

Sen. Vitter Proposed S. 2676 "Common Sense Indian Gambling Reform Act of
2008" to Amend IGRA
Redline Showing Proposed Changes to Existing Law

§ 2705. Powers of Chairman

(a) The Chairman, on behalf of the Commission, shall have power, subject to an appeal to the Commission, to—

- (1) issue orders of temporary closure of gaming activities as provided in section 2713 (b) of this title;
- (2) levy and collect civil fines as provided in section 2713 (a) of this title;
- (3) approve tribal ordinances or resolutions regulating class II gaming and class III gaming as provided in section 2710 of this title; ~~and~~
- (4) approve management contracts for class II gaming and class III gaming as provided in sections 2710 (d)(9) and 2711 of this title; ~~and~~
- (5) approve or disapprove the involvement in a gaming activity subject to regulation by the Commission of any 1 of the 10 persons or entities that have the highest financial interest in the gaming activity, as identified by the Commission under section 7(b)(3)(A).

(b) The Chairman shall have such other powers as may be delegated by the Commission.

§ 2706. Powers of Commission

(a) Budget approval; civil fines; fees; subpoenas; permanent orders

The Commission shall have the power, not subject to delegation—

- (1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 2717 of this title;
- (2) to adopt regulations for the assessment and collection of civil fines as provided in section 2713 (a) of this title;
- (3) by an affirmative vote of not less than 2 members, to establish the rate of fees as provided in section 2717 of this title;
- (4) by an affirmative vote of not less than 2 members, to authorize the Chairman to issue subpoenas as provided in section 2715 of this title; and
- (5) by an affirmative vote of not less than 2 members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 2713 (b)(2) of this title.

(b) Monitoring; inspection of premises; investigations; access to records; mail; contracts; hearings; oaths; regulations

The Commission shall have the authority—

- (1) shall to monitor class II gaming conducted on Indian lands on a continuing basis;
- (2) shall to inspect and examine all premises located on Indian lands on which class II gaming or class III gaming is conducted to ensure compliance with this Act (including regulations promulgated pursuant to paragraph (10));
- ~~(3) shall conduct or cause to be conducted such background investigations as may be necessary;~~
- (3) (A) to identify the 10 persons or entities that have the highest financial interest (including outstanding loans, debt-based financing, and other financial interests) in each gaming activity subject to regulation by the Commission; and
(B) to conduct a background investigation of-
 - (i) each of the persons and entities identified under subparagraph (A); and
 - (ii) any other person or entity, as the Commission determines to be appropriate;
- (4) may to demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of class II gaming and class III gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this chapter;
- (5) may to use the United States mail in the same manner and under the same conditions as any department or agency of the United States;
- (6) may to procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;
- (7) may to enter into contracts with Federal, State, tribal and private entities for activities necessary to the discharge of the duties of the Commission and, to the extent feasible, contract the enforcement of the Commission's regulations with the Indian tribes;
- (8) may to hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;
- (9) may to administer oaths or affirmations to witnesses appearing before the Commission; and

(10) ~~shall~~to promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this chapter, including regulations to address minimum internal control standards for class II gaming and class III gaming.

§ 2710. Tribal gaming ordinances

(a) Jurisdiction over class I and class II gaming activity

- (1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this chapter.
- (2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter.

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

(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), ~~and~~;

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted; and

(C) the class II gaming is conducted--

(i) on lands that were Indian lands before the date of enactment of this subparagraph; or

(ii) on land taken into trust for the benefit of the Indian tribe after the date of enactment of this subparagraph, but only if the application of the Indian tribe requesting that the land be taken into trust for the benefit of the Indian tribe stated the intent of the Indian tribe to conduct class II gaming activities on the land.

(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—

(A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than—

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies;

(C) annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of \$25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and

(F) there is an adequate system which—

(i) ensures that—

~~(I) a background investigations are conducted on the investigation will be conducted by the Commission on--~~

(aa) each tribal gaming commissioner;

(bb) key tribal gaming employees, as determined by the Commission;

(cc) primary management officials; and

(dd) key employees of the gaming enterprise; and that

(II) oversight of such officials and their management is the individuals described in subclause (I) will be conducted on an ongoing basis; and

(ii) includes—

(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;

(II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

(III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if—

(A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);

(B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);

(C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

(D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

(4)

(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include

the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B)

(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 2712 of this title,

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 2717 (a)(1) of this title for regulation of such gaming.

(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on October 17, 1988.

(iii) Within sixty days of October 17, 1988, the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.

(c) Issuance of gaming license; certificate of self-regulation

(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II) of this section, the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which—

(A) has continuously conducted such activity for a period of not less than three years, including at least one year after October 17, 1988; and

(B) has otherwise complied with the provisions of this section may petition the Commission for a certificate of self-regulation.

- (4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has—
- (A) conducted its gaming activity in a manner which—
 - (i) has resulted in an effective and honest accounting of all revenues;
 - (ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and
 - (iii) has been generally free of evidence of criminal or dishonest activity;
 - (B) adopted and is implementing adequate systems for—
 - (i) accounting for all revenues from the activity;
 - (ii) investigation, licensing, and monitoring of all employees of the gaming activity; and
 - (iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and
 - (C) conducted the operation on a fiscally and economically sound basis.
- (5) During any year in which a tribe has a certificate for self-regulation—
- (A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 2706 (b) of this title;
 - (B) the tribe shall continue to submit an annual independent audit as required by subsection (b)(2)(C) of this section and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and
 - (C) the Commission may not assess a fee on such activity pursuant to section 2717 of this title in excess of one quarter of 1 per centum of the gross revenue.
- (6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

(d) Class III gaming activities; authorization; revocation; Tribal-State compact

- (1) Class III gaming activities shall be lawful on Indian lands only if such activities are—
- (A) authorized by an ordinance or resolution that—
 - (i) is adopted by the governing body of the Indian tribe having jurisdiction over ~~such~~the Indian lands~~;~~₂
 - (ii) meets the requirements of subsection (b) of this section~~;~~₂ and
 - (iii) is approved by the Chairman~~;~~₂
 - (B) located in a State that permits such gaming for any purpose by any person, organization, or entity~~;~~and₂
 - (C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect~~;~~and
 - (D) conducted--
 - (i) on lands that were Indian lands before the date of enactment of this subparagraph; or
 - (ii) on land taken into trust for the benefit of the Indian tribe after the date of enactment of this subparagraph, but only if the application of the Indian tribe requesting that the land be taken into trust for the benefit of the Indian tribe stated the intent of the Indian tribe to conduct class III gaming activities on the land.

(2)

(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b) of this section.

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

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

(ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in section 2711 (e)(1)(D) of this title.

Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

(C) Effective with the publication under subparagraph (B) of an ordinance or resolution adopted by the governing body of an Indian tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

(D)

(i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

(ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(iii) Notwithstanding any other provision of this subsection—

(I) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and **(II)** any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be affected by such revocation ordinance or resolution.

(3)

(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to—

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

(6) The provisions of section 1175 of title 15 shall not apply to any gaming conducted under a Tribal-State compact that—

(A) is entered into under paragraph (3) by a State in which gambling devices are legal, and

(B) is in effect.

(7)

(A) The United States district courts shall have jurisdiction over—

- (i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith,
- (ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and
- (iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B)

- (i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).
- (ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that—
 - (I) a Tribal-State compact has not been entered into under paragraph (3), and
 - (II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith,the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.
- (iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe ~~to~~ to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court—
 - (I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and
 - (II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.
- (iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this chapter and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures—

(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this chapter, and the relevant provisions of the laws of the State, and

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

(8)

(A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates—

(i) any provision of this chapter,

(ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or

(iii) the trust obligations of the United States to Indians.

(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this chapter.

(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman. The Chairman's review and approval of such contract shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 2711 of this title.

[\(10\) DEFINITION OF STATE.--In this subsection, the term 'State' means the Governor of the State and the legislative body of the State.](#)

(e) Approval of ordinances

For purposes of this section, by not later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been

approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this chapter.

§ 2717. Commission funding

(a)

(1) The Commission shall establish a schedule of fees to be paid to the Commission annually by each gaming operation that conducts a class II or class III gaming activity that is regulated by this chapter.

(2)

(A) The rate of the fees imposed under the schedule established under paragraph (1) shall be—

(i) no more than 2.5 percent of the first \$1,500,000, and

(ii) no more than 5 percent of amounts in excess of the first \$1,500,000, of the gross revenues from each activity regulated by this chapter.

(B) The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed ~~\$8,000,000~~ 16,000,000.

(3) The Commission, by a vote of not less than two of its members, shall annually adopt the rate of the fees authorized by this section which shall be payable to the Commission on a quarterly basis.

(4) Failure to pay the fees imposed under the schedule established under paragraph (1) shall, subject to the regulations of the Commission, be grounds for revocation of the approval of the Chairman of any license, ordinance, or resolution required under this chapter for the operation of gaming.

(5) To the extent that revenue derived from fees imposed under the schedule established under paragraph (1) are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming activity on a pro rata basis against such fees imposed for the succeeding year.

(6) For purposes of this section, gross revenues shall constitute the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures.

(b)

(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal year of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 2718 of this title, in an amount equal the amount of funds derived from assessments authorized by subsection (a) of this section for the fiscal year preceding the fiscal year for which the appropriation request is made.

(3) The request for appropriations pursuant to paragraph (2) shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

§ 2719. Gaming on lands acquired after October 17, 1988

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless—

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation ~~on~~ as of October 17, 1988, and— the land is located in the State of Oklahoma and--

(A) ~~such lands are located in Oklahoma and— (i) are~~ is within the boundaries of the ~~Indian tribe's~~ former reservation of the Indian tribe, as defined by the Secretary; ~~or~~

~~(ii) are~~ (B) is contiguous to other land held in trust or restricted status by the United States for the benefit of the Indian tribe in ~~Oklahoma; or (B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.~~ the State of Oklahoma.

(b) Exceptions --

~~(1) Subsection (a) of this section will not apply when—~~ (1) IN GENERAL.--

(A) EFFECT ON COMMUNITY.-- Subject to subparagraph (B) and paragraph (2), subsection (a) shall not apply to Indian lands for which the Secretary, after consultation with the Indian tribe and ~~appropriate State and local officials, including officials of other nearby Indian tribes~~ officials of all State, local, and tribal governments that have jurisdiction over land located within 60 miles of the Indian lands, determines that a gaming establishment on ~~newly acquired lands~~ that land--

(i) would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if;
and

(ii) taking into consideration the results of a study of the economic impact of the gaming establishment, would not have a negative economic impact, or any other negative effect, on any unit of government, business, community, or Indian tribe located within 60 miles of the land.

(B) CONCURRENCE OF AFFECTED STATE.-- For a determination of the Secretary under subparagraph (A) to become valid, the Governor and legislative body of the State in which ~~the~~ a gaming activity is proposed to be conducted ~~concur~~ shall concur in the ~~Secretary's determination; or~~ determination.

~~(B) lands are taken into trust as part of—~~

~~(i) a settlement of a land claim;~~

(C) EFFECT OF PARAGRAPH.-- This paragraph shall not apply to any land on which a gaming facility is in operation as of the date of enactment of the Common Sense Indian Gambling Reform Act of 2008.

(2) PRIMARY NEXUS.--

(A) IN GENERAL.-- The land described in paragraph (1) shall be land--

- (i) within a State in which the Indian tribe is primarily located, as determined by the Secretary; and
- (ii) on which the primary geographic, social, and historical nexus to land of the Indian tribe is located, as determined in accordance with subparagraph (B).

(B) DETERMINATION.--For purposes of subparagraph (A), a geographic, social, and historical nexus to land of an Indian tribe shall exist with respect to land that is--

(i)

(I) owned by, or held in trust by the United States for the benefit of, an Indian tribe;

(II) located within the boundaries of--

(aa) the geographical area, as designated by the Secretary, in which financial assistance and social service programs are provided to the Indian tribe, including land on or contiguous to a reservation; or

~~(ii) the initial reservation of an~~bb) the geographical area designated by the Indian tribe ~~acknowledged by the Secretary under~~during the Federal acknowledgment process, ~~or~~ of the Indian tribe as the area in which more than 50 percent of the members of the Indian tribe reside in a group composed exclusively or almost exclusively of members of the Indian tribe; and

~~(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition-~~

(III) located within the geographical area in which the Indian tribe demonstrates that the Indian tribe has historically resided, as determined by the Secretary; or

(ii) located--

(I) in a State other than the State of Oklahoma; and

(II) within the boundaries of the ~~last recognized reservation of the Indian tribe in any State in which the Indian tribe is located as of the date on which a determination under this subparagraph is made.~~

(23) Subsection (a) of this section shall not apply to—

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86–2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(34) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph **(23)**(B) and the Secretary shall declare that such interests are held in trust by

the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 465 and 467 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Contiguous Land Requirement. – Notwithstanding any other provision of this Act, an Indian tribe shall conduct any gaming activity subject to regulation under this Act on 1 contiguous parcel of Indian lands.

(d) Authority of Secretary not affected

Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(de) Application of title 26

(1) The provisions of title 26 (including sections 1441, 3402 (q), 6041, and 6050I, and chapter 35 sections 1441, 3402 (q), 6041, and 6050I, and chapter 35 of such title) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710 (d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.

[[NOTE: PURSUANT TO SECTION 5 OF S. 2676, IGRA IS TO BE AMENDED "BY REDESIGNATING SECTIONS 21 THROUGH 24 AS SECTIONS 22 THROUGH 25, RESPECTIVELY" (I.E., THE CURRENT CODIFIED SECTIONS 25 U.S.C. 2720 THROUGH 2723 WOULD BE REDESIGNATED AS 25 U.S.C. 2721 THROUGH 2724, RESPECTIVELY) AND BY INSERTING THE FOLLOWING NEW SECTION 21 (I.E., AS CODIFIED, IT WOULD BE NEW SECTION 25 U.S.C. 2720)]]

§ 2720. CHANGING USE OF INDIAN LANDS.

Before an Indian tribe uses any Indian lands for purposes of class II gaming or class III gaming, the Indian tribe shall--

(1) submit to the Secretary an environmental impact statement that the Secretary determines to be in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) relating to that use; and

(2) obtain the consent of the Secretary with respect to the change in use of the Indian lands.

[[NOTE: PURSUANT TO SECTION 6 OF S. 2676, THIS BILL AND ITS AMENDMENTS DO NOT AFFECT ANY COMPACT OR OTHER AGREEMENT RELATING TO GAMING SUBJECT TO REGULATION UNDER IGRA IN EXISTENCE ON THE DATE OF ENACTMENT OF THIS BILL]]

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