



August 1, 2018

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative related to gaming activities (A.G. File 18-0003, Amendment #1).

Background

Gaming in California. State law limits the types of gaming that can occur in California. For example, state law prohibits wagering on the outcomes of contests between animals and/or people (including sporting events). It also prohibits banking and percentage games played with cards, dice, or other devices for monetary benefit (such as roulette and craps). Banking games generally involve players betting against the “house,” who is a participant in the game with an interest in its outcome, and percentage games generally involve the house receiving a percentage of the money involved in the game.

Under existing state law, specific gaming activities in California are allowed—including some activities that are exceptions to the above limits. Currently, the following major gaming activities are authorized in California:

- ***California Lottery.*** The California Lottery currently oversees the sale of various lottery games (such as Scratcher games or Powerball) at about 23,000 retail locations across the state. The California Lottery is overseen and regulated by the Lottery Commission.
- ***Cardrooms.*** Cardrooms in 32 counties operate certain card games (such as poker and pai-gow) in a manner that is generally understood to make them non-banked or non-percentage games. These cardrooms are regulated by the local governments that authorized them, the California Gambling Control Commission (CGCC), and the California Department of Justice (DOJ).
- ***Horse Racing.*** Currently, 36 tracks, fairs, and satellite facilities in 19 counties facilitate wagering on horse racing. The California Horse Racing Board oversees and regulates the horse racing industry.
- ***Tribal Gaming.*** Tribes currently operate 63 casinos in 27 counties, offering slot machines, lottery games, and banking and percentage card games on tribal lands. These casinos are regulated by individual tribal gaming agencies, CGCC, and DOJ.

The state and local governments receive revenues from authorized gaming activities in different ways. For example, cardrooms and their owners along with winnings are subject to state and local taxes. Lottery sales and winnings are generally not subject to state and local taxes.

Federal Authorization of Tribal Gaming. Indian tribes possess special status under federal law. Specifically, tribes have certain rights to govern themselves without interference from states. As a result, state regulation of tribal casinos and other activities is generally limited to what is authorized under (1) federal law and (2) federally approved agreements between a tribe and a state. For example, federal law permits federally recognized tribes to operate casinos that offer certain types of games (such as slot machines) on Indian land in states that allow such games.

The federal government generally defines Indian lands as reservation lands or lands held in trust by the U.S. for the benefit of an Indian tribe. However, federal law generally prohibits gaming on land that was obtained and put into trust for an Indian tribe after October 17, 1988. There are some exceptions to this rule. For example, gaming on newly obtained land is allowed if the federal government determines that gaming on the land is in the best interest of the tribe and would not be harmful to the surrounding community. The Governor of the state where the land is located must formally agree with the federal government's decision to permit gaming activities on such land. When a tribe wants to offer gaming on its land, federal law requires that the state negotiate a contract (known as a "tribal-state compact") with the tribe that specifies how gaming will be conducted and regulated. This compact must be approved by the federal government.

Proposal

Authorizes Additional Gaming Activities. This measure amends Section 19 of Article IV of the State Constitution to expand gaming activities in the state. Specifically, it requires the Legislature to authorize sports wagering and banking and percentage card games for "licensed gambling establishments." This could result in cardrooms changing the types of card games they offer. It could also result in gaming operators (such as cardrooms or horse racing facilities) offering new activities (such as sports wagering). The measure also states that "all wagers made pursuant to this section shall be physically placed within a licensed gambling establishment." In addition, it authorizes tribal casinos to offer roulette and craps games as long as these games are negotiated into their tribal-state compacts.

Changes State's Role in the Authorization of Gaming on Certain Tribal Lands. The measure prohibits the Governor from formally agreeing with any federal government decision to permit gaming activities on newly obtained tribal land. The measure also prohibits the Governor from negotiating a compact with a tribe that does not have land held in trust on which the gaming is to occur and that is not federally recognized, which could limit the future expansion of tribal gaming.

Fiscal Impact

The net fiscal impact of this measure is unclear and would depend primarily on how it was interpreted and implemented. For example, it is unclear what regulatory requirements would be imposed by the state and local governments. Specifically, it is unclear what types of businesses would be eligible to provide expanded gaming activities, how businesses would be licensed, and whether state and local governments would receive a portion of gaming revenue from new gaming activities (as certain other states currently do in regards to sports wagering). Additionally, the fiscal impact would depend on the extent to which businesses and members of the public participate in these new gaming activities, which is uncertain.

Impact on Gaming. This measure could result in various impacts on gaming. First, the measure could result in increased gaming from individuals choosing to participate in the new or expanded activities. For example, individuals could shift their sports wagering from illegal markets where they currently wager to a newly created legal market. Second, the measure could result in reduced gaming from wagers placed in tribal casinos that may no longer be constructed due to the change in the state's role in the authorization of gaming on certain tribal lands. Finally, the measure could result in a shift of gaming. For example, individuals could shift from wagering on banking and percentage card games to wagering on sports instead. Gaming activities may also shift between gaming operators—such as from a tribal casino to a cardroom. On net, the overall impact on gaming is unclear.

Impact on State and Local Governments. The gaming impacts discussed above could result in various potential fiscal impacts on state and local governments. State and local governments could experience increased revenues from increased gaming activity. For example, increased gaming could result in increased taxes or in new economic activity that creates revenues. At the same time, state and local governments could also experience increased costs. For example, expanded gaming activities could result in more individuals visiting gambling facilities, potentially increasing state and local law enforcement costs. Finally, state and/or local governments would incur increased regulatory costs, which could be offset to the extent that any regulatory fees are authorized by the Legislature. On net, the overall impact on state and local governments is unclear.

Summary of Fiscal Impact. We estimate that this measure could have the following major fiscal impact on state and local governments:

- Unclear net fiscal impact, as it would depend primarily on how the measure is interpreted and implemented as well as the extent to which businesses and members of the public participate in the new gaming activities.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance