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# Iowa Legislative Fiscal Bureau

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## Funding Responsibility For Monitoring Indian Operated Casinos

### ISSUE

American Indian tribes in the State of Iowa may engage in casino-style gambling through a compact with the State. Because of the Sovereign Nation status of the tribal lands, the State may exercise little control over the activities, except to verify adherence to the compacts. The Department of Inspections and Appeals' request for 1.67 FTE positions and related funding for monitoring these activities in FY 1994 was denied by the Legislature. Many states request contributions from the tribes for monitoring the gaming activity. The Governor has expressed his intention to devote the necessary funding and personnel to continue this function.

### AFFECTED AGENCIES

Department of Inspections and Appeals (DIA)  
Iowa Racing and Gaming Commission

### CODE AUTHORITY

Chapter 10A, Code of Iowa

### BACKGROUND

In 1988, Congress passed the Indian Gaming Regulatory Act (IGRA) outlining the process by which states and tribes may reach agreement about Indian gaming. Under the IGRA's compacting process, 3 classes of gaming are defined. The tribes are not required to negotiate compacts with individual states for Classes I & II, but must negotiate compacts before Class III gaming can commence on tribal lands. The 3 classes of gaming and their definitions are as follows:

- Class I gaming is considered to be under the exclusive jurisdiction of Indian tribes and is not subject to the provisions of the IGRA. Class I is defined as "social games played for prizes of minimal value or traditional forms of Indian gaming engaged in as a part of, or in connection with, tribal ceremonies or celebrations."
- Class II gaming is under extensive tribal jurisdiction, but is subject to provisions of IGRA and oversight regulation by the National Indian Gaming Commission. Class II gaming is not subject to State regulation. Class II gaming is defined as "the game of chance commonly known as Bingo including pull tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to Bingo." Electronic, computer, or other

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electronic aids for Bingo games are also under this class. Finally, nonbanking card games are permissible under Class II gaming. Banking card games are described as those games where the players play against the house (e.g., casino) and the house acts as the bank. Nonbanking card games are defined as card games in which players play against each other.

- Class III gaming is all other types and forms of gambling, including high stakes casino-style gambling. Tribes are precluded from conducting Class III gambling unless a compact is negotiated with the State.

The compacts are to outline what types of games can be played on tribal land and the rules by which gambling activity will be performed. The IRGA gives no specifics as to what is to be included in the compact, but that it is to be negotiated in "good faith." The compacts may contain any provisions agreed to by the individual state and the tribe.

Iowa has compacts in effect with the following tribes:

TRIBE	DATE COMPACT APPROVED	EFFECTIVE THROUGH
Omaha Tribe of Nebraska	2/24/92	12/31/96*
Sac and Fox Tribe of the Mississippi in Iowa	4/24/92	3/3/94
Winnebago Tribe of Nebraska	4/22/92	6/30/98

\* If the term of the management contract is for 7 years, the compact will be effective through 12/31/98

Because of the Sovereign Nation status of the Indian tribes, the State may collect no tax from the tribes for this activity, Section 422.25 of the Code of Iowa exempts State, federal, county, and municipal governments from remitting any sales tax, and the courts have ruled the Indian tribes are sovereign governments. Further, the IGRA expressly states that any attempt by states to tax tribal gaming revenues would be considered a lack of good faith in the negotiation of a compact.

**CURRENT SITUATION**

Currently, the State has 1.00 FTE position to monitor compliance with the compacts. This position was funded from the excursion boat budget unit of the Racing and Gaming Commission appropriation for FY 1993. The DIA requested 1.67 FTE positions and \$75,737 in funding to perform this function in FY 1994; this request was denied by the Legislature. Members of the Regulation Appropriations Subcommittee expressed concern about regulating an industry over which the State has no legal authority. If the tribes are

found to be in violation of the compact agreements, cancellation of the compact would be the only legal recourse available if the tribes did not comply. Further, the Subcommittee reasoned this activity was performed without new funding in FY 1993. The Governor indicated in his veto message for the Regulation Appropriation Bill that he is "committed to monitoring compliance with the compacts and will dedicate the resources necessary to do so."

While the State may not enforce State laws on tribal lands without congressional authorization and/or tribal consent, the Legislature approved a \$35,000 increase, from \$23,750 to \$58,750, to Tama County for the support of a law enforcement official assigned the additional responsibility of the Tama reservation.

### **ALTERNATIVES**

1. The excursion boat budget unit is based on regulation for 5 boats. Currently, 3 are operational and 1 is in the beginning process of licensure with the Iowa Racing and Gaming Commission. In FY 1993, the monitoring position was funded through the excursion boat budget unit. One FTE position was charged with the added responsibility of monitoring the casino activity. Since the riverboats are assessed fees in an amount equal to the cost of regulation, this position was apparently reimbursed by the excursion boats in FY 1993. This activity must be funded independent of the excursion boat appropriation, possibly through an appropriations transfer to the DIA or backed out when the fees are assessed the boats.
2. Practical experience has indicated a willingness on the part of the tribes to assist in solutions management when approached by local or State governments. Those involved with this type of gaming agree that when asked to share in the solution, tribes are open to suggestions of mutual contribution. Wisconsin, for example, has informal agreements with several of the tribes operating Class III gaming to contribute toward the cost of regulation. Minnesota tribes contribute to the State for regulatory activities. Washington State has a formal agreement whereby the tribes contribute to the State to help defray the costs associated with regulation. This alternative is strictly at the will of the tribes, as any contribution must be voluntary.
3. Connecticut is currently seeking a percentage of the revenues from the Indian-operated casinos in the State. Contacts following this negotiation agree this will likely be tested in the courts. The ambiguities in the IGRA are certain to be clarified in this, if not other, cases in the near future.

### **BUDGET IMPACT**

As the level of Class III gaming activity is augmented by new tribes opening new operations, the requirements for monitoring compliance with State compacts will also increase. At the present level of activity, the DIA anticipates 1 field auditor, or gaming representative as this class will now be called, and 0.67 FTE pari-mutuel clerk will be sufficient to monitor the tribes' adherence to the terms of the compacts. The FY 1994 budget request included \$75,737 for this activity.

Currently, the 1.0 FTE position responsible for performing this function is paid on a per day basis. Approximately \$13,500 has been expended through May 20 for FY 1993. Travel expenditures tracked through the accounting system are estimated at under \$5,000. Because of the dual responsibilities of this individual, Indian casinos and involvement in excursion boat regulation, the direct cost of the compact monitoring can not be determined.

