

## 97-14 Wisconsin Gaming Board

### Summary

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The Wisconsin Gaming Board, created by 1995 Wisconsin Act 27 as a successor to the Wisconsin Gaming Commission, is responsible for the oversight and regulation of all racing, on-track pari-mutuel wagering, and charitable gaming, as well as coordination of the State's Indian gaming regulatory activities. The Gaming Board consists of five part-time, non-paid members who are appointed to four-year terms by the Governor, with the advice and consent of the Senate. The Board is assisted by an Executive Director and 52.45 authorized full-time equivalent staff. The Board's currently authorized operating budget is approximately \$3.9 million.

We have issued an unqualified opinion of the Gaming Board's financial statement of revenues, expenditures, and changes in the program balance—budgetary basis of the three programs it administers—Racing, Charitable Gaming, and Indian Gaming—for fiscal year (FY) 1994-95 and FY 1995-96.

The Gaming Board's responsibilities related to racing include licensing all racetrack owners, managers, and individuals in racing-related occupations; determining the types of racing and wagering permitted at licensed tracks; protecting the public from unfair or illegal gaming operations; and ensuring the humane treatment of racing animals. Its expenditures for regulating the racetracks are funded by racing revenues, which are generated through wagers collected from racetrack patrons. State revenues from pari-mutuel racing also include various taxes, license fees, unclaimed prizes, and a portion of funds not paid to winning ticket holders because of rounding. Our review of pari-mutuel tax revenue, which is deposited directly in the State's General Fund, shows a steady decline from \$4.74 million in FY 1994-95 to \$3.64 million in FY 1995-96 and an estimated \$2.6 million in FY 1996-97.

At the peak of pari-mutuel activity in Wisconsin, five greyhound racetracks were in operation; however, the Fox Valley Greyhound Park closed in August 1993, and the Wisconsin Dells Greyhound Park closed in September 1996. Therefore, given the current status of greyhound racing in Wisconsin, it is not likely that any significant increases in racing revenues will occur in the future.

Charitable gaming includes bingo, raffles, and amusement devices that reward a player's skill with prizes worth \$5 or less, which are known as crane games. License and fee revenues from these activities are used to support the Charitable Gaming program within the Gaming Board, which licenses charitable organizations to hold bingo games and conduct raffles and which registers crane games. In addition, the Gaming Board receives a 2 percent bingo tax based on gross bingo revenues, which is deposited directly into the State's General Fund. Like pari-mutuel tax revenues, the State's bingo tax revenues have been declining, from nearly \$566,300 in FY 1994-95 to slightly over \$542,300 in FY 1995-96, although FY 1996-97 estimates indicate a slight increase to \$545,200.

Given the considerable interest in Indian gaming operations in Wisconsin, we have provided background information about Indian gaming and an analysis of the financial statements of 11 tribes' gaming activities. The growth in Indian gaming in Wisconsin has mirrored events nationwide, beginning with high-stakes bingo and expanding to casino games. Indian gaming is governed by the federal Indian Gaming Regulatory Act (IGRA), which Congress enacted in 1988 in response to concerns about the relationship between the states and Indian tribes. IGRA provides that, on Indian lands, Indian tribes have the right to engage in any form of gaming that may be legally conducted by any other person or group in the state. In addition, IGRA provides that the games offered by the Indian tribes be regulated by the terms of agreements negotiated between the states and the tribes, known as gaming compacts.

The Governor, who had been authorized to enter into gaming compacts on behalf of the State by 1989 Wisconsin Act 196, negotiated and entered into compacts with 11 Indian tribes between August 1991 and June 1992. The compacts define allowable types of casino games and establish a tribal and state regulatory and

oversight process. They remain in effect for seven years. Currently, the 11 tribes with signed compacts operate 17 casinos in Wisconsin.

The Gaming Board's activities related to Indian gaming include issuing gaming-related vendor certificates and renewals; inspecting tribal records, such as accounting and contract documentation; testing for compliance with certain aspects of the compacts; and maintaining inventory and control records for all electronic games. In addition, the tribes are required by the compacts to provide both the Gaming Board and the Legislative Audit Bureau with copies of financial and security audit reports for review and comment. An independent financial audit of the records of each tribe's gaming operations is to be performed by a certified public accountant at the close of each tribal fiscal year. A security audit, which is intended to review and evaluate the effectiveness, adequacy, and enforcement of the security of the tribe's gaming operations, must be performed every two years by a qualified independent auditor.

The financial and security audits submitted to the Gaming Board and the Legislative Audit Bureau provide considerable insight into the operations of the casinos. A Wisconsin Attorney General's informal opinion obtained in November 1996 states the Audit Bureau may release data relating to casino operations, in aggregate form, provided that nothing in the disclosure could lead to the identification of the tribe, its members, employees, or operations. Based on data from their financial statements from 1992 through 1996, the five-year period during which the compacts have been in effect, we found:

- the tribes' combined net gaming revenues, after prize pay-outs, increased from \$173.2 million in 1992 to \$682.7 million in 1996, or 294 percent. In total over the five-year period from 1992 through 1996, the tribes generated net gaming revenues of \$2.4 billion.
- the tribes' gaming-related expenses increased from \$113.8 million in 1992 to \$402.6 million in 1996, or 254 percent. Over the five-year period, the tribes' gaming-related expenses totaled \$1.5 billion.
- the tribes' gaming profits, calculated by subtracting operating expenses from net gaming revenues, increased from \$59.3 million in 1992 to \$280.1 million in 1996, or 372 percent. Over the five-year period, net Indian gaming profits totaled \$946.8 million.

The financial statements submitted by the tribes indicate that of these profits, at least \$829.9 million was transferred to other areas of tribal operations or paid directly to tribal members. While the tribes are not required to report how gaming profits have been used, media accounts provide some information on their benefits to tribal members and tribal communities. For example, in 1994, the St. Croix Chippewa Indians of Wisconsin reportedly disbursed \$12,000 to each registered tribal member. Other media accounts indicate the Oneida Tribe of Indians of Wisconsin constructed an \$11.4 million elementary school and developed an office building and business park.

It should be noted that several cautions are necessary in interpreting the financial information contained in the tribes' audited financial statements. First, although all of the statements are prepared in accordance with generally accepted accounting principles, these principles allow for variations in how data are reported. Second, third-party transactions and arrangements can be counted as gaming expenses but result in additional payments to a tribe. For example, some tribes charge their casinos an overhead rate for indirect costs or loan money to various tribal enterprises and later forgive the debt. Third, three tribes have not yet filed their 1996 financial audit reports, so 1996 information is based on projections for these three tribes. Finally, management fees, recorded as expenses in the audited financial statements, have been a significant expense for some tribes but not for others. Three tribes that entered into management contracts with private vendors paid a total of \$182.0 million in casino management fees at some point during the five-year period we reviewed.

When the first compacts were negotiated, the State's primary focus had been identifying allowable types of gaming, defining a basic regulatory framework for oversight of this new industry, and collecting sufficient revenues to cover the costs of regulation. The first of the compacts will expire in August 1998. Negotiations for future compacts could include several legal, financial, negotiating, and other issues that may affect the future of Indian gaming in the state. For example, in April 1993, a constitutional amendment was approved by Wisconsin's voters to limit gambling in Wisconsin to bingo, raffles, pari-mutuel on-track betting, and the current state-run lottery. It is not known at this time if the 1993 amendment could be interpreted to prevent casino games in the negotiation of future tribal-state gaming

compacts. Second, the potential effect of an April 1996 U.S. Supreme Court ruling is not known. In this ruling, the Court indicated that Indian tribes cannot compel states to enter into negotiations for successor compacts. However, if the Governor chooses not to enter into compact negotiations, it may be possible for the federal Secretary of the Interior to intercede.

Of substantial interest in the negotiation process may be questions related to payments made to the State by Indian tribes from their gaming revenues. Under the current compacts, the Gaming Board is to receive a total of \$350,000 annually from the 11 tribes as reimbursement for the State's regulatory costs. However, all tribal regulation fees have not been collected in a timely manner, and the State's regulatory expenditures have been greater than the amounts received for the four-year period from FY 1993-94 through FY 1996-97. In addition, regulatory expenditures currently do not include the full administrative costs of the Indian Gaming program. Three other states have imposed no requirement for tribes to pay state regulatory costs; 12 have imposed no fixed amount but instead require tribes to reimburse full regulatory costs; and 6, including Wisconsin, have negotiated specific dollar amounts or percentages of gaming revenues as reimbursement for regulatory costs. The amounts range from \$150,000 per year in Minnesota to \$5.2 million per year in Connecticut.

A second financial question is whether and in what form other payments should be received from the tribes in exchange for their exclusive rights to conduct casino gaming in the state. Under IGRA, such payment cannot be included as part of the compact. However, two other states—Michigan and Connecticut—have entered into separate arrangements whereby the tribes have agreed to share revenues. Michigan receives 8 percent of the net winnings from slot machines and other games, which totaled approximately \$35 million in FY 1995-96, and local governments in Michigan receive an additional 2 percent of net winnings, which totaled approximately \$8.7 million during the same period. Connecticut receives 25 percent of net casino revenues each year. In 1996, Connecticut received \$208 million in addition to the \$5.2 million received to reimburse regulatory costs.

Other questions that may arise during the negotiation process include:

- Who should negotiate the new compacts and what role, if any, should the Legislature play in either negotiating the compacts or ratifying them if an agreement is reached?
- Should future negotiations be conducted in a public setting?
- Should large and small tribal operations be treated differently in apportioning regulatory costs or other tribal payments?
- Should the biennial security audit requirement be eliminated?
- Should the tribes be required to disclose complete financial information about their gaming operations to the public?
- Should penalties be imposed on the State or the tribes if either fails to meet compact requirements?
- Should additional casino locations and casino games be allowed on newly acquired or existing Indian lands?
- Should other issues be debated as part of the compact negotiations, including but not limited to treaty rights, such as hunting and fishing rights; environmental issues; and tax policy?
- What role, if any, should local units of government have in the negotiation process to help decide the scope and nature of gaming in their communities?
- Should additional attention be given in the new compacts to the issue of compulsive or problem gambling?

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