

LFC Requester:	Peter VanMoorsel
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**AGENCY BILL ANALYSIS
2014 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date 2/6/2014

Bill No: HB307-305 Feb 10

Sponsor: Rep. Benny Shendo
 Rep. Patricia Roybal Caballero

Reviewing Attorney General's Office

Short Title: Gaming Compact Revenue
 Sharing Cap

Person Writing Abby Lewis and Chris Coppin

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SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

This Bill proposes to cap the revenue Tribes are required to share with the State as consideration for the Tribes’ exclusive right to have Class III gaming enterprises within the state of New Mexico (with the exception of Gaming Machines in certain locations). *See* Tribal-State Class III Gaming Compact § 11 (2001 and 2007). The proposed cap is that of corporate income tax rates under NMSA 1978, Section 7-2A-5 (2014).

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

None for this agency.

However, the fiscal implications for tribes are significant. In the aggregate, tribes subject to Gaming Compacts paid a total of \$68,304,866.00 in revenue sharing of their net win during 2012. *See* <http://www.nmgcb.org/tribal/revsharing.html> *last accessed* 2/5/2014. This amounts to about 9% of the tribes’ aggregate net win. However, under this Bill tribes would only pay, at most, 7.3% during the years of 2015 and 2016 (tax rates drop in subsequent years). Section 7-2A-5. The difference in 2012 would have been close to \$13,000,000.00.

SIGNIFICANT LEGAL ISSUES

The revenue sharing amount is intended to be a bargain between the state and tribe in exchange for a type of gaming exclusivity for the tribes. The tribes are allowed unlimited gaming machines and table games. Non-Indian gaming interests can have a limited number of slot machines and no table games. In addition, the commercial non-Indian gaming interests must run a horse racetrack. The Indian Gaming Regulatory Act prohibits the imposition of any “tax, fee, charge or other assessment on a Tribe engaged in Class III gaming Indian gaming. Act of 1988” (IGRA) 25 U.S.C § 2710(d)(4). This Bill appears to tie a revenue sharing maximum to state tax rates and to that extent uncouple it from the State-Tribal negotiation/bargaining process; as a result it creates at least the facial appearance of making revenue sharing seem more like a tax, which may make it more subject to a legal challenge under IGRA.

This Bill may be a legislative effort to circumvent the pending litigation between the Pueblo of Pojoaque and Governor Martinez over the re-negotiation of the 2001 Tribal-State Class III

Gaming Compact. Governor Rivera of Pojoaque has said publically that at issue in this lawsuit is, in part, that the Martinez administration “seeks an agreement that would...impose and increase taxes, fees, charges and other assessments.”

See

<http://www.abqjournal.com/321787/abqnewsseeker/pojoaque-pueblo-sues-state-over-gambling-compact.html>.

However, because the suit is already pending this Bill would not affect the right or remedy of either party. *See* NM Const. Art. IV Section 34 (stating that “No act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case.”).

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

Related to Senate Bill 22.

TECHNICAL ISSUES OR DRAFTING ERROR

OTHER SUBSTANTIVE LEGAL ISSUES

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The outcome of the negotiations between the tribes and the State will dictate the terms of revenue sharing.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

Specify a maximum acceptable percentage of revenue sharing based on a tribal casino's net win, depending upon the type and amount of Indian gaming allowed in comparison to limitations placed on non-Indian gaming operations permitted in the State.