F I S C A L   I M P A C T   R E P O R T

SPONSOR Ruiloba/Nibert/Ezzell/Cook

ORIGINAL DATE 1/29/2020
LAST UPDATED 2/03/2020

HB 271

SHORT TITLE Capital Improvements Gaming Tax Credit

SB

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	**FY21 – FY 25**	**FY26**		
	($3,000.0) each year	$0	Recurring	General Fund

Parenthesis ( ) indicate revenue decreases

Duplicates SB230

SOURCES OF INFORMATION
LFC Files

Responses Received
Gaming Control Board (GCB)
State Racing Commission (SRC)

No Response Received
Taxation and Revenue Department

SUMMARY

Synopsis of Bill

House Bill 271 creates a capital improvements gaming tax credit for qualifying racino operators. In order to qualify for up to $1.5 million per fiscal year, a racino operator must have:

- actual expenditures for capital improvements or long term financing for capital improvements, as the tax credit is limited to the amount of expenditures or a maximum of $1.5 million per year;
- had in the immediately prior calendar year a combined net take of under $25 million; and
- monthly gaming tax obligation in excess of the amount of credit claimed for that month.

The effective date of this bill is July 1, 2020. The credit is based on expenditures which must be completed by June 30, 2025.

FISCAL IMPLICATIONS

Based on FY18 data, Ruidoso Racetrack and Casino and SunRay Park and Casino would qualify based on annual net take less than $25 million. The estimate assumes that both racinos would qualify based on capital improvement expenditures each year of the five years in which the credit is possible.

As of late 2019, the Gaming Control Board decided not to grant the sixth racino license. If this decision changes and the new licensee expends money, there would be no credit allowed until the racino begins operating and generates net take and associated tax obligations. This is a non-refundable credit.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity. This bill creates a tax expenditure with a cost that is likely significant. LFC has serious concerns about the significant risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or be held for future consideration.

	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24
Revenue Source	Audited Actual	Actual	Actual	Audited Actual	Actual	Actual	Audited Actual	Dec 2019 Est.	Dec 2019 Est.	Dec 2019 Est.	Dec 2019 Est.	Dec 2019 Est.
Gaming Excise	63.1	66.5	70.4	63.1	59.5	62.1	64.9	66.5	68.8	70.9	72.4	73.5

Note that this is a revenue source that has experienced some difficulties since a peak of 70.4 million for FY15. The possible $3 million annual general fund loss is about 4 percent of the revenue.

In effect this reduces the statutory 26 percent tax rate to 20 percent for Ruidoso Downs and to 24 percent for SunRay Park and Casino the two qualifying racinos.

The Racing Commission notes that the bill's provisions have the potential to increase revenue for the gaming and racetrack operator. If net win increases, that means more purse money generated for the horsemen that participate in New Mexico horse racing and more gaming tax remitted to the state.

SIGNIFICANT ISSUES

Racino licensees pay 26 percent of the net take from slot machines as the gaming tax. The gaming tax supplanted an earlier horse racing tax. In addition to the taxes, racino operators must contribute horse racing purse money equal to 20 percent of net take.

The State Racing Commission provides the following:

> HB271 will allow the race track and gaming operators to invest in upgrades that will enhance the welfare of the race horse including new stables, improved racing surfaces, equipment to maintain the racing surface, purchasing of state of the art medical equipment

to analyze the condition of a horse prior to racing. Altogether, that should decrease catastrophic injuries to the horse which will in turn put the horse racing industry in a better light than it has been recently due to significant issues in California. Also, this tax credit will give the race track operator resources to upgrade their facilities with customer accommodations and upgrade slot machines on a routine basis which in turn may increase slot play which may lead to more purse money for horse racing.

It should be noted, that "racetrack facilities" for all the five licensed racinos include the casino, as well as the racetrack proper. No provision in the bill requires the capital improvement investment be devoted to the racetrack, as opposed to the casino portion of the operation.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is <u>not</u> met since TRD is <u>not</u> required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

TRD collects gaming tax, but the Gaming Control Board administers and verifies that the amounts remitted are correct.

GCB notes that there is no defined process indicating how the racetrack gaming operators should report capital expenditures to TRD in order to ensure compliance with qualifying criteria to receive the credit.

TECHNICAL ISSUES

This bill does not contain a delayed repeal date. LFC recommends adding a delayed repeal date about one year after the end of the qualifying period.

OTHER SUBSTANTIVE ISSUES

When the horse racing tax was effective and enforced, a popular tax expenditure was similar to the current proposal.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

1. **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure Policy Principle	**Met?**	**Comments**
Vetted	✘	
Targeted		
Clearly stated purpose	✘	The purpose is implicit – to allow the smaller racinos to invest and grow.
Long-term goals	✘	None stated.
Measurable targets	✘	None stated.
Transparent	✘	No annual reporting required.
Accountable		
Public analysis	✘	No purpose, targets or annual reporting.
Expiration date	✓	Limited to capital expenditures before June 30, 2025.
Effective		
Fulfills stated purpose	✘	None stated
Passes "but for" test	✘	Capital expenditures are likely to occur, even if not creditable.
Efficient	✓	In effect, this reduces the 26% tax rate for the two qualifying racinos..
Key: ✓ Met ✘ Not Met ? Unclear		

LG/rl/sb