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March 9, 1998

Hon. Daniel E. Lungren  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Connie Lemus  
Initiative Coordinator

Dear Attorney General Lungren:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative statutory amendment entitled "The Tribal Government Gaming and Economic Self-Sufficiency Act of 1998" (File No. SA 98 RF 0006, Amendment No. 1-NS). The measure amends the California Government Code to provide for the legalization and regulation of certain types of gambling on Indian lands in California. As Section 9005 directs, our review addresses the potential effects of the measure on state and local government revenues and costs.

**BACKGROUND**

Gambling on Indian lands is regulated by the 1988 federal Indian Gaming Regulatory Act (IGRA). The IGRA defines gambling under three classes. Class III gambling, which is the subject of this measure, generally includes banked card games (such as blackjack, pai gow, and baccarat), virtually all video or electronic games, slot machines, parimutuel horse race wagering, and craps. An Indian tribe can only operate Class III games if the tribe and the state have agreed to a tribal-state compact that governs the Class III activities.

According to the federal Bureau of Indian Affairs, there are over 100 Indian rancherias/reservations in California. Currently, there are 41 Indian gambling operations in California, which offer a variety of games.

## PROPOSAL

This measure establishes a specific compact allowing Class III gambling on Indian lands for tribes that agree to sign the compact. It also requires the Governor to negotiate a separate tribal-state compact with any tribes that want a different compact.

### Tribal-State Compact

The following are the basic provisions of the tribal-state compact established by the measure:

*Class III Games Allowed.* The following Class III gambling activities could be conducted in Indian gambling establishments:

- *Parimutuel Horse Race Wagering.* This gaming would be based on the existing compact between the state and the Sycuan Band of Mission Indians.
- *Gaming Devices.* These are machines (such as electronic or video) that allow the individual player to play any game of chance—provided the machine does not dispense coins or currency and is not activated with a handle. The machines must pay prizes solely in accordance with a player's pool prize system (as defined in the measure).
- *Card Games.* The compact allows any card game that was actually played in any California tribal gambling operation prior to January 1, 1998. Again, prizes would have to be paid solely in accordance with a player's pool prize system.
- *Lotteries.* The compact also allows any lottery game.

*Trust Funds.* Tribes would be required to establish three trust funds to be funded from a portion of the gambling proceeds. The contributions to the trust funds are to be calculated as a percent of the "net win" (defined as the total wager less any prize payouts) from certain gaming devices. The contributions vary by trust fund and are based on the net win of devices in excess of 200. The three trust funds and percent allocations are as follows:

- ***Nongaming Tribal Assistance Fund.*** This would be funded from 1 percent of the net win from those machines in excess of 200 and less than 400 and 2 percent of net win from machines in excess of 400. The proceeds are to be used for education, economic development, cultural preservation, health care, and other tribal purposes of federally recognized tribes located in California that *have not* participated in any form of gambling for the 12 months prior to the anticipated receipt of funds.
- ***Statewide Trust Fund.*** This would be funded from 1.5 percent of the net win from those machines in excess of 200 and less than 400 and 3 percent of the net win from machines in excess of 400. The funds are to be distributed statewide and used solely to supplement emergency medical care resources within each county. A portion of the distribution is to be used to establish or supplement programs which address compulsive and addictive gambling.
- ***Local Benefits Grant Fund.*** This is would be funded by 0.5 percent of the net win on those machines in excess of 200 and less than 400 and 1 percent of net win from machines in excess of 400. The proceeds of this trust fund are to be distributed as grants to address community needs, as determined by a committee of local and tribal officials in any city or county within which the tribe's gambling facility is located.

***Tribal Regulation.*** Under the compact, each tribe would need to have a tribal gaming agency responsible for regulating gaming facilities and operations. Additionally, the compact places the primary responsibility for licensure of all gaming employees and gaming resource suppliers with the tribal gaming agency.

***State Regulation.*** The Attorney General and the Gambling Control Commission would be the designated *state* entities responsible for state regulation of the tribal gambling operations. The authority of these state entities would be limited under the compact. Essentially the tribal regulatory body is to share information with the state and the state may review such information and object to actions taken by the tribal agency.

### **Other Provisions of the Measure**

***Other Compacts.*** The measure requires the Governor to negotiate with an Indian tribe a compact that differs from the one defined in the measure—provided that the scope of Class III gambling is not expanded. Thus, any Indian tribe requesting a tribal-state compact for Class III gambling would not be limited to the provisions of the compact discussed above—other than the scope of Class III gambling.

***Tribal Reimbursement of State Regulation Costs.*** The measure provides for tribal reimbursement of all reasonable costs associated with state regulation of the tribal gambling operation. This reimbursement would be for all regulatory activity under the specified compact or any other compact signed by the Governor.

## FISCAL EFFECTS

### State and Local Tax Revenues

The effect the measure would have on state and local tax revenue depends primarily on the *extent* to which gambling increases in California as a result of this measure and the *source* of any new spending on tribal gaming.

For example, tax revenues could increase substantially if (1) the measure were to result in a significant increase in gaming in California and (2) a large portion of the new gambling on tribal lands is spending that would have otherwise occurred *outside* of California (such as in Nevada).

On the other hand, if the new gambling resulting from the initiative were relatively limited or if most of the new gambling represented spending that was diverted from other areas in the local economy, the revenue gains would be smaller.

The measure probably would have a limited net effect on tax revenues in the near term. However, in the longer term, the measure could result in a significant increase in economic activity and tax revenues in California. This would occur if over time there is a *large* diversion of gambling activity from other states to California.

### Trust Fund Revenue

State and local governments could potentially receive revenue from the Statewide Trust Fund and the Local Benefits Grant Fund. The amount of revenue received from these two trust funds would depend on the net win of the different gambling operations and the quantity of machines in operation. Based on available information, revenue to these trust funds could total in the tens of millions of dollars annually.

### State Regulatory and Administrative Costs

The state incur costs for regulatory activity associated with the measure. These costs would vary depending on the number and size of Indian gambling establishments. The state regulatory and administrative costs could exceed \$10 million annually and would

be offset by fees charged to the regulated tribes. Thus, the measure would result in *no net* increased costs to the state.

### **Local Government Costs**

The measure could result in increased local law enforcement costs. The magnitude of these costs is unknown.

### **SUMMARY OF FISCAL EFFECTS**

This measure would have the following major fiscal effects:

- Probably a limited effect on the state and local revenues in the near term. Potential longer-term significant positive impact to the extent there is a *large* diversion of gambling activity from other states to California.
- Additional revenues to state and local governments from the trust funds called for under the compact—potentially in the tens of millions of dollars annually.

Sincerely,

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Elizabeth G. Hill  
Legislative Analyst

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Craig L. Brown  
Director of Finance