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January 19, 2015

**MEMORANDUM**

TO: Legislative Finance Committee

FROM: Racing Commission Budget and Compliance Subcommittee

Senator George Muñoz, Chair  
Representative Candy Ezzell  
Senator Stuart Ingle  
Representative Larry Larrañaga  
Senator Carroll Leavell  
Representative Ken Martinez  
Senator Richard Martinez  
Senator Steven P. Neville  
Senator Mary Kay Papen  
Representative James Smith  
Representative Luciano "Lucky" Varela

**SUBJECT: Racing Commission Budget and Compliance Subcommittee Report of  
December 16, 2014 Meeting**

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New Mexico Racing Commission (NMRC) Chairman Rob Doughty, Beverly Bourget, Ray Willis and Jerry Cospers were all in attendance at the hearing, with one commissioner (Gayla McCulloch) unable to attend.

Subcommittee Chair Muñoz made introductory comments. Clint Elkins, LFC Fiscal Analyst, presented background information on the timely resolution of horse racing ruling appeals overseen by the NMRC. NMRC Executive Director Vince Mares commented on current equine drug testing policy and process and how temporary restraining orders were causing bottlenecks. Mr. Mares then reviewed the timeline from a hearing officer's recommendation to the case being heard before the commission, available budgetary resources, and availability of assistant attorney general staff to address bottlenecks.

Chairman Doughty informed the committee that the Association of Racing Commissioners International (ARCI) provided positive feedback on the toughening of sanctions and about NMRC receiving national recognition for these efforts and his election to ARCI's board. Mr. Doughty then shared with the subcommittee that the Racing Medication and Testing Consortium reported many horse racing jurisdictions have adopted tougher testing standards and larger sanctions. Mr. Doughty noted New Mexico follows the World Anti-Doping Agency standards, which is considered the gold standard for competition testing.

Senator Papen asked about appeal cases being turned over to district attorneys for criminal prosecution and expressed concerns about disciplinary process documentation and availability of data. Chairman Doughty offered to assist in obtaining all data requested. Senator Papen also remarked use of the request- for-proposal processes provides the greatest transparency for choosing an equine testing lab even though a government-to-government agreement with University of California, Davis is a valid procurement mechanism. Senator Papen also asked for a status on specific cases outstanding more than two years.

Senator Leavell commented on how testing procedures seem solid but the adjudication process is inefficient. The Senator also asked what NMRC plans to do to protect horses from being inappropriately raced at bush tracks. Director Mares said NMRC is working with federal and state law enforcement entities and is proposing investigators become certified officers to assist in investigations with other agencies such as FBI, Homeland Security, Immigration and Customs Enforcement etc. Senator Papen asked if tracking devices, such as GPS, are options to keep horses from leaving licensed tracks without an owner's consent. Director Mares advised they are looking at micro-chipping horses. Senator Neville asked if NMRC could look into the cost of the technology and report back to the committee.

Representative Ezzell commented on importance and size of the horse racing industry in New Mexico and asked if trainers are required to sign contracts with NMRC or with race tracks. Mr. Mares responded no to both. Representative Ezzell then asked about process to license trainers. Mr. Mares advised, applicants for a trainer's license are required to take an accreditation exam as part of their licensure with a limited number of attempts at passing the exam before the applicant is banned from seeking a license. NMRC also informed the committee that New Mexico has reciprocity with other states; however, if a trainer is banned by a particular track in New Mexico there may not be reciprocity among New Mexico tracks. Representative Ezzell also asked if it would be possible to publish the names of banned trainers on the NMRC website.

Senator Muñoz asked about the contract with UC Davis and expressed concerns over missing terms that are customary in contracts with the state. Representative Varela asked if the Attorney General could review the contracts to ascertain sufficiency.

LeeAnn Werbelow, NMRC-contracted hearing officer, commented on potential bottlenecks in the appeal process, noting respondent attorneys often delay the process. Respondent attorneys request additional hearings on evidence, etc., which delays the process and there is no way to avoid this under current rules. Ms. Werbelow concurred that with the idea that more hearing officers are needed.

Sean Cuniff, Assistant Attorney General assigned to NMRC, reported he oversees three other boards and commissions and a civil case load at the Attorney General's Office (AGO). Mr. Cuniff serves as prosecutor on behalf of NMRC in hearings and expressed concerns over how readily courts are issuing stays. Mr. Cuniff then commented on how other regulatory boards are typically motivated to resolve issues as a settlement. In racing, a stay allows the respondent to go back to work the next day in the racing industry. He further commented on tactics of opposing council that delay proceedings and referred to Uniform Licensing Act, that governs regulatory entities. This act requires a hearing at respondent's request, but also requires resources to meet deadlines and specifies timelines to resolve disputes.

Representative Ezzell asked why hearing officer only conducts one hearing per week and about scheduling of the docket. Clint Elkins, LFC Fiscal Analyst, commented on the length of time it currently takes to resolve outstanding cases. Representative Ezzell asked if there have been any issues with evidence from lab results from UC Davis. Ms. Werbelow commented that she has not experienced any issues or flaws in UC Davis's lab results. Representative Ezzell asked how the caseload is prioritized at AGO. Mr. Cuniff advised the current process is not feasible under the current AGO structure. He also commented that increased sanctions, especially around drugs like clenbuterol, will increase case volume.

Speaker Martinez asked what is the district court review process. Mr. Cuniff advised the Horse Racing Act does not provide for an appeals process; "Rule 75" applies. Martinez asked if criminal penalties would assist, but Mr. Cuniff commented felony charges require more hearings. Speaker Martinez suggested first offense possession of drugs or doping of a horse could be a misdemeanor and fines could go into the race horse testing fund, and every district attorney in the state could prosecute. Speaker Martinez asked if felony convictions under the Horse Racing Act lead to a lifetime license ban, to which Mr. Cuniff responded he was unsure. Speaker Martinez advised magistrate courts have to hear cases within six months and it would move the process more expeditiously than an appeal to district court which requires different steps and could help to resolve the backlog at district court. This would incorporate more prosecuting attorneys in the process. Speaker Martinez suggested the first offense be made a misdemeanor and second offense a felony, because felonies go directly to district court. Speaker Martinez then referenced the Habitual Offender Act.

#### Industry Concerns:

Freda McSwane (attorney and breeder) expressed concerns about the language in the agreement between NMRA and UC Davis because it allows for inconsistent testing of horses. She also told the committee that NMRA does not share positive testing results with the New Mexico Horsemen's Association.

Leonard Blach and Shaun Hubbard stated the biggest problem facing the industry is use of illegal drugs, including therapeutic drugs and the backlog of penalties.

Subcommittee Chair Muñoz summarized the key issues and then directed staff to work with Legislative Council Services to draft legislation that amends the Horse Racing Act to make appeals of commissioners' rulings go directly to the Court of Appeals, prohibit same day licensure, administratively attach the Racing Commission to the Gaming Control Board, change

the penalty for a 3<sup>rd</sup> class I or class II category A drug violation to a lifetime ban from racing, make the possession of non FDA approved drugs on the grounds of a race track a felony, require the Racing Commission hearing officers to render decisions within 90 days, require a licensee to place a review fee equal two times the amount of the fine or \$1,000, whichever is greater, in an escrow account at the time a sanction is appealed, suspend the horse that was drugged until the appeal is settled, and make it a felony for having an illegal race track on your property and a misdemeanor for attending an illegal race. The bill appropriates \$100 thousand from the general fund to the Administrative Office of the Courts (AOC) for expenses related to direct appeals from the adjudicatory decisions of the Racing Commission. The bill intends the \$100 thousand appropriated to AOC would be used to pay court costs at the Appellate Court.