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FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/16

SPONSOR Gentry LAST UPDATED _____ HB 314

SHORT TITLE Fantasy Contests Act SB _____

ANALYST Liu

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
	See Fiscal Implications			

(Parenthesis () Indicate Revenue Decreases)

Duplicates SB 279
Relates to HB 320

SOURCES OF INFORMATION

LFC Files

Responses Received From

Gaming Control Board (GCB)
Attorney General’s Office (AGO)
Office of the State Auditor (OSA)
Secretary of State (SOS)

SUMMARY

Synopsis of Bill

House Bill 314 creates the Fantasy Contests Act and establishes consumer protections and penalties for participants and operators of fantasy contests with an entry fee for a cash prize. The bill defines “fantasy contest” as a fantasy or simulated game or contest in which:

- the value of all prizes and awards offered to winners is made known in advance,
- all winning outcomes reflect relative knowledge and skill of the players, and
- all winning outcomes are determined predominantly by accumulated statistical results of the performance of individuals and not based on the performance of any single performance of an individual person or team in any single event.

The bill includes other definitions and exempts fantasy contests from the New Mexico criminal statute which prohibits illegal gambling. Additionally, the bill requires operators that provide public fantasy contests with cash prizes to implement procedures preventing the following individuals from participating or sharing confidential information:

- employees (and relatives living in the same household as the employee) of the operator
- the fantasy contest operator
- individuals under the age of 18
- individuals who participate or officiate in a game or contest that is the subject of the fantasy contest
- individuals that request restrictions on themselves

Additionally, the bill requires operators to disclose the number of entries that a player may submit to each fantasy contest, segregate fantasy contest player funds from operational funds, maintain a reserve to protect deposits made to player accounts, and contract with a third party to perform an annual independent audit that will be submitted to the Secretary of State.

FISCAL IMPLICATIONS

Games of skill are not regulated by the Gaming Control Board; however, if fantasy contests are considered games of chance, it would implicate a new form of gambling within the state. Both the 2007 and 2015 Tribal-State Class III Gaming Compacts indicate expansion of non-tribal gaming could terminate an tribe's obligation to make revenue share payments to the state. In the event Internet gaming is authorized, the 2015 gaming compact requires the state and tribe to reopen good faith negotiations to evaluate the impact of Internet gaming and consider adjustments to the compact. Tribal revenue sharing payments and regulatory fees contributed \$65.8 million to the general fund in FY15.

Non-betting, yearly-based fantasy sports users have grown 25 percent since 2011, and the Fantasy Sports Trade Association estimates there were 51.8 million players in the U.S. and Canada in 2015. Industry consultant, Eilers Research, suggests that daily games will generate around \$3.7 billion in entry fees and \$370 million in revenue for operators in 2016. Using the Eilers Research model for typical fantasy contest players and 2014 U.S. Census Bureau data, approximately 52.6 thousand New Mexicans would participate in fantasy contests. If these players spend \$100 monthly and fantasy operators collect 10 percent of contest revenue, operators in the state could generate up to \$6.3 million in annual revenue.

The bill establishes a civil penalty up to \$1,000 for violations of the Fantasy Contests Act, which shall accrue to the state. According to GCB, it is unclear how many violations will occur or how much will be recovered through civil action brought by the Secretary of State. SOS does not anticipate any significant fiscal impact to agency operations.

SIGNIFICANT ISSUES

According to AGO and GCB, other than providing for the imposition of a civil penalty and requiring audit results to be provided to SOS, this bill does not expressly provide for any state regulation or oversight of fantasy contests.

DUPLICATION, RELATIONSHIP

This bill duplicates SB 279 and relates to HB 320, which provides for a charity gaming event permit.

OTHER SUBSTANTIVE ISSUES

New York, Illinois, Texas, and Nevada have taken legal action against the two largest daily fantasy sports websites, DraftKings and FanDuel, labeling the games as illegal gambling. Allegations surfaced that site employees were placing bets using secret information after a DraftKings employee won \$350 thousand at FanDuel in a week. Attorney generals of New York, Illinois, and Texas have maintained that the games are based on luck—not skill—and are prohibited as gambling. Nevada took the position that daily fantasy sports fall within the state’s definition of gambling and therefore require licensure for operation. However, Kansas and Maryland have enacted laws that exempt fantasy sports from the state’s definition of gambling.

The federal Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) seeks to regulate the financial intermediaries that act as the monetary link between Internet gambling consumers and online gaming operators. Section 5362 of UIGEA specifically states that the term ‘bet’ or ‘wager’ does not include:

(ix) participation in any fantasy or simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization (as those terms are defined in section 3701 of title 28) and that meets the following conditions:

(I) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.

(II) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.

(III) No winning outcome is based –

(aa) on the score, pointspread, or any performance or performances of any single real world team or any combination of such teams; or

(bb) solely on any single performance of an individual athlete in any single real-world sporting or other event.

The federal Professional and Amateur Sports Protection Act of 1992 (PASPA) prohibits state-regulated sports betting on the outcomes of professional and amateur sporting events. PASPA also contains language that may be directed at fantasy sports. Section 3702 of PASPA states in pertinent part:

It shall be unlawful for –

- 1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or
- 2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity,
 - a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographic reference or otherwise) on

one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

PASPA prohibits a “governmental entity” (defined to include a state) or a “person” acting pursuant to state law from sponsoring, operating or promoting any betting or wagering scheme based directly or indirectly on "one or more performances of...athletes" in games in which amateur or professional athletes participate.

POSSIBLE QUESTIONS

GCB provided the following:

This bill provides no registration requirements or obligation to demonstrate compliance with the statutory requirements prior to conducting business within the state. The issue is whether an independent audit of out-of-state fantasy contest operators will provide sufficient oversight and allow the Secretary of State to demonstrate compliance with the bill. Moreover, there is the legal question of whether the Secretary of State’s authority to initiate such actions would infringe upon the authorities given to the Office of the Attorney General.

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