

Competing Timelines Sway Mass. Tribe Casino Bid

Written by Administrator
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BOSTON — The Mashpee Wampanoag have 12 millennia of history behind them, but whether their history to come includes a Massachusetts-licensed casino depends now on what a state commission believes will happen in the tribe's near future.

Lawmakers gave the tribe exclusive rights to southeastern Massachusetts' only casino license, but the Massachusetts Gaming Commission is considering opening the region to other bidders.

The Wampanoag's would-be competitors say the tribe faces so many legal and bureaucratic obstacles that it won't open a casino for a decade, if ever. But the tribe says it's making historic progress and plans to open its \$500 million casino in Taunton in 2015.

The commission is left to decide which timeline will be most accurate. Commission Chairman Steve Crosby fretted over the task after he heard from both sides at a March 21 commission meeting.

Crosby offered that lawmakers clearly want to give the tribe a chance to make things work but don't want to give them forever. "And they are leaving it up to us to determine what forever is," he said.

"They would want us to understand how long this is going to take and make a decision based on that," he said. "And I don't know how we ever figure that out."

He has said he hopes the commission will vote by mid-April.

The state's 2011 casino law created a casino license for each of three geographic regions and gave exclusivity to the Wampanoag in the southeast. But the commission can open the area to other bidders if it determines the tribe's plans won't work.

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Tribal chairman Cedric Cromwell has indicated that if bidding is opened, the tribe will stop pursuing a state license – eliminating any chance of state revenues from the project – and seek gambling rights exclusively through the federal government.

Before it can build anything, the Wampanoag need the federal Bureau of Indian Affairs to take the proposed 146-acre casino site in Taunton into trust for the tribe.

Opponents of extending the tribe's exclusivity say a 2009 U.S. Supreme Court decision prevents the Wampanoag from getting that land because it limits the land-taking to tribes that were federally recognized before the Indian Reorganization Act of 1934. The tribe, which was recognized in 2007, argues it can proceed by showing it was under federal jurisdiction as of 1934.

If the government awards the Wampanoag the land-in-trust, it will prompt immediate lawsuits that could last years, said Marsha Sajer, an attorney for KG Urban Enterprises, which wants to build a casino in New Bedford.

Washington state's Cowlitz tribe, which also wasn't federally recognized before 1934, has pursued land-in-trust under the same theory as the Wampanoag. And while the government did award the land in 2010, litigation has left the case unresolved a decade after it started, Sajer said.

She added that the land-in-trust process on its own is purposely long and deliberative, since casinos have such significant regional effects. As examples, she pointed to eight tribes from California to Michigan that have recently pursued land-in-trust to operate gambling facilities. Some cases stretch back a decade, and none has been resolved, she said.

History simply provides no basis for the Wampanoag's confidence about quick approvals and construction, Sajer said.

"I think it's optimism; I don't think it's reality, because they have not been able to distinguish why their situation would be any different from any other," she said.

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New Bedford state Rep. Robert Koczera said forgoing years of jobs and revenue waiting for a Wampanoag casino that won't happen would be a travesty in the struggling region. Unemployment in its largest cities, New Bedford and Fall River, exceeds 14 percent.

"We border on being an economic Appalachia," Koczera said.

For its part, the Wampanoag question whether the commission even has the authority to open up the bidding ahead of the government's land-in-trust decision.

The Wampanoag also dispute that the land-in-trust process will take years. In a letter from their lawyer, Howard Cooper, delivered to Crosby on Thursday, the tribe listed procedural markers it has already cleared, laid out a timeline for the others and noted that federal officials have vowed a speedy review.

The tribe said it expects a favorable land-in-trust decision by early 2014, when it will immediately move forward with the project. The only way to slow it down, Cooper said, will be if opponents seek a preliminary injunction to stop development. But he predicts that will fail.

"The soundness of the trust application of the Mashpee will overcome any request for a preliminary injunction," Cooper wrote.

State Sen. Marc Pacheco of Taunton said it's too early for the commission to open up the region, especially with the tribe making progress. Just Tuesday, he noted, the tribe reached agreement with Taunton officials about the specifics of their partnership. This, while the two other regions don't yet know where their casinos will be located because they have competing bidders.

Pacheco said he is not sure how long is too long to extend the tribe's exclusive rights, but that time hasn't come.

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“They have been ahead of the game,” he said.

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