STATEMENT OF
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BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON S. 1529
"THE INDIAN GAMING REGULATORY ACT AMENDMENTS OF 2003"

MARCH 24, 2004

Good morning, Mr. Chairman, Mr. Vice-Chairman and Members of the Committee. My name is George Skibine, and I am the Acting Deputy Assistant Secretary for Policy and Economic Development in the Office of the Assistant Secretary – Indian Affairs at the Department of the Interior (Department). I am pleased to be here today to offer the Department's views on S. 1529, the "Indian Gaming Regulatory Act Amendments of 2003," as well as express our support for the Administration's proposal, the "Indian Gaming Regulatory Act Amendments of 2004."

The Department believes legislation in this area could provide a unique opportunity to address some of the uncertainties created by the U. S. Supreme Court's decision in the *Seminole v. Florida* case and existing revenue-sharing schemes adopted by tribes and states and approved by the Department. It allows us to take a step back from the present situation and create a process that is transparent to all parties involved in the process, provide clear guidelines regarding allowable benefits that may be negotiated by the parties and limits the percentage of net revenues that may be allocated to revenue-sharing schemes. This clarity is good, would benefit all parties, and can take much of the guesswork out of the already time-consuming and highly sensitive process of tribal-state negotiations.

There are five provisions of this bill which directly affect the duties of the Secretary as originally laid out in the Indian Gaming Regulatory Act (IGRA). These include the provisions relating to revenue-sharing between tribes and state and local governments; promulgation of regulations regarding revenue-sharing provisions; time frames for the Secretarial issuance of class III gaming procedures to a tribe after a mediator's notification of his or her determination; and the extension of expiration dates of compacts between tribes and states who are negotiating compact renewals.

Section 2(f)(2)(A) of the bill amends section 11(d)(4) of IGRA, 25 U.S.C. 2710(d)(4), by adding a new subparagraph (B) that provides a statutory basis for apportioning net revenues to a State, local government or other Indian tribes in a class III gaming compact, but imposes several conditions on apportionment and requires the promulgation of regulations to provide guidance on the allowable assessments within 90 days of the enactment of this bill.

This provision provides express authorization for revenue-sharing by tribes. These provisions provide clarity to an area which has become increasingly complex. In the

past, the Department has provided approval to revenue-sharing agreements between tribes and states where the tribe has received the substantial economic benefit of exclusive authorization to operate class III games within a state. The Department has also approved agreements which authorize payments to local governments to offset the costs it may incur as a result of the operation of class II gaming in a municipality. Generally, we support this new provision because it provides a statutory basis for revenue sharing provisions in class III gaming compacts. However, we believe that the conditions for apportionment should be modified.

We believe that the proposed amendments to IGRA should provide a clearer definition of the substantial benefits that Congress determines are appropriate in exchange for revenue-sharing. Until now, the Department has considered the exclusivity of class III gaming the only substantial economic benefit that merits revenue sharing between a tribe and a state. The exclusivity may be limited to specific types of class III games or to specific geographic areas within a state. If the Committee contemplates that other benefits may be negotiated, the Department requests that Congress define in more detail the items it believes are appropriate.

Additionally, the Department believes that the legislation should provide guidance regarding the amount of revenue-sharing that may be authorized. Tribes and states are making agreements for increasing percentages of net revenues. More and more, we are seeing agreements that call for 15% to 20% of a tribe's net win to be paid to state and local governments. We expect to see agreements soon which are in excess of that, possibly as much as 25% or more of a tribe's net win.

One of the stated purposes of IGRA is to provide "a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." The Department recommends that Congress consider whether these percentages are allowable and specifically authorize a limit on the percentage if it deems necessary.

Section 2(f)(2)(A) would also amend Section 11(d)(4)(C) by requiring regulations regarding revenue sharing payments be promulgated within 90 days of enactment of the bill. The process of rule-making is lengthy, and 90 days is not enough time to finalize regulations. We recommend that a more realistic time frame be identified for the promulgation of the regulations, and that eighteen months is a reasonable amount of time.

Section 2(f)(2)(B) of the bill would modify Section 11(d)(7)(B)(vii) of IGRA by requiring the Secretary to prescribe Class III procedures within 90 days after notification is made by the mediator. Again, we believe this time frame is too short, and recommend the words "180 days" be substituted instead of "90 days" to give the Secretary enough time to carefully examine difficult questions of state and federal law that are usually involved in this process.

Section 2(f)(2)(C) of the bill would create a new subparagraph 11(d)(10) providing that an approved compact will stay in effect for up to 180 days after its expiration if the tribe certifies to the Secretary it has requested a new compact no later than 90 days before the

compacts' expiration, and a new compact has not been agreed on. We support a concept that allows tribes and states a window in which they may negotiate compact renewals. The Department of Justice has advised us that there may be constitutional limitations on the Federal Government's authority to extend compacts that require state regulation of tribal gaming. Further, we note that the bill states that it adds a new paragraph (10) at the end of Section 11 that should read that it adds a new paragraph (10) at the end of Section 11(d) of IGRA.

Finally, the Department requests that the Committee examine two issues we believe would improve its ability to review and analyze compacts and gaming related fee to trust transactions.

First, the Department is increasingly encountering tribes who are interested in developing gaming sites which are far away from their homelands, in some cases in states other than where they are located, and in other cases on lands which are hundreds of miles from the tribe's homelands. We have researched the issue internally, and can find no limitation in IGRA or its legislative history that would lead us to believe that it is prohibited. At the same time, we receive numerous communications from Congressmen from around the country who express this as their greatest concern. The Department believes Congress should consider clarifying the ability of tribes to locate gaming operations far from their homelands, particularly in cases where the lands at issue are located in another state.

Second, the Department has received several compacts over the past two years which contain "anticompetitive" provisions. These provisions generally provide a tribe with a protected territory, outside of its reservation, in which they may game and create a disincentive for states that may otherwise be willing to negotiate for off-reservation sites with other tribes. Especially in cases of off-reservation casinos, it provides guaranteed exclusivity, possibly at the expense of other tribes who might otherwise desire to locate a facility in an off-reservation location. This limitation as applied to other tribes appears to violate the spirit of IGRA, but there is not express prohibition contained in the Act. The Department believes Congress should consider clarifying this matter.

Although we prefer the Administration's proposal, we would be happy to work with the Committee and to participate in further discussions with regard to our comments.

Thank you for the opportunity to testify on S. 1529. I will be happy to answer any questions you may have.