



Office of the Governor of Guam

LEGAL MEMORANDUM

July 5, 2013

TO: The Governor
FROM: Chief Legal Counsel
CC: Chief of Staff
SUBJECT: Bill No. 19-32

The purpose of this memo is to provide a quick summary of Bill 19-32. Essentially, the intent and purpose of the Bill is to create a method for collecting tax and license fees from Guam gaming activities, and then using the funds collected from the taxes and fees to finance certain Government of Guam agencies and activities.

WHAT THIS BILL DOES:

1. Taxes current existing non-profit bingo, lottery, cockfighting, carnival gaming, pinball, kiddie rides, coin-operated children's video games, video horse/greyhound racing, and "symbolic amusement" devices. **All these activities currently are legal and operating on Guam** [See 11 GCA §22202].
2. Uses the extra taxes to fund sports facilities and activities throughout the villages (through the mayors, Dept. of Parks & Recreation and public schools), to operate urgent care activities at Guam Memorial Hospital, and to pay for GMH operations and debt.

WHAT THIS BILL DOES NOT DO:

1. DOES NOT legalize casino gambling, poker machines, slot machines, etc.
2. DOES NOT do away with current non-profit bingo, lottery, cockfighting, Carnival gaming, pinball, kiddie rides, children's video games, video horse/greyhound racing, and "symbolic amusement" devices. While the bill purports to have a 'sunset provision,' this provision is contingent upon an appendix that was not appended.

DISCUSSION

Bill 19-32 accomplishes the primary goal of collecting taxes and fees by creating two (2) new funds: (1) the “*Limited Gaming Tax Fund*”; and (2) the *GMHA Healthcare Trust and Development Fund*. The details of each fund are summarized below:

(1) CREATION OF THE LIMITED GAMING TAX FUND:

- Creates a four percent (4%) “*Limited Gaming Tax*” (LGT) on gross receipts from “limited gaming activities” authorized pursuant to statute.
- Limited gaming activities allowed by the Act and which are subject to the LGT include:
 - Non-profit bingo or lottery;
 - Cockfighting;
 - Carnival or Liberation Day gaming; and
 - Other limited gaming activities *authorized by statute*.
 - Per 11 G.C.A. § 22202, the following are gaming activities presently authorized by statute: pinball, kiddie rides, children’s video games, video horse/greyhound racing, and “symbolic amusement” devices.

Activities which are NOT authorized, and which continue to not be authorized include: (a) slot machines; (b) amusement devices set to make progressive or automatic payouts; and (c) “gambling devices” defined by 9 G.C.A. § 64.20(b) [i.e., any coin operated device which, when operated, may return winnings (other than free games not redeemable for cash) of value to the user based partially or completely upon chance, by the operation of which a person may become entitled to receive winnings of value. Includes slot machines, video poker machines and other machines or devices which afford the opportunity of winnings, payouts, malfunction refunds to the player, or giving the player or user anything of value under any guise or form based partially or completely upon chance.]

- Use of monies in the LGT Fund are allocated as follows:
 - 5% for Fund administration, but not for personnel costs
 - After administrative expenses are paid, the balance of monies in the LGT Fund may be used as follows:

- 1/3 to the Mayor's Council for village recreational facilities & community centers;
- 1/3 to Dept. of Parks & Recreation for its facilities; and
- 1/3 to DOE for repair and construction of sports facilities.

(2) CREATION OF THE GMHA HEALTHCARE TRUST AND DEVELOPMENT FUND

- Creates the GMHA Healthcare Trust and Development Fund, which is financed separately from the Limited Gaming Tax Fund.
- The GMHA Fund is financed by two (2) sources:
 - Licensing fees, business privilege tax, and income taxes from companies involved in gaming under the Gaming Rules & Regulations, *including* the Liberty, Symbolix, and Match Play gaming devices.
 - Only those gaming devices registered prior to August 1, 2011 are allowed to be licensed.
 - Special 4% assessment fee on income from gaming devices. This assessment fee is known as the “*GMHA Trust Fund Fee.*”
- The new 4% GMHA Trust Fee is intended to be imposed on income from gaming devices *on top of and in addition* to the regular license fee, GRT, and other income taxes.
- Use of monies in the GMHA Fund are allocated as follows:
 - 60% for establishment & operation of an Urgent Healthcare Center
 - 40% for delivery of healthcare services (including funding for medication, supplies and equipment – *e.g.*, payments to vendors).

In addition to establishing the two gaming-related funds, Bill 19-32 also authorizes the establishment of a GMHA Urgentcare Health Center working group, as well as the establishment of a gaming fee schedule by the Guam Gaming Commission:

(3) ESTABLISHMENT OF THE GMHA URGENT HEALTHCARE CENTER:

- Authorizes the establishment of an urgent healthcare medical services center at GMHA.

- Requires that a working group to be established 30 days after enactment into law to develop criteria, siting, and a plan of action.
- A report from the working group is due 90 days after the working group is established.

(4) GAMING FEE SCHEDULE / RULES AND REGULATIONS TO BE DEVELOPED:

- Within 180 days after empanelling of the Guam Gaming [Control] Commission, the Commission shall develop rules & regulations to provide a fee schedule for the assessment of “across-the-board fees” for all gaming activities.
- The fee schedule shall be consistent with the manner in which existing gaming devices “have been legally authorized” pursuant to 11 G.C.A. § 22202(f) AND 3 G.A.R. § 7114(a)(5).

(5) OTHER COMPLIANCE SECTIONS:

If Bill 19-32 becomes law, then certain deadlines must be met. That is, within 30 days after enactment, GMHA must establish a working group for the Urgent Healthcare Center, and then a report from the working group is due 90 days after that.

GovGuam will also have to empanel the Gaming Control Commission, which consists of (five) 5 members appointed by the Governor with the consent and approval of the Legislature. The Director of DRT is also a member of the Commission, however, he is ex officio and has no vote. Once the Gaming Control Commission is empanelled, the Commission will have 180 days to develop a fee schedule for the assessment of across-the-board fees for all gaming activities.

Sincerely,

SANDRA MILLER