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

SPONSOR Caballero **ORIGINAL DATE** 02/06/14 **LAST UPDATED** **HB** 307

SHORT TITLE Gaming Compact Revenue Sharing Cap **SB**

ANALYST Van Moorsel/Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY14	**FY15**	**FY16**	**FY17**	**FY18**		
	($19,400.0)	($22,800.0)	($25,200.0)	($28,900.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

While the bill does not require the tribes to renegotiate compacts, the estimate above assumes that all of the participants in 2001 and 2007 compacts would apply to renegotiate their compacts quickly after the effective date of the act. There would be little or no risk to the tribes in this process, since the bill does not impair the current compacts.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Finance and Administration (DFA)
Gaming Control Board (GCB)

SUMMARY

Synopsis of Bill

House Bill 307 would cap the percentage of tribal gaming revenue shared with the state under any new tribal gaming compacts at the top corporate income tax rate. This clearly would not apply to the existing compacts, but only to newly negotiated compacts. Nothing in the bill would prohibit the gaming tribes with existing compacts from requesting new negotiations with the (presumably) lower sharing percentages

The effective date of this bill is July 1, 2014.

FISCAL IMPLICATIONS

DFA has submitted the following analysis:

The top corporate tax rates scheduled in current law are:

- CY2014 7.3%
- CY2015 6.9%
- CY2016 6.6%
- CY2017 6.2%
- ....CY2018 and thereafter 5.9%

Under the 2001 compact, the revenue sharing percentages are as follows:

- Tribes with annual net win over $12 million pay 8% of net win.
- Tribes with annual net win below $12 million pay 3% on the first $4 million net win and 8% thereafter.
  This compact only applies to Acoma, Jicarilla, Mescalero, Navajo and Pojoaque, which did not agree to the 2007 compact amendment.

The 2007 compact increases the revenue sharing rate for the remaining tribes:

- From FY08 to FY15, tribes with net win under $15 million will pay 3 percent on the first $5 million and 9.25 percent on the remainder.
- Tribes with annual net win between $15 and $50 million will pay 9.25 percent.
- Tribes with annual net win over $50 million will pay 9.75 percent.

  Based on the December 2013 forecast of tribal net receipt sharing and assuming that the lower tiered rates remain unchanged relative to the current compacts, the General Fund is expected to lose $19.4 million in FY15, $22.8 million in FY16, $25.2 million in FY17 and $28.9 million in FY18 as a result of the reduced rates.

The NMGCB has also estimated the fiscal impact of this bill, again assuming that the all of the current gaming tribes renegotiated their current compacts. The NMGCB estimates are:

Estimated Revenue					**Recurring or Nonrecurring**	**Fund Affected**
FY14	**FY15**	**FY16**	**FY17**	**FY18**		
	($14,240.0)	($17,900.0)	($20,800.0)		Recurring	General Fund

SIGNIFICANT ISSUES

DFA notes that, "…it is not clear why the revenue sharing agreements would be linked to corporate income tax rates in this manner. The "net win" of casinos is equal to the revenue received from a specific type of slot machine (class III) and does not include revenue received from card games, class II machines, entertainment and other revenue-generating activities that occur at tribal casinos."

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.

On the other hand, both the 2001 and the 2007 compacts were negotiated in rough recognition that Indian Gaming net win was not subject to either the Corporate Income Tax on net profits or the Gross Receipts Tax on gross receipts. Thus, were the compacts to be renegotiated after laws 2013, Chapter 160 reduced the State's Corporate Income Tax rate the revenue-sharing percentages might have been somewhat less than the current rates. This bill recognizes that possibility.

However, the compacts are contracts binding on the state and the tribes. The state benefits from the compacts through the revenue sharing percentage. The tribes benefits from the compacts with State approval of Indian gaming. The federal Indian Gaming Regulatory Act (IGRA) requires gaming tribes to negotiate compacts with the states. The state may be prohibited by Article 2, Section 19 of the New Mexico Constitution from impairing a contract. That may be the reason that the bill clearly does not attempt to alter existing compacts.

The NMGCB cautions that the tribes and the State are not the only players in this drama. The compacts seem to be fraught with uncertainty.

> Due to variations in the Tribal-State Compact (e.g., 2001, 2007 and proposed Navajo Compact currently before the legislature), with different expiration dates (e.g., June 30, 2015 for 2001 compacted Tribes), and different revenue share rates (including a tiered approach), the proposed bill creates uncertainty as to the currently compacted Tribes.
>
> Additionally, the Tribes that earn more in net win on an annual basis would likely disproportionately benefit by paying a lower revenue share rate, while those Tribes than earn less in net win on an annual basis would likely be subjected to an increase in their revenue share rates under Section 7-2A-5 NMSA 1978.
>
> As revenue share is not a tax, to compare the two (2) concepts may not be applicable. By relying on a legislative tax instead of a negotiated revenue share rate per compact, could create issues with the Department of the Interior in light of the Indian Gaming Regulatory Act's ("IGRA") prohibition on imposition of taxes. Additionally, the legislation of revenue share versus a bargained for agreement negotiated by the Governor could significantly affect provisions such as exclusivity under the Tribal-State Class III Gaming Compacts, as well as create further obstacles in the compact approval process with the Department of the Interior.

PERFORMANCE IMPLICATIONS

Although this bill does create a potential revenue loss, it is by no means clear that the revenue loss can be considered a tax expenditure. The compacts are contracts that are mutually beneficial to the state and to the gaming tribes, nations and pueblos. Thus, the LFC tax policy of accountability may not be applicable.

PvM:LG/svb:jl