

MINUTES

JOINT COMMITTEE ON STATE-TRIBAL RELATIONS

February 9, 2011
Room 144-S—Statehouse

Members Present

Senator Pete Brungardt, Chairperson
Representative Forrest Knox, Vice-chairperson
Senator David Haley
Senator Kelly Kultala
Senator Dennis Pyle
Senator John Vratil
Representative Tom Burroughs
Representative Ponka-We Victors
Caleb Stegall, Chief Counsel, Office of the Governor
Steve Phillips, Office of the Attorney General

Members Absent

Representative Phil Hermanson
Representative Lance Kinzer

Tribes Represented

Russell Bradley, Kickapoo Tribe
Twen Barton, Sac and Fox Nation of Missouri in Kansas and Nebraska
Steve Ortiz, Prairie Band Potawatomi Tribe

Staff Present

Dennis Hodgins, Kansas Legislative Research Department
Julian Efird, Kansas Legislative Research Department
Jason Long, Office of the Revisor of Statutes
Connie Burns, Committee Assistant

Conferees

Billy Friend, Second Chief, Wyandotte Nation
Jamie Nickoley, Enforcement and Compliance, Kansas Racing and Gaming Commission

Others Attending

See attached list.

The meeting was called to order by Chairperson Pete Brungardt. The Chairperson stated this is the second meeting convened to consider a compact with the Wyandotte Nation that was negotiated under Governor Parkinson and to hear testimony from the Wyandotte Nation.

Billy Friend, Second Chief on behalf of the Wyandotte Nation, appeared before the Committee in regard to the proposed Class III Gaming compact (Attachment 1). Mr. Friend provided a brief history of the Wyandotte Nation and the compact negotiations with Kansas. The Wyandotte Nation originally requested negotiations of a tribal-state compact with the State of Kansas on October 6, 1992, for gaming to be conducted upon lands in Park City, Kansas. The Wyandotte Nation had "Indian lands" in the state for purposes of Indian Gaming Regulatory Act (IGRA). Then-Attorney General Robert Stephan, on October 16, 1992, advised the Nation that the state had no legal obligation to negotiate with the Nation "until the U.S. Secretary of the Interior takes land in Kansas into trust for gaming purposes."

On June 21, 1996, when it became apparent that the U.S. Secretary of the Interior intended to take the Shriner's Property into trust for gaming purposes, the Nation again made a formal request for compact negotiations. The state did not respond and commenced litigation challenging the Secretary's decision. On July 15, 1996, the Secretary accepted title to the Shriner's Property in trust for the benefit of the Nation for gaming purposes. On July 31, 1996, the Nation renewed its request to enter into formal compact negotiations with the state. The litigation concerning the status of the Shriner's Property extended for more than 11 years. On July 18, 2007, following a ruling by the federal court in Kansas, it was determined that gaming could be conducted on the Shriner's Property. The Nation made a formal request to then-Governor Kathleen Sebelius to enter into compact negotiations with the Nation. The Nation met with Governor Sebelius' representatives on two occasions, but were told the state would not consider a compact with the Nation until all litigation had been completed.

On September 1, 2010, the Nation received a letter from the Attorney General's Office for the State of Kansas informing the Nation that the state would not be appealing to the U.S. Supreme Court the last decision that concluded all litigation between the Nation and the state. On September 3, 2010, the Nation submitted a letter to Governor Mark Parkinson requesting that the state fulfill its obligations to negotiate a compact with the Wyandotte Nation. From this last request, the proposed compact now before the Committee was signed by the Nation and Governor Parkinson.

He said two facts should be made clear about the proposed compact:

- The Wyandotte Nation made every effort to submit the exact same compact that the State of Kansas had approved with the four other Indian Tribes in the state; and
- The Wyandotte Nation consistently took the position in all the letter requests for compact negotiations that the 180-day period for commencing compact negotiations, provided for under 25 U.S.C. § 2710(d)(7)(B)(i), had expired years before (after the first request was made), and that neither the letter request nor the compact attached

to the letter request was intended nor should be construed as an original request for compact negotiations under 25 U.S.C. § 2710(d)(3)(A).

During the Committee meeting on January 26, 2011, several conferees testified with concerns on wording in the compact. The first concern was that the proposed agreement states in multiple locations that the Wyandotte Nation has a "permanent reservation" in Kansas. Those presenting testimony speculated the word "reservation" probably was used because the Wyandotte Nation copied the existing compacts, which was correct. Since 1992, the Wyandotte Nation has proposed a compact that was identical in all respects to the other state-approved compacts.

While the Wyandotte Nation may not agree with the conclusions reached by those presenting testimony on the issue, the Wyandotte Nation would entertain a request to amend this language by inserting "Indian Lands" (as that term is defined in 25 U.S.C. § 2703(4) of the Indian Gaming Regulatory Act) in the place of "reservation."

The second issue was the interpretation of Section 25, which would cause the other four Indian Tribes in Kansas to pay a prorated share of the Wyandotte Nation's start-up costs. The Wyandotte Nation would entertain a request to amend the language in Section 25 to address this issue. Further, the Wyandotte Nation would entertain a request to amend this Section to provide that the other four Kansas Tribes would not be obligated to pay any of the Wyandotte Nation's start-up costs or any regulatory costs of the Wyandotte Nation in association with the operation of its Kansas City casino and, if it is the desire of all involved that the Wyandotte Nation not share regulatory costs with the other four Indian Tribes, the Wyandotte Nation is amenable to such amendments to the compact.

Other proposals were presented to the Committee, including:

- The Wyandotte Nation should use a state bank as its depository;
- The Wyandotte Nation should be required to revenue share with the state;
- The Wyandotte Nation compact should have a term of ten years; and
- The Wyandotte Nation should be required to give up its right to engage in gaming in Park City, Kansas.

The Wyandotte Nation stated that none of these suggestions are proper issues for this compact negotiation.

The Committee asked if the official stand of the Wyandotte Nation was to refuse to negotiate the previous four items. Mr. Friend stated this was the Wyandotte Nation's position and it would refuse to negotiate those items.

Butch Ellison, member, Wyandotte County Unified Government Board of Commissioners, provided written testimony regarding the proposed compact between the State of Kansas and the Wyandotte Nation (Attachment 2). He stated that the Wyandotte Nation has a long and proud history of positively impacting both the State of Kansas and Wyandotte County, Kansas. The Wyandotte Nation continues to assist the community in employing over 200 people who are both taxpayers and wage earners in downtown Kansas City, Kansas. Without its assistance, Kansas City would not be renovating its downtown and improving its community.

Jamie Nickoley, Director of Enforcement and Compliance, provided requested information on the State Gaming Agency's assessment process for its oversight costs (Attachment 3). The process is set forth in the four existing tribal compacts, with the percentages of assessment modified by the 2003 arbitration.

- The Compacts Require Annual Tribal Assessments—Section 25: State Assessment for Costs of Oversight:
 - Imposition of Assessment for State Regulatory Expenditures. The state shall annually make an assessment sufficient to compensate the state for the reasonable and necessary costs of regulating Class III gaming pursuant to this compact;
 - Procedure for Assessments. On or before August 1st, annually, the state shall render to the Tribe a verified, detailed statement of expenses with supporting documentation of the total cost of regulation for the preceding fiscal year ending June 30, together with proposed assessments for the forthcoming fiscal year based on the preceding fiscal year's cost;
 - Procedure for Appeal of Assessments;
 - Adjustment of Excess Assessments; and
 - Adjustment for Termination of Regulatory Oversight.
- Tribal Assessments Now Include a Formula for Background Expenses—The only modification to the assessment process in the 1995 compacts has been to the percentages assessed each tribe. The original procedure was to assess each of the Tribes annually for their quarter share of the State Gaming Agency's budget. A 2003 arbitration, initiated by the Iowa Tribe of Kansas and Nebraska, altered the formula for allocating costs incurred for background investigations specific to each tribe. The number and type of background investigations and the accompanying expenses can vary greatly from tribe to tribe and year to year. The arbitration formula results in an adjustment to the first of each tribe's assessed payments; the remaining two assessments are equal in amounts and the same for each tribe; and
- Effect on Assessment Process If There Is a New Wyandotte Compact—If a compact with the Wyandotte Nation is entered into before the next annual assessment, carryover monies from a previous year would need to be credited only to the four tribes. All references to one-fourth would need to be amended to one-fifth, if the compact was approved.

The Committee asked where in the Kansas Statutes was the percentage split listed for the four Tribes' assessments. It was stated that it is listed only in each compact.

Patrick Martin, Assistant Attorney General for the Racing and Gaming Commission, addressed the Committee on the legal requirement on the arbitration award; he said all the Tribes comply with the terms.

The Chairperson reviewed the difference between the proposed compact and the existing four compacts and opened the meeting for discussion.

- The use of the term "reservation";
- Start up costs and on-going cost of regulations;

- Revenue sharing;
- State bank for depository; and
- Park City, Kansas.

Senator Vratil revised several scribe errors in the compact:

- Page 40, section 32, Section A line 3, the word "refuse" should be "refused";
- Page 41, Section 33, line 3, replace "wherein" with "herein"; and
- Page 42, section 38 line 2, add the word "in" after gaming.

Mr. Phillips, Office of the Attorney General, agreed with these changes and the changes were adopted without objections.

Representative Burroughs moved to reject the compact. Senator Vratil seconded the motion. The motion carried.

The Chairperson called for discussion on the specifications and recommendations to the Governor for renegotiation of the compact.

The duration clause of the compact indicated the compact would continue on into perpetuity.

Senator Vratil moved that the recommendation to the Governor to renegotiate the compact include a duration clause to limit the duration terms of the compact without specificity. Representative Knox seconded the motion. The motion carried.

The Committee discussed the amendment of a time line tied to the compact. The Committee agreed that duration be attached to the time line without specificity.

The Committee wanted to include in the recommendations the term "reservation," regulatory costs, revenue sharing, and Park City, Kansas. Chairperson Brungardt stated that the Committee would look at the items separately.

Representative Knox made a motion to encourage the Governor to renegotiate the compact in a manner which clearly indicates the Wyandotte Nation does not have a "reservation" in the State of Kansas, and nothing in the compact should reflect that. Representative Burroughs seconded the motion. The motion carried.

Representative Knox made a motion to encourage the Governor to review the subject of apportionment and regulatory expenses in the course of renegotiating the compact. Senator Vratil seconded the motion. The motion carried.

Representative Knox made a motion to encourage the Governor to renegotiate the compact and to review the concept of revenue sharing with the Wyandotte Nation. Senator Vratil seconded the motion. The motion carried.

Representative Knox made a motion the Governor should negotiate a provision in the compact whereby, to the extent that is legally possible, the Wyandotte Nation would agree that at no time in the future would it request the negotiation of a compact involving lands other than

the Shriner property in the State of Kansas. Senator Vratil seconded the motion. The motion carried.

Discussion on the motion indicated that this was an item of concern with the Committee several years ago when one of the Tribes wanted to move its casino to the Kansas City area. Twen Barton, Sac and Fox Nation, clarified the point that the Tribe had agreed to dissolve the current location and had agreed to revenue-sharing for going off reservation with the new location.

The Committee did not take action on the depository issue.

Senator Vratil moved for the Governor, in the renegotiation the compact, to clarify starting on page 4 sections (D) Tort Remedies for Patrons. Representative Knox seconded the motion. The motion carried.

Senator Vratil moved for the Governor, in the renegotiation of the compact, to add details on the arbitration process, page 36, Section 31 Dispute Resolution (B). Representative Knox seconded the motion. The motion carried.

Chairperson Brungardt expressed his gratitude for the Tribes, staffs, and the Committee members' time and testimony.

The meeting was adjourned at 8:38 a.m.

Prepared by Connie Burns
Edited by Dennis Hodgins

Approved by Committee on:

June 1, 2011

(Date)

GUEST LIST

DATE _____

[illegible]

Testimony of Second Chief Billy Friend on behalf of the Wyandotte Nation regarding the proposed Class III Gaming Compact with the State of Kansas

To the Joint State-Tribal Relations Committee:

On behalf of the Wyandotte Nation, I want to thank you for the opportunity granted the Nation to appear before this Committee and offer the following testimony:

History of Wyandotte Compact Negotiations with Kansas

As the members of this Committee may or may not know, the Wyandotte Nation (the "Nation") originally requested the State to enter Compact negotiations for gaming to be conducted upon lands in Park City, Kansas, on October 6, 1992. Even though the Nation had "Indian lands" in the State for purposes of IGRA, then Attorney General Robert Stephans, on October 16, 1992, advised the Nation that the State had no legal obligation to negotiate with the Nation "until the Secretary takes land in Kansas into trust for gaming purposes."

On June 21, 1996, when it became apparent that the Secretary intended to take the Shriner's Property into trust for gaming purposes, the Nation again made a formal request for Compact negotiations. The State did not respond to this request, and instead chose to commence litigation challenging the Secretary's decision. On July 15, 1996, the Secretary accepted title to the Shriner's Property into trust for the benefit of the Nation for gaming purposes. As a consequence, the Nation, on July 31, 1996, again renewed its request that the State enter into formal Compact negotiations.

As most of you are aware, the litigation concerning the status of the Shriner's Property extended for more than eleven years. On July 18, 2007, following a ruling by the Federal Court in Kansas that gaming could be conducted on the Shriner's Property, the Nation again made a formal request to then Governor Kathleen Sebelius to enter into Compact negotiations with the Nation. The Nation met with Governor Sebelius' representatives on two occasions but were essentially told the State would not consider a compact with the Nation until all litigation had been completed.

On September 1, 2010, the Nation received a letter from the Attorney General's Office for the State of Kansas informing the Nation that the State would not be appealing to the United States Supreme Court the last decision that concluded all litigation between the Nation and the State. On September 3, 2010, the Nation submitted a letter to the Governor Mark Parkinson requesting that the State fulfill its obligations to negotiate a Compact with the Wyandotte Nation. It is from this last request that the Compact now before this Committee was signed by the Nation and Governor Parkinson.

Two facts should be made clear about the background set for in this Introduction section. First, the Wyandotte Nation did make every effort to submit the exact same compact as the State of Kansas had approved with the four other Indian Tribes in the state. Second, the Wyandotte Nation consistently took the position in all the letter requests for compact negotiations that the 180 day period for commencing Compact negotiations, provided for under 25 U.S.C. §

2710(d)(7)(B)(i) had expired years before (after the first request was made) and that neither the letter request nor the Compact attached to the letter request was intended nor should be construed as an original request for compact negotiations under 25 U.S.C. 2710(d)(3)(A).

Use of term "Reservation" in Compact

During this Committee's January 26th meeting, many of those testifying stated that the word "Reservation" was not a proper term to be present in the Wyandotte Compact. Several of those presenting testimony speculated the word "Reservation" probably was used because the Wyandotte copied the existing compacts. As set forth in the history above, this assessment is correct. Since 1992, the Wyandotte have proposed a compact that was a true in all respects to the other state approved compacts.

While the Wyandotte may not agree with the conclusions reached by those presenting testimony on the issue, the Wyandotte would entertain a request to amend this language by inserting "Indian Lands" (as that term is defined in 25 U.S.C. § 2703(4) of the Indian Gaming Regulatory Act) in the place of "Reservation". As one of the presenters stated in his testimony: "The language fix is easy to resolve. . ."

Wyandotte Interprets Section 25 to Mean Nation Would Pay Own Start-up Costs

Several of the presenters at the January 26th Committee meeting testified that, "while it is somewhat difficult to interpret", the language in Section 25 could cause the other four Indian tribes in Kansas to pay a pro-rata share of the Wyandotte's start-up costs. The Wyandotte would entertain a request to amend the language in Section 25 to address this issue. Further, the Wyandotte would entertain a request to amend this Section to provide that the other four Kansas tribes would not be obligated to pay any of the Wyandotte's start-up costs and/or any regulatory costs of the Wyandotte in association with the operation of its Kansas City casino. If it is the desire of all involved that the Wyandotte not share regulatory costs with the other four Indian tribes, the Wyandotte are amenable to such amendments to the compact.

* * * * *

Other proposals were presented to the Committee last week, including (1) the Wyandotte should use a state bank as its depository; (2) the Wyandotte should be required to revenue share with the state; (3) the Wyandotte compact should have a term of 10 years; and (4) the Wyandotte should be required to give up its right to engage in gaming in Park City. None of these suggestions are proper issues for this Compact negotiation.

Again, on behalf of the Wyandotte Nation, I want to thank this Committee for allowing the Nation to present this testimony.



Board of Commissioners

BENOYD M. "Butch" ELLISON
Commissioner, District 8

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Chairman Pete Brungardt
Tribal Affairs Committee
Topeka, Kansas

February 8, 2011

Members of the Committee,

As a member of the Wyandotte County Unified Government Board of Commissioners, it is my pleasure to submit testimony regarding the proposed compact between the State of Kansas and the Wyandotte Nation.

The Wyandotte Nation has a long and proud history of positively impacting both the State of Kansas and Wyandotte County, Kansas. Just weeks ago we celebrated the 150th anniversary of the establishment of Kansas as a Free State in the Union. The Wyandotte Nation played a proud role in the free state Constitution Convention which was later ratified by the United States Senate. As an educator in Public Schools it was always a proud moment to teach our students about the establishment of Kansas as a Free State. Our State owes a debt of gratitude and respect to the Wyandotte Indians who assisted both slaves escaping to the freedoms of the new Territory and free State settlers who came to the new territory to assist in the fight for freedom.

The Wyandotte Nation continues today to assist our community in employing over 200 people who are both taxpayers and wage earners in downtown Kansas City, Kansas. Without their assistance we would not be renovating our downtown and improving our community.

I hope your committee can deliberate fairly and work with the Wyandotte Nation to complete the compact process which will continue the proud traditions and cooperation of the Wyandotte Nation in Wyandotte County, Kansas.

Sincerely,

Benoyd "Butch" Ellison

State Tribal Relations
Attachment 2
2-09-11



KANSAS

KANSAS STATE GAMING AGENCY
RICHARD L. BALDWIN, ACTING EXECUTIVE DIRECTOR

SAM BROWNBACK, GOVERNOR

MEMORANDUM

FROM: Jamie Nickoley, Director of Enforcement & Compliance
TO: Dennis Hodgins, Principal Analyst/Legislative Research
DATE: 01/28/2011
RE: Information for Joint Committee on State-Tribal Relations--
State Gaming Agency budget and assessment process

At its January 26th meeting, the Joint Committee on State-Tribal Relations requested information on the State Gaming Agency's assessment process for its oversight costs. That process is set-forth in the four existing tribal compacts, with the percentages of assessment modified by a 2003 arbitration.

1. The Compacts Require Annual Tribal Assessments

Each compact establishes this assessment process:

Section 25: State Assessment for Costs of Oversight.

(A) Imposition of Assessment for State Regulatory Expenditures. The State shall annually make an assessment sufficient to compensate the State for the reasonable and necessary costs of regulating Class III gaming pursuant to this Compact. [---]

(B) Procedure for Assessments. On or before August 1st, annually, the State shall render to the Tribe a verified, detailed statement of expenses with supporting documentation of the total cost of regulation for the preceding fiscal year ending June 30, together with proposed assessments for the forthcoming fiscal year based on the preceding fiscal year's cost. [---]

On September 1st annually, the State, after receiving any objections to the proposed assessments and making such changes or adjustments as may be indicated, shall assess the Tribe for the costs of regulation. The Tribe shall thereafter make a payment representing one-third of the assessment within a 20-day period, and shall make payments thereafter on January 1st and April 1st annually.

(C) Procedure for Appeal of Assessments. If the State or the Tribe is aggrieved because of any assessment levied pursuant to this Compact, it may, within 31 days from the time provided for the payment of such assessment, elect to resolve the matter pursuant to Section 31 [Dispute Resolution.]

(D) Adjustment of Excess Assessments. In the event the arbitrators find that the total assessment paid by the Tribe during any fiscal year of the State is less than or exceeds the reasonable and necessary costs of regulating gaming operations pursuant to this Compact during such fiscal year, then the State shall adjust the assessment for the succeeding fiscal year in the amount necessary to offset such shortage or excess assessment. If the State or the Tribe are aggrieved because of any failure by the State to make such an adjustment, or the Tribe's failure to pay the adjusted amount any claim for such adjustment shall be presented in the appeal of the assessment as provided in Section 31.

(E) Adjustment for Termination of Regulatory Oversight. If the State ends regulatory oversight during the course of a fiscal year in accordance with the terms of this Compact, then there shall be a pro rata adjustment to the assessment made by the State in accordance with Subsections 25(A) and 25(D).

2. Tribal Assessments Now Include a Formula for Background Expenses

The only modification to the assessment process in the 1995 compacts has been to the percentages assessed each tribe. As above, the original procedure was to assess each tribe annually for its quarter share of the State Gaming Agency's budget (to be paid in three equal installments). A 2003 arbitration initiated by the Iowa Tribe of Kansas and Nebraska, however, altered that formula.

The arbitration decision held that the State Gaming Agency should base its fixed cost assessment to each of the four tribes equally, but should incorporate a formula for allocating costs incurred for background investigations specific to each tribe. The number and type of background investigations and the accompanying expenses can vary greatly from tribe to tribe and year to year. The State Gaming Agency has followed that arbitration formula since 2003 without objection from the tribes.

As a practical matter, the arbitration formula results in an adjustment to the first of each tribe's assessed payments. Otherwise, the remaining two assessments are equal in amount and the same for each tribe. We are attaching a sample budget assessment worksheet to show an example of the calculations.¹

¹ The agency budget is currently just under two million dollars with a historic 10% - 20% carryover each year. This is due in part to holding some unfilled positions, and is necessary since the process for seeking funding happens at the beginning of each year, with no process for seeking or altering assessments later.

Kansas State Gaming Agency							
Assessment Example Worksheet							
Prior Year Backgrounds Completed							
	Category I		Category II		Renewals/ Addenda/ Upgrade		Bkgd
	@ \$2,000		@ \$600		@ \$350	Total	Total
Potawatomi	10	\$20,000.00	50	\$30,000.00	230	\$80,500.00	\$130,500.00 290
Sac & Fox	2	\$4,000.00	45	\$27,000.00	30	\$10,500.00	\$41,500.00 77
Kickapoo	5	\$10,000.00	35	\$21,000.00	30	\$10,500.00	\$41,500.00 70
Iowa	2	\$4,000.00	10	\$6,000.00	70	\$24,500.00	\$34,500.00 82
All Tribe Total	19	\$38,000.00	140	\$84,000.00	360	\$126,000.00	\$248,000.00 519
	Potawatomi		Sac & Fox		Kickapoo		Iowa
Each Tribe Total		\$130,500.00		\$41,500.00		\$41,500.00	\$34,500.00
All Tribe Total / 4		-\$62,000.00		-\$62,000.00		-\$62,000.00	-\$62,000.00
Bkgd Adjustment		\$68,500.00		-\$20,500.00		-\$20,500.00	-\$27,500.00
FY Budget:	\$1,800,000.00 / 4 tribes =		\$450,000.00	Assessment per tribe before credits and adjustments			
Prior FY Credits:	\$300,000.00 / 4 tribes =		\$75,000.00	Credit per tribe			
	Potawatomi		Sac & Fox		Kickapoo		Iowa
FY Budget		\$450,000.00		\$450,000.00		\$450,000.00	\$450,000.00
Prior FY Credits		-\$75,000.00		-\$75,000.00		-\$75,000.00	-\$75,000.00
		\$375,000.00		\$375,000.00		\$375,000.00	\$375,000.00
Bkgd Adjustment		\$68,500.00		-\$20,500.00		-\$20,500.00	-\$27,500.00
Assessment		\$443,500.00		\$354,500.00		\$347,500.00	\$1,500,000.00
Assessment Owed	Potawatomi		Sac & Fox		Kickapoo		Iowa
9/21/20XX		\$193,500.00		\$104,500.00		\$97,500.00	(Background Adjustment applied to 1st assmt)
1/1/20XX		\$125,000.00		\$125,000.00		\$125,000.00	\$125,000.00
4/1/20XX		\$125,000.00		\$125,000.00		\$125,000.00	\$125,000.00
Total		\$443,500.00		\$354,500.00		\$347,500.00	
Total Assessment		\$1,500,000.00					
Prior FY Credits		\$300,000.00					
FY Budget		\$1,800,000.00					

3. Effect on Assessment Process if a New Wyandotte Compact

If the state enters a new compact with the Wyandotte before the next annual assessment, carryover monies from a previous year would need to be credited *only* to the four tribes. And, depending on the timing of implementation, there may be no background investigations conducted the prior year for the new tribe, which would result in no adjustment to its first assessment.

Thereafter, all references to ¼ would need to be amended to 1/5, if the proposed compact were approved as suggested.

The proposed Wyandotte compact would allow for negotiating deposit money to cover any increased costs to the agency should the compact be approved and operations commence before the start of the fiscal year.