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BALLOT PROPOSAL 04-1

An Overview

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On November 2, 2004, Michigan voters will decide whether to amend Article IV, Section 41 of the State Constitution, to require voter approval for any expansion of gambling after January 1, 2004. Article IV, Section 41 allows the Legislature to authorize lotteries and permit the sale of lottery tickets.

### **Proposal 04-1**

Proposal 04-1 is the result of a petition circulated among electors for qualifying signatures. The following language will appear on the ballot:

#### ***PROPOSAL 04-1***

#### ***A PROPOSAL TO AMEND THE STATE CONSTITUTION TO REQUIRE VOTER APPROVAL OF ANY FORM OF GAMBLING AUTHORIZED BY LAW AND CERTAIN NEW STATE LOTTERY GAMES***

*The proposed constitutional amendment would:*

- *Require voter approval of any form of gambling authorized by law after January 1, 2004.*
- *Require voter approval of any new state lottery games utilizing "table games" or "player operated mechanical or electronic devices" introduced after January 1, 2004.*
- *Provide that when voter approval is required, both statewide voter approval and voter approval in the city or township where gambling will take place must be obtained.*
- *Specify that the voter approval requirement does not apply to Indian tribal gaming or gambling in up to three casinos located in the City of Detroit.*

*Should this proposal be adopted?*

### **Discussion**

#### "Let Voters Decide"

Proponents of Proposal 04-1--commonly called "Let Voters Decide, Yes"--see the amendment as a way to stem the growth of gaming in Michigan. Among all of the states, Michigan ranks third in the amount of gross gaming activity revenue from tribal and commercial casinos. Also, Michigan presently has over 22,000 slot machines in casinos on tribal land and in Detroit. Advocates believe that the electors should be able to decide whether additional gaming activity is allowed in this State, as voters had the opportunity to approve or disapprove the State Lottery and the Detroit casinos.

#### Indian Tribal Gaming

As the ballot proposal states, it does not apply to Indian gaming, which is regulated by the Federal Indian Gaming Regulatory Act (IGRA). Indian tribes may conduct Class III gaming, which includes banking cards (e.g., blackjack), slot machines, horse and dog racing, jai alai, and casinos, on land taken into trust by the U.S. Department of the Interior for a tribe's benefit. States must negotiate gaming compacts in good faith, and, if a state refuses to negotiate or come to an agreement, the Federal government may approve Indian gaming.

In the 1990s, former Governor Engler negotiated 20-year compacts with 11 tribes, which agreed to pay 8.0% of their electronic video gaming and slot machine profits to the Michigan Strategic Fund and 2.0% to their local units of government. Under some of the compacts, the 8.0% payments to the Strategic Fund were contingent upon the tribes' maintaining the exclusive right to conduct gambling in Michigan. With the authorization of the Detroit casinos in 1996, some tribes discontinued those payments.

#### Detroit Casinos

Proposal 04-1 does not apply to the three casinos in Detroit. In November 1996, Michigan voters approved Proposal E to enact the Michigan Gaming Control and Revenue Act (MCGRA) and authorize the licensing and operation of three casinos within the City of Detroit. Casinos pay a

9.9% wagering tax on their adjusted gross receipts to the City of Detroit for programs to improve the quality of life in the city. The State imposes a tax of 8.1% for deposit into the School Aid Fund (SAF), which funds K-12 public education.

Public Act 306 of 2004 made several changes to the taxes levied on the casinos, beginning September 1, 2004. The Act created an additional State wagering tax of 4.0%, which is distributed to the Michigan Agriculture Equine Industry Development Fund and the State's General Fund; and an additional Detroit wagering tax, whose rate depends upon whether a casino is fully operational (i.e., it is operating at its permanent location and has a hotel with at least 400 rooms).

Public Act 306 provides that if the Lottery Act is amended to allow the operation of video lottery at horse racetracks, and video lottery is operational, the Detroit casinos will not have to pay the additional tax.

### Video Lottery Terminals

Proposed legislation would allow video lottery terminals (VLTs) to be placed at racetracks (House Bill 4610) and in bars and restaurants (Senate Bill 562). If the bills are enacted and Proposal 04-1 is approved, presumably State and local voters then will have to approve the placement of VLTs, since the proposal states that it applies to gambling authorized by law after January 1, 2004.

### Constitutional Issues

Some people have questioned whether Proposal 04-1 conflicts with existing sections of the State Constitution. Article II, Section 9 of the Constitution states: "The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative...". To invoke the initiative, a number of registered voters (at least eight percent of the total vote cast for all gubernatorial candidates at the preceding election) must sign petitions. The proposed law then must be either enacted or rejected by the Legislature without change within 40 session days after the Legislature receives the petition. If the Legislature does not enact the law within the 40-day period, the people must vote on it at the next general election.

Concern about Proposal 04-1 has been raised because, if approved, it will require *local* voter approval in addition to statewide voter approval of any future citizen-initiated laws to expand gaming in the State. Also, if approved, Proposal 04-1 will apply retroactively to new forms of gambling authorized after January 1, 2004. Under Article XII, Section 2 of the Michigan Constitution, however, if a proposed constitutional amendment is approved by a majority of the electors voting on it, the amendment will become part of the Constitution at the end of 45 days after the date of the election.

### Scope of Proposal 04-1

It is not known how Proposal 04-1 will apply in practice, if it is approved, because the meaning of some of its terms is uncertain. The proposal requires statewide and local approval of "any form of gambling", but it is unclear exactly what that phrase encompasses. How the proposal will affect greyhound racing, jai alai, and other forms of pari-mutuel wagering is unknown. Also, the amendment applies to any new State Lottery games "utilizing table games". Although the Lottery Bureau does not offer traditional table games, it does sell instant tickets using graphic representations of table game themes or layouts. Thus, for example, if the Lottery offered scratch-off tickets in which the object was to obtain 21 points, simulating blackjack, it is unclear whether those tickets would be considered a table game necessitating voter approval.

Proposal 04-1 also applies to new lottery games using "player operated mechanical or electronic devices". Arguably, all non-table gaming devices that are mechanical or electronic involve some form of player action (such as filling out a play slip) to enter the game, place a wager, or claim a prize. In addition, this language potentially would prevent the Lottery Bureau from installing self-service terminals, which could be used, for example, to sell Keno or similar tickets.

Depending on how the amendment is interpreted and applied, if approved, there is concern that it will hamper the State Lottery's ability to market existing games and replace unpopular games with new ones. Some people fear that the amendment will reduce revenue to the School Aid Fund, which receives 34% of Lottery revenue.

Unlike some constitutional amendments, Proposal 04-1 does not contain language requiring the Legislature to implement it by law. The proposal also does not deny the Legislature the authority to do so. Although some people do not believe that the amendment is ambiguous, there are considerable differences of opinion about its potential impact. If the voters pass Proposal 04-1, it is foreseeable that the courts ultimately will have to interpret the amendment.

## Gaming Revenue

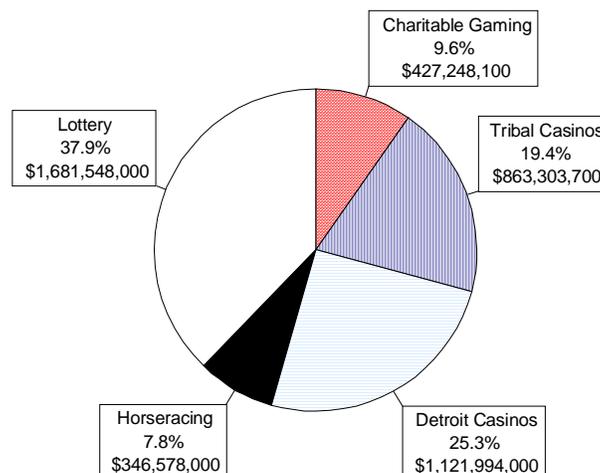
Legal gambling produces significant revenue for the State of Michigan and represents a considerable amount of economic activity. State regulation of legalized gambling in Michigan began initially with pari-mutuel horse racing in 1933, expanded to State-run lotteries in 1972, and now includes a number of for-profit gambling enterprises that are not part of State government. Presently, Michigan allows five forms of legal gambling: 1) State lottery, 2) pari-mutuel horse racing, 3) charitable gaming (e.g., bingo and raffles), 4) casino gaming on Native American Indian reservations, and 5) non-Indian casino gaming in Detroit. Michigan currently does not allow dog racing or jai alai. Slot machines and video poker are prohibited in places other than a casino.

Gaming activity, measured by the gross wagers on legal gambling, totaled over \$4.4 billion and represented nearly 1.5% of Michigan personal income in 2003 (Figure 1). Taxes and fees on this activity contributed more than \$722.8 million in revenue to the State (Figure 2). Revenue from the lottery and the Detroit casinos is deposited into the School Aid Fund, while horse racing revenue is deposited into the Michigan Agriculture Equine Development Fund, tribal gaming revenue into the Michigan Strategic Fund, and charitable gaming revenue into the General Fund.

The impact of Proposal 04-1 on State revenue would depend upon a large number of factors. New gaming initiatives, such as increases in the number of tribal casinos (which the proposal would not affect) or the introduction of video lottery terminals at horse racing tracks, could generate revenue for the State but also would likely reduce revenue from existing gaming revenue sources. The net effect of such changes would depend upon the specific provision governing the new gaming as well as how successful the new gaming was at retaining current gaming activity and/or attracting new gaming activity. Proposal 04-1 would affect these revenue sources only to the extent that the required State and local elections resulted in a different mix of gaming opportunities than what would occur absent such elections.

Figure 1

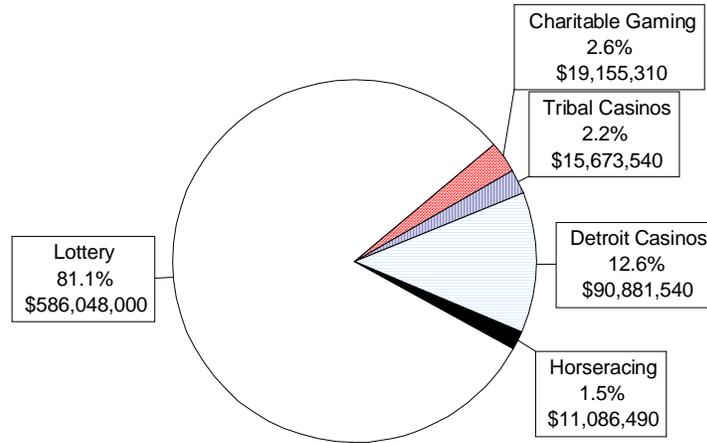
### Gross Gaming Activity in Michigan, 2003



Source: Michigan Lottery Bureau, Michigan Gaming Control Board, Michigan Dept. of Agriculture.

Figure 2

## State Gaming Revenue, 2003



Source: Michigan Lottery Bureau, Michigan Gaming Control Board, Michigan Dept. of Agriculture.