

## Tribal Gaming in the States

(based on surveys conducted by the National Conference of State Legislatures in cooperation with the Wisconsin Legislative Fiscal Bureau; text by Art Zimmerman, Wisconsin LFB, January 2007; update notes by Judy Zelio, NCSL)

Tribal gaming has developed into an economic and political phenomenon in many states and continues to grow and evolve in response to a variety of factors. Little systematic information about the development of tribal gaming in other states has generally been available in the years since the inception of Class III gaming on Indian lands. The Legislative Fiscal Bureau, in cooperation with staff of the National Conference of State Legislatures (NCSL), undertook a survey of states in October, 2004, and again in 2006 to obtain basic comparative information on tribal gaming across the country.

This 2006 survey sought the following information: (a) the number of tribes with compacts and the number of casinos operating in the state; (b) the branch of government responsible for the negotiation of state-tribal compacts; (c) the role of the legislature in approving or otherwise affecting the compacts; (d) the duration provisions of the compacts; (e) the states' regulatory budgets and the extent to which the costs of regulation are paid by tribes; and (f) the amount of additional payments, if any, that tribes make to the state and the use of such revenues.

While there is still some uncertainty about the precise number of states in which Class III tribal gaming is authorized, it appears that 28 states have either Class II or Class III tribal gaming, and at least 23 states have Class III gaming. Class II tribal gaming operations; however, do not require a state-tribal gaming compact. The Legislative Fiscal Bureau/NCSL survey was sent to all 50 states. Of the 29 responding states in 2006, 18 indicated the presence of Class III tribal gaming, and 11 states reported no Class III tribal gaming. Of the 18 states with Class III tribal gaming operations, one state, Florida, reported that its seven tribal casinos are operating under federal procedures and without the authorization of a state-tribal compact.

[**Update:** In late 2007, Florida's governor approved a compact with the Seminole Tribe of Florida that would give the tribe a monopoly on high stakes gambling except for Broward and Miami-Dade counties, in exchange for \$375 million to be paid to the state over the first three years of operation and at least \$100 million per year after that. In response to a challenge from the Legislature, the Florida Supreme Court is considering the legality of the arrangement. No date for a decision has been set.]

The results of this survey are discussed in this section, and Table [1] provides a summary of this material, [including responses from 2004 from states that did not respond in 2006].

**Compact Negotiations.** Under IGRA, a state is required to negotiate gaming compacts with a tribe, but federal law does not dictate which branch of state government has this responsibility. While the responsibility for compact negotiation may be determined by each state, in practice it is generally the responsibility of the governor through his or her designees in the executive branch.

The survey responses indicate that the compact negotiation process has varied among states. In Arizona, the negotiation authority of the governor was unsuccessfully challenged in court. In Connecticut, one of the two tribes operating Class III gaming received this right under federal procedures imposed by the U.S. Secretary of the Interior, rather than through negotiation with the state. Under Minnesota law, the governor (or his or her representatives) is required to negotiate a compact, and the state attorney general is designated as the legal counsel for the process. If the governor appoints designees to negotiate the compacts, the designees must include at least two members of the state Senate and two members of the state House of Representatives, two

of whom must be the chairs of the Senate and House standing committees with jurisdiction over gambling policy.

In South Dakota, the governor worked with the assistance of the state attorney general. In Washington, the Washington State Gambling Commission, an executive branch agency, negotiated the compacts. Despite these variations, the governor of each state is primarily responsible for the negotiation of tribal gaming compacts.

**Legislative Role.** Most state legislatures, including Wisconsin's, have been accorded little or no role in the compact approval process. Of the 18 states responding to the 2006 survey, no legislative approval of the compacts or amendments to the compacts is required in 13 states. California, Connecticut, New Mexico, [Kansas, New York and Oklahoma added] require legislative approval (although this authority in Connecticut was effective only after the original compacts were in place). [Legislative approval in Oklahoma is made by the Joint Committee on State-Tribal Relations, rather than the full Legislature.] Michigan requires legislative approval under the terms of the compacts, but such approvals are not required under state law. However, this compact provision has been challenged in court.

[Addition: In Montana, legislative approval is only required to sanction the play of new types of games or to appropriate state funds. Lawsuits in New York have resulted in clarifying that legislative authorization and ratification are required for compacts, although the governor may commence negotiations without legislative authorization. Two compacts entered by the governor in 1993 were invalidated because they lacked legislative authorization or ratification. The Legislature has since ratified one of those as well as a compact with a third tribe.] In Washington, the Legislature may hold public hearings on any compact negotiations and forward comments to the Washington State Gambling Commission. Finally, in Minnesota, each party to the agreement, including the Legislature by joint resolution, may request that the agreement be renegotiated or replaced by a new compact. However, neither the state nor the tribes are required to renegotiate following such a request.

**Duration of the Compacts.** The term or duration of state-tribal compacts varies greatly from state to state. In some cases, important differences in the term of tribal compacts are found within the same state.

Of the 18 tribal-gaming states responding to the 2006 survey, seven states (Colorado, Connecticut, Idaho, Kansas, Minnesota, Oregon and Washington) have compacts with unlimited duration. While Oregon's and Washington's compacts have no term limits, the compacts are subject to renegotiation at the request of either party.

Wisconsin negotiated compacts with unlimited terms, but this provision was struck down by the Wisconsin Supreme Court in its review of the Potawatomi compact amendments. The effect of the court's decision on other Wisconsin tribal compacts with a comparable feature is unclear at this time.

[**Update:** In 10 states, specific renewal terms are set in the compacts. In six of these states (Arizona, Louisiana, Michigan, New Mexico, North Dakota, and Oklahoma), the terms appear to be consistent for all tribes. Of these six states, Oklahoma has the shortest term (three years), while Michigan has the longest term (20 years). Arizona has an initial 10-year term, a 10-year extension, then a three-year extension. The intent of the three-year extension is to allow time for the negotiation of new compact agreements.

Of the 10 states with specific renewal terms, four states have terms that vary, depending on the specific compact. Most of the California compacts negotiated in 1999 have terms that extend to 2020; the compacts that were negotiated in 2004, extend to as late as 2030. South Dakota has short-term compacts, with the terms expiring in two-to-four years, depending on the tribe. The terms of the Idaho compacts also vary by tribe. Iowa has eight-year terms, but two tribes have renewal terms of eight years and one tribe has a renewal

term of 15 years, if certain conditions are met. Finally, Montana has four compacts with five-year terms and one compact with a perpetual term.]

**State Regulation.** The amounts paid by tribes specifically to defray the state costs of gaming regulation and enforcement vary greatly among the states responding to the survey.

[**Update:** Seven states (Colorado, Florida, Idaho, Mississippi, Montana, North Carolina and Oklahoma) indicate that tribes do not make any payments relating to the costs of state regulation.] Additionally, South Dakota receives slightly more than \$12,000 annually from tribes. In these eight states there is also little or no state regulatory oversight of tribal gaming.]

Three states receive substantial annual payments from tribes for gaming regulation: Arizona (\$8.0 million), California (\$19.6 million), and Connecticut (\$10.0 million). These states also exercise relatively extensive oversight of tribal gaming with state regulatory budgets of \$11.9 million (and 118 positions) in Arizona; \$29.1 million (and 209.5 positions) in California; and \$10.0 million (positions were not reported) in Connecticut. If viewed on a per casino basis, Connecticut spends about \$5.0 million for regulation and enforcement for each casino, Arizona spends over \$517,000 per casino, and California spends in excess of \$501,000 per casino. Also of note is New Mexico, which receives about \$1.2 million from its tribes and budgets \$5.0 million for regulation and enforcement, an average of nearly \$385,000 per casino.

The remaining states receive smaller tribal payments for regulation and enforcement and have smaller regulatory budgets. In at least four states--Iowa, Kansas, Louisiana and North Dakota--the tribal payments appear to be geared to the actual costs of regulation. Wisconsin, which receives only \$350,000 annually for regulation, currently spends about \$1.8 million, or \$102,500 per casino. The additional cost of state regulation and enforcement, about the \$350,000 provided by the tribes for this purpose, is appropriated from the additional tribal payments made to the state.

**Additional Tribal Payments.** Tribes in some states have also agreed to make payments in addition to reimbursements for state regulatory activities. Generally, these payments are based on a percentage of net revenue. The highest tribal payments reported in the survey are made in Connecticut, with annual payments averaging an estimated \$443.8 million for the three-year period 2006-07 through 2008-09. Annual tribal payments in California are expected to average \$298 million for this three-year period. Wisconsin's tribal payments may be viewed as the third highest among the tribal-gaming states responding to the survey (with 2006-07 payments estimated at \$112.3 million). Estimated payments for 2007-08 and 2008-09 will be addressed in the 2007-09 biennial budget process. Payments are somewhat uncertain due to the Wisconsin Supreme Court's *Panzer v. Doyle* decision described previously.

Other states also receive additional tribal payments: Arizona (an average of \$73.7 million annually for the three-year period); New Mexico (an average of \$53.1 million annually for the three-year period). Michigan, where estimated payments were not reported in the survey for these years. Michigan received about \$15.7 million in 2002-03, but payments are now delayed by legal disputes. New York reported receiving \$39 million in FY2003 and anticipated that the Seneca Nation would pay in excess of \$50 million in FY2005

A state's tribal revenue varies, depending on the number and size of casinos in the state and the percentage of net revenue specified for state payments under each of the compacts. Several states use a fixed percentage of net win to calculate tribal payments. In Connecticut, 25 percent of net slot machine revenue is provided to the state, but all table game revenue is retained by the tribes. Similarly, in Michigan state payments are based on 8 percent of net win from slot-machine play, although payments are not currently being made. In New York the Seneca and Mohawk compacts required payment of a portion of the proceeds from slot machines based on net drop (money dropped into machines, after payout but before expenses). Currently, the state portion is 18 percent.

The Arizona compacts require payments based on a sliding scale, ranging from 1 percent to 8 percent, with higher percentages applied as tribal gaming revenue increases through the year. State revenue in California varies by compact; it is based on both a percentage of net win [in the survey, California did not report the specific percentages used] and a licensing fee for each electronic game in operation. New Mexico payments are set at 3 percent of net win for high-revenue tribes.

Finally, in Wisconsin, all tribes pay a percentage of net win on all games, but the percentages vary by tribe. beginning in 2005-06, all tribes will pay a percentage of net win on all games, but the percents vary by tribe. Smaller tribes will pay as little as 1.75 percent of net win in excess of \$5.0 million; other tribes will pay 3 percent or 4.5 percent of net win; and the largest tribes will pay between 5 percent and 8 percent of net win. In some cases, the percentage for a particular tribe will vary year-to-year.

The states that receive additional tribal revenue payments utilize these funds in a variety of ways. Arizona uses a formula to divide the revenue among the following purposes: local government assistance, the regulation of tribal gaming, programs for problem gambling, and programs dedicated to instructional improvement, trauma and emergency services, wildlife conservation, and tourism. In California, tribal payments are deposited to several state funds for a variety of purposes. Connecticut allocates a share of its tribal payments to local governments, with the balance going to the state's general fund. [Michigan deposited its tribal revenue in an economic development fund that is an autonomous entity outside of the state's budget process.] New Mexico deposits its tribal gaming revenue to the state's general fund. Finally, as described above, Wisconsin allocates nearly \$26.4 million in 2006-07 to a variety of state programs, appropriates funding for regulation and enforcement, and deposits any remaining revenue in the general fund.

#### **Tribal Contributions to Local Governments (2004 survey)**

Tribes contribute 12 percent of tribal contributions directly to Arizona cities, towns or counties for government services that benefit the general public, including public safety, mitigation of gaming impacts, or promotion of commerce and economic development. In California, Chapter 858, Statutes of 2003 (SB 621, Battin) appropriated \$25 million for payments made by the tribes to local government agencies affected by tribal gaming. In addition, some tribes have made payments based on agreements developed with local agencies. Tribes do not have formal or required funding or in-kind programs, but work with Colorado local governments to provide law enforcement, improve roads, etc. as needs arise. In Connecticut, tribes have provided funds for such things as (1) the local tourism board; (2) a compulsive gamblers' hotline, and (3) emergency fire and ambulance equipment. The funds/services are usually donated to municipalities bordering the casinos and to regional organizations in the area where casinos are located. There is some evidence in Idaho that the Nez Perce Tribe has helped the school districts with athletic facilities such as running tracks and gyms. In Louisiana, compacts require tribes provide funds to local governments close to tribal gaming operations to help defray costs related to gaming.

Local governments in Michigan received approximately \$17 million from tribal gaming operations in 2004. Tribes operating under 1993 compacts pay 2 percent of the net win to local communities. Each tribe determines the local units that receive payments and the amount of those payments. Each community also receives an amount equivalent to its share of property taxes that would be attributable to the gaming facility if it were subject to taxation. The Saginaw Chippewa Tribe operates a casino near the City of Mount Pleasant (Isabella County) and has, since 1994, provided more than \$62 million to local governments (including school districts) near its gaming facilities. Tribes operating under 1998 compacts also pay 2 percent of net win to local governments. These payments are made on a semi-annual basis to the county treasurer and held for the Local Revenue Sharing Board. The board, composed of representatives of local governments within the vicinity of the gaming facility, determines the distribution of tribal payments. At least one-eighth must be provided to local public safety organizations. Funds also are distributed based on the share of property taxes that would be generated by a gaming facility if the facility were subject to taxation, and for actual costs incurred as a result of the gaming facility. Amounts in excess of the required disbursements can be used for

any lawful purpose. At present there are two local revenue sharing boards, one in Emmet County and one in Manistee County, both in the northern Lower Peninsula.

The Oneida Nation has made certain infrequent payments to county governments in New York. Many tribes in Oklahoma provide funds for road building projects. Tribes and Oregon agree to a percentage (heretofore 4 percent to 6 percent) to support local communities and local governments. These can be law enforcement, transportation, schools or other. Some communities in South Dakota have received tribal assistance in the form of payments for police services and purchases of fire trucks.

Washington tribal compacts generally require the establishment of an "impact mitigation fund" to provide assistance to local law enforcement and emergency services agencies. Disbursement to the fund is typically up to 2 percent of net winnings from Class II gaming tables. The tribes pay up to 0.5 percent of their net win from machines to local charitable/nonprofit organizations.

**Tribal Gaming Data (2006-07 Data Unless Otherwise Indicated)**

State	Number of Tribes with Compacts	Number of Casinos	Negotiation Authority	Legislative Approval Authority	Term of Compact	Current Tribal Payments for Regulation	State Regulation Budget/ Number of State Agencies/ Positions	Additional Payments (in millions)			Payment Notes
								2006-07	2007-08	2008-09	
Arizona	21	23	Executive branch negotiated organizational and current compacts. A lawsuit in 2001 challenged this authority but was eventually dismissed.	No approval authority	10 years, then renewal for 10 years, then renewal for 3 years	\$8.0 million	\$11.9 million One agency 118 positions	\$78.0	\$68.8	\$74.4	Payments shared with local government
California	66	58	Executive Branch	Approval authority for compacts and amendments	1999 compacts to 2020; some 2004 compacts to 2030	\$19.6 million	\$29.1 million Two agencies 209.5 positions	\$297.8	\$297.8	\$297.8	Payments deposited in several state funds.
Colorado	2	2	Executive Branch	No approval authority	No limit	\$0.0	None	\$0.0	\$0.0	\$0.0	
Connecticut	One compact. A second tribe operates a casino under federal procedures.	2	For one tribe, federal procedures were imposed by the U.S. Secretary of the Interior under IGRA. The governor negotiated a compact with a second tribe	Approval authority for compacts and amendments established after tribes authorized to begin casino operations.	No limit	\$10.0 million (2002-03)	\$10.0 million Three agencies' positions not reported	\$435.0	\$442.5	\$454.0	Payments shared with local government
Florida	1*	7	*	*	*	*	*	*	*	*	
Idaho	4	6	Executive Branch	No approval authority, except under limited circumstances	Varies by compact	\$0.0	Minimal oversight by one agency. No budget or positions reported.	\$0.0	\$0.0	\$0.0	
Iowa	3	3	Executive Branch	No approval authority	Two tribes with 8-year term and 8-year renewal; one tribe with 15-year renewal, if certain conditions are met	Limited to actual costs	No budget specified; three agencies	\$0.0	\$0.0	\$0.0	
Kansas	4	4	Executive Branch	Approval authority for compacts	No limit	\$1.7 million	\$1.7 million One agency 21 positions	\$0.0	\$0.0	\$0.0	
Louisiana	3	3	Executive Branch	No approval authority	7-year terms	About \$1.5 million, based on actual costs	\$1.6 million One agency	\$0.0	\$0.0	\$0.0	
Michigan	11	17	Executive Branch	Legislative approval required by compacts, not by state law. This has been a subject of litigation.	20-year terms	\$383,500	One agency; limited to review of audits	Unknown	Unknown	Unknown	Future payments pending court rulings

**Tribal Gaming Data (2006-07 Data Unless Otherwise Indicated)**

State	Number of Tribes with Compacts	Number of Casinos	Negotiation Authority	Legislative Approval Authority	Term of Compact	Current Tribal Payments for Regulation	State Regulation Budget/ Number of State Agencies/ Positions	Additional Payments (in millions)			Payment Notes
								2006-07	2007-08	2008-09	
Minnesota	11	17	State law provides the governor the authority to negotiate compacts and the governor may appoint a negotiating team. If a negotiating team is appointed, it must have legislative members. By law, the attorney general serves as legal advisor for the negotiating team.	No approval authority	No limit	\$150,000	No budget specified One agency 2.5 to 3.0 positions	\$0.0	\$0.0	\$0.0	
Mississippi*	1	2	Executive Branch	No approval authority	No limit	\$0.0		\$0.0	\$0.0	\$0.0	Note 2
Montana*	5	5	A team led by the governor's office, including an assistant attorney general and the administrator of the Gambling Control Division	No approval authority, except if new types of games are proposed	One tribe no limit; 4 tribes with 5-year terms	\$0.0		\$0.0	\$0.0	\$0.0	
New Mexico	13	18	Governor	Approval authority for compacts and amendments	Expire in 2015	Each tribe pays \$100,000 annually	No budget specified One agency 3.0 positions	\$51.5	\$54.0	\$56.7	
New York*	3	4	Executive Branch, Office of the Governor	No legislative authorization is required to commence negotiations, but legislative approval required to enter into compacts.	Oneida and Mohawk compacts have no sunset provisions. Seneca compact has 14-year initial term renewable for 7	\$2.5 million per facility, approximately	NY State Police and NY State Racing & Wagering Board provide regulation		\$50.0 (Seneca)		Additional payment information is not available.
North Carolina	1	1	Governor	No approval authority	30 years	\$0	One commission to approve electronic games; no funding provided	\$0	\$0	\$0	
North Dakota	5	5	Executive Branch	No approval authority	10-year terms	\$65,000 based on actual costs	\$65,000 One agency	\$0.0	\$0.0	\$0.0	
Oklahoma*	15	Note 3	Executive Branch	Approval authority by the Joint Committee on State-Tribal Relations	3-year terms with automatic renewal	\$0.0		\$0.0	\$0.0	\$0.0	Voters approved a 2004 ballot measure that could result in future state payments exceeding \$58.0 million annually.
Oregon	9	9	Executive Branch	No approval authority	No limit, but may be renegotiated at request of either party	\$1.8 million	\$1.8 million One agency 16.5 positions	\$0.0	\$0.0	\$0.0	
South Dakota	8	9	The Governor's Office with assistance from the Attorney General's Office	No approval authority	2- to 4-year terms	\$12,500	No budget specified One agency	\$0.0	\$0.0	\$0.0	

**Tribal Gaming Data (2006-07 Data Unless Otherwise Indicated)**

State	Number of Tribes with Compacts	Number of Casinos	Negotiation Authority	Legislative Approval Authority	Term of Compact	Current Tribal Payments for Regulation	State Regulation Budget/ Number of State Agencies/ Positions	Additional Payments (in millions)			Payment Notes
								2006-07	2007-08	2008-09	
Washington	27	25	Executive branch, through a state agency; the Washington State Gambling Commission	No approval authority	No limit, but either party may request renegotiation	\$3.26 million	\$4.67 million One agency 50.3 positions	\$0.0	\$0.0	\$0.0	Some voluntary tribal payments for problem gambling programs
Wisconsin	11	18	Governor	No approval authority	No limit, but provision struck down by Supreme Court for one tribe. Status uncertain at this time.	\$350,000	\$1.8 million Two agencies 16.4 positions Costs exceeding the \$350,000 in regulatory payments provided by the tribes is appropriated from the additional tribal payments made to the state.	\$112.3	TBD	TBD	Estimated payments for 2007-08 and 2008-09 to be determined in 2007-09 budget process.

**Notes:**

\*These states responded to the 2004 survey, but not to the 2006 survey.

1. In late 2007, Florida's governor approved a compact with the Seminole Tribe of Florida that would give the tribe a monopoly on high stakes gambling except for Broward and Miami-Dade counties, in exchange for \$375 million to be paid to the state over the first three years of operation and at least \$100 million per year after that. In response to a challenge from the Legislature, the Florida Supreme Court is considering the legality of the arrangement. No date for a decision has been set.
2. Mississippi information based on 2004 survey. The Mississippi compact has an option for the state and the tribe to each contribute \$250,000 annually for tourism promotion.
3. Oklahoma has more than 80 tribal gaming facilities, but it is unknown how many of these facilities are "casinos," offering both electronic and table games, and how many are "ancillary" sites offering electronic games only.
4. The cost of state regulation in Wisconsin exceeding the \$350,000 in regulatory payments provided by the tribes is appropriated from the additional tribal payments made to the state.

Source: Wisconsin Legislative Fiscal Bureau Informational Paper 86, January 2007. <http://www.legis.state.wi.us/lfb/Informationalpapers/86.pdf>

Statutory citations related to state-tribal gaming compacts:

1. Arizona: A.R.S 5-601, et. seq.
2. California: Gaming regulation – California Business and Professions Code, sec. 19800-19984; State-tribal gaming compacts – Government Code, sec. 12012.25-12012.90; Article IV, Sec. 19 of the California Constitution
3. Colorado: No statutory provisions related to tribal gaming.
4. Connecticut: CGS Section 3-6.
5. Florida: No statutory provisions related to tribal gaming.
6. Idaho: 67-429A, Idaho Code.

7. Iowa: Sec. 10A.104(10), Iowa Code.
8. Louisiana: Act 888 of 1990 and Act 817 of 1993.
9. Michigan: MCL 432.203.
10. Minnesota: Minn. Stat. 3.9221; Laws of Minnesota 1990, Ch. 590, Art. 1, sec. 48.
11. Montana: Proposed but not yet enacted.
12. New Mexico: NM Stat. Ann. 1978, Ch. 11, Art. 13.
13. New York: N.Y. Executive law ‘ 12; N.Y. State finance law ‘ 99-h; N.Y. Penal law ‘ 225.30.
14. North Dakota: ND Century Code Ch. 54-58.
15. Oklahoma: Oklahoma Statutes, Title 74, Sec. 1221-1223.
16. Oregon: Exec. Order 96-30; ORS 461.130; ORS 180.162-.168.
17. South Dakota: SDCL 1-4-25.
18. Washington: RCW 9.46.360 and 9.46.36001.
19. Wisconsin: Wisconsin Statutes Sec. 14.035.