

109TH CONGRESS
1ST SESSION

S. 2078

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2005

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. DEFINITIONS.**

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

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

(2) by adding at the end the following:

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

“(A) a contract or other agreement relating to the management and operation of an Indian tribal gaming activity, including a contract for services under which the gaming-related contractor—

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

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

“(B) an agreement relating to the development or construction of a facility to be used for an Indian tribal gaming activity (including a facility that is ancillary to such an activity) the cost of which is greater than \$250,000; or

“(C) an agreement that provides for compensation or fees based on a percentage of the

1 net revenues of an Indian tribal gaming activ-
 2 ity.

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

11 “(A) an Indian tribe; or

12 “(B) an agent of an Indian tribe.

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

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

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

22 (1) in subsection (c)—

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

25 “(c) VACANCIES.—

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

3 (B) by striking the second sentence and in-
4 serting the following:

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

8 “(A) serve after the expiration of the term
9 of office of the member until a successor is ap-
10 pointed; or

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

13 (C) by inserting after paragraph (1) (as
14 designated by subparagraph (A)) the following:

15 “(2) VICE CHAIRMAN.—The Vice Chairman
16 shall act as Chairman in the absence or disability of
17 the Chairman.”; and

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

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

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

23 (1) in subsection (a)—

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

1 (B) by striking paragraph (4) and insert-
 2 ing the following:

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

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

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

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

12 “(c) DELEGATION OF AUTHORITY.—

13 “(1) IN GENERAL.—The Chairman may dele-
 14 gate any authority under this section to any member
 15 of the Commission, as the Chairman determines to
 16 be appropriate.

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

21 “(A) the general policies formally adopted
 22 by the Commission; and

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

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

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

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

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

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

13 **SEC. 6. COMMISSION STAFFING.**

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

21 (b) OTHER STAFF.—Section 8(b) of the Indian Gam-
22 ing Regulatory Act (25 U.S.C. 2707(b)) is amended by
23 striking “basic” and all that follows through the end of
24 the subsection and inserting the following: “pay payable
25 for level IV of the Executive Schedule under chapter 11

1 of title 2, United States Code, as adjusted by section 5318
 2 of title 5, United States Code.”.

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

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

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

14 (1) in subsection (b)—

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

17 (B) in paragraph (2)(F)—

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

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

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

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

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

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

11 (C) in paragraph (3)—

12 (i) by redesignating subparagraphs
 13 (C) and (D) as subparagraphs (D) and
 14 (E), respectively; and

15 (ii) by striking subparagraph (B) and
 16 inserting the following:

17 “(B) the plan is approved by the Secretary
 18 after the Secretary determines that—

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

21 “(ii) the plan adequately addresses the
 22 purposes described in clauses (i) and (iii) of
 23 paragraph (2)(B); and

24 “(iii) a per capita payment is a reasonable
 25 method of providing for the general welfare of

1 the Indian tribe and the members of the Indian
 2 tribe;

3 “(C) the Secretary determines that the plan
 4 provides an adequate mechanism for the monitoring
 5 and enforcement, by the Secretary and the Chair-
 6 man, of the compliance of the plan (including any
 7 amendment, revision, or rescission of any part of the
 8 plan);”; and

9 (D) in paragraph (4)(B)(i)—

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

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

14 (iii) in subclause (III), by striking “,
 15 and” and inserting “; and”; and

16 (iv) in subclause (IV), by striking
 17 “National Indian Gaming”;

18 (2) in subsection (d)—

19 (A) in paragraph (1)—

20 (i) in subparagraph (A)—

21 (I) in clause (i), by striking
 22 “lands,” and inserting “lands;”;

23 (II) in clause (ii), by striking “,
 24 and” and inserting “; and”; and

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

1 “(f) PROVISION OF INFORMATION TO CHAIRMAN.—
 2 Immediately after approving a plan (including any amend-
 3 ment, revision, or rescission of any part of a plan) under
 4 subsection (b)(3), the Secretary shall provide to the Chair-
 5 man—

6 “(1) a notice of the approval; and

7 “(2) any information used by the Secretary in
 8 approving the plan.”.

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

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

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

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

15 “(1) in writing; and

16 “(2) approved by the Chairman under sub-
 17 section (c).

18 “(b) CONTRACT REQUIREMENTS.—

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

22 “(A) accounting and reporting procedures,
 23 including, as appropriate, provisions relating to
 24 verifiable financial reports;

“(B) the access required to ensure proper performance of the gaming-related contract, including access to, with respect to a gaming activity—

“(i) daily operations;

“(ii) real property;

“(iii) equipment; and

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

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

“(D) the reasons for, and method of, terminating the gaming-related contract.

“(2) TERM.—

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

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

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

1 “(ii) the Chairman determines that
2 the term is appropriate, taking into consid-
3 eration the circumstances of the gaming-
4 related contract.

5 “(3) FEES.—

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

14 “(B) EXCEPTION.—The fee of a gaming-
15 related contractor or beneficiary of a gaming-re-
16 lated contract may be in an amount equal to
17 not more than 40 percent of the net revenues
18 of the gaming operation that is the subject of
19 the gaming-related contract if the Chairman de-
20 termines that such a fee is appropriate, taking
21 into consideration the circumstances of the
22 gaming-related contract.

23 “(c) APPROVAL BY CHAIRMAN.—

24 “(1) GAMING-RELATED CONTRACTS.—

1 “(A) IN GENERAL.—An Indian tribe shall
 2 submit each gaming-related contract of the
 3 tribe to the Chairman for approval by not later
 4 than the earlier of—

5 “(i) the date that is 90 days after the
 6 date on which the gaming-related contract
 7 is executed; or

8 “(ii) the date that is 90 days before
 9 the date on which the gaming-related con-
 10 tract is scheduled to be completed.

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

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

18 “(ii) any other agreement relating to
 19 the Indian gaming activity, as determined
 20 by the Chairman.

21 “(C) DEADLINE FOR DETERMINATION.—

22 “(i) IN GENERAL.—The Chairman
 23 shall approve or disapprove a gaming-re-
 24 lated contract under this subsection by not
 25 later than 90 days after the date on which

1 the Chairman makes a determination re-
2 garding the suitability of each gaming-re-
3 lated contractor under paragraph (2).

4 “(ii) EXPEDITED REVIEW.—

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

16 “(II) FAILURE TO DETERMINE.—

17 If the Chairman fails to make a deter-
18 mination by the date described in sub-
19 clause (I), a gaming-related contract
20 described in that subclause shall be
21 considered to be approved.

22 “(III) AMENDMENTS.—The

23 Chairman may require the parties to
24 a gaming-related contract considered
25 to be approved under subclause (II) to

1 amend the gaming-related contract, as
 2 the Chairman considers to be appro-
 3 priate to meet the requirements under
 4 subsection (b).

5 “(iii) EARLY OPERATION.—

6 “(I) IN GENERAL.—On approval
 7 of the Chairman under subclause (II),
 8 a gaming-related contract may be car-
 9 ried out before the date on which the
 10 gaming-related contract is approved
 11 by the Chairman under clause (i).

12 “(II) APPROVAL BY CHAIR-
 13 MAN.—The Chairman may approve
 14 the early operation of a gaming-re-
 15 lated contract under subclause (I) if
 16 the Chairman determines that—

17 “(aa) adequate bonds have
 18 been provided under paragraph
 19 (2)(G)(iii) and subsection (d);
 20 and

21 “(bb) the gaming-related
 22 contract will be amended as the
 23 Chairman considers to be appro-
 24 priate to meet the requirements
 25 under subsection (b).

1 “(D) REQUIREMENTS FOR DIS-
 2 APPROVAL.—The Chairman shall disapprove a
 3 gaming-related contract under this subsection if
 4 the Chairman determines that—

5 “(i) the gaming-related contract fails
 6 to meet any requirement under subsection
 7 (b);

8 “(ii) a gaming-related contractor is
 9 unsuitable under paragraph (2);

10 “(iii) a gaming-related contractor or
 11 beneficiary of the gaming-related con-
 12 tract—

13 “(I) unduly interfered with or in-
 14 fluenced, or attempted to interfere
 15 with or influence, a decision or proc-
 16 ess of an Indian tribal government re-
 17 lating to the gaming activity for the
 18 benefit of the gaming-related con-
 19 tractor or beneficiary; or

20 “(II) deliberately or substantially
 21 failed to comply with—

22 “(aa) the gaming-related
 23 contract; or

1 “(bb) a tribal gaming ordi-
 2 nance or resolution adopted and
 3 approved pursuant to this Act;

4 “(iv) the Indian tribe with jurisdiction
 5 over the Indian lands on which the gaming
 6 activity is located will not receive the pri-
 7 mary benefit as sole proprietor of the gam-
 8 ing activity, taking into consideration any
 9 agreement relating to the gaming activity;

10 “(v) a trustee would disapprove the
 11 gaming-related contract, in accordance
 12 with the duties of skill and diligence of the
 13 trustee, because the compensation or fees
 14 under the gaming-related contract do not
 15 bear a reasonable relationship to the cost
 16 of the goods or the benefit of the services
 17 provided under the gaming-related con-
 18 tract; or

19 “(vi) a person or an Indian tribe
 20 would violate this Act—

21 “(I) on approval of the gaming-
 22 related contract; or

23 “(II) in carrying out the gaming-
 24 related contract.

25 “(2) GAMING-RELATED CONTRACTORS.—

1 “(A) IN GENERAL.—Not later than 90
 2 days after the date on which the Chairman re-
 3 ceives a gaming-related contract, the Chairman
 4 shall make a determination regarding the suit-
 5 ability of each gaming-related contractor to
 6 carry out any gaming activity that is the sub-
 7 ject of the gaming-related contract.

8 “(B) REQUIREMENTS.—The Chairman
 9 shall make a determination under subparagraph
 10 (A) that a gaming-related contractor is unsuit-
 11 able if, as determined by the Chairman—

12 “(i) the gaming-related contractor—

13 “(I) is an elected member of the
 14 governing body of an Indian tribe that
 15 is a party to the gaming-related con-
 16 tract;

17 “(II) has been convicted of—

18 “(aa) a felony; or

19 “(bb) any offense relating to
 20 gaming;

21 “(III)(aa) knowingly and willfully
 22 provided any materially important
 23 false statement or other information
 24 to the Commission or an Indian tribe

1 that is a party to the gaming-related
2 contract; or

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

5 “(IV) poses a threat to the public
6 interest or the effective regulation or
7 conduct of gaming under this Act,
8 taking into consideration the behavior,
9 criminal record, reputation, habits,
10 and associations of the gaming-related
11 contractor;

12 “(V) unduly interfered, or at-
13 tempted to unduly interfere, with any
14 determination or governing process of
15 the governing body of an Indian tribe
16 relating to a gaming activity, for the
17 benefit of the gaming-related con-
18 tractor; or

19 “(VI) deliberately or substan-
20 tially failed to comply with the terms
21 of—

22 “(aa) the gaming-related
23 contract; or

1 “(bb) a tribal gaming ordi-
2 nance or resolution approved and
3 adopted under this Act; or

4 “(ii) a trustee would determine that
5 the gaming-related contractor is unsuit-
6 able, in accordance with the duties of skill
7 and diligence of the trustee.

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

16 “(D) REVOCATION.—At any time, based
17 on a showing of good cause, the Chairman
18 may—

19 “(i) make a determination that a
20 gaming-related contractor is unsuitable
21 under this subsection; or

22 “(ii) revoke a suitability determination
23 under this subsection.

24 “(E) TEMPORARY SUITABILITY.—

1 “(i) IN GENERAL.—For purposes of
2 meeting a deadline under paragraph
3 (1)(C), the Chairman may determine that
4 a gaming-related contractor is temporarily
5 suitable if—

6 “(I) the Chairman determined
7 the gaming-related contractor to be
8 suitable with respect to another gam-
9 ing-related contract being carried out
10 on the date on which the Chairman
11 makes a determination under this
12 paragraph; and

13 “(II) the gaming-related con-
14 tractor has not otherwise been deter-
15 mined to be unsuitable by the Chair-
16 man.

17 “(ii) FINAL DETERMINATION.—The
18 Chairman shall make a suitability deter-
19 mination with respect to a gaming-related
20 contractor that is the subject of a tem-
21 porary suitability determination under
22 clause (i) by the date described in subpara-
23 graph (A), in accordance with subpara-
24 graph (F).

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

6 “(i) has been determined to be suit-
 7 able by the Chairman with respect to an-
 8 other gaming-related contract being carried
 9 out on the date on which the Chairman
 10 makes a determination under this para-
 11 graph; and

12 “(ii) certifies to the Chairman that
 13 the information provided during a pre-
 14 ceding suitability determination has not
 15 materially changed.

16 “(G) RESPONSIBILITY OF GAMING-RE-
 17 LATED CONTRACTOR.—A gaming-related con-
 18 tractor shall—

19 “(i) pay the costs of any investigation
 20 activity of the Chairman in carrying out
 21 this paragraph;

22 “(ii) provide to the Chairman a notice
 23 of any change in information provided dur-
 24 ing a preceding investigation on discovery
 25 of the change; and

1 “(iii) during an investigation of suit-
 2 ability under this paragraph, provide to the
 3 Chairman such bonds under subsection (d)
 4 as the Chairman determines to be appro-
 5 priate to shield an Indian tribe from liabil-
 6 ity resulting from an action of the gaming-
 7 related contractor.

8 “(H) REGISTRY.—The Chairman shall es-
 9 tablish and maintain a registry of each suit-
 10 ability determination made under this para-
 11 graph.

12 “(3) ADDITIONAL REVIEWS.—Notwithstanding
 13 an approval under paragraph (1), or a determination
 14 of suitability under paragraph (2), if the Chairman
 15 determines that a gaming-related contract, or any
 16 party to such a contract, is in violation of this Act,
 17 the Chairman may—

18 “(A) suspend performance under the gam-
 19 ing-related contract;

20 “(B) require the parties to amend the
 21 gaming-related contract; or

22 “(C) revoke a determination of suitability
 23 under paragraph (2)(D).

1 “(4) TERMINATION.—Termination of a gaming-
2 related contract shall not require the approval of the
3 Chairman.

4 “(d) BONDS.—

5 “(1) IN GENERAL.—The Chairman may require
6 a gaming-related contractor to provide to the Chair-
7 man a bond to ensure the performance of the gam-
8 ing-related contractor under a gaming-related con-
9 tract.

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

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

15 “(A) in cash or negotiable securities;

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

18 “(C) through an irrevocable letter of credit
19 issued by a banking institution acceptable to
20 the Chairman.

21 “(4) USE OF BONDS.—The Chairman shall use
22 a bond provided under this subsection to pay the
23 costs of a failure of the gaming-related contractor
24 that provided the bond to perform under a gaming-
25 related contract.

1 “(e) APPEAL OF DETERMINATION.—

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

6 “(2) DETERMINATION OF COMMISSION.—

7 “(A) HEARINGS.—The Commission shall
8 schedule a hearing relating to an appeal under
9 paragraph (1) by not later than 30 days after
10 the date on which a request for the appeal is
11 received.

12 “(B) DEADLINE FOR DETERMINATION.—
13 The Commission shall make a determination, by
14 majority vote of the Commission, relating to an
15 appeal under this subsection by not later than
16 5 days after the date of the hearing relating to
17 the appeal under subparagraph (A).

18 “(C) CONCURRENCE.—If the Commission
19 concurs with a determination of the Chairman
20 under this subsection, the determination shall
21 be considered to be a final agency action.

22 “(D) DISSENT.—

23 “(i) IN GENERAL.—If the Commission
24 dissents from a determination of the

1 Chairman under this subsection, the Chair-
 2 man may—

3 “(I) rescind the determination of
 4 the Chairman; or

5 “(II) on a finding of immediate
 6 and irreparable harm to the Indian
 7 tribe that is the subject of the deter-
 8 mination, maintain the determination.

9 “(ii) FINAL AGENCY ACTION.—A deci-
 10 sion by the Chairman to maintain a deter-
 11 mination under clause (i)(II) shall be con-
 12 sidered to be a final agency action.

13 “(3) APPEAL OF COMMISSION DETERMINA-
 14 TION.—An Indian tribe, a gaming-related con-
 15 tractor, or a beneficiary of a gaming-related contract
 16 may appeal a determination of the Commission
 17 under paragraph (2) to the United States District
 18 Court for the District of Columbia.

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

23 “(1) is authorized under law; and

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

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

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

10 **SEC. 9. CIVIL PENALTIES.**

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

13 (1) by striking the section designation and
14 heading and all that follows through subsection (a)
15 and inserting the following:

16 **“SEC. 14. CIVIL PENALTIES.**

17 “(a) PENALTIES.—

18 “(1) VIOLATION OF ACT.—

19 “(A) IN GENERAL.—An Indian tribe, indi-
20 vidual, or entity that violates any provision of
21 this Act (including any regulation of the Com-
22 mission and any Indian tribal regulation, ordi-
23 nance, or resolution approved under section 11
24 or 13) in carrying out a gaming-related con-

tract may be subject to, as the Chairman determines to be appropriate—

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

“(ii) an order of the Chairman for an accounting and disgorgement, including interest.

“(B) APPLICATION TO INDIAN TRIBES.—

An Indian tribe shall not be subject to disgorgement under subparagraph (A)(ii) unless the Chairman determines that the Indian tribe grossly violated a provision of this Act.

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

“(3) WRITTEN COMPLAINTS.—

“(A) IN GENERAL.—If the Commission has reason to believe that an Indian tribe or a party to a gaming-related contract may be subject to a penalty under paragraph (1), the final closure of an Indian gaming activity, or a modification or termination order relating to the gaming-related contract, the Chairman shall provide to

1 the Indian tribe or party a written complaint,
 2 including—

3 “(i) a description of any act or omis-
 4 sion that is the basis of the belief of the
 5 Commission; and

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

9 “(B) REQUIREMENTS.—A written com-
 10 plaint under subparagraph (A)—

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

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

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

18 (2) in subsection (b)—

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

21 “(b) TEMPORARY CLOSURES.—

22 “(1) IN GENERAL.—The Chairman”;

23 (B) in paragraph (1)—

1 (i) by striking “Indian game” and in-
 2 serting “Indian gaming activity, or any
 3 part of such a gaming activity,”; and

4 (ii) by striking “section 11 or 13 of
 5 this Act” and inserting “section 11 or 13”;
 6 and

7 (C) in paragraph (2)—

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

10 “(2) HEARINGS.—

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

12 (ii) in subparagraph (A) (as design-
 13 ating by clause (i))—

14 (I) by striking “management con-
 15 tractor” and inserting “party to a
 16 gaming-related contract”; and

17 (II) by striking “permanent” and
 18 inserting “final”; and

19 (iii) in the second sentence—

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

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

24 (II) by striking “permanent” and
 25 inserting “final”;

1 (3) in subsection (c), by striking “(c) A deci-
2 sion” and inserting the following:

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

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

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

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

10 Section 20(b) of the Indian Gaming Regulatory Act
11 (25 U.S.C. 2719(b)) is amended—

12 (1) in paragraph (1)—

13 (A) in subparagraph (A), by striking “ (A)
14 the Secretary, after consultation” and inserting
15 the following:

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

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

23 (B) in subparagraph (B)—

24 (i) in clause (i), by striking the
25 comma at the end and inserting the fol-

1 lowing: “under Federal statutory law, if
2 the land is within a State in which is lo-
3 cated—

4 “(I) the reservation of such Indian
5 tribe; or

6 “(II) the last recognized reservation
7 of such Indian tribe;”;

8 (ii) in clause (ii), by striking “, or”
9 and inserting “if, as determined by the
10 Secretary, the Indian tribe has a temporal,
11 cultural, and geographic nexus to the land;
12 or”; and

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

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

19 “(4) EFFECT OF SUBSECTION.—Notwith-
20 standing any other provision of this subsection, land
21 that, before the date of enactment of the Indian
22 Gaming Regulatory Act Amendments of 2005, was
23 determined by the Secretary or the Chairman to be
24 eligible to be used for purposes of gaming shall con-
25 tinue to be eligible for those purposes.”.

1 **SEC. 11. CONFORMING AMENDMENT.**

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

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

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

10 (3) by striking subparagraph (C).

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

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