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SENATE BILL 345

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO TRIBAL-STATE GAMING COMPACT REGULATORY FEES AND  
REVENUE-SHARING AGREEMENTS; AUTHORIZING WORDING FOR A  
SUPPLEMENT; REVISING THE REVENUE-SHARING PROVISIONS;  
CLARIFYING MECHANISMS OF DISPUTE RESOLUTION; AMENDING AND  
ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A supplemental section of the Indian Gaming  
Compact, Section 11-13-1.1 NMSA 1978, is enacted to read:

"11-13-1.1. [NEW MATERIAL] INDIAN GAMING COMPACT  
SUPPLEMENT AUTHORIZED. --The governor of the state upon written  
request from an Indian nation, tribe or pueblo located in  
whole or in part in the state that has entered into an Indian  
Gaming Compact in the form set forth in Section 11-13-1 NMSA  
1978 is authorized to execute a supplement to the existing

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1 Indian Gaming Compact in the form set forth in this section.  
2 The Supplement to the Indian Gaming Compact shall be effective  
3 when executed by the governor of the state on behalf of the  
4 state and the appropriate official of the Indian nation, tribe  
5 or pueblo, and approved pursuant to the federal Indian Gaming  
6 Regulatory Act and shall be in substantially the following  
7 form:

8 "SUPPLEMENT TO THE INDIAN GAMING COMPACT

9 SECTION 1. Maximum regulatory fee payment. On and after  
10 the effective date of this Supplement to the Indian Gaming  
11 Compact that was entered into between the State of New Mexico  
12 and the \_\_\_\_\_ on  
13 the \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, and  
14 that took effect on the \_\_\_\_\_ day of \_\_\_\_\_  
15 \_\_\_\_\_, 199\_\_\_\_, and notwithstanding anything to the  
16 contrary contained in Paragraph 5 of Subsection E of SECTION 4  
17 or any other provision of that Indian Gaming Compact, the  
18 maximum and only amount that the Tribe shall be required to  
19 pay the State in any State fiscal year as reimbursement of  
20 costs the State incurs in carrying out the regulatory  
21 functions authorized by the terms of the Indian Gaming Compact  
22 is the actual amount of expenses incurred by the State during  
23 the preceding fiscal year, as shown by an accounting of the  
24 expenses provided by the State to the Tribe within ninety (90)  
25 days following the end of the fiscal year.

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1           SECTION 2. Tribal payment of total State regulatory  
2 costs required. The tribe shall pay the State the full amount  
3 shown by the accounting provided by the State within thirty  
4 (30) days of receiving the accounting from the State. If the  
5 Tribe raises a question as to the amount that cannot be  
6 resolved informally by the parties, the Tribe may invoke the  
7 dispute resolution procedures of SECTION 7 of the Compact to  
8 resolve the dispute.

9           SECTION 3. Tribal regulatory fee payments limited to  
10 payment required in this Supplement. Except as expressly  
11 provided in this Supplement to the Indian Gaming Compact, the  
12 Tribe shall not be required to pay the State any additional  
13 sum as reimbursement of costs incurred by the State.

14           SECTION 4. Extension of Compact Terms. Notwithstanding  
15 any provisions in the Indian Gaming Compact to the contrary,  
16 upon the approval of this Supplement to the Indian Gaming  
17 Compact, the term of the Indian Gaming Compact shall be  
18 extended beyond its expiration date by an additional three  
19 years. "

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

22           "11-13-2. REVENUE SHARING OF TRIBAL GAMING REVENUE. --The  
23 governor is authorized to execute a revenue-sharing agreement  
24 in the form substantially set forth in this section with any  
25 New Mexico Indian nation, tribe or pueblo that has also

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1 entered into an Indian gaming compact as provided by law.  
2 Execution of an Indian gaming compact, as set forth in Section  
3 11-13-1 NMSA 1978, is conditioned upon the tribe's execution  
4 of a revenue-sharing agreement [~~the consideration for the~~  
5 ~~Indian entity entering into the revenue-sharing agreement is~~  
6 ~~the condition of the agreement providing limited exclusivity~~  
7 ~~of gaming activities to the tribal entity] as provided in this  
8 section. The revenue-sharing agreement shall be in  
9 substantially the following form and is effective when  
10 executed by the governor on behalf of the state and the  
11 appropriate official of the Indian entity and approved  
12 pursuant to the federal Indian Gaming Regulatory Act :~~

13 "REVENUE-SHARING AGREEMENT

14 SECTION 1. Summary and consideration. The Tribe shall  
15 [~~agree to contribute~~] pay to the state a portion of its Class  
16 III Gaming revenues identified in [~~and under~~] the procedures  
17 of this Revenue-Sharing Agreement, in return for which the  
18 State agrees that the Tribe:

19 A. [~~has~~] shall have the exclusive right within the  
20 State to [~~provide all~~] conduct the types of Class III Gaming  
21 described in the Indian Gaming Compact, with the sole  
22 exception of the [~~use~~] operation of Gaming Machines, which the  
23 State may permit on a limited basis [~~for~~] to be operated by  
24 racetracks and veterans' and fraternal organizations; and

25 B. will only [~~share that part of its revenue~~

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1 ~~arising~~ be required to pay to the State a portion of its  
2 revenues derived from the [use] operation of Gaming Machines  
3 and all other [gaming] revenue received by the Tribe from its  
4 gaming activities is exclusively the Tribe's.

5 SECTION 2. Revenue to State. The parties agree that,  
6 after the effective date [~~hereof~~] of this Revenue-Sharing  
7 Agreement, the Tribe shall make the quarterly payments  
8 provided for in [~~Paragraph~~] SECTION 3 of the Revenue-Sharing  
9 Agreement to the state treasurer for deposit into the State  
10 General Fund [of the State ("State General Fund")].

11 SECTION 3. Calculation of Revenue to State.

12 A. As used in this Revenue-Sharing Agreement, "net  
13 win" means the [~~annual~~] total amount wagered at a Gaming  
14 Facility on Gaming Machines less the following amounts:

15 (1) the [~~annual~~] amount paid out in prizes  
16 from gaming on Gaming Machines;

17 (2) the actual amount of regulatory fees paid  
18 to the state; and

19 (3) the sum of [~~two hundred fifty thousand~~  
20 ~~dollars (\$250,000) per year~~] sixty-two thousand five hundred  
21 dollars (\$62,500) per quarter as an amount representing tribal  
22 regulatory [~~fees, with these~~] cost, which amounts [~~increasing~~]  
23 shall increase by five percent (5%) each year beginning on the  
24 first day of January occurring after the Compact has been in  
25 effect for at least twelve months.

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1                   B. The Tribe shall pay the state: [~~sixteen percent~~  
2                   ~~(16%) of the net win]~~

3                                 (1) two percent (2%) of the first one million  
4                   dollars (\$1,000,000) of the Tribe's net win in each calendar  
5                   quarter;

6                                 (2) four percent (4%) of the second one  
7                   million dollars (\$1,000,000) of the Tribe's net win in each  
8                   calendar quarter; and

9                                 (3) six percent (6%) of the Tribe's net win  
10                   in excess of two million dollars (\$2,000,000) in each calendar  
11                   quarter.

12                   C. [~~For purposes of these payments, all~~  
13                   ~~calculations of amounts due shall be based upon the quarterly~~  
14                   ~~activity of the gaming facility.] Quarterly payments due to~~  
15                   the State pursuant to these terms shall be paid no later than  
16                   twenty-five (25) days after the last day of each calendar  
17                   quarter. [~~Any payments due and owing from the Tribe in the~~  
18                   ~~quarter the Compact is approved, or the final quarter the~~  
19                   ~~Compact is in force, shall reflect the net win, but only for~~  
20                   ~~the portion of the quarter the Compact is in effect.]~~

21                   SECTION 4. Limitations. The Tribe's obligation to make  
22                   the payments provided for in [~~Paragraphs]~~ SECTIONS 2 and 3 of  
23                   [~~this section~~] the Revenue-Sharing Agreement shall apply and  
24                   continue only so long as there is a binding [~~Indian Gaming]~~  
25                   Compact in effect between the Tribe and the State, which

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1 Compact provides for the [~~play~~] operation of Class III Gaming  
2 by the Tribe, but the Tribe's obligation to make payments  
3 shall terminate in the event of any of the following  
4 conditions:

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

9 B. if the State permits any expansion of nontribal  
10 Class III Gaming in the State; [~~Notwithstanding this general~~  
11 ~~prohibition against permitted expansion of gaming activities,~~  
12 ~~the State may permit~~] provided, however, that none of the  
13 following shall be considered an expansion of non-tribal Class  
14 III Gaming for purposes of this agreement:

15 (1) the [~~enactment~~] operation of a State  
16 lottery;

17 (2) [~~any~~] the licensing of a fraternal,  
18 veterans or other nonprofit membership organization to operate  
19 [~~such electronic gaming devices~~] Gaming Machines lawfully, but  
20 only for the benefit of [~~such~~] the organization's members;

21 (3) limited fundraising activities conducted  
22 by nonprofit tax-exempt organizations pursuant to Section  
23 30-19-6 NMSA 1978; and

24 (4) [~~any~~] the licensing of horse racetracks  
25 to operate [~~electronic gaming devices~~] Gaming Machines on days

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1 on which live or simulcast horse racing occurs.

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

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

14 SECTION 5. Definitions. All definitions contained in  
15 the Compact shall apply to the terms used in this section and  
16 the Revenue-Sharing Agreement.

17 SECTION 6. Dispute Resolution. The dispute resolution  
18 provisions of the Compact shall apply to disputes arising  
19 under the terms of this section and the Revenue-Sharing  
20 Agreement. ". "

21 Section 3. A new Section 11-13-3 NMSA 1978 is enacted to  
22 read:

23 "11-13-3. [NEW MATERIAL] RECONCILIATION OF PRIOR  
24 REVENUE-SHARING PAYMENTS.

25 A. The governor of the state and the appropriate



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1 official of a tribe that has entered into a compact and  
2 revenue-sharing agreement with the state shall jointly prepare  
3 an accounting of:

4 (1) all amounts paid by the tribe to the  
5 state pursuant to the terms of the revenue-sharing agreement  
6 that was in effect between the tribe and the state beginning  
7 in 1997 and all regulatory fees deducted from the tribe's  
8 gaming net win, as defined in Section 11-13-2 NMSA 1978, and  
9 regulatory fees due to the state pursuant to the terms of  
10 Paragraph 5 of Subsection E of SECTION 4 of the Indian Gaming  
11 Compact between the tribe and the state; and

12 (2) the total amount that the tribe would  
13 have been required to pay the state had the revenue-sharing  
14 agreement amendments of Section 2 of this act become effective  
15 on the date that the tribe's Indian Gaming Compact went into  
16 effect in 1997, increased by twenty-five thousand dollars  
17 (\$25,000) for each calendar year or part of a calendar year  
18 that the compact has been in effect.

19 B. If the total amount determined in Paragraph (1)  
20 of Subsection A of this section is greater than the amount  
21 determined in Paragraph (2) of Subsection A of this section,  
22 the tribe shall be entitled to a credit in the full amount of  
23 the difference, against future revenue-sharing payments due to  
24 the state pursuant to the amended terms of the revenue-sharing  
25 agreement adopted in the form set forth in Section 2 of this

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1 act. The governor of the state and the appropriate official  
2 of the tribe shall execute a credit agreement that shall be  
3 deemed part of the revenue-sharing agreement, setting forth  
4 the amount of the credit to which the tribe is entitled,  
5 stating that the credit shall apply to payments due pursuant  
6 to the revenue-sharing agreement until the credit is  
7 exhausted, requiring that the tribe continue to submit on a  
8 quarterly basis an accounting of the amount of revenue-sharing  
9 against which the credit is being taken and the tribe's  
10 calculation of the remaining balance on the credit and  
11 requiring the tribe to pay to the state the full amount of  
12 revenue-sharing due to the state once the credit is exhausted.

13 C. If the total amount determined in Paragraph (1)  
14 of Subsection A of this section is less than the amount  
15 determined by the terms of Paragraph (2) Subsection A of this  
16 section, the governor of the state and the appropriate  
17 official of the tribe shall execute a repayment agreement that  
18 shall be deemed part of the revenue-sharing agreement. The  
19 repayment agreement shall set forth the amount of the deficit  
20 owed to the state by the tribe and specify the date by which  
21 and the manner in which the tribe shall pay the amount of the  
22 deficit. The tribe shall agree to pay the deficit within the  
23 two-year period following the date on which Section 2 of this  
24 act is executed by the governor of the state and the  
25 appropriate official of the tribe. "

1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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SB 345/a

7 February 17, 1999  
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10 Mr. President:  
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12 Your COMMITTEE OF THE WHOLE, to whom has been referred  
13

14 SENATE BILL 345  
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16  
17 has had it under consideration and reports same WITHOUT  
18 RECOMMENDATION, amended as follows:  
19

20 1. On page 6, strike lines 3 through 11 and insert in lieu  
21 thereof the following:  
22

23 "(1) two percent (2%) of the first six million dollars  
24 (\$6,000,000) of the Tribe's annual net win; and  
25

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FORTY-FOURTH LEGISLATURE  
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(2) eight percent (8%) of the net win above six million dollars (\$6,000,000) of the Tribe's annual net win."

2. On page 8, line 25, strike the subsection designation "A."

3. On page 9, line 2, after "jointly" strike the remainder of the line, strike lines 3 through 25, strike all of page 10 and insert in lieu thereof:

"agree to the manner in which payments due pursuant to a revenue-sharing agreement entered into in 1997 shall be made. The agreement shall be submitted with the supplement to the compact and amended revenue-sharing agreement to the department of interior pursuant to requirements of the Indian Gaming Regulatory Act before the tribe can begin operating pursuant to the terms of the amended revenue-sharing agreement." .,

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Respectfully submitted,

\_\_\_\_\_  
Manny M. Aragon, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

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FORTY- FOURTH LEGISLATURE

FIRST SESSION

February 22, 1999

SENATE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE BILL 345, as amended

Amendment sponsored by Senator Patrick H. Lyons

1. On page 3, line 19, strike the quotation mark.

2. On page 3, between lines 19 and 20, insert the following:

"SECTION 5. Inspection of Public Records. Documents obtained by the State Gaming Representative pursuant to the provisions of Paragraphs 1 through 8 of Subsection C of SECTION 4 of the Indian Gaming Compact signed in 1997 shall be subject to access pursuant to the Inspection of Public Records Act. "".

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\_\_\_\_\_  
Patrick H. Lyons

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

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