

**BACKGROUND INFORMATION  
REGARDING  
COMMERCIAL GAMING IN CONNECTICUT**

**FEBRUARY 23, 2017  
PUBLIC SAFETY AND SECURITY COMMITTEE  
INFORMATIONAL HEARING**

## Overview

Senate Bill No. 1090, Special Act No. 15-7, An Act Concerning Gaming In June 2015, permits an entity owned only by the Mashantucket Pequot Tribe and the Mohegan Tribe of Indians of Connecticut (Joint Tribal Entity) to solicit proposals from municipalities seeking to host a commercial casino facility. This facility would be the first commercial casino to be authorized in the state of Connecticut. As such, it the State will have to establish a new regulatory structure (similar to Massachusetts) as any commercial casino would otherwise be unregulated. The federal Indian Gaming Regulatory Act's regulatory oversight of the existing Connecticut tribal gaming operations does not extend to commercial casinos.

The Special Act appears to abrogate entirely to the Joint Tribal Entity the State's right to choose the type, location and operator of a new commercial casino and does not permit any other entities to compete for the new commercial casino license.

## Economic Impact Study

Oxford Economics prepared an independent assessment of the market potential and economic impacts of expanded casino gaming in Connecticut under the following scenarios:

- **Baseline Scenario with MA and NY:** Casino gaming in Connecticut remains limited to tribal casinos at Foxwoods Resort Casino and Mohegan Sun (Existing CT Casinos). Expansion of gaming occurs in Massachusetts and New York.
- **Scenario 1 – North Central CT:** A new commercial casino opens north of Hartford, proximate to Interstate 91. It is assumed to be operated by the Joint Tribal Entity.
- **Scenario 2 – Southwest CT:** A new commercial casino opens either between Greenwich and Bridgeport, proximate to Interstate 95 or proximate to the I-684/I-84 corridor up to Danbury.

As part of Oxford Economics' analysis of fiscal (tax) impacts, they estimated gaming revenue contributions to Connecticut within the context of existing tribal gaming compacts.<sup>1</sup> Their conclusions included the following:

**"When considered on a net impact basis, and in the context of the existing tribal compacts, the addition of a single casino in North Central Connecticut offers relatively limited fiscal benefits for Connecticut.** We estimate the net fiscal impact of a Proposed North Central CT Casino at \$16 million of incremental gaming revenue contributions to Connecticut, plus \$17 million of additional state and local taxes."

**"The addition of a single casino in Southwest Connecticut offers more than two and a half times the net benefits to Connecticut of adding a casino in North Central Connecticut.** This holds true in terms of total jobs (approximately 5,800 jobs with Southwest, compared to 2,100 with North Central, 2.8 times), labor income (\$318 million compared to \$113 million, 2.8 times), economic output, also referred to as business sales (\$845 million compared to \$300 million, 2.8 times), gaming revenue contributions to Connecticut (\$70 million compared to \$16 million, 3.2 times), and state and local taxes excluding gaming revenue contributions (\$42 million compared to \$17 million, 2.4 times)."

The table below highlights the net impacts of both scenarios relative to the Baseline 2019 scenario.

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<sup>1</sup> Any new casino developed as a result of the Special Act would have commercial status and would not be governed by a tribal compact. However, because no tax or revenue sharing contribution is stipulated in the Special Act, for the purpose of the analysis, Oxford assumed that the slot revenue at a casino operated by the Joint Tribal Entity would be split equally between the two tribes and incorporated into each tribe's aggregate slot revenue for the purpose of the gaming revenue contribution to the State.

# POLICY BRIEFING: IMPACT OF NEW COMMERCIAL GAMING ON STATE OF CONNECTICUT

## Net impact of expanded gaming

Monetary amounts in millions of 2014 dollars

	North Central CT Casino	Southwest CT casino	Ratio of scenario impacts: Southwest / North Central
<b>Gaming Summary</b>			
Gaming Revenue	\$160	\$462	2.9
Direct Casino Jobs	1,114	3,077	2.8
Gaming Revenue Contribution to CT	\$16	\$70	4.3
<b>Economic Impact Analysis</b>			
<b>Total Economic Output</b>	<b>\$300</b>	<b>\$845</b>	<b>2.8</b>
Direct Expenditures	191	538	2.8
Indirect and Induced Expenditures	109	307	2.8
<b>Total Labor Income</b>	<b>\$113</b>	<b>\$318</b>	<b>2.8</b>
Direct Labor Income	65	173	2.6
Indirect Labor Income	48	145	3.0
<b>Total Jobs</b>	<b>2,081</b>	<b>5,735</b>	<b>2.8</b>
Direct Jobs	1,340	3,520	2.6
Indirect Jobs	741	2,215	3.0
<b>Total Fiscal (Tax) Impacts</b>	<b>\$59</b>	<b>\$187</b>	<b>3.2</b>
Gaming Revenue Contribution to CT	16	70	4.3
State and Local Taxes	17	42	2.4
Federal Taxes	26	75	2.9
<b>New Investment</b>	<b>\$553</b>	<b>\$1,084</b>	<b>2.0</b>

Source: Strategic Market Advisors; Oxford Economics

The Appendix includes impact summaries for each scenario.

# POLICY BRIEFING: IMPACT OF NEW COMMERCIAL GAMING ON STATE OF CONNECTICUT

## Appendix

### Impact summary: Scenario 1 – Proposed North Central CT Casino

Monetary amounts in millions of 2014 dollars

	Baseline with MA-NY	Existing plus North Central	Net
<b>Gaming Summary</b>			
Gaming Revenue	\$966	\$1,125	\$160
Direct Casino Jobs	9,266	10,380	1,114
Gaming Revenue Contribution to CT	\$173	\$189	\$16
<b>Economic Impact Analysis</b>			
<b>Total Economic Output</b>	<b>\$2,036</b>	<b>\$2,336</b>	<b>\$300</b>
Direct Expenditures	1,116	1,307	191
Indirect and Induced Expenditures	920	1,029	109
<b>Total Labor Income</b>	<b>\$803</b>	<b>\$917</b>	<b>\$113</b>
Direct Labor Income	384	450	65
Indirect Labor Income	419	467	48
<b>Total Jobs</b>	<b>15,699</b>	<b>17,779</b>	<b>2,081</b>
Direct Jobs	9,266	10,606	1,340
Indirect Jobs	6,433	7,174	741
<b>Total Fiscal (Tax) Impacts</b>	<b>\$403</b>	<b>\$462</b>	<b>\$59</b>
Gaming Revenue Contribution to CT	173	189	16
State and Local Taxes	56	73	17
Federal Taxes	174	200	26
<b>New Investment</b>	<b>\$0</b>	<b>\$553</b>	<b>\$553</b>

Source: Strategic Market Advisors; Oxford Economics

### Impact summary: Scenario 2 – Proposed Southwest CT Casino

Monetary amounts in millions of 2014 dollars

	Baseline with MA-NY	Existing CT Casinos plus SW CT	Net
<b>Gaming Summary</b>			
Gaming Revenue	\$966	\$1,428	\$462
Direct Casino Jobs	9,266	12,343	3,077
Gaming Revenue Contribution to CT	\$173	\$243	\$70
<b>Economic Impact Analysis</b>			
<b>Total Economic Output</b>	<b>\$2,036</b>	<b>\$2,880</b>	<b>\$845</b>
Direct Expenditures	1,116	1,654	538
Indirect and Induced Expenditures	920	1,227	307
<b>Total Labor Income</b>	<b>\$803</b>	<b>\$1,121</b>	<b>\$318</b>
Direct Labor Income	384	557	173
Indirect Labor Income	419	564	145
<b>Total Jobs</b>	<b>15,699</b>	<b>21,433</b>	<b>5,735</b>
Direct Jobs	9,266	12,786	3,520
Indirect Jobs	6,433	8,647	2,215
<b>Total Fiscal (Tax) Impacts</b>	<b>\$403</b>	<b>\$590</b>	<b>\$187</b>
Gaming Revenue Contribution to CT	173	243	70
State and Local Taxes	56	98	42
Federal Taxes	174	249	75
<b>New Investment</b>	<b>\$0</b>	<b>\$1,084</b>	<b>\$1,084</b>

Source: Strategic Market Advisors; Oxford Economics



GEORGE C. JEPSEN  
ATTORNEY GENERAL

55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120

Office of The Attorney General  
**State of Connecticut**

April 15, 2015

The Honorable Martin M. Looney  
Senate President Pro Tempore  
Legislative Office Building  
Room 3300  
Hartford, CT 06106

The Honorable Bob Duff  
Senate Majority Leader  
Legislative Office Building  
Room 3300  
Hartford, CT 06106

The Honorable Brendan J. Sharkey  
Speaker of the House of Representatives  
Legislative Office Building  
Room 4110  
Hartford, CT 06106

The Honorable Joe Aresimowicz  
House Majority Leader  
Legislative Office Building  
Room 4110  
Hartford, CT 06106

The Honorable Leonard A. Fasano  
Senate Minority Leader  
Legislative Office Building  
Room 3400  
Hartford, CT 06106

The Honorable Themis Klarides  
House Minority Leader  
Legislative Office Building  
Room 4200  
Hartford, CT 06106

Dear Legislator Leadership:

This letter addresses various legal issues raised by the possible enactment of legislation that would change state law to authorize the Mashantucket Pequot Tribe and the Mohegan Tribe (collectively, the "Tribes") to operate jointly casino gaming facilities outside their respective reservations. Specifically, we address two separate legal issues: (1) implications of the proposed legislation for the existing gaming compacts with the Tribes; and (2) the effects such legislation could have if additional tribes achieve federal tribal acknowledgment. Both of these issues pose significant uncertainties and potentially serious ramifications for the existing gaming relationships between the State and the Tribes.

The purpose of this letter is not to diminish the concerns prompting this legislation. I am sympathetic to the desire to promote economic development, assist the State in competing with gaming enterprises in neighboring states, and protect the economic well-being of our existing federally recognized tribes with whom Connecticut has a special and mutually beneficial relationship. Rather, this letter is offered to identify legal uncertainties to assist your careful

consideration of the risks associated with the proposed legislation, and offer possible ways to mitigate those risks.

As we understand it, the proposed legislation would include the following principal elements: The law would authorize the licensing of one or more casino gaming facilities to be operated by some form of joint venture of the Tribes. The facilities would not be located on reservation lands and would not involve the federal government taking any lands into trust for the Tribes. The gaming facilities and operations would be subject to state law and regulation. An agreement would be entered into between the State and the Tribes addressing certain issues relating to licensing and operation of the gaming facilities, including a specified percentage of gross operating revenues to the state and the municipality in which the facilities are to be located. *See Raised Bill No. 1090.*<sup>1</sup>

### Existing Gaming Agreements

The proposed legislation must be viewed against the backdrop of the existing agreements between the State and the Tribes. In 1991, under the provisions of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701 *et seq.*, the Secretary of the Interior approved the Final Mashantucket Pequot Gaming Procedures (Mashantucket Procedures), governing the operation of casino gaming on the Mashantucket reservation.<sup>2</sup> In 1994, the State and the Mohegan Tribe entered into a Gaming Compact (Mohegan Compact), similarly governing the operation of casino gaming on the Mohegan reservation. Both the Mashantucket Procedures and the Mohegan Compact contain provisions imposing a moratorium on video facsimile games – commonly referred to as video slot machines – absent certain conditions. Specifically, § 15(a) of the Mashantucket Procedures provides:

Notwithstanding the provisions of section 3(a)(ix), the Tribe shall have no authority under this Compact to conduct Class III video facsimile games as defined pursuant to section 3(a)(ix) unless and until either: (a) it is determined by agreement between the Tribe and the State, or by a court of competent jurisdiction, that by virtue of the existing laws and regulations of the State the

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<sup>1</sup> If enacted, the proposed legislation may face third-party court challenges, the outcomes of which are difficult to forecast. For example, a third party could claim that granting the exclusive right to conduct gaming to the Tribes, particularly where that gaming will be conducted off reservation land, violates the Equal Protection Clause of the U.S. Constitution. *See KG Urban Enterprises, LLC v. Patrick*, 693 F.3d 1, 18-20 (1st Cir. 2012) (raising serious doubts under the equal protection clause about Massachusetts law granting preference in awarding gaming license to Indian tribe). Similarly, a third party could seek to have the proposed legislation declared unconstitutional as a violation of the Commerce Clause, alleging that, by granting the right to conduct gaming exclusively to the Tribes for the purpose of protecting in-state economic interests from interstate commerce, the State would be unconstitutionally discriminating against interstate commerce. *See United Haulers Ass'n v. Oneida-Herkheimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007). We are unable to predict with any certainty how a court would resolve such issues. In light of the uncertainties discussed below, it would be prudent to include a nonseverability provision in the proposed legislation that voids the law if a court determines that all or any part of it is unconstitutional, invalid or otherwise unenforceable.

<sup>2</sup> The Mashantucket Procedures are not technically a gaming compact, but rather procedures approved by the Secretary of the Interior following a mediation process pursuant to IGRA. *See* 25 U.S.C. § 2710(d)(7)(B)(vii). The distinction is not material for purpose of this discussion.

operation of video facsimiles of games of chance would not be unlawful on the grounds that the Tribe is not located in a State that permits such gaming for any purpose by any person, organization, or entity within the meaning of 25 U.S.C. § 2710(d)(1)(B) (it being understood and agreed that there is a present controversy between the Tribe and the State in which the Tribe takes the position that such gaming is permitted under the existing laws of the State and the State takes the position that such gaming is not permitted under the existing laws of the State); or (ii) *the existing laws or regulations of the State are amended to expressly authorize the operation of any video games of chance for any purpose by any person, organization or entity.* Upon such determination the operation by the Tribe of video facsimile games of chance shall be subject to the applicable provisions of the Standards of Operation and Maintenance for Games of Chance adopted pursuant to section 7 of the Compact.

Mashantucket Procedures, § 15(a) (emphasis added). A substantively identical provision is found at § 15(a) of the Mohegan Compact. Thus, the operation of video facsimile games may become permissible in one of three ways: by agreement of the State and the Tribe; by a court order; or by a change in State law that allows the operation of video facsimile games for any purpose by any person, organization or entity. *See* A.G. Op. No. 93-004 (Feb. 11, 1993).<sup>3</sup>

As a resolution of the dispute between the State and the Tribes over video facsimile games referenced in § 15(a), both Tribes entered into memoranda of understanding (MOUs) with the State that suspended the moratorium on video facsimile games. Under the MOUs, the Tribes could operate video facsimile games and the State would receive 25 percent of the gross operating revenues from those games. The MOUs further provided that the right to operate video facsimile games and the payments to the State would continue "so long as no change in State law is enacted to permit the operation of video facsimiles or other commercial casino games *by any other person* and *no other person* within the State lawfully operates video facsimile games or other commercial games...." Mohegan MOU dated May 17, 1994, at 2 (emphasis added). Thus, under the MOUs, the Tribes' authority to operate video facsimile games and the payment to the State would both cease if State law permitted any person other than the Tribes to operate such games or other commercial casino games. *See* A.G. Op. No. 94-003 (Feb. 4, 1994).

The proposed legislation would change state law to authorize the Tribes to operate video facsimile and other casino games. The MOUs would arguably not be implicated by this change in state law; their provisions would be terminated only by a change in state law that authorizes "any other person" to operate such games – to wit, any person other than the Tribes. However, because the proposed legislation would authorize both Tribes to operate video facsimiles and other casino games jointly, it arguably would violate both MOUs by allowing someone other

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<sup>3</sup> In addition, Section 17(d) of the Mashantucket Procedures and Mohegan Compact provide that the Tribes shall not be deemed to have waived "the right to request negotiations for a tribal-state compact with respect to a Class III gaming activity which is to be conducted on the Reservation[s] but is not permitted under the provisions of this Compact, including forms of Class III gaming which were not permitted by the State *for any purpose by any person*, organization, or entity at the time when this compact was negotiated but are subsequently so permitted by the State, in accordance with 25 U.S.C. §2710 (d) (3) (A)." (Emphasis added).

than the Tribe that is a party to the respective MOUs – that is, the other Tribe – to operate such games. It would be prudent, therefore, to condition the effectiveness of any legislation upon an agreement among the State and the Tribes that such legislation is not a violation of the existing MOUs. Such legislation also should make clear that only the Tribes may own an equity interest in whatever business entity is formed to operate casinos.

That is not the end of the inquiry, however. As noted above, the moratoria on video facsimile games set forth in the Mashantucket Procedures and the Mohegan Compact themselves can be ended by a change in state law that allows *any* person for *any* purpose to operate video facsimile games, language that appears to be drawn from IGRA itself. *See* 25 U.S.C. § 2710(d)(1)(B). Unlike the existing MOUs, § 15(a) does not include the word "other." Arguably, the proposed legislation could be deemed a change in state law that would terminate the moratorium, affording the Tribes the right to conduct video facsimile games free of the payment requirements under the MOUs. How a court or other competent authority might resolve this legal issue is at best uncertain.

It is our understanding that there have been discussions about a possible solution to this uncertainty through a new memorandum of understanding between the State and the Tribes. Such agreements would memorialize mutual understandings that the language of § 15(a) was not intended to, and does not, include a change in state law that would authorize only the Tribes to engage in gaming under state law. Although presumably such an agreement would include waivers of tribal immunity, the enforceability of this possible solution is itself uncertain.

Amendments to gaming compacts under IGRA require approval by the Secretary of the Interior (Secretary). The Mashantucket Procedures and the Mohegan Compact both expressly require amendments to be approved by the Secretary. *See* Mashantucket Procedures, § 17(c); Mohegan Compact, § 17(c). In addition, the federal regulations governing gaming compacts expressly provide that "[a]ll amendments, regardless of whether they are substantive amendments or technical amendments, are subject to review and approval by the Secretary." 25 C.F.R. § 293.4(b); *see* 25 C.F.R. § 291.14 (amendments for gaming procedures). Moreover, the requirement for Secretarial review and approval cannot be waived. As the Interior Department has explained:

[T]he Secretary must review and approve all amendments to gaming compacts. It is of no consequence that such a document is titled "memorandum of understanding" or something else. Absent Secretarial review and approval of an amendment to a compact, and publication of the notice of approval in the Federal Register, it would be of no force and effect under IGRA.

Letter from Paula L. Hart, Director, Office of Indian Gaming, Department of Interior, to Hon. Peter S. Yucupicio, Chairman, Pascua Yaqui Tribe of Arizona, dated June 15, 2013, at 2; *see also* 73 Fed. Reg. 74005 (Dec. 5, 2008) (preamble to regulations).

It is possible that an agreement between the State and the Tribes memorializing their mutual understanding of the moratorium language could be deemed an effective amendment of § 15(a) – changing "any person" to "any person other than the Tribes." If that is the case, the



agreement, if not submitted as an amendment to the Secretary for approval, would not be enforceable.<sup>4</sup>

On the other hand, if the State and Tribes were to submit for Secretarial approval express amendments clarifying the moratorium language so that the enactment of the proposed legislation would not result in a lifting of the moratorium, there is no certainty as to whether the Secretary would approve the amendment or what the scope of the Secretary's review would be. In particular, it is unclear if the Secretary's review would encompass the broader context of the compacts, including the MOUs and their payment requirements to the State.

Given the unique nature and history of the State's gaming relationships with the Tribes, there is very little in the way of legal precedent or guidance that allows for a confident analysis of these complex and uncertain legal questions. In light of this uncertainty and the attendant risks, the legislature should carefully weigh the anticipated benefits of the proposed legislation against the risks it poses to the current arrangements of the existing MOUs. If the legislature concludes that the likely benefits outweigh such risks, it would be advisable to include in the legislation provisions that might mitigate potential adverse consequences for the State. This could include, for example, conditioning the authority to conduct gaming not just on an agreement as to the State's and Tribes' mutual understanding that the moratorium is not implicated, with appropriate waivers of tribal immunity, but also an express provision terminating the authority granted to the Tribes and a repeal of the law if the Tribes ever contest that mutual understanding or a court or other competent authority concludes, for any reason, that the agreement memorializing that mutual understanding is invalid, illegal or unenforceable. Though such provisions may help mitigate the risks associated with the proposed legislation, they would by no means eliminate that risk.

#### **Additional Federally Acknowledged Tribes**

A second issue relates to the potential implications of this proposed legislation for any additional federally acknowledged Indian tribes. Although the federal Bureau of Indian Affairs (BIA) previously denied the acknowledgment petitions of the Eastern Pequot, Schaghticoke and Golden Hill Paugussett petitioners, the BIA is currently in the process of considering significant changes to the existing acknowledgment regulations. These changes could result in the acknowledgment of one or more of the previously denied Connecticut petitioners. A federally acknowledged tribe has rights under IGRA that, under certain circumstances, would allow it to engage in casino gaming operations on Indian lands. Specifically, IGRA provides that a tribe may engage in so-called Class III gaming activities on Indian lands, subject to a tribal-state gaming compact, if such activities are located in a state that "permits such gaming for any purpose by any person, organization, or entity...." 25 U.S.C. § 2710(d)(1)(B).

In 2003, the General Assembly repealed the so-called "Las Vegas Nights" law, which permitted nonprofit organizations to operate certain games of chance for the purpose of raising

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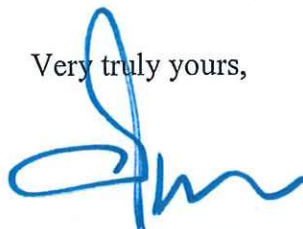
<sup>4</sup> It might be advisable to request guidance from the Interior Department to obtain its views as to whether amendments are required under the gaming compact regulations; however, it does not appear that there is a formal process for making such a request under the regulations that would necessarily result in a binding decision on the issue.

charitable funds. *See* Conn. Gen. Stat. §§ 7-186a *et seq.* (repealed). It was this state law that triggered IGRA's provisions for the Mashantucket Pequot and Mohegan Tribes. *See Mashantucket Pequot Tribe v. Connecticut*, 737 F. Supp. 169 (D. Conn.), *aff'd*, 913 F.2d 1024 (2d Cir. 1990), *cert. denied*, 499 U.S. 875 (1991). The purpose of the repeal was to eliminate that trigger for any future additional federally acknowledged tribes. *See* A.G. Op. No. 2003-011 (June 10, 2003). The enactment of the proposed legislation, authorizing the Tribes to conduct casino gaming under state law, could serve as a new trigger and would significantly increase the likelihood that newly acknowledged tribes would succeed in asserting the right to casino gaming under IGRA.

### Conclusion

The proposed legislation poses several legal issues that cannot be resolved with a high degree of certainty. This Office remains available to assist in evaluating the many very important concerns raised.

Very truly yours,



GEORGE JEPSEN

cc: Governor Dannel P. Malloy  
The Honorable Stephen D. Dargan  
The Honorable Timothy D. Larson  
Co-chairs, Public Safety and Security Committee

# **Risks to State and Local Revenues Posed by Casino-Licensing Legislation**

February 2017

## **EXECUTIVE SUMMARY**

The Mashantucket Pequot and Mohegan Tribes (“Tribes”) have proposed legislation that would allow them to jointly open a third casino in Connecticut, the first casino in the State to be located off Tribal land (the “Proposed Legislation”). The Proposed Legislation would not only increase the number of casinos in Connecticut, but also would also open up a new *type* of casino gaming: commercial, off-reservation gaming of the kind found in Atlantic City and Las Vegas (unlike the on-reservation casinos at Foxwoods and Mohegan Sun). Because the Tribe’s proposed casino would not be located on reservation lands, the Tribes cannot rely on Indian gaming law to authorize the casino.

The Proposed Legislation puts at risk the nearly \$300 million in annual revenue-sharing payments from the Tribes to the State’s General Fund, \$60 million of which is distributed to the State’s municipalities in annual grants from the State’s Mashantucket Pequot and Mohegan Fund (“Pequot Fund”). The Proposed Legislation also creates potential credit-rating and bond-interest-rate issues for State municipalities. Connecticut municipalities may also face disclosure requirements under their bond financings merely by the Proposed Legislation being introduced, as well as if the Proposed Legislation becomes law.

The \$300 million in annual revenue-sharing payments (including the \$60 million in annual Pequot Fund grants) to the State are generated by a 25 percent royalty on slot-machine revenues earned by the Foxwoods and Mohegan Sun casinos, which are owned by the Tribes. These payments are mandated by the Tribes’ compacts and related MOUs with the State (“Compacts”), which govern their on-reservation casinos. Based on language in the Compacts, upon enactment, the Proposed Legislation would terminate the Tribes’ revenue-sharing duties by the State authorizing the third casino. These termination clauses would apply even if the Tribes jointly own the third casino.

Although the Tribes have proposed amendments to the Compacts that would allow a third casino to open without terminating their revenue-sharing obligations (the “Proposed Compact Amendments”), the federal Indian Gaming Regulatory Act (“IGRA”) prevents the Proposed Compact Amendments from going into effect unless and until they are approved by the U.S. Department of the Interior (the “Interior Department”), which is charged with enforcing IGRA’s strict review requirements. Additional risks to the Proposed Contract Amendments include President Trump’s past adversary relationship with the Tribes and the risk of litigation by third parties. Further, presenting the Proposed Contract Amendments to the Interior Department opens the Compacts to review in their entirety. Current provisions in the Compacts directing shared revenue to the State’s General Fund likely violate IGRA, exposing the Compacts to invalidation by the Interior Department.

Any potential gain in Connecticut jobs resulting from a possible third casino (Connecticut's first "commercial," off-reservation casino) would be offset by the consequences of invalidating the State's revenue-sharing agreements with the Tribes (and, indirectly, for Connecticut municipalities), without a legally valid and binding replacement. There appears to be no viable path for the General Assembly to enact the Proposed Legislation authorizing a third casino without automatically eliminating the annual revenue-sharing payments from the Tribes. As discussed above, the Proposed Compact Amendments are unlikely to be approved by the Interior Department. In fact, putting the Proposed Compact Amendments before the Interior Department could lead the Interior Department to invalidate the Compacts based on provisions directing slot-machine royalties to the State's General Fund.

### **Key Questions and Answers**

#### **1. Why Would the Proposed Legislation Automatically Terminate The Tribes' Revenue-Sharing Obligations?**

The Compacts contain termination clauses that require the Tribes to make revenue-sharing payments to the State only "so long as no change in State law is enacted to permit the operating of . . . commercial casino games *by any other person*.." <sup>1</sup> The revenue-sharing obligations also terminate if "the existing laws or regulations of the State are amended to authorize operation of any video games of chance for any purpose *by any person, organization or entity*.." <sup>2</sup>

Under the Compacts, the Tribes would not be required to make royalty payments because passage of the Proposed Legislation would be a "change in State law" permitting operation of "commercial casino games by any other person." MMCT Venture LLC ("MMCT"), the entity formed by the Tribes to own and operate the third casino, would be another person operating commercial casino games. There is no carve-out from this test applicable to MMCT and the proposed "commercial" casino to be located off of Tribal land. Additionally, adoption of the Proposed Legislation would be an amendment to State law authorizing operation of any video games of chance for any purpose *by any person, organization or entity*. Again, there is no carve-out that would apply to MMCT and the proposed commercial casino to be located off Tribal land.

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<sup>1</sup> Mem. of Understanding Between the State of Connecticut and the Mohegan Tribe of Indians of Connecticut (May 17, 1994) , [http://www.ct.gov/dcp/lib/dcp/pdf/gaming/memorandum\\_of\\_understanding\\_mohegan\[1\].pdf](http://www.ct.gov/dcp/lib/dcp/pdf/gaming/memorandum_of_understanding_mohegan[1].pdf), ¶ 1 (emphasis added); Second Am. Mem. of Understanding Between the State of Connecticut and the Mashantucket Pequot Tribe (Apr. 25, 1994), ¶ 1 (emphasis added).

<sup>2</sup> Dept. of Interior, Mashantucket Pequot Indian Tribe – Approval Decision (May 31, 1991), <https://bia.gov/cs/groups/zoig/documents/text/idc1-026009.pdf>. (a/k/a Mashantucket Procedures), § 15(a) (emphasis added); *see also*, Dept. of Interior, Mohegan Indian Tribe of Connecticut – Approval Decision (Dec. 5, 1994) ("Mohegan Approval Decision"), <https://bia.gov/cs/groups/zoig/documents/text/idc1-026002.pdf>. ( a/k/a Mohegan Compact), § 15(a) (substantially identical provision).

## 2. Why Can't the Tribes and the State Simply Amend the Compacts to Avoid Termination of Revenue-Sharing upon Passage of the Proposed Legislation?

**The Interior Department Likely Would Reject The Tribes' Proposed Compact Amendments And Could Invalidate The Original Compacts.** The Compacts are governed by IGRA, which prevents Compact amendments from going into effect until they receive Interior Department approval. The Department evaluates revenue-sharing provisions "with great scrutiny" and "has sharply limited the circumstances in which Indian tribes can make direct payments to a State."<sup>3</sup>

In applying these standards, the Interior Department employs a two-pronged analysis, first inquiring whether the state has "offered a meaningful concession" to the tribe in exchange for the tribe's royalty payments.<sup>4</sup> If a revenue-sharing provision meets that test, the Department next assesses whether the value of the state's concession "provides substantial economic benefits to the tribe in a manner justifying the revenue sharing" required under the compact.<sup>5</sup>

Courts have provided additional guidance regarding IGRA's requirements for revenue-sharing provisions. In its widely cited *Rincon* decision, the Ninth Circuit held that a revenue-sharing provision may be approved only if it is "(a) for uses 'directly related to the operation of gaming activities' . . . , (b) consistent with the purposes of IGRA, and (c) not 'imposed' because it is bargained for in exchange for a 'meaningful concession.'"<sup>6</sup> The Second Circuit, which has appellate jurisdiction over cases from Connecticut federal district courts, has cited *Rincon* with approval.<sup>7</sup> The Interior Department has similarly explained that *Rincon* is "[a]n important part of [agency's] analysis" and "provid[es] guidance on the extent to which revenue sharing and . . . gaming exclusivity constitute 'meaningful concessions' under IGRA."<sup>8</sup>

Because the Interior Department reviews amendments and underlying compacts "as a whole," there also is a risk that the Interior Department would invalidate not only the

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<sup>3</sup> Habematolel Pomo Disapproval Decision at 3; Dept. of Interior, Jena Band of Choctaw Indians – Disapproval Decision, at 1 (Mar. 7, 2002) ("Jena Band Disapproval Decision"), <https://bia.gov/cs/groups/zoig/documents/text/idc1-029778.pdf>; Dept. of Interior, Forest County Potawatomi Community of Wisconsin – Disapproval Decision, at 1 (Jan. 9, 2015) ("Potawatomi Community Disapproval Decision"), <https://bia.gov/cs/groups/zoig/documents/text/idc1-029286.pdf>. The Department also conducts its review "in accordance with the principle that Indian tribes, not states or other parties, should be the primary beneficiaries of Indian gaming revenues." *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1113 (9th Cir. 2003); Dept. of Interior, Mashpee Wampanoag Tribe – Disapproval Decision, at 11 (Oct. 12, 2012) ("Mashpee Disapproval Decision"), <https://bia.gov/cs/groups/webteam/documents/text/idc1-028222.pdf>.

<sup>4</sup> Mashpee Disapproval Decision at 11.

<sup>5</sup> *Id.*

<sup>6</sup> *Rincon*, 602 F.3d at 1033; see also *Indian Gaming Related Cases*, 331 F.3d at 1112; *Wisconsin v. Ho-Chunk Nation*, 512 F.3d 921, 932 (7th Cir. 2008) ("[T]he legitimacy of . . . revenue-sharing provisions is far from a settled issue.").

<sup>7</sup> See *Mashantucket Pequot Tribe v. Town of Ledyard*, 722 F.3d 457, 472 (2d Cir. 2010).

<sup>8</sup> Habematolel Pomo Disapproval Decision at 3.



amendments, but also the underlying Compacts. Courts have held that IGRA prohibits states from using tribal-gaming revenues for general-fund programs.<sup>9</sup> The Tribes' agreements with the State violate this principle because they direct the Tribes' revenue-sharing payments into the State's General Fund: state law provides that "all funds received by the state" from the Tribes "shall be deposited into the General Fund."<sup>10</sup> Thus, submitting the Proposed Compact Amendments for review risks leaving the State worse off than it is now.

**The Trump Administration Is Particularly Unlikely To Approve The Proposed Amended Compacts.** The risk that the Interior Department would reject the Compacts is heightened by the fact that approval would have to come from a Donald Trump appointee. President Trump has an adversarial relationship with Indian tribes that goes back decades. He has criticized the Mashantucket Pequot and Mohegan Tribes, filed a lawsuit attempting to block all Indian gaming, and made hostile comments regarding Indian gaming. Although the Interior Department issued a "technical assistance" letter to the Tribes on April 25, 2016, that letter is non-binding and does not address whether the Proposed Compact Amendments comply with IGRA or other federal laws. Accordingly, the technical assistance letter does nothing to improve the Tribes' chances of securing approval by the Trump Administration. Presuming for the sake of argument that the Trump Administration were to approve the Proposed Compact Amendments, that approval could be challenged in court by third parties, including local residents and economic competitors.

### **3. What Is the Potential Impact of the Proposed Legislation to the State Budget?**

Connecticut faces a \$1.4 billion budget deficit, with greater deficits forecast in the years ahead.<sup>11</sup> These fiscal challenges would become more difficult to overcome if the State were to lose the nearly \$300 million in annual revenue-sharing payments made by the Tribes. The loss of these payments would increase the State's annual budget deficit by nearly 20 percent (assuming slots revenues at the same level as in 2014). Such a loss of revenue could lead to adverse consequences such as cuts in educational programs, highway projects, social services, and other priorities. Thus, any potential benefit of a new casino, such as preserving jobs, must be weighed against the consequences of passing a new casino bill, including loss of state revenue (or need to find other revenue sources, presumably in the form of increased taxes) and the unintended consequences associated with opening up a new type of gaming (commercial, off-reservation gaming).<sup>12</sup>

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<sup>9</sup> 73 Fed. Reg. at 74,005; *see also* Sac and Fox Nation of Missouri in Kansas and Nebraska – Disapproval Decision, at 1 (July 10, 1992) (concluding that "the compact, taken as a whole, violated" IGRA).

<sup>10</sup> Conn. Gen. Stat. § 3-55i.

<sup>11</sup> *See, e.g.,* Christopher Keating, *Malloy Proposes Eliminating Property Tax Credit*, HARTFORD COURANT (Feb. 3, 2017), <http://www.courant.com/politics/hc-malloy-budget-component-20170203-story.html>; Christopher Keating, *Budget: Malloy Calls for Local Relief, State Mandates Could Be Eased*, HARTFORD COURANT (Feb. 1, 2017); Ken Dixon, *The Deficit: Our Collective Challenge*, DANBURY NEWS-TIMES (Feb. 1, 2017).

<sup>12</sup> *See also* Letter from George C. Jepsen, Conn. Attorney General, to Conn. General Assembly, at 5-6 (Apr. 15, 2015) (identifying additional consequences, such as creating a new trigger for casino rights if and when other Connecticut-based tribes gain federal recognition).

#### **4. What Is the Potential Impact of the Proposed Legislation to Connecticut Municipalities?**

As discussed above, by statute, “all funds received by the state” from the Tribes “shall be deposited into the General Fund.”<sup>13</sup> A portion of those payments are then transferred to the Pequot Fund, “a separate nonlapsing fund” used to make annual grants to municipalities.<sup>14</sup> Although the proportion of the Tribes’ revenue-sharing payments that must be set aside for the Pequot Fund each year is set by the General Assembly, the formula for calculating each municipality’s annual Pequot Fund grant is fixed by statute.<sup>15</sup> The Office of Policy and Management (OPM) is responsible for administering the Pequot Fund.<sup>16</sup> The statutory formula guarantees that, except in extraordinary circumstances, each of Connecticut’s 169 cities, towns, and boroughs receives an annual grant from the Pequot Fund.<sup>17</sup>

In practical terms, the Proposed Legislation could affect municipalities in at least three ways. First, the loss of Pequot Fund revenues would create municipal budget gaps, in many cases resulting in increased local taxes or cuts in local services. Second, the loss of the Pequot Fund revenues could result in adverse consequences such as a downgrade of credit ratings and/or increased interest rates on municipal bonds. Third, the mere possibility of losing Pequot Fund revenues could require municipalities to make disclosures to bond underwriters.

##### **A. The Legal Framework Governing Pequot Fund Grants**

As discussed above, by statute, the State deposits into the General Fund all proceeds from the Tribes’ revenue-sharing payments, then transfers a portion of those proceeds into the Pequot Fund.<sup>18</sup> Every town, city, and borough is entitled to an annual grant from the Pequot Fund<sup>19</sup> based on, among other things, the value of tax-exempt property in the municipality (e.g., state-owned property, private college, and general hospitals), the municipality’s population, and per capita income.<sup>20</sup>

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<sup>13</sup> Conn. Gen. Stat. § 3-55i.

<sup>14</sup> *Id.*

<sup>15</sup> See Conn. Gen. Stat. §§ 3-55i, 3-55j. For a detailed discussion of the allocation formula, see Office of Policy and Management, *State of Connecticut – FY 2015, FY 2016 and FY 2017 Estimates of State Formula Aid to Municipalities*, at 2–3, 10 (Aug. 28, 2015) (“*Estimates of State Formula Aid to Municipalities*”), <http://www.ct.gov/opm/lib/opm/igp/estimat/augmuniaidest2015.pdf>.

<sup>16</sup> See Conn. Gen. Stat. §§ 3-55i.

<sup>17</sup> See Conn. Gen. Stat. §§ 3-55j(b) (guaranteeing minimum grant to municipalities), 3-55k (defining “municipality” as “any town, consolidated town and city or consolidated town and borough”).

<sup>18</sup> Conn. Gen. Stat. § 3-55i.

<sup>19</sup> *Id.*; see also Conn. Gen. Stat. § 3-55k (defining “municipality” for purposes of Pequot Fund grants as “any town, consolidated town and city or consolidated town and borough”).

<sup>20</sup> Conn. Gen. Stat. § 3-55j.

## B. The Proposed Legislation's Potential Negative Effects on Municipalities

Since its inception, the Pequot Fund has generated more than \$2 billion for Connecticut's municipalities. OPM reports that in one year alone (FY 2015), it paid out nearly \$62 million in Pequot Fund grants to Connecticut's 169 municipalities.<sup>21</sup> For FY 2017, the Appropriations Committee has recommended appropriating \$61,779,907 to the Pequot Fund,<sup>22</sup> and OPM estimates that it will distribute grants totaling over \$58 million.<sup>23</sup> For FY 2015, Pequot Fund grants ranged from \$6.6 million at the high end (to Hartford) to \$8,370 at the low end (to Roxbury); the average grant was approximately \$365,000.<sup>24</sup>

Pequot Fund grants can represent five percent or more of a municipality's annual budget. In Suffield, for example, the anticipated FY 2016 Pequot Fund grant of \$2,837,591 constituted approximately 4.9% of the town's overall projected total revenue.<sup>25</sup> Similarly, in Somers, an anticipated FY 2015 Pequot Fund grant of \$1,677,361 made up nearly 5.5% of the town's projected total revenue.<sup>26</sup>

As discussed above, the Proposed Legislation, if enacted, would terminate the Tribes' revenue-sharing obligations to the State.<sup>27</sup> Because those payments are the sole source of revenue for the Pequot Fund, their loss would necessarily eliminate the annual Pequot Fund grants. As a result, municipalities could face budget shortfalls; cities and towns like Suffield, Somers, and Waterbury might need to increase taxes, reduce services, draw down cash reserves, or some combination thereof.

If the General Assembly merely considers the Proposed Legislation, that alone could affect municipal finances. Rating agencies, such as Moody's Investor Services, Standard & Poor's Ratings Services, and Fitch, consider a municipality's revenue streams in assessing the municipality's ability and willingness to make principal and interest payments on new or outstanding bonds.<sup>28</sup>

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<sup>21</sup> Office of Policy and Management, *Mashantucket Pequot/Mohegan Fund Grant* (Feb. 3, 2017), <http://www.ct.gov/OPM/cwp/view.asp?a=2985&q=383146>.

<sup>22</sup> Office of Fiscal Analysis, Appropriates Committee FY 16 & FY 17, at 3 (Apr. 27, 2015), <https://www.cga.ct.gov/ofa/Documents/year/APPJF/2015APPJF->

20150427\_Appropriations%20Committee%20Budget%20FY%2016%20-%20FY%2017.pdf.

<sup>23</sup> *Estimates of State Formula Aid to Municipalities* at 18.

<sup>24</sup> See *id.* at 15, 16, 18.

<sup>25</sup> Town of Suffield, *2016–17 Budget*, at 5–6 (May 11, 2016), [http://www.suffieldct.gov/filestorage/10102/5206/5222/11103/Website\\_Handout.pdf](http://www.suffieldct.gov/filestorage/10102/5206/5222/11103/Website_Handout.pdf).

<sup>26</sup> Town of Somers, Budget Overview, <http://www.somersct.gov/download/Boards%20and%20Commissions/Board%20of%20Finance/Budget/FY2016/Budget%20Overview%20FY2016.pdf>.

<sup>27</sup> See *Q&A 1, supra*.

<sup>28</sup> Judy Wesalo Temel, *THE FUNDAMENTALS OF MUNICIPAL BONDS* 159–62 (5th ed. 2001).



A municipality's credit rating, in turn, can affect the interest rates at which it is able to borrow. In evaluating creditworthiness, rating agencies typically investigate a municipality's revenue sources and whether those sources are likely to exist or diminish: "Deficits in any of the various fund[s] municipalities use to account for their finances are red flags that require more investigation."<sup>29</sup>

In assessing a municipality's creditworthiness, rating agencies could consider the risk that the Proposed Legislation would eliminate an otherwise reliable revenue stream, thus impairing the municipality's ability to honor bond obligations. Ratings agencies might evaluate this risk because municipalities use Pequot Fund grants, along with other sources of revenue, to finance their bonds. In a 2015 bond issuance, for example, Waterbury listed the Pequot Fund grant in its schedule of revenues and other financing sources,<sup>30</sup> and Waterbury continues to identify the Pequot Fund grant as a financing source in its annual financial reports.<sup>31</sup> Similarly, Somers not only identified the Pequot Fund grant as a financing source in its annual financial report, but credited the grant with increasing the town's overall unrestricted funds.<sup>32</sup> The risk of ratings agencies conducting such an investigation is heightened given that municipalities are already facing tight budgets and diminishing contributions from the State.<sup>33</sup> Accordingly, in some instances the loss of Pequot Fund grant funds could lead to downgrades in a municipality's bond ratings and/or increases in the interest rates the municipality must pay on its debt.

Because the Proposed Legislation puts Pequot Fund grants at risk, municipalities would also need to consider whether that risk implicates their continuing disclosure obligations to creditors and other parties. The Securities and Exchange Commission requires municipal bond issuers to make continuing disclosures regarding their financial conditions, including timely notice of events evidencing financial difficulties.<sup>34</sup> Municipalities generally must disclose conditions that would materially impair their ability to make interest or principal payments on their bonds. Thus, if the loss of annual Pequot Fund grants would materially impair a municipality's ability to timely repay its debt, the General Assembly's consideration of the Proposed Legislation could itself warrant disclosure.<sup>35</sup>

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<sup>29</sup> *Id.* at 179. *Id.* at 179.

<sup>30</sup> City of Waterbury, *General Obligation Bonds, Issue of 2015*, at 122 (Nov. 12, 2015), <http://emma.msrb.org/EP890390-EP689438-EP1091153.pdf>.

<sup>31</sup> City of Waterbury, *Comprehensive Annual Financial Report of the City of Waterbury — Fiscal Year Ended June 30, 2016*, at 96 (Dec. 16, 2016), <http://emma.msrb.org/ER1005169-ER786799-ER1188097.pdf>.

<sup>32</sup> Town of Somers, *Comprehensive Annual Financial Report for the Year Ended June 30, 2015*, at 27, 86 (Dec. 9, 2015), <http://emma.msrb.org/ES993246.pdf> ("Grants and contributions not restricted to specific programs increased during fiscal year 2015 primarily due to an increase of approximately \$141 thousand or 9% in funding under the Mashantucket Pequot and Mohegan Fund Grant.").

<sup>33</sup> See, e.g., Eric Bedner, Manchester, Enfield Among Towns Facing New State Cuts, JOURNAL INQUIRER (Dec. 31, 2016), [http://www.journalinquirer.com/connecticut\\_and\\_region/manchester-enfield-among-towns-facing-new-state-cuts/article\\_19225fb2-cefb-11e6-8c1a-83f8b45dac19.html](http://www.journalinquirer.com/connecticut_and_region/manchester-enfield-among-towns-facing-new-state-cuts/article_19225fb2-cefb-11e6-8c1a-83f8b45dac19.html).

<sup>34</sup> See 17 C.F.R. § 240.15c2-12(b)

<sup>35</sup> Municipalities satisfy their disclosure obligations by providing annual financial reports, event-related notices, and other disclosure documents to the Municipal Securities Rulemaking Board (MSRB). See Municipal Securities

Even if disclosure is not mandatory, municipalities would still need to evaluate whether they should voluntarily disclose the potential loss of Pequot Fund grants to comply with industry guidelines and best practices.<sup>36</sup> Guidelines issued by the Government Finance Officers Association encourage municipalities to disclose “legal matters affecting the issuer, *including litigation and legislation* [Emphasis supplied.]”<sup>37</sup> The National Federation of Municipal Analysts’ best practices likewise encourage issuers to disclose “any and all changes in the legal basis for revenue” and to “identify circumstances under which grant revenues *may be reduced or removed entirely* [Emphasis supplied.]”<sup>38</sup>

## Conclusion

The Proposed Legislation to authorize a third casino puts at risk the \$300 million in annual revenue-sharing payments to the State’s General Fund, including more than \$60 million in annual Pequot Fund grants to municipalities:

- **The Proposed Legislation Likely Would Terminate the Tribes’ Revenue-Sharing Obligations, Resulting in the Loss of Approximately \$300 million in State Revenue.** Under the Compacts, the Tribes would not be required to make royalty payments because passage of the Proposed Legislation would:
  - be a “change in State law” permitting operation of “commercial casino games by any other person;” and/or
  - authorize operation of any video games of chance for any purpose by any person, organization or entity.

Thus, the Tribes’ revenue-sharing duties would automatically terminate upon State authorization of a third casino—even if the third casino is jointly own by the Tribes.

- **The Proposed Legislation Would Pose Financial Issues for Municipalities and Could Require Municipalities To Disclose Potential Loss Of Funds.** Not only would

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Rulemaking Board, *The MSRB and the Municipal Securities Market*, at 2 (2016), <http://www.msrb.org/msrb1/pdfs/MSRB-brochure-2014.pdf>. The MSRB makes those documents publicly available through its Electronic Municipal Market Access (EMMA) website, which serves as “the official repository for information on virtually all municipal bonds.” *Id.* Investors, financial professionals, and other market participants then use EMMA disclosures to assess risk and make investment decisions.

<sup>36</sup> See, e.g., Municipal Securities Rulemaking Board, *Voluntary Disclosure*, <http://www.msrb.org/EducationCenter/Municipal-Market/Lifecycle/Disclosure/Voluntary-Disclosure.aspx>.

<sup>37</sup> *Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others*, 59 Fed. Reg. 12,748, 12,756 (Mar. 9, 1994), <https://www.sec.gov/rules/interp/1994/33-7049.pdf> (emphasis added); see also Government Finance Officers Association, *Understanding Your Continuing Disclosure Responsibilities* (Sept. 2015), <http://www.gfoa.org/understanding-your-continuing-disclosure-responsibilities-0>.

<sup>38</sup> National Federation of Municipal Analysts, *Recommended Best Practices in Disclosure for State Government General Obligations and Appropriation Debt* at 15, 20 (Sept. 2015) (emphasis added), [http://www.nfma.org/assets/documents/RBP/rbp\\_statego\\_final.pdf](http://www.nfma.org/assets/documents/RBP/rbp_statego_final.pdf).

loss of the Pequot Fund grants pose financial challenges for municipalities, the mere *chance* that Pequot Fund grants could be lost may result in adverse consequences such as a downgrade of credit ratings or increased interest rates and implicate municipalities' continuing obligations to make disclosures to bond underwriters.

- **The Interior Department Likely Would Reject The Tribes' Proposed Compact Amendments And Could Invalidate The Original Compacts.** The Tribes' compacts are governed by IGRA, which prevents compact amendments from going into effect until the Interior Department has approved them. The Interior Department evaluates revenue-sharing provisions "with great scrutiny" and "has sharply limited the circumstances in which Indian tribes can make direct payments to a State." Because the Department reviews amendments and underlying compacts "as a whole," there is also a risk that the Interior Department would invalidate not only the amendments, but also the underlying Compacts as well. Courts have held that IGRA prohibits states from using tribal-gaming revenues for general-fund programs. The Tribes' agreements with the State violate this principle because they direct the Tribes' revenue-sharing payments into the State's General Fund. Thus, submitting the Proposed Compact Amendments for review could leave the State worse off than it is now. The risk that the Interior Department would reject the Tribes' Proposed Compact Amendments and invalidate the Compacts is heightened by the fact that the amendment would have to be approved by an appointee of Donald Trump, someone with a longstanding adversarial relationship with Indian gaming in general and with the Tribes in particular.

## **SUMMARY OF REVISED CT GAMING BILL**

This Bill aims to establish a competitive process that would ultimately award one commercial gaming license to an applicant. All other forms of non-tribal casino gaming not explicitly set forth in statute shall remain illegal.

### ***Resort Requires Non-Gaming Amenities***

The Bill allows Connecticut to maximize revenue generated from out-of-state tourism through the development of one “Commercial gaming facility” which would be a mixed-use commercial development project, where in addition to gambling games some of the following amenities are offered: hotels, villas, restaurants, convention facilities, attractions, entertainment facilities, service centers, and/or shopping centers.

### ***Financial Advantages to the State of Connecticut***

The Bill creates the following economic advantages for the State of Connecticut:

- \$15 million deposit for each application; refundable if applicant is not selected.
- \$500 million minimum total investment for Commercial Gaming Facility.
- \$50 million nonrefundable license fee due before construction (deposited in General Fund).
- 25 percent of the annual gross gaming on both Slots and Tables (recurring revenue).

### ***Advantages to Local Host Communities***

Before the award of a gaming license, a host community and applicant would execute an agreement that includes:

- (1) A community impact mitigation fee for surrounding infrastructure, emergency responders, and law enforcement;
- (2) A fixed percentage of annual gross gaming revenue to be paid to the host community;
- (3) A targeted and specific percentage of local residents who will be employed at the gaming establishment; and
- (4) Host community acceptance of gaming expansion by means of a local referendum.

### ***Creation of a Gaming Control Division and Regulatory Structure***

- Establishes a 7-member Gaming Control Division within the Department of Consumer Protection. The Division is vested with the power and authority necessary for the implementation, administration and enforcement of commercial gaming. Division members are all appointed by different branches of government and have different areas of expertise to ensure the continued success and regulation of the commercial gaming facility. The Governor would designate the chair of the Division.
- The award of a gaming license is a privilege. A license may be suspended or revoked upon: (i) a breach of the conditions of licensure, failure to complete any phase of construction of the commercial gaming facility or any promises made to the Division in return for receiving a gaming license; (ii) any civil or criminal violations of the laws of the Connecticut or other municipalities; or (iii) a finding by the Division that a gaming licensee is unsuitable to operate a gaming establishment or perform the duties of their licensed position.
- The Division shall have the authority to promulgate regulations in order to ensure proper, safe and orderly conduct of a commercial gaming facility.

- One fourth of one percent (.25%) annual gross gaming revenue paid by the licensee shall be provided to the Division for the creation and operational activities and professional staffing needs of the Division.
- One fourth of one percent (.25%) annual gross gaming revenue will be paid into the Problem Gaming Fund (split between Connecticut Council on Problem Gaming and The Chronic Gamblers Treatment Rehabilitation Account)

#### ***Application Criteria***

- Physical plans and specifications that meet minimum total investment of \$500 Million.
- Submission of Construction plan with a maximum 30-month construction schedule.
- Submission of studies and reports on the local and regional impact of proposed gaming facility on the surrounding community and state in order to strategically maximize job creation in the state and economic impact.
- Applicant has a demonstrated history of entering into Collective Bargaining Agreements (CBAs) with regard to management and operation of commercial gaming facilities, and Project Labor Agreements for construction.
- Agreement with host community stating conditions to have a commercial gaming facility located within a municipality.
- A \$150,000 application fee to be used to support the Division's administrative functions in the time before applicant submits a licensing fee.

#### ***Inclusions for Small Businesses, Minority Owned Businesses and Veteran-owned Micro-Businesses***

The applicant must set aside at least twenty-five percent (25%) of the total value of all contracts to build the commercial gaming facility for:

- Certified Small Business Enterprises under C.G.S.A. 4a-60g and the Department of Administrative Services;
- Certified Minority Business Enterprises under C.G.S.A. 4a-60g and the Department of Administrative Services; and
- Veteran-Owned Micro-Businesses that are certified as such under C.G.S.A. 4a-59(c), the Department of Administrative Services and the Department of Veterans Affairs;

#### ***Advantages for the Mashantucket Pequot and Mohegan Tribes***

- MMCT, The Mashantucket Pequot Tribe or the Mohegan Tribe of Indians of Connecticut are entitled to submit a casino gaming license application without paying the \$15 million deposit.
- Tribes do not have to pay \$50 Million license fee as long as the total amount paid to the Pequot find in the last 12 months is equal to or greater than the required gaming license fee.
- If awarded the gaming license, Tribes are required to execute a new MOU with the AG; agreeing to pay their existing annual gross gaming revenue under their previous MOU, as well as the 25 percent annual gross gaming revenue from the commercial gaming facility.

# Bradley Airport Casino Plans Shouldn't Be Secret

As MGM presses for details about a possible casino at Bradley International Airport, here are five things to know about plans for a casino in the Hartford area.

## **Editorial Contact Reporter**

August 16, 2016 Editorial

More sunlight, please, on the Bradley Airport casino plans.

Whether a casino will be built at Bradley International Airport remains to be seen, but already one thing is clear: The process of planning for such a venture needs to be far less secretive.

The Connecticut Airport Authority, which runs Bradley airport, is among those submitting proposals for a casino complex that would be a joint venture with the Mashantucket Pequots and the Mohegan tribes, together known as MMCT Venture. The airport authority claims its negotiations on the deal are privileged information. A hearing officer for the state Freedom of Information Commission recently agreed with the authority on that.

Referring to a portion of the FOI laws that allows keeping "trade secrets" private, the officer said that "financial provisions of the lease [with MMCT and] how the lease would be structured" need not be made public. Those discussions were held earlier this year in executive session, with the public excluded.

But the hearing officer said that other records — more than 350 pages of them — were not exempt from disclosure.

Among those records was the airport authority's 67-page pitch for a casino, with colorful renderings of what the building could look like. The authority released that document only this month — nine months after the pitch was



made. The authority says it's scrapping that plan and looking at other options. The public ought to see those options and those renderings as they develop — not after they're scrapped.



Plan For Huge Casino At Bradley Airport Was Hatched In Secret

## Let The Public In

Keeping sensitive negotiating tactics private may be legitimate, but the authority must take care not to overstep this limitation of right-to-know laws. Many details of a change to a public facility like an airport should be known to the public from the outset.

The tribes have said they envision a casino complex that would range from 150,000 to 350,000 square feet, cost \$200 million to \$300 million to develop, and attract 10,000 visitors a day. The impact on local businesses, road traffic, public safety and other community resources will be significant wherever such a gaming operation is located, and residents ought to be in on meetings where plans are discussed.

East Hartford made its casino complex proposal public months ago. The Connecticut Airport Authority and all other would-be hosts should be just as open.

The airport authority's documents are being sought through the FOI Commission by MGM Resorts International, which is building a casino complex up the road in Springfield, Mass. That project will be roughly 750,000 square feet and will cost at least \$800 million. MGM says it has hopes of building its own casino in Connecticut as well. Although MGM is acting largely out of self-interest, the fact that it has skin in the game doesn't invalidate its complaints about the Connecticut Airport Authority's secrecy.

## **Major Impact**

The airport authority, for its part, says that there is "significant opportunity for public input in the casino development process, including the town of Windsor Locks' commitment to hold a public referendum, the need for a public vote from the CAA board of directors and a requirement for further state legislative action."

That may be so, but details of a change of this magnitude at Connecticut's largest airport need to be made known early on. Surrounding communities should be able to weigh in at every stage of the process, not just the last step.

Allowing only an up-or-down vote on a casino makes it more difficult for the airport authority, the proposed developers and the public to develop a plan acceptable to all.

Connecticut residents have an example of what can happen if a complicated public project is put together behind closed doors. The surprise move of New Britain's minor league baseball team to Hartford was proclaimed a "done deal" by then-Mayor Pedro Segarra in June 2014. It was negotiated in secret. The team, however, has yet to play in Hartford's unfinished stadium.

The state's first airport casino, if it's to be built, shouldn't be done that way.