

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 270

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

JAMES ROGER MADALENA

AN ACT

RELATING TO GAMING; ENACTING THE TRIBAL GOVERNMENTAL GAMING
COMPACT ACT; ENACTING A TRIBAL-STATE GAMING COMPACT; ENACTING A
REVENUE SHARING AGREEMENT FOR TRIBAL GOVERNMENTAL GAMING;
DECLARING AN EMERGENCY.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 9 of this act may be cited as the "Tribal Governmental
Gaming Compact Act".

Section 2. [NEW MATERIAL] FINDINGS. -- The legislature
finds that:

A. it is the policy of the state that gaming is an
appropriate means for raising revenues for governmental and
charitable purposes;

B. the governor of New Mexico and the chief

Underscored material = new
[bracketed material] = delete

1 executive officials of the tribal governments of the pueblos of
2 Acoma, Isleta, Nambe, Pojoaque, San Felipe, San Ildefonso, San
3 Juan, Santa Ana, Santa Clara, Taos, and Tesuque, the Jicarilla
4 Apache tribe and the Mescalero Apache tribe negotiated compacts
5 concerning class III gaming and an agreement concerning the
6 sharing of revenue with the state from class III gaming
7 conducted by these tribal governments;

8 C. Indian gaming in New Mexico has become an
9 important source of revenues for Indian tribal governments,
10 enabling them to provide services, infrastructure, jobs, and
11 economic development for their members and other New Mexicans;

12 D. the definition of Class III gaming in the Tribal
13 Governmental Gaming Compact Act is intended to allow for the
14 operation of tribal casinos and to restore charitable casino
15 nights as a lawful means for tax exempt organizations to raise
16 funds; and

17 E. due to legal questions as to the validity of the
18 compacts previously executed with Indian tribes concerning class
19 III gaming, because of the need for certain changes and
20 additional provisions to assure that tribal gaming enterprises
21 are regulated primarily by tribes with a reasonable degree of
22 state as well as federal oversight and to provide a firm legal
23 foundation for Indian gaming in New Mexico, it is necessary and
24 appropriate that the legislature authorize the governor of the
25 state to execute new compacts for tribal governmental class III

Underscored material = new
[bracketed material] = delete

1 gaming.

2 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
3 Tribal Governmental Gaming Compact Act:

4 A. "IGRA" means the Indian Gaming Regulatory Act, 25
5 USCA Sections 2701, et seq., including the regulations issued
6 pursuant to that act;

7 B. "tribe" means an Indian nation, tribe or pueblo
8 recognized by the federal government and located in whole or in
9 part within the exterior boundaries of the state;

10 C. "class III gaming" means:

11 (1) all forms of class III gaming as that term
12 is defined in IGRA; and

13 (2) any or all forms of casino style gaming
14 permitted by federal law and the state of Nevada, including slot
15 machines and all other forms of gaming machines; all forms of
16 poker, blackjack, and other casino style card games, both banked
17 and non-banked; craps; roulette; keno; pai gow; wheel of
18 fortune; faro; monte; all progressive and bonus forms of the
19 foregoing; pari-mutuel gaming; and lotteries; and

20 D. "gross gaming receipts" means the total amount of
21 money received by a tribal gaming enterprise from class III
22 gaming activities, less amounts paid out to winners, and less
23 the actual cost of tribal regulatory activities (up to a total
24 of two hundred fifty thousand dollars (\$250,000) in such costs
25 annually) and minus federal and state regulatory fees and

. 114518.1ms

Underscored material = new
[bracketed material] = delete

1 expenses, and taxes, if any.

2 Section 4. [NEW MATERIAL] COMPACT ENACTMENT. --

3 A. The governor of the state is authorized and
4 directed to execute on behalf of the state a tribal-state gaming
5 compact concerning class III gaming with the following tribal
6 governments: the pueblos of Acoma, Isleta, Nambé, Pojoaque,
7 San Felipe, San Ildefonso, San Juan, Sandia, Santa Ana, Santa
8 Clara, Taos, and Tesuque, the Jicarilla Apache tribe and the
9 Mescalero Apache tribe in the form set forth in Section 5 of the
10 Tribal Governmental Gaming Compact Act.

11 B. The governor of the state is authorized and
12 directed, upon the written request of any other tribe within the
13 state, to execute on behalf of the state a tribal-state class
14 III gaming compact with the tribe in the form set forth in
15 Section 5 of the Tribal Governmental Gaming Compact Act.

16 C. Any compact executed by the governor pursuant to
17 Subsections A or B of this section, once approved by the
18 secretary of the interior, shall constitute a binding obligation
19 of the state.

20 Section 5. [NEW MATERIAL] COMPACT FORM -- Gaming compacts
21 executed by the governor of the state shall have the following
22 form:

23 "TRIBAL-STATE GAMING COMPACT

24 THIS COMPACT is made and entered into this ____ day of
25 _____, _____, by and between the _____

Underscored material = new
[bracketed material] = delete

1 (hereinafter referred to as "Tribe") and the STATE OF NEW MEXICO
2 (hereinafter referred to as "State").

3 **RECITALS**

4 **WHEREAS**, the State is a sovereign State of the United
5 States of America, having been admitted to the Union pursuant to
6 the Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310,
7 and is authorized to enter into contracts and agreements,
8 including this Compact, with the Tribe; and

9 **WHEREAS**, the Tribe is a sovereign federally recognized
10 Indian tribe and its governing body has authorized the officials
11 of the Tribe to enter into contracts and agreements of every
12 description, including this Compact, with the State; and

13 **WHEREAS**, the Congress of the United States has enacted the
14 Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701-2721
15 (hereinafter "IGRA"), which permits Indian tribes to conduct
16 Class III Gaming on Indian Lands pursuant to a tribal-state
17 compact entered into for that purpose; and

18 **WHEREAS**, the Tribe owns or controls Indian Lands and by
19 Ordinance has adopted rules and regulations governing Class III
20 games played and related activities at any Gaming Facility; and

21 **WHEREAS**, by enactment of an amendment to Section 30-19-6
22 NMSA 1978 in Section 10 of the act in which the Tribal
23 Governmental Gaming Compact Act is enacted, the State will
24 permit charitable organizations to conduct any or all forms of
25 casino-style gaming; and

Underscored material = new
[bracketed material] = delete

1 WHEREAS, the State permits pari-mutuel wagering pursuant to
2 the Horse Racing Act; and

3 WHEREAS, the State authorized the establishment and
4 operation of a state-wide lottery in the New Mexico Lottery Act
5 for the purpose of raising governmental revenue; and

6 WHEREAS, such forms of Class III Gaming are, therefore,
7 permitted in the State within the meaning of the IGRA; and

8 WHEREAS, a Compact between the Tribe and the State for the
9 conduct of Class III Gaming on Indian Lands will satisfy the
10 State's obligation to comply with federal law and fulfill the
11 IGRA requirement for the lawful operation of Class III Gaming on
12 the Indian Lands in New Mexico; and

13 WHEREAS, the State and the Tribe, in recognition of the
14 sovereign rights of each party and in a spirit of cooperation to
15 promote the best interests of the citizens of the State and the
16 members of the Tribe, have engaged in negotiations and have
17 agreed to this Compact.

18 NOW, THEREFORE, the State and the Tribe agree as follows:

19 TERMS AND CONDITIONS

20 SECTION 1. Purpose and Objectives.

21 The purpose and objectives of the State and the Tribe in
22 making this Compact are as follows:

23 A. to evidence the good will and cooperative spirit
24 between the State and the Tribe;

25 B. to continue the development of an effective government-

Underscored material = new
[bracketed material] = delete

1 to-government relationship between the State and the Tribe;

2 C. to provide for the regulation of Class III Gaming on
3 Indian Lands as required by the IGRA;

4 D. to fulfill the purpose and intent of the IGRA by
5 providing for tribal gaming as a means of generating tribal
6 revenues, thereby promoting tribal economic development, tribal
7 self-sufficiency, and strong tribal government;

8 E. to provide revenues to fund tribal government
9 operations or programs, to provide for the general welfare of
10 the tribal members and for other purposes allowed under the
11 IGRA;

12 F. to provide for the effective regulation of Class III
13 Gaming in which the Tribe shall have the sole proprietary
14 interest and be the primary beneficiary; and

15 G. to address the State's interest in the establishment,
16 by the Tribe, of rules and procedures for ensuring that Class
17 III Gaming is conducted fairly and honestly by the owners,
18 operators, employees and patrons of any Class III Gaming
19 enterprise on Indian Lands.

20 SECTION 2. Definitions.

21 For purposes of this Compact, the following definitions
22 pertain:

23 A. "Indian Lands" means:

24 1. all lands within the exterior boundaries of the
25 Tribe's reservation and its confirmed grants from prior

Underscored material = new
[bracketed material] = delete

1 sovereigns; and

2 2. any other lands title to which is either held in trust
3 by the United States for the exclusive benefit of the Tribe or
4 a member thereof or is held by the Tribe or a member thereof
5 subject to restrictions against alienation imposed by the
6 United States, and over which the Tribe exercises jurisdiction
7 and governmental authority.

8 B. "Tribal Gaming Agency" means the tribal governmental
9 agency which will be identified to the State Gaming
10 Representative as the agency responsible for regulatory actions
11 of the Tribe set out in the Compact.

12 C. "State Gaming Representative" means that person
13 designated by the Legislature in Section 9 of the Tribal
14 Governmental Gaming Compact Act. The State Gaming
15 Representative will be responsible for regulatory actions of
16 the State set out in the Compact.

17 D. "Compact" means this compact between the State and the
18 Tribe.

19 E. "Gaming Facility" means the buildings or structures in
20 which Class III Gaming is conducted on Indian Lands.

21 F. "Gaming Operation" means each economic entity that is
22 licensed by a tribe, operates the games, receives the revenues,
23 issues the prizes, and pays the expenses.

24 G. "Management Contract" means a contract within the
25 meaning of 25 USCA Sections 2710(d)(9) and 2711.

Underscored material = new
[bracketed material] = delete

1 H. "Management Contractor" means any person or entity
2 that has entered into a Management Contract with the Tribe.

3 I. "Ordinance" means the gaming ordinance and any
4 amendments thereto adopted by the Tribal Council of the Tribe.

5 J. "Tribe" means _____.

6 K. "State" means the State of New Mexico.

7 SECTION 3. Authorized Class III Gaming.

8 A. The Tribe may conduct, only on Indian Lands, subject
9 to all of the terms and conditions of this Compact, any or all
10 forms of class III gaming as that term is defined in IGRA. The
11 term means any or all forms of casino style gaming permitted by
12 federal law and the state of Nevada, including but not limited
13 to slot machines and all other forms of gaming machines; all
14 forms of poker, blackjack, and other casino style card games,
15 both banked and non-banked; craps; roulette; keno; pai gow;
16 wheel of fortune; faro; monte; all progressive and bonus forms
17 of the foregoing; pari-mutuel gaming; and lotteries.

18 B. Subject to the foregoing, the Tribe shall establish,
19 in its discretion, by tribal law, such limitations as it deems
20 appropriate on the number and type of Class III Gaming
21 conducted, the locations of Class III Gaming on Indian Lands,
22 the hours and days of operation, and betting and pot limits,
23 applicable to such gaming.

24 SECTION 4. Regulation of Class III Gaming.

25 A. Tribal Gaming Agency. The Tribal Gaming Agency will

Underscored material = new
[bracketed material] = delete

1 assure that the Tribe:

- 2 1. operates all Class III Gaming pursuant to this
- 3 Compact, tribal law, IGRA, and other applicable
- 4 Federal law;
- 5 2. provides for the physical safety of patrons in
- 6 any Gaming Facility;
- 7 3. provides for the physical safety of personnel
- 8 employed by the gaming enterprise;
- 9 4. provides for the physical safeguarding of assets
- 10 transported to and from the Gaming Facility and
- 11 cashier's cage department;
- 12 5. provides for the protection of the property of
- 13 the patrons and the gaming enterprise from illegal
- 14 activity;
- 15 6. participates in licensing of primary management
- 16 officials and key employees of a Class III Gaming
- 17 enterprise;
- 18 7. detains persons who may be involved in illegal
- 19 acts for the purpose of notifying law enforcement
- 20 authorities;
- 21 8. records and investigates any and all unusual
- 22 occurrences related to Class III Gaming within the
- 23 Gaming Facility; and
- 24 9. provides true copies of all tribal laws and
- 25 regulations affecting Class III Gaming conducted

Underscored material = new
[bracketed material] = delete

1 under the provisions of this Compact to the State
2 Gaming Representative within thirty (30) days after
3 the effective date of this Compact, and will provide
4 true copies of any amendments thereto or additional
5 laws or regulations affecting gaming within thirty
6 (30) days after their enactment (or approval, if
7 any).

8 B. Tribal Laws. Without affecting the generality of the
9 foregoing, the Tribe shall adopt laws:

- 10 1. prohibiting participation as a patron in any
11 Class III gaming by any person under the age at
12 which a person may place a wager on a game of the
13 New Mexico State Lottery. Any Tribe, at its sole
14 option, may elect to set an age minimum that is
15 higher than that set by the New Mexico Lottery Act;
- 16 2. prohibiting a key employee or primary management
17 official to be employed who is under the age of
18 eighteen (18) or who has not been licensed in
19 accordance with Section 5, hereinafter;
- 20 3. governing any Management Contract regarding its
21 Class III Gaming Activity such that they conform to
22 the requirements of tribal law and IGRA;
- 23 4. prohibiting a gaming enterprise from cashing any
24 paycheck or any type of government assistance check,
25 including Social Security, Aid For Dependent

Underscored material = new
[bracketed material] = delete

1 Children, and other such checks for any patron;
2 5. requiring that each gaming machine in use at the
3 tribal gaming facility must meet all technical
4 standards imposed on such devices by the laws and
5 regulations in force in the State of Nevada,
6 including the standards applicable to minimum payout
7 percentages;
8 6. requiring that within twelve months from the
9 date on which this Compact takes effect, all gaming
10 machines in use at the gaming facility be connected
11 to a central computerized reporting and auditing
12 system on the gaming facility premises, which shall
13 collect on a continual basis the financial
14 accounting and statistical performance data of each
15 gaming machine in use at the gaming facility, and
16 that such financial accounting and statistical
17 performance data shall be available to the state
18 gaming representative upon request; and
19 7. requiring the gaming enterprise to spend an
20 amount that is no less than one-quarter of one
21 percent of its gross gaming receipts annually to
22 fund or support programs for the treatment and
23 assistance of compulsive gamblers; the Tribe, at its
24 sole option, shall contribute either to an
25 established program operated by the State or an

1 established program in the Tribe's local community
2 which treats compulsive gamblers.

3 C. Audit and Financial Statements. The Tribal Gaming
4 Agency shall require that all books and records relating to
5 Class III Gaming be maintained in accordance with generally
6 accepted accounting principles. All such books and records
7 shall be retained for a period of at least six (6) years from
8 the date of creation. Not less than annually, the Tribal
9 Gaming Agency shall require an audit and certified financial
10 statements covering all financial activities of the gaming
11 enterprise by an independent certified public accountant
12 licensed by the State. The financial statements shall be
13 prepared in accordance with generally accepted accounting
14 principles and shall be submitted to the Tribal Gaming Agency
15 within one hundred twenty (120) days of the close of the
16 Tribe's fiscal year. The Tribe shall maintain the following
17 records concerning tribal gaming for not less than six (6)
18 years:

- 19 1. revenues, gross gaming receipts, expenses,
20 assets, liabilities and equity for each Gaming
21 Facility;
- 22 2. daily cash transactions for each Class III
23 Gaming at each Gaming Facility, including but not
24 limited to transactions relating to each gaming
25 table bank, game drop box, and gaming room bank;
3. all markers, IOU'S, returned checks, hold check

Underscored material = new
[bracketed material] = delete

- 1 or other similar credit instruments;
- 2 4. individual and statistical game records (except
- 3 card games) to reflect statistical drop and
- 4 statistical win; for electronic, computer, or other
- 5 technologically assisted games, analytic reports
- 6 which show the total amount of cash wagered and the
- 7 total amount of prizes won;
- 8 5. contracts, correspondence, and other transaction
- 9 documents relating to all vendors and contractors;
- 10 6. records of all tribal gaming enforcement
- 11 activities;
- 12 7. audits prepared by or on behalf of the Tribe;
- 13 and
- 14 8. personnel information on all Class III Gaming
- 15 employees or agents, including rotation sheets,
- 16 hours worked, employee profiles, and background
- 17 checks.

18 D. Violations. The agents of the Tribal Gaming Agency
19 shall have unrestricted access to the Gaming Facility during all
20 hours of Class III Gaming activity, and shall have immediate and
21 unrestricted access to any and all areas of the Gaming Facility
22 for the purpose of ensuring compliance with the provisions of
23 this Compact and the Ordinance. The agents shall report
24 immediately to the Tribal Gaming Agency any suspected violation
25 of this Compact, the Ordinance, or regulations of the Tribal

Underscored material = new
[bracketed material] = delete

1 Gaming Agency by the gaming enterprise, Management Contractor,
2 or any person, whether or not associated with Class III Gaming.

3 E. State Gaming Representative.

4 1. Upon written request by the State to the Tribe,
5 the Tribe will provide information on primary
6 management officials, key employees, and suppliers,
7 sufficient to allow the State to conduct its own
8 background investigations, as it may deem necessary,
9 so that it may make an independent determination as
10 to the suitability of such individuals, consistent
11 with the standards set forth in Section 5,
12 hereinafter. The Tribe shall consider any
13 information or recommendations provided to it by the
14 State as to any such person or entity, but the Tribe
15 shall have the final say with respect to the hiring
16 or licensing of any such person or entity.

17 2. Notwithstanding that the Tribe has the primary
18 responsibility to administer and enforce the
19 regulatory requirements, the State Gaming
20 Representative authorized in writing by the Governor
21 of the State or by legislation duly enacted by the
22 State Legislature shall have the right to inspect
23 all Gaming Facilities, Class III Gaming activity,
24 and all records relating to Class III Gaming
25 (including those set forth in Section 5,

Underscored material = new
[bracketed material] = delete

1 hereinafter) of the Tribe, subject to the following
2 conditions:

3 (a) with respect to public areas of a Gaming
4 Facility, at any time without prior notice
5 during normal business hours;

6 (b) with respect to private areas of a Gaming
7 Facility not accessible to the public, at any
8 time during normal business hours, immediately
9 after notifying the Tribal Gaming Agency and
10 Gaming Operation of his or her presence on the
11 premises and presenting proper identification,
12 and requesting access to such non-public areas
13 of the gaming facility. The Tribe, at its sole
14 discretion, may require an employee of the
15 Gaming Operation and the Tribal Gaming Agency
16 to accompany the State Gaming Representative at
17 all times that the State Gaming Representative
18 is on the premises of a Gaming Facility;

19 (c) with respect to inspection and copying of
20 all management records relating to Class III
21 Gaming, with 48 hours prior written notice, not
22 including weekends. The reasonable costs of
23 copying will be borne by the State; and

24 (d) whenever the State Gaming Representative,
25 or his designee, enters the premises of the

Underscored material = new
[bracketed material] = delete

1 Gaming Facility for any such inspection, such
2 Representative or designee shall identify
3 himself to security and supervisory personnel
4 of the Gaming Facility.

5 3. The Tribe considers the information provided to
6 the State pursuant to this Compact to be proprietary
7 and commercial property of the Tribe. To the
8 fullest extent allowed by State law, the State
9 agrees to maintain in confidence and never to
10 disclose to any third party any financial
11 information, proprietary ideas, plans, methods,
12 data, development inventions, or other proprietary
13 information regarding the gaming enterprise of the
14 Tribe, Class III Gaming conducted by the Tribe, or
15 the operation thereof, which is provided to the
16 State by the Tribe without the prior written
17 approval of a duly authorized representative of the
18 Tribe. These prohibitions shall not be construed to
19 prohibit:

20 (a) the furnishing of any information to a law
21 enforcement or regulatory agency of the Federal
22 Government;

23 (b) the State from making known the names of
24 persons, firms, or corporations conducting
25 Class III Gaming pursuant to the terms of this

Underscored material = new
[bracketed material] = delete

1 Compact, locations at which such activities are
2 conducted, or the dates on which such
3 activities are conducted;
4 (c) publishing the terms of this Compact;
5 (d) disclosing information as necessary to
6 audit, investigate, prosecute, or arbitrate
7 violations of this Compact or other applicable
8 laws or to defend suits against the State; and
9 (e) complying with subpoenas or court orders
10 issued by courts of competent jurisdiction.

11 4. To the fullest extent allowed by State law, the
12 Tribe shall have the right to inspect and copy State
13 records concerning all Class III Gaming conducted by
14 the Tribe with the Tribe bearing the reasonable cost
15 of copying.

16 5. The Tribe shall reimburse the State for the
17 actual costs the State incurs in carrying out any
18 functions authorized by the terms of this Compact,
19 in an amount not to exceed twenty-five thousand
20 dollars (\$25,000.00) per year. All calculations of
21 amounts due shall be based upon a fiscal year
22 beginning October 1, and ending September 30, unless
23 the parties select a different fiscal year.
24 Payments due the State shall be made no later than
25 sixty (60) days after the beginning of each fiscal

Underscored material = new
[bracketed material] = delete

1 year. Payments due the State during any partial
2 fiscal year this Compact is in effect shall be
3 adjusted to reflect only that portion of the fiscal
4 year. Within sixty (60) days after the end of each
5 fiscal year in which this Compact is in effect, the
6 State shall submit to the Tribe an accounting of
7 actual costs incurred in carrying out any functions
8 authorized by the terms of this Compact. Any amount
9 of the twenty-five thousand dollars (\$25,000.00) not
10 expended by the State on the actual costs shall be
11 returned to the Tribe by the State within sixty (60)
12 days after the fiscal year or treated as a
13 prepayment of the Tribe's obligation during the
14 subsequent fiscal year.

15 6. In the event the State believes that the Tribe
16 is not administering and enforcing the regulatory
17 requirements set forth herein, it may invoke the
18 procedures set forth in Section 7 of this Compact.

19 F. Cash Reporting. The Tribe shall comply with all
20 applicable provisions of the Bank Secrecy Act, P.L. 91-508,
21 October 26, 1970, 31 U.S.C. §§ 5311-5314, and all reporting
22 requirements of the Internal Revenue Service.

23 SECTION 5. Licensing Requirements.

24 A. License Required. The Gaming Facility operator,
25 (but not including the Tribe), including its principals, primary

Underscored material = new
[bracketed material] = delete

1 management officials, and key employees, the Management
2 Contractor and its principals, primary management officials, and
3 key employees (if the Tribe hires a Management Contractor), any
4 person, corporation, or other entity that has supplied or
5 proposes to supply any gaming device to the Tribe or the
6 Management Contractor; and any person, corporation, or other
7 entity providing gaming services within or without a Gaming
8 Facility, shall apply for and receive a license from the Tribal
9 Gaming Agency before participating in any way in the operation
10 or conduct of any Class III Gaming on Indian Lands.

11 B. License Application. Each applicant for a license
12 shall file with the Tribal Gaming Agency a written application
13 in the form prescribed by the Tribal Gaming Agency, along with
14 the applicant's fingerprint card, current photograph, and the
15 fee required by the Tribal Gaming Agency.

16 1. The following Notice ("Privacy Act Notice")
17 shall be placed on the application form for a
18 principal, key employee, or a primary management
19 official before that form is filled out by an
20 applicant:

21 In compliance with the Privacy Act of 1974,
22 the following information is provided:
23 Solicitations of the information on this
24 form is authorized by 25 U.S.C. §§ 2701-
25 2721. The purpose of the requested

Underscored material = new
~~[bracketed material] = delete~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

information is to determine the eligibility of individuals to be employed in a gaming enterprise. The information will be used by members and staff of the Tribal Gaming Agency and the National Indian Gaming Commission who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal, or regulatory investigations or prosecutions or when, pursuant to a requirement by a tribe, or the National Indian Gaming Commission, when the information is relevant to the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming enterprise. Failure to consent to the disclosures indicated in this Notice will result in a tribe being unable to hire you in a primary management official or key employee position with a tribal gaming

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

enterprise.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply an SSN may result in errors in processing your application.

2. Existing principals, key employees, and primary management officials shall be notified, in writing, that they shall either:

- (a) Complete a new application form that contains a Privacy Act notice; or
- (b) Sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that Notice.

3. The following Notice ("False Statement Notice") shall be placed on the application form for a principal, key employee or a primary management official before that form is filled out by an applicant:

A false statement on any part of your application may be grounds for not hiring you or for firing you after you begin work. Also, you may be punished by fine or imprisonment. See 18 U. S. C. § 1001. 4.

4. The Tribal Gaming Agency shall notify, in

1 writing, existing principals, key
2 employees, and primary management officials
3 that they shall either:

4 (a) complete a new application form that
5 contains a False Statement Notice; or

6 (b) sign a statement that contains the
7 False Statement Notice.

8 5. The Tribal Gaming Agency shall request from
9 each applicant, and from each principal, primary
10 management official, and key employee of each
11 applicant, all of the following information:

12 (a) full name, other names used (oral or
13 written), Social Security Number(s), birth
14 date, place of birth, citizenship, gender,
15 and all languages spoken or written;

16 (b) currently, and for the previous ten
17 (10) years, business and employment
18 positions held, ownership interests in
19 those businesses, business and residence
20 addresses, and driver's license numbers;
21 provided, that any applicant who is a
22 principal, primary management official, key
23 employee, Management Contractor,
24 manufacturer or supplier of gaming devices,
25 and/or a person providing gaming services,

Underscored material = new
[bracketed material] = delete

1 must provide such information currently,
2 and from the age of eighteen (18).
3 (c) the names and current addresses of at
4 least three (3) personal references,
5 including one personal reference who was
6 acquainted with the applicant during each
7 period of residence listed in Paragraph
8 B. 5. (b) of this Section;
9 (d) current business and residence
10 telephone numbers;
11 (e) a description of any existing and
12 previous business relationships with Indian
13 tribes, including ownership interests in
14 those businesses, and a description of any
15 potential or actual conflict of interests
16 between such businesses and Indian tribes;
17 (f) a description of any existing and
18 previous business relationships in the
19 gaming industry, including, but not limited
20 to, ownership interests in those
21 businesses;
22 (g) the name and address of any licensing
23 or regulatory agency with which the
24 applicant has filed an application for a
25 license or permit related to gaming,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

whether or not such license or permit was granted;

(h) for each felony for which there is an ongoing prosecution, or a conviction, the charge, the date of the charge, the name and address of the court involved, and the disposition, if any;

(i) for each misdemeanor for which there is an ongoing prosecution or conviction (excluding minor traffic violations), the charge, the date of the charge, the name and address of the court involved, and the disposition, if any;

(j) for each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is not otherwise listed pursuant to Paragraph B. 5. (h) or B. 5. (i) of this Section, the criminal charge, the date of the charge, the name and address of the court involved, and the disposition, if any;

(k) the name and address of any licensing or regulatory agency with which the person has filed an application for an

1 occupational license or permit, as an
2 applicant, principal, primary management
3 official, or key employee, and whether or
4 not such license or permit was granted;
5 (l) a current photograph;
6 (m) fingerprints, which shall be taken by
7 officers of the tribal police department
8 pursuant to a Memorandum of Understanding
9 between the Tribe and the National Indian
10 Gaming Commission ("Commission"); tribal
11 police officers shall forward the
12 fingerprint cards directly to the
13 Commission;
14 (n) the fee required by the Tribal Gaming
15 Agency; and
16 (o) any other information the Tribal
17 Gaming Agency deems relevant.

18 C. Background Investigations.

- 19 1. Upon receipt of a completed application and
20 required fee for licensing, the Tribal Gaming
21 Agency shall conduct or cause to be conducted a
22 background investigation to ensure that the
23 applicant is qualified for licensing.
24 2. Background checks of applicants will be
25 performed pursuant to the following procedures:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(a) the Tribal Gaming Agency shall provide applications to potential applicants upon request, and shall collect and maintain the applications;

(b) pursuant to a Memorandum of Understanding between the Tribe and the Commission, tribal police officers will collect fingerprints from all applicants and forward the fingerprint cards directly to the Commission. The Commission will obtain a criminal history record from the Federal Bureau of Investigation on each applicant and forward such information to the Tribal Gaming Agency;

(c) the Tribal Gaming Agency shall investigate the information provided in the applications. This investigation will include:

- (1) contacting persons or entities identified in the application, and verifying by written or oral communication that the information contained in the application is accurate;
- (2) interviewing a sufficient number

Underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

of knowledgeable people, such as former employers, partners, business associates, and others referred to in the application, to provide a basis for the Tribal Gaming Agency to make a determination concerning whether the applicant meets applicable eligibility requirements;

(3) reviewing relevant financial records of the applicant for the three (3) years preceding the application; and

(4) contacting any state, federal, or other government agency that is referred to in the application;

(d) the Tribal Gaming Agency shall document any information it obtains that calls into question whether the applicant would meet the eligibility requirements under the Ordinance. The Tribal Gaming Agency shall then document in detail the disposition of these problem areas, indicating the follow-up investigations performed on the problem areas and the result of such investigations;

1 (e) the Tribal Gaming Agency will review
2 the results of the investigation. This
3 review will include a determination as to
4 the scope of the investigation and whether
5 sufficient information was obtained and
6 verified. If such information is found not
7 sufficient, the Tribal Gaming Agency will
8 perform additional investigations; and
9 (f) once the investigation is complete,
10 the Tribal Gaming Agency will decide
11 whether the applicant meets the eligibility
12 criteria under the Ordinance.

13 3. In conducting a background investigation, the
14 Tribal Gaming Agency and its agents shall keep
15 confidential the identity of each person
16 interviewed in the course of the investigation.

17 4. Within twenty (20) days of the receipt of a
18 completed application for licensing, and upon
19 request of an applicant, the Tribal Gaming Agency
20 may issue a temporary license to the applicant,
21 unless the background investigation undertaken
22 discloses that the applicant has a criminal
23 history, or unless other grounds sufficient to
24 disqualify the applicant are apparent on the face
25 of the application. The temporary license shall

Underscored material = new
[bracketed material] = delete

1 become void and be of no effect upon either:

- 2 (a) the issuance of the license;
- 3 (b) the issuance of a notice of denial; or
- 4 (c) ninety (90) days after the temporary
- 5 license is issued unless the state review
- 6 time is enlarged as provided in Section
- 7 5. E. 2, whichever occurs earlier.

8 5. The Tribal Gaming Agency shall review a

9 person's prior activities, criminal record, if

10 any, and reputation, habits, and associations to

11 make a finding concerning the eligibility or

12 suitability of an applicant, or a principal, key

13 employee or primary management official of an

14 applicant, for employment or involvement in a

15 gaming enterprise. After such consultation, the

16 Tribal Gaming Agency shall either issue a license

17 or deny the application. If the Tribal Gaming

18 Agency determines that employment or involvement

19 of the applicant poses a threat to the public

20 interest, or to the effective regulation of Class

21 III Gaming, or creates or enhances dangers of

22 unsuitable, unfair, or illegal practices,

23 methods, or activities in the conduct of Class

24 III Gaming, the Tribal Gaming Agency shall deny

25 the application.

Underscored material = new
[bracketed material] = delete

1 6. The Tribal Gaming Agency shall retain the
2 right to conduct additional background
3 investigations of any person required to be
4 licensed at any time while the license is valid.

5 D. Procedure for Forwarding Applications and Reports.

6 Procedures for forwarding applications and investigative
7 reports to the Commission and State Gaming Representative.

8 1. When a key employee or primary management
9 official begins work at a gaming enterprise
10 authorized by this Compact, the Tribal Gaming
11 Agency shall forward to the Commission and the
12 State Gaming Representative a completed
13 application for employment.

14 2. The Tribal Gaming Agency shall forward the
15 report referred to in Paragraph D. 4. of this
16 section to the Commission and the State Gaming
17 Representative within sixty (60) days after an
18 employee begins works or within sixty (60) days
19 of the approval of this Compact by the Secretary
20 of the Interior.

21 3. A key employee or primary management official
22 who does not have a license shall not be employed
23 after ninety (90) days.

24 4. The Tribal Gaming Agency shall prepare and
25 forward to the Commission and the State Gaming

Underscored material = new
[bracketed material] = delete

1 Representative a report on each background
2 investigation ("Investigative Report"). An
3 Investigative Report shall include all of the
4 following:

- 5 (a) steps taken in conducting the
- 6 background investigation;
- 7 (b) results obtained;
- 8 (c) conclusions reached; and
- 9 (d) the basis for those conclusions.

10 5. The Tribal Gaming Agency shall submit with
11 the Investigative Report a copy of the
12 eligibility determination made under Paragraph
13 C. 5. of this section.

14 6. If a license is not issued to an applicant,
15 the Tribal Gaming Agency shall notify the
16 Commission and the State Gaming Representative.

17 7. With respect to principals, key employees and
18 primary management officials, the Tribal Gaming
19 Agency shall retain applications for employment
20 and Investigative Reports (if any) for no less
21 than three (3) years from the date of termination
22 of employment.

23 E. Granting a Gaming License.

24 1. If within thirty (30) days after it receives
25 an Investigative Report, neither the Commission

Underscored material = new
[bracketed material] = delete

1 nor the State Gaming Representative has notified
2 the Tribal Gaming Agency that it has an objection
3 to the issuance of a license pursuant to a
4 license application filed by a principal, key
5 employee, or a primary management official, the
6 Tribal Gaming Agency may issue a license to such
7 applicant.

8 2. The Tribal Gaming Agency shall respond to any
9 request for additional information from the
10 Commission or the State Gaming Representative
11 concerning a principal, key employee, or primary
12 management official who is the subject of an
13 Investigative Report. Such a request shall
14 suspend the thirty (30) day period under
15 Paragraph E. 1. of this Section until the
16 Commission or the State Gaming Representative
17 receives the additional information. However, in
18 no event shall a request for additional
19 information by the State Gaming Representative
20 extend the thirty (30) day period under Paragraph
21 E. 1. of this section for a total period of more
22 than sixty (60) days from the date the State
23 Gaming Representative received the investigative
24 report.

25 3. If, within the thirty (30) day period

Underscored material = new
[bracketed material] = delete

1 described above, the Commission or the State
2 Gaming Representative provides the Tribal Gaming
3 Agency with a statement itemizing objections to
4 the issuance of a license to a principal, key
5 employee or to primary management official for
6 whom the Tribal Gaming Agency has provided an
7 application and Investigative Report, the Tribal
8 Gaming Agency shall reconsider the application
9 taking into account the objections itemized by
10 the Commission and/or the State Gaming
11 Representative, and make a final decision whether
12 to issue a license to such applicant.

13 F. Management Contract.

14 1. If the Tribe chooses to enter into a
15 Management Contract, the Tribal Gaming
16 Agency shall require that all principals,
17 primary management officials, and key
18 employees of the Contractor be licensed.

19 2. The Tribe may enter into a Management
20 Contract only if the Management Contract:

21 (a) provides that all Class III Gaming
22 covered by the Management Contract will be
23 conducted in accordance with IGRA, the

24 Ordinance, and this Compact;

25 (b) enumerates the responsibilities of

1 each of the parties for each identifiable
2 function, including:

- 3 (1) maintaining and improving the
4 Gaming Facility;
- 5 (2) providing operating capital;
- 6 (3) establishing operating days
7 and hours;
- 8 (4) hiring, firing, training,
9 and promoting employees;
- 10 (5) maintaining the gaming
11 enterprise's books and records;
- 12 (6) preparing the gaming enterprise's
13 financial statements and reports;
- 14 (7) paying for the services of the
15 independent auditor engaged pursuant
16 to 25 C.F.R. § 571.12;
- 17 (8) hiring and supervising
18 security personnel;
- 19 (9) providing fire protection
20 services;
- 21 (10) setting advertising budget
22 and placing advertising;
- 23 (11) paying bills and expenses;
- 24 (12) establishing and
25 administering employment

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- practices;
- (13) obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;
 - (14) complying with all applicable provisions of the Internal Revenue Code;
 - (15) paying the cost of public safety services; and
 - (16) if applicable, supplying the Commission with all information necessary for the Commission to comply with the National Environmental Policy Act;
- (c) provides for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at minimum:
- (1) include an adequate system of internal controls;
 - (2) permit the preparation of financial statements in accordance with generally accepted accounting principles;

- 1 (3) be susceptible to audit;
- 2 (4) permit the calculation and
- 3 payment of the Management Contractor's
- 4 fee; and
- 5 (5) provide for the allocation of
- 6 operating expenses or overhead
- 7 expenses among the Tribe, the
- 8 Management Contractor, and any other
- 9 user of shared Gaming Facilities and
- 10 services;
- 11 (d) requires the Management Contractor to
- 12 provide the Tribe, not less frequently than
- 13 monthly, verifiable financial reports or
- 14 all information necessary to prepare such
- 15 reports;
- 16 (e) requires the Management Contractor to
- 17 provide immediate access to the Gaming
- 18 Facility, including its books and records,
- 19 by appropriate tribal officials, who shall
- 20 have:
- 21 (1) the right to verify the daily
- 22 gross revenues and income from the
- 23 gaming enterprise; and
- 24 (2) access to any other gaming-
- 25 related information the Tribe deems

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- appropriate;
- (f) provides for a minimum guaranteed monthly payment to the Tribe in a sum certain that has preference over the retirement of development and construction costs;
- (g) provides an agreed upon maximum dollar amount for the recoupment of development and construction costs;
- (h) provides for a term not to exceed the period allowed by the IGRA;
- (i) details the method of compensating and reimbursing the management Contractor. If a Management Contract provides for a percentage fee, such fee shall be either:
- (1) not more than thirty percent (30%) of the net revenues of the gaming enterprise if the Chairman of the Commission is satisfied that such percentage is reasonable considering the circumstances; or
 - (2) not more than forty percent (40%) of the net revenues if the Chairman of the Commission is satisfied that the capital investment required and income

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

projections for the gaming enterprise
require the additional fee;

(j) provides the grounds and mechanisms
for modifying or terminating the Management
Contract;

(k) contains a mechanism to resolve
disputes between:

- (1) the Management Contractor and
customers, consistent with the
procedures in the Ordinance;
- (2) the Management Contractor and the
Tribe; and
- (3) the Management Contractor and the
gaming enterprise employees;

(l) indicates whether and to what extent
contract assignments and subcontracting are
permissible;

(m) indicates whether and to what extent
changes in the ownership interest in the
Management Contract require advance
approval by the Tribe; and

(n) states that the Management Contract
shall not be effective unless and until it
is approved by the Chairman of the
Commission, date of signature of the

Underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

parties notwithstanding.

3. The Tribe shall not enter into any Management Contract if the Tribal Gaming Agency determines that the Management Contractor or any principal, primary management official, or key employee of the Management Contractor is not licensed or is ineligible to be licensed.

G. Access to Records. Any and all documents, records, and other information pertaining to receipts and expenditures of the tribal gaming enterprise, security and surveillance systems, background investigations, technical information pertaining to gaming devices, and other documents designated "confidential" by the tribal gaming agency or the tribal gaming enterprise that are received by the state gaming representative or his designee shall not be considered public records of the state, and shall not be disclosed by any state official to any member of the public without the express prior written consent of the tribe. Nothing herein, however, shall prevent the state gaming representative or his designee from sharing information with other state or federal agencies, as needed to perform its functions under this compact, or from complying with a valid court order compelling production of such documents, but in the event of any lawsuit in which production is sought by any party, without a confidentiality order being imposed on these documents, the state gaming representative or his designee (or

Underscored material = new
[bracketed material] = delete

1 other state agency in possession of such records) shall give
2 notice to the tribe prior to producing any such records, and
3 shall not object to the tribe's intervention in such action for
4 the purpose of opposing such disclosure of records.

5 SECTION 6. Providers of Class III Gaming Equipment or Supplies.

6 A. Within thirty (30) days after the effective date of
7 this Compact, if it has not already done so, the Tribal Gaming
8 Agency will adopt standards for any and all Class III Gaming
9 equipment, devices or supplies to be purchased, leased, or
10 otherwise acquired by the Tribe after the effective date of this
11 Compact for use in any Gaming Facility which standards shall be
12 at least as strict as the comparable standards applicable to
13 Class III Gaming equipment, devices, or supplies within the
14 State of Nevada. Any and all Class III Gaming equipment,
15 devices, or supplies acquired by the Tribe after the date of
16 this Compact shall meet or exceed the standards thereby adopted,
17 and any and all Class III Gaming equipment, devices, or supplies
18 utilized by the Tribe in its Gaming Facilities as of the
19 effective date of this Compact shall be upgraded or replaced, if
20 necessary, so as to comply with such standards, by no later than
21 one (1) year after the effective date of this Compact.

22 B. Prior to entering into any future lease or purchase
23 agreement Gaming equipment, the Tribe shall obtain sufficient
24 information and identification from the proposed seller or
25 lessor and all persons holding any direct or indirect financial

1 interest in the lessor or the lease-purchase agreement to permit
2 the Tribe to license those persons in accordance with Section 5,
3 hereof.

4 C. The seller, lessor, manufacturer, or distributor shall
5 provide, assemble, and install all Class III Gaming equipment,
6 devices, and supplies in a manner approved and licensed by the
7 Tribe.

8 SECTION 7. Dispute Resolution.

9 A. In the event either party believes that the other
10 party has failed to comply with or has otherwise breached any
11 provision of this Compact, such party may invoke the following
12 procedure:

13 1. the party asserting noncompliance shall serve
14 written notice on the other party. The notice shall
15 identify the specific Compact provision believed to
16 have been violated and shall specify the factual and
17 legal basis for the alleged noncompliance. The
18 notice shall specifically identify the date, time,
19 and nature of the alleged noncompliance.

20 Representatives of the State and Tribe shall
21 thereafter meet within thirty (30) days in an effort
22 to resolve the dispute;

23 2. in the event an allegation by the complaining
24 party is not resolved to the satisfaction of such
25 party within ninety (90) days after service of the

Underscored material = new
[bracketed material] = delete

1 notice set forth in Paragraph (A)(1) of this
2 Section, the complaining party may serve upon the
3 other party a notice to cease conduct of the
4 particular game(s) or activities alleged by the
5 complaining party to be in noncompliance. Upon
6 receipt of such notice, the responding party may
7 elect to stop the game(s) or activities specified in
8 the notice or invoke arbitration and continue the
9 game(s) or activities pending the results of
10 arbitration. The responding party shall act upon
11 one of the foregoing options within thirty (30) days
12 of receipt of notice from the complaining party;

13 3. arbitration under this authority shall be
14 conducted under the Commercial Arbitration Rules of
15 the American Arbitration Association, except that
16 the arbitrators shall be attorneys who are licensed
17 members of the State Bar of New Mexico or of the bar
18 of another state, in good standing. The State will
19 select one arbitrator, the Tribe a second
20 arbitrator, and the two so chosen shall select a
21 third arbitrator. If the third arbitrator is not
22 chosen in this manner within ten (10) days after the
23 second arbitrator is selected, the third arbitrator
24 will be chosen in accordance with the rules of the
25 American Arbitration Association;

Underscored material = new
[bracketed material] = delete

1 4. all parties shall bear their own costs of
2 arbitration and attorney fees; and
3 5. the results of arbitration shall be enforceable
4 by an action for injunctive or mandatory injunctive
5 relief against the State and the Tribe in any court
6 of competent jurisdiction. For purposes of any such
7 action, the State and the Tribe acknowledge that any
8 action or failure to act on the part of any agent or
9 employee of the State or the Tribe, contrary to a
10 decision of the arbitrators in an arbitration
11 proceeding conducted under the provisions of this
12 Section, occurring after such decision, shall be
13 wholly unauthorized and ultra vires acts, not
14 protected by the sovereign immunity of the State or
15 the Tribe.

16 B. Nothing in Subsection 7(A) shall be construed to
17 waive, limit or restrict any remedy which is otherwise available
18 to either party to enforce or resolve disputes concerning the
19 provisions of this Compact. Nothing in this Compact shall be
20 deemed a waiver of the Tribe's sovereign immunity. Nothing in
21 this Compact shall be deemed a waiver of the State's sovereign
22 immunity.

23 SECTION 8. Protection of Patrons.

24 A. Liability to Patrons. To insure the personal safety
25 and protection of patrons and other invitees of the Tribe's

Underscored material = new
[bracketed material] = delete

1 Gaming Facilities operated under the provisions of this Compact,
2 the Tribe shall at all times maintain in effect a policy of
3 public liability insurance, insuring the Tribe, its agents and
4 employees against any claims, demands or liability that may
5 arise as a result of personal injury to any person (other than
6 an employee of the gaming establishment) occurring anywhere on
7 the premises of any gaming establishment operated by the Tribe
8 under the provisions of this Compact, or as a result of any act
9 or omission of any agent or employee of such gaming
10 establishment while in the course of his or her employment,
11 which policy shall provide personal injury coverage of no less
12 than One Million Dollars (\$1,000,000) per injured person and Ten
13 Million Dollars (\$10,000,000) aggregate per policy year.

14 1. The Tribe agrees that in the event of any claim
15 made against it or its gaming enterprise, or any agent or
16 employee thereof, arising out of any personal injury as
17 described above, neither the Tribe nor its insurer will assert
18 any defense of immunity from suit as to such claim for
19 compensatory damages up to the amount of One Million Dollars
20 (\$1,000,000) per injured person, in any action filed in a court
21 of competent jurisdiction to be tried to the court; provided,
22 however, that this agreement not to assert such defense shall be
23 strictly limited as provided herein, and shall not apply to any
24 claim for punitive damages, or to any claim for which a jury
25 trial is demanded, or to any claim for any loss or damage other

Underscored material = new
[bracketed material] = delete

1 than that arising from actual bodily injury or death, or to any
2 claim for damages in excess of the amounts set forth herein.
3 Nothing herein shall be construed as stating or implying that
4 the Tribe has waived or agreed not to assert its immunity from
5 suit for any other purpose or in any other circumstance other
6 than the limited purposes and circumstances expressly set forth
7 herein, nor shall anything herein be construed as an admission
8 of liability as to any claim for damages or as an agreement or
9 indication of willingness to pay any amount as damages absent a
10 judicial determination of fault, and the Tribe or its insurer,
11 or both, shall in every instance have the right to defend any
12 such claim fully on the merits.

13 2. The Tribe shall provide to the State Gaming
14 Representative annually a certificate of insurance showing that
15 its gaming enterprise and its agents and employees engaged
16 therein, are insured to the extent and in the circumstances
17 required by this Section, or that it is self-insured to such
18 extent and in such circumstances. If the State Gaming
19 Representative so requests in writing, the certificate of
20 insurance may be furnished directly to the State Gaming
21 Representative from the insurance carrier or the insuring agency
22 for the insured Tribe.

23 B. Public Health and Safety. The Tribe will establish
24 for its Gaming Facilities health, safety, and construction
25 standards that are at least as stringent as the current editions

Underscored material = new
[bracketed material] = delete

1 of the National Electrical Code, the Uniform Building Code, the
2 Uniform Mechanical Code, the Uniform Fire Code, and the Uniform
3 Plumbing Code, and any and all gaming facilities or additions
4 thereto constructed by the Tribe hereafter shall be constructed
5 and all facilities shall be maintained so as to comply with such
6 standards. Inspections will be conducted with respect to these
7 standards at least annually. If the State Gaming Representative
8 requests sufficiently in advance of an annual inspection, the
9 representative may be present during such inspection. The Tribe
10 agrees to correct any deficiencies noted in such inspections
11 within a reasonable period of time. The Tribal Gaming Agency
12 will provide copies of such inspection reports to the State
13 Gaming Representative, if requested to do so in writing.

14 SECTION 9. Effective Date.

15 This Compact shall be effective immediately upon the
16 occurrence of the last of the following:

- 17 A. execution by the Tribe's Governor or President after
18 approval by the Tribal Council;
- 19 B. execution by the Governor of the State;
- 20 C. approval by the Secretary of the Interior; and
- 21 D. publication in the Federal Register.

22 SECTION 10. Criminal Jurisdiction.

23 The Tribe and the State acknowledge that under the
24 provisions of Section 23 of IGRA, especially that portion
25 codified at 18 U.S.C. § 1166(d), jurisdiction to prosecute

Underscored material = new
[bracketed material] = delete

1 violations of state gambling laws made applicable by that
2 section to Indian country is vested exclusively within the
3 United States, unless the Tribe and the State agree in a compact
4 entered into under IGRA to acknowledge such jurisdiction in the
5 State. The Tribe and the State hereby agree that, in the event
6 of any violation of any state gambling law within the Indian
7 Lands by any person who is not a member of the Tribe, the State
8 shall have and may exercise jurisdiction, concurrent with that
9 of the United States, to prosecute such person, under its laws
10 and in its courts; provided, however, that this concurrent
11 jurisdiction shall (1) not take effect unless and until the
12 State and the Tribe shall have entered into a Memorandum of
13 Understanding ("MOU") with respect to the manner in which State
14 and tribal law enforcement agencies shall cooperate with each
15 other and with federal authorities in the detection of
16 violations, apprehension and detention of any suspected
17 violator, and the investigation and prosecution of any charges
18 brought by the State pursuant to this Section and (2) continue
19 so long as the MOU remains in effect. For the purposes of
20 negotiating and executing such a Memorandum of Understanding,
21 the Legislature authorizes the State District Attorney for the
22 Judicial District in which the Tribes' lands are located to act
23 on behalf of the State.

24 SECTION 11. Binding Effect and Duration.

25 A. This Compact shall be binding upon the State and Tribe

1 for a term of fifteen (15) years from the date it becomes
2 effective and will automatically renew for an additional five
3 (5) year period unless modified or terminated by written
4 agreement of both parties.

5 B. Before the date that is one year prior to the
6 expiration of the fifteen (15) year initial term, and/or before
7 the date that is one year prior to the expiration of the five
8 (5) year renewal period, either party may serve written notice
9 on the other of its desire to renegotiate this Compact.

10 C. In the event that either party gives written notice to
11 the other of its desire to renegotiate this Compact pursuant to
12 Subsection (B) of this Section, the Tribe may, pursuant to the
13 procedures of IGRA, request the State to enter into negotiations
14 for a new compact governing the conduct of Class III Gaming. If
15 the parties are unable to conclude a successor compact, this
16 Compact shall remain in full force and effect pending exhaustion
17 of the administrative and judicial remedies set forth in IGRA
18 and any other applicable federal law.

19 D. Notwithstanding the foregoing, at any time while this
20 Compact remains in effect, either party may, by written notice
21 to the other party, request reopening negotiations with respect
22 to any provision of this Compact, or with respect to any issue
23 not addressed in the Compact, specifying such provision or issue
24 in such notice. No such request shall be unreasonably refused,
25 but neither party shall be required to agree to any change in

Underscored material = new
[bracketed material] = delete

1 the Compact, and no agreement to supplement or amend this
2 Compact in any respect shall have any validity until the same
3 shall have been approved in writing by the Tribe, the State, and
4 the Secretary of the Interior and notice of such approval
5 published in the Federal Register.

6 E. The Tribe may operate Class III Gaming only while this
7 Compact or any renegotiated compact is in effect.

8 SECTION 12. Severability.

9 In the event that any Section or provision of this Compact
10 is held invalid by any court of competent jurisdiction, it is
11 the intent of the parties that the remaining sections or
12 provisions of this Compact, and any amendments thereto, shall
13 continue in full force and effect.

14 SECTION 13. Notice to Parties.

15 Unless otherwise indicated, all notices, payments,
16 requests, reports, information, or demand which any party hereto
17 may desire or may be required to give to the other party hereto,
18 shall be in writing, and shall be personally delivered or sent
19 by first-class mail sent to the other party at its address
20 appearing below or such other address as any party shall
21 hereinafter inform the other party hereto by written notice
22 given as aforesaid:

23 Notice to the Tribe shall be sent to:

24 Office of the Governor or President Tribal Gaming Agency

25 Notice to the State shall be sent to:

Underscored material = new
[bracketed material] = delete

1 Governor' s Office Office of Attorney General
2 State of New Mexico State of New Mexico
3 Santa Fe, New Mexico Santa Fe, New Mexico

4 Every notice, payment, request, report, information, or demand
5 so given shall be deemed effective upon receipt, or if mailed,
6 upon receipt or the expiration of the third day following the
7 day of mailing, whichever occurs first, except that any notice
8 of change of address shall be effective only upon receipt by the
9 party to whom said notice is addressed.

10 SECTION 14. Entire Agreement.

11 This Compact is the entire agreement between the parties
12 and supersedes all prior agreements, whether written or oral,
13 with respect to the subject matter hereof. Neither this Compact
14 nor any provision herein may be changed, waived, discharged, or
15 terminated orally, but only by an instrument, in writing, signed
16 by the Tribe and the State, and approved by the Secretary of the
17 Interior.

18 SECTION 15. Filing of Compact with Secretary of State.

19 Upon the effective date of this Compact, a certified copy
20 shall be filed by the Tribe with the New Mexico Secretary of
21 State, and a copy shall be transmitted to the New Mexico
22 Attorney General. Any subsequent amendment or modification of
23 this Compact shall be filed with the New Mexico Secretary of
24 State and a copy shall be transmitted to the New Mexico Attorney
25 General. "

Underscored material = new
[bracketed material] = delete

1 Section 6. [NEW MATERIAL] REVENUE SHARING AGREEMENTS
2 AUTHORIZED AND REQUIRED. --

3 A. The governor of the state shall not enter into
4 any tribal-state gaming compact on behalf of the state unless
5 the Tribe requesting the compact agrees to enter into a revenue
6 sharing agreement with the state.

7 B. The governor of the state is hereby authorized
8 and directed to execute on behalf of the state tribal-state
9 revenue sharing agreements with the following tribal
10 governments: the pueblos of Acoma, Isleta, Nambe, Pojoaque,
11 San Felipe, San Ildefonso, San Juan, Sandia, Santa Ana, Santa
12 Clara, Taos, and Tesuque, the Jicarilla Apache tribe and the
13 Mescalero Apache tribe in the form set forth in Section 7 of the
14 Tribal Governmental Gaming Compact Act.

15 C. The governor of the state is hereby authorized
16 and directed to execute on behalf of the state a tribal-state
17 revenue sharing agreement in the form set forth in Section 7 of
18 the Tribal Governmental Gaming Compact Act.

19 D. Any tribal-state revenue sharing agreement
20 executed by the governor pursuant to Subsections A or B of this
21 section shall constitute a binding obligation of the state, once
22 the agreement takes effect.

23 Section 7. [NEW MATERIAL] FORM OF REVENUE SHARING
24 AGREEMENT. --

25 Revenue sharing agreements with tribes concerning class III

Underscored material = new
[bracketed material] = delete

1 gaming revenues shall have the following form:

2 "TRIBAL-STATE

3 REVENUE SHARING AGREEMENT

4 This Agreement made between the State of New Mexico
5 (hereinafter referred to as "State") and the _____
6 (hereinafter referred to as "Tribe"), parties to a Compact
7 between the Tribe and the State, executed more or less
8 contemporaneously with this Agreement. The parties agree as
9 follows:

10 1. Summary. The Tribe agrees to contribute certain of its
11 Class III Gaming revenues, as described below, to the State, on
12 the terms and conditions contained in this Agreement.

13 2. Purpose. The purpose of this Agreement is to
14 compensate the State for maintaining market exclusivity of tribal
15 gaming. Tribal revenue sharing will, therefore, be limited to
16 the extent that competing games are conducted outside Indian
17 Lands. This Agreement is intended to recognize the existing
18 lawful levels of gaming permitted under State law and public
19 policy. A central purpose of this Agreement is that if such
20 existing lawful levels of gaming are increased, except as
21 referred to under Paragraph 5(B) of this Agreement, the Tribe's
22 revenue sharing obligation hereunder shall terminate.

23 3. Revenue to State Government. The parties agree that,
24 after the effective date hereof, the Tribe shall make semi-
25 annual payments to the General Fund of the State ("State General

Underscored material = new
[bracketed material] = delete

1 Fund") in the amount calculated pursuant to Paragraph 4 of this
2 Agreement.

3 4. Calculation of Revenue to State Government.

4 A. The total revenue the Tribe will pay to the
5 State Government pursuant to Paragraph 3 of this Agreement
6 shall be Five Percent (5%) of the gross gaming receipts at each
7 Gaming Facility derived from Class III games of chance which are
8 protected by the limitations in Paragraph 5 of this Agreement
9 and elsewhere herein.

10 B. For purposes of these payments, all calculations
11 of amounts due shall be based upon a calendar year beginning
12 January 1 and ending December 31, unless the parties agree on a
13 different fiscal year. The semi-annual payments due to the
14 State Government pursuant to these terms shall be paid no later
15 than twenty-five (25) days after December 31 and June 30 of each
16 year (or commensurate dates if the fiscal year agreed upon is
17 different from the calendar year). Any payments due and owing
18 from the Tribe in the year the Compact is approved, or the final
19 year the Compact is in force, shall reflect the gross gaming
20 receipts, but only for the portion of the year the Compact is in
21 effect. Any adjustments to revenue sharing payments arising
22 from the annual audit report required under the Compact will be
23 reflected in the next following semi-annual payment under this
24 Revenue Sharing Agreement.

25 5. Limitations. The Tribe's obligation to make the

Underscored material = new
[bracketed material] = delete

1 payments provided for in Paragraphs 3 and 4 of this Agreement
2 shall apply and continue only so long as there is a binding
3 Compact in effect between the Tribe and the State which Compact
4 provides for the play of Class III games of chance, but shall
5 terminate in the event of any of the following conditions:

6 A. if the State passes, amends, or repeals any law,
7 or takes any other action, which would directly or indirectly
8 attempt to restrict, or has the effect of restricting, the scope
9 of Indian gaming.

10 B. if the State permits any expansion of non-tribal
11 Class III Gaming in the State. Notwithstanding this general
12 prohibition against permitted expansion of gaming activities,
13 the State may permit (1) the existing State lottery, (2) any
14 veterans, fraternal, or other non-profit membership organization
15 to operate one or more electronic gaming machines on such
16 organization's premises for the benefit of its members, but only
17 for the benefit of such organization's members, and only if such
18 devices are required to meet the standards applicable to such
19 devices in the State of Nevada by no later than one year after
20 the date of enactment of legislation making such devices lawful,
21 and (3) any horse racing tracks to operate electronic gaming
22 devices on days on which live horse racing or simulcast of horse
23 races occurring at horse racing tracks elsewhere within New
24 Mexico are conducted at such tracks; provided, however, that for
25 any day on which electronic gaming devices are permitted to be

Underscored material = new
[bracketed material] = delete

1 operated under this provision at any horse racing track located
2 within 150 miles of a Gaming Facility owned by the Tribe, one-
3 half of the gross gaming receipts derived from electronic gaming
4 devices at such Gaming Facility for such day would be exempt
5 from any revenue sharing obligation under the provisions of this
6 Agreement (except that if electronic gaming devices are operated
7 at such horse racing track for more than 12 hours on any such
8 day, all of the Tribe's revenues from electronic gaming devices
9 on such day shall be exempt from any revenue sharing obligation
10 under the provisions of this Agreement), and provided further
11 that there will be no exemption from State taxes imposed on
12 gross receipts of such electronic gaming devices at horse racing
13 tracks. Notwithstanding the reference to permitted live horse
14 racing dates, any increase in the number of permitted live horse
15 racing dates on which electronic gaming devices are permitted to
16 be operated shall constitute an unpermitted expansion of gaming.

17 6. Effect of Variance.

18 A. In the event the acts or omissions of the State
19 cause the Tribe's obligation to make payments under Paragraph 4
20 of this Agreement to terminate under the provisions of Paragraph
21 5 of this Agreement, such cessation of obligation to pay will
22 not adversely affect the validity of the Compact, but the
23 maximum amount that the Tribe agrees to reimburse the State for
24 actual documented regulatory costs under Section 4(E)(5) of the
25 Compact shall automatically increase to One Hundred Thousand

Underscored material = new
[bracketed material] = delete

1 Dollars (\$100,000) per year.

2 B. In the event a Tribe's revenue sharing payment
3 to the State is less than one hundred thousand dollars
4 (\$100,000) per year, the maximum amount that the Tribe agrees to
5 reimburse the State for actual documented regulatory costs under
6 Section (4)(E)(5) of the Compact shall automatically increase to
7 one hundred thousand dollars per year (\$100,000) less the amount
8 of the revenue sharing payment.

9 7. Interpretation. This Agreement shall be broadly
10 construed to accomplish its purpose.

11 8. Dispute Resolution. In the event either party fails
12 to comply with or otherwise breaches any provision of this
13 Agreement, the aggrieved party may invoke the dispute resolution
14 procedure set out in the Compact.

15 9. Effective Date. This Agreement shall become effective
16 on the date that the Compact between the State and the Tribe
17 becomes effective.

18 10. Amendments. Any amendment to this Agreement shall be
19 in writing and signed by both parties. The terms and conditions
20 of this Agreement shall remain in effect until amended, modified
21 or terminated, by agreement of the parties.

22 11. Third-Party Beneficiaries. This Agreement is not
23 intended to create any third-party beneficiaries and is entered
24 into solely for the benefit of the Tribe and the State.

25 12. Definitions. Unless otherwise provided herein, terms

Underscored material = new
[bracketed material] = delete

1 in this Agreement shall have the same meanings as such terms are
2 given in Section 2 of the Compact. "

3 Section 8. [NEW MATERIAL] RATIFICATION AND APPROVAL. --

4 The ratification and approval of forms of a tribal-state gaming
5 compact and revenue-sharing agreement by this state shall not be
6 binding or obligatory until it shall have been likewise approved
7 by the tribal government as a party to a state-tribal gaming
8 compact and revenue-sharing agreement with the state, and by the
9 Secretary of the Interior, notice of which approval has been
10 published in the Federal Register as provided by IGRA.

11 Section 9. [NEW MATERIAL] STATE GAMING REPRESENTATIVE. --

12 The director of the alcohol and gaming division of the
13 regulation and licensing department shall be the state gaming
14 representative for the purposes of implementing tribal-state
15 gaming compacts.

16 Section 10. Section 30-19-6 NMSA 1978 (being Laws 1963,
17 Chapter 303, Section 19-6, as amended) is amended to read:

18 "30-19-6. [~~PERMISSIVE LOTTERY~~] AUTHORIZED ACTIVITIES--
19 FAIRS--THEATERS--TAX-EXEMPT ORGANIZATIONS. --

20 A. Nothing in [~~Article 19~~] Chapter 30, Article 19
21 NMSA 1978 [~~shall be construed to apply to any~~] prohibits a sale
22 or drawing of [~~any~~] a prize at [~~any~~] a fair held in this state
23 for the benefit of [~~any~~] a church, public library or religious
24 society [~~situate or being~~] located in this state, or for
25 charitable purposes when all the proceeds of [~~such~~] the fair

Underscored material = new
[bracketed material] = delete

1 ~~[shall be]~~ are expended in this state for the benefit of ~~[such]~~
2 the church, public library, religious society or charitable
3 purposes. A ~~[lottery shall be operated]~~ sale or drawing
4 conducted pursuant to this subsection is for the benefit of the
5 organization or charitable purpose only ~~[when]~~ if the entire
6 proceeds ~~[of the lottery]~~ from the sale or drawing go to the
7 organization or charitable purpose and no part of ~~[such]~~ the
8 proceeds go to ~~[any]~~ an individual member or employee ~~[thereof]~~
9 of the organization.

10 B. Nothing in ~~[Article 19]~~ Chapter 30, Article 19
11 NMSA 1978 ~~[shall be held to prohibit any]~~ prohibits a bona fide
12 motion picture ~~[theatre]~~ theater from offering prizes of cash or
13 merchandise for advertising purposes, in connection with ~~[such]~~
14 the business of the theater or for the purpose of stimulating
15 business, whether or not ~~[any]~~ consideration other than a
16 monetary consideration in excess of the regular price of
17 admission is ~~[exacte~~ charged for participation in drawings for
18 prizes.

19 C. Nothing in ~~[Article 19]~~ Chapter 30, Article 19
20 NMSA 1978 ~~[shall be held to apply to any]~~ prohibits a bona fide
21 county fair, including ~~[fairs]~~ a fair for more than one county,
22 ~~[which shall have]~~ that has been held annually at the same
23 location for at least two years ~~[and which shall offer]~~ from
24 offering prizes of livestock or poultry in connection with
25 ~~[such]~~ the fair ~~[when]~~ if the proceeds of ~~[such]~~ the drawings

Underscored material = new
[bracketed material] = delete

1 ~~[shall be]~~ are used for the benefit of ~~[said]~~ the fair.

2 ~~[D. Nothing in Article 19, Chapter 30 NMSA 1978~~
3 ~~shall be construed to apply to any lottery operated by an~~
4 ~~organization exempt from the state income tax pursuant to~~
5 ~~Subsection C of Section 7-2-4 NMSA 1978 and not subject to the~~
6 ~~provisions of Subsection A of this section; provided that:~~

7 ~~(1) no more than two lotteries shall be~~
8 ~~operated in any year by such an organization;~~

9 ~~(2) all the gross proceeds less the reasonable~~
10 ~~cost of prizes of any lottery operated by such an organization~~
11 ~~shall be expended in the state for the benefit of the~~
12 ~~organization or public purposes; and~~

13 ~~(3) no part of the proceeds of any lottery~~
14 ~~shall go to any individual member or employee of any~~
15 ~~organization except as payment for the purchase of prizes at no~~
16 ~~more than the reasonable retail price.]~~

17 D. Nothing in Chapter 30, Article 19 NMSA 1978
18 prohibits an organization that is exempt from state income tax
19 pursuant to Section 7-2-4 NMSA 1978 and in good standing as a
20 not-for-profit corporation as shown by the records of the state
21 corporation commission from conducting bingo games, raffles,
22 lotteries or table games, including poker, craps, blackjack,
23 roulette and the like, including any class III gaming as defined
24 in the Indian Gaming Regulatory Act, at a "casino night"
25 fundraising event if:

1 (1) the "casino night" fundraising event is
2 conducted no more than two times in a calendar year by the
3 qualifying organization;

4 (2) the only persons authorized to participate
5 in the operation or management of the "casino night" fundraising
6 event are:

7 (a) bona fide members of the qualifying
8 organization who are not paid for their services in the
9 operation or management of the event; or

10 (b) persons who provide goods or services
11 for the fundraising event for a flat fee or an hourly fee
12 pursuant to a written contract with the qualifying organization;

13 (3) no person receives any part of the proceeds
14 of the "casino night" fundraising event except:

15 (a) as payment for prizes purchased at no
16 more than the reasonable retail prices for the prizes; or

17 (b) pursuant to a contract described in
18 Subparagraph (b) of Paragraph (2) of this subsection;

19 (4) the net proceeds of the "casino night"
20 fundraising event are expended in the state for the benefit of
21 the qualifying organization or purposes for which it was formed;

22 (5) gross revenue, expenses, prizes paid and the
23 date, time and location of the "casino night" fundraising event
24 are reported to the alcohol and gaming division of the
25 regulation and licensing department within thirty days after the

1 event:

2 (6) the qualifying organization conducting the
3 "casino night" fundraising event maintains records for a period
4 of one year after the date of the event that accurately show the
5 gross revenue generated by the event, details of the expenses of
6 conducting the event and details of how the gross revenue is
7 used, and the qualifying organization makes the records
8 available for review by the director of the alcohol and gaming
9 division of the regulation and licensing department or the
10 attorney general, or both, at their request:

11 (7) no more than five electronic gambling devices
12 are operated during the "casino night" fundraising event:

13 (8) no person younger than the age of twenty-one
14 is allowed to participate in the operation or management of the
15 "casino night" fundraising event or to play any game at the
16 event; and

17 (9) the "casino night" fundraising event is
18 conducted pursuant to regulations and a permit issued by the
19 alcohol and gaming division of the regulation and licensing
20 department.

21 E. Electronic gambling conducted pursuant to the
22 provisions of this section shall be conducted in accordance with
23 regulations adopted by the regulation and licensing department.
24 Those regulations may provide for minimum standards for
25 security, restrictions of amounts wagered, limits on amounts

Underscored material = new
[bracketed material] = delete

1 paid by electronic gambling devices, recordkeeping by the
2 operator and sponsor of the gaming event and monitoring.
3 electronic or otherwise, of the electronic gambling conducted.

4 F. As used in Subsections D and E of this section:

5 (1) "electronic gambling device" means a gambling
6 device consisting of an electronic device that simulates the
7 play of any game of chance, uses microprocessors and that, by
8 chance or through some combination of chance and skill, the
9 device dispenses or the player may otherwise receive cash,
10 coins, tokens for free games or credits that can be redeemed for
11 cash, coins or tokens; and

12 (2) "electronic gambling" means the play of an
13 electronic gambling device.

14 G. The provisions of the Bingo and Raffle Act and the
15 New Mexico Lottery Act do not apply to the activities described
16 in Subsection D of this section. "

17 Section 11. EMERGENCY. --It is necessary for the public
18 peace, health and safety that this act take effect immediately.