

CALIFORNIA GAMBLING CONTROL COMMISSION

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DATE: September 8, 2004

TO: Gambling Control Commission

FROM: Gary Qualset, Deputy Director
Licensing and Compliance Division

SUBJECT: Indian Gaming Special Distribution Fund and Indian Gaming Revenue Sharing Trust Fund Shortfall Distribution Report to Legislature per Government Code Section 12012.90

Government Code Section 12012.90 provides a mechanism to allow the California Gambling Control Commission (Commission) to distribute moneys appropriated and transferred from the Indian Gaming Special Distribution Fund (SDF) to the Indian Gaming Revenue Sharing Trust Fund (RSTF) for the purpose of making payments of any shortfalls that may occur in the RSTF. Additionally, Government Code Section 12012.85 provides for how moneys in the SDF shall be available for appropriation by the Legislature.

Section 12012.90 was originally added to the Government Code effective August 11, 2003. This section was amended this year effective August 16, 2004, with the chaptering of Senate Bill 1102 as Chapter 227, Statutes of 2004. The bill was a budget trailer bill and included an urgency clause. A copy of the relevant portions of Senate Bill 1102 as enacted and related to Government Code Section 12012.90 is attached to this report for your information.

The statute calls for the Commission to distribute the moneys without delay to eligible recipient Indian tribes. The Commission has acted as quickly as possible. As noted above, the amended statute was effective on August 16, 2004. On August 13, 2004 the agenda for the August 24, 2004, Commission meeting was announced. Due to timing constraints related to providing public notice and the approval of pending legislation effecting the shortfall distribution, it was not previously possible to consider a shortfall distribution report. The earliest that the Commission would thus be able to consider a shortfall distribution report is at the Commission meeting of September 8, 2004.

Original statute language in Section 12012.90 of the Government Code required the Commission to:

- Determine the aggregate amount of shortfalls in payments that occurred in the RSTF pursuant to Section 4.3.2.1 of the Tribal-State Gaming Compacts (Compact) for each fiscal year commencing with the 2002-03 fiscal year as prescribed in subdivision (a) of Government Code Section 12012.90,
- Report the amount of the shortfall that was determined to the committees in the Legislature that consider the State Budget after the Commission authorizes the final payment for each fiscal year from the RSTF, and

- Distribute the moneys without delay upon a transfer and appropriation from the SDF to the RSTF to eligible recipient Indian tribes for each quarter that a tribe was eligible to receive a distribution during the fiscal year immediately preceding.

Amended statute language in Section 12012.90 of the Government Code made the following changes:

- Repealed the requirement for the Commission to report to the committees in the Legislature that consider the State Budget the amount of the shortfall that is determined, but instead now requires the Commission to provide to the preceding committees an estimate of the amount needed to backfill the RSTF on or before the date of the May budget revision for each fiscal year. This will first be due by April/May of 2005.
- Prohibits an eligible recipient Indian tribe from receiving an amount from the backfill in excess of \$275,000 per eligible quarter.
- Specifies that any transfer of funds from the SDF to the RSTF that results in a surplus shall revert back to the SDF.

As set forth in the Government Code Section 12012.90, in case of occurrence of any shortfalls in payments that occur in the RSTF during the preceding fiscal year, the Commission must determine the aggregate amount of that shortfall according to the method delineated in subparagraphs (A) and (B) of paragraph (1) of subdivision (a) of Government Code Section 12012.90. This method provides that the amount shall be the sum of the amounts determined in the above two subparagraphs as follows:

- A. For each eligible recipient Indian tribe that received distributions for all four quarters of the fiscal year the amount shall be the difference between \$1.1 million and the actual amount paid to each eligible recipient Indian tribe during the fiscal year, and
- B. For each eligible recipient Indian tribe that received distributions for less than four quarters of the fiscal year the amount shall be the difference between \$275,000 for each quarter in the fiscal year that a recipient Indian tribe was eligible to receive moneys and the actual amount paid to each eligible recipient Indian tribe during the fiscal year.

It is determined that each of the seventy (70) eligible recipient Indian tribes received \$453,332.69 from the RSTF for all four quarters of the prior fiscal year resulting in a shortage of \$646,667.31 for each eligible recipient Indian tribe. The aggregate amount of the shortfall in payments to all eligible recipient Indian tribes for the fiscal year 2003-04 totals \$45,266,711.70.

No reporting of this information to the Legislature is presently required due to the recent changes that were made to Government Code Section 12012.90 as noted above. However, it will be recommended by Commission staff that the Commission voluntarily provide a copy of this report to the Legislature for informational purposes.

Pursuant to Items 0855-101-0366 and 0855-111-0367 of the Budget Act of 2004 (Senate Bill 1113, Chapter 208, Statutes of 2004) up to \$50.5 million was appropriated and authorized transfer for subsequent distribution to Non-Compact tribes per Government Code Section 12012.90. As noted in Budget Item 0855-111-0367 the Director of Finance must first order the

transfer of moneys by the Controller before the Commission can issued distributions. Commission staff will work with our Accounting Office, the State Controller's Office, and the Department of Finance to ensure that the transfer and distribution of these moneys are made as quickly as possible.

RECOMMENDATION: *It is recommended that the Commission approve this report to be submitted to the Legislature and the amounts of shortfall shown in Exhibit 1 determined pursuant to Government Code Section 12012.90 under the methodology prescribed therein.*

Exhibit 1**Aggregate Amount of Shortfalls in Payments that Occurred in the Indian Gaming Revenue Sharing Trust Fund for Fiscal Year 2003-04**

Eligible Recipient Indian Tribe	Quarters Eligible	Total Potential Distribution	Total Approved Distribution	Aggregate Shortfall
Alturas Indian Rancheria	4	\$1,100,000.00	\$453,332.69	\$646,667.31
Bear River Band of the Rohnerville Rancheria	4	1,100,000.00	453,332.69	646,667.31
Benton Paiute Reservation	4	1,100,000.00	453,332.69	646,667.31
Big Lagoon Rancheria	4	1,100,000.00	453,332.69	646,667.31
Big Pine Reservation	4	1,100,000.00	453,332.69	646,667.31
Big Sandy Rancheria	4	1,100,000.00	453,332.69	646,667.31
Bridgeport Paiute Indian Colony	4	1,100,000.00	453,332.69	646,667.31
Buena Vista Rancheria	4	1,100,000.00	453,332.69	646,667.31
Cahto Indian Tribe of Laytonville	4	1,100,000.00	453,332.69	646,667.31
Cahuilla Band of Mission Indians	4	1,100,000.00	453,332.69	646,667.31
California Valley Miwok Tribe	4	1,100,000.00	453,332.69	646,667.31
Cedarville Rancheria	4	1,100,000.00	453,332.69	646,667.31
Chemehuevi Indian Tribe	4	1,100,000.00	453,332.69	646,667.31
Cher-Ae Heights Indian Community	4	1,100,000.00	453,332.69	646,667.31
Chicken Ranch Rancheria	4	1,100,000.00	453,332.69	646,667.31
Cloverdale Rancheria	4	1,100,000.00	453,332.69	646,667.31
Cold Springs Rancheria	4	1,100,000.00	453,332.69	646,667.31
Colorado River Indian Tribes	4	1,100,000.00	453,332.69	646,667.31
Cortina Rancheria	4	1,100,000.00	453,332.69	646,667.31
Cuyapaipe Community of Mission Indians	4	1,100,000.00	453,332.69	646,667.31
Death Valley Timbi-Sha Shoshone Tribe	4	1,100,000.00	453,332.69	646,667.31
Elem Indian Colony	4	1,100,000.00	453,332.69	646,667.31
Elk Valley Rancheria	4	1,100,000.00	453,332.69	646,667.31
Enterprise Rancheria	4	1,100,000.00	453,332.69	646,667.31
Fort Bidwell Indian Community	4	1,100,000.00	453,332.69	646,667.31
Fort Independence Reservation	4	1,100,000.00	453,332.69	646,667.31
Fort Mojave Indian Tribe	4	1,100,000.00	453,332.69	646,667.31
Graton Rancheria	4	1,100,000.00	453,332.69	646,667.31
Greenville Rancheria	4	1,100,000.00	453,332.69	646,667.31
Grindstone Rancheria	4	1,100,000.00	453,332.69	646,667.31
Guidiville Rancheria	4	1,100,000.00	453,332.69	646,667.31
Hoopa Valley Tribe	4	1,100,000.00	453,332.69	646,667.31
Inaja-Cosmit Mission Indians	4	1,100,000.00	453,332.69	646,667.31
Ione Band of Miwok Indians	4	1,100,000.00	453,332.69	646,667.31
Jamul Indian Village	4	1,100,000.00	453,332.69	646,667.31

Exhibit 1 (Continued)**Aggregate Amount of Shortfalls in Payments that Occurred in the Indian Gaming Revenue Sharing Trust Fund for Fiscal Year 2003-04**

Eligible Recipient Indian Tribe	Quarters Eligible	Total Potential Distribution	Total Approved Distribution	Aggregate Shortfall
Karuk Tribe of California	4	1,100,000.00	453,332.69	646,667.31
La Jolla Band of Mission Indians	4	1,100,000.00	453,332.69	646,667.31
La Posta Band of Mission Indians	4	1,100,000.00	453,332.69	646,667.31
Lone Pine Reservation	4	1,100,000.00	453,332.69	646,667.31
Los Coyotes Band of Cahuilla Indians	4	1,100,000.00	453,332.69	646,667.31
Lower Lake Rancheria	4	1,100,000.00	453,332.69	646,667.31
Lytton Rancheria	4	1,100,000.00	453,332.69	646,667.31
Manchester Point Arena Rancheria	4	1,100,000.00	453,332.69	646,667.31
Manzanita Mission Indians	4	1,100,000.00	453,332.69	646,667.31
Mechoopda Indian Tribe	4	1,100,000.00	453,332.69	646,667.31
Mesa Grande Mission Indians	4	1,100,000.00	453,332.69	646,667.31
Northfork Rancheria	4	1,100,000.00	453,332.69	646,667.31
Paiute Bishop Community	4	1,100,000.00	453,332.69	646,667.31
Pinoleville Reservation	4	1,100,000.00	453,332.69	646,667.31
Pit River Tribe	4	1,100,000.00	453,332.69	646,667.31
Potter Valley Rancheria	4	1,100,000.00	453,332.69	646,667.31
Quartz Valley Indian Community	4	1,100,000.00	453,332.69	646,667.31
Quechan Tribe of Fort Yuma	4	1,100,000.00	453,332.69	646,667.31
Ramona Mission Indians	4	1,100,000.00	453,332.69	646,667.31
Redwood Valley Rancheria	4	1,100,000.00	453,332.69	646,667.31
Resighini Rancheria	4	1,100,000.00	453,332.69	646,667.31
Round Valley Indian Tribe	4	1,100,000.00	453,332.69	646,667.31
Santa Rosa Band of Cahuilla Mission Indians	4	1,100,000.00	453,332.69	646,667.31
Santa Ysabel Mission Indians	4	1,100,000.00	453,332.69	646,667.31
Scotts Valley Band of Pomo Indians	4	1,100,000.00	453,332.69	646,667.31
Sherwood Valley Pomo Indians	4	1,100,000.00	453,332.69	646,667.31
Shingle Springs Rancheria	4	1,100,000.00	453,332.69	646,667.31
Smith River Rancheria	4	1,100,000.00	453,332.69	646,667.31
Stewarts Point Rancheria	4	1,100,000.00	453,332.69	646,667.31
Susanville Indian Rancheria	4	1,100,000.00	453,332.69	646,667.31
Table Bluff Reservation	4	1,100,000.00	453,332.69	646,667.31
Torrez-Martinez Mission Indians	4	1,100,000.00	453,332.69	646,667.31
Upper Lake Band of Pomo Indians	4	1,100,000.00	453,332.69	646,667.31
Washoe Tribe of Nevada & California	4	1,100,000.00	453,332.69	646,667.31
Yurok Tribe of the Yurok Reservation	4	1,100,000.00	453,332.69	646,667.31
Total		\$77,000,000.00	\$31,733,288.30	\$45,266,711.70

BILL NUMBER: SB 1102 CHAPTERED
BILL TEXT

CHAPTER 227
FILED WITH SECRETARY OF STATE AUGUST 16, 2004
APPROVED BY GOVERNOR AUGUST 16, 2004
PASSED THE SENATE JULY 29, 2004
PASSED THE ASSEMBLY JULY 28, 2004
AMENDED IN ASSEMBLY JULY 27, 2004
AMENDED IN ASSEMBLY JUNE 29, 2004

INTRODUCED BY Committee on Budget and Fiscal Review

JANUARY 12, 2004

An act to...amend Sections 905.2, 910.4, 910.8, 911, 11011, 11011.1, 11011.2, 11011.3, 11011.4, 11011.5, 11011.6, 11011.8, 11011.9, 11794, 12012.90, 12152, 12439, 12715, 13332.11, 13332.19, 13923, 14612.2, 14661, 15201, 16182, 16320, 16351, 16427, 23344, 27297.5, 29550, 30070, 63021.5, 65583, 69926.5, 69957, 71601, 71630, 71636, 71639.3, 71823, and 77202 of, to amend and repeal Section 29550.4 of, to add Sections 14604, 65584.1, 65584.2, 68511.8, 69958, 71639.4, 71639.5, 71825.1, and 71825.2 to, to add and repeal Sections 8690.6, 11011.10, and 12432 of, to repeal Sections 11006 and 13332.04 of, and to repeal and add Sections 71639.1 and 71825 of, the Government Code,...relating to state government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1102, Committee on Budget and Fiscal Review. General government.

...(14) Existing law ratifies specified tribal-state gaming compacts and establishes in the State Treasury the Indian Gaming Special Distribution Fund for the receipt and deposit of gaming device license fee moneys received from Indian tribes pursuant to the terms of the tribal-state compacts. Existing law additionally creates in the State Treasury the Indian Gaming Revenue Sharing Trust Fund for the receipt and deposit of moneys derived from gaming device license fees paid by compact tribes and authorizes moneys in the Indian Gaming Special Distribution Fund to be used to make payment of shortfalls that occur in the Indian Gaming Revenue Sharing Trust Fund. Under existing law, the California Gambling Control Commission, upon authorizing the final payment for each fiscal year from the Indian Gaming Revenue Sharing Trust Fund, is required to report the amount of the deficiency in payments to that fund to a specified legislative committee.

This bill would instead require the California Gambling Control Commission to provide to the committee an estimate of the amount needed to backfill the Indian Gaming Revenue Sharing Trust Fund on or before the date of the May budget revision for each fiscal year. The bill would additionally prohibit an eligible recipient Indian tribe from receiving an amount from the backfill in excess of

\$275,000 per eligible quarter and would specify that surplus funds in the Indian Gaming Revenue Sharing Trust Fund would revert back to the Indian Gaming Special Distribution Fund after the authorization of the final payment of the fiscal year.

...SEC. 36. Section 12012.90 of the Government Code is amended to read:

12012.90. (a) (1) For each fiscal year commencing with the 2002-03 fiscal year, the California Gambling Control Commission shall determine the aggregate amount of shortfalls in payments that occurred in the Indian Gaming Revenue Sharing Trust Fund pursuant to Section 4.3.2.1 of the tribal-state gaming compacts ratified and in effect as provided in subdivision (f) of Section 19 of Article IV of the California Constitution as determined below:

(A) For each eligible recipient Indian tribe that received money for all four quarters of the fiscal year, the difference between one million one hundred thousand dollars (\$1,100,000) and the actual amount paid to each eligible recipient Indian tribe during the fiscal year from the Indian Gaming Revenue Sharing Trust Fund.

(B) For each eligible recipient Indian tribe that received moneys for less than four quarters of the fiscal year, the difference between two hundred seventy-five thousand dollars (\$275,000) for each quarter in the fiscal year that a recipient Indian tribe was eligible to receive moneys and the actual amount paid to each eligible recipient Indian tribe during the fiscal year from the Indian Gaming Revenue Sharing Trust Fund.

(2) For purposes of this section, "eligible recipient Indian tribe" means a noncompact tribe, as defined in Section 4.3.2(a)(i) of the tribal-state gaming compacts ratified and in effect as provided in subdivision (f) of Section 19 of Article IV of the California Constitution.

(b) The California Gambling Control Commission shall provide to the committee in the Senate and Assembly that considers the State Budget an estimate of the amount needed to backfill the Indian Gaming Revenue Sharing Trust Fund on or before the date of the May budget revision for each fiscal year.

(c) An eligible recipient Indian tribe may not receive an amount from the backfill appropriated following the estimate made pursuant to subdivision (b) that would give the eligible recipient Indian tribe an aggregate amount in excess of two hundred seventy-five thousand dollars (\$275,000) per eligible quarter. Any funds transferred from the Indian Gaming Special Distribution Fund to the Indian Gaming Revenue Sharing Trust Fund that result in a surplus shall revert back to the Indian Gaming Special Distribution Fund following the authorization of the final payment of the fiscal year.

(d) Upon a transfer of moneys from the Indian Gaming Special Distribution Fund to the Indian Gaming Revenue Sharing Trust Fund and appropriation from the trust fund, the California Gambling Control Commission shall distribute the moneys without delay to eligible recipient Indian tribes for each quarter that a tribe was eligible to receive a distribution during the fiscal year immediately preceding.