MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2025

2005 SENATE JUDICIARY

SB 2025

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2025

Senate Judiciary Committee

❑ Conference Committee

Hearing Date January 10, 2005

Tape Number	Side A	Side B	Meter #
1	X		00 - 3835
Committee Clerk Signature	Mona L Solberg		

Minutes: Relating to the approval of tribal-state gaming compacts.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony in Opposition of the Bill:

Tex G. Hall, Chairman of the Mandan, Hidatsa & Arikara Nation. (55 meter) Read testimony (Attachment #1) Recommends a Do Not Pass

Sen. Traynor discussed compact law (meter 556) Isn't there a provision allowing either party open negotiations? I believe it is in prior determinations.

Senator Triplett question **Mr. Hall** on why he believes our laws are the best in the Nation? (meter 582) **Mr. Hall** discussed how ours were created in a non-hostile environment with the best intentions. Discussed it's history. Discussed what other states have as problems with theirs and how expensive the litigation's are in those states. "If it is not broken, do not fix it".

Testimony In Support of the Bill:

Senator Judy Lee, Dist13, (meter 9883) gave testimony (Attachment #2) As a member of the Interim Committee. I response to the prior speaker, this bill does not have a connection with child support. My support of this bill is a philosophical position., that it is appropriate and necessary for the legislature not only be involved by offering comments, as they are currently permitted by law. Sited example on attachment. This bill came up from a conversation, there is no burning issue that brought this bill up. This came up from academic concerns. Child Support Assoc. of Counties are spearheading a task force with child support, this is not that bill. We are the #2 in the nation for child support collections with $200 million in back support mostly due to unemployment.

Sen. Traynor questioned if the six cases overturned (meter 1365) in other states were do to their constitution? Yes. Was there a statute in effect similar to this bill? Yes, that is my understanding, they need legislation like this bill. **Sen. Traynor** request **Jeff Ubbenn** (Senate Judiciary Intern) to locate a copy of 25 US Code 2701 for the committee

Sen. Nelson wondered why the Budget Committee on Human Services will bringing this bill forward. I do not recall a study resolution for it and if it not related to something dealing with Human Services, why is it coming to you committee? **Sen Lee** responded that this was not part of an agenda. This evolved from a conversation during the committees whether or not it is germane to this budget committee in Human Services, that will be up to you to decide. I think that it is germane to what we do in the state of ND and is appropriate to have your consideration (meter 1517) Discussion of this.

Senator Triplett requested copies of the six cases. Jeff Ubbenn to obtain for the committee

(attachment #3)

Testimony in Opposition of the Bill:

Kurt Luger (meter 1671) Executive Director of the ND Gaming Association. Discussed history of our compact and the great problems other states have. Discussed several Issues spoke of earlier. This compact is about the creation of 2,000 full time jobs, our distinct markets due to location and lock of a large metro area. Discussed tourism/financing $300 mill worth of infrastructure into ND since 1993. Discussed current involvement with the Governor (meter 2180) The American Indian population is 10% of ND's. This Bill is not practical discussed how the current system works (meter 2346). "If it is not broken, don't fix it". An internal study showed (meter 2660) truancy has stopped 30% now that Mom and Dad are going to work.. Discussed the importance the "trust" the state and the American Indians need to have. Discussed programs for help (compulsive gambling).

Sen Nelson stated that she interprets that they like working with the leadership. Why are there two different ruled currently one when we are in session and one when we do not meet? When we are not it seems more political. Discussed making an amendment (meter 2370). What if we deleted sub section 1, and delete first phase in sub section 2, saying "at the time negotiations are conducted the majority and minority leaders of both houses, or there designees, may attend all negotiations and brief there respected houses on the status of negotiations". Then it would not make any difference whether we were in or out of session, you talked about those four people are already being involved. (meter 3051) **Senator Hacker** question the leaderships involvement in the past (meter 3120)

James C. Crowford Tribal Chairman Sisseton-Wahpeton Oyata of the Lk Trav Resv.(meter 3330) spoke in opposition of the bill, re-interating the above speaker.

No further questions.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2025

Senate Judiciary Committee

☐ Conference Committee

Hearing Date February 7, 2005

Tape Number	Side A	Side B	Meter #
1		X	1350 - 2635
Committee Clerk Signature	Mona L Galbreath		

Minutes: Relating to the approval of tribal-state gaming compacts.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following:

Sen. Traynor handed out an amendment (meter 1445) - Att. #1 After looking into the United States Constitution and in the powers of the executive it reads "He (the President) shall have power by and with the advice and consent of the Senate to make treaties provided two/thirds of the Senators present concur." My amendment reflects this, or so I asked legislative council to do so. In place of the "President" I have put the "Governor" - sited amendment. This is only a suggestion. I take no offense if you disregard it.

Sen. Trenbeath stated that the bill as it stands that any amendment or renewals is subject to the vote of the legislative majority? Yes.

Sen. Nelson stated how difficult it is to get 21 people to agree, why are we trying to get 100+ more involved. It is not our duty to "micro manage" this.

Senator Triplett sited the other states that seem to have issues and not us. Discussed case study Att. #3 of previous testimony. Discussion of what "state" means. Is it the Legislature.

Sen. Trenbeath asked what the motivation of the budget committee in the Health Department that this bill was generated from? Child support.

Sen. Nelson stated that in Chapter 470 SB 2399 - Att. #2. We gave them this ability in a 1997 bill. **Senator Triplett** asked if any of the other tribal governments we were waiting a response from contact us? No. Tex Hall is only one tribe, what about the others.

Senator Hacker stated that the current contract has been good for 17 years and has a biannual review every two. If we have not had any problems why are we getting involved now. If there was an issue let us address it at that time.

Sen. Nelson made the motion to Do Not Pass and **Senator Hacker** seconded the motion. **Sen. Traynor** and **Senator Syverson** voted against the Do Not Pass but the majority agreed. Motion Passes.

Carrier: **Sen. Nelson**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2/7

50157.0102
Title.

Prepared by the Legislative Council staff for
Senator Traynor
February 2, 2005

AH #1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2025

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 54-58-03 of the North Dakota Century Code, relating to the execution of tribal-state gaming compacts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-58-03 of the North Dakota Century Code is amended and reenacted as follows:

54-58-03. Tribal-state gaming compact - Creation, renewals, and amendments. The governor ~~or the governor's designee may represent the state in any gaming negotiation in which the state is required to participate pursuant to 25 U.S.C. 2701 et seq. by any federally recognized Indian tribe and, on behalf of the state~~, by and with the advice and the consent of two-thirds of the members-elect of each house of the legislative assembly, may execute, pursuant to 25 U.S.C. 2701 et seq., a gaming compact between the state and a federally recognized Indian tribe, subject to the following:

1. ~~If the legislative assembly is not in session at the time gaming negotiations are being conducted, the chairman and vice chairman of the legislative council or the designee of the chairman or vice chairman may attend all negotiations and brief the legislative council on the status of the negotiations.~~

~~2.~~ ~~If the legislative assembly is in session at the time negotiations are being conducted, the majority and minority leaders of both houses, or their designees, may attend all negotiations and brief their respective houses on the status of the negotiations.~~

~~3.~~ The compact may authorize an Indian tribe to conduct gaming that is permitted in the state for any purpose by any person, organization, or entity.

~~4.~~ 2. For the purposes of this chapter, the term "gaming that is permitted in the state for any purpose by any person, organization, or entity" includes any game of chance that any Indian tribe was permitted to conduct under a tribal-state gaming compact that was in effect on August 1, 1997.

~~5.~~ 3. The compact may not authorize gaming to be conducted by an Indian tribe at any off-reservation location not permitted under a tribal-state gaming compact in effect on August 1, 1997, except that in the case of the tribal-state gaming compact between the Turtle Mountain Band of Chippewa and the state, gaming may be conducted on land within Rolette County held in trust for the Band by the United States government which was in trust as of the effective date of the Indian Gaming Regulatory Act of 1988 [Pub. L. 100-497; 102 Stat. 2467; 25 U.S.C. 2701 et seq.].

~~6.~~ 4. The compact may not obligate the state to appropriate state funds; provided, however, the state may perform services for reimbursement.

~~7.~~ 5. The negotiations between the tribe and the state must address the possibility of a mutual effort of the parties to address the issue of compulsive gambling.

~~8. If the legislative assembly is not in session when the negotiations are concluded, the governor shall forward a copy of the compact as finally negotiated to each member of the legislative council at least twenty-one days before the compact is signed.~~

~~9. If the legislative assembly is in session when the negotiations are concluded, the governor shall forward a copy of the compact as finally negotiated to each member of the legislative assembly at least twenty-one days before the compact is signed.~~

~~10.~~ 6. Before execution of any proposed tribal-state gaming compact or amendment thereto, the governor shall conduct one public hearing on the proposed compact or amendment."

Renumber accordingly

Date: 2/7/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2025

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Sen. Nelson Seconded By Sen Hacker

Senators	Yes	No	SenatorsSen. Nelson	Yes	No
Sen. Traynor		X	Sen. Nelson	✓	
Senator Syverson		X	Senator Triplett	✓	
[illegible]ator Hacker	✓				
[illegible]. Trenbeath	✓				

Total (Yes) 4 ~~6~~ No 2 ~~0~~

Absent 0

Floor Assignment Sen. Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2025: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2025 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

SB 2025

MANDAN, HIDATSA & ARIKARA NATION
Three Affiliated Tribes • Ft. Berthold Reservation
404 Frontage Road • New Town, ND 58763-9402

Att #1

59th LEGISLATIVE ASSEMBLY
SENATE JUDICIAL COMMITTEE
HONORABLE TRAYNOR, CHAIRMAN & COMMITTEE MEMBERS

TESTIMONY OF TEX G. HALL, CHAIRMAN
MANDAN, HIDATSA & ARIKARA NATION
ON SENATE BILL 2025

Chairman Traynor and Committee Members my name is Tex Hall and I am the Chairman of the Mandan, Hidatsa & Arikara Nation. Thank you for allowing me to testify before you today.

Senate Bill 2025 would amend Section 54-58-03 of the North Dakota Century Code to require legislative approval of any future gaming compacts between the State and North Dakota tribes or amendments thereto.

The Tribes of North Dakota and the State have the best gaming compacts in the nation. The Tribes negotiated these compacts with former Governor Schaffer, his staff, and the Chairman and Vice-Chairman of the legislative council at the time. The Governor received comments and input from the legislature through its various members. The end result was that the State got a very good gaming compact with the North Dakota Tribes. Later in 2001, the Tribes successfully renegotiated with Governor Hoeven and his staff along with legislative leadership for the present day compact.

The point is that the process for negotiating gaming compacts is not broke and there is no need to fix something that is not broke. The present statute concerning the negotiation for gaming compacts allows for input from the legislative body and there is no need to require legislative approval of a gaming compact.

I would also like to point out that the present gaming compacts do not expire until 2017. I do not believe that any North Dakota Tribe or the State desire to amend the gaming compact. Thus, it seems senseless to even consider this law at this point and time.

I am also fearful that requiring legislative approval could further politicize the process for negotiating gaming compacts and result in unnecessary delays. Millions of dollars have been financed on the strength of these compacts. North Dakota Tribes and their bankers should not have to worry about their finances being subject to additional political delays. Because our casinos fund our government and the services they provide, too much is at risk.

The way this bill originated demonstrates exactly what I mean about subjecting the gaming compacts to the politics of the legislature. This bill originated out of the

Budget Committee on Human Services. Since when did the Budget Committee on Human Services obtain jurisdiction over gaming compacts?

The Budget Committee on Human Services was concerned about the poor performance of the Lake Region Child Support Enforcement Unit. When studying this issue, one of the reasons stated for the poor performance of the Lake Region Unit was that it was difficult to enforce child support orders on Indian reservations and that this Region covered two Indian Reservations. That was all a few legislators in that committee needed to hear to conclude that the answer to the Lake Region Child Support Enforcement Unit's problem was for these legislators to inject themselves into the compact approval process. This conclusion is illogical when you consider that Mr. Colin Barstad, Lake Region Child Support Enforcement Unit's Administrator, made the following statements to the Committee:

- Lake Region Child Support Enforcement Unit's still rate's last in the State if you exclude cases that involve the Indian Reservation within the Unit's area. This statement indicates that the problem is deeper than child support enforcement on Indian reservations.

- Collection of child support on Indian reservations is difficult because of high unemployment rates and because the noncustodial parent living on the reservation may be unemployed, it is difficult for them to provide the child support for their children.

- The Lake Region Unit has been working with the Tribes within its area on child support enforcement on their reservations.

- That if District Court withholding orders are filed with Tribal Court, the Tribe will honor them.

These statements make it perfectly clear that the solution to child support enforcement within the Lake Region Unit is something other than addressing this issue in the State/tribal gaming compacts. This approach is especially nonsensical when you consider that the present compacts do not expire until 2017. The Lake Region Unit needs a solution now, not in 2017.

Our Tribal Attorney attended a hearing of the Budget Committee on Human Services on September 22, 2004 along with Mr. Kurt Luger, the Executive Director of the North Dakota Indian Gaming Association. Our attorney informed the Committee that he could arrange for a meeting with Tribal leaders to help address this issue and he gave out his telephone number to the Committee to give him a call if they wanted a meeting arranged. Nobody has called. The Committee's apparent lack of interest in meeting with Tribal leaders on this issue compels me to conclude that the child support enforcement on Indian reservations is simply an excuse for some legislators to inject themselves into the compacting process.

Lastly, please keep in mind that federal law requires the State to negotiate gaming compacts in good faith. If some legislators think that they can compel North Dakota's Tribes to address all jurisdiction and social issues in the gaming compacts, I believe they would find that they would violate the good faith requirement in attempting to do so. The State cannot make Tribes address non-gaming related issues in a gaming compact. Non-gaming issues must be handled separately. Thus, not only is the underlying purpose of this bill ill advised, it is probably illegal. Again, the State of North Dakota and North Dakota Tribes have a very successful gaming compact that is the best model in the entire country. The gaming compact has helped to create over 2000 jobs on our reservation and the State of North Dakota. Why would anyone want to change this?

Based on these reasons and ill advised intervention, I would respectfully urge this committee to recommend a DO NOT PASS on SB 2025.

(For Sen. J. Lee)

Att #2

Scratch Pad for Bill: SB 2025

SB 2025
January 10, 2005

Tribal gaming compacts play an important role in North Dakota and have had a favorable impact on the economies of our reservations. I do have concerns, however, about the fact that the legislative assembly does not have the opportunity to review and consent to the compacts under current practice, although they can attend and provide comments.

Just as the President of the US can negotiate a treaty or agreement with another country and the US Senate must consent, when the Governor negotiates an agreement or compact with a tribe which is a sovereign nation, the legislature should provide advice and consent.

Six states have had their tribal gaming compacts invalidated by their highest courts because of the absence of legislative approval. This is a good time for North Dakota to be examining our laws and making sure that the appropriate procedures are in place. Those states are New Mexico, Kansas, Michigan, Rhode Island, New York and Wisconsin. The respective court rulings are: Clark v. Johnson (1995); Stephen v. Finney (1992); McCartney v. Attorney General (1998); Narragansett Indian Tribe of Rhode Island v. State (1995); Saratoga Chamber of Commerce v. Pataki (2003); Peterman v.Pataki (2004); and Panzer v. Doyle (2004).

Timing is good for several reasons, including the fact that the compacts are not up for negotiation right now, so discussion can be done in general, not on specifics. There is time to put in place the procedures which would provide for legislative approval.

It is important to note that the reason for my support of this bill is not because of any burning issue in current compacts. It is my philosophical point of view that the legislature needs to consent to compacts and that North Dakota needs to provide for that consent.

AMENDED GAMING COMPACT
BETWEEN THE
SPIRIT LAKE NATION
AND THE
STATE OF NORTH DAKOTA

The Amended Gaming Compact ("Amended Compact") is made and entered into this 29th day of September, 1999, by and between the Spirit Lake Tribe, formerly known as the Devils Lake Sioux Tribe, (hereinafter referred to as the "Tribe") and the State of North Dakota (hereinafter referred to as the "State").

I. RECITALS.

The Tribe is a federally-recognized Indian Tribe, organized pursuant to the Constitution and By-Laws of the Spirit Lake Tribe, approved by the Commissioner. of the Bureau of Indian Affairs, on February 14, 1946, as amended thereafter, and situated on its. permanent homeland, with its headquarters at Fort Totten, North Dakota. Pursuant to Article VI of the Tribal Constitution, the Tribal Council is the governing body of the Tribe with constitutional and federal statutory authority to negotiate with state and local governments.

The State, through constitutional provisions and legislative acts, has authorized games of chance and other gaming activities, and the Congress of the United States, through the Indian Gaming Regulatory Act, Public Law 100-407, 102 Stat. 2426, 25 U.S.C. §2701 et seq. (1988) (hereinafter referred to as the "IGRA"), has authorized the Tribe to operate Class III gaming pursuant to a tribal gaming ordinance approved by the National Indian Gaming Commission and a Compact entered into with the State for that purpose. Pursuant to its inherent sovereign authority and the IGRA, the Tribe intends to continue presenting Class III gaming, and the Tribe and State negotiated a Compact under the provisions of the IGRA to authorize and provide for the operation of such gaming. Said Compact was executed on October 7,1992, by the then serving Tribal Chairman on behalf of the Tribe and the then serving Governor on behalf of the State and became effective when thereafter approved by the United States, Secretary of Interior and publicized in the Federal Register. Said Compact provides for Amendment upon agreement by both parties. The parties believe that amendment at this time would be appropriate.

NOW THEREFORE, in consideration of the covenants and agreements of. the parties herein below, the Tribe and the State agree as follows:

II. POLICY AND PURPOSE.

The Tribe and the State mutually recognize the positive economic benefits that gaming may provide to the Tribe and to the region of the State adjacent to Tribal lands, and the Tribe and, the State recognize the need to insure that the health, safety and welfare of the public and the integrity of the gaming industry of the Tribe and throughout North Dakota be protected. In the spirit of cooperation, the Tribe and the State hereby agree to carry out the terms of the IGRA regarding tribal Class III gaming.

The Tribal Gaming Code and regulations of the Tribal Gaming Commission (hereinafter referred to collectively As "Tribal Law"), this Compact, and the IGRA shall govern all Class III gaming activities, as defined in the IGRA. The purpose of this Compact is to provide the Tribe with the. opportunity to license and regulate Class III gaming to benefit the Tribe economically.

III. AUTHORIZED CLASS III GAMING.

3.1 Kinds of Gaming Authorized. The Tribe shall have the right to operate upon Tribal trust lands within the exterior boundaries of the Devils Lake Sioux Reservation, and the lands and waters identified in Section XXXIII below, the following Class III games during the term of this Compact, pursuant to Tribal Law and Federal Law, but subject to limitations set forth within this Compact.

A. Electronic games of chance with video facsimile displays. Machines featuring coin drop and payout, and machines featuring printed tabulations shall both be permitted;

B. Electronic games of chance with mechanical rotating reels whereby the software of the device predetermines the stop positions and the presence or lack thereof, of a winning combination and pay out, if any. Machines featuring coin drop and payout, and machines featuring printed tabulations shall both be permitted;

C. Blackjack; and similar banking card games;

D. Poker; including Pai Gai Poker and Caribbean Stud Poker;

E. Pari-mutuel and simulcast betting pursuant to the separate parimutuel horse racing addendum to Gaming Compact between the parties executed on April 8, 1993, and thereafter approved by the United States Secretary of Interior. This amended compact shall control any inconsistencies between the addendum and this compact;

F. Sports and Calcutta pools on professional sporting events as defined by North Dakota law, except as to bet limits and except that play may be conducted utilizing electronic projections or reproductions of a sports pool board;

G. Sports Book except as prohibited by the Professional and Amateur Sports Protection Act, P.L. 102-559; 28 U.S.C. Chap. 178,.Pt. VI;

H. Pull-tabs or break-open tickets when not played at the same location where bingo is being played, subject to the limitations set forth at Section 3.4, below;

I. Raffles;

J. Keno;

K. Punchboards and jars;

L. Paddlewheels;

M. Craps and Indian Dice;

N. All games of chance and/or skill, other than those subject to Section 3.3 of this Compact, authorized to be conducted by any group or individual under any circumstances within the State of North Dakota, rules of play to be negotiated in good faith by the parties hereto;

O. Roulette, and similar games, whether played conventionally or electronically; and

P. Slot Tournaments, whether or not a fee is charged, in which players use designated electronic games of chance machines, whether equipped with video facsimile displays or mechanical rotating reels, that are equipped with special tournament EPROM chips, and are set to not receive coins during tournament play and which do not make printed tabulations during tournament play, in which the player competes against other players for a specified prize or prizes based on accumulated points as determined by the machine. The Tribe shall adequately account for slot tournament revenues.

3.2 Limits of Wagers. The Tribe shall have the right to operate and/or conduct authorized Class III gaming with individual bet maximum wagers to be set at the discretion of the Tribe, except that maximum wagers shall not exceed those set forth herein.

A. Wagers on blackjack may not exceed One hundred and no/100 dollars ($100.00) per individual bet. However, the Tribe may designate no more than two (2) tables on which wagers may not exceed Two Hundred Fifty and no/100 ($250.00) dollars per individual bet. Such tables shall be physically segregated, separately identified, and concurrently operative no more than twelve (12) hours per day.

B. Wagers on poker shall not exceed Fifty and no/100 dollars ($50.00) per individual bet per round, with a three raise maximum per round.

C. Bets on paddlewheels, whether individual or multiple, shall not exceed Fifty and no/100 dollars ($50.00) by any individual player per spin of the wheel.

D. Individual bets placed during the play of craps shall not exceed sixty and no/100 ($60.00) dollars per bet. A player may lay "true odds don't bets" to win no more than monies placed into play by the player during any individual game. Each game shall be attended by at least a two-person team, and normally by a three person team, and overseen by at least one other non-participant supervisor who may oversee more than one game. Surveillance cameras shall not be considered a member of the three-person team.

E. The aggregate bets placed during the play of Indian dice shall not exceed an amount equal to One hundred and no/100 dollars ($100.00) multiplied by the number of players. Each game shall be attended by at least a two-person team, and normally by a three-person team, and overseen by

at least one other non-participant supervisor who may oversee more than one game.

F. Electronic games of chance may not process individual bets in excess of Twenty-five and no/100 ($25.00) dollars per bet. However, play may be conducted upon individual machines which, process simultaneously any number of bets, so long as the total of all bets does not exceed Twenty-five and no/100 dollars ($25.00).

G. Bets on Roulette shall not exceed Fifty and no/100 dollars ($50.00) where a player places a single bet per spin of the wheel. Players may, however, place a series of non-duplicate individual bets of no more than Five and no/100 dollars ($5.00) each per spin of the wheel.

3.3 Availability of Additional Games and Bet Limits Legally Conducted by Other Tribes. All games and/or increased wager limits which any other Indian Tribe may legally conduct, or utilize, on trust lands located within North Dakota, whether by compact with the State, or through action by the United States Secretary of Interior, or determination of any court maintaining jurisdiction, shall be available for play by Tribe subject to the following: The State may condition play upon the provision by Tribe of consideration similar or equivalent to that provided by another compacting Tribe. Upon identification by Tribe of any such game, and written notice to State, the parties shall within fourteen (14) days commence good faith negotiations as to the inclusion of such additional game or games, consideration by the Tribe, if applicable, rules of play and presentation thereof. Such negotiations shall proceed with deliberate speed and attention.

3.4 Limits on Conduct of Pull-Tabs. Pull tabs and/or break-open tickets when conducted as Class III gaming shall be conducted in accordance with standards; and limitations then currently established under North Dakota State Law for the conduct of similar games, within the State of North Dakota. This Compact, as to pull-tabs and break-open games only, shall be deemed to be revised simultaneously with any revisions of North Dakota law as to the conduct of pull-tabs or break-open tickets to incorporate within the Compact, as applicable to Tribe, any such revisions.

Further, and in addition to the limitations set forth above, pull-tabs shall be dispensed only by machines that incorporate devices to tabulate machine activity.

The Tribe shall voluntarily comply with the above criteria in its conduct of all pull-tabs and break-open games. Should it not do so, it is agreed by the parties that the Tribe under the terms of this Agreement shall not be authorized to conduct any Class III pull-tabs or break-open ticket sales and shall not do so.

3.5 No Machine or Table Limit. There shall be no limit on the number of machines, tables, or other gaming devices which the Tribe may operate pursuant to this Compact, nor shall there be a limit as to number of sites on trust lands upon which gaming may be offered.

3.6 Technology Advancements. It is the desire of Tribe and of State to permit games authorized at Section 3.1 above to be conducted at the Tribe's option in a manner incorporating such advancement of technology as may be available. At the request of either party, State and Tribe shall meet to discuss such application.

3.7 New Games. At the request of either party, Tribe and State shall meet to discuss introduction of new games and appropriate rules of play along with the appropriateness and/or necessity of the Amendment of this Compact to permit such play.

3.8 Inflation or Deflation. At the request of either party, the Tribe and the State shall meet to discuss adjustment of betting limits to address economic inflation or deflation.

IV. TRIBAL LAW.

4.1 Gaming Code. The Tribe has adopted a Tribal Code, entitled "Gaming", and shall adopt regulations of the Tribal Gaming Commission pursuant thereto. Such Tribal Law shall be, and shall remain after any amendment thereto, at least as stringent as those specified in the Indian Gaming Regulatory Act and this Compact, and, with the exception of wagering limits and banking card games, those statutes and administrative rules adopted by the State of North Dakota to regulate those games of chance as may be authorized for play within the State of North Dakota, generally. The Tribe shall furnish the State with copies of such Tribal Law, including all amendments thereto.

4.2 Incorporation. The Gaming Code of the Tribe, as it may be from time-to-time amended, is incorporated by reference into this Compact.

V. TRIBAL REGULATION OF CLASS III GAMING.

5.1 Tribal Council to Regulate Gaming. The Tribal Council of the Tribe ("the Council") shall license, operate and regulate all Class III gaming activities pursuant to Tribal Law, this Compact, and the IGRA, including, but not limited to, the licensing of consultants, primary management officials and key employees of each Class III gaming activity or operation, and the inspection and regulation of all gaming devices. Any discrepancies in any gaming activity or operation and any Violation of Tribal Law, this Compact or IGRA shall be corrected immediately by the Tribe pursuant to Tribal Law and this Compact.

5.2 Tribal Gaming Commission. The Tribal Gaming Commission, appointed pursuant to the Tribal Law and Order Code (hereinafter referred to as the "Tribal Commission"), shall have primary responsibility for the day-to-day regulation of all tribal gaming activities of operations, pursuant to delegation of authority by the Council, including licensing of all gaming employees.

5.3 Regulatory Requirements. The following regulatory requirements shall apply to the conduct of Class III gaming. The Tribe shall maintain as part of its lawfully enacted ordinances, at all times in which it conducts any Class III gaming, requirements at least as stringent as those set forth herein.

A. Odds and Prize Structure. The Tribe shall publish the odds and prize structure of each Class III game, and shall prominently display such throughout every gaming facility maintained by the Tribe.

B. No credit extended. All gaming shall be conducted on a cash basis. Except as herein provided, no person shall be extended credit for gaming by the gaming facility operated within the Reservation, and no operation shall permit any person or organization to offer such credit for a fee. This restriction shall not restrict the right of the Tribe or any other person or entity authorized by the Tribe to offer check cashing or to install or accept bank card, or credit card or automatic teller machine transactions in the same manner as would be normally permitted at any retail business within the State. The Tribe shall adopt check-cashing policies and advise the State of such policies.

C. Age Restrictions.

(i) No person under the age of 21, except for military personnel with military identification, may purchase a ticket, other than a raffle ticket, make a wager, or otherwise participate in any Class III game; provided that this section shall not prohibit a person 21 years old or older from giving a ticket or share to a person under the age of 21 as a gift.

(ii) No person under the age of 21, except employees performing job-related duties, shall be permitted on the premises where any component of Class III gaming is conducted, unless accompanied by a parent, guardian, spouse, grandparent, or great-grandparent over the age of 21, sibling over the age of 21, or other person over the age of 21 with the permission of the minor's parent or guardian; provided that this subsection shall not apply to locations at which safe of tickets is the only component of Class III gaming. This section shall not limit the presence of individuals under the age of 21 within areas of gaming facilities conducting only Class II gaming, or exclusively providing activities other than Class III gaming such as food service, concerts, and gift items.

D. Player Disputes. The Tribe shall provide and publish procedures for impartial resolution of a player dispute concerning the conduct of a game, which shall be made available to customers upon request.

VI. COMPLIANCE.

6.1 Report of Suspected Violation by Parties. The parties hereto, shall immediately report any suspected violation of Tribal Law, this Compact, or the IGRA to the Tribal Gaming Commission and to such State official as the State may designate. If the Commission concludes that a violation has occurred, the violation will be addressed by the Commission within five (5) days after receipt of such notice. The Commission shall notify the State promptly as to such resolution.

6.2 Response to Complaints by Third Parties. The Tribe shall through its Gaming Commission arrange for reasonable and accessible procedures to address consumer complaints. The Commission shall submit to such State official as the State may designate, a summary of any written Complaint received which addresses a suspected violation of Tribal law, this Compact, or the IGRA, along with specification as to any action or resolution deemed warranted and/or undertaken.

6.3 Non-Complying Class III Games. The following are declared to be non-complying Class III Games:

A. All Class III games to which the agents of the State have been denied access for inspection purposes; and

B. All Class III games operated in violation of this Compact.

6.4 Demand for Remedies for Non-Complying Games of Chance. Class III games believed to be non-complying shall be so designated, in writing, by the agents of the State. Within five (5) days of receipt of such written designation, the Tribe shall either:

A. Accept the finding of non-compliance, remove the Class III games from play, and take appropriate action to ensure that the manufacturer, distributor, or other responsible party cures the problem; or

B. Contest the finding of non-compliance by so notifying the agents of the State, in writing, and arrange for the inspection of the contested game, by an independent gaming test laboratory as provided within ten (10) days or the receipt of the finding of non-compliance. If the independent laboratory finds that the Class III game or related equipment is non-complying, the non-complying Class III game and related equipment shall be permanently removed from play unless modified to meet the requirements of this Compact.

VII. DESIGNATED USAGE OF FUNDS.

7.1 The Tribal Council of the Tribe has determined that it is in the interest of the Tribe that designated portions of revenue derived from gaming operations be guaranteed for usage within Tribal programs for economic development, other than gaming, and social welfare. In accordance therewith, at least ten (10%) percent of Net Revenues from Class III gaming operations must be directed to, and utilized within, economic development programs of the Tribe. Net Revenues shall be determined pursuant to the definition set forth within Section 4(9) of the Indian Gaming Regulatory Act according to Generally Accepted Accounting Principles (GAAP) as recognized by the American Institute of certified Public Accountants.

7.2 The parties intend that set aside funds as described herein shall be used for the long-term benefit and improvement of the Tribe and its members and be directed towards long-term economic development activities that will produce lasting returns on usage of these funds.

7.3 Economic development funds shall be used consistent with the following criteria:

(I) Purchase of supplies for the Tribes economic development programs.

(ii) Purchase of equipment of fixtures for the economic development programs.

(iii) Purchase, lease, or improvement of real estate for economic development operations or specific economic development projects.

(iv) Capitalization for economic development projects being pursued by the Tribe.

(v) Improvements to, or purchase towards tribal infrastructure (such as roads, buildings, water supply, waste water treatment, and similar efforts.)

(vi) Funds shall not be used for salaries, or day-to-day operations, or for gaming activities, whether of debt service or otherwise.

(vii) Planning and development of tribal businesses and other economic development activities.

(viii) Economic development grants to tribal members.

7.4 Any member of the Tribe may inspect, during normal business hours, how economic development funds under this section have been used by the Tribe and to inspect annual audits. Such information shall be periodically distributed to the representative body of each District.

VIII. LICENSING.

8.1 Tribal License. All personnel employed or contractors engaged by the Tribe, and/or by any Management Agent under contract with the Tribe, whose responsibilities include the operation or management of Class III games of chance shall be licensed by the Tribe.

8.2 State License. All personnel employed or contractors engaged by the Tribe and/or by any Management Agent under contract with the Tribe, other and apart from Members of the Tribe, whose responsibilities include the operation or management of Class III games of chance, shall be licensed by the State, should the State maintain applicable licensure requirements.

IX. BACKGROUND INVESTIGATION.

9.1 Information Gathering. The Tribe, prior to hiring a prospective employee or engaging a contractor whose responsibilities include the operation or management of Class III gaming activities, shall obtain sufficient information and identification from the applicant to permit the conduct of a background investigation of the applicant.

9.2 Authorization of Background Investigation. Any person who applies for a tribal license pursuant to this Compact and Tribal law shall first submit an application to the Tribe which includes a written release by the applicant authorizing the Tribe to conduct a background investigation of the applicant and shall be accompanied by an appropriate fee for such investigation as determined by the Commission pursuant to Tribal law and this Compact.

9.3 Background Investigation by the Tribe. Upon receipt of the application and fee, the Commission shall investigate the applicant within thirty (30) days of the receipt of the application or as soon thereafter as is practical. The Commission shall utilize the North Dakota Bureau of Criminal Investigations (BCI) to assist in background investigations, but may utilize any other resource the Tribe determines appropriate.

9.4 Background Investigations by State Prior to Employment. The Tribe, prior to placing a prospective employee whose responsibilities include the operation or management of games of chance, shall obtain a release and other information from the applicant to permit the State to conduct a background check on the applicant. This information, along with the standard fee, shall be provided in writing to the state which shall report to the Tribe regarding each applicant within thirty (30) days of receipt of the request or as soon thereafter as is practical. The Tribe may employ any person who represents, in writing, that he or she meets the standards set forth in this section, but must not retain any person who is subsequently revealed to be disqualified. Criminal history data compiled by the State on prospective employees shall, subject to applicable state to federal law, be released to the Tribe as part of the reporting regarding each applicant. The background check of employees and contractors to be conducted pursuant to this paragraph shall be independent of any similar federal requirements.

9.5. Background Investigations of Employees During Employment. Each person whose responsibilities include the operation or management of Class III games shall be subject to periodic review by the Gaming Commission comparable to that required for initial employment. This review shall take place at least every two years, commencing with the date of employment. Employees found to have committed disqualifying violations shall be dismissed.

9.6 State Processing of Tribal Requests. The State shall process background investigation requests by the Tribe with equal priority as to that afforded requests for background investigations by State Agencies.

9.7 Investigation Fees. The applicant shall reimburse the State for any and all reasonable expenses for background investigations required with this Compact.

X. PROHIBITIONS IN HIRING EMPLOYMENT AND CONTRACTING.

10.1 Prohibitions. The Tribe may not hire, employ or enter into a contract relating to Class III gaming with any person or entity which includes the provision of services by any person who:

A. Is under the age of 18;

B. Has, within the immediate preceding ten (10) years, been convicted of, entered a plea of guilty or no contest to, or has been released from parole, probation or incarceration, whichever is later in time; any felony, any gambling related offense, any fraud or misrepresentation offense; unless the person has been pardoned or the Tribe has made a determination that the person has been sufficiently rehabilitated.

C. Is determined to have poor moral character or to have participated in organized crime or unlawful gambling, or whose prior activities, criminal record, reputation, habits, and/or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming, or as to the business and financial arrangements incidental to the conduct of gaming. Determinations specified above will be disqualifying as to employment and/or contracting should such, be made by the Tribal Gaming Commission.

10.2 Dispensing of Alcoholic Beverages. Tribal employees will comply with State liquor laws with respect to the dispensing of alcoholic beverages.

XI. EMPLOYEES.

11.1 Procedural Manual. The Tribe shall publish and maintain a procedural manual for all personnel, which includes disciplinary standards for breach of the procedures.

11.2 Limitation of Participation in Games by Employees. The Tribe may not employ or pay any person to participate in any game, (including, but not limited to, any shill or proposition player); except that an employee may participate, as necessary, to conduct a game as a dealer or bank.

XII. MANAGEMENT AGREEMENTS.

12.1 Option for Tribe. The Tribe in its discretion may, but in no manner shall be required to enter into a management contract for the operation and management of a Class III gaming activity permitted under this Compact.

12.2 Receipt of Information by Tribe. Before approving such contract, the Tribe shall receive and consider the following information:

A. The name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) five (5%) percent or more of its issued and outstanding stock;

B. A description of any previous experience that each person listed has had with other gaming contracts with Indian Tribes or with the gaming industry generally, including specifically the name and address of any licensing or

regulatory agency which has issued the person a license or permit relating to gaming or with which such person has had a contract relating to gaming; and

C. A complete financial statement of each person listed.

12.3 Provisions of Management Agreement. The Tribe shall not enter a management contract unless the contract provides, at least, for the following:

A. Adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the Tribe on a monthly basis;

B. Access to the daily operations of the gaming activities to appropriate officials of the Tribe, who shall also have a right to verify the daily gross revenues and income made from any such Tribal gaming activity;

C. A minimum guaranteed payment to the Tribe, that has preference over the retirement of development and construction costs;

D. An agreed ceiling for the repayment of development and construction costs;

E. A contract term not to exceed five (5) years, except that the Tribe may approve a contract term that exceeds five (5) years but does, not exceed seven (7) years if, the Tribe is satisfied that the capital investment required, and the income projections, for the particular gaming activity require the additional time;

F. A complete, detailed specification of all compensation to the Contractor under the contract;

G. Provisions for an early Tribal buy out of the rights of the Management Agent; and

H. Grounds and mechanisms for terminating such contract.

I. At least ten (10%) percent of net revenues, from Class III gaming operations shall be directed to, and utilized within, economic development programs of the Tribe other than gaming. Net Revenues shall be determined according to Generally Accepted Accounting Principles (GAAP).

12.4 Fee. The Tribe may approve a management contract providing for a fee based upon a percentage of the net revenues of a Tribal gaming activity, which shall not exceed thirty (30%) percent, unless the Tribe, determines that the capital investment required, and income projections, for such gaming activity, require an additional fee, which in no event shall exceed forty (40%) percent of net revenues of such gaming activity. A contract providing for a fee based upon a percentage of net revenues shall include a provision describing in detail how net revenues will be determined.

12.5 Background Check.

A. Prior to hiring a Management Agent for Tribal Class III games, the Tribal Gaming Commission shall obtain release and other information sufficient from the proposed Management Agent and/or its principals to permit the State to conduct a background check. All information requested will be provided in writing to this State which shall conduct the background check and provide a written report to the Tribe regarding each Manager applicant and/or its principals within thirty (30) days of receipt of the request or as soon thereafter as is practical. The background check to be conducted pursuant to this paragraph shall be in addition to any similar federal requirements.

B. The Tribe shall not employ a Management Agent for the Class III games if the State Gaming Commission determines that the Management Agent applicant and/or its principals are in violation of the standards set forth in Section X of this Compact.

XIII. ACCOUNTING AND AUDIT PROCEDURES.

13.1 Accounting Standards. The Tribe shall adopt accounting standards, which meet or exceed those standards established in the IGRA.

13.2 Systems. All accounting records must be maintained according to Generally Accepted Accounting Principals (GAAP).

13.3 Audits. The Tribe shall conduct or cause to be conducted independent audits of every Class III gaming activity or operation. Audits will be conducted at least annually with copies all annual audits to be furnished to the State by the Tribe at no charge.

XIV. TRIBAL RECORD KEEPING.

14.1 Record Maintenance. The Tribe shall maintain the following records related to its gaming operations for at least three (3) years.

A. Revenues, expenses, assets, liabilities and equity for each location at which any component of Class III gaming is conducted;

B. Daily cash transactions for each game at each location at which Class III gaming is conducted including but not limited to transactions relating to each gaming table bank, game drop box and gaming room bank;

C. Individual and statistical game records to reflect statistical drop, statistical win, the statistical drop by table for each game, and the individual and statistical game records reflecting similar information for all other games;

D. Records of all tribal enforcement activities;

E. All audits prepared by or on behalf of the Tribe;

F. All returned checks which remain uncollected, hold checks or other similar credit instruments; and

G. Personnel information on all Class III gaming employees or agents, including time sheets, employee profiles and background checks.

14.2 Accounting Records and Audits Concerning Class III Gaming by Tribe. The Tribe shall provide a copy to the State of any independent audit report upon written request of the State. Any costs incidental to providing copies to the State will be borne by the Tribe.

XV. ACCESS TO RECORDS.

15.1 The Tribe shall permit reasonable access to review by the State of Tribal accounting and audit records associated with gaming conducted under this Compact. The State may copy such documents as it desires subject to the confidentiality provisions set forth herein below. Any costs incidental to such an inspection shall be covered from the Escrow Account for State Expenses established and maintained pursuant to Section XXV of this Compact.

15.2 The Tribe requires that its gaming records be confidential. Any Tribal records or documents submitted to the State, or of which the State has retained copies in the course of its gaming oversight and enforcement, will not be disclosed to any member of the public except as needed in a judicial proceeding to interpret or enforce the terms of this Compact, or except as may be required for law enforcement or tax assessment purposes. Such disclosure, however, shall be conditional upon: the recipient making no further disclosure absent authorization by the Tribe or under Court Order. This Compact is provided for by Federal law and therefore supersedes State records law to the contrary.

15.3 The Tribe shall have the right to inspect and copy all State records concerning the Tribe's Class III gaming unless such disclosure would compromise the integrity of an ongoing investigation.

XVI. TAX REPORTING MATTERS.

Whenever required by federal law to issue Internal Revenue Service Form W2G, the Tribe shall also provide a copy of the same to the State. In addition, the Tribe shall comply with employee income withholding requirements for all non-Indian employees and all Indian employees not living on the Reservation, who are not members of the Tribe.

XVII. JURISDICTION, ENFORCEMENT AND APPLICABLE LAW.

17.1 Criminal Enforcement. Nothing in this Compact shall deprive the Courts of the Tribe, the United States, or the State of North Dakota of such criminal jurisdiction as each may enjoy under applicable law.

A. Nothing in this Compact shall be interpreted as extending the criminal jurisdiction of the State of North Dakota or the Tribe.

17.2 Civil Enforcement. Nothing in this Compact shall deprive the Courts of the Tribe, the United States, or the State of North Dakota of such civil jurisdiction as each may enjoy under applicable law. Nothing in this Compact shall be interpreted as extending the civil jurisdiction of the State of North Dakota or the Tribe.

XVIII. SOVEREIGN IMMUNITY.

18.1 Tribe.

A. Nothing in this Compact shall be deemed to be a waiver of the sovereign immunity of the Tribe.

B. Sovereign immunity must be asserted by the Tribe itself and may not be asserted by insurers or agents. The Tribe waives sovereign immunity for personal in jury arising out of its gaming. activities, but only to the extent of its liability insurance coverage limits.

18.2 State. Nothing in this Compact shall be deemed to be a waiver of the sovereign immunity of the State.

XIX. QUALIFICATIONS OF PROVIDERS OF CLASS III GAMING EQUIPMENT OR SUPPLIES.

19.1 Purchase of Equipment and Supplies.

A. No Class III games of chance, gaming equipment or supplies may be purchased, leased or otherwise acquired by the Tribe unless the Class III equipment or supplies are purchased, leased or acquired from a manufacturer or distributor licensed by the Tribe to sell, lease, or distribute Class III gaming equipment or supplies, and further unless the gaming manufacturer is licensed to do business in one or more of the following states; Nevada, New Jersey, South Dakota, Colorado, and Mississippi. Should the Tribe wish to purchase equipment on supplies from a business not shown to be licensed to do business in one or more of the above mentioned States, the Tribe may petition the Office of the Attorney General for the State of North Dakota for review and approval of said manufacturer or supplier.

B. Should the State of North Dakota commence a comprehensive program of licensing the sale, lease, and/or distribution of Class III games of chance, gaming equipment, or supplies, no Class III games of chance, gaming equipment or supplies may be purchased, leased or otherwise acquired by the Tribe, after one year subsequent to the date of such enactment, except from a manufacturer or distributor licensed both by the Tribe and the State of North Dakota to sell, lease or distribute Class III gaming equipment or supplies, unless a manufacturer or distributor was licensed to do business in one of the States specified within Section 19.1.A, prior to the date of commencement of such licensing by the State of North Dakota.

19.2 Required Information. Prior to entering into any lease or purchase agreement for Class III gaming equipment or supplies, the Tribe's Gaming Commission shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in the lessor or the lease/purchase agreement to permit the Tribal Gaming Commission to conduct a background check on those persons.

19.3 No Business Dealings with Disqualified Parties. The Tribe shall not enter into any lease or purchase agreement for Class III gaming equipment or supplies with any person or entity if the Tribal Gaming Commission or the State determines that the lessor or seller, or any manager or person holding a direct or indirect financial interest in the lessor/seller or the proposed lease/purchase agreement, has, been convicted (if a felony or any gambling related crime or whose gaming license has been suspended or revoked because of misconduct through administrative action in any other state or jurisdiction, within the previous five (5) years, or who is determined to have participated in or have involvement with organized crime.

19.4 Receipt of Gaming Equipment. All sellers, lessors, manufacturers and/or distributors shall provide, assemble and install all Class III games of chance, gaming equipment and supplies in a manner approved and licensed by the Tribe.

XX. REGULATION AND PLAY OF AN ELECTRONIC GAME.

20.1 Electronic Game - Definition. "Electronic Game" means a microprocessor-controlled device that allows a player to play games of chance, which the outcome may or may not be affected by the player's skill. A game is activated by inserting a token, coin, currency, or other object, or use of a credit, and which awards credit, cash, tokens, replays, or a written Statement of the player's accumulated credits and that is redeemable for cash.

20.2 Display. Game play may be displayed by video facsimile, or mechanical rotating reels that stop in positions that display the presence, or lack of, a winning combination and pay out and which are predetermined by the software of the game.

20.3 Testing.

A. Designation of a Gaming Test Laboratory. A Tribe may not operate an electronic game, including a bill acceptor, unless the game (or prototype) and bill acceptor have been tested and approved or certified by a gaming test laboratory as meeting the requirements and standards of this Compact. A gaming test laboratory is a laboratory agreed to and designated in writing by the State and Tribe as competent and qualified to conduct scientific tests and evaluations of electronic games and related equipment. A laboratory operated by or under contract with any State of the United States to test electronic games may be designated.

B. Providing Documentation and Model of an Electronic Game (or Prototype). As requested by a gaming test laboratory, a manufacturer shall provide the laboratory with a copy of an electronic game's (or prototype's) illustrations, schematics, block diagrams, circuit analyses,

technical and operation manuals, program object and source codes, hexadecimal dumps (the compiled computer program represented in base-16 format), and any other information. As requested by the laboratory, the manufacturer shall transport one or more working models of the electronic game (or prototype) and related equipment to a location designated by the laboratory. The manufacturer shall pay for all costs of transporting, testing, and analyzing the model. As requested by the laboratory, the manufacturer shall provide specialized equipment or the services of an independent technical expert to assist the laboratory.

C. Report of Test Results. At the end of each test, the gaming test laboratory shall provide the State and Tribe a report containing the findings, conclusions, and a determination that the electronic game (or prototype) and related equipment conforms or does not conform to the hardware and software requirements of this Compact. If the electronic game (or prototype) or related equipment can be modified so it can conform, the report may contain recommended modifications. If the laboratory determines that an electronic game (or prototype) conforms, that determination will apply for all Tribes under this Compact.

D. Modification of an Approved Electronic Game. A Tribe may not modify the assembly or operational functions of an electronic game or related equipment, including logic control components, after testing and installation, unless a gaming test laboratory certifies to the State and Tribe that the modification conforms to the requirements and standards of this Compact.

E. Conformity to Technical Standards. A manufacturer or distributor shall certify, in writing, to the State and Tribe that, upon installation, each electronic game (or prototype): 1) conforms. to the exact specifications of the electronic game (or prototype) tested and approved by the gaming test laboratory; and 2) operates and plays according to the technical standards prescribed in this section.

F. Identification. A non-removable plate(s) must be affixed to the outside of each electronic game. The plate must contain the machine's serial number, manufacturer, and a unique identification number assigned by the Tribe and date this number was assigned.

20.4 Tribal Reports to the State.

A. Installation of Electronic Game. At least forty-eight (48) hours before installing an electronic game at a gaming site, the Tribe shall report this information to the State for each game:

(i) Type of game;

(ii) Serial number;

(iii) Manufacturer;

(iv) Source from whom the game was acquired, how the game was transported into the State, and name and street address of the common carrier or person that transported the game;

(v) Certification;

(vi) Unique identification number and date assigned by the Tribe;

(vii) Logic control component identification number;

(vii) Gaming site where the game will be placed; and

(ix) Date of installation.

B. Removal of Electronic Game. Upon removal of an electronic game from a gaming site, the Tribe shall provide the State, in writing:

(i) Information for items i, ii, and iii of subsection A;

(ii) Date on which it was removed;

(iii) Destination of the. game; and

(iv) Name of the person to whom the game is to be transferred, including the person's street address, business and home telephone numbers, how the game. is to be transported, and name and street address of the common carrier or person transporting the game.

20.5 Hardware Requirements.

A. Physical Hazard. Electrical and mechanical parts and design principles may not subject a player to physical hazards.

B. Surge Protector. A surge protector must be installed on the line that feeds electrical current to the electronic game.

B. Battery Backup. A battery backup or an equivalent must be Installed on an electronic game for the game's electronic meters. It must be capable of maintaining the accuracy of all information required by this Compact for one hundred eighty (180) days after electrical current is discontinued. The backup device must be kept within the locked microprocessor compartment.

D. On/Off Switch. An on/off switch that controls the electrical current of an electronic game and any associated equipment must be located in a readily accessible place inside the machine.

E. Static Discharge. The operation of an electronic game should be protected from static discharge or other electromagnetic interference.

F. Management Information System.

(i) The electronic game must be interconnected to a central on-line computer management information system, approved by the gaming test laboratory, that records and maintains essential information on machine play. This information must be retained for thirty (30) days. The State may inspect such records.

(ii) An electronic game using a coin drop hopper is allowed, provided it is monitored by an on-line management information system, which has been approved by the gaming test laboratory. However, should the Tribe maintain individual or clusters of machines apart from a major casino location, all coin hoppers must be monitored by a computer. Data from the machines must be downloaded to the central on-line management information system daily. The system must generate, by machine, analytical reports of coins and currency in, coins out, actual hold and actual to theoretical hold percentages, and error conditions. The term "error conditions" includes any exterior or interior cabinet door openings, coin-in tilts, and hopper tilts. A Tribe shall prepare system reports at least on a monthly basis and retain the reports for at least three years. The State may inspect such records.

(iii) The Tribe shall maintain accurate and complete records of the identification number of each logic control component installed in each electronic game. The State may inspect such records.

G. Cabinet Security. The cabinet or interior area of an electronic game must be locked and not readily accessible.

H. Repairs and Service. An authorized agent or employee of the Tribe may open a cabinet to repair or service the game, but may do it only in the presence of another Tribal agent or employee or when the access is recorded by a video surveillance system.

I. Microprocessor Compartment. Logic Boards and other logic control components must be located in a separate microprocessor compartment within the electronic game. This compartment must be sealed and locked with a key or combination different than the key or combination used for the main cabinet door and cash compartment. The microprocessor compartment may be opened only in the presence of a tribal official or security officer appointed by the Tribe. The key to the microprocessor compartment must be kept by the Tribe in a secure place. "Logic control components" means all types of program storage media used to maintain the executable program that causes the game to operate. Such devices include hard disk drives, PCMIA cards, EPROMs, EEPROMs, CD-ROMs and similar storage media.

(i) The storage media must be disabled from being able to be written to by a physical or hardware write disable feature when it is in the machine. It must be impossible to write any contents to the storage media at any time, from an internal or external source.

(ii) Sealing tape, or its equivalent, must be placed over areas that are access sensitive. The security tape must be numbered, physically secured, and available to only authorized personnel of the Tribe.

(iii) Logic control components must be able to be inspected in the field. The components must be able to be verified for authenticity by using signatures, hash codes, or other secure algorithm, and must be able to be compared on a bit for bit basis.

(iv) The supplier of an electronic game shall provide the State and Tribe with necessary field test equipment at no charge for carrying out tests required in (iii) above. Also, if requested by the State or Tribe, the supplier shall provide training on how to use the equipment.

J. Cash Compartment. The coin and currency Compartment must be locked separately from the main cabinet area, and secured with a key or combination different than the key or combination used for the main cabinet door. However, a separate cash compartment is not required for coins that are necessary to pay prizes through a drop hopper. The keys must be kept in a secure location. Except as provided in this section, the compartment into which coins and bills are inserted must be locked. An employee or official of the Tribe may open the cash compartment to collect the cash and shall record the amount collected.

K. Hardware Switches. No hardware switch may be installed on an electronic game or associated. equipment that may alter the game's pay table or payout percentage. Any other hardware switch must be approved by the State and Tribe.

L. Printing of Written Statement of Credits. For an electronic game that awards credits or replays, but not coins or tokens, a player, on completing play may prompt the game to print a written statement of credits. The game's interior printer must retain an exact, legible copy of the statement produced within the game.

M. Network. A Tribe may operate an electronic game as part of a network of games with an aggregate prize; provided:

(i) An electronic game capable of bi-directional communication with external associated equipment must use communication protocol, which ensures that erroneous data will not adversely affect the operation of the game. The local network must be approved a gaming test laboratory; and

(ii) If the network links the Tribe's progressive electronic games to another Tribe's progressive games that are located on the other Tribe's Indian reservation, each participating Tribe must have a Class III gaming compact that authorizes the Tribe's gaming to be operated as part of a multi-location network. All segments of the network must use security standards agreed to between the State and Tribe and which are as, restrictive as those used by the Tribe for its on-line games.

20.6 Software Requirements.

A. Randomness Testing. Each electronic game must have a true random number generator that will determine the occurrence of a specific card, symbol, number, or stop position to be displayed on a video screen or by mechanical rotating reels. An occurrence will be considered random if it meets all requirements:

(i) Chi-Square Analysis. Each card, symbol, number, or stop position, which is wholly or partially determinative, satisfies the 99 percent confidence limit using the standard chi-square analysis.

(ii) Runs Test. Each card, symbol, number, or stop position does not, as a significant statistic, produce predictable patterns of game elements or occurrences. Each card, symbol, number, or stop position will be considered random if it meets the 99 percent confidence level with regard to the "runs test" or any generally accepted pattern testing statistic.

(iii) Correlation Analysis. Each card, symbol, number, or stop position is, independently chosen without regard to any other card, symbol, number or stop position, drawn within that game play. Each pair of card, symbol, number, or stop position is considered random if they meet the 99 percent confidence level using standard correlation analysis.

(iv) Serial Correlation Analysis. Each card, symbol, number, or stop position is independently chosen without reference to the same card, number, or stop position in the previous game. Each card, number, or stop position is considered random if it meets the 99 percent confidence level using standard serial correlation analysis.

(v) Live Game Correlation. An electronic game that represents a live game must fairly and accurately depict the play of the live game.

B. Software Requirements for Percentage Payout. Each electronic game must meet the following maximum and minimum theoretical percentage payouts. However, these percentages are not applicable to slot tournaments conducted pursuant to Section 3.1(d):

(i) Electronic games that are not affected by player skill must pay out a minimum of eighty (80%) percent and no more than one hundred percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory; and

(ii) Electronic games that are affected by player skill, such as draw poker and twenty-one, must pay out a minimum of eighty-three (83 %) percent and no more than one hundred (100%) percent of the amount wagered. This standard is met when using a method of play that will provide the greatest return to the player over a

period of continuous play. These percentages shall not be applicable to slot tournaments conducted pursuant to Section 3. I(d).

C. Minimum Probability Standard for Maximum Pay. Each electronic game must have a probability of obtaining the maximum payout, which is greater than I in 17,000,000 for each play.

D. Software Requirements for Continuation of Game After Malfunction. Each electronic game must be capable of continuing the current game with all the current game's features after a game malfunction is cleared. This provision does not apply if a game is rendered totally inoperable; however, the current wager and all player credits before the malfunction must be returned to the player.

E. Software Requirements for Play Transaction Records. Each electronic game must maintain an electronic, electro-mechanical, or computer system, approved by a gaming test laboratory, to generate external reports. The system must record and maintain essential information associated with machine play. This information must be retained for at least thirty days, regardless of whether the machine has electrical power.

F. No Automatic Clearing of Accounting Meters. No electronic game may have a mechanism by which an error will cause the electronic accounting meters to automatically clear.

G. Display of Information. The information displayed must be kept under glass or other transparent material. No sticker or other removable item may be placed on the machine face or cover game information.

H. Display of Rules. The machine must display: 1) the rules of the game before each game is played; 2) the maximum and minimum wagers, amount of credits which may be won for each winning hand or combination of numbers or symbols; and 3) the credits the player has accumulated. However*, for an electronic game with a mechanical display, this information must be permanently affixed on the game in a conspicuous location.

XXI. AMENDMENTS TO REGULATORY AND TECHNICAL STANDARDS FOR ELECTRONIC GAMES OF CHANCE.

The State and the Tribe acknowledge the likelihood that technological advances or other changes will occur during the duration of this Compact that may make it necessary or desirable that the regulatory and technical standards set forth in Sections 20.5 and 20.6 for electronic games of chance be modified to take advantage of such advances or other changes in order to maintain or improve game security and integrity. Therefore any of the regulatory or technical standards set forth in Sections 20.5 and 20.6 may be modified for the purposes of maintaining or improving game security and integrity by mutual agreement of the North Dakota Attorney General and the Tribal Council or its Chairperson, upon the written recommendation and explanation of the need for such change made by either party.

XXII. REGULATION AND PLAY OF TABLE GAMES.

22.1 Gaming Table Bank. The Tribe. shall maintain at each table a gaming table bank, which shall be used exclusively for the making of change or handling player buy-ins.

22.2 Drop Box. The Tribe shall maintain at each table a game drop box, which shall be used exclusively for rake-offs or other compensation received by the Tribe. for maintaining the game. A separate game drop box shall be used for each shift.

22.3 Gaming Room Bank. The Tribe shall maintain, at each location at which table games are placed, a gaming room bank, which shall be used exclusively for the maintenance of gaming table banks and the purchase and redemption of chips by players,

22.4 Rules to be Posted. The rules of each game shall be posted and be clearly legible from each table and must designate:

A. The maximum rake-off percentage, time buy-in or other fee charged.

C. The number of raises allowed.

C. The monetary limit of each raise.

E. The amount of the ante.

E. Other rules as may be necessary.

XXIII. MINIMUM INTERNAL CONTROL STANDARDS.

Tribe shall abide with such Minimum Internal Control Standards as are adopted, published, and finalized by the National Indian Gaming Commission and as may be in current effect.

XXIV. INSPECTION.

24.1 Periodic Inspection and Testing. Tribal officials, agents or employees shall be authorized to periodically inspect and test any tribally licensed electronic games of chance. Any such inspection and testing shall be carried out in a manner and at a time, which will cause minimal disruption of gaming activities. The Tribal Gaming Commission shall be notified immediately of all such inspection and testing and the results thereof.

24.2 Receipt of Reports of Non-compliance. The Tribe shall provide for the receipt of information by the State as to machines believed to not be in compliance with this Compact or not to be in proper repair. Upon its receipt of such information the Tribe shall reasonably inspect or arrange for the inspection of any identified machine and shall thereafter undertake and complete, or commission the undertaking and completion of such corrective action as may be appropriate.

24.3 State Inspection of Operations. Agents of the State of North Dakota, or their designated representatives, shall upon the presentation of appropriate identification, have the right to gain access, without notice during normal hours of operation, to all premises used for the operation of games of chance, or the storage of games of chance or equipment related thereto, and may inspect all premises, equipment, daily records, documents, or items related to the operation of games of chance in order to verify compliance with the provisions of this Compact. Agents of the State making inspection shall be granted access to non-public areas for observations upon request. The Tribe reserves the right to accompany State inspectors within non-public areas. The Tribe shall cooperate as to such inspections. Inspections will be conduct, to the extent practicable, to avoid interrupting normal operations. Any costs associated with such inspection will be covered from the Escrow Account for State Expenses established and maintained pursuant to Section XXV of this Compact.

24.4 Inspection of Electronic Games of Chance. The State may cause any electronic game of chance in play by the Tribe to be inspected by a Qualified Gaming Test Laboratory or examiner. Inspections shall be conducted, to the extent practicable, to avoid interrupting normal operations. Any costs associated with inspection shall be covered from the Escrow Account for State Expenses established and maintained pursuant to Section XXV of this Compact. The Tribe shall cooperate in such inspection. Upon completion of such testing, test results must be provided to both the State and the Tribe.

24.5 Removal and Correction. Any machine confirmed to be in non-compliance with this Compact shall be removed from play by the Tribe and brought into compliance before reintroduction.

XXV. ESCROW ACCOUNT FOR STATE EXPENSES.

25.1 Escrow Fund. The Tribe shall establish an escrow fund at a bank of their choosing with an initial contribution of Fifteen Thousand and no/100 ($15,000.00) dollars to reimburse the State for the expenses specifically names for reimbursement in this Compact and for participation in legal costs and fees incurred in defending, with the concurrence of the Tribe, third party challenges to this Compact. The Tribe shall replenish the said escrow account as necessary and agree that the balance in the said escrow account will not drop below the sum of seven thousand five hundred and no/100 ($7,500.00) dollars.

25.2 Procedure. The payments referenced above shall be made to an escrow account from which the State may draw as hereinafter provided. The State shall bill the Tribe the reasonable, necessary, and actual costs related to obligations undertaken under this Compact. Unless unreasonable or unnecessary, the costs for such services shall be that established by state law. The State shall send invoices to the Tribe for these services and shall thereafter be permitted to withdraw the billed amounts from the escrow account under the circumstances provided in this section. The Tribe shall be advised in writing by the State of all withdrawals from the Escrow Account and as to the purpose of such withdrawal.

25.3 Tribal Challenge. Should the Tribe believe that any expenses for which the State has billed the Tribe under this section, or actions which the State proposes to

undertake and charge the Tribe for, are unnecessary, unreasonable or beyond the scope authorized by this Compact, the Tribe may invoke any of the Dispute Resolution procedures specified in Section XXVII below. In such event, the provisions set forth above shall remain in full force and effect pending resolution of the complaint of the Tribe. Should, however, it be determined that any expense charged against the Tribe is not necessary, not reasonable and/or is not within the scope of this Compact, the State shall reimburse the Tribe any monies withdrawn from escrow to meet such expense.

25.4 Termination of Escrow. Any monies that remain on deposit at the time this Compact, including all extensions thereof, concludes, shall be reimbursed to the Tribe.

XXVI. IGRA REMEDIES PRESERVED.

Nothing in this Compact shall be construed to limit the rights or remedies available to the parties hereto under the IGRA.

XXVII. WORKER'S COMPENSATION AND UNEMPLOYMENT INSURANCE.

27.1 Unemployment Insurance. In order to provide protection to the employees of the Tribe from unemployment, the Tribe and the State agree that all employees engaged in gaming activities as provided herein, whose coverage would be mandated under North Dakota law in the case of a non-Tribal employer, shall be covered by the North Dakota Unemployment Insurance Fund, and to that extent, the Tribe agrees as an employer to participate in those funds as provided herein. The Tribe will pay premiums for such employees to the Fund as any other employer in the State of North Dakota. The Tribe and its employees that are employed in gaming activities shall have all rights and remedies, as any employer or employee covered by the Fund. To that end, the Tribe and the State agree that any dispute with respect to the aforementioned funds, the coverage and benefits provided thereby, and premiums assessed and collected, shall be in the Courts of the State of North Dakota, and for that limited purpose, the Tribe and the State, each respectively, make a limited waiver of sovereign immunity.

27.2 Worker's Compensation. In order to provide protection to the employees of the Tribe from injury, the Tribe and the State agree that all employees engaged in gaming activities, as provided herein, whose coverage would be mandated under North Dakota law in the case of a non-Tribal employer, shall be covered by worker's compensation insurance comparable to that provided under North Dakota state law to employees covered thereby. Tribe may elect to obtain coverage from the North Dakota Worker's Compensation Bureau or from one or more private insurers certified to provide insurance coverage for any purpose within the State of North Dakota.

Should Tribe elect to obtain coverage from the North Dakota Worker's Compensation Bureau, the Tribe will pay premiums for such employees to the Bureau as any other employer in the State of North Dakota, with the Tribe and its employees that are employed in gaming activities having all rights and remedies as any employer covered under North Dakota state law. To that end, the Tribe and the State agree that any dispute with respect to the coverage and benefits

provided under North Dakota state law and premiums assessed and collected by the North Dakota Worker's Compensation Bureau shall be in the courts of the State of North Dakota, and for that limited purpose, the Tribe and the State, each respectively, make a limited waiver of sovereign immunity.

XXVIII. DISPUTE RESOLUTION.

28.1 If either party believes that the other party has failed to comply with any requirement of this Compact, it shall invoke the following procedure:

A. The party asserting the non-compliance shall serve written notice on the other party. The notice shall identify the specific statutory, regulatory or Compact provision alleged to have been violated and shall specify the factual basis for the alleged noncompliance. The State and Tribe shall thereafter meet within thirty (30) days in an effort to resolve the dispute.

B. If the dispute is not resolved to the satisfaction of the parties within ninety (90) days after service of the notice set forth, either party may pursue any remedy which is otherwise available to that party to enforce or resolve disputes concerning the provisions of this Compact, including:

(i) Arbitration pursuant to the specifications set forth in this section.

(ii) Commencement of an action in the United States District Court for the District of North Dakota.

(III) Any remedy which is otherwise available to that party to enforce or resolve disputes concerning the provisions of this Compact.

28.2 In the event an allegation by the State asserting that a particular gaming activity by the Tribe is not in compliance with this Compact, where such allegation is not resolved to the satisfaction of the State within ninety (90) days after service of notice, the State may serve upon the Tribe a notice to cease conduct of such gaming. Upon receipt of such notice, the Tribe may elect to stop the gaming activity specified in the notice or invoke one or more of the additional dispute resolution procedures set forth, above and continue gaming pending final determination.

28.3 In the event an allegation by the Tribe is not resolved to the satisfaction of the Tribe within ninety (90) days after service of the notice set forth above, the Tribe may invoke arbitration as specified above.

28.4 Any arbitration under this authority shall be conducted under the rules of the American Arbitration Association, except that the arbitrators will be selected by the State picking one arbitrator, the Tribe a second arbitrator and the two so chosen shall pick a third arbitrator. If the third arbitrator is not chosen in this manner within ten (10) days after the second arbitrator is picked, the third arbitrator will be chosen in accordance with the rules of the American Arbitration Association.

28.5 Either party may initiate action in United States District Court to enforce an arbitration determination, or to pursue such relief as may be unavailable through arbitration.

XM. COOPERATION BY PARTIES

29.1 Gambling Addiction Programs. The parties hereto wish to proclaim their joint support of effective programs to address gambling addiction. Past donations in support of such efforts by Tribe are acknowledged. Tribe intends to continue such voluntary donations. State shall extend efforts to facilitate similar support from other gaming interests within North Dakota. The parties shall continue their joint efforts to most effectively support gambling addiction treatment, education and prevention programs, including completion of a study of gaming addiction in the State of North Dakota, to be completed by the start of the 2001 Legislative session.

29.2 Government-to-Government Issues. The parties acknowledge that there exist many Government-to-Government issues of concern between them and pledge to cooperate with each other in addressing such issues.

29.3 Local Jurisdictions. Tribe and Local Jurisdictions shall in good faith negotiate relative to the provision by the local jurisdiction of such services to the Tribe as may be requested by the Tribe, and as to a reasonable contribution from the Tribe for such services. Tribe and Local Jurisdictions shall in good faith negotiate as to a reasonable contribution from the Tribe for services by local jurisdictions necessitated by the presence of a Tribal casino.

XXX. CONSULTATION.

Tribe and State shall in good faith periodically inform each other of issues associated with the implementation of this Compact and at the request of either party shall meet and discuss matters of concern. A status review meeting shall be had at least bi-annually in even numbered years between Tribe, other compacting Tribes within the state of North Dakota and state officials, including, but not limited to representatives of the Governor, Attorney General and legislative leaders. The State and the Tribe are concerned about the long term impact to the people of North Dakota (tribal and non-tribal alike) and are committed to implementing this Compact, making every effort during the term thereof, to provide economic opportunities and deal appropriately with any consequences resulting from gambling.

XXXI. EFFECTIVE DATE.

This Amended Compact shall become effective, and shall supersede the terms of the parties initial Gaming Compact, upon execution by the Chairperson of the Tribe and the Governor of the State, approval by the Secretary of the Interior, and publication of such approval in the Federal Register pursuant to the IGRA.

XXXII. DURATION.

32.1 Term. This Compact shall be in effect, following its effective date, for a term consisting of the remaining period of the initial Class III Gaming Compact

between Tribe and State (without any extensions) and hereafter for a period of ten (10) years.

32.2 Initial Renewal. This Compact shall, without action by either party, be extended for an additional five (5) year period beyond the term specified at Section 32.1 above, unless during the remaining period the initial Class III Gaming Compact between Tribe and State or during a subsequent period of seven (7) years thereafter, either party, believes that, the other has not been in substantial good faith compliance with the terms of this Compact and gives notice of non-compliance within the term herein specified. Such notice must be given in writing at least thirty (30) days prior to the conclusion of the above identified period ("Notice Date"). The Notice must be accompanied with specifications designating the manners the party is believed to have not been in good faith compliance. Failure by a party to give notice by the Notice Date as to activity by the other it views disfavor does not eliminate the ability of such party to arbitrate its concerns under Article XXVIII.

If an arbitration panel, upon consideration of conduct occurring between the Notice Date and the end of the term specified at Section 32.1, determines that the Tribe has been in substantial non-compliance, the Governor within thirty (30) days of the determination may vacate the five (5) year extension provided therein. The parties may thereafter negotiate for a Successor Compact.

32.3 Automatic Extension. The duration of this Compact shall thereafter be automatically extended for terms of five (5) years upon written notice of renewal by either party on the other party during the final year of the original term of this Compact, inclusive of the initial renewal as specified applying both Section 32.1 and Section 32.2 or any extension thereof, unless the Tribe or the Governor serves written notice of non-renewal within thirty (30) days thereafter, or unless the North Dakota Legislature directs notice of non-renewal, by Bill or Resolution, passed with two-third (2/3) majority in each house during the legislative session immediately prior to the expiration of the Compact.

32.4 Operation. The Tribe may operate Class III gaming only while this Compact, including any amendment or restatement thereof is in effect.

32.5 Successor Compact. In the event that written notice of non-renewal of this Compact is given by one of the parties above, the Tribe may, pursuant to the procedures of the Indian Gaming Regulatory Act, request the State to enter into negotiations for a successor compact governing the conduct of Class III gaming activities to become effective following the expiration of this Compact. Thereafter the State shall negotiate with the Tribe in good faith concerning the terms of a successor compact (see § 11(d)(3)(A) of the Act).

32.6 Interim Operation. If a Successor Compact is not, concluded by the expiration date of this Compact, or any extension thereof, and should either party request negotiation of a successor compact, then this Compact shall remain in effect until the procedures set forth in Section 11 (d)(7) of the Indian Gaming Regulatory Act are exhausted, including resolution of any appeal.

32.7 Cessation of Class III Gaming. In the event written notice of non-renewal is given by either party as set forth in this section, the Tribe shall cease all Class III gaming under this Compact upon the expiration date of this Compact, or upon the date the procedures specified above associated with a successor compact are concluded and a successor compact, if any, is in effect.

32.8 Pari-Mutuel Horse Racing Addendum. The duration specified above shall also be applicable to the pari-mutuel horse racing addendum to the Gaming Compact between Tribe and State pursuant to Section XVI of said Pari-mutuel Horse Racing Addendum that provides that the term of said Addendum shall be simultaneous with that of the Compact.

XXXIII. GEOGRAPHIC SCOPE OF COMPACT.

This compact shall only govern the conduct of Class III games by the Tribe on Tribal trust lands within the current exterior boundaries of the Spirit Lake Reservation, which are in compliance with the Indian Gaming Regulatory Act, at 25 U.S.C. 2719, and waters adjacent thereto, together with such lands, and waters adjacent thereto, as may be acknowledged by the parties to be lands and waters of the Spirit Lake Tribe. The Tribe may conduct gaming on adjacent waters, limited to excursion boats offering food service, where passengers may board and unboard only from the Tribe's marina. This Amended Compact shall further govern such lands and waters as may be transferred to the Spirit Lake Tribe or acknowledged to be Tribal as a result of any Court determination or agreement between the parties in Devils Lake Sioux v. State of North Dakota, now pending in United States District Court, District of North Dakota, No. A286-87. The execution of this Compact shall not in any manner be deemed to have waived the rights of the State or the Tribe pursuant to the aforementioned section of the Indian Gaming Regulatory Act or as to the referenced pending litigation.

XXXIV. AMENDMENT.

The State or the Tribe may at any time and upon proper notification request amendment or negotiations for the amendment of this Compact. Both parties shall negotiate any requested amendment in good faith and reach a determination thereupon within ninety (90) days. Amendments to this Compact shall not become applicable until agreed to by both parties and, if necessary, approved by the United States Secretary of Interior.

XXXV. NOTICES.

Unless a party advises otherwise in writing, all notices, payments, requests, reports, information or demand which any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered or sent by first class certified or registered United States mail, postage prepaid, return receipt requested, and sent to the other party at its address appearing below or such other address as any party shall hereinafter inform the other party hereto by written notice given as aforesaid:

Notice to the Tribe shall be sent to:

Spirit Lake Tribe
Fort Totten Community Center
PO Box 300
Fort Totten, ND 58335-0300

Notice to the State shall be sent to:

Governor, State of North Dakota
Office of the Governor
600 East Boulevard Avenue
Bismarck, ND 58505

Attorney General, State of North Dakota
Office of the Attorney General
600 East Boulevard Avenue
Bismarck, ND 58505

Each notice, payment, request, report, information or demand so given shall be deemed effective upon receipt, or if mailed, upon receipt or the expiration of the third day following the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

XXXVI. ENTIRE AGREEMENT.

This Compact is the entire agreement between the parties and supersedes all prior agreements whether written or oral, with respect to the subject matter hereof. Neither this Compact nor any provision herein may be changed, waived, discharged, or terminated orally, but only by an instrument in writing.

XXXVII. NO ASSIGNMENT.

Neither the State nor the Tribe may assign any of its respective right, title, or interest in this Compact, nor may either delegate any of its respective obligations and duties except as expressly provided herein. Any attempted assignment or delegation in contravention of the foregoing shall be void.

XXXVIII. SEVERABILITY.

Each provision, section, and subsection of this Compact shall stand separate and independent of every other provision, section, or subsection. In the event that a court of competent jurisdiction shall find any provision, section, or subsection of this Compact to be invalid, the remaining provisions, sections and subsections of the Compact shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Compact to be executed as of the day and year first above written.

STATE OF NORTH DAKOTA

_____ Dated this 29th day of September, 1999

By: Edward. T. Schafer
Governor

SPIRIT LAKE NATION

_____ Dated this 29th day of September, 1999

By: Phillip Longie
Chairman

DEPARTMENT OF THE INTERIOR

By: _____ Dated this 29th day of September, 1999
Kevin Gover
Assistant Secretary - Indian Affairs

Att #3

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120 N.M. 562, 904 P.2d 11

Case

STATE of New Mexico ex rel. Guy CLARK, Max Coll, and George Buffett, Petitioners,
v.
The Hon. Gary JOHNSON, Governor of the State of New Mexico, Respondent.
State ex rel. Clark v. Johnson

Case Summary: Synopsis

Two state legislators and a voter and taxpayer sought writ of mandamus or prohibition and declaratory judgment to preclude governor from implementing gaming compacts and revenue-sharing agreements entered into with various Indian tribes and pueblos which would leave permitted Class III gaming activities on Indian lands under Indian Gaming Regulatory Act (IGRA). The Supreme Court, Minzner, J., accepted original jurisdiction and held that: (1) standing would be conferred on basis of fundamental importance of constitutional issues involved; (2) allegations supported use of prohibitory mandamus; (3) tribes and pueblos were not indispensable parties; (4) compacts authorized gaming that state law did not permit; (5) state constitutional separation of powers required legislative approval or ratification of compacts otherwise in conflict with gambling statutes; (6) governor was not a "state department or agency" within meaning of Joint Powers Agreement Act, which thus did not provide authority for compacts and revenue-sharing agreements; (7) fact that compacts had law enforcement provisions did not bring all of their terms within scope of Mutual Aid Act; (8) IGRA did not purport to expand state gubernatorial power and, thus, governor's power to negotiate and sign compacts derived from State Constitution and statutes; and (9) compacts were therefore without legal effect and did not exist to be implemented.
So ordered.

Points of Law: West Headnotes

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251 Kan. 559, 836 P.2d 1169

Case

STATE of Kansas, ex rel., Robert T. STEPHAN, Attorney General, Petitioner,

v.

The Honorable Joan FINNEY, Governor for the State of Kansas, Respondent.

State ex rel. Stephan v. Finney

Case Summary: Synopsis

State Attorney General brought original action in mandamus and quo warranto, challenging authority of governor to negotiate and enter into binding tribal-state compact under Indian Gaming Regulatory Act. The Supreme Court held that: (1) mandamus/quo warranto proceeding was appropriate vehicle for resolution of issue, and (2) governor had authority to enter into negotiations with Indian tribe for tribal-state compact under Act, but had no power to bind state to terms thereof absent appropriate delegation of power by state legislature or legislative approval of compact.

Ordered accordingly.

**1170 *559 Syllabus by the Court

1. Mandamus is a proper remedy where the essential purpose of the proceeding is to obtain an authoritative interpretation of the law for the guidance of public officials in their administration of the public business.
2. The federal government and that of the State of Kansas are divided into three branches, *i.e.*, legislative, executive, and judicial, each of which is given under its respective constitution the powers and functions appropriate to it.
3. Generally speaking, the legislative power is the power to make, amend, or repeal laws; the executive power is the power to enforce the laws; and the judicial power is the power to interpret and apply the laws to actual controversies.
4. In an original proceeding in mandamus and quo warranto wherein the State, on the relation of the Attorney General, challenges the authority of the Governor to enter into a binding tribal-state compact with the Kickapoo Nation pursuant to the

Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.* [1988]), it is held: (1) The proceeding herein is an appropriate vehicle for the determination of the issue presented; and (2) the Governor had the authority to enter into negotiations with the tribe, but in the absence of an appropriate delegation of power by the Kansas Legislature or legislative approval of the compact, the Governor has no power to bind the State to the terms thereof.

Points of Law: West Headnotes

[1] KeyCite Notes

⇦250 Mandamus
⇦250k73(1) k. In General.

⇦319 Quo Warranto KeyCite Notes
⇦319k13 k. Acts in Excess of Authority.

Mandamus/quo warranto proceeding was appropriate vehicle for resolution of issue of whether Governor had authority to bind state to compact entered into with Indian tribe under Indian Gaming Regulatory Act; actual controversy of great public importance and concern existed and essential purpose of proceeding was to obtain authoritative interpretation of law for guidance of public officials in administration of public business.

[2] KeyCite Notes

⇦250 Mandamus
⇦250k73(1) k. In General.

Mandamus is proper remedy where essential purpose of proceeding is to obtain authoritative interpretation of law for guidance of public officials in their administration of public business.

[3] KeyCite Notes

⇦360 States
⇦360k43 k. Exercise of Supreme Executive Authority.

Governor had authority to enter into negotiations with Indian tribe for tribal-state compact under Indian Gaming Regulatory Act, but had no power to bind state to terms thereof absent appropriate delegation of power by state legislature or legislative approval of compact. K.S.A. 74-8702(d), 74- 8703(a), 74-8710, 75-106, 75-

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231 Mich.App. 722, 587 N.W.2d 824

Case H

P. Abbott McCARTNEY, Plaintiff-Appellant,
v.
ATTORNEY GENERAL, Defendant-Appellee.
McCartney v. Attorney General

Case Summary: Synopsis

Action was brought against state Attorney General under Michigan Freedom of Information Act for disclosure of six documents relating to Governor's negotiation of gaming compact with Indian tribes. The Emmet Circuit Court granted summary disposition to Attorney General. Appeal was taken. The Court of Appeals held that: (1) Governor was acting within scope of his authority in negotiating gaming compact with Indian tribes, such that an attorney-client relationship existed when he sought legal assistance from Attorney General concerning negotiations; (2) letters forwarded by Governor's office to Attorney General were exempt from disclosure based on attorney-client privilege; and (3) internal memoranda written by assistant Attorneys General were exempt from disclosure under deliberative process exemption, and one was also protected under attorney-client privilege.
Affirmed.

Points of Law: West Headnotes

[1] KeyCite Notes

⇦30 Appeal and Error
⇦30k756 k. Form and Requisites in General.

Court of Appeals was not required to address proposition for which appellant cited no authority.

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667 A.2d 280

Case

NARRAGANSETT INDIAN TRIBE OF RHODE ISLAND
v.
STATE of Rhode Island et al.
Narragansett Indian Tribe of Rhode Island v. State

Case Summary: Synopsis

In litigation concerning validity of agreement between Indian tribe and state which would permit gambling on tribal lands, the United States District Court for the District of Rhode Island, Ernest C. Torres, J., certified question concerning governor's authority to enter agreement. The Supreme Court, Bourcier, J., held that governor, as chief executive, lacked both constitutional and legislative authority to bind state to contract with Indian tribe whereby gambling would be allowed on tribal lands.
Question answered.

Points of Law: West Headnotes

KeyCite Notes

209 Indians
209k32(12) k. Gaming; Bingo.

247 Lotteries KeyCite Notes
247k1 k. Power to Regulate or Prohibit.

360 States KeyCite Notes
360k93 k. In General.

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100 N.Y.2d 801, 798 N.E.2d 1047, 766 N.Y.S.2d 654, 2003 N.Y. Slip Op. 14925

Case

SARATOGA COUNTY CHAMBER OF COMMERCE, INC., et al., Respondents,

v.

George PATAKI, as Governor of the State of New York, et al., Appellants.

(Action No. 1.)

Keith L. Wright, as Member of the New York State Assembly, et al., Respondents,

v.

George E. Pataki, as Governor of the State of New York, et al., Appellants.

(Action No. 2.)

Saratoga County Chamber of Commerce, Inc. v. Pataki

Case Summary: Synopsis

Legislators, organizations, and individuals opposed to casino gambling brought action challenging gaming compact between state and Native American tribe, and amendment to such compact. The Supreme Court, Albany County, Teresi, J., declared compact null and void, and governor appealed. The Supreme Court, Appellate Division, 293 A.D.2d 20, 740 N.Y.S.2d 733, affirmed. Appeal was taken. The Court of Appeals, Rosenblatt, J., held that: (1) challenge to compact amendment was moot; (2) citizen-taxpayers had standing to challenge compact; (3) tribe was not indispensable party; and (4) governor violated separation of powers doctrine by signing compact without legislative authorization or approval.

Affirmed as modified.

Smith, J., concurred in part and dissented in part with separate opinion.

Read, J., filed dissenting opinion in which Wesley and Graffeo, JJ., concurred.

FOR EDUCATIONAL USE ONLY
4 Misc.3d 1028(A), 2004 WL 2222278 (N.Y.Sup.), 2004 N.Y. Slip Op. 51092(U)
Unpublished Disposition
NOTE: THIS OPINION WILL NOT BE PUBLISHED IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN A REPORTER TABLE.

Supreme Court, Oneida County, New York.
Scott PETERMAN, Upstate Citizens for Equality, Inc and Persons and Entities Similarly Situated
v.
George PATAKI, Governor of the State of New York.
No. 99-0520.
June 25, 2004.

Leon Koziol, Esq [Utica], for Plaintiff.
Eliot L. Spitzer, Attorney General of the State of New York, Robert Siegfried, Assistant Attorney General, of Counsel[Albany], for Defendants, State of New York.
Peter D. Carmen, Mackenzie Hughes, LLP [Syracuse] William W. Taylor, III, Michael R. Smith and Elizabeth Taylor, Zuckerman Spaeder, LLP [Washington, D.C.] [Admitted pro-hac vice] for Oneida Indian Nation of New York and Ray Halbritter.

JAMES W. McCARTHY, J.
**1 The above-referenced matter is before this court pursuant to [1] Plaintiff's motion for summary judgment [New York Civil Practice Law and Rules § 3212, and [2] the Oneida Indian Nation of New York's [herein after Nation] cross-motion for leave to renew [New York Civil Practice Law and Rules § 2221[e]]. Oral argument was heard by the court on April 22, 2004, after which, on May 6, 2004, counsel for the Nation "supplemented" its initial motion. Final submissions were received on May 22, 2004, after which decision was reserved. Having reviewed the submissions of the parties and the Nation, for the reasons set forth below, this court makes the following Findings of Fact and Conclusions of Law.

Findings of Fact:

As more fully set forth in this court's previous Letter Decisions, the instant action finds it genesis in the 1993 Compact entered into between the Nation and the defendant, State of New York. Plaintiffs challenge the authority of then Governor Mario Cuomo to execute a compact with the defendant, Oneida Indian Nation of New York to operate gambling casinos within the State of New York under the Indian Gaming Regulatory Act of 1988 [25 U.S.C. § 2701, *et seq.*]. In essence, the plaintiffs argue that then Governor Cuomo lacked the authority to enter into the compact without legislative approval, and that the compact contravenes public policy against class III gaming activity.
Following a conditional dismissal of the instant action by Justice Murad, this court, by Letter Decision dated October 24, 2001 granted plaintiffs' motion for leave to file second amended complaint, and denied the plaintiffs' motion for summary judgment as premature. [FN1] On December 20, 2001 this court signed an Order consistent with its letter decision. The Order was filed and entered in the Oneida County Clerk's office on January 24, 2002. On the same date, plaintiffs filed their second amended complaint. Following entry of the order and service of the second amended complaint,, the Oneida Indian Nation of New York moved for leave to renew and reargue this court's January 24, 2002 order, the State of New York moved to dismiss plaintiffs' second amended complaint and plaintiffs, Scott Peterman, Upstate cross moved for summary judgment.

FN1. In granting plaintiffs' motion for leave to file second amended complaint, this court found that the plaintiffs had plead facts sufficient to demonstrate taxpayer standing with respect to Scott Peterman and David Townsend, organizational standing with respect to Upstate Citizens for Equality and found that the Oneida Indian Nation of New York was not a necessary and indispensable party. This Court further found that the plaintiff, the Hon. David Townsend did not have standing to proceed as a

legislator.

By Letter Decision dated May 23, 2002, the court granted the Nation's motion for leave to renew/ and or reargue, and based upon a review of the record before it, adhered to its original decision, denied the State of New York's motion to dismiss and denied plaintiffs' cross motion for summary judgment as premature [FN2]. Following entry of this Courts' August 14, 2002 Order, the State of New York appealed this court's decision to the Appellate Division, Fourth Department. In December of 2003, the State of New York withdrew its appeal, and the instant motion and cross motions were brought.

FN2. In that Letter Decision, this court found, based primarily upon the Appellate Division, Third Department's Decision *Saratoga Chamber of Commerce v. Pataki,* 293 A.D.2d 20 (3rd Dept.2002), *aff'd as modified,* 100 N.Y.2d 801, *cert.denied,* 124 S.Ct. 570, the Oneida Indian Nation of New York was not a necessary and indispensable party to the action, that the plaintiffs had standing, that the action was not pre-empted, and that the instant action was not barred by the applicable Statute of Limitations and laches.

By Notice of Motion dated February 9, 2004, plaintiffs moved for summary judgment arguing that: The high court [New York Court of Appeals] has rendered a decision on the validity of a 1993 compact entered into between the Mohawk Tribe and New York State, finding that the purported transaction violated the separation of powers doctrine. As relevant here, it found that the compact was illegal, by virtue of its lack of legislative authorization. The governor cannot bind the state to such a compact, and notwithstanding the various positions claiming constructive ratification, the [Court of Appeals] handed down a decision substantially consistent with the reasoning of most high courts in other states that have addressed the question.
****2** [Plaintiffs' Counsel's Affirmation in Support of Summary Judgment at ¶ 20]. In sum and substance, plaintiffs argue with respect to their first cause of action that, under the doctrine of *stare decisis,* this court is bound to follow the New York Court of Appeal's Decision in *Saratoga County Chamber of Commerce, Inc. v. Pataki,* 100 N.Y.2d 801 (2003), and to find the compact invalid [FN3].

FN3. Plaintiffs additionally moved for summary judgment on their second and third causes of action, in which they allege that the Compact violates Article 1, Section 9 of the New York State Constitution. Based upon representations made by the Assistant Attorney General at oral

argument, plaintiffs withdrew their motion with respect to the constitutionality of the Compact.

Defendants, in opposition to the instant motion for summary judgment, in essence concede the applicability of the decision in *Saratoga Chamber of Commerce, supra,* with respect to the plaintiffs' first cause of action. This concession, however, is not the end of the court's analysis.
On April 19, 2004, three days before the scheduled return date, the Nation entered: "... special appearance for the limited purpose of contesting the jurisdiction of the court, and specifically to renew the nation's motion to dismiss the Complaint on the grounds of Tribal sovereign immunity." [April 18, 2004 Notice of Special Appearance]. The Nation's motion for leave to renew is predicated on two arguments:
First, the ruling of the Court of Appeals in *Saratoga Chamber of Commerce v. Pataki,* 100 N.Y.2d 801, *cert. denied,* ---U.S.----, 124 S.Ct. 570 (2003), establishes that this litigation affects significant interests of the nation. Consequently, this Court's decision to the contrary must be reconsidered.
Second, the ruling in *Saratoga* has altered the interests this court considered in ruling that the litigation could proceed in the tribe's absence. There is now no compelling interest in addressing a significant issue of state law. The potential prejudice to the nation, however, is even greater than it was prior to the ruling in *Saratoga,* because it is now clear that the State cannot and will not adequately protect the Nation's interest. The State's refusal to present a meritorious laches defense

on behalf of the Nation is illustrative of this conflict.
[Nation's Memorandum of Law at p. 2].
Following oral argument on April 22, 2004, counsel for the Oneida Nation submitted a Supplemental Affirmation, raising for the first time an argument that the instant action should be dismissed insofar as there no longer exists a justiciable controversy. The affirmation is predicated on an argument that insofar as the parties agree there is no genuine dispute, and thus no justiciable controversy the court is required to dismiss the instant action. In opposition to the supplemental affirmation, the State defendants argue:
... The Oneidas now urge that the state and the plaintiffs entered into an agreement regarding the separation of powers issue resolved in the *Saratoga County Chamber of Commerce* case, which effectively prejudiced the interests of the Oneidas. There was never any 'agreement' made between the State and the plaintiffs.
As the record demonstrates, the State conceded that under the principal of stare decisis [so in original], this court was bound to follow the Court of Appeal's determination in *Saratoga* on the separation of powers question pertaining to the Governor's authority to enter into the 1992 Compact with the Oneidas without legislative authority [citation omitted]. The State also concedes that the application of the *Saratoga* decision to the instant matter would result in a declaration that the Governor violated State separation of powers law when he entered into the compact with the Oneidas in 1993, and consistent with the ruling in *Saratoga,* the Compact was void and unenforceable under State law.
***3** [May 17, 2004 Letter from Assistant Attorney General Robert A. Siegfried].
In light of the foregoing, this court turns its attention to the substantive issues before it.

Conclusions of Law: A.

Motion for Leave to Renew, Oneida Indian Nation of New York's [New York Civil Practice Law and Rules § 2221[e]:
As set forth in the Nation's counsel's affirmation in support of its motion for leave to renew, the Nation's argument is limited to "... the grounds of tribal sovereign immunity and the indispensability of the Nation as a party to the case." [Affirmation of Peter D. Carmen in Support of the Nation's Motion for Leave to Renew at ¶ 2]. As more fully set forth above, the Nation's position is predicated upon an argument that the Court of Appeal's decision in *Saratoga County Chamber of Commerce, supra,* establishes that a significant interest of the Nation will be effected, and second that the State, as a result of the decision, will no longer act to protect the interests of the Nation in this action.
New York Civil Practice Law and Rules § 2221[e] provides:
(e) A motion for leave to renew:
1. shall be identified specifically as such;
2. shall be based upon new facts not offered on the prior motion that would change the prior determination *or shall demonstrate that there has been a change in the law that would change the prior determination;* and
3. shall contain reasonable justification for the failure to present such facts on the prior motion.
N.Y.Civ. Prac. L. & R. § 2221[e] (McKinney 1993) [emphasis added]. Upon review of the papers submitted by the Nation, this Court grants leave to renew.
Turning to the merits, in its two previous Letter Decisions and resultant Orders, this court held that the Nation is not an indispensable party, as defined by New York Civil Practice Law and Rules § 1101. In reviewing the decision of the Court of Appeals in *Saratoga County Chamber of Commerce, supra,* this court does not find, as the Nation argues, that the decision announced a change in the law sufficient to change the court's prior determination. In holding that the Mohawk tribe was not an indispensable party in the *Saratoga* case, the Court of Appeals engaged in a painstaking analysis of CPLR § 1101, and concluded that:
The Tribe has chosen to be absent. Nobody has denied it the 'opportunity to be heard'; in fact, the Oneida Indian Nation, which operates the Turning Stone Casino, has appeared as amicus curiae making much the same arguments we would expect to be made by the Tribe had it chosen to participate. While sovereign immunity prevents the Tribe from being forced to participate in New York court proceedings, it does not require everyone else to forego the resolution of all disputes that could affect the Tribe (*see Keene v. Chambers,* 271 N.Y. 326, 330 [1936]; *Plaut v. HGH Partnership,* 59 A.D.2d 686 [1st Dept.1977]; 3 WeinsteinKorn-Miller, N.Y. Civ. Prac. ¶ 1001.10 [citing cases]). While we fully respect the sovereign prerogatives of the Indian tribes, we will not permit the Tribe's voluntary absence to deprive these plaintiffs (and in turn any member of the public) of their day in court. In balancing the CPLR 1001 factors, the Appellate Division concluded that the equities weighed

against dismissal. That conclusion was not an abuse of discretion. While in other cases sovereign immunity might support dismissal, [footnote omitted] here the factors weigh toward allowing judicial review of this constitutional question (*see* generally Siegel, N.Y. Prac. § 133 ['Dismissal of the action for nonjoinder of a given person is a possibility under the CPLR, but it is only a last resort']). [footnote omitted]

***4** We conclude that the alleged constitutional violation will be without remedy if this action is dismissed for the Tribe's nonjoinder. We further conclude that to the extent the Tribe is prejudiced by our adjudication of issues that affect its rights under the compact, the Tribe could have mitigated that prejudice by participating in the suit (*cf. United States ex rel. Steele v. Turn Key Gaming, Inc.*, 135 F.3d 1249, 1252 [8th Cir.1998]). The Tribe's nonjoinder is therefore excused....

Saratoga County Chamber of Commerce, supra at 820-821 [emphasis added]. The same can be said in the instant action. While the Nation goes to great lengths on the instant motion for leave to renew to show the potential economic harm it will suffer if the court invalidates the 1993 Compact, the Nation has chosen to voluntarily absent itself from the instant litigation, a choice that is clearly well within its right as a sovereign nation. To paraphrase the Court of Appeal's decision in *Saratoga,* to the extent that the Oneidas are prejudiced by this court's adjudication, if any, it could have chosen to mitigate its damages by participating in the litigation as a party. [*see, In the Matter of the Herald Company, Inc. v. Robert Feurstein, et al,* 3 Misc.3d 885, 2004 W.L. 503440 (S.Ct.N.Y.Co.2004). [FN4]

> FN4. Respondents also argue that the petition must be dismissed because the Oneidas are a necessary party who cannot be forced to appear in this matter as they are not subject to judicial process. Clearly, the Oneidas are not a party to this action. Although their interests are
>
> certainly affected by this litigation, the Oneidas have chosen not to participate. Unless Congress provides otherwise, Indian tribes, including the Oneidas, possess sovereign immunity against the judicial processes of states (*see Saratoga County Chamber of Commerce Inc. v. Pataki,* 100 N.Y.2d 801, 818, 766 N.Y.S .2d 654, 798 N.E.2d 1047, *cert. denied* --- U.S. ----, 124 S.Ct. 570, 157 L.Ed.2d 430 [2003]; *see also Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 58, 98 S.Ct. 1670, 56 L.Ed.2d 106 [1978]; *United States v. United States Fidelity & Guaranty Co.,* 309 U.S. 506, 512, 60 S.Ct. 653, 84 L.Ed. 894 [1940]). As a result, New York courts cannot force the Oneidas to participate in this matter. However, contrary to respondents' claim, the Oneidas' absence does not require this Court to dismiss this action.
>
> *In the Matter of the Herald Company, Inc. v. Robert Feurstein,* et al, supra at 2004 W.L.503440, *8.

Nor is the court persuaded by the Nation's argument that the instant action should be dismissed as barred by laches. In support of its position, the Nation argues: "In *Saratoga,* the Court of Appeals affirmed the lower court's refusal to dismiss the Complaint on the ground of laches, because the record was insufficient to support dismissal on that grounds. The record in this case will demonstrate a very different picture." [Nation's Memorandum of Law at p. 11]. While counsel for the Nation is technically correct in his assertion, a more thorough analysis of the opinion is necessary.

In deciding the issue of laches, the Court of Appeals did not limit its decision to the paucity of the record concerning economic harm to the Mohawks, finding:

Plaintiffs argue that the Tribe was on notice as to the possible illegality of the compact, citing a memorandum from Governor Cuomo's Counsel indicating that the Tribe had been informed that legislative approval would be required before the State could enter into effective compacts. [footnote omitted]. Thus, while the casino is presumably expected to make large sums over the next several years, and while plaintiffs' suit threatens that source of revenue, the prejudice caused by a loss of expected profits based on a predictably vulnerable compact is not the sort of prejudice that supports a defense of laches. Were it otherwise, very few suits would proceed past laches analysis, and

certainly no suits seeking to invalidate illegal contracts could ever proceed.
Saratoga County Chamber of Commerce, supra at 817-818. In reaching this conclusion, the Court of Appeals makes reference to the June 15, 1993 Memorandum from Elizabeth Moore, Esq., counsel to then Governor Mario Cuomo, in which she "... amplifies our reasons for seeking enactment of legislation to authorize the state to carry out ... [its] duties pursuant to the Indian Gaming Regulatory Act ..." [Memorandum of Elizabeth Moore to then Governor Mario Cuomo, attached to Nation's Counsel's Affirmation in Support of Motion to Renew, Exhibit F]. The memorandum goes on to make specific reference to the Compact which is at issue in the instant action. While counsel for the Nation attempts to limit the effect of the Memorandum in the instant action, it is clear that, just as with the Mohawks in the *Saratoga* case, the Nation was on notice of the potential vulnerability of the Compact, and thus this court finds: "... the prejudice caused by a loss of expected profits based on a predictably vulnerable compact is not the sort of prejudice that supports a defense of laches." B.
Justiciable Controversy:
***5** Following oral argument on April 22, 2004, counsel for the Nation submitted a: "Supplemental Affirmation Supporting Motion by the Oneida Indian Nation of New York to Dismiss Complaint for Lack of Justiciable Controversy." As more fully set forth above, the affirmation is predicated on an argument that insofar as the parties agree there is no genuine dispute, and thus no justiciable controversy, the court is required to dismiss the instant action. As set forth above, and in this court's two previous Letter Decisions, the Nation is neither a party to the instant action, nor is it an indispensable party, thus the first question before this court is whether it has standing to raise the issue of justiciable controversy.
Citing to decisions in which courts have declined to issue judgment declaring the rights of parties, where the rights of a third party would be adversely affected, as well as cases in which courts have declined to issue such judgments where there is no longer a "genuine or justiciable controversy" before it, the Nation argues that the court has been divested of its authority to declare the rights of the parties. The cases cited by the Nation in support of its argument involve fact patterns in which the third parties had an interest in the outcome of the litigation, which is the case here, but who were excluded from the litigation. There are no cases cited by the Nation in which a party, that has voluntarily absented itself from the litigation, was later allowed to object to the court rendering a decision. [FN5]

> FN5. Again the Nation argues that it would be substantially prejudiced by the decision of this court. However, as the Court of Appeals held when determining that the Mohawks were not an indispensable party: "We further conclude that to the extent the Tribe is prejudiced by our adjudication of issues that affect its rights under the compact, the Tribe could have mitigated that prejudice by participating in the suit." *Saratoga Chamber of Commerce v. Pataki, op.cit.*

Even if the Court were to accept the Nation's argument that it has standing in its limited appearance to raise the issue of justiciable controversy, turning to the merits of their argument, this court finds it to be without merit. In the instant case, the court does not find that the actions of the plaintiffs and defendants create a feigned controversy necessitating dismissal. Here there is no agreement either express or implied to submit the action to the court solely to obtain a predetermined declaration of the rights of the parties.
At oral argument in the instant action, counsel for the State of New York conceded that the court, under the doctrine of *stare decisis* was bound to follow the decision of the New York Court of Appeals in *Saratoga County Chamber of Commerce v. Pataki, supra,* insofar as the instant action is indistinguishable from the decision. This court does not find that, under the circumstances of this case, that a concession by counsel in opposing a motion for summary judgment of existing, controlling precedent, divests this court of jurisdiction to declare the rights of the parties before it. Where the Nation's argument taken to its logical conclusion, any time that a party cited controlling precedent in support of its position and opposing party conceded the applicability of the precedent to the matter before the court, the court would be precluded from declaring the rights of the parties based upon controlling case law, a position that strikes at the very heart of the doctrine of *stare decisis* [FN6]. Accordingly, the Nation's Motion to Dismiss the Complaint based on a Lack of

Justiciable Controversy is, in all respects denied. [FN7] C.

FN6. '... The doctrine of stare decisis provides that once a court has decided a legal issue, subsequent appeals presenting similar facts *should be decided* (emphasis added) in conformity with the earlier decision' (*People v. Bing*, 76 N.Y.2d 331, 337-338). The doctrine, which 'rests upon considerations of practicality and principle' (*People v. Damiano*, 87 N.Y.2d 477, 48 [Simons, J., concurring]), recognizes that a legal question, once resolved, should not be reexamined each and every time that it is presented *(see, Matter of Deposit Cent. School Dist. v. Public Empl. Relations Bd.*, 214 A.D.2d 288, 290, *lv. dismissed, lv. denied* 88 N.Y.2d 866; *Dufel v. Green*, 198 A.D.2d 640, *affd.* 84 N.Y.2d 795). Simply stated, the established precedent prevails unless there is a compelling reason to depart from it *(see, Matter of Schulz v. State of New York*, 241 A.D.2d 806, 808, *appeal dismissed* 90 N.Y.2d 1007; *Dufel v. Green, supra*). *Battle v. State*, 257 A.D.2d 745, 746 (3rd Dept.1999), *lv.to.app.denied*, 93 N.Y.2d 805 (emphasis added); *see also*, 28 N.Y. Jur.2d Courts and Judges § 220; 1 Carmody-Wait 2d § 2:261, Courts and Their Jurisdiction, Generally; Statement and Purpose of Doctrine [*Stare Decisis*].

FN7. As Judge Celya, writing for the First Circuit Court of Appeals observed in *The Dartmouth Review v. Dartmouth College, et al*, 889 F.2d 13 (1st Cir.1989): "We find this to be a ketchup bottle type argument: it looks quite full, but it is remarkably difficult to get anything useful out of it." *Id.* at 18.

Summary Judgment:

***6** Turning to the merits of the case before it, as framed by counsel for the parties to the instant action, the sole remaining issue to be determined by this court on plaintiffs' motion for summary judgment is whether then Governor Mario Cuomo exceeded his authority in entering into the 1993 Compact with the Oneida nation without legislative approval.

Reviewing the case before it in light of the Court of Appeals Decision in *Saratoga County Chamber of Commerce v. Pataki, supra,* this court finds the unilateral actions of then Governor Cuomo in entering into the Compact without legislative approval clearly violated the doctrine of separation of powers recognized by Articles 3-5 of the Constitution of the State of New York (*see* N .Y. Const., art. III, § 1; art. IV, § 1; art. VI, § 1) [FN8], and thus declares the 1993 Compact invalid.

FN8. "Stated succinctly, the separation of powers 'requires that the

Legislature make the critical policy decisions, while the executive branch's responsibility is to implement those policies' *(Bourquin v. Cuomo*, 85 N.Y.2d 781, 784,[1995] [*citing Matter of New York State Health Facilities Assn. v. Axelrod*, 77 N.Y.2d 340, 349 (1991)])." *Saratoga County Chamber of Commerce v. Pataki, supra* at 821-822.

The foregoing constitutes the Letter Decision of the Court. Counsel for the plaintiffs is to submit an Order consistent herewith for signature within five days of receipt.

N.Y.Sup.,2004.

Peterman v. Pataki

4 Misc.3d 1028(A), 2004 WL 2222278 (N.Y.Sup.), 2004 N.Y. Slip Op. 51092(U) Unpublished Disposition

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271 Wis.2d 295, 680 N.W.2d 666, 2004 WI 52

Case

Mary E. PANZER, personally and as Majority Leader of the Wisconsin Senate, John G. Gard, personally and as Speaker of the Wisconsin Assembly, and Joint Committee on Legislative Organization, Petitioners,

v.

James E. DOYLE, in his official capacity as Governor of Wisconsin and Marc J. Marotta, in his official capacity as acting Secretary of the Wisconsin Department of Administration, Respondents.

Panzer v. Doyle

Case Summary: Synopsis

Declaratory relief granted; injunctive relief denied.

Shirley S. Abrahamson, Chief Justice, and Ann Walsh Bradley, J., and N. Patrick Crooks, JJ., jointly filed a dissenting opinion.

Points of Law: West Headnotes

[1] KeyCite Notes

118A Declaratory Judgment
118Ak303 k. State or State Officers.

State Senate Majority Leader, State Assembly Speaker, and Joint Committee on Legislative Organization had standing to bring original action in Supreme Court, for declaratory and injunctive relief against Governor and Secretary of Administration, regarding

Governor's agreement to amendments to State's gaming compact with Indian tribe under federal Indian Gaming Regulatory Act (IGRA); if the legislative leaders lacked standing to assert a claim that the Governor had acted to deprive the legislature of the ability to exercise its core function in a specific subject area, then no one in the legislature could make such a claim, and no one outside the legislature would have an equivalent stake in the issue, and the legislative leaders had a significant stake in representing the legislative branch, because there was a claimed breach of separation of powers. Indian Gaming Regulatory Act, § 2 et seq., 25 U.S.C.A. § 2701 et seq.; W.S.A. 14.035.

[2] KeyCite Notes 

⇦118A Declaratory Judgment
⇦118Ak294 k. Subjects of Relief in General.

Indian tribe's decision not to participate as party to original action filed in Supreme Court by legislative leaders, seeking declaratory and injunctive relief against Governor and Secretary of Administration regarding Governor's agreement to amendments to State's gaming compact with Indian tribe under federal Indian Gaming Regulatory Act (IGRA), could not, under a theory of absence of indispensable party, deprive Supreme Court of its core power to interpret the Wisconsin Constitution and resolve disputes between coequal branches of state government, regarding separation of powers. Indian Gaming Regulatory Act, § 2 et seq., 25 U.S.C.A. § 2701 et seq.; W.S.A. 14.035.

[3] KeyCite Notes 

⇦92 Constitutional Law
⇦92k50 k. Nature and Scope in General.

The separation of powers doctrine is implicit in the tripartite division of government.

[4] KeyCite Notes 

⇦92 Constitutional Law
⇦92k50 k. Nature and Scope in General.

Under the separation of powers doctrine, there are zones of authority constitutionally established for each branch of government, upon which any other branch of government is prohibited from intruding.

[5] KeyCite Notes 

92 Constitutional Law
92k50 k. Nature and Scope in General.

Governmental functions and powers are too complex and interrelated to be neatly compartmentalized; for this reason, the court analyzes separation of powers claims not under formulaic rules, but under general principles that recognize both the independence and interdependence of the three branches of government.

[6] KeyCite Notes

92 Constitutional Law
92k50 k. Nature and Scope in General.

Under Wisconsin's Constitution, powers may be shared between and among branches of government, so long as the power at issue is not a "core" power reserved to one branch alone.

[7] KeyCite Notes

92 Constitutional Law
92k50 k. Nature and Scope in General.

Under the nondelegation doctrine, one branch of government may delegate power to another branch, but it may not delegate too much, thereby fusing an overabundance of power in the recipient branch; the concern about excessive delegation is that an improper concentration of power in one branch will undermine the checks and balances built into the system of government, or result in a ceding of power that the donor branch may be unable to reclaim.

[8] KeyCite Notes

92 Constitutional Law
92k60 k. In General.

When reviewing legislative delegations of power to another branch of government, the court normally reviews both the nature of delegated power and the presence of adequate procedural safeguards, giving less emphasis to the former when the latter is present.

[9] KeyCite Notes

92 Constitutional Law
92k62(1) k. In General.

The nondelegation doctrine, with respect to delegation of legislative power to an executive branch administrative agency, is primarily concerned with the presence of procedural safeguards that will adequately assure that discretionary power is not exercised unnecessarily or indiscriminately.

[10] KeyCite Notes

⇦92 Constitutional Law
⇦92k60 k. In General.

The legislative delegation of power to a sister branch of government must be scrutinized with heightened care to assure that the legislature retains control over the delegated power, much like the legislature exercises inherent control over state administrative agencies.

[11] KeyCite Notes

⇦92 Constitutional Law
⇦92k62(5.1) k. In General.

⇦209 Indians KeyCite Notes
⇦209k32(12) k. Gaming; Bingo.

Statute allowing Governor to enter into compacts with Indian tribes pursuant to federal Indian Gaming Regulatory Act (IGRA), on behalf of State, was not an unconstitutional delegation of power from legislative branch to executive branch; statute had ascertainable purpose of designating Governor as State's lead negotiator on Indian gaming compacts, and legislature retained power to act on Indian gaming through procedural safeguards, such as by repealing the statute if legislature could override gubernatorial veto, by amending the statute to require ratification of compact extensions or amendments, to direct Governor to seek specific terms, or to express a desire to nonrenew compacts, or by appealing to public opinion. W.S.A. 14.035.

[12] KeyCite Notes

⇦92 Constitutional Law
⇦92k50 k. Nature and Scope in General.

⇦209 Indians KeyCite Notes
⇦209k32(12) k. Gaming; Bingo.

In the absence of a legislative delegation to the Governor, the constitutional power to enter into compacts under the federal

Indian Gaming Regulatory Act (IGRA), on behalf of State, resides with Wisconsin's legislative branch. Indian Gaming Regulatory Act, § 2 et seq., 25 U.S.C.A. § 2701 et seq.; W.S.A. 14.035.

[13] KeyCite Notes

92 Constitutional Law
92k48(1) k. In General.

92 Constitutional Law KeyCite Notes
92k48(3) k. Doubtful Cases; Construction to Avoid Doubt.

A statute is presumed constitutional, and a court will strike down a statute only when it is shown to be unconstitutional beyond a reasonable doubt.

[14] KeyCite Notes

92 Constitutional Law
92k48(1) k. In General.

Where the constitutionality of a statute is at issue, courts attempt to avoid an interpretation that creates constitutional infirmities.

[15] KeyCite Notes

92 Constitutional Law
92k48(4.1) k. In General.

Courts must apply a limiting construction to a statute, if available, to eliminate the statute's overreach, while maintaining the legislation's constitutional integrity.

[16] KeyCite Notes

92 Constitutional Law
92k77 k. Encroachment on Legislature.

209 Indians KeyCite Notes
209k32(12) k. Gaming; Bingo.

Governor lacked inherent or delegated authority, under separation of powers principles, to enter into amendment to compact with Indian tribe pursuant to federal Indian Gaming Regulatory Act (IGRA) so as to permanently remove the subject of Indian gaming from legislature's ability to establish policy and make law, by giving up State's power, under pre-amendment compact, to

periodically withdraw from compact. Indian Gaming Regulatory Act, § 2 et seq., 25 U.S.C.A. § 2701 et seq.

[17] KeyCite Notes

92 Constitutional Law
92k77 k. Encroachment on Legislature.

209 Indians KeyCite Notes
209k32(12) k. Gaming; Bingo.

Governor lacked inherent or delegated authority, under separation of powers principles, to enter into amendment to compact with Indian tribe pursuant to federal Indian Gaming Regulatory Act (IGRA) so as to allow tribe to offer new casino-style games that were, as reflected in State's criminal statutes and reinforced by its Constitution, prohibited to everyone in the State. Indian Gaming Regulatory Act, § 11(d)(1)(B), 25 U.S.C.A. § 2710(d)(1)(B); W.S.A. Const. Art. 4, § 24; W.S.A. 14.035, 945.01 et seq.

[18] KeyCite Notes

92 Constitutional Law
92k77 k. Encroachment on Legislature.

209 Indians KeyCite Notes
209k32(12) k. Gaming; Bingo.

Governor lacked inherent or delegated authority, under separation of powers principles, to enter into amendment to compact with Indian tribe pursuant to federal Indian Gaming Regulatory Act (IGRA) so as to waive State's sovereign immunity. Indian Gaming Regulatory Act, § 2 et seq., 25 U.S.C.A. § 2701 et seq.; W.S.A. Const. Art. 4, § 27; W.S.A. 14.035.

[19] KeyCite Notes

360 States
360k191.2(1) k. In General.

Only the legislature may exercise the authority to waive sovereign immunity on behalf of the State. W.S.A. Const. Art. 4, § 27.

[20] KeyCite Notes

360 States
360k191.6(1) k. In General.

Legislative consent to suit, as a waiver of sovereign immunity, must be express. W.S.A. Const. Art. 4, § 27.

[21] KeyCite Notes

360 States
360k191.2(1) k. In General.

The legislature may not inadvertently dispossess itself of the power to waive sovereign immunity under the Constitution; thus, when the legislature wishes to authorize a designated agent to waive the State's sovereign immunity, it must do so clearly and expressly. W.S.A. Const. Art. 4, § 27.

Case History: KeyCite History

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History

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➡ **Panzer v. Doyle,** 271 Wis.2d 295, 680 N.W.2d 666, 2004 WI 52 (Wis. May 13, 2004) (NO. 03-0910-OA)

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Att #2

CHAPTER 470

SB 2025

SENATE BILL NO. 2399

(Senator W. Stenehjem)
(Representative Kretschmar)
(Approved by the Delayed Bills Committee)

TRIBAL-STATE GAMING COMPACT APPROVAL

AN ACT to provide approval of amendments and renewals of tribal-state gaming compacts and for an open records exception for tribal gaming financial information submitted to a state agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Tribal-state gaming compact - Definition. A tribal-state gaming compact is a duly executed agreement between the state and a federally recognized Indian tribe as approved by the secretary of the department of interior of the United States pursuant to the Indian Gaming Regulatory Act of 1988 [Pub. L. 100-497; 102 Stat. 2467; 25 U.S.C. 2701 et seq.].

SECTION 2. Tribal gaming records not subject to disclosure - Exceptions. Except as provided in each tribal-state gaming compact, all tribal gaming records, including trade secret and proprietary information as defined in section 44-04-18.4, submitted to an agency of this state are confidential and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

SECTION 3. Tribal-state gaming compact - Creation, renewals, and amendments. The governor or the governor's designee may represent the state in any gaming negotiation in which the state is required to participate pursuant to 25 U.S.C. 2701 et seq. by any federally recognized Indian tribe and, on behalf of the state, may execute a gaming compact between the state and a federally recognized Indian tribe, subject to the following:

1. If the legislative assembly is not in session at the time gaming negotiations are being conducted, the chairman and vice chairman of the legislative council or the designee of the chairman or vice chairman may attend all negotiations and brief the legislative council on the status of the negotiations.

2. If the legislative assembly is in session at the time negotiations are being conducted, the majority and minority leaders of both houses, or their designees, may attend all negotiations and brief their respective houses on the status of the negotiations.

3. The compact may authorize an Indian tribe to conduct gaming that is permitted in the state for any purpose by any person, organization, or entity.

4. For the purposes of this Act, the term "gaming that is permitted in the state for any purpose by any person, organization, or entity" includes any game of chance that any Indian tribe was permitted to conduct

under a tribal-state gaming compact that was in effect on the effective date of this Act.

5. The compact may not authorize gaming to be conducted by an Indian tribe at any off-reservation location not permitted under a tribal-state gaming compact in effect on the effective date of this Act, except that in the case of the tribal-state gaming compact between the Turtle Mountain Band of Chippewa and the state, gaming may be conducted on land within Rolette County held in trust for the Band by the United States government which was in trust as of the effective date of the Indian Gaming Regulatory Act of 1988 [Pub. L. 100-497, 102 Stat. 2467; 25 U.S.C. 2701 et seq.].

6. The compact may not obligate the state to appropriate state funds; provided, however, the state may perform services for reimbursement.

7. The negotiations between the tribe and the state must address the possibility of a mutual effort of the parties to address the issue of compulsive gambling.

8. If the legislative assembly is not in session when the negotiations are concluded, the governor shall forward a copy of the compact as finally negotiated to each member of the legislative council at least twenty-one days before the compact is signed.

9. If the legislative assembly is in session when the negotiations are concluded, the governor shall forward a copy of the compact as finally negotiated to each member of the legislative assembly at least twenty-one days before the compact is signed.

10. Before execution of any proposed tribal-state gaming compact or amendment thereto, the governor shall conduct one public hearing on the proposed compact or amendment.

Approved April 10, 1997
Filed April 10, 1997