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SENATE BILL 804

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO GAMING; ENACTING A GAMING COMPACT FORM ON WHICH
THE GOVERNOR MAY BASE INDIAN GAMING COMPACTS WITH TRIBES;
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN
EMERGENCY.

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

Section 1. INDIAN GAMING COMPACT. --The governor of New
Mexico is authorized to enter into this Indian Gaming Compact
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 as entered into shall be substantially in the form
that follows:

"INDIAN GAMING COMPACT

PART I

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1 to this compact; and

2 WHEREAS, the Tribe owns or controls Indian lands and by
3 ordinance of the Tribe has adopted rules governing class III
4 games played and related activities at all gaming facilities
5 on that land; and

6 WHEREAS, the State and the Tribe, in recognition of the
7 sovereign rights of each party and in a spirit of cooperation
8 to promote the best interests of the residents of the State,
9 including the members of the Tribe, have engaged in good faith
10 negotiations, recognizing and respecting the interests of each
11 party, and have agreed to the following compact;

12 NOW, THEREFORE, the State and the Tribe agree to the
13 terms and conditions set forth in Part II of this compact.

14 PART II

15 TERMS AND CONDITIONS

16 SECTION 1. PURPOSE AND OBJECTIVES. The purpose and
17 objectives of the State and the Tribe in making this compact
18 are as follows:

19 A. to evidence the good will and cooperative
20 spirit between the State and the Tribe;

21 B. to continue the development of an effective
22 government-to-government relationship between the State and
23 the Tribe;

24 C. to provide for the regulation of class III
25 gaming on Indian lands as required by the IGRA;

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

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

9 F. to provide for the effective regulation of
10 class III gaming in which the Tribe shall have the sole
11 proprietary interest and be the primary beneficiary;

12 G. to address the State's interest in the
13 establishment, by the Tribe, of rules and procedures for
14 ensuring that class III gaming is conducted fairly and
15 honestly by the owners, operators, employees and patrons of
16 any class III gaming enterprise on Indian lands; and

17 H. to settle and resolve certain disputes that
18 have arisen between the Tribe and the State under the
19 provisions of the predecessor agreements.

20 SECTION 2. DEFINITIONS. For purposes of this compact,
21 the following definitions pertain:

22 A. "board" means the State's gaming control board;

23 B. "class III gaming" means all forms of gaming as
24 defined in 25 U.S.C. Section 2703(8) and 25 C.F.R. Section
25 502.4;

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1 C. "compact" means this compact between the State
2 and the Tribe;

3 D. "gaming activity" means any endeavor associated
4 with the conduct of class III gaming;

5 E. "gaming employee" means a person connected
6 directly with a gaming activity, but "gaming employee" does
7 not include:

8 (1) bartenders, cocktail servers or other
9 persons engaged solely in preparing or serving food or
10 beverages;

11 (2) secretarial or janitorial personnel;

12 (3) stage, sound or light technicians; or

13 (4) other nongaming personnel;

14 F. "gaming enterprise" means the tribal entity
15 created or designated by the Tribe to have authority to
16 conduct class III gaming pursuant to this compact;

17 G. "gaming facility" means the buildings or
18 structures in which class III gaming is conducted on Indian
19 lands;

20 H. "gaming machine" means a mechanical,
21 electromechanical or electronic contrivance, device or machine
22 that, upon insertion of a coin, token or similar object, or
23 upon payment of any consideration, is available to play or
24 operate a game, whether the payoff is made automatically from
25 the gaming machine or in any other manner;

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1 I. "Indian lands" means:

2 (1) all lands within the exterior boundaries
3 of the Tribe's reservation and its confirmed grants from prior
4 sovereigns; or

5 (2) any other lands, title to which is either
6 held in trust by the United States for the exclusive benefit
7 of the Tribe or a member of the Tribe or is held by the Tribe
8 or a member of the Tribe subject to restrictions against
9 alienation imposed by the United States, and over which the
10 Tribe exercises jurisdiction and governmental authority, but
11 not including any land within the boundaries of a municipality
12 that is outside of the boundaries of the Tribes' s reservation
13 or confirmed Spanish grant, as those boundaries existed on
14 October 17, 1988;

15 J. "key employee" means that term as defined in 25
16 C. F. R. Section 502. 14;

17 K. "management contract" means a contract within
18 the meaning of 25 U. S. C. Sections 2710(d) (9) and 2711;

19 L. "management contractor" means any person or
20 entity that has entered into a management contract with the
21 Tribe;

22 M "ordinance" means the gaming ordinance and any
23 amendments thereto adopted by the tribal council of the Tribe;

24 N. "primary management official" means that term
25 as defined in 25 C. F. R. Section 502. 19;

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1 O. "State" means New Mexico; and

2 P. "state gaming representative" means the person
3 designated by the board pursuant to the Gaming Control Act or
4 an agency of the State if set forth in other law, who is
5 responsible for action of the State set out in the compact and
6 who is the single contact with the Tribe and may be relied
7 upon as such by the Tribe.

8 SECTION 3. AUTHORIZED CLASS III GAMING.

9 A. SCOPE OF GAMING. The Tribe may conduct, only
10 on its Indian lands, subject to all of the terms and
11 conditions of this compact, any or all forms of casino-style
12 gaming, including but not limited to slot machines and other
13 forms of electronic gaming devices; all forms of poker,
14 blackjack and other casino-style card games, both banked and
15 unbanked; roulette; craps; keno; wheel of fortune; pai gow;
16 and other games played in casino settings; and any form of a
17 lottery.

18 B. TRIBALLY IMPOSED LIMITATIONS. Subject to the
19 foregoing, the Tribe shall establish in its discretion, by
20 tribal law, such limitations as it deems appropriate on the
21 number and type of class III gaming conducted, the location of
22 class III gaming on its Indian lands, the hours and days of
23 operation and betting and pot limits, applicable to the gaming
24 activity.

25 SECTION 4. REGULATION OF CLASS III GAMING.

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1 A. TRIBAL GAMING AGENCY DUTIES. The tribal gaming
2 agency will assure that the Tribe:

3 (1) operates all class III gaming pursuant to
4 this compact, tribal law, the IGRA and other applicable
5 federal law;

6 (2) provides for the physical safety of
7 patrons in any gaming facility;

8 (3) provides for the physical safety of
9 personnel employed by the gaming enterprise;

10 (4) provides for the physical safeguarding of
11 assets transported to and from the gaming facility and
12 cashier's department;

13 (5) provides for the protection of the
14 property of the patrons and the gaming enterprise from illegal
15 activity;

16 (6) participates in licensing of primary
17 management officials and key employees of the gaming
18 enterprise;

19 (7) detains persons who may be involved in
20 illegal acts for the purpose of notifying law enforcement
21 authorities; and

22 (8) records and investigates any and all
23 unusual occurrences related to class III gaming within the
24 gaming facility.

25 B. REGULATIONS. The Tribe shall adopt laws

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1 without affecting the generality of the foregoing:

2 (1) prohibiting participation in any class
3 III gaming by any person under the age of twenty-one years;

4 (2) prohibiting the employment of any person
5 in class III gaming activities as a gaming employee who is
6 under the age of eighteen years or who has not been licensed
7 in accordance with Section 5 of this compact;

8 (3) requiring the Tribe to take all necessary
9 action to impose on its gaming operation standards and
10 requirements equivalent to or more stringent than those
11 contained in the federal Fair Labor Standards Act of 1938, the
12 federal Occupational Safety and Health Act of 1970 and any
13 other federal laws relating to wages, hours of work and
14 conditions of work and the regulations issued under those laws
15 that are applicable to an Indian tribe;

16 (4) requiring that on any construction
17 project involving any gaming facility or related structure
18 that is funded in whole or in part by federal funds, all
19 workers will be paid wages meeting or exceeding the standards
20 established for the State under the federal Davis-Bacon Act;

21 (5) prohibiting the Tribe, the gaming
22 enterprise and a management contractor from discriminating in
23 the employment of a person to work for the gaming enterprise
24 or in the gaming facility on the grounds of race, color,
25 national origin, gender, sexual orientation, age or handicap,

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1 but subject to federal law and tribal policies regarding
2 tribal and Indian preference in employment;

3 (6) providing to all qualifying employees of
4 a gaming establishment employment benefits, including, at a
5 minimum, sick leave, life insurance, paid annual leave and
6 medical and dental insurance as well as providing unemployment
7 insurance and workers' compensation insurance through
8 participation in programs offering benefits at least as
9 favorable as those provided by comparable State programs;

10 (7) providing a grievance process for an
11 employee in cases of disciplinary or punitive action taken
12 against an employee that includes a process for appeals to
13 persons of greater authority than the immediate supervisor of
14 the employee;

15 (8) requiring a gaming enterprise to adopt
16 standards and requirements at least as stringent as those
17 contained in the State's Food Service Sanitation Act;

18 (9) prohibiting a gaming enterprise from
19 cashing any paycheck or any type of government assistance
20 check, including social security, temporary assistance for
21 needy families, pension and other similar checks, for any
22 patron;

23 (10) prohibiting a gaming enterprise from
24 extending credit by accepting IOUs or markers from its
25 patrons;

1 (11) requiring that odds be posted on each
2 gaming machine;

3 (12) requiring that automatic teller machines
4 on gaming facility premises be programmed so that the machines
5 will not accept cards issued by the State to public assistance
6 recipients for access to temporary assistance for needy
7 families benefits;

8 (13) providing that each electronic or
9 electromechanical gaming device in use at the gaming facility
10 must pay out a mathematically demonstrable percentage of all
11 amounts wagered, which must not be less than eighty percent
12 (80%);

13 (14) providing that no later than ninety days
14 after this compact takes effect, all gaming machines on the
15 premises of the gaming facility will be connected to a central
16 computerized reporting and auditing system on the gaming
17 facility premises, which shall collect on a continual basis
18 the activity of each gaming machine in use at the gaming
19 facility;

20 (15) enacting provisions that:

21 (a) prohibit an employee of the gaming
22 facility from selling, serving, giving or delivering an
23 alcoholic beverage to an intoxicated person or from procuring
24 or aiding in the procurement of any alcoholic beverage for an
25 intoxicated person at the gaming facility;

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1 (b) require gaming facility employees
2 that dispense, sell, serve or deliver alcoholic beverages to
3 attend alcohol server education classes similar to those
4 classes provided for in the State Liquor Control Act; and

5 (c) require the gaming enterprise to
6 purchase and maintain a liquor liability insurance policy that
7 will provide, at a minimum, personal injury coverage of one
8 million dollars (\$1,000,000) per incident and two million
9 dollars (\$2,000,000) aggregate per policy year;

10 (16) requiring the gaming enterprise to spend
11 an amount that is no less than one-fourth of one percent
12 (.25%) of its net win as that term is defined herein annually
13 to fund or support programs for the treatment and assistance
14 of compulsive gamblers and for the prevention of compulsive
15 gambling within New Mexico;

16 (17) governing any management contract
17 regarding its class III gaming activity such that it conforms
18 to the requirements of tribal law and the IGRA and the
19 regulations issued thereunder; and

20 (18) the tribal gaming agency will provide
21 true copies of all tribal laws and regulations affecting class
22 III gaming conducted under the provisions of this compact to
23 the state gaming representative within thirty days after the
24 effective date of this compact, and will provide true copies
25 of any amendments to the compact or additional laws or

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1 regulations affecting gaming within thirty days after their
2 enactment or approval, if any.

3 C. AUDIT AND FINANCIAL STATEMENTS. The tribal
4 gaming agency shall require all books and records relating to
5 class III gaming to be maintained in accordance with generally
6 accepted accounting principles. All such books and records
7 shall be retained for a period of at least five years from the
8 date of creation pursuant to 25 C.F.R. Section 571.12. Not
9 less than annually, the tribal gaming agency shall require an
10 audit and a certified financial statement covering all
11 financial activities of the gaming enterprise by an
12 independent certified public accountant licensed by the State.
13 The financial statement shall be prepared in accordance with
14 generally accepted accounting principles and shall be
15 submitted to the tribal gaming agency within one hundred
16 twenty days of the close of the Tribe's fiscal year. Copies
17 of the financial statement and the audit shall be furnished to
18 the state gaming representative and the state treasurer by the
19 tribal gaming agency within one hundred twenty days of the
20 agency's receipt of the documents, but such documents shall be
21 considered confidential and shall not be considered public
22 records of the State, and no employee or agency of the State
23 shall provide any such document to any member of the public
24 without the express prior written consent of the Tribe. The
25 Tribe will maintain the following records for not less than

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1 five years:

2 (1) revenues, expenses, assets, liabilities
3 and equity for each gaming facility;

4 (2) daily cash transactions for each class
5 III gaming activity at each gaming facility, including but not
6 limited to transactions relating to each gaming table bank,
7 game dropbox and gaming room bank;

8 (3) all returned checks, hold checks or other
9 similar credit instruments;

10 (4) individual and statistical game records,
11 with the exception of card games, to reflect statistical drop
12 and statistical win; for electronic, computer or other
13 technologically assisted games, analytic reports that show the
14 total amount of cash wagered and the total amount of prizes
15 won;

16 (5) contracts, correspondence and other
17 transaction documents relating to all vendors and contractors;

18 (6) records of all tribal gaming enforcement
19 activities;

20 (7) audits prepared by or on behalf of the
21 Tribe; and

22 (8) personnel information on all class III
23 gaming employees or agents, including rotation sheets, hours
24 worked, employee profiles and background checks.

25 D. VIOLATIONS. The agents of the tribal gaming

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1 agency shall have unrestricted access to the gaming facility
2 during all hours of class III gaming activity, and shall have
3 immediate and unrestricted access to any and all areas of the
4 gaming facility for the purpose of ensuring compliance with
5 the provisions of this compact and the tribal gaming
6 ordinance. The agents shall report immediately to the tribal
7 gaming agency any suspected violation of this compact, the
8 tribal gaming ordinance or regulations of the tribal gaming
9 agency by the gaming enterprise, management contractor or any
10 person, whether or not associated with class III gaming.

11 E. STATE GAMING REPRESENTATIVE. Notwithstanding
12 that the Tribe has the primary responsibility to administer
13 and enforce the regulatory requirements of this compact, the
14 state gaming representative shall have the right to inspect a
15 gaming facility, gaming activity and all records relating to
16 class III gaming of the Tribe, subject to the following
17 conditions:

18 (1) with respect to public areas of a gaming
19 facility, at any time without prior notice during normal
20 gaming facility business hours;

21 (2) with respect to private areas of a gaming
22 facility not accessible to the public, at any time during
23 normal gaming facility business hours, immediately after
24 notifying the tribal gaming agency and gaming facility of his
25 presence on the premises and presenting proper identification,

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1 and requesting access to the non-public areas of the gaming
2 facility. The Tribe, in its sole discretion, may require an
3 employee of the gaming facility or the tribal gaming agency to
4 accompany the state gaming representative at all times that
5 the state gaming representative is on the premises of a gaming
6 facility, but if the Tribe imposes such a requirement, the
7 Tribe shall require such an employee of the gaming facility or
8 the tribal gaming agency to be available at all times for such
9 purposes;

10 (3) with respect to inspection and copying of
11 all management records relating to class III gaming, at any
12 time without prior notice between the hours of 9:00 a.m. and
13 4:00 p.m. Monday through Friday, excluding official holidays.
14 The reasonable costs of copying will be borne by the State;
15 and

16 (4) whenever the state gaming representative,
17 or his designee, enters the premises of the gaming facility
18 for any inspection, the gaming representative or designee
19 shall identify himself to security or supervisory personnel of
20 the gaming facility.

21 F. CONFIDENTIALITY OF RECORDS PROVIDED TO THE
22 GAMING REPRESENTATIVE OR BOARD.

23 (1) Gaming enterprise and gaming enterprise
24 operations information that is provided to the state gaming
25 representative shall not be considered public information and

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1 shall not be deemed subject to the State's Inspection of
2 Public Records Act. Trade secrets, information relating to
3 security and surveillance systems, cash handling and
4 accounting procedures, building layout, gaming machine
5 payouts, investigations into alleged violations of laws or
6 regulations, personnel records and proprietary information
7 regarding the gaming enterprise of the Tribe, class III gaming
8 conducted by the Tribe, or the operation thereof, shall not be
9 deemed public records as a matter of State law, and shall not
10 be disclosed to any member of the public without the prior
11 written approval of a duly authorized representative of the
12 Tribe. Any communication or document of the Tribe is
13 confidential and does not impose liability for defamation or
14 constitute a ground for recovery in any civil action if it is
15 required by the provisions of this compact.

16 (2) The confidentiality created pursuant to
17 this section is not waived or lost because the document or
18 communication is disclosed to the board. Notwithstanding the
19 powers granted to the board by the Gaming Control Act, the
20 board:

21 (a) may release or disclose any
22 confidential information, documents or communications provided
23 by the Tribe only with the prior written consent of the Tribe
24 or pursuant to a lawful court order after timely notice of the
25 proceedings has been given to the Tribe;

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1 (b) shall maintain all confidential
2 information, documents and communications in a secure place
3 accessible only to members of the board; and

4 (c) shall adopt procedures and
5 regulations to protect the confidentiality of information,
6 documents and communications provided by the Tribe.

7 (3) These prohibitions shall not be construed
8 to prohibit:

9 (a) the furnishing of any information
10 to a law enforcement or regulatory agency of the federal
11 government;

12 (b) the State from making known the
13 names of persons, firms or corporations conducting class III
14 gaming pursuant to the terms of this compact, locations at
15 which such activities are conducted or the dates on which such
16 activities are conducted;

17 (c) publishing the terms of this
18 compact;

19 (d) disclosing information as necessary
20 to audit, investigate, prosecute or arbitrate violations of
21 this compact or other applicable laws or to defend suits
22 against the State; and

23 (e) complying with subpoenas or court
24 orders issued by courts of competent jurisdiction.

25 (4) To the fullest extent allowed by State

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1 law, the Tribe shall have the right to inspect State records
2 concerning all class III gaming conducted by the Tribe; the
3 Tribe shall have the right to copy State records, with the
4 Tribe bearing the reasonable cost of copying.

5 G. REGULATORY FEE PAYMENTS.

6 (1) The Tribe shall reimburse the State for
7 the costs the board incurs in carrying out any functions
8 authorized by the terms of this compact in the amount of one
9 hundred thousand dollars (\$100,000) per calendar year
10 effective August 29, 1997, such annual amount to be prorated
11 for any calendar year in which operation of the gaming
12 facility by the Tribe is less than twelve months. Payments
13 due the State shall be made on a quarterly basis and shall be
14 paid no later than the twenty-fifth day of the month following
15 the end of a quarter to the State treasurer for deposit into
16 the State general fund. This amount shall increase by five
17 percent (5%) each year beginning on the first day of January
18 occurring after this compact has been in effect for at least
19 twelve months. Any regulatory fee payments paid by the Tribe
20 that exceeded the one hundred thousand dollars (\$100,000) per
21 calendar year effective August 29, 1997 shall be credited to
22 future regulatory fee payments.

23 (2) In the event the State believes that the
24 Tribe is not administering and enforcing the regulatory
25 requirements set forth herein, it may invoke the dispute

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1 resolution procedures set forth in Section 7 of this compact.

2 H. TRIBAL COMPLIANCE WITH FEDERAL LAWS. The Tribe
3 shall comply with all applicable provisions of the federal
4 Bank Secrecy Act and all reporting requirements of the
5 internal revenue service.

6 SECTION 5. LICENSING REQUIREMENTS.

7 A. LICENSE REQUIRED. The gaming facility
8 operator, not including the Tribe or tribal government,
9 including the principals, primary management officials and key
10 employees; if the Tribe hires a management contractor, the
11 management contractor and its principals, primary management
12 officials and key employees; any person, corporation or other
13 entity that has supplied or proposes to supply any gaming
14 device to the Tribe or the management contractor; and any
15 person, corporation or other entity providing gaming services
16 within or without a gaming facility shall apply for and
17 receive a license from the tribal gaming agency before
18 participating in any way in the operation or conduct of any
19 class III gaming on Indian lands. The tribal gaming agency
20 shall comply fully with the requirements of this section and
21 the IGRA, especially at 25 U.S.C. Sections 2710 and 2711, and
22 the regulations issued thereunder at 25 C.F.R. Parts 550-559,
23 as well as the requirements of the Tribe's gaming ordinance
24 and any regulations issued thereunder, in processing license
25 applications and issuing licenses.

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1 B. LICENSE APPLICATION. Each applicant for a
2 license shall file with the tribal gaming agency a written
3 application in the form prescribed by the tribal gaming
4 agency, along with the applicant's fingerprint card, current
5 photograph and the fee required by the tribal gaming agency.

6 C. BACKGROUND INVESTIGATIONS. Upon receipt of a
7 completed application and required fee for licensing, the
8 tribal gaming agency shall conduct or cause to be conducted a
9 background investigation to ensure that the applicant is
10 qualified for licensing.

11 D. PROVISION OF INFORMATION TO STATE GAMING
12 REPRESENTATIVE. Whenever the tribal gaming agency is required
13 by federal law or tribal law regulations to provide to the
14 national Indian gaming commission any information, document or
15 notice relating to the licensing of any key employee or
16 primary management official of the gaming enterprise, a copy
17 of that information, document or notice shall also be provided
18 to the state gaming representative. The state gaming
19 representative shall be entitled to the same right to request
20 additional information concerning an applicant licensee, to
21 comment on the proposed licensing of any applicant licensee
22 and to supply the tribal gaming agency with additional
23 information concerning any applicant licensee.

24 SECTION 6. PROVIDERS OF CLASS III GAMING MACHINES,
25 EQUIPMENT OR SUPPLIES.

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1 A. STANDARDS. Within thirty days after the
2 effective date of this compact, if it has not already done so,
3 the tribal gaming agency will adopt standards for all class
4 III gaming equipment, devices or supplies to be used in any
5 gaming facility, which standards shall be at least as strict
6 as the comparable standards applicable to class III gaming
7 machines, equipment or supplies within the state of Nevada.
8 All class III gaming machines, equipment or supplies used by
9 the Tribe after the date of this compact shall meet or exceed
10 the standards thereby adopted.

11 B. GAMING EQUIPMENT, MACHINES OR SUPPLIES LESSOR
12 OR SELLER LICENSING. Prior to entering into any future lease
13 or purchase agreement for class III gaming machines, equipment
14 or supplies, the Tribe shall obtain sufficient information and
15 identification from the proposed seller or lessor and all
16 persons holding any direct or indirect financial interest in
17 the lessor or the lease-purchase agreement to permit the Tribe
18 to license those persons in accordance with Section 5 of this
19 compact.

20 C. ASSEMBLY AND INSTALLATION LICENSING. The
21 seller, lessor, manufacturer or distributor shall provide,
22 assemble and install all class III gaming equipment, devices
23 or supplies in a manner approved and licensed by the Tribe.

24 SECTION 7. DISPUTE RESOLUTION.

25 A. PROCEDURE. In the event either party believes

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1 that the other party has failed to comply with or has
2 otherwise breached any provision of this compact, the party
3 asserting noncompliance may invoke the procedure set forth in
4 this section.

5 (1) The party asserting noncompliance shall
6 serve written notice on the other party. The notice shall
7 identify the specific compact provision believed to have been
8 violated and shall specify the factual and legal basis for the
9 alleged noncompliance. The notice shall specifically identify
10 the date, time and nature of the alleged noncompliance.
11 Representatives of the State and Tribe shall thereafter meet
12 within thirty days in an effort to resolve the dispute.

13 (2) In the event an allegation by the
14 complaining party is not resolved to the satisfaction of that
15 party within ninety days after service of the notice set forth
16 in Paragraph (1) of this subsection, the complaining party may
17 serve upon the other party a "notice to cease conduct",
18 requesting the responding party to cease the particular game
19 or activity alleged by the complaining party to be in
20 noncompliance. Upon receipt of the notice to cease conduct,
21 the responding party may elect to stop the game or activity
22 specified in the notice or invoke arbitration and continue the
23 game or activity pending the results of arbitration. The
24 responding party shall act upon one of the foregoing options
25 within thirty days of receipt of notice to cease conduct from

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1 the complaining party.

2 (3) Arbitration under authority of this
3 section shall be conducted generally under the commercial
4 arbitration rules of the American arbitration association,
5 except that the arbitrators shall be attorneys who are
6 licensed members in good standing of the state bar of New
7 Mexico or of the bar of another state. The State shall select
8 one arbitrator, the Tribe a second arbitrator, and the two so
9 chosen shall select a third arbitrator. If the third
10 arbitrator is not chosen in this manner within ten days after
11 the second arbitrator is selected, the third arbitrator will
12 be chosen in accordance with the rules of the American
13 arbitration association.

14 (4) All parties shall bear their own costs of
15 arbitration and attorney fees.

16 (5) The results of arbitration shall be
17 enforceable by an action for injunctive or mandatory
18 injunctive relief against the State and the Tribe in any court
19 of competent jurisdiction. For purposes of any such action,
20 the State and the Tribe acknowledge that any action or failure
21 to act on the part of any agent or employee of the State or
22 the Tribe contrary to a decision of the arbitrators in an
23 arbitration proceeding conducted under the provisions of this
24 section, occurring after a decision of those arbitrators,
25 shall be wholly unauthorized and ultra vires acts, not

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1 protected by the sovereign immunity of the State or the Tribe.

2 B. NO WAIVER OF REMEDIES OR SOVEREIGN IMMUNITY.

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

10 SECTION 8. PROTECTION OF VISITORS.

11 A. REMEDIES. The safety and protection of
12 visitors to a gaming facility is a priority of the Tribe, and
13 the Tribe agrees to provide a remedy for a visitor's claim of
14 liability for bodily injury or property damage proximately
15 caused by the conduct of the gaming enterprise and:

16 (1) occurring at a gaming facility, other
17 premises, structures or on grounds or involving vehicles and
18 mobile equipment used by a gaming enterprise;

19 (2) arising out of a condition at the gaming
20 facility or on the premises of the gaming facility; or

21 (3) occurring outside of the gaming facility
22 but arising from the activities of the gaming enterprise.

23 B. INSURANCE COVERAGE REQUIRED. The gaming
24 enterprise shall maintain in effect policies of liability
25 insurance insuring the Tribe, its agents and employees against

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1 claims, demands or liability for bodily injury and property
2 damages by a visitor arising from an occurrence described in
3 Subsection A of this section. The policies shall provide
4 bodily injury and property damage coverage in an amount of at
5 least one million dollars (\$1,000,000) per person and ten
6 million dollars (\$10,000,000) as an aggregate coverage amount
7 per policy year. The Tribe shall provide the state gaming
8 representative annually a certificate of insurance showing
9 that the Tribe, its agents and employees are insured to the
10 required extent and in the circumstances described in this
11 section.

12 C. LIMITATION ON TIME TO BRING CLAIM Claims
13 brought pursuant to the provisions of this section must be
14 commenced by filing an action in court or a demand for
15 arbitration within three years of the date the claim accrues.

16 D. SPECIFIC WAIVER OF IMMUNITY. The Tribe, by
17 entering into this compact and agreeing to the provisions of
18 this section, waives its defense of sovereign immunity in
19 connection with any claims for compensatory damages up to the
20 amount of one million dollars (\$1,000,000) per injured person
21 and ten million dollars (\$10,000,000) aggregate per policy
22 year asserted as provided in this section. This is a limited
23 waiver and does not waive the Tribe's immunity from suit for
24 any other purpose. The Tribe shall ensure that a policy of
25 insurance that it acquires to fulfill the requirements of this

1 section shall include a provision under which the insurer
2 agrees not to assert the defense of sovereign immunity on
3 behalf of the insured.

4 E. ELECTION BY VISITOR. A visitor having a claim
5 described in this section may pursue that claim in any court
6 of competent jurisdiction, or in binding arbitration. The
7 visitor shall make a written election that is final and
8 binding upon the visitor.

9 F. ARBITRATION. Arbitration pursuant to an
10 election as provided in Subsection E of this section shall be
11 conducted as follows:

12 (1) the visitor shall submit a written demand
13 for arbitration to the gaming enterprise, by certified mail,
14 return receipt requested;

15 (2) the visitor and the gaming enterprise
16 shall each designate an arbitrator within thirty days of the
17 date of receipt of the demand, and the two arbitrators shall
18 select a third arbitrator; in the event the two arbitrators
19 cannot agree on the selection of the third arbitrator within
20 thirty days of their appointment, they shall apply to the
21 American arbitration association to appoint the third
22 arbitrator;

23 (3) the arbitration panel shall permit the
24 parties to engage in reasonable discovery and shall establish
25 other procedures to ensure a full, fair and expeditious

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1 hearing on the claim; and

2 (4) the award of the arbitration panel shall
3 be final and binding.

4 G. PUBLIC HEALTH AND SAFETY. The Tribe shall
5 establish for its gaming facility health, safety and
6 construction standards that are at least as stringent as the
7 current editions of the National Electrical Code, the Uniform
8 Building Code, the Uniform Mechanical Code, the Uniform Fire
9 Code and the Uniform Plumbing Code, and any and all gaming
10 facilities or additions thereto constructed by the Tribe
11 hereafter shall be constructed and all facilities shall be
12 maintained to comply with the applicable standards.

13 Inspections shall be conducted with respect to these standards
14 at least annually. If the state gaming representative
15 requests sufficiently in advance of an annual inspection, the
16 state gaming representative may be present during an
17 inspection. The Tribe agrees to correct any deficiencies
18 noted in these inspections within a time agreed upon between
19 the State and Tribe. The tribal gaming agency will provide
20 copies of all inspection reports of inspections occurring
21 pursuant to this subsection to the state gaming
22 representative, if requested to do so in writing.

23 SECTION 9. EFFECTIVE DATE. This compact shall be
24 effective immediately upon publication of notice in the
25 *Federal Register* of the secretary of the interior's approval

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1 or, if after forty-five days following the date that this
2 compact is submitted to the secretary of the interior, he
3 fails to approve or disapprove the compact. Upon the
4 effective date of this compact, any prior tribal-state compact
5 and any prior revenue-sharing agreement between the Tribe and
6 the State shall be and become null and void, and have no
7 further effect.

8 SECTION 10. CRIMINAL JURISDICTION.

9 A. JURISDICTION TO PROSECUTE. The Tribe and the
10 State acknowledge that under the provisions of Section 23 of
11 the IGRA, especially that portion codified at 18 U. S. C.
12 Section 1166(d), jurisdiction to prosecute violations of State
13 gambling laws, applicable pursuant to that section to Indian
14 country, is vested exclusively within the United States unless
15 the Tribe and the State agree in a compact entered into
16 pursuant to the IGRA to transfer such jurisdiction to the
17 State.

18 B. STATE JURISDICTION OVER CRIMES COMMITTED. The
19 Tribe and the State agree that the State shall have and may
20 exercise jurisdiction, concurrent with that of the United
21 States, to prosecute a violator under its laws and in State
22 court when the violation or crime is committed by a person who
23 is not a member of a federally recognized Indian tribe and the
24 violator has committed a violation of a State gambling law on
25 Indian lands; any other crime against the gaming enterprise or

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1 a gaming enterprise employee; or a crime or violation
2 occurring on the premises of the tribal gaming facility.

3 C. NOTIFICATION OF A CRIME. Immediately upon
4 becoming aware of any suspected crime by a nonmember of the
5 Tribe or a person who is not a member of a federally
6 recognized Indian tribe, the gaming enterprise or the tribal
7 gaming agency shall notify the State attorney general and the
8 district attorney for the district in which the gaming
9 facility is located, supplying all particulars available to
10 the tribal entity at the time. The Tribe agrees that its law
11 enforcement and gaming agencies shall perform additional
12 investigations or other steps in furtherance of the
13 investigation and prosecution of the violation as reasonably
14 requested by the district attorney or other State law
15 enforcement office and will cooperate fully with those State
16 officials during the course of the investigation. At the time
17 of receipt of notice by the district attorney that a suspected
18 violation or crime has occurred, the jurisdiction over the
19 suspected violation or crime is transferred to the State. In
20 the event of emergency circumstances involving a violation or
21 crime, as determined by the tribal law enforcement agency or
22 the tribal gaming agency, the tribal law enforcement agency or
23 the tribal gaming agency has the discretion to act as it sees
24 fit and to call upon other agencies or entities as it deems
25 reasonable or necessary in order to protect against any

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1 immediate threat to lives or property. The State may, in its
2 discretion, refer the matter to federal authorities, but it
3 shall notify the tribal gaming agency upon doing so.

4 D. WRITTEN REPORT FROM THE STATE. The State
5 agrees that no less frequently than annually it shall provide
6 the tribal gaming agency with a written report of the status
7 and disposition of each matter referred to it under the
8 provisions of this section that is still pending. In the
9 event the district attorney to whom a matter is referred under
10 the provisions of this section decides not to prosecute such
11 matter, the district attorney shall promptly notify the tribal
12 gaming agency of such decision in writing. The tribal gaming
13 agency may in that event ask the attorney general of the State
14 to pursue the matter.

15 E. MEMORANDUM OF UNDERSTANDING REQUIRED FOR
16 PROSECUTION OF OFFENSES. The district attorney for the
17 district in which the gaming facility is situated may decline
18 to accept referrals of cases under the provisions of this
19 section unless and until the Tribe has entered into a
20 memorandum of understanding with the office of the district
21 attorney. The United States attorney for the district of New
22 Mexico may also be a party to the memorandum of understanding,
23 addressing such matters as the specific procedures by which
24 cases are to be referred, participation of the tribal gaming
25 agency and tribal law enforcement personnel in the

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1 investigation and prosecution of a case, payments by the Tribe
2 to the office of the district attorney to defray the costs of
3 handling cases referred under the provisions of this section
4 and related matters.

5 SECTION 11. BINDING EFFECT AND DURATION.

6 A. This compact shall be binding upon the State
7 and the Tribe for a term of eighteen years from the date it
8 becomes effective and may renew for an additional period, with
9 renegotiation conducted pursuant to the Compact Negotiation
10 Act or its successor provisions. If during the eighteen-year
11 term, the State passes, amends or repeals a law, or takes
12 other action, that would directly or indirectly eliminate or
13 prohibit the conduct of class III gaming within the State,
14 including any form of State lottery, horse racing or bicycle
15 racing, this compact shall terminate at the end of the
16 eighteen-year term.

17 B. LIMITATION ON TRIBAL GAMING TO PERIOD WHEN
18 COMPACT IS IN EFFECT. The Tribe may operate class III gaming
19 only while this compact or any amendment to this compact is in
20 effect.

21 C. AMENDMENT PROCESS. This compact may be amended
22 pursuant to the Compact Negotiation Act or its successor
23 provisions.

24 SECTION 12. NOTICE TO PARTIES. Unless otherwise
25 indicated, all notices, payments, requests, reports,

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1 information or demand that any party to this compact may
2 desire or may be required to give to the other party to this
3 compact shall be in writing and shall be personally delivered
4 or sent by first-class mail to the other party at the address
5 provided in writing by the other party. Every notice,
6 payment, request, report, information or demand given pursuant
7 to this compact shall be deemed effective upon receipt or, if
8 mailed, upon receipt or the expiration of the third day
9 following the day of mailing, whichever occurs first, except
10 that any notice of change of address shall be effective only
11 upon receipt by the party to whom the notice is addressed.

12 SECTION 13. ENTIRE AGREEMENT. This compact is the
13 entire agreement between the parties and supersedes all prior
14 agreements, whether written or oral, with respect to the
15 subject matter of this compact. Neither this compact nor any
16 provision within this compact may be changed, waived,
17 discharged or terminated orally, but only by an instrument, in
18 writing, signed by the Tribe and the State and approved by the
19 secretary of the interior. This compact shall not be amended
20 without the express approval of the Tribe, the governor of the
21 State and the State legislature, as provided in the Compact
22 Negotiation Act or its successor provisions.

23 SECTION 14. FILING OF COMPACT WITH STATE RECORDS CENTER.
24 Upon the effective date of this compact, a copy shall be filed
25 by the governor of the State with the State records center.

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1 Any subsequent amendment or modification of this compact shall
2 be filed with the State records center.

3 SECTION 15. COUNTERPARTS. This compact may be executed
4 by the parties in any number of separate counterparts with the
5 same effect as if the signatures were upon the same
6 instrument. All of the counterparts shall together constitute
7 one and the same document.

8 SECTION 16. REVENUE SHARING.

9 A. SUMMARY AND CONSIDERATION. The Tribe shall
10 agree to contribute a portion of its class III gaming revenues
11 identified in and under procedures of this section. In return
12 for the contribution of a portion of the Tribe's class III
13 gaming revenues pursuant to the provisions of this section,
14 the State agrees that the Tribe:

15 (1) has the exclusive right within the State
16 to provide all types of class III gaming as described in this
17 compact, with the sole exception of the use of gaming
18 machines, which the State may permit on a limited basis for
19 racetracks and veterans' and fraternal organizations; and

20 (2) will only share that part of its revenue
21 arising from the use of gaming machines and that all other
22 gaming revenue is exclusively the Tribe's.

23 B. REVENUE TO STATE. The parties agree that,
24 after the effective date of this compact, the Tribe shall make
25 the quarterly payments provided for in Subsection C of this

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1 section to the State treasurer for deposit into the State
2 general fund.

3 C. CALCULATION OF REVENUE TO STATE.

4 (1) As used in this section, "net win" means
5 the annual total amount wagered in a calendar year at a gaming
6 facility on gaming machines less the following amounts:

7 (a) the annual amount paid out in that
8 calendar year in prizes from gaming on gaming machines;

9 (b) the actual amount of regulatory
10 fees paid in a calendar year to the State as set forth in
11 Paragraph (1) of Subsection G of Section 4 of this compact;
12 and

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

19 (2) The Tribe shall pay the State a
20 percentage of the net win based on the following schedule:

21 (a) if the annual calendar year total
22 net win is equal to or less than ten million dollars
23 (\$10,000,000), the Tribe shall pay three percent (3%) of its
24 net win;

25 (b) if the annual calendar year total

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1 net win is more than ten million dollars (\$10,000,000), but
2 equal to or less than forty-five million dollars
3 (\$45,000,000), the Tribe shall pay six percent (6%) of the net
4 win; or

5 (c) if the annual calendar year total
6 net win is more than forty-five million dollars (\$45,000,000),
7 the Tribe shall pay eight percent (8%) of the net win.

8 (3) The Tribe shall use its best judgment to
9 reasonably estimate the anticipated annual calendar year total
10 net win in computing the revenue-sharing payments according to
11 Paragraph (2) of this subsection. If the actual annual
12 calendar year total net win should differ from the estimated
13 net win, adjustments necessary to correct the total annual
14 revenue-sharing payments shall be reflected in the final
15 quarterly payment for each calendar year.

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

25 D. LIMITATIONS ON OBLIGATION TO PAY REVENUE

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1 SHARING. The Tribe's obligation to make the payments provided
2 for in Paragraph (3) of Subsection C of this section shall
3 apply and continue only so long as there is a binding compact
4 in effect between the Tribe and the State, which compact
5 provides for the play of class III gaming, but shall terminate
6 in the event of any of the following conditions:

7 (1) if the State passes, amends or repeals
8 any law, or takes any other action, that would directly or
9 indirectly attempt to restrict, or has the effect of
10 restricting, the scope of Indian gaming; or

11 (2) if the State permits any expansion of
12 nontribal class III gaming in the State; notwithstanding this
13 general prohibition against permitted expansion of gaming
14 activities, the State may permit:

15 (a) the implementation of a State
16 lottery as described in Laws 1995, Chapter 155;

17 (b) up to fifteen gaming machines at
18 any fraternal, veterans' or other nonprofit membership
19 organization, which exists as of January 1, 2001, to operate
20 gaming machines lawfully, but only for the benefit of the
21 organization's members;

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

25 (d) only those horse racetracks in

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1 existence as of January 1, 1999, specifically Ruidoso Downs,
2 Sunland Park, The Downs at Santa Fe, Albuquerque Downs and Sun
3 Ray Park, to each operate up to five hundred electronic gaming
4 machines, at its own facility, on days on which live or
5 simulcast racing occurs. Expansion from the current
6 statutorily allowed three hundred electronic gaming machines
7 is subject to approval of this compact by the secretary of the
8 interior. If the approval of this compact is obtained, the
9 authority for expansion from three hundred to five hundred
10 gaming machines shall be effective one year after the
11 effective date of this compact.

12 E. EFFECT OF VARIANCE. In the event the acts or
13 omissions of the State cause the Tribe's obligation to make
14 payments under Paragraph (2) of Subsection C of this section
15 to terminate under the provisions of Subsection D of this
16 section, the cessation of obligation to pay will not adversely
17 affect the validity of the compact, but the amount that the
18 Tribe agrees to reimburse the State for regulatory fees under
19 the compact shall automatically increase by twenty percent
20 (20%).

21 F. THIRD-PARTY BENEFICIARIES. This section is not
22 intended to create any third-party beneficiaries and is
23 entered into solely for the benefit of the Tribe and the
24 State.

25 SECTION 17. BACK PAYMENTS.

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A. AGREEMENT TO MAKE BACK PAYMENTS. In recognizing the desire of both the State and the Tribe to complete this compact, and to avoid the costs and frustration of further litigation, the Tribe agrees to make back payments for those past contested revenue-sharing payments not paid, either in full or in part, to the State.

B. CALCULATION OF BACK PAYMENTS. Calculation of the amount that must be paid back shall be done pursuant to the net win calculations included in the predecessor revenue-sharing agreement, Laws 1997, Chapter 190, Section 2. Any amounts that have been paid by a Tribe in excess of the amount due shall be credited against future revenue-sharing payments owed by the Tribe. Back payments will accrue until this compact goes into effect pursuant to federal law as evidenced by publication in the *Federal Register*.

C. PAYMENT OF BACK PAYMENTS. The Tribe shall have up to four years from the effective date of this compact in which to make the back payments. Payments shall be made quarterly until all payments owed have been made. The first quarterly payment is due thirty days after the effective date of this compact.

D. SEGREGATED TRIBAL INFRASTRUCTURE FUND. One-half of the Tribe's back payments made pursuant to Subsection C of this section shall be appropriated to a fund created in the State treasury in the name of the Tribe. The money in the

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1 fund shall be administered by the New Mexico office of Indian
2 affairs. The money in the fund shall be used on a
3 reimbursement basis to provide funding for education, economic
4 development, community development or infrastructure costs
5 made by the Tribe subsequent to August 29, 1997 on the Tribe's
6 Indian lands. The Tribe shall supply supporting documentation
7 of expenditures made that may be reimbursed from the fund to
8 the New Mexico office of Indian affairs to substantiate
9 disbursements from the fund.

10 SECTION 18. SEVERABILITY. Should any provision of this
11 compact be found to be invalid or unenforceable by any court
12 or other forum having jurisdiction, such determination shall
13 have no effect upon the validity or enforceability of any
14 other portion of this compact, and all such other portions
15 shall continue in full force and effect. "

16 Section 2. REPEAL. -- Sections 11-13-1 and 11-13-2 NMSA
17 1978 (being Laws 1997, Chapter 190, Sections 1 and 2) are
18 repealed.

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