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HOUSE BILL 911

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Joni Marie Gutierrez

AN ACT

RELATING TO STATE REVENUE; PROVIDING THAT CERTAIN TAX REVENUES PAID BY CERTAIN RACETRACKS AND GAMING TAX REVENUES PAID BY CERTAIN GAMING OPERATOR LICENSEES THAT ARE RACETRACKS BE USED FOR GRADUATE STUDENT SCHOLARSHIPS; CREATING THE GRADUATE STUDENT SCHOLARSHIP FUND; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] GRADUATE STUDENT SCHOLARSHIP FUND--CREATED--SCHOLARSHIP PROGRAM.--

A. The "graduate student scholarship fund" is created in the state treasury. The fund shall be administered by the commission on higher education. Earnings from investment of the fund shall accrue to the credit of the fund and unexpended and unencumbered balances in the fund shall not revert to any other fund.

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1           B. Money in the graduate student scholarship fund  
2 is appropriated to the commission on higher education for  
3 distribution to New Mexico's public post-secondary educational  
4 institutions with graduate schools for the purpose of providing  
5 scholarships to New Mexico residents pursuing advanced degrees  
6 at those schools.

7           C. The commission on higher education shall develop  
8 guidelines, procedures and qualifications for the application  
9 and award of the scholarships provided for in this section.

10           Section 2. A new section of the Tax Administration Act is  
11 enacted to read:

12           "[NEW MATERIAL] DISTRIBUTION--GRADUATE STUDENT SCHOLARSHIP  
13 FUND--CERTAIN GAMING TAX RECEIPTS.--A distribution pursuant to  
14 Section 7-1-6.1 NMSA 1978 shall be made to the graduate student  
15 scholarship fund in the amount of one-third of the net receipts  
16 attributable to the gaming tax paid by those gaming operator  
17 licensees that are racetracks and located in a class B county  
18 with a population, as shown by the most recent federal  
19 decennial census, of greater than fifty thousand and less than  
20 eighty thousand and with a net taxable value for property tax  
21 purposes of greater than one billion dollars (\$1,000,000,000)."

22           Section 3. Section 60-1-8 NMSA 1978 (being Laws 1933,  
23 Chapter 55, Section 4, as amended by Laws 1991, Chapter 7,  
24 Section 2 and by Laws 1991, Chapter 195, Section 1) is amended  
25 to read:

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1 "60-1-8. TIME FOR FILING APPLICATION--AMOUNT OF DAILY  
2 TAX.--

3 A. Application shall be filed not less than sixty  
4 days prior to the first day the proposed races or meetings are  
5 to be held, and at the time pari-mutuel wagering is conducted,  
6 the applicant shall pay to the state racing commission the  
7 daily tax provided by this section.

8 B. The daily tax to be paid whenever the licensee  
9 offers pari-mutuel wagering on live on-track races shall be:

10 (1) for a class A license, six hundred fifty  
11 dollars (\$650) for each racing day authorized by the state  
12 racing commission; and

13 (2) for a class B license, one-eighth [~~of one~~]  
14 percent of a class B licensee's gross daily handle, up to a  
15 maximum of three hundred dollars (\$300), for each racing day  
16 authorized by the state racing commission for class B licenses.

17 C. Except as provided in Section 60-1-27 NMSA 1978,  
18 the daily tax provided in Subsection B of this section shall go  
19 to the credit of the general fund; provided, however, that for  
20 a class A license located in an incorporated municipality with  
21 a population, according to the 1990 federal decennial census,  
22 that is either:

23 (1) less than six thousand persons if located  
24 in a county with a population of more than ten thousand but  
25 less than fifteen thousand persons; or

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1 (2) more than eight thousand but less than ten  
2 thousand persons if located in a county with a population of  
3 more than one hundred thousand but less than one hundred fifty  
4 thousand persons; then one hundred fifty dollars (\$150) of the  
5 daily tax paid by those class A licensees that qualify under  
6 Paragraphs (1) and (2) of this subsection shall be paid to the  
7 municipality in which each licensee is located.

8 D. The daily tax to be paid whenever the licensee  
9 offers no pari-mutuel wagering on live on-track races and  
10 offers solely pari-mutuel wagering on simulcast races pursuant  
11 to Section 60-1-25 NMSA 1978 shall be one-eighth [~~of one~~]  
12 percent of the licensee's gross daily handle, up to a maximum  
13 of three hundred dollars (\$300), for each racing day authorized  
14 by the state racing commission.

15 E. The daily tax for any state fair association  
16 designated by law, which in good faith conducts a public fair  
17 and exhibition of stock and farming products, shall be six  
18 hundred fifty dollars (\$650) per day for each racing day  
19 authorized; provided, however, that where a licensed state fair  
20 association offers no pari-mutuel wagering on live on-track  
21 races and offers solely pari-mutuel wagering on simulcast races  
22 pursuant to Section 60-1-25 NMSA 1978, the daily tax shall be  
23 one-eighth [~~of one~~] percent of the licensee's gross daily  
24 handle, up to a maximum of three hundred dollars (\$300)."

25 Section 4. Section 60-1-10 NMSA 1978 (being Laws 1933,

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1 Chapter 55, Section 6, as amended) is amended to read:

2 "60-1-10. PARI-MUTUEL METHOD LEGALIZED--MAXIMUM  
3 COMMISSIONS--HORSEMEN'S COMMISSION--GAMBLING STATUTES NOT  
4 REPEALED--COMMISSION DISTRIBUTION.--

5 A. Within the enclosure where any horse races are  
6 conducted, either as live on-track horse races or as horse  
7 races simulcast pursuant to Section 60-1-25 NMSA 1978, and  
8 where the licensee has been licensed to use the pari-mutuel  
9 method or system of wagering on races, the pari-mutuel system  
10 is lawful, but only within the enclosure where races are  
11 conducted.

12 B. The sale to patrons present on the grounds of  
13 pari-mutuel tickets or certificates on the races or the use of  
14 the pari-mutuel system shall not be construed to be betting,  
15 gambling or pool selling and is authorized under the conditions  
16 provided by law.

17 C. There shall be for each class A licensee a  
18 commission of nineteen percent of the gross amount wagered on  
19 win, place and show through the pari-mutuel system, of which  
20 eighteen and three-fourths percent shall be retained by a class  
21 A licensee and, except as provided in Section 60-1-27 NMSA  
22 1978, one-fourth [~~of one~~] percent shall be allocated to the  
23 general fund. A commission in an amount determined by the  
24 licensee of not less than eighteen and six-eighths percent and  
25 not greater than twenty-five percent of the gross amount

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1     wagered on win, place and show through the pari-mutuel system  
2     shall be retained by a class B licensee. Each class B licensee  
3     shall advise the state racing commission not less than thirty  
4     days in advance of each horse racing meeting of the percentage  
5     the licensee shall retain as commission. From that commission,  
6     each class A and class B licensee shall allocate five-eighths  
7     [~~of one~~] percent to the New Mexico horse breeders' association  
8     weekly for distribution pursuant to the provisions of  
9     Subsection C of Section 60-1-17 NMSA 1978.

10             D. Except as otherwise provided in this subsection,  
11     a commission shall be retained by the licensee at the election  
12     of each class A licensee of not less than twenty-one percent  
13     and not greater than twenty-five percent of the gross amount  
14     wagered on exotic wagering and at the election of each class B  
15     licensee, and with the approval of the state racing commission,  
16     of not less than twenty-one percent and not greater than thirty  
17     percent of the gross amount wagered on exotic wagering. For  
18     the purpose of this subsection, "exotic wagering" means all  
19     wagering, other than win, place and show, through the pari-  
20     mutuel system. Each licensee shall advise the state racing  
21     commission not less than thirty days in advance of each horse  
22     racing meeting of the amount of the commission of the gross  
23     amount wagered on exotic wagering to be retained by the  
24     licensee. From that commission, the licensee shall allocate  
25     one and three-eighths percent to the New Mexico horse breeders'

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1 association weekly for distribution pursuant to the provisions  
2 of Subsection C of Section 60-1-17 NMSA 1978.

3 E. The odd cents of all redistributions to the  
4 wagerer over the next lowest multiple of ten from the gross  
5 amount wagered through the pari-mutuel system shall be retained  
6 by the licensee, with fifty percent of the total being  
7 allocated to enhance the race purses of established stake races  
8 that include only horses registered as New Mexico bred with the  
9 New Mexico horse breeders' association, to be distributed by  
10 the New Mexico horse breeders' association pursuant to  
11 Paragraph (3) of Subsection C of Section 60-1-17 NMSA 1978  
12 subject to the approval of the state racing commission.

13 F. All money resulting from the failure of patrons  
14 who purchased winning pari-mutuel tickets during the meeting to  
15 redeem their winning tickets before the end of the sixty-day  
16 period immediately succeeding the closing day of the meeting  
17 and all money resulting from the failure of patrons who  
18 purchased pari-mutuel tickets that were entitled to refund but  
19 were not refunded during the same sixty-day period shall be  
20 apportioned as follows:

21 (1) thirty-three and thirty-three hundredths  
22 percent shall be retained by the licensee;

23 (2) thirty-three and thirty-four hundredths  
24 percent shall be distributed to the New Mexico horse breeders'  
25 association to enhance each track's established overnight

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1 purses for races that include only horses registered as New  
2 Mexico bred with the New Mexico horse breeders' association  
3 pursuant to Paragraph (3) of Subsection C of Section 60-1-17  
4 NMSA 1978, subject to the approval of the state racing  
5 commission; and

6 (3) thirty-three and thirty-three hundredths  
7 percent shall be allocated to [~~horseman's~~] horsemen's race  
8 purses.

9 G. To promote and improve the quality of horse  
10 racing and simulcasting and the participation of interested  
11 persons in horse racing in New Mexico, one-half [~~of one~~]  
12 percent of the gross amount wagered on simulcast horse races at  
13 each licensed racetrack in New Mexico that receives simulcast  
14 horse races shall be allocated by each licensee for  
15 distribution to the New Mexico horsemen's association; provided  
16 that at least [~~one-quarter of one~~] one-fourth percent of the  
17 gross amount wagered on simulcast races that is so allocated is  
18 used solely for medical benefits for the members of the New  
19 Mexico horsemen's association, and provided further that the  
20 remaining [~~one-quarter of one~~] one-fourth percent of the gross  
21 amount wagered on simulcast races that is so allocated shall be  
22 used to enhance purses at each such licensed racetrack. The  
23 state racing commission shall by regulation provide for the  
24 timing and manner of the distribution required by this  
25 subsection and shall audit, or arrange for an independent audit

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1 of, the disbursement required by this subsection.

2 H. Fifty percent of the net retainage of each  
3 licensee shall be allocated to race purses. For purposes of  
4 this section, "net retainage" of the licensee means the  
5 commission retained by the licensee on all forms of wagers  
6 minus:

7 (1) the taxes delineated in Sections 60-1-8  
8 and 60-1-15 NMSA 1978;

9 (2) money allocated to the New Mexico horse  
10 breeders' association by this section and Section 60-1-17 NMSA  
11 1978;

12 (3) money allocated to the New Mexico  
13 horsemen's association by this section;

14 (4) a deduction for expenses incurred to  
15 engage in intrastate simulcasting pursuant to Section  
16 60-1-25 NMSA 1978, provided that:

17 (a) the deduction for each licensee  
18 shall be a portion of five percent of the gross amount wagered  
19 at all the sites receiving the same simulcast horse races;

20 (b) the deduction portion for each  
21 licensee shall be an amount allocated to the licensee by  
22 agreement voluntarily reached among all the licensees sending  
23 or receiving the same simulcast horse races; and

24 (c) the deduction portion for each  
25 licensee shall be an amount allocated to the licensee by the

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1 state racing commission if all the licensees sending or  
2 receiving the same simulcast horse races fail to reach a  
3 voluntary agreement under Subparagraph (b) of this paragraph;  
4 and

5 (5) a deduction for fees and commissions  
6 incurred to receive interstate simulcasts pursuant to Section  
7 60-1-25 NMSA 1978.

8 I. Existing statutes of this state against horse  
9 racing on Sundays or on bookmaking, pool selling or other  
10 methods of wagering on the racing of horses are not repealed  
11 but are hereby expressly continued in effect, with the  
12 exception that the operation of the pari-mutuel method or  
13 system in connection with the racing of horses, when used as  
14 provided by law, is lawful.

15 J. In the event any money paid or allocated to the  
16 New Mexico horse breeders' association or the New Mexico  
17 Appaloosa racing association pursuant to the Horse Racing Act  
18 cannot be paid to or allocated or administered by such  
19 associations, then the state racing commission, or such other  
20 organization as may be designated, retained or absolutely  
21 controlled by the state racing commission, shall receive all  
22 such money and shall pay, allocate and administer all such  
23 money pursuant to the provisions of Section 60-1-17 NMSA 1978.  
24 If the state racing commission or its controlled designee is  
25 required to pay, allocate or administer money on behalf of the

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1 New Mexico horse breeders' association or the New Mexico  
2 Appaloosa racing association pursuant to this subsection, then  
3 the maximum percentage of funds set forth in Paragraph (3) of  
4 Subsection C of Section 60-1-17 NMSA 1978 shall be paid by the  
5 state racing commission to the New Mexico horse breeders'  
6 association or the New Mexico Appaloosa racing association as a  
7 fee to obtain the certification of the registry of the dam and  
8 stud of the New Mexico bred horse.

9 K. In the event any money paid or allocated to the  
10 New Mexico horsemen's association pursuant to the Horse Racing  
11 Act cannot be paid to or allocated or administered by the  
12 association, then the state racing commission, or such other  
13 organization as may be designated, retained or absolutely  
14 controlled by the state racing commission, shall receive all  
15 such money and shall pay, allocate and administer all such  
16 money to achieve the purposes of the provisions of this  
17 section."

18 Section 5. Section 60-1-15 NMSA 1978 (being Laws 1933,  
19 Chapter 55, Section 9, as amended) is amended to read:

20 "60-1-15. TAX LEVIED--CERTAIN LICENSE FEES AND TAXES  
21 PROHIBITED.--

22 A. In addition to the daily tax provided in Section  
23 60-1-8 NMSA 1978, a tax of two and three-sixteenths percent is  
24 levied on the gross amount wagered each day at each place where  
25 horse racing is conducted by any state fair association

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1 designated by law that in good faith conducts a public fair and  
2 exhibition of stock and farming products or where horse racing  
3 for profit is held. The tax shall be paid from the commissions  
4 of the licensee.

5 B. To encourage the improvement of horse racing  
6 facilities for the benefit of the public, breeders and horse  
7 owners and to increase the revenue to the state from the  
8 increase in pari-mutuel wagering and tourism resulting from  
9 these improvements, not more than one-half of the tax levied  
10 under Subsection A of this section for the first two hundred  
11 fifty thousand dollars (\$250,000) of daily handle only, shall  
12 be offset for class A licensees by the amount that the class A  
13 licensee expends for capital improvements or in financing term  
14 investment in capital improvements at existing racetrack  
15 facilities and for class B licensees by the amount that the  
16 class B licensee expends for capital improvements, not to  
17 exceed fifty percent of the offset amount allowed pursuant to  
18 this subsection, and by the amount the class B licensee expends  
19 for advertising, marketing and promoting horse racing in the  
20 state, not to exceed fifty percent of the offset amount allowed  
21 pursuant to this subsection. The offset provided in this  
22 [~~paragraph~~] subsection shall also apply to the daily handle  
23 generated at its facility by a licensee engaged solely in  
24 simulcasting pursuant to Section 60-1-25 NMSA 1978. The term  
25 "capital improvement" means any capital investment in items

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1 that are subject to depreciation under the United States  
2 Internal Revenue Code of 1986 and are approved by the state  
3 racing commission.

4 C. To compensate for the additional municipal  
5 services required by the location of a racetrack within a  
6 municipality, an amount of revenue derived from the tax levied  
7 on such a racetrack under Subsection A of this section, above  
8 the amount offset by capital expenditures and advertising as  
9 provided in Subsection B of this section, shall be transferred  
10 to the municipal treasurer of the municipality in which the  
11 track generating the revenue is located for expenditure by the  
12 municipality in providing those additional municipal services.  
13 The amount to be transferred shall be determined in accordance  
14 with the provisions of Section 60-1-15.2 NMSA 1978.

15 D. An amount equal to one-half of the tax levied  
16 pursuant to Subsection A of this section is appropriated and  
17 shall be transferred to the state fair commission for  
18 expenditure on capital improvements at the state fairgrounds  
19 and for expenditure for debt service on negotiable bonds issued  
20 for the capital improvements.

21 E. Accurate records shall be kept by the licensee  
22 to show all commissions, total gross amounts wagered and  
23 breakage, as well as other information the state racing  
24 commission may require. Records shall be open to inspection  
25 and shall be audited by the commission or any of its authorized

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1 representatives. Should any licensee fail to keep records  
2 accurately and intelligibly, the commission may prescribe the  
3 method in which the licensee shall keep records.

4 F. Except as provided in Section 60-1-27 NMSA 1978,  
5 all remaining revenues collected as a result of the tax on the  
6 gross amount wagered shall be deposited in the state general  
7 fund.

8 G. Notwithstanding any other provision of law, no  
9 political subdivision of this state may impose any occupational  
10 tax against a racetrack operating under authority of a license  
11 granted by the state racing commission. No political  
12 subdivision may levy an excise tax against any racetrack  
13 operating under authority of a license granted by the state  
14 racing commission, except that local option gross receipts  
15 taxes may be imposed to the extent permitted by law."

16 Section 6. Section 60-1-16 NMSA 1978 (being Laws 1933,  
17 Chapter 55, Section 10, as amended) is amended to read:

18 "60-1-16. SUSPENSE FUND TO PAY CLAIMS.--From the funds  
19 derived from license fees and taxes, the state racing  
20 commission is authorized to create a special suspense fund with  
21 the state treasurer [~~of the state~~] in an amount not to exceed  
22 three thousand dollars (\$3,000) to pay all legal claims for  
23 refunds. Except as provided in Section 60-1-27 NMSA 1978, any  
24 surplus over and above the maximum suspense fund amount shall  
25 be deposited into the general fund [~~of the state~~]."

