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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 2/18/14  
**LAST UPDATED** \_\_\_\_\_ **HJR** 15

**SPONSOR** Madalena

**SHORT TITLE** Navajo Nation Gaming Compact Approval **SB** \_\_\_\_\_  
**ANALYST** Hartzler-Toon/  
van Moorsel

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		
	~\$2,000.0	~\$2,000.0	Recurring	General Fund
<b>See "Fiscal Implications," below.</b>				

(Parenthesis ( ) Indicate Revenue Decreases)

**Relates to:** HB 307 Gaming Compact Revenue Sharing Cap  
 SB 22 Limit on Tribal Entry into Gaming Compact

### SOURCES OF INFORMATION

LFC Files

### SUMMARY

#### Synopsis of Bill

House Joint Resolution 15 would approve the New Mexico-Navajo Nation's agreement to amend the 2001 state-nation gaming compact, due to expire June 30, 2015. Pursuant to the Compact Negotiation Act, Section 11-13A NMSA 1978, the Committee on Compacts reviewed the state-nation proposed compact and requested the governor and Nation resume negotiations to amend the proposed compact. Upon receiving the governor's response regarding resumed negotiations, the committee passed a motion to submit to the Legislature a joint resolution with a recommendation that the proposed compact be approved. Under the Act, both chambers of the Legislature must approve a resolution approving this amendment to the state-nation's 2001 compact for it to be sent to the U.S. Department of the Interior (Interior) for the departments consideration and filing.

The proposed compact is based on the 2007 state-tribal compact language and structure, with new, omitted, or refined provisions particular to the proposed compact.

**Section 1** states the purpose and objectives of the proposed compact. Based on testimony at the Committee on Compacts, the state's and nation's objectives include regulating Class III gaming on Indian lands, provide revenues and economic development opportunities to the nation, to settle and resolve disputes related from prior compacts and address pending issues.

**Section 2** provides definitions for the compact. Importantly, the following terms are defined: "adjusted net win," "net win," "point play," and "quarterly free play and point play." The term "Indian Lands" applies to lands otherwise eligible for gaming in New Mexico. The definition of "free play" and the use of free play in determining "adjusted net win" reflects the general accepted accounting principles, the standards of the American Institute of Certified Public Accountants, and interpretations by the National Indian Gaming Commission (NIGC).

**Section 3** authorizes Class III gaming.

Number of facilities. The proposed compact allows up to 2 or "one gaming facility per 15,000 tribal members residing in New Mexico," whichever is greater; but no more than 5 Class III facilities total. The proposed compact allows for the Nation to identify "legacy gaming facility" and limits when the Nation can open the

- (a) third casino: no sooner than five years after the compact's effective date and after having 1,500 Class III machines operating;
- (b) fourth casino: no sooner than 10 years after the compact's effective date; and
- (c) fifth casino: no sooner than 15 years after the compact's effective date.

**Section 4** describes the conduct of Class III gaming, including responsibilities of the tribal gaming agency, the state gaming representative, audit requirements and financial statements, and payments to the state for regulatory costs. The proposed compact requires the Nation to spend between 0.25 percent and 0.5 percent of its adjusted net win to support programs for the treatment and assistance of compulsive gamblers. This section details the Nation's reimbursement to the state for the state's costs associated with implementing the compact provisions: \$121.8 thousand if the Nation operates two or fewer gaming facilities, \$146.8 thousand if operating three or fewer facilities, \$171.8 thousand if operating four, and \$196.8 thousand if operating five. The compact adds a section requiring the nation to assist the state in collecting back child support payments from gambling winnings over \$1,200 and a section providing an option for problem gamblers to voluntarily exclude themselves from casinos and related casino offerings.

**Section 5** describes licensing requirements of vendors, gaming operators, and employees, and **Section 6** details requirements for Class III gaming equipment, devices and supplies reflect 2007 compact language.

**Section 7** describes the dispute resolution process the state and nation agree to follow. The proposed compact permits the state and nation to agree to have a single arbitrator address a dispute, though the parties may opt to have three arbitrators similar to the 2007 compact provisions.

**Section 8** outlines the nation's commitment to protecting visitors. The proposed compact maintains the 2007 compact-levels of insurance coverage required for claims against the nation, the gaming enterprise, or its employees. The proposed compact specifically provides that visitors bringing a claim under Section 8 may seek a remedy in tribal, state, or another court of competent jurisdiction and that the law of that forum shall govern the court chosen (example,

tribal law applies if the claim is brought in tribal court).

**Section 9** provides the conditions for executing the compact and the effective date. This section recognizes that the state and the nation have not resolved and settled the state’s claims against the nation under the revenue sharing provision of predecessor agreements. Section 7 governs the resolution of the payment dispute under the predecessor agreement.

**Section 10** describes changes in criminal jurisdiction, recognizing federal law permitting the nation has criminal jurisdiction over non-member Native Americans and the state has criminal jurisdiction over non-Indians.

**Section 11**, and the Appendix, lists gaming exclusivity provisions and describe the revenue sharing agreement.

The nation and state generally agree to the 2007 compact terms (Section 11) regarding revenue sharing provision. The Nation pays the state a percentage of its annual “adjusted net win.” Annual “adjusted net win” is defined as

- (1) “the combined net win from the direct play of all Class III gaming machines, at all facilities on the nation’s Indian lands,”
- (2) less the nation’s payment to the state for the state’s regulatory costs (see Section 4 above),
- (3) less at least \$375 thousand, per year, representing the nation’s regulatory costs. (Section 11(C)(1)(b)), and
- (4) less an amount paid for “wide-area progressive Class III gaming machines.” The Appendix describes this amount, when calculating adjusted net win to includes
  - a. the amount of fees paid to third-party vendor in excess of those necessary to fund progressive jackpots
  - b. amount paid out as a result of free play or point play
  - c. amounts for promotions, players’ clubs and complimentaries.

Based on the nation’s annual adjusted net win, the nation will pays a percentage of the annual amount, in quarterly payments, according to the chart below.

<b>Annual Adjusted Net Win (July 1-June 30 Fiscal Year)</b>	<b>2013-2015</b>	<b>2015-2030</b>	<b>2030-2037</b>
Under \$15 million	3 percent of the first \$5 million, and 9.25 percent on the rest	3 percent of the first \$5 million, and 9.5 percent on the rest	3 percent of the first \$5 million, and 10.25 percent on the rest
\$15 million to \$50 million	9.25 percent	9.5 percent	10.25 percent
More than \$50 million	9.75 percent	10 percent	10.75 percent

The proposed compact recognizes instances when the Nation may stop revenue sharing and other payments to the state (for example, if the state attempts to restrict Indian gaming or expand Class III gaming at licensed horse racetracks).

The remaining sections provide general compact terms. **Section 12** states the proposed compact duration (from the date it goes into full force and effect through June 30, 2037) and provisions for terminating the compact for non-payment. **Section 13** describes the notice provisions for the nation and the state. **Section 14** recognizes the compact constitutes the full agreement and

supersedes all prior agreements. Importantly, while the Appendix includes terms of the agreement, it may not be part of the compact under **Section 14**. Upon the compact’s effective date, it must be filed with the state records center. The severability provision states the compact shall be fully enforceable if some provisions are found invalid or unenforceable, except for Sections 4 (conduct of Class III gaming), 5 (licensing), 6 (gaming equipment, devices, or supplies), 9 (conditions to execute the compact), and 11 (revenue sharing).

**FISCAL IMPLICATIONS**

The proposed compact’s revenue sharing rates would result in some increase in revenue to the state, estimated at approximately \$2 million, listed here in FY15 but dependent on the effective date of the compact. This impact reflects the change in revenue sharing rates, and does not reflect a change in calculation of adjusted net win.

The estimate also does not reflect the opening of additional gaming facilities permitted under the terms of the compact. It is assumed that the statewide level of net win will not increase significantly with the opening of more casinos. Overall net win at New Mexico tribal casinos between FY08 and FY12 has remained flat at an average of \$711 million (Figure 1.) While new casinos have opened in that timeframe, there has not been growth in overall gaming revenue. Instead revenues were reallocated amongst an increasing number of casinos, signaling oversaturation in the marketplace.

**Figure 1. Tribal Net Win and Estimated Revenue Share  
FY08-FY12**

Fiscal Year	FY08	FY09	FY10	FY11	FY12	5 Year Average	
Tribes	Net Win	Net Win	Net Win	Net Win	Net Win	Net Win	Percentage of Total
Acoma	\$40,289,686	\$29,192,859	\$20,883,677	\$20,696,842	\$21,093,376	\$26,431,288	3.7%
Isleta	\$103,356,024	\$99,410,129	\$90,109,382	\$90,606,579	\$89,535,728	\$94,603,568	13.3%
Jicarilla Apache	\$7,865,360	\$6,241,393	\$5,548,938	\$5,330,499	\$4,803,560	\$5,957,950	0.8%
Laguna	\$100,191,032	\$98,569,391	\$94,068,208	\$97,173,893	\$93,602,744	\$96,721,054	13.6%
Mescalero Apache	\$72,303,767	\$68,943,552	\$65,355,189	\$69,220,223	\$70,881,996	\$69,340,945	9.8%
Navajo Nation	\$0	\$20,605,421	\$43,131,130	\$45,469,909	\$64,244,646	\$34,690,221	4.9%
Ohkay Owingeh	\$25,494,492	\$20,610,411	\$17,388,647	\$16,140,971	\$13,371,864	\$18,601,277	2.6%
Pojoaque	\$26,018,493	\$48,935,873	\$51,663,641	\$53,313,042	\$57,291,635	\$47,444,537	6.7%
Sandia	\$168,740,149	\$164,699,173	\$161,904,534	\$171,070,969	\$179,875,869	\$169,258,139	23.8%
San Felipe	\$20,501,733	\$18,543,943	\$18,433,821	\$19,675,455	\$19,042,760	\$19,239,542	2.7%
Santa Ana	\$80,700,370	\$71,412,356	\$69,477,421	\$69,796,007	\$72,622,277	\$72,801,686	10.2%
Santa Clara	\$25,216,841	\$21,197,769	\$22,466,858	\$21,004,254	\$22,802,209	\$22,537,586	3.2%
Taos	\$9,669,955	\$9,183,779	\$8,444,414	\$8,686,638	\$8,449,226	\$8,886,802	1.3%
Tesuque	\$30,799,788	\$24,227,056	\$21,633,499	\$22,429,079	\$22,318,873	\$24,281,659	3.4%
<b>Totals</b>	<b>\$711,147,690</b>	<b>\$701,773,105</b>	<b>\$690,509,359</b>	<b>\$710,614,360</b>	<b>\$739,936,763</b>	<b>\$710,796,255</b>	<b>100.0%</b>
<b>Change Year Over Year</b>		<b>-1.3%</b>	<b>-1.6%</b>	<b>2.9%</b>	<b>4.1%</b>		
<b>Sunray Race Track Gaming Revenues</b>	<b>N/A</b>	<b>N/A</b>	<b>\$40,258,959</b>	<b>\$40,322,163</b>	<b>N/A</b>	<b>N/A</b>	

Source: NMGCB and NMRC

With the 2007 compact limits on non-tribal gaming adopted by the proposed compact, it is reasonable to expect that oversaturation will continue as the Nation opens new casino facilities further eroding market share at Sunray Park and casinos located within neighboring tribal lands.

While additional research is needed, the proposed compact would impact the nation's tribal revenue contributions to the general fund. Further, if the state-Nation compact is adopted by the other 2001 compact tribes and pueblos, these changes would impact tribal revenue contributions. Area racinos or other Indian gaming facilities may be impacted.

## **SIGNIFICANT ISSUES**

Five Indian nations – the Jicarilla Apache Nation, the Mescalero Apache Tribe, the Navajo Nation, and the Pueblos of Acoma and Pojoaque – signed the 2001 state-tribal gaming compact, which will expire on June 30, 2015. While these five nations entered negotiations with the state in 2012, only the state and Navajo Nation have reached a compact agreement for consideration during the fifty-first Legislature. The governor's office and tribal representatives acknowledge that negotiations with the remaining 2001 compact nations will continue after this legislative session. Members of the remaining 2001 compact nations and members of the Legislature's Committee on Compacts expressed concern that the proposed Navajo compact, if approved, may serve as the state's benchmark for further negotiations, while the Governor's Office states that other nations, tribes, and pueblos (NTPs) are able to request and negotiate different compacts.

A number of concerns raised in the proposed compact amendment presented during the 2013 session have been addressed. For example, an initial review by Interior officials resulted in a number of provisions being omitted from the January 2014 version, particularly any state limits on Class II machines and the definition, the calculation of free play, and the requirement that prior claims be resolved prior to approving this proposed compact. Further, reporting requirements and access to gaming information has been made more transparent, with audits filed with the Office of the State Auditor.

During the 2013 interim, many members, particularly representatives from NTPs, commented on the inclusivity of prior compact negotiations compared to the limited involvement or inclusion of the 2007 compact NTPs in the negotiating of the 2001 compact amendment and negotiation of key terms in the proposed compact.

During the Committee on Compacts' hearings during the 2014 session, representatives from other gaming NTPs described particular concerns with the state-Nation proposed compact. Tribal leaders from the Jicarilla Apache Tribe, Pojoaque Pueblo, Acoma Pueblo, Laguna Pueblo and San Felipe Pueblo do not support increasing the number of gaming facilities, and particularly the five proposed in the state-Nation compact. (See attached map of gaming facilities.) Jicarilla and Pojoaque leaders, as they negotiate with the state, do not support the higher revenue sharing provisions in the proposed compact (which generally are the 2007 revenue sharing rates); current rates for 2001 compact tribes are lower. Tribes generally would like to see a geographic limitation placed on where the Navajo Nation could open facilities. San Felipe leaders do not support linking the number of gaming facilities to tribal enrollment.

## **ADMINISTRATIVE IMPLICATIONS**

The proposed compact, if approved, would resolve the compact matter for one of the five 2001 compact NTPs; the other four and the state are still in negotiations for a amended compact before the 2001 compacts' June 2015 expiration dates. While many provisions of the state-Navajo compact resemble the 2007 compacts, having a third and possibly fourth (depending on the results of the remaining 2001 compact NTPs negotiations) compact version for the state may lead to difficulties administering the compacts.

**RELATIONSHIP**

SB 22 to HJM 15. Under SB 22, the time limit for a NTP to sign on to an approved compact would be eliminated.

House Bill 307 would cap the percentage of tribal gaming revenue shared with the state under any new tribal gaming compacts at the top corporate income tax rate. This clearly would not apply to the existing compacts, but only to newly negotiated compacts. Nothing in the bill would prohibit the gaming tribes with existing compacts from requesting new negotiations with the (presumably) lower sharing percentages

**TECHNICAL ISSUES**

The proposed compact refers to an Appendix, which the parties have used to clarify terms; a sample calculation of adjusted net win is provided. While the Appendix is not considered part of the compact (Section 14), it serves as an agreement to terms regarding (1) gaming machines, table games, and lottery; (2) audits and compliance; (3) participation fees and progressive games; and (4) the adjusted net win calculation. It is unclear whether NTPs interested in signing on to the proposed compact would be required to follow the terms of the Appendix.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The 2001 compact governing the nation’s gaming activities does not expire until June 30, 2015. Should either chamber defeat the joint resolution by a majority vote, the 2001 compact would remain in place. The Governor and nation could continue negotiations to address concerns. The Governor could submit a request for Legislative consideration during the Fifty-Second Legislature, first session.

**POSSIBLE QUESTIONS**

THT/ds

**Jicarilla Apache Tribe**  
Best Western Jicarilla Inn & Casino  
Apache Nugget Casino

**Ohkay Owingeh**  
OhKay Casino

**Pojoaque Pueblo**  
Cities of Gold Casino  
Cities of Gold Sports Bar  
Kicks 66 Travel Center  
Chevron Convenience Store  
Buffalo Thunder Resort & Casino

**Navajo Nation**  
FruitLand

**Pueblo of Tesuque**  
Camel Rock Casino

**Pueblo of Santa Clara**  
Big Rock Casino

**Pueblo of Taos**  
Taos Mountain Casino

Hogback (Class II)

**Pueblo of San Felipe**  
Casino Hollywood  
San Felipe Travel Center

**Pueblo of Santa Ana**  
Santa Ana Star Casino

**Navajo Nation**  
Fire Rock Casino

**Pueblo of Acoma**  
Sky City Casino

**Pueblo of Laguna**  
Dancing Eagle Casino  
Route 66 Casino  
Route 66 Casino Express

**Pueblo of Sandia**  
Sandia Casino

**Pueblo of Isleta**  
Isleta Casino & Resort  
Isleta Palace West

**Mescalero Apache Tribe**  
Inn of the Mountain Gods  
Resort & Casino Apache  
Casino Apache Travel Center

