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## FISCAL IMPACT REPORT

**SPONSOR** Campos **ORIGINAL DATE** 02/13/20  
**LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_  
**SHORT TITLE** Gaming Tax Credit **SB** 153  
**ANALYST** Torres

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22	FY23	FY24		
		(\$7,500.00)	(\$3,000.0)	(\$3,000.0)	Recurring	General Fund

Parenthesis ( ) indicate revenue decreases

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
\$20.5	\$72.0	\$72.0	\$164.5	Recurring	TRD- General Fund

Parenthesis ( ) indicate expenditure decreases

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
 Taxation and Revenue Department (TRD)  
 Gaming Control Board (GCB)

### SUMMARY

#### Synopsis of Bill

Senate Bill 153 (SB 153) creates a “capital improvements gaming tax credit” to allow a racetrack gaming operator licensee to claim up to 100 percent of the licensee’s monthly tax liability but not to exceed \$1.5 million per fiscal year if the licensee (1) had expenditures for capital improvements or long-term financing of capital improvements at its racetrack facility equal to or greater than the amount of the credit claimed and (2) had a combined net take of under \$25 million in the prior year. Both the expenditures and net take must have occurred in the previous tax or calendar year.

The capital improvement gaming credit tax may be claimed on a monthly basis on forms provided by the Taxation and Revenue Department.

The effective date of this bill is July 1, 2021.

## **FISCAL IMPLICATIONS**

Income losses due to public-health-related closures in 2020 will likely qualify all five of the state's racetrack for the tax credit under the requirement of a net take under \$25 million a year. For FY22, all five locations will be eligible to take advantage of the maximum, while following years are likely to return to previous net take trends. Prior to the pandemic, two of the racetracks were eligible under the limitation of \$25 million a year net take. For that reason, fiscal impact estimates assume two entities would take full advantage of the credit.

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.

## **SIGNIFICANT ISSUES**

The following issues were noted by TRD:

Allowing some racetracks to take the credit and others not based on the overall size of the track, and thereby favoring smaller racinos, does not adhere to the tax policy principle of equity. The bill also subsidizes capital investments in certain industries over others, distorting decisions regarding the best investment of capital, which should be based on market demand and return on investment. Directing capital investment towards the gaming industry, favoring growth in that sector of the economy, may have unwanted social and economic consequences.

The proposed tax credit does include a sunset date of July 1, 2026. TRD supports sunset dates for policymakers to review the impact of a credit before extending it, if a sufficient timeframe is allotted for tax incentives to be measured. Given the additional cost to the state, a sunset date requires an examination of the benefit of this credit versus the cost.

## **PERFORMANCE IMPLICATIONS**

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

## **TECHNICAL ISSUES**

Section 1-A of the bill specifies TRD "shall allow" the tax credit in all situations. TRD recommends the language be changed to match that in other statutes, such as in 7-2F-1: "may apply for, and the taxation and revenue department may allow."

The language is broad and does not define the process for the taxpayer to apply for the credit or how the taxpayer receives a certification and does not specify how long the credit can be claimed for. Therefore, TRD recommends amending the language on Section 1, paragraph F, to read, "The capital improvements gaming tax credit may be claimed on a monthly basis against the gaming

tax remitted to the state on a form and manner provided by the taxation and revenue department.”

TRD also suggests the bill include a definition of “capital improvements” to reduce the potential for disagreements between TRD and applicants and to provide guidance to TRD for the application criteria for the credit.

## OTHER SUBSTANTIVE ISSUES

TRD will need to update forms, instructions, and publications, as well as train staff to administer the new tax credit. A new full-time tax auditor II will be needed in the Audit and Compliance Division (ACD). TRD’s Information Technology Division (ITD) will need to make changes to TRD’s systems, requiring approximately 400 hours of effort or approximately two and a half months for an estimate of \$20,540 in staff workload costs.

TRD expects to be able to absorb the impact of these changes as outlined in this stand-alone bill within the annual tax year implementation. This July 1, 2021, TRD implements the conversion for the Combined Reporting System (CRS) redesign project, as was authorized by Legislature. On July 1, 2021, TRD also implements the local option compensating tax, local option GRT on Internet sales, a new version 12 of GenTax, and moves to destination-based sourcing of the GRT. Due to the effective date of July 1, 2021, for this bill and other proposed bills, any changes to rates, deductions and distributions adds to the complexity and risk TRD faces on July 1 to ensure complete readiness and testing of all processes. If several bills with similar effective dates become law, there will be a greater impact to TRD and additional staff workload costs or contract resources may be needed to complete the changes specified by the effective dates of each bill. TRD recommends an effective date of date of January 1, 2022, or July 1, 2022, to ensure proper implementation of the legislation in TRD administration and system processes.

### 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
<b>Vetted</b>	✓	
<b>Targeted</b>		
Clearly stated purpose	✗	A lack of purpose statement makes the credit difficult to analyze.
Long-term goals	✗	
Measurable targets	✗	
<b>Transparent</b>	✗	No requirements for reporting are included in the bill.
<b>Accountable</b>		
Public analysis	✗	
Expiration date	✓	
<b>Effective</b>		
Fulfills stated purpose	✗	Without a purpose statement, effectiveness is indeterminable.
Passes “but for” test	✗	
<b>Efficient</b>	✗	
Key:    ✓ Met    ✗ Not Met    ? Unclear		