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AMENDING THE INDIAN GAMING REGULATORY ACT TO PROVIDE FOR ACCOUNTABILITY AND FUNDING OF THE NATIONAL INDIAN GAMING COMMISSION

AUGUST 31, 2005.—Ordered to be printed

Filed, under authority of the order of the Senate of July 29, 2005

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

R E P O R T

[To accompany S. 1295]

The Committee on Indian Affairs, to which was referred the bill (S. 1295) to amend the Indian Gaming Regulatory Act¹ (the “IGRA”) to provide for accountability and funding of the National Indian Gaming Commission, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The primary purpose of S. 1295, the National Indian Gaming Commission Accountability Act of 2005, is to provide for greater accountability and funding for the National Indian Gaming Commission (the “NIGC”). S. 1295 was introduced by Senator McCain on June 23, 2005, and amends IGRA through three provisions:

1. An amendment to § 18(a)(2)(B) changing the equation for fees assessed on tribal gaming operations and eliminating the current \$8 million cap on fee collection;

2. An addition to § 7 subjecting the NIGC to the Government Performance and Results Act (“GPRA”)² and

¹Pub. L. 100-497.

²Pub. L. 103-62.

3. An addition to § 7 that would require the agency to include, as part of its compliance with GPRA, a plan that addresses technical assistance to tribal gaming operations.

BACKGROUND

When IGRA was enacted in 1988, Congress created the NIGC to provide Federal oversight of the regulation of Indian gaming. Originally, the IGRA provided for the NIGC to be funded by a blend of Federally appropriated monies and fees assessed on Indian gaming operations. The total fees assessed were capped at \$2 million.

In 1997, Congress raised the fee assessment cap to \$8 million. Since Fiscal Year 1998, no Federal funds have been appropriated for the operation of the NIGC. To address the rising budgetary needs of the agency tasked with oversight of the fast-growing Indian gaming industry, the 108th Congress, through appropriations legislation, authorized an increase in the fee cap to \$12 million for fiscal 2005 and 2006. These year to year “stop-gap” appropriations measures have helped the agency meet its regulatory responsibilities but have impeded long-term budgeting.

The National Indian Gaming Commission Accountability Act of 2005 is designed to allow the agency to increase fee collection in proportion to the size of the industry it oversees. With fees capped at .08 percent of the industry’s gross revenue, the agency’s funding would float in proportion to the revenues of the Indian gaming industry, expanding or contracting as the Indian gaming industry grew or diminished. For example, had fees been capped at 0.08 percent for calendar year 2004, when reported industry gross revenues exceeded \$19.4 billion, the agency would have been authorized to collect fees of up to \$15.5 million.

S. 1295 does not, of course, compel the NIGC to annually collect the full amount allowable. Continuing careful stewardship of tribes’ fee payments, such has been exercised recently by the Commission, is encouraged. The agency must be free, however, to respond to continued growth in Indian gaming with adequate funds to provide oversight.

As the agency’s needs have grown, so has scrutiny of the agency by tribes and other interested parties. This legislation therefore increases not only the agency’s funding but also its accountability by directing that the NIGC be subject to GPRA. Heretofore the Commission has not been subject to GPRA pursuant to an exemption that allows OMB to exempt agencies with outlays under \$20 million from GPRA’s requirements.³ Because the NIGC’s budget has never been more than \$12 million, the NIGC OMB exemption from GPRA’s requirements has been applied. S. 1295 requires, however, that NIGC be subject to GPRA.

Congress enacted GPRA in an effort to strengthen public confidence in government and to assist Federal managers in improving program efficiency and effectiveness.⁴ That act requires that Federal agencies submit to Congress strategic five-year plans, annual performance plans, and performance reports. It specifically requires that, when developing a strategic plan, an agency must not only consult with Congress, but also “solicit and consider the views and

³ Pub. L. 103–62, § 4(b).

⁴ Pub. L. 103–62, § 2.

suggestions of those entities potentially affected by or interested in such a plan.”⁵ In the case of the Commission, those affected entities include tribes.

There are some well defined limits as to the degree of solicitation required by GPRA itself, including the caveat that the solicitation and consideration of views does not mean that the agency’s plan must be agreeable to all parties. GPRA provides that “the function and activities of this section shall be considered to be inherently governmental functions. The drafting of strategic plans under this section shall be performed only by Federal employees.”⁶ In the case of a regulating agency such as NIGC, creation of any given plan can be improved by consulting with, but should not be compelled by, the regulated entities, notwithstanding a policy of government-to-government relationship between the Federal and tribal governments.

Additionally, it is to be noted that the NIGC is an independent regulatory agency. This status has ramifications, including, that the agency is not governed by Executive Order 13175, which compels agencies other than independent regulatory agencies to consult tribal officials in the development of regulatory policies that have tribal implications. The Executive Order encourages independent agencies to observe its precepts, however, and the Committee notes with approval that the Commission, through its current consultation policy, has endeavored to do so.

In keeping with the long-standing Federal policy of tribal self-determination, and the corollary policy of maintaining government-to-government relations, the Committee strongly encourages the NIGC, consistent with its regulatory responsibilities, to work with tribal governments on a government-to-government basis in the development of regulatory policies, standards and definitions, which may include, where appropriate, the use of tribal advisory committees and negotiated rulemaking.

S. 1295 also requires that the agency’s GPRA plans address the need for technical assistance to tribal gaming operations. In the past, the NIGC has provided training and technical assistance to tribes and tribal gaming operations. Such assistance plays a critical role in supporting IGRA’s purposes by strengthening the Indian gaming industry, which in turn will lead to strengthened tribal governments. Including technical assistance in its regulatory plans will help both the agency and tribes focus on the importance of assistance in effectuating IGRA’s goals.

SUMMARY OF MAJOR PROVISIONS

The purpose in amending Pub. L. 100–447 through S. 1295 is two-fold: one, to hold NIGC accountable for its funding and two, to correlate NIGC funding with the size of the industry it regulates. The amendment thus requires compliance with the Government Performance and Results Act (Pub. L. 103–62; 107 Stat. 286). Compliance with this requirement will result in the agency writing strategic and performance plans for its programs. The amendment also specifies that performance plans address tribes’ needs for technical assistance in regulating their gaming operations.

⁵ 5 U.S.C. 306(d).

⁶ 5 U.S.C. 306(e).

The amendment also deletes IGRA's current cap on NIGC funding at \$8 million. In order to make the budget more responsive to the growth of the Indian gaming industry, the amendment replaces the cap with a formula whereby the agency may collect fees not to exceed .08 percent of the gross gaming revenues of all gaming operations.

LEGISLATIVE HISTORY

S. 1295 was introduced on June 23, 2005, by Senator McCain and was referred to the Committee on Indian Affairs.

On June 29, 2005, at a business meeting duly noticed, the Committee passed the bill for consideration by the full Senate, with a favorable recommendation that the Senate pass the bill.

SECTION-BY-SECTION ANALYSIS

Sec. 2(a). Powers of the Commission

Adds the requirement that the Commission shall be subject to the Government Performance and Results Act of 1993 and that, in addition to compliance with GPRA, the Commission shall submit a plan to provide technical assistance to tribes conducting gaming under IGRA.

Sec. 2(b). Commission funding

Deletes subparagraph imposing cap on NIGC funding and replaces it with provision authorizing funding not to exceed .08 percent of gross gaming revenues of all gaming operations subject to IGRA.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On June 29, 2005, the Committee, in an open business session, considered S. 1295 and approved the bill, and ordered S. 1295 favorably reported to the full Senate with a recommendation that the bill do pass.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1295 as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 19, 2005.

Hon. JOHN MCCAIN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, the Congressional Budget Office has prepared the enclosed cost estimate for S. 1295, the National Indian Gaming Commission Accountability Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Matthew Pickford (for

federal costs), and Marjorie Miller (for the impact on state, local, and tribal governments).

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 1295—National Indian Gaming Commission Accountability Act of 2005

Summary: S. 1295 would amend the Indian Gaming Regulatory Act (IGRA) to increase the fees paid to the National Indian Gaming Commission (NIGC) by tribal gaming operators. The legislation would also require the NIGC to comply with the requirements of the Government Performance and Results Act of 1993.

CBO estimates that implementing S. 1295 would increase direct spending by \$7 million in 2006 and about \$230 million over the 2006–2015 period. CBO also estimates that enacting the legislation would increase revenues by \$7 million in 2006 and about \$230 million over the 2006–2015 period.

S. 1295 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would increase the amount of fees that gaming tribes must pay to the NIGC. CBO estimates that the cost of this mandate would be well below the threshold established in UMRA (\$62 million in 2005, adjusted annually for inflation) for at least the next five years. The bill contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government. The estimated budgetary impact of S. 1295 is shown in the following table. The costs of the legislation fall within budget function 800 (general government).

By fiscal years, in millions of dollars—										
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN REVENUES										
NIGC Fees:										
Estimated Revenues	7	14	16	19	22	25	27	30	32	35
CHANGES IN DIRECT SPENDING										
Spending of NIGC Fees:										
Estimated Budget Authority	7	14	16	19	22	25	27	30	32	35
Estimated Outlays	7	14	16	19	22	25	27	30	32	35

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the end of fiscal year 2005 and that spending will follow historical patterns for NIGC and its programs.

The IGRA established the NIGC to monitor and regulate gaming activity on Indian lands. The legislation authorizes the commission to collect and expend an annual fixed assessment on tribal gaming operators based on tribal gambling revenues. The current limitation is \$12 million annually in fiscal years 2005 and 2006, and \$8 million in each subsequent year. The legislation would amend the current fixed limitation and allow the NIGC to collect up to 0.080 percent (80 cents per \$1,000) of all gaming revenues subject to NIGC regulation.

CBO expects that fixing the assessment to a percentage of total tribal gambling revenues would lead to a significant increase in the

amount of fees collected. Over the 2000–2004 calendar year period, annual tribal gaming revenues increased by an average of 14 percent a year to about \$19 billion in fiscal year 2004. If the revenue increases continue at the same rate, the amount of fees generated annually would increase to almost \$20 million in fiscal year 2006 and to about \$62 million in fiscal year 2015. However, CBO expects that future growth in Indian gaming revenues will slow relative to recent history over the 2006–2015 fiscal year period. We estimate that the amount of fees generated in fiscal year 2006 would be almost \$20 million and rise to \$43 million by fiscal year 2015.

CBO estimates that NIGC fees and spending would increase by \$7 million in 2006. We estimate that fees and spending would continue to grow with gaming revenues and reach an additional \$35 million a year by 2015.

Intergovernmental and private-sector impact: S. 1295 contains an intergovernmental mandate as defined in UMRA because it would increase the amount of fees that gaming tribes must pay to the NIGC. Under an existing mandate, tribes must pay fees that are capped at \$12 million in each of fiscal years 2005 and 2006. CBO estimates that enacting this bill would increase the cost of that mandate by less than \$10 million in 2006. Because the bill would replace a fixed dollar cap with a cap set as a percent of gaming revenues, these incremental costs would increase as tribal gaming revenues increase, but we expect that they would remain well below the threshold established in UMRA (\$62 million in 2005, adjusted annually for inflation) for at least the next five years. The bill would impose no other costs on state, local, or tribal governments. The bill contains no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Matthew Pickford, Federal Revenues: Laura Hanlon. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private-Sector: Craig Cammarata.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis. G. Thomas Woodward, Assistant Director for Tax 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 has concluded that S. 1295 will have no impact on regulatory or paperwork requirements and impacts.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1295.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1295, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is

printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 100-447

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SEC. 7. POWERS OF THE COMMISSION.

* * * * *

(d) *APPLICATION OF GOVERNMENT PERFORMANCE AND RESULTS ACT.*—

(1) *IN GENERAL.*—*In carrying out any action under this Act, the Commission shall be subject to the Government Performance and Results Act of 1993 (Public Law 103-62; 107 Stat. 285).*

(2) *PLANS.*—*In addition to any plan required under the Government Performance and Results Act of 1993 (Public Law 103-62; 107 Stat. 285), the Commission shall submit a plan to provide technical assistance to tribal gaming operations in accordance with that Act.*

* * * * *

SEC. 18. SCHEDULE OF FEES IMPOSED.

(a) * * *

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(2) * * *

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(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. *The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed 0.080 percent of the gross gaming revenues of all gaming operations subject to regulation under this Act.*