

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 9, 2009

TO: Honorable Edmund Kuempel, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB222 by Menendez (Relating to the authorization and regulation of poker gaming and the duties of the Texas Lottery Commission; providing civil and criminal penalties.),
Committee Report 1st House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for HB222, Committee Report 1st House, Substituted: a positive impact of \$882,223 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$522,607
2011	\$359,616
2012	\$559,616
2013	\$634,616
2014	\$709,616

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Savings/ (Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>Poker Gaming Revenue</i> <i>Fund</i>	Probable Savings/ (Cost) from <i>Poker Gaming Revenue</i> <i>Fund</i>
2010	\$1,508,000	(\$985,393)	\$2,791,000	(\$2,791,000)
2011	\$1,190,000	(\$830,384)	\$16,835,000	(\$3,229,177)
2012	\$1,390,000	(\$830,384)	\$39,077,000	(\$2,667,577)
2013	\$1,465,000	(\$830,384)	\$47,441,000	(\$2,667,577)
2014	\$1,540,000	(\$830,384)	\$55,753,000	(\$2,667,577)

Fiscal Year	Probable Revenue Gain/(Loss) from <i>Texas Racing Comm</i> <i>Acct</i> 597	Probable (Cost) from <i>Texas Racing Comm</i> <i>Acct</i> 597	Change in Number of State Employees from FY 2009
2010	\$635,637	(\$635,637)	40.0
2011	\$635,637	(\$635,637)	40.0
2012	\$635,637	(\$635,637)	40.0
2013	\$635,637	(\$635,637)	40.0
2014	\$635,637	(\$635,637)	40.0

Fiscal Analysis

The bill would add a new chapter to the Occupations Code to authorize and regulate poker gaming.

The bill would establish a poker gaming division within the Texas Lottery Commission (TLC) to issue and oversee commercial and charitable operator's licenses. Both electronic and traditional poker tables would be allowed at licensed locations. Racetracks would be allowed the number of tables authorized by TLC rules. Non-track locations would be limited to four tables per establishment—subject to a capital asset requirement of \$1 million.

The bill would establish a tax rate of 18 percent of gross receipts for commercial operators, 16 percent for a commercial operator who holds a pari-mutuel license with the Texas Racing Commission, and a five percent tax would be applied to the gross receipts from charitable poker tournaments. Penalties for delinquent taxes would be established. The bill would establish regulations and penalties for criminal behavior.

The bill would establish application fees and license fees for operators, dealers, manufacturers, distributors, and nonprofit organizations involved in poker gaming. Operators would collect a limited fee on each poker hand played and would be allowed to charge limited buy-in fees, tournament registration fees, and promotion bonus fees. In addition to the gross receipts tax, promotion bonus fees, less administration and gross receipts tax, would be submitted to the state.

The bill would allow federally recognized Indian tribes that have a reservation in this state to obtain a commercial operator's license to conduct poker gaming on their reservations.

The bill would establish the Texas Poker Gaming Revenue Fund, which would exist outside of the State Treasury, to be used to cover the state's associated oversight and regulatory costs. Any remaining balance after operating costs would be transferred to the Texas Department of Housing and Community Affairs, with 50 percent allocated for grants to municipalities, counties, and nonprofits to benefit the homeless population, and the remainder to the Housing Trust Fund established in Section 2306.201 of the Government Code for housing loans and constructing adequate and sanitary housing.

The bill would authorize TLC to access Criminal History Record Information (CHRI) maintained by Texas Department of Public Safety (DPS), the Federal Bureau of Investigation (FBI) or another law enforcement agency for the investigation of individuals as specified by the bill and during the license or permit approval process. The bill would require annual CHRI searches on all licensed operators, each holder of a 10 percent or greater equity or creditor interest in the licensed operator, and on licensed employees, manufacturers, and distributors.

The bill would establish requirements for electronic poker tables to allow TLC to access an electronic poker table through a remote connection for certain auditing purposes or to remotely lock down a table.

The bill would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

The bill would take effect on September 1, 2009.

Methodology

The fiscal impact was based on an estimated number of players, table occupancy rates, revenue per player per hour, hours of play, estimated number of license fees and promotions, the proportion of commercial play, the proportion of charitable tournament play, tax rates and license fees, and the number of tables necessary to meet the demand. Data from current poker operations in other states and estimates of the number of commercial Texas businesses that would qualify for a poker license as provided by the Texas Alcoholic Beverage Commission and TLC. Poker operations taxes would be payable to the Poker Gaming Revenue Fund. Distributions from the fund cannot be estimated, as this

would depend on indeterminable factors affecting the operating costs of poker gaming.

The bill would have an indeterminable impact on current lottery, bingo, and racing revenues. Although poker attracts different players than current Texas gambling options, state lottery and bingo revenues would likely be affected negatively. Because poker tables could be licensed in the state's racetrack venues and because the bill provides that some revenue from these venues goes to a racing purse fund, racing revenues would likely be affected positively.

Based on the analysis of TLC, it is assumed the agency would require an additional 32 full-time-equivalent positions in each fiscal year to staff the poker gaming division. The associated costs from the Poker Gaming Revenue Fund are estimated to be \$2,791,000 in fiscal year 2010; \$3,214,177 in fiscal year 2011; \$2,652,577 each year thereafter. Also based on the analysis and information provided by TLC, it is assumed the agency would incur costs of \$140,000 in fiscal year 2010 and \$15,000 each year thereafter to acquire and maintain network security hardware and connections to remotely link with electronic poker tables. Since the cost of the additional network hardware would cause TLC's estimated implementation costs to exceed the amount of estimated available revenue to the poker gaming fund in fiscal year 2010, it is assumed the initial cost to acquire the network would be accommodated through the use of General Revenue Funds. It is assumed ongoing network maintenance costs in subsequent years would be accommodated through funding from the Poker Gaming Revenue Fund.

Based on the analysis of DPS, it is assumed revenues collected for fingerprint-based CHRI fees would result in a revenue gain to the General Revenue Fund of \$1,370,000 in fiscal year 2010 for initial gaming license applicants and \$860,000 each year thereafter for new applicants and license renewals. It is also assumed DPS would require 3 additional FTEs to handle the increased workload at a total salary cost of \$101,391 each year with estimated employee benefits costs of 28,967. Other equipment and operating costs for DPS are estimated to be \$715,305 in fiscal year 2010 and \$700,026 each year thereafter. It is assumed these costs would be paid for with General Revenue Funds.

Based on the analysis of the Texas Racing Commission, it is assumed the authorization of poker gaming at race tracks would result in the opening of one currently inactive pari-mutuel racetrack in fiscal year 2010, which would require an additional 5 FTEs and costs of \$635,637 in each fiscal year beginning in fiscal year 2010. The costs to the agency would be offset collected from the racetrack through licensing fees, breakage revenue, and outstanding ticket revenue.

Note: As drafted, revenue from the taxes imposed on gaming gross receipts would go to the Poker Gaming Revenue Fund and revenue from the fees on applications and licenses would be deposited in an unnamed fund.

Note: The bill language may be subject to interpretation with respect to the funds or accounts into which application and license fees and the state reimbursements mandated by Section 2004.4025(b)(1) would be made. For the purposes of this analysis, it was assumed that these revenues would be deposited to the General Revenue Fund.

Technology

Technology costs are estimated to be \$691,100 in fiscal year 2010 and \$15,000 each year thereafter.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 362 Texas Lottery Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 405 Department of Public Safety, 458 Alcoholic Beverage Commission, 476 Racing Commission

LBB Staff: JOB, JRO, MW, TG, SD