

Legislative Analysis



LAWFUL INTERNET GAMING ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4311 as referred to second committee
Sponsor: Rep. Brandt Iden

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4312 (H-2) as referred to second committee
Sponsor: Rep. Wendell Byrd

House Bill 4323 as referred to second committee
Sponsor: Rep. LaTanya Garrett

1st Committee: Regulatory Reform
2nd Committee: Ways and Means
Complete to 5-1-19

BRIEF SUMMARY: House Bill 4311 would create the Lawful Internet Gaming Act; allow internet gaming to be conducted in accordance with the new act; license various activities; create the Division of Internet Gaming in the Michigan Gaming Control Board (MGCB); impose a tax on the conduct of licensed internet gaming; create the Internet Gaming Fund; prohibit certain conduct; establish civil sanctions and criminal penalties for violations of the act; and authorize the promulgation of rules.

House Bill 4312 would place the maximum term of imprisonment for a felony violation of the Lawful Internet Gaming Act within the sentencing guidelines.

House Bill 4323 would exempt gambling conducted under the Lawful Internet Gaming Act from the provisions of the Michigan Penal Code.

Tie-bars: House Bill 4311 is tie-barred to HB 4308, House Bill 4312 is tie-barred to HBs 4311 and 4173, and House Bill 4323 is tie-barred to HB 4311. A bill cannot take effect unless the bill to which it is tie-barred is also enacted.

Effective date: Each bill would take effect 90 days after it is enacted.

FISCAL IMPACT: In general, the bills likely would result in a net reduction in revenues for state and local governments, including the City of Detroit, mainly due to the incentives produced by the lower tax rate on internet gaming adjusted gross receipts (AGR) and the revenue distribution differences between the internet gaming tax revenue and brick-and-mortar gaming tax revenue. See ***Fiscal Information***, below, for a detailed fiscal analysis.

THE CONTENT OF THE BILLS:

House Bill 4311 would create the Lawful Internet Gaming Act, a description of which follows.

Definitions

The act provides definitions for numerous terms used throughout it. These include:

Authorized participant: An individual who is at least 21 years of age with a valid internet wagering account with an internet gaming operator.

Casino: A building or buildings in which gaming is lawfully conducted under the Michigan Gaming Control and Revenue Act (the initiated law voted on by Michigan electors which authorized the three Detroit casinos) or in which Class III gaming is conducted by an Indian tribe under a facility license issued in accordance with a tribal gaming ordinance approved by the chair of the National Indian Gaming Commission.

Internet gaming: Operating, conducting, or offering for play an internet game.

Internet game: A game of skill or chance offered for play through the internet in which a person wagers money or something of monetary value for the opportunity to win money or something of monetary value. Free plays or extended playing time won on a game of skill or chance would not be “something of monetary value.” The term would include gaming tournaments conducted via the internet in which persons compete in games authorized by the Division of Internet Gaming.

Internet gaming operator: A person issued an internet gaming license from the Division of Internet Gaming to conduct internet gaming or otherwise authorized to operate, conduct, or offer internet gaming.

Internet wagering: Risking money or something of monetary value on an internet game.

Internet wagering account: An electronic ledger in which deposits, withdrawals, internet wagers, monetary value of prizes, certain charges authorized by the authorized participant, and adjustments to the account are recorded.

Applicability of Act, Location of Operation/Equipment

The Lawful Internet Gaming Act would allow internet gaming only to the extent that it is conducted in accordance with the act. A law inconsistent with the act would not apply to internet gaming, and the act would not apply to lottery games offered by the Bureau of Lottery, Class II and Class III gaming conducted exclusively on Indian lands by a properly licensed Indian tribe, or a fantasy contest conducted under the Fantasy Contests Consumer Protection Act.

Under the act, an internet wager would be considered placed when received by the internet gaming operator, regardless of the location of the participant at the time the wager was placed. An internet wager received by an internet gaming licensee would be considered to be gambling or gaming conducted in the licensee’s casino, regardless of the authorized participant’s location at the time the wager was placed. The intermediate routing of electronic data in connection with internet wagering, including routing across state lines, would not determine the location or locations in which the wager is initiated, received, or otherwise made.

Aggregating computers or other internet access devices in order to enable multiple players to simultaneously play an internet game would be restricted to licensed internet gaming operators.

Division of Internet Gaming, Multijurisdictional Gaming, Sports Betting

The Division of Internet Gaming (“the Division”) would be established in the MGCB to administer, regulate, and enforce the system of internet gaming established by the act. The Division would have jurisdiction over licensees and could take enforcement action as provided in the act against an unlicensed person offering internet gaming in the state.

Under the act, the Division could enter into agreements with other jurisdictions, including Indian tribes, for multijurisdictional internet gaming by gaming licensees if consistent with state and federal law and for gaming conducted only in the United States. The Division could permit internet gaming operators to conduct internet wagering on amateur or professional sporting events or contests.

Internet Gaming License, Application and License Fees

An applicant for an internet gaming license would have to hold a casino license or be an Indian tribe that lawfully conducts Class III gaming under the required license. After receiving an application and application fee, the Division would have to issue a license if the internet gaming proposed by the applicant complied with the act and the applicant was otherwise eligible and suitable (with the burden on the applicant to establish suitability).

In determining whether an applicant is eligible and suitable, the Board could request and consider the financial situation of the applicant, historical compliance with casino-related licensing requirements, criminal history, or history of bankruptcy.

An application fee of \$100,000 would have to accompany the application. Departmental rules could allow for a refund of the fee, or a partial refund if not wholly expended in processing the application, and provide the circumstances under which a fee would be refunded.

An internet gaming license would be valid for five years and could be renewed for five-year periods. The initial license fee would be \$200,000 payable at the time the license is issued. The yearly fee would be \$100,000. Application and license fees would be deposited into the Internet Gaming Fund created by the act. An institutional investor (such as a financial institution or pension fund) holding less than 30% of the equity of an applicant would be exempt from licensure under the act.

Tribal Internet Gaming

A federally recognized tribe in Michigan could apply to the Division to conduct internet gaming and would have to include relevant information on its application, such as the name and location of its casinos, relevant tribal law and governing documents, and financial information.

Issuance, maintenance, and renewal of internet gaming licenses to tribal casinos would be based on all of the following:

- Compliance with the act and related rules.
- Adoption and maintenance of technical standards consistent with those adopted by the Division.
- Maintenance of a mechanism to determine that participants are at least 21 years old and in allowed jurisdictions.
- Adoption and maintenance of responsible gaming measures.
- Maintenance and operation of a casino operating Class III gaming and containing at least 50% of the gaming positions in place as of the act’s effective date.

- Timely payment of 8% of the gross gaming revenue received from internet gaming.
- Provision of internet gaming records for verification of the 8% amount upon request by the Division.
- Provision of a waiver of sovereign immunity to consent to the Division's jurisdiction for specified purposes, as well as to the exclusive jurisdiction of Michigan's court system (expressly waiving the exhaustion of tribal revenues).

Under the bill, the state (acting through the governor) would have to negotiate any amendments to a tribe's compact necessary to ensure compliance with the act and any applicable federal law upon request by any Indian tribe. If the governor failed to enter into negotiations or failed to negotiate in good faith, the tribe could initiate a cause of action against the governor in state or federal court.

The Division would have to exercise its limited direct regulatory and enforcement authority in a manner that is not arbitrary, capricious, or contradictory to the act. The act would only regulate internet gaming and would not extend to any further aspect of tribal gaming operations beyond those granted to the state under a compact with the tribe.

Internet Gaming Vendor and Gaming Platform Vendor Provider Licenses

An internet gaming vendor would be a person providing to an internet gaming operator goods, software, or services that directly affect the wagering, play, and results of authorized internet games. Only a person licensed under the act could provide goods, software, or services as an internet gaming vendor to an internet gaming operator.

A provisional license would be available to enable the applicant for a vendor license to conduct business with an internet gaming operator or applicant before receiving a vendor's license. The provisional license would expire on the date listed.

A vendor license would be valid for five years and would be renewable for additional five-year periods if eligibility and suitability standards continued to be met. Applications would be made on forms provided by the Division and would have to include certain information specified in the act, such as financial information regarding the applicant.

A nonrefundable fee to be determined by the Division (but not to exceed \$5,000) would have to accompany the application with a fee of \$5,000 payable upon issuance of a license. The annual fee would be \$2,500.

An internet gaming platform provider would pay a license fee of \$100,000 at the time of issuance of the license and \$50,000 each year after that. [Note: ***Internet gaming platform provider*** is not defined in the act, nor are any requirements specified. The act defines ***internet gaming platform*** to mean an integrated system of hardware, software, and servers through which an internet gaming operator operates, conducts, or offers internet gaming.]

Application and license fees, taxes, and payments would be deposited into the Internet Gaming Fund created under the act. Information included with the application and records pertaining to the application process would be confidential and not subject to the Freedom of Information Act (FOIA). An institutional investor holding less than 30% of the equity of an applicant would be exempt from licensure under the act.

Jurisdiction of the Division, Civil Fines, Civil Remedies

The Division would have jurisdiction over and responsibility to supervise all internet gaming operations governed by the act. The Division could do the following to effectuate the act:

- Develop qualifications, standards, and procedures for approval and licensure of internet gaming operators and gaming vendors. [Note: internet gaming platform provider licensee is not mentioned here.]
- Conduct hearings pertaining to violations of the act or rules.
- Develop and enforce testing and auditing requirements for internet gaming platforms, internet wagering, and internet wagering accounts.
- Develop and administer civil fines (not to exceed \$5,000 per violation) for internet gaming operators and internet gaming vendor licensees that violate the act or departmental rules.

The Division could investigate, issue cease and desist orders, and obtain injunctive relief against a person that is not licensed and that is offering internet gaming in the state. Information, records, interviews, reports, and other data supplied to or used by the Division in the course of an investigation of a licensee would be confidential and not be subject to FOIA.

Rule Promulgation

Within one year after the act took effect, the Division would be required to promulgate rules governing the licensing, administration, and conduct of internet gaming necessary to carry out the act. The rules could only include things expressly authorized by the act, including the following:

- Types of internet games to be offered; poker, blackjack, cards, slots, and other games typically offered at a casino must be offered.
- Qualifications, standards, and procedures for approval and licensure of internet gaming licensees and internet gaming vendor operators.
- Requirements to ensure responsible gaming.
- Technical and financial standards for internet wagering, wagering accounts, and internet gaming platforms, systems, and software or other electronic components for internet gaming.
- Procedures for conducting contested case hearings.
- Requirements for multijurisdictional agreements entered into with other jurisdictions. These would include qualifications, standards, and procedures for approval of internet gaming vendors providing internet gaming platforms in connection with the agreement.
- Procedures and requirements for the acceptance, by an internet gaming operator, of internet wagers initiated or otherwise made by persons in other jurisdictions, if the Division authorized multijurisdictional gaming.

Age Verification Requirements, Requirements of Internet Gaming Operators

An internet gaming operator have to provide one or more mechanisms on the gaming platform it uses that are designed to:

- Reasonably verify that an authorized participant is at least 21 years of age. An individual would have to satisfy the verification requirements in order to establish an internet gaming account or to make an internet wager on an internet game.
- Limit internet wagering to transactions that are initiated and received or otherwise made by an authorized participant located in Michigan or a jurisdiction in the United States in which internet gaming is legal.
- Detect and prevent the unauthorized use of internet wagering accounts, and detect and prevent fraud, money laundering, and collusion.

An internet gaming operator could not knowingly authorize an individual less than 21 years old or an individual whose name appears in the responsible gaming database created under the act to establish an internet gaming account or knowingly allow them to wager on internet games offered by the licensee—unless required and authorized by the Division for testing purposes or to otherwise fulfill the purposes of the act.

Responsible Gaming Database, Posting of Compulsive Gambling Hotline

The Division could develop responsible gaming measures, including a statewide responsible gaming database that would identify individuals who are prohibited from establishing an internet wagering account or participating in internet gaming offered by an internet gaming operator. An individual's name could be placed in the database if any of the following apply to the individual:

- He or she has been convicted in any jurisdiction of a felony, a crime of moral turpitude, or a crime involving gaming.
- He or she has violated the act or another gaming-related act.
- He or she has performed an act, or has a notorious or unsavory reputation, such that his or her participation in internet gaming under the act would adversely affect public confidence and trust in internet gaming.
- His or her name is on a valid and current exclusion list maintained by Michigan or another U.S. jurisdiction.

Names of individuals to be included on the list could be provided by an internet gaming operator in a format specified by the Division.

The number of the toll-free compulsive gambling hotline maintained by the state would have to be displayed in a clear, conspicuous, and accessible manner on the internet gaming platform used by an internet gaming operator. Also, responsible services and technical controls would have to be offered to authorized participants. This would consist of both temporary and permanent self-exclusion for all internet games offered and the ability for authorized participants to establish their own periodic deposit and internet wagering limits and maximum playing times.

A participant could voluntarily prohibit himself or herself from establishing an internet wagering account with an operator. The voluntary self-exclusion list could be incorporated into the responsible gaming database and both be maintained by the Division in a confidential manner. Both lists would be exempt from disclosure under FOIA.

Prohibited Conduct, Criminal Penalties

The act would prohibit a person from doing any of the following:

- Offering internet gaming for play if not an internet gaming operator (except if exempt as a lottery game, tribal casino, or fantasy contest). This would be a felony punishable by imprisonment for up to 10 years or a fine of up to \$100,000, or both.
- Knowingly making a false statement on an application for a license issued under the act.
- Knowingly providing false testimony to MGCB or its authorized representative while under oath.

A license could not be issued to a person that committed a listed violation. An action to prosecute a violation could be brought by the attorney general or a county prosecuting attorney

in the county in which the violation occurred or in Ingham County, at either of the officials' discretion.

Gross Gaming Revenue Tax, Allocation of Tax

An internet gaming licensee would be subject to an 8% tax on the gross gaming revenue from internet gaming conducted under the act, payable monthly. No other tax, payment, or fee could be imposed on an internet gaming operator for internet gaming.

The tax would have to be allocated as follows:

- 30% to the city in which the internet gaming licensee's casino is located, for use in that city in connection with the following:
 - Hiring, training, and deployment of street patrol officers.
 - Neighborhood and downtown economic development programs designed to create jobs, with a focus on blighted neighborhoods.
 - Public safety programs such as emergency medical services, fire department programs, and street lighting.
 - Anti-gang and youth development programs.
 - Other programs designed to contribute to the improvement of the quality of life.
 - Relief to the taxpayers of the city from one or more taxes or fees imposed by the city.
 - Costs of capital improvements.
 - Road repairs and improvements.
- 55% to the state to be deposited into the Internet Gaming Fund.
- 5% to be deposited in the state School Aid Fund.
- 5% to be deposited in the Michigan Transportation Fund.
- 5% to the Michigan Agricultural Equine Industry Development Fund. (However, if that amount exceeded \$3 million in a fiscal year, the excess would have to be deposited in the Internet Gaming Fund.)

If the combined total of the 30% allocated to the city and the wagering tax under the Michigan Gaming Control and Revenue Act were less than \$179 million, the Board would have to distribute to the city from the fund an amount equal to the difference between \$179 million and the amount received by the city in the previous year. This would have to take place by December 31, 2020, and each December 31 thereafter. However, the total amount under the 30% allocation and this dispersal could not be more than 55% of the total tax imposed under this section in the fiscal year.

Internet Gaming Fund

The Internet Gaming Fund would be created in the treasury. Money or assets required to be paid into the fund or received from any other sources would be received by the state treasurer. Interest and earnings from fund investments would be credited to the fund. MGCB would be the administrator for auditing purposes. MGCB would be required to expend money from the Fund, on appropriation, for its costs of regulating and enforcing internet gaming under the act, as well as \$1.0 million to the Compulsive Gaming Prevention Fund.

Of the 8% gross gaming revenue (under section 7(1)(f) of the bill), 75% of the payments would have to be deposited into the Internet Gaming Fund, with the remaining 25% deposited into the Michigan Strategic Fund.

House Bill 4312 would amend the Code of Criminal Procedure to specify that internet gaming offenses under Section 13 of the proposed new Lawful Internet Gaming Act would be a Class D felony against the public order punishable by a maximum term of imprisonment of 10 years. Additionally, Bingo—false statements would be a Class G felony against the public trust punishable by a maximum term of imprisonment of 2 years.

MCL 777.14d

House Bill 4323 would add a new section to the Michigan Penal Code to specify that Chapter 44 (Gambling) would not apply to gambling conducted under the proposed Lawful Internet Gaming Act.

Proposed MCL 750.310d

BACKGROUND INFORMATION:

House Bills 4311, 4312, and 4323 are part of a series of reintroduced bills regarding gaming regulation in Michigan. The bills' counterparts in the 2017-18 legislative session—House Bills 4926, 4928, and 4927, respectively—were passed by the House and Senate but vetoed by the governor. In his veto message,¹ Governor Snyder cited unknown budgetary concerns and a desire for more careful study of the issue.

FISCAL INFORMATION:

In general, the bills likely would result in a net reduction in revenues for state and local governments, including the City of Detroit, mainly due to the incentives produced by the lower tax rate on internet gaming adjusted gross receipts (AGR) and the revenue distribution differences between the internet gaming tax revenue and brick-and-mortar gaming tax revenue.

Determining a fiscal impact is difficult in both scope and magnitude due to the financial, legal, and tax structure of the Michigan gaming industry; the dynamic interplay between the different types of gaming offered in Michigan (commercial casinos, tribal casinos, and a state-run lottery); and the relatively small sample size of states that have legalized internet casino gaming (Delaware [2012], Nevada [2013], and New Jersey [2013]). Additionally, casino revenues are affected by economic conditions, societal trends, expansion of gaming in other states, and the offering of alternative gaming opportunities, all of which make differentiating between correlation and causation when reviewing other states difficult.

New Jersey's online gaming market is structured most similarly to the proposed online gaming market under this bill. However, there are notable differences that limit its usefulness as a direct comparable for Michigan's gaming market. While Michigan's population is almost one million greater than New Jersey's, New Jersey has a per capita personal income that is 40% greater than Michigan's. In addition, population demographics and the dependence on tourism as a source of business for casino gaming diminish the value of direct comparisons.

For purposes of this analysis, the most notable difference is that New Jersey licensees pay a higher tax rate (15%) on internet gaming AGR than brick-and-mortar AGR (8%), while under

¹https://content.govdelivery.com/attachments/MIGOV/2018/12/28/file_attachments/1130293/Veto%20Letter%204926%20-%204928.pdf

the provisions of this bill Michigan licensees would pay a lower tax rate of 8% on internet gaming AGR (minus the monetary value of free play) than brick-and-mortar casino AGR, where the effective rate exceeds 19%.² In Michigan, the commercial casinos in Detroit would have a strong incentive to promote internet gaming at the expense of brick-and-mortar casino gaming because AGR received from internet wagering would be levied a tax rate significantly lower than AGR from the brick-and-mortar facility.

The scope and magnitude of the fiscal impact would depend on whether online gaming had a substitution, neutral, or stimulative effect on other forms of gaming. All of these factors are discussed in more detail below.

As background, in 2018 AGR from New Jersey internet gaming totaled approximately \$300.0 million, which represented 10% of the overall casino gaming market (based on AGR). Assuming that internet gaming AGR comprises approximately 12% of the total amount wagered, roughly \$2.5 billion was wagered online in New Jersey in 2018.

The narrative below assumes a mature market and does not represent short term changes immediately following the adoption of the bill’s provisions.

State School Aid Fund

The State School Aid Fund (SAF) likely would realize reduced revenues under House Bill 4311. Currently, a wagering tax of 19% is levied on casino AGR. Of that amount, 42.6% (\$0.081) is distributed to the SAF. Under the bill, internet gaming AGR would be taxed at a rate of 8%, with 5% (\$0.004) of the tax revenues deposited in the SAF. Therefore, every dollar of AGR lost at brick-and-mortar casinos due to internet gaming would result in a \$0.077 loss to the SAF.

The reduction in revenues would be directly related to the substitutive effect internet gaming would have on brick-and-mortar casinos. Any net new wagering from online gaming would offset a portion of the losses due to the substitution effect of online gaming.

Table 1 provides this information another way. The table shows how much internet wagering would need to occur to hold the SAF harmless at various brick-and-mortar wagering loss scenarios.

**Table 1
Internet Wagering Needed to Hold School Aid Fund Harmless at Various Brick-and-Mortar Casino Wagering Loss Scenarios**

% Wagering Loss at Detroit Casinos	SAF Loss	Internet Wagering Required for SAF Hold Harmless
1%	\$1,169,721	\$2,436,918,384
5%	5,848,604	12,184,591,919
10%	11,697,208	24,369,183,838
15%	17,545,812	36,553,775,757

Note: Based on 2018 MGCB AGR data for Detroit Commercial Casinos; assumes AGR comprises 12% of total wagering.

² In addition to the 19% wagering tax on adjusted gross receipts, the Detroit casinos pay a municipal services fee and development agreement payment based on adjusted gross receipts.

Internet gaming also could reduce lottery sales, mainly by diverting participants from the iLottery platform or instant ticket sales, because many of the games offered could be considered substantially similar from a user perspective. Payouts for individuals playing casino-operated games would be higher. Higher payout rates likely would lead to increased internet gaming play at the expense of iLottery and instant ticket play. Lottery AGR (net revenue) is deposited in the SAF. Therefore, any diminishment in lottery sales from the introduction of online gaming would result in lower SAF transfers from the Bureau of State Lottery. In 2017 net revenues from iLottery totaled \$80.0 million. Based on net revenues totaling 12% of total sales for iLottery games and 27% of total sales for instant ticket games, every dollar of wagering iLottery lost to internet gaming would require \$250 of internet wagering to hold the SAF harmless. Every dollar of instant ticket sales lost to internet gaming would require approximately \$550 of internet wagering to hold the SAF harmless.

Even if no substitution effect were assumed and online gaming had a neutral or stimulative effect on brick-and-mortar casino revenues, the SAF could still realize a decrease in dedicated revenues due to a loss in iLottery revenues. However, the lower tax rate for online gaming likely would result in the Detroit casinos promoting online gaming at the expense of brick-and-mortar gaming. The strength of this incentive would be affected by any expected non-gaming revenue a casino expected from brick-and-mortar casino patrons.

City of Detroit Revenues

The City of Detroit (“City”) likely would realize reduced revenues under House Bill 4311. Currently, a wagering tax of 19% is levied on casino AGR. Of that amount, 57.4% (\$0.109) is distributed to the City. In 2018, the City received approximately \$157.4 million from the casino wagering tax. Under the bill, internet gaming AGR would be taxed at a rate of 8%, with 30% (\$0.024) of the tax revenues allocated to the City. Therefore, every dollar of AGR lost at brick-and-mortar casinos due to internet gaming would result in a \$0.085 loss to the City.

Table 2 provides this information another way. The table shows how much internet wagering would need to occur to hold the City wagering tax revenues harmless at various AGR loss scenarios.

**Table 2
Internet Wagering Needed to Hold the City of Detroit Harmless at Various Brick-and-Mortar Casino Wagering Loss Scenarios**

<u>% Wagering Loss at Detroit Casinos</u>	<u>City of Detroit Revenue Loss</u>	<u>Internet Wagering Needed for City of Detroit Hold Harmless</u>
1%	\$1,574,069	\$546,551,654
5%	7,870,344	2,732,758,270
10%	15,740,688	5,465,516,540
15%	23,611,031	8,198,274,810

Note: Based on 2018 MGCB AGR data for Detroit Commercial Casinos; assumes AGR comprises 12% of total wagering.

It should be noted that if the impact on brick-and-mortar casino revenue were relatively neutral or stimulative, the City would realize increased revenues. The magnitude of the increase would depend on AGR from online gaming and a combination of the effective tax rate and any new revenues directly attributable to enhanced brick-and-mortar play due to online gaming.

However, the commercial casinos in Detroit would have an incentive to promote online gaming at the expense of brick-and-mortar play due to the lower tax rate of online gaming. As noted above, the strength of this incentive would be affected by any non-gaming revenue a casino expected from brick-and-mortar casino patrons.

The bill includes a specified tax revenue minimum of \$179.0 million for the City. If the City failed to generate \$179.0 million from its wagering tax distribution and internet gaming distribution, MGCB would be required to distribute the difference from the Internet Gaming Fund. The amount of revenue the City received from its internet gaming tax and additional Internet Gaming Fund distribution could not exceed 55% of the total internet gaming tax imposed in the fiscal year. Whether or not the floor could be satisfied in any given year would be a function of combined revenues from the wagering taxes and available revenues in the Internet Gaming Fund.

As written, the calculation for the \$179.0 million fails to include the development agreement revenues and the additional 1% wagering tax dedicated to Detroit under section 12(7) of the Michigan Gaming Control and Revenue Act, 1997 PA 69, MCL 432.212. Therefore, it is possible that the Internet Gaming Fund would have to allocate funds to the City to make up the calculated shortfall even in a scenario where there was no substitution effect and the internet gaming taxes were considered entirely new revenue.

Tribal Gaming – Payments to the State of Michigan

Tribal casino payments to the State of Michigan under the Tribal-State Compacts are made directly to the Michigan Strategic Fund and Michigan Economic Development Corporation (MSF/MEDC). Any fiscal impact would depend on the negotiated terms related to online gaming revenue sharing payments and the decisions made regarding revenue sharing payments to the state. Of the 12 tribes, 6 tribes do not currently make revenue sharing payments to the state. The other 6 tribes pay between 4% and 12% of net win. Payments to MSF/MEDC totaled \$57.3 million in 2017.

If the tribes that currently do not make revenue sharing payments to the state negotiate a revenue sharing agreement for online gaming, the state would realize increased revenues. However, the magnitude and purpose of those revenues for the state would depend on the terms of the negotiated compact.

Any fiscal impact related to tribes that currently make revenue sharing payments to the state would depend on the percentage of the online gaming payment agreed upon and the substitution effect of online gaming versus brick-and-mortar casino gaming.

Alternatively, tribal casinos that currently make revenue sharing payments to MSF/MEDC could choose to withhold payments if they deemed online gaming to be an expansion of gaming. Each tribe would have to determine whether revenues generated from online gaming would exceed revenues saved from withholding state payments.

It is not known how much of the internet gaming market tribal casinos could acquire. Increased internet gaming market share could further reduce SAF and City revenues.

Tribal Gaming – Payments to Local Units of Government

The provisions of the bill likely would result in reduced tribal casino payments to local units of government by an unknown amount. Any fiscal impact would depend on the substitution

effect. All tribal casinos make payments equal to 2% of net win to local units of government in their defined regional area. These payments totaled \$29.7 million in 2017. These payments cannot be withheld for an expansion of gaming violation of the Tribal-State Compacts. From the 8% tax rate levied on internet gaming offered by the tribal casinos, 75% must be allocated in the Internet Gaming Fund and 25% must be allocated to the Michigan Strategic Fund.

Michigan Transportation Fund

The bill would increase revenues to the Michigan Transportation Fund (MTF) by an unknown amount. The bill directs that 5% of the tax revenues received be deposited in the MTF established in section 10 of 1951 PA 51 (“Act 51”) to be distributed in accordance with the provisions of section 10(1)(l) of Act 51. The MTF is the primary collection and distribution fund for state restricted transportation revenue. The Act 51 distribution provisions referenced in the bill provide for the distribution of net MTF revenue as follows: 39.1% to the State Trunkline Fund (STF); 39.1% to county road commissions; 21.8% to cities and villages.

As provided by section 11 of Act 51, the STF is used for construction and preservation of the state trunkline highway system as well as administration of the Michigan Department of Transportation. The MTF distributions to county road commissions and to cities and villages are used primarily for the preservation of local road systems as provided by sections 12 and 13 of Act 51.

The amount of internet gaming tax revenue that would be credited to the MTF would depend on the total internet gaming tax revenue generated, which in turn would depend on adjusted gross receipts identified and taxed from online gaming.

Administration and Enforcement

The bill would create a new division within the Michigan Gaming Control Board. This would increase costs associated with staffing, office space, information technology, and other administrative, enforcement, audit, and regulatory costs. The extent of these costs is unknown. However, the bill would authorize the licensing and application fees levied on internet gaming licensees and vendors to be used to cover administrative expenses. In addition, 55% of the funds collected under the internet gaming tax is deposited in the Internet Gaming Fund in part for regulation and enforcement. Presumably, the funds collected and allocated for administration under the bill would be sufficient to cover necessary expenses related to administration and enforcement of the provisions of the bill.

Compulsive Gaming Prevention Fund

The bill would increase revenues for the Compulsive Gaming Prevention Fund by \$1.0 million annually due to the required deposit from the Internet Gaming Fund created under the bill.

Impact on the Judiciary and/or State and Local Corrections

The bill would have an indeterminate fiscal impact on the state’s correctional system and on local court systems. Information is not available on the number of persons who might be convicted under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year.

Civil fines would increase revenues going to the state Justice System Fund, which supports the Legislative Retirement System, the Departments of State Police, Corrections, Health and Human Services, and Treasury, and various justice-related endeavors in the judicial branch.

The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

POSITIONS:

A representative of Greektown Casino testified in support of the bills. (3-12-19)

Representatives of the following organizations testified in support of House Bill 4311 (3-12-19):

Fan Duel and Draft Kings
MGM Grand Detroit
GEOComply
The Stars Group

The following organizations indicated support for the bills (3-12-19):

Michigan Chamber of Commerce
City of Detroit

The following organizations indicated support for House Bills 4311 and 4312 (3-12-19):

Gun Lake Tribe
Pokagon Band of Potawatomi

iDEA Growth (iDevelopment and Economic Association) indicated support for House Bill 4311. (3-12-19)

MGM Grand Detroit indicated support for House Bill 4312. (3-12-19)

The Coalition to Stop Internet Gaming indicated opposition to House Bill 4311. (3-12-19)

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Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.