



Governor Schwarzenegger Issues Proclamation on Tribal Gaming Policy PROCLAMATION

by the
Governor of the State of California

Governor Arnold Schwarzenegger today issued the following Proclamation describing his general policy on specified matters related to tribal gaming:

PROCLAMATION

BY THE GOVERNOR OF THE STATE OF CALIFORNIA

WHEREAS, the federal Indian Gaming Regulatory Act of 1988 (IGRA) authorizes federally recognized Indian tribes to conduct class III gaming on Indian lands, as defined by IGRA, to the extent such games are permitted by state law, and pursuant to a gaming compact negotiated between a tribe and the State; and

WHEREAS, IGRA requires the State to negotiate in good faith for the conclusion of tribal-state gaming compacts with Indian tribes that request such negotiations when those tribes have eligible Indian lands located in the State; and

WHEREAS, in 1998, California voters approved Proposition 5, a statutory measure designed to allow for the operation of slot machine and house banked card gaming by California Indian tribes on Indian lands in accordance with federal law; and

WHEREAS, in 2000, California voters approved Proposition 1A, a measure that amended the California Constitution to authorize the Governor to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines, lottery games and banked and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law; and

WHEREAS, during the campaigns to approve Propositions 5 and 1A, California voters were assured that approval of these measures would not result in tribal casinos being located in urban areas; and

WHEREAS, the constitutionality of tribal exclusivity over the forms of gaming authorized by Proposition 1A is premised upon the limitation of these activities to Indian lands; and

WHEREAS, there are over 100 federally recognized Indian tribes in California and many of those tribes already have Indian lands within the meaning of IGRA that are eligible for class III gaming; and

WHEREAS, California Government Code section 12012.25, subdivision (d), designates the Governor as the state official with authority to negotiate and execute tribal gaming compacts on behalf of the State; and

WHEREAS, California Government Code section 12012.25, subdivisions (c) and (e), provide that tribal-state gaming compacts negotiated by the Governor are subject to ratification by the Legislature; and

WHEREAS, in 1999, Governor Gray Davis concluded, and the Legislature ratified, compacts with 57 tribes, in anticipation of the voters' approval of Proposition 1A; and

WHEREAS, since 1999, seven additional tribes have concluded compacts that have been ratified by the Legislature, seven tribes have amended the terms of their 1999 compacts, which amendments have been ratified by the Legislature, and one tribe with Indian lands in an urban area concluded a compact that was not ratified; and

WHEREAS, in the general election of 2004, two initiative measures, Propositions 68 and 70, that would have expanded gaming activities in urban areas were placed before the California voters; and

WHEREAS, Proposition 68 was defeated with 83.8 percent of the electorate voting against it and Proposition 70 was defeated with 76.3 percent of the electorate voting against it; and

WHEREAS, events demonstrate increasing public concern over the location and expansion of tribal gaming enterprises in California; and

WHEREAS, the State of California exercises jurisdiction over land within the territorial boundaries of the State, except to the extent such jurisdiction is expressly reserved by, or ceded to, the federal government or is preempted by operation of federal law; and

WHEREAS, IGRA generally prohibits Indian gaming on lands acquired by the federal government in trust for Indian tribes after October 17, 1988, the effective date of IGRA; and

WHEREAS, exceptions exist that authorize class III gaming on lands acquired in trust after October 17, 1988, (1) if the lands are taken into trust as part of (i) a settlement of a land claim, or (ii) the restoration of lands for an Indian tribe that is restored to federal recognition, (2) if the lands are taken into trust as part of the initial reservation of an Indian tribe acknowledged by the Secretary of Interior under the federal acknowledgement process, or (3) if the Secretary of Interior determines that a gaming establishment on lands acquired after October 17, 1988, would be in the best interest of the Indian tribe and its members, would not be detrimental to the surrounding community, and the Governor of the State in which the land is situated concurs in the Secretary's determination that such land can be used for gaming (a Section 20 concurrence); and

WHEREAS, an increasing number of Indian tribes are seeking to take new land into trust for purposes of conducting class III gaming activities pursuant to the provisions of IGRA, often in urban areas; and

WHEREAS, it is in the best interests of all Californians that there be a clear statement of policy identifying the Governor's positions with respect to Indian gaming on newly acquired trust land located in urban areas.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, do hereby proclaim the following statements as my general policy on the specified matters related to tribal gaming:

1. I shall oppose proposals for the federal acquisition of lands within any urbanized area where the lands sought to be acquired in trust are to be used to conduct or facilitate gaming activities.
2. I shall decline to engage in negotiations for tribal-state gaming compacts where the Indian tribe does not have Indian lands eligible for class III gaming.
3. I shall consider requests for a gubernatorial concurrence under section 20(b)(1)(A) of IGRA, that would allow a tribe to conduct class III gaming on newly acquired land, only in cases where each of the following criteria is satisfied:
 - a) The land that is sought for class III gaming is not within any urbanized area.
 - b) The local jurisdiction in which the tribe's proposed gaming project is located supports the project.



c) The tribe and the local jurisdiction demonstrate that the affected local community supports the project, such as by a local advisory vote.

d) The project substantially serves a clear, independent public policy, separate and apart from any increased economic benefit or financial contribution to the State, community, or the Indian tribe that may arise from gaming.

4. In order to ensure adherence to the foregoing policies, I will direct the Governor's Office of Planning and Research (OPR) to provide to the Attorney General and the following departments, boards, and commissions copies of every notice of a tribal application to have land taken into trust by the federal government:

- a) The Department of Parks and Recreation
- b) The Department of Water Resources
- c) The Department of Fish and Game
- d) The Native American Heritage Commission
- e) The Department of Transportation
- f) The California Highway Patrol
- g) The Air Resources Board
- h) The Department of Conservation
- i) The appropriate regional office of the Regional Water Quality Control Board.

I will further direct the Resources Agency, Environmental Protection Agency, and Health and Human Services Agency to distribute a copy of the notice to any of their respective departments that may be able to provide input on a particular application. The departments referenced above will be directed to promptly review the notices and provide comments to the Legal Affairs Secretary for a determination as to whether any comment on an application to have land taken into trust should be provided to the Bureau of Indian Affairs. The boards and commissions listed above will be invited to provide comments on said notices to the Legal Affairs Secretary.

5. I shall support legislative ratification and Department of Interior approval of each compact or amended compact negotiated by my administration, including the one compact for a casino in an urban area that is not yet ratified by the Legislature.

6. For purpose of this Proclamation, "urbanized area" means the definition of that term as defined in Public Resources Code section 21071, subdivision (a). A list of the cities meeting this definition as of the date of this Proclamation is attached hereto.

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OFFICE OF THE GOVERNOR

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FOR IMMEDIATE RELEASE
05/18/2005

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6. For purpose of this Proclamation, "urbanized area" means the definition of that term as defined in Public Resources Code section 21071, subdivision (a). A list of the cities meeting this definition as of the date of this Proclamation is attached hereto.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 18th day of May, 2005.

ARNOLD SCHWARZENEGGER
Governor of California

List of Cities in Urbanized Areas