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SENATE BILL 44

**44TH LEGISLATURE - STATE OF NEW MEXICO - 2ND SPECIAL SESSION, 2000**

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO INDIAN GAMING COMPACTS; AMENDING REVENUE-SHARING PROVISIONS PERMITTED TO BE ENTERED INTO BY THE GOVERNOR AND TRIBES IN NEW MEXICO; AMENDING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 11-13-2 NMSA 1978 (being Laws 1997, Chapter 190, Section 2) is amended to read:

"11-13-2. REVENUE SHARING OF TRIBAL GAMING REVENUE.--  
The governor is authorized to execute a revenue-sharing agreement in the form substantially set forth in this section with any New Mexico Indian nation, tribe or pueblo that has also entered into an Indian gaming compact as provided by law. Execution of an Indian gaming compact is conditioned upon execution of a revenue-sharing agreement. The consideration for the Indian entity entering into the revenue-sharing agreement is the condition of the agreement

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1 providing limited exclusivity of gaming activities to the  
2 tribal entity. The revenue-sharing agreement shall be in  
3 substantially the following form and is effective when  
4 executed by the governor on behalf of the state and the  
5 appropriate official of the Indian entity:

6 "REVENUE-SHARING AGREEMENT

7 1. Summary and consideration. The Tribe shall agree to  
8 contribute a portion of its Class III Gaming revenues  
9 identified in and under procedures of this Revenue-Sharing  
10 Agreement, in return for which the State agrees that the  
11 Tribe:

12 A. has the exclusive right within the State to  
13 provide all types of Class III Gaming described in the Indian  
14 Gaming Compact, with the sole exception of the use of Gaming  
15 Machines, which the State may permit on a limited basis for  
16 racetracks and veterans' and fraternal organizations; and

17 B. will only share that part of its revenue  
18 arising from the use of Gaming Machines and all other gaming  
19 revenue is exclusively the Tribe's.

20 2. Revenue to State. The parties agree that, after the  
21 effective date hereof, the Tribe shall make the quarterly  
22 payments provided for in Paragraph 3 of the Revenue-Sharing  
23 Agreement to the state treasurer for deposit into the General  
24 Fund of the State ("State General Fund"). Fifty percent of  
25 the money deposited in the State General Fund each quarter  
pursuant to the Revenue-Sharing Agreement shall be held in a  
nonreverting account, the principle and earnings of which

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1 shall be appropriated annually to the tourism department for  
2 expenditure for out-of-state marketing and promotion of  
3 tribal tourism activities and destinations, including  
4 casinos, and for other tribal tourism activities that benefit  
5 the tribes in New Mexico.

6 3. Calculation of Revenue to State.

7 A. As used in this Revenue-Sharing Agreement, "net  
8 win" means the annual total amount wagered at a Gaming  
9 Facility on Gaming Machines less the following amounts:

10 (1) the annual amount paid out in prizes  
11 from gaming on Gaming Machines;

12 (2) the actual amount of regulatory fees  
13 paid to the state; and

14 (3) the sum of two hundred fifty thousand  
15 dollars (\$250,000) per year as an amount representing tribal  
16 regulatory fees, with these amounts increasing by five  
17 percent (5%) each year beginning on the first day of January  
18 occurring after the Compact has been in effect for at least  
19 twelve months.

20 B. The Tribe shall pay the state sixteen percent  
21 (16%) of the net win.

22 C. For purposes of these payments, all  
23 calculations of amounts due shall be based upon the quarterly  
24 activity of the gaming facility. Quarterly payments due to  
25 the State pursuant to these terms shall be paid no later than  
twenty-five (25) days after the last day of each calendar  
quarter. Any payments due and owing from the Tribe in the

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1 quarter the Compact is approved, or the final quarter the  
2 Compact is in force, shall reflect the net win, but only for  
3 the portion of the quarter the Compact is in effect.

4 4. Limitations. The Tribe's obligation to make the  
5 payments provided for in Paragraphs 2 and 3 of this section  
6 shall apply and continue only so long as there is a binding  
7 Indian Gaming Compact in effect between the Tribe and the  
8 State, which Compact provides for the play of Class III  
9 Gaming, but shall terminate in the event of any of the  
10 following conditions:

11 A. If the State passes, amends, or repeals any  
12 law, or takes any other action, which would directly or  
13 indirectly attempt to restrict, or has the effect of  
14 restricting, the scope of Indian gaming.

15 B. If the State permits any expansion of nontribal  
16 Class III Gaming in the State. Notwithstanding this general  
17 prohibition against permitted expansion of gaming activities,  
18 the State may permit: (1) the enactment of a State lottery,  
19 (2) any fraternal, veterans or other nonprofit membership  
20 organization to operate [~~such electronic gaming devices~~]  
21 Gaming Machines lawfully, but only for the benefit of such  
22 organization's members, (3) limited fundraising activities  
23 conducted by nonprofit tax exempt organizations pursuant to  
24 Section 30-19-6 NMSA 1978, and (4) any horse racetracks to  
25 operate [~~electronic gaming devices~~] Gaming Machines on days  
on which live or simulcast horse racing occurs.

5. Effect of Variance. In the event the acts or

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1 omissions of the State cause the Tribe's obligation to make  
2 payments under Paragraph 3 of this section to terminate under  
3 the provisions of Paragraph 4 of this section, such cessation  
4 of obligation to pay will not adversely affect the validity  
5 of the Compact, but the amount that the Tribe agrees to  
6 reimburse the State for regulatory fees under the Compact  
7 shall automatically increase by twenty percent (20%).

8 6. Third-Party Beneficiaries. This Agreement is not  
9 intended to create any third-party beneficiaries and is  
10 entered into solely for the benefit of the Tribe and the  
11 State."."

12 Section 2. APPROPRIATION.--An amount equal to fifty  
13 percent of the money deposited in the state treasury in each  
14 quarter of fiscal year 2000 pursuant to Section 2 of the  
15 Revenue-Sharing Agreements identical to Section 11-13-2 NMSA  
16 1978 as enacted in 1997 and entered into by Indian nations,  
17 tribes and pueblos in New Mexico with the state of New Mexico  
18 as part of their Indian Gaming Compacts is appropriated from  
19 the general fund to the tourism department for expenditure in  
20 fiscal year 2001 and in subsequent fiscal years for out-of-  
21 state marketing and promotion of New Mexico tribal tourism  
22 activities and destinations, including casinos, and for other  
23 tribal tourism activities that benefit the Indian nations,  
24 tribes and pueblos of New Mexico. Any unexpended or  
25 unencumbered balance remaining at the end of fiscal year 2001  
shall not revert to the general fund but shall be held in the  
tribal tourism account in the general fund and be available

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1 in subsequent fiscal years for expenditure.

2 Section 3. EMERGENCY.--It is necessary for the public  
3 peace, health and safety that this act take effect  
4 immediately.

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