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FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/09

SPONSOR Jennings, T. LAST UPDATED _____ HB _____

SHORT TITLE Prohibit Mixed Martial Arts Contests SB 688

ANALYST Sanchez, C.

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	(\$80)	(\$97)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(\$70.0)	(\$87.0)	(\$157.0)	Recurring	Athletic Commission

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Regulation and Licensing Department (RLD)
 Department of Indian Affairs (DIA)

SUMMARY

Synopsis of Bill

SB 688, the Prohibit Mixed Martial Arts Contests Act ("Act"), would amend the Professional Athletic Competition Act ("PACA"), §60-2A-8.2 NMSA 1978, to prohibit the contest or exhibition of unarmed combat to be held or given within New Mexico that allows for the use of a variety of fighting techniques or mixed martial arts ("MMA") techniques.

FISCAL IMPLICATIONS

The New Mexico Athletic Commission estimates SB 688 will cost New Mexico over \$80,000 in revenue in the first fiscal year. However, if SB 688 were to pass the commission would not need funds to regulate mixed martial arts contests.

SIGNIFICANT ISSUES

The NM State Athletic Commission (“SAC”) is administratively attached to the NM Regulation and Licensing Department. The jurisdiction of the SAC is defined by the Professional Athletic Competition Act (PACA) as the “sole direction, management, control and jurisdiction over all contests or exhibitions of unarmed combat to be conducted, held or given within New Mexico, and no contest or exhibition may be conducted, held or given within the state except in accordance with the provisions of the Professional Athletic Competition Act.”¹ SB 688 would amend the PACA to prohibit unarmed combat that allows “combatants to use a variety of fighting techniques, including a mixture of martial arts techniques and nontraditional techniques; or the use of striking and grappling techniques, both while standing and while lying on the ground.” SB 688 in effect would eliminate mixed martial artists from the statutory definition of “unarmed combatant” and would expressly prohibit such practice within the State.

The PACA defines unarmed combatant as “a person who engages in unarmed combat in a contest or exhibition, whether or not the person receives remuneration, including a wrestler, boxer, mixed martial artist or other contestant.”² SB 688 would continue to allow “a form of Oriental unarmed self-defense . . . [to] be conducted pursuant to rules for that form that are approved by the commission.” Thus, events involving only one style of unarmed combat or self-defense between combatants, such as judo, boxing, or jiu-jitsu, would not be prohibited.

According to the Indian Affairs Department, Federal Indian Law doctrine generally prohibits state regulatory authority on Indian lands.³ In the case of regulating MMA-style events, the State of California recently lifted the ban on MMA-style events in December 2005, but before the lifting of the ban “[m]ixed martial arts events ha[d] been held throughout the state in recent years, illegally or on Indian reservations beyond the commission's reach.”⁴

For New Mexico, the PACA allows cooperative agreements between the SAC and Indian nations, tribes and pueblo “for the reciprocal, joint or common direction, management or control of professional contests conducted, held or given in New Mexico.” According to the CEO of TsayCorp of the Pueblo of Ohkay Owingeh, the Pueblo has hosted an MMA-style event at its gaming facility in recent years and implemented its own Athletic Commission’s rules and regulations to oversee the sanctioned event. Without the existence of a tribal Commission and regulations to oversee boxing and MMA-style events, the SAC would provide regulatory authority on reservation lands.⁵ However, using the Pueblo’s own Athletic Commission’s rules and regulations to host the event served two purposes: 1) fulfilling the statutory requirement regarding the management or control of MMA-style events on the reservation without ceding regulatory authority to the state of New Mexico, and 2) allowing the event to be sanctioned for official MMA-association participant ranking purposes.

¹ §60-2A-8.2 NMSA 1978.

² *Id.*

³ “*Environmental Federalism And The Third Sovereign: Limits On State Authority To Regulate Water Quality In Indian Country*” Judith Royster, Associate Professor of Law, Tulsa University School of Law, 19: “[S]tate authority in Indian country is sharply limited. States generally have no authority over tribes, their members, or Indian lands without express congressional authorization. State authority over nonmember fee lands may be more extensive, but is nonetheless limited by the retained sovereignty of the Indian tribes and by federal law.”

⁴ <http://www.thefreelibrary.com/MARTIAL+ARTS+EVENT+NOW+LEGAL-a0140289903>, last accessed 2-20-09.

⁵ Conversation with Mr. Ron Lovato, CEO of TsayCorp for the Pueblo of Ohkay Owingeh on 2-20-09. Mr. Lovato cautioned that to the best of his recollection, this was the understanding between the SAC and the Pueblo. “Not having a regulatory body does not serve anyone’s purpose, promoters or fighters.”

According to the Regulation and Licensing Department, SB 688 is seeking to ban the fastest growing sport in the world from the State of New Mexico.

RLD believes mixed martial arts shows will still go on without any government agency regulating the sport. As a result SB 688 would re-create an underground scene of mixed martial arts that would be unregulated and detriment to the citizens of New Mexico. It should also be noted that SB 688 has no consequences for people who would participate in contest or exhibitions of unarmed combat.

According to RLD, mixed martial arts have given many New Mexico youths an opportunity to better their situations in life. For many young New Mexicans who see martial arts on the world stage see it as an out from traditional formats for releasing anger or aggression. Some of New Mexico training gyms are world recognized. Taking mixed martial arts away from individuals who have built self-esteem and have become productive citizens in the State of New Mexico through the sport would be an injustice to the State of New Mexico.

The Department of Indian Affairs notes that opponents of MMA-style fighting cite the early years of the sport in which little or no combatant rules or regulatory oversight were offered. These early events drew criticism of politicians like U.S. Senator John McCain who famously called the events “human cockfighting” and successfully lobbied for their removal from television pay-per-view stations.⁶

Since 2001, when stricter regulatory rules and procedures were adopted by MMA-style associations to overcome public relations and safety concerns, contests and events have increased in popularity for both fighters and fans, and several of New Mexico’s tribes, nations and pueblos that have gaming and entertainment facilities have hosted MMA events.⁷ While the SAC clearly has jurisdiction over non-Indian reservation lands, it is unclear to what extent, if any, the SAC would have regulatory authority under SB 688 to prohibit MMA-style contests or exhibitions that would continue to take place on New Mexico’s Indian reservations.

ADMINISTRATIVE IMPLICATIONS

According to the Department of Indian Affairs, if the state were to assert regulatory primacy in all instances of MMA-style events, legal questions would remain for jurisdiction of the SAC on Indian lands in New Mexico.

OTHER SUBSTANTIVE ISSUES

Senate Bill 688 prohibits the use of striking and grappling techniques, but does not define these techniques. The bill also does not provide penalties for engaging in mixed martial arts contests and exhibitions.

According to the AGO, the bill may create an inconsistency concerning the jurisdiction of the Athletic Commission. Currently, the commission has jurisdiction over “all contests or exhibitions of unarmed combat” in New Mexico. NMSA 1978, § 60-2A-8.2 (2007). “Unarmed combat” is defined as “boxing, wrestling, martial arts or any form of competition in which a

⁶ http://sacunion.com/pages/state_capitol/articles/7906, last accessed 2-20-09.

⁷ http://indiancountrynews.net/index.php?option=com_content&task=view&id=1234&Itemid=1, last accessed 2-20-09.

blow is usually struck that may reasonably be expected to inflict injury.” NMSA 1978, § 60-2A-2(L) (1980, as amended through 2007). Thus, in one portion of the statute mixed martial arts would fall under the regulatory jurisdiction of the commission, while in another portion of the statute, mixed martial arts would be strictly prohibited.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/mc

