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State Ballot Question Issue Brief #3 **SQ 712: State-Tribal Gaming Act**

In a Nutshell

SQ 712 would establish state-tribal gaming compacts that would authorize the tribes to operate certain kinds of electronic games in return for exclusivity payments to the state. The measure also allows three racetracks to operate electronic games. The state is projected to receive \$71.8 million in gaming revenues, which would be dedicated to common education and higher education scholarships.

Current Law

Currently 27 Indian tribes in Oklahoma operate more than 80 gaming centers. Under the federal Indian Gaming Regulatory Act, there are three different classes of games with a different regulatory scheme for each. While Indians casinos can operate Class I and II games without a state compact, a compact is required for Class III games, which are identified as “casino-style gaming”. Currently, some of the electronic forms of bingo games being operated by the tribes fall into a “grey zone” between Class II and III, placing the tribes at risk of being found in violation of federal law.¹ While the tribes have an interest in getting formal approval for their gaming operations through a compact, the state’s interest is to gain a share of the revenue generated by gaming while at the same time allowing similar gaming at horse tracks as a way to preserve and stimulate the horse racing industry. Electronic gaming at racetracks is currently prohibited.

The Proposal

SB 1252 has two principal components: it authorizes gaming at three horse racing facilities, and it sets up a model compact between the state and Indian tribes to regulate tribal gaming operations.

The bill authorizes a set number of gaming terminals at each of three racetracks:

- Remington Park (Oklahoma City): 650 terminals (to be increased to 750 terminals over 5 years);
- Blue Ribbon Downs (Sallisaw) and Will Rogers (Claremore): 250 terminals each.
- Fair Meadows Race Track in Tulsa would not be allowed to operate gaming but the racetrack and Tulsa County would share a portion of the revenue from Tulsa-area tribal gaming operations

The bill expressly authorizes and prohibits specific categories of games at the three racetracks. Authorized games would be:

- Electronic bonanza-style bingo games;
- Electronic instant bingo;
- Electronic amusement games.

¹ The National Indian Gaming Commission’s overview of the Indian Gaming Regulatory Act identifies Class II gaming as “the game of chance commonly known as bingo, whether or not electronic, computer, or other technological aids are used in connection therewith...” But one paragraph later, “electronic facsimiles of any game of chance” are defined as Class III.

The bill prohibits slot machines, dice games, roulette wheels, house-banked card games and games determined by the outcome of sporting events.

Under the model tribal gaming compact, compacting tribes would be authorized to operate those games listed above, as well as non-house banked card games, in return for making exclusivity payments to the state. There is no limit on the number of machine that tribes can operate. The tribes are not required to share revenues from Class I or other Class II games.

The difference between what is allowed today in tribal gaming centers and what will be allowed under the compact is complicated and rather contentious. While tribes are already operating electronic games, many machines are configured in certain cumbersome ways to maintain their Class II character that would become unnecessary under the compact. In addition, the compacts would expand gaming by authorizing non-house banked card games, such as poker and certain types of blackjack where players compete against each other and the house takes a share.

Fiscal Impact

State revenues would be generated by gaming operations at both tribal gaming centers and racetracks under separate rules:

- For each tribe, the state's share would begin at 4% of adjusted gross revenue (AGR - revenue net of payouts) of the first \$10 million and rise to 6% of AGR exceeding \$20 million. In addition, the state would receive 10% of the net win of the common pool for nonhouse-banked card games.
- For the racetracks, revenues from electronic gaming operations will be divided according to a set formula between the racetracks, the owners of winning horses, horsemen and breed associations, and the state. The state's share would begin at 10% of adjusted gross revenue (AGR - revenue net of payouts) of the first \$30 million from each track, rising incrementally to 25% of AGR exceeding \$70 million.

The Office of State Finance has projected state revenue from full year operations under SB 1252 to total \$71.8 million. It projects that \$13.3 million would be generated from racetrack gaming and \$58.5 million from tribal gaming.

These revenue projections assume total adjusted gross revenue of \$93 million from the racetracks and \$1.2 billion from tribal games. While precise state-level figures of current gaming revenues are not available, existing data suggest that gaming in Oklahoma would need to grow considerably to meet these revenue projections. The Analysis Group, an economic consulting company, has estimated income from Oklahoma tribal casinos at \$466 million in 2003, a figure that represented a 32% increase from 2002. The most recent figures from the NIGC show gaming revenue in 2003 of \$822 million from the 3-state region of Oklahoma, Kansas, and Texas. While almost all the gaming operations in the region are in Oklahoma, Kansas has large Class III riverboat casinos. Furthermore, some portion of existing revenue is from Class I and Class II games that are not subject to revenue-sharing under the compact.

Allocation of Funds

State revenue derived from gaming will be allocated as follows:

- 88% to the HB 1017 Education Reform Fund
- 12% to the Oklahoma Higher Learning Access (OHLAP) Trust Fund
- \$250,000 of state revenue will go to the Department of Mental Health and Substance Abuse Services for treatment and educational programs related to compulsive gambling disorders

The state's FY '05 General Appropriations Bill (HB 2007) included \$34.6 million in anticipated revenue from the implementation of SB 1252, divided between the Department of Education (\$30.6 million) and the OHLAP Trust Fund (\$4 million). If SQ 712 were to fail, other revenue would be needed to make up these holes in the FY '05 budget.

Proposal Details

The tribal compacts will be for a 15-year term and will automatically renew, subject to renegotiation. Indian tribes are required to pay outstanding fines assessed by the federal government before entering into the compact. Each compacting tribe will pay an annual oversight assessment of \$50,000 in the first year and \$35,000 each year thereafter. The state is granted the authority to cancel a tribe's gaming compact if the tribe is found to be in violation of its tobacco compact. The Office of State Finance will have oversight authority over the compacts.

Under the terms of the compact, should the National Indian Gaming Commission (NIGC) ever rule that the electronic bonanza-style and instant bingo games covered by the compact are Class II games, the tribes would no longer be bound by the compact's revenue-sharing provisions.

Racetrack gaming provisions will take effect once four tribes enter into the compact. Racetracks are permitted to conduct gaming for a maximum of 18 hours a day and 106 hours per week. Gaming is not limited to days or times when races are being held.

Some Pros and Cons of SQ 712

Pros	Cons
<p>Tribal gaming is a large and growing industry in Oklahoma. Currently, the state government lacks regulatory authority over the industry and is receiving no revenue from tribal gaming operations. A formal gaming compact will simply acknowledge the reality of tribal gaming, give the state a piece of the pie, and help ensure that the industry is operated fairly.</p> <p>Adoption of tribal gaming compacts will likely fuel an expansion of the gaming industry, which can help draw out-of-state tourists. Tourist spending would provide benefit to the broader entertainment and hospitality industry and boost state and local sales tax receipts.</p> <p>New revenue from gaming will boost the budgets for common education and the Oklahoma Higher Learning Access Program by a projected \$70 million. Education budgets have suffered major cuts in recent years and have failed to keep pace with inflation and population growth. Revenue growth from existing tax sources are inadequate to fund growing educational needs.</p>	<p>The revenue projections from SQ 712 are highly uncertain and would seem to require enormous growth in tribal gaming activities. To the extent that gaming activities do increase, part of the state's additional revenue would be offset by lost sales tax revenue as consumer spending shifts from other taxable items. Local governments may see a loss of sales tax revenues but do not share in gaming revenue. Some consider it unlikely that Oklahoma's casinos will ever become a big draw for out-of-state tourists.</p> <p>New gaming revenues may be used to supplant funding that is currently, or would otherwise be, supporting education. Even if gaming revenues increase the overall budget pot by \$71 million, this represents less than 1.5% of total state appropriations. In addition, there is a risk of gaming revenues going away and creating a budget hole if the electronic games covered by the compact are determined to be Class II.</p>

For the state's tribes, passage of SQ 712 will create a secure legal environment for their gaming operations. Many tribes see gaming as a dynamic engine of economic growth and expanded employment opportunity for their members, especially in rural and impoverished areas of the state.

Allowing gaming at racetracks is seen by the state's horse racing industry as vital for their economic survival. Oklahoma's horse breeders would also benefit from their portion of gaming revenues.

Some tribes oppose the compacts as a first step towards the loss of tribal sovereignty and dispute the need for a compact to operate the games they are currently operating.

Passage of SQ 712 will unquestionably lead to increased gambling at racetracks and most likely at tribal casinos as well. The state is thus encouraging and promoting an activity that is associated with a variety of social costs that afflict compulsive gamblers, including increased debt and bankruptcy, job loss and family break-ups.

State Question 712

This measure enacts the State-Tribal Gaming Act. The Act contains a Model Tribal Gaming Compact. Indian tribes that agree to the Compact can use new types of gaming machines. These machines are used for gambling. Compacting tribes could also offer some card games. If at least four Indian tribes enter into the Compact, three State licensed racetracks could use the same electronic gaming machines. The Act limits the number of gaming machines racetracks can use. The Act does not limit the number of machines that Indian tribes can use. The State Horse Racing Commission would regulate machine gaming at racetracks. A tribal agency would regulate authorized gaming by a tribe. The Office of State Finance would monitor authorized tribal gambling.

Proceeds from authorized gaming at racetracks go to:

1. the racetrack,
2. the owners of winning horses,
3. horsemen's organizations,
4. breed organizations, and
5. the State to be used for educational purposes.

Some of the proceeds from authorized gaming by Indian tribes goes to the State. The State would use these proceeds for educational purposes and compulsive gambling programs.

These issue briefs are intended to help Oklahoma voters make informed decisions on the issues before them. For more information, contact Monica Barczak at (918) 382-3354 or mbarczak@captc.org

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Community Action Project (CAP) is a comprehensive anti-poverty agency whose mission is to help individuals and families achieve economic self-sufficiency. CAP's public policy department aims to promote policies that will benefit low-income Oklahomans through research, education, and advocacy.