



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 17, 2006

S. 2078

Indian Gaming Regulatory Act Amendments of 2006

As reported by the Senate Committee on Indian Affairs on March 29, 2006

SUMMARY

S. 2078 would amend provisions of the Indian Gaming Regulatory Act (IGRA) to clarify and expand the authority of the National Indian Gaming Commission (NIGC) to regulate and oversee Indian gaming. In addition, S. 2078 would restrict off-reservation gambling. CBO estimates that implementing S. 2078 would not have a significant impact on the budget. Enacting the bill could affect revenues, but CBO estimates that any such effects would not be significant. Enacting the bill would not affect direct spending.

S. 2078 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would limit the ability of tribes to operate gaming on land put in trust after 1988 and increase federal regulation of tribal gaming operations. While the impact of these changes on tribes with such operations is very uncertain, CBO estimates that the aggregate costs probably would not exceed the annual threshold established in UMRA (\$64 million in 2006, adjusted annually for inflation) in the next five years. Enacting this bill would impose no other significant costs on state, local, or tribal governments.

S. 2078 would impose a private-sector mandate, as defined in UMRA, on certain contractors in the Indian gaming industry by making them subject to federal regulation of Class II and Class III gaming-related contracts. Based on information from industry and government sources, CBO estimates that the aggregate direct costs associated with complying with the mandate would fall below the annual threshold established by UMRA for private-sector mandates (\$128 million in 2006, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The NIGC is authorized to collect and spend annual assessments on the revenues of tribal gaming operators. The NIGC is currently authorized to collect and spend up to 0.080 percent

(80 cents per \$1,000) of all tribal gaming revenues subject to NIGC regulation. Based on information from NIGC, CBO estimates that the agency's current collection and spending authority would be sufficient to accommodate the additional costs under the bill.

Enacting S. 2087 could affect federal revenues because the legislation would amend civil penalties related to Indian gaming. Collections of the civil penalties are recorded in the budget as revenues. CBO estimates, however, that any change in revenues that would result from enacting the bill would not be significant.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 2078 contains intergovernmental mandates as defined in UMRA because it would limit the ability of tribes to operate gaming on land put in trust after 1988 and increase federal regulation of tribal gaming operations. While the impact of these changes on tribes with gaming operations is very uncertain, CBO estimates that the aggregate costs probably would not exceed the annual threshold established in UMRA (\$64 million in 2006, adjusted annually for inflation) in any of the next five years. Enacting this bill would impose no other significant costs on state, local, or tribal governments.

Off-Reservation Gaming

The bill would amend section 20 of the Indian Gaming Regulatory Act to further restrict the ability of tribes to establish gaming operations on lands taken into trust after the IGRA was enacted. That section generally prohibits gaming on lands placed into trust after October 17, 1988. It includes a number of exceptions to that rule, but this bill would further narrow those exceptions. First, the bill would eliminate the exception for a tribe that receives a special determination from the Department of the Interior and approval of the state's governor (referred to as two-part determinations) for all but those tribes that had an application pending before April 15, 2006. Second, it would add new conditions to the exceptions for newly created or restored tribes.

These changes would have limited impact on the ability of tribes to open gaming operations. Eliminating two-part determinations probably would affect few, if any, tribes in the next few years because, according to government officials, most tribes that had any plans to seek such a determination filed applications before the April 15 deadline. Further, the Department of the Interior has approved only three applications for two-part determinations since IGRA was enacted. The new conditions affecting newly created or restored tribes generally reflect those already imposed administratively by the Department of the Interior.

Additional Oversight of Tribal Gaming

Several provisions in S. 2078 would increase the National Indian Gaming Commission's role in regulating tribal gaming operations and so would impose further mandates on tribes. The bill would broaden existing requirements for NIGC review of tribal contracts and would require additional background checks of tribal gaming commissioners and contractors. It also would clarify the Commission's authority to oversee tribal gaming establishments that fall within Class III (generally, slot machines and other casino games) and to establish minimum standards for internal controls exerted by tribes over such operations. The impact of these new mandates is very uncertain and would depend to a great extent on the NIGC's implementing regulations.

Some of the new requirements in this bill focus on oversight of gaming-related contracts and contractors. The law already requires that NIGC review contracts for managing tribal gaming operations, but S. 2078 would broaden the existing requirement to cover other types of gaming-related contracts and would make these additional contractors subject to NIGC background investigations. While these new requirements fall on both the tribes and businesses as parties to the covered contracts, the direct cost of these changes would fall initially on the businesses that contract with tribes. The direct costs incurred by tribes could include legal costs and delays in implementing new contracts. The tribes could also bear a substantial part of the costs initially incurred by contractors, however, if those costs are passed through under the terms of these contracts.

Other requirements would fall entirely on the tribes with gaming operations. For example, the bill would require tribes to conduct background investigations of tribal gaming commissioners and key commission employees. CBO estimates that, even if tribes conduct relatively extensive background checks, the total cost of this mandate would not exceed \$5 million per year, and the costs could be much less. The bill also includes explicit authority for NIGC to establish minimum standards for tribes' internal controls. Such standards have already been established by the NIGC under current law, but its authority to do so is currently under litigation. This provision would settle those legal challenges. While CBO cannot predict the outcome of the current litigation, we would not expect the cost of this provision to be significant in any case because most tribes have substantially adopted the standards. Finally, the bill would require all tribes with gaming operations to pay fees to the NIGC, and remove an existing exception for certain tribes. This would not change the total amount of fees paid by tribes but would slightly reallocate the burden of those fees.

IMPACT ON THE PRIVATE SECTOR

S. 2078 would impose a private-sector mandate, as defined in UMRA, on certain contractors in the Indian gaming industry by making them subject to federal regulation of Class II and Class III gaming-related contracts. Based on information from industry and government sources, CBO estimates that the aggregate direct costs associated with complying with the mandate would fall below the annual threshold established by UMRA for private-sector mandates (\$128 million in 2006, adjusted annually for inflation).

S. 2078 would clarify and broaden the National Indian Gaming Commission's authority to regulate all Class II and Class III gaming-related contracts. Currently, the Commission regulates all management contracts for Class II and Class III Indian gaming. The bill would expand the Commission's authority to regulate additional types of Class II and Class III contracts, including, but not be limited to: consulting contracts; development contracts; financing contracts; and participation contracts. By regulating the terms of such contracts, the bill would impose a mandate on certain private contractors.

The bill would require new gaming-related contracts and any changes in existing contracts to be approved by NIGC. Such gaming-related contracts would have to meet certain minimum standards outlined in the bill to be eligible for approval by the Commission. In approving such contracts, NIGC would have to determine if contractors or subcontractors are suitable to engage in business with Indian tribes. In addition, in the case of a change in a contract, the bill would require contractors to provide a notice to the NIGC if there is any change in the information they reported during a suitability determination. The bill would exclude from the suitability determinations any contractor that is either regulated by the Securities and Exchange Commission (SEC) or wholly or partially owned by an entity regulated by the SEC.

The cost of the mandate would be the incremental expenditures incurred in meeting the new requirements on gaming-related contracts. The bill would require that gaming-related contractors pay the costs of any investigation activities carried out during the suitability determination. According to government sources, such activities would include, but may not be limited to, FBI background checks and fingerprinting procedures. Currently, NIGC only requires management officials and other key employees of gaming enterprises of Class II and Class III Indian gaming to be subject to background checks and fingerprinting. CBO estimates that the incremental costs associated with the additional background checks and fingerprinting for those entities would be minimal.

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