

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. INOUE) 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.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Indian Gaming Regu-  
5       latory Act Amendments of 2003”.

6       **SEC. 2. PAYMENT AND ADMINISTRATION OF GAMING FEES.**

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

1           “(G) TECHNOLOGICAL AIDS.—Notwith-  
 2 standing any other provision of law, sections 1  
 3 through 7 of the Act of January 2, 1951 (com-  
 4 monly known as the ‘Gambling Devices Trans-  
 5 portation Act’) (15 U.S.C. 1171 through 1177)  
 6 shall not apply to any gaming described in sub-  
 7 paragraph (A)(i) for which an electronic aid,  
 8 computer, or other technological aid is used in  
 9 connection with the gaming.”.

10       (b) NATIONAL INDIAN GAMING COMMISSION.—Sec-  
 11 tion 5 of the Indian Gaming Regulatory Act (25 U.S.C.  
 12 2704) is amended—

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

15       “(c) VACANCIES.—

16           “(1) IN GENERAL.—A vacancy on the Commis-  
 17 sion shall be filled in the same manner as the origi-  
 18 nal appointment.

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

22           “(A) be reappointed; and

23           “(B) serve after the expiration of the term  
 24 of the member until a successor is appointed.”;

25       and

1           (2) in subsection (e), in the last sentence, by in-  
2           serting “or disability” after “in the absence”.

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

6           “(c) DELEGATION.—The Chairman may delegate to  
7           an individual Commissioner any of the authorities de-  
8           scribed in subsection (a).

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

12                 “(1) such general policies as are formally  
13                 adopted by the Commission; and

14                 “(2) such regulatory decisions, findings, and de-  
15                 terminations as are made by the Commission.”.

16          (d) POWERS OF COMMISSION.—Section 7 of the In-  
17          dian Gaming Regulatory Act (25 U.S.C. 2706) is amend-  
18          ed—

19                 (1) in paragraphs (1), (2), and (4) of sub-  
20                 section (b), by striking “class II gaming” each place  
21                 it appears and inserting “class II gaming and class  
22                 III gaming”;

23                 (2) by redesignating subsection (c) as sub-  
24                 section (d);

1           (3) by inserting after subsection (b) the fol-  
2           lowing:

3           “(c) STRATEGIC PLAN.—

4                 “(1) IN GENERAL.—The Commission shall de-  
5           velop a strategic plan for use in carrying out activi-  
6           ties of the Commission.

7                 “(2) REQUIREMENTS.—The strategic plan shall  
8           include—

9                         “(A) a comprehensive mission statement  
10           describing the major functions and operations  
11           of the Commission;

12                        “(B) a description of the goals and objec-  
13           tives of the Commission;

14                        “(C) a description of the means by which  
15           those goals and objectives are to be achieved,  
16           including a description of the operational proc-  
17           esses, skills and technology, and the human,  
18           capital, information, and other resources re-  
19           quired to achieve those goals and objectives;

20                        “(D) a performance plan for achievement  
21           of those goals and objectives that is consistent  
22           with—

23                                 “(i) other components of the strategic  
24           plan; and

1                   “(ii) section 1115 of title 31, United  
2                   States Code;

3                   “(E) an identification of the key factors  
4                   that are external to, or beyond the control of,  
5                   the Commission that could significantly affect  
6                   the achievement of those goals and objectives;  
7                   and

8                   “(F) a description of the program evalua-  
9                   tions used in establishing or revising those  
10                  goals and objectives, including a schedule for  
11                  future program evaluations.

12                  “(3) BIENNIAL PLAN.—

13                  “(A) PERIOD COVERED.—The strategic  
14                  plan shall cover a period of not less than 5 fis-  
15                  cal years beginning with the fiscal year in which  
16                  the plan is submitted.

17                  “(B) UPDATES AND REVISIONS.—The  
18                  strategic plan shall be updated and revised bi-  
19                  ennially.”; and

20                  (4) in subsection (d) (as redesignated by para-  
21                  graph (2))—

22                         (A) in paragraph (3), by striking “and” at  
23                         the end;

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

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

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

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

7 (1) in subsection (a), by striking “GS–18 of the  
8 General Schedule under section 5332” and inserting  
9 “level IV of the Executive Schedule under section  
10 5318”;

11 (2) in subsection (b)—

12 (A) by striking “(b) The Chairman” and  
13 inserting the following:

14 “(b) STAFF.—

15 “(1) IN GENERAL.—The Chairman”; and

16 (B) by striking the last sentence and in-  
17 serting the following:

18 “(2) COMPENSATION.—

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

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

1 graph (1) shall not exceed the rate payable for  
2 level IV of the Executive Schedule under section  
3 5315 of title 5, United States Code.”; and

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

6 “(c) TEMPORARY SERVICES.—

7 “(1) IN GENERAL.—The Chairman may procure  
8 temporary and intermittent services under section  
9 3109 of title 5, United States Code.

10 “(2) MAXIMUM RATE OF PAY.—The rate of pay  
11 for an individual for service described in paragraph  
12 (1) shall not exceed the daily equivalent of the max-  
13 imum rate payable for level IV of the Executive  
14 Schedule under section 5318 of title 5, United  
15 States Code.”.

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

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

21 “(i) ensures that—

22 “(I) background investigations are  
23 conducted on the tribal gaming commis-  
24 sioners, key tribal gaming commission em-  
25 ployees, and primary management officials

1 and key employees of the gaming enter-  
 2 prise; and

3 “(II) oversight of primary manage-  
 4 ment officials and key employees is con-  
 5 ducted on an ongoing basis; and”;

6 (2) in subsection (d)—

7 (A) in paragraph (4)—

8 (i) by striking “(4) Except” and in-  
 9 serting the following:

10 “(4) REVENUE SHARING.—

11 “(A) IN GENERAL.—Except for any assess-  
 12 ments that may be agreed to under paragraph  
 13 (3)(C)(iii), nothing in this section confers on a  
 14 State or political subdivision of a State author-  
 15 ity to impose any tax, fee, charge, or other as-  
 16 sessment on any Indian tribe or any other per-  
 17 son or entity authorized by an Indian tribe to  
 18 engage in a class III activity. No State may  
 19 refuse to enter into the negotiations described  
 20 in paragraph (3)(A) based on the lack of au-  
 21 thority in the State or a political subdivision of  
 22 the State to impose such a tax, fee, charge, or  
 23 other assessment.

24 “(B) APPORTIONMENT OF REVENUES.—

25 The Secretary may not approve any Tribal-

1 State compact or other agreement that includes  
2 an apportionment of net revenues with a State,  
3 local government, or other Indian tribes un-  
4 less—

5 “(i) in the case of apportionment with  
6 other Indian tribes, the net revenues are  
7 not distributable by the other Indian tribes  
8 to members of the Indian tribes on a per  
9 capita basis;

10 “(ii) in the case of apportionment  
11 with local governments, the total amount  
12 of net revenues exceeds the amounts nec-  
13 essary to meet the requirements of clauses  
14 (i) and (ii) of subsection (b)(2)(B), but  
15 only to the extent that the excess revenues  
16 reflect the actual costs incurred by affected  
17 local governments as a result of the oper-  
18 ation of gaming activities; or

19 “(iii) in the case of apportionment  
20 with a State—

21 “(I) the total amount of net reve-  
22 nues—

23 “(aa) exceeds the amounts  
24 necessary to meet the require-  
25 ments of clauses (i) and (ii) of

1 subsection (b)(2)(B) and clause  
2 (ii) of this subparagraph, if appli-  
3 cable; and

4 “(bb) is in accordance with  
5 regulations promulgated by the  
6 Secretary under subparagraph  
7 (C); and

8 “(II) a substantial economic ben-  
9 efit is rendered by the State to the In-  
10 dian tribe.

11 “(C) REGULATIONS.—Not later than 90  
12 days after the date of enactment of this para-  
13 graph, the Secretary shall promulgate regula-  
14 tions to provide guidance to Indian tribes and  
15 States on the scope of allowable assessments  
16 negotiated under paragraph (3)(C)(iii) and the  
17 apportionment of revenues negotiated in accord-  
18 ance with subparagraph (B).”;

19 (B) in paragraph (7)(B)(vii), by inserting  
20 “not later than 90 days after notification is  
21 made” after “the Secretary shall prescribe”;  
22 and

23 (C) by adding at the end the following:

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

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

4 “(A) the Indian tribe certifies to the Sec-  
5 retary that the Indian tribe requested a new  
6 compact not later than 90 days before expira-  
7 tion of the compact; and

8 “(B) a new compact has not been agreed  
9 on.”.

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

13 (1) by striking the section heading and all that  
14 follows through “Subject” in subsection (a)(1) and  
15 inserting the following:

16 **“SEC. 12. MANAGEMENT CONTRACTS.**

17 “(a) CLASS II GAMING AND CLASS III GAMING AC-  
18 TIVITIES; INFORMATION ON OPERATORS.—

19 “(1) GAMING ACTIVITIES.—Subject”; and

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

1 gaming activity in which the Indian tribe may en-  
2 gage under section 11(d),”.

3 (h) COMMISSION FUNDING.—Section 18 of the In-  
4 dian Gaming Regulatory Act (25 U.S.C. 2717) is amend-  
5 ed—

6 (1) in subsection (a)—

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

9 “(1) SCHEDULE OF FEES.—

10 “(A) IN GENERAL.—Except as provided in  
11 this section, the Commission shall establish a  
12 schedule of fees to be paid annually to the Com-  
13 mission, on a quarterly basis, by each gaming  
14 operation that conducts a class II gaming or  
15 class III gaming activity that is regulated, in  
16 whole or in part, by this Act.

17 “(B) RATES.—The rate of fees under the  
18 schedule established under subparagraph (A)  
19 that are imposed on the gross revenues from  
20 each operation that conducts a class II gaming  
21 or class III gaming activity described in that  
22 paragraph shall be (as determined by the Com-  
23 mission)—

24 “(i) a progressive rate structure levied  
25 on the gross revenues in excess of

1           \$1,500,000 from each operation that con-  
2           ducts a class II gaming or class III gaming  
3           activity; or

4           “(ii) a flat fee levied on the gross rev-  
5           enues from each operation that conducts a  
6           class II gaming or class III gaming activ-  
7           ity.

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

12           “(i) \$10,000,000 for each of fiscal  
13           years 2004 and 2005;

14           “(ii) \$11,000,000 for each of fiscal  
15           years 2006 and 2007; and

16           “(iii) \$12,000,000 for each of fiscal  
17           years 2008 and 2009.”; and

18          (B) by redesignating paragraphs (4)  
19          through (6) as paragraphs (2) through (4), re-  
20          spectively;

21          (2) by redesignating subsection (b) as sub-  
22          section (d);

23          (3) in paragraph (2) of subsection (d) (as re-  
24          designated by paragraph (2)), by striking “section  
25          19 of this Act” and inserting “section 28”; and

1           (4) by inserting after subsection (a) the fol-  
2           lowing:

3           “(b) FEE PROCEDURES.—

4           “(1) IN GENERAL.—By a vote of not less than  
5           2 members of the Commission, the Commission shall  
6           adopt the schedule of fees provided for under this  
7           section.

8           “(2) FEES ASSESSED.—In assessing and col-  
9           lecting fees under this section, the Commission shall  
10          take into account the duties of, and services pro-  
11          vided by, the Commission under this Act.

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

15          “(c) FEE REDUCTION PROGRAM.—

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

22                  “(A) the extent and quality of regulation  
23                  of the gaming activity provided by a State or  
24                  Indian tribe, or both, in accordance with an ap-  
25                  proved State-tribal compact;

1           “(B) the extent and quality of self-regu-  
2           lating activities covered by this Act that are  
3           conducted by an Indian tribe; and

4           “(C) other factors determined by the Com-  
5           mission, including—

6                   “(i) the unique nature of tribal gam-  
7                   ing as compared with commercial gaming,  
8                   other governmental gaming, and charitable  
9                   gaming;

10                   “(ii) the broad variations in the na-  
11                   ture, scale, and size of tribal gaming activ-  
12                   ity;

13                   “(iii) the inherent sovereign rights of  
14                   Indian tribes with respect to regulating the  
15                   affairs of Indian tribes;

16                   “(iv) the findings and purposes under  
17                   sections 2 and 3;

18                   “(v) the amount of interest or invest-  
19                   ment income derived from the Indian gam-  
20                   ing regulation accounts; and

21                   “(vi) any other matter that is con-  
22                   sistent with the purposes under section 3.

23           “(2) RULEMAKING.—The Commission shall  
24           promulgate such regulations as are necessary to  
25           carry out this subsection.”.

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

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

4 (2) by redesignating sections 20 through 24 (25  
5 U.S.C. 2719 through 2723) as sections 23 through  
6 27, respectively;

7 (3) by inserting after section 18 (25 U.S.C.  
8 2717) the following:

9 **“SEC. 19. INDIAN GAMING REGULATION ACCOUNTS.**

10 “(a) IN GENERAL.—All fees and civil forfeitures col-  
11 lected by the Commission in accordance with this Act  
12 shall—

13 “(1) be maintained in separate, segregated ac-  
14 counts; and

15 “(2) be expended only for purposes described in  
16 this Act.

17 “(b) INVESTMENTS.—

18 “(1) IN GENERAL.—The Commission shall in-  
19 vest such portion of the accounts maintained under  
20 subsection (a) as are not, in the judgment of the  
21 Commission, required to meet immediate expenses.

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

1       “(c) SALE OF OBLIGATIONS.—Any obligation ac-  
2       quired with funds in an account maintained under sub-  
3       section (a)(1) (except special obligations issued exclusively  
4       to those accounts, which may be redeemed at par plus ac-  
5       rued interest) may be sold by the Commission at the mar-  
6       ket price.

7       “(d) CREDITS TO INDIAN GAMING REGULATORY AC-  
8       COUNTS.—The interest on, and proceeds from, the sale or  
9       redemption of any obligation held in an account main-  
10      tained under subsection (a)(1) shall be credited to and  
11      form a part of the account.

12      **“SEC. 20. MINIMUM STANDARDS.**

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

15              “(1) shall remain within the exclusive jurisdic-  
16              tion of the Indian tribe having jurisdiction over the  
17              Indian land; and

18              “(2) shall not be subject to this Act.

19      “(b) CLASS II GAMING.—

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

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

4                   “(A) section 11; and

5                   “(B) regulations promulgated under sub-  
6           section (d).

7           “(c) CLASS III GAMING.—

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

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

15                   “(A) section 11; and

16                   “(B) regulations promulgated under sub-  
17          section (d).

18           “(d) RULEMAKING.—

19                   “(1) IN GENERAL.—

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

1 States Code, to negotiate and promulgate regu-  
2 lations relating to—

3 “(i) the monitoring and regulation of  
4 tribal gaming;

5 “(ii) the establishment and regulation  
6 of internal control systems; and

7 “(iii) the conduct of background in-  
8 vestigation.

9 “(B) PUBLICATION OF PROPOSED REGULA-  
10 TIONS.—Not later than 1 year after the date of  
11 enactment of the Indian Gaming Regulatory  
12 Act Amendments of 2003, the Commission shall  
13 publish in the Federal Register proposed regu-  
14 lations developed by a negotiated rulemaking  
15 committee in accordance with this section.

16 “(2) COMMITTEE.—A negotiated rulemaking  
17 committee established in accordance with section  
18 565 of title 5, United States Code, to carry out this  
19 subsection shall be composed only of Federal and In-  
20 dian tribal government representatives, a majority of  
21 whom shall be nominated by and be representative  
22 of Indian tribes that conduct gaming in accordance  
23 with this Act.

24 “(e) ELIMINATION OF EXISTING REGULATIONS.—

1           “(1) IN GENERAL.—Except as provided in para-  
2           graph (2), as of the date that is 1 year after the  
3           date of enactment of the Indian Gaming Regulatory  
4           Act Amendments of 2003, regulations establishing  
5           minimum internal control standards promulgated by  
6           the Commission that are in effect as of the date of  
7           enactment of the Indian Gaming Regulatory Act  
8           Amendments of 2003 shall have no force or effect.

9           “(2) EXCEPTION FOR AFFIRMATION OF EXIST-  
10          ING REGULATIONS.—Notwithstanding paragraph  
11          (1), if, before the date of enactment of the Indian  
12          Gaming Regulatory Act Amendments of 2003, the  
13          Commission certifies to the Secretary of the Interior  
14          that the Commission has promulgated regulations  
15          that establish minimum internal control standards  
16          that meet the requirements of subsection (d)(1)(A)  
17          and were developed in consultation with affected In-  
18          dian tribes, the regulations shall—

19                 “(A) be considered to satisfy the require-  
20                 ments of paragraph (1); and

21                 “(B) remain in full force and effect.

22         **“SEC. 21. USE OF NATIONAL INDIAN GAMING COMMISSION**  
23                 **CIVIL FINES.**

24                 “(a) ACCOUNT.—Amounts collected by the Commis-  
25                 sion under section 14 shall—

1           “(1) be deposited in a separate Indian gaming  
2 regulation account established under section  
3 19(d)(1)(A); and

4           “(2) be available to the Commission, as pro-  
5 vided for in advance in Acts of appropriation, for  
6 use in carrying out this Act.

7           “(b) USE OF FUNDS.—

8           “(1) IN GENERAL.—The Commission may pro-  
9 vide grants and technical assistance to Indian tribes  
10 using funds secured by the Commission under sec-  
11 tion 14.

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

14           “(A) to provide technical training and  
15 other assistance to an Indian tribe to strength-  
16 en the regulatory integrity of Indian gaming;

17           “(B) to provide assistance to an Indian  
18 tribe to assess the feasibility of conducting non-  
19 gaming economic development activities on In-  
20 dian land;

21           “(C) to provide assistance to an Indian  
22 tribe to devise and implement programs and  
23 treatment services for individuals diagnosed as  
24 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 redesign-  
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

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

4       “(b) ADDITIONAL AMOUNTS.—Notwithstanding sec-  
5 tion 18, in addition to amounts authorized to be appro-  
6 priated by subsection (a), there are authorized to be ap-  
7 propriated \$2,000,000 to fund the operation of the Com-  
8 mission for fiscal year 1998 and each fiscal year there-  
9 after.”.

○