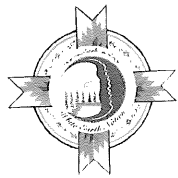


"Attachment A"

Minnesota Gaming Fairness Act



Minnesota Gaming Fairness Act

Bill Principles

- Distributes tribal gaming revenues equitably.
- Stimulates rural economic development.
- Promotes self-sufficiency for Minnesota's poorest citizens.
- Provides revenues for state priorities.
- Keeps the state's gaming contours consistent.

Bill Basics

The bill proposes that the state enter a contract for the operation of a metro area casino with a tribal entity, comprised of tribal governments that have demonstrated financial need.

Under contract, the state would pay the tribal entity 64% of the adjusted gross revenue from the gaming machine games and other lottery games. From these funds, the tribal entity would pay:

- An upfront license fee of \$2 M
- All facility-related costs and manage day-to-day operations
- .5% of all adjusted gross revenues (capped at \$2.5 M) to the Department of Human Services for problem gaming treatment programs
- The city and county hosting the gaming facility 2% of all adjusted gross revenues (approximately \$10 M) in lieu of city and county property taxes (tribal entity still has responsibility for school district taxes)

26% of the adjusted gross gaming machine revenue deposited into a gaming facilities proceeds fund and annually appropriated to:

- 10% to a newly created community assets account (approximately \$10M)
- 90% to the state's general fund (approximately \$160 M)

The state would own all the gaming machines and have overall responsibility for the operation of the casino and the gaming machines.

The bill also clarifies regulatory and licensing requirements, and requires annual audits.

Our perspective

Gambling

Time to try for a better deal

Publicly, the heat got hotter last week for Minnesota's casino-running Native American tribes. Armed with new figures showing that the state nets only a 1.5 percent return from Minnesota's \$10 billion gambling industry, Gov. Tim Pawlenty used his weekly radio program to renew his call for "a better deal."

In private talks with the tribes, too, pressure from the administration for new gaming compacts has been rising for some time, and for understandable reason. This state is still in money trouble, and Pawlenty is still preaching "no new taxes." To make that vow stick with the 2005 Legislature, he likely needs to come up with a sizeable chunk of new revenue from a nontax source. Gambling could be that source — through revenue-sharing agreements with the tribes, or several other options, all of which involve ending the tribes' monopoly on casinos.

A new report prepared by the state lottery noted that among the five states with the largest tribal casino revenues, Minnesota is the only one that does not collect revenue-sharing payments from the tribes.

The report also described other gambling options. A "racino" at Canterbury Park, an option popular with the Legislature's GOP leaders, would bring the state \$50 million a year, it said. That's small fry compared with the yearly take that could come from a state-owned or joint state-tribal casino (both in the \$100 million range), a commercial casino (\$300 million) or video slot machines in bars (\$400 million).

But those options involve the proliferation of venues for an activity that has a decided downside for society. Gambling may be a winner for the state budget, but it invites a compulsion that can do great harm to individuals, sap economic productivity and add to society's social welfare and criminal justice costs. Those costs are difficult to tally, but they are surely substantial enough to give good stewards of this state pause. If the state can derive more benefit from existing casinos, with-

out giving people more places and more encouragement to gamble, it should.

That notion is not unique to Minnesota. Several other states recently have entered into new revenue-sharing arrangements with tribal casinos, in exchange for a guaranteed Indian monopoly. Notable among them is California, where five tribes have agreed with Gov. Arnold Schwarzenegger to share 15 to 25 percent of casino revenue with the state, in exchange for exclusive expansion rights.

That changing national scene, plus the undeniable lure of new nontax revenue for politicians, have to be weighing heavily on Minnesota's tribal leaders. Their ability to keep non-Indian competition at bay through political muscle may be slipping away. Last session, even the leader of the political force that has been the tribes' best ally, Dean Johnson of the Senate DFL caucus, started encouraging the tribes to reconsider their resistance to revenue-sharing with the state.

It was good advice — and at least one band appears to be heeding it. Melanie Benjamin, chief executive of the Mille Lacs Band of Ojibwe, said last month that her band would discuss giving the state a share, in exchange for authorization to operate more games and simulcast horse racing.

The Leech Lake Band, meanwhile, has joined forces with the state's two largest native groups, Red Lake and White Earth, in expressing willingness to go into the casino business in the metro area with the state as a partner. If gaming is to be expanded in Minnesota, that would be the most justifiable option. Its benefits would accrue largely to native people who have thus far gained little from 16 years of Indian gambling.

With the next budget-setting session of the Legislature only three months away, other Minnesota bands should be reassessing their positions. Pawlenty's words last week should send a clear message that gambling's status quo in Minnesota won't hold much longer.

**White Earth Reservation Tribal Council
A/K/A white Earth Business Committee
Resolution No. 090-03-003**

WHEREAS: the White Earth Reservation Tribal Council is the duly elected governing body of the White Earth Reservation pursuant to Article IV, Section 1, of the revised constitution of the Minnesota Chippewa Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984), and

WHEREAS: the White Earth Tribal Council has constitutional power and authority to engage in any business that will further the economic well-being of the members of the White Earth Band, and

WHEREAS: proposals for several urban casino complex initiatives are being developed and will be taken forth to the Minnesota State Legislature, and

WHEREAS: the White Earth Tribal Council in a collaborative effort among the State of Minnesota and Red Lake Tribal Council will present the proposals, and

WHEREAS: the economic impact of these proposals for the Tribes and the State of Minnesota will provide financial stability of all entities involved.

THEREFORE BE IT RESOLVED that the White Earth Tribal Council, as the duly elected governing body, hereby supports the partnership and development of several urban casino complex initiatives in conjunction with the State of Minnesota and the Indian Tribes.

We do hereby certify that the foregoing resolution was adopted by a vote of 3 for 0 against 0 silent a quorum being present at a regular meeting the White Earth Reservation Tribal Council held on March 6, 2003 in Cass Lake, Minnesota.



Doyle Turner, Chairman



Franklin Heisler, Secretary-Treasurer


**WHITE EARTH TRIBAL COUNCIL
A/K/A WHITE EARTH RESERVATION BUSINESS COMMITTEE
RESOLUTION NO. 001-05-026**

- WHEREAS:** the White Earth Reservation Tribal Council is the duly elected governing body of the White Earth Reservation pursuant to Article IV, Section 1 of the Revised Constitution of the Minnesota Chippewa Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984), and
- WHEREAS:** the White Earth Tribal Council has constitutional power and authority to engage in any business that will further the economic well-being of the members of the White Earth Reservation, and
- WHEREAS:** the White Earth Tribal Council has promoted the Gaming Equity Act in past Minnesota State Legislature Legislative Sessions, and it intends to do so in the 2005 Legislative Session, and
- WHEREAS:** Governor Tim Pawlenty has communicated several State/Tribal urban casino concepts to be developed and promoted to the Minnesota State Legislature for its 2005 Legislative Session, and
- WHEREAS:** the White Earth Reservation Tribal Council has committed to pursue a joint collaboration with the Governor to develop urban casino legislation, and
- WHEREAS:** the economic impact of this legislation for the Tribes and the State of Minnesota will provide financial benefits for all entities involved.

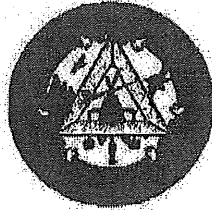
THEREFORE, BE IT RESOLVED the White Earth Tribal Council, hereby supports the partnership and development of the urban casino legislation in conjunction with the State of Minnesota and the Reservation.

BE IT FURTHER RESOLVED that the White Earth Tribal Council, shall negotiate in good faith with the State of Minnesota and other Tribes so that an urban casino initiative acceptable to all parties may be reached which will provide financial benefits for all parties.

We do hereby certify that the foregoing resolution was duly presented and adopted by a vote of 3 FOR, 1 AGAINST, 0 SILENT, 0 ABSENT, at a special meeting of the Tribal Council, a quorum being present, held on April 1, 2005, in White Earth, MN.


Erma J. Vizenor, Chairwoman

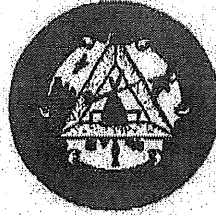

Franklin Heisler, Secretary-Treasurer



RESOLUTION NO. 05-42

**LEECH LAKE TRIBAL COUNCIL SUPPORT FOR THE
MINNESOTA GAMING EQUITY ACT**

- WHEREAS,** the Minnesota Chippewa Tribe Constitution, Article III, Section 2 established the Reservation Business Committee (aka, Tribal Council) as the governing body of the Leech Lake Band of the Minnesota Chippewa Tribe; and
- WHEREAS,** the Tribal Council has the inherent sovereign authority to protect the health, safety and welfare of all Leech Lake Band members and provide for and to regulate relations among Band members and others; and
- WHEREAS,** the Leech Lake Band of Ojibwe, through the Tribal Council, has the right to make its own laws and be ruled by them, and the power to regulate its internal and social relations; and
- WHEREAS,** the Leech Lake Tribal Council has constitutional power and authority to engage in any business that will further the economic well being of the members of the Leech Lake Band; and
- WHEREAS,** the proposed Minnesota Gaming Equity Act would authorize the State Lottery to operate Gaming machines as a facility in the Metropolitan area operated by the Leech Lake Band of Ojibwe, the White Earth Band and the Red Lake Band of Chippewa Indians; and
- WHEREAS,** the Leech Lake Band of Ojibwe has millions of dollars in unmet needs and the proposed Minnesota Gaming Equity Act would eventually provide additional revenue in order to meet the Leech Lake Tribal Government's unmet needs such as housing and in the area of economic development; and
- WHEREAS,** the Leech Lake Band of Ojibwe, the White Earth Band and Red Lake Band of Chippewa Indians would work in a collaborative effort in order to promote the Minnesota Gaming Equity Act; and



Leech Lake Tribal Council


Resolution No. 05-42

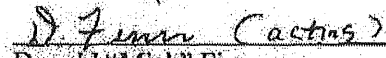
Page 2

THEREFORE BE IT RESOLVED that the Leech Lake Tribal Council, as the duly authorized governing body, hereby supports the partnership between the Leech Lake Band, White Earth Band and Red Lake Band of Chippewa Indians with the State of Minnesota in the development of a Gaming Facility in the Metropolitan Area of Minneapolis/St. Paul in which the revenue from the facility would benefit the Leech Lake Band of Ojibwe, White Earth Band and Red Lake Band of Chippewa Indians and the State of Minnesota.

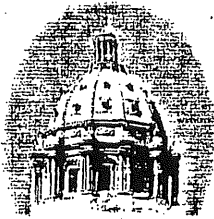
CERTIFICATION

WE DO HEREBY CERTIFY, that the foregoing resolution was duly presented and adopted by a vote of 03 For 0 Against 0 Silent at a Special Meeting of the Leech Lake Tribal Council, a quorum being present, held on October 1, 2004 at Cass Lake MN.


George Goggeys Jr.,
Chairman
LEECH LAKE BAND OF OJIBWE


Donald "Mick" Finn
Acting Secretary/Treasurer
LEECH LAKE BAND OF OJIBWE

PIONEER PRESS



MONDAY, APRIL 12, 2004

METRO EDITION

WWW.TWINCITIES.COM



OF THE PEOPLE INDIAN TRIBES AND GAMBLING



A TRIBAL DIVIDE



PHOTOS BY BEN GARVIN, PIONEER PRESS

At northern Minnesota's Red Lake Nation, 5-year-old Alicia Wind, center, holds her sister Andrea, 20 months. In the foreground is their cousin Angela Trevino, 3. The girls are among 12 people living in their grandmother's home. They and about 600 other families are on a waiting list for housing assistance on the reservation.

Casino-rich tribes and poorer reservations are at odds over a bill to spread gambling money to more tribes — and to the state.

BY JIM RAGSDALE
Pioneer Press

WHITE EARTH RESERVATION
It has everything a water tower needs — except water.

Soaring above the humble homes in the northeast corner of the White Earth reservation, the freshly painted light-green tower adorned with the image of an eagle sits empty while the band looks for money to run it.

"I call it the pigeon decoy," quipped Andrew Favorite, who supervises tribe enrollments.

The dry reservoir — along with the crumbling tribal school, the lead-tainted water system, health care needs and a jumble of substandard housing — are on White Earth's bulging to-do list. So are the needs of the many urban White Earth tribe members in the Twin Cities, 250 miles away from the pigeon decoy.

It's an image at odds with the more visible tribal success stories



The slot machine floor at Grand Casino Mille Lacs near Onamia, Minn., teems with gamblers. The casino, run by the Mille Lacs Band, pulls in enough revenue to fund a \$60 million annual budget for the tribe.

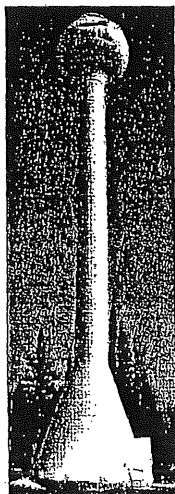
of recent years on wealthier reservations, where thriving casinos have fueled a revolution in high-quality schools, community facilities and personal income. But that success has eluded more remote reservations, such as the White Earth Band of Ojibwe as well as the Red Lake Band of Chippewa to the north.

This vivid divide between rich

and poor tribes has reached the Minnesota Legislature in the form of a gambling bill.

Red Lake and White Earth are pinning their hopes for the future on a long-odds proposal to build a new gambling palace in the metro area, with the proceeds flowing to the financially struggling, populous

A TRIBAL DIVIDE, 9A



Casino success has eluded the White Earth Band. A new water tower stands empty because there isn't money to hook it up.

OF THE PEOPLE INDIAN TRIBES AND GAMBLING FROM PAGE 1A

A tribal divide

(continued)

tribes — and also to the state. The two tribes represent nearly two-thirds of Minnesota's Indian population.

White Earth, with about 23,000 enrolled members, made about \$3.8 million per year from its casino in Mahanomen, officials say. Compare that with the mountains of cash thrown off by the Mystic Lake complex in Shakopee by the 300-member Sioux band, where net payments of gambling profits for each tribe member are believed to exceed \$1 million.

"Three people down in Mystic Lake get more money than we get to serve 23,000 members," said Ron Vallant, executive director of the White Earth Tribal Council.



The teaching of cotus and synthesized jingles of the video slot machines — the dominant industry in Indian Country —

have showered riches on geographically blessed tribes, left others out in the cold, provoked jealousy among whites who want their own slot-machine music and drawn the attention of Gov. Tim Pawlenty, who wants the state to share in the booty.

"There's a chess game going on between all of the tribes and the state," Favorite said.

WHITE EARTH

Fear from the heavily lobbied committees, gambling economics is a powerful force, determining who gets housing, insurance coverage and college scholarships — and whether the water will ever flow from the "pigeon doozy" lowering over the pines of White Earth.

Bert Stevens, 72, who lives in across the street, sees the need to fix up crumbling housing and improve police protection. But he is not convinced gambling is the solution.

"I think it just breaks up a lot of families," Stevens said. "It causes a lot of hardship for families."

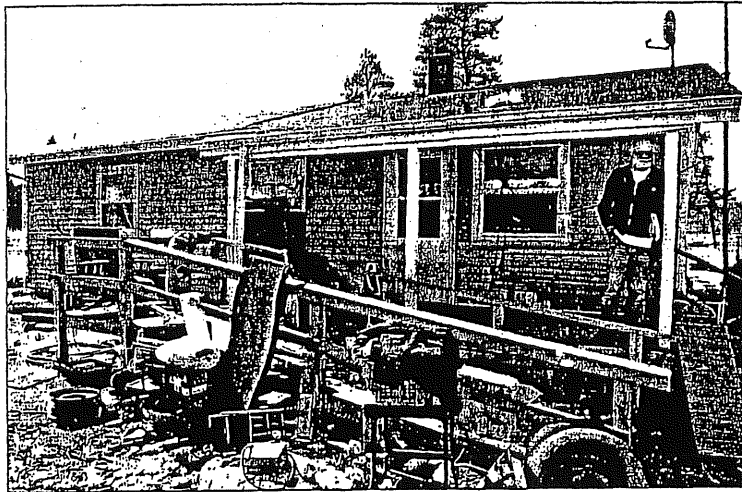
The push for gaming here is complicated by tribal, state and tribal politics, which resurfaced March 30. Darrell "Chip" Wedema, a former tribal chairman who served a prison term for crimes arising from the construction of the White Earth casino, was the leading vote-getter in the primary to become tribal chairman. Supporters fear the possibility of a Wedema comeback will make it harder to sell legislators on a plan to funnel millions in gambling revenue to the tribe.

On a recent visit, the "Vote Chip" signs were out in force as Favorite guided visitors around the reservation and talked of how White Earth's painful past defines its perilous present.

All but a small portion of the original reservation was lost to settlers and loggers, and what remains in tribal hands is a scattered checkerboard of about 75,000 acres. "We had land and timber and resources," Favorite said. "They needed it. We got relegated to reservations in poverty. The rest of the state developed and flourished."

Housing is scattered and often marginal. There are 600 families on a waiting list for housing assistance, according to Vallant. The main employer is the casino-hotel in Mahanomen, a quiet farm town of 1,200 with the familiar rural skyline of grain silos.

The Shooting Star Casino, Hotel and Event Center is a rural reservation. Its grand, parking lot and show-biz lighting seem out of place, and tribal officials say the project may have been overbuilt for the market.



Bert Stevens, 72, likens the poverty of his remote White Earth tribe to that of a developing nation. Still, he's not convinced a proposed metro-area casino is the answer.

inside the casino, seniors wear their "Star Player Cards" clipped to their coats on a curling lanyard, plugging the card into slot machines for points and extra prizes.

The casinos, even if they do not provide huge revenues for the tribe, do provide jobs for members. "We've gone from being unemployed to being working poor," Favorite said. The modest profits and the large size of the White Earth sent all of its profits back to members, each person would receive about \$165 per year.

The signs of progress, like the southern shore of Lake Miller, mean that if White Earth sent all of its profits back to members, each person would receive about \$165 per year.

The signs of progress, like the southern shore of Lake Miller, mean that if White Earth sent all of its profits back to members, each person would receive about \$165 per year.

Favorite, who serves on the tribe's housing commission, pointed out the mismatched collection of "FEMA trailers" left over from the Red River Valley flood. Air Force houses hauled in from North Dakota bases and newer federal HUD Houses. He drove by a burned-out sedan near Rice Lake, which he said is a frequent occurrence on the reservation, an example of vandalism and neglect with which the tribe must reckon.

"The main culprit is poverty," Favorite said. "We're almost like a developing nation."

To Favorite, "Vallant and other White Earth officials, the metro casino project — as far away from reality as the Capitol is from the water tower — looks like the best way out."

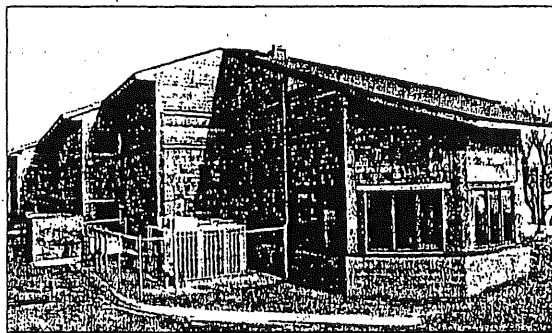
MILLE LACS

Bonita Bwaan laid out her goals that would soon become dancers' uniforms. She displayed a colorful dress festooned with metal cones, used in a traditional "jingle dance." She and other tribal members were getting ready for a dance practice with children at the Nay Ah Shing K school on the Mille Lacs reservation.

"Our kids absolutely love to dance," Bwaan said.

And since the casino era began, she said, the tenuous nature of old War on Poverty programs has given way to more stable funding. That makes it easier to keep the traditions alive, and for the members to have dependable jobs.

"Thank God for that casino," she said. This is a common refrain in the lower and upper school, the picturesque health center, the sparkling tribal government office, the ceremonial building and in the corporate suites adjoining Grand Casino Mille Lacs, which look down on



Housing for elders of the Mille Lacs Band of Ojibwe includes this new building in Onamia, Minn. Gross revenue from the band's two casinos hit \$280 million in 2000. The tribe also has built schools and a clinic, tribal government center and ceremonial building in Onamia.

parked four buses and the lines of gray-haired slot-machine feeders.

The Mille Lacs Band of Ojibwe, a small tribe based on the southern shore of Lake Miller, Lacs about 90 miles north of the Twin Cities, owns and operates two casinos: Grand Casino Mille Lacs and Grand Casino Hinckley.



The Mille Lacs band has approximately 3,600 members, with about half living on reservation lands, officials say. Tribal officials will not say how much the casinos earn each year, but the Native American Press/Ojibwe News reported that audited financial statements showed the two casinos produced \$280 million in gross revenues in the year 2000.

Don Wedell, a non-Indian who has worked for the tribe in a variety of positions since 1973, recalls when his entire budget for managing the natural resources of the band was less than his sister made working for a Twin Cities insurance company. He remembers when the tribal budget was close to \$2 million in the early 1990s. It's 12 years in the casino business, it is now approaching \$60 million, he said.

The band historically has focused on building its infrastructure, providing health care and improving education, but now also pays members an annual per-capita share of the profits. Tadd Johnson, who works in government affairs for the band, said those "per-caps" are now \$5,700 a year.

Poverty and unemployment rates have nosedived and per-capita income figures have surged since the casinos opened, tribal officials say. The casinos employ about 3,000 people — most of them non-Indians — and 500 more work for the tribal government in some capacity, according to Wedell and Johnson.

The once-poor band is now flush enough to pour money into lobbying in St. Paul (\$600,000 in 2003, according to state figures) and to purchase Edgy's Dining resort on the lake and Woodlands National Bank in the area.

Tribal officials see the Red Lake-White Earth bill as potentially devastating, particularly if the new casino is located in the north metro area — which feeds customers to their casinos.

The success of gambling is on display at the Ne-la-Shing clinic, where Sam Moose, commissioner of health for the band, described how the "Circle of Health" insurance program for band members fills in gaps in other policies and provides coverage for everyone.

The sunny clinic, whose waiting room looks out over the lake, offers health and dental care and a pharmacy, and is a great improvement over the health programs of the pre-casino era, Moose said. "It's definitely right and day," he said.

RED LAKE

Thunder, cultural coordinator for the Red Lake Band of Chippewa, stood on a cliff overlooking the icy expanse of lower Red Lake and revealed in his tribe's autonomy. "We all own every inch of this," he said. "It was put in common for

elsewhere — mostly in the metro area. He said 740 families draw welfare on the reservation. The tribe wants to build new housing, create new jobs, develop a tribal college and improve law enforcement and court facilities, Seki said.

A small reservation casino is located in a rust-colored metal building a few blocks from tribal headquarters. Thum says there are too few slot machines to produce much revenue, and it mainly serves as recreation "for the working man." A sign outside cautions over-zealous bettors: "Please Don't Hit the Machines."

The casino adjoins a small school building where Renee Gurneau is trying to build Red Lake Nation College, offering both Anishinabe culture and casino management to students who want a foot in both worlds. She has four classrooms and dreams of casino money fueling future growth. "We need everything," she said.

Darrell Aughinash oversees Red Lake Industries, which builds modular homes that are popular on many reservations in the region. The business was closed temporarily but he hopes it can rev up again with new contracts and additional resources for expansion.

"A plant like this gives our community hope," Aughinash said.

The problems associated with urban poverty — crumbling housing, drugs and crime — have migrated to the northern reservations, tribe officials say. The bill is aimed at funneling money both to the reservations and to the large urban Indian populations.

Officials hope it could help Debbie Waybenals on the reservation and Alberta Van Wert's clients along Franklin Avenue. Waybenals was trying to get her six grandchildren to stay out of the muddy puddle that the snowmelt had produced in front of her home on a recent warm day. She said she lost an 18-year-old son in a traffic accident six months ago, is receiving welfare payments and is crowded into her home with the grandchildren while her daughter waits for assistance to move into her own home.

Red Lake officials say with the casino money, they could build more homes and help those in need of housing assistance.

Van Wert, liaison officer for the Red Lake Band in Minneapolis, deals with similar problems among those who have moved off the reservation. The bill directs funding for services for urban Indian populations, officials say, and will offer jobs to tribe members and other minorities.

Van Wert sees the new casino as a lifeline for urban Red Lakers. She grew up on the reservation, gathering wild rice, catching fish and tapping maple trees in an echo of the subsistence lifestyle of her forebears. She came to the Twin Cities for education, family and a career, but many others have not thrived in the Twin Cities.

According to a new study, the poverty rate for Indians in Hennepin County is 28 percent — four times the rate for the county as a whole. Indians four times the diabetes rate and double the rates of obesity and depression of other county residents.

In light of these statistics, Van Wert called Pawlenty's attempt to grab casino profits to balance the state's budget "extortion." "And even if the Red Lake-White Earth bill does cut into other tribes' business, she thinks it's not too much to ask of those few who have become slot-machine millionaires.

"Do they think they could live on a million a year, instead of a million and a half, and put more money into the community?" she asked.

Jim Ragsdale covers state government and politics and can be contacted at jragdale@pioneerpress.com or 651-228-5529.

TRIBE FACTS

WHITE EARTH BAND OF OJIBWE	RED LAKE BAND OF CHIPPEWA	MILLE LACS BAND OF OJIBWE	WHITE EARTH BAND OF OJIBWE
Location: White Earth, 25 miles north of Detroit Lakes and 255 miles northwest of St. Paul.	Location: Red Lake, 34 miles north of Bemidji and 301 miles northwest of St. Paul.	Location: South shore of Mille Lacs Lake; MacGregor area; and Hinckley, Onamia headquarters is 93 miles north of St. Paul.	Location: Grand Casino Mille Lacs near lake in Onamia; Grand Casino Hinckley near I-95 between the Twin Cities and Duluth.
Tribal land: 75,267 acres	Tribal land: 806,698 acres, including	Tribal land: About 13,000 acres	Casino revenue estimate: \$280 million gross revenues (before expenses) in 2000
Number of enrolled members: 23,000	Number of enrolled members: 3,600	Number of enrolled members: 3,600	Source: Enrollment estimates by tribe officials, Minnesota House Research, Native American Press.
Number living in reservation: 4,500	Number living on reservation: 1,800	Number living on reservation: 1,800	
Casino: Casino-hotel in Mahanomen. Revenue estimate: Annual net to tribe is \$3.8 million.	Casino: Red Lake, Thief River Falls and Warroad. Casino revenue: Annual net to tribe is \$1.75 million.	Casino: Grand Casino Mille Lacs near lake in Onamia; Grand Casino Hinckley near I-95 between the Twin Cities and Duluth.	

WESTERN INTERNATIONAL SECURITIES INC.
Tribal Finance Division

March 25, 2005

RE: GAMING FAIRNESS ACT 2005

As the financial advisor retained jointly by The White Earth Band of Chippewa Indians, The Leech Lake Band of Ojibwe and the Red Lake Band of Chippewa Indians to prepare the financing structure for the proposed resort/casino facility with regards to the aforementioned Bill, please note that in the previous Committee Hearing held on March 18, 2005 some questions were posed to me and additional materials were requested. Specifically the question was raised regarding the financing structure as I have anticipated the capital markets will propose to lend, specifically from a construction phase financing into a more mature credit facility.

I have based the proposed financing structure on industry standards within the gaming, resort and leisure sectors of the capital markets lending trends over the last ten years. I have based the structure not only on my own experience as a licensed investment banker, but also have confirmed and discussed the proposed structure with six of the leading investment banks issuing gaming sector debt: Bank of America, Deutsche Bank, Morgan Stanley, Lehman Brothers, CIBC World Markets and Citigroup.

Typically construction of a new gaming facility or an expansion of an existing facility is financed with institutional bonds whereby during the construction phase and the early period of realizing the revenue and establishing the market from the new or additional facilities, the lenders require interest only payments. Due to higher leverage ratios, little to no equity and construction risk, the interest rate for this early stage financing is predictably higher than an established credit facility. Once the entity has established historical financials within the first few years of operations with the new or expanded amenities, typically the debt will then be refinanced into a commercial credit facility or new bond issuance (depending on size) at a much lower interest rate and fully amortized (i.e. required interest and principal payments).

However, to be clear, within the first early stage financing structure, there is nothing to prevent the owners from creating a principal reserve account (also sometimes called a sinking fund) if the cash flow is sufficient. This concept is sometimes also engineered within a vehicle we refer to as the "waterfall". The bondholders will require an interest reserve account that will have to be filled first, then there could also be a sinking fund reserve account created... thus the idea of the cash flowing into different funds via a waterfall effect. The owners would be able to realize interest income from the amounts held in these accounts, which could be substantial. However it is not recommended to create or require these prematurely (other than what the bondholders will mandate as covenants to the lending indenture) until the facility is opened and the cash flow picture is evident, as there must be some flexibility allowed for operations.

In conclusion, with all due respect, I do not believe it is the role of legislators to dictate the financing structure to the capital markets and casino owners/operators. The lenders, which will all be institutional in nature, will structure their lending proposals based on industry standards and prevailing market conditions and the gaming operations will dictate the flexibility of the cash flow in the early stages until the refinancing to full amortization occurs.

To that end, it was requested of me to provide examples of other similar facilities that have utilized this type of financing structure. On the following pages, I am providing gaming sector bond issuance tables from the leading banks on Wall Street over the last few years. Any issuance that lists the security as **Senior Notes** or **Senior Subordinated Notes** would typically be of a similar structure as the proposed facility. Then for later stage financing you can see established facilities have converted to a **Senior Credit Facility**. The proposed type of financing has been utilized by some of the largest names in the gaming industry, including both Indian and non-Indian. You will see financings by Senior Notes for Wynn Resorts, MGM Mirage, Park Place, Mississippi Band of Choctaw, Station Casinos, Mohegan Sun, Chumash Casino and Seneca Niagara to name a few. Please note that the financings for Chukchansi Gold (Bank of America), River Rock Casino and Buena Vista Me-Wuk Tribe (latter both by CIBC World Markets) are nearly identical to the Gaming Fairness Act proposed financing in that they were/are for brand new construction.

I hope this information is helpful, please do not hesitate to contact me with any further questions.

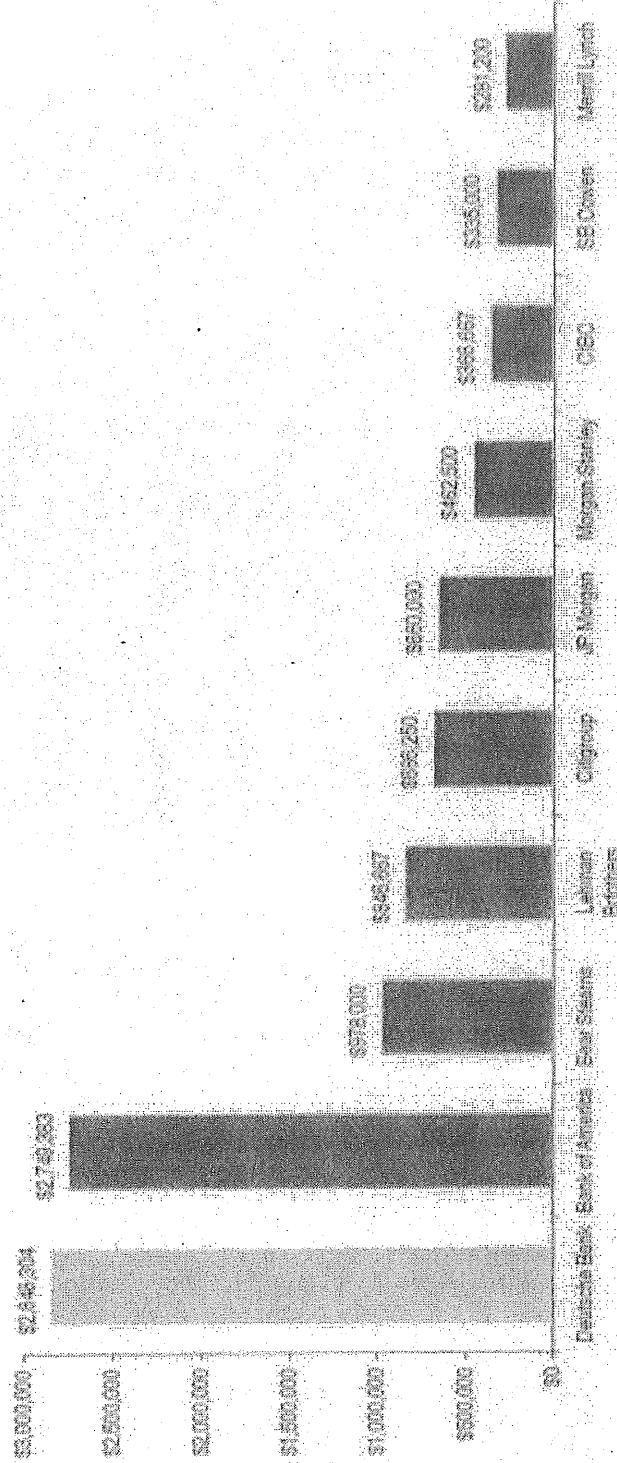
Sincerely,



Valerie Red-Horse
Senior Managing Director
Tribal Finance

Gaming high yield volume YTD 2004

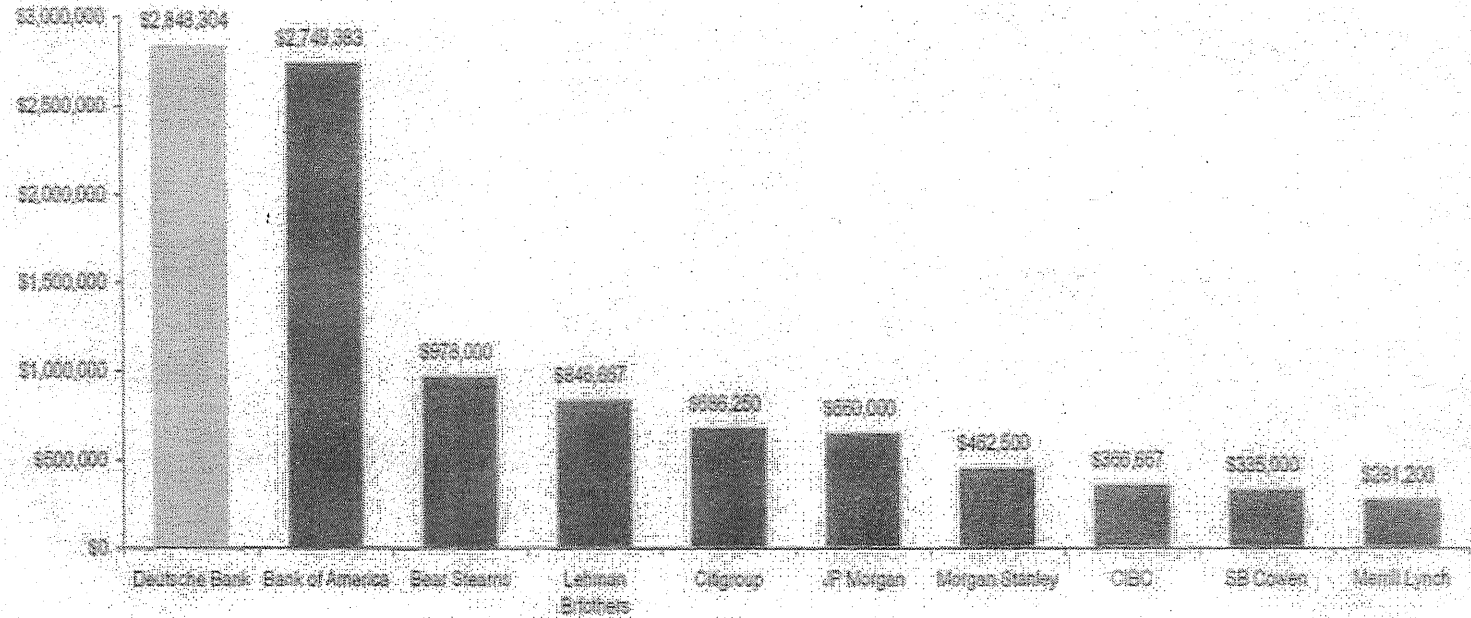
Total gaming volume ('000s)



Wynn Las Vegas Wynn Las Vegas USD 1.7 billion Full Morgan stake	AZTAR Aztec Corporation USD 1.7 billion Share repurchase	MGM MIRAGE MGM Mirages USD 535 million Share repurchase	Sammy's Gaming Stateside Casino, Inc. USD 1.7 billion Share and Subordinated Note	Chiefs Ipsos Capital Casino, Inc. USD 500 million Share repurchase	BOYD GAMING Boyd Gaming USD 350 million Share repurchase
Joint Bookkeeping Manager November 2004	Joint Bookkeeping Manager May 2004	Bookkeeping Manager January - March 2004	Joint Bookkeeping Manager January - March 2004	Joint Bookkeeping Manager February 2004	Joint Bookkeeping Manager March 2004

Gaming high yield volume YTD 2004

Total gaming volume ('000s)



 Wynn Las Vegas USD1.3 billion First Mortgage Notes Joint Bookrunning Manager November 2004	 AZTAR Aztar Corporation USD100 million Senior Notes Joint Bookrunning Manager May 2004	 MGM MIRAGE MGM Mirage USD225 million Senior Notes Bookrunning Manager January - March 2004	 Station Casinos, Inc. USD1.2 billion Senior and Subordinated Notes Joint Bookrunner January - March 2004	 Isle of Capri Casinos, Inc. USD500 million Senior Notes Joint Bookrunning Manager February 2004	 BOYD GAMING Boyd Gaming USD350 million Senior Notes Joint Bookrunning Manager March 2004
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Banc of America Securities' Capabilities

High Yield Gaming League Table – FY2004

(Ranked by proceeds)

EQUAL/SPLIT CREDIT TO BOOK-RUNNING MANAGERS

Rank	Managers	Proceeds (\$MM)	Number of Deals	Share
1	Banc of America Securities LLC	2,115	15	26.1%
2	Deutsche Bank Securities Inc.	1,350	9	16.7%
3	Lehman Brothers	747	6	9.2%
4	Bear Stearns	725	5	9.0%
5	Citigroup	686	6	8.5%
6	JP Morgan Chase & Co.	473	3	5.8%
7	Morgan Stanley	463	2	5.7%
8	Jefferies & Co.	398	3	4.9%
9	CIBC World Markets	367	2	4.5%
10	SG Corporate & Investment Banking	335	2	4.1%
11	Merrill Lynch	206	2	2.6%
12	Barclays Capital	113	1	1.4%
13	Wachovia Securities	113	1	1.4%

(Ranked by proceeds)

FULL CREDIT TO LEFT BOOK-RUNNING MANAGER

Rank	Managers	Number of Deals	Share
1	Banc of America Securities LLC	8	29.6%
2	Deutsche Bank Securities Inc.	5	18.5%
3	Lehman Brothers	4	14.8%
4	Jefferies & Co.	3	11.1%
5	JP Morgan Chase & Co.	2	7.4%
5	Merrill Lynch	2	7.4%
7	Bear Stearns	1	3.7%
7	Citigroup	1	3.7%
7	Morgan Stanley	1	3.7%

BAS LEFT BOOK-RUN TRANSACTIONS (2004)

<p>\$150,000,000</p> <p>October 2004</p>  <p>Mississippi Band of Choctaw Indians d/b/a Choctaw Resort Development Enterprise</p> <p>7 1/4% Senior Notes due 2019 Price 100% Sole Book-Running Manager</p>	<p>\$550,000,000</p> <p>August 2004</p>  <p>MGM MIRAGE</p> <p>5 3/4% Senior Notes due 2012 Price 100% Joint Book-Running Manager (Left)</p>	<p>\$300,000,000</p> <p>May 2004</p>  <p>AZTAR</p> <p>7 7/8% Senior Subordinated Notes due 2014 Price 100% Joint Book-Running Manager (Left)</p>	<p>\$235,000,000</p> <p>March 2004</p>  <p>GLOBAL GAMING</p> <p>5 3/4% Senior Subordinated Notes due 2012 Price 100% Sole Book-Running Manager</p>
<p>\$50,000,000</p> <p>March 2004</p>  <p>STATION CASINO</p> <p>6 1/2% Senior Subordinated Notes due 2014 Priced 100.500% (Add-on) Sole Book-Running Manager</p>	<p>\$350,000,000</p> <p>February 2004</p>  <p>STATION CASINO</p> <p>6 7/8% Senior Subordinated Notes due 2016 Priced 100% Joint Book-Running Manager (Left)</p>	<p>\$160,000,000</p> <p>January 2004</p>  <p>HARD ROCK HOTEL</p> <p>10 3/4% First Mortgage Notes due 2012 Price 98.664% Joint Book-Running Manager (Left)</p>	<p>\$400,000,000</p> <p>January 2004</p>  <p>STATION CASINO</p> <p>6 1/2% Sr. Subordinated Notes due 2014 Price 100% Joint Book-Running Manager (Left)</p>

Note: Dollar-denominated transactions only
Source: Banc of America Securities LLC

Banc of America Securities



Banc of America Securities' Capabilities

Native American Gaming Finance Expertise

<p>\$143,750,000 November 2004</p> <p> The Mississippi Band of Choctaw Indians</p> <p>Choctaw Resort Development Enterprise Syndicated Credit Facility Sole Lead Arranger</p>	<p>\$150,000,000 November 2004</p> <p> The Mississippi Band of Choctaw Indians</p> <p>Choctaw Resort Development Enterprise Senior Notes Sole Bookrunner</p>	<p>\$200,000,000 October 2004</p> <p> Barona Band of Mission Indians</p> <p>Barona Band of Mission Indians Syndicated Credit Facility Co-Lead Arranger</p>	<p>\$600,000,000 October 2004</p> <p> Mojogian Sun</p> <p>Mojogian Tribal Gaming Authority Syndicated Credit Facility Co-Lead Arranger</p>	<p>\$250,000,000 September 2004</p> <p> FOXWOODS RESORT & CASINO</p> <p>The Mashantucket (Western) Pequot Tribe Syndicated Credit Facility Sole Lead Arranger</p>
<p>\$225,000,000 July 2004</p> <p> Mojogian Sun</p> <p>Mojogian Tribal Gaming Authority Senior Subordinated Note Joint Bookrunner</p>	<p>\$300,000,000 April 2004</p> <p> Seneca Gaming Corporation</p> <p>Seneca Gaming Corporation Senior Notes Joint Bookrunner</p>	<p>\$175,000,000 September 2003</p> <p> Eastern Band of Cherokee Indians</p> <p>Eastern Band of Cherokee Indians Syndicated Credit Facility Co-Lead Arranger</p>	<p>\$250,000,000 September 2003</p> <p> FOXWOODS RESORT & CASINO</p> <p>The Mashantucket (Western) Pequot Tribe Syndicated Credit Facility Sole Lead Arranger</p>	<p>\$330,000,000 July 2003</p> <p> Mojogian Sun</p> <p>Mojogian Tribal Gaming Authority Senior Subordinated Note Joint Bookrunner</p>
<p>\$215,000,000 July 2003</p> <p> STATION Casino</p> <p>United Auburn Indian Community Syndicated Credit Facility Co-Lead Arranger</p>	<p>\$25,000,000 May 2003</p> <p> TURNING STONE Casino RESORT & CASINO</p> <p>Turning Stone Casino Resort Enterprise Senior Notes (105-On) Sole Bookrunner</p>	<p>\$391,000,000 March 2003</p> <p> Mojogian Sun</p> <p>Mojogian Tribal Gaming Authority Syndicated Credit Facility Co-Lead Arranger</p>	<p>\$135,000,000 December 2002</p> <p> TURNING STONE Casino RESORT & CASINO</p> <p>Turning Stone Casino Resort Enterprise Senior Notes Sole Bookrunner</p>	<p>\$150,000,000 December 2002</p> <p> TURNING STONE Casino RESORT & CASINO</p> <p>Turning Stone Casino Resort Enterprise Syndicated Credit Facility Sole Lead Arranger</p>
<p>\$145,000,000 December 2002</p> <p> Onondaga Indian Nation</p> <p>Onondaga Indian Nation Tax-Exempt Bonds Sole Bookrunner</p>	<p>\$153,000,000 September 2002</p> <p> CHUKCHANEI GOLD RESORT & CASINO</p> <p>Chukchaneh Economic Development Authority Senior Notes Joint Bookrunner</p>	<p>\$210,000,000 September 2002</p> <p> FOXWOODS RESORT & CASINO</p> <p>The Mashantucket (Western) Pequot Tribe Syndicated Credit Facility Sole Lead Arranger</p>	<p>\$130,000,000 August 2002</p> <p> TULALIP TRIBES</p> <p>Tulalip Tribes of Washington Syndicated Credit Facility Co-Lead Arranger</p>	<p>\$150,000,000 June 2002</p> <p> Chumash Casino and Resort</p> <p>Chumash Casino and Resort Enterprise Senior Notes Sole Bookrunner</p>

Morgan Stanley's Gaming Franchise

Morgan Stanley is one of the Leading Underwriters to the Gaming Industry

- Morgan Stanley is one of the leading underwriters of debt and equity securities to the gaming industry
- As such, Morgan Stanley has relationships and access to the key decision makers in the industry

<p>\$400,000,000</p> <p>MGM MIRAGE</p> <p>8.80% Senior Notes Due 2009</p> <p>September 9, 2004</p>	<p>\$380,000,000</p> <p>Argosy</p> <p>7% Senior Subordinated Notes Due 2014</p> <p>February 5, 2004</p>	<p>\$600,000,000</p> <p>MGM MIRAGE</p> <p>8.60% Senior Notes Due 2008</p> <p>September 12, 2007</p>	<p>\$100,000,000</p> <p>CRAFT HOTELS AND CASINOS, INC.</p> <p>8.50% 2007 Subordinated Notes Due 2009 Add-on to Original March 1998 Deal</p> <p>March 11, 2002</p>	<p>\$200,000,000</p> <p>Argosy</p> <p>9% Senior Subordinated Notes Due 2011</p> <p>July 26, 2007</p>	<p>\$160,000,000</p> <p>Argosy</p> <p>10.75% Senior Subordinated Notes Due 2009 Add-on to Original June 1998 Deal</p> <p>February 5, 2007</p>	<p>\$40,000,000</p> <p>CRAFT HOTELS AND CASINOS, INC.</p> <p>8.50% Senior Subordinated Notes Due 2008 Add-on to Original March 1998 Deal</p> <p>January 23, 2007</p>
<p>\$300,000,000</p> <p>MGM MIRAGE</p> <p>8.50% Senior Notes Due 2010</p> <p>September 12, 2005</p>	<p>\$700,000,000</p> <p>MGM GRAND</p> <p>8.75% Senior Subordinated Notes Due 2007</p> <p>May 27, 2000</p>	<p>\$20,000,000</p> <p>See notes for interest in TASCOPY</p> <p>Morgan Stanley acted as placement agent for Harrah's</p> <p>January 21, 2000</p>	<p>\$130,000,000</p> <p>See notes for interest in Pinnacle Subordinated, Inc.</p> <p>10.25% Senior Subordinated Notes Due 2005</p> <p>December 21, 1999</p>	<p>\$210,000,000</p> <p>Argosy</p> <p>See notes for interest in 12.25% Subordinated Notes Due 2009</p> <p>June 7, 1999</p>	<p>\$200,000,000</p> <p>Argosy</p> <p>12.75% Senior Subordinated Notes Due 2009</p> <p>June 8, 1999</p>	<p>\$170,000,000</p> <p>CRAFT HOTELS AND CASINOS, INC.</p> <p>8.50% Senior Subordinated Notes Due 2009</p> <p>March 14, 1999</p>
<p>\$180,000,000</p> <p>CRAFT HOTELS AND CASINOS, INC.</p> <p>See notes for interest in 12.00% Subordinated Notes Due 2009 gross: \$175.8</p> <p>12.50% Subordinated Notes Due 2009 gross: \$172.5</p> <p>March 14, 1999</p>	<p>\$140,000,000</p> <p>See notes for interest in Showboy Martin's Casino Partnership</p> <p>12.50% Subordinated Notes Due 2010 gross: \$132.5</p> <p>March 12, 1999</p>	<p>\$150,000,000</p> <p>See notes for interest in 8.25% Senior Subordinated Notes Due 2007</p> <p>February 12, 1999</p>	<p>\$11,877,340</p> <p>Subordinated (Western) Payment Bonds</p> <p>See notes for interest in Series A and Series B Special Revenue Bonds</p> <p>January 21, 1999</p>	<p>\$300,000,000</p> <p>See notes for interest in 7.50% Senior Notes Due 2008</p> <p>January 12, 1999</p>	<p>\$700,000,000</p> <p>See notes for interest in 7.75% Senior Subordinated Notes Due 2008</p> <p>December 4, 1998</p>	<p>\$180,000,000</p> <p>See notes for interest in 8.25% Special Revenue Bonds Due 2012</p> <p>November 21, 1998</p>
<p>\$100,000,000</p> <p>See notes for interest in 8.50% Senior Subordinated Notes Due 2009 gross: \$122.5</p> <p>8.25% Subordinated Notes Due 2009 gross: \$115.0</p> <p>June 16, 1998</p>	<p>\$100,000,000</p> <p>Common Stock</p> <p>Price: \$0.30 Per Share</p> <p>October 14, 1997</p>	<p>\$200,000,000</p> <p>See notes for interest in 8.50% Special Revenue Bonds Due 2012</p> <p>September 15, 1997</p>	<p>\$207,400,000</p> <p>See notes for interest in Subordinated Special Revenue Bonds</p> <p>September 16, 1997</p>	<p>\$100,000,000</p> <p>See notes for interest in 8.75% Debentures Due 2008</p> <p>November 25, 1996</p>	<p>\$100,000,000</p> <p>See notes for interest in 7% Debentures Due 2020</p> <p>November 21, 1996</p>	<p>\$100,000,000</p> <p>See notes for interest in 7% Convertible Preferred Stock</p> <p>March 25, 1996</p>

Overview of CIBC World Markets

Selected Gaming Transactions

**Buena Vista
Me-Wuk Tribe**

\$300 Million
Senior Notes
Sole Book-Runner
Pending

RIVER CREEK

\$145 Million
Private Placement
Sole Placement Agent
In Documentation
Expected Close January 2005

**New York Native
American Tribe**

\$40 Million
Private Placement
Sole Placement Agent
Pending

**City of
Capri Casinos, Inc.**

\$650 Million
Senior Credit Facility
Lead Arranger
Pending

Development LLC

Tribal Casino Joint Venture
Development
Exclusive Advisor
Ongoing

Guidville
Band of
Pomo
Indians **Harrah's**

ELDOREGO

\$190 Million
Sale to Eldorado Resorts
Exclusive Advisor to
Bondholders
Pending

Mountain High Casino

\$117 Million
Mountain High Casino
Advised on Sale to Ameristar
Exclusive Advisor to
Bondholders
Pending

ACCOR CASINOS

Jointly Held by
Accor Colony Capital

Undisclosed
Advised on merger with
SHCD and SHCLB
Exclusive Advisor

SEATTLE

\$200 Million
Senior Notes
Sole Bookrunner
November 2003

MGM MIRAGE

\$550 Million
Senior Notes
Co-Manager
August 2004

Borgata

\$700 Million
Senior Credit Facility
Lead Arranger
Pending

kerzner


\$500 Million
Senior Credit Facility
Co-Agent
July 2004

Overview of CIBC World Markets

Selected Gaming Transactions

BOYD GAMING

\$1.3 Billion
Boyd Gaming
Advised on acquisition of
Coast Casinos
Advisor
July 2004



BOYD GAMING

\$1.5 Billion
Senior Credit Facility
Co-Lead Arranger
July 2004

CENTURY GAMING


\$91 Million
Senior Credit Facility
\$34 Million
Mezzanine Debt
Sole Placement Agent
June 2004

AZTAR

\$300 Million
Senior Subordinated Notes
Co-Manager
May 2004


BOYD GAMING

\$190 Million
Boyd Gaming
Advised on acquisition of
Harrah's Shreveport property
Exclusive Advisor
May 2004



GTECH CORPORATION

Undisclosed
Advised on Sale of 50%
Interest in GED to Harrington
Raceway, Inc.
Exclusive Advisor
April 2004



BOYD GAMING

\$350 Million
Senior Subordinated Notes
Joint Book-Runner
April 2004


kerzner

\$230 Million
Convertible Senior
Subordinated Notes
Co-Manager
April 2004

Capri Casinos

\$500 Million
Senior Subordinated Notes
Joint Book-Runner
March 2004

\$130 Million
Sierra Design Group
Advised on sale to Alliance
Gaming Corp.
Exclusive Advisor
March 2004



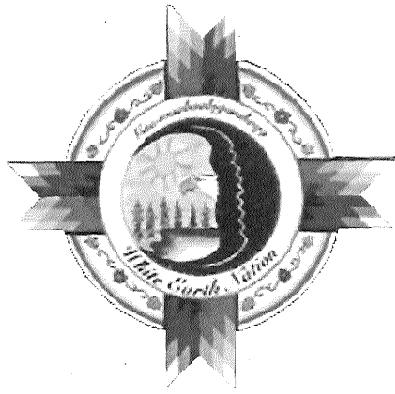
Capri Casinos

Isle of Capri Black Hawk, LLC

\$205 Million
Senior Credit Facility
Lead Arranger
February 2004

MGM MIRAGE

\$2.5 Billion
Senior Credit Facility
Co-Agent
November 2003



Minnesota Gaming Fairness Act

Economic implications

Anton, Lubov & Associates, Inc.

Impact on competition

- Casinos near the Twin Cities
 - Initial drop in revenues
 - Splits *growth* in casino gambling differently than if there were no new casino
- Outstate casinos
 - Negligible impact

Construction impact

- Construction spending of \$281.2 million produces
 - Total economic activity of \$624.5 million
 - 4,900 jobs (one-year FTE's)
 - State income and sales taxes of \$10.7 million

Annual operations^a

# of employees	3,000
Payroll, state taxes, & benefits	\$109.1 million
State sales and income taxes	\$10.8 million

^aExcludes any multiplier effects

The tribes will spend the money well

- Schools
- Housing
- Health care
- Basic infrastructure
- Economic development
- Community needs

Growth of gaming

- Gaming continues to grow in Minnesota
- This bill is about how the growing gaming revenues will be distributed
- Gaming will eventually reach saturation with or without another casino

Greatest economic impact

- Tribal infrastructure spending
 - Improve life for tribal members
 - Strengthen the state's workforce
 - Enable more tribal members to become productive participants in the state's economy

Differs from other casino projects

- All profits to public entities (State of Minnesota and Tribal Councils) to be used for public purposes
- Profits will be spent in Minnesota
- Benefits state's lowest-income tribes

The MGFA...

- Allows the state a share of gaming revenue;
- Keeps big-time, private, for-profit casino operators out of Minnesota;
- Preserves the exclusivity of Native American casino gaming in Minnesota;
- Distributes the proceeds of Native American gaming more equitably within the Native American community; and
- Assists large numbers of Native Americans to help themselves to a better life;

Sources and Uses of Funds

The Gaming Fairness Act 2005

Prepared by Valerie Red-Horse

Budget Overview of Proposed Project

Sources & Uses

Sources and Uses of Funds

Sources (\$MM)		Uses (\$MM)	
		Gaming License	\$200.0
		Temp. Structure	17.0
Senior Notes	\$542.7	Building Casino	169.2
FF&E Financing	20.6	Building Hotel	50.0
Land Mortgage Loan	12.0	Land	12.0
		FF&E	20.6
		Marketing/Pre-opening	20.0
		Contingency	10.0
		Initial Cage Cash	5.0
		Pre-Funded Interest	54.3 (12 Months)
		Cost of Issuance	17.3
Total Sources	\$575.3	Total Uses	\$575.3

NOTE: Based on Preliminary estimates subject to change as individual line items are tightened.

The Gaming Fairness Act 2005 5 Year Pro Forma Projections

		Year 1	Year 2	Year 3	Year 4	Year 5
REVENUES:						
Non-Lottery Gaming Revenue (Tables/Poker)		71,261,248	83,522,756	86,028,438	88,609,292	91,267,570
Lottery Gaming Revenue (Slots/Bingo)		386,141,241	454,283,813	467,912,327	481,949,697	496,408,189
Gross Gaming Revenues		457,402,489	537,806,569	553,940,765	570,558,989	587,675,759
Non-Gaming Revenue (Hotel/Retail/Food/Ent.)		53,631,395	60,810,354	62,506,401	64,196,421	65,899,913
Total Gross Revenue		511,033,884	598,616,923	616,447,166	634,755,410	653,575,672
Less Promotional Allowances (6%)						
Non-Lottery Gaming	0.059	4,183,035	4,902,786	5,049,869	5,201,365	5,357,406
Lottery Gaming	0.059	22,666,491	26,666,460	27,466,454	28,290,447	29,139,161
Adjusted Non-Lottery Gaming Revenue		67,078,213	78,619,970	80,978,569	83,407,927	85,910,164
Adjusted Lottery Gaming Revenue		363,474,750	427,617,353	440,445,873	453,659,250	467,269,028
Non-Gaming Revenue		53,631,395	60,810,354	62,506,401	64,196,421	65,899,913
Total Adjusted Revenue		484,184,358	567,047,677	583,930,843	601,263,597	619,079,105
Payments to State						
10.0% Adjusted Lottery Revenue to Lottery for major operations	0.10	(36,347,475)	(42,761,735)	(44,044,587)	(45,365,925)	(46,726,903)
26.0% Adjusted Lottery Revenue gaming transaction fee	0.26	(94,503,435)	(111,180,512)	(114,515,927)	(117,951,405)	(121,489,947)
14.0% Adjusted Non-Lottery Revenue gaming transaction fee	0.14	(9,390,950)	(11,006,796)	(11,337,000)	(11,677,110)	(12,027,423)
Total Payments to State		(140,241,860)	(164,949,043)	(169,897,514)	(174,994,440)	(180,244,273)
% of Total Gaming Revenue		30.7%	30.7%	30.7%	30.7%	30.7%
Balance Remaining within Tribal Entity		343,942,498	402,098,634	414,033,329	426,269,158	438,834,832
Departmental Operational Expenses (Itemization attached)		152,085,610	167,259,249	171,197,682	175,590,948	180,083,013
Balance (Net after Operations)		191,856,888	234,839,385	242,835,647	250,678,210	258,751,819

Depreciation (Assume 7 yrs for Fixtures, 40yrs for Building)	(8,847,857)	(8,847,857)	(8,847,857)	(8,847,857)	(8,847,857)
Host City Tax Estimate	(9,906,100)	(9,906,100)	(9,906,100)	(9,906,100)	(9,906,100)
Problem Gambling Estimate	(2,500,000)	(2,500,000)	(2,500,000)	(2,500,000)	(2,500,000)
Interest Expense - Senior Notes (Assume 10%)*	(54,270,000)	(54,270,000)	(54,270,000)	(54,270,000)	(54,270,000)
Debt Expense FF&E (Assume 5.85%, 4yrs)**	(5,750,000)	(5,750,000)	(5,750,000)		
Debt Expense Land Mortgage (Assume 6%, 30yrs)	(870,000)	(870,000)	(870,000)	(870,000)	(870,000)
Total Interest Expense	(60,890,000)	(60,890,000)	(60,890,000)	(55,140,000)	(55,140,000)

Total Amount for Operating Expense, Depreciation, Interest, Debt Service and Taxes	(234,229,567)	(249,403,206)	(253,341,639)	(251,984,905)	(256,476,970)
As a percentage of Gross Revenue	46%	42%	41%	40%	39%

Cash Available for Tribal Distributions	109,712,931	152,695,428	160,691,690	174,284,253	182,357,862
% of Total Gaming Revenue	24%	28%	29%	31%	31%

*Will refinance senior notes earlier than five yrs, but refi will include full amort

**Pro Forma does not reflect approx. 18 mos. of temp structure operations,
therefore payoff of FFE loan will occur in year 3 of perm. operations

Gaming Assumptions

365 Days					
Slots: Number of Devices: 4,000	Win per Unit per Day:	261	307	316	325
Tables: Number: 125	Positions: 875	Win per table per day:	1,472	1,732	1,784
			1,837		1,892

Projections based on location within 15 miles of downtown Minneapolis

Revenue and Operations Projections Prepared by The Innovation Group
Payment and Debt Service Schedules prepared by Valerie Red-Horse, Sr. Managing Director,
Tribal Finance, Western International Securities

Twin Cities Casino Project

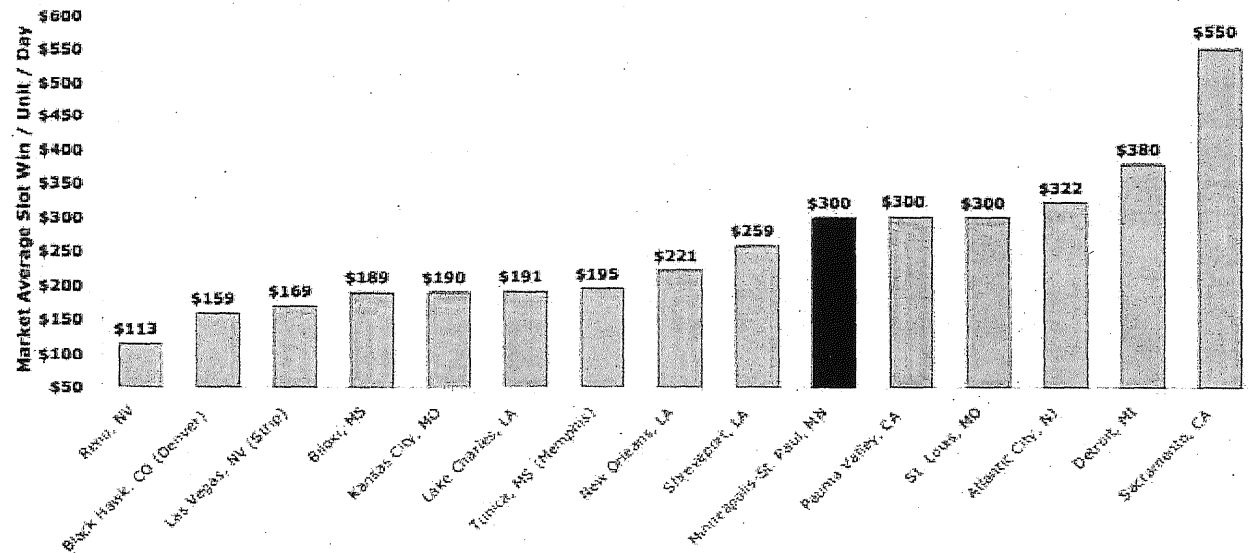
Preliminary Thoughts on the Twin Cities Casino Project

- > We have had preliminary discussions with Valerie Red-Horse regarding the casino facility proposed by the Leech Lake Band of Ojibwe, the Red Lake Nation and the White Earth Nation (collectively the "Tribes") in the Twin Cities metropolitan area (the "Casino Project")
- > Our understanding of the proposed Casino Project includes:
 - Approximately 4,000 slot machines, as well as a number of various table games
 - To be located within the greater Twin Cities metropolitan area
 - Preliminary estimates for development and construction costs are approximately \$300 million
- > Additionally, we understand that the Governor of the State of Minnesota has entered into a partnership agreement with the Tribes which includes an initial one-time license fee of \$200 million and a revenue share with the State of Minnesota of approximately 33.1%
- > Given the estimated development and construction costs and the one-time license fee, we understand that the Tribes would require approximately \$550 to \$600 in financing
- > Based on our initial review of the Casino Project we believe that the Tribes would be able to successfully execute a debt financing to raise the necessary funds **with no equity contribution**
- > We would welcome the opportunity to assist the Tribes as they continue their discussions regarding the Casino Project
- > CIBC is well positioned to assist the Tribes with a financing of this size

Transaction Rationale

- > Strong underlying demographics
 - Minneapolis / St. Paul area is the 15th largest metropolitan area in the U.S.
 - Approximately 3.0 million people in 13 counties located in both Minnesota and Wisconsin
 - Minnesota is a proven successful gaming state
- > Limited competition
 - Mystic Lake and Canterbury Park provide the only viable competition
 - Could potentially lead to a positive "clustering effect"
- > Impressive, credible financial projections
 - The projections provided by The Innovation Group compare favorably to other established gaming markets, and we believe these are reasonable given the strong demographics

Market Comparison - Win/Unit/Day



The Twin Cities Casino Project will benefit from a comparison to successful Native American casinos with close proximity to metropolitan areas

Successful Native American Casinos

(\$ in millions, except per unit statistics)

Property	Market	Number of Units (1)	Estimated EBITDA	Estimated Win Per Unit
The Barona Casino	Greater San Diego	2,000	\$300 - \$350 million	\$400
Cache Creek	Sacramento	1,600	\$250 - \$300 million	\$550
Thunder Valley	Sacramento	2,000	\$300 - \$350 million	\$600
Harrah's Rincon	Greater San Diego	1,600	\$250 - \$300 million	\$300
Pala Casino	Greater San Diego	2,000	\$250 - \$300 million	\$300
Pechanga Entertainment	Greater San Diego	2,000	\$350 - \$400 million	\$350 - \$400
Morongo Casino	Greater Los Angeles	2,000	\$200 - \$300 million	\$300+
Foxwoods Casino	Connecticut	7,386	\$500 - \$550 million	\$325
Mohegan Sun	Connecticut	6,235	\$500 - \$550 million	\$366
Seminole	Miami / Ft. Lauderdale	6,000	\$300 - \$400 million	\$325

Twin Cities Casino	4,000	\$327 million	\$260
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Source: CIBC estimates

(1) Per The Innovation Group report and regulatory agencies

> Projections for the Twin Cities Casino are in-line with strong performing Native American casinos.

CIBC World Markets

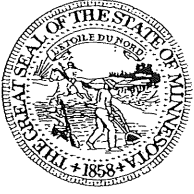
Team Members

David Berman **Managing Director**

Mr. Berman is group head of the Gaming, Lodging and Leisure Investment Banking practice. Mr. Berman has over sixteen years of experience in investment banking, including over eleven years with CIBC World Markets. Mr. Berman has accumulated significant experience in mergers and acquisitions advisory, leveraged finance and equity and equity-linked products. Mr. Berman has assisted clients in raising over \$30 billion of capital and has advised on strategic transactions representing an excess of \$10 billion in transaction value. Previously, he was associated with Bateman Eichler, Hill Richards, Inc. and Drexel Burnham Lambert Incorporated. Mr. Berman earned a B.S. in Finance from the University of Southern California and an M.B.A. from the Harvard Business School.

Dean Decker **Managing Director**

Mr. Decker manages the west coast leveraged finance business for CIBC World Markets and is a member of CIBC World Markets' Gaming, Lodging and Leisure group. He heads the firm's debt financing efforts to the sector and has over eleven years of gaming and lodging experience, including working with Native American tribes. Mr. Decker has extensive experience in corporate and investment banking, including acquisition, structured, and real estate finance, financial advisory and debt underwriting and distribution. At CIBC, Mr. Decker works actively with numerous strategic companies and private equity firms to originate, structure and distribute high yield issues, bank financings and private placements. He has broad transaction experience in numerous industries including: gaming, lodging, consumer products, and aerospace and defense. Prior to joining CIBC in 1993, he worked at City National Bank. Mr. Decker received his B.S. in Economics from the Wharton School at the University of Pennsylvania.



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

MIKE HATCH
ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155-1002
TELEPHONE: (651) 296-6196

March 30, 2005

Senator Jim Vickerman
Chair, Senate Agriculture Veterans and Gaming Committee
226 State Capitol Building
75 Rev. Dr. Martin Luther King Jr., Blvd.
St. Paul, MN 55155

Dear Senator Vickerman:

Thank you for your letter dated March 18, 2005, a copy of which is attached as Exhibit 1, requesting an opinion of the Attorney General regarding the constitutionality of a bill pending before your committee. Specifically, you ask whether House File 1817, a bill relating to gambling and the operation of a State/tribal casino, is consistent with Minnesota's constitution.

A summary of the bill, a discussion of the constitutional issues and our conclusion are set forth below.

SUMMARY OF BILL.

A summary of House File 1817 prepared by the research division of the Minnesota House of Representatives is attached as Exhibit 2. To briefly summarize, Article 1 of the bill identifies the purpose of the Act. Article 2 authorizes the State to enter into a contract for the operation of a metropolitan area casino with a tribal entity comprised of tribal governments that have demonstrated financial need ("Tribal Entity"). The Tribal Entity will bear all facility-related costs and manage the day-to-day operations of the casino. The State will own and maintain "overall control" over the gaming machines and other lottery games but may delegate day-to-day management of the games to the Tribal Entity.

The contract between the State and the Tribal Entity will allow the Tribal Entity to receive 64% of adjusted gross revenue from gaming machines and other lottery games.

Article 3 establishes a system whereby the Commissioner of Public Safety will regulate the gaming facility. The Tribal Entity must secure a gaming facility license, contingent upon payment of a one-time \$200,000,000 licensing fee. The Tribal Entity, or another entity retained by the Tribal Entity to manage the facility, will be required to obtain a gaming management license and renew this license every two years. Employees and vendors at the facility are also subject to licensure.



Article 3 also authorizes the Tribal Entity to operate nonlottery casino games at the facility.

Article 4 requires that 26 percent of adjusted gross revenue from gaming machines and other lottery games be paid to the Commissioner of Revenue. A "gaming transaction fee" of 14 percent of nonlottery casino games' adjusted gross revenue is also required to be paid to the Commissioner. This money is to be deposited into a "gaming facility proceeds fund". Ten percent of the monies in the gaming facility proceeds fund are appropriated to a "community assets account" and 90 percent are to be transferred to the general fund.

Article 5 makes various changes to existing laws to make them consistent with the provisions of Articles 1 to 4.

CONSTITUTIONAL ISSUES.

I. Minnesota Constitution, Article XIII, Section 5.

Article XIII, section 5 of the Minnesota Constitution states:

The legislature shall not authorize any lottery or the sale of lottery tickets, other than authorizing a lottery and sale of lottery tickets for a lottery operated by the state.

In analyzing House File 1817, it must be determined whether the proposal set forth in the bill authorizes a lottery and, if it does, whether the lottery proposed is one permitted by the above language.

A. Whether House File 1817 authorizes a "lottery".

House File 1817 authorizes the operating of "gaming machines" and "other lottery games" at the casino to be operated by the Tribal Entity. Article 2, section 3 of the bill defines a "gaming machine" as:

Any machine, system, or device which, upon payment of consideration in order to play a game, may award or entitle a player to a prize by reason of skill of the player or application of the element of chance, or both.

Article 2, section 7 of the bill defines "other lottery game" to mean:

Any game operated by the lottery at the gaming facility other than a gaming machine, where money or property are distributed to persons selected primarily by chance from among participants who have paid for a chance of being selected and any other game or activity determined to constitute a lottery within the meaning of the Minnesota Constitution, article XIII, section 5 ...

In the press release announcing the proposed State/tribal casino, the Governor indicated that the proposed casino would have slot machines and offer additional table games such as craps and roulette. Ex. 2.¹ Slot machines appear to constitute “gaming machines” under House File 1817, and craps and roulette appear to constitute either “gaming machines” or “other lottery games”.

Until it was amended in 1988 to permit a state-run lottery, the Minnesota Constitution stated:

The legislature shall never authorize any lottery or the sale of lottery tickets.

Minn. Const. of 1859, art. IV, § 31.

Minnesota courts have consistently applied an expansive interpretation to the term “lottery.” As early as 1892, the Minnesota Supreme Court stated that “lottery” had no technical meaning but must be construed in the popular sense and with a view to remedy the mischief intended to be prevented. *State v. Moren*, 48 Minn. 555, 559, 51 N.W. 618 (1892). The court went on to declare a lottery to be a scheme for the distribution of property by chance among persons who have paid or agreed to pay a valuable consideration for the chance -- whether called a lottery, raffle or some other name. *Id.* In 1937, the court pronounced that public policy was against every scheme that includes the three essential features of a lottery -- prize, consideration, and chance. *State v. Stern*, 201 Minn. 139, 143, 275 N.W. 616 (1937). Justice Olson, in the dissenting opinion, stated that the courts generally construe prohibitions relating to lotteries liberally “so as to include all schemes which appeal to the gambling propensities of men.” *Id.* In a recent appellate holding, the Minnesota Court of Appeals followed longstanding precedent when it found that a lottery exists if (i) a prize is offered, (ii) chance determines who is awarded the prize and (iii) participants pay consideration for the chance to win the prize. *See Minnesota Souvenir Milkcaps, LLC v. State*, 687 N.W.2d 400 (Minn. Ct. App. 2004).

While the Minnesota Supreme Court has not been presented with the specific issue of whether slot machines are lotteries, a 1946 Minnesota Attorney General’s opinion addresses this precise issue. In applying the three essential elements of a lottery set down in *Stern*, Attorney General J.A.A. Burnquist opined that the legislature did not have the authority to pass a bill licensing slot machines, since slot machines are lotteries. Atty. Gen. Op. 733-D, December 23, 1946 (copy attached as Exhibit 3).

¹ “Craps” is a casino game played with a pair of six-sided dice where the objective is to bet whether a shooter throwing a pair of dice will be able to roll a winning combination. *See* Stanford Wong & Susan Spector, *The Complete Idiot’s Guide to Gambling Like a Pro*, (3d ed., Alpha, a Member of Penguin Group (USA) Inc. 2003). “Roulette” is played with a roulette wheel containing the numbers 1-36, the objective of which is to select the number which appears after the wheel is spun. *Id.*

Other state courts have consistently found slot machines to be lotteries. *See e.g., In re Advisory Opinion to the Governor*, 856 A.2d 320 (R.I. 2004); *State v. Nelson*, 210 Kan. 439, 502 P.2d 841, 847 (1972); *Idaho v. Village of Garden City*, 74 Idaho 513, 265 P.2d, 328, 332 (Idaho 1953); *State ex rel. Evans v. Brotherhood of Friends*, 41 Wash.2d 133, 247 P.2d 787, 796 (Wash. 1952); *Montana v. Marck*, 124 Mont. 178, 220, P.2d 1017, 1018 (Mont. 1950); *Thompson v. Ledbetter*, 74 Ga. App. 427, 39 S.E.2d 720, 721 (Ga. 1946). Similarly, other state courts have found craps and roulette wheels to also constitute lotteries. *See In re Advisory Opinion to the Governor*, 856 A.2d 320 (R.I. 2004); *Dalton v. Pataki*, 11 A.D.3d 62, 780 N.Y.S.2d 47 (2004). As stated by the Rhode Island Supreme Court:

...[S]ome of the casino games authorized by the Casino Act, including roulette, craps and slot machines specifically, "amount to nothing more than chance". ... It cannot seriously be disputed that all of these games fall squarely within the definition of a lottery. Skill and judgment play no part in roulette, craps and slot machines -- their outcome depends exclusively on chance.

In re Advisory Opinion at 328.

It is indisputable that roulette, craps, and slot machines are based on the payment of consideration for the chance to win money or a prize. As a result, it is a virtual certainty that a Minnesota court would conclude that the games authorized by House File 1817 -- slot machines, roulette and craps -- are lotteries.

B. Assuming that the proposed games are lotteries, are they lotteries permitted by Article XIII, Section 5.

As noted above, the 1988 amendment to the Minnesota Constitution permitted the legislature to "authorize[e] a lottery and sale of lottery tickets for a lottery operated by the state." Assuming that slot machines, craps and roulette constitute lotteries, the next issue is whether they constitute lotteries authorized by the constitution.

With respect to interpreting constitutional provisions, the Minnesota Supreme Court has stated:

The rules governing the courts in construing articles of the State Constitution are well settled. The primary purpose of the courts is to ascertain and give effect to the intention of the Legislature and people in adopting the article in question. If the language used is unambiguous, it must be taken as it reads, and in that case there is no room for construction. The entire article is to be construed as a whole, and receive a practical, common sense construction. It should be construed in the

light of the social, economic, and political situation of the people at the time of its adoption, as well as subsequent changes in such conditions.

Rice v. Connolly, 488 N.W.2d 241, 247 (1992), citing *State ex rel. Chase v. Babcock*, 175 Minn. 103, 107, 220 N.W. 408, 410 (1928).

1. The language of the amendment appears to limit the legislature's power to authorizing only a ticket-generating lottery.

The constitutional amendment permits the legislature to "authoriz[e] a lottery and the sale of lottery tickets for a lottery operated by the state." If the word "and" in this authorization is used conjunctively, then a permissible lottery is one which includes the sale of lottery tickets. If the word "and" is used disjunctively, then the legislature is permitted to authorize either a lottery or the sale of lottery tickets for a lottery operated by the state.

It is a cardinal principle of construction that words used in statutes and constitutional provisions are ordinarily to be construed according to rules of grammar and their common and approved usage. See, e.g., Minn. Stat. § 645.08 (1); *Rice v. Connolly*, 488 N.W.2d 241 (Minn. 1992). Consistent with this principle, absent plain indications of contrary intent, the word "and" should be construed conjunctively, with the objects of the conjunction considered jointly, whereas the word "or" should normally be considered disjunctive, with each object taken separately. See, e.g., *State v. Kelly*, 218 Minn. 247, 15 N.W.2d 554 (1944); *Chisholm v. Davis*, 207 Minn. 614, 292 N.W. 268 (1940), 73 *Am. Jur.* 2d Statutes § 156.

Courts will, in certain circumstances, apply "and" in a disjunctive fashion when such construction is plainly necessary to accomplish legislative intent. See, e.g., *Maytag Co. v. Commissioner of Taxation*, 218 Minn. 460, 17 N.W.2d 37 (1944); *County of Benton v. Kismet Investors, Inc.*, 653 N.W.2d 193 (Minn. Ct. App. 2002). With respect to Article XIII, section 5, however, no such artificial construction is necessary or appropriate. The section, as amended, employs both the disjunctive and conjunctive in the same sentence. The prohibition is phrased in the disjunctive, while the exception is stated conjunctively. Given their proximity to one another, it must be presumed that each term was used in accordance with its ordinary meaning.

Further, if the word "and" were construed disjunctively, its objects would each be taken separately and independently. Under this interpretation, the constitutional amendment would authorize two separate things: (i) a lottery, or (ii) the sale of lottery tickets for a lottery operated by the state. Strikingly, if the two phrases were treated independently, lottery tickets could be sold only for a lottery operated by the state but all lotteries -- state-operated or non-state-operated -- would be permitted. This construction would also result in the absurdity of the constitutional amendment stating, in essence, that the legislature may not authorize a lottery ... except a lottery.

2. Legislative history demonstrates the legislature's intent to limit the scope of the amendment to ticket-generating lotteries.

In determining legislative intent, courts consider contemporaneous legislative history, including tapes of legislative hearings and proceedings; committee reports; conference reports and journal entries; and statements of the legislation sponsors. *Handle with Care, Inc. v. Department of Human Services*, 406 N.W.2d 518, 522 (Minn. 1987); *Stearns-Hotzfield v. Farmers Ins. Exchange*, 360 N.W.2d 384, 389 (Minn. Ct. App. 1985).

The legislative history of the bills² that would have allowed voters to decide whether to amend Minnesota's constitution to allow a lottery is instructive. Not surprisingly, there was considerable debate about the bills in committees, on the legislative floors and in conference committees. Testimony shedding light on what the legislature thought a lottery permitted by the constitutional amendment would be is helpful. In that regard, in a floor debate in the Minnesota Senate, Senator Frederickson stated:

This morning Senator Purfeerst and Senator Pehler and I were on a radio show on the subject and I think it was Senator Purfeerst or Senator Pehler, I forget which one now, who was talking about one of the great wonders of the lottery is going to be that little Mom and Pop grocery stores and dairy stores, and candy stores all over the State of Minnesota, are going to be selling lottery tickets. Isn't that great, isn't it terrific. ... but you can't tell me for a minute that by making the lottery available and gambling available in every corner grocery store in the State of Minnesota and having the state promote it, you're not going to lead more people into gambling....

Minnesota Senate, Floor Debate on S.F. 2, April 7, 1988.

Extensive discussion regarding the intent of Senate File 2 continued on the Senate floor. In responding to the need for lottery, the author of the bill, Senator Bob Lessard, stated:

...I think the people of this state want the opportunity, they want the right, they want the legislature to give them this opportunity to vote on whether or not the constitution should be amended... Beyond that, on a practical reality, and I guess I would have to say this, it is probably to prevent approximately \$140 to

² Senate File 2 and House File 4 were companion bills which proposed a constitutional amendment to permit a state-operated casino. Senate File 2000 and House File 2182 were also companion bills which proposed a constitutional amendment to authorize an environmental and natural resources trust fund. During the course of the session, House File 2182 was amended to include, among other things, the proposed constitutional amendment to permit a state-operated lottery. House File 2182 was ultimately enacted into law.

\$150 million from leaving this state. Cause that's what's going to happen when we are surrounded. ...

Id.

In response, Senator Bill Belanger stated:

...I would argue against the idea that we're going to have a mass, a mass exodus from the State of Minnesota to run across the state border and buy lottery tickets.
...

Id.

Senator Bernhagen later asked the author of the bill what some of the largest winnings an individual might get with their "purchase of a ticket". In response, Senator Lessard stated:

Mr. President, it depends on the type of the game. You know, if you have instant games which are smaller or if you allow the prize to become much larger depending on whether the previous winner did not, that there was not a previous winner. ... My personal preference, and apparently this is not the case in other states, you should have more smaller winners. ...

Id.

Representative Tom Osthoff, the chief author of House File 4, described in a committee hearing the lottery that would be permitted by his bill:

Lottery is a game of chance. There are three main types of lottery games ... the instant ticket that all of you are familiar with that are called a rub-off. Passive, because the player buys a pre-numbered ticket, checks it later on to see if they won a prize. This is like a raffle ticket. There is what's called the instant game, where the player uncovers hidden numbers or symbols to see if the ticket is a winner. Then there is the lotto game where players choose their own combination of numbers and hope that those numbers are picked in a drawing later that day or later in the week.

Minnesota House of Representatives, General Legislation, Veterans' Affairs and Gambling Committee, Hearing on H.F. 4, March 10, 1988.

When later asked what he believed was most important -- raising money from a lottery or giving voters the right to decide whether they wanted a lottery, Representative Osthoff responded:

I clearly think it is unconscionable that we have municipal liquor stores, and I clearly have a hard time with the compulsive gambling aspects of horse racing and certainly don't subscribe or submit that I will ever support a bill for a Las Vegas casino in our state. ... And, clearly, I think the advantage is that, yes, this can bring dollars to the state's treasury.

Id.

Discussion on the House floor with regard to the expected lottery proceeds is also instructive. In that discussion, Representative Bill Schreiber stated:

...I think you can expect something more than \$70 million in revenue in the first year that the lottery would start but based upon the experience of other states there's a fairly dramatic drop off in the second year because people find that they don't win. People find that they feed more money into a lottery than they are getting back and the fun is gone. And at that point the advertising campaign kicks in on the part of the State and you see more television ads and more newspaper ads and more radio ads encouraging state residents to buy a lottery ticket and people are persuaded to some degree by those advertisements and lottery sale go up. I think what you might expect in Minnesota is about \$200 million a year in lottery ticket sales. ...

Minnesota House of Representatives, Floor Debate on H.F. 2182, April 6, 1988.

Representative Schreiber later stated his concerns about a lottery:

...We appropriate more for the environment, on an annual basis, than what you're going to see out of this lottery tax and for the buyers of the lottery tickets, more false hope. In 1990, if this is adopted by the voters, it's more likely that people are going to be struck by lightning than to win a million dollars on this lottery. It's more likely to be hit in the head with a golf ball on a golf course than you will to win a million dollars out of this lottery.

Id.

Nowhere in the extensive legislative testimony on the lottery bills debated in the 1987-1988 legislative session is there any discussion of slot machines, craps or roulette wheels being authorized as a result of the constitutional amendment. In fact, the only type of lotteries that were discussed were those involving a ticket -- instant games and lotto-type lotteries.

3. **Evidence of the understanding of the voters in adopting the 1988 constitutional amendment illustrates an understanding that only ticket-generating lotteries would be permitted.**

In ascertaining the meaning of the amendment to Article XIII, section 5, a court must also consider the understanding of the voters in adopting the amendment. In that regard, a court considers the statement of the attorney general required by Minnesota statutes, section 3.21,³ articles and editorials published in newspapers and periodicals and other literature in determining the understanding of the people in voting for the constitutional amendment. *See State ex rel. Hennepin County Bar Ass'n v. Amdahl*, 264 Minn. 350, 119 N.W.2d 169, 172 (1962).

In accordance with Minnesota Statutes, section 3.21, the attorney general furnished a statement of the purpose and effect of the proposed constitutional amendment to the Minnesota Secretary of State. That statement, a copy of which is attached as Exhibit 4, discusses the purpose and effect of the ballot question which was to read:

Shall the Minnesota Constitution be amended to permit the legislature to authorize a lottery operated by the state?

The purpose and effect of this ballot question, as stated by the attorney general, was "that the legislature would be authorized to enact a statute authorizing a lottery and sale of lottery tickets for a lottery operated by the state."

The statement of the attorney general is significant because the language of the amendment presented to the people did not reference the sale of lottery tickets at all. Yet, the effect of the amendment was described as permitting a lottery operated by the state *and* the sale of lottery tickets for the lottery. It is apparent that the attorney general believed the lottery which would be permitted by passage of the constitutional amendment necessarily involved the sale of tickets.

Numerous articles and other documents discussing a potential lottery were written during the period leading up to the vote on the constitutional amendment. For example, in 1986, the Citizens League published a report, "It's Only a Game, A Lottery in Minnesota," which was cited in the legislative debate on the lottery bills. The report discusses, among other things, then-current lottery operations in other states. In discussing these lottery operations, only two types of lotteries were ever identified: instant games and on-line lottery games such as lotto. *See* "It's Only a Game, A Lottery in Minnesota," Citizens League Report, February 11, 1986.

³ Pursuant to this section, the attorney general is required to furnish a statement of the purpose and effect of all proposed constitutional amendments. Minn. Stat. § 3.21 (2004).

Articles about the proposed constitutional amendment appearing in the *Minneapolis StarTribune* and the *St. Paul Pioneer Press* during the 1987-1988 legislative session also focused exclusively on the traditional lottery where a ticket is issued with winning numbers or other designations. In an article in the *St. Paul Pioneer Press*, Senator Bob Lessard and Representative Tom Osthoff, the chief authors of the lottery bills in the Senate and House of Representatives, respectively, were interviewed about various issues regarding the proposed lottery. The article states, in part:

Osthoff also rejects the argument that lotteries prey on the poor. He offers statistics indicating that the poor do not spend proportionately more on lottery tickets than higher-income groups.

He and Lessard warn that if the state rejects the lottery, many Minnesotans will simply buy lottery tickets in adjoining states and Canada.

Gary Dawson, "Osthoff a Lonely Voice in Campaign for Lottery," *St. Paul Pioneer Press*, August 21, 1988.

On December 27, 1987, the *Minneapolis StarTribune* released the results of a poll that showed that two-thirds of Minnesota's adults favored a state lottery. In response to this poll, Wayne Olhoff, a former legislator opposed to the lottery, was interviewed. The article states:

Nearly two of every five respondents who said they disapprove of gambling favor the proposed lottery -- suggesting that for some people, a state lottery and gambling are two different things.

That's been one of the difficulties lottery opponents have faced in making their case, Olhoff said. "When people think of gambling, they think of the Mob. A lottery seems so much more innocent."

He maintains that it isn't innocent at all. Despite the odds, he'll carry to the Legislature an argument that the convenience and the availability of state lottery tickets will increase the incidence of compulsive gambling in the state, while teaching Minnesota children that "you can get something for nothing."

Lori Sturdevant, "Two-thirds of Adults Favor State-run Lottery," *Minneapolis StarTribune*, December 27, 1987.

The *StarTribune* also reported on former Governor Al Quie's opposition to a lottery. In describing why the former governor joined the list of lottery foes, the paper reported:

It was during a 1984 visit to Ethiopia that Al Quie made up his mind.

In a squalid section of Addis Ababa, where corrugated metal sheets passed for housing, people were forming a long line. Quie, Minnesota governor from 1978 to 1982, at first thought it was a feeding station for the poor.

Then he realized he was wrong. "They were queuing up for their lottery tickets there. Just seeing that offended me. I decided then, if it ever came to Minnesota, I would oppose it.

Robert Whereatt, "Quie Joins Lottery Foes/Forces Seeking to Build Alliances," *Minneapolis StarTribune*, May 4, 1988.

In a later *StarTribune* article, S. John Williams, a Minnesota House Researcher whose expertise included gambling legislation, was asked what kind of games Minnesota could expect from the lottery. Mr. Williams said that the first game would probably be an instant game. He defined an instant game as a ticket game -- scratch-off type tickets. When asked what other lottery games Minnesotans could expect, Mr. Williams said that there would probably be on-line games similar to lotto and numbers.⁴ See Robert Whereatt, "Expert Answers Question About Proposed Lottery," *Minneapolis StarTribune*, April 8, 1988.

It is apparent from the above that the legislature and the public thought that the approval of the constitutional amendment would allow for traditional ticket-generating lotteries. The authors of the bills which authorized the ballot question clearly considered a lottery to include only the sale of lottery tickets and the Lotto. Indeed, as noted above, one of the chief authors even indicated that he could not support any type of a "Las Vegas casino". Similarly, newspaper articles published at this time reflected the common understanding that the amendment being voted upon would simply permit scratch-off tickets and Lottos.

While the Minnesota Supreme Court has not had occasion to interpret the language which permits the legislature to authorize "a lottery and sale of lottery tickets for a lottery operated by the state", virtually identical language was interpreted in New York. In *Dalton v. Pataki*, 11 A.D.3d 62, 780 N.Y.S.2d 47 (2004), the language of the New York constitution, Article I, Section 9(1) was interpreted. That section states, in part:

⁴ Describing the difference between lotto and numbers, Mr. Williams indicated that numbers has a fixed payoff in most states while the payoff in lotto depends on the size of the jackpot. Robert Whereatt, "Expert Answers Questions About Proposed Lottery," *Minneapolis StarTribune*, April 8, 1988.

[E]xcept as hereinafter provided, no lottery or the sale of lottery tickets, pool-selling, bookmaking or any other type of gambling, *except lotteries operated by the state and the sale of lottery tickets in connection therewith* as may be authorized and prescribed by the [L]egislature, the net proceeds which shall be applied exclusively to or in aid of support of education in this state as a [L]egislature may prescribe ...

Id. at 78, 61 (emphasis added).

The question before the court was whether video lottery terminals (“VLTs”)⁵ constituted lotteries permitted under New York’s constitution. In analyzing the statute, the court noted that on its face, the constitutional exception contemplated that state-run lotteries involved the sale of tickets, *i.e.* lots or chances. *Id.* The court also noted that the senate debates on the lottery amendment indicated that the legislature conceived of the sale of tickets and multiple participation as integral elements of lotteries. *Id.* In rejecting the defendant’s claim that any game where the elements of consideration, chance and prize are present constitutes a permissible lottery, the court stated that, pursuant to that definition:

Any game of chance -- including such casino games as poker, blackjack, craps and roulette -- could be a lottery if operated by the state.

Such a broad interpretation would expand the constitutional exception permitting state-run lotteries to such an extent that it would swallow the general constitutional prohibition on gambling.

Id. at 69, 90.⁶

In light of the language of Article XIII, section 5, the legislative history and the public’s understanding of the amendment at the time of adoption, it is indisputable that the language was intended and believed to authorize a traditional ticket-generating lottery. At no time during the

⁵ To play video lottery, a player must insert paper currency or other consideration into a video display terminal to purchase one or more electronic instant lottery tickets. Upon the insertion of the currency, the next situated electronic ticket is dispensed from the site controller to the display terminal which shows the outcome associated with that ticket; the tickets are predetermined to be either winners or losers before the time of the purchase. Once a player has purchased a ticket, it is removed from the poll of available electronic tickets in a given series and cannot be selected or dispensed again. *Id.*

⁶ The court concluded that video lottery terminals could not be considered slot machines as a matter of law and constituted lotteries because they involved the elements of a lottery -- consideration, chance, prize, multiple participation and tickets. *Id.* at 95, 73. Other courts have found that video lotteries do not constitute permissible lotteries. *See Poppen v. Walker*, 520 N.W.2d 238 (S.D. 1994).

legislative debate or in the newspaper articles written at that time was there any discussion that slot machines, roulette wheels or craps would be permitted. Throughout the debate -- both in the legislature and amongst the public -- the only lottery that was discussed as resulting from passage of the amendment was one involving the sale of tickets. Further, to interpret the language in the 1988 amendment as authorizing slot machines, roulette wheels and craps would cause the exception to the lottery prohibition to subsume the prohibition.

Based on the above, it is our opinion that the operation of slot machines, roulette wheels or craps by the State would violate Article XIII, Section 5 of the Minnesota Constitution.

C. Whether the proposed games would be "operated by the state".

A second issue is whether the slot machines, roulette, craps and other games of chance that are included in House File 1817 are "operated by the state" as required by Article XIII, Section 5.

Various provisions of House File 1817 discuss the operation of the casino and the games. Section 13 of the bill states that the Tribal Entity will own or lease the gaming facility and will also operate the facility. That section also states that the Tribal Entity bears the costs associated with "managing the day-to-day activity of gaming machines and other lottery games, including, but not limited to, routine and minor service and maintenance, security monitoring, verifying winners, paying winners, collecting money from gaming machines, collecting wagers from the operation of other lottery games, and advertising and marketing of other gaming machines and other lottery games." Proceeds from the operation of gaming machines and other lottery games are to be collected by the Tribal Entity, held in trust, and subsequently divided in a manner set forth in the bill.

With respect to the involvement of the State, Section 13 states that "[a]ll gaming machines that are placed at a gaming facility or other lottery games conducted at the gaming facility must be operated and controlled by the director." The section further states:

The director may authorize the tribal entity to manage the day-to-day operation of the gaming machines and the conducting of other lottery games at the gaming facility, provided that the director shall maintain overall control of the operation of the gaming machines and the conducting of other lottery games at the gaming facility.

H.F. 1817, Article 2, § 13.

In addition, while House File 1817 indicates that the Tribal Entity must operate the gaming facility, Article 3, Section 2 states that the Tribal Entity may form or engage another entity to manage the operations of the gaming facility.

To summarize the above provisions, the Tribal Entity will own and operate the gaming facility. It may contract with a third party to operate or manage the facility. While the Minnesota lottery director is required to maintain "overall control of the operation of the gaming machines and the conducting of other lottery games", the Tribal Entity may manage the day-to-day activity of the gaming machines and other lottery games including routine and minor service and maintenance, security monitoring, paying winners, collecting money from gaming machines, collecting wagers, and advertising and marketing.

The meaning of the term "operated by the state" as contained in Article XIII, section 5 was discussed in the Minnesota House Appropriation Committee meeting on March 22, 1988. Instructive excerpts from that discussion include:

Representative Kahn:

I know that other members of the committee have some other questions about other parts of wording in the bill, like do you really want a state-operated lottery or do we want the ability to contract? Do we want to decide constitutionally state operated lottery or do we want the ability to contract out to someone else to be able to do it ...

I would strike "owned and operated" so that it would just read as the legislature may authorize lotteries that are regulated by the state in the manner prescribed by law which would, of course, allow it to be owned and operated by the state. But I think that the constitutional determination that the state be the operator of the lottery, when in fact some of the experiences in other states has told us that this is not a good idea. ...

Chairman Anderson:

Representative Kahn, I believe there are lotteries in 27 states and I believe that each of them are state run.

Representative Kahn:

I don't, I think that they're state authorized but I don't, I think they are often contracted ...

You almost have to state to constitutionally determine ownership and operation no matter how incompetent the operation was we could never get rid of it because it was operated by the state. And I guess, I think with the word regulated, don't you

believe with the word regulated we would also have the ability of the state to own and operate it. I'm not objecting to the fact that you might want to have the state own and operate it. I'm just objecting to stating that in the constitution as opposed to being able to think it out. ...

Chairman Anderson:

That's kind of the theory behind this constitutional amendment, Representative Kahn, is that with a state-run lottery there would be some proceeds to divvy up. And I don't know if you farmed it out to somebody, GI Joe, they might work it so they're in the profits. ...

Minnesota House of Representatives, Appropriation Committee, Hearing on H.F. 2182, March 22, 1988.

The specific matter of a lottery "operated by the state" was also discussed in the House General Legislation, Veterans' Affairs and Gaming Committee where Representative Linda Scheid, one of the authors of the lottery bill, stated:

The word "operated" may have different shades of meaning I suppose, but I think I know the intent here is that it would be a state-operated lottery ... as opposed to the state overseeing or regulating a private entity.

Minnesota House of Representatives, General Legislation, Veterans Affairs and Gaming Committee, Hearing on H.F. 4.

No Minnesota court has interpreted the phrase "operated by state". Recently, however, the Rhode Island Supreme Court considered whether a proposed partnership for a casino involving the State, a Native American Indian tribe, and a casino corporation was consistent with Rhode Island's Constitution which required that any casino be "state-operated". *See In Re Advisory Opinion to the Governor*, 856 A.2d 320 (RI 2004). Like Minnesota, Rhode Island's constitution required that any permissible lottery be "operated by the state". At issue was a referendum question presented to the public which asked "Shall there be a casino in the Town of West Warwick operated by an Affiliate of Harrah's Entertainment in association with the Narragansett Indian Tribe?" The Rhode Island Supreme Court indicated that, to determine the prohibitive effect of the Rhode Island constitution, it first had to determine whether the proposed casino was a "lottery". The court concluded that because chance was the predominant factor in all the games that would be conducted at the casino, they were all forms of lotteries. *Id.* at 329. Emphasizing the overall nature of the activity to be conducted, the court found the casino itself to constitute a "lottery operation". *Id.*

In discussing the definition of the term "operate," the court noted that to operate an enterprise means to be in actual control of the operation. *Id.* at 331. The court further explained that the word "control" indicates authority over the day-to-day functioning of an enterprise. The court then noted that Harrah's would be making the day-to-day decisions pertaining to the functioning of the casino and further noted that, unlike proceeds generated from the sale of state lottery tickets, daily revenue at the casino would go directly to Harrah's rather than to the state. The court concluded that the delegation of operational control to a private entity constituted an unconstitutional divestiture of operational control over a lottery. *Id.*

The definition of the term "owned and operated" as applied to a lottery was also at issue in *State v. West Virginia Economic Development Authority*, 214 W.Va. 277, 588 S.E.2d 655, (W.V. 2003). The court there found that "absolute" ownership and operation was not required by the West Virginia constitution, which authorized lotteries that are "regulated, controlled, owned and operated ... in the manner provided by general law." The court concluded that the allocation of responsibilities by the legislature among the state, operators and manufacturers was consistent with the constitution, since the allocation was set out in West Virginia law. *Id.* at 669-70, 291-92

Finally, the Kansas attorney general opined in 1994 that the phrase "state-owned and operated" as contained in the Kansas constitution requires that the lottery be owned, as well as directed, controlled and managed by the state. Kansas Atty. Gen. Op. No. 94-26 (Feb. 23, 1994). The attorney general further concluded that the state could not lease the casino premises to a third party to operate the games of chance. *Id.* The attorney general did note, however, that a contractual arrangement with a private entity to operate the casino where the state retains ownership and control may be permissible. *Id.*

With respect to House File 1817, a Minnesota court could find, as did the Rhode Island court, that because various lottery games are to be played at the State/tribal casino, the casino itself, and not just the games in the casino, constitutes a lottery. If that analysis is followed, the operation of the casino by the Tribal Entity is inconsistent with Article XIII, section 5. Pursuant to House File 1817, the Tribal Entity, and possibly a management company retained by the Tribal Entity, is operating the casino. The Tribal Entity would own the casino, manage its affairs and also handle the day-to-day operation of slot machines and other lottery games, as well as all "nonlottery games". Funds from the gaming machines and lottery games would flow directly to the Tribal Entity. As a result, many characteristics of the casino described in House File 1817 parallel those present in *In Re Advisory Opinion to the Governor*, which was found to be an impermissible lottery operation.

On the other hand, it could be argued that the gaming machines and other lottery games conducted at the casino must be "operated and controlled by the director" under House File 1817 and that, therefore, the individual lotteries would be operated by the State. No caselaw addressing this particular type of arrangement appears to exist. Other provisions of House File 1817, however, belie the level of control that would actually be retained by the State. As noted above, the day-to-day operations of the gaming machines and lottery games are to be

handled by the Tribal Entity. In this regard, the Tribal Entity, or its management company, is responsible for managing the day-to-day activity of gaming machines and other lottery games including service and maintenance, security monitoring, verifying winners, collecting money, paying winners and advertising and marketing the games. Considering this expansive list of responsibilities of the Tribal Entity, there is little left for the State to "operate." Indeed, it appears that the State is responsible only for "major maintenance of the gaming machines." It is unlikely that this level of activity rises to the level of operation contemplated by Article XIII, Section 5.

II. Minnesota Constitution Article XI, Section 14.

Article XI, Section 14 of the Minnesota Constitution states, in part:

Not less than 40 percent of the net proceeds from any state-operated lottery must be credited to the [environment and natural resources] fund until the year 2025.

Minn. Const., art. XI, § 14.

Under House File 1817, up to 10 percent of adjusted gross revenue from the operation of gaming machines and other lottery games may be credited to the lottery operations account. House File 1817, art. 2, § 10. "Adjusted gross gaming machine revenue" is defined as the "sum of all money received for gaming machine plays less the amount paid out in prizes and for gaming machine games and promotional allowances." *Id.*, art. 2, § 6. "Other lottery games adjusted gross revenue" is defined as the sum of all money from the operation of other lottery games at the gaming facility less the amount paid out in prizes in the other lottery games and promotional allowances paid by the Tribal Entity." *Id.*, art. 2, § 8. Sixty-four percent of the "adjusted gross gaming machine revenue" and "other lottery games adjusted gross revenue" is paid in the form of a "fee" to the Tribal Entity. *Id.*, art. 2, § 13. The remaining 26 percent of "adjusted gross gaming machine revenue" and "other lottery games adjusted gross revenue" is paid to the Commissioner of Revenue. *Id.*, art. 4, § 1.

The constitutional amendment establishing the Minnesota Environmental and Natural Resources Trust was approved by voters in 1988. The principal author of the bill which authorized a vote on the constitutional amendment, Representative Willard Munger, described the purpose of the environmental and natural resources trust fund as follows:

The purpose of the Minnesota environmental and natural resources trust fund is to ensure that the environment and natural resources of the State will be protected, conserved, preserved and enhanced for current citizens and for future generations. To undertake such activity properly, a long-term, consistent and stable source of funding must be provided. ... With the fund protected by a constitutional amendment, no governor, no legislature can take away money funded for environmental programs and transfer it into the general fund in times of [revenue] shortness. ...

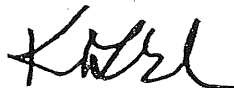
Minnesota House of Representatives, Floor Debate H.F. 1821, April 6, 1988.

Under House File 1817, it does not appear that any proceeds from the "lottery" would be credited to the environmental and natural resources trust. As discussed above, 64 percent of adjusted gross revenues from lottery games are paid to the Tribal Entity, and up to 10 percent of such proceeds are to be deposited in the lottery operations account. Under Article 4 of the bill, 26 percent of the "adjusted gross gaming machine revenue and other lottery games adjusted gross revenue" must be transmitted to the Commissioner of Revenue. Funds transferred to the Commissioner are to be deposited in a "gaming facility proceeds fund," which is to be appropriated 90 percent to the general fund and 10 percent to a "community assets account". Under House File 1817, no funds, let alone 40 percent of net proceeds, are allocated to the environmental and natural resources trust fund. This allocation of "lottery" proceeds is clearly unconstitutional.

CONCLUSION.

The provisions of House File 1817 are inconsistent with Minnesota's Constitution. Accordingly, should the Governor and the legislature wish to pursue a state-operated casino, I recommend that they first seek approval of a constitutional amendment from the voters.

Very truly yours,



KRISTINE L. EIDEN
Chief Deputy Attorney General

JIM VICKERMAN

Senator 22nd District
Majority Whip
2252 221st Street
Tracy, MN 56175
And
226 State Capitol Building
75 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155
Phone: (651) 296-5650
E-Mail: Sen.jim.vickerman@senate.mn



Senate

State of Minnesota

March 18, 2005

Attorney General Mike Hatch
102 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Dear Attorney General Hatch,

I'm writing this letter as the Chair of the Senate Agriculture, Veterans & Gaming Committee, to formally request a legal opinion regarding the constitutionality of a bill before our committee which would have the Minnesota State Lottery operate a casino.

House File 1817 is a bill relating to gambling, which provides for the operation of lottery gaming machines and the conduct of lottery and non-lottery games at a gaming facility; licensing the gaming facility and imposing a license fee; and imposing a gaming transaction fee on gaming at the gaming facility. The bill provides for the operation of a casino by the Minnesota State Lottery Director.

However, under the Minnesota Constitution, article XIII, section 5 it does not appear that there is any express authority for the State Lottery to operate a casino. Answering the question of constitutional authority is of vital importance to the state legislature. If the legislature passes a state budget that relies upon state casino revenue, and the court finds that the law authorizing a state casino is unconstitutional, then the legislature will have failed to meet its fiduciary responsibility to balance the state budget.

Your prompt response to this request would be most appreciated.

Sincerely,

Senator Jim Vickerman
JV:DM



Minnesota House of Representatives

House Research

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House Research Bill Summary

Number: H.F. 1817, delete everything (H1817DE1) **Date:** March 19, 2005

Version: Division Report (as amended)

Status: Regulated Industries Committee

Authors: Westerberg and others

Subject: Tribal-state casino

Analyst: Elisabeth A. Long, 651-296-5052

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Article 1: Purpose

Overview

Article 1 identifies as the purpose of the act:

- recognizing the inequities created by current casino gaming in Minnesota;
- providing opportunities for increased economic development and self-sufficiency to tribal governments that have not benefited significantly from gaming;

- generating revenues to the state;
- establishing a structure that promotes tribal sovereignty and self-governance and provides casino gaming revenues to tribal governments for the development of programs to alleviate poverty and advance tribal goals.

Article 2: Lottery Operations

Overview

Article 2 authorizes the state to enter a contract for the operation of a metropolitan-area casino with a tribal entity comprised of tribal governments that have demonstrated financial need. The tribal entity would bear all facility-related costs and would manage the day-to-day operations of the casino. The state would own all gaming machines and have overall responsibility for the operation of the casino and the gaming machines.

Under the contract, the state would pay the tribal entity 64 percent of adjusted gross revenue from gaming machine games and other lottery games. The tribal entity would pay .5 percent of all adjusted gross revenues (capped at \$2,500,000) to the commissioner of human services for problem gambling treatment and programs. The tribal entity would also pay the city and county hosting the gaming facility 2 percent of all adjusted gross revenues, in lieu of city and county property taxes (though the tribal entity would still be responsible for paying local property taxes attributable to the relevant school district).

Section

- 1 Lottery procurement contract.** Expands the definition of "lottery procurement contract" to include a contract to provide gaming machines, maintenance of gaming machines, computer hardware and software used to monitor gaming machine plays, and equipment used to conduct and monitor other lottery games at a gaming facility.
- 2 Gaming facility.** Defines "gaming facility" as the site selected for the location of gaming machines and the conduct of other lottery games (section 7) and nonlottery casino games (article 3, section 5).
- 3 Gaming machine.** Defines "gaming machine" as a machine, system, or device which, upon payment of consideration to play a game, may award or entitle a player to a prize by reason of skill, chance, or both.
- 4 Gaming machine game.** Defines "gaming machine game" as a game operated by a gaming machine, as authorized by the director.
- 5 Gaming machine play.** Defines "gaming machine play" as a record proving participation in a gaming machine game.
- 6 Adjusted gross gaming machine revenue.** Defines the term as revenue from gaming machine plays less the amount paid out in prizes and for gaming machine games and promotional allowances (see section 13).
- 7 Other lottery game.** Defines "other lottery game" as any game operated by the lottery at the gaming facility other than a gaming machine, where money or property are distributed (*prize*) to persons selected primarily by *chance* from among participants who have paid for a chance of being selected (*consideration*). Also includes any other game or activity determined to constitute a lottery within the meaning of the Minnesota

Constitution. Excludes from the term games operated by the lottery at the gaming facility that are also sold by lottery retailers.

8 **Other lottery games adjusted gross revenue.** Defines the term to mean all revenue from other lottery games, less prizes and promotional allowances (see section 13).

9 **Lottery game procedures.** Permits the director to adopt procedures for gaming machine games and other lottery games and to set the cost of gaming machine plays and other lottery games.

10 **Lottery operations.** Excludes amounts transferred to or retained by the tribal entity under a location contract (see section 13) for purposes of calculating the amount that can be credited to the lottery operations account (which is currently capped at 15 percent of gross revenue to the lottery fund each fiscal year). States that the amount credited to the lottery operations account cannot exceed 10 percent of adjusted gross revenue from the operation of gaming machines and other lottery games at the gaming facility.

11 **Budget; plans.** Excludes from the legislative determination of the lottery's annual budget for operating expenses and capital expenditures (1) amounts paid to an outside vendor to operate a central system for gaming machines and other lottery games; and (2) amounts paid to acquire and maintain gaming machines and equipment used to conduct other lottery games.

12 **Restrictions.** Permits the director to install or operate lottery devices operated by coin or currency in accord with section 13 .

13 **Gaming facility.**

Subd. 1. Definitions. Defines these terms as follows:

- "Tribal entity" means the corporation(s) or other legal entities owned by one or more tribal governments that are parties to the location contract (subd. 2);
- "Tribal government" means a federally recognized Indian tribe in Minnesota; and
- "Site" means a parcel or contiguous parcels of land, which may be enlarged by contiguous parcels over time.

Subd. 2. Location contract. Permits the director to contract with a tribal entity to operate gaming machines and other lottery games at one site in the seven-county metropolitan area, or in any contiguous county.

- Requires the director to select a site with the tribal entity and to notify the city where the site is located. Gives a city 60 days to adopt a resolution stating that it does not consent to consideration as a host city.
- Allows the director to enter a location contract with a tribal entity only if it meets the following criteria:
 - a. The entity is comprised of federally-recognized tribal governments that have gaming compacts with the state and operate casinos under IGRA;
 - b. The entity only allows a tribal government to participate if it can demonstrate that currently-available revenues are insufficient to meet the basic needs of tribal members;

- c. Each participating tribal government, within 30 days after enactment of this act, files a formal resolution from its tribal council stating intent to participate; demonstrating its eligibility to participate; waiving sovereign immunity with respect to disputes arising under the location contract; consenting to state court jurisdiction; making an additional limited waiver of sovereign immunity; and voicing intent to distribute revenues in a fair and equitable manner.
- States that the location contract will have no legal effect on existing compacts.
 - Limits the duration of a location contract to 20 years, with provision for renewal negotiations every 15 years thereafter. Requires notice of intent not to renegotiate one year before the contract expires, if reasonably possible. Permits a tribal government to opt out of the entity without affecting the entity's ability to renew.
 - Requires the contract to include the following provisions:
 - a. A waiver of sovereign immunity and limited waiver of sovereign immunity, as discussed above;
 - b. Liquidated damages to the tribe if a state statute or constitutional amendment revokes substantially all forms of gambling authorized under this section. This provision must expire within 10 years and cannot provide for damages greater than the unpaid balance of debt incurred by the tribal entity (after the location contract is executed) for (1) the gaming facility license, (2) initial construction, or (3) acquisition of the gaming facility (less the present market value of property and other related assets)
 - c. The tribal entity shall make good faith efforts to employ American Indians and other minorities at the facility and to hire American Indian and minority-owned businesses to construct, repair, and maintain the gaming facility.
 - d. The state must pay the tribal entity a fee equal to 64 percent of adjusted gross gaming machine revenue and other lottery games adjusted gross revenue.
 - e. The tribal entity bears all costs associated with day-to-day management.
 - f. The lottery bears all costs of purchasing or leasing gaming machines and major maintenance on gaming machines.
 - g. The tribal entity shall pay either .5 percent of all adjusted gross revenue or \$2,500,000, whichever is less, to the commissioner of human services for problem and compulsive gambling treatment and programs.
 - h. In lieu of the local property taxes attributable to the city and county where the gaming facility is located, the tribal entity shall annually pay 2 percent of all adjusted gross revenues to the city and county. (The tribal

entity is still responsible for local property taxes attributable to the relevant school district.)

- i. Any claim or controversy arising under the contract must be settled by arbitration, unless otherwise noted.
- Permits the tribal entity to establish standards for promotional allowances to players and, upon director approval, to be reimbursed for promotional allowances.
 - Allows the director to authorize a temporary facility (pending completion of a permanent facility) and establish conditions for its operation. Treats the operation of a temporary facility as if it were a permanent facility (i.e., a license is required).
 - Lets the director cancel or suspend the location contract if the tribal entity loses its license or if it materially breaches the contract and fails to cure in a reasonable time. Makes this a contested case under the Administrative Procedures Act (APA).
 - Allows the director to impose civil penalties or issue correction orders upon identifying any breach of contract by the tribal entity. Provides that this is a contested case under the APA.
 - Prohibits the transfer of location contract rights without the director's written approval.
 - Limits the authorization of the placement of gaming machines and conduct of other lottery games to a gaming facility leased or owned by the tribal entity.
 - Excepts the location contract from the requirements for procurement contracts (Chapter 16C).
 - Appropriates to the commissioner of human services the tribal entity's payment for problem gambling, to be used for treatment and programs, including programs focused on American Indian and minority communities.

Subd. 3. Operation. Specifies that the director must:

- operate and control all gaming machines and other lottery games at the gaming facility;
- own or lease gaming machines;
- control major maintenance of gaming machines or the vendor who handles major maintenance;
- have a central communications system to monitor activities on each gaming machine;

- own or lease equipment used to conduct other lottery games at the gaming facility;
- approve security arrangements for gaming machines and other lottery games;
- approve advertising and promotional material produced by the gaming facility (except for material related only to nonlottery casino games);
- maintain overall control over the gaming machines and other lottery games at the gaming facility (though the tribal entity can manage day-to-day operations).

Requires the lottery to bear the costs of (1) procuring and maintaining gaming machines and equipment for lottery games, and (2) acquiring, maintaining, and operating the central system used to monitor the gaming machines.

Provides that all proceeds from gaming machines and other lottery games are held in trust by the tribal entity until they are transferred to the director. Authorizes the director to require the deposit of all such proceeds in an account at a designated bank. Requires the tribe to pay interest if it fails to timely pay money due.

Permits the director to implement policies, procedures, and other controls necessary for gaming machines and other lottery games.

Subd. 4. Games. Directs the director to decide what games may be played on a gaming machine and how other lottery games shall be conducted.

Subd. 5. Specifications. Requires machines to: (1) have a permanent record, on a nonresettable meter, of all transactions on the machine; (2) be capable of being linked electronically to a central communications system; and (3) be accessible to individuals with disabilities.

Subd. 6. Examination of machines. Provides for examination of prototypes of gaming machines, with costs paid by the manufacturer. Allows the director to contract for testing.

Subd. 7. Prizes. Provides that players playing a game at the gaming facility are bound by the rules and procedures of the game. As with current lottery games, prize determinations would be made in accord with rules, procedures, claims procedures, and validation tests for a game. Prohibits persons under 18 years old from claiming prizes.

Subd. 8. Prohibitions. Prohibits persons under 18 years old from partaking of gaming machines or other lottery games.

Subd. 9. Compulsive gambling notice. Requires the tribal entity to prominently post the hotline number for department of human service's compulsive gambling program. Requires the tribal entity to develop, and the director to approve, a plan relating to problem and compulsive gambling.

Subd. 10. Local licenses; local fees. Prohibits political subdivisions from licensing, regulating, or taxing gaming machines, lottery games, or nonlottery casino games at the gaming facility.

14 Lottery budget; gaming facility. Directs the director to submit a budget for gaming facility operations, permits the director to expend amounts necessary for operations, and exempts FY06 and FY07 expenditures for the conduct of gaming at the gaming facility from the maximum amount set in law for lottery operations.

5 Effective date. Makes Article 2 effective the day following final enactment.

Article 3: Gaming Facility Regulation

Overview

Article 3 establishes a system by which the Commissioner of Public Safety (commissioner) would regulate the gaming facility. The tribal entity would need to secure a gaming facility license, contingent upon payment of a \$200,000,000 one-time licensing fee, which would be reviewed by the commissioner. The tribal entity, or another entity engaged by the tribal entity to manage the facility, would need to secure a gaming management license and renew this license every two years. Every employee and vendor at the facility would also need to obtain an appropriate license, subject to renewal every year.

Article 3 also authorizes the tribal entity to operate nonlottery casino games at the facility, in accordance with a plan of operation that has been approved by the commissioner.

Gaming facility.

Subd. 1. Definitions. Defines "direct financial interest," "lottery director," "tribal entity," and "management entity."

Subd. 2. License required. Requires the tribal entity that will own and operate the gaming facility to obtain a gaming facility license.

Subd. 3. Application. Requires application for a license to be made on a form prescribed by the commissioner; permits the commissioner to issue a gaming facility license to the tribal entity.

Subd. 4. License fee. Requires the tribal entity to pay a onetime gaming facility license fee of \$200,000,000 to the commissioner.

Subd. 5. License issuance. Makes issuance of a gaming facility license contingent upon the completion of a comprehensive background check. Only permits the commissioner to issue a license to a tribal entity that has given a valid limited waiver of sovereign immunity and is subject to Minnesota state court and administrative jurisdiction. Prohibits transfer of the license without commissioner approval.

Subd. 6. Background investigation. Requires comprehensive background and financial investigations of the tribal entity (including officers, directors, managers,

Subd. 2. Application. Requires application to be made on a form prescribed by the commissioner; permits the commissioner to issue a gaming management license to the management entity that will manage or operate the gaming facility or gaming operations for the tribal entity.

Subd. 3. License issuance. Requires the commissioner to issue a gaming management license if:

- it would not be adverse to the public interest or the effective regulation of gaming; and
- it is issued to an entity that is subject to the Minnesota state court and administrative jurisdiction.

Makes the licenses non-transferable.

Subd. 4. Background investigation. Requires comprehensive background and financial investigations of the license applicant (including its officers, directors, managers, supervisory personnel, and persons with a direct financial interest in the management entity - but not the tribal governments). Allows the commissioner to use the background investigation conducted under for the gaming facility license if the tribal entity and the management entity are the same. Permits the commissioner to charge the tribal entity an investigation fee.

Subd. 5. License actions. Prohibits the commissioner from issuing a gaming management license, and permits the suspension or revocation of a license, under certain circumstances. Requires notice to the tribal entity of any license revocation, license suspension, or imposition of a civil penalty. Clarifies that revocation, suspension, or imposition of a civil penalty is a contested case under the APA.

Subd. 6. Required notification. Requires the gaming management licensee to promptly report any change in management or ownership. Requires comprehensive background and financial investigations of new officers and directors and of individuals acquiring direct financial or management interests in the tribal entity. Requires these individuals to file appropriate license applications and requires the licensee to annually certify compliance with this provision.

Subd. 7. License renewal. Requires the licensee to apply for renewal of the license every two years. States that review of a renewal application shall comply with the same requirements as review of a new application.

3 Employee licenses.

Subd. 1. Authority. Authorizes the commissioner to issue employees licenses for persons employed at the facility. Requires each employee at the facility to have an appropriate license and makes the tribal entity responsible for ensuring that each employee has a valid license prior to beginning work at the gaming facility.

Subd. 2. Application information. Requires application to be made on a form prescribed by the commissioner, accompanied by an affidavit attesting to felony

record, felony charges, connections with illegal businesses, conviction of fraud or misrepresentation in connection with gambling, and violations of gambling-related laws or rules.

Subd. 3. Background investigations. Directs the commissioner to investigate each employee license applicant and permits him to seek reimbursement for costs from the tribal entity. Requires fingerprints from each applicant.

Subd. 4. License issuance and renewal. Makes licenses effective one year. Permits issuance or renewal of a license when an applicant is qualified for the occupation and will not adversely affect the public health, safety, and welfare, or the integrity of gambling in Minnesota.

Subd. 5. Revocation and suspension. Permits the revocation of a license, suspension of a license for up to one year, or refusal to renew a license for an intentional false statement in a license application or for a violation of law or rule that adversely affects the integrity of gambling. Clarifies that revocation or suspension is a contested case under the APA. Under certain circumstances, permits summary suspension prior to the contested case hearing.

4

Vendor licenses.

Subd. 1. Issuance. Requires anyone who sells products, distributes products, or provides services at the gaming facility to have a vendor license. Authorizes the commissioner to issue vendor licenses. (Requires employees of vendors to have employee licenses under section 3.)

Subd. 2. Rulemaking. Authorizes the commissioner to prescribe rules for vendor licenses.

Subd. 3. Application information. Requires application on a form prescribed by the commissioner, accompanied by an affidavit attesting to felony record, felony charge, connections with illegal businesses, conviction of fraud or misrepresentation in connection with gambling, and violations of gambling-related laws or rules.

Subd. 4. Background investigations. Directs the commissioner to investigate each employee license applicant and permits him to seek reimbursement for costs from the vendor. Requires fingerprints from each applicant.

Subd. 5. License issuance and renewal. Makes licenses effective one year. Permits issuance or renewal of a license when an applicant is qualified for the occupation and will not adversely affect the public health, safety, and welfare, or the integrity of gambling in Minnesota.

Subd. 6. Revocation and suspension. Permits the revocation of a license, suspension of a license for up to one year, or refusal to renew a license for an intentional false statement in a license application or for a violation of law or rule that adversely affects the integrity of gambling. Clarifies that revocation or suspension is a contested case under the APA. Under certain circumstances, permits summary suspension (for up to 90 days) prior to the contested case hearing.

5

Nonlottery casino games.

Subd. 1. Definitions. Defines "nonlottery casino game" as any casino game the commissioner authorizes the tribal entity to conduct at the gaming facility that is not a gaming machine or other lottery game. Defines "nonlottery casino games' adjusted gross revenue" as revenue from the operation of nonlottery casino games, less prize and promotional allowances.

Subd. 2. Operation. Allows the operation of nonlottery casino games in accord with a plan approved by the commissioner. Requires the plan to identify and define all nonlottery casino games and to address security and internal control systems. Also requires a plan for training nonlottery casino games personnel in problem gambling

Subd. 3. Plan amendment. Requires commissioner approval of plan modifications

Subd. 4. Actions. Permits the revocation, suspension, or refusal to renew a license (or the imposition of a civil penalty) for violations of the plan of operation. Makes this a contested case under the APA.

Subd. 5. Prizes. States that players playing a nonlottery casino game are bound by the rules and procedures of the game and that prize determinations are determined in accord with relevant rules, procedures, claims procedures, and validation tests. Prohibits persons under 18 years of age from claiming prizes.

- 6 **Employment restrictions; civil penalty.** Prohibits individuals responsible for oversight, audits, or investigations at the gaming facility (through employment and for one year after leaving employment) from entering a contract with or receiving compensation from the tribal entity or management entity. Also prohibits the tribal entity and management entity from entering such a relationship. Establishes a maximum civil penalty of \$10,000 for violations by state employees. Permits license-related administrative action against the tribal entity or management entity for violating this section.
- 7 **Effective date.** Makes this article effective the day following final enactment.

Article 4: Gaming Transaction Fee

Overview

Article 4 imposes an in lieu of tax on adjusted gross revenues from the gaming facilities at the following rates: 26 percent of adjusted gross gaming machine revenue; 26 percent of other lottery games' adjusted gross revenue; and 14 percent of nonlottery casino games' adjusted gross revenue. This money would be deposited into a gaming facility proceeds fund and annually appropriated as follows: 10 percent to the community assets account, and 90 percent to the general fund.

- 1 **Gaming facility.** Requires transfer to the commissioner of revenue of:
- 26 percent of adjusted gross gaming revenue and other lottery games' adjusted gross revenue (from lottery); and
 - 14 percent of nonlottery casino games' adjusted gross revenue (from tribal entity).

Makes this transfer is in lieu of any state tax on wagering at the facility and any local tax fee on wagering at the facility.

2 **Deposit of revenues.** Directs the commissioner to deposit revenues received under section 1 in the gaming facility proceeds fund (section 3).

3 **Gaming facility proceeds fund.** Establishes a gaming facility proceeds fund in the state treasury. Annually appropriates 10 percent of the money in the fund to the community assets account and 90 percent to the general fund.

4 **Community assets account.** Establishes a community assets account in the state treasury Provides that the money in the account may be spent to help finance capital projects for facilities such as athletic facilities, museums, theaters, recreational facilities, planetarium: and zoos.

5 **Effective date.** Makes this article effective the day following final enactment.

Article 5: Miscellaneous Provisions

Overview

Article 5 makes various changes to existing law to be consistent with the activities authorized in Articles 1 to 4.

1 **Gambling device possession.** Exempts gambling devices possessed by the state lottery from the general prohibition against possession of gambling devices.

2 **Gambling device distributors.** Allows licensed gambling device distributors and manufacturers to sell, lease, or rent gambling devices to the state lottery.

3 **Gambling in licensed liquor establishments.** Exempts gambling devices at the gaming facility from the prohibition against gambling devices at establishments licensed for retail liquor sales.

4 **Recovery of money lost.** Exempts gaming machine plays and the conduct of any lottery and nonlottery casino games at the gaming facility from the law that allows persons to sue to recover gambling losses.

5 **Commitments for gambling debt void.** Exempts gaming machine play from the law that makes gambling debts void.

6 **What are not bets.** Adds gaming machine plays and participation in any lottery or nonlottery casino game at a gaming facility to the list of gambling activities that are not bets in the context of state laws that prohibit gambling.

7 **Gaming facility.** Exempts from criminal prohibitions of gambling the manufacture, possession, sale, or operation of a gaming machine, or the conduct of a lottery or nonlottery casino game at a gaming facility.

8 **Severability; savings.** Provides that if part of the act is found invalid, all other provisions remain valid and all rights, remedies, and privileges otherwise accrued remain in effect.

9 **Effective date.** Makes this article effective the day following final enactment.

From: Jeff Falk [mailto:Jeff.Falk@state.mn.us]

Sent: Friday, March 04, 2005 10:47 AM

Subject: Gov. Pawlenty and tribal leaders announce historic gaming fairness partnership agreement -- March 4, 2005

NOTE: Attached are a FAQ sheet on the partnership agreement and a figure sheet/pie chart on estimated revenues.

FOR IMMEDIATE RELEASE:
March 4, 2005

Contact: Brian McClung
(651) 296-0001

**GOVERNOR PAWLENTY AND TRIBAL LEADERS ANNOUNCE HISTORIC GAMING FAIRNESS
PARTNERSHIP AGREEMENT**

~Governor, Tribal Leaders and legislative authors unveil tribal-state proposal ~

St. Paul – Moving forward with a proposal for gaming fairness in Minnesota, Governor Tim Pawlenty today announced a casino partnership agreement with the Leech Lake Band of Ojibwe, the Red Lake Nation and the White Earth Nation.

The Governor was joined at the announcement by Leech Lake Tribal Chairman George Goggleye, Red Lake Tribal Secretary Judy Roy, White Earth Tribal Chairwoman Erma Vizenor and tribal council members from each of the tribes. Also present were bill authors Senator Sandy Pappas (DFL-St. Paul) and Rep. Andy Westerberg (R-Blaine), labor and urban Indian leaders.

"The time for a better deal is here," Governor Pawlenty said. "This is about creating fairness – fairness for the

3/4/2005

people of Minnesota and fairness for the northern tribes who represent approximately 85% of tribal members in the state, but haven't benefited much from existing gaming operations. A strong majority of Minnesotans believe that gaming needs to change in this state. This proposal does so in a manner that is responsible and fair."

As part of his budget announcement on January 25, Governor Pawlenty outlined the "Gaming Fairness for Minnesota" proposal. Minnesota is estimated to have the third largest tribal gaming industry in the nation, surpassed by only California and Connecticut. In those states and others, revenues from the growing casino industry are shared with the state.

The proposal would allow any interested tribe in Minnesota to participate in the partnership. To this point, the Leech Lake, Red Lake and White Earth nations have agreed to do so.

Governor Pawlenty proposed partnering with the large northern Minnesota tribes in order to make the gaming industry fairer to them as well. While a few tribes with better locations have had extraordinary success, the 85% of Minnesota's enrolled tribal members in the Leech Lake, Red Lake and White Earth nations have seen little benefit from the Indian gaming industry. Governor Pawlenty believes it's in the best interest of the state to see that the northern tribes and surrounding rural communities have additional opportunities for economic success and self sufficiency.

The agreement announced today outlines the arrangement between the state and the tribes. Under the agreement, net proceeds from the partnership for the state and tribal entity are expected to be relatively comparable after costs are factored in. An estimated 66.87% of the total gaming revenues would flow to the newly formed tribal entity, which would own the facility. However, the tribal entity would finance the construction and operation of the new facility and would also make contributions to programs for problem gaming and an annual payment to the host community. The state would receive an estimated 33.13% of the total gaming revenues, including money for the Environment and Natural Resources Trust Fund and the newly established Community Assets Account.

Once the casino is fully operational, the state's gross revenues would be approximately \$164 million per year. Tribal entity gross revenues, including non-gaming revenue, would be approximately \$385 million per year.

The proposal retains the features outlined when the Governor unveiled his Gaming Fairness Proposal on January 25:

- The current tribal gaming compacts signed in 1989 and 1991 that established the existing tribal casinos will be respected

- The new arrangement will be mutually beneficial to participating tribes and the State of Minnesota

- The proposal does not select a site – the casino will be located in a willing host community that is selected by the Minnesota Lottery and the tribal entity

- The cost of land acquisition and construction will be financed by the tribal entity

- The Minnesota Lottery will operate the gaming machines and other lottery games

- A one-time license fee of \$200 million will be paid to the state and deposited in the general fund

The partnership casino could have higher slot machine payouts than are allowed under existing compacts in Minnesota and will offer additional table games, such as craps and roulette. A temporary facility would be operational within six months of passage of the bill. The permanent facility would take about two years and \$550 million to construct. It would employ at least 3,000 people.

Under the proposal, 10% of the state's general fund share, or approximately \$12 million a year, would flow to the Community Assets Account. The account could be used to fund facilities for professional or college sports, the arts or other community priorities such as museums, theaters, planetariums, amateur sports facilities and zoos.

Minnesota State Lottery would be paid 10% of the adjusted gross revenue of the gaming machines and other lottery games played at the new facility. About half of that amount would be needed to pay the expenses of the games and the balance would be profit to the Lottery. This would result in about \$22 million a year in new net proceeds which would be divided 60% to the general fund and 40% to the Environment and Natural Resources Trust Fund. That means about \$9 million each year to the trust fund to help pay for projects of long-term benefit to Minnesota's environment.

"We have a number of important needs, including housing and improvements to schools that could be fulfilled through a tribal-state partnership" said Leech Lake Tribal Chairman George Goggeley. "We are pleased to have bipartisan support for this proposal and look forward to taking this concept to legislators."

"I don't think that anyone begrudges the tribes who have very successful gaming operations. We applaud them and we're happy for them," said Red Lake Tribal Secretary Judy Roy. "The problem is more of location. Our tribal nations will never achieve the kind of financial benefit with our locations and the sparse populations in northern Minnesota."

"We are all very pleased to be working with the Governor to help bring fairness to the gaming system that exists in our state," said White Earth Tribal Chair Erma Vizenor. "Our current casino operations do not address the economic issues we face on our Reservations. This partnership will help address those issues."

Governor Pawlenty reiterated that this proposal does not foreclose proposals for a "Racino" at Canterbury Park. "The legislature and public are engaged in a positive debate about how we can make gaming fairer for all Minnesotans," said Governor Pawlenty. "I believe that the racino is also a viable proposal."

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Jeff Falk
Deputy Press Secretary
Office of Governor Tim Pawlenty
130 State Capitol
Saint Paul, MN 55155
651-296-2427 - phone
651-296-0056 - fax
j.falk@governor.state.mn.us

Gaming Fairness for Minnesota Frequently Asked Questions

Q. Why are Governor Pawlenty and the northern tribes proposing a gaming partnership?

A. To create fairness in the gaming market in Minnesota, both for tribal nations that have not seen the benefits of Indian gaming and for the State of Minnesota. As the executive director of the Minnesota Indian Gaming Association said last year before a Senate committee:

"Maybe 1,000 Indians in Minnesota currently truly benefit from Indian gaming in its current form, while 54,000 others are still waiting and struggling to make ends meet." Over 40,000 of the Indians who are struggling to make ends meet are enrolled members of the Red Lake, White Earth, and Leech Lake Nations. That's approximately 85% of the total population of tribal members in the state.

The proposal would allow any interested tribe in Minnesota to participate in the partnership. To this point, the Leech Lake, Red Lake and White Earth nations have agreed to do so.

Q: Does the proposed partnership change anything in the compacts signed in 1989 and 1991?

A: No. The tribal gaming compacts negotiated in 1989 and 1991 that established the existing tribal casinos are not affected by this proposal. Those compacts authorize gaming only on tribal trust land and will be fully honored. It should be noted that while those compacts did allow casinos to begin operating in Minnesota, they did not provide Indian tribes with any exclusive right to operate casinos in the state.

Q: Is it constitutional for the State of Minnesota to operate casino games?

A: Yes. The gaming machines and other lottery games at the facility would be operated by the state through the Minnesota Lottery. This is consistent with the Minnesota Constitution's requirement that any lottery be operated by the state. Additionally, state lottery operated casinos in Rhode Island, Delaware and West Virginia have been upheld by the court. Other games at the facility will be operated by the participating tribes. Those tribes will also own the facility. It is likely the facility will become a significant property asset for the participating tribes.

Q: Does the proposal require approval by the federal Bureau of Indian Affairs?

A: No. The proposed facility would not operate on tribal trust land and would not be an IGRA (Indian Gaming Regulatory Act) casino. The proposed facility would be a partnership with the participating tribes, but would be on private land subject to regulation by the state and would not need BIA approval.

Q: Is this an undue expansion of gaming in Minnesota?

A: There are currently 18 casinos operating in Minnesota. Surveys have consistently shown that most Minnesotans gamble in some manner. Last year 41% of adults in the state reported visiting one of the existing Indian casinos, 60% played the Minnesota lottery and 83%

participated in some form of gaming.¹ The overwhelming majority of those who visit Minnesota casinos go for entertainment and use the facilities responsibly. Most adults are capable of making appropriate decisions for themselves. There are some who develop problems with gambling. This proposal provides funding to make our strong state services for compulsive gaming even better.

Q: Does casino gaming lead to an increase in crime?

A: In reviewing crime data collected by the Minnesota Bureau of Criminal Apphension, there is no noted increase in crime in the communities where the existing 18 casinos are operated.

A study by the National Institute of Justice found that overall casinos do not have any systematic effect on crime. Data was collected from police departments in seven cities with gambling. Three communities experienced an increase in crime, three saw crime decreased significantly and in one city there was no change.²

Q: Does casino gaming prey on the elderly?

A: A 2003 study funded by the National Institute of Justice looked at the differences between elderly casino gamblers and younger gamblers in eight areas that had new casinos. The report said the data "do not support the view that casino gambling is a major threat to the elderly, preying on the aged and leading them to destructive gambling practices." The study also said that the elderly "generally exercise better money management and experience proportionally fewer gambling problems than the general population."³

A study here in Minnesota had similar results. Researchers at the College of St. Benedict/St. John's University and St. Cloud State University wrote that there is "no evidence that casino gambling activities threaten [older Minnesotans'] well being. For most respondents the social benefits were the most salient parts of this activity and they were well aware of the danger signs of problem behaviors. ... Public concerns and media images may be based on socially constructed assumptions and fears."⁴

Q: Does casino gaming prey on the poor?

A survey conducted by NFO WorldGroup found that casino customers are not poor, but have higher incomes than the average U.S. household. The median household income of U.S. casino customers is \$50,716, compared to \$42,228 for the overall U.S. population. According to the same survey, casino customers are more likely to have attended college and hold a white-collar job than the average American.

Q: What will the host community receive from the casino?

¹ Minnesota Lottery annual survey taken in April 2004, "Gambling in Minnesota: An Overview," (September 2004)

² B. Grant Stitt et al., "Does the Presence of Casinos Increase Crime? An Examination of Casino and Control Communities," *Crime & Delinquency* Vol.49 Issue: 2 (2003), 253-284

³ B. Grant Stitt et al., "Gambling Among Older Adults," *Experimental Aging Research* 29 (2003): 189-203

⁴ Janet Hope and Linda Havir, "You Bet They're Having Fun! Older Americans and Casino Gambling," *Journal of Aging Studies* 16, no. 2 (May 2002): 177-97

A: The host community will receive a payment from the tribal entity that is equal to 2% of total gaming revenues. Once the casino is fully operational, that would be about \$10 million or more annually. The casino revenues could be used by a community for tax relief, police, fire, infrastructure or other community projects, as determined by the city council.

The proposed casino will be located in a willing host community that is selected by the Minnesota Lottery and the tribal entity. The state and the tribes will not force this facility on a community that does not want it.

Q: How much money will flow to the new Community Assets Account?

A: The new Community Assets Account will receive 10% of the state's general fund share – approximately \$12 million or more per year. The Community Assets Account could be used to fund facilities for professional or college sports, the arts or other community priorities such as museums, theaters, planetariums, amateur sports facilities and zoos at the direction of the legislature.

Q: How will construction of the facility be financed?

It is anticipated that the proposed project will be financed through a High Yield Taxable Bond Issuance via the capital markets (*not* a commercial bank loan), which is the typical financial structure utilized for new construction of Gaming operations with little to no equity or credit, where the market supports a substantial anticipated revenue stream. The Issuer will be an entity created by the tribes and wholly owned by the tribal governments.

Q: If the tribes have so little cash for so many tribal members now, how can they get lenders/credit to build such a large facility?

Bondholders lending into the gaming sector on an issuance of this scope are qualified and experienced institutional investors; lending will be based on the feasibility and attractiveness of the project. They will assess anticipated revenue stream, management, location, and lifespan of the gaming revenue and ancillary operations. Unlike a reservation facility, there will be the opportunity to assess a mortgage lien on the land and physical buildings of the facility in addition to the cash flow, furniture, fixtures and equipment. To be perfectly clear however, no security or credit from any of the tribes' existing operations on their existing reservations will be utilized.

Q: Who will the lenders/bondholders be?

Examples of qualified and experienced institutional investors who have historically invested in gaming sector bonds, both non-Indian and Indian are insurance funds, investment portfolios, and hedge funds.

Q: How will the tribes manage the facility?

The tribal governments, the State and the Bondholders will all demand that professional management operate the facility. It is anticipated that a highly experienced team will be hired through an RFP process. Whether these professionals will be secured via a management contract or individually hired is yet to be determined.

Gaming Fairness for Minnesota

NOTE: All figures are estimates based on average revenue per day per gaming machine of \$295

Number of gaming machines		4,000
Estimated average revenue per day per gaming machine	\$	295
		365.00
Estimated table games % of slots		15%
Estimated gaming machine revenue	\$	430,700,000
Estimated table game revenue	\$	64,605,000
Estimated total gaming revenue	\$	495,305,000

Distribution of Revenue

	Rate	
Fee to the Lottery	10.00%	\$43,070,000
Gaming transaction fee on slot revenue	26.00%	\$111,982,000
Gaming transaction fee on table games	14.00%	\$9,044,700
Total fee to the State		\$164,096,700
Estimated % of Total Gaming Revenue		33.13%
Lottery fee		\$43,070,000
Total gaming transaction fee		\$121,026,700

Distribution to Tribal Entity

Gaming share for the Tribal Entity	\$	331,208,300
Other revenue for Tribal Entity (Hotel/Retail/Food/Entertainment)	\$	53,546,599
Total revenue for Tribal Entity	\$	384,754,899
Estimated contribution for Problem Gaming		2,476,525
Estimated contribution for Host Community Fee		9,906,100
Net Available for Debt Service on Land and Construction Costs, All Operational Expenses, Depreciation, and Distribution		372,372,274

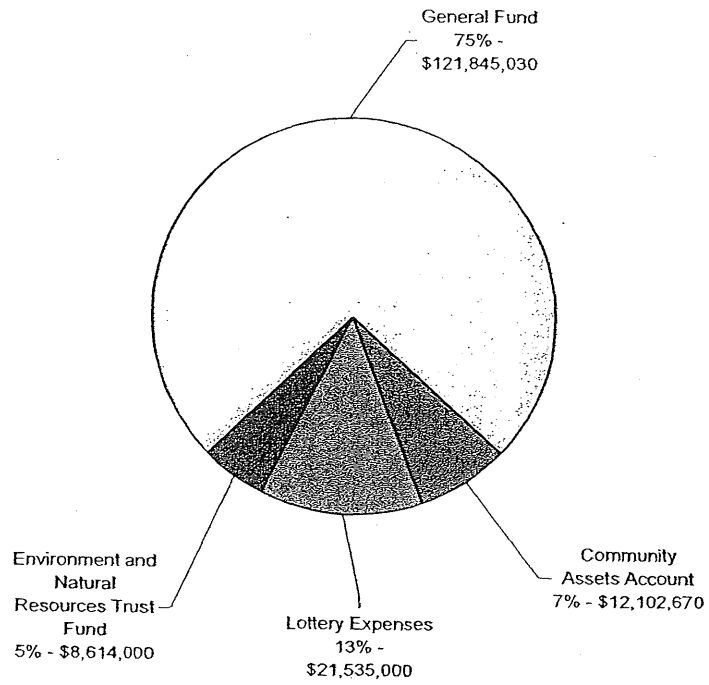
Distribution of the State Revenue

Lottery Expenses @ 50% of the fee		\$21,535,000
Lottery Proceeds to the general fund		\$12,921,000
Lottery Proceeds to the Environment and Natural Resources Trust Fund		\$8,614,000
General fund portion of the gaming transaction fee		\$108,924,030
Total General Fund Revenue (estimated)		\$121,845,030
Community Assets Account		\$12,102,670

Overall Summary of State Revenue

Lottery Expenses		\$21,535,000
Environment and Natural Resources Trust Fund		\$8,614,000
General Fund		\$121,845,030
Community Assets Account		\$12,102,670
Total State and Minnesota State Lottery Revenues		\$164,096,700

Estimated Summary of State Revenues



CONSTITUTIONAL LAW: Lotteries - Slot machines - Legislature under present constitution has no power to authorize by law that slot machines be licensed in order to obtain revenue with which to pay soldiers' bonus. State Const. Art. IV, §§ 24, 31. 148

December 23, 1946

82

C. J. E.
Hon. Edwin Mehofer
548 Superior Street
St. Paul 2, Minnesota

Dear Sir:

You state that a proposal has been made by you that slot machines be licensed in order to obtain revenues with which to pay a soldiers' bonus, and inquire whether the operation of slot machines is prohibited by our constitutional provision relating to lotteries.

Article IV, Sec. 31 of the State Constitution to which you refer, reads as follows:

"The legislature shall never authorize any lottery or the sale of lottery tickets."

The wording of the above cited provision does not by itself appear to prohibit lotteries, but it deprives the legislature of the power to enact legislation authorizing lotteries or sale of lottery tickets.

However, in State vs. Stern, 201 Minn. 139, 143, our Supreme Court says:

"* * * Our Constitution bars lotteries. Art. 4, § 31, reads: 'The legislature shall never authorize any lottery or the sale of lottery tickets.' Not only have the legislatures heeded the command, but have enacted laws prohibiting all lotteries and gift enterprises dependent on chance. So it may be said that public policy is against every scheme that includes the three essential features of a lottery.
* * *"

The three essential elements of a lottery to which the court refers are a chance to win, the distribution of property by chance and the payment of a consideration for such chance.

As to whether the legislature has the constitutional authority to pass a bill licensing slot machines to obtain revenue to pay a soldiers bonus depends upon the judicial construction of the word "lottery" as used in the constitution. If the operation of a slot machine is construed by the courts to constitute the conducting of a lottery within the meaning of the constitutional prohibition, the legislature, without an amendment to the constitution, would not, of course, have the power to enact the proposed legislation.

In 158 Ore. 102, the Supreme Court of that state held that the operation of a "nickel in the slot machine" constitutes a lottery in violation of the constitution of Oregon, which provides that "Lotteries and the sale of lottery tickets for any purpose whatsoever are prohibited, and the legislative assembly shall prevent same by penal law." In Nevada, where the constitutional provision is the same as Minnesota's, it was held that a slot machine "for the sale of cigars and drinks and no play-back allowed" is not a lottery within the purview of Article IV, Section 24 of the constitution of that state. *Ex Parte Periotti*, 43 Nev. 243.

Although the Supreme Court of Minnesota has not passed specifically upon the question here involved, I am of the opinion from the reading of its decisions, including the one above cited,

Hon. Edwin Reihofers

-3-

December 23, 1946

that it would hold, if it follows its past conclusions, that the legislature under our present constitution has no power to authorize by law the licensing of slot machines where they are so operated as to distribute moneys by chance and a consideration is paid for such chance.

Very truly yours

J. A. A. BURNQUIST
Attorney General

JAAB-sm

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Proposed Amendments to the Minnesota Constitution

Statement of Purpose and Effect of Amendments

September, 1988

To: The Voters of Minnesota

The following proposed amendments to the Constitution of the State of Minnesota will be submitted to the voters for their approval or rejection at the November 8, 1988 general election. Each amendment requires a separate vote. If a majority of all who vote in the November 8 election votes "YES", an amendment is adopted. A voter at the election who does not vote on an amendment is in effect voting "NO". Printed here are the proposed amendments they will appear on the ballot. Following each question is a statement, prepared pursuant to M.S. 3.21 by Attorney General Hubert H. Humphrey III, of the purpose and effect of the proposed amendments.

Sincerely,
Joan Anderson Growe
Secretary of State

AMENDMENT NO. 1 — ENVIRONMENTAL TRUST FUND: TO ESTABLISH

YES
NO

"Shall the Minnesota Constitution be amended to establish a Minnesota Environment and Natural Resources Trust Fund for environmental, natural resource, and wildlife purposes?"

The purpose and effect of the amendment proposed in Minnesota Laws 1988, chapter 690, article 1, section 1, is:

1. A permanent Minnesota Environmental and Natural Resources Trust Fund would be established in the state treasury.
2. The Legislature would appropriate earnings from the Fund for protection, conservation, preservation and enhancement of the state's air, water, land, fish, wildlife and other natural resources.
3. The principal of the Fund would be perpetual and inviolate forever, except that appropriations could be made from up to 25 percent of the annual revenue deposited in the Fund until fiscal year 1997 and loans could be made of up to 5 percent of the principal of the fund for water system improvements as provided by law. Investments of the Fund could be sold at less than cost to the Fund, but losses not offset by gains would be repaid to the Fund from earnings.

In chapter 690, the Legislature also adopted statutory provisions which will be effective only if the people ratify the proposed amendment. The statutory provisions would, among other things, require that the Fund not be used as a substitute for traditional sources of funding environmental and natural resources activities, but supplement traditional sources; require certain proceeds from a state-operated lottery to be credited to the Fund; permit gifts and donations to be made to the Fund; create a Minnesota Future Resources Commission to develop a budget plan for expenditures from the Fund; create a citizens advisory committee to advise the Minnesota Future Resources Commission, and provide that money in the Fund may be spent only for specified types of programs.

If the amendment is adopted, a new section 14 of Article XI will read (additions indicated by underline):

Sec. 14. A permanent Minnesota environment and natural resources trust fund is established in the state treasury. The principal of the environment and natural resources trust fund must be perpetual and inviolate forever, except appropriations may be made from up to 25 percent of the annual revenue deposited in the fund until fiscal year 1997 and loans may be made of up to five percent of the principal of the fund for water system improvements as provided by law. This restriction does not prevent the sale of investments at less than the cost of the fund, however, all losses not offset by gains shall be repaid to the fund from the earnings of the fund. The net earnings from the fund shall be appropriated in a manner prescribed by law for the public purpose of protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources.

AMENDMENT NO. 2 — JURIES: TO ALLOW LESS THAN TWELVE MEMBERS

YES
NO

"Shall the Minnesota Constitution be amended to allow the use of juries of less than 12 members in civil and non-felony cases?"

The purpose and effect of the amendment proposed in Minnesota Laws 1988, chapter 716, is:

1. The Legislature would be authorized to enact a statute providing for the number of jurors in a civil action, but the statute would have to provide for at least six jurors.

2. A person accused of a felony crime would have the right to a jury of twelve members. The Legislature would be authorized to enact a statute providing for the number of jurors in other criminal prosecutions, but the statute would have to provide for at least six jurors.

If the amendment is adopted, Article I, Section 4 will read (additions indicated by underline):

Sec. 4. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy. A jury trial may be waived by the parties in all cases in the manner prescribed by law. The Legislature may provide that the agreement of five-sixths of a jury in a civil action or proceeding, after not less than six hours' deliberation, is a sufficient verdict. The legislature may provide for the number of jurors in a civil action or proceeding, provided that a jury have at least six members.

If the amendment is adopted, Article I, Section 6, will read (additions indicated by underline):

Sec. 6. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law. In all prosecutions of crimes defined by law as felonies, the accused has the right to a jury of 12 members. In all other criminal prosecutions, the legislature may provide for the number of jurors, provided that a jury have at least six members. The accused shall enjoy the right to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel in his defense.

AMENDMENT NO. 3 — STATE LOTTERY: TO PERMIT LEGISLATURE TO AUTHORIZE

YES
NO

"Shall the Minnesota Constitution be amended to permit the legislature to authorize a lottery operated by the state?"

The purpose and effect of the amendment proposed in Minnesota Laws 1988, chapter 690, article 1, section 2, is that the Legislature would be authorized to enact a statute authorizing a lottery and sale of lottery tickets for a lottery operated by the state.

In chapter 690, the Legislature also adopted statutory provisions which will be effective only if the people ratify the proposed amendment. The statutory provisions would, among other things, require that during the first five full fiscal years in which proceeds from the lottery are received, the net lottery proceeds from the state-operated lottery would be shared equally by the Minnesota Environment and Natural Resources Trust Fund and the Greater Minnesota Corporation Fund. Thereafter, as determined by law each biennium, up to one-half of the net proceeds of the state-operated lottery must be credited to each of the two funds.

If the amendment is adopted, Article XIII, section 5 will read (additions indicated by underline):

Sec. 5. The legislature shall not authorize any lottery or the sale of lottery tickets, other than authorizing a lottery and sale of lottery tickets for a lottery operated by the state.



One South Pinckney Street
Post Office Box 2113
Madison, Wisconsin 53701-2113
Tel 608.251.5000
Fax 608.251.9166
www.quarles.com

Attorneys at Law in:
Phoenix and Tucson, Arizona
Naples and Boca Raton, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

Writer's Direct Dial: 608.283.2469
E-Mail: wxa@quarles.com

April 4, 2005

Mr. Mike Garbow, Tribal Attorney
Leech Lake Band of Ojibwe
Route 3, Box 100
Cass Lake, MN 56633

Mr. Darrell Seki, Treasurer
Red Lake Band of Chippewa Indians
P.O. Box 369
Red Lake, MN 56671

Mr. Ron Valiant, Executive Director
White Earth Band of Ojibwe
P.O. Box 418
White Earth, MN 56591

**Re: The Authority of the Minnesota Legislature to
Authorize Gaming Operated by the State**

Dear Tribal Leaders:

You have contacted me seeking my review of an Opinion of Attorney General Mike Hatch of Minnesota issued on March 30, 2005, which concluded that Minnesota House File 1817, relating to state-operated gaming in Minnesota, does not permit the State of Minnesota to operate forms of casino gaming such as slot machines, blackjack, roulette, craps, and other forms of gaming currently offered in Minnesota's casinos.¹ It is my conclusion that the Opinion's narrow construction of "lottery" is incorrect since it ignores the plain meaning of the words of the Constitution and the longstanding interpretation of "lottery" by the Minnesota legislature and courts. The reasoning of the Opinion relies on anecdotal and extraneous legislative materials to limit the definition of "lottery", despite persuasive and controlling precedent to the contrary.

**THE 1988 CONSTITUTIONAL AMENDMENT PERMITS
THE STATE LEGISLATURE TO AUTHORIZE THE STATE
TO OPERATE THE TYPES OF GAMES COMMONLY FOUND IN CASINOS.**

The Minnesota Constitution, like the constitutions of a number of other states, once contained an absolute prohibition on gambling: "The Legislature shall never authorize any

¹ Attorney General Hatch's opinion also deals with whether House File 1817's provisions meet the "operated by the State" requirements of the Minn. Const., Art. XIII, § 5, and whether the proceeds of the gaming complies with Minn. Const., Art. XI, § 14. (Op. at 13-18). I have not evaluated these issues since they can be best addressed by representatives of the State Lottery.

April 4, 2005

Page 2

lottery or the sale of lottery tickets.” Minn. Const. of 1857, Art. IV, § 31.² This language remained the same until 1974 when the Minnesota Constitution was restructured and the restructured version was adopted by the voters on November 5, 1974. The restructuring moved the gambling prohibition to Art. XIII, § 5, where it read as follows: “The legislature shall not authorize any lottery or the sale of lottery tickets.” Minn. Const. 1974, Art. XIII, § 5.³ That initial absolute prohibition was removed by the Minnesota Legislature and its people in 1988 when the language of the Constitution was changed to read: “The legislature shall not authorize any lottery or the sale of lottery tickets, other than authorizing a lottery and sale of lottery tickets for a lottery operated by the state.” Minn. Const., Art. XIII, § 5.

Lawyers and judges faced with the task of deciding what sort of gaming Minnesota could authorize under this constitutional provision, look first to the words of the constitution itself to determine what was intended in context. *Rice v. Connolly*, 488 N.W.2d 241, 246-47 (Minn. 1992) (interpreting Minnesota Constitution’s provisions regarding parimutual betting: “If the language of the provision is unambiguous, it must be given its literal meaning – there is neither the opportunity nor the responsibility to engage in creative construction.”). The language of the 1988 amendment uses “lottery” five times, but does not define “lottery”. The language contains the same general prohibition as was in the 1857 Constitution, but then creates an exception to the general prohibition if the lottery is operated by the state.

The courts of Minnesota, as Attorney General Hatch points out, have consistently interpreted “lottery” in an expansive fashion from 1892 through 2004. Op. at 3 and cases cited therein. If an activity had the elements of prize, chance, and consideration, it was a “lottery.” *Id.* The Minnesota Attorney General agreed with that expansive definition, specifically stating that slot machines were “lotteries.” *Id.*, citing Atty. Gen. Op. 733-D, December 23, 1946. Attorney General Hatch points out that the precedent in other states is in agreement with the expansive definition used in Minnesota. *Id.* at 4.

The Minnesota statutes also contains a longstanding definition of “lottery” that is consistent with the definition recognized by the Minnesota courts. Minn. Stat. § 609.75 defines “lottery” as “[a] plan which provides for the distribution of money, property or other reward or benefits to persons selected by chance from among participants some or all of whom have given a consideration for the chance of being selected.” Although a legislative definition is not controlling over the plain language, the courts, when interpreting a constitution, will consider whether the definition is consistent with the legislature’s use of the term. *See, e.g., Winters v.*

² Attorney General Hatch’s Opinion at p.3 states that this provision was in the Minnesota Constitution of 1859. However, the Minnesota Constitution was adopted on October 13, 1857 by the people of Minnesota.

³ The 1974 restructuring resulted from a constitutional study commission established by the legislature in 1971 to review the Constitution. The commission recommended restructuring for easy reference and rewriting to modernize the language. No alteration in meaning was intended, and the language of the original documents is the final authority. (Minn. Secy. of State, Online Blue Book, Chap. 7, Minnesota Constitution, www.state.mn.us/ebranch/sos.)

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Kiffmeyer, 650 N.W.2d 167, 173 (Minn. 2002) (noting that the courts' interpretation of the term "appointment" was consistent with the legislature's definition of appointment in statute.)

Rather than applying this longstanding and widely-accepted expansive interpretation of "lottery" to the use of the same word in the Minnesota Constitution, the Attorney General ignores the Minnesota rule of construction that he cites, that is, that if the language used is unambiguous "it must be taken as it reads" and there is "no room for construction", *Id.*, and proceeds to ignore the plain and well-established meaning of "lottery" and creates ambiguity by looking to materials such as newspaper articles, selected portions of floor debates, etc. *Id.* at 4-13.

This is where, in my opinion, the analysis goes wrong. Since the word "lottery" used in 1988 is the identical term used in 1857, and since one hundred years of Minnesota case law precedent says that a "lottery" is any game with the elements of prize, chance, and consideration, that precedent should control the meaning of "lottery" in the 1988 amendment.⁴ *State ex. rel. Frederick v. Zimmerman*, 254 Wis. 600, 37 N.W.2d 473, 479 (1949) (applying the rule that a longstanding construction of a phrase in a constitution must be given great, if not controlling weight).

In other words, there was a long-established legislative and judicial meaning of "lottery" in 1988 when the Minnesota Constitution was amended. Courts apply a presumption that legislatures choose terms carefully and precisely. *ILHC of Eagan v. County of Dakota*, ___ N.W.2d ___, (Minn. 2005), 2005 Lexis 113, 115, (Minn. 2005) ("legislature presumed to know the effect of its words.") *Hoffman v. Rankin*, 256 Wis.2d 678, 649 N.W.2d 350, 356 (Ct. App. 2002) (refusing to give two different meanings to the same word in a statute); *Meister v. Western Nat'l Mutual Ins. Co.*, 479 N.W.2d 372, 378, (Minn. 1992) (stating courts should presume legislature acted with understanding of existing, related legislation); *Storm v. Legion Insurance Co.*, 265 Wis.2d 169, 189, 665 N.W.2d 353 (2003) (applying presumption that when a legislature enacts new law it does so with knowledge of new law's relationship with existing law).⁵ If the 1988 amendment was to change that long understanding, it had to either define "lottery" in the Constitution differently than the previous way it was understood or it had to use a word other than "lottery."⁶ It did neither.

Attorney General Hatch's analysis uses the type of analysis used by a former Wisconsin Attorney General Donald J. Hanaway in 1990. He issued an opinion about the meaning of "lottery" as used in a 1987 amendment to the Wisconsin Constitution, 79 Op. Atty. Gen. Wis. 14

⁴ In 1982, Minnesota amended its Constitution to permit pari-mutuel on-track betting. Minn. Const., Art. X, § 8. When the legislature intended to authorize only one form of gaming, it knew how to describe it so there would be no ambiguity in meaning.

⁵ Minnesota applies rules of construction applicable to statutes equally to the Constitution. *In The Matter of The Retirement Benefits of Yetka*, 554 N.W.2d 85, 91 (Minn. Ct. App. 1996).

⁶ For example, in 1993, Wisconsin amended its Constitution to specifically define the type of lottery that the State could operate. Wis. Const., Art. IV, § 24(6)(b). The same amendment specifically prohibited certain types of games such as banking card games, poker, roulette, craps, slot machines, etc. Wis. Const., Art. IV, § 24(6)(c).

(1990). The 1987 amendment at issue in the Opinion, like Minnesota's 1988 amendment, authorized a state-operated lottery. Wis. Const. 1987, Art. IV, § 24(6):

The legislature may authorize the creation of a lottery to be operated by the state as provided by law. The expenditure of public funds or of revenues derived from lottery operations to engage in promotional advertising of the Wisconsin state lottery is prohibited. Any advertising of the state lottery shall indicate the odds of a specific lottery ticket to be selected as the winning ticket for each prize amount offered. The net proceeds of the state lottery shall be deposited in the treasury of the state, to be used for property tax relief as provided by law.

Attorney General Hanaway disregarded the long-established meaning of "lottery" in Wisconsin where, just as in Minnesota, the courts had ruled it meant any game with the elements of prize, chance, and consideration. *Id.* at 17-18. Instead of relying on that interpretation, the Wisconsin Attorney General, like Attorney General Hatch, sought ambiguity by going to the history of what legislators thought a "lottery" was, and concluded, as did Attorney General Hatch, that a "lottery" in the constitutional amendment was a distinct form a gaming different from other forms of gaming. *Id.* at 27. Under Minnesota law, the type of constitutional construction Attorney General Hatch used is called a "practical construction," and should not be used if the meaning of the words is plain:

In construing a constitutional provision or any writing, first resort is to letter and spirit. That implies application of writing to subject-matter. If without going farther the meaning is plain interpretation is at an end. Resort cannot then be had to the extraneous to obscure what is already clear, and so start again the process of construction and excuse resort to further extraneous aids.

State ex rel Gardner v. Holm, 241 Minn. 125, 139, 62 N.W.2d 52 (1954), quoting, *State ex rel. University of Minnesota v. Chase*, 175 Minn. 259, 272, 220 N.W. 951, 956 (1928).

The type of legal analysis done by both former Attorney General Hanaway and Attorney General Hatch was almost immediately rejected by both the new Wisconsin Attorney General, James E. Doyle,⁷ and by the Federal District Court for the Western District of Wisconsin. 80

⁷ James E. Doyle is currently the Governor of Wisconsin.

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Op. Atty. Gen. Wis. 53 (1991);⁸ *Lac du Flambeau v. State of Wis.*, 770 F. Supp. 480, 486 (W.D. Wis. 1991), *appeal dis.*, 957 F. 2d 515 (7th Cir. 1992), *cert. den.* 506 U.S. 829 (1992).⁹

Attorney General Doyle used the preferred legal analysis by relying on how "lottery" has been construed by the courts as including any game with the three elements of prize, chance and consideration:

The term "lottery" has been continuously and uniformly construed by the courts to include the three elements of prize, chance and consideration. *Kayden Industries, Inc., v. Murphy*, 34 Wis. 2d 718, 150 N.W.2d 447 (1967); *State v. Laven*, 270 Wis. 524, 71 N.W.2d 287 (1955); *State ex rel. Regez v. Blumer*, 236 Wis. 129, 294 N.W. 491 (1940); and *State ex rel. Cowie v. La Crosse Theaters Co.*, 232 Wis. 153, 286 N.W. 707 (1939). The Legislature is presumed to enact statutory provisions with full knowledge of the existing laws, including decisions of the Wisconsin Supreme Court interpreting relevant statutes. *Glinski v. Sheldon*, 88 Wis. 2d 509, 520, 276 N.W.2d 815 (1979). The courts would undoubtedly hold that the Legislature had been aware of the judicial definition of lottery for almost fifty years. *See State v. Banks*, 105 Wis. 2d 32, 313 N.W.2d 67 (1981).

Numerous prior opinions of the attorney general have similarly found a violation of the lottery statute whenever the three elements of prize, chance and consideration were present in any scheme. 5 Op. Att'y Gen. 380 (1916), 9 Op. Att'y Gen. 9 (1920), 11 Op. Att'y Gen. 396 (1922), 23 Op. Att'y Gen. 396 (1934), 26 Op. Att'y Gen. 143 (1937), 28 Op. Att'y Gen. 457 (1939), 28 Op. Att'y Gen. 556 (1939), 32 Op. Att'y Gen. 181 (1943), 37 Op. Att'y Gen. 184 (1948), 41 Op. Att'y Gen. 111 (1952), 61 Op. Att'y Gen. 405 (1972), 62 Op. Att'y Gen. 122 (1973). Over the years the attorney general has expressly concluded that gambling activities such as "Las Vegas" type games and casino slot machines constituted a lottery. 70 Op. Att'y Gen. 59 (1981), 32 Op. Att'y Gen. 181 (1943) and 28 Op. Att'y Gen. 556 (1939).

80 Op. Atty. Gen. Wis. at 55.

⁸ A copy of Attorney General Doyle's Opinion is attached.

⁹ Some aspects of *Lac du Flambeau* dealing with the application of federal law have been questioned by other courts, but Judge Crabb's ruling on the meaning of "lottery" in the 1987 amendment to the Wisconsin Constitution, Art. IV, § 24(6) has not been questioned.

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The federal court, when it decided the scope of games that the State of Wisconsin was required to negotiate with Native American tribes, construed the same provision of the Wisconsin Constitution, and independently analyzed Wisconsin law and the 1987 constitutional amendment:

When the voters authorized a state-operated "lottery," they removed any remaining constitutional prohibition against state-operated games, schemes or plans involving prize, chance and consideration, with minor exceptions. *See* Op. Att'y Gen. Wis. 10-91, slip op. at 5 ("Under the [state] constitution, the Legislature may authorize any type of state-operated lottery subject only to the advertising, use-of-revenue and off-track wagering restrictions.

Lac du Flambeau, 770 F. Supp. at 486. The court acknowledged Attorney General Hanaway's Opinion was to the contrary, but did not rely on his opinion that was based on the notion that the framers of the state constitution and the members of the state legislature considered lotteries a form of gambling separate and distinct from other forms of gambling" *Id.* at fn. 4.

Attorney General Hatch's construction of the 1988 amendment also relies on wording in the Constitution that mentions "lottery tickets", Op. at 5. He reasons that the use of "ticket" means that the intent was to limit the definition of "lottery" to a game which involves the sale of tickets. *Id.*

The Wisconsin amendment of 1987 also used the word "ticket," but as Attorney General Doyle pointed out that "ticket" did not limit the games authorized to games where tickets are used to play the game:

Nor do I view the use of the word "ticket" in the third sentence of article IV, section 24(6) of the Wisconsin Constitution as limiting the lottery to games employing a ticket as a method of determining the winner. The plain, ordinary definition of ticket is "a written, typed, printed, stamped, or engraved notice, record, memorandum, or token." Webster's Third New International Dictionary 2389 (1986). Under this definition, a ticket is evidence of participation in a lottery game. The word ticket does not require that the ticket be in some way used in the play of the game or selection of the winner. *Compare, e.g.,* the definition of raffle, chapter 163. Under the plain meaning of the word "ticket" as set forth above, a note, document or token in writing which serves as a permit to participate in any specific game would serve as a ticket within the meaning of the constitutional provision.

The Lottery Board currently operates three such games involving tickets. The instant game television show does not use the ticket to

determine the amount of the prizes awarded on the television show. A ticket is used to determine the participants in the show. Megabucks and SuperCash tickets are memoranda of the numbers selected by the player. The winners are ultimately determined by mechanical selection of numbered balls.

80 Op. Att'y Gen. Wis. at 58-59.

The Minnesota Supreme Court has recognized the value at looking to similar historical context and interpretations where the Minnesota and Wisconsin Constitutions are similar. *See Cooper v. French*, 460 N.W.2d 2, 9 (Minn. 1990) (considering Wisconsin precedent and historical context in interpreting religious freedom provision of the Minnesota Constitution).

To summarize, the language of the Minnesota Constitution permits the legislature to authorize any game that includes the elements of prize, chance and consideration. As Attorney General Doyle said: "The type of games the Lottery Board, [in Minnesota the State Lottery § 349A.01, Minn. Stats.], may offer is solely a legislative decision." *Id.* at 60.

**THE LEGISLATIVE HISTORY CITED IN THE OPINION DOES NOT
SUPPORT THE VIEW THAT THE MEANING OF "LOTTERY"
HAD CHANGED OR THAT THE LEGISLATURE'S ABILITY TO
AUTHORIZE STATE-OPERATED GAMING IS LIMITED.**

Since "lottery" had a long-accepted and uniform meaning in Minnesota prior to the 1988 amendment, and since the legislature used that very same word in creating an exception to the general prohibition against gambling to allow state-operated gambling, there is no need to go beyond the words that were used. However, even if examination of other sources of legislative intent was proper, the type of materials used in Attorney General Hatch's Opinion are not persuasive, are unreliable, and are not the types of legislative history that courts give weight to when construing the language of a constitution.

The construction Attorney General Hatch is trying to support is that "lottery" as used in the 1988 constitutional amendment means a limited form of gaming that looks something like the games currently offered to the public by the State of Minnesota.¹⁰ To support this construction he cannot rely on the legally-established meaning of "lottery" in Minnesota, the decisions of the Minnesota courts, or the prior decisions of his office.

The Opinion quotes from floor debate from a Senator opposed to the amendment. Op. p. 6 quoting Senator Frederickson. The legislator quoted is not acknowledged in the Opinion as

¹⁰ The Opinion does not explain how the legislature is to be guided by the Constitution in what types of games it can authorize under his narrow interpretation of "lottery." Even assuming a "ticket" was required, it should also be noted that the current version of H.F. 1817 includes provisions for gaming machines that would meet a ticket requirement.

being a sponsor or drafter of the amendment, which is usual if legislators' statements are to be used as an indication of intent.¹¹ *Reserve Mining Company v. Minnesota*, 310 N.W.2d 487, 490 (Minn. 1981) (official journals and reports of the legislature may be consulted); *see also Heilman v. Levi*, 391 F. Supp. 1106, 1112 (1975), *aff'd*, 583 F.2d 373 (7th Cir. 1978), *cert. den.*, 440 U.S. 959 (1979) (refusing to consider the opinions of legislators as evidence of legislative purpose). Also, floor debates as evidence of legislative intent are used to support the language in the enactment, not to contradict it. *U.S. v. Kjellstrom*, 916 F. Supp. 902, 906, (W.D. Wis. 1996), *aff'd*, 100 F.3d 482 (7th Cir. 1996) (applying evidence of floor debate in Congress to support construction of the words of a statute.) In any case, legislative history is not the law, the words used are the law and control interpretation: "[C]aution should be exercised in calling opponents to the bill, since they have tend to overstate its reach in their zeal to defeat it." *Reserve Mining Company*, 310 N.W.2d at 491.

What is the most striking about the floor debate quotations used in the Opinion is that none of them support the limiting interpretation argued by Attorney General Hatch. The statements quoted generally refer to the type of games currently being offered by the Minnesota State Lottery, but there is no language that supports the interpretation that Minnesota would be precluded from offering other games.

Senator Frederickson's quote does not say the amendment limits the State to selling lottery tickets, in fact, it suggests the amendment will lead to gaming other than selling tickets: "... but you can't tell me for a minute that by making the lottery available and gambling available in every corner grocery store ..." Op. at 6. (Emphasis supplied.) Senator Lessard says the people want to vote on the amendment and to prevent money from leaving the State. Op. at 6-7. He says nothing about what type of gaming the State could authorize. Senator Bernhagen's comments confirm that the legislature has discretion in offering different types of games: "...it depends on the type of the game." Op. at 7. Rep. Osthoff's comment hardly supports the narrow meaning suggested by Attorney General Hatch: "Lottery is a game of chance." Op. at 7. His later comment about his opposition to casino gaming confirms he thought that the legislature could pass a bill authorizing casino gaming if the amendment passes. He said he would not support a bill for casino gaming, not that the amendment could not authorize a bill to authorize casino gaming. Op. at 8. (Emphasis supplied.) Finally, Senator Schreiber's comments go to what the State will realize if it goes into the business of selling lottery tickets; it says nothing about whether other forms of gaming would be authorized. Op. at 8.

Minnesota's former Attorney General, in accordance with Minnesota law, told the people of the State what they were voting on when they voted on the proposed constitutional amendment: "Shall the Minnesota Constitution be amended to permit the legislature to authorize a lottery operated by the State?" Op. at 9. Attorney General Hatch argues that this question, coupled with the former Attorney General's statement that the legislature would be able to authorize a lottery and the sale of lottery tickets for a lottery operated by the State, meant the

¹¹ The quotes from Senator Lessard and Representative Osthoff are from persons who authored the amendment.

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Attorney General believed that the lottery authorized would limited to one involving sales of tickets. *Id.*

The conclusion drawn in the Opinion, however, does not logically follow. Since the 1857 constitutional language used the words "sale of lottery tickets," Minn. Const. 1857, Art. IV, § 31, the Attorney General's statements that the legislature could authorize a lottery and the sale of lottery tickets were addressed to the fact that everything that had once been prohibited would now be authorized by the constitutional amendment. He knew that the impact of the amendment would be to authorize all forms of gaming, if operated by the State. By referencing the original constitutional language, he was making it plain that the prohibition was removed in its entirety.

If the intent was truly as Attorney General Hatch contends, the ballot question and proposed constitutional language should have been stated to clearly reflect the limitation. For example, "shall the Minnesota Constitution be amended to permit the legislature to authorize the sale of lottery tickets for a lottery operated by the state." As presented to the people, the votes were asked whether to amend the constitution to permit a lottery operated by the state. The term "lottery" presented to the voters in the ballot questions was not intended to have a meaning different than the term "lottery" as it was used in the existing constitutional provision and as it had been interpreted by the courts.

The Opinion quotes a number of articles in the popular press at the time the constitutional amendment was proposed. *Op.* at 9-11. None of the information cited demonstrates that the legislature intended that the state would operate only games such as the ones currently operated by the Minnesota State Lottery. The question of what could be authorized is never addressed at all. To the contrary, the gambling expert quoted acknowledged that on-line games would "probably" be authorized. *Op.* at 11. His statements cannot be fairly read to say the amendment limited the legislature's options.

The New York Constitution analysis, cited in the Opinion at 12, does not apply to Minnesota. The New York Constitution in 1821 provided: "No lottery shall hereafter be authorized in this state; and the legislature shall pass laws to prevent the sale of all lottery tickets within this state except the lotteries already provided for by law." New York Const. 1821, Art. 1, § 10. Prior to the 1821 Constitution, New York Law, unlike Minnesota law, distinguished between a "lottery" and a "bet" and "bets" were not constitutionally prohibited. *Reilly v. Gray*, 77 Hun. 402, 28 N.Y.S. 811 (1894). The courts of New York recognized early on that "lottery" excluded "bets":

It seems to me very clear that it was not the intent of the framers of the constitution either in 1846 or 1821, in the use of the word "lottery," to include in it the subject of betting as then prohibited by statute. They were distinct subjects upon the statute book and in the public mind, and, if the design had been to cover both, they would have been named.

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Reilly, 28 N.Y.S. at 815. Therefore, New York law is not pertinent as legal gambling existed in New York prior to both the 1821 and 1846 constitutions, and therefore, "lottery" did not mean the same thing in those constitutions as it did in the Minnesota Constitution and laws.

The history of the New York provisions discussed in *Dalton v. Pataki*, 780 N.Y.S.2d 47, 60-62 (N.Y. App. 2004), confirms the difference between the Minnesota Constitution and the various New York constitutions. The amendments to the 4th New York Constitution were at issue. The 4th version, as amended, prohibited lotteries, the sale of lottery tickets, pool-selling, bookmaking, or any other kind of gambling, except lotteries operated by the state and sale of lottery tickets in connection therewith. In taking a narrower view of permissible lottery, the court relied on the fact that multiple forms of gaming were prohibited and only one form allowed. To hold otherwise would have rendered the remaining prohibitions meaningless.

CONCLUSION

It is the nature of legal disputes that lawyers may draw different legal conclusions regarding questions like the one addressed in this letter. However, the law provides a set of rules for how these questions should be analyzed and resolved. Attorney General Hatch's Opinion, in my view, does not rigorously apply these rules and relies instead on sources that are less reliable and of questionable applicability. If a court addressed the question and applied the plain meaning of the amendment and the longstanding Minnesota precedent, I believe that it would conclude the legislature could authorize any type of gaming operated by the state.

Very truly yours,



Waltraud A. Arts

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Gambling; Lotteries; Lottery Board; Words And Phrases;
Under article IV, section 24 of the Wisconsin Constitution the Legislature may not authorize any scheme involving prize, chance, and consideration without amending the constitution unless the scheme falls within the bingo, raffle, on-track pari-mutuel or state lottery exceptions to the constitution.
OAG 10-91

May 2, 1991

WALTER KUNICKI, *Chairperson*
Assembly Organization Committee

The Assembly Committee on Organization has requested that I render a formal opinion on the following question. "[D]oes Wisconsin Constitution, article IV, section 24, prohibit all forms of gambling in Wisconsin, except for those matters specified in the Constitution, or does the constitutional term 'lottery' have a narrow scope that would allow legislation to be enacted legalizing the forms of gambling to which reference is made in OAG 3-90?"

You have, on behalf of the committee, quoted at length from 79 Op. Att'y Gen. 14 (1990) in which my predecessor opined:

I therefore believe it to be clear, and conclude, that both the framers of the constitution and the Legislature in its various enactments, treat lotteries as a form of gambling separate and distinct from the other methods of gambling such as betting, playing gambling machines and the like

. . . .
. . . I wish to emphasize that the forms of gambling encompassed by the definition of bet and gambling machines are prohibited by statute only, and do not come within the purview of prohibited lotteries as described in the constitution of this state. Therefore, the Legislature may allow casino-type gambling in the State of Wisconsin.

Because my predecessor's opinion is contrary to the prior decisions of the Wisconsin Supreme Court, the legislative history of the 1955 criminal code revision and the manner in which the Legislature has treated the term "lottery" in proposing amendments to our constitution and enacting legislation, I have determined to depart from that opinion.¹

In construing the constitution, courts rely on the same rules that govern statutory construction. Where there is no ambiguity, there is no room for judicial construction. *Ripley v. Brown*, 141 Wis. 2d 447, 415 N.W.2d 550 (Ct. App. 1987). The courts in interpreting constitutional provisions will examine:

"(1) The plain meaning of the words in the context used;

"(2) The historical analysis of the constitutional debates

"(3) The earliest interpretation of this section by the legislature as manifested in the first law passed following the adoption of the constitution. . . ."

State v. Beno, 116 Wis. 2d 122, 136-37, 341 N.W.2d 668 (1984); *Jacobs v. Major*, 139 Wis. 2d 492, 502, 407 N.W.2d 832 (1987).

Article IV, section 24(1) of the Wisconsin Constitution states "[e]xcept as provided in this section, the legislature shall never authorize any lottery or grant any divorce." Words are to be given their plain meaning, that is their ordinary and approved meaning. Sec. 990.01(1), Stats. *State v. Williquette*, 129 Wis. 2d 239, 385 N.W.2d 145 (1986). The words should be construed

¹The State of Wisconsin is currently a defendant in a lawsuit involving the issue of the gambling activities which must be the subject of negotiations between the state and Indian Tribes under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, et seq., *Lac du Flambeau Band of Lake Superior Chippewa Indians, et al. v. State of Wisconsin, et al.*, Case No. 90-C-0408-C. (United States District Court for the Western District of Wisconsin.) The issue in that litigation is different than the issue addressed in this opinion.

to give effect to the intent of the framers. *State v. Beno*, 116 Wis. 2d at 138.

The term "lottery" has been continuously and uniformly construed by the courts to include the three elements of prize, chance and consideration. *Kayden Industries, Inc., v. Murphy*, 34 Wis. 2d 718, 150 N.W.2d 447 (1967); *State v. Laven*, 270 Wis. 524, 71 N.W.2d 287 (1955); *State ex rel. Regez v. Blumer*, 236 Wis. 129, 294 N.W. 491 (1940); and *State ex rel. Cowie v. La Crosse Theaters Co.*, 232 Wis. 153, 286 N.W. 707 (1939). The Legislature is presumed to enact statutory provisions with full knowledge of the existing laws, including decisions of the Wisconsin Supreme Court interpreting relevant statutes. *Glinski v. Sheldon*, 88 Wis. 2d 509, 520, 276 N.W.2d 815 (1979). The courts would undoubtedly hold that the Legislature had been aware of the judicial definition of lottery for almost fifty years. See *State v. Banks*, 105 Wis. 2d 32, 313 N.W.2d 67 (1981).

Numerous prior opinions of the attorney general have similarly found a violation of the lottery statute whenever the three elements of prize, chance and consideration were present in any scheme. 5 Op. Att'y Gen. 380 (1916), 9 Op. Att'y Gen. 9 (1920), 11 Op. Att'y Gen. 396 (1922), 23 Op. Att'y Gen. 396 (1934), 26 Op. Att'y Gen. 143 (1937), 28 Op. Att'y Gen. 457 (1939), 28 Op. Att'y Gen. 556 (1939), 32 Op. Att'y Gen. 181 (1943), 37 Op. Att'y Gen. 184 (1948), 41 Op. Att'y Gen. 111 (1952), 61 Op. Att'y Gen. 405 (1972), 62 Op. Att'y Gen. 122 (1973). Over the years the attorney general has expressly concluded that gambling activities such as "Las Vegas" type games and casino slot machines constituted a lottery. 70 Op. Att'y Gen. 59 (1981), 32 Op. Att'y Gen. 181 (1943) and 28 Op. Att'y Gen. 556 (1939).

As stated by the Wisconsin Supreme Court: "The legislature, the courts, and the attorney general of Wisconsin have traditionally taken a restrictive view of games, schemes, and plans involving a prize, chance, and consideration, condemning

them as lotteries prohibited by the constitution." *Kayden Industries*, 34 Wis. 2d at 724.

The history of our constitutional provision further evidences that the term as construed by the courts was the definition accepted by the Legislature and the people. Until 1965, article IV, section 24 of the Wisconsin Constitution stated simply "[t]he legislature shall never authorize any lottery, or grant any divorce." In April of 1965 the people approved a constitutional amendment limiting the definition of consideration as an element of a lottery. Wis. Const. art. IV, § 24(2). The Legislature quickly added these limitations to the statutory definition. Sec. 945.01, Stats.

The next expansion of lotteries was the constitutional amendments authorizing the Legislature to legalize bingo in 1973 and raffles in 1977 when these activities are conducted by religious, charitable, service, fraternal or veterans' organizations or those to which contributions are deductible for federal or state income tax purposes. Wis. Const. art. IV, § 24(3) and (4). The Legislature thereafter adopted section 945.01(5)(am) which specifically excluded bingo and raffles conducted under chapter 163 from the statutory definition of lottery.

In 1987, article IV, section 24(6) of the Wisconsin Constitution was adopted to provide:

The legislature may authorize the creation of a lottery to be operated by the state as provided by law. The expenditure of public funds or of revenues derived from lottery operations to engage in promotional advertising of the Wisconsin state lottery is prohibited. Any advertising of the state lottery shall indicate the odds of a specific lottery ticket to be selected as the winning ticket for each prize amount offered. The net proceeds of the state lottery shall be deposited in the treasury of the state, to be used for property tax relief as provided by law.

A separate amendment in 1987 authorized on-track, pari-mutuel wagering.

Prior amendments to the constitution, including the 1987 amendments, removed the absolute prohibition against the Legislature's authorizing a lottery. These amendments narrowed definitions and excepted games and eventually authorized the creation of a state operated lottery. Since these amendments did not modify the preexisting definition of lottery, I can only conclude that the scope of the amendments must be construed identically to the definition of lottery which has been constantly used by the courts, the Legislature and this department. Generally, when a word in one subsection is clear, it will be given the same interpretation as in other subsections of the same section. *United States v. Nunez*, 573 F.2d 769, 771 (2d Cir. 1978); 2A Singer, Sutherland Statutory Construction § 46.06 n.6 (Sands 4th ed. 1984).

There is additional evidence that the Legislature itself has operated under a broad definition of the term "lottery." "[T]he overall purpose of the 1965 amendment was to remove the constitutional obstacle to the conduct of the kinds of activities forbidden by *Cowie* [theater bank nights], *Regez* [drug store promotional giveaway] and *Laven* [watching television or listening to radio] . . . under the original sec. 24 of art. IV, Const." *Kayden Industries*, 34 Wis. 2d at 730. The amendment to legalize bingo in 1973 and the amendment to authorize on-track, pari-mutuel wagering were necessary only if the term "lottery" was understood to prohibit all schemes involving prize, chance and consideration.

The legislative council report to the criminal code revision in the 1950's indicated that the definition of lottery included in the code was a "restatement of the rule laid down by the supreme court. *State ex rel. Regez v. Blumer*, 236 Wis. 129, 294 N. W. 491 (1940); *State ex rel. Cowie v. La Crosse Theaters Co.*, 232 Wis. 153, 286 N. W. 707 (1939); 40 Ops. Atty. Gen. 438 (Wis., 1951)." *Kayden Industries*, 34 Wis. 2d at 726 (quoting from Wisconsin Legislative Council Reports, comment to 1953 Criminal Code draft of section 345.01(2)). I must, therefore,

conclude that the term "lottery" throughout article IV, section 24, refers to any game, scheme or plan comprising prize, chance and consideration.

Under the constitution, the Legislature may authorize any type of state-operated lottery subject only to the advertising, use-of-revenue and off-track wagering restrictions. The Legislature may not, however, authorize such lotteries if they are not operated by the state, or fall within the bingo, raffle or on-track, pari-mutuel exceptions. Any other lottery requires an amendment to the constitution.

In reaching this conclusion, I recognize that article IV, section 24(6) of the Wisconsin Constitution includes provisions relating to promotional advertising and the required use of lottery proceeds. Although these provisions unquestionably limit the Legislature's discretion regarding the administration and regulation of a state lottery, they do not in any way limit the scope of gaming which may be authorized by the Legislature. There is nothing in the language of the amendment to prohibit legislative authorization of casino-type games by the Lottery Board.

The Legislature has plenary power to legislate all laws not expressly prohibited by the constitution. *Jacobs*, 139 Wis. 2d at 507. Although the constitutional requirement to disclose the odds of selecting a winning ticket may, as a practical matter, make implementation of some lottery games more difficult than others, it does not stand as an absolute barrier to games such as those involving casino-type gambling.

Nor do I view the use of the word "ticket" in the third sentence of article IV, section 24(6) of the Wisconsin Constitution as limiting the lottery to games employing a ticket as a method of determining the winner. The plain, ordinary definition of ticket is "a written, typed, printed, stamped, or engraved notice, record, memorandum, or token." Webster's Third New International Dictionary 2389 (1986). Under this definition, a ticket is evidence of participation in a lottery game.

The word ticket does not require that the ticket be in some way used in the play of the game or selection of the winner. *Compare, e.g.*, the definition of raffle, chapter 163. Under the plain meaning of the word "ticket" as set forth above, a note, document or token in writing which serves as a permit to participate in any specific game would serve as a ticket within the meaning of the constitutional provision.

The Lottery Board currently operates three such games involving tickets. The instant game television show does not use the ticket to determine the amount of the prizes awarded on the television show. A ticket is used to determine the participants in the show. Megabucks and SuperCash tickets are memoranda of the numbers selected by the player. The winners are ultimately determined by mechanical selection of numbered balls.

The first legislation after the 1987 amendment authorized the Lottery Board to use lottery tickets or lottery shares. *See* secs. 565.02(3)(b)5., 565.17, 565.27(1)(b) and 565.27(3), Stats. Section 565.02(3)(g) further gives the Lottery Board authority to define "lottery shares." This is compelling evidence that the Legislature did not view the constitutional reference to "tickets" as a restriction on the conduct of games.

The Legislature also contemplated that the Lottery Board could have conducted games in which the winners were determined by the outcome of a race or other sporting event. Enabling legislation for the state lottery provides that the Lottery Board shall promulgate rules "[d]etermining the types of lottery games to be offered under s. 565.27." Sec. 565.02(3)(d), Stats. Section 565.27(1) provides:

Subject to this section, the rules promulgated under s. 565.02(3)(d) and (4)(a) and board approval, the executive director shall determine the particular features of and procedures for each lottery game offered. The executive director shall recommend to the board for promulgation by rule under s. 565.02(3)(d) the types of

state or multistate lottery games to be offered, *except that no game may be offered for which winners are selected based on the results of a race or sporting event.*

There would have been no need for this provision if "lottery" in chapter 565 did not include betting on races or other sports betting.

It is my opinion that any lottery game which is not based on the outcome of a race or sporting event and which includes all of the elements of section 565.27(1)(a) through (f) may be authorized by the Lottery Board. While these requirements may make certain games more difficult or require modifications to meet the provisions of section 565.27(1), the only limitation contained in that section is on games involving races or sporting events. Language in similar statutes in another state has also been interpreted as a broad grant of authority. *See Tichenor v. Missouri State Lottery Com'n*, 742 S.W.2d 170 (Mo. en banc 1988).

Of course, the Legislature has the power to limit the type of games which the Lottery Board may permissibly authorize. Section 565.27(1) already prohibits the Lottery Board from offering games "based on the results of a race or a sporting event." This exception could be expanded to prohibit card games, casino-type games or any other game the Legislature deems undesirable. The types of games the Lottery Board may offer is solely a legislative decision.

JED:WDW

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EDITORIAL

Pennsylvania's Slots Sleaze

Thursday, March 3, 2005; Page A24

IT TOOK LESS than six months from the date Pennsylvania legalized the expansion of slot machine gambling last year for state prosecutors to bring their first slots-related indictment. The mayor of Erie was accused of trying to enrich himself through a land deal at a proposed gambling site. He was charged with criminal conspiracy, conflict of interest and other corruption-related counts. Naturally, Maryland's slots advocates will gloss over that and other signs of sleaze oozing to the surface in Pennsylvania; they'll focus instead on the \$1 billion in annual revenue that the Keystone State hopes to harvest from casinos and slots parlors a few years from now. But as lawmakers in Annapolis prepare to negotiate a political compromise on slots, they would be wise to examine Pennsylvania's experience, and the corruption that may slither southward.

As in Maryland, slots partisans in Pennsylvania, led by a popular first-term governor, moaned about losing potential income to neighboring states' casinos. Last July they passed slots legislation envisioning a vast empire of 61,000 machines at seven racetracks, two resort hotels and five other locations. Gov. Edward G. Rendell promised that revenue from slots, which would trim perhaps \$300 from the property tax bill of an average homeowner, would improve Pennsylvania's "quality of life."

Instead, in the brief period since the slots bill passed, Pennsylvanians have been treated to a series of disquieting disclosures. Some involved the state's Gaming Control Board, a powerful body established to issue hugely profitable casino licenses and oversee the state's plunge into gambling. Mr. Rendell's first pick as board chairman was forced to resign before he started after the Philadelphia Daily News revealed he had helped an alleged underworld crime figure regain a boxing license at a casino in Connecticut. A short time later it was reported that another man with big-time ties to organized crime documented by the government -- and a felony fraud conviction in his past -- had bought a defunct 1,000-acre resort in hopes of developing it into a casino. Then there was the matter of Erie's mayor, Rick Filippi, who is in hot water for trying to acquire land near a proposed casino site where MTR Gaming Group Inc. wants to build an \$80 million horse-racing track and entertainment complex. "It has nothing to do with us," Ted Arneault, MTR's chief executive, told the Associated Press. "If you really think about it, his problems would have existed if IBM was going to build a plant there."

Well, not exactly. In state after state, slots have fostered an atmosphere of corruption and a seedy mingling of monied interests, huge potential profits and susceptible politicians. The competition to secure a license and to locate a casino strategically can amount to a scramble for a permit to print money. "Casino licenses are extremely valuable, and there

are often a limited number of them, so bidding is going to be very fierce and very competitive," said Bill Thompson of the University of Nevada at Las Vegas, who has studied states' experiences with gambling. "It's extremely hard to keep the corruption out."

In Maryland's House of Delegates, some anti-slots lawmakers from Baltimore and from Prince George's County voted for the slots bill last week because it would keep casinos out of their jurisdictions -- while cutting them in on the profits. But once gambling money and interests are allowed in, their insidious influence may not be so easily quarantined. Before consenting to a final slots bill, Maryland lawmakers should ponder Pennsylvania's experience and carefully weigh the stakes.

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March 31, 2005

As Gambling Grows, States Depend on Their Cut

By **FOX BUTTERFIELD**

DOVER, Del. - Gambling revenues, once a mere trickle, have become a critical stream of income in a number of states, in some cases surpassing traditional sources like the corporate income tax and helping states lower personal income or property taxes.

The sums are so alluring that some officials are concerned that their states are becoming as addicted as problem gamblers. "We're drunk on gambling revenue," said Representative Wayne A. Smith, the Republican who is House majority leader in the Delaware Legislature. "Gambling revenues are like free money."

In Rhode Island, South Dakota, Louisiana, Oregon and, most of all, Nevada, taxes from casinos, slot machines at racetracks and lotteries make up more than 10 percent of overall revenues, according to a new report. In Delaware, West Virginia, Indiana, Iowa and Mississippi, gambling revenues are fast approaching 10 percent.

So vital has the money become that in Rhode Island, gambling revenue has surpassed the corporate income tax to become the state's third largest source of income, after the personal income and sales tax. It has enabled the state to avoid raising its income tax for 10 years.

Because of gambling, South Dakota officials were able to push through a 20 percent reduction in property taxes a decade ago by increasing to 50 percent the state's share of gambling revenue from video lottery terminals, up from 37 percent.

A property tax reduction was also the main argument in Pennsylvania for legalizing gambling when the Legislature last year authorized slot machines at racetracks and casinos after years of intense opposition.

Here in Delaware, where video slot machines were legalized in 1994 as a way to revive ailing horse racing and horse farming industries, racetracks are thriving, horse farms have been preserved and the legislature, unexpectedly, has been able to cut the top personal income tax rate over several years during the late 1990's to 5.9 percent, from 8.4 percent, a reduction of nearly one-third.

The scenes that fuel Delaware's success take place every night. On a recent cold, rainy weeknight, many of the 2,500 video slot machines at Dover Downs here were clinking steadily, as customers from as far as Baltimore, Washington and Richmond, Va., pressed the play button every three seconds, as fast as the electronic terminals can spin. That was

good news for the state, since Dover Downs, a combination harness racetrack, Las Vegas-style hotel, slot machine emporium and Nascar track, pumped \$102 million from its slot machines alone into the budget last year. Delaware over all got \$222 million from gambling - 8.1 percent of its \$2.72 billion in state revenues.

But Delaware, like most states that rely on gambling revenue, now faces a danger - competition from nearby states for the same dollars.

Some 70 percent of gambling losses in Delaware's three "racinos," racetracks with video slot machines, come from visitors from Pennsylvania and Maryland, according to the Delaware Department of Finance. But Pennsylvania legalized slot machines last year and the Maryland Legislature is debating a bill to legalize gambling there.

If Pennsylvania and Maryland install all the slot machines they are considering, Delaware could lose \$120 million annually, almost 5 percent of state revenues, said Tom Cook, a spokesman for the Department of Finance.

In Dover, the looming battle with Pennsylvania and Maryland has touched off a debate pitting the governor, Ruth Ann Minner, against many legislators.

"We have legislators every day who propose opening new venues, like a big casino on the waterfront in Wilmington or a floating barge in the Delaware River," said Governor Minner, a Democrat. "But there are only so many dollars that are going to be spent on gambling, and I don't want to build that into the base of my budget and then find Pennsylvania and Maryland leaving a \$120 million hole in it."

So Governor Minner has decided, in her words, "to draw a line in the sand." She has allowed longer hours at the state's three racinos and encouraged them to modernize to attract out-of-state bettors. But she is saying no to stand-alone casinos or other proposed new forms of gambling like blackjack tables and sports betting.

Similar dilemmas are cropping up around the country now that 48 states, with the exception of Utah and Hawaii, have legalized some form of gambling.

Like Delaware, South Dakota first legalized gambling for a limited purpose - allowing casinos in the decaying frontier town of Deadwood to try to preserve it.

But South Dakota now gets \$112.8 million a year from gambling, most of it from video slot machines in bars all over the state operated by the state lottery. Gambling accounts for 13.2 percent of South Dakota's revenue, according to state figures.

David Knudson, a Republican state senator from Sioux Falls, concedes that gambling has brought some benefits. In 1995 he was chief of staff to then Gov. Bill Janklow when South Dakota was able to push through the 20 percent property tax reduction because of gambling revenue.

"But that only increased our dependence on gambling," Mr. Knudson said. He noted that gambling opponents often cite the danger of addiction for individual gamblers, and said, "But the biggest addict turns out to be the state government that becomes dependent on it."

In 2000, worried about an increase in divorces, crime and suicide among problem gamblers, Mr. Knudson supported a ballot issue to repeal the law legalizing the state lottery video slot machines. But many members of the Legislature argued that the state would have to come up with alternative sources of money, Senator Knudson said, and the measure was defeated.

Iowa, which pioneered modern riverboat gambling in 1989 when it legalized gambling as long as the boats were cruising on a river, is continually striving to keep ahead of neighboring states. When Illinois and Missouri soon passed similar laws, the Iowa Legislature voted to add slot machines at racetracks. It also negotiated with local Indian tribes for tribal casinos.

Last year, facing a \$140 million budget gap that threatened education programs, Iowa added table gambling at racetracks, dropped a moratorium on new gambling licenses and allowed gambling on the riverboats when they were tied ashore.

Iowa derives 6.65 percent of its state revenue from gambling, according to a new study by William N. Thompson, a professor of public administration at the University of Nevada, Las Vegas, and a colleague at the university, Christopher Stream.

The analysis, which Mr. Thompson says is the first to measure the percentage of state revenue from gambling, was done for the Wisconsin Policy Research Institute, a business-sponsored organization and based on 2003 data.

Nevada, not surprisingly, gets by far the largest proportion of its revenue from gambling, 42.6 percent, Professor Thompson found. South Dakota is second, with 13.2 percent.

Rhode Island is another state that legalized video slot machines for a limited purpose - to help its aging horse and dog racing tracks. When the slots were introduced in 1992, the income was small, but the amount has almost doubled every year since, said Joseph A. Montalbano, the president of the Rhode Island Senate, and has reached \$281 million a year, including the state's conventional lottery.

Not only has gambling revenue surpassed the corporate income tax in Rhode Island and enabled the state to avoid raising its income tax, gambling also helps teach children, pay for medical care for the poor and repair roads.

But Rhode Island, too, faces competition. There is concern that Massachusetts, the source of many customers at Rhode Island's racinos, will legalize slot machines at its own racetracks, and within an hour's drive of Providence, the large Indian-owned casinos in Connecticut are expanding.

"We're in a Catch-22 situation, with our third-largest revenue source being surrounded by these other gambling facilities," said Senator Montalbano, a Democrat.

So Senator Montalbano proposed legislation last week that would allow the new owner of Lincoln Park, Rhode Island's largest racetrack, to increase its 2,543 video slot machines by 1,750 in exchange for a \$125 million investment to upgrade the aging track.

Here in Dover, Denis McGlynn, president and chief executive of Dover Downs Gaming and Entertainment Inc., also sees the need to expand, perhaps by allowing his slots to stay open 24 hours a day instead of closing at 4 a.m.

"Sometimes you play the cards you're dealt," said Mr. McGlynn, whose company has prospered with the legalization of gambling in Delaware and is now a publicly owned corporation. "Delaware is small. It's not Silicon Valley. People are not pouring in to build new industries from the ground up. But people are willing to come here and gamble and contribute to the state's revenues."



Fact of the Week

The costs of gambling
outweigh the benefits by
more than 3 to 1

Earl L. Grinols (Baylor University), *Gambling Economics: Summary Facts* (April 2005)



Fact of the Week

“About half of casino revenue comes from problem and pathological (addicted) gamblers for whom gambling is not voluntary.”

Robert Williams & Robert Wood, “The Demographic Sources of Ontario Gaming Revenue,” Ontario Problem Gambling Research Centre (June 2004)



Fact of the Week

The presence of a casino within 50 miles *doubles* the prevalence of problem and pathological gamblers.

National Gambling Impact Study Commission Final Report (1999):
<http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html>



Fact of the Week

A study on the link between casinos and crime found that 8.6% of property crime and 12.6% of violent crime in casino counties was attributable to the presence of a casino.

Earl Grinols & David Mustard, "Casinos, Crime, & Community Costs" (September 2004): <http://econwpa.wustl.edu:8089/eps/le/papers/0501/0501001.pdf>

1 Senator moves to amend S.F. No. 1978 as follows:

2 Page 9, line 27, delete "64" and insert "90"

3 Page 31, line 19, delete "multiplied by 26 percent"

4 Page 34, line 12, delete everything after the second "fund"

5 and insert "may be spent only on gambling enforcement, crime

6 prevention and public safety, and the compulsive gambling

7 treatment program under section 245.98."

8 Page 34, delete lines 13 to 16

9 Page 38, after line 25, insert:

10 "Sec. 10. [EXPIRATION.]

11 Articles 1 and 3; article 2, sections 2 to 8 and 13 to 15;

12 article 4, sections 1, 3, and 4; and article 5, sections 7 to 9,

13 expire on June 30, 2025."

14 Amend the title accordingly

"Defeated"

1 Senator moves to amend S.F. No. 1978 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. [REPEALER.]

4 Minnesota Statutes 2004, chapters 240 (pari-mutuel horse
5 racing); 297E (gambling taxes); 299L (gambling enforcement); 349
6 (lawful gambling); and 349A (state lottery), are repealed.

7 Minnesota Statutes 2004, sections 3.9221 (Indian tribes;
8 compacts to be negotiated); 297A.65 (lottery tickets; in-lieu
9 tax); 609.75; 609.755; 609.76; 609.761; 609.762; and 609.763
10 (gambling criminal code), are repealed.

11 Minnesota Rules, chapters 7856 to 7858 (state lottery);
12 7861 to 7865 (Gambling Control Board); and 7869 to 7899 (racing
13 commission), are repealed.

14 [EFFECTIVE DATE.] This section is effective July 1, 2005. ²⁰¹⁰

15 Amend the title accordingly

**Senate Counsel, Research,
and Fiscal Analysis**


G-17 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING, JR. BLVD.
ST. PAUL, MN 55155-1606
(651) 296-4791
FAX: (651) 296-7747
JO ANNE ZOFF SELLNER
DIRECTOR

Senate

State of Minnesota

S.F. No. 1978 - Tribal/State Casino

Author: Senator Sandra Pappas

Prepared by: Carol E. Baker, Senate Counsel (651/296-4395) 

Date: April 3, 2005

**Article 1
Purpose**

Section 1 identifies as the purpose of the act:

1. recognizing the inequities created by current casino gaming in Minnesota;
2. providing opportunities for increased economic development and self-sufficiency to tribal governments that have not benefitted significantly from gaming;
3. generating revenues to the state; and
4. establishing a structure that promotes tribal sovereignty and provides gaming revenue to tribal governments for programs to alleviate poverty and advance tribal goals.

**Article 2
Lottery Operations**

Article 2 authorizes the state to enter a contract for the operation of a metropolitan-area casino with a tribal entity comprised of tribal governments that have demonstrated financial need. The tribal entity would bear all facility-related costs and would manage the day-to-day operations of the casino. The state would own all gaming machines and have overall responsibility for the operation of the casino and the gaming machines.

Under the contract, the state would pay the tribal entity 64 percent of adjusted gross revenue from gaming machine games and other lottery games. The tribal entity would pay .5 percent of all adjusted gross revenues (capped at \$2,500,000) to the Commissioner of Human Services for problem gambling treatment and programs. The tribal entity would also pay the city and county hosting the gaming facility 2 percent of all adjusted gross revenues, in lieu of city and county property taxes (though the tribal entity would still be responsible for paying local property taxes attributable to the relevant school district).

Section 1 [Lottery Procurement Contract.] expands the definition of "lottery procurement contract" to include a contract to provide gaming machines, maintenance of gaming machines, and other equipment used to conduct and monitor lottery games at a gaming facility.

Section 2 [Gaming Facility.] defines the term as the site for the location of gaming machines and the conduct of other lottery games and nonlottery casino games.

Section 3 [Gaming Machine.] defines the term as a machine, system, or device which, upon payment of consideration to play a game, may award or entitle a player to a prize by reason of skill, chance, or both.

Section 4 [Gaming Machine Game.] defines the term as a game operated by a gaming machine.

Section 5 [Gaming Machine Play.] defines the term as a record proving participation in a gaming machine game.

Section 6 [Adjusted Gross Gaming Machine Revenue.] defines the term as revenue from gaming machine plays less amounts paid out in prizes, gaming machine games, and promotional allowances.

Section 7 [Other Lottery Game.] defines the term as any game operated by the lottery at the gaming facility other than a gaming machine, where money or property are distributed (prize) to persons selected primarily by chance from among participants who have paid for a chance of being selected (consideration).

Section 8 [Other Lottery Games Adjusted Gross Revenue.] defines the term as all revenue from other lottery games, less prizes and promotional allowances.

Section 9 [Lottery Game Procedures.] permits the director to adopt procedures and set costs for gaming machine games and other lottery games.

Section 10 [Lottery Operations.] disregards amounts transferred to or retained by the tribal entity under a location contract for purposes of calculating the amount that can be credited to the lottery operations account (currently capped at 15 percent of gross revenue to the lottery fund each fiscal year). It allows the director to credit up to ten percent of adjusted gross revenue from the operation of gaming machines and other lottery games.

Section 11 [Budget; Plans.] excludes from the legislative determination of the lottery's annual budget for operating expenses and capital expenditures amounts paid (1) to an outside vendor to operate a central communications system for gaming machines and other lottery games; and (2) to acquire and maintain gaming machines and equipment used to conduct other lottery games.

Section 12 [Restriction.] allows the director to operate lottery devices operated by coin or currency.

Section 13 [Gaming Facility.]

Subdivision 1 [Definitions.] defines these terms as follows:

- "Tribal entity" means the corporation(s) or other legal entities owned by one or more tribal governments that are parties to the location contract;
- "Tribal government" means a federally recognized Indian tribe in Minnesota; and
- "Site" means a parcel or contiguous parcels of land, which may be enlarged by contiguous parcels over time.

Subdivision 2 [Location Contract.] allows the director to contract with a tribal entity to operate gaming machines and other lottery games at one site in the seven-county metropolitan area, or in any contiguous county. It requires the director to select a site with the tribal entity and to notify the city where the site is located. A city then has 60 days to adopt a resolution that it does not consent to consideration as a host city.

Paragraph (b) allows the director to enter a location contract with a tribal entity only if it meets the following criteria:

1. The entity is comprised of federally-recognized tribal governments that have gaming compacts with the state and operate casinos under IGRA;
2. The entity only allows a tribal government to participate if it demonstrates that currently-available revenues are insufficient to meet the basic needs of tribal members;
3. Each participating tribal government, within 30 days after enactment of this act, files a formal resolution from its tribal council stating intent to participate; demonstrating its eligibility to participate; waiving sovereign immunity with respect to disputes arising under the location contract; consenting to state court jurisdiction; making an additional limited waiver of sovereign immunity; and stating intent to distribute revenues in a fair and equitable manner.

Paragraph (c) states that the location contract will have no legal effect on existing compacts.

Paragraph (d) limits the duration of a location contract to 20 years, with provision for renewal negotiations every 15 years thereafter. A tribal government may opt out of the entity without affecting the entity's ability to renew.

Paragraph (e) requires the contract to include the following provisions:

1. A waiver of sovereign immunity and limited waiver of sovereign immunity consistent with paragraph (b).
2. Liquidated damages to the tribal entity if a state statute or constitutional amendment revokes substantially all forms of gambling authorized under this section. This provision must expire within ten years and limits damages to the unpaid balance of debt incurred by the tribal entity for (1) the gaming facility license, (2) initial construction, or (3) acquisition of the gaming facility (less the present market value of the property and other related assets).
3. The tribal entity shall make good faith efforts to employ American Indians and other minorities at the facility and to hire American Indian and minority-owned businesses to construct, repair, and maintain the gaming facility.
4. The lottery must pay the tribal entity 64 percent of adjusted gross gaming machine revenue and other lottery games adjusted gross revenue.
5. The tribal entity bears all costs associated with day-to-day management.
6. The lottery bears all costs of purchasing or leasing gaming machines and major maintenance on gaming machines.
7. The tribal entity shall pay either .5 percent of all adjusted gross revenue or \$2,500,000, whichever is less, to the Commissioner of Human Services for problem and compulsive gambling programs.
8. In lieu of the local property taxes attributable to the city and county where the gaming facility is located, the tribal entity shall annually pay 2 percent of all adjusted gross revenues to the city and county. (The tribal entity is still responsible for local property taxes attributable to the relevant school district.)
9. Any claim or controversy arising under the contract must be settled by arbitration, unless otherwise noted.

Paragraph (f) permits the tribal entity to establish standards for promotional allowances to players and, upon director approval, to be reimbursed for promotional allowances.

Paragraph (g) allows the director to authorize a temporary facility (pending completion of a permanent facility) and establish conditions for its operation.

Paragraph (h) allows the director to cancel or suspend the location contract if the tribal entity loses its license or if it materially breaches the contract and fails to cure in a reasonable time. This is a contested case under the Administrative Procedures Act (APA).

Paragraph (i) allows the director to impose civil penalties or issue correction orders upon identifying any breach of contract by the tribal entity. This is a contested case under the APA.

Paragraph (j) prohibits the transfer of location contract rights without the director's written approval.

Paragraph (k) limits the placement of gaming machines and the conducting of other lottery games to a gaming facility leased or owned by the tribal entity.

Paragraph (l) excepts the location contract from the requirements for procurement contracts (Chapter 16C).

Paragraph (m) appropriates to the Commissioner of Human Services the tribal entity's payment for problem gambling programs.

Subdivision 3 [Operation.] Specifies that the director must:

- operate and control all gaming machines and other lottery games at the gaming facility;
- own or lease gaming machines;
- control major maintenance of gaming machines or the vendor who provides major maintenance;
- have a central communications system to monitor activities on each gaming machine;
- own or lease equipment used to conduct other lottery games;
- approve security arrangements for gaming machines and other lottery games;
- approve advertising and promotional material relating to gaming machines and other lottery games;

- maintain overall control over the gaming machines and other lottery games (though the tribal entity can manage day-to-day operations).

The lottery is required to bear the costs of (1) procuring and maintaining gaming machines and equipment for lottery games, and (2) acquiring, maintaining, and operating the central communications system used to monitor the gaming machines. All proceeds from gaming machines and other lottery games are held in trust by the tribal entity until they are transferred to the director. The director may implement policies, procedures, and other controls necessary for gaming machines and other lottery games.

Subdivision 4 [Games.] requires the director to specify the games to be played and game procedures for gaming machines and other lottery games.

Subdivision 5 [Specifications.] requires machines to maintain a permanent record of all transactions on the machine.

Subdivision 6 [Examination of Machines.] provides for examination of prototypes of gaming machines, with costs paid by the manufacturer.

Subdivision 7 [Prizes.] provides that players playing a game at the gaming facility are bound by the rules and procedures of the game.

Subdivision 8 [Prohibitions.] prohibits persons under 18 years old from playing gaming machines or other lottery games.

Subdivision 9 [Compulsive Gambling Notice.] requires the tribal entity to post the toll-free number for the compulsive gambling program. The tribal entity must develop, and the director approve, a plan relating to problem and compulsive gambling.

Subdivision 10 [Local Licenses; Local Fees.] prohibits political subdivisions from licensing, regulating, or taxing gaming machines or other casino games at the gaming facility.

Subdivision 11 [Data Classification.] permits the director, upon entering a confidentiality agreement, to provide the tribal entity, the management entity, or a vendor with access to proprietary data related to the operation of the gaming facility.

Section 14 [Lottery Budget; Gaming Facility.] requires the director to submit a budget for gaming facility operations and permits the director to expend amounts necessary in FY06 and FY07, notwithstanding the maximum amount set in law for lottery operations.

Section 15 [Effective Date.] makes Article 2 effective the day following final enactment.

Article 3 Gaming Facility Regulation

Article 3 establishes a system by which the Commissioner of Public Safety (commissioner) would regulate the gaming facility. The tribal entity would need to secure a gaming facility license, contingent upon payment of a \$200,000,000 one-time licensing fee, which would be reviewed by the commissioner. The tribal entity, or another entity engaged by the tribal entity to manage the facility, would need to secure a gaming management license and renew this license every two years. Every employee and vendor at the facility would also need to obtain an appropriate license, subject to renewal every year.

Article 3 also authorizes the tribal entity to operate nonlottery casino games at the facility, in accordance with a plan of operation that has been approved by the commissioner.

Section 1 [Gaming Facility.]

Subdivision 1 [Definitions.] defines "direct financial interest," "lottery director," "tribal entity," and "management entity."

Subdivision 2 [License Required] requires the tribal entity that will own and operate the gaming facility to obtain a gaming facility license.

Subdivision 3 [Application.] allows the commissioner to issue a gaming facility license to the tribal entity.

Subdivision 4 [License Fee.] requires the tribal entity to pay a onetime gaming facility license fee of \$200,000,000.

Subdivision 5 [License Issuance.] makes issuance of a gaming facility license contingent upon the completion of a comprehensive background check. The commissioner may only issue a license to a tribal entity that has given a valid limited waiver of sovereign immunity and is subject to Minnesota state court and administrative jurisdiction.

Subdivision 6 [Background Investigation.] requires comprehensive background and financial investigations of the tribal entity (including officers, directors, managers, supervisory personnel, and persons with a direct financial interest in the entity - but not the tribal governments).

Subdivision 7 [License Refusal; Suspension and Revocation.] permits the commissioner to refuse to issue a gaming facility license, or to suspend or revoke a license, under certain circumstances.

Subdivision 8 [Other License Actions.] permits the commissioner to refuse to issue a gaming facility license, or to impose a civil penalty, issue correction orders, or take other administrative action if the tribal entity engages in other specified conduct.

Subdivision 9 [Required Notification.] requires the tribal entity to immediately report any substantial change in management or ownership and mandates comprehensive background and financial investigations of new officers and directors and of individuals acquiring direct financial or management interests in the tribal entity. The tribal entity must annually certify compliance with this provision.

Subdivision 10 [License Review.] requires the commissioner to review the gaming facility license every five and years conduct comprehensive background investigations.

Subdivision 11 [Audit; Investigation] requires the tribal entity to have an annual certified audit, to be filed with the commissioner. The commissioner may conduct additional audits and investigations related to facility operations. Audit data is nonpublic, but the commissioner may share the data with the lottery director or the tribal entity.

Subdivision 12 [Sale of Intoxicating Liquor.] requires the host community to issue an on-sale liquor license to the tribal entity.

Subdivision 13 [Detention of Suspects.] permits the commissioner to select individuals who can detain persons suspected of gaming fraud or cheating at the gaming facility.

Subdivision 14 [Reimbursement of Costs.] requires the tribal entity to reimburse the commissioner for the actual costs of licensing, regulation, enforcement, and oversight of the gaming facility and appropriates the money collected to the commissioner to pay the costs of regulating the gaming facility.

Section 2 [Gaming Management.]

Subdivision 1 [License Required.] requires the tribal entity, or any entity engaged by the tribal entity to manage gaming facility operations, to obtain a gaming management license.

Subdivision 2 [Application.] permits the commissioner to issue a gaming management license to the management entity.

Subdivision 3 [License Issuance.] requires the commissioner to issue a gaming management license if: (1) it would not be against public interest or the effective regulation of gaming; and (2) the entity is subject to the Minnesota state court and administrative jurisdiction. The license is nontransferable.

Subdivision 4 [Background Investigation.] requires comprehensive background and financial investigations of the license applicant (including its officers, directors, managers,

supervisory personnel, and persons with a direct financial interest in the management entity - but not the tribal governments).

Subdivision 5 [License Actions.] prohibits the commissioner from issuing a gaming management license, and permits the suspension or revocation of a license, under certain circumstances. Requires notice to the tribal entity of any license revocation, license suspension, or imposition of a civil penalty and clarifies that revocation, suspension, or imposition of a civil penalty is a contested case under the APA.

Subdivision 6 [Required Notification.] requires the gaming management licensee to promptly report any change in management or ownership. The commissioner must conduct comprehensive background and financial investigations of new officers and directors and of individuals acquiring direct financial or management interests in the tribal entity.

Subdivision 7 [License Renewal.] requires the licensee to apply for renewal of the license every two years.

Section 3 [Employee Licenses.]

Subdivision 1 [Authority.] authorizes the commissioner to issue employees licenses for persons employed at the facility. The tribal entity is responsible for ensuring that each employee has a valid license before beginning work.

Subdivision 2 [Rulemaking.] gives the commissioner rulemaking authority to establish qualifications for employee licensees and standards for issuing employee licenses.

Subdivision 3 [Application Information.] requires applicants to submit an affidavit attesting to felony record, felony charges, connections with illegal businesses, conviction of fraud or misrepresentation in connection with gambling, and violations of gambling-related laws or rules.

Subdivision 4 [Background Investigations.] directs the commissioner to investigate each employee license applicant and requires fingerprints from each applicant.

Subdivision 5 [License Issuance and Renewal.] permits issuance or renewal of a license when an applicant is qualified and will not adversely affect the public health, safety, and welfare, or the integrity of gambling in Minnesota.

Subdivision 6 [Revocation and Suspension.] permits the revocation, suspension, or refusal to renew a license for an intentional false statement in a license application or for a violation of law or rule that adversely affects the integrity of gambling. Revocation or suspension is a contested case under the APA.

Section 4 [Vendor Licenses.]

Subdivision 1 [Issuance.] requires anyone who sells or distributes products, or provides services at the gaming facility to have a vendor license.

Subdivision 2 [Rulemaking.] authorizes the commissioner to prescribe rules for vendor licenses.

Subdivision 3 [Application Information.] requires the applicant to submit an affidavit attesting to felony record, felony charges, connections with illegal businesses, conviction of fraud or misrepresentation in connection with gambling, and violations of gambling-related laws or rules.

Subdivision 4 [Background Investigations.] directs the commissioner to investigate and require fingerprints from each vendor license applicant.

Subdivision 5 [License Issuance and Renewal.] permits issuance or renewal of a license if an applicant is qualified and will not adversely affect the public health, safety, and welfare, or the integrity of gambling in Minnesota.

Subdivision 6 [Revocation and Suspension.] permits the revocation, suspension, or refusal to renew a license for an intentional false statement in a license application or for a violation of law or rule that adversely affects the integrity of gambling. Revocation or suspension is a contested case under the APA.

Section 5 [Nonlottery Casino Games.]

Subdivision 1 [Definitions.] defines "nonlottery casino game" as any game the commissioner authorizes the tribal entity to conduct at the gaming facility that is not a gaming machine or other lottery game. It defines "nonlottery casino games adjusted gross revenue" as revenue from the operation of nonlottery casino games, less prizes and promotional allowances.

Subdivision 2 [Operation.] allows the tribal entity to operate nonlottery casino games in accord with a plan approved by the commissioner. Requires the plan to identify and define all nonlottery casino games and to address security and internal control systems. It also requires a plan for training nonlottery casino games personnel in problem gambling.

Subdivision 3 [Plan Amendment.] requires commissioner approval of plan modifications.

Subdivision 4 [Actions.] permits the revocation, suspension, or refusal to renew a license (or the imposition of a civil penalty) for violations of the plan of operation. This a contested case under the APA.

Subdivision 5 [Prizes.] requires players playing a nonlottery casino game to be bound by the rules and procedures of the game.

Section 6 [Employment Restrictions; Civil Penalty.] prohibits individuals responsible for oversight, audits, or investigations at the gaming facility (through employment and for one year after leaving employment) from entering a contract with or receiving compensation from the tribal entity or management entity. Also prohibits the tribal entity and management entity from entering such a relationship. It establishes a maximum civil penalty of \$10,000 for violations by state employees and permits license-related administrative action against the tribal entity or management entity for violating this section.

Section 7 [Effective Date.] makes this article effective the day following final enactment.

Article 4 Gaming Transaction Fee

Article 4 imposes an in lieu of tax on adjusted gross revenues from the gaming facilities at the following rates: 26 percent of adjusted gross gaming machine revenue; 26 percent of other lottery games adjusted gross revenue; and 14 percent of nonlottery casino games adjusted gross revenue. This money would be deposited into a gaming facility proceeds fund and annually appropriated as follows: ten percent to the community assets account, and 90 percent to the general fund.

Section 1 [Gaming Facility.] requires transfer to the commissioner of revenue of:

- 26 percent of adjusted gross gaming revenue and other lottery games adjusted gross revenue (from the lottery); and
- 14 percent of nonlottery casino games adjusted gross revenue (from the tribal entity).

This transfer is in lieu of any state tax on wagering at the facility and any local tax or fee on wagering at the facility.

Section 2 [Deposit of Revenues.] directs the commissioner to deposit revenues received under section 1 in the gaming facility proceeds fund.

Section 3 [Gaming Facility Proceeds Fund.] establishes a gaming facility proceeds fund in the state treasury and annually appropriates ten percent of the money in the fund to the community assets account and 90 percent to the general fund.

Section 4 [Effective Date.] makes this article effective the day following final enactment.

Article 5
Miscellaneous Provisions

Article 5 makes various changes to existing law to be consistent with the activities authorized in Articles 1 to 4.

Section 1 [Exclusions.] exempts gambling devices possessed by the state lottery from the general prohibition against possession of gambling devices.

Section 2 [Restrictions.] allows licensed gambling device distributors and manufacturers to sell, lease, or rent gambling devices to the state lottery.

Section 3 [Prohibited .] exempts the gaming facility from the prohibition against gambling devices at establishments licensed for retail liquor sales.

Section 4 [Recovery of Money Lost.] exempts gaming machine plays and the conduct of any lottery and nonlottery casino games at the gaming facility from the law that allows persons to sue to recover gambling losses.

Section 5 [Commitments for Gambling Debt Void.] exempts gaming machine play and the conduct of any lottery and nonlottery casino games at the gaming facility from the law that makes gambling debts void.

Section 6 [What Are Not Bets.] adds gaming machine plays and participation in any lottery or nonlottery casino game at a gaming facility to the list of gambling activities that are not bets in the context of state laws that prohibit gambling.

Section 7 [Gaming Facility.] exempts from criminal prohibitions of gambling the manufacture, possession, sale, or operation of a gaming machine, or the conduct of a lottery or nonlottery casino game at a gaming facility.

Section 8 [Severability; Savings.] provides that if part of the act is found invalid, all other provisions remain valid and all rights, remedies, and privileges otherwise accrued remain in effect.

Section 9 [Effective Date.] makes this article effective the day following final enactment.

CEB:rdr

Senators Pappas, Skoe, Langseth, Metzen and Ruud introduced--
S.F. No. 1978: Referred to the Committee on Agriculture, Veterans and Gaming.

1 A bill for an act
 2 relating to gambling; providing for the operation of
 3 lottery gaming machines and the conduct of lottery and
 4 nonlottery games at a gaming facility; licensing the
 5 gaming facility and imposing a license fee; imposing a
 6 gaming transaction fee on gaming at the gaming
 7 facility; amending Minnesota Statutes 2004, sections
 8 297A.94; 299L.07, subdivisions 2, 2a; 340A.410,
 9 subdivision 5; 349A.01, subdivision 10, by adding
 10 subdivisions; 349A.04; 349A.10, subdivisions 3, 6;
 11 349A.13; 541.20; 541.21; 609.75, subdivision 3;
 12 609.761, by adding a subdivision; proposing coding for
 13 new law in Minnesota Statutes, chapters 297A; 299L;
 14 349A.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

16 ARTICLE 1

17 PURPOSE

18 Section 1. [PURPOSE.]

19 The purpose of this act is to:

20 (1) recognize the significant inequities created by the
 21 current status of casino gaming in Minnesota given the extreme
 22 disparity in revenues generated by tribal casinos for
 23 Minnesota's Indian tribes and tribal members and the lack of any
 24 significant direct revenue to the state of Minnesota;

25 (2) provide an opportunity for increased economic
 26 development and tribal self-sufficiency to tribal governments
 27 which, because of their locations and tribal populations, have
 28 not benefited significantly from gaming opportunities under the
 29 federal Indian Gaming Regulatory Act, United States Code, title
 30 25, sections 2701 to 2721;

1 (3) provide for the generation of revenues to the state,
2 including proceeds for distribution as set forth in the
3 Minnesota Constitution, article XI, section 14; and
4 (4) establish a structure that promotes tribal sovereignty
5 and self-governance and that provides revenues from casino
6 gaming to tribal governments for the development of programs to
7 alleviate persistent poverty conditions and to advance tribal
8 goals.

ARTICLE 2

LOTTERY OPERATIONS

11 Section 1. Minnesota Statutes 2004, section 349A.01,
12 subdivision 10, is amended to read:

13 Subd. 10. [LOTTERY PROCUREMENT CONTRACT.] "Lottery
14 procurement contract" means a contract to provide lottery
15 products, gaming machines, maintenance of gaming machines,
16 computer hardware and software used to monitor sales of lottery
17 tickets and gaming machine plays, equipment used to conduct and
18 monitor other lottery games at a gaming facility, equipment used
19 for the conducting of other lottery games, and lottery tickets.
20 "Lottery procurement contract" does not include a contract to
21 provide an annuity or prize payment agreement or materials,
22 supplies, equipment, or services common to the ordinary
23 operation of a state agency.

24 Sec. 2. Minnesota Statutes 2004, section 349A.01, is
25 amended by adding a subdivision to read:

26 Subd. 14. [GAMING FACILITY.] "Gaming facility" means the
27 site selected for the location of gaming machines and the
28 conduct of other lottery games pursuant to a location contract
29 under section 349A.17 and nonlottery casino games pursuant to a
30 plan of operation approved under section 299L.094.

31 Sec. 3. Minnesota Statutes 2004, section 349A.01, is
32 amended by adding a subdivision to read:

33 Subd. 15. [GAMING MACHINE.] "Gaming machine" means any
34 machine, system, or device which, upon payment of consideration
35 in order to play a game, may award or entitle a player to a
36 prize by reason of skill of the player or application of the

1 element of chance, or both.

2 Sec. 4. Minnesota Statutes 2004, section 349A.01, is
3 amended by adding a subdivision to read:

4 Subd. 16. [GAMING MACHINE GAME.] "Gaming machine game"
5 means a game operated by a gaming machine as authorized by the
6 director.

7 Sec. 5. Minnesota Statutes 2004, section 349A.01, is
8 amended by adding a subdivision to read:

9 Subd. 17. [GAMING MACHINE PLAY.] "Gaming machine play"
10 means a record that proves participation in a gaming machine
11 game.

12 Sec. 6. Minnesota Statutes 2004, section 349A.01, is
13 amended by adding a subdivision to read:

14 Subd. 18. [ADJUSTED GROSS GAMING MACHINE
15 REVENUE.] "Adjusted gross gaming machine revenue" means the sum
16 of all money received for gaming machine plays less the amount
17 paid out in prizes and for gaming machine games and promotional
18 allowances approved by the director under section 349A.17.

19 Sec. 7. Minnesota Statutes 2004, section 349A.01, is
20 amended by adding a subdivision to read:

21 Subd. 19. [OTHER LOTTERY GAME.] "Other lottery game" means
22 any game operated by the lottery at the gaming facility other
23 than a gaming machine, where money or property are distributed
24 to persons selected primarily by chance from among participants
25 who have paid for a chance of being selected and any other game
26 or activity determined to constitute a lottery within the
27 meaning of the Minnesota Constitution, article XIII, section 5.
28 Other lottery games do not include lottery games that are
29 operated by the lottery at the gaming facility that are also
30 sold by lottery retailers.

31 Sec. 8. Minnesota Statutes 2004, section 349A.01, is
32 amended by adding a subdivision to read:

33 Subd. 20. [OTHER LOTTERY GAMES ADJUSTED GROSS
34 REVENUE.] "Other lottery games adjusted gross revenue" means the
35 sum of all money from the operation of other lottery games at
36 the gaming facility, less the amount paid out in prizes in the

1 other lottery games and promotional allowances paid by the
2 tribal entity under section 349A.17 and approved by the director.

3 Sec. 9. Minnesota Statutes 2004, section 349A.04, is
4 amended to read:

5 349A.04 [LOTTERY GAME PROCEDURES.]

6 The director may adopt game procedures governing the
7 following elements of the lottery:

- 8 (1) lottery games;
- 9 (2) ticket prices;
- 10 (3) number and size of prizes;
- 11 (4) methods of selecting winning tickets; and
- 12 (5) frequency and method of drawings;
- 13 (6) gaming machine games;
- 14 (7) cost of gaming machine plays;
- 15 (8) other lottery games; and
- 16 (9) cost to participate in other lottery games.

17 The adoption of lottery game procedures is not subject to
18 chapter 14.

19 Sec. 10. Minnesota Statutes 2004, section 349A.10,
20 subdivision 3, is amended to read:

21 Subd. 3. [LOTTERY OPERATIONS.] (a) The director shall
22 establish a lottery operations account in the lottery fund. The
23 director shall pay all costs of operating the lottery, including
24 payroll costs or amounts transferred to the state treasury for
25 payroll costs, but not including lottery prizes, from the
26 lottery operating account. The director shall credit to the
27 lottery operations account amounts sufficient to pay the
28 operating costs of the lottery.

29 (b) Except as provided in paragraph (e), the director may
30 not credit in any fiscal year thereafter amounts to the lottery
31 operations account which when totaled exceed 15 percent of gross
32 revenue to the lottery fund in that fiscal year. In computing
33 total amounts credited to the lottery operations account under
34 this paragraph the director shall disregard amounts transferred
35 to or retained by lottery retailers as sales commissions or
36 other compensation and amounts transferred to or retained by the

1 tribal entity pursuant to a location contract under section
2 349A.17.

3 (c) The director of the lottery may not expend after July
4 1, 1991, more than 2-3/4 percent of gross revenues in a fiscal
5 year for contracts for the preparation, publication, and
6 placement of advertising.

7 (d) Except as the director determines, the lottery is not
8 subject to chapter 16A relating to budgeting, payroll, and the
9 purchase of goods and services.

10 (e) In addition to the amounts credited to the lottery
11 operations account under paragraph (b), the director is
12 authorized, if necessary, to meet the current obligations of the
13 lottery and to credit up to 25 percent of an amount equal to the
14 average annual amount which was authorized to be credited to the
15 lottery operations account for the previous three fiscal years
16 but was not needed to meet the obligations of the lottery.

17 (f) Notwithstanding the provisions of this subdivision, the
18 director may not credit, in any fiscal year, to the lottery
19 operations account which when totaled exceed ten
20 percent of adjusted gross revenue from the operation of gaming
21 machines and other lottery games at the gaming facility.

22 Sec. 11. Minnesota Statutes 2004, section 349A.10,
23 subdivision 6, is amended to read:

24 Subd. 6. [BUDGET; PLANS.] The director shall prepare and
25 submit a biennial budget plan to the commissioner of finance.
26 The governor shall recommend the maximum amount available for
27 the lottery in the budget the governor submits to the
28 legislature under section 16A.11. The maximum amount available
29 to the lottery for operating expenses and capital expenditures
30 shall be determined by law. Operating expenses shall not
31 include expenses that are a direct function of lottery sales,
32 which include the cost of lottery prizes, amounts paid to
33 lottery retailers as sales commissions or other compensation,
34 amounts paid to produce and deliver scratch lottery games, and
35 amounts paid to an outside vendor to operate and maintain an
36 online gaming system, amounts paid to an outside vendor to

1 operate and maintain a central system for gaming machines and
 2 for other lottery games, and amounts paid to acquire and
 3 maintain gaming machines and equipment used to conduct other
 4 lottery games. In addition, the director shall appear at least
 5 once each fiscal year before the senate and house of
 6 representatives committees having jurisdiction over gambling
 7 policy to present and explain the lottery's plans for future
 8 games and the related advertising and promotions and spending
 9 plans for the next fiscal year.

10 Sec. 12. Minnesota Statutes 2004, section 349A.13, is
 11 amended to read:

12 349A.13 [RESTRICTIONS.]

13 Nothing in this chapter:

14 (1) authorizes the director to conduct a lottery game or
 15 contest the winner or winners of which are determined by the
 16 result of a sporting event other than a horse race conducted
 17 under chapter 240;

18 (2) authorizes the director to install or operate a lottery
 19 device operated by coin or currency which when operated
 20 determines the winner of a game except as authorized under
 21 section 349A.17; and

22 (3) authorizes the director to sell pull-tabs as defined
 23 under section 349.12, subdivision 32.

24 Sec. 13. [349A.17] [GAMING FACILITY.]

25 Subdivision 1. [DEFINITIONS.] (a) For the purposes of this
 26 section, the terms defined in this subdivision have the meanings
 27 given them.

28 (b) "Tribal entity" means one or more entities, whether
 29 tribally or federally chartered corporations, or other legal
 30 entities, wholly owned by one or more tribal governments that
 31 are parties to the location contract under this section.

32 (c) "Tribal government" means the governmental entity that
 33 represents one of the 11 federally recognized Indian tribes
 34 within the state of Minnesota.

35 (d) "Site" means a parcel or contiguous parcels of land,
 36 and may be enlarged by the addition of contiguous parcels of

1 land over time.

2 Subd. 2. [LOCATION CONTRACT.] (a) The director may enter
3 into a contract with a tribal entity to provide locations for
4 the operation of gaming machines and other lottery games at one
5 site located in the seven-county metropolitan area as defined in
6 section 473.121, subdivision 2, or any contiguous county
7 thereto. The site for the gaming facility shall be jointly
8 selected by the director and the tribal entity. Upon
9 notification by the director that the gaming facility will be
10 located in a particular city, the home rule charter or statutory
11 city has 60 days after the notification to adopt a resolution
12 that it does not consent to being considered as a site under
13 this subdivision. Upon receipt of the notification by the home
14 rule charter or statutory city, the director shall not consider
15 that city as a site for the facility.

16 (b) The director may enter a location contract with a
17 tribal entity that meets the following criteria:

18 (1) the tribal entity must be comprised of tribal
19 governments which are each federally recognized tribes which
20 operate current casino gaming operations under the federal
21 Indian Gaming Regulatory Act, United States Code, title 25,
22 sections 2701 to 2721, pursuant to a compact with the state of
23 Minnesota;

24 (2) to be eligible to participate in the tribal entity, the
25 tribal government must demonstrate to the director that the
26 revenues available to the tribal government from currently
27 available revenue sources are insufficient to adequately meet
28 the basic needs of tribal members including, but not limited to,
29 housing, medical care, education, or other governmental services
30 to members;

31 (3) each of the tribal governments participating in the
32 tribal entity must within 30 days following final enactment of
33 this act file with the director a formal resolution from its
34 tribal council which provides that:

35 (i) the tribal government intends to participate in a
36 tribal entity which will enter a contract that complies with the

1 requirements of this act;

2 (ii) the tribal government meets the eligibility criteria
3 set forth in this paragraph and provides adequate documentation
4 to supports its eligibility to participate in the tribal entity;

5 (iii) a statement of the tribal government's intent to
6 participate in a tribal entity that waives the entity's
7 sovereign immunity relating to disputes arising out of the
8 location contract or the construction, management, or operation
9 of the gaming facility and that the tribal government expressly
10 consents that the tribal entity will be subject to the
11 jurisdiction of the state court and the administrative and
12 regulatory jurisdiction of the state. The resolution must also
13 include a limited waiver of sovereign immunity and consent by
14 the tribal government to the jurisdiction of state court solely
15 to resolve disputes alleging that assets have been transferred
16 from the tribal entity to the tribe in violation of the location
17 contract or other applicable law and limited to any improperly
18 transferred assets; and

19 (iv) states the intention of the tribal government to
20 ensure that revenues provided to the participating tribal
21 governments from the tribal entity will be distributed between
22 the participating tribal governments in a fair and equitable
23 manner as determined solely by the participating tribal
24 governments.

25 (c) The location contract shall have no legal effect on the
26 validity of existing tribal-state gaming compacts.

27 (d) A contract signed with a tribal entity under this
28 section shall run for not more than 20 years and shall be
29 negotiable and renewable every 15 years thereafter. The state,
30 tribal entity, or participating tribal government that intends
31 to not renegotiate and renew the location contract must, if
32 reasonably possible, provide notice of its intent to the other
33 parties at least one year before the location contract expires.
34 A tribal government participating in the tribal entity may opt
35 out of this arrangement as part of the renewal process without
36 affecting the ability of the tribal entity to renew the contract

1 with the participation of the remaining tribal governments.

2 (e) The contract entered into under this section must
3 provide for the following provisions:

4 (1) The waiver of sovereign immunity by the tribal entity
5 and the limited waiver of sovereign immunity by the tribal
6 governments consistent with paragraph (b).

7 (2) Liquidated damages to recover the initial investment by
8 the tribal entity in the event the state, through legislation or
9 constitutional amendment, revokes all or substantially all of
10 the forms of gambling authorized under this section. The
11 liquidated damages may not be greater than the unpaid balance of
12 any debt incurred by the tribal entity after the location
13 contract has been executed and is limited to the debt incurred
14 by the tribal entity for the gaming facility license, initial
15 construction, or acquisition of the gaming facility less the
16 present market value of the property or other assets related to
17 the debt. Any liquidated damages provision must expire within
18 ten years.

19 (3) The tribal entity, in the construction of the gaming
20 facility, and the subsequent repair and maintenance of the
21 facility, shall make good faith efforts to contract with
22 American Indian and minority-owned businesses.

23 (4) The tribal entity, in operating the gaming facility,
24 shall make good faith efforts to ensure that American Indians
25 and other minorities are employed in entry level, middle
26 management, and upper management positions.

27 (5) Payment of a fee to the tribal entity equal to 64
28 percent of the adjusted gross gaming machine revenue and other
29 lottery games adjusted gross revenue.

30 (6) All costs associated with managing the day-to-day
31 activity of gaming machines and other lottery games, including,
32 but not limited to, routine and minor service and maintenance,
33 security monitoring, verifying winners, paying winners,
34 collecting money from gaming machines, collecting wagers from
35 the operation of other lottery games, and advertising and
36 marketing of gaming machines and other lottery games shall be

1 borne by the tribal entity.

2 (7) All costs associated with purchase or lease of gaming
3 machines and costs associated with major maintenance of the
4 gaming machines shall be borne by the lottery.

5 (8) The tribal entity shall pay to the commissioner of
6 human services an annual amount equal to the lesser of 0.5
7 percent of adjusted gross gaming machine revenue, other lottery
8 games' adjusted gross income, and nonlottery casino games'
9 adjusted gross revenue or \$2,500,000, for problem and compulsive
10 gambling treatment or programs.

11 (9) The tribal entity shall pay an annual amount equal to
12 two percent of adjusted gross gaming machine revenue, other
13 lottery games' adjusted gross income, and nonlottery casino
14 games' adjusted gross revenue to the city and county where the
15 gaming facility is located. This payment is in lieu of an
16 obligation to pay any portion of local property taxes
17 attributable to the city and county. The tribal entity is still
18 responsible for payment of the portion of local property taxes
19 attributable to the appropriate school district.

20 (10) Any controversy or claim between the tribal entity and
21 the director arising out of the location contract may be settled
22 by arbitration except as provided in paragraphs (g) and (h).

23 (11) The tribal entity must maintain adequate liability and
24 casualty insurance for the gaming facility.

25 (f) The tribal entity may establish reasonable standards
26 for payment of promotional allowances to players and the
27 proportional allocation of promotional allowances between
28 revenue generated from gaming machines, other lottery games, and
29 nonlottery casino games. Upon approval of the standards for
30 promotional allowances, the director shall reimburse the tribal
31 entity for the cost of promotional allowances paid by the tribal
32 entity.

33 (g) As part of the location contract, the director may
34 authorize the operation of gaming machines and the conduct of
35 other lottery games at a temporary facility pending completion
36 of a permanent facility and may establish reasonable conditions

1 for the operation. The operation of gaming machines and the
2 conducting of other lottery games at a temporary facility shall
3 be treated in the same manner as if it was conducted in a
4 permanent facility.

5 (h) The director may by administrative action cancel or
6 suspend the location contract if the director reasonably
7 determines that the tribal entity has materially breached any
8 material provision of the location contract and has failed to
9 cure that breach in a reasonable time, or if the tribal entity's
10 gaming facility license has been suspended or revoked by the
11 commissioner of public safety.

12 A contract cancellation or suspension under this paragraph
13 is a contested case under sections 14.57 to 14.69 and is in
14 addition to any criminal penalties provided for a violation of
15 law or rule.

16 (i) The director may by administrative action impose a
17 civil penalty, issue correction orders, or resolve in any other
18 manner as determined appropriate by the director, if the
19 director determines that the tribal entity has breached any term
20 of the location contract. The imposition of a civil penalty is
21 a contested case under sections 14.57 to 14.69 and is in
22 addition to any criminal penalties provided for a violation of
23 law or rule.

24 (j) The rights and interests provided by the location
25 contract are specific to the state and the tribal entity and are
26 not transferable without the written approval of the director.

27 (k) Gaming machines may only be placed and other lottery
28 games may only be conducted at a gaming facility that is owned
29 or leased by the tribal entity.

30 (l) The contract entered into under this subdivision is not
31 subject to chapter 16C.

32 (m) The amount paid by the tribal entity to the
33 commissioner of human services pursuant to the location contract
34 under this section is annually appropriated to the commissioner
35 of human services for problem and compulsive gambling treatment
36 or programs, including programs that are designed to address

1 compulsive gambling in American Indian and minority communities.

2 Subd. 3. [OPERATION.] (a) All gaming machines that are
3 placed at a gaming facility or other lottery games conducted at
4 the gaming facility must be operated and controlled by the
5 director.

6 (b) Gaming machines must be owned or leased by the director.

7 (c) Major maintenance of the gaming machines shall be
8 controlled by the director or by a vendor that is under the
9 control and direction of the director.

10 (d) The director must have a central communications system
11 that monitors activities on each gaming machine.

12 (e) Equipment used to conduct other lottery games at the
13 gaming facility must be owned or leased by the director.

14 (f) The director must approve the general security
15 arrangements associated with and relating to the operation of
16 the gaming machines and the conducting of other lottery games at
17 the gaming facility.

18 (g) Advertising and promotional material produced by the
19 gaming facility relating to gaming machines and the conduct of
20 other lottery games at the gaming facility must be approved by
21 the director in a timely manner.

22 (h) The director may authorize the tribal entity to manage
23 the day-to-day operation of the gaming machines and the
24 conducting of other lottery games at the gaming facility,
25 provided that the director shall maintain overall control of the
26 operation of the gaming machines and the conducting of other
27 lottery games at the gaming facility.

28 (i) The costs associated with procuring and maintaining
29 gaming machines and equipment involved in operating other
30 lottery games, and costs associated with acquiring, maintaining,
31 and operating the central system used to monitor the activity of
32 gaming machines, shall be borne by the lottery.

33 (j) All proceeds from the operation of gaming machines and
34 conduct of other lottery games received by the tribal entity
35 constitute a trust fund until transmitted to the director.

36 (k) The director may require the tribal entity to deposit

1 in an account in a designated bank all money received by the
2 tribal entity from the operation of gaming machines and the
3 conduct of other lottery games.

4 (1) If the tribal entity fails to pay any money due the
5 director within the time prescribed by the director, the tribal
6 entity shall pay interest on the amount owed at the rate set for
7 lottery retailers under Minnesota Rules, part 7856.7020.

8 (m) The director may implement policies, procedures, and
9 other controls that are determined to be necessary by the
10 director for the operation of gaming machines and the conducting
11 of other lottery games pursuant to this section.

12 Subd. 4. [GAMES.] The director shall specify the games
13 that may be played on a gaming machine and the manner in which
14 other lottery games are conducted at the gaming facility as set
15 forth under section 349A.04.

16 Subd. 5. [SPECIFICATIONS.] Gaming machines must:

17 (1) maintain on non-resettable meters a permanent record
18 capable of being printed out, of all transactions by the machine
19 and all entries into the machine; and

20 (2) be capable of being linked to a central communications
21 system to provide auditing program information as required by
22 the director.

23 Subd. 6. [EXAMINATION OF MACHINES.] The director shall
24 examine prototypes of gaming machines and require that the
25 manufacturer of the machine pay the cost of the examination.
26 The director may contract for the examination of gaming
27 machines. The director may require working models of a gaming
28 machine transported to the locations the director designates for
29 testing, examination, and analysis. The manufacturer shall pay
30 all costs of any testing, examination, analysis, and
31 transportation of the machine model.

32 Subd. 7. [PRIZES.] A person who plays a gaming machine or
33 plays any other lottery game at the gaming facility agrees to be
34 bound by the rules and game procedures applicable to that
35 particular game. The player acknowledges that the determination
36 of whether the player has won a prize is subject to the rules

1 and game procedures adopted by the director, claim procedures
2 established by the director for that game, and any confidential
3 or public validation tests established by the director for that
4 game. A person under 18 years of age may not claim a prize from
5 the operation of a gaming machine or the conducting of any other
6 lottery game at the gaming facility. A prize claimed from the
7 play of a gaming machine game or the conduct of any other
8 lottery game is not subject to section 349A.08, subdivision 8.

9 Subd. 8. [PROHIBITIONS.] A person under the age of 18
10 years may not play a game on a gaming machine or participate in
11 any other lottery game at the gaming facility.

12 Subd. 9. [COMPULSIVE GAMBLING NOTICE.] The tribal entity
13 shall prominently post, in areas of the gaming facility where
14 gaming machines are located or where other lottery games are
15 conducted, the toll-free telephone number established by the
16 commissioner of human services in connection with the problem
17 and compulsive gambling program. The tribal entity shall
18 establish, with the approval of the director, a proactive plan
19 relating to problem and compulsive gambling.

20 Subd. 10. [LOCAL LICENSES; LOCAL FEES.] A political
21 subdivision may not require a license to operate a gaming
22 machine or conduct other lottery games or nonlottery casino
23 games as defined under section 299L.093, restrict or regulate
24 the placement of gaming machines or the conducting of other
25 lottery or nonlottery casino games, or impose a tax or fee on
26 the business of operating gaming machines or the conducting of
27 other lottery or nonlottery casino games at the gaming facility.

28 Subd. 11. [DATA CLASSIFICATION.] In performing the
29 responsibilities and duties required by this section, the
30 director and the lottery shall receive, collect, and create data
31 that reflects the internal operations of the gaming machines,
32 and other lottery games that are proprietary in nature
33 including, but not limited to, information regarding placement
34 or operation of machines and games, gaming receipts from
35 specific machines and games, payouts for specific games and
36 machines, and other business and operational decisions relating

1 to profitability and competitive advantage. This data is
 2 classified as nonpublic data under section 13.02, subdivision
 3 9. The director may provide the tribal entity, the management
 4 entity, or a vendor that is providing gaming machines at the
 5 gaming facility with access to any part of this data pursuant to
 6 an appropriate confidentiality agreement between the director
 7 and the appropriate party.

8 Sec. 14. [LOTTERY BUDGET; GAMING FACILITY.]

9 The director of the State Lottery shall submit a budget for
 10 the operation of gaming machines and for the conduct of other
 11 lottery games at a gaming facility as authorized under Minnesota
 12 Statutes, section 349A.17, to the commissioner of finance.
 13 Notwithstanding Minnesota Statutes, section 349A.10, subdivision
 14 6, the director of the State Lottery may expend amounts
 15 necessary to operate gaming at the gaming facility. Amounts
 16 expended by the director of the State Lottery for the conducting
 17 of gaming at the gaming facility in fiscal years 2006 and 2007
 18 are not subject to the maximum amount set in law for the
 19 operation of the lottery.

20 Sec. 15. [EFFECTIVE DATE.]

21 This article is effective the day following final enactment.

22 ARTICLE 3

23 GAMING FACILITY REGULATION

24 Section 1. [299L.09] [GAMING FACILITY.]

25 Subdivision 1. [DEFINITIONS.] For the purposes of this
 26 section and sections 299L.09 to 299L.095, the following terms
 27 have the meanings given them.

28 (a) "Direct financial interest" means ownership or control
 29 of at least five percent interest in the tribal entity or
 30 management entity, the debt, or other financial interest in the
 31 tribal entity or management entity.

32 (b) "Lottery director" means the director of the Minnesota
 33 State Lottery under chapter 349A.

34 (c) "Tribal entity" is as defined in section 349A.17.

35 (d) "Management entity" means the entity applying for or
 36 holding a management license under section 299L.092.

1 Subd. 2. [LICENSE REQUIRED.] The tribal entity that will
2 own and operate, whether directly or through another tribal or
3 management entity, a gaming facility under section 349A.17 must
4 obtain a gaming facility license from the commissioner.

5 Subd. 3. [APPLICATION.] An application for a license under
6 this section must be on a form prescribed by the commissioner.
7 The commissioner may issue a gaming facility license to the
8 tribal entity that will operate the gaming facility.

9 Subd. 4. [LICENSE FEE.] Upon issuance of the license, the
10 tribal entity must pay a onetime license fee of \$200,000,000 to
11 the commissioner.

12 Subd. 5. [LICENSE ISSUANCE.] (a) The commissioner shall
13 issue a license under this section unless information obtained
14 from the comprehensive background check establishes that
15 issuance of the license would be adverse to the public interest
16 or to the effective regulation of gaming. If a license
17 application is denied, the tribal entity may reapply for a
18 license.

19 (b) The commissioner may only issue a gaming facility
20 license to a tribal entity that, through a valid limited waiver
21 of sovereign immunity, is subject to the jurisdiction of the
22 Minnesota state courts and the administrative jurisdiction and
23 regulation of the state.

24 (c) A license issued under this section may not be
25 transferred without the written approval of the commissioner.

26 Subd. 6. [BACKGROUND INVESTIGATION.] Before issuing a
27 gaming facility license, the commissioner shall conduct a
28 comprehensive background and financial investigation of the
29 tribal entity, including its officers, directors, managers,
30 supervisory personnel, and persons with a direct financial
31 interest in the tribal entity but does not include the tribal
32 governments that have formed the tribal entity. The
33 commissioner may charge the tribal entity an investigation fee
34 to cover the cost of the investigation. The commissioner may
35 require that fingerprints be taken from officers, directors,
36 managers, supervisory personnel, and persons with a direct

1 financial interest in the tribal entity not including the tribal
2 governments that have formed the tribal entity. The
3 commissioner may forward the fingerprints to the Federal Bureau
4 of Investigation for a national criminal history check.

5 Subd. 7. [LICENSE REFUSAL; SUSPENSION AND REVOCATION.] (a)
6 The commissioner may refuse to issue, or may revoke or suspend,
7 the gaming facility license if the tribal entity or its
8 officers, directors, managers, supervisory personnel, and
9 persons with a direct financial interest in the tribal entity,
10 not including the tribal governments that have formed the tribal
11 entity, has:

12 (1) engaged in a material violation of law, order, or rule
13 relating to gambling within any jurisdiction;

14 (2) operated a gaming facility in violation of approved
15 game procedures or an approved security plan, which in the
16 commissioner's opinion adversely and materially affects the
17 public interest of the state in the effective regulation and
18 control of gaming;

19 (3) made an intentional false statement in a license
20 application related to gaming;

21 (4) failed to perform material covenants or representations
22 made in a license application; or

23 (5) failed to notify the commissioner of a material change
24 in the information provided in the application.

25 (b) The commissioner may not revoke or suspend a license
26 under this subdivision unless the commissioner has given the
27 tribal entity and each participating tribal government express
28 written notice of the reason for the proposed revocation or
29 suspension and has granted the tribal entity a reasonable amount
30 of time to cure the violation giving rise to the proposed
31 revocation or suspension, and, in the commissioner's reasonable
32 judgment, the tribal entity has failed to do so. The
33 commissioner is not required to provide a reasonable time to
34 cure the violation before a license suspension if, in the
35 commissioner's reasonable judgment, the violation cannot be
36 cured by the tribal entity before significant harm will result

1 to the public health, safety, or welfare. The ability to cure
2 may include creation of a reorganized or reformed tribal entity,
3 provided that the reorganized or reformed tribal entity is
4 approved by the commissioner and the lottery director.

5 (c) A license revocation or suspension under this
6 subdivision is conducted as a contested case under sections
7 14.57 to 14.69 of the Administrative Procedure Act, and is in
8 addition to any other civil, administrative, or criminal
9 penalties imposed for a violation of law or rule.

10 Subd. 8. [OTHER LICENSE ACTIONS.] (a) The commissioner may
11 not issue the gaming facility license under this section or may
12 by administrative action impose a civil penalty upon the
13 licensee, issue correction orders, or take other administrative
14 action if the commissioner determines that the tribal entity, or
15 officer, director, manager, supervisory personnel, or other
16 person with a direct financial or management interest in the
17 licensee:

18 (1) has been convicted of a felony or of a crime in another
19 jurisdiction, which would be a felony in Minnesota;

20 (2) has been convicted of any crime related to gaming;

21 (3) has been found by a court, the lottery director, the
22 commissioner, or other state or governmental body to have
23 engaged in fraud, misrepresentation, or deceit;

24 (4) has provided false or misleading information to the
25 commissioner;

26 (5) has violated or failed to comply with this section or
27 any provision of this chapter or chapter 349A;

28 (6) is permanently or temporarily enjoined by any gambling
29 regulatory agency from engaging in or continuing any conduct or
30 practice involving any aspect of gambling;

31 (7) has had a gambling-related license revoked or
32 suspended, or has paid or been required to pay a monetary
33 penalty of \$10,000 or more by a gambling regulator in another
34 state or jurisdiction;

35 (8) has been the subject of any of the following actions by
36 the commissioner:

1 (i) has had a license under this chapter denied, suspended,
2 or revoked;

3 (ii) has been censured or reprimanded, or has paid or been
4 required to pay a monetary penalty or fine; or

5 (iii) has been the subject of any other discipline by the
6 commissioner; or

7 (9) based on past activities or criminal record, poses a
8 threat to the public interest or to the effective regulation and
9 control of gambling, or creates or enhances the dangers of
10 unsuitable, unfair, or illegal practices, methods, and
11 activities in the conduct of gambling or the management of the
12 business and financial arrangements incidental to the conduct of
13 gambling.

14 (b) Any conduct in violation of this section, or failure by
15 the tribal entity to take reasonable action to cure a violation
16 of this section, may be considered by the commissioner in
17 determining whether to order revocation or suspension of the
18 gaming facility license. Any proposed revocation or suspension
19 is subject to the notice and process requirements of subdivision
20 7, paragraph (b).

21 (c) Administrative action, including, but not limited to,
22 imposition of a civil penalty, corrective order, or other
23 administrative action under this paragraph, is a contested case
24 under sections 14.57 to 14.69 and is in addition to any other
25 civil, administrative, or criminal penalties provided for a
26 violation of law or rule.

27 Subd. 9. [REQUIRED NOTIFICATION.] (a) The tribal entity
28 has the obligation to immediately report to the commissioner any
29 substantial change in its management or ownership. Any
30 individual who later becomes an officer, director, or other
31 individual with a direct financial or management interest in the
32 tribal entity must undergo a comprehensive background and
33 financial investigation as set forth in subdivision 6. Prior to
34 assuming any duties or responsibilities for the tribal entity
35 the individual must file the appropriate license application
36 information with the commissioner.

1 (b) Following issuance of a gaming facility license, the
2 licensee must annually certify to the commissioner its
3 compliance with this section.

4 Subd. 10. [LICENSE REVIEW.] The gaming facility license
5 must be reviewed by the commissioner every five years. An
6 application for review must be on a form prescribed by the
7 commissioner. The commissioner shall review the application and
8 conduct the comprehensive background investigation pursuant to
9 subdivision 6.

10 Subd. 11. [AUDIT; INVESTIGATION.] (a) The tribal entity
11 shall have an annual certified audit conducted of the tribal
12 entity's operation of the gaming facility in accordance with
13 generally accepted accounting principles. The tribal entity
14 shall file a copy of each audit report with the commissioner.

15 (b) The commissioner has the right to conduct additional
16 reasonable audits or investigations relating to the operation of
17 the gaming facility. The commissioner shall have access to all
18 information, records, and accounts pertaining to the operation
19 of the gaming facility. The commissioner may recover the
20 reasonable costs of additional audits and investigations from
21 the tribal entity.

22 (c) The data created, collected, or retained under this
23 subdivision is private data as it relates to individuals or
24 nonpublic data as it relates to entities under chapter 13. At
25 the commissioner's discretion, the commissioner may share any
26 data under this subdivision with the director of the lottery or
27 the tribal entity, as deemed appropriate by the commissioner.

28 Subd. 12. [SALE OF INTOXICATING LIQUOR.] Notwithstanding
29 any other law, local ordinance, or charter provision, the host
30 community shall issue to the tribal entity an on-sale license
31 for the sale of intoxicating liquor at the gaming facility
32 pursuant to chapter 340A. The annual fee for the license issued
33 pursuant to this subdivision shall be set by the host community
34 at an amount comparable to the fee charged by municipalities in
35 the surrounding area for a similar license. Chapter 340A
36 applies to the sale of intoxicating liquor at the gaming

1 facility, except that the licensed premises need not be compact
2 and contiguous if the licensed premises are limited to the
3 interior and grounds of the facility.

4 Subd. 13. [DETENTION OF SUSPECTS.] (a) The commissioner
5 may designate specific employees of the department, the lottery,
6 or the gaming facility as persons authorized to detain a person
7 if they have probable cause to believe that the person detained
8 has violated section 609.651 or 609.76 while at the gaming
9 facility.

10 (b) A person authorized to detain an individual under
11 paragraph (a) is not criminally or civilly liable for any
12 detention authorized by this subdivision if the person has a
13 good faith belief that probable cause exists for the detention,
14 and the detention was not conducted with unreasonable force or
15 in bad faith.

16 (c) A peace officer or person authorized by the
17 commissioner under paragraph (a) may exclude a person from the
18 gaming facility or remove that person from the gaming facility
19 if the person is suspected to have violated section 609.651 or
20 609.76 or possesses contraband as provided in section 609.762,
21 subdivision 1.

22 (d) The tribal entity may establish a self-exclusion
23 program by which persons, at their request, may be excluded from
24 the gaming facility.

25 Subd. 14. [REIMBURSEMENT OF COSTS.] The commissioner shall
26 require that the tribal entity, on a quarterly basis, reimburse
27 the commissioner for the commissioner's actual costs, including
28 personnel costs of licensing, regulating, enforcement, and
29 oversight of the gaming facility under this section and sections
30 299L.091 to 299L.094. Money received by the commissioner under
31 this subdivision must be deposited in the state treasury and
32 credited to the commissioner reimbursement account and is
33 annually appropriated to the commissioner to pay the costs of
34 regulating activities at the gaming facility.

35 Sec. 2. [299L.091] [GAMING MANAGEMENT.]

36 Subdivision 1. [LICENSE REQUIRED.] The tribal entity, or

1 any entity formed by or engaged by the tribal entity to manage
2 the operations of the gaming facility under section 349A.17,
3 must obtain a gaming management license from the commissioner.

4 Subd. 2. [APPLICATION.] An application for a license under
5 this section must be on a form prescribed by the commissioner.
6 The commissioner may issue a gaming management license to the
7 management entity that will manage or operate the gaming
8 facility or gaming operations for the tribal entity.

9 Subd. 3. [LICENSE ISSUANCE.] (a) The commissioner shall
10 issue a license under this section unless information obtained
11 from the comprehensive background check establishes that
12 issuance of the license would be adverse to the public interest
13 or to the effective regulation of gaming.

14 (b) The commissioner may only issue a gaming management
15 license to an entity that is subject to the jurisdiction of the
16 Minnesota state courts and the administrative jurisdiction and
17 regulation of the state.

18 (c) Any license issued under this section is
19 nontransferable.

20 Subd. 4. [BACKGROUND INVESTIGATION.] Before issuing a
21 gaming management license, the commissioner must conduct a
22 comprehensive background and financial investigation of the
23 applicant including its officers, directors, managers,
24 supervisory personnel, and persons with a direct financial
25 interest in the management entity, not including the tribal
26 governments that have an interest in the management entity,
27 provided that if the management entity and the tribal entity are
28 the same, the commissioner shall utilize the background
29 investigation conducted as part of the application for a gaming
30 facility license. The commissioner may require that
31 fingerprints be taken and the commissioner may forward the
32 fingerprints to the Federal Bureau of Investigation for a
33 national criminal history check on the officers, directors,
34 managers, supervisory personnel, and persons with a direct
35 financial interest in the management entity, not including the
36 tribal governments that have an interest in the management

1 entity. The commissioner may charge an applicant for a gaming
2 management license a reasonable fee to cover the costs of the
3 investigation. Money received by the commissioner under this
4 subdivision must be deposited in the state treasury and credited
5 to the commissioner reimbursement account and is annually
6 appropriated to the commissioner to pay for costs incurred under
7 this subdivision.

8 Subd. 5. [LICENSE ACTIONS.] (a) The commissioner may not
9 issue a license under this section, or may by administrative
10 action revoke, suspend, or refuse to renew the gaming management
11 license, impose a civil penalty upon the licensee, or issue
12 correction orders, if the commissioner determines that the
13 management entity, or officer, director, manager, supervisory
14 personnel, other person with a direct financial interest in the
15 management entity, not including the tribal government that have
16 an interest in the management entity financial or management
17 interest in the licensee:

18 (1) has been convicted of a felony or of a crime in another
19 jurisdiction, which would be a felony in Minnesota;

20 (2) has been convicted of any crime related to gaming;

21 (3) has been found by a court, the lottery director, the
22 commissioner, or other state or governmental body to have
23 engaged in fraud, misrepresentation, or deceit;

24 (4) has provided false or misleading information to the
25 commissioner;

26 (5) has violated or failed to comply with this chapter or
27 chapter 349A;

28 (6) is permanently or temporarily enjoined by any gambling
29 regulatory agency from engaging in or continuing any conduct or
30 practice involving any aspect of gambling;

31 (7) has had a gambling-related license revoked or
32 suspended, or has paid or been required to pay a monetary
33 penalty of \$10,000 or more, by a gambling regulator in another
34 state or jurisdiction; or

35 (8) has been the subject of any of the following actions by
36 the commissioner:

1 (i) has had a license under chapter 299L denied, suspended,
2 or revoked;

3 (ii) has been censured or reprimanded or has paid or been
4 required to pay a monetary penalty or fine; or

5 (iii) has been the subject of any other discipline by the
6 commissioner;

7 (9) has engaged in conduct that is contrary to the public
8 health, safety, or welfare, or to the integrity of gambling;

9 (10) based on past activities or criminal record, poses a
10 threat to the public interest or to the effective regulation and
11 control of gambling, or creates or enhances the dangers of
12 unsuitable, unfair, or illegal practices, methods, and
13 activities in the conduct of gambling or the management of the
14 business and financial arrangements incidental to the conduct of
15 gambling;

16 (11) has engaged in a material violation of law, order, or
17 rule relating to gambling within any jurisdiction;

18 (12) has operated gaming in violation of approved game
19 procedures or an approved security plan, which in the
20 commissioner's opinion adversely and materially affects the
21 public interest of the state in the effective regulation and
22 control of gaming;

23 (13) has made an intentional false statement in a license
24 application;

25 (14) has failed to perform material covenants or
26 representations made in a license application; or

27 (15) has failed to notify the commissioner of a material
28 change in the information provided in a license application.

29 (b) A license revocation, suspension, or imposition of a
30 civil penalty under this paragraph is a contested case under
31 sections 14.57 to 14.69 and is in addition to any criminal
32 penalties provided for a violation of law or rule.

33 (c) The commissioner shall provide notice of any license
34 revocation, suspension, or imposition of a civil penalty to the
35 tribal entity.

36 Subd. 6. [REQUIRED NOTIFICATION.] (a) The gaming

1 management licensee has the obligation to immediately report to
2 the commissioner any change in its management or ownership. Any
3 individual who later becomes an officer, director, or other
4 individual with a direct financial or management interest in the
5 licensee must undergo a comprehensive background and financial
6 investigation as set forth in subdivision 4. Prior to assuming
7 any duties or responsibilities for the licensee, the individual
8 must file the appropriate license application information with
9 the commissioner.

10 (b) Following issuance of a gaming management license, the
11 licensee must annually certify to the commissioner its
12 compliance with this section.

13 Subd. 7. [LICENSE RENEWAL.] The gaming management license
14 must be renewed every two years. The commissioner must review
15 an application for renewal of a gaming management license in the
16 same manner as set forth in this section for issuance of a
17 license, including the assessment of costs related to the
18 background investigation.

19 Sec. 3. [299L.092] [EMPLOYEE LICENSES.]

20 Subdivision 1. [AUTHORITY.] The commissioner may issue
21 employee licenses for persons employed at the gaming facility.
22 All persons employed at the gaming facility must have the
23 appropriate license issued by the commissioner. The tribal
24 entity must ensure that an employee has a valid employee license
25 before the employee begins work at the gaming facility.

26 Subd. 2. [RULEMAKING.] The commissioner may by rule
27 prescribe the qualifications for employee licenses and standards
28 required for issuance of employee licenses under this section.

29 Subd. 3. [APPLICATION INFORMATION.] An application for an
30 employee license must be on a form prescribed by the
31 commissioner and include an affidavit of qualification that the
32 applicant:

33 (1) does not have a felony conviction of record in a state
34 or federal court and does not have a state or federal felony
35 charge pending;

36 (2) is not and never has been connected with or engaged in

1 an illegal business;

2 (3) has never been found guilty of fraud or
3 misrepresentation in connection with gambling; and

4 (4) has never been found guilty of a violation of law or
5 rule relating to gambling within any jurisdiction.

6 Subd. 4. [BACKGROUND INVESTIGATIONS.] The commissioner
7 shall investigate each applicant for an employee license to the
8 extent the commissioner deems necessary. The commissioner must
9 require the applicant to be fingerprinted or to furnish the
10 applicant's fingerprints. The commissioner may require the
11 tribal entity to pay the costs of processing employee licenses,
12 renewing employee licenses, and conducting background
13 investigations on the employee. Money received by the
14 commissioner under this subdivision must be deposited in the
15 state treasury and credited to the commissioner reimbursement
16 account and are annually appropriated to the commissioner to pay
17 for costs incurred under this subdivision.

18 Subd. 5. [LICENSE ISSUANCE AND RENEWAL.] If the
19 commissioner determines that the applicant is qualified for the
20 occupation for which licensing is sought and will not adversely
21 affect the public health, safety, and welfare or the integrity
22 of gambling in Minnesota, the commissioner may issue an employee
23 license to the applicant. If the commissioner makes a similar
24 finding for a renewal of an employee license, the commissioner
25 may renew the license. Employee licenses are effective for one
26 year.

27 Subd. 6. [REVOCATION AND SUSPENSION.] (a) The commissioner
28 may revoke an employee license for a violation of law or rule
29 which in the commissioner's opinion adversely affects the
30 integrity of gambling in Minnesota, or for an intentional false
31 statement made in a license application. The commissioner may
32 suspend an employee license for up to one year or refuse to
33 renew the license or impose a civil penalty for a violation of
34 law, order, or rule. A license revocation or suspension is a
35 contested case under sections 14.57 to 14.69 of the
36 Administrative Procedure Act and is in addition to criminal

1 penalties imposed for a violation of law or rule.

2 (b) The commissioner may summarily suspend an employee
3 license prior to a contested case hearing where it is necessary
4 to ensure the integrity of gambling. A contested case hearing
5 must be held within 20 days of the summary suspension and the
6 administrative law judge's report must be issued within 20 days
7 from the close of the hearing record. In all cases involving
8 summary suspension, the commissioner must issue its final
9 decision within 30 days from receipt of the report of the
10 administrative law judge and subsequent exceptions and argument
11 under section 14.61.

12 Sec. 4. [299L.093] [VENDOR LICENSES.]

13 Subdivision 1. [ISSUANCE.] The commissioner may issue a
14 vendor license for any person or entity that sells or
15 distributes products or provides services at the gaming
16 facility. No person may sell or distribute products or provide
17 a service at the gaming facility unless the person has obtained
18 a license from the commissioner. All employees of the vendor
19 whose work requires attendance at the gaming facility must
20 obtain an employee license under section 299L.092.

21 Subd. 2. [RULEMAKING.] The commissioner may by rule
22 prescribe the qualifications for vendor licenses under this
23 section and standards required for issuance of vendor licenses.

24 Subd. 3. [APPLICATION INFORMATION.] An application for a
25 vendor license must be on a form prescribed by the commissioner
26 and include an affidavit of qualification that the applicant,
27 and any officer, director, or person with direct financial
28 interest in the applicant:

29 (1) does not have a felony conviction of record in a state
30 or federal court and does not have a state or federal felony
31 charge pending;

32 (2) is not and never has been connected with or engaged in
33 an illegal business;

34 (3) has never been found guilty of fraud or
35 misrepresentation in connection with gambling; and

36 (4) has never been found guilty of a violation of law or

1 rule relating to gambling within any jurisdiction.

2 Subd. 4. [BACKGROUND INVESTIGATIONS.] The commissioner
3 shall investigate each applicant for a vendor license to the
4 extent the commissioner deems necessary. The commissioner must
5 require the applicant be fingerprinted or furnish the
6 applicant's fingerprints. The commissioner may require the
7 vendor to pay the costs of processing employee licenses,
8 renewing vendor licenses, and conducting background
9 investigations on the vendor. Money received by the
10 commissioner under this subdivision must be deposited in the
11 state treasury and credited to the commissioner reimbursement
12 account, and are annually appropriated to the commissioner to
13 pay for costs incurred under this subdivision.

14 Subd. 5. [LICENSE ISSUANCE AND RENEWAL.] If the
15 commissioner determines that the applicant is qualified and the
16 issuance of the license will not adversely affect the public
17 health, safety, and welfare or the integrity of gambling in
18 Minnesota, the commissioner may issue a vendor license to the
19 applicant. If the commissioner makes a similar finding for a
20 renewal of a vendor license, the commissioner may renew the
21 license. Vendor licenses are effective for one year.

22 Subd. 6. [REVOCAION AND SUSPENSION.] (a) The commissioner
23 may revoke a vendor license for a violation of law or rule that,
24 in the commissioner's opinion, adversely affects the integrity
25 of gambling in Minnesota, or for an intentional false statement
26 made in a license application. The commissioner may suspend a
27 vendor license for up to one year or refuse to renew the license
28 or impose a civil penalty for a violation of law, order, or
29 rule. A license revocation or suspension is a contested case
30 under sections 14.57 to 14.69 of the Administrative Procedure
31 Act and is in addition to criminal penalties imposed for a
32 violation of law or rule.

33 (b) The commissioner may summarily suspend a vendor license
34 for not more than 90 days prior to a contested case hearing
35 where it is necessary to ensure the integrity of gambling. A
36 contested case hearing must be held within 20 days of the

1 summary suspension and the administrative law judge's report
2 must be issued within 20 days from the close of the hearing
3 record. In all cases involving summary suspension, the
4 commissioner must issue its final decision within 30 days from
5 receipt of the report of the administrative law judge and
6 subsequent exceptions and argument under section 14.61.

7 Sec. 5. [299L.094] [NONLOTTERY CASINO GAMES.]

8 Subdivision 1. [DEFINITIONS.] (a) For the purposes of this
9 section, the following terms have the meanings given them.

10 (b) "Nonlottery casino games" means any game authorized by
11 the commissioner to be conducted by the tribal entity at the
12 gaming facility that is not a gaming machine or other lottery
13 game as defined by section 349A.01.

14 (c) "Nonlottery casino games' adjusted gross revenue" means
15 the sum of all money received from the operation of nonlottery
16 casino games, less the amounts paid out to players in prizes or
17 winnings and promotional allowances approved by the lottery
18 director under section 349A.17 in the nonlottery casino games.

19 Subd. 2. [OPERATION.] Nonlottery casino games may be
20 operated by the tribal entity in conformance with a plan of
21 operation approved by the commissioner. The plan of operation
22 must include, at a minimum:

23 (1) specifying and defining all nonlottery games to be
24 played, including all governing aspects of each nonlottery
25 casino game;

26 (2) arrangements to ensure the security of nonlottery
27 casino gaming;

28 (3) internal control systems for play of nonlottery casino
29 games; and

30 (4) a plan for the training of nonlottery casino games
31 personnel in identification of problem gamblers and appropriate
32 action to prevent or control problem gambling.

33 Subd. 3. [PLAN AMENDMENT.] The plan of operation may be
34 amended only with the approval of the commissioner.

35 Subd. 4. [ACTIONS.] The commissioner may revoke, suspend,
36 refuse to renew, or impose a civil penalty upon the tribal

1 entity or the gaming management licensee for violation of the
2 plan of operation. An action under this subdivision shall be
3 conducted as a contested case under sections 14.57 to 14.69 of
4 the Administrative Procedures Act and is in addition to criminal
5 penalties imposed for violation of the plan of operation.

6 Subd. 5. [PRIZES.] A person who plays a nonlottery casino
7 game at the gaming facility agrees to be bound by the rules and
8 game procedures applicable to that particular game. The player
9 acknowledges that the determination of whether the player has
10 won a prize is subject to the rules and game procedures adopted
11 by the plan of operation, claim procedures established by the
12 plan of operation for that game, and any confidential or public
13 validation tests established by the plan of operation for that
14 game. A person under 18 years of age may not claim a prize from
15 a nonlottery casino game at the gaming facility.

16 Sec. 6. [299L.095] [EMPLOYMENT RESTRICTIONS; CIVIL
17 PENALTY.]

18 (a) The lottery director, the commissioner, or any manager,
19 director, or supervisor employed by the lottery or the
20 Department of Public Safety whose job responsibilities include
21 the oversight, audit, investigation, or regulation of gaming at
22 a gaming facility licensed by the commissioner must not, while
23 employed with or within one year after leaving employment,
24 receive compensation directly or indirectly from, or enter into
25 a contractual relationship with the tribal entity or any
26 management entity licensed by the commissioner pursuant to
27 section 299L.09 or 299L.091.

28 (b) The tribal entity or management entity licensed by the
29 commissioner must not negotiate with or offer to employ or
30 compensate the lottery director; commissioner; or any manager,
31 director, or supervisor employed by the lottery or the
32 Department of Public Safety whose job responsibilities include
33 the oversight, audit, investigation, or regulation of gaming at
34 a gaming facility licensed by the commissioner pursuant to
35 section 299L.09 or 299L.091 while the person is employed by the
36 lottery or the Department of Public Safety or within one year

1 after the person's employment has ended.

2 (c) A state employee who violates this section is subject
3 to a civil penalty not to exceed \$10,000 for each violation.
4 The attorney general may bring an action in district court to
5 pursue a violation of this section.

6 (d) The commissioner may take administrative action in
7 relation to the gaming facility license or management license
8 for a violation of this section by a tribal entity or management
9 entity.

10 Sec. 7. [EFFECTIVE DATE.]

11 This article is effective the day following final enactment.

12 ARTICLE 4

13 GAMING TRANSACTION FEE

14 Section 1. [297A.651] [GAMING FACILITY.]

15 (a) The State Lottery must, on or before the 20th day of
16 each month, transmit to the commissioner an amount equal to the
17 adjusted gross gaming machine revenue and other lottery games'
18 adjusted gross revenue, as defined in section 349A.01, for the
19 previous month multiplied by 26 percent.

20 (b) A gaming transaction fee is imposed on nonlottery
21 casino games at the gaming facility authorized under section
22 299L.094 at the rate of 14 percent of nonlottery casino games'
23 adjusted gross revenue, as defined in section 299L.094. The
24 tribal entity authorized to conduct nonlottery casino games at
25 the gaming facility must make the payments due under this
26 paragraph to the commissioner on or before the 20th day of each
27 month for the adjusted gross revenue received for the previous
28 month.

29 (c) The commissioner shall deposit the money transmitted
30 under this section in the state treasury to be credited as
31 provided in section 297A.94.

32 (d) The payments imposed by this section are in lieu of the
33 tax imposed by section 297A.62 relating to wagering at the
34 gaming facility and any local taxes relating to wagering at the
35 gaming facility and local license fees relating to wagering at
36 the gaming facility.

1 Sec. 2. Minnesota Statutes 2004, section 297A.94, is
2 amended to read:

3 297A.94 [DEPOSIT OF REVENUES.]

4 (a) Except as provided in this section, the commissioner
5 shall deposit the revenues, including interest and penalties,
6 derived from the taxes imposed by this chapter in the state
7 treasury and credit them to the general fund.

8 (b) The commissioner shall deposit taxes in the Minnesota
9 agricultural and economic account in the special revenue fund if:

10 (1) the taxes are derived from sales and use of property
11 and services purchased for the construction and operation of an
12 agricultural resource project; and

13 (2) the purchase was made on or after the date on which a
14 conditional commitment was made for a loan guaranty for the
15 project under section 41A.04, subdivision 3.

16 The commissioner of finance shall certify to the commissioner
17 the date on which the project received the conditional
18 commitment. The amount deposited in the loan guaranty account
19 must be reduced by any refunds and by the costs incurred by the
20 Department of Revenue to administer and enforce the assessment
21 and collection of the taxes.

22 (c) The commissioner shall deposit the revenues, including
23 interest and penalties, derived from the taxes imposed on sales
24 and purchases included in section 297A.61, subdivision 3,
25 paragraph (g), clauses (1) and (4), in the state treasury, and
26 credit them as follows:

27 (1) first to the general obligation special tax bond debt
28 service account in each fiscal year the amount required by
29 section 16A.661, subdivision 3, paragraph (b); and

30 (2) after the requirements of clause (1) have been met, the
31 balance to the general fund.

32 (d) The commissioner shall deposit the revenues, including
33 interest and penalties, collected under section 297A.64,
34 subdivision 5, in the state treasury and credit them to the
35 general fund. By July 15 of each year the commissioner shall
36 transfer to the highway user tax distribution fund an amount

1 equal to the excess fees collected under section 297A.64,
2 subdivision 5, for the previous calendar year.

3 (e) For fiscal year 2001, 97 percent; for fiscal years 2002
4 and 2003, 87 percent; and for fiscal year 2004 and thereafter,
5 72.43 percent of the revenues, including interest and penalties,
6 transmitted to the commissioner under section 297A.65, must be
7 deposited by the commissioner in the state treasury as follows:

8 (1) 50 percent of the receipts must be deposited in the
9 heritage enhancement account in the game and fish fund, and may
10 be spent only on activities that improve, enhance, or protect
11 fish and wildlife resources, including conservation,
12 restoration, and enhancement of land, water, and other natural
13 resources of the state;

14 (2) 22.5 percent of the receipts must be deposited in the
15 natural resources fund, and may be spent only for state parks
16 and trails;

17 (3) 22.5 percent of the receipts must be deposited in the
18 natural resources fund, and may be spent only on metropolitan
19 park and trail grants;

20 (4) three percent of the receipts must be deposited in the
21 natural resources fund, and may be spent only on local trail
22 grants; and

23 (5) two percent of the receipts must be deposited in the
24 natural resources fund, and may be spent only for the Minnesota
25 Zoological Garden, the Como Park Zoo and Conservatory, and the
26 Duluth Zoo.

27 (f) The revenue dedicated under paragraph (e) may not be
28 used as a substitute for traditional sources of funding for the
29 purposes specified, but the dedicated revenue shall supplement
30 traditional sources of funding for those purposes. Land
31 acquired with money deposited in the game and fish fund under
32 paragraph (e) must be open to public hunting and fishing during
33 the open season, except that in aquatic management areas or on
34 lands where angling easements have been acquired, fishing may be
35 prohibited during certain times of the year and hunting may be
36 prohibited. At least 87 percent of the money deposited in the

1 game and fish fund for improvement, enhancement, or protection
 2 of fish and wildlife resources under paragraph (e) must be
 3 allocated for field operations.

4 (g) The commissioner must deposit revenues, including
 5 interest and penalties, transmitted to the commissioner under
 6 section 297A.651 into the gaming facility proceeds fund
 7 established in section 297A.941.

8 Sec. 3. [297A.941] [GAMING FACILITY PROCEEDS FUND.]

9 A gaming facility proceeds fund is established in the state
 10 treasury, consisting of money deposited in the fund under
 11 section 297A.94, paragraph (g), and any other money credited to
 12 the fund by law. Money in the fund is appropriated as follows:

13 (1) ten percent of the receipts is annually appropriated to
 14 the community assets account; and

15 (2) the remaining 90 percent of the receipts shall be
 16 transferred to the general fund.

17 Sec. 4. [EFFECTIVE DATE.]

18 This article is effective the day following final enactment.

19 ARTICLE 5

20 MISCELLANEOUS PROVISIONS

21 Section 1. Minnesota Statutes 2004, section 299L.07,
 22 subdivision 2, is amended to read:

23 Subd. 2. [EXCLUSIONS.] Notwithstanding subdivision 1, a
 24 gambling device:

25 (1) may be sold by a person who is not licensed under this
 26 section, if the person (i) is not engaged in the trade or
 27 business of selling gambling devices, and (ii) does not sell
 28 more than one gambling device in any calendar year;

29 (2) may be sold by the governing body of a federally
 30 recognized Indian tribe described in subdivision 2a, paragraph
 31 (b), clause (1), which is not licensed under this section, if
 32 (i) the gambling device was operated by the Indian tribe, (ii)
 33 the sale is to a distributor licensed under this section, and
 34 (iii) the licensed distributor notifies the commissioner of the
 35 purchase, in the same manner as is required when the licensed
 36 distributor ships a gambling device into Minnesota;

1 (3) may be possessed by a person not licensed under this
2 section if the person holds a permit issued under section
3 299L.08; and

4 (4) may be possessed by a state agency, with the written
5 authorization of the director, for display or evaluation
6 purposes only and not for the conduct of gambling; and

7 (5) may be possessed by the State Lottery as authorized
8 under chapter 349A.

9 Sec. 2. Minnesota Statutes 2004, section 299L.07,
10 subdivision 2a, is amended to read:

11 Subd. 2a. [RESTRICTIONS.] (a) A manufacturer licensed
12 under this section may sell, offer to sell, lease, or rent, in
13 whole or in part, a gambling device only to a distributor
14 licensed under this section or to the State Lottery as
15 authorized under chapter 349A.

16 (b) A distributor licensed under this section may sell,
17 offer to sell, market, rent, lease, or otherwise provide, in
18 whole or in part, a gambling device only to:

19 (1) the governing body of a federally recognized Indian
20 tribe that is authorized to operate the gambling device under a
21 tribal state compact under the Indian Gaming Regulatory Act,
22 Public Law 100-497, and future amendments to it;

23 (2) a person for use in the person's dwelling for display
24 or amusement purposes in a manner that does not afford players
25 an opportunity to obtain anything of value;

26 (3) another distributor licensed under this section; or

27 (4) a person in another state who is authorized under the
28 laws of that state to possess the gambling device; or

29 (5) the State Lottery as authorized under chapter 349A.

30 Sec. 3. Minnesota Statutes 2004, section 340A.410,
31 subdivision 5, is amended to read:

32 Subd. 5. [GAMBLING PROHIBITED.] (a) Except as otherwise
33 provided in this subdivision, no retail establishment licensed
34 to sell alcoholic beverages may keep, possess, or operate, or
35 permit the keeping, possession, or operation on the licensed
36 premises of dice or any gambling device as defined in section

1 349.30, or permit gambling therein.

2 (b) Gambling equipment may be kept or operated and raffles
3 conducted on licensed premises and adjoining rooms when the use
4 of the gambling equipment is authorized by (1) chapter 349, (2)
5 a tribal ordinance in conformity with the Indian Gaming
6 Regulatory Act, Public Law 100-497, or (3) a tribal-state
7 compact authorized under section 3.9221.

8 (c) Lottery tickets may be purchased and sold within the
9 licensed premises as authorized by the director of the lottery
10 under chapter 349A.

11 (d) Dice may be kept and used on licensed premises and
12 adjoining rooms as authorized by section 609.761, subdivision 4.

13 (e) Gambling devices may be operated and gambling permitted
14 at a gaming facility as authorized by chapter 299L and 349A.

15 Sec. 4. Minnesota Statutes 2004, section 541.20, is
16 amended to read:

17 541.20 [RECOVERY OF MONEY LOST.]

18 Every person who, by playing at cards, dice, or other game,
19 or by betting on the hands or sides of such as are gambling,
20 shall lose to any person so playing or betting any sum of money
21 or any goods, and pays or delivers the same, or any part
22 thereof, to the winner, may sue for and recover such money by a
23 civil action, before any court of competent jurisdiction. For
24 purposes of this section, gambling shall not include pari-mutuel
25 wagering conducted under a license issued pursuant to chapter
26 240, purchase or sale of tickets in the state lottery, purchase
27 of gaming machine plays as authorized under chapter 349A,
28 conduct of any lottery or nonlottery casino games at a gaming
29 facility as authorized under chapters 299L and 349A, or gambling
30 authorized under chapters 349 and 349A.

31 Sec. 5. Minnesota Statutes 2004, section 541.21, is
32 amended to read:

33 541.21 [COMMITMENTS FOR GAMBLING DEBT VOID.]

34 Every note, bill, bond, mortgage, or other security or
35 conveyance in which the whole or any part of the consideration
36 shall be for any money or goods won by gambling or playing at

1 cards, dice, or any other game whatever, or by betting on the
2 sides or hands of any person gambling, or for reimbursing or
3 repaying any money knowingly lent or advanced at the time and
4 place of such gambling or betting, or lent and advanced for any
5 gambling or betting to any persons so gambling or betting, shall
6 be void and of no effect as between the parties to the same, and
7 as to all persons except such as hold or claim under them in
8 good faith, without notice of the illegality of the
9 consideration of such contract or conveyance. The provisions of
10 this section shall not apply to: (1) pari-mutuel wagering
11 conducted under a license issued pursuant to chapter 240; (2)
12 purchase of tickets in the state lottery or other wagering
13 authorized under chapter 299L or 349A; (3) gaming activities
14 conducted pursuant to the Indian Gaming Regulatory Act, 25
15 U.S.C. 2701 et seq.; or (4) lawful gambling activities permitted
16 under chapter 349.

17 Sec. 6. Minnesota Statutes 2004, section 609.75,
18 subdivision 3, is amended to read:

19 Subd. 3. [WHAT ARE NOT BETS.] The following are not bets:

20 (1) A contract to insure, indemnify, guarantee or otherwise
21 compensate another for a harm or loss sustained, even though the
22 loss depends upon chance.

23 (2) A contract for the purchase or sale at a future date of
24 securities or other commodities.

25 (3) Offers of purses, prizes or premiums to the actual
26 contestants in any bona fide contest for the determination of
27 skill, speed, strength, endurance, or quality or to the bona
28 fide owners of animals or other property entered in such a
29 contest.

30 (4) The game of bingo when conducted in compliance with
31 sections 349.11 to 349.23.

32 (5) A private social bet not part of or incidental to
33 organized, commercialized, or systematic gambling.

34 (6) The operation of equipment or the conduct of a raffle
35 under sections 349.11 to 349.22, by an organization licensed by
36 the Gambling Control Board or an organization exempt from

1 licensing under section 349.166.

2 (7) Pari-mutuel betting on horse racing when the betting is
3 conducted under chapter 240.

4 (8) The purchase and sale of state lottery tickets under
5 chapter 349A.

6 (9) Plays on a gaming machine, or purchase or participating
7 in any lottery or nonlottery casino game at a gaming facility
8 authorized under chapter 299L or 349A.

9 Sec. 7. Minnesota Statutes 2004, section 609.761, is
10 amended by adding a subdivision to read:

11 Subd. 6. [GAMING FACILITY.] Sections 609.755 and 609.76 do
12 not prohibit the manufacture, possession, sale, or operation of
13 a gaming machine at a gaming facility under chapter 349A, or the
14 conduct of any other lottery or nonlottery casino game at a
15 gaming facility under chapters 299L and 349A.

16 Sec. 8. [SEVERABILITY; SAVINGS.]

17 If any part of this act is found to be invalid because it
18 is in conflict with a provision of the Constitution of the State
19 of Minnesota or the Constitution of the United States, or for
20 any other reason, all other provisions of this act shall remain
21 valid and any rights, remedies, and privileges that have been
22 otherwise accrued by this act, shall remain in effect and may be
23 proceeded with and concluded under the provisions of this act.

24 Sec. 9. [EFFECTIVE DATE.]

25 This article is effective the day following final enactment.

Article 1 PURPOSE.....	page	1
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Agriculture, Veterans and Gaming Committee
Roll Call

S.F. 1978 - State-run
Casino

Name	Yea	Nay	Abstain
Day	X		
Dille		X	
Hann		X	
Johnson, Dean		X	
Koering	X		
Skoglund		X	
Lourey		X	
Murphy		X	
Nienow		X	
Rest		X	
Sams			
Skoe	X		
Solon		X	
Vickerman		X	
Wergin	X		

Ayes 4 Nays 10 Motion Carried Motion Lost ✓

Requested by Rest Supported by



Hotel Employees and Restaurant Employees Union
Local No. 17
of Minneapolis and St. Paul, MN

April 4, 2005

President & Principal Officer
Jaye Rykunyk

Director of Organization
Martin Goff

Secretary-Treasurer
Nancy Goldman

Vice President
Uriel Pérez Espinoza

Trustees
Laurie Fossen
Patt Fornshell
Steve Mohr

Executive Board at Large
Desiree King
Rita Silk Leckie
Wade Luneburg
Claire Baker
Art Poepping

Dear Senate Members,

UNITE HERE in Minnesota represents 10,000 people in the hospitality industry and allied trades. UNITE HERE has 450,000 members across North America with nearly 90,000 members in gaming.

Hospitality jobs in general are the gateway to America's workforce. Historically the industry allowed incomes that supported whole families and provided opportunity to many. As the Minnesota economy moves more to the 'service sector' it is important that these jobs be of higher quality and standards than are currently offered in the gaming industry in Minnesota.

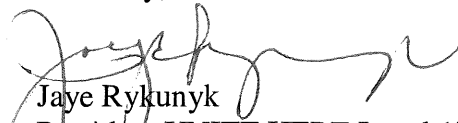
UNITE HERE knows that workers in the industry lead better lives when offered the opportunity to collectively bargain their wages, health benefits and workplace standards. UNITE HERE has the necessary experience in and with the industry to make sure that the jobs offered in these proposals are not just transitional in nature but offer real opportunity going forward.

We have worked closely for three years with the proponents of the State Licensed/Tribal Casino that offers real equity to the largest group of Native Americans in Minnesota. The agreement with these three nations is unique in the gaming industry and again offers the opportunity for workers at the proposed facility to make choices in their working conditions and standards. It is estimated that 2500 good paying sustainable jobs would be created to operate such a facility.

If gaming is meant to grow in Minnesota there is a responsibility to make sure that the jobs created be of high quality and sustainability. The people that we have worked with in these proposals are setting a standard that is exemplary in the industry and in Minnesota.

UNITE HERE fully supports and endorses S. F.1978 and asks for your support going forward.

Sincerely,



Jaye Rykunyk
President UNITE HERE Local 17
International Vice President UNITE HERE

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Last update: March 10, 2005 at 6:40 AM

Work & Life: Jobs are casino plans' silver lining

H.J. Cummins

Star Tribune

Published March 10, 2005

Minnesota officials are pitching a city casino for the millions they can take from it.

But a casino would have another big economic impact: It would create 2,000 to 3,000 jobs for the Twin Cities hospitality industry.

Like any big employer, a casino has its top-of-the-pyramid jobs: administrators, accountants and marketers. But most of that pyramid is filled with slot attendants, change makers, cooks, waiters, room cleaners and desk clerks.

If those jobs move off the reservation for the first time in Minnesota, they would look different in at least two big ways.

They could be covered by state labor law. And they could become union jobs.

Gov. Tim Pawlenty and the White Earth, Leech Lake and Red Lake Indian bands have one plan for a casino-hotel partnership, with the state expecting about \$200 million a year in revenue from the venture. The Canterbury Park racetrack has a similar plan and is promising to share its profits with the state.

So far, public debate has focused on everything but jobs. Proponents say gambling is growing, anyway, why not let the state benefit? Opponents say gambling doesn't have to spread, that this is a bad way for the state to pay its bills.

Also, they say, Pawlenty's plan, specifically, is just a gambit against long-standing state agreements to leave all gaming profits with the tribes.

State labor laws in general don't reach onto tribal lands, said James Honerman, spokesman for the Minnesota Department of Labor and Industry. That means that Minnesota laws on workers' compensation, occupational safety and wage-and-hour standards don't apply, Honerman said. The state would enforce those laws in any casino off Indian lands -- Canterbury Park, for example. If a casino is off Indian land but partially owned by Indians -- as in the Pawlenty plan -- "we'd have to take a look at that," he said.

The other big new wrinkle is opening the doors to unions. Both development groups have agreed not to interfere with union organizing efforts, said Jaye Rykuny, president of Unite Here Local 17 in Minneapolis. In exchange, the union has agreed to support a metro casino.

Unite Here is one of the busiest organizing unions around these days. Created last summer with the merger of UNITE -- textiles and industrial workers -- and HERE -- hotel and restaurant employees -- the union represents almost half a million workers in the United States and Canada, including about 100,000 gaming workers in this country, according to its national headquarters.

Local 17 has a strong record for reaching out to the people likely to fill these casino jobs: women,

minorities and new immigrants.

"We're their gateway to the workforce," Rykunyk said.

She hopes the new casinos will mean more "good" jobs in the traditional union sense: a living wage, health benefits and a pension plan.

Skilled cooks covered by Unite Here contracts make more than \$15 an hour, Rykunyk said. Assistant cooks: \$13. Pantry workers, room cleaners and dish washers are all above \$11. And every full-timer has health benefits and a pension plan, paid entirely by the employer.

The Minnesota Indian Gaming Association didn't return phone calls asking to discuss wages at the 18 tribal casinos. But a 2000 audit for the association gives some clues. It said then that Indian gaming in Minnesota employed 13,339 people -- 85 percent of them "full time with full benefits."

The average annual wage then was \$18,705, or \$8.99 an hour. Benefits and pensions added about \$2,000 a year to that. It's unclear, however, what the audit means by "full benefits." Average health plans alone cost about \$4,000 a year for an individual and \$8,000 for a family.

The 2000 accounting made another point: Eight of every 10 casino employees were not Indian.

That's another reason Unite Here supports the idea of casinos in the Twin Cities.

"Our union's experience with gaming is that it can provide excellent jobs," Rykunyk said. "I really see this as an opportunity to provide training and jobs not just for Native Americans but for the whole urban minority community."

What are your workplace issues? You can reach H.J. Cummins at workandlife@startribune.com. Please sign your e-mails; no names will appear in print without prior approval.

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"Defeated"

1 Senator moves to amend the delete-everything
2 amendment (SCS1609A-2) to S.F. No. 1609 as follows:

3 Page 3, line 13, after the period, insert "Of this amount,
4 75 percent must be dedicated for transfer to federally
5 recognized tribal governments that:

6 (1) operate current casino gaming operations pursuant to a
7 compact with this state; and

8 (2) demonstrate that the revenues available to the tribal
9 government from currently available sources are insufficient to
10 adequately meet the basic needs of tribal members."

Passed

04/04/05 DAY

[COUNSEL] CEB

SCS1609A-9

1 Senator moves to amend the delete-everything
2 amendment (SCS1609A-2) to S.F. No. 1609 as follows:

3 Page 3, line 13, after "fund" insert "and appropriate
4 annually that amount to the commissioner of education to
5 increase the basic revenue formula allowance under section
6 126C.10, subdivision 2"

**Senate Counsel, Research,
and Fiscal Analysis**

G-17 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING, JR. BLVD.
ST. PAUL, MN 55155-1606
(651) 296-4791
FAX: (651) 296-7747
JO ANNE ZOFF SELLNER
DIRECTOR

Senate

State of Minnesota

S.F. No. 1609 - Racino (Delete-Everything Amendment)

Author: Senator Dick Day

Prepared by: Carol E. Baker, Senate Counsel (651/296-4395)

Date: March 30, 2005

This bill authorizes the State Lottery to operate gaming machines at a licensed racetrack, and allows the racetrack to conduct blackjack card games. The racetrack will make a onetime payment of \$100,000,000 upon entering a location contract with the lottery, to be deposited in the general fund. Once the gaming machines are operational, 55 percent of the revenue (total wager minus payouts) will go to the racetrack. The racetrack is required to pay the city and the county where the racetrack is located one percent of that amount, and is also required to use at least 7.25 percent of its share for horse racing purses and the Minnesota breeders fund. The bill requires 35 percent of adjusted gross gaming machine revenue, 20 percent of the revenue from blackjack, and five percent of the card club rake to be deposited monthly in the general fund.

Section 1 [Purses; Gaming Machines.] requires a racetrack with gaming machines to set aside at least 7.25 percent of adjusted gross gaming machine revenue for horse racing purses. Twenty percent of this amount must go to the breeders fund for purse supplements. The racetrack and the majority horsepersons' organization may negotiate a different percentage.

Section 2 [Taxes Imposed.] imposes a five percent tax on the amount annually received from charges for card playing services in card clubs, less amounts set aside for purses and the breeders fund.

Section 3 [Limitations.] eliminates the statutory limitation on the number of tables permitted at a card club (currently a maximum of 50 tables).

Section 4 [Generally.] permits the Racing Commission's director of racing security or a licensed security officer to detain someone if they have probable cause to believe the person committed a gambling crime at the racetrack.

Section 5 [Lottery Gaming Machines; In Lieu Tax.] requires the lottery to pay 35 percent of adjusted gross gaming machine revenue to the Commissioner of Revenue, in lieu of sales tax.

Section 6 [Exclusions.] exempts gambling devices possessed by the lottery from the general prohibition against possession of gambling devices.

Section 7 [Restrictions.] allows licensed gambling device manufacturers and distributors to sell, lease, or rent gambling devices to the lottery.

Section 8 [Gambling Prohibited.] exempts gambling devices at racetracks from the prohibition against gambling devices at establishments licensed for retail liquor sales.

Section 9 [Lottery Procurement Contract.] adds contracts for gaming machines to the definition of "lottery procurement contract."

Section 10 [Gaming Machine.] defines "gaming machine" as a machine, system, or device, which upon payment of consideration to play a game, may award or entitle a player to a prize by reason of skill, chance, or both.

Section 11 [Gaming Machine Game.] defines "gaming machine game" as a game operated by a gaming machine.

Section 12 [Gaming Machine Play.] defines "gaming machine play" as an electronic record that proves participation in a gaming machine game.

Section 13 [Adjusted Gross Gaming Machine Revenue.] defines "adjusted gross gaming machine revenue" as all money received by the lottery from gaming machine plays, less prizes paid out.

Section 14 [Lottery Operations.] disregards amounts transferred or retained by a racetrack under a location contract when calculating the 15 percent of gross revenue the lottery may spend on lottery operations. The director may credit up to ten percent of adjusted gross gaming machine revenue to the lottery operations account in a fiscal year.

Section 15 [Budget; Plans.] excludes from lottery operating expenses (which are capped by law): (1) amounts paid to an outside vendor to operate a central communications system for gaming machines; and (2) amounts paid to acquire and maintain gaming machines.

Section 16 [Restrictions.] allows the lottery to operate gaming machines pursuant to a location contract.

Section 17 [Gaming Machines.] provides for the operation of gaming machines by the lottery at a racetrack.

Subdivision 1 [Location Contract.] Paragraph (a) authorizes the lottery director to enter into a contract with a class A licensee who has conducted at least 50 days of live racing each year for the past five years, under which the licensee provides a location for gaming machines.

Paragraph (b) requires a contract provision terminating the contract if the licensee failed to conduct at least 50 days of live racing in the previous year.

Paragraph (c) requires the contract to provide for compensation to the racetrack of at least 55 percent of adjusted gross gaming machine revenue and requires the racetrack to annually pay one percent of its share of the adjusted gross gaming machine revenue to both the city or town and the county where it is located.

Paragraph (d) allows the director to cancel, suspend, or refuse to renew a contract, or to impose a civil penalty, if the licensee loses its license; does not account for gaming machine proceeds; fails to remit funds as required; violates a law, rule, or order of the director; fails to comply with any terms of the contract; or acts in a manner that hurts public confidence in the integrity of the gaming machines. A termination of a location contract is a contested case under the Administrative Procedures Act.

Paragraph (e) prohibits the location of gaming machines in a city or town unless the governing body adopts a resolution approving the location.

Paragraph (f) requires the licensee to make a onetime payment of \$100,000,000 to the Racing Commissioner by June 30, 2007, for deposit in the general fund, as a condition of entering the contract. The contract must include a refund provision if this section is repealed by the Legislature, revoked by a constitutional amendment, or held unconstitutional in court.

Paragraph (g) requires the contract to include a liquidated damages provision to recover the licensee's investment if the state revokes, by legislation or constitutional amendment, gambling authorized by this section. The contract must specify that the licensee bears all costs associated with managing the day-to-day activity of gaming machines.

Subdivision 2 [Operation.] requires the lottery to: (1) operate, control, maintain, and own or lease the gaming machines; (2) maintain a central communications system that monitors each machine; (3) approve general security arrangements; and (4) approve all advertising related to gaming machines.

Subdivision 3 [Games.] requires the director to specify the games that may be played on gaming machines.

Subdivision 4 [Prizes.] makes gaming machine prizes subject to rules and game procedures adopted by the director. It exempts gaming machine prizes from the law that authorizes withholding of unpaid taxes from lottery prizes.

Subdivision 5 [Prohibitions.] prohibits persons under age 18, the lottery director, and lottery employees and their immediate families, from playing or receiving a prize from gaming machines.

Subdivision 6 [Compulsive Gambling; Report.] requires the racetrack to post the compulsive gambling hot line number at gaming machine locations. The director and racetrack must develop a proactive plan relating to problem gambling and report to the Legislature on this plan by January 15 of each year. The racetrack may establish a self-exclusion program by which persons may request to be excluded from gaming machine locations.

Subdivision 7 [Local Licenses.] prohibits political subdivisions from licensing, regulating, or taxing gaming machines.

Subdivision 8 [Reimbursement; Racing Commission.] requires the Racing Commission to require the racetrack to reimburse the commission for its costs of regulating the licensee.

Section 18 [Recovery of Money Lost.] exempts card games conducted at the racetrack from the law that allows persons to sue to recover gambling losses.

Section 19 [Commitments For Gambling Debt Void.] exempts gaming machine play and card games from the law that makes gambling debts void.

Section 20 [What Are Not Bets.] adds gaming machine plays to the list of gambling activities that are not bets for purposes of state laws prohibiting gambling.

Section 21 [State Lottery.] exempts the manufacture, possession, sale, and operation of gaming machines from antigambling laws.

Section 22 [Other Games.] allows the racing commission to authorize a racetrack with a location contract to conduct card games that Indian casinos in Minnesota are authorized to conduct. The commission must adopt game procedures and take other actions necessary to regulate the conduct and ensure the integrity of the card games.

A tax of 20 percent of gross gaming receipts is imposed on any games conducted under this section. The section requires the racetrack to set aside at least 7.25 percent of gross gaming receipts for racing purses, 20 percent of which must be transferred to the breeders fund.

Section 23 [Lottery Budget; Gaming Machines.] requires the director to submit a budget for gaming machine operation to the Commissioner of Finance. It allows the director to expend amounts necessary to operate gaming machines, notwithstanding the statutory provision allowing the Legislature to cap lottery operating expenses.

Section 24 [Severability; Savings.] provides that if any provision of the bill is found unconstitutional or otherwise invalid, all other provisions remain in effect.

Section 25 [Effective Date.] makes the act effective the day following final enactment.

CEB:rer

Passed

1 Senator moves to amend S.F. No. 1609 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. Minnesota Statutes 2004, section 240.13, is
4 amended by adding a subdivision to read:

5 Subd. 5a. [PURSES; GAMING MACHINES.] From the compensation
6 received by a licensee pursuant to a gaming machine location
7 contract entered into under section 349A.17, the licensee must
8 set aside at least 7.25 percent of the adjusted gross gaming
9 machine revenue as defined under chapter 349A, for purses for
10 live horse races conducted by the licensee. Purse payments made
11 pursuant to this subdivision are in addition to purse payments
12 otherwise established by law or contract. Twenty percent of the
13 money set aside for purses pursuant to this subdivision shall be
14 transferred to the commission and used for the purposes in
15 section 240.18, subdivisions 2, paragraph (d), and 3, paragraph
16 (b), subject to the proportionality requirement in section
17 240.18, subdivision 1. The licensee and the horseperson's
18 organization representing the majority of horsepersons who have
19 raced horses at the racetrack during the preceding 12 months may
20 negotiate percentages different from those stated in this
21 section if the agreement is in writing and filed with the
22 commission.

23 Sec. 2. Minnesota Statutes 2004, section 240.15,
24 subdivision 1, is amended to read:

25 Subdivision 1. [TAXES IMPOSED.] (a) There is imposed a tax
26 at the rate of six percent of the amount in excess of
27 \$12,000,000 annually withheld from all pari-mutuel pools by the
28 licensee, including breakage and amounts withheld under section
29 240.13, subdivision 4. For the purpose of this subdivision,
30 "annually" is the period from July 1 to June 30 of the next year.

31 In addition to the above tax, the licensee must designate
32 and pay to the commission a tax of one percent of the total
33 amount bet on each racing day, for deposit in the Minnesota
34 breeders fund.

35 The taxes imposed by this clause must be paid from the
36 amounts permitted to be withheld by a licensee under section

1 240.13, subdivision 4.

2 (b) The commission may impose an admissions tax of not more
3 than ten cents on each paid admission at a licensed racetrack on
4 a racing day if:

5 (1) the tax is requested by a local unit of government
6 within whose borders the track is located;

7 (2) a public hearing is held on the request; and

8 (3) the commission finds that the local unit of government
9 requesting the tax is in need of its revenue to meet
10 extraordinary expenses caused by the racetrack.

11 (c) There is imposed a tax at the rate of five percent on
12 amounts annually received from charges authorized under section
13 240.30, subdivision 4, less amounts set aside for purse payments
14 and the breeders fund, as required by section 240.135.

15 Sec. 3. Minnesota Statutes 2004, section 240.30,
16 subdivision 8, is amended to read:

17 Subd. 8. [LIMITATIONS.] The commission may not approve any
18 plan of operation under subdivision 6 that exceeds any of the
19 following limitations:

20 ~~(1) the maximum number of tables used for card playing at~~
21 ~~the card club at any one time, other than tables used for~~
22 ~~instruction, demonstrations, or tournament play, may not exceed~~
23 ~~50. The table limit exception for tournament play is allowed~~
24 ~~for only one tournament per year that lasts for no longer than~~
25 ~~14 days;~~

26 ~~(2)~~ except as provided in clause ~~(3)~~ (2), no wager may
27 exceed \$60;

28 ~~(3)~~ (2) for games in which each player is allowed to make
29 only one wager or has a limited opportunity to change that
30 wager, no wager may exceed \$300.

31 Sec. 4. Minnesota Statutes 2004, section 240.35,
32 subdivision 1, is amended to read:

33 Subdivision 1. [GENERALLY.] A licensee of the commission
34 may detain a person if the licensee has probable cause to
35 believe that the person detained has violated section 609.76
36 while at a card club authorized by section 240.30 or at a

1 facility where gaming machines are located under section
2 349A.17. For purposes of this section, "licensee" means the
3 commission's director of racing security or a security officer
4 licensed under Minnesota Rules, chapter 7878.

5 Sec. 5. [297A.651] [LOTTERY GAMING MACHINES; IN-LIEU TAX.]

6 Adjusted gross gaming machine revenue is exempt from the
7 tax imposed under section 297A.62. The state lottery must on or
8 before the 20th day of each month transmit to the commissioner
9 an amount equal to the adjusted gross gaming machine revenue, as
10 defined in section 349A.01, for the previous month multiplied by
11 35 percent. The commissioner shall deposit the money
12 transmitted under this paragraph in the state treasury in the
13 general fund.

14 Sec. 6. Minnesota Statutes 2004, section 299L.07,
15 subdivision 2, is amended to read:

16 Subd. 2. [EXCLUSIONS.] Notwithstanding subdivision 1, a
17 gambling device:

18 (1) may be sold by a person who is not licensed under this
19 section, if the person (i) is not engaged in the trade or
20 business of selling gambling devices, and (ii) does not sell
21 more than one gambling device in any calendar year;

22 (2) may be sold by the governing body of a federally
23 recognized Indian tribe described in subdivision 2a, paragraph
24 (b), clause (1), which is not licensed under this section, if
25 (i) the gambling device was operated by the Indian tribe, (ii)
26 the sale is to a distributor licensed under this section, and
27 (iii) the licensed distributor notifies the commissioner of the
28 purchase, in the same manner as is required when the licensed
29 distributor ships a gambling device into Minnesota;

30 (3) may be possessed by a person not licensed under this
31 section if the person holds a permit issued under section
32 299L.08; and

33 (4) may be possessed by a state agency, with the written
34 authorization of the director, for display or evaluation
35 purposes only and not for the conduct of gambling; and

36 (5) may be possessed by the state lottery as authorized

1 under chapter 349A.

2 Sec. 7. Minnesota Statutes 2004, section 299L.07,
3 subdivision 2a, is amended to read:

4 Subd. 2a. [RESTRICTIONS.] (a) A manufacturer licensed
5 under this section may sell, offer to sell, lease, or rent, in
6 whole or in part, a gambling device only to a distributor
7 licensed under this section or to the state lottery as
8 authorized under chapter 349A.

9 (b) A distributor licensed under this section may sell,
10 offer to sell, market, rent, lease, or otherwise provide, in
11 whole or in part, a gambling device only to:

12 (1) the governing body of a federally recognized Indian
13 tribe that is authorized to operate the gambling device under a
14 tribal state compact under the Indian Gaming Regulatory Act,
15 Public Law 100-497, and future amendments to it;

16 (2) a person for use in the person's dwelling for display
17 or amusement purposes in a manner that does not afford players
18 an opportunity to obtain anything of value;

19 (3) another distributor licensed under this section; ~~or~~

20 (4) a person in another state who is authorized under the
21 laws of that state to possess the gambling device; or

22 (5) the state lottery as authorized under chapter 349A.

23 Sec. 8. Minnesota Statutes 2004, section 340A.410,
24 subdivision 5, is amended to read:

25 Subd. 5. [GAMBLING PROHIBITED.] (a) Except as otherwise
26 provided in this subdivision, no retail establishment licensed
27 to sell alcoholic beverages may keep, possess, or operate, or
28 permit the keeping, possession, or operation on the licensed
29 premises of dice or any gambling device as defined in section
30 349.30, or permit gambling therein.

31 (b) Gambling equipment may be kept or operated and raffles
32 conducted on licensed premises and adjoining rooms when the use
33 of the gambling equipment is authorized by (1) chapter 349, (2)
34 a tribal ordinance in conformity with the Indian Gaming
35 Regulatory Act, Public Law 100-497, or (3) a tribal-state
36 compact authorized under section 3.9221.

1 (c) Lottery tickets may be purchased and sold within the
2 licensed premises as authorized by the director of the lottery
3 under chapter 349A.

4 (d) Dice may be kept and used on licensed premises and
5 adjoining rooms as authorized by section 609.761, subdivision 4.

6 (e) Gambling devices may be operated on the premises of a
7 licensed racetrack as authorized by chapter 349A.

8 Sec. 9. Minnesota Statutes 2004, section 349A.01,
9 subdivision 10, is amended to read:

10 Subd. 10. [LOTTERY PROCUREMENT CONTRACT.] "Lottery
11 procurement contract" means a contract to provide lottery
12 products, gaming machines, maintenance of gaming machines,
13 computer hardware and software used to monitor sales of lottery
14 tickets and gaming machine plays, and lottery tickets. "Lottery
15 procurement contract" does not include a contract to provide an
16 annuity or prize payment agreement or materials, supplies,
17 equipment, or services common to the ordinary operation of a
18 state agency.

19 Sec. 10. Minnesota Statutes 2004, section 349A.01, is
20 amended by adding a subdivision to read:

21 Subd. 14. [GAMING MACHINE.] "Gaming machine" means any
22 machine, system, or device which, upon payment of consideration
23 in order to play a game, may award or entitle a player to a
24 prize by reason of skill of the player or application of the
25 element of chance, or both.

26 Sec. 11. Minnesota Statutes 2004, section 349A.01, is
27 amended by adding a subdivision to read:

28 Subd. 15. [GAMING MACHINE GAME.] "Gaming machine game"
29 means a game operated by a gaming machine as authorized by the
30 director.

31 Sec. 12. Minnesota Statutes 2004, section 349A.01, is
32 amended by adding a subdivision to read:

33 Subd. 16. [GAMING MACHINE PLAY.] "Gaming machine play"
34 means an electronic record that proves participation in a gaming
35 machine game.

36 Sec. 13. Minnesota Statutes 2004, section 349A.01, is

1 amended by adding a subdivision to read:

2 Subd. 17. [ADJUSTED GROSS GAMING MACHINE REVENUE.]

3 "Adjusted gross gaming machine revenue" means the sum of all
4 money received by the lottery for gaming machine plays, less the
5 amount paid out in prizes for gaming machine games.

6 Sec. 14. Minnesota Statutes 2004, section 349A.10,
7 subdivision 3, is amended to read:

8 Subd. 3. [LOTTERY OPERATIONS.] (a) The director shall
9 establish a lottery operations account in the lottery fund. The
10 director shall pay all costs of operating the lottery, including
11 payroll costs or amounts transferred to the state treasury for
12 payroll costs, but not including lottery prizes, from the
13 lottery operating account. The director shall credit to the
14 lottery operations account amounts sufficient to pay the
15 operating costs of the lottery.

16 (b) Except as provided in paragraph (e), the director may
17 not credit in any fiscal year thereafter amounts to the lottery
18 operations account which when totaled exceed 15 percent of gross
19 revenue to the lottery fund in that fiscal year. In computing
20 total amounts credited to the lottery operations account under
21 this paragraph the director shall disregard amounts transferred
22 to or retained by lottery retailers as sales commissions or
23 other compensation and amounts transferred or retained by a
24 racetrack pursuant to a location contract under section 349A.17.

25 (c) The director of the lottery may not expend after July
26 1, 1991, more than 2-3/4 percent of gross revenues in a fiscal
27 year for contracts for the preparation, publication, and
28 placement of advertising.

29 (d) Except as the director determines, the lottery is not
30 subject to chapter 16A relating to budgeting, payroll, and the
31 purchase of goods and services.

32 (e) In addition to the amounts credited to the lottery
33 operations account under paragraph (b), the director is
34 authorized, if necessary, to meet the current obligations of the
35 lottery and to credit up to 25 percent of an amount equal to the
36 average annual amount which was authorized to be credited to the

1 lottery operations account for the previous three fiscal years
2 but was not needed to meet the obligations of the lottery.

3 (f) Notwithstanding the provisions of this subdivision, the
4 director may credit up to ten percent of adjusted gross gaming
5 machine revenue to the lottery operations account in a fiscal
6 year.

7 Sec. 15. Minnesota Statutes 2004, section 349A.10,
8 subdivision 6, is amended to read:

9 Subd. 6. [BUDGET; PLANS.] The director shall prepare and
10 submit a biennial budget plan to the commissioner of finance.
11 The governor shall recommend the maximum amount available for
12 the lottery in the budget the governor submits to the
13 legislature under section 16A.11. The maximum amount available
14 to the lottery for operating expenses and capital expenditures
15 shall be determined by law. Operating expenses shall not
16 include expenses that are a direct function of lottery sales,
17 which include the cost of lottery prizes, amounts paid to
18 lottery retailers as sales commissions or other compensation,
19 amounts paid to produce and deliver scratch lottery games, and
20 amounts paid to an outside vendor to operate and maintain an
21 online gaming system, amounts paid to an outside vendor to
22 operate and maintain a central communications system for gaming
23 machines, and amounts paid to acquire and maintain gaming
24 machines. In addition, the director shall appear at least once
25 each fiscal year before the senate and house of representatives
26 committees having jurisdiction over gambling policy to present
27 and explain the lottery's plans for future games and the related
28 advertising and promotions and spending plans for the next
29 fiscal year.

30 Sec. 16. Minnesota Statutes 2004, section 349A.13, is
31 amended to read:

32 349A.13 [RESTRICTIONS.]

33 Nothing in this chapter:

34 (1) authorizes the director to conduct a lottery game or
35 contest the winner or winners of which are determined by the
36 result of a sporting event other than a horse race conducted

1 under chapter 240;

2 (2) authorizes the director to install or operate a lottery
3 device operated by coin or currency which when operated
4 determines the winner of a game except as authorized under
5 section 349A.17; and

6 (3) authorizes the director to sell pull-tabs as defined
7 under section 349.12, subdivision 32.

8 Sec. 17. [349A.17] [GAMING MACHINES.]

9 Subdivision 1. [LOCATION CONTRACT.] (a) The director may
10 enter into a contract with a person to provide a location for
11 gaming machines. Contracts entered into under this section are
12 not subject to chapter 16C. The director may only enter a
13 contract under this subdivision with a person that holds a class
14 A license under chapter 240. The gaming machines may only be
15 placed at the racetrack for which the class A license under
16 chapter 240 was issued.

17 (b) In order to be eligible for a contract under this
18 section, the class A licensee must have conducted at least 50
19 days of live racing at the racetrack each year within the last
20 five preceding calendar years. A contract under this section
21 must contain a provision under which the contract terminates on
22 the first day of any calendar year following a calendar year
23 during which the class A licensee has not conducted at least 50
24 days of live racing at the licensee's racetrack.

25 (c) Contracts entered into must provide for compensation to
26 the racetrack in an amount equal to at least 55 percent of
27 adjusted gross gaming machine revenue. From the amount received
28 by the racetrack under this section, the racetrack shall
29 annually remit an amount equal to one percent of the adjusted
30 gross gaming machine revenue to both the city or town and the
31 county where the racetrack is located.

32 (d) The director may cancel, suspend, or refuse to renew
33 the location contract or impose a civil penalty if the licensee:

34 (1) no longer holds a class A license under chapter 240;

35 (2) fails to account for proceeds from the gaming machines;

36 (3) fails to remit funds to the director in accordance with

1 the location contract;

2 (4) violates a law, rule, or order of the director;

3 (5) fails to comply with any of the terms of the location
4 contract; or

5 (6) has acted in a manner prejudicial to public confidence
6 in the integrity of the operation of the gaming machines.

7 The cancellation, suspension, or refusal to renew the
8 location contract or imposition of a civil penalty under this
9 paragraph is a contested case under sections 14.57 to 14.69.

10 (e) No gaming machines may be located within a statutory or
11 home rule charter city or town, unless the governing body of the
12 city or town adopts a resolution approving the location of the
13 gaming machines within the city or town.

14 (f) As a condition of entering into a contract under this
15 section, the licensee must make to the commission, for deposit
16 in the general fund, a onetime payment of \$100,000,000 by June
17 30, 2007. A contract must include a provision to refund this
18 payment if this section is repealed by the legislature, revoked
19 by constitutional amendment, or held unconstitutional by a court
20 of competent jurisdiction.

21 (g) The contract entered into under this section must
22 include the following provisions:

23 (1) liquidated damages to recover the initial investment by
24 the licensee in the event the state, through legislation or
25 constitutional amendment, revokes all or substantially all of
26 the forms of gambling authorized under this section. The
27 liquidated damages must include the onetime payment under
28 paragraph (f) and the unpaid balance of costs incurred by the
29 licensee for construction or acquisition of the gaming facility
30 less the present market value of that property. Any liquidated
31 damages provision must expire within ten years; and

32 (2) all costs associated with managing the day-to-day
33 activity of gaming machines, including, but not limited to,
34 routine and minor service and maintenance, security monitoring,
35 verifying winners, paying winners, collecting money from gaming
36 machines, and advertising and marketing of gaming machines must

1 be borne by the licensee.

2 Subd. 2. [OPERATION.] (a) All gaming machines that are
3 placed at a racetrack pursuant to subdivision 1 must be operated
4 and controlled by the director.

5 (b) Gaming machines must be owned or leased by the director.

6 (c) Gaming machines must be maintained by the lottery, or
7 by a vendor that is under the control and direction of the
8 director.

9 (d) The director must have a central communications system
10 that monitors activities on each gaming machine. The central
11 communications system must be located at a lottery office.

12 (e) The director must approve the general security
13 arrangements associated with and relating to the operation of
14 the gaming machines.

15 (f) Advertising and promotional material produced by the
16 racetrack relating to gaming machines located at its facility
17 must be approved by the director.

18 (g) The director may implement such other controls as are
19 deemed necessary for the operation of gaming machines pursuant
20 to this section.

21 Subd. 3. [GAMES.] The director shall specify the games
22 that may be played on a gaming machine according to section
23 349A.04. Gaming machines may conduct pari-mutuel wagering and
24 display horse races pursuant to the director's specifications.

25 Subd. 4. [PRIZES.] A person who plays a gaming machine
26 agrees to be bound by the rules and game procedures applicable
27 to that particular gaming machine game. The player acknowledges
28 that the determination of whether the player has won a prize is
29 subject to the rules and game procedures adopted by the
30 director, claim procedures established by the director for the
31 game, and any confidential or public validation tests
32 established by the director for that game. A prize claimed from
33 the play of a gaming machine game is not subject to the
34 provisions of section 349A.08, subdivision 8.

35 Subd. 5. [PROHIBITIONS.] (a) A person under the age of 18
36 years may not play a game on or claim a prize from a gaming

1 machine.

2 (b) The director or any employee of the lottery, or a
3 member of their immediate family residing in the same household,
4 may not play a game on a gaming machine or receive a prize from
5 the operation of a gaming machine.

6 Subd. 6. [COMPULSIVE GAMBLING; REPORT.] (a) The licensee
7 shall prominently post, in the area where the gaming machines
8 are located, the toll-free telephone number established by the
9 commissioner of human services in connection with the compulsive
10 gambling program established under section 245.98. The
11 licensee, with the approval of the director, shall establish a
12 proactive plan relating to problem gambling.

13 (b) By January 15 of each year, the director shall submit a
14 report to the legislature, of not more than five pages in
15 length, setting forth the performance objectives of the plan and
16 the progress that was made toward those objectives during the
17 prior calendar year. The licensee may establish a
18 self-exclusion program by which persons, at their request, may
19 be excluded from the facility where the gaming machines are
20 located.

21 Subd. 7. [LOCAL LICENSES.] Except as provided in
22 subdivision 1, no political subdivision may require a license to
23 operate a gaming machine, restrict or regulate the placement of
24 gaming machines, or impose a tax or fee on the business of
25 operating gaming machines.

26 Subd. 8. [REIMBURSEMENT; RACING COMMISSION.] The Minnesota
27 Racing Commission shall require the licensee to reimburse the
28 commission's actual costs, including personnel costs, of
29 regulating the licensee under this section. Amounts received
30 under this subdivision must be deposited as provided in section
31 240.155, subdivision 1.

32 Sec. 18. Minnesota Statutes 2004, section 541.20, is
33 amended to read:

34 541.20 [RECOVERY OF MONEY LOST.]

35 Every person who, by playing at cards, dice, or other game,
36 or by betting on the hands or sides of such as are gambling,

1 shall lose to any person so playing or betting any sum of money
2 or any goods, and pays or delivers the same, or any part
3 thereof, to the winner, may sue for and recover such money by a
4 civil action, before any court of competent jurisdiction. For
5 purposes of this section, gambling shall not include pari-mutuel
6 wagering or other wagering conducted under a license issued
7 pursuant to chapter 240, purchase or sale of tickets in the
8 state lottery, or gambling authorized under chapters 349 and
9 349A.

10 Sec. 19. Minnesota Statutes 2004, section 541.21, is
11 amended to read:

12 541.21 [COMMITMENTS FOR GAMBLING DEBT VOID.]

13 Every note, bill, bond, mortgage, or other security or
14 conveyance in which the whole or any part of the consideration
15 shall be for any money or goods won by gambling or playing at
16 cards, dice, or any other game whatever, or by betting on the
17 sides or hands of any person gambling, or for reimbursing or
18 repaying any money knowingly lent or advanced at the time and
19 place of such gambling or betting, or lent and advanced for any
20 gambling or betting to any persons so gambling or betting, shall
21 be void and of no effect as between the parties to the same, and
22 as to all persons except such as hold or claim under them in
23 good faith, without notice of the illegality of the
24 consideration of such contract, or conveyance. The provisions of
25 this section shall not apply to: (1) pari-mutuel or other
26 wagering conducted under a license issued pursuant to chapter
27 240; (2) purchase of tickets in the state lottery or other
28 wagering authorized under chapter 349A; (3) gaming activities
29 conducted pursuant to the Indian Gaming Regulatory Act, 25
30 U.S.C. 2701 et seq.; or (4) lawful gambling activities permitted
31 under chapter 349.

32 Sec. 20. Minnesota Statutes 2004, section 609.75,
33 subdivision 3, is amended to read:

34 Subd. 3. [WHAT ARE NOT BETS.] The following are not bets:

35 (1) A contract to insure, indemnify, guarantee or otherwise
36 compensate another for a harm or loss sustained, even though the

1 loss depends upon chance.

2 (2) A contract for the purchase or sale at a future date of
3 securities or other commodities.

4 (3) Offers of purses, prizes or premiums to the actual
5 contestants in any bona fide contest for the determination of
6 skill, speed, strength, endurance, or quality or to the bona
7 fide owners of animals or other property entered in such a
8 contest.

9 (4) The game of bingo when conducted in compliance with
10 sections 349.11 to 349.23.

11 (5) A private social bet not part of or incidental to
12 organized, commercialized, or systematic gambling.

13 (6) The operation of equipment or the conduct of a raffle
14 under sections 349.11 to 349.22, by an organization licensed by
15 the Gambling Control Board or an organization exempt from
16 licensing under section 349.166.

17 (7) Pari-mutuel betting on horse racing when the betting is
18 conducted under chapter 240.

19 (8) The purchase and sale of state lottery tickets and
20 plays on a gaming machine under chapter 349A.

21 Sec. 21. Minnesota Statutes 2004, section 609.761,
22 subdivision 2, is amended to read:

23 Subd. 2. [STATE LOTTERY.] Sections 609.755 and 609.76 do
24 not prohibit the operation of the state lottery or the sale,
25 possession, or purchase of tickets for the state lottery under
26 chapter 349A, or the manufacture, possession, sale, or operation
27 of a gaming machine under chapter 349A.

28 Sec. 22. [OTHER GAMES.]

29 (a) The Minnesota Racing Commission may authorize a person
30 with a gaming machine location contract under Minnesota
31 Statutes, section 349A.17, to conduct other card games that
32 Indian gaming casinos within this state are authorized by
33 compact or law to conduct. The Minnesota Racing Commission
34 shall adopt game procedures and take other actions necessary to
35 regulate the conduct and ensure the integrity of the games. A
36 tax is imposed on games conducted under this section at the rate

1 of 20 percent of the gross gaming receipts. For purposes of
2 this section, "gross gaming receipts" means all revenue received
3 by the licensee from card games authorized under this section,
4 less winnings paid to players.

5 (b) Of the gross gaming receipts, the licensee must set
6 aside at least 7.25 percent for purses for live horse races
7 conducted by the licensee. Purse payments under this section
8 are in addition to any other purse payments established by law
9 or contract. Twenty percent of the amount set aside for purses
10 shall be transferred to the Minnesota Racing Commission and used
11 for the purposes in Minnesota Statutes, section 240.18. The
12 licensee and the horseperson's organization representing the
13 majority of horsepersons who have raced horses at the racetrack
14 during the preceding 12 months may negotiate percentages
15 different from those stated in this section if the agreement is
16 in writing and filed with the racing commission.

17 Sec. 23. [LOTTERY BUDGET; GAMING MACHINES.]

18 The director of the State Lottery shall submit a budget for
19 the operation of gaming machines authorized under Minnesota
20 Statutes, section 349A.17, to the commissioner of finance.
21 Notwithstanding Minnesota Statutes, section 349A.10, subdivision
22 6, the director of the State Lottery may expend amounts
23 necessary to operate the gaming machines. Amounts expended by
24 the director of the State Lottery for the operation of gaming
25 machines in fiscal years 2006 and 2007 are not subject to the
26 maximum amount set in law for the operation of the lottery.

27 Sec. 24. [SEVERABILITY; SAVINGS.]

28 If any part of this act is found to be invalid because it
29 is in conflict with a provision of the Constitution of the state
30 of Minnesota or the Constitution of the United States, or for
31 any other reason, all other provisions of this act shall remain
32 valid and any rights, remedies, and privileges that have been
33 otherwise accrued by this act, shall remain in effect and may be
34 proceeded with and concluded under the provisions of this act.

35 Sec. 25. [EFFECTIVE DATE.]

36 This act is effective the day following final enactment."

1 Amend the title accordingly

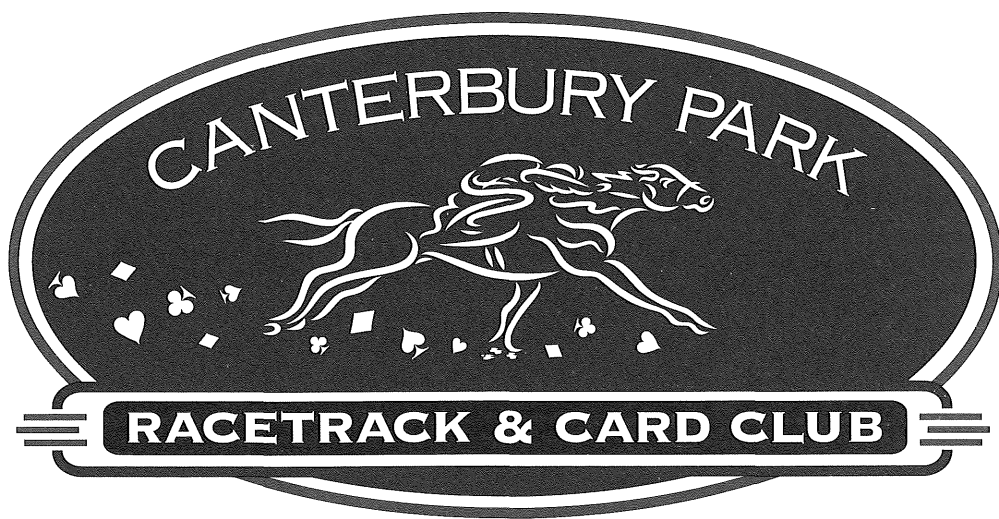
Agriculture, Veterans and Gaming Committee
Roll Call

S.F. 1609 - Racino

Name	Yea	Nay	Abstain
Day	X		
Dille		X	
Hann		X	
Johnson, Dean		X	
Koering	X		
Stoglund		X	
Lourey		X	
Murphy		X	
Nienow	X		
Rest		X	
Sams			
Skoe		X	
Solon		X	
Vickerman		X	
Wergin	X		

Ayes 4 Nays 10 Motion Carried Motion Lost ✓

Requested by Day Supported by



Racino At Canterbury Park

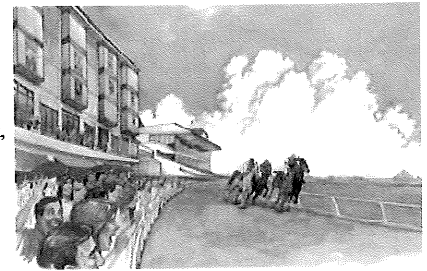
"The Vision"

The vision for the Racino at Canterbury Park is broader than slot machines and tax revenue. Much broader. If passed, Canterbury Park would undergo a privately financed \$120 million construction project that would feature the addition of a 250-room hotel and conference center overlooking the racetrack, a world-class equestrian center featuring two indoor show venues and a trio of outdoor arenas, and a cross-country jumping course on the current racetrack infield.

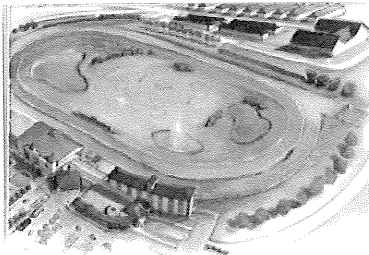
The images are available for download on CD or via the web at www.mn-racino.com



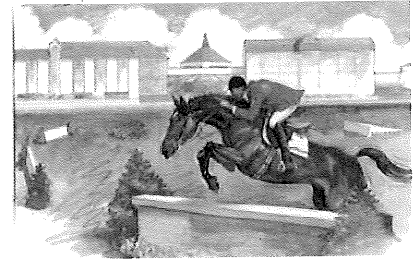
The existing Canterbury Park grandstand on the right connected by an atrium to the new 250-room hotel, conference center and casino.



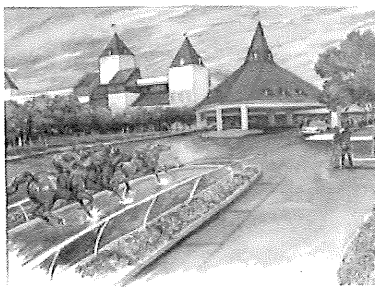
Built overlooking the main track, the 250-room First Turn Hotel features private balconies where guests can comfortably view morning workouts as well as almost feel the racing action



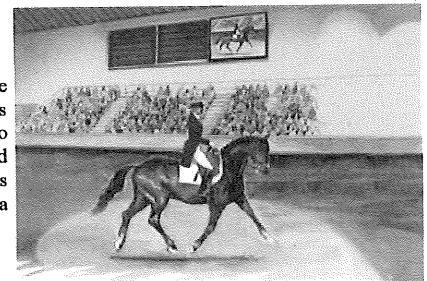
An overhead shot looking west at Canterbury Park with a view of the new hotel and casino in the foreground and the horse park arenas and stalls in the background.



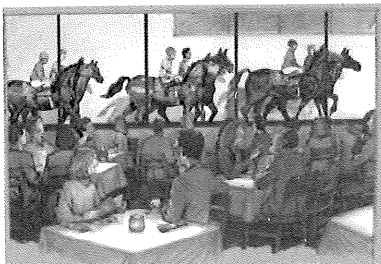
Inside the main track and turf course, the infield features a beautifully landscaped cross country course. Television coverage of competitions will be shown on screens throughout the entire complex.



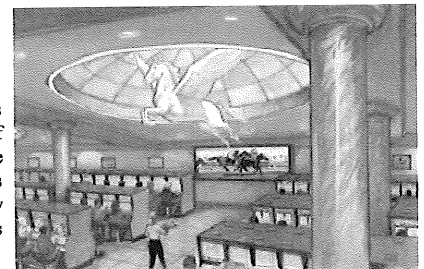
A bronze statue of a three-horse stretch run leads visitors along the main promenade to the entrance that connects the grandstand with the casino, hotel and conference center.



A show horse entertains the crowd at the new world-class horse show facility. The Racino proposal includes two indoor and three outdoor show arenas as well as a Western show arena and cross-country course.



Floor to ceiling windows inside the Casino's full menu restaurant provide patrons with an up close preview of the horses on post parade to the track.



A giant flying horse is suspended over the main floor of the Casino gaming area. Large video screens provide customers with coverage of Canterbury races and action from tracks around the country.



Racino at Canterbury

H.F. No. 1664

Bill Summary & Analysis

Delete-all Amendment (A05-0267)

This bill authorizes the State Lottery to operate gaming machines – video or electromechanical slot machines – on the premises of a licensed racetrack and allows the track to conduct blackjack card games. Proceeds from the operation of the gambling activities will be used to pay for purchase and maintenance of the machines, oversight activities conducted by the Lottery and use of the racetrack facilities where the machines are to be located.

Thirty-five percent of the "adjusted gross gaming machine revenues," twenty percent of the revenues from blackjack and five percent of the existing card club rake will be deposited each month into the state general fund.

The racetrack will receive at least 55 percent of the adjusted gross revenues. From this amount, 7.25 percent of the total adjusted gross revenue will be set aside for purses for live horse races conducted at the track, including an amount exclusively for Minnesota bred horses. In addition, the local city and county where the track is located will each receive 1 percent of the adjusted gross revenue.

The gaming machines used by the lottery must by certain specifications for recording and monitoring of machine activity. Persons under the age of 18 may not play a game on or claim a prize from a gaming machine. Lottery employees are prohibited from playing the machines. The lottery director must give notice of where compulsive gambling assistance is available.

Section-by-section analysis

Section 1. Requires the licensed racetrack that is the gaming machine location provider to set aside an amount equal to 7.25 percent of the "adjusted gross gaming machine revenues" for purses for live horse races conducted by the licensee. These payments are in addition to all others required by law or contract. Twenty percent of the money set aside must be transferred to the racing commission for administration through the breeder's fund. These amounts may be changed through negotiations between the racetrack and the majority horsemen's association.

Sec. 2. Imposes a tax of five percent on charges rake and seat charges from the card club, less amounts set aside for racing purses.

Sec. 3. Removes the limit on the maximum number of card tables allowed at a card club located at a racetrack.

Sec. 4. Allows licensees of the Racing Commission to detain persons who have committed gambling crimes at the facility where gaming machines are located.

Sec. 5. Exempts the gross revenue from the operation of the gaming machines from state sale taxation. However, 35 percent of the proceeds must be deposited each month into the state general fund

Sec. 6. Excludes the state lottery from the statutory prohibition on possession of a gambling device.

Sec. 7. Allows a licensed manufacturer to sell a gambling device to the state lottery.

Sec. 8. Allows gambling devices to be operated on at a licensed racetrack where liquor is served.

Sec. 9. Allows the state lottery to enter into contracts to procure gaming machines and provide for their maintenance and monitoring.

Sec. 10. Defines "gaming machine" as any machine in which a coin or other currency is deposited to play a game that uses a video display and microprocessors or electromechanical device with a spinning reel.

Sec. 11. Defines "gaming machine game" to mean a game operated by a gaming machine as authorized by the state lottery director.

Sec. 12. Defines "gaming machine play" to mean an electronic record that proves participation in a gaming machine game.

Sec. 13. Defines "adjusted gross gaming machine revenue" to mean the sum of all money received in gaming machine play less the amount paid out in prizes.

Sec. 14. As with payments made to lottery retailers, allows the director to deduct amounts paid to the racetrack under the location contract before crediting a maximum 10 percent of that annual gross lottery revenue to the lottery operations account.

Sec. 15. Excludes from the calculation of lottery's operating budget amounts paid to outside vendors for the operation and maintenance of a gaming machines and other lottery games.

Sec. 16. Amends the restrictions on what activities the state lottery may conduct to include the use of gaming machines as provided in this act.

Sec. 17. Provides requirements for the location of and specifications for gaming machines operated by the state lottery as follows:

Subdivision 1: Location Contract. Provides that the lottery director may contract for location of gaming machines with a class A racetrack that has conducted at least 50 days of live racing in the preceding five calendar years. The racetrack license holder is to be paid an amount equal to not less than 55 percent of the adjusted gross gaming machine revenue. From that amount the racetrack must pay one percent to both the city and county where the racetrack is located. The lottery director may fine, cancel, suspend, or refuse to renew a location contract if the track loses its class A license, fails to account for machine proceeds, fails to remit funds, violates laws or directors orders, fails to meet the terms of the locations contract or jeopardizes the public confidence in the operation of the machines.

Requires the local unit of government to adopt a resolution of support approving the location of the gaming machines.

Requires the licensee, by June 30, 2007, to make a one-time payment of \$100,000,000 to the racing commission for deposit in the general fund upon entering into a location contract. If the legislature repeals the statute or it is found unconstitutional, the payment must be refunded to the licensee.

Requires that the location contract include a liquidated damages contract to recover any initial investment made by the licensee if the state or a court revokes the authority for the lottery to conduct these newly authorized gambling activities. The damages will amount to no more than the unpaid balance on any outstanding debt incurred to build the gambling facility. This provision expires after ten years.

Costs associated with routine day-to-day operation of the gambling machines are to be borne by the track.

Subd. 2: Operation. Requires machines to be operated, controlled, and owned or leased by the lottery. Requires them to be maintained by the lottery or a lottery contractor. Requires a central communications system that monitors each machine. Requires the lottery to approve general security arrangements. Requires lottery to approve all advertising related to machines. Requires that all gaming machines be accessible to individuals with disabilities as defined in this section.

Subd. 3. Games. Requires the director to specify the games played on gaming machines, including horse racing.

Subd. 4. Prizes. Provides that players are bound by the rules and game procedures for any particular gaming machine game. The director alone is authorized to determine prize winners subject to these rules.

Subd. 5. Prohibitions. Prohibits persons under age 18, and the lottery director and lottery employees and their immediate families, from playing gaming machines.

Subd. 6. Compulsive gambling notice. Requires the licensee to post the compulsive gambling hotline number at gaming machine locations. The licensee must also develop a proactive plan relating to problem gambling. The director must report to the legislature each year on the plan's objectives and progress being made toward dealing with problem gamblers.

Subd. 7. No local license. Prohibits political subdivisions from licensing, regulating, or taxing gaming machines.

Subd. 8. Reimbursement to racing commission. Requires the racing commission to require the class A licensee to reimburse the commission for its costs of regulating the facility.

Subd. 9. Allows the director to collect proprietary data on the internal operations of the gaming machines. This data is classified nonpublic. The director may provide the data to the licensee or a vendor subject to a confidentiality agreement.

Sec. 18. Recovery of money lost. Exempts gaming machine play from the law that allows persons to sue to recover gambling losses.

Sec. 19. Gambling debts void. Exempts gaming machine play from the law that makes gambling debts void.

Sec. 20. Exemption from gambling laws. Adds gaming machine plays to the list of gambling activities that are not bets for purposes of state laws that prohibit gambling.

Sec.21. State Lottery. Exempts manufacture, possession, sale, and operation of gaming machines from anti-gambling laws.

Sec. 22. Other games. Allows the licensee to conduct other card games that Indian gaming casinos within the state are authorized to conduct. Twenty percent of the adjusted gross revenue from the games is to be paid to the state. Of the amount retained by the licensee, 7.25 percent is to be paid out as purses for live horse races.

Sec. 23. Lottery Budget. Requires the director to submit a budget for the operation of gaming machines and other lottery conducted at the racetrack. However, the director is allowed to expend those amounts necessary to operate any new facility in fiscal 2006 – 2007 without being subject to existing budget limitations.

Sec. 24. Severability. Provides that if any provision of the bill is found unconstitutional or otherwise invalid all other provisions remain in effect.

Sec. 25. Effective date. Makes all sections effective immediately.

**EXECUTIVE SUMMARY OF
MARKET STUDY FOR
A PROPOSED CASINO AT
CANTERBURY PARK**

Shakopee, Minnesota

January 2005

PREPARED FOR:

Canterbury Park Holding Corporation

PREPARED BY:

GVA MARQUETTE ADVISORS

333 South 7th Street
Suite 2300
Minneapolis, Minnesota 55402
Telephone: (612) 344-1309
Fax: (612) 334-3022

GVA File #04072

EXECUTIVE SUMMARY

The State of Minnesota's casino history began with high stakes bingo halls on several Native American reservations in the 1980's, which grew into casinos after the signing of compacts with the State in 1991. Today, the state has 19 operating Indian casinos with a total of 22,200 gaming positions (one table counts as seven positions).

Minnesota's sole racetrack, Canterbury Park, is seeking to construct and operate a racino at the track. The track presently offers simulcast wagering throughout the year and has successfully operated a card room for the last five years.

LOCATION

Canterbury Park is located just off Federal Highway 169 in Shakopee, a rapidly growing suburb in the southwest corner of the metropolitan area. Highway 169 provides excellent access to the I/494/694 beltway that encircles the Twin Cities, as well as to Interstates 35 and 94.

RECOMMENDED RACINO FACILITIES

The proposed racino will share the market with several successful Native American casinos, so that it must offer high quality facilities and supporting amenities. Based on the scope of competitive development and the size of the market available to the subject racino, we recommend the following racino facilities:

- 3,000 slot machines
- 40 Blackjack tables
- Buffet restaurant with approximately 250 to 300 seats
- 200-seat coffee shop open 24 hours a day
- Snack bar
- Entertainment-oriented restaurant and lounge with approximately 250 seats, offering brief entertainment evenings on the hour.
- Gift shop
- 250-Room Hotel
- 15,000-Square feet of meeting and banquet space

In conjunction with the proposed racino, an **Equestrian & Agricultural Event Facility** is planned for the racetrack that will include a 3,000-seat indoor arena with two show areas, four outdoor show arenas, a cross country course and supporting horse barns. The facility will be

capable of hosting regional and national horse shows with a projected attendance of 45,000 in its third year of operation.

DEMOGRAPHIC CHARACTERISTICS

The Twin Cities is surrounded by a large, mostly rural area, so that it functions as a commercial center for a very large trade area. There are 3.2 million people within 50 miles, 4.3 million within 100 miles and 7.3 million within 200 miles. The population within 50 and 100 miles is projected to increase by approximately 5 percent over the next five years. The median household income within 50 miles is relatively high at \$58,400 and these households spend approximately \$5.4 billion on entertainment and food away from home.

CONVENTIONS AND TOURISM

The Twin Cities is a popular destination for visitors from the region and throughout the country. The convention centers in both cities attracted 554,000 delegates in 2003. The area's many tourist attractions and its four professional sports teams draw millions of visitors annually, which represent an additional pool of gaming demand.

REGIONAL GAMING INDUSTRY

For purposes of our analysis the subject racino's primary market is defined as the population that lives within 50 miles of Canterbury Park in Shakopee. The area between 50 and 100 miles of the proposed racino is considered to be the secondary competitive market. The Canterbury racino is expected to occasionally draw from greater distances, particularly due to the rural nature of much of Minnesota and Iowa and the strength of the Twin Cities as an entertainment destination. Therefore, the subject racino's regional competitive market includes the 200-mile surrounding area that represents a reasonable daytrip distance.

The scope of gaming within the state is significant. While the Indian casinos are not required to report revenues, the state is able to support 19 casinos with a total of 20,000 slot machines and 400 table games. Canterbury Park reported simulcast handle of \$63 million and live on-track racing handle of \$18 million in 2003. The Minnesota State Lottery reported annual gross receipts of nearly \$362 million in 2004 and more than \$1.3 billion in pull-tabs were sold.

GAMING DEMAND FACTORS

The amount of gaming demand that exists in a market is a function of the following major factors:

- Population
- Income
- Quantity of gaming facilities
- Quality and amenities of gaming facilities
- Proximity and convenience of gaming facilities
- Variety and quality of entertainment alternatives

In evaluating the potential gaming market available for the proposed racino, each of these factors were weighed in relation to the particular characteristics of the market.

COMPETITIVE GAMING FACILITIES

The existing primary gaming competition for the Canterbury racino consists of three Native American casinos within 50 miles of Shakopee. Six more Native American casinos within approximately 100 miles represent secondary competition. Additional, but greatly reduced, competition for the proposed racino will come from eight more Native American casinos located within 200 miles. These include casinos in Wisconsin and Iowa.

FUTURE GAMING MARKET

We do not anticipate any new Native American casino locations will open within the market area. However, the existing casinos could expand at any time. Should another new casino or racino be authorized in the metropolitan area, the demand for the subject racino would be diluted and consequently its performance and tax revenues would be lowered.

The addition of the recommended number of gaming devices at the Canterbury Park racino would create the market conditions summarized in the table below.

Table 1

PROJECTED COMPETITIVE MARKET		
Gaming Positions*	Current	Projected
50 Miles	8,200	11,500
200 Miles	29,500	32,800
Population per Position		
50 Miles	395	296
200 Miles	249	231
*one table equals 7 positions		
<i>Source: GVA Marquette Advisors</i>		

HOTEL ANALYSIS

Hotels affiliated with casinos typically operate in a different manner than non-casino hotels. The hotels are usually ancillary facilities - they exist to serve casino patrons and boost casino demand, so they do not necessarily compete for the lodging demand present in the market area for other reasons. Because casino hotels are designed to attract gaming patrons, their primary competitors are other casino hotels, and their success is inextricably tied to the success of the gaming operation. Casino hotels serve as a marketing tool, with their performance dictated in large part by management decisions in relation to the competitive environment in the gaming market.

There exists a supply of 772 rooms within traditional hotels in and around Shakopee that are available to support the racino. There are eight hotels with a total of 586 rooms in Shakopee; one 75-room hotel in adjacent Savage and Chaska has two hotels with a total of 111 rooms. In the Shakopee market, the subject hotel would seek to capture some of the area's tourists, as they represent a new pool of potential gaming dollars. Similarly, the hotel would develop group business as well. The extent to which the racino hotel will market to these sectors of lodging demand in the future depends on its ability to attract alternative gaming patrons who typically spend more than do either tourists or people that attend group or social functions.

All but one of the primary and secondary competitive casinos have hotels. Room rates at these hotels range from \$59 to \$109 and increase \$10 to \$20 on weekends. Deep rate discounts are also typically available during slow business periods.

The competitive casino hotels would not disclose occupancy data. The occupancy of a casino hotel is determined mostly by the casino's marketing efforts. That is, through various promotional packages, discounts and outright comps, the casino can control the occupancy at the hotel. In our experience, we have found that casino hotels in rural areas generally achieve annual occupancies in the 70 to 75 percent range, while casinos located in or near a large population are typically able to achieve an annual occupancy of 80 to 85 percent.

HOTEL UTILIZATION

Based on the results of our market study, we estimate that a 250-room hotel located at Canterbury Park and supported by an effective marketing program utilizing its player club, could achieve an **85 percent** annual occupancy by its third year of operation.

In most markets, casino hotels are able to command higher room rates than most of the area hotels. We feel that the recommended hotel should be able to achieve room rates above those at traditional hotels in the immediate area and more in line with the casino hotels in the market area. On this basis, we expect the planned hotel could achieve a **\$92 average rate**, in current dollars.

PROJECTED GAMING MARKET PERFORMANCE

Any projection of future market performance involves comparisons, either with existing market performance or other gaming markets. There are two primary methods for making the necessary comparisons to develop future market projections. Both methods rely upon key demographic information and other market factors to identify those comparisons most relevant and to adjust the input to reflect the unique characteristics of the subject market.

One method relies primarily on comparisons to actual gaming win statistics in the existing market or in other comparable markets. Adjustments are made for differences in demographic characteristics, tourism potential, competition and other factors to yield projections of future gaming win. The advantage of this method is its reliance on actual, verifiable data, namely actual gaming revenue figures, as the key input in the comparison.

The other common method is a comparison of the underlying factors which drive market performance: what proportion of the area's population are likely to participate in casino gaming, how frequently will they gamble, and how much will they spend on their visits to the casinos. In this analysis technique, adjustments are made to the experience of comparable gaming markets that reflect local differences in the population base, level of competition and other key factors present in the subject market. These adjusted factors yield a sequence of inputs that produce the estimate of future market performance. The advantage of this method is the greater level of analysis of the underlying factors that actually drive performance, thereby reducing the risk of missing a key difference between the subject market and others used in the comparison.

In order to assess the likely future gaming market conditions in which the proposed racino will operate, we performed both a comparative analysis and a participation analysis.

COMPARATIVE ANALYSIS

With nearly 4.6 million residents within 100 miles when the racino opens, the Twin Cities market has a significant demographic base upon which to draw. Other sources of gaming demand are the tourists, conventioners and business travelers that visit the metropolitan area.

Based upon these considerations and a comparative analysis of the local and regional markets presented in Appendix B, we project the future **market** performance (four casinos within the primary market: Mystic Lake, Little Six, Treasure Island, Canterbury) to be approximately **\$200** per gaming position per day in 2009.

Based upon the future number of gaming positions expected to be available in the primary market, estimated to be about 11,500, the projected total gaming win in 2009 is estimated to be approximately **\$839 million**.

PARTICIPATION RATE ANALYSIS

The amount of gaming win which any population base can generate can be defined as the product of the propensity of that population to gamble (the proportion of the people that will gamble), the frequency of their gambling (visits per year) and the average amount they will spend at each visit (or conversely the average win per visit for the facility). The first two of these factors: propensity and frequency can be combined into a single **participation rate**, producing an estimate of the number of gaming visits that the designated population base will produce in a given year.

In evaluating the Twin Cities market, the following factors were considered:

- The existence of three gaming facilities in the metro area and six more in the region means that the participation rate of the population is expected to be relatively high compared to communities where fewer gaming venues exist.
- However, the broad array of entertainment alternatives available in the Twin Cities and the many outdoor activities, means that the participation rate tends to reduce somewhat the local participation rates in gaming, compared to communities where less entertainment exists.
- The area's tourist industry and active convention industry injects additional gaming demand into the market.

Based upon our analysis of the market we have projected the following performance factors for the primary gaming market (four casinos within 50 miles, including Canterbury racino):

Table 2

Participation Rate Analysis Summary for Primary Market Area

Origin	2009 Adults	Participation Rate	Annual Visits	Average Spend	Potential Revenue
0 - 50 Miles	2,485,000	5.5	13,668,000	\$55.00	\$751,700,000
50 - 100 Miles	866,000	3	2,598,000	\$60.00	\$155,900,000
100 - 200 Miles	2,286,000	1	2,286,000	\$65.00	\$148,600,000
Tourists	2,000,000	na	2,000,000	\$60.00	\$120,000,000
Totals	7,637,000		20,552,000	\$57.23	\$ 1,176,200,000

Source: GVA Marquette Advisors

Applying the above participation rates to the estimated future adult population figures for the market area, and adding an estimated \$120 million potential from tourism, the total market potential for the Twin Cities is estimated to be **\$1.2 billion** in 2009. The existence of six other casinos within the secondary market dilutes this demand for the primary market, however. Some of this demand will be captured by the other casinos in the surrounding area.

Because the proposed racino's market overlaps with the markets of at least four other casinos, we constructed a constrained gravity model that factored in both the distances of the competitive casinos relative to the population (measured by drive times), and the competitive advantages or drawing power of the individual casinos. The general premise of this technique is that the drawing power of a casino is directly related to its attractiveness and inversely related to the square of the travel distance.

This analysis found that the number and locations of competitive casinos around the perimeter of the Primary Market reduced the number of trips that the Twin City casinos could expect. Adjusting the market area's gaming model to include the impact of surrounding casinos results in lower participation rates. Applying the area's adjusted participation rates described above to the future adult population figures for these sub-markets and adding a factor for tourists and demand from beyond 200 miles, the total number of gaming visits to the four casinos in the primary market in 2009 is projected to be approximately 15,215,000.

Applying the same expenditure patterns to the available market produces a total projected gaming win for the casinos in the primary market of approximately **\$859 million**, as shown in the table below.

Table 3

Participation Rate Analysis Summary for Primary Market Area					
Origin	2009 Adults	Participation Rate	Annual Visits	Average Spend	Potential Revenue
0 - 50 Miles	2,485,000	4.6	11,431,000	\$55.00	\$628,700,000
50 - 100 Miles	866,000	1.4	1,212,400	\$60.00	\$72,700,000
100 - 200 Miles	2,286,000	0.25	571,500	\$65.00	\$37,100,000
Tourists	2,000,000	na	2,000,000	\$60.00	\$120,000,000
Totals	7,637,000		15,214,900	\$56.42	\$ 858,500,000

Source: GVA Marquette Advisors

Under both methods of analysis we have reached a similar projected performance for the primary market. Consequently, we project that the primary market's gaming win in 2009 (the third year of the Canterbury racino's operation) will range between **\$839 million** and **\$859 million**.

PROJECTED CANTERBURY RACINO UTILIZATION

The subject racino would share this market with the three other casinos in the primary market. A racino located at Canterbury Park will enjoy the following competitive advantages:

1. It will have the most convenient location among the primary competitive casinos with respect to most of the metropolitan area population.
2. The racing and other events held at Canterbury Park will expose large numbers of potential new patrons to the racino.
3. The racino will serve alcohol, in contrast to some of the Native American casinos that offer limited or no alcoholic beverage service.
4. Like the State Lottery, public awareness that a large portion of the racino's winnings will go back to the state will enhance the racino's attractiveness for some patrons.

Based on our evaluation of the project's location, facilities and other competitive advantages and disadvantages relative to the other casinos, we project that the proposed racino should capture about one third of this potential market, or **\$284 million** of gaming revenue, as shown in the table below. This revenue would be in addition to the gaming revenue captured by the card club located in the grandstand.

Table 4

Projected Casino Utilization

Origin	Annual Visits	Average Spend	Potential Revenue
0 - 50 Miles	3,677,000	\$55.00	\$202,200,000
50 - 100 Miles	421,000	\$60.00	\$25,300,000
100 - 200 Miles	191,000	\$65.00	\$12,400,000
Tourists	727,000	\$60.00	\$43,600,000
Totals	5,016,000	\$56.52	\$ 283,500,000

Source: GVA Marquette Advisors

Based on our projections of the market mix of patrons at the racino, and their respective expenditure patterns, the subject racino is projected to experience an average daily win per position ranging from \$217 to \$252 over the first five years of its operation.

Table 5

**Proposed Canterbury Racino
Projected Win (3,000 slots; 40 tables)**

	2007	2008	2009	2010	2011
Slot Revenue	\$232,524,000	\$243,203,000	\$254,314,000	\$261,943,000	\$269,801,000
Table Revenue	26,700,000	27,900,000	29,200,000	30,076,000	30,978,000
Total Gamng Revenue	\$259,224,000	\$271,103,000	\$283,514,000	\$292,019,000	\$300,779,000
Daily Win per Slot	\$212	\$222	\$232	\$239	\$246
Daily Win per Table	\$1,829	\$1,913	\$2,000	\$2,060	\$2,122

Source: GVA Marquette Advisors

CLASS III TABLE GAMES

We have also prepared projections for the racino in the event it was allowed to offer Class III table games on a non-exclusive basis.

Building upon the loyal following that Canterbury has developed with its card room, the racino could similarly establish itself as the premier casino with respect to table games. We have prepared financial projections for the racino under the assumption that it operates 45 table games at the racino:

- o 4 Craps
- o 2 Roulette
- o 2 Mini-baccarat
- o 37 Blackjack

The eight Class III games would out perform the blackjack tables, resulting in a higher average daily win per table, but would have little impact on the performance of the slot machines performance.

Table 6

**Proposed Canterbury Racino
Projected Win (3,000 slots; 45 tables)**

	2007	2008	2009	2010	2011
Slot Revenue	\$232,524,000	\$243,203,000	\$254,314,000	\$261,943,000	\$269,801,000
Table Revenue	36,042,000	37,698,000	39,420,000	40,603,000	41,821,000
Total Gamng Revenue	\$268,566,000	\$280,901,000	\$293,734,000	\$302,546,000	\$311,622,000
Daily Win per Slot	\$212	\$222	\$232	\$239	\$246
Daily Win per Table	\$2,194	\$2,295	\$2,400	\$2,472	\$2,546

Source: GVA Marquette Advisors

TEMPORARY RACINO

A new gaming facility would require approximately two years to design and construct. While the development of the racino is in process, Canterbury Park plans to open a temporary racino by installing slot machines within the existing grandstand area. Sufficient space exists for 1,200 machines and supporting amenities would be provided by the existing food and beverage facilities at the track.

This strategy will allow the Park to begin generating revenue (and tax revenue) by 2006. It will also provide an excellent opportunity to train gaming and surveillance staff, prior to the opening of the new large racino.

Based on a competitive analysis, we project that the temporary racino, with 1,200 slot machines, would be able to achieve an annual gaming win of **\$87 million** in 2006, with a full year of operation. This represents a utilization level of about **\$198 per slot machine** per day.

Projected slot revenue of \$87 million would produce an estimated **revenue sharing** amount equal to **\$48.6 million**.

REVENUE SHARING PAYMENTS

Revenue Sharing payments are estimated to be the following:

Table 7

Proposed Canterbury Racino Projected Revenue Sharing Payments							
	Share	2006	2007	2008	2009	2010	2011
General Fund (slots)	35.0%	\$30,353,000	\$81,383,000	\$85,121,000	\$89,010,000	\$91,680,000	\$94,430,000
General Fund (tables)	20.0%	-	5,340,000	5,580,000	5,840,000	6,015,000	6,196,000
MN. State Lottery (slots)	10.0%	8,672,000	23,252,000	24,320,000	25,431,000	26,194,000	26,980,000
Scott County (slots)	1.0%	867,000	2,325,000	2,432,000	2,543,000	2,619,000	2,698,000
City of Shakopee (slots)	1.0%	867,000	2,325,000	2,432,000	2,543,000	2,619,000	2,698,000
Purse Increases (slots & tables)	7.25%	6,287,000	18,794,000	19,655,000	20,555,000	21,171,000	21,806,000
Total revenue Share		\$47,046,000	\$133,419,000	\$139,540,000	\$145,922,000	\$150,298,000	\$154,808,000

Source: GVA Marquette Advisors

DIRECT ECONOMIC IMPACTS

Direct impacts are changes in the industry in which a final demand change is made. In the case of the racino operation, direct impacts would be those generated directly at the racino. These include employment, wages, and purchases of goods and services by the racino complex, as well as revenue sharing and payments in lieu of taxes paid to the local, state and/or federal governments.

Although not addressed in this study, there are additional rounds of benefits that would result from the racino operations that are frequently addressed when examining the total economic impact from a project. While direct impacts from a business venture are easy to understand, the concepts of secondary effects, known as indirect and induced impacts, are among the most widely used and most poorly understood tools in economic analysis. These impacts are frequently referred to as the “multiplier effect”. Fundamentally, they are based upon an extension of the direct expenditures by the racino operation. The revenues generated by the racino are redistributed back into the economy in the form of wages, taxes and expenditures for goods and services. In the same manner that the racino redistributes the revenue it receives, the people to whom those wages are paid and from whom the goods and services are purchased further redistribute the money they receive in the form of wages to their employees and purchases for their own operating needs. It is this on-going cycle of redistribution that estimates of indirect and induced impact attempt to quantify.

Our estimates of the direct impacts that the Canterbury Park racino will have on the community and the state (beyond the current impact of the racing facility), with respect to new jobs, earnings, purchases and tax revenue, are summarized in the following table:

Table 8

**Summary of Direct Impacts
Proposed Canterbury Racino**

Construction jobs	655
Jobs at casino/hotel	1,300
Employee earnings	\$35.8 million
Purchases of goods & services	\$78.1 million
Revenue sharing	\$145.9 million
Tax revenue:	
Property tax	\$2.3 million
Sales tax	\$7.3 million
State income tax	\$2.0 million

Source: GVA Marquette Advisors

**FINANCIAL PROJECTIONS FOR
A PROPOSED RACINO AT
CANTERBURY PARK**

Shakopee, Minnesota

January 2005

PREPARED FOR:

Canterbury Park Holding Corporation

PREPARED BY:

GVA MARQUETTE ADVISORS

333 South 7th Street
Suite 2300
Minneapolis, Minnesota 55402
Telephone: (612) 344-1309
Fax: (612) 334-3022

GVA File #04072

RECOMMENDED FACILITIES

The proposed racino will share the market with Mystic Lake, one of the largest and most complete Native American gaming facilities in the country. Treasure Island, the other casino in the primary market, also has extensive gaming facilities and supporting amenities. Therefore, it is important that the proposed racino offer high quality facilities and supporting amenities as well.

Based on the scope of competitive development and the size of the market available to the subject racino, we recommend the following racino facilities:

- 3,000 slot machines
- 40 Blackjack tables
- Buffet restaurant with approximately 250 to 300 seats
- 200-seat coffee shop open 24 hours a day
- Snack bar
- Entertainment-oriented restaurant and lounge with approximately 250 seats, offering brief entertainment evenings on the hour.
- Gift shop
- 250-Room Hotel
- 15,000-Square feet of meeting and banquet space

A racino of this size will be sufficient to offer most weekend crowds a wide variety of games, yet still achieve an acceptable level of annual utilization.

Restaurants are an important part of the gaming experience and encourage more frequent visitation. They also provide a means for broadening the appeal of a casino, attracting people who otherwise may not participate in gaming. The planned food and beverage facilities will offer a total of about 800 restaurant seats in four outlets. A **buffet** of approximately 275 seats will be the heart of the racino's restaurant offerings. This outlet will offer breakfast lunch and dinner and should focus on providing good quality food rather than a bargain price. A **coffee shop** of about 200 seats should be open during all hours of racino operation to meet the patrons light dining and snacking needs.

A **cabaret-style restaurant and lounge** should be developed to enhance the entertainment experience of the racino patrons. We suggest that in-house entertainers be presented on a small central stage for brief shows on an hourly basis, as this format would be unique to the market. Open for lunch and dinner, this facility would function as both a restaurant and lounge for the racino.

A **gift shop** that sells cigarettes, candy, sundries, gaming novelties, gifts and logo items.

A **hotel** with meeting space would provide the racino with the opportunity to draw new patrons to the racino through lodging packages and group functions hosted at the hotel, and would hold patrons at the racino for a longer period of time. Hotels tend to expand the entertainment experience and therefore broaden the market for gaming.

Approximately 15,000 square feet of **meeting and banquet** space should be planned to accommodate social functions, meetings and other group events. A large ballroom of approximately 12,000 square feet, divisible by three to provide for smaller simultaneous functions, should be provided. This large space will provide facilities for exhibitions, charitable events and other large gatherings, and could be used in conjunction with the existing grandstand to host even larger functions. Such function space will provide the racino with the opportunity to build business during slower business periods.

FINANCIAL PROJECTIONS

We have prepared projections of revenue and operating expenses for the racino's first five years of business. These projections have been developed from the results of our market study and are based on the actual operating results of similar casinos.

REVENUE

Estimated revenue for the racino is based upon the utilization figures developed from our market study. Slot revenues are projected to range from \$212 to \$246 per day and table game revenue is expected to range from \$1,800 to \$2,100 per day. All figures for gaming represent the net win after distribution of prizes.

Table 1

**Proposed Canterbury Racino - Class II Tables
Projected Win (3,000 slots; 40 tables)**

	2007	2008	2009	2010	2011
Slot Revenue	\$232,524,000	\$243,203,000	\$254,314,000	\$261,943,000	\$269,801,000
Table Revenue	26,700,000	27,900,000	29,200,000	30,076,000	30,978,000
Total Gaming Revenue	\$259,224,000	\$271,103,000	\$283,514,000	\$292,019,000	\$300,779,000
Daily Win per Slot	\$212	\$222	\$232	\$239	\$246
Daily Win per Table	\$1,829	\$1,913	\$2,000	\$2,060	\$2,122

Source: GVA Marquette Advisors

Hotel revenues include income from room rentals and all miscellaneous associated income. As noted in our analysis, we estimate that the hotel should achieve rack rates of \$79 to \$109 for standard guest rooms and as much as \$250 for suites. We have projected an overall average daily

rate (ADR) of \$92 in year one. Occupancy is projected to stabilize at 85% by year three of the operation.

Projections of revenue from **food & beverage sales** are based upon available information on other casinos of comparable size and utilization. Food and beverage revenue was projected to be approximately 9.0 percent of gaming revenue.

Gift shop sales were estimated to be approximately 0.3 percent of gaming revenue.

Other revenue, net of expenses, includes ATM and check cashing fees, interest income, and other miscellaneous revenue. The net revenue in this category was estimated to be 1.0 percent of gaming revenue.

DEPARTMENTAL EXPENSES

Gaming departmental expenses include payroll and related expenses, supplies and other direct operating costs for the casino operation. Also included are the retail costs of food, beverage, coins or other materials given to patrons on a complimentary basis. Expenses were estimated separately on a percentage of sales or dollars per device basis as appropriate, in relation to the performance of other comparable casino operations. Payroll accounts for the largest share of gaming departmental expense in all casino operations. Total gaming departmental expenses are projected to equal approximately 22 percent of gaming revenue on a stabilized basis.

The gaming machines will be owned and maintained by the Minnesota State Lottery. Accordingly, the casino will not have to incur the considerable expense of on-staff slot technicians.

Revenue Sharing includes the estimated amounts that will be paid to the State of Minnesota, the Minnesota Lottery, various horse industry organizations and the local government by the casino. The revenue sharing payments assumed in the financial projections for the temporary and permanent racinos are shown in the following table.

Table 2

Proposed Canterbury Racino Projected Revenue Sharing Payments							
	Share	2006	2007	2008	2009	2010	2011
General Fund (slots)	35.0%	\$30,353,000	\$81,383,000	\$85,121,000	\$89,010,000	\$91,680,000	\$94,430,000
General Fund (tables)	20.0%	-	5,340,000	5,580,000	5,840,000	6,015,000	6,196,000
MN. State Lottery (slots)	10.0%	8,672,000	23,252,000	24,320,000	25,431,000	26,194,000	26,980,000
Scott County (slots)	1.0%	867,000	2,325,000	2,432,000	2,543,000	2,619,000	2,698,000
City of Shakopee (slots)	1.0%	867,000	2,325,000	2,432,000	2,543,000	2,619,000	2,698,000
Purse Increases (slots & tables)	7.25%	6,287,000	18,794,000	19,655,000	20,555,000	21,171,000	21,806,000
Total revenue Share		\$47,046,000	\$133,419,000	\$139,540,000	\$145,922,000	\$150,298,000	\$154,808,000

Source: GVA Marquette Advisors

Hotel departmental expenses also include payroll and related expenses, supplies and other direct operating costs for the lodge. Total hotel departmental expenses are projected to equal approximately 65 percent of hotel revenue on a stabilized basis.

Food & Beverage departmental expenses include payroll and related costs, the cost of food and beverage raw materials and the cost of supplies and other direct expenses in the food and beverage facilities. Food and beverage departmental expenses were estimated in relation to the performance of other comparable casino operations. Expenses were estimated based on an assumed product cost of 40 percent of food and beverage sales, a labor cost of 30 percent of food and beverage sales, a benefits cost equal to 25 percent of labor cost, and supplies and other expenses equal to 5 percent of sales. Food and beverage departmental costs were estimated to be approximately 83 percent of total food and beverage revenue for the period under analysis.

Gift Shop departmental expenses were projected based on an assumed merchandise cost equal to 65 percent of gift shop sales and a payroll and benefit expense equal to 27 percent of sales.

UNDISTRIBUTED OPERATING EXPENSES

Administrative & General expenses include the general operating costs associated with a casino and the other components of the complex, including administrative payroll and related expenses, credit card commissions, bank charges, professional fees, office supplies, insurance and other miscellaneous costs. Expenses are projected in relation the performance of other comparable casinos. Total administrative and general costs are projected to equal approximately 5.7 percent of total revenue on a stabilized basis.

Security expense includes payroll and related costs, the cost of supplies and other direct costs for the security and surveillance departments at the casino. Security costs were estimated in relation to comparable casino operations. Total security costs are projected to equal approximately 1.3 percent of total revenue on a stabilized basis.

Marketing expenses include marketing payroll and related costs and the cost of advertising, supplies, promotional materials, bus programs and other promotional expenditures. Due to the level of competition from other area casinos, an effective long-term marketing strategy will be critical to the success of the proposed casino. Marketing expense is projected to equal approximately 8.4 percent of total revenue on a stabilized basis.

Utilities include all expenditures related to the heating and cooling of the casino and the hotel, as well as electricity, water, sewer and waste removal. Estimates are based upon the performance of comparable casinos and hotels in other markets with a similar climate. Total utility costs are projected to equal approximately 1.2 percent of total revenue on a stabilized basis.

Property Operations and Maintenance expenses include maintenance payroll and related costs, repair costs, maintenance supplies and contracts, and grounds keeping. Property operations and

maintenance expenses are projected in relation comparable casinos throughout the U.S. This expense is projected to equal approximately 2.2 percent of total revenue on a stabilized basis.

Property Tax expense was based on an estimated \$107 million project valuation and the current assessment rate for commercial property within the City of Shakopee.

REPLACEMENT RESERVE

The projections presented in this report are intended to provide an estimate of the actual cash flow available for debt service. Consequently, no provision for depreciation is included. However, an allocation typically must be made for funds taken from operating cash flow to cover the cost of replacing and upgrading furnishings and fixtures in the facility to maintain its competitive standing in the market on an ongoing basis. A reserve for replacement of fixed assets of 2.0 to 3.0 percent of projected revenue annually is considered to be sufficient. For the purposes of this analysis, the replacement reserve is assumed to be subordinate to debt service. Consequently, no reserve has been included in the financial projections.

Table 3

**PROPOSED CANTERBURY RACINO
PROJECTED CASH FLOW FROM OPERATIONS
BEFORE DEBT SERVICE AND STATE SHARE
(Dollars in Thousands)**

	YEAR 1		YEAR 2		YEAR 3		YEAR 4		YEAR 5	
	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT	%
REVENUE:										
GAMING	\$259,222	88.6%	\$271,127	88.6%	\$283,514	88.6%	\$292,019	88.6%	\$300,780	88.6%
HOTEL	7,048	2.4	7,506	2.5	7,882	2.5	8,118	2.5	8,362	2.5
FOOD & BEVERAGE	22,931	7.8	23,984	7.8	25,080	7.8	25,832	7.8	26,607	7.8
GIFT SHOP	778	0.3	813	0.3	851	0.3	876	0.3	902	0.3
OTHER(NET)	2,592	0.9	2,711	0.9	2,835	0.9	2,900	0.9	3,000	0.9
TOTAL REVENUE	292,571	100.0	306,143	100.0	320,161	100.0	329,745	100.0	339,651	100.0
DEPARTMENTAL EXPENSES:										
GAMING	56,608	21.8	59,046	21.8	61,582	21.7	63,429	21.7	65,332	21.7
REVENUE SHARING	133,419	51.5	139,540	51.5	145,922	51.5	150,298	51.5	154,808	51.5
HOTEL	4,629	65.7	4,900	65.3	5,103	64.7	5,256	64.7	5,414	64.7
FOOD & BEVERAGE	18,999	82.9	19,828	82.7	20,691	82.5	21,312	82.5	21,951	82.5
GIFT SHOP	719	92.5	752	92.5	787	92.5	810	92.5	834	92.5
TOTAL DEPARTMENTAL EXPENSES	214,374	73.3	224,066	73.2	234,085	73.1	241,105	73.1	248,339	73.1
DEPARTMENTAL PROFIT	78,197	26.7	82,077	26.8	86,076	26.9	88,640	26.9	91,312	26.9
UNDISTRIBUTED OPERATING EXPENSES:										
ADMINISTRATIVE & GENERAL	17,355	5.9	17,797	5.8	18,256	5.7	18,804	5.7	19,368	5.7
SECURITY	3,993	1.4	4,048	1.3	4,104	1.3	4,227	1.3	4,354	1.3
MARKETING	24,850	8.5	25,921	8.5	27,036	8.4	27,847	8.4	28,682	8.4
UTILITIES	3,689	1.3	3,744	1.2	3,800	1.2	3,914	1.2	4,031	1.2
PROPERTY OPERATIONS & MAINTENANCE	6,861	2.3	6,964	2.3	7,068	2.2	7,280	2.2	7,498	2.2
PROPERTY TAXES	2,169	0.7	2,212	0.7	2,257	0.7	2,302	0.7	2,348	0.7
TOTAL UNDISTRIBUTED EXPENSES	58,916	20.1	60,686	19.8	62,521	19.5	64,374	19.5	66,281	19.5
CASH FLOW FROM OPERATIONS BEFORE DEBT SERVICE AND REVENUE SHARING	\$19,282	6.6%	\$21,391	7.0%	\$23,555	7.4%	\$24,266	7.4%	\$25,031	7.4%

THE COMMENTS AND ASSUMPTIONS CONTAINED IN THE ACCOMPANYING REPORT ARE AN INTEGRAL PART OF THESE FINANCIAL PROJECTIONS

CLASS III TABLE GAMES

Class III table games, including craps, roulette and mini-baccarat, are not now allowed in Minnesota's Native American casinos, and are in the process of being negotiated for in Wisconsin. They are legal in the Iowa casinos. The ability for Canterbury to exclusively offer these games would create a considerable competitive advantage for the racino, however, we would expect the authorization for Class III table games would trigger the addition of equivalent table games at the Native American casinos.

The utilization levels projected above and the resulting financial projections assume that the racino will offer only slot machines and Blackjack. We have also prepared projections for the racino in the event it was allowed to offer Class III table games on a non-exclusive basis.

Building upon the loyal following that Canterbury has developed with its card room, the racino could similarly establish itself as the premier casino with respect to table games. We have prepared financial projections for the racino under the assumption that it operates 45 table games at the racino:

- o 4 Craps
- o 2 Roulette
- o 2 Mini-baccarat
- o 37 Blackjack

The eight Class III games would out perform the blackjack tables, resulting in a higher average daily win per table, but would have little impact on the performance of the slot machines.

Table 4

**Proposed Canterbury Racino - Class III Tables
Projected Win (3,000 slots; 45 tables)**

	2007	2008	2009	2010	2011
Slot Revenue	\$232,524,000	\$243,203,000	\$254,314,000	\$261,943,000	\$269,801,000
Table Revenue	36,042,000	37,698,000	39,420,000	40,603,000	41,821,000
Total Gaming Revenue	\$268,566,000	\$280,901,000	\$293,734,000	\$302,546,000	\$311,622,000
Daily Win per Slot	\$212	\$222	\$232	\$239	\$246
Daily Win per Table	\$2,194	\$2,295	\$2,400	\$2,472	\$2,546

Source: GVA Marquette Advisors

The financial projections for the racino with Class III table games are summarized below.

Table 5

Canterbury Park Racino - Class III Tables Projected Cash Flow (\$000)					
	2007	2008	2009	2010	2011
Gaming	\$268,566	\$280,901	\$293,734	\$302,546	\$311,622
Hotel	7,048	7,506	7,882	8,118	8,362
Food & Beverage	22,969	24,024	25,121	25,875	26,651
Gift Shop	806	843	881	908	935
Other (net)	2,686	2,809	2,937	3,000	3,100
Total Revenue	302,075	316,083	330,555	340,447	350,670
Departmental Expenses	-84,332	-88,040	-91,819	-94,575	-97,412
Revenue Sharing	-133,419	-139,540	-145,922	-150,298	-154,808
Undistributed Expenses	-60,298	-62,123	-64,015	-65,912	-67,867
Cash Flow Available For Debt Service	\$24,026	\$26,380	\$28,799	\$29,662	\$30,583

Source: GVA Marquette Advisors

TEMPORARY RACINO

A new gaming facility would require approximately two years to design and construct. While the development of the racino is in process, Canterbury Park plans to open a temporary racino by installing slot machines within the existing grandstand area. Sufficient space exists for 1,200 machines and supporting amenities would be provided by the existing food and beverage facilities at the track.

This strategy will allow the Park to begin generating revenue (and tax revenue) by 2006. It will also provide an excellent opportunity to train gaming and surveillance staff, prior to the opening of the new large racino.

Competitively, the multi-floored temporary racino would not be as convenient for patrons as the other competitive casinos that have all or their gaming devices located on the ground floor. The temporary racino would, however, enjoy a more convenient location than its competitors.

Based on a competitive analysis, we project that the temporary racino, with 1,200 slot machines, would be able to achieve an annual gaming win of \$87 million in 2006, with a full year of operation. This represents a utilization level of about \$198 per slot machine per day.

Projected slot revenue of \$87 million would produce an estimated revenue sharing amount equal to \$47.0 million.

Racino at Canterbury Park

Finally A Jackpot for Minnesota!

	06-07 Biennium			08-09 Biennium			10-11 Biennium		
	<u>6/30/2006</u>	<u>6/30/2007</u>	<u>Total Biennium</u>	<u>6/30/2008</u>	<u>6/30/2009</u>	<u>Total Biennium</u>	<u>6/30/2010</u>	<u>6/30/2011</u>	<u>Total Biennium</u>
Number of Gaming Machines	(1) 1,200	(2) 1,200/3,000		3,000	3,000		3,000	3,000	
Daily win per slot	\$ 198	\$198/\$212		\$ 222	\$ 232		\$ 239	\$ 246	
Blackjack Revenue	\$ -	\$ 13,950,000	\$ 13,950,000	\$ 27,900,000	\$ 29,200,000	\$ 57,100,000	\$ 30,076,000	\$ 30,978,000	\$ 61,054,000
Slot Revenue	\$ 43,362,000	\$ 159,432,000	\$ 202,794,000	\$ 243,203,000	\$ 254,314,000	\$ 497,517,000	\$ 261,943,000	\$ 269,801,000	\$ 531,744,000
Net Gaming Revenues	\$ 43,362,000	\$ 173,382,000	\$ 216,744,000	\$ 271,103,000	\$ 283,514,000	\$ 554,617,000	\$ 292,019,000	\$ 300,779,000	\$ 592,798,000
Purse Expense	\$ 3,143,745	\$ 12,570,195	\$ 15,713,940	\$ 19,654,968	\$ 20,554,765	\$ 40,209,733	\$ 21,171,378	\$ 21,806,478	\$ 42,977,855
			7%			7%			7%
Canterbury Park - net available for Operating expenses, Depreciation, Interest, Taxes and Debt Service	\$ 19,838,115	\$ 83,088,765	\$ 102,926,880	\$ 131,562,623	\$ 137,591,655	\$ 269,154,278	\$ 141,719,213	\$ 145,970,453	\$ 287,689,665
			47%			49%			49%
Scott County	\$ 433,620	\$ 1,594,320	\$ 2,027,940	\$ 2,432,030	\$ 2,543,140	\$ 4,975,170	\$ 2,619,430	\$ 2,698,010	\$ 5,317,440
City of Shakopee	\$ 433,620	\$ 1,594,320	\$ 2,027,940	\$ 2,432,030	\$ 2,543,140	\$ 4,975,170	\$ 2,619,430	\$ 2,698,010	\$ 5,317,440
Total Local Government	\$ 867,240	\$ 3,188,640	\$ 4,055,880	\$ 4,864,060	\$ 5,086,280	\$ 9,950,340	\$ 5,238,860	\$ 5,396,020	\$ 10,634,880
			2%			2%			2%
Lottery - 10%	\$ 4,336,200	\$ 15,943,200	\$ 20,279,400	\$ 24,320,300	\$ 25,431,400	\$ 49,751,700	\$ 26,194,300	\$ 26,980,100	\$ 53,174,400
State of Minnesota - BJ 20%	\$ -	\$ 2,790,000	\$ 2,790,000	\$ 5,580,000	\$ 5,840,000	\$ 11,420,000	\$ 6,015,200	\$ 6,195,600	\$ 12,210,800
State of Minnesota - Slots 35%	\$ 15,176,700	\$ 55,801,200	\$ 70,977,900	\$ 85,121,050	\$ 89,009,900	\$ 174,130,950	\$ 91,680,050	\$ 94,430,350	\$ 186,110,400
One-time fee		\$ 100,000,000	\$ 100,000,000			\$ -			\$ -
State General Fund	\$ 15,176,700	\$ 158,591,200	\$ 173,767,900	\$ 90,701,050	\$ 94,849,900	\$ 185,550,950	\$ 97,695,250	\$ 100,625,950	\$ 198,321,200
Total State and Lottery Revenues	\$ 19,512,900	\$ 174,534,400	\$ 194,047,300	\$ 115,021,350	\$ 120,281,300	\$ 235,302,650	\$ 123,889,550	\$ 127,606,050	\$ 251,495,600
			90%			42%			42%
			90%			42%			42%

Projected

Notes:

- 1) Temporary facility 1/1/06 to 6/30/06 ;
- 2) Temporary facility 7/1/06 to 12/31/06 and, Permanent facility 1/1/07 to 6/30/07;





KRAUS-ANDERSON CONSTRUCTION COMPANY
CONTRACTORS & CONSTRUCTION MANAGERS

February 7, 2005

Mr. Randall D. Sampson
President and General Manager
Canterbury Park Holding Corporation
1100 Canterbury Road
Shakopee, MN 55379-1873

Re: Racino at Canterbury Park
Preliminary Budget

Dear Mr. Sampson:

In response to your recent request, Kraus-Anderson Construction Company is pleased to provide you the enclosed budget proposal for the Racino Facility at Canterbury Park.

Our budget proposal is based on recent casino-hotel facilities we have constructed.

If you have any questions regarding our proposal, please contact me directly.

Very truly yours,

KRAUS-ANDERSON CONSTRUCTION COMPANY

Thomas J. Sackett
Vice President,
Construction Management

TJS/jlu

Enclosure



**RACINO AT CANTERBURY PARK
SHAKOPEE, MN
PRELIMINARY BUILDING PROGRAM AND BUDGET
February 7, 2005**

SITE IMPROVEMENTS (Allowance)		\$6,500,000
<ul style="list-style-type: none"> • Site Earthwork • Site Utilities • Site Signage • Landscaping • Site Concrete • Site Electrical • Site Ponds for Storm Water Retention • Site Bituminous Roads/Paving • Cross Country Course • Horse Polo and Training Field • Miscellaneous Site Improvements 		
CASINO COMPLEX	190,900 S.F.	\$41,120,000
<ul style="list-style-type: none"> • Gaming Floor – 3,000 Slot Machines • Table Games • Race Book • Public Circulation • Porte Cochere • Back of House 	<ul style="list-style-type: none"> 84,000 S.F. 22,500 S.F. 3,400 S.F. 30,000 S.F. 6,000 S.F. 45,000 S.F. 	<ul style="list-style-type: none"> \$21,000,000 \$5,625,000 \$680,000 \$7,500,000 \$1,140,000 \$5,175,000
RESTAURANT, FOOD, BEVERAGE	24,275 S.F.	\$7,732,500
<ul style="list-style-type: none"> • Restaurant – 150 Seats • Buffet – 350 Seats • Snack Bar/Deli – 40 Seats w/Kitchen/Serving • Lounge – 150 Seats • Bar – 35 Seats • Kitchen/Serving/Storage 	<ul style="list-style-type: none"> 3,000 S.F. 7,000 S.F. 2,500 S.F. 2,250 S.F. 525 S.F. 9,000 S.F. 	<ul style="list-style-type: none"> \$900,000 \$2,100,000 \$750,000 \$675,000 \$157,500 \$3,150,000
HOTEL	127,974 SF	\$34,060,000
250 Guest Rooms – 277 Bays total		
<ul style="list-style-type: none"> • 238 Standard Rooms • 12 Suites 		

HOTEL FIRST FLOOR & BASEMENT	58,000 S.F.	\$8,880,000
• Retail	5,000 S.F.	\$625,000
• Spa, Exercise, Sauna	5,000 S.F.	\$1,250,000
• Swimming Pool/Shower/Toilets	8,000 S.F.	\$2,000,000
• Back of House/Mechanical/Electrical	30,000 S.F.	\$3,450,000
• Laundry	3,000 S.F.	\$750,000
• Storage	7,000 S.F.	\$805,000
CONFERENCE CENTER	50,000 S.F.	\$9,250,000
• Main Ballroom – 750 Seats	15,000 S.F.	\$2,775,000
• Junior Ballroom – 500 Seats	10,000 S.F.	\$1,850,000
• Meeting Rooms 5/6 Rooms, 25/50 Seats each	10,000 S.F.	\$1,850,000
• Prefunction, Convention Services	15,000 S.F.	\$2,775,000
• Casino, Hotel, Restaurants, Conference Center	451,149 S.F.	\$107,542,500
TOTAL PRELIMINARY PROGRAM AND COST		

HORSE FACILITY

HORSE SHOW BARNS		\$5,500,000
• 400 Stalls		
OUTDOOR SHOW ARENAS		\$235,000
WESTERN SHOW ARENAS & PENS		\$65,000
INDOOR HORSE SHOW ARENAS		\$8,000,000
TOTAL HORSE FACILITY		\$13,800,000

**BOARD OF COUNTY COMMISSIONERS
SCOTT COUNTY, MINNESOTA**

Date	March 11, 2003
Resolution No.	2003-032
Motion by Commissioner	Hennen
Seconded by Commissioner	Marschall

RESOLUTION 2003-032 – SUPPORTING SF576/HF646 ALLOWING THE MINNESOTA STATE LOTTERY TO CONDUCT SLOT MACHINE (“RACINO”) GAMING AT CANTERBURY PARK

WHEREAS, the Minnesota Legislature, per Senate File 576 (Senator Dick Day) and House File 646 (Representative Mark Buesgens), will be requested to allow the Minnesota State Lottery to administer slot machine gaming at Canterbury Downs racetrack in Shakopee, Minnesota; and

WHEREAS, the legislation currently stipulates that the affected local governmental jurisdictions (the City of Shakopee and the County of Scott) are each to be the recipients of 0.5 percent of the gaming revenue generated by the proposed slot machine gaming; and

WHEREAS, the County of Scott has pursued an aggressive policy of fiscal austerity and accountability over the course of the last several years, of which stability in the property tax levy has been determined to be of paramount importance;

THEREFORE BE IT RESOLVED that the Scott County Board of Commissioners officially supports the legislative initiatives put forth by Senator Dick Day and Representative Mark Buesgens to allow the Minnesota State Lottery to conduct slot machine gaming on the site of Canterbury Downs in Shakopee, Minnesota;

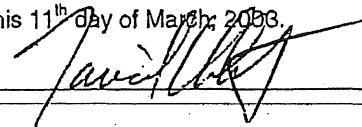
BE IT FURTHER RESOLVED that the Scott County Board of Commissioners will employ any revenue generated by the “racino” at Canterbury to offsetting County-incurred costs attributable to gaming activities at this facility.

COMMISSIONERS	VOTE			
Wagner	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Vogel	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Hennen	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Marschall	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Ulrich	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain

State of Minnesota)
County of Scott)

I, David J. Unmacht, duly appointed qualified and County Administrator for the County of Scott, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Scott County, Minnesota, at their session held on the 11th day of March, 2003 now on file in my office, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal at Shakopee, Minnesota, this 11th day of March, 2003.



County Administrator

Administrator's Designee

RESOLUTION NO. 5865

A RESOLUTION ENDORSING THE ESTABLISHMENT
OF A "RACINO" FACILITY AT CANTERBURY PARK,
SHAKOPEE, MINNESOTA

WHEREAS, in 1985, Canterbury Downs opened as Minnesota's pari-mutual horse racing facility; and

WHEREAS, since its opening as Canterbury Downs, the racetrack has seen significantly increased competition from other outlets for gambling; and

WHEREAS, in 2000, a Card Club was opened at Canterbury Park, which has provided increased purses to support the horse racing industry in Minnesota; and

WHEREAS, taxpayers in the State of Minnesota are not realizing a financial benefit from other forms of casino gambling in Minnesota; and

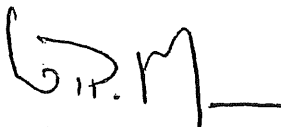
WHEREAS, the establishment of a "Racino" – style gaming facility at Canterbury Park could generate millions of dollars as revenues for the State of Minnesota, in addition to bolstering horse race purses for Canterbury; and

WHEREAS, as proposed, the County of Scott and City of Shakopee would split one per cent of the adjusted gross gaming machine revenues, which will help offset the additional public safety and transportation expenses which are experienced by these two units of government in hosting entertainment in the area; and

WHEREAS, Canterbury Park is the logical location for a casino to benefit the State of Minnesota, in that much of the infrastructure needed for a successful gambling operation is already in place, and its location in Shakopee is a natural addition to the other tourism attractions in the area.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Shakopee, Minnesota that it hereby endorses the concept of casino-style slot machines to be added to the existing Canterbury Park facility (to be known as the "Racino at Canterbury Park").

Adopted in regular session of the City Council of the City of Shakopee, Minnesota held this 4th day of March 2003.



Mayor of the City of Shakopee

ATTEST:



City Clerk

*JOSEPH P. HELKAMP
SHAKOPEE CITY COUNCIL*

*129 HOLMES STREET SOUTH
SHAKOPEE MINNESOTA 55379
jlhent6@att.net*

March 28, 2005

Honorable State Representatives,

Thank you for taking the time to read this letter.

As a council member of the City of Shakopee I fully support the Racino at Canterbury Park. I understand the importance of local support to any gaming proposal, and I can assure you the city of Shakopee is ready, willing and able to be the host city for the Racino at Canterbury Park. The overwhelming majority of residents support the Racino. In addition the City of Shakopee and the Scott County Board have passed resolutions of support for the Racino.

Benefits the Racino will bring to Shakopee and the State of Minnesota are many, from a significant increase in tax base to an expanded regional tourism draw. With its hotels, restaurants, amusement and entertainment parks, Shakopee currently attracts tourists from all around the region; the Racino will expand the city's drawing power to the benefit of all, a positive impact for taxpayers, employers and employees across the region's entire economy. The Racino will also add a show horse arena at Canterbury, a facility I know from personal experience to be desperately needed in the region.

There has been much talk of the crime and social consequences of introducing gambling in a new location. Gambling is not new here; Mystic Lake Casino and Canterbury Park operate 24 hours a day. There were similar fears and concerns cited when the card club was authorized in 1999, and they have not materialized. I have not seen an increase in crime with the Card Club, nor has the City been able to make a correlation between crime and the operations of Canterbury Park.

Canterbury Park is a trusted and active member of our community and has been for more than a decade. I have worked closely with the management of Canterbury on numerous local issues, and they are always willing to work with the council and community. I know them to be forthright and sincere, and I welcome the opportunity to work with them to enhance Shakopee.

Shakopee supports and welcomes the passage of the Racino at Canterbury Park and we thank you for your support.

Respectfully Submitted,
Joseph P. Helkamp
Shakopee City Councilor



March 17, 2005

Representative Mark Buesgens
Minnesota House of Representatives
445 State Office Building
100 Rev. Dr. Martin King Boulevard
Saint Paul, Minnesota 55155

Dear Rep. Buesgens:

Thank you for this opportunity to clarify my statements that appeared in a recent metro-area press article. First, I would like to state that my position in support of the racino at Canterbury has not changed; I regret that there may have been some confusion about this fact. Second, my statements about any lingering uncertainty and/or unanswered questions were in response to the legislative process, not the racino concept itself. Canterbury has always been a reliable and responsive corporate citizen in all of its dealings with the City of Shakopee, and we eagerly await the state's final decision on their racino proposal.

Respectfully,

Mayor John J. Schmitt
City of Shakopee



March 17, 2005

Representative Mark Buesgens
 Minnesota House of Representatives
 445 State Office Building
 100 Rev. Dr. Martin King Boulevard
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Respectfully,

Mayor John J. Schmitt
 City of Shakopee

TO: Honorable State Leaders

FROM: Matt Lehman
Shakopee City Council Member

DATE: March 16, 2005

SUBJECT: Canterbury Racino

I was unable to reschedule a work conflict to appear in person before this distinguished committee concerning a proposed Racino located in Shakopee. I have strong opinions of this proposal that I ask consideration for entering them into the record.

The Shakopee City Council approved a resolution in support of the currently proposed "as we know it" Racino at Canterbury Park in 2003. Many issues and items were discussed and studied at great length prior to resolution approval which included transportation related items, crime and law enforcement, social lifestyle impacts, noise mitigation, light flood, and the overall sentiments of the local general public.

The census of council, in my opinion, supports the Racino based on many key factors. Canterbury Park has a solid record of cooperation with the city of Shakopee both present and past that spans from Shakopee Showcase where the community comes together for an evening at the park to update each other on new or changing city programming, new local businesses, current and upcoming community events, and educational booths for all items like land use, crime prevention, utilities, etc.

Canterbury Park is a responsible partner in our community as shown by the direct partnership with our local law enforcement agencies in a proactive, preventative manner with many programs including tobacco/alcohol compliance sales training, gaming addiction warning signs and resource programs, crime prevention, and others. With no pun intended, the overall track record of Canterbury Park is very positive, accountable, and responsive. The greater visions and concerns expressed by Canterbury would indicate a forward sincerity to the overall health of the region through a program dedicated to the past and present horsemen and supportive related economies. The self initiated transportation routes and directional signage control planning with the city of Shakopee, and the existing and future local needs for meeting/conference spaces. I view both this proposal and the current operators of Canterbury Park as very positive. The potential jobs created and secondary patronage to regional business would be an economic benefit of excitement. This location has existing gaming and horse uses, it's located on the updated and improved 169 regional corridor, and has both the general public and elected support of the community.

Possible general concerns and planned future solutions:

Traffic: 169 is currently being refitted to a regional corridor, 83 was improved, Shakopee 17th ave is to be extended to 83 (realigned 16), 16 is to become a 4 lane, co. 21 is currently in right of way acquisition and public open house stage, local mass transit program has been partnered with Scott

County for efficiencies and growth opportunities. Future 41-river crossing is currently in the EIS phase.

Crime: Past and present law enforcement relationship is strong, working well, and very effective. It was my understanding that our approval included an understanding of a continued future proactive, preventative relationship towards crime related issues.

Gaming: It's already here with the tribe, state lottery, and pull-tabs. People must be responsible for their own actions whether it's drinking and driving, hunting, or any other individual decisions. To make all things that could be used improperly illegal would change the foundation of our country.

Tribe: I actually grew up poor with many of the Shakopee tribe and have a great respect for their history and heritage. I am sincere in being glad they have come to financial freedom after so many years of poverty, however it is not my intent nor do I believe this Racino proposal will have a sizable negative impact on the tribes current economic resources.

Financials: As you can see above, the possible revenue from a Racino is last to be considered pending reasonable solutions to the possible concerns listed above.

Summary: We have resolved the issues above at the local level and passed a resolution of support for a Racino at Canterbury Park. I believe the State has resolved many of the issues outlined above concerning traffic issues with the refitted 169 regional corridor concept, future 41 river crossing, expanded mass transit programs and routes, and other regional improvements.
On behalf of those I represent, I do support a Racino at Canterbury Park in Shakopee. I respectfully ask that any major modification made be reviewed and accepted by the local unit of government prior to approval. Thank you for your time on this matter.

Sincerely, Matt Lehman
Shakopee City Council member
Work 952-403-0700
Cell 612-237-0422

Cc: Mark McNeill (file)
Councilor Helkamp



Questions & Answers

Q: What is a Racino?

A: A racino is a racetrack that also offers casino games for the purpose of increasing live racing purses and generating gaming tax revenue for local and state government. Ten states have already approved Racinos, and they have been proven to be an effective gaming model because of the enormous benefits they generate beyond the new tax revenues.

For example, Iowa authorized its first Racino in 1994. According to an Iowa State University study, between 1994 and 1999 the amount spent on the care and maintenance of horses in the state more than doubled, providing needed growth for the state's rural economy.

Iowa is only one of many states reaping the vast benefits of racinos. A 2003 survey of New Mexico Horse Breeders reports that since New Mexico authorized Racinos in 1998, it has witnessed:

- 216% growth in the amount spent on alfalfa and grain.
- 324% growth in the amount spent on veterinarian care.
- 413% growth in the amount spent on horse trailers.

Based on the success of racinos in states across the country, many others are now considering legislation to add slot gaming at their racetracks, including: Florida, Kansas, Kentucky, Maryland, and Ohio.

Q: Why is an equestrian center part of the Racino proposal?

A: The vision of the Racino is to transform Canterbury Park into the centerpiece for Minnesota's race and show horse industries. As part of the Racino proposal, Canterbury Park is planning to build a world-class equestrian park capable of hosting local, regional and national show events.

Despite having a large show horse community, Minnesota lacks a premier national equestrian park. While the equestrian center does not require legislative approval, passage of the Racino would provide Canterbury Park with the revenue necessary to construct the facility, allowing Minnesota to draw shows and the accompanying tourism dollars from around the country.

Q: Will horse racing suffer if slot machines are introduced at Canterbury Park?

A: No. To the contrary, slot machines at Canterbury Park will provide an additional boost to live racing and Minnesota's horse industry:

- Purses at Canterbury Park will increase nearly \$18 million each year with the addition of slot machines, nearly tripling the amount of current purses. Of this amount, approximately \$3.6 million will go to the Minnesota Breeders' Fund, which promotes Minnesota's racing and breeding industry.
- Based on the experience in other states, growing racing purses will fuel the investment in breeding and foaling in Minnesota. As the number of horses bred in Minnesota grows, positive effects will ripple through the rest of Minnesota's agricultural industry.

Q: Can the Racino meet Governor Pawlenty's gaming revenue goals?

A: When fully operational, the Racino will generate more than \$200 million every biennium in new state gaming tax revenues, according to recent estimates by GVA Marquette Advisors.

Q: Why do other gaming proposals anticipate greater revenues for the state?

A: There are a few reasons. Canterbury Park's estimates reflect a more modest gaming proposal with 3,000 slot machines and 40 table games, while most other proposals project 4,000 or more slots.

In addition, Canterbury Park has chosen to be more conservative in our win estimates, forecasting \$212 - \$246 per machine each day compared to \$295 in the Governor's proposal. However, the Racino bill proposes providing a higher percentage of the revenue to state and local governments than other gaming proposals before the legislature.

Q: The Governor's proposal has a \$200 million up front fee. Why is the Racino's proposed fee only \$100 million?

A: The Racino at Canterbury Park proposal provides 47% of the net gaming revenues to state and local government, one of the largest percentages in the country. Based on the financial projections for the Racino, a \$100 million up-front fee is prudent if the State is to receive \$200 million each biennium in new state gaming tax revenues once the Racino is fully operational.

Q: Will the Racino generate revenue for the state in the coming biennium?

A: Yes. The Racino proposal includes a \$100 million up front fee. Additionally, Canterbury Park could have a temporary facility operational and generating revenue for the state within 7-9 months of passage of the bill. If the legislature approves this proposal in May, the Racino could generate over \$175 million in new state gaming tax revenues for the state in the coming biennium.

Q: How much support does the Racino have statewide?

A: The Racino is the gaming proposal with the broadest public support because of the wide range of benefits extending to the horse and agriculture industry. Numerous statewide polls confirm that 70% of Minnesotans support the Racino. Support among the public stretches across ideological lines and to all regions of the state.

Q: Can the Racino meet the Governor's requirement for local support?

A: The Racino at Canterbury Park already enjoys strong local support.

- The Racino is endorsed by both the City of Shakopee and Scott County
- According to a 2004 poll by Decision Resources Ltd., the Racino is supported by 74% of Scott County residents

Q: The Governor says that Canterbury Park may become the site of the state-tribal partnership casino. How does Canterbury Park feel about that scenario?

A: Canterbury Park will consider any proposal that can help grow the horse industry in Minnesota. However, at this point Canterbury Park is advocating for the Racino proposal, which would nearly triple live racing purses and allow for the construction of a world-class equestrian park at Canterbury.

Q: Is gambling a good way to raise money for needed state services?

A: Currently 87% of Minnesotans participate in some form of gambling. Gambling has already been used in Minnesota to raise funds for a variety of local and state needs, and racinos have proven to be a tremendously effective way for other states to raise new gaming tax revenues. For example, according to the Iowa Racing and Gaming Commission, Iowa has raised well over \$650 million in revenue from racino gaming over the past 10 years that has been used for needed services and programs - in a much smaller market!

Q: Would passing the Racino mean breaking the existing tribal compacts?

A: No. The existing tribal compacts allow the state to authorize gaming outside of tribal casinos if the legislature deems fit. While the tribal casinos have enjoyed a monopoly on some casino gaming since they opened, exclusivity was not guaranteed in the agreement.

Q: Will the Racino proposal automatically authorize slot machines at the newly licensed harness track in Anoka County?

A: No. The Racino bill deals only with currently operating racetracks.

Q: Won't the Racino ultimately hurt business at existing tribal casinos?

A: That's very unlikely. Business at tribal casinos has exploded in recent years as more and more Minnesotans and tourists are looking for gaming options. Since 1996, the number of slot machines at Minnesota's tribal casinos has increased over 50 percent, according to annual surveys by the *Business Journal*. There is no reason to believe that trend will end soon.

The *Shakopee Valley News*, the local newspaper in the area which is home to both Canterbury Park and Mystic Lake Casino, concluded in an editorial that the demand for gaming and entertainment in Minnesota has reached a point that Mystic Lake would not be harmed by the presence of a Racino at Canterbury Park.

Q: Would passing the Racino bring "Las Vegas" to Minnesota like opponents keep saying?

A: According to popular estimates, Minnesota already has 21,000 slot machines at its 18 casinos owned by tribal governments. Canterbury Park is proposing to add an additional 3,000 slot machines in a location that already offers horse racing, simulcast racing and a 24-hour card club.

Ten other states have passed Racinos to generate needed revenue and improve their agricultural economies, and they have succeeded. That's exactly what a Racino would do for Minnesota.

Besides, when was the last time you heard anyone say "what happens in Altoona stays in Altoona?"

Racino

At Canterbury Park

A JACKPOT FOR ALL MINNESOTANS

Horse Industry Generates Nearly \$1 Billion in Minnesota

An analysis released last year by the University of Minnesota found that the equine industry has a significant impact on Minnesota's agricultural economy. Minnesota's horse industry generates nearly \$1 billion in economic activity every year in Minnesota, and could have even more economic impact with further investments in horse racing and horse shows.

The report, authored by Brian Buhr, Associate Professor of Applied Economics at the University of Minnesota, found that Minnesota ranks 9th in the country in number of horses, which result in \$930 million in direct and indirect economic benefit.

"Minnesota has a thriving horse population," said Buhr. "With 155,000 horses currently being raised here, we have significant horse activity in every county. That means lots of work for horse trainers, veterinarians and farmers throughout Minnesota."

Potential For Growing Our Horse & Agricultural Economy

While the horse industry already generates nearly \$1 billion in economic impact, the report found there is plenty of room for industry growth. Even though Minnesota ranks 9th in the total number of horses, it ranks 45th in sales value per horse.

"If we want to increase the total value and economic impact of horses, the best investment would be in stronger horse racing and horse shows," explained Buhr. "Show horses generate twice the economic value of pleasure horses, and race horses generate nearly five times the impact."

University of Minnesota Horse Industry Analysis Highlights

Minnesota's horse industry generates \$930 million of economic impact annually for the state.

- Minnesota ranks 9th nationally in the total number of horses (155,000), with a significant horse population in all 87 Minnesota counties.
- The value of Minnesota's horse population ranks a distant 45th in the country.
- Investments in both the show and race horse industries would raise the value and impact of Minnesota's horse industry.

Racino Would Grow The Race & Show Horse Industries
The Racino at Canterbury Park would provide a major boost for Minnesota's horse industry with new horse racing and showing opportunities.

- The Racino would add an additional \$16 million annually to racing purses, nearly tripling their current value. Purse growth would spark increased breeding levels throughout Minnesota and enhance the economic impact of Minnesota's horse industry.
- The Racino would allow for the construction of a world-class equestrian center at Canterbury Park capable of hosting local, regional and national shows.
- The equestrian park would draw substantial tourism dollars into Minnesota as well as provide a centerpiece for Minnesota's show horse community.

Curtis Gardner
Gardner Fence Company
Minneapolis, Minnesota

Racino Supporter



Craig Bishop
Bishop Family Farm
Bloomington, Minnesota

Racino Supporter

Racino

CANTERBURY PARK

Racino

At Canterbury Park

A JACKPOT FOR ALL MINNESOTANS

The Vision

The Racino at Canterbury Park would be the first entertainment and gaming facility of its kind in Minnesota.

Currently Offered at Canterbury Park:

Live Horse Racing

Conducted at one of the nation's finest facilities for racing, Canterbury Park's live racing meet is enjoyed by over 300,000 Minnesotans annually. Canterbury Park's 2005 live racing meet will stretch from Kentucky Derby Day through Labor Day.

Simulcast Racing

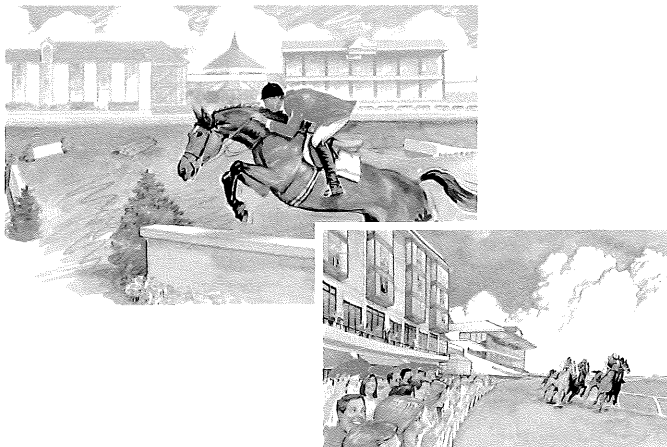
Year round, patrons can watch and wager on races from horse tracks around the country. From the Breeders' Cup to the Belmont Stakes, Canterbury Park offers opportunities for horse racing fans 364 days a year.

Card Club

The Card Club at Canterbury Park offers Texas Hold 'em, along with other traditional poker and casino card games. Approved in 1999, the Canterbury Card Club has allowed the track to increase Thoroughbred and Quarter Horse racing purses by over 75% since its inception.

Special Events

Canterbury Park is home to special events year round, ranging from WSA snowmobile racing to the Upper Midwest's largest craft show. Over 100,000 people visit Canterbury Park each year for special events alone.



The Racino Would Add the Following:

World-Class Equestrian Park

Despite having an enormous show horse industry in Minnesota, the state lacks a large regional or national equestrian center. Passage of the Racino would change that. As part of the Racino proposal, Canterbury Park would construct a major horse show facility.

The equestrian center would:

- Include two indoor arenas, three outdoor arenas (including a working western arena), a cross-country jumping course, and new stalls specifically for show horse events.
- Be capable of hosting a litany of local, regional and national equestrian events that are currently going to other states, along with the economic impact they generate.
- In comparison, WestWorld, an equestrian center in Scottsdale, Ariz., created nearly \$25 million in direct spending in the community from events at the facility.

Slot and Card Gaming

The Racino would authorize slot gaming and banked blackjack at Canterbury Park to complement its current games.

Canterbury Park would privately finance the construction of a casino adjacent to the existing racing grandstand to house the 3,000 slot machines and table games. The separate casino facility would allow Canterbury Park to retain the family-friendly live horse racing atmosphere Minnesotans have grown to love.

250-Room Hotel With Conference Facilities

Built overlooking the main track, the 250-room First Turn Hotel would feature private balconies where guests could comfortably view morning workouts as well as almost feel the racing action. The hotel and conference center would help accommodate patrons of live racing, casino gaming and the equestrian center.

Fine Restaurants

The Racino project will include the construction of additional dining options at the Racino and the hotel.


CANTERBURY PARK

Racino

At Canterbury Park

A JACKPOT FOR ALL MINNESOTANS

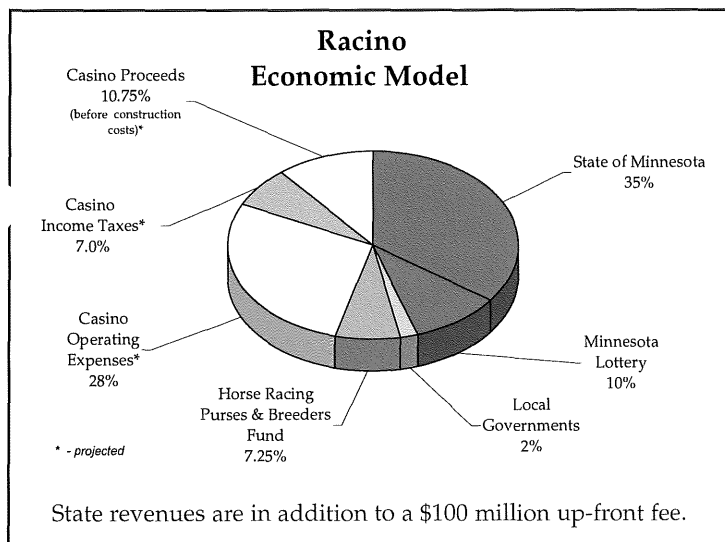
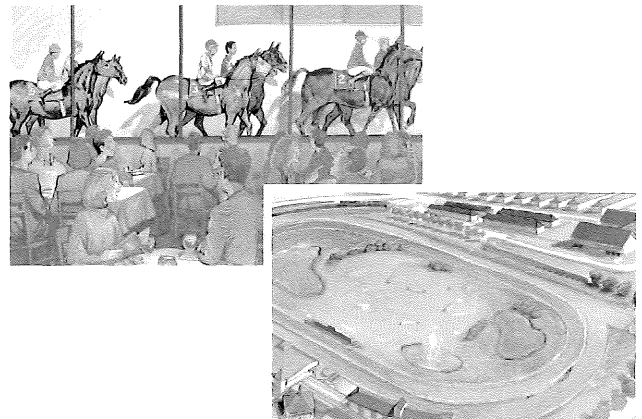
The Proposal

Some of the Legislative Highlights of the Racino Proposal Include:

- The Racino would authorize the Minnesota Lottery to operate slot machines at a licensed racetrack and allow for banked blackjack and other games authorized at tribal casinos.
- The Racino would be tightly regulated by the Minnesota State Lottery and the Minnesota Racing Commission.
- The Racino would provide a one-time fee of \$100 million to be paid to the state's general fund.
- Approval of the local governing body would be required for the Racino.
- The facility would be privately financed and would not require any state bonding or operating subsidies.
- The Racino would create jobs and significant new state tax revenue as well as spur growth in the racing and show industries through increased racing purses and a new Olympic-caliber show arena.
- Without expanding the number of gaming locations, the Racino would help meet a quickly growing demand for gaming and entertainment by Minnesota residents and tourists.

A Minnesota Model for Gaming

Benefits	The Racino at Canterbury Park
A Minnesota-owned company	✓
New Minnesota jobs and investment	✓
New state gaming tax revenues	✓
Stronger rural economy	✓
Supported by 70% of Minnesotans	✓
Endorsed by the host city and county	✓
Backed by Minnesota labor unions	✓



The **RACINO** would generate
over \$175 MILLION
 for the state in the
COMING BIENNIUM.



Racino

At Canterbury Park

A JACKPOT FOR ALL MINNESOTANS

The Benefits

Generate Substantial New Gaming Tax Revenues.

According to a conservative market analysis based on the addition of 3,000 slot machines and banked blackjack at Canterbury Park, the Racino would generate \$100 million every year in new state tax revenue once fully operational.

Combined with a \$100 million up front fee, the Racino could net the state over \$175 million in revenue in the coming biennium.

Create New Jobs.

According to the market study, the Racino would directly create 1,300 new full and part-time jobs at the Shakopee facility, as well as the equivalent of over 650 full-time jobs during the construction of the Racino. Canterbury Park has signed a card-check neutrality agreement with the Hotel Employees and Restaurant employees Union Local No. 17 and has the support of a number of unions throughout Minnesota.

Energize Minnesota's Horse and Agriculture Economy.

A University of Minnesota report recently concluded that Minnesota's horse industry is worth nearly \$1 billion to the state's economy each year. However, the economic value and impact of horses could grow substantially with additional investments in racing and horse shows. The Racino at Canterbury Park would do both.

The Racino would more than double purses for live racing at Canterbury Park, which would spur growth in horse breeding levels throughout the state. Every state that has authorized a Racino has experienced substantial growth in the size and impact of its horse industry. Additionally, as part of the Racino project, Canterbury Park would construct a world class equestrian park, igniting growth in Minnesota's show horse community.

Minnesotans Support the Racino at Canterbury Park.

Four separate statewide polls have found that over 70 percent of Minnesotans support the Racino at Canterbury Park and want to use the new state gaming tax revenues for critical services such as local education and funding for nursing homes.

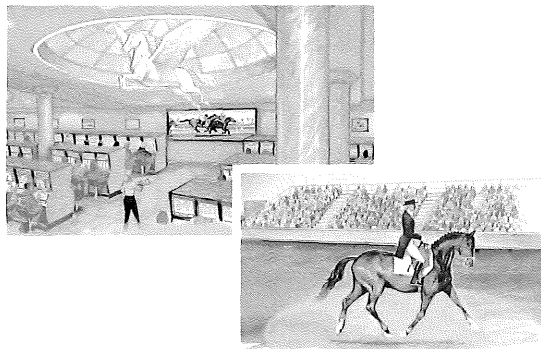
According to surveys, more than 80 percent of Minnesotans gamble in some form each year. The market for gaming in Minnesota is growing, as evidenced by the continual expansion of Tribal casinos.

\$100

Million

in new state tax revenue

every year!



Racino

CANTERBURY PARK

Racino

At Canterbury Park

A JACKPOT FOR ALL MINNESOTANS

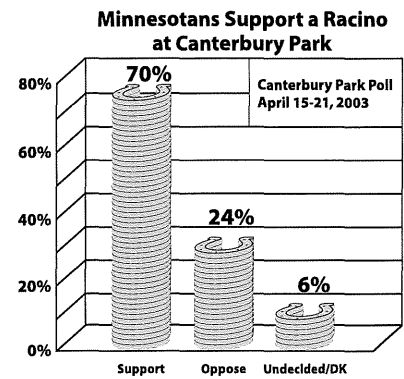
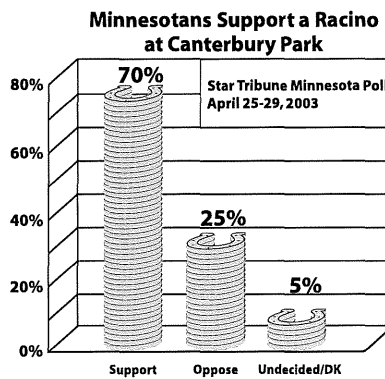
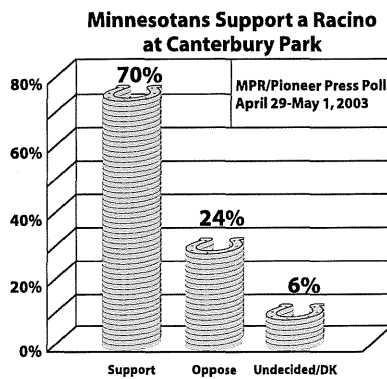
Support for the Racino



Statewide Support

The Racino at Canterbury Park is not the biggest or the flashiest gaming proposal before the Minnesota Legislature, but it is the proposal with the strongest measure of support statewide.

Poll after poll confirms that 70% of Minnesotans support the Racino at Canterbury Park.



Horse Industry Support

Because of the tremendous benefit the Racino would bring to race and show horse enthusiasts alike, the project is supported by a broad range of Minnesota's horse community.

The Racino at Canterbury Park is Endorsed by:

- The Minnesota Horse Council
- Minnesota Thoroughbred Association
- American Quarter Horse Association
- Minnesota Quarter Horse Racing Association
- The Horsemen's Benevolent and Protective Association
- The Tri-State Horsemen's Association
- The Central State's Dressage and Eventing Association

Local Support

- Backed by the entire Scott County legislative delegation
- Endorsed by both the city of Shakopee and Scott County
- Supported by 74% of Scott County residents*

*According to a January 2004 poll conducted by Decision Resources Ltd.

Union Support

The Racino Proposal is Supported by Many Minnesota Labor Unions:

- Building & Construction Trades Council - Mpls.
- Hotel Employees & Restaurant Employees Local 17
- IBEW
- PACE International
- United Auto Workers
- Communication Workers of America
- International Association of Machinists
- Iron Workers Local 512
- Minneapolis Central Labor Union
- MN State Pipe Trades
- Teamsters DRIVE

Racino

At Canterbury Park

A JACKPOT FOR ALL MINNESOTANS

Racinos In Other States



Racinos are a proven model for gaming across the country. Ten states have already approved Racinos, and are enjoying the benefits of enhanced state tax revenues, a stronger horse and agriculture industry, and the creation of new jobs and investment.

Since the Minnesota legislature adjourned last May, two more states – Oklahoma and Pennsylvania - have added the growing list of states approving Racinos.

Unlike other gaming models, Racinos have a significant impact on a state's horse and agriculture economy. Since 1999, the year Racinos were approved in New Mexico, the state has witnessed:

- 216% growth in the amount of money spent on alfalfa and grain;
- 324% growth in the amount spent on veterinary services; and
- 413% growth in the amount spent on horse trailers.

In every state where they have been implemented, Racinos have enhanced the agriculture economy while delivering vital tax revenues to the state coffers. A glance at the tax rates of Racinos across the country shows the Canterbury Park model would be one of the most successful at raising new tax revenue for the state.

Other States considering authorizing Racinos

- | | |
|----------|---------------|
| Florida | Maryland |
| Indiana | New Hampshire |
| Kansas | Texas |
| Kentucky | |

And the list keeps growing . . .

10 STATES
have already
APPROVED
RACINOS

Racinos - Where Does the Revenue Go?

	State Share	Local Share	Total Share to Governments
Minnesota	45%	2%	47%
National Average	36%	1%	37%
Delaware	41%	0%	41%
Iowa	25%	1%	26%
Louisiana	30%	3%	33%
Maine	19%	1%	20%
New Mexico	25%	0%	25%
New York	60-73%	0%	60-73%
Oklahoma*	19-39%	0%	19-39%
Pennsylvania	39%	4%	43%
Rhode Island	53-58%	1%	54-59%
West Virginia	35%	2%	37%

* Oklahoma uses a sliding scale based on revenue.

Iowa Racino Flourishes

A closer look at our neighbors

Racino Stats

Authorized: 1994

Slots: 3,513

'04 Gross State Revenue: \$89.0 million

Prairie Meadows Racetrack was bankrupt and its doors were closed when the addition of slots was approved in 1994. Since then, the racino has produced huge benefits for the Iowa's horse industry.

From 1995 to 1997, Iowa became the nation's fastest-growing thoroughbred breeding state, jumping from 28th to 12th nationally in total foals bred. The annual spending for the care and maintenance of horses increased from \$41 million in 1995 to \$97 million in 1999 according to Iowa State University.

In 2002, Polk County residents voted to approve the racino for another eight years. Sixty-six percent of the voters supported the racino – a larger margin of victory than was originally achieved in 1994.



CANTERBURY PARK

Racino

At Canterbury Park

A JACKPOT FOR ALL MINNESOTANS

History of Canterbury Park

Early Years at the Downs

Horse racing came to Minnesota in 1985 when Canterbury Downs opened its gates in Shakopee. The track opened to enthusiastic acclaim and high expectation for development of a new industry in Minnesota – horse racing.

But in the late 1980s and early 1990s, pressure from additional gaming had a devastating effect on track operations. During the 1980s, Minnesota saw significant growth in the charitable gambling sector, followed by the authorization of the Minnesota Lottery in 1989. Tribal gaming compacts were first signed with the state in 1988, and Mystic Lake opened its doors in 1992 just 5 miles from Canterbury Downs.

The odds were too much to overcome, and after the 1992 racing season Canterbury Downs closed.

Racing Revival Under New Management

That's when several local horsemen, led by Curtis and Randy Sampson and Dale Schenian, stepped in. They weren't interested in owning the track, but after a year of struggling to find investors they decided to do it themselves. The Canterbury Park Holding Corporation was formed and the track was purchased in 1994. Canterbury Park is a publicly traded company (Amex: ECP) with over 2,500 shareholders, the majority of whom are Minnesotans.

Live racing returned to Canterbury Park in 1995 and the track made a small profit in 1996. Purses gradually increased and the racing season lengthened as customer support continued to grow. Today, over 1 million visitors attend horse racing, concerts, fairs and other live events at Canterbury Park, with more than 1,000 people employed at the facility.

Card Club Injection

In 1999, the Minnesota Legislature agreed that racing purses needed a boost, and authorized the Canterbury Card Club. In just under four years, the Card Club has helped revive Minnesota's horse industry. Race purses have increased by more than \$4 million, which drives Minnesota's breeding industry. Although still not back to the levels of the mid-1980's, the number and value of Minnesota-bred horses has risen since the opening of the club.

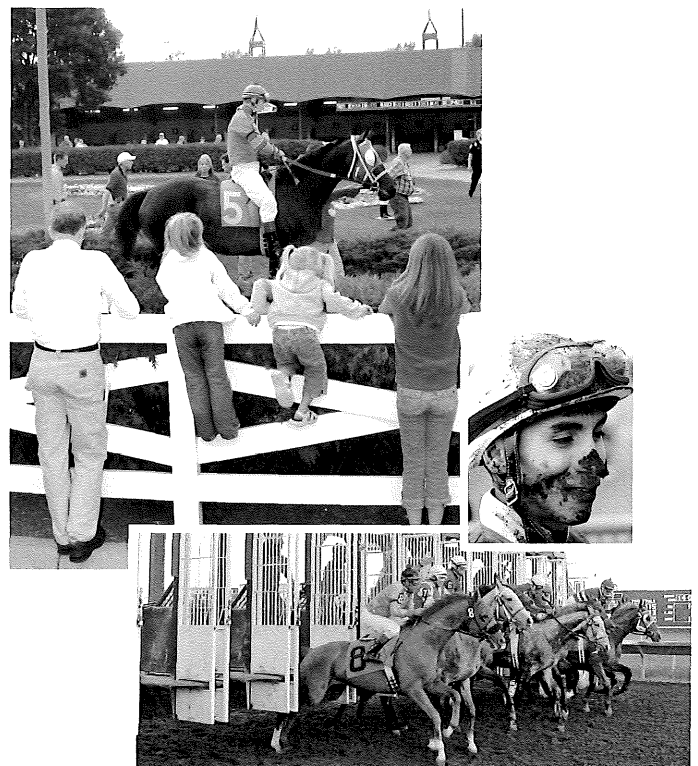
Canterbury Park is about to start its eleventh year of managing gaming in Minnesota. Its success as a responsible manager of gaming and entertainment has been recognized nationally. In 2001, Forbes Magazine named Canterbury Park as one of the 200 best small companies in America.

Commitment To Community

In 2003, Canterbury Park Holding Corporation upped the ante in our long tradition of charitable giving, pledging through the Minnesota Keystone Program to give back at least five percent of pre-tax profits to charity annually.

As part of that initiative, Canterbury Park founded the Canterbury Park Minnesota Fund, a donor-advised community fund. Under the mission of giving to organizations that benefit equine and agricultural causes, local communities and responsible gaming programs, the fund approved over \$100,000 in grant monies during its initial round of giving.

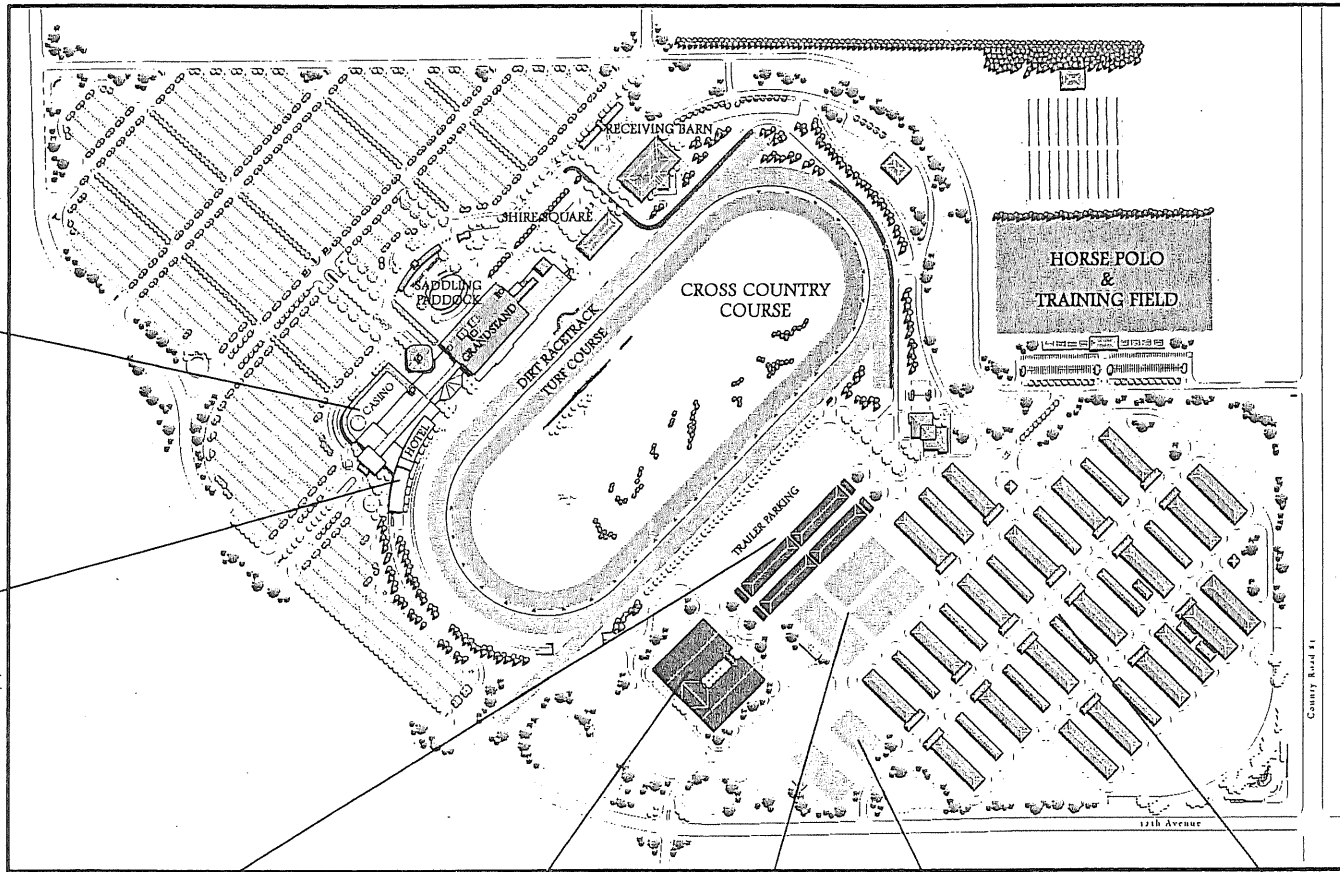
In the past two years alone, Canterbury Park has given over \$600,000 in money, merchandise and services to charities across Minnesota.



RACINO AT CANTERBURY PARK - MASTERPLAN

150,000 SQ FT
CASINO WITH TABLE
AND SLOT GAMING

250 ROOM HOTEL
BALCONY ROOMS
OVERLOOKING TRACK



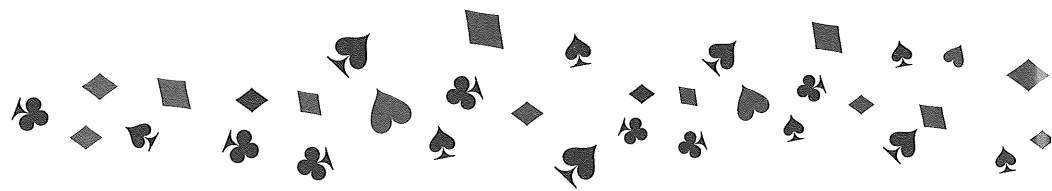
HORSE SHOW BARN -
400 STALLS

(2) INDOOR HORSE SHOW ARENAS
175' X 300'
& 140' X 300'

3 OUTDOOR
SHOW ARENAS
130' X 300'

WESTERN SHOW
ARENAS & PENS
125' X 275'

RACEHORSE BARN AREA -
1650 STALLS FOR LIVE RACING



Canterbury Park Holding Corporation
1100 Canterbury Road
Shakopee, MN 55379
www.canterburypark.com
(952) 445-7223