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FISCAL IMPACT REPORT

ORIGINAL 1/22/15
DATE LAST

SPONSOR Roybal Caballero **UPDATED** _____ **HB** 22

SHORT TITLE Cap Gaming Compact Revenue Sharing **SB** _____

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
	(\$19,100.0)	(\$22,900.0)	(\$26,400.0)	(\$27,200.0)	Recurring	General Fund
	to (\$25,400.0)	to (\$29,300.0)	to (\$33,000.0)	to (\$34,000.0)		

(Parenthesis () indicate revenue decreases

Note: the revenue estimates are based on DFA’s 2014 review of that year’s HB-307. The revenue decreases have not been conformed to the December 2014 revenue estimate. While the bill does not require the tribes to renegotiate compacts, the estimate above assumes that all of the participants in 2001 and 2007 compacts would apply to renegotiate their compacts quickly after the effective date of the act. There would be little or no risk to the tribes in this process, since the bill does not impair the current compacts. The range is attributable to whether Pojoaque accepts the 2015 compact terms.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Gaming Control Board (GCB)

Department of Finance and Administration (2014 on the same bill – HB307) (DFA)

SUMMARY

Synopsis of Bill

House Bill 22 would cap the percentage of tribal gaming revenue shared with the state under any new tribal gaming compacts at the corporate income tax rate. This clearly would not apply to the existing compacts, but only to newly negotiated compacts. Nothing in the bill would prohibit the gaming tribes with existing compacts from requesting new negotiations with the (presumably) lower sharing percentages. The cap is expressed in terms of, “The governor shall not submit to the committee and the legislature shall not approve ...” The effective date of this bill is July 1, 2015

FISCAL IMPLICATIONS

DFA submitted the following analysis:

The top corporate tax rates scheduled in current law are:

CY2014	7.3%
CY2015	6.9%
CY2016	6.6%
CY2017	6.2%
CY2018 and thereafter	5.9%

Under the 2001 compact, the revenue sharing percentages are as follows:

- Tribes with annual net win over \$12 million pay 8% of net win.
 - Tribes with annual net win below \$12 million pay 3% on the first \$4 million net win and 8% thereafter.
- This compact only applies to Acoma, Jicarilla, Mescalero, Navajo and Pojoaque, which did not agree to the 2007 compact amendment.

The 2007 compact increases the revenue sharing rate for the remaining tribes:

- From FY08 to FY15, tribes with net win under \$15 million will pay 3 percent on the first \$5 million and 9.25 percent on the remainder.
 - Tribes with annual net win between \$15 and \$50 million will pay 9.25 percent.
 - Tribes with annual net win over \$50 million will pay 9.75 percent.
- Based on the December 2013 forecast of tribal net receipt sharing and assuming that the lower tiered rates remain unchanged relative to the current compacts, the General Fund is expected to lose \$19.4 million in FY15, \$22.8 million in FY16, \$25.2 million in FY17 and \$28.9 million in FY18 as a result of the reduced rates.

Because Jicarilla and Navajo have each agreed with slightly modified compacts, these reported impacts for 2015 are slightly changed. While the compacts have not been approved by the legislature and Pojoaque has not agreed to any terms to supersede the 2001 compact which expires in June 2015, any fiscal estimate is highly speculative.

The GCB has also estimated the fiscal impact of this bill, again assuming that the all of the current gaming tribes renegotiated their current compacts. The GCB estimates are:

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
	(10,662.8)	(13,716.7)	(16,007.2)		Recurring	General Fund

SIGNIFICANT ISSUES

There are two or three corporate income tax rates in 7-2A-5 NMSA 1978. By CY17, there is one rate for net income less than \$500 thousand and a second for net income greater than \$500 thousand. Although the bill intends that the cap is at the top marginal rate, this is not clear and could be an element of contention in future compact negotiations. The updated revenue estimating spreadsheet used for this analysis uses the progressive rates from 7-2A-5 NMSA 1978.

As an element of policy, this bill attempts to bind the hands of future legislatures. The limitation on the Governor's submission of a proposed contract to the legislature would be binding, but the legislature would view the law passed by this legislature as advisory, at best.

DFA notes that, "...it is not clear why the revenue sharing agreements would be linked to corporate income tax rates in this manner. The "net win" of casinos is equal to the revenue received from a specific type of slot machine (class III) and does not include revenue received from card games, class II machines, entertainment and other revenue-generating activities that occur at tribal casinos."

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations. On the other hand, this bill may not create a tax expenditure, since the Tribal Revenue Sharing is not a tax, but a contracted revenue sharing agreement.

Both the 2001 and the 2007 compacts were negotiated in rough recognition that Indian Gaming net win was not subject to either the Corporate Income Tax on net profits or the Gross Receipts Tax on gross receipts. Thus, were the compacts to be renegotiated after laws 2013, Chapter 160 reduced the State's Corporate Income Tax rate the revenue-sharing percentages might have been somewhat less than the current rates. This bill recognizes that possibility.

However, the compacts are contracts binding on the state and the tribes. The state benefits from the compacts through the revenue sharing percentage. The tribes benefit from the compacts with State approval of Indian gaming. The federal Indian Gaming Regulatory Act (IGRA) requires gaming tribes to negotiate compacts with the states. The state may be prohibited by Article 2, Section 19 of the New Mexico Constitution from impairing a contract. That may be the reason that the bill clearly does not attempt to alter existing compacts.

Additionally, the Tribes that earn more in net win on an annual basis would likely disproportionately benefit by paying a lower revenue share rate, while those Tribes that earn less in net win on an annual basis might be subjected to an increase in their revenue share rates under Section 7-2A-5 NMSA 1978. This is by no means automatic.

There is a small possibility that this bill might change the reality of the negotiated compact rates as a contract to a view that the payments are a tax. This would create issues with the Department of the Interior in light of the Indian Gaming Regulatory Act's ("IGRA") prohibition on imposition of taxes.

PERFORMANCE IMPLICATIONS

Although this bill does create a potential revenue loss, it is by no means clear that the revenue loss can be considered a tax expenditure. The compacts are contracts that are mutually beneficial to the state and to the gaming tribes, nations and pueblos. Thus, the LFC tax policy of accountability may not be applicable.

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