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109TH CONGRESS
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[Report No. 109–261]

To amend the Indian Gaming Regulatory Act to clarify the authority of the National Indian Gaming Commission to regulate class III gaming, to limit the lands eligible for gaming, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2005

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

JUNE 6, 2006

Reported by Mr. MCCAIN, 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 clarify the authority of the National Indian Gaming Commission to regulate class III gaming, to limit the lands eligible for gaming, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Indian Gaming Regu-
3 latory Act Amendments of 2005”.

4 **SEC. 2. DEFINITIONS.**

5 Section 4 of the Indian Gaming Regulatory Act (25
6 U.S.C. 2703) is amended—

7 (1) in paragraph (7)(E), by striking “of the In-
8 dian Gaming Regulatory Act (25 U.S.C.
9 2710(d)(3))”; and

10 (2) by adding at the end the following:

11 “(11) ~~GAMING-RELATED CONTRACT.~~—The term
12 ‘gaming-related contract’ means—

13 “(A) a contract or other agreement relat-
14 ing to the management and operation of an In-
15 dian tribal gaming activity, including a contract
16 for services under which the gaming-related
17 contractor—

18 “(i) exercises material control over the
19 gaming activity (or any part of the gaming
20 activity); or

21 “(ii) advises or consults with a person
22 that exercises material control over the
23 gaming activity (or any part of the gaming
24 activity);

25 “(B) an agreement relating to the develop-
26 ment or construction of a facility to be used for

1 an Indian tribal gaming activity (including a fa-
 2 cility that is ancillary to such an activity) the
 3 cost of which is greater than \$250,000; or

4 “(C) an agreement that provides for com-
 5 pensation or fees based on a percentage of the
 6 net revenues of an Indian tribal gaming activ-
 7 ity.

8 “(12) GAMING-RELATED CONTRACTOR.—The
 9 term ‘gaming-related contractor’ means an entity or
 10 an individual, including an individual who is an offi-
 11 cer, or who serves on the board of directors, of an
 12 entity, or a stockholder that directly or indirectly
 13 holds at least 5 percent of the issued and out-
 14 standing stock of an entity, that enters into a gam-
 15 ing-related contract with—

16 “(A) an Indian tribe; or

17 “(B) an agent of an Indian tribe.

18 “(13) MATERIAL CONTROL.—The term ‘mate-
 19 rial control’, with respect to a gaming activity,
 20 means the exercise of authority or supervision over
 21 a matter that substantially affects a financial or
 22 management aspect of an Indian tribal gaming ac-
 23 tivity.”.

1 **SEC. 3. NATIONAL INDIAN GAMING COMMISSION.**

2 Section 5 of the Indian Gaming Regulatory Act (25
3 U.S.C. 2704) is amended—

4 (1) in subsection (c)—

5 (A) by striking “(c) Vacancies” and insert-
6 ing the following:

7 “(c) VACANCIES.—

8 “(1) IN GENERAL.—Except as provided in para-
9 graph (2), a vacancy”;

10 (B) by striking the second sentence and in-
11 serting the following:

12 “(3) EXPIRATION OF TERM.—Unless a member
13 has been removed for cause under subsection (b)(6),
14 the member may—

15 “(A) serve after the expiration of the term
16 of office of the member until a successor is ap-
17 pointed; or

18 “(B) be reappointed to serve on the Com-
19 mission.”; and

20 (C) by inserting after paragraph (1) (as
21 designated by subparagraph (A)) the following:

22 “(2) VICE CHAIRMAN.—The Vice Chairman
23 shall act as Chairman in the absence or disability of
24 the Chairman.”; and

25 (2) in subsection (c), in the second sentence, by
26 inserting “or disability” after “in the absence”.

1 **SEC. 4. POWERS OF THE CHAIRMAN.**

2 Section 6 of the Indian Gaming Regulatory Act (25
3 U.S.C. 2705) is amended—

4 (1) in subsection (a)—

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

7 (B) by striking paragraph (4) and insert-
8 ing the following:

9 “(4) approve gaming-related contracts for class
10 H gaming and class III gaming under section 12;
11 and”; and

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

13 “(5) conduct a background investigation and
14 make a determination with respect to the suitability
15 of a gaming-related contractor, as the Chairman de-
16 termines to be appropriate.”; and

17 (2) by adding at the end the following:

18 “(c) **DELEGATION OF AUTHORITY.**—

19 “(1) **IN GENERAL.**—The Chairman may dele-
20 gate any authority under this section to any member
21 of the Commission, as the Chairman determines to
22 be appropriate.

23 “(2) **REQUIREMENT.**—In carrying out an activ-
24 ity pursuant to a delegation under paragraph (1), a
25 member of the Commission shall be subject to, and
26 act in accordance with—

1 “(A) the general policies formally adopted
2 by the Commission; and

3 “(B) the regulatory decisions, findings,
4 and determinations of the Commission pursuant
5 to Federal law.”.

6 **SEC. 5. POWERS OF THE COMMISSION.**

7 Section 7(b) of the Indian Gaming Regulatory Act
8 (25 U.S.C. 2706(b)) is amended—

9 (1) in paragraphs (1) and (4), by inserting
10 “and class III gaming” after “class II gaming” each
11 place it appears;

12 (2) in paragraph (2), by inserting “or class III
13 gaming” after “class II gaming”; and

14 (3) in paragraph (10), by inserting “, including
15 regulations addressing minimum internal control
16 standards for class II gaming and class III gaming
17 activities” before the period at the end.

18 **SEC. 6. COMMISSION STAFFING.**

19 (a) **GENERAL COUNSEL.**—Section 8(a) of the Indian
20 Gaming Regulatory Act (25 U.S.C. 2707(a)) is amended
21 by striking “basic” and all that follows through the end
22 of the subsection and inserting the following: “pay payable
23 for level IV of the Executive Schedule under chapter 11
24 of title 2, United States Code, as adjusted by section 5318
25 of title 5, United States Code.”.

1 (b) **OTHER STAFF.**—Section 8(b) of the Indian Gam-
 2 ing Regulatory Act (25 U.S.C. 2707(b)) is amended by
 3 striking “basic” and all that follows through the end of
 4 the subsection and inserting the following: “pay payable
 5 for level IV of the Executive Schedule under chapter 11
 6 of title 2, United States Code, as adjusted by section 5318
 7 of title 5, United States Code.”.

8 (c) **TEMPORARY AND INTERMITTENT SERVICES.**—
 9 Section 8(c) of the Indian Gaming Regulatory Act (25
 10 U.S.C. 2707(c)) is amended by striking “basic” and all
 11 that follows through the end of the subsection and insert-
 12 ing the following: “pay payable for level IV of the Execu-
 13 tive Schedule under chapter 11 of title 2, United States
 14 Code, as adjusted by section 5318 of title 5, United States
 15 Code.”.

16 **SEC. 7. TRIBAL GAMING ORDINANCES.**

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

19 (1) in subsection (b)—

20 (A) in paragraph (1)(A), by striking “,
 21 and” and inserting “; and”;

22 (B) in paragraph (2)(F)—

23 (i) by striking clause (i) and inserting
 24 the following:

1 “(i) ensures that background investigations
 2 and ongoing oversight activities are conducted
 3 with respect to—

4 “(I) tribal gaming commissioners and
 5 key tribal gaming commission employees;
 6 as determined by the Chairman;

7 “(II) primary management officials
 8 and other key employees of the gaming en-
 9 terprise; as determined by the Chairman;
 10 and

11 “(III) any person that is a party to a
 12 gaming-related contract; and”; and

13 (ii) in clause (ii)(I), by striking “pri-
 14 mary” and all that follows through “with”
 15 and inserting “the individuals and entities
 16 described in clause (i), including”;

17 (C) in paragraph (3)—

18 (i) by redesignating subparagraphs
 19 (C) and (D) as subparagraphs (D) and
 20 (E), respectively; and

21 (ii) by striking subparagraph (B) and
 22 inserting the following:

23 “(B) the plan is approved by the Secretary
 24 after the Secretary determines that—

1 “(i) the plan is consistent with the uses de-
2 scribed in paragraph (2)(B);

3 “(ii) the plan adequately addresses the
4 purposes described in clauses (i) and (iii) of
5 paragraph (2)(B); and

6 “(iii) a per capita payment is a reasonable
7 method of providing for the general welfare of
8 the Indian tribe and the members of the Indian
9 tribe;

10 “(C) the Secretary determines that the plan
11 provides an adequate mechanism for the monitoring
12 and enforcement, by the Secretary and the Chair-
13 man, of the compliance of the plan (including any
14 amendment, revision, or rescission of any part of the
15 plan);” and

16 (D) in paragraph (4)(B)(i)—

17 (i) in subclause (I), by striking “of
18 the Act,” and inserting a semicolon;

19 (ii) in subclause (II), by striking “of
20 this subsection” and inserting a semicolon;

21 (iii) in subclause (III), by striking “,
22 and” and inserting “; and”; and

23 (iv) in subclause (IV), by striking
24 “National Indian Gaming”;

25 (2) in subsection (d)—

- 1 (A) in paragraph (1)—
- 2 (i) in subparagraph (A)—
- 3 (I) in clause (i), by striking
- 4 “lands,” and inserting “lands;”
- 5 (II) in clause (ii), by striking “,
- 6 and” and inserting “; and”; and
- 7 (III) in clause (iii), by striking
- 8 the comma at the end and inserting a
- 9 semicolon; and
- 10 (ii) in subparagraph (B), by striking
- 11 “; and” and inserting “; and”;
- 12 (B) in paragraph (2)—
- 13 (i) in subparagraph (B)(i), by striking
- 14 “; or” and inserting “; or”; and
- 15 (ii) in subparagraph (D)(iii)(I), by
- 16 striking “; and” and inserting “; and”;
- 17 (C) in paragraph (7)(B)—
- 18 (i) in clause (ii)(I), by striking “,
- 19 and” and inserting “; and”;
- 20 (ii) in clause (iii)(I), by striking “,
- 21 and” and inserting “; and”; and
- 22 (iii) in clause (vii)(I), by striking “,
- 23 and” and inserting “; and”;
- 24 (D) in paragraph (8)(B)—

1 (i) in clause (i), by striking the
 2 comma at the end and inserting a semi-
 3 colon; and

4 (ii) in clause (ii), by striking “, or”
 5 and inserting “; or”; and

6 (E) by striking paragraph (9); and

7 (3) by adding at the end the following:

8 “(f) PROVISION OF INFORMATION TO CHAIRMAN.—

9 Immediately after approving a plan (including any amend-
 10 ment, revision, or recision of any part of a plan) under
 11 subsection (b)(3), the Secretary shall provide to the Chair-
 12 man—

13 “(1) a notice of the approval; and

14 “(2) any information used by the Secretary in
 15 approving the plan.”.

16 **SEC. 8. GAMING-RELATED CONTRACTS.**

17 Section 12 of the Indian Gaming Regulatory Act (25
 18 U.S.C. 2711) is amended to read as follows:

19 **“SEC. 12. GAMING-RELATED CONTRACTS.**

20 “(a) IN GENERAL.—To be enforceable under this
 21 Act, a gaming-related contract shall be—

22 “(1) in writing; and

23 “(2) approved by the Chairman under sub-
 24 section (c).

25 “(b) CONTRACT REQUIREMENTS.—

1 “(1) IN GENERAL.—A gaming-related contract
2 under this Act shall provide for the Indian tribe, at
3 a minimum, provisions relating to—

4 “(A) accounting and reporting procedures;
5 including, as appropriate, provisions relating to
6 verifiable financial reports;

7 “(B) the access required to ensure proper
8 performance of the gaming-related contract, in-
9 cluding access to, with respect to a gaming ac-
10 tivity—

11 “(i) daily operations;

12 “(ii) real property;

13 “(iii) equipment; and

14 “(iv) any other tangible or intangible
15 property used to carry out the activity;

16 “(C) assurance of performance of each
17 party to the gaming-related contract, including
18 the provision of bonds under subsection (d), as
19 the Chairman determines to be necessary; and

20 “(D) the reasons for, and method of, ter-
21 minating the gaming-related contract.

22 “(2) TERM.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (B), the term of a gaming-related
25 contract shall not exceed 5 years.

1 “(B) EXCEPTION.—Notwithstanding sub-
 2 paragraph (A), a gaming-related contract may
 3 have a term of not to exceed 7 years if—

4 “(i) the Indian tribal party to the
 5 gaming-related contract submits to the
 6 Chairman a request for such a term; and

7 “(ii) the Chairman determines that
 8 the term is appropriate, taking into consid-
 9 eration the circumstances of the gaming-
 10 related contract.

11 “(3) FEES.—

12 “(A) IN GENERAL.—Notwithstanding the
 13 payment terms of a gaming-related contract,
 14 and except as provided in subparagraph (B),
 15 the fee of a gaming-related contractor or bene-
 16 ficiary of a gaming-related contract shall not
 17 exceed an amount equal to 30 percent of the
 18 net revenues of the gaming operation that is
 19 the subject of the gaming-related contract.

20 “(B) EXCEPTION.—The fee of a gaming-
 21 related contractor or beneficiary of a gaming-re-
 22 lated contract may be in an amount equal to
 23 not more than 40 percent of the net revenues
 24 of the gaming operation that is the subject of
 25 the gaming-related contract if the Chairman de-

1 termines that such a fee is appropriate, taking
 2 into consideration the circumstances of the
 3 gaming-related contract.

4 “(c) APPROVAL BY CHAIRMAN.—

5 “(1) GAMING-RELATED CONTRACTS.—

6 “(A) IN GENERAL.—An Indian tribe shall
 7 submit each gaming-related contract of the
 8 tribe to the Chairman for approval by not later
 9 than the earlier of—

10 “(i) the date that is 90 days after the
 11 date on which the gaming-related contract
 12 is executed; or

13 “(ii) the date that is 90 days before
 14 the date on which the gaming-related con-
 15 tract is scheduled to be completed.

16 “(B) FACTORS FOR CONSIDERATION.—In
 17 determining whether to approve a gaming-re-
 18 lated contract under this subsection, the Chair-
 19 man may take into consideration any informa-
 20 tion relating to the terms, parties, and bene-
 21 ficiaries of—

22 “(i) the gaming-related contract; and

23 “(ii) any other agreement relating to
 24 the Indian gaming activity, as determined
 25 by the Chairman.

1 “(C) DEADLINE FOR DETERMINATION.—

2 “(i) IN GENERAL.—The Chairman
3 shall approve or disapprove a gaming-re-
4 lated contract under this subsection by not
5 later than 90 days after the date on which
6 the Chairman makes a determination re-
7 garding the suitability of each gaming-re-
8 lated contractor under paragraph (2).

9 “(ii) EXPEDITED REVIEW.—

10 “(I) IN GENERAL.—If each gam-
11 ing-related contractor has been deter-
12 mined by the Chairman to be suitable
13 under paragraph (2) on or before the
14 date on which the gaming-related con-
15 tract is submitted to the Chairman,
16 the Chairman shall approve or dis-
17 approve the gaming-related contract
18 by not later than 30 days after the
19 date on which the gaming-related con-
20 tract is submitted.

21 “(II) FAILURE TO DETERMINE.—

22 If the Chairman fails to make a deter-
23 mination by the date described in sub-
24 clause (I), a gaming-related contract

described in that subclause shall be considered to be approved.

~~“(III) AMENDMENTS.—~~The Chairman may require the parties to a gaming-related contract considered to be approved under subclause (II) to amend the gaming-related contract, as the Chairman considers to be appropriate to meet the requirements under subsection (b).

~~“(iii) EARLY OPERATION.—~~

~~“(I) IN GENERAL.—~~On approval of the Chairman under subclause (II), a gaming-related contract may be carried out before the date on which the gaming-related contract is approved by the Chairman under clause (i).

~~“(II) APPROVAL BY CHAIRMAN.—~~The Chairman may approve the early operation of a gaming-related contract under subclause (I) if the Chairman determines that—

~~“(aa) adequate bonds have been provided under paragraph~~

1 (2)(G)(iii) and subsection (d);
2 and

3 “~~(bb)~~ the gaming-related
4 contract will be amended as the
5 Chairman considers to be appropriate to meet the requirements
6 under subsection (b).

7 “(D) REQUIREMENTS FOR DIS-
8 APPROVAL.—The Chairman shall disapprove a
9 gaming-related contract under this subsection if
10 the Chairman determines that—

11 “(i) the gaming-related contract fails
12 to meet any requirement under subsection
13 (b);

14 “(ii) a gaming-related contractor is
15 unsuitable under paragraph (2);

16 “(iii) a gaming-related contractor or
17 beneficiary of the gaming-related contract—
18 contract—

19 “(I) unduly interfered with or in-
20 fluenced, or attempted to interfere
21 with or influence, a decision or process of an Indian tribal government re-
22 lating to the gaming activity for the
23 lating to the gaming activity for the
24 lating to the gaming activity for the

1 benefit of the gaming-related con-
2 tractor or beneficiary; or
3 “(H) deliberately or substantially
4 failed to comply with—
5 “(aa) the gaming-related
6 contract; or
7 “(bb) a tribal gaming ordi-
8 nance or resolution adopted and
9 approved pursuant to this Act;
10 “(iv) the Indian tribe with jurisdiction
11 over the Indian lands on which the gaming
12 activity is located will not receive the pri-
13 mary benefit as sole proprietor of the gam-
14 ing activity, taking into consideration any
15 agreement relating to the gaming activity;
16 “(v) a trustee would disapprove the
17 gaming-related contract, in accordance
18 with the duties of skill and diligence of the
19 trustee, because the compensation or fees
20 under the gaming-related contract do not
21 bear a reasonable relationship to the cost
22 of the goods or the benefit of the services
23 provided under the gaming-related con-
24 tract; or

1 “(vi) a person or an Indian tribe
2 would violate this Act—

3 “(I) on approval of the gaming-
4 related contract; or

5 “(II) in carrying out the gaming-
6 related contract.

7 “(2) GAMING-RELATED CONTRACTORS.—

8 “(A) IN GENERAL.—Not later than 90
9 days after the date on which the Chairman re-
10 ceives a gaming-related contract, the Chairman
11 shall make a determination regarding the suit-
12 ability of each gaming-related contractor to
13 carry out any gaming activity that is the sub-
14 ject of the gaming-related contract.

15 “(B) REQUIREMENTS.—The Chairman
16 shall make a determination under subparagraph
17 (A) that a gaming-related contractor is unsuit-
18 able if, as determined by the Chairman—

19 “(i) the gaming-related contractor—

20 “(I) is an elected member of the
21 governing body of an Indian tribe that
22 is a party to the gaming-related con-
23 tract;

24 “(II) has been convicted of—

25 “(aa) a felony; or

1 “(bb) any offense relating to
2 gaming;

3 “(III)(aa) knowingly and willfully
4 provided any materially important
5 false statement or other information
6 to the Commission or an Indian tribe
7 that is a party to the gaming-related
8 contract; or

9 “(bb) failed to respond to a re-
10 quest for information under this Act;

11 “(IV) poses a threat to the public
12 interest or the effective regulation or
13 conduct of gaming under this Act,
14 taking into consideration the behavior,
15 criminal record, reputation, habits,
16 and associations of the gaming-related
17 contractor;

18 “(V) unduly interfered, or at-
19 tempted to unduly interfere, with any
20 determination or governing process of
21 the governing body of an Indian tribe
22 relating to a gaming activity, for the
23 benefit of the gaming-related con-
24 tractor; or

1 “(VI) deliberately or substan-
2 tially failed to comply with the terms
3 of—

4 “(aa) the gaming-related
5 contract; or

6 “(bb) a tribal gaming ordi-
7 nance or resolution approved and
8 adopted under this Act; or

9 “(ii) a trustee would determine that
10 the gaming-related contractor is unsuit-
11 able, in accordance with the duties of skill
12 and diligence of the trustee.

13 “(C) FAILURE TO DETERMINE.—If the
14 Chairman fails to make a suitability determina-
15 tion with respect to a gaming-related contractor
16 by the date described in subparagraph (A), each
17 gaming-related contractor shall be considered to
18 be suitable to carry out the gaming activity that
19 is the subject of the applicable gaming-related
20 contract.

21 “(D) REVOCATION.—At any time, based
22 on a showing of good cause, the Chairman
23 may—

1 “(i) make a determination that a
2 gaming-related contractor is unsuitable
3 under this subsection; or

4 “(ii) revoke a suitability determination
5 under this subsection.

6 “(E) TEMPORARY SUITABILITY.—

7 “(i) IN GENERAL.—For purposes of
8 meeting a deadline under paragraph
9 (1)(C), the Chairman may determine that
10 a gaming-related contractor is temporarily
11 suitable if—

12 “(I) the Chairman determined
13 the gaming-related contractor to be
14 suitable with respect to another gam-
15 ing-related contract being carried out
16 on the date on which the Chairman
17 makes a determination under this
18 paragraph; and

19 “(II) the gaming-related con-
20 tractor has not otherwise been deter-
21 mined to be unsuitable by the Chair-
22 man.

23 “(ii) FINAL DETERMINATION.—The
24 Chairman shall make a suitability deter-
25 mination with respect to a gaming-related

contractor that is the subject of a temporary suitability determination under clause (i) by the date described in subparagraph (A), in accordance with subparagraph (F).

“(F) ~~UPDATING DETERMINATIONS.~~—The Chairman, as the Chairman determines to be appropriate, may limit an investigation of the suitability of a gaming-related contractor that—

“(i) has been determined to be suitable by the Chairman with respect to another gaming-related contract being carried out on the date on which the Chairman makes a determination under this paragraph; and

“(ii) certifies to the Chairman that the information provided during a preceding suitability determination has not materially changed.

“(G) ~~RESPONSIBILITY OF GAMING-RELATED CONTRACTOR.~~—A gaming-related contractor shall—

1 “(i) pay the costs of any investigation
2 activity of the Chairman in carrying out
3 this paragraph;

4 “(ii) provide to the Chairman a notice
5 of any change in information provided dur-
6 ing a preceding investigation on discovery
7 of the change; and

8 “(iii) during an investigation of suit-
9 ability under this paragraph, provide to the
10 Chairman such bonds under subsection (d)
11 as the Chairman determines to be appro-
12 priate to shield an Indian tribe from liabil-
13 ity resulting from an action of the gaming-
14 related contractor.

15 “(H) REGISTRY.—The Chairman shall es-
16 tablish and maintain a registry of each suit-
17 ability determination made under this para-
18 graph.

19 “(3) ADDITIONAL REVIEWS.—Notwithstanding
20 an approval under paragraph (1), or a determination
21 of suitability under paragraph (2), if the Chairman
22 determines that a gaming-related contract, or any
23 party to such a contract, is in violation of this Act,
24 the Chairman may—

1 “(A) suspend performance under the gam-
2 ing-related contract;

3 “(B) require the parties to amend the
4 gaming-related contract; or

5 “(C) revoke a determination of suitability
6 under paragraph (2)(D).

7 “(4) TERMINATION.—Termination of a gaming-
8 related contract shall not require the approval of the
9 Chairman.

10 “(d) BONDS.—

11 “(1) IN GENERAL.—The Chairman may require
12 a gaming-related contractor to provide to the Chair-
13 man a bond to ensure the performance of the gam-
14 ing-related contractor under a gaming-related con-
15 tract.

16 “(2) REGULATIONS.—The Chairman, by regula-
17 tion, shall establish the amount of a bond required
18 under this subsection.

19 “(3) METHOD OF PAYMENT.—A bond under
20 this subsection may be provided—

21 “(A) in cash or negotiable securities;

22 “(B) through a surety bond guaranteed by
23 a guarantor acceptable to the Chairman; or

1 “(C) through an irrevocable letter of credit
2 issued by a banking institution acceptable to
3 the Chairman.

4 “(4) USE OF BONDS.—The Chairman shall use
5 a bond provided under this subsection to pay the
6 costs of a failure of the gaming-related contractor
7 that provided the bond to perform under a gaming-
8 related contract.

9 “(e) APPEAL OF DETERMINATION.—

10 “(1) IN GENERAL.—An Indian tribe or a gam-
11 ing-related contractor may submit to the Commis-
12 sion a request for an appeal of a determination of
13 the Chairman under subsection (c) or (d).

14 “(2) DETERMINATION OF COMMISSION.—

15 “(A) HEARINGS.—The Commission shall
16 schedule a hearing relating to an appeal under
17 paragraph (1) by not later than 30 days after
18 the date on which a request for the appeal is
19 received.

20 “(B) DEADLINE FOR DETERMINATION.—

21 The Commission shall make a determination, by
22 majority vote of the Commission, relating to an
23 appeal under this subsection by not later than
24 5 days after the date of the hearing relating to
25 the appeal under subparagraph (A).

1 ~~“(C) CONCURRENCE.—~~If the Commission
 2 concurs with a determination of the Chairman
 3 under this subsection, the determination shall
 4 be considered to be a final agency action.

5 ~~“(D) DISSENT.—~~

6 ~~“(i) IN GENERAL.—~~If the Commission
 7 dissents from a determination of the
 8 Chairman under this subsection, the Chair-
 9 man may—

10 ~~“(I) rescind the determination of~~
 11 the Chairman; or

12 ~~“(II) on a finding of immediate~~
 13 and irreparable harm to the Indian
 14 tribe that is the subject of the deter-
 15 mination, maintain the determination.

16 ~~“(ii) FINAL AGENCY ACTION.—~~A deci-
 17 sion by the Chairman to maintain a deter-
 18 mination under clause (i)(II) shall be con-
 19 sidered to be a final agency action.

20 ~~“(3) APPEAL OF COMMISSION DETERMINA-~~
 21 TION.—An Indian tribe, a gaming-related con-
 22 tractor, or a beneficiary of a gaming-related contract
 23 may appeal a determination of the Commission
 24 under paragraph (2) to the United States District
 25 Court for the District of Columbia.

1 “(f) CONVEYANCE OF REAL PROPERTY.—No gam-
 2 ing-related contract under this Act shall transfer or other-
 3 wise convey any interest in land or other real property un-
 4 less the transfer or conveyance—

5 “(1) is authorized under law; and

6 “(2) is specifically described in the gaming-re-
 7 lated contract.

8 “(g) CONTRACT AUTHORITY.—The authority of the
 9 Secretary under section 2103 of the Revised Statutes (25
 10 U.S.C. 81) relating to contracts under this Act is trans-
 11 ferred to the Commission.

12 “(h) NO EFFECT ON TRIBAL AUTHORITY.—This sec-
 13 tion does not expand, limit, or otherwise affect the author-
 14 ity of any Indian tribe or any party to a Tribal-State com-
 15 pact to investigate, license, or impose a fee on a gaming-
 16 related contractor.”.

17 **SEC. 9. CIVIL PENALTIES.**

18 Section 14 of the Indian Gaming Regulatory Act (25
 19 U.S.C. 2713) is amended—

20 (1) by striking the section designation and
 21 heading and all that follows through subsection (a)
 22 and inserting the following:

23 **“SEC. 14. CIVIL PENALTIES.**

24 “(a) PENALTIES.—

25 “(1) VIOLATION OF ACT.—

1 “(A) IN GENERAL.—An Indian tribe, indi-
 2 vidual, or entity that violates any provision of
 3 this Act (including any regulation of the Com-
 4 mission and any Indian tribal regulation, ordi-
 5 nance, or resolution approved under section 11
 6 or 13) in carrying out a gaming-related con-
 7 tract may be subject to, as the Chairman deter-
 8 mines to be appropriate—

9 “(i) an appropriate civil fine, in an
 10 amount not to exceed \$25,000 per viola-
 11 tion per day; or

12 “(ii) an order of the Chairman for an
 13 accounting and disgorgement, including in-
 14 terest.

15 “(B) APPLICATION TO INDIAN TRIBES.—
 16 An Indian tribe shall not be subject to
 17 disgorgement under subparagraph (A)(ii) unless
 18 the Chairman determines that the Indian tribe
 19 grossly violated a provision of this Act.

20 “(2) APPEALS.—The Chairman shall provide,
 21 by regulation, an opportunity to appeal a determina-
 22 tion relating to a violation under paragraph (1).

23 “(3) WRITTEN COMPLAINTS.—

24 “(A) IN GENERAL.—If the Commission has
 25 reason to believe that an Indian tribe or a party

to a gaming-related contract may be subject to a penalty under paragraph (1), the final closure of an Indian gaming activity, or a modification or termination order relating to the gaming-related contract, the Chairman shall provide to the Indian tribe or party a written complaint, including—

“(i) a description of any act or omission that is the basis of the belief of the Commission; and

“(ii) a description of any action being considered by the Commission relating to the act or omission.

“(B) REQUIREMENTS.—A written complaint under subparagraph (A)—

“(i) shall be written in common and concise language;

“(ii) shall identify any statutory or regulatory provision relating to an alleged violation by the Indian tribe or party; and

“(iii) shall not be written only in statutory or regulatory language.”;

(2) in subsection (b)—

(A) by striking “(b)(1) The Chairman” and inserting the following:

1 ~~“(b) TEMPORARY CLOSURES.—~~

2 ~~“(1) IN GENERAL.—The Chairman”;~~

3 ~~(B) in paragraph (1)—~~

4 (i) by striking “Indian game” and in-
5 serting “Indian gaming activity, or any
6 part of such a gaming activity,”; and

7 (ii) by striking “section 11 or 13 of
8 this Act” and inserting “section 11 or 13”;
9 and

10 ~~(C) in paragraph (2)—~~

11 (i) by striking “(2) Not later than
12 thirty” and inserting the following:

13 ~~“(2) HEARINGS.—~~

14 ~~“(A) IN GENERAL.—Not later than 30”;~~

15 ~~(ii) in subparagraph (A) (as desig-~~
16 ~~nating by clause (i))—~~

17 (I) by striking “management con-

18 tractor” and inserting “party to a

19 gaming-related contract”; and

20 (II) by striking “permanent” and

21 inserting “final”; and

22 (iii) in the second sentence—

23 (I) by striking “Not later than

24 sixty” and inserting the following:

1 “(B) DETERMINATION OF COMMISSION.—

2 Not later than 60”; and

3 (H) by striking “permanent” and

4 inserting “final”;

5 (3) in subsection (e), by striking “(e) A deci-
6 sion” and inserting the following:

7 “(e) APPEAL OF FINAL DETERMINATIONS.—A deter-
8 mination”; and

9 (4) in subsection (d), by striking “(d) Nothing”
10 and inserting the following:

11 “(d) EFFECT ON REGULATORY AUTHORITY OF IN-
12 DIAN TRIBES.—Nothing”.

13 **SEC. 10. GAMING ON LATER-ACQUIRED LAND.**

14 Section 20(b) of the Indian Gaming Regulatory Act
15 (25 U.S.C. 2719(b)) is amended—

16 (1) in paragraph (1)—

17 (A) in subparagraph (A), by striking “ (A)
18 the Secretary, after consultation” and inserting
19 the following:

20 “(A)(i) before November 18, 2005, the Sec-
21 retary reviewed, or was in the process of reviewing,
22 at the Central Office of the Bureau of Indian Af-
23 fairs, Washington, DC, the petition of an Indian
24 tribe to have land taken into trust for purposes of
25 gaming under this Act; and

1 “(ii) the Secretary, after consultation”; and

2 (B) in subparagraph (B)—

3 (i) in clause (i), by striking the
4 comma at the end and inserting the fol-
5 lowing: “under Federal statutory law, if
6 the land is within a State in which is lo-
7 cated—

8 “(I) the reservation of such Indian
9 tribe; or

10 “(II) the last recognized reservation
11 of such Indian tribe;”;

12 (ii) in clause (ii), by striking “, or”
13 and inserting “if, as determined by the
14 Secretary, the Indian tribe has a temporal,
15 cultural, and geographic nexus to the land;
16 or”; and

17 (iii) in clause (iii), by inserting before
18 the period at the end the following: “if, as
19 determined by the Secretary, the Indian
20 tribe has a temporal, cultural, and geo-
21 graphic nexus to the land”; and

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

23 “(4) EFFECT OF SUBSECTION.—Notwith-
24 standing any other provision of this subsection, land
25 that, before the date of enactment of the Indian

1 Gaming Regulatory Act Amendments of 2005, was
 2 determined by the Secretary or the Chairman to be
 3 eligible to be used for purposes of gaming shall con-
 4 tinue to be eligible for those purposes.”.

5 **SEC. 11. CONFORMING AMENDMENT.**

6 (a) ~~IN GENERAL.~~—Section 123(a)(2) of the Depart-
 7 ment of the Interior and Related Agencies Appropriations
 8 Act, 1998 (Public Law 105–83; 111 Stat. 1566) is amend-
 9 ed—

10 (1) in subparagraph (A), by adding “and” at
 11 the end;

12 (2) in subparagraph (B), by striking “; and”
 13 and inserting a period; and

14 (3) by striking subparagraph (C).

15 (b) ~~APPLICABILITY.~~—Notwithstanding any other pro-
 16 vision of law, section 18(a) of the Indian Gaming Regu-
 17 latory Act (25 U.S.C. 2717(a)) shall apply to all Indian
 18 tribes.

19 **SECTION 1. SHORT TITLE.**

20 *This Act may be cited as the “Indian Gaming Regu-*
 21 *latory Act Amendments of 2006”.*

22 **SEC. 2. DEFINITIONS.**

23 *Section 4 of the Indian Gaming Regulatory Act (25*
 24 *U.S.C. 2703) is amended—*

1 (1) *by striking the section heading and all that*
 2 *follows through “For purposes of this Act—” and in-*
 3 *serting the following:*

4 **“SEC. 4. DEFINITIONS.**

5 *“In this Act:”;*

6 (2) *in paragraph (7)(E), by striking “of the In-*
 7 *dian Gaming Regulatory Act (25 U.S.C.*
 8 *2710(d)(3))”;*

9 (3) *by redesignating paragraphs (3), (4), (5),*
 10 *(6), (7), (8), (9), and (10) as paragraphs (6), (12),*
 11 *(13), (3), (4), (5), (15), and (17), respectively, and*
 12 *moving the paragraphs so as to appear in numerical*
 13 *order;*

14 (4) *by inserting after paragraph (6) (as redesign-*
 15 *ated by paragraph (3)) the following:*

16 “(7) *CONSULTING CONTRACT.—The term ‘con-*
 17 *sulting contract’ means any contract or subcontract*
 18 *between an Indian tribe and a gaming-related con-*
 19 *tractor, or between a gaming-related contractor and a*
 20 *subcontractor, that provides for advising or consulting*
 21 *with a person that exercises management over all or*
 22 *a significant part of a gaming operation, subject to*
 23 *such categorical exclusions as the Commission may*
 24 *establish, by regulation.*

1 “(8) *DEVELOPMENT CONTRACT.*—*The term ‘de-*
 2 *velopment contract’ means any contract or sub-*
 3 *contract between an Indian tribe and a gaming-re-*
 4 *lated contractor, or between a gaming-related con-*
 5 *tractor and a subcontractor, that provides for the de-*
 6 *velopment or construction of a facility to be used for*
 7 *an Indian gaming activity, subject to such categorical*
 8 *exclusions as the Commission may establish, by regu-*
 9 *lation.*

10 “(9) *FINANCING CONTRACT.*—

11 “(A) *IN GENERAL.*—*The term ‘financing*
 12 *contract’ means any contract or subcontract be-*
 13 *tween an Indian tribe and a gaming-related con-*
 14 *tractor, or between a gaming-related contractor*
 15 *and a subcontractor—*

16 “(i) *that is not a management con-*
 17 *tract, a consulting contract, a development*
 18 *contract, or a participation contract;*

19 “(ii) *pursuant to which a gaming-re-*
 20 *lated contractor or subcontractor provides*
 21 *services or property of any kind, or financ-*
 22 *ing of any nature, to be used for an Indian*
 23 *gaming activity; and*

1 “(iii) for compensation (including in-
 2 terest and fees), denominated in any man-
 3 ner—

4 “(I) of more than \$250,000 dur-
 5 ing the term of the contract or sub-
 6 contract (as periodically adjusted for
 7 inflation in accordance with rules
 8 adopted by the Commission); and

9 “(II) that is provided by—

10 “(aa) loan;

11 “(bb) lease; or

12 “(cc) deferred payments.

13 “(B) *EXCLUSIONS.*—The term ‘financing
 14 contract’ does not include—

15 “(i) a contract or agreement between
 16 an Indian tribe and—

17 “(I) a federally-chartered or
 18 State-chartered bank;

19 “(II) another Indian tribe;

20 “(III) another Indian tribe, or a
 21 State, pursuant to a Tribal-State com-
 22 pact; or

23 “(IV) an entity that is—

1 “(aa) regulated by the Secu-
 2 rities and Exchange Commission;
 3 or

4 “(bb) wholly owned, directly
 5 or indirectly, by an entity that is
 6 regulated by the Securities and
 7 Exchange Commission;

8 “(ii) a contract or agreement that is
 9 subject to the Securities Exchange Act of
 10 1934 (15 U.S.C. 78a et seq.); or

11 “(iii) any other agreement or contract
 12 that the Commission, by regulation, deter-
 13 mines should be categorically excluded from
 14 consideration as a financing contract.

15 “(10) GAMING-RELATED CONTRACT.—The term
 16 ‘gaming-related contract’ means any management
 17 contract, consulting contract, development contract,
 18 financing contract, participation contract, or other
 19 agreement determined by the Commission pursuant to
 20 a rulemaking under section 7 to be subject to the re-
 21 quirements of section 12, and any collateral agree-
 22 ment related to any of the foregoing.

23 “(11) GAMING-RELATED CONTRACTOR.—The
 24 term ‘gaming-related contractor’ means an entity or
 25 person, including an individual who is an officer, or

1 *who serves on the board of directors, of an entity, or*
 2 *a stockholder that directly or indirectly holds at least*
 3 *5 percent of the issued and outstanding stock of an*
 4 *entity, that enters into a gaming-related contract*
 5 *with—*

6 “(A) *an Indian tribe; or*

7 “(B) *an agent of an Indian tribe.*”;

8 (5) *by inserting after paragraph (13) (as redes-*
 9 *ignated by paragraph (3)) the following:*

10 “(14) *MANAGEMENT CONTRACT.—*

11 “(A) *IN GENERAL.—The term ‘management*
 12 *contract’ means any contract or subcontract be-*
 13 *tween an Indian tribe and a gaming-related con-*
 14 *tractor, or between a gaming-related contractor*
 15 *and a subcontractor, that provides for the man-*
 16 *agement of all or a part of a gaming operation,*
 17 *subject to such categorical exclusions as the Com-*
 18 *mission may establish, by regulation.*

19 “(B) *EXCLUSION.—The term ‘management*
 20 *contract’ does not include a personal employ-*
 21 *ment contract under which compensation is not*
 22 *based on a percentage of the revenues or profit*
 23 *increases of an Indian gaming activity or a pro-*
 24 *spective Indian gaming activity.*”; and

(6) by inserting after paragraph (15) (as redesignated by paragraph (3)) the following:

“(16) *PARTICIPATION CONTRACT.*—The term ‘participation contract’ means any contract or subcontract between an Indian tribe and a gaming-related contractor, or between a gaming-related contractor and a subcontractor, under which compensation to the gaming-related contractor or subcontractor is based, in whole or in part, on a percentage of the revenues or profit increases of an Indian gaming activity or a prospective Indian gaming activity, subject to such categorical exclusions as the Commission may establish, by regulation.”.

SEC. 3. NATIONAL INDIAN GAMING COMMISSION.

Section 5 of the Indian Gaming Regulatory Act (25 U.S.C. 2704) is amended—

(1) in subsection (c)—

(A) by striking “(c) Vacancies” and inserting the following:

“(c) *VACANCIES.*—

“(1) *IN GENERAL.*—Except as provided in paragraph (2), a vacancy”;

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

1 “(3) *EXPIRATION OF TERM.*—Unless a member
2 has been removed for cause under subsection (b)(6),
3 the member may—

4 “(A) serve after the expiration of the term
5 of office of the member until a successor is ap-
6 pointed; or

7 “(B) be reappointed to serve on the Com-
8 mission.”; and

9 (C) by inserting after paragraph (1) (as
10 designated by subparagraph (A)) the following:

11 “(2) *VICE CHAIRMAN.*—The Vice Chairman shall
12 act as Chairman in the absence or disability of the
13 Chairman.”; and

14 (2) in subsection (e), in the second sentence, by
15 inserting “or disability” after “in the absence”.

16 **SEC. 4. POWERS OF THE CHAIRMAN.**

17 Section 6 of the Indian Gaming Regulatory Act (25
18 U.S.C. 2705) is amended—

19 (1) in subsection (a)—

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

22 (B) by striking paragraph (4) and inserting
23 the following:

1 “(4) approve gaming-related contracts for class
2 II gaming and class III gaming under section 12;
3 and”; and

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

5 “(5) conduct a background investigation and
6 make a determination with respect to the suitability
7 of a gaming-related contractor, as the Chairman de-
8 termines to be appropriate.”; and

9 (2) by adding at the end the following:

10 “(c) *DELEGATION OF AUTHORITY.*—

11 “(1) *IN GENERAL.*—The Chairman may delegate
12 any authority under this section to any member of
13 the Commission, as the Chairman determines to be
14 appropriate.

15 “(2) *REQUIREMENT.*—In carrying out an activ-
16 ity pursuant to a delegation under paragraph (1), a
17 member of the Commission shall be subject to, and act
18 in accordance with—

19 “(A) the general policies formally adopted
20 by the Commission; and

21 “(B) the regulatory decisions, findings, and
22 determinations of the Commission pursuant to
23 Federal law.”.

1 **SEC. 5. POWERS OF THE COMMISSION.**

2 (a) *IN GENERAL.*—Section 7(b) of the Indian Gaming
3 Regulatory Act (25 U.S.C. 2706(b)) is amended—

4 (1) in paragraphs (1) and (4), by inserting “and
5 class III gaming” after “class II gaming” each place
6 it appears;

7 (2) in paragraph (2), by inserting “or class III
8 gaming” after “class II gaming”; and

9 (3) by striking paragraph (10) and inserting the
10 following:

11 “(10) shall promulgate such regulations and
12 guidelines as the Commission determines to be appro-
13 priate to implement this Act, including—

14 “(A) regulations addressing minimum in-
15 ternal control standards for class II gaming and
16 class III gaming activities; and

17 “(B) regulations determining categories of
18 contracts for goods and services directly relating
19 to tribal gaming activities that shall be—

20 “(i) considered to be gaming-related
21 contracts; and

22 “(ii) subject to the requirements of sec-
23 tion 12.”.

24 (b) *REPORTING OF TRIBAL-LEVEL GAMING REVE-*
25 *NUES.*—Section 7 of the Indian Gaming Regulatory Act (25
26 U.S.C. 2706) is amended by adding at the end the following:

1 “(c) *REPORTING OF TRIBAL-LEVEL GAMING REVE-*
 2 *NUES.—Not less frequently than once each year—*

3 “(1) *the Commission shall submit to the Sec-*
 4 *retary a report describing the aggregate revenues of*
 5 *the tribal-level gaming activities of each Indian tribe;*
 6 *and*

7 “(2) *the Secretary, in consultation with affected*
 8 *Indian tribes, shall promulgate regulations under*
 9 *which information contained in a report under para-*
 10 *graph (1) regarding each Indian tribe shall be made*
 11 *available to the members of the Indian tribe, as the*
 12 *Secretary determines to be consistent with the pur-*
 13 *poses of this subsection.”.*

14 **SEC. 6. COMMISSION STAFFING.**

15 (a) *GENERAL COUNSEL.—Section 8(a) of the Indian*
 16 *Gaming Regulatory Act (25 U.S.C. 2707(a)) is amended*
 17 *by striking “basic” and all that follows through the end of*
 18 *the subsection and inserting the following: “pay payable for*
 19 *level IV of the Executive Schedule under chapter 11 of title*
 20 *2, United States Code, as adjusted by section 5318 of title*
 21 *5, United States Code.”.*

22 (b) *OTHER STAFF.—Section 8(b) of the Indian Gam-*
 23 *ing Regulatory Act (25 U.S.C. 2707(b)) is amended by*
 24 *striking “basic” and all that follows through the end of the*
 25 *subsection and inserting the following: “pay payable for*

1 *level IV of the Executive Schedule under chapter 11 of title*
 2 *2, United States Code, as adjusted by section 5318 of title*
 3 *5, United States Code.”.*

4 *(c) TEMPORARY AND INTERMITTENT SERVICES.—Sec-*
 5 *tion 8(c) of the Indian Gaming Regulatory Act (25 U.S.C.*
 6 *2707(c)) is amended by striking “basic” and all that follows*
 7 *through the end of the subsection and inserting the fol-*
 8 *lowing: “pay payable for level IV of the Executive Schedule*
 9 *under chapter 11 of title 2, United States Code, as adjusted*
 10 *by section 5318 of title 5, United States Code.”.*

11 **SEC. 7. TRIBAL GAMING ORDINANCES.**

12 *Section 11 of the Indian Gaming Regulatory Act (25*
 13 *U.S.C. 2710) is amended—*

14 *(1) in subsection (b)—*

15 *(A) in paragraph (1)(A), by striking “,*
 16 *and” and inserting “; and”;*

17 *(B) in paragraph (2)(F)—*

18 *(i) by striking clause (i) and inserting*
 19 *the following:*

20 *“(i) ensures that background investigations*
 21 *and ongoing oversight activities are conducted*
 22 *with respect to—*

23 *“(I) tribal gaming commissioners and*
 24 *key tribal gaming commission employees, as*
 25 *determined by the Chairman;*

1 “(II) primary management officials
 2 and other key employees of the gaming en-
 3 terprise, as determined by the Chairman;
 4 and

5 “(III) persons that provide goods or
 6 services directly relating to the tribal gam-
 7 ing activity; and”; and

8 (ii) in clause (ii)(I), by striking “pri-
 9 mary” and all that follows through “with”
 10 and inserting “the individuals and entities
 11 described in subclauses (II) and (III) of
 12 clause (i), including”; and

13 (C) in paragraph (4)(B)(i)—

14 (i) in subclause (I), by striking “of the
 15 Act,” and inserting a semicolon;

16 (ii) in subclause (II), by striking “of
 17 this subsection” and inserting a semicolon;

18 (iii) in subclause (III), by striking “,
 19 and” and inserting “; and”; and

20 (iv) in subclause (IV), by striking “Na-
 21 tional Indian Gaming”;

22 (2) in subsection (d)—

23 (A) in paragraph (1)—

24 (i) in subparagraph (A)—

1 (I) in clause (i), by striking
2 “lands,” and inserting “lands;”;

3 (II) in clause (ii), by striking “,
4 and” and inserting “; and”; and

5 (III) in clause (iii), by striking
6 the comma at the end and inserting a
7 semicolon; and

8 (ii) in subparagraph (B), by striking
9 “, and” and inserting “; and”;

10 (B) in paragraph (2)—

11 (i) in subparagraph (B)(i), by striking
12 “, or” and inserting “; or”; and

13 (ii) in subparagraph (D)(iii)(I), by
14 striking “, and” and inserting “; and”;

15 (C) in paragraph (7)(B)—

16 (i) in clause (ii)(I), by striking “,
17 and” and inserting “; and”;

18 (ii) in clause (iii)(I), by striking “,
19 and” and inserting “; and”; and

20 (iii) in clause (vii)(I), by striking
21 “State , and” and inserting “State; and”;

22 (D) in paragraph (8)(B)—

23 (i) in clause (i), by striking the comma
24 at the end and inserting a semicolon; and

1 (ii) in clause (ii), by striking “, or”

2 and inserting “; or”; and

3 (E) by striking paragraph (9); and

4 (3) by adding at the end the following:

5 “(f) *PROVISION OF INFORMATION TO CHAIRMAN.—Im-*
 6 *mediately after approving a plan (including any amend-*
 7 *ment, revision, or recision of any part of a plan) under*
 8 *subsection (b)(3), the Secretary shall provide to the Chair-*
 9 *man—*

10 “(1) a notice of the approval; and

11 “(2) the plan, and any information used by the
 12 Secretary in approving the plan.”.

13 **SEC. 8. GAMING-RELATED CONTRACTS.**

14 Section 12 of the Indian Gaming Regulatory Act (25
 15 U.S.C. 2711) is amended to read as follows:

16 **“SEC. 12. GAMING-RELATED CONTRACTS.**

17 “(a) *APPROVAL BY CHAIRMAN.—*

18 “(1) *GAMING-RELATED CONTRACTS.—To be en-*
 19 *forceable and valid, a gaming-related contract must*
 20 *be approved by the Chairman under subsection (b).*

21 “(2) *GAMING-RELATED CONTRACTORS.—Each*
 22 *gaming-related contractor shall be subject to a suit-*
 23 *ability determination by the Chairman under sub-*
 24 *section (c).*

1 “(3) *FAILURE TO APPROVE.*—For any gaming-
 2 related contract that is not approved by the Chair-
 3 man under subsection (b)—

4 “(A) the gaming-related contract shall be
 5 void *ab initio*; and

6 “(B) any party to the gaming-related con-
 7 tract shall be subject to such civil penalties as the
 8 Chairman determines to be appropriate under
 9 section 14.

10 “(b) *CONTRACT REVIEW.*—

11 “(1) *MINIMUM CONTRACT REQUIREMENTS.*—A
 12 gaming-related contract under this Act shall provide,
 13 at a minimum, provisions relating to—

14 “(A) accounting and reporting procedures,
 15 including, as appropriate, provisions relating to
 16 verifiable financial reports;

17 “(B) the access required to ensure proper
 18 performance of the gaming-related contract, in-
 19 cluding access to—

20 “(i) the daily operations of the gaming
 21 activity;

22 “(ii) real property relating to the gam-
 23 ing activity;

24 “(iii) equipment associated with the
 25 gaming activity; and

1 “(iv) any other tangible or intangible
2 property used to carry out the gaming ac-
3 tivity;

4 “(C) assurances of performance by each
5 party to the gaming-related contract, as the
6 Chairman determines to be necessary;

7 “(D) the reasons for, and method of, termi-
8 nation of the gaming-related contract; and

9 “(E) such other provisions as the Chairman
10 determines to be necessary to ensure that the In-
11 dian tribe will receive the primary benefit as the
12 sole proprietor of the gaming activity.

13 “(2) *TERM.*—

14 “(A) *IN GENERAL.*—Except as provided in
15 subparagraph (B), the term of a gaming-related
16 contract shall not exceed 5 years.

17 “(B) *EXCEPTIONS.*—

18 “(i) *EXTRAORDINARY* *CIR-*
19 *CUMSTANCES.*—Notwithstanding subpara-
20 graph (A), a gaming-related contract may
21 have a term of not more than 7 years if the
22 Chairman determines the term is appro-
23 priate, taking into consideration any ex-
24 traordinary circumstances relating to the
25 gaming-related contract.

1 “(ii) *FINANCING CONTRACTS.—The*
 2 *terms described in subparagraph (A) and*
 3 *clause (i) shall not apply to a financing*
 4 *contract.*

5 “(3) *FEEES.—*

6 “(A) *IN GENERAL.—Except as provided in*
 7 *subparagraph (B), the fee provided pursuant to*
 8 *a gaming-related contract shall not exceed an*
 9 *amount equal to 30 percent of the net revenues*
 10 *of the gaming operation that is the subject of the*
 11 *gaming-related contract.*

12 “(B) *EXCEPTIONS.—*

13 “(i) *EXTRAORDINARY CIR-*
 14 *CUMSTANCES.—The fee provided pursuant*
 15 *to a gaming-related contract may be in an*
 16 *amount equal to not more than 40 percent*
 17 *of net revenues of the gaming operation that*
 18 *is the subject of the gaming-related contract*
 19 *if the Chairman determines that such a fee*
 20 *is appropriate, taking into consideration*
 21 *any extraordinary circumstances relating to*
 22 *the gaming-related contract.*

23 “(ii) *FINANCING CONTRACTS.—The*
 24 *limitations described in subparagraph (A)*

1 *and clause (i) shall not apply to a financ-*
 2 *ing contract.*

3 “(4) *REQUIREMENTS FOR DISAPPROVAL.—The*
 4 *Chairman shall disapprove a gaming-related contract*
 5 *under this subsection if the Chairman determines*
 6 *that—*

7 “(A) *the gaming-related contract fails to*
 8 *meet any requirement under paragraph (1), (2),*
 9 *or (3);*

10 “(B) *a gaming-related contractor that is a*
 11 *party to the gaming-related contract is unsuit-*
 12 *able under subsection (c);*

13 “(C) *a gaming-related contractor or bene-*
 14 *ficiary of the gaming-related contract—*

15 “(i) *unduly interfered with or influ-*
 16 *enced a decision or process of tribal govern-*
 17 *ment relating to the gaming activity; or*

18 “(ii) *deliberately or substantially failed*
 19 *to comply with a tribal gaming ordinance*
 20 *or resolution;*

21 “(D) *the Indian tribe will not receive the*
 22 *primary benefit as the sole proprietor of the*
 23 *gaming activity;*

24 “(E) *a trustee would not approve the gam-*
 25 *ing-related contract because the compensation or*

1 *fees do not bear a reasonable relationship to the*
 2 *cost of the goods or benefit of the services pro-*
 3 *vided; or*

4 *“(F) a person or an Indian tribe would vio-*
 5 *late a provision of this Act—*

6 *“(i) on approval of the gaming-related*
 7 *contract; or*

8 *“(ii) in carrying out the gaming-re-*
 9 *lated contract.*

10 *“(5) TIMELINES.—*

11 *“(A) SUBMISSION OF GAMING-RELATED*
 12 *CONTRACTS.—To be approved under this sub-*
 13 *section, a gaming-related contract shall be sub-*
 14 *mitted to the Chairman by the appropriate In-*
 15 *dian tribe by not later than 30 days after the*
 16 *date on which the gaming-related contract is exe-*
 17 *cuted.*

18 *“(B) DETERMINATION OF CHAIRMAN.—*

19 *“(i) IN GENERAL.—Subject to clause*
 20 *(ii), the Chairman shall approve or dis-*
 21 *approve a management contract, a develop-*
 22 *ment contract, a participation contract, or*
 23 *other gaming-related contract designated by*
 24 *the Chairman under section 7 by not later*
 25 *than 90 days after the date on which such*

1 *a contract is submitted under subparagraph*
 2 *(A).*

3 “(ii) *FINANCING CONTRACTS AND CON-*
 4 *SULTING CONTRACTS.—The Chairman shall*
 5 *approve or disapprove a financing contract*
 6 *or a consulting contract by not later than*
 7 *30 days after the date on which such a con-*
 8 *tract is submitted under subparagraph (A).*

9 “(iii) *EXTENSIONS.—The Chairman*
 10 *may extend a deadline under clause (i) or*
 11 *(ii) on approval of the Indian tribe that is*
 12 *party to the applicable contract.*

13 “(6) *ADDITIONAL FACTORS FOR CONSIDER-*
 14 *ATION.—In determining whether to approve a gam-*
 15 *ing-related contract under this subsection, the Chair-*
 16 *man may take into consideration any information re-*
 17 *lating to the terms, parties, and beneficiaries of—*

18 “(A) *the gaming-related contract; and*

19 “(B) *any other agreement relating to the*
 20 *Indian gaming activity, as the Chairman deter-*
 21 *mines to be appropriate.*

22 “(7) *MODIFICATIONS.—Notwithstanding an ap-*
 23 *proval of a gaming-related contract under this sub-*
 24 *section, or a determination of suitability of a gaming-*
 25 *related contractor under subsection (c), if the Chair-*

1 *man determines, based on information that was not*
 2 *disclosed at the time of the approval or determina-*
 3 *tion, that a gaming-related contract violates this Act,*
 4 *or that a determination of suitability should not have*
 5 *been made, the Chairman, after providing notice and*
 6 *an opportunity for a hearing, may—*

7 *“(A) require any modification of the gam-*
 8 *ing-related contract that the Chairman deter-*
 9 *mines to be necessary to comply with this Act;*

10 *“(B) suspend performance under the gam-*
 11 *ing-related contract;*

12 *“(C) revoke a determination of suitability*
 13 *under subsection (c); or*

14 *“(D) void the gaming-related contract.*

15 *“(c) SUITABILITY DETERMINATIONS.—*

16 *“(1) IN GENERAL.—Subject to paragraph (4), a*
 17 *gaming-related contract shall not be approved under*
 18 *subsection (b) unless, on receipt of an application for*
 19 *a determination of suitability, the Chairman deter-*
 20 *mines under this subsection that each applicable gam-*
 21 *ing-related contractor is suitable.*

22 *“(2) STANDARD.—The Chairman, by regulation,*
 23 *shall establish a suitability standard under which a*
 24 *gaming-related contractor shall not be considered to*

1 *be suitable under this subsection if, as determined by*
 2 *the Chairman—*

3 “(A) *the gaming-related contractor—*

4 “(i) *is an elected member of the gov-*
 5 *erning body of an Indian tribe that is a*
 6 *party to an applicable gaming-related con-*
 7 *tract;*

8 “(ii) *at any time, was convicted of any*
 9 *felony or gaming offense; or*

10 “(iii)(I) *has knowingly and willfully*
 11 *provided materially important false state-*
 12 *ments or information to the Commission or*
 13 *the Indian tribe under this Act; or*

14 “(II) *has refused to provide informa-*
 15 *tion requested by the Commission under*
 16 *this Act; or*

17 “(B) *the prior activities, criminal record (if*
 18 *any), reputation, habits, or associations of the*
 19 *gaming-related contractor—*

20 “(i) *pose a threat to—*

21 “(I) *the public interest; or*

22 “(II) *the effective regulation of*
 23 *gaming; or*

1 “(ii) create or enhance the risk of un-
 2 suitable, unfair, or illegal practices, meth-
 3 ods, or activities with respect to—

4 “(I) a gaming activity; or

5 “(II) the operation of a gaming
 6 facility.

7 “(3) AGREEMENTS WITH INDIAN TRIBES.—In
 8 carrying out this subsection, the Chairman may enter
 9 into a contract with any Indian tribe—

10 “(A) to conduct a background investigation
 11 of a gaming-related contractor;

12 “(B) to assist in determining the suitability
 13 of a gaming-related contractor; or

14 “(C) to facilitate tribal licensing of a person
 15 that provides goods or services directly relating
 16 to the tribal gaming activity or a gaming-related
 17 contractor in accordance with the standard es-
 18 tablished under paragraph (2).

19 “(4) ALTERNATIVE DETERMINATIONS AND EX-
 20 CLUSIONS.—The Commission, by regulation, may es-
 21 tablish, as the Commission determines to be appro-
 22 priate—

23 “(A) alternative methods of determining
 24 suitability; and

1 “(B) *categorical exclusions for persons or*
 2 *entities that are subject to licensing or suit-*
 3 *ability determinations by—*

4 “(i) *a Federal, State, or tribal agency;*
 5 *or*

6 “(ii) *a professional association.*

7 “(5) *REGISTRY.—The Chairman shall establish*
 8 *and maintain a registry of—*

9 “(A) *each suitability determination made*
 10 *under this subsection; and*

11 “(B) *each suitability determination of an*
 12 *Indian tribe provided under section 11.*

13 “(6) *RESPONSIBILITY OF GAMING-RELATED CON-*
 14 *TRACTOR.—A gaming-related contractor shall—*

15 “(A) *pay the costs of any investigation ac-*
 16 *tivity of the Chairman in carrying out this sub-*
 17 *section; and*

18 “(B) *provide to the Chairman a notice of*
 19 *any change in information provided during an*
 20 *investigation on discovery of the change*

21 “(d) *CONVEYANCE OF REAL PROPERTY.—No gaming-*
 22 *related contract under this Act shall transfer or otherwise*
 23 *convey any interest in land or other real property unless*
 24 *the transfer or conveyance—*

25 “(1) *is authorized under law; and*

1 “(2) is specifically described in the gaming-re-
2 lated contract.

3 “(e) *CONTRACT AUTHORITY.*—The authority of the
4 Secretary under section 2103 of the Revised Statutes (25
5 U.S.C. 81) relating to contracts under this Act is trans-
6 ferred to the Commission.

7 “(f) *NO EFFECT ON TRIBAL AUTHORITY.*—This section
8 does not expand, limit, or otherwise affect the authority of
9 any Indian tribe or any party to a Tribal-State compact
10 to investigate, license, or impose a fee on a gaming-related
11 contractor.

12 “(g) *APPEALS.*—The Chairman, by regulation, shall
13 provide an opportunity for an appeal, conducted through
14 a hearing before the Commission, of any determination of
15 the Chairman under this section by not later than 30 days
16 after the date on which the determination is made.

17 “(h) *EMERGENCY WAIVERS.*—The Chairman may pro-
18 mulgate regulations providing for a waiver of any require-
19 ment under this section because of—

20 “(1) an emergency; or

21 “(2) an imminent threat to the public health or
22 safety.”.

23 **SEC. 9. CIVIL PENALTIES.**

24 Section 14 of the Indian Gaming Regulatory Act (25
25 U.S.C. 2713) is amended—

1 (1) *by striking the section designation and head-*
 2 *ing and all that follows through subsection (a) and*
 3 *inserting the following:*

4 **“SEC. 14. CIVIL PENALTIES.**

5 “(a) *PENALTIES.*—

6 “(1) *VIOLATION OF ACT.*—

7 “(A) *IN GENERAL.*—*Except as provided in*
 8 *subparagraph (B), an Indian tribe, individual,*
 9 *or entity that violates any provision of this Act*
 10 *(including any regulation of the Commission*
 11 *and any Indian tribal regulation, ordinance, or*
 12 *resolution approved under section 11 or 13) may*
 13 *be subject to, as the Chairman determines to be*
 14 *appropriate—*

15 “(i) *an appropriate civil fine, in an*
 16 *amount not to exceed \$25,000 per violation*
 17 *per day; or*

18 “(ii) *an order of the Chairman for an*
 19 *accounting and disgorgement, including in-*
 20 *terest.*

21 “(B) *APPLICATION TO INDIAN TRIBES.*—
 22 *Subparagraph (A)(ii) shall not apply to any In-*
 23 *dian tribe.*

1 “(2) *APPEALS.*—*The Chairman shall provide, by*
 2 *regulation, an opportunity to appeal a determination*
 3 *relating to a violation under paragraph (1).*

4 “(3) *WRITTEN COMPLAINTS.*—

5 “(A) *IN GENERAL.*—*If the Commission has*
 6 *reason to believe that an Indian tribe or a party*
 7 *to a gaming-related contract may be subject to a*
 8 *penalty under paragraph (1), the final closure of*
 9 *an Indian gaming activity, or a modification or*
 10 *termination order relating to the gaming-related*
 11 *contract, the Chairman shall provide to the In-*
 12 *dian tribe or party a written complaint, includ-*
 13 *ing—*

14 “(i) *a description of any act or omis-*
 15 *sion that is the basis of the belief of the*
 16 *Commission; and*

17 “(ii) *a description of any action being*
 18 *considered by the Commission relating to*
 19 *the act or omission.*

20 “(B) *REQUIREMENTS.*—*A written com-*
 21 *plaint under subparagraph (A)—*

22 “(i) *shall be written in common and*
 23 *concise language;*

1 “(ii) shall identify any statutory or
2 regulatory provision relating to an alleged
3 violation by the Indian tribe or party; and

4 “(iii) shall not be written only in stat-
5 utory or regulatory language.”;

6 (2) in subsection (b)—

7 (A) by striking “(b)(1) The Chairman” and
8 inserting the following:

9 “(b) TEMPORARY CLOSURES.—

10 “(1) IN GENERAL.—The Chairman”;

11 (B) in paragraph (1)—

12 (i) by striking “Indian game” and in-
13 serting “Indian gaming activity, or any
14 part of such a gaming activity,”; and

15 (ii) by striking “section 11 or 13 of
16 this Act” and inserting “section 11 or 13”;
17 and

18 (C) in paragraph (2)—

19 (i) by striking “(2) Not later than thir-
20 ty” and inserting the following:

21 “(2) HEARINGS.—

22 “(A) IN GENERAL.—Not later than 30”;

23 (ii) in subparagraph (A) (as desig-
24 nating by clause (i))—

1 (I) by striking “management con-
2 tractor” and inserting “party to a
3 gaming-related contract”; and

4 (II) by striking “permanent” and
5 inserting “final”; and

6 (iii) in the second sentence—

7 (I) by striking “Not later than
8 sixty” and inserting the following:

9 “(B) DETERMINATION OF COMMISSION.—
10 Not later than 60”; and

11 (II) by striking “permanent” and
12 inserting “final”;

13 (3) in subsection (c), by striking “(c) A decision”
14 and inserting the following:

15 “(c) APPEAL OF FINAL DETERMINATIONS.—A deter-
16 mination”; and

17 (4) in subsection (d), by striking “(d) Nothing”
18 and inserting the following:

19 “(d) EFFECT ON REGULATORY AUTHORITY OF INDIAN
20 TRIBES.—Nothing”.

21 **SEC. 10. GAMING ON LATER-ACQUIRED LAND.**

22 Section 20(b) of the Indian Gaming Regulatory Act
23 (25 U.S.C. 2719(b)) is amended—

24 (1) in paragraph (1)—

1 (A) in subparagraph (A), by striking “ (A)
2 the Secretary, after consultation” and inserting
3 the following:

4 “(A)(i) before April 15, 2006, an Indian tribe
5 has submitted to the Secretary a written request to
6 have land deemed eligible for gaming under this sub-
7 paragraph; and

8 “(ii) the Secretary, after consultation”; and

9 (B) in subparagraph (B)—

10 (i) in clause (i), by striking the comma
11 at the end and inserting the following:
12 “under Federal statutory law, if the land is
13 within a State in which is located—

14 “(I) the reservation of such Indian
15 tribe; or

16 “(II) the last recognized reservation of
17 such Indian tribe;”;

18 (ii) by striking clause (ii) and insert-
19 ing the following:

20 “(ii) the initial reservation of an Indian
21 tribe acknowledged by the Secretary pursuant to
22 the Federal acknowledgment process, if—

23 “(I) the Indian tribe has an historical
24 and geographical nexus to the land, as de-
25 termined by the Secretary; and

1 “(II) after consultation with the In-
 2 dian tribe and appropriate local and tribal
 3 officials, and after providing for public no-
 4 tice and an opportunity to comment and a
 5 public hearing, the Secretary determines
 6 that a gaming establishment on the land—

7 “(aa) would be in the best inter-
 8 ests of the Indian tribe and members of
 9 the tribe; and

10 “(bb) would not create significant,
 11 unmitigated impacts on the sur-
 12 rounding community; or”; and

13 (iii) by striking clause (iii) and insert-
 14 ing the following:

15 “(iii) the restoration of land for an Indian
 16 tribe that is restored to Federal recognition, if—

17 “(I) the Indian tribe has an historical
 18 and geographical nexus to the land, as de-
 19 termined by the Secretary;

20 “(II) a temporal connection exists be-
 21 tween the acquisition of the land and the
 22 date of recognition of the tribe, as deter-
 23 mined by the Secretary; and

24 “(III) after consultation with the In-
 25 dian tribe and appropriate local and tribal

officials, and after providing for public notice and an opportunity to comment and a public hearing, the Secretary determines that a gaming establishment on the land—

“(aa) would be in the best interests of the Indian tribe and members of the tribe; and

“(bb) would not create significant, unmitigated impacts on the surrounding community.”; and

(2) by adding at the end the following:

“(4) *EFFECT OF SUBSECTION.*—Nothing in this subsection affects the validity of any determination regarding the eligibility of land for gaming made by the Secretary or Chairman before the date of enactment of this paragraph.”.

SEC. 11. CONSULTATION POLICY.

The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) is amended by adding at the end the following:

“SEC. 25. CONSULTATION POLICY.

“In promulgating rules and regulations pursuant to this Act, the Commission shall establish and maintain a policy of consultation with Indian tribes in accordance with the Federal trust responsibility and the government-to-gov-

1 *ernment relationship that exists between Indian tribes and*
 2 *the Federal Government.”.*

3 **SEC. 12. IMPLEMENTATION.**

4 *The Indian Gaming Regulatory Act (25 U.S.C. 2701*
 5 *et seq.) (as amended by section 11) is amended by adding*
 6 *at the end the following:*

7 **“SEC. 26. IMPLEMENTATION.**

8 *“(a) RULES AND REGULATIONS.—Not later than 2*
 9 *years after the date of enactment of this section, the Com-*
 10 *mission, in consultation with Indian tribes, shall promul-*
 11 *gate rules and regulations implementing new definitions,*
 12 *authorities, responsibilities, and restrictions in accordance*
 13 *with the Indian Gaming Regulatory Act Amendments of*
 14 *2006.*

15 *“(b) REPORT.—Not later than 1 year after the date*
 16 *of enactment of this section, the Commission shall submit*
 17 *to the Committee on Indian Affairs of the Senate and the*
 18 *Committee on Resources of the House of Representatives a*
 19 *report describing the status of the promulgation of rules and*
 20 *regulations pursuant to subsection (a).*

21 *“(c) GAMING-RELATED CONTRACTS.—*

22 *“(1) EFFECTIVE DATE.—With respect to gaming-*
 23 *related contracts other than management contracts,*
 24 *section 12 shall not take effect until the date on which*

1 *rules and regulations implementing that section are*
 2 *promulgated pursuant to subsection (a).*

3 “(2) *EFFECT ON EXISTING GAMING-RELATED*
 4 *CONTRACTS.—Notwithstanding section 12, a gaming-*
 5 *related contract entered into before the date of enact-*
 6 *ment of this section that is not approved by the*
 7 *Chairman shall be valid.*

8 “(d) *EFFECT ON EXISTING REGULATIONS.—Nothing*
 9 *in this section prohibits, limits, or restricts the Commission*
 10 *from—*

11 “(1) *applying any regulation in effect on the*
 12 *date of enactment of this section that is not incon-*
 13 *sistent with this Act;*

14 “(2) *amending any regulation; or*

15 “(3) *adopting any new regulation.*”.

16 **SEC. 13. CONFORMING AMENDMENT.**

17 (a) *IN GENERAL.—Section 123(a)(2) of the Depart-*
 18 *ment of the Interior and Related Agencies Appropriations*
 19 *Act, 1998 (Public Law 105–83; 111 Stat. 1566) is amend-*
 20 *ed—*

21 (1) *in subparagraph (A), by adding “and” at the*
 22 *end;*

23 (2) *in subparagraph (B), by striking “; and”*
 24 *and inserting a period; and*

25 (3) *by striking subparagraph (C).*

1 (b) *APPLICABILITY.*—*Notwithstanding any other pro-*
2 *vision of law, section 18(a) of the Indian Gaming Regu-*
3 *latory Act (25 U.S.C. 2717(a)) shall apply to all Indian*
4 *tribes.*

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109TH CONGRESS
2^D Session

S. 2078

[Report No. 109–261]

A BILL

To amend the Indian Gaming Regulatory Act to clarify the authority of the National Indian Gaming Commission to regulate class III gaming, to limit the lands eligible for gaming, and for other purposes.

JUNE 6, 2006

Reported with an amendment