

**TESTIMONY OF AURENE M. MARTIN
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BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
U.S.SENATE
ON
S. 2986
"THE BAY MILLS INDIAN COMMUNITY LAND CLAIM SETTLEMENT ACT"
OCTOBER 10, 2002**

Good morning, Mr. Chairman and Members of the Committee. I am pleased to be here today, to testify on the bill for the settlement of certain land claims of the Bay Mills Indian Community in Michigan.

Land Claim Settlement

S. 2986 would ratify and execute an agreement between the Governor of the State of Michigan and the Bay Mills Indian Community settling the Tribe's land claim in the State of Michigan. According to the provisions of S. 2986, in exchange for extinguishing their claim to Charlotte Beach Land in Chippewa County, Michigan, the Indian Community is to receive alternative land at Port Huron, which is 257 miles from the Community's reservation. The land would be taken into trust by the Department and a Class III gaming compact would be approved to allow gaming on the land. We are encouraged by the efforts of the State and the Tribe to reach an agreement on this important issue, however the Department does not support this legislation at this time. S. 2986 would force a number of administrative actions without giving the Administration sufficient time to review the terms and there is no provision for obtaining the views of other interested parties, including other Tribes, prior to executing these significant actions.

Settlement of Land Claim

Section 1(5) defines the term "Settlement of Land Claim" to mean "the agreement between the Community and the Governor of the State executed on August 23, 7002, and filed with the Office of the Secretary of State of the State." The Department has not fully reviewed the terms and implications of the Settlement Agreement. On its face, it appears the Tribe would agree to make revenue sharing payments to the Michigan Economic Development Corporation in an amount equal to 8 percent of the net win derived from all Class III electronic games of chance (as defined in Section 3(A)(5) of the Class III gaming compact between the Bay Mills Community and the State of Michigan) that are operated by the Tribe. In exchange, the Tribe would receive limited geographical exclusivity for electronic games of chance. The Tribe would also agree, under the Settlement Agreement, to limit its Class III gaming operations in Michigan.

Gaming Provisions

The Settlement Agreement also contains other gaming-related provisions. It has been the policy of the Department to require that provisions such as these be part of the Class III gaming compact between a tribe and the State. In our view, the Indian Gaming Regulatory Act (IGRA) requires that all substantive provisions relating to the operation of gaming activities be included in the tribal/state compact. This bill arguably carves an exception to this requirement of IGRA, and may set a precedent for other parties to try to do the same.

Land into Trust

Section 3 of the bill would establish a 30 day requirement for the Secretary to take land into trust for the Tribe once the Secretary receives a title insurance policy for the alternative land that indicates it is not

subject to any mortgage, lien, deed of trust, option to purchase, or other security interest. Under statutory and regulatory provisions, the BIA is normally required to consult with local units of state government and other Tribes prior to taking land into trust. The mandatory nature of this trust acquisition, as well as the short time frame provided in the bill, precludes us from consulting with interested parties in this regard. The legislation also precludes the Department from evaluating the subject property to determine whether hazardous materials (such as lead paint, mercury, spilled fuel, other dangerous or toxic material), or other potential liabilities exist, and to work with the owner on a remediation plan if necessary.

Conclusion

The Department respects the sovereign-to-sovereign relationship between the United States and Federally recognized Indian Tribes. On this issue, we commend the efforts of the Tribe and the State to work toward reaching agreement, but we do not support S. 2986 at this time.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.