

# Poarch Band of Creek Indians

## TRIBAL OFFICES

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10/13/06

October 13, 2006

Philip N. Hogen, Chairman  
National Indian Gaming Commission  
1441 L Street, NW  
Washington, DC 20005

**Re: Economic Impacts of Proposed Class II Regulations**

Dear Chairman Hogen:

Thank you for your letter dated September 27, 2006, requesting information regarding the economic impacts the National Indian Gaming Commission's ("NIGC") proposed rules regarding the classification of games under the Indian Gaming Regulatory Act will have on the Poarch Band of Creek Indians ("Tribe"). We appreciate the opportunity to again describe the detrimental impacts these rules will have on the Tribe.

As we have shared previously, the Tribe objects to the NIGC's current rulemaking as it narrows the scope of class II gaming, and, as a result, redefines all existing class II games. If these proposed rules are finalized, all existing class II games *will automatically lose their class II status* and thus require a Tribal-State Compact for their continued operation. Such a result is particularly problematic for our Tribe because of the State of Alabama's continued unwillingness to negotiate for the very same games that are currently being played elsewhere within the state. By further restricting the types of games that the Tribe may operate, the proposed rules will severely impact our ability to maintain equal footing with our competitors. Our recent experiences illustrate the financial harm anticipated by finalization of the proposed rules.

As you will recall, during the very time at which state voters were expanding the scope of gaming within Alabama, the Tribe was forced to scale-back both the type and variety of games available for our patrons. In early 2004, the NIGC issued a letter to the Tribe identifying certain games that we had been operating as "questionable." Though we disagreed with the NIGC's assertions, in May 2004, the Tribe removed 76 games and modified approximately 600 others to satisfy the NIGC's concerns. The Tribe's efforts to work with the NIGC resulted in a 34% decrease in revenue and a 56% decrease in net income.

If finalized, the proposed rules would limit the Tribe to even slower-playing and less entertaining games than we currently operate, while non-Indian gaming operations in Alabama

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NATIONAL INDIAN GAMING COMMISSION

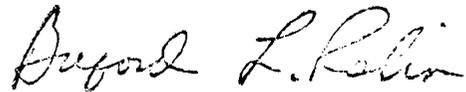
The Honorable Philip N. Hogen  
October 13, 2006  
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will remain unaffected. Thus, for example, the proposal would require the Tribe to operate games such as "Eight Way Bingo," a game currently operated by the Tribe that is perhaps the closest to meeting the requirements of the proposed rules. This game has a very low entertainment value compared to other existing class II games, and quite frankly, customers generally do not like to play it, which is evidenced by a Win Per Unit (WPU) of \$39 as compared to an overall average WPU of \$223.

The average dollars wagered on Eight Way Bingo exhibit a similar pattern. The floor average for this game is just over \$1,100, compared to an overall floor average of \$3,100. Based on these figures, the proposed rules could immediately impact the revenues of our Atmore facility by up to 80%. This negative impact will only increase as the casinos on the gulf coast impacted by last year's hurricanes resume operation. With competition in central Alabama continuing to expand uninhibited, the Tribe's facilities in Montgomery also could no longer remain competitive and would be forced to close.

In response to your request, I am also attaching a copy of my testimony presented to the NIGC at its September 19, 2006, public hearing and an additional copy of the information provided to you in our October 10, 2006 meeting, as both address many of your questions. We are in the process of finalizing our written comment and will ensure that it too addresses the devastating impacts the proposed rules will have on our Tribe. This comment will be submitted in the very near future. Again, we appreciate the opportunity to share this information with the NIGC and urge you to abandon the current proposal in its entirety.

Sincerely,



Buford L. Rolin, Chairman  
Poarch Band of Creek Indians

# **Potential Economic Impact Of NIGC Class II Regulations**



**Submitted by:  
Poarch Band of Creek Indians**

Potential Economic Impact of NIGC Class II Regulations

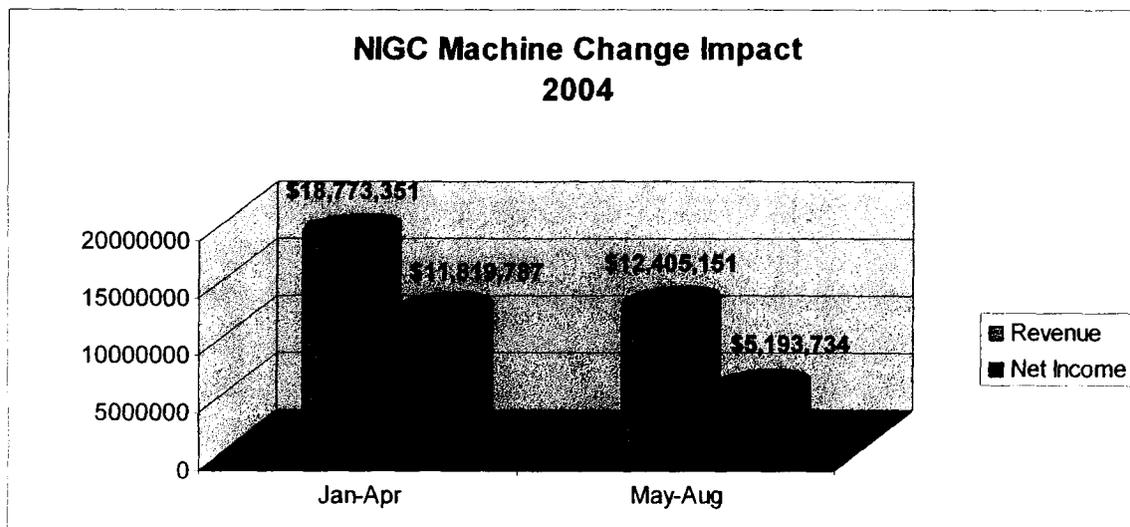
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The Poarch Band of Creek Indians have always faced an uphill battle in the gaming industry. Years of failed attempts to negotiate with state officials have hurt the ability of the Tribe to compete on the gaming front. Class III exists in virtually every surrounding state which has impacted the revenues of the Tribe immensely. Traditional bingo could not keep up with the bright lights and glamour of the Mississippi casinos. The lotteries in Florida and Georgia have also added to the erosion of our Tribal gaming revenue. Technological aids lifted the economic viability of Tribal gaming in Alabama by allowing the Tribe a more competitive product. However, the Tribe's difficulties were further compounded by the fact that in November 2003, voters in Macon County, Alabama, approved a constitutional amendment authorizing the operation of bingo games by nonprofit organizations for charitable and educational purposes. Macon County, which is a mere 30 miles from the Tribe's Wetumpka facility, is home to the Victoryland Dog Track, which is the only entity within the county qualified to conduct such games. The track now operates approximately 3,000 electronic bingo machines – machines that are forbidden to the Tribe because they possess characteristics that the NIGC deems to be class III.

At this same time, the NIGC issued a letter to the Tribe identifying "questionable" games that the Tribe had been operating. In May 2004, the Tribe replaced 76 of these games and modified approximately 600 others to satisfy the concerns of the NIGC. The Tribe's efforts to work with the NIGC to maintain compliance with IGRA resulted in a 34% decrease in revenue and a 56% decrease in net income, impacts that are illustrated within Figure 1. Revenues continue to be impacted as the games in operation at Victoryland possess the very same features that the Tribe was forced by the NIGC to abandon – features that increase the game's entertainment value.

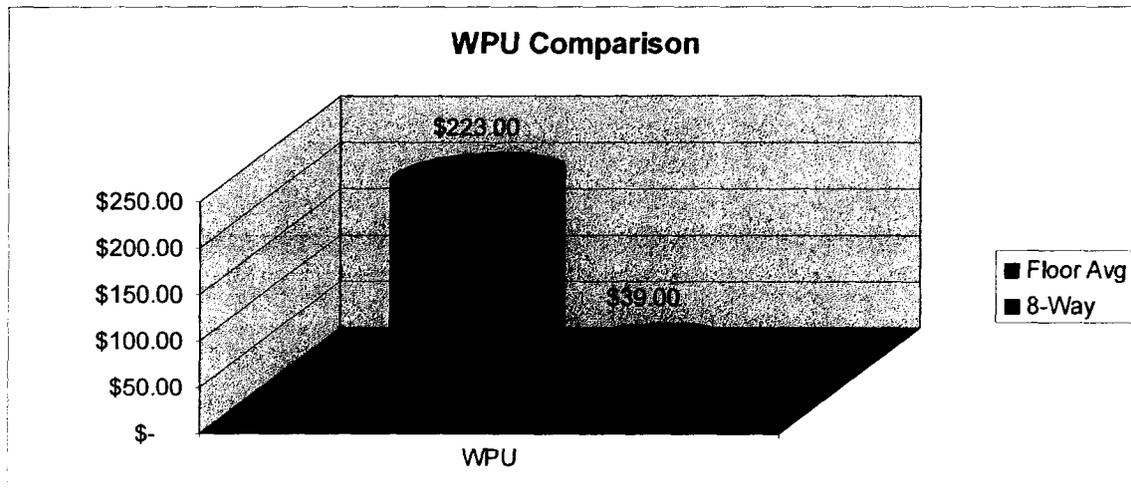
Figure 1.



Potential Economic Impact of NIGC Class II Regulations  
Submitted by:  
Poarch Band of Creek Indians

In 2005, the Department of Justice joined the NIGC in developing new regulations for Class II games. These proposed amendments threatened to further erode the Tribe's competitiveness and sustainability in the gaming market. The proposal would limit the Tribe to slower-playing and less entertaining games – even more so than those that it currently operates – while existing non-Indian gaming operations in Alabama will remain unaffected. Thus, for example, the proposal would require the Tribe to operate games such as “Eight Way Bingo,” a game recently operated by the Tribe that generally met the requirements of the proposal. This game had a very low entertainment value compared to other existing class II games, and quite frankly, customers generally did not like to play it. As depicted by Figure 2, this is evidenced by a Win Per Unit (WPU) of \$39 from 08-01-05 to 10-31-05 for Eight Way Bingo, compared to an overall average WPU of \$223.

Figure 2.



As illustrated above any change that impacts the entertainment value of the game places the Tribe at a competitive disadvantage. The NIGC proposed regulations would cause the game to be played at half the current pace. The additional delay is caused by three factors. First, the customer would have to wait for five additional players. This is a dramatic shift from the current requirement of one additional player. Next a two second delay has been instituted between each ball draw. Finally, the customer must “daub” three times instead of two. The cumulative effect of these delays is shown in Figure 3.

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**Figure 3.**

Proposed NIGC Standard : Game Play Sequence

Step #	Game Action or Guest Action	Total Button Pushes	Time / Delay for this Step Cumulative Time
1	Guest Inserts Currency	0	Delay: No Delay Cum: 0 seconds
2	Guest Pushes Play to Start Game (buy a bingo card)	1	Delay: No Delay Cum: 1 seconds
3	Game Waits for at least One other person to join	1	Delay: 2 seconds Cum: 3 seconds
At least two releases are required per game. Game waits for earlier of: Everyone covering (daubing after the release) or 2 seconds			
4	1 <sup>st</sup> Ball release occurs, Player must push Play to Cover (daub) cards	2	Delay: 2 seconds Cum: 5 seconds
5	2 <sup>nd</sup> Ball release occurs, Player must push Play to Cover (daub) cards	3	Delay: 2 seconds Cum: 7 seconds
6	Winners push Play to Collect win	4	Delay: 2 seconds Cum: 9 seconds

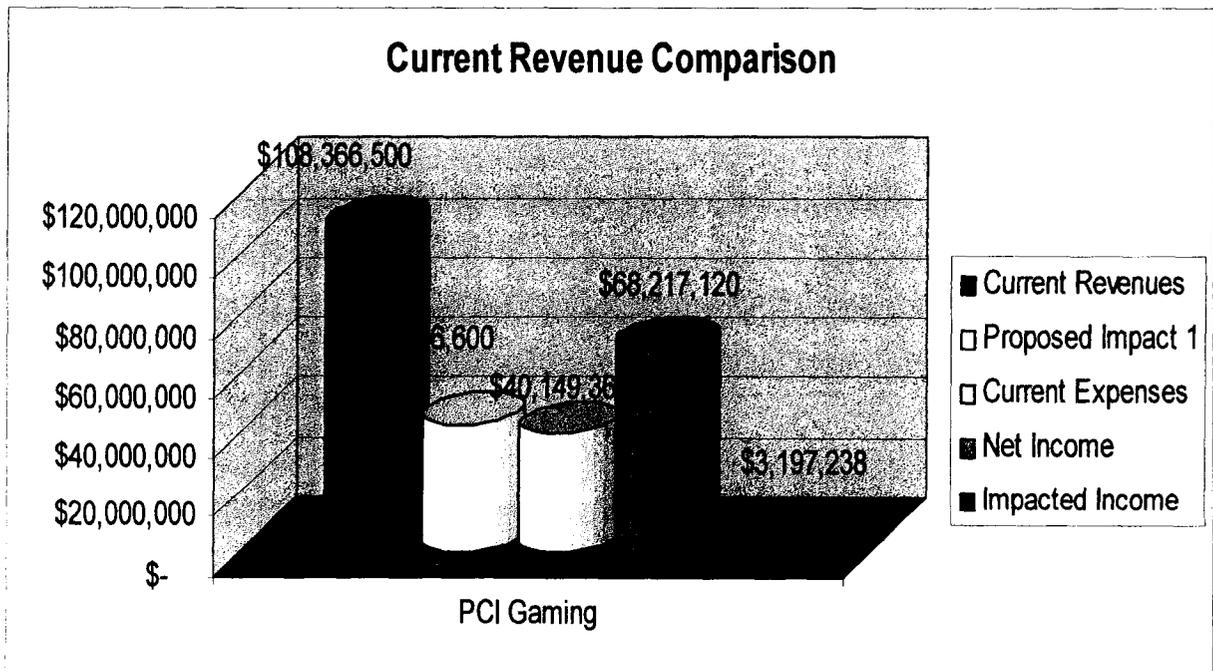
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Currently an experienced customer can play the game in around five seconds. The new regulations would push that time to nine or ten seconds. The math of the game would also be altered under the new regulations. Forcing the game winning prize to 20% of the amount wagered will require the game to payout less frequently reducing the entertainment value and time on the machine. Combining these factors make for a less entertaining and much slower game. Presently our customers spend approximately two hours in our facility. We do not anticipate the customers lengthening their stay especially in light of a game with decreased entertainment. A knowledgeable customer can play approximately 1488 games in that time period. The new regulations would reduce that number to 827. Assuming the customer spent the same amount of time on the machine the effect on current revenues and net income would be devastating. As shown below the Tribe stands to lose over 65 million in net income. This dramatic effect felt by the gaming operations would naturally spill over into governmental services.

Figure 4.



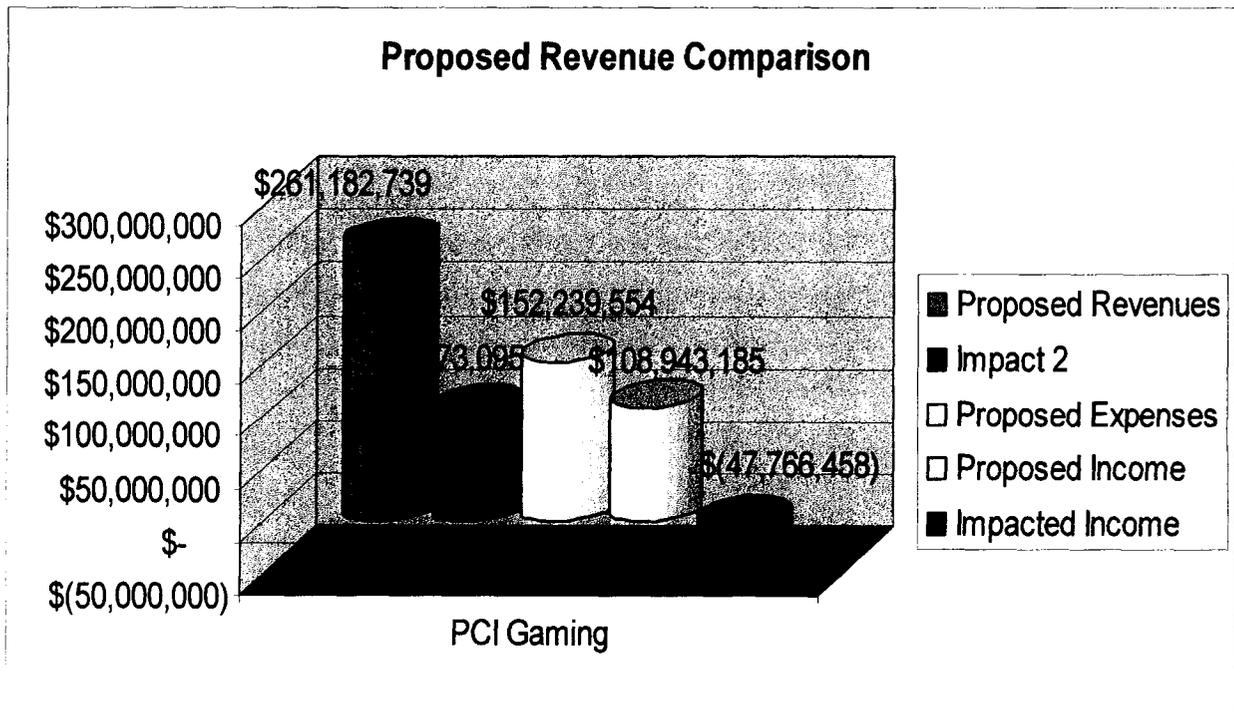
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There is also a proposed affect that must be considered. The Tribe currently plans to expand its operations in both Wetumpka and Atmore. The capital investment is over 500 million dollars. This infusion in the economy of the state is almost unprecedented. Under these uncertain circumstances the Tribe cannot move forward for two main reasons. First, the risk associated would cause investors to either shy away from the project or make the interest rates unreasonable. Second, the economic impact of the less appealing games on future operations must be considered. Applying the same logic to proposed revenues paints an even more dismal picture for the Tribe. Proposed income for the Tribe falls from 108 million dollars to a negative 47 million dollars under the new regulations. This destroys the viability of the projects not only in the eyes of the Tribe but to potential investors as well. These numbers may appear dramatic but when the proximity of competition is considered they may be conservative. These impacts are graphically illustrated below.

Figure 5.



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In short the viability of our gaming enterprises is at stake. Current revenues and income would be impacted greatly and any chance of future growth eliminated. The NIGC must consider state gaming regulations during this crucial time. We do not feel it is the intent of the NIGC to cripple Tribes who are reliant on Class II gaming for revenue but if they proceed with the regulations they will do just that.