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SENATE BILL 469

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

INTRODUCED BY

Manny M Aragon

AN ACT

RELATING TO TRIBAL-STATE AGREEMENTS; AUTHORIZING SUPPLEMENTAL LANGUAGE TO INDIAN GAMING COMPACTS; AMENDING PROVISIONS OF REVENUE-SHARING AGREEMENTS; ENACTING A DELAYED CONTINGENT REPEALER REGARDING NON-INDIAN GAMING ACTIVITIES IN NEW MEXICO; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

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

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

A. The governor of the state upon written request from an Indian nation, tribe or pueblo located in the state that has entered into an Indian Gaming Compact in the form set

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1     forth in Section 11-13-1 NMSA 1978 is authorized to execute a  
2     supplement to the existing Indian Gaming Compact in the form  
3     set forth in this section. The supplement to the Indian  
4     Gaming Indian Compact shall be in substantially the following  
5     form:

6                     "SUPPLEMENT TO INDIAN GAMING COMPACT

7             SECTION 1. Maximum Regulatory Fee Payment. On and after  
8     the effective date of this Supplement to the Indian Gaming  
9     Compact that was entered into between the State of New Mexico  
10    and the \_\_\_\_\_ on  
11    the \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, and  
12    that took effect on the \_\_\_\_\_ day of \_\_\_\_\_  
13    \_\_\_\_\_, 199\_\_\_\_, and notwithstanding anything to the  
14    contrary contained in Paragraph 5 of Subsection E of SECTION 4  
15    of that Indian Gaming Compact, the amount that the Tribe shall  
16    be required to pay the State in any State fiscal year in which  
17    the Tribe operates a Gaming Facility as reimbursement of costs  
18    the State incurs in carrying out the regulatory functions  
19    authorized by the terms of the Indian Gaming Compact is five  
20    hundred dollars (\$500) per Gaming Machine.

21             SECTION 2. Tribal Payment of Total Regulatory Costs.  
22     The Tribe shall pay the State one hundred twenty-five dollars  
23     (\$125) per Gaming Machine per quarter on the twenty-fifth day  
24     of the month following the end of the quarter.

25             SECTION 3. Tribal Regulatory Fee Payments limited to

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

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

7 "11-13-2. REVENUE SHARING OF TRIBAL GAMING REVENUE. --The  
8 governor is authorized to execute a revenue-sharing agreement  
9 in the form substantially set forth in this section with any  
10 New Mexico Indian nation, tribe or pueblo that has also  
11 entered into an Indian gaming compact as provided by law;  
12 provided, however, that the governor is not authorized to  
13 execute a revenue-sharing agreement in the form set forth in  
14 this section with an Indian nation, tribe or pueblo that has  
15 an outstanding balance due to the state of money owed pursuant  
16 to the revenue-sharing agreement entered into between that  
17 Indian nation, tribe or pueblo and the state in 1997.

18 Execution of an Indian gaming compact is conditioned upon  
19 execution of a revenue-sharing agreement. The consideration  
20 for the Indian [entity] nation, tribe or pueblo entering into  
21 the revenue-sharing agreement is the condition of the  
22 agreement providing limited exclusivity of gaming activities  
23 to the [tribal entity] Indian nation, tribe or pueblos. The  
24 revenue-sharing agreement shall be in substantially the  
25 following form [~~and is effective when executed by the governor~~

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1 ~~on behalf of the state and the appropriate official of the~~  
2 ~~Indian entity]:~~

3 "REVENUE-SHARING AGREEMENT

4 SECTION 1. Summary and consideration. The Tribe [~~shall~~  
5 ~~agree to contribute]~~ agrees to pay to the State a portion of  
6 its Class III Gaming revenues identified in and under  
7 procedures of this Revenue-Sharing Agreement, in return for  
8 which the State agrees that the Tribe:

9 A. [~~has]~~ shall have the exclusive right within the  
10 State to provide all types of Class III Gaming described in  
11 the Indian Gaming Compact, with the sole exception of the use  
12 of Gaming Machines, which the State may permit on a limited  
13 basis for racetracks and veterans' and fraternal  
14 organizations; and

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

18 SECTION 2. Revenue to State. The parties agree that,  
19 after the effective date hereof, the Tribe shall make the  
20 quarterly payments provided for in [~~Paragraph]~~ SECTION 3 of  
21 the Revenue-Sharing Agreement to the state treasurer [~~for~~  
22 ~~deposit into the General Fund of the State ("State General~~  
23 ~~Fund")]. The state treasurer shall deposit in the Tribal  
24 Infrastructure Fund forty percent (40%) of the revenue-sharing  
25 payments made on the first twelve million dollars~~

. 126160. 2

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1 (\$12,000,000) of net win by the Tribe every year and in the  
2 State General Fund and sixty percent (60%) of the revenue-  
3 sharing payment made on the first twelve million dollars  
4 (\$12,000,000) of net win by the Tribe every year. The state  
5 treasurer shall deposit in the State General Fund one hundred  
6 percent (100%) of the revenue-sharing payments made on net win  
7 greater than twelve million dollars (\$12,000,000) by the Tribe  
8 in a one-year period. Money deposited in the Tribal  
9 Infrastructure Fund shall be used for road and infrastructure  
10 projects on Tribal land as permitted by law.

11 SECTION 3. Calculation of Revenue to State.

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

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

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

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

25 B. On an annual basis, the Tribe shall pay the

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1 state [~~sixteen percent (16%) of the net win~~]:

2 (1) four percent (4%) of the net win up to  
3 and including six million dollars (\$6,000,000);

4 (2) eight percent (8%) of the net win above  
5 six million dollars (\$6,000,000) up to and including twelve  
6 million dollars (\$12,000,000); and

7 (3) twelve percent (12%) of the net win above  
8 twelve million dollars (\$12,000,000).

9 C. For purposes of these payments, all  
10 calculations of amounts due shall be based upon the  
11 [~~quarterly~~] annual activity of the Gaming Facility beginning  
12 on July 1 of each year. Payments shall be made quarterly  
13 [~~payments due~~] to the State [~~pursuant to these terms~~] by  
14 submitting an amount equal to the amount of net win actually  
15 earned by the Tribe in the same quarter one year prior to the  
16 quarter for which the payment is being made and shall be paid  
17 no later than twenty-five (25) days after the last day of each  
18 calendar quarter. The payment made for the final quarter of  
19 the year shall be reduced or increased as necessary so that  
20 the payments made by the Tribe are based on the actual net win  
21 of the Tribe for the entire year. Any payments due and owing  
22 from the Tribe in the quarter the Indian Gaming Compact is  
23 approved, or the final quarter the Indian Gaming Compact is in  
24 force, shall reflect the net win, but only for the portion of  
25 the quarter the Indian Gaming Compact is in effect.

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

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

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

25            SECTION 5. Effect of Variance. In the event the acts or

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

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

14 Section 3. [NEW MATERIAL] TRIBAL INFRASTRUCTURE FUND  
15 CREATED- - PURPOSES. --

16 A. There is created in the state treasury the  
17 "tribal infrastructure fund".

18 B. Forty percent of the revenue-sharing submitted  
19 to the state based on the first twelve million dollars  
20 (\$12,000,000) of net win of each tribe from gaming machines  
21 submitted to the state pursuant to revenue-sharing agreements  
22 entered into in the form set forth in Section 11-13-2 NMSA  
23 1978 between a tribe and the state shall be deposited in the  
24 tribal infrastructure fund.

25 C. Money in the tribal infrastructure fund shall



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1 be appropriated by the legislature for projects on tribal land  
2 in the following manner:

3 (1) fifty percent of the money shall be  
4 appropriated to improve state roads or school bus routes on  
5 tribal land; and

6 (2) fifty percent of the money shall be  
7 appropriated for other infrastructure projects on tribal land.

8 D. For purposes of this section:

9 (1) "infrastructure" means tribal roads,  
10 community water and waste water systems, tourist facilities,  
11 fiber optics cable and associated technology and community  
12 centers for recreation, education or other activities; and

13 (2) "tribal land" means:

14 (a) all land within the exterior  
15 boundaries of the reservation of an Indian nation, tribe or  
16 pueblo, and its confirmed grants from prior sovereigns; and

17 (b) any other lands to which title is  
18 either held in trust by the United States for the exclusive  
19 benefit of an Indian nation, tribe or pueblo or one of its  
20 members or is held by an Indian nation, tribe or pueblo or one  
21 of its members, subject to restrictions against alienation  
22 imposed by the United States and over which the Indian nation,  
23 tribe or pueblo exercises jurisdiction and governmental  
24 authority.

25 Section 4. DELAYED REPEAL. -- If on January 1, 2000, an  
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1 Indian nation, tribe or pueblo that in 1997 had entered into  
2 an Indian gaming compact and a revenue-sharing agreement in  
3 the forms set forth in Laws 1997, Chapter 190, Sections 1 and  
4 2, has a balance due and owing to the state pursuant to that  
5 revenue-sharing agreement, Sections 60-2E-1 through 60-2E-61  
6 NMSA 1978 (being Laws 1997, Chapter 190, Sections 3 through  
7 63, as amended) are repealed effective January 1, 2000.

8 Section 5. EFFECTIVE DATES. --

9 A. An Indian gaming compact supplement set forth  
10 in Section 1 of this act and a revenue-sharing agreement set  
11 forth in Section 2 of this act may be executed on or after  
12 June 18, 1999. The effective date of the provisions of an  
13 Indian gaming compact supplement and an amended version of a  
14 revenue-sharing agreement executed by a tribal official  
15 authorized by the Indian nation, tribe or pueblo entering into  
16 the agreement and the governor of New Mexico on behalf of the  
17 state is the date on which the supplement to that Indian  
18 gaming compact and that amended version of a revenue-sharing  
19 agreement has been approved pursuant to the provisions of the  
20 federal Indian Gaming Regulatory Act.

21 B. The effective date of the provisions of Section  
22 3 of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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6 February 17, 1999  
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8 Mr. President:  
9

10 Your COMMITTEE OF THE WHOLE, to whom has been referred  
11

12 SENATE BILL 469  
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14 has had it under consideration and reports same WITHOUT  
15 RECOMMENDATION, and further recommends that it NOT be referred to  
16 the FINANCE COMMITTEE.  
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19 Respectfully submitted,  
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24 \_\_\_\_\_  
Manny M. Aragon, Chairman  
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Page 12

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Date \_\_\_\_\_

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FORTY- FOURTH LEGISLATURE

FIRST SESSION

February 22, 1999

SENATE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE BILL 469

Amendment sponsored by Senator Patrick H. Lyons

1. On page 3, line 4, strike the quotation marks and the second period.

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

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

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

SF1 /SB 469

Page 14

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