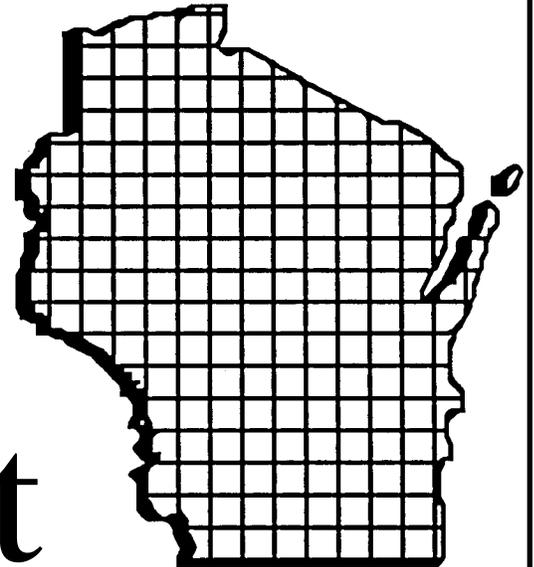


Wisconsin

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R e p o r t



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**NOT EXACTLY
"A FAIR SHARE"**

*Revenue Sharing and Native
American Casinos in
Wisconsin*

REPORT FROM THE PRESIDENT:

Wisconsin is now experiencing severe budget problems. One potential area of increased revenue for the state is an increase in revenue-sharing with Native American casinos in Wisconsin.

We commissioned two academics to study this issue. William Thompson is a Professor of Public Administration at the University of Nevada-Las Vegas (UNLV). He is considered by many to be the leading academic expert in the country on gambling issues. He has authored numerous studies and articles specifically on Indian casino gambling in Wisconsin, both for us and for other Wisconsin-based organizations. Robert Schmidt is a member of the graduate faculty of UNLV's Colleges of Liberal Arts and Business Administration. He is also an economic consultant to local governments.

Their research developed a quantitative method for examining Native American casino revenue in Wisconsin. They estimate that the Wisconsin casinos collect gaming revenues of over \$1 billion annually. They also estimate that the Indian casinos make a net profit of 48% on these revenues. This is an enormous amount of money to be generated in Wisconsin. In return, the tribes pay approximately \$24.6 million per year to the state, which represents just over 2% of their revenues. Research indicates that tribes in other states contribute much higher amounts to state and local governments. Commercial casinos also pay taxes greatly in excess of this number in other states.

The question is what is it worth to Native American tribes in Wisconsin to have this ongoing monopoly that produces such large amounts of profit for them. Should Wisconsin taxpayers continue to subsidize these casinos? Is there a figure that is fair both to the taxpayers and to the tribes? We believe that the revenue-sharing number should be raised to approximately \$90 million a year. This would still be below the percentage that Native American tribes and commercial casinos pay in other states.

In Wisconsin, the Native American tribes have a total monopoly on the casino industry. That has to be worth something. The tribes can't be taxed because they are legally separate nations, but there is no reason for Wisconsin taxpayers not to benefit from their enormous profits.

This issue must be seriously debated in Madison after the November election. If the Native American tribes are not willing to return a fair share of their revenue back to Wisconsin, then it is time for Wisconsin to end their monopolies. The issue is not gambling; the issue is fairness to taxpayers. The current arrangement is not fair and must be reconstructed so that it does not tilt economically toward the Native American tribes.



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NOT EXACTLY "A FAIR SHARE"

Revenue Sharing and Native American Casinos in Wisconsin

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EXECUTIVE SUMMARY

The authors of this report seek to find a proper and appropriate level of revenues that Native American casinos could share with the State of Wisconsin and its local governments. The authors found this analysis to be difficult because of the general denial of freedom of information included in the Wisconsin Native American gaming compacts. Nonetheless, by looking at revenues in other casino jurisdictions, the authors reasonably estimate that the Wisconsin casinos collectively have gaming revenues of \$1,134,798,000 per year. We estimate that the casinos have 22,665,960 player-visits per year. From their revenues, the tribal casinos are currently giving the State of Wisconsin \$24,686,799 per year. This represents just over 2% of the revenue.

We find tribes in other states giving governments much more than this amount. Commercial casinos also pay taxes greatly in excess of this number. Indeed, in most jurisdictions, casino operations with these revenues would be giving governments well over \$100 million a year.

We also explore business taxes and property taxes in Wisconsin and conclude that a similar-sized business would be paying state and local business and property taxes approaching \$90 million per year. These taxes offset the costs of actual services businesses receive, including the right to offer a business activity with limited competition (due to licensing restrictions and franchise requirements). The Native American casinos enjoy a franchise to conduct gaming operations that other groups in the state are not permitted to conduct.

We recommend that the revenue-sharing amounts be adjusted in new compacts to be negotiated in 2003 and 2004. We conclude that the casinos should share with the State of Wisconsin revenues of approximately \$90 million per year. Mindful of legal difficulties surrounding taxation of Native American enterprises, we suggest that the amount be levied as a four dollar door charge against players entering the facilities. We support the notion of Native American gaming in Wisconsin as an economic development tool for tribal peoples. However, tribes should also pay the appropriate costs of services received from the state and for burdens imposed on the community. While creating economic benefits, all businesses receive services from the community and also impose burdens on the community. Like other businesses, Native American casinos should pay the cost of these burdens and services.

Native American Gaming In Wisconsin

The authors of this report seek to find a proper and appropriate level of revenues that Native American casinos could share with the State of Wisconsin and its local governments. The report also recommends a feasible and acceptable means for the assessment and collection of the revenues. This report presumes that the information presented can be used to renegotiate gaming compacts between the State of Wisconsin and certain Wisconsin-based Native American tribes. Native American gaming facilities currently reimburse the State of Wisconsin and its local governments for state services and exclusive rights to casino gaming.

The recommendations developed in this report are based upon an in-depth evaluation of gaming revenues of the Wisconsin Native American casino facilities, as well as those in other jurisdictions; an examination of the state's fiscal needs and services provided to the local facilities; and an exploration of comparable revenue and cost-sharing mechanisms in other jurisdictions. This report also provides a brief overview of the historical, legal, and economic issues surrounding Native American casino operations in Wisconsin.

History of the Tribal Casinos and Compacts

Although Native American casino gambling is over a decade old in Wisconsin, its genesis goes back nearly thirty years. In 1973, the voters of Wisconsin utilized their referendum right (a right established in the State of Wisconsin as a democratic reform in the early part of the twentieth century) to approve a constitutional provision allowing charities to operate bingo games. In 1975, representatives in the state legislature wrote the rules for conducting the games, including state-determined prize limits.

Tribal bingo parlors across the United States reacted when federal courts allowed a Florida tribe to have high stakes bingo games even though the state's bingo statute set lower prize limits. The Wisconsin tribes followed suit

and began games with prizes above the designated state limits. In 1981, federal district Judge Barbara Crabb upheld the earlier judicial rulings determining that the tribes of Wisconsin need not follow the state's bingo rules as long as the games themselves were legal.

Following the seminal 1987 U.S. Supreme Court decision of *California v. Cabazon*, which effectively ratified these lower federal court rulings, Congress felt the need to put some rules in place that would govern the conduct of Native American gaming (*California v. Cabazon Band of Mission Indians*, 480 U. S. 202 [1987]). Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988. The IGRA indicated that a tribe could negotiate compact agreements with states that would allow them to conduct casino-type games (called Class III games) only if such games were permitted by the state "for any purpose by any person, organization, or entity. . . ."

In 1987, before the IGRA was passed, the voters of Wisconsin again exercised their power of making public policy by amending the state constitution with a 70-30% vote to remove a ban on lotteries. Soon afterwards the state legislature authorized a Lottery Commission empowered to offer "lottery" games. Wisconsin's legal history had well-established dicta concerning the word "lottery." The word included any game involving consideration (a price to play), chance, and a prize worth money for winning. By definition almost any casino game could be considered a "lottery" game.

Soon after 1988, the tribes of the state sought to negotiate agreements to have casino games. The governor refused to negotiate, maintaining that the state did not permit casino-type games. The tribes utilized provisions of the Indian Gaming Regulatory Act that allowed them to sue the state if the state would not "negotiate in good faith." The case went to the federal district court of Judge Barbara Crabb. She ruled that Wisconsin's lottery provisions, in effect, gave permission to the lottery commission to conduct casino-type games. That the games were not conducted was not relevant. Governor Thompson began an appeal, but rather than completing legal action, he did negotiate the first round of casino compacts with the tribes. These allowed slot machines and blackjack games for the tribes.

Eleven tribal groups have negotiated agreements with state executive officials to operate sixteen (the two Menomonee casinos are being treated as one facility for this report) Class III (casino) gambling facilities. Wisconsin Governor Thompson and tribal leaders signed the first round of compact agreements in 1992. These agreements expired in 1998 and 1999. Governor Thompson and the tribes then negotiated a new round of five-year agreements. These agreements will expire in 2003 and 2004 and will be subject to renegotiation during those years.

The compact agreements were made in accordance with the IGRA. The IGRA permits the casino tribes to pay state governments for the actual costs of regulation incurred by the state. Initially, tribes paid the state \$350,000 each year for the regulatory costs. The funds were pro-rated among the tribes according to their gambling "handle." This report does not address this aspect of payments, which were executed within the framework of federal law at that time. Instead, it is concerned with alternative types of "revenue-sharing." In the second round of compacts, the tribes agreed to give set, annual amounts of money to the state. These compacts established compact "fees" that ranged from \$64,685 for the Red Cliff tribal casino in Bayfield to \$7,500,000 for the Ho-Chunk's three casinos.

The steps in the preliminary development of Wisconsin's early compacts are well-documented in an earlier study conducted for the Wisconsin Policy Research Institute (WPRI), *The Economic Impact of Native American Gaming in Wisconsin* (Thompson, Gazel and Rickman, April 1995). For the purposes of this report we will provide only a summary of the important aspects of the early compacts.

After the first round of negotiations was complete, the voters of Wisconsin spoke again. In 1993, by a vote of 59% to 41%, they approved a new constitutional provision that clearly banned all casino gambling, while still allowing narrowly defined lottery-type games of the traditional lottery nature. Since 1993, it has been unequivocal and clear that the policy of Wisconsin does not permit any casino gambling. It does not permit slot machines. It does not permit blackjack games.

In 1996, the U.S. Supreme Court in *Seminole v. Florida* rejected as unconstitutional that portion of the IGRA that allowed tribes to sue states when the states refused to negotiate compacts "in good faith" (*Seminole v. Florida*, 517 U.S. 44 [1996]). Consequently, if the State of Wisconsin now refuses to negotiate another compact with a tribe, the tribe would have no judicial recourse to seek a resolution to the impasse, albeit they could still seek political solutions. In 1998 and 1999, the governor of Wisconsin consented to making new compact agreements with the tribes. These compact agreements were made in accordance with the IGRA and were subsequently certified and declared to be in effect by the U.S. Secretary of Interior.

The Casinos and Their Location and Size

There are sixteen Wisconsin casinos being operated by eleven Native American tribes (or bands or communities) in the state. The tribes have a total on-reservation population of 37,011. A few of the casinos are located in urbanized areas of the southern part of the state, in Milwaukee and near Madison. There is also a casino in the Green Bay area. Two are within a one-hour drive of the Minneapolis-St Paul area. However, most of the facilities are in the rural, northern areas of the state. The casinos range from small facilities with a few hundred slot machines and a few tables to rather large facilities that would rival Las Vegas Strip casinos in the size of their gambling floors. The numbers of employees at the casinos range from 100 to 1500. Ten of the facilities have hotel rooms. The most rooms at any hotel are 315. Most casino-hotels have 100 or fewer rooms. The following chart provides information about the casinos as well as the on-reservation population of the tribes.

Tribe	Players (per year)	Slots	Tables	Square Feet	Employees	Reservation Population
Ho-Chunk (Baraboo)	6,339,550	2645	56	90,000	1400	960
Rainbow (Nekoosa)		680	12	37,000	450	
Majestic (Black River)		608	12	72,000	400	
Potawatomi (Milwaukee)	2,625,900	1250	25	75,000	1500	531
Potawatomi (Carter)		400	8	20,000	225	
Oneida (Green Bay)	5,047,200	2280	50	65,000	1300	21,321
Oneida (Mason St.)		700	0	8,000	100	
St Croix (Turtle Lake)	2,224,250	1035	24	95,000	800	641
St. Croix (Danbury)		329	12	30,000	200	
Menomonie (Keshena)	1,229,400	830	12	32,000	539	3255
Lac Du Flambeau	1,219,100	775	12	20,000	425	2995
Stockbridge-Musee Mohican (Bowler)	1,903,960	1044	18	23,700	500	1527
Lac Courte Oreilles	978,200	630	8	35,000	400	2900
Skogan Mole Lake (Crandon)	410,400	372	8	33,000	250	392
Bad River (Odanah)	438,800	410	6	20,000	274	1411
Red Cliff (Bayfield)	249,200	230	4	15,000	100	1078

INFORMATION AVAILABILITY

In the 1995 Wisconsin Policy Research Institute Report on economic impacts of casinos, the researchers made a pointed plea for freedom of information regarding all gambling revenues in the State of Wisconsin. In the six intervening years, however, there has been little improvement in the disclosure of information on Native American gaming. This information is crucial for any definitive debate about public policy and gambling in Wisconsin. Regrettably, the Wisconsin media, political establishment, and academic community have remained relatively silent on this matter.

One of the purposes of this paper is to open a dialogue over issues concerning the volume and the character of Native American casinos' impact on Wisconsin government costs and revenues. This dialogue cannot be effectively completed without better access to salient information on tribal revenues.

Wisconsin has a unique history of keeping its public informed. For example, an essential part and parcel of "Fighting Bob" La Follette's "Wisconsin Idea" was the simple notion of democracy and the public's duty and right to exercise popular control over public events and policies affecting their lives. In his autobiography he wrote:

I thought it all over. It was clear to me that the only way to beat boss and ring rule was to keep the people thoroughly informed. Machine control is based upon misrepresentation and ignorance. Democracy is based upon knowledge. It is of first importance that the people shall know about their government and the work of their public servants. "Ye shall know the Truth, and the Truth shall make you free." This I have always believed vital to self government. (29)

Given their liberal heritage, the Wisconsin citizenry may question the appropriateness of the following language in the gaming compacts of 1992 (the provision carries into the 1998 and 1999 compacts):

The Tribe requires that its gaming records be confidential. The State and the Tribe agree that the State does not otherwise have a right to inspect or copy tribal gaming records. However, in order to enable the State to perform its oversight and enforcement functions and responsibilities under this compact, the tribe required that the State pledge, and the State does so pledge, that any Tribal records or documents submitted to the State, or of which the State has retained copies in the course of its gaming oversight and enforcement, will not be disclosed to any member of the public except as needed in a judicial proceeding to interpret or enforce the terms of this Compact. In return, the Tribe has granted the State the right to inspect and copy the Tribal records as provided in this compact. (Compact with the Bad River Tribe, Article X Section B [1]).

The most important words, for our discussions, placed in the compacts with the tribes are these: "This compact is provided for by federal law and therefore supersedes State records laws to the contrary." With a stroke of a pen, the governor nullified the open records law of the people. Specifically, the Wisconsin Open Records Law (Wisconsin Statutes 19.31-19.39, Declaration) states:

In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. Further, providing persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. To that end (these sections) shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.

Two federal laws often invoked by the compacts are the Indian Gaming Regulatory Act of 1988 (IGRA) and the Freedom of Information Act of 1966 (FOIA). IGRA Section 17 states that the National Indian Gaming Commission shall treat information it receives as "confidential" and falling under one of two exemptions of the FOIA. One exemption refers to law enforcement information, while another speaks to trade secrets and commercial and financial information. While the compacts defer to federal law, there is nothing in the federal law that is directed toward information that is collected or may be collected by a state government agency. Moreover, one exemption of the FOIA specifies information coming from persons and not organizations.

The National Indian Gaming Commission interpreted the FOIA exemption in the IGRA and issued regulations that appear to uphold that exemption. However, in our opinion, full disclosure of basic financial information — most importantly, revenues of gaming facilities — would allow both tribal members and the non-tribal members to know that the various tribes are being treated fairly; it would allow members to know that funds are being used properly. Openness will let the citizens know that the state's executives are responsible officials, enabling them to hold those officials responsible for their decisions.

It is our recommendation that *at a minimum* the state release composite fiscal data for the sixteen casinos including their gaming revenues from both machines and tables, as well as their basic expenditures, with an indication of how much revenue is retained by the tribal governments. The composite numbers of machines, tables, square footage of gaming areas, employees, and players should also be released. Within tribal units, members should have immediate access to such information regarding individual casino facilities. The tribes and the state should explore the very positive benefits that would follow releasing this data to the public as well. The state should also release all factors that are utilized in determining any revenue-sharing amounts that are to be collected from the tribal casinos. Moreover, consideration should be given to opening up all discussions among state policy makers and tribal officials regarding compact negotiations in accordance with the State's open meetings law.

CASINO REVENUES

Data Sources

Because of the non-disclosure language included in the current compacts, the revenues of the Native American casinos of Wisconsin are not available for publication. Therefore, any public analysis of the revenues and subsequent determination of an "equitable" level of state compensation is subject to considerable debate. Establishment of a reliable basis for state impacts requires extensive comparative analysis. Fortunately, there are substantive data that can be used. Most importantly, public information sources do allow creation of pro forma expected incomes from the number of gambling tables and machines and the square footage of the Wisconsin casinos.

The public information about revenue flows in casinos elsewhere is used to determine the approximate revenues of the Wisconsin casinos. As stated above, we present these approximations as informed estimates that may be refuted by full disclosures of actual revenues. We draw our assumptions from revenues generated in other Native American casino jurisdictions, as well as from commercial casino jurisdictions. First, we look at the Native American casinos that provide some information for our calculations.

Comparisons with Other Native American Casinos

Unfortunately, there is also limited information in other Native American casino jurisdictions. However, through detailed analysis of revenue-sharing amounts and revenue-sharing formulas in certain states, portions of the casino revenues can be reliably established. For example, slot and video machine revenues can be determined for both Connecticut (a jurisdiction quite dissimilar from Wisconsin in terms of Native American casinos) and Michigan (sharing many of the attributes of Wisconsin casinos).

In Connecticut, there are two Native American casinos. Each casino gives the State of Connecticut 25% of its machine revenues. Using those revenue numbers, analysts have determined that the year 2000 revenues of the two casinos exceeded one billion dollars. Indeed, one analyst indicated the revenues approached two billion dollars. It was determined that each single machine produced average daily wins (that is money in, minus prize money given out) of \$404 per day, or \$147,460 for the year. This is a top-end number that reflects the fact that the two casinos serve a very urbanized New York to Boston and New England market. Located just east of New York, the two casinos comprise a gaming monopoly. For New York City residents, the casinos are as close or closer in travel time as are the Atlantic City casinos.

The Michigan casinos serve a geographical territory configured more like Wisconsin. The Native American casinos in Michigan are spread over the northern and rural areas of the state. The compacts for the casinos of the seven Michigan tribes negotiated in 1992 stipulated that the tribes would give the state 8% and local governments 2% of the slot machine revenues. The tribes were allowed to tell the local governments how they must spend the payments. The state payments were not considered to be taxes but (as in Connecticut) "fees" in exchange for a monopoly over machine gambling. The 8% payments stopped in 1999 when commercial casinos were licensed for the city of Detroit. For this reason, more current information is unavailable to be used to determine machine revenues. Also, one of the seven tribes did experience a closure during the 1997 and 1998 years, so its revenues are not considered in the analysis.

The revenues are estimated using data presented in *Casino Executive* magazine (June 1997). The publication indicated that the six tribes with open casinos had 8667 machines. Based upon state revenues, we estimate that in fiscal 1997 each of the machines won an average of \$150 per day or \$54,934 per year. In fiscal 1998, the amounts rose to \$181 per day, or \$65,918 per year. The leading casino is located in the center of the state's lower peninsula. It is within a one-hour drive of the urban areas of Lansing and Flint and Grand Rapids, and within two and a half hours of the full metropolitan Detroit area. The only competitive casino in 1997 and 1998 was in Windsor, Canada, about a mile from downtown Detroit. The Saginaw Chippewa tribe's Soaring Eagle Casino won per machine revenues of \$253 per day or \$92,495 per year.

Comparisons with Commercial Casinos

Extensive, reliable data on table and machine revenues for games in commercial casino states are available. To develop revenue estimates for Wisconsin casinos, it was important to consider the revenues of nearby commercial jurisdictions, namely, the casino boat jurisdictions of Illinois, Indiana, Iowa, and Missouri, and the land-based Detroit, Michigan casinos. We also considered the three leading commercial casino states — Nevada, New Jersey, and Mississippi — as well as Louisiana which has both riverboats and one land-based casino found in downtown New Orleans. The jurisdictions also report per-position wins. For purposes of this analysis, we assume that a machine is a single position and a table represents seven positions. For Michigan and Louisiana, we only have reports of per-position wins. Using the data, we can discern per-square-foot (of gambling floor) wins, and in some cases, per-player wins. Players are not typically counted in the land-based facilities.

Starting with the bigger casino jurisdictions, we note that these venues generally have open license entry rules. For example, in Nevada, any qualifying company can build a casino of any size. However, in urbanized Clark County (containing the cities of Las Vegas, North Las Vegas, and Henderson), the casino must have a hotel with at least 300 rooms. In New Jersey, the casino must be located within Atlantic City and have a five hundred or more room hotel. Mississippi casinos must be located in counties on approved waterways, and the county must approve casino gambling. Nevada has well over 300 casinos; New Jersey has twelve; and Mississippi, over thirty. Much of the data incorporated below was reported in the *Global Gaming Guide* of Bear Stearns and is for the year 2000, as reported by the states (some states report calendar years; others fiscal years). The *Nevada Gaming Abstract 2000* was also utilized.

Nevada's free market environment generates the lowest wins per machine, but the Las Vegas Strip exhibits rather high table wins. Nevada statewide casinos have daily slot wins of \$84 per machine, or \$30,660 per year. Table wins are \$1,342 per day, or \$489,830 per table per year. The per-position wins are \$112 per day or \$41,245 per year, and per-square-foot annual wins are \$1,298. The Las Vegas "Strip" reported machine wins of \$102 per day and \$37,230 per year and table wins of \$2,389 per day or \$871,986 per year. Per-position wins are \$174 per day or \$63,510 per year. The square foot annual win was \$1,765.

Atlantic City wins per machine were reported at \$236 per day or \$86,140 per year, and table wins were \$2,492 per day or \$909,580 per year. Position wins are at \$269 and \$98,185. The casino win was estimated at \$3,791 per square foot per year.

Mississippi casinos win moderate to low amounts on machines, \$147 and \$53,655, and low amounts from tables, \$971 and \$354,415. Per-position wins are \$150 and \$54,750, while the annual square footage win is \$1,780. Louisiana reports position wins of \$228 per day or \$83,220 per year, and an annual win of \$4,151 per square foot of gambling space.

The Detroit casinos have per-day position wins of \$262 or \$95,630 per year, and per square foot annual wins of \$3,302. Combined with Windsor's casino, metropolitan Detroit wins are \$315 per day per-position, or \$114,975 per year, with space wins of \$3,794 per square foot per year.

The four Midwest riverboat jurisdictions offer a range of revenues in each category, with Iowa and Missouri on the lower end, and Illinois and Indiana at the higher end of the spectrum. For instance, slot wins range from \$152 a day in Missouri (\$55,480 per year) to \$414 a day in Illinois (\$151,110 per year). Iowa had the lowest table wins at \$776 per day (\$283,240 per year). Position wins range from \$152 per day in Missouri (\$55,480 per year) to \$413 per day or \$150,745 per year in Illinois. Space wins range from annual wins per square foot of \$1770 in Missouri, to \$6,690 in Illinois.

Calculating the Revenue of Wisconsin Casinos

To determine the revenues of the Wisconsin casinos we use the pro forma data from other jurisdictions and modify it, given the unique attributes of Wisconsin. For example, Native American Wisconsin casinos represent localized and regionalized monopolies like those in Indiana, Illinois, Michigan, and Iowa, but not area wide monopolies like those found in Connecticut. On the other hand, the casinos do not face open style competition as severe as in Nevada and Mississippi, or even in New Jersey.

The Wisconsin casinos are not leaders in income for the Midwest region. Neither are they at the lowest end of the continuum. Collectively, they do not have the urban markets enjoyed in Illinois and Indiana by casinos, but they

have a stronger urbanized presence (close driving access to cities) than all but one of the Native American casinos in Michigan. There is a stronger urban presence than found in Iowa, and a stronger monopolistic urban presence than found in Missouri, where several boats must compete for St. Louis and Kansas City patronage. The urbanized presence is a strong indicator of potential for income generation.

Our estimates suggest that the Wisconsin casinos do not win the \$404 or \$414 per day per machine of Connecticut or Illinois casinos. However, they do considerably better than the Nevada machines and stronger than machines of Iowa and Missouri. Likewise, tables cannot expect to do as well as those in Illinois (\$2,460), Atlantic City (\$2,492), or on the Las Vegas Strip (\$2,389). Nonetheless, they do better than those in Mississippi (\$971) and Missouri (\$914).

Our estimates indicate that the machines in Wisconsin casinos have a daily, statewide average win of \$200, or an annual win of \$73,000. The tables each win \$1000 per day, or \$365,000 per year. The 14,218 slot machines of Wisconsin should produce an annual casino win of \$1,037,538,000, while the 267 tables will produce annual wins of \$97,260,000.

Based on this analysis, the annual gross gambling wins (money played minus prizes given) of the 16 Wisconsin casinos is:

\$1,134,798,000

This revenue represents a per-position win of \$193 per day (\$70,576 per year). The revenue also represents a win of \$1,692 per square foot of gambling space.

The casinos of the several jurisdictions examined offer various reports of per-player wins. As many do not have actual counts of the wins, some figures are estimates only. These range from a high of \$87 in Illinois to \$51 in Louisiana and lower amounts in Indiana and Iowa (approximately \$45).

By using a reasonable middle figure of \$50 per player, we can estimate that the casinos of Wisconsin attract 22,665,960 players per year. We will use the \$50 figure to estimate the numbers of players in each of the casinos.

The figures averaged out among the sixteen casinos develop a profile as follows: 41,919 square foot (gaming area) facility with 889 slot machines and 17 tables, for a total of 1,008 gambling positions. The average casino would win \$71,102,600 with \$64,897,000 coming from slot revenues and \$6,205,000 coming from players at the tables. Overall, the casino would entertain 1,420,000 players per year. The casino would feature the average wins of \$73,000 per machine, and \$365,000 per table.

Rather than treating each of the 16 casinos as unique entities, we have segmented them into three categories: larger casinos with good drive time access to urban centers (Milwaukee, Green Bay, Madison, and Minneapolis-St Paul); medium-sized casinos; and smaller casinos that are generally confined to rural, northern areas of the state. This segmentation will allow a better understanding of the revenue potential of the collective monopoly without burying the public policy implications in the economic detail.

The first category of casinos includes urban casinos that are larger in terms of physical size and should be expected to have higher revenues per gambling unit. Their respective annual win is estimated to be \$79,500 per slot machine, and \$400,000 per table.

The medium category of casinos will have the revenue attributes of the average casino described above. The smaller casinos are estimated to win \$50,000 per machine, and \$240,000 per table each year.

In all three categories, the revenue differentiation is largely a result of the differentiation in the volume of players. Revenues per player are typically the same over all three categories. While, on the one hand it might be expected that the larger urban-accessible casinos would attract more "high rollers," our experience suggests that they also attract more bus tours of senior citizens, as well as more regular local players who will gamble less money during each visit. (The player-numbers actually represent player-visits). Therefore, we maintain a \$50 per visit statistic for all casinos.

TRIBE	REVENUES SLOTS	REVENUES TABLES	TOTAL REVENUES	EMPLOYEES
Large Casinos				
Ho-Chunk (Baraboo)	\$210,277,500	\$22,400,000	\$232,677,500	1400
Oneida (Green Bay)	\$181,260,000	\$20,000,000	\$201,260,000	1300
Potawatomi (Milwaukee)	\$99,375,000	\$10,000,000	\$109,375,000	1500
St Croix (Turtle Lake)	\$82,282,500	\$9,600,000	\$91,882,500	800
Medium Casinos				
Menomonie (Keshena)	\$60,590,000	\$4,380,000	\$64,970,000	539
Lac Du Flambeau	\$56,575,000	\$4,380,000	\$60,955,000	425
Oneida (Mason St.)	\$51,100,000	0	\$51,100,000	100
Rainbow (Nekoosa)	\$49,640,000	\$4,380,000	\$54,020,000	450
Lac Courte Oreilles	\$45,990,000	\$2,920,000	\$48,910,000	400
Small Casinos				
Majestic (Black River)	\$30,400,000	\$2,880,000	\$33,280,000	400
Bad River (Odanah)	\$20,500,000	\$1,440,000	\$21,940,000	274
Potawatomi (Carter)	\$20,000,000	\$1,920,000	\$21,920,000	225
Skogan Mole Lake (Crandon)	\$18,600,000	\$1,920,000	\$20,520,000	250
St. Croix (Danbury)	\$16,450,000	\$2,880,000	\$19,330,000	200
Red Cliff (Bayfield)	\$11,500,000	\$960,000	\$12,460,000	100
Stockbridge-Musee Mohican (Bowler)	\$82,998,000	\$7,200,000	\$90,198,000	500

As can be seen on the next page, revenues per tribe and location vary greatly.

Net Revenues

As with other data, indications of net revenues from gambling operations of Native American casinos in Wisconsin are based upon estimates gathered from other studies. For example, in 1993, the Wisconsin Indian Gaming Association (composed of the Native American tribes themselves) sponsored an economic impact study estimating that the operating expenses from Class III gaming were about 30% of the win. Net revenues from gaming were 70%. The 1995 WPRI-sponsored study showed expenses to be almost 51% of gaming revenues, but somewhat less a portion of total revenues. That study incorporated comparable expenses from commercial casinos. Utilizing this basis for estimates, we have utilized the 48% net win figure. In all probability, as the casinos have added more slot machines and reduced table games since 1995, the net revenues are higher. However, we use the lower figures to prevent an overestimate of the actual revenues captured by the facilities.

The 48% net win figure produces a collective annual net income for the tribes of \$544,703,040 from the casino facilities.

REVENUE SHARING AND REGULATORY COSTS

The initial Wisconsin compacts with the tribes set forth a flat rate cost of \$350,000 per year (pro-rated by handle) to cover the costs of regulation incurred by the state. The amount was set in 1991 and 1992 and has remained

TRIBE	PLAYERS	REVENUES SLOTS	REVENUES TABLES	TOTAL REVENUES
Ho-Chunk (Baraboo)	6,339,550	\$210,277,500	\$22,400,000	\$232,677,500
Rainbow (Nekoosa)		\$49,640,000	\$4,380,000	\$54,020,000
Majestic (Black River)		\$30,400,000	\$2,880,000	\$33,280,000
Total		\$290,317,500	\$29,660,000	\$319,977,500
Potawatomi (Milwaukee)	2,625,900	\$99,375,000	\$10,000,000	\$109,375,000
Potawatomi (Carter)		\$20,000,000	\$1,920,000	\$21,920,000
Total		\$119,375,000	\$11,920,000	\$131,295,000
Oneida (Green Bay)	5,047,200	\$181,260,000	\$20,000,000	\$201,260,000
Oneida(Mason St.)		\$51,100,000	0	\$51,100,000
Total		\$232,360,000	\$20,000,000	\$252,360,000
St Croix (Turtle Lake)	2,224,250	\$82,282,500	\$9,600,000	\$91,882,500
St. Croix (Danbury)		\$16,450,000	\$2,880,000	\$19,330,000
Total		\$98,732,500	\$12,480,000	\$111,212,500
Menomonie (Keshena)	1,229,400	\$60,590,000	\$4,380,000	\$64,970,000
Lac Du Flambeau	1,219,100	\$56,575,000	\$4,380,000	\$60,955,000
Stockbridge-Musee Mohican (Bowler)	1,903,960	\$82,998,000	\$7,200,000	\$90,198,000
Lac Courte Oreilles	978,200	\$45,990,000	\$2,920,000	\$48,910,000
Skogan Mole Lake (Crandon)	410,400	\$18,600,000	\$1,920,000	\$20,520,000
Bad River (Odanah)	438,800	\$20,500,000	\$1,440,000	\$21,940,000
Red Cliff (Bayfield)	249,200	\$11,500,000	\$960,000	\$12,460,000

constant to this date. Whether this amount represented the actual regulatory costs is unknown. The reasoning behind the establishment of this regulatory cost figure is beyond the scope of this report; however, a brief discussion is necessary to understand the alternative presented.

One piece of information traditionally used in casino management is “the handle.” The notion of “handle” is well-known in pari-mutuel racing (horse racing and dog racing) entities. Handle is the amount of money played at the tables and in the machines. Perhaps, since Wisconsin has had such tracks, it was a term that was thrown into the compact language without much thought.

Handle does not consider how much money a player has staked, that is the amount of money brought to the casino to be bet. Nor does it refer to the amount of money that a player loses. The handle represents every bet made, whether the betting money came from outside the casino doors, or from the players’ last wins at the table (or at the machine). To find out what the “handle” of a casino was, play at the tables must be monitored and recorded for each single bet made. Internal machine computers now easily record accounts of every coin put through a machine. However, table handle is problematic. “Handle” is simply a poor concept for pro-rating an assessment for regulatory costs.

Currently, legal restrictions on the confidentiality of financial data limit the ability of gaming officials in Wisconsin to resolve this issue through the use of traditional measurement methods, e.g., looking at gross revenues. Therefore, they must use another method for ascertaining the regulatory costs.

Revenue Sharing/General Charges

Several states, such as New York, Connecticut, and Michigan, use revenue-sharing formulas for “charging” tribes for regulatory expenses and for the “benefit” of having a collective gaming monopoly. Compacts in several of these jurisdictions include provisions that some of the revenue-sharing will cease if non-Native organizations are allowed to have certain forms of gaming, specifically machine gaming.

The situation of exchanging revenues for a Native American gaming monopoly presents an incongruity with the application of the IGRA. The IGRA indicates that Native Americans can have a type of gaming (e.g., machine gaming) only if other parties may also have that type of gaming. It is, therefore, somewhat problematic to consider that

machine gaming is permissible in Native American casinos if a state does not allow other parties to have machine gaming. The situation in Wisconsin is even more complex in that the Wisconsin Constitution prohibits others from having any casino games.

Specific Annual Revenue-Sharing Charges

The following annual charges were published in *The Business Journal* of Milwaukee on August 31, 2001.

TRIBE	ACTUAL ANNUAL CHARGES	ESTIMATED PERCENT OF TOTAL REVENUE	ESTIMATED PERCENT OF SLOT REVENUE
Ho-Chunk	\$7,500,000	2.30%	2.60%
Potawatomi	\$6,300,000	4.80%	5.30%
Oneida	\$5,400,000	2.10%	2.30%
St. Croix	\$2,191,000	2.00%	2.20%
Menomonie	\$934,214	1.40%	1.50%
Lac Du Flambeau	\$738,900	1.20%	1.30%
Stockbridge-Munsee	\$650,000	0.70%	0.80%
Lac Courte Oreilles	\$420,000	0.90%	0.90%
Skogan	\$258,000	1.30%	1.40%
Bad River	\$230,000	1.00%	1.10%
Red Cliff	\$64,685	0.50%	0.60%

The average tribe paid \$1,542,924 to the state. Cumulatively, the revenue-sharing amounts equate to 2.2% of the estimated total gambling revenue and 2.4% of the estimated slot machine revenue. The percentages vary widely among the tribes.

There is no formula explaining the variations in the amounts received from each tribe. Lacking evidence to the contrary, we might conclude that there is no rational basis for the revenue-sharing arrangements. Certainly, the revenue-sharing arrangements do not meet the criterion of being rationally related to a level of state services provided. It is quite ironic that the compacts make a specific assertion that they need not be subject to the Wisconsin FOIA statutes because they are preempted by federal statute. The irony results because the United States Constitution — which governs federal laws — would offer cause to strike down the levies that have been imposed upon the tribal casinos by the compacts. They certainly represent a contentious interpretation of the "Equal Protection" clause of the 14th Amendment.

The state could assert that a state constitutional amendment passed in 1993 by voters after the first compacts were signed precludes Native American casinos, as the amendment very clearly bans casino gambling in Wisconsin. The state could "stonewall" a renegotiation process and hide behind the Supreme Court ruling in *Seminole v. Florida* that held that the Eleventh Amendment did not allow tribes to adversely sue the states in federal court (*Seminole v. Florida*, 517 U.S. 44 [1996]). However, this option may not be politically acceptable. There is a genuine belief that gaming is an appropriate way for tribes to experience economic development. Without knowing all the thinking that was involved in making the compacts, it might also be suggested that the compacts are part of a larger realm of state/tribal relationships that involve many other issues.

TAX AND FEE EVALUATION CRITERIA

Economist Adam Smith in his 1776 classic *The Wealth of Nations* posited that there were several "canons," or principles, by which taxes should be measured. This includes the adequacy of the tax: specifically, is the amount levied sufficient to generate enough money for the government services provided?

A second principle concerns equity. This principle is typically expressed as the question: “Is the tax or fee fair?” But there are many ways to measure fairness. For example, one measure of fairness is measured by the burden that a cost has on a particular group of individuals similarly situated: is it more “fair” to impose upon persons most able to pay the tax or fee, or is it more “fair” to place the burden (pain of payment) equally on all individuals?

Other principles to consider in selecting an appropriate tax or fee include the simplicity and clarity of the tax or fee, the ease and cost of collection, political acceptability, and the effect of the revenue generation method upon the economy. Another relevant principle concerns the receipt of services and their value as an exchange for the taxes or fees levied and collected. It is appropriate to ask that casino facilities share (or pay for) any additional burdens that their activities may place upon the broader society.

Wisconsin Budget Background

Native American citizens of Wisconsin benefit greatly from state activities. Like all states, Wisconsin’s budgetary process is subject to a variety of external forces and political realities. This section briefly reviews the current Wisconsin state budget in order to provide a contextual framework for tribal gaming activities. The state’s budget is driven by numerous forces to include federal legislation, liberal public policy traditions, and population growth. The State of Wisconsin population for January 1, 2001, was estimated at 5,400,449, an increase of .69% (37,000) from the April 1, 2000, United States Census.

In January 2001, the Wisconsin Legislative Fiscal Bureau estimated Fiscal Year (FY) 2001 revenues at \$10.185 billion with a structural deficit of \$557 million. The largest portion of the budget is devoted to the statewide costs of supporting K-12 education. School aid comprises 39.4% of the total general-purpose revenue (GPR) spending proposal for 2002. The second largest GPR budget component provides financial assistance to individuals. Almost 16% of the GPR budget is for state payments made directly to, or on behalf of, individuals, through such payments as medical assistance, W-2, student financial aid, and various state property tax credits. State agencies, excluding the University of Wisconsin System, are the third largest component of the GPR budget, consuming nearly 15% of the budget. Fourth is funding for the University of Wisconsin System, constituting nearly 9% of annual state funds. The proportions allocated to these activities have remained relatively stable over the last decade. The ten largest general fund programs are listed below:

TEN LARGEST GENERAL FUND PROGRAMS FOR 2001-2002

	Amount	Percent of Total
School Aid (K-12)	\$4,559,695,100	39.4%
Medical Assistance	\$1,106,695,900	9.6%
UW System	\$1,029,710,000	8.9%
Shared revenues	\$1,019,223,600	8.8%
Correctional Operations	\$ 716,285,000	6.2%
School Levy Tax Credit	\$ 469,305,000	4.1%
Community/Juvenile Correction	\$ 294,655,800	2.5%
Judicial & Legal Services	\$ 201,777,600	1.8%
Public Assistance	\$ 167,508,400	1.4%
Technical College System Aid	\$ 145,036,400	1.3%
Subtotal	\$9,709,892,800	84.0%
All Other Programs	\$1,850,660,100	16.0%
Total	\$11,560,552,900	100.0

General Purpose Revenue (GPR) estimates, based on the Governor's 2001-2002 budget, identified the following sources of general tax revenues:

GENERAL FUND TAXES		
Tax Source	2001-2002	Percent of Total 2001-2003 Budget
Individual Income	\$5,455,527,500	51.1%
Sales & Use	\$3,750,575,400	35.5%
Corporate/Franchise	\$ 594,197,100	5.5%
Public Utility	\$ 244,000,000	2.3%
Excise:		
Cigarette	\$ 300,400,000	2.8%
Liquor & Wine	\$ 35,900,000	0.3%
Tobacco Products	\$ 14,500,000	0.1%
Beer	\$ 9,500,000	0.1%
Estate	\$ 110,000,000	0.9%
Insurance Company	\$ 90,000,000	0.8%
Miscellaneous	\$ 56,000,000	0.5%
Total	\$10,661,200,000	100%

In addition to general-purpose revenues, the transportation fund is estimated to receive annual revenues of \$1,269,058,300 in FY2001-2002. The majority of these funds come from two sources: Motor Fuel Tax of \$848,308,500 and Motor Vehicle Registration Fees of \$388,758,900. Department of Transportation appropriations for FY2001-2002 are estimated at \$1,224,722,000. Transportation infrastructure is critical to the success of tribal gaming in Wisconsin.

Native American tribes and their customers benefit directly and indirectly from these state services. Some Wisconsin citizens may argue that Native Americans do not pay their fair share of the state's costs. The next sections will examine this assertion in more detail. First, we will look at the use of impact fees for services, and then we will seek to determine an equitable level of fees that might be charged to the tribes in exchanges for allowing them (and them alone) to operate gaming facilities.

Impact Fees for State and Local Government Services

Wisconsin, like many high-tax states, has been attempting to reduce the property and income tax burden on its citizens over the last decade. For example, in the 1993-1995 biennium, direct controls on school property taxes and substantial state aid increases reduced the net property tax burden. In the 1995-1997 Budget, the state assumed two-thirds of the costs of local schools. The result was a dramatic reduction in property taxes. The 1997-1999 Budget also provided further property tax relief and an income tax reduction of approximately 2.5%. The 1999-2001 Budget also enacted a two-stage substantial reduction in income taxes, amounting to nearly 11%, with special relief for middle-income wage earners.

Wisconsin has also attempted to lower the tax burden on state residents by controlling state costs as well as lowering the state tax rates. As a consequence, Wisconsin's state government currently has the fourth lowest number of state employees per 10,000 citizens. Also the recent tax reductions and limited state aid have put pressures on Wisconsin's local governments to better manage their resources. These pressures may cause local jurisdictions to re-evaluate the relationships between economic growth from gaming and attendant regional costs.

Common arrays of techniques have been used to address impacts of development on local and state governments. These techniques include measures such as user charges, revenue-sharing, special assessments, and negotiated exactions and/or impact fees. These options vary by jurisdiction.

It is important to differentiate between fees and taxes since, in theory, states cannot impose taxes on tribes. However, case law suggests that they may impose appropriate “fees.” A tax is a “revenue-generating” measure, while a fee is a more specific “regulatory” measure. Each tax and/or fee has a distinct set of characteristics in terms of revenue generation capacity, equity, and appropriateness as a revenue source.

In 1994, the Wisconsin legislature authorized the use of impact fees as a locally imposed “tax” on real estate development to help offset increased infrastructure costs needed to service the new development. The law, however, requires that impact fees bear a direct relationship to the specific new development; they cannot be used to fund non-related infrastructure construction or maintenance. The “fee” must meet a “rational nexus” test. In our recommendations at the end of this report we propose that the state charge the tribes an impact fee. The fee can meet the rational nexus and proportionality test so as not to be considered a tax. The fee is related to costs that similar business operations would impose upon the general community. Moreover, we offer the suggestion that the amount charged be assessed on the basis of per-player charges. In doing so, the state and tribes may again avoid notions that the state is imposing a tax on the tribes, as the charges will only be assessed against non-tribal members visiting the facilities.

Equity

The most common concern over taxes and fees is their equity or fairness. Fee and tax equity is the proper concern of both social and economic analysis and should be addressed as objectively as possible. There are many different ways of interpreting the “fairness” of a tax or fee, and so there are many different measures of equity.

To assure equity within the revenue-generation technique expected from the Wisconsin casinos, one should strive for a revenue formula of even application. Moreover, in determining the revenue-sharing amount expected we will also examine what the casinos would be paying if they were located in other jurisdictions — whether there were Native American casinos in those jurisdictions, and also if they were commercial facilities. We can also indicate the taxes the federal government would collect if the casinos were private commercial casinos.

The other Native American casinos are in Minnesota, Michigan, New Mexico, California, Connecticut, and New York.

Native American Casino States

a) **Minnesota** gaming Class III compacts do not provide for contributions of the tribal casinos to the state beyond direct regulatory costs. If the casinos of Wisconsin were in Minnesota, they would not be paying any revenue-sharing funds to the state.

b) In its 1992 compacts, **Michigan** established that each tribe would incur a charge of 10% of its slot machine revenues, of which 8% went to the state and 2% went to local governments. The 8% share was to be given in exchange for a state commitment not to permit any commercial slot machines activity. When, in 1999, commercial casinos were licensed for Detroit, the charge was discarded for those casinos that had engaged in the compacting process in 1992. The 2% contribution to local governments remained in effect.

However, there were four new tribes that negotiated compacts for Class III gambling operations after the state's voters had authorized casinos for Detroit in a November 1996 election. These compacts included the provision for the 8% state charge and the 2% local government charge, and did not contain a provision negating the state charge after Detroit casinos were licensed and operating. Hence the state has two levels of charges for casinos: 2% of slot revenues for the older casinos, and 10% of slot revenues for the newer casinos.

If similar charges were imposed upon the Wisconsin casinos, they would pay a total of \$103,753,800 (10%) or \$20,750,760 (2%) annually to government. Individual tribes would pay accordingly.

c) **Connecticut and New York**

The Mashantucket Tribe of Connecticut agreement firmly established the concept of revenue-sharing in Native American compacts. In the Mashantucket case, states share in a percentage of the casino revenues in exchange for a slot machine gambling monopoly. In the Mashantucket compact the tribe is obligated to give the State of Connecticut

TRIBE	WISCONSIN SHARE PAYMENT	TEN PERCENT	TWO PERCENT
Ho-Chunk	\$7,500,000	\$29,031,750	\$5,806,350
Potawatomi	\$6,300,000	\$11,937,500	\$2,387,500
Oneida	\$5,400,000	\$23,236,000	\$4,647,200
St. Croix	\$2,191,000	\$9,873,250	\$1,974,650
Menomonie	\$934,214	\$6,059,000	\$1,211,800
Lac Du Flambeau	\$738,900	\$5,657,500	\$1,131,500
Stockbridge-Munsee	\$650,000	\$8,299,800	\$1,659,960
Lac Courte Oreilles	\$420,000	\$4,599,000	\$919,800
Skogan	\$258,000	\$1,860,000	\$372,000
Bad River	\$230,000	\$2,050,000	\$410,000
Red Cliff	\$64,685	\$1,150,000	\$230,000
Total	\$24,686,799	\$103,753,800	\$20,750,760

25% of the revenue from the machines each year or, alternatively, \$100 million (whichever figure is larger). This agreement was made as an amendment to a Class III gambling compact and was not submitted to the Secretary of the Interior for approval.

Interestingly, when a second Native American tribe, the Mohegans, desired to have a casino and slot machines, the Mashantuckets allowed the modification of their agreement to read that the monopoly would exist for Native American casinos and that no commercial casino would be allowed to have machines or their payments would stop.

The Mohegans agreed to also give a payment of 25% of the slot revenues to the State. In 2001, an agreement was reached with the Seneca Tribe of New York State allowing the tribe to have casinos (along with other new tribal casinos) with Class III slot machines. Again, as long as no non-Native organization was permitted to have slot machines, the tribe (and the other tribes with new casinos) would pay 25% of the slot machine revenues to the State of New York. If the Wisconsin casinos made share payments as did Native American casinos in Connecticut and soon New York, the State would receive \$259,384,500 instead of \$24,686,799 annually.

TRIBE	WISCONSIN SHARE PAYMENT	TWENTY-FIVE PERCENT
Ho-Chunk	\$7,500,000	\$72,579,375
Potawatomi	\$6,300,000	\$29,843,750
Oneida	\$5,400,000	\$58,090,000
St. Croix	\$2,191,000	\$24,683,125
Menomonie	\$934,214	\$15,147,500
Lac Du Flambeau	\$738,900	\$14,143,750
Stockbridge-Munsee	\$650,000	\$20,749,500
Lac Courte Oreilles	\$420,000	\$11,497,500
Skogan	\$258,000	\$4,650,000
Bad River	\$230,000	\$5,125,000
Red Cliff	\$64,685	\$2,875,000
Total	\$24,686,799	\$259,384,500

d) New Mexico

The first compacts of New Mexico provided that 16% of the machine revenues would go to the state in revenue-sharing. However, after many protests by tribes suggested that they could not operate profitably with these charges, the figures were renegotiated and the legislature approved new compacts with an 8% revenue-sharing amount.

Under the previous New Mexico formula, the State of Wisconsin would have received shares equaling \$166,006,080 annually, while under the new 8% formula they would receive \$83,003,040.

e) California

In March 2000, the voters of California approved a constitutional ballot initiative that outlined provisions for a compact with the state's over 100 Native American tribes (mostly known as rancherias). The compact that is now in force provides for two specific revenue-sharing arrangements. One fund called for revenue-sharing based upon the number of machines in use by each tribe. The provisions of this fund were as follows:

First 350 Machines	\$ 0
Next 400 Machines	\$9,000 each
Next 500 Machines	\$1,900 each
Additional Machines	\$4,350 each

A second "Special Fund" assessed charges based upon revenues from the machines:

Revenue from first 200 machines . .	None
Revenue from next 500 machines . .	7% of revenues
Revenue from next 500 machines . .	10% of revenues
Remaining Machines	13% of revenues

An average Wisconsin casino of 889 machines would pay \$814,100 under the requirements of the "first fund." Under the second fund provisions the first 200 machines would generate no payment, the next 500 with revenues of \$73,000 each would generate (at 7%) \$2,555,000, while the remaining 189 with revenues of \$73,000 each would generate (at 10%) \$1,379,700 for an annual payment of \$3,934,700. The two funds together would result in payments to the State of \$4,748,800.

While the largest casinos would have made payments at the 13% level on higher revenue machines, their overall contributions would have skewed any average numbers up considerably. For instance, payments from the Ho Chunk would be \$35,632,820, the Oneida, \$31,932,700, the Potawatomi, \$13,743,000, and the St. Croix, \$15,261,260. By totaling the payments from each tribe on the basis of the California formulas, we would find the State receiving \$114,709,000 annually instead of the current share of \$24,686,799.

The Commercial Casino States

Commercial casino states have a variety of taxation levels. Each includes several regulatory fees, application costs, and supplemental fees which will not be considered here. The basic tax rates and charges in some cases are on a flat percentage basis, and in other cases on a progressive schedule. For this reason we will not make a tedious presentation of the tax charges for each Wisconsin casino if it were to be subject to the commercial casino rates. Rather in most cases we will look only at the overall charges to all the casinos of the State of Wisconsin as well as the charges for the average casino as described above.

a) Indiana

Indiana has authorized ten riverboat casinos. They pay a tax of 20% on all their gambling revenues, in addition to an admissions tax of \$3 for each customer. If such a rate of taxation were imposed upon the Wisconsin casinos, the State of Wisconsin would annually receive \$226,959,600 in revenue taxes, and an additional \$67,997,880 in admissions taxes (for a total of \$294,957,480) — again, instead of the actual \$24,686,799 the State receives in revenue-sharing.

The average casino, as described, would generate a revenue tax of \$14,220,400 and admission taxes of \$4,266,120 — instead of the current \$1,542,924 under the revenue-sharing agreements. For example, the Ho-Chunk casino would give the State \$83,014,150 annually if it were subject to the Indiana tax rates.

b) Missouri

The Missouri tax rate is similar to that in Iowa. There is a 20% gambling-win tax plus a \$2 per-admission fee. Again, the tribal casinos would pay a combined win tax of \$226,959,600 plus admission fees of \$45,331,920, for a combined tax burden of \$272,291,520 per year.

Our average casino would pay a revenue tax of \$14,220,400 and admission taxes of \$2,840,080 for a total tax burden of \$17,060,480.

c) Iowa

Iowa staggers its revenue taxation, with a 5% charge on the first one million dollars per year, 10% on the next two million dollars, and 20% on amounts over three million dollars. The average casino generating revenues of

\$71,102,000 per year would pay a tax of \$13,870,400 annually. As this average casino has a one-sixteenth share of the gaming volume in Wisconsin, we can suggest that, using the Iowa formula, all the casinos would be paying sixteen times that amount, or a total annual tax to Wisconsin of \$221,926,400.

d) Michigan

Michigan has many fees in addition to its basic 18% tax rate for gambling wins. If just that rate were applied to Wisconsin, the average casino would pay \$12,798,360 to the State, and collectively the casinos would give Wisconsin \$204,773,760 annually.

e) Illinois

In addition to a two-dollar admissions tax, Illinois has a staggered tax rate ranging from 15% for the first \$25 million earned, to 20%, 25%, 30%, and 35% applied to incremental amounts of \$25 million in revenues. This means that for all revenues over \$100 million the tax is 35%. Under this formula, the average casino earning just over \$71.1 million would pay \$14,025,500 in revenue taxes and \$2,840,080 in admission fees, for a total of \$16,865,580. Using this as a base figure representing one-sixteenth of the tribal tax obligation, the Wisconsin casinos would pay the state a total of \$269,849,280 annually. The smallest casino in the state (Red Cliff) would pay \$2,118,202, while the combined Ho-Chunk casinos would pay \$112,291,125 per year.

The Midwest riverboat jurisdictions have the highest gambling taxes for the commercial states as they have restricted competition in local areas quite similar to the situation with the Wisconsin Native American casinos. The more competitive states allow multiple casino facilities within the same community, indeed, within walking distance of one another. Their tax rates take this fact into consideration, and their bottom-line net revenues reflect this reality as well.

f) New Jersey

New Jersey has a basic 8% win tax plus another 1.25% win tax that goes into a local community development fund. Additionally, each machine is taxed \$500 annually. If these rates were applied statewide in Wisconsin, they would result in win taxes of \$105,021,630 and machine taxes of \$7,109,000 for a total tax burden of \$112,130,630 annually.

The average Wisconsin casino would pay \$6,576,938 in win taxes and \$444,500 in machine taxes, for an annual total of \$7,021,439.

g) Nevada

Nevada has a staggered win tax rate of 3% (first \$600,000), 4% (next \$1,008,000) and 6.25% for amounts over that. There are also machine and table fees and local fees of various amounts. For our purposes here, they average around \$1000 from each table and machine. The average casino in Wisconsin would pay win taxes of \$4,404,575, and game fees of \$906,000 for a total of \$5,310,575 under this arrangement. All Wisconsin casinos together would pay \$84,969,200 annually.

h) Mississippi

Like Iowa and Illinois, Mississippi has a staggered tax rate structure with tax rates of 4% on the first \$600,000 won each year, 6% on the next \$1,008,000, and 8% on amounts over \$1,608,000. An additional local tax equal to 10% of the tax is charged. Under this formula, the average Wisconsin casino would pay \$6,206,816 in taxes annually, with \$5,642,560 going to the State of Wisconsin and \$564,256 going to local governments.

The combined taxes for all Wisconsin casinos would be \$99,309,056, using the Mississippi tax structure.

Federal and State Taxes

If the casinos were commercial private business corporations, they would pay a federal income tax of 34% on their net profits (48% of total revenue equals net profits of \$544,703,040). If this tax were applied to the Wisconsin casinos, as it is on all the commercial casinos in the states above (in addition to their state taxes), the casinos of Wisconsin would pay an additional \$185,199,034 annually in federal taxes.

If there were an additional state income tax on business profits in place, such as the 7.9% tax in Wisconsin, the casinos would pay an additional annual tax to the state of \$43,031,540. (This does not assume offsetting deductions.)

Simplicity and Cost Efficiency

The standard of simplicity requires taxes and fee legislation be drafted in a manner to allow ratepayers to ascertain their collection and/or payment responsibilities simply by reviewing the provisions of the legislation or compact itself, without resorting to interpretative regulations. Simplicity is crucial to the effective implementation of any fee.

The standard of cost efficiency requires that the cost of administration borne by the State of Wisconsin and the costs of compliance borne by the tribe be as low as it can be, hence in our recommendations we suggest basing the fee simply on numbers of players.

The Costs of Externalities

All commercial activity presents costs to societies as well as benefits. In most situations, the costs arising from various business activities are diffuse and difficult to assign to specific enterprises or activities. For instance, a retail shopping center will generate automobile traffic that in turn contributes to air pollution. The sale of food products or certain beverages carry collateral health costs that are long-ranging and not precisely tied to particular sales at particular locations. Nonetheless, food contributes not only to basic sustenance of life but also to incidents of heart disease, diabetes, and cancers.

Excessive alcohol consumption can be related to a wide range of illnesses, as well as accidents that are costly for society, yet are difficult to directly correlate. On the other hand, sometimes costs can be assigned. A particular business, a large commercial establishment where none existed before, or an entertainment center that promotes alcoholic beverage sales may cause a need for extra traffic control, extra roads, and police personnel. Courts have assigned health costs to cigarette companies. There are also identifiable costs that can be tied to gambling activity, albeit exact causal connections are not always identifiable in precise specific ways.

In two previous Wisconsin Policy Research Institute reports, the question of special externalities of Native American gaming in Wisconsin has been raised. One report presented evidence that suggested there were major costs associated with pathological gambling behaviors related to the presence of casinos in Wisconsin, (Thompson, Gazel and Rickman. *The Social Costs of Gambling in Wisconsin*, July 1996). The other report found that, in counties with casinos or near casinos, certain crime occurred with higher incidence than similar crime in other counties, and that the criminal activity presented costs to society (Thompson, Gazel and Rickman. *Crime and Casinos: What's the Connection*, November 1996).

While this report is not presented to reaffirm or to restructure those analyses of social costs, that information can be useful in suggesting that there is a range of costs due to the presence of the casino enterprises that goes beyond the normal type of costs associated with other commercial enterprises. The point is that the existence of the Native American casinos definitely adds to the number of Wisconsin residents that are compulsive gamblers. The National Gambling Impact Study Commission concluded that the placement of a casino within fifty miles of a population results in a doubling of the incidence of pathological gambling in that population. The study also revealed a national incidence of pathological gambling of between 1.2% and 1.3% of the adult population. While their studies revealed a lower incidence rate than most other studies, the 1996 Wisconsin study revealed that serious problem gambling affected .9% of the adults of the state.

Another survey of problem gamblers in treatment groups (Gamblers Anonymous) discovered the social costs of each typical problem gambler. The average serious problem gambler imposed costs of \$9,469 upon Wisconsin society each year. The figures were calculated by determining the full burdens these people imposed upon others (outside their families) over their careers as gamblers, and then the number was divided by the average number of years (just over three) in a troubled gambling career. The survey methodology was utilized by the National Gambling Impact Study Commission, which used parameters established in the Wisconsin study. In actuality, their numbers were close to those found in Wisconsin, although the national study chose not to include thefts and bad debts as social costs. They did, however, add costs of pathological gamblers and problem gamblers, the latter group being about 2% of the adult population.

A South Carolina study found similar numbers. However, there a troubled gambling career was found to be almost eight years, so the annual cost to society was somewhat lower. As casino gambling has now existed in Wisconsin for a decade, we can expect that if we had a new survey, the length of the gambler's career would proba-

bly be longer. To be conservative and to not overstate the extent of the costs of this externality, we will here choose to use the lower South Carolina figures and apply them only to the .9% of the adult population considered "serious" problem gamblers.

The single serious-problem gambler often imposes costs upon other people because of unpaid debts, lost productivity from missed work, unemployment compensation, thefts, costs of arrests, costs of criminal trials, and civil trials for matters such as debt collection and bankruptcy, costs of jail, prison, probation and parole, divorce court, welfare of various types, and therapy. Many other costs, such as the costs of broken families and medical costs from suicide attempts, were not included as it was deemed that they were too difficult to document. That does not mean the costs do not exist. Of the categories indicated above, \$1562 of the costs are directly imposed upon the social and criminal justice systems of the state.

Of this very low estimate of social-governmental costs, we should assign 75% to the casinos, as they provide over 75% of the gambling revenue won from players in the state. Therefore, we must assume that the Native American casinos place an annual social cost burden of \$38,447,458 on Wisconsin government.

A separate study of crime rates over a three-year period, from the start of casino gambling until 1996, found that counties with casinos — or counties adjacent to two other counties with casinos — demonstrated higher levels of crime than other counties. While the overall crime rates in the state were declining, the declines elsewhere were greater than in these counties. Having a nearby casino made a difference. As a result, there were an additional 5277 major crimes statewide and an additional 17,100 arrests for other crimes. Using generalized national statistics for the judicial system costs of this criminal activity, we assessed a cost of \$2250 for major crimes (\$1000 for police and court costs, and \$1250, assuming that 5% of the crimes will be cleared and prison time assessed). We assessed a cost of \$1500 for each arrest, this number including police time, court time, and jail time. Accordingly, we find the state government incurred costs of \$33,246,250 because of this extra crime. This number does not include all of the costs that victims and their insurance companies actually incur. These criminal costs are not included in the figures for compulsive gamblers, but rather are in addition to those costs.

Again, as gambling is seen as a related factor, we should not assign all the costs to the casinos, but again only 75% of the costs, as the casinos produce only 75% of gambling revenues lost to Wisconsin gaming venues. This then represents an externality of \$24,934,687.

Therefore, we can suggest that the government of Wisconsin and its local communities must spend \$63,382,145 a year in additional social and criminal justice costs because of behaviors of its citizens that are associated with the presence of casinos in the state.

REVENUE-SHARING, TAXATION, AND NATIVE AMERICAN ACTIVITY: THE LAW

Before we turn to our recommendations, it is appropriate to revisit concepts we have alluded to throughout this report. We should explicitly consider the legal ramifications of a state government imposing fees, charges, taxes, or revenue-sharing obligations upon Native Americans. Whatever recommendations may be offered and whatever course of action the state and tribes may take in future negotiations, an environment of federal legal case history will surround any determination. The notion of taxing tribes and tribal activities has presented an array of problems to policy makers and to their judicial referees over the past century and longer. Questions are posed regarding just when taxation can take place, whether by the tribes or by civil governments, what the objects of the taxation may be, and what the means of taxation shall be. While the questions are several, nonetheless, there are some answers in the arena of taxation and Native American activities.

First, it should be pointed out that Native Americans do pay taxes in many ways. It is generally established that as individuals, Native Americans essentially pay all the federal taxes that other individual Americans pay. All Native Americans pay federal income taxes. Moreover, on non-reservation and non-Indian lands, Native Americans pay the same "non-discriminatory" state and local taxes as do other people. Non-Native people working on reservations pay taxes on income as if they are located off reservations.

Second, it is established that Native American tribes themselves are empowered with few restrictions to tax activities on their lands. The tribes may impose a sales tax on purchases made on the reservation, whether the one making purchases is a Native or non-Native (*Washington v. Colville* 447 U.S. 134 [1980]). Similarly, the Supreme Court held that a tribe could levy a severance tax on on-reservation oil leases granted to non-members of the tribe.

The Supreme Court reasoned that the non-reservation members who were engaged in business transactions on the reservation were availing themselves of tribal services paid for by the tribe (*Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 [1982]). The fact that tribal government organizations receive all the net revenues of Native American casinos also means that those casinos do, in fact, pay the highest level of taxation of any casino in the United States — a tax of 100% of net income. On the other hand, it is clear that tribes have no taxation authority over non-reservation lands. Nevertheless, whatever rules surround the taxation of activities on Native American lands may be limited, eliminated, or expanded with precise legislation from Congress.

The federal courts are somewhat divided regarding exactly when a state government can impose taxes on aspects of tribal activities occurring on a reservation. One general rule finds that states possess no power to tax on reservation commercial exchanges unless Congress grants that authority (*McClanahan v. Arizona State Tax Commission*, 411 U.S. 1164 [1973]). However, this doctrine, built upon the notion that Native Americans have sovereign authority over their lands, does have exceptions.

Under some circumstances, which tend to be judged on a case-by-case basis, the state can levy taxes without congressional authorization. The taxes have to be imposed upon commercial activities involving non-members of a tribe, and the state has to show that it has a legitimate material interest in the matter being taxed. In general the state has to show that it is offering services to the parties in the transaction, or the state has a concern for regulating behaviors involved in the transaction. The state is precluded from simply taxing in order to raise revenues. Also, federal policies of promoting the welfare of tribal members must not be contravened by the taxation. The state cannot unduly burden the tribe in its legitimate activities.

A Washington state case held that the state could impose its cigarette taxes on reservation sales of cigarettes to non-members of the tribe. The Supreme Court reasoned that the tribe had not made a material investment in the product being sold; hence they were only playing a middleman role in the sale. On-reservation cigarette sales absent other tribal investments were not protected from state taxes, as long as the state taxes were not imposed upon tribal members. Moreover, the Court did rule that the state could require the tribe to assist in the collection of the tax for the state (*Washington v. Colville*).

In one set of cases, the Court barred states from taxing mining leases on reservation lands held by non-members, as the tax was seen as a tax on the power of the tribe to make the lease, which was an activity helping the welfare of the tribe (*Gillespie v. Oklahoma*, 257 U.S. 501 [1922]; *Burnett v. Coronado Oil and Gas Company*, 285 U.S. 393 [1932]). Yet in the *Cotton* case, the Court ruled otherwise. The Court held that the state was extending some services to the private mining company, such as the use of roads and other off-reservation public facilities. The company then argued that the benefits they were receiving from the state were not nearly as valuable as the price they were being charged through the taxation. But the Court held that the tax is not a fee for service if it is not assessed on a cost-benefit theory and the state only had to show that some benefit was going to the mining company, and collaterally that the interests of the tribe were not being materially harmed by the tax (*Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 [1989]).

States were forbidden to tax non-member logging firms when the firms showed they were using only tribal roads in their operations. However, a tax could be imposed if they were using state roads, even if the roads passed through the reservation. The Supreme Court also banned state taxation on fuel sales to a Native American school, claiming that the tax interfered with a specific federal obligation to the tribes — education. However, a tribe could be taxed for fuel purchases made solely for the purpose of reselling the fuel to non-members. Moreover, the state could tax liquor sales that were made on-reservation for off-reservation consumption by non-members. Again, the Court pondered that the tribe had added no value to the product being sold, and that liquor taxes in this situation would not interfere with essential functions of tribal governments. They might so interfere if the goods being sold were manufactured on the reservation.

In one case, the Court did not allow a state to tax gross receipts of a construction firm that was building a school on reservation land, as education is a critical tribal function. But in another case the same receipts were taxable when the contractor was building a resort facility.

The proscriptions on taxation take ownership of property into consideration. Where a non-member of a tribe owns property in fee simple within the boundary of Indian lands (but not on trust lands), the property may be taxed by the state (and its local governments).

No summary can be exact regarding taxation of Native American lands and activities, as the law is subject to change with new cases and controversies. Nevertheless, there is a general point that may be offered: Absent federal

law, a tax on non-Indians engaged in commercial activities on a reservation may be imposed if the state is offering some level of service to the parties involved, and if the tax does not represent a substantial infringement upon the rights of the tribe and the legitimate functions of the tribal government.

The taxation situation surrounding Native American gambling is complicated. However, because there is a federal law, the Indian Gaming Regulatory Act of 1988, its words are governing. This complication arises, as the words of the law are not completely definitive, albeit they are expressed with rather certain terms.

The Indian Gaming Regulatory Act [(Section 11, (b) (2) (B)] specifies precisely where the tribes may spend the "net revenues" from any tribal gaming. These may "not be used for purposes other than

- (i) to fund tribal government operations or programs;
- (ii) to provide for the general welfare of the Indian tribe and its members;
- (iii) to promote tribal economic development;
- (iv) to donate to charitable organizations; or
- (v) to help fund operations of local government agencies; . . ."

Although "net revenues" cannot be given to state governments, Section 11(d) (3) (C) (iii), allows state compacts to assess regulatory fees "in such amounts as are necessary to defray the costs of regulating such activity."

Nevertheless, Section 11, subsection (d) (4) relates these words:

Except for any assessments that may be agreed to under paragraph (3) (C) (iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivision authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon other person or entity authorized by an Indian tribe to engage in a Class III [casino] activity.

The text of Section 11(d) (4) suggests that the state is limited in levying charges against the casino. However, while that appears to be the intent of the law, case law suggests that appropriate fees may be negotiated with tribes to cover state expenses incurred from tribal gaming activities. Moreover, the Secretary of Interior is statutorily required to oversee compact negotiations. Specifically, the IGRA [Section 11 (d) (8) (B)] states that the "Secretary may disapprove a compact . . . if such compact violates: any provision of this Act, . . . or any other provision of Federal law. . . ." It goes on to indicate that the compact takes effect in forty-five days if it is unsigned or not rejected by the Secretary. The Secretary may sign the compact, or he/she may disapprove it, or he/she may simply let it take effect without a signature. This latter case occurred in New Mexico when Secretary Babbitt indicated that he thought the 16% tax violated the law, but he did not disapprove the compact nor did he sign it.

Wisconsin has some choices. The state and the tribes can attempt to meet the spirit of the law and design a revenue package consistent with the law, or they can persist in political game playing.

RECOMMENDATIONS

We believe that the revenue-sharing amount assessed against Native American casinos in Wisconsin should conservatively range between \$80 million and \$90 million per year. This amount would equate to the lowest amounts charged to casinos (including Native American casinos) in other jurisdictions.

We recommend that the fee be allocated among tribes on a per-player basis. A fee of \$4 per player would produce a revenue-sharing amount of \$90,663,840. The state would ask the tribes to assess this \$4 charge against the players. Tribal members who were playing would not be expected to pay the charge. In assessing the revenue-sharing charge in this manner, the state would avoid legal controversies cited previously. The collection arrangement would be very consistent with the Supreme Court edicts in the *Colville* case. The notion of door charges would have collateral advantages as well. These advantages would be found in monitoring players for better casino security as well as for implementing programs to exclude players such as those with pathological gambling problems. The recommendations provide a politically acceptable arrangement for equitable revenue-sharing between the State of Wisconsin and the tribal casinos.

TRIBE	PLAYERS	SLOT REVENUE	TABLE REVENUE	TOTAL REVENUE	CURRENT FEES	25% OF SLOT REVENUE	16% OF SLOT REVENUE	10% OF SLOT REVENUE	8% OF SLOT REVENUE
Ho-Chunk	6,339,550	\$290,317,500	\$29,660,000	\$319,977,500	\$7,500,000	\$72,579,375	\$46,450,800	\$29,031,750	\$23,225,400
Potawatomi	2,625,900	\$119,375,000	\$11,920,000	\$131,295,000	\$6,300,000	\$29,843,750	\$19,100,000	\$11,937,500	\$9,550,000
Oneida	5,047,200	\$232,360,000	\$20,000,000	\$252,360,000	\$5,400,000	\$58,090,000	\$37,177,600	\$23,236,000	\$18,588,800
St. Croix	2,224,250	\$98,732,500	\$12,480,000	\$111,212,500	\$2,191,000	\$24,683,125	\$15,797,200	\$9,873,250	\$7,898,600
Menomonie	1,229,400	\$60,590,000	\$4,380,000	\$64,970,000	\$934,214	\$15,147,500	\$9,694,400	\$6,059,000	\$4,847,200
Lac Du Flambeau	1,219,100	\$56,575,000	\$4,380,000	\$60,955,000	\$738,900	\$14,143,750	\$9,052,000	\$5,657,500	\$4,526,000
Stockbridge-Munsee Mohican (Bowler)	1,903,960	\$82,998,000	\$7,200,000	\$90,198,000	\$650,000	\$20,749,500	\$13,279,680	\$8,299,800	\$6,639,840
Lac Courte Oreilles	978,200	\$45,990,000	\$2,920,000	\$48,910,000	\$420,000	\$11,497,500	\$7,358,400	\$4,599,000	\$3,679,200
Skogan	410,400	\$18,600,000	\$1,920,000	\$20,520,000	\$258,000	\$4,650,000	\$2,976,000	\$1,860,000	\$1,488,000
Bad River	438,800	\$20,500,000	\$1,440,000	\$21,940,000	\$230,000	\$5,125,000	\$3,280,000	\$2,050,000	\$1,640,000
Red Cliff	249,200	\$11,500,000	\$960,000	\$12,460,000	\$64,685	\$2,875,000	\$1,840,000	\$1,150,000	\$920,000
Total	22,665,960	\$1,037,538,000	\$97,260,000	\$1,134,798,000	\$24,686,799	\$259,384,500	\$166,006,080	\$103,753,800	\$83,003,040

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ABOUT THE INSTITUTE

The **Wisconsin Policy Research Institute** is a not-for-profit institute established to study public-policy issues affecting the state of Wisconsin.

Under the new federalism, government policy increasingly is made at the state and local levels. These public-policy decisions affect the life of every citizen in the state. Our goal is to provide nonpartisan research on key issues affecting Wisconsinites, so that their elected representatives can make informed decisions to improve the quality of life and future of the state.

Our major priority is to increase the accountability of Wisconsin's government. State and local governments must be responsive to the citizenry, both in terms of the programs they devise and the tax money they spend. Accountability should apply in every area to which the state devotes the public's funds.

The Institute's agenda encompasses the following issues: education, welfare and social services, criminal justice, taxes and spending, and economic development.

We believe that the views of the citizens of Wisconsin should guide the decisions of government officials. To help accomplish this, we also conduct regular public-opinion polls that are designed to inform public officials about how the citizenry views major statewide issues. These polls are disseminated through the media and are made available to the general public and the legislative and executive branches of state government. It is essential that elected officials remember that all of the programs they create and all of the money they spend comes from the citizens of Wisconsin and is made available through their taxes. Public policy should reflect the real needs and concerns of all of the citizens of the state and not those of specific special-interest groups.