

Assembly Bill No. 880

CHAPTER 801

An act to amend and renumber Section 12012.95 of, to add Sections 11126.4.5 and 12012.3 to, and to add Article 2.3 (commencing with Section 12019.30) to Chapter 1 of Part 2 of Division 3 of Title 2 of, the Government Code, relating to tribal gaming.

[Approved by Governor September 27, 2018. Filed with
Secretary of State September 27, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 880, Gray. Tribal Nation Grant Fund.

(1) Existing law establishes the Tribal Nation Grant Fund for the receipt and deposit of moneys received by the state from Indian tribes pursuant to the terms of tribal-state gaming compacts. Under existing law, moneys in the Tribal Nation Grant Fund are available, upon appropriation by the Legislature, for the discretionary distribution of funds to nongaming and limited-gaming tribes, as specified. An existing Executive Order establishes the position of the Governor's Tribal Advisor within the office of the Governor.

This bill would establish within the office of the Governor, the office of the Governor's Tribal Advisor, to be headed by the Governor's Tribal Advisor, who is to be appointed by, and serve at the pleasure of, the Governor. The bill would also establish within state government the Tribal Nation Grant Panel and the Tribal Nation Grant Fund Program, through which the panel may award grants and make other distributions from the fund to eligible tribes, as defined, with the assistance of the advisor, the Bureau of Gambling Control, and the California Gambling Control Commission, as specified. The bill would require the tribal advisor, before January 1, 2020, to appoint elected tribal leaders from federally recognized tribes in California to serve on the panel. The bill would require, after that date, the advisor and panel, in consultation with federally recognized tribes in California, to determine how members of the panel are appointed. The bill would require actions taken under these provisions to be consistent with tribal-state gaming compacts and would exempt the activities of the advisor, panel, bureau, and commission pursuant to these provisions from the Administrative Procedure Act. The bill would prohibit public disclosure, in public records or during a meeting of the panel, of all information relating to the administration of these provisions that describes the internal affairs of an eligible tribe, except as specified, and would require the panel to comply with the Bagley-Keene Open Meeting Act in a manner consistent with these prohibitions. The bill would require, commencing on or before July 15, 2020, and annually thereafter, the commission to prepare and post

on its Internet Web site a report detailing the status of grants and other distributions made from the fund for the previous fiscal year. The bill would also require the tribal advisor to provide an annual report to the Senate and Assembly Committees on Governmental Organization on the status of the program, as specified.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. Section 11126.4.5 is added to the Government Code, to read:

11126.4.5. (a) This article does not prohibit the Tribal Nation Grant Panel from holding a closed session when discussing matters involving information relating to the administration of Article 2.3 (commencing with Section 12019.30) of Chapter 1 of Part 2 that describes, directly or indirectly, the internal affairs of an eligible tribe, including, but not limited to, the finances and competitive business plans of an eligible tribe.

(b) Discussion in closed session authorized by this section shall be limited to the confidential information related to the agenda item and shall not include discussion of any other information or matter.

(c) Before going into closed session, the Tribal Nation Grant Panel shall publicly announce the type of information to be discussed in closed session, which shall be recorded in the minutes.

(d) Action taken on agenda items discussed pursuant to this section shall be taken in open session.

(e) For purposes of this section, the terms “Tribal Nation Grant Panel” and “eligible tribe” shall have the same meanings as set forth in Article 2.3 (commencing with Section 12019.30) of Chapter 1 of Part 2.

SEC. 2. Section 12012.3 is added to the Government Code, to read:

12012.3. (a) There is within the office of the Governor, the office of the Governor’s Tribal Advisor, which shall be headed by the Governor’s Tribal Advisor.

(b) The Governor’s Tribal Advisor shall be appointed by, and serve at the pleasure of, the Governor.

(c) The Governor’s Tribal Advisor shall be an enrolled member of a federally recognized tribe in California.

SEC. 3. Section 12012.95 of the Government Code is amended and renumbered to read:

12019.35. (a) There is in the State Treasury the Tribal Nation Grant Fund for the receipt and deposit of moneys received by the state from Indian tribes pursuant to the terms of tribal-state gaming compacts. The fund reflects

a vision of facilitating tribal self-governance and improving the quality of life of tribal people throughout the state.

(b) The Tribal Nation Grant Fund shall be administered by the California Gambling Control Commission, which shall act as the limited trustee as provided under the terms of applicable tribal-state gaming compacts and shall not be subject to the duties and liabilities provided in the Probate Code, common law, or equitable principles. Moneys in the fund shall be available, upon appropriation by the Legislature, for the discretionary distribution of funds to nongaming tribes and limited-gaming tribes upon application of those tribes for purposes related to effective self-governance, self-determined community, and economic development.

(c) The California Gambling Control Commission shall deposit money into the fund only after it determines there are sufficient moneys in the Indian Gaming Revenue Sharing Trust Fund to distribute the quarterly payments described in Section 12012.90.

SEC. 4. Article 2.3 (commencing with Section 12019.30) is added to Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code, to read:

Article 2.3. Tribal Nation Grant Fund Program

12019.30. Unless the context requires otherwise, for purposes of this article, the following terms shall have the following meanings:

(a) “Advisor” means the Governor’s Tribal Advisor.

(b) “Bureau” means the Bureau of Gambling Control within the Department of Justice.

(c) “Commission” means the California Gambling Control Commission.

(d) “Eligible tribe” means a nongaming or limited-gaming federally recognized tribe in California as defined in applicable tribal-state gaming compacts.

(e) “Fund” means the Tribal Nation Grant Fund established by Section 12019.35.

(f) “Grant” means an amount of money paid to an eligible tribe from the fund awarded by the panel through a competitive process pursuant to this article.

(g) “Panel” means the Tribal Nation Grant Panel established by Section 12019.60.

(h) “Program” means the Tribal Nation Grant Fund Program established by this article.

12019.40. (a) There is in state government the Tribal Nation Grant Fund Program whereby the panel is authorized to award grants from available moneys within the fund and make other distributions from the fund to eligible tribes as set forth in this article.

(b) A request for a grant shall be made by submitting an application to the commission on a form approved by the panel and provided by the commission. Unless prohibited by a tribal-state gaming compact or the

panel, an eligible tribe may apply for more than one grant, but shall submit a separate application for each grant proposal. Two or more eligible tribes may apply for one grant by submitting a joint application.

(c) A grant shall be used to fund a specifically described purpose or project generally relating to self-governance, developing a self-determined community, and economic development in the application. Eligible purposes or projects may include, but are not limited to, development of curricula in a tribal language or culture, housing, support for compliance with the federal Indian Child Welfare Act, vocational training, community development, investments in tribal schools and colleges, support of tribal government institutions and tribal courts, nongaming economic diversification, or investment in public health, information technology, renewable energy, water conservation, cultural preservation or awareness, educational programs, or scholarships.

(d) A grant shall not be used to pay a per capita distribution to tribal members or an investment in a purpose or project related to any gaming operation or activity.

12019.45. (a) The advisor and panel, with administrative support from the commission and in consultation with federally recognized tribes in California, shall develop a concise application form for one or more eligible tribes to apply for a grant.

(b) The application developed pursuant to subdivision (a) shall include, but not be limited to, all of the following:

(1) An identification of every eligible tribe applying for the grant and the name, signature, and contact information of every individual who is authorized by each eligible tribe's governing body to apply for the grant.

(2) A description of the purpose or project for which the grant is intended to be used.

(3) An assessment of the nature and extent of the potential benefits from the described purpose or project to each applying eligible tribe.

(4) The safeguards in place to ensure that the grant would be applied only to the described purpose or project.

(5) The amount and source of other moneys or in-kind services or goods, if any, that are available to be additionally applied to the described purpose or project and when those moneys or in-kind services or goods are intended to be applied.

(6) A list of every grant awarded or other distribution from the fund previously awarded or distributed to each eligible tribe applying for the grant and the results achieved as a result of those prior awards or distributions.

(7) A strategy for how the benefits from the described purpose or project will be sustainably maintained.

(8) A signed acceptance of the terms described in Section 12019.75 from an authorized representative of every eligible tribe applying in the application.

(9) Identification of the information provided in the application that each eligible tribe proposes is confidential and not subject to public disclosure

pursuant to subdivision (a) of Section 12019.55, and a statement, in bold, that the panel may consider, but is not required to comply with, an eligible tribe's identification of information as confidential when responding to a request for public records pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(10) Any other information the advisor and panel deem valuable to evaluating the merits of awarding a grant.

12019.50. (a) The staff of the commission shall provide all of the following services:

(1) Assistance to the individuals applying for a grant on behalf of every eligible tribe in understanding the application process. This assistance shall not include completing an application for a grant on behalf of an eligible tribe.

(2) All administrative support necessary to implement this article, including, but not limited to, processing applications for grants, administrative services to the advisor, the panel, and technical experts retained by the panel, if any, and administrative assistance to the panel allocating and disbursing grants and making other distributions from the fund to eligible tribes.

(b) To the extent prohibited by applicable tribal-state gaming compacts, the commission and its staff shall not exercise discretion or control over the approval or disapproval of grant applications or the use of grants or other distributions from the fund by eligible tribes.

12019.55. (a) All information relating to the administration of this article that describes, directly or indirectly, the internal affairs of an eligible tribe, including, but not limited to, the finances and competitive business plans of an eligible tribe, is confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(b) The panel shall comply with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1), and shall do so in a manner that prevents the disclosure of information described in subdivision (a), including, but not limited to, holding, when necessary in a closed session, as authorized by Section 11126.4.5.

12019.60. (a) There is in state government the Tribal Nation Grant Panel.

(b) (1) The panel shall be composed of nine total members, of which seven are voting members and two are alternate nonvoting members.

(2) Four members who are authorized to vote are required to establish a quorum for the transaction of business of the panel. The panel may take an action by a majority vote of a quorum, except that the panel shall only award a grant or approve a distribution from the fund by an approval vote of four or more members who are authorized to vote.

(3) Any member may voluntarily recuse himself or herself from the consideration of a grant application or a particular agenda item.

(4) If one or two of the seven voting members recuse themselves from the consideration of or voting on a grant application or a particular agenda item, or do not attend a meeting of the panel, the advisor may select an alternate nonvoting member to act in the place of the recused or absent voting member for the consideration of and voting on the grant application or agenda item, or for that meeting.

(c) (1) Before January 1, 2020, all members shall be appointed by the advisor for a term of one year. The advisor may extend the term of any member for up to one year or fill a vacancy by appointing a new member. Applicable to any appointment made pursuant to this paragraph, the advisor shall only appoint an individual who is an elected tribal leader from a federally recognized tribe in California and shall endeavor to establish a panel that represents the diversity of tribes in California. No member appointed pursuant to this paragraph shall serve on the panel on or after January 1, 2020, unless separately appointed pursuant to a process authorized in paragraph (2).

(2) The advisor and panel, as comprised before January 1, 2020, in consultation with federally recognized tribes in California, shall determine how members of the panel are appointed on and after January 1, 2020. The advisor and panel, as comprised on and after January 1, 2020, in consultation with federally recognized tribes in California, may from time-to-time, amend how members of the panel are appointed as they jointly determine is necessary to fairly and equitably achieve the purposes for which the fund was created.

(d) The advisor is not a member of the panel but shall preside over the meetings of the panel in an administrative capacity. The advisor shall advise the panel on procedures for the business of the panel and encourage the use of procedures that allow for a fair process to evaluate grant applications and consider other distributions from the fund that best serves all eligible tribes.

(e) Any member of the panel who attends a meeting, regardless of whether the member votes, shall be compensated a one-hundred-dollar (\$100) per diem for each day a meeting is held and the actual, reasonable travel expenses to attend that meeting.

12019.65. (a) The panel shall meet to consider grant applications at least annually and shall consider at a meeting all completed grant applications that were submitted by a deadline established by the panel. The panel may award a grant in an amount less than requested in an application.

(b) The panel may distribute, in equal amounts, a portion of the available moneys in the fund to all eligible tribes that submitted a completed grant application within the deadline established by the panel. The panel shall not distribute all available moneys in the fund through an equal distribution pursuant to this subdivision.

(c) The panel may decline to award future grants or distributions to an eligible tribe for a specified period of time if the panel, in its sole discretion, determines that the eligible tribe had previously received and used a grant in a manner inconsistent with the described purpose or project set forth in

the grant application or in compliance with conditions and limitations imposed by the panel.

(d) The advisor and panel, with administrative support from the commission and in consultation with federally recognized tribes in California, shall develop an appropriate process to reasonably ensure that grants are used in a manner consistent with this article, applicable tribal-state gaming compacts, the application, and the conditions and limitation imposed on the award of a grant, if any. The process shall be respectful and promotive of tribal sovereignty.

(e) The advisor and panel, with administrative support from the commission and in consultation with federally recognized tribes in California, may develop a process to use technical experts with relevant experience to review and score applications. The technical experts may be compensated up to a one-hundred-dollar (\$100) per diem for each day spent reviewing and scoring applications.

(f) (1) The advisor and panel, with administrative support from the commission and in consultation with federally recognized tribes in California, shall develop procedures to govern the business of the panel, including, but not limited to, the procedures for meetings, a process for evaluating and resolving potential conflicts of interest of members of the panel, the process for auditing the use of grants, and all other processes that may be required to award grants or make other distributions from the fund.

(2) Only the bureau shall conduct audits of the use of grant funds.

(g) All activities of the advisor, panel, bureau, and commission pursuant to this article are exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1).

12019.70. (a) The panel may, in its discretion and based upon the purpose or project set forth in the application, require an eligible tribe to encumber or expend any or all of a grant within a specified period of time from the date that the panel awarded the grant.

(b) The panel may, in its discretion, modify any deadline it established for the use of a grant.

12019.75. By applying for a grant, each eligible tribe and each individual applying on behalf of each eligible tribe shall agree to all of the following:

(a) The terms and conditions the panel imposes as a condition of awarding the grant, including the limitations set forth in this section and article.

(b) To cooperate with the panel, advisor, commission, bureau, or other state entity designated by the Governor to ensure that the grant is used in a manner consistent with the assertions in the application and any condition or limitations imposed on the award of the grant.

(c) To provide access to the panel, advisor, commission, bureau, or other state entity designated by the Governor to all documents relevant to the use of the grant to allow a comprehensive audit, to ensure a grant is used for the purpose or project set forth in the application, in compliance with the conditions or limitations on the grant, and applicable tribal-state gaming compacts.

(d) To return to the fund any amount of a grant not encumbered or expended in compliance with Section 12019.70. Any returned funds shall be provided to the commission for deposit into the fund.

12019.80. On or before July 15, 2020, and annually thereafter, the commission shall prepare and post on its Internet Web site a report detailing the status of grants and other distributions made from the fund for the previous fiscal year. In preparing the report, the commission shall not provide information prohibited from public disclosure pursuant to Section 12019.55, unless the eligible tribe that is the subject of the information authorizes the commission to include that information in the report as evidenced in a writing signed by an authorized representative of the eligible tribe.

12019.81. (a) The advisor shall provide an annual report to the Senate and Assembly Committees on Governmental Organization on the status of the program relating to the program's activities and resources needed to implement and maintain the program.

(b) This report shall include all of the following:

(1) An update and summary of the program, including recent developments, strategic priorities, and upcoming milestones.

(2) An annual fiscal report for the prior fiscal year summarizing proceeds to the fund and expenditures and grants distributed out of the fund.

(3) A general evaluation to understand and strengthen the performance and effectiveness of the program.

12019.85. The activities authorized and required by this article, including, but not limited to, the administrative and procedural support services provided by the commission, its staff, and the advisor, the costs and compensation of members of the panel, and the costs of audits, are regulatory costs in connection with the implementation and administration of responsibilities imposed by tribal-state gaming compacts, and shall be funded by moneys in the Indian Gaming Special Distribution Fund, and shall not be funded from the Indian Gaming Revenue Sharing Trust Fund or the fund.

12019.90. Actions taken under this article shall be consistent with the provisions of tribal-state gaming compacts.

SEC. 5. The Legislature finds and declares that Section 1 of this act, which adds Section 11126.4.5 to the Government Code, and Section 4 of this act, which adds Article 2.3 (commencing with Section 12019.30) to Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

To protect the sovereignty of tribal nations and perform the state's responsibilities pursuant to tribal-state gaming compacts, it is necessary to limit the public's access to information regarding the internal affairs of

eligible tribes seeking grants and other distributions from the Tribal Nation Grant Fund.

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