



December 27, 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 Section 9005, we have reviewed the proposed constitutional and statutory initiative related to gaming (A.G. File 21-0039, Amendment No. 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). 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 the 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 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 that take place on Indian lands 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 lands, 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.

If the state and tribe are unable to reach agreement, the tribe may ask the federal government to issue gaming regulations instead. In such cases, the federal regulations—rather than a tribal-state compact—govern how the tribe may offer gaming. Since 1999, 78 out of over 100 federally recognized Indian tribes in California have negotiated tribal-state compacts with the state or have been issued federal gaming regulations. (We note that not all of these tribes currently operate casinos.)

Proposal

This measure authorizes tribal casinos to offer roulette and games played with dice (such as craps), as well as online and in-person sports wagering. Below, we describe the major provisions of this measure.

Authorizes Additional Gaming Activities at Tribal Casinos. This measure amends the State Constitution to authorize roulette and games played with dice (such as craps) at tribal casinos.

Authorizes Online Sports Wagering. This measure amends the Constitution to authorize Indian tribes to offer online sports wagering beginning September 1, 2023. The measure permits only individuals 21 years of age or older to make sports wagers and requires individuals register for player accounts in-person at a tribal gaming facility. The measure also prohibits advertising or marketing sports wagering to individuals under the age of 21. Additionally, the measure prohibits sports wagering on certain sporting events including high school games, animal contests currently prohibited under state law (such as greyhound races), and games that have already occurred.

This measure authorizes tribes to offer online sports wagering through one of three ways that would specify how the online wagering would be conducted, regulated, and enforced. First, the measure amends state law to establish a framework to authorize federally recognized tribes with Indian lands in California to offer online sports wagering to individuals physically in California but not on Indian lands. The measure also allows these tribes to contract with other California federally recognized tribes that are not offering sports wagering to register player accounts.

Second, tribes with existing tribal-state compacts or federal gaming regulations could adopt a “model compact agreement” (as established in the measure) before September 2027. Similar to a tribal-state compact, the model compact agreement would govern online sports wagering. However, the model compact agreement would not require state approval. Third, tribes could negotiate individual tribal-state compacts with the state or ask the federal government to issue gaming regulations to govern online sports wagering. Under the latter two ways for offering online sports wagering, the measure (1) specifies that all sports wagers placed by individuals physically located in California shall be considered to have taken place on Indian lands and (2) allows tribes to contract with any other California federally recognized tribes that are not offering sports wagering to perform marketing or other services (including registering player accounts).

Authorizes In-Person Sports Wagering. This measure amends the Constitution to authorize Indian tribes to offer in-person sports wagering beginning September 1, 2023 under the same conditions described above for online sports wagering. However, in-person sports wagering would only be able to be authorized through adoption of the model compact agreement, a tribal-state compact, or federal gaming regulations. Accordingly, tribes offering online sports wagering under the state law framework would have to seek separate authorization for in-person sports wagering.

Requires Payments Into Two New Sports Wagering Funds. This measure creates two new funds—the Tribal Sports Wagering Revenue Sharing Trust Fund (TSW-RSTF) and the California Homelessness and Mental Health Fund (CHMHF). Under this measure, tribes offering sports wagering under the state law framework and tribes adopting the model compact agreement would be required to make payments into these two funds. Specifically, such tribes must pay 15 percent of sports wagering revenue into the TSW-RSTF and 10 percent into the CHMHF—a total of 25 percent. This percent 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 tribe to a player as a promotion), (2) all player winnings, and (3) all federal gaming taxes. However, the deduction for free bets and promotional credits would be limited to 15 percent of all sports wagers made after deducting all player winnings. For tribes offering sports wagering under individual tribal-state compacts or federal gaming regulations, payments into these funds would only occur if required by the compact or regulations.

Under the measure, monies in TSW-RSTF would be considered tribal revenues that are distributed to federally recognized tribes in the state that either do not operate casinos or operate casinos with less than 350 slot machines. Monies in the CHMHF would be considered state revenues and first be used to reimburse state regulatory costs, with any remaining funds allocated by the Legislature to address homelessness and mental health priorities. The measure states that these allocations may not be used to replace any other existing state or local funds provided for these purposes.

Establishes State Regulation Over Sports Wagering. The measure provides DOJ and CGCC with some regulatory and oversight authority over sports wagering. The specific levels of authority that DOJ and CGCC would have over each tribe would depend on the type of authorization the tribe received. For those under the state law framework, the measure authorizes CGCC to develop and implement various regulations—such as the types of bets that can be offered, licensing requirements, and consumer protection requirements. The regulations would require approval by a committee consisting of up to two members from each tribe with a tribal-state compact or federal gaming regulations, two CGCC representatives, and two DOJ representatives. If the committee does not

approve a proposed regulation, CGCC could ask the courts to allow the regulation to go into effect. CGCC and/or DOJ would also be permitted to investigate and audit sports wagering activities.

Tribes that choose to adopt the model compact agreement to govern in-person and/or online sports wagering would have the primary responsibility to regulate sports wagering. For example, such tribes would be responsible for reviewing what games or bets can be offered and what rules would apply (such as how payouts for winning wagers are calculated). However, the state would have some limited regulatory authority as well. For example, the model compact agreement requires sports wagering vendors be certified by the state and authorizes the state to charge fees to cover its costs. Additionally, the model compact agreement limits reimbursement of the state's regulatory costs from the CHMHF to no more than 10 percent of the amount paid in the fund. For tribes that choose to negotiate tribal-state compacts or federal gaming regulations to govern in-person and/or online sport wagering, those compacts or regulations would specify the level of state responsibility and what payments would be required.

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 on how the measure is interpreted and implemented. For example, it is unclear whether tribes could be required by tribal-state compacts (including the model compact agreement) to make payments (excluding funds used to reimburse state costs) into the CHMHF. This is because a federal court previously determined that the payments required by certain tribal-state compacts into the state's General Fund for use at the state's discretion generally were an illegal tax prohibited under federal law. However, federal law does permit states to receive payments under certain conditions, such as for state costs resulting from gaming activities.

The measure's fiscal impact would also depend on the number of tribes that offer sports wagering, the number of tribes adopting the model compact agreement, the number of tribes offering online sports wagering under the state law framework, and the extent to which members of the public choose to participate in sports wagering.

Increased State Revenues. The measure would result in increased revenues to the state from sports wagering-related tribal payments and fees. Some of these revenues would be new to the state, such as payments related to 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 activities—such as shopping.

The magnitude of the increase in state revenues is highly uncertain. Revenues could range from the tens of millions of dollars to the mid-hundreds of millions of dollars annually depending on how it is interpreted and implemented given the uncertainties described above. After deducting regulatory costs, any remaining funds paid into the CHMHF would be allocated by the Legislature to address homelessness and mental health priorities.

Increased State Regulatory Costs. The measure would increase workload for state agencies (predominantly CGCC and DOJ) to implement and regulate sports wagering. The magnitude of the increase would depend primarily on how sports wagering is implemented (such as the total number of tribes offering sports wagering and how they choose to do so) and regulated. In total, increased

state costs for agencies to regulate sports wagering could be in the low- to mid-tens of millions of dollars annually. Some or all of these costs would be offset by the increased revenue paid into the CHMHF, reimbursement payments required by tribal-state compacts or federal gaming regulations, and fees.

Other Fiscal Effects. The 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 from individuals from out of state visiting to place sports wagers and spending more in the state as a result. 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 require government assistance or if there is an increase in individuals visiting gaming facilities that could potentially increase state and local law enforcement costs. 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 that could range from the tens of millions of dollars to the mid-hundreds of millions of dollars annually, depending on how the measure is implemented and legally interpreted. Some portion of these revenues would reflect a shift from other existing state and local revenues.
- Increased state regulatory costs, potentially in the low- to mid-tens of millions of dollars annually. Some or all of these costs would be offset by the increased revenue or reimbursements to the state.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Keely Martin Bosler
Director of Finance