

106TH CONGRESS  
1ST SESSION

# S. 985

To amend the Indian Gaming Regulatory Act, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 6, 1999

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To amend the Indian Gaming Regulatory Act, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “The Intergovernmental  
5 Gaming Agreement Act of 1999”.

6 **SEC. 2. AMENDMENTS TO THE INDIAN GAMING REGU-**  
7 **LATORY ACT.**

8 The Indian Gaming Regulatory Act (25 U.S.C. 2701  
9 et seq.) is amended by striking section 11, subsection (d)  
10 and inserting the following:

1 “(d)(1) Class III gaming activities shall be lawful on  
2 Indian lands only if those activities are—

3 “(A) authorized by an ordinance or resolution  
4 that—

5 “(i) is adopted by the governing body of  
6 the Indian tribe having jurisdiction over such  
7 lands,

8 “(ii) meets the requirements of subsection  
9 (b), and

10 “(iii) is approved by the Chairman,

11 “(B) located in a State that permits such gam-  
12 ing for any purpose by any person, organization, or  
13 entity; and

14 “(C) authorized by a Compact that is approved  
15 pursuant to tribal law by the governing body of the  
16 Indian tribe having jurisdiction over those lands;

17 “(D) conducted in conformance with a compact  
18 that—

19 “(i) is in effect; and

20 “(ii) is—

21 “(I) entered into by an Indian tribe  
22 and a State and approved by the Secretary  
23 under paragraph (3); or

24 “(II) issued by the Secretary under  
25 paragraph (3).

1       “(2)(A) If any Indian tribe proposes to engage in,  
 2 or to authorize any person or entity to engage in, a class  
 3 III gaming activity on Indian lands of the Indian tribe,  
 4 the governing body shall adopt and submit to the chair-  
 5 man an ordinance or resolution that meets the require-  
 6 ments of subsection (b).

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

10           “(i) the ordinance or resolution was not adopted  
 11 in compliance with the governing documents of the  
 12 Indian tribe, or

13           “(ii) the tribal governing body was significantly  
 14 and unduly influenced in the adoption of such ordi-  
 15 nance or resolution by any person identified in sec-  
 16 tion 12(e)(1)(D).

17       “(C) Upon approval of such an ordinance or resolu-  
 18 tion, the Chairman shall publish in the Federal Register  
 19 such ordinance or resolution and the order of approval.

20       “(3) COMPACT NEGOTIATIONS; APPROVAL.—

21           “(A) IN GENERAL.—

22           “(i) COMPACT NEGOTIATIONS.—Any tribe  
 23 having jurisdiction over lands upon which a  
 24 class III gaming activity is to be conducted may  
 25 request the State in which those lands are lo-

1 cated to enter into negotiations for the purpose  
 2 of entering into a compact with that State gov-  
 3 erning conduct of Class III gaming activities.

4 “(ii) REQUIREMENTS FOR REQUEST FOR  
 5 NEGOTIATIONS.—A request for negotiations  
 6 under clause (i) shall be in writing and shall  
 7 specify each gaming activity the Indian tribe  
 8 proposes for inclusion in the compact. Not later  
 9 than 30 days after receipt of the written re-  
 10 quest, the State shall respond to the Indian  
 11 tribe.

12 “(iii) COMMENCEMENT OF COMPACT NE-  
 13 GOTIATIONS.—Compact negotiations conducted  
 14 under this paragraph shall commence not later  
 15 than 30 days after the date on which a re-  
 16 sponse by a State is due to the Indian tribe,  
 17 and shall be completed not later than 120 days  
 18 after the initiation of compact negotiations, un-  
 19 less the State and the Indian tribe agree in  
 20 writing to a different period of time for the  
 21 completion of compact negotiations.

22 “(B) NEGOTIATIONS.—

23 “(i) IN GENERAL.—The Secretary shall,  
 24 upon request of an Indian tribe described in  
 25 subparagraph (A)(i) that has not reached an

1 agreement with a State concerning a compact  
 2 referred to in that subparagraph (or with re-  
 3 spect to an Indian tribe described in clause  
 4 (ii)(I)(bb) a compact) during the applicable pe-  
 5 riod under clause (ii) of this subparagraph, ini-  
 6 tiate a mediation process to—

7 “(I) conclude a compact referred to in  
 8 subparagraph (A)(i); or

9 “(II) if necessary, provide for the  
 10 issuance of procedures by the Secretary to  
 11 govern the conduct of the gaming referred  
 12 to in that subparagraph.

13 “(ii) APPLICABLE PERIOD.—

14 “(I) IN GENERAL.—Subject to sub-  
 15 clause (II), the applicable period described  
 16 in this paragraph is—

17 “(aa) in the case of an Indian  
 18 tribe that makes a request for com-  
 19 pact negotiations under subparagraph  
 20 (A), the 180-day period beginning on  
 21 the date on which that Indian tribe  
 22 makes the request; and

23 “(bb) in the case of an Indian  
 24 tribe that makes a request to renew a  
 25 compact to govern class III gaming

1 activity on Indian lands of that Indian  
 2 tribe within the State that the Indian  
 3 tribe entered into prior to the date of  
 4 enactment of the Indian Gaming Reg-  
 5 ulatory Act of 1988, during the 60-  
 6 day period beginning on the date of  
 7 that request.

8 “(II) EXTENSION.—An Indian tribe  
 9 and a State may agree to extend an appli-  
 10 cable period under this paragraph beyond  
 11 the applicable termination date specified in  
 12 item (aa) or (bb) of subclause (I).

13 “(iii) MEDIATION.—

14 “(I) IN GENERAL.—The Secretary  
 15 shall initiate mediation to conclude a com-  
 16 pact governing the conduct of class III  
 17 gaming activities on Indian lands upon a  
 18 clear showing by an Indian tribe that,  
 19 within the applicable period specified in  
 20 clause (ii), a state has failed—

21 “(aa) to respond to a request by  
 22 an Indian tribe for negotiations under  
 23 this subparagraph; or

24 “(bb) to negotiate in good faith.

1           “(II) EFFECT OF DECLINING NEGOTIATIONS.—The Secretary shall initiate  
2 mediation within 10 days after a State declines to enter into negotiations under this  
3 subparagraph, without regard to whether  
4 the otherwise applicable period specified in  
5 clause (ii) has expired.  
6

7           “(III) COPY OF REQUEST.—An Indian  
8 tribe that requests mediation under this  
9 clause shall provide the State that is the  
10 subject of the mediation request a copy of  
11 the mediation request submitted to the  
12 Secretary within 5 days of receipt of the  
13 request.  
14

15           “(IV) PANEL.—The Secretary, in consultation with the Indian tribes and States,  
16 shall establish a list of independent mediators, that the Secretary, in consultation  
17 with the Indian tribes and the States, shall periodically update. All mediators placed  
18 upon the list shall be certified by the  
19 American Arbitration Association as qualified to conduct arbitration in accordance  
20 with the American Arbitration Association  
21 rules and procedures.  
22  
23  
24  
25

“(V) NOTIFICATION BY STATE.—Not later than 10 days after an Indian tribe makes a request to the Secretary for mediation under subclause (I), the State that is the subject of the mediation request shall notify the Secretary whether the State elects to participate in the mediation process within 5 days of receipt of the request. If the State elects to participate in the mediation, the mediation shall be conducted in accordance with subclause (IV). If the State declines to participate in the mediation process, the Secretary shall issue procedures pursuant to clause (iv).

“(VI) MEDIATION PROCESS.—

“(aa) IN GENERAL.—Not later than 20 days after a State elects under subclause (V) to participate in a mediation, the Secretary shall submit to the Indian tribe and the State the names of 3 mediators randomly selected by the Secretary from the list of mediators established under subclause (IV).



1                   “(bb) SELECTION OF MEDI-  
2                   ATOR.—Not later than 10 days after  
3                   the Secretary submits the mediators  
4                   referred to in item (aa), the Indian  
5                   tribe and the State may each peremp-  
6                   torily remove one mediator from the  
7                   mediators submitted. If either the In-  
8                   dian tribe or the State declines to re-  
9                   move a mediator, the Secretary shall  
10                  randomly remove names until only one  
11                  mediator remains. The remaining me-  
12                  diator shall conduct the mediation.

13                  “(cc) INITIAL PERIOD OF MEDI-  
14                  ATION.—The mediator shall, during  
15                  the 60-day period beginning on the  
16                  date on which the mediator is selected  
17                  under item (bb) (or a longer period  
18                  upon the written agreement of the  
19                  parties to the mediation for an exten-  
20                  sion of the period) attempt to achieve  
21                  a compact.

22                  “(dd) LAST BEST OFFER.—If by  
23                  the termination of the period specified  
24                  in item (cc), no agreement for con-  
25                  cluding a compact is achieved by the

1 parties to the mediation, each such  
2 party may, not later than 10 days  
3 after that date, submit to the medi-  
4 ator an offer that represents the best  
5 offer that the party intends to make  
6 for achieving an agreement for con-  
7 cluding a compact (referred to herein-  
8 after as a ‘last-best-offer’). The medi-  
9 ator shall review a last-best-offer re-  
10 ceived pursuant to this item not later  
11 than 30 days after the date of submis-  
12 sion of the offer.

13 “(ee) REPORT BY MEDIATOR.—

14 Not later than the date specified for  
15 the completion of a review of a last-  
16 best-offer under item (dd), or in any  
17 case in which either party in a medi-  
18 ation fails to make such an offer, the  
19 date that is 10 days after the termi-  
20 nation of the initial period of medi-  
21 ation under item (cc), the mediator  
22 shall prepare and submit to the Sec-  
23 retary a report that includes the con-  
24 tentions of the parties, the conclusions  
25 of the mediator concerning the per-

1 missible scope of gaming on the In-  
2 dian lands involved, and recommenda-  
3 tions for the operation and regulation  
4 of gaming on the Indian lands in ac-  
5 cordance with this Act.

6 “(ff) FINAL DETERMINATIONS.—

7 Not later than 60 days after receiving  
8 a report from a mediator under item  
9 (ee), the Secretary shall make a final  
10 determination concerning the oper-  
11 ation and regulation of class III gam-  
12 ing that is the subject of the medi-  
13 ation.

14 “(VII) PROCEDURES.—Subject to

15 clause (iii)(V), on the basis of a final de-  
16 termination described in clause  
17 (iii)(VI)(ff), the Secretary shall issue pro-  
18 cedures for the operation and regulation of  
19 the class III gaming described in that item  
20 by the date that is 180 days after the date  
21 specified in clause (iii)(V) or upon the de-  
22 termination described in clause  
23 (iii)(VI)(ff).

1 “(VIII) JURISDICTION OF THE  
2 UNITED STATES DISTRICT COURT FOR THE  
3 DISTRICT OF COLUMBIA.—

4 “(aa) The United States District  
5 Court for the District of Columbia  
6 shall have jurisdiction over any action  
7 initiated by the Secretary, the Com-  
8 mission, a State, or an Indian tribe to  
9 challenge the Secretary’s decision to  
10 complete a compact or initiate medi-  
11 ation or to challenge specific provi-  
12 sions of procedures issued by the Sec-  
13 retary for the operation of class III  
14 gaming under clause (iii)(V) or  
15 (iii)(VII).

16 “(bb) The Secretary’s decision to  
17 complete a compact or to initiate me-  
18 diation pursuant to clause (iii)(V) or  
19 (iii)(VII) shall be immediately review-  
20 able in the United States District  
21 Court.

22 “(cc) Upon receipt of a petition  
23 to review a decision of the Secretary  
24 to complete a compact or initiate me-  
25 diation pursuant to clause (iii)(V) or

1 (iii)(VII), the United States District  
2 Court shall appoint a three judge  
3 panel to hear the proceedings and  
4 render a decision regarding whether  
5 the determination of the Secretary  
6 was valid as a matter of law.

7 “(IX) PROHIBITION.—No compact ne-  
8 gotiated, or procedures issued, under this  
9 subparagraph shall require that a State  
10 undertake any regulation of gaming on In-  
11 dian lands unless—

12 “(aa) the State affirmatively con-  
13 sents to regulate that gaming; and

14 “(bb) applicable State laws permit  
15 that regulatory function.

16 “(C) MANDATORY DISAPPROVAL.—Notwith-  
17 standing any other provision of this Act, the Sec-  
18 retary may not approve a compact if the compact re-  
19 quires State regulation of gaming absent the consent  
20 of the State or the Indian tribe.

21 “(D) EFFECTIVE DATE OF COMPACT OR PROCE-  
22 DURES.—Any compact negotiated, or procedures  
23 issued, under this subsection shall become effective  
24 upon the publication of the compact or procedures in  
25 the Federal Register by the Secretary.

1           “(E) EFFECT OF PUBLICATION OF COMPACT.—

2       Except for an appeal conducted under subchapter II  
3       of chapter 5 of title 5, United States Code, by an  
4       Indian tribe or a State associated with the compact,  
5       the publication of a compact pursuant to subpara-  
6       graph (B) shall, for the purposes of this Act, be con-  
7       clusive evidence that the class III gaming subject to  
8       the compact is an activity subject to negotiations  
9       under the laws of the State where the gaming is to  
10      be conducted, in any matter under consideration by  
11      the Commission or a Federal court.

12           “(F) DUTIES OF COMMISSION.—Consistent with  
13      minimum standards and as otherwise authorized by  
14      this Act, the Commission shall monitor and, if au-  
15      thorized by those standards and this Act, regulate  
16      and license class III gaming with respect to and in  
17      a manner consistent with any compact that is ap-  
18      proved by the Secretary under this subsection and  
19      published in the Federal Register.

20           “(4) PROVISIONS OF COMPACTS.—

21           “(A) IN GENERAL.—A compact negotiated  
22      under this subsection may only include provisions re-  
23      lating to—

24                   “(i) the application of the criminal and  
25                   civil laws (including regulations) of the Indian

1           tribe or the State that are directly related to,  
2           and necessary for, the licensing and regulation  
3           of that gaming activity in a manner consistent  
4           with the requirements of the standards promul-  
5           gated by the Commission.

6           “(ii) the allocation of criminal and civil ju-  
7           risdiction between the State and the Indian  
8           tribe necessary for the enforcement of those  
9           laws (including regulations);

10          “(iii) the assessment by the state of the  
11          costs associated with those activities in such  
12          amounts as are necessary to defray the costs of  
13          regulating that activity;

14          “(iv) taxation by the Indian tribe of that  
15          activity in amounts comparable to amounts as-  
16          sessed by the State for comparable activities;

17          “(v) remedies for breach of compact provi-  
18          sions;

19          “(vi) standards for the operation of that  
20          activity and maintenance of the gaming facility,  
21          including licensing, in a manner consistent with  
22          the requirements of the standards promulgated  
23          by the Commission.

24          “(vii) any other subject that is directly re-  
25          lated to the operation of gaming activities.

1           “(B) STATUTORY CONSTRUCTION WITH RE-  
2       SPECT TO ASSESSMENTS; PROHIBITION.—

3           “(i) STATUTORY CONSTRUCTION.—Except  
4       for any assessments for services agreed to by an  
5       Indian tribe in compact negotiations, nothing in  
6       this section may construed as conferring upon  
7       a State, or any political subdivision thereof, the  
8       authority to impose any tax, fee, charge, or  
9       other assessment upon an Indian tribe, an In-  
10      dian gaming operation or the value generated  
11      by the gaming operation, or any person or enti-  
12      ty authorized by an Indian tribe to engage in  
13      class III gaming activity in conformance with  
14      this Act.

15          “(ii) ASSESSMENT BY STATES.—A State  
16      may assess the assessments agreed to by an In-  
17      dian tribe referred to in clause (i) in a manner  
18      consistent with that clause.

19          “(5) STATUTORY CONSTRUCTION WITH RESPECT TO  
20      CERTAIN RIGHTS OF INDIAN TRIBES.—Nothing in this  
21      subsection impairs the right of an Indian tribe to regulate  
22      class III gaming on the indian lands of the indian tribe  
23      concurrently with a State and the Commission, except to  
24      the extent that such regulation is inconsistent with or less  
25      stringent than, this Act or any laws (including regula-



1 tions) made applicable by any compact entered into by the  
 2 Indian tribe under this subsection that is in effect.

3 “(6) EXEMPTION.—The provisions of section 2 of the  
 4 Act of January 2, 1951 (commonly referred to as the  
 5 ‘Gambling Devices Transportation Act’) (64 Stat. 1134,  
 6 chapter 1194; 15 U.S.C. 1175) shall not apply to any class  
 7 II gaming activity or any gaming activity conducted pur-  
 8 suant to a compact entered into after the date of enact-  
 9 ment of this Act, but in no event shall this paragraph be  
 10 constructed as invalidating any exemption from the provi-  
 11 sions of section 2 of the Act of January 2, 1951 for any  
 12 compact entered into prior to the date of enactment of  
 13 this Act.”.

14 (b) JURISDICTION OF THE UNITED STATES DIS-  
 15 TRICT COURT FOR THE DISTRICT OF COLUMBIA.—The  
 16 United States District Court for the District of Columbia  
 17 shall have jurisdiction over any action initiated by the Sec-  
 18 retary, the Commission, a State, or an Indian tribe to en-  
 19 force any provision of a compact entered into under sub-  
 20 section (a) or to enjoin a class III gaming activity located  
 21 on Indian lands and conducted in violation of any compact  
 22 that is in effect and that was entered into under sub-  
 23 section (a).

24 (c) APPROVAL OF COMPACTS.—

1           (1) IN GENERAL.—The Secretary may approve  
2           any compact between an Indian tribe and a State  
3           governing the conduct of class III gaming on Indian  
4           lands of that indian tribe entered into under sub-  
5           section (a).

6           (2) REASONS FOR DISAPPROVAL BY SEC-  
7           RETARY.—The Secretary may disapprove a compact  
8           entered into under subsection (a) only if that com-  
9           pact violates any—

10                   (A) provision of this Act or any regulation  
11                   promulgated by the Commission pursuant to  
12                   this Act;

13                   (B) other provision of Federal law; or

14                   (C) trust obligation of the United States to  
15           Indians.

16           (3) EFFECT OF FAILURE TO ACT ON COM-  
17           PACT.—If the Secretary fails to approve or dis-  
18           approve a compact entered into under subsection (a)  
19           before the date that is 45 days after the date on  
20           which the compact is submitted to the Secretary for  
21           approval, the compact shall be considered to be ap-  
22           proved by the Secretary, but only to the extent the  
23           compact is consistent with the provisions of this Act  
24           and the regulations promulgated by the Commission  
25           pursuant to this Act.

1           (4) NOTIFICATION.—The Secretary shall pub-  
2           lish in the Federal Register notice of any compact  
3           that is approved, or considered to have been ap-  
4           proved, under this subsection.

5           (d) REVOCATION OF ORDINANCE.—

6           (1) IN GENERAL.—The governing body of an  
7           Indian tribe in its sole discretion, may adopt an or-  
8           dinance or resolution revoking any prior ordinance  
9           or resolution that authorized class III gaming on the  
10          Indian lands of the Indian tribe. That revocation  
11          shall render class III gaming illegal on the Indian  
12          lands of that Indian tribe.

13          (2) PUBLICATION OF REVOCATION.—An Indian  
14          tribe shall submit any revocation ordinance or reso-  
15          lution described in paragraph (1) to the Commis-  
16          sion. The Commission shall publish that ordinance  
17          or resolution in the Federal Register. The revocation  
18          provided by that ordinance or resolution shall take  
19          effect on the date of that publication.

20          (3) CONDITIONAL OPERATION.—Notwith-  
21          standing any other provision of this subsection—

22                (A) any person or entity operating a class  
23                III gaming activity pursuant to this Act on the  
24                date on which an ordinance or resolution de-  
25                scribe in paragraph (1) that revokes authoriza-

tion for that class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which that revocation, ordinance, or resolution is published under paragraph (2), continue to operate that activity in conformance with an applicable compact entered into under subsection (a) that is in effect; and

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

(e) CERTAIN CLASS III GAMING ACTIVITIES.—

(1) COMPACTS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE INTERGOVERNMENTAL GAMING AGREEMENT ACT OF 1999.—Class III gaming activities that are authorized under a compact approved or issued by the Secretary under the authority of this Act prior to the date of enactment of the intergovernmental gaming agreement act of 1999 shall, during such period as the compact is in effect, remain lawful for the purposes of this Act, notwithstanding the Intergovernmental Gaming

1 Agreement Act of 1999 and the amendments made  
2 by that Act or any change in State law.

3 (2) COMPACT ENTERED INTO AFTER THE DATE  
4 OF ENACTMENT OF THE INTERGOVERNMENTAL GAM-  
5 ING AGREEMENT ACT OF 1999.—Any compact en-  
6 tered into under subsection (a) after the date speci-  
7 fied in paragraph (1) shall remain lawful for the  
8 purposes of the Intergovernmental Gaming Agree-  
9 ment Act of 1999, notwithstanding any change in  
10 state law, other than a change in state law that  
11 constitutes a change in the public policy of the State  
12 with respect to permitting or prohibiting class III  
13 gaming in the State.

○