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AMENDING THE INDIAN GAMING REGULATORY ACT, AND FOR OTHER PURPOSES

OCTOBER 11 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

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

REPORT

[To accompany S. 2920]

The Committee on Indian Affairs, to which was referred the bill (S. 2920) to amend the Indian Gaming Regulatory Act, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 2920 is twofold: to assure that the primary purposes of the Indian Gaming Regulatory Act are fulfilled in the operation of tribal gaming and to ensure that the Indian tribal gaming industry is properly regulated by providing guidance to the National Indian Gaming Commission on issues related to regulation.

BACKGROUND

The existing Federal law regarding Indian tribal gaming was enacted into law more than ten years ago. The Indian Gaming Regulatory Act of 1988 ("IGRA"), P.L. 100–497, 25 U.S.C. § 2501 *et seq.,* established a comprehensive framework for the operation of Indian tribal gaming across the United States. This framework attempts to bring some order to the complex relationship between the Federal government, Indian tribes and the states in relation to gaming by establishing three different categories of gaming and a regulatory system which applies to each. IGRA also established a Federal regulatory commission, the National Indian Gaming Commission or "NIGC", to provide Federal oversight over tribal gaming.

At the time the IGRA was passed by Congress, gaming was a small industry consisting mainly of what are now known as "class II" high stakes bingo operations. At that time, virtually no one contemplated that gaming would become the multi-billion dollar industry that exists today, providing tribes with much-needed capital for development and employment opportunities where few previously existed.

Even though gaming revenues have grown exponentially in the last ten years, the Indian Gaming Regulatory Act has been amended only one time. In 1997, Chairman Campbell introduced an amendment that authorized the NIGC to collect increased fees which would fund its regulatory efforts in Indian Country.[1] Before the change in the fees structure, the NIGC was funded almost exclusively with Federal appropriations, and was barely able to keep up with the ever-growing number of tribal gaming operations.

Since 1997, the NIGC has made significant strides in its role as the Federal regulatory body charged with oversight in the field of Indian gaming, having opened five field offices and employing additional necessary staff to oversee tribal gaming operations across the country.

The increased funding which Congress endorsed in 1997 has allowed the NIGC to take steps to increase its regulation and enforcement efforts. Last year it promulgated minimum internal control standards to provide a minimum regulatory standard below which no Indian gaming operation may be conducted. Those standards became final in April, 1999. Additionally, the Commission has been able to hire much-needed field investigators who are responsible for monitoring tribal gaming operations. The Commission should be applauded for these activities.

It should also be noted that many Indian tribes, working in tandem with the states where they are located, have developed sophisticated regulatory frameworks for their operations. Pursuant to joint tribal-state compacts, these tribes have put in place effective standards regarding rules of play for their games, as well as financial and accounting standards for their operations. The need for intense oversight in these instances is lessened because tribal regulatory bodies and those of their respective states have created effective oversight for tribal gaming operations.

Not all tribal gaming ordinances and tribal-state compacts address the need for such sophisticated regulatory frameworks, and it is for these tribes and states that the NIGC can provide the most effective assistance.

Since the fee structure was changed in late 1997, the Committee has held a number of legislative and oversight hearings on the issue of regulation and related matters. During the last two years, several themes have emerged.

First, tribes have expressed increasing alarm with what they perceive as the explosive growth and activity of the Commission since the fee increase was enacted in late 1997. The National Indian Gaming Association ("NIGA") noted in its testimony before the Committee on March 24, 1999, that,

[1] Prior to the 1997 amendment, the NIGC budget was limited to federal appropriations which could match fees collected from the tribes based on their "class II" gaming revenues. The cap on those class II fees was set at $3,000,000.

> Indian Country and NIGA have yet to see a coherent plan from the NIGC documenting an increased need, the level of need, a plan for growth or any other basis for an increase in funding authority to $8 million. Indian Country recognizes that a need for increased funding does exist. We just want to know, and we deserve to know, that our money is being spent in the best possible manner.[2]

These concerns were not alleviated by the NIGC between March of 1999 and July of 2000. At an oversight hearing conducted by the Committee on July 26, 2000, NIGA testified that—

> I appear before you today, nearly two years later, and I must tell you that we are not at all comfortable with the actions taken by the NIGC in that time span. NIGA remains supportive of a respected, independent, objective and efficient NIGC, yet no communications have been shared with us regarding how the NIGC plans to meet those goals. Instead we face a number of new regulatory initiatives that infringe upon Indian nations' governmental authority and are duplicative of existing regulatory structures.
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> The failure to communicate has not resulted from inaction from NIGA or its Member Indian nations. We have made repeated requests for budget projections and work plans, with no response. In January of this year NIGA facilitated a meeting between the NIGC and over 70 Indian nation leaders, the sole purpose of which was to promote communication between the NIGC and NIGA's Member Indian nations. Specifically our Member Indian nations sought some insight regarding the NIGC's recent actions and its plans to implement the new resources at its disposal. To date no satisfactory explanation has been given.[3]

It should be noted that the NIGC has been responsive to requests from Congress for information. The Committee, however, intends that justification for the activities of the NIGC should be more apparent to the tribes to which they are charged with providing services and regulation and the public, through the development of strategic and performance plans which are to be included in its biennial reports to Congress. The requirement to have NIGC submit this type of report has been supported by the General Accounting Office.[4]

Tribes have also requested that their regulatory efforts be recognized in relation to the fees imposed on class III gaming tribes. This concept was generally endorsed by Congress when it passed the IGRA. Section 11(c) of IGRA, 25 U.S.C. §2710(c), addressed tribal self-regulation and directs the NIGC to promulgate regulations that would allow a tribe that meets criteria set by the NIGC

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[2] Statement of Richard G. Hill, President, National Indian Gaming Association, before the Senate Committee on Indian Affairs, March 24, 1999, page 9.

[3] Statement of Richard G. Hill, President, National Indian Gaming Association, before the Senate Committee on Indian Affairs, July 26, 2000, page 2.

[4] Letter dated July 20, 1999, from the General Accounting Office to the Representative Dick Armey, Representative Dan Burton, and Senator Fred Thompson, page 10.

to be certified as a self-regulating tribe and to provide its own regulation for class II gaming. In addition to carrying out most of its own regulatory duties, a tribe would receive a corresponding fee reduction.

The NIGC reports that since September of 1998, when the regulations became final, only five tribes have applied for the certification, but that only one of those tribes fully completed an application. The NIGC also states that three tribes have withdrawn their applications and the fifth abandoned the application process before completing its application. Tribes claim that the NIGC has discouraged potential applicants and that applicants have been presented by the NIGC to withdraw their applications.

In publishing the regulations dealing with the self-regulated status of tribes, the NIGC stated,

> The Commission agrees, as a general matter, that tribes with certificates should pay a lower fee than tribes without certificates. The IGRA provides that the Commission may not assess a fee on the class II gaming activity of a tribe with a certificate in excess of 0.25 percent. 25 U.S.C. 2710(c)(5)(C). Therefore, the Commission plans to establish fee rates for self-regulated tribes through the annual fee notice which will recognize and reward self regulated status.[5]

The Committee notes that the NIGC adopted regulations on implementation of the self-regulation policy on September 8, 1998, but to-date no tribe has been certified as self-regulating and consequently received a reduction in fees.

While the inauguration of the self-regulatory program remains to be seen, the Committee believes it important to provide the NIGC with the discretion to reduce fees for tribes according to a regime which has been adopted through regulation and contains objective criteria, which may not necessarily be tied solely to the accomplishment of tribal regulation.

Additionally, tribes remain concerned with the segregation of fees paid to the NIGC. There is some uneasiness among tribes about what they perceive as potential for NIGC accounts to be misused, either by the NIGC itself or the by the Federal government. It is felt that because the IGRA does not address the segregation of NIGC accounts nor is there a limit on the use of funds in the accounts, the accounts are vulnerable to appropriation by the Federal government or misuse. To address these concerns, the Committee has limited the use of funds by the NIGC to IGRA-related responsibilities and required the NIGC to establish and use segregated accounts for fees collected from tribes and civil forfeitures collected by the NIGC.

Also of major concern, especially to tribes which do not offer class III ("casino-styled") gaming, is the continued conflict between the Johnson Act, 15 U.S.C. 1171–1178, and the use of technological aids in the operation of class II gaming. The IGRA is unambiguous in its statement that technological aids may be used by a tribe to conduct class II gaming and report language accompanying IGRA provides clear Congressional intent to authorize Indian tribes to

[5] S25 CFR Part 518, General Comments.

maximize class II operations through the use of technological advances. The report states in part that,

> [t]he Committee intends that tribes should be given the opportunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility.[6]

Additionally, the Committee specifically stated its intent with regard to the application of the Johnson Act—

> The phrase 'not otherwise prohibited by Federal Law' refers to gaming that utilizes mechanical devices as defined in 15 U.S.C. 1175. *That section prohibits gambling devices on Indian lands but does not apply to devices used in connection with bingo and lotto.* [emphasis added]. It is the Committee's intent that with the passage of this act, no other Federal statute, such as those listed below, will preclude the use of otherwise legal devices used solely in aid or conjunction with bingo or lotto or other such gaming on or off Indian lands.[7]

The United States Department of Justice has taken a different view and has embarked on a series of actions against tribes who use technological aids in the conduct of class II gaming in at least two Federal circuit courts.[8] These actions allege that tribes operating class II games which use technological aids are violating the Johnson Act. Both actions were unsuccessful at the trial level and in one case the tribe prevailed over the Department of Justice on appeal.[9] The other appeal is still pending. In a third case, no final decision has been entered, but a review of the transcripts from the bench ruling on a preliminary injunction motion would suggest that the Judge's intention is to rule against the United States.[10]

The Committee, a number of whose members either actively sponsored or were involved in the consideration of the original IGRA bill, intends to clarify what it already believes to be the

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[6] Senate Rep. 100–446 (Aug. 3, 1998), p. 9.

[7] Ibid, p. 12.

[8] *United States of America* v. *103 Electronic Gambling Devices,* 2000 WL 1218766 (9th Cir. Aug. 29, 2000), and *United States* v. *162 Megamania Gambling Devices,* No. 97–C–1140–K, 1998 U.S. Dist. LEXIS 17293 (N.D. Okla. Oct. 23, 1998).

[9] *United States of America* v. *103 Electronic Gambling Devices,* 2000 WL 1218766 (9th Cir., Aug. 29, 2000). In this case, the game at issue was a bingo game played at an electronic terminal that connected the player with other players at other terminals, all playing against one another for the first "bingo". The appellate court was unequivocal in its ruling that the terminal was not a Johnson Act device or a class III game as defined by IGRA, "* * * the MegaMania is not a 'facsimile of any game of chance,' 25 U.S.C. § 2703(7)(A)(ii), or indeed, a facsimile of anything. Rather, the terminal is merely an electronic aid to human players of bingo, something like electronic mail with a graphic user interface. And, while the government has argued that MegaMania resembles a slot machine in certain limited respects, there has been no argument that the terminal is a 'slot machine', id., which it plainly is not."

The trial court in *United States of America* v. *162 Megamania Gambling Devices,* No. 97–C–1140–K, 1998 U.S. Dist. LEXIS 17293 (N.D. Okla. Oct. 23, 1998), was equally clear in its ruling, "In sum, the Court finds it an absurd result that Congress would classify "paper" bingo as Class II gaming, but classify electronic bingo, at least as embodied by MegaMania, as Class II gaming."

[10] *Seneca-Cayuga Tribe of Oklahoma* v. *NIGC,* No. 00–CV–609–BU (N.D. Okla. Aug. 30, 2000) (Transcript of Court's Ruling). In interpreting IGRA and the definition of class II gaming, the Court states, "Congress did not intend to allow the Johnson Act to reach bingo aids. The statute provides that bingo using 'electronic, computer, or other technological aids' is class II gaming, and therefore permitted in Indian Country. Reading the Johnson Act to forbid such aids would render the quoted language a nullity. Why would Congress carefully protect such technological aids through the text [the quoted language], yet leave them to the wolves of a Johnson Act forfeiture action? We cannot presume that enacting IGRA, Congress performed such 'a useless act'."

law—that the Johnson Act does not apply to technological aids used in connection with class II games.

One other issue of particular importance to the Committee is the need to ensure that all Indian tribal gaming is conducted in a safe and fair manner. The Committee believes that tribes and states continue to make impressive efforts in this area, but that all operations should adhere to a uniform set of minimum industry standards. It is of paramount importance to tribal gaming that games are conducted fairly. Accordingly, the Committee believes it is important that minimum standards be adhered to by all gaming operations.

The NIGC, in April of 1999, promulgated regulations which established regulatory standards to which all Indian tribal gaming operations must adhere. However, NIGA and individual tribes have questioned the NIGC's authority to promulgate and enforce these regulations. It is the Committee's intention to clarify its position on the authority of the NIGC to promulgate minimum internal control standards by specifically authorizing the NIGC to promulgate and enforce those regulations, within the jurisdictional framework established by IGRA.

Tribes have expressed concern with the language contained in the bill regarding minimum internal control standards and the interplay and role of tribal regulation with those sections. In keeping with the original intent of IGRA, the Committee continues to stress that tribes are the sovereign entities primarily responsible for the regulation of their facilities and that the authorization for the promulgation of the minimum internal control standards is in no way intended to change primary jurisdiction over regulation of gaming on tribal lands.

Finally, the NIGC informed the Committee late last year that it has been collecting forfeitures of considerable amounts through enforcement actions against parties who are in violation of IGRA, but that those funds were not used to fund NIGC operations (which could result in a reduction of fee for tribes), but were turned over to the Treasury Department's general fund to be used for Federal purposes.

Since the NIGC is now entirely funded by the collection of fees paid by tribes, it follows that tribes should benefit from the collection of the civil forfeitures made against tribal gaming operators as well. However, it is problematic to fund the NIGC with monies it has collected through enforcement actions against tribes, as it appears to give the NIGC an incentive to bring enforcement actions to fund the Commission's operations. The Committee intends for these funds to be used in a way that benefits tribes, but that does not appear to create an incentive to penalize tribes. Accordingly, S. 2920 proposes the development of a tribal grant program which would be distributed pursuant to regulations and criteria promulgated by the Commission.

THE USE OF TECHNOLOGICAL AIDS IN "CLASS II" GAMING

In clarifying the use of technological aids in conjunction with "class II" games, the Committee is cognizant of the position of the Senate in 1988 regarding the use of technological aids. The report is very clear in its statement that tribes should have maximum

flexibility to use technological aids and that the Committee did not intend the Johnson Act to apply to technological aids.[11]

Recent case law has upheld the intent of Congress in regard to this particular issue, and it is the intent of the Committee to affirm its position with regard to class II games and express its agreement with the courts' interpretation of the IGRA in the cases cited above.

EXPANDED REPORTING REQUIREMENTS BY THE NIGC

Section 2 of S. 2920 makes the NIGC responsible for the submission of additional information not currently required by IGRA. Specifically, the bill requires the NIGC to submit strategic and performance plans to Congress with its required biennial report. The bill initially proposed that the NIGC be subject to the requirements of the Government Performance and Results Act of 1993 (GPRA),[12] but after consultation with the NIGC, it was determined that the detailed annual reporting required by GPRA may be too onerous for the NIGC. The Committee believes strongly, however, that the planning and operations of the NIGC should be more available to the Congress and the regulated community.

As a compromise, the language has been changed to require the Commission to prepare and submit additional material in its biennial reports to Congress and incorporate its strategic and performance plans into that report. The requirements of the report remain largely the same. The language of GPRA has been used as a model for the strategic plan, and the requirement for consultation with the Congress and the affected community is nearly identical to GPRA. Additionally, the NIGC is directed to develop its performance plans with a view toward the GPRA requirements for those plans.

The NIGC suggested in a position paper circulated to Committee staff that administrative costs in developing the GPRA report could be a factor in determining larger fees, but the Committee does not find that assertion to be persuasive. Additionally, the NIGC states,

> The resources of a small agency that would be directed to development of performance plans outweigh the benefits to be achieved.[13]

The Committee also disagrees with this assertion. Clearly, the regulated community has expressed a number of concerns with the NIGC in regard to performance and planning. Perhaps most persuasive is the opinion of the GAO that—

> While this may not be a major activity within Interior, the sensitivities of Indian gaming issues and the potential for criminal activities related to Indian gaming, would seem to indicate that Indian gaming is an important area in which to develop performance goals and measures to explain what it [NIGC] plans to accomplish with these funds.[14]

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[11] Senate Rep. 100–466 (Aug. 3, 1988).
[12] Pub.L. 103–62.
[13] Letter dated September 14, 2000, from Montie Deer to Senator Ben Nighthorse Campbell, page 4.
[14] Letter dated July 20, 1999, from General Accounting Office to the Representative Dick Armey, Representative Dan Burton, and Senator Fred Thompson, page 10.

Finally, the NIGC has stated that it does operate "within the principles of performance-based management".[15] It should not be difficult then, for the NIGC to reduce and commit those principles and its strategic objectives to writing.

The Committee notes that Committee staff have not been able to verify that any IGRA-mandated report has been submitted by the NIGC to Congress since 1996, although the NIGC has stated that such a report is forthcoming.

LICENSING OF TRIBAL GAMING COMMISSIONERS

Section 2(3) provides that tribes must address, in addition to key employees and primary management officials, the background checks of tribal gaming commissioners and tribal gaming commission employees.

Many comments have been received disputing the necessity of background checks for these individuals and the possible negative effects of this new requirement on tribal sovereignty.

Indian tribal gaming has come under attack in the past few years, and it has become a prime target for accusations that it is unregulated. This section is designed to address a key concern regarding the operation of tribal gaming commissions—that the regulators themselves meet the criteria imposed on the individuals they regulate.

The specific language of the bill requires tribes to address the background checks of tribal gaming commissioners and their employees on a regular basis. This language does not require a tribe to have a tribal gaming commission, nor does it prohibit a tribe from determining the makeup of those commissions. It merely requires that, where tribal gaming commissions have been established, that those commission members and commission employees meet the standards applicable to the employees they are responsible for licensing and that the appearance of impropriety is avoided.

The Committee believes that this section respects tribal sovereignty, because it does not mandate the use of tribal gaming commissions, nor does it mandate the makeup of those commissions, but provides a guideline for the tribal gaming commissions, much the same as the background check language currently provides. It is doubtful that tribes would argue that the required background checks for primary management and key officials have hindered tribal sovereignty by dictating who a tribe may hire, which is a tribe's sovereign right. The section simply provides guidance where a tribe has determined to operate class III gaming and to operate a tribal gaming commission.

The NIGC has noted that it is unclear whether the NIGC or the Secretary of the Interior should set the standard for tribal officials and employees of the tribal government pursuant to this section.[16] Neither the NICG nor the Secretary of the Interior have been delegated any authority to set these standards within this legislation. The specific amendment to IGRA made by section 2(3) requires that a tribe addresses the issue of background checks for tribal

[15] Letter dated September 5, 2000, from Montie Deer to Senator Ben Nighthorse Campbell, page 3.

[16] Letter dated September 14, 2000, from Montie Deer to Senator Ben Nighthorse Campbell, page 3.

gaming commissioners and employees in its ordinance. The standard a tribe adopts for the tribal gaming commission is within the tribe's discretion.

FEE ASSESSMENTS

The fee-levying provision in S. 2920, section 22, authorizes the Commission to establish a schedule of fees to be collected from Indian tribes operating class II or class III gaming. This section incorporates two concepts: (1) how fees are assessed; and (2) the segregation of those fees in Commission accounts.

According to the NIGC, the growth of the Indian tribal gaming industry is such that fees paid will be reduced over time, and will continue to be reduced if growth continues at the current rate. Currently, the NIGC is limited by the terms of IGRA in the amount of fees it can collect from tribes to $8 million annually.

S. 2920 requires that the fees assessed by the NIGC are related to the statutory authorities and duties delegated to the NIGC under the Act. This limitation is designed to address tribal concerns that funds paid to the NIGC be used only for purposes of IGRA, and not for other Federal purposes.

This provision requires the budget developed by the NIGC and the corresponding fee assessment be related to the purposes of IGRA. Additionally, it is not the intent of this provision to limit the collection of fees to specific "services" provided by the NIGC to each individual tribe, but is meant to extend to all compliance, regulation, training, and other indirect costs (such as administrative costs and other costs associated with NIGC operations, including such items as utilities and rent) associated with the statutory duties and requirements of carrying out IGRA for all tribes. To limit the fees collected for use only in the provision of direct "services", and excluding the availability of those funds for duties, such as enforcement, regulation and other related needs is contrary to the intent of the Committee.

In establishing this fee structure, it is the Committee's intent that the Commission continue to consult with tribes consistent with the NIGC's current consultation policy, as well as Executive Order 13084, dated May 14, 1998.

The Fee Reduction section provides the NIGC with the discretion to review the fee structure for any given year and determine whether or not to provide for fee reduction(s). This decision is completely within the discretion of the NIGC.

The Fee Reduction section, section 22(b)(3), states that the NIGC, in determining the amount of fees to be assessed for either class I or class III gaming, may provide for a reduction in the amount of fees that would otherwise be collected based on a number of factors. The factors are quite broad, and are meant to provide the NIGC with the maximum discretion to make a determination (1) whether or not to provide fee reduction(s); and (2) whether the fee reduction(s), when and if appropriate, should be applied to all tribes, or specific tribes (based on objective criteria developed by the NIGC).

This section is a compromise between the requirement that the NIGC establish a self-regulatory system for class III tribes and the current flat fee system. Additionally, the Committee is cognizant of the myriad situations which exist for each individual tribal gaming

operation and is mindful that fee reductions may be necessary or desirable for any number of reasons other than self-regulation and this section is designed to provide discretion to the NIGC in those instances as well.

The Committee is also aware of the overarching policy implications of any system which would award self-regulation. It is quite obvious that tribes who will be awarded for extensive efforts toward self-regulation will generally be tribes who have larger and more profitable operations and which pay the largest fees. These operations are more likely to be able to pay for the expensive infrastructure required for comprehensive self-regulation. According to NIGC reports, only twenty tribes pay fees in excess of $88,650.00 (the calculated fee on gross revenues of $100 million during one year). It is these tribes that provide the majority of fees for the NIGC's operation and who are most likely to benefit from a reduction in fees provided for by self-regulation.

Finally, the NIGC has expressed concerns with what it terms fee rates which are determined on a "tribe-by-tribe basis"—and suggests that such determination will lead to an unworkable system.[17] Again, if the NIGC decides to provide a fee reduction pursuant to the authorization provided in section 22, the Committee expects that the NIGC would promulgate regulations to provide for a fair and uniform process for individual fee reductions. The Committee would also expect that
the NIGC would establish uniform criteria which each tribe requesting such a fee reduction would be required to meet. The Committee is confident in the ability of the NIGC to establish an equitable and workable system for providing fee reductions, should it determine to provide such reductions.

SEGREGATED ACCOUNTS

Section 22 also requires segregated accounts to be maintained by the NIGC for the holding of fees collected from tribes. Similar language is contained in new section 24, regarding the use of NIGC civil fine assessments. Originally, section 22 provided that NIGC funds would be placed in trust accounts maintained by the Secretary of the Treasury, out of which funds would be released to the NIGC on a quarterly basis.

The proposal was based on language incorporated from previous bills which addressed tribal concerns about the use of fees paid by tribes to the Federal government. In short, tribes were apprehensive about the placement of fees paid into the general fund of the Treasury being used for general Federal purposes not related to the operation of the NIGC. The trust fund language was developed to address this problem.

However, the mechanisms for depositing and withdrawing funds from the trust fund are considered unwieldy and new language has been developed to require the NIGC to maintain accounts which are segregated from other federal accounts and which hold the fees collected from the tribes and the civil fines collected from enforcement actions brought by the NIGC.

[17]Letter dated September 14, 2000, from Montie Deer to Senator Ben Nighthorse Campbell, page 2.

This language is not specific with regard to the number of accounts the NIGC must maintain, or whether the NIGC must maintain an account for each tribe from which it collects fees or civil fines. These decisions are within the discretion of the NIGC.

Finally, section 22 also provides the NIGC with the limited ability to invest the fees it collects and which are not immediately needed for expenditure. The section also provides the NIGC with the ability to dispose of investments it makes.

This section is intended to increase the earning power of the fees collected and spent by the NIGC on annual basis. The NIGC reports that it collects fees and spends them in the same year. The provision authorizing investment is meant to allow the NIGC to conservatively invest fees received for short periods of time, thus optimizing the earning potential of the funds.

These sections combine to guarantee that funds collected by the NIGC will not be used for purposes other than those in IGRA, and maximize the potential of the funds held in accounts which are not immediately needed for use by the NIGC.

USE OF NATIONAL INDIAN GAMING COMMISSION CIVIL FINES

Section 24 outlines a new procedure for the use of civil forfeitures collected by the NIGC. The NIGC approached the Committee regarding the use of civil forfeitures and noted that those funds are deposited into Federal accounts and used for whatever purposes the Federal government deems necessary. The NIGC noted that these funds may be better utilized by tribes, since the funds originate from Indian gaming. The Committee agrees.

Section 24 establishes a grant program which would fund applicants for projects that would provide technical assistance to tribes to strengthen the regulatory integrity of gaming, assist tribes in determining the feasibility of non-gaming economic development activities, provide assistance to tribes for the development and implementation of programs to treat problem gamblers, and other forms of assistance not inconsistent with IGRA.

To carry out this section, the NIGC is authorized to establish regulations as necessary.

LEGISLATIVE HISTORY

S. 2920 was introduced on July 25, 2000 by Chairman Campbell and referred to the Committee on Indian Affairs. On September 27, 2000, the Committee considered S. 2920 and ordered it to be favorably reported to the full Senate.

SECTION-BY-SECTION ANALYSIS

Section 1. The short title of this Act is the "Indian Gaming Regulatory Improvement Act of 2000".

Section 2. Amendments to the Indian Gaming Regulatory Act.

Subsection (1) provides that the definition of class II gaming contained in IGRA is clarified to state that the Johnson Act, 15 U.S.C. 1171–1177, does not apply to technologic aids used in the operation of class II games.

Subsection (2) provides that the National Indian Gaming Commission shall provide detailed strategic and performance plans in its biennial reports to Congress. The strategic plan shall include a

comprehensive mission statement, general goals and objectives, a description of goals are to be achieved, a performance plan, identification of external factors affecting the Commission, a description of program evaluations to be used by the Commission. The strategic plan shall cover at least a five year period, and shall be revised at least every four years. In developing the performance plan, the Commission should make a plan consistent with the requirements of the Government Performance and Results Act of 1993 ("GPRA") and must consult with Congress and other affected parties.

Subsection (3) provides that tribal gaming ordinances shall provide for an adequate system that ensures that background investigations are conducted on tribal gaming commissioners, tribal gaming commission employees, primary management officials and key employees.

Section (4) adds three new sections to the Indian Gaming Regulatory Act.

Section 22. Establishment of Fees.

Subsection (a) provides that the Commission establish a schedule of fees to be paid annually by each gaming operation that conducts class II or class III gaming activities. It also establishes that the fees may not be assessed at more than 2.5% of the first $1,500,000 of gross revenues, or 5% of gross revenues in excess of $1,500,000. The Commission may not collect more than $8,000,000 in total fees.

Subsection (b) provides that by a vote of not less than two members, the Commission shall adopt a schedule of fees, to be payable to the Commission quarterly. The aggregate amount of fees assessed shall be reasonably related to the cost of responsibilities and services the Commission is required to carry out pursuant to IGRA. The Commission shall take these responsibilities and services into consideration when assessing and collecting fees under IGRA.

The Commission may, when assessing fees, determine in its discretion whether to provide a fee reduction for one or all tribes. This fee reduction is not mandated, and when determining whether to provide such a reduction, the Commission should consider the following factors: 1) the extent of regulation of the gaming activity by the tribe or the state in which the tribe is located; 2) the extent of self-regulating activities, as defined by IGRA, conducted by the tribe; 3) other factors, including the unique nature of tribal gaming, the broad variations in tribal gaming activity, the inherent sovereign rights of tribes, the findings and purposes of IGRA, the amount of interest or income derived from the investment of the previous year's fees, and any other matter consistent with the policy of IGRA, as stated in section 3 of that Act. In determining its annual schedule of fees, the Commission shall consult with tribes.

Subsection (c) provides that all fees and forfeitures collected by the Commission shall be maintained in segregated accounts and used only for purposes set out in IGRA. The Commission may invest funds collected, if the Commission deems that they are not needed to meet immediate expenses, but may only invest such funds in interest bearing obligations of the United States or in obligations which guarantee both principal and interest by the United States. Any obligation acquired by the Commission may be sold by the Commission, except special obligations, which may be redeemed at par plus accrued interest. All proceeds from the sale or

redemption of any obligation held in the Indian gaming regulation accounts shall be credited and form a part of those accounts.

Section 23. Minimum Standards.

Subsection (a) provides that Class I gaming shall remain within the exclusive jurisdiction of the Indian tribes.

Subsection (b) provides that Indian tribes shall retain primary jurisdiction over the regulation of class II gaming, as long as they meet minimum standards established under section 11 of IGRA regarding the monitoring and regulation of class II gaming, the conducting of background checks and the establishment and regulation of internal control systems.

Subsection (c) provides that where an Indian tribe and a state have entered into a compact for class III gaming, an Indian tribe shall retain primary jurisdiction over regulation of class III gaming as long as the tribe meets minimum standards established by the Commission, pursuant to section 11, to monitor and regulate class III gaming, conduct background investigations and establish and regulate internal control systems.

Subsection (d) provides the Commission may promulgate regulations as are needed to augment current regulations regarding minimum internal control systems which are necessary to carry out this section.

Section 24. Use of Civil forfeitures.

Subsection (a) provides that all funds collected by the Commission shall be deposited in an Indian Gaming Regulation Account.

Subsection (b) authorizes the Commission to provide grants and technical assistance to Indian tribes from any funds secured by the Commission pursuant to section 14, which shall be used for the following purposes; 1) to provide training and technical assistance to tribes to strengthen the regulatory integrity of Indian gaming; 2) to provide assistance to tribes to assess the feasibility of non-gaming economic development activities on Indian lands; 3) to provide assistance to tribes to develop and implement programs and treatment for individuals who are problem gamblers; 4) other purposes not inconsistent with the Indian Gaming Regulatory Act.

Subsection (c) provides that in carrying out this section, the Commission shall consult with tribes.

Subsection (d) provides that the Commission may promulgate regulations as necessary to carry out this section.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On September 13, 2000, the Committee on Indian Affairs, in an open business session, considered S. 2920. The bill, with amendment in the nature of a substitute, was ordered favorably reported with a recommendation that the bill do pass.

COST AND BUDGETARY CONSIDERATIONS

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 6, 2000.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2920, the Indian Gaming Regulatory Improvement Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts for this estimate are John R. Righter (for federal costs), who can be reached at 226–2860, and Marjorie Miller (for the impact on state, local, and tribal governments), who can be reached at 225–3220.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 2920—Indian Gaming Regulatory Improvement Act of 2000

S. 2920 would provide new direct spending authority to the National Indian Gaming Commission (NIGC), which would supplement its appropriations. The bill would authorize the commission to invest the unspent portions of the fees it collects each year from Indian gaming operations in interest-bearing obligations of the United States or in obligations guaranteed by the United States. The commission could spend interest earned on such amounts without further appropriation action. S. 2920 also would require that the NIGC submit a strategic planning report to the Congress every two years, require background checks for tribal gaming commissioners and employees, change the NIGC's fee schedule from a flat-rate to a cost-based system, and allow the NIGC to spend the civil penalties it collects from Indian gaming operations on grants and technical assistance to tribes without further appropriation action.

Impact on the Federal budget

CBO estimates that enacting this bill would increase direct spending, on average, by about $2 million each year. Because the bill would affect direct spending, pay-as-you-go procedures would apply. The estimated costs include annual spending of about $2 million from allowing the NIGC to spend the civil penalties it collects each year and less than $500,000 from allowing it to spend the interest earned on balances invested in Treasury obligations. (Our estimate of the amount of new spending from civil penalties is based on the average amount of such penalties collected by the NIGC in recent years.) CBO estimates that implementing the provisions to change NIGC's fee schedule from a flat-rate to a cost-based system and to prepare a biennial strategic and performance plan would increase its administrative costs by less than $500,000 each year.

Intergovernmental and private-sector impact

S.2920 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would require tribes to conduct background investigations of tribal gaming commissioners and employees of tribal gaming commissions. Information from the Indian Gaming Association suggests that most tribes would pay a nominal fee (less than $50) to the NIGC to collect information for those investigations. (The NIGC, along with the FBI, currently collects such information for use by gaming operations when they conduct background investigations.) CBO estimates that the total number of commissioners and employees requiring investigations would be small (fewer than 2,000) and that less than one staff-year per tribe would be required to complete the investigations. Based on this information, we estimate that the cost of complying with this mandate would fall well below the annual threshold established in that act ($55 million in 2000, adjusted annually for inflation). The bill contains no private-sector mandates as defined in UMRA.

Enactment of S. 2920 would have other impacts on Indian tribes that conduct gaming operations. The bill would require the NIGC to establish a new fee schedule for the tribes it regulates. The commission collects fees from the tribes under current law, but this provision could result in a reallocation of those fees among the tribes, though it would not change the total amount of fees collected. The bill also includes explicit authority for the commission to establish minimum internal control standards for tribes. Such standards have already been established by the commission under current law, but this provision would clarify its authority and could prevent legal challenges to the existing standards.

The CBO staff contacts for this estimate are John R. Righter (for federal costs) and Marjorie Miller (for the impact on state, local, and tribal governments). This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2920 will have minimal regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The following letter on the provisions of S. 2920 was received from the National Indian Gaming Commission.

NATIONAL INDIAN GAMING COMMISSION,
Washington, DC, September 14, 2000.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Senate Hart Building, Washington, DC.

DEAR SENATOR CAMPBELL: Your staff has indicated that you would like the Commission to review and comment on S. 2920, the "Indian Gaming Regulatory Improvement Act of 2000." I, along with Vice-Chair Elizabeth Homer and Commissioner Teresa Poust

appreciate the opportunity to provide the views of the Commission on this important bill. As introduced, the Commission has significant concerns and questions regarding the bill and opposes passage.

FEE FOR SERVICE

By way of background, the Commission's current proposed fee assessment for the year 2000 is .09 percent of $^{9}/_{100th}$ of one percent on all gaming revenue over $1.5 million which is exempt—about 60 times less than 5 percent authorized by IGRA. By way of example, a tribe that grosses $10 million a year will pay $7,650 in fees to the Commission. In 1999, 120 tribes made less than $10 million. By contrast, a tribe that grosses $100 million will pay $88,650. Only 20 tribes made that amount in 1999.

This section is unclear as to whether it is intended to supplement or supplant the current fee structure which is not deleted under S. 2920 and thus the bill could be interpreted to require the National Indian Gaming Commission ("Commission") to collect fees twice under two different fee structures.

Furthermore, this section appears to be unnecessary since the Commission currently establishes an aggregate fee rate that is "reasonably related" to the costs of services, enforcement and compliance efforts and other statutorily required activities. The Commission does not and would not, collect or spend fees that are not reasonably related to the cost of carrying out its statutorily required duties under the Indian Gaming Regulatory Act (IGRA).

Under the "Factors for Consideration" section, the Commission strongly recommends that enforcement and compliance efforts be included among the factors. While enforcement work may be not properly characterized as a service, the Commission expends considerable funds to carry out this statutorily required duty. The Commission's policy is to obtain voluntary compliance with the law but often it is required to enforce the law, which requires a significant amount of funding.

The Commission is not certain as to the intent of this section and believes that it should be made clear that fee rates are not to be determined on a tribe-by-tribe basis—rather the Commission is to determine an aggregate fee rate as it does currently. Individual calculations (and reductions based on services) of fee rates would require the Commission to collect fees at a much higher rate and that the burden of those higher fees will fall upon the less wealthy tribes. In addition, a tribe-by-tribe determination substantively deviates from a fee assessment based on business volume to one that will require an examination of the gaming operation of each tribe before a fee can be assessed for that tribe. This will inevitably lead to challenges of arbitrary action if one tribe perceives that another has received a more favorable rate. The system becomes unworkable.

While the Commission has committed itself to keeping the fee assessment rate low, the $8 million cap on fee collections contained in IGRA provides an additional legal constraint to an increase in fee assessment rates. So long as we continue to assess fees evenly on all gaming operations and the industry continues to grow, it is unlikely that we would ever need to raise our fees to a rate higher than $^{12}/_{100th}$ of a percent. In fact, given the growth in the industry,

it is possible that we may lower the percentage rate of collection from the .09% rate at which we are currently collecting.

CONSULATION

The consultation requirement in establishing fees is also troublesome. The Commission currently carries out its business in accordance with President Clinton's Executive Order on Coordination and Consultation. The consultation requirement contained in S.2920 does not indicate whether something more is required. Furthermore, the provision contains no guidance on what issues are to be the subject of the consultation. For example, will the Commission be required to come up with alternative schedules, and then put it to a vote among the regulated tribes?

TRUST FUND

In the Commission's testimony on S.399, in which the trust fund concept was introduced, we explained that we are able to assess fees based on current information—assessing, collecting and using fees in the same fiscal year. With the Trust Fund, presumably the Commission will have to assess and collect fees well in advance of when they are needed so that we can request that they be appropriated for our use during the subsequent fiscal year. This will result in a sizable increase in the amount of gaming industry funds being held by the federal government. We have no objection to the fact that the earnings on those funds would go to the Commission rather than the Treasury. However, the same result could be obtained by appropriating funds equivalent to the Treasury's earnings for use by the Commission. If this concept is one in which the Committee is committed to pursuing, the NIGC would welcome the opportunity to work with your staff on this issue.

LICENSING OF TRIBAL GAMING COMMISSIONERS AND EMPLOYEES

The Commission supports the policies of those tribes that have established independent regulatory agencies that require regulators to undergo a background check. Regulators have important responsibilities and must deal with confidential and sensitive material in carrying out their duties. The application of appropriate suitability standards confirmed through a thorough background check is the best step toward ensuring a sound regulatory system.

We would note, however, that there is no requirement that tribal governments form a tribal gaming commission. An unintended consequence of this provision would be for tribes to abolish tribal gaming commissions to avoid this requirement. Also, there are tribes that designate their council as a gaming commission and this provision could result in a situation where the need for a completed background investigation could impact tribal elections. Furthermore, unless those employees are functioning as key employees or primary management officials, FBI policy prohibits the processing of their fingerprint cards and the Commission does not initiate a background check.

Generally, background investigations are conducted to determine whether the individuals or entities meet established standards. Here, standards have not been included. Furthermore, it is not

clear whether the NIGC or the Secretary should set the standards for tribal government officials and employees.

MINIMUM STANDARDS

This section is unclear as to what is meant by "federal standards." This section can only add confusion since it is not clear how it impacts the rest of IGRA.

NEGOTIATED RULEMAKING FOR GAME CLASSIFICATION

It is not clear how a negotiated rulemaking would be of benefit in this area and the section overrides the requirement that the head of an agency find that the negotiated rulemaking would be "in the public interest" after applying the factors specified. Also, the amendment has a technical defect, as it appears to engage the Secretary of the Interior in the process when the prerogatives on game classification are with the NIGC.

Under IGRA, the Commission has the responsibility of interpreting the Act's definitions of class II and class III gaming. Tribes that have been unsuccessful in attempts to obtain Tribal-State compacts are limited to class II gaming. One way we have sought to provide certainty is to issue game classification decisions. As you may know, we have issued a proposed rule that, if made final, will result in procedures whereby all games and gaming machines must be reviewed by the NIGC before they may be lawfully played as class II gaming. The procedures will allow for adjudication and appeal, which should benefit the regulated community.

As is the case with all major NIGC rulemaking, there has been extensive public involvement in the development of these game classification regulations, including a lengthy comment period and a public hearing. Because the rule is, ultimately, a procedural device that must be implemented with the Commission's existing limited resources, and because the regulated community and other interested parties have had ample opportunity to provide input, we do not consider this an appropriate subject for negotiated rulemaking.

We understand there is some legal controversy over the scope of the definition of class II gaming. As indicated in my letter to you dated July 21, 2000 the Commission is pleased to assist in any way with this issue. We encourage the Committee to seek the assistance of all interested parties such as the tribes and the Department of Justice in addressing this issue.

APPLICATION OF GPRA

The provisions of S. 2920 would make the Commission subject to the Government Performance and Results Act of 1993 ("GPRA"). In a letter to Congress dated July 20, 1999, the General Accounting Office suggested that the Interior Department should include a section on the Commission in its strategic and performance plan. It reasoned that since the Commission was established as an independent agency within the Department of the Interior, and given the importance of its mission, the Department's plan should include the Commission notwithstanding its small size and limited spending authority. Size and spending authority, incidentally, are relevant to the applicability of GPRA, which provides for an exemp-

tion for those Executive agencies with spending authority under $20,000,000, such as the Commission.

As drafted, the bill would mandate NIGC participation even though other small regulatory agencies with limited resources may be excluded. If enacted, the bill should also reference Section 1117. The intent of the exclusion under 31 U.S.C. § 1117 is obvious. The resources of a small agency that would be directed to development of the performance plans outweigh the benefit to be achieved. Also, since the NIGC is essentially funded from tribal gaming revenues, this amounts to the use of those tribal contributions to fulfill a seemingly bureaucratic requirement.

As a general matter, the Commission supports the goals and purposes of the GPRA and already operates within the principles of performance-based management. While the Commission does not object to inclusion of its goals in the Department of Interior's GPRA plan, it is worth noting that IGRA contains an alternative reporting requirement and specifies a biennial report as the mechanism through which the Commission is to report its activities and accomplishments to the Congress. Since this is the reporting mechanism expressly mandated by the Congress in IGRA, the Commission prefers its continued use. Moreover, it is a much more manageable mechanism given the Commission's size and resource limitations.

The Department of the Treasury has advised us that it supports our recommendation that appropriations be made to the Commission in lieu of the proposed investment authority for the Trust Fund. Moreover, the Department recommends that any amount so provided should be based on an analysis of how much money is needed to fund the proposed program purposes, rather than be based solely on the happenstance of interest rate changes occurring during the period of investment.

The Department of the Treasury questions what appropriations would be deposited to the Trust Fund under subsection 22(c)(1)(b). The Department recommends excluding appropriations from being invested under that section because an appropriation is simply a limit on the amount of money that a government agency or account may spend for its authorized purpose and is not a sum of cash that is available to be invested.

Additionally, the Department of the Treasury is concerned that 22(c)(2) places the responsibility for determining estimated revenues from the fees on the Secretary of the Treasury. As these fees and the payment schedule are determined and assessed by the Commission, and not Treasury, it would be more appropriate for the Commission to determine when the funding would be available.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the presentation of this report.

I trust these comments are responsive to your staff's request for comments. Should you have questions or require further information, please do not hesitate to contact me or Kyle Nayback of my staff at (202) 632–7003.

Kind regards.

Sincerely yours,

MONTIE R. DEER,
Chairman.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that enactment of S. 2920 will result in the following changes in the following statutes as noted below, with existing language which is to be deleted in brackets and the new language which is to be added in italic:

(1) Section 2703 of Title 25, United States Code:

(7)(A) The term "class II gaming" means—

* * * * * * *

(G) Notwithstanding any other provision of law, sections 1171 through 1177 of Title 15 shall not apply to any gaming described in subparagraph (A)(i) as "class II gaming", where technologic aids are used in connection with any such gaming.

(2) Section 2706 of Title 25, United States Code:

SEC. 2706. POWERS OF COMMISSION.

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

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

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

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

(4) the strategic plan for Commission activities.

(A) This plan shall include—

(i) a comprehensive mission statement covering the major functions and operations of the Commission;

(ii) general goals and objectives, including outcome-related goals and objectives, for the major functions and operations of the Commission;

(iii) a description of how the goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives;

(iv) a performance plan, which shall be related to the general goals and objectives of the strategic plan;

(v) an identification of those key factors external to the Commission and beyond its control that could significantly affect the achievement of the general goals and objectives; and

(vi) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations.

(B) The strategic plan shall cover a period of not less than five years forward from the fiscal year in which it is submitted. The strategic plan shall be updated and revised at least every four years.

(C) The performance plan shall be consistent with the Commission's strategic plan. In developing the performance plan, the Commission should look to the requirements of section 1115 of Title 31, United States Code (the Government Performance and Results Act (Public Law 103–62)).

(D) When developing a strategic plan, the Commission shall consult with the Congress, and shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan.

(5) any other matter considered appropriate by the Commission.

(3) Section 2710(b)(2)(F)(i), United States Code:

SEC. 2710. TRIBAL GAMING ORDINANCES.

* * * * * * *

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts

* * * * * * *

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

* * * * * * *

(F) there is an adequate system which—

(i) ensures that background investigations are conducted on the [primary management officials and key employees of the gaming enterprise and the oversight of such officials] *tribal gaming commissioners, tribal gaming commission employees, and primary management officials and key employees of the gaming enterprise and that oversight of primary management officials and key employees* and their management is conducted on an ongoing basis; and

(4) Section 2721 of Title 25, United States Code:

SECTION 2721. FEE ASSESSMENTS.

(a) ESTABLISHMENT OF SCHEDULE OF FEES.—

(1) IN GENERAL.—Except as provided in this section, the Commission shall establish a schedule of fees to be paid annually to the Commission by each gaming operation that conducts a class II or class III gaming activity that is regulated by this Act.

(2) RATES.—The rate of fees under the schedule established under paragraph (1) that are imposed on the gross revenues from each activity described in such paragraph shall be as follows:

(A) A fee of not more than 2.5 percent shall be imposed on the first $1,500,000 of such gross revenues.

(B) A fee of not more than 5 percent shall be imposed on amounts in excess of the first $1,500,000 of such gross revenues.

(3) TOTAL AMOUNT.—The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed $8,000,000.

(b) COMMISSION AUTHORIZATION.—

(1) IN GENERAL.—By a vote of not less than 2 members of the Commission the Commission shall adopt the schedule of fees provided for under this section. Such fees shall be payable to the Commission on a quarterly basis.

(2) FEES ASSESSED FOR SERVICES.—The aggregate amount of fees assessed under this section shall be reasonably related to the costs of services provided by the Commission to Indian tribes under this Act (including the cost of issuing regulations necessary to carry out this Act). In assessing and collecting fees under this section, the Commission shall take into account the duties of, and services provided by, the Commission under this Act.

(3) FACTORS FOR CONSIDERATION.—In making a determination of the amount of fees to be assessed for any class II or class III gaming activity under the schedule of fees under this section, the Commission may provide for a reduction in the amount of fees that otherwise would be collected on the basis of the following factors:

(A) The extent of the regulation of the gaming activity involved by a State or Indian tribe (or both).

(B) The extent of self-regulating activities, as defined by this Act, conducted by the Indian tribe.

(C) Other factors determined by the Commission, including—

(i) the unique nature of tribal gaming as compared to commercial gaming, other governmental gaming, and charitable gaming;

(ii) the broad variations in the nature, scale, and size of tribal gaming activity;

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

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

(v) the amount of interest or investment income derived from the Indian gaming regulation account(s); and

(vi) any other matter that is consistent with the purposes under section 3.

(4) Consultation.—In establishing a schedule of fees under this section, the Commission shall consult with Indian tribes.

(c) INDIAN GAMING REGULATION ACCOUNTS.—All fees and civil forfeitures collected by the Commission pursuant to this Act shall be kept in separate, segregated accounts, and shall only be expended for purposes set forth in this Act.

(1) IN GENERAL.—It shall be the duty of the Commission to invest such portion of the Indian gaming regulation accounts as are not, in the judgment of the Commission, required to meet immediate expenses. The Commission shall invest the amounts deposited under this Act only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(2) SALE OF OBLIGATIONS.—Any obligation acquired by the Indian gaming regulatory accounts, except special obligations issued exclusively to the Indian gaming regulatory accounts, may be sold by the Commission at the market price, and such special obligations may be redeemed at par plus accrued interest.

(3) CREDITS TO THE INDIAN GAMING REGULATORY ACCOUNTS.—The interest on, and proceeds from, the sale or re-

demption of any obligations held in the Indian gaming regulatory accounts shall be credited to and form a part of the Indian Gaming regulatory accounts.

SECTION. 2722. MINIMUM STANDARDS.

(a) CLASS I GAMING.—Notwithstanding any other provision of law, class I gaming on Indian lands shall be within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

(b) CLASS II GAMING.—Effective on the date of enactment of this section, an Indian tribe shall retain the rights of that Indian tribe, with respect to class II gaming and in a manner that meets or exceeds the minimum Federal standards established under section 11, to—

(1) monitor and regulate that gaming;

(2) conduct background investigations; and

(3) establish and regulate internal control systems.

(c) CLASS III GAMING UNDER A COMPACT.—With respect to class III gaming that is conducted under a compact entered into under this Act, an Indian tribe or a State (or both), as provided for in such a compact or a related tribal ordinance or resolution shall, in a manner that meets or exceeds the minimum Federal standards established by the Commission under section 11—

(1) monitor and regulate that gaming;

(2) conduct background investigations; and

(3) establish and regulate internal control systems.

(d) RULEMAKING.—The Commission may promulgate such additional regulations as may be necessary to carry out this section.

SECTION 2723. USE OF NATIONAL INDIAN GAMING COMMISSION CIVIL FINES.

(a) IN GENERAL.—All funds secured by the Commission pursuant to section 14 shall be deposited in the Indian gaming regulation accounts, as provided in section 22(c).

(b) USE OF FUNDS.—The Secretary may provide grants and technical assistance to Indian tribes from any funds secured by the Commission pursuant to section 14, which funds shall be made available only for the following purposes:

(1) To provide technical training and other assistance to Indian tribes to strengthen the regulatory integrity of Indian gaming.

(2) To provide assistance to Indian tribes to assess the feasibility of non-gaming economic development activities on Indian lands.

(3) To provide assistance to Indian tribes to devise and implement programs and treatment services for individuals diagnosed as problem gamblers.

(4) To provide other forms of assistance to Indian tribes not inconsistent with the Indian Gaming Regulatory Act.

(b) CONSULTATION.—In carrying out this section, the Secretary shall consult with Indian tribes and any other appropriate tribal or Federal officials.

(c) REGULATIONS.—The Secretary may promulgate such regulations as may be necessary to carry out this section.

(5) Section 2721 of Title 25, United States Code.

SECTION 272[1]*5*. SEVERABILITY.

In the event that any section or provision of this chapter, or amendment made by this chapter, is held invalid, it is the intent of Congress that the remaining sections or provisions of this chapter, and amendments made by this chapter, shall continue in full force and effect.

○