

Date of Hearing: June 29, 2021

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Jim Frazier, Chair

SB 576 (Archuleta) – As Amended April 7, 2021

**SENATE VOTE:** 30-2

**SUBJECT:** Gambling: local moratorium

**SUMMARY:** This bill extends the gambling moratorium related to the expansion of gaming and the issuance of new gambling licenses from January 1, 2023, to January 1, 2028. Additionally, this bill authorizes a city, county, or city and county, to amend its ordinance to increase the number of gambling tables that may be operated in a gambling establishment by up to two tables each calendar year, up to a maximum of 10 additional tables, as specified. Specifically, **this bill:**

- 1) Extends the gambling moratorium related to the expansion of gaming and the issuance of new gambling licenses from January 1, 2023, to January 1, 2028.
- 2) Authorizes a city, county, or city and county, to amend its ordinance to increase the number of gambling tables that may be operated in a gambling establishment by up to two tables each calendar year, up to a maximum total of 10 additional tables, above the number of tables authorized under the ordinance that was in effect on January 1, 2022.
- 3) Provides that a city, county, or city and county's jurisdictional limit may expand to accommodate the increase of gaming tables pursuant to this bill.

**EXISTING LAW:**

- 1) Provides, under the Gambling Control Act (Act), for the licensure and regulation of various legalized gambling activities and gambling establishments by the California Gambling Control Commission (CGCC) and the investigation and enforcement of those activities and establishments by the Bureau of Gambling Control (Bureau), under the Department of Justice (DOJ).
- 2) Expresses the intent of the Legislature that nothing in the Act shall be construed to preclude any city, county, or city and county from prohibiting any gambling activity, from imposing more stringent local controls or conditions upon gambling than are imposed by the Act or by CGCC.
- 3) Prohibits the CGCC, until January 1, 2023, from issuing a gambling license for a gambling establishment that was not licensed to operate on December 31, 1999, unless an application to operate that establishment was on file with the Bureau prior to September 1, 2000.
- 4) Prohibits, until January 1, 2023, an ordinance in effect on January 1, 1996, that authorizes legal gaming within a city, county, or city and county from being amended to expand gaming in that jurisdiction beyond that permitted on January 1, 1996, with minor exceptions.
- 5) Requires any amendment to any ordinance that would result in an expansion of gambling, as defined, in the city, county, or city and county, to be approved by the voters in that jurisdiction,

unless that amendment results in an increase of less than 25% with respect to specified matters, including the number of gambling tables or the hours of operation of a gambling establishment in the city, county, or city and county.

5) The California Constitution, Article IV, Section 19, generally prohibits casinos of the type currently operating in Nevada and New Jersey. However, constitutional amendments together with legislation have created many distinct categories of regulated and legal gambling.

6) Provides, under the Cal. Const. Art. IV, Sec. 19(f) and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts

7) Provides, under the California Penal Code § 330, “Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of those prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.”

8) Provides, under the California Penal Code § 330.11 that “Banking game” or “banked game” does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game, and preclude the house, another entity, a player, or an observer from maintaining or operating as a bank during the course of the game. For purposes of this section it is not the intent of the Legislature to mandate acceptance of the deal by every player if the division finds that the rules of the game render the maintenance of or operation of a bank impossible by other means. The house shall not occupy the player-dealer position.”

**FISCAL EFFECT:** Unknown. This bill was not heard by the Senate Appropriations Committee pursuant to Senate Rule 28.8.

## **COMMENTS:**

### **Background:**

Card clubs are one of California's oldest forms of legal gambling. Currently, 86 cardrooms in 32 counties are licensed to operate more than 1,700 tables in California. A small percentage are large in scale, the remainder are smaller operations (one to two tables) scattered throughout the State.

Due to California gaming regulations, players do not play against the house but rather against each other. As a result, each cardroom charges a player's fee. This is how a cardroom generates revenue rather than the traditional Las Vegas casino style, in which the house doesn't charge a fee and relies instead on actually banking the game.

The CGCC and the Bureau are responsible for the development of policy, regulatory oversight, and enforcement of the state's gaming laws at California card clubs. Local governments also regulate California card clubs. At the local level, gaming interests must secure a gaming ordinance. The Bureau and CGCC must then approve the ordinance. Local ordinances must be approved by the host jurisdiction. A newly proposed cardroom or an expansion of gambling, as defined, is subject to a vote and/or referendum by the voters in that jurisdiction.

It has been reported that card club operations, directly and indirectly support more than 23,000 jobs in California. The cardroom industry generates more than \$2 billion in annual economic activity and contributes hundreds of millions of dollars to local communities and the state in tax revenue. Cardroom tax revenues help communities fund important local services such as park maintenance, police and fire services, and local road repairs. Additionally, some California card clubs generate over half of the total tax revenue for the municipal general funds in their home cities.

Regulation and enforcement. Before 1998, California's gambling industry was essentially unregulated. In 1984, the Legislature enacted the Gaming Registration Act that required the Attorney General's office to provide uniform, minimum regulation of California card rooms. However, the scope of the Attorney General's authority was extremely limited and funding was inadequate. Recognizing the need for broader oversight of California's gambling industry, the Legislature enacted the Act in 1997. The Act created a comprehensive scheme for statewide regulation of legal gambling under a bifurcated system of administration involving the Bureau and the five-member CGCC by the Governor.

The Act provides the CGCC with jurisdiction over the operation of gambling establishments in California. The Act requires every owner, lessee, or employee of a gambling establishment to obtain and maintain a valid state gambling license and assigns CGCC the responsibility of assuring that gambling licenses are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is harmful to the public health, safety, or welfare. The Act directs CGCC to issue licenses only to those persons of good character, honesty and integrity, whose prior activities, criminal record, if any; reputation, habits, and associations do not pose a threat to the public interest of this state.

The DOJ, through the Bureau, monitors the conduct of gaming operations to ensure compliance with state gambling laws and conducts extensive background investigations of applicants seeking a state gambling license. The Bureau also conducts background checks for all key employees and state gambling licensees and vendor applications. The Bureau also inspects premises where gambling is conducted, examines gambling equipment, audits papers, books, and records of the gambling establishment, investigates suspected violations of gambling laws, and is ultimately responsible for enforcing compliance with all state laws pertaining to gambling.

The Bureau is also responsible for the approval of games that cardrooms are allowed to offer.

Moratorium. There are currently two statutory moratoriums that restrict the growth of card clubs in California. One moratorium prohibits the state from issuing licenses for new gambling

establishments. The other limits licensed gaming establishments from expanding the number of tables and hours they operate. Most local jurisdictions have modified their gambling ordinances to realize the maximum amount of growth authorized by law. Both of these moratoriums are set to expire on January 1, 2023.

The moratorium restricting the expansion of existing gambling establishments and licensing of new establishments began in 1995. A five- year moratorium was put in place by the enactment of SB 100 (Maddy), Chapter 387, Statutes of 1995. Since this initial moratorium, legislation continuing both moratoriums has been continually enacted. Most recently, AB 1168 (Gipson, Chapter 744, Statutes of 2018) extended the moratorium by three years, from January 1, 2020, to January 1, 2023.

Since the enactment of the moratorium in 1995, the Legislature has also passed several laws allowing gambling establishments to expand the number of tables in a licensed establishment. The last expansion of tables was enacted in AB 1039 (Hall), Chapter 745, Statutes of 2013, which allowed a city, county, or city and county to amend its local ordinance to increase the number of tables by two, above the number of tables authorized by local ordinance in effect on January 1, 2013.

Most local jurisdictions have modified their local ordinances to realize the maximum amount of growth authorized by law. SB 576 grants cardrooms the ability to increase the number of tables at their establishments by up to two tables per calendar year, up to a maximum of 10 tables. *See Prior/Related Legislation for full list of moratorium and expansion bills.*

Game/gaming activity approval at cardrooms. All controlled games (such as pai-gow, poker, etc.) and gaming activities (jackpots, bonuses, tournaments, etc.) must be approved by the Bureau and are subject to local ordinance requirements, regardless of whether the Bureau has approved the game and gaming activity rules for play.

The Act, Business & Professions Code section 19800 et seq., charges the Bureau with the responsibility to review and approve the rules of any game/gaming activity in a cardroom prior to them being offered for play. It is Bureau policy that all requests to review a game and/or gaming activity require an application, a \$1050 fee, which consists of a non-refundable \$500 application fee and \$550 background investigation deposit for the review and approval, and the fee collection schedule for each wagering limit. The Bureau will only begin the review/approval process upon receipt of a complete application and the appropriate application fees. Any amendments to a game or gaming activity must be approved prior to being offered for play in the gambling establishment.

Therefore, games that are currently being played in California's cardrooms have been through a specified approval process by the Bureau.

The legality of games offered. Under state law, banked card games—games where the casino has a stake in the outcome—are illegal outside of tribal casinos. This includes games like blackjack and baccarat. Instead, California's cardrooms use a state-licensed 'third-party proposition player' to act as the dealer and bank, as specified in law. For years, various tribes who operate casinos have argued that this practice not only violates specified legal provisions but also their exclusive right to offer Class III Vegas-style games like blackjack and baccarat, as outlined in their Tribal-State Gaming Compact. In addition, tribes have stated that cardrooms

continue to offer and play games in a manner that violate the State Constitution's prohibition of 'casinos of the type currently operating in Nevada and New Jersey'.

The cardroom operators state that for more than two decades and through various attorney generals, they have been offering and playing these games in a state-sanctioned manner and it has been proven to be legal by the California courts. Per state law, California gaming regulators have accepted the use of state-licensed third-party proposition player firms, or TPPPs (usually employed by a private company) to act as the banker provided the dealer and banker spot is offered to other players at the table after two hands are dealt—and then again two hands later on a continuing and rotating basis.

It should be noted that in Nevada and New Jersey casinos, and even at California's tribal casinos, players at the table do not act as the bank or the house, thus taking on all comers, collecting from the losers, and paying the winners.

Cardroom owners further contend their compliance with state law and regulations is further evident by a recent judicial decision in December 2020, where the United States Court of Appeals for the Ninth Circuit upheld a lower court's dismissal of a 2019 lawsuit filed by three California Tribes (Yocha Dehe Wintun Nation, the Viejas Band of Kumeyaay Indians and the Sycuan Band of the Kumeyaay Nation) against the State of California and Governor Gavin Newsom. The tribes argued that the state violated exclusivity provisions of the compacts by allowing cardrooms to offer house-banked games. The court ruled that tribes had no right to exclusivity beyond that which is contained within California's Constitution.

The Presiding District Judge, John Menendez wrote, "*We need not decide today whether exclusivity is a compact term,*" writes Menendez in his opinion. "*Even assuming that it is, the remedy the tribes seek, an injunction requiring the state to enforce its laws against non-Indian card rooms that allegedly operate illegal banked card games, cannot be granted.*" The judge further wrote, "*Nothing in the compacts purports to impose on the State the obligation to enforce its laws against non-Indian cardrooms, and nothing in the contracts suggests the Tribes may seek that remedy based on an alleged breach of any exclusivity guarantee.*"

Recent regulatory action by the Bureau. The Bureau has held workshops throughout the state and provided concept language in December 2019 to further clarify the provisions of Penal Code section 330.11 (rotation of the player-dealer position). In addition, the Bureau provided concept language in December 2020 to clarify "California-blackjack" games. The official rulemaking has not been initiated for either issue at this time. The Bureau is reviewing pending and currently approved blackjack-style games to determine if they are too similar to the game prohibited under the law. With respect to non-blackjack games, the Bureau is approving games on a temporary basis that are approved for play in other cardrooms.

Purpose of the bill. According to the author's office, "California card clubs are fundamental assets in many local economies, serving as the largest single source of total tax revenue for several city general funds. Cardroom taxes fund numerous services like public safety, public health, and parks to name just a few. Cardrooms also generate significant employment and secondary business activity in many communities. The Legislature has an established history of keeping a moratorium on the expansion of local gambling in card clubs. In turn, SB 576 will extend the current moratorium to January 1, 2028 and allow a modest increase in tables at

existing card clubs. This will provide predictability and needed financial stability to local governments that rely on revenue from licensed gambling.”

In support. According to the California Cardroom Alliance, “California card clubs are fundamental assets in many local economies, serving as the largest single source of total tax revenue for several city general funds. Cardroom taxes fund essential public safety and health services, parks, water delivery, youth services, gang prevention and transportation systems. They also pay millions of dollars in state licensing fees. Card clubs also generate significant employment and secondary business activity in many communities.”

The Communities for California Cardrooms (CCC) writes in support, “The CCC supports the five year extension of the existing moratorium on card room licenses; and, as enacted in previous moratorium legislation, the increase in licensed tables, subject to local government approval. As our industry well knows, the Legislature has not increased the number of tables that may be approved locally without placing the issue on the ballot since 2013. You may have received correspondence or messages from tribal casinos making unfounded and inaccurate statements about the cardroom industry. Those letters are nothing more than an attempt to snuff out competition. The tribes have made the same claims in court, and the courts have repeatedly rejected their claims. Cardrooms are a heavily regulated industry that only play games that are reviewed, approved, and licensed by the state. Cardrooms pay taxes, provide jobs, and actively engage in bettering our communities.”

According to Parkwest Casinos, “Cities with licensed cardrooms have millions of dollars in long-term bonds and debt service financed in significant part by cardroom revenues. If the licensing moratorium were to expire, it would likely be followed by major expansion of gambling activities in adjacent areas, jeopardizing the fiscal health of many of these cities throughout the state. Finally, we estimate that one gaming table produces ten living wage jobs, and local governments benefit from the increase in tax revenues and fees generated from each table increase. Therefore, the ability to modestly increase tables annually will allow many more Californians to secure steady employment and help our local governments sustain financial solvency and public services. The last thirteen months have considerably challenged our industry, but we have been able to survive at Parkwest Casinos and we have done our best to minimize the economic hardship felt by our employees and their families during the shutdown.”

Writing in support of this measure, the California Cities for Self-Reliance Joint Powers Authority states that “extending the current moratorium will provide needed financial stability to our JPA member cities that rely upon revenue from licensed gambling, and it will continue the state’s commitment to limit the number of gambling facilities operated in the state. Cardrooms based in our member cities are vital local economic engines that serve as the largest single source of total tax revenue that fund residents’ services such as emergency services, fire, health care, homeless programs, transportation, and other essential programs. In addition, our cardrooms serve as regional economic engines via their direct employment of not only local residents, but of residents from throughout our region that number well over 10,000. Within our membership alone, the revenue derived from Hawaiian Garden’s casino to the City of Hawaiian Gardens represents 70% of the City’s total general fund revenues. The City of Bell Gardens derives 50% of its general fund revenue from the Bicycle Casino, while the City of Commerce generates 40% of its general fund revenues from Commerce Casino. Also, the City of Compton derives substantial revenue for its general fund from Crystal Casino.”

In opposition. The United Auburn Indian Community states that “the tribe is strongly opposed to any increase in the number of cardroom gambling tables. Over the years, the courts and the California Gambling Control Commission have determined that numerous cardrooms have blatantly violated the law and have jeopardized the public's confidence in a well-regulated gaming industry. Currently, the Bureau of Gambling Control (BGC) in the State Department of Justice is in the process of reviewing the legality of games that are being offered at cardroom facilities as well as proposed regulations that would bring those games into compliance with the law. We believe the BGC should be given time to complete its long-overdue review. And until such time as the regulations are promulgated, we believe it would not be prudent to increase the number of tables at which cardrooms can offer these games.”

According to the Viejas Band of Kumeyaay Indians, “for almost ten years now, California gaming tribes have fought to stop the illegal gaming that occurs daily in California cardrooms. This illegal gaming includes the play of blackjack, which Penal Code section 330 expressly prohibits, and ‘banked’ games, which are constitutionally impermissible. Only Indian tribes that have negotiated a compact with the State have the right to play those games. The cardrooms not only infringe directly on the tribe’s hard-won gaming rights but they get to do so in urban areas, while the tribes’ gaming is limited to their mostly remote tribal lands. California tribes have made many efforts to stop the illegal gaming occurring in California’s cardrooms. While the Bureau of Gambling Control has issued “concept” regulations to stop the play of blackjack, based on almost a decade of discussions, there is no guarantee that the Bureau will ever follow through with them.”

Several other tribes make similar statements in opposition of this bill.

According to California Cities Gaming Authority, “SB 576 is a devastating blow to approximately 64 cities with small and medium card rooms who want and need additional tables now and/or will need gaming tables within the next seven years. There are small and medium card room owners who want and need 15-20 additional gaming tables immediately for their economic survival as well as to accommodate patron demand. This measure threatens real physical harm to cities that are host to card rooms and other legal gaming operations, by denying local governments the ability to fully manage them and the revenue streams they represent for seven years.”

Prior/Related Legislation. AB 1321 (Lackey, 2021) excludes an increase in the number of tables authorized in existing gambling establishments from the prohibition on expansion of gaming and explicitly authorizes a city, county, or city and county to expand, by ordinance, the number of tables permitted in a gambling establishment. (Pending in the Assembly Governmental Organization Committee)

SCA 6 (Dodd), 2019-2020 Legislative Session. Would have authorized sports betting, including online or mobile sports betting, by horse race tracks and federally recognized Indian tribes, as specified. Additionally, the bill would have incorporated into the California Constitution the authority of a licensed gambling establishment to offer games with cards or tiles in which participants wager against each other, including games in which a participant known as the player-dealer wagers against the other participants, and would have clarified that games played in this manner at a licensed gambling establishment are not banking or percentage games. (Died in the Senate Appropriations Committee)

AB 1168 (Gipson), Chapter 744, Statutes of 2018. Extended the gambling moratorium related to the expansion of gaming and the issuance of new gambling licenses from January 2, 2020, to January 1, 2023.

SB 654 (Dodd), Chapter 244, Statutes of 2017. Authorized a city, county, or city and county to amend its local ordinance to increase the operation of hours of a gambling establishment to up to 24 hours a day, seven days a week.

AB 1039 (Hall), Chapter 745, Statutes of 2013. Allowed a city, county, or city and county to amend its local ordinance to increase the number of tables by two, above the number of tables authorized by local ordinance in effect on January 1, 2013.

AB 241 (Hall), Chapter 316, Statutes of 2011. Extended the gambling moratorium related to the expansion of cardrooms and the issuance of new cardroom licenses from January 1, 2015 to January 1, 2020.

AB 2193 (Hall) of the 2009-2010 Legislative Session. Would have extended the gambling moratorium related to the expansion of cardrooms and the issuance of new cardroom licenses from January 1, 2015 to January 1, 2020. (Vetoed by Governor)

SB 213 (Florez) of the 2009-2010 Legislative Session. Among other things, would have extended the moratorium on the issuance of new gambling establishments from January 1, 2015 to January 1, 2020. (Vetoed by Governor)

AB 441 (Hall), Chapter 530, Statutes of 2010. Modified provisions of the Act as it relates to the limit on increases in the number of gambling tables that a local jurisdiction may authorize without voter approval.

AB 293 (Mendoza) Chapter 233, Statutes of 2009. Made numerous changes to the Act, including replacing references to "gambling establishments" with "gambling enterprises" in specific sections of the Act.

AB 163 (Mendoza) Chapter 647, Statutes of 2008. Authorized a city or county, without voter approval, to amend an ordinance to increase the number of gambling tables that may be operated in a gambling establishment by 3 tables if the ordinance in effect on July 1, 2007, provided for 5 to 8 tables, and by 4 tables if the ordinance in effect on July 1, 2007, provided for 9 to 12 tables.

SB 730 (Florez) Chapter 438, Statutes of 2007. Among other things, authorized CGCC to issue licenses for a two-year period and required CGCC to establish a portable key employee license program.

AB 1973 (Bermudez) Chapter 854, Statutes of 2006. Among other things, extended the moratorium on the expansion of gambling from January 1, 2010, to January 1, 2015.

SB 1198 (Florez) Chapter 181, Statutes of 2006. Deleted "wagering limits" from the list of items that are considered expansion of gambling pursuant to the moratorium on the expansion of existing gaming in a locality.

AB 635 (Bermudez) Chapter 694, Statutes of 2005. Permitted local governments to revise their ordinances limiting the number of tables in card rooms by 24.99 percent or two tables, whichever

is greater, as compared with the level or number operated or authorized on January 1, 1996, without voter approval.

AB 864 (Firebaugh) Chapter 872, Statutes of 2004. Permitted cities and counties to adopt ordinances permitting the expansion of gambling that result in less than a 25 percent increase, without voter approval.

SB 814 (Vincent) Chapter 799, Statutes of 2003. Authorized CGCC to renew gambling licenses for a period of up to 2 years. Specified that for any license issued for more than one year the licensee shall continue to pay the annual gambling license fee. Also, extended the moratorium on the expansion of gambling from January 1, 2007 to January 1, 2010.

AB 1416 (Wesson), Chapter 1023, Statutes of 2000. Defines what constitutes a prohibited “banking or banked game,” and exempts from this definition those games played in licensed card clubs in which the rules of the game utilize a player-dealer position, provided the opportunity to occupy this position continuously and systematically rotates among all seated players and preclude a person or entity from maintaining or operating as a bank during the course of the game.

SB 8 (Lockyer), Chapter 867, Statutes of 1997. Repealed the Gaming Regulation Act, and instead enacted the Gambling Control Act, which provided for DOJ to investigate and enforce controlled gambling in the state. It also establishes CGCC to regulate gambling in this state to issue, suspend, or revoke gambling licenses and extended the moratorium to January 1, 2001.

SB 100 (Maddy) Chapter 387, Statutes of 1995. Established the original moratorium on card room expansion, prohibiting the creation of new card rooms until January 1, 1999.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Cardroom Alliance  
California Cities for Self-reliance Joint Powers Authority  
California Gaming Association  
California Grand Casino  
Capitol Casino  
Citrus Heights Police Department  
City of Citrus Heights  
Communities for California Cardrooms  
Delta C, Lp  
Elevation Entertainment  
Hayward Chamber of Commerce  
Knighted Ventures  
Livermore Casino  
Napa Valley Casino  
Oaks Card Club  
Palace Poker Casino  
Parkwest Casinos  
Pt Gaming, LLC

**Opposition**

Agua Caliente Band of Cahuilla Indians  
Barona Band of Mission Indians  
California Cities Gaming Authority  
City of Gardena  
Federated Indians of Graton Rancheria  
Habematolel Pomo of Upper Lake  
League of California Cities  
Player's Poker Club, INC.  
United Auburn Indian Community  
Viejas Band of Kumeyaay Indians  
Yocha Dehe Wintun Nation

**Oppose Unless Amended**

City of San Jose

**Analysis Prepared by:** Eric Johnson / G.O. / (916) 319-2531