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FISCAL IMPACT REPORT

ORIGINAL DATE 3/11/15
LAST UPDATED 3/18/15 **HB** _____

SPONSOR SJC

Public Peace, Health, Safety and Welfare –

SHORT TITLE Calculation of Gaming Net Take **SB** 706/SJCS

ANALYST Elkins/vanMoorsel

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
\$0.0	(\$3,670.0)	(\$3,680.0)	(\$3,690.0)	(\$3,700.0)	Recurring	General Fund
\$0.0	(\$2,830.0)	(\$2,830.0)	(\$2,840.0)	(\$2,850.0)	Recurring	Horse Racing Purses

(Parenthesis () Indicate Revenue Decreases)

Relates to SJR 19

SOURCES OF INFORMATION

LFC Files

Responses Received From

Gaming Control Board (GCB)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Judiciary Committee Substitute for Senate Corporations and Transportation Committee Substitute for Senate Conservation Committee Substitute for Senate Bill 706 amends the Gaming Control Act by:

- Changing the definition of “net take” to mean:
 - The total of the following, excluding any amount attributable to a promotional credit, cash received from patrons for playing a game, cash received in payment for credit extended by a licensee to a patron for playing a game, and compensation received for conducting a game in which the licensee is not a party to a wager; minus
 - the total of all cash paid out as losses to winning patrons from play, including play initiated by a promotional credit, the actual cost to the licensee of non-cash prizes provided to winning patrons from play, including play initiated by a promotional credit, and amounts paid to purchase annuities to fund losses paid to winning patrons over several years by independent administrators.

- Defining promotional credit as points or credits that are provided to a patron, without monetary consideration and that have no cash redemption value, for the purpose of enabling the patron to play a gaming machine or points that are earned or accrued by a patron through previous gaming machine play, players' clubs or any other method and that have no cash redemption value.
- Allowing a gaming operator licensee to provide, allow, contract, or arrange to provide food for no charge or at reduced prices to any patron as an incentive to game; however, the total actual cost to the licensee of the food provided a patron who is not a member of the licensee's rewards program is capped at three percent of the licensee's net take for the prior month.
- Requiring licensees to report to the Gaming Control Board the total monthly amount of food provided, allowed, contracted, or arranged to be provided.
- Allowing licensees to deduct the actual cost of personal property that is travel expense, food, refreshments, lodging, or services distributed to a patron up to a maximum of \$250 thousand per calendar year and one-twelfth of initial license fees, annual renewal fees, and gaming machine fees paid by a licensee to the board.
- Requiring licensees to report to the Gaming Control Board the amounts deducted from net take.
- Providing the effective date of this bill is the date the state gaming representative certifies to the secretary of DFA, LCS, and the Compilation Commission that publication of notice in the federal register has occurred of the secretary of the Interior's approval of, or of the secretary's failure to act on, a tribal-state class III gaming compact approved by the first session of the fifty-second Legislature.

FISCAL IMPLICATIONS

The estimated fiscal impact of the bill is compared to the February 2015 consensus revenue estimates for gaming tax paid by licensees. (See table on the following page)

Free Play. The bill states free play and point play shall not be included in, and do not increase, net take, and amounts paid as losses as a result of free play or point play shall be deductible from net take. The Gaming Control Board estimates that net take will be reduced by five percent due to the deduction of free play and point play. This FIR estimate reflects a reduction in net take by that amount.

Comps. The bill allows licensees to deduct the actual cost to the licensee of personal property (comps) that is travel expense, food, refreshments, lodging, or services distributed to a patron up to a maximum of \$250 thousand per calendar year. The LFC staff estimate assumes all five racetrack licensees will deduct \$250 thousand from net take for personal property awards (comps).

Licensing Fees. The bill allows all gaming licensees to deduct one-twelfth of initial license fees, annual renewal fees, and gaming machine fees paid to the board from net take. According to GCB, licensing fees and gaming machine fees for racetrack and not-for-profit licensees totaled \$206.7 thousand in FY14. The estimate assumes no new gaming licenses will be issued and that licensing fees will not increase.

Horse Racing Purses. In addition to the general fund impact through the gaming tax, the reductions in “net take” from the amendments could significantly impact payments to the Horseman’s Trust, as well as to charitable and educational distributions. Twenty percent of net take is paid to the Horseman’s Trust for horse racing purses.

February 2015 Consensus Revenue Estimate	Est. FY16	Est. FY17	Est. FY18	Est. FY19
Estimated Racetrack Licensee Net Take	\$253,335	\$253,903	\$254,453	\$255,368
Estimated Horseman’s Trust Contribution	\$50,667	\$50,781	\$50,891	\$51,074
Estimated Racetrack Gaming Tax	\$65,867	\$66,015	\$66,158	\$66,396
Senate Bill 706				
Estimated Racetrack Licensee Net Take	\$253,335	\$253,903	\$254,453	\$255,368
Comps Deduction	(\$1,250)	(\$1,250)	(\$1,250)	(\$1,250)
Five Percent Free Play Deduction	(\$12,667)	(\$12,695)	(\$12,723)	(\$12,768)
License Fee Deduction	(\$206.7)	(\$206.7)	(\$206.7)	(\$206.7)
Adjusted Racetrack Licensee Net Take	\$239,212	\$239,752	\$240,274	\$241,143
Estimated Horse Racing Purses Contribution w/ SB706	\$47,842	\$47,950	\$48,055	\$48,229
Estimated Racetrack Gaming Tax w/ SB706	\$62,195	\$62,335	\$62,471	\$62,697
Estimated Horseman’s Trust Impact	(\$2,825)	(\$2,830)	(\$2,836)	(\$2,845)
Estimated Revenue Impact	(\$3,672)	(\$3,679)	(\$3,687)	(\$3,699)

DFA provided an estimate of the general fund impact of SB 706. Changes to net take calculations can impact general fund revenues through the gaming tax, which is 26 percent of net take. DFA’s estimated fiscal impact was calculated using the February 2015 consensus forecast. The Gaming Control Board notes that racinos currently offer just under 5 percent of net take in free play. Industry representatives have indicated to DFA that this amount will likely double with the new deduction. However, DFA stated this increase in free play is expected to generate additional gaming activity that will likely offset the larger deduction. GCB further notes that racinos pay \$206 thousand annually in licenses. DFA’s analysis assumes all racinos will max out the available deduction for complementaries. The Horseman’s Trust receives an additional 20 percent of net take – 19 percent of net take is returned to the racetrack for payment of horse racing purses.

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
\$0.0	(\$3,700.0)	(\$3,750.0)	Recurring	General Fund
\$0.0	(\$2,900.0)	(\$2,900.0)	Recurring	Horseman’s Trust

(Parenthesis () Indicate Revenue Decreases)

The Gaming Control Board estimates a negative revenue impact of \$3.6 million if FY16 and \$3.7 million in FY17. GCB’s estimate assumes promotional play will reduce net take by 5 percent, license fee deductions will reduce net take by \$206.7 thousand, and comp deductions

will reduce net take by \$1.25 million.

SIGNIFICANT ISSUES

According to the GCB, the new language permitting a gaming operator licensee to deduct licensing fees potentially violates the Anti-Donation Clause in the New Mexico Constitution. Furthermore, GCB states this language is ambiguous as to what specific deduction is allowed. The language states that “one-twelfth” of the fee paid is deductible. However, it is unclear if the “one-twelfth” is an annual deduction (8.33% of licensing fees annually) or a monthly deduction (100% of licensing fees annually).

The Department of Finance and Administration offers the following commentary:

This bill is intended to achieve parity with the provisions of the 2015 Gaming Compact. The proposed compact allows the casino to provide discretionary complementaries (free food or lodging) of up to 3% of adjusted net win. It clarifies that additional complementaries can be provided in exchange for player’s club points or credits. The compact amends the definition of net win to include deductions for free play and clarifies the treatment of point play and credits. The compact includes new reporting requirements regarding free play, point play and net win.

The table below provides comparison of some of the proposed changes under the 2015 Gaming Compact and Senate Bill 706.

	2015 Tribal Compact	SJC substitute for SB706
Allowable Comps	Free food and lodging up to 3% of adjusted net win (net win less deductions)	Unlimited free food for rewards members; up to 3% of net take for nonrewards members
Deductions		
Comps	Not deductible	Allowed to deduct travel expenses, food, refreshments, lodging or services up to \$250,000 annually
Free Play	Deductible from net win	Deductible from net take
Licenses/ Regulatory Fees	State and tribal regulatory fees deductible from net win	Annual licenses deductible from net take

Inclusion of free or point play towards net take subject to gaming tax has been a source of discussion. In 2014, New Mexico racinos filed a lawsuit against the Gaming Control Board in the 11th District Court in Farmington claiming the panel’s policy on promotional credits or free play on slot machines was instituted without proper procedures and has resulted in millions of dollars in past overpayments. The lawsuit seeks \$9.36 million in refunds or credit and a ruling that the Gaming Control Board’s policy is null and void because of its particular implementation. The purpose of this bill may be to clarify gaming laws and regulations so that issues of taxation and policy are not questioned and to resolve this and avoid other lawsuits.

In late 2014, the South Dakota Supreme Court agreed that free promotional play is not taxable play in South Dakota based on court interpretation of South Dakota gaming laws and regulations.

RELATIONSHIP

Senate Joint Resolution 19 would approve the proposed 2015 Tribal-State Class III Gaming Compact.

POSSIBLE QUESTIONS

How is the actual cost to the licensee of any personal property distributed to a patron determined?

CE/bb