

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR Castellano **LAST UPDATED** 2/14/23
ORIGINAL DATE 2/14/23
BILL
SHORT TITLE Gaming Operator License Rate Differential **NUMBER** House Bill 301
ANALYST Faubion

REVENUE* (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
--	\$7,700.0	\$7,700.0	\$7,700.0	\$7,700.0	Recurring	General Fund

Parenthesis () indicate revenue decreases

*Amounts reflect most recent version of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	--	--		Nonrecurring	GCB
	Indeterminate but minimal	--	--		Nonrecurring	TRD

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Gaming Control Board (GCB)

Department of Finance and Administration (DFA)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of House Bill 301

House Bill 301 adds a 13 percent gaming tax on net take for gaming operator licensees located in a class A county and within a 60-mile radius of three or more tribal casinos.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

The criteria of a gaming operator licensee located in a Class A county and be within a 60-mile radius of three or more tribal casinos would directly affect the counties of Bernalillo, Sandoval, and Santa Fe. There is currently one licensed racetrack, the Albuquerque Downs Casino, and 11 licensed nonprofit gaming operators located in these counties which meet the proposed criteria.

The Taxation and Revenue Department (TRD) notes that this bill adds a new 13 percent tax rate on net take of a gaming operator licensee that is located in a class A county and within a 60-mile radius of three or more tribal casinos. This is half of the current 26 percent rate for other gaming operator licensees that are not manufacturers, distributors, or non-profits. The language of the additional rate is not constructed in relation to the current rates in a way that clearly defines what tax rates apply to which kind of gaming operator licensees and creates the possibility of additional taxation of the new category of operator.

TRD notes as currently written, the proposal could be interpreted in several different ways such as an aggregate tax rate of 23 percent on nonprofits located in a class A county within a 60-mile radius of three or more tribal casinos. In the case of a nonprofit, it could also be interpreted as 10 percent or 13 percent depending on the location of the licensee. It is unclear if the tax rates are mutually exclusive or aggregated.

LFC fiscal analysis interprets the bill as written and therefore stacks the gaming tax rates listed in Section 1 of the proposed bill (see *Technical Issues*). All nonprofit operator licensees are subject to a 10 percent tax on net take. All other operators are subject to a 26 percent tax on net take. In addition to these tax rates, all operator licensees, including nonprofits, located in a class A county and within a 60-mile radius of 3 or more tribal casinos are subject to an additional 13 percent tax on net take. Using 2022 gaming tax data, this results in a general fund revenue increase of \$189 thousand from nonprofits and \$7.5 million general fund revenue increase from the racetrack located within these parameters.

SIGNIFICANT ISSUES

The Gaming Control Board (GCB), which interpreted the bill to apply the 13 percent tax on both the racetrack and the nonprofit organizations, notes the following:

The imposition of a new thirteen percent tax on these licensees would have a direct impact on these organization's operating revenues and may affect their ability to operate their facilities at a high level. It would also put the one affected racetrack at a competitive disadvantage compared to the other four racetracks located within the State and to the tribal casinos.

As proposed, the 13 percent tax on the gaming operators who are a non-profit organization will greatly reduce the funds available to these organizations to operate their game rooms and keep their organizations open and operating. This additional tax will eliminate most of the funds they currently generate to cover operating expenses and facility maintenance. Many nonprofit organizations are already facing financial difficulties and revenues generated through the game rooms help them meet their financial obligations. Membership at many of these organizations is aging and declining, and they struggle to recruit new members. Additionally, hiring and keeping employees

due to increasing labor costs has become a significant drain on financial resources. Based on fiscal year 2022 figures, if these nonprofit operators close their game rooms, there will be an estimated decrease in available charitable and educational funds of approximately \$275 thousand that these organizations donate within their communities.

TRD notes the bill appears to target a particular gaming operator in Bernalillo County. By restricting the preferential tax rate to gaming operators that are within 60 miles of three or more tribal casinos, the bill may be trying to make that non-tribal gaming operator more competitive vis a vis nearby tribal casinos.

TRD notes the proposed changes to the gaming tax rate, although not clearly defined, appear to add complexity to the tax code and increase the tax compliance burden on both taxpayers and TRD. Complexity does not comport generally with the best tax policy.

ADMINISTRATIVE IMPLICATIONS

Currently, all racetracks are set to a tax rate of 26 percent. The Gaming Control Board (GCB) will need to add a new rate. This will GCB to request this enhancement from Light and Wonder, the provider of support and maintenance for the GCB Central Monitoring System, as future maintenance release.

TRD notes as written, it is unclear what the tax rate would be on gaming operator licensees and how to estimate the administrative time and effort to implement the changes. The rate changes would be incorporated into TRD's annual tax year implementation and updates to forms, instructions, and publications would be required.

TECHNICAL ISSUES

TRD notes the following technical issues:

If the intent of the bill is to tax all gaming operator licensees inside a class A county and within a 60-mile radius of three or more tribal casinos at 13 percent, then the sponsor should consider adding “or” before the semicolons on page 2, lines 5, 7 and 10 and remove “and” at the end of line 10.

On page 2, lines 9 and 10, ‘within a sixty-mile radius’ needs to be defined clearly, that is, how is that to be measured consistently. It appears that the radius is to be determined based on the location of the casino operator licensee, but this could be clarified.

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.