PROPOSITION

70

Tribal Gaming Compacts. Exclusive Gaming Rights. Contributions to State. Initiative Constitutional Amendment and Statute.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Tribal Gaming Compacts. Exclusive Gaming Rights. Contributions to State. Initiative Constitutional Amendment and Statute.

- Upon request by federally-recognized Indian tribe, Governor must execute renewable 99-year gaming compact.
- Grants exclusive tribal gaming rights; no limits on number of machines, facilities, types of games on Indian land.
- Tribes contribute percentage of net gaming income, based on prevailing state corporate tax rate, to state fund.
- Contributions cease if non-tribal casino-type gaming is permitted.
- Contributions are in lieu of any other fees, taxes, levies.
- Requires off-reservation impact assessments, public notice/comment opportunities before significant expansion or construction of gaming facilities.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Unknown effect on payments to the state from Indian tribes. The potential increase or decrease in these payments could be in the tens of millions to over a hundred million dollars annually.
- Likely reduction in tribal payments to local governments, potentially totaling in the millions of dollars annually.

ANALYSIS BY THE LEGISLATIVE ANALYST

Background

Indian Tribes in California. Under federal law, Indian tribes in California are considered sovereign nations. As a result, tribes are not required to pay most federal, state, or local taxes (such as income, property, or sales tax). In addition, tribes are largely exempt from state laws, including California environmental and workplace laws.

Gambling on Tribal Lands. Federal law and the State Constitution allow tribes to conduct gambling on Indian land if they enter into agreements with the state. These agreements, called compacts, lay out the conditions under which the gambling may occur. Under current compacts, tribes may operate slot machines and card games, such as twenty-one. Other Nevada-style casino games such as craps and roulette are prohibited. Currently, 64 tribes have compacts and operate 53 casinos with a total of more than 54,000 slot machines.

1999 Compacts. Most tribes signed their current compacts in 1999. Under these compacts, a tribe may operate up to two facilities and up to a total of 2,000 slot machines. In exchange, tribes make some payments to the state which can only be used for specified purposes (such as for making payments to tribes that either do not operate slot machines or operate fewer than 350 machines). These payments total over $100 million annually. Under these compacts, tribes are required to prepare an environmental study analyzing the impact on the surrounding area of any new or expanded gambling facility. These compacts will expire in 2020.

2004 Compacts. In the summer of 2004, five tribes signed amendments to their 1999 compacts, and these revised agreements were approved by the state. Under these new agreements, these tribes may operate as many slot machines as they desire. In exchange, these tribes make a specified payment annually to the state, with additional payments for each slot machine added to their facilities. Payments to the state from these revised compacts are expected to total in the low hundreds of millions of dollars annually. Unlike the payments required by the 1999 compacts, the state can use these payments for any purpose. The newer compacts also require the tribes to (1) prepare more detailed environmental studies, (2) negotiate with local governments regarding payments addressing the impacts of new gambling facilities on the local communities, and (3) follow other provisions related to patron disputes, building codes, and labor relations. These new agreements expire in 2030, ten years later than the 1999 compacts.

Proposal

This measure amends the State Constitution and state statutes to require the Governor to amend an existing compact or enter into a new compact with any tribe within 30 days of a tribe's request. Any such compact would have to include certain provisions, as discussed below.

Gambling Revenues. Under the provisions of the measure, a tribe entering into an amended or new compact would pay the state a percentage of its net income from gambling activities. The percentage of net income paid would be equivalent to the corporate tax rate paid by a private business (currently 8.84 percent). The measure specifies that the state could spend these revenues for any purpose. In the event that the tribes lose their exclusive right

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

to conduct certain types of gambling in California, the tribes would no longer be required to make these payments to the state. These payments generally would be in place of any other state or local government fees, taxes, or levies on gambling activities. (Tribes, however, would still be required to make the specific payments required under the 1999 compacts.)

Expansion of Gambling. The measure expands the types of games authorized by the compacts to include roulette, craps, and any other form of casino gambling. The measure eliminates the 1999 compact limit on the number of slot machines and facilities a tribe can operate on Indian lands.

Compacts Extended. The measure specifies that any amended or new compact would remain in effect for 99 years. These compacts could be amended or renewed upon agreement of the Governor and a tribe and approval by the federal government.

Environmental Studies. As required under the 1999 compacts, any tribe entering a compact under this measure would be required to prepare an environmental study analyzing the impact on the surrounding area of any new or expanded tribal gambling facility.

Related Provisions in Proposition 68. Proposition 68 on this ballot also contains provisions affecting the number of slot machines authorized in the state. That measure would allow specified card rooms and racetracks to operate slot machines if tribes do not agree to make specified payments to the state and abide by certain state laws. The State Constitution provides that if the provisions of two approved propositions are in conflict, only the provisions of the measure with the higher number of yes votes at the statewide election take effect.

Fiscal Effect

Background. Over time, it is likely that additional tribes will seek amendments to their compacts similar to those agreed to by five tribes earlier this year. These amendments would allow tribes to exceed their current limit of 2,000 slot machines. As a result, over the next few years (absent any other changes), the state would likely experience:

- Increased slot machines operated on Indian lands in the thousands.
- Increased state revenues in the hundreds of millions of dollars annually.
- Increased payments to local governments to address the impacts of gambling on communities in the millions of dollars annually.

Changes Under the Measure. In comparison to the existing compacts, the compacts authorized under this measure would generally offer tribes the following:

- ***More Games.*** Like the 2004 compacts, this measure's compacts would not restrict the number of allowable slot machines. In addition, this measure would allow tribes to offer additional casino games, like craps and roulette.
- ***Likely Lower Payments.*** Rather than the per machine payments to the state required under the 2004 compacts, this measure's payments would be based on the income generated by the machines (and other games). The amount of payments received by the state, therefore, would vary among tribes, depending on their gambling operations. Consequently, it is difficult to determine the exact amount that would be paid to the state. We have reviewed the payments required by the 2004 compacts and those required under this measure. For any given level of tribal gambling activity, the payments to the state would tend to be lower under this measure.
- ***Fewer Regulations.*** Tribes under this measure would not be subject to several provisions in the 2004 compacts, such as the requirements for more extensive environmental reviews and negotiations with local governments.
- ***Longer Length.*** Under the measure, tribes' compacts would last 99 years. This would provide tribes with greater long-term stability for their gambling operations.

Given these provisions compared to existing compacts, we would expect many tribes to request amendments under this measure. In this case, tribes would be able to add additional slot machines and other games to their operations. Consequently, tribal gambling across the state under this measure would likely be higher than otherwise would have been the case.

Estimated Gambling Revenues. Although the measure could lead to an increase in overall gambling in the state, it is unclear what impact that would have on payments to the state. This is because, as noted above, the payments for any given level of gambling activity would tend to be lower than under current law. If the increase in gambling income were to more than offset the lower payments, the state would experience an increase in annual payments. On the other hand, if the increase in gambling income did not offset the lower payments, the state would experience a reduction in annual payments.

The change in revenues from current law would depend on a variety of factors including (1) the extent to which tribes agreed to the measure's provisions, (2) the extent to which new slot machines and games were added at gambling establishments, (3) the income generated from gambling, and (4) how the state enforced the collection of required payments based on the net income of each tribe. The change in payments—whether an increase or decrease—could be in the tens of millions to over a hundred million dollars annually.

Payments to Local Governments. To the extent that tribes opted to accept this measure's provisions rather than those of the 2004 compacts, they would not be subject to the requirement for negotiations with local governments concerning community impacts. As a result, local governments would likely receive less in payments from tribes. The amount of any such reduction is unknown but would likely be in the millions of dollars annually.

For text of Proposition 70 see page 145.

PROP 70

TRIBAL GAMING COMPACTS. EXCLUSIVE GAMING RIGHTS. CONTRIBUTIONS TO STATE. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

ARGUMENT in Favor of Proposition 70

California Indian Tribes have come forward with this initiative and volunteered to pay millions of dollars from their gaming revenues to help California taxpayers. We want to pay our fair share, which means we would pay the same as any other business pays in state taxes.

We would not pay any more or any less—just the same as everybody else. We think that is fair, even though the law exempts Indian tribes from paying taxes on income from gaming activities on Indian lands. We want to pay our fair share to help California out of the financial problems that our political leaders have created.

When California Indians were rounded up and forced onto land that nobody wanted, they were given the sovereignty to run their own affairs without interference. Now, after decades of hardship, many tribes have been able to achieve some success. Gaming revenues have finally allowed many tribes to provide education, housing, and health care for their members.

As history has sadly shown, however, there are some who now want to take the good fortune away from the successful Indians.

We are very thankful that the people of California voted time and again to respect Indian sovereignty and support Indians' rights to conduct gaming operations on tribal lands.

Now we are once again forced to go directly to the voters and bypass the politicians in Sacramento. After misspending the State surplus, they are trying to get California Indian tribes to make up the difference. They want to come onto our reservations and tell us how to run our businesses. They won't negotiate with Indian tribes one-by-one, but insist that we all accept a deal that was only negotiated by a few.

Our initiative is very simple and straightforward: We will pay millions of dollars to the State; in return, we want to be able to run our tribal businesses like any other businesses.

This Proposition will continue the ban on new tribal casinos that are NOT on Indian Reservations, unlike Proposition 68, which would result in casinos throughout California.

This Proposition will lead to new agreements allowing each tribe to decide for itself how many casinos and what types or how many games it wishes to operate on its tribal lands. Tribes would get to make these decisions, like other businesses, without government interference. Market forces would determine the best decisions.

Under the new agreements, tribes would prepare environmental impact reports and develop a good-faith plan to mitigate any significant adverse environmental impacts after consultation with the public and local governments.

And just like any other business that has the right to decide what kind of business to operate, Indian tribes would pay on their gaming revenues the equivalent of what other businesses pay as an income tax. This is basically a win-win for everyone.

That's why California's Indian tribes need your help once again to stand up for what's fair. Together, we will be living up to the promises made to California's Indians.

RICHARD M. MILANOVICH, *Tribal Chairman*
Agua Caliente Band of Cahuilla Indians

REBUTTAL to Argument in Favor of Proposition 70

More than 60 California Indian tribes operate casinos, but just one tribe is sponsoring Proposition 70. It says it wants to be treated like other businesses, but what other business can't be audited by the state to determine their taxable income? What other business is granted a 99-year casino gaming agreement?

Proposition 70 is full of loopholes:

- No provision to ensure tribes pay their fair share
- Keeps the state in the dark about the amount of money Indian casinos earn

Governor Schwarzenegger's negotiated agreements with several gaming tribes will add $1 billion to the state's bottom line this year alone and hundreds of millions more every year. Proposition 70 effectively destroys these agreements.

Don't be misled by this self-serving measure that's been drafted by one lone Indian gaming tribe. Governor Schwarzenegger, leaders in law enforcement, labor, the environmental community, and seniors all say VOTE NO on Proposition 70.

Additional reasons Californians should VOTE NO on Proposition 70:

- Gives tribes a 99-year casino gaming agreement
- Wouldn't require tribes to pay taxes other companies pay, such as property and income taxes
- Allows tribes to own an unlimited number of casinos with no size limits
- Paves the way for UNLIMITED casino gaming in major urban and suburban areas across California

Governor Schwarzenegger's agreements are a winner for tribes and taxpayers. These agreements keep California's promise to Indian tribes while ensuring they pay their fair share.

VOTE NO ON PROPOSITIONS 68 & 70.

DAVID W. PAULSON, *President*
California District Attorneys Association
JACK GRIBBON
California UNITE HERE!
JOHN T. KEHOE, *President*
California Senior Action Network

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

ARGUMENT Against Proposition 70

Message from Governor Arnold Schwarzenegger: "I am officially opposed to Propositions 68 & 70, and I strongly urge you to VOTE NO."

This measure is not what it seems, which is why Governor Schwarzenegger is asking you to *VOTE NO*. The wealthy Indian gaming tribes behind Proposition 70 want you to believe this measure will force tribes to "pay their fair share." *The truth is that it gives these Indian gaming tribes a 99-year monopoly on gambling without ever having to pay their fair share in revenues to the state.* If Prop. 70 passes, it will be almost impossible to change.

For years Indian gaming tribes have paid almost nothing to state or local governments. But now, GOVERNOR SCHWARZENEGGER HAS NEGOTIATED NEW AGREEMENTS WITH MANY TRIBES THAT ARE A WINNER FOR TRIBES AND TAXPAYERS.

UNFORTUNATELY, PROPOSITION 70 EFFECTIVELY DESTROYS THESE NEW AGREEMENTS. Prop. 70 claims that tribes will pay a percentage of their net profits to the state, but it does not provide the state any auditing vehicle to determine those profits. Without a state audit, taxpayers will never know if they are getting a fair deal or a raw deal.

Unlike the new agreements Governor Schwarzenegger has negotiated, this measure will allow tribes to massively expand gambling by operating an unlimited number of casinos. PROPOSITION 70 ENCOURAGES TRIBES TO PUT CASINOS IN OUR STATE'S MAJOR CITIES, *INCREASING CRIME AND TRAFFIC CONGESTION PROBLEMS.*

Governor Schwarzenegger's agreements promote cooperation between tribes and local governments to deal with the impact on law enforcement, traffic congestion, and road construction while providing needed environmental protections. Proposition 70 will undo these agreements. PROPOSITION 70 PROVIDES *NO MONEY* FOR LAW ENFORCEMENT, ENVIRONMENTAL IMPACTS, OR TRANSPORTATION.

WORKING CALIFORNIANS OPPOSE PROPOSITION 70:

"Responsible Indian tribes have already negotiated and signed agreements with Governor Schwarzenegger that are good for employees and casino customers plus provide a significant boost to the California economy. The compacts already in place will create more than 25,000 new jobs. Most important, the compacts provide stability and predictability for governments, tribes, and local communities."

Bob Balgenorth, President
State Building and Construction Trades Council of California

LAW ENFORCEMENT GROUPS ALSO OPPOSE PROPOSITION 70:

"Casinos can be a magnet for crime. Unfortunately, Proposition 70 provides no funds to local law enforcement agencies to help fight crime in the communities surrounding Indian casinos. Please vote NO on this measure."

Chief Jerry Adams, President
California Peace Officers' Association

PROPOSITION 70 IS A BAD DEAL FOR CALIFORNIA. Responsible Indian tribes have already negotiated and signed agreements with Governor Schwarzenegger that benefit both tribes and taxpayers. The tribes pay their fair share while agreeing to follow important environmental and public safety laws. Proposition 70 effectively eliminates these protections and gives tribes a 99-year casino gaming agreement that California will never be able to change without another constitutional amendment.

VOTE NO ON PROPOSITION 70.

ARNOLD SCHWARZENEGGER, *Governor*
State of California
LARRY McCARTHY, *President*
California Taxpayers' Association
SHERIFF BILL KOLENDER, *1st Vice President*
California State Sheriffs' Association

REBUTTAL to Argument Against Proposition 70

The opponents of Proposition 70 have their facts wrong.

Proposition 70's agreements will require Indian tribes that engage in gaming operations to pay the State the SAME AMOUNT that every corporation pays in state income taxes. No more, no less—WHAT COULD BE FAIRER?

Under Proposition 70, THE STATE is not prohibited from agreeing to audits of the Tribes' records to ensure their fair share is paid.

And Proposition 70 will mean that tribal gaming can occur ONLY on Indian land and NOWHERE ELSE. It will NOT lead to increased gambling OFF Indian lands.

California Indians sponsored this "Indian Fair Share Initiative" because we knew we had to turn directly to the voters, who have more sense than the politicians.

We've seen the political games that continue to be played by special interest groups, who want Indians to lose their right to conduct gaming so they can take it over.

If Proposition 70 doesn't pass, California will lose billions of dollars in revenue from gaming tribes. Unless the existing compacts are changed, tribes would not be obligated to pay any more for the next 17 years.

Governor Schwarzenegger has proposed his own compacts, but they were so flawed that only about 4% of the state's tribes signed them. No other tribes will sign those agreements because they unfairly take away Indians' rights.

Only this initiative will keep Indian gaming on reservations and provide billions of dollars to California in a way that is FAIR TO BOTH INDIANS AND TAXPAYERS.

VOTE YES on PROPOSITION 70.

RICHARD M. MILANOVICH, *Tribal Chairman*
Agua Caliente Band of Cahuilla Indians