

113TH CONGRESS
1ST SESSION

S. 477

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

MARCH 6, 2013

Mrs. FEINSTEIN 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 striking “lands are
10 taken” and inserting “subject to paragraph (2),
11 land is taken”;

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

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

16 “(2) APPLICABILITY TO CERTAIN LAND.—

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

1 unless the Secretary determines, on the date
2 the land is taken into trust, that the Indian
3 tribe—

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

8 “(ii) demonstrates—

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

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

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

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

1 “(I) the land is located within a
2 25-mile radius of the tribal head-
3 quarters or other tribal governmental
4 facilities of the Indian tribe on the
5 reservation;

6 “(II) the Indian tribe has dem-
7 onstrated a temporal connection to, or
8 routine presence on, the land during
9 the period beginning on October 17,
10 1988, and ending on the date of the
11 certification; and

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

17 “(ii) if the Indian tribe does not have
18 a reservation—

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

23 “(II) the Indian tribe has dem-
24 onstrated a temporal connection to, or
25 routine presence on, the land during

1 the period beginning on October 17,
2 1988, and ending on the date of the
3 certification; and

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

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

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

19 “(C) SUBSTANTIAL, DIRECT, ABORIGINAL
20 CONNECTION.—In making a determination
21 under subparagraph (A)(ii)(II) that an Indian
22 tribe demonstrates a substantial, direct, aborigi-
23 nal connection to land, the Secretary shall take
24 into consideration some or all of the following
25 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 Indian tribe can demonstrate lineal de-
11 scendent or cultural affiliation, in accord-
12 ance with section 10.14 of title 43, Code of
13 Federal Regulations (or a successor regula-
14 tion).

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

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

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

24 “(vi) Other factors that demonstrate a
25 temporal presence of the Indian tribe on

1 the land prior to the first interactions of
2 the Indian tribe with nonnative individuals,
3 the Federal Government, or any other sov-
4 ereign entity.

5 “(D) EXCEPTIONS.—

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

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

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

15 “(III) if—

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

19 “(bb) the land is located—

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

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

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

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

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

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

1 “(ii) CERTAIN DECISIONS.—

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

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

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

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

○