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FISCAL IMPACT REPORT

SPONSOR HCPAC **ORIGINAL DATE** 02/04/14
LAST UPDATED 02/14/14 **HB** 293/HCPACS

SHORT TITLE Racing Commission Hearing Procedure **SB** _____

ANALYST Martinez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		
	Unknown			

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Response received from:

State Racing Commission (SRC)

SUMMARY

Synopsis of Bill

The House Consumer and Public Affairs Committee substitute for House Bill 293 creates the horse racing appeal fund to be administered by the State Racing Commission (SRC). Money in the fund is generated by fees from the legal appeal of racing participants and used by the commission for the contracting of a disinterested hearing officer, who shall be an attorney licensed in this state, to make preliminary rulings, set conditions pending adjudicatory hearing, conduct adjudicatory hearings, make findings of fact and conclusions of law and render final administrative decisions on the commission's behalf regarding decisions or actions of the stewards involving the suspension or revocation of a license for the use of a class 1 or class 2 penalty class A drug.

The bill provides that beginning on July 1, 2014, a licensee receiving a citation for the use of a class 1 or class 2 penalty class A drug wishing to appeal must appeal in writing within ten days of the citation requesting an adjudicatory hearing before a hearing officer and pay a fee of five hundred dollars to cover the cost of a hearing officer. The horse racing appeal fund is created as a nonreverting fund in the state treasury.

Section 1: Adds clarifying language: The commission may grant or deny, ~~suspend or revoke~~ and shall take action when required pursuant to the Horse Racing Act to suspend, revoke or not renew occupational licenses.

Adds language providing the SRC may appoint a hearing officer to conduct hearings required by the Horse Racing Act except for hearings from a violation involving the use of a class 1 or class 2 penalty class A drug at which time the SRC must hire a hearing officer to administer the process.

Adds clarifying language providing the level of expectations pertaining to the contracted hearing officer and the SRC staff.

Section 2: Adds language providing the SRC the ability to impose an appropriate civil penalty fine pursuant to Subsection D (not to exceed one hundred thousand dollars or one hundred percent of a purse related to the violation, whichever is greater).

Adds language providing that a decision by a steward or a hearing officer shall not relieve the licensee from prosecution for the violations or from payment of fines and penalties.

Section 3: Adds language that provides stewards the authority to issue citations for violations of the Horse Racing Act and suspend and revoke a license.

Adds extensive language to provide more detail regarding the appeals process, the level of rights the party aggrieved has and the newly associated fees and refund policy.

Additional language also specifies the logistics of where the hearing shall be held.

Adds appeal language stating that any party aggrieved by the hearing officer's final decision can appeal to the district court in the county where the hearing was held.

Section 4: New material creating the Horse Racing Appeal fund, stipulating the commission shall administer the fund, and money in the fund is appropriated to the commission to help defray the costs of adjudicatory hearings and compensation for hearing officers and to reimburse hearing fees pursuant to the Horse Racing Act.

Section 5: Creates an effective date of the provisions of July, 1, 2014.

FISCAL IMPLICATIONS

The amount of revenue that may be generated was undeterminable as the State Racing Commission states it is indeterminate at this time.

SIGNIFICANT ISSUES

The State Racing Commission writes:

This rewrite gives the Commission discretion to contract with a hearing officer for all violations except for violations involving class 1 and 2 penalty class A drugs. For those drugs, the Commission must hire a hearing officer. It creates a statutory appeal from decisions of the

stewards to the hearing officer. It takes out of the Commission's hands, the review of Class 1 and 2 drug violations and puts that directly to a hearing officer.

The bill continues to require the hearing to be held in the county where the conduct leading to the action occurred or at the location of a currently running race meet. The bill purposes an appeal fee of five hundred dollars (\$500) to cover the reasonable cost of the appeal and compensation for the hearing officer. Yet, the commission cannot determine the direct costs for staff, travel, court reporters, and witnesses. Currently all hearings are held in Albuquerque

Another concern is that it makes the decision of the hearing officer the final administrative decision. It requires the Commission to adopt the recommended decision of the hearing officer. First, there is no requirement that the hearing officer be familiar with horse racing. Requiring the Commission to adopt the hearing officer's recommendation removes consideration of the special skills of the Commission from the decision.

Additionally, the bill provides for the refund of the fee if the licensee prevails. This causes a financial/budget concern because the fee is intended to help pay for the costs of a hearing. If the fee is refunded to the licensee, the Commission must pay for the costs of the proceedings.

This bill also creates a new appeal. Currently, there is no statutory basis for appeal from the administrative decisions of the Commission. Appeals from Commission decisions are to district court through a petition for writ of certiorari. There is a good possibility that if the statute provides for an appeal, there will be even more appeals taken to district court and more appeals delayed waiting disposition. The backlog of pending cases, which this bill attempts to address, is not the result of a slow hearing process; it's due to cases sitting in district court after the hearing takes place.

RM/svb