

Tribe, state face challenge in casino talks

By **Mark Arsenault** | GLOBE STAFF NOVEMBER 19, 2012

Governor Deval Patrick's administration and the Mashpee Wampanoag tribe are in "active conversations" over a new agreement on a tribal casino to replace an earlier deal rejected by the federal government for being unfavorable to the tribe.

But negotiators have a difficult needle to thread: They must craft an agreement more generous to the Mashpee that still can win support from the state Legislature, which must approve the deal, known as a compact. The Mashpee want to develop a tribal casino in Taunton.

As the terms of the compact are adjusted to the tribe's favor, the financial benefits to the state probably will shrink.

"If the compact is renegotiated downward, I think that would be problematic for my colleagues to accept," said state Representative Robert Koczera, a New Bedford Democrat. "They might not be willing to do that."

The US Department of the Interior, which is charged with protecting the interest of tribes, rejected Patrick's first deal with the Mashpee in October.

That agreement, signed in July, required the tribe to pay the state 21.5 percent of all gambling revenue in exchange for the semiexclusive right to run a casino in Southeastern Massachusetts, and other considerations. Commercial casino development in that region is on hold to give the tribe time to make progress.

States cannot tax tribal casinos, but tribes are permitted to trade revenue for something of tangible value, normally an exclusive zone to run a gambling business without commercial competition.

The proposed 21.5 percent rate immediately raised eyebrows when it was announced.

The figure is very high compared with other recent tribal compacts around the country. Also, the exclusivity offered by the state was not guaranteed, and the Mashpee would have been required to pay 15 percent of revenue if the state breached the exclusivity and allowed a resort casino in the Southeast. In many other states, tribes pay zero if the state allows commercial competition.

The tribe's original deal also provided no protection from competition from a slot parlor with up to 1,250 machines. The tribe still would have been required to pay 21.5 percent in revenue if a slot parlor was licensed in the Southeast.

In emphatically rejecting the deal, the Department of the Interior said the "revenue sharing provisions in this compact go beyond those permitted by the department." The federal government also questioned the value of the limited exclusivity offered the tribe, and said some language in the compact encroached on tribal sovereignty.

To win federal approval of a compact, the 21.5 percent rate probably will have to come down, perhaps by a lot.

A compact that proposes a significantly lower tribal payment will increase pressure for the state to open the Southeast to bidding from commercial casino developers, said Clyde Barrow, a casino specialist at the University of Massachusetts Dartmouth. The casino legislation passed last year allowed for three casinos in the state, one in the Greater Boston region, one in Western Massachusetts, and one — set aside for tribal gaming — in the Southeast. The state gambling commission has begun the process of reviewing possible developers in the other two regions.

"Legislators from the Southeast are going to start arguing this is a bad deal," said Barrow.

Almost immediately after the compact was rejected, the Mashpee formally asked Patrick to begin a new round of negotiations.

"We have maintained an open line of communication with Governor Patrick and his team throughout this process, and the last few weeks have been no different," Cedric Cromwell, chairman of the Mashpee Wampanoag, said in a statement. "The fact remains that reaching a renegotiated compact is in the best interest of both the tribe and the Commonwealth, and we are confident that a new agreement that takes into account guidance from the Department of Interior . . . can be reached in the very near future."

Patrick's administration confirmed the ongoing talks.

"We are in active conversations with the tribe and [the Department of the Interior], and remain focused on reaching an agreement that's fair to the Commonwealth and the tribe," said Jason Lefferts, spokesman for the Executive Office of Housing and Economic Development.

State Representative Keiko M. Orrall, a Lakeville Republican, said that after the failure of the first compact lawmakers could be skeptical that continuing to pursue a tribal casino is the right course for the Southeast.

"It may be difficult to come back to the same people and sell the same idea again," she said.

Koczera, the New Bedford representative, said the state should set a deadline for the tribe to win approval to have its land taken into trust by the federal government, an essential step before the Mashpee can build a tribal casino. It is an open question whether the federal government has the legal authority to take the land into trust. The US Congress or a federal court may have to settle the matter.

"This is an issue with the potential to hold the region hostage to a process that could take years," said Koczera. "The region is losing out to other parts of the state."

The tribe's supporters argue that a signed compact — even with a reduced revenue payment — would be good for the state in the long run. That is because federally recognized tribes have legal rights to host gambling as a means of self-support and economic development. If the tribe solves its land issues, even years in the future, it could open a casino in the Southeast even if the state has already licensed a commercial gambling resort in that region.

"The biggest concern for the Commonwealth in not reaching an agreement is it opens the possibility we'll have four resort casinos, not three," said state Senator Stanley Rosenberg, an Amherst Democrat and one of the architects of the 2011 state law that legalized casino gambling. Four casinos, he said, would be too many for the Massachusetts market and would undercut the industry.

"Three is the magic number," he said.

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