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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 2/17/16  
**SPONSOR** Caballero **LAST UPDATED** \_\_\_\_\_ **HB** 320

**SHORT TITLE** Charity Gaming Event Permit **SB** \_\_\_\_\_

**ANALYST** Liu

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
	\$0.0 - \$8.2	\$0.0 - \$8.2	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate but Minimal	Indeterminate but Minimal	Indeterminate but Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 314, SB 279

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Gaming Control Board (GCB)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 320 amends the New Mexico Bingo and Raffle Act to add a definition for “charity gaming event,” which is defined as a “fundraising event, include a ‘poker run’ or ‘poker tournament,’ held by a qualified organization in which games of chance, including bingo, raffle, pull-tabs, dice, playing cards and mechanical wheels, are played for entertainment.” This bill exempts charity gaming events from the New Mexico Bingo and Raffle Act that are held by a qualified organization only once every three calendar months and less than four times a calendar year. Additionally, qualified organizations holding exempted charity gaming events must apply to GCB for a permit prior to the event and donate all proceeds, except bona fide expenses

pursuant to Section 60-2F-20 NMSA 1978, to the advertised charitable cause. The qualified organization may accept donations from players in return for chips or tokens to play the game, and winners may be awarded non-cash prizes. Charity gaming events at premises licensed for the sale of alcohol require the licensee to apply for a temporary suspension of the license for the venue area through the Alcohol and Gaming Division of the Regulation and Licensing Department.

## **FISCAL IMPLICATIONS**

According to GCB, this bill would create additional regulatory responsibilities on the Background and Licensing Division of the Gaming Control Board via the permitting requirements of the bill, thereby impacting staff time and the agency's operating budget. The Enforcement Division and Audit & Compliance Division may also be tasked with additional oversight. The fiscal impact is indeterminate but minimal.

Section 60-2F-4 NMSA 1978 defines "qualified organization" as a bona fide chartered branch, lodge or chapter of a national or state organization or any bona fide religious, charitable, environmental, fraternal, educational or veterans' organization operating without profit to its members that has been in existence in New Mexico continuously for a period of two years immediately prior to conducting a raffle or making an application for a license under the New Mexico Bingo and Raffle Act and that has had a membership engaged in carrying out the objects of the corporation or organization. A voluntary firefighter's organization is a qualified organization and a labor organization is a qualified organization for the purposes of the New Mexico Bingo and Raffle Act if they use the proceeds from a game of chance solely for scholarship or charitable purposes.

According to GCB, profits from the operation of qualified veteran and fraternal organizations are to be used to fund the charitable and educational purposes supported by the club. As of June 30, 2015, there were 66 clubs licensed and operating in the state. An amount equal to 10 percent of "net take" is paid in gaming taxes. Non-profit clubs are typically staffed by both volunteer and paid members and constitute a relatively small part of the gaming market. During FY15, licensed non-profit gaming operators earned approximately \$1.9 million for charitable and educational purposes.

According to the Canadian Gambling Digest, in FY14 over 400 charitable gaming licenses in Canada generated about \$2.4 million in gaming revenue from poker tournaments after prizes were paid. Using the average daily gaming revenue of each licensee from the Canadian model, New Mexico qualified organizations could generate up to \$82.4 thousand in additional annual net take. Imposition of the 10 percent gaming tax on this recurring revenue could add up to \$8.2 thousand to the general fund.

## **SIGNIFICANT ISSUES**

According to GCB, the definition of gambling consists of "an activity in which, upon payment of consideration, a player receives a prize or other thing of value, the award of which is determined by chance." If the elements of consideration, chance, and prize are present, then the activity constitutes gambling. It is unclear whether all three elements are present due to ambiguity in the language of the bill. The bill allows qualified organizations to accept donations from players in return for chips or tokens to play the games, as long as no cash is returned to a player at any time

during or after the event. However, money in the form of donations that is exchanged for chips or tokens, which can then be exchanged to purchase prizes, may constitute unauthorized gambling.

Poker is not expressly authorized under New Mexico law. According to GCB, including poker runs, poker tournaments, and other table games in this bill may infringe on certain exclusivity provisions of the class III tribal-state gaming compacts.

Under the 2015 tribal gaming compact, the tribe's obligation to make revenue sharing payments is terminated in the event the state "passes, amends, or repeals any law, or takes any other action, that would directly or indirectly attempt to restrict, or has the effect of restricting, the scope or extent of Indian gaming." However, the compact allows specified forms of class III gaming that have no effect on the tribe's obligation to make revenue sharing payments, including:

- the operation of a state lottery,
- the operation of gaming machines by fraternal or veterans organizations (pursuant to Section 60-2E-3.GG NMSA 1978) for the benefit of its members,
- limited fundraising activities conducted by nonprofit tax exempt organizations,
- the conduct by licensed horse racetracks and bicycle tracks of pari-mutuel betting on races and simulcast races, and
- limited operation by licensed horse racetracks of gaming machines.

Under the 2007 tribal gaming compact, the state and tribes intended to accommodate and clarify revenue sharing requirements of new games that blurred the line between traditional games:

The definition of a table game is intended to encompass traditional games that use cards such as poker, Pai-gow and blackjack, wheel games such as roulette and the Big Wheel, and dice games such as craps...The greater the involvement of the casino attendant, the more likely the game is a table game. For example, a casino attendant may have some minimal involvement in an electromechanical slot machine game, such as making a pay-out, but that is not a significant enough involvement to exclude it from revenue sharing obligations. Similarly, although roulette has a mechanical aspect, it is not significant enough to make it subject to revenue sharing obligations. Recognizing the dynamic nature of gaming technology, the parties shall attempt to agree on whether new mechanical, electromechanical or electronic games that utilize traditional components of table games, e.g. cards, wheels or dice, are subject to revenue sharing on a case by case basis.

In her 2013 letter to the Mohegan Tribal Gaming Commission, National Indian Gaming Commission Chairwoman Tracie Stevens opined:

Class II gaming includes card games, such as poker, if such card games: (I) are explicitly authorized by the laws of the State, or (II) are not explicitly prohibited by the laws of the State and are played at any location in the State but only if such card games are played in conformity with those laws and regulations (if any) of the State

regarding hours or periods of operation of such card games or limitations on wages or pot sizes in such card games. Class II gaming also expressly excludes any banking card game. Banking card games, as commonly understood and as defined in NIGC regulations, are games in which the banker (usually the house) competes against all players, collecting from losers and paying winner. Conversely, non-banking card games are games where players play against each other, rather than the house or a single player acting as the bank. Poker, played in its traditional form—players play against one another without a bank—, is the typical example of a non-banked card game...Class II gaming is defined by federal legislation and cannot be changed by a tribal-state agreement. Therefore, regardless of the dictates of the compact, so long as poker meets the definition of Class II gaming found in IGRA, it is a Class II game.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill relates to HB 314 and SB 279, which create the Fantasy Contests Act and establish consumer protections and penalties for participants and operators of fantasy contests with an entry fee for a cash prize.

### **TECHNICAL ISSUES**

AGO provided the following:

This bill proposes to exempt “charity gaming events” from the requirements of the New Mexico Bingo and Raffle Act; however, as a condition of the exemption, the qualified organization must first apply to GCB for a permit. The permitting requirement is at odds with Section 60-2F-8 NMSA 1978, which does not include a “charity gaming event permit” among the types of licenses and permits that GCB may issue.

The bill also mentions but does not define the following terms: poker run, poker tournament, dice, playing cards, and mechanical wheels.

### **OTHER SUBSTANTIVE ISSUES**

In *DiCristina v. United States*, the U.S. District Court for the Eastern District of New York asserted that poker is predominantly a game of skill, rather than chance. Although the U.S. Circuit Court for the Second Circuit reversed the district court’s decision and found that DiCristina’s poker business was allegedly in violation of the federal Illegal Gambling Business Act (IGBA), it declined to address the issue of whether poker was a game of skill or chance, stating that “the question of whether skill or chance predominates in poker is inapposite to this appeal.” Under IGBA, an illegal gambling business is defined as “includ[ing] but . . . not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.”