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TRIBAL CASINO APPROVAL PROCESS AND THE EFFECTS OF TRIBAL GAMING

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You asked for information on the (1) tribal casino approval process and (2) effects of tribal gaming on Connecticut.

SUMMARY

The federal Indian Gaming Regulatory Act (IGRA) sets out the process for federally recognized Indian tribes to operate casinos under tribal-state compacts or federal procedures. IGRA generally limits tribal gaming to Indian reservations.

Connecticut currently has two Indian casinos (Foxwoods and Mohegan Sun). The Foxwoods Casino operates under federal procedures; the Mohegan Sun Casino operates under a tribal-state compact. The federal procedures and tribal-state compact have the same legal effect and force under federal law. Under separate memorandum of understandings (MOU), the tribes have the exclusive right to operate slot machines and commercial casino games in the state. In return, each tribe must contribute 25% of its gross slot machine revenue to the state monthly. If either tribe's contribution falls below \$80 million in any year, its rate increases to 30%.

Current state law requires both houses of the legislature to approve a tribal-state compact ([CGS § 3-6c](#)). But the law was passed after the Mohegan tribal-state compact was approved.

The casinos have had a major economic impact on southeast Connecticut and the state. They have, among other things, raised revenue, created jobs, and stimulated economic development. For example, since 1993, they have contributed over \$6.4 billion to the state's General Fund, averaging over \$305 million yearly. Additionally, they have reportedly created 20,000 new service jobs in a 10-year period.

Among the negative impacts of the casinos are increased problem gambling, traffic, and possibly crime. With the influx of visitors and employees, traffic in Southeastern Connecticut has increased significantly since the casinos opened, with average daily traffic increasing by as much as 80%. Arrests in the region for driving under the influence (DUI) and embezzlement have also increased. But it is unclear to what extent the casinos have contributed to the increase in crime in the region because there is no consensus on whether there is a casual link between casinos and crime.

IGRA

IGRA provides a statutory framework for resolving jurisdictional, regulatory, and legal issues about gaming on federally recognized Indian reservations (25 USC §§ 2701 et seq.). Under IGRA, Class III gaming (i.e., casino-type gaming) is lawful on federally recognized Indian reservations only if (1) authorized by a National Indian Gaming Commission-approved tribal ordinance; (2) located in a state that permits such gaming for any purpose by any person, organization, or entity; and (3) conducted under a negotiated tribal-state compact.

Tribal-State Compacts

IGRA was designed to give states a role in tribal gaming by encouraging states and tribes to enter into compacts to permit class III gaming on Indian lands, subject to the U.S. Department of the Interior (DOI) secretary approval. While the federal government sets the overall contracting process, states and tribes can negotiate the state's role in such gaming on Indian lands.

Compact provisions vary greatly. But many compacts contain, among other things, licensing and certification for employees, enforcement issues, gaming operations, authorized games, tribal payment of state regulatory costs, alcohol regulations, and revenue sharing.

Once a state and tribe agree on a compact, it must be submitted to the DOI secretary for approval.

Good Faith Negotiations. IGRA requires states to negotiate a compact with tribes in good faith. But a state does not have to negotiate if the tribe does not have any “Indian lands” on which gaming may occur.

IGRA provides guidelines for courts to determine whether a state negotiated in good faith. A court:

1. may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and
2. must consider any demand by the state for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith (25 USC § 2710(d)(7)(B)(iii)).

IGRA was originally designed to allow a tribe to sue states in federal court for refusing to negotiate or not negotiating in good faith (25 USC § 2710(d)(7)). However, the Supreme Court invalidated this provision because it violated state sovereignty under the Eleventh Amendment (*Seminole Tribe v. Florida*, 517 U.S. 44 (1996)).

Tribal Remedies. As a result of the *Seminole Tribe* decision, a tribe can now bring a federal suit only if the state waives its immunity. But a tribe may ask the U.S. attorney general to, on its behalf, sue a state that refuses to negotiate a compact in good faith.

If the court determines that the state did not negotiate in good faith, it must order the parties to conclude a compact within 60 days. If they fail to reach an agreement, the court must appoint a mediator to whom both parties will submit a proposed compact. The mediator must then select the proposal that best comports with IGRA and submit it to both parties. A compact is reached if the state consents within 60 days. If the state does not, the mediator will notify the DOI secretary, who will prescribe, in consultation with the tribe, procedures consistent with the proposed compact selected by the mediator. Both the compact and procedures have the force of federal law (25 USC § 2710(d)(7)(B)).

In an attempt to give tribes an alternative when states assert immunity, DOI adopted regulations that would allow the interior secretary to issue gaming procedures without requiring a tribe to sue in federal court (25 CFR pt. 291). But, the Fifth Circuit Court of Appeals has held these procedures to be invalid on the grounds that Congress did not explicitly authorize them (*Texas v. United States*, 497 F.3d 491 (5th

Cir. 2007)). Since the Supreme Court has not ruled on the issue, this holding is binding only in the Fifth Circuit (Louisiana, Mississippi, and Texas). It is unclear if DOI will use these procedures in other circuits.

Allowable Land for Gaming

Under IGRA, gaming is permitted only on Indian lands. These are (1) lands within the limits of an Indian reservation and (2) lands held in trust by (a) the United States for the benefit of any Indian tribe or individual or (b) any Indian tribe or individual subject to restrictions by the United States against alienation and over which the tribe exercises governmental power (25 USC § 2703(4)). IGRA also limits the extent trust land acquired after October 17, 1988 (IGRA's effective date) can be used for gaming.

It is settled that tribes may engage in gaming on its reservation. For gaming to be allowed on off-reservation traditional trust land or land not held in trust but subject to restrictions, a tribe must exercise governmental authority. The courts have held that whether a tribe exercises governmental power under IGRA requires both theoretical power to exercise jurisdiction over the land and actual exercise of such authority (*Rhode Island v. Narragansett Tribe*, 19 F. 3d 685 (1st Cir. 1994)).

Land Acquired After IGRA's Effective Date. IGRA generally prohibits gaming on lands acquired in trust for the benefit of Indian tribes after October 17, 1988, except for lands (1) located within or contiguous to the tribe's reservation or (2) within its last-recognized reservation (25 USC § 2719(a)).

But IGRA provides four exceptions. The act allows gaming on lands (1) obtained as part of a land claim settlement, (2) comprising the initial reservation of a tribe acknowledged by the DOI secretary, or (3) restored to an Indian tribe due to federal recognition. Finally, IGRA allows off-reservation gaming if the DOI secretary finds, with the affected state's governor's approval, that gaming on the land acquired in trust after 1988 would (1) be in the tribe's best interest and (2) not be detrimental to the surrounding community (25 USC § 2719(b)).

CONNECTICUT TRIBAL GAMING

Foxwoods Casino

Federal Recognition and Casino Approval. In 1983, Congress recognized the Mashantucket Pequot Tribe through a special act. After gaining federal recognition, the Pequots wanted to operate a casino under IGRA, but the state refused to negotiate a compact.

The tribe sued the state arguing that it should be able to operate casino games because the state permitted such games for charities known as “Las Vegas nights.” Over the state’s objections, the Second Circuit Court of Appeals ruled that the existence of “Las Vegas nights” would allow the Pequots to operate a casino on its tribal land (*Mashantucket Pequot Tribe v. State of Connecticut*, 913 F.2d 1024 (2nd Cir. 1990)). The DOI secretary then issued gaming procedures governing gaming at Foxwoods (*Final Mashantucket Pequot Gaming Procedures*, 56 Fed. Reg. 24996, May 31, 1991).

Land Claims Settlement. While the Pequots were seeking federal recognition, the tribe also filed a lawsuit to recover 800 acres of land in Ledyard. After the tribe gained federal recognition, Congress passed the Connecticut Indian Land Claims Settlement to resolve the lawsuit by appropriating \$900,000 to buy the disputed land (PL 98–134). The settlement allows the state to exercise civil and criminal, but not regulatory, jurisdiction over the land.

Facilities. The Mashantucket Pequots opened Foxwoods in 1992. Foxwoods currently features more than 2,000 hotel rooms and suites and over 350,000 square feet of gaming space with more than 7,200 slot machines and 400 table games, including a poker room and racebook. Additionally, Foxwoods has a variety of restaurants, bars, and meeting and ball rooms.

Mohegan Sun

Federal Recognition and State Gaming Compact. In 1994, the Mohegan tribe gained federal recognition through the DOI’s Bureau of Indian Affairs’ administrative process. That same year, the tribe negotiated with Governor Weicker and entered into a gaming compact and MOU governing slot machines (see below).

Land Claims Settlement. Prior to gaining federal recognition, the Mohegan tribe filed a lawsuit against the state to recover land in Montville. Congress passed the Mohegan Nation Land Claim Settlement Act to resolve the lawsuit (PL 103-377). Under the act, the Mohegan's received 800 acres of land and the right to operate casino gaming. The act also allows the state to exercise civil and criminal, but not regulatory, jurisdiction over the land.

Facilities. The Mohegan Sun opened on October 12, 1996, with more than 1,200 hotel rooms and suites and over 300,000 square feet of gaming space with more than 6,000 slot machines and 300 table games, including a poker room and racebook. It has a variety of restaurants and bars, meeting and ball rooms, and theaters. Additionally, the Mohegan Sun is home to the Women's National Basketball Association's Connecticut Sun.

Memorandum of Understanding (MOU)

Initially, the Foxwoods Casino had table games but not slot machines. The tribe introduced slot machines in 1993, after negotiating a MOU with the state. The original MOU was negotiated and designed to suspend the moratorium imposed on slot machines by the federal procedures governing the Foxwoods' casino gaming. This MOU, signed January 13, 1993, gave Foxwoods the exclusive right to operate slot machines in return for a monthly contribution of 25% of gross slot machine revenue. If the contribution falls below \$100 million in any year, the rate increases to 30%.

After the Mohegans won federal recognition and gained approval to operate a casino, the Pequot tribe renegotiated the MOU on April 25, 1994 to allow the Mohegans to conduct casino gaming. In the same year, the Mohegans negotiated a separate MOU with Governor Weicker. Under the separate agreements, each tribe must contribute 25% of its gross slot machine revenue to the state monthly. If either tribe's contribution falls below \$80 million in any year, its rate increases to 30%. The MOU also expanded the scope of the original memorandum by conditioning the tribes' contribution to the state on the state not permitting others to operate casino games, instead of just slot machines.

CONNECTICUT COMPACT APPROVAL

Legislative of Approval

The attorney general, in a May 18, 1994 opinion, decided that absent legislation, the governor could enter into a compact without submitting it to the legislature. Before Governor Weicker signed the Mohegan Compact, the legislature passed a law requiring the submission of compacts for legislative approval. He vetoed the legislation and signed the agreement with the Mohegans on the same day. The legislature overrode the governor's veto and enacted the compact approval law that is currently in place.

Current Compact Approval Law

State law requires both houses of the legislature to approve a state-tribal compact or amendment ([CGS § 3-6c](#)).

By law, the governor must file a compact or amendment with the Senate and House clerks within 10 days after it is executed. If filed during a regular session, the legislature has until its adjournment to approve or reject it. If not filed during a regular session, the legislature has until adjournment of (1) the next regular session or (2) a special session convened to take action on the measure. If the legislature does not act by adjournment, the compact or amendment is rejected and is not implemented.

If the governor files a compact or amendment within 30 days of the end of a regular session, the legislature can either (1) convene in a special session and vote within 30 days or (2) vote on it within the first 30 days of its next regular session. The legislature has until the end of either the 30 day-period to vote before the measure is considered rejected.

IMPACT OF TRIBAL GAMING ON CONNECTICUT

Having two large resort casinos in southeast Connecticut has impacted the state greatly. It has, among other things, raised revenue for the state and municipalities, created jobs, and stimulated economic development. However, it has also increased problem gambling, traffic, and possibly crime. (For more information on economic and social impacts, see *Gambling in Connecticut*, available at: http://www.ct.gov/dosr/lib/dosr/june_24_2009_spectrum_final_final_report_to_the_state_of_connecticut.pdf.)

Increased Revenue

The main economic benefit of tribal gaming for Connecticut is the revenue the two casinos provide to the state under their MOUs. Table 1 shows these payments. From 1993 to 2013, the casinos have paid the state more than \$6.4 billion, with average yearly payments of over \$305 million.

Table 1: Indian Gaming Payments to the State (in millions) (1993-2013)

	<i>Foxwoods</i>	<i>Mohegan Sun</i>	<i>Total</i>
FY 93	\$30.0	-	\$30.0
FY 94	113.0	-	113.0
FY 95	135.7	-	135.7
FY 96	148.7	-	148.7
FY 97	146.0	57.6	203.6
FY 98	165.1	91.0	256.1
FY 99	173.6	113.5	287.1
FY 00	189.2	129.8	319.0
FY 01	190.6	141.7	332.3
FY 02	199.0	169.9	368.9
FY 03	196.3	191.0	387.3
FY 04	196.9	205.9	402.8
FY 05	205.0	212.9	417.9
FY 06	204.5	223.0	427.5
FY 07	201.4	229.1	430.5
FY 08	190.0	221.4	411.4
FY 09	177.2	200.7	377.9
FY 10	188.6	195.6	384.2
FY 11	174.1	185.5	359.6
FY 12	165.5	178.8	344.3
FY 13	138.5	157.9	296.4
Total	3,528.9	2,905.3	6,434.2

Source: Connecticut General Assembly, Office of Fiscal Analysis

Local Revenue. The state annually distributes a certain amount of the tribes' gaming contributions to the Mashantucket Pequot and Mohegan Fund. Money from the fund is allocated to municipalities based on various statutory formulas and grant criteria. The formula is based in part on the (1) municipality's property values, per-capita

income, and population; (2) amount of state-owned property in a municipality; and (3) amount of other tax-exempt property in the municipality. (For more information on the fund and its formula, see OLR Report [2009-R-0387](#).)

Since the casinos opened, Connecticut municipalities have received over \$1.9 billion or about 30% of the slot revenue the state has received from the casinos. The municipalities have received average yearly payments of \$95 million. Table 2 shows the amount of Indian gaming revenue that has been distributed to the municipalities.

**Table 2: Gaming Revenue Distributed to Municipalities
(1993-2013)**

	<i>Payment to Municipalities (in millions)</i>
FY 93	-
FY 94	\$88.3
FY 95	85.0
FY 96	85.0
FY 97	85.0
FY 98	135.0
FY 99	135.0
FY 00	135.0
FY 01	130.4
FY 02	135.0
FY 03	106.0
FY 04	85.0
FY 05	85.0
FY 06	86.3
FY 07	91.1
FY 08	93.3
FY 09	93.0
FY 10	61.6
FY 11	61.7
FY 12	61.7
FY 13	61.7
Total	1,900.1

Source: Connecticut General Assembly, Office of Fiscal Analysis

Economic Development and Jobs

According to the 2009 *Gambling in Connecticut* report, with the addition of the two casinos, millions of dollars have been spent on economic development and thousands of jobs have been created. Before the casinos were built, Southeastern Connecticut was largely rural and had lost approximately 10,000 jobs in the 1990s.

Since they began operating, the two casinos have reportedly created 20,000 new service jobs, and between 1997 and 2007 had a job-growth rate of 15.9%, which was the highest in the state (*The Governor's Commission for the Economic Diversification Southeastern Connecticut: Final Report*, December 2006, available at: http://www.seccog.org/pdfs/GovCommEconDiv_FINAL.pdf). In 2007, the casinos employed more than 21,000 people and had an annual payroll of almost \$700 million. More recently, Foxwoods has broken ground on a new \$115 million, 300,000 square-foot outlet mall, which reportedly will create more than 400 jobs during construction and 900 retail jobs when completed. The project is expected to pay \$10.4 million in state sales tax annually (*Foxwoods breaks ground on \$115M outlet shops*, available at: <http://www.businessweek.com/ap/2013-09-26/foxwoods-breaks-ground-on-115m-outlet-shops>).

The casinos have also had a positive impact on tourism. Tourists who visit the casinos spend money on lodging, recreation, meals, shopping, fuel, and gaming. In addition, the casinos have become a major destination for meetings and conventions, as well as concerts and other entertainment events.

Problem Gambling

Scientific studies have long shown an association between gambling availability and problem gambling. The National Council on Problem Gambling defines “problem gambling” as behavior that causes disruptions in any major area of life: psychological, physical, social, or vocational. Since the casinos opened, problem gambling has increased in the state, according to a 2008 Spectrum Gaming Group survey.

To help combat problem gambling, the state requires the Department of Mental Health and Addiction Services (DMHAS) to establish a program for treating and rehabilitating chronic gamblers ([CGS § 17a-713](#)).

Additionally, both casinos voluntarily provide funds to the privately-run Connecticut Council on Problem Gambling. The council provides a 24-hour helpline for problem gamblers to call and talk about their problems. From 1997 to 2007, there were 8,477 gambling-related calls made to the hotline. The helpline also tries to refer its callers to state-sponsored treatment programs for additional counseling.

Traffic

With the influx of visitors and employees, traffic in Southeastern Connecticut has increased significantly since the casinos opened, with average daily traffic increasing by as high as 80%. Additionally, with the increase in traffic, some municipalities near the casinos have reported an increase in traffic accidents, including ones causing injuries.

Both casinos have contributed money to improve traffic conditions. For example, the Mohegan Sun spent nearly \$38 million to widen Route 2A and Foxwoods spent \$60 million on a flyway along Route 2 (*Gambling in Connecticut*).

Crime

Although crime is often associated with casinos and gambling, there is no consensus on whether there is a causal link. However, statistics have shown that there has been a rise in certain crimes, like DUI and embezzlement, since the casinos opened.

DUI. The number of DUI arrests has increased dramatically since the casinos opened. Norwich, a town north of both casinos, had 129 DUI arrests in 1992 and 252 in 2008. In Montville, home of the Mohegan Sun, there were 37 DUI arrests in 1992, 87 in 1997, and 116 in 2007. Additionally, roughly 20% of drunk drivers in Montville and Ledyard (where Foxwoods is located) said their last drink was at a casino. These increases all occurred at a time when DUI arrests were falling statewide (*Gambling in Connecticut*).

Embezzlement. “Embezzlement” is the fraudulent taking of personal property with which one has been entrusted (Black's Law Dictionary (9th ed. 2009)). Since the casinos opened, the number of embezzlements has increased significantly. In 1991 (the year before Foxwoods opened) there were 43 embezzlement arrests and in 2012 there were 168 such arrests (*FBI Crime in the United States: Uniform Crime Report*). The *Gambling in Connecticut* report indicates that many of these arrests resulted from employees who stole from their employer for gambling-related activities.

DC:ts