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GAMING COMMISSION SENATE INDIAN AFFAIRS NATIONAL GAMING COMMISSION
REPORT

BODY:

TESTIMONY OF THE HONORABLE MONTIE R. DEER, CHAIRMAN NATIONAL INDIAN
GAMING COMMISSION BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS June
23, 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 National Gambling Impact Study
Commission's (Study Commission) final report. As you know, this report was issued this past Fri-
day on June 18, 1999. At this time, the NIGC has not had ample time to fully review and digest the
report. We would appreciate an opportunity to more fully comment on the report's recommenda-

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tions once we are able to thoroughly analyze the report's contents. Additionally, we would like to comment on the "Survey of Regulatory Practices in the Gaming Industry" submitted by Dr. Amy Bunger Pool. This survey was conducted at the request of the Study Commission and discusses many characteristics of the Indian gaming industry, particularly with regard to regulation. You have asked me here today to address two issues: (1) the regulation of Indian gaming and (2) the NIGC's disclosure of aggregate tribal revenue figures to the Study Commission. Indian gaming regulation Indian gaming has three tiers of regulation: tribal, state and federal. The Study Commission report recognizes the fact that as sovereign governments, tribes provide the first level of regulation for their gaming operations. Indeed, the report recommends that tribal sovereignty should be "recognized, protected and preserved." With respect to state involvement, many Tribal-State compacts provide for some level of state regulation. Finally, the NIGC provides a third level of regulation including (1) monitoring all tribal gaming operations on a continuing basis; (2) approving management contracts; (3) conducting background investigations on management company officials; (4) reviewing and conducting audits of the gaming operations; and (5) initiating enforcement actions to ensure the integrity of Indian gaming operations. We sincerely appreciate the Study Commission's acknowledgment of, and support for, the NIGC's role in regulating Indian gaming. (Executive Summary Recommendation (E. S. Recommendation) 6.1). Tribal gaming regulatory authority is often delegated to tribal gaming commissions under the tribes' tribal gaming ordinances which are submitted and approved by the NIGC. They may also be established or delegated authority under Tribal-State compacts entered into to govern Class III gaming. Occasionally, tribes establish their regulatory bodies by other means such as a tribal resolution or may even change the tribe's governing document, its constitution. Although not mandated by the Indian Gaming Regulatory Act (IGRA), the NIG-C works closely with tribes to establish independent regulatory bodies. The NIGC

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has issued a bulletin which encourages tribes to establish independent tribal gaming commissions and describes our expectations for the regulatory function that those commissions will provide. I have attached the most recent version of the NIGC's Report to the Secretary of the Interior on Compliance with the Indian Gaming Regulatory Act. This report focusses on eight key requirements of IGRA. As you will see the report shows that gaming tribes maintain a strong compliance record. In January of this year, the NIGC promulgated regulations on Minimum Internal Control Standards (MICS) which are intended to protect and preserve the integrity of Indian gaming. The MICS were drafted to provide protection against potential risk of loss at tribal casinos due to customer or employee access to cash and cash equivalents within the casino -- which is true of any casino. The MICS will reduce the risk of loss to tribal gaming operations because the rule contains, among other things, standards and procedures that govern cash handling and counting, documentation, game integrity, auditing and surveillance. For example, with regard to the game of Bingo, the MICS (1) establish game play standards; (2) restrict access to bingo supplies and equipment; (3) require collection and review of data; and (4) establish standards for linked electronic games. In addition to Bingo, the MICS also establish minimum standards and PI procedures for Class II and III games such as pull tabs, card games, manual and computerized Keno, pari-mutuel wagering, table games and gaming machines. In short, the MICS provide strict rules which track money from the time it enters the casino, until the time it leaves. All gaming tribes must adopt Minimum Internal Control Standards by August 4, 1999. I appreciate the Study Commission's support of the MICS issued by the NIGC. As these standards become effective, we intend to emphasize compliance with them as a key aspect of our regulatory program. To meet this challenge we have established a separate Division of Audits as part of the NIGC staff structure and are in the process of hiring auditors experienced in gaming operations for positions within that division. Under the MICS, the annual inde-

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pendent audit of a tribal gaming operation provided to the NIGC will include comment on that tribal gaming operation's compliance with the NIGC-directed MICS program, as recommended by the Study Commission (Recommendation 6.5). You should know that many tribes' internal controls already meet or exceed the NIGC's MICS. Just this past week I visited four tribes in Michigan to tour the casinos, including a review of surveillance, count room procedures and other casino regulation. I can tell you first hand that these particular tribes had state of the art surveillance and machinery to conduct the counting of money. I also learned about a cooperative network in which all Michigan gaming tribes share photographs and other information on cheaters and scam artists. Many employees I spoke with had prior experience in the industry and some had been with the operation for close to ten years, since the inception of Indian gaming. Let me add that I was impressed on my visit to Michigan last week by the tribal infrastructure and programs that have resulted from the revenues of Indian gaming for the tribes in that state. As the Study Commission report concludes, "gambling revenues have proven to be a very important source of funding from many tribal governments, providing much-needed improvements in the health, education and welfare of Native Americans on reservations across the United States." (Final Report at 2- 10.) The building of tribal schools, health centers and recreation centers as well as substance abuse programs, elderly and headstart programs and water treatment programs are just a few of the things I observed first hand. I was informed that 10 years ago many of these programs and much of the infrastructure simply did not exist. To be fair, this is not the case for all tribes. Some tribes which have smaller, less profitable operations may not have sophisticated surveillance or advanced machinery to assist in count room procedures. Indeed, some tribes will be required to expend additional revenues in order to come into compliance with the NIGC's MICS. With respect to the NIGC's regulatory authority, I would request again that the NIGC be granted licensing authority. Currently, there exists some gaps

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in the regulatory process because, under the current statutory authority, the NIGC is not authorized to investigate suspect individuals or companies which might be using vending or consulting contracts as a foothold into Indian gaming. The problem is that, because IGRA requires only the approval of management contracts and not the approval of consulting agreements and other similar arrangements, some parties have attempted to circumvent the management contract approval requirements by claiming that they are merely providing consulting or vendor services, or that they are simply lenders attempting to assure that they will be repaid in full. A national licensing system for all individuals engaged in Indian gaming and for gaming related contracts would give the NIGC the ability to scrutinize persons involved in consulting agreements, and similar gaming related contracts and would be an improvement in our regulatory scheme. Release of tribal financial information In addition to Indian gaming regulation, I wanted to briefly discuss the Study Commission's statement that the NIG-C refused to provide information to the Study Commission. (Report at 7-3 -- 7-9). I believe the record is quite clear that the NIGC provided extensive amounts of information to the Study Commission. What we did not produce were complete copies of tribal audits. In September of 1998, prior to my Chairmanship at the NIGC, the Study Commission made a blanket request for individual proprietary tribal audits which tribes must provide to the NIGC pursuant to IGRA. In response to the Study Commission's request for copies of the tribal gaming operation audit reports, we explained in a series of letters dated September 9, October 23, and December 4, 1998, and in a face-to-face meeting with Chairman James, that we are prohibited by the Indian Gaming Regulatory Act from releasing the audit reports except in certain limited circumstances, e.g., when the audits are used for law enforcement purposes. IGRA provides that: Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provisions of paragraph (4) and (7) of section 552(b) of title 5, United States Code.

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The reference to paragraph 4 in 2716(a) refers to exemption 4 of the Freedom of Information Act which protects "trade secrets and commercial or financial information obtained from a person that is privileged or confidential." Section 2716(a) thus eliminates the NIGC's discretion to release exemption 4 information. Consequently, because the audit information is confidential information under exemption 4, and that the release of the information could result in substantial competitive harm, we concluded that the NIGC is not authorized to provide copies of the audits to the Study Commission. In addition to the legal restrictions, the confidentiality provisions of IGRA allow the NIGC to efficiently conduct business as tribes are more inclined to provide the NIG-C with a full and complete audit of their operations. Notwithstanding the statutory prohibition of full disclosure of audits, we met and discussed on several occasions, this issue with the Study Commission. Ultimately, NIG-C staff met with Study Commission researchers to reach some workable solution to the request. The NIGC and Study Commission researchers finally agreed that the release of aggregate financial information on Indian gaming would satisfy the purposes for which the Study Commission requested the information. On two occasions, December 4, 1998 and April 13, 1999 the NIGC provided aggregate data to the Study Commission. Interestingly, the Study Commission recommends in its report that the NIGC compile and present for public release certain aggregated audit information about tribal gaming operations -- the precise solution that the NIGC recommended to the Study Commission, albeit not for public release. In addition to the aggregate financial data, the NIGC produced, among other things, the following additional information to the Study Commission: (1) a list of all tribal auditors used by tribes to conduct audits; (2) NIGC's Report to the Secretary of the Interior on Compliance with IGRA- (3) copies of redacted audits; and (4) copies of NIGC regulations including the MICS. I am concerned about the Study Commission's recommendation that the NIGC compile for public release certain aggregated audit information about tribal gaming operations. (E.

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S. Recommendation 6.5). To the extent the Commission recommends a change in the current law, we do not believe that is necessary. As I stated earlier, we have already provided aggregate data to the Study Commission and believe this to be permissible pursuant to IGRA. However, I have concerns with the vague recommendation made by the Study Commission. For example, the Study Commission does not articulate any sound public policy rationale for the public release of the data as to Indian gaming. In addition, public release in other than aggregate form does have impact on tribal sovereignty. The Study Commission report would otherwise recommend that sovereignty be "recognized, protected and preserved." The public release of tribal financial data seems at odds with this fundamental position. To the extent this Committee recommends any change in the law, we would be happy to work with Committee staff in reaching some resolution. Under IGRA, we are currently bound to treat such information as confidential and as such, the NIGC has ready access to tribal financial data related to gaming. We receive the annual independent auditors' reports and when we are monitoring or investigating gaming operations, tribal books and records are normally provided without objection. While a legislative change could result in a requirement that we release financial information to the public, I think such a change could have a negative impact on our oversight authority. Thank you again for the opportunity to present my views on this subject.

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