



December 18, 2023

Initiative 23-0031

Hon. Rob Bonta
Attorney General
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Sacramento, California 95814

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Attention: Ms. Anabel Renteria
Initiative Coordinator

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative related to sports wagering (A.G. File 23-0031).

Background

Gaming in California. State law limits the type of gaming that can occur in California. For example, state law currently bans sports wagering in California. However, state law allows certain gaming activities in the state. These include tribal gambling in casinos, the state lottery, cardrooms that operate certain card games, and horse racing wagering.

Tribal-State Compacts. Native American 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 Native American 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 Native American 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. However, federal courts have made rulings that payments to state and local governmental entities should generally be limited to the amount necessary to cover their regulation and other costs related to gaming activities. Compacts may be renegotiated under certain conditions, such as if additional gaming activities are authorized in the state. If the state and tribe are unable to reach agreement, the tribe may ask the federal government to issue


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gaming regulations instead. In such cases, the federal regulations—rather than a tribal-state compact—govern how the tribe may offer gaming. Since 1999, 80 out of over 100 federally recognized 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

Allows Legislature to Authorize Tribes to Offer Sports Wagering. This measure amends the State Constitution to authorize the Legislature to enact a bill allowing federally recognized Native American tribes to offer in-person or online sports wagering. If such a bill is enacted, this measure also authorizes the state to negotiate tribal-state compacts, or amend existing compacts, to allow sports wagering to occur.

Imposes Limits on Sports Wagering. If any new or amended compacts with tribes seeking to offer sports wagering are authorized, the measure requires these compacts to include certain sports wagering regulations. At minimum, these regulations must limit wagering to (1) bets made by people age of 21 and older; (2) professional or college sporting events that do not include animals other than horses; and (3) amateur sporting events that do not include children under the age of 18. Additionally, the measure specifies that these regulations also must include provisions to protect consumers, ensure the integrity of sporting events, and provide payments to non-gaming tribes and “the people of California”.

Fiscal Effects

No Immediate Fiscal Effects. This measure would not have an immediate effect on state and local governments costs and revenues as it authorizes—but does not require—the Legislature to enact a bill to authorize sports wagering.

Potential Impacts if Legislature Authorizes Sports Wagering. If the Legislature enacts a bill to authorize sports wagering and it is subsequently offered, state and local government costs and revenues could increase. At minimum, state and/or local costs would likely increase to regulate sports wagering. At the same time, state and/or local revenues could increase due to required fees (such as regulatory fees), payments (such as a share of sports wagering revenues), or tax revenues from economic activity associated with sports wagering. However, the state’s ability to require tribes to make payments to state and local governments is generally limited by federal court rulings. Specifically, 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. Despite this, federal law does permit states to receive payments under certain conditions—such as to cover state and local governmental costs resulting from the authorization, regulation, and oversight of gaming activities. Accordingly, it is likely that state and/or local revenues would increase to at least partially or fully offset such increased costs. However, the actual magnitude of increased state and local government costs and revenues is highly uncertain and would depend on the number of tribes that choose to offer sports wagering, the extent to which the public participates in sports wagering, as well as the details of the bill enacted by the Legislature authorizing sports wagering and any subsequently negotiated tribal-state compacts. Key details of the bill and/or compacts that could significantly impact the magnitude of the fiscal effects include: the specific sports

wagering activities which are authorized (such as whether both in-person and online sports wagering are permitted as well as the types of games that may be bet upon), the regulatory structure adopted, and the specific payments required.

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

- No immediate fiscal effects on the state and local governments as the Legislature would be allowed—but not required—to authorize sports wagering.
- If the Legislature authorizes sports wagering, uncertain increase in state and local government costs and revenues depending on various factors including the specific regulatory and other requirements adopted. Federal courts have generally limited tribal payments to state and local governments to the amount necessary to cover their regulation and other costs related to gaming activities.

Sincerely,



Gabriel Petek
Legislative Analyst



for Joe Stephenshaw
Director of Finance