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## FISCAL IMPACT REPORT

SPONSOR: Cisneros DATE TYPED: 02/23/01 HB \_\_\_\_\_  
 SHORT TITLE: Gaming Compact Form SB 804  
 ANALYST: Williams

### APPROPRIATION \*

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Text			

(Parenthesis ( ) Indicate Expenditure Decreases)

\*The specific appropriation impact of this bill cannot be calculated due to uncertainty regarding the number and identity of tribes which might enter into this compact.

### REVENUE \*

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
		See Text		

(Parenthesis ( ) Indicate Revenue Decreases)

\*The specific revenue impact of this bill cannot be calculated due to uncertainty regarding the number and identity of tribes which might enter into this compact.

Relates to SB 225, SB 803, SJR 2, HB 934, and HJR 7

### SOURCES OF INFORMATION

LFC Files  
 Office of Indian Affairs (OIA)  
 Gaming Control Board  
 State Racing Commission

No Response  
 Department of Finance and Administration (DFA)

### SUMMARY

Significant Issues

The specific revenue impact of this bill cannot be calculated due to uncertainty regarding the number and identity of tribes which might enter into this Compact. The **Fiscal Implications Section** below discusses the potential magnitude of impacts if all gaming tribes signed this Compact form and fully complied with its provisions.

With respect to back payment liability for revenue sharing amounts, tribes would have up to 4 years from the effective date of the new compact to make the back payments. A payment must be made quarterly. However, the proportion of the liability due is not addressed for each quarterly payment.

Regulatory fees would increase by 5 percent per year, beginning on the first January after the Compact has been in effect for one year. The timing of this escalator is uncertain because the regulatory fees are retroactively reduced, a credit is created on a forward basis and the language of the escalator triggers on the effective date of the Compact.

In contrast with the gaming compacts considered by the 2000 Legislature, this Compact language does not provide for assessment of late fees on payments due to the state.

The expansion of racetrack gaming is predicated on approval of the Compact by the Secretary of the Interior. If the Secretary does not act on the Compact, and it goes into effect by default, then it appears this expansion would not be valid.

The location of New Mexico racetracks would be restricted to the five locations identified in the bill. There would be no provisions to build new or renovate existing racetracks in other New Mexico locations.

The Racing Commission expresses concern that the horse racing industry would be restricted to the provisions of the bill for the next 18 years, even though other components affecting the industry could have fundamental changes.

Note that this Compact language reflects that once the new compact takes effect, all previous compacts and revenue sharing agreements would be null and void. While the Office of the Attorney General has not submitted an analysis of this legislation, in a memorandum to members of the New Mexico State Legislature, dated February 9, 2001, Attorney General Madrid noted “while I believe that the Attorney General has the authority to settle claims for the overdue back-payments, the Legislature has the authority to change the terms of the compacts as they will apply in the future”.

Synopsis of Bill

The bill authorizes the Governor to enter into a Compact taking a substantially similar format to that outlined in the bill. This authorization is in conjunction with that provided for in SJR 2 and HJR 7. The bill provides language for an agreement between the state and an individual tribe.

Section 1 includes the purposes and objectives and is an indication that this Compact would “settle and resolve certain disputes between the state and the tribe under prior agreements.

Section 2 defines “Indian lands” as:

- all lands within the exterior boundaries of the tribe’s reservation and its confirmed grants from prior sovereigns and

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- any other lands, title to which is either held in trust by the United States for the exclusive benefit of the tribe or one of its members or is held by the tribe or a member subject to restrictions against alienation imposed by the United States, any other lands, title to which is either held in trust by the United States for the exclusive benefit of the Tribe or a member of the Tribe or is held by the Tribe or a member of the Tribe subject to restrictions against alienation imposed by the United States, and over which the Tribe exercises jurisdiction and governmental authority, but not including any land within the boundaries of a municipality that is outside of the boundaries of the Tribe's reservation or confirmed Spanish grant, as those boundaries existed on October 17, 1988.

Section 3 specifies tribes may conduct any and all forms of casino style gaming, subject to state and tribal regulatory oversight.

Section 4 provides for regulation of tribal gaming. In subsections A and B, tribal gaming agency duties and tribal regulations are described. Among these provisions is that each gaming device must pay out at least 80 percent. Within 90 days of the effective date of the Compact, all tribal gaming machines must be connected to a central computerized reporting and auditing system on the gaming facility premises to continually collect data on each gaming machine's activity. The gaming enterprise must spend at least 0.25% of net win annually to fund or support programs for the treatment and assistance of compulsive gamblers.

Dispensing, selling, serving and delivering alcoholic beverages is authorized in the bill, such that alcohol could be served in the casino gaming area. Currently, alcoholic beverages are prohibited in this area.

The duties of the State Gaming Representative are outlined. With respect to audits and financial statements, each gaming enterprise must have at least an annual audit and certified financial statement meeting certain criteria. Copies of these documents would be provided to the State Gaming Representative and the State Treasurer within 120 days. These documents would be considered confidential and would not be subject to the Inspection of Public Records Act. These documents could not be provided to the public without the prior written consent of the tribe.

**See Fiscal Implications -- State Regulatory Costs and Back Payment Regulatory Fees** for more detailed information.

Section 5 outlines licensing requirements for tribal gaming facilities.

Section 6 addresses providers of gaming machines, equipment or supplies.

Section 7 provides for a dispute resolution procedure.

Section 8 provides for protection of visitors.

Section 9 states the effective date would be upon publication of notice of the Federal Register of the approval of the Compact by the Secretary of the Interior. If the Secretary of the Interior does not act within 45 days following the date of submission of the Compact, the Compact would also go into effect. Thus, the Secretary would not have to take affirmative action for the Compact to become effective. Once the new Compact takes effect, all previous compacts and revenue sharing agreements would be null and void.

Section 10 provides for criminal jurisdiction.

Section 11 provides that the Compact would be binding for 18 years from its effective date. The Compact could be renewed for an additional unspecified period subject to the Compact Negotiation Act or successor legislation. During the 18 year period if the state takes direct or indirect action to eliminate or prohibit class III gaming, including state lottery, horse racing or bicycle racing, the Compact would terminate at the end of the 18 year time frame. The Compact may be amended pursuant to the Compact Negotiation Act or successor legislation.

Section 12 outlines procedures for party notification.

Section 13 includes additional provisions regarding the agreement and subsequent amendments.

Section 14 directs filing of the Compact with the State Records Center.

Section 15 allows for the Compact to be executed in separate counterparts.

Section 16 provides for revenue sharing. Exclusivity is addressed in that the tribe has the exclusive right to provide all types of Class III gaming, except for the limited number of gaming machines at racetracks and veterans' and fraternal organizations. Revenue sharing would be made only on net win from gaming machines, and would exclude table games. See **Fiscal Implications -- Revenue Sharing and Reduction/Elimination of Revenue Sharing** for more detail.

This bill is an expansion of gaming at racetracks. See **Fiscal Implications --Gaming Tax from Expanded Racetrack Operations** for more information.

Section 17 addresses back payment liability. See **Fiscal Implications -- Back- Payments -- Current Liability and Back-Payments in Revenue Sharing** for more discussion.

Section 18 provides that the Compact language includes a severability clause. The 1997 Indian gaming compacts and revenue sharing agreement are repealed. The bill carries an emergency clause.

## **PERFORMANCE IMPLICATIONS**

Per the LFC Budget Recommendation, the Committee recommends OIA begin to develop measures to evaluate the effectiveness of its programs in anticipation of performance-based budgeting in FY03 (see page 455).

## **FISCAL IMPLICATIONS**

### **Revenue Sharing**

In this bill, revenue sharing would be made only on net win from gaming machines, and would exclude table games. Revenue sharing would be based on net win from gaming machines less:

- c Prizes paid out;
- c State regulatory fees; and
- c Tribal regulatory fees.

Revenue sharing payments would be made based on the following formula:

- c Calendar year net win less than \$10 million, revenue sharing rate would be 3%,

- c Calendar year net win is between \$10 million and \$45 million, revenue sharing rate would be 6%, and
- c Calendar year net win is greater than \$45 million, revenue sharing rate would be 8%.

If the actual calendar year net win is greater than anticipated by the tribe, then the final quarterly payment must reflect the necessary adjustments. Quarterly payments must be paid to the State Treasurer by the 25<sup>th</sup> day of the month following each calendar quarter, i.e. April 25, July 25, October 25 and January 25. Receipts would be deposited to the general fund.

There is considerable uncertainty on the amount of net win subject to tax at the tribal casinos. After tribal payments ceased last spring, there is even less information available about this industry. Based on conversations with the Gaming Control Board, LFC estimates net win on gaming machines at tribal casino operations in calendar year 2000 at approximately \$400 million. Net win is then assumed to escalate by 10 percent in calendar year 2001. The analysis assumes one new casino of small-to-medium size will open in mid 2001. Both state and tribal regulatory fees are deducted to obtain "adjusted net win" before applying the revenue sharing percentage. State and tribal regulatory fees would not escalate by 5 percent until January 1, 2003. Thus, the escalation does not impact state revenues until FY03.

The state could assume a full year of revenue sharing and regulatory fees beginning in FY03 under the provisions of the new Compact.

The estimate of revenue sharing if all tribes signed compacts with these terms and with full compliance would be approximately \$22.5 million in FY 02 and approximately \$29.6 million in FY03. However, the specific revenue impact of this bill cannot be calculated due to the uncertainty regarding the number and identity of tribes which might enter into this Compact.

### **Reduction In/Elimination Of Revenue Sharing**

Under the proposed Compact, revenue sharing would be eliminated if:

- The state takes any action directly or indirectly to restrict the scope of Indian gaming
- The state permits any expansion of nontribal Class III gaming, other than the following:
  - < A state lottery as enacted in Laws of 1995, Chapter 155.
  - < Up to 15 machines for each qualifying veteran and fraternal organization which existed on January 1, 2001 for the benefit of its membership.
  - < Limited fund raising activities by nonprofit tax-exempt organizations.
  - < 500 gaming machines at 5 racetracks on days for which live or simulcast racing occurs.

If the state limits Indian gaming or expands other gaming beyond that outlined above, the compacts would still be valid, but the revenue sharing requirement would terminate while the tribal payments for regulatory fees would increase by 20%.

### **State Regulatory Costs**

With respect to regulatory fees, the Compact authorizes reimbursement of state expenses at \$100,000 per calendar year per gaming tribe, effective August 29, 1997, with prorated amounts for those facilities with operations less than a full calendar year. These payments would be due quarterly by the 25<sup>th</sup> of the month after the end of a quarter to the State Treasurer for deposit to the general fund.

Regulatory fees would increase by 5 percent per year, beginning on the first January after the Compact has been in effect for one year. The timing of this escalator is uncertain because the regulatory fees are retroactively reduced, a credit is created on a going forward basis and the language of the escalator triggers on the effective date of the Compact. There are currently 11 gaming tribes.

### **Back Payments - Current Liability**

At the present time, it is estimated that total liability generated by the tribal casinos under the 1997 Gaming Compacts totals \$197.8 million. This amount includes both revenue sharing and regulatory fees. Of this amount, gaming tribes paid \$66.8 million. Thus, an estimated \$131 million remains due. Because a significant amount of tribal payments to the state did not differentiate between revenue sharing and regulatory fees, there is uncertainty on the amount of payments made to address regulatory fees. If this Compact were enacted and become effective this summer, the estimate of liability would change.

### **Back Payments - Regulatory Fees**

The Compact notes that any regulatory fees paid by the tribe in excess of \$100,000 per calendar year effective August 29, 1997 must be credited to future regulatory fee payments. Thus, the language forgives current liabilities of tribes beyond the \$100,000 per year of operations since the 1997 compacts were signed.

Some tribes never paid regulatory fees. Because it is unknown which tribes would participate and the extent of their regulatory fee payments and liabilities, the effect of back payments and credit on future collections of regulatory fees cannot be determined at this time.

### **Back Payments - Revenue Sharing**

Section 17 addresses payment of back payment liability. The tribe would agree to make back payments for liability due to revenue sharing. The back payments would be calculated using the 16 percent revenue sharing rate and other provisions of the 1997 compacts. Payments in excess of liability could be credited against future revenue sharing payment due under the new Compact. Liability for back payments would accrue until the Compact goes into effect. Tribes would have up to 4 years from the effective date of the new Compact to make the back payments. A payment must be made quarterly. However, the proportion of the liability due is not addressed for each quarterly payment. The first quarterly payment would be due 30 days after the effective date of the Compact.

One-half of back payments would be appropriated to a fund in the State Treasury in the name of the tribe to be administered by the Office of Indian Affairs. This fund would be used to reimburse costs for education, economic development, community development or infrastructure made by the tribe after August 29, 1997 on the tribe's lands.

In addition, there is uncertainty as to the timing of the payment schedule because each tribe's quarterly payment schedule would be triggered by the effective date of its compact.

In the bill's current form, the potential amount and timing of back payments attributable to revenue sharing cannot be determined.

### **Continuing Appropriations**

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

### **Gaming Tax From Expanded Racetrack Operations**

Currently four racetracks, Ruidoso Downs, Sunland Park, Albuquerque Downs and Sun Ray Park, operate the maximum number of gaming machines allowed, or 300 machines per race track for a total of 1,200 machines. The Compact would specifically add The Downs at Santa Fe and authorize each track to operate 500 gaming machines, for a total of 2,500 machines. In addition, the language appears to eliminate the current hourly operating limitations for gaming at the racetracks. The expansion is authorized one year after the effective date of the Compact. The expansion of racetrack gaming is predicated on approval of the Compact by the Secretary of the Interior. If the Secretary does not act on the Compact, and it goes into effect by default, then it appears this expansion would not be valid.

Using somewhat conservative assumptions of net win per machine, the potential increase in gaming tax to the general fund for an additional 200 machines at four race tracks and 500 machines at the Downs at Santa Fe could generate an additional \$16.0 million in recurring general fund revenue and an additional \$12.8 million in revenue for horseman's purses. In addition, the elimination of the hourly operating limitation would generate revenue in excess of these estimates. The state imposes a 10% tax on new machines. Assuming the machines are purchased new to obtain more exciting games at \$8,000 each, the additional 1,300 machines would generate \$1.04 million in non-recurring general fund revenue. The State Racing Commission estimates the potential general fund revenue increase from the racetrack provisions in this bill from \$7.0 million to \$14.0 million per year. Note that there is a delay included in the bill for the expansion of racetrack gaming, so the first full year of revenue from this component would not be evident until FY03.

### **ADMINISTRATIVE IMPLICATIONS**

The Office of Indian Affairs notes the potential for significant increase in costs due to the provision to administer the segregated tribal infrastructure fund. OIA estimates approximately \$250.0 in additional personnel and operating costs for 3 FTE.

The State Racing Commission notes with increased race days, an additional \$200.0 to \$300.0 for 2 FTE would be needed to regulate the industry.

### **TECHNICAL ISSUES**

The bill indicates existing racetracks as of January 1, 1999 would qualify for gaming machines. State Racing Commission notes Sun Ray Park did not become operational until July 2, 1999, and the Downs at Santa Fe was not operational on January 1, 1999. However, both facilities physically existed on January 1, 1999.

Albuquerque Downs is known as Downs at Albuquerque Racetrack and Casino and currently has a contract with the New Mexico State Fair to operate a race meet at the facility.

Because the regulatory fee is retroactively changed, what impact does that have on calculated revenue sharing back payments?

**POSSIBLE QUESTIONS**

1. Which tribes are expected to agree to the terms of this proposed Compact?

AW/ar