



October 1, 2021

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

RECEIVED

OCT 1 2021

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code 9005, we have reviewed the proposed constitutional initiative related to gaming (A.G. File 21-0009, 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, craps, and blackjack). 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 money involved in the game. However, the California Constitution does not specifically define banking games.

Under existing state law, specific gaming activities in California are allowed, including some activities that are exemptions 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) in a manner that is generally understood to make them non-banked and 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 30 fairs and satellite facilities in 17 counties accept wagers on horse racing. The California Horse Racing Board regulates the horse racing industry.

Legislative Analyst's Office
California Legislature
Gabriel Petek, Legislative Analyst
925 L Street, Suite 1000, Sacramento, CA 95814
(916) 445-4656

- ***Tribal Gaming.*** Tribes currently operate 66 casinos in 28 counties, offering slot machines, lottery games, and banking and percentage card games on Indian 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 and players' winnings are subject to state and local taxes and/or fees.

Enforcement of Gaming Laws. 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 a 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 tribes to make certain payments, such as to the state and local governments. Compacts may be renegotiated under certain conditions, such as if additional non-tribal gaming is 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.

Proposal

This measure makes various changes to the California Constitution related to the types of gaming activities allowed in the state and the enforcement of state gaming laws. In addition, the measure specifies that it entirely conflicts with any other proposed initiatives that address the rights of individuals to gamble in California if they appear on the same statewide ballot, including the above initiative already eligible for the November 2022 ballot. 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. Below, we describe the major provisions of this measure.

Authorizes Additional Gaming Activities at Tribal Casinos. This measure amends the Constitution in order to authorize roulette, craps, and games played with dice at tribal casinos. However, before tribes can offer these games, their existing tribal-state compacts would need to be updated to give them specific permission to do so.

Authorizes Additional Gaming Activities at Cardrooms. This measure amends the Constitution to authorize games played with cards or tiles, including blackjack and baccarat, as long as they are not banking games, at cardrooms. The measure specifies that any revenues generated by these additional gaming activities will be subject to local tax or fee requirements that were in place as of January 2021.

Establishes Constitutional Definition of Banking Game. The measure amends the Constitution to define banking games to mean all games in which players compete against the cardroom (house) rather than one another. It also specifies that banking games do not include those in which licensed third parties hired by cardrooms participate in games as players that others can bet against. The use of licensed third parties generally reflects existing cardroom practices.

Authorizes In-Person and Online Sports Wagering. This measure amends the Constitution to authorize in-person and online sports wagering beginning January 1, 2023. At minimum, California's cardrooms, horse racing tracks, and tribes with tribal-state compacts as well as professional sports teams from certain leagues (including the National Football League, National Basketball Association, and Major League Baseball) would be eligible to offer sports wagering to individuals 21 years of age or older. However, the measure prohibits certain types of sports wagering, including wagering on high school games and games that have already occurred. It also prohibits advertising or marketing sports wagering to individuals under the age of 21. The measure generally authorizes the California Department of Consumer Affairs (DCA) to regulate sports wagering. This includes requirements for developing sports wagering regulations, licensing entities to offer sports wagering, conducting investigations, and auditing operations.

Imposes Sports Wagering Tax and Payments. The measure imposes a 15 percent tax on entities offering sports wagering. This tax is applied to the amount of sports wagers made after deducting any payouts of winnings. The measure also imposes an additional 1 percent assessment—up to \$10 million—to support problem gaming programs. Finally, sports wagering “platforms” would be required to pay a one-time licensing fee of \$5 million and a renewal fee of \$1 million every four years.

Under this measure, all of these revenues would be deposited into a new special fund, the California Sports Wagering Fund (CSWF). After deducting regulatory and problem gaming program costs, funds deposited into the CSWF would be allocated by the Legislature to local governments to specifically address homelessness, affordable housing, public education, and mental health priorities.

Limits Enforcement of Gaming Laws. The measure prohibits the use of civil actions to enforce certain gaming laws (such as state law prohibiting the offering of certain games). It also specifies that DOJ will be solely responsible for enforcement.

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, as we discuss above, tribes have special status under federal law that results in tribal-state compacts governing gaming activities. As such, it is unclear the extent to which tribal sports wagering would be subject to the provisions of the measure rather than provisions of new or renegotiated tribal-state compacts. Additionally, it is unclear how payments to the state and/or local governments would be changed in existing tribal-state compacts that are renegotiated to reflect the authorization of additional non-tribal gaming in the state. The measure's fiscal impact would also depend on the number of entities licensed to offer sports wagering as well as the extent to which members of the public choose to participate in sports wagering. The fiscal effects described below only concern this measure and do not reflect the implementation of any other conflicting gaming measures.

Increased State Revenues. The measure would result in increased revenues to the state from sports wagering taxes and payments 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. 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 and problem gaming program costs, funds deposited into the CSWF would be allocated by the Legislature to local governments to address homelessness, affordable housing, public education, and mental health priorities.

Increased State Regulatory Costs. The measure would increase workload for state agencies—primarily DCA—to implement and regulate sports wagering. The magnitude of the increase would depend primarily on how sports wagering is implemented and regulated—such as the total number of entities that would be licensed to offer sports wagering, the complexity of wagering options offered, and the level of state enforcement activities. In total, increased state costs for agencies to regulate sports wagering could reach the high 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 payments made pursuant to tribal-state compacts.

State Appropriations Limit Consideration. The California Constitution limits how much tax revenues the state can spend each year, with exceptions like spending on infrastructure and emergencies. This measure would increase tax collections by up to the mid-hundreds of millions of dollars annually and, as a result, could increase the chances that the state would collect revenues in excess of the limit. Revenues in excess of the limit may only be used for taxpayer rebates and additional school payments.

Other Fiscal Effects. This measure could result in various other fiscal impacts on the state and local governments. The state and local governments could experience increased revenues. For example, new economic activity could be generated by individuals from out of state visiting

gaming facilities to place sports wagers and spending more in the state as a result. Local governments could also receive additional revenues from the newly authorized cardroom gaming activities. However, some of this revenue increase to certain local governments could be partially or fully offset by decreased revenues. For example, given the significant expansion of non-tribal gaming activities, renegotiated tribal-state compacts could result in reduced tribal payments to local governments. 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, but would likely not be significant. However, 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 mid-hundreds of millions of dollars annually, from sports wagering taxes and payments (such as licensing fees). Some portion of these revenues would reflect a shift from other existing state and local revenues.
- Increased state regulatory costs, potentially reaching the high tens of millions of dollars annually, that would be fully or partially offset by the increased revenue or payments required by gaming agreements between tribes and the state.

Sincerely,



for Gabriel Petek
Legislative Analyst



for Keely Martin Bosler
Director of Finance