

**OFFICE OF POLICY AND LEGAL ANALYSIS
MEMORANDUM**

Date: March 19, 2021

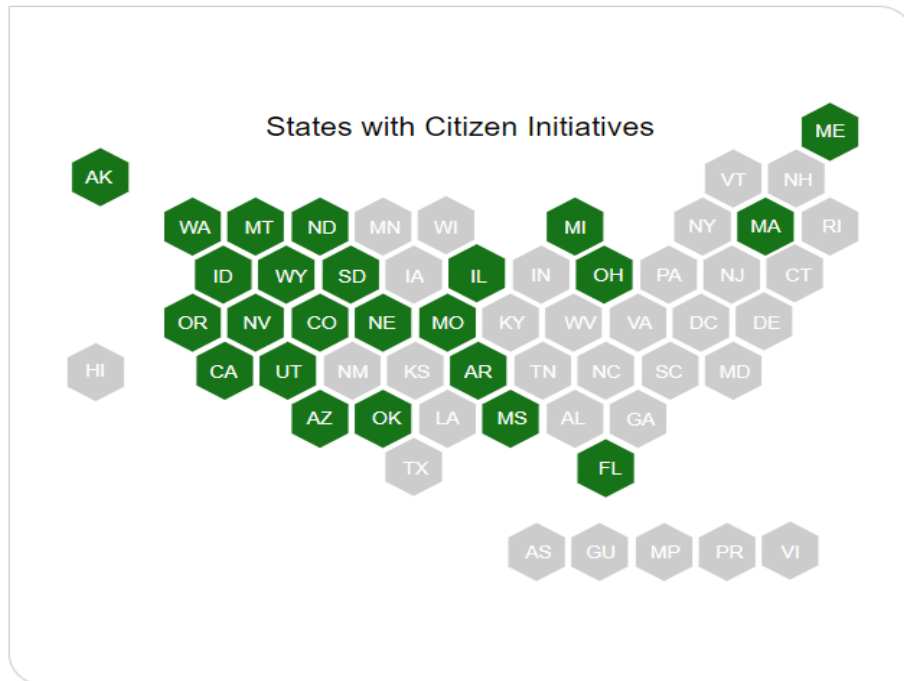
To: Janet Stocco, Legislative Analyst

From: Kristin Brawn, Legislative Researcher

RE: Rep. Tuttle research request re:
LD 554, An Act to Create Gaming Equity and Fairness for the Native American Tribes in Maine

During the public hearing on LD 554 (3/17/2021), Rep. Tuttle asked for information about whether other states have a referendum provision, like Maine, related to authorizing the operation of casinos. Maine’s referendum requirement is provided in Title 8, chapter 31, specifically §1019, sub-§7. As you know, LD 554 does not amend any part Title 8 to authorize gaming by Maine’s federally recognized Indian tribes, but rather the bill addresses the Act to Implement the Maine Indian Claims Settlement.

If Rep. Tuttle is looking for an answer to the more general question of which states have a direct/indirect initiative process (which could be used to authorize a casino as has happened in Maine), that information can be found here: <https://www.ncsl.org/research/elections-and-campaigns/initiative-and-referendum-processes.aspx#/>



Graphic of initiative states from the National Conference of State Legislatures

In response to what I understand to be Rep. Tuttle’s request, this memo addresses: referendum requirements under IGRA; Tribal-state compacts subject to the voters by the state; Maine’s referendum requirement; and states which put Tribal-State compacts on the ballot through a people’s initiative or veto process.

Compacts established pursuant to IGRA – no referendum requirement.

LD 554 proposes that three federally recognized Indian tribes in Maine be governed by the Indian Gaming Regulatory Act (IGRA 25 U.S.C. §2701 et seq). One element of IGRA provides that in states where gambling is permitted, Class III gaming may be conducted in conformance with a Tribal-state compact. IGRA requires the state to negotiate in good faith with a federally recognized Indian tribe seeking to conduct Class III gaming and enter into a compact. The compact is submitted to the Secretary of the Interior for approval and ultimately printed in the Federal Register.

IGRA does not contain a requirement that the implementation of such compacts be contingent upon approval of the voters of the state where the gaming will be conducted. Several courts have concluded that, because IGRA does not specify which state officials must negotiate or sign a gaming compact on behalf of the State, state law governs this issue. *See, e.g., Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546 (10th Cir. 1997). For example, state law could bestow upon the governor, full authority to negotiate the terms of a Tribal-state compact established under IGRA. Although we have been unable to locate a case on point, presumably a state could also require that a compact be subject to approval by the voters at referendum.

Negotiated Tribal-State compacts subject to referendum vote- one example.

My review found one example where a state, by law, subjected a negotiated compact to a vote by referendum:

Oklahoma

State Question #712 (2004)

- In the 2004 Legislative Session, the Oklahoma Legislature approved Senate Bill 553 and subsequently amended that with Senate Bill 1252.
- This legislation, known as the “State-Tribal Gaming Act” was referred to a vote of the People of the State of Oklahoma.
- The referendum was approved in the November 2, 2004 vote.

Tribal-state gaming compacts have been placed on the ballot in several states via citizen initiative – either directing the Governor of the state to negotiate a compact or by directly proposing a Tribal-state compact. There are also several examples where compacts that were negotiated under IGRA were subject to a citizen-initiated veto referendum. Below is a chart providing examples of Tribal-state compacts subject to a vote as initiated ballot measure through a veto referendum.

States with Tribal-State Gaming Compacts on the Ballot as a Voter Initiative/Veto

State	Ballot Measure	Date of Referendum
California	Proposition 29, Referendum on the Pala Compacts	March 7, 2000
	Proposition 94, Pechanga Band of Luiseno Mission Indians Gaming Compact Referendum	February 5, 2008
	Proposition 95, Morongo Band of Mission Indians Gaming Compact Referendum	February 5, 2008
	Proposition 96, Sycuan Band of the Kumeyaay Nation Gaming Compact Referendum	February 5, 2008
	Proposition 97, Agua Caliente Band of Cahuilla Indians Gaming Compact Referendum	February 5, 2008
	Proposition 48, American Indian Gaming Compacts Referendum	November 4, 2014
Idaho	Initiative 1, Idaho State-Tribal Gambling Compact Initiative	November 5, 2002
Washington	Initiative 651, Washington Gambling on Tribal Land	November 7, 1995
	Initiative 671, Washington Gaming on Indian Lands	November 5, 1996

History of Title 8 §1019 (7) – Maine’s provision requiring a referendum vote authorizing licensure of a slot facility/casino.

Maine’s referendum provision was enacted as part of the citizen-initiated bill that authorized the Gambling Control Board to license a casino in Oxford County (I.B. 2009, c. 2 §36). It was later amended in 2011 by LD 1418, An Act to Allow Table Games at a Facility Licensed to Operate Slot Machines on January 1, 2011 (P.L. 2011, c. 417 §6) to require only a county-wide vote to allow for table games at the slot machine facility located in Bangor. The referendum requirement currently reads as follows:

7. Statewide and county referendum; municipal vote. After January 1, 2011, any proposed casino or slot machine facility may not be issued a license unless it has been approved by a statewide referendum vote and a vote of the municipal officers or municipality in which the casino or slot machine facility is to be located, except that a commercial track licensed to operate slot machines on January 1, 2011 is only required, as a condition to obtain a casino license, to receive approval to operate a casino by means of a referendum of the voters of the county in which the commercial track is located.

The referendum provision and recent Tribal gaming legislation in Maine.

Below are some examples of recent legislation considered by the Legislature proposing to authorize the operation of casino gaming or slot machines by federally recognized Indian tribes, which addressed the referendum provision:

Session	LD/Title	Referendum Requirement
127 th (2015)	LD 1446, An Act to Authorize a Casino to Benefit Federally Recognized Indian Tribes in the State (Committee bill pursuant to law)	Would have repealed the referendum requirement 8 MRSA §1019 (7)
128 th (2018)	LD 1201, An Act to Authorize Tribal Gaming	Would have exempted the tribal casino authorized in the bill from the referendum requirement in 8 MRSA §1019 (7)
128 th (2017)	LD 1447, An Act to Recognize and Provide for the Right of the Houlton Band of Maliseet Indians To Operate a Casino on Houlton Band Trust Land Exempt from Certain Gaming Laws	Would have exempted the tribal casino authorized in the bill from the referendum requirement in 8 MRSA §1019 (7)
129 th (2020)	LD 1144, An Act to Authorize Tribal Gaming	Would have exempted the tribal casino authorized in the bill from the referendum provision in 8 MRSA §1019 (7)
129 th (2020)	LD 1244, An Act To Authorize the Gambling Control Board To Accept an Application from the Passamaquoddy Tribe To Operate 50 Slot Machines in the Tribe's High-stakes Beano Facility	Would have exempted the tribal slot machine facility authorized in the bill from the referendum provision in 8 MRSA §1019 (7)