



New Mexico, Tribes Near Agreement On Compacts

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New Mexico Governor Susana Martinez has reached tentative agreement with four of five American Indian tribes that have state casino regulatory compacts expiring this summer, according to Martinez's deputy chief of staff.

Negotiators for the Navajo Nation, Mescalero and Jicarilla Apache tribes and Acoma Pueblo have all agreed in principle to compact extensions to 2037 that call for graduated revenue sharing of up to 10.75 percent of net income, tribal and state sources said.

The agreements, yet to be approved by Mescalero and Acoma governing councils, are expected to be presented to the state legislature for ratification when it convenes later this month.

Jemez and Zuni pueblos may also reach agreement on similar compacts, enabling them to join 14 New Mexico tribes now operating casinos in the state.

"Although several council approvals are still pending, we are hopeful that we will be able to submit a compact to the legislature that includes at least those four tribes," Jessica Hernandez, Martinez's general counsel and negotiator, told GamblingCompliance, referring to Navajo, Mescalero, Acoma and Jicarilla.

"I am optimistic that one or both Jemez and Zuni will agree to the negotiated terms as well."

State law will allow nine other tribes with compacts that also expire in 2037 to sign onto the pending agreements, which include improved economic provisions largely dealing with the use of free play and comps in determining net revenues.

"I believe that there will be one compact that several tribes will sign," Navajo attorney Stephen Hart said.

Hernandez and Hart said they were confident the boilerplate compacts would get necessary approvals from both the legislature and the U.S. Department of Interior.

"We have spent significant time with Interior," Hart said. "We've asked them to identify any issues and we've corrected any potential issues."

Meanwhile, Pojoaque Pueblo, whose compact also expires June 30, is caught up in litigation as it seeks a regulator agreement through federal procedures that would free the tribe from paying a share of its revenues to the state.

The Interior Department announced last month it would join Pojoaque in appealing an Albuquerque federal judge's ruling that the pueblo's argument that Martinez engaged in "bad faith" negotiations did not abrogate the state's constitutional immunity against lawsuits.

Both Pojoaque and Interior Secretary Sally Jewell filed notices of appeal taking the case to the 10th Circuit Court of Appeals.

"It continues to be an illegal tax," Pojoaque attorney Scott Crowell said of revenue sharing provisions in New Mexico compacts.

"It is not legally defensible," he said, citing anti-tax provisions in the Indian Gaming Regulatory Act and related federal court judgments.

"It's incredibly disappointing that tribes have to make this calculated decision of acquiescing to illegal terms or facing uncertain litigation."

The New Mexico compacts limit most tribes to two casinos.

But Navajo, with casinos near Gallup and Farmington, would be allowed to "grandfather" in a third, Class II bingo operation near Ship Rock and launch a fourth casino at an undisclosed location after six years.

The Ship Rock facility currently is not taxed or subject to state regulatory oversight.

The Navajo Nation is contemplating a fourth casino on its To-Hajiilee Chapter near Albuquerque. But the regional and state-wide casino market is suffering from saturation and stagnant revenues that would make a major investment and debt load problematic for the tribe.

Twenty-four licensed casinos operated by 14 indigenous governments last year generated net revenues of \$758m, according to the New Mexico Gaming Control Board.

But casino revenue for the first six months of 2014 fell 4.8 percent compared with the previous year, according to state figures. The revenue drop in the Albuquerque area was 6.3 percent.

The crowded gambling market and intense competition initially caused tribes to balk at compact revenue sharing provisions and resulted in state concessions in the method of calculating free play and comps to encourage action in the casinos.

"The agreement we reached ... maintains important aspects of past gaming compacts in New Mexico, which is essential for ensuring stability, predictability and a level playing field for gaming tribes," Hernandez said.

"However, the new agreement also demonstrates how willing the state has been to consider and accept new compact terms that are important priorities for the tribes."

"We think those are good provisions in the compact," Hart said. "We think it's workable from a business perspective."

Hernandez said the state has reached out to Pojoaque in an effort to address the pueblo's struggles with a major debt load in development of its Buffalo Thunder resort near Santa Fe.

The pueblo last month announced a massive debt restructuring that eliminates a third of the \$240m originally borrowed to build the resort.

Pojoaque Governor George Rivera said the state's revenue sharing demands do not allow tribes to compete.

"The problem is not so much the market, but the fact the tribes are not growing with the industry," Rivera said. "If tribes don't have the revenue to reinvest, modernize and update their facilities, they're obviously going to have problems.

"If you overtax an industry you run it into the ground. There has to be the opportunity to reinvest, improve and modernize, especially in a market like this."

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