

SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION  
Senator Roderick D. Wright, Chair  
2009-2010 Regular Session  
Staff Analysis

**SB 213 Author: Florez**  
**As Proposed To Be Amended: May 14, 2009**  
**Hearing Date: May 14, 2009**  
**Consultant: Chris Lindstrom**

**SUBJECT**

Gambling establishments: proposition players.

**DESCRIPTION**

SB 213 makes a number of substantive changes to the Gambling Control Act. Specifically, the bill:

- 1) Maintains local control over the issuance of local key employee licensing. (*The proposed author's amendments delete section 1 of the bill which would have allowed a state key employee license to serve as a local temporary license.*)
- 2) Creates a new moratorium of the issuance of gambling licenses for new gambling establishments. Prohibits the California Gambling Control Commission (CGCC) from issuing a gambling license for a gambling establishment that is not licensed to operate on January 1, 2010. Provides that this moratorium on the issuance of new gambling licenses shall remain in effect until January 1, 2020. (*This is a proposed author's amendment that will replace sections 2 and 3 of the bill.*)
- 3) Prohibits a local jurisdiction that issues gambling licenses, key employee licenses, or work permits from appointing a person to manage or oversee the issuance of those licenses or permits who, within two years prior to that appointment, was employed or retained by, or derived substantial income from, a gambling establishment, or was a principal in a partnership or corporation that was retained by, or derived substantial income from, any gambling establishment. (Section 4 of the bill.)
- 4) Prohibits a member of CGCC, the executive director, the chief, and any employee of CGCC or the Department of Justice (DOJ) designated by regulation, for a period of two years after leaving office or terminating employment, from being employed as a consultant or key employee of a gambling establishment. (Section 5 of the bill.)

- 5) Prohibits the duration of a contract between a gambling establishment and a third party provider of proposition player services from exceeding 2 years. (Section 6 of the bill.)

### **EXISTING LAW**

Existing law provides for the licensure of certain individuals and establishments involved in various gambling activities, and for the regulation of those activities, by CGCC. Existing law provides for the enforcement of those activities by DOJ. Existing law provides that any violation of the Gambling Control Act for which a penalty is not provided is punishable as a misdemeanor.

Existing law expresses the intent of the Legislature that nothing in the Gambling Control 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 Gambling Control Act or by CGCC.

Existing law requires the commission to establish a program for personal portable licenses for key employees, and to seek to implement that program on or before July 1, 2008.

Existing law prohibits CGCC, until January 1, 2015, 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 DOJ prior to September 1, 2000.

Existing law prohibits a member of CGCC, the executive director, the chief, and any employee of CGCC or DOJ designated by regulation, for a period of 3 years after leaving office or terminating employment, for compensation, from acting as agent or attorney for, or otherwise representing, any other person by making any formal or informal appearance, or by making any oral or written communication, before the commission or the department, or any officer or employee thereof, if the appearance or communication is for the purpose of influencing administrative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, or approval.

Existing law allows a licensed gambling establishment to contract with a third party for the purpose of providing proposition player services, subject to specified conditions.

### **BACKGROUND**

The State of California has permitted the operation of gambling establishments for more than one hundred and fifty years dating back to the gold rush. Until 1984, all forms of non-house-banked gaming were legal provided it wasn't prohibited by the Penal Code or by local ordinance. In 1984, the Legislature enacted the Gaming Registration Act, which required the Attorney General's office to provide uniform, minimum regulation of California's cardrooms. However, the scope of the Attorney General's authority was extremely limited – it was basically a registration program. Recognizing the need for broader oversight of California's gambling industry, the Legislature enacted the

Gambling Control Act (Chapter 867, Statutes of 1997). The Act created a comprehensive scheme for statewide regulation of legal gambling.

The provisions of the Act are administered through a bifurcated system at the state level. The Bureau of Gambling Control within DOJ was created to investigate, among other things, the qualifications of persons who apply for state gambling licenses and to monitor the conduct of these persons to ensure compliance with the Act. In addition, the Act created a five-member, Governor-appointed California Gambling Control Commission to establish minimum regulatory standards for the gambling industry and to ensure that state gambling licenses are not issued to or held by unsuitable or unqualified individuals.

The Act also recognized that the primacy of the authorization and regulation of controlled gambling resides with local jurisdictions. The Act provides that no person in this state has a right to operate a gambling enterprise except as may be expressly permitted by the laws of this state and by the ordinances of local governmental bodies. The Act provides that no new gambling establishment may be opened in a city, county, or city and county in which a gambling establishment was not operating on and before January 1, 1984, except upon the affirmative vote of the electors of that city, county, or city and county.

The Act requires local jurisdictions, in order to allow for lawful gambling at authorized premises, to adopt a gambling ordinance governing the hours of operation of gambling at those premises, patron security and safety in and around those premises, the location of those premises, wagering limits in permissible games conducted in those premises, and the number of tables permitted in those premises and in the jurisdiction as a whole.

Finally, the Act does not preclude any local jurisdiction from prohibiting any gambling activity, from imposing more stringent local controls or conditions upon gambling than are imposed by the Act or the CGCC, from inspecting gambling premises to enforce applicable state and local laws, or from imposing any local tax or license fee, if the prohibition, control, condition, inspection, tax, or fee is not inconsistent with the Act.

**Purpose of the bill.** According to the sponsors, SB 213 “specifically seeks to broaden existing provisions in law which preclude former executives from the Gambling Control Commission from appearing before the Commission for a period of three years. The proposed change in this bill will also preclude “the revolving door” for former employees of the Commission precluding them from representing card clubs. Proponents note that this bill further extends the conflict of interest provisions which currently apply to members of the Commission and the executive director, and applies them to those in charge of gaming at the local level. In addition, this measure also extends the moratorium on the expansion of gambling for an additional five years.”

**Analysis of the bill – section by section.** SB 213 makes a number of substantive changes to the Gambling Control Act. The following comments are intended to provide background regarding each of the proposed changes and the arguments in support and opposition to the proposed changes.

- **Section 1 – State key employee license serves as a local temporary key employee license.** **The proposed author’s amendments strike this section from the bill.**

- **Sections 2 and 3 (replaced by proposed author's amendments)** – Creates a new moratorium on the issuance of gambling licenses for new gambling establishments.

*Background.* There are currently two moratoria in state law limiting the growth or expansion of controlled gambling in California. One moratorium, specifically, (Business and Professions Code Section 19963) prohibits CGCC, until January 1, 2015, from issuing a 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 DOJ prior to September 1, 2000. When Section 19963 became operative, there were approximately 140 gambling establishments statewide that either possessed a gambling license or had an application on file with DOJ. Since then, approximately 50 gambling licenses expired. Today, there are 92 licensed gambling establishments operating in California.

Over the past few years, there has been a significant amount of interest regarding the intent of Section 19963 and the status of the expired licenses. Generally, there were two schools of thought. One believed that once a license expired, it was surrendered to the state and no longer reachable. The other school of thought interpreted Section 19963 as simply establishing the total number of authorized licenses available in the state. They contend that if one of the existing licenses expired, it was not necessarily surrendered to the state. They argue that these licenses should be considered dormant, capable of being resurrected and becoming active again.

It is the understanding of committee staff that there may be as many as two licenses that expired that have been resurrected by CGCC. Additionally, there may be two other license applications on file at CGCC to resurrect expired licenses.

In the last two years, there have been at least two legislative attempts to allow CGCC to resurrect some or all of the expired licenses. Those attempts were unsuccessful.

In addition, CGCC, beginning in April 2008, held its first of two workshops to receive public input on how to interpret and implement the moratorium provisions of Section 19963. On May 15, 2009, CGCC will conduct another workshop at which time it will present and receive comments on proposed regulations that will *establish a process* for the submittal and hearing of applications to operate a gambling establishment under a resurrected dormant license.

The proposed author's amendments will create a new moratorium that **adds a new section to the Business and Professions Code that reads:**

19963.5. (a) Notwithstanding any other limitation imposed by this article, the commission shall not issue a gambling license for a gambling establishment that is not licensed to operate on January 1, 2010.

(b) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

The net effect of the proposed amendment will:

1. Close the door on any dormant license that is not resurrected and re-issued as of January 1, 2010;
2. Validate any license that has been resurrected and re-issued prior to January 1, 2010; and
3. Prohibit CGCC from issuing any new license for a gambling establishment until January 1, 2020.

Committee staff has been advised by CGCC staff that, at this time, there is no set date as to when the regulations will be promulgated. Once regulations are promulgated, CGCC will then be able to receive and consider owner-licensee applications to resurrect dormant licenses and begin the licensing process which is a thorough, deliberate, and time-consuming process. Given the uncertainties as to when the regulations will be completed or the length of time it takes for an application to wind its way through the licensing process, it is unclear how many dormant licenses will be resurrected, if any, before the January 1, 2010 date.

Also, as it relates to the existing moratoria on the expansion of gambling that has been in place for the better part of a decade, there have been a number of policy attempts to relax various aspects of the moratoria, such as eliminating wagering limits, modifying the interpretation on hours of operation, and increasing the number of authorized licenses in the state, among other things. In addition, committee staff is aware of a number of complaints about the moratoria from individual citizens who would like to open new gambling establishments or who believe local governments could realize increased revenues from new gambling establishments or the expansion of existing establishments, especially in light of the increased popularity of poker. Finally, a number of individual citizens express dismay that the state continues to control the growth of controlled gambling in California when other segments of the gambling sector are not being treated similarly (the Lottery, charitable bingo, raffles, Indian gaming, and horse racing).

*Arguments in support.* The sponsors argue, “California has had a longstanding policy against the proliferation of gambling establishments. Since 1995, California has discouraged and precluded additional cities and counties from adopting ordinances providing for expansion of gambling. The Governor has adopted an executive order discouraging casinos in the urban area. This measure will continue this longstanding public policy and preclude an expansion of gambling in California until after 2020.”

- ***Section 4 – Employment restrictions on local gambling control agencies.***

*Background.* The Gambling Control Act does not impose upon local jurisdictions employment restrictions on persons who manage or oversee the issuance of local gambling licenses or permits. Local jurisdictions that have licensing authorities implement their own employment standards. Nothing in current law precludes a local jurisdiction from imposing restrictions upon the employees or officers of its licensing authority similar to the restrictions that state law places upon the members of CGCC.

The Gambling Control Act contains employment restrictions on the members of CGCC. Under the Act, a person is ineligible for appointment to the commission if, among other things, within two years prior to appointment, the person, or any partnership or corporation in which the person is a principal, was employed by, retained by, or derived substantial income from, any gambling establishment.

*Arguments in support.* The sponsors argue, “This language is intended to have the prior employment restrictions apply to a director of Gambling Control in a city or county as it applies to the state. An individual should not go directly from working for the gambling industry to being a regulator. From a public perception stand point, it is better for the individual who is in charge of overseeing gambling to be someone from outside the industry.”

*Arguments in opposition.* The City of San Jose argues that the change proposed by section 4 of the bill is overreaching, preempting local control and steps on the authority of the local jurisdiction to regulate the qualifications of its employees and officers. Further, the City argues that the proposed change to the Act will have the undesired affect of eliminating qualified persons that have sufficient knowledge of, and expertise in, the gambling industry that would enable them to effectively administer and enforce strict local regulatory controls over controlled gambling. The City argues that this change to the Gambling Control Act could undermine local regulation of controlled gambling, making it ineffective and fail to achieve its purpose of protecting the public.

The City also notes that its gaming regulatory control ordinance contains a code of ethics provision. Moreover, San Jose’s civil service rules strictly regulate and restrict outside work employment by City employees. City employees cannot accept any outside employment unless it is preapproved by the City and no employee can engage in any outside work that is detrimental to the service, prevents or impedes the efficient performance of the employee’s duties in his or her city employment, or which in any way is in conflict with his or her city employment.

Finally, the City argues that Title 8 of the San Jose Municipal Code is devoted to ethics regulation. This title includes, for example, a gift ordinance applicable to all employees that is stricter than the gift regulations in the Fair Political Practices Act. The Municipal Code details revolving door restrictions to prevent former officials and designated employees from using their positions with the City for personal gain and to prevent private for-profit business entities from gaining a real or perceived unfair advantage in dealing with the City by hiring former officials and designated employees.

Also in opposition, Stand Up For California writes that the language in section 4 of the bill is intended to protect the public interests from corruption. Nevertheless, the language has unintended consequences detrimental to local jurisdictions currently employing persons who may not meet this specific standard. Local government is the first line of defense ensuring the public’s welfare. Should local government, the employer set the standard for employment?

- This language could potentially leave a city or county without a skilled employee to manage or oversee the issuance of key employee licenses and work permits and,
- Create a financial burden on a city or county in seeking a qualified applicant.

Both represent impacts defeating the presumed intent of the language. Thus, Stand Up For California suggests this section be further clarified.

- **Section 5 – Revolving door provisions for designated employees of CGCC and DOJ.**

*Background.* Existing law imposes post-employment revolving door restriction on designated employees of CGCC and DOJ. The restriction prevents designated employees of CGCC and DOJ, for a period of three years after terminating employment, from acting as an agent or attorney for, or otherwise representing a person before CGCC or DOJ if the appearance or communication is for the purpose of influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, or approval.

The proposed change to the Act put forward by SB 213 would impose additional post-employment restrictions on designated employees of CGCC and DOJ prohibiting them, for a period of two years from terminating employment, from being employed as a consultant or key employee of a gambling establishment.

Just as arguments are made that the hiring restrictions on local jurisdictions may negatively impact local regulation, a similar argument could be made by gambling establishments that the restriction on designated employees of CGCC or DOJ may prevent gambling establishments from hiring people who are most familiar with the laws and regulations governing controlled gambling. As a result, gambling establishments may incur compliance issues that could have been avoided with the advice and counsel of former government licensing and enforcement personnel who may have written, implemented, or enforced state gambling laws and regulations.

*Arguments in support.* The sponsors argue, “This provision extends the revolving door provisions in the Fair Political Practices Act to the Gambling Control Commission so that an individual cannot go directly from working for the Commission to working for a gambling establishment.”

- **Section 6 – Third party provider of proposition player services contracts.**

*Background.* Existing law provides that third party providers of proposition player services must have a written contract with a gambling establishment, approved by DOJ, in order to provide its services to a gambling establishment. Third party providers of proposition player services contracts currently are a year in duration, as prescribed by state regulation. The proposed change to the Act would allow for the contracts for proposition player services to be up to two years in duration. It is the understanding of the committee staff that CGCC is currently considering regulations to allow for proposition player contracts to be two years in duration. SB 213 would codify that practice, making it permissive for the state gaming agency to authorize and approve proposition player contracts that are two years in duration.

*Arguments in support.* The sponsors argue, “Regulations adopted by the Commission require a gambling establishment and a third party provider of proposition player services to submit any contract for renewal four months prior to the expiration of the current contract. Thus, approximately seven months into the contracts parties begin working on the contract renewal. Often times the renewed contracts is identical to the previous contract, yet the contract still must be submitted four months prior to the expiration. Proponents argue that this creates a lot of busy work on the part of the parties to the contract and additional work load for the Bureau.”

*Arguments in opposition.* Stand Up For California states that it “has long held the position that the statutory authorization of prop players is unconstitutional. That being said, there is still the issue of this language conflicting with current administrative law.”

*Author’s amendments.* The author will be proposing amendments to strike section 1 of the bill and to replace sections 2 and 3 of the bill with language that will create a new moratorium that will prohibit CGCC, until 2020, from issuing a gambling license for a gambling establishment that was not licensed to operate prior to January 1, 2010. The proposed amendments are reflected in the committee analysis.

### **PRIOR/RELATED LEGISLATION**

**AB 293 (Mendoza), 2009-2010 Legislative Session.** Makes numerous changes to the Gambling Control Act, including replacing references to “gambling establishments” with “gambling enterprises” in specific sections of the Act. **(Pending on the Assembly Floor.)**

**SB 1697 (Florez), 2007-2008 Legislative Session.** Among other things, would have allowed CGCC to consider applications to activate expired gambling licenses. **(Died, Assembly G.O. Committee)**

**AB 560 (Richardson), 2007-2008 Legislative Session.** Among other things, would have allowed CGCC to consider applications to activate expired gambling licenses provided that the card club remains in the same city, county, or city and county in which it was located. **(Died, Assembly G.O. Committee)**

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

**AB 1973 (Bermudez), Chapter 854, Statutes of 2006.** Among other things, requires DOJ, in determining whether there has been expansion of gambling relating to "hours of operation," to consider the hours in the day when the local ordinance permitted the gambling establishment to be open for business on January 1, 1996. Changes the eligibility requirements that one member of CGCC shall be "a certified public accountant with auditing experience" to "a certified public accountant or a person with experience in banking or finance." Changes the eligibility requirements that one member of CGCC shall have “a background in business with at least five years of business experience” to



"or alternatively five years of governmental experience." Extends the moratorium on the expansion of gambling from January 1, 2010, to January 1, 2015.

**SB 1198 (Florez), Chapter 181, Statutes of 2006.** Deletes “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.** Permits 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.** Permits 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.** Authorizes CGCC to renew gambling licenses for a period of up to 2 years. Specifies that for any license issued for more than one year the licensee shall continue to pay the annual gambling license fee. Extends the moratorium on the expansion of gambling from January 1, 2007 to January 1, 2010.

**AB 2431 (Governmental Organization Committee), Chapter 738, Statutes of 2002.** Renumbers various sections and article headings within the Gambling Control Act, eliminates outdated references, resolves conflicting provisions, and makes other technical and clarifying changes.

**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.

**SUPPORT:** As of May 8, 2009:

California Gaming Association  
Commerce Club (sponsor)  
Lucky Chances Casino  
Hollywood Park Casino  
Village Club (sponsor)

**OPPOSE:** As of May 8, 2009:

City of San Jose  
Stand Up for California

**FISCAL COMMITTEE:** Senate Appropriations Committee

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