

Tribal Compacts a Challenge for New Mexico Sports Betting

- Tribes have exclusive gaming rights in New Mexico
- Sports betting tax revenue projections up to \$11M

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Photographer: Michelle Gustafson/Bloomberg via Getty Images

A guest grabs pick sheets during the launch of full-scale sports betting at Dover Downs Hotel and Casino in Dover, Delaware.

Legalizing sports betting across New Mexico would come with a \$74 million hit to state revenue if tribal gaming compacts aren't renegotiated.

That loss—stemming from a provision that gives tribes exclusive gaming rights—far outweighs tax revenue estimates if the state widely legalizes sports betting, according to new projections presented to state legislators. At risk is shared gaming revenue the state gets from tribes under those compacts.

New Mexico is among several states weighing whether to allow sports betting after the U.S. Supreme Court's [Murphy v. NCAA](#) decision gave them the chance to legalize it.

Lawmakers on an interim tax policy committee agreed the compacts stand in the way of any quick action to make sports betting legal statewide. Rep. Antonio "Moe" Maestas (D), who is pushing for statewide sports betting, said changes to the tribal compacts would come before any legislation.

i. Tax Revenue in Millions

Statewide sports betting in New Mexico could generate an estimated \$7.6 million to \$11 million a year in taxes, according to new economic analysis reports. The projections largely depend on how New Mexico would decide to regulate it.

Legalizing sports betting at just brick-and-mortar casinos and racetracks could provide about \$8 million in tax revenue, according to a [study](#) commissioned by the New Mexico racing industry. That number could jump to \$11.3 million if New Mexico allows mobile betting throughout the state, the report said.

A state [analysis](#) of a “best-case scenario” found sports betting could generate about \$7.6 million by taxing wins at roughly 10 percent, said James Girard, senior economist with the New Mexico Taxation and Revenue Department. Taxing the total bets placed, instead of just operator wins, could boost that an additional \$3.9 million, he said at an Oct. 30 legislative meeting.

ii. Outweighed by Revenue Sharing

But even the most optimistic revenue projection for legal sports betting doesn’t come close to the shared gaming revenue the state already receives from tribes.

New Mexico expects about \$74 million from that revenue sharing in fiscal year 2019, Girard said.

Tribes in New Mexico have exclusive rights to the category of gaming under which sports betting falls, with narrow exceptions. Expanding sports betting statewide would mean tribes no longer have to share revenue, Girard said.

“You’re basically ending up with a net loss, it looks like,” he said.

iii. Tribes Exploring Sports Betting

Tribes are already exploring sports betting at their casinos—one tribal casino in the state launched the gambling in October.

The Navajo Nation is “completing its due diligence” to consider operating sports betting at its casinos, LoRenzo Bates, speaker of the Navajo Nation Council, said in a written statement. The nation is looking at whether changing its compact to allow for mobile technology could be a simple amendment or require more complex process, he said.

No tribal representatives spoke at the Oct. 30 meeting. More than a dozen tribes didn’t immediately respond to Bloomberg Tax’s requests for comment on reopening the compacts.

However, an attorney for the Navajo Nation Gaming Enterprise told Bloomberg

Tax that it is hard to imagine tribes would want to enter negotiations to lessen their exclusive gaming rights.

Stephen Hart, a partner at Lewis Roca Rothgerber Christie LLP who represents the gaming organization, said negotiating the current compacts was an extensive process that spanned more than five years and several legislative sessions.

Reopening the compacts is a multifaceted question, Hart said. New Mexico could look at Internet gaming, for example, to allow mobile betting by tribes off of reservations.

An attorney who has represented New Mexico tribes in gaming negotiations said revenue sharing provisions have been a “thorn in the tribes’ side.”

Some tribes would favor lower payments in exchange for expanded sports betting, but the state is projecting only modest returns, Richard Hughes, a partner with Rothstein Donatelli LLP, told Bloomberg Tax.

“It’s a tough proposition,” Hughes said.

iv. Lawmakers Consider Strategy

Lawmakers said New Mexico needs to be ready to address sports betting, but they aren’t rushing to introduce legislation. Reworking the provisions could fall to the new governor elected Nov. 6 to replace term-limited Gov. Susana Martinez (R).

Maestas proposed that New Mexico run its own sports betting authority if the gambling is legalized statewide. The legislature should decide what infrastructure it wants, but only move forward after an agreement with tribes, he said.

“The law is on their side,” Maestas said.

Other lawmakers said the conversations are premature without tribal representatives. Sen. Peter Wirth (D) said revenue projections show the state will lose out on sports betting without profit sharing from tribes.

“To walk away from that and shift dramatically is a huge undertaking,” he said.

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