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FISCAL IMPACT REPORT

SPONSOR: Smith DATE TYPED: 03/15/01 HB _____
 SHORT TITLE: Expand Gaming at Race Tracks SB 225
 ANALYST: Williams

REVENUE (see text)

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	Gain	Gain	Recurring	General Fund
	Gain		Non-Recurring	General Fund
	Gain	Gain	Recurring	Horseman's Purses

(Parenthesis () Indicate Revenue Decreases)

Relates to SB 133, SB 235, SJR 2, HB 195, HB 456, HB 471, and SB 797

SOURCES OF INFORMATION

LFC Files
 Gaming Control Board (GCB)
 State Racing Commission

No Response
 Taxation and Revenue Department (TRD)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

This bill expands gaming at racetracks in the state. Racetracks are no longer restricted to just gaming machines. The current definition of games in the Gaming Control Act could include table games such as blackjack, craps and roulette. The limitation of 300 gaming machines per racetrack is eliminated, and the Gaming Control Board would specify the number on each operator's license. The daily limitation of 12 hours of gaming is eliminated. The bill would not change the current gaming policies for nonprofit organizations. The effective date of the bill is July 1, 2001.

Significant Issues

The Gaming Control Board notes the table games implied by the bill could constitute Class III games under the federal Indian Gaming Regulatory Act. If enacted, allowing those games may terminate tribal obligations to make revenue sharing payments to the state under the current tribal-state compacts and could weaken the state's ability to negotiate revenue sharing payments in the future.

The legislation does not authorize imposition of state taxes or funding for horseman's purses on table games.

Additional racetrack applications are expected to be "immediately forthcoming". However, to obtain a license with the State Racing Commission, the owner/operators must show financial responsibility and clear background investigations. More importantly, it is not clear whether the Racing Commission would grant the license until the facilities are ready to come on-line. If the Racing Commission does not issue the license until the facilities are ready to open, then there may be a delay in the opening up of the racing industry as a whole to additional gaming.

Before new racetracks could offer casino-style gaming, they would also have to have a license from the GCB. It appears GCB would not issue the license until the Racing Commission issues its license. Thus, the timing of gaming-related revenues at the new racetracks would be contingent upon these processes.

Based on new information provided by the Racing Commission, there is substantial variation in net win among the facilities, and the State Racing Commission indicates Sunland is "the most prosperous racetrack casino with a daily average per machine in excess of \$350."

FISCAL IMPLICATIONS

The expansion of gaming at racetracks would increase general fund and purse revenues. There is uncertainty on the magnitude of the extent to which revenues would increase, but the following summarizes the LFC analysis.

Currently, there are 1,200 machines at racetracks in the state: Sunland Park, Ruidoso, Albuquerque and Farmington. GCB projects an additional 1,000 machines, while the State Racing Commission projects total machines would increase by 3,800 machines. The State Racing Commission reports the statewide average revenue per gaming machine is \$185, while the Gaming Control Board reports the statewide average net win for machines located at racetrack casinos was \$193 per machine per day in FY00. There is substantial variation in net win among the facilities, and the State Racing Commission indicates Sunland is "the most prosperous racetrack casino with a daily average per machine in excess of \$350."

This analysis assumes net win per machine per day for new machines would be less than current average, but overall revenues from gaming would increase. Machines would not be equally distributed around the state. Net win from these gaming machines would be subject to a 25% gaming tax and a 20% tax for horseman's purses. This analysis relies on three scenarios in which general fund recurring revenues would be from \$28,800.0 to \$48,600.0 for a full year. In addition, incremental revenue for horseman's purses could range from \$23,040.0 to \$38,870.0 for a full year. This component reflect new machines at existing racetracks only, and is consistent with SB 797.

GCB notes passage of the bill would require promulgation of new regulations governing the type and conduct of table games and the determination of the number of allowed gaming machines. The GCB

estimates this process will take about three months to draft necessary rules, and the rule adoption process will take at least nine months to complete. The first rules would go into effect approximately three months from the date notice of rulemaking is issued by GCB. Thus, the first year impact would reflect only 3/4 of a full year of revenues.

Finally, the state imposes a 10% tax on new machines. Assuming the machines are purchased new to obtain more exciting games at \$8,000 each, this tax could generate from \$1,200.0 to \$2,240.0 in non-recurring general fund revenue.

There would be some additional fiscal impact from the removal of hourly operation limitations as well as an increase in parimutuel tax revenue to the general fund over time due to the stimulatory effects for the horse racing industry.

Note that the bill does not authorize imposition of gaming taxes on table games; therefore, this analysis does not include revenue from the table games at the racetrack casinos.

ADMINISTRATIVE IMPLICATIONS

The State Racing Commission expects a significant increase in workload due to the potential increase in race days and racing activity, with a projected \$1000.0 increase in funding needed to regulate the industry. The Commission projects an additional 6 FTE would be needed. In contrast, the LFC budget recommendation is currently \$1,549.9 for 16.6 total FTE.

GCB notes table games typically represent 10% of a casino's revenue, but represent a high percentage of fraud cases, are more difficult to audit because these games create no record of activity and strict internal controls are required to protect casino assets. Additional funding for GCB is projected by the agency at \$294.0 for audit and enforcement.

GCB notes it would have the discretion to set the number of machines to be located at each racetrack casino, but the bill does not contain any guidelines on determining the number.

TECHNICAL ISSUES

GCB recommends specifying the types of table games to avoid legal challenges.

The bill might be amended to tax the additional gaming activities similar to the taxation of gaming machines; taxes could be assessed against gross revenues or on a "per table" basis.

GCB recommends the following technical amendments:

If the intent is to issue gaming licenses that specify the types of games and number of gaming machines permitted, "machines" should not be deleted from Section 1, paragraph C, line 15 (page 2 in the PDF version), and "and specific types of" should be inserted before "games" on the same line. In addition, "of machines" should be inserted after "number" in Section 1, paragraph D, line 19 (page 2 in the PDF version).

The amendment in Section 1, paragraph I seems to imply that a racetrack gaming operator licensee could not request or be issued a gaming operators' license for gaming machines only. To avoid potential misinterpretation, the new sentence in Section 1, paragraph I, beginning on line 22 (page 3 in the PDF version) could be deleted and replaced with, "A nonprofit organization may apply for and

be issued a gaming operator's license permitting and restricted to the operation of gaming machines only."

The second sentence in Section 2, paragraph D, lines 5 through 9 (page 5 in the PDF version) is redundant and could be deleted.

Section 3 could be amended to change Human Services Department lien procedures. The current provisions assume that the GCB, like the Lottery Commission, pays out winnings. However, the GCB does not make payments to patrons. Those payments are made at the licensed facilities by licensees.

If the intent of SB225 is to include table games, the definition of "game" in Section 60-2E-3(N) could be amended to specify the table games permitted and to distinguish between table games and games on slot machines; for example: "N. 'game' means any game played with cards, dice, or equipment for money, property, credit or any representative of value, including keno, bingo, twenty-one, blackjack, craps, poker, roulette and any banking or percentage game approved by the board; with respect to a gaming machine, "game" means any activity in which, upon insertion of a coin or other object or upon payment of consideration, a player may receive[s] a prize or other thing of value, the award of which is determined by chance even though accompanied by some skill; "game" does not include an activity played with cards in a private residence in which no person makes money for operating the activity except through winnings as a player; "

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