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HOUSE BILL 615

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

INTRODUCED BY

Joe Nestor Chavez

AN ACT

RELATING TO GAMING; AMENDING THE PROVISIONS OF THE REVENUE-SHARING AGREEMENT; AMENDING THE GAMING TAX; AMENDING SECTIONS OF THE NMSA 1978.

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

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

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

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

7 "REVENUE-SHARING AGREEMENT

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

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

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

21 SECTION 2. Revenue to State. The parties agree that,
22 after the effective date hereof, the Tribe shall make the
23 quarterly payments provided for in [~~Paragraph~~] SECTION 3 of
24 the Revenue-Sharing Agreement to the state treasurer for
25 deposit into the [~~General Fund of the State~~] State General

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1 Fund.

2 SECTION 3. Calculation of Revenue to State.

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

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

8 (2) the actual amount of regulatory fees paid
9 to the State; and

10 (3) the sum of two hundred fifty thousand
11 dollars (\$250,000) per year as an amount representing tribal
12 regulatory fees, with these amounts increasing by five percent
13 (5%) each year beginning on the first day of January occurring
14 after the Indian Gaming Compact has been in effect for at
15 least twelve months.

16 B. The Tribe shall pay the state [~~sixteen percent~~
17 ~~(16%)~~] eight percent (8%) of the net win.

18 C. For purposes of these payments, all
19 calculations of amounts due shall be based upon the quarterly
20 activity of the Gaming Facility. Quarterly payments due to
21 the State pursuant to these terms shall be paid no later than
22 twenty-five (25) days after the last day of each calendar
23 quarter. Any payments due and owing from the Tribe in the
24 quarter the Indian Gaming Compact is approved, or the final
25 quarter the Indian Gaming Compact is in force, shall reflect

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1 the net win, but only for the portion of the quarter the
2 Indian Gaming Compact is in effect.

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

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

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

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1 occurs.

2 SECTION 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~~] SECTION 3 of [~~this section~~] the
5 Revenue-Sharing Agreement to terminate under the provisions of
6 [~~Paragraph~~] SECTION 4 of [~~this section, such~~] the Revenue-
7 Sharing Agreement, the cessation of obligation to pay will not
8 adversely affect the validity of the Indian Gaming Compact,
9 but the amount that the Tribe agrees to reimburse the State
10 for regulatory fees under the Indian Gaming Compact shall
11 automatically increase by twenty percent (20%).

12 SECTION 6. Third-Party Beneficiaries. This Agreement is
13 not intended to create any third-party beneficiaries and is
14 entered into solely for the benefit of the Tribe and the
15 State. ". "

16 Section 2. Section 60-2E-47 NMSA 1978 (being Laws 1997,
17 Chapter 190, Section 49, as amended) is amended to read:

18 "60-2E-47. GAMING TAX--IMPOSITION--ADMINISTRATION.--

19 A. An excise tax is imposed on the privilege of
20 engaging in gaming activities in the state. This tax shall be
21 known as the "gaming tax".

22 B. The gaming tax is an amount equal to ten
23 percent of the gross receipts of manufacturer licensees from
24 the sale, lease or other transfer of gaming devices in or into
25 the state, except receipts of a manufacturer from the sale,

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1 lease or other transfer to a licensed distributor for
2 subsequent sale or lease may be excluded from gross receipts;
3 ten percent of the gross receipts of distributor licensees
4 from the sale, lease or other transfer of gaming devices in or
5 into the state; and [~~twenty-five~~] fifteen percent of the net
6 take of every gaming operator licensee. For the purposes of
7 this section, "gross receipts" means the total amount of money
8 or the value of other consideration received from selling,
9 leasing or otherwise transferring gaming devices.

10 C. The gaming tax imposed on a licensee is in lieu
11 of all state and local gross receipts taxes on that portion of
12 the licensee's gross receipts attributable to gaming
13 activities.

14 D. The gaming tax is to be paid on or before the
15 fifteenth day of the month following the month in which the
16 taxable event occurs. The gaming tax shall be administered
17 and collected by the taxation and revenue department in
18 cooperation with the board. The provisions of the Tax
19 Administration Act apply to the collection and administration
20 of the tax.

21 E. In addition to the gaming tax, a gaming
22 operator licensee that is a racetrack shall pay twenty percent
23 of its net take to purses to be distributed in accordance with
24 regulations adopted by the state racing commission. A
25 racetrack gaming operator licensee shall spend no less than

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1 one-fourth of one percent of the net take of its gaming
2 machines to fund or support programs for the treatment and
3 assistance of compulsive gamblers.

4 F. A nonprofit gaming operator licensee shall
5 distribute at least eighty-eight percent of the balance of its
6 net take, after payment of the gaming tax and any income
7 taxes, for charitable or educational purposes. "

8 Section 3. EFFECTIVE DATES. --

9 A. The effective date of the provisions of this
10 act is July 1, 1999.

11 B. The effective date of the provisions of the
12 amended version of a revenue-sharing agreement executed by a
13 tribal official authorized by the Indian nation, tribe or
14 pueblo entering into that agreement and the governor of New
15 Mexico on behalf of the state is the date on which the amended
16 version of the revenue-sharing agreement has been approved
17 pursuant to the provisions of the federal Indian Gaming
18 Regulatory Act.

1 **FORTY- FOURTH LEGISLATURE**

2 **FIRST SESSION, 1999**

3
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5
6 **February 27, 1999**

7
8 **Mr. Speaker:**

9
10 **Your BUSINESS AND INDUSTRY COMMITTEE, to whom**
11 **has been referred**

12
13 **HOUSE BILLS 419 AND 615**

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

17 **HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE**
18 **FOR HOUSE BILLS 419 AND 615**

19
20 **DO PASS, and thence referred to the JUDICIARY**
21 **COMMITTEE.**

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Respectfully submitted,

Debbie A. Rodella, Chairwoman

Adopted _____

Not Adopted _____

-

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 1 Against

Yes: 7

No: Rodella

Excused: Hanosh, Hobbs

Absent: Kissner, Lutz

J: \99BillSWP\H0615

1 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
2 HOUSE BILLS 419 & 615
3 **44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**
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9 AN ACT

10 RELATING TO GAMING; AUTHORIZING WORDING FOR A SUPPLEMENT TO AN
11 INDIAN GAMING COMPACT; REVISING THE REVENUE-SHARING
12 PROVISIONS; CLARIFYING DISPUTE RESOLUTIONS PROVISIONS;
13 AMENDING THE GAMING TAX; AMENDING AND ENACTING SECTIONS OF THE
14 NMSA 1978.

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

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

18 "11-13-1.1. [NEW MATERIAL] INDIAN GAMING COMPACT
19 SUPPLEMENT AUTHORIZED. --

20 A. The governor of the state may enter into an
21 Indian Gaming Compact in the form set forth in Section 11-13-1
22 NMSA 1978 as supplemented by the Supplement to the Indian
23 Gaming Compact set forth in Subsection C of this section upon
24 written request from an Indian nation, tribe or pueblo located
25 in whole or in part in the state that has not entered into a
previous Indian Gaming Compact. Notwithstanding any provision

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of Section 11-13-2 NMSA 1978, an Indian nation, tribe or pueblo is not required to enter into revenue-sharing provisions other than those set forth in the Supplement to the Indian Gaming Compact of Subsection C of this section.

1
2 B. The governor of the state, upon written request
3 from an Indian nation, tribe or pueblo located in whole or in
4 part in the state that has entered into an Indian Gaming
5 Compact in the form set forth in Section 11-13-1 NMSA 1978, is
6 authorized to execute a supplement to the existing Indian
7 Gaming Compact in the form set forth in Subsection C of this
8 section. The governor has no authority, however, to enter
9 into an agreement in the form set forth in Subsection C of
10 this section with an Indian nation, tribe or pueblo that has
11 an outstanding balance due to the state of money owed pursuant
12 to a revenue-sharing agreement entered into between that
13 Indian nation, tribe or pueblo and the state in 1997; with an
14 Indian nation, tribe or pueblo that has not entered into a
15 payment agreement pursuant to Section 11-13-3 NMSA 1978 if one
16 is required by the provisions of that section; or with an
17 Indian nation, tribe or pueblo that filed a court or
18 arbitration action under the provisions of its Indian gaming
19 compact or revenue-sharing agreement in which there has been
20 no settlement, dismissal or final judgment entered on the
21 action.

22 C. The Supplement to the Indian Gaming Compact or
23 a new Indian Gaming Compact entered into pursuant to Section
24 11-13-1 NMSA 1978 and supplemented with the language that
25 follows shall be effective when executed by the governor of
the state on behalf of the state and the appropriate official
of the Indian nation, tribe or pueblo, and approved pursuant
to the federal Indian Gaming Regulatory Act and shall be in
substantially the following form:

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"SUPPLEMENT TO THE INDIAN GAMING COMPACT

SECTION 1. Maximum Regulatory Fee Payment. On and after the effective date of this Supplement to the Indian Gaming Compact that was entered into between the State of New Mexico and the _____ on the _____ day of _____, 199____, and that took effect on the _____ day of _____, 199____, and notwithstanding anything to the contrary contained in Paragraph 5 of Subsection E of SECTION 4, SECTION 13 or any other provision of that Indian Gaming Compact or Revenue-Sharing Agreement, the maximum and only amount that the Tribe shall be required to pay the State in any State fiscal year as reimbursement of costs the State incurs in carrying out the regulatory functions authorized by the terms of the Indian Gaming Compact is the actual amount of expenses incurred by the State during the preceding fiscal year, as shown by an accounting of the expenses that shall be provided by the State to the Tribe within ninety (90) days following the end of the fiscal year.

SECTION 2. Tribal Payment of Total State Regulatory Costs Required. The tribe shall pay to the State the full amount shown by the accounting provided by the State within thirty (30) days of receiving the accounting from the State. If the Tribe raises a question as to the amount that cannot be resolved informally by the parties, the Tribe may invoke the dispute resolution procedures of SECTION 7 of the Indian Gaming Compact to resolve the dispute.

SECTION 3. Tribal Regulatory Fee Payments Limited to

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1 Payment Required in this Supplement. Except as expressly
2 provided in this Supplement to the Indian Gaming Compact, the
3 Tribe shall not be required to pay the State any additional
4 sum as regulatory fees or as reimbursement of costs incurred
5 by the State.

6 SECTION 4. Consideration, Revenue-Sharing Calculation.

7 A. The Tribe shall agree to contribute to the
8 state a portion of its Class III Gaming revenues, in return
9 for which the State agrees that the Tribe:

10 1. shall have the exclusive right within the
11 State to conduct the types of Class III Gaming described in
12 the Indian Gaming Compact, with the sole exception of the
13 operation of Gaming Machines, which the State may permit on a
14 limited basis to be operated by racetracks and nonprofit
15 organizations; and

16 2. will share with the State that part of its
17 revenues derived from the operation of Gaming Machines and all
18 other revenue received by the Tribe from its gaming activities
19 is exclusively the Tribe's.

20 B. The parties agree that, after the effective
21 date of the Supplement to the Indian Gaming Compact, the Tribe
22 shall make the quarterly payments and contributions provided
23 for in Subsection D of this section to the state treasurer for
24 deposit into the State General Fund.

25 C. As used in the Supplement to the Indian Gaming
Compact, "net win" means the total amount wagered at a Gaming
Facility on Gaming Machines less the following amounts:

1. the amount paid out in prizes from gaming

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1 on Gaming Machines;

2 2. the actual amount of regulatory fees paid
3 to the state; and

4 3. the sum of sixty-two thousand five hundred
5 dollars (\$62,500) per quarter as an amount representing tribal
6 regulatory costs, which amount shall increase by five percent
7 (5%) each year beginning on the first day of January occurring
8 after the Indian Gaming Compact has been in effect for at
9 least twelve months.

10 D. The Tribe shall agree to contribute to the
11 state eight percent (8%) of the Tribe's net win in each
12 calendar quarter.

13 E. Quarterly payments due to the State pursuant to
14 these terms shall be paid no later than twenty-five (25) days
15 after the last day of each calendar quarter.

16 SECTION 5. Limitations. The Tribe's obligation to make
17 the payments provided for in SECTION 4 of the Supplement to
18 the Indian Gaming Compact shall terminate in the event of any
19 of the following conditions:

20 A. if the State passes, amends or repeals any law,
21 or takes any other action that would directly or indirectly
22 attempt to restrict, or has the effect of restricting, the
23 scope of Indian gaming; or

24 B. if the State permits any expansion of nontribal
25 Class III Gaming in the State; provided, however, that none of
the following shall be considered an expansion of non-tribal
Class III Gaming for purposes of this Supplement to the Indian
Gaming Compact:

- 1 1. the operation of a State lottery;
- 2 2. the licensing of nonprofit organizations
- 3 as defined in the Gaming Control Act, to operate Gaming
- 4 Machines consistent with the level of gaming permitted by the
- 5 provisions of Section 60-2E-28 NMSA 1978 as enacted in 1997;
- 6 3. limited fundraising activities conducted
- 7 by nonprofit tax-exempt organizations pursuant to Section
- 8 30-19-6 NMSA 1978; and
- 9 4. the licensing of horse racetracks to
- 10 operate Gaming Machines on days on which live or simulcast
- 11 horse racing occurs consistent with the provisions of Section
- 12 60-2E-27 NMSA 1978 as enacted in 1997.

12 SECTION 6. Definitions. All definitions contained in

13 the Indian Gaming Compact shall apply to the terms used in the

14 Supplement to the Indian Gaming Compact.

15 SECTION 7. Dispute Resolution. The dispute resolution

16 provisions of the Indian Gaming Compact shall apply to

17 disputes arising under the terms of the Supplement to the

18 Indian Gaming Compact.

19 SECTION 8. Termination of Compact on Default of Agreed

20 Upon Contributions. If the Tribe is in default of its agreed

21 upon contributions in any amount due to the State pursuant to

22 its Indian Gaming Compact, its Supplement to the Indian Gaming

23 Compact or a Payment Agreement entered into pursuant to

24 Section 11-13-3 NMSA 1978, and notwithstanding any provision

25 of the Tribe's original Indian Gaming Compact to the contrary,

the Gaming Control Board may make a determination that the

Indian Gaming Compact entered into between the Tribe and the

1 State be terminated. To terminate the Indian Gaming Compact
2 the Gaming Control Board shall send a Notice of Default and
3 Intent to Terminate to the Tribe. The Indian Gaming Compact
4 in total, including the Supplement to the Indian Gaming
5 Compact, shall terminate automatically and without the need
6 for further action thirty days following the date on which the
7 Notice of Default and Intent to Terminate is received, unless
8 the dispute resolution provisions of the Indian Gaming Compact
9 are invoked or the default is cured during that thirty-day
period.

10 SECTION 9. Supplement Negotiated by Parties. This
11 Supplement to the Indian Gaming Compact and the Indian Gaming
12 Compact, as of the date it is signed by the appropriate
13 official of the Tribe and the Governor of the State, is deemed
14 to have been negotiated in good faith and written by the
15 parties who are signatories to this Supplement to the Indian
Gaming Compact.

16 SECTION 10. Revenue-Sharing Agreements Void. On the
17 date on which the action of or failure to act by the Secretary
18 of the Interior on this Supplement to the Indian Gaming
19 Compact entered into by the Tribe and the State is published
20 in the federal register, the Revenue-Sharing Agreement entered
21 into in 1997 between the Tribe and the State is void. ". "

22 Section 2. A new Section 11-13-3 NMSA 1978 is enacted to
read:

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

25 A. If a tribe wishes to enter into a supplement to

1 the Indian Gaming Compact, the governor of the state and the
 2 appropriate official of a tribe that has entered into a
 3 compact and revenue-sharing agreement with the state shall
 4 jointly prepare an accounting of all amounts due from and
 5 contributed by the tribe to the state pursuant to the terms of
 6 the revenue-sharing agreement that was in effect between the
 7 tribe and the state beginning in 1997 and all regulatory fees
 8 deducted from the tribe's gaming net win, as defined in
 9 Section 11-13-2 NMSA 1978, and regulatory fees due to the
 10 state pursuant to the terms of Paragraph 5 of Subsection E of
 11 SECTION 4 of the Indian Gaming Compact between the tribe and
 12 the state.

12 B. If the total amount contributed, as determined
 13 in Subsection A of this section, is less than the amount owed,
 14 the governor of the state and the appropriate official of the
 15 tribe shall execute a payment agreement that shall be deemed
 16 part of the Indian Gaming Compact. The payment agreement
 17 shall set forth the amount of the deficit owed to the state by
 18 the tribe and specify the date by which and the manner in
 19 which the tribe shall pay the amount of the deficit; provided
 20 that the payment agreement shall provide that the deficit owed
 21 by the tribe to the state shall be paid within two years
 22 following the effective date of the Supplement to the Indian
 23 Gaming Compact. "

22 Section 3. Section 60-2E-47 NMSA 1978 (being Laws 1997,
 23 Chapter 190, Section 49, as amended) is amended to read:

24 "60-2E-47. GAMING TAX--IMPOSITION--ADMINISTRATION. --

25 A. An excise tax is imposed on the privilege of

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1 engaging in gaming activities in the state. This tax shall be
2 known as the "gaming tax".

3 B. The gaming tax is an amount equal to ten
4 percent of the gross receipts of manufacturer licensees from
5 the sale, lease or other transfer of gaming devices in or into
6 the state, except receipts of a manufacturer from the sale,
7 lease or other transfer to a licensed distributor for
8 subsequent sale or lease may be excluded from gross receipts;
9 ten percent of the gross receipts of distributor licensees
10 from the sale, lease or other transfer of gaming devices in or
11 into the state; and [~~twenty-five~~] fifteen percent of the net
12 take of every gaming operator licensee. For the purposes of
13 this section, "gross receipts" means the total amount of money
14 or the value of other consideration received from selling,
15 leasing or otherwise transferring gaming devices.

16 C. The gaming tax imposed on a licensee is in lieu
17 of all state and local gross receipts taxes on that portion of
18 the licensee's gross receipts attributable to gaming
19 activities.

20 D. The gaming tax is to be paid on or before the
21 fifteenth day of the month following the month in which the
22 taxable event occurs. The gaming tax shall be administered
23 and collected by the taxation and revenue department in
24 cooperation with the board. The provisions of the Tax
25 Administration Act apply to the collection and administration
of the tax.

E. In addition to the gaming tax, a gaming
operator licensee that is a racetrack shall pay twenty percent

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of its net take to purses to be distributed in accordance with regulations adopted by the state racing commission. A racetrack gaming operator licensee shall spend no less than one-fourth of one percent of the net take of its gaming machines to fund or support programs for the treatment and assistance of compulsive gamblers.

F. A nonprofit gaming operator licensee shall distribute at least eighty-eight percent of the balance of its net take, after payment of the gaming tax and any income taxes, for charitable or educational purposes."

Section 4. EFFECTIVE DATE. --The effective date of the provisions of Section 3 of this act is July 1, 1999.

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2 **HTRC/HBIC/HB 419 & 615**

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4 **FORTY- FOURTH LEGISLATURE**
5 **FIRST SESSION, 1999**
6

7 **March 6, 1999**
8

9
10 **Mr. Speaker:**
11

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

13 **HOUSE BUSINESS AND INDUSTRY COMMITTEE**
14 **SUBSTITUTE FOR HOUSE BILLS 419 & 615**
15

16 **has had it under consideration and reports same WITHOUT**
17 **RECOMMENDATION, amended as follows:**
18

19 1. On page 2, line 18, after "to" insert "an Indian
20 Gaming Compact or".

21 2. On page 2, line 19, strike "; with an", insert in
22 lieu thereof "unless the" and on line 20, strike "that has
23 not" and insert in lieu thereof "has".
24

25 3. On page 2, line 21, after "1978" strike the

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1 remainder of the line and strike line 22 up to the
2 semicolon.

3
4 4. On page 4, between lines 18 and 19, insert the
5 following:

6 "SECTION 4. Extension of Compact Terms.
7 Notwithstanding any provisions to the contrary in SECTION
8 11 of the Indian Gaming Compact entered into in 1997, upon
9 the approval of this Supplement to the Indian Gaming
10 Compact, the term of the Indian Gaming Compact shall be
11 extended beyond its original expiration date by an
12 additional two (2) years."

13 5. Renumber the succeeding SECTIONS of the form
14 entitled "Supplement to the Indian Gaming Compact" from
15 page 4, line 19 to page 8, line 15.

16
17 6. On page 6, line 3, before the period insert:

18 "; provided, however, that a Tribe that generates
19 less than two million dollars (\$2,000,000) of net win in
20 the calendar quarter does not have to pay a share of its
21 gaming revenue to the state in that calendar quarter".
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7. On page 8, line 7, after the period insert:

"If the dispute resolution provisions are invoked, and if the arbitration determines that the Tribe shall pay, the Tribe has thirty (30) days from the date of the final decision of the arbitration to pay the amount determined to be due to the State or the Tribe's Indian Gaming Compact and Supplement to the Indian Gaming Compact shall terminate automatically and without the need for further action. In the event that the Notice of Default and Intent to Terminate has been received and either gaming is continued beyond the thirty-day period or the dispute resolution provisions of the Indian Gaming Compact are invoked and the result does not provide for a continuation of gaming pursuant to the compact and the supplement, the parties agree that the U.S. Attorney is empowered to enforce the Notice of Default and Intent to Terminate pursuant to the U.S. Indian Gaming Regulatory Act."

8. On page 11 line 6, after "pay" insert a colon and the paragraph designation "(1)".

9. On page 11, line 8, after "commission" strike ". A" and insert in lieu thereof a semicolon.

10. On page 11, strike line 9 in its entirety and

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1 insert in lieu thereof the following:

2
3 "(2) five-tenths of one percent (.5%) of the
4 net take to be distributed to the jockey's guild health
5 and welfare trust maintained by the jockey's guild, inc.
6 for the purpose of providing health care and other welfare
7 benefits to active, disabled and retired New Mexico
8 thoroughbred and quarter horse jockeys pursuant to
9 reasonable criteria for benefit eligibility established by
10 jockey's guild, inc. The jockey's guild shall annually
11 provide to the state racing commission a certified
12 financial statement of the expenditures made for the
13 benefits provided pursuant to this subsection; and

14 (3) no less than".
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and thence referred to the TAXATION AND REVENUE
COMMI TTEE.

Respectfully submit ted,

R. Davi d Pederson, Chai rman

Adopted _____

Not Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

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1 The roll call vote was 9 For 1 Against

2 Yes: 9

3 No: Stewart

4 Excused: Luna, Vaughn

5 Absent: None

6

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12 J: \99BillsWP\H0615

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2 HTRC/HBIC/HB 419 & 615

3
4 FORTY-FOURTH LEGISLATURE
5 FIRST SESSION, 1999

6
7
8 March 12, 1999

9
10 Mr. Speaker:

11
12 Your TAXATION AND REVENUE COMMITTEE, to whom has
13 been referred

14 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE
15 FOR HOUSE BILLS 419 & 615, as amended

16
17 has had it under consideration and reports same with
18 recommendation that it DO NOT PASS, but that

19
20 HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
21 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE
22 FOR HOUSE BILLS 419 & 615

23 DO PASS, amended as follows:

- 24
25 1. On page 56, strike line 25 and insert in lieu thereof

. 128190. 4

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HTRC/HBICS/HB 419 & 615aa

Page 27

"but not to exceed a total of twenty-five Gaming Machines if the number authorized is increased by legislative action;".

2. On page 57, strike line 7 after "1978" and insert in lieu thereof "but not to exceed a total of five hundred Gaming Machines if the number authorized is increased by legislative action.".,

and thence referred to the APPROPRIATIONS AND FINANCE COMMITTEE.

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999
HTRC/HBIC/HB 419 & ~~615~~

HTRC/HBICS/HB 419 & 615aa

Page 28

The roll call vote on Amendment #1 and Amendment #2 was 12 For
3 Against

Yes: 12
No: Burpo, Hawkins, Gubbels
Excused: None
Absent: None

Respectfully submitted,

Jerry W. Sandel, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HTRC/HBICS/HB 419 & 615aa

Page 29

4 The roll call vote was 13 For 2 Against

5 Yes: 13

6 No: Sandoval, Tripp

7 Excused: None

8 Absent: None

11 129069.1

12 J: \99BillsWP\H0615

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HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 419 & 615
HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

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AN ACT

RELATING TO GAMING; AMENDING THE INDIAN GAMING COMPACT AND THE
REVENUE-SHARING AGREEMENT; REVISING REVENUE-SHARING
PROVISIONS; CHANGING CERTAIN OTHER PROVISIONS OF THE INDIAN
GAMING COMPACT AND THE REVENUE-SHARING AGREEMENT; ENACTING
TEMPORARY PROVISIONS; AMENDING AND REPEALING SECTIONS OF THE
NMSA 1978.

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

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

"11-13-1. INDIAN GAMING COMPACT ENTERED INTO. --The
Indian Gaming Compact is enacted into law and entered into
with all Indian nations, tribes and pueblos in the state
legally joining in it by enactment of a resolution pursuant to
the requirements of applicable tribal and federal law. The
compact is enacted and entered into in the form substantially
as follows:

"INDIAN GAMING COMPACT

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INTRODUCTION

The State is a sovereign State of the United States of America, having been admitted to the Union pursuant to the Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and is authorized by its constitution to enter into contracts and agreements, including this Compact, with the Tribe;

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

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

The Tribe owns or controls Indian Lands and by Ordinance has adopted rules and regulations governing Class III games played and related activities at any Gaming Facility;

The State and the Tribe, in recognition of the sovereign rights of each party and in a spirit of cooperation to promote the best interests of the citizens of the State and the members of the Tribe, have engaged in good faith negotiations recognizing and respecting the interests of each party and have agreed to this Compact.

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

TERMS AND CONDITIONS

SECTION 1. Purpose and Objectives.

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

- A. To evidence the good will and cooperative spirit between the State and the Tribe;
- B. To continue the development of an effective

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

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

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

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

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

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

21 SECTION 2. Definitions.

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

24 A. "Class III Gaming" means all forms of gaming as
25 defined in 25 U.S.C. § 2703(8), and 25 C.F.R. § 502.4.

A. "Compact" means this compact between the State and
the Tribe.

C. "Gaming Enterprise" means the tribal entity created

1 and designated by the Tribe as having authority to conduct
2 Class III Gaming pursuant to this Compact.

3 D. "Gaming Facility" means the buildings or structures
4 in which Class III Gaming is conducted on Indian Lands.

5 E. "Gaming Machine" means a mechanical,
6 electromechanical or electronic contrivance or machine that,
7 upon insertion of a coin, token or similar object, or upon
8 payment of any consideration, is available to play or operate
9 a game, whether the payoff is made automatically from the
10 Gaming Machine or in any other manner.

11 F. "Indian Lands" means:

12 1. all lands within the exterior boundaries of the
13 Tribe's reservation and its confirmed grants from prior
14 sovereigns; [~~or~~] and

15 2. any other lands title to which is either held
16 in trust by the United States for the exclusive benefit of the
17 Tribe or a member thereof or is held by the Tribe or a member
18 thereof subject to restrictions against alienation imposed by
19 the United States, and over which the Tribe exercises
20 jurisdiction and governmental authority, but not including any
21 land within the boundaries of a municipality that is outside
22 of the boundaries of the Tribe's reservation or confirmed
23 Spanish grant, as those boundaries existed on October 17,
24 1988.

25 G. "Key Employee" means that term as defined in 25 CFR
Section 502.14.

H. "Management Contract" means a contract within the
meaning of 25 U. S. C. §§ 2710(d) (9) and 2711.

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

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

5 K. "Primary Management Official" means that term as
6 defined in 25 CFR Section 502.19.

7 L. "State" means the State of New Mexico.

8 M "State Gaming Representative" means that person
9 designated by the gaming control board pursuant to the Gaming
10 Control Act who will be responsible for actions of the State
11 set out in the Compact. The representative will be the single
12 contact with the Tribe and may be relied upon as such by the
13 Tribe. [~~If the State Legislature enacts legislation to
establish an agency of the State, such agency may assume the
duties of the State Gaming Representative.~~]

14 N. "Tribal Gaming Agency" means the tribal governmental
15 agency which will be identified to the State Gaming
16 Representative as the agency responsible for actions of the
17 Tribe set out in the Compact. It will be the single contact
18 with the State and may be relied upon as such by the State.

19 O. "Tribe" means [~~any~~] an Indian Nation, Tribe, or
20 Pueblo located within the State of New Mexico entering into
21 this Compact as provided for herein.

22 SECTION 3. Authorized Class III Gaming.

23 The Tribe may conduct, only on Indian Lands, subject to
24 all of the terms and conditions of this Compact, any or all
25 forms of casino-style gaming, including but not limited to
slot machines and other forms of electronic gaming devices;

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1 all forms of poker, blackjack and other casino-style card
2 games, both banked and unbanked; roulette; craps; keno; wheel
3 of fortune; pai gow; and other games played in casino
4 settings; and any form of a lottery.

5 Subject to the foregoing, the Tribe shall establish, in
6 its discretion, by tribal law, such limitations as it deems
7 appropriate on the number and type of Class III Gaming
8 conducted, the location of Class III Gaming on Indian Lands,
9 the hours and days of operation, and betting and pot limits,
applicable to such gaming.

10 SECTION 4. Regulation of Class III Gaming.

11 A. Tribal Gaming Agency. The Tribal Gaming Agency will
12 assure that the Tribe will:

- 13 1. operate all Class III Gaming pursuant to this
14 Compact, tribal law, the IGRA and other
applicable Federal law;
- 15 2. provide for the physical safety of patrons in
16 any Gaming Facility;
- 17 3. provide for the physical safety of personnel
18 employed by the gaming enterprise;
- 19 4. provide for the physical safeguarding of assets
20 transported to and from the Gaming Facility and
cashier's cage department;
- 21 5. provide for the protection of the property of
22 the patrons and the gaming enterprise from
23 illegal activity;
- 24 6. participate in licensing of primary management
25 officials and key employees of a Class III

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Gaming enterprise;

- 7. detain persons who may be involved in illegal acts for the purpose of notifying law enforcement authorities; and
- 8. record and investigate any and all unusual occurrences related to Class III Gaming within the Gaming Facility.

B. Regulations. Without affecting the generality of the foregoing, the Tribe shall adopt laws:

- 1. prohibiting participation in any Class III Gaming by any person under the age of twenty-one (21);
- 2. prohibiting the employment of any person in Class III Gaming activities who is under the age of twenty-one (21) or who has not been licensed in accordance with Section 5, herein;
- 3. requiring the Tribe to take all necessary action to impose on its gaming operation standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and any other federal laws relating to wages, hours of work and conditions of work, and the regulations issued thereunder;
- 4. requiring that on any construction project involving any Gaming Facility or related structure that is funded in whole or in part by

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1 federal funds, all workers will be paid wages
2 meeting or exceeding the standards established
3 for New Mexico under the federal Davis-Bacon
4 Act;

- 5 5. prohibiting the Tribe, the Gaming Enterprise and
6 a Management Contractor from discriminating in
7 the employment of persons to work for the gaming
8 Enterprise or in the Gaming Facility on the
9 grounds of race, color, national origin, gender,
10 sexual orientation, age or handicap;
- 11 6. providing to all employees of a gaming
12 establishment employment benefits, including, at
13 a minimum, sick leave, life insurance, paid
14 annual leave and medical and dental insurance as
15 well as providing unemployment insurance and
16 workers' compensation insurance through
17 participation in programs offering benefits at
18 least as favorable as those provided by
19 comparable state programs;
- 20 7. providing a grievance process for an employee in
21 cases of disciplinary or punitive action taken
22 against an employee that includes a process for
23 appeals to persons of greater authority than the
24 immediate supervisor of the employee;
- 25 8. permitting State Department of Environment
inspectors to inspect Gaming Facilities' food
service operations during normal Gaming Facility
business hours to assure that standards and

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- requirements equivalent to the State's Food Service Sanitation Act are maintained;
9. prohibiting a gaming enterprise from cashing any paycheck or any type of government assistance check, including Social Security, AFDC, pension and other similar checks, for any patron;
 10. prohibiting a gaming enterprise from extending credit by accepting IOUs or markers from its patrons;
 11. requiring that odds be posted on each electronic and electromechanical gaming device;
 12. requiring that automatic teller machines on Gaming Facility premises be programmed so that the machines will not accept cards issued by the State to AFDC recipients for access to AFDC benefits;
 13. providing that each electronic or electromechanical gaming device in use at the Gaming Facility must pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than eighty percent (80%);
 14. providing that no later than ninety days after this Compact takes effect, all gaming machines on the premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual

1 basis the activity of each gaming machine in use
2 at the Gaming Facility, and that such data shall
3 be electronically accessible to the State Gaming
4 Representative upon entry of appropriate
5 security codes;

6 15. enacting provisions that:

7 (a) prohibit an employee of the Gaming
8 Facility from selling, serving, giving or
9 delivering an alcoholic beverage to an
10 intoxicated person or from procuring or
11 aiding in the procurement of any alcoholic
12 beverage for an intoxicated person at the
13 Gaming Facility;

14 (b) require Gaming Facility employees that
15 dispense, sell, serve or deliver alcoholic
16 beverages to attend Alcohol Server
17 Education Classes similar to those classes
18 provided for in the New Mexico Liquor
19 Control Act; and

20 (c) require the gaming enterprise to purchase
21 and maintain a liquor liability insurance
22 policy that will provide, at a minimum,
23 personal injury coverage of one million
24 dollars (\$1,000,000) per incident and two
25 million dollars (\$2,000,000) aggregate per
policy year;

16. prohibiting alcoholic beverages from being sold,
served, delivered or consumed in that part of a

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- 1 Gaming Facility where gaming is allowed;
- 2 17. requiring the gaming enterprise to spend an
- 3 amount that is no less than one-quarter of one
- 4 percent (.25%) of its net win as that term is
- 5 defined herein annually to fund or support
- 6 programs for the treatment and assistance of
- 7 compulsive gamblers and for the prevention of
- 8 compulsive gambling;
- 9 18. governing any Management Contract regarding its
- 10 Class III Gaming activity [~~such~~] so that it
- 11 conforms to the requirements of tribal law and
- 12 the IGRA and the regulations issued thereunder;
- 13 19. prohibiting the operation of any Class III
- 14 Gaming for at least four (4) consecutive hours
- 15 daily, Mondays through Thursdays (except federal
- 16 holidays);
- 17 20. prohibiting a Tribal Gaming Enterprise and the
- 18 Tribe from providing, allowing, contracting to
- 19 provide or arranging to provide alcoholic
- 20 beverages, food or lodging for no charge or at
- 21 reduced prices at a Gaming Facility or lodging
- 22 facility as an incentive or enticement for
- 23 patrons to game; and
- 24 21. prohibiting the Tribe, the Tribal Gaming
- 25 [Agency] Enterprise or a Management Contractor
- from contributing directly, or through an agent,
- representative or employee, revenue from a
- Gaming Enterprise owned by the Tribe, or

1 anything of value acquired with that revenue, to
2 a candidate, political committee or person
3 holding an office elected or to be elected at an
4 election covered by the State's Campaign
5 Reporting Act.

6 The Tribal Gaming Agency will provide true copies of all
7 tribal laws and regulations affecting Class III Gaming
8 conducted under the provisions of this Compact to the State
9 Gaming Representative within thirty (30) days after the
10 effective date of this Compact, and will provide true copies
11 of any amendments thereto or additional laws or regulations
12 affecting gaming within thirty (30) days after their enactment
(or approval, if any).

13 C. Audit and Financial Statements. The Tribal Gaming
14 Agency shall require all books and records relating to Class
15 III Gaming to be maintained in accordance with generally
16 accepted accounting principles. All such books and records
17 shall be retained for a period of at least six (6) years from
18 the date of creation. Not less than annually, the Tribal
19 Gaming Agency shall require an audit and a certified financial
20 statement covering all financial activities of the Gaming
21 Enterprise by an independent certified public accountant
22 licensed by the State. The financial statement shall be
23 prepared in accordance with generally accepted accounting
24 principles and shall be submitted to the Tribal Gaming Agency
25 within one hundred twenty (120) days of the close of the
Tribe's fiscal year. Copies of the financial statement and
the audit shall be furnished to the State Gaming

1 Representative and the state treasurer by the Tribal Gaming
2 Agency within one hundred twenty days of the agency's receipt
3 of the documents. The Tribe will maintain the following
4 records for not less than six (6) years:

- 5 1. revenues, expenses, assets, liabilities and
6 equity for each Gaming Facility;
- 7 2. daily cash transactions for each Class III
8 Gaming activity at each Gaming Facility,
9 including but not limited to transactions
10 relating to each gaming table bank, game dropbox
11 and gaming room bank;
- 12 3. all markers, IOUs, returned checks, hold check
13 or other similar credit instruments;
- 14 4. individual and statistical game records (except
15 card games) to reflect statistical drop and
16 statistical win; for electronic, computer, or
17 other technologically assisted games, analytic
18 reports which show the total amount of cash
19 wagered and the total amount of prizes won;
- 20 5. contracts, correspondence and other transaction
21 documents relating to all vendors and
22 contractors;
- 23 6. records of all tribal gaming enforcement
24 activities;
- 25 7. audits prepared by or on behalf of the Tribe;
and
8. personnel information on all Class III Gaming
employees or agents, including rotation sheets,

1 hours worked, employee profiles and background
2 checks.

3 D. Violations. The agents of the Tribal Gaming Agency
4 shall have unrestricted access to the Gaming Facility during
5 all hours of Class III Gaming activity, and shall have
6 immediate and unrestricted access to any and all areas of the
7 Gaming Facility for the purpose of ensuring compliance with
8 the provisions of this Compact and the Ordinance. The agents
9 shall report immediately to the Tribal Gaming Agency any
10 suspected violation of this Compact, the Ordinance, or
11 regulations of the Tribal Gaming Agency by the Gaming
12 Enterprise, Management Contractor, or any person, whether or
13 not associated with Class III Gaming.

14 E. State Gaming Representative.

- 15 1. Upon written request by the State to the Tribe,
16 the Tribe will provide information on primary
17 management officials, key employees and
18 suppliers, sufficient to allow the State to
19 conduct its own background investigations, as it
20 may deem necessary, so that it may make an
21 independent determination as to the suitability
22 of such individuals, consistent with the
23 standards set forth in Section 5 [~~hereinafter~~]
24 of this compact. The Tribe shall consider any
25 information or recommendations provided to it by
the State as to any such person or entity, but
the Tribe shall have the final say with respect
to the hiring or licensing of any such person or

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1 entity.

2 2. Notwithstanding that the Tribe has the primary
3 responsibility to administer and enforce the
4 regulatory requirements, the State Gaming
5 Representative [~~authorized in writing by the~~
6 ~~Governor of the State or by legislation duly~~
7 ~~enacted by the State Legislature shall have~~] has
8 the right to inspect a Gaming Facility, Class
9 III Gaming activity, and all records relating to
10 Class III Gaming (including those set forth in
11 Section 5 [~~hereinafter~~] of this compact) of the
12 Tribe, subject to the following conditions:

13 (a) with respect to public areas of a Gaming
14 Facility, at any time without prior notice
15 during normal Gaming Facility business
16 hours;

17 (b) with respect to private areas of a Gaming
18 Facility not accessible to the public, at
19 any time during normal Gaming Facility
20 business hours, immediately after
21 notifying the Tribal Gaming Agency and
22 Gaming [~~Facility~~] Enterprise of his or her
23 presence on the premises and presenting
24 proper identification, and requesting
25 access to the non-public areas of the
 Gaming Facility. The Tribe, in its sole
 discretion, may require an employee of the
 Gaming [~~Facility~~] Enterprise or the Tribal

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Gaming Agency to accompany the State Gaming Representative at all times that the State Gaming Representative is on the premises of a Gaming Facility, but if the Tribe imposes such a requirement, the Tribe shall require such an employee of the Gaming [Facility] Enterprise or the Tribal Gaming Agency to be available at all times for such purposes;

(c) with respect to inspection and copying of all management records relating to Class III Gaming, at any time without prior notice between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding official holidays. The reasonable costs of copying will be borne by the State; and

(d) whenever the State Gaming Representative, or his designee, enters the premises of the Gaming Facility for any such inspection, such Representative, or designee, shall identify himself to security or supervisory personnel of the Gaming [Facility] Enterprise.

3. Gaming Enterprise and gaming operations information that is provided to the State Gaming Representative shall be considered public information and subject to the Inspection of Public Records Act. Trade secrets, information

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1 relating to security and surveillance systems,
2 cash handling and accounting procedures,
3 building layout, gaming machine payouts,
4 investigations into alleged violations of laws
5 or regulations, personnel records and
6 proprietary information regarding the Gaming
7 Enterprise [~~of the Tribe~~], Class III Gaming
8 conducted by the Tribe, or the operation
9 thereof, shall not be deemed public records as a
10 matter of state law, and shall not be disclosed
11 to any member of the public, without the prior
12 written approval of a duly authorized
13 representative of the Tribe. These prohibitions
14 shall not [~~be construed to~~] prohibit:

- 15 (a) the furnishing of any information to a law
16 enforcement or regulatory agency of the
17 Federal Government;
- 18 (b) the State from making known the names of
19 persons, firms, or corporations conducting
20 Class III Gaming pursuant to the terms of
21 this Compact, locations at which such
22 activities are conducted, or the dates on
23 which such activities are conducted;
- 24 (c) publishing the terms of this Compact;
- 25 (d) disclosing information as necessary to
audit, investigate, prosecute or arbitrate
violations of this Compact or other
applicable laws or to defend suits against

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1 the State; and

2 (e) complying with subpoenas or court orders
3 issued by courts of competent
4 jurisdiction.

5 4. To the fullest extent allowed by State law, the
6 Tribe shall have the right to inspect State
7 records concerning all Class III Gaming
8 conducted by the Tribe; the Tribe shall have the
9 right to copy such State records, with the Tribe
bearing the reasonable cost of copying.

10 5. For every year or part thereof in which the
11 Tribe is actually engaged in Class III Gaming
12 hereunder, the Tribe shall reimburse the State
13 for the costs the State incurs in carrying out
14 any functions authorized by the terms of this
15 Compact. All calculations of amounts due shall
16 be based upon the operations of the Gaming
17 Enterprise on the final day of operation of each
18 quarter of the calendar year. Payments due the
19 State shall be made no later than the twenty-
20 fifth day of the month following the end of a
21 quarter to the State Treasurer for deposit into
22 the General Fund of the State ("State General
23 Fund"). The amount of the regulatory fee each
24 quarter ~~[shall be the sum of six thousand two~~
25 ~~hundred fifty dollars (\$6,250) per Gaming~~
~~Facility plus three hundred dollars (\$300) per~~
~~gaming machine plus seven hundred fifty dollars~~

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~~(\$750) per gaming table or device other than a Gaming Machine. These amounts shall increase by five percent (5%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve months.~~

~~6. In the event the State believes that the Tribe is not administering and enforcing the regulatory requirements set forth herein, it may invoke the procedures set forth in Section 7 of this Compact.]~~ is the sum of the following calculations:

(a) for the average number of machines in operation during a quarter, up to two hundred machines in number, the amount of fifty dollars (\$50.00) per machine; and

(b) for the average number of machines in operations during a quarter, exceeding two hundred machines in number, the amount of one hundred twenty-five dollars (\$125) per machine.

6. No other state regulatory costs shall be payable by a Gaming Enterprise. If a dispute arises between the State and the Tribe about the amount, calculation, payment or other matter involving state regulatory fees, it shall be resolved pursuant to Section 7 of this Compact.

F. The Tribe shall comply with all applicable provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. §§ 5311-5314, and all reporting requirements of the

1 Internal Revenue Service.

2 SECTION 5. Licensing Requirements.

3 A. License Required. The Gaming [~~Facility operator (but~~
4 ~~not including the Tribe)~~] Enterprise, including its
5 principals, primary management officials, and key employees,
6 the Management Contractor and its principals, primary
7 management officials, and key employees (if the Tribe hires a
8 Management Contractor); any person, corporation, or other
9 entity that has supplied or proposes to supply any gaming
10 device to the Tribe or the Management Contractor; and any
11 person, corporation or other entity providing gaming services
12 within or without a Gaming Facility, shall apply for and
13 receive a license from the Tribal Gaming Agency before
14 participating in any way in the operation or conduct of any
15 Class III Gaming on Indian Lands.

16 B. License Application. Each applicant for a license
17 shall file with the Tribal Gaming Agency a written application
18 in the form prescribed by the Tribal Gaming Agency, along with
19 the applicant's fingerprint card, current photograph and the
20 fee required by the Tribal Gaming Agency.

- 21 1. The following Notice ("Privacy Act Notice")
22 shall be placed on the application form for a
23 principal, key employee or a primary management
24 official before that form is filled out by an
25 applicant:

"In compliance with the
Privacy Act of 1974, the
following information is

1 provided: Solicitation of the
2 information on this form is
3 authorized by 25 U. S. C.
4 §§ 2701-2721. The purpose of
5 the requested information is
6 to determine the eligibility
7 of individuals to be employed
8 ~~[in a]~~ by the Gaming
9 Enterprise. The information
10 will be used by members and
11 staff of the Tribal Gaming
12 Agency and the National Indian
13 Gaming Commission who have
14 need for the information in
15 the performance of their
16 official duties. The
17 information may be disclosed
18 to appropriate federal,
19 tribal, state, local or
20 foreign law enforcement and
21 regulatory agencies when
22 relevant to civil, criminal or
23 regulatory investigations or
24 prosecutions or when, pursuant
25 to a requirement by a Tribe,
or the National Indian Gaming
Commission, the information is
relevant to the hiring or

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1 firing of an employee, the
2 issuance or revocation of a
3 gaming license or
4 investigations of activities
5 while associated with a Tribe
6 or a gaming enterprise.
7 Failure to consent to the
8 disclosures indicated in this
9 Notice will result in a Tribe
10 being unable to hire you in a
11 primary management official or
12 key employee position with [~~a~~
13 ~~tribal~~] the Gaming Enterprise.
14 The disclosure of your Social
15 Security Number (SSN) is
16 voluntary. However, failure
17 to supply an SSN may result in
18 errors in processing your
19 application. "

- 20 2. Existing principals, key employees and primary
21 management officials shall be notified, in
22 writing, that they shall either:
23 (a) complete a new application form that
24 contains a Privacy Act Notice; or
25 (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")

1 shall be placed on the application form for a
2 principal, key employee or a primary management
3 official before that form is filled out by an
4 applicant:

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

10 4. The Tribal Gaming Agency shall notify, in
11 writing, existing principals, key employees and
12 primary management officials that they shall
13 either:

- 14 (a) complete a new application form that
15 contains a False Statement Notice; or
16 (b) sign a statement that contains the False
17 Statement Notice.

18 5. The Tribal Gaming Agency shall request from each
19 applicant, and from each principal, primary
20 management official and key employee of each
21 applicant, all of the following information:

- 22 (a) full name, other names used (oral or
23 written), Social Security Number(s), birth
24 date, place of birth, citizenship, gender
25 and all languages spoken or written;
(b) currently, and for the previous ten (10)
years, business and employment positions
held, ownership interests in those

1 businesses, business and residence
2 addresses and driver's license numbers;
3 provided, that any applicant who is a
4 principal, primary management official,
5 key employee, Management Contractor,
6 manufacturer or supplier of gaming
7 devices, and/or a person providing gaming
8 services, must provide such information
9 currently, and from the age of eighteen
(18);

- 10 (c) the names and current addresses of at
11 least three (3) personal references,
12 including one (1) personal reference who
13 was acquainted with the applicant during
14 each period of residence listed in
Paragraph B. 5. (b) of this section;
- 15 (d) current business and residence telephone
16 numbers;
- 17 (e) a description of any existing and previous
18 business relationships with a Tribe,
19 including ownership interests in those
20 businesses, and a description of any
21 potential or actual conflict of interests
between such businesses and a Tribe;
- 22 (f) a description of any existing and previous
23 business relationships in the gaming
24 industry, including, but not limited to,
25 ownership interests in those businesses;

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- (g) the name and address of any licensing or regulatory agency with which the applicant has filed an application for a license or permit related to gaming, 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 occupational license or permit, as an

1 applicant, principal, primary management
2 official or key employee, and whether or
3 not such license or permit was granted;

- 4 (l) a current photograph;
- 5 (m) fingerprints, which shall be taken by
6 officers of the tribal police department
7 or by another law enforcement agency and
8 forwarded directly to the tribal police
9 department. Pursuant to a Memorandum of
10 Understanding between the Tribe and the
11 National Indian Gaming Commission
12 ("Commission"), tribal police officers
13 shall forward the fingerprint cards
14 directly to the Commission;
- 15 (n) the fee required by the Tribal Gaming
16 Agency; and
- 17 (o) any other information the Tribal Gaming
18 Agency deems relevant.

19 C. Background Investigations.

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

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1 request and shall collect and maintain the
2 applications.

3 (b) Pursuant to a Memorandum of Understanding
4 between the Tribe and the Commission,
5 tribal police officers will collect
6 fingerprints from all applicants and
7 forward the fingerprint cards directly to
8 the Commission. The Commission will
9 obtain a criminal history record from the
10 Federal Bureau of Investigation on each
11 applicant and forward such information to
12 the Tribal Gaming Agency.

13 (c) The Tribal Gaming Agency shall investigate
14 the information provided in the
15 applications. This investigation shall
16 include:

- 17 (1) contacting persons or entities
18 identified in the application and
19 verifying by written or oral
20 communication that the information
21 contained in the application is
22 accurate;
- 23 (2) interviewing a sufficient number of
24 knowledgeable people, such as former
25 employers, partners, business
associates, and others referred to in
the application, to provide a basis for
the Tribal Gaming Agency to make a

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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.

(e) The Tribal Gaming Agency will review the results of the investigation. This review will include a determination as to the scope of the investigation and whether sufficient information was obtained and verified. If such information is found not sufficient, the Tribal Gaming Agency will perform additional investigations.

(f) Once the investigation is complete, the Tribal Gaming Agency will decide whether the

1 applicant meets the eligibility criteria
2 under the Ordinance.

- 3 3. In conducting a background investigation, the
4 Tribal Gaming Agency and its agents shall keep
5 confidential the identity of each person
6 interviewed in the course of the investigation.
- 7 4. Within twenty (20) days of the receipt of a
8 completed application for licensing, and upon
9 request of an applicant, the Tribal Gaming Agency
10 may issue a temporary license to the applicant,
11 unless the background investigation undertaken
12 discloses that the applicant has a criminal
13 history, or unless other grounds sufficient to
14 disqualify the applicant are apparent on the face
15 of the application. The temporary license shall
16 become void and be of no effect upon either:
17 (a) the issuance of the license;
18 (b) the issuance of a notice of denial; or
19 (c) ninety (90) days after the temporary license
20 is issued, whichever occurs first.
- 21 5. The Tribal Gaming Agency shall review a person's
22 prior activities, criminal record, if any, and
23 reputation, habits and associations to make a
24 finding concerning the eligibility or suitability
25 of an applicant, or a principal, key employee or
primary management official of an applicant, for
employment or involvement ~~[in a]~~ by the Gaming
Enterprise. After such consultation, the Tribal

Gaming Agency shall either issue a license or deny the application. If the Tribal Gaming Agency determines that employment or involvement of the applicant poses a threat to the public interest or to the effective regulation of Class III Gaming or creates or enhances dangers of unsuitable, unfair or illegal practices, methods or activities in the conduct of Class III Gaming, the Tribal Gaming Agency shall deny the application.

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

D. Procedure for Forwarding Applications and Reports.

Procedures for forwarding applications and investigative reports to the Commission and State Gaming Representative:

1. When a key employee or primary management official begins work ~~[at a]~~ for the Gaming Enterprise authorized by this Compact, the Tribal Gaming Agency shall forward to the Commission and the State Gaming Representative a completed application for employment.
2. The Tribal Gaming Agency shall forward the report referred to in Paragraph D.4. of this section to the Commission and the State Gaming Representative within sixty (60) days after an employee begins work, or within sixty (60) days

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1 of the approval of this Compact by the Secretary
2 of the Interior.

- 3 3. A key employee or primary management official who
4 does not have a license shall not be employed
5 after ninety (90) days.
- 6 4. The Tribal Gaming Agency shall prepare and
7 forward to the Commission and the State Gaming
8 Representative a report on each background
9 investigation ("Investigative Report"). An
10 Investigative Report shall include all of the
11 following:
12 (a) steps taken in conducting the background
13 investigation;
14 (b) results obtained;
15 (c) conclusions reached; and
16 (d) the basis for those conclusions.
- 17 5. The Tribal Gaming Agency shall submit with the
18 Investigative Report a copy of the eligibility
19 determination made under Paragraph C.5. of this
20 section.
- 21 6. If a license is not issued to an applicant, the
22 Tribal Gaming Agency shall notify the Commission
23 and the State Gaming Representative.
- 24 7. With respect to principals, key employees and
25 primary management officials, the Tribal Gaming
Agency shall retain applications for employment
and Investigative Reports (if any) for no less
than three (3) years from the date of termination

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1 of employment.

2 E. Granting a Gaming License.

3 1. If within thirty (30) days after it receives an
4 Investigative Report, neither the Commission nor
5 the State Gaming Representative has notified the
6 Tribal Gaming Agency that it has an objection to
7 the issuance of a license pursuant to a license
8 application filed by a principal, key employee or
9 primary management official, the Tribal Gaming
Agency may issue a license to such applicant.

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

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

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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 primary management official for whom
6 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.

12 F. Management Contract.

- 13 1. If the Tribe chooses to enter into a Management
14 Contract, the Tribal Gaming Agency shall require
15 that all principals, primary management officials
16 and key employees of the Management Contractor be
17 licensed.
- 18 2. The Tribe may enter into a Management Contract
19 only if the Management Contract:
20 (a) provides that all Class III Gaming covered
21 by the Management Contract will be conducted
22 in accordance with the IGRA, the Ordinance
23 and this Compact;
24 (b) enumerates the responsibilities of each of
25 the parties for each identifiable function,
including:
(1) maintaining and improving the Gaming

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- Facility;
- (2) providing operating capital;
- (3) establishing operating days and hours;
- (4) hiring, firing, training and promoting employees;
- (5) maintaining the Gaming Enterprise's books and records;
- (6) preparing the Gaming Enterprise's financial statements and reports;
- (7) paying for the services of the independent auditor engaged pursuant to 25 C. F. R. § 571.12;
- (8) hiring and supervising security personnel;
- (9) providing fire protection services;
- (10) setting an advertising budget and placing advertising;
- (11) paying bills and expenses;
- (12) establishing and administering employment 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 of 1986, as amended;
- (15) paying the cost of public safety services; and

1 (16) if applicable, supplying the Commission
2 with all information necessary for the
3 Commission to comply with the National
4 Environmental Policy Act of 1969;

5 (c) provides for the establishment and
6 maintenance of satisfactory accounting
7 systems and procedures that shall, at a
8 minimum:

9 (1) include an adequate system of internal
10 controls;

11 (2) permit the preparation of financial
12 statements in accordance with generally
13 accepted accounting principles;

14 (3) be susceptible to audit;

15 (4) permit the calculation and payment of
16 the Management Contractor's fee; and

17 (5) provide for the allocation of operating
18 expenses or overhead expenses among the
19 Tribe, the Management Contractor and any
20 other user of a shared Gaming Facility
21 and services;

22 (d) requires the Management Contractor to
23 provide the Tribe, not less frequently than
24 monthly, verifiable financial reports or all
25 information necessary to prepare such
reports;

(e) requires the Management Contractor to
provide immediate access to the Gaming

1 Facility, including its books and records,
2 by appropriate officials of the Tribe, who
3 shall have:

- 4 (1) the right to verify the daily gross
5 revenues and income from the gaming
6 [~~enterprise~~] activities; and
7 (2) access to any other gaming-related
8 information the Tribe deems appropriate;

9 (f) provides for a minimum guaranteed monthly
10 payment to the Tribe in a sum certain that
11 has preference over the retirement of
12 development and construction costs;

13 (g) provides an agreed upon maximum dollar
14 amount for the recoument of development and
15 construction costs;

16 (h) provides for a term not to exceed the period
17 allowed by the IGRA;

18 (i) details the method of compensating and
19 reimbursing the Management Contractor. If a
20 Management Contract provides for a
21 percentage fee, such fee shall be either:

- 22 (1) not more than thirty percent (30%) of
23 the net revenues [~~of~~] from the gaming
24 [~~enterprise~~] activities if the Chairman
25 of the Commission determines that such
percentage is reasonable considering the
circumstances; or
(2) not more than forty percent (40%) of the

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1 net revenues if the Chairman of the
2 Commission is satisfied that the capital
3 investment required and income
4 projections for the gaming [~~enterprise~~]
5 activities require the additional fee;

- 6 (j) provides the grounds and mechanisms for
7 modifying or terminating the Management
8 Contract;
- 9 (k) contains a mechanism to resolve disputes
10 between:
11 (1) the Management Contractor and customers,
12 consistent with the procedures in the
13 Ordinance;
14 (2) the Management Contractor and the Tribe;
15 and
16 (3) the Management Contractor and the Gaming
17 Enterprise employees;
- 18 (l) indicates whether and to what extent
19 contract assignments and subcontracting are
20 permissible;
- 21 (m) indicates whether and to what extent changes
22 in the ownership interest in the Management
23 Contract require advance approval by the
24 Tribe; and
- 25 (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 parties

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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. Confidentiality of Records. Any and all background Investigative Reports on employees or contractors, supporting documents acquired or generated in connection therewith, and any other Investigative Reports or documents acquired or generated in the course of investigations performed by the Tribe or the Tribal Gaming Agency, that are provided to the State Gaming Representative or any other agency or official of the State by the Tribal Gaming Agency or the Tribe pursuant to the provisions of this Compact, shall not be deemed public records of the State and shall not be disclosed to any member of the public without the prior express written authorization of an authorized representative of the Tribe; provided, that nothing herein shall preclude any State agency or official from providing information to a federal agency or official having responsibility relative to Indian Gaming or from compliance with any valid order of a court having jurisdiction.

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

A. Within thirty (30) days after the effective date of this Compact, if it has not already done so, the Tribal Gaming

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1 Agency will adopt standards for any and all Class III Gaming
2 equipment, devices or supplies to be purchased, leased or
3 otherwise acquired by the Tribe after the effective date of
4 this Compact for use in any Gaming Facility, which standards
5 shall be at least as strict as the comparable standards
6 applicable to Class III Gaming equipment, devices or supplies
7 within the State of Nevada. Any and all Class III Gaming
8 equipment, devices or supplies acquired by the Tribe after the
9 date of this Compact shall meet or exceed the standards
10 thereby adopted, and any and all Class III Gaming equipment,
11 devices or supplies used by the Tribe in its Gaming Facilities
12 as of the effective date of this Compact shall be upgraded or
13 replaced, if necessary, so as to comply with such standards,
14 by no later than one (1) year after the effective date of this
15 Compact.

14 B. Prior to entering into any future lease or purchase
15 agreement for Class III Gaming equipment, devices or supplies,
16 the Tribe shall obtain sufficient information and
17 identification from the proposed seller or lessor and all
18 persons holding any direct or indirect financial interest in
19 the lessor or the lease/purchase agreement to permit the Tribe
20 to license those persons in accordance with Section 5 [~~hereof~~]
21 of this compact.

21 C. The seller, lessor, manufacturer or distributor shall
22 provide, assemble and install all Class III Gaming equipment,
23 devices or supplies in a manner approved and licensed by the
24 Tribe.

25 SECTION 7. Dispute Resolution.

1 A. In the event either party believes that the other
2 party has failed to comply with or has otherwise breached any
3 provision of this Compact, such party may invoke the following
4 procedure:

- 5 1. The party asserting noncompliance shall serve
6 written notice on the other party. The notice
7 shall identify the specific Compact provision
8 believed to have been violated and shall specify
9 the factual and legal basis for the alleged
10 noncompliance. The notice shall specifically
11 identify the date, time and nature of the alleged
12 noncompliance. Representatives of the State and
13 Tribe shall thereafter meet within thirty (30)
14 days in an effort to resolve the dispute.
- 15 2. In the event an allegation by the complaining
16 party is not resolved to the satisfaction of such
17 party within ninety (90) days after service of
18 the notice set forth in Paragraph A. 1. of this
19 section, the complaining party may serve upon the
20 other party a notice to cease conduct of the
21 particular game(s) or activities alleged by the
22 complaining party to be in noncompliance. Upon
23 receipt of such notice, the responding party may
24 elect to stop the game(s) or activities specified
25 in the notice or invoke arbitration and continue
the game(s) or activities pending the results of
arbitration. The responding party shall act upon
one of the foregoing options within thirty (30)

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1 days of receipt of notice from the complaining
2 party.

- 3 3. Arbitration under this authority shall be
4 conducted under the Commercial Arbitration Rules
5 of the American Arbitration Association, except
6 that the arbitrators shall be attorneys who are
7 licensed members in good standing of the State
8 Bar of New Mexico or of the bar of another state.
9 The State will select one arbitrator, the Tribe a
10 second arbitrator, and the two so chosen shall
11 select a third arbitrator. If the third
12 arbitrator is not chosen in this manner within
13 ten (10) days after the second arbitrator is
14 selected, the third arbitrator will be chosen in
15 accordance with the rules of the American
16 Arbitration Association.
- 17 4. All parties shall bear their own costs of
18 arbitration and attorney fees.
- 19 5. The results of arbitration shall be enforceable
20 by an action for injunctive or mandatory
21 injunctive relief against the State and the Tribe
22 in any court of competent jurisdiction. For
23 purposes of any such action, the State and the
24 Tribe acknowledge that any action or failure to
25 act on the part of any agent or employee of the
State or the Tribe, contrary to a decision of the
arbitrators in an arbitration proceeding
conducted under the provisions of this section,

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1 occurring after such decision, shall be wholly
2 unauthorized and ultra vires acts, not protected
3 by the sovereign immunity of the State or the
4 Tribe.

5 B. Nothing in Subsection 7A. shall be construed to
6 waive, limit or restrict any remedy that is otherwise
7 available to either party to enforce or resolve disputes
8 concerning the provisions of this Compact. Nothing in this
9 Compact shall be deemed a waiver of the Tribe's sovereign
10 immunity. Nothing in this Compact shall be deemed a waiver of
11 the State's sovereign immunity.

SECTION 8. Protection of Visitors.

12 A. Liability to Visitors. The safety and protection of
13 visitors to a Gaming Facility and uniformity and application
14 of laws and jurisdiction of claims is directly related to and
15 necessary for the regulation of Tribal gaming activities in
16 this state. To that end, the general civil laws of New Mexico
17 and concurrent civil jurisdiction in the State courts and the
18 Tribal courts shall apply to a visitor's claim of liability
19 for bodily injury or property damage proximately caused by the
20 conduct of the Gaming Enterprise and:

- 21 1. occurring at a Gaming Facility, other premises,
22 structures, on grounds or involving vehicles and
23 mobile equipment used by a Gaming Enterprise;
- 24 2. arising out of a condition at the Gaming Facility
25 or on premises or roads and passageways
immediately adjoining it;
3. occurring outside of the Gaming Facility but

1 arising from the activities of the Gaming
2 Enterprise;

- 3 4. as a result of a written contract that directly
4 relates to the ownership, maintenance or use of a
5 Gaming Facility or when the liability of others
6 is assumed by the Gaming Enterprise; or
7 5. on a road or other passageway on Indian lands
8 while the visitor is traveling to or from the
9 Gaming Facility.

10 B. Insurance Coverage for Claims Required. The Gaming
11 Enterprise shall maintain in effect policies of liability
12 insurance insuring the Tribe, its agents and employees against
13 claims, demands or liability for bodily injury and property
14 damages by a visitor arising from an occurrence described in
15 Subsection A of this section. The policies shall provide
16 bodily injury and property damage coverage in an amount of a
17 least one million dollars (\$1,000,000) per person and ten
18 million dollars (\$10,000,000) per occurrence. The Tribe shall
19 provide the State Gaming Representative annually a certificate
20 of insurance showing that the Tribe, its agents and employees
21 are insured to the required extent and in the circumstances
22 described in this section.

23 C. Limitation on Time to Bring Claim. Claims brought
24 pursuant to the provisions of this section must be commenced
25 by filing an action in court or a demand for arbitration
within three years of the date the claim accrues.

D. Specific Waiver of Immunity. The Tribe, by entering
into this Compact and agreeing to the provisions of this

1 section, waives its defense of sovereign immunity in
 2 connection with any claims for compensatory damages up to the
 3 amount of one million dollars (\$1,000,000) per injured person
 4 and ten million dollars (\$10,000,000) per occurrence asserted
 5 as provided in this section. This is a limited waiver and
 6 does not waive the tribe's immunity from suit for any other
 7 purpose. The Tribe shall ensure that a policy of insurance
 8 that it acquires to fulfill the requirements of this section
 9 shall include a provision under which the insurer agrees not
 10 to assert the defense of sovereign immunity on behalf of the
 insured.

11 E. Election by Visitor. A visitor having a claim
 12 described in this section may pursue that claim in the State
 13 court of general jurisdiction for such claims or the Tribal
 14 court or, at the option of the visitor, may proceed to enforce
 15 the claim in binding arbitration. The visitor shall make a
 written election that is final and binding upon the visitor.

16 F. Arbitration. Arbitration shall be conducted pursuant
 17 to an election by a visitor as provided in Subsection E of
 18 this section as follows:

- 19 1. the visitor shall submit a written demand for
 20 arbitration to the Gaming Enterprise, by certified
 21 mail, return receipt requested;
- 22 2. the visitor and the Gaming Enterprise shall each
 23 designate an arbitrator within thirty (30) days of
 24 the date of receipt of the demand, and the two
 arbitrators shall select a third arbitrator;
- 25 3. the arbitration panel shall permit the parties to

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- 1 engage in reasonable discovery, and shall
2 establish other procedures to ensure a full, fair
3 and expeditious hearing on the claim; and
4 4. the award of the arbitration panel shall be final
5 and binding.

6 G. Public Health and Safety. The Tribe shall establish
7 for its Gaming Facility health, safety and construction
8 standards that are at least as stringent as the current
9 editions of the National Electrical Code, the Uniform Building
10 Code, the Uniform Mechanical Code, the Uniform Fire Code and
11 the Uniform Plumbing Code, and any and all Gaming Facilities
12 or additions thereto constructed by the Tribe hereafter shall
13 be constructed and all facilities shall be maintained so as to
14 comply with such standards. Inspections will be conducted
15 with respect to these standards at least annually. If the
16 State Gaming Representative requests sufficiently in advance
17 of an annual inspection, the State Gaming Representative may
18 be present during such inspection. The Tribe agrees to
19 correct any deficiencies noted in such inspections within a
20 time agreed upon between the State and Tribe. The Tribal
21 Gaming Agency will provide copies of such inspection reports
22 to the State Gaming Representative, if requested to do so in
23 writing.

24 SECTION 9. Effective Date.

25 This Compact shall be effective immediately upon [the
26 ~~occurrence of the last of the following:~~

27 ~~A. execution by the Tribe's Governor after approval of
28 the Tribal Council;~~

- ~~B. execution by the Governor of the State;~~
- ~~C. approval by the Secretary of the Interior; and~~
- ~~D.] publication of the notice of the Secretary of Interior's action or inaction in the Federal Register.~~

The Governor is authorized to execute [~~compacts~~] a compact with an individual Tribe [~~that has also entered into revenue sharing agreements and has passed resolutions described herein,~~] in substantially the same form as set forth herein. Upon signature by the Governor and the authorized official of the Tribe, the Compact shall be transmitted to the Secretary of the Interior for [~~approval~~] review and action pursuant to the IGRA.

SECTION 10. Criminal Jurisdiction.

A. The Tribe and the State acknowledge that under the provisions of § 23 of the IGRA, especially that portion codified at 18 U. S. C. § 1166(d), jurisdiction to prosecute violations of State gambling laws made applicable by that section to Indian country is vested exclusively within the United States, unless the Tribe and the State agree in a compact entered into pursuant to the IGRA to transfer such jurisdiction to the State.

B. The Tribe and the State hereby agree that, in the event of any violation of any State gambling law on Indian Lands or any other crime against the Gaming Enterprise or any employee thereof or that occurs on the premises of the Tribal Gaming Facility, that is committed by any person who is not a member of the Tribe, the State shall have and may exercise jurisdiction, concurrent with that of the United States, to

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1 prosecute such person, under its laws and in its courts.

2 C. Immediately upon becoming aware of any such suspected
3 crime by a nonmember of the Tribe, the Gaming Enterprise or
4 the Tribal Gaming Agency shall notify the state attorney
5 general and the district attorney for the district in which
6 the Gaming Facility is located, supplying all particulars
7 available to the tribal entity at the time. The Tribe agrees
8 that its law enforcement and gaming agencies shall perform
9 such additional investigation or take such other steps in
10 furtherance of the investigation and prosecution of the
11 violation as the district attorney may reasonably request, and
12 otherwise cooperate fully with the district attorney and any
13 state law enforcement agencies with respect to the matter, but
14 once notice of a suspected violation has been given to the
15 district attorney, the matter shall be deemed to be under the
16 jurisdiction of the State (except that in the event of
17 emergency circumstances involving a possible violation, the
18 Tribe and its constituent agencies shall have the discretion
19 to act as they see fit, and to call upon such other agencies
20 or entities as they deem reasonable or necessary, in order to
21 protect against any immediate threat to lives or property).
22 The State may, in its discretion, refer the matter to federal
23 authorities, but it shall notify the Tribal Gaming Agency upon
24 doing so.

25 D. The State agrees that no less frequently than
annually it will provide the Tribal Gaming Agency with a
written report of the status and disposition of each matter
referred to it under the provisions of this section that is

1 still pending. In the event the district attorney to whom a
2 matter is referred under the provisions of this section
3 decides not to prosecute such matter, the district attorney
4 shall promptly notify the Tribal Gaming Agency of such
5 decision in writing. The Tribal Gaming Agency may in that
6 event ask the attorney general of the state to pursue the
7 matter.

8 E. The district attorney for the district in which the
9 Gaming Facility is situated may decline to accept referrals of
10 cases under the provisions of this section unless and until
11 the Tribe has entered into a Memorandum of Understanding with
12 the office of the district attorney to which Memorandum of
13 Understanding the United States Attorney for the District of
14 New Mexico may also be a party addressing such matters as the
15 specific procedures by which cases are to be referred,
16 participation of the Tribal Gaming Agency and tribal law
17 enforcement personnel in the investigation and prosecution of
18 any such case, payments by the Tribe to the office of the
19 district attorney to defray the costs of handling cases
20 referred under the provisions of this section, and related
21 matters.

22 SECTION 11. Revenue Sharing Provisions.

23 A. The Tribe agrees to contribute a portion of its Class
24 III Gaming revenues to the State, in return for which the
25 State agrees that the Tribe:

1. shall have the exclusive right within the State
to conduct the types of Class III Gaming described in the
Indian Gaming Compact, with the sole exception of the

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1 operation of Gaming Machines, which the State may permit on a
2 limited basis to be operated by racetracks and nonprofit
3 organizations; and

4 2. will share with the State that part of its
5 revenues derived from the operation of Gaming Machines and all
6 other revenue received by the Tribe from its gaming activities
7 is exclusively the Tribe's.

8 B. The parties agree that, after the effective date of a
9 Compact between the Tribe and the State, the Tribe shall make
10 the quarterly payments and contributions provided for in
11 Subsection D of this section to the state treasurer for
12 deposit into the State General Fund.

13 C. As used in this Compact, "net win" means the total
14 amount wagered at a Gaming Facility on Gaming Machines for a
15 stated period less the following amounts for the same period:

16 1. the amount paid out in prizes from gaming on
17 Gaming Machines;

18 2. the amount of regulatory fees paid to the state;
19 and

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

D. The Tribe agrees to contribute for a quarter:

(1) six percent (6%) of the first one million five
hundred thousand dollars (\$1,500,000) of net win; and

1 (2) ten percent (10%) of amounts of net win over one
2 million five hundred thousand dollars (\$1,500,000).

3 E. For purposes of these payments, all calculations of
4 amounts due shall be based upon the quarterly activity of the
5 gaming facility. Quarterly payments due to the State pursuant
6 to these terms shall be paid no later than twenty-five (25)
7 days after the last day of each calendar quarter.

8 SECTION 12. Limitations.

9 The Tribe's obligation to make the payments provided for
10 in SECTION 11 of the Compact shall terminate in the event of
11 any of the following conditions:

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

16 B. if the State permits any expansion of nontribal Class
17 III Gaming in the State; provided, however, that none of the
18 following shall be considered an expansion of non-tribal Class
19 III Gaming for purposes of this Compact:

20 1. the operation of a State lottery;

21 2. the licensing of nonprofit organizations as
22 defined in the Gaming Control Act, to operate Gaming Machines
23 consistent with the provisions of Section 60-2E-28 NMSA 1978
24 as enacted in 1997;

25 3. limited fundraising activities conducted by
nonprofit tax-exempt organizations pursuant to Section 30-19-6
NMSA 1978; and

4. the licensing of horse racetracks to operate

1 Gaming Machines on days on which live or simulcast horse
2 racing occurs consistent with the provisions of Section
3 60-2E-27 NMSA 1978 as enacted in 1997.

4 SECTION 13. Termination of Compact on Default of Agreed Upon
5 Contributions.

6 If the Tribe is in default of its agreed upon
7 contributions in any amount due to the State pursuant to its
8 Compact or a Payment Agreement, the Gaming Control Board may
9 make a determination that the Compact entered into between the
10 Tribe and the State be terminated. To terminate the Compact,
11 the Gaming Control Board shall send a Notice of Default and
12 Intent to Terminate to the Tribe. The Compact shall terminate
13 automatically and without the need for further action thirty
14 days following the date on which the Notice of Default and
15 Intent to Terminate is received, unless the dispute resolution
16 provisions of the Compact are invoked or the default is cured
17 during that thirty-day period. If the dispute resolution
18 provisions are invoked, the Tribe has thirty days from the
19 date of the final decision resolving the dispute to pay the
20 amount determined to be due to the State. If payment is not
21 made within thirty days, the Tribe's Compact is terminated.
22 If the Notice of Default and Intent to Terminate is received
23 by the Tribe and it continues to operate gaming activities
24 beyond the thirty day period or if the dispute resolution
25 provisions are invoked and the final result does not provide
for continuation of gaming pursuant to the Compact, the State
may request the United States Attorney to take appropriate
action to terminate the Tribe's Compact pursuant to the IGRA.

1 SECTION 14. Compact Negotiated by Parties.

2 This Compact, as of the date it is signed by the
3 appropriate official of the Tribe and the Governor of the
4 State, is deemed to have been negotiated in good faith and
5 written by the parties who are signatories to this Compact.

6 SECTION 15. Revenue-Sharing Agreements Void.

7 On the date on which the action of or failure to act by
8 the Secretary of the Interior on this Compact entered into by
9 the Tribe and the State is published in the federal register,
10 the Revenue-Sharing Agreement entered into in 1997 between the
11 Tribe and the State is void.

12 SECTION ~~[11.]~~ 16. Binding Effect and Duration.

13 A. This Compact shall be binding upon the State and
14 Tribe for a term of ~~[nine (9)]~~ twelve (12) years from the date
15 it becomes effective ~~[and may renew]~~, less the amount of time,
16 if any, that the tribe has operated under a compact executed
17 in 1997, and may be renewed for an additional period.

18 B. Before the date that is one (1) year prior to the
19 expiration of the ~~[ten-year (10-year) initial term, and/or]~~
20 term or before the date that is one (1) year prior to the
21 expiration of the renewal period, either party may serve
22 written notice on the other of its desire to renegotiate this
23 Compact.

24 C. In the event that either party gives written notice
25 to the other of its desire to renegotiate this Compact
pursuant to Subsection B. of this section, the Tribe may,
pursuant to the procedures of the IGRA, request the State to
enter into negotiations for a new compact governing the

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1 conduct of Class III Gaming. If the parties are unable to
2 conclude a successor compact, this Compact shall terminate.

3 D. Notwithstanding the foregoing, at any time while this
4 Compact remains in effect, either party may, by written notice
5 to the other party, request reopening of negotiations with
6 respect to any provision of this Compact, or with respect to
7 any issue not addressed in the Compact, specifying such
8 provision or issue in such notice. No such request shall be
9 unreasonably refused, but neither party shall be required to
10 agree to any change in the Compact, and no agreement to
11 supplement or amend this Compact in any respect shall have any
12 validity until the same shall have been approved in writing by
13 the Tribe, the State and the Secretary of the Interior and
14 notice of such approval published in the Federal Register.

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

17 SECTION ~~[12.]~~ 17. Notice to Parties.

18 Unless otherwise indicated, all notices, payments,
19 requests, reports, information or demand that any party hereto
20 may desire or may be required to give to the other party
21 hereto, shall be in writing and shall be personally delivered
22 or sent by first-class mail sent to the other party at the
23 address provided in writing by the other party. Every notice,
24 payment, request, report, information or demand so given shall
25 be deemed effective upon receipt or, if mailed, upon receipt
or the expiration of the third day following the day of
mailing, whichever occurs first, except that any notice of
change of address shall be effective only upon receipt by the

1 party to whom said notice is addressed.

2 SECTION [~~13-~~] 18. Entire Agreement.

3 This Compact is the entire agreement between the parties
4 and supersedes all prior agreements, whether written or oral,
5 with respect to the subject matter hereof. Neither this
6 Compact nor any provision herein may be changed, waived,
7 discharged or terminated orally, but only by an instrument, in
8 writing, signed by the Tribe and the State and approved by the
9 Secretary of the Interior. This Compact shall not be amended
10 without the express approval of the Tribe, the Governor of the
11 State and the State Legislature.

12 SECTION [~~14-~~] 19. Filing of Compact with State Records
13 Center.

14 Upon the effective date of this Compact, a copy shall be
15 filed by the Governor with the New Mexico Records Center. Any
16 subsequent amendment or modification of this Compact shall be
17 filed with the New Mexico Records Center.

18 SECTION [~~15-~~] 20. Counterparts.

19 This Compact may be executed by the parties in any number
20 of separate counterparts with the same effect as if the
21 signatures were upon the same instrument. All such
22 counterparts shall together constitute one and the same
23 document. ". "

24 Section 2. TEMPORARY PROVISION--RECONCILIATION OF PRIOR
25 REVENUE-SHARING PAYMENTS--PAYMENT AGREEMENT. --

A. If a tribe that has an existing Indian Gaming Compact
and revenue-sharing agreement executed in 1997 wishes to enter
into an Indian Gaming Compact pursuant to this act, the

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1 governor of the state and the authorized official of a tribe
2 shall jointly prepare an accounting of all amounts due from
3 and contributed by the tribe to the state pursuant to the
4 terms of the revenue-sharing agreement that was in effect
5 between the tribe and the state beginning in 1997 and all
6 regulatory fees deducted from the tribe's gaming net win, as
7 defined in Section 11-13-1 NMSA 1978, and regulatory fees due
8 to the state pursuant to the terms of Paragraph 5 of
9 Subsection E of SECTION 4 of the Indian Gaming Compact between
the tribe and the state.

10 B. If the total amount contributed, as determined in
11 Subsection A of this section, is less than the amount owed,
12 the governor of the state and the appropriate official of the
13 tribe shall execute a payment agreement. The payment
14 agreement shall set forth the amount of the deficit owed to
15 the state by the tribe and specify the date by which and the
16 manner in which the tribe shall pay the amount of the deficit;
17 provided that the payment agreement shall provide that the
18 deficit owed by the tribe to the state shall be paid within
19 two years following the date of execution of the payment
20 agreement.

21 C. As used in this section, "tribe" means an Indian
22 nation, tribe or pueblo located in whole or in part in New
23 Mexico.

24 Section 3. LIMITED APPLICABILITY. --

25 A. The provisions of this act apply to an Indian
Gaming Compact executed between the state and a tribe after
the act's effective date only if:

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1 (1) the tribe has no outstanding balance due the
2 state of money owed pursuant to an Indian Gaming Compact or to
3 a revenue-sharing agreement entered into between the tribe and
4 the state in 1997 pursuant to Section 11-13-1 NMSA 1978; or

5 (2) the tribe has an outstanding balance due the
6 state pursuant to Paragraph (1) of this subsection but has
7 entered into a payment agreement pursuant to Section 2 of this
8 act.

9 B. As used in this section:

10 (1) "outstanding balance due the state" includes
11 an amount that is disputed between the state and a tribe and
12 has been submitted to arbitration or become the subject of an
13 action in court in which there has been no settlement,
14 dismissal or final judgment entered; and

15 (2) "tribe" means an Indian nation, tribe or
16 pueblo.

17 Section 4. REPEAL. -- Section 11-13-2 NMSA 1978 (being
18 laws 1997, Chapter 190, Section 2) is repealed.