

## SENATE RESOLUTION NO.154

Senator Bumstead offered the following resolution:

1       A resolution to amend the tribal-state gaming compact between  
2 the Little River Band of Ottawa Indians and the state of Michigan  
3 made and entered on December 3, 1998.

4       Whereas, The Little River Band of Ottawa Indians (the "Tribe")  
5 is descended from, and is the political successor to, the Grand  
6 River Ottawa Bands, signatories of the 1836 Treaty of Washington (7  
7 Stat 491) with the United States. The Tribe's status was reaffirmed  
8 by federal law in P.L. 103-324 (1994); and

9       Whereas, The Tribe is a federally recognized Indian tribe with  
10 rights under federal law to operate gaming as a means of economic  
11 development within states that allow such gaming. The state of  
12 Michigan permits Class III (casino-style) gaming to be operated  
13 under state law, including the Michigan Gaming Control and Revenue

1 Act, 1996 IL 1, MCL 432.201 to 432.226; and

2 Whereas, Under the federal Indian Gaming Regulatory Act, P.L.  
3 100-497 (1988) ("IGRA"), before a tribe may engage in Class III  
4 gaming, the tribe must be a party to a tribal-state gaming compact  
5 with the state in which the tribe is going to engage in gaming; and

6 Whereas, IGRA requires a state that permits gaming for any  
7 purpose by any person, organization, or entity, upon the request of  
8 a tribe that has eligible Indian lands in the state, to negotiate  
9 in good faith for a tribal-state gaming compact; and

10 Whereas, While IGRA prohibits a state from taxing a tribal  
11 gaming facility, revenue-sharing payments from tribal gaming to a  
12 state may be lawful under IGRA when such payments are bargained for  
13 in exchange for meaningful concessions from the state, i.e.,  
14 quantifiable economic benefits over which the state is not required  
15 to negotiate under IGRA, such as substantial exclusive rights to  
16 engage in Class III gaming; and

17 Whereas, IGRA allows a tribe to engage in gaming on land taken  
18 into trust after IGRA's passage in 1988 ("After Acquired Lands")  
19 only if the land qualifies under specific statutory criteria; and

20 Whereas, The Tribe and the state of Michigan (the "State")  
21 made and entered into a tribal-state gaming compact on December 3,  
22 1998 (the "Compact"). The Compact was initially approved by the  
23 Michigan Legislature with the adoption of House Concurrent  
24 Resolution No. 115 on December 11, 1998; and

25 Whereas, The Michigan Supreme Court in *Taxpayers of Michigan*  
26 *Against Casinos v State of Michigan*, 471 Mich. 306; 685 N.W.2d 221  
27 (2004), cert. denied, 543 U.S. 1146 (2005), ruled that the Michigan  
28 Legislature holds the power to bind the State to a tribal-state  
29 gaming compact and may do so by means of a resolution; and

1       Whereas, The Michigan Supreme Court in *Taxpayers of Michigan*  
2 *Against Casinos v State of Michigan*, 478 Mich. 99; 732 N.W.2d 487  
3 (2007), ruled that the Michigan Legislature, through the provisions  
4 of Section 16 of the Compact, properly delegated the ability to  
5 enter into amendments to tribal-state gaming compacts to the  
6 Governor of the State; and

7       Whereas, The Tribe and the State have previously amended the  
8 Compact, through an amendment dated January 24, 2008, by means of  
9 the Governor acting for the State; and

10       Whereas, The Compact defines "eligible Indian lands" as "trust  
11 or reservation lands acquired under 25 U.S.C. § 1300k-4(b) within  
12 Manistee or Mason Counties. A total of one (1) tribal Class III  
13 gaming facility may be located on eligible Indian lands"; and

14       Whereas, Section 16 of the Compact prohibits amendment of "the  
15 definition of 'eligible Indian lands' to include counties" other  
16 than Manistee or Mason Counties; and

17       Whereas, While the Legislature thereby does not allow the  
18 Governor to amend the Compact to include additional counties in the  
19 definition of "eligible Indian lands", one Legislature cannot  
20 constrain the authority of a future Legislature to exercise its  
21 powers, and therefore, the 100th Legislature, with the agreement of  
22 the Tribe, may act to amend the definition of "eligible Indian  
23 lands"; and

24       Whereas, Only three of the state of Michigan's twelve tribal-  
25 state gaming compacts limit tribes to a single gaming facility. Two  
26 compacts entered into by the state of Michigan with other tribes  
27 simultaneously with the Compact have since been amended to allow  
28 those tribes to operate multiple gaming facilities, and six  
29 Michigan tribes currently operate multiple gaming facilities; and

1       Whereas, While at the time of the Compact, the Tribe did not  
2 have trust or reservation lands outside of Manistee County, the  
3 Tribe has the right under federal law to obtain additional trust  
4 lands, and those After Acquired Lands may be eligible for gaming  
5 under IGRA if they satisfy statutory criteria allowing gaming on  
6 After Acquired Lands; and

7       Whereas, One means provided in IGRA for a tribe to engage in  
8 gaming on After Acquired Lands is if the United States Secretary of  
9 Interior determines that gaming on such land would be in the best  
10 interest of the tribe and not detrimental to the surrounding  
11 community, and the governor of the state, at her discretion,  
12 concurs in that determination (a "2-Part Determination"); and

13       Whereas, Ten tribal casinos operating in the state of Michigan  
14 today are sited on After Acquired Lands, including one on land made  
15 eligible by a 2-Part Determination following the concurrence of  
16 then Governor John Engler. Two other 2-Part Determinations have  
17 been approved by the federal government, but governors did not  
18 concur in the federal decision; and

19       Whereas, In 2007, the Tribe acquired the former Great Lakes  
20 Downs thoroughbred racetrack in Fruitport Township, Muskegon  
21 County, and on February 25, 2015, filed an application with the  
22 federal government to have 60 acres of land at that location (the  
23 "Muskegon Site") taken into trust for the benefit of the Tribe and  
24 for a 2-Part Determination to allow the Tribe to develop a gaming  
25 facility and related amenities (the "Muskegon Project") on the  
26 Muskegon Site; and

27       Whereas, The process for the federal government to decide to  
28 take the Muskegon Site into trust and issue a 2-Part Determination  
29 has included multiple public hearings with hundreds of attendees;

1 public opportunities to comment on thousands of pages of reports  
2 and studies; federal consultation with federal and state and local  
3 governments and agencies; and the publication of a Final

4 Environmental Impact Statement ("FEIS") on October 23, 2020; and

5       Whereas, The FEIS, after considering a range of alternatives,  
6 concluded that the Muskegon Project is the preferred federal  
7 alternative, and the federal government can issue a Record of  
8 Decision granting the federal portion of the 2-Part Determination  
9 as soon as December 1, 2020; and

10       Whereas, The Muskegon Project enjoys overwhelming local  
11 support, including unanimous resolutions of support by the Muskegon  
12 County Commission and Fruitport Township; resolutions of support  
13 from other nearby governments; the support of local business  
14 organizations and organized labor; and tremendous citizen support,  
15 exceeding 90 percent among those commenting at public hearings; and

16       Whereas, The Tribe has entered into Municipal Services and Law  
17 Enforcement Agreements with Muskegon County and Fruitport Township;  
18 and

19       Whereas, The Muskegon Project will lead to investment and jobs  
20 without the use of any tax dollars, including well over \$100  
21 million in construction costs, approximately 1,500 construction  
22 jobs, approximately 1,500 permanent jobs, and an upgrade to the I-  
23 96/US-31 interchange; and

24       Whereas, Through revenue sharing with the state of Michigan,  
25 the State can also see increased revenues as a result of the  
26 Muskegon Project; and

27       Whereas, The Tribe has long ties to Muskegon, as the Tribe's  
28 membership criteria trace back to the Ogemuk of villages in  
29 Muskegon County; one of the former reservations of the Tribe's

1 predecessors is located in Muskegon County 17 miles from the  
2 Muskegon Site; and grave sites and historic trails of the Tribe's  
3 predecessors are within 10 miles of the Muskegon Site; and

4       Whereas, The Tribe also maintains modern ties to Muskegon  
5 County, as more of the Tribe's members live in Muskegon County than  
6 any other county in the State. The Muskegon area is home to 45  
7 percent of the Tribe's Michigan populace, and the Tribe has  
8 operated a Muskegon government office for many years, just six  
9 miles from the Muskegon Site; and

10       Whereas, No Michigan tribe has bargained for market  
11 exclusivity with respect to Muskegon County. While a number of  
12 Michigan tribes do not pay revenue sharing to the state of  
13 Michigan, the Michigan tribes that do make revenue sharing payments  
14 to the State in exchange for market exclusivity have identified  
15 multiple counties as their "Competitive Market Areas" for purposes  
16 of gaming exclusivity, but no Michigan tribe has designated  
17 Muskegon County; and

18       Whereas, Governor Rick Snyder, acting for the State, waived  
19 Section 9 of the Compact to allow the Tribe to proceed with federal  
20 applications for the Muskegon Project, just as Governor John Engler  
21 waived Section 9 of the State's tribal-state gaming compact with  
22 the Keweenaw Bay Indian Community, before concurring in a 2-Part  
23 Determination by which the Keweenaw Bay Indian Community now  
24 operates a gaming facility on After Acquired Lands near Marquette,  
25 which actions were found permissible by the United States District  
26 Court for the Western District of Michigan; and

27       Whereas, A 2004 amendment to Article IV, Section 41 of the  
28 *Constitution of the State of Michigan of 1963* expressly allows the  
29 authorization of tribal casinos on Indian lands without the

1 requirement of a statewide vote, as demonstrated by the opening of  
2 seven tribal gaming facilities without such a vote since 2004; and

3       Whereas, The State and the Tribe, in recognition of the  
4 sovereign rights of each party and in a spirit of cooperation in  
5 the interests of the citizens of the State and the members of the  
6 Tribe, wish to realize the benefits of approval of the Tribe's  
7 Muskegon Project; now, therefore, be it

8       Resolved by the Senate, That, subject to the agreement of the  
9 Tribe and approval by the Michigan House of Representatives,  
10 Section 2(B)(1) of the Compact made and entered on the 3rd day of  
11 December, 1998, by and between the Little River Band of Ottawa  
12 Indians and the State, and approved by the Secretary of the  
13 Interior by publication in the Federal Register on February 18,  
14 1999, at 64 Fed. Reg. 8111, and subsequently amended and approved  
15 by the Secretary of the Interior by publication in the Federal  
16 Register on April 21, 2008, at 73 Fed. Reg. 21362, is hereby  
17 amended to read as follows:

18  
19           (B) (1) "Eligible Indian lands" means trust and  
20 reservation lands acquired by the tribe within Manistee,  
21 Mason, or Muskegon Counties, Michigan. A total of two (2)  
22 tribal Class III gaming facilities may be located on  
23 eligible Indian lands; provided however, if any tribe  
24 which attains federal recognition subsequent to the date  
25 of this Compact is granted the right, under a valid  
26 Compact with the State of Michigan, to operate more than  
27 two (2) Class III gaming facilities on its eligible  
28 Indian lands, the Tribe shall be afforded the same right  
29 subject to the same terms and conditions imposed on such

1           newly recognized tribe.

2

3   ; and be it further

4           Resolved, That all provisions of the Compact not explicitly  
5 added or amended herein shall remain in full force and effect;  
6 and be it further

7           Resolved, That we urge the Governor to concur in a 2-Part  
8 Determination in favor of the Tribe's Muskegon Project, subject to  
9 such reasonable conditions as the Governor may request on behalf of  
10 the State, including, at a minimum, an increase in revenue sharing  
11 payments to reflect the greater value of exclusivity provided to  
12 the Tribe; and be it further

13           Resolved, That copies of this resolution be transmitted to the  
14 Michigan House of Representatives, the Governor, representatives of  
15 the Tribe, and the United States Secretary of the Interior.