

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 406

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO HORSE RACING; RENAMING THE RACEHORSE TESTING FUND
THE RACEHORSE TESTING AND ENFORCEMENT FUND AND PROVIDING
ADDITIONAL PURPOSES OF THE FUND; REQUIRING PAYMENT OF A PORTION
OF CERTAIN RACETRACKS' NET TAKE FOR DEPOSIT IN THE RACEHORSE
TESTING AND ENFORCEMENT FUND; CREATING CONDITIONS FOR PAYMENT;
PROVIDING FOR REFUNDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 60-1A-14.1 NMSA 1978 (being Laws 2013,
Chapter 102, Section 1) is amended to read:

"60-1A-14.1. RACEHORSE TESTING AND ENFORCEMENT FUND--
CREATED--PURPOSE.--

A. The "racehorse testing and enforcement fund" is
created in the state treasury. The purpose of the fund is to:

(1) ensure the testing of racehorses at a

.200869.1

underscored material = new
[bracketed material] = delete

1 laboratory that meets or exceeds the current national
2 laboratory standards for the testing of drugs or other foreign
3 substances not naturally occurring in a horse, as established
4 by the association of racing commissioners international,
5 incorporated; and

6 (2) provide additional resources to the
7 commission to enforce the requirements and prohibitions of the
8 Horse Racing Act and commission rules.

9 B. The fund consists of:

10 (1) one-half of the daily capital outlay tax
11 appropriated and transferred pursuant to Paragraph (4) of
12 Subsection A of Section 60-1A-20 NMSA 1978;

13 (2) a percentage of the net take of a gaming
14 operator licensee that is a racetrack paid and deposited into a
15 subaccount of the fund pursuant to Paragraph (2) of Subsection
16 E of Section 60-2E-47 NMSA 1978; and

17 (3) appropriations, gifts, grants and
18 donations made to the fund.

19 C. Income from investment of the fund shall be
20 credited to the fund.

21 D. The commission shall administer the racehorse
22 testing and enforcement fund, and money in the fund is
23 appropriated to the commission:

24 (1) for the handling and testing of blood
25 serum plasma, urine or other appropriate test samples taken

1 from racehorses pursuant to Section 60-1A-14 NMSA 1978;
 2 (2) to offset enforcement costs; and
 3 (3) to make refunds pursuant to Paragraph (2)
 4 of Subsection F of Section 60-2E-47 NMSA 1978.

5 E. Any unexpended or unencumbered balance remaining
 6 in the racehorse testing and enforcement fund at the end of a
 7 fiscal year in excess of six hundred thousand dollars
 8 (\$600,000), not counting any unexpended or unencumbered balance
 9 in the subaccount described in Paragraph (2) of Subsection E of
 10 Section 60-2E-47 NMSA 1978, shall revert to the general fund.

11 F. Expenditures from the fund shall be made on
 12 warrant of the secretary of finance and administration pursuant
 13 to vouchers signed by the executive director of the
 14 commission."

15 **SECTION 2.** Section 60-1A-20 NMSA 1978 (being Laws 2007,
 16 Chapter 39, Section 20, as amended) is amended to read:

17 "60-1A-20. DAILY CAPITAL OUTLAY TAX--CAPITAL OUTLAY
 18 OFFSET--STATE FAIR COMMISSION DISTRIBUTION--DAILY LICENSE
 19 FEES.--

20 A. A "daily capital outlay tax" of two and three-
 21 sixteenths percent is imposed on the gross amount wagered each
 22 day at a racetrack where horse racing is conducted on the
 23 premises of a racetrack licensee and also on the gross amount
 24 wagered each day when a racetrack licensee is engaged in
 25 simulcasting pursuant to the Horse Racing Act. After deducting

.200869.1

1 the amount of offset allowed pursuant to this section, any
2 remaining daily capital outlay tax shall be paid by the
3 commission to the taxation and revenue department from the
4 retainage of a racetrack licensee from on-site wagers made on
5 the licensed premises of the racetrack licensee for deposit in
6 the general fund. Of the daily capital outlay tax imposed
7 pursuant to this subsection:

8 (1) for a class A racetrack licensee, not more
9 than one-half of the daily capital outlay tax imposed on the
10 first two hundred fifty thousand dollars (\$250,000) of the
11 daily handle may be offset by the amount that the class A
12 racetrack licensee expends for capital improvements or for
13 long-term financing of capital improvements at the racetrack
14 licensee's existing facility;

15 (2) for a class B racetrack licensee, not more
16 than one-half of the daily capital outlay tax imposed on the
17 first two hundred fifty thousand dollars (\$250,000) of the
18 daily handle may be offset:

19 (a) in an amount not to exceed one-half
20 of the offset allowed, the amount expended by the class B
21 racetrack licensee for capital improvements; and

22 (b) in an amount not to exceed one-half
23 of the offset allowed, the amount expended by the class B
24 racetrack licensee for advertising, marketing and promoting
25 horse racing in the state;

.200869.1

1 (3) through December 31, 2014, for both class
2 A and class B racetrack licensees, an amount equal to one-half
3 of the daily capital outlay tax is appropriated and transferred
4 to the state fair commission for expenditure on capital
5 improvements at the state fairgrounds and for expenditure on
6 debt service on negotiable bonds issued for the state
7 fairgrounds' capital improvements; and

8 (4) on and after January 1, 2015, for both
9 class A and class B racetrack licensees, an amount equal to
10 one-half of the daily capital outlay tax is appropriated and
11 transferred to the racehorse testing and enforcement fund.

12 B. An additional daily license fee of five hundred
13 dollars (\$500) shall be paid to the commission by the racetrack
14 licensee for each day of live racing on the premises of the
15 racetrack licensee.

16 C. Accurate records shall be kept by the racetrack
17 licensee to show gross amounts wagered, retainage, breakage and
18 amounts received from interstate common pools and distributions
19 from gross amounts wagered, retainage, breakage and amounts
20 received from interstate common pools, as well as other
21 information the commission may require. Records shall be open
22 to inspection and shall be audited by the commission, its
23 authorized representatives or an independent auditor selected
24 by the commission. The commission may prescribe the method in
25 which records shall be maintained. A racetrack licensee shall

.200869.1

1 keep records that are accurate, legible and easy to understand.

2 D. Notwithstanding any other provision of law,
3 a political subdivision of the state shall not impose an
4 occupational tax on a horse racetrack owned or operated by a
5 racetrack licensee. A political subdivision of the state shall
6 not impose an excise tax on a horse racetrack owned or operated
7 by a racetrack licensee. Local option gross receipts taxes
8 authorized by the state may be imposed to the extent authorized
9 and imposed by a subdivision of the state on a horse racetrack
10 owned or operated by a racetrack licensee."

11 SECTION 3. Section 60-2E-47 NMSA 1978 (being Laws 1997,
12 Chapter 190, Section 49, as amended) is amended to read:

13 "60-2E-47. GAMING TAX--IMPOSITION--ADMINISTRATION.--

14 A. An excise tax is imposed on the privilege of
15 engaging in gaming activities in the state. This tax shall be
16 known as the "gaming tax".

17 B. The gaming tax is an amount equal to ten percent
18 of the gross receipts of manufacturer licensees from the sale,
19 lease or other transfer of gaming devices in or into the state,
20 except receipts of a manufacturer from the sale, lease or other
21 transfer to a licensed distributor for subsequent sale or lease
22 may be excluded from gross receipts; ten percent of the gross
23 receipts of distributor licensees from the sale, lease or other
24 transfer of gaming devices in or into the state; ten percent of
25 the net take of a gaming operator licensee that is a nonprofit

.200869.1

1 organization; and twenty-six percent of the net take of every
 2 other gaming operator licensee. For the purposes of this
 3 section, "gross receipts" means the total amount of money or
 4 the value of other consideration received from selling, leasing
 5 or otherwise transferring gaming devices.

6 C. The gaming tax imposed on a licensee is in lieu
 7 of all state and local gross receipts taxes on that portion of
 8 the licensee's gross receipts attributable to gaming
 9 activities.

10 D. The gaming tax is to be paid on or before the
 11 fifteenth day of the month following the month in which the
 12 taxable event occurs. The gaming tax shall be administered and
 13 collected by the taxation and revenue department in cooperation
 14 with the board. The provisions of the Tax Administration Act
 15 apply to the collection and administration of the tax.

16 E. Subject to the provisions of Subsection F of
 17 this section, in addition to the gaming tax, a gaming operator
 18 licensee that is a racetrack shall:

19 (1) pay ~~twenty~~ nineteen and nine-tenths
 20 percent of its net take to purses to be distributed in
 21 accordance with rules adopted by the state racing commission.
 22 An amount not to exceed twenty percent of the interest earned
 23 on the balance of any fund consisting of money for purses
 24 distributed by racetrack gaming operator licensees pursuant to
 25 this ~~subsection~~ paragraph may be expended for the costs of

.200869.1

1 administering the distributions; and

2 (2) pay one-tenth percent of its net take to
3 the state racing commission for deposit in a subaccount of the
4 racehorse testing and enforcement fund.

5 F. If:

6 (1) as of June 30, 2017, there is an
7 unexpended or unencumbered balance in the subaccount described
8 in Paragraph (2) of Subsection E of this section, then, except
9 as provided in Paragraph (2) of this subsection, beginning July
10 1, 2017, the payment described in Paragraph (1) of Subsection E
11 of this section shall be increased to nineteen and ninety-five
12 hundredths percent and the payment in Paragraph (2) of
13 Subsection E of this section shall be reduced to five-
14 hundredths percent; and

15 (2) as of June 30, 2019, there is an
16 unexpended or unencumbered balance in the subaccount described
17 in Paragraph (2) of Subsection E of this section, then
18 beginning July 1, 2019, the payment described in Paragraph (1)
19 of Subsection E of this section shall be increased to twenty
20 percent, no further payment shall be made as otherwise required
21 in Paragraph (2) of Subsection E of this section and the
22 unexpended or unencumbered balance shall be refunded by the
23 state racing commission to each racetrack in the same
24 proportion as its payments of net take were to the total amount
25 of net take paid to the state racing commission during fiscal

.200869.1

1 years 2018 and 2019.

2 G. A racetrack gaming operator licensee shall spend
3 no less than one-fourth percent of the net take of its gaming
4 machines to fund or support programs for the treatment and
5 assistance of compulsive gamblers.

6 ~~[F.]~~ H. A nonprofit gaming operator licensee shall
7 distribute at least sixty percent of the balance of its net
8 take, after payment of the gaming tax and any income taxes,
9 for charitable or educational purposes."

10 **SECTION 4. TEMPORARY PROVISION--FUND NAME CHANGE.--**The
11 racehorse testing and enforcement fund is the new name for the
12 racehorse testing fund and is not a new fund created by this
13 act.

14 **SECTION 5. EFFECTIVE DATE.--**The effective date of the
15 provisions of this act is July 1, 2015.

underscored material = new
[bracketed material] = delete