

Calendar No. 739

108TH CONGRESS
2D SESSION

S. 1529

[Report No. 108-380]

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

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 21), 2003

Mr. CAMPBELL (for himself and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

SEPTEMBER 28, 2004

Reported by Mr. CAMPBELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

14 (b) **NATIONAL INDIAN GAMING COMMISSION.**—Sec-
 15 tion 5 of the Indian Gaming Regulatory Act (25 U.S.C.
 16 2704) is amended—

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

19 “(c) **VACANCIES.**—

20 “(1) **IN GENERAL.**—A vacancy on the Commis-
 21 sion shall be filled in the same manner as the origi-
 22 nal appointment.

23 “(2) **SUCCESSORS.**—Unless a member of the
 24 Commission is removed for cause under subsection
 25 (b)(6), the member may—

26 “(A) be reappointed; and

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

3 and

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

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

9 “(e) DELEGATION.—The Chairman may delegate to
10 an individual Commissioner any of the authorities de-
11 scribed in subsection (a).

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

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

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

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

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

1 (2) by redesignating subsection (e) as sub-
2 section (d);

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

5 “(e) STRATEGIC PLAN.—

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

9 “(2) REQUIREMENTS.—The strategic plan shall
10 include—

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

14 “(B) a description of the goals and objec-
15 tives of the Commission;

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

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

1 “(i) other components of the strategic
2 plan; and

3 “(ii) section 1115 of title 31, United
4 States Code;

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

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

14 “(3) BIENNIAL PLAN.—

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

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

22 (4) in subsection (d) (as redesignated by para-
23 graph (2))—

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

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

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

5 “(4) the strategic plan for activities of the
6 Commission described in subsection (e); and”.

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

9 (1) in subsection (a), by striking “GS-18 of the
10 General Schedule under section 5332” and inserting
11 “level IV of the Executive Schedule under section
12 5318”;

13 (2) in subsection (b)—

14 (A) by striking “(b) The Chairman” and
15 inserting the following:

16 “(b) STAFF.—

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

18 (B) by striking the last sentence and in-
19 serting the following:

20 “(2) COMPENSATION.—

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

1 “(B) MAXIMUM RATE OF PAY.—The rate
2 of pay for an individual appointed under para-
3 graph (1) shall not exceed the rate payable for
4 level IV of the Executive Schedule under section
5 5315 of title 5, United States Code.”; and

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

8 “(c) TEMPORARY SERVICES.—

9 “(1) IN GENERAL.—The Chairman may procure
10 temporary and intermittent services under section
11 3109 of title 5, United States Code.

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

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

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

23 “(i) ensures that—

24 “(I) background investigations are
25 conducted on the tribal gaming commis-

1 sioners, key tribal gaming commission em-
 2 ployees, and primary management officials
 3 and key employees of the gaming enter-
 4 prise; and

5 “~~(H)~~ oversight of primary manage-
 6 ment officials and key employees is con-
 7 ducted on an ongoing basis; and”;

8 ~~(2)~~ in subsection (d)—

9 ~~(A)~~ in paragraph (4)—

10 (i) by striking “~~(4)~~ Except” and in-
 11 serting the following:

12 “~~(4)~~ REVENUE SHARING.—

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

1 “(B) APPORTIONMENT OF REVENUES.—

2 The Secretary may not approve any Tribal-
3 State compact or other agreement that includes
4 an apportionment of net revenues with a State,
5 local government, or other Indian tribes un-
6 less—

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

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

21 “(iii) in the case of apportionment
22 with a State—

23 “(I) the total amount of net reve-
24 nues—

1 “(aa) exceeds the amounts
2 necessary to meet the require-
3 ments of clauses (i) and (ii) of
4 subsection (b)(2)(B) and clause
5 (ii) of this subparagraph, if appli-
6 cable; and

7 “(bb) is in accordance with
8 regulations promulgated by the
9 Secretary under subparagraph
10 (C); and

11 “(H) a substantial economic ben-
12 efit is rendered by the State to the In-
13 dian tribe.

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

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

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

2 “(10) EXTENSION OF TERM OF TRIBAL-STATE
3 COMPACT.—Any Tribal-State compact approved by
4 the Secretary in accordance with paragraph (8) shall
5 remain in effect for up to 180 days after expiration
6 of the Tribal-State compact if—

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

11 “(B) a new compact has not been agreed
12 on.”.

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

16 (1) by striking the section heading and all that
17 follows through “Subject” in subsection (a)(1) and
18 inserting the following:

19 **“SEC. 12. MANAGEMENT CONTRACTS.**

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

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

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

1 “class II gaming activity in which the Indian tribe
 2 may engage under section 11(b)(1), or a class III
 3 gaming activity in which the Indian tribe may en-
 4 gage under section 11(d),”.

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

8 (1) in subsection (a)—

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

11 “(1) SCHEDULE OF FEES.—

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

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

1 “(i) a progressive rate structure levied
2 on the gross revenues in excess of
3 \$1,500,000 from each operation that con-
4 ducts a class II gaming or class III gaming
5 activity; or

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

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

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

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

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

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

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

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

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

6 “(b) FEE PROCEDURES.—

7 “(1) IN GENERAL.—By a vote of not less than
8 2 members of the Commission, the Commission shall
9 adopt the schedule of fees provided for under this
10 section.

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

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

18 “(c) FEE REDUCTION PROGRAM.—

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

1 “(A) the extent and quality of regulation
2 of the gaming activity provided by a State or
3 Indian tribe, or both, in accordance with an ap-
4 proved State-tribal compact;

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

8 “(C) other factors determined by the Com-
9 mission, including—

10 “(i) the unique nature of tribal gam-
11 ing as compared with commercial gaming;
12 other governmental gaming; and charitable
13 gaming;

14 “(ii) the broad variations in the na-
15 ture, scale, and size of tribal gaming activ-
16 ity;

17 “(iii) the inherent sovereign rights of
18 Indian tribes with respect to regulating the
19 affairs of Indian tribes;

20 “(iv) the findings and purposes under
21 sections 2 and 3;

22 “(v) the amount of interest or invest-
23 ment income derived from the Indian gam-
24 ing regulation accounts; and

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

3 “~~(2) RULEMAKING.—~~The Commission shall
4 promulgate such regulations as are necessary to
5 carry out this subsection.”.

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

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

9 (2) by redesignating sections 20 through 24 (25
10 U.S.C. 2719 through 2723) as sections 23 through
11 27, respectively;

12 (3) by inserting after section 18 (25 U.S.C.
13 2717) the following:

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

15 “(a) ~~IN GENERAL.—~~All fees and civil forfeitures col-
16 lected by the Commission in accordance with this Act
17 shall—

18 “(1) be maintained in separate, segregated ac-
19 counts; and

20 “(2) be expended only for purposes described in
21 this Act.

22 “(b) ~~INVESTMENTS.—~~

23 “(1) ~~IN GENERAL.—~~The Commission shall in-
24 vest such portion of the accounts maintained under

1 subsection (a) as are not, in the judgment of the
2 Commission, required to meet immediate expenses.

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

7 “(c) SALE OF OBLIGATIONS.—Any obligation ac-
8 quired with funds in an account maintained under sub-
9 section (a)(1) (except special obligations issued exclusively
10 to those accounts, which may be redeemed at par plus ac-
11 erued interest) may be sold by the Commission at the mar-
12 ket price.

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

18 **“SEC. 20. MINIMUM STANDARDS.**

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

21 “(1) shall remain within the exclusive jurisdic-
22 tion of the Indian tribe having jurisdiction over the
23 Indian land; and

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

25 “(b) CLASS II GAMING.—

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

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

8 “(A) section 11; and

9 “(B) regulations promulgated under sub-
 10 section (d).

11 “(c) CLASS III GAMING.—

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

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

19 “(A) section 11; and

20 “(B) regulations promulgated under sub-
 21 section (d).

22 “(d) RULEMAKING.—

23 “(1) IN GENERAL.—

24 “(A) PROMULGATION.—Not later than 180
 25 days after the date of enactment of the Indian

1 Gaming Regulatory Act Amendments of 2003,
2 the Commission shall develop procedures under
3 subchapter III of chapter 5 of title 5, United
4 States Code, to negotiate and promulgate regu-
5 lations relating to—

6 “(i) the monitoring and regulation of
7 tribal gaming;

8 “(ii) the establishment and regulation
9 of internal control systems; and

10 “(iii) the conduct of background in-
11 vestigation.

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

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

1 of Indian tribes that conduct gaming in accordance
2 with this Act.

3 ~~“(e) ELIMINATION OF EXISTING REGULATIONS.—~~

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

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

22 ~~“(A) be considered to satisfy the require-~~
23 ~~ments of paragraph (1); and~~

24 ~~“(B) remain in full force and effect.~~

1 **“SEC. 21. USE OF NATIONAL INDIAN GAMING COMMISSION**

2 **CIVIL FINES.**

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

5 “(1) be deposited in a separate Indian gaming
6 regulation account established under section
7 19(d)(1)(A); and

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

11 “(b) USE OF FUNDS.—

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

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

18 “(A) to provide technical training and
19 other assistance to an Indian tribe to strength-
20 en the regulatory integrity of Indian gaming;

21 “(B) to provide assistance to an Indian
22 tribe to assess the feasibility of conducting non-
23 gaming economic development activities on In-
24 dian land;

25 “(C) to provide assistance to an Indian
26 tribe to devise and implement programs and

1 treatment services for individuals diagnosed as
2 problem gamblers; or

3 “(D) to provide to an Indian tribe 1 or
4 more other forms of assistance that are not in-
5 consistent with this Act.

6 “(e) SOURCE OF FUNDS.—Amounts used to carry out
7 subsection (b) may be derived only from funds—

8 “(1) collected by the Commission under section
9 14; and

10 “(2) authorized for use in advance by an Act of
11 appropriation.

12 “(d) REGULATIONS.—The Commission may promul-
13 gate such regulations as are necessary to carry out this
14 section.

15 **“SEC. 22. TRIBAL CONSULTATION.**

16 “In carrying out this Act, the Secretary of the Inte-
17 rior, Secretary of the Treasury, and Chairman of the Com-
18 mission shall involve and consult with Indian tribes to the
19 maximum extent practicable, as appropriate, in a manner
20 that is consistent with the Federal trust and the govern-
21 ment-to-government relationship that exists between In-
22 dian tribes and the Federal Government.”; and

23 (4) by inserting after section 27 (as redesign-
24 nated by paragraph (2)) the following:

1 **“SEC. 28. AUTHORIZATION OF APPROPRIATIONS.**

2 “(a) **IN GENERAL.**—Subject to section 18, there is
3 authorized to be appropriated to carry out this Act, for
4 fiscal year 1998 and each fiscal year thereafter, an
5 amount equal to the amount of funds derived from the
6 assessments authorized by section 18(a).

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

13 **SECTION 1. SHORT TITLE.**

14 *This Act may be cited as the “Indian Gaming Regu-*
15 *latory Act Amendments of 2004”.*

16 **SEC. 2. ADMINISTRATION AND FEES.**

17 (a) **DEFINITIONS.**—Section 4(7) of the *Indian Gaming*
18 *Regulatory Act (25 U.S.C. 2703(7))* is amended—

19 (1) *in subparagraph (E), by striking “of the In-*
20 *dian Gaming Regulatory Act (25 U.S.C.*
21 *2710(d)(3))”;* and

22 (2) *by adding at the end the following:*

23 “(G) **TECHNOLOGICAL AIDS.**—*Notwith-*
24 *standing any other provision of law, sections 1*
25 *through 7 of the Act of January 2, 1951 (com-*
26 *monly known as the ‘Gambling Devices Trans-*

1 *portation Act*') (15 U.S.C. 1171 *et seq.*), shall
2 *not apply to any gaming described in subpara-*
3 *graph (A)(i) for which an electronic aid, com-*
4 *puter, or other technological aid is used in con-*
5 *nection with the gaming.*".

6 (b) NATIONAL INDIAN GAMING COMMISSION.—Section
7 5 of the Indian Gaming Regulatory Act (25 U.S.C. 2704)
8 is amended—

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

11 “(c) VACANCIES.—

12 “(1) IN GENERAL.—A vacancy on the Commis-
13 *sion shall be filled in the same manner as the original*
14 *appointment.*

15 “(2) SUCCESSORS.—Unless a member of the
16 *Commission is removed for cause under subsection*
17 *(b)(6), the member may—*

18 “(A) be reappointed; and

19 “(B) serve after the expiration of the term
20 *of the member until a successor is appointed.”;*
21 *and*

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

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

4 “(c) *DELEGATION.*—The Chairman may delegate to an
5 *individual Commissioner any of the authorities described*
6 *in subsection (a).*

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

10 “(1) *such general policies as are formally adopt-*
11 *ed by the Commission; and*

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

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

16 (1) *by redesignating subsection (c) as subsection*
17 *(e);*

18 (2) *by inserting after subsection (b) the fol-*
19 *lowing:*

20 “(c) *STRATEGIC PLAN.*—

21 “(1) *IN GENERAL.*—The Commission shall de-
22 *velop a strategic plan for use in carrying out activi-*
23 *ties of the Commission.*

24 “(2) *REQUIREMENTS.*—The strategic plan shall
25 *include—*

1 “(A) a comprehensive mission statement de-
2 scribing the major functions and operations of
3 the Commission;

4 “(B) a description of the goals and objec-
5 tives of the Commission;

6 “(C) a description of the general means by
7 which those goals and objectives are to be
8 achieved, including a description of the oper-
9 ational processes, skills, and technology, and the
10 human resources, capital, information, and other
11 resources required to achieve those goals and ob-
12 jectives;

13 “(D) a performance plan for achievement of
14 those goals and objectives that is consistent
15 with—

16 “(i) other components of the strategic
17 plan; and

18 “(ii) section 1115 of title 31, United
19 States Code;

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

24 “(F) a description of the program evalua-
25 tions used in establishing or revising those goals

1 *and objectives, including a schedule for future*
2 *program evaluations.*

3 “(3) *BIENNIAL PLAN.*—

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

8 “(B) *UPDATES AND REVISIONS.*—*The stra-*
9 *tegic plan shall be updated and revised bienni-*
10 *ally.*

11 “(d) *REGISTRATION OF TECHNOLOGICAL AIDS.*—

12 “(1) *IN GENERAL.*—*The Commission shall re-*
13 *quire the registration of—*

14 “(A) *any electronic aid, computer, or other*
15 *technological aid described in section 4(7)(G)*
16 *that is intended for use on Indian land; and*

17 “(B) *any manufacturer, seller, dealer,*
18 *buyer, lessor, or any other person that is engaged*
19 *in the business of repairing, reconditioning, or*
20 *reprogramming such technological aids.*

21 “(2) *REGISTRATION OF MANUFACTURERS AND*
22 *DEALERS.*—*A manufacturer, seller, dealer, buyer, les-*
23 *sor, or any other person that intends to be engaged*
24 *in the business of repairing, reconditioning, or re-*
25 *programming any electronic aid, computer, or other*

1 *technological aid described in section 4(7)(G) that is*
2 *intended for use on Indian land in a calendar year*
3 *shall register with the Commission not later than No-*
4 *vember 30 of the preceding calendar year.*

5 “(3) *NUMBERING AND RECORDS FOR TECHNO-*
6 *LOGICAL AIDS.—*

7 “(A) *MANUFACTURERS.—A manufacturer of*
8 *an electronic, computer, or other technological*
9 *aid described in section 4(7)(G) shall—*

10 “(i) *sequentially number each techno-*
11 *logical aid; and*

12 “(ii) *permanently affix to the techno-*
13 *logical aid, so as to be clearly visible, the se-*
14 *rial number, legal and trade name of the*
15 *manufacturer, and date of manufacture of*
16 *the technological aid.*

17 “(B) *PERSONS REQUIRED TO REGISTER.—*

18 “(i) *NUMBERING.—A person required*
19 *to register under paragraph (2) shall—*

20 “(I) *sequentially number each*
21 *electronic aid, computer, or other tech-*
22 *nological aid within the physical pos-*
23 *session of the person, if a manufactur-*
24 *er’s serial number has not been pre-*

1 *viously affixed in accordance with*
2 *paragraph (A); and*

3 *“(II) permanently affix to the*
4 *technological aid, so as to be clearly*
5 *visible, the serial number, legal name*
6 *and trade name of the registrant, and*
7 *date on which the serial number is af-*
8 *fixed.*

9 *“(ii) RECORDS.—A person required to*
10 *register under paragraph (2) for any cal-*
11 *endar year shall, on and after the date of*
12 *registration or the first day of that year*
13 *(whichever occurs later), maintain a record*
14 *by calendar month, for all periods thereafter*
15 *in the year, of each electronic aid, com-*
16 *puter, or other technological aid within the*
17 *possession of the registrant that discloses—*

18 *“(I) the information required by*
19 *subparagraph (A) and clause (i); and*

20 *“(II) on transfer of possession of*
21 *the technological aid, the legal and*
22 *trade name of the person to which pos-*
23 *session is transferred and the date of*
24 *the transfer.*

1 “(4) *CIVIL PENALTIES.*—A person that fails to
 2 *comply with this subsection shall be subject to the*
 3 *penalties prescribed in section 14 as if the person*
 4 *were a management contractor engaged in gaming.”;*
 5 *and*

6 (3) *in subsection (e) (as redesignated by para-*
 7 *graph (1))—*

8 (A) *in paragraph (3), by striking “the Act;*
 9 *and” and inserting “this Act;”;*

10 (B) *by redesignating paragraph (4) as*
 11 *paragraph (5); and*

12 (C) *by inserting after paragraph (3) the fol-*
 13 *lowing:*

14 “(4) *the strategic plan for activities of the Com-*
 15 *mission described in subsection (c); and”.*

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

18 (1) *in subsection (a), by striking “GS-18 of the*
 19 *General Schedule under section 5332” and inserting*
 20 *“level IV of the Executive Schedule under section*
 21 *5318”;*

22 (2) *in subsection (b)—*

23 (A) *by striking “(b) The Chairman” and*
 24 *inserting the following:*

25 “(b) *STAFF.*—

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

2 *(B) by striking the last sentence and insert-*
3 *ing the following:*

4 “(2) *COMPENSATION.—*

5 “(A) *IN GENERAL.—Staff appointed under*
6 *paragraph (1) shall be paid without regard to*
7 *the provisions of chapter 51 and subchapter III*
8 *of chapter 53, of title 5, United States Code, re-*
9 *lating to General Schedule pay rates.*

10 “(B) *MAXIMUM RATE OF PAY.—The rate of*
11 *pay for an individual appointed under para-*
12 *graph (1) shall not exceed the rate payable for*
13 *level IV of the Executive Schedule under section*
14 *5315 of title 5, United States Code.”; and*

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

17 “(c) *TEMPORARY SERVICES.—*

18 “(1) *IN GENERAL.—The Chairman may procure*
19 *temporary and intermittent services under section*
20 *3109 of title 5, United States Code.*

21 “(2) *MAXIMUM RATE OF PAY.—The rate of pay*
22 *for an individual for service described in paragraph*
23 *(1) shall not exceed the daily equivalent of the max-*
24 *imum rate payable for level IV of the Executive*

1 *Schedule under section 5318 of title 5, United States*
 2 *Code.”.*

3 (f) *TRIBAL GAMING ORDINANCES.—Section 11 of the*
 4 *Indian Gaming Regulatory Act (25 U.S.C. 2710) is amend-*
 5 *ed—*

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

8 “(i) *ensures that—*

9 “(I) *background investigations are con-*
 10 *ducted on the tribal gaming commissioners,*
 11 *key tribal gaming commission employees,*
 12 *and primary management officials and key*
 13 *employees of the gaming enterprise; and*

14 “(II) *oversight of primary manage-*
 15 *ment officials and key employees is con-*
 16 *ducted on an ongoing basis; and”;* and

17 (2) *in subsection (d)—*

18 (A) *by striking paragraph (4) and inserting*
 19 *the following:*

20 “(4) *REVENUE APPORTIONMENT.—*

21 “(A) *IN GENERAL.—Except for any assess-*
 22 *ments that may be agreed to under paragraph*
 23 *(3)(C)(iii), nothing in this section confers on a*
 24 *State or any political subdivision of a State au-*
 25 *thority to impose any tax, fee, charge, or other*

1 *assessment on an Indian tribe or on any other*
2 *person or entity authorized by an Indian tribe*
3 *to engage in a class III activity.*

4 “(B) *NEGOTIATIONS.*—*No State may refuse*
5 *to enter into the negotiations described in para-*
6 *graph (3)(A) based on the lack of authority in a*
7 *State, or political subdivision of a State, to im-*
8 *pose such a tax, fee, charge, or other assessment.*

9 “(C) *APPORTIONMENT OF REVENUES.*—*The*
10 *Secretary may not approve any Tribal-State*
11 *compact or other agreement that includes an ap-*
12 *portionment of revenues with a State or local*
13 *government unless—*

14 “(i) *in the case of apportionment with*
15 *local governments, the total amount of net*
16 *revenues exceeds the amounts necessary to*
17 *meet the requirements of subsection*
18 *(b)(2)(B)(i), but only to the extent that the*
19 *excess revenues reflect the actual costs in-*
20 *curring by affected local governments as a re-*
21 *sult of the operation of gaming activities; or*

22 “(ii) *in the case of apportionment with*
23 *a State—*

24 “(I) *the total amount of net reve-*
25 *nuces—*

1 “(aa) exceeds the amounts
2 necessary to meet the requirements
3 of clauses (i) and (iii) of sub-
4 section (b)(2)(B) and clause (i) of
5 this subparagraph, if applicable;
6 and

7 “(bb) is in accordance with
8 regulations promulgated by the
9 Secretary under subparagraph
10 (D); and

11 “(II) a substantial economic ben-
12 efit is rendered by the State to the In-
13 dian tribe.

14 “(D) REGULATIONS.—Not later than 18
15 months after the date of enactment of this sub-
16 paragraph, the Secretary shall promulgate regu-
17 lations to provide guidance to Indian tribes and
18 States on the scope of allowable assessments ne-
19 gotiated under paragraph (3)(C)(iii) and the ap-
20 portionment of revenues negotiated in accordance
21 with subparagraph (C).

22 “(E) NO EFFECT ON EXISTING AGREE-
23 MENTS.—Nothing in this paragraph affects any
24 existing Tribal-State compact or other agreement
25 providing for an apportionment of revenues with

1 *a State, local government, or other Indian*
2 *tribe.”;*

3 *(B) in paragraph (7)(B)(vii), by inserting*
4 *“not later than 180 days after notification is*
5 *made” after “the Secretary shall prescribe”; and*

6 *(C) by striking paragraph (9) and inserting*
7 *the following:*

8 *“(9) EXTENSION OF NEGOTIATING TIMEFRAME.—*
9 *Class III gaming activities conducted by an Indian*
10 *tribe on Indian land shall be lawful under this Act*
11 *for up to 180 days after expiration of a Tribal-State*
12 *compact if the Indian tribe signatory to the compact*
13 *certifies to the Secretary that—*

14 *“(A) the Indian tribe requested a new com-*
15 *compact not later than 90 days before expiration of*
16 *the compact; and*

17 *“(B) a new compact has not been agreed*
18 *on.”.*

19 *(g) MANAGEMENT CONTRACTS.—Section 12 of the In-*
20 *dian Gaming Regulatory Act (25 U.S.C. 2711) is amend-*
21 *ed—*

22 *(1) by striking the section heading and all that*
23 *follows through “Subject” in subsection (a)(1) and in-*
24 *serting the following:*

1 **“SEC. 12. MANAGEMENT CONTRACTS.**

2 “(a) *CLASS II GAMING AND CLASS III GAMING ACTIVI-*
3 *TIES; INFORMATION ON OPERATORS.—*

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

5 (2) *in subsection (a)—*

6 (A) *in paragraph (1)—*

7 (i) *by striking “class II gaming activ-*
8 *ity that the Indian tribe may engage in*
9 *under section 11(b)(1) of this Act,” and in-*
10 *serting “class II gaming activity in which*
11 *the Indian tribe may engage under section*
12 *11(b)(1), or a class III gaming activity in*
13 *which the Indian tribe may engage under*
14 *section 11(d),”;* and

15 (ii) *by adjusting the margins of sub-*
16 *paragraphs (A), (B), and (C) appro-*
17 *priately;*

18 (B) *in paragraph (2), by striking “(2) Any*
19 *person” and inserting the following:*

20 “(2) *REQUIREMENT TO RESPOND.—Any person*”;

21 and

22 (C) *in paragraph (3), by striking “(3) For*
23 *purposes” and inserting the following:*

24 “(3) *REFERENCES TO MANAGEMENT CON-*
25 *TRACTS.—For purposes*”.

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

3 (1) *by striking the section heading and all that*
4 *follows through paragraph (3) of subsection (a) and*
5 *inserting the following:*

6 **“SEC. 18. COMMISSION FUNDING.**

7 “(a) *FEEES.*—

8 “(1) *FEE SCHEDULE.*—

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

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

22 “(i) *a progressive rate structure levied*
23 *on the gross revenues in excess of \$1,500,000*
24 *from each operation that conducts a class II*
25 *gaming or class III gaming activity; or*

1 “(ii) a flat fee levied on the gross reve-
 2 nues from each operation that conducts a
 3 class II gaming or class III gaming activ-
 4 ity.

5 “(C) *TOTAL AMOUNT.*—Notwithstanding
 6 any other provision of law, the total amount of
 7 all fees imposed during any fiscal year under the
 8 schedule established under subparagraph (A)
 9 shall not exceed—

10 “(i) \$11,500,000 for fiscal year 2005;

11 “(ii) \$12,000,000 for each of fiscal
 12 years 2006 and 2007; and

13 “(iii) \$13,000,000 for each of fiscal
 14 years 2008 and 2009.”; and

15 (B) by redesignating paragraphs (4)
 16 through (6) as paragraphs (2) through (4), re-
 17 spectively;

18 (2) by redesignating subsection (b) as subsection
 19 (c);

20 (3) by inserting after subsection (a) the fol-
 21 lowing:

22 “(b) *FEE PROCEDURES.*—

23 “(1) *IN GENERAL.*—By a vote of not less than 2
 24 members of the Commission, the Commission shall

1 *adopt the schedule of fees provided for under this sec-*
2 *tion.*

3 “(2) *FEES ASSESSED.*—*In assessing and col-*
4 *lecting fees under this section, the Commission shall*
5 *take into account the duties of, and services provided*
6 *by, the Commission under this Act.*

7 “(3) *REGULATIONS.*—*The Commission shall pro-*
8 *mulgate such regulations as are necessary to carry*
9 *out this subsection.”; and*

10 (4) *in paragraph (2) of subsection (c) (as reded-*
11 *ignated by paragraph (2)), by striking “section 19”*
12 *and inserting “section 24”.*

13 (i) *TRIBAL CONSULTATION.*—*The Indian Gaming*
14 *Regulatory Act is amended by striking section 19 (25*
15 *U.S.C. 2718) and inserting the following:*

16 **“SEC. 19. TRIBAL CONSULTATION.**

17 *“In carrying out this Act (including the use of nego-*
18 *tiated rulemaking with tribal governments and the use of*
19 *tribal advisory committees in developing regulatory poli-*
20 *cies, standards, and definitions), the Secretary, Secretary*
21 *of the Treasury, and Chairman of the Commission shall in-*
22 *volve and consult with Indian tribes to the maximum extent*
23 *practicable, as appropriate, in a manner that is consistent*
24 *with the Federal trust and the government-to-government*

1 *relationship that exists between Indian tribes and the Fed-*
 2 *eral Government.”.*

3 (j) *AUTHORIZATION OF APPROPRIATIONS.—The In-*
 4 *dian Regulatory Gaming Act is amended—*

5 (1) *in section 23 (102 Stat. 2487), by striking*
 6 *the section heading and all that follows through*
 7 *“Chapter 53” and inserting the following:*

8 **“SEC. 23. CRIMINAL PENALTIES.**

9 *“(a) IN GENERAL.—Chapter 53”;*

10 (2) *in section 24 (102 Stat. 2488), by striking*
 11 *the section heading and all that follows through “The*
 12 *table” and inserting the following:*

13 *“(b) CONFORMING AMENDMENT.—The table”;* and

14 (3) *by adding at the end the following:*

15 **“SEC. 24. AUTHORIZATION OF APPROPRIATIONS.**

16 *“(a) IN GENERAL.—Subject to section 18, there is au-*
 17 *thorized to be appropriated to carry out this Act, for fiscal*
 18 *year 1998 and each fiscal year thereafter, an amount equal*
 19 *to the amount of funds derived from the assessments author-*
 20 *ized by section 18(a).*

21 *“(b) ADDITIONAL AMOUNTS.—Notwithstanding section*
 22 *18, in addition to amounts authorized to be appropriated*
 23 *by subsection (a), there are authorized to be appropriated*
 24 *\$2,000,000 to fund the operation of the Commission for fis-*
 25 *cal year 1998 and each fiscal year thereafter.”.*

Calendar No. 739

108TH CONGRESS
2^D SESSION

S. 1529

[Report No. 108-380]

A BILL

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

SEPTEMBER 28, 2004

Reported with an amendment