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FISCAL IMPACT REPORT

ORIGINAL DATE 2/27/17

SPONSOR Roybal Caballero **LAST UPDATED** _____ **HB** 404

SHORT TITLE Bingo and Raffle Act Charity gaming **SB** _____

ANALYST Romero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
NFI	(\$65,000.0)	(\$65,000.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	112.3	112.3	224.6	Recurring	GCB Operating

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Gaming Control Board (GCB)

SUMMARY

Synopsis of Bill

House Bill 404 creates a new section to the Gaming Control Act. This bill introduces new material for certain Class II bingo and raffle concepts into the Gaming Control Act which represents Class III slot machine gaming. Likewise, House Bill 404 introduces new material for certain Class III gaming concepts into the Bingo and Raffle Act, which contains Class II games in the form of bingo, raffle, and pull-tabs.

This bill authorizes the Gaming Control Board to make rules for the conduct and issuance of licenses for charitable organizations that submit an application with a fee of \$50.00. Upon approval by the GCB, the charitable organization may

- Host a charity gaming event no more than once every three months for no more than a 12

hour period;

- Charge a fee to attend the event;
- Accept cash donations from attendees in exchange for tokens to play games, including games of chance, or to purchase goods or services donated for the charity gaming event. No cash shall be returned to an attendee;
- Accept donations for goods and services to be offered as prizes;
- Award prizes or tokens that may in turn be used to purchase other prizes or play games, including games of chance.

The charitable organization will then donate all proceeds, minus expenses, to the charitable cause advertised as the recipient of the proceeds. Within thirty days of the event, the charitable organization must file with the GCB a verified accounting of the event showing:

- The amount received for attendance fees;
- The amount of cash donations received;
- A list of expenses for purchase of goods or services or payment of fees incurred for hosting the event;
- A list of goods and services donated for the charity gaming event, with an estimated value for each item;
- The amount of the donation to the charitable cause that the charity gaming event was held to support.

It also requires specific authorization from the alcohol and gaming division of the Regulation and Licensing Department if alcohol is to be served at the charity gaming event.

FISCAL IMPLICATIONS

HB 404 may be considered an expansion of non-tribal Class III gaming, thereby jeopardizing revenue sharing payments to the state.

Section 11(D) (1) (b) of the 2015 Tribal-State Compact reads,
“D. Limitations.

1. The Tribe’s obligation to make the payments provided for in Paragraphs B and C of this Section shall apply and continue only so long as this Compact remains in effect; and provided that that obligation shall terminate altogether in the event the State:

(b) licenses, permits or otherwise allows any person or entity other than six licensed horse racetracks and veterans and fraternal organizations as described in NMSA 1978, §60-2E-3(GG) to operate Gaming Machines.”

HB 404 affects the Background and Licensing Division, the Audit and Compliance Division, and the Enforcement Division of the Gaming Control Board. The “Estimated Additional Operating Budget Impact” reflects one additional FTE in each division to process, monitor, and audit such charity gaming events.

SIGNIFICANT ISSUES

See attachments for select sections of the 2015 Tribal-State Compacts.

investigation and prosecution of the violation as the district attorney may reasonably request, and otherwise cooperate fully with the district attorney and any state law enforcement agencies with respect to the matter, but once notice of a suspected violation has been given to the district attorney, the matter shall be deemed to be under the jurisdiction of the State; provided, however, that in the event of emergency circumstances involving a possible violation, the Tribe and its constituent agencies shall have the discretion to act as they see fit, and to call upon such other agencies or entities as they deem reasonable or necessary, in order to protect against any immediate threat to lives or property. The State may, in its discretion, refer the matter to federal authorities, but it shall notify the Tribal Gaming Agency upon doing so.

D. The State agrees that no less frequently than annually it will provide the Tribal Gaming Agency with a written report of the status and disposition of each matter referred to it under the provisions of this Section since the last report or that was still pending at the time of the last report. In the event the district attorney to whom a matter is referred under the provisions of this Section decides not to prosecute such matter, the district attorney shall promptly notify the Tribal Gaming Agency of such decision in writing. The Tribal Gaming Agency may in that event ask the attorney general of the State to pursue the matter.

E. The district attorney for a district in which the Tribe conducts Class III Gaming may decline to accept referrals of cases under the provisions of this Section unless and until the Tribe has entered into a memorandum of understanding with the office of the district attorney, to which memorandum of understanding the United States Attorney for the District of New Mexico may also be a party. The memorandum of understanding may address such matters as the specific procedures by which cases are to be referred, participation of the Tribal Gaming Agency and tribal law enforcement personnel in the investigation and prosecution of any such case, and related matters.

SECTION 11. Revenue Sharing.

A. Consideration. The Tribe shall pay to the State a portion of its Class III Gaming revenues identified in and under procedures of this Section, in return for which the State agrees that the Tribe has the exclusive right within the State to conduct all types of Class III Gaming described in this Compact, with the sole exception of the use of Gaming Machines, which the State may permit on a limited basis for racetracks and for veterans' and fraternal organizations as such organizations are described in NMSA 1978, § 60-2E-3(GG), as amended through 2014. The Tribe agrees to pay this portion of its revenue in acknowledgment of the fact that the State is forgoing significant revenue that it would otherwise receive from non-tribal gaming enterprises. The Tribe acknowledges that it has received meaningful concessions and significant benefits for the limitations set forth in Section 11(D).

B. Revenue to State. The parties agree that, after the Effective Date hereof or after July 1, 2015, whichever is later, the Tribe shall make the quarterly payments provided for in Paragraph C of this Section. For a Non-Operational Tribe, quarterly payments shall be due at the next quarter following the Tribe's first day of operation of the Gaming Facility. Each payment shall be made to the State Treasurer for deposit into the General Fund of the State.

C. Calculation of Payment Amounts.

1. “Adjusted Net Win” means the combined Net Win from all Class III Gaming Machines in the Gaming Facilities on the Tribe’s Indian Lands, with the following adjustments:

(a) Subtract the amount paid to the State by the Tribe under the provisions of Section 4(E)(6) of this Compact;

(b) Subtract the sum of four hundred sixteen thousand dollars (\$416,000) per year as the amount representing tribal regulatory costs, which amount shall increase by five percent (5%) as of July 1 of 2017, and as of July 1 of every fifth year thereafter as long as this Compact remains in effect; and

(c) Account for the amounts paid for wide-area progressive Class III Gaming Machines as set forth in the attached Appendix.

2. The Tribe shall pay the State a percentage of its Adjusted Net Win, determined in accordance with this chart:

Annual Adjusted Net Win	July 1, 2015 – June 30, 2018	July 1, 2018 – June 30, 2030	July 1, 2030 – June 30, 2037
Under \$20 million:	2% of the first \$6 million, and 8.50% on the rest	2% of the first \$6 million, and 8.75% on the rest	2% of the first \$6 million, and 9.50% on the rest
\$20-\$40 million:	8.50%	8.75%	9.50%
\$40-\$80 million:	9.00%	9.50%	10.25%
More than \$80 million:	9.00%	10.00%	10.75%

3. Payments due pursuant to Section 11(C) shall be paid quarterly, no later than twenty-five (25) days after the last day of each calendar quarter, and shall be based upon the Adjusted Net Win during the preceding quarter; provided, however, that for any Tribe for whom this Compact becomes effective prior to July 1, 2015, the applicable revenue sharing rate from any Predecessor Agreement shall apply until the quarter beginning on July 1, 2015. The Tribe shall ascertain the applicable revenue sharing percentage in Section 11(C)(2) above and shall base its quarterly payments on the following factors: (1) the prior year’s total Adjusted Net Win amount and the applicable revenue sharing percentage; and (2) its best good faith estimate of its annual Adjusted Net Win for the July 1 – June 30 period. In the event its total Adjusted Net Win for any such period varies from such estimate, such that the amount due the State for the first three quarters as set forth in Section 11(C)(2), above, is different from the amount paid, the payment due for the fourth quarter shall include any additional amounts due for the first three quarters, or shall reflect a credit for any overpayment. Any payment or any portion thereof that is not made within ten (10) days of the due date shall accrue interest at the rate of ten percent (10%) per annum, from the original due date until paid. The Tribe shall accompany any payment to the State with a detailed breakdown of the particular obligation to which such payment applies, and the basis for the calculation of such payment on a form provided by the State Gaming Representative, and shall provide a copy of such documentation to the State Gaming Representative.

D. Limitations.

1. The Tribe's obligation to make the payments provided for in Paragraphs B and C of this Section shall apply and continue only so long as this Compact remains in effect; and provided that that obligation shall terminate altogether in the event the State:

(a) 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;

(b) licenses, permits or otherwise allows any person or entity other than six licensed horse racetracks and veterans and fraternal organizations as described in NMSA 1978, § 60-2E-3(GG) to operate Gaming Machines;

(c) permits any licensed horse racetrack to operate a larger number of Gaming Machines, or to operate any Gaming Machines for longer hours, than is set forth in Subsection (D)(2)(e), below, or to operate any Gaming Machines outside of its licensed premises, or to operate any Table Game; or

(d) licenses, permits or otherwise allows any non-Indian person or entity to engage in any other form of Class III gaming other than a state-sponsored lottery, pari-mutuel betting on horse racing and bicycle racing, operation of Gaming Machines, and limited fundraising by non-profit organizations, as set forth in Subsection (D)(2), below.

2. The parties agree that the State's allowance of the following forms of Class III Gaming, subject to the limitations expressly set forth herein, shall not be considered an expansion of non-tribal Class III gaming for purposes of this agreement, and shall have no effect on the Tribe's obligation to make the payments provided for in Paragraphs B and C of this Section:

(a) the operation of a State lottery;

(b) the operation of Gaming Machines by any fraternal or veterans organization as described in NMSA 1978, § 60-2E-3(GG), but only for the benefit of such organization's members;

(c) limited fundraising activities conducted by nonprofit tax-exempt organizations;

(d) the conduct by licensed horse racetracks and bicycle tracks of pari-mutuel betting on races at such tracks, and on simulcast races at other tracks elsewhere in the country; and

(e) the operation by a licensed horse racetrack of Gaming Machines on days on which live or simulcast horse racing occurs, provided that such operation is limited to no more than eighteen (18) hours in any one day, and to no more than a total of one hundred twelve (112) hours in any calendar week, and provided further that no licensed horse racetrack shall

have more than six hundred (600) licensed Gaming Machines, nor be authorized to operate more than seven hundred and fifty (750) Gaming Machines.

3. The limitations set forth in this Section shall not prohibit a horse racetrack from relocating, selling, transferring or assigning its operations in accordance with applicable procedures and authorizations set forth in New Mexico law.

4. Prior to granting the approval of an application for a racing license for a horse racetrack other than the five horse racetracks holding such licenses as of January 1, 2015, or the approval of an application by a licensed horse racetrack to move its racing and gaming facilities to a new location after January 1, 2015, the State Racing Commission shall adopt, put into effect, and shall have substantially complied with regulations requiring the Commission to solicit and consider the Tribe's views on the application.

E. Third-Party Beneficiaries. The provisions of this Section are not intended to create any third-party beneficiaries and are entered into solely for the benefit of the Tribe and the State.

SECTION 12. Duration; Termination for Non-Payment.

A. This Compact shall have a term commencing on the date on which it goes into full force and effect as provided in Section 9, and ending at midnight on June 30, 2037.

B. Notwithstanding the provisions of Paragraph A of this Section, if the Tribe fails to comply with any of its payment obligations to the State under Sections 4(E)(6), 9(B) or 11 of this Compact, and persists in such failure for a period of thirty (30) days after receipt, by certified mail, of a "Notice of Noncompliance and Termination for Non-Payment" sent by the State Gaming Representative to the Tribal Gaming Agency, which Notice shall specify the amount due and the provision of the Compact under which such payment is required, this Compact, and the conduct of all Class III Gaming by the Tribe hereunder, shall terminate automatically as of the end of the thirty (30)-day period, unless within such thirty (30)-day period the Tribe shall have either cured the non-payment to the satisfaction of the State Gaming Representative or invoked arbitration on a matter of fact as provided in Section 7(A)(2) of this Compact, and simultaneously shall have placed into escrow, in an institution that is unaffiliated with either the Tribe or the State, a sum of money equal to the amount claimed due by the State, with instructions to the escrow agent specifying that such sum shall not be released except by direction of the arbitrator or arbitration panel or pursuant to a settlement agreement of the parties. The Tribe shall give written notice to the State of the deposit of the amount in dispute into escrow, and of the escrow instructions. At the conclusion of the arbitration proceeding, or, in the event the parties reach a settlement, immediately after execution of the settlement agreement, the escrow agent shall disburse the sum deposited by the Tribe in accordance with the settlement agreement or arbitration award, as applicable. In the event the Tribe invokes arbitration, this Compact and the Tribe's right to conduct Class III gaming shall terminate automatically at the end of the thirtieth (30th) day after the entry of a final, non-appealable decision by the arbitrators or by a court having jurisdiction of the dispute, unless the full amount determined by the arbitrators or by such court to be due the State, if any, has been paid by such date. The Tribe