

April 2005

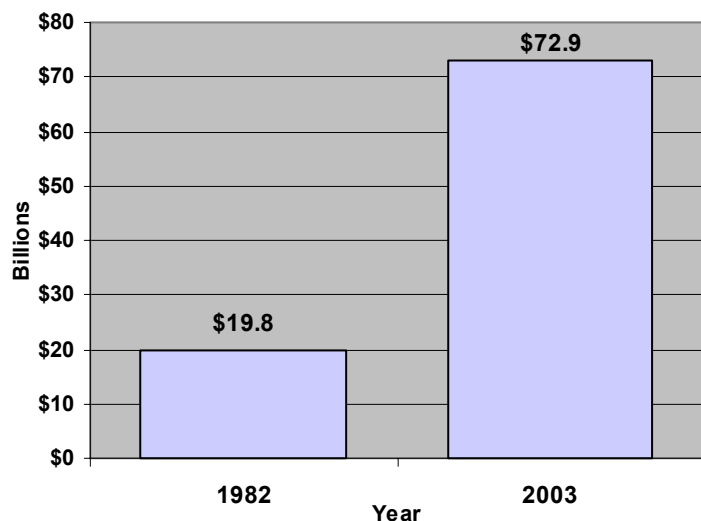
## The Growth of Gaming in the U.S.

In the mid-1970s, very few states had legalized gambling. Casinos were located in the remote desert town of Las Vegas; a handful of states operated lotteries; pari-mutuel betting was offered on a small scale; and tribal gaming was also virtually non-existent. For most, legal gambling was limited to church bingo or charity raffles. Over the past thirty years, states have incrementally authorized various forms of gaming and today wagers can be placed on games of chance in 48 states and the District of Columbia.

The United States is now a world leader in gaming. As shown in Graph 1, the total amount of consumer spending, or wagering, on gaming has climbed by over \$50 billion since 1982 using equivalent dollars; a 368% increase with inflation factored in. This statistic underestimates the actual increase in U.S. gaming as these figures do not include money spent on internet gambling. Online gaming sites are expected to collect \$10 billion in revenues this year, with U.S. players doing most of the wagering.<sup>1</sup>

Another factor contributing to the rise in the level of gambling is societal acceptance. In 1938, a Gallup survey showed 51 percent of Americans believed “government lotteries would produce an unwholesome gambling spirit in this country.” Another Gallup poll in 1951 showed 55 percent of Americans opposed legalizing “such forms of gambling as betting on races, lotteries, numbers...throughout the country.”<sup>2</sup> Compare that to today when over 80 percent feel casino gambling is acceptable to themselves or others. In addition, generally half of all Americans purchase a lottery ticket at some point in a year.<sup>3</sup>

**Graph 1: Gross Gambling Revenues in the United States (1982 & 2003)**



Sources: National Gambling Impact Study Commission Final Report, June 18, 1999 and Christiansen Capital Advisors, Gross Annual Wager in the United States. Figures exclude consumer spending on internet gaming because it is conducted globally.

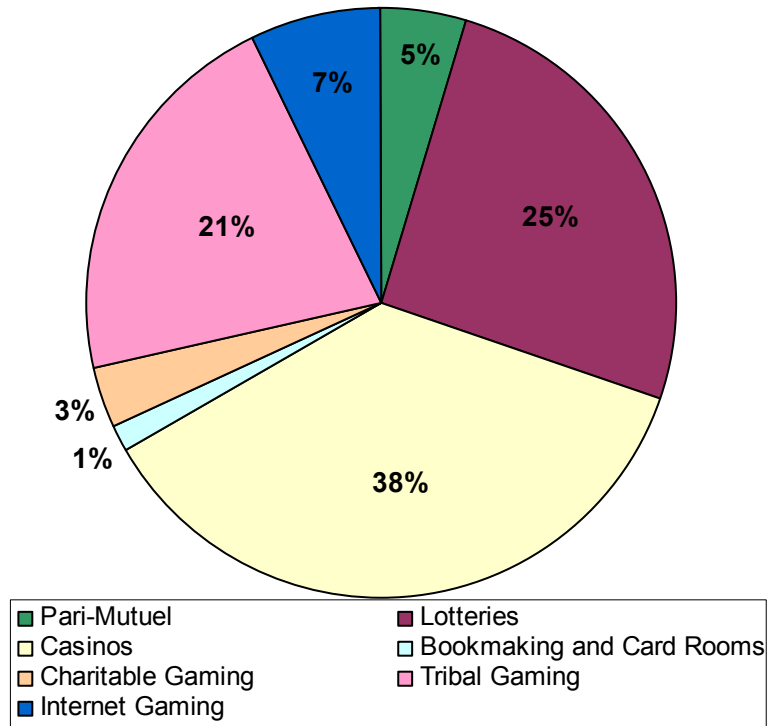
<sup>1</sup> Jon Swartz, “Online Gambling Sites Expect Big Payoffs,” *USA Today*, February 8, 2005.

<sup>2</sup> Doug Cantor and Marta Hummel, “Its Stigma Gone, Gambling Enjoys Broad Support,” *Medill News Service*, September 9, 2003.

<sup>3</sup> American Gaming Association, Survey of Casino Entertainment, *2004 State of the States*.

Over 52 million Americans made 310 million trips to casinos in 2003 – 5.8 trips per gambler.<sup>4</sup> As seen in Graph 2, casinos received 38% of gaming revenues in 2003; 25% of the nation’s spending on gambling went to lotteries. In 2003, tribal facilities garnered \$16.8 billion in gaming revenues. This is 21% of gross gaming revenues, significantly up from the 16% share they held in 1999. Consumer spending on internet gambling has also grown, rising over a 5 year period from 2% of gross gaming revenue to 7%.<sup>5</sup>

**Graph 2: Gross Gaming Revenue by Type (2003)**



According to the National Conference of State Legislatures, gambling was one of the top issues on the agenda in 2004 with 28 states considering 50 different measures. States and local governments are heavily involved in the pursuit of gaming revenues through casinos, state sanctioned lotteries, pari-mutuel betting or from Native American tribal gaming venues. As states compete to reap the monetary and economic rewards from gaming, regions feel a ripple effect. For example, Pennsylvania recently legalized 61,000 slot machines at seven race tracks, five slot casinos and two resorts. This development is prompting Maryland, West Virginia and Delaware to consider expanding gaming in their states in order to avoid the loss of gaming activity and revenue. Delaware alone estimates it could lose \$130 million due to the extensive numbers of slot machines to be installed in Pennsylvania and Maryland.<sup>6</sup>

Source: Christiansen Capital Advisors LLC, *The 2003 Gross Annual Wager*. Note that consumer spending on internet gaming is conducted globally and does not accurately reflect the actual U.S. consumer spending on that type of gambling.

Some states have rejected gaming expansion. A State of Washington ballot initiative authorizing slot machines to generate revenues for property tax relief was recently voted down. Nebraska voters also recently rejected a proposal to allow two casinos to operate in the state. Legislatures in Illinois, Indiana, Kansas, Kentucky, Minnesota, Ohio and Texas turned down proposals to establish “Racinos”- casino and slot machine operations at pari-mutuel race tracks

<sup>4</sup> American Gaming Association, *Survey of Casino Entertainment, 2004 State of the States*, page 14.

<sup>5</sup> Christiansen Capital Advisors LLC, *The Gross Annual Wager*, 1999 and 2003.

<sup>6</sup> Al Miscitti, “*Day by Day, Delaware’s Neighbors Get Closer to Having Slots*,” [Delawareonline.com](http://Delawareonline.com), March 1, 2005.

## **The Challenges of Gambling Regulation**

Citizens rely on state government to prevent fraud and ensure the integrity of gaming. Governments address societal impacts by limiting the quantity, location and sizes of gaming facilities; the types of gambling offered; ensuring the integrity of the various forms of gaming; and allocating resources toward addiction programs. Finally, measures are required to assure that the gaming facility pays the required taxes and revenues to the state or local government.

Government officials face several challenges in effectively overseeing gambling. According to a 1999 report by the National Gambling Impact Commission, those challenges include:

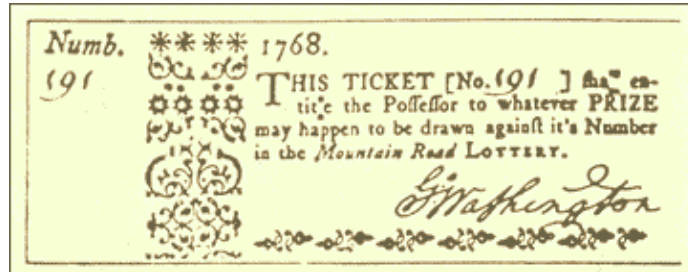
- Federal, state, tribal, and local officials all have a say in gambling policy, and there is a lack of coordination among them.
- Regulation and oversight of gaming is been incremental and often in reaction to short-term needs and issues rather than based on long-term needs, goals, and risks.
- Lotteries, Native American gaming facilities, casinos, pari-mutuel racetracks and other forms of gambling have varying issues, impacts, and interest groups, requiring different regulatory structures and objectives for each type of gaming.
- The rapid changes in the gaming industry require continuous regulatory adjustments. Technology continues to produce new and different forms of gaming, often directly aimed at any weak links in government restrictions and regulation.
- Government decision making on gaming tends to be focused more on a shortsighted pursuit of revenues than on the long-term impact of their decisions on the public's welfare.

A number of reviews and audits conducted on state gaming oversight see room for improvement. Minnesota's Legislative Auditor recently indicated state gambling officials could do a better job regulating Native American casinos and card rooms. Auditors in Michigan have questioned gaming enforcement effectiveness, and noted only one compliance officer handles oversight of 17 tribal casinos (with revenues exceeding \$918 million). They also concluded Michigan's regulators could be more effective in assuring commercial and tribal casinos submit required payments to the state. A 2002 Legislative audit conducted in Wisconsin pointed out inadequacies of oversight provisions in tribal gaming compacts, and demonstrated that other states have reached agreements which provide larger percentages of revenue to states.

### **Lotteries**

Participation in lotteries is the most common form of gambling by Americans, and half of all eligible Americans purchase a lottery ticket in any given year. Lotteries are the second largest type of gaming, in terms of total revenues. Currently 40 states and the District of Columbia operate lotteries and Oklahoma will become the 41<sup>st</sup> state when their lottery starts in October, 2005.

While the number of states participating in lotteries has grown over the past few decades, a government sanctioned lottery is hardly a recent phenomenon. Lotteries were used by the British to help finance the colonization of America and they were viewed by colonists as a popular form of voluntary taxation. Lotteries were sponsored in the 13 colonies by prominent individuals such as Ben Franklin, John Hancock, and George Washington to raise funds for building projects. Fifty colleges, 300 schools and 200 churches were erected with lottery proceeds, including Harvard, Dartmouth, Yale, Princeton and Columbia. A lottery even was approved to finance the American Revolution.<sup>7</sup>



In the 1870's, scandal in the nationally operated Louisiana lottery – which included bribery of state and federal officials – led to a ban of most forms of gambling by states. The federal government outlawed the use of the U.S. mail for lotteries in 1890 and in 1895 took action to effectively end all lotteries in the United State by invoking the Commerce Clause to forbid shipments of lottery tickets or advertisements across state lines.<sup>8</sup>

In 1964, New Hampshire reintroduced a legal state lottery by labeling it as a “Sweepstakes” and tying it to horse races to avoid the 70-year-old federal prohibition. By 1975, twelve other states, led by New York and New Jersey, introduced their own lotteries. State lotteries have the least favorable-to-player odds of any legally available form of gambling, but promise the greatest level of winnings - payouts that have exceeded \$100 million dollars for a one-dollar ticket. The pre-1970's state lotteries were little more than traditional raffles, with the public buying tickets for a drawing at some future date, sometimes months away. New types of lottery games have almost entirely displaced the original sweepstakes form of the lottery. Today, states offer five principle types of lotteries: instant games, daily numbers games, lotto, electronic terminals for keno, and video lottery.

State governments have justified creating lotteries by earmarking revenues for certain programs and causes, such as education, as seen in Table 1 on the following page. Although dedicating lottery funds for specific purposes may generate political support, those savvy about state budgets know the funding merely replaces funding that might have come from general tax revenues. In an anti-tax era, lotteries are seen as a painless way to generate revenues to support various government programs.

Overall consumer spending on lotteries has continued to increase, nearing the \$20 billion mark in 2003.<sup>9</sup> The continued interest by the public in purchasing lottery tickets can be attributed to increased availability of lotteries among the states and the additional types of lottery games available. States also have active sophisticated lottery marketing campaigns to stimulate ticket sales.

<sup>7</sup> National Gambling Impact Study Commission Final Report, June 18, 1999.

<sup>8</sup> Ibid.

<sup>9</sup> Christiansen Capital Advisors LLC, The Gross Annual Wager. 1999 and 2003.

**Table 1: State Dedication of Lottery Revenues**

<b>State</b>	<b>Start Date</b>	<b>Use of Net Revenue</b>
Arizona	7/1/1981	Mass Transit, General Fund, County Assistance, Economic Development, Heritage Fund, Local Transportation Assistance Fund
California	10/3/1985	K-12 Education
Colorado	1/24/1983	Parks and Recreation, Wildlife, Open Space
Connecticut	2/15/1972	General Fund
D.C.	8/25/1982	D.C. General Fund
Delaware	10/30/1975	General Fund
Florida	1/12/1988	Educational Enhancement Trust Fund
Georgia	6/29/1993	Education (Hope Scholarship Program, Voluntary Pre-Kindergarten Program)
Idaho	7/19/1989	Public Schools & State Permanent Building Fund
Illinois	7/30/1974	Common School Fund (K-12 Public Schools)
Indiana	10/13/1989	Education, License Plate Tax, Police/Fireman Pensions, Teachers Retirement, Build Indiana Fund
Iowa	8/22/1985	General Fund
Kansas	11/12/1987	Economic Development, Prisons
Kentucky	4/4/1989	General Fund
Louisiana	9/6/1991	State's Lottery Proceeds Fund (appropriated by legislature annually)
Maine	6/27/1974	General Fund
Maryland	5/15/1973	General Fund, Stadium Authority
Massachusetts	3/22/1972	Cities and Towns
Michigan	11/13/1972	Michigan School Aid Fund (K-12 Public Schools)
Minnesota	4/17/1990	General Fund and Environmental Trust Fund
Missouri	1/20/1986	Education
Montana	6/27/1987	General Fund
Nebraska	9/11/1993	Trust Funds for Education, the Environment and Compulsive Gamblers Assistance
New Hampshire	3/12/1964	Education
New Jersey	12/16/1970	Public Education (K-12), Community College and 4-Year State Colleges, State Homes for Disabled Veterans
New Mexico	4/27/1996	Education (60% Capital Improvements; 40% Scholarship Program)
New York	6/1/1967	K-12 Education
Ohio	8/22/1974	Education
Oregon	4/25/1985	Economic Development, Tourism, Job Creation & Education (K-12 Public Schools)
Pennsylvania	3/6/1972	Senior Citizen Programs
Rhode Island	5/30/1974	Distressed Cities and Towns, General Fund
South Carolina	1/7/2002	Education
South Dakota	9/30/1987	General Fund, Capital Construction Fund, Property Tax Reduction Fund
Tennessee	1/20/2004	University Scholarships
Texas	5/29/1992	Foundation School Fund
Vermont	2/14/1978	General Fund
Virginia	9/20/1988	General Fund
Washington	11/11/1982	General Fund, Mariners Stadium, Stadium Exhibition Center
West Virginia	1/9/1986	Education, Senior Citizens, Tourism
Wisconsin	9/14/1988	Property Tax Relief

Source: National Conference of State Legislatures, [www.ncsl.org](http://www.ncsl.org).

As seen in Graph 3, per capita lottery ticket purchases have jumped considerably from 1973 to 2004. In addition, despite competition from commercial and tribal casinos, the innovations by state lotteries have successfully maintained a high level of public participation.

Many states have generated interest in lotteries by introducing electronic versions of the game. These video lottery games are as close to slot machines as one can get, allowing lotteries to compete with gaming offered at casinos. Many of the electronic games include video poker, blackjack, keno, and bingo. However, in many cases cash won from a video lottery terminal do not come from the machine and can be collected as one would by redeeming a winning lottery ticket. States usually place limits on video lottery terminals, including the number of machines authorized, levels of wagering, payouts and where they can be located. Frequently they are allowed in smaller establishments, including racetracks, taverns, truck stops, restaurants, convenience stores, video gaming malls and other entertainment venues.

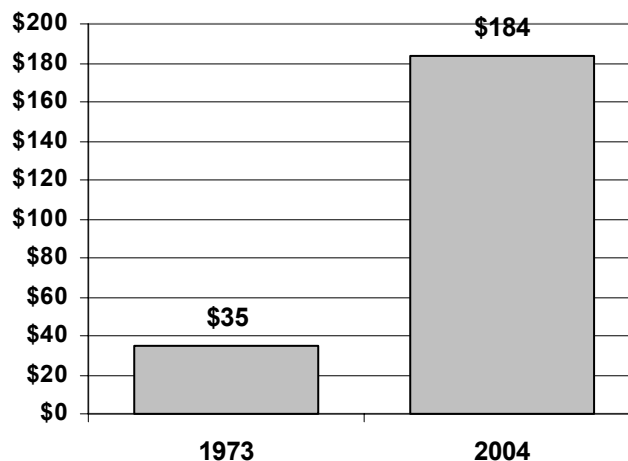
This type of gambling, labeled “convenience” or “retail” gaming, has also seen a significant level of growth. Consumer spending on video lottery has increased from about \$1.4 billion in 1999 to about \$2.6 billion in 2003<sup>11</sup>; an 85% increase during a 5 year period. However, some criticize video lottery, saying that it provides no recognizable economic benefit and it allows a faster pace of gambling which can lead to addiction.<sup>12</sup>

## Casino Gaming

Only a few decades ago, legalized casinos operated in two jurisdictions: Nevada and Atlantic City. Nevada legalized gambling in 1931 to strengthen an economy weakened by a struggling mining industry. New Jersey followed in 1978, permitting casinos in Atlantic City to revitalize the cash-strapped resort community. Today, more than 700 casinos operate in 28 states, including nearly 100 riverboat and dockside casinos (found in six states) and approximately 260 casinos on Indian reservations.

Today more than one-quarter of the U.S. adult population visits a casino in a given year. Compared to other forms of entertainment, casinos are frequented three times more often than professional baseball games, but far fewer than movie theaters or museums. In

**Graph 3: State Lottery Ticket Sales Per Capita (1973 & 2004)**



Sources: National Gambling Impact Study Commission Final Report, June 18, 1999 and North American Association of State and Provincial Lotteries.

<sup>11</sup> Christiansen Capital Advisors LLC, *The Gross Annual Wager*, 1999 and 2003.

<sup>12</sup> “Cash-strapped States Consider Video Gambling,” *Gambling News by Casino Man.net*, May 18, 2003.

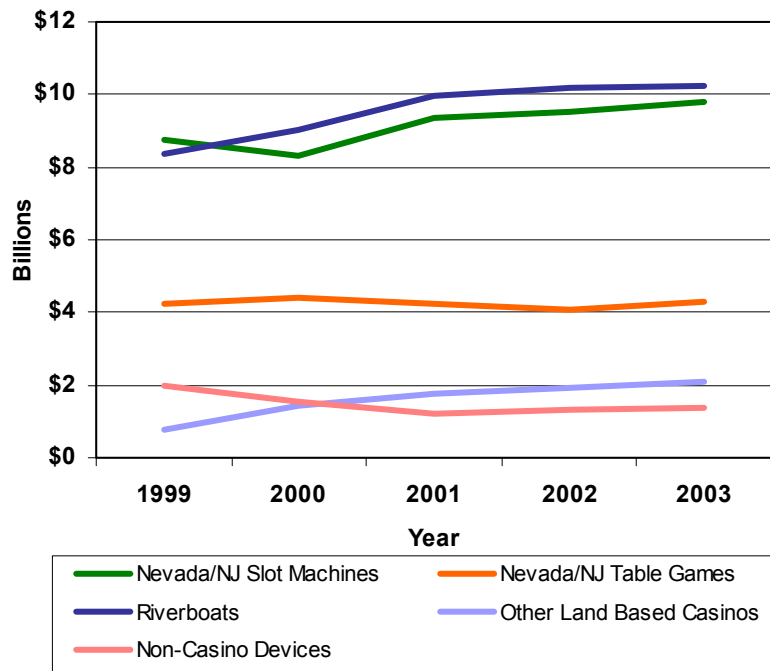
2003, gross gaming revenue in the 443 non-tribal casinos was more than \$27 billion, generating \$4.32 billion in taxes paid to state and local governments. This amounts to an effective tax rate of 16 percent on gross gaming revenue. As seen on Table 2 on the next page, many states allocate these revenues for a variety of purposes, including education, economic development, public safety, and for use in the general fund. The 352,428 employees in the casino gaming industry earned \$11.837 billion in salaries, including benefits and tips.<sup>13</sup>

According to a 1999 National Gambling Impact Study Commission report, destination resort casino gambling provides a greater level of economic benefit than other types of gaming because they draw in visitors and money from outside the immediate community. For example, in 1998 the full and part-time jobs in Atlantic City casino hotels represented approximately 80 percent of the private sector employment in that city. Studies indicate convenience gambling, such as video poker, does not create a significant level of good quality jobs and investment in the local economy.<sup>14</sup>

Gross gambling revenues received by non-tribal gaming casinos continue to climb, even though their overall share of all monies wagered in the United States has dropped from 41% in 1999 to 38% in 2003.<sup>15</sup> As seen in Graph 4, gambling revenues for Nevada/Atlantic City slot machines, riverboats and land-based casinos in other states are increasing.

Riverboat casinos are a uniquely American gaming phenomenon. Riverboat casinos began operating in Iowa in 1991, and quickly expanded throughout the Midwest. In 2003, there were over 40 riverboat casinos operating in Illinois, Indiana, Missouri, Iowa, and over 30 riverboat and dockside casinos in

**Graph 4: Gross Casino Gambling Revenues (1999-2003)**



Source: Christiansen Capital Advisors LLC, Gross Annual Wager from 1999 through 2003.

<sup>13</sup> American Gaming Association, Survey of Casino Entertainment, 2004 State of the States.

<sup>14</sup> United States General Accounting Office, Convenience Gambling: Information on Economic and Social Effects in Select Locations, October 2000, page 23.

<sup>15</sup> Christiansen Capital Advisors LLC, The Gross Annual Wager, 1999 and 2003.

Table 2: State Statistics on Commercial Casino Operations (2003)

State	Casinos	Gaming Format	Gross Casino Revenue (millions)	Gaming Tax Revenue (millions)	How Revenues are Spent	Legalization Year	Gaming Tax Rate
Colorado	44	Land-based (Limited stakes: \$5 maximum bet)	\$666.2	\$85.6	Local communities, historic preservation, general fund	1990	Graduated with maximum of 20% on gross gaming revenue.
Illinois	9	Riverboat/dockside	\$1,709	\$719.9	Education assistance, local government	1990	Graduated from 15% to 70% of gross gaming revenue. \$3-\$5 per patron admission tax.
Indiana	10	Riverboat/dockside	\$2,229	\$702.7	Economic development, local government	1993	Graduated from 15% to 35% of gross gaming revenue. \$3 per patron admission tax.
Iowa	13	Riverboat - 10 Racetrack Casino - 3	\$1,024	\$209.7	Infrastructure, local government, general fund, schools, universities and environment.	1989	Graduated with maximum of 20% on gross gaming revenue.
Louisiana	18	Riverboat - 14 Racetrack Casino - 3 Land Based - 1	\$2,017	\$448.9	General fund, City of New Orleans, public retirement systems, state capital improvements, rainy day fund.	1991	Riverboats: 21.5% Land-based: 21.5% of gross gaming revenue Racetrack Casinos: 18.5% of gross gaming revenues - 18% of net revenue paid to horsemen.
Michigan	3	Land-based	\$1,130	\$250.2	Public safety, youth programs, capital improvements, tax relief, neighborhood development, infrastructure improvement.	1996	18% of gross gaming revenues (9.9% to Detroit, 8.1% to state). Effective tax rate of 22.14% (incl. fees & state tax).
Mississippi	29	Dockside	\$2,700	\$325	Housing, education, health care, transportation, and youth counseling.	1990	Graduated with maximum of 8% on gaming revenue; up to 4% additional local government tax.
New Jersey	12	Land-based	\$4,490	\$414.5	Senior citizens, disabled, revitalization programs.	1976	8% tax on gross gaming revenues (plus 1.25% to 2.5% investment obligation), 4.25% tax on casino complementaries.
Missouri	11	Riverboat (\$500 loss limit per 2 hour cruise)	\$1,330	\$369	Education, local public safety, gambling treatment, veterans programs, and early childhood.	1993	20% tax on gross gaming revenues and \$2 per patron split between state and dock community
Nevada	256	Land-based	\$9,625	\$776.5	Education, local governments, general fund.	1931	Graduated with maximum of 6.75% on gross gaming revenue. 1% in addition taxes can be levied by local govts.
South Dakota	38	Land-based (Limited stakes: \$100 max. bet)	\$70.4	\$17.2	40% tourism, 10% Lawrence County, 50% Commission fund.	1989	8% tax on gross gaming revenues, gaming device tax of \$2,000 per machine/yr.
<b>TOTAL</b>	<b>443</b>		<b>\$27,022</b>	<b>\$4,320</b>			

Source: American Gaming Association, 2004 State of the States.

Louisiana and Mississippi. Revenues for riverboats in 2003 were approximately \$10 billion, with around \$400 million paid in gaming taxes. The record is mixed as to whether or not riverboat/dockside gaming provides an economic benefit. The riverboat/dockside casinos in Galena, Illinois and Biloxi/Gulfport, Mississippi, are considered to be successful in generating jobs, retail sales growth, and construction activity. Other locations have not seen a boom in tourism because many riverboat casino visitors are regional or day-trip patrons who do not stay overnight. Riverboat casinos are generally not a destination resort which attracts tourists and conventions for longer stays.<sup>16</sup>

Racetrack casinos, otherwise called “Racinos,” are receiving a lot of attention from states. Racinos tend to be pari-mutuel racetracks which also host electronic slot-machines or video lottery. In 2004, at least 14 states considered measures on racino authorization.<sup>17</sup> However, the traditional definition of “racino” may soon change. The decision by Pennsylvania to transform their racetracks into racinos with thousands of slot-machines is pressuring long-time racino states like Delaware and West Virginia to add table games at their facilities. This is an excellent example of how gambling competition between the states is leading to an escalation in the types of gaming authorized. In the six states that have racinos, \$2.2 billion in revenue was generated in 2003 and \$766 million was paid to state and local governments through gaming taxes.<sup>18</sup> The bulk of revenue generated by racinos likely comes from the electronic gaming devices, indicated by declining racetrack wagering.

### **Pari-Mutuel Gambling**

Pari-mutuel gaming represents the smallest component of gambling in America in terms of revenue even though it is legal as a type of gaming in the most states (43). Under a pari-mutuel betting system, individuals bet against each other rather than against "the house" as in casino betting. Pari-mutuel gambling includes wagering on horse racing, dog racing, and jai-alai, with horse racing being the most successful financially. Racing generates over \$421 million directly to states and local governments in the form of pari-mutuel taxes, track licenses, occupational licenses, admission taxes and miscellaneous fees.<sup>19</sup>

The largest sector within pari-mutuel gambling is horse-racing, generating over \$3.36 billion in gross revenue. American horse-racing's history dates back to the 1660's and the industry maintains strong links with the agricultural sector. Greyhound racing is the second largest with 49 tracks operating in 15 states, generating annual gross revenues of \$398 million. Jai alai is played in three states and is the smallest part of the pari-mutuel industry. It involves players hurling a hard ball against a wall and catching it with curved baskets in a venue called a “fronton.” With a handle of approximately \$275,000 annually, Jai alai accounts for less than 2 percent of the total handle among the three pari-mutuel sectors.

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<sup>16</sup> National Gambling Impact Study Commission Final Report, June 18, 1999.

<sup>17</sup> Mandy Rafool, “Gambling on Gaming, Revenues from gambling are just too tempting for troubled state budgets,” State Legislatures, National Conference of State Legislatures, January 2005.

<sup>18</sup> Christiansen Capital Advisors LLC, The Gross Annual Wager, 1999 and 2003.

<sup>19</sup> American Horse Council, Racing Background, [www.horsecouncil.org](http://www.horsecouncil.org).

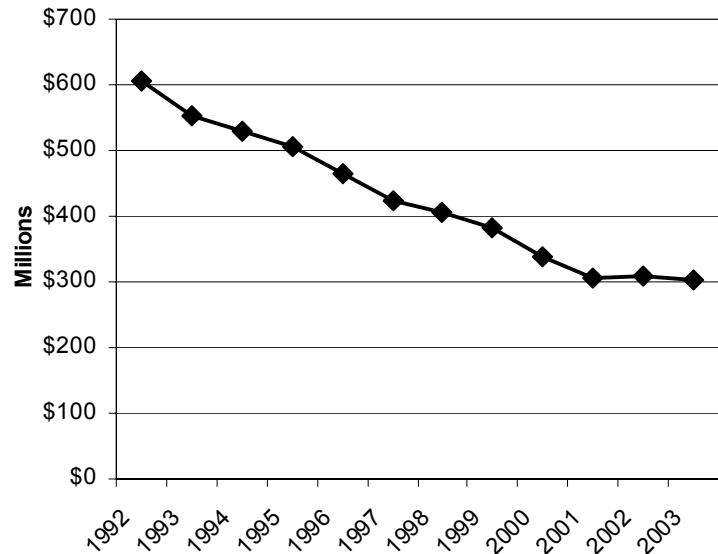
Most pari-mutuel betting does not occur at the track while viewing the actual race. Satellites now simultaneously broadcast races held at different racetracks or at Off-Track Betting sites (OTB) where no racing occurs at all. In Wisconsin, which does not allow OTB sites, betting on live greyhound races represented less than 40% of the handle in 2003; down from 68% in 1996.<sup>20</sup> Simulcasts generate larger betting pools by increasing public access and the availability of races on which a wager can be placed. In some states, bets can be placed from home and watched on 24-hour racing cable channels or the internet. Individuals can set up accounts at racing venues and in eight states they can telephone in their wagers from anywhere. Approximately \$550 million was wagered through account wagering in 1998.<sup>21</sup>

<b>States With Off-Track Betting</b>	<b>States With Telephone Wagering</b>
Arizona, California, Colorado, Connecticut, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Montana, Nevada, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington and Wyoming.	California, Connecticut, Idaho, Kentucky, Louisiana, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Virginia, Wyoming.

Source: National Conference of State Legislatures

Over the past two decades, pari-mutuel gaming has struggled. As seen in Graph 5, state revenues received from pari-mutuel gaming has dropped by approximately 50% from 1992 to 2003. Many attribute the pari-mutuel financial downturn to the expansion of different forms of gambling. The competition for the gaming dollar has made it difficult for tracks to even pay for the cost of running the races. In many states, a number of racetrack facilities have simply closed. A 2003 audit found attendance dropped at Florida horse and dog tracks and jai alai frontons by 80 percent since 1990. Greyhound racing has also faced a dramatic decline in attendance and wagering.

**Graph 5: State Pari-Mutuel Revenue (1992-2003)**



Source: U.S. Census Bureau.

In response, the pari-mutuel industry has fought for and received the authority in many states to offer alternative forms of gambling at racetracks. As discussed earlier in this paper, many states have permitted racetracks to install electronic gaming devices and slot-machines at the facilities, evolving them into “Racinos.” As policymakers continue to strive

<sup>20</sup>Art Zimmerman, *State Lottery, Pari-Mutuel Wagering and Racing, and Charitable Gaming*, Wisconsin Legislative Fiscal Bureau January 2005.

<sup>21</sup>National Gambling Impact Study Commission Final Report, June 18, 1999.

to reverse declines in the pari-mutuel industry and preserve the revenues they generate for their states, the typical response has been to further expand the types of gaming authorized.

## **Indian Gaming**

The U.S. Constitution empowers Congress to regulate commerce with the Indian tribes. Historically, this prevented states from exercising jurisdiction over tribal matters unless federal law specifically grants states such jurisdiction. Federal law grants some states broad jurisdiction over criminal offenses committed by or against Native Americans on tribal lands. If an activity is outlawed by a state punishable with criminal penalties, then the state law can be enforced on a reservation. However, if a state permits an activity, even though it is limited by regulations or conditions, the state may not prevent the tribe from conducting similar activity on Indian lands. As a result, if states allow some form of gambling, they cannot prevent tribes from conducting gaming on their lands.

Indian gaming first started in the late 1970s when several tribes established bingo operations to raise revenues for tribal government operations. At that time, state governments were also interested in increased revenues through gambling and by the mid-1980s, several states authorized charitable gaming and lotteries. As conflicts rose between states and tribal governments over gaming authority, the Supreme Court in 1987 confirmed their authority to establish gaming operations independent of state regulation as long as that state permitted some form of gaming. As a result, the door was opened for greater levels of Indian gaming.

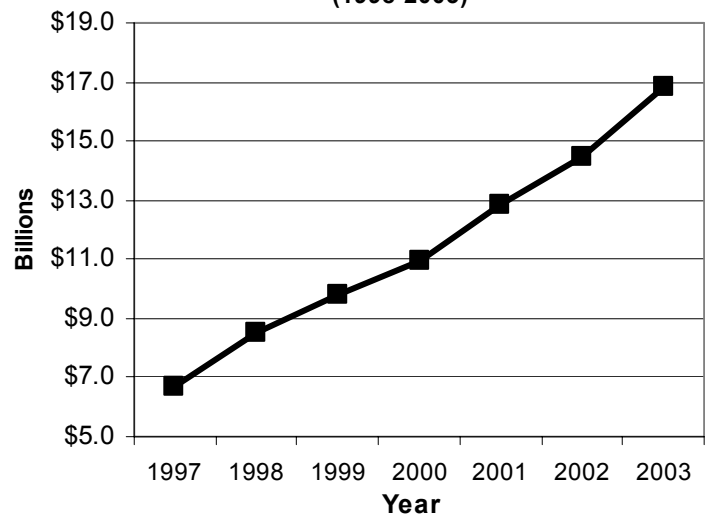
In 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA) which specified Indian tribes could engage in gaming as long as it was not prohibited under state or federal criminal laws. IGRA provides standards and regulations for gaming on Indian lands and established requirements for gaming compacts between tribes and states. The Act is consistent with the goals of federal Indian policy which is to promote tribal economic development, self-sufficiency, and a strong government. The law also responded to the interests of some Indian tribes who sought gambling as a means of economic development on reservations. IGRA defined three classes of gaming that are subject to different jurisdictions and levels of regulation. Compacts must be reached between tribal and state governments for Class III types of gaming and they must be approved by the U.S. Secretary of the Interior.

- **Class I** games are traditional Indian gaming and social gaming for minimal prizes. Regulatory authority over class I gaming is vested exclusively in tribal governments.
- **Class II** games are commonly known as bingo and includes, if played at the same location, pull-tabs, punch boards, tip jars, instant bingo and other games similar to bingo. Class II gaming also includes non-banked card games in which players bet against each other rather than against the house or a player acting as a bank.
- **Class III** games are defined as all forms of gaming that are not defined as Class I or Class II games. These types of games would include lotteries, pari-mutuel racing, and others commonly played at casinos, including slot machines, black jack, craps, and roulette.

Compacts between state and tribal jurisdictions govern Class III gaming activities on Indian lands and can include provisions relating how state and tribal criminal and civil laws apply to the licensing and regulation of the gaming activities; state and tribal jurisdiction for criminal and civil matters; payments to the state to defray the costs of regulation; standards for gaming operations; compact durations and conditions for renegotiation; and any other subjects related to the operation of gaming activities. These compacts are a crucial tool used by states to monitor tribal gambling operations. Many compact agreements state and tribal governments reached vary significantly from state to state, with one of the most significant being the amount of gaming revenues shared with state and local governments. States also differ as to the process used for compact negotiations; with some requiring legislative approval of the compacts and almost all providing the negotiation authority to the governor or executive branch. Finally, the levels of resources allocated to oversee tribal gambling operations also vary between the states. (See Table 3 in the Appendix)

Over a fifteen year period the number of tribal gaming facilities in America has more than quadrupled. In 1988, approximately 70 Indian casinos and bingo halls were operating in 16 states; in 2003 there were 354 facilities operating in 28 states.<sup>22</sup> Tribal gaming receives the third largest amount of gambling revenues in America and represents over one-fifth of the country's gaming industry. With class III casino-style gambling available on Indian tribal lands in nearly half the states, there has been a dramatic growth in consumer spending in these facilities as seen in Graph 6. Apart from total consumer spending at Native American facilities, class III tribal gaming revenues grew from \$8.5 billion in 1999 and to \$14.8 billion in 2003.<sup>23</sup>

**Graph 6: Total Tribal Gaming Revenues (1998-2003)**



Source: National Gambling Impact Study Commission Final Report, June 18, 1999 and Christiansen Capital Advisors LLC, Gross Annual Wager from 1999 through 2003.

More than sixty-percent of recognized Indian tribes do not participate in gambling at all. Nevertheless, casinos have changed the economic climate in and around reservations nationwide where half of Native Americans who live on or near reservations belong to tribes that have opened facilities with class III gambling. Studies show there have been positive changes resulting from casinos after at least four years of operation on a reservation, including: an 11.5% population increase fueled by young adults moving back to reservations; a 26% increase in adult employment; and a 14% decline in the number of working poor. In counties that have a tribal casino or are located near a facility, the employment/population

<sup>22</sup> National Gambling Impact Study Commission Final Report, June 18, 1999; Christiansen Capital Advisors LLC, Gross Annual Wager from 1999 through 2003; and National Indian Gaming Association.

<sup>23</sup> Christiansen Capital Advisors LLC, The Gross Annual Wager, 1999 and 2003.

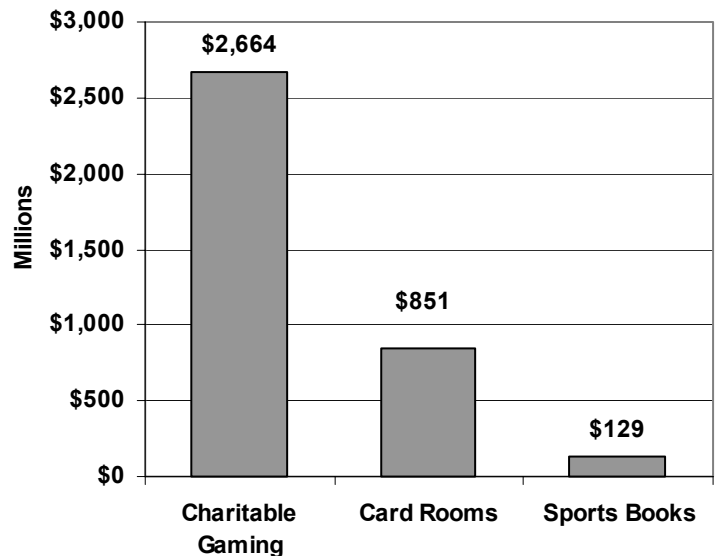
ratio has increased and mortality has declined.<sup>24</sup> Many tribal governments have also benefited from the revenues derived from their gaming activities.

However, the impacts of tribal casinos are not all positive. Not all tribes benefit equally from gaming when one considers the 20 largest Indian gambling facilities account for 50.5% of total revenues. Additionally, not all gambling facilities are successful with some tribes operating their casinos at a loss and a few facilities have even been forced to close.<sup>25</sup> In addition, in counties four years after a tribal casino has opened, there has been about a 10% increase in auto thefts, larceny, and violent crime. Bankruptcies have increased both in the counties and within 50 miles of a new casino. In addition, increased employment opportunities do not necessarily benefit Native Americans considering 75% of jobs at tribal facilities are held by non-Indians.<sup>26</sup> Finally, state government leaders need to realize that casino profits are not taxable and, as a result, may diverts funds from an activity the state would receive tax revenues from.<sup>27</sup>

### Other Types of Gaming – Charitable, Card Rooms, Sports Books and Internet Gambling

Other types of gambling are available to the American public, some of which have been authorized by the states and others in which their legality is unclear. Types of legal gaming in the states include the various charitable games, card rooms, and sports wagering. As seen in Graph 7, the \$2.6 billion in revenues generated by charitable gaming is significant, with about half coming from bingo. Approximately \$851 million was spent in 2003 by consumers at the 420 card rooms in five states. Card rooms allow patrons bet against each other, rather than the house, when playing table games like poker.<sup>28</sup> Sports wagering is legal in only two states, Nevada and to some degree in Oregon. Consumer spending on all of these types of gaming has remained relatively constant since 1999.

**Graph 7: Gross Revenues in Alternative State Gaming (2003)**



Source: Christiansen Capital Advisors LLC, Gross Annual Wager from 1999 through 2003.

<sup>24</sup> William Evans and Julie Topoleski, The Social and Economic Impact of Native American Casinos, National Bureau of Economic Research, Working Paper No. 9198, February 2003.

<sup>25</sup> National Gambling Impact Study Commission Final Report, June 18, 1999.

<sup>26</sup> National Indian Gaming Association, Resource Library, [www.indiangaming.org](http://www.indiangaming.org).

<sup>27</sup> William Evans and Julie Topoleski, The Social and Economic Impact of Native American Casinos, National Bureau of Economic Research, Working Paper No. 9198, February 2003.

<sup>28</sup> American Gaming Association, Survey of Casino Entertainment, 2004 State of the States.

One type of gaming that has seen significant growth in consumer spending is in internet gambling. According to gambling analysts from the River City Group based in St. Louis, the number of on-line gamblers this year in the U.S. will reach about 7.4 million. It is estimated this year more than 2,000 internet gambling sites will collect nearly \$10 billion in revenue, most from U.S. consumers. That is a 40% increase from 2004.<sup>29</sup> What is surprising about these figures is that the U.S. Justice Department considers internet gambling to be illegal under the federal 1961 Wire Act which prohibits the use of phone lines for placing bets. In addition, the U.S. Justice Departments have states federal money laundering statutes are applicable to unlawful Internet gambling businesses. However, some believe federal law is unclear citing past court rulings the limit the 1961 Wire Act to sports wagering. They also cite there is no national law that applies to Internet gambling and point to the fact that Members of Congress have proposed several bills to outlaw Internet gambling and extend the Wire Act to internet casinos.<sup>30</sup>

While Nevada approved a law to authorize and regulate internet casinos, the state never moved forward with that type of gaming because of objections from the federal government. However, there are now several countries and jurisdictions that offer online gaming, including: a number of Caribbean island nations led by Antigua; Australia; Costa Rica; and the Kahnawake Mohawk tribe of Ontario, Canada. Among the many countries considering the expansion of online gaming, the United Kingdom may pursue becoming a world leader in the area of web gambling.<sup>31</sup> Because of the explosion of the use of the internet by Americans to gamble, some states are now considering the approval and regulation of the practice despite objections by the U.S. Justice Department. North Dakota is the furthest along and is considering placing before the voters a constitutional amendment to approve giving the state the ability to authorize and regulate internet gambling. Bills have also been proposed in Illinois and Georgia on the issue.

All this comes against the backdrop of a closely watched World Trade Organization (WTO) gaming decision. The tiny Caribbean island of Antigua, which has replaced its sugar and banana economy with Internet gambling, filed a complaint with to the WTO that the United States was violating a 1993 trade agreement when they was stopped from offering Internet gambling to American citizens. A WTO dispute panel ruled in November 2004 that the United States was in violation of its international trade obligations. In other words, U.S. or state governments can't stop Antigua or any other overseas site from offering internet gambling because it violates the market access principles of the WTO's General Agreement on Trade in Services (GATS). The United States is appealing a WTO ruling.

## **Conclusion**

Today Americans can place a wager of some form in all but two states, and consumer spending on gaming has increased 368% since 1982. Just as 18<sup>th</sup> century colonists to America welcomed gambling through lotteries as a voluntary form of taxation, the same seems to be true today as to the general public's view of the practice. At a time when state lawmakers are struggling with budget shortfalls and demands for tax relief, many will

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<sup>29</sup> John Swartz, On-line gambling sites expect big payoffs, USA Today, March 21, 2005.

<sup>30</sup> Dale Wetzel, Internet Poker Bill: Feds say it's illegal, Associated Press, March 6, 2005.

<sup>31</sup> MSNBC, Internet Gambling's Spread, April 10, 2001.

choose gambling over tax increases. In addition, now that gambling is readily available through casinos, lotteries, electronic gaming and racetracks, a significant portion of the American public no longer worries about its existence. Gaming is now a major component of many state budgets.

Tens of billions are at stake in the gambling industry and competition is growing for those dollars. As states begin to depend on the monies gambling provides to their treasuries, expanded gaming will continue to be looked at as a way to preserve that revenue stream. As global gaming competition expands through internet wagering, there will be increased pressure to address this nebulous area of uncharted enforcement.

If the broad availability of gambling is here to stay in the United States, then policymakers should remain focused on their responsibility to ensure the integrity of the various forms of gaming, and to address the societal impact of gambling. Government leaders should look to states and other jurisdictions with successful gaming regulatory structures. It is also vital for federal, state and local government officials with the responsibility for oversight to gain a more comprehensive understanding of the complexities, the operations and impacts of the gaming industry.

**The Taxpayers Network** is a non-profit social welfare organization founded in 1992 with the mission of educating its members and the general public about government and public policy. The Taxpayers Network conducts and publishes research with the goal of generating policy discussions in the areas of government programs and expenditures, taxation, economic development, international commerce, health and long term care financing, and public and private retirement initiatives.

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#### **About the Author:**

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**Table 3: Information on Tribal Gaming in the States (2004-05 Unless Otherwise Noted)**

State	Number of Tribes with Compacts	Number of Casinos	Negotiation Authority	Legislative Approval Authority	Term of Compact	Current Tribal Payments for Regulation	State Regulation Budget/Number of State Agencies/Positions	Additional Payments (Millions)			Payment Notes
								2004-05	2005-06	2006-07	
Arizona	21	22	Executive branch negotiated original and current compacts. A lawsuit in 2001 challenged this authority, but was eventually dismissed.	No approval authority	10 years, then renewal for 10 years, then renewal for 3 years	\$8.0 million	\$10.5 million One agency 105 positions	\$78.0	\$68.8	\$74.4	Payments shared with local government
California	66	53	Executive Branch	Approval authority for compacts and amendments	1999 compacts to 2020, some 2004 compacts to 2030	\$13.0 million	\$13.1 million Two agencies 110 positions	\$200.0	\$250.0	\$300.0	\$100 million each year is restricted for specific purposes
Colorado	2	2	The Office of the Governor	No approval authority	No limit	\$0	Note 1	\$0	\$0	\$0	
Connecticut	2	2	For one tribe, federal procedures were imposed by the U.S. Secretary of Interior under IGRA. The Governor negotiated a compact with a second tribe.	Approval authority for compacts and amendments	No limit	\$8.6 million (2002-03)	\$8.6 million (2002-03) Three agencies Positions Not Reported	\$387.3	\$410.0	\$458.0	Payments shared with local government
Idaho	4	4	Executive Branch	No approval authority	Varies by compact	\$0	Minimal oversight with two agencies. No budget or positions reported.	\$0	\$0	\$0	
Louisiana	3	3	The Office of the Governor	No approval authority	7-year terms	Actual costs	Not reported (proprietary) One agency 18 positions	\$0	\$0	\$0	
Michigan	11	17	The Office of the Governor	Legislative approval required by compacts, not by state law. This is being challenged in court	20-year terms	\$332,000	\$332,000 One agency 3.5 positions	Unknown	Unknown	Unknown	Declining payments due to private casino openings

Note: Table extracted directly from Informational Paper 81, Tribal Gaming in Wisconsin, Wisconsin Legislative Fiscal Bureau, January 2005.

State	Number of Tribes with Compacts	Number of Casinos	Negotiation Authority	Legislative Approval Authority	Term of Compact	Current Tribal Payments for Regulation	State Regulation Budget/Number of State Agencies/Positions	Additional Payments (Millions)			Payment Notes
								2004-05	2005-06	2006-07	
Minnesota	11	18	State law provides the Governor the authority to negotiate the compacts and the Governor may appoint a negotiating team. If a negotiating team is appointed, it must have legislative members. By law, the Attorney General serves as legal advisor for the negotiating team.	No approval authority	No limit	\$150,000	\$1.6 million One agency 25 positions (Budget and staff reflect additional, non-tribal functions)	\$0	\$0	\$0	
Mississippi	1	2	The Office of the Governor	No approval authority	No limit	\$0	\$0 Minimal or no oversight	\$0	\$0	\$0	Note 2
Montana	5	5	A team led by the Governor's Office and including an Assistant Attorney General and the Administrator of the Gambling Control Division	No approval authority, except if new types of games are proposed	One tribe no limit; 4 tribes with 5-year terms	\$0	\$0 Minimal or no oversight	\$0	\$0	\$0	
New Mexico	12	13	Executive Branch	Approval authority for compacts and amendments	15-year terms	\$1.2 million	\$5.0 million One agency 59 positions	\$38.6	\$45.5	\$47.8	
North Dakota	5	5	Executive Branch	No approval authority	10-year terms	\$92,000	\$92,000 One agency 1.5 positions	\$0	\$0	\$0	
Oklahoma	15	Note 3	Executive Branch	Approval authority by the Joint Committee on State-Tribal Relations	3-year terms with automatic renewal	\$0	\$0 Minimal or no oversight	\$0	\$0	\$0	Ballot question outcome could result in future state payments exceeding \$38.0 million annually

State	Number of Tribes with Compacts	Number of Casinos	Negotiation Authority	Legislative Approval Authority	Term of Compact	Current Tribal Payments for Regulation	State Regulation Budget/Number of State Agencies/Positions	Additional Payments (Millions)			Payment Notes
								2004-05	2005-06	2006-07	
Oregon	9	9	Executive Branch	No approval authority	No limit unless a major expansion is proposed	\$1.5 million	Not reported One agency 16.5 positions	\$0	\$0	\$0	
South Dakota	8	9	The Governor's Office with assistance from the Attorney General's Office	No approval authority	2- to 4-year terms	Less than \$5,000	Minimal or no oversight	\$0	\$0	\$0	
Washington	27	23	Executive branch, through a state agency: the Washington State Gambling Commission	No approval authority	No limit	\$2.67 million	\$2.67 million One agency 35 positions	\$0	\$0	\$0	
Wisconsin	11	17	The Office of the Governor	No approval authority	No limit, but provision struck down by Supreme Court for one tribe. Status uncertain at this time.	\$350,000	\$2.0 million Two agencies 17.25 positions (Note 4)	\$104.2	\$91.6	\$108.7	Estimated payments may be affected by Supreme Court decision or by renegotiated payment provisions.

Notes:

- 1 Colorado only performs background investigations of non-Indian employees. Costs are borne by the applicant.
- 2 The Mississippi compact has an option for the state and the tribe to each contribute \$250,000 annually for tourism promotion.
- 3 Oklahoma has more than 80 tribal gaming facilities, but it is unknown how many of these facilities are "casinos," offering both electronic and table games, and how many are "ancillary" sites offering electronic games only.
- 4 The cost of state regulation in Wisconsin exceeding the \$350,000 in regulatory payments provided by the tribes is appropriated from the additional tribal payments made to the state.