

# HOUSE RESEARCH

## Bill Summary

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#### Article 1: Purpose

##### Overview

Article 1 identifies as the purpose of the act:

- recognizing the inequities created by current casino gaming in Minnesota;
- providing opportunities for increased economic development and self-sufficiency to tribal governments that have not benefited significantly from gaming;

- generating revenues to the state;
- establishing a structure that promotes tribal sovereignty and self-governance and provides casino gaming revenues to tribal governments for the development of programs to alleviate poverty and advance tribal goals.

## Article 2: Lottery Operations

### Overview

Article 2 authorizes the state to enter a contract for the operation of a metropolitan-area casino with a tribal entity comprised of tribal governments that have demonstrated financial need. The tribal entity would bear all facility-related costs and would manage the day-to-day operations of the casino. The state would own all gaming machines and have overall responsibility for the operation of the casino and the gaming machines.

Under the contract, the state would pay the tribal entity 64 percent of adjusted gross revenue from gaming machine games and other lottery games. The tribal entity would pay .5 percent of all adjusted gross revenues (capped at \$2,500,000) to the commissioner of human services for problem gambling treatment and programs. The tribal entity would also pay the city and county hosting the gaming facility 2 percent of all adjusted gross revenues, in lieu of city and county property taxes (though the tribal entity would still be responsible for paying local property taxes attributable to the relevant school district).

### Section

- 1 Lottery procurement contract. Expands the definition of "lottery procurement contract" to include a contract to provide gaming machines, maintenance of gaming machines, computer hardware and software used to monitor gaming machine plays, and equipment used to conduct and monitor other lottery games at a gaming facility.
- 2 Gaming facility. Defines "gaming facility" as the site selected for the location of gaming machines and the conduct of other lottery games (section 0) and nonlottery casino games (article 3, section 5).
- 3 Gaming machine. Defines "gaming machine" as a machine, system, or device which, upon payment of consideration to play a game, may award or entitle a player to a prize by reason of skill, chance, or both.
- 4 Gaming machine game. Defines "gaming machine game" as a game operated by a gaming machine, as authorized by the director.
- 5 Gaming machine play. Defines "gaming machine play" as a record proving participation in a gaming machine game.
- 6 Adjusted gross gaming machine revenue. Defines the term as revenue from gaming machine plays less the amount paid out in prizes and for gaming machine games and promotional allowances (see section 0).
- 7 Other lottery game. Defines "other lottery game" as any game operated by the lottery at the gaming facility other than a gaming machine, where money or property are distributed (*prize*) to persons selected primarily by *chance* from among participants who have paid for a chance of being selected (*consideration*). Also includes any other game or activity determined to

constitute a lottery within the meaning of the Minnesota Constitution. Excludes from the term games operated by the lottery at the gaming facility that are also sold by lottery retailers.

8 Other lottery games adjusted gross revenue. Defines the term to mean all revenue from other lottery games, less prizes and promotional allowances (see section 0).

9 Lottery game procedures. Permits the director to adopt procedures for gaming machine games and other lottery games and to set the cost of gaming machine plays and other lottery games.

10 Lottery operations. Excludes amounts transferred to or retained by the tribal entity under a location contract (see section 0) for purposes of calculating the amount that can be credited to the lottery operations account (which is currently capped at 15 percent of gross revenue to the lottery fund each fiscal year). States that the amount credited to the lottery operations account cannot exceed 10 percent of adjusted gross revenue from the operation of gaming machines and other lottery games at the gaming facility.

11 Budget; plans. Excludes from the legislative determination of the lottery's annual budget for operating expenses and capital expenditures (1) amounts paid to an outside vendor to operate a central system for gaming machines and other lottery games; and (2) amounts paid to acquire and maintain gaming machines and equipment used to conduct other lottery games.

12 Restrictions. Permits the director to install or operate lottery devices operated by coin or currency in accord with section 0.

13 Gaming facility.

Subd. 1. Definitions. Defines these terms as follows:

- "Tribal entity" means the corporation(s) or other legal entities owned by one or more tribal governments that are parties to the location contract (subd. 2);
- "Tribal government" means a federally recognized Indian tribe in Minnesota; and
- "Site" means a parcel or contiguous parcels of land, which may be enlarged by contiguous parcels over time.

Subd. 2. Location contract. Permits the director to contract with a tribal entity to operate gaming machines and other lottery games at one site in the seven-county metropolitan area, or in any contiguous county.

- Requires the director to select a site with the tribal entity and to notify the city where the site is located. Gives a city 60 days to adopt a resolution stating that it does not consent to consideration as a host city.
- Allows the director to enter a location contract with a tribal entity only if it meets the following criteria:
  - a. The entity is comprised of federally-recognized tribal governments that have gaming compacts with the state and operate casinos under IGRA;
  - b. The entity only allows a tribal government to participate if it can demonstrate that currently-available revenues are insufficient to meet the basic needs of tribal members;
  - c. Each participating tribal government, within 30 days after enactment of this act, files a formal resolution from its tribal council stating intent to participate; demonstrating its eligibility to participate; waiving sovereign immunity with respect to disputes arising under

the location contract; consenting to state court jurisdiction; making an additional limited waiver of sovereign immunity; and voicing intent to distribute revenues in a fair and equitable manner.

- States that the location contract will have no legal effect on existing compacts.
- Limits the duration of a location contract to 20 years, with provision for renewal negotiations every 15 years thereafter. Requires notice of intent not to renegotiate one year before the contract expires, if reasonably possible. Permits a tribal government to opt out of the entity without affecting the entity's ability to renew.
- Requires the contract to include the following provisions:
  - a. A waiver of sovereign immunity and limited waiver of sovereign immunity, as discussed above;
  - b. Liquidated damages to the tribe if a state statute or constitutional amendment revokes substantially all forms of gambling authorized under this section. This provision must expire within 10 years and cannot provide for damages greater than the unpaid balance of debt incurred by the tribal entity (after the location contract is executed) for (1) the gaming facility license, (2) initial construction, or (3) acquisition of the gaming facility (less the present market value of property and other related assets)
  - c. The tribal entity shall make good faith efforts to employ American Indians and other minorities at the facility and to hire American Indian and minority-owned businesses to construct, repair, and maintain the gaming facility.
  - d. The state must pay the tribal entity a fee equal to 64 percent of adjusted gross gaming machine revenue and other lottery games adjusted gross revenue.
  - e. The tribal entity bears all costs associated with day-to-day management.
  - f. The lottery bears all costs of purchasing or leasing gaming machines and major maintenance on gaming machines.
  - g. The tribal entity shall pay either .5 percent of all adjusted gross revenue or \$2,500,000, whichever is less, to the commissioner of human services for problem and compulsive gambling treatment and programs.
  - h. In lieu of the local property taxes attributable to the city and county where the gaming facility is located, the tribal entity shall annually pay 2 percent of all adjusted gross revenues to the city and county. (The tribal entity is still responsible for local property taxes attributable to the relevant school district.)
  - i. Any claim or controversy arising under the contract must be settled by arbitration, unless otherwise noted.
- Permits the tribal entity to establish standards for promotional allowances to players

and, upon director approval, to be reimbursed for promotional allowances.

- Allows the director to authorize a temporary facility (pending completion of a permanent facility) and establish conditions for its operation. Treats the operation of a temporary facility as if it were a permanent facility (i.e., a license is required).
- Lets the director cancel or suspend the location contract if the tribal entity loses its license or if it materially breaches the contract and fails to cure in a reasonable time. Makes this a contested case under the Administrative Procedures Act (APA).
- Allows the director to impose civil penalties or issue correction orders upon identifying any breach of contract by the tribal entity. Provides that this is a contested case under the APA.
- Prohibits the transfer of location contract rights without the director's written approval.
- Limits the authorization of the placement of gaming machines and conduct of other lottery games to a gaming facility leased or owned by the tribal entity.
- Excepts the location contract from the requirements for procurement contracts (Chapter 16C).
- Appropriates to the commissioner of human services the tribal entity's payment for problem gambling, to be used for treatment and programs, including programs focused on American Indian and minority communities.

Subd. 3. Operation. Specifies that the director must:

- operate and control all gaming machines and other lottery games at the gaming facility;
- own or lease gaming machines;
- control major maintenance of gaming machines or the vendor who handles major maintenance;
- have a central communications system to monitor activities on each gaming machine;
- own or lease equipment used to conduct other lottery games at the gaming facility;
- approve security arrangements for gaming machines and other lottery games;
- approve advertising and promotional material produced by the gaming facility (except for material related only to nonlottery casino games);
- maintain overall control over the gaming machines and other lottery games at the

gaming facility (though the tribal entity can manage day-to-day operations).

Requires the lottery to bear the costs of (1) procuring and maintaining gaming machines and equipment for lottery games, and (2) acquiring, maintaining, and operating the central system used to monitor the gaming machines.

Provides that all proceeds from gaming machines and other lottery games are held in trust by the tribal entity until they are transferred to the director. Authorizes the director to require the deposit of all such proceeds in an account at a designated bank. Requires the tribe to pay interest if it fails to timely pay money due.

Permits the director to implement policies, procedures, and other controls necessary for gaming machines and other lottery games.

Subd. 4. Games. Directs the director to decide what games may be played on a gaming machine and how other lottery games shall be conducted.

Subd. 5. Specifications. Requires machines to have a permanent record, on a nonresettable meter, of all transactions on the machine and to be capable of being linked electronically to a central communications system. Requires that a reasonable number of gaming machines at the facility are accessible to individuals with disabilities and that a reasonable number of gaming machines at the facility give players the option of receiving winnings in the form of coins or tokens.

Subd. 6. Examination of machines. Provides for examination of prototypes of gaming machines, with costs paid by the manufacturer. Allows the director to contract for testing.

Subd. 7. Prizes. Provides that players playing a game at the gaming facility are bound by the rules and procedures of the game. As with current lottery games, prize determinations would be made in accord with rules, procedures, claims procedures, and validation tests for a game. Prohibits persons under 18 years old from claiming prizes.

Subd. 8. Prohibitions. Prohibits persons under 18 years old from partaking of gaming machines or other lottery games.

Subd. 9. Compulsive gambling notice. Requires the tribal entity to prominently post the hotline number for department of human service's compulsive gambling program. Requires the tribal entity to develop, and the director to approve, a plan relating to problem and compulsive gambling.

Subd. 10. Local licenses; local fees. Prohibits political subdivisions from licensing, regulating, or taxing gaming machines, lottery games, or nonlottery casino games at the gaming facility.

14 Lottery budget; gaming facility. Directs the director to submit a budget for gaming facility operations, permits the director to expend amounts necessary for operations, and exempts FY06 and FY07 expenditures for the conduct of gaming at the gaming facility from the maximum amount set in law for lottery operations.

15 Effective date. Makes Article 2 effective the day following final enactment.

## Article 3: Gaming Facility Regulation

### Overview

Article 3 establishes a system by which the Commissioner of Public Safety (commissioner) would regulate the gaming facility. The tribal entity would need to secure a gaming facility license, contingent upon payment of a \$200,000,000 one-time licensing fee, which would be reviewed by the commissioner. The tribal entity, or another entity engaged by the tribal entity to manage the facility, would need to secure a gaming management license and renew this license every two years. Every employee and vendor at the facility would also need to obtain an appropriate license, subject to renewal every year.

Article 3 also authorizes the tribal entity to operate nonlottery casino games at the facility, in accordance with a plan of operation that has been approved by the commissioner.

1. 1 Gaming facility.

Subd. 1. Definitions. Defines "direct financial interest," "lottery director," "tribal entity," and "management entity."

Subd. 2. License required. Requires the tribal entity that will own and operate the gaming facility to obtain a gaming facility license.

Subd. 3. Application. Requires application for a license to be made on a form prescribed by the commissioner; permits the commissioner to issue a gaming facility license to the tribal entity.

Subd. 4. License fee. Requires the tribal entity to pay a onetime gaming facility license fee of \$200,000,000 to the commissioner.

Subd. 5. License issuance. Makes issuance of a gaming facility license contingent upon the completion of a comprehensive background check. Only permits the commissioner to issue a license to a tribal entity that has given a valid limited waiver of sovereign immunity and is subject to Minnesota state court and administrative jurisdiction. Prohibits transfer of the license without commissioner approval.

Subd. 6. Background investigation. Requires comprehensive background and financial investigations of the tribal entity (including officers, directors, managers, supervisory personnel, and persons with a direct financial interest in the entity - but not the tribal governments) prior to issuing a gaming facility license. Permits commissioner to charge the tribal entity an investigation fee.

Subd. 7. License refusal; suspension and revocation. Permits the commissioner to refuse to issue a gaming facility license, or to suspend or revoke a license, under certain circumstances. Requires written notice of the reason for a proposed suspension or revocation and an opportunity for cure (unless cure is impossible).

Clarifies that revocation or suspension is a contested case under the APA.

Subd. 8. Other license actions. Permits the commissioner to refuse to issue a gaming facility license, or to impose a civil penalty, issue correction orders, or take other administrative action if the tribal entity engages in other specified conduct. Conduct meriting other license actions may be considered in deciding whether to suspend or revoke a license under subd. 7. Clarifies that revocation or suspension is a contested case under the APA.

Subd. 9. Required notification. Requires the tribal entity to immediately report any substantial change in management or ownership. Also requires legislative approval of any change of ownership in the tribal entity. Mandates comprehensive background and financial investigations of new officers and directors and of individuals acquiring direct financial or management interests in the tribal entity. Requires these individuals to file appropriate license applications and requires the tribal entity to annually certify compliance with this provision.

Subd. 10. License review. Provides for the commissioner's review of the gaming facility license every five years and for a comprehensive background investigation.

Subd. 11. Audit; investigation. Requires the tribal entity to have an annual certified audit, to be filed with the commissioner. Permits the commissioner to conduct additional audits and investigations related to facility operations and to recover reasonable costs.

Subd. 12. Sale of intoxicating liquor. Requires the host community to issue an on-sale liquor license to the tribal entity for the sale of intoxicating liquor at the gaming facility.

Subd. 13. Detention of suspects. Permits the commissioner to select individuals who can detain persons suspected of gaming fraud or cheating at the gaming facility. Allows the exclusion or removal of a suspect from the gaming facility. Also permits the tribal entity to establish a self-exclusion program.

Subd. 14. Reimbursement of costs. Requires the tribal entity to reimburse the commissioner for the actual costs of licensing, regulation, enforcement, and oversight of the gaming facility and appropriates the money collected to the commissioner to pay the costs of regulating the gaming facility.

2. 2 Gaming management.

Subd. 1. License required. Requires the tribal entity, or any entity formed or engaged by the tribal entity to manage gaming facility operations, to obtain a gaming management license.

Subd. 2. Application. Requires application to be made on a form prescribed by the commissioner; permits the commissioner to issue a gaming management license to the management entity that will manage or operate the gaming facility or gaming operations for the tribal entity.

Subd. 3. License issuance. Requires the commissioner to issue a gaming

management license if:

- it would not be adverse to the public interest or the effective regulation of gaming; and
- it is issued to an entity that is subject to the Minnesota state court and administrative jurisdiction.

Makes the licenses non-transferable.

Subd. 4. Background investigation. Requires comprehensive background and financial investigations of the license applicant (including its officers, directors, managers, supervisory personnel, and persons with a direct financial interest in the management entity - but not the tribal governments). Allows the commissioner to use the background investigation conducted under for the gaming facility license if the tribal entity and the management entity are the same. Permits the commissioner to charge the tribal entity an investigation fee.

Subd. 5. License actions. Prohibits the commissioner from issuing a gaming management license, and permits the suspension or revocation of a license, under certain circumstances. Requires notice to the tribal entity of any license revocation, license suspension, or imposition of a civil penalty. Clarifies that revocation, suspension, or imposition of a civil penalty is a contested case under the APA.

Subd. 6. Required notification. Requires the gaming management licensee to promptly report any change in management or ownership. Requires comprehensive background and financial investigations of new officers and directors and of individuals acquiring direct financial or management interests in the tribal entity. Requires these individuals to file appropriate license applications and requires the licensee to annually certify compliance with this provision.

Subd. 7. License renewal. Requires the licensee to apply for renewal of the license every two years. States that review of a renewal application shall comply with the same requirements as review of a new application.

3. 3 Employee licenses.

Subd. 1. Authority. Authorizes the commissioner to issue employees licenses for persons employed at the facility. Requires each employee at the facility to have an appropriate license and makes the tribal entity responsible for ensuring that each employee has a valid license prior to beginning work at the gaming facility.

Subd. 2. Application information. Requires application to be made on a form prescribed by the commissioner, accompanied by an affidavit attesting to felony record, felony charges, connections with illegal businesses, conviction of fraud or misrepresentation in connection with gambling, and violations of gambling-related

laws or rules.

Subd. 3. Background investigations. Directs the commissioner to investigate each employee license applicant and permits him to seek reimbursement for costs from the tribal entity. Requires fingerprints from each applicant.

Subd. 4. License issuance and renewal. Makes licenses effective one year. Permits issuance or renewal of a license when an applicant is qualified for the occupation and will not adversely affect the public health, safety, and welfare, or the integrity of gambling in Minnesota.

Subd. 5. Revocation and suspension. Permits the revocation of a license, suspension of a license for up to one year, or refusal to renew a license for an intentional false statement in a license application or for a violation of law or rule that adversely affects the integrity of gambling. Clarifies that revocation or suspension is a contested case under the APA. Under certain circumstances, permits summary suspension prior to the contested case hearing.

4. 4 Vendor licenses.

Subd. 1. Issuance. Requires anyone who sells products, distributes products, or provides services at the gaming facility to have a vendor license. Authorizes the commissioner to issue vendor licenses. (Requires employees of vendors to have employee licenses under section 3.)

Subd. 2. Application information. Requires application on a form prescribed by the commissioner, accompanied by an affidavit attesting to felony record, felony charges, connections with illegal businesses, conviction of fraud or misrepresentation in connection with gambling, and violations of gambling-related laws or rules.

Subd. 3. Background investigations. Directs the commissioner to investigate each employee license applicant and permits him to seek reimbursement for costs from the vendor. Requires fingerprints from each applicant.

Subd. 4. License issuance and renewal. Makes licenses effective one year. Permits issuance or renewal of a license when an applicant is qualified for the occupation and will not adversely affect the public health, safety, and welfare, or the integrity of gambling in Minnesota.

Subd. 5. Revocation and suspension. Permits the revocation of a license, suspension of a license for up to one year, or refusal to renew a license for an intentional false statement in a license application or for a violation of law or rule that adversely affects the integrity of gambling. Clarifies that revocation or suspension is a contested case under the APA. Under certain circumstances, permits summary

- suspension (for up to 90 days) prior to the contested case hearing.
5. 5 Nonlottery casino games.
- Subd. 1. Definitions. Defines "nonlottery casino game" as any casino game the commissioner authorizes the tribal entity to conduct at the gaming facility that is not a gaming machine or other lottery game. Defines "nonlottery casino games' adjusted gross revenue" as revenue from the operation of nonlottery casino games, less prizes and promotional allowances.
- Subd. 2. Operation. Allows the operation of nonlottery casino games in accord with a plan approved by the commissioner. Requires the plan to identify and define all nonlottery casino games and to address security and internal control systems. Also requires a plan for training nonlottery casino games personnel in problem gambling.
- Subd. 3. Plan amendment. Requires commissioner approval of plan modifications.
- Subd. 4. Actions. Permits the revocation, suspension, or refusal to renew a license (or the imposition of a civil penalty) for violations of the plan of operation. Makes this a contested case under the APA.
- Subd. 5. Prizes. States that players playing a nonlottery casino game are bound by the rules and procedures of the game and that prize determinations are determined in accord with relevant rules, procedures, claims procedures, and validation tests. Prohibits persons under 18 years of age from claiming prizes.
6. 6 Employment restrictions; civil penalty. Prohibits individuals responsible for oversight, audits, or investigations at the gaming facility (through employment and for one year after leaving employment) from entering a contract with or receiving compensation from the tribal entity or management entity. Also prohibits the tribal entity and management entity from entering such a relationship. Establishes a maximum civil penalty of \$10,000 for violations by state employees. Permits license-related administrative action against the tribal entity or management entity for violating this section.
7. 7 Effective date. Makes this article effective the day following final enactment.

## **Article 4: Gaming Transaction Fee**

### **Overview**

Article 4 imposes an in lieu of tax on adjusted gross revenues from the gaming facilities at the following rates: 26 percent of adjusted gross gaming machine revenue; 26 percent of other lottery games' adjusted gross revenue; and 14 percent of nonlottery casino games' adjusted gross revenue. This money would be deposited into a gaming facility proceeds fund and annually appropriated as follows: 10 percent to the community assets account, and 90 percent to the general fund.

1. 1 Gaming facility. Requires transfer to the commissioner of revenue of:
- 26 percent of adjusted gross gaming revenue and other lottery games' adjusted

gross revenue (from lottery); and

- 14 percent of nonlottery casino games' adjusted gross revenue (from tribal entity).

Makes this transfer is in lieu of any state tax on wagering at the facility and any local tax or fee on wagering at the facility.

2 Deposit of revenues. Directs the commissioner to deposit revenues received under section 1 in the gaming facility proceeds fund (section 0).

3 Gaming facility proceeds fund. Establishes a gaming facility proceeds fund in the state treasury. Annually appropriates 10 percent of the money in the fund to the community assets account and 90 percent to the general fund.

4 Community assets account. Establishes a community assets account in the state treasury. Provides that the money in the account may be spent to help finance capital projects for facilities such as athletic facilities, museums, theaters, recreational facilities, planetariums, and zoos.

5 Effective date. Makes this article effective the day following final enactment.

## Article 5: Miscellaneous Provisions

### Overview

Article 5 makes various changes to existing law to be consistent with the activities authorized in Articles 1 to 4.

- 1 Gambling device possession. Exempts gambling devices possessed by the state lottery from the general prohibition against possession of gambling devices.
- 2 Gambling device distributors. Allows licensed gambling device distributors and manufacturers to sell, lease, or rent gambling devices to the state lottery.
- 3 Gambling in licensed liquor establishments. Exempts gambling devices at the gaming facility from the prohibition against gambling devices at establishments licensed for retail liquor sales.
- 4 Recovery of money lost. Exempts gaming machine plays and the conduct of any lottery and nonlottery casino games at the gaming facility from the law that allows persons to sue to recover gambling losses.
- 5 Commitments for gambling debt void. Exempts gaming machine play from the law that makes gambling debts void.
- 6 What are not bets. Adds gaming machine plays and participation in any lottery or nonlottery casino game at a gaming facility to the list of gambling activities that are not bets in the context of state laws that prohibit gambling.
- 7 Gaming facility. Exempts from criminal prohibitions of gambling the manufacture, possession, sale, or operation of a gaming machine, or the conduct of a lottery or nonlottery casino game at a gaming facility.
- 8 Severability; savings. Provides that if part of the act is found invalid, all other provisions remain valid and all rights, remedies, and privileges otherwise accrued remain in effect.
- 9 Effective date. Makes this article effective the day following final enactment.