

HOUSE BILL 106

Introduced by Harrington

1/05	Introduced
1/05	Fiscal Note Requested
1/05	Referred to Local Government
1/07	First Reading
1/12	Fiscal Note Received
1/15	Fiscal Note Printed
2/14	Hearing
2/19	Tabled in Committee

1 HOUSE BILL NO. 106

2 INTRODUCED BY HARRINGTON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING
5 SELF-GOVERNING COUNTIES AND SELF-GOVERNING CITY-COUNTY
6 CONSOLIDATED LOCAL GOVERNMENTS TO REGULATE GAMBLING,
7 INCLUDING THE ADOPTION OF PENALTIES, PERMIT FEES, AND TAXES,
8 SUBJECT TO THE APPROVAL OF THE ELECTORATE WITHIN THEIR
9 JURISDICTIONS; AND AMENDING SECTIONS 7-1-112, 7-1-113,
10 23-5-110, 23-5-111, 23-5-151, AND 23-5-171, MCA."
11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. **Section 1.** Countywide regulation of
14 gambling -- self-governing local governments. (1) The
15 governing body of a self-governing county or a
16 self-governing city-county consolidated local government
17 may, by ordinance approved by the electorate in a referendum
18 conducted under 7-5-132, regulate gambling within its
19 jurisdiction.

20 (2) The regulation of gambling provided for in this
21 section includes but is not limited to the power to license
22 gambling activities, devices, and enterprises.

23 (3) The regulation of gambling may be more or less
24 strict than state statutes regulating gambling.

25 (4) (a) A form of gambling that is prohibited by a

1 self-governing county or self-governing city-county
2 consolidated local government is prohibited even if that
3 form of gambling is authorized under state statutes.

4 (b) A form of gambling that is authorized by a
5 self-governing county or a self-governing city-county
6 consolidated local government is an authorized form of
7 gambling under Article III, section 9, of the Montana
8 constitution, even if that form of gambling is prohibited or
9 not authorized by state statutes; no state gambling statute
10 applies to that form of gambling unless the statute is
11 incorporated, by reference or otherwise, into the ordinance.

12 (5) A local government regulating gambling under this
13 section may define gambling criminal offenses, including but
14 not limited to cheating and prohibited forms of gambling,
15 and may fix as a penalty for violation of a gambling offense
16 a fine not to exceed \$5,000 or imprisonment not to exceed 6
17 months, or both.

18 (6) A local government regulating gambling under this
19 section may by ordinance impose a tax or permit fee, or both
20 a tax and a fee, on gambling activities, devices, and
21 enterprises.

22 **Section 2.** Section 7-1-112, MCA, is amended to read:

23 "7-1-112. Powers requiring delegation. A local
24 government with self-government powers is prohibited the
25 exercise of the following powers unless the power is

1 specifically delegated by law:

2 (1) the power to authorize a tax on income or the sale
3 of goods or services, except that this section shall not be
4 construed to limit the authority of a local government to
5 levy any other tax or establish the rate of any other tax;

6 (2) the power to regulate private activity beyond its
7 geographic limits;

8 (3) the power to impose a duty on another unit of local
9 government, except that nothing in this limitation shall
10 affect the right of a self-government unit to enter into and
11 enforce an agreement on interlocal cooperation; and

12 (4) the power to exercise any judicial function, except
13 as an incident to the exercise of an independent
14 self-government administrative power;

15 ~~{5}--the--power--to--regulate--any--form--of--gambling,
16 lotteries,--or--gift--enterprises."~~

17 **Section 3.** Section 7-1-113, MCA, is amended to read:

18 "7-1-113. Consistency with state regulation required.

19 (1) Except as provided in [section 1], a local government
20 with self-government powers is prohibited the exercise of
21 any power in a manner inconsistent with state law or
22 administrative regulation in any area affirmatively
23 subjected by law to state regulation or control.

24 (2) The exercise of a power is inconsistent with state
25 law or regulation if it establishes standards or

1 requirements which are lower or less stringent than those
2 imposed by state law or regulation.

3 (3) An area is affirmatively subjected to state control
4 if a state agency or officer is directed to establish
5 administrative rules governing the matter or if enforcement
6 of standards or requirements established by statute is
7 vested in a state officer or agency."

8 **Section 4.** Section 23-5-110, MCA, is amended to read:

9 "23-5-110. Public policy of state concerning gambling.

10 (1) The legislature finds that for the purpose of ensuring
11 the proper gambling environment in this state it is
12 necessary and desirable to adopt a public policy regarding
13 public gambling activities in Montana. The legislature
14 therefore declares that except to the extent that gambling
15 is regulated under [section 1], it is necessary to:

16 (a) create and maintain a uniform regulatory climate
17 that assures players, owners, tourists, citizens, and others
18 that the gambling industry in this state is fair and is not
19 influenced by corrupt persons, organizations, or practices;

20 (b) protect legal public gambling activities from
21 unscrupulous players and vendors and detrimental influences;

22 (c) protect the public from unscrupulous proprietors
23 and operators of gambling establishments, games, and
24 devices;

25 (d) protect the state and local governments from those

1 who would conduct illegal gambling activities that deprive
2 those governments of their tax revenues;

3 (e) protect the health, safety, and welfare of all
4 citizens of this state, including those who do not gamble,
5 by regulating gambling activities; and

6 (f) promote programs necessary to provide assistance to
7 those who are adversely affected by legalized gambling,
8 including compulsive gamblers and their families.

9 (2) The legislature adopts the policy that an applicant
10 for a license or permit or other department approval under
11 parts 1 through 6 of this chapter does not have a right to
12 the issuance of a license or permit or the granting of the
13 approval sought. The issuance of a license or permit issued
14 or other department approval granted pursuant to the
15 provisions of parts 1 through 6 of this chapter is a
16 privilege revocable only for good cause. A holder does not
17 acquire a vested right in the license or permit issued or
18 other department approval granted. A license or permit
19 issued under parts 1 through 6 of this chapter may not be
20 sold, assigned, leased, or transferred.

21 (3) Revenue to fund the expense of administration and
22 control of gambling as regulated by parts 1 through 6 of
23 this chapter must be derived solely from fees, taxes, and
24 penalties on gambling activities, except the gambling
25 activities of the Montana state lottery and the parimutuel

1 industry."

2 **Section 5.** Section 23-5-111, MCA, is amended to read:

3 "**23-5-111. Construction and application.** ~~(1)~~ In view of
4 Article III, section 9, of the Montana constitution, Chapter
5 642, Laws of 1989, must be strictly construed by the
6 department and the courts to allow only those types of
7 gambling and gambling activity that are specifically and
8 clearly allowed by Chapter 642, Laws of 1989.

9 ~~(2)---This---chapter---applies---only---to---public---gambling~~
10 ~~activities-within-the-state-of-Montana:--"~~

11 **Section 6.** Section 23-5-151, MCA, is amended to read:

12 "**23-5-151. Gambling prohibited.** Except as provided in
13 [section 1] or specifically authorized by statute, all forms
14 of public gambling, lotteries, and gift enterprises are
15 prohibited."

16 **Section 7.** Section 23-5-171, MCA, is amended to read:

17 "**23-5-171. Authority of local governments to regulate**
18 **gambling.** (1) A Except as provided in [section 1], a local
19 government may not license or regulate a form of gambling
20 authorized by parts 1 through 6 of this chapter or assess or
21 charge any fees or taxes unless specifically authorized by
22 statute.

23 (2) An incorporated city or town may enact an ordinance
24 or resolution zoning certain areas within its incorporated
25 limits in which gambling is prohibited.

1 (3) A county may enact a resolution zoning certain
2 areas in the county, not within an incorporated city or
3 town, in which gambling is prohibited.

4 (4) A Except as provided in [section 1], a county or
5 incorporated city or town may not restrict the number of
6 licenses that the department may issue."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0106, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing self-governing counties and self-governing city-county consolidated local governments to regulate gambling, including the adoption of penalties, permit fees, and taxes, subject to the approval of the electorate within their jurisdictions.

ASSUMPTIONS:

1. Dept. of Justice will continue to regulate gambling authorized solely in state statute.
2. The state will continue to assess fees, penalties, and taxes on gambling authorized solely in state statute.
3. Dept. of Justice will not experience a reduction in costs due to its current staffing.

FISCAL IMPACT:

No fiscal impact to the state based on the above assumptions. (See potential impact below.)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Butte/Silver Bow and Anaconda-Deer Lodge are the only two entities which could avail themselves of the provisions of the bill. If these two entities were to enact the same fees, taxes and penalties as currently imposed by the state and if the were to no longer regulate gambling or collect fees and taxes in these two jurisdictions, the bill would result in:

1. A state general fund loss of \$420,000 per year (based on FY90 figures from Dept. of Justice).
2. A state special revenue fee loss of \$100,000 per year for operation of the Gambling Control Division which would probably require an increase in fees to other owners. (Justice)
3. A negligible fiscal impact to the two consolidated local governments, if the entities were to assess an amount comparable to the current state fees and taxes, because the state would no longer distribute approximately \$900,000 to the two governments as a result of gambling taxes and permit fees. (Justice)

 1-11-91

ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE

 1/15/91

DAN W. HARRINGTON, PRIMARY SPONSOR

DATE

Fiscal Note for HB0106, as introduced

HB 106