

**TESTIMONY OF
THE HONORABLE MONTEE R. DEER, CHAIRMAN
NATIONAL INDIAN GAMING COMMISSION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS**

MARCH 24, 1999

Mr. Chairman, Mr. Vice-Chairman, members of the Committee, my name is Montie Deer and I am the Chairman of the National Indian Gaming Commission (NIGC or Commission). Thank you for the opportunity to appear before you today to testify on S. 399, the Indian Gaming Regulatory Improvement Act of 1999.

First, I would like to give my personal thanks to the Chairman, the Vice-Chairman and to the Committee for all your help and support of my confirmation. As you know, on March 8, I was confirmed by the Senate and I look forward to working with each of you during the next three years on the important issue of Indian gaming regulation.

You have asked me to address two sections of S. 399 - Section 11 (creating minimum federal standards) and Section 18 (Commission funding). Before addressing those two sections of the bill, I would like to provide you with an update on the what the NIGC has been doing since we last spoke.

Background

The Indian Gaming Regulatory Act (IGRA), 25 U.S. C. § 2701, was enacted to promote "tribal economic development, self-sufficiency, and strong tribal governments," and to protect Indian Tribes and the public from corrupt influences by establishing a sound regulatory framework for Indian gaming. 25 U.S. C. § 2702.

Since the enactment of the IGRA, just over 10 years ago, there has been positive and substantial growth within the Indian gaming industry. In 1988, when IGRA was enacted, it was estimated that Indian gaming revenues totaled approximately \$1 00 million a year. Most of that revenue was generated by bingo and games similar to bingo, or what IGRA deems to be Class 11 gaming. However, after the passage of IGRA and the negotiation of compacts which provide for slot machines, blackjack and other casino type games (which IGRA refers to as Class 111 going) the industry experienced considerable growth. Today, Indian gaming -generates over \$7 billion dollars in annual revenue.

The funding mechanism created for the NIGC by IGRA allowed for the annual appropriation of \$1.5 million of taxpayers' dollars and assessments on Class II tribal gaming revenues to generate up to \$1.5 million annually. Thus, a structure was in place providing a core budget of up to \$3 million, to regulate a rapidly growing industry.

It quickly became apparent to many, including this Committee, that the resources of the NIGC were not up to the task of providing the oversight demanded of' by IGRA. The regulatory scheme provided in IGRA essentially provided that the Class II gaming (bingo, pull tabs, etc.) shall be regulated by the tribes and the NIGC and that Class III gaming, the casino activities, shall be regulated pursuant to the terms of the compacts the tribes enter into with the states. Much latitude is permitted in the framework the compacts create and indeed there exists a wide variety of models currently in use. However, in all instances, no tribal gaming is permitted until the tribe enacts tribal law providing for the conduct of gaming and these laws and ordinances must be reviewed and approved by the Chairman of the NIGC. IGRA and NIGC regulations require that those tribal laws provide for strong tribal regulation of the gaming activity and most tribes have created independent tribal gaming commissions to implement that regulation.

Thus, tribes and the NIG-C have direct roles in the regulation of Class II gaming and the tribes and states, under the terms of their compacts, are responsible for the direct regulation of a majority of Class III gaming. The NIGC, however, is not wholly excluded from the regulation of the Class III or casino-style activities. In fact, IGRA specifically gives the NIGC the authority and responsibility to take enforcement action, including the ability to issue notices of violation, impose fines and issue closure orders, when the terms of the IGRA, the NIGC regulations, or tribal gaming ordinances approved by the Commission are violated. Thus, while the Commission is not involved in the around-the-clock, 365 days a year on site, regulation of Class III gaming, if there is a violation of the IGRA, NIGC regulations or the tribe's gaming ordinance, it is the responsibility of the NIGC to take enforcement action.

Currently, the NIGC is responsible for monitoring and regulating 198 tribes operating 310 gaming operations in 28 states. The NIGC is responsible for, among other things: 1) monitoring gaming operations on a continuing basis; 2) approving all contracts for the management of gaming operations by non-tribal parties; 3) conducting background investigations on individuals and entities with a financial interest in, or management responsibility for, a Class II or combined Class II/III gaming management contract; 4) approving all gaming related tribal ordinances; 5) reviewing background investigations of key gaming employees conducted by the tribes; 6) reviewing and conducting audits of the books and records of the gaming operations, and, 7) initiating enforcement actions to help ensure the integrity of Indian gaming operations.

Expansion

As you know, IGRA was amended in 1997 to permit the assessment of fees on class III gaming activities. The Commission's ability to collect fees was spread from Class II alone, to Class II and Class. The maximum amount that the NIGC was permitted to collect annually from its fee assessments was also increased from \$1.5 million to \$8 million. With the expanded fee base, the NIGC was able to exempt the first \$1.5 million of revenues for each tribal operation. This was

done in an effort to recognize amounts tribes already spend locally for gaming regulation. The fee rate was reduced to .08% on revenues exceeding the exempt amount, thereby providing the NIGC with a FY 1998 budget of \$5.4 million. It is expected that as the NIGC expands it will raise the fee assessment rate to allow for collection of fees up to the \$8 million cap.

With the increase of funds, the NIGC has embarked upon an expansion of the agency to fulfill the mandate of IGRA. The NIGC is pleased to report that it recently opened its first field office in St. Paul, Minnesota. The office is currently staffed by three employees, two field investigators and an administrative assistant. It is expected that two additional staffers, including an auditor will be added in the near future.

I am also pleased to announce that we have more than doubled our field staff in the last six months. We have hired four field investigators, two auditors and two financial background investigators. These new employees come to the NIGC with a wealth of gaming regulatory experience from places such as the Nevada Gaming Commission and large sophisticated tribal gaming operations. Additionally, they have experience in areas such as: (1) auditing and accounting; (2) security and background investigations; (3) gaming operations and internal controls; and (4) environment, health and public safety.

The Commission has plans this year to open four additional field offices in, Tulsa, Phoenix, Sacramento and Portland. The offices will be located near Indian gaming facilities and will provide tribes with additional resources to assist meeting their regulatory responsibilities. There is no doubt that these field offices will allow the NIGC to work more closely with the tribes, on a day-to-day basis, to provide effective regulation of the Indian gaming industry.

The NIGC's Washington office will continue to coordinate the activities of the NIGC, and will serve as a clearinghouse for the data and information generated by the field operations. All tasks will be carefully analyzed to determine if they are most efficiently performed at the headquarters or satellite office level.

Minimum Federal Standards

Sections 10 and 11 of S.399 require that the NIGC promulgate minimum federal standards relating to background investigations, internal control systems, and licensing standards. It further requires that in promulgating the regulations that the NIGC consult with the Attorney General, Indian tribes, and appropriate states. I would like to address these three areas separately, beginning with minimum internal control standards.

1. Minimum Internal Control Standards (MICS)

Gaming, by its nature, is a cash-intensive business, often involving large amounts of coins and currency. Tribal casino operations and the gaming public are subject to risk of loss because of

customer or employee access to cash and cash equivalents within a casino. In January of this year, the NIGC published its final rule on Minimum Internal Control Standards (MICS) for Class II and Class III tribal gaming operations in order to reduce that risk. The MICS rule, among other things, contains standards and procedures that govern cash handling, documentation, game integrity, auditing, and surveillance.

While many tribes have strong minimum internal controls in place, those within and outside the Indian gaming community recognized a need for a minimum level of control, to apply universally throughout the industry. In developing the MICS, control standards from several other gaming jurisdictions such as Nevada and New Jersey were evaluated. In practice, these systems and procedures vary from casino to casino. As such, the MICS were developed to allow for the unique operating environment of each tribal casino. Although the MICS contain stringent standards, the tribes will find flexibility in complying with them. I believe this aspect of the MICS is important because it is not our intention to regulate the tribal casinos out of business.

S.3 99 requires that the NIGC take into consideration several factors including the unique nature of tribal gaming, the broad variations in the nature of the gaming and the inherent sovereign rights of the tribe when it drafts the minimum standards. In developing the MICS, the NIGC did take these factors into account as evidenced by the tiering system, the development of tribal MICS and the variance mechanism. One commentator to the NIGC's proposed rule on the MICS wrote that, "[t]he approach in Section 542.3 recognizes the sovereign authority of the Tribe and allows for flexibility in the implementation of the standards."

As the NIGC embarked upon the course of establishing MICS it formed an Advisory Committee made up of tribal gaming officials so as to ensure tribal input. Officials representing large and small gaming operations commented on our procedures. The NIGC also retained the Las Vegas office of the accounting firm Arthur Anderson to assist in the drafting of the regulations. Over a five-month period, the Advisory Committee met on several occasions to review and comment on the proposed MICS.

Since finalizing the regulations, the NIGC has embarked on a 14 city tour to provide training on the MICS. We just recently completed the training. I am pleased to announce that 153 of the 198 gaming tribes were represented. Further, we trained approximately 900 tribal leaders, gaming commissioners, tribal administrators and gaming employees on the content of the MICS.

Further, the NIGC's authority to promulgate such a rule has been questioned. In fact, we expect a legal challenge to that authority at some time in the future. Our recommendation is that since the NIGC has already promulgated MICS, and since our authority to do so under the present law has been questioned, S.399 should either delete the reference to internal controls or the legislative history of S.399 should make it clear that Congress views this provision as confirming and clarifying authority which the NIGC had been granted under IGRA.

2. Minimum Federal Standards for Background Investigations and Licensing.

Minimum federal standards for background investigations and licensing might be useful for some

of the tribes; however, we would expect (as is the case with the MICS) that the current practices and procedures in place for many of the tribes already exceed those minimums.

We strongly support, and encourage, Congressional authorization to establish authority for the NIGC to license vendors, consultants and gaming suppliers. With respect to management contractors, our current practice for class II operations amounts to a de facto national license, that is, we must approve the background of persons and entities managing class II operations, and, once we have given such an approval, subsequent contracts may be more easily approved. The problem is that we do not have authority under current law to obtain background information and get reimbursed for the cost of background investigations of Class II management contractors. S.399 would cure that problem.

Additionally, the NIGC presently has no authority to require licensing or backgrounding of consultants, vendors and suppliers. This creates two serious gaps in the regulatory process. First, the NIGC currently is unable to identify corrupting influences which might be using vending contracts as a foothold into Indian gaming. Second, neither the NIGC nor the tribes can get FBI background checks on vendors because there is no legal requirement to support the request. Again, S.399 cures the are problems.

Please be assured that the cooperative process by which the NIGC undertook in creating the MICS will likewise be utilized if the agency promulgates regulations regarding licensing and backgrounding.

Commission Funding - Fees

Section IS of S.399 deals with the finding for the NIGC. It provides that the Commission shall reduce its fees in consideration of. 1) regulation provided by a State or Indian tribe (or both); and, 2) issuance of a self-regulation certificate.

We are currently funded entirely by the regulated community through the assessment of fees. We collect fees at a rate of 8/100th of a percent on gaming revenues. No fees are collected on revenues below \$1.5 million. The Act provides for a cap of \$8 million on the NIGC's fee collections. So long as we continue to assess fees evenly on all gaming operations, it is unlikely that we would ever need to raise our fees to a rate higher than 12/100th of a percent assuming current levels of revenue. In fact, the 5 percent authorized by IGRA, and S.399, is more than 60 times the rate we are now using.

My concern with the approach of S.399, Section 18, is that it may require that the NIG-C, collect fees at a much higher rate and that the burden of those higher fees will fall upon the less wealthy tribes. Our experience has been that, very often, the task of running a gaming operation is especially difficult for poorer and less sophisticated tribal gaming operations. When those tribes are in remote areas and are unable to anticipate high levels of revenue, they have less access to quality management contractors, consultants and attorneys. The end result is that, often, the poorer tribes require the most attention from outside regulators, while the wealthy tribes are able to buy whatever they need to establish a robust regulatory regime. Thus, any significant fee

reduction for self-regulated tribes is likely to result in much higher rates for the other tribes. I should also say that I have no objection in principal to the suggestion that our fee structure take into account the cost to the tribes of state regulation, but I should point out that this could be a sophisticated and potentially controversial calculation. I have asked my staff to begin studying this concept.

Trust Fund Concept

Finally, we are concerned about the changes being proposed to the way the Commission is funded, specifically, the use of the Trust Fund. Currently, we are able to assess fees based on current information and needs. We are able to assess and collect fees and use them in the same fiscal year. With the Trust Fund, presumably we will have to assess and collect fees well in advance of when they are needed so that we can request that they be appropriated for our use during the subsequent fiscal year. This will result in a sizable increase in the amount of gaming industry funds being held by the federal government. We have no objection to the fact that the earnings on those funds would go to the Commission rather than the Treasury. However, the same result could be obtained by appropriating funds equivalent to the Treasury's earnings for use by the Commission. If this concept is one in which the Committee is committed to pursuing, the NIGC would welcome the opportunity to work with your staff on this issue-

Conclusion

I want to thank you for the opportunity to speak to you today regarding S. 399 and other issues facing the NIGC. I am available to answer your questions.