

NATIONAL COUNCIL OF LEGISLATORS FROM GAMING STATES
INFORMATION CONCERNING
TRIBAL-STATE GAMING COMPACTS

Adopted by the NCLGS Executive Committee on June 6, 2004

POTENTIAL ISSUES TO BE ADDRESSED IN A TRIBAL-STATE COMPACT

It is the intent of the National Council of Legislators from Gaming States (NCLGS) to develop a list of provisions that have been discussed or included in Tribal-State gaming compacts.

The purpose of this list is to assist in making states aware of the issues they may consider when dealing with this extremely important subject. A secondary goal is to let states know the various ways that issues have been resolved.

NCLGS recognizes that each state and each tribe is unique and sovereign. NCLGS does not intend to generate model legislation, nor does it intend to recommend or counsel against any particular facet of a compact. From this compilation of issues, states, tribes and their respective attorneys will determine the issues that should be addressed and how they should be resolved.

NCLGS recognizes that the National Indian Gaming Association (NIGA) is of the opinion that certain issues contained in the list may fall outside the provisions of the Indian Gaming Regulatory Act. NCLGS respects the position of NIGA and will specifically note such issues and accept comments from NIGA and tribes regarding them.

NCLGS asks that the same respect be accorded to our organization as we proceed with formulating this advisory document.

This document includes research performed by NCLGS staff and Senator Geller's staff. It has been revised to include testimony received at a January 6, 2000, meeting of the NCLGS Subcommittee on Tribal-State Compacts, input at a July 28, 2000, meeting of the NCLGS State-Federal Relations Committee, and comments received between the NCLGS State-Federal Relations Committee meetings on September 7, 2001, and June 2, 2002, and amendments adopted at its June 6, 2004, State-Federal relations Committee meeting.

IGRA acknowledges the right of the Indian tribes to use gaming to generate tribal government revenue and promotes tribal economic development, self-sufficiency and strong tribal governments. Accordingly, tribal-state compact negotiations should proceed on a government-to-government basis giving consideration to the unique circumstances of each tribe and state. The Office of Indian Gaming Management, Bureau of Indian Affairs, U.S. Department of the Interior, receives, reviews and makes recommendations on tribal-state compacts to the Secretary of the Interior. For copies of compacts or other information relating to Indian gaming, please contact the Office of Indian Gaming Management at 202-219-4066.

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1. PREAMBLE, INCLUDING A DECLARATION OF POLICY/FINDINGS

Declaration of policy could recognize the positive impact that gaming may have on the State, such as

- the utilization of gaming generated financial resources to fund programs and services on tribal lands such as education, health and human resources, housing development, road construction and economic development;
- the positive economic effects of gaming enterprises which may extend beyond the tribal community into surrounding communities;

Findings could include the purposes of the compact, such as

- creation of a compact authority, e.g., to govern the particular form of Indian gaming;
- compact purposes, e.g., to provide the opportunity for a Tribe to offer the particular form of gaming in a way that would benefit the tribe economically, insure fair operation of the game, and minimize

corruption.

- the principal goal of federal Indian policy which is to promote Tribal economic development, tribal self-sufficiency and strong tribal government; and
- the right of the Tribal government to license and regulate gaming on its lands in accordance with IGRA and the Compact.

Indian gaming is regulated by three sovereigns: tribal governments, state governments, and the federal government. The payments and the regulatory roles that States play are negotiated for in tribal-state compacts. Tribes also fully fund the budget of the federal National Indian Gaming Commission. In addition to the NIGC, Tribes also work with a number of other federal agencies on regulation, including the FBI (within the Department of Justice), the BIA (within the Interior Department), and the IRS and Financial Crimes Enforcement Network (within the Treasury Department). Because of this comprehensive regulatory regime, the U.S. Department of Justice has repeatedly found that Indian gaming regulation is working, and that there is no evidence of infiltration of organized crime into Indian gaming.

This compact is our birthright:

Mashantucket Pequot Tribe (CT) – Preamble “WHEREAS, the Mashantucket Pequot Tribe is a federally recognized Indian tribe, possessed of all sovereign powers and rights thereto pertaining; ...”

This compact promotes mutual goals of the parties:

Pueblo of Acoma (NM) – Introduction “The State and Tribe, in recognition of the sovereign rights of each party and in a spirit of cooperation to promote the best interests of the citizens of the State and the members of this Tribe, have engaged in good faith negotiations recognizing and respecting the interests of each party and have agreed to this Compact.”

This compact is our right, with a discussion of why it is not in violation of State law:

Tunica-Biloxi Indian Tribe (LA) – Preamble “Whereas, the Congress of the United States of America has found that ‘Indian Tribes have the exclusive right to regulate gaming activities on Indian lands if the gaming activity is not specifically prohibited by federal law and is conducted within a state which does not as a matter of criminal law and public policy prohibit such gaming activity;”

This compact recognizes that each of the parties is sovereign:

San Carlos Apache Tribe (AZ) – Declaration of Policy and Purpose “WHEREAS, the Tribe and the State are separate sovereigns, and each recognizes and respects the laws and authority of the other sovereign; and ...”

Explains why this Compact is necessary:

Kickapoo Tribe of Indians (KS) – Section 2(A) Tribal Interest in Class III Gaming. “The Tribe’s interests in Class III gaming include raising revenue to provide governmental services for the benefit of the tribal community and reservation residents, promoting public safety as well as law and order on the Reservation, realizing the objectives of economic self-sufficiency and tribal self-determination, and regulating the activities of all people within the Tribe’s jurisdictional borders. ...”

Pueblo of Acoma (NM) – Section 1 Purpose and Objectives ‘The purpose and objectives of the State and the Tribe in making this Compact are as follows: ... (D) To fulfill the purpose and intent of the IGRA by providing for tribal gaming as a means of generating tribal revenues, thereby promoting tribal economic development, tribal self sufficiency, and strong tribal government; ...”

Tribal-State Gaming Compact (CA) – Preamble D. “The State enters into this Compact out of respect for the sovereignty of the Tribe; in recognition of the historical fact that Indian gaming has become the single largest revenue-producing activity for Indian tribes in the United States; out of a desire to terminate pending “bad faith” litigation between the Tribe and the State; out of respect for the sentiment of the voters of California, who, in approving Proposition 5, expressed their belief that the forms of gaming authorized herein should be allowed; ...”

Prairie Island Sioux Community (MN) – Section 1.1 “The State recognizes the positive impacts that gaming may provide to the Community. The Community may utilize gaming generated financial resources to fund programs that provide various vital services to Community residents. These programs may include education, health and human resources, housing development, road construction and maintenance, sewer and water projects, and economic development. The State also recognizes that the positive economic effects of such gaming enterprises may extent beyond tribal governments to the tribe’s neighbors and surrounding communities, and may help to foster mutual respect and understanding among Indians and non-Indians.”

Special provision to highlight the need and desire for honest wagering:

Mashantucket Pequot Tribe (CT) – Preamble “Whereas ... [the] Tribe and the State ... have mutually agreed ... and (b) develop and implement a means of regulation for the conduct of Class III gaming on Indian lands as that term is defined in the Act in order to attempt to insure the fair and honest operation of such gaming activities and to minimize the possibility of corruption or illegal practices in conjunction with such activities...”

Omaha Tribe of Nebraska (NE) – Recitals “The purposes of this Compact are:...(7) to deter any criminality, or the potential for any criminality to occur and to shield any such gaming activity from any involvement by organized crime or other corrupting influences;...”

State already allows similar gaming off reservation lands:

Little River Band of Ottawa Indians (MI) – Recitals “Whereas, the State presently permits and regulates various types of gaming within the State (but outside Indian lands), including casino style charitable gaming such as craps, roulette, and banking card games, as well as a lottery operating instant scratch games, and "pick number" games, most of which would be Class III games if conducted by the Tribe;”

Little River Band of Ottawa Indians (MI) – Recitals “Whereas, the Michigan Supreme Court in *Automatic Music & Vending Corp. v. Liquor Control Comm.*, 426 Mich 452, 396 N-W.2d 204 (1986); appeal dismissed, 481 U.S. 1009 (1987), and the Michigan Court of Appeals in *Primages Int'l of Michigan v. Michigan*, 199 Mich App 252, 501 NW2d 268 (1993), have held that the statutory exception found at MCL 750.303(2) allows for the play of electronic gaming devices, which includes computerized or electronic games of chance, albeit subject to specified restrictions regarding the mode of play;”

This is a major policy issue of great import. Governors traditionally have negotiated compacts, while some legislatures feel it is their responsibility to approve and amend compacts, e.g., New Mexico legislature.

This section could provide how the Compact would be approved, e.g., approval by Governor, legislature, Secretary of Interior.

Clearly states that effectiveness of the Compact is contingent upon publication of notice of approval by the Secretary of the Interior:

Mashantucket Pequot Tribe (CT) – 17(a) Effective Date – “This Compact shall be effective upon publication of notice of approval by the Secretary of the Interior of the United States in the Federal Register in accordance with 25 U.S.C. sec. 2710(d)(3)(B).”

As a result of a lawsuit, New Mexico requires legislative approval for Tribal-State Compacts:

Pueblo of Acoma (NM) – “Executed pursuant to Chapter 190 of THE LAWS OF NEW MEXICO OF THE FIRST SESSION OF THE FORTY-THIRD LEGISLATURE by Governor Ron Shutiva acting for the Tribe and Governor Gary E. Johnson acting for the State.”

States that the governor of the state may negotiate gaming compact with tribe:

Stockbridge-Munsee Community (WI) – Recitals “WHEREAS, the Governor is authorized by s. 14.035, Wis. Stats., to enter into gaming compacts with the several Indian tribal governments within the State of Wisconsin;”

Requires the concurrent endorsement of the State Governor and Legislature:

Little River Band of Ottawa Indians (MI) – Section 11 “This Compact shall be effective immediately upon: (A) Endorsement by the tribal chairperson and concurrence in that endorsement by resolution of the Tribal Council; (B) Endorsement by the Governor of the State and concurrence in that endorsement by resolution of the Michigan Legislature; (C) Approval by the Secretary of the Interior of the United States; and (D) Publication in the Federal Register.”

3. RELATIONSHIP TO IGRA

This section could include the preservation of Tribal rights under IGRA and acknowledgment of National Indian Gaming Commission Minimum Internal Control Standards (MICS).

Acknowledges the purpose of IGRA:

Oneida Nation of New York – Recitals “WHEREAS, the Congress of the United States has enacted into law the Indian Gaming Regulatory Act ... which provides in part that a Compact be negotiated between an Indian nation and a State to govern the conduct of activities which constitutes Class III gaming as defined by the Act;”

Pueblo of Acoma (NM) – Section 1 Purpose and Objectives “The purpose and objectives of the State and the Tribe in making this Compact are as follows: ... (D) To fulfill the purpose and intent of the IGRA by providing for tribal gaming as a means of generating tribal revenues, thereby promoting tribal economic development, tribal self sufficiency, and strong tribal government; ...”

Tribal-State Gaming Compact (CA) – Preamble F. “The State has a legitimate interest in promoting the purposes of IGRA for all federally-recognized Indian tribes in California, whether gaming or non-gaming. The State contends that it has an equally legitimate sovereign interest in regulating the growth of Class III gaming activities in California. ...”

Stockbridge-Munsee Community (WI) – Recitals “WHEREAS, the Indian Gaming Regulatory Act provides that an Indian tribe has the right to regulate Class III gaming activities on its lands concurrently with the State pursuant to a compact with the State;”

4. REGULATORY FEES AS ALLOWED BY IGRA

This section could acknowledge reimbursement to the States by the Tribal governments of their share of regulatory costs necessary in the execution of the Compact, as allowed in IGRA section 2710 d)(3)(c)(iii).

Allows the State to make an annual assessment for expenses due to regulating the provisions of the Compact:

Mashantucket Pequot Tribe (CT) – 11(a) Imposition of assessment for State regulatory expenditures. “The State shall annually make an assessment sufficient to compensate the State for the reasonable and necessary costs of regulatory gaming operations and conducting law enforcement investigations pursuant to this Compact.”

Omaha Tribe of Nebraska (NE) – Section 6(B)(vi) Additional Powers, Functions and Duties of Nebraska. “To compute, determine, assess, and collect accurate amounts required to be paid to Nebraska as are necessary to defray the costs incurred by Nebraska of regulating Class III Gaming activity conducted by the Omaha Tribe or any Gaming Operator conducting Class III Gaming activity on behalf of the Omaha Tribe;”

Provides that the Tribe reimburse the state for any costs the state incurs in regulating the Compact:

Oneida Nation of New York – Appendix D (a) “The State shall assess and the Nation shall pay for reasonable and necessary costs incurred by the State in regulating gaming under this compact as provided in 25 U.S.C. § 2710(d)(3)(c)(iii). These costs shall include ...,” and goes on to enumerate certain costs plus reasonable expenses.

Pueblo of Acoma (NM) – 4.E.5 “For every year or part thereof in which the Tribe is actually engaged in Class III Gaming hereunder, the Tribe shall reimburse the State for the costs the State incurs in carrying out any function authorized by the terms of this compact.”

Gives a more detailed explanation of what the State will be reimbursed for:

Tunica-Biloxi Indian Tribe (LA) –11(A) “The Tunica-Biloxi Indian tribe of Louisiana shall reimburse the State of Louisiana for all expenses actually incurred by the State of Louisiana in carrying out its obligations pursuant to this Tribal-State Compact. Reimbursement shall be made for monitoring, investigative, intelligence, processing, and safety costs.”

Limits the tribe’s reimbursement of regulatory costs to the state:

Bay Mills Indian Community (MI) – Section 4(K)(5) “The Tribe shall reimburse the State for the actual costs the State incurs in carrying out any functions authorized by the terms of this Compact, in an amount not to exceed twenty-five thousand dollars (\$25,000.00) per annum.... Any amount of said twenty-five thousand dollars (\$25,000.00) not expended by the State on said actual costs shall be returned to the Tribe by the State within sixty (60) days after the fiscal year or treated as a pre-payment of the Tribe’s obligation during the subsequent fiscal year.”

Tribe’s reimbursement of costs to state adjusted in accordance with Consumer Price Index:

Little River Band of Ottawa Indians – Section 4(M)(5) “The Tribe shall reimburse the State for the actual costs the State incurs in carrying out any functions authorized by the terms of this Compact, in an amount not to exceed fifty thousand dollars (\$50,000.00) per annum, adjusted annually in accordance with the Consumer Price Index (CPI) annual inflation index.”

Calls for reimbursement of expenses to local units of government:

Menominee Indian Tribe of Wisconsin (WI) – Section XXXVI “The Tribe shall enter into written agreements with all units of local governments providing services to a Class III gaming facility of the Tribe, to reimburse those units of local governments for such services.”

Oneida Tribe of Indians of Wisconsin (WI), Amendments to the Oneida Tribe of Indians of Wisconsin and the State of Wisconsin Gaming Compact of 1991 - “4. Section XXXII of the Compact entitled “PAYMENT TO THE STATE” is created as follows: A. The Tribe shall make an annual payment to the State for each one (1) year period beginning November 8, 1998 through November 8, 2003, in the amount of \$5,400,000. For each payment required by this section, the Nation shall reduce the payment by \$550,000 in direct recognition of existing municipal service agreements. The Governor shall undertake to use his best efforts within the scope of his authority to assure payments received by the State pursuant to this section are spent in accordance with the May 8, 1998, Memorandum of Understanding Regarding Government to Government Matters.”

Little River Band of Ottawa Indians (MI) – Section 18(A)(2) “It is the State's intent, in this and its other Compacts with federally recognized tribes, that the payments to local governments provided for in this section provide financial resources to those political subdivisions of the State which actually experience increased operating costs associated with the operation of the Class III gaming facility. To this end, a Local Revenue Sharing Board shall be created by those local governments in the vicinity of the Class III gaming facility to receive and disburse the semi-annual payments from the Tribe as described below.”

Rate of reimbursement changes once all tribes that have requested Class III gaming compacts have completed negotiations:

Stockbridge-Munsee Community (WI) – Section XXIV (A.) Until such time as all tribes within the State that have requested negotiation of Class III gaming compacts have concluded compacts with the State, the Tribe shall pay to the State, as reimbursement for State costs of regulation under this Compact, the sum of \$25,000 for each State fiscal year (ending June 30), or part thereof, that this Compact is in force;...(B.) As soon as all tribes within the State that have requested negotiation of Class III gaming compacts have concluded compacts with the State, the Tribe shall pay to the State, as reimbursement for State costs of regulation under this Compact, an annual amount for each State fiscal year computed as follows: the share of \$350,000 determined by multiplying that amount by a fraction whose denominator is the sum of the gross annual Class III gaming handle of those tribes for the previous fiscal year, and whose numerator is the Tribe's gross annual Class III gaming handle for that same fiscal year.”

5. LICENSING AND BACKGROUND INVESTIGATIONS

Under IGRA, Indian tribes maintain gaming licensing and background systems pursuant to tribal laws and ordinances that are reviewed and approved by the National Indian Gaming Commission (NIGC).

This section could

- provide all requirements for licensing and background investigations including employee and vendor certification and provisions for federal/state review;
- clearly define who and what should be licensed, e.g., specific classes of employees, classes of vendors and business volume, facilities, etc.; and
- define suitable criteria, minimum background efforts, provisions to allow for temporary licensing, duration and renewal requirements for licenses, fees, provisions for work permits for those not required to be licensed, etc.

Requires that a gaming facility, its operators and employees be licensed by the tribal gaming office and in some cases by the state gaming agency:

San Carlos Apache Tribe (AZ) - Section 4 Tribal-State Licensing and Certification

Requirements. 4(a) Gaming Facility Operator and Gaming Facility. "The Gaming Facility Operator, and all Gaming Facilities authorized by this Compact, shall be licensed by the Tribal Gaming Office in conformance with the requirements of this Compact prior to the commencement of its operation, and annually thereafter." "Prior to the initial commencement of the operation, the State Gaming Agency and Tribal Gaming Office shall verify compliance with this requirement through a joint pre-operation inspection and letter of compliance."

4(b) Gaming Employees. "Every Gaming Employee shall be licensed by the Tribal Gaming Office and every employee of the Tribal Gaming Office shall be licensed by the Tribe. Any Gaming Employee or Tribal Gaming Office Employee that is a non-member of the Tribe shall also be certified by the State Gaming Agency prior to commencement of employment, and annually thereafter . . ."

Omaha Tribe of Nebraska (NE) – Section 6 (A) Powers, Functions, And Duties of Omaha

Tribe and Nebraska. The Omaha Tribe and Nebraska shall have the following powers, functions and duties with regard to the conduct of Class III gaming activities authorized by this Compact:

(i) To issue regular and probationary licenses for Gaming Operators, Key Employees and Manufacturer-Distributors; (ii) To deny any license application for cause..." Section 9 **Licenses; Application Forms.** Application forms for licenses relating to Class III Games shall be prescribed by Nebraska with the advice and consent of the Omaha Tribe. Such application forms shall be obtained by Applicants from the Omaha Tribe and submitted, together with such supplemental information as is necessary, in completed form to the Omaha Tribe in duplicate. The original copy shall be retained by the Omaha Tribe, and one duplicate original shall be submitted to Nebraska for processing."

Little River Band of Ottawa Indians (MI) – Section 4(C) "The Tribe shall license, operate, and regulate all Class III gaming activities pursuant to this Compact, tribal law, IGRA, and all other applicable federal law. This shall include but not be limited to the licensing of consultants (except legal counsel), primary management officials, and key officials of each Class III gaming

activity or operation. Any violation of this Compact, tribal law, IGRA, or other applicable federal law shall be corrected immediately by the Tribe.”

Mandates that employment is contingent on obtaining a license from the State. A state and federal background check is part of this process. Employees in ancillary facilities are also scrutinized:

Mashantucket Pequot Tribe (CT) –5(a) Requirements for employee licensing. “No person may commence or continue employment as a gaming employee unless he is the holder of a valid current gaming employee license issued by the State gaming agency in accordance with the provisions of this section.”

5(c) Background Investigation of Applicants Mandates State and Federal criminal background checks for all gaming employees.

5(j) Investigation of non gaming employees “The State law enforcement agency may investigate misconduct of employees ... in ancillary facilities ...”

Allows a person who has been denied a gaming license an avenue of appeal:

Oneida Nation of New York – Section 6(j) Denial, Suspension or Revocation of Certification by the Board and Appeal. “... The action of the board in denying an initial annual license certification is reviewable in the State Supreme Court upon petition by the applicant.”

Stockbridge-Munsee Community (WI) – Section VII(E)(2)(b) “If, after consultation under subpar. a., the Executive Director determines that a certificate should not issue to the applicant, the Tribe shall have the right to appeal the matter to the Lottery Board and be heard thereon. Any decision of the Lottery Board shall designate the Tribe as an interested party for purposes of judicial review under ch. 227, Stats.”

Licensing of manufacturers and distributors:

Prairie Island Sioux Community (MN) – Section 6.13 “The Community shall only issue licenses to manufacturers of video gaming equipment holding a valid license from the states of Minnesota, or New Jersey, or Nevada, or South Dakota. The Community shall only issue licenses to distributors of video gaming equipment holding a valid license from the states of Minnesota, or New Jersey, or Nevada, or South Dakota. In the event that the State of Minnesota, or the States of New Jersey, or Nevada, or South Dakota, suspend, revoke, or refuses to renew a license of a manufacturer, or distributor similarly licensed by the Community, such action shall be grounds for similar action by the Community and the Community shall suspend, revoke or refuse to renew the license issued by the Community.

Background investigations of employees during employment:

Prairie Island Sioux Community (MN) – Section 5.2 “Each person in the Community whose responsibilities include the operation or management of video games of chance shall be subject to periodic review comparable to that required for initial employment as provided in section 5.1 by the State Department of Public Safety, which review shall take place at least annually commencing with the date of employment.”

Licensing and discipline of employees:

Prairie Island Sioux Community (MN) – Section 5.3 “All personnel employed by the Community whose responsibilities include the operation or management of video games of chance shall be licensed by the Community. The Community shall publish and maintain a procedural manual for such personnel, which includes disciplinary standards for breach of the procedures.”

Establishes state/tribal investigative liaison:

Menominee Indian Tribe of Wisconsin (WI) – Section VIII(E)(3)(a) “The Department shall appoint a Regulation Compliance Investigator/Auditor to be the State/Tribal liaison for investigations under this Compact for the Kenosha facility who shall be the primary contact for the State to exchange information with Tribal Investigators.”

Mandates who must have a license:

Pueblo of Acoma (NM) – 5.A License Required All employees, vendors, management personnel, contractors... “shall apply for and receive a license from the Tribal gaming Agency before participating in any way in the operation or conduct of any Class III gaming on Indian lands.”

Lets the police conduct the background check:

Oneida Nation of New York – Section 8(b)- “Upon written request of the Nation or the Commission, the Board and the State law enforcement agency shall conduct a background investigation of any person, and provide a recommendation based on the results of the investigation. ...”

Lists standards to be considered when reviewing a gaming license applicant:

Kickapoo Tribe of Indians (KS) –Section 16(C) Background Investigation Standards “Background investigations conducted pursuant to this Section shall be conducted pursuant to the Background Investigation Standards attached hereto as Appendix C. Notwithstanding and in addition to any other provision of the Compact, background investigations shall be conducted upon every person and entity specified in, and to the extent required by, the regulation of the Indian Gaming Commission .”**Tribal-State Gaming Compact (CA) – Sec. 6.4.3. Suitability Standard Regarding Gaming Licenses** (a) “In reviewing an application for a gaming license, and in addition to any standards set forth in the Tribal Gaming Ordinance, the Tribal Gaming Agency shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the Tribe’s Gaming Operations, or tribal government gaming generally, are free from criminal and dishonest elements and would be conducted honestly. ...”

Mandates who pays for cost of background investigations necessary for licensing:

Omaha Tribe of Nebraska (NE) – Section 12(E) Payment of Cost of Background Investigation. The Applicant or licensee shall pay the actual cost incurred by Nebraska and the Omaha Tribe resulting from the investigation of the Applicant’s background, fingerprinting, or check of his or her criminal history record.”

Criminal and background investigations are the responsibility of the tribe:

Stockbridge-Munsee Community (WI) – Section IX(C) “The Tribe shall have primary responsibility for the investigations and determinations under this section, and shall retain for a period of at least 7 years, all records relating to such investigations and determinations.”

The State shall release criminal history data to the Tribe for the purposes of conducting a criminal or background investigation:

Stockbridge-Munsee Community (WI) – Section IX(E) “Criminal history data compiled by the Department of Justice on any person subject to subsection A. shall, subject to applicable federal or state law, be released to the Tribe as part of its report regarding each person, and the Tribe shall reimburse the State for the Department's actual costs of compiling the data.”

This section could in accordance with IGRA, Supreme Court Rulings and State Laws

- authorize the types, forms and scope of Class III gaming to be allowed;
- prohibit unauthorized Class III gaming activities, such as internet gaming;
- provide a system for Tribes and a State to address new gaming activities that were not discussed or proposed at the time the Compact was signed.

Explicitly lists the games allowed to operate:

Mashantucket Pequot Tribe (CT) – 3(a) Authorized Games “The Tribe may conduct, only within the Reservation, and subject to the terms and conditions of this Compact, and or all of the following: ...” Goes on to list specific games, lottery, bazaar and pari-mutuel activities.

White Earth Band of Chippewa Reservation (MN) – 1.07 “The band will operate video games of chance pursuant to this compact.”

San Carlos Apache Tribe (AZ) – Section 3(a) “Subject to the terms and conditions of this Compact, the Tribe is authorized to operate the following Gaming Activities: (1) Gaming Devices, (2) Keno, (3) lottery, (4) off-track pari-mutual wagering, (5) pari-mutual wagering on horse racing, and pari-mutual wagering on dog racing.”

Oneida Nation of New York – Section 2 (a) Authorized Games and Activities. “The Nation may conduct within the Nation lands those games and activities enumerated in Appendix A, which is made part of this Compact, in accordance with the specifications described for those games and activities in that Appendix.”

Mashantucket Pequot Tribe (CT) – 5(d) Prohibited Class III Gaming. “The Tribe may not conduct any form of Class III gaming which is not expressly enumerated in section 3(a) of this Compact unless this Compact is amended ...”

Kickapoo Tribe of Indians (KS) –Section 3(B)(1) “The Tribe may not conduct pari-mutual wagering, off track betting, sports betting, club keno or state-wide lottery gaming.”

Explicitly defines where gaming may be held:

Pueblo of Acoma (NM) – Section 3 Authorized Class III Gaming “The Tribe may conduct, only on Indian Land, subjects to all of the terms and conditions of this Compact, and or all forms of casino – style gaming, including but not limited to ...”

Provides a general definition of Class III gaming:

Little River Band of Ottawa Indians (MI) – Section 2(A) “‘Class III gaming’ means all forms of gaming authorized by this Compact, which are neither Class I nor Class II gaming, as such terms are defined in 2703(6) and (7) of IGRA. Only those Class III games authorized by this Compact may be played by the Tribe.”

Simulcasting permitted:

Menominee Indian Tribe of Wisconsin (WI) – Section IV(C) “Except as provided in par. XV.D.17., the Tribe shall not conduct or permit any Class III gaming or any component thereof outside Tribal lands including use of common carriers (such as telecommunications, postal or delivery services) for the purpose of sale of a ticket or playing card to, or placement of a wager by, a person who is not physically present on Tribal lands to purchase the ticket or card or place the wager. This Section shall not prohibit the transmission of live races from the Kenosha facility for the purposes of accepting simulcast wagers at another racetrack.”

7. DEFINITIONS

This section could include explicit and detailed definitions of

- the particular Class III gaming being authorized, gaming operations, gaming employees, non-gaming employees, facilities, suppliers, etc.
- tribal land, e.g., land on which reservations stand, land held in trust, land appropriated by Indians; and
- other definitions.

Class III gaming can be defined in many ways. Here are some examples:

Mashantucket Pequot Tribe (CT) - 2(c) “ ‘Class III Gaming’ means all forms of gaming that are not Class I gaming or Class II gaming, as defined in sections 4(6) and 4(7) of the Act, 25 U.S.C. Sec. 2703(6) and (7).

Pueblo of Acoma (NM) – 2.A “ ‘Class III Gaming’ means all forms of gaming as defined in 25 U.S.C. sec. 2703(8), and 25 C.F.R. sec. 502.4”

Indian lands can also be defined in a variety of ways. Some examples:

Gila River Indian Community (AZ) –2(s) “ ‘Indian Lands’ means lands as defines in 25 U.S.C. sec. 2703(4)(A) and (B), subject to the provisions of 25 U.S.C. sec. 2719.”

Prairie Band Potawatomi Nation (KS)- 5(AE) “ ‘Tribal Land’ means Indian land as defined in the IGRA.”

Oneida Nation of New York – Section 1(o) “ ‘Nation lands’ means the reservation lands of the Nation or lands within the State over which the Nation exercises governmental power and that are either (i) held by the Nation or an individual member of the nation subject to restriction by the United States against alienation; or (ii) held in trust by the United States for the benefit of the Nation or an individual member of the Nation.”

Omaha Tribe of Nebraska (NE) – Section 2 (P) “Indian Lands shall mean: (i) All lands within the limits of the reservation of the Omaha Tribe of Nebraska, together with all accretions thereto, which lands must be located within the State of Nebraska; (ii) Any lands title to which is either held in trust by the United States for the benefit of the Omaha Tribe or individual, or held by the Omaha Tribe for individual subject to restriction by the United States against alienation and over which the Omaha Tribe exercises governmental power; and (iii) All lands within the State of Nebraska which may be acquired by the Omaha Tribe in the future and which meet the requirements of Section 20 of the Act, 25 U.S.C. sec. 2719.”

Little River Band of Ottawa Indians (MI) – Section 2(B)(1) “ ‘Eligible Indian lands’ means reservation lands acquired under 25 U.S.C. § 1300k-4(b) within Manistee or Mason Counties, Michigan. A total of one (1) tribal Class III gaming facility may be located on Eligible Indian Lands; Provided However, If any tribe which attains federal recognition subsequent to the date of this Compact is granted the right, under a valid Compact with the State of Michigan, to operate more than one (1) Class III gaming facility on its Indian lands, the Tribe shall be afforded the same right subject to the same terms and conditions imposed on such newly recognized tribe. **Section 2(B)(2)** Nothing in this subsection 2(B) shall be construed to limit the Tribe's ability to change the location of the Tribe's Class III gaming facility within ‘Eligible Indian Lands’.”

Stockbridge-Munsee Community (WI) – Section III(G)(2) “All lands within the State of Wisconsin held in trust by the United States for the benefit of the Stockbridge-Munsee Community as of October 17, 1988;”

8. LIMITATIONS

This section could

- provide limitations, such as

- machines per facility,
- number of hours of operations, daily or otherwise,
- betting and loss limits, and
- number of gaming locations;
- provide that good faith should prevail; and
- successfully support the Compact Declaration of Policy.

Caution should be used when considering such limitations. In many cases, the market will self-regulate in this regard.

No alcohol served in the gaming areas:

Pueblo of Acoma (NM) – 4.B.16 –“The Tribe shall adopt provisions “prohibiting alcoholic beverages from being sold, served, delivered or consumed in that part of a Gaming facility where gaming is allowed;”

Nottawaseppi Huron Band of Potawatomi (MI) – Section 10 “The Tribe will not participate in the sale or allow the sale of alcoholic beverages at any of its Class III establishments.”

Conditions for sale of alcoholic beverages:

Bay Mills Indian Community (MI) – Section 10(A) “The Tribe hereby adopts and applies to its Tribal Class III gaming establishment as tribal law those State laws, as amended, relating to the sale and regulation of alcoholic beverages encompassing the following areas: sale to a minor; sale to a visibly intoxicated individual; sale of adulterated or misbranded liquor; hours of operation; and similar substantive provisions. Said tribal laws, which are defined by reference to the substantive areas of State laws referred to above, shall apply to the Tribal Class III gaming establishment in the same manner and to the same extent as such laws apply elsewhere in the State to off-reservation transactions.”

All gaming must be done on a cash basis:

White Earth Band of Chippewa Reservation (MN) – 4.2 No Credit Extended “All gaming shall be conducted on a cash basis.”

No guns or minors in the facility:

Oneida Nation of New York – Section 11 (a) Prohibition on Possession of Firearms ; (b) Prohibition on Attendance by Minors; (c) Persons Barred from Facilities.

Number of gaming machines limited:

San Carlos Apache Tribe (AZ) – Section 3(c) “Subject to the terms and conditions of this Compact, the Tribe is authorized to operate the following number of Gaming Devices, not to exceed 500 Gaming Devices per Gaming Facility location, based upon its Enrolled Tribal member population: ...” and goes on to list the allowable ratios of devices per member population.

Menominee Indian Tribe of Wisconsin (WI) – Section IV(G) “The Tribe may not operate more than 60 Blackjack tables and 4,000 electronic games of chance at the Kenosha facility without the prior written consent of the Department. If the Tribe at any time operates more than 3,500 electronic games of chance at the Kenosha facility, it shall pay to the State the additional amount set out in Section XXXIII.C.6.”

Wisconsin Winnebago (WI) – Section XV(H)(2) “Unless the State by amendment to this Compact consents to additional locations, games authorized and operated under this section XV shall be conducted at gaming facilities on the Tribe’s Lands at not more than four locations, which locations shall be subject to the provisions of section XXVII of the Compact; provided that the total number of games shall not exceed 400 among two of the locations.”

Declaration of prize amounts:

Omaha Tribe of Nebraska (NE) – Section 6(C)(vi) “Not less than sixty-five percent (65%) of the aggregate Gross Proceeds of Class III Gaming during an annual period from October 1 to September 30 of each year shall be used for the awarding of prizes.”

Limitation of operating expenses:

Omaha Tribe of Nebraska (NE) – Section 6(C)(vii) “Commencing the date a Class III Gaming facility is open to the public, not more than twenty-five percent (25%) of the aggregate Gross Proceeds of Class III Gaming during the annual period beginning October 1, through September 30 of each year and in the case of initial operation, the period between the date a Class III Gaming facility is open to the public, through September 30, shall be used to pay the Expenses of operating the Class III Gaming activity. For the second year of operation and subsequent years the expense limitations shall be twenty percent (20%).”

Limitations on days/hours of operation:

Omaha Tribe of Nebraska (NE) – Section 6(C)(viii) “No Class III Gaming activity shall be conducted between the hours of 4:00 a.m. and 9:00 a.m., Monday through Thursday, and between the hours of 6:00 a.m. and 9:00 a.m. Friday through Sunday, provided, however, that there shall be no limitation on hours of operation during a tribal holiday, pow-wow or other tribal celebration or festival or any Friday, Saturday or Sunday preceding a federal holiday that falls on a Monday or any other Nebraska or federal holiday.”

Limitations to be determined by tribal law or regulation:

Bay Mills Indian Community (MI)-Section 3 (A) Authorized Class III Games. “Any limitations on the number of games operated or played, their location within Indian lands as defined under this Compact, hours or period of operation, limits on wagers or pot size, or other such limitations shall be determined by duly enacted tribal law or regulation. Any state law restrictions, limitations or regulation of such gaming shall not apply to Class III games conducted by the Tribe pursuant to this Compact.”

Class III gaming conducted off tribal lands via common carriers prohibited:

Wisconsin Winnebago Tribe (WI) – Section IV(B) “Except as provided in par. XV.D.17 of this Compact, the Tribe shall not conduct or permit any Class III gaming or any component thereof outside Tribal lands, including use of common carriers (such as telecommunications, postal or delivery services) for the purpose of sale of a ticket or playing card to, or placement of a wager by, a person who is not physically present on Tribal lands to purchase the ticket or card or place the wager.”

Age restrictions for play of Class III gaming:

Menominee Indian Tribe of Wisconsin (WI) – Section V(A) “No person under 21 years of age may play, or be permitted by the Tribe to play, any game authorized by this Compact.”

Age restrictions for employment:

Menominee Indian Tribe of Wisconsin (WI) – Section V(B) “No person under 18 years of age may be employed in the conduct of gaming under this Compact; provided, however, that persons 16 years of age or older may be employed with respect to the racetrack portion of the Kenosha facility.”

If tribe opens off-reservation gaming facility, it must close one of its on-reservation gaming facilities:

Menominee Indian Tribe of Wisconsin (WI) – Section XXXIX (A) “Restrictions on Acquisition of Tribal Trust Lands. In the event the Tribe opens a gaming facility on off-reservation land in Kenosha, Wisconsin, the Tribe will close one of its existing on-reservation gaming facilities (Menominee Crystal Palace), as required by Sections XV.H of this Compact. The Tribe agrees that in the event it does acquire such off-reservation trust lands for gaming, it will not seek to acquire any additional trust lands located in the county in which such trust lands are located other than the lands acquired for gaming.”

Regarding card games:

Little River Band of Ottawa Indians (MI) – Section 3(A) “This Compact shall apply to card games that are considered to be Class II games pursuant to 25 U.S.C. 2703(7)(C) only if those games are expanded beyond their "nature and scope" as it existed before May 1, 1988, and only to the extent of such expansion. The term "nature and scope" shall be interpreted consistent with IGRA, the legislative history of IGRA, any applicable decisions of the courts of the United States and any applicable regulations of the National Indian Gaming Commission. Any limitations on the number of games operated or played, their location within eligible Indian lands as defined under this Compact, hours or period of operation, limits on wagers or pot size, or other such limitations shall be determined by duly enacted tribal law or regulation. Any state law restrictions, limitations or regulation of such gaming shall not apply to Class III games conducted by the Tribe pursuant to this Compact.”

Permissible location and times for Blackjack:

Menominee Indian Tribe of Wisconsin (WI) – Section XVI(B) “(1) Blackjack games authorized and operated under this Section may be located at the facilities at which electronic games of chance may be operated under Section XV.H. (2) Blackjack may not be conducted at any location for more than 18 hours in any day; provided, however, that Blackjack may be conducted 24 hours a day at the Kenosha facility.”

This section could establish

- technical standards for gaming devices and gaming device systems;
- a system for the testing and approval of such devices; and
- random testing procedures.

The section would include recognition that all Class III gaming equipment and devices must be tested, certified, approved and monitored, i.e., Keno, table games, Roulette, video and slot machines, and even chips and playing cards.

The National Indian Gaming Commission (NIGC) recommends that compacts contain adequate provisions for internal controls. While the NIGC has established regulations concerning Minimum Internal Control Standards (MICS) at 25 C.F.R. Part 542, those standards do not cover all areas that should have standards. Furthermore, such standards are only the minimum that should be in place. Tribal operations government by a Tribal-State compact must adhere to whichever standard is the more stringent, the compact standards or the MICS.¹

Addresses the integrity of their gaming devices by putting them in separate categories: games of chance, lottery, and pari-mutuel wagering:

Mashantucket Pequot Tribe (CT) – Section 7 Standards of operation and management for games of chance. Section 8 Standards of operation and management for pari-mutuel betting facilities. Section 9 Standards of operation and management for lottery gaming.

Puts the onus on the Tribal Gaming Agency to adopt standards that are at least as strong as similar standards:

Pueblo of Acoma (NM) – 6.A “... the Tribal Gaming Agency will adopt standards for any and all Class III Gaming equipment, devices or supplies ... for use in any gaming facility.... which standards shall be at least as strict as the comparable standards applicable to Class III Gaming equipment, devices, or supplies within the State of Nevada.”

Little River Band of Ottawa Indians (MI) – Section 6(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 meet the technical equipment standards of either the State of Nevada or the State of New Jersey.”

Provides for technical and other advancement:

Wisconsin Winnebago Tribe (WI) – Section XVIII “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 XV and XVI for electronic games of chance and Blackjack, respectively, 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 section XV and SXVI may be modified for the purposes of maintaining or improving game

¹ March 4, 2003 letter to Sen. Geller from Philip N. Hogen, Chairman, National Indian Gaming Commission

security and integrity by mutual agreement of the Executive Director of the Wisconsin Lottery and the Wisconsin Winnebago Business Committee or its Chairperson, upon the written recommendation and explanation of the need for such change made by either party.”

Procedure for adopting standards:

Oneida Nation of New York – Appendix B.3(1) “The Nation operation shall submit to the Commission and the Board a description of its system of internal procedures and administrative and accounting controls before gaming operations are to commence and before changes in a previously submitted system are to become effective.”

Minimum probability standard for electronic games of chance:

Menominee Indian Tribe of Wisconsin (WI) – Section XV(E)(3) “Each electronic game of chance must have a probability of obtaining the maximum payout which is greater than 1 in 17,000,000 for each play.” *Requires testing and approval of electronic games of chance:*

Stockbridge-Munsee Community (WI) – Section XV (B)(1) “No electronic game of chance may be operated by the Tribe unless: (1) the electronic game of chance is obtained from a manufacturer or distributor that holds a Certificate issued under section VII. of this Compact to sell, lease, or distribute electronic games of chance; and (2) the electronic game of chance, or a prototype thereof, has been tested, approved or certified by a gaming test laboratory as meeting the requirements and standards of this Compact. For purposes of this Compact, a gaming test laboratory is a laboratory agreed to and designated in writing by the Lottery Board and the Tribe as competent and qualified to conduct scientific tests and evaluations of electronic games of chance and related equipment. A laboratory operated by or under contract with the states of Minnesota, New Jersey, or South Dakota constitutes a designated gaming test laboratory.”

Provides for application and approval of prototype games:

Stockbridge-Munsee Community (WI) – Section XV (B)(2) Application for Approval of Prototype Electronic Games of Chance.

Integrity of pull-tabs or break-open tickets:

Stockbridge-Munsee Community (WI) – Section XVII (A) “Standards. Pull-tab or break-open ticket games, when conducted as Class III gaming pursuant to this Compact, shall be conducted in accord with the most recent published standards of the North American Gaming Regulators Association.”

10. MONITORING

This section could

- authorize the compact to monitor a Tribe's Class III gaming operations to ensure compliance with compact provisions;
- authorize access to Tribal gaming facilities by authorized personnel;
- establish a system for such monitoring, including number of occasions of access, notice of access, etc.

This section should be consistent with IGRA, NIGC, and Tribal Regulations. NIGC Minimum Internal Control Standards (MICS) must be recognized by the Compact in regard to monitoring. Tribal operators will be required to adhere to whichever of the standards (the Compact standards or the MICS) whichever is the more stringent.

Monitors have full access to all areas of the gaming facility:

Mashantucket Pequot Tribe (CT) –13(a) Tribal gaming commission supervision. “The Tribal gaming agency shall have primary responsibility for oversight of tribal gaming operations and shall ... employ non-uniformed inspectors who shall be present in all gaming facilities during all hours of operation and who shall be under the supervision of personnel accountable solely to the Tribal gaming agency and not to any management employees of the Tribal gaming operations. Such inspectors shall have unfettered access to all area of the gaming facility at all times, and personnel employed by the Tribal gaming operation shall ... provide such inspectors access to locked and secure areas ...”

Minimum staffing and surveillance requirements:

Oneida Nation of New York – Appendix B.6(3) “Adequate lighting shall be present in all areas, including gaming tables and pits, where Closed Circuit camera coverage is required to enable clear camera coverage. The coverage shall be of significant quality to produce clear video tape and still picture reproductions.”

Stockbridge-Munsee Community (WI) – Section XVI(D) Staffing and Surveillance Requirements. “The following staffing and surveillance requirements shall apply to the game of Blackjack. . .”

Calls for a list of “personas non grata”:

Kickapoo Tribe of Indians (KS) –Section 7(B)(2) “The Tribal Gaming Commission shall establish a list of persons barred from the gaming facility because their criminal history or association with career offenders or career offender organizations poses a threat to the integrity of gaming activities of the Tribe. The Tribal Gaming Commission shall employ its best efforts to exclude persons on such list from entry into such gaming facility. ...”

Menominee Indian Tribe of Wisconsin (WI) – Section V(G)(1) “The Tribe shall permanently exclude from any and all premises on which Class III gaming is conducted any individual found by the Tribe or Department to have committed any of the following activities:...”

Menominee Indian Tribe of Wisconsin (WI) – Section XI(C) “The Tribe shall prohibit the participation in gaming by the following individuals at the Kenosha facility:

1. Tribal Class III gaming employees;
2. Tribal gaming commissioners;
3. Tribal officials associated with the operation of Class III gaming;
4. Officers, Directors, and employees of a management company granted a certificate pursuant to Section VII; and
5. The immediate family members of the individuals identified in sec. C.1.-4, . . . As defined in s. 19.42(7), Wis. Stats.”

Wisconsin Winnebago Tribe (WI) - Section XI(A) “The tribe shall adopt within its Gaming Code provisions prohibiting gaming by persons employed by the Tribe at any site or in the case of management contractors, at any site on the Tribe’s Lands where gaming is conducted.”

Authorizes state representative to monitor under certain conditions:

Little River Band of Ottawa Indians (MI) – Section 4(M)(2) “A representative authorized in writing by the Governor of the State shall have the following right to inspect all tribal Class III gaming facilities and all tribal records related to Class III gaming, including those records set forth in 4(H) herein, subject to the following conditions:

- (a) With respect to public areas, at any time without prior notice;
- (b) With respect to private areas not accessible to the public, at any time during normal business hours, with 12 hours prior written notice; and
- (c) With respect to inspection and copying of all tribal records relating to Class III gaming, with 48 hours prior written notice, not including weekends.”

Requires periodic reporting:

Stockbridge-Munsee Community – Section XV(C) Tribal Reports to Lottery Board 1. Installation and Operation. 2. Removal from play. 3. Existing games.

Omaha Tribe of Nebraska (NE) – Section 6(B) Additional Powers, Functions, And Duties of Nebraska (iv) “To require periodic reports of Class III Gaming activity from the Omaha Tribe, any Manufacturer-Distributor, and any Gaming Operator and any other persons, organizations, or corporations as Nebraska, with the consent of the Omaha Tribe, deems necessary to carry out the provisions of this compact;”

11. CONFIDENTIALITY

This section could address confidentiality and disclosure of Tribal information and records.

States that gaming facility documents are confidential:

San Carlos Apache Tribe (AZ) – Section 7(b) “Agents of the State Gaming Agency shall, upon twenty-four (24) hours advance notification to the Tribal Gaming Office, have the right to inspect and copy during normal business hours, all records maintained by the Gaming Facility Operator. . . . All such records, and the information derived from such records, are confidential and proprietary information of the Tribe. Access to all records, or documents of the Gaming Facility Operator, or copies thereof in the possession of the State shall be limited solely to employees of the State Gaming Agency and the Tribal Gaming Office and the State shall not disclose such records and documents to other persons . . .”

Menominee Indian Tribe of Wisconsin (WI) – Section X(A) “In addition to records specifically required under other provisions of this Compact, the Tribe shall also maintain, and the State shall have the right to inspect and copy or receive delivery of records related to Class III gaming for at least seven years after the record is created or such shorter period of time as may be agreed to by the Tribe and Department. . . . Any such records submitted to the Department shall be deemed confidential and not subject to public inspection. These records shall include but not be limited to: . . .”

Stockbridge-Munsee Community (WI) – Section X(B)(1) “The Tribe requires that its gaming records be confidential. The State and the Tribe agree that the State does not otherwise have a right to inspect or copy tribal gaming records. However, in order to enable the State to perform its oversight and enforcement functions and responsibilities under this Compact, the Tribe required that the State pledge, and the State does so pledge, that 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. In return, the Tribe has granted the State the right to inspect and copy the Tribal records as provided in this Compact.”

Confidentiality governed by state’s Open Records Law:

Omaha Tribe of Nebraska (NE) – Section 34 “Disclosure of information by Nebraska shall be governed by Neb. Rev. Stat. Sections 84-712 to 84-712.09 (Reissue 1987). The Omaha Tribe shall have the burden of informing Nebraska if any information submitted to it is a trade secret or proprietary information if the Omaha Tribe designates such information as not otherwise accessible to the public pursuant to Nebraska law and the burden of substantiating such a claim. Nebraska shall maintain the confidentiality of any information obtained from the Omaha Tribe which the Omaha Tribe specifies and substantiates is not subject to disclosure pursuant to Neb. Rev. Stat. Section 84-712.05 (Reissue 1987) or equivalent provision of law as amended from time to time.”

Confidentiality only extends to those items marked confidential by tribe upon receipt by state, with the following exceptions:

Little River Band of Ottawa Indians (MI) – Section 4(M)(3) “Except as otherwise provided by law or as also allowed by the exceptions defined below, the State agrees to maintain in confidence and never to disclose to any third party any financial information, proprietary ideas, plans, methods, data, development, inventions or other proprietary information regarding the gambling enterprise of the Tribe, games conducted by the Tribe, or the operation thereof which is provided to the State by the Tribe without the prior written approval of a duly authorized representative of the Tribe, provided that the information is marked as confidential information when received by the State. Nothing contained in this 4(M)(3) shall be construed to prohibit:

- (a) The furnishing of any information to a law enforcement or regulatory agency of the United States or State government pursuant to a lawful request of such agency;
- (b) The State from making known the names of persons, firms or corporations conducting Class III gaming activities pursuant to the terms of this Compact, locations at which such activities are conducted or the dates on which such activities are conducted;
- (c) Publishing the terms of this Compact;
- (d) Disclosing information as necessary to audit, investigate, prosecute, or arbitrate violations of this Compact;
- (e) Complying with any law, subpoena or court order. The State shall immediately notify the Tribe of any request or demand for the release of confidential information under this subsection 4(M)(3)(e) to allow the Tribe to initiate proceedings under Section 7 of this Compact or other applicable law to resolve any dispute regarding the State's intention to disclose such information.”

12. ACCOUNTING/AUDITING PROCEDURES

This section could lay out accounting and auditing procedures in regard to the Compact.

NIGC Minimum Internal Control Standards (MICS) must be recognized by the Compact in regard to accounting/auditing. Tribal operators will be required to adhere to whichever of the standards (the Compact standards or the MICS) whichever is the more stringent.

Generally accepted accounting principals (a.k.a. GAP) will be used:

Pueblo of Acoma (NM) – 4.C Audit and Financial Statements “The Tribal Gaming Agency shall require all books and records relating to Class III Gaming to be maintained in accordance with generally accepted accounting principals.”

An independent CPA will conduct the audit:

Kickapoo Tribe of Indians (KS) –Section 23 “As required by IGRA, the Tribe shall engage an independent certified public accountant to audit the books and records of all gaming conducted pursuant to this Compact and shall make copies of the audit and all current internal accounting and audit procedures available to the State Gaming Agency upon request. ... In addition ... the State shall have the right to conduct a separate annual audit at its own expense, provided that such audit shall be reasonably conducted so as to not interrupt normal business practices of the Tribe.”

The CPA should have prior experience in auditing Class III gaming operations:

San Carlos Apache Tribe (AZ) – Section 11(c) “The Gaming Operation shall be audited, not less than annually, by an independent certified public accountant licensed by the State. ... All auditors shall preferably have experience in Class III Gaming matters conducted pursuant to the Act. ...”

CPA must have a gaming-related contractor certificate:

Menominee Indian Tribe of Wisconsin (WI) – Section XII(A) “Prior to the close of each Tribal fiscal year, the Tribe shall engage a firm of independent Certified Public Accountant(s) (CPA(s)) that currently maintains a gaming-related contractor certificate or temporary gaming-related contractor certificate issued by the Department, to audit the books and records of all gaming operations conducted under this Compact. The Tribe shall obtain the concurrence of the Department in its choice of audit firm.”

AICPA Standards for Audits of Casinos will be used:

Omaha Tribe of Nebraska (NE) – Section 26(A) AICPA Standards for Audits. “All audits must be conducted in accordance with the AICPA Standards for Audits of Casinos and generally accepted accounting principles.”

Outlines accounting procedures to be followed:

Little River Band of Ottawa Indians (MI) – Section 4(H) “All accounting records shall be kept on a double entry system of accounting, maintaining detailed, supporting, subsidiary records. The Tribe shall maintain the following records for not less than three (3) years...”

13. COMPACT NEGOTIATIONS/RENEGOTIATIONS

This section could authorize

- the length of the Compact; *or*
- sunset provisions; and
- rules for renegotiation/amendment of the Compact.

Appears not to limit duration of compact:

Shakopee Mdewakanton Sioux (MN) - Section 2 Duration and Renegotiation. "This compact is entered into pursuant to the IGRA, State law and Community law. Minnesota laws 1989, Ch. 44, subd. 4 is incorporated herein by reference. It is the intent of the State that, if the Minnesota Legislature prohibits the operation or use of video games of chance for all purposes as against public policy and as a matter of criminal law, this section shall not be construed to provide for continued operation by the Community of video games of chance pursuant to this compact. It is the intent of the Community that, if the Minnesota legislature prohibits the use of video games of chance for all purpose as against the public policy and as a matter of criminal law, this section shall not be construed to prohibit the continued operation by the Community of video games of chance pursuant to this compact."

2.2 Renegotiation. "In the event of a request for renegotiation of a new compact, this compact shall remain in effect until renegotiated or replaced."

Acceptance of the Compact does not waive future attempts to expand Class III gaming:

Mashantucket Pequot Tribe (CT) – 17(d) Subsequent negotiations. "Nothing in this Compact shall be deemed to waive the rights of the Tribe to request negotiations for a tribal – state compact with respect to a Class III gaming activity which is to be conducted on the Reservation but it is not permitted under the provisions of this Compact ..."

Compact will bind the parties for 9 years, and then they may renew once:

Pueblo of Acoma (NM) – 11.A "This Compact shall be binding upon the State and Tribe for a term of nine (9) years from the date it becomes effective and may renew for an additional period."

Compact does not waive right to modify the compact:

Oneida Nation of New York – Section 17 Subsequent Negotiations "Nothing in this Compact shall be deemed to waive the right of the Nation to request negotiations for amendment or modification to this Compact with respect to a Class III game or activity which is to be conducted on the Nations lands but is not permitted under the provisions of this Compact."

Need concurrent resolution to amend the compact:

Kickapoo Tribe of Indians (KS) – Section 35 “The Tribe and the State, through the Governor or the Legislature by concurrent resolution, may request negotiations to amend, modify or replace this Compact. ...”

Changes to the compact must be in writing:

San Carlos Apache Tribe (AZ) – Section 17 “Any amendment to this Compact shall be in writing and signed by both parties. The terms and conditions of this Compact shall remain in effect until amended, modified, or terminated.”

Conditions for renegotiation if another tribe is authorized to conduct Class III gaming:

Omaha Tribe of Nebraska (NE) – Section 37 “In the event another Indian tribe executes a Compact with Nebraska for the conduct of Class III Gaming, Nebraska shall provide a copy thereof to the Omaha Tribe within ten (10) business days following execution thereof. The Omaha Tribe shall specify in writing those additional terms and conditions as contained in such Compact that the Omaha Tribe wishes to include in this Compact, and the parties shall meet within fifteen (15) days following the receipt of such notice by Nebraska to negotiate in good faith pursuant to the terms of the Act to reach an agreement concerning the incorporation of those additional terms and conditions herein.”

Tribe can renegotiate as state allows Class III gaming:

Wisconsin Winnebago (WI) – Section IV (D) “In the event that the State, after the date on which this Compact becomes binding on the parties, commences actual operation, licenses or permits the operation, of games not specifically enumerated under subsec. A for governmental, charitable or commercial purposes, and other than games presently operated, licenses or permitted by the State, the Tribe may upon written notice to the State, commence operation of any such game(s) subject to the same State operational rules, procedures and requirements for such game(s) as they may from time-to-time be amended or revised by the State...”

Notice of request for renegotiation:

Little River Band of Ottawa Indians (MI) – Section 12(B) “At least one year prior to the expiration of twenty (20) years after the Compact becomes effective, and thereafter at least one year prior to the expiration of such subsequent five (5) year period, either party may serve written notice on the other of its right to renegotiate this Compact.”

If, in the future, the state legislature prohibits video games of chance:

Prairie Island Sioux Community (MN) – Section 2.1 “...It is the intent of the State that, if the Minnesota Legislature prohibits the operation or use of video games of chance for all purposes as against public policy and as a matter of criminal law, this section shall not be construed to provide for the continued operation by the community of video games of chance pursuant to this contract.”

Terms of original compact remain in place until new compact is completed:

Prairie Island Sioux Community (MN) – Section 2.2 “The State or the Community may, by appropriate and lawful means, request negotiations to amend, replace or repeal this compact. In the event of a request for renegotiation or the negotiation of a new compact, this compact shall remain in effect until renegotiated or replaced...”

Automatic renewal:

Stockbridge-Munsee Community (WI) – Section XXV(B) “The duration of this Compact shall thereafter be automatically extended for terms of five years, unless either party serves written notice of nonrenewal on the other party not less than one hundred eighty days prior to the expiration of the original term of this Compact or any extension thereof.”

Provides for terms of renegotiation if notice of nonrenewal given:

Stockbridge-Munsee Community (WI) – Section XXV(E) “In the event that written notice of nonrenewal of this Compact is given by one of the parties under subsec. B., above, the Tribe may, pursuant to the procedures of the 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.”

Provides for amendment of authorized games:

Stockbridge-Munsee Community (WI) – Section IV(D) “In the event that the State, after the date on which this Compact becomes binding on the parties, commences actual operation, or licenses or permits the operation, of games not specifically enumerated under subsec. A., this Compact may be reopened upon written request from the Tribe, for the specific purposes of including such games in subsec. A. and of negotiating amendments establishing the concurrent Tribal and State regulatory requirements for such games.”

Acknowledges dispute over definition of Class III gaming, and provides for renegotiation:

Oneida Tribe of Indians of Wisconsin (WI) – Section IV(G) “The Tribe and the State acknowledge a dispute exists and is in litigation concerning two games that the Tribe wishes to offer. The Tribe maintains these games are Class II while the State maintains they are Class III. The parties agree that if the courts ultimately determine the games to be Class III games, the parties will reopen this Compact within 30 days of the final court order. This reopening shall be for the specific purposes of including such games in subsec. A, above, and of negotiating concurrent Tribal and State regulatory requirements for such games.”

14. SEVERABILITY/BREACH OF COMPACT

This section would provide for the mechanics of severability and ramifications of breach of Compact.

If any of the provisions of the Compact are voided, the remaining provisions will remain in effect:

Mashantucket Pequot Tribe (CT) – Section 19 Severability. “In the event that any section or provision of this Compact is held invalid, or its application to any particular activity held invalid, it is the intent of the parties that the remaining sections of the Compact and the remaining applications of such section or provision shall continue in full force and effect.”

Oneida Nation of New York – Section 22 Severability “In the event that any section or provision of this Compact is held invalid, or its application to any particular activity is held invalid, it is the intent of the parties that the remaining sections of the Compact and the remaining applications of such section or provision shall continue in full force and effect.”

All provisions are independent of one another, so if any provision should be struck down, the remaining provisions shall remain in effect:

White Earth Band of Chippewa Reservation (MN) – Section 8 “Each provision, section, and subsection of this compact shall stand separate and independent of every other provision, section, or subsection.”

15. DISPUTE RESOLUTION/ENFORCEMENT

This section could address dispute resolution in regard to compact violations by the Tribe or the State and include procedures such as notices of non-compliance and notices to cease, informal resolution, arbitration, and arbitration enforcement.

The section should include recognition of courts of competent jurisdiction for specific purposes and waivers of sovereign immunity by Tribes and States for those specified disputes.

Explicitly talks to cooperation by both the parties with each other. Additionally, defines where actions can be brought in court should cooperation fail:

Kickapoo Tribe of Indians (KS) – Section 31(C) “If enforcement of a settlement or arbitration decision becomes necessary by reason of failure of one or both parties to implement its terms voluntarily, or if one of the parties refuses to participate in arbitration as provided in this Section and the other party seeks enforcement of any provision of this Compact, the Tribe and the State agree that the matter may be resolved by judicial resolution and enforcement and that venue for judicial resolution and enforcement shall be in the United States District Court for Kansas pursuant to the specific provisions of this Section.”

Omaha Tribe of Nebraska (NE) – Section 32 (E) “This Compact is, in all respects, to be governed by the laws of the United States of America and the State of Nebraska, and if any action is taken to enforce the terms of this Compact, such action shall be commenced and maintained in the U.S. District Court for the District of Nebraska.”

Menominee Indian Tribe of Wisconsin (WI) - Section XXIV (C) “*In addition to the enforcement mechanism under subsec. B., both the State and the Tribe agree that suit to enforce any provision of this Compact may be brought in federal court by either the State or the Tribe or any official or employee of either the State or the Tribe. Said suit may be brought for any violation of the terms of this Compact or violation of any applicable state or federal law. Relief in said suit shall be limited to prospective declaratory or injunctive relief. An allegation that an official or employee violated this Compact shall be deemed as an allegation that said official or employee is acting in excess of his/her authority for purposes of jurisdiction only. The State and the Tribe will bear their own costs of litigation for any action to enforce this Compact, including but not limited to, attorneys’ fees.*”

Provides for arbitration as means of dispute resolution:

Oneida Nation of New York – Section 14(a) “The Nation and the State hereby establish a method of non-judicial dispute resolution in order to foster a spirit of cooperation and efficiency in the administration of and compliance by each party with the provisions of this Compact. Except for disputes concerning the games and activities permitted under this Compact, all disputes concerning compliance with and interpretation of any provisions of the Compact shall be resolved by binding arbitration in accordance with the procedures set forth below. ...”

Pueblo of Acoma (NM) – 7.A.3 – Provides for arbitration in disputes that cannot be otherwise resolved by negotiation.

San Carlos Apache Tribe (AZ) – Section 15(f) “The decision of the majority of the arbitrator(s) shall be final, binding, and unappealable. Failure to comply with judgment upon the award entered in such arbitration proceeding shall be deemed a breach of the Compact.”

Tribe is responsible for the enforcement of Compact’s regulatory requirements:

Little River Band of Ottawa Indians (MI) – Section 4(M)(1) “The Tribe shall have responsibility to administer and enforce the regulatory requirements.” *Provides for alternative methods of dispute resolution, none of which may be binding:*

Stockbridge-Munsee Community (WI) – Section XXII(B) “Nothing in this section shall be construed to preclude, limit or restrict the ability of the parties to pursue, by mutual agreement, alternative methods of dispute resolution, including but not limited to mediation or arbitration; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.”

This compact provides for a limited waiver of the parties’ sovereign immunity:

Tribal-State Gaming Compact (CA) – Sec. 9.4. Limited Waiver of Sovereign Immunity (a) “In the event that a dispute is to be resolved in federal court or a state court of competent jurisdiction as provided in this Section 9.0, the State and the Tribe expressly consent to be sued and waive any immunity therefrom that they may have provided that: ...” the dispute is limited to gaming issues arising under this Compact, neither side makes a claim for monetary damages, and no parties to the suit other than the Tribe and the State”

Omaha Tribe of Nebraska (NE) – Section 33(B) “As sovereigns, Nebraska and the Omaha Tribe hereby waive both jurisdictional and liability immunity to any action which may be brought to enforce and interpret the terms of this Compact or to remedy breaches of any of its terms;...”
Closure of Class III gaming facility as a consequence of repeated material compact violations, including those that may threaten the integrity of tribal gaming, or the health and safety of casino employees or patrons:

Menominee Indian Tribe of Wisconsin (WI) - Section XXI(F) Closure

“1. Issuance of Order for Closure. 2. Notice to the Tribe 3. Corrective Action 4. Hearing 5. Examiner’s Decision 6. Selection of Examiner 7. Tribal Compliance 8. Permanent Closure”

Consumer protection:

Little River Band of Ottawa Indians (MI) – Section 1(I) “To establish procedures to notify the patrons of the Tribe’s Class III gaming establishment that the establishment is not regulated by the State of Michigan and that patrons must look to the tribal government or to the federal government to resolve any issues or disputes with respect to the operations of the establishment.”

16. HEALTH/SAFETY ISSUES

This section could include issues such as

- liability insurance at facilities;
- protection of consumers; and
- public safety.

This Compact devotes an entire chapter to regulations designed to protect visitors:

Pueblo of Acoma (NM) – Section 8 Protection of Visitors

Mandates that procedures are set up to evaluate liability claims:

Oneida Nation of New York – Section 13 Tort Remedies for Patrons “The nation agrees to require the Nation gaming operation to maintain liability insurance to compensate injured patrons of gaming facilities. The Nation shall directly, or through its operator, establish procedures for the adjudication of compensation for tort claims by patrons of its gaming facilities. ... This section does not preclude an injured party from pursuing any other remedy available under applicable law.”

Emergency personnel and service must be able to access the facility:

San Carlos Apache Tribe (AZ) – Section 13(b) “The Tribe shall require the Gaming Facility Operator to make provisions for adequate emergency accessibility and service.”

Make available the rules of each game:

Omaha Tribe of Nebraska (NE) – Section 6 (C)(xi)(d) “Post the rules of each game in a conspicuous location visible from each table or have such information available in pamphlet form designating: (1) The maximum rake-off percentage, time buy-in or other fee charged; (2) The number of raises allowed; (3) The monetary unit of each raise; (4) The amount of ante; and (5) Other rules as may be necessary.”

Tribe will provide for player dispute resolution:

Wisconsin Winnebago (WI) – Section V(E) “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.”

No one who is visibly intoxicated may participate in any Class III gaming:

Wisconsin Winnebago (WI) – Section V(C) “No person who is visibly intoxicated shall be permitted to play any game authorized by this compact.”

Tribe's public health and safety ordinances for gaming facilities shall be at least as restrictive as those enacted by the State:

Stockbridge-Munsee Community (WI) – Section XIV(A) “In regard to any facilities utilized for Class III gaming under this Compact, the Tribe shall enact ordinances setting forth public health and safety standards for public buildings, electrical wiring, fire prevention, plumbing and sanitation that are at least as restrictive as those standards set forth in chapter 101 of the Wisconsin Statutes and the administrative rules adopted thereunder...”

17. OPERATIVE DATE

This section would designate the date that the Compact becomes effective.

Compact becomes operative upon publication of the Secretary of Interior's approval:

Mashantucket Pequot Tribe (CT) – 17(a) Effective Date – “This Compact shall be effective upon publication of notice of approval by the Secretary of the Interior of the United States in the Federal Register in accordance with 25 U.S.C. sec. 2710(d)(3)(B).

Provides for multiple events to occur before the Compact becomes effective:

Pueblo of Acoma (NM) – Section 9 “This compact shall be effective immediately upon the occurrence of the last of the following:” execution by the Tribe’s Governor and Tribal Council, execution by the Governor of the State, approval by the Secretary of the Interior, and publication in the Federal Register.

Tribal-State Gaming Compact (CA) – Sec. 11.1 Effective Date. “This Gaming Compact shall not be effective unless and until all of the following have occurred: (a) The Compact is ratified by statute in accordance with State law; (b) Notice of approval or constructive approval is published in the Federal Register as provided in 25 U.S.C 2710(d)(3)(B); and (c) SCA 11 is approved by the California voters in the march 2000 general election.”

Little River Band of Ottawa Indians (MI) – Section 11 “This Compact shall be effective immediately upon: (A) Endorsement by the tribal chairperson and concurrence in that endorsement by resolution of the Tribal Council; (B) Endorsement by the Governor of the State and concurrence in that endorsement by resolution of the Michigan Legislature; (C) Approval by the Secretary of the Interior of the United States; and (D) Publication in the Federal Register.”

Compact is binding upon the signature of the Chairman of the Tribe and the Governor of the State:

Stockbridge-Munsee Community (WI) – Section XXIX “This Compact shall become binding on the Tribe and the State upon signature by the Chairman of the Stockbridge-Munsee Community and by the Governor of the State of Wisconsin. This Compact shall cease to be binding upon the parties in the event it is not approved by the Secretary of the United States Department of the Interior.”

SENSITIVE ISSUES

THESE ISSUES ARE CONTROVERSIAL COMPONENTS IN TRIBAL-STATE COMPACTS. TRIBAL AND INTERESTED PARTY COMMENTS REGARDING THESE ISSUES ARE INCLUDED.

1. REVENUE SHARING

This section could map out a formula for revenue sharing, e.g., () percent of gross revenue over a certain amount annually, () percent of revenue, or another form of revenue sharing.

PHILIP N. HOGEN, CHAIRMAN
NATIONAL INDIAN GAMING COMMISSION

“The Secretary of the Interior recently expressed the current policy on ‘revenue sharing’ in a letter dated November 12, 2002, to New York Governor George E. Pataki. I fully support the principles contained in this letter. In this letter, the Secretary observes the following:

‘The Department has sharply limited the circumstances under which Indian tribes can make direct payments to a state for purposes other than defraying the costs of regulating Class III gaming activities. To date, the Department has approved payments to a state only when the state has agreed to provide the tribe with substantial exclusivity for Indian Gaming.’²

MONTIE DEERE, CHAIRMAN
NATIONAL INDIAN GAMING COMMISSION (NIGC), WASHINGTON, D.C.:

“ . . . in the area of revenue sharing, IGRA allows states to assess amounts necessary to defray costs of regulation but does not permit state taxation.”

“I would expect the issue of ‘revenue sharing’ to be one of the most sensitive and contentious issues in most compact negotiations, and, that, therefore, the model should probably be written in a manner which provides a maximum amount of flexibility in this regard.”³

NORMAN DESROSIERS, COMMISSIONER
CALIFORNIA VIEJAS TRIBAL GAMING COMMISSION:

“Tribes pay their own way by reimbursing costs referenced in Item #6, and I believe most tribes are amenable to reimbursing costs incurred by surrounding communities such as are specified in Item #22 ‘social costs.’ With tribal willingness to pay all these costs, any further revenue sharing is unjustified unless those who want to ‘share’ the revenues are willing to ‘share’ the costs of building and operating the gaming facility and ‘share’ the risk of financial losses.”⁴

² March 4, 2003 letter to Sen. Geller from Philip N. Hogen, Chairman, National Indian Gaming Commission, with attached November 12, 2002 letter to Hon. George Pataki from Secretary of the Interior, Gale A. Norton

³ January 1999 letter to Sen. Geller from Montie R. Deer

⁴ December 31, 1998 letter to Jacob Coin from Norman DesRosiers, cc: Susan Nolan

CALIFORNIA STATE SENATE PRESIDENT PRO TEMPORE JOHN L. BURTON:

" . . . Indian tribes, as governments, are not subject to state taxation. So, a state may not simply request revenue sharing without a benefit flowing to the tribe for that revenue sharing, because that would constitute taxation. In the absence of a clear benefit to the tribe, the Secretary of the Interior will disapprove a compact calling for revenue sharing."⁵

FORMER FOXWOODS PRESIDENT G. MICHAEL "MICKEY" BROWN:

There were a lot of tribes that were upset with the deal. They felt the Mashantuckets gave up a portion of their sovereignty by agreeing to share their profits. But this was a voluntary decision on their part. The state [Connecticut] never asked them for revenue. We offered to share the slot revenue for the right to have slot machines."⁶

Provides for an escalating (up to six percent) share of revenues to the state:

Tunica-Biloxi Indian Tribe (LA) – Section 12(C) Commencing the second year of Class III gaming, the Tribe shall contribute two percent (2 %) of the net revenues of Class III gaming, the third year four percent (4 %), the fourth year and thereafter six percent (6 %)

Tribe shall make additional payments to state for every percentage increase in the net win (compared to last year's numbers) at the Tribe's on-reservation gaming facilities:

Menominee Indian Tribe of Wisconsin (WI) – Section XXXIII(A)(1) “For every percentage increase in the net win at the Tribe’s Class III on-reservation gaming facilities, the Tribe shall pay to the State an additional \$7,473. Net win shall mean the total amount wagered less winnings paid. **(2)** The increases in net win shall be measured by comparing the net win at the Tribe’s Class III on-reservation gaming facilities in the base year for which the payment applies, with the net win at the Tribe’s Class III on-reservation gaming facilities in the immediately preceding base year. The amount shall be reported to the State by the Tribe within sixty (60) days of the close of the preceding year and shall be subject to verification by the State.”

Revenue sharing intended to reimburse local units of government for increased expenses as a result of Tribe's Class III gaming facility:

Little River Band of Ottawa Indians (MI) – Section 18(A)(1) “Payment in the aggregate amount equal to two percent (2%) of the net win at each casino derived from all Class III electronic games of chance as those games are defined in this Compact. The county treasurer shall disburse the payments received as specified by lawful vote of the Local Revenue Sharing Board.”

⁵ January 29, 2002 letter to Sen. Geller from California State Senate President pro Tempore John L. Burton

⁶ "A Taxing Situation," *International Gaming & Wagering Business*, April 2002, Volume 23, No. 4

Tribe shall make payments to State based on net win for economic benefits of exclusivity:

Little River Band of Ottawa Indians (MI) – Section 17(A) “The State and the Tribe have determined that it is in the interests of the people of the State and the members of the Tribe to maximize the economic benefits of Class III gaming for the Tribe and to minimize the adverse effects of Class III gaming by providing a mechanism to reduce the proliferation of Class III gaming enterprises in the State in exchange for the Tribe providing important revenue to the State.” **Section (C)(i)** “Payment to the Michigan Strategic Fund, or its successor as determined by State law, in amount equal to eight percent (8%) of the net win at the casino derived from all Class III electronic games of chance, as those games are defined in this Compact.”

Mandates revenue sharing among other tribes in state:

Stockbridge-Munsee Community (WI), Amendments to the Stockbridge-Munsee Community and the State of Wisconsin Gaming Compact of 1992- “6. The Tribe, along with other Wisconsin Indian Tribes, agrees to propose the development of a plan by February 1999 for the creation of a revenue sharing system among the Tribes so that monies would be directed by the Tribes within Wisconsin having the greatest gaming revenues to the Tribes having the least gaming revenues. The Tribe agrees to make its best efforts to develop such a plan in consultation with other Wisconsin Indian Tribes by February 1999.”

2. EMPLOYEE PROTECTION

This section could address workers' compensation, disability and unemployment insurance.

SHARON GREENE-GRETZINGER, TRIBAL ATTORNEY

WISCONSIN STOCKBRIDGE-MUNSEE COMMUNITY TRIBE OF MOHICAN INDIANS:

“ . . . Employee Protection is another area that falls directly under tribal government functions and is inappropriate to be included in the Compact. I understand the argument that is often applied in order to justify what is obvious interference with tribal government, i.e., since the Tribe will be hiring non-tribal members and often employs a larger number of non-members than members, the State is somehow entitled to write tribal personnel and employment laws. Tribal members have been employed in state jobs for many years, however, by virtue of such employment, tribal governments are certainly not entitled to write state employment laws.

Most tribes have their own employment laws, many have opted into State Unemployment Compensation programs; most have their own private workers' compensation insurance. These are individual issues for each Tribe and laws regarding employment matters fall under powers that are central to a sovereign government. Working at a tribal gaming facility is a choice an individual makes. If they investigate and discover that the facility does not have the benefits in place that they require, then the individual may go elsewhere.”⁷

CALIFORNIA STATE SENATE PRESIDENT PRO TEMPORE JOHN L. BURTON:

" . . . The imposition of employment conditions impacts a sensitive core area of tribal sovereignty, and . . . such conditions should be left to tribal law whenever possible." ⁸

Mandates the tribe offer benefits to their employees that are at least as favorable as benefits state employees receive:

Pueblo of Acoma (NM)– 4.B.6. The Tribe shall adopt laws “providing to all employees of a gaming establishment employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave and medical and dental insurance as well as providing unemployment insurance and workers' compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable state programs.”

Employee benefits should be equal to those provided for under state law:

Little River Band of Ottawa Indians (MI) – Section 5 “The Tribe shall provide to any employee who is employed in conjunction with the operation of any gaming establishment at which Class III gaming activities are operated pursuant to this compact, such benefits to which the employee would be entitled by virtue of the Michigan Employment Security Act, (Michigan Public Act No. 1 of 1936, as amended, being MCL 421.1 et seq.) and the Worker's Disability Compensation Act of 1969, (Michigan Public Act No. 317 of 1969, as amended, being MCL

⁷ January 4, 1999 memo to Susan Nolan from Sharon Greene-Gretzinger

⁸ *January 29, 2002 letter to Sen. Geller from California State Senate President pro Tempore John L. Burton*

481.101 et seq.) if his or her employment services were provided to an employer engaged in a business enterprise which is subject to, and covered by, the respective Public Acts.”

Mandates workers compensation benefits for employees:

Kickapoo Tribe of Indians (KS) –Section 26(D) “All key employees, standard gaming employees and non-gaming employees shall be covered by Unemployment Compensation and Workers Compensation benefits equivalent to that provided by state law.”

3. CIVIL AND CRIMINAL JURISDICTION

This section could allocate civil and criminal jurisdiction to the Tribes, State or Federal authorities in respect to accidents and criminal activity.

Allocates criminal jurisdiction to the state:

Mashantucket Pequot Tribe (CT) – 4(a) State criminal jurisdiction. “The State ... shall have jurisdiction to enforce all criminal laws of the State which may prohibit any form of Class III gaming ... The State shall also have jurisdiction to enforce all other criminal laws of the State which are consistent with the provisions of this Compact on the reservation, including enforcement within the gaming facilities.”

Allocates criminal jurisdiction of State gambling rules to the Federal government:

Pueblo of Acoma (NM) – 10.A “The Tribe and the State acknowledge that under the provisions of section 23 of IGRA, especially that portion codified at 18 U.S.C. sec. 1166(d), jurisdiction to prosecute violations of State gambling laws made applicable by that section to Indian country is vested exclusively within the United States, unless the Tribe and the State agree in a compact entered into pursuant to the IGRA to transfer such jurisdiction to the State.”

State and Tribe can jointly enforce laws:

Oneida Nation of New York – Section 5(e) “Upon mutual agreement by the Nation and the State that the members of the Nation law enforcement agency are adequately trained and certified, the parties shall meet at the next annual assessment or costs meeting between the Nation and the State to reach a mutual agreement on the respective roles of the Nation and the State law enforcement agencies in maintaining public order and safety and in enforcing applicable criminal laws.”

Civil and criminal jurisdiction remains unchanged by the compact:

San Carlos Apache Tribe (AZ) – Section 8 “Nothing in this Compact is intended to change, revise or modify the civil and criminal jurisdiction of the Tribe or of the State. Nothing contained herein shall be deemed to modify or limit existing federal jurisdiction over Indians and the Gaming Operations authorized under this Compact.”

State shall not bring criminal prosecution against any individual engaged in gaming activities under the terms of the Compact that have been authorized by the Tribe:

Wisconsin Winnebago Tribe (WI) – Section XIX(B)(2) “The State shall not initiate criminal prosecution against any individual authorized by the Tribe to, on behalf of the Tribe, engage in Class III activities authorized by this Compact or against any individual authorized by the Tribe to engage in Class I or Class II activities under the Act. Any dispute as to the authority of the Tribe relating to such authorization shall be resolved through the Dispute Resolution procedures set forth within this Compact.”

Tribe has jurisdiction to prosecute all violations of its Gaming Code:

Wisconsin Winnebago Tribe (WI) – Section XIX (B)(3) “The Tribe shall have jurisdiction to prosecute violations of its Gaming Code against all individuals subject hereto.”

Tribe has civil jurisdiction over Community members; Community and State have concurrent civil jurisdiction over non-Community members:

Prairie Island Sioux Community (MN) – Section 3.1 “For purposes of this compact, the Community shall exercise exclusive civil jurisdiction over Community members, and the Community and the State shall exercise concurrent civil jurisdiction over non-Community members. The State pursuant to P.L. 280, 18 U.S.C. 1162 has criminal jurisdiction over the Prairie Island Sioux Community reservation. This jurisdiction is concurrent with federal criminal jurisdiction under the IGRA and Community criminal jurisdiction over Community members. Nothing in this compact shall be construed to limit state, federal and Community criminal jurisdiction.”

Criminal jurisdiction governed by Memorandum of Understanding:

Menominee Indian Tribe of Wisconsin (WI) – Section XIX(B)(5) “The parties acknowledge the existence of the memorandum of understanding between the Tribe and the United States Attorney for the Eastern District of Wisconsin relating to the exercise of criminal jurisdiction by the United States and the Tribe.”

Tribal jurisdiction of criminal and civil laws apply to tribal citizens, while the state has jurisdiction over non-tribal citizens:

Omaha Tribe of Nebraska (NE) – Section 33(B) “...however, that the Omaha Tribe may enforce its civil and criminal laws against its citizens in the Omaha Tribal Court, and Nebraska may enforce its civil and criminal laws against individuals, firms, and corporations who are not citizens of the Omaha Tribe or Indians generally in the Nebraska state court system.”

Indemnification:

Omaha Tribe of Nebraska (NE) – Section 31 “The respective parties to this Compact initially agree to indemnify, protect, defend, and save harmless one another from any and all loss, damage, liability, cost or expense arising from the negligence, breach of duty or wrongful misconduct of their respective employees, servants or agents resulting from the performance of this Compact, subject to all statutory immunities and limitations upon damage awards applicable to the Omaha Tribe pursuant to the provisions of Tribal and Federal law and the Charitable Gaming Division of the Nebraska Department of Revenue pursuant to the provisions of Nebraska law.”

Notifies patrons of tribal/federal jurisdiction:

Little River Band of Ottawa Indians (MI) – Section 8 Notice to Patrons “In the facility of the Tribe where Class III gaming is conducted the Tribe shall post in a prominent position a Notice to patrons at least two (2) feet by three (3) feet in dimension with the following language:

NOTICE

THIS FACILITY IS REGULATED BY ONE OR MORE OF THE FOLLOWING: THE NATIONAL INDIAN GAMING COMMISSION, BUREAU OF INDIAN AFFAIRS OF THE U.S. DEPARTMENT OF THE INTERIOR AND THE GOVERNMENT OF THE LITTLE RIVER BAND OF OTTAWA INDIANS.

THIS FACILITY IS NOT REGULATED BY THE STATE OF MICHIGAN.”

Requirements for public liability insurance:

Wisconsin Winnebago Tribe (WI) – Section XX (A) “During the term of this Compact, the Tribe shall maintain public liability insurance with limits of not less than \$250,000 for any one person and \$4,000,000 for any one occurrence for personal injury, and \$2,000,000 for any one occurrence for property damage. (B) The Tribe’s insurance policy shall include an endorsement providing that the insurer may not invoke tribal sovereign immunity up to the limits of the policy required under subsec. A. (C) The Tribe shall indemnify, defend and hold harmless the State, its officers, directors, employees and agents from and against any claims, damages, losses or expenses asserted against or suffered or incurred by the State or its officers, directors, employees and agents based upon or arising out of any bodily injury or property damage resulting or claimed to result in whole or in part from any act or omission of the Tribe relating to the inspection of any gaming or gaming related facilities, or any rectification thereof, pursuant to this Compact or tribal ordinances regarding public health, safety and welfare.”

Compacts Consulted

Gila River Indian Community	AZ
Kickapoo Tribe of Indians	KS
Little River Band of Ottawa Indians	MI
Mashantucket Pequot Tribe	CT
Menominee Tribe of Wisconsin	WI
Nottawaseppi Huron Band of Potawatomi	WI
Omaha Tribe of Nebraska	NE
Oneida Nation of New York	NY
Oneida Tribe of Indians of Wisconsin	WI
Prairie Band Potawatomi Nation	KS
Pueblo of Acoma	NM
San Carlos Apache Tribe	AZ
Shakopee Mdewakanton Sioux	MN
Stockbridge-Munsee Community	WI
Tribal-State Gaming Compact	CA
Tunica-Biloxi Indian Tribe	LA
White Earth Band of Chippewa Reservation	MN
Wisconsin Winnebago Tribe	WI