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

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code 9005, we have reviewed the proposed constitutional and statutory initiative related to gaming (A.G. File 19-0029, Amendment #1).

Background

Gaming in California. State law limits the type 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 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 locations across the state. The California Lottery is regulated by the Lottery Commission. Lottery sales—after deducting prizes, game costs, and administrative expenses—support education.
- **Cardrooms.** Currently, 86 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, four tracks as well as 33 fairs and satellite facilities in 18 counties facilitate wagering on horse racing. The California Horse Racing Board regulates the horse racing industry.
- **Tribal Gaming.** Tribes currently operate 65 casinos in 28 counties, offering slot machines, lottery games, and banking and percentage card games on tribal lands. As discussed below, these casinos are authorized based on agreements with individual tribes and the state and 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 along with winnings are subject to state and local taxes.

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 a state (known as tribal-state compacts). For example, federal law permits federally recognized tribes to operate casinos that offer 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 tribal-state compact with the tribe that specifies how gaming will be conducted, regulated, and enforced. These compacts can also include requirements for certain payments, such as to the state and local governments.

Enforcement of Gaming Laws. California's gaming laws are enforced in various ways. For example, regulatory agencies of the state's gaming activities can revoke 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.

Annual Required Spending on Education. The California Constitution requires the state to spend a minimum amount on K-12 schools and community colleges each year. This "minimum guarantee" grows over time based on growth in state tax revenues, the economy, and student attendance. This year, the state General Fund will provide over \$55 billion towards the minimum guarantee. Local property taxes also contribute to the minimum guarantee.

Proposal

Authorizes Additional Gaming Activities at Tribal Casinos. This measure amends the California State Constitution to authorize roulette and games played with dice (such as craps) at tribal casinos. However, before tribes can offer these games, their tribal-state compacts will need to be updated to give them specific permission to provide such games.

Authorizes Sports Wagering at Tribal Casinos and Horse Racetracks. This measure amends the State Constitution, as well as state law, to authorize sports wagering—beginning January 1, 2022—at (1) tribal casinos on tribal lands if authorized by their tribal-state compacts and (2) the state's existing racetracks. However, the measure prohibits sports wagering on high

school games, events in which a California college team is a participant, and games that have already occurred.

For racetracks offering sports wagering, the measure permits only individuals 21 years of age or older to make sports wagers and requires that any bets be placed in person at the track. Additionally, the measure prohibits advertising or marketing sports wagering to individuals under the age of 21. According to the measure, restrictions regarding sports wagering at a tribal casino would depend on the specific terms of the casino's tribal-state compact.

Imposes a Sports Wagering Tax. The measure imposes a 10 percent tax on horse racing tracks offering sports wagering. The tax is applied to the amount of sports wagers made daily after deducting any payouts of winnings. Under the measure, collected tax revenues will be deposited into a new special fund, the California Sports Wagering Fund (CSWF). The measure states that a tribe can choose to make payments into this fund, depending on the specific terms of its tribal-state compact. However, the measure specifically requires that the tribe reimburse the state for actual sports wagering regulatory costs.

The measure specifies that the revenues collected from the sports wagering tax shall be considered as state tax revenues for determining the minimum amount of spending on schools and community colleges each year. In addition, the measure specifies that funds deposited into the CSWF would be used to offset actual state costs of collecting the sports wagering tax and administering the CSWF. Beginning in 2022-23, any remaining funds would be allocated as follows: (1) 15 percent to the California Department of Public Health for problem gaming and mental health research programs and grants, (2) 15 percent to DOJ for actual enforcement and implementation costs of sports wagering and other forms of gaming, and (3) 70 percent to the General Fund for the state's discretionary use.

Authorizes New Civil Enforcement Tool. In addition to existing methods of enforcement, this measure authorizes a new civil enforcement tool for violations of certain state gaming laws (such as offering games that are prohibited by state law). Specifically, persons or entities that become aware of any person engaging in behavior prohibited by these state gaming laws may file a civil action in court seeking penalties of up to \$10,000 per violation and request a court order to stop the illegal behavior. This civil action would only be permitted if the individual filing the action requests DOJ in writing to take action and either DOJ does not take action within 90 days or a court dismisses without prejudice an action brought by DOJ. Any civil penalties obtained either through a court judgement or through the settlement of a case would be deposited into the CSWF.

Fiscal Effects

As we discuss below, 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 what payments to state and/or local governments would be negotiated in tribal-state compacts in order for tribal casinos to offer sports wagering. The measure's fiscal impact would

also depend on the extent to which members of the public choose to participate in sports wagering, as well as the frequency with which the new civil enforcement tool is used.

Increased State Revenues. The measure would result in increased revenues to the state from sports wagering payments and civil penalties deposited into the CSWF. Some of these revenues would be new to the state, such as sports wagering taxes collected on wagers that would have otherwise been placed in the illegal market, or civil penalties from the new civil enforcement tool. However, some portion of the increased state revenues under the measure 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 the State Lottery or shopping.

The magnitude of the increase in state revenues is uncertain, but could reach the tens of millions of dollars annually. Given the provisions of the measure, these additional revenues would result in a higher minimum spending level for schools and community colleges than would otherwise be required. However, the exact amount that the state must spend on schools and community colleges in the future depends on several factors that are difficult to predict. It is reasonable to assume that roughly 40 percent of any funds deposited into the CSWF would be used to help meet the state's minimum guarantee for education. The remaining 60 percent would be used to offset increased administrative and regulatory costs, to support new or expanded problem gaming and mental health programs, and to support state policy priorities.

Increased State Regulatory Costs. The measure would increase workload for state agencies (such as DOJ) to implement and regulate sports wagering. The magnitude of the increase would depend primarily on how sports wagering is implemented (such as the complexity of wagering options offered) and regulated. In total, increased state costs for agencies to regulate sports wagering could reach the low tens of millions of dollars annually. Some or all of these costs would be offset by the increased revenue deposited into the CSWF and/or from reimbursement payments required by tribal-state compacts.

Increased State Enforcement Costs. This measure would increase workload for DOJ and the state courts due to the new civil enforcement tool. DOJ would likely require additional resources to respond to written requests, as well as to potentially pursue actions against violations brought to its attention. Additionally, the state courts would experience increased workload to adjudicate any civil actions that are filed. The overall increase in costs would depend primarily on how often this new tool is used, but is not likely to exceed several million dollars annually.

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 new economic activity generated by individuals from out of state visiting gaming facilities to place sports wagers and spending more in the state as a result. Alternatively, local governments could also experience decreased revenue. For example, if the new civil enforcement tool negatively affects cardrooms, the local governments that receive revenues from cardrooms could experience a reduction in such revenues. In addition, the state and local governments could experience increased costs. For example, an increase in individuals visiting gaming facilities could potentially increase state and local law enforcement costs. The net impact of the above factors on the state and local governments is unknown. While the impact on most local

governments might not be significant, certain local jurisdictions could experience larger impacts if their local economies are significantly affected by gaming activity.

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 tens of millions of dollars annually, from payments made by facilities offering sports wagering and new civil penalties authorized by this measure. Some portion of these revenues would reflect a shift from other existing state and local revenues.
- Increased state regulatory costs, potentially reaching the low tens of millions of dollars annually. Some or all of these costs would be offset by the increased revenue or reimbursements to the state.
- Increased state enforcement costs, not likely to exceed several million dollars annually, related to a new civil enforcement tool for enforcing certain gaming laws.

Sincerely,

for 

Gabriel Petek
Legislative Analyst

for 

Keely Martin Bosler
Director of Finance