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HOUSE BILL 263

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

JAMES ROGER MADALENA

AN ACT

RELATING TO TRIBAL-STATE AGREEMENTS; ESTABLISHING PROCEDURES FOR NEGOTIATION, APPROVAL, EXECUTION AND AMENDMENT OF AGREEMENTS BETWEEN THE STATE AND INDIAN TRIBES; DECLARING AN EMERGENCY.

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

Section 1. SHORT TITLE. -- This act may be cited as the "Compact Negotiation Act".

Section 2. DEFINITIONS. -- As used in the Compact Negotiation Act:

A. "committee" means the joint legislative committee on compacts;

B. "compact" means an agreement:

(1) entered into between a tribe and the state;

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1 (2) entered into pursuant to federal or state
2 law; and

3 (3) that is not valid unless approved by the
4 legislature;

5 C. "governor" means the governor of New Mexico;
6 and

7 D. "tribe" means an Indian nation, tribe or pueblo
8 located in whole or in part within the state.

9 Section 3. COMPACTS--NEGOTIATION--SUBMISSION TO
10 COMMITTEE BY GOVERNOR--COMPACT PROVISIONS.--

11 A. A tribe may request the state in writing to
12 negotiate a compact or to enter into negotiations to amend an
13 approved and existing compact pursuant to action of its
14 governing authority or a representative authorized by the
15 compact to initiate negotiations for amendment of that
16 compact.

17 B. The legislature by joint resolution or the
18 governor may request a tribe to negotiate a compact or to
19 enter into negotiations to amend an approved and existing
20 compact by submitting a written request to the chief executive
21 officer of the tribe or a representative authorized by an
22 existing compact to negotiate modifications to that compact.

23 C. The governor may designate a representative to
24 negotiate the terms of a compact or an amendment, provided
25 that no representative has been identified in the wording of

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1 the compact to be amended. The designation shall be written,
2 and a copy of the designation shall be delivered or mailed
3 within three days of the designation to the attorney general,
4 the speaker of the house of representatives and the president
5 pro tempore of the senate. The governor or the governor's
6 designated representative is authorized to negotiate the terms
7 of a compact or amendment on behalf of the state, but neither
8 the representative nor the governor is authorized to execute a
9 compact or amendment on behalf of the state without
10 legislative approval granted pursuant to the provisions of
11 Section 4 of the Compact Negotiation Act.

12 D. If a proposed compact or amendment is agreed
13 upon through negotiations, it shall be prepared and submitted
14 by the governor to the committee within five days of the
15 conclusion of negotiations. The governor shall include in his
16 submittal document his recommendation for approval of the
17 proposed compact or amendment and comments about or analysis
18 of its provisions.

19 Section 4. SUBMITTAL TO COMMITTEE-- COMMITTEE ACTION--
20 LEGISLATIVE ACTION. --

21 A. Submittal of a proposed compact or amendment
22 occurs when the compact or amendment and the submittal
23 document are received for the committee by the legislative
24 council service.

25 B. The committee shall review the proposed compact

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1 or amendment and within twenty days after its receipt shall:

2 (1) by written report to the legislature,
3 recommend approval of the proposed compact or amendment; or

4 (2) by written transmittal document, propose
5 specific modifications to the proposed compact or amendment
6 and request the governor to resume negotiations with the
7 tribe.

8 C. If the committee proposes specific
9 modifications to the proposed compact or amendment, the
10 governor or his designated representative shall resume
11 negotiations with the tribe within twenty days of receipt of
12 the transmittal document unless within that time period either
13 the governor or the tribe refuses to negotiate further, in
14 which case the governor shall notify the committee
15 immediately. If negotiations are resumed and a modified
16 proposed compact or amendment is agreed to, the governor shall
17 submit to the committee the modified proposed compact or
18 amendment, together with any additional analysis or
19 recommendations. The approval process described in this
20 section for the originally submitted proposed compact or
21 amendment shall be followed for consideration of a proposed
22 modified compact or a proposed modified amendment, except that
23 the time limitation for review by the committee specified in
24 Subsection B of this section is reduced to ten days.

25 D. Within five days of being notified that further

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1 negotiations are refused, the committee shall reconsider the
2 proposed compact or amendment together with any changes agreed
3 upon by the negotiating parties and submit to the legislature
4 a written recommendation to approve the proposed compact or
5 amendment or a written statement expressing no recommendation
6 on the action that should be taken by the legislature.

7 E. The committee may return a proposed compact or
8 amendment with suggested modifications to the governor and the
9 tribe for renegotiation no more than three times. After the
10 third submittal for renegotiation, the committee shall submit
11 a report in writing to the legislature making a recommendation
12 to approve the proposed compact or amendment or making no
13 recommendation. The procedure for legislative review and
14 approval remains the same as set forth in this section.

15 F. If the legislature is in session when the
16 committee submits its recommendation, it shall at the same
17 time prepare and introduce a joint resolution approving the
18 proposed compact or amendment. A joint resolution may cover
19 more than one compact or amendment if the terms of the
20 compacts or amendments are identical except for the name of
21 the tribe and the name of the person executing the compact on
22 behalf of the tribe. A copy of the written recommendation
23 shall be submitted with the joint resolution. If a majority
24 in each house votes to adopt the joint resolution, the
25 proposed compact or amendment is approved by the legislature,

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1 and the governor shall execute it on behalf of the state.

2 G. If the legislature is not in session when the
3 recommendation of the committee is submitted, the committee
4 shall proceed pursuant to the provisions of Subsection E of
5 this section by no later than the second day of the next
6 regular or special session of the legislature.

7 H. The legislature may not amend or modify a
8 resolution submitted to it pursuant to the provisions of this
9 section except to correct technical errors in the text or
10 format, and it may not refer the resolution to a committee.

11 I. If a request for negotiation of a compact or
12 amendment is made and the proposed compact or amendment is
13 identical to a compact or amendment previously approved by the
14 legislature except for the name of the compacting tribe and
15 the names of the persons to execute the compact or amendment
16 on behalf of the tribe and on behalf of the state, the
17 governor shall approve and sign the compact or amendment on
18 behalf of the state without submitting the compact for
19 approval pursuant to the provisions of this section. A
20 compact or amendment signed by the governor pursuant to this
21 subsection is deemed approved by the legislature.

22 Section 5. JOINT LEGISLATIVE COMMITTEE ON COMPACTS--
23 CREATION-- MEMBERSHIP-- AUTHORITY. --

24 A. The joint legislative "committee on compacts"
25 is created. Once established it shall continue operating

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1 until specific action is taken by the legislature to terminate
2 its existence.

3 B. The committee shall have eight members, four
4 from the house of representatives and four from the senate.
5 House members shall be appointed annually by the speaker of
6 the house and senate members shall be appointed annually by
7 the committees' committee or, if the senate appointments are
8 made in the interim, by the president pro tempore after
9 consultation with and agreement of a majority of the members
10 of the committees' committee. Members shall be appointed from
11 each house to give the two major political parties in each
12 house equal representation on the committee. At least one
13 member appointed from each house shall be Native American, or
14 if there is no Native American member of a house, shall
15 represent a district in which Native Americans constitute a
16 significant percentage of the voting age population.

17 C. The president pro tempore of the senate shall
18 designate a senate member of the committee to be chairman of
19 the committee in odd-numbered years and the vice chairman in
20 even-numbered years. The speaker of the house of
21 representatives shall designate a house member of the
22 committee to be chairman of the committee in even-numbered
23 years and the vice chairman in odd-numbered years.

24 D. The committee shall meet at the call of the
25 chairman to consider a compact or amendment submitted to it.

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3 **FORTY-THIRD LEGISLATURE**
4 **SECOND SESSION, 1998**
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8 **January 30, 1998**
9

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11 **Mr. Speaker:**
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13 **Your RULES AND ORDER OF BUSINESS COMMITTEE, to**
14 **whom has been referred**
15

16 **HOUSE BILL 263**
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18
19 **has had it under consideration and finds same to be GERMANE**
20 **in accordance with constitutional provisions.**
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22 **Respectfully submitted,**
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R. David Pederson, Chairman

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Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Hobbs, Nicely, Rodella, Ryan, Sanchez, Williams, S.M

Absent: None

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1 **FORTY-THIRD LEGISLATURE**

2 **SECOND SESSION, 1998**

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6 **February 14, 1998**

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8 **Mr. Speaker:**

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10 **Your JUDICIARY COMMITTEE, to whom has been referred**

11
12 **HOUSE BILL 263**

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14 **has had it under consideration and reports same with**
15 **recommendation that it DO NOT PASS, but that**

16 **HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR**
17 **HOUSE BILL 263**

18
19 **DO PASS, and thence referred to the APPROPRIATIONS**
20 **AND FINANCE COMMITTEE.**

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 Page 12

4 Respectfully submitted,
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8 _____
9 Thomas P. Foy, Chairman

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11 Adopted _____

12 (Chief Clerk)

11 Not Adopted _____

12 (Chief Clerk)

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14 Date _____
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16 The roll call vote was 8 For 2 Against

17 Yes: 8

18 No: Alwin, Stewart

19 Excused: King, Larranaga, Pederson

20 Absent: None

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 263

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

AN ACT

RELATING TO TRIBAL-STATE AGREEMENTS; ESTABLISHING A PROCESS
FOR NEGOTIATION, APPROVAL, EXECUTION AND AMENDMENT OF CERTAIN
AGREEMENTS BETWEEN THE STATE AND INDIAN TRIBES; DECLARING AN
EMERGENCY.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Compact Negotiation Act".

Section 2. DEFINITIONS.--As used in the Compact
Negotiation Act:

A. "committee" means the joint legislative
committee on compacts;

B. "compact" means a tribal-state class III gaming
compact entered into between a tribe and the state pursuant to
the federal Indian Gaming Regulatory Act and including any
separate agreement ancillary to that compact;

C. "governor" means the governor of New Mexico;
and

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1 D. "tribe" means an Indian nation, tribe or pueblo
2 located in whole or in part within the state.

3 Section 3. COMPACTS--NEGOTIATION--SUBMISSION TO
4 COMMITTEE BY GOVERNOR--COMPACT PROVISIONS.--

5 A. A tribe, pursuant to action of its governing
6 authority, may request the state to negotiate a compact or to
7 enter into negotiations to amend an approved and existing
8 compact. The request shall be in writing and shall be
9 submitted to the governor.

10 B. The legislature by joint resolution or the
11 governor may request a tribe to negotiate a compact or to
12 enter into negotiations to amend an approved and existing
13 compact by submitting a written request to the chief executive
14 officer of the tribe or a representative authorized by an
15 existing compact to negotiate modifications to that compact.

16 C. If either the state or a tribe has initiated
17 litigation or a dispute resolution procedure against the other
18 for a breach of a compact that is in effect, which litigation
19 or procedure is not concluded or has been concluded against
20 the party in breach, and the circumstances constituting the
21 breach have not been cured, no request will be entertained
22 from the party in breach for negotiations to amend the
23 provision of the compact.

24 D. The governor may designate a representative to
25 negotiate the terms of a compact or an amendment, unless a
representative has been identified in the wording of the
compact to be amended. The designation shall be written, and
a copy of the designation shall be delivered or mailed within

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1 three days of the designation to the attorney general, the
 2 speaker of the house of representatives and the president pro
 3 tempore of the senate. The governor or the governor's designated
 4 representative is authorized to negotiate the terms of a compact
 5 or amendment on behalf of the state, but neither the
 6 representative nor the governor is authorized to execute a
 7 compact or amendment on behalf of the state without legislative
 8 approval granted pursuant to the provisions of Section 4 of the
 Compact Negotiation Act.

9 E. If a proposed compact or amendment is agreed upon
 10 through negotiations, it shall be prepared and submitted by the
 11 governor to the committee within five days of the conclusion of
 12 negotiations. The governor shall include in his submittal
 13 document his recommendation for approval of the proposed compact
 or amendment and comments about or analysis of its provisions.

14 Section 4. SUBMITTAL TO COMMITTEE- - COMMITTEE ACTION- -
 15 LEGISLATIVE ACTION. - -

16 A. Submittal of a proposed compact or amendment
 17 occurs when the compact or amendment and the submittal document
 18 are received for the committee by the legislative council
 service.

19 B. After its receipt, the committee shall review the
 20 proposed compact or amendment in a timely manner but no later
 21 than forty-five days from receipt and shall:

22 (1) recommend approval of the proposed compact
 23 or amendment by submitting a joint resolution to approve the
 24 compact or amendment to the legislature; or

25 (2) by written transmittal document, propose

1 specific modifications to the proposed compact or amendment and
2 request the governor to resume negotiations with the tribe.

3 C. If the committee proposes specific modifications
4 to the proposed compact or amendment, the governor or his
5 designated representative shall resume negotiations with the
6 tribe within twenty days of receipt of the transmittal document
7 unless within that time period either the governor or the tribe
8 refuses to negotiate further, in which case the governor shall
9 notify the committee immediately.

10 D. If negotiations are resumed pursuant to Subsection
11 C of this section and a modified proposed compact or amendment is
12 agreed to, the governor shall submit the modified proposed
13 compact or amendment together with any additional analysis or
14 recommendations to the committee. The approval process described
15 in this section for the originally submitted proposed compact or
16 amendment shall be followed for consideration of a proposed
17 modified compact or a proposed modified amendment, except that
18 the committee shall conduct its review in a timely manner but in
19 not more than thirty days.

20 E. Within thirty days of being notified that further
21 negotiations are refused, the committee shall meet to reconsider
22 the proposed compact or amendment together with any changes
23 agreed upon by the negotiating parties. The committee shall then
24 submit to the legislature a joint resolution to approve the
25 proposed compact or amendment with the committee's recommendation
to approve it, to disapprove it or to express no recommendation
on the action that should be taken by the legislature.

F. The committee may return a proposed compact or

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1 amendment with suggested modifications to the governor and the
 2 tribe for renegotiation no more than three times. After the
 3 third submittal for renegotiation, the committee shall submit the
 4 joint resolution to the legislature accompanied with its
 5 recommendation to approve the proposed compact or amendment, to
 6 disapprove it or, to make no recommendation.

7 G. If the legislature is in session when the
 8 committee makes its decision on the compact, it shall prepare and
 9 introduce a joint resolution to approve the proposed compact or
 10 amendment. The joint resolution shall be accompanied by the
 11 committee's recommendation to approve, to disapprove or to make
 12 no recommendation. A joint resolution may cover more than one
 13 compact or amendment if the terms of the compacts or amendments
 14 are identical except for the name of the tribe and the name of
 15 the person executing the compact on behalf of the tribe. If a
 16 majority in each house votes to adopt the joint resolution, the
 17 proposed compact or amendment is approved by the legislature, and
 18 the governor shall execute it on behalf of the state.

19 H. If the legislature is not in session when the
 20 recommendation of the committee is submitted, the committee
 21 shall proceed pursuant to the provisions of Subsection G of this
 22 section by no later than the second day of the next regular or
 23 special session of the legislature.

24 I. The legislature may only amend or modify the joint
 25 resolution submitted to it pursuant to the provisions of this
 section so as to correct technical errors in the text or format.
 Neither house may refer the joint resolution to a committee other
 than a committee of the whole in each house.

1 J. If a request for negotiation of a compact or
 2 amendment is made and the proposed compact or amendment is
 3 identical to a compact or amendment previously approved by the
 4 legislature except for the name of the compacting tribe and the
 5 names of the persons to execute the compact or amendment on
 6 behalf of the tribe and on behalf of the state, the governor
 7 shall approve and sign the compact or amendment on behalf of the
 8 state without submitting the compact for approval pursuant to the
 9 provisions of this section; provided, however, that no request
 10 for amendment shall be entertained pursuant to the provisions of
 11 this subsection from a tribe that is in breach of an existing
 12 compact and as to which breach the state has initiated litigation
 13 or dispute resolution procedures, which litigation or procedures
 14 are not concluded or have been concluded against the tribe. A
 15 compact or amendment signed by the governor pursuant to this
 16 subsection is deemed approved by the legislature.

17 Section 5. JOINT LEGISLATIVE COMMITTEE ON COMPACTS--
 18 CREATION-- MEMBERSHIP-- AUTHORITY. --

19 A. The joint legislative "committee on compacts" is
 20 created. Once established it shall continue operating until
 21 specific action is taken by the legislature to terminate its
 22 existence.

23 B. The committee shall consider the requirements of
 24 the federal Indian Gaming Regulatory Act, provisions of existing
 25 state law and the best interests of the tribes and the citizens
 of the state in considering any compact or amendment submitted to
 it.

 C. The committee shall have eight members, four from

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1 the house of representatives and four from the senate. House
 2 members shall be appointed annually by the speaker of the house
 3 and senate members shall be appointed annually by the committees'
 4 committee or, if the senate appointments are made in the interim,
 5 by the president pro tempore after consultation with and
 6 agreement of a majority of the members of the committees'
 7 committee. Members shall be appointed from each house to give
 8 the two major political parties in each house equal
 9 representation on the committee. The appointing authorities
 10 shall consider appointing to the committee a Native American
 11 member or a member who represents a district in which Native
 12 Americans constitute a significant percentage of the voting age
 13 population.

14 D. The president pro tempore of the senate shall
 15 designate a senate member of the committee to be chairman of the
 16 committee in odd-numbered years and the vice chairman in even-
 17 numbered years. The speaker of the house of representatives
 18 shall designate a house member of the committee to be chairman of
 19 the committee in even-numbered years and the vice chairman in
 20 odd-numbered years.

21 E. No member of the committee may participate in the
 22 consideration of a compact or an amendment negotiated with a
 23 tribe if that member has accepted campaign contributions from
 24 that tribe or its gaming enterprise totaling more than twenty-
 25 five dollars (\$25.00) during the previous twelve-month period,
 except that contributions made prior to January 1, 1998 shall not
 be subject to this provision. A temporary substitute for a
 member disqualified pursuant to this subsection shall be

1 appointed in the same manner as the disqualified member.

2 F. The committee shall meet at the call of the
3 chairman to consider a compact or amendment submitted to it.

4 G. The committee may meet during legislative sessions
5 as needed.

6 H. Staff services for the committee shall be provided
7 by the legislative council service.

8 Section 6. EMERGENCY.--It is necessary for the public
9 peace, health and safety that this act take effect immediately.

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