

108TH CONGRESS  
2D SESSION

# S. 2232

To amend the Indian Gaming Regulatory Act of 1988 to revise the fee cap on National Indian Gaming Commission funding and make certain technical amendments.

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## IN THE SENATE OF THE UNITED STATES

MARCH 25, 2004

Mr. CAMPBELL (by request) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To amend the Indian Gaming Regulatory Act of 1988 to revise the fee cap on National Indian Gaming Commission funding and make certain technical amendments.

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 2004”.

6 **SEC. 2. DEFINITIONS.**

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

1           (1) by redesignating paragraphs (3), (4), (5),  
2           (6), (7), (8), and (10), as paragraphs (6), (7), (8),  
3           (3), (4), (5), and (11), respectively; and

4           (2) by inserting after paragraph (9) the fol-  
5           lowing:

6           “(10) REGULATED PERSON OR ENTITY.—The  
7           term ‘regulated person or entity’ means—

8                   “(A) an Indian tribe;

9                   “(B) a tribal operator of an Indian gaming  
10           operation;

11                   “(C) a management contractor engaged in  
12           Indian gaming;

13                   “(D) any person that is associated with—

14                           “(i) a gaming operation, or any part  
15                   of a gaming operation, of an Indian tribe;  
16                   or

17                           “(ii) a gaming-related contractor of  
18                   an Indian tribe; and

19                   “(E) any person that—

20                           “(i) agrees, by contract or otherwise,  
21                   to provide a tribal gaming operation with  
22                   supplies, a service, or a concession with an  
23                   estimated value in excess of \$25,000 annu-  
24                   ally (not including a contract for a legal or

accounting service, commercial banking  
service, or public utility service); or

“(ii) requests a suitability determina-  
tion by the Commission, or by an Indian  
tribe or State, as part of an effort—

“(I) to acquire a direct financial  
interest in, or management responsi-  
bility for, a management contract for  
operation of a tribal gaming facility;  
or

“(II) to participate in a gaming-  
related activity that requires a licens-  
ing decision by an Indian tribe or  
State.”.

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

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

(1) in subsection (b)(2)—

(A) in subparagraph (A), by striking  
“(A)”;

(B) by striking subparagraph (B);

(2) by striking subsection (c) and inserting the  
following:

“(c) VACANCIES.—

1           “(1) IN GENERAL.—A vacancy on the Commis-  
 2           sion shall be filled in the same manner as the origi-  
 3           nal appointment.

4           “(2) SERVICE AFTER EXPIRATION OF TERM.—  
 5           A member may serve after the expiration of the  
 6           member’s term at the pleasure of the officer of the  
 7           United States who appointed the member.”; and

8           (3) in the second sentence of subsection (e), by  
 9           striking “during meetings of the Commission in the  
 10          absence of the Chairman” and inserting “in the ab-  
 11          sence of, or during any period of disability of, the  
 12          Chairman”.

13 **SEC. 4. POWERS OF CHAIRMAN.**

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

16               (1) in subsection (a)—

17                       (A) by striking “, on behalf of the Com-  
 18                       mission,”;

19                       (B) in paragraph (3), by striking “and” at  
 20                       the end;

21                       (C) in paragraph (4), by striking the pe-  
 22                       riod at the end and inserting “; and”; and

23                       (D) by adding at the end the following:

24                       “(5) to issue to a regulated person or entity an  
 25                       order that—

1                   “(A) requires an accounting and  
2 disgorgement, with interest;

3                   “(B) reprimands or censures; or

4                   “(C) places a limitation on a gaming activ-  
5 ity or gaming function.”; and

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

7           “(c) DELEGATION.—The Chairman may delegate to  
8 any member of the Commission, on such terms and condi-  
9 tions as the Chairman may determine, any power of the  
10 Chairman under subsection (a).

11           “(d) MANNER OF EXERCISE.—Authority under sub-  
12 section (a) shall be exercised in a manner that is con-  
13 sistent with—

14                   “(1) due process of law;

15                   “(2) this Act; and

16                   “(3) the rules, findings, and determinations  
17 made by the Commission in accordance with applica-  
18 ble law.”.

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

20           Section 7 of the Indian Gaming Regulatory Act (25  
21 U.S.C. 2706) is amended—

22                   (1) in subsection (a)(5), by striking “perma-  
23 nent” and inserting “final”;

24                   (2) in subsection (b)—

1 (A) in paragraphs (1), (2), and (4), by in-  
2 serting “and class III gaming” after “class II  
3 gaming”;

4 (B) in paragraph (9), by striking “and” at  
5 the end;

6 (C) in paragraph (10), by striking the pe-  
7 riod at the end and inserting “; and”; and

8 (D) by adding at the end the following:

9 “(11) may, in case of contumacy by, or refusal  
10 to obey any subpoena issued to, any person, request  
11 the Attorney General to invoke the jurisdiction of  
12 any court of the United States, within the geo-  
13 graphical jurisdiction of which a person to whom the  
14 subpoena was directed is an inhabitant, is domiciled,  
15 is organized, has appointed an agent for service of  
16 process, transacts business, or is found, to compel  
17 compliance with the subpoena to require the attend-  
18 ance and testimony of witnesses and the production  
19 of records; and

20 “(12) subject to subsection (c), may accept gifts  
21 on behalf of the Commission.”; and

22 (3) by striking subsection (c) and inserting the  
23 following:

24 “(c) GIFTS.—

1           “(1) IN GENERAL.—The Commission shall not  
2       accept a gift—

3           “(A) that attaches a condition that is in-  
4       consistent with any applicable law (including a  
5       regulation); or

6           “(B) that is conditioned on, or will require,  
7       the expenditure of appropriated funds that are  
8       not available to the Commission.

9           “(2) REGULATIONS.—The Commission shall  
10      promulgate regulations specifying the criteria to be  
11      used to determine whether the acceptance of a gift  
12      would—

13           “(A) adversely affect the ability of the  
14      Commission or any employee of the Commission  
15      to carry out the duties of the Commission in a  
16      fair and objective manner; or

17           “(B) compromise the integrity or the ap-  
18      pearance of the integrity of any official involved  
19      in a program of the Commission.

20      “(d) REGULATORY PLAN.—

21           “(1) IN GENERAL.—The Commission shall de-  
22      velop a nonbinding regulatory plan for use in car-  
23      rying out activities of the Commission.

1           “(2) TREATMENT.—In developing the regu-  
 2           latory plan, the Commission shall not be bound by  
 3           chapter 6 of title 5, United States Code.

4           “(3) CONTENTS.—The regulatory plan shall in-  
 5           clude—

6                   “(A) a comprehensive mission statement  
 7           describing the major functions and operations  
 8           of the Commission;

9                   “(B) a description of the goals and objec-  
 10          tives of the Commission;

11                  “(C) a description of the general means by  
 12          which those goals and objectives are to be  
 13          achieved, including a description of the oper-  
 14          ational processes, skills, and technology and the  
 15          human resources, capital, information, and  
 16          other resources required to achieve those goals  
 17          and objectives;

18                  “(D) a performance plan for achievement  
 19          of those goals and objectives, including provi-  
 20          sion for a report on the actual performance of  
 21          the Commission as measured against the goals  
 22          and objectives;

23                  “(E) an identification of the key factors  
 24          that are external to, or beyond the control of,  
 25          the Commission that could significantly affect



1 the achievement of those goals and objectives;  
 2 and

3 “(F) a description of the program evalua-  
 4 tions used in establishing or revising those  
 5 goals and objectives, including a schedule for  
 6 future program evaluations.

7 “(4) DURATION.—The regulatory plan shall  
 8 cover a period of not less than 5 fiscal years, begin-  
 9 ning with the fiscal year in which the plan is devel-  
 10 oped.

11 “(5) REVISION.—The regulatory plan shall be  
 12 revised biennially.”.

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

14 Section 8 of the Indian Gaming Regulatory Act (25  
 15 U.S.C. 2707) is amended—

16 (1) in subsection (a), by striking “basic pay  
 17 payable for GS–18 of the General Schedule under  
 18 section 5332 of title 5” and inserting “pay payable  
 19 for level IV of the Executive Schedule under section  
 20 5315 of title 5, United States Code, as adjusted  
 21 under section 5318 of that title”;

22 (2) in the second sentence of subsection (b), by  
 23 striking “basic pay payable for GS–17 of the Gen-  
 24 eral Schedule under section 5332 of that title” and  
 25 inserting “pay payable for level IV of the Executive

1       Schedule under section 5315 of title 5, United  
 2       States Code, as adjusted under section 5318 of that  
 3       title”; and

4           (3) in subsection (c), by striking “basic pay  
 5       payable for GS–18 of the General Schedule” and in-  
 6       serting “pay payable for level IV of the Executive  
 7       Schedule under section 5315 of title 5, United  
 8       States Code, as adjusted under section 5318 of that  
 9       title”.

10   **SEC. 7. TRIBAL GAMING ORDINANCES.**

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

13           (1) in subsection (b)(2)(F)(i)—

14               (A) by inserting “tribal gaming commis-  
 15       sioners, key tribal gaming commission employ-  
 16       ees, and” after “conducted on”;

17               (B) by inserting “primary management of-  
 18       ficials and key employees” after “oversight of”;  
 19       and

20               (C) by striking “such officials and their  
 21       management”; and

22           (2) in subsection (d)(9), by striking “the provi-  
 23       sions of subsections (b), (c), (d), (f), (g), and (h)  
 24       of”.

1 **SEC. 8. MANAGEMENT CONTRACTS.**

2 Section 12(a)(1) of the Indian Gaming Regulatory  
3 Act (25 U.S.C. 2711(a)(1)) is amended by inserting “or  
4 a class III gaming activity that the Indian tribe may en-  
5 gage in under section 11(d)” after “section 11(b)(1)”.

6 **SEC. 9. CIVIL PENALTIES.**

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

9 (1) by striking the section heading and all that  
10 follows through “provide such tribal operator or  
11 management contractor” in subsection (a)(3) and in-  
12 serting the following:

13 **“SEC. 14. CIVIL PENALTIES.**

14 **“(a) IN GENERAL.—**

15 **“(1) LEVY AND COLLECTION.—**Subject to such  
16 regulations as the Commission may promulgate, the  
17 Chairman shall have authority to—

18 **“(A)** levy and collect appropriate civil  
19 fines, not to exceed \$25,000 per violation, per  
20 day;

21 **“(B)** issue orders requiring accounting and  
22 disgorgement, including interest; and

23 **“(C)** issue orders of reprimand, censure, or  
24 the placement of limitations on gaming activi-  
25 ties and functions of any regulated person or  
26 entity for any violation of any provision of this

1 Act, Commission regulations, or tribal regula-  
 2 tions, ordinances, or resolutions approved under  
 3 section 11 or 13.

4 “(2) APPEAL.—The Commission shall by regu-  
 5 lation provide an opportunity for an appeal and  
 6 hearing before the Commission of an action taken  
 7 under paragraph (1).

8 “(3) COMPLAINT.—If the Commission has rea-  
 9 son to believe that a regulated person or entity is en-  
 10 gaged in activities regulated by this Act (including  
 11 regulations promulgated under this Act), or by tribal  
 12 regulations, ordinances, or resolutions approved  
 13 under section 11 or 13, that may result in the im-  
 14 position of a fine under subsection (a)(1), the perma-  
 15 nent closure of a game, or the modification or termi-  
 16 nation of a management contract, the Commission  
 17 shall provide the regulated person or entity.”;

18 (2) in subsection (b)—

19 (A) in paragraph (1), by striking “game”  
 20 and inserting “gaming operation, or any part of  
 21 a gaming operation,”; and

22 (B) in paragraph (2)—

23 (i) in the first sentence, by striking  
 24 “permanent” and inserting “final”; and

1 (ii) in the second sentence, by striking  
 2 “order a permanent closure of the gaming  
 3 operation” and inserting “make final the  
 4 order of closure”; and

5 (3) in subsection (c), by striking “permanent  
 6 closure” and inserting “closure, accounting,  
 7 disgorgement, reprimand, or censure or placement of  
 8 a limitation on a gaming activity or function”.

9 **SEC. 10. SUBPOENA AND DEPOSITION AUTHORITY.**

10 Section 16 of the Indian Gaming Regulatory Act (25  
 11 U.S.C. 2715) is amended—

12 (1) by striking subsection (c) and inserting the  
 13 following:

14 “(c) **JUDICIAL ENFORCEMENT.**—On application of  
 15 the Attorney General, a district court of the United States  
 16 shall have jurisdiction to issue a writ of mandamus, in-  
 17 junction, or order commanding any person to comply with  
 18 this Act.”;

19 (2) by redesignating subsections (d), (e), and  
 20 (f) as subsections (e), (f), and (g), respectively, and  
 21 inserting after subsection (c) the following:

22 “(d) **FAILURE TO OBEY SUBPOENA.**—

23 “(1) **IN GENERAL.**—In case of a failure to obey  
 24 a subpoena issued by the Commission or the Chair-  
 25 man and on request of the Commission or Chair-

1 man, the Attorney General may apply to the United  
 2 States District Court for the District of Columbia or  
 3 any United States district court within the geo-  
 4 graphical jurisdiction of which a person to whom the  
 5 subpoena was directed is an inhabitant, is domiciled,  
 6 is organized, has appointed an agent for service of  
 7 process, transacts business or is found, to compel  
 8 compliance with the subpoena.

9 “(2) REMEDIES.—On application under para-  
 10 graph (1), the court shall have jurisdiction to—

11 “(A) issue a writ commanding the person  
 12 to comply with the subpoena; or

13 “(B) punish a failure to obey the writ as  
 14 a contempt of court.

15 “(3) PROCESS.—Process to a person in any  
 16 proceeding under this subsection may be served  
 17 wherever the person may be found in the United  
 18 States or as otherwise authorized by law or by rule  
 19 or order of the court.”.

20 **SEC. 11. COMMISSION FUNDING.**

21 Section 18(a)(2) of the Indian Gaming Regulatory  
 22 Act (25 U.S.C. 2717(a)(2)) is amended by striking sub-  
 23 paragraph (B) and inserting the following:

24 “(B) LIMITATION.—The total amount of  
 25 all fees imposed during any fiscal year under

1           the schedule established under paragraph (1)  
2           shall not exceed 0.080 percent of the gaming  
3           revenues of all gaming operations subject to  
4           regulation by the Commission.”.

5 **SEC. 12. PRESERVATION OF EXISTING STATUS.**

6           Nothing in this Act or any amendment made by this  
7 Act expands, limits, or otherwise affects any immunity  
8 that an Indian tribe may have under applicable law.

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