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FISCAL IMPACT REPORT

SPONSOR: Foley DATE TYPED: 03/08/03 HB 952
 SHORT TITLE: NM Residency for Horse Race Conductors SB _____
 ANALYST: Gonzales

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	None				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
 State Racing Commission
 Attorney General

SUMMARY

Synopsis of Bill

House Bill 952 would require any person who is issued a horse race meeting license after January 1, 2003 to be a New Mexico resident. The bill defines New Mexico resident as a person who:

- Files a personal income tax return annually with the (NM) Taxation and Revenue Department;
- Has resided in New Mexico for one year prior to being granted a license and will file income taxes for that year in New Mexico;
- Is currently residing in New Mexico;
- Maintains his primary residence in New Mexico during the period in which he is an owner of a racetrack or is licensed to conduct a horse race meet by the State Racing Commission;

This bill exempts individuals who were licensed on January 1, 2003, to conduct a horse race meet from the requirements listed above and allows for license renewal without meeting the new restrictions.

This bill also restricts individuals from qualifying for a license to operate horse race meets at a

location other than the location for which he was licensed on January 1, 2003, unless the individual becomes a New Mexico resident, as defined in this bill.

This bill contains an emergency clause.

Significant Issues

The State Racing Commission is currently evaluating three license applications for a race meet in the Hobbs area. All applications involve individuals with residencies other than New Mexico. The effects of this bill would appear to make these individuals ineligible for a race meet license.

The Attorney General states it is unlikely that this bill, if enacted, would withstand a constitutional challenge in court under the Privileges and Immunities Clause of the U.S. Constitution.

OTHER SUBSTANTIVE ISSUES

As noted by the Attorney General, this bill, if enacted, would almost certainly be challenged in court and stands a good chance of being ruled unconstitutional under the Privileges and Immunities Clause of the U.S. Constitution. That Clause provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several states." U.S. Const. art. IV, § 2, cl. 1.

The U.S. Supreme Court has made clear that privileges and immunities protected by the Constitution include the right of a citizen of one state to do business or pursue his or her livelihood in another state. See Supreme Ct. of N.H. v. Piper, 470 U.S. 274, 279-80 (1985). Accordingly, state laws making residency a qualification for a license to conduct business in the state, like this bill, are subject to the Privileges and Immunities Clause. Id. at 283 (right to practice law is protected by Clause). Such laws will pass constitutional muster only if the discrimination against nonresidents is justified by a "substantial reason" and has a substantial relationship to the state's objective. Id. at 284. Protecting state residents from out-of-state competition is not a constitutionally sufficient "substantial" reason. Id. at 285 n. 18. Nor can a state discriminate against nonresidents merely because of their different citizenship. See Saenz v. Roe, 526 U.S. 489, 501-02 (1999).

Rarely, if ever, has a court upheld a state law requiring residency as a qualification for a license or business opportunity in the face of a Privileges and Immunities Clause challenge. See, e.g., Piper, 470 U.S. at 288 (finding unconstitutional New Hampshire's residency requirement for admission to the state bar); C.S. McCrossan Constr., Inc. v. Rahn, 96 F.Supp.2d 1238, 1246-47 (D.N.M. 2000) (statute providing preference in bidding for state public works contracts to corporate bidders having majority resident shareholders violated constitutional rights of out-of-state owner of corporation); Tafoya v. City of Albuquerque, 751 F.Supp. 1527, 1528-29 (D.N.M. 1990) (city ordinance that granted only state residents the right to obtain licenses to sell wares in the city's historic zone violated the Privileges and Immunities Clause); State v. Shunneson, 743 P.2d 1275, 1278 (Wyo. 1987) (Wyoming statute requiring that applicant reside in the state for one year before being eligible for an outfitter's license violated Privileges and Immunities Clause).

JMG/sb