



UNITED SOUTH AND EASTERN TRIBES, INC.
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UNITED SOUTH AND EASTERN TRIBES

Resolution No. ~~94-40-TN~~

RECOMMENDING AMENDMENTS TO THE INDIAN GAMING REGULATORY ACT

- WHEREAS,** United South and Eastern Tribes (USET) is an inter-tribal organization comprised of twenty-one (21) federally recognized tribes; and
- WHEREAS,** the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors is comprised of delegates from the member tribes leadership; and
- WHEREAS,** several USET tribes are carrying out class II and/or Class III gaming under the provisions of the Indian Gaming Regulatory Act (IGRA) of 1988; and
- WHEREAS,** through six years of operation, the IGRA has proven to have some significant defects, but tribal governments have by and large schooled themselves on its provisions and have learned to deal with its foibles, understanding that any additional federal Indian gaming legislation might undermine tribal sovereign jurisdiction over gaming on Indian lands, and
- WHEREAS,** it has become apparent that amendments to IGRA will soon be considered by the Congress; and it is important that such amendments serve the dual purposes of reinforcing the sovereignty of tribal of tribal governments and increasing the efficiency, effectiveness, and fairness of federal and tribal regulation of Indian gaming; and

“Because there is strength in Unity”

Resolution No. 94-40-TN

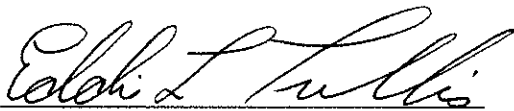
WHEREAS, in order to improve IGRA, changes would be necessary in creating checks and balances to increase the fairness and equity of the National Indian Gaming Commission, establishing a mechanism for preservation of the terms of tribal-state compacts from later decisions of the National Indian Gaming Commission, procedures for Secretarial approval of tribal-state compacts when a state may refuse to participate in negotiations with a tribe, increased flexibility in management contract terms and percentages, requiring the National Indian Gaming Commission to follow industry standards, and establishing experience in the gaming industry as a qualification for key staff of the National Indian Gaming Commission,

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of United South and Eastern Tribes hereby endorse the attached letter from the USET Gaming Association Chairman to Senator Inouye dated May 20, 1994, and the "Proposed Amendments to the IGRA"

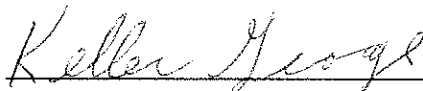
NOW BE IT FURTHER RESOLVED that the Board of directors of United South and Eastern Tribes does hereby authorize the executive Director to disseminate this Resolution and attachments to the appropriate officials of the executive and legislative branches, other Indian organizations, local and state government officials, and other interested citizens, and to take such other and further actions as may be necessary to inform others of the position of USET.

CERTIFICATION

This resolution was duly passed at the Board of Directors meeting, at which a quorum was present, in Nashville, Tennessee, on May 27, 1994.



Eddie Tullis, President
United South and Eastern Tribes



Keller George, Secretary
United South and Eastern Tribes



UNITED SOUTH AND EASTERN TRIBES GAMING ASSOCIATION

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May 20, 1994

CHAIRMAN
Phillip Martin

VICE CHAIRMAN
Richard 'Skip' Hayward

SECRETARY
Terry Martin

TREASURER
Keller George

Honorable Daniel Inouye
Chairman
Senate Committee on Indian Affairs
Washington, D.C. 20510-6450

Dear Mr. Chairman:

I want to express my appreciation for the opportunity provided by the Committee to appear before you last Tuesday, May 17 on behalf of the United South and Eastern Tribes Gaming Association. The amendments we offer in the following pages are meant to improve a law that already works -- providing the states choose to participate. These amendments are offered based upon the experience of USET gaming tribes to date and are grounded upon three basic assumptions:

- 1) The federal government is interested in effective regulation of gaming by both states and tribes;
- 2) The federal government, recognizing state sovereignty, defers in large measure to individual states to regulate gaming, and the same principle applies to tribes and tribal sovereignty; and
- 3) Whatever is the least restrictive operative regulatory requirement promulgated by a state or federal regulatory agency becomes the minimum national standard for any gaming jurisdictions, tribal or state. This is necessary if a uniform national standard is to be fairly applied to all gaming regulatory agencies and to the gaming industry within those jurisdictions.

The attached recommended amendments address the following:

- (1) creates additional checks and balances on the power of the Chairman by reducing his power and expanding that of the other commissioners (the "A" amendments);
- (2) guarantees the integrity of the basic Class III gaming structure by preventing alterations to the tribal/state compact unless agreed to by both the state and the tribes; and provides a mechanism for tribes to compact with the federal government if a state chooses not to

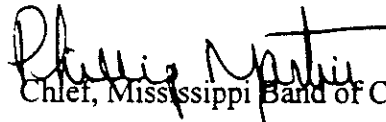
"Because there is Strength in Unity"

negotiate without getting bogged down in legal issues (the "B" amendments);

- (3) provides the tribes with access to substantial capital resources precluded under the current contract limits through a waiver provision; and prevents disruption of existing contract terms until contract expiration or mutual agreement by the contracting parties (the "C" amendments);
- (4) establishes the parameters for the NIGC by specifying that its regulations cannot exceed that promulgated by other gaming regulatory bodies; and prevents any action of the NIGC from disrupting the business relationship between the contractor and the tribe for the term of the approved management contract (the "D" Amendments); and
- (5) adds a requirement for experience in the gaming industry or gaming regulatory industry to the key daily administrative position of the Commission (the "E" Amendment).

We will be happy to provide any additional assistance the Committee may wish.

Sincerely,
Chairman, USET Gaming Association


Chief, Mississippi Band of Choctaw Indians

Attachments

PROPOSED AMENDMENTS TO THE IGRA

"A" Amendments

25 USC 2705 Powers of the Chairman

Delete Section 6(a) up to part (1) and replace with: The Commission hereby delegates to the Chairman the authority, subject to appeal to the full Commission, to {remainder of section the same}

Delete Section 6(a) parts (3) and (4) and move to Section 7(a) (Power of the Commission) as new parts 7(a)(6) and (7). NOTE: References to the "Chairman" throughout the rest of IGRA regarding contracts and ordinances, the substance of these two parts, must be changed to "Commission."

Add to Section 6 as a new part (c): The general delegation granted by this Section to the Chairman may, upon a majority vote of the Commission, be temporarily abrogated.

Add to Section 6 as a new part (d): Any specific ruling or decision of the Chairman pursuant to subsection (a) of this Section is subject to consideration by the entire Commission upon the request of any Commissioner, or any tribal gaming entity or tribal regulatory agency affected by the ruling or decision

"B" Amendments

25 USC 2710 Tribal Gaming Ordinances

Add to Section 11(d)(1) a new part (D): Once approved by the National Indian Gaming Commission (NIGC), a valid compact shall not be subject to changes in its terms by future actions of the NIGC unless agreed upon by both the state and the tribe.

Add to the end of Section 11(d)(3)(A): Upon receipt of a proposed compact from a Tribe, the State shall have 30 days to enter into good faith compact negotiations. Failure by the state to commence these negotiations within this timeframe shall result in state forfeiture of its right of participation in the compacting process. After the expiration of the 30 day timeframe without the state commencing negotiations, the tribe may take its proposed compact to the Secretary of Interior for consideration and action. Should the Secretary of Interior fail to commence good faith negotiations within 30 days, the proposed compact submitted by the tribe is automatically approved.

"C" Amendments

25 USC 2711 Management Contracts

Add to Section 12(b)(5): In circumstances where seven years does not generate sufficient

return on investment (defined as equal to the average rate of return on the industry's investment in gaming enterprises) for a major capital investment, the Tribe may petition the Commission for a waiver of the limitation. The financial justification for this waiver must comply with generally accepted accounting principles utilized by the gaming industry to analyze risk and rate of return. the Commission must make a decision regarding the waiver within ninety (90) days or the waiver request is automatically granted. Any denial decision by the Commission must include the basis for the decision.

Add to Section 12 a new part (j): Once approved by the Commission the terms of a management contract are not subject to change by future NIGC rulemakings until the contract's original or renewal term has expired or until the management firm and the tribe both agree to the change.

"D" Amendments

25 USC 2706 Powers of the Commission

Add to Section 7(b)(10): No regulation promulgated by the Commission may exceed in scope or requirement those regulations of similar purpose or intent utilized by existing approved state or federal gaming regulatory bodies.

Add to Section 7 a new part (d): Daily regulatory development, oversight and enforcement functions of tribal gaming operations are to be performed by tribal gaming regulatory bodies. Activities of this Commission are limited to that of establishing minimum federal standards in conformance with industry standards reflected in the minimum requirements of state and federal regulatory bodies.

"E" Amendments

25 USC 2707 Commission Staffing

Add to Section 8 a new part (f): A requirement for the position of Executive Director or such equivalent position in the Commission shall be substantial experience in the gaming industry or in gaming regulatory agencies.

USET GAMING ASSOCIATION

RESOLUTION UGA _____

A RESOLUTION TO RECOMMEND AMENDMENTS TO THE INDIAN GAMING
REGULATORY ACT

WHEREAS, the United South and Eastern Tribes Gaming Association is a group of federally-recognized Indian tribal governments in the eastern and southern sections of the country with interests in Indian gaming; and

WHEREAS, several USET tribes are carrying out Class II and Class III gaming under the provisions of the Indian Gaming Regulatory Act (IGRA) of 1988; and

WHEREAS, through six years of operation, the IGRA has proven to have some significant defects, but tribal governments have by and large schooled themselves on its provisions and have learned to deal with its foibles, understanding that any additional federal Indian gaming legislation might undermine sovereign jurisdiction over gaming on Indian lands, and

WHEREAS, it has become apparent that amendments to IGRA will soon be considered by the Congress; and it is important that such amendments serve the dual purposes of reinforcing the sovereignty of tribal governments and increasing the efficiency, effectiveness, and fairness of federal and tribal regulation of Indian gaming; and

WHEREAS, in order to improve IGRA, changes would be necessary in creating check and balances to increase the fairness and equity of the National Indian Gaming Commission, establishing a mechanism for preservation of the terms of tribal-state compacts from later decisions of the National Indian Gaming Commission, procedures for Secretarial approval of tribal-state compacts when a state may refuse to participate in negotiations with a tribe, increased flexibility in management contract terms and percentages, requiring the National Indian Gaming Commission to follow industry standards, and establishing experience in the gaming industry as a qualification for key staff of the National Indian Gaming Commission, now therefore be it

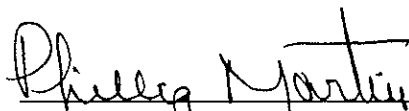
RESOLVED, that the Board of Directors of the United South and Eastern Tribes Gaming Association does hereby endorse the attached letter to Senator Inouye dated May 20, 1994, and the "Proposed Amendments to the IGRA," and be it further

RESOLVED, that the Board of Directors of the United South and Eastern Tribes Gaming Association does hereby authorize the Chairman to disseminate this Resolution and attachments to the appropriate officials of the executive and legislative branches, other Indian organizations, local and state government officials, and other interested citizens,

and to take such other and further actions as may be necessary to inform others of the position of UGA.

CERTIFICATION

I, the undersigned, as Secretary of the board of directors of the United South and Eastern Tribes Gaming Association, certify that said board members were present at a meeting held in Nashville, Tennessee on May 26, 1994; and that the foregoing Resolution was duly adopted by unanimous vote.



Phillip Martin, Chairman
USET Gaming Association



Keller George, Secretary
USET Gaming Association

USET GAMING ASSOCIATION

RESOLUTION UGA _____

A RESOLUTION TO ENDORSE THE POSITION OF NIGA/NCAI
ON IGRA AND CERTAIN FEDERALLY RECOGNIZED TRIBES WHICH HAVE
NEGOTIATED LAND CLAIMS SETTLEMENTS

WHEREAS, on May 17, 1994, a combined meeting of the National Indian Gaming Association (NIGA) and the National Congress of American Indians (NCAI) endorsed a position statement (attached) on the situation of those certain federally recognized Indian tribes which have negotiated land claims settlements approved by act of Congress with regard to the Indian Gaming Regulatory Act (IGRA) and its possible amendment, and

WHEREAS, a majority of such tribes (that is, those tribal governments recognized through statute as a result of violations of the Nonintercourse Act of 1790) are located in the USET area, and

WHEREAS, such tribes have tribal governments which are as legitimate and sovereign institutions as any others under federal law, now therefore be it

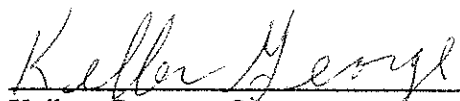
RESOLVED, that the Board of Directors of the United South and Eastern Tribes Gaming Association does hereby endorse the attached position on IGRA and the affected tribes, and be it further

RESOLVED, that the Board of Directors of the United South and Eastern Tribes Gaming Association does hereby authorize the Chairman to disseminate this Resolution and attachments to the appropriate officials of the executive and legislative branches, other Indian organizations, local and state government officials, and other interested citizens, and to take such other and further actions as may be necessary to inform others of the position of UGA.

CERTIFICATION

I, the undersigned, as Secretary of the board of directors of the United South and Eastern Tribes Gaming Association, certify that said board members were present at a meeting held in Nashville, Tennessee on May 26, 1994; and that the foregoing Resolution was duly adopted by unanimous vote.

Phillip Martin, Chairman
USET Gaming Association



Keller George, Secretary
USET Gaming Association

NIGA/NCAI POSITION

The IGRA should not be amended to overrule the Narragansett decision. Settlement Act tribes need the IGRA benefits the same as other tribes.

Explanation

A number of New England tribes are under land Settlement Acts which make state laws generally applicable. These Acts were all passed prior to IGRA. In order to run their governments these tribes badly need the stream of income that IGRA makes possible, the same as other tribes. One of these tribes (Narragansett) proposed to set up a casino under IGRA on federal trust land, and was sued by the state of Rhode Island. The state argued that the Settlement Act prevented the IGRA from being applicable. The federal district court rejected the state's argument, and said that the IGRA takes precedence over the Settlement Act. The federal court of appeals approved that ruling.

We understand an amendment will be proposed to overrule the Narragansett case,¹ stating that IGRA does not supersede any of the Settlement Acts. The Task Force opposes any such amendment because it would create two classes of Indian tribal governments -- one privileged in the area of gaming and one not. This is clearly discrimination. There is no fair reason for such a distinction. All tribes need the revenue that gaming provides, and which the IGRA allows. We oppose any outright prohibition that would deprive these tribes of the intended benefits of IGRA to "promote tribal economic development, tribal self-sufficiency, and strong tribal government." These remain the principal goals of federal Indian policy, both in the Congress and the White House, as stated by President Clinton as recently as April 29, 1994.

It should be noted that the New England Settlement Act tribes recognize, and are sensitive to, the concerns of their respective states, and the tribes interested in gaming are willing to reach mutually acceptable accommodations that will satisfy legitimate state concerns while allowing the tribes to conduct viable gaming operations.

¹ *State of Rhode Island v. Narragansett tribe of Indians*, 816 F. Supp. 796 (D.R.I. 1993), *aff'd in part, rev'd in part*, ___ F. 3d ___, No. 93-1400, slip op. (1st Cir., Mar. 23, 1994).