

112TH CONGRESS
1ST SESSION

S. 771

To amend the Indian Gaming Regulatory Act to modify a provision relating to gaming on land acquired after October 17, 1988.

IN THE SENATE OF THE UNITED STATES

APRIL 8, 2011

Mrs. FEINSTEIN (for herself and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Indian Gaming Regulatory Act to modify a provision relating to gaming on land acquired after October 17, 1988.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Gaming Eligi-
5 bility Act”.

6 **SEC. 2. GAMING ON LAND ACQUIRED AFTER OCTOBER 17,**
7 **1988.**

8 Section 20 of the Indian Gaming Regulatory Act (25
9 U.S.C. 2719) is amended—

1 (1) by striking the section designation and
2 heading and all that follows through “(a) Except”
3 and inserting the following:

4 **“SEC. 20. GAMING ON LAND ACQUIRED AFTER OCTOBER 17,**
5 **1988.**

6 “(a) IN GENERAL.—Except”; and

7 (2) in subsection (b)—

8 (A) in paragraph (1)(B), in the matter
9 preceding clause (i), by inserting “subject to
10 paragraph (2),” before “lands are taken”;

11 (B) by redesignating paragraphs (2) and
12 (3) as paragraphs (3) and (4), respectively;

13 (C) by inserting after paragraph (1) the
14 following:

15 “(2) APPLICABILITY TO CERTAIN LAND.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (D), effective beginning on the
18 date of enactment of the Tribal Gaming Eligi-
19 bility Act, in addition to any other requirements
20 under applicable Federal law, gaming conducted
21 pursuant to an exception under paragraph
22 (1)(B) shall not be conducted on land taken
23 into trust after October 17, 1988, by the
24 United States for the benefit of an Indian tribe
25 unless the Secretary determines, on the date

1 the land is taken into trust, that the Indian
2 tribe—

3 “(i) has received a written determina-
4 tion by the Secretary that the land is eligi-
5 ble to be used for gaming under this sec-
6 tion; and

7 “(ii) demonstrates—

8 “(I) in accordance with subpara-
9 graph (B), a substantial, direct, mod-
10 ern connection to the land taken into
11 trust, as of October 17, 1988; and

12 “(II) in accordance with subpara-
13 graph (C), a substantial, direct, ab-
14 original connection to the land taken
15 into trust.

16 “(B) SUBSTANTIAL, DIRECT, MODERN
17 CONNECTION.—In making a determination
18 under subparagraph (A)(ii)(I) that an Indian
19 tribe demonstrates a substantial, direct, modern
20 connection to land taken into trust as of Octo-
21 ber 17, 1988, the Secretary shall certify that—

22 “(i) if the Indian tribe has a reserva-
23 tion—

24 “(I) the land is located within a
25 25-mile radius of the tribal head-

1 quarters or other tribal governmental
2 facilities of the Indian tribe on the
3 reservation;

4 “(II) the Indian tribe has dem-
5 onstrated a temporal connection to, or
6 routine presence on, the land during
7 the period beginning on October 17,
8 1988, and ending on the date of the
9 certification; and

10 “(III) the Indian tribe has not
11 been recognized or restored to Federal
12 recognition status during the 5-year
13 period preceding the date of the cer-
14 tification; or

15 “(ii) if the Indian tribe does not have
16 a reservation—

17 “(I) the land is located within a
18 25-mile radius of an area in which a
19 significant number of members of the
20 Indian tribe reside;

21 “(II) the Indian tribe has dem-
22 onstrated a temporal connection to, or
23 routine presence on, the land during
24 the period beginning on October 17,

1 1988, and ending on the date of the
2 certification; and

3 “(III)(aa) the land was included
4 in the first-submitted request of the
5 Indian tribe for newly acquired land
6 since the date on which the Indian
7 tribe was recognized or restored to
8 Federal recognition; or

9 “(bb)(AA) the application to take
10 the land into trust was received by the
11 Secretary during the 5-year period be-
12 ginning on the date on which the In-
13 dian tribe was recognized or restored
14 to Federal recognition; and

15 “(BB) the Indian tribe is not
16 conducting any gaming activity on
17 any other land.

18 “(C) SUBSTANTIAL, DIRECT, ABORIGINAL
19 CONNECTION.—In making a determination
20 under subparagraph (A)(ii)(II) that an Indian
21 tribe demonstrates a substantial, direct, aborigi-
22 nal connection to land, the Secretary shall take
23 into consideration some or all of the following
24 factors:

1 “(i) The historical presence of the In-
2 dian tribe on the land, including any land
3 to which the Indian tribe was relocated
4 pursuant to the forcible removal of tribal
5 members from land as a result of acts of
6 violence, an Act of Congress, a Federal or
7 State administrative action, or a judicial
8 order.

9 “(ii) Whether the membership of the
10 tribe can demonstrate lineal descendent or
11 cultural affiliation, in accordance with sec-
12 tion 10.14 of title 43, Code of Federal
13 Regulations (or a successor regulation).

14 “(iii) The area in which the unique
15 language of the Indian tribe has been used.

16 “(iv) The proximity of the land to cul-
17 turally significant sites of the Indian tribe.

18 “(v) The forcible removal of tribal
19 members from land as a result of acts of
20 violence, an Act of Congress, a Federal or
21 State administrative action, or a judicial
22 order.

23 “(vi) Other factors that demonstrate a
24 temporal presence of the Indian tribe on
25 the land prior to the first interactions of

1 the Indian tribe with nonnative individuals,
2 the Federal Government, or any other sov-
3 ereign entity.

4 “(D) EXCEPTIONS.—

5 “(i) IN GENERAL.—Subparagraphs
6 (A) through (C) shall not apply—

7 “(I) to any land on which gaming
8 regulated by this Act will not take
9 place;

10 “(II) to any land located within,
11 or contiguous to, the boundaries of
12 the reservation of an Indian tribe, as
13 of October 17, 1988;

14 “(III) if—

15 “(aa) the relevant Indian
16 tribe did not have a reservation
17 on October 17, 1988; and

18 “(bb) the land is located—

19 “(AA) in the State of
20 Oklahoma and within the
21 boundaries of the former
22 reservation of the Indian
23 tribe, as defined by the Sec-
24 retary, or contiguous to
25 other land held in trust or

1 restricted status by the
2 United States for the Indian
3 tribe in the State of Okla-
4 homa; or

5 “(BB) in a State other
6 than Oklahoma and within
7 the last recognized reserva-
8 tion of the Indian tribe in
9 any State in which the In-
10 dian tribe is presently lo-
11 cated; or

12 “(IV) if the relevant Indian tribe
13 has—

14 “(aa) taken land into trust
15 during the period beginning on
16 October 17, 1988, and ending on
17 the date of enactment of the
18 Tribal Gaming Eligibility Act;
19 and

20 “(bb) has received a written
21 determination by the Secretary
22 that the land is eligible to be
23 used for gaming under this sec-
24 tion.

25 “(ii) CERTAIN DECISIONS.—

1 “(I) IN GENERAL.—Subject to
 2 subclause (II), subparagraphs (A)
 3 through (C) shall not apply to a final
 4 agency decision issued before the date
 5 of enactment of the Tribal Gaming
 6 Eligibility Act.

7 “(II) PENDING APPLICATIONS.—
 8 Subparagraphs (A) through (C) shall
 9 apply to an application that is pend-
 10 ing, but for which a final agency deci-
 11 sion has not been made, as of the date
 12 of enactment of the Tribal Gaming
 13 Eligibility Act.

14 “(E) ADMINISTRATION.—An action under
 15 this paragraph shall be considered a final ad-
 16 ministrative action for purposes of subchapter
 17 II of chapter 5, and chapter 7, of title 5,
 18 United States Code (commonly known as the
 19 ‘Administrative Procedure Act’).”; and

20 (D) in paragraph (4) (as redesignated by
 21 subparagraph (B)), by striking “paragraph
 22 (2)(B)” and inserting “paragraph (3)(B),”.

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