



VIA FACSIMILE & REGULAR MAIL

FEB 27 2007

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Ms. Elizabeth L. Homer
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RE: Gaming Ordinance of the Osage Nation

Dear Chief Gray and Ms. Homer:

This letter responds to Ms. Homer's request on behalf of the Osage Nation for the National Indian Gaming Commission (NIGC) to review and approve the Nation's newly enacted gaming ordinance. The ordinance was adopted by the Congress of the Osage Nation, on December 6, 2006 via Bill No. ONCA 07-09.

This letter constitutes approval under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, of the enclosed ordinance. As you know, approval does not constitute approval of specific games. Furthermore, the approved statute, and the newly approved amendment, is approved only for gaming on Indian Lands as defined under the IGRA, lands over which the Nation possesses jurisdiction and exercises governmental power.

Thank you for submitting the ordinance for review and approval. The NIGC staff and I look forward to working with you and the Nation to implement IGRA. If you need further assistance, do not hesitate to contact the office.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Philip N. Hogen".

Philip N. Hogen
Chairman

OSAGE NATION CONGRESS

2nd Special Session of the 1st Legislature (2007)

BILL NUMBER ONCA 07-09

ENROLLED

AUTHOR: Congressman Mark Freeman

An Act

Updating the Osage Tribal Gaming Ordinance to Reflect the Changes in the Osage Nation Constitution, correcting the Numbering of Sections in the Osage Tribal Gaming Law, declaring an emergency, and establishing an effective date.

Be it enacted by the Congress of the Osage Nation:

SECTION 1. SHORT TITLE

This Act may be cited as the "Osage Tribal Gaming Law Update Act."

SECTION 2. FINDINGS; PURPOSE

(a) FINDINGS. The Osage Nation Congress finds that:

- A. The Osage Nation adopted a new Constitution on Saturday, March 11, 2006.
- B. The existing Osage Tribe Gaming Ordinance was enacted on March 14, 2005, prior to the creation of the 2006 Constitution of the Osage Nation and should be updated to reflect the Constitutional framework of the Osage Nation.

(b) PURPOSE.

The purpose of this law is to update the Osage Nation Tribal Ordinance so it will be consistent with the powers and authorities established in the Constitution of the Osage Nation as ratified on March 11, 2006 and signed on May 6, 2006.

SECTION 3. TITLE

The title of the law shall be the "Osage Nation Gaming Law".

SECTION 4. DEFINITIONS. Unless a different meaning is set forth below, the terms used in this chapter shall have the same meaning as defined in the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2467 (Oct. 17, 1988), 25 U.S.C. 2701 et seq. (IGRA).

- (a) "Applicant" means any person, partnership, corporation, joint venture or other entity applying for, or requesting renewal of, any license described in or required by this chapter.
- (b) "Application" means a request for the issuance or renewal of a license described in or required by this chapter.
- (c) "Congress" means the Osage Nation Congress.
- (d) "Chairman" means the Chairman of the National Indian Gaming Commission defined at 25 U.S.C. 2703(2).

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- (e) **"Class II Gaming"** means Class II Gaming as defined at 25 U.S.C. 2703(7)(A), and any regulations promulgated thereunder.
- (f) **"Class III Gaming"** means Class III Gaming as defined at 25 U.S.C. 2703(8), and any regulations promulgated thereunder.
- (g) **"Commission"** means the Office of the Commissioner of the Osage Nation Gaming Commission and its employees.
- (h) **"Commissioner"** means the Public Officer appointed and confirmed by the Osage Nation Congress to carry out the duties of the Gaming Statute of the Osage Nation, or as authorized by any other gaming Statutes, resolutions, or laws enacted by the Osage Nation Congress.
- (i) **"Fiscal Year"** means the period beginning at 12:01 a.m. on October 1 of each year and ending at midnight, September 30 of the following year.
- (j) **"Gaming"** means any Class II or Class III Gaming activity, either individually or collectively, whether authorized or unauthorized.
- (k) **"Gaming Device"** means any equipment or mechanical, electromechanical or electronic contrivance, component or machine, used remotely or directly in connection with any gaming which affects the result of a wager by determining or predicting the outcome of such game or the odds of winning or losing such game. The term shall be broadly construed to promote the purposes of this chapter and shall also include any devices, machines, components or contrivances which do or are capable of affecting, in any way, the playing of any gaming.
- (l) **"Supplier or Vendor of Gaming Goods and Services"** means any person who manufactures, sells, leases, distributes, supplies or makes modifications to, any gaming device of the Nation and all persons holding any direct or indirect financial interest in such gaming device supplier.
- (m) **"Gaming Establishment"** means any premises where gaming is operated or conducted on the Nation's Indian Lands and includes all buildings, improvements, appurtenances, equipment and facilities used or maintained in connection with such gaming.
- (n) **"Gaming Operation"** means any business enterprise owned by the Nation, the revenues of which are primarily derived from gaming or from any gaming establishment.
- (o) **"Gross Revenue"**. *Gross revenue* means the total of all of the following, less the total of all cash paid out as losses to patrons and any items made deductible as losses by calculation of gross revenues:
- (i) Cash received as winnings;
 - (ii) Compensation received for conducting any game in which the licensee is not a party to a wager.

For the purposes of this definition, cash or the value of non-cash prizes awarded to patrons in a contest or tournament are not losses.

The term does not include:

- (i) Counterfeit money or tokens;
- (ii) Coins of other countries which are received in gaming devices;
- (iii) Cash taken in fraudulent acts perpetrated against a licensee for which the licensee is not reimbursed; or
- (iv) Cash received as entry fees for contests or tournaments in which the patrons compete

for prizes.

Calculation of Gross Revenues. Certain expenses are not deductible.

- (1) In calculating gross revenue, any prizes, premiums, drawings, benefits or tickets which are redeemable for money or merchandise or other promotional allowance, except money or tokens paid at face value directly to a patron as the result of a specific wager and the amount of cash paid to purchase an annuity to fund winnings must not be deducted as losses from winnings.
 - (2) In calculating gross revenue from gaming devices, the actual cost to the licensee of any personal property distributed to a patron as the result of a legitimate wager may be deducted as a loss, but not travel expenses, food, refreshments, lodging or services. For the purposes of this section, "as the result of a legitimate wager" means that the patron must make a wager prior to receiving the personal property, regardless of whether the receipt of the personal property is dependent on the outcome of the wager.
- (p) **"Indian Lands"** shall have the same meaning as set forth in the Indian Gaming Regulatory Act.
- (a) **"Key Employee"** shall have the same definition as set forth in 25 C.F.R. Part Section 502.14.
- (r) **"License"** means any authorization granted by the Commission, pursuant to this chapter, to any person which is required for such person to perform certain acts or engage in certain activities. The issuance of a license shall not create a property or liberty interest in such license for the benefit of the licensee.
- (s) **"Licensee"** means any person who has been issued a valid and current license pursuant to the provisions of this chapter.
- (t) **"Management Contract"** means any contract, agreement or other document, including all collateral agreements, establishing a relationship between the Nation's government and any person, pursuant to which such person has managerial responsibilities in or for any gaming operation.
- (u) **"Management Entity or Controlling Shareholder"** means:
- (a) Any person having a direct financial interest in any management contract, including those persons who own five percent or more of any management entity's outstanding capital stock;
 - (b) When a trust is a party to a management contract, any beneficiary or trustee of such trust;
 - (c) When a partnership is a party to a management contract, any partner, general or limited, in such partnership;
 - (d) When a corporation is a party to a management contract, any person who is an officer or director of such corporation, or who holds five percent or more of the issued and outstanding capital stock of such corporation, either alone or in combination with a spouse, parent, child or sibling; or
 - (e) With respect to any non-natural person with an interest in a trust, partnership or corporation that has an interest in a management contract, all beneficiaries, trustees, partners, or directors of, and five percent stockholders of, such non-natural person.
- (v) **"Management Fee"** means any monies paid from gaming revenue to any person

pursuant to an NIGC approved contract to operate a gaming establishment. Such term shall not include monies paid for the operating expenses of such gaming establishment.

(w) "Nation" means the Osage Nation.

(x) "Net Revenue" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

(y) "NIGC" means the National Indian Gaming Commission.

(z) "Non Gaming Revenue" means gross revenue that is generated from any non-gaming operations.

(aa) "Operating Expense" means any expense incurred in the operation of gaming that is specifically designated as an operating expense in any management contract or which by operation of generally accepted accounting principles, consistently applied, is so treated.

(bb) "Patron" means any person who participates in gaming, or who is physically present on premises wherein or whereon gaming is conducted.

(cc) "Person" means any association, partnership, corporation, firm, trust or other form of business association or entity, as well as a natural person.

(ee) "Primary Management Officials" shall have the same meaning as set forth in 25 C.F.R. Part 502.19.

(ff) "Rules" means any rules governing the conduct of games or the control of internal fiscal affairs of gaming operations as may be promulgated by the Commission established pursuant to this chapter.

(gg) "Secretary" means the Secretary of the United States Department of the Interior.

(hh) "Statute" means the Osage Nation Gaming Statute, as amended from time to time, and any rules promulgated under this Statute

Chapter I

Purpose, Public Policy, Applicability and Authorizations

Section 1.01 Short Title.

This Statute shall be known and cited as the "Osage Nation Gaming Statute."

Section 1.02 Purpose.

The Osage Nation Congress enacts this Statute in order to regulate all forms of gaming on the Nation's Indian lands.

Section 1.03 Public Policy.

(a) All gaming which is conducted within the Nation's Indian lands and which is otherwise authorized by law shall be regulated and licensed pursuant to the provisions of this Statute.

(b) The Congress hereby finds and declares it to be the public policy of the Nation that:

(1) Regulation of licensed gaming is important in order that licensed gaming is conducted honestly and that gaming is free from criminal and corruptive elements.

(2) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments and the manufacture or distribution of Gaming Devices.

(3) All management entities or controlling shareholders, primary management officials, key employees, gaming establishments and suppliers of gaming goods and services must therefore be licensed and controlled to protect the public health, safety, morals, good order and general welfare of the Nation.

Section 1.04 Class II and Class III Gaming Authorized.

Class II and Class III Gaming is hereby authorized to be conducted on the Nation's Indian lands; provided, however, that such Gaming shall be conducted only in accordance with the provisions of this Statute, the rules, and IGRA.

Section 1.05 Location of Gaming.

The Commission shall ensure that such gaming as it authorizes and licenses pursuant to this Statute is conducted on the Nation's Indian lands.

Section 1.06 Ownership of Gaming.

The Nation shall have the sole proprietary interest in any gaming operation authorized by this Statute. The Nation shall receive, at a minimum, not less than 60 percent of the net revenues from any gaming operation.

Section 1.07 Use of Gaming Revenue.

Net revenues from any form of gaming authorized under this Statute shall be used only for the following purposes: to fund the Nation's government operations and programs; to provide for the general welfare of the Nation and its members; to promote the Nation's economic development; to make donations to charitable organizations or to help fund operations of local government agent.

Section 1.08 Unauthorized Gaming.

Any person who commits any act of unauthorized gaming on the Nation's Indian lands shall be guilty of a crime and shall be prosecuted in the Nation's Courts or any other court of competent jurisdiction.

Section 1.09 Conduct of Games.

All gaming shall be conducted by persons duly licensed by the Commission. No person licensed by the Commission shall engage in, conduct or condone any gaming that is not conducted in accordance with such rules governing the conduct of games as may be promulgated by the Commission under this Statute.

Section 1.10 Applicability of Statute.

All provisions of this Statute shall apply to Class II and Class III Gaming including, but not limited to, all licensing and background investigation procedures.

Chapter II

Establishment, Administration and Powers of Commission

Section 2.01 Gaming Commission Established.

In order to provide for the orderly development, administration, and regulation of gaming activities within the jurisdiction for the Osage Nation, there is established the Osage Nation Gaming Commission which shall consist of one (1) Public Officer, the Gaming Commissioner, and staff necessary to carry out the provisions of this Statute, and any regulations promulgated thereunder.

Section 2.02 Appointment and Term of Commissioner.

The Principal Chief shall nominate a member of the Osage Nation to serve as the Commissioner, subject to confirmation by a Resolution of the Nation. The Commissioner's term will be for a period of three (3) years, from the date of confirmation.

Section 2.03 Outside Employment and Activities of Commissioner.

The Commissioner may not hold other Nation positions. The Commissioner may be engaged in business, provided, however, that the Commissioner shall not engage in any business which is subject to provisions of this Statute or which has commerce with any licensee under this Statute. The Commissioner shall post a bond with the Osage Nation in the amount of One Hundred Thousand Dollars (\$100,000.00). Such bond shall be funded from the fund appropriated to the Osage Nation Gaming Commission.

Section 2.04 Removal from Office.

(a) The Commissioner may be removed from office prior to the end of any term for one or more of the following causes, as set forth in a written Petition and proved by a preponderance of the evidence in the hearing provided for in Paragraph (c) of this subsection:

- (1) Dishonesty, gross misconduct, or incompetence in office;
- (2) Conviction of a felony or any crime involving dishonesty under federal, state, or Nation law;
- (3) Directly or indirectly engaging in activities or transactions constituting a conflict of interest under the laws of the Osage Nation or any other applicable laws, rules, or regulations;
- (4) Being employed by the Osage Nation or by any other board or authority of the Osage Nation;

(b) A Petition for removal hereunder may only be filed by the Principal Chief or by a majority vote of the Osage Nation Congress.

(c) The Commissioner accused of any of the foregoing causes shall be given a copy of the Petition charging him or her and afforded the right to respond to the charges and present witnesses and other evidence in his or her defense at a hearing convened by the Congress. The Petition shall state the cause or causes for removal with sufficient particularity to put the Commissioner on notice of the nature of the charges against him or her. Both the Petitioner and Commissioner so accused shall have the right to be represented by an attorney at the hearing, provided that the Commissioner shall be responsible for paying his or her own attorneys fees and other expenses in defending the Petition. The Congress shall preside over the removal hearing and receive the evidence. Removal of the Commissioner shall require a majority vote of the Congress. The decision of the Congress shall be final and binding on the Osage Nation and the Commissioner, and shall

not be subject to judicial review.

Section 2.05 Duties.

The Commissioner shall be charged with the responsibility of administering and enforcing the provisions of this Statute. It shall be the responsibility of the Commission to promulgate regulations necessary to administer provisions of this Statute. These duties shall include but not be limited to the following:

- (a) Printing and making available application forms for initial review;
- (b) Supervising the collection of all fees and taxes prescribed in this Statute;
- (c) Processing all license applications;
- (d) Issuing licenses;
- (e) Determining applicable license fees;
- (f) Auditing all returns;
- (g) Reviewing all gaming operation contracts, records, documents, and anything else necessary and pertinent to the financial accountability of licensees or to the enforcement of any provision of this Statute or Osage Nation Gaming Commission regulations;
- (h) Denying any application; limiting, conditioning, suspending, or restricting any license or permit; making a finding of suitability or approval of the license or permit; or a finding of suitability or approval of or the imposition of a fine upon any person licensed or permitted for any cause deemed reasonable by the Commissioner;
- (i) Performing additional duties as required in the Statute or any amendments thereto, or other duties that may hereafter be specified by the Commissioner;
- (j) Employing legal counsel with the consent of the Osage Nation under applicable laws;
- (k) Defending this Statute in any court of law;
- (l) Acting as designee agent for service of process for any legal disputes that may arise at any of the Nation's gaming facilities.
- (m) Reviewing and enforcing the Minimum Internal Control Standards of the Osage Nation or as set out by the National Indian Gaming Commission;
- (n) Any other duties that are deemed by the Commissioner as necessary to carry out the provisions of this Statute, the Commission's regulations, or rules of the National Indian Gaming Commission.

Section 2.06 Authority of Commissioner.

The Commissioner may exercise any proper power and authority necessary to perform the duties assigned by this Statute. The Commissioner may organize any functional divisions as may be necessary and from time to time alter such plan of organization as may be expedient. The Commissioner shall recommend the Osage Nation Gaming Commission budget to the Principal Chief and Osage Nation Congress, and take any other steps necessary to fulfill the duties and responsibilities under the Statute. In adopting, amending, or repealing any Osage Nation Gaming Commission regulations, the Commissioner shall give prior notice of the proposed action to all licensees and other persons whom the Commissioner has reason to believe have a legitimate and bona fide interest in such proposed action. The Commissioner shall also be responsible for ensuring that the Nation's gaming operations are constructed, maintained, and operated in a manner that adequately protects the environment, public health and safety.

Section 2.07 Reports of the Commission.

The Commission, through its Gaming Commissioner, shall provide to the Principal Chief, Assistant Principal Chief, and Osage Nation Congress, quarterly reports of the activities of the Commission. In addition, the Commissioner shall provide any other report requested by the Principal Chief, Assistant Principal Chief, and Osage Nation Congress, or as requested by the National Indian Gaming Commission.

Chapter III

Licenses, Applications and License Procedures

Section 3.01 Gaming License Required.

The Commission is hereby authorized to issue all licenses for the conduct of all gaming authorized under this Statute or any other license related to gaming which the Commission may by rule require.

- (a) **Persons.** The following persons must obtain licenses as a precondition to employment in or management of any gaming operation:
- (1) Any management entity or controlling shareholder. Any person deemed a controlling shareholder must comply with the same licensing requirements as if such person were a primary management official; however, if any controlling shareholder is a non-natural person, such controlling shareholder shall be subject to management entity licensing procedures;
 - (2) All primary management officials;
 - (3) All key employees;
 - (4) Suppliers or vendors of gaming goods and services. Any person who is a supplier of gaming goods and services must comply with the same licensing requirements as if such person were a primary management official; however, if any supplier is a non-natural person, such supplier shall be subject to management entity licensing procedures; and
 - (5) Non-gaming revenue vendors.
 - (6) Any other employee or class of employees as determined by Commission Rules.
- (b) **Gaming Establishments.** Each place, facility, or location where gaming is conducted must obtain a separate facility license from the Commission.

Section 3.02 Standard for License.

Licenses issued hereunder shall be issued according to requirements at least as stringent as those set forth at 25 C.F.R. §§ 556 and 558, and any amendments thereto.

Section 3.03 Application for License.

- (a) No license shall be issued under this Statute except upon a sworn application filed with the Commission, in such form as may be prescribed by the Commission, containing a full and complete showing, at a minimum, of the following:
- (1) Satisfactory proof that the applicant is of good character and reputation, and is financially responsible;
 - (2) If applicable, a complete description of the premises at which gaming will be conducted;
 - (3) Agreement by the applicant to abide by all conditions of the license, this Statute, the

rules, and IGRA;

(4) A separately sworn statement that the applicant has never been convicted of, or entered a plea of guilty or no contest to, any of the following criminal offenses:

- (a) Any felony, other than a felony conviction for an offense under subsection (b), (c), or (d), within the preceding ten years; provided, however, that this record limitation to the preceding ten years shall not apply to any applicant which is a management entity or controlling shareholder,
- (b) Any gaming-related offense,
- (c) Fraud, misrepresentation or any other crimes of moral turpitude in any context, or
- (d) A violation of any provision of this Statute, the rules, or any other Statute or rules of the Nation.

(5) The applicant's fulfillment of all applicable requirements of IGRA, all provisions of this Statute, including, but not limited to, those in Chapter IV.

(b) No license shall be issued to any applicant who is determined by the Commission to be a person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of gaming or the carrying on of the business and financial arrangements incidental thereto.

(c) The issuance of licenses shall also be subject to the provisions of Chapter IV of this Statute regarding background investigations.

(d) The following notices shall be placed on the application form for a key employee, management entity, primary management official or supplier of gaming goods and services before such form is completed by an Application:

(i) "In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by the Commission, the State of Oklahoma, and/or the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, Tribal, state, local, or foreign law enforcement and regulatory agencies where relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a Tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a Tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a Tribe's being unable to hire you in a primary management official or key employee position.

(ii) "The disclosure of your social security number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(iii) "A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. (18 U.S.C. 1001)"

Section 3.04 Required Application Forms.

(a) Each individual applying for a license, whether as a primary management official or key employee, and any person who is subject to a background investigation in connection with an entity application for a license, shall be required to complete the following forms:

- (1) Application for gaming license by individual, if applicable;
- (2) Personal history record, with attached personal financial questionnaire, including statement of assets and statement of liabilities;
- (3) Two complete fingerprint cards;
- (4) Request to release information - individual.

(b) Each individual in subsection (a) of this section applying for a license renewal shall supplement the personal history record and shall also be required to complete the following forms:

- (1) Application for gaming license by individual, if applicable;
- (2) Request to release information - individual.

(c) Each entity, including a management entity and supplier of gaming goods and services, applying for a license must complete the following forms:

- (1) Application for gaming license by entity;
- (2) Request to release information - entity.

(d) The Commission may request any additional forms or information from an applicant as it deems necessary or appropriate.

(e) Pursuant to the compact the Commission shall create an individual file for each applicant which includes the applicant's personal history record and all background information compiled by the Commission.

Section 3.05 Fingerprint Cards Required.

All applicants for a license are required to submit fingerprint cards. The Gaming Commission is hereby identified as the enforcement agency to take fingerprints. Pursuant to 25 C.F.R. § 522.2(h), the Commission shall forward an applicant's fingerprint cards to the NIGC to be processed by the Federal Bureau of Investigation National Criminal Information Center. The Commission may submit an applicant's fingerprint card to any additional Tribal, local or state criminal history check system or center as the Commission or the Executive Director deem necessary or appropriate. Reports obtained from such fingerprint processing shall be incorporated into the applicant's personnel file.

Section 3.06 Withdrawal of Application.

An application may not be withdrawn without the permission of the Commission. An applicant may request to withdraw an application by submitting to the Commission a written request for withdrawal. The Commission retains the right, in its sole discretion, to grant or deny a request for withdrawal.

Section 3.07 Continuing Duty to Provide Information.

Applicants and licensees shall have a continuing duty to provide any materials, assistance or other information required by the Commission, and to fully cooperate in any investigation conducted by or on behalf of the Commission. If any information provided

on the application changes or becomes inaccurate in any way, the applicant or licensee shall promptly notify the Commission of such changes or inaccuracies.

Section 3.08 Term of License; License Fees; Parameters of License.

- (a) Licenses, except provisional licenses (see section 3.12 provisional license), shall be for a term of one year, and shall expire on the anniversary of the effective date of such licenses.
- (b) In order for the Nation to recover the costs of complying with federal, Tribal, and state regulatory processes applicable to Class II and Class III Gaming, annual license fees shall be imposed:
 - (1) In the amount of \$7,500.00 annually on each party, other than the Nation, to a management contract;
 - (2) On any persons required to obtain a license, in accordance with a fee schedule to be established by the Commission; and
 - (3) In addition to the license fees imposed pursuant to subsection (b)(1) and (2) of this section, the Commission may impose such fees on licensees as are reasonably related to costs of enforcement, including investigations and proceedings before the Commission, and which will in the aggregate be sufficient to enable the Nation and the Commission to recover its reasonable costs of enforcing this Statute. Such costs may be estimated by the Commission and imposed prior to a final Commission action regarding a particular licensee or applicant.
- (c) Violations of any provision of this Statute or the rules, or relevant license provisions, by a licensee shall be deemed contrary to the public health, safety, morals, good order and general welfare of the Nation and the inhabitants of the Reservation, and shall be deemed grounds for refusing to grant or renew a license, or for suspending or revoking a license. Acceptance of a license, or renewal thereof by a licensee, constitutes an agreement on the part of the licensee to be bound by the provisions of this Statute and the rules as they are now, or as they may hereafter be amended or restated, and to cooperate fully with the Commission. It is the responsibility of the licensee to remain informed of the contents of this Statute, the rules and all other applicable regulations, amendments, provisions, and conditions, and ignorance thereof will not excuse violations. A license issued hereunder is a privilege license and no right shall attach thereto.

Section 3.09 Conditions of License.

All licensees shall comply with such reasonable conditions as may be fixed by the Commission including, but not limited to, the following conditions:

- (a) Facility licensees-
 - (1) The licensee shall at all times maintain an orderly, clean and neat gaming establishment, both inside and outside the premises of the gaming establishment;
 - (2) The gaming establishment shall be subject to patrol by the Nation's security and law enforcement personnel and, when authorized, local and state law enforcement, and the licensee shall cooperate at all times with such security and law enforcement officials;

(3) The gaming establishment shall be open to inspection by authorized Nation officials at all times during business hours;

(4) There shall be no discrimination in any gaming operations by reason of race, color, sex or creed; provided, however, that nothing herein shall prevent the licensee from granting preferences to Native Americans as permitted by law; and

(b) Persons, management entities and suppliers of gaming goods and services licensed by the Commission shall comply with such conditions of the license as the Commission, in its reasonable discretion, may require.

Section 3.10 Facility License.

The Commission may issue an annual facility license to a gaming establishment, if the gaming establishment:

(a) Is a sound physical structure with adequate and safe plumbing, electrical, heating, cooling and ventilation systems in place and operational;

(b) Has been inspected and approved for safety by a building and fire inspector designated by the Commission;

(c) Is adequate in all respects to accommodate the gaming intended to be carried on within the structure;

(d) Is equipped with security and surveillance equipment meeting or exceeding provisions set forth in regulations established by the Commission;

(e) Meets all requirements of applicable federal, Nation and state law; and

(f) Has paid all applicable license fees and costs.

Section 3.11 Certification of Gaming Devices.

All gaming devices purchased, leased or otherwise acquired by the Nation must, meet the technical equipment standards set forth therein. The Commission shall maintain a complete list of all gaming devices (whether or not such devices are in use) located at any gaming establishment.

Section 3.12 Provisional License.

The Commission may issue provisional licenses pending the satisfactory completion of all background investigations and other requirements of this Statute, IGRA, and, if applicable, pending expiration of the 30-day NIGC review period provide for at 25 C.F.R. § 558. In no event shall a provisional license be valid for greater than 90 days, subject to the issuance of another provisional license if such background investigations are not completed so long as no information to date has been received which would otherwise disqualify the applicant for a license.

Section 3.13 Provisional Employment Pending Issuance of License and During Temporary License Period.

As provided in section 3.12, primary management officials and key employees may be employed in gaming operations prior to the issuance of a license hereunder and during the period that a license shall be effective on a provisional basis, but such employment shall be provisional only and subject to the requirements of this section. Employment may begin prior to issuance of a license only if the Commission has made a preliminary finding of eligibility for employment in gaming operations, which shall require a

preliminary determination that the primary management official or key employee in question is not a person whose prior activities, criminal record or reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of gaming or the carrying on of the business and financial arrangements incidental thereto. Provisional employment shall be terminated upon the occurrence of any of the following:

- (a) Denial of a relevant license by the Commission;
- (b) Unsatisfactory completion of a background investigation or NIGC review resulting in nullification of a provisional license, as described in section 3.12; or
- (c) To the extent required under 25 C.F.R. § 558 and, at the end of 30 days after the starting date of provisional employment, if at the end of such period no license has been issued hereunder or if a license issued hereunder remains effective only on a provisional basis, as provided in section 3.12; provided, however, that provisional employees terminated for the reason described in this subsection shall be qualified for reemployment upon the satisfactory completion of background investigations and NIGC reviews.

Section 3.14 Assignment or Transfer.

No license issued under this Statute may be assigned or transferred unless the proposed assignee or transferee would independently be qualified to hold the license proposed to be assigned or transferred and the Commission approves of such assignment or transfer.

Chapter IV
Background Investigations and License Decisions

Section 4.01 Required Background Investigations.

Background investigations shall be conducted by the Commission, or other agent retained by the Commission, under the supervision and direction of the Commission, on all persons specified in section 3.01 of this Statute.

Section 4.02 Standards for Background Investigations.

All background investigations shall be conducted to ensure that gaming operations shall not employ or contract with persons whose prior activities, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of such gaming. Such investigations shall be conducted according to requirements at least as stringent as those set forth at 25 C.F.R. §§ 556 and 558, and this Chapter. Background investigations shall be conducted in a manner which takes all reasonable steps to ensure the confidentiality of the information generated by the investigation as well as that submitted by the applicants. Any willful or careless breach of this requirement may result in a penalty ranging from censure, suspension, removal from office, and a fine of up to \$5,000.00. The Commission shall have jurisdiction to hear and decide upon any such claims.

Section 4.03 Information Required for Background Investigations.

- (a) Each person subject to a background investigation under section 4.01 of this Statute shall be required to provide, subject to the Privacy Act of 1974, to the Commission or the Executive Director, all of the following information:
- (1) Full name, other names used, social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
 - (2) Currently and for the previous ten years, all business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;
 - (3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under subsection (a)(2) of this section;
 - (4) Current business and residence telephone numbers;
 - (5) A description of any existing and previous business relationships with any Native American Indian Tribe including, but not limited to, a description of the amount and type of ownership interest in those businesses;
 - (6) A description of any existing and previous business relationships with gaming including, but not limited to, a description of the amount and type of ownership interest in those businesses;
 - (7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to any gaming or gambling, whether or not such license or permit was granted;
 - (8) For each felony for which there is an ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition, if any;

SUBCHAPTER B—APPROVAL OF CLASS II AND CLASS III ORDINANCES AND RESOLUTIONS

PARTS 520–521 [RESERVED]

PART 522—SUBMISSION OF GAMING ORDINANCE OR RESOLUTION

- Sec.
- 522.1 Scope of this part.
- 522.2 Submission requirements.
- 522.3 Amendment.
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- 522.5 Disapproval of a class II ordinance.
- 522.6 Approval requirements for class III ordinances.
- 522.7 Disapproval of a class III ordinance.
- 522.8 Publication of class III ordinance and approval.
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- 522.10 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.
- 522.11 Individually owned class II gaming operations operating on September 1, 1986.
- 522.12 Revocation of class III gaming.

AUTHORITY: 25 U.S.C. 2706, 2710, 2712

SOURCE: 58 FR 5810, Jan. 22, 1993, unless otherwise noted.

§ 522.1 Scope of this part.

This part applies to any gaming ordinance or resolution adopted by a tribe after February 22, 1993. Part 523 of this chapter applies to all existing gaming ordinances or resolutions.

[58 FR 5810, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 522.2 Submission requirements.

A tribe shall submit to the Chairman all of the following information with a request for approval of a class II or class III ordinance or resolution:

(a) One copy on 8½"×11" paper of an ordinance or resolution certified as authentic by an authorized tribal official and that meets the approval requirements in § 522.4(b) or 522.6 of this part;

(b) A description of procedures to conduct or cause to be conducted background investigations on key employees and primary management officials and to ensure that key employees and primary management officials are noti-

fied of their rights under the Privacy Act as specified in § 556.2 of this chapter;

(c) A description of procedures to issue tribal licenses to primary management officials and key employees;

(d) Copies of all tribal gaming regulations;

(e) When an ordinance or resolution concerns class III gaming, a copy of the tribal-state compact or procedures as prescribed by the Secretary;

(f) A description of procedures for resolving disputes between the gaming public and the tribe or the management contractor;

(g) Designation of an agent for service under § 519.1 of this chapter; and

(h) Identification of a law enforcement agency that will take fingerprints and a description of procedures for conducting a criminal history check by a law enforcement agency. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

[58 FR 5810, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 522.3 Amendment.

(a) Within 15 days after adoption, a tribe shall submit for the Chairman's approval any amendment to an ordinance or resolution.

(b) A tribe shall submit for the Chairman's approval any amendment to the submissions made under §§ 522.2(b) through (h) of this part within 15 days after adoption of such amendment.

§ 522.4 Approval requirements for class II ordinances.

No later than 90 days after the submission to the Chairman under § 522.2 of this part, the Chairman shall approve the class II ordinance or resolution if the Chairman finds that—

(a) A tribe meets the submission requirements contained in § 522.2 of this part; and

(b) The class II ordinance or resolution provides that—

- (9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within ten years of the date of the application, the name and address of the court involved and the date and disposition;
- (10) For each criminal charge (excluding misdemeanor traffic charges, but including any DWI, reckless or careless driving charges), whether or not there is a conviction, if such criminal charge is within ten years of the date of the application and is not otherwise listed, the type of criminal charge, the name and address of the court involved and the date and disposition of such charge;
- (11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
- (12) A current photograph;
- (13) Any other information the Commission deems relevant; and
- (14) Fingerprints consistent with the provisions of section 3.05.

(b) Background investigations conducted by the Commission must be sufficient to make the determination described in section 4.08(a). In conducting a background investigation, the Commission or its agents, shall make every reasonable effort to maintain the confidentiality of the identity of each person interviewed in the course of the investigation. Willful or careless violations of this requirement are subject to penalty ranging from censure, suspension, removal from office and a fine of up to \$5,000.00.

Section 4.04 Completion of Investigation.

Upon completion of the investigation, the Commission may either (i) grant a license to the applicant, or (ii) notice the applicant for a hearing under Chapter V of this Statute. The Commission may notice the applicant for a hearing at any time during the investigation.

Section 4.05 Issuance of License.

The Commission after a hearing conducted under Chapter V of this Statute, may subject to the requirements of section 4.09, issue a license only after it has determined that the following minimum requirements have been met:

- (a) The applicant has fully completed all required application forms and has provided the Commission with all other information that the Commission has requested;
- (b) The applicant meets all of the licensing requirements of this Statute;
- (c) The applicant meets all of the licensing requirements and criteria contained in the compact;
- (d) The Commission has reviewed the applicant's criminal history record and deems the applicant's criminal history to be satisfactory to hold a license; and
- (e) All applicable license fees and costs have been paid.

Section 4.06 Denial of a License Application.

The Commission, after a hearing conducted pursuant to Chapter V of this statute, may deny an applicant a license only after it has determined that the minimum requirements contained in section 4.05 have not been met by the applicant or the applicant's

application, or if the Commission determines that the applicant is a person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of gaming or the carrying on of the business and financial arrangements incidental thereto.

Section 4.07 Cancellation or Suspension.

Licenses and applicants shall be legally responsible for any violation of this Statute, any relevant license provisions, the rules, or IGRA. Any license issued hereunder may be canceled, limited, revoked, suspended, terminated or modified by the Commission, for the breach of any of the provisions of the license, this Statute, or rules. In addition:

(a) Unless otherwise stated in this Statute or the rules, a licensee's attorney has the right to be present and to participate in any proceeding concerning the cancellation, limitation, revocation, suspension, termination or modification of a license;

(b) A license may be summarily suspended, without a prior hearing, only upon notice to that effect from the NIGC; and

(c) All decisions of the Commission regarding the cancellation, limitation, revocation, suspension, termination or modification of licenses shall be final, unless appealed as provided in Chapter V of this Statute. No gaming shall be conducted by the licensee after cancellation, even during the pendency of an appeal.

Section 4.08 Eligibility Determination and Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission.

(a) The Commission shall review an applicant's prior activities, criminal record, reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Commission determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, the gaming operation shall not employ that person.

(b) When a key employee or primary management official commences work at a gaming operation, the Commission shall within a reasonable period of time forward to the NIGC a completed application for employment for such key employee or primary management official, and shall conduct all necessary background investigations. The Commission shall make the eligibility determination referred to in subsection (a) of this section.

(c) A report shall be submitted to the NIGC within 60 days after a key employee or primary management official commences work at a gaming operation or within 60 days of the approval of this Statute by the Chairman. Such report shall, at a minimum, include all of the following:

- (1) Steps taken in conducting the background investigation;
- (2) Results obtained;
- (3) Conclusions reached by the Commission;
- (4) The Commission's basis for those conclusions; and
- (5) A copy of the eligibility determination made pursuant to section 4.08(a).

(d) Subject to the provisions of section 3.13, no gaming operation shall continue to employ as a key employee or primary management official any person who does not have a license within 90 days of commencing work at a gaming operation.

(e) If a license is not issued to an applicant, the Commission:

(1) Shall notify the NIGC; and

(2) May forward copies of its eligibility determination and any relevant report regarding a background investigation of the applicant to the NIGC for inclusion in the Indian Gaming Individuals Records System.

(f) With respect to key employees and primary management officials, applications for employment and reports of background investigations shall be retained by the Commission for inspection by the Chairman or his designee for no less than three years from the date of termination of employment of each key employee or primary management official.

Section 4.09 Granting a Gaming License.

(a) If, within a 30-day period after the NIGC receives all required applications and reports, the NIGC notifies the Nation that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official, the Commission may issue a license to such applicant.

(b) The Commission shall respond in a timely manner to requests for additional information from the Chairman concerning key employees or primary management officials who are the subject of any report filed with the NIGC by the Commission. Any such request by the Chairman shall suspend the 30-day period referred to in this section until the Chairman receives the additional information requested.

(c) If, within a 30-day period after the NIGC receives all required applications and reports, the NIGC provides the Nation with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Commission has submitted an application and all required reports to the NIGC, the Commission shall reconsider the application, taking into account the objections itemized by the NIGC. The Commission shall make the final decision whether to issue a license to such applicant.

Section 4.10 License Revocation and Suspension Following Receipt of Information from NIGC.

(a) If, after the issuance of a license, the Nation receives information from the NIGC indicating that a management entity or controlling shareholder, key employee, or primary management official is not eligible for employment under section 4.02 of this Statute, the Commission shall suspend such license, shall notify the licensee in writing of such suspension and the potential revocation of the licensee's license, and shall conduct a hearing in accordance with the rules regarding the proposed license revocation.

(b) After a hearing, the Commission shall revoke or reinstate a license suspended pursuant to subsection (a) of this section. The Commission shall notify the NIGC of its decision. A decision of the Commission to revoke a license after the hearing called for by subsection (a) of this section shall be final and there shall be no appeal. A management entity whose license has been revoked or suspended pursuant to this section may not operate a gaming operation.

Section 4.11 Show Cause Hearing for Manager and Primary Management Officials.

Excepting the provisions of section 4.10 and notwithstanding the foregoing, in the event that the Commission obtains reliable information that the duly licensed manager and/or a primary management official may have breached any provision of this Statute, IGRA, or its license, the Commission shall issue a notice for show cause to the licensee prior to any action of suspension or the giving of notice of a revocation hearing with respect to its/their licenses. The notice for show cause shall describe the alleged breach, shall describe the steps necessary to effect a cure and shall provide the licensee with an opportunity to meet with the Gaming Commission to discuss the matter. The discontinuance or correction of the alleged breach shall constitute a cure thereof, except where such alleged breach constitutes a criminal violation by the manager or the primary management official. If the alleged breach is not corrected or discontinued as required herein, then the Gaming Commission shall institute the notice and hearing procedure set forth above.

Chapter V
Rules of Procedure for Hearings

Section 5.01 Scope of Rules of Procedure.

All hearings conducted pursuant to this Statute except hearings regarding the removal of the Commissioner and hearings resulting from patron disputes shall be governed by this Chapter of the Statute.

Section 5.02 Hearings.

(a) The Commission shall afford an applicant an opportunity for a hearing prior to any final action by the Commission on an application, other than an unconditional grant of a license.

(b) The Commission shall afford a licensee the opportunity for a hearing prior to taking final action resulting in the revocation of the license or the imposition of any penalties which the Commission is authorized to impose pursuant to these rules and the Statute.

(c) Nothing in this section shall limit the Commission's authority to summarily suspend or revoke a license without a hearing pursuant to section 4.07(b) of this chapter.

Section 5.03 Notice of Hearing.

(a) The Commission shall provide written notice to the applicant or licensee of the hearing at least seven days prior to the date set for the hearing. The day the applicant or licensee receives the notice shall be considered a full day's notice under this section. The notice shall be sent by registered or certified mail, or may be personally served upon the applicant or licensee. The notice shall state the date, time and place of the hearing. The notice shall also contain an indication of the actions being considered by the Commission including, but not limited to:

- (1) Whether the Commission is holding the hearing for the purpose of obtaining further information from the applicant;
 - (2) Whether the Commission will be considering the grant or denial of the license application;
 - (3) Whether the Commission will be examining any alleged violations of the Statute, the IGRA, the conditions of any license issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements; or
 - (4) Whether any other sanctions or penalties will be considered.
- (b) The notice shall also contain a short, plain statement of the reasons the Commission determines the hearing is necessary.

Section 5.04 Ex Parte Communications.

(a) No *ex parte* communication relative to the actions being considered by the commission, or a threat or offer of reward shall be made, before a decision is rendered, to any member of the Commission by or on behalf of the applicant or licensee, or any legal representative or counsel of the applicant or licensee.

(b) Nothing in this section shall prohibit the applicant, licensee or its authorized agent from communicating with the Commission's legal counsel, its investigators or other authorized agents.

(c) Any member of the Commission who receives an *ex parte* communication shall immediately report such communication to the Commission's legal counsel.

(d) For purposes of this section only, the actions being considered by the Commission shall be those matters identified in the written notice as provided in section 5.03(a) of this Statute, as well as any other matters that are actually considered by the Commission during a hearing. All matters identified in the written notice shall be subject to the prohibition against *ex parte* communications. All matters not identified in the written notice that are considered by the Commission during a hearing become subject to the prohibition against *ex parte* communications as soon as they are discussed during the hearing.

(e) The Commission shall have the power to impose any sanction pursuant to this Statute upon its determination that an applicant or licensee has made an *ex parte* communication in violation of this section.

Section 5.05 Appearance through counsel.

(a) Parties to all hearings governed by this Statute may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless his attendance has been waived, in writing, by the Commission.

(b) When a party appears through an attorney, service of all notices, motions, orders, decisions and other papers shall thereafter be made upon the attorney, unless the party requests otherwise in writing.

(c) When a party is represented by an attorney, the attorney shall sign all motions, notices, requests, and other papers on behalf of the party, including a request for subpoenas.

Discovery procedures for hearings.

(a) The Commission's legal counsel and the licensee shall exchange a list of persons that each party intends to call as witnesses no later than five business days before a scheduled hearing. The day the list is received shall be considered a full day's notice under this section. Each witness shall be identified by name, if known, position, and business address. If no business address is available, a home address for the witness shall be provided. Any witness not identified in accordance with this section may be prohibited from testifying at a hearing in the Commission's discretion.

(b) The Commission's legal counsel and the licensee shall exchange a copy of all documents or tangible things that they intend to offer as evidence in support of the party's case in chief. This exchange shall be made to the opposing party no later than five business days before a scheduled enforcement hearing. The day the documents are received shall be considered a full day's notice under this section. Failure to make available any document or tangible thing in accordance with this section may, in the Commission's discretion, be grounds to deny the admission into evidence of such document or tangible thing.

Section 5.07 Confidential materials.

(a) Prior to making any documents available to the Commission's legal counsel or designated agent, the applicant or licensee may designate any document it believes to contain confidential information as subject to a confidentiality claim by so marking the document prior to providing a copy of the document to the Commission's legal counsel.

(b) Documents provided to the Commission's legal counsel or designated agent which have been marked in accordance with paragraph (a) above, and any nonpublic information contained within the document, shall not be made a part of the public record of the Commission proceedings otherwise disclosed by the Commission to any person (except as may be required under any applicable law, rule, regulation, court or administrative order, or the compact), without first providing the applicant or licensee with the opportunity to seek a ruling by the Commission that the document or nonpublic information contained therein should not be made public. The request for such a ruling and any discussions relating to the document shall be heard and ruled upon by the Commission in an executive session meeting. If the request for such a ruling is made during a public hearing session, the hearing session shall be adjourned and Commission shall conduct an executive session meeting in order to hear and rule upon the applicant's or respondent's request. The applicant or licensee may present to the Commission in executive session written and oral argument regarding the confidentiality claim, along with any facts the applicant or licensee believes to be relevant to such argument.

(c) In determining whether a document marked in accordance with subsection (a) above should be made part of the public record of the Commission proceedings on the application, the Commission will balance the applicant's claimed confidentiality concerns against the materiality of the information to the application, the public's right to be made aware of the information, and the Commission's need to make the information part of the public record in order to remain fully accountable for the licensing decision. In making this determination, the Commission shall consider all facts and circumstances relevant to making a proper ruling.

(d) In the event that the Commission rules during executive session that the document in question and/or information contained therein should be made part of the public record of the Commission's proceedings on the application, the document and/or information contained therein will be made part of the public record unless the applicant withdraws the document from the Commission's possession. In the event the applicant chooses to withdraw the document from the Commission's possession, the Commission will then weigh the withdrawal along with the other evidence in making its determination on the application. Withdrawal of documents from the application process shall be looked upon by the Commission with disfavor, and, depending on the facts and circumstances, the Commission may deem the withdrawal of any document to be sufficient cause in and of itself for denial of the license.

(e) In the event that the Commission rules during executive session that the document and/or information contained therein should not be made part of the public record, the document shall be designated "Confidential" and will not be made part of the public record. The Commission may consider the document and information contained therein in camera in making its determination on the application.

(f) At the conclusion of the Commission proceedings on the license application, the Commission will return to the applicant all documents marked as "Subject to a Confidentiality Claim" pursuant to paragraph (c) above that were not (i) made part of the public record of the gaming license application or (ii) designated as "Confidential" and considered by the Commission in camera.

Section 5.08 Subpoenas.

(a) The Commission has the power and discretion to issue subpoenas and to impose such reasonable penalties for noncompliance.

(b) Subpoenas may be issued to compel any person to appear at the hearing on the merits of the case, to give oral testimony, or to produce documents or other tangible things.

Section 5.09 Hearing procedures.

(a) The Commissioner shall preside over all hearings, and shall call the proceedings to order, control the presentation of evidence, the appearance of witnesses, and the order of the proceedings.

(b) The Commission may require any person including, but not limited to, any applicant or licensee, or any agent, employee or representative of any applicant or licensee, to appear and testify before it with regard to any matter within its jurisdiction at such time and place as it may designate. Such testimony shall be under oath and may include any matters which the Commission deems relevant to the discharge of the Commission's official duties. Testimony shall be recorded by a duly certified court reporter and may be used by the Commission as evidence in any proceeding or matter before the Commission. Failure to appear and testify fully at the time and place designated shall result in sanctions. Failure to appear may constitute grounds for:

(1) The refusal to grant or renew a license to the person summoned, and /or that person's principal, or employer;

(2) The revocation or suspension of a license held by the person summoned, and/or that person's principal, or employer; or

(3) The inference that the testimony of the person summoned would have been adverse to that person and/or that person's principal or employer.

(c) Any party to the hearing may call and examine witnesses. The Commission shall exercise its discretion to limit the testimony of witnesses where that testimony is argumentative or repetitive.

(d) The Commission shall have the authority to eject from the hearings any person who is disruptive, disorderly, or who shows a lack of proper respect for the Commission or the nature of the proceedings.

(e) Persons shall be permitted to speak only when recognized by the Chair. This provision also applies to administrative hearings under section 5.03 (a).

(f) Any member of the Commission may ask questions of witnesses, and may request or allow additional evidence at any time.

(g) Any party to the hearing may conduct cross examinations reasonably required for a full and true disclosure of the facts.

(h) All hearings held under this Chapter shall be open to the public.

(i) The Commission, in its discretion, has the power to sequester witnesses

Section 5.10 Evidence.

(a) In hearings governed by this Chapter, the Commission shall not be bound by technical rules relating to evidence and witnesses. The Commission shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The Commission shall give effect to the rules of privilege unless such privilege is waived. Basic principles of relevancy, materiality and probative force

shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record

(b) All evidence, including records and documents in the possession of the Commission or of which the Commission desires to avail itself, shall be duly offered and made a part of the record in the case. Every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.

(c) The Commission may take official notice of any generally recognized fact or any established technical or scientific fact, but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice.

(d) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy to the original.

(e) The record in a hearing governed by these rules shall include:

- (1) All applications, intermediate rulings and exhibits and appendices thereto.
- (2) Evidence received or considered stipulations and admissions, including but not limited to confidential evidence received pursuant to section 5.07 of this Statute.
- (3) A statement of matters officially noticed.
- (4) Questions and offers of proof, objections, and rulings thereon.
- (5) Any decision, opinion, findings or report by the Commission.
- (6) The transcript prepared by a duly certified court reporter

1 Determinations by the Commission.

(a) The Commission shall make all determinations of issues before it by a majority vote of the Commission.

(b) All determinations made by the Commission involving the grant, denial, cancellation, revocation, limitation or modification of a license, a finding of a violation of this Statute, the rules, IGRA, the conditions of any license issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements, and the imposition of any sanctions or penalties shall be made by motion and on the record.

(c) A copy of any resolution reached pursuant to section 5.11(b) of this chapter shall be served upon the applicant or licensee by registered or certified mail, or may be served personally.

Section 5.12 Sanctions.

If any party or its attorney fails to comply with any provision of this Statute, the rules, IGRA, the conditions of any license issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements including, but not limited to, any agreement regarding any matter including, but not limited to, discovery matters and the failure to appear at a hearing at the scheduled time, the Commission, upon motion or upon its own initiative, may in its discretion impose upon such party or attorney, or both, appropriate sanctions in regard to the failures as are just including, but not limited to, the following:

(a) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited or exchanged pursuant to these rules or any

order of the Commission;

(b) An order that designated facts shall be taken to be established;

(c) An order that the disobedient party may not support or oppose designated claims or defenses;

(d) An order striking any pleadings or parts thereof, or staying further proceedings or dismissing the proceeding or any part thereof, or entering a judgment by default against the disobedient party;

(e) A finding against the disobedient party; or

(f) Any sanction otherwise set forth in this Statute.

Chapter VI Appeals

Section 6.01 Petition for Review.

As imposed by the Commissioner, any person found to be in violation of any provision of this Statute or regulation of the Osage Nation Gaming Commission may seek review of the Commissioner's decision by filing a Petition for Review of the Commissioner's decision with the Trial Court of the Osage Nation within thirty (30) days of said decision. Failure to file a Petition for Review shall make the decision of the Commissioner final and not subject to further judicial review. Upon receiving notice of the filing of a Petition for Review, the Commissioner shall, within fifteen (15) days of receiving notice, file the record of proceeding in its entirety with the Trial Court of the Osage Nation.

Section 6.02 Standard for Review.

Upon hearing of the appeal, the Trial Court of the Osage Nation shall give proper deference to the administrative expertise of the Commissioner. The Trial Court of the Osage Nation shall not set aside, modify, or remand any determination by the Commissioner unless it finds the termination to be arbitrary and capricious, unsupported by substantial evidence, or contrary to law.

Section 6.03 Legal Representation.

The Petitioner may be represented by legal counsel in any proceedings or reviews of the Trial Court, and the Commissioner shall be represented by the attorney for the Gaming Commission.

Section 6.04 Trial Court Decision.

Trial Court of the Osage Nation shall issue a written decision on all appeals. In no event shall the Court be authorized to award or order payment of damages or to fashion any remedy against the Commissioner. In the event that the Trial Court affirms the decision of the Commissioner or the Osage Nation, the Court shall award costs and reasonable attorneys' fees to the Osage Nation Gaming Commission with the provision that any part of the attorneys' fees collected shall be paid to the Treasury of the Osage Nation.

Section 6.05 Appeal of Trial Court Decision.

If the Petitioner receives an adverse decision from the Trial Court, then the Petitioner may appeal to the Supreme Court within thirty (30) days after the Trial Court enters the

decision. The appeal shall be limited to the record on appeal. The decision of the Osage Tribal Council shall be final.

Chapter VII

Auditing and Internal Control

Section 7.01 Minimum procedures for control of internal fiscal affairs.

The Commission shall promulgate rules governing the control of internal fiscal affairs of all gaming operations. At a minimum, such rules shall require the consistent application of generally accepted accounting principles, and shall:

- (a) Prescribe minimum procedures for the safeguarding of a gaming operation's assets and revenues, including recording of cash and evidence of indebtedness, and mandatory count procedures. Such rules shall establish a controlled environment, accounting system, and control procedures that safeguard the assets of the gaming operation, ensure that operating transactions are properly recorded, promote operational efficiency, and encourage adherence to prescribed policies;
- (b) Prescribe minimum reporting requirements to the Commission;
- (c) Provide for the adoption and use of internal audits conducted in accordance with generally accepted accounting principles by internal auditors licensed or certified to practice public accounting in the State of Oklahoma;
- (d) Formulate a uniform regulation of accounts and accounting classifications to ensure the consistency, comparability and effective disclosure of financial information. Such a regulation shall require that records be retained that reflect statistical drop (amount of cash wagered by patrons), statistical win (amount of cash won by the gaming operation), and the percentage of statistical win to statistical drop, or provide similar information for each type of game in each gaming operation;
- (e) Prescribe the intervals at which such information shall be furnished;
- (f) Provide for the maintenance of documentation, (i.e., checklists, programs, reports, etc.), to evidence all internal work performed as it relates to the requirements of this section; and
- (g) Provide that all financial statements and documentation referred to in this section be maintained for a minimum of five years.

Section 7.02 Oversight of Internal Fiscal Affairs.

The Commission shall require independent audits of the financial statements of all gaming operations. Such independent audits must apply and require the consistent application of generally accepted accounting principles, and shall:

- (a) Be conducted by independent accountants, knowledgeable in casino audits and operations and licensed or certified to practice public accounting in the State of Oklahoma;
- (b) Include an opinion, qualified or unqualified, or if appropriate, disclaim an opinion on the financial statements taken as a whole in accordance with standards of the accounting profession established by rules and regulations of the Oklahoma State Council of Accountancy and the American Institute of Certified Public Accountants;
- (c) Disclose whether the accounts, records and control procedures maintained by the gaming operation conform with this Statute and the rules; and

- (d) Provide a review of the internal financial controls of the audited gaming operation to disclose any deviation from the requirements of this Statute and the rules and report such findings to the Commission and the management of the audited gaming operations; and
- (e) Provide such other information as the Commission deems necessary or appropriate.

Section 7.03 Conduct of Audit.

- (a) The Commission shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the NIGC.
- (b) All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, and any other information the Commission deems necessary or appropriate shall be specifically included within the scope of the audit described in section 7.03(a).

Section 7.04 Prohibition Against Embezzlement.

Any delay or action of any kind which, in the opinion of the Commission, is effectuated by any licensee to unlawfully or improperly divert gaming or other proceeds properly belonging to the Nation shall constitute grounds for taking disciplinary action against that licensee. If the Commission finds an unlawful diversion was attempted, it may sanction the licensee, report the matter to appropriate law enforcement and gaming regulatory agencies for further action and take such other action as it deems necessary or appropriate. Sanctions may include the imposition of fines, and/or the revocation, suspension, or limitation of, or refusal to renew, any license.

Section 7.05 Noncompliance.

Failure to comply with any of the requirements of this article, or the rules promulgated hereunder may be found to constitute a violation of this Statute.

Chapter VIII

Exclusion or Reflection of Individuals

Section 8.01 Prohibition Against Certain Individuals.

It shall be a violation of this Statute for any licensee to knowingly fail to exclude or eject from the gaming area of a gaming establishment any individual who:

- (a) Is visibly under the influence of liquor, a drug or other intoxicating substance;
- (b) Is under the age of 18 years;
- (c) Is displaying disorderly conduct;
- (d) Is a person known to have committed a gaming related felony;
- (e) Is known to have a reputation for cheating or manipulation of games; or
- (f) Has been personally excluded, or is a member of any group or type of persons which has been excluded, for cause from gaming establishments by a resolution of the Commission.

Section 8.02 Right to Exclude or Remove.

Nation, the Commission may exclude or remove any persons from the premises of any gaming operation. Any person so excluded shall be entitled to a hearing for reconsideration as provided for by section 5.03 (c) and shall have the rights provided to

an applicant therein. The manager of any gaming operation shall also have the authority to exclude or remove any person from the gaming establishment, and all such actions shall be reported to the Commission within 24 hours of the taking of such action.

Chapter IX Prohibited Acts

Section 9.01 Enumeration.

In addition to other civil and criminal acts that may be regulated or prohibited by this Statute, other Nation law, or applicable federal law, the following shall constitute prohibited activities and unauthorized gaming under this Statute and shall subject any perpetrator to Commission action including, but not limited to, the imposition of civil penalties, referral to appropriate law enforcement authorities for criminal proceedings, and license suspension or revocation:

- (a) Altering or misrepresenting the outcome of gaming or other event on which wagers have been made after the outcome of such gaming or event has been determined but before such outcome is revealed to the players;
- (b) Placing or increasing a bet or wager after acquiring knowledge of the outcome of the gaming or event which is the subject of the bet or wager, including past-posting and pressing bets;
- (c) Aiding anyone in acquiring such knowledge referred to in subsection (b) of this section for the purposes of increasing or decreasing any bet or wager, or for the purpose of determining the course of play;
- (d) Claiming, collecting or taking, or attempting to claim, collect or take, money or anything of value in or from a game with intent to defraud or claiming, collecting or taking an amount greater than the amount actually won in such game;
- (e) Knowingly to entice or induce another to go to any place where gaming is conducted or operated in violation of the provisions of this Statute, with the intent that the other person play or participate in such gaming;
- (f) Reducing the amount wagered or canceling a wager after acquiring knowledge of the outcome of the game or other event which is the subject of the bet or wager, including pinching bets;
- (g) Manipulating, with intent to cheat or defraud, any component or part of a game in a manner contrary to the designed and normal operational purpose for such component or part, with knowledge that such manipulation will affect the outcome of the game, or with knowledge of any event that affects the outcome of the game;
- (h) Defrauding the Nation, any licensee or any participant in any gaming;
- (i) Participating in any gaming not authorized under this Statute;
- (j) Knowingly providing false information or making any false statement with respect to an application for employment or for any license, certification or determination provided for in this Statute;
- (k) Knowingly providing false or misleading information or making any false or misleading statement to the Nation, the Commission or the Executive Director in connection with any contract for services or property related to gaming;
- (l) Knowingly making any false or misleading statement in response to any official inquiry by the Commission or its agents;

- (m) Offering or attempting to offer any thing of value, to a licensee in an attempt to induce the licensee to act or refrain from acting in a manner contrary to the official duties of the licensee under this Statute, the rules, Nation and Federal law or IGRA;
- (n) Acceptance by a licensee of any thing of value with the expectation that receipt of such thing of value is intended, or may be perceived as intended, to induce the licensee to act or refrain from acting, in a manner contrary to the official duties of the licensee under this Statute, the rules, Nation and Federal law or IGRA;
- (o) Falsifying, destroying, erasing or altering any books, computer data, records, or other information relating to a gaming operation in ways other than is provided in approved internal control procedures;
- (p) Taking any action which interferes with or prevents the Commission or the Congress from fulfilling its duties and responsibilities under this Statute, the rules, or IGRA; and
- (q) Entering into any contract, or making payment on any contract for the delivery of goods or services to a gaming operation, when such contract fails to provide for or result in the delivery of goods or services of fair value for the payment made or contemplated.

Section 9.02 Prohibition Against Electronic Aids.

Except as specifically permitted by the Commission, no person shall possess, with the intent to use in connection with gaming, either individually, or in concert with others, any calculator, computer, or other electronic or mechanical device to assist in projecting the outcome or odds of such gaming, to keep track of or analyze cards, or to change probabilities of any game or the playing strategies regularly utilized in such gaming.

**Chapter X
National Indian Gaming Commission and Compact**

Section 10.01 Regulation of the Commission.

Notwithstanding any provision in this Statute or the rules, the Commission is hereby fully empowered to comply with all regulations promulgated by the NIGC including, but not limited to, reporting requirements relating to Statutes, contracts, license applications, background checks, and other information.

Section 10.02 Assessment.

Notwithstanding any provision in this Statute or the rules, the Commission is hereby fully empowered to comply with all assessments authorized by the NIGC. Such assessments shall be payable solely from funds of gaming operation revenues as an operating expense.

**Chapter XI
General Requirements**

Section 11.01 Security and Surveillance.

Each gaming establishment must provide for full security and surveillance within the gaming establishment at all times. All security personnel in a gaming establishment must be licensed by the Commission. The security and surveillance departments shall interact when necessary to carry out their official duties and to coordinate their activities in order to effectuate the best protection for the gaming patrons, the Nation, management

interests, and the assets of the enterprise.

Section 11.02 Compliance With Other Laws.

The construction, maintenance and operation of any gaming operation shall be in a manner which protects the environment, public health and safety, and shall comply with all applicable Nation and federal laws relating to environmental protection and public health and safety including, but not limited to, 25 C.F.R. § 522.4(b)(7).

Section 11.03 Amendments.

All provisions of this Statute are subject to amendment by the Congress. All rules promulgated by the Commission are subject to proper revision, repeal, or amendment by the Commission. All amendments to this Statute shall be effective upon the date of passage by the Congress.

Section 11.04 Severability.

If any provision of this Statute, or any portion of any provision to this Statute, is found to be invalid by any court of competent jurisdiction, the full remainder of such provisions shall not be affected.

Section 11.05 Words and Terms.

Tense, number and gender. In interpreting the provisions of this Statute, save when otherwise plainly declared or clearly apparent from the context:

- (a) Words in the present tense shall include the future tense;
- (b) Words in masculine, feminine and neuter genders shall include all genders; and
- (c) Words in the singular shall include the plural, and words in the plural shall include the singular.

Section 11.06 Repeal.

To the extent that they are inconsistent with this Statute, all prior gaming laws, rules, Statutes or regulations of the Nation are hereby repealed.

Section 11.07 Unclaimed Winnings.

(a) Any winnings, whether property or cash, which are due and payable to a participant in any gaming activity, and which remain unclaimed at the end of a gaming session, shall be held in safekeeping for the benefit of such participant if his or her identity is known. Such winnings shall be held for 12 months or such longer period as the Commission deems reasonable in consideration of all relevant facts and circumstances. The Commission shall make such efforts as are reasonable under the circumstances to locate such participant. At the end of the safekeeping period, such winnings shall revert to the ownership of the Nation's Casino Gaming Enterprise and shall be transferred to the account or place designated by the enterprise.

(b) In the event the identity of a participant entitled to unclaimed winnings is unknown, the Commission shall use its best efforts to learn the identity of such individual and shall follow the procedure set forth in section 11.08 if the Commission is able to identify such individual with reasonable certainty; provided, however, if after six months from the time the winnings were payable, the Commission has been unable to identify the individual

entitled thereto, such winnings shall revert to the ownership of the Nation's Casino Gaming Enterprise.

Section 11.08 Patron Disputes.

Any person who has any dispute, disagreement or other grievance with the gaming operation that involves currency, tokens, coins, or any other thing of value, may seek resolution of such dispute from the following persons and in the following order:

- (a) A member of the staff relevant of the gaming operation;
- (b) The supervisor in the area of the relevant gaming operation in which the dispute arose;
- (c) The manager of the relevant gaming operation; and
- (d) The Commission.

Section 11.09 Patron Rights Regarding Disputes.

When a person brings a dispute for resolution pursuant to section 11.08, the complainant has the right to explain his or her side of the dispute, and to present witnesses in connection with any factual allegations. At each level, if the dispute remains unresolved, the complainant shall be informed of the right to take the dispute to the next higher level as set forth in section 11.08. Resolution of any dispute by the personnel of a gaming operation shall always involve two or more staff members. All disputes, whether resolved or not, shall be reported in detail by the staff persons involved to their supervisor, or, in the case of the general manager of the gaming operation, to the Commission.

Section 11.10 Gaming Commission Action on Patron Disputes.

All disputes which are submitted to the gaming Commission shall be decided by the Commission based on information provided by the complainant, including any witnesses for or documents provided by or for, the complainant. The decision of the Commission shall be in writing, shall be issued within 14 days of submission of the matter to the Commission, and shall be provided to the general manager of the gaming operation and to the complainant. The decision of the Commission shall be final and shall not be subject to judicial review.

Section 11.11 Agent For Service of Process.

The Commission Chairman shall be designated agent for service of process for the Osage Nation Gaming Commission. The Chairman shall promptly report any such service to the Commission, and shall promptly provide the Commission with a copy of any complaints or other documents served.

Section 11.12 Consent to Jurisdiction.

Any person, who applies for a license under this Statute, applies for employment in any gaming establishment, enters into any contract or agreement related to gaming, or participates in any Nation gaming activity, shall be deemed to consent to the civil jurisdiction of the Nation, the Commission and the Nation's Courts. Nothing in this section shall limit the jurisdiction of the Nation, the Commission or the Nation's Courts under any circumstances not explicitly contemplated in this Statute.

Section 11.13 Comity and Concurrent Jurisdiction.

The Commission is empowered to seek comity and enforcement of the orders of the Commission by the courts of any other jurisdiction whose assistance may be required to give effect to the orders of the Commission. The Commission is also empowered to issue orders to enforce the lawful orders of other gaming regulatory agencies and the courts of foreign jurisdictions.

Section 11.14 Other Powers of the Commission.

In addition to and in conjunction with the powers and responsibilities listed in this Statute, rules and other applicable laws and regulations the Commission shall have power to:

Statute or of contractual obligations to the Nation, the IGRA or orders of permanent closure of gaming activities for violations of this Statute, Nation gaming regulations or contractual obligations to the Nation;

- (a) Initiate civil and criminal actions in court to enforce provisions of this Statute, Nation gaming regulations or the IGRA;
- (b) Negotiate and approve management agreements for Class II and Class III Gaming to be submitted to the Congress for approval by congressional resolution;
- (c) Approve, deny or revoke gaming licenses for Class II or Class III Gaming;
- (d) Monitor all gaming activities conducted on Osage Nation Trust lands on a continuing basis;
- (e) Ensure that background investigations are conducted as required by this Statute and the IGRA as well as conduct such additional investigations as the Commission may deem necessary;
- (f) Demand access to and inspect, examine, copy and audit all papers, books and records concerning activities and revenues of any gaming activity conducted on Osage Trust lands and any other matters necessary to carry out their duties under this Statute;
- (g) Conduct such hearings as the Commission may deem appropriate in carrying out its duties, including administering oaths or affirmations to witnesses and issuing subpoenas to compel witnesses to appear at such hearings;
- (h) When information is received through audits or other investigations that indicates a violation of Nation, federal or applicable state Statutes, laws or regulations, to treat as confidential and provide such information to the appropriate law enforcement officials;
- (i) Adopt regulations deemed necessary to clarify or enforce provision of this Statute or Nation rights and interests established in approved management agreements; and
- (j) Adopt an Osage Nation Class II and Class III Gaming license application.

Section 11.15 Enforcement Provisions.

(a) All matters and occurrences which indicate that a criminal act under the Nation's Statute, federal law or state law may have occurred in or around any gaming establishment shall be immediately reported to the appropriate law enforcement agency and to the Commission.

(b) All matters and occurrences contrary to this Statute, rules or regulations promulgated by the Commission which are not covered under a criminal Statute shall be deemed to be a civil violation. The Commission is hereby authorized to establish a civil violations list of penalties and fines which shall be imposed by the Commission for all such civil

violations with the violator afforded the rights to a hearing as provided in Chapter V of this Statute.

ARTICLE CHAPTERS XIII - XL RESERVED*

SECTION 12. DECLARATION OF EMERGENCY AND EFFECTIVE DATE

An emergency exists. This bill is effective upon signature of the Principal Chief or upon signature of the Speaker of the Osage Nation Congress following legislative override.

ENACTED by the Osage Nation Congress on this sixth day of December, 2006.

IN WITNESS WHEREOF, the Speaker of the Osage Nation Congress has hereto attached his signature.

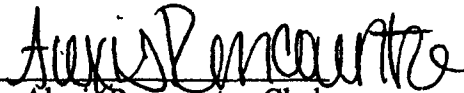

Archie Mason, Speaker
Osage Nation Congress

CERTIFICATION

I, THE UNDERSIGNED, CERTIFY THAT THE FOREGOING IS A TRUE EXTRACT FROM THE MINUTES OF THE Osage Nation Congress comprised of twelve members and one ex-officio member with ten members attending this meeting on the first day of December, 2006, and that the above is in conformity with the provisions therein adopted by a vote of nine in favor, zero against, zero abstentions, and three absent.

Faren Revard Anderson	yes
Jerri Jean Branstetter	absent
Shannon Edwards	absent
Mark Freeman	yes
Debra Littleton	yes
Archie Mason	yes
Raymond Red Corn	yes
Eddy Red Eagle, Jr.	yes
Doug Revard	yes
Anthony Shackelford	yes
Mark Simms	absent
William Supernaw	yes

Said Bill has not been rescinded or amended in any way and the above is the signature of the Speaker of the Osage Nation Congress.


Alexis Rencountre, Clerk
Osage Nation Congress

EFFECTIVE DATE CERTIFICATION

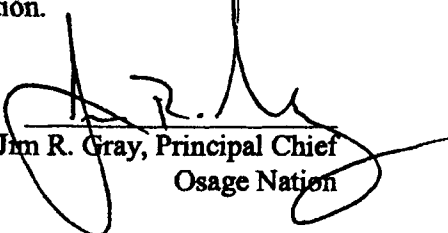
I, THE UNDERSIGNED, CERTIFY THAT THE FOREGOING EFFECTIVE DATE was approved by a two-thirds vote of the Osage Nation Congress in accordance with the Constitution of the Osage Nation Article VI, Section 13. This provision was adopted by a vote of nine in favor, zero against, zero abstentions, and three absent.

Faren Revard Anderson	yes
Jerri Jean Branstetter	absent
Shannon Edwards	absent
Mark Freeman	yes
Debra Littleton	yes
Archie Mason	yes
Raymond Red Corn	yes
Eddy Red Eagle, Jr.	yes
Doug Revard	yes
Anthony Shackelford	yes
Mark Simms	absent
William Supernaw	yes


Alexis Rencountre, Clerk
Osage Nation Congress

APPROVAL

I, the Principal Chief of the Osage Nation, hereby affix my signature this day 8th of December, 2006, to the above Bill No. 07-09 authorizing it to become a law under the Constitution of the Osage Nation.


Jim R. Gray, Principal Chief
Osage Nation

CO-SPONSORS ADDED AFTER INTRODUCTION

Shannon Edwards