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FISCAL IMPACT REPORT

SPONSOR <u>STBTC</u>	LAST UPDATED <u>3/15/23</u> ORIGINAL DATE <u>2/28/2023</u>
SHORT TITLE <u>Use of Racetrack Funds For Insurance</u>	BILL NUMBER <u>CS/Senate Bill 336/ec/STBTCS/aSFC /aSFI#1</u>
	ANALYST <u>Graeser</u>

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
(\$760.0)	(\$3,090.0)	(\$3,060.0)	(\$3,030.0)	(0.0)	Recurring*	General Fund (Gaming Tax)
No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact			Local Governments

Parenthesis () indicate revenue decreases.

* Although the change is effective only through FY26, the change is considered to be recurring for the duration of the change.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Minimal	Minimal	Minimal	Recurring	State Racing Commission
\$21.8	\$87.36	\$87.36	\$174.72	Recurring*	Gaming Control Board

Parenthesis () indicate expenditure decreases.

* The changes persist through FY26 and are considered recurring for that period of time.

Sources of Information

LFC Files

Responses Received From

Office of Superintendent of Insurance (OSI)

Gaming Control Board (GCB)

Taxation and Revenue Department (TRD)

State Racing Commission (SRC)

SUMMARY

Synopsis of SFI#1 Amendment to STBTC Substitute for Senate Bill 336

Senate Floor amendment to STBTC Substitute for Senate Bill 336 clearly establishes that it is the responsibility of the State Racing Commission for regulatory oversight of funds withdrawn for exercise rider and jockey insurance, compliance with federal and state laws affecting horse racing and of the twenty percent and one and two-tenths percent fees funding from gaming.

Synopsis of SFC amendment to STBTC Substitute for Senate Bill 336

Senate Finance Committee amendment to the Senate Taxation, Business and Transportation Committee substitute for Senate Bill 336 changes the gaming tax reduction from 21.4 percent to 24.8 percent and changes the additional amount that racetracks are to allocate to health and accident insurance for jockeys and exercise riders to 1.2 percent.

Synopsis of STBTC Substitute for Senate Bill 336

The Senate Taxation, Business and Transportation Committee substitute for Senate Bill 336 reduces the gaming tax for a licensee that is a racetrack (racino) from 26 percent to 21.4 percent for three and a quarter fiscal years. Each racino is required to allocate the full current 20 percent of its net take to purses and then allocate an additional 4.6 percent of net take to pay for the costs of jockey and exercise rider insurance and to reimburse the racino operator for the costs to comply with federal laws affecting horseracing.

This bill contains an emergency clause and would become effective immediately on signature by the governor, provided that the bill is passed by 2/3rd of both houses.

FISCAL IMPLICATIONS

The revenue table above derives from the following spreadsheet.

All values in \$1,000	FY22	FY23	FY24	FY25	FY26	FY27
Gaming Excise (CREG)	\$68,365.1	\$68,700.0	\$70,000.0	\$69,300.0	\$68,700.0	\$68,900.0
Racino Contrib	\$251,487	\$252,731	\$257,500	\$254,923	\$252,731	\$253,462
0.26	\$65,386.5	\$65,710.0	\$66,950.0	\$66,280.0	\$65,710.0	\$65,900.0
	95.6%					
0.248		62,677	63,860	63,221	62,677	62,858
		(760.0)	(3,090.0)	(3,060.0)	(3,030.0)	(3,040.0)

* Assumes that the provisions begin April 1, 2023.

The amount required for the five racinos to expend on insurance and regulatory costs exactly equals the amount shown as general fund revenue decrease. Note that the racing commission indicates the cost of insurance will be in the range of \$1.6 million, not \$3 million as indicated in the above table.

Section 7-9-40 NMSA 1978 exempts from the gross receipts tax purses and jockey remuneration at New Mexico racetracks and the track commission (takeout) from amounts wagered. Because of the GRT exemption, however, there is no impact of this reduction in gaming tax on general fund or local government gross receipts tax.

The Racing Commission indicates the newly enacted federal Horseracing Integrity and Safety Act (HISA) has imposed a \$1.6 million cost on the New Mexico horseracing industry.

The New Mexico Gaming Control Board also comments:

The changes proposed are seated in the statutes that govern the regulatory responsibilities of the New Mexico Gaming Control Board. Staff will need to be increased by at least one position. ... The position may exist for 4 years, to include FY27.

Although the NMGCB expects to bear the administrative burden of the provisions of this bill, it is not clear whether the GCB or the Racing Commission will supervise and regulate the 4.6 percent allocated to jockey and exercise rider insurance and federal regulatory compliance costs.

SIGNIFICANT ISSUES

The State Racing Commission explains the purposes of this bill:

SB336 can help the stakeholders in the industry from a financial aspect. SB336 would assure that jockeys and exercise riders, who have inherently dangerous occupations, would be covered by some type of insurance should they sustain an injury. Horsemen would not have to purchase their own workman's comp for these specific occupations which would leave them with finances to reinvest in the horse racing industry. These expenses, according to SB336 will be covered by a portion of the racetrack operators' 20 percent net take from gaming.

SB336 would also allow for the industry to offset the costs of the newly implemented federal law called the Horseracing Integrity and Safety Act (HISA). Consistent with the insurance payment model, the reduction in the gaming tax will be used to offset these costs.”

The Gaming Control Board notes the following:

Nationally gaming revenue is increasing significantly with the implementation of Igaming and Sportsbook gaming. As Igaming has not been made legal in NM and Sportsbook is only legal in Tribal venues the increases in gaming related revenue are not as significant.

The bill as proposed is only temporary. With no provision for potential permanency, the original purpose of the bill (the protection of the jockeys and exercise riders) is not being fulfilled. Further, with the need for the GCB to hire at least one additional employee to accomplish the mandates of the proposed bill, the agency will be left with an additional employee or an employee will lose their job due to the temporary nature of the bill. The temporary nature of the bill will likely make the necessary position difficult to fill.

PERFORMANCE IMPLICATIONS

The provisions of this bill do not constitute a tax expenditure. Hence, the LFC tax policy of accountability is not relevant. However, the long-standing exemptions for purses and jockey's remuneration and the companion exemption for the gaming operators' commissions (takeout) are tax expenditures, and 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 exemption. The cost of GRT exemptions can only be inferred from collateral data.

ADMINISTRATIVE IMPLICATIONS

The GCB notes the following:

Page 3, line 6, Section (2) and page 3, line 10, Section F, are not clear as to which agency

will have the regulatory authority to audit the new fee and its distribution, with cost monitoring. Whether it is the NMGCB or the NMRC, a position will need to be added to be able to regulate and monitor these sections.

LFC staff note there may be difficulties in regulation in case the insurance and compliance costs are greater or lesser than the reduction in the gaming tax.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB330 proposes to transfer the regulation of horse racing from the quasi-independent New Mexico Racing Commission to become a division within the Regulation and Licensing Department. This would not be incompatible with the provisions of this bill.

TECHNICAL ISSUES

GCB notes a technical issue:

The way the statute was originally worded, made clear that the NMGCB's regulatory and audit authority ended with making sure that the 20 percent fee was moved from the gaming to the racing side of each of the five licensed tracks in New Mexico. The new language does not. Additionally, the statutes regarding confidentiality are significantly different between the two agencies, so the handling of information and documents that are submitted pursuant to audit and compliance requirements would be handled differently.

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