

March 4, 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 related to gaming on Indian lands (File No. SA2004RF0007).

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 and engage in lottery and banked card games, such as twenty-one. Current compacts limit the number of machines to 2,000 per tribe and the number of casinos to two per tribe. 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 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 to include new requirements for tribal gaming compacts. In exchange for agreeing to the provisions of the measure,

tribes would be authorized to operate up to 3,000 slot machines each. (As with current compacts, tribes would be limited to two facilities.) The new requirements are as follows:

- ***State Gaming Revenues.*** Under the measure, tribes entering an amended or new compact would pay a “fair share” of revenues to the state. While the measure does not define fair share, it does require that the amount be equal to at least what a California business conducting lawful gaming would pay in state taxes.
- ***Local Revenues.*** Tribes would also be required to negotiate with the local governments (where the tribal casino is located) to make payments to the local governments. These payments would be in lieu of local taxes that are imposed on nontribal California businesses and to mitigate any impacts on the local areas.
- ***Workplace Laws.*** Any revised or new compact would require the tribe to enforce workforce laws equivalent to those that apply to nontribal businesses in California.

Tribes That Do Not Agree to Provisions. Under the provisions of the measure, tribes could continue to operate under their existing compacts. Those tribes seeking to amend an *existing* compact that do not agree to the provisions, however, could not expand their gaming operations. Tribes entering a *new* compact that do not agree to the provisions above could not operate more than 350 slot machines.

Fiscal Effect

Gaming Revenues Would Depend on Various Factors. Increased revenues to the state and local governments from any new compacts would depend on a number of factors, including the extent to which:

- Tribes with existing compacts agreed to the revised compact provisions.
- New slot machines and games were added at gaming establishments.
- Tribes currently without compacts agreed to new compacts under this measure’s provisions.
- The amount of tribal payments negotiated by the state and local governments.

Many tribes with compacts are not currently at the maximum allowable number of slot machines. Therefore, it is not clear that they would seek to renegotiate their compacts under the measure's provisions. For instance, if most tribes with existing compacts did not find the benefits of additional slot machines worth the required payments and regulations, the increased revenues from the measure likely would be minimal. If, however, a number of tribes agreed to revised compacts and added several thousand new slot machines, payments to the state and local governments could total in the high tens of millions of dollars annually (depending on negotiated terms). Any 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 could 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. Licensing fees have typically covered these costs.

Long-Term Impact. Under current law, tribes can renegotiate existing compacts with the Governor or agree to new compacts upon their expiration. The level of gaming and revenue that would result from such compacts over the long term is unknown. This measure, by limiting gaming levels allowed by any new compact, could restrict the future long-term level of gaming (and associated economic activity). If this occurred, state and local gaming-related revenues would tend to be lower in the long term under the measure than otherwise would be the case.

Fiscal Summary. This measure would have the following major fiscal effect:

- Based on future negotiations with tribes, potentially significant increase of state and local gaming revenues. These revenues could be in the high tens of millions of dollars annually in the foreseeable future.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Donna Arduin
Director of Finance