

Mashpee tribe, Governor Patrick reach new casino deal

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By Mark Arsenault, Globe Staff

The Mashpee Wampanoag would pay the state 17 percent of gambling revenue from a Taunton tribal casino under a new agreement between the tribe and Governor Deval Patrick, a reduction from the state's demand of 21.5 percent of tribal revenue in 2012, which the federal government rejected as too much.

The new agreement, which was approved by the Mashpee tribal council late Tuesday, comes at a critical moment for the tribe, as the state gambling commission on Thursday begins debate on ending – or extending – a controversial ban on commercial casinos in Southeastern Massachusetts, a gambling market the Mashpee hope to capture from Taunton.

If the commission opens the region to commercial bidders, the Mashpee could continue to pursue a tribal casino, through a federal process mostly outside of state control. But the tribe would lose its exclusive hold on the market, and a commercial casino in the region could force the Mashpee to compete for gambling customers.

While the agreement is one ingredient needed for tribal gambling, the tribe still faces legal obstacles to opening a gambling business, including its effort to put its Taunton land into federal trust.

Under the Mashpee's new deal with the governor, known as a compact, the tribe would pay nothing to the state if a commercial resort casino opens in the southeast. It would pay 15 percent of revenue if the gambling commission licensed a commercial slot parlor in southeastern Massachusetts, a realistic possibility with at least one pending slot applicant in Raynham.

The state's financial take from the Mashpee, while lower than what was proposed in 2012, is still steep compared to many recent compacts signed by other tribes around the country.

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State lawmakers in 2011 created the ban on commercial casinos in the southeast to give the tribe first shot at casino development in the region. Those who want to end the ban say the Mashpee face a long and uncertain road to a tribal casino, regardless of the new compact, and that the southeast may miss out on jobs and economic development. The gambling commission must seek bids for a commercial casino in the region if it concludes the tribe will be unable to overcome legal hurdles to hosting a tribal gambling business.

“I don’t think we can wait any longer to make a decision,” said state Rep. Robert Koczera, a New Bedford Democrat who favors setting a date for opening the southeast to commercial casino developers.

While a signed compact does not enable the Mashpee to open a gambling business, the high-profile deal could carry enough political weight to buy the Mashpee more time to show progress toward federal approvals.

“I think the commission may be looking for a reason to kick the can down the road again,” said Clyde Barrow, a casino expert at the University of Massachusetts-Dartmouth. He suggested the commission could wait to see if the state legislature or the federal government’s Bureau of Indian Affairs rejects the Mashpee’s compact, which would make a decision to open the region to commercial bidders much easier.

The federal government last October rejected the governor’s 2012 pact with the Mashpee, saying the tribe was paying too much and getting too little.

States cannot tax sovereign tribal nations, though tribes are permitted to trade casino revenue for concessions from the state, normally an exclusive zone with no commercial casino competition

Patrick’s administration is confident the new compact will pass the federal review. The governor’s legal advisors shared details of the proposal with the Bureau of Indian Affairs, which provided technical assistance during negotiations. Federal officials did not flag the revenue sharing payments as fatal to the compact.

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The new compact bumps up the Mashpee's payment to 21 percent if there is no commercial casino competition anywhere in Massachusetts — extremely unlikely with bidding wars underway for casino resort licenses in Greater Boston and Western Massachusetts.

But a 17 percent payment is still much higher than what the Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians, for instance, agreed to pay the state of Michigan in 2007. That tribe pays 8 percent of its first \$150 million in revenue, and up to 12 percent on higher profits, in exchange for the exclusive right to run a casino in a zone of 8,000 square miles with about 1.9 million residents, a more substantial territory than the Mashpee's zone, which covers about 1,800 square miles and about 1.3 million residents.

On Thursday, the gambling commission will convene in Fall River to hear from the clashing special interests with a stake in casino development in the southeast. Mashpee Wampanoag Chairman Cedric Cromwell is expected to address the commission, as is Taunton Mayor Tom Hoye, local lawmakers and representatives from citizens groups.

Private casino developers, such as KG Urban, which has proposed a New Bedford gambling resort, want the region opened to commercial bidding so they can compete for a casino license. KG has pursued a federal lawsuit to overturn the ban on commercial developers in the southeast.

The commission's decision is complicated by the fact that the Mashpee, a federally recognized tribe, have the right to pursue a casino under federal law, the Indian Gaming Regulatory Act, regardless of what happens elsewhere in Massachusetts. Hundred of casinos have been built in the US under the act, including Foxwoods in Connecticut.

But Indian casinos can only be built on sovereign tribal land, and the Mashpee have no land that qualifies. They have asked the US Department of Interior to take the land in Taunton, where the casino is planned, into federal trust, which would make the land eligible to host gambling.

Whether the department has the authority to take the land into trust is an open question, due to a 2009 Supreme Court decision. Other federal court cases that could clarify the issue may be years away from a decision.

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“There is a growing dissatisfaction in the legislature, especially the southeastern delegation, that the region is falling behind based on a proposition that may never come to pass,” said Barrow.

The heavy downside of licensing a commercial casino in the southeast is that if the Mashpee overcome their obstacles to getting land, they could open a second casino in the region and possibly glut the market.

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