



October 20, 2021

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code 9005, we have reviewed the proposed constitutional and statutory initiative related to online sports wagering (A.G. File 21-0017, Amendment #1).

Background

Gaming in California. State law limits the type of gaming that can occur in California. For example, state law generally prohibits wagering on the outcomes of contests between animals and/or people (including sporting events). Under existing state law, the following major gaming activities are currently authorized in California, including some activities that are exceptions to the prohibitions in state law:

- ***California Lottery.*** The California Lottery currently oversees the sale of various lottery games at about 23,000 retail stores across the state. The California Lottery is regulated by the Lottery Commission.
- ***Cardrooms.*** Currently, 86 cardrooms in 32 counties operate certain card games (such as poker and pai-gow). 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, four tracks as well as 30 fairs and satellite facilities in 17 counties accept wagers on horse racing. The California Horse Racing Board regulates the horse racing industry.
- ***Tribal Gaming.*** Tribes currently operate 66 casinos in 28 counties, offering slot machines, lottery games, and card games on Indian lands. As discussed below, these casinos are generally authorized based on agreements with individual gaming tribes and the state and are regulated by individual tribal gaming agencies, CGCC, and DOJ.

California's gaming laws are enforced in various ways. For example, regulatory agencies can revoke gaming licenses or levy fines through administrative proceedings or through civil actions

pursued in the state trial courts. At the same time, DOJ, county district attorneys, and city attorneys can pursue criminal actions seeking fines or convictions for violations of the state's gaming laws.

Tribal-State Compacts. 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 negotiated between a tribe and state (known as tribal-state compacts). For example, federal law permits federally recognized tribes to operate certain types of games (such as slot machines) on Indian lands in states that allow such games. When a tribe wants to offer gaming on its land, federal law requires that the state negotiate a compact with the tribe that specifies how gaming will be conducted, regulated, and enforced. These compacts can also require gaming tribes make certain payments, such as to non-gaming tribes, the state, and local governments. Compacts may be renegotiated under certain conditions, such as if additional gaming activities are authorized in the state.

Separate Gaming Measure Eligible for November 2022 Ballot. At the time of this writing, a constitutional and statutory initiative related to gaming—separate from the measure reviewed in this analysis—is eligible to appear on the November 2022 ballot. This other initiative would authorize (1) additional gaming activities (such as roulette and craps) at tribal casinos, (2) in-person sports wagering at the state's existing racetracks as well as at tribal casinos on Indian lands if authorized by their tribal-state compacts, and (3) a new civil enforcement tool for violations of certain state gaming laws.

Homeless Housing, Assistance, and Prevention Program (HHAPP). HHAPP—a state program administered by the Homelessness Coordinating and Financing Council (HCFC) within the Business, Consumer Services, and Housing Agency—provides flexible funding to local entities (such as cities) and tribes to address homelessness in their communities. The program is intended to support regional coordination and expand or develop local capacity to address homelessness based on best practices. Under current state law, funding is provided to local entities and tribes as follows: (1) 80 percent to local entities generally based on their proportionate share of the homeless population in the state, (2) 2 percent to tribes generally based on self-asserted need, and (3) 18 percent to HCFC for discretionary bonuses to funding recipients who meet homelessness goals they have set for themselves. Currently, the program receives \$1 billion in state General Fund support, with an additional \$1 billion planned for next year.

Proposal

This measure authorizes online sports wagering in California outside of Indian lands and includes various provisions related to the regulation of such gaming. In addition, the measure specifies that it entirely conflicts with any other proposed initiatives that appear on the same statewide ballot that authorize online sports wagering to individuals 21 years of age or older who are in California and outside of Indian lands. If conflicting measures are approved by the voters, this measure specifies that the one receiving the most “yes” votes will prevail and go into effect. This measure states that both this measure and the above initiative authorizing in-person sports wagering that is already eligible for the November 2022 ballot shall go into effect if both are

approved by the voters at the same election because the two measures are not in conflict. Below, we describe the major provisions of this measure.

Authorizes Online Sports Wagering. This measure amends the State Constitution and state law to authorize online wagering on sports events. Assuming this measure appears on the November 2022 ballot and is approved by voters, this authorization would begin January 1, 2023, with wagering becoming publicly available no later than the end of August 2023. The measure defines sports events to include athletic events as well as certain non-athletic events, such as award shows and video game competitions. However, the measure prohibits online wagering on various events, including youth sports events (such as high school games) and elections. Eligibility to offer online sports wagering would be limited to:

- Gaming tribes that choose to give up some of the rights they possess due to their special status under state law, such as agreeing to comply with all of the requirements laid out in this measure rather than negotiating separate requirements regarding online sports wagering through tribal-state compacts.
- Technology businesses that have a contract with a gaming tribe to offer online sports wagering on behalf of the tribe under the tribe's name or branding.
- Gaming companies that have an agreement with a gaming tribe for access to the California market and either (1) are licensed to offer online sports wagering in at least ten U.S. states or territories or (2) are licensed to offer online sports wagering in at least five U.S. states or territories and operate or manage at least 12 U.S. casinos. The companies would have the option of offering sports wagering under their own name or brand instead of the name or brand of the tribe.

The measure restricts the offering of online sports wagering to individuals 21 years of age or older who are physically present in California but not on Indian lands. It also prohibits advertising or marketing to individuals who are under the age of 21 or who have requested to have themselves prohibited from making online sports wagers.

Imposes Online Sports Wagering Licensing Fees and Taxes. This measure imposes various licensing-related fees. Most notably, the measure requires tribes and technology businesses to pay a one-time initial license fee of \$10 million and a license renewal fee of \$1 million every five years. Gaming companies would be required to pay a one-time initial license fee of \$100 million and a license renewal fee of \$10 million every five years. The measure also imposes a 10 percent tax on entities offering online sports wagering. This tax is applied to the amount of sports wagers made after deducting (1) any wagers made with free bets or promotional credits (such as a wager made with funds provided by a gaming operator to a player as a promotion), (2) players' winnings and prizes, and (3) all federal gaming taxes. The measure allows entities to annually deduct from their online sports wagering tax payment up to 20 percent of the amount they paid in initial and renewal license fees.

Under this measure, all of these revenues would be deposited into a new special fund, the California Online Sports Betting Trust Fund (COSBTF). After deducting state regulatory costs, the measure requires 85 percent of revenues be allocated by the Legislature through the annual

state budget process for the purpose of delivering permanent and interim housing. The funds would be allocated to local entities using the most recent HHAPP allocation methodology. However, the measure allows the Legislature to restrict the funding for certain purposes (such as to provide mental health or substance use treatment for individuals experiencing homelessness) and to allocate a portion of the funding to the state's Office of Problem Gaming. This measure states that these allocations may not be used to replace any other existing revenue provided for these purposes. The measure requires that the remaining 15 percent be allocated to federally recognized Indian tribes in California that are not involved in online sports wagering to support tribal government, public health, infrastructure, and economic development.

Creates Division of Online Sports Betting Control (DOSBC). This measure creates DOSBC within DOJ, which would have the exclusive authority to regulate online sports wagering as well as to investigate illegal wagering activities (such as "match-fixing"). This includes developing regulations and licensing requirements, authorizing the list of events and bet types eligible for online sports wagering, and investigating abnormal wagering activity (such as the "fixing" of games). However, the measure specifically prohibits DOSBC from taking certain regulatory actions. For example, the measure prohibits the division from placing limits on the type or amount of free bets or promotional credits offered to individuals, as well as from specifying how odds are to be calculated.

The measure creates a 17-member advisory committee within DOSBC to provide advice and recommendations. The measure requires the division obtain written input from this committee prior to proposing, adopting, or changing any regulations. The measure also provides a \$30 million General Fund loan to DOJ to support the division's start-up costs and requires the loan be repaid from the COSBTF within five years.

Authorizes Actions Against Illegal Online Sports Wagering. The measure imposes a 15 percent tax on people in California who illegally make online sports wagers. This tax is applied to the amount a person bets. Additionally, the measure authorizes DOSBC to take various enforcement actions, including requiring people making such bets to register with DOSBC, requiring entities illegally offering online sports wagering to disclose the names of people who make wagers with them, and blocking access to illegal sites accepting sports wagers. The measure imposes a civil penalty of \$1,000 per day on any tax owed for illegal online sports wagering. Such taxes and penalty revenues are to be deposited into the COSBTF.

Revenues Exempt From State Spending Limit and Minimum Education Funding Levels. The Constitution contains various rules affecting the state budget. For example, the Constitution specifies a state spending limit and requires a minimum level of annual funding for K-12 education and the California Community Colleges. This measure amends the Constitution to exempt the measure's revenues and spending from these constitutional requirements.

Fiscal Effects

This measure would impact the expenditures and revenues of both the state and local governments. The actual magnitude of these effects, however, is uncertain and would depend primarily on how the measure is interpreted and implemented. For example, it is unclear whether payments required by existing tribal state compacts to local governments would be renegotiated

given this proposed expansion in legal gaming activities. (The state currently receives payments to offset its regulatory and other gaming-related costs, which would be unlikely to change.) The measure's fiscal impact would also depend on the number of entities licensed to offer online sports wagering, the amount of deductions taken by those entities from their online sports wagering tax payments, and the extent to which members of the public choose to participate in online sports wagering. The fiscal effects described below only concern this measure and do not reflect the implementation of any other gaming measures.

Increased State Revenues. The measure would result in increased revenues to the state from online sports wagering-related taxes, licensing fees, and penalties. Some of these revenues would be new to the state, such as online sports wagering taxes collected on wagers that would have otherwise been placed in the illegal market. However, some portion of the increased revenues would reflect a shift from other existing state and local revenues. For example, some individuals who wager on sports would spend less on other revenue-generating activity—such as shopping.

The magnitude of the increase in state revenues is uncertain, but could reach the mid-hundreds of millions of dollars annually. After deducting regulatory costs, funds deposited into the COSBTF would be allocated by the Legislature to (1) local entities to deliver permanent and interim housing, (2) problem gambling programs, and (3) tribes not engaged in online sports wagering to support economic development and other purposes.

Increased State Regulatory Costs. The measure would create workload for DOSBC to implement and regulate online sports wagering. The magnitude of the increase would depend primarily on how online sports wagering is implemented and regulated—such as the total number of entities that would be licensed to offer online sports wagering, the complexity and number of wagering options and events offered, and the level of state enforcement activities. In total, increased state costs to regulate online sports wagering could reach the mid-tens of millions of dollars annually. Some or all of these costs would be offset by the increased revenue deposited into the COSBTF.

Other Fiscal Effects. This measure could result in various other fiscal impacts on the state and local governments. For example, the state and local governments could experience increased revenues from economic activity generated by individuals from out of state visiting to place online sports wagers and spending more in the state as a result. However, some of this revenue increase to certain local governments could be partially or fully offset by renegotiated tribal-state compacts that reduce tribal payments to local governments due to the significant expansion of non-tribal gaming activities. In addition, the state and local governments could experience increased costs, such as if there was an increase in individuals with gambling addictions that subsequently required governmental assistance. The net impact of the above factors on the state and local governments is unknown.

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

- Increased state revenues, potentially reaching the mid-hundreds of millions of dollars annually, from online sports wagering-related taxes, licensing fees, and penalties.

Some portion of these revenues would reflect a shift from other existing state and local revenues.

- Increased state regulatory costs, potentially reaching the mid-tens of millions of dollars annually, that would be fully or partially offset by the increased revenues.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Keely Martin Bosler
Director of Finance