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INDIAN GAMING REGULATORY ACT AMENDMENTS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

S. 1529

TO AMEND THE INDIAN GAMING REGULATORY ACT TO INCLUDE PROVISIONS RELATING TO THE PAYMENT AND ADMINISTRATION OF GAMING FEES

MARCH 24, 2004
WASHINGTON, DC

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INDIAN GAMING REGULATORY ACT AMENDMENTS

WEDNESDAY, MARCH 24, 2004

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 11:00 a.m. in room 562, Dirksen Senate Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Inouye and McCain.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The committee will be in order. Good morning and welcome to the Committee on Indian Affairs' hearing on S. 1529, a bill that I, along with my vice chairman, Senator Inouye, introduced in July 2003 after we held two hearings on these matters.

I have to say at the outset, Mr. Vice Chairman, I am very pleased to see such a large turnout. I would also like to say I would like to see this kind of participation when we talk about Indian nutrition or care of elders or education for Indian kids. Clearly, when it has to do with money, it excites a lot of people because we have a very full house today.

If enacted, the bill will amend the Indian Gaming Regulatory Act of 1988 to, clarify that when a class II game is used with electronic aids it is still a class II game for purposes of the Johnson Act; to require the National Indian Gaming Commission to be more transparent and open to the regulated community. It clarifies the Commission's authority with respect to class III gaming. It provides much-needed guidance to tribes and States when they are negotiating a revenue-sharing agreement, and provides certainty and stability to tribes regarding the amount of gaming fees the Commission can charge.

We have a vote scheduled at 11:30, so we will get through as much as we can. We will have to take a few minutes' break and then we will continue after that. Other members have notified us that they will be coming and going throughout the meeting.

With that, Senator Inouye, did you have an opening statement, sir?

Senator INOUYE. All I can say is that much has happened since the U.S. Supreme Court's ruling in the *Cabazon* case and I think

the crowd here today so indicates that. I look forward to hearing the testimony.

[Text of S. 1529 follows:]

II

108TH CONGRESS
1ST SESSION

S. 1529

To amend the Indian Gaming Regulatory Act to include provisions relating to the payment and administration of gaming fees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 21), 2003

Mr. CAMPBELL (for himself and Mr. INOUYE) 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 include provisions relating to the payment and administration of gaming fees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Indian Gaming Regulatory Act Amendments of 2003''.

SEC. 2. PAYMENT AND ADMINISTRATION OF GAMING FEES.

(a) DEFINITIONS.—Section 4(7) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(7)) is amended by adding at the end the following:

"(G) TECHNOLOGICAL AIDS.—Notwithstanding any other provision of law, sections 1 through 7 of the Act of January 2, 1951 (commonly known as the 'Gambling Devices Transportation Act') (15 U.S.C. 1171 through 1177) shall not apply to any gaming described in subparagraph (A)(i) for which an electronic aid, computer, or other technological aid is used in connection with the gaming.".

(b) NATIONAL INDIAN GAMING COMMISSION.—Section 5 of the Indian Gaming Regulatory Act (25 U.S.C. 2704) is amended—

(1) by striking subsection (c) and inserting the following:

"(c) VACANCIES.—

"(1) IN GENERAL.—A vacancy on the Commission shall be filled in the same manner as the original appointment.

"(2) SUCCESSORS.—Unless a member of the Commission is removed for cause under subsection (b)(6), the member may—

"(A) be reappointed; and

"(B) serve after the expiration of the term of the member until a successor is appointed."; and

(2) in subsection (e), in the last sentence, by inserting ''or disability'' after ''in the absence''.

(c) POWERS OF CHAIRMAN.—Section 6 of the Indian Gaming Regulatory Act (25 U.S.C. 2705) is amended by adding at the end the following:

''(c) DELEGATION.—The Chairman may delegate to an individual Commissioner any of the authorities described in subsection (a).

''(d) APPLICABLE AUTHORITY.—In carrying out any function under this section, a Commissioner serving in the capacity of the Chairman shall be governed by—

''(1) such general policies as are formally adopted by the Commission; and

''(2) such regulatory decisions, findings, and determinations as are made by the Commission.''.

(d) POWERS OF COMMISSION.—Section 7 of the Indian Gaming Regulatory Act (25 U.S.C. 2706) is amended—

(1) in paragraphs (1), (2), and (4) of subsection (b), by striking ''class II gaming'' each place it appears and inserting ''class II gaming and class III gaming'';

(2) by redesignating subsection (c) as subsection (d);

(3) by inserting after subsection (b) the following:

"(c) STRATEGIC PLAN.—

"(1) IN GENERAL.—The Commission shall develop a strategic plan for use in carrying out activities of the Commission.

"(2) REQUIREMENTS.—The strategic plan shall include—

"(A) a comprehensive mission statement describing the major functions and operations of the Commission;

"(B) a description of the goals and objectives of the Commission;

"(C) a description of the means by which those goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to achieve those goals and objectives;

"(D) a performance plan for achievement of those goals and objectives that is consistent with—

"(i) other components of the strategic plan; and

"(ii) section 1115 of title 31, United States Code;

"(E) an identification of the key factors that are external to, or beyond the control of, the Commission that could significantly affect the achievement of those goals and objectives; and

"(F) a description of the program evaluations used in establishing or revising those goals and objectives, including a schedule for future program evaluations.

"(3) BIENNIAL PLAN.—

"(A) PERIOD COVERED.—The strategic plan shall cover a period of not less than 5 fiscal years beginning with the fiscal year in which the plan is submitted.

"(B) UPDATES AND REVISIONS.—The strategic plan shall be updated and revised biennially."; and

(4) in subsection (d) (as redesignated by paragraph (2))—

(A) in paragraph (3), by striking "and" at the end;

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by inserting after paragraph (3) the following:

''(4) the strategic plan for activities of the Commission described in subsection (c); and''.

(e) COMMISSION STAFFING.—Section 8 of the Indian Gaming Regulatory Act (25 U.S.C. 2707) is amended—

(1) in subsection (a), by striking ''GS–18 of the General Schedule under section 5332'' and inserting ''level IV of the Executive Schedule under section 5318'';

(2) in subsection (b)—

(A) by striking ''(b) The Chairman'' and inserting the following:

''(b) STAFF.—

''(1) IN GENERAL.—The Chairman''; and

(B) by striking the last sentence and inserting the following:

''(2) COMPENSATION.—

''(A) IN GENERAL.—Staff appointed under paragraph (1) shall be paid without regard to the provision of chapter 51 and subchapter III of chapter 53, of title 5, United States Code, relating to General Schedule pay rates.

''(B) MAXIMUM RATE OF PAY.—The rate of pay for an individual appointed under para-

graph (1) shall not exceed the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.''; and

(3) by striking subsection (c) and inserting the following:

''(c) TEMPORARY SERVICES.—

''(1) IN GENERAL.—The Chairman may procure temporary and intermittent services under section 3109 of title 5, United States Code.

''(2) MAXIMUM RATE OF PAY.—The rate of pay for an individual for service described in paragraph (1) shall not exceed the daily equivalent of the maximum rate payable for level IV of the Executive Schedule under section 5318 of title 5, United States Code.''.

(f) TRIBAL GAMING ORDINANCES.—Section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2710) is amended—

(1) in subsection (b)(2)(F), by striking clause (i) and inserting the following:

''(i) ensures that—

''(I) background investigations are conducted on the tribal gaming commissioners, key tribal gaming commission employees, and primary management officials

and key employees of the gaming enterprise; and

"(II) oversight of primary management officials and key employees is conducted on an ongoing basis; and"; and

(2) in subsection (d)—

(A) in paragraph (4)—

(i) by striking "(4) Except" and inserting the following:

"(4) REVENUE SHARING.—

"(A) IN GENERAL.—Except for any assessments that may be agreed to under paragraph (3)(C)(iii), nothing in this section confers on a State or political subdivision of a State authority to impose any tax, fee, charge, or other assessment on any Indian tribe or any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based on the lack of authority in the State or a political subdivision of the State to impose such a tax, fee, charge, or other assessment.

"(B) APPORTIONMENT OF REVENUES.—The Secretary may not approve any Tribal-

State compact or other agreement that includes an apportionment of net revenues with a State, local government, or other Indian tribes unless—

"(i) in the case of apportionment with other Indian tribes, the net revenues are not distributable by the other Indian tribes to members of the Indian tribes on a per capita basis;

"(ii) in the case of apportionment with local governments, the total amount of net revenues exceeds the amounts necessary to meet the requirements of clauses (i) and (ii) of subsection (b)(2)(B), but only to the extent that the excess revenues reflect the actual costs incurred by affected local governments as a result of the operation of gaming activities; or

"(iii) in the case of apportionment with a State—

"(I) the total amount of net revenues—

"(aa) exceeds the amounts necessary to meet the requirements of clauses (i) and (ii) of

subsection (b)(2)(B) and clause (ii) of this subparagraph, if applicable; and

"(bb) is in accordance with regulations promulgated by the Secretary under subparagraph (C); and

"(II) a substantial economic benefit is rendered by the State to the Indian tribe.

"(C) REGULATIONS.—Not later than 90 days after the date of enactment of this paragraph, the Secretary shall promulgate regulations to provide guidance to Indian tribes and States on the scope of allowable assessments negotiated under paragraph (3)(C)(iii) and the apportionment of revenues negotiated in accordance with subparagraph (B).";

(B) in paragraph (7)(B)(vii), by inserting "not later than 90 days after notification is made" after "the Secretary shall prescribe"; and

(C) by adding at the end the following:

"(10) EXTENSION OF TERM OF TRIBAL-STATE COMPACT.—Any Tribal-State compact approved by

the Secretary in accordance with paragraph (8) shall remain in effect for up to 180 days after expiration of the Tribal-State compact if—

"(A) the Indian tribe certifies to the Secretary that the Indian tribe requested a new compact not later than 90 days before expiration of the compact; and

"(B) a new compact has not been agreed on.".

(g) MANAGEMENT CONTRACTS.—Section 12 of the Indian Gaming Regulatory Act (25 U.S.C. 2711) is amended—

(1) by striking the section heading and all that follows through "Subject" in subsection (a)(1) and inserting the following:

"SEC. 12. MANAGEMENT CONTRACTS.

"(a) CLASS II GAMING AND CLASS III GAMING ACTIVITIES; INFORMATION ON OPERATORS.—

"(1) GAMING ACTIVITIES.—Subject"; and

(2) in subsection (a)(1), by striking "class II gaming activity that the Indian tribe may engage in under section 11(b)(1) of this Act," and inserting "class II gaming activity in which the Indian tribe may engage under section 11(b)(1), or a class III

gaming activity in which the Indian tribe may engage under section 11(d),''.

(h) COMMISSION FUNDING.—Section 18 of the Indian Gaming Regulatory Act (25 U.S.C. 2717) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1) through (3) and inserting the following:

''(1) SCHEDULE OF FEES.—

''(A) IN GENERAL.—Except as provided in this section, the Commission shall establish a schedule of fees to be paid annually to the Commission, on a quarterly basis, by each gaming operation that conducts a class II gaming or class III gaming activity that is regulated, in whole or in part, by this Act.

''(B) RATES.—The rate of fees under the schedule established under subparagraph (A) that are imposed on the gross revenues from each operation that conducts a class II gaming or class III gaming activity described in that paragraph shall be (as determined by the Commission)—

''(i) a progressive rate structure levied on the gross revenues in excess of

$1,500,000 from each operation that conducts a class II gaming or class III gaming activity; or

"(ii) a flat fee levied on the gross revenues from each operation that conducts a class II gaming or class III gaming activity.

"(C) TOTAL AMOUNT.—The total amount of all fees imposed during any fiscal year under the schedule established under subparagraph (A) shall not exceed—

"(i) $10,000,000 for each of fiscal years 2004 and 2005;

"(ii) $11,000,000 for each of fiscal years 2006 and 2007; and

"(iii) $12,000,000 for each of fiscal years 2008 and 2009."; and

(B) by redesignating paragraphs (4) through (6) as paragraphs (2) through (4), respectively;

(2) by redesignating subsection (b) as subsection (d);

(3) in paragraph (2) of subsection (d) (as redesignated by paragraph (2)), by striking "section 19 of this Act" and inserting "section 28"; and

(4) by inserting after subsection (a) the following:

"(b) FEE PROCEDURES.—

"(1) IN GENERAL.—By a vote of not less than 2 members of the Commission, the Commission shall adopt the schedule of fees provided for under this section.

"(2) FEES ASSESSED.—In assessing and collecting fees under this section, the Commission shall take into account the duties of, and services provided by, the Commission under this Act.

"(3) REGULATIONS.—The Commission shall promulgate such regulations as are necessary to carry out this subsection.

"(c) FEE REDUCTION PROGRAM.—

"(1) IN GENERAL.—In making a determination of the amount of fees to be assessed for any class II gaming or class III gaming activity under the schedule of fees under this section, the Commission may provide for a reduction in the amount of fees that otherwise would be collected on the basis of—

"(A) the extent and quality of regulation of the gaming activity provided by a State or Indian tribe, or both, in accordance with an approved State-tribal compact;

"(B) the extent and quality of self-regulating activities covered by this Act that are conducted by an Indian tribe; and

"(C) other factors determined by the Commission, including—

"(i) the unique nature of tribal gaming as compared with commercial gaming, other governmental gaming, and charitable gaming;

"(ii) the broad variations in the nature, scale, and size of tribal gaming activity;

"(iii) the inherent sovereign rights of Indian tribes with respect to regulating the affairs of Indian tribes;

"(iv) the findings and purposes under sections 2 and 3;

"(v) the amount of interest or investment income derived from the Indian gaming regulation accounts; and

"(vi) any other matter that is consistent with the purposes under section 3.

"(2) RULEMAKING.—The Commission shall promulgate such regulations as are necessary to carry out this subsection.".

(i) ADDITIONAL AMENDMENTS.—The Indian Gaming Regulatory Act is amended—

(1) by striking section 19 (25 U.S.C. 2718);

(2) by redesignating sections 20 through 24 (25 U.S.C. 2719 through 2723) as sections 23 through 27, respectively;

(3) by inserting after section 18 (25 U.S.C. 2717) the following:

"SEC. 19. INDIAN GAMING REGULATION ACCOUNTS.

"(a) IN GENERAL.—All fees and civil forfeitures collected by the Commission in accordance with this Act shall—

"(1) be maintained in separate, segregated accounts; and

"(2) be expended only for purposes described in this Act.

"(b) INVESTMENTS.—

"(1) IN GENERAL.—The Commission shall invest such portion of the accounts maintained under subsection (a) as are not, in the judgment of the Commission, required to meet immediate expenses.

"(2) TYPES OF INVESTMENTS.—Investments may be made only in interest-bearing obligations of the United States guaranteed as to both principal and interest by the United States.

"(c) SALE OF OBLIGATIONS.—Any obligation acquired with funds in an account maintained under subsection (a)(1) (except special obligations issued exclusively to those accounts, which may be redeemed at par plus accrued interest) may be sold by the Commission at the market price.

"(d) CREDITS TO INDIAN GAMING REGULATORY ACCOUNTS.—The interest on, and proceeds from, the sale or redemption of any obligation held in an account maintained under subsection (a)(1) shall be credited to and form a part of the account.

"SEC. 20. MINIMUM STANDARDS.

"(a) CLASS I GAMING.—Notwithstanding any other provision of law, class I gaming on Indian land—

"(1) shall remain within the exclusive jurisdiction of the Indian tribe having jurisdiction over the Indian land; and

"(2) shall not be subject to this Act.

"(b) CLASS II GAMING.—

"(1) IN GENERAL.—Subject to paragraph (2), an Indian tribe shall retain primary jurisdiction over regulation of class II gaming activities conducted by the Indian tribe.

"(2) CONDUCT OF CLASS II GAMING.—Any class II gaming activity shall be conducted in accordance with—

"(A) section 11; and

"(B) regulations promulgated under subsection (d).

"(c) CLASS III GAMING.—

"(1) IN GENERAL.—Subject to paragraph (2), an Indian tribe shall retain primary jurisdiction over regulation of class III gaming activities conducted by the Indian tribe.

"(2) CONDUCT OF CLASS III GAMING.—Any class III gaming operated by an Indian tribe under this Act shall be conducted in accordance with—

"(A) section 11; and

"(B) regulations promulgated under subsection (d).

"(d) RULEMAKING.—

"(1) IN GENERAL.—

"(A) PROMULGATION.—Not later than 180 days after the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, the Commission shall develop procedures under subchapter III of chapter 5 of title 5, United

States Code, to negotiate and promulgate regulations relating to—

"(i) the monitoring and regulation of tribal gaming;

"(ii) the establishment and regulation of internal control systems; and

"(iii) the conduct of background investigation.

"(B) PUBLICATION OF PROPOSED REGULATIONS.—Not later than 1 year after the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, the Commission shall publish in the Federal Register proposed regulations developed by a negotiated rulemaking committee in accordance with this section.

"(2) COMMITTEE.—A negotiated rulemaking committee established in accordance with section 565 of title 5, United States Code, to carry out this subsection shall be composed only of Federal and Indian tribal government representatives, a majority of whom shall be nominated by and be representative of Indian tribes that conduct gaming in accordance with this Act.

"(e) ELIMINATION OF EXISTING REGULATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), as of the date that is 1 year after the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, regulations establishing minimum internal control standards promulgated by the Commission that are in effect as of the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003 shall have no force or effect.

"(2) EXCEPTION FOR AFFIRMATION OF EXISTING REGULATIONS.—Notwithstanding paragraph (1), if, before the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, the Commission certifies to the Secretary of the Interior that the Commission has promulgated regulations that establish minimum internal control standards that meet the requirements of subsection (d)(1)(A) and were developed in consultation with affected Indian tribes, the regulations shall—

"(A) be considered to satisfy the requirements of paragraph (1); and

"(B) remain in full force and effect.

"SEC. 21. USE OF NATIONAL INDIAN GAMING COMMISSION CIVIL FINES.

"(a) ACCOUNT.—Amounts collected by the Commission under section 14 shall—

"(1) be deposited in a separate Indian gaming regulation account established under section 19(d)(1)(A); and

"(2) be available to the Commission, as provided for in advance in Acts of appropriation, for use in carrying out this Act.

"(b) USE OF FUNDS.—

"(1) IN GENERAL.—The Commission may provide grants and technical assistance to Indian tribes using funds secured by the Commission under section 14.

"(2) USES.—A grant or financial assistance provided under paragraph (1) may be used only—

"(A) to provide technical training and other assistance to an Indian tribe to strengthen the regulatory integrity of Indian gaming;

"(B) to provide assistance to an Indian tribe to assess the feasibility of conducting non-gaming economic development activities on Indian land;

"(C) to provide assistance to an Indian tribe to devise and implement programs and treatment services for individuals diagnosed as problem gamblers; or

1 "(D) to provide to an Indian tribe 1 or
2 more other forms of assistance that are not in-
3 consistent with this Act.
4 "(c) SOURCE OF FUNDS.—Amounts used to carry out
5 subsection (b) may be derived only from funds—
6 "(1) collected by the Commission under section
7 14; and
8 "(2) authorized for use in advance by an Act of
9 appropriation.
10 "(d) REGULATIONS.—The Commission may promul-
11 gate such regulations as are necessary to carry out this
12 section.
13 **"SEC. 22. TRIBAL CONSULTATION.**
14 "In carrying out this Act, the Secretary of the Inte-
15 rior, Secretary of the Treasury, and Chairman of the Com-
16 mission shall involve and consult with Indian tribes to the
17 maximum extent practicable, as appropriate, in a manner
18 that is consistent with the Federal trust and the govern-
19 ment-to-government relationship that exists between In-
20 dian tribes and the Federal Government."; and
21 (4) by inserting after section 27 (as redesig-
22 nated by paragraph (2)) the following:
23 **"SEC. 28. AUTHORIZATION OF APPROPRIATIONS.**
24 "(a) IN GENERAL.—Subject to section 18, there is
25 authorized to be appropriated to carry out this Act, for

fiscal year 1998 and each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 18(a).

"(b) ADDITIONAL AMOUNTS.—Notwithstanding section 18, in addition to amounts authorized to be appropriated by subsection (a), there are authorized to be appropriated $2,000,000 to fund the operation of the Commission for fiscal year 1998 and each fiscal year thereafter.".

○

The CHAIRMAN. We will start with the first panel. I think we will have all three of our people testifying sit at the same time: Phil Hogen, the commissioner for the National Indian Gaming Commission from Washington; George Skibine, the acting deputy assistant secretary for Policy and Economic Development with the Department of the Interior; and Ernie Stevens, Jr., the chairman of the National Indian Gaming Association.

Ernie, nice to see you. Mark Van Norman will accompany Ernie Stevens. That will be fine.

Why don't we go ahead in that order. If you would like to start, Commissioner Hogen, we will be happy to take your testimony and you may abbreviate if you like.

STATEMENT OF PHIL HOGEN, COMMISSIONER, NATIONAL INDIAN GAMING COMMISSION

Mr. HOGEN. Thank you. Good morning, Mr. Chairman, Senator Inouye. We thank you very much for the opportunity to appear before you with respect to this very significant measure that you are considering.

With me here today are the other members of the National Indian Gaming Commission. I am Phil Hogen, Oglala Sioux from South Dakota. Chuck Choney is also present. Mr. Choney is Comanche from Oklahoma. He is a veteran of the FBI, for 26 years he served as a special agent with the Federal Bureau of Investigation [FBI]. One of his pet projects in terms of what we are doing is trying to enhance the sensitivity that Federal investigators, Federal prosecutors give to crime that occurs against Indian gaming facilities or at gaming facilities. In this connection, we have orchestrated with the help of the FBI, the Internal Revenue Service [IRS], the Department of the Interior's Inspector General, a Federal law enforcement working group.

One of the recent efforts in that regard was last month, we held, at the Mohegan Sun facility in Connecticut, a 1-week-long training, attended by more than 100 FBI agents, IRS agents, and assistant U.S attorneys, to educate them with respect to Indian gaming. Hopefully, now when an offense is perpetrated against a facility, the Federal law enforcement family will be more attentive and we will get those cases prosecuted, and there will be better cooperation and communication.

Commissioner and Vice Chairman Nelson Westrin is also present with me. Commissioner Westrin was formerly with the Michigan Gaming Control Board. We, the three of us, I think make a good team. One of the strengths that Nelson brings to our Commission is his organizational ability. We have, and we have distributed to the committee our annual report for 2003 that is before you. Nelson was one of the guiding forces in getting this put together. It really does a good job of reflecting where we have been, what we have done, how we have used the resources that we have to play our important role in the oversight of Indian gaming.

Also, our new chief of staff, Gary Pechota, and our new director of Congressional Affairs, Affie Ellis, played a significant role in putting that together. This report discusses our mission, our structure, our revenues, our budget, and our staff.

Of course, what we are primarily here to tell you about today is what we think of the legislation that has been proposed, as well as some companion legislation or proposed legislation that the Administration has submitted. I will not tell you all of the things you already know about the context of Indian gaming, but it is important to keep that in mind. Both we, as we do our job, and Congress as it enacts legislation, must keep in mind that Indian gaming is not a Federal program. This is not something that the Great White Father did for the Indians. Rather, Indians invented Indian gaming. They have made it work and it has indeed been a very significant and useful economic development tool in Indian country.

IGRA, of course, when passed in 1988 set up the framework that is now utilized to oversee, to operate Indian gaming. It was put in place for a number of reasons. Congress wanted a place in Federal law that tribes could point to to say, yes, we can continue with this important economic development tool. Like all gaming that is sanctioned, it provided that those who are involved in Indian gaming be examined for their suitability; that the fairness of play at the casinos, at the bingo halls be fair, both by the operation and by the customers, and that the money goes where it is supposed to. It has to be the tribes that benefits primarily from those operations.

Finally, a Federal regulatory mechanism was set up, a Federal agency was created. That is us, the National Indian Gaming Commission, to among other things establish Federal standards for the regulation of Indian gaming.

Now, of course, we are looking at an opportunity to revisit that act, to make some adjustments.

I would like to comment on the funding aspect with respect to NIGC, some of the housekeeping measures contained in the proposed legislation regarding NIGC's authority, the tools that we have to deal with those who attempt to deal unfairly with gaming tribes, how we attempt to distinguish between class II and class III gaming, the minimum internal control standards we have established that set the rules by which Indian gaming must be conducted, the use made of the proceeds from civil fines that we assess and collect, and how we consult with Indian tribes in the course of all of this.

In 2003, Congress provided that the National Indian Gaming Commission can collect from Indian tribes on the Indian gaming revenues from class II and class III gaming up to $12 million. Those fees that we assess, those fees that we collect are the only revenues we have. We do not get any appropriated money to do our job. So this represented an increase of some $4 million in the cap, from $8 million up to $12 million. This fiscal year 2004 is the first year that we are now operating under this $12 million cap.

We have established the fee rate, the rate that we assess our fee on Indian gaming at .69 percent [.069]. In other words, for every $1,000 of gross gaming revenues, each tribe has to send NIGC 69 cents. This is a moderate increase from what it was before when we had the $8 million cap. The reason it is not a large increase to make a big step in revenue is the industry itself continues to grow. So we have a bigger base that we are assessing fees on.

We do not think that we need or could appropriately spend $12 million this year, or probably even next year. This year, we antici-

pate we will collect and spend about $10.7 million, so we are staying well under that cap. The additional funding that we now have over that $8 million has permitted us to fill a number of vacancies, particularly in our audit positions, the auditors that we have in the field, and our inspectors that are our in our five field offices. This has permitted the staff to make more frequent, more thorough visitations at the tribal gaming operations sites, and to provide training to tribal regulators and gaming commissioners.

We have a lot of information at the National Indian Gaming Commission. We get audits from tribes. We review their background investigation reports. That information could be very useful to all of those that have a role to play, but right now the way we handle that information probably is inefficient. Without increased funding we are going to upgrade our information management system, the computers that we use to deal with this, and of course we are not unaware of the scrutiny that the Department of the Interior's trust fund information has been given. We want to make sure our computers are indeed secure and that, first of all, the information is protected as it should be, and secondly, someone does not come along and in effect kick us off the Internet and hamper our ability to do our job.

Another computer-related tool that we are using is Live Scan to communicate fingerprint information the tribes collect at the tribal level when someone applies for a tribal gaming license. In the old days, they would do it on a cardboard fingerprint card and send it to us. We would sent it to the FBI and the FBI would send the results to us. We would send it back to the tribe and that could take months. Now, electronically in a heartbeat, that information can be beamed from the tribal office to the NIGC, then to the FBI, and the results can be returned. This is much more efficient in that you can tell right there in minutes if your applicant has a criminal record and maybe should not be further considered. You do not have to give him or her a temporary gaming license. It will be extremely efficient, both at the tribal and at the NIGC level in terms of the background investigation process.

We do not have all tribes on line yet, but we are now set up so that we can make this opportunity available to all the tribes. That follows a pilot project that was successful that involved a number of tribes.

In terms of setting a fee schedule, any fee schedule that Congress sets for NIGC needs to keep us somewhat proportionate to the size of the industry. If the industry grows faster than we do, we cannot do the job that we are assigned under the Indian Gaming Regulatory Act [IGRA].

What we have suggested in the Administration's proposal is that the fee cap be set as a percentage of gross gaming revenues. We have suggested not to exceed .8 percent [.08], or 80 cents per $1,000. That way, we would not have to revisit from time to time what that level would be, with congressional action.

However it is done, it is important that we look down the road. We know what our future is going to hold. So the proposal S. 1529 that would set up funding through fiscal year 2008 is certainly a step in the right direction.

S. 1529 proposes a fee reduction proposal, in effect to reward tribes that do an excellent job of regulation at the tribal level by assessing a reduced fee. Certainly, there is some merit to that. The problem that we have is that we spend a disproportionate amount of time working with tribes that are not well equipped to pay a fee because they have problems. We would like to be like the Maytag repairman and have our phone not ring because everything is going smoothly. It does ring occasionally, and I think what we are more like is the fire department. That is, while we hope we do not have to go do enforcement and things like that at tribal gaming facilities, when we do go, we want to know what is going on; we want to be well prepared. Nobody likes having to pay for the fire department, but they want them there when they need them. We think that is sort of a parallel that can be drawn with respect to fees the tribes pay.

The whole Indian gaming industry is well served if there is a sound, adequately funded regulatory oversight body at the national level. With the fee proposal that we have suggested and perhaps with the one contained in S. 1529, we can stay at that level.

In terms of the housekeeping measures with respect to NIGC's authority, we think it is appropriate that NIGC develop, provide to the tribes, and provide the Congress a strategic plan.

There are some corrections or clarifications that need to be made with respect to how vacancies on the Commission are filled and how the Chairman at the National Indian Gaming Commission delegates his authority, and then the pay level specified in the IGRA are obsolete. That needs to be made consistent with the current Federal employment pay structure.

We strongly support the language that will clarify our authority to play a role in the regulation of class III gaming. If all of those things are enacted, we think we will be a better, stronger Commission.

In terms of the tools that we have to deal with those who might deal unfairly with gaming tribes, we have a role to play with respect to management contractors. In the old days when unscrupulous traders swindled Indians, Congress quickly enacted Section 81 of Title 25 that says the Federal government has to approve a contract with the tribe if it affects Indian lands. When IGRA was enacted in 1988, recognizing that gaming is kind of specialized, they farmed that out, that role, the approval of management contracts to NIGC. So we do that. We review and approve the backgrounds, the management contracts the tribes have with those who run their facilities.

However, a large number of individuals and firms that deal with tribes are not management contractors per se. Rather, they style themselves as consultants, as lenders, as lessors of machines, and they do not get that same scrutiny. We think in the Administration proposal whereby we set up a category of "regulated individuals," that whereby NIGC when necessary, would have the authority to reach out and require that those non-management contractors make corrections, perhaps make refunds to tribes, would be appropriate and would actually comply with the spirit of what Congress had in mind in the IGRA.

Distinguishing between what is class II, bingo, and what is class III, casino-type gaming that you have to have a compact with the State to do, continues to be a real challenge for the National Indian Gaming Commission. We spend a disproportionate amount of our time trying to sort out, whether a particular machine is one that can be played without a compact, or is it indeed a class II bingo or pull-tab-type machine that the tribe does not have to have a compact for.

We are trying to meet this challenge. We recently appointed or selected the nomination of tribes, membership to a tribal advisory committee that will help us establish class II standards so that if a game meets those standards, then it can be used without a class III compact. The process we are now using of offering informal advisory opinions with respect to each machine, often results in extended, costly litigation, and we do not really give the tribes or the vendors a clear path. Once we have these standards in place, we think that will be workable and will be a service to tribes, as well as those who provide these devices to the tribes.

S. 1529 takes a look at the minimum internal control process. Minimum internal control standards are basically universal for all commercial legalized gaming. The State of Nevada, the State of New Jersey, all the jurisdictions that have gaming have some standards that facilities must meet so that they track the dollars as they go through the machine to the cage, to the count room and eventually in some cases to State coffers if there are taxes, or to the casino proprietor, or in the case of Indian gaming, to the tribe.

We promulgated minimum internal control standards. They are in effect. They have been revisited once in 2002. A tribal advisory committee was assembled. We revised them. We are currently in the process of doing that again. Not only have we appointed a tribal advisory committee to help us do that, but it is a standing tribal advisory committee. You cannot just get it done once and solve the problem. Given the changes in technology and so forth, you have to keep up with this. With the assistance of this tribally nominated tribal advisory committee, we will be again revising the minimum internal control standards.

S. 1529, as we read it, would in effect send us back to the drawing board. The good news is it would clearly in Federal law say we have the authority to do this. The problem as I see it is we would have to in effect throw out the progress we have made, the minimum internal control standards we now have in place, and in effect start over, do negotiated rulemaking to come up with a new set of minimum internal control standards. I think the adage, "if it ain't broke, don't fix it," ought to apply here. I think our present standards are workable. I think we continue to get tribal input with respect to those standards. We hope that is a tack that the committee will take as it pursues this.

We are not without challenges in this area. At the Colorado River Indian Tribe in Arizona, we went out to do a MICS audit, minimum internal control standard audit. That was going pretty well until our Regional Director said, okay, let's go take a look at the slot machines. The tribe said, no, you do not have authority to look at class III. We said, well, yes we do. As a result, the audit came to a stop. Eventually the Commission issued a violation no-

tice, assessed a fine because the audit process had been disrupted. Eventually we got that sorted out. We have been to Colorado River Indian Tribe. We have done an audit. Things look pretty good out there. But they reserved the right to challenge whether we have that authority, the proposition being tribes and NIGC will regulate class II; class III will be regulated pursuant to Tribal-State compacts.

Well, that case is now working its way through the court. If in fact the court disagrees with us and says, no, even though IGRA says we have the right to promulgate standards, even though the chairman of the National Indian Gaming Commission has the right to assess fines for violations of the IGRA, of NIGC's regulations, of the tribal gaming ordinance, you have to stay out of class III, that is where most of the ballgame is. Class III is where all of the money, or not all of the money, but most of the money in Indian gaming is. All day every day, that is what we are currently doing now. This act would clarify that we have that authority. However, if we have to go back and rewrite the MICS, we think it is a step forward and maybe also a step backward.

There is a provision in S. 1529 that addresses the use of the fines that NIGC collects for violations of IGRA and the regulations and so forth. It would in effect say, NIGC, you set up a separate fund; put those proceeds in that fund; and there are some special uses you can make of those funds. We do not think that is good business. That is, we do not think that the body that assesses the fines should be the one that gets to decide or decides in part where to spend it. Right now, those fines that we collect, and in this last year we collected about $4 million in fines, go into the general fund of the U.S. Treasury.

There is probably a way to do both of these things. That is, get the benefits of what money like that would provide for, such as additional training for tribal gaming regulators, things of that nature, but money for those purposes could be appropriated. Maybe they could look as they do that, to see how much the fines were that came in. But to say to us, you go out there and collect fines and then use that money, I think raises a red flag with respect to the credibility of the NIGC when we assess those fines.

The consultation provision of S. 1529 is something we certainly agree with. We have promulgated for the first time at NIGC a consultation policy. It will be published in the Federal Register the first week in April. It specifically sets forth how NIGC should and will consult with tribes when we consider changing policy that relates to Indians and Indian gaming. We have held five regional consultations this past year, and almost on a weekly basis we are engaged in consultation of one sort or another, meeting with tribal leaders and addressing the issues that arise as we play our regulatory role.

Finally, let me say we want to continue to play an important role in the regulation of Indian gaming that makes it a strong economic development tool. We want to continue to help tribes scrutinize the individuals that participate in Indian gaming. We want to monitor with them the fairness of the play. We want to make sure that the money goes where it is supposed to.

We fully understand that tribes do the heavy lifting. They are out there all day every day. We merely come along and look over their shoulder. But by looking over their shoulder, we give credibility to what they are doing, to the gaming public, to know that there is somebody here that is talking to you, talking to Congress, talking to the tribes with respect to how it works. I think it also fortifies the trust that tribal members themselves have that their assets are being adequately protected; that their economic development in the way of gaming is being run the way it should.

There certainly will be new challenges that will come along. We are seeing more and more questions about our tribes making proper utilization of their gaming revenues. NIGC will continue to try and address those issues that come our way. We need to have the tools to do that, enough resources in the way of dollars and staff. We need to have a viable, modern, current, organic Act, the [IGRA]. When we have that, we think we can play the role that is expected of us.

That basically concludes what I have to say, Mr. Chairman. But before concluding, we may not have the opportunity during your tenure to come before you again, Senator Campbell. I want to thank you so much for the attention you have given to us. It has been a privilege to appear before you. From one Indian to another, you make us proud that the Indians know how things ought to work.

Thank you, sir.

[Prepared statement of Mr. Hogen appears in appendix]

The CHAIRMAN. The three of us here in attendance today, we were all active in 1988 in helping write IGRA. I do not think any of us, or anybody in Congress, had any idea of the growth that was going to happen after we passed that bill. In my view, I think Indian gaming has done a world of good for communities around reservations, and particularly for tribes that have invested in gaming, but it has had some complications, and that is what this bill is about.

Before we go to Mr. Skibine, I would like to ask Senator McCain if had an opening statement or any comments to make.

Senator MCCAIN. No, Mr. Chairman; except to thank you for holding this hearing. I think it is important after 15 years that we review IGRA. As you mentioned, and I think Senator Inouye would agree, we had no idea that it would be this large a situation.

I was reading the opening statement of Mr. Stevens, who said that IGRA is a result of lobbying efforts by State governments and the commercial gaming industry in response to the Supreme Court's holding *California* v. *Cabazon Band of Mission Indians.* I do not know where you were at that time, Mr. Stevens. It had nothing to do whatsoever with anybody's lobbying. It had a lot to do with our abiding commitment to try to see that a Supreme Court decision, which we all supported, certainly Senator Inouye and myself and Senator Campbell, was translated into some kind of reasonable process so that we would be in compliance with a U.S. Supreme Court decision, and allow as much as possible Indian tribes to engage in gaming.

To allege that somehow that this was a result of lobbying efforts is a bit insulting to those of us who worked so hard on behalf of

Native Americans and have continued to work on behalf of Native Americans' right to engage in gaming.

Thank you, Mr. Chairman.

Mr. STEVENS. Senator, if I could?

The CHAIRMAN. Yes; go ahead, if you would like to respond to that.

Mr. STEVENS. I apologize if I offended you in any way, shape or form.

Senator MCCAIN. You did not offend me. I was just correcting the record.

Mr. STEVENS. It is not my intent, and certainly we feel that there was a lot of lobbying efforts that took place. We certainly take the position that tribes did not write this and we were not the champions of this until it was installed.

Senator MCCAIN. This law was passed in complete consultation with Indian tribes. It was extensive for a long period of time. I will engage in that later on, Mr. Chairman, but I thank you, Mr. Chairman.

Mr. STEVENS. I would welcome the opportunity to try to clarify my record on that, Senator.

Senator MCCAIN. Thank you.

The CHAIRMAN. Mr. Skibine, if you would continue.

STATEMENT OF GEORGE T. SKIBINE, ACTING DEPUTY ASSISTANT SECRETARY FOR POLICY AND ECONOMIC DEVELOPMENT, DEPARTMENT OF THE INTERIOR

Mr. SKIBINE. Thank you, Mr. Chairman.

Good morning, Mr. Chairman, Mr. Vice Chairman, Senator McCain. I am pleased to be here to present the Department of the Interior's view on S. 1529, the Indian Gaming Regulatory Act Amendments of 2003. My comments this morning will focus on section 2(f)(2) of the bill, which is the only section that directly affects the Secretary's statutory duties under the IGRA.

As you know, in July of last year the principal deputy assistant secretary, for Indian Affairs testified before this committee on the concerns we had with revenue-sharing provisions in class III gaming compacts. We talked about the growth of revenue-sharing provisions in the compacts; about how the 1996 *Seminole* decision affected this by giving States the upper hand in compact negotiations; how there has been a rise in revenue-sharing provisions in general in compacts and, also, how there has been a rise in the percentage of revenue that the states receive under these compacts.

Back in 1994, we approved the Mohegan compact. It was the beginning of the era for revenue-sharing provisions in compacts. We also you, a book with a compendium of our decisions regarding revenue-sharing payment. Our position has been that as long as these payments are not a tax, then they are okay, as long as they are viewed as the purchase of a valuable economic benefit in exchange for the payment.

We require that the economic benefit be quantifiable and we have also insisted that it be for a benefit that the state is not required to negotiate in good faith. Our thinking there is that we do not believe it was the intent of IGRA to have all the provisions up for sale. We wanted to make sure that it is like substantial exclu-

sive rights to certain forms of class III gaming, something that the State is not required to offer in good faith.

As a result, we support the thrust of section 2(f)(2)(a) because it provides a statutory basis for the inclusion of revenue-sharing provisions in class III gaming compacts. We think that this is welcome because the Department has been challenged over its approval of such provisions in court, and we have not lost litigation there, but we feel that it is an ongoing concern and that if that can be clarified by an amendment to IGRA I think it will resolve all these doubts about whether you can or cannot make those revenue-sharing payments.

We believe that the conditions for revenue-sharing payments in the bill should be, modified and that the bill should contain very clear language that specifies exactly what economic benefits may be conferred in exchange for the payment, and perhaps even to provide a cap on the percentage of net revenues that can be made so that there will not be a tendency to have the percentage that the States require be increased over time. This is something we have seen, and with direction from Congress as to the cap, that we would essentially help promote the notion that the gaming activities are mainly for the tribes' economic development and tribal programs, that it will not see more and more of these revenues going to States under these compacts.

We think that this clear statutory guidance, in this respect, will provide a transparent process for reviewing these provisions at Interior and will help states and tribes know exactly what is on the table for them to negotiate. It will also eliminate the uncertainty surrounding the approval or disapproval of these provisions at Interior. Usually, I can tell you that when we have to make a determination on a compact that contains revenue-sharing provisions, we do a lot of hand-wringing and a lot of analysis, and we are usually not done with our analysis until the 44th day when we actually issue the decision because it is a very difficult process to try to figure out exactly what is the value that the tribe is receiving in exchange for the payment.

With respect to the promulgation of regulations included in section 2(f)(2), we believe that if the statute itself clearly articulates the criteria for revenue-sharing payments, then regulations may actually not be necessary. Actually, if the committee believes these regulations are necessary, we think in our testimony we said that the timeframe seems unrealistic and we suggest 18 months, rather than the 90 days that are in the bill.

Also, we think that the inclusion of a 90-day timeframe for issuing class III procedures in section 2(f)(2)(b) is insufficient. We would recommend the doubling of that deadline of the timeframe at the very least. In our experience, we have had very few instances of reviewing class III procedures under the scheme outlined in IGRA. We are in the process of doing that now. I can tell you that the timeframe, presents very difficult questions, especially in the scope of gaming, that would require us to study this very diligently.

Now, I note that last July our principal deputy assistant secretary for Indian Affairs was asked whether the committee should consider any other modifications of IGRA. She responded that the

45-day deadline for approval of compacts was too short. I cannot find that provision extending that timeframe in the bill. We continue to believe that the 45-day timeframe is short. What happens a lot of times is we have a compact that is submitted and when we examine it, we notice that there are some glitches. We ask within the timeframe for the tribe and the State to modify that section, to provide us with something that would comply with IGRA. The back-and-forth negotiation that we are doing takes time. As a result, we always bump up against that 45 days, in most cases.

We notice that in section 2(f)(2)(b) there is a requirement that the net revenues from gaming activities of the tribe that may be in the compact be allocated to another tribe or a portion to another tribe and not be used on a per capita basis. I think I should make the committee aware that at Interior, we do not believe that these funds are subject to the revenue allocation plan requirements currently under IGRA. We do not consider those to be the net revenue of that tribe, and as a result in states that authorize that, they are using those funds for tribal governance purposes or whatever purpose they need without having to come to Interior to submit a revenue allocation plan. So we have not considered these particular funds to be subject to IGRA.

Let me also, mention that the 6-month extension of compacts contained in section 2(f)(2)(c) is a concept that we do like, but we were made aware by the Justice Department that there may be 10th Amendment problems with this provision. We think this issue should be examined in more detail.

Finally, the Department requests the committee examine two additional issues which are of concern to us. The first is the inclusion of anti-competitive provisions in compacts that are directed at other Indian tribes. Secretary Norton is very concerned about that and we have seen that in the last 2 years in a compact where the compact would provide exclusive rights to game on a geographical basis, or substantial exclusivity to tribes against non-Indian gaming. It also gives a tribe the right to game in a geographical area to the exclusion of other Indian tribes. We have noticed a rise in these provisions that set tribes against tribes, and we are very concerned about it.

Our lawyers have told us that they do not feel that such a requirement violates any requirement of IGRA, but yet, we feel as a policy matter that it is something that gives us pause. In fact, we have been sued in Wisconsin by two tribes over the decision not to disapprove the Ho-Chunk Nation compact that contains such a provision, so there is ongoing litigation on that.

The second issue that we raise involves section 20(b)(1)(a) of IGRA and the submission of applications to take land into trust for gaming on what we call "far flung" lands. We discussed this in our appearance last summer with the committee. We have come to the conclusion that section 20 of IGRA does not prohibit gaming on off-reservation land under section 20(b)(1)(a) of IGRA and there is nothing in IGRA that prohibits it. In fact, it is contemplated that it does occur.

Yet, when we are seeing the rise of applications from tribes for land that is hundreds of miles from the reservation, or from lands that are in another State, we are often contacted by congressmen

that are essentially outraged that this can happen under IGRA and that in fact they feel that it was never the intent of Congress to permit it. We believe the committee may want to consider clarifying this area since it is raising a lot of concerns, not only with congressmen, but also with the communities that are affected by these applications that we continue to process.

This concludes my remarks. I will be happy to respond to any questions you may have.

Thank you very much.

[Prepared statement of Mr. Skibine appears in appendix.]

The CHAIRMAN. We will look forward to working with the Department in trying to improve this bill as we go along. I do not think any of us had any idea in 1988 about some of the complicated things that are coming up now as the industry grows. In my view, having been one of the people that worked on it in 1988, I was not concerned about the states at all. They are doing great compared to the tribes. When you compare unemployment as an example, State unemployment and tribal unemployment, it is just as different as night and day, as well as many things like the suicide rate among youngsters or high school dropout rate or so on.

My original intent was to try to help tribes, and certainly the peripheral benefits have gone to States or communities. That is fine, but right from the beginning I was concerned more about tribes than I was States. Who would have known that when we thought we would put something in place in 1988 that would allow people of good faith to reach an agreement between the states and the tribes, and then after the *Seminole* decision we found out that one of the participants did not have to participate if they wanted to hold out and basically put tribes, in my view, in a real subjective position.

Now, we find that when many States have deficits, they are looking to tribes to bail them out, when they were not there in the beginning to help them pass IGRA to help tribes. In those days, if anything, they dragged their feet, if you remember.

We will go ahead to Mr. Stevens' testimony.

STATEMENT OF ERNIE STEVENS, JR., CHAIRMAN, NATIONAL INDIAN GAMING ASSOCIATION, ACCOMPANIED BY MARK VAN NORMAN, EXECUTIVE DIRECTOR

Mr. STEVENS. Mr. Chairman, members of the committee, I just want to clarify. I reviewed the statement regarding Senator McCain's concern and clarify that in my record.

The CHAIRMAN. Okay, that will be fine.

Mr. STEVENS. I get a lot of my information from my elders and they have made it clear to me that in working with that process, it was not completely Indian country's baby, but we have championed that from day one and done a great job of doing that. I apologize if my statement was a little bit aggressive in that regard.

Senator MCCAIN. That is not an important item, believe me. Thank you.

Mr. STEVENS. Thank you, Senator.

Good morning Chairman Campbell and Vice Chairman Inouye and Senator McCain, members of the committee, on behalf of

NIGA's member tribes, I want to thank you for providing me the opportunity to testify before you this morning.

My name is Ernie Stevens, Jr. and I am a member of the Oneida Nation of Wisconsin and chairman of the National Indian Gaming Association. With me this morning is Mark Van Norman, a member of the Cheyenne River Sioux Tribe and NIGA's executive director.

I first want to commend your efforts in crafting S. 1529. NIGA fully supports a number of provisions that would make positive technical corrections to the IGRA. However, as you know, Indian country has a number of concerns with this bill and we appreciate the continuing dialog with you and your staff over the past year. Most importantly, we welcome the opportunity to formally provide our views.

Mr. Chairman, before I speak from the text, I want to speak from my heart. Tribal government gaming is working. Before Indian gaming, my people had few jobs. Indian gaming has created 500,000 jobs. Before tribal gaming, Indian people when they were sick they could not find a doctor. Now, we are building health clinics. Before tribal gaming, Indian children had little chance for an education, and now we are building schools. Before tribal gaming, Indian people had few opportunities. Now we have a bright future for our children.

Gentlemen, tribal government gaming is the Native American success story.

I will turn to the specifics of my presentation. I would ask that I am able to provide my full statement for the record.

The CHAIRMAN. It will be included in the record.

Mr. STEVENS. Thank you, sir.

It has been 15 years since Congress enacted IGRA. Indian gaming is a tool that tribal governments have used for more than 30 years now. IGRA was the brainchild of many different efforts, but as I said previously before Senator McCain left, it was not ours, but we are very proud of what we have done to champion that law and we are very proud of what we have done to contribute to this industry.

Indian tribes use gaming just as state governments use lotteries, to build infrastructure and provide essential services for their citizens. In just 30 years, Indian gaming has helped tribes begin to rebuild communities that were all but forgotten.

Indian country still has a long way to go. Too many people continue to live with disease and poverty. Indian gaming has proven to be the best available tool for tribal economic development.

I appreciate your efforts through S. 1529, which would bring clarity to several areas of the law. These are some of the provisions we support. First, the Johnson Act clarification. The Supreme Court brought stability to this area of law by rejecting the Department of Justice review to two appellate court decisions that found the Johnson Act did not apply to IGRA class II technological aids. This bill's provisions would help prevent any future confusion.

Second is NIGC's accountability. This bill would require NIGC to adopt a 5-year strategic plan, and in addition would propose section 20 which will require the Commission to involve and consult with Indian tribes. We kind of look at the record regarding this, and we

are not so excited about that. We are appreciative of the efforts more recently on consultation and we are encouraged by the way this process is growing in Indian country by NIGC. NIGA asks the committee to consider requiring the NIGC to develop its plans in accordance with the limited powers pursuant to IGRA.

Despite our strong support for these important clarifications, Chairman Campbell, NIGA has three concerns. It authorizes the NIGC to regulate class III gaming. It authorizes NIGC to do background checks on tribal gaming commissioners. And it does not provide a Seminole fix.

The authorization will burden the tribal-State compacting process pertaining to class III authorization. It will create conflict and only serve to create confusion and a duplication of effort. Congress considered NIGC authority over class III gaming, but decided against it. Our elders have fought against it as well. Our elders have told me on more than one occasion that is a sovereign right and we need to stand by that.

As Congress and the Department of Justice expected, tribal-State compacts are working to provide a strong regulatory regime backed up by Federal agencies like the FBI, FinCEN, IRS and others. In total, Indian tribes invest over $262 million annually for the regulation of Indian gaming. Against a backdrop of comprehensive regulation, the FBI and the U.S. Department of Justice have testified repeatedly that this regulatory scheme is working well to prevent the infiltration of crime and protect the integrity of games played at all tribal operations.

Next if I could just talk real briefly about NIGC licensing authority. NIGA objects to the provision requiring Federal background checks for tribal gaming commissioners. Unlike management and other key gaming personnel, tribal gaming commissioners are tribal government officials and the selection of tribal government officials must be left to the sovereign authority of tribal governments. NIGC should not be permitted to infringe on tribal government authority in this manner and we ask that you consider deleting that provision from the bill.

One thing we are very concerned about is the lack of a Seminole fix. I think everybody is aware of that. For the past 8 years, NIGA, NCAI and tribal governments throughout the Nation have all stated that any IGRA amendment must contain a Seminole provision. When I spoke before this committee in 1997, then as First Vice President of the National Congress of American Indians, that was our stance, and those resolutions stand firm today.

Today, I must again ask that the committee consider adding a provision to address this longstanding wrong. States are using Seminole to impose unreasonable demands on tribal governments through the compacting process.

Last, before I close, I would like to address the revenue-sharing provision. NIGA fully supports this concept. The burdens of homeland security, the economic downturn nationwide, the loss of jobs and very poor financial planning are all reasons for State budget shortfalls. Indian gaming, however, is not a reason for State budget problems and should not be used as a way out. Shifting the burden to tribal governments is neither reasonable or fair. Why? Because these proposals burden only the industry that is producing jobs and

generating economic development. They also ignore a significant benefit that Indian gaming currently provides to State and local communities.

Finally, these proposals violate Federal law and ignore the status of Indian tribes as governments. As I mentioned earlier, tribal government gaming has created 500,000 American jobs and three-fourths of those jobs are held by non-Indians.

Indian gaming also creates a substantial revenue stream for the State and local units of government. In 2003 alone, Indian gaming provided for about $7.6 billion in added revenue to Federal, State and local governments. These provisions do not make good financial sense and most of them violate Federal law.

Indian tribes conduct gaming for the same purpose that State governments operate lotteries: To generate revenue, to fund infrastructure and essential government programs. Congress enacted the IGRA to promote tribal economies and strengthen tribal governments. As a result, IGRA requires that Indian gaming revenues be used first and foremost to address the governmental, economic and social problems of Indian country.

Until these needs are fully addressed, Federal law prohibits the use of gaming revenues for any other purpose. I understand that an amended version of S. 1529 includes a savings clause to protect the effect of existing tribal-State compacts that are working well for the tribes and States involved. Again, NIGA fully supports this provision.

In closing, Mr. Chairman and Senator, I again thank you for your dedication and interest in tribal government gaming and Native Americans. We want you to know that we appreciate the hard work that the committee and its staff have done in regards to this legislation.

Senator Campbell, this may be the last time that I have the privilege of testifying before you as one chairman to another. I was saddened to hear you will be leaving the committee. You have been an inspiration to all Native Americans. We are deeply and eternally grateful.

Mr. Chairman and members of the committee, this concludes my remarks this morning, and once again I thank you for providing me with this opportunity. I am available for any questions.

[Prepared statement of Mr. Stevens appears in appendix.]

The CHAIRMAN. Thank you, Ernie.

I am going to run and vote. Senator Inouye will chair. Don't be a little bit embarrassed about your confusion with which one of us is Inouye and which one is Campbell. We have worked together for so many years and been friends for so many years that we are like an old married couple sometimes. We begin to look alike. [Laughter.]

Mr. STEVENS. I am very clear, Chairman Campbell. Again, we are excited to come before you on this important matter. You two are great gentlemen and friends I have inherited from my father. I am very clear the difference. I am a little bit nervous trying to clarify for Senator McCain this morning, but I hope my position here this morning stands clear.

Senator INOUYE. Thank you very much. I am sorry I was not here for the past 10 minutes. Since this issue has been brought up,

when the U.S. Supreme Court issued its ruling in the *Cabazon* case the committee was faced with a problem. We approached the Administration to suggest that they should carryout its responsibility on a government-to-government relationship with sovereign nations, but as some of you recall, our Government, our Attorney General adamantly refused to participate and said, no, we do not want to have any part of this.

As a result, the Congress had to enact laws and delegate this government-to-government role to the States. We know that the Constitution did not contemplate such a rule for the States but what choice did we have? It was either that or chaos, and we could not countenance that. So that is why we have this law today. I am glad that the Federal Government is involved now to some extent.

If I may, I would like to ask a few questions. I believe the Deputy Assistant Secretary brought up the matter of caps.

Mr. SKIBINE. Yes.

Senator INOUYE. At the present time, there are no caps. When the first compact was put into effect, I believe that was the Mashantucket Pequots.

Mr. SKIBINE. The Mashantucket Pequots were actually procedures under IGRA. The first compact with a revenue-sharing payment that we approved was the Mohegan compact.

Senator INOUYE. For that revenue-sharing agreement, the Connecticut tribes got some monopolies. Isn't that correct?

Mr. SKIBINE. That is correct.

Senator INOUYE. Do the other tribes that are being forced to accept high percentages of revenue-sharing, they get monopolies as well?

Mr. SKIBINE. In some cases they do. What they get is a substantial exclusivity to certain forms of tax-free gaming. So it is not as broad as the exclusivity that the Mohegan Tribe got in Connecticut, which is a total monopoly on slot machines, but it is still a substantial exclusivity. We believe that the form of class III gaming has to be authorized somehow within the State so it is not a total exclusivity anymore, but it is a substantial exclusivity.

We have in fact, for a while, insisted on a statewide exclusivity. With the Seneca compact in New York, we agreed to a substantial exclusivity that is geographic, so that the Seneca Tribe has essentially substantial exclusivity on forms of machines in Western New York, but not over the whole state. The tribe persuaded us that it was significant enough to provide payments to the State.

Senator INOUYE. Do you believe it is your responsibility to, quote, "protect" Indians from being shortchanged or conned by some of these dealers?

Mr. SKIBINE. What we believe is that in order for the compact not to violate IGRA, and especially not to violate the taxation provision of IGRA, the payment has to be something that is a payment in exchange for a benefit. If the payment greatly exceeds the value of the benefit, our view is that the difference between what the benefit is worth and the payment that the tribe would agree to make, that is a tax and that is prohibited by IGRA. So to that extent, that is what we look at.

Senator INOUYE. Who determines what is a tax or is a benefit?

Mr. SKIBINE. We ask the tribe and the State to provide us with an economic analysis that outlines what is the benefit that is conferred and essentially what is the value of the benefit, as compared to the payment that is provided. Based on this analysis, we make a decision as to whether it is not a tax and in fact is a payment that is authorized as the purchase of a valuable economic benefit.

It is a difficult analysis and that is why we welcome the provision that would clarify that it is authorized, and under what circumstances.

Senator INOUYE. I have been advised that New Mexico Indian tribes originally were forced to accept 16 percent revenue-sharing with the State.

Mr. SKIBINE. No; they pay 8 percent.

Mr. VAN NORMAN. Could I just add. There are two that remain under the former regime, Mescalero and Pojoaque Pueblo.

Mr. SKIBINE. Yes; right.

Senator INOUYE. Do they receive any exclusivity?

Mr. SKIBINE. Under the previous——

Senator INOUYE. Under the 16 percent.

Mr. SKIBINE. Under the 16 percent, they receive some exclusivity, however the Department never affirmatively approved the compact for these two tribes, or for the other tribe. We did not approve it because we felt that it was not arms length negotiations with the State and therefore, the payment was more likely to be a tax than a payment in exchange for a bargain a benefit. At the time, from what I recall, we felt that the tribes were between a rock and a hard place.

If they did not have a compact, I think the U.S. Attorney at the time had filed to close them down, and yet they were faced with a legislative compact that they did not negotiate. The tribe sent us a resolution urging us to neither approve nor disapprove this compact because in fact they felt that they wanted to be able to test their legality in court. So we ended up following that request.

Senator INOUYE. Would you recommend that this bill contain a cap?

Mr. SKIBINE. Yes; I think that we should explore having a cap on the payment of net revenues.

Senator INOUYE. From your experience, what would be a reasonable cap?

Mr. SKIBINE. I think it should be single-digit, maybe, or 10 percent. I think that has yet to be looked at. I think that if it goes above that I think it is maybe problematic for the tribes.

Senator INOUYE. We will consider that.

Mr. Stevens, Mr. Chairman, you have indicated that you are not happy with the bill requiring personnel to be investigated because of your sovereign nature. Is that correct?

Mr. STEVENS. Tribal gaming commissioners that are appointed by the tribes, we think that is a tribal council right, only for tribal gaming commissioners.

Senator INOUYE. And you do not want the Government of the United States investigating them?

Mr. STEVENS. I am saying that it is our position that that is first and foremost the right of the tribal government. That is my only statement.

Senator INOUYE. How can you assure your tribal members and the Government that your commissioners are free of a criminal background?

Mr. STEVENS. I think that we have a demonstrated experience with our background investigation through our tribal governments. As I reflected in our numbers, our numbers are for regulation nationwide is $272 million. That is reflective of our tribes' background investigations. So I would say that our tribal governments would be able to do adequate background investigations on those commissioners.

Senator INOUYE. Mr. Hogen, do you believe that you and your Commission should have the right to investigate?

Mr. HOGEN. Senator Inouye, as I read the proposed legislation, it would not give us the primary task of investigating tribal gaming commissioners. Rather, they, the tribal gaming commissioners, would have to be backgrounded just as all of the licensed employees are. We play a role in that in that the tribes first do that, then they send their investigative report to us. We review that, and only if we object to what they have done do we take any action. That action would be, for example, to ask them to reexamine or to object to that. They have the ultimate decision as to whether they are going to license those individuals.

I think it is good business to have those who do the licensing at the tribal level subject to the same scrutiny as those that they are going to license. I do not think it would be good to have a tribal gaming commissioner with a felony record sitting there looking over applicants from blackjack dealers and be in a position to veto their qualification because they may have a conviction.

So we do not want to be intrusive, and I agree that the record of tribal gaming commissions is good, but I think putting everybody on that same level has merit.

Senator INOUYE. If you object, do the commissioners get thrown out? What is the outcome?

Mr. HOGEN. I believe, and I would have to look at the statute to be absolutely clear, that the tribes are obligated to re-examine, they look at it, and I think they may have to suspend that license that is in place for a period of time, but they make that ultimate decision.

Senator INOUYE. Notwithstanding your objection?

Mr. HOGEN. Right.

Senator INOUYE. Do you believe that this is what you want?

Mr. HOGEN. It has worked pretty well so far. We have been troubled occasionally, but it has been very isolated.

Mr. STEVENS. Vice Chairman Inouye?

Senator INOUYE. Yes?

Mr. STEVENS. I just want to make sure I clarify for the record that in no way, shape or form do we advocate that we should not do a background or a review. We just want to make sure that we clarify that it is a sovereign right of our tribal governments to do so for their regulators.

Senator INOUYE. I fully support your sovereignty, as you know, but I want to also make certain that gaming is conducted in a manner that would be approved by the public at large because we are constantly pressured by members of the Congress, members of the

Senate to close tribal gaming. They pick on everything that they can find. A little thing can be a big thing for you.

So with that, I thank you very much.

Mr. Chairman.

The CHAIRMAN. Thank you, Senator Inouye.

We are all double- or triple-booked today, so I apologize for that, but those of you who have been here before, you know it comes with the deal here in the Senate. I do not know what Senator Inouye already asked you, so hopefully I will not duplicate that.

Let me start with you, Phil. You indicate that this roller-coaster appropriations cycle is not the best way to go, and that is certainly what we have had. I understand that. In your testimony you express concern about having to consider factors such as level and quality of State and tribal regulation in determining fees imposed on individual tribes. It just would seem to me those are reasonable things to consider. Do you disagree with that?

Mr. HOGEN. No; I think as a general proposition, to decide how much we have to do and what we need to do that, we need to kind of be very cognizant of the environment that we are looking at. If tribes are doing a super job and we find out that they are doing that by going to their facility twice a year, that is great. If we find out that it is not working very well, we need to be there more often. So we need to be aware of what they are doing, how they are doing it, and are there any holes that we need to try and plug in the role that we play.

The CHAIRMAN. I see. Okay. I think we are probably close to the same track.

In your testimony, you mention that tribes can reduce their fees by obtaining a certificate of self-regulation. Are there any tribes that do that now or have applied for that?

Mr. HOGEN. The only two tribes that do that, I believe are the Menominee Tribe in Wisconsin and the Grand Ronde Tribe in Oregon. However, under the current IGRA, that only applies to the class II gaming. As I mentioned before, that is a small chunk of the action, so there is really not much reward to a tribe for doing that.

The CHAIRMAN. Should we apply that to class III gaming?

Mr. HOGEN. If everybody is self-regulated, then NIGC is probably going to be left with very little resources, and must still spring into action when they need to. I have concerns about that, not only dollars and cents, but as Senator Inouye mentioned 1 minute ago, we are under a great deal of scrutiny. If we say to those who are complaining about the extent of the regulation of tribal gaming, well, now they are self-regulated, I expect we might hear some increased concerns expressed.

The CHAIRMAN. I understand.

I am interested to see that the legislative proposal that you have mentioned includes long-term planning similar to the Government Performance Results Act that applies to most other agencies. Can you tell me if that change is also a position of the National Indian Gaming Commission?

Mr. HOGEN. We have always done some planning, and it has probably been less formal than is required of other, and particularly larger agencies. This GPRA that I do not know all the details

about, but I do know that it is fairly bureaucratic and complex, we think that there are aspects of that that we can comply with that will tell this committee, tell Congress what they need to know about where we are going, tell tribes where we are going, and fully be transparent. Maybe we do not need to jump through all the hoops that GPRA itself would require, but still accomplish that.

The CHAIRMAN. I am not an expert on the technology that is changing so fast with any kind of gaming, but clearly there is some difference of opinion about what should be class II and class III. I guess with some of the new machines that are coming out, it is difficult to determine. In your opinion, is the NIGC the best agency situated to determine whether a particular game is class II or III?

Mr. HOGEN. I think we are the best agency to set the rules or the standards as to what the machine has to comply with. Once those are clear, then tribal gaming commissions themselves can examine those devices and decide whether to permit them on their floor. I think the buck, in terms of what those standards are, needs to stop someplace. I think having some national consistency to that has merit. So for that reason, I think that is a role that the NIGC ought to be playing.

The CHAIRMAN. Do you think that would also be tested in court, if you did have that legislative authority?

Mr. HOGEN. I would not be surprised. We very seldom go someplace without having somebody file a lawsuit. But I think if there is a strong statutory basis, we would prevail.

The CHAIRMAN. Let me move on to Mr. Skibine.

You state that the *Seminole* decision created, in your written testimony, uncertainties in compacting between tribes and States. I believe that, too. But several attorneys general believe there is no problem because, and I am quoting from a letter from the Conference of Western Attorneys General, "tribes do not have to sign these compacts if they don't want to." What has been the impact of the *Seminole* decision on revenue sharing?

Mr. SKIBINE. As I said in my comments, I think the impact of the *Seminole* decision on revenue sharing has been to increase the number of revenue-sharing provisions in compacts, and we have seen an increase in the percentage that the tribes are required to pay.

If the tribes do not sign these compacts, then there is very little remedy available.

The CHAIRMAN. I do not know if it is connected, but it seems like since the *Seminole* decision that more and more States have made higher demands and held out. Is that my imagination or is that true?

Mr. SKIBINE. No; that is true.

The CHAIRMAN. What recourse do the tribes have now if they do not want to share revenue with the State?

Mr. SKIBINE. If they do not want to share revenue with the State and the State refuses to negotiate, what can happen is they can sue the State for a bad-faith negotiation. If the State raises its 11th Amendment defense, then the suit will be dismissed. Then the tribe may come to the Department and apply for class III procedures under our regulation in 25 CFR part 291. We are entertaining a proposal right now from a few tribes, but our authority to

promulgate these regulations has been challenged so that we have actually not issued regulations, procedures for these tribes. So it is up in the air.

The CHAIRMAN. Do you know the number of States, in lieu of a compact, are there regulations now that states have dealing with them?

Mr. SKIBINE. No; not under our regulations.

The CHAIRMAN. I had my notes all mixed up here, but one of you mentioned the example of $4 million of fines that have been assessed to tribes.

Mr. HOGEN. I brought that up.

The CHAIRMAN. What were most of those fines for?

Mr. HOGEN. Most of those fines were assessed against tribes that were operating class III devices when they did not have a compact. We attempted, and most of those fines were assessed by the Commission that preceded ours, but they tried to equate the amount of the fine to the ill-gotten gain, so to speak, the amount that the tribe made by playing illegal machine.

The CHAIRMAN. I see. Let me go back to Mr. Skibine.

Do you think, Mr. Skibine, that State consent to off-reservation gaming would be another relevant substantial economic benefit to tribes?

Mr. SKIBINE. It would definitely be an economic benefit to tribes.

The CHAIRMAN. This bill that we are talking about would require tribal-State compacts to address tribal government needs, which is something we probably should have done in the first bill in 1988, but did not. That deals with the general welfare of tribes, and its members too, before the State can share in the revenue. I would guess just off-hand that that is not a provision that the States would be very supportive of. In the view of the Department, or do you have a view on that, in fact?

Mr. SKIBINE. In the provision of the bill?

The CHAIRMAN. Yes.

Mr. SKIBINE. We would prefer to see a clear direction in the bill on what is allowable in terms of revenue-sharing payment and what the criteria are. In terms of that provision in this bill, we think that would be difficult for us to look at because when we receive those compacts, usually the revenue-sharing provision is expressed in terms of a percentage of net revenues.

We do not know whether the needs of the tribes are met. In fact, it is likely that the needs of many of these tribes are not met. There are unmet needs with tribal governments, as you know, for many, many tribes. If that is the case, then there will never be revenue sharing if we have to address the unmet needs of the tribes.

The CHAIRMAN. You also mention in your testimony the Department's concern with anti-competitive provisions in compacts that may prevent some tribes from operating gaming in specific geographic locations. First of all, will you tell the committee, are there many of those compacts with those provisions?

Mr. SKIBINE. In the last 2 years or 1½, we have seen more and more of these provisions.

The CHAIRMAN. Have they been suggested between tribes, that one tribe is concerned that another one may leap-frog over them

closer to a metropolitan area, and therefore cut off the benefits of the first tribe?

Mr. SKIBINE. That is correct.

The CHAIRMAN. How do you address that in lieu of what some might say that that is a violation of a trust responsibility to those tribes that you put some restrictions on?

Mr. SKIBINE. The Secretary is very concerned about these provisions from a policy standpoint. But our legal position is that these provisions do not violate IGRA or our trust obligation to Indians, principally because we do not think that tribes have a statutory right to off-reservation gaming, so we have not disapproved these compacts.

The CHAIRMAN. I see. Let me ask another question or two. I just got a note. The Energy Committee is waiting to establish a quorum and I have to leave, so I am going to submit most of my further questions of all three of you in writing, if you would, so that I can get to the next committee.

Over the past couple of years, Ernie, the NIGC has been able to obtain increased fee authority through the appropriation process. As I remember, some tribes were concerned that that would translate into more punitive action by the NIGC. Did the NIGA oppose those efforts when we were dealing with increased fee authority?

Mr. STEVENS. I want to hand this to Mark real quick, but I just want to make sure, the main thing that we want to do through that process is that they consult with tribes while they are going through that process.

I will let Mark handle the technical side of that.

Mr. VAN NORMAN. Mr. Chairman, yes, we did oppose the increase from $8 million to $12 million because that was a 50-percent increase. We thought a much more measured increase would have been appropriate and that we should have had a direction that the NIGC work with us on a government-to-government basis to accompany that, and that it should go through the authorizing committees.

The CHAIRMAN. Okay. Your testimony, Ernie, states an objection to a provision in our bill requiring background checks on tribal gaming commissioners as an intrusion on tribal government decisionmaking. As I read the language that we framed up, the decisions on background checks on gaming commissioners is still left up to the tribe, as they do with people who run for tribal council and that that happens to be in their constitution. The only requirement, as I read our language, is that some provision should be for background checks instituted by the tribe.

Mr. STEVENS. The only clarification, and I clarified that for Senator Inouye, is that we are not saying that our commissioners should not do a background investigation, but we are saying that that right should be left to the tribal government; only to that extent.

The CHAIRMAN. I see. Perhaps the last question, NIGA has long objected to amending IGRA if a fix for the *Seminole* decision is not included. You probably know, with states' rights folks around here, that might be a very difficult thing to include and still get the thing passed. That was one of the problems we had in 1988.

The way it works in the Senate, of course, is you get things done by consensus, and when you have 100 flaming egos, it is difficult to get them all to agree on anything. I happen to agree with you personally, but I think that that might be a very difficult thing to get into this bill to actually get it passed. It is something that we will certainly look at.

Mr. STEVENS. Let me just say, Chairman Campbell, I appreciate it. I think that tribal sovereignty and tribal governments have evolved around consensus from the beginning of time, and I appreciate that encouragement. I think to that extent, what we would do is, and we have pledged to other tribal leaders that have brought this up, that we will bring this before our executive committee meeting coming up next month. We would like to discuss it.

I appreciate your asking the question, because it is the only way I could really clarify, but what we have told to this extent is that is our position. However, we will bring this before the tribal leadership.

The CHAIRMAN. I would appreciate your getting back to the committee when they do address that, and perhaps tell the committee if we cannot get that provision, if we cannot keep that provision in, would you still support the bill? I would like to know that.

Mr. STEVENS. I will have the information for you in April.

The CHAIRMAN. Okay, that will be fine.

With that, I will include the rest of my questions to all three of you in writing. If you would get back to the committee, I would appreciate it. We will keep the record open for 2 weeks, if you can get back to us within 2 weeks.

This committee is adjourned.

[Whereupon, at 12:20 p.m. the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF GEORGE SKIBINE, ACTING DEPUTY ASSISTANT SECRETARY FOR POLICY AND ECONOMIC DEVELOPMENT, OFFICE OF THE ASSISTANT SECRETARY, DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman, Mr. Vice Chairman and members of the committee. My name is George Skibine, and I am the acting deputy assistant secretary for Policy and Economic Development in the Office of the Assistant Secretary—Indian Affairs at the Department of the Interior [Department]. I am pleased to be here today to offer the Department's views on S. 1529, the "Indian Gaming Regulatory Act Amendments of 2003," as well as express our support for the Administration's proposal, the "Indian Gaming Regulatory Act Amendments of 2004."

The Department believes legislation in this area could provide a unique opportunity to address some of the uncertainties created by the U.S. Supreme Court's decision in the *Seminole* v. *Florida case and existing revenue-sharing schemes adopted by tribes and States and approved by the Department. It allows us to take a step back from the present situation and create a process that is transparent to all parties involved in the process, provide clear guidelines regarding allowable benefits that may be negotiated by the parties and limits the percentage of net revenues that may be allocated to revenue-sharing schemes., This clarity is good, would benefit all parties, and can take. much of the guesswork out of the already time-consuming and highly sensitive process of tribal-State negotiations.*

There are five provisions of this bill which directly affect the duties of the Secretary as originally laid out in the Indian Gaming Regulatory Act [IGRA]. These include the provisions relating to revenue-sharing between tribes and State and local governments; promulgation of regulations regarding revenue-sharing provisions; timeframes for the Secretarial issuance of class III gaming procedures to a tribe after a mediator's notification of his or her determination; and the extension of expiration dates of compacts between tribes and states who are negotiating compact renewals.

Section 2(f)(2)(A) of the bill amends section 11(d)(4) of IGRA, 25 U.S.C. 2710(d)(4), by adding a new subparagraph (B) that provides a statutory basis for apportioning net revenues to a State, local government or other Indian tribes in a class III gaming compact, but imposes several conditions on apportionment and requires the promulgation of regulations to provide guidance on the allowable assessments within 90 days of the enactment of this bill.

This provision provides express authorization for revenue-sharing by tribes. These provisions provide clarity to an area which has become increasingly complex. In the past, the Department has provided approval to revenue-sharing agreements between tribes and States where the tribe has received the substantial economic benefit of exclusive authorization to operate class III games within a State. The Department has also approved agreements which authorize payments to local governments to offset the costs it may incur as a result of the operation of class II gaming in a municipality. Generally, we support-this new provision because it provides a statutory

basis for revenue sharing provisions in class III gaming compacts. However, we believe that the conditions for apportionment should be modified.

We believe that the proposed amendments to IGRA should provide a clearer definition of the substantial benefits that Congress determines are appropriate in exchange for revenue-sharing. Until now, the Department has considered the exclusivity of class III gaming the only substantial economic benefit that merits revenue sharing between a tribe and a State. The exclusivity may be limited to specific types of class III games or to specific geographic areas within a State. If the committee contemplates that other benefits may be negotiated, the Department requests that Congress define in more detail the items it believes are appropriate.

Additionally, the Department believes that the legislation should provide guidance regarding the amount of revenue-sharing that may be authorized. Tribes and states are making agreements for increasing percentages of net revenues. More and more, we are seeing agreements that call for 15 percent to 20 percent of a tribe's net win to be paid to State and local governments. We expect to see agreements soon which are in excess of that, possibly as much as 25 percent or more of a tribe's net win.

One of the stated purposes of IGRA is to provide "a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." The Department recommends that Congress consider whether these percentages are allowable and specifically authorize a limit on the percentage if it deems necessary.

Section 2(f)(2)(A) would also amend Section 11(d)(4)(C) by requiring regulations regarding revenue sharing payments be promulgated within 90 days of enactment of the bill. The process of rulemaking is lengthy, and 90 days is not enough time to finalize regulations. We recommend that a more realistic timeframe be identified for the promulgation of the regulations, and that 18 months is a reasonable amount of time.

Section 2(f)(2)(B) of the bill would modify section 11 (d)(7)(B)(vii) of IGRA by requiring the Secretary to prescribe class III procedures within 90 days after notification is made by the mediator. Again, we believe this timeframe is too short, and recommend the words "180 days" be substituted instead of "90 days" to give the Secretary enough time to carefully examine difficult questions of State and Federal law that are usually involved in this process.

Section 2(f)(2)(C) of the bill would create a new subparagraph 11(d)(10) providing that an approved compact will stay in effect for up to 180 days after its expiration if the tribe certifies to the Secretary it has requested a new compact no later than 90 days before the compacts' expiration, and a new compact has not been agreed on. We support a concept that allows tribes and states a window in which they may negotiate compact renewals. The Department of Justice has advised us that there may be constitutional limitations on the Federal Government's authority to extend compacts that require State regulation of tribal gaming. Further, we note that the bill states that it adds a new paragraph (10) at the end of section 11 that should read that it adds a new paragraph (10) at the end of section 11(d) of IGRA.

Finally, the Department requests that the committee examine two issues we believe would improve its ability to review and analyze compacts and gaming related fee to trust transactions.

First, the Department is increasingly encountering tribes who are interested in developing gaming sites which are far away from their homelands, in some cases in States other than where they are located, and in other cases on lands which are hundreds of miles from the tribe's homelands. We have researched the issue internally, and can find no limitation in IGRA or its legislative history that would lead us to believe that it is prohibited. At the same time, we receive numerous communications from Congressmen from around the country who express this as their greatest concern. The Department believes Congress should consider clarifying the ability of tribes to locate gaming operations far from their homelands, particularly in cases where the lands at issue are located in another State.

Second, the Department has received several compacts over the past 2 years which contain "anticompetitive" provisions. These provisions generally provide a tribe with a protected territory, outside of its reservation, in which they may game and create a disincentive for states that may otherwise be willing to negotiate for off-reservation sites with other tribes. Especially in cases of off-reservation casinos, it provides guaranteed exclusivity, possibly at the expense of other tribes who might otherwise desire to locate a facility in an off-reservation location. This limitation as applied to other tribes appears to violate the spirit of IGRA, but there is not express prohibition contained in the act. The Department believes Congress should consider clarifying this matter.

Although we prefer the Administration's proposal, we would be happy to work with the committee and to participate in further discussions with regard to our comments.

Thank you for the opportunity to testify on S. 1529. I will be happy to answer any questions you may have.

TESTIMONY OF
PHILIP N. HOGEN
CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION

BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS

MARCH 24, 2004

Mr. Chairman, Mr. Vice Chairman, and members of the Committee, thank you for this opportunity to comment on S. 1529, the "Indian Gaming Regulatory Act Amendments of 2003."

I am Philip Hogen, a member of the Oglala Sioux Tribe of the Pine Ridge Indian Reservation in South Dakota. Seated with me are Commissioners Nelson Westrin, a former Executive Director of the Michigan Gaming Control Board, and Cloyce "Chuck" Choney, a member of the Comanche Nation of Oklahoma and former Special Agent for the Federal Bureau of Investigation.

We took our oath of office in December of 2002, and after a year of activity, we can point to a number of accomplishments. I am providing a copy of the Commission's Annual Report, which describes our accomplishments for 2003 and includes information on our goals for the next two years. We are very proud of our work this past year and encourage you and your staff to review this document.

Before I begin, on behalf of the Administration, I would like to say that we look forward to introduction of the Administration's Proposal, the "Indian Gaming Regulatory Act Amendments of 2004" in the Senate. In addition to the questions raised by the Department of the Interior in its testimony, the Administration has concerns with S. 1529. Throughout my testimony, I will highlight similarities between S. 1529 and the Administration's Proposal which we strongly support. I will also mention areas where these two pieces of legislation differ.

NIGC Responsibilities and Budget

The mission of the National Indian Gaming Commission (NIGC or Commission) is to provide regulatory oversight of gaming activities on Indian lands adequate to shield Indian tribes from organized crime and other corrupting influences, to ensure that Indian gaming tribes are the primary beneficiaries of gaming revenue, and to assure that Indian gaming is conducted fairly and honestly by both operators and players. To achieve these goals, the Commission is authorized to conduct investigations, take enforcement actions, including the issuance of notices of violation, assessment of civil fines and/or issuance of closure orders, conduct background investigations, conduct audits, and review and approve tribal gaming ordinances and management contracts. The NIGC is staffed by 74 employees, of which 36 are located in our regional offices.

Of the responsibilities mentioned above, the NIGC believes keeping organized crime and other corrupting influences out of Indian gaming are especially important. This is achieved primarily through the due diligence exercised by the gaming tribes themselves, as the day-to-day regulators of Indian gaming under the Indian Gaming Regulatory Act (IGRA). Another effective means to achieve this goal is through a Federal law enforcement initiative started by the NIGC this past year. Initially, we contacted the Federal Bureau of Investigation to take part in this effort and have subsequently included the Office of the Inspector General Department of Interior, the Bureau of Indian Affairs Law Enforcement, the Internal Revenue Service, and the Department of Justice to become a part of this work group. The purpose of the group is to enhance cooperation between each agency, obtain commitments to undertake an investigative role, pool resources, coordinate roles and functions, and develop effective strategies to investigate and prosecute Indian gaming-related crime. The NIGC has advised gaming tribes through consultation meetings of the existence of this law enforcement initiative. Our message is that anyone committing a felonious act in a Native American casino will be prosecuted.

The Commission operates on a lean budget in spite of the breadth of its mission. The Indian gaming industry has grown significantly since the passage of the IGRA. In 1988, the year IGRA became law, Indian gaming was a $100 million dollar year industry conducted by approximately 100 tribes. Today, Indian gaming is a multi-billion dollar industry. For fiscal years ending in 2002, Indian gaming operations grossed $14.5 billion dollars and were conducted by more than 200 tribes, at over 300 sites in 28 states.

Regulating and providing oversight of this rapidly growing industry has been a challenge. The Commission is funded exclusively through fees paid by Indian gaming tribes on Class II and Class III assessable gross revenues in excess of $1.5 million. The NIGC is allowed to collect a congressionally determined maximum amount in fees. In 2003 through two appropriation bills, Congress authorized the NIGC to collect up to $12 million for Fiscal Years 2004 and 2005, which represents a $4 million increase over our previous cap of $8 million.

The NIGC recently announced a preliminary fee rate of .069 percent of assessable gross revenues over $1.5 million for 2004. To put this in perspective, for each thousand dollars of assessable gross revenue, the NIGC will receive 69 cents. I would like to emphasize that although we are authorized to collect up to $12 million this year, the NIGC will likely collect and expend less than $10.7 million through our current preliminary fee rate. The Commission believes planning and managing growth is critical, and to move from an $8 million fee cap to a $12 million fee cap in one year would have presented integration problems. Further, we recognize that dollars the NIGC collects from gross gaming revenue are funds that could be spent on improving tribal services, and in this respect, we work very hard to be resourceful in performing our responsibilities.

S. 1529 proposes a schedule of fees that will increase our fixed fee cap through FY 2008. Increasing our budget from $8 million to $12 million is appreciated and the additional funds have allowed the agency to improve its regulatory and oversight functions. We

were able to fill numerous staff vacancies in both the field and in our national office, to better serve Indian gaming operations through increased visitation by staff and to provide training to tribal regulators and gaming commissions. In addition, information system upgrades and modifications were designated as a priority in 2003. A request for proposals was issued late in the year to assess the agency's current state of managing information and to develop a model for capturing and sharing information and providing relevant information to gaming tribes. An unrelated information system improvement was the ongoing development of the electronic system called Live Scan for processing fingerprints through the Federal Bureau of Investigation (FBI). Live Scan, which is now available to all tribes, will make criminal history reports available to tribes within 24 hours after submitting the fingerprints, compared to the previous system, which could take weeks. Tribes use fingerprints in conducting background investigations for applicants seeking tribal gaming licenses.

Although the increase in our budget has improved our operations and services, we are concerned that a fee schedule that is not reflective of the growth of the Indian gaming industry will inhibit our ability to fulfill our mission in the future.

We support allowing the Commission's fee collection authority to float, allowing us to grow, or contract, with the size of the Indian gaming industry. The Administration's Proposal would set the maximum amount the NIGC can collect in fees at .080 percent of gaming revenues. Again, this means that for each gaming operation grossing more than $1.5 million, the NIGC would receive a maximum of 80 cents of $1,000 in gross gaming revenue. While we don't anticipate an actual decrease in gaming activity, a floating fee cap would also require the Commission to adjust to declines in Indian gaming industry revenues.

I do want to stress that although the NIGC prefers a floating fee cap, we believe setting a schedule of fees through FY 2008 is a step in the right direction. Our main concern is that we have both financial viability and sufficient funding to allow us to regulate the current environment and develop long-term plans and goals to better regulate and protect the integrity of an industry that is extremely important to tribes. The current practice of establishing our fee cap through annual appropriations is not conducive to a stable operation, especially given the size of the budget. If funding should decrease, it becomes very difficult for an agency, such as NIGC, with limited personnel and resources to adjust in the course of a year and continue to fulfill its very important mission. In fact, a big concern is that the many improvements made in 2003 would be negated by any decrease in the budget.

We also want to mention our concern regarding the proposed Fee Reduction Program outlined in S. 1529. This program would require the NIGC to reduce fees based on factors such as the level and quality of state and tribal regulation. In determining our goals and plans for the year, we do consider these factors even though many of them are subjective and subject to change based on tribal and state leadership and philosophies. It is also important to note that tribes do in fact, have an opportunity to reduce their fees by making application for a Certificate of Self Regulation. Admittedly, we have more

interaction with tribes that have poor or substandard regulatory oversight. However, this is the nature of industry regulation.

We are concerned not only with the integrity of gaming but the perception of the integrity of gaming and all tribes benefit when the reputation of the industry is advanced. Even though a tribe is well regulated, it has an interest in ensuring that all other tribes are also well regulated, and further, that there is substance and integrity in the Federal regulatory agency responsible for their oversight. While all tribes will not require the same extent of NIGC intervention or assistance all of the time, all tribes are well served when a credible NIGC infrastructure and capability is in place and available. As all gaming tribes are served by this, all tribes should be called upon to make proportionate contributions to the creation and maintenance of that infrastructure and capability. Given the unique structure of Indian gaming under IGRA, this is a cost of conducting Indian gaming business.

NIGC Authority

When the IGRA became law in 1988, Indian gaming really meant Indian bingo. The IGRA created our statutory framework based on a relatively small industry comprising of about 100 tribes. Today, Indian gaming is much more than bingo; it includes casino gaming producing revenues that exceed the gaming revenues of Las Vegas and Atlantic City combined. Yet the basic legal authority of the NIGC has not changed since 1988.

The Commission supports language in S. 1529 and the Administration's Proposal that would modernize our statutory structure, and allow our agency to become more effective in fulfilling its regulatory role. For example, both pieces of legislation include language that would: require the NIGC to develop a strategic or regulatory plan; define how vacancies within the Commission are filled; clarify the Chairman's delegation authority; and make adjustments to pay rates. More importantly, we strongly support language included in both bills that eliminates questions challenging our legal authority to monitor and regulate Class III gaming.

The Indian Gaming Regulatory Act gave the Commission responsibility for ensuring that management contractors deal fairly with Indian tribes, and to keep unsuitable individuals from participating in these contracts. However, in some situations, developers, consultants and equipment lessors may exert significant control over the gaming operations under arrangements that are not considered management contracts, and thereby avoid federal scrutiny. Our mission, in part, is to ensure that tribes are the primary beneficiaries of gaming revenues. However, if any of these parties violate the IGRA, the Commission's recourse is against the tribe, which in such cases, may be the victim. It is for this reason that we advocate an expansion of remedies, included in the Administration's Proposal, which would allow the NIGC to take action against individuals, not just the tribes, who take advantage of or exploit tribes and Indian gaming operations.

The Indian gaming industry has been challenged by the difficulty in differentiating between Class II and Class III gaming devices requiring a significant investment of time on the part of the NIGC. In the past, the NIGC has issued opinions and bulletins to assist in determining the class of individual games. Recognizing that issuing opinions on individual games is not the most efficient way to address the issue, we have developed a Tribal Class II Game Classification Standards Advisory Committee. This committee will help us formulate more definitive technical standards and regulations for distinguishing whether electronic games are Class II or Class III games under the IGRA.

Minimum Internal Control Standards

The NIGC supports the concepts included in Section 20 of S. 1529, which require our agency to establish Minimum Internal Control Standards (MICS) for Class II and Class III gaming.

MICS are procedures used to protect the integrity of gaming operations and offer uniformity and consistency in the application of internal controls on an industry-wide basis. The NIGC first developed MICS in the late 1990s through a Tribal Advisory Committee process and in close consultation with tribes. We recently established a Standing Tribal MICS Advisory Committee, comprised of tribally nominated tribal reprsentatives, to recommend and provide input regarding the formulation of proposed amendments necessary to update our current MICS and address changes in gaming technology. Nine individuals have been selected to serve on the committee through December 2005.

The NIGC supports language included in the Administration's Proposal that would allow the Commission to retain the current system of utilizing Advisory Committees. This process is efficient and effective. S. 1529, on the other hand, would require the Commission to utilize a time-consuming negotiated rulemaking process. In doing so, we would also be required to completely discard our current MICS and create a new set of MICS. Our preference is to amend the current MICS, and we therefore prefer the language contained in the Administration's Proposal.

Our authority to promulgate and require MICS for Class III gaming has recently been challenged. In July 2003, the NIGC issued a Final Decision and Order concluding that the Colorado River Indian Tribes violated NIGC regulations by denying access to Commission representatives to conduct an audit on the Tribe's Class III gaming activities. The Tribes filed suit on January 7, 2004, alleging that the NIGC exceeded its statutory authority under the IGRA.

The NIGC considers MICS to be one of the primary regulatory tools available to protect Indian gaming and strongly believe the Commission must continue to have authority over MICS in both Class II and Class III gaming. Although we are confident in defending our position through litigation, if necessary, we appreciate the fact that both S. 1529 and the Administration's Proposal include language that provide clarity to this issue.

Use of Civil Fines

NIGC is concerned about Section 19 and Section 21 of S. 1529. Section 19 would require the NIGC to invest a portion of all fees and civil fines to supplement our budget. Under current law, fines we assess to gaming operations in violation of IGRA are paid to the general treasury of the United States government, not to the NIGC. Regulatory agencies should not be the financial beneficiaries of their own regulatory programs.

Enforcement actions are one of the least desirable, but necessary, parts of the Commission's oversight responsibilities. In 2003, our field investigators conducted 446 site visits to tribal gaming operations; our Enforcement Division issued 25 Potential Notices of Violation (PNOVs), and provided evidence leading to the issuance of four Notices of Violation. For clarification, PNOVs give tribes the opportunity to correct questionable practices and get back on the right track before formal enforcement action is taken. Unfortunately, we are sometimes forced to take more severe enforcement action. In 2003, the NIGC collected more than $4 million from fine assessments. If the NIGC were in any way benefiting from the assessment and collection of these fines, the legitimacy of our enforcement decisions and our motives may be called into question.

For similar reasons, the NIGC is concerned with Section 21 of S. 1529, which would require our agency to create a special Indian gaming regulation account to provide grants and technical assistance to Indian tribes using funds secured through civil fines. We strongly agree that increased training in Indian Country is an important part of the Commission's role in regulating gaming. Well-trained gaming officials are better able to protect the integrity of gaming and greatly assist in our efforts. In 2003, our agency conducted more than twenty training sessions for tribal leaders and tribal gaming regulators on subjects such as MICS, environmental safety and health, tribal gaming authority responsibilities, and Indian land and jurisdictional issues. While we are supportive of increasing training and providing additional services, we do not believe that civil fines should be used to fund these kinds of activities.

Consultation

I also wanted to comment on Section 22 in S. 1529, which requires federal agencies, including the NIGC, to consult with federally recognized tribes to the maximum extent possible. Although there is not a consultation section included in the Administration's Proposal, the Commission believes that consultations are an important and effective method of communicating with federally recognized tribes and their authorized government leaders.

Commissioners Westrin, Choney and I are dedicated to engaging in regular, timely, and meaningful government-to-government dialogue on matters impacting Indian gaming. In 2003, we conducted five formal regional consultations across the country, as well as many other consultations with tribes, regulators and others impacted by our work. These

initial consultations provided valuable insight, and we plan to issue a formal consultation policy by April 5, 2004. We will share this policy with you and your staff upon completion.

Conclusion

Keeping tribal gaming operations squeaky clean by scrutinizing the individuals permitted to participate in them, carefully monitoring the fairness of the play of the gaming conducted -- by the operations and the customers who patronize them -- and ensuring that the proceeds of the gaming activities flow to the tribal entities which created and operate them, continues to be challenging. It remains that tribes bear and accept the primary responsibility for this work. NIGC oversight, by being thorough and efficient, lends credibility to the tribes' efforts in this regard. This credibility enhances the public's confidence in tribal gaming operations, and fortifies the trust tribal members have that their assets and economic development opportunities are protected.

All areas of tribal gaming addressed by the IGRA are of importance to the NIGC as it implements its mission. The focus the Commission's efforts will shift as challenges, such as distinguishing between the classes of gaming, are resolved by regulatory, judicial and legislative progress. New challenges, such as tribes' utilization of tribal gaming revenues in accordance with the mandates of IGRA, will arise. Given the tools and resources, including an organic Act -- the Indian Gaming Regulatory Act -- which keeps pace with the dynamic progress of the gaming industry, NIGC will continue to help tribes achieve self-determination and self-sufficiency as that Act originally intended.

Again, I appreciate the opportunity to testify on S. 1529 and am happy to respond to any questions the Committee may have.

1. *In 1997 I proposed an increase in the Commission's fee authority from $2 million to $8 million and the record shows that I have always supported a well-funded NIGC. I believe as you do that your work is too important to leave it to the vagaries of the appropriations cycles. Yet, that is exactly the avenue that has been pursued over the past two years as NIGC fee authority has been increased not by this Committee but the appropriators.*

Do you support the gradual but certain ramp up of fees as provided in S. 1529.

NIGC believes that it is adequately fulfilling it regulatory role with its present level of resources. For the NIGC to continue to fulfill this role, it will be important for the NIGC's resources to grow proportionately to the growth of the Indian gaming industry, in terms of growth from existing facilities, and additional facilities. We anticipate that this growth will be gradual, and thus, the gradual but certain ramp included in S. 1529 will likely be workable. However, if S. 1529 were enacted into law in its current form, the fee cap for fiscal years 2004 and 2005 would be reduced to $10 million annually, which represents a reduction of $2 million from our current cap of $12 million annually. This reduction would severely reduce our ability to fulfill our current regulatory role.

While the NIGC believes the ramp included in S. 1529 will be workable, the Commission strongly advocates the proposal set forth in S. 2232, the Administration's Proposal, which would allow our fee collection authority to float, enabling the NIGC to grow, or contract, with the size of the Indian gaming industry. NIGC believes that collecting a maximum amount fees at .080 percent of gaming revenues for each gaming operation grossing more than $1.5 million is reasonable for tribes, yet still provides adequate funding for the agency.

1B. *In your testimony, you express concern about having to consider such factors such as the level and quality of tribal and state regulation for determining fees imposed on individual tribes but aren't they reasonable things for the NIGC to take into account when it levies its fees?*

The NIGC views its presence in the oversight role as a necessary and valuable contribution to all gaming tribes by validating the credibility of the Indian gaming regulatory scheme at individual tribal levels and within individual states. As mentioned in testimony, we are concerned not only with the integrity of gaming but the perception of the integrity of gaming and all tribes benefit when the reputation of the industry is advanced. All tribes should, therefore, be called upon to make proportionate contributions to create and maintain an infrastructure and capability that provides a constant regulation.

As a matter of practice, the NIGC considers, among other factors, the level and quality of tribal and state regulation in determining how to allocate the resources available to best achieve our mission. There are certainly contrasts between states in their regulatory oversight philosophies. We currently do this on an overall, or macro basis, and do not have specific fee levels for individual states or individual tribes.

Given the considerable diversity among the level of state regulatory participation pursuant to the various tribal-state Class III gaming compacts, as well as the level of commitment by the individual tribes, the NIGC is concerned about assessing fees based on an individual or tribal basis, or even a state-by-state basis. The NIGC believes that it is currently funded at an effective, but minimal level. However, additional resources would first be needed to evaluate and continually monitor the individual and/or state-by-state levels of regulation. Further, we are concerned that such a system would add confusion and controversy among the tribes. The following examples may help clarify the difficulty in making fee collections dependent on the level of regulation required:

- Some compacts address the rights of states to inspect facilities, control systems and records. However, there is no statutory mandate or standard for states to participate in the regulation of tribal gaming, and many states have little or no regulatory role. This is where the NIGC serves to fill this void, especially where tribal control systems appear to be weak as well.

- The NIGC has also found that the level of state and tribal regulation can vary greatly depending on the leadership of the state or the tribe. As such, the NIGC's oversight responsibilities provide the "constant vigilance" intended by IGRA.

- We have found that regardless of the level of regulation, tribal members and gaming employees contact the NIGC regarding regulatory issues or problems. Investigating a complaint may take a considerable amount of our time and resources, yet would not necessarily reflect or be proportionate to the level of regulation on which we base a fee. In many cases, complaints are charged against tribal entities. As such, we cannot refer these complaints to the tribe, and individuals often do not feel comfortable reporting their claims to the state, regardless of compact language.

2. *In your testimony you mention that tribes can reduce their fees by obtaining a Certificate of Regulation, but my understanding is that these certificates are available for class II operators only. Would the Commission support expanding [Certificates of Self Regulation] to include Class III?*

We believe the NIGC is currently funded at an effective, but minimal level. An aspect of the current system of self-regulation certification results in reduced fee levels for self-regulated tribes. Certificates of self regulation for Class II gaming activities have been minimally utilized because Class II gaming does not represent a significant portion of the tribal gaming revenues of most gaming tribes. Assuming the Indian Gaming Regulatory Act was amended to allow self-regulation for Class III, we believe more tribes would likely pursue self-regulation authority. If the NIGC continues to be funded at its minimal, but effective level, this would mean increasing the fees for the tribes that are

not self-regulated. The NIGC views this as a disadvantage, and therefore has serious concerns about expanding self-regulation certification to Class III gaming.

3. *I am gratified to see that the legislative proposal you mentioned includes long-term planning similar to the Government Performance Results Act (GPRA) that is applicable to other Federal agencies. Am I reading your statement correctly and can you tell me if this is a change of position for the NIGC?*

The NIGC agrees that it is appropriate to provide Congress, the public and gaming tribes with information relating to activities and plans for the future. Albeit without a statutory mandate, the NIGC is currently working to accomplish this goal. This year we have sent letters containing detailed budget information to tribal leaders, as well as members of Congress. Further, we have also prepared and circulated an Annual Report for 2003, which describes our accomplishments for 2003 and goals for the Commission. We are supportive of a statutory requirement to report activities and maintain a regulatory plan. To the extent that the NIGC has previously been understood to object to being statutorily mandated to maintain such a plan, this could be viewed as a change of position.

GPRA provides for the establishment of strategic planning, annual performance planning and annual performance reporting to ensure agencies are managing for results. However, because it is a smaller agency, the NIGC is concerned that fulfilling all of GPRA's requirements will result in an inefficient use of limited financial and staff resources. The Administration's legislative proposal, later introduced as S. 2232, would allow the NIGC to develop a regulatory plan and not be bound by all of the statutory requirements of GPRA. NIGC is committee to reporting annually on our accomplishments and the extent to which we are achieving our goals.

4. *There has been a lot of controversy and much litigation over the years regarding the applicability of the Johnson Act to class II "technological aids". The U.S. Supreme Court has recently declined to overturn several circuit court decisions finding that Congress did not intend for the Johnson Act to apply. Yet, several States Attorneys General have indicated that they do not intend to stop the litigation.*

Does the NIGC support our efforts to end this costly litigation and bring clarity to the issue of game classification?

The controversy over the applicability of the Johnson Act to Class II technological aids has been very problematic for gaming tribes, gaming device vendors and the NIGC. Greater clarity would be very useful.

4B. *Is the NIGC the agency best situated to make determinations about whether a particular game in Class II or Class III?*

Each tribal gaming regulatory entity that oversees a Class II gaming facility must determine if the devices are Class II or Class III. The NIGC strongly believes that it

would not serve a worthwhile purpose if there were great variations in the standards that the individual tribal gaming commissions applied to make these determinations. Additionally, if the NIGC disagreed with a particular gaming commission's determination, enforcement action would be necessary. Therefore, we support the formulation of a national standard that would create a bright line upon which tribal gaming commissions could rely to distinguish between Class II and Class III devices.

Given the experience the NIGC has developed over the years, it is the agency best qualified and suited to establish those standards. In the past, the NIGC has reviewed individual devices on a case-by-case basis. We recognize that this approach is not the most efficient, and have developed a tribal advisory committee to help us establish technical and legal standards that will clearly set forth where Class II and Class III gaming devices differ.

5. *One criticism of the Minimum Internal Control Standards (MICS) was leveled by the States Attorneys General because "state expertise" was not, in their opinion, used in crafting the MICS.*

Can you briefly describe the process used to create the NIGC-endorsed MICS?

Criticism that "state expertise" was not utilized in crafting the National Indian Gaming Commission's Minimum Internal Control Standards (MICS) regulation is inaccurate. From their inception, the MICS have been patterned after similar standards previously developed by states with legalized non-Indian gaming. In 1995, the National Indian Gaming Association (NIGA) issued recommended MICS for gaming tribes that drew heavily on the MICS earlier developed by the Nevada Gaming Control Board for Nevada's private commercial casinos. In 1998, the Commission (NIGC) developed its initial set of MICS as a regulation to address Congressional regulatory concerns regarding Indian gaming and further implementation of the Indian Gaming Regulatory Act (IGRA). To assist in development of its original MICS regulation in 1998, the NIGC established a joint Federal-Tribal MICS advisory committee and contracted with gaming regulatory consultant Arthur Anderson, LLP, to advise the committee. The committee met over a period of several months and, with the assistance of Arthur Anderson, conducted a line-by-line analysis of existing state developed gaming MICS. Like the NIGA recommended MICS, the committee relied most heavily on Nevada's MICS in crafting the framework and content of the Commission's first proposed MICS regulation. Before the Commission MICS regulation was promulgated as a final rule in February 1999, it was published in the Federal Register for review and comment by Indian tribes and other interested parties, including input from various states.

Thereafter, in November 2000, the Commission published an Advance Notice of Proposed Rulemaking requesting similar public comment and recommendation regarding necessary and appropriate amendment of the NIGC's MICS regulation. As part of this amendment process, a new joint Federal-Tribal MICS advisory Committee was formed to craft proposed MICS amendments for the Commission's consideration. In developing the proposed MICS amendments, the committee, like its predecessor, relied heavily on

existing state-developed MICS as guidelines. The committee's proposed MICS amendments were published by the NIGC in the Federal Register for proposed rulemaking in December 2001. Ample opportunity was again provided for Indian tribes, states, and other interested parties to submit comments both in writing and also orally at a public hearing regarding the proposed MICS amendments. The amended MICS, with certain revisions based on input received during the comment period, were subsequently published by the NIGC as a final rule in June 2002 and took effect the following month.

As a result of the input of tribal advisory committees and individual Indian tribes during government-to-government consultation, both the NIGC's original and later amended MICS regulation were crafted to reflect variations in the unique nature and scale of Indian gaming across the country. However, both sets of MICS regulations were also heavily influenced by existing state-developed MICS in terms of both their framework and content

5B. *In your opinion, would the input of "state expertise" have been helpful in development of your MICS?*

As indicated in the previous answer, the NIGC has always believed that state expertise and experience in the regulation of gaming activities is very instructive and helpful in developing our MICS regulation for Indian gaming. Consistent with that view, the NIGC's recently issued Government-to-Government Tribal Consultation Policy expressly provides in Paragraph I. A. 4 and 5 as follows:

> "4. IGRA's statutory system of shared regulatory authority and responsibility for Indian gaming will work most effectively to further the Act's declared policies and purposes, when the three involved sovereign governmental authorities work, communicate, and cooperate with each other in a respectful government-to-government manner. Such government-to-government relationships will make is possible for all three sovereign governments to mutually resolve their issues and concerns regarding the operation and regulation of Indian gaming, and efficiently coordinate and assist each other in carrying out their respective regulatory responsibilities for Indian gaming under IGRA."
>
> "5. Accordingly, the NIGC deems it appropriate to issue this Government-to-Government Tribal Consultation Policy, to promote and enhance the government-to-government relationships, consultations, and mutual cooperation among Indian tribes, the NIGC, other involved Federal departments and agencies, and state and local governments, regarding the operation and regulation of Indian gaming under IGRA."

Paragraphs II. A.6. and 7. of our Tribal Consultation Policy further to provides that:

> "6. The NIGC will encourage Federally-recognized Indian tribes and state and local governments to consult, collaborate and work cooperatively with each other in a respectful, good faith government-to-government manner to mutually address

> and resolve their respective issues and concerns regarding the operation and regulation of gaming on Indian lands under IGRA, in furtherance of the policies and purposes of the Act."
>
> "7. The NIGC will also work cooperatively with other Federal departments and agencies and with state and local governments to enlist their interest and support to assist the Commission and Indian tribes in safeguarding tribal gaming from organized crime and other corrupting influences; providing adequate law enforcement, fire, and emergency health care services, and environmental protections for the health and safety of the public in tribal gaming facilities; and accomplishing the other goals of IGRA."

In keeping with the foregoing policy, the NIGC is committed to considering state gaming expertise and experience, in developing new or amended MICS regulations for Indian gaming.

5C. *How many states and tribes have negotiated for some type of MICS?*

Several Tribal-State compacts contain negotiated provisions for general, non-specific standards for Indian gaming. However, most states and tribes have not negotiated specific, detailed MICS in their compacts. In addition to this absence of specific, detailed MICS provisions in most Tribal-State Compacts, there is also wide variation in the extent and quality of actual and negotiated state regulatory oversight of Indian gaming under the various compacts across the country. As a result, there is a particular need for the NIGC MICS regulation to provide a Federal standard for Indian gaming, because of the critical importance of internal control standards in ensuring adequate regulation of Indian gaming, safeguarding its integrity, protecting tribal gaming assets, and furthering the other statutory goals of IGRA. The NIGC MICS effectively provide a minimum Federal standard and serve as the basic foundation for the tribal internal control standards (TICS) that Tribes adopt for their respective gaming operations, as the primary sovereign operator and regulator of those operations under IGRA. Each tribe's TICS must provide a level of operational and regulatory control that equals or exceeds the NIGC MICS. In those instances where an internal control standard established in a Tribal-State compact equals or exceeds the NIGC MICS, then the Tribal-State compact standard shall prevail under our MICS regulation.

National Indian Gaming Commission

Annual Report

2003

INTRODUCTION TO TRIBAL GAMING

BACKGROUND

Tribal government-sponsored gaming is a relatively new phenomenon dating to the late 1970's when a number of tribes established bingo operations as a means of raising revenues to fund tribal government operations. At about the same time, a number of state governments were also exploring the potential for increasing state revenues through state-sponsored gaming. By the mid-1980's, a number of states had authorized charitable gaming, and some were sponsoring state-operated lotteries.

Although government-sponsored gaming was an issue of mutual interest, tribal and state governments soon found themselves at odds over Indian gaming. The debate centered on the issue of whether tribal governments possess the authority to conduct gaming independently of state regulation. Although many lower courts affirmed the tribal view in the early cases, the matter was not finally resolved until 1987 when the U.S. Supreme Court confirmed the authority of tribal governments to establish gaming operations independent of state regulation provided that the state in question permits some form of gaming. California v. Cabazon Band of Mission Indians 480 U.S. 202 (1987).

THE INDIAN GAMING REGULATORY ACT OF 1988

Congress took up the issue of tribal gaming and conducted a series of hearings, ultimately culminating in the passage of the Indian Gaming Regulatory Act of 1988 (IGRA). Embodied in IGRA was a compromise between state and tribal interests. The states were offered a voice in determining the scope and extent of tribal gaming by requiring tribal-state compacts for Class III gaming. However, tribal regulatory authority over Class II gaming was preserved in full.

IGRA establishes the jurisdictional framework that presently governs Indian gaming. IGRA establishes three classes of games with a different regulatory scheme for each. Class I gaming is defined as traditional Indian gaming and social gaming for minimal prizes. Regulatory authority over Class I gaming is vested exclusively in tribal governments.

Class II gaming is defined as the game of chance commonly known as bingo (whether or not electronic, computer, or other technological aids are used in connection therewith) and, if played in the same location as bingo, pull-tabs, punchboards, tip jars, instant bingo, and other games similar to bingo. Class II gaming also includes non-banked card games; that is, games that are played exclusively against other players rather than against the house or a player acting as a bank. IGRA specifically excludes slot machines or electronic facsimiles of any game of chance from the definition of Class II games. Tribes retain their authority to conduct, license, and regulate Class II gaming so long as the state in which the tribe is located permits such gaming for any purpose and the tribal government adopts a gaming ordinance approved by the National Indian Gaming Commission (Commission). Tribal governments are responsible for regulating Class II gaming with Commission oversight.

The definition of Class III gaming is extremely broad. It includes all forms of gaming that are neither Class I nor II. Games commonly played in casinos, such as slot machines, black jack, craps, and roulette, would clearly fall in the Class III category, as well as wagering games and electronic facsimiles of any game of chance. Generally, Class III gaming is often referred to as full-scale casino-style gaming. As a compromise, IGRA restricts tribal authority to conduct Class III gaming. Before a tribe may lawfully conduct Class III gaming, the following conditions must be met: (1) the particular form of Class III gaming that the tribe wants

to conduct must be permitted in the state in which the tribe is located; (2) the tribe and the state must have negotiated a compact that has been approved by the Secretary of the Interior, or the Secretary must have approved regulatory procedures; and (3) the tribe must have adopted a tribal gaming ordinance that has been approved by the Chairman or the Commission.

The regulatory scheme for Class III gaming is more complex than a casual reading of the statute might suggest. Although Congress clearly intended regulatory issues to be addressed in tribal-state compacts, it left a number of key functions in federal hands, including approval authority over compacts, management contracts, and tribal ordinances. Congress also vested the Commission with broad authority to issue regulations in furtherance of the purposes of IGRA. Accordingly, the Commission plays a key role in the regulation of Class II and III gaming.

THE NATIONAL INDIAN GAMING COMMISSION

The Commission was established as an independent federal regulatory agency of the United States pursuant to IGRA. The Commission is comprised of a Chairman and two commissioners, each of whom serves on a full-time basis for a three-year term. The Chairman is appointed by the President and must be confirmed by the Senate. The Secretary of the Interior appoints the other two commissioners. Under IGRA, at least two of the three commissioners must be enrolled members of a federally recognized Indian tribe, and no more than two members may be of the same political party.

The Commission maintains its headquarters in Washington, D.C., with six regional offices located in Portland, Oregon; Sacramento, California; Phoenix, Arizona; St. Paul, Minnesota; Tulsa, Oklahoma; and Washington, D.C. In addition, satellite offices are located in Rapid City, South Dakota, and Temecula, California, with an additional office planned for Jackson, Mississippi in 2004.

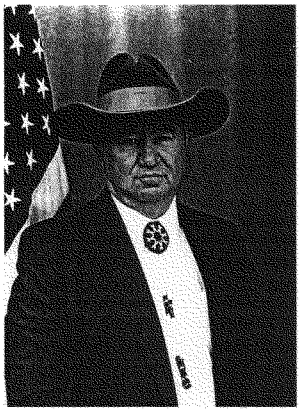
MISSION STATEMENT

It is the mission of the National Indian Gaming Commission (Commission) to fulfill the mandates of the Indian Gaming Regulatory Act of 1988 (IGRA) in fostering economic development of Indian tribes by attempting to insure the integrity of Indian tribal government gaming on Indian lands and to insure that tribes are the primary beneficiaries. This will be accomplished by the promulgation of regulations to guide the operation of tribal government gaming; by direct regulation of certain aspects of such gaming activities, and coordinated regulation with tribal and other regulatory agencies; of other aspects of such gaming; by the review, and approval where appropriate, of tribal gaming ordinances and agreements; by reviewing backgrounds of individuals and entities to insure the suitability of those seeking to engage or invest in such gaming; by maintaining oversight and review of the actual conduct of such gaming and the financial performance of such gaming; and by seeking to detect any violations of IGRA, the regulations of the Commission, and instances relating to tribal government gaming which threaten the safety of the tribes, their assets, those engaged in the industry, and the public upon which the industry depends, and by imposing appropriate sanctions on those committing such violations. As it fulfills these responsibilities, the Commission will be particularly vigilant for any indications of corrupting influences such as organized criminal elements known to be attracted to cash-intensive industries such as gaming.

In attempting to accomplish this mission, the Commission shall always be mindful of the trust relationship the United States bears to the Indian nations it serves and that prompt and efficient administration of IGRA is required to foster the economic development so urgently needed by Indian tribes. In all phases of its regulatory performance, the Commission and its staff shall observe due process rights of those who come before it and extend courtesy all individuals are entitled to expect from their government.

Where consistent with its regulatory role, the Commission will be responsive to tribes seeking guidance as they enter the dynamic gaming industry, will monitor trends in tribal government gaming, and report its findings to Congress and the Administration.

THE COMMISSION



Chairman Philip N. Hogen is an enrolled member of the Oglala Sioux Tribe of the Pine Ridge Indian Reservation in South Dakota. Mr. Hogen was formerly Associate Solicitor for the Division of Indian Affairs, U.S. Department of the Interior. Mr. Hogen joined the Department in 2001 from the private practice of Indian law in Rapid City, South Dakota, where he was affiliated with the national law firm of Holland & Knight LLP. Mr. Hogen also served as an Associate Member and the Vice Chairman of the National Indian Gaming Commission and was the first Director of the Department of Interior Office of American Indian Trust. Mr. Hogen was United States Attorney for the District of South Dakota, serving in that position for more than ten years. Mr. Hogen earned his law degree at the University of South Dakota (1970) and his undergraduate degree at Augustana College in Sioux Falls, South Dakota (1967).

Vice Chairman Nelson W. Westrin served as the first Executive Director of the Michigan Gaming Control Board since 1996, having responsibility for developing, implementing, organizing, and managing every facet of the state agency. He worked closely with tribal officials while carrying out the state's oversight of the Native American casino gaming operations in Michigan. Mr. Westrin was the Assistant Attorney General for the State of Michigan from 1977 to 1993; and from 1984 to 1993, he was assigned to the Lottery and Racing Division. Mr. Westrin served as the Assistant Prosecuting Attorney for Ingham County, Michigan. Mr. Westrin received his Bachelor of Arts degree from Michigan State University in 1969. He holds a Juris Doctor from the Detroit College of Law, which was awarded in 1974.

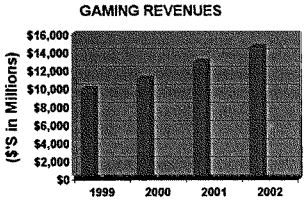
THE COMMISSION

Commissioner Cloyce V. Choney is a member of the Comanche Nation of Oklahoma. From 1976 to 2001, Mr. Choney served as a Special Agent for the Federal Bureau of Investigation. During that time, he handled a variety of cases and investigations and was awarded several Federal Bureau of Investigation commendations. He also served as Chair of the Native American/Alaska People Advisory Committee. In 2002, Mr. Choney became the Chief Executive Officer for Indian Territory Investigations. In that capacity, Mr. Choney was responsible for business development, reporting and supervision of day-to-day activities related to the company's function of pre-employment background investigations. Between 1969 and 1975, Mr. Choney served in the United States Army, where he earned the rank of Captain. Mr. Choney has been a member of the National Native American Law Enforcement Association, and he served as its president from 1996-1997. He received a Bachelor of Science in Military Science from Oklahoma State University in 1968.

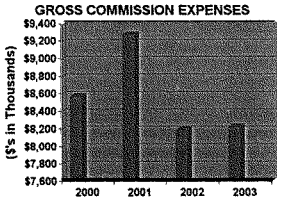
MESSAGE FROM THE CHAIRMAN

The new commissioners took their oath of office on December 12, 2002, and after a year of activity, we can point to a number of accomplishments. Overall, the year was a success. The past experience of the Commission members facilitated a smooth transition process; and this, along with a strong effort by all of the divisions, allowed the Commission to have an immediate impact on gaming regulation. In addition, the Commission and staff identified several initiatives that will provide longer- term benefits and further improve its regulatory and oversight functions.

Revenues at Indian casinos, which are reported on a one-year lag basis, grew in the latest reporting period, albeit at a slightly lower rate than the prior year. Revenues increased by 13% or $1.7 billion in 2002. The growth was a function of new casinos brought on-line in late 2001 and 2002 as well as growth at established casinos. Currently, 207 tribes operate 330 casinos in 28 states. We expect to see continued growth, particularly in California where several casinos are in the expansion, construction or discussion stages.



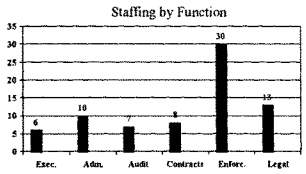
Funding has been an issue since the Commission was established in 1991. The Commission is unique in that it is a federal agency funded solely by the industry it oversees or regulates. To be effective, it must be knowledgeable of the regulatory framework of over 200 gaming tribes (dispersed geographically across the United States) and have an understanding of the interaction between tribal and state gaming authorities. Congress approved an increase in the Commission's funding from $8 million to $12 million for fiscal years 2004 and 2005, the first increase in funding since 1998. The growth in gaming has challenged the resources of the Commission. Gaming revenues increased 70% over the past four years while the Commission budget remained flat over the same period. The final fee rate the tribes pay to support the Commission activities was .0635% of Tier II and Tier III revenues for 2003. The preliminary rate for 2004, the first year of the budget increase, is .069% or less than one-tenth of 1% of gross gaming revenues.



While the funding is small in comparison to the Nevada or New Jersey State regulatory agencies, it is important to keep in mind IGRA recognizes the tribes as having sovereign authority and responsibility with respect to the day-to-day operation and regulation of gaming on their tribal lands.

Staffing increased during the year. The Commission filled a number of vacant positions in both the Washington and regional offices. Two executive level positions, the Chief of Staff and Director of Congressional and Public Affairs, were filled with enrolled tribal members. The addition of three

investigators and three auditors brought our total field personnel to 36 or approximately 50% of the total staffing. As the detailed budget shows, salaries and benefits represented 69% of total 2003 gross expenditures. Staff additions in the future will be directed toward field operations.



Consultations are an important and effective method of communicating with the federally recognized tribes and their authorized government leaders. Consultations, among other things, mean the Commission will engage in regular, timely and meaningful government-to-government dialogue on matters impacting Indian gaming. During the year, five consultations were held across the United States. While the consultations format was a work in progress in the initial meetings, we learned from each session. The initial consultations provided insight into the requirements of a formal consultation policy. A draft of a formal consultation policy was circulated to tribal leaders for their input and will be finalized in 2004. Consultations however are only one form of communicating with gaming tribes. The Commission feels that the visibility and accessibility of the Commission and staff are important. To provide information on Commission activities and respond to questions, the commissioners and staff participated during the year in over 30 seminars, roundtables, and association meetings covering all aspects of Indian gaming.

Gaming Classification, or the distinction between Class II and Class III gaming, was one of the most important issues dealt with during the year. The issue is important primarily because Class III gaming requires a tribal state compact. Twenty-five of the twenty-eight states with Indian gaming activities have Class III gaming. The extent of the states' participation in the regulation of Class III gaming varies from state to state. The Office of General Counsel issued an opinion and bulletin on the topic, and the Commission will issue technical standards for classifying Class II games in 2004.

Training is an important part of the Commission's role in gaming, the idea being that well-trained gaming officials will better protect the integrity of gaming and assists us in our efforts. In addition to the general presentations made during the year, the Commission provided specific training to tribal leaders and gaming officials in all aspects of gaming. Minimum Internal Control Standards (MICS), environmental, safety, health, tribal gaming authority responsibilities, and land issues were the subjects of over twenty training sessions sponsored during the year.

Enforcement Actions are one of the least desirable, but necessary, parts of the Commission's oversight responsibilities. In spite of the intentions, experience and training of the tribes, there are times when enforcement action is required. During the year, the Commission issued Closure Orders to two casinos and issued four Notices of Violation. In most cases, the Commission prefers to issue a Potential Notice of Violation, giving the tribe an opportunity to correct the practice in question since this will ultimately result in improved gaming practices.

Information System upgrades and modifications were designated as a priority in 2003. A request for proposals was issued late in the year to (1) assess the agency's current state of managing information, and (2) develop a desired model for capturing and sharing information. The system will serve not only the agency's needs but will have the capability of providing relevant information to gaming tribes. In addition, progress was made on the implementation of an electronic system

for processing fingerprints through the Federal Bureau of Investigation (FBI). The system is referred to as "Live Scan." Tribes use the fingerprints in conducting background investigations for gaming license applicants. The process will make Criminal History Reports available to tribes within 24 hours of submitting fingerprints, compared to the present system that could take several weeks. The system will be available to all gaming tribes.

While significant progress was made during the year, the Commission has an aggressive plan for 2004 and 2005. Objectives for the new year can be broken down into three primary areas:

— ***Improved Communications with Gaming Constituencies.*** Adopting a formal consultation policy will be an important part of our communication plan. In addition, filling the Congressional and Public Affairs position and enhancing our information systems will better inform the tribes of activities impacting gaming.

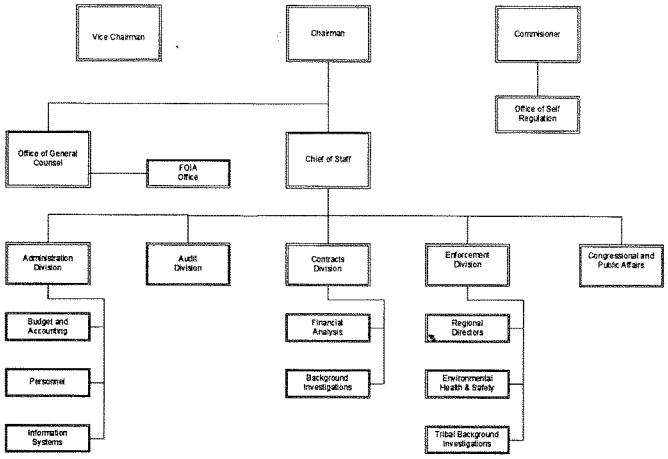
— ***Adapting to Changing Gaming Technology and Methods.*** Regulatory changes are required as gaming technology and practices change. To address this important need, the Commission recently contracted with technical experts and established a tribal advisory committee to assist the Commission in developing and implementing necessary and appropriate technical standards to distinguish Class II and Class III gaming and related electronic, computer and technologic devices and regulate their operation in Indian gaming under IGRA. In addition, the Commission has also recently established a standing tribal advisory committee to help the Commission keep its Minimum Internal Control Standards (MICS) effective and current.

— ***Improve Oversight and Enforcement Effectiveness.*** This will be accomplished by a limited amount of cross training of the Audit/Enforcement personnel and Enforcement/Contract personnel. The number of comprehensive MICS audits and special MICS specific reviews will be increased. Better utilization of data base information and continued cooperation with other regulatory and law enforcement agencies will increase the effectiveness of the Commission.

Philip N. Hogen
Chairman
March 17, 2004

STRUCTURE AND OPERATIONS

FUNCTIONAL ORGANIZATION CHART



ADMINISTRATION

The Administration Division serves the financial, personnel, office services, and information needs of the Commission. Included in the four categories are fee processing and collection as well as procurement. The Administration Division also acts as liaison to the Department of the Interior, Office of Management and Budget (OMB) on fiscal matters, with General Services Administration (GSA) on procurement of goods, services and office needs. The Administration Division consists of a Director, three supervisory personnel, and a six-person support staff. A portion of the personnel activities are contracted to Minerals Management Service (MMS) and a portion of the accounting activities are contracted to the National Business Center (NBC).

The Administration Division initiated four major projects in 2003, all of which should be completed in 2004. These include:

— ***Information System Review.*** Proposals were requested to review the information system needs of the organization consistent with Commission objectives. Focus will be on data base design and administration, hardware needs and overall administration of the department.

— ***Live Scan.*** The Administration Division worked with the Enforcement Division to successfully complete the Live Scan electronic fingerprint system pilot project. For the project, a higher level of

security was put in place, additional hardware was purchased, and specialists were contracted to address interface challenges between the Commission and tribal computers.

— ***Paper Check Conversion Project.*** The Commission collects fees from the gaming tribes based on gross gaming revenues. The paper check conversion project, which is sponsored by the U.S. Department of the Treasury Financial Management Service, will allow the Commission to improve its cash management and also streamline the documentation and recording of amounts collected.

— ***Accounting Systems Upgrades.*** The National Business Center (NBC) provides the accounting services for the Commission. However, the Commission still has needs for additional accounting information. During 2004, an accounting system will be installed at the Commission that will provide for better revenue and expense control, improved internal controls, and less clerical effort and duplication in recording transactions.

AUDIT

The Audit Division performs comprehensive MICS compliance audits and special purpose reviews and also assists the Enforcement Division in conducting inquiries of an investigative nature. The Audit Division also provides training to tribal gaming authorities and personnel.

An Acting Director and six auditors, with an additional auditor to be hired, presently staff the Division. Three new positions were filled during the year.

Tribes have primary regulatory responsibility for gaming operations. This includes, among other things, instituting MICS, establishing an internal audit function, and requiring that an independent auditor audit all operations. As a result, the Audit Division does not routinely and systematically perform compliance audits similar to what might take place by state agencies in major gaming states such as Nevada or New Jersey.

Nine comprehensive MICS compliance audits were completed during the year. The selection process involved monitoring and collecting various sources of data that reflect on compliance with MICS. Operations that appear to pose a high risk of noncompliance and those considered to have a substandard control system were selected. Each of the assignments revealed internal control weaknesses posing an immediate and material risk to the tribe's investment as well as to the integrity of gaming.

After performance of an audit, the Audit or Enforcement Division works with the gaming operation in the development and implementation of remedial actions to achieve a position of substantial compliance with MICS. This may result in over a year of follow-up activities. All but one of the nine operations were successful in achieving substantial compliance. The unsuccessful gaming property was closed by mutual agreement between the Commission and the tribe.

The results of the Audit Division's special purpose reviews generally ended with an operation taking corrective action to the Audit Division's satisfaction. The results of the Audit Division's investigations with the Enforcement Division varied. Some were referred to other enforcement agencies, and others led to internal administrative actions.

During the year, audit personnel provided MICS training to twelve tribes and two independent CPA firms. Nine additional presentations were made at conferences, seminars, association meetings and consultations.

Objectives in 2004 include:

— ***MICS Audits.*** Increase the number of comprehensive MICS audits as a result of increased staff and cross-training Enforcement personnel to assist in follow-up activities.

— ***Data Base Development.*** Assist in the development of a data base which will allow the Audit Division to utilize computer-generated information to identify trends and changes in income statement and balance sheet ratios.

— ***Training.*** Continue to provide training to tribes and regulators on MICS.

— ***Advisory Committee on MICS.*** Establish an advisory committee to monitor and make changes in the MICS so that they are reflective of changes in gaming.

— ***Communication.*** Work closer with independent auditors to assure they are familiar with the regulations and reporting requirements of IGRA.

CONTRACTS

The Contracts Division is responsible for reviewing all management contracts and amendments to management contracts between tribes and gaming management contractors. Upon completion of a management contract review, the Contracts Division forwards a recommended action to the Chairman, who must approve the contract before it can become effective. This review and approval process is mandated by IGRA as a means of shielding Indian gaming from organized crime and other corrupting influences and to ensure that the Indian tribe is the primary beneficiary of gaming revenue.

The staff of the Contracts Division consists of a Director, one full-time and one part-time financial analyst, a data base specialist, a chief of management contract background investigations, and two full-time and one part-time financial background investigators. A member of the Enforcement staff and an outside consultant carry out the requirements of the National Environmental Policy Act (NEPA) The Office of General Counsel provides legal advice and assistance.

In performing its function during the approval process, the Contracts Division staff works closely with all interested parties, including tribal officials, management contractors, attorneys, accountants, and tribal gaming commissioners, to ensure that all essential information is submitted. To recommend approval, the staff must be satisfied that the contracts meet all the requirements established by Congress in IGRA and that the collateral agreements do not violate federal law. Additionally, required investigations of persons and entities with a financial interest in, or management responsibility for, the contract must be satisfactorily completed and the related suitability criteria met. And, finally, the Commission must be in compliance with NEPA.
Two hundred management contracts have been submitted for review and approval in the eleven years since the Commission became operational in early 1993. Forty-two contracts have been approved, and eighteen contracts were in process as of December 31, 2003. One hundred and forty contracts have been withdrawn, disapproved, or closed for some other reason(s). In addition, several of the approved management contracts have been amended one or more times, each amendment requiring the staff's review and the Chairman's approval.

The Contracts Division also receives and tracks the annual audit reports submitted by all gaming operations, determines compliance, and extracts key financial information from each report. Such information is, among other things, used to report annually the size of the Indian gaming industry to assist the Audit and Enforcement Divisions in their oversight functions. The Contracts Division also refers non-compliance issues to the Enforcement Division and/or the Office of General Counsel for further action.

Objectives for 2004 include:

— ***Process Review.*** Review the process and procedures relating to the review and approval of management contracts for the operation of tribal gaming facilities to determine if changes can be made that will assist tribes in efficiently completing the process while continuing to ensure compliance with standards specified in IGRA.

— ***Data Base Development.*** Assist in the development and maintenance of a Commission financial data base of tribal gaming operations and make relevant information available to the Enforcement and Audit Divisions to assist in their oversight role.

— ***Commission Environmental Role.*** Review the environmental discipline needs of the Management Contract Division and make recommendations on how best to meet the objectives of NEPA.

— ***Cross-training.*** Provide cross-training to the financial background investigators in the Management Contract Division so they may provide assistance to the Audit and Enforcement Divisions as needs arise.

ENFORCEMENT

The top priority of the Enforcement Division in 2003 was to ensure tribal compliance with the fundamental statutory and regulatory compliance obligations set forth in IGRA and Commission regulations. The Enforcement Division's oversight activities primarily involved the performance of five critical functions. These included:

— Monitoring Indian gaming operations for compliance with the Commission regulations. The monitoring activities range from reviews of gaming operation books and records to on-site inspection of steps taken by a gaming operation to ensure the health and safety of the public.

— Assisting tribes in developing a regulatory structure to comply with IGRA and Commission requirements. This includes offering advice on how best to structure a tribal gaming commission and reviewing operating procedures with tribal gaming commissions and gaming operation managers.

— Investigating matters relating to regulatory violations and alleged criminal activities. These investigations result in the issuance of Notices of Violation, Closure Orders, and Civil Fine Assessments by the Commission and, in some cases, the initiation of criminal investigations by various law enforcement authorities.

— Functioning as liaison to federal, state, and tribal law enforcement officials. Field investigators facilitate the flow of information between various regulatory authorities, and help coordinate investigative and monitoring activities related to Indian gaming operations, individuals, and companies employed by Indian gaming operations.

— Conducting background investigations of individuals and companies seeking approval of management contracts. The field investigators assist the Management Contract Division in reviewing pertinent documents and records, conducting interviews, and verifying the accuracy of information submitted by applicants.

The staff of the Enforcement Division consists of a Director, fifteen field investigators, including six regional Directors, three tribal background employees, and six administrative personnel.

Field investigators conducted 446 site visits to tribal gaming operations during the calendar year 2003. The Enforcement Division issued twenty-five Potential Notices of Violation and provided evidence leading to the issuance of four Notices of Violation.

IGRA requires that Indian tribes conduct background investigations on their key employees and primary management officials and notify the Commission of the results of the background investigations before issuing a license to those individuals. The Enforcement Division plays a critical role in the processing of background investigations of employees at tribal gaming facilities. In 2003, the Enforcement Division received and processed 30,102 investigative reports and 41,505 fingerprint cards submitted by tribes in compliance with this obligation.

The Enforcement Division also made significant progress in implementing the Live Scan fingerprinting system for processing fingerprints through the FBI. Tribes that take advantage of this new technology receive Criminal History Record information reports within 24 hours after submitting the electronic fingerprints to the Commission. Last year, the Commission completed its pilot project to test the viability of the electronic fingerprint system and now offers access to this system to all interested gaming tribes.

In 2003, the Commission implemented its Environment, Public Health and Safety oversight program. The primary role of the Enforcement Division in this area is to review tribal gaming operations to ensure that tribal standards are in place. The Enforcement Division also provides assistance to tribes in locating relevant expertise from other governmental agencies. In 2003, the Enforcement Division initiated a series of training sessions to inform tribes about the Environment, Public Health and Safety program.

In 1997, the Commission began publishing a Compliance Report that reflected the compliance record of all gaming tribes with regard to seven regulatory requirements set forth in the Commission regulations. This report is published every six months and has helped to improve the efforts of tribal governments to meet their compliance responsibilities. Last year, the Compliance Report was amended to include compliance with MICS in addition to the six critical areas previously covered. The Compliance Report has been a useful tool in aiding the Commission's efforts to increase voluntary compliance with its regulations.

In the past year, the Enforcement Division expanded its training activities for tribal gaming regulators. The Enforcement Division now attempts to offer at least one training conference a month in each regional office. These sessions cover a wide range of compliance and law enforcement issues.

In 2003, the Commission opened sub-offices in Temecula, California and Rapid City, South Dakota and announced the opening of an office in Jackson, Mississippi. Such offices are expected to both improve the Enforcement Division's oversight efforts and reduce travel costs.

During the last year, the Enforcement Division was an active participant in the Federal Indian Gaming Working Group. This group was formed to coordinate the investigative efforts of federal agencies with oversight authority in Indian gaming. The Enforcement Division participated in a number of working group conferences and is actively involved in ongoing investigative activities of the working group.

Objectives in 2004 include:

— ***Training.*** Provide training on the Environment, Public Health and Safety regulations in each of its regional offices.

— ***Live Scan.*** Significantly expand the number of tribes participating in the electronic fingerprint process.

— ***Compliance Report.*** Update and improve the Compliance Report by including qualitative factors.

— ***MICS Follow-up.*** Assist in implementing an approach to MICS oversight that will substantially increase the number of tribal operations that have been examined for MICS compliance.

— ***Staffing.*** Expand its investigative staff and have its sub-offices in Rapid City, South Dakota and Jackson, Mississippi become fully operational.

— ***Regulation.*** Maintain its commitment to ensure compliance with the basic statutory and regulatory obligation of gaming tribes and to protect Indian gaming from criminal influence.

OFFICE OF GENERAL COUNSEL

The Office of General Counsel serves as the legal staff of the Commission. It represents the Chairman and Commission in formal enforcement actions, coordinates litigation with the Department of Justice, reviews tribal ordinances and contracts, and provides legal advice on a wide variety of issues.

The current staff consists of the Deputy General Counsel, who also serves as the Acting General Counsel, the senior attorney, seven staff attorneys, a Freedom of Information Act (FOIA) officer, and three legal staff assistants. The staff was increased slightly with the addition of a legal staff assistant and two staff attorneys. These additions helped absorb some of the work resulting from new Commission initiatives.

Historically, one of the most difficult legal challenges facing the Commission is the classification of games as Class II or III. To provide guidance to the regulated community, the Office of General Counsel issues advisory opinions on classifying games. With the development of guidance through advisory opinions and a bulletin, the industry was provided with major guideposts for the development of Class II electronic inter-linked bingo. As a direct result, many gaming operations that were previously offering Class III gaming without a compact are moving quickly toward Class II compliance.

When the Chairman determines that formal enforcement actions must be pursued, the Office of General Counsel serves as the Commission's prosecutorial arm. Two significant enforcement actions brought by the Office in 2003 included the closure of the casinos owned and operated by the Sac and Fox Tribe of the Mississippi in Iowa and the Seminole Nation of Oklahoma. The Sac and Fox Tribe gaming operation was closed after a faction of the Tribe gained control over the gaming operation. However, within months of the closure, elections were held, and a new federally recognized tribal government gained control over the operation. Shortly thereafter, the Department of the Interior recognized the new government. The election and recognition of the new government eliminated the Commission's concerns, and the Tribe was allowed to reopen on New Year's Eve.

The Seminole Nation closure was the result of years of administrative and federal litigation which culminated in the issuance of substantial fines to the tribe and closure of the facility by the tribe. Despite the difficulties encountered, by the end of the year, the parties were able to agree on a process for allowing the operation to reopen its facility.

A third enforcement action, begun in 2001, was challenged by the Colorado River Indian Tribes on the theory that the Commission did not have the authority to demand access to Class III operations or to issue regulations establishing MICS for Class III operations. The Commission's 2002 decision affirmed the regulatory scheme that encompassed Class III operations. Subsequently, on July 17, 2003, the Commission found that the tribes denied Commission representatives access to the Class III gaming operation and were fined for this violation. While the tribes acceded to the Commission by permitting an audit of their internal controls, they recently filed suit in federal district court to obtain judicial review of the Commission's decision.

Two areas where the Office of General Counsel routinely responds to a number of requests are tribal

ordinances and contracts. Eighty-one tribal ordinances were submitted for review and approval in 2003. This year, the Chairman directed the Office of General Counsel to work extensively with tribes to assure that their ordinances could be approved. As a result, the number of ordinances that were disapproved was greatly reduced from previous years. In addition to providing legal advice on management contracts, the Office of General Counsel reviews other contracts to determine whether they are management contracts and therefore subject to the Commission's approval requirements. Forty-two of these contracts were submitted in 2003. One in particular raised the difficult question of whether the contractor's interest in the tribe's gaming operation was proprietary in violation of IGRA.

The Office of General Counsel also processes requests filed under FOIA. During the course of the last fiscal year, ninety requests for information were received. Despite a turnover in FOIA personnel, some of the FOIA backlog was reduced and 102 requests were processed during that same time period.

Other important actions included the development and referral of legislation to Congress to amend IGRA, issuance of an opinion concluding that the lands of the Mechoopda Indian Tribe of the Chico Rancheria could constitute restored lands, and participation on the FBI Task Force.

Objectives in 2004 include:

— ***Regulatory.*** Assist in several proposed regulatory initiatives including MICS revisions.

— ***Game Classification.*** Develop a workable framework for the classification of games. This latter initiative will prove difficult as the concepts are complicated and any decisions will greatly impact the regulated community.

— ***Guidance to Tribe.*** Continue to provide classification guidance and draft other Commission guidance while working with tribes to encourage compliance with IGRA.

— ***Indian Lands Questions.*** Resolve several difficult pending Indian lands questions.

Accomplishing these objectives will depend on staffing availability. If the level of enforcement actions increase or additional litigation is brought, staff will be diverted to that litigation.

OFFICE OF CONGRESSIONAL AND PUBLIC AFFAIRS

The Office of Congressional and Public Affairs is responsible for the planning, coordination, and management of agency programs and activities relating to both legislative and public affairs. Among its principal duties, the Office of Congressional and Public Affairs monitors legislation affecting the Commission and advises on any necessary policy action. The Office of Congressional and Public Affairs coordinates submission of bills, resolutions, reports, testimony, and other statements on legislation to Congress, and also prepares agency press releases, speeches, reports, and policy statements.

From April through October 2003, an employee of the Department of the Interior, temporarily staffed the Office of Congressional and Public Affairs. In January 2004, the Commission permanently filled this position.

In 2003, Congress authorized an increase to the Commission's budgetary fee cap from $8 million to $12 million for fiscal years 2004 and 2005. While the authorization is a maximum of $12 million, actual assessments should be well below this amount.

Although Congress has recognized and responded to the Commission's need to fund essential regulatory activities, the pattern of increasing the fee cap on an annual basis has hindered the Commission's ability to develop long-term plans. Further, future fee caps set by Congress may not necessarily reflect the growing size of the Indian gaming industry. In May 2003, the

Commission testified before the Senate Indian Affairs Committee and recommended a formula that would allow the Commission to collect fees based on the size of the industry, rather than maintaining the current fixed cap fee system set by Congress.

In July 2003, S. 1529, "Indian Gaming Regulatory Act Amendments of 2003," was introduced. This legislation would make technical changes regarding the staffing, clarify the Commission's authority over Class II gaming, direct that MICS be revised, and set a schedule of the maximum amount of fees the Commission is authorized to collect. S. 1529 is currently pending before the Senate Committee on Indian Affairs. The Commission will continue to work with members of Congress to pass legislation that will modernize the statutory structure under which the Commission operates and provide stability for the Commission funding stream.

Improving communications is a priority of the Commission. In 2003, the Commission was featured in a variety of publications including Casino Enterprise Management, Indian Gaming Magazine, and Gaming Products and Services. These and other articles generally focused on providing an introduction of the newly appointed commissioners, explaining the role of the Commission, describing the Commission consultation meetings throughout Indian Country, outlining the challenges facing the Commission, and clarifying agency decisions.

Objectives in 2004 include:

— ***Communication.*** Work to increase communication with members on Capitol Hill and their staff to provide assistance on gaming related matters in Indian Country.

— ***Congressional Briefings.*** Provide briefings for staff in both the House and Senate regarding the role, responsibilities, and activities of the Commission.

— ***Public and Media.*** Increase communication with the general public and media resources by responding to all inquiries, posting press materials on the Commission website, and informing the media in advance about Commission events.

— ***Contact Inventory.*** Build on the existing list of media and congressional contacts to ensure that individuals with an interest in Indian gaming are provided regular updates on Commission activities.

OFFICE OF SELF-REGULATION

The Office of Self-Regulation's primary responsibility is to process tribal petitions for self-regulation for Class II gaming. Self-Regulation status provides tribal governments with increased regulatory responsibility and greater autonomy by diminishing the role of the Commission in the areas of monitoring, inspection, and review of background investigations. Such status will also result in a reduction of fees paid to the Commission.

To participate in the Self-Regulation program, a tribal government must satisfy a number of requirements. First, it must demonstrate that it has a system for effective and honest accounting of all revenue. It must also show that a system for investigating, licensing, and monitoring all employees of the gaming activity is in place. Reviewers must determine whether the tribal government has established standards and practices to ensure that the facility is operated on a fiscally and economically sound basis. Another key element is compliance with IGRA, Commission regulations, and applicable tribal regulations and/or ordinances. Finally, a petitioning tribe must show that its operations have met the minimum requirements for a period of three years.

The final rule regarding the issuance of Certificates of Self-Regulation was issued in August 1998. Two tribes have been issued Certificates of Self-Regulation.

COOPERATION — OTHER REGULATORY AND ENFORCEMENT AGENCIES

The overall effectiveness of the Commission is enhanced because of relationships forged with other agencies and commissions that make determinations on Indian gaming or have a regulatory or statutory role in maintaining the integrity of the industry. The Commission has entered into memoranda of understanding with several agencies and commissions. Some of the memoranda outline services to be provided by other agencies, while others authorize the sharing of investigative information and establish protocols for working together. In addition, there are several agencies where no memorandum of understanding exists, but the subject matter requires or encourages notification of follow-up on issues of mutual interest.

The Commission works closely with the Department of Justice and works diligently to keep the Department of Justice abreast of activities in each of the regions. The Commission meets regularly with the Native American Affairs Subcommittee of the Attorney General's Advisory Committee of the United States Attorneys and cooperates with the Department of Justice and the subcommittee on its regulatory initiatives.

The U.S. Department of the Interior has responsibilities for the acquisition of lands into trust, per capita payments, and other areas under IGRA. The Commission meets regularly with Interior officials to coordinate activities and discuss matters of mutual interest. The Office of General Counsel participates in joint meetings with both Interior and Justice Department attorneys.

The following are memoranda of understanding with other federal agencies:

— ***Interior Department Office of the Solicitor Division of Indian Affairs.*** This memorandum details the process for cooperation between the Commission and the department on Indian lands determinations under IGRA

— ***Interior Department Office of the Solicitor.*** This memorandum establishes a process for receiving legal services from the Interior Office of the Solicitor.

— ***Federal Bureau of Investigation.*** This memorandum establishes the process for FBI processing of tribal employee fingerprints and criminal history checks.

— ***Office of Personnel Management.*** This memorandum establishes the process for the completion of routine background investigations initiated by the Commission.

Because a number of Class III tribal-state gaming compacts provide state agencies with a regulatory role in Indian gaming, the Commission has established memoranda of understanding with the following gaming commissions and law enforcement agencies: the Federal Bureau of Investigation, the Colorado Division of Gaming, the Michigan Gaming Control Board, the New York Racing and Wagering Board, the New York State Police, the Kansas Bureau of Investigation, the Oregon Department of State Police, the Illinois Gaming Board, the Indiana Gaming Commission, the North Dakota Office of Attorney General, the New Jersey Department of Law and Public Safety, the Arizona State Gaming Agency, the Washington State Gambling Commission, the Mississippi Gaming Commission, the New South Wales Casino Control Authority, the Nova Scotia Gaming Control Commission, and the Gaming Board for Great Britain. In addition, two other collaborative initiatives of note are presently under way.

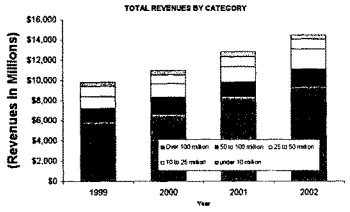
DETAILED REVENUES AND EXPENSES

GAMING REVENUES AND OPERATIONS
($ Amounts in Millions)

	1999		2000		2001		2002	
$100 Million and Over	$ 5,846	28	$ 6,606	31	$ 8,398	39	$ 9,399	41
$50 to $100 Million	1,324	19	1,694	24	1,416	19	1,698	24
$25 to $50 Million	1,193	33	1,361	41	1,529	43	1,978	55
$10 to $25 Million	1,029	59	856	50	997	58	984	61
Under $10 Million	409	171	442	165	482	170	438	149
Total Revenue/*Operations*	$ 9,801	310	$ 10,959	311	$ 12,822	329	$ 14,497	330

REVENUES

The Commission is funded exclusively through fees paid by Indian gaming tribes on Class II and Class III gaming in excess of $1.5 million. Indian gaming revenues grew at a 15% compound annual growth rate since 1998 while the number of operations increased by 33.



Although the gaming revenues have dramatically increased, the number of casinos has not grown in proportion to the growth of gaming. Casinos with more than $100 million in revenues generated 59.6% of total gaming revenues in 1999 compared to 64.8% in 2002. Casinos with less than $10 million in revenues generated 4.2% of total revenues in 1999, dropping to 3% in 2002 with the number of operations decreasing by 22 over the same time period. One big factor impacting both overall revenues and the number of large casinos is the growth of Indian gaming in the heavily populated states, with California contributing to a high percentage of the growth.

FEES AS PERCENT OF PRIOR YEAR ASSESSED REVENUE

2000	2001	2002	2003
0.090%	0.075%	0.0665%	0.0635%

FEE RATE

The increase in Indian gaming revenue, along with the fee cap and expense control at the Commission level, has meant a decrease in fees as a percent of total revenues. In 2000, fees as a percent of the prior year's assessed revenues were nine one hundredth of one percent of Class II and Class III gaming. In 2003, the number declined to less than seven one hundredth of one percent. With the increase in the fee cap, continued growth of gaming and expense control, the fee assessment should remain below seven hundredth of one percent in 2004.

EXPENSES

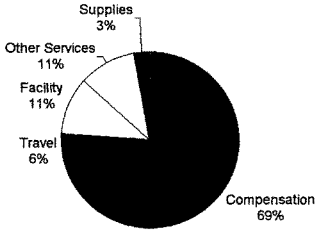
The Commission operates on a lean budget in spite of the breadth of its mission. The Commission is involved in land issues, environmental health and safety, and financial, as well as the more typical issues dealt with by state gaming agencies.

DETAILED BUDGET
($ Amounts in Thousands)

	2000	2001	2002	2003
Employee Count	71	74	67	63
Compensation	$5,391	$5,957	$5,764	$5,797
Travel	678	647	321	463
Facility	707	913	905	869
Printing & Other Services	568	693	1,052	876
Supplies & Equipment	200	481	148	221
One Time Expenditures	1,034	593	-	
	$8,578	$9,284	$8,190	$8,226
Reimbursable Services (Fingerprinting and Background Investigation)	-	1,367	501	1,128
Total	$8,578	$7,917	$7,690	$7,098

While Commission expenses have trended down over the last few years, the Commission has met the challenge and improved regulatory oversight in an industry exhibiting significant growth. Most of the Commission expenses are somewhat fixed. Compensation, which includes salary and benefits, makes up 69% of the Commission's 2003 expenditures. The Commission has been slow to fill positions due to funding concerns. However, with the increase in the fee cap, positions that were intentionally vacant have been filled. The Commission made payments to other governmental agencies for an additional 15.9% of its expenditures in 2003. This includes GSA (rent), Office of Personnel and Management (personnel and background services), MMS (payroll services), and NBC (accounting services).

2003 Gross Expenses by Category



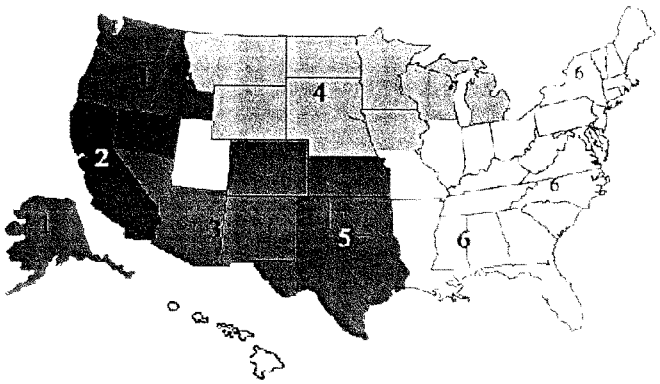
SENIOR STAFF

Chief of Staff	Gary Pechota
Acting General Counsel	Penny Coleman
Director of Administration	Irene Schrader
Acting Director of Audits	Joe Smith
Director of Contracts	Fred Stuckwisch
Director of Enforcement	Alan Fedman
Director of Congressional and Public Affairs	Affie Ellis

STATISTICS

GAMING	Gaming Tribes-2002	207
	Gaming Operations-2002	330
	States with Indian Gaming	28
	2002 Gross Gaming Revenue	$14.5 Billion
	Five-Year Revenue Growth Rate	15%
	Management Contracts Approved-Cumulative	42
	Tribes With Approved Revenue Allocation Plans	88
MARCH 2004 STAFFING	Commission and Support	5
	Administration	10
	Audit	7
	Enforcement	30
	Management Contract	8
	Legal	13
	Congressional and Public Affairs	1
	Total Staff	74
	2004 Budget	**$10.7 Million**
ACTIVITIES 2003	Casino Visits	446
	FOIA Request Processed	102
	Fingerprint Cards Processed	41,505
	Investigative Reports Processed	30,102
	Potential Notices of Violation	25
	Notices of Violation	4
	Tribal Ordinance Submissions	81
	Tribal Contracts Submitted	42
	Management Contracts Approved	2

REGIONAL OFFICES



REGION 1
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503-326-5095

REGION 2
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Suite 12400
Sacramento, CA 95814
916-930-2231

REGION 3
Ken Billingsley
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3636 N. Central Ave
Suite 880
Phoenix, AZ 85012
602-640-2951

REGION 4
John Peterson
190 E. 5th Street
Suite 170
St. Paul, MN 55101
651-290-4004

REGION 5
Tim Harper
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Room 301
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918-581-7928

REGION 6
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20005
202-632-7003

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605-718-5724

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909-676-9000

National Indian Gaming Association

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**TESTIMONY OF ERNEST L. STEVENS, JR., CHAIRMAN
OF THE NATIONAL INDIAN GAMING ASSOCIATION**

MARCH 24, 2004

**BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON S. 1529, AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT**

INTRODUCTION

Good morning Chairman Campbell, Vice Chairman Inouye, and Members of the Committee. Thank you all for providing me the opportunity to testify before you this morning. My name is Ernest Stevens, Jr., and I am a member of the Oneida Nation of Wisconsin and Chairman of the National Indian Gaming Association or NIGA. I am honored to be here this morning to share with you NIGA's views on S. 1529, the Amendments to the Indian Gaming Regulatory Act.

BACKGROUND

It's been a little more than 15 years since Congress enacted IGRA. As you know – contrary to some popular belief – Congress did not establish Indian gaming by enacting IGRA. Instead, Indian gaming is a tool that tribal governments have used to generate governmental revenue for more than 30 years now.

When Congress was considering IGRA in 1988, Indian tribes expressed concern over the provisions requiring tribal governments to negotiate compacts with States prior to engaging in Class III gaming. Yet, the States and others advocated for the inclusion of the compact requirement. A number of Senators and Congressman expressed concern over this situation. Senator McCain, for example, explained:

> As the debate unfolded, it became clear that the interests of the states and of the gaming industry extended far beyond their expressed concern about organized crime. Their true interest was protection of their own games from a new source of competition. Never mind the fact that tribes have used gaming revenues and S. 1303 would have restricted their use, to support tribal governmental functions as well as addressing the health, education, social and economic needs of their members. Never mind the fact that in 15 years of gaming activity on Indian reservations there has never been one clearly proven case of organized criminal activity. In spite of these and other reasons, the States and gaming industry have always come to the table with the position that what is theirs is theirs and what the Tribes have is negotiable.

S. Rep. No. 446, 100th Cong., 2nd Sess. (1988) (Additional Views of Senator McCain). Senator Evans also expressed concerns about the IGRA. He said, "I am troubled by the potential implications S. 555 may have for the fundamental legal relationship between the United States and the several Indian tribes on the established principles of Federal Indian law which guide that relationship." Id. (Additional Views of Senator Evans). Many tribal leaders were concerned about the Tribal-State compact requirement and the possibility that the States would give far more weight to state interests, including economic interests, than to accommodating tribal government interests in ensuing

negotiations.[1] Yet, Congress made the difficult determination that "the compact process is a viable mechanism for setting various matters between two equal sovereigns." S. Rep. No. 446, 100th Cong., 2nd Sess., at 13. Thus, the Tribal-State compact process is the centerpiece for the regulation of Class III Indian gaming. To ensure that States negotiated fairly with Indian tribes, IGRA authorized an Indian tribe to sue a State that refused to negotiate or failed to negotiate a Tribal-State compact in good faith with the tribe. 25 U.S.C. §2710(d). In regard to the compacting process, Senator McCain stated:

> I would like to serve notice that I, Senator Inouye, Senator Evans, and other members of the Senate Select Committee on Indian Affairs will be watching very carefully what happens in Indian Country. If the states take advantage of this relationship, the so-called compacts, then I would be one of the first to appear before my colleagues and work to repeal this legislation because we must ensure that the Indians are given a level playing field that are the same as the states in which they reside and will not be prevented from doing so because of the self-interest of the states....

134 Cong. Rec. S12643-01 (Sept. 15, 1988) (statement of Sen. McCain). The concerns of Senator McCain and the Committee regarding the Tribal-State compact process have proved to be prophetic.

While many Indian tribes have successfully navigated the often difficult Tribal-State compact process; after 15 years under IGRA, a number of Tribes remain without a class III gaming compact. This problem has been made worse by the Supreme Court's decision in Seminole Tribe v. Florida, 116 S. Ct. 1114 (1996), which permitted States to raise an Eleventh Amendment sovereign immunity defense to tribal litigation to test "good faith" negotiations under IGRA. Accordingly, in any major legislation to amend IGRA, NIGA has continued to request that Congress include provisions to restore the imbalance in compact negotiations resulting the Seminole decision. We are also concerned that in the absence of a provision to address the Seminole case, some States are making unreasonable demands upon Indian Tribes for "revenue sharing" that amount to direct taxation.

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[1] For example, South Dakota tribes called upon Sen. Daschle to vote against final passage of the bill because they considered the Tribal-State compact process to be a derogation of tribal sovereignty. Senator Daschle, in response to these concerns stated the following:

> As a member of the Select Committee on Indian Affairs and as an original co-sponsor of S. 555, I regretfully object to the final version of this bill.... Indian tribes from South Dakota whom I represent have informed me that this bill is unacceptable. The tribes strongly object to any form of direct or indirect State jurisdiction over tribal matters. They believe the provisions calling for a tribal-state compact are in derogation of the status of Indian tribes as domestic sovereign nations.

134 Cong. Rec. S24030 (Sept. 15, 1988). In addition, two notable tribal leaders, Roger Jourdain and Wendell Chino, sued the Federal government arguing that the IGRA violated the United States' trust responsibility to Indian tribes and the Constitution. See Red Lake Band of Chippewa Indians v. Swimmer, 740 F. Supp. 9 (D.D.C. 1990).

The National Indian Gaming Association and our Member Tribes appreciate the hard work of the Senate Indian Affairs Committee in protecting Indian sovereignty and tribal self-government over the years, including the Committee's commitment to ensure that any legislation concerning Indian gaming preserves Indian sovereignty and tribal government rights. And, for those who know Indian country, it is clear that the experience of Indian tribes both before and after the enactment of IGRA have been, for the most part, progressive and beneficial. Senator Inouye had keen foresight in 1988, when he said:

> For various reasons, not all tribes can engaged in profitable gaming operations. While I personally believe other economic development opportunities are sorely need on the Nation's Indian reservations, for those tribes that are in the gaming business, the income often means the difference between an adequate governmental program and a bare bones program which is totally dependent on Federal dollars.

133 Cong. Record 3736 (Feb. 19, 1987). I have attached an appendix analyzing the economic impacts of Indian gaming in 2003, which shows that where tribal governments are able to use Indian gaming to generate governmental revenue, Indian gaming revenue is truly working to rebuild Native American communities and strengthen tribal governments. At the same time, Tribes are aiding nearby Indian and non-Indian communities with increased employment, economic development opportunities, and increased indirect tax revenues.

Indian Tribes use gaming in the same manner that State governments use lotteries – to rebuild community and government infrastructure and provide essential services for their citizens. In rebuilding their economies, tribal communities were placed at a significant disadvantage, and tribal governmental gaming revenues today are especially tasked to make up for hundreds of years of community neglect.

This Committee is particularly aware of the past federal policies of Removal, Allotment, Assimilation, and Termination, and their resulting effects on Tribes and their people. These policies cost tribal communities millions of lives, hundreds of millions of acres of tribal homelands, caused significant cultural damage, and devastated many tribal economies. These results continued to worsen through the 1960's, when Indian communities faced the highest national rates of poverty, crime, poor health care access, dropouts, and countless other social and economic problems.

At this time (the 1960's), the Federal policy on Indian affairs changed from Termination of the Federal-Tribal relationship to support for Tribal self-determination and economic self-sufficiency. The federal government began to make available to tribal governments a number of the programs that were used to help state and local governments. These programs provide many Tribes with the ability to rebuild their communities, and provide new economic opportunities throughout Indian country.

In addition, Tribes began to look for a steady stream of tribal governmental revenue.[2] After learning from the model that State governments were using through lottery systems, many Tribes looked to gaming as the answer for their budgetary concerns. Today, approximately 65% of the federally recognized Indian Tribes in the lower 48 states have chosen to use gaming to aid their communities.

In just 30 years, Indian gaming has helped many Tribes begin to rebuild communities that were all but forgotten. Because of Indian gaming, our Tribal governments are stronger, our people are healthier and our economies are beginning to grow. Indian country still has a long way to go. Too many of our people continue to live with disease and poverty. But Indian gaming has proven to be the best available tool for Tribal economic development.[3] For the sake of our ancestors, our children and the generations to come, we must make certain this progress continues. For all of these reasons, many Tribes approach attempts to amend the Indian Gaming Regulatory Act with great caution.

S. 1529 – POSITIVE CLARIFICATIONS

NIGA appreciates the Senate Indian Affairs Committee's efforts through S. 1529, which would clarify several important issues.

JOHNSON ACT CLARIFICATION

First, NIGA supports the provision in section 2(a), which would reaffirm that the Johnson Act does not bar the use of technologic aids to class II gaming. Just 3 weeks ago, the U.S. Supreme Court brought stability to this area of law by rejecting the Department of Justice's request to review two Appellate Court opinions,[4] which both found that the Johnson Act does not apply to IGRA class II technologic aids. We believe that the Supreme Court's action together with the National Indian Gaming Commission's revised definition regulations, 67 Fed. Reg. 41166-74 (June 17, 2002), have provided a clear statement of the law in this area, and section 2(a) would be helpful in providing legislative affirmation of these decisions.

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[2] The sovereign attributes of Tribal governments are similar to those of State governments. However, Tribal governments have a limited tax base, because the federal government holds title over most Indian lands "in trust" for the Tribe. As a result, tribal governments cannot raise revenue through real estate taxes in the same manner as state governments. In addition, tribal communities with unemployment rates sometimes higher than 60% can not generate enough in income taxes to justify the levy. As economies develop on reservations throughout the nation, a number of Tribes today are, however, turning to taxation (income, sales, and other) as an additional form of governmental revenue.

[3] The U.S. National Gambling Impact Study Commission (NGISC) found that "There was no evidence presented to the Commission suggesting any viable approach to economic development across the broad spectrum of Indian country, in the absence of gambling." NGISC Final Report, Chapter 6 Native American Tribal Gambling, Page 6-6 (1999).

[4] United States v. Santee Sioux Tribe of NE, 324 F.3d 607 (8th Cir. 2003), cert. denied, 2004 WL 368474 (Order No. 03-762, Mar. 1, 2004); Seneca-Cayuga Tribe of OK v. NIGC, 327 F.3d 1019 (10th Cir. 2003), cert. denied, Ashcroft v. Seneca-Cayuga Tribe of OK, 2004 WL 368118 (Order No. 03-740, Mar. 1, 2004).

NATIONAL INDIAN GAMING COMMISSION ACCOUNTABILITY

NIGA also supports the provision in Section 2(d), which proposes to amend IGRA at 25 U.S.C. § 2706 by adding a new paragraph (c) that will require the National Indian Gaming Commission (NIGC or Commission) to be more accountable to tribal governments and to Congress by requiring the Commission to adopt a 5 year "Strategic Plan". We also support the new proposed section 20 of S. 1529, which would require the Commission to "involve and consult with Indian tribes" before making final determinations that affect tribal governmental interests.

NIGA is concerned, however, that the NIGC may stray beyond its existing statutory mandate in developing its strategic plan. For that reason, we hope that you will consider requiring the NIGC to develop its Plan in accord with the limited powers conferred to it pursuant to the Indian Gaming Regulatory Act. This will ensure that the Commission's Strategic Plan doesn't result in bureaucratic "mission creep" beyond the authority Congress envisioned when enacting IGRA. Thus, NIGA asks that you consider amending proposed subsection (c)(2) by adding a new subparagraph (G) as follows:

> "(G) The strategic plan shall be developed in accord with the limited powers listed in the Indian Gaming Regulatory Act."

With the exception of the current Commission, the NIGC has not provided tribal governments or Congress with a budget of how they planned to spend fees collected from tribal governments – or an accounting of how those fees were spent. In addition, past Commissions lost focus of their primary mission of providing technical assistance to tribal regulators and background oversight of class II gaming, and instead sought to regulate environmental, public health and safety matters, which duplicated existing efforts by the EPA, HHS, CDC, and FEMA. As a result, we hope that you will consider adding the above requested language to S. 1529, which would ensure that the current and future NIGC will abide by its mission of regulating Indian gaming in accord with Congress' intent.

REVENUE SHARING PROVISION

S. 1529 proposes to amend IGRA at 25 U.S.C. § 2710(d)(4) to make certain clarifications regarding revenue sharing agreements in tribal-state compacts. NIGA supports this concept.

Last summer, the Committee held a hearing on this issue, and it was made clear that a number of state governments have attempted to shift the responsibility of their budget crises onto the shoulders of tribal governments. The additional burdens of homeland security, the economic downturn nationwide, the loss of jobs, and very poor financial planning are all reasons for state budget shortfalls. Tribal governments did not create these state budget problems, and they should not be looked to as a way out.

Shifting the responsibility to cover state budget shortfalls to Indian Tribes is not a reasonable alternative for several additional reasons: (1) it would improperly burden the only activity that is producing American jobs and generating economic development in many regions of the Nation; (2) it ignores the significant benefits that Indian gaming operations currently provide to state and local communities; and (3) most of these proposals violate federal law and ignore the status of Indian Tribes as governments – not corporations subject to state regulation or taxation.

Before even considering placing such a great burden on only the successful means of job creation and economic development in a state, state officials must first look at what Indian gaming is already doing for state and local economies. Once this evaluation is completed, most Governors will realize that Indian Tribes are already doing much for tribal communities, and for state and local communities.

Of the approximately 500,000 American jobs created by Indian gaming, about three-fourths are held by non-Indians. Indian gaming helps state and local communities recover lost jobs where companies are forced to leave, reduce state welfare and unemployment payments, and provide hundreds of thousands of families with well-paying careers with substantial benefit packages.

Indian gaming also creates substantial revenue streams for state and local units of government. In 2003 alone, Indian gaming will generate approximately $7.6 billion in added revenue to federal, state, and local governments. See Appendix. Despite the fact that Indian Tribes are governments, not subject to taxation, individual Indians pay taxes. People who work at casinos, those who do business with casinos, and those who get paid by casinos pay taxes. As employers, Tribes also pay employment taxes to fund social security and participate as governments in the federal unemployment system. At the State level, Indian gaming generates revenue through payroll and income taxes, and vendors and consumers pay sales and excise taxes on goods and services procured off-reservation to supply tribal operations. State governments must first take a hard economic look at these substantial benefits, and realize that many of them will be lost if they move forward with these misguided proposals.

In addition to not making good financial sense, most of these proposals would violate federal law. Indian Tribes conduct gaming for the same purpose that state governments operate lottery programs: to generate revenue to fund infrastructure and essential government programs. Congress enacted the Indian Gaming Regulatory Act to promote tribal economies, and strengthen tribal governments. As a result, IGRA requires that Indian gaming revenues be used first and foremost to address the financial and social problems in Indian country.

Despite recent gains due to gaming revenues, many tribal communities are just beginning to address the results of past federal policies by rebuilding their infrastructure. Because of gaming, many Tribes are finally able to implement viable programs to address severe social and health-related problems. Until these needs are fully addressed, federal law

prohibits the use of gaming revenues for any other purpose. S. 1529 makes this point perfectly clear.

The first principle that should govern any compact negotiation is the recognition that Indian Tribes are governments. The U.S. Constitution, treaties, hundreds of Supreme Court decisions and federal laws all acknowledge the status of Indian Tribes as governments. Through IGRA, Congress again acknowledged that Tribes are governments, and made crystal clear that the Act did not permit a State to impose a tax upon an Indian tribe, and that no State may refuse to enter into compact negotiations based upon the lack of authority to impose such a tax. S. 1529 again makes this point clear.

I understand that an amended version of S. 1529 includes a savings clause to protect the effect of existing tribal-state compacts, and that the provision limiting the use of gaming revenues received by non-gaming Tribes has been amended. NIGA supports this provision, and hopes to work with the Committee to ensure that this concept is enacted.

VALIDITY OF TRIBAL-STATE COMPACTS

As discussed above, some State Governors are attempting to fix their budget shortfalls through the IGRA tribal-state compacting process. The provisions in S. 1529 adequately address the concerns of Tribes without compacts – or Tribes that are re-negotiating compacts that have expired. However, we ask that you consider another scenario. In some cases, States that have already reached compacts with Tribes are threatening to renege on or negate those compacts by amending State law to prohibit all forms of gaming in the State. These proposed changes to State law are not guided by public policy concerns against gambling in general, or even Indian gaming in particular, they instead seek only to force Tribal governments to agree to forgo compacts already in place, and force negotiations of new compacts that will seek only to drain Indian communities of precious revenue.

For this reason, we ask that you consider adding an additional amendment to section 11 of the Indian Gaming Regulatory Act (25 U.S.C. §2710) in the following manner:

> "(E). Gaming conducted pursuant to, and during the term of, a Tribal-State compact approved under this paragraph shall be lawful notwithstanding any change in State law subsequent to the approval."

S. 1529 – NIGA CONCERNS

Despite our strong support for these important clarifications, NIGA hopes to continue to work with the Committee on S. 1529 to address 3 concerns: (1) the provisions authorizing the NIGC to regulate class III gaming; (2) the provisions authorizing the NIGC to conduct additional background investigations of tribal gaming commission

personnel; and (3) the lack of a provision to correct the Supreme Court's error in Seminole Tribe v. Florida, 116 S. Ct. 1114 (1996).

NIGC CLASS III AUTHORIZATION

First, NIGA is concerned with Section 2(d)(1), proposed new section 19 (Minimum Standards), and other provisions of S. 1529 that authorize the NIGC to regulate class III gaming. This authorization will unduly burden the already troublesome tribal-state compacting process, will create conflict with tribal-state compacts, and only serve to create confusion and duplication of effort in a regulatory system that is working well.

The Conference of Western Attorneys General has called the NIGC class III authorization "unwarranted and unworkable".[5] This may be the only time that a Native American organization has positively quoted CWAG in congressional testimony, but in this one case we have to agree.

Congress fully deliberated the regulatory roles of Tribes, States, and the federal government before enacting the IGRA. The Department of Justice testified in favor of no federal role in regulating class III gaming, and agreed that Tribes and States should work out regulatory concerns through the tribal-state compact negotiations. In addition, this Committee's Report on S. 555 stated in the "Purpose" that the NIGC "will have a regulatory role for class II gaming and an oversight role with respect to class III gaming." S. Rep. No. 446, 100th Cong., 2nd Sess. 1 (1988).[6]

As Congress and DOJ expected, Tribal-State compacts are very thorough regarding the regulation of class III Indian gaming operations, and repeated federal investigations and reports provide strong evidence that the regulatory scheme is working well. The NIGC itself noted in its preamble to the 2002 revisions to the MICS regulations that Indian gaming regulation is effective:

> Internal controls are the primary procedures used to protect the integrity of casino funds and games, and are a vitally important part of properly regulating gaming. Inherent in gaming operations are problems of customer and employee access to cash.... Internal control standards are therefore commonplace in the industry and the Commission recognizes that many Tribes has sophisticated internal control standards in place prior to the Commission's original promulgation of the MICS.

67 Fed. Reg. 43391 (June 27, 2002).

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[5] Letter from Conference of Western Attorneys General to Members of the Senate Committee on Indian Affairs, at 5-6 (Jan. 16, 2004).

[6] On the Senate floor during debate on S. 555, Committee Chairman Inouye, managing the bill stated that "class II games are regulated by tribal governments with the oversight of the National Indian Gaming Commission, a federal agency. Class III games are to be regulated jointly by State and tribal governments pursuant to a tribal-state compact." 139 Cong. Rec. S6797-01, 1993 WL 184341 (Cong. Rec.).

In total, Indian Tribes invest over $262 million dollars annually for the regulation of Indian gaming. That includes over $203 million for tribal self-regulation, over $50 million to reimburse state regulatory agencies for their role in Indian gaming regulation, and $9 million to fund the Nation Indian Gaming Commission.

Against this backdrop of comprehensive regulation, the FBI and the United States Justice Department have testified repeatedly that this regulatory scheme is working well to prevent the infiltration of crime and protect the integrity of the games played at tribal operations. In fact, the last time the Chief of DOJ's Organized Crime division testified before this Committee he stated that "Indian gaming has proven to be a useful economic development tool for a number of tribes who have utilized gaming revenues to support a variety of essential services."

S. 1529 would alter the current regulatory regime governing Indian gaming by amending IGRA to permit the NIGC to apply its Minimum Internal Control Standards (MICS) to class III gaming. Many Indian Tribes have questioned whether it is appropriate for NIGC to issue the MICS as a mandatory rule, especially with regard to Class III gaming. As stated above, IGRA contemplates that Tribal-State compacts will provide the ground rules for regulation for class III gaming on a Tribe-by-Tribe and State-by-State basis. Chief Phillip Martin of the Mississippi Band of Choctaw Indians wrote this Committee in opposition to this provision, stating that "This is no minor change. It changes the entire framework of the regulation of Indian gaming...."

For all of these reasons, I hope that you will consider deleting these provisions – or amending them to authorize the NIGC to issue guidelines (as opposed to mandatory regulations) for Tribal and State governments to consider in the compacting process.

NIGC LICENSING AUTHORITY

Second, NIGA objects to section 2(f)(1), which would require Federal background checks for tribal government gaming commissioners. The selection of tribal government officials must be left to the authority of tribal governments. Unlike management and other key gaming personnel, tribal gaming commissioners act through authority delegated to them from the Tribal executive branches – usually the Tribal Chairman or the Tribal Council. Many times, these are elected positions of tribal government. The NIGC should not be permitted to infringe on tribal governmental authority in this manner, and we ask that you consider deleting this provision from the bill.

LACK OF A SEMINOLE FIX

For the past eight years, NIGA, NCAI and Tribal governments throughout the Nation have held the position that any amendment to the Indian Gaming Regulatory Act should first and foremost include a provision to restore balance to the tribal-state compacting process destroyed by the Supreme Court in Seminole Tribe v. Florida, 116 S. Ct. 1114 (1996). In fact, when I spoke before this Committee back in 1997 as First Vice President of the National Congress of American Indians to comment on S. 1077, which also sought

to amend IGRA, I asked the Committee to include a provision to address the Seminole case. These resolutions stand firm today, and I must again ask that the Committee consider adding a provision to S. 1529 to address this long-standing wrong.

In Seminole, the Supreme Court explained that through IGRA, Congress granted the States an opportunity to work with tribal governments on regulating class III gaming. This is an opportunity generally withheld from States under the U.S. Constitution, which acknowledges an exclusive relationship between Indian tribes and the federal government. Seminole, 116 S. Ct. at 1126.[7] Congress, through IGRA, also placed upon States a concomitant obligation to negotiate tribal-state compacts in good faith. If States failed to negotiate in good faith, IGRA provides that Tribes may bring suit against States to enforce the State obligation. The Seminole Court held that Congress could not waive the States' 11th Amendment immunity to permit Indian Tribes to bring suit against states to enforce the good faith negotiation clause in IGRA. This case has left Indian Tribes with a right expect states to negotiate class III gaming compacts in good faith, but with no remedy to enforce such right.

In 1999, the Interior Department promulgated regulations for alternative procedures to class III gaming in lieu of a compact where States fail to negotiate in good faith, where they raise sovereign immunity as a defense, and where a number of other factors are met. See 25 C.F.R. Part 291. While these procedures have worked in some instances, it is safe to say that they are not being fully or evenly enforced in every instance.

Because of the Seminole case and the lack of effective enforcement of the Secretary's alternative procedures, a number of States are using the case to impose unreasonable demands on tribal governments through the compacting process. As a result, we hope that the Committee will consider adding a provision to S. 1529 that will legislatively affirm these regulations.

CONCLUSION

In closing, I again thank you for your dedication to the interests of tribal governments and protection of Indian sovereignty, including the inherent authority of Tribes to engage in gaming to generate governmental revenue. NIGA appreciates the hard work that you and your staff have done with regard to S. 1529, and we hope to continue working with you on this important legislation. Mr. Chairman and Members of the Committee this concludes my remarks. Once again thank you for providing me this opportunity to testify.

[7] The Seminole Court stated, "[T]he Indian Commerce Clause accomplishes a greater transfer of power from the States to the Federal Government than does the Interstate Commerce Clause. This is clear enough from the fact that the States still exercise some authority over interstate trade but have been divested of virtually all authority over Indian commerce and Indian tribes."

TRIBAL GOVERNMENT GAMING

THE NATIVE AMERICAN SUCCESS STORY

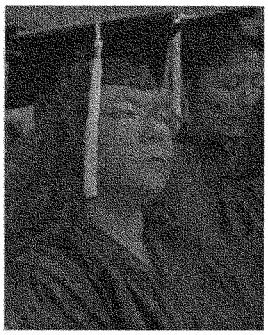
An Analysis of the Economic Impact of Indian Gaming in 2003

The purpose of the Indian Gaming Regulatory Act is to promote Tribal economic development, Tribal self-sufficiency, and strong Tribal government.

Appendix to the Testimony of Ernest L. Stevens, Jr., Chairman, National Indian Gaming Association, before the Senate Committee on Indian Affairs, March 24, 2004

Executive Summary

- Tribal government gaming in 2003 generated total revenues of approximately $15.9 billion.
- Tribal government hospitality, restaurant and entertainment enterprises related to the gaming industry in 2003 generated an additional $1.8 billion in total revenue.
- Tribal gaming and ancillary businesses have directly and indirectly created almost 500,000 jobs.
- Tribal government gaming and ancillary businesses in 2003 generated $4.7 billion in Federal taxes (including employer and employee Social Security taxes, personal income taxes, corporate income taxes and excise taxes). Jobs created by Indian gaming in 2003 reduced Federal government unemployment benefits and welfare payments by $1.2 billion.
- Tribal government gaming and ancillary businesses in 2003 generated $1.6 billion in state government revenue (including state income, sales and excise taxes generated by wages, vendor payments and purchases by Tribal gaming operations and related businesses, taxes on ancillary economic activity generated by gaming, and revenue sharing). Indian gaming also generated more than $100 million for local governments as a result of local taxes and government service agreements.
- In accord with the Indian Gaming Regulatory Act, Indian Tribes use government revenue generated by Indian gaming to build basic community infrastructure, such as schools, hospitals, roads and water and sewer systems. Tribal government gaming revenue is also used to fund essential government services, such as police and fire protection, education, health care, housing, child and elder care, cultural preservation and general welfare.



Introduction

For generations this nation's First Americans have lived in poverty and despair, many on small, predominantly rural Federal trust lands, victims of a tortured, genocidal history and a failed system of Federal paternalism.

Tribal government gaming on Indian lands is dramatically changing life for many of the more than 4.1 million American Indians in the United States. It has proven to be the first and most effective tool for economic development on sovereign, Tribal trust lands.

Gaming generates a few billion dollars in much needed Tribal government revenue annually to provide essential government services to hundreds of thousands of Native Americans. It is helping Indian nations build strong and diversified economies. Gaming is creating hundreds of thousands of jobs for reservation Indians and neighboring non-Indians. Gaming has enabled many Tribes to become an economic engine, contributing to the prosperity of those on and off the reservation, generating Federal, state and local taxes, employment and economic development in nearby cities and counties.

Gaming has given Tribal leaders the opportunity to acquire the knowledge, skills and self-confidence needed to build strong Tribal governments and, for the first time in generations, provide for the health, education and welfare of their people. It has restored to American Indians a sense of pride and self-respect. It is helping Indians recapture their past, preserve their culture and ensure their future.

"Indian gaming has enabled Tribes to begin the long march back from poverty and hopelessness to prosperity and a better future," said Mark Macarro, chairman of the Pechanga Band of Luiseño Indians in Temecula, Ca.

There are challenges ahead. For many American Indians, poverty, disease and addiction remain a way of life. But by any measure, Indian gaming is a Native American success story.

Indian gaming has provided a better life for many Indian people. Finally, we as Native Americans are beginning to catch up to the "American dream," says Ernest L. Stevens, Jr., Chairman of the National Indian Gaming Association.

A Story of Survival

American Indians are the indigenous peoples of the United States, endowed with inherent rights of sovereignty and self-governance. The United States acknowledges the sovereign status of Indian Tribes in both the Treaty Clause and the Commerce Clause of the Constitution. Pursuant to the constitutional plan, the United States entered into more than 300 Indian treaties that guarantee Tribal rights of self-government. The first Indian treaty, entered into in 1787 with the Delaware Nation, created a vitally important military alliance during the Revolutionary War. The government-to-government relationship between the Federal and Tribal governments is the cornerstone of Federal Indian Policy today. For example, Presidential Executive Order 13175 (2000) states: "Our Nation . . . recognized the right of Indian Tribes to self-government. As domestic dependent nations, Indian Tribes exercise inherent sovereign powers over their members and territory."

Genocidal government policies in the 1800s devastated Indian Tribes. The Indian population in the United States plunged from as high as 15 million before Columbus to only 250,000 by the end of the Indian wars at the close of the 19th Century. Despite U.S. treaty pledges to protect Indian reservations, from 1886 to 1934 Indian Tribes lost more than 90 million acres of land. By the beginning of the 20th Century, Indian Tribes held only 48 million acres in the lower 48 states, much of it unproductive desert or arid land. During the 19th Century, the United States destroyed traditional Indian economies through war, removal, reservation policies, land theft and destruction of native species. General William Tecumseh Sherman ordered the U.S. Army to issue free bullets to white hunters to kill the buffalo herds because destroying the Native American food supply made it easier for the United States to confine Indian Tribes to smaller and smaller reservations. Biographer John F. Marszalek reports, General Sherman "expressed his deep disappointment over the fact that, were it not for 'civilian interference,' his army would have 'gotten rid of them all' and killed every last Indian in the U.S." [2]

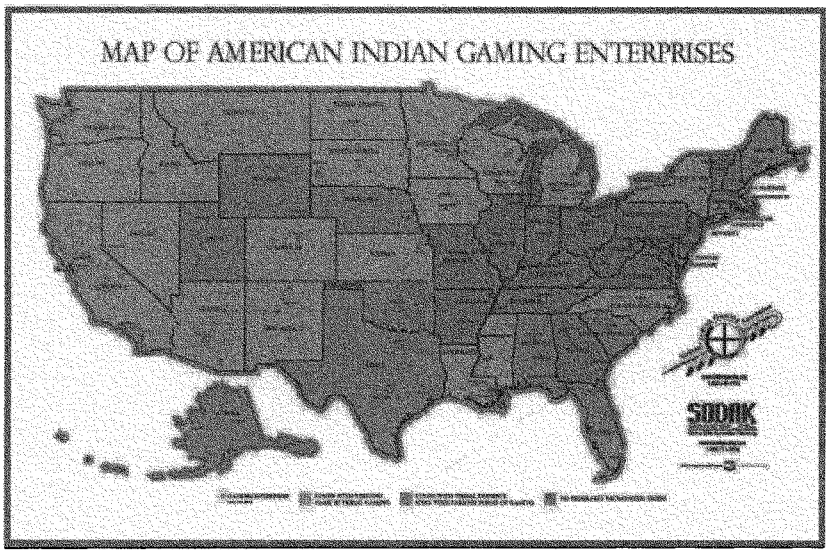
Indian Tribes in California were removed from lush agricultural lands to rocky outcroppings at the edge of the mountains or desert. As the Supreme Court noted in the California v. Cabazon, 480 U.S. 202, 220 (1987), California Indians were left with reservations that "contain no natural resources which can be exploited." Throughout most of the 20th Century, Indian Tribes across the United States suffered from poverty, unemployment, disease and life expectancies much shorter than the national average.

With little or no economy or tax base, Indian Tribes in the late 1960s and early 1970s turned to Indian gaming to generate government revenue. The Supreme Court in California v. Cabazon ruled that Indian gaming was crucial to Tribal self-determination and self-governance because it provided Indian Tribes with the means to generate government revenue needed to fund essential services and provide employment for Tribal members. Following the Cabazon decision, Congress in 1988 enacted the Indian Gaming Regulatory Act, 25 U.S.C. secs. 2701 et seq., affirming Tribal government authority to use Indian gaming "to promote Tribal economic development, Tribal self-sufficiency and strong Tribal government."

"The vast, primeval forests that once blanketed the eastern United States were once home to millions of Indians. But starting in the 17th century, shiploads of European settlers arrived in superior numbers, bearing superior weapons. By 1830, war, genocide, and pestilence (diseases such as smallpox and measles to which the Indians had no immunity) had conspired to kill most Eastern Indians.

U.S. News & World Report,
Exiles in their own land (2004)

There are 4.1 million American Indians in the United States, about 1.5 percent of the nation's population.[3] There are 567 Federally recognized Indian Tribes in the United States, including 226 Alaska Native villages and 341 Indian Tribes in the lower 48 states.[4] Two hundred twenty Tribes in 28 States operate 377 Indian gaming facilities for the purpose of generating Tribal government revenue. Only three of the 220 Tribes are Alaska Native villages.[5] Roughly 65 percent of Indian Tribes in the lower 48 states use Indian gaming to generate governmental revenue. As a comparison, 78 percent of the 50 states and the District of Columbia use state lotteries to generate government revenue.



Tribal government gaming has created almost 500,000 jobs[6] nationwide. Indian gaming in 2003 and generated $15.9 billion[7] in gross Tribal government revenues. Net government revenues from these Tribal gaming operations are being used to build schools, hospitals, police and fire stations, housing, roads, water, sewer and sanitation facilities. Tribal government gaming revenues are also being used to fund essential services, provide child and elder care and preserve Indian languages, cultures and traditions. About 65 percent of the Indian Tribes in the lower 48 states are using gaming to help overcome the devastating legacy of the 18th and 19th centuries.

Indian Gaming Public Support and Visitation

About 80 percent of the American public agrees that "Indian gaming provides jobs for Indians" and "Indian gaming provides revenues that Tribes can use to provide essential services to their members."[8] Twenty-one states have entered into Tribal-state compacts for Class III, casino-style gaming. Indian Tribes in seven other states operate Class II, bingo-style gaming. Indian Tribes in two states operate gaming pursuant to specific Tribal settlement acts. Voters in Arizona, California, Idaho and New Mexico have approved Indian gaming through initiatives and referendums.[9] More than 18 million Americans visited Indian gaming facilities in 28 states across the United States in 2002. On average, each patron made five or six visits to an Indian gaming facility for a total of more than 100 million visits nationwide.[10]

Indian Gaming Regulation

Tribal government gaming is tightly regulated with participation by Tribal, Federal and state government agencies. Tribal governments in 2003 spent at least $203 million to regulate their gaming operations. In addition, Tribal governments gave $50 million to states and $9 million to the National Indian Gaming Commission to assist with Federal oversight.[11] There are three classes of gaming on Indian lands. The role of Tribal, state and Federal governments vary with each form of wagering.

Class I gaming includes social games with prizes of minimal value. Class II gaming includes bingo, lotto or pull-tabs. Class III gaming refers to casino-style wagering and includes all forms of gaming that are not included in Class I or Class II gaming.

Governments Involved in Gaming Regulation

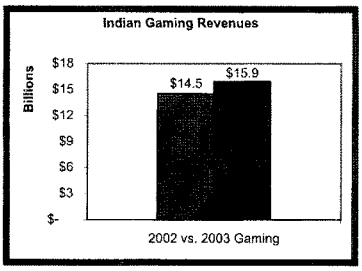
Gaming Class	Tribal	Federal	State
I	✓		
II	✓	✓	
III	✓	✓	✓

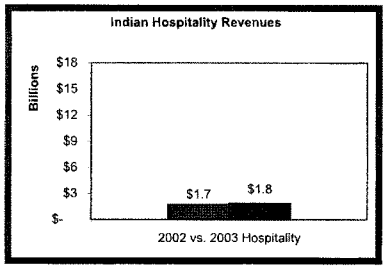
At the Federal level, the National Indian Gaming Commission provides oversight and reviews the licensing of gaming management and key employees, management contracts, and Tribal gaming ordinances. NIGC's minimum internal control standards for Indian gaming address audits, cash and credit procedures, surveillance, electronic data processing, gaming devices, bingo and pull tabs, card and table games, and pari-mutuel wagering. The U.S. Department of Treasury monitors large cash transactions at Indian gaming facilities, just as it does for Atlantic City. The FBI and the U.S. Justice Department have authority to prosecute anyone who would cheat, embezzle, or defraud an Indian gaming facility-that applies to management, employees, and patrons. 18 U.S.C. 1163

The comprehensive Tribal, State and Federal regulation of Indian gaming is effective. In a July 2001 review of Indian gaming by the Justice Department's Office of the Inspector General, the FBI reported that "none of their Indian country investigations of isolated allegations of organized crome have been substantiated." In testimony to the Senate Committee on Indian Affairs, Bruce G. Ohr, Chief of the Organized Crime and Racketeering Section of the Department of Justice stated: "Indian Tribal gaming has proven to be a useful economic development tool for a number of tribes, who utilize gaming income to support a variety of essential services."[12]

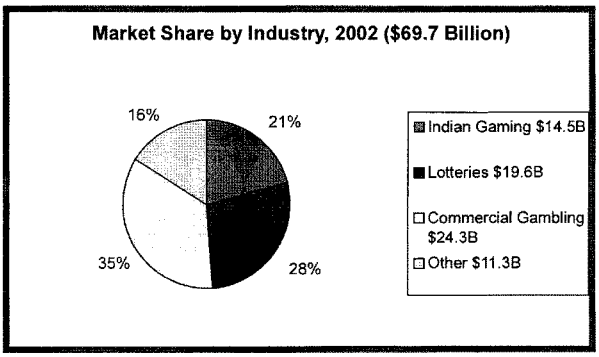
Indian Gaming Revenue

The 220 Indian Tribes engaged in gaming in 2003 generated $15.9 billion in gross revenues. The 220 Tribes operated 377 facilities. The facilities included both Class II and Class III gaming operations. We estimate that total Indian gaming revenues in 2003 increased 10 percent over 2002. Indian Tribes are increasingly expanding Tribal economies to include lodging, restaurants convention space and entertainment facilities. Hospitality, entertainment and ancillary businesses generated an additional $1.8 billion[13] in gross revenues in 2003. This represents a 5.9 percent increase over 2002.





In 2002, nationwide consumer spending on legal gambling in the United States was approximately $70 billion. State lotteries generated $19.5 billion, or 28 percent of the total. Commercial gaming generated $24.2 billion, or 35 percent. Tribal government gaming generated $14.5 billion, or 21 percent. Parimutuel wagering generated $11.3 billion, or 16 percent.[14]

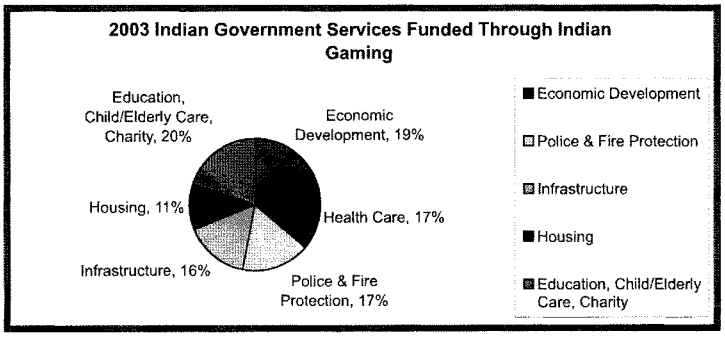


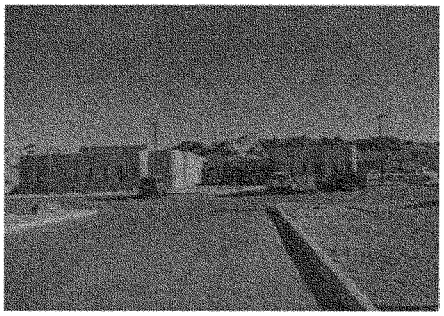
Source: Christian Capital Association; NIGA

Tribal Governmental Services, Infrastructure and Community Development

The Indian Gaming Regulatory Act provides that Indian Tribes shall use net revenue for five general purposes: (1) to fund Tribal government services, operations and programs; (2) to promote general welfare; (3) to promote Tribal economic development; (4) to make charitable donations; and (5) to help fund local government agencies.

The National Indian Gaming Association in 2003 conducted a survey of its member Tribes concerning the use of net governmental revenue generated by Indian gaming. Survey results revealed that Indian Tribes spend net government revenue as follows: 20 percent of net revenue is used for education, child and elder care, cultural preservation, charitable donations and other purposes; 19 percent goes to economic development; 17 percent to health care; 17 percent to police and fire protection; 16 percent to infrastructure; and 11 percent to housing.

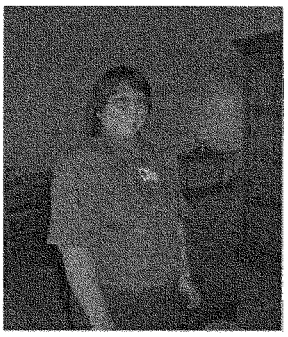




Indian Gaming Employment and Job Creation

Indian gaming creates three levels of employment. Primary employment is created at Indian gaming facilities, ancillary facilities and other Tribal government and enterprise positions. The second level of employment is created when employees spend their income on goods and services in the local community. The third level of employment is created when Indian gaming operations, ancillary facilities and Tribal governments buy goods and services in the economy and make capital improvements.

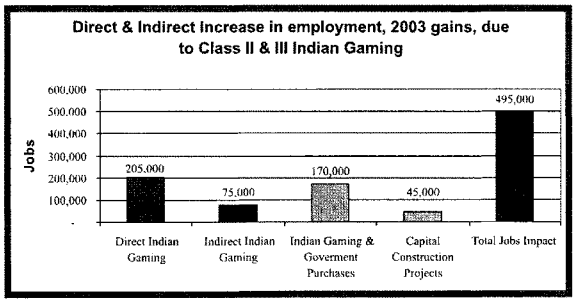
Indian Tribes in 2003 created more than 155,000 jobs in Indian gaming facilities. Industry benchmarks indicate that Indian Tribes create 25 percent to 28 percent more jobs through ancillary facilities, such as restaurants and hotels. In other words, nearly 40,000 more people were employed by Indian Tribes at restaurants, hotels and ancillary facilities. Other Tribal government programs and Tribal enterprises funded by Indian gaming employed more than 10,000 workers. Thus, primary employment created by Tribes through Indian gaming totaled close to 205,000 jobs nationwide.



Thanks to Indian Gaming revenues,, Faith Eagle has a job and is able to support herself for the first time.

As direct Tribal employees spent their wages, the secondary employment effect created almost an additional 75,000 jobs. Thus, the total of primary and secondary employment effects created 280,000 jobs.[15]

Third, as Indian gaming facilities, ancillary facilities and Tribal governments used the purchasing power derived from Indian gaming to buy goods and services, additional jobs were created. Assuming, that 75 percent of goods and services were purchased locally and 25 percent outside the region, the multiplier effect for both types of purchases created 170,000 more jobs. Capital construction projects created an additional 45,000 jobs.



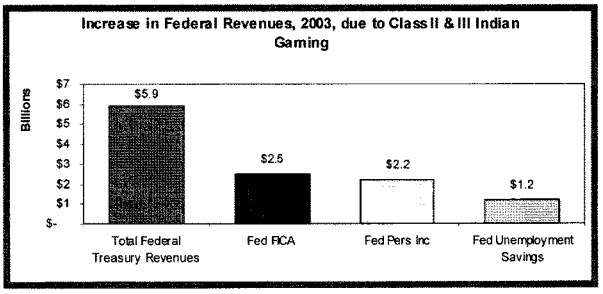
In total, Indian gaming created 495,000 jobs nationwide in 2003.[16]

Jobs created by Indian gaming have been vital to local and state economies. For example, New London, Connecticut, lost 12,000 jobs when Electric Boat closed down its ship building facilities. Fortunately, the Mashantucket Pequot Tribe opened its Foxwoods Casino in Mashantucket, Connecticut, shortly thereafter. Today, the Tribe has created 13,000 jobs at its casino and related facilities. In upstate New York, the Federal government closed down an Air Force base in Troy, New York with a loss of 2,500 jobs. At about the same time, the Oneida Nation of New York opened up its gaming facility and created an additional 3,000 jobs to 1,000 jobs already in place at other Tribal businesses. By the end of 2004 the Oneida Nation expects to add another 1,000 jobs. Many Indian Tribes are now the largest employers in their locale and Indian gaming facilities create a destination effect that often serves as a magnet for other business development, including neighboring restaurants and lodging.

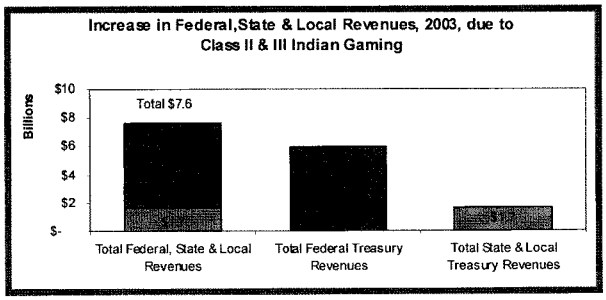
Increase in Federal, State, and Local Revenues

Federal, state, and local taxes claim roughly a third of revenue generated in the United States. Increases in economic activity expand the tax base and increase government revenue. Indian gaming generated a total of 495,000 jobs nationwide in 2003. The wages associated with these jobs generate Federal, state, and local payroll, income, and other taxes and help reduce welfare payments and unemployment benefits, freeing up more revenue for the Federal and state and local governments.

Wages paid to employees of Tribal governments and economic development enterprises amount to roughly $5 billion, with an additional $10 billion generated by the multiplier effects of Indian gaming. The $15 billion in wages generates about $2.2 billion in Federal income taxes and $2.5 billion in Social Security taxes. Thus, in 2003 Indian gaming increased Federal tax revenues by $4.7 billion. In addition, the Federal government also saved an additional $1.2 billion in reduced welfare payments and unemployment benefits. As a result, Federal treasury revenues increased almost $6 billion in 2003 due to the increased economic activity generated by Indian gaming.[17]



Indian gaming in 2003 also generated an additional $1.6 billion in revenue for state governments through state income, payroll, sales and other taxes and direct revenue sharing payments. Indian gaming generated an additional $100 million in local taxes and revenue through increased sales and other taxes and governmental services agreements.[18]



Economic Status of Indians

The 2000 Census reports that there are 4.1 million American Indians in the United States. Despite recent gains through Indian gaming, American Indians continue to face a disproportionately high poverty rate. The poverty rate is 24.7 percent for gaming Tribes and 33 percent for non-gaming Tribes, according to the 2000 Census.

On many reservations, the U.S. Department of Labor reports that unemployment continues at rates several times as high as the national average. In Montana, the average reservation unemployment rate is 11.3 percent, with the Crow and Rocky Boy's reservations unemployment rate rising to 21.8 percent. The United States average unemployment rate for 2003 was 6.0 percent.[19]

"Only a few years ago, Viejas Reservation unemployment was as high as 80 percent. Sixty percent of the housing was substandard. Today, as a result of revenues from [Indian gaming], there is no unemployment. The Band has built new homes, improved older residences...."

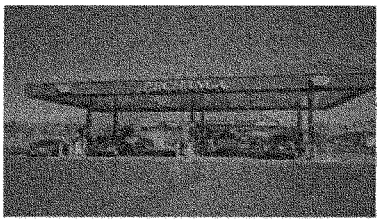
Kumeyaay Nation

Another success story is seen in one of California's poorest counties, Del Norte, which sits on the Oregon border. The Elk Valley Rancheria is leading the revival of Crescent City, where before Tribal investments began, a maximum-security prison led the way in economic development. Today, the Elk Valley Rancheria is the county's largest employer. Building upon that success, a bill is working its way through the state Legislature allowing the Tribe, city and county to form a partnership in the construction of a much needed $35 million wastewater treatment plant.

Thanks to the Tunica-Biloxi Tribe in Central Louisiana, the local community has grown from one of the poorest parishes in Louisiana to a thriving economy fueled by the addition of 1,600 Tribal government jobs. The Tribal casino offers numerous resources for Indians and non-Indians to advance their careers and their quality of life. In addition to opening five fast-food restaurants, the Tribe provides scholarships to Tribal members attending local high schools and state colleges.

The Atlanta Constitution Journal in April 2003 reported census data from 1990 and 2000 which shows that over the decade, gaming has helped alleviate poverty on Indian reservations.[20] Specifically, the article found that:

- "Per capita income rose by more than 50 percent on the casino reservations, but less than 17 percent on non-gambling reservations."
- "Unemployment rates dropped by 17 percent on the casino reservations, but less than nine percent on the non-gambling reservations."
- "Population increased 18 percent on the casino reservations during the 1990s, but remained unchanged on the non-gambling reservations."



Nevertheless, even on reservations with Indian gaming, per capita income continued to lag substantially behind the national average.

American Indian Reservation Census Trends

		Gaming Reservation	Non-Gaming Reservation	United States
Per Capita Income				
	1990	$9,779	$6,685	$15,687
	2000	$14,737	$7,781	$21,587
	% change	up50.7%	up 16.4%	up 37.6%
Median Household Income				
	1990	$25,098	$24,776	$31,435
	2000	$32,509	$26,783	$41,994
	% change	up 29.5%	up 8.1%	up 33.5%
Poverty Rate				
	1990	30.4%	40.2%	9.8%
	2000	24.7%	33.0%	12.4%
	% change	down 18.9%	down 17.9%	up 34.6%
Unemployment Rate				
	1990	13.6%	17.9%	6.0 %
	2000	11.5%	16.4%	4.0%
	% change	down 17%	down 8.1%	down 28.6%

Source: U.S. Census Bureau; Atlanta Journal-Constitution, Cherokees' casino hits the jackpot (April 2003)

Naturally, Indian gaming has been more successful for Indian Tribes closer to larger population centers. Yet even in rural states, Indian gaming has increased employment and per capita income. For example, the South Dakota Business Review reports: "The development of Indian casinos under the Indian Gaming Regulatory Act (1988) has led to development of eight Indian casinos in South Dakota and more are on the way. These casinos have had demonstrably positive effects on income and employment on their respective reservations. . . ."

Increases in per capita income and the reduction in poverty brought about by Indian gaming have increased the well-being of Tribal members. The New York Times reported that: "Climbing out of poverty significantly reduces the likelihood of childhood mental illness, says a new study that looked at the effects of a casino opening on Indian Tribal welfare." The study, which appears in the Journal of the American Medical Association, compared rates of poverty and mental health among Native American and other children living in rural North Carolina between 1993 and 2000. Before the opening of the casino on land belonging to the Eastern Band of Cherokee Indians, poor children in the Tribe were about twice as likely as wealthier children to suffer from emotional and behavioral disorders.[21] After gaming began, the impact of the new revenue on the Tribe's mental health was dramatic. Rates of rebellious and aggressive behavior diminished among children lifted out of poverty by the annual distribution of casino money.

RISE IN INCOME IMPROVES CHILDREN'S BEHAVIOR[22]

By ANAHAD O'CONNOR

Tuesday, October 21, 2003 - The notion that poverty and mental illness are intertwined is nothing new, as past research has demonstrated time and time again. But finding evidence that one begets the other has often proved difficult.

Now new research that coincided with the opening of an Indian casino may have come a step closer to identifying a link by suggesting that lifting children out of poverty can diminish some psychiatric symptoms, though others seem unaffected.

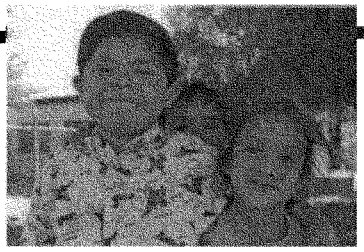
A study published in last week's issue of The Journal of the American Medical Association looked at children before and after their families rose above the poverty level. Rates of deviant and aggressive behaviors, the study noted, declined as incomes rose.

When the study began, 68 percent of the children were from families living below the Federally defined poverty line. On average, the poorer children exhibited more behaviors associated with psychiatric problems than those who did not live in poverty. But midway through the study, the opening of a local casino offered researchers a chance to analyze the effects of quick rises in income.

Just over 14 percent of the American Indian children rose above the poverty level when the casino started distributing a percentage of its profits to Tribal families. The payment, given to people over age 18 and put into a trust fund for those younger, has increased slightly each year, reaching about $6,000 per person by 2001.

When the researchers conducted their tests soon after, they noticed that the rate of psychiatric symptoms among the children who had risen from poverty was dropping. As time went on, the children were less inclined to stubbornness, temper tantrums, stealing, bullying and vandalism — all symptoms of conduct and oppositional defiant disorders.

After four years, the rate of such behaviors had dropped to the same levels found among children whose families had never been poor. Children whose families broke the poverty threshold had a 40 percent decrease in behavioral symptoms. But the payments had no effect on children whose families had been unable to rise from poverty or on the children whose families had not been poor to begin with. For complete story, please visit archives of **www.newyorktimes.com**

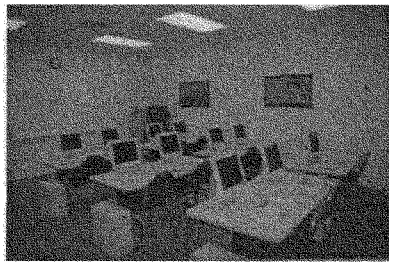


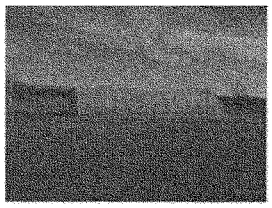
Tribal Economic Diversification

American Indians and Alaska Natives owned 197,300 of all 20.8 million U.S. non-farm businesses in 1997, employing 298,661 persons and generating $34.3 billion in business revenues. These firms accounted for 0.9 percent of the total non-farm businesses in the United States, 0.3 percent of their employment, and 0.2 percent of business receipts.

Small business development is particularly critical in building sustainable tribal economies, and with Indian gaming as a catalyst, American Indians are beginning to see substantial growth in small business development. Excluding C corporations, the number of American-Indian-and-Alaska-Native-owned firms jumped 83.7 percent, from 102,271 in 1992 to 187,921 in 1997. In contrast, the number of all non-corporate businesses nationwide increased only 6.8 percent, from 17,253,143 in 1992 to 18,431,456 in 1997. Revenue growth of American-Indian-and-Alaska-Native-owned firms also outpaced their U.S. counterparts. Sales and receipts grew from $8.1 billion to $22.4 billion, an increase of 178.5 percent. Nationwide business revenue rose only 40.2 percent, from $3.3 trillion in 1992 to $4.7 trillion in 1997.

We believe that this rapid growth in the number and revenue of American Indian and Alaska Native owned businesses is due, at least in part, to the positive economic effects generated by Tribal government gaming.

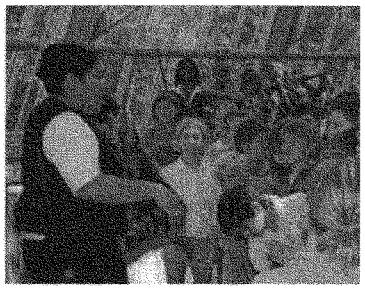




Good Neighbors

Indian governments in many states with gaming often help neighboring Tribes without casinos. In California, with 107 Indian tribes, Tribal governments have worked with the State to establish an Indian Gaming Revenue Sharing Trust Fund from which Indian tribes with no gaming or fewer than 350 slot machines are paid up to $1.1 million a year.[23] In 2003, more than 70 Tribes were receiving monies from the Fund. To date, the California Gambling Control Commission has approved the distribution of $100 million in license fees, payments, and interest income from the Fund covering 13 fiscal quarters from July 1, 2000, through September 30, 2003.

Several Arizona Tribes, including many that do not operate casinos, lease "Gaming Device Operating Rights" to other Tribes throughout the state.[24] The Arizona Department of Gaming in its Status of Tribal Gaming report said there were 11,779 slot machines operated by Indian tribes throughout the state including 2,407 slot machines, or about 20 percent that were leased from compacted non-gaming Tribes. An additional 368 slot machines have been leased from compacted non-gaming Tribes that have yet to be utilized. Once these slot machines are put into play the total number of slot machines leased from compacted non-gaming Tribes will be 2,775, about 23 percent of the total number. It's important to note that with the ability to lease their gaming devices, Tribes without gaming generate badly needed revenues to run their Tribal governments and programs based upon their partnership with neighboring Tribes engaged in gaming.



Since the first Thanksgiving, Indian tribes have had a tradition of sharing with those in need and that continues today. For example, the Morongo Band of Mission Indians gives generously to many national charitable groups including the Special Olympics, American Cancer Society, and Juvenile Diabetes Association. The Shakopee Sioux Tribe established a community recreation center open to all nearby residents, Indian and non-Indian, and the Tribe frequently assists both neighboring communities and neighboring Indian tribes with charitable donations. The Forest County Potawatomi Tribe funds the Milwaukee Indian School and aids the Red Cliff and Mole Lake Bands of Chippewa.

The National Indian Gaming Association is also working to establish the American Indian Business Network, where Indian Tribes engaged in gaming purchase goods and services from other Indian Tribes and many Indian tribes are already engaged in pan-Indian commerce. For example, the Mohegan Tribe's restaurant serves buffalo meat purchased from Great Plains Indian Tribes. The Oneida Nation of New York purchases coffee from Native American coffee growers and many Indian Tribes sell traditional arts and crafts in their gift shops. Thus, Indian gaming provides economic opportunities beyond the borders of those Tribes that engage in Tribal government gaming.

Continuing Challenges Facing Indian Tribes

Tribal government gaming is helping approximately 65 percent of Indian Tribes in the lower 48 states overcome the devastating legacy of the 18th and 19th centuries. For many Indian Tribes, gaming generates governmental revenue to help build schools, hospitals, roads, and water, sewer, and sanitation systems and fund essential governmental services. For other Indian Tribes, Indian gaming is mainly an opportunity to create jobs and boost Tribal member income through employment. Without question, Indian gaming is creating new economic opportunities in Indian country, where there were few before.

For decades, the Federal government tried with little success to spur economic growth on Indian reservations. Congress has stated:

> *It is hereby declared to be the policy of Congress to provide capital on a reimbursable basis to help develop and utilize Indian resources, both physical and human to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities.*[25]

Invariably, these Federal efforts met with little success because Federal funding did not follow the policy declarations.

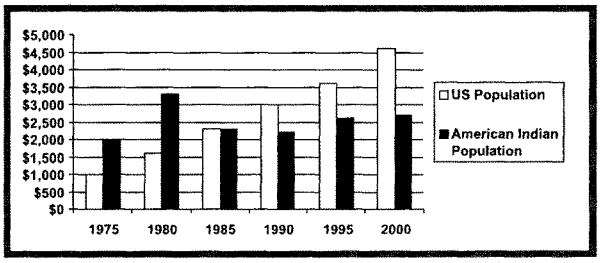
Measured on a per capita basis, Federal funding for American Indians has been decreasing since 1985. Recently, the U.S. Commission on Civil Rights reported that:

> *Small in numbers and relatively poor, Native Americans often have had a difficult time ensuring fair and equal treatment on their own. Unfortunately, relying on the good will of the nation to honor its obligations to Native Americans clearly has not resulted in desired outcomes. . . . [T]here persists a large deficit in funding Native American programs that needs to be paid to eliminate the backlog of unmet Native American needs, an essential predicate to raising their standard of living to that of other Americans. Native Americans living on Tribal lands do not have access to the same services and programs available to other Americans, even though the government has a binding trust obligation to provide them.*

"As was IGRA's intention, gambling revenues have proven to be a very important source of funding for many Tribal governments, providing much-needed improvements in the health, education, and welfare of Native Americans on reservations across the United States. Nevertheless, Indian gambling has not been a panacea for the many economic and social problems that Native Americans continue to face."

National Gambling Impact Study Commission Final Report

Per Capita Government Expenditures, U.S vs. American Indian Population, 1975-2000 ($ Thousands) Current Dollars



Source: U.S. Commission on Civil Rights, A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country (July 2003)

Thus, even as Tribal governments increase efforts to generate revenue through Indian gaming, Federal funding has declined.

In addition, Indian Tribes struggle to overcome many difficult social, health and community problems created by the United States' legacy of genocide and dispossession of American Indians. The following statistics were taken from government or non-governmental organization websites and help provide a snapshot of some of the ongoing problems that Indian Tribes are dealing with:

Health:[26]

- Infant mortality is 22 percent higher among American Indians than the national rate.
- Life expectancy among American Indians is more than five years lower than the national average.
- The rate of death from alcoholism 627 percent greater among American Indians than the national rate.
- The incidence of diabetes is 249 percent greater among American Indians than the national rate.
- The rate of death by suicide is 72 percent greater among American Indians than the national rate.

Housing: [27]

- In Tribal areas, 40 percent of homes are overcrowded compared to a national rate of 5.9 percent. More than 11 percent of homes in Tribal areas lack complete plumbing facilities compared with just over one percent nationwide. Eleven point seven percent of homes in Tribal areas lack complete plumbing facilities compared with 1.2 percent nationwide.

Education:[28]

- The high school drop out rate is 40 percent higher among American Indians than the national rate.
- Only 13.3 percent of American Indians have attained a bachelor's degree or higher compared with 24.4 percent of the general public.

Poverty and Unemployment:[29]

- The poverty rate among American Indians is 24.7 percent compared with the national poverty rate of 12.4 percent.
- Unemployment among American Indians is 11.5 percent compared with 6.0 percent nationwide.

Violent Crime Victimization: [30]

- American Indians are victimized by violent crime at a rate almost two and one-half times higher than the rate of violent victimization among Americans nationwide.
- The rate of death by homicide is 32 percent higher among American Indians than the national rate.

Indian gaming has had a positive impact on these problems. But Indian Tribes clearly have a long ways to go before the standard of living for American Indians rises to the level of non-Indians nationwide.

Conclusion

"Because of Indian gaming, our Tribal governments are stronger, our people are healthier and our economies are beginning to grow," said Ernest L. Stevens Jr., chairman of the National Indian Gaming Association and a member of the Oneida Indian Nation of Wisconsin. "Indian country still has a long way to go. Too many of our people continue to live with disease and poverty. But Indian gaming has proven to be the best available tool for Tribal economic development. For the sake of our ancestors, our children and the generations to come, we must make certain this progress continues."

End Notes

[1] Produced by the National Indian Gaming Association. Special thanks to Shawn Johns, Research Director, Juanita Keesing, Research Assistant, and Dianne Wyss, Director of Casino and Industry Relations for their hard work. NIGA would like to also thank Gary and Aldona Robbins, Fiscal Associates, Inc., Joseph Eve & Tim O'dell, and Michael K. Evans for the invaluable research assistance they provided during the preparation of this analysis.

[2] Marszalek, J.F. *Sherman: A Soldier's Passion for Order*, page 400.

[3] U.S. Census Bureau, http://www.census.gov/PressRelease/www/2002/cb02cn56.html

[4] U.S. Department of Interior, Bureau of Indian Affairs

[5] National Indian Gaming Commission.

[6] The multipliers used in this report were developed by IMPLAN Professional Software, Analysis, and Data.

Job creation is a principal indicator of what Indian gaming means to the United States economy. There are three types of employment effects. First are the jobs created directly by casinos, ancillary facilities, and other Tribal enterprises, which we'll call primary jobs. Second, are the jobs that are created via income generated from these primary jobs. These secondary jobs create another round of economic activity as Indian gaming workers spend their income on other goods and services. For example, an individual hired when an Indian casino opened a hotel might use their first paycheck to buy a new tire for his automobile. The owner and employees of the local service station, in turn, are likely to spend a part of their additional income at the local restaurant, supermarket or movie theatre. At the end of the day, benefits to the local economy are far greater than the one new job at that Indian casino.

The third type of employment effect is the jobs created as casinos, ancillary facilities, and other Tribal enterprises purchase goods and services as part of their normal operations.

[7] This estimate is based upon the National Indian Gaming Commission Report on Tribal Gaming Revenues for 2002 of $14.5 billion and assumes a 10% growth rate for 2003.

[8] Fairbank, Maslin, Maullin & Associates, "Indian Gaming National Survey," March 27 – April 3, 2002.

[9] In Washington, a referendum on Indian gaming failed but Tribal-State gaming compacts have been approved by the Governor and State Legislature. In Maine, a referendum on a gaming proposal by two Indian Tribes failed, but that was outside the scope of the Indian Gaming Regulatory Act.

[10] Indian Casinos represent 34% of the national casino industry. NIGA methodology multiplied total national casino visits of 297 million from Harrah's Survey 2003,"*Profile of the American Casino Gambler.*" (.34 x 297 Million ~ 100 million Indian Casino Visits). National per visit average of 5.8 is derived from Harrah's Survey 2003, "*Profile of the American Casino Gambler.*"

[11] Based on "The National Survey of Indian Gaming Regulation," July 2001. We assume tribes spent in 2003 the same percentages of total tribal government gaming revenues for Tribal government regulation and state gaming regulation. The $9 million figure for Federal regulation comes from NIGC budget information.

[12] National Indian Gaming Association, *Indian Gaming Regulation* report, 2001.

[13] Hospitality revenues were estimated at 10% of total gaming and non-gaming revenues based on analysis of Native American Casinos representing 21state jurisdictions in "*The 2003 Cost of Doing Business Report,*" by Joseph Eve & Company, a CPA firm that performs audits for a large number of Tribes in the United States.

[14] National Indian Gaming Commission, Christiansen Capital Advisors, LLC.

[15] See note 5.

[16] See note 5.

[17] We assume that 7.65% were for the employer portion of Old-Age Survivor, Disability and Hospital Insurance taxes and 10% were in the form of fringe benefits. Federal personal income taxes, which are 15% of, wage income. Federal FICA taxes, which are 15.3% of, wage income. The decline in Federal unemployment benefits was estimated under the assumption that half of the people finding jobs because of the impact of Indian gaming were previously unemployed, and would have received benefits of $5,000 per year. Thus the total increase in employment is multiplied by $2,500 to determine the decline in unemployment benefits paid by the Federal government.

[18] State income taxes are calculated by taking the ratio of state income tax collections for all states to the Bureau of Economic Analysis (BEA) estimate of personal income for each state. For this project we used 2.7% for Indian gaming and 3.6% for non-Tribal businesses. The Indian gaming rate is lower then the non-Tribal businesses because Tribal members who live on their own reservations and work for the Tribe is exempt from state income taxes. State sales and excise taxes are calculated by taking the ratio of state sales and excise tax collections, including license fees, in each state to the estimate of personal income for all states made by the BEA. For this project we used 5% overall for the state sales & excise tax rate.

[19] Bureau of Labor Statistics. http://www.bls.gov/cps/home.htm

[20] Mollison, A. (2003, April). Casinos lift Indians closer to other Americans. The Lufkin Daily, www.lufkindailynews.com.

[21] Rutter, M., MD (2003, October) Poverty and Child Mental Health. Journal of the American Medical Association, 290 (15), 2063-2064.

[22] "Risk in Income Improves Children's Behavior." Exerpts from New York Times. October 21, 2003.

[23] Tribal-State Compacts between the State of California and the California Gaming Tribes.

[24] Tribal-State Compacts between the State of Arizona and the Arizona Gaming Tribes.

[25] 25 U.S.C. sec. 1451.

[26] www.ihs.gov

[27] http://naihc.net/research/index.asp?bid=550

[28] www.census.gov

[29] See note 27

[30] Greenfield, L.A. and Smith, S.K. (1999). American Indians and Crime (U.S. Department of Justice, Bureau of Justice Statistics, NCJ 173386) http://www.ojp.usdoj.gov/bjs/.

List of Casinos

APACHE GOLD CASINO RESORT
BLUE WATER RESORT & CASINO
BUCKYS CASINO
CASINO ARIZONA AT SALT RIVER - INDIAN BEND
CASINO ARIZONA AT SALT RIVER - MCKELLIPS
CASINO DEL SOL
CASINO OF THE SUN
CLIFF CASTLE CASINO
COCOPAH CASINO
DESERT DIAMOND CASINO I-19
DESERT DIAMOND CASINO NOGALES HWY
FORT MCDOWELL CASINO
GILA RIVER CASINO - LONE BUTTE
GILA RIVER CASINO - VEE QUIVA
GILA RIVER CASINO - WILD HORSE PASS
GOLDEN HA.SAN CASINO
HARRAH'S PHOENIX AK-CHIN CASINO RESORT
HON-DAH RESORT CASINO
MAZATZAL CASINO
PARADISE CASINO
SPIRIT MOUNTAIN CASINO - AZ
YAVAPAI CASINO
AGUA CALIENTE CASINO
AUGUSTINE CASINO
BARONA VALLEY RANCH RESORT & CASINO
BLACK BART CASINO
BLACK OAK CASINO
BLUE LAKE CASINO
CACHE CREEK INDIAN BINGO & CASINO
CAHUILLA CREEK CASINO
CASINO MORONGO
CASINO PAUMA
CASINO SAN PABLO
CHER-AE-HEIGHTS CASINO
CHICKEN RANCH BINGO & CASINO
CHUKCHANSI GOLD RESORT & CASINO
CHUMASH CASINO
COLUSA CASINO
COYOTE VALLEY SHODAKAI CASINO
CRYSTAL MOUNTAIN CASINO
DESERT ROSE CASINO
DIAMOND MOUNTAIN CASINO
EAGLE MOUNTAIN CASINO
ELK VALLEY CASINO
FANTASY SPRINGS CASINO
FEATHER FALLS CASINO
GOLD COUNTRY CASINO
GOLDEN ACORN CASINO
HARRAH'S RINCON CASINO & RESORT
HAVASU LANDING RESORT AND CASINO
JACKSON RANCHERIA CASINO
KONOCTI VISTA CASINO
LA JOLLA SLOT ARCADE
LUCKY 7 CASINO
LUCKY BEAR CASINO
MONO WIND CASINO
PAIUTE PLACE CASINO
PALA CASINO
PECHANGA RESORT & CASINO
PIT RIVER CASINO
RED FOX CASINO
RIVER ROCK CASINO
ROBINSON RANCHERIA BINGO & CASINO
ROLLING HILLS CASINO
SAN MANUEL INDIAN BINGO & CASINO
SHO-KA-WAH CASINO
SOBOBA CASINO
SPA RESORT CASINO
SYCUAN CASINO & RESORT
TABLE MOUNTAIN CASINO
THE PALACE INDIAN GAMING CENTER
THUNDER VALLEY CASINO
TRUMP 29 CASINO
TWIN PINE CASINO
VALLEY VIEW CASINO
VIEJAS CASINO
WIN-RIVER CASINO
SKY UTE CASINO
UTE MOUNTAIN CASINO
FOXWOODS RESORT CASINO
MOHEGAN SUN
COCONUT CREEK CASINO
MICCOSUKEE RESORT & GAMING
SEMINOLE CASINO - BRIGHTON
SEMINOLE CASINO - HOLLYWOOD
SEMINOLE CASINO - IMMOKALEE
SEMINOLE CASINO - TAMPA
CASINO OMAHA
MESKWAKI BINGO CASINO HOTEL
WINNAVEGAS CASINO
BANNOCK PEAK CASINO
CLEARWATER RIVER CASINO
COEUR D ALENE CASINO
COYOTE CASINO
KOOTENAI RIVER INN & CASINO
SHOSHONE-BANNOCK CASINO & HIGH STAKES BINGO
GOLDEN EAGLE CASINO
HARRAH'S PRAIRIE BAND CASINO
SAC & FOX CASINO
WHITE CLOUD CASINO
CYPRESS BAYOU CASINO
GRAND CASINO COUSHATTA
PARAGON CASINO RESORT
BAY MILLS RESORT & CASINOS
CHIP IN'S ISLAND RESORT & CASINO
GREEKTOWN CASINO
KEWADIN CASINO - CHRISTMAS
KEWADIN CASINO - HESSEL
KEWADIN CASINO - MANISTIQUE
KEWADIN CASINO, HOTEL & CONVENTION CENTER
KEWADIN SHORES CASINO - ST. IGNACE
KINGS CLUB CASINO
LAC VIEUX DESERT CASINO
LEELANAU SANDS CASINO
LITTLE RIVER CASINO RESORT
OJIBWA CASINO RESORT
OJIBWA II CASINO
SOARING EAGLE CASINO & RESORT
TURTLE CREEK CASINO
VICTORIES CASINO & HOTEL
BLACK BEAR CASINO & HOTEL
FOND-DU-LUTH CASINO
FORTUNE BAY RESORT CASINO
GRAND CASINO HINCKLEY
GRAND CASINO MILLE LACS
GRAND PORTAGE LODGE & CASINO
JACKPOT JUNCTION CASINO HOTEL
LITTLE SIX CASINO
MYSTIC LAKE CASINO HOTEL
NORTHERN LIGHTS CASINO
PALACE CASINO HOTEL
PRAIRIE'S EDGE CASINO RESORT
SEVEN CLANS CASINO - RED LAKE
SEVEN CLANS CASINO - THIEF RIVER FALLS
SEVEN CLANS CASINO - WARROAD
SHOOTING STAR CASINO
TREASURE ISLAND RESORT & CASINO
WHITE OAK CASINO
GOLDEN MOON HOTEL & CASINO
SILVER STAR HOTEL & CASINO
SILVER WOLF CASINO

HARRAH'S CHEROKEE CASINO
4 BEARS CASINO & LODGE
DAKOTA MAGIC CASINO & HOTEL
PRAIRIE KNIGHTS CASINO & RESORT
SKY DANCER HOTEL & CASINO
SPIRIT LAKE CASINO & RESORT
BEST WESTERN JICARILLA INN & CASINO
BIG ROCK CASINO
CAMEL ROCK CASINO
CASINO APACHE
CITIES OF GOLD CASINO
DANCING EAGLE CASINO
ISLETA CASINO & RESORT
OHKAY CASINO & RESORT
ROUTE 66 EXPRESS CASINO
SAN FELIPE'S CASINO HOLLYWOOD
SANDIA CASINO
SANTA ANA STAR HOTEL CASINO
SKY CITY CASINO
TAOS MOUNTAIN CASINO
AKWESASNE MOHAWK CASINO
MOHAWK BINGO PALACE
SENECA GAMING & ENTERTAINMENT
SENECA NATION BINGO ALLEGANY
SENECA NIAGARA CASINO
TURNING STONE CASINO RESORT
7 CLANS CASINO
ADA GAMING CENTER
ADA TRAVEL STOP
ARDMORE GAMING CENTER
BLUE STAR GAMING & CASINO
BORDER TOWN BINGO & GAMING
BRISTOW INDIAN COMMUNITY BINGO
CATOOSA SMOKE SHOP
CHECOTAH INDIAN COMMUNITY BINGO
CHEROKEE CASINO - CATOOSA
CHEROKEE CASINO - FT GIBSON
CHEROKEE CASINO - ROLAND
CHEROKEE CASINO - WEST SILOAM SPRINGS
CHOCTAW CASINO - BROKEN BOW
CHOCTAW CASINO - DURANT
CHOCTAW CASINO - GRANT
CHOCTAW CASINO - IDABEL
CHOCTAW CASINO - MCALESTER
CHOCTAW CASINO - POCOLA
CHOCTAW CASINO - STRINGTOWN
CHOCTAW INDIAN GAMING CENTER - MCALESTER 2
CHOCTAW TRAVEL PLAZA - DURANT 1
CIMARRON BINGO CASINO
COMANCHE NATION GAMES
COMANCHE NATION SMOKE SHOP
COMANCHE RED RIVER CASINO
CREEK NATION MUSCOGEE BINGO & CASINO
CREEK NATION OKMULGEE BINGO & GAMING CENTER
CREEK NATION TRAVEL PLAZA
CREEK NATION TULSA BINGO
DAVIS GAMING CENTER
DUCK CREEK GAMING CENTER
EUFAULA INDIAN COMMUNITY BINGO
FIRE LAKE ENTERTAINMENT CENTER
FORT SILL APACHE CASINO
GOLD RIVER BINGO & CASINO
GOLDSBY GAMING CENTER
GOLDSBY TRAVEL PLAZA
GRAND LAKE CASINO
KAW NATION BINGO
KEETOOWAH BINGO
KICKAPOO CASINO
LUCKY STAR CASINO - CLINTON
LUCKY STAR CASINO - CONCHO
MADILL GAMING CENTER
MARLOW GAMING CENTER
MIAMI TRIBE ENTERTAINMENT
NEWCASTLE GAMING CENTER
OKEMAH COMMUNITY CENTER
OSAGE PARK GAMING HOMINY
PAWHUSKA FACILITY
PAWNEE GAMING CENTER
QUAPAW CASINO
RIVERMIST CASINO
SEMINOLE CASINO - MEKUSUKEY MISSION
SEMINOLE I-40 CASINO
SEMINOLE NATION BINGO & CASINO
SULPHUR GAMING CENTER & CHICKASAW LODGE
THACKERVILLE TRAVEL PLAZA
THE STABLES
THLOPTHLOCCO TRIBAL GAMING CENTER & CASINO
THUNDERBIRD CASINO & BINGO
TONKAWA TRIAL BINGO/CASINO
WEST SILOAM SPRINGS SMOKE SHOP
WEWONKA GAMING CENTER
WILSON TRAVEL PLAZA
WINSTAR CASINO
CHINOOK WINDS CASINO & CONVENTION CENTER
KAH-NEE-TA HIGH DESERT RESORT & CASINO
KLA-MO-YA CASINO
SEVEN FEATHERS HOTEL & CASINO RESORT
SPIRIT MOUNTAIN CASINO - OR
THE MILL CASINO HOTEL
THE OLD CAMP CASINO
WILDHORSE RESORT & CASINO
BB CODY'S
BEST WESTERN HICKOK'S
BODEGA
BUFFALO BAR & RESTAURANT
BULLOCK EXPRESS
BULLOCK HOTEL
CADILLAC JACKS
CELEBRITY HOTEL
COMFORT INN / GULCHES OF FUN
DAKOTA CONNECTION CASINO & BINGO
DAKOTA FRONTIER DEADWOOD STAGE
DAKOTA SIOUX CASINO
DEADWOOD GULCH RESORT
DEADWOOD GULCH SALOON
DECKER'S
FAIRMONT HOTEL & OYSTER BAY CASINO
FIRST GOLD HOTEL
FORT RANDALL CASINO HOTEL
FOUR ACES
FRANKLIN HOTEL
FRENCH QUARTER
GOLD COUNTRY INN
GOLD DUST
GOLDBERG'S
GOLDEN BUFFALO CASINO & RESORT
GRAND RIVER CASINO & RESORT
HICKOCK'S SALOON
LODE STAR CASINO
LUCKY 8 CASINO
MIDNIGHT STAR
MINERAL PALACE HOTEL & GAMING
MISS KITTY'S PARLOR
MUSTANG SALLY'S
OLD STYLE SALOON #10
PRAIRIE WIND CASINO
ROSEBUD CASINO
ROYAL RIVER CASINO, BINGO & MOTEL
SILVERADO
TIN LIZZIE
WILD WEST WINNERS CASINO
7 CEDARS CASINO
CHEWELAH CASINO
CLEARWATER CASINO
COULEE DAM CASINO
DOUBLE EAGLE CASINO
EMERALD QUEEN CASINO
LIL CHIEFS CASINO
LITTLE CREEK CASINO
LUCKY DOG CASINO
LUCKY EAGLE CASINO
MAKAH TRIBAL BINGO
MILL BAY CASINO
MUCKLESHOOT CASINO
NISQUALLY RED WIND CASINO
NOOKSACK RIVER CASINO
NORTHERN QUEST CASINO
OKANOGAN BINGO-CASINO
POINT NO POINT CASINO
QUINAULT BEACH RESORT & CASINO
SHOALWATER BAY CASINO
SILVER REEF CASINO
SWINOMISH NORTHERN LIGHTS CASINO
THE SKAGIT
TULALIP CASINO AND BINGO
TWO RIVERS CASINO & RESORT
YAKAMA NATION LEGENDS CASINO
BAD RIVER LODGE CASINO
DEJOPE BINGO
GRINDSTONE CREEK CASINO
HO CHUNK CASINO
HOLE IN THE WALL CASINO & HOTEL
ISLE VISTA CASINO
LAKE OF THE TORCHES RESORT CASINO
LCO CASINO LODGE
LITTLE TURTLE HERTEL EXPRESS CASINO
MAJESTIC PINES CASINO, BINGO & HOTEL
MENOMINEE CASINO, BINGO & HOTEL
MOHICAN NORTH STAR CASINO & BINGO
MOLE LAKE CASINO
ONEIDA 54 / ONE STOP
ONEIDA BINGO AND CASINO
ONEIDA E-DOUBLE-E / ONE STOP
ONEIDA IRENE MOORE ACTIVITY CENTER
ONEIDA LUCKY - U / ONE STOP
ONEIDA MASON STREET CASINO
ONEIDA RADISSON / ONE STOP
POTAWATOMI BINGO CASINO
POTAWATOMI BINGO NORTHERN LIGHTS CASINO
RAINBOW CASINO & BINGO
ST. CROIX CASINO & HOTEL

National Indian Gaming Association

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April 2, 2004

Hon. Ben Nighthorse Campbell, Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510
Fax: (202) 224-5429

Dear Chairman Campbell:

Thank you for the opportunity to testify before the Senate Committee on Indian Affairs concerning S. 1529, the Indian Gaming Regulatory Act Amendments on March 24, 2004. On behalf of the 184 Member Tribes of the National Indian Gaming Association, we want to thank you for your leadership and for sharing your wisdom with us concerning the many challenges facing Indian gaming and Indian country in general.

During the hearing on March 24, Senator McCain raised a question concerning a statement in my testimony that States and the commercial gambling industry had lobbied for the Indian Gaming Regulatory Act. What I meant by my statement is that during the formation of IGRA Indian tribes sought to preserve a direct Federal government-to-government relationship, and the States and others pressed for the Tribal-State compact process. Yet, Indian tribes for the past 15 years have worked hard to make the Act work, and for the most part, the Act has worked well. Indeed, only our most visionary tribal leaders could have envisioned the level of success that our Indian tribes have achieved – 500,000 jobs, schools, hospitals and health clinics, police and fire stations, child care and elderly centers, and museums and cultural centers. Nevertheless, some of our Member Tribes continue to struggle to secure Tribal-State compacts. Accordingly, I have amended my testimony to make this point more clearly and correct the record as Senator McCain requested. Please substitute my amended testimony for printing in the official record of the hearing. Thank you for your thoughtful consideration of this request.

Sincerely,

Ernest Stevens Jr.

Ernest Stevens, Jr., Chairman

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April 19, 2004

The Honorable Ben Nighthorse Campbell, Chairman
Senate Committee on Indian Affairs
Senate Harte Office Building, Room 838
Washington, DC 20510
Fax: (202) 224-5429

Dear Chairman Campbell:

I write in response to your follow up questions to the March 24, 2004 hearing on S. 1529, the Indian Gaming Regulatory Act Amendments of 2003. In addition, I'd like to take this opportunity to again thank you for holding the hearing, and for your efforts through the bill to make needed technical corrections to IGRA. The changes made prior to the attempted markup of the bill on April 7, 2004 were very positive. NIGA's answers to your follow up questions are attached.

Thank you for your continued dedication to protect tribal sovereignty, Indian gaming, and the many issues facing Indian country. Please do not hesitate to contact me if you need any additional information or if we can be of any service.

Sincerely,

Ernie Stevens Jr.

Ernest Stevens, Jr., Chairman

NATIONAL INDIAN GAMING ASSOCIATION RESPONSES TO FOLLOW UP QUESTIONS OF SENATE COMMITTEE ON INDIAN AFFAIRS' HEARING ON S. 1529, THE INDIAN GAMING REGULATORY ACT AMENDMENTS OF 2003

Question 1: *Over the past couple of years, NIGC has been able to obtain increased fee authority through the appropriations process.*

Q. Did NIGA oppose those efforts?

Concerning the FY 2003 appropriations process, NIGA supported the Administration's original request for a $2 million appropriation to supplement NIGC's budget and permit time for government-to-government dialogue between NIGC and tribal governments concerning NIGC regulatory fees. NIGA opposed the Department of the Interior's efforts during the conference committee to raise the NIGC's fee authority for FY 2004 from $8 million to $12 million.

Concerning the FY 2004 appropriations process, NIGA opposed the Administration request to extend the $12 million fee cap for FY 2005. Instead, NIGA requested that NIGC fees be capped at $11 million consistent with NIGC's projected budgetary needs.

Q. If we don't give the NIGC "floating fee" authority, do you support any proposal for providing adequate funding for the NIGC?

NIGA has always supported adequate funding for NIGC. At the same time, we have asked the NIGC to acknowledge that tribal governments invest heavily in regulatory systems for Indian gaming.

Under the Indian Gaming Regulatory Act ("IGRA"), tribal governments are the primary day-to-day regulators of Indian gaming. In 2003, we estimate that tribal governments invested $203 million for tribal gaming regulatory agencies to regulate Indian gaming. In addition, the Tribal-State compact process is intended to establish the regulatory framework for Class III gaming. And in 2003, pursuant to Tribal-State compacts, tribal governments reimbursed state regulatory agencies $50 million for state regulation of Indian gaming. In the same year, tribal governments also paid the NIGC $9 million for its regulatory activities ($8 million in regulatory fees and an additional $1 million for background checks and licensing fees). In total, Indian tribes spent approximately $262 million for the regulation of Indian gaming in 2003.

We believe that it is appropriate for the National Indian Gaming Commission to annually propose a budget, consult with tribal governments on a government-to-government basis concerning the budget, and make appropriate adjustments based on consultations to avoid inefficiencies and duplication of services at the tribal or state government level. NIGA and our Member Tribes are engaged in dialogue with NIGC right now concerning the FY 2005 appropriations process.

Question 2: *In your testimony, you reference the recent Supreme Court "no-decision" in the Johnson Act litigation. The State Attorneys General have indicated that they believe that there will continue to be litigation over this issue.*

Q. Does NIGA have a concern that this litigation will continue?

In five decisions, the D.C., 8th, 9th and 10th Circuit Federal Courts of Appeals have established a fairly clear framework for analysis of Class II technologic aids under the Indian Gaming Regulatory Act. The D.C. Circuit generally has oversight of Federal agency actions and the 8th, 9th, and 10th Circuits cover most of Indian country in the western United States. The Federal courts are generally open to the public to litigate questions of law, so there may very well be more litigation in this area. However, we believe that the framework for analysis established by the Federal Courts of Appeals should govern any future litigation.

Q. What agency does NIGA believe is best situated to make these determinations?

Undoubtedly, the National Indian Gaming Commission is vested with authority to monitor Class II Indian gaming pursuant to IGRA, so it is best situated to make determinations about Class II technologic aids. In fact, the NIGC has empanelled a tribal advisory committee to work on technical standards for Class II technologic aids. NIGA supports this effort, and will work with our Member Tribes and the NIGC in this process.

Question 3: *Currently NIGC has an "oversight" role in class III gaming and your testimony expresses a desire to keep the NIGC in that role and to preserve the "primary" role for tribes. I understand that there is litigation over the NIGC's authority to access records to verify audits related to a tribe's Class III gaming operations.*

Q. In your opinion, how would the NIGC perform its "oversight" role if it cannot access class III records and functions to verify compliance with IGRA?

Congress intended the Tribal-State compact process to establish regulatory frameworks for Class III gaming based on negotiations between two equal sovereigns. As the Senate Committee Report explains: "the Committee concluded that the use of compacts between tribes and states is the best mechanism to assure that the interests of both sovereign entities are met with respect to the regulation of complex gaming enterprises such as pari-mutuel horse and dog racing, casino gaming, jai alai and so forth." In contrast, NIGC was intended to have a limited role concerning the regulation of Class III gaming, and IGRA empowers NIGC to approve Class III gaming ordinances, review background checks and licenses for gaming management and key employees, review annual audit reports, and approve management contracts. At the same time, tribal government power to regulate Indian gaming is expressly preserved. 25 U.S.C. § 2710(d)(5).

In our view, the NIGC has authority to review the audits that it receives, but does not have authority to establish new regulatory standards for Class III gaming that conflict

with Tribal-State compact provisions. In the case referred to, our understanding is that NIGC officials sought to conduct a "MICS" review of Class III gaming in the Tribe's casinos and tribal officials objected because such Class III gaming operations were regulated by the Tribal-State compact, the Arizona Department of Gaming, and the tribal gaming regulatory commission. The Tribe continues to challenge "MICS" regulations for Class III gaming that conflict with its Tribal-State compact.

Q. For that matter, how can the NIGC determine if it is fulfilling its "oversight" function, if it doesn't have some standard like the MICS to reference?

NIGC has reference to the Indian Gaming Regulatory Act, which establishes specific duties for the NIGC. In addition, the Tribal-State compacts and tribal gaming regulatory ordinances – approved by NIGC – provide regulatory frameworks for Class III gaming generally. As a Federal agency, the NIGC should complement, not duplicate, the work of the tribal and state governments. As stated in our testimony, NIGA would work with our Member Tribes to consider authorizing the NIGC to issue guidelines, rather than mandatory regulations, which Tribes and States could look to when negotiating compacts pursuant to IGRA.

Question 4: *Section 2(f)(1) of S. 1529 is aimed at strengthening the integrity of Indian gaming by requiring that the NIGC ensure the TRIBES, not the NIGC, conduct background checks on its tribal gaming commissioners and others. Looking at this amendment in the context of existing Section 11(b)(2)(F) of IGRA reveals the following:*

The relevant language of Section 11(b)(2)(F) that would be amended by S. 1529 reads:

> *The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that . . . there is an adequate system which –*
> *. . . ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis . . .*

Section 2(f)(1) of S. 1529 would amend that provision to read:

> *The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that . . . there is an adequate system which – ensures that –*
>
> *(I) background investigations are conducted on the tribal gaming commissioners, key tribal gaming commission employees, and primary management officials and key employees of the gaming enterprise; and*

(II) oversight of primary management officials and key employees is conducted on an ongoing basis....

Your testimony objects to this provision as "an intrusion on tribal sovereignty" and decision-making. As I read the language, the decision on who should be tribal gaming commissioners and commission staff is left to the tribe. The only requirement is that some provision for background checks be instituted by the tribe.

Q. Are you saying that it is not good to have some way for the NIGC to ensure that, in fact, background checks have been performed on tribal regulators?

The first power of Indian tribes is the power to determine the form of tribal government and an essential aspect of that power is the right of the tribal polity to choose who will serve as a tribal government official. By way of analogy, the Constitution of the United States provides that: "Each House shall be the Judge of the . . . Qualifications of its own Members." In the same vein, Indian tribes should judge the qualifications of tribal government officials. We believe, and we have recommended this to the NIGC, that NIGC should work with tribal governments on a government-to-government basis to *recommend* background checks for tribal gaming commissions. We do not believe that it is necessary to amend the statute to *require* tribal governments to submit background checks on tribal government officials to the NIGC and we would view such a statutory requirement as an intrusion on tribal sovereignty.

Question 5: *NIGA has long objected to amending IGRA if a fix for the Seminole decision is not included. I understand that is one reason for your objection to our bill. While it is not a comprehensive fix, the bill does provide a time frame for action by the Secretary, when the lawsuits and mediation fail.*

Q. Is it your position that such a time frame would not produce movement in finalizing procedures?

We believe that such a time frame would be helpful in providing a "window" for secretarial action, but we do not believe it goes far enough to fix the problem for Tribal-State compact negotiations created by the Supreme Court's Seminole decision.

Q. What "fix" would NIGA propose?

NIGA proposes that Congress eliminates the requirement for "good faith" litigation and instead, provide that Indian tribes may proceed to work with the Secretary of the Interior on procedures in lieu of a compact after 180 days of negotiations with a State, if a Tribal-State Compact has not been concluded. Alternatively, Congress could simply approve the existing secretarial procedures that the Secretary of the Interior has promulgated. *See* 25 CFR 291.

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