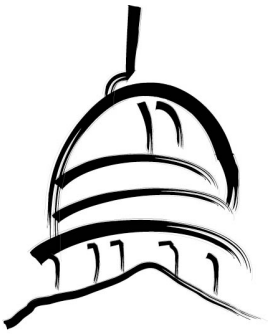
Legal Gambling in Wisconsin

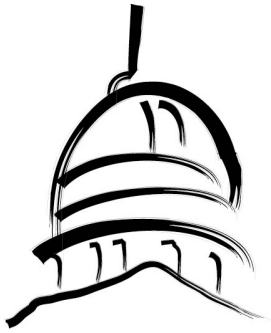


Informational Paper 77

Wisconsin Legislative Fiscal Bureau

January, 2003

Legal Gambling in Wisconsin



Prepared by
Art Zimmerman

Wisconsin Legislative Fiscal Bureau
One East Main, Suite 301
Madison, WI 53703

TABLE OF CONTENTS

Legal Gambling in Wisconsin

Introduction

Prior to 1965, Article IV, Section 24 of the Wisconsin Constitution stipulated that "the legislature shall never authorize any lottery..." This provision was broadly interpreted to exclude all forms of gambling in Wisconsin.

Five separate amendments have since modified this strict gambling prohibition. The first, ratified in 1965, allowed the Legislature to create an exception to permit state residents to participate in various promotional contests. In 1973 and 1977, amendments were passed authorizing the Legislature to allow charitable bingo games and raffles, respectively. Finally, in 1987, two amendments were adopted authorizing: (a) the creation of a state-operated lottery, with proceeds to be used for property tax relief; and (b) privately operated pari-mutuel on-track betting as provided by law.

In addition to these amendments, which expanded legal gambling in the state, Wisconsin voters ratified a constitutional amendment on April 6, 1993, that clarified that all forms of gambling are prohibited except bingo, raffles, pari-mutuel on-track betting and the current state-run lottery. The amendment also specifically prohibits the state from conducting prohibited forms of gambling as part of the state-run lottery. The amendment limits gambling in the state to those forms permitted in April, 1993.

In a parallel development, Indian tribes in Wisconsin and other states, as a result of federal court rulings, were provided the right to negotiate gaming compacts authorizing a wide variety of gambling activities on reservation and federal trust lands. As a result, 11 Indian tribes and bands currently operate gaming facilities in 23 locations, including both gambling casinos and satellite sites offering electronic gaming devices. This paper describes all forms of legal gambling under both state law and the state-tribal gaming compacts.

Prior to October 1, 1992, three agencies performed gambling-related functions: (a) the Department of Regulation and Licensing regulated charitable bingo and raffle activities; (b) the Lottery Board operated the state lottery; and (c) the Racing Board regulated pari-mutuel betting and racing. Effective October 1, 1992, the Wisconsin Gaming Commission, comprised of three full-time members, was created (under 1991 Wisconsin Act 269) to coordinate and regulate all activities relating to legal gambling. This action: (a) eliminated the Lottery and the Racing Boards and transferred their functions to the Commission; (b) transferred the regulatory responsibilities for charitable bingo and raffles from the Department of Regulation and Licensing to the Commission; and (c) made the Commission responsible for the state's regulatory responsibilities under the state-tribal gaming compacts.

Under 1995 Wisconsin Act 27, the 1995-97 biennial budget act, the Gaming Commission was eliminated and replaced by a Gaming Board, effective July 1, 1996. Also, on that date, the administration of the state lottery was transferred

to the Department of Revenue (DOR). All other Gaming Commission responsibilities were transferred to the Gaming Board. Finally, under 1997 Wisconsin Act 27, the 1997-99 biennial budget act, the Gaming Board was eliminated and its functions were transferred to a Division of Gaming in the Department of Administration (DOA), effective October 14, 1997.

This paper describes: (a) the state's current administrative structure relating to legal gambling in Wisconsin; (b) the administration and operation of the state lottery; (c) the operation and regulation of racing and pari-mutuel betting; (d) the development and operation of Indian gaming; (e) the regulation of charitable bingo and raffles; and (f) the respective gambling enforcement responsibilities of the Division of Gaming in DOA and the Department of Justice (DOJ).

The Structure of State Gaming Administration

The Lottery Division under the Department of Revenue

Under 1995 Wisconsin Act 27, the operation of the state lottery was transferred to the Department of Revenue as a separate division within DOR. The Department is authorized one unclassified position for the lottery, a division administrator. The Department, prior to appointing a division administrator, is required to conduct a nationwide search to find the best, most qualified appointee and consider the business management experience, marketing experience, computer experience and lottery management experience of the applicants. No person may serve as the administrator if he or she has been convicted of, or entered a plea of guilty or no contest to, any felony during the immediately preceding 10 years (unless the person has been pardoned); a gambling-related offense; fraud or misrepresentation in any connection; or a violation of lottery law or administrative rules.

The Lottery Division is authorized 109.5 FTE positions in 2002-03, funded from the segregated (SEG) lottery fund. Positions are allocated for administration (15.75 FTE), lottery operations, including vendor fees and retailer compensation (47.75 FTE) and marketing and retailer relations (46.0 FTE). All lottery employees are subject to background investigations and criminal record restrictions. The Division's base funding in 2002-03, totals $62,831,200 SEG and includes $1,989,300 for administration, $49,904,500 for lottery operations and $10,937,400 for marketing and retailer relations.

The Division of Gaming under the Department of Administration

The Department of Administration, through its Division of Gaming, coordinates and regulates activities and promulgates rules relating to racing and pari-mutuel wagering, charitable gaming (bingo and raffles) and crane games. The Division also coordinates the state's regulatory activities under the state-tribal gaming compacts relating to Indian casino gaming.

A total of 42.85 FTE positions are authorized for the Division in 2002-03, including three unclassified positions: (a) a division administrator; (b) a director of the Office of Indian Gaming; and (c) an attorney for the Office of Indian Gaming. Positions are allocated to pari-mutuel racing (22.1 FTE), Indian gaming (14.0 FTE), raffles and crane games (2.75 FTE) and bingo (4.0 FTE), funded from program revenue (PR) associated with each type of gaming. These employees are subject to background investigations and criminal record restrictions. The Division's base funding in 2002-03 totals $3,972,400 [$44,000 general purpose revenue (GPR) and $3,928,400 program revenue (PR)] and includes $2,055,300 PR for pari-mutuel racing regulation, $1,434,600 PR for Indian gaming regulation, $182,500 PR for raffles and crane games

and $256,000 PR for bingo regulation. The GPR funding relates to interest earnings on racing and bingo proceeds that are transferred to the lottery fund.

The pari-mutuel racing program advises DOA on policy and rule-making issues relating to racing and pari-mutuel wagering and regulates the pari-mutuel racing industry in the state.

The Office of Indian Gaming: (a) coordinates state regulation of Indian gaming; (b) functions as a gaming liaison between Indians, the general public and the state; (c) functions as a clearinghouse for information on Indian gaming; and (d) assists the Governor in determining the types of gaming that may be conducted on Indian lands, and in entering into Indian gaming compacts.

The Office of Charitable Gaming administers the regulation of charitable games (bingo, raffles) and crane games. (Crane games are amusement devices, involving some degree of skill, which may reward a player exclusively with merchandise of limited value contained within the device.)

The Wisconsin State Lottery

Constitutional Provision

Authorization of the Wisconsin lottery required the adoption of a constitutional amendment creating an exception to the gambling prohibition. This amendment received voter approval on April 7, 1987, by a vote of 739,181 (65%) to 391,942 (35%).

This amendment allowed the Legislature to create a state lottery, the net proceeds of which must be used for property tax relief. The amendment prohibits the expenditure of any public funds or lottery proceeds for promotional advertising of the lottery and stipulates that "any advertising of the state lottery shall indicate the odds of a specific ticket to be selected as the winning ticket for each prize amount offered." This language appears to allow the state to engage in advertising only to inform potential participants of the lottery's existence, precluding the state from conducting advertising that is promotional in nature. Advertising by private businesses acting as lottery ticket retailers or suppliers must also disclose a ticket's odds of winning; however, the prohibition of promotional advertising does not apply to these businesses.

Lottery Definitions in State Law

A "lottery" is defined under s. 945.01(5)(a) of the Wisconsin Statutes as "...an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill." This definition contains three elements which are essential in any lottery:

1. **Consideration**. Either promoters must receive some commercial or financial advantage or participants must be disadvantaged in some way. An example of a consideration is the price paid for a lottery ticket.

2. **Chance**. The determination of prize winners must be through some random selection process.

3. **Prize**. Selected participants must be awarded some sort of prize. In a lottery, prizes may range from $1 to large cash amounts.

Chapter 945 of the statutes, which prohibits anyone from conducting or participating in a "lottery," also specifies that a lottery does not include bingo and raffles, pari-mutuel wagering or the state lottery or any multijurisdictional lottery conducted under Wisconsin law. (A "multijurisdictional" lottery pertains to games in which Wisconsin participates in conjunction with another state of

the United States of America, the District of Columbia, the Commonwealth of Puerto Rico or any territory or possession of the United States of America or the government of Canada or any Canadian province.)

The types of games that may be offered to players of the state lottery are restricted, under s. 565.01(6m) of the statutes, by defining the state lottery as an enterprise, including a multijurisdictional lottery in which the state participates, where the player, by purchasing a ticket, is entitled to participate in a game of chance in which any of the following applies:

1. The winning tickets are randomly predetermined and the player reveals preprinted numbers or symbols from which it can be immediately determined whether the ticket is a winning ticket entitling the player to win a prize, including an opportunity to win a prize in a secondary or subsequent chance drawing or game.

2. The ticket is evidence of the numbers or symbols selected by the player or, at the player's option, selected by a computer, and the player becomes entitled to a prize, including an opportunity to win a prize in a secondary or subsequent chance drawing or game. The player wins if some or all of the player's symbols or numbers are selected in a chance drawing or game, if the player's ticket is randomly selected by the computer at the time of purchase or if the ticket is selected in a chance drawing.

This definition is consistent with the types of lottery games that have been conducted by the Wisconsin state lottery since its inception. The state lottery cannot include any of the following games or games simulating any of the following games:

1. Any game in which winners are selected based on the results of a race or sporting event.

2. Any banking card game, including blackjack, baccarat or chemin de fer.

3. Poker, roulette, craps or other dice games, keno, bingo 21, bingo jack, bingolet or bingo craps.

4. Any game of chance played on a slot machine or any mechanical, electromechanical or electronic device that is generally available at a gambling casino.

5. Any game or device that is commonly known as a video game of chance, a video gaming machine or a video gambling machine, except a video device authorized by the Department to permit the sale of tickets for an authorized game if the device does not determine or indicate whether the player has won a prize.

6. Any game that is similar to a game identified above.

7. Any other game that is commonly considered to be a form of gambling and is not substantially similar to a game that the Department has the authority to conduct under state law.

The Legislature cannot pass any bill that authorizes the conduct of any game specified in 1 through 7 above unless, prior to the passage of that bill and during the same legislative session, a bill requiring a statewide advisory referendum on whether such a game should be authorized is enacted and the advisory referendum is held.

The definition of the state lottery does not affect the provisions of any Indian gaming compact entered into by the state before January 1, 1993.

Wisconsin Lottery Games

The state lottery offers two types of instant games, "scratch" ticket games and pull-tab games. In the scratch games, participants purchase a card with a latex covering, which is scratched off to reveal the prize, if any, that is won. Depending on

the game, tickets cost $1, $2, $3 or $5. The state lottery also conducts a weekly television show where selected participants in the instant games can win additional prizes. In 2001-02, scratch game sales amounted to $233.6 million and accounted for 54.6% of total lottery sales.

Pull-tab games are played with "break-open" tickets that are made of laminated paper partially perforated to permit strips to be torn from one side to reveal the underlying play symbols, from which it can be immediately determined whether the ticket is a winner. Pull-tab tickets may only be redeemed at the place the ticket is purchased. In 2001-02, pull-tab game sales amounted to $4.6 million and accounted for 1.1% of total lottery sales.

The state lottery also offers "on-line" games. In these games, tickets are distributed from terminals linked to the state lottery's central office computer (there are currently about 3,380 terminals). Participants select a combination of numbers (or have a computer randomly select the numbers) from a larger field. Periodic drawings are held to determine the winning combinations. There are two basic types of on-line games. In daily or weekly draw games, prizes are awarded to winners with no carryover to subsequent drawings. In "jackpot" games, the odds against selecting the correct combination of numbers are higher, so there may be no winner among the participants in a given drawing. When this occurs, the prize money is added to the amounts from subsequent drawings until a winner emerges.

The state currently offers four daily or weekly draw games (SuperCash, Daily Pick 3, Daily Pick 4 and City Picks) and two jackpot games (Powerball and Wisconsin's Very Own Megabucks). The Powerball game is a multi-state game, while the others are Wisconsin-only games. In 2001-02, on-line game sales amounted to $189.3 million and accounted for 44.3% of total lottery sales.

The state lottery began selling tickets September 14, 1988. Total lottery ticket sales for the years 1988-89 through 2001-02 are indicated in Table 1.

Table 1: Wisconsin Lottery Ticket Sales

Fiscal Year	Instant Games	On-Line Games	Totals
1988-89	$230,365,300	$0	$230,365,300
1989-90	182,674,800	126,923,100	309,597,900
1990-91	230,724,800	160,672,200	391,397,000
1991-92	289,685,900	159,370,500	449,056,400
1992-93	310,951,800	184,180,100	495,131,900
1993-94	285,317,800	210,203,500	495,521,300
1994-95	320,356,100	198,558,900	518,915,000
1995-96	310,401,700	171,722,300	482,124,000
1996-97	273,413,600	157,677,500	431,091,100
1997-98	252,915,500	165,724,800	418,640,300
1998-99	230,817,600	197,378,500	428,196,100
1999-00	241,040,900	165,629,300	406,670,200
2000-01	237,944,200	163,244,400	401,188,600
2001-02	238,214,000	189,336,300	427,550,300

Statutory Provisions

Although the constitutional amendment authorized a lottery, legislation was needed to create the lottery and specify the details of its operation. The following sections briefly outline the major provisions of the current state lottery statutes.

Administration by the Department of Revenue. The Department of Revenue has the responsibility for operating the state lottery and has certain oversight responsibilities under current law. DOR has broad authority to promulgate rules relating to implementing the lottery statutes. The Department is required to adopt rules governing specific aspects of the lottery's management and operations, including rules for: (a) establishing a plan of organizational structure for lottery division employees; (b) selecting retailers; (c) establishing requirements for information to be submitted with a bid or proposal by a person proposing to contract

with the state lottery; (d) determining the types of lottery games to be offered; (e) defining the terms "advertising" and "lottery shares;" (f) establishing the circumstances and procedures under which a retailer may not be reimbursed if he or she accepts and directly pays a prize on an altered or forged lottery ticket or lottery share; (g) providing for terms of lottery retailer contracts for periods that are shorter than three years; (h) establishing the retailer performance program; and (i) establishing goals to increase the total amount of expenditures for advertising, public relations and other procurements that are directed to minority businesses, the number of retailers that are minority businesses and the number of employees of the lottery division who are minority group members. Additional rules relating to the operation of the state lottery may be promulgated by DOR.

The Department is also authorized to: (a) approve whether lottery functions are to be performed by DOR employees or provided under contract; (b) approve a major procurement contract, if the Department of Administration delegates responsibility for the procurement process to DOR; (c) approve the features and procedures for each lottery game; and (d) conduct hearings and render final decisions relating to the suspension or termination of a lottery retailer contract.

Lottery Procurements. The lottery division administrator (subject to approval by the Secretary of Revenue) can determine whether lottery functions will be performed by DOR employees or be provided under contract with private businesses or individuals. However, no contract may provide for the entire management or operation of the lottery by any private person.

Major procurements for the lottery are made by the Department of Administration (DOA), unless DOA delegates this authority to DOR. Major procurements are defined as materials, supplies, equipment or services which are unique to the operation of the lottery and not common to the ordinary operations of other state agencies. Other goods and services used by the state lottery are subject to normal state purchasing procedures. DOA may not contract for financial auditing or security monitoring services, except that, if DOA delegates the procurement process to DOR, then DOR may contract with DOA for warehouse and building protection services relating to the state lottery.

DOA must solicit separate bids or proposals for management consultation services, instant lottery ticket supplies and services and on-line services and supplies. Major procurement contracts must be awarded using a formula based on: (a) cost; (b) the proposed vendor's technical capability and expertise; (c) the integrity, reliability and expertise of the proposed vendor; (d) security considerations; and (e) the vendor's financial stability.

Like lottery employees, major procurement vendors are subject to background investigations and criminal record restrictions. Major procurement vendors are also required to establish an office in Wisconsin.

Conflict of interest provisions prohibit a vendor selected to provide management consultation services from submitting a bid or proposal to provide other supplies, goods or services under a major procurement contract or to have an ownership interest in any vendor under such a contract or submitting a bid for such items. In addition, conflict of interest provisions apply to the employees in the lottery division in DOR, the Executive Assistant, the Secretary and the Deputy Secretary of DOR.

Lottery Retailers. Under state lottery administrative rules, retailers enter into contracts with the state lottery for the sale of lottery tickets to the public. Under rules, fees may be imposed for

the initial retailer application and, in addition, a second fee for a three-year certificate of authority, which must be displayed at each sales location. Currently, the initial contract application fee is $75. The certificate of authority fee of $25 per sales location is imposed when a contract is awarded or renewed. Retailer contracts typically run for three years, although other lengths can be used to stagger contract expiration dates.

Retailer selection must provide for the convenient availability of lottery tickets to prospective buyers. Rules relating to retailer selection must be based on objective criteria and may not limit the number of retailers in a municipality solely based on its population. The rules must also establish requirements considering: (a) financial responsibility; (b) security; (c) accessibility; (d) the sufficiency of existing retailers to serve the public; (e) expected sales volume; (f) ensuring that there will not be an undue concentration of retailers in any geographic area of the state; and (g) additional qualifications (determined by rule).

A retailer contract may be terminated or suspended if a retailer has done any of the following: (a) violated lottery statutes or rules; (b) failed to meet retailer qualifications; (c) endangered lottery security; (d) engaged in fraud, deceit, misrepresentation or other conduct prejudicial to public confidence in the lottery; (e) failed to accurately account for lottery tickets, revenues or prizes; (f) is delinquent in making payment of lottery ticket revenues; or (g) violated contractual provisions in a manner that constitutes grounds for termination or suspension. In addition, the lottery administrator can suspend or terminate a contract, without prior notice or hearing, if he or she determines that such action is necessary to protect the public interest or the security, integrity or fiscal responsibility of the state lottery. In this circumstance, the retailer can have such a suspension or termination reconsidered by the lottery administrator and, if necessary, reviewed by DOR through a hearing process.

No retailer contract may be entered into with a person who is less than 18 years of age or is finally adjudged to be delinquent in the payment of state taxes or unemployment compensation; also, criminal record restrictions apply. There is also a prohibition against entering into a retailer contract with a person engaged in business exclusively as a lottery retailer, unless the contract is on a temporary basis or is with a person with a disability, a group of individuals with disabilities or a nonprofit organization providing services to such persons.

The state lottery may operate retail sales outlets or enter into retailer contracts with state and local governmental agencies. However, under these circumstances, the lottery division administrator must minimize the competitive effect of such sales on sales by private retailers. Retailer contracts with private persons operating activities on state or local government property are also allowed but, in awarding these contracts, the state lottery must give preference to individuals with disabilities and nonprofit organizations providing services to such persons.

Retailer Compensation. Basic retailer compensation is established by statute at 5.5% of the retail price of on-line lottery tickets and 6.25% of the retail price of instant tickets sold by the retailer. A higher rate of basic compensation (currently averaging approximately 26.6%) is permitted to nonprofit organizations selling pull-tab lottery tickets at special events.

Retailer Performance Program. Under 1999 Wisconsin Act 9, the 1999-01 biennial budget act, DOR was provided the authority, effective January 1, 2000, to establish by rule a program for additional compensation paid to retailers who meet certain performance goals identified by the Department. The additional compensation paid to retailers under the program may not exceed 1.0%

of gross lottery sales revenue.

Under Act 9, DOR was required to provide the Joint Committee on Finance with a retailer performance program plan, based on proposed administrative rules for the program, before any funds could be expended. The Joint Committee on Finance approved the proposed program plan on February 24, 2000. Emergency rules initially regulated the program, with final rules promulgated on November 1, 2000. Under these administrative rules, the incentive program provisions first applied to lottery sales on January 1, 2000. The rules for the program require the lottery administrator to document and report, within 90 days of the completion of a fiscal year, the total payments made to retailers under the program. The report must include a breakdown of any incentives paid under the winning ticket incentive, the sales goal incentive and the short-term incentive.

Program eligibility requirements include: (a) a retailer must be a for-profit retailer; (b) the retailer must honor the existing retailer contract and all addenda; (c) the retailer must satisfy any qualifying requirements specific to each component of the program; and (d) the retailer must sell a monthly average of instant tickets in a sales quarter that is not less than the dollar amount established by the lottery administrator. This dollar amount is set at $400, which is consistent with current retailer contract provisions. The rules provide that, in the event the administrator terminates the eligibility or qualification of a retailer under the program, the retailer is entitled to an appeal in accordance with current appeal procedures under lottery rules relating to a contract termination. The right to appeal also includes disputes regarding payments under the program.

The retailer performance program is composed of three components: (a) a winning ticket bonus component; (b) a sales goal incentive component; and (c) a short-term incentive component. The winning ticket and sales goal components are viewed by DOR as the major components of the program, while the short-term incentives are characterized as a minor component of the program designed to support certain lottery products or strengthen sales during certain periods of the year.

Winning Ticket Component. The winning ticket component provides a payment to the retailer selling a winning ticket equal to 2% of the winning ticket value, if the winning ticket value is at least $600. The maximum payment under the winning ticket incentive component is established at $100,000 per winning ticket. A retailer selling an instant ticket qualifying a player for the lottery's TV game show receives a $30 bonus. Under the winning ticket component of the program, retailers received $724,700 in 2000-01 and $780,900 in 2001-02.

Sales Goal Incentive Component. The sales goal incentive component pays bonuses of 10% of sales increases (unless the lottery administrator adjusts the payment percentage to a lower percentage) in three categories of lottery products: (a) instant ticket games; (b) non-jackpot on-line games; and (c) jackpot on-line games. Each lottery product category is treated separately. The specification that the sales goals incentive payments may be adjusted to less than 10% of sales increases is a mechanism to ensure that total payments in a fiscal year will not exceed the 1% of total sales funding limit. Any adjustment must consider historical sales and incentive information and must be applied equally to all retailers receiving payment.

A retailer qualifies for the sales incentive component by establishing a sales history for comparison purposes. In the case of instant and non-jackpot on-line games, sales increases are based on quarterly comparisons; therefore, a retailer's sales in the corresponding quarter of the previous fiscal year would qualify the retailer and

provide a basis for comparison with quarterly sales in the current fiscal year. Alternatively, for new lottery retailers or retailers adding a new product category (other than jackpot on-line games), the full sales quarter immediately prior to the current sales quarter is used for comparison until a corresponding quarter of the previous fiscal year is established.

For jackpot on-line games, sales increases are be based on fiscal year comparisons. For these games, a retailer is required to have no less than 52 weeks of sales history in the previous fiscal year to qualify for sales incentive payments. The Department considers an annual approach to jackpot games more suitable than a quarterly approach because there is a need to smooth out the sales peaks that are an inherent part of jackpot games.

In the case of instant and non-jackpot on-line games, only retailers who increase quarterly sales, as compared to the appropriate quarterly sales history, receive bonus compensation. Similarly, for jackpot on-line game sales, only retailers who increase annual sales, as compared to the previous fiscal year, receive bonus compensation. Payments are made to retailers in the month following the end of each quarter, in the case of instant and non-jackpot on-line games, and in the month following the close of a fiscal year, in the case of jackpot games. Sales goal incentive payments to retailers totaled $3,189,300 in 2000-01 and $3,128,700 in 2001-02.

Short-Term Incentive Component. The short-term incentive component of the program provides bonus payments to retailers who satisfy a specific, short-term performance expectation. The intent of providing short-term incentives is to support certain lottery products or strengthen sales during certain periods of the year through a flexible incentive mechanism that has a limited life cycle. For example, short-term incentives could be used to help reduce the ticket inventory for certain games or support seasonal lottery products.

Under the rules, the lottery administrator may offer a maximum of four, short-term incentives in a fiscal year. A short-term incentive may not continue from one fiscal year to another fiscal year and may not run for more than 13 weeks. The administrator is required to provide retailers with a features and procedures document for each short-term incentive no later than 21 days prior to the start date of the incentive. Each short-term incentive is limited to a maximum of $100,000 in incentive payments. Thus, the maximum fiscal effect in any fiscal year for this component would be $400,000. In 2000-01, no short-term incentive bonuses were paid to lottery retailers. In 2001-02, four short-term incentive programs resulted in payments of $332,100 to retailers

In summary, 2000-01 retailer performance payments totaled $3,914,000 ($724,700 for the winning ticket component and $3,189,300 for sales goal incentives) and 2001-02 payments totaled $4,241,700 ($780,900 for the winning ticket component, $3,128,700 for sales goal incentives, and $332,100 for short-term incentives).

Lottery Games and Prizes. The Department must promulgate rules for the types of games offered by the state lottery. Subject to these rules and the approval of the Secretary of Revenue, the lottery administrator must determine the particular features of and procedures for each lottery game offered. The features and procedures must be in writing, accessible to the public and must include: (a) the theme and name of the game; (b) the price of the lottery tickets; (c) the prize structure, including the number and value of prizes; (d) the frequency of drawings or other winner selections; (e) the method of selecting winners; and (f) the method of making payment to winners.

Lottery tickets cannot be sold to anyone under 18 years of age. However, an adult may give a ticket to a minor. In addition, no employee in the Lottery Division or the Executive Assistant, the Secretary or Deputy Secretary of Revenue and no

member of such a person's immediate family may purchase a lottery ticket.

By statute, total annual lottery prizes must equal at least 50% of gross sales. (In 1999-00, prizes totaled approximately 57% of gross sales.) Prizes under $600 may be redeemed by lottery retailers. Larger prizes must be paid by the state lottery. Lottery winners have 180 days from the date of the drawing in which to claim prizes.

DOR must submit an annual report (no later than March 1) to the Joint Committee on Finance that estimates, for the current and subsequent fiscal years, the following: (a) gross revenue from lottery ticket sales; (b) the total amount to be paid as prizes; (c) the prize payout ratio for each type of lottery game offered; and (d) an evaluation of the effect prize payout ratios have on lottery sales, lottery operating costs and on maximizing the revenue available for the lottery property tax credit. If, within 14 days of the receipt of the report, the Co-chairs of the Committee notify DOR that a meeting of the Committee has been scheduled to review the proposed prize payouts, DOR may proceed with the payout plans for the next fiscal year only upon approval by the Committee. If no meeting is scheduled within 14 days, the payout plans for the following year are considered approved by the Committee.

Additional Options for Prizewinners. Under 1999 Wisconsin Act 9, additional options for prizewinners were provided. These provisions allow lottery prizes to be used as security for a loan or assigned to another person.

A lottery prize winner may use a lottery prize or part of a lottery prize as security for a loan if authorized by a court order. Any prize winner who intends to use part or all of a lottery prize as security for a loan must petition the circuit court of the county in which the prize winner resides or the circuit court of Dane County for a court order confirming the use of a lottery prize as security for a loan.

The court is required to issue an order confirming the use of a lottery prize as security for a loan if certain conditions are met. For example, the prize winner must be represented by independent legal counsel, a copy of the contract that provides for using any part of the lottery prize as security for the loan must be attached to the petition and the contract executed by the prize winner must provide that the prize winner has the right to cancel the contract until midnight of the 3rd business day after the date on which the prize winner entered into the contract. Additional conditions relate to ensuring the payment of claims to, or judgments, liens, security interests, garnishments, assignments or attachments against, all or any part of the lottery prize payments. Finally, requirements are also specified for the contents of the court order, the organization making the loan and the administrator of the lottery.

A second option is that a lottery prize winner, acting as an "assignor," may make a voluntary assignment of a lottery prize or part of a lottery prize if authorized by a court order. Larger lottery prizes associated with the on-line games of Powerball and Megabucks may be paid out in annual installments, usually over a 25-year period, or as a smaller one-time payment, depending on the option chosen by the purchaser. Assignment refers to the transfer to another of any property, in whole or in part, which may be executed for a variety of reasons. Assignment, in the context of lottery prizes, involves the ability of a prize winner to "sell" or assign his or her right to collect all or part of future lottery prize payments to a third party in exchange for a more immediate payment or other return made by the third party to the prize winner. Examples of such third parties could include investors, banks or loan companies. Any assignor who intends to voluntarily assign part or all of a lottery prize to any individual or organization is required to petition the circuit court of the county in which the assignor resides or the circuit court of Dane County for a court order confirming the

assignment.

As with using a lottery prize as security for a loan, the court is required to issue an order confirming the assignment if a variety of conditions are met. Again, the assignor must be represented by independent legal counsel and the assignor has the right to cancel the contract until midnight of the 3rd business day after the date on which the assignor entered into the contract. Additional requirements are also specified for obtaining the court order, the contents of the court order, the individual or organization to whom the lottery prize is assigned and the administrator of the lottery.

Advertising. The Wisconsin Constitution prohibits spending public funds or lottery revenues to engage in promotional advertising of the lottery. Statutory provisions repeat this prohibition and define promotional advertising as "advertising which is for the purpose of inducing persons to purchase lottery tickets or lottery shares." This does not include advertising designed to provide the public with the following information: (a) the fact that the state has a lottery or participates in a multijurisdictional lottery; (b) the locations where lottery tickets are sold; (c) the price of lottery tickets; (d) the prizes or prize structure of the lottery; (e) the type of lottery game and an explanation of how it works; (f) the time, date, and place of conducting the lottery; (g) the winning tickets or ticket numbers or the identity of winners and the amounts won; and (h) how the lottery is operated or how the net proceeds of the lottery are to be used.

Retailers and vendors can engage in promotional advertising of the state lottery; however, such promotional advertising must indicate that it is paid for by the retailer or vendor.

The Wisconsin Constitution also specifies that all lottery advertising must indicate the odds of a specific ticket being selected as a winning ticket for each prize amount offered. By statute, any lottery advertising describing a specific game must include: (a) for games in which the prizes and odds of winning are predetermined, the prize structure, prize amounts and the odds of a specific ticket being selected as a winner; and (b) for games in which the prizes and odds of winning are determined by the number of participants in the game, an explanation that the prize amounts and odds of winning are determined by the number of participants in the game, an explanation of the prize structure and estimates of prize amounts and the odds of winning each prize amount. This information must also be disclosed on lottery tickets. Finally, any lottery informational material must state whether prize amounts are paid in installments and the number of years over which such payments will be made.

The lottery's annual advertising budget totals $4,608,000. In 2001-02, advertising expenditures and encumbrances totaled $4,549,100.

Taxes and Other Withholdings. Lottery ticket sales are exempt from state and county sales taxes; however, lottery winnings may be taxable as income at both the state and federal levels. The lottery is required to withhold state income taxes from lottery prizes of $2,000 or more. Statutory provisions also provide for withholding from certain lottery winnings delinquent state taxes, child support, spousal support, maintenance, family support or other debts owed the state.

Lottery Fund. The lottery fund is a segregated fund, the net proceeds of which are constitutionally required to be used for property tax relief. Under current law, property tax relief is provided through a lottery and gaming credit distributed to owners of primary residences and through a farmland tax relief credit.

Revenues accruing to the lottery fund include: (a) lottery ticket sales and other miscellaneous lottery revenue; (b) the net state revenue relating to

pari-mutuel racing and charitable bingo; and (c) the interest earnings of the fund. Lottery fund appropriations are made for the following: (a) prize payments; (b) retailer compensation; (c) vendor payments for major lottery equipment and data processing; (d) general program operations of the lottery; (e) gaming law enforcement costs of the Department of Justice; (f) lottery credit administration costs of the Department of Revenue; (g) local costs of lottery and gaming credit claim certifications; and (h) property tax relief, including appropriations for the lottery and gaming credit, lottery and gaming credit payments relating to late applications, and the farmland tax relief credit. Further, a lottery fund reserve is statutorily required. Under current law, the Legislature may not enact any bill directly or indirectly affecting the lottery fund if the bill would cause the estimated lottery fund balance on June 30 of any fiscal year to be less than 2% of the estimated gross lottery revenues for that year. This 2% reserve helps to ensure that adequate funds are available for property tax relief in the event that lottery sales decline.

Limit on Administrative Expenditures. The amount paid annually for state lottery administrative expenses (including general program operations and vendor payments for equipment and data processing) may not exceed 10% of yearly gross lottery revenues, unless additional expenditures are approved by the Joint Committee on Finance. Capital expenditures may be amortized in applying the 10% limit. Retailer compensation, and monies appropriated from the lottery fund to the Department of Justice (for criminal enforcement) are not included as lottery expenses under the limitation.

Before January 1 of every even-numbered year, the Department is required to submit a report to the Legislature on the effects on the operation of the lottery of the 10% expense limitation. Administrative expenses, as reported in the Department's December 21, 2001, report, totaled 8.0% of gross revenues in 1999-00 and 8.3% in 2000-01.

Miscellaneous Provisions. State statutes also include provisions relating to the enforcement authority and subpoena power of the Department of Justice, criminal penalties for violation of lottery laws and rules, required financial and performance audits by the Legislative Audit Bureau and other required audits and financial reports regarding the lottery.

Wisconsin Lottery Retailers

In prior years, lottery tickets were distributed to retailers through five regional sales and distribution routes, centered in Eau Claire, Green Bay, Madison, Milwaukee and Rhinelander. While ticket distribution and retailer support is now centralized, it is still helpful to view retailer characteristics by region. Table 2 indicates, for each region of the state, the number of lottery retailers selling one or more types of tickets, including the number of nonprofit organizations selling pull-tab tickets and the total number of on-line retailers.

Property Tax Relief

The Wisconsin Constitution requires that "the net proceeds of the state lottery shall be deposited in the treasury of the state, to be used for property tax relief for residents of this state as provided by law." A particular method to accomplish this directive is not specified. Since the creation of the lottery, the Legislature has appropriated lottery funds for four property tax relief programs. In addition, a gubernatorial veto resulted in the transfer of lottery funds to the general fund in 1991-92. One program, the lottery property tax credit, was restructured under 1997 Wisconsin Act 27 to address a state Supreme Court ruling described below. The credit was restructured again in the 1999 legislative session to address an April, 1999, constitutional amendment, also discussed below. These uses of lottery proceeds from 1988-89

Table 2: Lottery Retailers by Ticket Type as of December, 2002

Region	Scratch Only	Scratch & On-line	Scratch & Pull-tab	Scratch, Pull-tab & On-line	Pull-tab (For profit)	Total Retailers	Pull-tab (Nonprofit Organizations)
Eau Claire	35	388	25	183	10	641	76
Green Bay	22	468	30	221	4	745	88
Madison	26	367	15	150	3	561	60
Milwaukee	47	822	47	451	11	1,378	240
Rhinelander	12	216	23	114	6	371	63
Total	142	2,261	140	1,119	34	3,696	527
Total On-Line Retailers	3,380						

through 2000-01 are shown in Table 3 and are described below.

Lottery Property Tax Credit. Although there have been other uses of lottery proceeds, this credit has been the most significant use of these funds. For the years 1991-92 through 1995-96, the lottery credit provided direct property tax relief in the form of a state credit on property tax bills for primary home owners. However, on October 29, 1996, a Dane County Circuit Court ruled *(Wisconsin Out-of-State Landowners Association, Inc., et al. v. Wisconsin Department of Revenue, et al.)* that the state's lottery tax credit provisions were

Table 3: Lottery Property Tax Relief Appropriations

Fiscal Year	General Equalization School Aids	Farmland Tax Relief Credit	District Attorney Salaries	Transfer to General Fund	Lottery Property Tax Credit	Totals
1988-89	$69,358,500	$0	$0	$0	$0	$69,358,500
1989-90	66,748,300	17,997,600	3,156,900	0	0	87,902,800
1990-91	0	14,745,300	10,276,200	0	0	25,021,500
1991-92	0	14,717,800	0	54,054,800	167,890,500	236,663,100
1992-93	0	15,410,300	0	0	185,021,400	200,431,700
1993-94	0	15,865,900	0	0	153,916,600	169,782,500
1994-95	0	15,547,600	0	0	136,881,800	152,429,400
1995-96	0	15,141,300	0	0	156,778,000	171,919,300
1996-97	0	12,939,200	0	0	975,700	13,914,900
1997-98	0	11,118,700	0	0	205,777,200	216,895,900
1998-99	0	11,218,200	0	0	142,682,300	153,900,500
1999-00	0	0	0	0	216,255,200	216,255,200
2000-01	0	11,748,000	0	0	90,009,300	101,757,300
2001-02	0	13,744,600	0	0	105,248,700	118,993,300
2002-03*	0	18,487,400	0	0	106,484,700	124,972,100
Totals	$136,106,800	$188,681,900	$13,433,100	$54,054,800	$1,667,921,400	$2,060,198,000

* Estimated

unconstitutional because they violated the uniformity clause of the state Constitution, which requires that all classes of property be taxed in a uniform manner. The lottery tax credit benefited only the owners of principal residential dwellings. (The credit was determined by multiplying the local school tax rate by the estimated fair market value, but not exceeding a credit base established under law, of every parcel of taxable property on which a principal dwelling was located and for which a claim for the credit was made by its owner.)

The lottery tax credit was not applied to 1996 tax bills and the funds available for 1996(97) lottery property tax relief ($125.2 million plus a 2% reserve) remained in the lottery fund. (The $975,700 in property tax relief expenditures made in 1996-97, related to prior year adjustments and credit administration costs.) Under 1997 Wisconsin Act 27, a new lottery credit distribution mechanism was provided that extended lottery credits to all taxable properties (by multiplying the local school tax rate by the estimated fair market value of the property, but not exceeding a credit base established under law). Under this distribution mechanism, lottery property tax credits totaled $205.8 million in 1997-98 and $142.7 million in 1998-99.

On April 6, 1999, state voters approved an amendment to the Wisconsin Constitution relating to the use and distribution of gaming proceeds. The amendment required that state revenues from the lottery, pari-mutuel wagering activities and charitable bingo, including interest earnings, be used for property tax relief, with the exception of funds used for lottery operations and the regulation and enforcement of these gambling activities. The amendment also specified that the distribution of monies for property tax relief may not be based on the recipient's age or income and is not subject to the rules of uniform taxation required under Article VIII, Section 1, of the Wisconsin Constitution.

Under 1999 Wisconsin Act 5, a number of provisions relating to the administration and use of gambling revenues, including provisions relating to the lottery property tax credit, were enacted to reflect these new Constitutional requirements. The lottery credit was renamed the lottery and gaming credit and now applies only to property used as the owner's principal dwelling. Act 5 also provided for lottery gaming and credit certification payments to reimburse counties and cities in 1999-00 for certifying principal dwellings (at a rate of $0.70 for each certification) that would qualify an owner for the lottery and gaming credit. These reimbursements totaled $889,900 in 1999-00. The certification reimbursement is authorized to be made in 1999-00 and every fifth year thereafter. In addition, Act 5 created and amended appropriations to effectuate the Constitutional requirements for state gaming revenue to be used for property tax relief. These provisions direct that available pari-mutuel- and bingo-related revenue, including interest earnings, be transferred to the lottery fund.

In addition to these Act 5 provisions relating to the lottery and gaming credit, the 1999-01 biennial budget act (1999 Wisconsin Act 9) appropriated general fund revenue for various lottery operating expenses and for the farmland tax relief credit to effectuate a larger distribution under the lottery and gaming credit. Under these provisions, the credit in 1999-00 increased to $216.3 million. In 2000-01, lottery expenses are once again funded from the segregated lottery fund. This change, along with a significantly lower opening balance and smaller net proceeds in 2000-01 than in 1999-00, resulted in a smaller lottery and gaming credit (certified at $89.7 million in October, 2000).

[For additional information and a more detailed discussion of the lottery and gaming credit, see Legislative Fiscal Bureau Informational Paper #21 entitled "State Property Tax Credits."]

Farmland Tax Relief Credit. The farmland tax relief credit was created in the 1989-91 budget. Act

5 modified the credit by replacing the existing credit reimbursement rate, which equaled 10% of first $10,000 in property taxes. Under the modifications, the reimbursement rate on the first $10,000 in property taxes is determined annually by DOR at a rate that will be sufficient to distribute the funds available for credit payments in that year. This was set at $15 million for claims filed for tax year 1999. For each year thereafter, annual credit payments are to total $15 million plus an amount equal to the amount estimated to be expended in the previous year minus the actual expenditures for the credit in the previous year. For tax year 2002, with $18,487,700 available for distribution, DOR established the credit reimbursement rate at 30% of the first $10,000 in property taxes. Act 5 also increased the maximum allowable credit from $1,000 to $1,500.

The farmland tax relief credits are funded from a sum sufficient appropriation from the segregated lottery fund, except for 1999-00, when the credit was funded from general fund revenues. [For additional information and a more detailed discussion of the farmland tax relief credit, see Legislative Fiscal Bureau Informational Paper #25 entitled "Farmland Preservation and Tax Relief Credits."]

General Equalization School Aids. The first use of lottery proceeds was to offset general purpose revenue (GPR) funding for general equalization school aids. The lottery fund expenditures were part of the state aid payments made to local school districts. Funds were expended for this purpose in both 1988-89 and 1989-90.

District Attorney Salaries. District attorneys, and their deputies and assistants, who had formerly been county employees, became state employees on January 1, 1990. During 1989-90 and 1990-91, lottery proceeds were used to fund the salaries and fringe benefits of these employees.

Transfer to the General Fund. As partially vetoed, 1991 Wisconsin Act 39 would have transferred $83.2 million from the lottery fund to the general fund in 1991-92. In his veto message, the Governor directed the Secretary of DOA to use these revenues to partially fund an increase in the 1991-92 school aids appropriation. No mechanism existed, however, by which these monies could be specifically earmarked within the general fund for school aids. In a May 4, 1992, Dane County Circuit Court ruling *(Branshaw, et al. v. Wisconsin Department of Administration)*, the Court determined that the use of lottery proceeds for general equalization school aids violates the constitutional requirement that lottery revenues be used for property tax relief. (The Court found that using lottery funds for school aids, which the court viewed as a traditional state program, did not provide property tax relief that was "separate, different and extra" as intended by the voters in approving the lottery constitutional amendment.) Prior to the decision, $54.1 million of the $83.2 million had already been transferred from the lottery fund to the general fund. The Court's decision prevented the transfer of the remaining $29.1 million.

Current Fund Condition

Table 4 shows the lottery fund condition for the years 2001-02 (actual) and 2002-03 (estimated), including revenues, expenditures and the appropriations from the lottery fund for property tax relief.

Pari-Mutuel Wagering and Racing in Wisconsin

Constitutional Provision

Authorization of pari-mutuel on-track wagering in Wisconsin required the adoption of a constitutional amendment creating an exception to the gambling prohibition. This amendment received voter approval on April 7, 1987, by a vote

Table 4: Lottery Fund Condition

	2001-02	2002-03
Fiscal Year Opening Balance	$12,670,500	$17,698,700**
Operating Revenues		
Ticket Sales	$427,550,300	$412,712,900
Retailer Fees and Miscellaneous	101,700	100,600
Gross Revenues	$427,652,000	$412,813,500
Expenditures		
Prizes	$243,049,700	$235,235,000
Basic and Bonus Retailer Compensation	30,378,700	29,059,500
Vendor Payments	12,488,300	12,694,400
General Program Operations	20,688,700	21,510,500
Appropriation to DOJ - Lottery Enforcement	287,400	289,100
Appropriation to DOR - Credit Administration	194,000	222,000
Program Reserves	0	412,200
Total Expenditures	$307,086,800	$299,422,700
Net Proceeds	$120,565,200	$113,390,800
Interest Earnings	$2,229,100	$1,135,000
Gaming-Related Revenue	$1,589,300	$1,003,900
Total Available for Tax Relief *	$137,054,100	$133,228,400
Appropriations for Tax Relief		
Lottery and Gaming Credit	$104,773,900	$106,334,700
Farmland Tax Relief Credit	13,744,600	18,487,400
Late Lottery and Gaming Credit Applications	474,800	150,000
Total Appropriations for Tax Relief	$118,993,300	$124,972,100
Gross Closing Balance	$18,060,800	$8,256,300
Reserve (2% of Gross Revenues)	$8,553,000	$8,256,300
Net Closing Balance	$9,507,800	$0

* Opening balance, net proceeds, interest earnings and gaming-related revenue.
** The 2002-03 opening balance is adjusted by -$362,100 to reflect a technical adjustment relating to the change in encumbrance balance from 2000-01 to 2001-02.

of 580,089 (52%) to 529,729 (48%).

This amendment specifies that the Wisconsin Constitution's general gambling prohibition "shall not prohibit pari-mutuel on-track betting as provided by law." It also prohibits the state from owning or operating a pari-mutuel betting enterprise or facility and from leasing state-owned land for the purpose of conducting pari-mutuel betting.

Pari-Mutuel Wagering

The term "pari-mutuel" does not refer specifically to racetrack betting or to any particular game or event upon which a bet is made. Rather, it describes a method by which the payout of a wager is determined. Under a pari-mutuel betting system, bettors wager against each other rather than against "the house" as in casino betting. For example, in pari-mutuel greyhound race wagering, the individual bets are pooled and payouts are determined based on the proportion of wagers placed on individual dogs. A winning dog on which very little was bet would pay out at more favorable odds than a dog that was heavily bet upon.

Because bettors wager among themselves in a pari-mutuel gambling system, the racetrack organization has no wagering interest in the outcome of any race. Rather than earning gambling revenue, as do casinos, racetracks retain a fixed percentage of each bet, and also earn admission and concession income. The state receives revenue from pari-mutuel wagering primarily through taxes on bets, unclaimed prizes and various fees.

Statutory Provisions

Although the constitutional amendment authorized the legalization of pari-mutuel betting, enabling legislation was needed to implement the constitutional change. The following sections outline the major provisions of the state racing statutes.

Racing Governance. The Division of Gaming in the Department of Administration coordinates and regulates activities and promulgates rules relating to racing and pari-mutuel wagering. Under prior law, the Wisconsin Gaming Board governed racing and pari-mutuel wagering, charitable gaming and the state's regulatory responsibilities under the Indian gaming compacts. Under 1997 Wisconsin Act 27, the Board was eliminated and its functions transferred to a newly-created Division of Gaming in DOA.

In general, the provisions described below apply to wagering on dog and horse races and the regulation of races where such wagering is authorized.

Licenses and License Fees. The Division of Gaming may issue licenses for the following activities:

1. The ownership and operation of a racetrack at which pari-mutuel wagering is conducted.

2. The sponsorship and management of racing on which pari-mutuel wagering is conducted, other than at fairs.

3. The sponsorship and management of horse racing on which pari-mutuel wagering is conducted and which is located at a fair held by a county, or a county agricultural society, association or board.

4. Engaging in certain racing-related occupations. Licensed occupations must include, but are not limited to: (a) occupations of participants in horse racing, including horse owners or lessees, trainers and their assistants, jockeys, drivers, exercise riders and grooms; (b) occupations of participants in dog racing, including dog owners or lessees, trainers and their assistants, kennel masters and kennel helpers; and (c) veterinarians, race officials and personnel; pari-mutuel personnel; security personnel and persons holding contracts to provide goods and services to licensees. Persons serving under contract with DOA are also subject to conflict of interest provisions.

The statutes prohibit engaging in the activities outlined above without a valid license issued by DOA. The Department may suspend or revoke licenses and impose forfeitures for any violation of

racing law or rules. A license may be denied if the applicant has not made required payments, has violated certain laws, is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or is liable for delinquent taxes.

1. **License to Own and Operate a Racetrack.** In deciding whether to issue a license to own and operate a racetrack that is not at a fair, DOA must consider the competitive effects on other licensees. In general, this license may include horse racing, dog racing or both. Prior to issuing a license, DOA must hold at least one public hearing. In addition, an initial license application must be accompanied by a resolution supporting the application that has been adopted, after a public hearing, by the municipality where the track would be located.

The Department must determine that the following conditions are met before it may issue this license: (a) at least 51% of the ownership interest in the track is held by state residents; (b) the license will not adversely affect the public health, welfare and safety; (c) the racetrack will be operated in accordance with applicable laws; and (d) the applicant is qualified and financially able to operate a racetrack.

For each location, the initial license is valid for five years; subsequent licenses must be renewed annually.

2. **License to Sponsor and Manage Racing**. A license to sponsor and manage racing, other than at fairs, may include horse racing, dog racing or both. The license application must be accompanied by a bond sufficient to guarantee the payment of fees, taxes and other moneys due, including payments to winning bettors and the payment of purses to the owners of winning animals. In issuing a license, DOA must hold at least one public hearing and must determine that: (a) the license will not adversely affect the public health, welfare and safety; (b) the applicant will conduct races in accordance with applicable laws; and (c) the license will not create competition that will adversely affect other licensees.

Only horse racing may be conducted at county fairs. The bonding and public hearing requirements also apply in issuing a license to sponsor and manage racing at a fair; further, the issuance of such a license is subject to county board approval. This license may allow for racing on days on which the fair is held and for two additional periods not to exceed five days each. Either or both of the additional periods may be consecutive with the days of the fair. In assigning these race dates, DOA must consider the competitive effects on other licensees.

A license to sponsor and manage racing (including fairs) must be renewed annually. The statutes prohibit a person from holding more than one license to own and operate a racetrack and one license to sponsor and manage racing (including fairs). If the applicant is a corporation, association, limited liability company or partnership, DOA must determine whether the applicant is the same "person" as another licensee in applying this restriction. Applications for licenses to own and operate a racetrack or to sponsor and manage races must include a statement setting forth the assets and liabilities of the applicant.

In addition to the qualifications outlined above, the statutes specify a number of criminal record restrictions for all licensees and require DOA to establish further qualifications and fees by rule. The statutes also specify the conditions under which a license may be suspended or revoked. License applicants are subject to background investigations, conducted with the assistance of the Department of Justice. DOA must establish, by rule, fees for such background investigations. Table 5 shows the current fees relating to the ownership and operation of a racetrack or the sponsorship or management of racing.

Table 5: Ownership and Management Fees

$25,000	Application fee for a license to own and operate a racetrack (Renewal: $2,500)
25,000	Application fee for a license to sponsor and manage racing (Renewal: $2,500)
45,000	Application fee for a joint license to own and operate a racetrack and to sponsor and manage racing
10,000	Background investigation fee for a license to own and operate a racetrack or to sponsor and manage racing (applicant pays the fee shown or actual costs, whichever is greater)
15,000	Background investigation fee for a joint license to own and operate a racetrack and to sponsor and manage racing (applicant pays the fee shown or actual costs, whichever is greater)
100,000	Original issuance fee for a license to own and operate a racetrack (per location)
50,000	Annual renewal fee for a license to own and operate a racetrack
$125 / per-formance	Performance fee for a license to sponsor and manage racing

The Department may adopt, by rule, conflict of interest provisions for licensees. At least 85% of the employees of a licensee, or of a person providing services to a licensee under contract, who work at a racetrack must have been residents of Wisconsin for at least one year immediately prior to their employment at the track.

Racing Officials. Other than at fairs, the pari-mutuel statutes require that three stewards preside over licensed races. At least two of them must be employed by, or serving under contract with, DOA. Other stewards may be employed by the licensee; however, all stewards are subject to criminal record restrictions and must be approved by DOA. Stewards must ensure that all races are run in accordance with DOA rules, certify official race results, settle disputes regarding races and perform other duties assigned by the Department. Stewards may impose sanctions (license suspensions and forfeitures) on occupational licensees who engage in conduct that adversely affects the integrity of racing or who violate pari-mutuel laws or rules. Licensees who have received steward sanctions can appeal the decision to DOA.

For races held at county fairs, DOA must specify the requirements for stewards, by rule. In addition, DOA must adopt rules relating to other racing officials, fees for services by racing officials employed by, or serving under contract with, the Department and the qualifications of all racing officials.

Minors. No person under the age of 18 years may be admitted to a licensed racetrack unless accompanied by an adult parent, grandparent, great-grandparent, guardian or spouse or by another adult with the written consent of the minor's parent or guardian. Although permitted at a racetrack under these conditions, minors are prohibited from making wagers and receiving payouts on wagers. Licensees are expressly prohibited from knowingly accepting wagers from, and making payouts to, minors. Persons under the age of 16 years may not be employed at a licensed racetrack, other than at fairs. At fairs, this restriction applies only to employment in pari-mutuel wagering activities.

Income Tax. Winnings from pari-mutuel wagers are subject to the state income tax. The holder of the sponsorship and management license at a racetrack must withhold state taxes from payments on winning wagers, if the winnings exceed $1,000.

Simulcasting and Intertrack Wagering. Simulcasting refers to conducting wagering at a Wisconsin-licensed racetrack on horse and dog races that are broadcast from a racetrack in another state. State licensees are also permitted to simulcast their races to any legal, out-of-state wagering entity. Intertrack wagering refers to wagering at Wisconsin racetracks on races conducted at other Wisconsin racetracks. Simulcast and intertrack wagering may be conducted only as an adjunct to live race wagering and may not be conducted in a manner that would supplant live race wagering.

Further, simulcast and intertrack wagering may not be the primary source of revenue at a racetrack. Current provisions described below regarding take-out, pari-mutuel tax, and the 0.75% allocation apply to simulcast and intertrack wagering.

Under the 1995-97 biennial budget act (1995 Wisconsin Act 27), each Wisconsin racetrack may simulcast, with state approval, any number of out-of-state races. (Previously, no more than nine out-of-state races annually could be simulcast at each racetrack). An additional Act 27 provision relating to simulcasting requires that: (a) for a racetrack at which $25,000,000 or more was wagered during the preceding calendar year, at least 250 live race performances must have been conducted at the racetrack during that year; and (b) for a racetrack at which less than $25,000,000 was wagered, at least 200 race performances must have been conducted.

In addition, under a policy change made by the Gaming Commission, effective January 1, 1996, simulcast horse race wagers are taxed at the pari-mutuel tax rate schedule applicable to horse racing. Prior to January 1, 1996, simulcast horse race wagers were taxed at the dog race pari-mutuel rates. Each year, this change results in no pari-mutuel tax on the first $50.0 million in simulcast wagers on horse races at each dog track.

Alcoholic Beverages. Notwithstanding license quotas, municipalities are authorized to issue licenses for the sale of intoxicating beverages at racetracks. Persons under the legal drinking age may be on racetrack premises, even if alcoholic beverages are sold.

Medication and the Humane Treatment of Animals. There are numerous provisions governing the humane treatment of animals, including the medication of or tampering with race animals, the administration of foreign substances, testing for medication or a foreign substance, prohibiting the use of live lures in training race dogs and governing the humane killing of race dogs.

DOA must adopt rules governing the administration of medication and foreign substances to animals at racetracks. The general requirements are that no medication or foreign substance may be administered to an animal within 48 hours prior to its entry into a race and that no animal participating in a race may carry any medication or foreign substance in its body. However, certain exceptions have been made to these provisions. DOA may permit specified levels of procaine and its metabolites, sulfa drugs and their metabolites and polyethylene glycol to be present in a race animal's body if the substance entered the body through the food chain. DOA may also allow any other medication or foreign substance that may enter the animal's body through the food chain that the Department determines will not affect the integrity of a race or be relevant to the wagering public if the medication or foreign substance is present in the animal.

The owner, or the agent or employee of the owner, of a race animal must permit race officials to test race animals for medication or foreign substances. DOA must require that at least one animal per race be tested to determine whether medication or foreign substance violations have occurred. The Department may establish and charge fees for this testing.

Under current law, the state pays the total costs of drug testing. Expenditures in 2001-02 for testing totaled $207,400; the average cost of testing is currently $18.00 per sample.

Miscellaneous Provisions. Pari-mutuel betting and racing statutes also include criminal penalties for violations of pari-mutuel laws and rules, provisions relating to the enforcement authority of the Department of Justice and audit and reporting requirements.

1. **Take-Out**. For straight pools (wagers on a

single animal in a single race), licensees are required to take out a minimum of 17% of the total amount wagered (and up to 20% with DOA approval); the remainder, minus breakage (the rounding down of payouts to the nearest $0.10), must be paid to winning bettors. The take-out for multiple pools (wagers involving more than one animal) is a minimum of 23% (or up to 25% with DOA approval). These provisions apply to both horse and dog racing.

2. Purses. For horse races, at least 8% of the total amount wagered must be used for purses; dog race purses must equal at least 4.5% of the total amount wagered. Purses, which are paid to the animal owners, must be paid from the licensee's take-out.

3. Pari-Mutuel Tax. The most significant source of state revenue from pari-mutuel wagering is the pari-mutuel tax. The tax is calculated as a percentage of the total amount bet (the "handle") and licensees must pay the tax from each day's take-out, under a sliding rate scale. The current rates for both horse and dog racing are outlined in Table 6. All revenues from the pari-mutuel tax are credited to appropriations for the general program operations of DOA (for racing regulation) and DOJ (for racing law enforcement). Pari-mutuel revenue totaled $1.29 million in 2001-02.

Table 6: Pari-Mutuel Tax Rates for Horse and Dog Racing

Amount Wagered on all Previous Race Days During Calendar Year	Tax as Percent of Total Wager
Horse Racing	
$50 million or less	0.00%
$50 million to $100 million	1.00
$100 million to $150 million	2.00
More than $150 million	3.00
Dog Racing	
$25 million or less	2.00%
$25 million to $100 million	2.67
$100 million to $150 million	4.67
$150 million to $200 million	6.67
$200 million to $250 million	7.67
More than $250 million	8.67

4. Allocation for Special Programs. In addition to the pari-mutuel tax, licensees must remit to DOA 0.75% of the total amount wagered within 48 hours of each race day. These revenues are credited to appropriations for the general program operations of DOA (for racing regulation) and DOJ (for racing law enforcement).

5. Breakage. Winning bets are calculated by rounding down to the nearest $0.10. The remainder above the $.10 is termed the "breakage." For example, a winning ticket on a race may be computed exactly at $5.87. The bettor would be paid $5.80 and the remaining $0.07 is the breakage. Licensees are permitted to retain 100% of the breakage. (Prior to July 29, 1995, 50% of the breakage was provided to the state.)

6. Unclaimed Winnings. Winnings on a race that are not claimed within 90 days of the end of a racing year are divided equally between the state and licensee. The state portion is credited to appropriations for the general program operations of DOA (for racing regulation) and DOJ (for racing law enforcement). (Prior to July 1, 2001, all unclaimed winnings were credited to these appropriations.)

Allocation of Amounts Wagered at Fairs. Licensees must take out 20% from all amounts wagered on horse races held at county fairs; the remainder, minus breakage, must be paid to winning bettors. From the take-out, licensees must allocate 8% of the amount wagered for the payment of purses. After the deduction of purses, licensees may retain an amount equal to the costs of conducting racing and pari-mutuel wagering and 50% of the remainder. The other 50% of the remaining take-out must be deposited with DOA to be credited to appropriations for the general program operations of DOA (for racing regulation) and DOJ (for racing law enforcement). The licensee

may also retain the total breakage for each race day.

Admissions Tax; Local Taxes. On each race day when an admissions fee is charged, racetrack owners and operators are required to collect an admissions tax of $0.50 per person. The tax includes persons entering the racetrack on free passes or complimentary tickets. Funds from the admissions tax are to be divided equally between the county and the municipality in which the racetrack is located to defray the costs of law enforcement, traffic control and other municipal expenditures incidental to the conduct of racing.

Counties and municipalities are prohibited from levying or collecting any tax, fee or assessment on pari-mutuel betting or on any admission to a racetrack.

General Program Operations Appropriation and Transfers to the Lottery Fund. On April 6, 1999, state voters approved an amendment to the Wisconsin Constitution relating to the use and distribution of gaming proceeds. The amendment requires that state revenues from the lottery, pari-mutuel wagering activities and charitable bingo, including interest earnings, be used for property tax relief, with the exception of funds used for lottery operations and the regulation and enforcement of these gambling activities. Under 1999 Wisconsin Act 5, a number of provisions relating to the administration and use of gambling revenues were enacted to reflect these new constitutional requirements. The lottery credit was renamed the lottery and gaming credit and now applies only to property used as the owner's principal dwelling. In addition, Act 5 creates and amends appropriations to effectuate the constitutional requirements for state gaming revenue to be used for property tax relief.

As noted above, DOA receives revenue from a number of racing-related sources. These amounts, less the amounts appropriated to DOJ for racing law enforcement responsibilities ($124,900 PR in 2002-03) are credited to a general program operations appropriation for racing (with $2,054,200 PR appropriated in 2002-03). The unencumbered balance in this appropriation account at the end of each fiscal year is now transferred to the lottery fund. In 2001-02, this transfer totaled $1,250,000.

Wisconsin Racetracks

The Racing Board, initially authorized to regulate pari-mutuel racing, began operations in the Fall of 1988. The first candidates for racetrack licensure had to file an application with the Board by January 17, 1989. Subsequent license applications must be filed on or after September 15, but not later than October 15, of any calendar year or by such other date as the state's regulatory agency (now DOA) may declare.

During the initial round of licensure, the Racing Board evaluated applications for 11 greyhound racetrack locations; no applications for horse racetracks were submitted. On May 19, 1989, the Board announced that the following five racetracks would receive licenses:

Racetrack	Opening Date
Wisconsin Dells Greyhound Park (Lake Delton)	April 30, 1990
Geneva Lakes Kennel Club (Delavan)	May 25, 1990
Dairyland Greyhound Park (Kenosha)	June 20, 1990
Fox Valley Greyhound Park (Kaukauna)	August 2, 1990
St. Croix Meadows Greyhound Park (Hudson)	June 20, 1991

Three racetracks subsequently went out of business. The Fox Valley Greyhound Park closed on August 11, 1993, the Wisconsin Dells Greyhound Park closed on September 9, 1996, and the St. Croix Meadows Greyhound Park closed August 9, 2001.

Tables 7 and 8 summarize wagering, attendance

and revenue data relating to pari-mutuel wagering and racing at currently operating racetracks for calendar years 1995 through 2001. Table 7 provides the data for these racetracks combined. Table 8 provides selected data for each racetrack.

Trends in Wagering

As noted above, the prior-law limitation on simulcast races was eliminated under 1995 Act 27, effective July 29, 1995. In addition, effective January 1, 1996, simulcast horse race wagers are taxed at the pari-mutuel tax rate schedule

Table 7: Racing Statistics and Revenue Totals for Wisconsin Racetracks -- 1995 through 2001

	1995	1996	1997	1998	1999	2000	2001
Performances							
Live	1,430	1,304	1,045	1,028	1,050	968	840
Percent Change	NA	-8.8%	-19.9%	-1.6%	2.1%	-7.8%	-13.2%
Simulcast - Horse	1,000	6,649	9,921	9,081	9,055	8,814	7,993
Simulcast - Greyhound	333	2,588	3,695	3,793	4,595	4,562	3,784
Total Simulcast Performances	1,333	9,237	13,616	12,874	13,650	13,376	11,777
Percent Change	NA	592.9%	47.4%	-5.4%	6.0%	-2.0%	-12.0%
Total Performances	2,763	10,541	14,661	13,902	14,700	14,344	12,617
Percent Change	NA	281.5%	39.1%	-5.2%	5.7%	-2.4%	-12.0%
Handle							
Live Handle	$169,070,719	$113,939,972	$89,039,979	$85,745,793	$75,456,933	$63,155,728	$48,531,842
Percent Change	NA	-32.6%	-21.9%	-3.7%	-12.0%	-16.3%	-23.2%
Simulcast - Horse	9,460,752	46,320,991	54,796,437	61,681,692	61,274,264	57,964,498	53,182,572
Simulcast - Greyhound	2,077,968	13,825,208	15,222,456	16,914,184	17,391,115	16,592,752	14,913,634
Total Simulcast Handle	11,538,720	60,146,199	70,018,893	78,595,876	78,665,379	74,557,250	68,096,206
Percent Change	NA	421.3%	16.4%	12.2%	0.1%	-5.2%	-8.7%
Total Handle	$180,609,439	$174,086,171	$159,058,872	$164,341,669	$154,122,312	$137,712,978	$116,628,048
Percent Change	NA	-3.6%	-8.6%	3.3%	-6.2%		
Attendance	1,574,842	1,300,673	1,039,387	1,056,484	960,371	817,788	683,733
Percent Change	NA	-17.4%	-20.1%	1.6%	-9.1%	-14.8%	-16.4%
Average Live Wager	$107	$88	$86	$81	$79	$77	$71
Average Simulcast Wager	7	46	67	74	82	91	100
Public Winnings	$139,467,668	$132,691,890	$121,207,348	$125,616,670	$117,698,255	$105,806,019	$89,988,753
Percent of Total Handle	77.2%	76.2%	76.2%	76.4%	76.4%	76.8%	77.2%
Purses to Dog Owners	8,178,950	6,947,292	5,957,732	6,327,156	5,835,370	5,124,079	4,239,144
Percent of Total Handle	4.5%	4.0%	3.7%	3.9%	3.8%	3.7%	3.6%
State Revenue							
Pari-Mutuel Tax	$4,274,181	$3,371,013	$2,367,631	$2,317,655	$2,075,965	$1,760,384	$1,373,388
Special Programs	1,354,574	1,305,659	1,192,960	1,232,580	1,155,937	1,032,865	874,727
Breakage	213,663	0	0	0	0	0	0
Other State Revenue *	1,753,487	1,922,975	1,655,625	1,657,677	1,673,849	1,510,773	1,372,848
Total Revenues to the State	$7,595,904	$6,599,648	$5,216,216	$5,207,912	$4,905,751	$4,304,023	$3,620,963
Percent of Total Handle	4.2%	3.8%	3.3%	3.2%	3.2%	3.1%	3.1%
Amount Retained by Racetrack **	$26,512,754	$29,066,291	$27,660,756	$28,193,828	$26,682,535	$22,937,911	$19,214,755
Percent of Total Handle	14.7%	16.7%	17.4%	17.2%	17.3%	16.7%	16.5%

* Includes race supervision fees and miscellaneous revenue paid by tracks, other state payments made by individuals associated with pari-mutuel racing operations and unclaimed prizes paid from the handle.

** From retained revenues, tracks must pay such costs as employee compensation, facility maintenance, debt payments and other operating expenses.

Table 8: Summary Data for Individual Racetracks -- 1995 through 2001

	1995	1996	1997	1998	1999	2000	2001
Live Performances							
Dairyland	438	452	443	433	430	365	369
Geneva Lakes	367	351	323	312	334	331	325
St. Croix	363	308	279	283	286	272	146
Wisconsin Dells	262	193	0	0	0	0	0
Simulcast Performances							
Dairyland	525	3,756	5,072	4,595	5,065	5,365	4,932
Geneva Lakes	218	2,510	4,606	4,750	5,452	5,606	5,575
St. Croix	416	1,892	3,938	3,529	3,133	2,405	1,270
Wisconsin Dells	174	1,079	0	0	0	0	0
Attendance							
Dairyland	792,810	714,592	659,898	644,657	573,574	485,999	426,913
Geneva Lakes	362,997	303,885	234,788	267,129	262,295	232,520	210,249
St. Croix	225,932	162,232	144,701	144,698	124,502	99,269	46,571
Wisconsin Dells	193,103	119,964	0	0	0	0	0
Average Live Wager							
Dairyland	$120	$98	$90	$85	$84	$83	$75
Geneva Lakes	105	89	87	78	71	71	67
St. Croix	96	61	63	69	67	62	50
Wisconsin Dells	72	58	0	0	0	0	0
Average Simulcast Wager							
Dairyland	$9	$53	$69	$74	$83	$94	$104
Geneva Lakes	3	27	61	76	76	83	87
St. Croix	12	66	72	75	89	98	114
Wisconsin Dells	3	29	0	0	0	0	0
Total Revenues to the State							
Dairyland	$4,185,845	$3,820,596	$3,215,613	$3,145,687	$2,932,733	$2,539,062	$2,205,380
Geneva Lakes	1,653,425	1,376,745	1,251,948	1,294,653	1,256,446	1,159,011	1,076,968
St. Croix	1,039,724	870,600	748,655	767,572	716,572	605,950	338,614
Wisconsin Dells	716,911	531,706	81,239	0	0	0	0
Amount Retained by Racetrack							
Dairyland	$15,000,642	$18,263,499	$18,448,046	$17,729,960	$16,839,443	$14,566,931	$12,811,172
Geneva Lakes	5,719,286	5,812,925	5,852,739	6,906,482	6,515,506	5,808,943	5,223,955
St. Croix	3,661,980	3,349,792	3,359,971	3,557,386	3,327,586	2,562,037	1,179,628
Wisconsin Dells	2,130,845	1,640,076	0	0	0	0	0

applicable to horse racing. Since the first $50 million in wagers on horse races each year are not taxed under the pari-mutuel tax schedule, it is unlikely that any pari-mutuel taxes will be collected on these proceeds in the future. (Dairyland's simulcast horse race handle, the largest of any Wisconsin racetrack, totaled $36.3 million in 2000 and $36.0 million in 2001.) This situation may create an incentive for racetracks to conduct simulcast horse races.

Calendar year 1996 was the first full year in which the number of simulcast races was not limited and the taxing policy that encourages simulcast horse racing events was in place. With the closure of the St. Croix Meadows racetrack in August, 2001, two racetracks continue to operate: Dairyland and Geneva Lakes. An analysis of the wagering patterns at these two racetracks from 1996 through 2001 (see Table 9) illustrates certain trends in racetrack programming and pari-mutuel

wagering.

Prior to July, 1995, with simulcast races strictly limited, racetrack handle was derived almost entirely from live greyhound racing. This situation has changed significantly, as shown in Table 9. Simulcast handle grew to more than 32% of total handle in 1996 and increased to 57.6% of total handle in 2001. The majority of the simulcast handle for both tracks relates to horse races; although handle for simulcast dog races also increased significantly from 1996 to 2001. Simulcast wagering, then, has become a major portion of handle generated at the two tracks.

Live racing, on the other hand, declined from 1996 through 2001, a trend that has held since 1992. The decline in live handle from 1996 through 2001 exceeds 50.0%. On the one hand, it could be argued that simulcast wagering has helped to stabilize the Wisconsin pari-mutuel racing industry by supplementing racetrack revenue that is otherwise in decline. On the other hand, it could also be argued that simulcast wagering may negatively impact live racing. It appears, for both racetracks, that the decline in live race wagering may be

Table 9: Trends in Pari-Mutuel Wagering – 1996 through 2001

	Calendar Year						% Change
Racetrack	1996	1997	1998	1999	2000	2001	1996-2001
Dairyland							
Live Handle	$69,959,277	$59,364,554	$54,951,796	$48,425,338	$40,523,109	$32,151,716	-54.0%
Simulcast Horse	33,912,301	37,514,817	38,336,405	38,292,797	36,293,602	35,987,107	6.1%
Simulcast Dog	3,961,382	7,782,065	9,213,128	9,261,850	9,165,634	8,442,047	113.1%
Total Simulcast	37,873,683	45,296,882	47,549,533	47,554,647	45,459,236	44,429,154	17.3%
Total Handle	$107,832,960	$104,661,436	$102,501,329	$95,979,985	$85,982,345	$76,580,870	-29.0%
Live Racing as Percent of Total Handle	64.9%	56.7%	53.6%	50.5%	47.1%	42.0%	-22.9%
Simulcast Racing as Percent of Total Handle	35.1%	43.3%	46.4%	49.5%	52.9%	58.0%	22.9%
Geneva Lakes							
Live Handle	$27,081,417	$20,519,324	$20,775,774	$18,651,563	$16,488,144	$14,030,016	-48.2%
Simulcast Horse	7,035,218	10,680,542	15,650,761	14,976,811	14,690,104	13,749,794	95.4%
Simulcast Dog	1,035,542	3,563,247	4,530,407	5,057,773	4,718,655	4,629,243	347.0%
Total Simulcast	8,070,760	14,243,789	20,181,168	20,034,584	19,408,759	18,379,037	127.7%
Total Handle	$35,152,177	$34,763,113	$40,956,942	$38,686,147	$35,896,903	$32,409,053	-7.8%
Live Racing as Percent of Total Handle	77.0%	59.0%	50.7%	48.2%	45.9%	43.3%	-33.8%
Simulcast Racing as Percent of Total Handle	23.0%	41.0%	49.3%	51.8%	54.1%	56.7%	33.8%
Total All Tracks							
Live Handle	$97,040,694	$79,883,878	$75,727,570	$67,076,901	$57,011,253	$46,181,732	-52.4%
Simulcast Horse	40,947,519	48,195,359	53,987,166	53,269,608	50,983,706	49,736,901	21.5%
Simulcast Dog	4,996,924	11,345,312	13,743,535	14,319,623	13,884,289	13,071,290	161.6%
Total Simulcast	45,944,443	59,540,671	67,730,701	67,589,231	64,867,995	62,808,191	36.7%
Total Handle	$142,985,137	$139,424,549	$143,458,271	$134,666,132	$121,879,248	$108,989,923	-23.8%
Live Racing as Percent of Total Handle	67.9%	57.3%	52.8%	49.8%	46.8%	42.4%	-25.5%
Simulcast Racing as Percent of Total Handle	32.1%	42.7%	47.2%	50.2%	53.2%	57.6%	25.5%

related to the increase in simulcast wagering. It also appears that simulcast wagering may have also passed its peak. Total simulcast wagering at the Dairyland racetrack has been declining since its high point in 1999, and simulcast wagering at Geneva Lakes has been in decline since 1998. Total handle for the two racetracks in 2001 is 23.8% less than the total handle was in 1996.

As noted above, there is a statutory provision that simulcast and intertrack wagering may not be the primary source of revenue at a racetrack. Division of Gaming officials indicate that, while simulcast handle in 2001 exceeded 57% of total handle, the actual wagering revenue the tracks derived from live and simulcast racing respectively was approximately equal in 2001.

Indian Gaming Compacts

The gaming compacts negotiated with Wisconsin Indian tribes provide that the state has certain regulatory responsibilities under the compacts. Under 1991 Wisconsin Act 269, the Office of Indian Gaming was created as a unit under the direction of the Gaming Commission (now the Division of Gaming in DOA) to: (a) assume responsibility for the coordination of all the state's regulatory activities regarding Indian gaming; (b) function as an Indian gaming liaison between Indians, the general public and the state; (c) function as a clearinghouse for information on Indian gaming; and (d) assist the Governor in determining the types of gaming that may be conducted on Indian lands and in entering into compacts. Currently, 14.0 full-time equivalent positions are authorized for the Office of Indian Gaming and base funding for the Office in 2002-03 is $1,434,600 PR.

The appearance of casino gambling operations on Indian lands in Wisconsin is part of a national phenomenon that is the result of the enactment of the federal Indian Gaming Regulatory Act and several court decisions. This Act and two key court decisions are described in the next section before turning to a discussion of Indian gaming in Wisconsin.

Indian Gaming Regulatory Act (IGRA)

Enacted as P.L. 100-497 on October 17, 1988, IGRA provides that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity." The act is consistent with a principal goal of federal Indian policy, which is to promote tribal economic development, tribal self sufficiency and strong tribal government. It is also viewed as responsive to the interest many Indian tribes had in using gambling as a means to economic development. In order to provide clearer standards and regulations for the conduct of gaming on Indian lands, IGRA specifies what types of gaming are subject to what types of jurisdiction, defines on what lands Indian gaming may be operated and establishes the requirements for compacts between Indian tribes and the states. These major features are briefly described here.

Three classes of gaming are defined by IGRA that are subject to different jurisdictions and levels of regulation. State-tribal gaming compacts are required for Class III gaming only.

Class I Gaming. Class I games are defined as "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations." Under IGRA, Class I games conducted on Indian lands are within the exclusive jurisdiction of the Indian tribes and are not subject to federal or state regulation.

Class II Gaming. Class II games are defined as

the game commonly know as bingo and includes, if played at the same location, pull-tabs, punch boards, tip jars, instant bingo and other games similar to bingo. It also includes card games that are authorized by the laws of a state or are not expressly prohibited by the laws of a state and are played at any location in a state. However, Class II gaming does not include banking card games (where a player is playing against the "house" rather than other players: for example, baccarat, chemin de fer or blackjack) or electronic facsimiles of any game of chance or slot machines. Class II gaming on Indian lands is also within the jurisdiction of Indian tribes, but is subject to federal provisions under IGRA.

Class III Gaming. Class III games are defined as all forms of gaming that are not defined as Class I or II games. These would include banking card games, electronic or electromechanical games of chance, including slot machines, pari-mutuel racing, jai alai and, generally, all high-stakes, casino-style games. Class III gaming may be conducted on Indian lands if the following conditions are met: (a) the gaming activities are authorized by an ordinance or resolution adopted by the tribe and approved by the Chairman of the National Indian Gaming Commission; (b) the gaming activities are located in a state that permits such gaming for any purpose by any person, organization or entity; and (c) the gaming is conducted in conformance with a state-tribal compact entered into by the tribe and the state.

Generally, gaming may not be conducted on Indian lands acquired after October 17, 1988, by the Secretary of the Interior in trust for the benefit of an Indian tribe unless: (a) the lands are located within, or are contiguous to, the boundaries of a reservation of a tribe on October 17, 1988; or (b) the tribe has no reservation as of this date, but the land is located within the tribe's last recognized reservation within a state or states in which the tribe is presently located. An exception may be made to this rule if the Secretary of the Interior determines that a gaming establishment on newly acquired lands would be in the best interest of the tribe and would not be detrimental to the surrounding community, but only if the Governor of the concerned state concurs in this determination.

The purpose of the state-tribal compact is to govern Class III gaming activities on Indian lands and may include provisions relating to: (a) the application of criminal and civil laws of the tribe and the state to the licensing and regulation of the gaming activities; (b) the allocation of criminal and civil jurisdiction between the state and the tribe; (c) the assessment by the state of amounts necessary to defray the costs of regulation; (d) standards for the operation of gaming activities; (e) remedies for breach of contract; and (f) any other subjects directly related to the operation of gaming activities. A state-tribal compact takes effect only when notice of approval by the Secretary of the Interior of the compact has been published in the Federal Register.

IGRA also prescribes procedures for the negotiation of state-tribal compacts, requires states to negotiate in good faith and requires a mediation process to be utilized, under certain conditions, if negotiations are not successfully concluded. However, a U.S. Supreme Court decision *(Seminole Tribe of Florida v. Florida, et al.*, March 27, 1996) has determined that certain of these provisions are unconstitutional. This decision is discussed in the following section.

Court Decisions

The development of Indian gaming has been subject to various court decisions that have resolved issues relating to jurisdictional disputes over the regulation of Indian gaming activities and the types of games that may be offered on Indian lands. An important standard for subsequent cases was set in a 1987 U.S. Supreme Court decision in *California v. Cabazon Band of Mission Indians.* The case involved California's attempt to require tribes to submit to state and local laws governing

wagering on bingo and card games. The Supreme Court held that the application of a state's criminal laws to Indian gaming would depend on a state's policy toward gambling. If the policy is "criminal-prohibitory," that is, if the state prohibits all forms of gambling by anyone, the state's laws would apply to Indian gaming. If, however, the state's policy is "civil-regulatory," that is, if the state allows some forms of gambling, even gaming that is subject to extensive regulation, the state is barred from enforcing its gambling laws on Indian reservations. California law was characterized by the Court as civil-regulatory; it held, therefore, that California could not enforce its criminal gambling laws against the Cabazon gaming operations.

Congress relied on *Cabazon* in drafting the Indian Gaming Regulatory Act of 1988. The IGRA requirement that state-tribal gaming compacts be negotiated for Class III gaming was the means devised to balance state and Indian interests in the regulation and operation of high stakes gambling. An important interpretation of IGRA was provided in a 1991 Wisconsin case. In *Lac du Flambeau Band of Lake Superior Chippewa Indians and the Sokaogon Chippewa Community v. State of Wisconsin et al.*, the U.S. District Court for Western Wisconsin held that:

"...the state is required to negotiate with plaintiffs (the tribes) over the inclusion in a state-tribal compact of any activity that includes the elements of prize, chance and consideration and that is not prohibited expressly by the Wisconsin Constitution or state law."

This ruling settled a dispute over whether the state had to include casino games, video games and slot machines in its compact negotiations with tribes. The state contended that unless a state grants leave expressly for the playing of a particular type of game within the state, that activity cannot be lawful on Indian lands. The court, however, determined that:

"it is not necessary for plaintiffs to show that the state formally authorizes the same activities plaintiffs wish to offer. The inquiry is whether Wisconsin prohibits those particular gaming activities. It does not."

This ruling applied the *Cabazon* standard of civil-regulatory versus criminal-prohibitory to state policy and concluded that the state's current lottery and pari-mutuel wagering provisions demonstrate that state policy permits gaming in a civil-regulatory sense.

The Indian Gaming Regulatory Act, in conjunction with court decisions prior and subsequent to its enactment, set the stage for the negotiation of Class III Indian gaming compacts in Wisconsin and in other states where such gambling is permitted, even in a restricted manner. However, one important provision of IGRA has been struck down by the U.S. Supreme Court. Under IGRA, states have a duty to negotiate in good faith with a tribe toward the formation of a compact and a tribe may sue a state in federal court in order to compel performance of that duty. A U.S. Supreme Court decision (*Seminole Tribe of Florida v. Florida, et al.*, March 27, 1996) has held, however, that the Eleventh Amendment of the U.S. Constitution (which limits the power of the federal judiciary to hear suits brought against individual states by citizens of another state or subjects of a foreign state) prevents Congress from authorizing suits by Indian tribes against states to enforce legislation enacted pursuant to the Indian commerce clause. The *Seminole* decision would not prevent a state from negotiating or renegotiating a gaming compact in the future. However, if a state fails to negotiate or renegotiate a compact to the satisfaction of a tribe, the tribe would not have recourse in federal court. It is not clear at this time how a failed compact negotiation would be resolved.

Wisconsin Indian Gaming Compacts

Under s. 14.035 of the statutes, the Governor is authorized to negotiate Indian gaming compacts on behalf of the state. The original gaming compacts with the 11 tribes and bands in the state were signed between August 16, 1991, and June 11, 1992, with a term of seven years. As a result, 17 Indian gaming casinos began operation across the state, featuring electronic games and blackjack tables. As of January, 2003, 23 casinos and ancillary sites (sites limited to electronic games) are operational. Based on data from the Office of Indian Gaming, Table 10 lists, for each tribe or band, the name and location of the casinos and ancillary locations and the number of electronic gaming devices and blackjack tables currently operated at each site.

Between February, 1998 and March, 1999, Wisconsin tribes and bands completed new agreements with the state, extending the terms of the compacts for five years. In addition, the Menominee Indian Tribe negotiated additional amendments, dated August 18, 2000, relating to a proposed casino to be operated in conjunction with one of the state's pari-mutuel racing facilities.

The 11 Wisconsin state-tribal gaming compacts contain identical provisions in most respects, but differ in some respects. The 1998/1999 compact amendments modify some provisions of the original compacts and, in addition, create some new features. The following section summarizes major compact provisions, as currently specified under the amended compacts. Additional sections describe the provisions relating to the additional state payments made by the tribes under the

Table 10: Indian Gaming Casinos, January, 2003

Tribe or Band	Casino Name	Casino Location	County	Gaming Devices	Tables
Bad River*	Bad River Casino	Odanah	Ashland	400	24
Ho-Chunk Nation	Ho-Chunk Casino	Lake Delton	Sauk	3,500	48
Ho-Chunk Nation	Rainbow Casino	Nekoosa	Wood	300	0
Ho-Chunk Nation	Majestic Pines Casino	Black River Falls	Jackson	400	12
Lac Courte Oreilles *	Lac Courte Oreilles Casino	Hayward	Sawyer	596	24
Lac Courte Oreilles *	Grindstone Creek Casino	Hayward	Sawyer	100	0
Lac du Flambeau *	Lake of the Torches Casino	Lac du Flambeau	Vilas	1,000	36
Menominee Indian Tribe	Menominee Nation Casino	Keshena	Menominee	600	24
Menominee Indian Tribe	Crystal Palace Bingo	Keshena	Menominee	250	0
Oneida Tribe of Indians	Oneida Bingo & Casino	Green Bay	Brown	2,000	40
Oneida Tribe of Indians	Irene Moore Activity Center	Oneida	Brown	300	8
Oneida Tribe of Indians	Convenience Store - Hwy. 54	Oneida	Outagamie	150	0
Oneida Tribe of Indians	Convenience Store - Mason St.	Green Bay	Brown	750	0
Oneida Tribe of Indians	Convenience Store - Hwy. 29	Oneida	Outagamie	100	0
Oneida Tribe of Indians	Convenience Store - Cty. Rd. E	Oneida	Outagamie	100	0
Stockbridge-Munsee Comm.	Mohican North Star Casino	Bowler	Shawano	1,200	24
Forest County Potawatomi	Potawatomi Bingo Casino	Milwaukee	Milwaukee	1,000	24
Forest County Potawatomi	Northern Lights Casino	Carter	Forest	500	12
Red Cliff *	Isle Vista Casino	Bayfield	Bayfield	300	12
Sokaogon Chippewa Comm.	Mole Lake Regcy. Resort Casino	Mole Lake	Forest	600	12
St. Croix Chippewa Indians	St. Croix Casino	Turtle Lake	Barron	1,200	24
St. Croix Chippewa Indians	Hole in the Wall Casino	Danbury	Burnett	400	9
St. Croix Chippewa Indians	Little Turtle Express Casino	Hertel	Burnett	100	0
Totals				15,846	333

*Band of Lake Superior Chippewa Indians

1998/1999 amendments and the unique features of the Menominee amendments of August, 2000.

Major State-Tribal Gaming Compact Provisions

Sovereign Immunity. Each compact provides that, except as expressly provided for in the compact, neither the state nor the tribe waive their sovereign immunity, under either state or federal law, by entering into the compact. If any enforcement provision of a compact is found to violate the sovereign immunity of the state or the tribe, or if a court should otherwise determine that the state or the tribe lacks jurisdiction to enforce the compact, the two parties are required to immediately resume negotiations to create a new enforcement mechanism.

Term and Renewal. The term of each original compact was for seven years. The amendments extend this term for five years; as a result, the current terms for the 11 compacts extend to 2003 and 2004. The duration is automatically extended for terms of five years unless either party serves written notice of nonrenewal on the other party not less than 180 days prior to the expiration date of the term. If written notice of nonrenewal is given by either party, the tribe may, pursuant to procedures under IGRA, request the state to enter into negotiations for a successor compact. In this event, the state has agreed to negotiate with the tribe in good faith concerning the terms of a successor compact. If the compact is not renewed and a successor compact is not concluded by the expiration date or the term, the tribe must either: (a) cease all Class III gaming upon the expiration date; or (b) commence action in federal court under procedures enumerated in IGRA. If this second option is followed, the current compact remains in effect until the procedures under IGRA are exhausted.

Types of Games Authorized. The compacts specify the Class III games that are authorized to be operated by each tribe or band. These games include: (a) electronic games of chance with video facsimile displays; (b) electronic games of chance with mechanical displays; (c) blackjack; and (d) pull-tabs or break-open tickets, when not played at the same location where bingo is being played. Class III games may not be conducted outside qualified tribal lands, including the use of common carriers such as telecommunications, postal or delivery services for the purpose of facilitating gambling by a person who is not physically present on tribal lands. Tribes are also not allowed to operate any other types of Class III gaming unless the compact is amended.

The compacts provide that a tribe may request that negotiation of a compact be reopened in the event the state commences operation or licenses or permits the operation of other types of games, not currently authorized in the tribe's compact, including any additional games permitted under other state-tribal gaming compacts. Under some state-tribal compacts, tribes are authorized to request annually that the state and tribe discuss and consider the addition of new types of games, if the tribe specifies the need to operate additional games in order to realize a reasonable return on its investment.

Conduct of Games. Under the compacts, general provisions for the conduct of games include: (a) no person under 18 years of age may be employed in the conduct of gaming; (b) no person visibly intoxicated is allowed to play any game; (c) games must be conducted on a cash basis (bank or credit card transactions are permitted); (d) a tribe must publish procedures for the impartial resolution of a player dispute concerning the conduct of a game; and (e) alcoholic beverages may be served on the premises of gaming facilities during the hours prescribed under state law. With two exceptions, the minimum age to play is 21 years. Under the Lac Courte Oreilles and Sokaogon compacts, the minimum playing age is 18 years.

Gaming Procedures and Requirements. The state-tribal compacts also provide detailed

procedures and requirements relating to the operations of Class III games to ensure gaming security and adequate regulatory oversight. Separate requirements are specified for the operation of electronic games of chance and the conduct of blackjack and pull-tab ticket games; however, the conduct of all Class III games must be at a location within the exterior boundaries of the tribal reservation, on tribally-owned land or land held in trust by the United States on behalf of the tribe. These requirements are briefly summarized as follows:

1. **Electronic Games of Chance**. The compacts require that electronic games of chance be obtained from a manufacturer or distributor holding a state certificate required for gaming-related contracts (see below). The electronic game must also be tested, approved and certified by a gaming test laboratory as meeting the requirements and standards of the compact. Provisions also delineate procedures for testing, modifying, installing, operating and removing games from play and specify hardware, cabinet security, software and other requirements. Video games that are not affected by player skill must pay out a minimum of 80% of the amount wagered and games affected by player skill must pay out a minimum of 83% of the amount wagered. An electronic game of chance may not allow a player to wager more than $5 during a single game.

2. **Blackjack**. Under each compact, a tribe is authorized to operate blackjack games at no more than two facilities on tribal-owned land or trust lands unless the state, by amendment of the compact, consents to additional locations. Blackjack may not be operated at any location for more than 18 hours a day. The compacts also define a variety of blackjack terms and specify regulations that apply to players and non-players, the cards used in the games, wagers, playing procedures and payment of winners. Minimum staffing levels for the conduct of blackjack and surveillance requirements are also provided.

3. **Pull-Tab Ticket Games**. When conducted as Class III gaming under the compacts, pull-tab ticket games must be conducted in accordance with the most recently published standards of the American Gaming Regulators Association.

Gaming-Related Contracts. Agreements under which a tribe procures materials, supplies, equipment or services that are unique to the operation of gaming and not common to ordinary tribal operations are defined, under the compacts, as gaming-related contracts. These include, but are not limited to: (a) contracts for management, consultation or security services; (b) prize payout agreements; (c) procurement of materials, supplies and equipment and equipment maintenance; and (d) certain financing agreements related to gaming facilities. Any contract involving consideration exceeding $10,000 requires that the contractor be issued a certificate by the Department of Administration (DOA). Eligibility for a certificate is subject to criminal history and other restrictions to insure the integrity of Class III gaming conducted under the compacts. A person applying for a certificate must provide required information and pay the state for the actual costs of the background investigation. A gaming-related contract must provide that the contract is subject to the provisions of the state-tribal compact and will be terminated if the contractor's certificate is revoked by DOA.

Management contracts for the operation and management of Class III gaming are subject to additional requirements. At least 60 days prior to a tribe's approval of a management contract, background information on the person or corporation to perform the management services must be provided to DOA along with a copy of the contract. A management contract must also provide for: (a) adequate accounting procedures; (b) access to the daily operations and records of the gaming facility by appropriate officials of the tribe, DOA and the Department of Justice; (c) a minimum guaranteed payment to the tribe that has

preference over the retirement of development and construction costs; (d) an agreed ceiling for the repayment of development and retirement costs; (e) a term of five to seven years for the contract depending on capital investment and income considerations; (f) a detailed specification of all compensation to be paid to the contractor; and (g) the grounds and mechanisms for contract termination. Finally, a management contract providing for a fee based on a percentage of the net revenues from gaming activities may not exceed 30% unless the tribe, after consultation with DOA, determines, based on capital investment and income considerations, that an additional fee is required. In no event may such fees exceed 40% of net revenues.

DOA must, in accordance with an Indian gaming compact or with the regulations of or an agreement with, the National Indian Gaming Commission, certify and conduct background investigations of any person proposing to be an Indian gaming contractor. Such persons must be photographed and fingerprinted. The Department of Justice is authorized to submit these fingerprint cards to the Federal Bureau of Investigation. Any certificate authorizing a person to be a gaming vendor is void if the results of the background investigation disclose information that disqualifies the person from being a vendor, under the terms of the gaming compacts.

Employee Restrictions. Under the compacts, the tribes agree that no person may be employed in the operation or conduct of gaming (and the tribes will not permit gaming-related contractors to employ any person) who does not meet criminal history requirements or who, for some reason, may pose a threat to the public interest or to the integrity of the gaming operation. A tribal governing board may waive these restrictions if the applicant or employee has demonstrated to the tribal board evidence of sufficient rehabilitation and present fitness. The tribes have responsibility for investigations and determinations regarding employees. Employees must also be reviewed at least every two years to determine whether they continue to meet these requirements. The Department of Justice must provide a tribe with criminal history data, subject to state and federal law, concerning any person subject to investigation as a gaming employee. The tribes must reimburse the Department for the actual costs of compiling this data.

Audit and Records Requirements. An independent financial audit of the books and records of all gaming operations must be performed by a certified public accountant at the close of each tribal fiscal year. The audit must be completed within 90 days of the close of the fiscal year and copies of any audit reports and management letters must be forwarded to DOA and the State Auditor (Legislative Audit Bureau).

A security audit to review and evaluate the effectiveness, adequacy and enforcement of the systems, policies and procedures relating to the security of all aspects of the tribe's gaming operations must be performed every two years by a qualified independent auditor. The audit must be completed within 90 days of the close of the tribal fiscal year and copies of any audit reports and management letters must be forwarded to DOA and the State Auditor.

Under the compacts, the state also has the right to submit written comments or objections regarding the engagement letters between the tribes and their auditors, to consult with the auditors prior to or following an audit, to have access, upon written request, to the auditors' work papers and to submit written comments or suggestions for improvements regarding the accounting or audit procedures.

The compacts also specify that the state has the right to inspect and copy a variety of tribal gaming records including: (a) accounting and financial records; (b) records relating to the conduct of games; (c) contracts and correspondence relating to

contractors and vendors; (d) enforcement records; and (e) personnel information on gaming employees. The tribes have provided the state with the right to inspect and copy these records and, in return, the state pledges that all such records will not be disclosed to any member of the public except as needed in a judicial proceeding to interpret or enforce the terms of the compacts.

Withholding Wisconsin Income Tax. The tribes must withhold Wisconsin income tax on any payment of a prize or winnings from which it must withhold federal taxes. Withholding is not required from payments made to enrolled members of the tribe or to individuals who have certified that they are not legal residents of the state and who are not subject, under state law, to Wisconsin income tax on such winnings.

Allocation of Criminal Jurisdiction. For the term of the compact, the state has jurisdiction to prosecute criminal violations of its gambling laws that may occur on tribal lands. The consent of the state Attorney General is required before any prosecution may by commenced. The state may not initiate any prosecution against an individual authorized by the tribe, on behalf of the tribe, to engage in Class III gaming activities under the compact (or Class I or II gaming under IGRA). Some compacts specify that the tribe has jurisdiction to prosecute violations of its tribal gaming code against all individuals subject to the tribal code. Each compact provides that the allocation of civil jurisdiction among federal, state and tribal courts does not change.

Enforcement. DOA and the Department of Justice have the right, under the compacts, to monitor each tribe's Class III gaming to ensure compliance with the compacts. Agents of DOA and DOJ are granted access, with or without notice, to all gaming facilities, storage areas, equipment and records. DOA and DOJ are authorized to investigate the activities of tribal officers, employees, contractors or gaming participants who may affect the operation or administration of the tribal gaming. Suspected violation of state or federal law or tribal ordinances must be reported to the appropriate prosecution authorities; suspected violations of the compacts must be reported to DOA. Both DOA and DOJ may issue a subpoena, in accordance with state law, to compel the production of evidence relating to an investigation. The Attorney General is provided jurisdiction to commence prosecutions relating to Class III gaming for violations of any applicable state civil or criminal law or provision of a compact.

Reimbursement of State Costs. The 11 tribes must jointly provide $350,000 annually to the state as reimbursement for the state costs of regulation of Class III tribal gaming under the compacts. Each tribe's share of this total reimbursement amount is calculated annually, based on its relative share of the total amount wagered on tribal Class III gaming statewide during the previous fiscal year. In addition, each tribe must directly reimburse DOA and the Department of Justice for their actual and necessary costs of providing requested services and assistance. These state reimbursement provisions are unrelated to the state payments required under the 1998/1999 compact amendments, which are discussed below.

Dispute Resolution. If either the tribe or the state believes the other party has failed to comply with any requirement of the compact, that party may serve written notice on the other and the tribe and state must meet within 30 days of the notice being served to attempt to resolve the dispute. If the dispute is not resolved within 90 days of the service, either party may pursue other remedies that may be available to resolve the dispute. This procedure does not preclude, limit or restrict the tribe and state from pursuing alternative methods of dispute resolution, if both parties mutually agree on the method.

Some Unique Compact Features. With the

exception of the 2000 amendments to the Menominee compact (described in a separate section below), the 11 state-tribal gaming compacts are very similar to one another in nearly all respects. Some compact differences may reflect a tribe's preference for the wording of a provision or for including a procedure that may or may not eventually be needed. For example, there is some variability in the section of the compacts that specifies the types of Class III games that are authorized. In general, the compacts provide that a tribe may request that negotiation of a compact be reopened in the event the state commences operation or licenses or permits the operation of other types of games, not currently authorized in the tribe's compact, including any additional games permitted under other state-tribal gaming compacts. Under some state-tribal compacts, tribes are authorized to request annually that the state and tribe discuss and consider the addition of new types of games, under certain circumstances. The language in the compacts also varies somewhat in the procedure a tribe would use if new games become subject to negotiation.

Other features of certain compacts reflect unique tribal situations. The most notable of these are described as follows.

1. The Wisconsin Ho-Chunk Nation does not have one distinct tribal reservation; its reservation land is widely separated over at least seven Wisconsin counties. As a result, the original Ho-Chunk Nation's gaming compact allows electronic games of chance to be conducted at not more than four locations on tribal land in Jackson, Sauk and Wood counties. Further, within each of these counties, there are limits on the types of facilities and the number of games that may be conducted at each location. Blackjack is limited to three locations within these counties and the three game sites may not be located in the same county. Also, pull-tab tickets may only be sold at locations authorized for electronic games of chance. Under the original compact, the state also offered to include a fourth location for Class III gaming, but under conditions that were not agreed to by the Ho-Chunk Nation at that time. The compact provision, in this regard, permits a future amendment to enumerate a fourth location. Under the compact amendments, upon delivery to the Governor of resolutions of support from a county, or a county and a city, for authorizing Class III gaming in that county or city, the Governor is required to meet and negotiate in good faith whether the site may be enumerated as a fourth site. If this fourth site is agreed to, negotiations would include, but not be limited to: (a) the suitability of the site for gaming; (b) the fee, if any, to be paid to the state; and (c) the number of Class III games authorized by the compact.

2. The Forest County Potawatomi Community of Wisconsin is limited to 1,000 electronic games of chance and 25 blackjack tables at the Potawatomi facility in Milwaukee. Generally, a tribe may operate as many electronic games of chance as it chooses at each of its gaming facilities. As with other tribes, the Potawatomi Community may conduct blackjack at two other locations on tribal or trust lands within the exterior boundaries of its reservation. Final authorization for the number of electronic games and blackjack tables in Milwaukee was dependent on the delivery of City of Milwaukee and Milwaukee County approval resolutions to the state concerning the removal of prior limitations on Class III gaming at the Milwaukee facility. These resolutions were approved by the city and the county. Upon delivery of the resolutions, the state and tribe also agreed to discuss the inclusion of additional blackjack tables in Milwaukee. The tribe also agreed to limit electronic games of chance at its convenience store enterprises to 50 games at one location in Carter, Wisconsin (although, this ancillary site is now closed).

3. The Oneida Tribe of Indians of Wisconsin specifically prohibits, in its compact, the awarding of a management contract for the operation and management of its gaming operations. This provision reflects the Oneida Tribe's policy that it

should be the sole manager of its gaming operations.

Operations. Under provisions specified in memoranda of understanding concerning technical matters, nine tribes have agreed to utilize, in their casino operations, minimum internal control standards (generally, at least as restrictive as those adopted by the National Indian Gaming Commission and, under certain conditions or for certain tribes, at least as restrictive as the National Indian Gaming Association). With some variations, the tribes agree to provide the state with electronic access (in addition to on-site physical access allowed under the compacts) to certain slot machine accounting data. Generally, the data must be treated as confidential by the state and may not be disclosed in the form of statewide aggregate totals without the permission of the tribes. Finally, some tribes have agreed to make electronic transfers of funds owed the state under the terms of the compacts.

Local Reimbursements. Tribal reimbursement for services provided by local units of government are also provided for under the compacts. In the case of the Bad River, Lac du Flambeau, Lac Courte Oreilles, Menominee, Red Cliff, St. Croix, and Sokaogon, the tribes agreed to enter into written agreements by July 1, 1999, with the respective units of local government providing services. The Ho-Chunk Nation agreed to have made reasonable offers to enter into written agreements with local units of government by July 1, 1999. The Oneida Tribe, the Forest County Potawatomi and the Stockbridge-Munsee Community have existing agreements with certain local units of government and the amendment language, for these three tribes, reflect this fact. The Oneida and the Potawatomi also agree to make reasonable efforts to sign reimbursement agreements with certain additional local units of government.

Revenue Sharing. Although the wording varies somewhat, the amended state-tribal compacts, with one exception noted below, include a revenue sharing provision. Under the provision, each tribe, along with other Wisconsin tribes, has proposed or agrees to propose the development of a plan for the creation of a revenue sharing system among the tribes so that monies would be directed by the tribes within Wisconsin having the greatest gaming revenues to the tribes having the least gaming revenues. The tribes agreed to propose the development of a plan by February, 1999, except that under the Lac Courte Oreilles and Sokaogon agreements, no date is specified. In the Bad River, Lac Courte Oreilles, Potawatomi, Red Cliff and Sokaogon agreements, the state agreed to work with the tribes on the development of the plan. In the Bad River, Menominee, Oneida, St. Croix and Stockbridge-Munsee agreements, the tribes agreed to make their best efforts to develop such a plan in consultation with other Wisconsin Indian tribes.

The Ho-Chunk Nation did not agree to a revenue sharing provision. Instead, the Ho-Chunk Nation proposed the development of a plan for the creation of a revolving loan program to promote tribal economic development and to enhance employment opportunities through low interest loans to tribes not otherwise available to them. Under the agreement, the Ho-Chunk Nation is not required to make more than one monetary contribution to the program. The tribe was to develop and submit program guidelines to the state on or before March 31, 1999.

According to DOA, only the Potawatomi proposed a revenue sharing plan, which was limited to aiding the Red Cliff. The state objected to the plan because it called for funding the assistance from the tribal payments to the state.

Additional State Revenues

Under the 1998/1999 compact amendments, each tribe has agreed to make additional payments to the state that are not required under the original compacts. The amounts vary by tribe and reflect

the variation in total net winnings among the tribes. Table 11 shows the additional annual amounts to be paid by each tribe or band over the five-year compact extension period.

Each compact includes a provision that, in the event the state permits the operation of electronic games of chance or other Class III games by any person other than a federally recognized tribe under the Indian Gaming Regulatory Act or by the state lottery, the tribe must be relieved of its obligations to pay these amounts. Except for the Lac Courte Oreilles, Lac du Flambeau, Red Cliff and Sokaogon agreements, the amended compacts provide that, if a subsequent agreement regarding Class III gaming causes a substantial reduction of a tribe's Class III gaming revenues, the state and tribe must negotiate a reduction of the amount of payment. Under the Ho-Chunk agreement, the Ho-Chunk Nation agrees in return not to expand its Class II (bingo) gaming to more than two additional counties. The Red Cliff agreement states that, in the event the state lottery permits the operation of video lottery terminals or other forms of elec-

Table 11: Annual Payments Under the Compact Amendments

Tribe or Band	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
Bad River [1]	$172,500	$230,000	$230,000	$230,000	$230,000	$57,500
Ho-Chunk [2]	0	6,500,000	7,500,000	7,500,000	8,000,000	8,000,000
Lac Courte Oreilles [3]	0	420,000	420,000	420,000	420,000	420,000
Lac du Flambeau [4]	0	0	738,900	738,900	738,900	738,900
Menominee [5]	0	186,843	747,371	747,371	747,371	747,371
Oneida [6]	0	4,850,000	4,850,000	4,850,000	4,850,000	4,850,000
Potawatomi	0	6,375,000	6,375,000	6,375,000	6,375,000	6,375,000
Red Cliff [7]	0	64,685	64,685	64,685	64,685	64,685
Sokaogon [3]	0	258,000	258,000	258,000	258,000	258,000
St. Croix	0	2,191,000	2,191,000	2,191,000	2,191,000	2,191,000
Stockbridge-Munsee	0	650,000	650,000	650,000	650,000	650,000
Total	$172,500	$21,725,528	$24,024,956	$24,024,956	$24,524,956	$24,352,456

[1] Bad River Band makes quarterly payments instead of annual payments; based on the compact's term, three quarterly payments will be made in 1998-99 and one quarterly payment will be made in 2003-04.

[2] The Ho-Chunk annual payments total $6.5 million in the first year of the agreement, $7.5 million in the second and third years and $8.0 million in the fourth and fifth years.

[3] The Lac Courte Oreilles and Sokaogon agreements contain an escalator payment clause that provides for an additional 1% payment to the state ($4,200 for the Lac Courte Oreilles and $2,580 for the Sokaogon) for each 1% increase in net win in the base year for which the payment applies as compared to the net win in the immediately preceding base year.

[4] A fifth payment by the Lac du Flambeau of $738,900 is due in 2004-05.

[5] The Menominee agreement contains an escalator payment clause that provides for an additional 1% payment to the state ($7,474) for each 1% increase in net win in the year for which the payment applies as compared to the net win in the immediately preceding year. A fifth payment of $747,371 is due in 2004-05.

[6] The Oneida agreement specifies a total annual payment to the state of $5,400,000, adjusted by a reduction of $550,000 in direct recognition of existing municipal service agreements (for a net payment of $4,850,000).

[7] The Red Cliff agreement includes a provision that, if net revenue is less than $3,000,000 for any one-year period, the tribe may petition the state to reduce its payment.

Note: Fiscal year totals would be modified if tribal payments are not made as scheduled.

tronic games of chance not currently operated by the state lottery, the state and tribe must meet to discuss a reduction in the payment amount.

With the exception of the Lac Courte Oreilles and Sokaogon agreements, each compact also has a provision that, under certain circumstances, a natural or man-made disaster that affects gaming operations would allow for the state payment to be reduced by a percentage equal to the percentage decrease in the net win for the calendar year in which the disaster occurs as compared to the net win in the prior calendar year. Under this provision, the state and tribes also agree to meet to discuss additional assistance in the event of such a disaster.

Intended Use of the Additional State Revenues. The intended use of this state revenue is specified in most of the amended compact agreements; however, there are variations in the agreements regarding the use of these monies.

First, it should be noted that ten of the agreements each include one, and in some cases two, memoranda of understanding (MOU). The first is a MOU relating to technical matters (included in nine agreements; Lac Courte Oreilles and Sokaogon are the exceptions) concerning internal control standards, state access to slot machine accounting data and, in some cases, electronic transfer of funds. These provisions are described above. The Ho-Chunk Nation agreement includes a unique MOU under which the state and Nation agree, by February 15, 1999, to begin ongoing discussions regarding cooperative efforts affecting the ultimate use of the Badger Army Ammunition Plant lands. Finally, nine agreements include MOU relating to government to government matters; it is these MOU that concern, in part, the intended use of the additional state payments. The Ho-Chunk and Lac du Flambeau amendments do not include MOU on government to government matters and are silent on the issue of how the state utilizes this additional gaming revenue.

The Sokaogon agreement contains a provision that states that Wisconsin tribes have proposed the development of a plan for a multi-year revenue sharing agreement with the state under which the tribes will make annual payments to the state for the establishment of an economic development fund to: (a) assist tribal governments that wish to develop non-gaming businesses; (b) promote Wisconsin tourism; and (c) pay local governments for services provided to tribal casinos. The Lac Courte Oreilles agreement also includes this provision.

The nine agreements that contain government to government MOU relating to the use of the additional payments have some common elements and some important differences.

The most important element common to these eight MOU is the provision that the Governor must undertake his best efforts within the scope of his authority to assure that monies paid to the state under the agreements are expended for specific purposes. With the exception of the Menominee, Potawatomi and Red Cliff, these purposes are: (a) economic development initiatives to benefit tribes and/or American Indians within Wisconsin; (b) economic development initiatives in regions around casinos; (c) promotion of tourism within the state; and (d) support of programs and services of the county in which the tribe is located.

The Menominee MOU specifies three of these purposes: (a) economic development initiatives to benefit tribes and/or American Indians within Wisconsin; (b) economic development initiatives in regions around casinos; and (c) promotion of tourism within the state.

The Potawatomi MOU specifies the four purposes for spending identified above, but would limit this spending to Milwaukee and Forest Counties.

The Red Cliff agreement states these four

purposes differently and adds a fifth purpose. These purposes are: (a) economic development initiatives to benefit federally recognized Wisconsin tribes or their enrolled members; (b) economic development initiatives in Red Cliff and regions around Red Cliff; (c) promotion of tourism within the northwest region of the state; (d) support of programs and services which benefit the Red Cliff tribe or its members; and (e) law enforcement initiatives on the reservation.

Other differences among the MOU include the following:

- Similar to the Red Cliff MOU, three of the MOU also specify an additional area of spending: (a) the Bad River and St. Croix agreements include expenditures for law enforcement initiatives on reservations; and (b) the Stockbridge-Munsee agreement includes spending for public safety initiatives on the Stockbridge-Munsee reservation.

- Eight of the MOU (Lac Courte Oreilles, Menominee, Oneida, Potawatomi, Red Cliff, Sokaogon, St. Croix and Stockbridge-Munsee) require the establishment of a schedule of regular meetings to address government-to-government issues of mutual concern. The Potawatomi and Red Cliff MOU specify that these meetings must occur no later than certain annual dates.

- The Bad River MOU requires the establishment of a schedule of regular meetings to address law enforcement issues of mutual concern.

- Under four of the MOU (Menominee, Potawatomi, St. Croix and Stockbridge-Munsee), the state is required to consult with these tribes regarding the content of the proposals for the distribution of the monies paid to the state.

- Four MOU (Bad River, Menominee, St. Croix and Stockbridge-Munsee) specify that the state and the tribe shall negotiate additional MOU on government-to-government issues of mutually-agreed-upon concerns no later than certain annual dates.

- Seven MOU (Bad River, Menominee, Oneida, Potawatomi, Red Cliff, St. Croix and Stockbridge-Munsee) require that one state/tribe government-to-government meeting each year contain an accounting of funds expended in accordance with the agreements.

- The Stockbridge-Munsee MOU, in addition to requiring a meeting that contains an accounting of funds expended, also requires a discussion regarding the distribution of monies in the coming year.

- Under the Ho-Chunk Nation's technical MOU, DOA has the authority to grant a temporary certificate to a gaming-related contractor applicant that has met criteria determined by DOA and the applicant is licensed by a state gaming regulatory entity in one of seven specified states. If DOA subsequently denies certification, any contract entered into between the contractor and the Nation would be null and void.

The variations among the agreements appear to reflect, in part, the different concerns of each tribe or band. However, the variations may also be a reflection of how the negotiation of each compact agreement built on the previous ones. Thus, the later agreements are generally more detailed and thorough than the first ones signed. These variations may or may not be considered material by the tribes, but are likely to remain in place. Inconsistencies between the agreements could be resolved to some extent because each agreement contains a provision that allows a tribe to request that their agreement be revised should the state and any other tribe amend a compact or adopt a new compact with terms that are more favorable than the terms contained in the first tribe's agreement. The state and tribe, under these circumstances, would be required to meet to negotiate the incorporation of substantially similar provisions in the applicable agreement. However, given the impending negotiations on new compact

extensions, which should begin in 2003, variations between compacts are likely to addressed under future agreements.

Allocation of Tribal Gaming Revenue

The tribal gaming revenue provided to the state in the 2001-03 biennium is allocated to state agencies for a variety of purposes under 2001 Wisconsin Acts 16 (the 2001-03 biennial budget act), 71 (relating to funding for the enforcement of laws regulating snowmobiles and the operation of snowmobiles), and 109 (the 2001-03 budget adjustment act). Table 12 details these allocations in 2001-02 and 2002-03 and provides a brief description of the purpose for which each allocation is made.

Menominee Indian Compact Amendments: August, 2000

The Menominee compact amendments of August, 2000, make extensive changes to the tribe's gaming compact, primarily with respect to establishing provisions to govern Class III gaming at a proposed site in Kenosha, Wisconsin. In addition, the amendments revised other provisions that affect all of the tribe's Class III gaming operations. The Kenosha proposal was not successfully implemented as it was conceived in 2000 and it does not appear that the tribe is actively pursuing plans for the facility at this time. For this reason, this current informational paper will not describe the compact provisions relating to the Kenosha facility. However, a detailed description of these provisions can be found in the previous version of this publication, *Informational Paper #78, Legal Gambling in Wisconsin*, published by the Legislative Fiscal Bureau in January, 2001.

In addition to the provisions relating to the Kenosha facility, the amended Menominee compact revises other provisions that affect the tribe's current Class III gaming operations. Some of the major changes include the following.

1. Expanded oversight and authority by the state regarding gaming-related contractors, including the authority to suspend or revoke required certificates under certain conditions.

2. Revised and more comprehensive financial audit requirements, including a provision allowing DOA to retain certified public accountants, at the tribe's expense, to perform the annual audit if the financial statement and audit is not submitted to DOA within 180 days of the close of the tribal fiscal year. In the event such an audit is initiated, the tribe must fully cooperate and provide access to all books and records to the certified public accountants retained by DOA.

3. Revised and more comprehensive security audit requirements, including a requirement that a security audit be conducted every calendar year (instead of every two years under the prior compact). DOA may retain a certified public accountant or other qualified auditor, at the tribe's expense, to perform the annual audit if the security audit is not submitted to DOA by June 30th every year.

4. DOA is provided the authority to petition for a written order of closure of a Menominee gaming facility whenever any of the following conditions exist: (a) repeated, material violations of the provisions of the compact which have not been corrected; (b) the continued operation of the tribal gaming facility causes a significant threat to the integrity of tribal gaming in the state or the diversion of revenue from the tribal gaming operations; or (c) the continued operation of the tribal gaming facility causes an immediate and present threat to the safety or health of casino employees or patrons or to the integrity of the gaming operation of the tribal gaming facility. Procedures regarding notice, corrective action, hearings and due process relating to closure are specified in the compact.

Table 12: Tribal Gaming Revenue Allocations -- 2001 Acts 16, 71 and 109

	Department	Program Revenue 2001-02	Program Revenue 2002-03	Purpose
1	Administration	$500,000	$500,000	County management assistance grant program.
2	Administration--Office of Justice Assistance	1,050,000	1,050,000	Tribal law enforcement assistance grant program.
3	Administration--Office of Justice Assistance	250,000	250,000	County law enforcement grants for certain counties.
4	Administration	250,000	250,000	UW-Green Bay and Oneida Tribe programs.
5	Agriculture, Trade and Consumer Protection	0	1,900,000	Grants to ethanol producers.
6	Arts Board	25,200	25,200	Grants-in-aid to, or contracts with, American Indian individuals or groups for services furthering the development of the arts and humanities.
7	Commerce	25,000	25,000	American Indian liaison, economic development liaison grants and technical assistance.
8	Commerce	249,500	249,500	American Indian economic liaison and gaming grants specialist and program marketing.
9	Commerce	90,000	94,000	American Indian economic development technical assistance grants.
10	Commerce	2,238,700	3,238,700	Gaming economic development and diversification grants and loans.
11	Commerce	500,000	500,000	Manufacturing extension center grants.
12	Commerce	438,700	488,700	Physician, Dentist, Dental Hygienist and Health Care Provider Loan Assistance Programs.
13	Health and Family Services	500,000	500,000	Elderly nutrition; home-delivered and congregate meals.
14	Health and Family Services	120,000	120,000	Cooperative American Indian health projects.
15	Health and Family Services	271,600	271,600	Indian aids for social and mental hygiene services.
16	Health and Family Services	500,000	500,000	Indian substance abuse prevention education.
17	Health and Family Services	1,070,000	1,070,000	Medical assistance matching funds for tribal outreach positions and federally qualified health centers (FQHC).

Table 12: Tribal Gaming Revenue Allocations -- 2001 Acts 16, 71 and 109 (continued)

	Department	Program Revenue 2001-02	Program Revenue 2002-03	Purpose
18	Health and Family Services	$800,000	$800,000	Health services: tribal medical relief block grants.
19	Health and Family Services	250,000	250,000	Minority health program and public information campaign grants.
20	Higher Educ. Aids Board	779,800	787,600	Indian student assistance grant program for American Indian undergraduate or graduate students.
21	Higher Educ. Aids Board	400,000	404,000	Wisconsin Higher Education Grant (WHEG) program for tribal college students.
22	Historical Society	189,800	189,800	Northern Great Lakes Center operations funding.
23	Historical Society	25,000	0	Merrill Historical Society for publication of tribal history in the upper Wisconsin river valley (one-time funding).
24	Historical Society	15,000	0	Identification of unmarked American Indian gravesites (one-time funding).
25	Justice	708,400	708,400	County-tribal law enforcement programs: local assistance.
26	Justice	63,600	63,600	County-tribal law enforcement programs: state operations.
27	Natural Resources	2,500,000	2,500,000	Transfer to the fish and wildlife account of the conservation fund.
28	Natural Resources	1,000,000	718,000	One-time transfer to the parks account of the conservation fund.
29	Natural Resources	100,600	100,600	Management of an elk reintroduction program.
30	Natural Resources	500,000	1,000,000	One-time transfer to the environmental fund for brownfields efforts.
31	Natural Resources	114,500	114,500	Management of state fishery resources in off-reservation areas where tribes have treaty-based rights to fish.
32	Natural Resources	100,000	100,000	Payment to the Lac du Flambeau Band relating to certain fishing and sports licenses.

Table 12: Tribal Gaming Revenue Allocations -- 2001 Acts 16, 71 and 109 (continued)

Department	Program Revenue 2001-02	Program Revenue 2002-03	Purpose
33 Natural Resources	$943,100	$943,100	State snowmobile enforcement program, safety training and fatality reporting.
34 Natural Resources	44,700	44,700	Reintroduction of whooping cranes.
35 Natural Resources	500,000	500,000	Grant to the Town of Swiss (Danbury) in Burnett County and the St. Croix Band for wastewater and drinking water treatment facilities.
36 Natural Resources	20,000	20,000	Costs relating to the study and reintroduction of coaster brook trout.
37 Natural Resources	30,000	30,000	Study of crop damage caused by cranes (one-time funding).
38 Natural Resources	10,000	0	Grant to the Wisconsin Conservation Hall of Fame (one-time funding).
39 Public Instruction	220,000	220,000	Aid to alternative schools operating American Indian language and culture education programs.
40 Public Instruction	50,000	50,000	Grant to Beloit College for educational programs on Native American cultures.
41 Public Instruction	50,000	0	Special Counselor grant program to assist American Indian pupils (one-time funding).
42 Shared Revenue	0	0	Farmland tax relief credit payments by tribes with casinos associated with certain pari-mutuel racetracks. (No allocations are made in the 2001-03 biennium.)
43 Tourism	126,500	126,500	Limited-term employees to operate the Wisconsin travel information center located in the Minnesota Mall of America.
44 Tourism	3,969,500	3,969,500	General tourism marketing, including grants to nonprofit tourism promotion organizations and specific earmarks.
45 Tourism	31,300	31,300	Law enforcement services at the Kickapoo Valley Reserve.
46 Transportation	1,250,000	1,250,000	Grant to the City of Milwaukee for the reconstruction of West Canal Street (one-time funding).

Table 12: Tribal Gaming Revenue Allocations -- 2001 Acts 16, 71 and 109 (continued)

	Department	Program Revenue 2001-02	Program Revenue 2002-03	Purpose
47	University of Wisconsin System	$0	$0	Ashland full-scale aquaculture demonstration facility debt service payments. (No allocations are made in the 2001-03 biennium.)
48	University of Wisconsin System	0	250,000	Ashland full-scale aquaculture demonstration facility operational costs.
49	Veterans Affairs	15,000	15,000	Grants to assist American Indians in obtaining federal and state veterans benefits.
50	Veterans Affairs	56,400	56,400	American Indian services veterans benefits coordinator position.
51	Veterans Affairs	228,700	176,900	Operational costs relating to the Wisconsin Veterans Museum.
52	Workforce Development	600,000	600,000	Work-Based Learning Board grants for work-based learning programs.
53	Workforce Development	350,000	350,000	Vocational rehabilitation services for Native American individuals and American Indian tribes or bands.
54	Workforce Development	50,000	0	Trade Masters Pilot Program (one-time funding).
	Total Allocations	$24,170,600	$27,402,600	

Net Indian Gaming Revenue

As noted above, the compacts require the tribes to submit independent financial audits of casino operations to DOA and the Legislative Audit Bureau (LAB) on an annual basis. These audits are confidential and revenue data for individual tribal operations is not available. However, aggregate data relating to Class III net revenue for tribal casino operations statewide is made available by LAB. Table 13 shows the annual net revenue (revenue remaining after winnings are paid out) for tribal casinos for the period 1992 to 2001. Summarizing this data by year is complicated by the fact that individual tribal fiscal years vary and do not necessarily coincide with other tribal, state

Table 13: Tribal Casino Net Revenue 1992-2001 (Class III Gaming)

Year	Net Revenue	Percent Change
1992	$142.7	
1993	333.0	133.4%
1994	498.7	49.8
1995	612.0	22.7
1996	634.4	3.7
1997	611.9*	-3.5
1998	693.5	13.3
1999	750.5	8.2
2000	845.3	12.6
2001	904.1	7.0
Total	$6,026.1	

*Excludes data from one tribe not reporting financial data for its 1996-97 fiscal year.

or federal fiscal years.

Net revenue increased each year through 1996 before declining somewhat in 1997. Revenue then increased to its highest level to date in 2001. To some extent, the decline in 1997 and increase in 1998 reflects the fact that one tribe failed to provide data for its 1996-97 fiscal year. It should also be noted that, under the amended state-tribal compacts, some expansion of casino gambling was permitted, such as the expanded Potawatami Casino in Milwaukee, which opened in 2000. Such expansion affects overall net revenue. Finally, this aggregate data is not necessarily representative of revenue performance for individual tribes. LAB indicates that not all tribes experienced increases in their net gaming revenue in recent years.

Charitable Gaming

Background

In 1973 and 1977, constitutional amendments were passed that authorized the Legislature to provide for the conduct of charitable bingo and raffles, respectively. Prior to October 1, 1992, the statutes related to these forms of gambling were administered by the Bingo Control Board, working in conjunction with the Department of Regulation and Licensing. At that time, this responsibility was transferred to the Gaming Commission. On July 1, 1996, these functions were transferred to the Gaming Board and, on October 14, 1997, were transferred to the Division of Gaming in DOA.

Within the Division of Gaming, these functions are performed by the Office of Charitable Gaming. This Office advises DOA on policy and rule making related to bingo, raffles and crane games and administers the legal requirements for the conduct of these games.

On April 6, 1999, state voters approved an amendment to the Wisconsin Constitution relating to the use and distribution of gaming proceeds. The amendment requires that state revenues from the lottery, racing and pari-mutuel wagering activities and charitable bingo, including interest earnings, be used for property tax relief, with the exception of funds used for lottery operations and the regulation and enforcement of racing, pari-mutuel wagering and charitable bingo activities. Under 1999 Wisconsin Act 5, a number of provisions were enacted to reflect these new Constitutional requirements, including the creation and amendment of appropriations to effectuate the Constitutional requirements that state gaming revenue be used for property tax relief. These provisions direct that available pari-mutuel- and bingo-related revenue, including interest earnings, are transferred to the lottery fund.

While under prior law the Office of Charitable Gaming was funded from a single appropriation for both bingo and raffle regulation, Act 5 created separate appropriation for these activities. The Office of Charitable Gaming is provided base funding and positions in 2002-03 as follows: (a) $256,000 PR and 4.0 PR positions for bingo regulation; and (b) $182,500 PR and 2.75 PR positions for raffle and crane game regulation. The following section discusses certain bingo and raffle charitable gaming provisions.

General Provisions of Charitable Gaming

Bingo and raffle licenses may be granted to any bona fide religious, charitable, service, fraternal or veteran's organization and to any organization to which contributions are deductible for state and federal income tax purposes. License fees are deposited in separate DOA general operations appropriations for bingo (with unexpended revenue transferred to the lottery fund) and raffle and crane games.

A bingo license may only be granted to an organization that meets a number of requirements, including being in existence for the three years preceding its license application. A $10 fee is required for each bingo occasion (a bingo playing

session) and a $5 annual fee is required for the designated member of an organization responsible for the proper utilization of gross receipts. A bingo suppliers license fee is $25; in addition, a supplementary suppliers fee ranging from $10 to $1,000 is charged on a sliding scale basis, depending upon annual gross sales of bingo supplies during the preceding year. In 2001-02, there were 578 active bingo organizations and bingo license fees generated $180,900 PR.

In addition, an occupational tax is imposed on the gross receipts of licensed bingo organizations. The tax rate is 1% on the first $30,000 in gross receipts and 2% on gross receipts in excess of $30,000. In 2001-02, the bingo gross receipts tax totaled $384,800. While under prior law, these revenues were deposited in the state's general fund, they are now (under 1999 Act 5) deposited to the general operations appropriation for bingo regulation.

To qualify for a raffle license, an organization must have been in existence for one year immediately preceding its license application or show that it is chartered by a national organization that has existed for at least three years. The annual raffle license fee is $25, which allows an organization to conduct a maximum of 200 raffles and one calendar raffle annually. (A calendar raffle involves drawing and awarding a prize on each date specified in a calendar.) Two license types are available, a Class A raffle license for the conduct of raffles in which at least some tickets are sold on days other than the day of the drawing and a Class B raffle license for the conduct of raffles in which all tickets are sold on the same day as the drawing. In 2001-02, there were 7,132 licensed raffle organizations and raffle license fees generated $182,600 (used by the Office of Charitable Gaming for the regulation of raffles).

The Office's responsibilities regarding charitable gaming include: (a) rule-making relating to the conduct of bingo and raffles; (b) licensing of bingo organizations and persons distributing supplies or equipment to a licensed bingo organization; (c) licensing raffle organizations; (d) administering proceedings relating to the suspension and revocation of licenses; and (e) receiving required semi-annual reports from bingo licensees and required annual financial reports from raffle licensees.

General Provisions of Crane Games

A crane game is an amusement device involving skill that may reward a player exclusively with merchandise contained within the device. This merchandise is limited to prizes, toys and novelties, each having a wholesale value not more than seven times the cost charged to play the device once or $5, whichever is less. A crane game may not be operated unless an owner is registered with the state and an identification number is affixed to the game. The Division of Gaming registers owners and issues the required identification numbers. The registration fee is $120 per game. The registration remains in effect until canceled by DOA, with the advice and consent of the Department of Justice, or is withdrawn by the registered owner. Revenues from these fees totaled $13,700 in 2001-02 (used by the Division of Gaming for the regulation of crane games) and 114 registration permits were issued.

Security and Enforcement

Security and enforcement functions relating to gambling activities in Wisconsin are performed by the Division of Gaming in DOA and in the Department of Justice. The responsibilities of these units are described below.

Division of Gaming Security Functions

The Department of Administration has the authority to provide all of the security services and monitor the regulatory compliance of gaming

operations relating to pari-mutuel racing and wagering, charitable gaming, crane games and Indian gaming under the state-tribal compacts. DOA is also authorized to audit gaming operations and investigate suspected violations of gaming law, and to report suspected gaming-related criminal activity to DOJ's Division of Criminal Investigation (DCI). If DCI chooses not to investigate the report, DOA may coordinate an investigation of the suspected criminal activity with local law enforcement officials and district attorneys. The Division of Gaming in DOA currently allocates 2.0 FTE positions and approximately $300,000 in funding annually for security functions, including contracted investigation work.

DOJ Gaming Enforcement Bureau

The Gaming Enforcement Bureau is a unit within the DOJ's Division of Criminal Investigation. In 2002-03, funding for the Bureau is provided from the lottery fund ($289,100), pari-mutuel racing revenue ($124,900) and Indian gaming revenue ($105,600). A bureau director and four special agents carry out the Department's responsibilities for the enforcement of the state's gambling statutes. These responsibilities include the following:

Indian Gaming. DOJ is authorized, under the state-tribal compacts, to monitor each tribe's casino gaming to ensure compliance with the compacts, to investigate the activities of tribal officers, employees, contractors or gaming participants who may affect the operation or administration of the tribal gaming and to commence prosecutions relating to casino gaming for violations of any applicable state civil or criminal law or provision of a compact.

Lottery. DOJ may investigate activities of Lottery Division employees in the Department of Revenue and lottery vendors that affect the administration or operation of the state lottery or multijurisdictional lotteries. In addition, DOJ is required to perform the background investigations relating to major procurement contract vendors. DOJ must report suspected violations of state or federal law to the appropriate prosecuting authority. As part of its investigation, the Department may issue a subpoena to compel the production of evidence. DOJ and district attorneys have concurrent jurisdiction to prosecute violations of state lottery statutes.

Racing. DOJ may investigate activities of the Department of Administration and its employees and contractors and activities of racing licensees and their employees and contractors that affect the administration or operation of racing or on-track pari-mutuel wagering. DOJ must report suspected violations of state or federal law to the appropriate prosecuting authority. As part of its investigation, DOJ may issue a subpoena to compel the production of evidence. DOJ and district attorneys have concurrent jurisdiction to prosecute violations of state racing statutes.

Bingo. DOJ, DOA or a district attorney may commence civil or criminal action in circuit court to restrain any violation of bingo law. DOJ may issue a subpoena to compel the production of evidence relating to alleged violations.

Crane Games. DOJ is authorized to: (a) investigate written complaints relating to crane games; (b) investigate if a game is being operated without the required registration; (c) prosecute any violations of crane game law; and (d) seize any crane game owned by a person convicted of violating crane game law.