



CALIFORNIA TRIBAL
BUSINESS ALLIANCE

March 22, 2006

Senator John McCain, Chairman
Committee on Indian Affairs
United States Senate
838 Hart Office Building
Washington, D.C. 20510

RE: Gaming Related Contract Provisions of S. 2078

Dear Senator McCain:

I am writing on behalf of the six member tribes of the California Tribal Business Alliance to express support for the Arizona Indian Gaming Association efforts in developing and proposing alternative language for your S. 2078 on “gaming-related contracts” and to comment on that proposed language. The California Tribal Business Alliance members are the Pala Band of Mission Indians, the Paskenta Band of Nomlaki Indians, the Pauma Band of Luiseño Indians, the Rumsey Band of Wintun Indians, the United Auburn Indian Community, and the Viejas Band of Kumeyaay Indians. These tribes are united in their common goal of fostering business development and coalition building with California government and business leaders.

We believe the proposed language meets many of the concerns we expressed in our comment letter to you of March 1, 2006, and therefore CTBA generally supports the language proposed by the Arizona Indian Gaming Association. However, we believe the definition of “gaming-related contract” in Section 11 Subsection (A) should exclude standard employment contracts where compensation is not based on a percentage of net or gross revenue or profit increases. We also believe that Section 12(g)(4) should be rephrased to provide that the NIGC may enter into intergovernmental agreements with Indian tribes “to determine the suitability of gaming vendors for licensing” rather than “to license” vendors on a tribe-by-tribe basis.

As currently proposed, Section 11 Subsection (A) would require NIGC pre-approval of any “contract or other agreement for the management or operation of an Indian tribal gaming activity, including a contract for services under which the gaming-related contractor exercises material control over the gaming activity (or any part of the gaming



activity).” This would include the contracts of all casino employees with management and supervisory responsibilities over gaming activity and is problematic for several reasons. First, vacancies in key management and gaming employment positions need to be filled quickly in order to run an effective operation compliant with internal controls and regulatory standards. Leaving these key positions vacant pending approval of employment contracts subject to a 180-day plus federal approval process would leave our casinos understaffed, to the serious detriment of the business and the integrity of the gaming activity there. Moreover, more than 100 contracts per casino would be covered potentially by this pre-approval requirement, as many casinos offer contracts for retention purposes to many of their supervisory employees (such as pit managers, cage shift managers, and slot shift managers).

Second, our casinos will be unable to recruit the best people for key management and gaming positions. Individuals who are at the top of their field will have no incentive to leave a good position with a premier casino to then wait for his or her employment contract to be submitted to and potentially approved by the NIGC. In the gaming industry, executive level management are asked to leave immediately upon giving notice for security reasons, and other senior level employees typically provide two weeks notice at most. Under the proposed language, an individual recruited by a tribal casino would likely lose his or her job without any guarantee of employment with the tribal casino. As a result, our tribal casinos would have to fill vacancies with individuals who do not have a job, who are within our own organizations, or who are willing to enter into a prospective employment contract without telling their current employer. Limiting tribal casinos in this way would significantly damage our operations.

Finally, our casinos located in rural and often remote areas of California struggle to recruit managers and executive staff from the best casino companies in the world. Under S. 2078, the terms of these employment contracts could be changed at any time, including the terms necessary for enforcement. (See Section 12(c)(3)). In addition, the business terms of these contracts would be subject to NIGC approval, placing this federal regulatory agency in Washington D.C. in the unworkable position of second guessing the tribe’s need to recruit managers and to keep pace with competition in other jurisdictions and local companies.

Requiring pre-approval of these types of contracts would significantly impair our tribal casinos’ ability to hire the most experienced and best management team and would hinder the gaming operation’s ability to fill crucial top level management positions in the expeditious manner necessary to protect the integrity of Indian gaming. Therefore, we urge the exclusion from the proposed Section 11 Subsection (A) of standard employment contracts where compensation is not based upon a percentage of net or gross revenue or profit increases.

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In addition, we also believe that Section 12(g)(4) should be rephrased to provide that the NIGC may enter into intergovernmental agreements with Indian tribes "to determine the suitability of gaming vendors for licensing" rather than "to license gaming vendors" on a tribe-by-tribe basis. Establishing a licensing program for each tribe, if any, that may choose to enter into an intergovernmental agreement with the NIGC does not seem to be workable system. Determining the suitability of individuals and entities for licensing comports with the current federal regulatory scheme.

The California Tribal Business Alliance appreciates this opportunity to comment on your S. 2078 and the alternative language proposed by the Arizona Indian Gaming Association. Some suggested language is attached.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula Lorenzo", with a long, sweeping flourish extending to the right.

Paula Lorenzo, Chair
California Tribal Business Alliance
Board of Directors

Attachment

Proposed California Tribal Business Alliance Changes to Arizona Indian Gaming Association Language

Definitions, 25 U.S.C. §2703 [SEC. 4]

(11) GAMING-RELATED CONTRACT.--The term 'gaming-related contract' means

(A) a contract or other agreement for the management and operation of an Indian tribal gaming activity, including a contract for services under which the gaming-related contractor exercises material control over the gaming activity (or any part of the gaming activity), except for employment contracts where compensation is not based upon a percentage of net or gross revenues or profit increases; or

(B) an agreement for the development or construction of a facility to be used for an Indian tribal gaming activity which provides for compensation or fees that are --

- (i) based on a percentage of the net or gross revenues of an Indian tribal gaming activity; or
- (ii) deferred for 6 months or more after performance of the agreement is substantially completed.

(12) GAMING-RELATED CONTRACTOR.--The term 'gaming-related contractor' means an entity or an individual, including an individual who is an officer, or who serves on the board of directors, of an entity, or a stockholder that directly or indirectly holds at least 5 percent of the issued and outstanding stock of an entity, that enters into a gaming-related contract with --

(A) an Indian tribe; or

(B) an agent of an Indian tribe.

(13) MATERIAL CONTROL.-- The term 'material control', with respect to a gaming activity, means the exercise of authority or supervision over a matter that substantially affects a financial or management aspect of an Indian tribal gaming activity.

(14) GAMING VENDOR.-- The term 'gaming vendor' means an entity or an individual that provides goods or services for use in an Indian tribal gaming activity and either receives compensation or fees of two hundred fifty thousand dollars (\$250,000.00) or more within a twelve month period (as periodically adjusted for inflation pursuant to rules adopted by the Commission) or receives compensation based on a percentage of the net or gross revenue of an Indian gaming activity.

Powers of Commission, 25 U.S.C. §2706 [SEC. 7]

. . . .

(d) Regulation of Tribal Gaming Activity under Tribal-State Compact. The Commission shall rely on the regulatory authority and procedures of a tribe and a state acting under the authority of a tribal-state compact approved under 25 U.S.C. §2710(d) to meet any requirements imposed on a tribal gaming activity by regulations of the Commission adopted under this section, if the NIGC

determines that such tribal and state regulation ensures reasonably comparable regulation of the tribal gaming activity. The Commission shall adopt regulations to implement this paragraph.

Management Contracts, 25 U.S.C. §2711 [SEC. 12]

SEC. 12. GAMING-RELATED CONTRACTS AND GAMING VENDORS.

. . . .

(g) Gaming Vendors.--

(1) Each gaming vendor shall be licensed pursuant to procedures which the Chairman has determined meet or exceed the minimum federal regulatory standards adopted by the Commission.

(2) The Commission shall promulgate regulations adopting minimum federal regulatory standards for the licensing of gaming vendors, which:

(A) require appropriate background investigations of the gaming vendor;

(B) ensure that the licensing authority is independent of the gaming operation;

(C) include a mechanism to enforce the licensing procedures;

(D) provide for monitoring of compliance with the standards by the Commission; and

(E) allow for alternative determinations of suitability for persons or entities that are publicly traded companies or are subject to licensing or a suitability determination by other government agencies or professional associations such as the FDIC, the SEC, public utility corporations, or bond rating agencies.

(3) An Indian tribe may adopt and implement licensing and background investigation procedures for gaming vendors either pursuant to a tribal-state compact or otherwise that satisfy the standards for licensing gaming vendors adopted by the Commission;

(4) The Commission is authorized to enter into intergovernmental agreements with Indian tribes ~~to issue licenses~~ determine the suitability of gaming vendors for licensing or to assist in tribal licensing of gaming vendors in compliance with the standards for licensing gaming vendors adopted by the Commission.

(h) CONTRACT AUTHORITY.-- The authority of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81) relating to contracts under this Act is transferred to the Commission.

(i) NO EFFECT ON TRIBAL AUTHORITY.--

This section does not expand, limit, or otherwise affect the authority of any Indian tribe or any party to a Tribal-State compact to investigate, license, or impose a fee on a gaming-related contractor or a gaming vendor.