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Terms of proposed gambling compacts raise concerns

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A customer operates a slot machine in December at Buffalo Thunder Resort & Casino in Pojoaque. Clyde Mueller/The New Mexican



Posted: Monday, January 26, 2015 9:00 pm | Updated: 11:55 am, Tue Jan 27, 2015

By Steve Terrell
The New Mexican | 1 comment

Proposed Indian gambling compacts between the state and several New Mexico tribes might violate federal law because the terms would prohibit the Fort Sill Apache tribe in Southern New Mexico from opening a casino, a federal official who deals with Indian gambling says.

In a letter sent Friday to Sen. Bill Soules, D-Las Cruces, Paula Hart, director of the U.S. Interior Department's Office of Indian Gaming, said she is concerned about a paragraph in the proposed 23-year compacts. The

compacts require approval from the Legislature, which is expected to vote on them during the 60-day session that continues through March. Existing compacts with four of the tribes expire June 30.

The paragraph in question reads: "Subject to all the terms and conditions of this compact, any tribe that has lands in the state that were held in trust status prior to 1988 may conduct any and all forms of Class III gaming on any Indian lands eligible for gaming under the [Indian Gaming Regulatory Act] ..."

But the Fort Sill Apache Tribe, which owns about 30 acres of land near Deming, would be affected by that provision because its land in New Mexico was not made tribal trust land until 2002.

Fort Sill Apache Tribal Chairman Jeff Haozous said Monday that "this language in the compacts was specifically written to exclude us."

The tribe has had a bumpy relationship with Gov. Susana Martinez, who originally refused to recognize the Fort Sill Apaches as a New Mexico tribe. The tribe sued the administration in late 2013, and the state Supreme Court ruled in April that Martinez must recognize the tribe under state law.

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Off the floor

Demonstrations, booths, and informational sessions fill the halls of the capitol building almost daily.

Feb. 3 — Disability Rights Awareness Day at the Legislature Capitol, 9 a.m. - 2:30 p.m.

Anti-Racism Day in New Mexico Rotunda, 1 p.m. - 2 p.m.

Feb. 6 — American Indian Day

Feb. 10 — Boys and Girls Club Day at the Legislature

Feb. 11 — Wildlife & Public Lands Day, Halls of History, Eastside, Press Conference Rotunda, 12 p.m.

Feb. 13 — I Love Rio Rancho Day at the Legislature

African American Day

Feb. 17 — DWI March of Sorrow, Capitol Building, East and West Concourse, 11:30 - 2 p.m.

Feb. 18 — Girl Scout Day at the Roundhouse, Halls of History, Westside

New Mexico GRADS Day at the Legislature, Halls of History, Eastside, Rotunda, 11 a.m. - 1 p.m.

Central New Mexico Community (CNM) College Day at the Legislature

New Mexico Main Street Day

Feb. 19 — Colonias Day at the Legislature Capitol Building, Room 326

Earth Science Day at the Legislature, Halls of History, Westside, Press Conference at the Rotunda, 12 p.m.

Albuquerque West Side Day at the Legislature Rotunda, 9 a.m. - 12 p.m.

In her letter to Soules, Hart wrote, "We share your concern that this provision, if included in the Class III gaming compact, may violate [the Indian Gaming Regulatory Act] because it could be read to improperly prohibit gaming that might otherwise be legal under [that law]."

Hart said that the federal gambling law "generally prohibits Indian gaming on lands acquired in trust after Oct. 17, 1988." But there are several exceptions. "The compact provision appears to prohibit gaming even if a gaming tribe were to qualify for gaming under one of the exceptions. ... The compact provision appears to strip these exemptions from [the law], which only Congress can do."

Soules, who first alerted the Interior Department about the language in the proposed compacts, on Monday said, "There's an easy solution. Take that paragraph out."

Soules noted that once the Legislature approves and the governor signs the new compacts, they must be sent to the Interior Department for final approval. The letter from Hart, he said, shows the department might not approve the compacts if the paragraph affecting the Fort Sill Apaches is left in.

Six tribes have negotiated with the Martinez administration for new gambling compacts. These tribes include the Navajo Nation, the Jicarilla Apaches, the Mescalero Apaches and Acoma Pueblo — all tribes with casinos — plus two tribes that are not operating casinos, the Jemez and Zuni pueblos. Pojoaque Pueblo, which has a compact that expires June 30, is trying to get a new agreement directly with the federal government and is pursuing a federal court ruling to do so.

Other tribes would be able to sign on to the new compacts — including tribes operating casinos under compacts signed in 2007.

In a written statement, Jessica Hernandez, Martinez's deputy chief of staff, said, "This compact provision does not have any impact on tribes that are not parties to the compact. Other tribes are free to approach the State for different terms to govern their own gaming activities."

"We have negotiated with tribes for terms that address their specific situations," Hernandez continued. "Every tribe we negotiated with has lands that meet this description. If another tribe asked to negotiate a compact with the State, we would negotiate terms that address that tribe's circumstances."

She said the compact does not try to change the Indian Gaming Regulatory Act. "That law remains in full force," she said. "Tribes that did not historically have trust lands in New Mexico will need federal approval of their planned gaming activities. After they receive that federal approval, they can negotiate a gaming compact with the state."

Martinez isn't the first governor to wrangle with the Fort Sill Apaches.

In 2008, the tribe built a high-stakes bingo parlor and then-Gov. Bill Richardson ordered state police to block access to the parlor.

The next year, the National Indian Gaming Commission chairman ruled that the Fort Sill Apaches were illegally running bingo games at the tribe's Apache Homelands Casino along Interstate 10, west of Las Cruces. The tribe appealed that decision, but the commission never has acted. Last June, the tribe filed suit in federal court, asking the court to overturn the commission chairman's 2009 ruling.

"If we get a favorable ruling, we could open a casino right away," Haozous said.

According to the tribe's website, the Fort Sill Apaches, headquartered in Oklahoma, are successors of the Chiricahua and Warm Springs Apache tribes,

Santa Fe Community College Day at the Legislature, Halls of History, Eastside, 8 a.m. - 2 p.m.

Feb. 20 — New Mexico Aviation Day, Halls of History, Westside, 8 a.m. - 2 p.m.

Valencia County Day at the Legislature Rotunda, 12 p.m.

Feb. 24 — Culture Day at the Legislature Rotunda, 8 a.m. - 4 p.m.

Feb. 26 — City of Las Vegas Day, Halls of History, Westside Rotunda, Performance at 12 p.m.

Feb. 27 — Renewable Energy Day at the Legislature Halls of History, East and Westside, 10 a.m. - 3 p.m. Press Conference 12 p.m.

Mar. 2 — Albuquerque NOW (National Organization for Women), celebrate Women's History and equal rights. Rotunda, 2 p.m. - 3 p.m.

Mar. 4 — Charter School Day at the Legislature Rotunda, Press Conference 12 p.m. - 1 p.m., Halls of History, Westside 8 a.m. - 3 p.m.

Mar. 6 — Asian American & International District Day, Rotunda, 12 p.m. - 2 p.m.


Mar. 21 — Session ends at noon

Session dates - 2015

- December 15, 2014 - January 16 Legislation may be prefiled
- January 20 Opening day (noon)
- February 19 Deadline for introduction
- March 21 Session ends (noon)
- April 10 Legislation not acted upon by governor is pocket vetoed
- June 19 Effective date of legislation not a general appropriation bill or a bill carrying an emergency clause or other specified date

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By Kelli Burt



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which, under Geronimo, warred with the U.S. Army when New Mexico was still a territory. In 1886, tribal members were forcibly removed from their homeland in southwestern New Mexico and southeastern Arizona and held as prisoners. The Chiricahua and Warm Springs Apaches later organized as the Fort Sill Apaches.

Contact Steve Terrell at sterrell@sfnewmexican.com. Read his political blog at <http://tinyurl.com/roundhouseroundup>.

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Dr. Michael Johnson posted at 12:55 pm on Tue, Jan 27, 2015.



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