

February 27, 2004

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative regarding gaming on Indian lands (File No. SA2004RF0005, Amendment No. 1-NS).

Background

The federal Indian Gaming Regulatory Act of 1988 and the State Constitution govern gambling operations on Indian land. Tribes that enter a tribal-state compact may operate slot machines (up to 2,000) and engage in lottery and banked card games, such as twenty-one. Games such as craps and roulette are prohibited. Currently, 64 tribes have tribal-state gaming compacts and operate 50 casinos with a total of 54,000 slot machines. All of the compacts' provisions last 20 years, with most due to expire in 2020.

Under the compacts, tribes make payments to two state accounts, totaling more than \$130 million annually. The use of these funds is restricted to specific purposes. The California Gambling Control Commission (CGCC) is charged with the primary regulation of the tribal compacts for the state. The costs of these activities, about \$13 million annually, are funded from these payments made by the tribes. As sovereign nations, tribes are not required to pay federal, state, or local taxes (such as income, property, or sales tax). In addition, tribes are exempt from state laws, including California environmental and workplace laws.

Major Provisions

The measure amends the California Constitution and state law to require the Governor to amend or enter into a new compact with any federally recognized tribe within 30 days of a tribe's request. This new or amended compact would have to include certain provisions, as discussed below.

New Gaming Revenues. Under the provisions of the measure, tribes entering an amended or new compact would pay the state a percentage of its net income from gaming activities. The percentage of net income paid would be equivalent to the corporate tax rate paid by a private business (currently 8.84 percent). These payments would be in lieu of any other fees, taxes, or levies that may be charged by the state, cities, or counties against the tribes on its authorized gaming activities. The measure specifies that the state could spend these revenues for any purpose. In the event the tribes lose their exclusive right to conduct gaming in California, the tribes would no longer be required to make these payments. The measure does not change any provisions related to existing payments to the state.

Expansion of Gaming. The measure expands the types of games authorized by the compacts to include roulette, craps, and any other form of casino gaming. The measure eliminates existing compact limits on the number of slot machines and facilities (currently limited to two facilities) a tribe can operate. The measure restricts the location of the gaming operations to Indian lands.

Compacts Extended. The measure specifies that any amended or new compact would remain in effect for 99 years. These compacts could be amended or renewed upon agreement of the Governor and a tribe.

Legislative Approval of Compacts. An amendment to an *existing* compact would not require legislative ratification. Any *new* compact, however, would be submitted to the Legislature within 15 days of the conclusion of negotiations. The Legislature would then have 30 days in which it could reject the compact. If the Legislature took no action within this period, the compact would go into effect.

Environmental Impact Reports. As required under the current compacts, any tribe entering a compact under this measure would be required to prepare an environmental impact report analyzing the impact of any new or expansion of a tribal gaming facility on the surrounding area.

Fiscal Effect

Gaming Revenues Would Depend on Various Factors. Increased revenues to the state from the new compacts would depend on a number of factors, including the extent to which (1) tribes with existing compacts agreed to the revised compact provisions, (2) new slot machines and games were added at gaming establishments, and (3) tribes currently without compacts agreed to new compacts.

Estimated Gaming Revenues. While tribes do not publicly report the net *win* (that is, total revenues less payouts) of their gaming machines or table games, it is estimated that these activities are currently generating a net win of over \$5 billion annually. The net *profit* from these activities (the basis for the payments to the state under the measure) is somewhat less, but probably still in the billions of dollars annually. Given a tax rate of almost 9 percent on these profits and assuming that most tribes agreed to amended compacts under this measure, payments to the state could total several hundreds of millions of dollars annually. As gaming revenues increased, tribes added gaming machines and tables, and additional tribes signed compacts, these payments to the state could increase significantly. These revenues from tribes would be partially offset to the extent that any new gaming activities replaced other forms of gaming currently available in California, such as the lottery and horse racing.

Increased Economic Activity. This measure would likely result in an increase in economic activity in California. The magnitude of the increase would depend primarily on (1) the extent to which tribal gambling operations expand and (2) the degree to which new gambling-related activity in California is from spending diverted from outside of California. While economic activity on Indian lands is generally exempt from taxation, associated spending could increase the amount of taxable economic activity in California. For instance, wages paid to nontribal employees of the gaming operations would be subject to the state's income tax. In addition, associated development near Indian lands (such as hotels or restaurants) would be subject to state and local taxes. The magnitude of any such increase in taxable economic activity is unknown but potentially significant.

State Regulatory Costs. The measure could result in increased state gaming regulation costs. The magnitude of these costs would depend on the extent of increased gambling and the workload necessary to calculate gaming net profit. These costs would likely total millions of dollars annually. Licensing fees have typically covered these costs.

Local Government Costs. If the measure significantly expanded gambling, local governments could experience unknown, but potentially significant increases in costs associated with gambling, such as for law enforcement and infrastructure.

Summary

This measure would have the following major fiscal effect:

- Increased state gaming revenues—potentially several hundreds of millions of dollars annually. These revenues could increase significantly over time.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Donna Arduin
Director of Finance