

**March 2005**

**Gambling in Minnesota**  
**A Short History**

This report describes the evolution of gambling in Minnesota since 1945, with particular attention to the role of the legislature. It covers charitable gambling, pari-mutuel racing, the state lottery, Indian gaming, and other gambling forms that have been proposed in Minnesota over the years.

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## Gambling in Minnesota 1945-2005: Timeline

|             | <b>Charitable Gambling</b>  | <b>Horse Racing</b>  | <b>State Lottery</b>                             | <b>Tribal Casinos</b>   | <b>Other</b>                                   |
|-------------|---|--|--|---|--|
| <b>1945</b> | Bingo legalized for first time  |  |  |   |  |
| <b>1947</b> |   |  |  |   | Gov. Youngdahl's anti-slot machine law enacted |
| <b>1963</b> | Bingo law amended to limit compensation to workers                    |  |  |   |  |
| <b>1964</b> |   |  | New Hampshire creates first modern state lottery |   |  |
| <b>1967</b> |   |  | New York becomes first large lottery state       |   |  |
| <b>1971</b> |   | Bill to legalize pari-mutuel betting reaches floor of both houses for first time                       |  |   |  |
| <b>1972</b> |   |  | First lottery bill introduced in Minnesota       |   |  |
| <b>1976</b> | Bingo law amended to require local licensing, regulate use of profits |  |  |   |  |
| <b>1978</b> | Paddlewheels, tipboards, raffles legalized                            | Bill for constitutional amendment to allow pari-mutuel betting nearly passes House                     |  |   |  |
| <b>1981</b> | Pull-tabs legalized   |  |  | U.S. Court of Appeals says tribes may conduct bingo on Indian land without state regulation; bingo parlors appear on Indian reservations in Minnesota |  |
| <b>1982</b> |   | Legislature passes bill to put pari-mutuel betting amendment on the ballot; voters approve in November |  | More bingo parlors open on Indian land, including Mdewakanton Sioux near Prior Lake and Prairie Island near Red Wing                                  |  |

|             | <b>Charitable Gambling</b>   | <b>Horse Racing</b>   | <b>State Lottery</b>   | <b>Tribal Casinos</b>  | <b>Other</b>   |
|-------------|--|---|--|--|--|
| <b>1983</b> |  | Legislature approves pari-mutuel enabling legislation and creates Minnesota Racing Commission   |  |  |  |
| <b>1984</b> | Legislature transfers regulation and licensing from local governments to Charitable Gambling Control Board; gambling tax enacted |   |  |  | Legislature legalizes possession of "video games of chance" (video poker, etc.) but not gambling on them |
| <b>1985</b> | Deadline for exchanging local licenses for state licenses extended after gambling board is swamped with applications             | Canterbury Downs opens in Shakopee for first season of racing   |  |  | Bill to legalize casino in Ely rejected  |
| <b>1986</b> | Pull-tab tax becomes tax on ideal gross  | Canterbury Downs total wagering peaks at \$134 million  |  | Fond du Luth bingo parlor opens in downtown Duluth<br><br>Video gaming machines begin to appear in tribal casinos  |  |
| <b>1987</b> | Local governments allowed to tax charitable gambling   | Canterbury Downs shows signs of financial strain and requires new infusion of cash; owners unsuccessfully seek tax relief from legislature                      |  | U.S. Supreme Court rules in <i>Cabazon</i> decision that tribes could conduct any gambling form that a state permits, without state regulation           |  |
| <b>1988</b> | Gross receipts approach \$500 million; most gambling board functions shifted to Administration Department                        | Canterbury Downs given significant tax relief as tax basis shifts from total wagering to total takeout; mandated share of takeout dedicated to purses increased | Legislature puts state lottery amendment on ballot; legislation dedicates half of revenue to environmental trust fund, half to Greater Minnesota Corp.<br><br>Voters approve amendment in November | Congress passes Indian Gaming Regulatory Act affirming legal basis for gaming on tribal land; authorizes tribal-state compacts for casino-style gambling |  |

|             | <b>Charitable Gambling</b>   | <b>Horse Racing</b>   | <b>State Lottery</b>  | <b>Tribal Casinos</b>   | <b>Other</b>  |
|-------------|--|---|---|---|---|
| <b>1989</b> | Gross receipts exceed \$1 billion; gambling board becomes agency of Department of Gaming; newspaper articles raise questions about uses of gambling proceeds; 13-member board replaced by 6-member board plus gaming commissioner; combined receipts tax imposed on pull-tab and tipboard revenues                         | Out-of-season simulcasting legalized; track ownership files for bankruptcy; track put up for sale   | Lottery legislation enacted with lottery as division of Department of Gaming; lottery put under supervision of lottery director with advisory board<br><br>George Andersen named first lottery director   | State signs compacts with 7 tribes for video gambling   | Legislature creates Department of Gaming with commissioner sitting on gambling and lottery boards and racing commission<br><br>Legislature increases penalties for gambling on video games of chance                    |
| <b>1990</b> | Charitable gambling criticized by Attorney General and office of Legislative Auditor for lax enforcement, lack of accountability, and spending on noncharitable purposes<br><br>Legislature passes reform bill to require posting of pull-tab winners, tighten lawful purpose expenditures, increase enforcement resources | Track bought by Detroit investors, who enter into partnership with Ladbroke International to manage the track; winter simulcasting begins | Minnesota State Lottery begins sales in April; sales begin with instant tickets; on-line games added in August<br><br>Legislature redirects lottery profits, reducing environmental trust fund to 40 percent, Greater Minnesota Corp. to 25 percent, and remainder to infrastructure<br><br>Legislature proposes constitutional amendment to guarantee environmental trust fund's 40 percent share for 10 years; voters approve in November | State signs video compacts with 2 more tribes<br><br>Federal magistrate rules that state must negotiate compacts with tribes for blackjack, based on state's "private social bet" exemption | Compulsive gambling program created in Department of Human Services, funded through lottery proceeds<br><br>Legislature ends licensing of video games of chance and instead classifies them as illegal gambling devices |

|             | <b>Charitable Gambling</b>  | <b>Horse Racing</b>   | <b>State Lottery</b>   | <b>Tribal Casinos</b>   | <b>Other</b>   |
|-------------|---|---|--|---|--|
| <b>1991</b> | Legislature begins reversing reforms by relaxing pull-tab posting requirement | Legislature passes bill to legalize off-track betting; racing commission approves rules for telephone betting   | Lottery profits reallocated again, with 60 percent of net proceeds dedicated to state general fund<br><br>Lottery proposes, then withdraws plan for Nintendo home lottery play | State signs video compacts with last 2 tribes<br><br>State signs compacts with 11 tribes for blackjack                  | Department of Gaming abolished; racing commission, gambling board, lottery made independent  |
| <b>1992</b> |   | Off-track betting and telephone betting declared unconstitutional by state supreme court; racing commission declines to approve simulcasting for 1993 without commitment from Ladbroke for live racing        | Minnesota joins multi-state Powerball game   | 14 casinos operating on Indian land offering video gambling and blackjack; gross wager estimated at \$1 billion or more | Congress prohibits states from licensing or operating sports betting; grandfathers existing systems<br>First compulsive gambling treatment program using state funds opens |
| <b>1993</b> |   | Without simulcasting days approved, Canterbury Downs closes for the year<br><br>Irwin Jacobs buys track, but quickly puts it back up for sale<br><br>Curt and Randy Sampson lead ownership group buying track |  | Number of casinos grows to 17, total wager estimated at \$5 billion   | Legislative effort to legalize video lottery in bars hits high point as issue is tied to fishing rights on Lake Mille Lacs   |
| <b>1994</b> |   | Legislature passes constitutional amendment to allow off-track betting, but voters narrowly reject it<br><br>Canterbury Downs operates as simulcasting-only facility  |  |   | Video lottery in bars rejected   |



|             | <b>Charitable Gambling</b>   | <b>Horse Racing</b>  | <b>State Lottery</b>                                     | <b>Tribal Casinos</b> | <b>Other</b>  |
|-------------|--|--|--|-----------------------|---|
| <b>1995</b> |  | Canterbury Downs, renamed Canterbury Park, reopens with live racing season of 51 days                    | Legislature abolishes lottery board                      |                       | Attorney General tells legislature that it would little chance of winning a lawsuit to invalidate federal law prohibiting sports betting<br><br>Advisory Council on Gambling report to legislature recommends no new forms of gambling, no major change in existing forms |
| <b>1996</b> | Tax relief granted as legislature allows refunds on taxes paid on unsold boxes of pull-tabs  | Legislature grants additional tax relief by exempting first \$12 million in takeout from pari-mutuel tax | Lottery reaches \$375 million in total sales for FY 1996 |                       |   |
| <b>1997</b> | Allowable expenses raised to 65 percent of gross profit for bingo, 55 percent for other forms<br><br>Sanctions against organizations on premises where illegal gambling occurs relaxed |  |  |                       | Special legislative session to deal with stadium issues, including options to fund stadiums with gambling revenue, ends with no agreement   |
| <b>1998</b> | Lawful gambling taxes reduced by 5 percent   |  |  |                       |   |
| <b>1999</b> | Additional 5 percent reduction in gambling taxes   | Legislature authorizes card club for Canterbury Park where betting on "unbanked" card games is allowed   |  |                       |   |
| <b>2000</b> | Gambling taxes again reduced by additional 5 percent   | Card club opens at Canterbury  |  |                       |   |

|             | <b>Charitable Gambling</b>   | <b>Horse Racing</b>  | <b>State Lottery</b>  | <b>Tribal Casinos</b>   | <b>Other</b>  |
|-------------|--|--|---|---|---|
| <b>2003</b> | Licensed gambling organizations assessed new regulatory fee of 0.1 percent of gross receipts to fund gambling regulation | Minnesota House passes bill to allow "racino" at Canterbury, but Senate rejects plan | Minnesota Center for Environmental Advocacy criticizes lottery, claiming its performance in returning state revenue is below average<br><br>Legislative Auditor undertakes study of lottery operations  | Red Lake, White Earth bands propose partnership with state for metro area casino; legislature fails to approve  | Caesar's Entertainment proposes massive casino project at Mall of America; bill is withdrawn before vote<br><br>Total national volume of Internet wagering estimated at \$5.7 billion |
| <b>2004</b> |  |  | Lottery director George Andersen found dead in January, death later ruled a suicide<br><br>Legislative Auditor report issued shortly thereafter criticizes several lottery contracts and business arrangements but finds no evidence of illegal acts<br><br>Legislature creates task force to study lottery organization<br><br>Michael Vekich named interim lottery director, later succeeded on permanent basis by Clint Harris | Gov. Pawlenty proposes tribes share revenues with state, suggests "other gambling options" if they decline<br><br>Mille Lacs tribal chair Melanie Benjamin proposes new relationship between tribes and state, suggests that tribal gaming revenue be used for nontribal purposes including stadiums or assistance to local governments, nonprofits, or other tribes<br><br>Tribal leaders critical after governor intensifies efforts to seek other gambling options |   |
| <b>2005</b> |  |  | Lottery task force report advocates reestablishment of lottery board but with mostly advisory function  |   | Legislative Auditor releases program evaluation report on gambling, recommends improved oversight over charitable gambling  |

## **1945-1981: Legalizing What's Already Going on**

Almost every attempt to write a history of gambling, however limited in scope, begins with the observation that gambling is among the oldest of human activities. Gambling in one form or another has existed in virtually every human society, often with little regard to whether or not it is officially proscribed. As one history has noted, “Whether gambling is a basic human instinct or not has been argued long, and often loudly, without a positive resolution. But, be it instinctive or cultural, gambling has been pervasive in human society throughout time.”<sup>1</sup>

While the urge to gamble is probably older than written history, in Minnesota the urge to suppress gambling is older than statehood. The 1851 territorial legislature enacted strict prohibitions against all forms of gambling.<sup>2</sup> The prohibition that still influences the state’s gambling policy was contained in the state’s first constitution adopted in 1858:

The legislature shall never authorize any lottery or the sale of lottery tickets.  
*Article XIII, section 5.*

For nearly a century, gambling statutes faithfully carried out this stern injunction by making not just lotteries but all forms of gambling illegal.

### **The First Bingo Law**

Minnesota’s first cautious venture into legalized gambling came in 1945 with a legalization of nonprofit bingo. Charitable, fraternal, and other nonprofit associations were allowed to conduct the game as long as the proceeds “did not inure to the profit of any individual.”<sup>3</sup> The conducting organization was required to give 30 days advance notice of each game to its local governing body, which could prevent it by passing a resolution.

It is interesting to note how many of the elements of this brief act can be found in current Minnesota law. Bingo can still be conducted only by nonprofit organizations, individuals are still not supposed to profit from it, and local governments can still veto it. Another element of this law was its artful evasion of the constitutional prohibition against lotteries by the simple mechanism of declaring bingo not to be a lottery, despite the presence in the game of the three essential elements—consideration, prize, and chance—that have almost universally defined a lottery.

### **Slot Machines Driven Out**

Minnesota law may have left no room for commercial gambling, but in the post-World War II era its presence in some parts of the state was pervasive despite its illegality. An estimated 8,000 illegal slot machines were being operated in Minnesota<sup>4</sup> and the annual revenue from these machines was estimated at \$4 million (equivalent to about \$35 million today).<sup>5</sup> Many of the machines were operated in resort areas with little interference from local law enforcement. Gov.

Luther Youngdahl, who in his 1946 campaign had made clear his intention to stamp out slot machines, succeeded in passing legislation in 1947 that made the possession of a gambling device grounds for revocation of any of the violator's business licenses, including its liquor license.<sup>6</sup>

Controversial at the time, the new law was largely successful in driving slot machines out of the state (some resorts replacing them with signs reading "Luther Was Here"), and Youngdahl went on to be re-elected as governor twice.

## **Further Attempts to Regulate Bingo**

Sixteen years would go by until the legislature addressed the problem of gambling again, and when it finally did so in 1963 it was in phrases that, in light of subsequent developments, seem almost quaint. The 1963 bingo law's declaration of policy deplored the "increasing commercialization in the conduct of bingo" as being "contrary to public policy and deleterious to the morals of the citizens of the state." The stated intent of the act was to limit bingo to "a mild form of social recreation" intended to raise funds for charitable purposes and not for private profit. The actual content of the law had less lofty ambitions, serving only to limit compensation for bingo sessions to \$8 per person.<sup>7</sup>

Another law change in 1963, part of a massive recodification of the state's criminal statutes, was little noticed at the time but would eventually have a significant effect on casino gambling in Minnesota. The new criminal code maintained the longstanding prohibitions against gambling but made an exception not only for bingo but also for "private social bets not part of or incidental to organized, commercialized, or systematic gambling."<sup>8</sup>

In 1976, the legislature made its first venture into detailed gambling regulation by passing an extensive bingo regulation law that was based largely on the existing St. Paul bingo ordinance.<sup>9</sup> It implicitly recognized that previous legislative attempts to control bingo had not been entirely successful, stating in its first section that the purpose of the new law was to "closely regulate and control" bingo and to prevent "commercialization of bingo."

For the first time, organizations conducting bingo were required to obtain a license from local governments and to report to the local regulating agency and their members annually on use of bingo proceeds. Net profits (gross receipts after prizes and expenses) were limited to "lawful purposes," which were defined in very broad terms to include religious, educational, charitable, patriotic purposes, fostering worthy public works, "lessening the burdens of government," and improving or maintaining the sponsoring organization's real property.

Bingo prizes were limited to \$100 per game except for higher stakes "coverall" games. Total prizes for a single bingo occasion were limited to \$2,500, or \$3,000 for occasions where a coverall game was played. Bingo occasions were limited to two per week per organization. Compensation, raised from \$8 to \$12 per occasion, could only be paid to members of the

organization or their spouses. Each organization was required to have a bingo manager who would be responsible for the organization's games.

The 1976 law attempted to address in more specific terms a question that had previously been dealt with only in general ones—specifically, for whose benefit is bingo being conducted? Several provisions were intended to prevent individuals from profiting from bingo. Expenditure of bingo proceeds could only be made for prizes and for reasonable and necessary expenses including supplies and equipment, rent, and utilities. In an attempt to ensure that lessors did not have a vested interest in maximizing gambling, organizations conducting gambling on leased premises were required to have a lease, the terms of which could not provide for rental payments based on a percentage of gambling receipts or profits. The limitation of net profits to lawful purposes, while written mostly in generalities, was intended to further advance the principle that bingo profits were not to benefit individuals who were involved in conducting the games.

The 1976 law opened what turned out to be a long-running debate over use of net gambling profits on the conducting organization's building. Improving, maintaining, and repairing an organization's own building was designated as a lawful purpose, but using net profits to erect or acquire a building was not, unless the building would be used for another lawful purpose.

One aspect of keeping charitable gambling strictly for charitable purposes was making organizations accountable for the gambling conducted in their name. Each organization was required to have at least one bingo manager who would be responsible for the conduct of bingo and for its gross receipts. Managers were required to be bonded. Another provision prohibited the person who kept the gambling accounts for an organization from being the same person who kept the organization's other accounts. All expenditures of gambling net profits had to be approved by the organization's membership.

The first three decades of bingo regulation were clearly intended to legalize and regulate an activity that had been going on for many years. The same pattern was followed as bingo regulation gradually turned into charitable gambling regulation. In 1978, the legislature expanded the list of legal forms of charitable gambling to include raffles, paddlewheels (a kind of wheel of fortune), and tipboards (punchboards).<sup>10</sup> In each case, the addition was a recognition of a form of gambling that was already widespread despite being illegal. The regulatory system for these forms was essentially the same as for bingo, with licensing still being handled at the local level.

## **Unintended Consequences**

Little notice was taken in 1981 when charitable gambling law was amended again to allow pull-tabs as a form of lawful gambling. At the time pull-tabs were considered only a minor part of the gambling picture. But when the legalization of pull-tabs was combined with another little-noticed provision from the 1978 law that allowed charitable gambling to be conducted in licensed liquor establishments, the conditions were created for a dramatic increase in the volume of charitable gambling.

The original intent of the law allowing charitable gambling in licensed bars and restaurants, which was an exception to the general statute that prohibited any kind of gambling in those establishments, was to legalize charitable games in the clubrooms and post headquarters of fraternal and veterans organizations that held club liquor licenses. It was soon interpreted to allow organizations to rent space in bars and restaurants for placement of booths to sell pull-tabs, or to sell pull-tabs at the bar itself. This more than any other development led to the explosive growth of charitable gambling in the 1980s.

## **1982-1992: Creating A Gambling Industry**

At the beginning of the 1980s Minnesota still thought of itself largely as a gambling-free state. As late as 1984, a press release from Gov. Rudy Perpich's office could still describe bingo as "the only major form of gambling that is legal in Minnesota."<sup>11</sup>

By the end of the decade casual references to a "gambling industry" were widespread. For-profit gambling had been legalized, state-operated gambling was imminent, the charitable gambling industry was the largest in the country, full-fledged casinos had sprouted around the state, and Attorney General Hubert H. Humphrey III could write that "we are on a gambling binge, the consequences of which have yet to be fully recognized or acknowledged."<sup>12</sup>

Few such drastic changes in the cultural and political landscape have happened in so short a time. It can still be argued as to whether Minnesota underwent a fundamental social change during this decade or whether the changes were simply a matter of legal supply catching up with pent-up demand.

### **Pari-mutuel Betting Bill Passes**

Proposals to legalize pari-mutuel betting on horse racing had been legislative perennials throughout the 1960s, occasionally given hearings and then quietly buried. It therefore came as something of a shock to both supporters and opponents when a pari-mutuel betting bill reached the floor of both bodies in 1971. When the bill was eventually sent back to committee normality appeared to have been restored, but the proposal had made a degree of progress that would not be reversed.

The turning point may have been 1978, when pari-mutuel supporters adopted a novel approach. Most courts in other states had taken the position that pari-mutuel betting was not a lottery, so that constitutional prohibitions against lotteries would not be a bar to legalizing it. The proposal's supporters nonetheless argued that there was enough uncertainty surrounding the question to justify a constitutional amendment that would resolve the matter and allow, but not require, the legislature to legalize pari-mutuel betting.

The decision to seek a constitutional amendment was as much a political as legal calculation, since supporters believed that there was more support for pari-mutuel betting among the general public than in the legislature. Instead of becoming enmeshed in arguments about the corruption of morals and the undermining of the work ethic that had previously dominated debates about legalizing commercial gambling, the supporters simply advocated "letting the people decide."

The 1978 bill to put pari-mutuel betting before the voters as a constitutional amendment came within a few votes of being approved by the House, the closest any pari-mutuel bill had ever come to passage. Its eventual approval began to appear inevitable, and in 1982 the question finally appeared on the general election ballot. If its presence was the result of a political calculation it turned out to be a shrewd one, because while the pari-mutuel amendment was

passed by the legislature with only a few votes to spare in each house, it was approved by the voters by almost a two-to-one margin. The amendment authorized the legislature to legalize and tax “on-track pari-mutuel betting on horse racing,” restrictive language that eventually would have major implications for the racing industry.

The 1983 Legislature responded with legislation that created a nine-member Minnesota Racing Commission to issue racetrack, betting, and occupational licenses and to regulate both horse racing and betting. A tax was imposed of 1.75 percent of the first \$48 million in betting handle in a year and 6 percent on handle above that amount, plus a 40-cent admissions tax and one-half of the breakage (the amount left over from each pari-mutuel payout after it is rounded down to the nearest dime). The tax revenue would go into the state’s general fund, but 1 percent of the total handle was dedicated to a Minnesota Breeders Fund to give incentives to the state’s breeding industry.

Fears that the industry would quickly become overbuilt led to a limitation of a single racetrack in the seven-county metropolitan area. In later years this restriction would be modified to allow a harness track in the metropolitan area if it were located at least 20 miles from the thoroughbred track.

Some of the authors of the 1983 pari-mutuel bill had expected that the racing commission would focus primarily on the qualifications of the applicants rather than the location of the track when awarding the single racetrack license. There were seven applicants for the first license and the eventual location of the track became one of the racing commission’s prime concerns. The decision eventually came down to a choice between sites in Woodbury in the east metro area and near Shakopee in the southwest metro. By a single vote, the Shakopee applicants were awarded the license.

## **The State Takes Over Charitable Gambling Regulation**

Within a few years of passage of the 1976 bingo bill, a sentiment had grown in the legislature that charitable gambling had expanded far faster than had been originally expected and that it had outgrown the control system enacted that year. Local enforcement of licensing requirements appeared spotty, with some jurisdictions enforcing the licensing requirement and others ignoring it. Adding to the concern was a belief that the state sales tax, which theoretically applied to gross receipts from charitable gambling, was going uncollected because the state Department of Revenue had no reliable records of what organizations were conducting gambling.

In 1984, the legislature responded by transferring primary control of charitable gambling from local government to the state.<sup>13</sup> A new 13-member Charitable Gambling Control Board was created to take over licensing functions and to adopt rules for the conduct of gambling and handling of gambling proceeds. All organizations conducting gambling were required to obtain an annual license from the board. Distributors of gambling equipment (including pull-tabs, bingo paper, paddlewheels, and tipboards) were also required to be licensed, and all gambling equipment was required to be registered.



The sales tax on charitable gambling gross receipts was eliminated and replaced by a new tax of 10 percent of gross gambling receipts minus prizes, to be collected by the board. With charitable gambling averaging about an 80 percent prize payback rate, the tax worked out to about 2 percent of gross receipts. At the behest of Gov. Perpich, the tax was originally dedicated to one of his pet projects, a state school of the arts, but within a year that dedication had been rescinded and the money redirected to the general fund.

Local authorities, while stripped of authority to issue licenses, still retained considerable power over charitable gambling. All state-issued licenses had to be submitted to the city or county having jurisdiction before becoming effective, and could not be issued if disapproved by the city council or county board. Local governments were given the power to adopt gambling regulations that were more stringent than state regulations, up to and including prohibition of gambling.

## **Video Games of Chance Legalized**

In the same 1984 session in which the Gambling Control Board was created, the legislature began one of its odder forays into gambling policy when it legalized the possession and operation of video poker machines in bars and restaurants without actually permitting gambling on them.<sup>14</sup>

The 1984 law did not introduce these machines into Minnesota, since they were already widespread here and elsewhere. They were coin-operated video games that simulated poker, blackjack, or other common gambling games. In statute they were called “video games of chance” but in legal circles they were widely known as “gray area games” since their legal status was often ambiguous. They could at least in theory be used solely as amusement devices since they did not pay out any coins or tokens or directly award anything but free games. Players accumulated credits that could be used for free games but which could also be redeemed by the game operator (usually a bar) for cash, making them gambling devices.

This dual use made it necessary for law enforcement agents to actually see payoffs being made on the machines in order to allow their seizure as gambling devices and prosecution of their operators. Many law enforcement agencies regarded gambling as a victimless crime and gambling enforcement as a low-priority activity, so the machines flourished in many locations around the state. However, some agencies were still regarding them as illegal per se and seizing them as gambling devices, leading the games’ distributors to seek legislation to allow their possession.

The law came down on both sides of the issue. It allowed establishments with liquor licenses to obtain licenses from the Department of Public Safety to possess video games of chance on the premises, but it continued to prohibit any gambling on them. The state licenses were sufficient to clarify the games’ legal status and prevent their seizure, thus achieving the distributors’ main objective. The state was less successful in achieving its objective of preventing gambling on the machines, since it was obvious that the machines’ sole appeal to players was as gambling devices. Attorney General Humphrey, who had opposed the law, said later that “As predicted, illegal payoffs on video games of chance have become commonplace in many areas of the state.”<sup>15</sup>

The legislature eventually recognized this reality and voted in 1989 to increase the penalty for making payoffs on video games of chance to the level of a gross misdemeanor, and for the first time made accepting payoffs a misdemeanor.<sup>16</sup> A year later state licensing of the machines was terminated and the machines were classified as gambling devices, meaning that their mere possession would be illegal.<sup>17</sup>

The 1990 law brought an end to the state's adventure with legalizing gray area games, but the episode would have long-lasting consequences. As noted elsewhere in this history, it provided one legal basis for the presence of video gambling devices on Indian reservations and thus helped to create a massive new gambling industry.

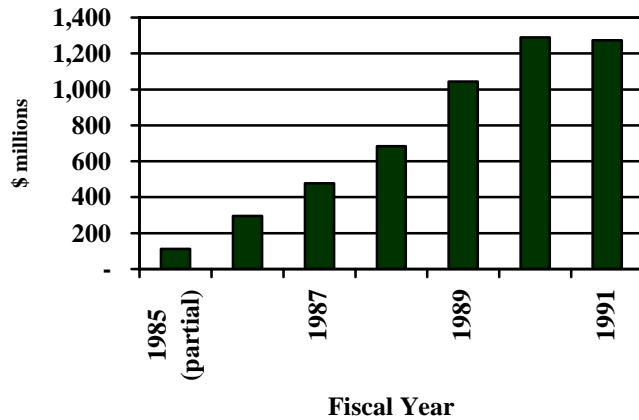
### **Implementing the New Charitable Gambling Law**

Almost from the beginning the process of implementing the 1984 charitable gambling law was plagued with problems. The law had an effective date of March 1, 1985, and provided that all local charitable gambling licenses were to expire the previous day. It was assumed that all licensed organizations would by then have obtained state licenses from the board. This in turn was based on the assumption that the board would be functioning by midsummer 1984. However, the appointments to the board by Gov. Rudy Perpich were not completed until October 8 of that year and the first meeting not held until October 22. The board began life with a budget of \$50,000 and a staff of 12.

The deadlines set in law required the board to issue over 1,800 organizational licenses in just over three months. The avalanche of applications forced the 1985 Legislature to delay the expiration date for local licenses until July 1, 1985, to give the board's staff time to catch up with the backlog.

In the years following the creation of the board, gambling grew at an almost dizzying pace. This rise was fueled largely by growth in pull-tabs, which almost as soon as they were legalized supplanted bingo as the most popular form of legal gambling. Pull-tabs moved into more and more bars and restaurants as licensed organizations expanded the scope of their operations and cities dropped their opposition or amended their ordinances to allow them. The extraordinary growth continued until the early 1990s when the number of new locations hit a plateau.

Charitable Gambling Gross Receipts 1985-1991



The need to make up for lost time meant that the board was playing from behind for much of the decade. By 1988 gross receipts from gambling were approaching \$700 million and the board was issuing over 3,400 organization licenses annually, along with 67 manufacturer and distributor licenses. Some of the administrative pressure was relieved in 1987 when the responsibility of collecting the tax on pull-tabs was transferred to the Revenue Department.

The board's annual report for 1988 predicted that the rapid expansion of charitable gambling would soon reach an end:

The growth of lawful gambling will plateau when all successful organizations have been licensed and all profitable gambling premises have been leased. That time is not far off.<sup>18</sup>

There was nonetheless widespread agreement that the board and its staff were approaching a crisis point. Concerns were growing that the agency could not keep up with the job of making rules, passing on licensing applications, and regulating several thousand gambling locations. As Gaming Commissioner Tony Bouza's 1991 report described the situation, "Probably no one could have foreseen the exponential growth that would occur and which would overwhelm the feeble resources allocated to its regulation."<sup>19</sup> The board's executive secretary Roger Franke requested a management report from the Department of Administration's management analysis division, and the report, completed in July 1988, highlighted numerous administrative and regulatory problems. It found a lack of long-range planning, an inability to provide organizations with accurate and timely information, inadequate communication within the agency, low staff morale, insufficient staff training, and an overall absence of written policies.<sup>20</sup>

Gov. Perpich responded to the report with an executive order in August 1988 that shifted all the administrative functions of the board to the Department of Revenue, leaving the board only with authority of issuing licenses and disciplining licensees. His main reason was that the change would allow the state to "cope more effectively with the overwhelming growth in charitable gambling."<sup>21</sup>

The 1989 Legislature responded to these problems by reorganizing the state's gambling control functions.<sup>22</sup> It created an entirely new Department of Gaming that would encompass separate divisions for charitable gambling, pari-mutuel racing, and the newly created state lottery. The Charitable Gambling Control Board was renamed the Gambling Control Board and the nine-

member board replaced by a board consisting of six appointees of the governor and the commissioner of the new department.

The 1989 law resulted in Minnesota having what the Legislative Auditor's office described as "one of the more complicated regulatory structures for lawful gambling" in the country.<sup>23</sup> The restructured board retained authority to adopt rules, approve gambling equipment, and issue, renew, revoke, and suspend licenses for organizations, distributors, manufacturers, and bingo halls. The Revenue Department took over responsibility for collection of all gambling taxes and also for conducting gambling audits. The director of the gambling board was made a gubernatorial rather than a board appointee.

### **Criticism and Reform of Charitable Gambling**

Almost as soon as the 1984 law had been implemented the legislature began making changes in charitable gambling regulation. In 1986, organizations were limited to spending not more than 40 percent of the gross profit (gross receipts less prizes and taxes) on expenses for gambling other than bingo, and not more than 50 percent for bingo. These limits were raised the next year to 45 percent and 55 percent respectively. Also in 1987 the legislature gave the board substantial new authority to issue cease and desist orders against licensees who were violating or about to violate the law or the board's rules.

Many local governments were resentful of the state's 1984 takeover of charitable gambling licensing and regulation and soon began urging the legislature to give them a greater role. In 1987 the legislature allowed local governments to impose a local gambling tax of up to 3 percent of gross profit as long as the revenue was dedicated solely to gambling regulation. It also validated the local practice of requiring organizations to make contributions to specified "lawful purposes" within the locality, but limited these mandated contributions to not more than 10 percent of an organization's total net profit. Local governments were prohibited from requiring any donations to local government itself, clearly demonstrating a determination not to allow cities and counties to use mandatory contributions as a backdoor method of taxation.

The internal difficulties of the Charitable Gambling Control Board were a major factor in the legislature's extensive 1989 reorganization, but they aroused relatively little public attention. Charitable gambling's low profile was abruptly raised later in 1989. A series of newspaper articles late in the year raised questions about the use of charitable gambling net profits, including payments to two legislators and expenditures for lobbying activities.<sup>24</sup> The problem sufficiently concerned legislative leaders that they created a bipartisan task force to study charitable gambling regulation. In early 1990, a report from the attorney general's office stated:

The potential for widespread corruption exists in the lawful gambling industry. Investigations had disclosed fraud in the sale of pull-tabs and jar tickets, fraudulent reporting and a skimming of proceeds and significant abuse in the expenditure of gambling profits. These problems are compounded by the lack of

individual accountability under the lawful gambling law and the acute lack of financial and human resources to effectively regulate the industry.<sup>25</sup>

At about the same time the legislature received an evaluation of lawful gambling from the legislative auditor's program evaluation division that found numerous shortcomings in charitable gambling regulation, including the following:

- ▶ Less than 10 percent of gross receipts being spent for charitable purposes
- ▶ Inappropriate deductions for gambling expenses
- ▶ A high risk of fraud and misappropriation of gambling receipts
- ▶ Millions of dollars possibly missing from gambling bank accounts
- ▶ Little likelihood that misuse of gambling proceeds would be detected
- ▶ Insufficient state and local enforcement efforts and auditing<sup>26</sup>

The most common perception of charitable gambling was that it was "out of control." *Minneapolis Star Tribune* columnist Jim Klobuchar wrote, "As a serious regulator of gambling, the gambling commissions of Minnesota function at the same level of comic ferocity as Inspector Clouseau assaulting the Parisian underworld."<sup>27</sup> In a memorable phrase, Gaming Commissioner Tony Bouza referred to charitable gambling as a "cancerous pizza that has grown and throbbled." Of pull-tabs in particular he wrote:

Every study [of pull-tabs speaks] of extensive problems of skimming, theft, insider trading, inappropriate expenditures and contributions and a general blurring of the altruistic purposes [envisioned] in the origins of the industry.<sup>28</sup>

In 1989, the legislature had showed its frustration with the gambling control board by ending the terms of all 13 members and replacing them with a new board of six members plus the new Commissioner of Gaming. In 1990 it went further and passed a far-reaching reform bill that addressed many of the most frequently voiced criticisms of the industry.<sup>29</sup>

"*Insider trading.*" A frequent criticism was that pull-tab buyers were not being given an honest game because pull-tab sellers would too often give favored players tips on which games still had prize-winning tickets that had not yet been sold. Players not so favored would still be buying pull-tabs from "dead games" where all the large prizes had already been won. A 1989 law had made it a misdemeanor for pull-tab sellers to give information to any player that would result in an unfair advantage,<sup>30</sup> but the practice persisted. The 1990 legislation required every organization to post at each pull-tab booth or other point of sale each major prize that had been awarded from each pull-tab game. Organizations had always resisted posting on the grounds that it would discourage sales in dead games, leaving organizations with large numbers of unsold tickets on which they had already paid a nonrefundable tax, but the pressure for reform had become too strong to resist.

The new law also dealt with questions about favoritism in the sale of pull-tabs by requiring organizations to require winners of pull-tab prizes of \$50 or more to present identification. The organizations were required to keep winning pull-tabs of \$50 or more and the identification of the winner for 30 months.

*Lawful purpose expenditures.* The use of gambling net profits for purposes whose charitable nature was open to question had been one of the most frequent targets of gambling critics. Only about 8 percent of the gross receipts from charitable gambling in calendar 1989 were actually going to charitable purposes. The legislative auditor's report found that about 20 percent of lawful purpose expenditures were going to directly benefit the organization conducting the gambling, mostly for building repair and capital projects including mortgage payments. Commissioner Bouza's report observed that some expenditures "looked suspiciously like frills, perks, or pleasures for the members. There is something resembling an edifice complex in the palatial establishments funded by gambling revenues."<sup>31</sup>

One source of the problem was the law's extremely vague definition of "lawful purpose." The legislature's response was to redefine "lawful purpose" more specifically to generally limit it to education, military recognition, youth recreation and sports, religious activities, and support for individuals to relieve sickness, disability, and poverty. Payment of gambling taxes and, more controversially, real estate taxes were also made a lawful purpose. Organizations were required to report all expenditures of net profits monthly to the gambling board, and each expenditure was required to be accompanied by an acknowledgment from the recipient.

*Accountability.* Attorney General Humphrey's charitable gambling report had said that the law provided for accountability for licensed organizations but not for the individuals who were actually conducting gambling. In response, the 1990 law required that all gambling managers be licensed and bonded. Training was required for all gambling managers, and licensing qualifications including disqualification for certain offenses were established. Other gambling employees such as pull-tab sellers were required to register with the board and wear identification while working.

*Relationships with distributors and manufacturers.* There had been numerous suggestions that the manufacturers and distributors of pull-tabs and other gambling equipment were exercising too much control over the organizations that actually conducted gambling. The legislature enacted licensing requirements for manufacturers and distributors, prohibited extensions of credit to distributors and organizations beyond 30 days, and prohibited organizations from accepting help from a manufacturer or distributor in finding or recruiting gambling managers.

*Enforcement.* Almost as soon as the gambling board was created, criticism began to be heard that the state was devoting too few resources to enforcement of charitable gambling law and rules. Commissioner Bouza's report recounted, "From 1985 to 1988 the gross charitable gambling handle increased over 1,000 percent, from \$111,389 in 1985 to over \$1.2 billion in 1989. The board's budget increased by only 82 percent, from \$535,000 for FY 1985 to \$976,785 for FY 1988. The board's staff was increased from 12 to 21."<sup>32</sup>

The legislative auditor's report found that organization compliance with board rules was "poor," licensing had been largely ineffective in ensuring proper organization conduct, and the level of enforcement offered no incentives for an organization to take responsibility for their gambling operations.

The 1990 law provided a substantial increase in the board's complement to 42 positions, 17 fewer than the Perpich administration had requested but still a significant increase. The 1990 law also gave the board new enforcement powers to issue cease and desist orders against actual or potential violations of law or rule and to impose summary license suspensions for certain violations. Following the recommendations of the attorney general, the legislature increased penalties for numerous gambling violations.

It was a measure of the legislature's frustration with charitable gambling controversies that as part of the 1990 bill it seriously considered abolishing all charitable gambling by June 30, 1993. This sunset clause was intended to be a warning to the industry, since it could only have been lifted if a subsequent legislature decided that the industry was worth saving. In the end the sunset clause was deleted from the bill.

The eventual defeat of the sunset clause gave an indication of where charitable gambling stood in the legislature. Although the 1990 reforms touched almost all elements of the industry, they did not demonstrate widespread revulsion against charitable gambling as a whole. The legislature had grown exasperated by the continued revelations of questionable behavior in charitable gambling but it was still mindful that the abuses in Minnesota's charitable gambling industry were modest compared to gambling-related scandals in other states that had led to governors being imprisoned and legislative careers destroyed. They also were aware that charitable gambling was still to a significant extent locally based and volunteer-driven. As Sen. LeRoy Stumpf pointed out, "Allegations that the whole system is deteriorating into a Chicago Mafia situation are causing a false perception and hard feelings among dedicated volunteers in our communities. It's upsetting a lot of our fraternal, service and community organizations who do a lot of good for a lot of people."<sup>33</sup>

## **Charitable Gambling For Whose Benefit?**

Almost from the beginning of legalized charitable gambling the question had been raised in one form or another, "For whose benefit is charitable gambling being conducted?" The original 1945 law had been written to specify that bingo was legal as long as the profit did not go to any individual, and this philosophy carried over into subsequent law. The 1945 law did not address the question of whether a charitable, religious, fraternal, or other nonprofit organization could conduct gambling to benefit itself, even if no individuals received a share of the profits. Later laws attempted to deal with this question by limiting expenditure of net profits to lawful purposes, but as the account in the above section indicates the definition of lawful purpose was so broad as to leave the question unaddressed. Prominent among the controversies was the practice of organizations using gambling profits to improve or repair their buildings.

The 1976 bingo law, along with its very general language recognizing various worthy purposes as lawful purposes, had included the improvement, expansion, maintenance, and repair of real property owned or leased by an organization.

In 1988 the legislature, concerned that too much gambling money was going for buildings rather than charity, eliminated building expenditures as a lawful purpose. Previous law had prohibited use of gambling profits for the erection or acquisition of real property unless the board found that the property would be used exclusively for charitable purposes. This effectively excluded buildings of veterans and fraternal organizations since they were extensively used for social as well as charitable purposes. The 1988 Legislature expanded that restriction to include building improvement, expansion, repair, and maintenance.<sup>34</sup> It softened that restriction somewhat in 1989 when it allowed organizations to spend gambling profits on repair and maintenance of their own buildings if they were used extensively as a meeting place or event location by other nonprofit organizations or service groups (as many veterans posts and fraternal clubs were used in smaller towns).

Another recurring debate related to organizations' buildings was the use of gambling profits to pay property taxes. The 1989 special session that enacted the combined receipts tax on charitable gambling also included payment of property taxes on buildings owned or leased by a licensed organization as a lawful purpose, but only up to the maximum amount that organizations were allowed under board rules to spend on rent (which at that time was \$1,000 per month for most locations). The argument made by organizations for this authorization was essentially the same as for allowing building expenditures from gambling profits, that for many organizations gambling was often the only source of funds for these purposes. The maximum amount of property taxes that could be paid from gambling profits was increased to \$15,000 per year in 1991 except for bingo premises, which continued to be limited to the maximum rent allowance.<sup>35</sup> The present limit of \$35,000 was enacted in 1995.<sup>36</sup>

In 1989 a new charitable gambling tax changed the debate over the beneficiaries of charitable gambling by making it clear that the prime beneficiary was going to be state government. The previous taxes on charitable gambling—2 percent of “ideal gross” on pull-tabs and tipboards payable by the distributor, and 10 percent of gross profit on other forms of gambling payable by the organization—were by 1988 producing nearly \$20 million annually to the state's general fund. That contribution was substantially increased in 1989 with the enactment of a “combined receipts” tax on pull-tabs and tipboards. The tax applied only to organizations with pull-tab and tipboard gross receipts over \$500,000 per year, which amounted to about one-fourth of all licensed organizations.

The tax was on a progressive scale, with rates ranging from 2 percent on combined receipts of \$500,000 to \$700,000 to 6 percent on combined receipts over \$900,000. Unlike the pull-tab tax that was paid by distributors and passed on to organizations, the combined receipts tax would be directly paid by organizations.

The combined receipts tax was passed as part of an overall tax bill to help fund extensive property tax relief. It was projected that the tax would bring in about \$22 million per year, thus doubling total state tax revenue from charitable gambling. By 1991 state tax receipts from charitable gambling totaled \$57 million, or almost 40 percent of net profit. Based on the legislative auditor's calculations of net profit expenditure for 1988, this was a level that no other category of lawful purpose expenditure came close to matching. Payment of taxes had far



eclipsed scholarship programs, conservation, youth sports, veterans programs, or any of the other charitable purposes that had once been the principal reason for the existence of charitable gambling.

Legislators who devised the combined receipts tax told organizations that they could pay the tax without cutting into charitable contributions simply by reducing their prize payouts, noting that Minnesota's prize percentage for charitable gambling was notably higher than in other states. The organizations responded that they had to maintain their prize payouts at existing levels to compete with other forms of gambling, including the state itself in the form of the new state lottery. In calendar year 1990, the first full year with the new tax, the decline in prize payouts was barely perceptible, from 81.54 percent to 81.37 percent. The more precipitous decline was in charitable contributions, which went up in dollar terms from 1988 to 1990 but fell from 9.2 percent to 7.3 percent of gross sales.<sup>37</sup> The state revenue was coming at the expense of charitable contributions rather than gamblers.

## **Canterbury Ups and Downs**

The opening of Minnesota's first pari-mutuel racetrack in June of 1985 was one of the Twin Cities' most eagerly awaited events of the mid-1980s. Named Canterbury Downs, the Shakopee track was a \$70 million showpiece that could accommodate 30,000 fans. The president of the Thoroughbred Racing Association of North America called it "one of the jewels of racing in the country," and said it "should be a benchmark for other states to study."<sup>38</sup> Its owners projected average daily attendance of 10,500, well above the national average for thoroughbred racing.

The first season of racing in 1985 seemed to justify this optimism. In 83 racing days the track drew an average attendance of 13,163, putting it in the top 15 racetracks in the country. A newspaper story headlined "Canterbury a Winner in Maiden Season" reported:

A final verdict may be years away, but after one season it is reasonable to conclude that gambling on horses appealed to Minnesotans. At least in its first season, Canterbury Downs was able to compete with the Twins, the Vikings, and walleyes in the continuing quest to provide an entertaining way for Minnesotans to use their disposable income.<sup>39</sup>

Just as important for the future of legalized gambling, the story reported that many of the worst fears of an increase in crime that would follow the track's opening had not been borne out. Shakopee police chief Tom Brownell said, "I feel the track has not had the anticipated impact on the community from the standpoint of crime as we were led to believe would occur."<sup>40</sup>

One disturbing element was also noted: the average daily betting handle of \$1.014 million was almost \$200,000 below projections. The average Canterbury fan bet \$77 per day, well below the national average of about \$120. But the track still showed an operating profit for the first year of about \$37,000.

Although many indicators from the first season seemed to point to prosperity for Canterbury Downs, subsequent events suggested that the track had opened several years too late for its early success to be sustained. When the legislature began seriously debating pari-mutuel legislation in the early 1970s horse racing had a near-monopoly on legalized gambling in most of the country, and many of the expectations for the track's impact on economic development, tourism, the horse industry in Minnesota, and state tax revenues implicitly assumed that it would continue to do so. But by the time Canterbury Downs opened, charitable gambling was closing in on half a billion dollars in gross sales and full-fledged casinos were appearing on Indian land, soon to look more like Nevada or Atlantic City casinos than the modest bingo parlors from which they sprang. A state-operated lottery was also beginning to look inevitable.

In the face of this competition pari-mutuel betting on horse racing was at an inherent disadvantage. As one team of gambling researchers wrote:

A very considerable knowledge of the sports involved is required for more than casual participation in pari-mutuel betting. This entry-level knowledge requirement distinguishes pari-mutuel betting from lotteries and casinos: anyone can buy a lottery ticket or pull the handle of a slot machine. In comparison pari-mutuel betting represents a "closed" aspect to the uninitiated public; the elaborate, ritualized subculture of horse racing and the considerable special knowledge needed to handicap and bet horses are significant barriers to participation . . .<sup>41</sup>

Canterbury's own financial structure also worked against its long-term success. In the middle of the 1985 season former racing commission member Kris Sanda noted that the track opened with a debt of some \$46 million and working capital of about \$5 million, and suggested that the former might have been too high and the latter too low to insure the track's financial stability.<sup>42</sup> She raised the possibility that Canterbury's owners would eventually have to come back to the legislature for financial relief.

The 1986 season added quarterhorse and standardbred meetings but average daily attendance fell to 9,100 and average daily handle fell below \$875,000. In 1986 the track lost nearly \$8 million and Sanda's prediction of a request to the legislature for tax relief was realized as the owners asked for a tax reduction of more than \$5 million.

The original state tax on pari-mutuel bets—1.75 percent on annual handle up to \$48 million and 6 percent on all additional betting—was enacted at a time when other pari-mutuel states were beginning to reduce their taxes to meet increased competition from other gambling forms. Minnesota's pari-mutuel tax soon became one of the highest in the country.<sup>43</sup> The high tax helped vitiate the benefits to the track of a relatively high takeout rate (the percentage of total betting pools retained by the track to pay expenses, taxes, and purses) and made it difficult for the track to maintain an attractive purse structure. In spite of warnings that the state tax was making Canterbury uncompetitive with other tracks in attracting horses, the 1987 Legislature failed to act.

In late 1987 Canterbury's situation worsened as it defaulted on some of its debt and was bailed out by a refinancing and additional infusion of cash. The cash and debt relief allowed the track to open for its 1988 season. The track's owners (by this time consisting of the owners of the Santa Anita racetrack, a Minnesota firm called Scotland owned by Brooks Fields and Brooks Hauser, and North American Life and Casualty Co.) came to the 1988 Legislature claiming that the track's future survival depended on tax relief.

The track argued that tax relief was essential to stop the decline in betting handle. Total handle had dropped from a high of \$133 million in 1986 to \$120 million in both 1987 and 1988, while track expenses rose. The track had been forced to reduce purses in both 1987 and 1988 when betting failed to reach forecasted levels. The track owners argued that the best way to arrest the decline was to improve the quality of racing by improving the track's purse offerings, and that this would be impossible without tax relief.

Some questions were raised about the assumption that larger purses and a higher caliber of horses were the best way to attract more wagering.<sup>44</sup> Nonetheless, the track and the horse owners were able to make a credible case that the track had contributed to Minnesota's economy in spite of its problems. Tom Metzen, president of the Minnesota Thoroughbred Association, pointed to an estimate that breeding and racing in Minnesota had become a \$250 million industry, experiencing "phenomenal growth" since 1985.<sup>45</sup> A 1987 study by the state Department of Revenue found that the track had had a positive impact on the state's economy since its opening and had created over 2,500 jobs directly or indirectly with a payroll of over \$9 million.<sup>46</sup> With support from horse owners, breeders, and trainers from around the state, the track succeeded in gaining a significant tax reduction in the 1988 session.

The original tax was producing an effective tax rate of 4.4 percent, while Canterbury's first proposal was to reduce the effective tax rate to about 0.75 percent. What eventually passed was a change in the tax basis from total wagering to total takeout (including breakage) while eliminating the admissions tax and the separate 50 percent tax on breakage. The tax on the takeout was set at the same 6 percent rate as the general sales tax. The net effect was to reduce the effective tax rate to about 1.2 percent.

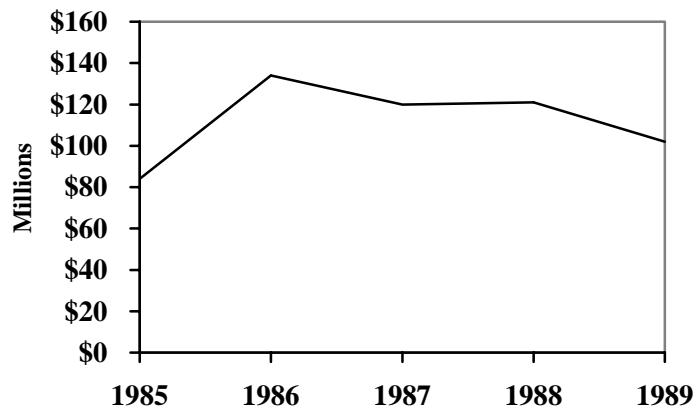
The tax relief was accompanied by a requirement that Canterbury increase the share of total takeout dedicated to purses, from a minimum of 5 percent in the 1983 law to 8.4 percent of the first \$1 million in average daily handle (Canterbury's average daily handle in 1987 had been \$960,000). Although this meant that it would not be Canterbury's owners but rather the horse owners that would benefit from the tax reduction, the track was still optimistic that it would benefit in the long run. The connection between higher purses and higher wagering was made explicit:

[The legislation] cuts admissions and betting taxes at the track by \$4 million a year. It requires that the tax savings be plowed back into purses paid to winning horsemen. Bigger purses are expected to attract better horses, and better horses are expected to increase attendance and the amount of money bet.<sup>47</sup>

Canterbury president Brooks Fields predicted that the tax reduction and better marketing could finally put the track in the black in 1988 for the first time since its opening year. The optimism proved unfounded. Whatever the relationship may have been between higher purses and more betting, it was not strong enough to significantly change the track's fortunes. In 1988 purses rose by almost 25 percent but average daily handle rose by only 3 percent and average daily attendance actually fell by the same percentage. The next season offered little improvement as continued declines in attendance and handle forced several new rounds of purse cuts.

Competition from other, more accessible forms of gambling was regularly described as a main source of Canterbury's disappointing performance, but many other causes were also cited. The track's critics argued that its marketing was ineffective and its management unresponsive.<sup>48</sup> Some continued to believe that the track was overbuilt and that its main competitor for the Twin Cities license, a smaller proposed track in Eagan, would have had a lower debt and thus a better chance of profitability.<sup>49</sup>

Canterbury Downs Total Wagering 1985-1989



By the middle of the 1989 season a change of ownership became inevitable. The 1989 legislative session had legalized pari-mutuel betting on simulcasting at the track outside the live racing season,<sup>50</sup> but few believed that winter attendance at the track would be sufficient to make it profitable. Scotland, Inc., the co-developer and part owner of the track, was losing money every year not only on the track but on the development of land and properties it owned near the track, and in 1989 it filed for bankruptcy as did its principal investor. At one point the track was unable even to pay its bills because creditors had frozen its assets. Santa Anita continued to manage the track but had written off its original investment and declined to put any more money into the operation.

Various potential buyers were identified, including Minnesota Twins owner Carl Pohlad, New York Yankees owner George Steinbrenner, and Minnesota Vikings president Mike Lynn, but in June 1989 Scotland agreed to sell its majority interest in the track to St. Louis Park financial consultant Lawrence Greenberg. By August Greenberg was beginning to question whether horse racing in Minnesota could be saved, and three months later he dropped out.

Greenberg was replaced as the track's leading suitor by Delaware North, owners of the Boston Bruins hockey team, but its financing negotiations were inconclusive and its bid was clouded by the possibility that a criminal conviction by its predecessor firm would make the company ineligible for a racetrack ownership license. In late 1989 Delaware North was replaced as front-

runner by two Michigan investors, Bernard Hartman and Herbert Tyner, owners of a Detroit harness track and previously owners of a Detroit thoroughbred track. They reached a tentative agreement to assume the track's \$45 million debt for about one-fourth of its face value, but their bid ran into intense criticism of their management of the Detroit tracks and a charge by a leading Michigan horse owner that the industry would be better off with the track temporarily closed rather than open under their operation.<sup>51</sup>

Canterbury Downs might have seemed an unlikely object of an ownership tussle given its string of losses, but that is what developed when New Jersey investor John Aglialoro reached an agreement with Scotland and Santa Anita for the purchase of 100 percent of the track's stock. At the same time Hartman and Tyner were continuing to negotiate with Canterbury's lenders for the purchase of the track's mortgage, and finally bought the track in January 1990.

In mid-January Aglialoro completed his purchase of Canterbury's stock for between \$4 million and \$5 million, and Hartman and Tyner completed their purchase of the track's mortgage for \$12 million.<sup>52</sup> In order to have a hope of profitability, Aglialoro had to negotiate reduced mortgage terms with Hartman and Tyner, who themselves wanted to own and operate the track. By March Aglialoro had given up his attempt to negotiate the mortgage and Hartman and Tyner were left as the last candidates standing. With the live racing season set to begin in less than two months they took over the track in lieu of foreclosing on the mortgage.

Ladbroke, an international gaming and entertainment firm with interests in other American tracks, Nevada casinos, and a national chain of betting shops in the United Kingdom, first publicly entered the Canterbury picture in January as holders of a lease from Hartman and Tyner to manage the track for 20 years. By the time the 1990 season opened, Ladbroke had a management agreement for 80 years and a 50 percent ownership of the track through a partnership with Hartman and Tyner called New Canterbury Downs. The new partnership would hold the class A (racetrack ownership) license while Ladbroke would hold the class B (racing and pari-mutuel betting) license. The total purchase price for the track was \$21 million, about one-fourth of its original cost. Ladbroke quickly became the public face of horse racing in Minnesota.

Horse owners were relieved when negotiations were (barely) completed in time for the 1990 live racing season to open on time and looked forward to Ladbroke's tenure with some optimism:

"The original owners wanted racing to succeed here," said Clayton Gray, president of the Horsemen's Benevolent and Protective Association. "But they either didn't have the experience or they thought everything good at Santa Anita would be good for Minnesota. Most horsemen feel Ladbroke will go about things much differently."<sup>53</sup>

In April Ladbroke announced the first winter simulcasting season, to run from the end of the live racing season in mid-October to mid-March, 1991. Ladbroke agreed to pay 2 percent of total simulcast handle as purses for the 1991 live season. Original projections were modest, showing 850 patrons betting \$100,000 daily. In May Ladbroke announced a plan to televise an afternoon card from Arlington Park in Chicago on a Friday afternoon before a night card of live racing. In

both instances horse owners cautiously approved the plans (their approval of simulcasting was required by law), but their misgivings about the potential effect on the live handle of betting on televised races from other states were clear.<sup>54</sup>

The horse owners and the track's dwindling fan base soon discovered they had only exchanged one era of tumult for another. In July of its first season as manager of the track, Ladbroke cut purses by 10 percent, citing attendance and betting handle that had failed to reach projections. The cut brought to the foreground some suspicions that horse owners had long held about Ladbroke based, among other things, on the company's involvement in British betting parlors. Some horse owners feared that Ladbroke was more interested in televised racing and off-track betting than in live racing.<sup>55</sup> Horse owners responded to the purse cuts by threatening to withdraw their approval of simulcasting and publicly questioning Ladbroke's commitment to live racing, and some suggested that the company show its faith in the industry by subsidizing purses above the level required by law.<sup>56</sup>

Canterbury ended the live season in October 1990 with 20 percent declines in attendance and average daily handle, which fell below \$700,000 for the first time. Its winter simulcasting schedule, however, turned out to be a surprise success. Average daily attendance was over 1,100 and average daily per-capita handle was nearly \$230, both well in excess of the track's predictions. Nearly \$400,000 was generated for purses, raising the projected daily purses for 1991 from \$61,000 to \$72,000.<sup>57</sup> A rare element of cautious optimism prevailed at the opening of the 1991 season, partly based on the purse augmentation and partly on the fact that unlike in 1990, Ladbroke had an entire off-season to prepare. Simulcasting would be expanded to become a regular feature of Canterbury cards.

The optimism had been bolstered by the legislature, which in the 1991 session had passed a "teleracing" bill to allow up to four off-track betting establishments around the state linked by computer to Canterbury and operated by the track.<sup>58</sup> The establishments would have had dining and bar facilities and a capacity of 500 persons, and would more nearly have resembled theaters than the stark and unappealing OTB parlors that were being operated in New York City. In passing the bill, legislators were influenced by reports that indicated that Canterbury and the racing and breeding industry were still pluses for the state's economy despite the track's troubles. A study of the racing and breeding industry in Minnesota in 1990 showed that it was responsible for over 7,500 jobs and personal income over \$150 million, and had contributed more than \$220 million to the gross state product.<sup>59</sup>

In supporting the off-track betting bill in the 1991 legislative session, Canterbury director of business development Terry McWilliams had said that OTB would stimulate the breeding industry in Minnesota but was not essential to the financial stability of the track. Nonetheless, one of the most frequently cited arguments in favor of the bill had been the impending opening of yet another competitor for the gambling dollar, a pari-mutuel dog track in Hudson, Wisconsin, directly across the border from Minnesota.<sup>60</sup>

By June of 1991 the hopes that had been high early in the year had been tempered by another dose of reality in the form of a new purse cut, including the elimination of a major stakes race.

Horse owners began to fear that the proliferation of simulcast races—a typical day might include nine live races and twice as many simulcast races—was spreading the betting money too thin, and that too much of it was being shipped to out-of-state tracks.<sup>61</sup>

The end of the 1991 season in October showed another year of decline. Total wagering during the live racing season, including in-season simulcasting, was only \$58 million, a drop of nearly one-third from the combined handle during the live season in 1990.

By this time criticism of Ladbroke's management was becoming widespread, as were suspicions that the decline of the live handle may have been part of Ladbroke's long-term strategy. Handicapper and columnist Mike Gelfand wrote:

Thanks to a cynical management, a confused group of horsemen, and a rubber-stamp racing commission, the Ladbroke folks helped to create what might have been the greatest failure story in the history of the sport. Bit by bit, Canterbury Downs died this year. As fewer and fewer people showed up, the track simply would shut off large sections of the facility. Much of the main floor was closed. The hasty layoffs were inevitable, because off-season simulcasting had helped to deplete the money and interest of fans in live racing . . . The suspicion then and now was that Ladbroke was not sorry to see interest in live racing destroyed. Ladbroke, after all, has made its fortune from bookmaking in Europe. Much to the chagrin of the organization, one of its U.S. executives said not long ago that live racing is a necessary evil in order to retain simulcast concessions.<sup>62</sup>

During the season sports columnist Patrick Reusse wrote:

There is more competition than ever in Midwest racing—a new track opened in Kansas City this summer—and Ladbroke has not responded. Its idea of selling racing is to announce that the first post time is 7:15 p.m. and, if you want to be there, fine. Its idea of presenting quality racing is to show nine simulcast races from Arlington Park on Friday afternoons. To this date Ladbroke has been a disappointment, bordering on a disaster.<sup>63</sup>

Whatever misgivings may have existed about Ladbroke's commitment to live racing, they did not prevent the racing commission in November 1991 from approving Ladbroke's plan for telephone betting at Canterbury. Telephone betting, where patrons establish accounts with the track as the basis for bets called in to the track, had been authorized in the original 1983 pari-mutuel law but never implemented until Ladbroke announced plans to accept telephone bets on both live and simulcast races.

The move toward remote betting from home telephones and off-track betting parlors came to an abrupt halt when Rep. Jim Rice of Minneapolis, one of the legislature's most outspoken critics of legalized gambling, filed suit to enjoin both the establishment of the OTB facilities and the operation of telephone betting. Rice's lawsuit argued that when the voters adopted the pari-mutuel constitutional amendment in 1982 they intended only to permit the legislature to legalize

“on-track betting,” and that an OTB law and telephone betting would go beyond what they had authorized.

The 1991 law had attempted to get around the constitutional obstacle by defining “on-track” as “wagering conducted at a licensed racetrack, or at a [licensed off-track betting facility] whose wagering system is electronically linked to a licensed racetrack.”<sup>64</sup> But opponents cited a 1989 memo by Mary Magnuson of the Attorney General’s office, who gave the office’s opinion that “the specific inclusion of the phrase ‘on-track’ was intended to limit pari-mutuel betting in Minnesota to the premises of a racetrack.”<sup>65</sup>

In March 1992 the Ramsey County district court agreed with Rice’s argument and invalidated the OTB law and the telephone betting rules. The Minnesota Supreme Court upheld the decision four months later.<sup>66</sup> The rulings brought a new level of gloom to the state’s embattled horse industry, with attorney and horse owner Joe Fridberg saying, “If OTBs are found unconstitutional, this industry is dead in the state.”<sup>67</sup>

Following the district court decision, Gov. Arne Carlson appointed a Governor’s Commission on Canterbury Downs to make recommendations on the role and future of the racetrack and the horse industry. Its report rejected the options of installing video gaming devices at the track or selling the track to one or more Indian tribes, but instead linked the future of the racetrack and the horse industry in the state to a revival of the off-track betting concept:

In our opinion, development of an off-track betting system is critical to the continued survival of horse racing in this state. Off-track betting expands the market area for horse racing and addresses the need to make pari-mutuel wagering more accessible to the public. Off-track betting also pumps substantial revenues into the total betting handle, generating significant amounts of money for purses and breeder awards.<sup>68</sup>

The commission cited the extensive competition for the gambling dollar that had arisen since the pari-mutuel amendment was adopted, including charitable gambling, the new state lottery, and Indian casinos, and observed that pari-mutuel betting’s share of total wagering in the state had fallen to less than 4 percent. Its report noted the presence of 15 casinos, 3,800 retail lottery outlets, and 2,700 charitable gambling locations in the state, and concluded that horse racing could compete with other forms of gambling only if it were available at more locations.

The hopes of the industry were once again in the hands of the legislature, which could salvage OTB legislation only by proposing an amendment to the constitution. Certainly there was little from the 1992 season to give rise to optimism. Total handle for the live season including simulcasting was just \$29 million, down almost 50 percent from the previous year, even though the track was simulcasting from seven different racetracks. Purses were cut by 30 percent just nine days into the season, forcing yet another exodus of horses from the track. In June an entire race card was cancelled because of a shortage of horses.



Ladbroke's management agreement with Hartman and Tyner obligated it to conduct at least 78 days of live racing at Canterbury each year. In August 1992 Ladbroke submitted a request to the racing commission to authorize simulcasting days beyond December 31, which was when its current authorization would run out. The request was controversial because at the time of the submission Ladbroke had not committed to a live season for 1993. The absence of this commitment and Ladbroke's proposal for an expanded 151-day winter simulcasting schedule revived horse owners' fears that Ladbroke's long-range goal was to phase out live racing entirely and turn the track into an OTB teletheater.

The horse owners could not disapprove the plan because there was still another year to run on the three-year agreement authorizing simulcasting that they had signed with the track, but they could still bring their concerns to the commission. The Minnesota Thoroughbred Association (MTA) urged the commission to reject the simulcast plan unless Ladbroke committed to live racing the following summer. Ladbroke declined to comply, and its chief financial officer told the racing commission in November that there would be no live racing in 1993.

In December the commission told Ladbroke that it would not approve simulcasting days in 1993 unless it reached an agreement with horse owners' groups by the end of the year. Ladbroke continued negotiations with the Horsemen's Benevolent and Protective Association (HBPA) and the Festival of Champions investment group over a variety of options including the Festival leasing the track with an option to buy it for \$14 million, but no agreement could be reached.

Hampering the negotiations was the overall attitude of the horse owners toward Ladbroke, which during the company's tenure at the track had progressed from initial enthusiasm to skepticism to open hostility. MTA president Jim Druck told the commission, "Ladbroke should go. It's time for them to go. They don't care about live racing or a Minnesota industry. Don't let them string you along like they have every other group they've dealt with."<sup>69</sup>

With no agreement in place the racing commission made good its threat not to approve simulcasting in 1993, and the track closed its doors on New Year's Eve. The commission did renew Ladbroke's racing license for another year, but with little expectation that it would be used. With no further authorization for simulcasting and no plan to return to live racing Canterbury Downs went dark, leaving widespread uncertainty about when or if it would reopen.

## **Indian Gaming Outgrows the Bingo Parlor**

In 1984 most talk in and out of the legislature about legal gambling focused on the state's takeover of charitable gambling regulation, the anticipated opening of the state's first pari-mutuel racetrack, and the chances for the creation of the state lottery. There was little attention left over for the first appearance of gambling on Minnesota's Indian reservations.

Federal court rulings since the 1970s had held that states could enforce on Indian land only those laws that were criminal in nature. State laws that were civil in nature could not be enforced. As state gambling laws were being transformed from broad prohibitions to selective legalization and

regulation, this distinction began to have an effect on the status of gambling on Indian reservations. In 1981 a U.S. Court of Appeals in Florida held that the state of Florida could not enforce its bingo law on the Seminole reservation in that state because the law was “civil/regulatory” in nature rather than “criminal/prohibitory.” It held that the Florida law did not prohibit bingo as a matter of public policy but rather allowed it under state regulation.<sup>70</sup> The effect was to allow the Seminole tribe to conduct bingo on the reservation without being required to adhere to Florida’s bingo regulations.

Bingo parlors operating free of state regulation soon arose on Indian land around the country, including in Minnesota. Several reservation bingo operations appeared in the early 1980s, including the Big Bucks parlor on the Fond du Lac Chippewa reservation near Cloquet in 1981, the Little Six parlor on the Mdewakanton Sioux reservation near Prior Lake in 1982, and operations on the Prairie Island Sioux reservation near Red Wing, the Lower Sioux reservation near Morton, and the Leech Lake Chippewa reservation near Cass Lake, all opening in 1984. By 1987 there were at least 14 Indian bingo parlors in the state. All were able to offer top prizes well in excess of the limits imposed by state law on charitable bingo.

Indian gaming moved into the middle of an urban area through an unusual relationship between the city of Duluth and the Fond du Lac Chippewa tribe. After first considering and dropping a plan to operate bingo in an empty ore boat in Duluth, the tribe reached agreement with the city to convert an abandoned downtown department store into a bingo parlor. The tribe and city created an economic development partnership governed by a seven-member commission consisting of four tribal appointees and three city appointees. The city agreed to build a parking ramp with bonds repaid from a percentage of bingo revenues. The arrangement required approval by the federal Bureau of Indian Affairs of designation of the store’s real estate as reservation land. After considerable soul-searching and an initial rejection, the BIA approved the designation and the downtown bingo parlor opened in September 1986.

The first wave of bingo parlor openings had barely subsided when bingo itself began to be overshadowed by a different form of gambling. Video bingo appeared in the downtown Duluth casino almost as soon as the facility opened. Ingenious variants of the original game appeared including craps, blackjack, and roulette games that barely managed to qualify as bingo. By mid-1986 video poker machines and electronic slot machines had been installed at the Little Six and Prairie Island bingo parlors. Law enforcement officials including representatives of the attorney general’s office questioned the legality of these games but tribal officials justified them on the grounds that they were simply alternative versions of bingo.<sup>71</sup> Another justification offered by the tribes was that since the state had legalized the presence of video poker machines in bars and restaurants the tribes had a right to operate them as gambling devices.

Law enforcement officials never fully accepted these legal arguments and largely remained convinced that the use of these devices on Indian land was illegal but declined to take immediate action, preferring to wait for the U.S. Supreme Court to resolve the overall question of gambling on Indian land. In February 1987 the court ruled in a 6-3 decision that Indian gaming could proceed without state or federal regulation. In its *Cabazon* decision the court addressed the questions of whether California’ bingo regulations were “criminal/prohibitory” or

“civil/regulatory.” Since previous decisions had found that prohibitory regulations could be enforced on Indian land while regulatory provisions could not, this distinction was crucial. The court held:

In light of the fact that California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery, we must conclude that California regulates rather than prohibits gambling in general and bingo in particular.<sup>72</sup>

By its reference to “gambling in general” the court raised the stakes of Indian gaming by extending the authorization for Indian gaming beyond bingo to include other games. As the 1991 report to the legislature from the state’s negotiating team on Indian gambling observed, the above sentence “provided the basis for tribal interests to argue that the *Cabazon* opinion surpassed bingo by applying the criminal/prohibitory and civil/regulatory dichotomy to other forms of gambling. It is perhaps that one sentence, and the arguments that flowed from it, that finally after years of debate prompted Congress into action.”<sup>73</sup>

### **With Congressional Blessing, Indian Gaming Takes Off**

The action that Congress eventually took was passage of the Indian Gaming Regulatory Act (IGRA) of 1988. IGRA divided all gambling on Indian land into one of three classes:

- ▶ *Class I*, including only traditional Indian ceremonial and social games, would be controlled exclusively by the tribes.
- ▶ *Class II*, consisting of bingo, keno, pull-tabs, punchboards, and nonbanking card games (games where players play against each other rather than against the house), would be governed by tribal ordinances subject to consistency with federal guidelines and approval by the National Indian Gaming Commission.
- ▶ *Class III* would consist of common casino games such as roulette, craps, chemin de fer, baccarat, and banking card games such as blackjack, and mechanical or electronic gambling machines such as slot machines and video poker devices. Class III gambling would be governed by compacts negotiated between individual tribes and state governments. The compacts would provide for regulation of class III games and machines and specify which party has civil and criminal jurisdiction over gambling enforcement and which state gambling laws would apply.<sup>74</sup>

If a state permitted a form of gambling for non-Indians for any purpose, including social or charitable purposes, a tribe in that state had the right to request negotiation of a compact that would permit that form of gambling on the tribe’s land. A state’s failure to negotiate in good faith would start a legal process that could result in the compact being negotiated between the tribe and the Department of the Interior with little or no state participation, so simply ignoring a request for a compact was not an option for any state.

In Minnesota the legislature responded in 1989 by passing legislation authorizing the governor to negotiate class III tribal-state compacts. A key provision of the 1989 law, little noticed at the time, provided that the compacts would not have a fixed expiration date but would remain in effect until renegotiated.

Another important element of the 1989 law, also not considered controversial at the time, gave implied legislative authorization for compacts with Minnesota tribes for video gaming machines. Responding to complaints that the legalization of video poker machines in bars and restaurants had led to an increase in gambling despite laws prohibiting payoffs from these machines, the legislature in 1989 raised the offense to a gross misdemeanor. At the same time it specified that this penalty increase was not to be construed to prohibit the state from agreeing to a compact for video poker or video blackjack “currently operated by Indian tribes in this state.”<sup>75</sup>

Gov. Perpich appointed a negotiating team in mid-1989 consisting of Rep. Becky Kelso, Sen. Ron Dicklich, and Revenue Department attorney Dorothy McClung. By law, the attorney general served as legal counsel to the team. In October 1989 the first seven tribal-state compacts were signed to allow operation of class III video games on Indian land. Gov. Perpich signed compacts with two more tribes before his term ended in 1991, and Gov. Arne Carlson signed compacts with the two remaining tribes later that year.

The 11 compacts are virtually identical. They set out technical specifications for video games, established regulatory standards for their operation, regulated hiring of tribal casino staff, provided qualifications for distributors and lessors of the games, and allocated regulatory and criminal jurisdiction between the state and the tribe. The state Department of Public Safety was given authority to inspect and approve the machines. Payouts were required to range from 83 percent to 98 percent of total wagers for games affected by player skill such as video poker, and from 80 percent to 95 percent for other games.<sup>76</sup>

In subsequent years, the state’s negotiators for the first class III compacts have been criticized for two supposed failures. First, it has been argued that the negotiators should have insisted on the insertion of an expiration date for the compacts, as was the case in a number of other states. Second, it has been claimed that the compacts failed to provide payment to the state in return for the monopoly on gaming machines that the tribes still enjoy. The subsequent blackjack compacts required each tribe to pay about \$13,000 to the state to defray the Department of Public Safety’s administrative and inspection costs under the compacts, but this is far less than what was later negotiated by other states.

The first objection could be answered by pointing to the provision in the 1989 law that required the compacts to remain in effect until renegotiated. In order to understand why the compacts did not provide for substantial payments to the state it is necessary to understand the state negotiators’ objectives at the time the compacts were written.

In the late 1980s Indian casinos were seen primarily as a route to tribal economic self-sufficiency and as a source of jobs that would bring down the chronically high unemployment rate on Indian reservations. It was also hoped that in some cases they might spur broader economic

development in some of the state's most sparsely populated and poorest areas. The state negotiators were also concerned about the possibility that gambling on Indian land might expand from video games into full-fledged casinos with card games, dice games, roulette, and most worrisome of all, sports betting. The negotiators also wanted to end the system whereby games at tribal casinos were conducted free of any outside regulation or audit.

The state's goals therefore were to allow limited gambling on Indian land using the types of games that were already being operated without compacts, while providing some level of state oversight. The possibility that Indian casinos might someday generate large sums of money for state government was a distant consideration compared to these more immediate goals. As Rep. Kelso, a member of the negotiating team, said later, "When we were negotiating in 1989, we were looking at very, very modest (gaming) businesses—hole-in-the-wall operations. What Mystic Lake has now would never have occurred to us."<sup>77</sup>

In later years it was sometimes assumed that the compacts had in some way guaranteed the tribes the exclusive right to operate video games and blackjack. The reality is that the compacts do not guarantee any kind of exclusivity over these games, nor could they. The compacts do not govern any gambling off Indian land or preclude the legislature from legalizing any form of gambling elsewhere in the state.

Further questions might have been raised about the legality of the video gambling compacts since they permitted a form of gambling—betting on video games—that state law did not allow anywhere else in the state. The question became more relevant in 1990 when the legislature voted to abolish the licensing of video games of chance and designate them as gambling devices, making their mere possession a misdemeanor. However, in the same act the legislature specified that the repeal, which removed the most frequently cited precompact legal basis for possession of video gaming devices on Indian land, was not intended to affect the validity of any existing or future compact for any form of gambling.<sup>78</sup> The compacts were thus given official recognition and validity under Minnesota law.

The first video gaming compacts were barely signed when the Lower Sioux community filed a federal lawsuit against the state seeking negotiation of a compact to allow blackjack in tribal casinos. The tribe had originally requested the compact on the grounds that Minnesota's anti-gambling laws contained an exception for "private social bets." This, according to the tribe, constituted legalization of betting on blackjack within the meaning of IGRA, and thus entitled the tribes to offer the same game on a commercial basis. The state responded by making a distinction between commercial blackjack and private social bets and argued that the former was not legal anywhere in Minnesota.

On December 20, 1990, a U.S. magistrate ruled against the state and in favor of the tribe's position, concluding that the state should be required to negotiate a blackjack compact.<sup>79</sup> The attorney general's office wrote, "Under the magistrate's rationale virtually any type of casino gambling, including sports betting, would be permitted on Indian land in Minnesota."<sup>80</sup>

With the magistrate's ruling indicating that further attempts to avoid negotiating a blackjack compact would be unlikely to succeed, the state's negotiators and the tribes settled the lawsuit and went to work to devise a blackjack compact. The resulting compacts signed by each of Minnesota's 11 tribes set out rules of play and types of bets allowed but did not impose betting limits. In addition to regulating blackjack, the state's negotiators sought to limit the effects of the magistrate's ruling by using the compacts to preclude further expansion into additional gambling forms. Under the blackjack compacts the tribes agreed to waive their right to seek further compacts for other forms of gambling based on the "private social bet" exemption, but the state recognized the tribes' right to seek new compacts if the legislature ever legalized additional gambling beyond that exemption, including charitable and state-operated gambling.

With compacts signed and a firm legal foundation in both state and federal law secured, Indian gambling was ready for a growth spurt. What happened exceeded almost all expectations. By 1992 there were 14 casinos in the state offering over 9,200 video gaming machines and blackjack with limits of up to \$500. Gross wagering was estimated at \$1 billion or more, and casino employment exceeded 5,700 statewide.

In its 1992 report *High Stakes: Gambling in Minnesota*, Minnesota Planning described Minnesota as "the largest casino gaming center between Nevada and New Jersey." It described tribal gaming's economic impact in macroeconomic terms, as "redistributing wealth to rural Minnesota, spurring activity in many low and moderate income counties." It referred to a "historic impact" on the self-sufficiency and self-esteem of Indian families.<sup>81</sup>

## **The Voters Say Yes to a Lottery**

The modern state lottery began with the creation of the New Hampshire sweepstakes in 1964 and began to look like a permanent part of the gambling landscape with the establishment of the New York state lottery in 1967 and the New Jersey lottery in 1970. As early as 1972 bills began to be introduced in Minnesota for a constitutional amendment to allow a state lottery, but it was not until 1986 that passage actually appeared possible. A bill to put a lottery amendment on the 1986 general election ballot passed the DFL-controlled Senate that year by one vote but was narrowly defeated in committee in the Independent-Republican-controlled House.

Two factors helped to bring the lottery bill to the edge of passage. One was public opinion, with a 1985 Minnesota Poll showing 73 percent support for the idea. The other was Gov. Rudy Perpich, who saw the lottery as a means to finance an ambitious \$1.8 billion rural economic development and natural resources program. Perpich was the first governor to incorporate a state lottery into his spending proposals, and his support helped to turn the proposal into a serious political issue.

By 1987 the DFL party was back in control of both houses of the legislature and it was becoming clear that the biggest obstacle to putting a lottery amendment on the 1988 ballot would not be public opposition but the difficulty of deciding what to do with the proceeds. In the House alone bills were introduced for lotteries to benefit environmental programs, children's health programs,

education, the Reinvest in Minnesota (RIM) conservation program, economic development, and an environment and natural resources trust fund.<sup>82</sup> Estimates of potential lottery revenue to the state ranged from \$75 million to \$100 million annually.

The legislature addressed the issue in an environment marked by growth in the gambling industry and public uncertainty about whether that growth was good or bad. Charitable gambling by this time was a half-billion-dollar per year business, betting at the Canterbury Downs racetrack had reached \$120 million, and Indian tribal casinos were continuing to grow. A Minnesota Poll found that over 60 percent of Minnesotans had participated in some form of legal gambling in the past year. It also found that 40 percent disapproved of gambling, a significantly higher percentage of disapproval than was common in other states, but even a sizeable percentage of the persons who said they disapproved of gambling had participated in it.<sup>83</sup> This ambivalence was to persist in future years.

In 1987, Perpich endorsed a plan to dedicate half of lottery proceeds to the RIM program to pay landowners to set aside marginal farmland for recreation and conservation, with part of that money being used for an endowment, and the other half to his proposed Greater Minnesota Corporation (GMC). This entity would provide research, product application, and capital to create jobs and industries predominantly outside the metropolitan area. The legislature created the GMC in 1987 with a startup appropriation of \$10 million, but with widespread expectation that it would be one of the main beneficiaries of any future lottery.

The legislature finally voted in 1988 to put on the ballot a constitutional amendment to allow the state to operate a lottery, without any constitutional dedication of the proceeds. The bill that contained the proposed amendment, however, went into considerable detail about how the profits would be spent.<sup>84</sup> It proposed a separate constitutional amendment to create a Minnesota Environment and Natural Resources Trust Fund, with the principal held as an endowment except for authorization to spend up to 25 percent of annual revenues for the first seven years. Neither amendment dedicated any lottery proceeds to the trust fund, but the bill wrote into statute a dedication of half of future lottery net proceeds. The other half was dedicated by statute to the GMC fund. The bill disregarded much of Perpich's original position, which was that all of the profits be dedicated constitutionally to the GMC, but he eventually supported it.

The campaign leading up to the 1988 general election was unusually low-key for an issue with so much emotional content. No major group campaigned for the lottery, and Perpich not only did not campaign for it but declined even to say whether he would vote for it. An anti-lottery group was formed that included several prominent DFLers, and the state Independent-Republican party went on record against the amendment. Given Minnesota's requirement that a constitutional amendment receive a majority of votes from all persons voting at the election (making a failure to vote on it equivalent to voting no), a constitutional amendment with broad-based opposition and little organized support would ordinarily face almost certain defeat. But the lottery was clearly no ordinary issue and in November the voters endorsed it by a 59-41 percent margin.

The 1988 law had contained no provisions actually creating a state lottery other than to direct the distribution of its net proceeds. This left the job to the 1989 Legislature. For guidance, it had a

report from a commission that Perpich had established shortly after the election to make recommendations on enabling legislation for a lottery. The commission recommended that the lottery be an independent state agency, supervised by a director and a lottery board. The director would have day-to-day authority while the board would review and approve the lottery's budget, rules, and annual business plan. Lottery purchases would have to follow state procurement procedures but actual procurement would be by the lottery agency rather than the Department of Administration. The lottery would not be allowed to compete directly with charitable gambling by selling pull-tabs.<sup>85</sup>

While the legislation to set up the lottery would have to address a number of organizational questions, including limits on lottery expenses and lottery advertising, the broad issue overriding all the others was whether the new lottery would more nearly resemble a state agency or a private business. Given the unique nature of state lotteries—an entrepreneurial enterprise within a governmental setting—the answer to this question would determine much of the lottery's structure.

Organizationally the lottery that emerged at the end of the 1989 session followed many of the recommendations of the governor's commission, but when it departed from them was in the direction of the "private business" end of the spectrum.<sup>86</sup> Uniquely among state agencies, the lottery's funds were kept outside the state treasury, meaning that the lottery would not be subject to the biennial budget process. As recommended, lottery contracts were exempt from the usual approval process for state contracts although the lottery was instructed to follow state procedures as much as was practicable. Most but not all employees were to be in the state's classified system.

Where the 1989 law differed most significantly from the recommendations of the governor's commission was in the authority of the director. The commission had recommended that overall authority be divided between the director and a board of five to seven members with the final say over lottery policy. The legislation produced both a director and a seven-member board but the director's decisions were final and the board's role strictly advisory.

The director was to be insulated from politics to a degree almost unknown in state government. Although appointed by the governor, the director was required to be "qualified by experience and training to supervise the lottery," ruling out the purely political appointees that could be found in some other lottery states. The director could be removed from office only for cause, which included maladministration, violation of laws, and failure to generate sufficient revenue.

Although the lottery would look more like a private business than other state agencies, it was still subject to more restrictions than were common in the private sphere, although not uncommon for regulated gambling. It was limited by law to spending not more than 15 percent of total revenue for administrative purposes, and not more than 2.75 percent of total revenue for advertising contracts. Lottery advertisements were required to contain the odds of winning each prize in each game. Ads could only give information on each game, identify recipients of net profits, announce winners, and "present the lottery as a form of entertainment." Advertising was not allowed to present the lottery as a way of solving anyone's financial problems or achieving



financial security. Advertising was required to be “consistent with the dignity of the state.” The restrictions on advertising were a compromise over one of the most contentious issues surrounding the lottery enabling law. Many legislators who were still uncomfortable with the idea of state-sponsored gambling, or who had opposed the lottery from the beginning, sought to include provisions found in other states that prohibited any lottery advertising designed to promote ticket sales. Others argued that the voters had made it clear that they wanted a lottery and the legislature’s responsibility was to create a successful one, which required the ability to advertise effectively in a competitive environment.

With the law enacted, the next stage in the life of the new Minnesota State Lottery was the selection of a director. The law had directed the governor to name the first director from a list of up to three names submitted by the governor’s advisory commission. A nationwide search began in June and drew 140 applicants from in and out of Minnesota. In September, Gov. Perpich appointed George Andersen, deputy director of the Pennsylvania lottery, as the first director.

Andersen quickly made it clear that he was in no rush to begin selling tickets. There had been some comment in and out of the legislature to the effect that Minnesota was moving much more slowly than other new lottery states to begin operations, but most observers accepted Andersen’s philosophy that “We will do it right before we do it fast.”<sup>87</sup> The Minnesota Lottery did not sell its first ticket until April 18, 1990, nearly 18 months after the voters approved the lottery amendment.

The first tickets were instant scratch-off tickets, sold through a network of about 4,000 retailers statewide. The lottery sold \$15 million worth of tickets in its first week and \$67 million by June 30. By mid-August its sales totaled \$100 million. At that point the lottery greatly broadened its offerings to include on-line games (games played through a centralized computer system)—a Daily 3 numbers game and a Lotto Minnesota lotto game.

## **Lottery Revenues and What to Do With Them**

The lottery had barely sold its first instant ticket before the legislature began changing the distribution of its net profits. The principal victim of the reshuffling was the GMC. Even before the voters approved the lottery amendment some legislators had begun to suggest that Minnesota had more pressing needs than funding the GMC.<sup>88</sup> The corporation began with inherent limitations that made immediate economic development breakthroughs difficult. As one newspaper report put it, the GMC “doesn’t manufacture or sell anything. Rather, it is to act as a catalyst, helping entrepreneurs build on the work of scientists and inventors. It funds agricultural and manufacturing research projects, provides money for new businesses and helps create new markets.”<sup>89</sup> Its impact on the rural economy, if any, could not be known for several years. An evaluation of the GMC by the legislative auditor’s program evaluation division cited concerns of legislators and citizens that the corporation, notwithstanding its goal of promoting the rural economy, was too oriented to the metropolitan area.<sup>90</sup>

The GMC's credibility in the legislature was further damaged when Perpich's two main appointments to it proved disastrous. Harold W. Greenwood, Jr., his appointee as chair of the corporation's board, resigned in January 1989 after being forced by federal regulators to vacate his position as head of an insolvent savings and loan association and becoming the subject of a criminal investigation. His appointee as interim president of the corporation, his former chief of staff Terry Montgomery, resigned in December 1989 after being the subject of a sexual harassment complaint from a job applicant and a critical report from the legislative auditor on his expense accounts and the agency's spending practices.<sup>91</sup>

These factors helped make the GMC's share of lottery profits an obvious target for legislators in the 1990 legislative session, and along with the environmental trust fund it eventually fell victim to other demands for state money. The winner in this competition turned out to be infrastructure. The legislature cut the GMC's share of the profits from 50 percent to 25 percent and the environmental trust fund's share from 50 percent to 40 percent and redirected the remaining 35 percent to a newly created infrastructure development fund for higher education and environmental capital projects. In response to intense criticism from backers of the environmental trust fund that the re-dedication represented a breach of faith with the voters, the legislature also voted to put on the 1990 ballot a constitutional amendment to guarantee that the trust fund's 40 percent share would remain inviolate for at least ten years.

At the general election later that year the amendment passed easily (as did another amendment a decade later to extend the constitutional dedication for another 25 years), putting the trust fund's share out of the reach of legislative budget negotiations. The remaining 60 percent became another new target as newly elected Gov. Arne Carlson took office in January 1991, inheriting a \$200 million deficit for the rest of the biennium and a \$1 billion deficit for the next biennium. These deficits, along with Carlson's longstanding dislike of dedicated funds, made the dedication of lottery funds a natural target. The GMC emerged from the session with a new name (Minnesota Technology) and a new status as a fully public agency whose funding would come from the state's general fund rather than a percentage of lottery revenues. The infrastructure fund likewise lost its dedication as the 60 percent of lottery profits not constitutionally dedicated were placed in the state's beleaguered general fund.

Together with the 1989 tax increase for charitable gambling, the allocation of over half of the lottery's profits to the state general fund indicated that the legislature was sufficiently comfortable with legalized gambling that it could look to it as a viable means of solving budget crises or paying for other tax relief. The era when gambling was seen as a dubious endeavor that could only be justified by its support of nonprofit "worthy causes" had been succeeded by a view of gambling that also saw it as a relatively painless source of government revenue. Since none of the changes in dedication had any noticeable effect on lottery sales it was clear that the lottery no longer needed to have its revenues dedicated to a specific popular cause in order to gain public acceptance. All this gave further proof of gambling's new role as a mainstream activity.

## **Department of Gaming Comes and Goes**

The 1989 lottery law was passed as part of an omnibus gambling bill that also addressed charitable gambling reform, betting on off-season simulcasting at Canterbury Downs, and authorization for tribal-state gaming compacts. With gambling becoming a prominent and recurring political issue, there was growing sentiment to “get a handle on” gambling policy by creating a super-agency to control all state involvement in gambling.

Various proposals in 1989 to create an overall gambling agency in state government envisioned a single public official with power to set gambling policy and carry out the state’s varying responsibilities as both regulator and operator. Repeatedly the proposal was described as creating a “gambling czar.” But at the same time concerns were expressed that concentrating that much authority into the hands of one person would lead to one form of gambling being favored over others.

What the legislature eventually enacted was a governance structure that was guaranteed to disappoint almost everyone who was looking for a strong centralized authority over gambling. It converted the racing commission, gambling control board, and newly created state lottery into divisions of a new Department of Gaming headed by a commissioner appointed by the governor. But the new commissioner’s duties were limited to being an ex-officio member of the racing commission, gambling board, and the new lottery board. The commissioner would be one vote out of nine on the racing commission, one out of seven on the gambling control board, and one out of seven on the advisory-only lottery board. The racing commission and gambling board would continue essentially as autonomous agencies with their own staffs, and the lottery administration would have a degree of independence unprecedented in state government.

Gov. Perpich appointed former Minneapolis police chief Tony Bouza as the first gambling “czar,” but Bouza quickly realized that few czars have ever had such limited authority. Despite being often referred to as “overseeing” state gambling activities, his actual role was more as a public commentator than as an overseer. In office, Bouza was notable in leading much of the criticism and reform of charitable gambling but played only a minor role in horse racing regulation and almost no role in the operation or governance of the lottery or in the regulation or suppression of any other form of legal or illegal gambling.

It came almost as a relief when within two years of his appointment Bouza recommended that his department and position be abolished. The legislature quickly complied in the 1991 session, but did not accept his corresponding recommendation that a “state body composed of gambling’s various elements” be created to coordinate gambling policy.

One element of the governmental reorganization in the 1989 law proved to be more long lasting. The legislature created a division of gambling enforcement in the Department of Public Safety to conduct background investigations on applicants for charitable gambling licenses, horse racing licenses, and lottery retailer and vendor contracts, as well as to enforce laws against illegal gambling. Later the division was merged with the division of liquor control to create a division of alcohol and gambling enforcement, which continues to function today.

## **Gambling in the Mainstream**

At the end of the 1989 legislative session, Sen. Dean Johnson said, “The gambling floodgates are open.”<sup>92</sup> The massive 1989 gambling bill and the subsequent 1989 special session demonstrated what he was talking about. Although the bill did not represent the single biggest expansion of gambling in state history (that was done by tribal casinos), its scope indicated how much gambling had come to the forefront as a legislative issue. Canterbury Downs was given expanded authority to conduct betting on out-of-state races outside the live racing season. The state itself entered the gambling business with the authorization for a state lottery. Gambling was a sufficiently big business to justify creation of its own department in state government. And just a few months later charitable gambling became a source of almost \$50 million annually in state tax revenue, making its survival and success a matter of even greater importance to state finances.<sup>93</sup>

None of this could have come about without a substantial degree of public approval. The decisive votes on the constitutional amendments to allow pari-mutuel betting and a state lottery were indicative of a public acceptance of, and in some cases enthusiasm for, legalized gambling as a legitimate activity.

In his landmark 1960 study of the history of U.S. lotteries, *Fortune's Merry Wheel*, historian John Samuel Ezell had wondered whether the dormant state of the lottery in the era in which he wrote was a permanent change in public attitudes or just another phase in a long cycle of alternating acceptance and suppression of gambling.<sup>94</sup> Minnesota was about to demonstrate a new kind of cycle, where a period of expansion of legalized gambling was followed by a period of consolidation.

## **1992-1997: Gambling Moratorium**

What came to be described as Minnesota's "gambling moratorium" was never explicitly written into law but it still dominated public discussions about gambling for much of the 1990s and beyond. Insofar as it could be defined, it was a policy that there would be no further expansion of legalized gambling in Minnesota beyond the forms of gambling that existed in 1990.

The "moratorium" concept was first raised in a high-profile manner in 1990 by Commissioner Bouza, who used his departure from office to recommend that the state declare a moratorium on new forms of gambling until it could create a permanent citizens' body to formulate an overall state gambling policy. He was followed later in the year by Attorney General Humphrey, who at a press conference articulated the most frequently cited rationale for a moratorium: "We've been expanding at a very rapid pace. We've got to stop, got to take a breath and see what we have, see how well it's operating."<sup>95</sup>

By the 1992 legislative session, the concept of a moratorium on new forms of gambling had taken hold to the point where it was endorsed not only by Humphrey but by Gov. Arne Carlson, Senate Majority Leader Roger Moe, House Speaker Bob Vanasek, and both Twin Cities newspapers. Not surprisingly, it was also endorsed by the largest organization of charitable gambling operators.

The widely used phrase "expansion of gambling" was and still is a rhetorical rather than legal term, and as such it lacks a single agreed-upon definition. It was common in the decade for supporters of some new form of gambling to go to some trouble to explain why their proposal wasn't really an expansion of gambling.

Expansion of gambling can occur one of three ways:

- ▶ by allowing additional forms of gambling
- ▶ by increasing the overall availability of gambling
- ▶ by increasing the overall volume of gambling

The moratorium focused predominantly on the first two definitions, since those were most directly under state control.

### **The Moratorium Withstands a Host of Challenges**

By 1992, many if not most of the major forms of legal gambling were available in Minnesota, including bingo, pull-tabs, raffles, pari-mutuel betting on horses, statewide lottery games, and tribal casinos offering blackjack and video gaming machines. Only a few options widely available in other states were unavailable in Minnesota, and mostly it was for lack of interest. A prime example was dog racing, which was excluded from the 1982 constitutional authorization of pari-mutuel betting. Although several dog tracks were constructed in Wisconsin beginning in 1990, including one just a few miles from the Minnesota border, there has never been a serious

effort to amend the constitution to allow pari-mutuel betting on dogs in Minnesota.<sup>96</sup> Nonetheless, there was no shortage of new gambling proposals for moratorium backers to oppose.

*Sports betting.* Bills to legalize sports betting had occasionally been introduced in the legislature, with revenue to the state predicted to be as high as \$250 million annually.<sup>97</sup> Proposed schemes took the form of state-operated sports lotteries or legalization and licensing of private bookmakers. However, a 1992 federal law prohibited states that did not allow or operate sports betting at the time of its passage from adopting new schemes to either license or operate sports betting.<sup>98</sup> Rep. Phyllis Kahn, a leading proponent of legalized sports betting, succeeded in including in the 1994 omnibus gambling bill a section requesting the attorney general to explore the feasibility of a state lawsuit to challenge the validity of the federal prohibition. The report came back in March 1995 with a judgment that such an action was “highly unlikely to succeed,”<sup>99</sup> and sports betting stalled as an issue for several years. It made a comeback on a relatively small scale in 2004 with the passage by two House committees of a bill to add sports tipboards (tipboards on which the winning chances are determined by the scores of games, usually football games) as a form of charitable gambling, but the bill eventually failed.

*Riverboat gambling.* The rise of riverboat gambling in other Midwestern states, notably Iowa, Illinois, and Missouri, created some interest in bringing it to Minnesota. The House held a hearing on it in 1989 and bills were introduced in the Senate first to study the issue and later to legalize floating casinos operated by nonprofit organizations. Some of the interest was stimulated by efforts to bring riverboat gambling to Wisconsin’s border waters. In 1991 a partnership that included prominent St. Paul civic leader Richard Zehring promoted the idea of a riverboat casino docked in St. Paul, claiming that it would contribute over \$200 million to the downtown economy and create nearly 10,000 jobs.<sup>100</sup> The plan foundered after a city planning department study estimated far lower figures for jobs and development.

The absence of strong public or legislative support for riverboat gambling is among the most important indications of the strength of the gambling moratorium. The fact that Minnesota already had some 17 land-based casinos contributed to an “enough is enough” attitude. The riverboat campaign was also hurt by the fact that another constitutional amendment would probably have been required to allow it, and by the embarrassingly abrupt departure from Iowa of two of its riverboats to Mississippi, lured by lower taxes and looser gaming restrictions. The Iowa exodus clearly demonstrated the transient nature of any economic development spinoffs from riverboat gambling compared to land-based casinos.

*Nintendo-style lottery game.* The Minnesota Lottery had introduced on-line lottery games in its first year of operation, but in late 1991 lottery director George Andersen proposed going significantly further by implementing lottery games that could be played at home. He announced that lottery intended to test a system to allow players to pick lottery numbers and buy tickets directly from their homes by using a Nintendo video game play system. The Nintendo control deck would allow players who had established an account with the lottery to connect directly with the lottery by modem. The lottery would provide players with a Nintendo control deck and

a state lottery cartridge. Players would have access to the lottery's numbers game and state and national lotto games.

Andersen cited the fact that 32 percent of Minnesota households already had Nintendo video game units. At the time this was a significantly greater penetration rate than home personal computers. For the lottery, the use of Nintendo units meant a potentially substantial increase in revenue. If only 15 percent of the Nintendo households in Minnesota bought \$10 worth of tickets weekly and paid a \$10 per month equipment fee, total annual revenue was estimated at almost \$50 million, with \$15 million going to the state. If 75 percent of Nintendo households had that level of play, the estimates rose to \$250 million and \$77 million respectively. For Nintendo the arrangement meant the first use of its consoles for something other than playing video games and a potential expansion into nonentertainment applications.

Proponents of the plan paid homage to the moratorium by arguing that it wasn't really an "expansion of gambling" because it was merely an extension of existing state lottery games. According to Andersen, "It's not really an expansion into new forms of gambling. It's a customer convenience for people for whom inconvenience can be a barrier to playing our games." Supporters also pointed out that the plan meant new business for locally based Control Data, which had developed the at-home system.

It quickly became clear that in offering the proposal Andersen had made an uncharacteristic political miscalculation. The opposition to the Nintendo scheme was immediate and intense. Within days of the announcement Senate Majority Leader Roger Moe denounced the plan as "unethical" and "insidiously destructive," and Attorney General Humphrey called it "lousy public policy."<sup>101</sup> Editorial pages around the region joined in the criticism and used it as an opportunity to renew their endorsement of the moratorium.<sup>102</sup> Comments from an expert panel on gambling assembled by the state planning agency included observations that the scheme was "a little like the alcoholic drinking alone," and that "Gambling would be further legitimized, and could for the first time be seen as a family activity."<sup>103</sup> A letter began to circulate in the Senate promising to kill the plan in the legislature if Andersen didn't withdraw it.

An experiment involving 10,000 Minnesota households had originally been planned for the summer of 1992 but less than eight weeks after announcing the plan Andersen pulled the plug on it, still unwilling to call it a bad idea but recognizing that it had become divisive and that it probably would not survive the upcoming legislative session.

*Ely casino.* In 1985, a group of mostly Iron Range legislators introduced a bill that would have allowed the city of Ely to operate a municipal casino in the city under the control of a board of appointees of the city and the gambling control board. The gambling control board would have adopted rules to govern the casino. Profits would have gone to the Iron Range Resources and Rehabilitation Board (IRRRB) for projects to create jobs and diversify the Iron Range economy. The plan was presented as one answer to the decline in the region's mining and tourism industries.

The Ely casino was intended to be on a small scale compared to what eventually became Minnesota's casino industry. Ely mayor Joseph Baltich said, "We don't want a casino with neon lights or loud noises. We're looking for a nice easygoing kind of place."<sup>104</sup> With Indian gaming still in the bingo hall phase, competition with tribal casinos was not an issue and the Minnesota Indian Affairs Council even declared its nonopposition.<sup>105</sup> But the proposal still made no headway in the legislature in spite of Gov. Perpich's support, and the legislature's reluctance even to take it seriously indicated that Minnesota was largely unprepared for the abrupt growth in casino gambling that was about to occur.

Some years later, reflecting on what had happened in the state's gambling industry since the Ely casino bill came and went in the legislature, an Ely resident commented ruefully, "It turns out everybody in Minnesota is gambling. God forbid Ely should have benefited from it."<sup>106</sup>

At the end of the 1992 legislative session Sen. Charlie Berg, chair of the Senate committee on gambling regulation, said, "This is the first time we've ever been able to stop the expansion of gambling. I think the pendulum's swung as far as it's going to."<sup>107</sup> The moratorium would nonetheless face additional pressure for the remainder of the decade.

## **The Video Lottery Controversy**

The most sustained assault on the gambling moratorium in the mid-1990s came from proponents of a plan to allow the state lottery to install video lottery machines in bars and restaurants.

The drive to install video devices on non-Indian land on which gambling would officially be legal actually began in the late 1980s as a possible solution to some of the irregularities then surrounding the sale of paper pull-tabs. A bill introduced in the 1989 session would have authorized the gambling board to conduct an experiment with up to 100 video pull-tab machines operated by charitable gambling organizations. Proponents claimed that the machines would eliminate the "insider-trading" of information to favored customers about which games still had unsold winning tickets, since the play of the machines would be vastly more random than with boxes of paper pull-tabs. They also claimed that the machines would eliminate skimming by greatly limiting the number of people with access to cash proceeds. Organizations also saw the possibility of increasing their pull-tab receipts while at the same time reducing their expenses. The usual obeisance was made to the moratorium with the argument that the proposal wasn't really an expansion of gambling but just an electronic version of the same pull-tabs that had been in Minnesota for years.

Some of the opposition arose from concerns that the machines would not stamp out insider trading since there would still be human monitoring of payouts. Commissioner Bouza wrote, "It can never be forgotten that whatever a human can invent another will find a way to circumvent."<sup>108</sup> Fears were also expressed that minors would find playing video pull-tab machines easier than buying pull-tabs from a seller. But even more of the criticism came from an aversion to connecting gambling with the growing video-game culture and its potential for significantly increasing gambling addiction, particularly among the young.



The video pull-tab proposal failed to advance in the 1989 session but returned with renewed strength in 1990 as frequent reports of charitable gambling abuses engendered a growing feeling that drastic measures were necessary. The proposal was endorsed for a three-year trial by a legislative task force that saw it as a way of dealing with highly publicized charitable gambling abuses. It was also endorsed by the gambling board despite the reservations of its own executive director Tom Anzelc, who questioned if the agency had enough personnel to regulate the devices. Eventually the enactment of numerous other pull-tab reforms and the growing strength of the moratorium concept were enough to sink the video pull-tab concept.

Video gaming as a state-approved activity was not dead, however, and soon returned as a proposal for video lottery devices in bars and restaurants. For years Minnesota's on-sale liquor retailers had argued that various elements of Minnesota law, such as a relatively high sales tax on alcoholic beverages and the state's mandatory dram-shop insurance laws, had put their businesses under increasing pressure. This pressure, they claimed, was being aggravated by competition from Indian gaming casinos, whose tax-free status was cited as an unfair advantage.<sup>109</sup> They argued that a "level playing field" meant that they needed to be able to offer video gambling, and since these devices were lotteries that under the constitution could only be operated by the state, the proposal became a plan to have the machines installed and operated by the state lottery. Their case was stated by columnist Joe Soucheray: "The loneliest fellow in town these days is not the appliance repairman, but probably the local barkeep, who has seen his business diminish under the weight of modern temperance movements, not to mention those flourishing Indian casinos."<sup>110</sup>

Proponents of video lottery pointed to South Dakota as a successful prototype of video lottery. State-operated video lottery terminals (VLTs) offering poker, blackjack, keno, and bingo had been installed in bars and lounges since 1989, with occasional interruptions for legal battles. In fiscal 1990 video lotteries produced gross profits of over \$46 million, split equally between the state and operators, even though they were in operation for only three-fourths of the year. By 1993 four states had statewide VLT gambling with gross revenues (shared between the state and machine operators) ranging from \$142 million in South Dakota to \$186 million in Louisiana.<sup>111</sup> An analysis by the Minnesota lottery projected that placing five VLTs in 3,500 licensed liquor establishments would generate over \$750 million in gross revenue, with the state receiving from \$218 million to \$331 million depending on the split between the state and machine operators.

Video lottery as a political issue hit its peak in 1993 when it was entwined with an even more volatile issue, Indian hunting and fishing rights. In 1990, the Mille Lacs Band of Chippewa had sued the state arguing that an 1837 treaty with the United States that ceded land to the band had given it the right to hunt and fish without state regulation on the land. The Department of Natural Resources eventually reached a settlement with the band under which the band dropped its lawsuit and agreed to limit harvest of walleyes on Lake Mille Lacs, in return for a grant of 7,500 acres of land and \$8.6 million, plus exclusive fishing rights on 4.5 percent of Lake Mille Lacs and the right to continue traditional spear fishing and netting practices.<sup>112</sup>

The treaty required legislative approval in order to take effect, and the effort to pass an approval bill became one of the hottest legislative issues of the 1990s. As columnist Jim Klobuchar wrote,

“This is the real gut brawl in the Legislature. It pours in the elements of race, money, fear, greed, land and water, which is a combination guaranteed to set off jumping and screaming.”<sup>113</sup>

During the legislative session, Senate gaming committee chair Charlie Berg, a vociferous opponent of the treaty, repeatedly hinted that as a tactic to stop the treaty, he would support the VLT bill despite his longstanding opposition to expansion of gambling. He criticized what he referred to as “two [Indian] monopolies,” one over fishing and the other over casino gambling. At a rally at the State Capitol before hundreds of bar owners demonstrating in favor of the VLT bill, he predicted that video gambling around the state would be a “sure thing” if the treaty were to be approved.<sup>114</sup>

The defeat of the Mille Lacs treaty bill in the 1993 legislative session took much of the steam out of the VLT proposal, and it was finally defeated and pronounced dead in the 1994 session when committees in both bodies rejected it. Supporters had first sought to amend the proposal to have it only apply to 14 counties rather than statewide, then to apply only at the airport, Canterbury Downs racetrack, and a single nonmetro site, but the compromises were not enough to keep the bill alive. The last blow came when the legislature’s advisory committee on gambling recommended against reviving the bill in 1995.

The VLT proposal had passionate support from many of the state’s bar owners, but the support was far from unanimous. Some liquor retailers in resort areas with tribal casinos reported that the casinos had been a boon to their businesses and testified against the VLT bill in committee. One study concluded that after controlling for other factors that affect bar business, “The availability of casino gambling has a positive effect on bar sales,”<sup>115</sup> and a major lobbyist for the on-sale liquor industry acknowledged that his evidence of a casino-induced loss of business was anecdotal rather than statistical.<sup>116</sup>

In the absence of unified support within the liquor industry other factors became decisive. A 1993 Minnesota Poll indicated that the public opposed the idea by 62 percent to 35 percent, with an unusually low 3 percent with no opinion.<sup>117</sup> There were concerns that by leaving the actual operation of the machines in private hands, the bill risked violating the constitution. Organizations conducting charitable gambling in bars saw the placement of VLTs in the same locations as a direct threat to their revenues in spite of efforts by VLT bill sponsors to share profits with them. Many opponents who feared that VLTs were uniquely addictive cited a widely quoted observation by the clinical director of a large Las Vegas hospital that video gaming machines were the “crack [cocaine] of gambling.”<sup>118</sup>

Finally there was the moratorium, which was still publicly subscribed to by most Minnesota political leaders from Gov. Arne Carlson on down. One editorialist argued that passage of the VLT bill would fracture the moratorium permanently:

Expanding gambling further, creating statewide private gambling industries, may prove an irreversible step. If lawmakers in each state are finding it challenging to say no to bar owners and other promoters of commercial gambling (and they are), one can only imagine how much more daunting it would be to ever repeal

legalized gambling once every small-town bar and restaurant has grown dependent on the revenue.

To fail to freeze gambling expansions now may be to permanently institutionalize a pervasive gambling culture—a culture based, to a degree not widely admitted, on fleecing the vulnerable.<sup>119</sup>

## **The Advisory Council Advises No Change**

For several years, beginning with Commissioner Bouza's report to the 1991 Legislature, there had been calls for a study commission to evaluate all forms of gambling in Minnesota and make recommendations on an overall state gambling policy. The 1994 omnibus gambling bill created such a body, to be called the Advisory Council on Gambling. It consisted of 14 members overall: nine members appointed by the governor, one to serve as chair and eight others representing each congressional district, one member appointed by the attorney general, and four legislators. Gov. Carlson appointed Harry Baltzer, director of the gambling control board, as chair, and other gubernatorial appointees represented horse racing, charitable gambling, Indian gaming, and compulsive gambling treatment interests.

The advisory council's final report in 1995 made it clear that the moratorium was still firmly entrenched as state policy. It recommended that the legislature authorize no new forms of gambling, and specifically recommended against the proposal to put video lottery devices in bars and restaurants, citing concerns with problem gambling and possible excessive state reliance on gambling revenues. At the same time it recommended that no existing form of gambling be abolished or even substantially changed. It explained:

On balance the advisory council feels that the best approach would be to continue to present efforts to regulate the volume of gambling but not to go so far beyond them as to eliminate any existing form. Within this framework the total volume of gambling should be ultimately determined by market forces. This recommendation is not based on a judgment as to whether gambling overall is good or bad for the state. Rather, it derives from a belief that government efforts to abolish existing gambling forms would likely be unproductive and would use up energy and resources best expended elsewhere.<sup>120</sup>

The report was generally an endorsement of the gambling status quo, with the advisory council also recommending against any major changes in the governing structures of gambling or in the statutes regulating gambling.

## **Racing Returns to Canterbury**

With off-track betting having been overturned by the courts, the reopening of Canterbury Downs after its shuttering at the end of 1991 seemed like a questionable bet. Nonetheless, in 1993 the

track for the second time became the prize in an ownership struggle. In November, financier Irwin Jacobs agreed to buy the track from Ladbroke for a reported \$7 million, about one-tenth of its original cost. At the same time another buyer, Susan Bala, general manager of a North Dakota firm that specialized in simulcasting services and equipment, claimed she had an agreement with Ladbroke to buy the track for \$6 million, but Ladbroke denied having reached such an agreement. To make the confusion complete, former suitor John Agliodoro also put himself back into the bidding.

A flurry of lawsuits inevitably followed. In January 1994, a Scott County district court ruled that Jacobs' purchase of the track was valid, but this only deepened the uncertainty surrounding the track. Jacobs had refused to commit himself to returning live racing to Canterbury, indicating that the track had several other possible uses. Within days of the decision Jacobs announced his long-range intention: to turn Canterbury into a full-fledged casino that also featured live racing and simulcasting. He made it clear that without the casino, live racing had no future at Canterbury, since he did not intend to follow previous owners in losing money at the track.

Jacobs' support of the casino concept was less than wholehearted, and he left it up to the legislature to decide if the concept had a future. The response was so instantaneous and negative that within a week of floating the idea he abandoned it, citing not only the adverse reaction but also his own personal reservations about legalized gambling. He also reiterated his decision not to reopen the track for live racing, saying "When I bought the track, it never entered my mind to operate it as a racetrack."<sup>121</sup> It was obvious that Jacobs had bought the track without ever having a clear idea of what to do with it.<sup>122</sup> This lack of a business plan made his position as track owner untenable, and he soon put the track back up for sale.

In spite of his own ambivalence about gambling, Jacobs announced he wanted to sell the track only to owners who intended to restore live racing. Such an ownership group soon emerged from Minnesota's horse industry. It was headed by the father and son team of Curt and Randy Sampson, who had built a substantial telecommunications business in greater Minnesota and who had been in the breeding business since 1987. Unlike previous owners, they were primarily motivated by a desire to preserve live racing and a breeding industry in Minnesota. One trainer said, "The Sampsons are like any other businessmen—they would like to make a profit—but they have done this because they are Minnesota horsemen."<sup>123</sup>

The Sampson ownership group was welcomed not only by the state's horse industry but also by the legislature, which at the time of the sale was considering a constitutional amendment to allow off-track betting. A locally based ownership group that was deeply involved in the horse industry, which many legislators continued to regard as an economic asset to the state despite the track's vicissitudes, was exactly what OTB supporters had been looking for.

Many in the racing industry still considered OTB to be essential to the survival of horse racing in the state. Their numbers included Randy Sampson, who said "Realistically, there is no long-term future for horse racing in Minnesota without some form of off-track betting."<sup>124</sup> Many in the legislature still saw OTB as inimical to live racing, but the purchase of the track by active horse owners raised hopes that the increased OTB revenue would lead to higher purses. Rated a

long shot at the beginning of the session, the OTB constitutional amendment was approved by the legislature in May 1994 by surprisingly comfortable margins.<sup>125</sup> The legislature's passage of the amendment marked the first breach of the moratorium since it was first proposed in 1990.

The track operated as a simulcasting facility only during the remainder of 1994, but with plans for a 51-day live season in 1995 featuring both thoroughbred and quarterhorse racing. In the meantime the track and the horse industry nervously awaited the vote on the OTB amendment in November 1994. This time it was not the legislature but the voters who kept the moratorium in force. The vote on the OTB amendment was extremely close but in the end it fell short by 7,000 votes out of 1.68 million votes cast.

The defeat of the amendment was tempered by a 1994-95 simulcasting season that drew higher than expected per-capita betting handles and contributed an additional \$2 million in purse money for the live season. A public stock offering before the opening of the 1995 season erased the track's debt and made possible a modest first-quarter profit. A name change to Canterbury Park indicated an intention to break with the past and also to use the track as a year-round entertainment center.

The track and horse owners also benefited significantly from another tax break granted in 1996, to exempt the first \$12 million in takeout each year from the state pari-mutuel tax.<sup>126</sup> With the track's takeout averaging about 20 percent, the tax break effectively exempted the first \$60 million in handle from taxes. Since Canterbury's total handle since reopening did not reach the \$60 million level until 2001, the value of the tax break was obvious.

## **Charitable Gambling—Reversing the Reforms**

Through the 1990 session the critics of charitable gambling had set the legislative agenda, and the result was legislation that raised the levels of regulation and enforcement and imposed an increasing level of responsibility on gambling organizations. Beginning as early as 1991, the legislature began giving a more sympathetic ear to the gambling industry's own agenda, and the results were reversals of several of the reforms that the industry had considered among the most onerous.

The 1990 law had dealt with the problem of pull-tab insider trading by requiring all organizations that sell pull-tabs to post the names of winners of major prizes as they were paid out. Organizations claimed that, just as they had predicted, the posting requirement was cutting into their sales by increasing the number of dead games. In response, the 1991 Legislature repealed the posting requirement and substituted a provision that allowed the gambling board to impose a posting requirement only if it had reason to believe that an organization was giving illegal information to players.

The 1991 law also repealed another unpopular feature of the 1990 act that required recipients of gambling net profit contributions to register with the board. The bond posted by gambling managers, which had been raised from \$10,000 to \$25,000 in 1990, was reduced back to \$10,000 in 1991.

The 1991 changes did not gut charitable gambling regulation but they did indicate that the brief era of wholesale reform was over and that the legislature had returned to listening more closely to gambling organizations and their concerns. The reform period was giving way to the charitable gambling industry's agenda.

## **Indian Casinos Dominate the Gambling Scene**

In 1993 the number of Indian tribal casinos had reached 17, and according to the state planning agency, their total revenue was an estimated \$500 million. Assuming that gross revenue was about 10 percent of gross wager this would have represented a total wager of about \$5 billion.<sup>127</sup> The number dwarfed total wagering on charitable gambling, the state lottery, and pari-mutuel racing combined.

The effect of casinos on the economies of their surrounding counties appeared to be substantial. A 1993 Minnesota Planning report found that the ten Minnesota counties with casinos fared better than the rest of the state between 1989 and 1991, experiencing \$182 million more in economic activity in 1990 and 1991 than would have been the case had they grown at the same rate as the rest of the state.<sup>128</sup> A later report by the Federal Reserve Bank of Minneapolis found that Upper Midwest and northern tier counties containing Indian reservations with the highest per capita casino revenue had greater population growth, higher per capita income, and greater declines in unemployment from 1990 to 2000.<sup>129</sup> Not all the results were beneficial, however, as the hospitality industry claimed that some restaurants near casinos were losing 50 percent of their business.<sup>130</sup>

The impact of Indian gaming on the statewide economy was harder to determine. As one economic study put it, "The role casinos play in contributing to the economic base of a state or regional economy is largely determined by whether gaming revenues are generated from in-state or out-of-state sources. To the extent that the presence of in-state casinos are able to retain gambling dollars that would leave the state in the absence of gaming facilities, the money wagered would be considered a benefit (gain) to the state. However, gaming revenues from in-state sources that would not otherwise leave the state are simply a shifting of discretionary spending. This spending shift is not new wealth."<sup>131</sup>

As tribal casinos proliferated across the Midwest the ability of Minnesota's casinos to draw wealth from other states became limited. A 1995 report indicated that 80 percent of Minnesota casino patrons came from Minnesota. Still, a state tourism official was quoted as saying, "The casinos have been very popular with the tourism groups, and that's been one of the fastest growing segments of the industry."<sup>132</sup>

Whatever the effects of tribal casinos may have been on surrounding economies, their effect on Indian land was dramatic. A 1998 report from the Minnesota Indian Gaming Association (MIGA) cited 14,000 jobs created on reservations with an annual payroll of over \$184 million. The impact on reservation unemployment rates may have been limited—one report in 1997 indicated that about 71 percent of casino jobs were held by non-Indians<sup>133</sup>—but a 1997 MIGA-

sponsored study found that “the rapid growth in Indian gaming facilities in areas of traditionally high unemployment and social services needs have reduced the burden on [government social] programs by a considerable degree.”<sup>134</sup> Tribal lobbyist Larry Kitto said, “Gambling is the first economic tool that’s come along in the 20<sup>th</sup> century on Indian reservations that’s really worked.”<sup>135</sup>

Of the negative effects of tribal gaming none was cited more often than its association with compulsive gambling. Of the callers to the state Compulsive Gambling Hotline, 44 percent identified their problems as stemming from casino gambling, well above the second most frequently cited source, pull-tabs (24 percent).<sup>136</sup> Hotline officials called video gaming devices “the most addictive form of gambling in the state,” and noted that calls to the line in 1994 nearly doubled over the number in 1992, with most of the callers being casino gamblers.<sup>137</sup>

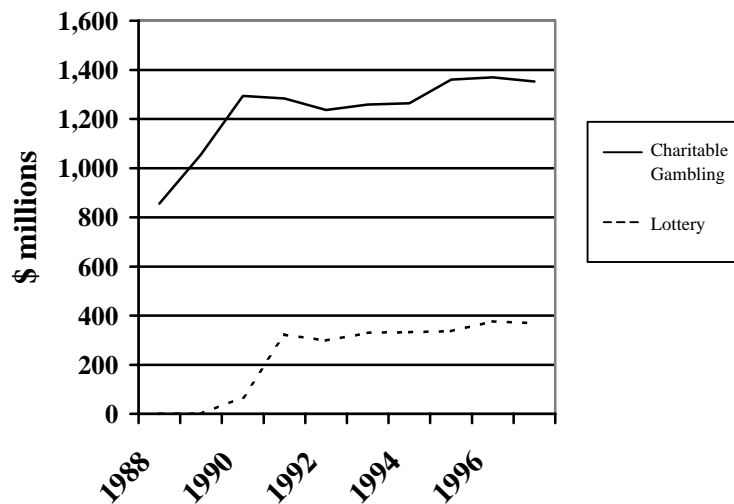
The effect of tribal casinos on the revenues of other major gambling options in Minnesota is hard to gauge with certainty, but by the late 1990s it seemed clear that, as the adjacent chart of charitable gambling and lottery sales in the decade since the passage of IGRA indicates, casinos had not had the devastating effect that had once been feared. Charitable gambling sales leveled off in 1990 and remained relatively flat for years afterward, rising an average of about 1 percent a year. However, as noted before, the gambling board in 1988 had predicted just such a plateau,

largely as the result of charitable gambling running out of new sales outlets. The state lottery’s sales rose during its first eight years of operation by an average of about 2 percent per year, modest growth compared to some other lotteries but a respectable performance in a highly competitive environment. That environment probably played a role in the Minnesota lottery’s decision to adopt a relatively high prize

payout percentage: in 1993 Minnesota’s prize payout was about 60 percent of gross sales, well above the 53.7 percent payout for ten other Midwestern state lotteries.<sup>138</sup> This decision helped keep the lottery competitive but also adversely affected its ability to return money to the state treasury.

Pari-mutuel betting may have been the most adversely affected by Indian gaming, in large measure because the state’s largest casino was located only a few miles from Canterbury Park, but the racing industry’s difficulties were national in scope and preceded passage of IGRA.

**Charitable Gambling & Lottery Sales 1988-1997**



Although many references to tribal casinos tended to lump them all together into a single industry, Indian gaming in Minnesota has for almost all of its history been characterized by a wide disparity in the revenue capacity of individual casinos. This could be seen as early as 1992 when a survey of Minnesota casinos found that the number of gaming machines ranged from 1,400 at each of the two Grand Casinos (Mille Lacs and Hinckley) to 300 or fewer at five other casinos. A similar disparity existed in blackjack tables, ranging from 76 at Mystic Lake to fewer than ten at Lake of the Woods.<sup>139</sup> In 1994, the Mdewakanton community, owner of the Mystic Lake Casino, distributed some \$500,000 in per capita payments to each band member, while the majority of tribes in the state were making no per capita payments at all. Several of the state's smallest casinos were being operated not with the expectation of producing sizeable profits but in the hope that they would reduce their reservation's unemployment rate.

Perhaps the most persistent controversy dogging Indian gaming throughout the 1990s was not its social or economic impact but its tax status. As one editorialist noted, in the early days of casino development the greatest fear was of corruption and organized crime involvement. As these fears faded they were replaced by resentment of Indian casinos' freedom from state taxes on gambling proceeds. "You simply cannot discuss gambling in outstate Minnesota without hearing more than you desire about taxes—about how 'the state ought to be getting its share' by letting 'tax-paying businesses' offer more gambling."<sup>140</sup> Since the state was prohibited by IGRA from imposing direct taxes on casino revenues, the argument increasingly became focused on "breaking the tribal monopoly" and "creating a level playing field."<sup>141</sup> With most of the traditional arguments about the wisdom or morality of gambling having become settled in the minds of many Minnesotans, this was to become the dominant controversy in gambling as the century turned.

## **Gambling is Dealt into the Stadium Game**

Improbable as it may seem, an issue arose in the mid-1990s that managed to evoke an even more intense public reaction than legalized gambling. This was the proposal to build one or more new sports stadiums in the metropolitan area.

The issue arose mainly because the two professional tenants of the Hubert H. Humphrey Metrodome had announced that they wanted out. When the Metrodome was opened in 1982 it was widely regarded as being able to meet Minnesota's professional and college sports needs for a generation or more. But by 1995 it was increasingly being described as inadequate and obsolete. The Minnesota Vikings wanted a new stadium of their own in order to obtain the increased revenue the team claimed was vital in order to remain competitive in the National Football League. The Minnesota Twins wanted a new baseball stadium not only to improve their revenue capability but also to provide a better baseball experience than a stadium designed primarily for football could offer. The University of Minnesota also raised the possibility of vacating the Metrodome for a new open-air on-campus stadium. A combined Vikings-Gophers football stadium on or near the campus was one possibility but not an ideal one for either prospective tenant. In the case of the Vikings and Twins the facility in question would not be



built by the teams but by the Metropolitan Sports Facilities Commission, owners of the Metrodome, or a successor body using a combination of public money and contributions from the teams.

Adding to the complexities was a growing feeling in St. Paul that it had a viable opportunity to bring the National Hockey League back to Minnesota and place the team in the city's somnolent downtown if it could replace its aging Civic Center with a modern arena.

There were clear priorities in addressing these issues. The Twins' lease for the Metrodome allowed the team to escape it at the end of 1997, while the Vikings were tied to the building with a lease that ran through 2011, and no hard deadline existed for construction of a new hockey arena. This brought the baseball stadium to the forefront of the debate. The cost of the new stadium was estimated at \$350 million to \$400 million, with a retractable roof adding some \$50 million to \$75 million to the cost.

Even the legislative backers of one or more new stadiums recognized that political realities precluded costs like these from being paid from the state's general fund or through general obligation bonding. The stadium funding debate thus became a search for innovative sources of public funds that could generate maximum revenue from narrowly based tax sources, or preferably some source other than taxes. The one broad-based tax proposal, Gov. Carlson's suggestion of a 10-cent per pack cigarette tax increase to finance the stadium, went nowhere in the legislature, making it clear that broad-based taxes, even sin taxes, were not an option. The remaining options included capturing sales tax revenue from baseball tickets and income tax revenue from player salaries, redirection of some state lottery proceeds, and imposing new taxes on sports merchandise. But none of these proposals could hope to generate the same level of revenue as a major expansion of gambling.

One of the first attempts to link gambling and sports facilities was a plan proposed by House Speaker Irv Anderson late in the 1995 session to place as many as 17,000 state-operated VLTs in bars and restaurants statewide, with proceeds to be used to return NHL hockey to Minnesota and expand youth sports.<sup>142</sup> The plan foundered on legislative opposition to such a major gambling expansion, but the connection had been made.

It arose again in the 1997 session with the introduction of a bill by Senate Minority Leader Dick Day to provide for the installation of 1,500 video lottery machines at Canterbury Park to be operated by the state lottery. The net revenue, which Day estimated at \$70 million per year, would go into a "sports infrastructure fund" to provide ongoing funding not only for a baseball stadium but a new arena for professional hockey and a remodeled Metrodome for the Vikings, as well as subsidizing higher purses for horse racing. Gov. Carlson, a stadium supporter, declined to endorse Day's bill at the beginning of the session and stuck with his proposed cigarette tax increase. But later in the 1997 session Carlson, who had seen his cigarette tax proposal pronounced DOA, was reconsidering his opposition. However, not all stadium supporters were convinced—Rep. Ann Rest, chief sponsor of the stadium bill in the House (not a companion to Day's bill), expressed strong reservations about gambling as a source of financing.<sup>143</sup>

By the end of the 1997 session no stadium bill had passed but the legislature was not quite prepared to let the issue die. A legislative task force was established to sift through the numerous proposals both for stadiums and means of paying for them, prior to an anticipated special session in the fall to deal solely with stadium issues.

The stadium debate created a new opportunity for Minnesota's horse industry and for Canterbury Park. Ever since the defeat of the off-track betting amendment, the industry and the track had been looking for additional gambling options at the track to finance expansion, or an increase in purses for live racing, or both. They saw the stadium debate as an opportunity to offer the state a means of both stimulating the horse industry and paying for one or more new stadiums without any general fund or other tax money.

In picking the video lottery option the industry was clearly influenced by the success of Prairie Meadows racetrack, a once-floundering thoroughbred track near Des Moines, Iowa, that had become a massive revenue generator by reinventing itself as a "racino," a combination of racetrack and video slots casino. Video gambling revenue allowed Prairie Meadows to offer daily purses substantially higher than Canterbury's despite being in a smaller market.

True to the moratorium code, supporters described the addition of a racino to Canterbury Park as being not really an expansion of gambling but merely the addition of games that were already legal in Minnesota at a location where gambling was already being conducted.

In late August 1997, the track presented a detailed proposal to the stadium task force that called for placement of 1,400 slot machines at the track to be operated by the state lottery. State operation was essential to conform to the constitutional prohibition against any lottery not operated by the state. The casino, which would also include 36 blackjack tables, would be part of a \$12 million renovation of the track. The proposal envisioned gross revenue of \$87 million per year and a net to the state of \$30 million, less than what Sen. Day had envisioned but enough to fund 20-year bonds for a \$400 million ballpark. The horse industry would benefit from a 7.5 percent cut of the gaming revenues, which the track estimated would add \$6.5 million annually to purses.<sup>144</sup> With Canterbury's purses averaging only \$4 million per year, the effect on the horse industry was bound to be substantial.

The Canterbury proposal was not the only gambling-related funding source to be floated before the task force. Others included dedicating a share of state lottery proceeds and obtaining a share of Indian gaming revenues in return for the state's refusal to approve any further gambling. The task force, at the urging of its co-chairs, Sen. Keith Langseth and Rep. Loren Jennings, voted on October 10, 1997, to support a \$411 million baseball park proposal with the state's \$250 million share coming from a combination of stadium user fees, Canterbury slots, and lottery revenues. It was a significant victory for expanded gambling but a short-lived one. A week later the legislature's commission on planning and fiscal policy rejected not only the task force proposal but every other stadium funding plan brought before it.

House Speaker Phil Carruthers noted that the commission's action "reflects the same negativism that's out there in the public at large."<sup>145</sup> The public's opposition to every stadium proposal,

however creatively funded, was broad and intense. A poll taken shortly before the special session found 56 percent of respondents saying it was “not very important” or “not important at all” for the legislature to find a stadium solution to satisfy the Twins. The special session opened with none of the stadium proposals having any broad support in the legislature, and the public’s negative reaction precluded any proposal from ever gaining momentum. Within a few days the session staggered to a conclusion with no legislation even coming close to passage.

The special session debacle and the noise level of the stadium debate may have obscured one significant milestone in the evolution of legislative views of gambling. When the session ended, expanded gambling had suffered a short-term defeat but had possibly won a long-term victory. In the late 1980s and early 1990s, state revenue from gambling had reached the point where it could plausibly be seen as a viable funding source for tax relief or budget fixes. The state’s spending patterns were at least to some extent dependent on gambling revenue. With the stadium debate, gambling rose to another level, being seen as a potential generator of large sums of money to finance major government projects. Fiscally as well as socially, gambling was moving even further into the mainstream.

### **Charitable Gambling: Achieving the Industry Agenda**

By 1996, the industry’s agenda was clearly beginning to dominate legislative discussions of charitable gambling. The industry, led by its largest trade organization, Allied Charities of Minnesota, had three major legislative initiatives—tax relief, an increase in permissible expenses, and a change in the penalties for illegal gambling at lawful gambling sites—and by 2000 it had won major victories on all of them.

*Taxes.* The gambling industry has long had two major objections to Minnesota’s system of taxing gambling: tax rates were too high and organizations were taxed on pull-tabs whether they sold them or not.

The unsold pull-tab issue was addressed in 1996. Under previous law, organizations that paid a 2 percent tax on the ideal gross of each package of pull-tabs bought from a distributor received no tax refund for pull-tabs that were not sold to customers, such as in the case of “dead games” withdrawn from play after all major prizes had been won. In those instances organizations had no opportunity to recover the tax from pull-tab buyers and were forced to bear the tax burden themselves. The 1996 Legislature allowed organizations to claim a refund of 100 percent of the tax paid on pull-tabs put into play after June 30, 1996, but not sold.

After resolution of the unsold pull-tab problem the industry made a major effort to reduce gambling tax rates and achieved its first success in 1998 with a 5 percent across-the-board reduction in all rates. Although falling considerably short of the 25 percent reduction that Allied Charities had originally sought, the change represented the first reduction in tax rates since special gambling taxes were established in 1984. Further reductions, part of the legislature’s broader array of tax cuts made possible by a series of budget surpluses in the late 1990s, brought gambling taxes to 90 percent of their pre-reduction level in 1999, then down to 85 percent in 2000.

*Allowable expenses.* In 1997, the maximum percentage of gross profit that could be spent for expenses was raised from 50 percent to 55 percent for all forms of gambling except bingo, and from 60 percent to 65 percent for bingo. Gambling organizations had been seeking this change for several years, even though the average organization continues to spend significantly less than 50 percent of gross profit on expenses. Supporters argued that rising costs, particularly for rent and wages, and relatively flat revenues had put more and more organizations in danger of exceeding their maximum expense limits. Smaller volunteer organizations, particularly veterans organizations, were suffering from declining membership that limited their pool of volunteers, forcing them to rely increasingly on paid employees. The fact that gambling had already saturated the number of potential locations for it led to pressure on rents, which sometimes took the form of other charges by lessors in addition to the rent that was capped by board rule.

*Sanctions for illegal gambling.* The 1997 charitable gambling law also extended some protection to organizations leasing premises where illegal gambling, usually some type of sports betting, has occurred. Under previous board rules, such an organization could have its permit to conduct gambling at that location suspended for up to two years even if it didn't participate in or even know about the illegal gambling. Under the new law, in order for the board to suspend the organization's premises permit, the board would have to determine that the organization either was involved in the illegal gambling or knew about it and took no steps to stop it.

## **Dealing with Compulsive Gambling**

The potential of gambling to become addictive for some players had been an element in public debate on gambling for decades. Even for persons who did not have moral objections to legalized gambling and who were disinclined to view gamblers in general as a deviant subculture, the connection between expanded gambling and expanded gambling addiction argued in favor of maintaining the moratorium.

In 1994, the Department of Human Services (DHS) estimated that about 1.5 percent of adult Minnesotans, or 45,000 individuals, were considered to be pathological gamblers who could not rationally control the impulse to gamble.<sup>146</sup> As noted before, the largest percentage (44 percent) of callers identified casino gambling as the main source of their gambling addiction. Casinos were followed by pull-tabs (24 percent) and the state lottery (10 percent). Comparisons between calls in 1992 and 1993 showed that in only a year, casino gambling had overtaken pull-tabs as the "game of choice" among compulsive gamblers.<sup>147</sup>

Minnesota had created a state compulsive gambling program in DHS in 1990 and funded it mainly through a dedicated portion of the state lottery revenues. As operated by DHS, the program was clearly treatment-oriented, with other elements including training, research, public education, and a 24-hour referral hotline. Through most of the 1990s, treatment was offered at six treatment centers using DHS grants for outpatient treatment of gamblers referred by the hotline, corrections officers, Gamblers Anonymous, and counselors. In 1994 the average cost of a full course of treatment ranged from \$2,700 to \$4,000.<sup>148</sup>

The Advisory Council on Gambling in 1995 had raised some questions about the effectiveness of this program: “It is clear that a more coherent, aggressive testing of patient effectiveness, cost effectiveness, and outcomes remains to be accomplished.” The report also questioned the fact that the program’s advisory committee contained several members who were also recipients of its funding.<sup>149</sup>

At least partly in response to some of the questions the advisory council raised, DHS commissioned research on the effectiveness of these programs. A consultant’s study for DHS in 1997 found that gamblers who completed treatment reduced their compulsive gambling screening scores and reduced their level of gambling more than did gamblers who received only partial or no treatment. The study concluded, “As with other addictions, some compulsive gamblers are able to overcome their gambling problems without intervention by the state, but it seems that the state-funded programs have helped gamblers and their families along this road to recovery. Furthermore, it appears that many treated gamblers would have relapsed to compulsive gambling had the treatment not been provided.”<sup>150</sup>

An earlier DHS-commissioned study of state-funded treatment programs found that “almost two-thirds of treatment completers moved from the clinical range before treatment to the normative range after treatment . . . Even clients who did not complete treatment showed a significant reduction in gambling and gambling-related problems.”<sup>151</sup>

Whatever the effectiveness may have been of various state-funded treatment programs, it seemed clear that they were reaching only a small percentage of the state’s problem gamblers. In 1995, DHS reported that since the first such program opened in 1992 treatment services had been provided to a total of 600 gamblers and 1,000 family members or concerned others. If the total number of compulsive gamblers in the state was more than 45,000, clearly the state program was affecting only a small portion of the problem. The programs have expanded little since then, with the department reporting 873 persons receiving state-funded treatment in fiscal year 2003. While there were numerous other resources available to compulsive gamblers (the department currently reports 74 state-registered treatment providers at 91 locations in Minnesota), the small numbers going through DHS-funded programs are a clear indication of the limited resources available for the problem at the state level.

In 2004, Ronald M. Pavelko, professor of sociology at the University of Wisconsin-Parkside, wrote:

The prevalence of pathological and problem gambling cannot be attributed solely to the legalization of gambling. Pathological and problem gamblers existed before the gambling legalization wave of the 1980s and the 1990s, and they would certainly continue to exist if all illegal gambling were to disappear. Just how much state legalization contributes to the prevalence of pathological and problem gambling has not been determined. Legalization has made it easier for gamblers to access gambling venues, and it has created “new” gamblers who might not have considered gambling in illegal or unpleasant circumstances (e.g., mob-operated numbers, casinos, horse parlors).<sup>152</sup>

Whatever impact legalization has had on the incidence of problem gambling, the legislature has regularly acted on the assumption that a connection exists. State compulsive gambling funds now come entirely from the state lottery, and almost every proposal for an expansion of gambling comes with a dedication of a portion of the proceeds to the state program.

## **1999 and After: The Post-Moratorium Era**

As widespread as support for the gambling moratorium had been throughout most of the 1990s, pressures were building that threatened its continuation. The growth of gambling in general and casino gambling in particular made it increasingly hard to maintain that Minnesotans really didn't want more gambling, no matter what they might have said in public opinion polls. Minnesota's experience was hardly unusual, as the final report in 1999 of the National Gambling Impact Study Commission made clear:

The most salient fact about gambling in America—and the impetus for the creation of the National Gambling Impact Study Commission (NGISC)—is that over the past 25 years, the United States has been transformed from a nation in which legalized gambling was a limited and a relatively rare phenomenon into one in which such activity is common and growing.<sup>153</sup>

The commission wrote, "Every prediction that the gambling market was becoming saturated has proved to be premature." Given this long pent-up and still unsatisfied demand, pressure on the moratorium was inevitable.

### **Canterbury Gets a Card Club**

The 1999 legislative session saw the first expansion of gambling take effect since the enactment of the state lottery law in 1989. It allowed Canterbury Park (and any future racetrack after it had had at least one full season of live racing) to operate a card club where "unbanked" card games could be played with legal betting. Unbanked card games are those games where players play only against each other rather than against the house. Track revenue would come not from a house percentage as in blackjack but from table rental and a percentage of bets.<sup>154</sup>

The legislation allowed the track to have up to 50 card tables and limited betting to \$15 on an opening bet and \$30 on raises. The law required percentages of card club revenue to be set aside for horse racing purses, with the percentages being higher than for revenue from live or simulcast pari-mutuel betting.

By limiting the betting to unbanked card games, the card club law also limited the extent to which the state's Indian tribes could take advantage of the expansion. Under IGRA unbanked card games are class II games, meaning that tribes do not need a tribal-state compact to conduct them in states where they are legal gambling games on non-Indian land but rather need only a tribal ordinance approved by the Interior Department. However, to operate under such an ordinance the tribes would have to agree to the betting limits in state law. Conducting betting on unbanked games with higher betting limits would require a tribal-state compact.

Supporters of the card club argued that with off-track betting rejected by the voters and no legislative movement on the proposal to place VLTs at racetracks, the horse industry needed to turn to some other option to augment purses. As with the other options to benefit the track, card

club backers focused their argument on Minnesota's horse industry as the ultimate beneficiary. Sen. Jim Vickerman, who sponsored the card club amendment in the Senate, said, "I'm basing this upon what we need to do for agriculture."<sup>155</sup> Track president Randy Sampson said, "It's not going to put us on the same level as racetracks in Illinois or Iowa. But it's certainly going to help."<sup>156</sup>

It was a measure of the continuing ambivalence with which the legislature approached gambling that in the same session—in fact in the same bill—in which the moratorium was breached with the card club authorization, the Senate voted to raise the minimum gambling age in Minnesota from 18 to 19. The House eventually accepted the card club but rejected the age increase.

As expected, supporters contended that the card club bill wasn't really an expansion of gambling because gambling already existed at Canterbury Park. Although this argument ignored the other ways in which gambling can be expanded, in reality the expansion was a modest one. The new law did expand the forms of gambling allowed in Minnesota by allowing betting on poker, although it did not introduce betting on card games since that was already widespread at Minnesota's 17 casinos. It did not expand the venues for gambling, nor was it likely that it would significantly expand the overall volume of gambling. The card club's total annual wager of around \$150 million to \$175 million would represent not more than 2 percent of total wagering in the state.

The card club's effect on the track and the racing industry was more pronounced. A newspaper report the year after the card club was authorized said:

When the state legislature approved the card club during its 1999 session, Minnesota breeders responded quickly. They have registered 218 mares and 129 foals with the state racing commission this year, stabilizing those numbers after a decade of decline. Canterbury Park president Randy Sampson said the card club will keep the track financially healthy and could allow it to hold longer racing seasons in the future. That promise—and the \$100,000 in daily purses the club will help fund this year—could steady the state's breeding and racing industries after years of struggle.<sup>157</sup>

In just two years, from 2001 to 2003, the card club's "rake," its revenue from table rentals and a percentage of bets, rose from \$16.3 million to \$22.1 million. By 2003 the card club was contributing over one-fourth of the total revenue to the Minnesota breeders fund.

The card club helped Canterbury survive and even prosper in spite of reduced circumstances for thoroughbred racing. While the track's financial position was sound and its owners could even see prospects for growth in the Minnesota horse industry, the fact remained that interest in thoroughbred racing has apparently hit a plateau that is well below the track's peak years. Total handle, even with simulcasting, has averaged around \$60 million per year since the track reopened in 1994, less than half of the total handle in the pre-simulcasting year of 1986.



## Casinos and Racinos Come to the Fore

The new post-moratorium era saw the debate over expanded gambling begin to center around the concept of one or more casinos, at Canterbury Park or elsewhere. The reasons for this concentration of effort were numerous:

- ▶ Following the heady days of 1990s-era surpluses, Minnesota was faced with a series of increasingly daunting budget deficits. The public was resistant to closing these budget caps entirely or even primarily with new taxes, as evidenced by the election in 2002 of Gov. Tim Pawlenty on an anti-tax platform. Instead, there was significant sentiment for solving at least part of the budget problem through expanded gambling, specifically a state-run casino at Canterbury Park. In a May 2003 poll, some 70 percent of respondents given an array of options for dealing with the deficit expressed support for the racino concept.<sup>158</sup>
- ▶ The popularity of casino gambling in Minnesota was indisputable with a state lottery survey indicating that in 2003, 40 percent of the adult population had gambled at least once at an Indian casino.<sup>159</sup>
- ▶ The revenue potential for a nontribal casino is substantial, with some estimates of revenue to the state running as high as \$300 million.<sup>160</sup>

The state constitution still prohibits all lotteries other than a state-operated lottery. Legal authorities in other states have generally held that “lottery” in this context includes most casino games.<sup>161</sup> This constitutional provision has been ignored for decades in the case of charitable gambling, but a privately operated casino would be unlikely to receive the same kind of benign neglect. Some supporters of expanding casino gambling believed that any nontribal casino should be privately operated under state regulation, and their proposed legislation included constitutional amendments to allow this. Other supporters, who didn’t want the uncertainty and delay of a referendum on a constitutional amendment allowing private casinos, adopted the alternative of a casino where video lottery machines would be entirely state-operated.

In the 2001-02 session both approaches could be found in one or more bills, along with a bill to provide for county-licensed casinos and another to establish a state casino at the Minneapolis-St. Paul International Airport. None of these bills passed, but support for the concept of state-operated or state-licensed competition for tribal casinos was beginning to solidify.

The change became apparent in the 2003-04 session. As part of its attempt to close a large budget gap without new taxes, the Republican majority in the House included in its proposed budget some \$100 million in revenue from state-operated VLTs at Canterbury Park. Instead of being a sideline to the budget and tax debates that usually dominate the closing weeks of the legislative session expanded gambling was at the center of them.

The proposal, authored in the House by Rep. Mark Buesgens of Shakopee, would have directed the state lottery to contract with Canterbury Park for the placement of VLTs in a facility to be

built by the track. The racino, envisioned to hold up to 2,000 machines, would have been the key element of a \$90 million expansion of the track which would also have included a 250-room hotel, a 3,000-seat equestrian center, and polo grounds. Supporters estimated eventual state revenue of \$75 million per year.<sup>162</sup>

Like the card club, the racino would have dedicated a portion of its proceeds to supplementing horse racing purses, in this case 7.5 percent of gross profit, less than the percentage of the card club “rake” and pari-mutuel takeouts dedicated to purses. The bill’s backers projected that Canterbury’s purses, already augmented by the card club, would go from \$8 million per year to \$12.6 million in the first year of racino operation and eventually reach almost \$14 million.<sup>163</sup>

Opponents immediately criticized the proposal as an expansion of gambling. It was clearly not an expansion of the locations for gambling since the racetrack had been a gambling venue since 1985, nor was it an expansion of the types of gambling allowed since video gaming machines had been present in Minnesota for almost as long. The extent to which it represented an expansion of the volume of gambling was unclear. The total annual volume of gambling in Minnesota, as estimated fairly conservatively by the state lottery, is about \$10 billion. Net revenue from video machines at the Canterbury racino was projected by the track’s consultants as eventually reaching \$174 million. Assuming a 95 percent payout rate to compete with tribal casinos, this would be equivalent to a gross wager of about \$3.5 billion, or about one-third of the existing volume of gambling.

Of course it could not be assumed that all the wagering at the racino would be new wagering, since a significant percentage of the racino’s slot trade would probably come at the expense of tribal casinos, particularly nearby Mystic Lake, or other forms of gambling including pari-mutuel betting. The track’s consultants estimated that the market area within 100 miles of Shakopee generates over 15 million trips to casinos annually, and that the racino would capture about 18 percent of this patronage, or about 2.8 million visits.<sup>164</sup> This would suggest that there might be little overall increase in gambling, although the consultants did not make such a claim.

The tribes’ opposition to the bill, although sometimes couched in vague phrases such as “turning Minnesota into Las Vegas,” was more often explicit in stating its threat to Indian gaming. John McCarthy, executive director of the Minnesota Indian Gaming Association, charged that the bill was only a first step toward an even greater expansion: “The real goal of the supporters of this bill is to open the door to legalized gambling by private, for-profit businesses all across the state. Once that door has been opened, we’ll see gambling in every neighborhood bar, restaurant and convenience store. That’s what’s really at stake here.”<sup>165</sup> Tribal leaders defended Indian gaming as an asset to the state that deserved to be protected; a letter from nine tribal leaders stated, “Minnesota agriculture is hurting, the taconite industry in Minnesota has been greatly diminished, and many of Minnesota’s largest employers are laying people off and reducing benefits. Indian gaming is a bright spot in that grim picture. It is providing job stability, health and retirement benefits and sustaining economic vitality in rural areas that might otherwise be devastated by this recession.”<sup>166</sup>

The racino bill passed the House on April 25, 2003,<sup>167</sup> making it the first major gambling expansion to pass either body since the off-track betting amendment in 1994. The bill met stiff resistance in the Senate, which had traditionally been more sympathetic to tribal concerns, and eventually was dropped from budget negotiations.

Despite its eventual failure, the racino bill was another milestone in the process of bringing gambling into the political as well as cultural mainstream. The newsletter *Politics in Minnesota* wrote late in the 2003 session, “We expect historians and others to look back at this 2003 session as the one where gambling in this state started to change dramatically . . . Have no doubt about it, getting a measure to start locating slot machines in locations off tribal reservations was a huge shift in attitude and policy.”<sup>168</sup>

Tribal opponents of the bill may have overstated their argument that supporters of the bill were secretly motivated by a desire to extend gambling to off-reservation sites all over the state. Many supporters in the legislature voted for the racino bill as a part of the House’s budget negotiating position not because they were philosophically in favor of wider gambling but because they saw they racino as being preferable to tax increases as a means of raising revenue. House Speaker Steve Sviggum, previously an opponent of expanded gambling, said a few days before the floor vote, “This is one of the options, maybe one of the only options, to provide for our needs for nursing homes, local governments, higher education, additional to what the governor recommended.”<sup>169</sup> Many other supporters backed the racino bill because of its potential to benefit the horse industry in Minnesota as the Prairie Meadows racino had stimulated the industry in Iowa.

Nonetheless, it seemed clear that with the relative success of the racino bill the movement toward wider gambling in Minnesota had taken a step forward. Some industries were eager to keep the movement going. *Politics in Minnesota* wrote, “We found people in the hotel and resort business in Minnesota as well as those operating saloons and restaurants around the state were already excitedly discussing the possibility of pushing for future gambling expansion.”<sup>170</sup> What many of them had in mind was placement of VLTs in bars and restaurants statewide. What actually followed the racino onto the legislative stage however was not the long-dormant VLT plan but a new and even bigger concept, the mega-casino.

## **The Mega-Casino Emerges**

Proposals for a large-scale nontribal casino in the metropolitan area had been floated at the legislature for some years without making major headway. In the 2003-04 session three new versions appeared with even higher hopes and loftier ambitions among their supporters.

*Tribal-state venture.* For years the two Indian communities that benefited least from tribal gambling were the Red Lake and White Earth bands, whose northwest Minnesota reservations contained 65 percent of the state’s Indian population. They operated four casinos but among them had fewer than 15 percent of the video gaming machines in the state, with little room for growth because of their region’s remote location and sparse population. The unemployment rate

for each tribe was at 60 percent, and on each reservation there were long waiting lists for public housing.<sup>171</sup> The two tribes' isolation from the casino mainstream was evidenced by the fact that they were the only two tribes not members of the Minnesota Indian Gaming Association.

The two tribes eventually came to the conclusion that their only hope of taking advantage of IGRA was not to depend on their own modest casinos but to expand into the metropolitan area. They proposed to build and operate a casino in the Twin Cities, with the tribes and the state sharing in the profits. They argued, "This is the only proposal to fulfill the . . . intent of Indian gaming—to assist local Indian tribes. [It] ensures economic opportunities for all the state's Indian tribes, not just a small minority."<sup>172</sup>

The bill they supported in the 2003 session would have authorized a "tribal entity" consisting of tribes that had signed up for it within 30 weeks after the bill's introduction. The lottery and the tribal entity would jointly pick the site for the casino. The tribal entity would build and operate it, except that to satisfy the constitution, the gambling machines would be operated by the state lottery. The tribes would conduct other games, including blackjack and poker. The tribal entity would receive 65 percent of gaming machine revenue, with the lottery keeping 15 percent for its costs. Of the remaining 20 percent, 10 percent would go for education, business development, and other programs for urban Indians and other minorities and for the state compulsive gambling program, and the remainder would go to the state's general fund. The Finance Department's fiscal note on the bill projected total general fund revenue of \$89 million by fiscal year 2007, assuming a temporary facility opened in January 2005 and a permanent facility in June 2006.<sup>173</sup>

In one of its more controversial provisions, the bill required the state's initial contract with the tribal entity to run for at least 20 years with renewals every 15 years. The contract was also required to provide for payment by the state of liquidated damages if the state ever authorized additional forms of gambling.

Like Sviggum, chief House sponsor Rep. Bill Haas was a former opponent of additional gambling:

I've had a change of philosophy . . . This is a bill that helps people become self-sufficient. This is a jobs program, and that intrigued me. This bill will provide a hand-up instead of a handout. It is an economic development engine within the community that will help support the creation of infrastructure, including jobs, housing, health care and education.<sup>174</sup>

MIGA members vigorously opposed the bill, creating the first open split among tribes since they became a political force. Sonny Peacock, Fond du Lac tribal chairman, described the battle as "a fight for the existing dollar," and argued that "you are going to destroy one economy to offset another."<sup>175</sup>

The bill created a first for a state-operated casino bill by being passed out of two House committees (Governmental Operations and State Government Finance) in 2004, only to be defeated in a third committee (Taxes). Events after the 2004 session, however, suggested that

the proposal still had a future. In September 2004 the chair of the Leech Lake Band of Ojibwe, owner of casinos near Cass Lake, Walker, and Deer River, indicated a willingness to become the third tribe to participate in the joint-venture casino. Chair George Goggleye, previously an opponent, announced that the Leech Lake band would join with the Red Lake and White Earth bands in support of the bill in the 2005 session, saying, "We at Leech Lake are one of the tribes in northern Minnesota that are disadvantaged because of the size of our tribe."<sup>176</sup>

*The Mall of America casino.* Even before the Mall of America (MOA), the country's largest indoor retail/entertainment complex, opened its doors in August 1992 there was speculation that someday it might be home to a casino.<sup>177</sup> This vision only grew stronger as the "megamall" reached or exceeded almost all of its pre-opening patronage projections, attracting 38 million visits per year by 1995. Melvin Simon, head of the firm that manages the mall, was quoted in 1998 as saying that he would "love" to build a casino as part of the second phase of the mall's development.<sup>178</sup> Lottery director George Andersen called the mall site "probably the most lucrative potential [casino] site on earth."<sup>179</sup>

But the idea remained in the realm of speculation until 2003, when the MOA became the focus of the most expansive gambling proposal in state history. Late in the year Rep. Lynda Boudreau announced plans to introduce a bill in the 2004 session to establish a major statewide "merit-based" higher education scholarship program funded by the state's share of revenue from a state-owned but privately operated casino. Although Rep. Boudreau's proposal was not specific as to the casino's location, the MOA was obviously the prime candidate. She had been working closely on the development of the proposal with Park Place Entertainment, operator of Caesar's Palace and other casinos in Las Vegas, Atlantic City, and Mississippi. Park Place, which was in the process of changing its name to Caesar's Entertainment, had recently signed an agreement with the mall that gave it first rights to operate any casino at the site, and company officials said later that they were not considering any other location.

Caesar's showed a feasibility study prepared by the Ernst and Young accounting firm that estimated that a casino at the mall would generate \$1 billion in gross revenue, which would require a gross wager approaching that of all Minnesota tribal casinos combined. Under the Boudreau proposal, the winning bidder for the right to operate the casino would make a one-time payment of \$100 million to the state and pay at least another \$250 million annually. The plan was structured so that bidders would compete against each other to pay the largest amount.

No legislative action was ever taken on the bill beyond hearing it. The prodigious sums being projected by Caesar's and the appeal of the scholarship program might have intrigued legislators, but there were several factors working against the proposal. The sheer size of the project made many nervous about creating a "Las Vegas of the Midwest" with gambling overshadowing all of the mall's other attractions. The revenue estimates were questioned by, among others, Prof. Bill Thompson of the University of Nevada-Las Vegas who called the \$1 billion figure "twice what I would expect a good midwestern place would do."<sup>180</sup>

Finally, there was the ineptitude of Caesar's own lobbying for the proposal. The company spent over \$600,000 on lobbying for the session<sup>181</sup> but may have been better off had it spent nothing.

Early in the 2004 session, contributors linked to Caesar's had sent checks to several House Republican leaders that raised questions about violations of law prohibiting "bundling" contributions and making contributions after the start of a legislative session. All the checks were returned after Speaker Sviggum said that they "didn't pass the smell test."<sup>182</sup> At a Senate hearing on the casino bill, Bloomington Sen. Bill Belanger, reacting not only to Caesar's legislative lobbying but its pro-casino campaign in Bloomington, blasted Caesar's president Mark Juliano: "You are not wanted in my community. We don't want you. You can't just come in here and throw money around, not to the people and not to the Legislature. With all your money, it isn't going to work in Minnesota."<sup>183</sup> All of Bloomington's legislators eventually signed on as authors of legislation to require a local referendum before a casino could be located in Bloomington or any other city.

*Private casino.* The Boudreau/Caesar's proposal was less than precise about the relationship between the state and the eventual operator of the Mall of America casino but the same could not be said about the third major casino proposal, offered by Rep. Tom Hackbarth. It called for a constitutional amendment to allow the state to license a single casino in the metropolitan area that would be entirely privately owned and operated. The winning applicant for the license would pay an even bigger one-time payment than under the Boudreau plan, \$450 million to go into a fund dedicated to paying for one baseball and two football stadiums. Subsequent revenue from a 12 percent tax on gross gaming receipts would be dedicated for 30 years to the stadium fund and undedicated thereafter.

At the same House Taxes Committee hearing that defeated the tribal-state casino plan Hackbarth withdrew his bill rather than see it face the same fate.

One of the major elements all these mega-casino bills had in common was that unlike the racino proposal, they were not designed to patch holes in the state budget. Rather they harked back to earlier years when gambling was justified not as an end in itself but as a fundraiser for worthy causes—merit-based scholarships, stadium funding, or economic development among Minnesota's poorest Indian tribes. Even the racino might be seen to fall in this category, given the speaker's explicit connection of it with preserving funding for nursing homes, local government aid, and higher education. Public attitudes about the acceptability of legalized gambling may have changed over the years, but the view of gambling as being justified primarily by its service to a higher good persisted.

## **Upheaval at the Lottery**

For a subject that was surrounded with controversy throughout most of the 1980s, the state lottery enjoyed widespread public acceptance from the day of its opening. In just its third year of operation, a lottery survey showed that nearly two-thirds of the adult population had bought a ticket for the lottery at least once, making it the most widely played form of gambling in the state.<sup>184</sup> Lottery ticket sales leveled off at about \$370 million to \$398 million per year beginning in fiscal 1996, but many viewed this as an accomplishment given the level of competition the lottery faced.

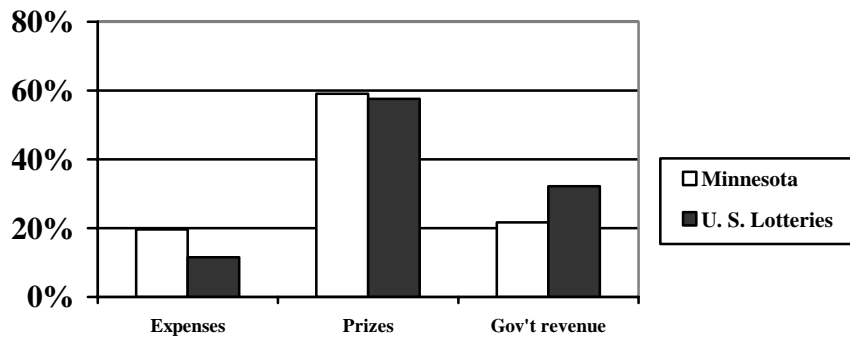
The lottery was also able to cite statistics to refute the arguments that had been made when the issue was before the voters that lotteries “prey on the poor and ignorant.” A 1994 survey conducted by the lottery and St. Cloud State University found that lottery participation was lowest among the lowest income group (under \$20,000 annual income) and highest in middle-income groups (\$20,000 to \$50,000 annual income). Lottery participation rates were highest among persons with at least some college education, and lowest among those who didn’t finish high school.<sup>185</sup>

Nonetheless there remained an undercurrent of anti-lottery sentiment that questioned the lottery’s very existence as a legitimate government activity. In nearly every legislative session since 1993 bills were introduced to abolish the lottery or to severely curtail or eliminate its ability to advertise. An amendment to prohibit all lottery advertising actually passed the Senate in 1994. The House rejected that move but in the same year passed a bill of its own cutting the lottery’s advertising budget by 40 percent. A year earlier an amendment on the Senate floor to abolish the lottery failed by only a single vote.

(The legislature also abolished the lottery board in 1995 but this was seen as more of a cost cutting and government-streamlining move than a repudiation of the lottery itself, particularly since the board was purely advisory.)

Criticism of a more specific nature began to appear in 2003, focusing on the percentage of total ticket revenue that ended up going to state beneficiaries. The “lottery efficiency study” conducted by the trade publication *Gaming and Wagering Business* for fiscal year 2002 showed that the Minnesota lottery’s expenses were relatively high and its percentage of gross sales returned to the state relatively low compared to national averages.<sup>186</sup> A report from the Minnesota Center for Environmental Advocacy in April 2003 concluded that the lottery’s high administrative costs, along with legislative diversion of lottery proceeds to other purposes, were reducing revenue to the environmental trust fund.<sup>187</sup> An editorial in the *Duluth News Tribune* said, “Like all state agencies in these hard times, the lottery needs a change of attitude. It, like other agencies, needs to cut costs and return a higher percentage of its sales to the environment and other state programs.”<sup>188</sup> The questions raised by these criticisms led directly to an audit of the lottery’s administrative performance by the legislative auditor’s office.

**Lottery Expenses, Prizes, & Government Revenue  
FY 2002**



The auditor's report contained numerous criticisms of the lottery's efficiency, as well as judgments made by George Andersen, who had directed the lottery since its inception. It found that the lottery:

- ▶ spent almost two-thirds more of its sales revenue on expenses than comparable lotteries in other states;
- ▶ was less accountable than those of other states;
- ▶ made several promotional contracts that were of questionable value; and
- ▶ issued several contracts without competitive bidding, resulting in overpayments to the contractor.

The report recommended that the lottery be made more accountable to the governor and legislature, have its budget reviewed by the Finance Department in the same manner as other state agencies, and terminate its questionable contracts and promotional relationships.<sup>189</sup>

The long-term effects on the lottery of these criticisms would be significant, but the short-term effect was devastating. On January 28, 2004, George Andersen was found dead outside his home of what was later determined to be an overdose of pain medication. His death was ruled a suicide. Later reports indicated that he was deeply worried about the effect of the impending performance audit on the lottery and his future. Although Legislative Auditor Jim Nobles made it clear that the audit had found no evidence of criminal acts by Andersen or anyone else, Andersen feared that its findings would make it impossible for him to continue as director. Many of his numerous friends in and out of the lottery industry later spoke of his near-total identification with and devotion to the lottery, and noted that he had never fully recovered from having to lay off lottery personnel in 2003 as a result of budget cuts.

Gov. Pawlenty subsequently replaced Andersen on a temporary basis with Michael Vekich, a business consultant who specialized in "turnarounds" of troubled companies.

The performance audit made it inevitable that changes would be made in the lottery structure by the legislature, but the legislature initially acted cautiously.<sup>190</sup> It made the lottery director's tenure subject to the pleasure of the governor rather than leaving the director removable only for cause. It required the lottery to submit a biennial budget to the Finance Department, but did not otherwise make major changes in the lottery's governance, instead creating a lottery organization task force to make recommendations on the agency's future structure. As the year ended it was widely expected that the lottery organization task force would recommend some new oversight body for the lottery to limit its traditional autonomy, although the oversight body's exact authority remained to be determined.

In July 2004, Vekich reported to the governor on the lottery's performance in fiscal 2004 and the report showed several milestones. Sales reached \$387 million, a 10 percent increase over 2003 and the highest level since 2000. The lottery transferred a record \$100 million to state beneficiaries. Vekich set an even more ambitious long-term goal, to contribute \$250 million annually to the state by 2024, a level that could not be reached without a significant expansion of lottery offerings or other sales enhancements. Among the options cited were keno (fast-draw lotto games played every few minutes), widespread use of ticket vending machines, allowing



credit card sales, allowing lottery play over the Internet, or allowing the lottery to operate video gaming devices at a racino, state-operated casino, or tribal-state cooperative casino.<sup>191</sup>

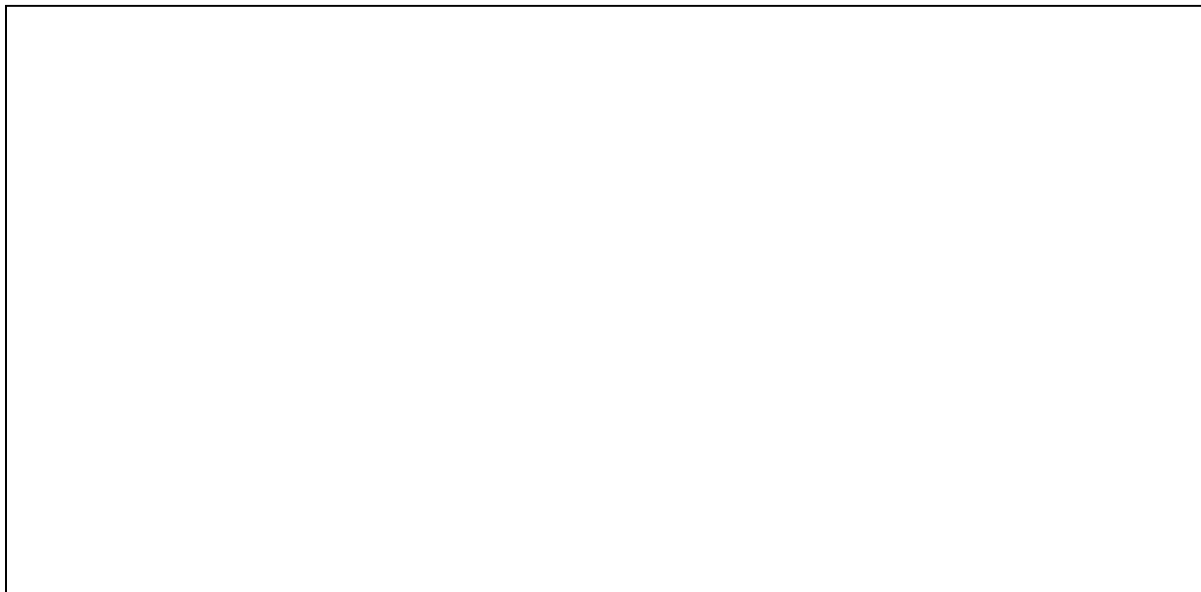
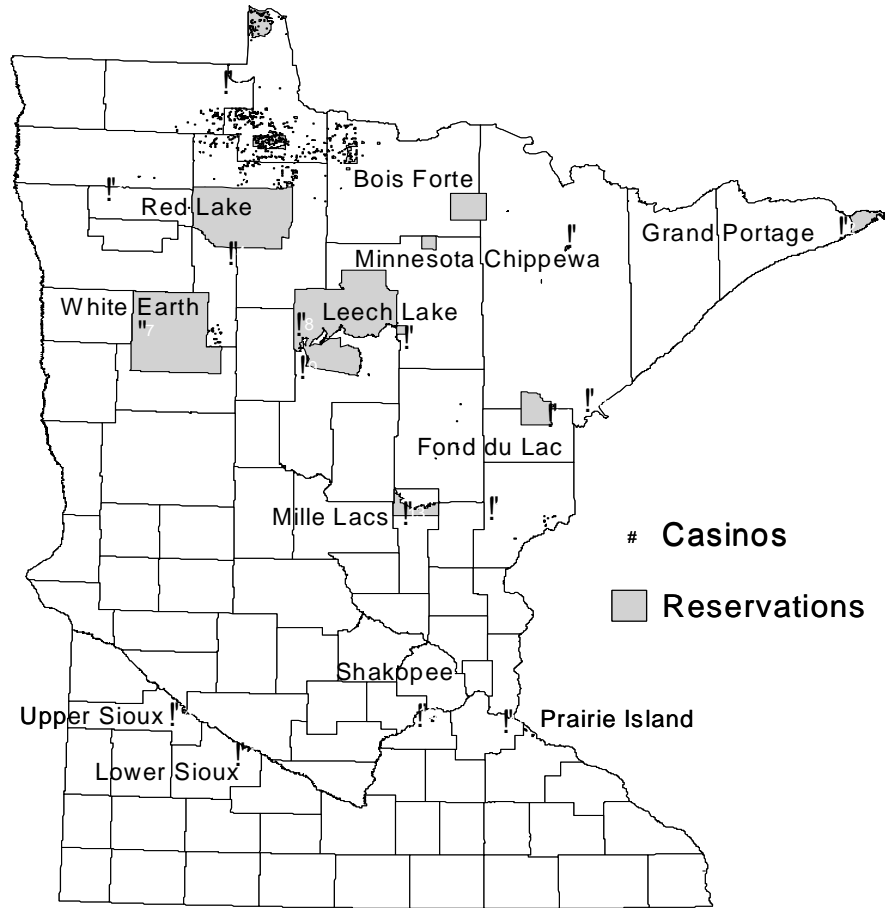
Vekich had made it clear on accepting the temporary appointment that he would not be a candidate for the permanent job of lottery director. On September 24, Pawlenty appointed Clint Harris, director of the South Dakota state lottery, as the new permanent director. Harris had been executive director of the South Dakota lottery for little over a year after being interim director for three years. South Dakota's lottery in fiscal 2002 was last in the United States in sales of traditional lottery products (on-line and scratch games) but contributed \$103 million to the state from video lottery terminals in bars and restaurants. This amount was almost 40 percent more than Minnesota's contribution to the state from all of its lottery products, despite the fact that South Dakota has one-sixth of Minnesota's population. Harris' success with nontraditional lottery products had some observers wondering if his appointment was a precursor of a new and expanded role for the lottery in Minnesota gambling.

### **The Compacts Back in the Spotlight**

In retrospect it seems remarkable how little public attention was focused on the process that resulted in the current tribal-state compacts for video gaming and blackjack. Their negotiation and signing were not major public events compared to the most visible gambling controversies of the late 1980s and early 1990s. Gov. Perpich's signing of the first seven video game compacts in October 1989 was not even reported in the press until almost a week after it took place.<sup>192</sup>

Since then occasional criticisms were voiced of the compacts, most often of their indefinite duration and lack of payments to the state, but in general they were regarded as fixed elements of the gambling scene. In the 2004 legislative session and afterwards that view changed.

### Minnesota Indian Reservations And Casinos 2004



In March 2004, when some optimists thought the legislative session was approaching a point of decision, a newspaper report commented, "It's crunch time at the Capitol, and gambling is on the table. This is the biggest challenge to the Indian casino-gambling monopoly in Minnesota in the 15 years since compacts between the tribes and the state were signed."<sup>193</sup> The central figure in this challenge turned out to be Gov. Tim Pawlenty. The new governor had not been noted as an advocate of expanded gambling in his years in the legislature, and early in his first year in office he was careful not to give too much encouragement to supporters of proposals to expand gambling even when those proposals would have helped resolve his budget problems. But later in the 2003 session his opposition to expanded gambling seemed to soften as he indicated a willingness to at least consider signing a racino bill.

In the 2004 session Indian gaming was also facing a challenge from a different direction, in the form of legislation that questioned the legal basis for the video game compacts. This bill,<sup>194</sup> introduced by Rep. Jim Knobloch and Sen. Tom Neuville, began with a "legislative finding" that was highly critical of Indian gaming in general and video machines in particular, claiming that they had produced substantial direct and indirect costs to state and local governments, that their benefits varied widely from tribe to tribe, and that video gaming was uniquely addictive and should be prohibited statewide. It sought to remove the legal basis in state law for the video compacts, including repeal of the statute that provided for licensing of video game manufacturers and distributors. It then directed the attorney general to bring a lawsuit in federal court asserting that since the legal basis of the compacts had been removed from state law, the compacts were therefore void.

The bill did allow new compacts to be signed, but only if they provided for revenue sharing, an increase from 18 to 21 in the minimum age for casino gambling, and a maximum 20-year duration. The new compacts would also have required the tribe to waive all rights to seek new designation of Indian trust land for gambling purposes.

In announcing their bill, the authors were careful not to make it look like a direct challenge to the existence of Indian gaming. "This bill doesn't have to shut down Indian gaming," Sen. Neuville said. "This bill is truly designed ... to draw [tribes] back to the table to negotiate a more equitable and a more appropriate compact in Minnesota."<sup>195</sup> This low-key description of the proposal did not impress Minnesota's tribes, and a letter to Rep. Knobloch from MIGA icily informed him that MIGA would not attend any future hearings on his "hostile and irresponsible proposal." Far from encouraging a new round of compact negotiations, the letter said, "your appalling effort to extort illegal tax payments from tribes has reinforced our view that the state cannot be trusted to honor over the long term any agreements negotiated in good faith."<sup>196</sup> More than 1,000 people, many of them casino employees, turned out at a rally at the Capitol on March 10 to protest the bill.

Rep. Knobloch eventually withdrew the bill before it could be voted on, having achieved at least one of his objectives by raising the question of the permanence of the compacts. The withdrawal of the bill may have been a victory for MIGA, but the overall tone of the session gave the tribes cause for concern. None of the proposals to challenge the tribal monopoly either by competition or litigation had passed, but the issue was clearly at the legislative forefront and was showing no

signs of going away. This was brought home early in the 2004 session when Gov. Pawlenty's State of the State message clearly showed a further receptivity to expanded gambling:

I opposed the expansion of gambling in the past. However, we need to recognize that times have changed. The compacts negotiated with the American Indian tribes almost 15 years ago do not reflect current circumstances—and we need to address the issue. My preference is to keep gaming within its current contours, but we need to explore a better deal for Minnesotans, and that's what we're going to do.<sup>197</sup>

He later said, "If we can't make progress with the tribal communities, we are going to entertain other options."<sup>198</sup>

Since there had been nothing to suggest that tribes would come to the table and renegotiate compacts on their own volition, the message from the governor was clear: their failure to do so would mean that he would look favorably upon at least some of the numerous proposals that would expand legalized off-reservation gambling. As subsequent events would make clear, his ultimate goal was a substantial share of tribal gaming profits.

In view of the intense opposition of most of the tribes to any legislative action to expand gambling in the 2003-04 session, it was somewhat surprising that the next step should be a conciliatory one. In August 2004 Melanie Benjamin, chief executive of the Mille Lacs Band of Ojibwe, sent a letter to Gov. Pawlenty proposing tribal-state discussions on several possible methods of sharing casino revenues for nontribal purposes, including new sports stadiums or a charitable foundation to support nonprofit organizations, local governments, or other tribes. It also suggested new compacts to allow off-track betting or other new gambling forms on Indian land, and indicated a willingness to support a state challenge to the validity of the federal ban on new sports betting schemes.

The letter was, among other things, an attempt to change the tone of what was becoming an increasingly acrimonious dialogue. Benjamin wrote, "The Mille Lacs Band has seen firsthand the growing political pressure to expand gaming in Minnesota and the stalemate between the tribes and the state. If left unresolved, this hostility would continue to spread and cause cultural misunderstanding that could divide our state for generations."<sup>199</sup> As a gesture her letter was widely welcomed, but it did not indicate any willingness to discuss the issues Pawlenty had raised in February. Benjamin specifically refused to consider reopening the existing compacts or sharing of tribal revenues directly with the state.

Pawlenty's response was also conciliatory:

Today's letter from Chief Executive Benjamin may set the stage for more productive talks. I applaud the tribe for their leadership and willingness to come to the table. Our administration looks forward to further discussions with the Mille Lacs Band of Ojibwe and any other tribes willing to join them. It is my sincere hope that our discussions will be productive for Minnesota and our tribal communities.<sup>200</sup>

On September 24, the governor released a report from the state lottery that bore the bland title “Gambling in Minnesota: An Overview” but which was in substance a catalog of potential expansions of gambling, going beyond the options previously cited by acting director Michael Vekich for increasing lottery revenues (keno, ticket vending machines, credit sales, Internet lottery sales, VLTs in casinos) to include authorization of new games at tribal casinos, the airport casino, privately operated commercial casinos, and VLTs in bars and restaurants. The report also contained detailed information on tribal-state revenue sharing agreements in other states and estimated the total wager at Minnesota’s tribal casinos as “in excess of \$10 billion.” Although it did not endorse any specific option, the report fleshed out what Pawlenty had earlier referred to as “entertaining other options.”

On October 12, Pawlenty invited tribal leaders to meet with him to discuss what he had meant in his State of the State speech by “exploring a better deal for Minnesotans.” His proposal was to require tribes to pay a percentage of their casino profits to the state, with a suggested target figure of \$350 million annually, in return for continued exclusivity in casino games. Apparently to underline his seriousness about looking at other options he dispatched chief of staff Dan McElroy to Nevada to meet with three of the country’s largest casino companies to explore their interest in Minnesota.<sup>201</sup>

With this proposal, whatever conciliatory atmosphere had been created by the Benjamin letter and the governor’s response evaporated. Tribal leaders responded quickly and negatively, questioning both the governor’s math and his motives. MIGA director John McCarthy called the letter “not an invitation, more like a summons.” Upper Sioux chair Helen Blue-Redner accused the governor of “practicing a form of racial profiling” by “placing the burden of the state on the backs of the Indian people.”<sup>202</sup> A Mdewakanton Sioux attorney said, “He’s disingenuous on his no-new-taxes pledge. This is a tax on tribal governments.”<sup>203</sup>

The \$350 million figure was especially controversial. A study by a consulting firm with experience in Indian gaming estimated that gross revenue (total wagering minus payment of winnings) at Minnesota’s casinos in 2003 was at least \$1.3 billion.<sup>204</sup> For Minnesota casinos, according to the governor’s October 9 press release, this would represent a gross wager of about \$14 billion, even more than the lottery’s estimate, assuming a ratio of \$1 retained by the casinos for each \$10 wagered.<sup>205</sup> The \$350 million annual figure would represent about 25 percent of the gross revenue after payouts, a percentage comparable to that paid by Connecticut’s tribes to the state in return for exclusivity in slot machine gambling.

Tribal leaders rejected this calculation as being based on what McCarthy called a “laughable” overestimation of tribal revenues.<sup>206</sup> Much of the disagreement resulted from the fact that tribal leaders repeatedly questioned Pawlenty’s estimates of wagering and profits at tribal casinos while continuing their longstanding practice of not releasing the correct figures. McCarthy did suggest that the actual figure for gross revenue after payouts “could be \$1 billion” but did not elaborate.<sup>207</sup>

At the October 27 meeting that the governor called to discuss the future of Indian gaming only two tribes, White Earth and Leech Lake, showed up, and they were more interested in talking

about the tribal-state joint venture casino than in sharing profits. Still, as the governor noted, they represented about 60 percent of the state's Indian population although their casinos were among the state's smallest. Other tribal figures continued to criticize the governor, with the Prairie Island Dakota tribe calling the governor's proposal a "nonstarter."<sup>208</sup>

## The Legislative Auditor Again Reviews Gambling

In early 2005, the Office of the Legislative Auditor (OLA) presented to the legislature a comprehensive review of gambling regulation at the state level. The report<sup>209</sup> evaluated the effectiveness of the racing commission, the gambling control board, the security elements of the lottery, and the performance of the alcohol and gambling division of the Department of Public Safety.

- ▶ **Lottery.** The report found that the lottery had protected the integrity and security of its games through comprehensive and overlapping security measures, a finding consistent with the OLA's earlier evaluation of the lottery.
- ▶ **Racing commission.** The racing commission was described as having effectively supervised horse racing and pari-mutuel betting, but its performance in regulating the card club at Canterbury Park was faulted as being overly reliant on the track's own security staff. It recommended that the track increase its own oversight and hire additional staff to oversee the card club operation.
- ▶ **Alcohol and Gambling Enforcement Division.** The report concluded that the AGE division did not fully utilize all of the authority granted to it in tribal-state compacts to oversee Indian casinos, specifically finding that it had focused too much on physical inspection of video machines and not enough on other sources of information such as internal audits and casino information systems. However, it further found that this did not have a major adverse effect on casino security because of simultaneous jurisdiction exercised by the tribes and the federal government.
- ▶ **Gambling Control Board.** The evaluation of the board's performance was by no means as negative as evaluations by the OLA and others in previous years, but the report did find that the board was not adequately detecting and deterring noncompliance by licensed gambling organizations. It found that the board needed to focus more on on-site compliance activities and target its site visits toward organizations with signs of problems. It also found that too many organizations were exceeding the limits on allowable expenses set in state law, partly because of the way that the board was measuring expenditures. It recommended that the board improve its technology both to allow more on-site compliance activities and to better measure expense compliance. It also suggested that the legislature change its approach toward gambling expenditures by adopting minimum contributions to charitable purposes rather than maximum percentages of gross receipts spent for gambling expenses.

The report addressed one question of gambling regulation that had been lingering ever since the abolition of the Department of Gaming, that being whether some or all of the state's gambling-related activities should be combined into a single agency. It concluded that no compelling case could be made for such a reorganization. While there were common problems among the various regulatory agencies, including inadequate technology, lack of staff expertise, and an shortage of overall strategic analysis, it concluded that these problems did not require the establishment of an umbrella agency to oversee gambling activities:

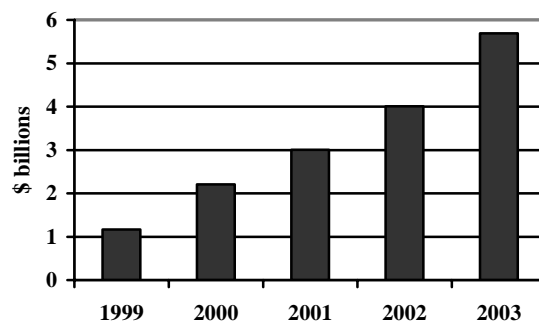
. . . each type of gambling operates very differently, requiring specialized knowledge on the part of regulators and different regulatory approaches. For example, the Lottery needs flexibility to operate the business of producing, distributing, and marketing lottery games. At the same time, horseracing and charitable gambling are very different types of gambling that require different oversight expertise. . . In the end, if the law required all four agencies to consolidate into one organization, this specialization would still be needed, and day-to-day regulatory activity would likely remain segmented as it did from 1989 to 1991 when consolidated in the state's Department of Gaming.<sup>210</sup>

### **The Internet, Telecommunications, and the Future of Gambling**

The rise of the Internet has affected, even revolutionized, a number of aspects of American life, and few aspects more than gambling. Sociologist Ronald M. Pavalko recently wrote, "Internet gambling has not been around very long, but it is clearly the new frontier of commercial gambling."<sup>211</sup>

Gambling operators have been seeking for years to find ways to allow people to participate in any type of gambling from their homes or workplaces rather than being limited only to games and venues that the law allows. The state lottery's ill-fated flirtation with Nintendo games and the racing commission's invalidated rules to allow telephone betting on horse racing were two early manifestations of this urge. But not until the advent of the Internet and subsequent technologies did the full possibilities of remote gambling become clear.

**Gross Revenues from Internet Gambling in the U.S.**



Gambling industry consultant Eugene Martin Christenson in his annual reports on the "gross annual wager of the United States" estimates that gross revenues from Internet gambling have increased almost fivefold in less five years, from \$1.1 billion in 1999 to \$5.7 billion in 2003. Over the same period, total casino gross revenues have increased by only 15 percent.<sup>212</sup>

The Internet has spawned a profusion of virtual casinos, sports books, and lotteries, all played with real money by means of credit cards or deposit accounts. The National Gambling Impact Study Commission final report estimated that in 1998 there were 190 gambling sites on the Internet, including 90 on-line casinos and 53 sports books.<sup>213</sup> Six years later, an estimate in the *Economist* had increased that total to 1,500 sites, with potential revenues of \$10 billion by 2010.<sup>214</sup>

So rapid has been the pace of technological change that Internet gambling, largely unknown a decade ago, is already threatened itself by new forms of virtual gambling that will make at-home and remote betting even more convenient. A recent article in the trade publication *International Gaming and Wagering Business* entitled “Beyond the PC,” foresees a time in the near future when Internet wagering will be overtaken by gambling over mobile telephones and television. The article reported that the five years since Britain’s Sky satellite television service offered television betting over digital television “have witnessed gambling’s steady migration from the World Wide Web—to TV and toward a range of wireless applications—along routes that now appear clearly marked for operators and suppliers looking ahead to the next five years and the next big thing.”<sup>215</sup>

All this growth has occurred despite the fact that a web of federal and state laws restricts or prohibits on-line gambling to the point where gambling web sites are forced to operate outside the United States. Given the instantaneous speed and global reach of the Internet this is no serious obstacle to their operators, except perhaps when they wish to attend conventions in the United States.

Critics of the proliferation of Internet and other remote wagering have cited the fact that it has almost no safeguards against compulsive gambling or underage play, and no means of regulating the honesty of games. In Pavalko’s words, “Playing on the Internet is like shooting craps with a person who has invisible dice.”<sup>216</sup> It also represents a direct threat to government revenue by offering an easy and often untaxed alternative to legal gambling. Perhaps most important, it is highly resistant to the techniques of gambling regulation that have developed over decades. Gambling regulation has traditionally taken the form of limiting the entities that may conduct gambling, the places where it may be played, the forms it may take, the rules of play, and the purposes for which its proceeds may be directed. By virtue of its nature as a private and unmonitored transaction between an individual and a gambling operator who may be located anywhere in the world, remote gambling threatens to render this entire regulatory structure irrelevant.

Minnesota law at least has the virtue of simplicity with respect to remote gambling. Anyone in Minnesota who makes a bet, except one sanctioned by state or federal law, is guilty of a misdemeanor.<sup>217</sup> It does not matter if the bet is made with a gambling operator in Minnesota, a casino in Nevada, or an offshore computer in Antigua. Enforcing this proscription is another matter, since short of a massive invasion of privacy the state has no way of knowing when and with whom a remote bet is made. Even at the federal level the power of the federal government to affect gambling operations in other countries is limited, although federal pressure can be brought on credit card companies that handle such transactions.



A 1997 Minnesota court case<sup>218</sup> did establish the power of the state to exercise jurisdiction over advertising by a Nevada-based sports betting web site whose web servers were in Belize. A ruling by a Ramsey County district court, later upheld on appeal, held that Minnesota had jurisdiction over the web site operator because it had established presence in Minnesota through its advertising to Minnesotans. However, the action brought by the state was not against the defendant's gambling operation—the site in fact had not accepted any bets from anyone at the time of the state's lawsuit—but rather against its advertising, which the state claimed had falsely advised Minnesotans that placing bets with the site was legal for them. The legal basis for the state's action was not its criminal code but its commercial code.

Even if this ruling could be applied to anti-gambling laws its practical impact is unclear. Prof. I Nelson Rose of Whittier Law School, a leading authority on gambling law, commented, "In the short term it won't have an impact except to drive operators outside the U.S. Even if operators are outside the country they could be dragged back, but [there's no] practicality to attempting it."<sup>219</sup>

It is unlikely that anything the legislature could undertake would have a significant impact on remote gambling, short of lifting all restrictions on gambling to create a truly level playing field. One free-market view holds that this powerlessness is actually desirable: "Lawmakers and prohibitionists can neither effectively stop Internet gambling nor justify their attempts to do so. In the long run it will, like so many other forms of gambling, almost certainly become legal."<sup>220</sup>

Effective power over remote gambling appears to be in the hands of Congress, where an ongoing debate continues as to whether it is desirable or practicable to attempt to prohibit remote gambling entirely or to legalize, repatriate, and regulate it. In the absence of any federal action, the state faces the possibility that an increasing share of its gambling market will be drawn away to unregulated and untaxed activities. In spite of its rapid and still unchecked growth, however, remote gambling has inherent limitations. It cannot provide the glamorous atmosphere of the state's more lavish casinos, the convivial and often alcohol-fueled atmosphere that surrounds much pull-tab gambling, or the entertainment value of horse racing. In short, it is devoid of the entire social dimension of gambling. This limitation as much as legislative action may keep remote gambling within measurable bounds.

## Conclusion: A Persistent Ambivalence

The most volatile political debates in recent Minnesota history, such as abortion, gun control, crime and punishment, and gay rights, tend to be dominated by committed factions who have deeply held and vigorously argued positions. Uncertainty tends to be drowned out by conviction. The debate over gambling, while it can be just as volatile and emotional, could hardly be more different. Instead of firmly held positions, it has been characterized for decades by a deep-seated, pervasive, and to a significant extent, unresolved ambivalence.

In 1974, gambling researchers David Weinstein and Lillian Deitch wrote, “Social attitudes toward gambling are highly ambivalent and have produced public policies consisting of compromise and accommodation.”<sup>221</sup> Certainly the same could be said of Minnesota. Roger Franke, former director of the gambling control board, succinctly characterized this ambiguous public attitude in a 1989 interview:

Do we mean the gambling in which someone squanders their paycheck and damages their personal life and that of their family and friends? I'm against that.

But if you're talking about the gambling done by the Rice Sportsmen's Club to buy wildlife property for the Department of Natural Resources, I'm in favor of that.<sup>222</sup>

Not every gambling issue has been subject to this level of uncertainty. Both the pari-mutuel horse racing amendment and the state lottery amendment were approved by the voters by large majorities despite having no statewide campaigns behind them. Public opposition to installing video lottery in bars and restaurants has also been strong and consistent. But in their broader attitudes toward gambling, Minnesotans have on several occasions indicated ambivalence about the merits of gambling and a discrepancy between their words and their actions.

Prof. John Rosecrance of the University of Nevada has argued that the emergence of gambling as a popular mainstream activity means that the kind of ambivalence cited by Weinstein and Deitch in 1974 is no longer a factor:

It is no longer accurate to state (as a group of leading experts did in 1985) that gambling retains an “ambiguous cultural status.” The overwhelming evidence indicates that Americans have resolved their ambivalence toward gambling by opting for participation.<sup>223</sup>

Rosecrance was undoubtedly correct in seeing that ambivalence about participation in gambling has largely been resolved. But ambivalence about gambling as a subject of public policy, as distinct from gambling as a personal entertainment option, persists.

A Minnesota poll in 1987 indicated that 40 percent of respondents described themselves as disapproving of gambling, a significantly higher percentage than for the United States as a

whole. But even among these critics of gambling some 40 percent indicated that they had participated in some form of gambling the previous year. The poll found that almost two-thirds of the public had participated in some form of legal gambling in the last year, but the most popular form of gambling was “playing cards or games with friends or relatives where money was bet.”<sup>224</sup>

Another Minnesota Poll in 1989 found that at least 60 percent of all Minnesota adults had participated in some form of gambling in the previous year, covering activities from office pools to trips to Las Vegas. Although some legislators still took offense at the label, lottery director George Andersen could say with certainty that “Minnesota is a gambling state, and I think it’s time we acknowledge that.”<sup>225</sup> But the poll still found that substantial majorities agreed with the propositions that “gambling is bad because families suffer,” and that “many gamblers bet more than they can afford.”<sup>226</sup> Despite these concerns about problem gambling, 71 percent agreed that “gambling is all right as long as the state keeps it honest,” ignoring the fact that problem gambling usually occurs without regard to whether the game is honest or crooked.

Throughout the period of the moratorium the public was consistent in opposing expanded gambling. A Minnesota Poll in 1994 found two-thirds of respondents opposed to additional forms of gambling, and a 1995 *Pioneer Press/KARE11* poll found that only 14 percent were in favor of expanded gambling in competition with Indian casinos. A 1994 *Pioneer Press/KARE* poll found 73 percent supported continuation of existing forms of legal gambling while 56 percent opposed any expansion, including 69 percent against video lottery in bars and restaurants. This suggests that the Advisory Council on Gambling’s 1995 report advocating no significant changes in the scope of legalized gambling may have been an accurate reflection of public opinion.

But evidence was also forthcoming that suggested that Minnesotans were uncomfortable about the state’s gambling landscape despite their unwillingness to change it, seeing the status quo as more of an uneasy compromise than a golden mean. A 1995 state lottery survey found that 52 percent of respondents agreed that “there is too much gambling available in Minnesota,” and 65 percent rejected the statement that “I like having a wide range of gambling options available to me.”<sup>227</sup> But the public was also voting with its dollars. As one news report, citing the growth of legalized gambling from a few hundred million dollars in the mid-1980s to annual wagering of \$5 billion in 1995, put it, “Most Minnesotans tell pollsters they don’t want more gambling in the state. But their money also talks, and it suggests a different sentiment: Minnesotans may be hungry for more.”<sup>228</sup>

The most recent display of public ambivalence about expanded gambling came in a *Pioneer Press/Minnesota Public Radio* poll published on November 2, 2004, on public reaction to Gov. Pawlenty’s attempts to obtain a percentage of tribal casino revenues. The poll showed that 53 percent supported the proposal and 42 percent opposed. At the same time respondents opposed by 58 percent to 30 percent “having more casino-style gambling in Minnesota,” despite the fact that the governor’s proposal necessarily involved at least consideration of just such an option. When presented with a list of policy options—allowing nontribal casinos, leaving casino gambling exclusively in tribal hands, or leaving casino gaming exclusively in tribal hands but with tribes contributing 25 percent of the revenue to the state—a sizeable plurality (42 percent)

chose the last option, even though as a strategy it was almost certain to fail. Only 18 percent favored leaving the situation as it is. It is not surprising that the newspaper's report of the poll described it as presenting "a mixed, even conflicting picture about how Minnesotans feel about casinos, Indian gaming, and state payments."<sup>229</sup>

The emergence of additional gambling options in the post-moratorium era has opened new lines of division in public opinion on gambling. As the poll on the Pawlenty Indian gambling initiative indicates, there seems to be limited public appetite for expanded gambling when the option is presented in general terms. Less than a third of respondents favored "allowing non-Indians to offer casino-style gambling." But another survey just before the 2004 legislative session on more specific proposals found that 62 percent of respondents supported a Canterbury Park racino to help balance the state budget, and 71 percent supported using racino revenues to pay for new baseball and football stadiums.<sup>230</sup>

When faced with this history of conflicting views and disparities between public attitudes and public behavior, it is not surprising that many legislators have been left bewildered in their attempts to figure out what kind of gambling policy the public wants. Other than opposition to all gambling that is rooted in a religious, moral, or ethical objections, opposition to proposals to expand gambling is most likely to arise from concerns about increases in problem gambling. The social costs of gambling are rarely made better or worse by the uses to which gambling revenues are put. The potential for social costs continues to exist whether casino revenues go to tribal self-sufficiency or enrichment, to a multinational corporation, or to the state's general fund. Yet the public's support for gambling expansion now seems to vary depending on the ultimate beneficiary. The public seems to regard the social costs of gambling as a barrier to expansion in general, but as a cost to be balanced against benefits when considered in the context of a particular expansion.

In the face of ambivalence and apparent contradiction legislators must try to fashion a coherent public policy. They must take into consideration the fact that a consensus seems to have emerged that legalized gambling is here to stay, that it has entered the cultural and social mainstream, and that it is a legitimate form of entertainment for adults. At the same time they must also consider public awareness that gambling is rarely without some social cost. Another factor they must consider is that a significant minority (about a quarter of the adult population according to a 1999 state lottery survey) is "personally opposed to gambling for moral and religious reasons."<sup>231</sup>

Given this level of division and ambivalence among the public it could be expected that the legislature would sometimes act in inconsistent ways. In 1994, the Senate Gaming Regulation committee voted to approve a constitutional amendment to abolish the state lottery, then a week later approved a bill to authorize up to 12,000 video lottery terminals operated by the same state lottery it had just proposed to abolish. As part of its 1990 reform bill, the House seriously considered abolishing charitable gambling by 1993, but by the time 1993 came around not only was charitable gambling not abolished but the legislature had begun to move away from several of its earlier reforms.

Amid these fits and starts an overall policy can be discerned. In spite of the introduction of occasional bills to eliminate all forms of legal gambling, the legislature has seemingly accepted the permanence of gambling in Minnesota's way of life. It has decided that charitable gambling is an appropriate method of fund-raising for worthy causes as well as a significant source of tax revenues, and that for both reasons it will continue at approximately the same level of regulation. In spite of recent upheavals at the state lottery, it has come to see the lottery as a fixed element in state government, no longer at risk of abolition. It values the horse industry in Minnesota and so accepts some responsibility for the survival and prosperity of Canterbury Park, to the point of rejecting legislation in 2004 that would have helped to create a competing standardbred track in the northern Twin Cities suburbs (a license for the harness track was first rejected but later approved by the racing commission).

Nonetheless, major issues remain unresolved even after Gov. Pawlenty's attempt to set a new course for tribal-state relations. There is no shortage of proposals to expand gambling for one or more public purposes, each with its own built-in constituency. There appears to be no public consensus for expanded gambling in general, but variable and often unpredictable shifts in public opinion with regard to specific expansions for specific purposes. As an alternative to these ventures many legislators will continue to look to Indian tribes for a greater share of their gaming revenues, but tribes are unlikely to agree unless faced with the real possibility of off-reservation expansion, an option about which both the public and the legislature have mixed feelings.

The overall lack of a public consensus on the future direction of gambling policy inevitably affects legislative efforts to create that policy. In this debate, the legislature is not an arbiter deciding between two clearly defined factions but more nearly plays the role of a soothsayer, attempting to divine the public will from sometimes confusing and conflicting evidence. Whatever the fifth phase of the evolution of gambling in Minnesota may be, it will, like the previous four, emerge out of an environment in which the making of public policy is unusually challenging.

## Endnotes

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- <sup>16</sup> Laws 1989, ch. 149; ch. 334, art. 6, § 10
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- <sup>28</sup> Department of Gaming, *Gambling in Minnesota*, 32.
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- <sup>30</sup> Laws 1989, 1<sup>st</sup> spec. sess., ch. 1, art. 13, § 17.
- <sup>31</sup> Department of Gaming, *Gambling in Minnesota*, 44.
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- <sup>33</sup> "Lawmakers Softening Rhetoric on Gambling," *Minneapolis Star-Tribune*, February 21, 1990, 1B.
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- <sup>35</sup> Laws 1991, ch. 336, art. 2, § 11.
- <sup>36</sup> Laws 1995, ch. 261, § 21.
- <sup>37</sup> Date from annual reports of Gambling Control Board.
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- <sup>76</sup> “Affected by player skill” is a concept that applies to a particular game such as video poker, which allows a player to employ basic elements of poker strategy, but it affects only the play of a single game on that machine. Over the 17,000,000 plays that are the standard measurement under the compact, the game will pay off within the prescribed range regardless of the skill levels of the persons who play it.
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