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AMENDING THE INDIAN GAMING REGULATORY ACT, AND FOR OTHER PURPOSES

MARCH 14 (legislative day, MARCH 13), 1996.—Ordered to be printed

Mr. MCCAIN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 487]

The Committee on Indian Affairs to which was referred the bill (S. 487) the Indian Gaming Regulatory Act Amendments Act of 1995 having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

PURPOSES

The purpose of S. 487 is to ensure the rights of Indian tribal governments to conduct gaming activities on Indian lands consistent with the United States Supreme Court decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), to provide a more comprehensive statutory basis for the conduct and regulation of gaming activities on Indian lands, and to establish minimum Federal standards for the conduct of gaming activities on Indian lands.

BACKGROUND

On March 2, 1995, Senators McCain and Inouye introduced S. 487, the Indian Gaming Regulatory Act Amendments Act of 1995. Senator Campbell joined as a co-sponsor of the legislation on August 1, 1995. During the previous three years, Senators McCain and Inouye met with representatives of State and tribal governments to discuss amendments to the Indian Gaming Regulatory Act of 1988 (IGRA). This three-year process also included consultation with representatives of Federal agencies that are charged with various responsibilities associated with Indian gaming or law en-

forcement. In these discussions with State and tribal governments, a wide variety of proposed amendments to IGRA were discussed. Although there was general agreement supporting increased Federal regulation of Indian gaming, neither the States nor the tribes could agree on specific legislation to accomplish this objective. S. 487 was introduced to continue the discussions among the parties regarding amendments to the Indian Gaming Regulatory Act. It reflects many of the positions considered during the discussions between the Indian tribes and States.

In order to properly consider the issue of Indian gaming, there must be a review of the legal and constitutional basis of Indian gaming. The authority of Indian tribal governments to conduct gaming activities on Indian lands arises out of their status as sovereign governments and the well-established legal principle that, absent an express authorization by the United States Congress, state laws do not apply on Indian lands. The legal foundation of Indian gaming was addressed by the U.S. Supreme Court in its 1987 ruling in *California v. Cabazon Band of Mission Indians*.

CABAZON DECISION

On February 25, 1987, the U.S. Supreme Court issued its decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 107 S. Ct. 1083, 94 L. Ed. 2d 244 (1987). This case involved the Cabazon and Morongo Bands of Mission Indians of Riverside, California. At the time of the case, both tribes were operating high stakes bingo games and card rooms which were open to the general public. These games were conducted pursuant to tribal ordinances that had been approved by the Secretary of the Interior. The issue presented in the case was whether the State of California and the County of Riverside could apply their regulatory authority and ordinances to the tribal gaming operations which were located wholly within the Cabazon and Morongo Indian Reservations. In deciding this question, the U.S. Supreme Court weighed several factors, including the fact that in 1953, the Federal Government had granted California limited jurisdictional authority over Indian reservations within the State under Public Law 83-280. In analyzing whether the State of California possessed the authority to impose and enforce State laws regulating bingo and card games on the Cabazon and Morongo Indian Reservations, the U.S. Supreme Court considered whether the State statutes regulating bingo and card games were criminal or civil in nature. Under the authority of Section 2 of Public Law 83-280, six States, including California, were granted broad criminal jurisdiction over offenses committed by or against Indians within all Indian Country within those States. However, the United States Supreme Court in *Bryan v. Itasca County*, 426 U.S. 373 (1976), interpreted Section 4 of that Act to grant these States jurisdiction over private civil litigation involving reservation Indians in State court, but not to grant general civil regulatory jurisdiction to these States. To grant States "general civil regulatory power over Indian reservations would result in the destruction of tribal institutions and values. Accordingly, when a State seeks to enforce a law within an Indian reservation under the authority of Public Law 280, it must be determined whether the law is criminal in nature, and thus fully applicable to the reserva-

tion under Section 2, or civil in nature, and applicable only as it may be relevant to private civil litigation in state court.” *Cabazon*, 480 U.S. at 208. Under Public Law 83–280, those State statutes which were determined to be civil/regulatory in nature could not be enforced on Indian reservations by the States. In applying this analysis to the facts presented in the *Cabazon* case, the U.S. Supreme Court determined that California’s statutes regulating bingo and card games were not criminal/prohibitory in nature, but rather, these statutes were civil/regulatory and therefore did not apply to activities on the Cabazon and Morongo Indian Reservations. Further, the U.S. Supreme Court found that the application of State and County ordinances to the gaming activities on the Indian reservations had been preempted as a matter of Federal law.

The U.S. Supreme Court’s decision in *Cabazon* made clear that Indian tribes had the authority to conduct gaming activities on reservations unfettered by any State or County regulation. This decision recognized the important Federal principles of tribal self-governance and self-determination and found that these Federal principles preempted the application of California civil statutes. At the same time that the *Cabazon* case was being litigated, there was a wide spread growth of Indian bingo halls in many parts of the country. The growth of Indian gaming increasingly came under congressional scrutiny during the 99th and 100th Congresses and was the subject of numerous congressional hearings. In response to State concerns that Indian gaming activities presented attractive targets to organized crime infiltration due to the absence of any comprehensive Federal regulation of Indian gaming, Congress enacted the Indian Gaming Regulatory Act, Public Law 100–497 in 1988.

THE INDIAN GAMING REGULATORY ACT

On October 17, 1988, Public Law 100–497, the Indian Gaming Regulatory Act (IGRA) was signed into law by President Ronald Reagan. This law established a system for the joint regulation of Class II and Class III gaming operations on Indian lands. Under IGRA, Class II Indian gaming activities are jointly regulated by the Federal government, through the National Indian Gaming Commission, and by the Tribal government. Class III Indian gaming activities are jointly regulated by the Tribal government and the State government pursuant to Tribal-State Gaming Compacts. Class I Indian gaming activities are under the exclusive jurisdiction of Indian tribal governments. Class I Gaming is defined as traditional or social games played solely for prizes of minimal value or played in connection with tribal ceremonies or celebrations. Class II Gaming activities are defined in IGRA as bingo, pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and non-banking card games which have not been prohibited by the State in which the reservation is located. IGRA defines Class III Gaming activities as all forms of gaming that are not Class I or Class II Gaming. Examples of Class III Gaming activities under IGRA include blackjack, baccarat, parimutuel wagering, roulette, craps, and any type of banking card games.

IGRA established a three member commission within the Department of the Interior known as the National Indian Gaming Com-

mission (NIGC). The Commission is charged with the oversight and regulation of all Class II Indian gaming operations. The Chairman of the Commission is vested with the authority to issue temporary closure orders, to collect and levy civil fines, to approve tribal ordinances or resolutions governing Class II and Class III gaming activities, and to approve management contracts for Class II and Class III gaming operations. The Commission is responsible for monitoring Class II gaming operations on Indian lands, which includes the authority to inspect and examine all Class II gaming operations, and to inspect, examine, and audit all papers, books and records of any Class II Gaming operation. The Commission is also authorized to conduct or cause to be conducted background investigations as required under the Act. The Commission has the authority to issue permanent closure orders, issue subpoenas, hold hearings and take testimony, and receive evidence.

The IGRA makes clear that an Indian tribal government may engage in Class II or Class III gaming activities on Indian lands if such gaming is located in a State that permits such gaming for any purpose by any person, organization, or entity and for purposes of Class III gaming activities, if such gaming is conducted pursuant to an approved Tribal-State gaming compact. The Act requires all Class II and Class III Indian gaming to be conducted pursuant to tribal gaming ordinances which have been approved by the Chairman of the National Indian Gaming Commission. A tribal gaming ordinance must include provisions that ensure the Indian tribe has the sole proprietary interest and responsibility for the gaming operation. Tribal gaming ordinances must provide that net revenues for any tribal gaming operation be used to fund tribal governmental operations, provide for the general welfare of the tribal government and its members, promote tribal economic development, and fund other operations of local government. A tribal government may also use net gaming revenues for charitable donations. In addition, a tribal government may make per capita distributions of gaming proceeds to tribal members if the tribal government has a distribution plan approved by the Secretary of the Interior. These per capita distributions are subject to Federal income tax and the tribal government is required to notify the tribal members of their tax liability when such distribution payments are made.

Under the IGRA, all Class III Indian gaming operations must be conducted under the authority of a Tribal-State gaming compact or under procedures which have been prescribed by the Secretary of the Interior. A Tribal-State gaming compact may include provisions relating to the application of civil and criminal laws and regulations of the Indian tribal government or the State government for the licensing and regulation of the gaming activity. Compacts may also include provisions that allocate civil and criminal jurisdiction between the Indian tribal government and the State government. Pursuant to the Compact, a State may assess the costs of any enforcement or regulatory activities undertaken against the gaming operation. Similarly, an Indian tribal government may assess a tax against the gaming operation to defray the costs of tribal regulatory enforcement activities. IGRA explicitly prohibits a State or any political subdivision of a State from imposing any tax, fee, charge or other assessment upon an Indian tribe or any other per-

son or entity authorized to operate a Class III gaming enterprise. Further, IGRA prohibits a State from refusing to negotiate with an Indian tribe for a Class gaming compact due to the failure to include such taxing authority.

An Indian tribal government seeking to conduct Class III gaming activities on Indian lands is required under the IGRA to make a request to the State in which such lands are located to enter into negotiations for a Tribal-State gaming compact. Upon the request of an Indian tribal government, a State is required to enter into good faith negotiations with the tribal government for a Class III gaming compact. In the event that a State fails to negotiate a gaming compact in good faith, an Indian tribal government may file an action in Federal court alleging bad faith negotiations on the part of the State. In such an action, the State has the burden of proving that it has negotiated in good faith with the Indian tribal government. If the Court determines that the State has failed to negotiate in good faith, the court shall order the State and the Indian tribal government to conclude Class III compact negotiations within 60 days. The Court may consider the public interest, the public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities in determining whether a State negotiated in good faith. The Court shall consider any demand by the State for direct taxation of the Indian tribe or any Indian lands as evidence that the State has not negotiated in good faith.

If a State and an Indian tribal government have failed to successfully conclude compact negotiations within the 60 day period established by the Court, the State and the Indian tribal government are required to submit their respective last best offers for a compact to a mediator who has been appointed by the Court. The mediator is required to select the compact which best comports with IGRA, other applicable Federal laws, and the findings and order of the Court. The selected compact is then submitted to the State and the Indian tribal government for approval. If the State approves the compact, it is considered an effective Tribal-State gaming compact on the date it was submitted by the mediator to the State. If the State fails to approve the selected compact during the 60 day period, the mediator notifies the Secretary of the Interior who then prescribes procedures under which Class III gaming activities may be conducted. These procedures must be consistent with the provisions of the selected compact, the provisions of the IGRA and any relevant provisions of State law.

The IGRA also includes provisions that limit the authority of Indian tribal governments to conduct gaming activities on lands acquired after the enactment of the IGRA. An Indian tribal government may conduct gaming activities on lands acquired after the enactment of IGRA if such lands are located within, or are contiguous to, the tribe's existing reservation. For Indian tribal governments located in Oklahoma which have no reservation, gaming can be conducted on after-acquired lands if such lands are within the boundaries of the tribal government's former reservation, or are contiguous to trust allotted lands. For Indian tribal governments located outside of Oklahoma which have no reservation, gaming can be conducted on after-acquired lands if such lands are located within the tribal governments last recognized reservation. An In-

dian tribal government may petition the Secretary of the Interior to conduct gaming activities on lands acquired after the enactment of IGRA. The Secretary must determine that the conduct of gaming on such lands is in the best interest of the Indian tribe and its members and is not detrimental to the surrounding community. In making this determination, the Secretary must consult with the Indian tribal government and appropriate State and local officials, including officials of any nearby Indian tribes. An Indian tribal government may only conduct gaming on these lands if the Secretary determines that it would be in the tribe's best interest and the Governor of the State in which such lands are located concurs in the Secretary's determination. The Act specifies that the limitations on the Secretary's authority to bring lands into trust only apply to lands on which gaming activities will occur and do not apply to the Secretary's authority to bring lands in to trust for purposes other than gaming.

In its consideration of IGRA in 1988, it is clear that Congress balanced the competing interests of Federal, Tribal, and State governments. It also considered the need for strong enforcement of gaming laws and regulations and the Federal interest in protecting and preserving the sovereign authority of Indian tribal governments. In enacting IGRA, the Congress specifically recognized several longstanding principles of Federal Indian policy:

It is a long- and well-established principle of Federal-Indian law as expressed in the United States Constitution, reflected in Federal statutes, and articulated in decisions of the Supreme Court, that unless authorized by an act of Congress, the jurisdiction of State governments and the application of state laws do not extend to Indian lands. In modern times, even when Congress has enacted laws to allow a limited application of State law on Indian lands, the Congress has required the consent of the tribal governments before State jurisdiction can be extended to tribal lands. * * * In determining what patterns of jurisdiction and regulation should govern the conduct of gaming activities on Indian lands, the Committee has sought to preserve the principles which have guided the evolution of Federal-Indian law for over 150 years. In so doing, the Committee has attempted to balance the need for sound enforcement of gaming laws and regulations, with the strong Federal interest in preserving the sovereign rights of tribal governments to regulate activities and enforce laws on Indian land. The Committee recognizes and affirms the principle that by virtue of their original tribal sovereignty, tribes reserved certain rights when entering into treaties with the United States, and that today, tribal governments retain all rights that were not expressly relinquished.¹

Under IGRA, the Congress authorized Indian tribal governments to negotiate with State governments for compacts governing the operation of Class III gaming activities on Indian lands. Under these compacts, Indian tribal governments and State governments could

¹ (S. Rept. 100-446, 2d session, 1988, at page 5.)

negotiate the extent of State jurisdiction, if any, over criminal violations on the reservation, or the amount of State regulation, if any, of the tribal gaming operation, or the application of any other State laws to the tribal gaming operation. The Congress recognized the unique character of the Tribal-State compacts authorized in IGRA:

The mechanism for facilitating the unusual relationship in which a tribe might affirmatively seek the extension of State jurisdiction and the application of State laws to activities conducted on Indian land is a tribal-State compact. In no instance, does [this Act] contemplate the extension of State jurisdiction or the application of State laws for any other purpose. Further, it is the Committee's intention that to the extent tribal governments elect to relinquish rights in a tribal-State compact that they might have otherwise reserved, the relinquishment of such rights shall be specific to the tribe so making the election, and shall not be construed to extend to other tribes, or as a general abrogation of other reserved rights or of tribal sovereignty.²

In IGRA, Congress provided State governments with an unprecedented opportunity to participate in the regulation of Indian gaming activities on Indian lands pursuant to Tribal-State compacts. IGRA provided this authority to State governments to work cooperatively with Indian tribal governments in the regulation of Indian gaming in recognition of significant State interests in the lawful conduct of gaming activities within a State including the paramount concern of Federal, State, and tribal governments in preventing the infiltration of organized crime in gaming activities conducted on Indian reservations.

IGRA reflected a compromise. It diminished the extent of tribal sovereign authority over gaming that had been determined by the U.S. Supreme Court in the *Cabazon* decision, authorizing the exercise of some authority by State governments that was previously reserved to the Federal and Tribal governments. State governors were afforded the right to withhold their concurrence in a Secretary of the Interior's decision to hold in trust, for the benefit of an Indian tribal government, off-reservation lands which were acquired by the tribal government for gaming purposes. In addition, State governments were authorized to enter into compacts with Indian tribal governments to determine the terms and conditions under which Class III gaming activities can occur on Indian lands.

Congress utilized the U.S. Supreme Court's reasoning in *Cabazon* to apply the distinction between civil/regulatory and criminal/prohibitory laws to the context of Indian gaming. In applying this analysis, Congress reasoned:

[This Act] is intended to expressly preempt the field in governance of gaming activities on Indian lands. Consequently, Federal courts should not balance competing Federal, State, and tribal interests to determine the extent to which various gaming activities are allowed. * * * Finally, the Committee anticipates that Federal courts will

² (S. Rept. 100-446, 2d session, 1988, at page 6.)

rely on the distinction between State criminal laws which prohibit certain activities and the civil laws of a State which impose a regulatory scheme upon those activities to determine whether class II games are allowed in certain States. * * * The Committee wishes to make clear that, under [this Act], application of the prohibitory/regulatory distinction is markedly different from the application of the distinction in the context of Public Law 83-280. Here, the courts will consider the distinction between a State's civil and criminal laws to determine whether a body of law is applicable, as a matter of Federal law, to either allow or prohibit certain activities. The Committee does not intend [this Act] to be used in any way to subject Indian tribes or their members who engage in class II games to the criminal jurisdiction of States in which criminal laws prohibit class II games.³

IGRA requires the Federal courts to review the character of State civil and criminal laws governing gaming activities to determine whether such laws should act as a bar to Indian gaming activities. Where a State's law governing gaming activities is determined to be criminal/prohibitory rather than civil/regulatory, then such gaming activities may not be conducted on Indian lands. Where a State's law governing gaming activities is determined to be civil/regulatory, then such gaming activities may be conducted on Indian lands subject to the terms and conditions of the IGRA. Where a gaming activity is not determined to be prohibited as a matter of Federal law, the conduct of such gaming activities are not governed by the application of State law and regulation; instead, such gaming activities are governed by the provisions in the Tribal-State compact, or in the case of Class II gaming, pursuant to such regulations as may be developed by the Tribal government and the National Indian Gaming Commission. This standard is entirely consistent with the U.S. Supreme Court's decision in *Cabazon*.

INDIAN GAMING POST-CABAZON

Since the decision of the U.S. Supreme Court in *Cabazon*, Indian gaming has experienced tremendous growth. In 1987, Indian gaming was a \$121 million industry (in annual gross revenues). In the succeeding years, that figure has grown to \$2.6 billion. Since 1985, the Indian gaming industry has experienced an average annual growth in gross revenues of approximately 53 percent. Of the 557 Indian tribes across the nation, 115 Indian tribal governments have entered into 131 approved Class III gaming compacts involving 23 States.⁴ Of the 115 Indian tribes with compacts, some tribes have not yet established a gaming operation despite having an approved compact. In addition, some Indian tribes have more than one approved compact with a State and certain tribes may have compacts with more than one State. The table below indicates the

³(S. Rept. 100-446, 2d session, 1988, at page 6.)

⁴These figures reflect the number of approved Tribal-State compacts as of Mar. 23, 1995, as compiled by the U.S. Bureau of Indian Affairs, Indian Gaming Management Staff.

estimated annual gross revenues realized by Class II and Class III Indian gaming enterprises since 1988:

ESTIMATED GROSS REVENUES OF INDIAN GAMING ¹
[In thousands of dollars]

	1988	1989	1990	1991	1992	1993
Class II Indian gaming	N/A	N/A	\$388,200	\$419,250	\$429,000	\$435,300
Class III Indian gaming	N/A	N/A	100,300	300,900	1,202,600	2,159,600
Total	\$121,000	\$300,000	488,500	720,150	1,631,600	2,594,900

¹ The figures for the table are based on information compiled by the Congressional Research Service from the Annual Estimates prepared by Christiansen/Cummings Associates, Inc. for Gaming & Wagering Business magazine's July 15–Sept. 14 issues of 1989–92, July 15–Aug. 14, 1993, issue, and Aug. 5, 1994, issue, using the most recent revised figures.

From these figures it is apparent that since 1988 Class II Indian gaming has remained relatively stable with some slight growth in gross revenues each year. Over the same period of time, the growth in gross revenues for Class III gaming operations has increased exponentially. Despite the growth in gross revenues, Indian gaming still represents only 7.5 percent of the total gross revenues of legalized gambling in the Nation. Some of this growth can be explained through the increase in the number of Indian tribes operating Class III gaming operations since 1990. Additional growth can be accounted for by the increased numbers of States which have compacted with Indian tribal governments to conduct Class III gaming operations.

Over this same period of time, non-Indian gaming, including casino gambling and State lotteries, has also experienced a tremendous growth in gross revenues. Since 1988, non-Indian casino gambling has grown from \$7.16 billion in annual gross revenues to \$12.54 billion. The average annual growth in gross revenues for non-Indian casino gambling in the United States since 1985 is 11 percent. Similarly, since 1988 State lotteries grew from \$8.42 billion in annual gross revenues to \$12.82 billion. The average annual growth in gross revenues for State lotteries since 1985 is 12 percent. It is clear that the Nation as a whole has experienced a significant expansion of gambling since 1985 which has resulted in a steady growth in gross revenues to the gambling industry in general. The growth of Indian gaming since 1985 reflects an overall trend in the growth of gambling within the United States. The chart below describes the number of Indian tribal governments with approved Class III gaming compacts since 1989:

NUMBER OF APPROVED TRIBAL-STATE COMPACTS FOR CLASS III GAMING, AND NUMBER OF TRIBES AND STATES WITH CLASS III COMPACTS ¹

	Number of new approved compacts	Cumulative number of approved compacts	Number of new tribes with compacts	Cumulative number of new tribes with compacts	Number of new States with compacts	Cumulative number of States with compacts
1989	0	0	0	0	0	0
1990	14	14	14	14	4	4
1991	21	35	9	23	3	7
1992	31	66	29	52	8	15
1993	36	102	34	86	4	19
1994	12	114	12	98	3	22

NUMBER OF APPROVED TRIBAL-STATE COMPACTS FOR CLASS III GAMING, AND NUMBER OF TRIBES AND STATES WITH CLASS III COMPACTS ¹—Continued

	Number of new ap- proved com- pacts	Cumulative number of approved compacts	Number of new tribes with com- pacts	Cumulative number of new tribes with com- pacts	Number of new States with com- pacts	Cumulative number of States with compacts
1995	17	131	17	115	1	23

¹The information provided in this chart was prepared by the Congressional Research Service from lists of approved Tribal-State Compacts compiled by the Bureau of Indian Affairs. This information reflects data available through Mar. 23, 1995.

Despite the continued growth of Indian gaming since the passage of the Indian Gaming Regulatory Act, the vast majority of Indian tribal governments are not involved in any Indian gaming operations. There are a variety of reasons why an Indian tribal government may not choose to engage in gaming. In recent years, Indian tribes, like the Navajo Nation and the Hopi Indian tribe, have conducted referendums in which the tribal membership elected not to have gaming operations on their reservations. Other Indian tribal governments have determined that their reservations are too remote and too isolated for a successful Indian gaming operation. In some areas of the country, the market is already saturated with gambling operations, both Indian and non-Indian, and it is not economically feasible to locate additional gaming operations in that part of the country. Finally, there are a substantial number of Indian tribes that are culturally, socially, or morally opposed to gaming of any form.

A number of States have refused to negotiate Tribal-State compacts with the Indian tribal governments whose reservations are located within their State boundaries. States such as California, Florida, Texas, and Oklahoma have elected not to negotiate Class III gaming compacts with Indian tribal governments. In many cases, the State's election not to negotiate compacts with Indian tribal governments is based on a fundamental disagreement with the Indian tribal governments over the scope of gaming which is permitted by State law. Since the passage of the IGRA, the scope of the gaming issue has become a major source of disagreement between Tribal and State governments. The lack of agreement on this issue has been a significant barrier for Indian tribal governments in the development of Class III gaming operations on their lands.

The issue of scope of gaming was presented to the Ninth Circuit Court of Appeals in the case of *Rumsey Indian Rancheria et al. v. Wilson*, 41 F. 3d 421 (9th Cir., 1994). In this case, the court considered whether the State of California was required to negotiate Class III gaming compacts with California Indian tribes which permitted electronic gaming devices, live banking card games (blackjack, baccarat, etc.), and percentage card games. The State of California argued that because these types of gaming activities are not permitted in California, the State was under no obligation to include these gaming activities in compact negotiations with Indian tribes. The Indian tribes argued that under the Indian Gaming Regulatory Act, the State of California must negotiate for those games that do not violate the public policy of the State of California. The tribes argued that because California permits certain types of Class III gaming activities, it does not criminally prohibit Class III gaming but rather merely regulates Class III gaming ac-

tivities, and therefore the tribes are entitled under IGRA to negotiate compacts for these gaming activities. The Indian tribes also argued that because the State of California permits video lottery, parimutuel wagering, and non-banked and non-percentage card games, then other types of electronic gaming, banking and percentage card games should be available for compact negotiations. The Indian tribes reasoned that because the types of games permitted by the State of California are functionally similar to the electronic gaming and banking card games sought by the Indian tribes, then the tribes should be permitted to include such games in a Class III gaming compact.

The Ninth Circuit Court of Appeals held that, consistent with the U.S. Supreme Court's holding in *Cabazon*, IGRA required a State to negotiate with Indian tribes on those games which are permitted by the State for any purpose by any person, organization, or entity. The Court in *Rumsey* found after a factual inquiry, that California did not permit banked or percentage card games and therefore those gaming activities could not be included in Tribal-State Class III gaming compacts. The Court also found that if the State of California's video keno lottery terminals did not constitute slot machines under California law, then Indian tribes in California could not negotiate for electronic gaming under IGRA. The Ninth Circuit Court of Appeals remanded this portion of the case to the district court for a determination of whether California permits the operation of slot machines through the operation of video keno lottery terminals.

Another area where State governments have challenged the constitutionality of IGRA are the provisions which authorize the Federal courts to review the actions of a State to determine if a State has negotiated in "good faith" with an Indian tribal government for a Class III gaming compact. States have argued that the provisions of IGRA that subject a State government to suit in Federal court and which require a State to negotiate in good faith with an Indian tribal government for a Class III gaming compact violate the 10th and 11th Amendments to the U.S. Constitution. The principle case raising this constitutional challenge to IGRA is *Seminole Tribe of Florida v. Florida*, No. 94-12 (1994) which was argued before the U.S. Supreme Court on October 11, 1995.

In this case, the Seminole tribe filed an action in Federal court alleging that the State of Florida had failed to negotiate in good faith for a Tribal-State gaming compact under IGRA. The Seminole tribe alleged bad faith on the part of the State due to the failure of the State of Florida to negotiate with the tribe for any video gaming or computer-assisted gaming. The Seminole tribe argued that because Florida permits casino gambling and slot machines, then the tribe should be permitted to negotiate for those gaming activities as part of a Tribal-State compact. In response, the State argued that the tribe's complaint should be dismissed under the 11th Amendment to the Constitution because Florida had not waived its immunity to suit. The district court denied the State's motion to dismiss, reasoning that Congress had the authority to ab-

rogate the State of Florida's immunity pursuant to the authority in the Indian Commerce Clause⁵ of the U.S. Constitution.⁶

The Eleventh Circuit Court of Appeals reversed the decision of the district court to deny the State of Florida's motion to dismiss. In reversing the lower court, the Court of Appeals held that Congress could not abrogate a State's immunity to suit through the exercise of the Indian Commerce Clause of the U.S. Constitution.⁷ The Court of Appeals further found that none of the exceptions to the State's 11th Amendment immunity were presented in the case. On January 23, 1995, the U.S. Supreme Court granted certiorari to hear the case. The issues presented to the U.S. Supreme Court are: does the Congress have the authority to abrogate a State's immunity pursuant to the Indian Commerce Clause of the U.S. Constitution; if a State's immunity cannot be abrogated under the Indian Commerce Clause, does the doctrine of *Ex parte Young*⁸ allow the Court to order State officials to comply with IGRA. The *Seminole* case is similar to several other cases which have been filed in other States where Class III gaming compact negotiations have broken down. The U.S. Supreme Court's decision in *Seminole* will have a dramatic impact on the future implementation of the IGRA.

S. 487, THE INDIAN GAMING REGULATORY ACT AMENDMENTS ACT OF 1995

S. 487 establishes an independent Federal agency called the Federal Indian Gaming Regulatory Commission. The Commission is comprised of three full-time members appointed by the President, with the advice and consent of the Senate. The bill requires one member of the Commission to be a certified public accountant and one member to have expertise and experience in the field of investigation of law enforcement. It also provides that no more than two Commission members may be members of the same political party and at least two Commission members must be members of Federally-recognized Indian tribes.

Under S. 487, the Commission is vested with the power to establish a rate of fees and assessments for each Class II and Class III gaming activity and to conduct investigations, including background investigations. The bill also provides the Commission with the authority to issue temporary and permanent orders closing gaming operations; to grant, deny, condition or suspend any license issued under any authority under the Act; to inspect Class II and Class III gaming premises; to inspect and audit the books and records of any Class II and Class III gaming operations; and to assess fines and penalties for violations of the Act. In addition the Commission has the authority to issue written interrogatories administer oaths, serve or cause to be served process or notices, and conduct hearings on violations of the Act. Under S. 487, the Commission is responsible for the regulation and monitoring of all Class II and Class III gaming activities. In carrying out its duties, the Commission is authorized to enter into a contract with State, tribal or private entities to assist the Commission in carrying out

⁵ Art. 1, § 8, cl. 3, U.S. Const.

⁶ *Seminole tribe of Florida v. Florida*, 801 F. Supp. 655 (S.D. Fla. 1992).

⁷ *Seminole tribe of Florida v. Florida*, 11 F. 3d 1016 (11th Cir. 1994).

⁸ *Ex parte Young*, 209 U.S. 123 (1908).

its responsibilities. Finally, the Commission is authorized to provide training and technical assistance to Indian tribes on the conduct and regulation of gaming activities.

S. 487, as introduced, substantially retains the definitions for Class I, Class II, and Class III gaming in the Indian Gaming Regulatory Act of 1988, and the regulations promulgated by the National Indian Gaming Commission to implement the Act. The bill provides a framework for the regulation of Class II and Class III gaming in conformance with minimum Federal standards which are established by the Commission. The regulatory scheme created by the bill covers all Class II gaming, Class III gaming which is conducted under a Tribal-State compact, and Class III gaming which is conducted pursuant to a compact negotiated by the Secretary of the Interior. Under this scheme, the Commission is vested with the authority to enforce violations of the minimum standards established under the bill.

S. 487 establishes an advisory committee to develop recommendations for minimum Federal standards on Indian gaming which is called the Advisory Committee or Minimum Regulatory Requirements and Licensing Standards. The advisory committee is composed of 7 members who are appointed by the President. Three members of the Advisory Committee must be members of Federally-recognized Indian tribes which are engaged in gaming under this Act, two members are required to be representatives of state governments, and two members shall be employees of the Department of Justice. The Advisory Committee is responsible for the development of recommended minimum Federal standards for the conduct of background investigations, internal control systems, and licensing standards for all Indian gaming operations. Within 180 days of being fully constituted, the Advisory Committee is required to submit its recommendations to the Federal Indian Gaming Regulatory Commission. Once the recommendations have been received by the Commission, the Commission shall hold public hearings on the recommendations. The bill provides that in developing the recommendations and promulgating minimum Federal standards, the Committee and the Commission shall consider the unique nature of tribal gaming as compared to non-Indian commercial, governmental, and charitable gaming; the broad variations in the scope and size of tribal gaming; the sovereign authority of Indian tribes to regulate their own affairs; and the findings and purposes set out in this Act.

While the bill as introduced maintains the same requirements for Class I and Class II gaming that were provided in the Indian Gaming Regulatory Act of 1988, the bill modifies the requirements for Class III gaming activities. Class I gaming would remain under the exclusive jurisdiction of Indian tribes and not subject to the provisions of the Act. The treatment of Class II gaming would remain unchanged under the Act. Class II would remain under the jurisdiction of the tribes, but it is subject to regulation by the Commission pursuant to the provisions of the Act. The bill maintains the requirement that Class II gaming be conducted pursuant to a compact. S. 487 retains the process for the negotiation of a Class III gaming compact between an Indian tribe and a state. However, where Tribal-State negotiations cannot be concluded within 180

days from the time an Indian tribe has requested in writing that the State enter into negotiations for a Class III gaming compact, and where such tribe has specified each gaming activity to be included in the compact, then the tribe may notify the Secretary of the Interior of the impasse, unless the parties have agreed to a longer period of time. Upon receipt of the notice, the Secretary requests the State and the tribe to submit their respective positions on what should be included in the compact, including the types of gaming activities to be permitted, the framework for regulating the gaming activities, and such other matters as the Secretary deems appropriate within 60 days of the request. Not later than 90 days after the 60 day period has expired, the Secretary is authorized to approve a compact which meets the requirements of the Act and includes provisions that best meet the objectives of the Act for background investigations, internal controls, and licensing. The Secretary must ensure that the compact does not violate any provision of this Act, any other provision of Federal law, and the trust obligation of the Federal government. The Secretary may not approve a compact which requires state regulation of Indian gaming about the consent of the State or the Indian tribe. An approved compact shall be published in the Federal Register.

The bill requires that all gaming operations, key employees of gaming operations, management contractors, gaming-related contractors, and any person who has material control, directly or indirectly, over a licensed gaming operation be licensed. In addition, the Commission may require any gaming service industry to be licensed. Under the bill, the Commission is required to review all management contracts, management fees, gaming-related contracts, contract modifications, and existing contracts. The bill provides that the Federal Indian Gaming Regulatory Commission may derive up to \$25 million of its operating funds through an assessment of fees from Class II and Class III gaming activities not to exceed 2 percent of net revenues. The Commission is also authorized to seek reimbursements of costs for conducting reviews and investigations associated with licensing. In addition, Federal appropriations are authorized for up to \$5 million for each fiscal year from 1997 through 1999. The bill authorizes the Commission to impose civil penalties of \$50,000 per day for each violation of the Act. The Commission is also authorized to temporarily close all or part of an Indian gaming operation.

Finally, the bill as introduced included provisions which maintained the Secretary of Interior's authority to take land into trust for gaming purposes at the request of an Indian tribe. The bill requires the Secretary to consult with the tribe and review the recommendations of the Governor of the State in which such lands are located, any state or local officials, and any other nearby Indian tribes. In order to take such land into trust, the Secretary must determine that the gaming establishment on such lands would be in the best interest of the tribe and its members and would not be detrimental to the surrounding community.

PROPOSED ALTERNATIVES TO SECTION 12

Prior to the July 25th Committee hearing on S. 487, the Chairman directed the Committee staff to draft alternative provisions for

Section 12 of the bill. The alternative proposals were intended to address States' concerns regarding Section 12. Over the months preceding the July 25th hearing the Committee had received numerous letters from State Governors and State Attorneys General objecting to the provisions in Section 12 of the bill. This section authorizes the Secretary of the Interior to act as the mediator in the negotiation of a Class III gaming compact when a tribe and a State cannot agree on the terms of a compact. Under current law, when a tribe and State cannot agree on the terms of a compact or where a State has negotiated in bad faith, the Federal court appoints a mediator to develop the terms of a Class III gaming compact. States strenuously objected to the changes proposed by S. 487 to the compact negotiation process. In order to address States concerns regarding Section 12 and to provide a negotiation process that would avoid an impasse in negotiations and result in a gaming compact, Committee staff drafted two alternative proposals which were then circulated to interested parties.

The first alternative would provide the State with the option to request a binding arbitration proceeding to resolve the differences in the positions of the tribe and the State in the compact negotiations. Under this proposal, an Indian tribe would be required to participate in the arbitration proceeding once it has been requested by the State. Both parties would jointly select the arbitrator who shall be independent to the parties. If the parties could not agree on an arbitrator, then the Secretary would appoint the arbitrator from a list of qualified arbitrators. The cost of the arbitration would be shared by both parties. The final decision of the arbitrator would be binding on both parties.

The second alternative would authorize the Secretary to file an expedited action in Federal court for a determination of which types of gaming activities are permitted under State law. It would permit a State and an Indian tribe to submit a compact to the Secretary which leaves unresolved the issue of which types of Class III gaming activities are permitted by State law. In filing the expedited action, the Secretary could request the Federal court to certify the question of which types of Class III gaming activities are permitted by State law to the highest court of the State. Once the State court makes a determination regarding which types of gaming activities are permitted under the State law, such determination would be presented to the Federal court to determine what gaming activities could be incorporated in a Class III gaming compact. Once the Federal court determined the scope of gaming under IGRA, the Secretary is required to make such modifications as are necessary to incorporate the determination of the Federal court prior to approving the Compact.

At the July 25th hearing on S. 487, the Committee solicited the views of the several tribal representatives and the National Governors Association on the two proposed alternatives to Section 12 of the bill. The National Governors Association testified in opposition to both proposed alternatives to Section 12. During the hearing the Chairman invited the National Governors Association to provide an alternative approach to address the issues presented in Section 12. The Committee has yet to receive any proposal from the National Governors Association. While several tribal witnesses tes-

tified in opposition to the second alternative to Section 12 of the Act, there were several tribal witnesses who did express support for a revised form of binding arbitration. In addition, the Committee did receive proposed revisions to alternative 1 from some Indian tribes.

COMMITTEE SUBSTITUTE AMENDMENT

The substitute amendment proposes four major changes to the provisions of S. 487, the Indian Gaming Regulatory Act Amendments Act of 1995. The first proposed change to S. 487 as introduced would delete Section 19 of the bill regarding the authority of the Secretary to bring lands into trust for purposes of gaming. The Substitute Amendment would return to the original statutory language in the Indian Gaming Regulatory Act (IGRA) by not deleting Section 20 of the 1988 Act regarding Gaming on Lands Acquired After Enactment of this Act. The proposed change is in response to objections raised by a number of State Governors and Attorneys General to the provisions of Section 19 of the bill. As originally introduced, Section 19 would have authorized the Secretary of the Interior to consult with, and review the recommendations of, the Governor of the State in which such lands are located, any state or local officials, including the recommendations of any other nearby Indian tribes. S. 487 proposed the change to existing law in order to address the *Siletz* decision,⁹ where a Federal district court held that section 20 of IGRA was an unconstitutional delegation of Federal authority to a State. Section 19 of the bill merely required the Secretary to consult with the Governor of a State rather than require the Secretary to seek the concurrence of the Governor. In the June 22nd hearing on S. 487, the Department of Justice testified that the Department's view is that Section 20 of IGRA is constitutional. Accordingly, the Committee Substitute Amendment deletes Section 19 of the bill and retains Section 20 of existing law in entirety.

The second major change to S. 487 as introduced pertains to the definitions of Class II and Class III gaming. The Substitute Amendment proposes to delete the definitions of "Class II gaming"; "Class III gaming"; "Electronic, Computer, or other Technologic Aid"; "Electronic or Electromechanical Facsimile"; and "Gambling Device" as contained in section 4 of S. 487. In place of those definitions, the Substitute Amendment would retain the definitions of Class II and Class III gaming as set out in section 4 of IGRA. This proposed change responds to concerns raised by witnesses before the Committee regarding the impact of the new definitions in section 4 of the bill on current regulations promulgated under the 1988 Act by the Commission regarding the distinctions between Class II and Class III gaming. Under the Substitute Amendment, the Committee would return to the original definitions under the IGRA. It is the intent of the Committee to retain the current regulations pertaining to Class II and Class III gaming activities, including the definitions of "Electronic, Computer or other Technologic Aid" and "Electronic or Electromechanical Facsimile",

⁹ *Confederated Tribes of Siletz Indians of Oregon v. U.S.*, 841 F. Supp. 1479 (D. Or. 1994).

as promulgated by the Commission on April 9, 1992.¹⁰ The Committee supports the continued application of such regulations to Class II and Class III gaming activities and does not intend the passage of S. 487 to alter said application. One additional change in the Substitute Amendment is the inclusion of a new definition for the term “gaming operation”.

The third major change to S. 487 would modify the qualifications for members of the Federal Indian Gaming Regulatory Commission under Section 5 of the bill. As introduced, S. 487 would require that at least two members of the Commission be members of Federally-recognized Indian tribes and that one member of the Commission be a certified public accountant with not less than 5 years of experience, and that one member of the Commission be an individual with training and experience in the fields of investigation and law enforcement. The Substitute Amendment would modify these provisions to require that at least two members of the Commission be individuals with extensive experience or expertise in tribal government. The Substitute would authorize the President to give special reference to the training and experience of individuals in the fields of corporate finance, accounting, auditing, and investigation or law enforcement. The Committee intends the amendments to Section 5 of the bill to provide the Administration with more flexibility in making appointments to the Commission. The Committee believes that because of the nature of the work to be carried out by the Commission, qualified candidates should have significant experience in corporate finance, accounting, and auditing or significant experience in investigation and law enforcement. Finally, the Committee intends the changes in Section 5 which require at least 2 members of the Commission to have extensive experience or expertise in tribal government will ensure that these Commission members will be well-versed in the principles of Federal Indian law and have significant experience working with or in tribal governments. In addition, the Substitute would add to the list of authorities of the Commission under Section 7 of the bill, the authority to establish precertification criteria that apply to management contractors and other persons having material control over a gaming operation.

The fourth major change to S. 487 would substantially revise Section 12 of the bill and reinsert the original statutory provisions in Subsection (d) of Section 11 of IGRA. S. 487 as introduced would have authorized the Secretary of the Interior to act as a mediator between the State and an Indian tribe where the parties are unable to successfully conclude compact negotiations within the timelines provided under the bill. Under Section 12 of the Substitute Amendment, the original statutory language regarding compact negotiations would be incorporated into the amendment. The proposed change in the Substitute Amendment would restore the good faith defense to the States and restore the Federal court mediation process to address those circumstances where an Indian tribe and a State are unable to conclude a compact. The changes contained in the Substitute Amendment were made in response to the concerns raised by a number of State Governors and State Attor-

¹⁰ See 25 CFR part 502, sections 502.3, 502.4, 502.7, and 502.8.

neys General regarding the provisions in Section 12 of S. 487 which authorized the Secretary of the Interior to act as a mediator. Several States objected to this provision in S. 487 arguing that it ceded too much authority to the Secretary of the Interior to develop a Class III gaming compact without sufficient State participation. Indian tribes testified in support of the provisions of S. 487 as introduced as an appropriate response to those circumstances where a State refused to negotiate with a tribe on Class III gaming, and invoked its 10th and 11th Amendment defenses to the Federal court mediation process to create an impasse. Finally, the two alternative proposals to Section 12 which were circulated by the Committee were not supported by the representatives of tribal governments and the National Governors Association in the July 25th hearing. Because there is no consensus between the States and the tribes on this issue and there has been no agreement on proposed alternative language to Section 12 of the bill, the Committee has determined to return to the original process set out under IGRA.

OTHER CONSIDERATIONS

In recent years, three serious proposals have been made to levy a new Federal tax upon the proceeds of gaming activity conducted by Indian tribal governments. In 1994, the Clinton Administration floated a wagering tax on all casino-style gaming in order to finance its welfare reform proposal. That tax would have applied to both for-profit commercial gaming private enterprises operated in Nevada, New Jersey, and in other states on riverboats and land, as well as to the governmental gaming conducted by Indian tribes. The Administration's new wagering tax was not adopted by the Congress. In early 1995, a revenue proposal of uncertain origin was floated during consideration of the General Agreement on Tariffs and Trade (GATT) that would have imposed a Federal tax on Indian gaming activity. This too was abandoned. Subsequently, during the summer of 1995, the House Committee on Ways and Means proposed and then approved a provision as part of its balanced budget reconciliation bill that would have applied a new Federal tax solely on Indian gaming.

The House provision singled out Indian tribal governments for disparate treatment by imposing a new Federal income tax on the Federally-authorized governmental gaming revenues of tribes, while continuing to treat as exempt from Federal tax both the gaming revenues derived by State and local governments and the gaming funds raised by non-profit, tax-exempt charitable organizations. In passing the Indian governmental gaming tax provision as part of its initial reconciliation measure, the House of Representatives proposed a dramatic change in the tax status of Indian tribal governments. Federal policy for decades has encouraged tribal governments to foster economic development on their impoverished reservations. Since the time tribal governments entered into treaties with the United States, they have been considered sovereign governments. Consequently, Indian tribal governments have been treated as non-taxable entities under Federal income tax law. (See IRS Rev. Rul. 67-284, 1967-2 C.B. 55; Rev. Rul. 81-295, 1981-2 C.B. 15; Rev. Rul. 94-16, 1994-12 I.R.B. 1; Rev. Rul. 94-65, 1994-42 I.R.B. 10.) Perhaps the sharpest irony is that the tribal revenue

declared by the House provision to be taxable was characterized as “unrelated business income”. However, tribal revenues derived from the conduct of gaming activities on Indian lands are expressly required by Federal law to be expended by tribal governments for governmental purposes under the Indian Gaming Regulatory Act of 1988 in a provision that would not be altered by S. 487.

The Chairman, Vice-Chairman, and many other members of the Senate Committee on Indian Affairs wrote the leadership of the Senate Committee on Finance to urge that Committee to reject the House-passed provision to tax Indian gaming revenues. After considering the matter, the Finance Committee did not include that provision in its Balanced Budget bill, and subsequently prevailed upon the House to drop the idea in the Conference Committee. The effort to defeat the Indian gaming tax was led by a broadly bi-partisan group of Senators. The arguments they made against the bill included the following points. Indian tribes are governments, they are not cultural organizations or non-profit corporations. Tribal governments exercise substantial jurisdiction and governmental authority under Federal law. The governmental status of tribes has been confirmed repeatedly by the United States Supreme Court and Federal statutes, consistent with long-standing constitutional principles. Like States and other sovereign governments, Indian tribes have a need to raise revenues to meet their governmental obligations and to provide basic governmental services by conducting business activities such as gaming. Tribal governments do not have “unrelated business income,” they have governmental revenues derived from Federally-authorized economic development activities. No serious proposal was under consideration to impose a Federal income tax on State or other governments who conduct lotteries or other gaming activities as part of their responsibility to raise revenues to carry out governmental activities for their territories. Consequently, the House proposal was rejected as a plainly discriminatory Federal income tax against Indian tribal governments.

LEGISLATIVE HISTORY

S. 487 was introduced by Senator McCain, for himself and Senator Inouye, on March 2, 1995, and was referred to the Committee on Indian Affairs. On June 22, 1995, the Committee on Indian Affairs held a hearing on S. 487. A second hearing was held on July 25, 1995.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In an open business session on August 9, 1995, the Committee on Indian Affairs ordered the bill reported with amendments, with the recommendation that the Senate pass the bill as reported.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that this Act may be cited as the “Indian Gaming Regulatory Act Amendments Act of 1995”.

Section 2. Amendment to the Indian Gaming Regulatory Act

This section provides that the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) is amended by striking the first section and inserting the following new section:

Section 1. Short title; table of contents

Subsection (a) provides that this Act may be cited as the “Indian Gaming Regulatory Act”.

Subsection (b) sets forth the table of contents for the Act and strikes sections 2 and 3 of the Act and inserting the following new sections:

Section 2. Congressional findings

This section contains seven separate findings, including the following: Indian tribes are engaged in the licensing and operation of gaming activities as a means of generating tribal governmental revenue; clear Federal standards and regulations for the conduct of Indian gaming will assist tribal governments in assuring the integrity of gaming activities; a principal goal of Federal Indian policy is to promote tribal economic development, self-sufficiency and strong tribal government; Indian tribes have the right to regulate gaming activities on Indian lands if such activities are not prohibited by Federal law and are conducted within a state that permits such gaming activities and the Congress has the authority to regulate the privilege of doing business with Indian tribes in Indian country; the regulation of Indian gaming activities should meet or exceed federally established minimum regulatory requirements; gaming activities on Indian lands has had a substantial impact on commerce with foreign nations, among the several states and with the Indian tribes; and the Constitution vests the Congress with the power to regulate commerce with foreign nations, among the several states and with the Indian tribes and this Act is enacted in the exercise of those powers.

Section 3. Purposes

This section sets forth four purposes of the Act, including the following: to ensure the right of Indian tribes to conduct gaming operations on Indian lands consistent with the U.S. Supreme Court decision in the case of *California v. Cabazon Band of Mission Indians*; to provide a statutory basis for the conduct of gaming activities on Indian lands as a means of promoting tribal economic development and strong tribal governments; to provide an adequate statutory basis for the regulation of Indian gaming by tribal governments to shield the gaming from organized crime; ensure that the Indian tribe is the primary beneficiary of the gaming activities and to ensure that the gaming activities are conducted fairly by both the operator and the patrons; and to declare that the establishment of independent Federal regulatory authority and minimum regulatory standards for the conduct of gaming activities on Indian lands are necessary to protect such gaming.

Section 4. Definitions

This section contains definitions for the following terms: “applicant”, “Advisory Committee”, “Attorney General”, “Chairperson”,

“Class I Gaming”, “Commission”, “Compact”, “Gaming Operation”, “Gaming-Related Contract”, “Gaming Related Contractor”, “Gaming Service Industry”, “Indian Lands”, “Indian Tribe”, “Key Employee”, “Management Contract”, “Management Contractor”, “Material Control”, “Net Revenues”, “Person”, and “Secretary”. This Section also incorporates by reference the definitions of “Class II gaming” and “Class III gaming” from the Indian Gaming Regulatory Act.

Section 5. Establishment of the Federal Indian Gaming Regulatory Commission

Subsection (a) of this section provides for the establishment of the Federal Indian Gaming Regulatory Commission as an independent agency of the United States.

Subsection (b) provides that the Commission shall be composed of 3 full-time members who are appointed by the President and confirmed by the Senate. Commission members are prohibited from pursuing any other business or occupation or holding any other office. Other than through distribution of gaming revenues as a member of an Indian tribe, Commission members are prohibited from engaging in or having a pecuniary interest in a gaming activity or in any business or organization that has a license under this Act or that does business with any person or organization under this Act. Persons who have been convicted of a felony or a gaming offense cannot serve as Commissioners. In addition, persons who have any financial interest in or management responsibility for any gaming contract or other contract approved pursuant to this Act are also ineligible to serve as Commissioners.

Subsection (b) also provides that not more than 2 members of the Commission shall be members of the same political party. Under this subsection, the President is authorized to give special reference to an individual's training and experience in the fields of corporate finance, accounting, auditing and investigation or law enforcement. It also provides that not less than 2 members of the Commission shall be individuals with extensive experience or expertise in tribal government. Any person under consideration for appointment to the Commission shall be the subject of a background investigation conducted by the Attorney General with particular emphasis on the person's financial stability, integrity, responsibility and reputation for good character and honesty.

Subsection (c) provides that the President shall select a Chairperson from among the members appointed to the Commission.

Subsection (d) provides that the Commission shall select a Vice Chairperson by majority vote. The Vice Chairperson shall serve as the Chairperson in the absence of the Chairperson and shall exercise such other powers as may be delegated by the Chairperson.

Subsection (e) provides that each member of the Commission shall hold for a term of 5 years and no member can serve more than two terms of 5 years each. The initial appointments to the Commission will be made for staggered terms, with the Chairperson serving a full 5 year term.

Subsection (f) provides that Commissioners shall serve until the expiration of their term or until their successor is duly appointed and qualified, unless a Commissioner is removed for cause. A Commissioner can only be removed by the President for neglect of duty,

malfeasance in office or for other good cause. Any member appointed to fill a vacancy shall serve for the unexpired term of the vacancy.

Subsection (g) provides that two members of the Commission shall constitute a quorum.

Subsection (h) provides that the Commission shall meet at the call of the Chairperson or a majority of the members of the Commission. A majority of the members of the Commission shall determine any action of the Commission.

Subsection (i) provides that the Chairperson shall be compensated at level IV of the Executive Schedule and other members shall be compensated at level V. All members of the Commission shall be reimbursed for travel, subsistence and other necessary expenses.

Subsection (j) requires the Administrator of General Services to provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

Section 6. Powers of the chairperson

Subsection (a) provides that the Chairperson is the chief executive officer of the Commission.

Subsection (b) provides that the Chairperson can employ and supervise such personnel as may be necessary to carry out the functions of the Commission, without regard to the requirements of title 5 of the United States Code relating to appointments in the competitive service. The Chairperson is required to appoint a General Counsel and may procure temporary and intermittent services or request the head of any federal agency to detail any personnel of such agency to the Commission to assist in carrying out the duties of the Commission under this Act. The Chairperson is also authorized to use and expend federal funds and fees collected pursuant to this Act and to contract for such professional, technical and operational personnel as may be necessary to carry out this Act. Staff of the Commission are to be paid without regard to the requirements of title 5 of the United States Code relating to classification and pay rates.

Subsection (c) provides that the Chairperson shall be governed by the general policies of the Commission and by such regulatory decisions and determinations as the Commission is authorized to make.

Section 7. Powers and authority of the Commission

Subsection (a) provides that the Commission shall have the power to approve the annual budget of the Commission; promulgate regulations to carry out this Act; establish fees and assessments; conduct investigations; issue temporary and permanent orders closing gaming operations; grant, deny or condition or suspend any license issued under any authority conferred on the Commission by this Act; fine any person licensed pursuant to this Act for violation of any of the conditions of licensure under this Act; inspect the premises where Class II and III gaming operations are located; inspect and audit all books and records of Class II and III gaming operations; use the U.S. mail in the same manner as any agency of the U.S.; procure supplies and services by contract; contract with state, tribal and private entities to assist in the dis-

charge of the Commission's duties; serve or cause to be served process or notices of the Commission; propound written interrogatories and appoint hearing examiners who are empowered to administer oaths; conduct hearings pertaining to violations of this Act; collect the fees and assessments authorized by this Act; assess penalties for violations of the Act; provide training and technical assistance to Indian tribes with respect to the conduct and regulation of gaming activities; monitor and regulate Class II and III gaming; establish precertification criteria that apply to management contractors and other persons having material control over a gaming operation; approve all management-related and gaming-related contracts; delegate any of the functions of the Commission, except for rule-making, to a division of the Commission or a Commissioner, employee or administrative law judge.

Subsection (b) provides that the Commission reserves the right to review any action taken pursuant to a delegation of its authority. The vote of one Commissioner is sufficient to bring a delegated action before the full Commission for review. If the Commission declines to exercise the right of review, then the delegated action shall be deemed an action of the Commission.

Subsection (c) provides that after receiving recommendations from the Advisory Committee pursuant to this Act, the Commission shall establish minimum Federal standards for: background investigations; licensing; the operation of Class II and III gaming activities, including surveillance, security and systems for monitoring all gaming activity, protection of the integrity of the rules for play of games, cash counting and control, controls over gambling devices and accounting and auditing.

Subsection (d) provides that the Commission may secure from any department or agency of the United States information necessary to enable the Commission to carry out this Act. The Commission may also secure from any law enforcement or gaming regulatory agency of any State, Indian tribe or foreign nation information necessary to enable the Commission to carry out this Act. All such information obtained by the Commission shall be protected from disclosure by the Commission. For purposes of this subsection, the Commission shall be considered to be a law enforcement agency.

Subsection (e) authorizes the Commission to conduct such investigations as the Commission considers necessary to determine whether any person has violated, is violating or is conspiring to violate any provision of this Act. In addition, the Commission is authorized to investigate such facts, conditions, practices, or matters as the Commission considers necessary to proper to aid in the enforcement, implementation or amendment of the Act. Any member of the Commission or any officer designated by the Commission is empowered to administer oaths and to subpoena witnesses and evidence from any place in the United States at any designated place of hearing. The Commission is authorized to invoke the jurisdiction of any Federal court to require the attendance and testimony of witnesses and the production of records. The failure of any person to obey an order of a Federal court to appear and testify or to produce records is punishable as a contempt of such court. If the Commission determines that any person is engaged, has engaged

or is conspiring to engage in any act or practice which constitutes a violation of this Act, the Commission may bring an action in the Federal District Court for the District of Columbia to enjoin such act or practice or refer the matter to the Attorney General for the initiation of criminal proceedings. At the request of the Commission, each Federal district court shall have jurisdiction to issue writs of mandamus, injunctions and orders commanding any person to comply with this Act and any rules or regulations promulgated pursuant to the Act.

Section 8. Regulatory framework

Subsection (a) provides that for Class II gaming Indian tribes shall retain the right to monitor and regulate such gaming, conduct background investigations, and issue licenses in a manner which meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c) of this Act.

Subsection (b) provides that for Class III gaming which is conducted pursuant to a tribal/state compact, an Indian tribe or a state or both shall monitor and regulate such gaming, conduct background investigations, issue licenses and establish and regulate internal control systems in a manner which meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c) of this Act.

Subsection (c) provides that in any case in which an Indian tribe conducts Class II gaming in a manner which substantially fails to meet or enforce the minimum Federal standards for Class II gaming, then the Commission shall have the authority to conduct background investigations, issue licenses and establish and regulate internal control systems after providing the Indian tribe an opportunity to cure violations and to be heard. The authority of the Commission may be exclusive and may continue until such time as the regulatory and internal control systems of the Indian tribe meet or exceed the minimum Federal standards established by the Commission.

Subsection (c) also provides that in the case of Class III gaming, if an Indian tribe or a state, or both, fail to meet or enforce the minimum Federal standards for Class III gaming then the Commission shall have the authority to conduct background investigations, issue licenses and establish and regulate internal control systems after providing notice and an opportunity to cure problems and be heard. The authority of the Commission may be exclusive and may continue until such time as the regulatory and internal control systems of an Indiana tribe or a state, or both, meet or exceed the minimum Federal standards established by the Commission.

Section 9. Advisory Committee on Minimum Regulatory Requirements and Licensing Standards

Subsection (a) authorizes the President to establish an Advisory Committee on Minimum Regulatory Requirements and Licensing Standards.

Subsection (b) provides that the advisory committee shall be composed of 7 members who shall be appointed by the President within 120 days of enactment of the Indian Gaming Regulatory Act

Amendments Act of 1995. Three members shall be members of, and represent, Indian tribal governments which are engaged in gaming under this Act and shall be selected from a list of recommendations submitted to the President by the Chairman and Vice Chairman of the Senate Committee on Indian Affairs and the Chairman and ranking minority member of the Subcommittee on Native American and Insular Affairs of the Committee on Resources of the House of Representatives. Two members shall represent state governments and shall be selected from a list of recommendations submitted to the President by the Majority Leader and the Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives. Two members shall be employees of the department of Justice. Any vacancy on the Advisory Committee shall not affect its powers, but shall be filled in the same manner as the original appointment.

Subsection (c) provides that 180 days after the date on which the Advisory Committee is fully constituted it shall develop recommendations for minimum Federal standards for the conduct of background investigations, internal control systems and licensing standards. The committee's recommendations shall be submitted to The Committee on Indian Affairs of the Senate, the Subcommittee on Native American and Insular Affairs of the Committee on Resources of the House of Representatives, the Commission and to each federally recognized Indian tribe. The Commission and the Advisory Committee are required to give equal weight to existing industry standards, the unique nature of tribal gaming, the broad variations in the scope and size of tribal gaming activity, the inherent sovereign right of Indian tribes to regulate their own affairs and the Findings and Purposes set forth in sections 2 and 3 of this Act.

Subsection (d) provides that the Commission shall hold public hearings on the Advisory Committee's recommendations after they are received. At the conclusion of the hearings, the Commission shall promulgate regulations establishing minimum regulatory requirements and licensing standards.

Subsection (e) provides that the members of the Advisory Committee who are not officers or employees of the Federal government or a State government shall be reimbursed for travel and per diem during the performance of the duties of the Advisory Committee and while away from home or their regular place of business.

Subsection (f) provides that the Advisory Committee shall cease to exist 10 days after it submits its recommendations to the Commission.

Subsection (g) provides that the activities of the Advisory Committee are exempt from the Federal Advisory Committee Act.

Section 10. Licensing

Subsection (a) provides that licenses shall be required of gaming operations, key employees of a gaming operation, management- and gaming-related contractors, any gaming service industry, and any person who has material control over a licensed gaming operation.

Subsection (b) provides that the Commission may require license of management contractors and gaming operations notwithstanding

any other provision of law relating to the issuance of licenses by an Indian tribe or a state, or both.

Subsection (c) provides that no gaming operation shall operate unless all required licenses and approvals have been obtained in accordance with this Act. Each management contract for a gaming operation must be in writing and filed with and approved by the Commission. The Commission may require that a management contract include any provisions that are reasonably necessary to meet the requirements of this Act. Any applicant for a license who does not have the ability to exercise any significant control over a licensed gaming operation may be determined by the Commission to be ineligible to hold a license or to be exempt from being required to hold a license.

Subsection (d) provides that the Commission shall deny a license to any applicant who is disqualified for failure to meet any of the minimum Federal standards promulgated by the Commission pursuant to section 7(c).

Subsection (e) provides that the Commission shall conduct an investigation into the qualifications of the applicant and may conduct a non-public hearing concerning the applicant's qualifications. No later than 90 days after an application is filed with the Commission, the Commission shall complete its investigation and any hearings associated with such investigation. Not later than 10 days after the expiration of the 90-day period, the Commission shall take final action grant or deny a license. If an application is denied by the Commission, the applicant can request a statement of the reasons, including specific findings of fact. If the Commission is satisfied that the applicant is qualified to receive a license, then the Commission shall issue a license upon the tender of all license fees and assessments required by this Act and such bonds as the Commission may require for the faithful performance of all requirements imposed by this Act. The Commission is authorized to fix the amount of any bond it requires. Bonds furnished to the Commission may be applied by the Commission to any unpaid liability of the licensee. Bonds shall be furnished in cash or negotiable securities, by a surety or through an irrevocable letter of credit.

Subsection (f) provides that the Commission shall renew any license issued under this Act, subject to its power to deny, revoke or suspend licenses, upon proper application for renewal and the receipt of license fees and assessments. Licenses can be renewed for up to two years for each of the first 2 renewal periods and three years for each succeeding renewal period. A licensing hearing can be reopened by the Commission at any time. Any licenses in existence on the date of enactment of this Act may be renewed for a period of 18 months. Any application for renewal must be filed with the Commission not later than 90 days prior to the expiration of the current license. Upon renewal of a license, the Commission shall issue an appropriate renewal certificate.

Subsection (g) provides that the Commission shall establish procedures for the conduct of hearings associated with licensing including procedures for denying, limiting, conditioning, revoking or suspending any such license. After the completion of a licensing hearing the Commission shall render a decision and issue and serve an order on the affected parties. The Commission may order

a rehearing on a decision on a motion made by a party or the Commission not later than 10 days after the service of a decision and order. Following a rehearing, the Commission shall render a decision, issue an order and serve it on the affected parties. Any licensing decision or order made by the Commission shall be final agency action for the purposes of judicial review. The United States Court of Appeals for the District of Columbia has jurisdiction to review the licensing decisions and orders of the Commission.

Subsection (h) provides that the Commission shall maintain a registry of all licenses granted or denied and shall make the information contained in the registry available to Indian tribes to assist them in the licensing and regulation of gaming activities.

Section 11. Requirements for the conduct of class I and class II gaming on Indian lands.

Subsection (a) provides that Class I gaming shall be within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

Subsection (b) provides that Class II gaming shall be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this Act. An Indian tribe may engage in, and license and regulate Class II gaming on the lands within the jurisdiction of the tribe if: the gaming is located within a state that permits such gaming for any purpose by any person; such gaming is not otherwise specifically prohibited on Indian lands by Federal law; and the Class II gaming operation meets or exceeds the requirements of section 7(c) and 10. With regard to any Class II gaming operation, the Commission shall ensure that: the Indian tribe has issued a separate license for each place, facility or location at which Class II gaming is conducted; the Indian tribe has or will have the sole proprietary interest and responsibility for the conduct of any Class II gaming activity, except as provided elsewhere in the Act with regard to gaming operations by Indian individuals; and the net revenues from Class II gaming may only be used to fund tribal government operations or programs, to provide for the general welfare of the Indian tribe and its members, to promote tribal economic development, to donate to charitable organizations, to help fund operations of local government agencies, to comply with section 17 of this Act, or to make per capita payments to tribal members pursuant to the provisions of this subsection. The Indian tribe is required to provide the Commission with annual outside audits of its Class II gaming operation. Such audits shall include a review of all contracts for supplies and services equal to or more than \$50,000 annually, except for contracts for legal and accounting services.

Subsection (b) further provides that the Commission shall ensure that the construction and maintenance of a Class I gaming facility and the operation of the gaming shall be conducted in a manner that adequately protects the environment and public health and safety. The Commission must also ensure that there is an adequate system for background investigations on all persons who are required to be licensed in accordance with sections 7(c) and 10 and notice to the Commission by the Indian tribe of the results of the background investigation before the issuance of any license. No license may be granted to any person whose prior activities, criminal

record or reputation habits and associations pose a threat to the public interest or the effective regulation of gaming.

With regard to per capita payments, subsection (b) provides that such payments may only be made if: the Indian tribe has prepared a plan to allocate revenues to the public, governmental, economic development and social welfare purposes prescribed by this Act and the Secretary determines that the plan is adequate; the interests of minors and other legally incompetent persons are protected and preserved and the payments for such individuals are disbursed to their parents or legal guardians under a plan approved by the Secretary and the governing body of the Indian tribe; and the per capita payments are subject to Federal income taxation and Indian tribes withhold such tax.

With regard to Class II gaming operations on Indian lands which are owned by a person or entity other than the Indian tribe, subsection (b) requires the issuance of a separate license which includes the requirements of this section and requirements that are at least as restrictive as those established by state law governing similar gaming within the jurisdiction of the state within which the Indian lands are located. No person or entity, other than the Indian tribe shall be eligible to receive a tribal license to own a Class II gaming operation on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a state license to conduct the same activity within the jurisdiction of the state. Any individually owned Class II gaming operation that was in operation on September 1, 1986 shall not be barred by this Act if: it is licensed by an Indian tribe; the income to the Indian tribe from such gaming is not used for per capita payments; not less than 60 percent of the net revenues from the gaming operation is income to the Indian tribe; and the owner of the gaming operation pays an assessment to the Commission pursuant to section 17 for the regulation of such gaming. This exemption for certain individually owned games cannot be transferred to any person or entity and only remains in effect so long as the gaming activity remains within the same nature and scope as the gaming operation which was operated on October 17, 1988. The Commission is required to maintain and publish in the Federal Register a list of individually owned gaming operations.

Subsection (c) provides that any Indian tribe that operates a Class II gaming activity may petition the Commission for a certificate of self-regulation if that Indian tribe has continuously conducted such gaming activity for a period of not less than 3 years, including at least one year after the date of enactment of this Act, and has otherwise complied with the provisions of this Act. The Commission shall issue a certificate of self-regulation if it determines that the Indian tribe has: conducted its gaming activity in a manner which has resulted in an effective and honest accounting of all revenues; resulted in a reputation for safe, fair, and honest operation of the activity; been generally free of evidence of criminal or dishonest activity; and the Indian tribe has adequate systems for accounting for revenues, investigation and licensing of employees and contractors, investigation and enforcement of its gaming laws and has conducted the gaming operation on a fiscally sound basis. During any period in which a certificate of self-regulation is in ef-

fect, the Indian tribe shall continue to submit an annual independent audit to the Commission and a complete resume of each employee and contractor hired and licensed by the Indian tribe. The Commission cannot assess a fee on a self-regulated activity pursuant to section 17 in excess of one quarter of 1 percent of the net revenue from such activity. The Commission may rescind a certificate of self-regulation for just cause and after an opportunity for a hearing.

Subsection (d) provides that if the Commission notifies the Indian tribe that any license which has been issued by the tribe under this section does not meet any standards established under sections 7(c) or 10, then the Indian tribe shall immediately suspend the license and after notice and hearing to the licensee in conformity with the laws of the Indian tribe may revoke such license.

Section 12. Class III gaming on Indian lands

Subsection (a) provides that Class III gaming activities shall be lawful on Indian lands only if such activities are authorized by the Secretary under procedures prescribed under paragraph (3)(B)(vii) or by a compact that: is adopted by the governing body of the Indian tribe having jurisdiction over such lands; meets the requirements of section 11(b)(3) for the conduct of Class II gaming; is approved by the Secretary. Such gaming activities must be located in a State that permits such gaming for any purpose by any person and be conducted in conformity with a compact that is in effect or with procedures prescribed by the Secretary under paragraph (3)(B)(vii). Any Indian tribe which has jurisdiction over the lands upon which a Class III gaming activity is to be conducted shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a compact to govern the conduct of Class III gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

Any State and any Indian tribe may enter into a Class III gaming compact, however such compact shall only take effect when notice of approval by the Secretary of such compact has been published in the Federal Register. The U.S. District Courts shall have jurisdiction over: any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Class III gaming compact or to conduct such negotiations in good faith; any cause of action initiated by a State or Indian tribe to enjoin a Class III gaming activity located on Indian lands conducted in violation of any Class III gaming compact; and any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

Subparagraph (B) provides that an Indian tribe may only initiate a cause of action after the expiration of the 180 day period beginning on the date when the Indian tribe requests the State to enter into negotiations. In any action arising from the failure of the State to enter into negotiations with an Indian tribe in good faith, the burden of proof shall be upon the State to prove that it had negotiated in good faith. If the court finds that the State has failed to negotiate in good faith with the tribe, the court shall order the

State and the tribe to conclude such compact within a 60 day period. In determining whether a State has negotiated in good faith the court may take into account the public interest, public safety, adverse economic impacts on existing gaming activities and shall consider the demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

In the event that a State and an Indian tribe fail to conclude a compact within the 60 day period, the tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compact one which best comports with the terms of this Act and any other applicable Federal law and with the findings and order of the court. The mediator shall submit the proposed compact he has selected to the State and the Indian tribe for their review. If a State consents to a proposed compact during the 60 day period, then such compact shall be treated as a compact entered into under paragraph (2). If a State fails to consent to a compact submitted by the mediator during the 60 day period, the mediator shall notify the Secretary and the Secretary shall prescribe procedures for the conduct of Class III which are consistent with the proposed compact selected by the mediator, the provisions of this Act, and the relevant provisions of State law.

The Secretary is authorized to approve any compact between an Indian tribe and a State governing gaming on Indian lands of such tribe. The Secretary may disapprove a compact only if that compact violates any provision of this Act, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligations of the United States to Indians. If the Secretary does not approve or disapprove a compact before the expiration of the 45 day period beginning on the date on which the compact is submitted to the Secretary for approval, the compact shall be considered approved to the extent that it is consistent with the provisions of this Act. The Secretary shall publish notice of any compact that is approved, or considered to have been approved under this paragraph in the Federal Register. The publication of a compact that permits a form of Class III gaming shall be conclusive evidence that such Class III gaming is an activity subject to the laws of the state where the gaming is to be conducted. Any compact negotiated under this subsection shall become effective on its publication in the Federal Register. The Commission shall monitor and, if authorized, regulate and license Class III gaming with respect to any compact that is approved by the Secretary.

Subsection (a) also provides that a compact may include provisions relating to the criminal and civil laws of the Indian tribe or the state; the allocation of criminal and civil jurisdiction between the state and the Indian tribe; the assessment by the state of the costs associated with such activities in such amounts as are necessary to defray the costs of regulating such activity; taxation by the Indian tribe of such activity in amounts comparable to the amounts assessed by the state for similar activity; remedies for breach of contract; standards for the operation of such activity and maintenance of the gaming facility; and any other subject that is directly related to the operation of gaming activities and the impact

of gaming on tribal, state and local governments. Nothing in this Act may be construed as conferring on a state or political subdivision of a state the authority to impose any tax, fee, charge, or other assessment on an Indian tribe, an Indian gaming operation or the value generated by the gaming operation or any person or entity authority by an Indian tribe to engage in a Class III gaming activity in conformity with this Act.

Nothing in subsection (a) impairs the right of an Indian tribe to regulate Class III gaming on the lands of the Indian tribe concurrently with a state and the Commission, except to the extent that such regulation is inconsistent with or less stringent than this Act. The Committee has included language to clarify exemptions to the Johnson Act, also known as the Gambling Devices Transportation Act (15 U.S.C. 1172 and 1175), for gaming conducted under the Indian Gaming Regulatory Act. Specifically, this section provides that sections 1172 and 1175 of the Johnson Act shall not apply to any Class II gaming activity, or to any gaming activity conducted pursuant to a Tribal-State compact, or gaming conducted under procedures prescribed by the Secretary of the Interior pursuant to the Indian Gaming Regulatory Act. The Committee is concerned that the definition of a "gambling device" in the Johnson Act is overbroad and may have unintended consequences when applied to gaming activities regulated under IGRA. In particular, the Committee is concerned that devices which have been classified by the National Indian Gaming Commission, or its successor under this bill, the Federal Indian Gaming Regulatory Commission, to be "class II technologic aids" should not fall under the broad definition of "gambling devices" in the Johnson Act. Of particular concern are those electronic, computer, or technologic aids which support class II gaming activities such as random number generators, bingo blowers, computers, televisions, and other types of devices. Under section 1171 of the Johnson Act, gambling devices are defined as including "any other machine or mechanical device * * * designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property * * *."¹¹ The definition additionally includes any sub-assembly or essential part of any such machine or mechanical device.¹² This definition has been interpreted by the courts to apply to "trade booster" devices which were attached to cigarette vending machines to deliver a free package of cigarettes to certain customers based on randomly generated numbers.¹³ The Committee is concerned that those electronic, computer, or technologic aids to class II gaming activities, as determined by the Federal Indian Gaming Regulatory Commission, be exempted from the application of the provisions of the Johnson Act. The Committee has also clarified that gaming activities conducted under Tribal-State compacts or under procedures prescribed by the Secretary of the Interior be exempted from the application of sections 1172 and 1175 of the

¹¹ 15 U.S.C. 1171(a)(2).

¹² 15 U.S.C. 1171(a)(3).

¹³ See *U.S. v. 11 Star-Pack Cigarette Merchandiser Machines*, 248 F.Supp. 933 (D.C.Pa., 1966).

Johnson Act, which pertain to the transportation of gambling devices and the manufacture, sale, repair, or possession of gambling devices, respectively.

Subsection (b) provides that the Federal District Court for the District of Columbia shall have jurisdiction over any action initiated by an Indian tribe, a state, the Secretary or the Commission to enforce a compact or to enjoin a Class III gaming activity located on Indian lands and conducted in violation of any compact.

Subsection (c) provides that the governing body of an Indian tribe may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized Class III gaming on the Indian Lands of the Indian tribe. Such a revocation shall render Class III gaming illegal on the Indian lands of such Indian tribe. The Commission is required to publish the revocation ordinance or resolution in the Federal Register not later than 90 days after receipt of such resolution or ordinance and it shall take effect upon such publication. Any person or entity operating a Class III gaming activity on the date of such revocation may continue to operate such activity in conformity with a compact that is in effect for one year from the date of publication of the revocation.

Subsection (d) provides that with regard to compacts entered into and approved by the Secretary before the date of enactment of this Act shall remain lawful during the period such compact is in effect notwithstanding any amendments made by this Act or any changes made in state law enacted after the approval of the compact. It further provides that all Class III gaming activity conducted under a compact or pursuant to procedures prescribed by the Secretary shall be subject to all Federal minimum regulatory standards established under this act and any regulations promulgated under this Act. Any compact entered into after the date of enactment of this Act shall remain lawful under this Act notwithstanding any change in state law enacted after the approval of the compact.

Section 13. Review of contracts

Subsection (a) provides that the Commission shall review and approve or disapprove any management contracts for the management of any gaming activity and any gaming-related contract unless such gaming related contract is licensed by an Indian tribe consistent with the minimum Federal standards promulgated pursuant to section 7(c).

Subsection (b) provides that the Commission shall only approve a management contract if it determines that the contract provides for: adequate accounting procedures that are maintained and for verifiable monthly financial reports prepared by or for the governing body of the Indian tribe; access to the gaming operations by tribal officials who shall have the right to verify the daily gross revenues and income derived from the gaming activity; a minimum guaranteed payment to the Indian tribe that has preference over the retirement of any development and construction costs; an agreed upon ceiling for the repayment of any development and construction costs; a contract term of not more than 5 years unless the Commission determines that a term of 7 years is appropriate based on the capital investment required and the income projections for

the gaming activity; and grounds and mechanisms for the termination of the contract.

Subsection (c) provides that the Commission may approve a management contract that provides for a fee of 30 percent of the net revenues of a tribal gaming activity, unless the Indian tribe requests a higher fee and the Commission determines that based on the capital investment required and the income projections a higher fee is justified. In no circumstances can a management fee exceed 40 percent.

Subsection (d) provides that the Commission shall approve a gaming-related contract only if the Commission determines that the contract provides for: grounds and mechanisms for the termination of the contract and such other conditions as the Commission may be empowered to impose under this Act.

Subsection (e) provides that not later than 90 days after the date on which a management contract or gaming-related contract is submitted to the Commission for approval the Commission shall either approve or disapprove the contract. The 90 day period may be extended for 45 days if the Commission notifies the tribe in writing of the reason for the extension. The Indian tribe may bring an action in the Federal District Court for the District of Columbia to compel action by the Commission if it does not act in a timely manner. Any gaming-related contract for an amount of \$100,000 or less which is submitted to the Commission for approval by a person who holds a valid license that is in effect under this Act, shall be deemed to be approved if the Commission has not acted to approve or disapprove it within 90 days of its submission.

Subsection (f) provides that after providing notice and hearing, the Commission shall have the authority to require appropriate contract modifications to ensure compliance with this Act or may void any contract if the Commission determines that it violates any of the provisions of this Act.

Subsection (g) provides that no contract regulated by this Act may transfer or in any other manner convey any interest in real property unless specific statutory authority exists, all necessary approvals have been obtained and the conveyance is clearly specified in the contract.

Subsection (h) provides that the authority of the Secretary under 25 U.S.C. 81 shall not extend to any contracts or agreements which are regulated pursuant to this Act.

Subsection (i) provides that the Commission may not approve a contract if the Commission finds that: any person having a direct financial interest in, or management responsibility for such contract, and in the case of a corporation, any member of the board of directors or any stockholders who hold more than 10 percent of its issued stock is an elected member of the governing body of the Indian tribe which is a party to the contract; has been convicted of any felony or any gaming offense; has knowingly and willfully provided materially false statements to the Commission or the Indian tribe or has refused to respond to questions propounded by the Commission; or has been determined to be a person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming. The Commission may also disapprove any contract

if it finds that; the contractor has unduly interfered or influenced for its gain any decision or process of tribal government relating to the gaming activity; the contractor has deliberately or substantially failed to comply with the terms of the contract; or a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

Section 14. Review of existing contracts; interim authority

Subsection (a) provides that at any time after the Commission is sworn in and has promulgated regulations for the implementation of this Act the Commission shall notify each Indian tribe and management contractor who entered into a contract prior to the enactment of this Act that the Indian tribe is required to submit the contract to the Commission within 60 days of such notice. Any such contract shall be valid under this Act unless the Commission disapproves it under this section. Not later than 180 days after the submission of a contract for review, the Commission shall review it to determine if it meets the requirements of section 13. The Commission shall approve a contract if it determines that the contract meets the requirements of section 13 and the contractor has obtained all of the licenses required by this Act. If the Commission determines that a contract does not meet the requirements of section 13, the Commission shall provide written notice to the parties of the necessary modifications and the parties shall have 180 days to make the modifications.

Subsection (b) provides that the Commissioners who are holding office on the date of enactment of this Act shall exercise the authorities vested in the Federal Indian Gaming Regulatory Commission (except those authorities specified in 7(a)(1) and those authorities associated with the administration of the Commission as an independent agency as defined in 5 U.S.C. 104) until such time as the members of that Commission are sworn into office. Until such time as the Federal Indian Gaming Regulatory Commission promulgates regulations under this Act, the regulations promulgated under the Indian Gaming Regulatory Act of 1988 shall apply.

Section 15. Civil penalties

Subsection (a) provides that any person who violates this Act or the regulations promulgated pursuant to this Act, either by an act or an omission, shall be subject to a civil penalty of not more than \$50,000 per day for each violation.

Subsection (b) provides that the Commission shall assess the civil penalties authorized by this Act and the Attorney General shall collect them in a civil action. The Commission may seek to compromise any assessed civil penalty. In determining the amount of a civil penalty, the Commission shall take into account: the nature, circumstances, extent and gravity of the violation; with regard to the person found to have committed the violation, the degree of culpability, any history of prior violations, ability to pay and the effect on ability to continue to do business; and such other matters as justice may require.

Subparagraph (c) provides that the Commission may order the temporary closure of all or part of an Indian gaming operation for substantial violation of this Act and the regulations promulgated

by the Commission. Not later than 30 days after an order of temporary closure the Indian tribe or the individual owner of the gaming operation may request a hearing on the record to determine whether the order should be made permanent or dissolved. Not later than 30 days after a request for a hearing, the Commission shall hold the hearing and render a final decision within 30 days after the completion of the hearing.

Section 16. Judicial review

Any decision made by the Commission pursuant to sections 7, 8, 10, 13, 14, and 15 shall constitute final agency decisions for purposes of appeal to the Federal District Court for the District of Columbia under the Administrative Procedures Act.

Section 17. Commission funding

Subsection (a) provides that the Commission shall establish an annual schedule of fees to be paid to it by each Class II and III gaming operation that is regulated by this Act. No gaming operation may be assessed more than 2 percent of its net revenues and the Commission cannot collect more than \$25 million in fees in any year. Fees are payable to the Commission on a monthly basis. The fees paid by a gaming operation may be reduced by the Commission to take into account that regulatory functions are performed by an Indian tribe, or an Indian tribe and a state. Failure to pay fees imposed by the Commission will be grounds for revocation of any license required under this Act for the operation of gaming activities. Any surplus assessments in any given year will be credited pro rata against such fees for the succeeding year.

Subsection (b) provides that the Commission is authorized to assess license applicants, except for Indian tribes, for the actual cost of all reviews and investigations necessary to determine whether a license should be granted or denied.

Subsection (c) provides that the Commission shall adopt an annual budget for each fiscal year. Any request for an appropriation pursuant to section 18 shall be submitted directly to the Congress.

Section 18. Authorization of appropriations

This section authorizes an appropriation of \$5 million for the operation of the Commission for each of the fiscal years 1997, 1998 and 1999 to remain available until expended.

Section 19. Application of the Internal Revenue Code of 1986

Subsection (a) provides that the provisions of the Internal Revenue Code with regard to reporting and withholding taxes on winnings.

Subsection (b) provides that the provisions of the Bank Secrecy Act relating to the reporting requirements for cash transactions of \$10,000 or greater will apply to Indian gaming operations which are regulated by this Act.

Subsection (c) provides that this section shall apply notwithstanding any other provision of law enacted before, on or after the date of enactment unless such other provision specifically cites this subsection.

Subsection (d) provides that the Commission shall make available to a state or the governing body of an Indian tribe any law enforcement information it has obtained pursuant to section 7(d), unless otherwise prohibited by law, in order to assist the state or Indian tribe to carry out its responsibilities under this Act or any compact approved by the Secretary.

Section 3. Conforming amendments

This section provides for several amendments to titles 10, 18, 26, and 28 of the United States Code to conform them to the provisions of this Act.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 487, as calculated by the Congressional Budget Office is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 26, 1995.

Hon. JOHN MCCAIN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 487, the Indian Gaming Regulatory Act Amendments Act of 1995.

Enacting S. 487 would affect direct spending or receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 487.
2. Bill title: Indian Gaming Regulatory Act Amendments Act of 1995.
3. Bill status: As ordered reported by the Senate Committee on Indian Affairs on August 9, 1995.
4. Bill purpose: S. 487 would amend the Indian Gaming Regulatory Act to clarify the responsibilities of the Indian Gaming Commission. Licensing procedures for both Class II and Class III gaming would be expanded, and civil penalties for any violation of this Act would be increased. (Class II gaming includes games of chance such as bingo and certain card games; Class III gaming includes gambling activities like blackjack and slot machines.) In addition, the bill would raise the level of fees that may be collected each year by the Commission and would authorize appropriations of \$5 million each fiscal year for fiscal years 1997 through 1999. Finally, S. 487 would create an Advisory Committee on Minimum Regulatory Requirements and Licensing Standards, which would cease to exist once it recommends minimum federal licensing and internal control standards.

5. Estimated cost to the Federal Government: Assuming that the full amounts authorized are appropriated for each year, CBO estimates that spending under S. 487 would total about \$15 million over the next five years, as shown in the following table.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
SPENDING SUBJECT TO APPROPRIATIONS ACTION						
Spending under current law:						
Budget authority ¹	1	.....	.....	.....	.....	.....
Estimated outlays	3	(²)	.....	.....	.....	.....
Proposed changes:						
Authorization level .....	.....	.....	5	5	5	.....
Estimated outlays .....	.....	.....	4	5	5	1
Spending under S. 487:						
Authorization level ¹	1	.....	5	5	5	.....
Estimated outlays	3	(²)	4	5	5	1
ADDITIONAL REVENUES						
Estimated revenues .....	.....	(²)	(²)	(²)	(²)	(²)

¹The 1995 level is the amount appropriated for that year. At this time, fiscal year 1996 appropriations have not been enacted. Hence, the table does not include any amount for 1996. However, the conference agreement for the Department of the Interior and Related Agencies Appropriations bill includes \$1 million for 1996.

²Less than \$500,000.

The costs of this bill fall within budget function 800.

6. Basis of estimate: This estimate assumes that the amounts authorized will be appropriated for each year and that spending will occur at historical rates. Other provisions, including the creation of a temporary Advisory Committee, would result in no significant cost to the federal government.

In addition to the authorization of appropriations, S. 487 would authorize an increase in annual fees that may be paid to the Commission by Class II and Class III gaming operations. Such fees are treated as offsetting collections and may be spent without further appropriations. Fees may also be collected to cover the costs of licensing any non-Indian owned gaming establishment on Indian land. Currently, about \$1.5 million (the highest amount allowed by law) is collected by the Commission from Class II gaming operations. Under S. 487, the maximum amount allowed to be collected from both Class II and Class III operations would increase to \$25 million. Based on information from the Commission, CBO expects that collections would eventually rise to an amount between \$15 million and \$25 million. The highest amount attained would depend on several factors, including the way that Indian tribes and States regulate Indian gaming, the rate of growth of Indian gaming, and the complexity of the final regulations approved after recommendations by the Advisory Committee are submitted. Because the Commission can spend any amounts collected, we estimate that the change in collections would be matched by a change in spending, resulting in no net budgetary impact.

S. 487 would increase civil penalties that could cause government receipts to increase, and thus would be subject to pay-as-you-go procedures. CBO estimates, however, that any such increase would be less than \$500,000 per fiscal year.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or re-

ceipts through 1998. CBO estimates that enacting S. 487 would increase federal receipts, but the increase would be less than \$500,000 per year. The following table shows the estimated pay-as-you-go impact of this bill.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays	(¹)	(¹)	(¹)
Change in receipts	0	0	0

¹ Not applicable.

8. Estimated cost to State and local governments: None.
9. Estimate comparison: None.
10. Previous CBO estimate: None.
11. Estimate prepared by: Rachel Robertson.
12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of the rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 487 will have a regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee received written testimony from the Department of Justice, the Department of the Interior, and the National Indian Gaming Commission for the hearing held on June 22, 1995. The written testimony from the Administration is as follows:

STATEMENT OF KEVIN V. DI GREGORY, DEPUTY ASSISTANT ATTORNEY GENERAL CRIMINAL DIVISION

Chairman McCain, Chairman Gallegly, Vice Chairman Inouye, and members of the Committees, I am Kevin Di Gregory, Deputy Assistant Attorney General in the Criminal Division of the Department of Justice. Thank you for inviting the Department to present its views on Senate Bill 487, the Indian Gaming Regulatory Act Amendments.

The Administration and the Attorney General greatly appreciate the efforts that you and the Vice Chairman have made over the course of the past several years to foster government-to-government dialogue between the federal government, Indian tribes, and states concerning Indian gaming. The Department recognizes that S.487 is based on the Committee's thorough review of Indian gaming and your synthesis of the views presented to you by government leaders involved in the Committee's consultation process.

As you well know, despite important economic gains made by Indian tribes in certain areas, Indian people continue to suffer serious economic deprivation, which exacerbates social problems in Indian country. The Indian Gam-

ing Regulatory Act has provided one of the few successful avenues of economic development in Indian country, and Senate Bill 487 demonstrates the Committee's vital commitment to protect Indian gaming as a means of building strong tribal government and economic self-sufficiency within a regulatory system that preserves long-term viability of Indian gaming and shields Indian tribes and the public from organized crime and corrupting influences. At the same time, S. 487 continues to offer states a role in developing the regulatory framework for class III gaming by Indian tribes.

In July 1994, the Department presented its position on Senate Bill 2230, the proposed Indian Gaming Regulatory Act Amendments of 1994, and we identified two primary concerns. First, we noted that the generation of the protracted litigation between the tribes and the states concerning class III gaming is "the central failing of the IGRA." Second, the Department emphasized the vital importance of ensuring that an adequate regulatory base exists for Indian gaming. S. 487 addresses both of those concerns.

THE CLASS III GAMING COMPACT PROCESS

S. 487 eliminates the provision that states are subject to suit unless they negotiate a compact in good faith, thereby avoiding potential 10th and 11th Amendment concerns with the IGRA.

Under S. 487, states and Indian tribes have the opportunity to negotiate class III gaming compacts. State participation in the compacting is, however, voluntary and the states are not compelled to negotiate or regulate. In this way, potential 10th and 11th Amendment concerns are eliminated. I emphasize potential because the Department is defending the IGRA against an 11th Amendment challenge as *amicus curiae* before the Supreme Court and against a 10th Amendment challenge in the Ninth Circuit Court of Appeals as *amicus curiae*.

If no class III gaming compact is concluded within the negotiation period, then the Secretary of the Interior becomes responsible for concluding the compact. The Secretary will choose class III gaming compact provisions from among alternative provisions submitted by the state and the affected Indian tribe that best meet the objectives of the Act.

The Department recognizes that to a certain extent this new scheme will shift the burden of litigation to the Secretary, particularly on the scope of gaming issue. We defer to the Department of the Interior as to whether this shift is appropriate.

MINIMUM FEDERAL REGULATORY STANDARDS

Significantly, S. 487 provides for the establishment of federal minimum regulatory standards for Indian gaming. These standards are to be developed by an Advisory Com-

mittee composed of federal, tribal, and state officials, on which two Department of Justice employees are to be members. The Advisory Committee is to complete its work within 180 days, and thereafter, regulations incorporating the standards are to be promulgated by the reconfigured Federal Indian Gaming Regulatory Commission.

Although the Department recognizes that many tribes have sophisticated regulatory regimes, the Department views the promulgation of uniform federal minimum standards for Indian gaming regulatory regimes as an important prudential measure. The S. 487 process for promulgating federal minimum regulatory standards with the aid of the Advisory Committee is consonant with the federal policy of promoting government-to-government relations with Indian tribes. The Department of Interior has suggested that use of the negotiated rulemaking is akin to the process underway pursuant to the Indian Self-Determination Act. That alternative also would be consonant with the government-to-government relationship with tribes.

The Department notes that S. 487, in fairness to Indian tribes with existing gaming operations, sets a 180-day grace period for compliance with the federal minimum regulatory standards. The Department also notes that for federal minimum regulatory standards to be effective, they must be uniform in application. Although the clear thrust of S. 487 is to apply federal minimum standards uniformly to all Indian gaming operations, section 12(e), which was created to “grandfather” in existing class III gaming compacts, somewhat confuses this issue. Therefore, the Department includes a proposed technical correction to section 12(e) in our attached addendum.

Finally, although minimum standards are an integral part of well-regulated gaming, a fully funded FIGRC is equally important. The Department urges Congress to ensure that FIGRC is provided with sufficient resources to maintain and enforce the standards.

ALLOCATION OF REGULATORY RESPONSIBILITY TO THE FIGRC

Senate Bill 487 amends the current regulatory structure of the IGRA by vesting the Federal Indian Gaming Regulatory Commission with regulatory authority over class III gaming, while the current law vests the NIGC with primary responsibility for regulating only class II gaming (i.e., bingo, pull-tabs, etc.). Accordingly, if an Indian tribe or management contractor operates class III gaming outside the scope of a class III gaming compact, the FIGRC would have the authority to seek both temporary and permanent closure orders for the operation, as well as monetary penalties up to \$50,000 per day. The Department believes that these stringent civil penalties are appropriate measures to deal with non-compacted class III gaming.

FIGRC’s increased authority includes the authority to bring civil enforcement actions. In general, it is the policy

of the Department to propose such grants of independent litigating authority. Such independent authority invites inconsistent interpretations of federal law.

CHANGES IN STATE LAW

S. 487 also addresses the issue of the effect that changes in state law have on existing compacts. S. 487 states that changes in state law have no effect on existing compacts. The Department believes that this provision resolves the uncertainty that currently exists in the IGRA.

AFTER ACQUIRED TRUST LANDS

The Department is presently defending the constitutionality of the “after acquired” lands provision of IGRA against an Appointments Clause challenge in the Ninth Circuit. Senate Bill 487 eliminates the provision that requires the concurrence of the governor of a state before a tribe is allowed to game on lands acquired after the passage of IGRA. The Department continues to believe that there is in fact no Appointment Clause problem under the current law.

TAX TREATMENT OF INDIAN TRIBES

Section 19(b)(1) of S. 487 would amend the current language of the IGRA relating to the application of the Internal Revenue Code to Indian gaming operations, apparently with the intent that Indian tribes receive the same treatment as states vis-a-vis the federal wagering taxes. The Department reserves comment on this issue, as this is primarily a Department of the Treasury issue.

Finally, we have included the Department of Justice's list of suggested technical corrections for your review.

That concludes my prepared remarks. At this time, I would be pleased to respond to questions from the Committee Members.

DEPARTMENT OF JUSTICE SUGGESTED TECHNICAL CORRECTIONS TO S. 487

1. *Section 4(16) Indian lands*

(B)(ii)(II) should read: “held *in trust* by the United States for the benefit of an individual Indian.” The omission of the italicized words appears to be a typographical error.

(B)(iii) should be renumbered (B)(ii)(IV) because, *a priori*, Indian tribes have government authority over their own tribal trust lands.

2. *Section 12(e)(1) Compacts entered into before the date of the enactment of the Indian Gaming Regulatory Act Amendments of 1995*

The phrase “Provided that the minimum regulatory requirements set forth in the Indian Gaming Regulatory Act

Amendments of 1995 and the regulations promulgated thereunder are applied.”

The addition of this phrase should make clear that federal minimum regulatory standards apply uniformly throughout the United States to all Indian gaming operations.

3. *Section 19(b)(3) Statutory construction*

The word “after” should be substituted for the word “before” used in this paragraph.

4. *Section 7(e)(3)(A) Enforcement*

Rewrite Section 7(e)(3) to read, after (A) “[* * * the Commission may] transmit such evidence as may be available concerning such act or practice as may constitute a violation of any Federal civil or criminal law to the Attorney General, who may institute the necessary civil or criminal proceedings. The Department of Justice may bring an action in the appropriate district court of the United States of the United States District court for the District of Columbia to enjoin such act or practice, and upon a proper showing, the court shall grant, without bond, a permanent or temporary injunction or restraining order.”

At the end of Section 7(e)(3)(B) insert “nor is a referral by the Commission a condition precedent to action by such agency or department.”

STATEMENT OF JOHN J. DUFFY, COUNSELOR TO THE SECRETARY, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, I am pleased to present the views of the Department of the Interior on S. 487, a bill proposing amendments to the Indian Gaming Regulatory Act of 1988.

I want to begin by emphasizing that the department strongly supports tribes engaging in gaming activities. As a tool for tribal economic development, Indian gaming is working. Gaming tribes now have more funds available to provide their people with health care, education, and social services. Although there is no systematically collected data on the tribal use of gaming proceeds, information supplied by gaming tribes indicates that gaming revenues are used by tribes for the following purposes: (1) Infrastructure, new roads, water and sewer systems, and community centers; (2) economic development, land acquisitions, new business development, long-term investments; (3) community grants, payments to local governments for schools, police protection, and social service programs; (4) health care, funding health insurance programs, new medical facilities, and programs for the elderly; (5) education, scholarships, new school facilities, day care subsidies, school buses, and youth programs; and (6) housing, home construction, repairs and senior citizen housing. In addition,

Indian gaming and related economic activities have improved reservation employment opportunities for tribal members and for members of the surrounding non-Indian communities as well. The benefits of Indian gaming are accruing to the approximately 150 Indian tribes which are currently operating class II or class III gaming establishments in 28 States.

The bill provides a framework for regulation of gaming activities on Indian lands. S. 487 requires the formulation of minimum Federal standards for the regulation and licensing of class II and class III gaming, as well as regulation of all contractors, suppliers, and industries associated with such gaming. We support the creation of such standards as long as their development and enforcement are consistent with the principles of tribal sovereignty and self-determination. Although the bill establishes a seven member advisory committee to develop recommendations for minimum Federal standards in the areas of background investigations, internal control systems and licensing standards, we are concerned that this process may not provide for enough tribal participation.

With respect to the members of the current National Indian Gaming Commission, we believe that to provide some continuity during the transition, commissioners serving at the time of the passage of the act should be permitted to serve out their term.

The bill also makes several proposed changes in the compacting process for class III gaming activities. While we understand and respect the rationale for these changes, we believe that the present process can work if the lack of certainty about the ability of tribes to sue states in Federal court is resolved by the courts in favor of the constitutionality of the Indian Gaming Regulatory Act of 1988.

This concludes my statement. I will be happy to answer any questions the committee may have. Thank you.

TESTIMONY OF HAROLD A. MONTEAU, CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION

Mr. Chairman, Members of the Committee, thank you for the opportunity to appear before you and offer testimony on S. 487. My name is Harold Monteau. I am Chairman of the National Indian Gaming Commission. With me today is Associate Commissioner Jana McKeag.

If enacted, S. 487 would supersede Public Law 100-497, The Indian Gaming Regulatory Act of 1988. This Act established the National Indian Gaming Commission. The primary mission of the Commission is to monitor and oversee the regulation of Class II gaming such as bingo and pull-tabs conducted on Indian lands. The Commission reviews and approves Class II and Class III tribal gaming ordinances and management contracts. In addition, it has the authority to impose civil penalties or to close a gaming establishment for substantial violations of the 1988 Act,

regulations promulgated by the Commission, or tribal gaming ordinances.

The Commission is also responsible for conducting background investigations of entities and of individuals with a financial interest in, or management responsibility for Class II management contracts, unless the contracts combines Class II and Class III activities. The Commission does not have the authority to conduct background investigations with respect to Class III management contracts. The regulation of Class III gaming is primarily the responsibility of the tribes and the states as set forth in the compacts negotiated between those parties.

The amendments as proposed in S. 487 provide for: the establishment of a new Federal Indian Regulatory Gaming Commission (FIRGC), the regulation of gaming activities by tribes, the establishment of Federal minimum standards, the compacting of Class III gaming, regulatory oversight by the new Commission along with licensing of contractors, penalty assessment, and funding.

These proposed amendments continue Congress' approach of recognizing that Indian tribes have the fundamental responsibility for regulating Class II gaming activities over Indian lands. The Commission supports this overall approach. The amendments also enhance and strengthen the Federal, tribal and state involvement in the overall gaming regulatory process. The Commission's role would be that of oversight and general monitoring so as to assure that Federal minimum standards are complied with. This approach is consistent with the government-to-government relationship the United States has with Indian tribes. It is respectful of Tribal sovereignty.

The compacting provisions for Class III gaming, likewise, would provide a non-compulsory mechanism for tribes and states to establish procedures for the conduct of such gaming activities. The amendments do this by not imposing requirements on the states to negotiate with tribes. Elimination of the compulsory aspects of the 1988 Act, effectively removes the 10th and 11th Amendments issues raised by the states. These have been contentious issues for the tribes and the states, and have delayed the benefits of tribal economic development envisioned in the 1988 Act, through gaming.

S. 487 proposes to change the way Commissioners are appointed. It also sets the terms of the Commissioners and sets certain qualifications for Commissioners. The number of Commissioners remains as under current law, three. The amendments designate that the Chairperson of the Commission as the Chief executive officer of the Commission. Certain powers that were conferred under the 1988 Act on the Chairman would be exercised by the full Commission with the enactment of these amendments.

The fundamental nature of the operation and scope of authority of the Commission remains that of an independent regulatory authority. New Federal minimum standards

are to be developed and promulgated as regulations of the Commission. During the interim, that is before the new Commissioners are appointed and the minimum standards are established, the existing regulatory framework is to be followed. Also, the existing Commissioners serve until they are replaced or nominated through the new process.

Along with certain tribal and political qualifications, the amendments call for additional requirements of candidates for the Commission. While the Commission does not object that certain professional qualifications for Commissioners, the Executive branch should not be constrained by specific limitations by law to select and establish professional qualifications of candidates. Lengthening of the terms of the Commissioners to five years is viewed favorably; it provides the opportunity for greater experience on the Commission. Moreover, with the treatment of the Commission as an independent regulatory agency these five-year terms strengthen the independent status of the Commission.

The amendments do not adequately deal with the transition of the Commissioners. At the least, the present Associate Commissioners terms should be completed prior to the appointment of the new Commissioners. This would assure continuity in the administration of the existing provisions of the 1988 Act and the implementation of the new ones.

S. 487 provides a mechanism for establishing Federal minimum standards. The Commission supports the setting of minimum standards. The overall concept behind passage of the 1988 Act was to assist tribes in the establishment of gaming as an economic opportunity for tribes and to protect the integrity of gaming for the tribes and the public. The setting of uniform minimum standards will assist in meeting Congressional intent.

The minimum standards fall into two broad general categories: operational and regulatory. The operational aspects are concerned with such functions as internal controls, surveillance, security and auditing. The regulatory area is concerned with establishing procedures to assure that the operational standards are being complied with and that background investigations and licensing requirements are being met.

Although the Commission welcomes and solicits the input of the tribes and the states in formulating those standards, the methodology set out in S. 487 is not conducive to prompt appointments of the Advisory Committee members. The process of appointments could be fairly lengthy and result in delays in the development and implementation of the Federal minimum standards. Essentially, the setting of minimum standards is that of creating operational and regulatory standards and procedures which serve to protect the integrity of gaming conducted by the tribes. If a method could be established for the prompt selection of an Advisory Committee and mandatory deadlines set, the concept could be made to work. However, the Advisory Committee would need to include some expertise by

way of individuals with gaming regulatory and operational expertise.

The appointment of the new Commissioners and promulgation of the regulations for the Federal minimum standards under the process set out in S. 487 could take several years to accomplish. The Commission recommends that this new framework be instituted during the transition period, even while the new Commissioners are being appointed and confirmed.

The approach of recognizing tribal regulatory responsibility of gaming activities at the operational level in these amendments serves to assist in strengthening tribal government. Moreover, placing the Commission in the position of providing a backup role where minimum standards are not being followed is consonant with this overall concept. It also assures that safeguards exist to protect the integrity of gaming and protect the interests of the tribes and the general public. The Commission supports this general conceptional approach.

S. 487 provides broader enforcement authority to the Commission. Where the Federal minimum standards are not being met with respect to both Class II and Class III gaming activities the Commission is given the authority to directly regulate these activities.

To be able to carry out these particular functions and the others vested in the Commission, these amendments authorize the Commission to impose fees on Class III gaming. Existing law only authorizes the Commission to assess Class II gaming. Given the growth in gaming the Commission believes that such authorization is necessary and prudent. The amendments, however, provide for the assessment to be made against net revenues as opposed to gross revenues, as provided for in the current law. The Commission recommends that the assessment be on the gross revenues. The cost of regulation should be allocated across the regulated industry on the volume of activity, not the profitability of individual operations.

The efficacy of the self-regulation provisions should be re-evaluated. The overall concept of the amendments and that of the 1988 Act was and is for tribes to be responsible for regulation. The role of the Commission is oversight and monitoring of tribal regulatory implementation. The amendments in S. 487 only authorize direct Commission regulatory action where Federal minimum standards are not being followed. Therefore, the self-regulation provisions appear to be redundant.

As under existing law, the Commission by these amendments will continue to exercise the responsibility of reviewing and approving management contracts between Indian tribes and other entities. This particular function places the Commission in the position of examining the economic terms of the management contract negotiated by the tribes. This particular role is not one traditionally vested in a regulatory-type agency. Whether the Commission

should continue to function in this capacity should be reconsidered. The Commission recommends that rather than second-guessing tribal business and economic decisions, the Commission could establish limits on the various components of management fees, including (1) management, (2) risk assumption, and (3) return on or of any capital investment.

In summary the Commission supports many of the concepts in S. 487 and is preparing amendatory language changes for submission to the Committee. The Commission looks forward to working with the Committee on this bill.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the enactment of S. 487 will result in the following changes in 24 U.S.C. §§ 2701 et seq., 10 U.S.C. § 2323a(e)(1), 18 U.S.C. §§ 1166, 1167, and 1168, 28 U.S.C. §§ 3701(2) and 3704(b), and Section 168(j)(4)(A)(iv) of the Internal Revenue Code of 1986, with existing language which is to be deleted in black brackets and the new language to be added in italic:

24 U.S.C. §§ 2701 THROUGH 2721

§ 2701 [Congressional Findings]

[The Congress finds that—

【(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

【(2) Federal courts have held that section 81 of this title requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;

【(3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;

【(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government;

【(5) Indian tribes have exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.】

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) Indian tribes are—

(A) engaged in the operation of gaming activities on Indian lands as a means of generating tribal government revenue; and

(B) licensing such activities;

(2) clear Federal standards and regulations for the conduct of gaming on Indian lands will assist tribal governments in as-

surging the integrity of gaming activities conducted on Indian lands;

(3) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong Indian tribal governments;

(4) while Indian tribes have the right to regulate the operation of gaming activities on Indian lands, if such gaming activities are—

(A) not specifically prohibited by Federal law; and

(B) conducted within a State that as a matter of public policy permits such gaming activities,
Congress has the authority to regulate the privilege of doing business with Indian tribes in Indian country (as defined in section 1151 of title 18, United States Code);

(5) systems for the regulation of gaming activities on Indian lands should meet or exceed Federally established minimum regulatory requirements;

(6) the operation of gaming activities on Indian lands has had a significant impact on commerce with foreign nations, among the several States and with the Indian tribes; and

(7) the Constitution vests the Congress with the powers to regulate Commerce with foreign nations and among the several States, and with the Indian tribes, and this Act is enacted in the exercise of those powers.

§ 2702 [Congressional Declaration of Policy]

[The purpose of this chapter is—

[(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

[(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

[(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.]

SEC 3. PURPOSES.

The purposes of this Act are—

(1) to ensure the right of Indian tribes to conduct gaming activities on Indian lands in a manner consistent with the decision of the Supreme Court in California et al. v. Cabazon Band of Mission Indian et al. (480 U.S. 202, 107 S. Ct. 1083, 94 L. Ed. 2d 244 (1987)), involving the Cabazon and Morongo Bands of Mission Indians;

(2) to provide a statutory basis for the conduct of gaming activities on Indian lands as a means of promoting tribal eco-

conomic development, tribal self-sufficiency, and strong Indian tribal governments;

(3) to provide a statutory basis for the regulation of gaming activities on Indian lands by an Indian tribe that is adequate to shield such activities from organized crime and other corrupting influences, to ensure that an Indian tribal government is the primary beneficiary of the operation of gaming activities, and to ensure that gaming is conducted fairly and honestly by both the operator and players; and

(4) to declare that the establishment of independent Federal regulatory authority for the conduct of gaming activities on Indian land and the establishment of Federal minimum regulatory requirements for the conduct of gaming activities on Indian lands are necessary to protect such gaming.

§ 2703 Definitions

For the purposes of this Chapter—

【(1) The terms “Attorney General” means the Attorney General of the United States.

【(2) The term “Chairman” means the Chairman of the National Indian Gaming Commission.

【(3) The term “Commission” means the national Indian Gaming Commission established pursuant to section 2704 of this title.

【(4) The term “Indian lands” means—

【(A) all lands within the limits of any Indian reservation; and

【(B) any lands title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by any Indian tribe or individual section to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

【(5) The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians which—

【(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and

【(B) is recognized as possessing powers of self-government.

【(6) The term “class I gaming” means social gaming solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.】

【(1) *APPLICANT.*—The term “applicant” means any person who applies for a license pursuant to this Act, including any person who applies for a renewal of a license.

【(2) *ADVISORY COMMITTEE.*—The term “Advisory Committee” means the Advisory Committee on Minimum Regulatory Requirements and Licensing Standards established under section 9(a).

【(3) *ATTORNEY GENERAL.*—The term “Attorney General” means the Attorney General of the United States.

[(4) CHAIRPERSON.—*The term “Chairperson” means the Chairperson of the Federal Indian Gaming Regulatory Commission established under section 5.*

[(5) CLASS I GAMING.—*The term “class I gaming” means social games played solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.*

[(7)](6)(A) The term “class II gaming” means—

(i) the game of chance commonly known as bingo (whether or not electronic computer, or other technologic aids are used in connection therewith)—

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards,

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that—

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State,

but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term “class II gaming” does not include—

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(C) Notwithstanding any other provision of this paragraph, the term “class II gaming” includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

(D) Notwithstanding any other provision of this paragraph, the term “class II gaming” includes, during the 1-year period beginning on October 17, 1988, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after Octo-

ber 17, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(E) Notwithstanding any other provision of this paragraph, the term “class II gaming” includes, during the 1-year period beginning on December 17, 1991, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands in the State of Wisconsin on or before May 1, 1988, if the Indian tribes having jurisdiction over the lands on which such gaming was operated requested the State, by no later than November 16, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(F) If, during the 1-year period described in subparagraph (E), there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such judicial decision.

[(8)](7) The term “class III gaming” means all forms of gaming that are not class I gaming or class II gaming.

[(9)] The term “net revenues” means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

[(10)] The term “Secretary” means the Secretary of the Interior.

(8) COMMISSION.—*The term “Commission” means the Federal Indian Gaming Regulatory Commission established under section 5.*

(9) COMPACT.—*The term “compact” means an agreement relating to the operation of class III gaming on Indian lands that is entered into by an Indian tribe and a State and that is approved by the Secretary.*

(10) GAMING OPERATION.—*The term “gaming operation” means an entity that conducts class II or class III gaming on Indian lands.*

(11) GAMING-RELATED CONTRACT.—*The term “gaming-related contract” means any agreement for an amount of more than \$50,000 per year—*

(A) under which an Indian tribe or an agent of any Indian tribe procures gaming materials, supplies, equipment, or services that are used in the conduct of a class II or class III gaming activity, or

(B) financing contracts or agreements for any facility in which a gaming activity is to be conducted.

(12) GAMING-RELATED CONTRACTOR.—*The term “gaming-related contractor” means any person who enters into a gaming related contract with an Indian tribe or an agent of an Indian tribe, including any person with a financial interest in such contract.*

(13) GAMING SERVICE INDUSTRY.—*The term “gaming service industry” means any form of enterprise that provides goods or services that are used in conjunction with any class II or class III gaming activity, in any case in which—*

(A) the proposed agreement between the enterprise and a class II or class III gaming operation, or the aggregate of such agreements is for an amount of not less than \$100,000 per year; or

(B) the amount of business conducted by such enterprise with any such gaming operation in the 1-year period preceding the effective date of the proposed agreement between the enterprise and a class II or class III gaming operation was not less than \$250,000.

(14) **INDIAN LANDS.**—The term “Indian lands” means—

(A) all lands within the limits of any Indian reservation; and

(B) any lands—

(i) the title to which is held in trust by the United States for the benefit of any Indian tribe; or

(ii)(I) the title to which is—

(aa) held by an Indian tribe subject to a restriction by the United States against alienation;

(bb) held in trust by the United States for the benefit of an individual Indian; or

(cc) held by an individual subject to restriction by the United States against alienation; and

(II) over which an Indian tribe exercises governmental power.

(15) **INDIAN TRIBE.**—The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians that—

(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians; and

(B) is recognized as possessing powers of self-government.

(16) **KEY EMPLOYEE.**—The term “key employee” means any individual employed in a gaming operation licensed pursuant to this Act in a supervisory capacity or empowered to make any discretionary decision with regard to the gaming operation, including any pit boss, shift boss, credit executive, cashier supervisor, gaming facility manager or assistant manager, or manager or supervisor of security employees.

(17) **MANAGEMENT CONTRACT.**—The term “management contract” means any contract or collateral agreement between an Indian tribe and a contractor; if such contract or agreement provides for the management of all or part of a gaming operation.

(18) **MANAGEMENT CONTRACTOR.**—The term “management contractor” means any person entering into a management contract with an Indian tribe or an agent of the Indian tribe for the management of a gaming operation, including any person with a financial interest in such contract.

(19) **MATERIAL CONTROL.**—The term “material control” means the exercise of authority of supervision or the power to make or cause to be made any discretionary decision with regard to matters which have a substantial effect on the financial or management aspects of a gaming operation.

(20) *NET REVENUES.*—The term “net revenues” means the gross revenues of an Indian gaming activity reduced by the sum of—

(A) any amounts paid out or paid for as prizes; and

(B) the total operating expenses associated with the gaming activity, excluding management fees.

(21) *PERSON.*—The term “person” means an individual, firm, corporation, association, organization, partnership, trust, consortium, joint venture, or entity.

(22) *SECRETARY.*—The term “Secretary” means the Secretary of the Interior.

§ 2704 [National Indian Gaming Commission]

[(a) *ESTABLISHMENT.*—There is established within the Department of the Interior a Commission to be known as the National Indian Gaming Commission.

[(b) *COMPOSITION; INVESTIGATION; TERM OF OFFICE; REMOVAL.*—

[(1) The Commission shall be composed of three full-time members who shall be appointed as follows:

[(A) a Chairman, who shall be appointed by the President with the advice and consent of the Senate; and

[(B) two associate members who shall be appointed by the Secretary of the Interior.

[(2)(A) The Attorney General shall conduct a background investigation on any person considered for appointment to the Commission.

[(B) The Secretary shall publish in the Federal Register the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and shall allow a period of not less than thirty days for receipt of public comment.

[(3) Not more than two members shall be of the same political party. At least two members of the Commission shall be enrolled members of any Indian tribe.

[(4)(A) Except as provided in subparagraph (B), the term of office of the members of the Commission shall be three years.

[(B) Of the initial members of the Commission—

[(i) two members, including the Chairman, shall have a term of office of three years; and

[(ii) one member shall have a term of office of one year.

[(5) No individual shall be eligible for any appointment to, or to continue service on, the Commission, who—

[(A) has been convicted of a felony or gaming offense;

[(B) has any financial interest in, or management responsibility for, any gaming activity; or

[(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 2711 of this title.

[(6) A Commissioner may only be removed from office before the expiration of the term of office of the member by the President (or, in the case of associate member, by the Secretary) for neglect of duty, or malfeasance in office, or for other good cause shown.

[(c) VACANCIES.—Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term of office until his successor has been appointed, unless the member has been removed for cause under subsection (b)(6) of this section.

[(d) QUORUM.—Two members of the Commission, at least one of which is the Chairman or Vice Chairman, shall constitute a quorum.

[(e) VICE CHAIRMAN.—The Commission shall select, by majority vote, one of the members of the Commission to serve as Vice Chairman. The Vice Chairman shall serve as Chairman during meetings of the Commission in the absence of the Chairman.

[(f) MEETINGS.—The Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least once every 4 months.

[(g) COMPENSATION.—

[(1) The Chairman of the Commission shall be paid at a rate equal to that of level IV of the Executive Schedule under section 5315 of Title 5.

[(2) the associate members of the Commission shall each be paid at a rate equal to that of level V of the Executive Schedule under section 5316 of Title 5.

[(3) All members of the Commission shall be reimbursed in accordance with Title 5, for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

§ 2705 [Powers of the Chairman]

[(a) The Chairman, on behalf of the Commission, shall have power, subject to an appeal to the Commission, to—

[(1) issue orders of temporary closure of gaming activities as provided in section 2713(b) of this title;

[(2) levy and collect civil fines as provided in section 2713(a) of this title;

[(3) approve tribal ordinances or resolutions regulating class II gaming and class III gaming as provided in section 2710 of this title; and

[(4) approve management contracts for class II gaming and class III gaming as provided in sections 2710(d)(9) and 2711 of this title.

[(b) The Chairman shall have such other powers as may be delegated by the Commission.

§ 2706 [Powers of the Commission]

[(a) BUDGET APPROVAL; CIVIL FINES; FEES; SUBPOENAS; PERMANENT ORDERS.—The Commission shall have the power, not subject to delegation—

[(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 2717 of this title;

[(2) to adopt regulations for the assessment and collection of civil fines as provided in section 2713(a) of this title;

[(3) by an affirmative vote of not less than 2 members, to establish the rate of fees as provided in section 2717 of this title; and

[(4) by an affirmative vote of not less than 2 members, to authorize the Chairman to issue subpoenas as provided in section 2715 of this title; and

[(5) by an affirmative vote of not less than 2 members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 2713(b)(2) of this title.

[(b) MONITORING; INSPECTION OF PREMISES; INVESTIGATIONS; ACCESS TO RECORDS; MAIL; CONTRACTS; HEARINGS; OATHS; REGULATIONS.—The Commission—

[(1) shall monitor class II gaming conducted on Indian lands on a continuing basis;

[(2) shall inspect and examine all premises located on Indian lands on which class II gaming is conducted;

[(3) shall conduct or cause to be conducted such background investigations as may be necessary;

[(4) may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this chapter.

[(5) may use the United States mail in the same manner and under the same conditions as any department or agency of the United States;

[(6) may procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

[(7) may enter in contracts with Federal, State, tribal and private entities for activities necessary to the discharge of the duties of the Commission and, to the extent feasible contract the enforcement of the Commission's regulations with the Indian tribes;

[(8) may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

[(9) may administer oaths or affirmations to witnesses appearing before the Commission; and

[(10) shall promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this chapter.

[(c) REPORT.—The Commission shall submit a report with minority views, if any, to the Congress on December 31, 1989, and every two years thereafter. The report shall include information on—

[(1) whether the associate commissioners shall continue as full or part-time officials;

[(2) funding, including income and expenses, of the Commission;

[(3) recommendations for amendments to the chapter; and

[(4) any other matter considered appropriate by the Commission.

§ 2707 [Commission staffing]

[(a) GENERAL COUNSEL.—The Chairman shall appoint a General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for GS–18 of the General Schedule under section 5332 of Title 5.

[(b) STAFF.—The Chairman shall appoint and supervise other staff of the Commission without regard to the provisions of Title 5, governing appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS–17 of the General Schedule under section 5332 of that title.

[(c) TEMPORARY SERVICES.—The Chairman may procure temporary and intermittent services under section 3109(b) of Title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS–18 of the General Schedule.

[(d) FEDERAL AGENCY PERSONNEL.—Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this chapter, unless otherwise prohibited by law.

[(e) ADMINISTRATIVE SUPPORT SERVICES.—The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

§ 2708 [Commission—access to information]

[The Commission may secure from any department or agency of the United States information necessary to enable it to carry out this chapter. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

§ 2709 [Interim authority to regulate gaming]

[Notwithstanding any other provision of this chapter, the Secretary shall continue to exercise those authorities vested in the Secretary on the day before October 17, 1988, relating to the supervision of Indian gaming until such time as the Commission is organized and prescribes regulations. The Secretary shall provide staff and support assistance to facilitate an orderly transition to regulation of Indian gaming by the Commission.

§ 2710 [Tribal gaming ordinances]

[(a) EXCLUSIVE JURISDICTION OF CLASS I GAMING ACTIVITY.—

[(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this chapter.

[(2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter.

[(b) REGULATION OF CLASS II GAMING ACTIVITY; NET REVENUE ALLOCATION; AUDITS; CONTRACTS.—

[(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—

[(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization, or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

[(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman. A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

[(2) The Chairman shall approve any tribal ordinance or resolution concerning conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that—

[(A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

[(B) net revenues from any tribal gaming are not to be used for purposes other than—

[(i) to fund tribal government operations or programs;

[(ii) to provide for the general welfare of the Indian tribe and its members;

[(iii) to promote tribal economic development;

[(iv) to donate to charitable organizations; or

[(v) to help fund operations of local government agencies;

[(C) annual outside audits of the gaming which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;

[(D) all contracts for supplies, services, or concessions for a contract amount in excess of \$25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to independent audits;

[(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and

[(F) there is an adequate system which—

[(i) 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; and

[(ii) includes—

[(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such license;

[(II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

[(III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

[(3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if—

[(A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);

[(B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);

[(C) the interests of minors and other legally incompetent person who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents is such amounts as may be necessary for health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

[(D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

[(4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

[(B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

[(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 2712 of this title,

[(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

[(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

[(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 2717(a)(1) of this title for regulation of such gaming.

[(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on October 17, 1988.

[(iii) Within sixty days of October 17, 1988, the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.

[(c) ISSUANCE OF GAMING LICENSE; CERTIFICATE OF SELF-REGULATION.—

[(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

[(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II) of this section, the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

[(3) Any Indian tribe which operates a class II gaming activity and which—

[(A) has continuously conducted such activity for a period of not less than three years, including at least one year after October 17, 1988; and

[(B) has otherwise complied with the provisions of this section may petition the Commission for a certificate of self-regulation.

[(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has—

[(A) conducted its gaming activity in a manner which—

[(i) has resulted in an effective and honest accounting of all revenues;

[(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

[(iii) has been generally free of evidence of criminal or dishonest activity;

[(B) adopted and is implementing adequate systems for—

[(i) accounting for all revenues from the activity;

[(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

[(iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and

[(C) conducted the operation on a fiscally and economically sound basis.

[(5) During any year in which a tribe has a certificate of self-regulation—

[(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 2706(b) of this title;

[(B) the tribe shall continue to submit an annual independent audit as required by subsec. (b)(2)(C) of this section and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

[(C) the Commission may not assess a fee on such activity pursuant to section 2717 of this title in excess of one quarter of 1 per centum of the gross revenue.

[(6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

[(d) CLASS III GAMING ACTIVITIES; AUTHORIZATION; REVOCATION; TRIBAL-STATE COMPACT.—

[(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

[(A) authorized by an ordinance or resolution that—

[(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

[(ii) meets the requirements of subsection (b) of this section, and

[(iii) is approved by the Chairman.

[(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

[(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

[(2)(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b) of this section.

[(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that—

[(i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or

[(ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in section 2711 (e)(1)(D) of this title.

Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

[(C) Effective with the publication under subparagraph (B) of an ordinance or resolution adopted by the governing body of an Indian tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

[(D)(i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

[(ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

[(iii) Notwithstanding any provision of this subsection—

[(I) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and

[(II) any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be affected by such revocation ordinance or resolution.

[(3)(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

[(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

[(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to—

[(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are di-

rectly related to, and necessary for, the licensing and regulation of such activity;

[(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

[(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

[(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities,

[(v) remedies for breach of contract;

[(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

[(vii) any other subjects that are directly related to the operation of gaming activities.

[(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon 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) base upon the lack of authority in such State, or its political subdivisions, to impose such a tax, free, charge, or other assessment.

[(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulations inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

[(6) The provisions of section 1175 of Title 15 shall not apply to any gaming conducted under a Tribal-State compact that—

[(A) is entered into under paragraph (8) by a State in which gambling devices are legal, and

[(B) is in effect.

[(7)(A) The United States district courts shall have jurisdiction over—

[(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith.

[(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and

[(iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

[(B)(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

[(ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that—

[(I) a Tribal-State compact has not been entered into under paragraph (3), and

[(II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith, the burden of proof shall be upon the State to provide that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

[(iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian tribe to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court—

[(I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and

[(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

[(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms in this Act and any other applicable Federal law and with the findings and order of the court.

[(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv),

[(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

[(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures—

[(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of

this chapter and the relevant provisions of the laws of the State, and

[(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

[(8)(A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

[(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates—

[(i) any provision of this chapter,

[(ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or

[(iii) the trust obligations of the United States to Indians.

[(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this chapter.

[(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

[(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman. The Chairman's review and approval of such contract shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 2711 of this title.

[(e) APPROVAL OF ORDINANCES.—For purposes of this section, by no later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this chapter.

§ 2711. [Management Contracts]

[(a) CLASS II GAMING ACTIVITY; INFORMATION ON OPERATORS.—

[(1) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a class II gaming activity that the Indian tribe may engage in under section 2710(b)(1) of this title, but, before approving such contract, the Chairman shall require and obtain the following information:

[(A) the name, address and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corpora-

tion and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

[(B) a description of any previous experience that each person listed pursuant to subparagraph (A) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming; and

[(C) a complete financial statement of each person listed pursuant to subparagraph (A).

[(2) Any person listed pursuant to paragraph (1)(A) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

[(3) For purposes of this chapter, any references to the management contract described in paragraph (1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

[(b) APPROVAL.—The Chairman may approve any management contract entered into pursuant to this section only if he determines that it provides at least—

[(1) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the tribal governing body on a monthly basis;

[(2) for access to the daily operations of the gaming to appropriate tribal officials who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

[(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

[(4) for an agreed ceiling for the repayment of development and construction costs;

[(5) for a contract term not to exceed five years, except that, upon the request of an Indian tribe, the Chairman may authorize a contract term that exceeds five years but does not exceed seven years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming activity require the additional time; and

[(6) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Commission.

[(c) FEE BASED ON PERCENTAGE OF NET REVENUES.—

[(1) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if the Chairman determines that such percentage fee is reasonable in light of surrounding circumstances. Except as otherwise provided in this subsection, such fee shall not exceed 30 percent of the net revenues.

[(2) Upon the request of an Indian tribe, the Chairman may approve a management contract for a fee based upon a percentage of the net revenues of a tribal gaming activity that exceeds 30 percent but not 40 percent of the net revenues if the

Chairman is satisfied that the capital investment required, and income projections, for such tribal gaming activity require the additional fee requested by the Indian tribe.

[(d) PERIOD FOR APPROVAL; EXTENSION.—By no later than the date that is 180 days after the date on which a management contract is submitted to the Chairman for approval, the Chairman shall approve or disapprove such contract on its merits. The Chairman may extend the 180-day period by not more than 90 days if the Chairman notifies the Indian tribe in writing of the reason for the extension. The Indian tribe may bring an action in a United States district court to compel action by the Chairman if a contract has not been approved or disapproved within the period required by this subsection.

[(e) DISAPPROVAL.—The Chairman shall not approve any contract if the Chairman determines that—

[(1) any person listed pursuant to subsection (a)(1)(A) of this section—

[(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

[(B) has been or subsequently is convicted of any felony or gaming offense;

[(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this chapter or has refused to respond to questions propounded pursuant to subsection (a)(2) of this section; or

[(D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

[(2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity;

[(3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this chapter; or

[(4) a trustee, exercising the skill and diligence that a trustee is commonly held to; would not approve the contract.

[(f) MODIFICATION OR VOIDING.—The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated.

[(g) INTEREST IN LAND.—No management contract for the operation and management of a gaming activity regulated by this chapter shall transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in said contract.

[(h) AUTHORITY.—The authority of the Secretary under section 81 of this title, relating to management contracts regulated pursuant to this chapter, is hereby transferred to the Commission.

[(i) INVESTIGATION FEE.—The Commission shall require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in subsection (e) of this section.

§ 2712. [Review of existing ordinances and contracts

[(a) NOTIFICATION TO SUBMIT.—As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to October 17, 1988, adopted an ordinance or resolution authorizing class II gaming or class III gaming or entered into a management contract, that such ordinance, resolution, or contract, including all collateral agreements relating to the gaming activity, must be submitted for his review within 60 days of such notification. Any activity conducted under such ordinance, resolution, contract, or agreement shall be valid under this chapter, or any amendment made by this Act, unless disapproved under this section.

[(b) APPROVAL OR MODIFICATION OF ORDINANCE OR RESOLUTION.—

[(1) By no later than the date that is 90 days after the date on which an ordinance or resolution authorizing class II gaming or class III gaming is submitted to the Chairman pursuant to subsection (a) of this section, the Chairman shall review such ordinance or resolution to determine if it conforms to the requirements of section 2710(b) of this title.

[(2) If the Chairman determines that an ordinance or resolution submitted under subsection (a) of this section conforms to the requirements of section 2710(b) of this title, the Chairman shall approve it.

[(3) If the Chairman determines that an ordinance or resolution submitted under subsection (a) of this section does not conform to the requirements of section 2710(b) of this title, the Chairman shall provide written notification of necessary modifications to the Indian tribe which shall have not more than 120 days to bring such ordinance or resolution into compliance.

[(c) APPROVAL OR MODIFICATION OF MANAGEMENT CONTRACT.—

[(1) Within 180 days after the submission of a management contract, including all collateral agreements, pursuant to subsection (a) of this section, the Chairman shall subject such contract to the requirements and process of section 2711 of this title.

[(2) If the Chairman determines that a management contract submitted under subsection (a) of this section, or the management contractor under a contract submitted under subsection (a) of this section, does not meet the requirements of section 2711 of this title, the Chairman shall provide written notification to the parties to such contract of necessary notifications and the parties shall have not more than 120 days to come into compliance. If a management contract has been approved by the Secretary prior to October 17, 1988, the parties

shall have not more than 180 days after notification of necessary modifications to come into compliance.

§ 2713. Civil penalties

[(a) AUTHORITY; AMOUNT; APPEAL; WRITTEN COMPLAINT.—

[(1) Subject to such regulations as may be prescribed by the Commission, the Chairman shall have authority to levy and collect appropriate civil fines, not to exceed \$25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this chapter, any regulation prescribed by the Commission pursuant to this chapter, or tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

[(2) The Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and collected by the Chairman.

[(3) Whenever the Commission has reason to believe that the tribal operator of an Indian game or a management contractor is engaged in activities regulated by this chapter, by regulations prescribed under this chapter, or by tribal regulations, ordinances, or resolutions, approved under section 2710 or 2712 of this title, that may result in the imposition of a fine under subsection (a)(1) of this section, the permanent closure of such game, or the modification, or termination of any management contract, the Commission shall provide such tribal operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice being considered by the Commission. The allegation shall be set forth in common and concise language and must specify the statutory or regulatory provisions alleged to have been violated, but may not consist merely of allegations stated in statutory or regulatory language.

[(b) TEMPORARY CLOSURE; HEARING.—

[(1) The Chairman shall have power to order temporary closure of an Indian game for substantial violation of the provisions of this chapter, of regulations prescribed by the Commission pursuant to this chapter, or of tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

[(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. Not later than sixty days following such hearing, the Commission shall, by a vote of not less than two of its members, decide whether to order a permanent closure of the gaming operation.

[(c) APPEAL FROM FINAL DECISION.—A decision of the Commission to give final approval of a fine levied by the Chairman or to order a permanent closure pursuant to this section shall be appealable to the appropriate Federal district court pursuant to chapter 7 of Title 5.

[(d) REGULATORY AUTHORITY UNDER TRIBAL LAW.—Nothing in this chapter precludes an Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is not inconsistent with this chapter or with any rules or regulations adopted by the Commission.

§ 2714 [Judicial review]

[Decisions made by the Commission pursuant to sections 2710, 2711, 2712, and 2713 of this title shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to chapter 7 of Title 5.

§ 2715 [Subpoena and deposition authority]

[(a) ATTENDANCE, TESTIMONY, PRODUCTION OF PAPERS, ETC.—By a vote of not less than two members, the Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration of investigation. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

[(b) GEOGRAPHICAL LOCATION.—The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing. The Commission may request the Secretary to request the Attorney General to bring an action to enforce any subpoena under this section.

[(c) REFUSAL OF SUBPOENA; COURT ORDER; CONTEMPT.—Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena for any reason, issue an order requiring such person to appear before the Commission (and produce books, papers, or documents as so ordered) and give evidence concerning the matter in question and any failure to obey such order of the court may be punished by such court as a contempt thereof.

[(d) DEPOSITIONS; NOTICE.—A Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such deposition, and, in cases in which a Commissioner proposes to take a deposition, reasonable notice must be given. The notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission, as hereinbefore provided.

[(e) OATH OR AFFIRMATION REQUIRED.—Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so requests) to testify to the whole truth, and shall be carefully examined. His testimony shall be reduced in writ-

ing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Commission.

[(f) WITNESS FEES.—Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

§ 2716 [Investigative powers]

[(a) CONFIDENTIAL INFORMATION.—Except as provided in subsection (b) of this section, the Commission shall preserve any and all information received pursuant to this chapter as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of Title 5.

[(b) PROVISION TO LAW ENFORCEMENT OFFICIALS.—The Commission shall, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.

[(c) ATTORNEY GENERAL.—The Attorney General shall investigate activities associated with gaming authorized by this chapter which may be a violation of Federal law.

§ 2717 [Commission Funding]

[(a)(1) The Commission shall establish a schedule of fees to be paid to the Commission annually by each class II gaming activity that is regulated by this chapter.

[(2)(A) The rate of the fees imposed under the schedule established under paragraph (1) shall be—

[(i) not less than 0.5 percent nor more than 2.5 percent of the first \$1,500,000, and

[(ii) no more than 5 percent of amounts in excess of the first \$1,500,000, of the gross revenues from each activity regulated by this chapter.

[(B) The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed \$1,500,000.

[(3) The Commission, by a vote of not less than two of its members, shall annually adopt the rate of the fees authorized by this section which shall be payable to the Commission on a quarterly basis.

[(4) Failure to pay the fees imposed under the schedule established under paragraph (1) shall, subject to the regulations of the Commission, be grounds for revocation of the approval of the Chairman of any license, ordinance, or resolution required under this chapter for the operation of gaming.

[(5) To the extent that revenue derived from fees imposed under the schedule established under paragraph (1) are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming activity on a pro rata basis against such fees imposed for the succeeding year.

[(6) For purposes of this section, gross revenues shall constitute the annual total amount of money wagered, less any amounts paid

out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditure for structures.

[(b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal year of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

[(2) The budget of the Commission may include a request for appropriations, as authorized by section 2718 of this title, in an amount equal the amount of funds derived from assessments authorized by subsection (a) of this section for the fiscal year preceding the fiscal year for which the appropriation request is made.

[(3) The request for appropriations pursuant to paragraph (2) shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

§ 2717a [Availability of class II gaming activity fees to carry out duties of the Commission]

[In fiscal year 1990 and thereafter, fees collected pursuant to and as limited by section 2717 of this title shall be available to carry out the duties of the Commission, to remain available until expended.

§ 2718 [Authorization of appropriations]

[(a) Subject to the provisions of section 2717 of this title, there are hereby authorized to be appropriated such sums as may be necessary for the operation of the Commission.

[(b) Notwithstanding the provisions of section 2717 of this title, there are hereby authorized to be appropriated not to exceed \$2,000,000 to fund the operation of the Commission for each of the fiscal years beginning October 1, 1988 and October 1, 1989. Notwithstanding the provisions of section 2717 of this title, there are authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992.]

SEC. 6. ESTABLISHMENT OF THE FEDERAL INDIAN GAMING REGULATORY COMMISSION.

(a) *ESTABLISHMENT.*—*There is established as an independent agency of the United States, a Commission to be known as the Federal Indian Gaming Regulatory Commission. Such Commission shall be an independent establishment, as defined in section 104 of title 5, United States Code.*

(b) *COMPOSITION OF THE COMMISSION.*—

(1) *IN GENERAL.*—*The Commission shall be composed of 3 full-time members, who shall be appointed by the President, by and with the advice and consent of the Senate.*

(2) *CITIZENSHIP OF MEMBERS.*—*Each member of the Commission shall be a citizen of the United States.*

(3) *REQUIREMENTS FOR MEMBERS.*—*No member of the Commission may—*

(A) pursue any other business or occupation or hold any other Office;

(B) be activity engaged in or, other than through distribution of gaming revenues as a member of an Indian tribe, have any pecuniary interest in gaming activities;

(C) other than through distribution of gaming revenues as a member of an Indian tribe, have any pecuniary interest in any business or organization that holds a gaming license under this Act, or that does business with any person or organization licensed under this Act;

(D) have been convicted of a felony or gaming offense; or

(E) have any pecuniary interest in, or management responsibility for, any gaming-related contract or any other contract approved pursuant to this Act.

[(4) **POLITICAL AFFILIATION.**—Not more than 2 members of the Commission shall be members of the same political party. In making appointments to the Commission, the President shall appoint members of different political parties, to the extent practicable.

(5) **ADDITIONAL QUALIFICATIONS.**—

(A) **IN GENERAL.**—The Commission shall be composed of the most qualified individuals available. In making appointments to the Commission, the President shall give special reference to the training and experience of individuals in the fields of corporate finance, accounting, auditing, and investigation or law enforcement.

(B) **TRIBAL GOVERNMENT EXPERIENCE.**—Not less than 2 members of the Commission shall be individuals with extensive experience or expertise in tribal government.

(6) **BACKGROUND INVESTIGATION.**—The Attorney General shall conduct a background investigation concerning any individual under consideration for appointment to the Commission, with particular regard to the financial stability, integrity, responsibility, and reputation for good character, honesty, and integrity of the nominee.

(c) **CHAIRPERSON.**—The President shall elect a Chairperson from among the members appointed to the Commission.

(d) **VICE CHAIRPERSON.**—The Commission shall select, by majority vote, 1 of the members of the Commission to serve as Vice Chairperson. The Vice Chairperson shall—

(1) serve as Chairperson of the Commission in the absence of the Chairperson; and

(2) exercise such other powers as may be delegated by the Chairperson.

(e) **TERMS OF OFFICE.**—

(1) **IN GENERAL.**—Each Member of the Commission shall hold office for a term of 5 years.

(2) **INITIAL APPOINTMENTS.**—Initial Appointments to the Commission shall be made for the following terms:

(A) The Chairperson shall be appointed for a term of 5 years.

(B) One member shall be appointed for a term of 4 years.

(C) One member shall be appointed for a term of 3 years.

(3) **LIMITATION.**—No member shall serve for more than 2 terms of 5 years each.

(f) **VACANCIES.**—

(1) *IN GENERAL.*—Each individual appointed by the President to serve as Chairperson and each member of the Commission shall, unless removed for cause under paragraph (2), serve in the capacity for which such individual is appointed until the expiration of the term of such individual or until a successor is duly appointed and qualified.

(2) *REMOVAL FROM OFFICE.*—The Chairperson or any member of the Commission may only be removed from office before the expiration of the term of the office by the President for neglect of duty, malfeasance in office, or for other good cause shown.

(3) *TERM TO FILL VACANCIES.*—The term of any member appointed to fill a vacancy on the Commission shall be for the unexpired term of the member.

(g) *QUORUM.*—Two members of the Commission shall constitute a quorum.

(h) *MEETINGS.*—

(1) *IN GENERAL.*—The Commission shall meet at the call of the Chairperson or a majority of the members of the Commission.

(2) *MAJORITY OF MEMBERS DETERMINE ACTION.*—A majority of the members of the Commission shall determine any action of the Commission.

(i) *COMPENSATION.*—

(1) *CHAIRPERSON.*—The Chairperson shall be paid at a rate equal to that of level IV of the Executive Schedule under section 5316 of title 5, United States Code.

(2) *OTHER MEMBERS.*—Each other member of the Commission shall be paid at a rate equal to that of level V of the Executive Schedule, under section 5316 of title 5, United States Code.

(3) *TRAVEL.*—All members of the Commission shall be reimbursed in accordance with title 5, United States Code, for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(j) *ADMINISTRATIVE SUPPORT SERVICES.*—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

SEC. 6. POWERS OF THE CHAIRPERSON.

(a) *CHIEF EXECUTIVE OFFICER.*—The Chairperson shall serve as the chief executive officer of the Commission.

(b) *ADMINISTRATION OF THE COMMISSION.*—

(1) *IN GENERAL.*—Subject to subsection (c), the Chairperson—

(A) shall employ and supervise such personnel as the Chairperson considers necessary to carry out the function of the Commission, and assign work among such personnel;

(B) shall appoint a General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for ES-6 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code.

(C) shall appoint and supervise other staff of the Commission without regard to the provision of title 5, United States Code, governing appointments in the competitive service;

(D) may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for ES-6 of the Senior Executive Services Schedule;

(E) may request the head of any Federal agency to detail any personnel of such agency to the Commission to assist the Commission in carrying out the duties of the Commission under this Act, unless otherwise prohibited by law;

(F) shall use and expend Federal funds and funds collected pursuant to section 17; and

(G) may contract for the services of such other professional, technical, and operational personnel and consultants as may be necessary for the performance of the Commission's responsibilities under this Act.

(2) **COMPENSATION OF STAFF.**—The staff referred to in paragraph (1)(C) shall be paid without regard to the provisions of chapter 51 and subchapters III and VIII of chapter 53 of title 5, United States Code, relating to classification and General Schedule and Senior Executive Service Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for ES-5 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code.

(c) **APPLICABLE POLICIES.**—In carrying out any of the functions under this section, the Chairperson shall be governed by the general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

SEC. 7. POWERS AND AUTHORITY OF THE COMMISSION.

(a) **GENERAL POWERS.**—

(1) **IN GENERAL.**—The Commission shall have the power to—

(A) approve the annual budget of the Commission;

(B) promulgate regulations to carry out this Act;

(C) establish a rate of fees and assessments, as provided in section 17;

(D) conduct investigations, including background investigations;

(E) issue a temporary order closing the operation of gaming activities;

(F) after a hearing, make permanent a temporary order closing the operation of gaming activities, as provided in section 15;

(G) grant, deny, limit, condition, restrict, revoke, or suspend any license issued under any licensing authority conferred upon the Commission pursuant to this Act or fine any person licensed pursuant to this Act for violation of any of the conditions of licensure under this Act;

(H) inspect and examine all premises in which class II or class III gaming is conducted on Indian lands;

(I) demand access to and inspect, examine, photocopy, and audit all papers, books, and records of class II and class III gaming activities conducted on Indian lands and

any other matters necessary to carry out the duties of the Commission under this Act;

(J) use the United States mails in the same manner and under the same conditions as any department or agency of the United States;

(K) procure supplies, services, and property by contract in accordance with applicable Federal laws;

(L) enter into contracts with Federal, State, tribal, and private entities for activities necessary to the discharge of the duties of the Commission;

(M) serve or cause to be served, process or notices of the Commission in a manner provided for by the Commission or in a manner provided for the service of process and notice in civil actions in accordance with the applicable rules of a tribal, State, or Federal court;

(N) propound written interrogatories and appoint hearing examiners, to whom may be delegated the power and authority to administer oaths, issue subpoenas, propound written interrogatories, and require testimony under oath;

(O) conduct all administrative hearings pertaining to civil violations of this Act (including any civil violation of a regulation promulgated under this Act);

(P) collect all fees and assessments authorized by this Act and the regulations promulgated pursuant to this Act;

(Q) assess penalties for violation of the provisions of this Act and the regulations promulgated pursuant to this Act;

(R) provide training and technical assistance to Indian tribes with respect to all aspects of the conduct and regulation of gaming activities;

(S) monitor and, as specifically authorized by this Act, regulate class II and class III gaming;

(T) establish precertification criteria that apply to management contractors and other persons having material control over a gaming operation;

(U) approve all management-related and gaming-related contracts; and

(V) in addition to the authorities otherwise specified in this Act, delegate by published order or rule, any of the functions of the Commission (including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting on the part of the Commission concerning any work, business, or matter) to a division of the Commission, an individual member of the Commission, an administrative law judge, or an employee of the Commission.

(2) **STATUTORY CONSTRUCTION.**—Nothing in this section may be construed to authorize the delegation of the function of rule-making, as described in subchapter II of chapter 5 of title 5, United States Code, with respect to general rules (as distinguished from rules of particular applicability), or the promulgation of any other rule.

(b) **RIGHT TO RESERVE DELEGATED FUNCTIONS.**—

(1) **IN GENERAL.**—With respect to the delegation of any of the functions of the Commission, the Commission shall retain a

discretionary right to review the action of any division of the Commission, individual member of the Commission, administrative law judge, or employee of the Commission, upon the initiative of the Commission.

(2) *VOTE NEEDED FOR REVIEW.*—The vote of one member of the Commission shall be sufficient to bring an action referred to in paragraph (1) before the Commission for review, and the Commission shall ratify, revise, or reject the action under review not later than the last day of the applicable period specified in regulations promulgated by the Commission.

(3) *FAILURE TO CONDUCT REVIEW.*—If the Commission declines to exercise the right to such review or fails to exercise such right within the applicable period specified in regulations promulgated by the Commission, the action of any such division of the Commission, individual member of the Commission, administrative law judge, or employee, shall for all purposes, including any appeal or review of such action, be deemed an action of the Commission.

(c) *MINIMUM REQUIREMENTS.*—Pursuant to the procedures described in section 9(d), after receiving recommendation from the Advisory Committee, the Commission shall establish minimum Federal standards—

(1) for background investigations, licensing of persons, and licensing of gaming operations associated with the conduct or regulation of class II and class III gaming on Indian lands by tribal governments; and

(2) for the operation of class II and class III gaming activities on Indian lands, including—

(A) surveillance and security personnel and systems capable of monitoring all gaming activities, including the conduct of games, cashiers' cages, change booths, count rooms, movements of cash and chips, entrances and exits to gaming facilities, and other critical areas of any gaming facility;

(B) procedures for the protection of the integrity of the rules for the play of games and controls related to such rules;

(C) credit and debit collection controls;

(D) controls over gambling devices and equipment; and

(E) accounting and auditing.

(d) *COMMISSION ACCESS TO INFORMATION.*—

(1) *IN GENERAL.*—The Commission may secure from any department or agency of the United States information necessary to enable the Commission to carry out this Act. Unless otherwise prohibited by law, upon request of the Chairperson, the head of such department or agency shall furnish such information to the Commission.

(2) *INFORMATION TRANSFER.*—The Commission may secure from any law enforcement agency or gaming regulatory agency of any State, Indian tribe, or foreign nation information necessary to enable the Commission to carry out this Act. Unless otherwise prohibited by law, upon request of the Chairperson, the head of any State or tribal law enforcement agency shall furnish such information to the Commission.

(3) *PRIVILEGED INFORMATION.*—Notwithstanding sections 552 and 552a of title 5, United States Code, the Commission shall protect from disclosure information provided by Federal, State, tribal, or international law enforcement or gaming regulatory agencies.

(4) *LAW ENFORCEMENT AGENCY.*—For purposes of this subsection, the Commission shall be considered to be a law enforcement agency.

(e) *INVESTIGATIONS AND ACTIONS.*—

(1) *IN GENERAL.*—

(A) *POSSIBLE VIOLATIONS.*—The Commission may, at the discretion of the Commission, and as specifically authorized by this Act, conduct such investigations as the Commission considers necessary to determine whether any person has violated, is violating, or is conspiring to violate any provision of this Act (including any rule or regulation promulgated under this Act). The Commission may require or permit any person to file with the Commission a statement in writing, under oath, or otherwise as the Commission may determine, concerning all relevant facts and circumstances, regarding the matter under investigation by the Commission pursuant to this subsection.

(B) *ADMINISTRATIVE INVESTIGATIONS.*—The Commission is authorized at the discretion of the Commission, and as specifically authorized by this Act, to investigate such facts, conditions, practices, or matters as the Commission considers necessary or proper to aid in—

- (i) the enforcement of any provision of this Act; or
 - (ii) prescribing rules and regulations under this Act;
- or
- (iii) securing information to serve as a basis for recommending further legislation concerning the matters to which this Act relates.

(2) *ADMINISTRATIVE AUTHORITIES.*—

(A) *IN GENERAL.*—For the purpose of any investigation or any other proceeding conducted under this Act, any member of the Commission or any officer designated by the Commission is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission considers relevant or material to the inquiry. The attendance of such witnesses and the production of any such records may be required from any place in the United States at any designated place of hearing.

(B) *REQUIRING APPEARANCES OR TESTIMONY.*—In case of contumacy by, or refusal to obey any subpoena issued to, any person, the Commission may invoke the jurisdiction of any court of the United States within the jurisdiction of which an investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records.

(C) *COURT ORDERS.*—Any court described in subparagraph (B) may issue an order requiring such person to appear before the Commission or member of the Commission or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question, and any failure to obey such order of the court may be punished by such court as a contempt of such court.

(3) *ENFORCEMENT.*—

(A) *IN GENERAL.*—If the Commission determines that any person is engaged, has engaged, or is conspiring to engage, in any act of practice constituting a violation of any provision of this Act (including any rule or regulation promulgated under this Act), the Commission may—

(i) bring an action in the appropriate district court of the United States or the United States District Court for the District of Columbia to enjoin such act or practice, and upon a proper showing, the court shall grant, without bond, a permanent or temporary injunction or restraining order; or

(ii) transmit such evidence as may be available concerning such act or practice as may constitute a violation of any Federal criminal law to the Attorney General, who may institute the necessary criminal or civil proceedings.

(B) *STATUTORY CONSTRUCTION.*—

(i) *IN GENERAL.*—The authority of the Commission to conduct investigations and take actions under subparagraph (A) may not be construed to affect in any way the authority of any other agency or department of the United States to carry out statutory responsibilities of such agency or department.

(ii) *EFFECT OF TRANSMITTAL BY THE COMMISSION.*—The transmittal by the Commission pursuant to subparagraph (A)(ii) may not be construed to constitute a condition precedent with respect to any action taken by any department or agency referred to in clause (i).

(4) *WRITS, INJUNCTIONS, AND ORDERS.*—Upon application of the Commission, each district court of the United States shall have jurisdiction to issue writs or mandamus, injunctions, and orders commanding any person to comply with the provision of this Act (including any rule or regulation promulgated under this Act.)

SEC. 8. REGULATORY FRAMEWORK.

(a) *CLASS II GAMING.*—For class II gaming, Indian tribes shall retain the right of such tribes to, in a manner that meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c)—

(1) monitor and regulate such gaming; and

(2) conduct background investigations and issue licenses to persons who are required to obtain a license under section 10(a).

(b) *CLASS III GAMING CONDUCTED UNDER A COMPACT.*—For class III gaming conducted under the authority of a compact entered into

pursuant to section 12, an Indian tribe or a State, or both, as provided in a compact or by tribal ordinance or resolution, shall, in a manner that meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c)—

(1) monitor and regulate gaming;

(2) conduct background investigations and issue licenses to persons who are required to obtain a license pursuant to section 10(a); and

(3) establish and regulate internal control systems.

(c) VIOLATIONS OF MINIMUM FEDERAL STANDARDS.—

(1) CLASS II GAMING.—In any case in which an Indian tribe that regulates or conducts class II gaming on Indian lands substantially fails to meet or enforce minimum Federal standards for that gaming, after providing the Indian tribe notice and reasonable opportunity to cure violations and to be heard, and after the exhaustion of other authorized remedies and sanctions, the Commission shall have the authority to conduct background investigations, issue licenses, and establish and regulate internal control systems relating to class II gaming conducted by the Indian tribe. Such authority of the Commission may be exclusive until such time as the regulatory and internal control systems of the Indian tribe meet or exceed the minimum Federal standards concerning regulatory, licensing, or internal control requirements established by the Commission for such gaming.

(2) CLASS III GAMING.—In any case in which an Indian tribe or a State (or both) that regulates class III gaming on Indian lands fails to meet or enforce minimum Federal standards for class III gaming, after providing notice and reasonable opportunity to cure violations and be heard, and after the exhaustion of other authorized remedies and sanctions, the Commission shall have the authority to conduct background investigations, issue licenses, and establish and regulate internal control systems relating to class III gaming conducted by the Indian tribe. Such authority of the Commission may be exclusive until such time as the regulatory or internal control systems of the Indian tribe or the State (or both) meet or exceed the minimum Federal regulatory, licensing, or internal control requirements established by the Commission for such gaming.

SEC. 9. ADVISORY COMMITTEE ON MINIMUM REGULATORY REQUIREMENTS AND LICENSING STANDARDS.

(a) ESTABLISHMENT.—The President shall establish an advisory committee to be known as the “Advisory Committee on Minimum Regulatory Requirements and Licensing Standards”.

(b) MEMBERS.—

(1) IN GENERAL.—The Advisory Committee shall be composed of 8 members who shall be appointed by the President not later than 120 days after the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995, of which—

(A) 3 members, selected from a list of recommendations submitted to the President by the Chairperson and Vice Chairperson of the Committee on Indian Affairs of the Senate and the Chairperson and ranking minority member of the Subcommittee on Native American Affairs of the Committee on Resources of the House of Representatives, shall

be members of, and represent, Indian tribal governments involved in gaming covered under this Act;

(B) 3 members, selected from a list of recommendations submitted to the President by the Majority Leader and the Minority Leader of the Senate and the Speaker and the Minority Leader of the House of Representatives, shall represent State governments involved in gaming covered under this Act, and shall have experience as State gaming regulators; and

(C) 2 members shall each be an employee of the Department of Justice.

(2) *VACANCIES*.—Any vacancy on the Advisory Committee shall not affect its powers, but shall be filled in the same manner as the original appointment.

(c) *RECOMMENDATIONS FOR MINIMUM FEDERAL STANDARDS*.—

(1) *IN GENERAL*.—Not later than 180 days after the date on which all initial members of the Advisory Committee have been appointed under subsection (b), the Advisory Committee shall develop and submit to the entities referred to in paragraph (2) recommendations for minimum Federal standards relating to background investigations, internal control systems, and licensing standards (as described in section 7(c)).

(2) *RECIPIENTS OF RECOMMENDATIONS*.—The Advisory Committee shall submit the recommendations described in paragraph (1) to the Committee on Indian Affairs of the Senate, the Subcommittee on Native American and Insular Affairs of the Committee on Resources of the House of Representatives, the Commission, and to each Federally-recognized Indian tribe.

(3) *FACTORS FOR CONSIDERATION*.—While the minimum Federal standards recommended or established pursuant to this section may be developed with due regard for existing industry standards, the Advisory Committee, and the Commission in promulgating standards pursuant in subsection (d), shall also consider—

(A) the unique nature of tribal gaming as compared to non-Indian commercial, governmental, and charitable gaming;

(B) the broad variations in the scope and size of tribal gaming activity;

(C) the inherent sovereign right of Indian tribes to regulate their own affairs; and

(D) the findings and purposes set forth in sections 2 and 3.

(d) *REGULATIONS*.—Upon receipt of the recommendations of the Advisory Committee, the Commission shall hold public hearings on the recommendations. After the conclusion of the hearings, the Commission shall promulgate regulations establishing minimum Federal regulatory requirements and licensing standards.

(e) *TRAVEL*.—Each member of the Advisory Committee who is appointed under subparagraph (A) or (B) of subsection (b)(1) and who is not an officer or employee of the Federal government or a government of a State shall be reimbursed for travel and per diem in lieu of subsistence expenses during the performance of duties of the Advisory Committee while away from the home or the regular place of

business of that member, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(f) *TERMINATION.*—The Advisory Committee shall cease to exist on the date that is 10 days after the date on which the Advisory Committee submits the recommendations under subsection (c).

(g) *EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.*—All activities of the Advisory Committee shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

SEC 10. LICENSING.

(a) *IN GENERAL.*—A license issued under this act shall be required of—

- (1) a gaming operation;
- (2) a key employee of a gaming operation;
- (3) a management of gaming-related contractor;
- (4) a gaming service industry; or
- (5) a person who has material control, either directly or indirectly, over a licensed gaming operation.

(b) *CERTAIN LICENSES FOR MANAGEMENT CONTRACTOR AND GAMING OPERATIONS.*—Notwithstanding any other provision of law relating to licenses issued by an Indian tribe or a State (or both) pursuant to this Act, the Commission may require licenses of—

- (1) management contractors; and
- (2) gaming operations.

(c) *GAMING OPERATION LICENSE.*—

(1) *IN GENERAL.*—No gaming operation shall operate unless all required licenses and approval for the gaming operation have been obtained in accordance with this Act.

(2) *WRITTEN AGREEMENTS.*—

(A) *FILING.*—Prior to the operation of any gaming facility or activity, each management contract for the gaming operations shall be in writing and filed with the Commission pursuant to section 13.

(B) *EXPRESS APPROVAL REQUIRED.*—No management contract referred to in subparagraph (A) shall be effective unless the Commission expressly approves the management contract.

(C) *REQUIREMENT OF ADDITIONAL PROVISIONS.*—The Commission may require that a management contract referred to in subparagraph (A) include any provisions that are reasonably necessary to meet the requirements of this Act.

(D) *INELIGIBILITY OR EXEMPTION.*—The Commission may, with respect to an applicant who does not have the ability to exercise any significant control over a licensed gaming operation—

- (i) determine that applicant to be ineligible to hold a license, or
- (ii) exempt that applicant from being required to hold a license.

(d) *DENIAL OF LICENSE.*—The Commission, in the exercise of specific licensure power conferred upon the Commission by this Act, shall deny a license to any applicant who is disqualified on the basis of a failure to meet any of the minimum Federal standards promulgated by the Commission pursuant to section 7(c).

(e) APPLICATION FOR LICENSE.—

(1) *IN GENERAL.*—Upon the filing of the materials specified in paragraph (2), the Commission shall conduct an investigation into the qualifications of an applicant. The Commission may conduct a non-public hearing on such investigation concerning the qualifications of the applicant in accordance with regulations promulgated by the Commission.

(2) *FILING OF MATERIALS.*—The Commission shall carry out paragraph (1) upon the filing of—

(A) an application for a license that the Commission is specifically authorized to issue pursuant to this Act; and

(B) such supplemental information as the Commission may require.

(3) *TIMING OF HEARINGS AND INVESTIGATIONS AND FINAL ACTION.*—

(A) *DEADLINE FOR HEARINGS AND INVESTIGATIONS.*—Not later than 90 days after receiving the materials described in paragraph (2), the Commission shall complete the investigations described in paragraph (1) and any hearings associated with the investigation conducted pursuant to that paragraph.

(B) *DEADLINE FOR FINAL ACTION.*—Not later than 10 days after the date specified in subparagraph (A), the Commission shall take final action to grant or deny a license to the applicant.

(4) *DENIALS.*—

(A) *IN GENERAL.*—The Commission may disapprove an application submitted to the Commission under this section and deny a license to the applicant.

(B) *ORDER OF DENIAL.*—If the Commission denies a license to an applicant under subparagraph (A), the Commission shall prepare an order denying such license. In addition, if an applicant requests a statement of the reasons for the denial, the Commission shall prepare such statement and provide the statement to the applicant. The statement shall include specific findings of fact.

(5) *ISSUANCE OF LICENSES.*—If the Commission is satisfied that an applicant is qualified to receive a license, the Commission shall issue a license to the applicant upon tender of—

(A) all license fees and assessments as required by this Act (including any rule or regulation promulgated under this Act); and

(B) such bonds as the Commission may require for the faithful performance of all requirements imposed by this Act (including any rule or regulation promulgated under this Act).

(6) *BONDS.*—

(A) *AMOUNTS.*—The Commission shall, by rules of uniform application, fix the amount of each bond that the Commission requires under this section in such amount as the Commission considers appropriate.

(B) *USE OF BONDS.*—The Bonds furnished to the Commission under this paragraph may be applied by the Com-

mission to the payment of any unpaid liability of the license under this Act.

(C) *TERMS.*—Each bond required in accordance with this section shall be furnished—

- (i) in cash or negotiable securities;
- (ii) by a surety bond guaranteed by a satisfactory guarantor; or
- (iii) by an irrevocable letter of credit issued by a banking institution acceptable to the Commission.

(D) *TREATMENT OF PRINCIPAL AND INCOME.*—If a bond is furnished in cash or negotiable securities, the principal shall be placed without restriction of the disposal of the Commission, but any income shall inure to the benefit of the licensee.

(f) *RENEWAL OF LICENSE.*—

(1) *IN GENERAL.*—

(A) *RENEWALS.*—Subject to the power of the Commission to deny, revoke, or suspend licenses, any license issued under this section and in force shall be renewed by the Commission for the next succeeding license period upon proper application for renewal and payment of license fees and assessments, as required by applicable law (including any rule or regulation promulgated under this Act).

(B) *RENEWAL TERM.*—Subject to subparagraph (C), the term of a renewal period for a license issued under this section shall be for a period of not more than—

- (i) 2 years, for each of the first 2 renewal periods succeeding the initial issuance of a license pursuant to subsection (e); and
- (ii) 3 years, for each succeeding renewal period.

(C) *REOPENING HEARINGS.*—The Commission may reopen licensing hearings at any time after the Commission has issued or renewed a license.

(2) *TRANSITION.*—

(A) *IN GENERAL.*—Notwithstanding any other provision of this subsection, the Commission shall, for the purpose of facilitating the administration of this Act, renew a license for an activity covered under this subsection (a) that is held by a person on the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995 for a renewal period of 18 months.

(B) *ACTION BEFORE EXPIRATION.*—The Commission shall act upon a timely filed license renewal application prior to the date of expiration of the then current license.

(3) *FILING REQUIREMENT.*—Each application for renewal shall be filed with the Commission not later than 90 days prior to the expiration of the then current license, and shall be accompanied by full payment of all license fees and assessments that are required by law to be paid to the Commission.

(4) *RENEWAL CERTIFICATE.*—Upon renewal of a license, the Commission shall issue an appropriate renewal certificate, validating device, or sticker, which shall be attached to the license.

(g) *HEARINGS.*—

(1) *IN GENERAL.*—The Commission shall establish procedures for the conduct of hearings associated with licensing, including procedures for issuing, denying, limiting, conditioning, restricting, revoking, or suspending any such license.

(2) *ACTION BY COMMISSION.*—Following a hearing conducted for any of the purposes authorized in this section, the Commission shall—

(A) render a decision of the Commission;

(B) issue an order; and

(C) serve such decision and order upon the affected parties.

(3) *REHEARING.*—

(A) *IN GENERAL.*—The Commission may, upon a motion made not later than 10 days after the service of a decision and order, order a rehearing before the Commission on such terms and conditions as the Commission considers just and proper if the Commission finds cause to believe that the decision and order should be reconsidered in view of the legal, policy, or factual matters that are—

(i) advanced by the party that makes the motion; or

(ii) raised by the Commission on a motion made by the Commission.

(B) *ACTION AFTER REHEARING.*—Following a rehearing conducted by the Commission, the Commission shall—

(i) render a decision of the Commission;

(ii) issue an order; and

(iii) serve such decision and order upon the affected parties.

(C) *FINAL AGENCY ACTION.*—A decision and order made by the Commission under paragraph (2) (if no motion for a rehearing is made by the date specified in subparagraph (A)), or a decision and order made by the Commission upon rehearing shall constitute final agency action for purposes of judicial review.

(4) *JURISDICTION.*—The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to review the licensing decisions and orders of the Commission.

(h) *LICENSE REGISTRY.*—The Commission shall—

(1) maintain a registry of all licenses that are granted or denied pursuant to this Act; and

(2) make the information contained in the registry available to Indian tribes to assist the licensure and regulatory activities of Indian tribes.

SEC. 11. REQUIREMENTS FOR THE CONDUCT OF CLASS I AND CLASS II GAMING ON INDIAN LANDS.

(a) *CLASS I GAMING.*—Class I gaming on Indian lands shall be within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

(b) *CLASS II GAMING.*—

(1) *IN GENERAL.*—Any class II gaming on Indian lands shall be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this Act.

(2) *LEGAL ACTIVITIES.*—An Indian tribe may engage in, and license and regulate, class II gaming on Indian lands within the jurisdiction of such tribe, if—

- (A) such Indian gaming is located within a State that permits such gaming for any purpose by any person; and
- (B) the class II gaming operation meets or exceeds the requirements of sections 7(c) and 10.

(3) *REQUIREMENTS FOR CLASS II GAMING OPERATIONS.*—

(A) *IN GENERAL.*—The Commission shall ensure that, with regard to any class II gaming operation on Indian lands—

- (i) a separate license is issued by the Indian tribe for each place, facility, or location on Indian lands at which class II gaming is conducted;

- (ii) the Indian tribe has or will have the sole proprietary interest and responsibility for the conduct of any class II gaming activity, unless the conditions of clause (ix) apply;

- (iii) the net revenues from any class II gaming activity are used only—

- (I) to fund tribal government operations or programs;

- (II) to provide for the general welfare of the Indian tribe and the members of the Indian tribe;

- (III) to promote tribal economic development;

- (IV) to donate to charitable organizations;

- (V) to help fund operations of local government agencies;

- (VI) to comply with the provisions of section 17;

and

- (VII) to make per capita payments to members of the Indian tribe pursuant to clause (viii);

- (iv) the Indian tribe provides to the Commission annual outside audit reports of the class II gaming operation of the Indian tribe, which may be encompassed within existing independent tribal audit systems;

- (v) each contract for supplies, services, or concessions for a contract amount equal to more than \$50,000 per year, other than a contract for professional legal or accounting services, relating to such gaming is subject to such independent audit reports and any audit conducted by the Commission;

- (vi) the construction and maintenance of a class II gaming facility and the operation of class II gaming are conducted in a manner that adequately protects the environment and public health and safety;

- (vii) there is instituted an adequate system that—

- (I) ensures that—

- (aa) background investigations are conducted on primary management officials, key employees, and persons having material control, either directly or indirectly, in a licensed class II gaming operation, and gaming-related

contractors associated with a licensed class II gaming operation; and

(bb) oversight of such officials and the management by such officials is conducted on an ongoing basis; and

(II) includes—

(aa) tribal licenses for persons involved in class II gaming operations, issued in accordance with sections 7(c) and 10;

(bb) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment or licensure; and

(cc) notification by the Indian tribe to the Commission of the results of such background investigation before the issuance of any such license;

(viii) net revenues from any class II gaming activities conducted or licensed by any Indian tribal government are used to make per capita payments to members of the Indian tribe only if—

(I) the Indian tribe has prepared a plan to allocate revenues to uses authorized by clause (iii);

(II) the Secretary determines that the plan is adequate, particularly with respect to uses described in subclause (I) or (III) of clause (iii);

(III) the interests of minors and other legally incompetent persons who are entitled to received any of the per capita payments are protected and preserved;

(IV) the per capita payments to minors and other legally incompetent persons are disbursed to the parents or legal guardians of such minors or legally incompetent persons in such amounts as may be necessary for the health, education, or welfare of each such minor or legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

(V) the per capita payments are subject to Federal income taxation and Indian tribes withhold such taxes when such payments are made;

(ix) a separate license is issued by the Indian tribe for any class II gaming operation owned by any person or entity other than the Indian tribe and conducted on Indian lands, that includes—

(I) requirements set forth in clauses (v) through (vii) (other than the requirements of clause (vii)(II)(cc)), and (x); and

(II) requirements that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located; and

(x) no person or entity, other than the Indian tribe, is eligible to receive a tribal license for a class II gaming operation conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B) TRANSITION.—

(i) IN GENERAL.—Clause (ii), (iii), and (ix) of subparagraph (A) shall not bar the continued operation of a class II gaming operation described in clause (ix) of that subparagraph that was operating on September 1, 1986, if—

(I) such gaming operation is licensed and regulated by an Indian tribe;

(II) income to the Indian tribe from such gaming is used only for the purposes described in subparagraph (A)(iii);

(III) not less than 60 percent of the net revenues from such gaming operation is income to the licensing Indian tribe; and

(IV) the owner of such gaming operation pays on appropriate assessment to the Commission pursuant to section 17 for the regulation of such gaming.

(ii) LIMITATIONS ON EXEMPTION.—The exemption from application provided under clause (I) may not be transferred to any person or entity and shall remain in effect only during such period as the gaming operation remains within the same nature and scope as such gaming operation was actually operated on October 17, 1988.

(C) LIST.—The Commission shall—

(i) maintain a list of each gaming operation that is subject to subparagraph (B); and

(ii) publish such list in the Federal Register.

(c) PETITION FOR CERTIFICATE OF SELF-REGULATION.—

(1) IN GENERAL.—Any Indian tribe that operates, directly or with a management contract, a class II gaming activity may petition the Commission for a certificate of self-regulation if that Indian tribe—

(A) has continuously conducted such activity for a period of not less than 3 years, including a period of not less than 1 year that begins after the date of the enactment of the Indian Gaming Regulatory Act Amendments Act of 1995; and

(B) has otherwise complied with the provisions of this Act.

(2) ISSUANCE OF CERTIFICATE OF SELF-REGULATION.—The Commission shall issue a certificate of self-regulation under this subsection if the Commission determines, on the basis of

available information and after a hearing if requested by the tribe, that the Indian tribe has—

- (A) conducted its gaming activity in a manner which has—
 - (i) resulted in an effective and honest accounting of all revenues;
 - (ii) resulted in a reputation for safe, fair, and honest operation of the activity; and
 - (iii) been generally free of evidence of criminal or dishonest activity;
- (B) adopted and implemented adequate systems for—
 - (i) accounting for all revenues from the gaming activity;
 - (ii) investigation, licensing, and monitoring of all employees of the gaming activity; and
 - (iii) investigation, enforcement, and prosecution of violations of its gaming ordinance and regulations;
- (C) conducted the operation on a fiscally and economically sound basis; and
- (D) paid all fees and assessments that the tribe is required to pay to the Commission under this Act.

(3) **EFFECT OF CERTIFICATE OF SELF-REGULATION.**—During the period in which a certificate of self-regulation issued under this subsection is in effect with respect to a gaming activity conducted by an Indian tribe—

- (A) the tribe shall—
 - (i) submit an annual independent audit report as required by subsection (b)(3)(A)(iv); and
 - (ii) submit to the Commission a complete resume of each employee hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and
- (B) the Commission may not assess a fee under section 17 on gaming operated by the tribe pursuant to paragraph (1) in excess of $\frac{1}{4}$ of 1 percent of the net revenues from such activity.

(4) **RESCISSION.**—The Commission may, for just cause and after a reasonable opportunity for a hearing, rescind a certificate of self-regulation issued under this subsection by majority vote of the members of the Commission.

(d) **LICENSE REVOCATION.**—If, after the issuance of any license by an Indian tribe under this section, the Indian tribe receives reliable information from the Commission indicating that license does not meet any standard established under section 7(c) or 10, or any other applicable regulation promulgated under this Act, the Indian tribe—

- (1) shall immediately suspend such license; and
- (2) after providing notice, holding a hearing, and making findings of fact under procedures established pursuant to applicable tribal law, may revoke such license.

SEC. 12. CLASS III GAMING ON INDIAN LANDS.

(a) **REQUIREMENTS FOR THE CONDUCT OF CLASS III GAMING ON INDIAN LANDS.**—

(1) *IN GENERAL.*—Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by—

(i) a compact that—

(I) is approved pursuant to tribal law by the governing body of the Indian tribe having jurisdiction over such lands;

(II) meets the requirements of section 11(b)(3) for the conduct of class II gaming; and

(III) is approved by the Secretary under paragraph (4); or

(ii) the Secretary under procedures prescribed by the Secretary under paragraph (3)(B)(vii);

(B) located in a State that permits such gaming for any purpose by any person; and

(C) conducted in conformance with—

(i) a compact that—

(I) is in effect; and

(II) is entered into by an Indian tribe and a State and approved by the Secretary under paragraph (4); and

(ii) procedures prescribed by the Secretary under paragraph (3)(B)(vii).

(2) *COMPACT NEGOTIATIONS.*—

(A) *IN GENERAL.*—Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) *APPROVAL BY THE SECRETARY.*—Any State and any Indian tribe may enter into a compact governing class III gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(3) *ACTIONS.*—

(A) *IN GENERAL.*—the United States district courts shall have jurisdiction over—

(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a compact under paragraph (2) or to conduct such negotiations in good faith;

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any compact entered into under paragraph (2) that is in effect; and

(iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B) *PROCEDURES.*—

(i) *IN GENERAL.*—An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the expiration of the 180-day period beginning on the date on which the Indian tribe requests the State to enter into negotiations under paragraph (2)(A).

(ii) *BURDEN OF PROOF.*—In any action described in subparagraph (A)(i), upon introduction of evidence by an Indian tribe that—

(I) a compact has not been entered into under paragraph (2); and

(II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith, the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a compact governing the conduct of gaming activities.

(iii) *FAILURE TO NEGOTIATE.*—If, in any action described in subparagraph (A)(i), the court finds that the state has failed to negotiate in good faith with the Indian tribe to conclude a compact governing the conduct of gaming activities, the court shall order the State and the Indian tribe to conclude such a compact with a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court—

(I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities; and

(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

(iv) *PROCEDURE IN THE EVENT OF FAILURE TO CONCLUDE A COMPACT.*—If a State and an Indian tribe fail to conclude a compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the 2 proposed compacts the 1 which best comports with the terms of this Act and any other applicable Federal law and with the findings and order of the court.

(v) *SUBMISSION OF COMPACT TO STATE AND INDIAN TRIBE.*—The mediator appointed under clause (iv) shall submit to the State and Indian tribe the proposed compact selected by the mediator under clause (iv).

(vi) *CONSENT OF STATE.*—If a State consents to a proposed compact submitted to the State under clause (v) during the 60-day period beginning on the date on which the proposed compact is submitted to the State

under clause (v), the proposed compact shall be treated as a compact entered into under paragraph (2).

(vii) *FAILURE OF STATE TO CONSENT.*—If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures—

(I) that are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this Act, and the relevant provisions of the laws of the State; and

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

(4) *APPROVAL BY SECRETARY.*—

(A) *IN GENERAL.*—The Secretary is authorized to approve any compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

(B) *DISAPPROVAL BY SECRETARY.*—The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates—

(i) any provision of this Act;

(ii) any other provisions of Federal law that does not relate to jurisdiction over gaming on Indian lands; or

(iii) the trust obligation of the United States to Indians.

(C) *FAILURE OF THE SECRETARY TO TAKE FINAL ACTION.*—If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the expiration of the 45-day period beginning on the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this Act.

(D) *PUBLICATION OF NOTICE.*—The Secretary shall publish in the Federal Register notice of any compact that is approved, or considered to have been approved, under this paragraph.

(E) *EFFECT OF PUBLICATION OF COMPACT.*—Except for an appeal conducted under subchapter II of chapter 5 of title 5, United States Code, by an Indian tribe or by a State associated with the publication of the compact, the publication of a compact pursuant to subparagraph (D) or subsection (c)(4) that permits a form of class III gaming shall, for purposes of this Act, be conclusive evidence that such class III gaming is an activity subject to negotiations under the laws of the State where the gaming is to be conducted, in any matter under consideration by the Commission or a Federal court.

(F) *EFFECTIVE DATE OF COMPACT.*—A compact shall become effective upon the publication of the compact in the Federal Register by the Secretary.

(G) *DUTIES OF COMMISSION.*—Consistent with the provisions of sections 7(c), 8, and 10, the Commission shall monitor and, if specifically authorized, regulate and license class III gaming with respect to any compact that is published in the Federal Register.

(5) *PROVISIONS OF COMPACTS.*—

(A) *IN GENERAL.*—A compact negotiated under this subsection may include provisions relating to—

(i) the application of the criminal and civil laws (including any rule or regulation) of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity in a manner consistent with sections 7(c), 8, and 10;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws (including any rule or regulation);

(iii) the assessment by the State of the costs associated with such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of compact provisions;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing, in a manner consistent with sections 7(c), 8, and 10; and

(vii) any other subject that is directly related to the operation of gaming activities and the impact of gaming on tribal, State, and local governments.

(B) *STATUTORY CONSTRUCTION WITH RESPECT TO ASSESSMENTS.*—Except for any assessments for services agreed to by an Indian tribe in compact negotiations, nothing in this section may be construed as conferring upon a State or any political subdivision thereof the authority to impose any tax, fee, charge, or other assessment upon an Indian tribe, an Indian gaming operation or the value generated by the gaming operation, or any person or entity authorized by an Indian tribe to engage in class III gaming activity in conformance with this Act.

(6) *STATUTORY CONSTRUCTION WITH RESPECT TO CERTAIN RIGHTS OF INDIAN TRIBES.*—Nothing in this subsection impairs the right of an Indian tribe to regulate class III gaming on the Indians lands of the Indian tribe concurrently with a State and the Commission, except to the extent that such regulation is inconsistent with, or less stringent than, this Act or any laws (including any rule or regulation) made applicable by any compact entered into by the Indian tribe under this subsection that is in effect.

(7) *EXEMPTION.*—The provisions of section 2 and 5 of the Act of January 2, 1951 (commonly referred to as the ‘Gambling Devices Transportation Act’) (64 Stat. 1134, chapter 1194, 15 U.S.C. 1172 and 1175) shall not apply to any class II gaming

activity or any gaming activity conducted pursuant to a compact entered into after the date of enactment of this Act or conducted pursuant to procedures prescribed by the Secretary under this Act, but in no event shall this paragraph be construed as invalidating any exemption from section 2 or 5 of the Act of January 2, 1951, for any compact entered into prior to the date of enactment of this Act or any procedures for conducted a gaming activity prescribed by the Secretary prior to such date of enactment.

(b) *JURISDICTION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.*—The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the Secretary, the Commission, a State, or an Indian tribe to enforce any provision of a compact under subsection (a) that is in effect or to enjoin a class III gaming activity located on Indian lands and conducted in violation of such compact that is in effect and that was entered into under subsection (a).

(c) *REVOCATION OF ORDINANCE.*—

(1) *IN GENERAL.*—The governing body of an Indian tribe, in its sole discretion, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

(2) *PUBLICATION OF REVOCATION.*—An Indian tribe shall submit any revocation ordinance or resolution described in paragraph (1) to the Commission. Not later than 90 days after the date on which the Commission receives such ordinance or resolution, the Commission shall publish such ordinance or resolution in the Federal Register. The revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(3) *CONDITIONAL OPERATION.*—Notwithstanding any other provision of this subsection—

(A) any person or entity operating a class III gaming activity pursuant to this subsection on the date on which an ordinance or resolution described in paragraph (1) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation, ordinance, or resolution is published under paragraph (2), continue to operate such activity in conformance with an applicable compact approved or issued under subsection (a) that is in effect; and

(B) any civil action that arises before, and any crime that is committed before, the expiration of such 1-year period shall not be affected by such revocation ordinance, or resolution.

(d) *CERTAIN CLASS III GAMING ACTIVITIES.*—

(1) *COMPACTS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE INDIAN GAMING REGULATORY ACT AMENDMENTS ACT OF 1995.*—

(A) *IN GENERAL.*—Subject to subparagraph (B), class III gaming activities that are authorized under a compact ap-

proved, or procedures prescribed, by the Secretary under the authority of this Act prior to the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995 shall, during such period as the compact is in effect, remain lawful for the purposes of this Act, notwithstanding the Indian Gaming Regulatory Act Amendments Act of 1995 and the amendments made by such Act or any change in State law enacted after the approval or issuance of the compact.

(B) COMPACT OR PROCEDURES SUBJECT TO MINIMUM REGULATORY STANDARDS.—Subparagraph (A) shall apply to a compact or procedures described in that subparagraph on the condition that any class III gaming activity conducted under the compact or procedures shall be subject to all Federal minimum regulatory standards established under this Act and the regulations promulgated under this Act.

(2) COMPACT ENTERED INTO AFTER THE DATE OF ENACTMENT OF THE INDIAN GAMING REGULATORY ACT AMENDMENTS ACT OF 1995.—Any compact entered into under subsection (a) after the date specified in paragraph (1) shall remain lawful for the purposes of this Act, notwithstanding any change in State law enacted after the approval or issuance of the compact.

SEC. 13. REVIEW OF CONTRACTS.

(a) CONTRACTS INCLUDED.—The Commission shall, in accordance with this section, review and approve or disapprove—

(1) any management contract for the operation and management of any gaming activity that an Indian tribe may engage in under this Act; and

(2) unless licensed by an Indian tribe consistent with the minimum Federal standards adopted pursuant to section 7(c), any gaming-related contract.

(b) MANAGEMENT CONTRACT REQUIREMENTS.—The Commission shall approve any management contract between an Indian tribe and a person licensed by an Indian tribe or the Commission that is entered into pursuant to this Act only if the Commission determines that the contract provides for—

(1) adequate accounting procedures that are maintained, and verifiable financial reports that are prepared, by or for the governing body of the Indian tribe on a monthly basis;

(2) access to the daily gaming operations by appropriate officials of the Indian tribe who shall have the right to verify the daily gross revenues and income derived from any gaming activity;

(3) a minimum guaranteed payment to the Indian tribe that has preference over the retirement of any development and construction costs;

(4) an agreed upon ceiling for the repayment of any development and construction costs;

(5) a contract term of not to exceed 5 years, except that, upon the request of an Indian tribe, the Commission may authorize a contract term that exceeds 5 years but does not exceed 7 years if the Commission is satisfied that the capital investment required, and the income projections for, the particular gaming activity require the additional time; and

(6) grounds and mechanisms for the termination of the contract, but any such termination shall not require the approval of the Commission.

(c) *MANAGEMENT FEE BASED ON PERCENTAGE OF NET REVENUES.*—

(1) *PERCENTAGE FEE.*—The Commission may approve a management contract that provides for a fee that is based on a percentage of the net revenues of a tribal gaming activity if the Commission determines that such percentage fee is reasonable, taking into consideration surrounding circumstances.

(2) *FEE AMOUNT.*—Except as provided in paragraph (3), a fee described in paragraph (1) shall not exceed an amount equal to 30 percent of the net revenues described in such paragraph.

(3) *EXCEPTION.*—Upon the request of an Indian tribe, if the Commission is satisfied that the capital investment required, and income projections for, a tribal gaming activity, necessitate a fee in excess of the amount specified in paragraph (2), the Commission may approve a management contract that provides for a fee described in paragraph (1) in an amount in excess of the amount specified in paragraph (2), but not to exceed 40 percent of the net revenues described in paragraph (1).

(d) *GAMING-RELATED CONTRACT REQUIREMENTS.*—The Commission shall approve a gaming-related contract covered under subsection (a)(2) that is entered into pursuant to this Act only if the Commission determines that the contract provides for—

(1) grounds and mechanisms for termination of the contract, but such termination shall not require the approval of the Commission; and

(2) such other provisions as the Commission may be empowered to impose by this Act.

(e) *TIME PERIOD FOR REVIEW.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2), not later than 90 days after the date on which a management contract or other gaming-related contract is submitted to the Commission for approval, the Commission shall approve or disapprove such contract on the merits of the contract. The Commission may extend the 90-day period for an additional period of not more than 45 days if the Commission notifies the Indian tribe in writing of the reason for the extension of the period. The Indian tribe may bring an action in the United States District Court for the District of Columbia to compel action by the Commission if a contract has not been approved or disapproved by the termination date of an applicable period under this subsection.

(2) *EFFECT OF FAILURE OF COMMISSION TO ACT ON CERTAIN GAMING-RELATED CONTRACTS.*—Any gaming-related contract for an amount less than or equal to \$100,000 that is submitted to the Commission pursuant to paragraph (1) by a person who holds a valid license that is in effect under this Act shall be deemed to be approved, if by the date that is 90 days after the contract is submitted to the Commission, the Commission fails to approve or disapprove the contract.

(f) *CONTRACT MODIFICATIONS AND VOID CONTRACTS.*—The Commission, after providing notice and a hearing on the record—

(1) shall have the authority to require appropriate contract modifications to ensure compliance with the provisions of this Act; and

(2) may void any contract regulated by the Commission under this Act if the Commission determines that any provision of this Act has been violated by the terms of the contract.

(g) *INTERESTS IN REAL PROPERTY.*—No contract regulated by this Act may transfer or, in any other manner convey any interest in land or any other real property, unless specific statutory authority exists, all necessary approvals for such transfer or conveyance have been obtained, and such transfer or conveyance is clearly specified in the contract.

(h) *AUTHORITY OF THE SECRETARY.*—The authority of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81) shall not exceed to any contract or agreement that is regulated pursuant to this Act.

(i) *DISAPPROVAL OF CONTRACTS.*—The Commission may not approve a contract if the Commission determines that—

(1) any person having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, any individual who serves on the board of directors of such corporation, and any of the stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock—

(A) is an elected member of the governing body of the Indian tribe which is a party to the contract;

(B) has been convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this Act or has refused to respond to questions propounded by the Commission; or

(D) has been determined to be a person whose prior activities, criminal record, if any, or reputation, habits, and association pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on the business and financial arrangements incidental thereto;

(2) the contractor—

(A) has unduly interfered or influenced for its gain or advantage any decision or process of tribal government relating to the gaming activity; or

(B) has attempted to interfere or influence a decision pursuant to subparagraph (A);

(3) the contractor has deliberately or substantially failed to comply with the terms of the contract; or

(4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

SEC. 14. REVIEW OF EXISTING CONTRACTS: INTERIM AUTHORITY.

(a) *REVIEW OF EXISTING CONTRACTS.*—

(i) *IN GENERAL.*—At any time after the Commission is sworn in and has promulgated regulations for the implementation of this Act, the Commission shall notify each Indian tribe and

management contractor who, prior to the enactment of the Indian Gaming Regulatory Act Amendments Act of 1995, entered into a management contract that was approved by the Secretary, that the Indian tribe is required to submit to the Commission such contract, including all collateral agreements relating to the gaming activity, for review by the Commission not later than 60 days after such notification. Any such contract be valid under this Act, unless the contract is disapproved by the Commission under this section.

(2) REVIEW.—

(A) IN GENERAL.—Not later than 180 days after the submission of a management contract, including all collateral agreements, to the Commission pursuant to this section, the Commission shall review the contract to determine whether the contract meets the requirements of section 13 and was entered into in accordance with the procedures under such section.

(B) APPROVAL OF CONTRACT.—The Commission shall approve a management contract submitted for review under subsection (a) if the Commission determines that—

- (i) the management contract meets the requirements of section 13; and
- (ii) the management contractor has obtained all of the licenses that the contractor is required to obtain under this Act.

(C) NOTIFICATION OF NECESSARY MODIFICATION.—If the Commission determines that a contract submitted under this section does not meet the requirements of section 13—

- (i) the Commission shall provide the parties to such contract written notification of the necessary modifications; and
- (ii) the parties shall have 180 days after the date on which such notification is provided to make the modifications.

(b) INTERIM AUTHORITY OF THE NATIONAL INDIAN GAMING COMMISSION.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, the Chairman and the associate members of the National Indian Gaming Commission who are holding office on the day before the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995 shall exercise the authorities described in paragraph (2) until such time as all of the initial members of the Federal Indian Gaming Regulatory Commission are sworn into office.

(2) AUTHORITIES.—Until the date specified in paragraph (1), the Chairman and the Associate members of the National Indian Gaming Commission referred to in that paragraph shall exercise those authorities vested in the Federal Indian Gaming Regulatory Commission by this Act (other than the authority specified in section 7(a)(1)(A) and any other authority directly related to the administration of the Federal Indian Gaming Regulatory Commission as an independent establishment, as defined in section 104 of title 5, United States Code).

(3) *REGULATIONS.*—Until such time as the Commission promulgates revised regulations after the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995, the regulations promulgated under this Act, as in effect on the day before the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995, shall apply.

SEC. 15. CIVIL PENALTIES.

(a) *AMOUNT.*—Any person who commits any act or causes to be done any act that violates any provision of this Act or any rule or regulation promulgated under this Act, or who fails to carry out any act or causes the failure to carry out any act that is required by any such provision of law shall be subject to a civil penalty in an amount equal to not more than \$50,000 per day for each such violation.

(b) *ASSESSMENT AND COLLECTION.*—

(1) *IN GENERAL.*—Each civil penalty assessed under this section shall be assessed by the Commission and collected in a civil action brought by the Attorney General on behalf of the United States. Before the Commission refers civil penalty claims to the Attorney General, the Commission may compromise the civil penalty after affording the person charged with a violation referred to in subsection (a), an opportunity to present views and evidence in support of such action by the Commission to establish that the alleged violation did not occur.

(2) *PENALTY AMOUNT.*—In determining the amount of a civil penalty assessed under this section, the Commission shall take into account—

(A) the nature, circumstances, extent, and gravity of the violation committed;

(B) with respect to the person found to have committed such violation, the degree of culpability, any history of prior violations, ability to pay, the effect on ability to continue to do business; and

(C) such other matters as justice may require.

(c) *TEMPORARY CLOSURES.*—

(1) *IN GENERAL.*—The Commission may order the temporary closure of all or part of an Indian gaming operation for a substantial violation of any provision of law referred to in subsection (a).

(2) *HEARING ON ORDER OF TEMPORARY CLOSURE.*—

(A) *IN GENERAL.*—Not later than 30 days after the issuance of an order of temporary closure, the Indian tribe or the individual owner of a gaming operation shall have the right to request a hearing on the record before the Commission to determine whether such order should be made permanent or dissolved.

(B) *DEADLINES RELATING TO HEARING.*—Not later than 30 days after a request for a hearing is made under subparagraph (A), the Commission shall conduct such hearing. Not later than 30 days after the termination of the hearing, the Commission shall render a final decision on the closure.

SEC. 16. JUDICIAL REVIEW.

A decision made by the Commission pursuant to section 7, 8, 10, 13, 14, or 15 shall constitute a final agency decision for purposes of appeal to the United States District Court for the District of Columbia pursuant to chapter 7 of title 5, United States Code.

SEC. 17. COMMISSION FUNDING.**(a) ANNUAL FEES.—**

(1) **IN GENERAL.**—The Commission shall establish a schedule of fees to be paid to the Commission annually by gaming operations for each class II and class III gaming activity that is regulated by this Act.

(2) LIMITATION ON FEE RATES.—

(A) **IN GENERAL.**—For each gaming operation regulated under this Act, the rate of the fees imposed under the schedule established under paragraph (1) shall not exceed 2 percent of the net revenues of such gaming operation.

(B) **TOTAL AMOUNT OF FEES.**—The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall be equal to not more than \$25,000,000.

(3) **ANNUAL FEE RATE.**—The Commission, by a vote of a majority of the members of the Commission, shall annually adopt the rate of the fees authorized by this section. Such fees shall be payable to the Commission on a monthly basis.

(4) **ADJUSTMENT OF FEES.**—The fees imposed upon a gaming operation may be reduced by the Commission to take into account any regulatory functions that are performed by an Indian tribe, or the Indian tribe and a State, pursuant to regulations promulgated by the Commission.

(5) **CONSEQUENCES OF FAILURE TO PAY FEES.**—Failure to pay the fees imposed under the schedule established under paragraph (1) shall, subject to regulations promulgated by the Commission, be grounds for revocation of the approval of the Commission of any license required under this Act for the operation of gaming activities.

(6) **SURPLUS FUNDS.**—To the extent that revenues derived from fees imposed under the schedule established under paragraph (1), exceed the limitation in paragraph (2)(B) or are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming activity that is the subject of the fees on a pro rata basis against such fees imposed for the succeeding year.

(b) **REIMBURSEMENT OF COSTS.**—The Commission is authorized to assess any applicant, except the governing body of an Indian tribe, for any license required pursuant to this Act. Such assessment shall be an amount equal to the actual costs of conducting all reviews and investigations necessary for the Commission to determine whether a license should be granted or denied to the applicant.

(c) ANNUAL BUDGET.—

(1) **IN GENERAL.**—For the first full fiscal year beginning after the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995, and each fiscal year thereafter, the Commission shall adopt an annual budget for the expenses and operation of the Commission.

(2) *REQUEST FOR APPROPRIATIONS.*—The budget of the Commission may include a request for appropriations authorized under section 18.

(3) *SUBMISSION TO CONGRESS.*—Notwithstanding any other provision of law, a request for appropriations made pursuant to paragraph (2) shall be submitted by the Commission directly to the Congress beginning with the request for the first full fiscal year beginning after the date of enactment of this Act, and shall include the proposed annual budget of the Commission and the estimated revenues to be derived from fees.

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

Subject to section 17, there are authorized to be appropriated \$5,000,000 to provide for the operation of the Commission for each of fiscal years, 1997, 1998, and 1999, to remain available until expended.

SEC. 19. APPLICATION OF THE INTERNAL REVENUE CODE OF 1986.

(a) *IN GENERAL.*—The provisions of the Internal Revenue Code of 1986 (including sections 1141, 3402(q), 6041, and chapter 35 of such Code) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this Act in the same manner as such provisions apply to State gaming and wagering operations. Any exemptions to States with respect to taxation of such gaming and wagering operations shall be allowed to Indian tribes.

(b) *EXEMPTION.*—The provisions of section 6050I of the Internal Revenue Code of 1986 shall apply to an Indian gaming establishment that is not designated by the Secretary of the Treasury as a financial institution pursuant to chapter 53 of title 31, United States Code.

(c) *STATUTORY CONSTRUCTION.*—This section shall apply notwithstanding any other provision of law enacted before, on, or after, the date of enactment of this Act unless such other provision of law specifically cites this subsection.

(d) *ACCESS TO INFORMATION BY STATE AND TRIBAL GOVERNMENT.*—Subject to section 7(d) upon the request of a State or the governing body of an Indian tribe, the Commission shall make available any law enforcement information which it has obtained pursuant to such section, unless otherwise prohibited by law, in order to enable the State or the Indian tribe to carry out its responsibilities under this Act or any compact approved by the Secretary."

§ 2719. Gaming on lands acquired after October 17, 1988

(a) *PROHIBITION ON LANDS ACQUIRED IN TRUST BY SECRETARY.*—Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless—

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and—

- (A) such lands are located in Oklahoma, and—
 - (i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary; or
 - (ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or
- (B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) EXCEPTIONS.—

(1) Subsection (a) of this section will not apply when—

(A) the Secretary, after consultation with the Indian tribe and appropriate State, and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of—

- (i) a settlement of a land claim,
- (ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or
- (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

(2) Subsection (a) of this section shall not apply to—

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled *St. Croix Chippewa Indians of Wisconsin v. United States*, Civ. No. 86-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 465 and 467 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) **AUTHORITY OF SECRETARY NOT AFFECTED.**—Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

[(d) **APPLICATION OF INTERNAL REVENUE CODE OF 1986.**—

[(1) The provisions of the Internal Revenue Code of 1986 (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such Code) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(3) of this title is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

[(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.]

§ 2720. Dissemination of information

Consistent with the requirements of this chapter, sections 1301, 1302, 1303, and 1304 of Title 18 shall not apply to any gaming conducted by an Indian tribe pursuant to this chapter.

§ 2721. Severability

In the event that any section or provision of this chapter, or amendment, made by this chapter, is held invalid, it is the intent of Congress that the remaining sections or provisions of this chapter, and amendments made by this chapter, shall continue in full force and effect.

* * * * *

10 U.S.C. § 2323a(e)(1)

(e)(1) The term “Indian Lands” has the meaning given that term by [section 4(4) of the Indian Gaming Regulatory Act (102 Stat. 2468; 25 U.S.C. 2703(4))] *Section 4(14) of the Indian Gaming Regulatory Act.*

* * * * *

18 U.S.C. § 1166

(c) For the purpose of this section the term “gambling” does not include—

(1) class I gaming or class II gaming regulated by the Indian Gaming Regulatory Act, or

(2) class II gaming conducted under [a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act that is in effect] *a compact approved by the Secretary of the Interior under section 12(a)(4) of the Indian Gaming Regulatory Act that is in effect or pursuant to procedures prescribed by the Secretary of the Interior under section 12(a)(3)(B)(iii) of such Act.*

(d) The United States shall have exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made

applicable under this section to Indian country, unless an Indian tribe pursuant to [a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act] *a compact approved by the Secretary of the Interior under section 12(a)(4) of the Indian Gaming Regulatory Act or pursuant to procedures prescribed by the Secretary of the Interior under section 12(a)(3)(B)(iii) of such Act*, or under any provision of Federal law, has consented to the transfer to the State of criminal jurisdiction with respect to gambling on the lands of the Indian tribe.

* * * * *

18 U.S.C. § 1167

(a) Whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any money, funds, or other property of a value of \$1,000 or less belonging to an establishment operated by or for or licensed by an Indian tribe [pursuant to an ordinance of resolution approved by the National Indian Gaming Commission] shall be fined under this title or be imprisoned for not more than one year, or both.

(b) whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any money, funds, or other property of a value in excess of \$1,000 belonging to a gaming establishment operated by or licensed by an Indian tribe [pursuant to an ordinance of resolution approved by the National Indian Gaming Commission] shall be fined under this title, or imprisoned for not more than ten years, or both.

* * * * *

18 U.S.C. § 1168

(a) Whoever, being an officer, employee, or individual licensee of a gaming establishment operated by or for or licensed by an Indian tribe [pursuant to an ordinance or resolution approved by the National Indian Gaming Commission], embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value of \$1,000 or less shall be fined not more than \$250,000 or imprisoned not more than five years, or both;

(b) Whoever, being an officer, employee, or individual licensee of a gaming establishment operated by or for or licensed by an Indian Tribe [pursuant to an ordinance or resolution approved by the National Indian Gaming Commission,] embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value in excess of \$1,000 shall be fined not more than \$1,000,000 or imprisoned for not more than twenty years, or both.

* * * * *

§ 168(j)(4)(A)(iv) of the Internal Revenue Code of 1986

(iv) not property (or any portion thereof) placed in service for purposes of conducting or housing class I, II, or III gaming (as defined in section 4 of the [Indian

Regulatory Act】 *Indian Gaming Regulatory Act* (25 U.S.C. 2703)).

* * * * *

28 U.S.C. § 3701(2)

(2) the term “governmental entity” means a State, a political subdivision of State, or an entity or organization described in 【section 4(5) of the *Indian Gaming Regulatory Act* (25 U.S.C. 2703(5))】 *section 4(15) of the Indian Gaming Regulatory Act*, that has governmental authority within the territorial boundaries of the United States, including on lands described in 【section 4(4) of such Act (25 U.S.C. 2703(4))】 *section 4(14) of such Act*,

* * * * *

28 U.S.C. § 3704(b)

(b) Except as provided in subsection (a), section 3702 shall apply on lands described in 【section 4(4) of the *Indian Gaming Regulatory Act*】 *section 4(14) of the Indian Gaming Regulatory Act* (25 U.S.C. 2703(4)).

