



Mashantucket Pequot
Tribal Nation



THE
MORONGO BAND OF
MISSION INDIANS
A SOVEREIGN NATION



SAN MANUEL
BAND OF MISSION INDIANS

March 19, 2020

The Honorable Nancy Pelosi, Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy, Republican Leader
U.S. House of Representative
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Chuck Schumer
Democratic Leader
U.S. Senate
Washington, DC 20510

Dear Congressional Leaders:

We write as the leaders of some of the Indian tribal governments who are the largest employers in our respective regions. As tribal governments we are working closely with the National Congress of American Indians, the National Indian Gaming Association, and the Native American Finance Officers Association, and fully support the requests these tribal organizations have submitted that relate to the immediate health and governmental needs throughout Indian Country.

As large employers, we face a unique situation and financial obligations regarding our employees, citizens, and lenders. As you develop a third package that will focus on the emerging economic crisis, we urge you to include provisions that address the particular context of Indian tribal government-owned enterprises in ways that will specifically sustain their operations.

Without a tax base to generate governmental revenue, Indian tribal governments must rely on our tribal government-owned enterprises to generate revenue to fund essential government services to Native communities across Indian Country in the form of health care, education, public safety, housing and social services. In fact, federal law mandates that Indian gaming revenues be used for government purposes.

In the last week, hundreds of Indian gaming, hotel and hospitality operations have shut down to prevent transmission of the coronavirus and to protect the safety of guests and employees. Tribal governments are implementing these closures in coordination with state governors and through tribal government emergency declarations.

As our Tribal government gaming operations are closing, we continue to face financial obligations to our lenders and to our employees. As with privately owned commercial gaming operations, Tribal government-owned operations increasingly will need capital structure support, working capital support through direct grant assistance, loan guarantees, employer payroll tax credits, and business disruption insurance relief to enable Tribal governments to continue to support our workers and their families through this unprecedented crisis.

Tribal government gaming closures will have a chilling ripple effect through much of rural America. More than 250 Tribal governments operate 488 gaming facilities in 28 states—the majority of these operations are the primary employers and economic engines in rural communities nationwide. Indian gaming operations provide more than 300,000 direct American jobs annually. An additional 350,000 jobs for Americans are aided through supply and support of tribal operations.

While Indian tribes, as governments, do not pay direct taxes to other governments – the wages associated with these jobs generate federal, state, and local payroll, income, and other taxes and help reduce welfare payments and unemployment benefits. In total, Indian gaming operations generated a total of \$17,243,917,654 paid to the U.S. Treasury and State government revenues in 2018 alone.

As Congress works with the Administration to develop additional economic stabilization packages, we urge you to recognize our tribal government gaming industry’s unique concerns and significant contributions to America’s economy and the quality jobs we sustain, which extends well-beyond the facilities we operate.

We look forward to working with you and other government leaders to provide meaningful assistance to the tribal government gaming industry – over both the short and long-term – to get through this unprecedented challenge.

Sincerely,

Stephanie A. Bryan, Chairwoman
Poarch Band of Creek Indians

Lynn Valbuena, Chairwoman
San Manuel Band of Mission Indians

Mark Macarro, Chairman
Pechanga Band of Luiseño Indians

Rodney Butler, Chairman
Mashantucket Pequot Tribal Nation

Gary Batton, Chief
Choctaw Nation of Oklahoma

Marcellus W. Osceola, Jr., Chairman
Seminole Tribe of Florida

Robert Martin, Tribal Chairman
Morongo Band of Mission Indians

Chuck Hoskin, Jr., Principal Chief
Cherokee Nation

Specific Tribal Government-Owned Business-Focused Relief Measures
Responding to COVID-19 Emergency

March 19, 2020

Business Interruption Loan Forbearance and Guarantees of New Loans for Tribes – Due to the closure of tribal government-owned enterprises, many tribes will face defaults on existing loans, which will increase in severity with the length of the duration of operation closures. Defaults may initially be triggered due to the tribal business not being in compliance with its covenants, but it is also likely that payment defaults will ensue when a tribal government operation's liquidity deteriorates to a point where interest payment and/or principal repayments are unable to be made – this will result in payment defaults. When an Event of Default is triggered, lenders have the ability to enforce various remedies, which in the case of tribal government-owned enterprises, results in the significant loss of government revenue dedicated to community programs and services.

To stabilize tribal government budgets, the federal government should –

- Temporarily prohibit lenders from enforcing their remedies in these cases where an Event of Default has occurred as a result of the corona virus operation closures. Such forbearance should span a timeframe that encompasses the shut-down period plus additional months to allow the underlying tribal operation to regain its revenue and cash flow profile from which to renegotiate loan terms with its lenders.
- Guarantee new loans provided by third party lenders to tribal gaming and other businesses and operations to fulfill various high priority liquidity needs (i.e., payroll and essential governmental services). These guarantees would enable tribes to unlock a source of liquidity which would otherwise not be available given the deterioration of the underlying credit profile of tribal businesses.
- Authorize tribal businesses, regardless of their size, to be eligible for all federal business interruption loan programs that encourage continuity of employment. Specifically, we request that every tribal business be exempted from any size limitation on eligibility (e.g., 500 or fewer employees). Many tribal government businesses have over 500 employees because tribes are typically the only business owner in relatively remote Reservation areas and most of the funding for tribal programs is derived from tribal business revenue since tribes have no tax base from which they may raise revenue.

Clarification and Enforcement of Business Interruption Insurance for Tribes – Many of the liquidity issues being faced by tribal government-owned enterprises should be covered by traditional business interruption insurance, which is generally a requirement of lenders (these are provisions in the loan agreements). Business interruption insurance is designed to compensate a business for lost operating cash flow in the face of catastrophic events outside of the tribal government-enterprises' control, which result in operation closures — most clauses are limited to natural disasters like hurricanes, fires, or other disasters. Congress should clarify that in this time of national emergency a claim for business interruption insurance shall also be triggered by tribal and state government emergency declarations issued to protect the public health in the event of a pandemic such as the corona virus in order to ensure that closures of tribal government-enterprises will result in insurance company payment of business interruption insurance claims by tribes. This provision should be enforced by the United States to avoid protracted legal battles that would significantly delay much-needed financial assistance.

Business Interruption Direct Grants for Tribes – Direct grants should be provided to tribal government-owned enterprises that are enduring closures and market contraction due to the corona virus. Tribes are coordinating with state governors to close their operations, while many others are issuing tribal government emergency closures to help slow the spread of the virus. As a result of these

government-owned business closures, the underlying businesses are (and will continue to be) experiencing a reduction in the liquidity they need to pay for the following primary categories:

- Payroll for employees and management
- Essential governmental services for the tribe and its members
- Debt service payments (interest and principal amortization)
- Facility clean up and maintenance.

Few tribal government-owned enterprises operate with excess liquidity, and most will be forced to make difficult financial choices in the coming days. Keeping the more than 300,000 tribal government-owned entity employees engaged and employed is paramount to ensure that these workers can protect their family's health and meet ongoing financial obligations (i.e., food, healthcare, education, childcare, rent/mortgage payments, etc.).

Refundable Payroll Tax Credits for Tribes – In lieu of any income tax credit provided to other employers, we ask that a tribal government specific provision be included to authorize emergency and refundable payroll tax credits to compensate tribal business employers who incur losses related to their continuation of employee payments and business operations at a loss during the downturn associated with the coronavirus pandemic. Since tribal businesses would not receive a benefit from any corporate income tax credit extended to corporations, the amount of this special tribal refundable payroll tax credit should be on par with the value of such corporate income tax credit and a tribal business employer should be permitted to receive the immediate value of a refund for prior payroll tax it paid or to carry forward and apply that tax credit to its future payroll tax payments obligations.

Chapter 9 Bankruptcy Relief Parity for Tribes – Tribes and tribal government enterprises need access to governmental bankruptcy protections in order to remain financially stable during and after the conclusion of this global crisis. Under current law, tribes and tribal government enterprises are not lawfully authorized to be eligible for Chapter 9 bankruptcy protections. We request that a provision be included to ensure that tribal governments have the same rights under Chapter 9 as do other governments. The legislative text should read as follows: *“Any federally recognized Indian tribe shall, at its election, be deemed to be a municipality within the meaning of section 101(40) of title 11 of the United States Code solely for the purposes of chapter 9 of such title, and the governing body of the Indian tribe shall be deemed to have the power to authorize the Indian tribe or any of its tribal government enterprises to be a debtor under chapter 9 for purposes of section 109(c)(2) of title 11 of the United States Code.”*

Partial Reimbursement of Employee Wages for Paid Sick Leave – Given that tribal business enterprises are often the main economic engines in their regions, most have decided to continue paying their employees during shutdowns. However, the ability of tribes to pay these wages is jeopardized since revenues from tribal enterprises is also the primary source of funding for direct governmental services. Since Tribes do not have the ability to generate tax revenues like other governments, it is imperative that the federal government assist them in continuing to cover the cost of paying employees. Additionally, tribal governments do not “profit” from their enterprises; rather every dollar generated goes back into employee wages, government services, and infrastructure. Thus, tribal governments and enterprises do not have profits to use for continued wages of employees during closures. If tribal governments and enterprises run out of funds to continue paying employees who have to take emergency sick leave during this health crisis, our regions will suffer significantly and cause more harm to small businesses and lower income families. We request that Congress provide a temporary program (sunset December 31, 2020) that reimburses tribal governments and enterprises for 100% of wages for the first 80 hours of emergency sick leave taken by a full-time employee and a pro rata share for part-time employees. We ask that the program reimburse tribal governments and enterprises for 50% of wages for any emergency sick time taken by an employee beyond 80 hours for the duration of this health crisis.