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FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/19

SPONSOR Cook LAST UPDATED 3/10/19 HB 650/aHTRC

SHORT TITLE Lower Gaming Tax On Certain Licenses SB _____

ANALYST Graeser

REVENUE (dollars in thousands)

| Estimated Revenue | | | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|-------------|-------------|-------------|-------------|---------------------------------|------------------|
| FY19 | FY20 | FY21 | FY22 | FY23 | | |
| | (\$1,500.0) | (\$1,500.0) | (\$1,500.0) | (\$1,500.0) | Recurring | General Fund |

Parenthesis () indicate revenue decreases

* Note: rate reduction is effective for four fiscal years FFY 20 – FY24 and the rate reverts to the full 26 percent.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Gaming Control Board (GCB) on original bill

SUMMARY

Synopsis of HTRC amendment

House Taxation and Revenue Committee amendment to House Bill 650 renames the temporary gaming tax reduction as the “Capital Improvements Gaming Tax Credit”, sets a number of restrictions and requirements, sets a limit of \$1.5 million in credit each year, extends the life of the temporary credit for one more year, for a total of five fiscal years. The Taxation and Revenue Department will administer this tax credit pursuant to the provisions of the Tax Administration Act.

The effective date of the provisions of the bill is July 1, 2019. The rate reduction for smaller racinos would apply from July 1, 2019 through June 30, 2024.

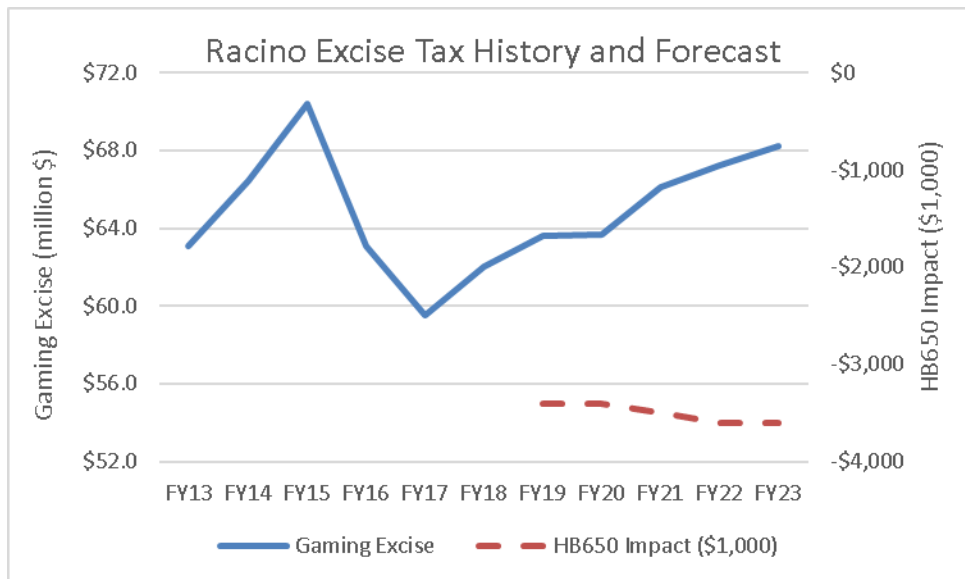
Synopsis of Original Bill

Provided by GCB:

House Bill 650 changes the way that gaming taxes are calculated for racetrack gaming operators that have a net take of twenty million dollars or less based on the previous calendar year. For those racetrack gaming operators, it lowers the percentage they are required to pay from 26 percent of net take to 10 percent of net take, establishing the same rate for the lower revenue racetrack gaming operators as is currently paid by the veteran, fraternal and non-profit organizations.

~~There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends (June 14, 2019). The rate reduction for smaller racinos would apply from July 1, 2019 through June 30, 2023.~~

FISCAL IMPLICATIONS



(Analysis provided by GCB)

Using recent history as reference, at least two racetrack gaming operators would meet the criteria for a lowered percentage calculation and associated payments to the state of New Mexico, resulting in an estimated reduction of approximately \$3,413,651 annually to the general fund for those years in which the changes would apply, for a total fiscal impact over the applicable duration of the legislation of approximately \$13.5 million. LFC used the GCB base estimate for FY20 impact and grew the general fund cost in the same ratio that was derived for the December 2018 Consensus Revenue Estimate.

In addition, GCB is concerned with administrative costs.

“... changes to factors that establish calculations would require the Gaming Control Board (GCB), through its contractor, to reprogram the Central Monitoring System (CMS), which is linked to each individual gaming machine and determines the amount owed to the state on a daily basis, given current statutory requirements. The monetary cost to the GCB to contract the CMS vendor to make modifications is unknown at this time but it is anticipated the cost to the agency would be significant and would require a special appropriation once a cost estimate could be provided by the CMS vendor.”

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. There does not appear to be a stated justification for this request for tax reduction. In particular, under the LFC tax expenditure guidelines, there is no long-term goal and no measureable annual targets to measure progress toward the goal. There is no claim that racino employment would increase. Without a stated purpose of the tax reduction, it is difficult to determine if the tax reduction is effective.

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

1. **Vetted:** The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted:** The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent:** The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable:** The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective:** The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions “but for” the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

SIGNIFICANT ISSUES

While the level of tax reduction is relatively small compared to the total collections from the racinos, the state also receives revenue from the Indian tribal/pueblo casino operators. In the gaming compacts, the total number of racinos is limited. Currently, the GCB is debating which proposal to accept for the sixth racino allowed in the Indian gaming compacts.

A November 12, 2018 story in the Albuquerque Journal, by MARIE C. BACA / JOURNAL STAFF WRITER discusses the “race-for-the-racino.”¹

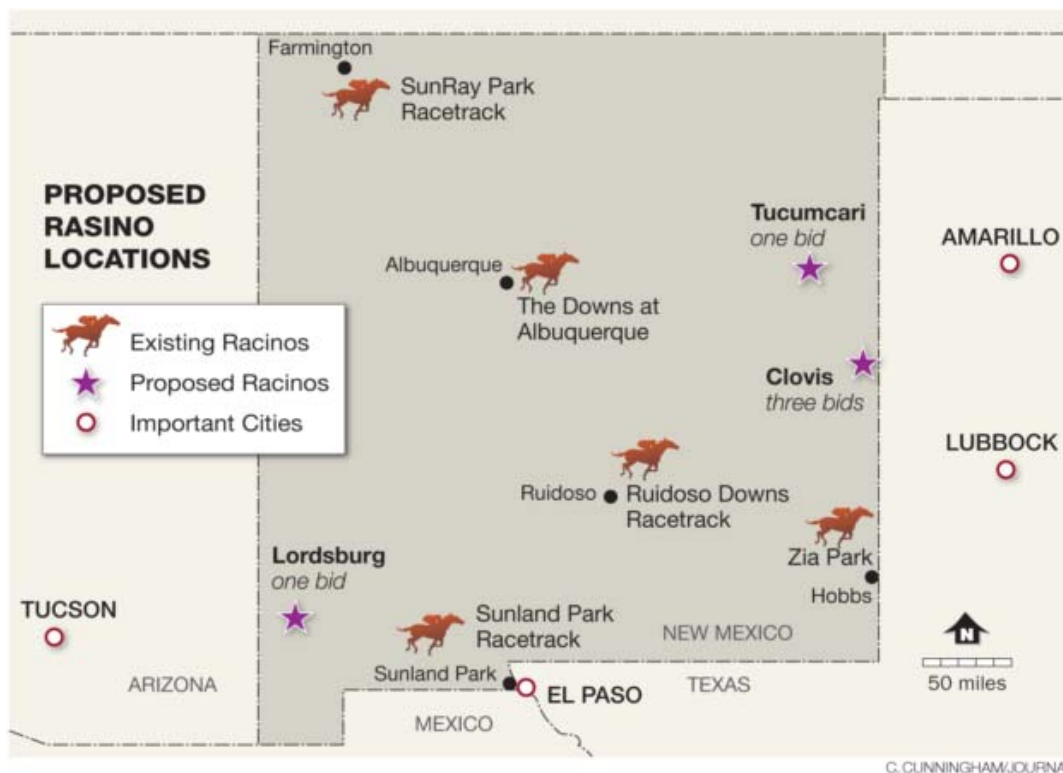
“In recent years, New Mexico racinos have been limited to five locations: The Downs at Albuquerque Racetrack and Casino, Sunland Park Racetrack and Casino, Ruidoso Downs and Billy the Kid Casino, SunRay Park and Casino near Farmington, and Zia Park Casino Hotel and Racetrack in Hobbs. A sixth racino license was awarded to a Canadian developer in 2008 for a facility in Raton, but the project was never completed and the developer lost the license.”

“Now five businesses are vying for that license, the last allowed under the state’s tribal gaming compacts. The stakes are high: racinos are permitted to operate 600 slot machines

¹ <https://www.abqjournal.com/1245352/the-race-for-the-racino.html> A November 18

– up to 750, if they purchase the machines from other casinos and the transaction is approved by the New Mexico Gaming Control Board – which will presumably generate millions of dollars in revenue. A consulting firm retained by two of the bidders estimated that in fiscal year 2017, the state’s 2,927 racino-based slot machines averaged \$212 in revenue per machine per day. With 600 machines, the revenue from slots alone would be \$46.4 million per year under those projections.”

“It’s no secret that the slot operations of the racino generate the majority of the revenue, not only for owners but also for (horse racing) purses and the state,” said Izzy Trejo, executive director of the New Mexico Racing Commission, which oversees the licensing process. “But racing is at the forefront of this decision. We have to bring a certain balance to the industry. We have five tracks in (New Mexico) already, and that’s a lot for one state.”



“Part of that balancing act will include determining which city is most equipped to host a racino. The five bidders have chosen one of three locations: Clovis and Tucumcari, which the proposals predict will be a destination for residents of North Texas, and Lordsburg, in the southwestern part of the state, which aims to capture traffic between El Paso and Tucson.”

LFC staff are somewhat concerned that if GCB licenses the sixth racino and this bill is enacted, the Indian Gaming interests might assert that the letter and spirit of the Indian gaming compacts have been abrogated. In FY 18, Indian gaming revenue sharing contributed \$68,091,935.28 to the state general fund.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose. This is particularly an issue since the bill does not explain the purpose of the four-year rate reduction.

ADMINISTRATIVE IMPLICATIONS

(See above in fiscal implications... The GCB asserts that “the CMS is programmed based on the current statutory requirements and calculates the gaming taxes daily by each gaming machine, while changes proposed in HB 650 would require modifications to the CMS, which would result in unanticipated and unbudgeted expenses to the GCB.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates Senate Bill 579

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

All racetrack gaming operators would continue to pay a consistent rate gaming tax of 26 percent of net take to the state of New Mexico.

LG/sb/gb