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Testimony
Before the Committee on Resources
United States House of Representatives
"Second Discussion Draft of Legislation Regarding Off-Reservation Indian Gaming."

November 9, 2005

Good morning. I wish to thank Chairman Pombo and Ranking Member Rahall for inviting me here today to testify on the proposed amendment language to the Indian Gaming Regulatory Act, or IGRA. I am here in my individual capacity as an Illinois Senator, and am not testifying in my capacity as the President of the National Conference of State Legislatures, which has not adopted a formal position on this matter.

Current law, IGRA section 2719 (b)(1), provides one of several exceptions to the prohibition of Indian gaming on lands acquired in trust by the Secretary of the Interior. The (b)(1) exception states that Indian gaming can occur on land taken into trust where the Secretary of the Interior, after consultation with appropriate state and local officials, including officials of nearby Indian tribes determines that gaming would be in the best interest of that tribe. However, this determination must either follow a Governor's agreeing to the gaming proposal, or the lands on which the casino is to be located are taken into trust as part of a settlement of a land claim, are part of the initial reservation of an Indian tribe acknowledged by the Secretary under the federal acknowledgment process, or are the restoration of lands for an Indian tribe that is restored to federal recognition. Under the current process, the Secretary and the Governor may jointly decide whether a casino is or is not appropriate despite the opinions of state legislators who may not even be consulted. IGRA requires the Secretary to consult with "state officials" which may not be a state legislature. There is no mandatory requirement that the views of state legislators have any weight whatsoever in this determination. This current process is not an open and transparent one, but rather one that occurs behind closed doors without the benefit of public hearings and state legislative input.

By contrast the proposal before you this morning seeks to open up the process of Indian gaming approval by requiring not only the Governor of state in which the casino will be located to give his or her approval, but also requires the state legislature, counties and neighboring tribes to concur with the Secretary's decision on the appropriateness of the casino. I have no opinion on whether counties or neighboring tribes should be involved in this process, that decision is best left to county and tribal officials; however, I am very supportive of the inclusion of the state legislature in the process of determining whether a casino should be placed in my state, particularly in the instance where a non-resident tribe seeks permission to open a casino. In Illinois, four non-resident tribes have sought to do this in the last ten years. No Governor of Illinois has ever agreed to this type of proposal. However, there is an ever-present uncertainty with respect to how a particular governor would entertain these proposals. I should also note that state legislators are oftentimes much more accessible to the tribes and the general public than are governors, so the opportunity to have all concerns addressed with a proposed casino would be greater through the state legislative process.

Including the state legislature in the decision as to whether or not to permit Indian casinos is extremely important to me for several reasons. First, our republican system of government, or representative democracy, vests the authority and responsibility to create sound public policy with the elected representative body, or state legislature. The governor, as the executive branch of state government, serves to implement the public policy decisions of the state legislature. It is through the state legislative process that state laws evolve and shape the overall direction a state takes on any given issue.

Second, requiring the casino proposal to go through the state legislature eliminates "closed door" negotiations regarding the appropriateness of and the details concerning the placement and operation of Indian casinos. Some of the issues surrounding Indian gaming that have been negotiated out in the state/tribal compact process between the Governor and the tribe, but are actually ripe for legislative examination and consideration are revenue sharing, law enforcement and fire protection costs.

Third, under the proposed bill, those tribes seeking to engage in gaming will have to present their proposal to the legislature in a public forum. The legislators will be able to explore and pose questions about the details of the proposed casino through the legislative hearing process. This last point in and of itself is very, very important to me as a state legislator. If an Indian casino was being considered in my state, I would want to explore the benefits and detriments of the project with relevant experts before deciding whether the project was right for Illinois. I would also want the general public to have an opportunity to attend an open hearing so they too would be aware of the proposal and its potential impact on local communities and the

state. The bottom line is that this process should be an open and transparent one, and should include the opinions of state elected officials who will be dealing with the economic and social impacts of a casino. In addition, many states regulate gaming either by way of their constitutions or by state statute. Permitting state legislative input into this issue insures that state legislative intent is respected and upheld. I thank you for your time this morning, and I am happy to answer any questions you may have.