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THE NATIONAL CONGRESS OF
AMERICAN INDIANS

RESOLUTION #SD-02-063

Title: NIGC Technical Assistance and Consultation with Tribal Governments in the Implementation of the Amended Regulatory Definitions

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people and their way of life, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Supreme Court and Congress recognize that Tribal governments retain the inherent authority to conduct gaming operations to generate governmental revenue and attain economic self-sufficiency; and

WHEREAS, the U.S. Congress enacted the Indian Gaming Regulatory Act (IGRA) to promote Indian economic development and build strong tribal governments by protecting Indian gaming as a means of generating tribal governmental revenues; and

WHEREAS, when Congress enacted IGRA it made clear its intention that Tribes could use new methods of technology in the use of technologic aids to class II gaming; and

WHEREAS, the Ninth, Tenth, and D.C. Federal Circuit Courts of Appeal have recognized through written case opinions that the Johnson Act does not apply to IGRA technologic aids to class II games; and

WHEREAS, on June 17, 2002 in 67 Federal Register 41166 the National Indian Gaming Commission (NIGC) adopted a final rule amending its regulatory definitions by removing the reference to the Johnson Act from the definition of electronic and electromechanical facsimiles and made other important changes, which reflect that Congress did not intend the Johnson Act to apply to IGRA technologic aids to class II games; and

WHEREAS, the NIGC has been inconsistent in implementing the final rule amending its regulatory definitions, and has not consulted with Tribal governments in that implementation; and

WHEREAS, the U.S. Department of Justice has ignored the Federal Circuit Courts of Appeal opinions and the NIGC final rule by continuing to press its litigation against the Santee Sioux and Seneca Cayuga Tribes, in which DOJ contends that the Johnson Act does apply to IGRA technologic aids to class II games, and that Tribes must compact with States to employ such devices; and

WHEREAS, the House of Representatives has included a \$2 million federal appropriation for additional funding of the NIGC in the Fiscal Year 2003 Interior Appropriations bill, which it passed and sent to the U.S. Senate for consideration; and

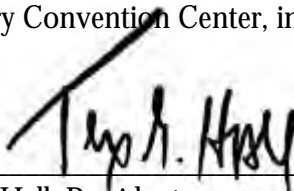
WHEREAS, the current U.S. Senate version of the FY 2003 Interior Appropriation bill does not include an additional federal appropriation for the NIGC.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby call upon the United States Congress to adopt language in the Fiscal Year 2003 Interior Appropriations bill to direct the National Indian Gaming Commission to use a portion of its one-time federal appropriation to consult with Tribal governments in the implementation of the Amended Regulatory Definitions set forth at 67 Federal Register 41166 (June 17, 2002); and

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted at the 2002 Annual Session of the National Congress of American Indians, held at the Town and Country Convention Center, in San Diego, California on November 10-15, 2002 with a quorum present.



Tex Hall, President

ATTEST:



Juana Majel, Recording Secretary

Adopted by the General Assembly during the 2002 Annual Session of the National Congress of American Indians, held at the Town and Country Convention Center, in San Diego, California on November 10-15, 2002.