

By Mr. McCAIN:

S. 2078: 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; to the Committee on Indian Affairs.

Mr. McCAIN . Mr. President, I am introducing today a bill to amend regulatory provisions of the Indian Gaming Regulatory Act (IGRA). The bill clarifies that the National Indian Gaming Commission (NIGC) has authority to promulgate and enforce Minimum Internal Control Standards as to Class III gaming; grants the NIGC Chairman authority to approve contracts, and expands contract approval to include contracts not only for management contracts but also for gaming operation development contracts and consulting services, as well as for any contract the fees for which are to be paid as a percentage of gaming revenue; tightens restrictions on off-reservation gaming; gives the NIGC authority to issue complaints against any individual or entity, not just against tribes or management contractors, that violate IGRA or federal regulations; and requires all tribes to pay fees to the NIGC.

When IGRA was enacted in 1988, Indian gaming was a \$200 million dollar industry. Today, the industry earns \$19 billion a year and is spread throughout the nation. The amendments reflect the need to re-evaluate what constitutes appropriate regulation of this vastly changed enterprise. I have always been and continue to be a supporter of the rights of Indian tribes to conduct gaming, a right guaranteed by the Supreme Court in the *California v. Cabazon* decision and codified in IGRA, but I also continue to believe that effective regulation of these enterprises are critical to tribes' continued success.

Ensuring that the NIGC is able to continue its oversight of Class III gaming is necessary to this effective regulation. On August 24, 2005, the U.S. District Court for the District of Columbia issued its decision in *Colorado River Indian Tribes v. NIGC* ("CRIT"), ruling that the National Indian Gaming Commission (NIGC) did not have jurisdiction to issue Class III Minimum Internal Controls Standards (MICS). These standards regulate day-to-day operations of gaming operations. Specifically, they provide rules that designate how cash is handled by the gaming operation, prescribe surveillance over game play, and provide auditing procedures.

Until the Court's decision, the NIGC had been regulating Class III gaming through MICS since 1999. The regulations applied both to Class II gaming—that is, bingo and games similar to bingo—and to Class III gaming—including slot machines and table games—which represents the largest source of revenue in Indian gaming. Following to CRIT decision this summer, however, some tribes have challenged NIGC's authority to issue or enforce the MICS. Although without NIGC authority, oversight of Class III gaming may be provided by tribal-State compacts, States' roles in enforcement varies widely and many have left such regulation to NIGC. In a Nationwide industry, uniform federal minimum internal control standards are appropriate. This amendment makes clear that NIGC continues to have the authority it has exercised until now to issue and enforce MICS, including the ability to inspect facilities and audit premises in order to assure compliance.

Protecting the integrity of Indian gaming also requires that the NIGC's authority to review

manager contracts be expanded. IGRA originally identified only one kind of contract that was subject to NIGC approval: management contracts. History has shown, however, that in order to avoid NIGC review, some contracts have been fashioned as "consulting" contracts or "development" contracts, i.e., something other than "management" contracts that require NIGC review. In these cases, tribes run the risk that contractors will enforce unfair contract terms, and tribes and patrons run the risk that the tribe will contract with unsuitable partners. This amendment extends NIGC approval to all significant gaming operation related contracts so that the Indian gaming industry remains, as far as possible, free from unscrupulous and unsuitable contractors.

Related to protecting the integrity of Indian gaming is the issue of off-reservation gaming. When enacted in 1988, IGRA generally banned Indian gaming that was not located on reservations, however, in the interest of fairness, several exceptions to this ban were provided. Exploitation of these exceptions, not anticipated at the time IGRA was enacted, has led to a burgeoning practice by unscrupulous developers seeking to profit off Indian tribes desperate for economic development. Predictably, these ill-advised deals have invited a backlash against Indian gaming generally. These amendments to IGRA will put an end to the most troublesome of these proposals by eliminating the authority of the Secretary to take land into trust off-reservation pursuant to the so-called "two-part determination" provisions of Section 20.

In addressing concerns about other exceptions in Section 20 for land claims, initial reservations and restored reservations, these amendments strike a balance by curbing potential abuses of these exceptions, while not unfairly penalizing those who lost their lands through no fault of their own, or even had them taken illegally—often by force. Thus, newly recognized and restored tribes may still obtain lands, and conduct gaming on them, but such lands must be in the area where the particular tribe has its most significant ties. This has been the case for most newly recognized and restored tribes, and surely is not unfair to impose on all similarly situated tribes. For tribes that successfully reclaim lands taken illegally and want to conduct gaming on them, these amendments will require congressional confirmation and the lands must be within the state where the tribe has or had its last reservation. This provision does not impair any tribe's legal rights to reclaim lands, but will discourage attempts by creative non-Indian developers to turn a tribe's legal rights into a form of extortion.

Ensuring that penalties are appropriate and can be brought against the responsible party is another means of protecting the integrity of Indian gaming. To this end the bill clarifies that civil penalties can be imposed on any violator of IGRA, not just Indian tribes or management contractors.

Finally, this bill will ensure fairness in the regulation of Indian gaming by assuring that all tribes bear their appropriate share of the cost of regulation so that the industry, as a whole, continues to prosper. I ask unanimous consent that the text of the bill be printed in the Record.