

Legislative Analysis



MICHIGAN GAMING CONTROL AND REVENUE ACT REVISIONS

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<http://www.house.mi.gov/hfa>

House Bill 5881 as enrolled
Sponsor: Rep. Brandt Iden
House Committee: Regulatory Reform
Senate Committee: Government Operations
Complete to 5-6-19

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

(Vetoed by the Governor 12-28-18)

SUMMARY:

House Bill 5881 would make numerous revisions to the Michigan Gaming Control and Revenue Act, the act that regulates the three Detroit casinos. The changes would include paying members of the Michigan Gaming Control Board (MGCB) for attending board meetings, allowing a person with a criminal conviction to be eligible for licenses under the act after a specified post-conviction time period, raising the minimum percentage of interest in a licensee or applicant that would trigger a background check, requiring an annual audit instead of a quarterly audit for suppliers, and no longer allowing the disclosure of certain currently available information pertaining to licensees or applicants.

Significant changes proposed by House Bill 5881 include the following:

Definitions

Several definitions in the act would be revised. Among those with major changes are the following:

- *Junket enterprise* would be deleted.
- *Occupational license* would mean a license issued by MGCB to a person to perform in a casino or a casino enterprise an occupation that directly impacts the integrity of gaming and that MGCB has identified as requiring a license.
- *Supplier*, defined as a person requiring a license to provide casino licensees with goods or services regarding the business of a casino or casino enterprise on a regular or continuing basis, would no longer include junket enterprises, security businesses, manufacturers, distributors, persons who service gaming devices or equipment, garbage haulers, maintenance companies, food purveyor, and construction companies.
- The level of direct or indirect interest in a casino for a person or partnership to be considered an *applicant* would be increased from 1% or more to greater than 5%.
- *Affiliate* would mean a person who, directly or indirectly, through one or more intermediaries, controls a casino licensee under the act.
- *Affiliated company* would mean any form of business organization that controls a casino licensee under the act.
- *Casino* would be expanded to include a building or buildings in which gaming is conducted.

Direct or indirect interest in an applicant or pecuniary interest in a casino

Under the bill, persons having less than 5% (increased from 1%) direct or indirect interest in an applicant, or direct or indirect pecuniary interest in the casino, would no longer be subject to criminal history background checks or other restrictions.

Casino licensees would have to submit a list annually to MGCB of stockholders or other persons having a 5% (rather than 1%) or greater beneficial interest in the licensee's gambling activities.

Michigan Gaming Control Board

Beginning January 1, 2023, the bill would require each member of MGCB to be compensated in the amount of \$1,000 for each public board meeting attended, with the chairperson receiving \$1,250 for each public board meeting attended, in addition to being reimbursed for all actual and necessary expenses and disbursements incurred in the execution of official duties.

A person could not be appointed to MGCB if he or she held a direct or indirect interest in, or had been employed by, a casino licensee during the previous year (rather than the previous three years).

A member of MGCB, executive director, or board employee (rather than key employee) would be barred from holding an interest in, or being employed by, or contracting for services with a casino licensee (rather than an applicant, person licensed or registered by the board, or a casino enterprise) for a period of two years (rather than four years).

A provision that prohibits an MGCB employee from acquiring an interest in or employment with a person licensed by MGCB for two years after terminating employment with MGCB would be retained in the bill. [It had been deleted in the enrolled version of the bill last session.] A provision prohibiting a business entity in which a former board member or board employee had an interest from making an appearance or representation prohibited to the former board member or employee would be deleted.

MGCB could enter into agreements with other jurisdictions to facilitate, administer, and regulate multijurisdictional gaming by casino licensees if the gaming under the agreement would be conducted only in the United States.

Application to conduct a gambling operation

The bill would raise the ownership interest number triggering disclosure on a casino's application from 1% to 5%. It would also remove from the required disclosures a statement listing the names and titles of all public officials and their families who, directly or indirectly, have a financial interest in, are the creditors of or hold any debt instruments issued by, or have a contractual or service relationship with an applicant. Finally, it would remove the requirement that an applicant disclose certain political contributions made by himself or herself or a close family member within five years of filing for the application.

Information subject to FOIA

Any information that would disclose employment schedules, travel schedules, vehicle information, or other information that might endanger the physical safety of MGCB employees, or investigation information, would not be subject to disclosure under the Freedom of Information Act (FOIA).

The following information currently required to be provided by MGCB upon a written request concerning an applicant or licensee; his or her products, services, or gambling enterprises; and his or her business holdings and required to be disclosed by a city upon request pertaining to a response to a request for proposals for development agreements would be deleted:

- Identification of any business in which an applicant's or licensee's spouse, parent, or child has equity interest of more than 5%.
- Whether an applicant or licensee had been indicted, convicted, pleaded guilty to, or forfeited bail concerning a criminal offense.
- Whether the applicant or licensee had a license or certification denied, restricted, suspended, revoked, or not renewed.
- Whether the applicant or licensee filed for bankruptcy or has ever been involved in a formal process to adjust, defer, or suspend payment of a debt.
- Whether the applicant or licensee has filed, or been served with, a complaint with a public body regarding delinquent payment of any federal, state, or local tax.
- A list of public officials or officers of any city, state, or federal body or entity and relatives of those officials who own any financial interest in, are the creditors of, or have a contractual or service relationship with an applicant or licensee.
- Whether an applicant or licensee, or his or her spouse, parent, child, or spouse of a child, had made political contributions, loans, gifts, or other payments to a candidate or officeholder elected in the state within the five years prior to filing an application. (A city would still have to disclose this information upon request.)

The bill would also allow an applicant, a licensee, or MGCB to designate information, records, interviews, reports, correspondence, statements, memoranda, documents, or other data as confidential and thus not subject to disclosure under FOIA.

Ineligibility of applicant

The prohibition against receiving a casino, supplier, or occupational license if the applicant has been convicted of a felony or misdemeanor offense under federal law or the law of any state could be waived by MGCB if the conviction occurred more than 10 years before application for a felony, or five years for a misdemeanor, and MGCB is convinced that the applicant does not pose a threat to the integrity of gaming and that the applicant otherwise meets the requirements for licensure.

Additionally, the bill would expand the prohibition against applicants holding local, state, or federal elective offices to include employees of the city or county where the casino is located.

Allowable taxes

Generally, a wagering tax of 18% applies to the adjusted gross receipts received by a casino licensee for gaming authorized under the act. The bill would provide that, if internet gaming were authorized by another state law, any taxes, payment, and fees would be subject to that other law, and that the state or a political subdivision of the state could not impose any additional tax, payment, or fee. If internet gaming were not authorized by another state law, however, the bill would impose a wagering tax of 8% on the adjusted gross receipts received by a casino licensee by the state or a political subdivision of the state for sports betting or internet gaming. These provisions would not impair the contractual rights under an existing development agreement between a city and a casino licensee.

If a casino licensee provided a wagerer with a device to conduct internet gaming at the casino, the default wagering tax of 19% would apply.

Miscellaneous provisions

The bill would also do all of the following:

- Eliminate the authority of MGCB to revoke or suspend a casino license or impose other disciplinary action for a violation of the Michigan Liquor Control Act or departmental rules. (The Michigan Liquor Control Act was repealed in 1998 and replaced by the Michigan Liquor Control Code.)
- Eliminate as conduct constituting a one-year misdemeanor offense knowingly violating or aiding or abetting in the violation of the provisions of section 7b of the act. (Section 7b pertains to prohibitions on certain political contributions and would be repealed by the bill.)
- Exclude a player's mobile or other personal device from the definition of *electronic funds transfer terminal*.
- Eliminate a requirement that a casino licensee must immediately remove an individual confirmed as filing an affidavit to be on the disassociated persons list from the casino premises and report the incident to the county prosecutor.
- Clarify that the prohibition against casino licensees' extending credit, offering coupons, or advertising gambling operations to, or soliciting the patronage of, persons whose names are on the list of disassociated persons would not pertain to nongaming amenities such as hotels, restaurants, and event centers.
- Delete the requirement for a supplier to file a quarterly return with MGCB listing all sales, leases, and services.
- Require each local labor organization directly representing casino gaming employees to register with MGCB every other year rather than annually.
- Require annual financial audits of each casino licensee and allow the licensee to transmit the audit to MGCB and the city in which the casino is located within 90 days after the end of the fiscal year. Currently, audits are required quarterly and must be transmitted within 30 days of the end of each fiscal year quarter.
- Eliminate, as grounds for denial of an occupational license, that the applicant or affiliate owns more than a 10% ownership interest in any entity holding a casino license under the act.

- If video lottery is allowed to be conducted at horse racetracks, a casino licensee authorized to simulcast horse races under the Horse Racing Law would no longer be restricted to display and allow wagering on simulcast races only at the licensee's casino.

Repealers

The bill would repeal sections 7b, 8a, and 10 of the act. Section 7b defines persons considered to have an interest in a licensee or casino. Section 8a pertains to a requirement for a licensee for a casino license to post a \$1.0 million bond prior to issuance of the license. Section 10 requires alcoholic beverages to be sold or distributed in a casino only pursuant to the Michigan Liquor Control Act (which was repealed and replaced by the Michigan Liquor Control Code in 1998).

FISCAL IMPACT:

The bill would have fiscal implications for state and local governments.

House Bill 5881 revises many areas of the Michigan Gaming Control and Revenue Act and would have various fiscal implications related to the operation of MGCB; licensure of applicants; and the regulation, oversight, and enforcement of gaming-related activities. The fiscal implications are discussed in more detail below.

The bill would increase the cost of MGCB activities by a maximum of \$5,250 for every board meeting held by requiring specified compensation for board members for each meeting they attend. Compensation rates would be \$1,000 for each member and \$1,250 for the chairperson for each meeting. MGCB typically convenes six meetings each calendar year.

While the bill removes the requirement that certain statutorily specified nongaming suppliers be licensed, MGCB would be provided discretion in determining which classes of applicants require supplier licensure. Any change in revenues to MGCB from licensure fees would be directly related to the scope of suppliers required for licensure compared to current law. MGCB currently charges between \$500 and \$2,500 for supplier licenses, dependent upon the total dollar amount of a supplier's business transactions with all casino licensees or casino enterprises. The annual supplier's license fee paid by all suppliers is \$5,000. Narrowing the scope of potential suppliers would also reduce oversight and investigatory costs for MGCB by an unknown amount.

The bill would also narrow the scope of individuals required to apply for occupational licensure to those that directly impact the integrity of gaming. This provision would also lead to lower revenues from license applications and biennial license fees. MGCB currently levies an application fee of between \$50 and \$500 and a biennial license fee of between \$50 and \$250. Narrowing the scope of individuals required to apply for occupational licensure would also reduce oversight and investigatory costs for MGCB by an unknown amount.

The bill would eliminate MGCB's authority to impose a disciplinary action against a casino licensee for a violation of the Michigan Liquor Control Act. It is unknown how many actions have been taken by MGCB and what penalties were imposed for those violations. Therefore, a fiscal impact related to this bill provision is unknown.

The bill would eliminate the misdemeanor offense for violating the prohibition on political contributions by a licensee which could result in a decrease in costs for local units of government. The costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how the provisions of the bill affected caseloads and related administrative costs. There could also be a decrease in penal fine revenues, which would decrease funding for local libraries, which are the constitutionally designated recipients of those revenues.

Vetoed 12-28-18:

In his veto message for House Bill 5881,¹ Governor Snyder stated that he was vetoing the bill because it was tie-barred to House Bill 4926, which he had already vetoed. In his veto message for House Bills 4926, 4927, and 4928,² Governor Snyder stated that he was vetoing those bills due to largely unknown budgetary concerns and a need for more careful study.

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■ 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.

¹https://content.govdelivery.com/attachments/MIGOV/2018/12/28/file_attachments/1130294/Veto%20Letter%205881.pdf

²https://content.govdelivery.com/attachments/MIGOV/2018/12/28/file_attachments/1130293/Veto%20Letter%204926%20-%204928.pdf