

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/12/11

SPONSOR Neville LAST UPDATED _____ HB _____

SHORT TITLE Transfer Authority to Gaming Control Board SB 85

ANALYST Graeser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	Cost savings shown in Op Bud Table	Recurring	

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(\$396.4)	(\$396.4)	(\$792.8)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

State Racing Commission (SRC)

SUMMARY

Synopsis

Senate Bill 85 merges the staff and functions of the Racing Commission into the Gaming Control Board to form the New Mexico Racing and Gaming Commission. The bill preserve the status of the three paid, full-time members of the Gaming Control Board and merges virtually all of the provisions of the Horse Racing Act into the Gaming Control Act. The bill abolishes the State Racing Commission. This bill was developed and endorsed by the Government Restructuring Task Force.

FISCAL IMPLICATIONS

The final report of the Government Restructuring Task Force indicates, "*Potential savings: \$396.4.*" The 2010 appropriations for the Racing Commission are as follows:

- (a) Personal services and employee benefits 1,227.9
- (b) Contractual services 749.5

(c) Other 202.0
Authorized FTE: 17.30 Permanent; .60 Term; 1.80 Temporary

The LFC/DFA estimate of potential savings in a merger with Gaming Control Board is consistent with losing 6 of these 20 positions. However, the State Racing Commission indicates that most of the 20 employees of the commission, "...are very specialized positions [occupied by] individuals with extensive racing knowledge." It is unknown how many of the 20 authorized positions are support or administrative ones whose functions could be taken up by the Gaming Control Board and the positions cut.

State racing commissioners are not paid a salary, but are paid per diem and mileage. The State Racing Commission has five appointed commissioners, three of whom must be horse breeders. SB 85 expands the Gaming Control Board, which currently has five members, to seven members, including three persons who are practical horse breeders. The law enforcement, certified public accountant and attorney members on the Gaming Control Board are paid state employees (Gov-ex). On net, the two boards with a total of 10 members would contract to one board with seven members – three paid and four receiving per diem and mileage. This would save approximately \$10.0 per year.

SRC also notes, "As a regulatory agency, the New Mexico Racing Commission ("Commission") currently licenses approximately 8829 licensees and oversees the six licensed racetrack facilities within the state. The Commission's operating budget has been significantly reduced within the past two years, thus making it difficult to fulfill a number of its statutory obligations, including mandatory testing of racehorses."

SIGNIFICANT ISSUES

The New Mexico Racing Commission regulates the pari-mutuel horseracing industry to protect the interest of the wagering public and the state in a manner which promotes economic prosperity for horsemen, horse owners and racetrack management. The commission's regulatory oversight includes both human and equine drug testing, licensing of all participants, background investigations, and enforcement of the rules and regulations of pari-mutuel horseracing. The commission oversees five racetracks and six race meets; approves race dates for live racing; and regulates simulcast facilities and signals. The commission is composed of five gubernatorial-appointed members. The membership must meet the following criteria:

1. Three members are horse breeders;
2. Two members are public members; and
3. No more than three members can be from the same political party.

The New Mexico Gaming Control Board was established by the New Mexico Legislature and began operations in June 1998. It is responsible for regulating legalized gaming at New Mexico's licensed racetracks, as well as veterans' and fraternal organizations. The board also appoints a representative to monitor New Mexico's tribal gaming compacts. In 2005, the Gaming Control Board also began regulating bingo and raffle games. The board is composed of five gubernatorial-appointed members. The membership must meet the following criteria:

1. Three members are paid fulltime positions;
 - a. One must be an attorney,
 - b. One must be a certified public accountant, and
 - c. One must have a background in law enforcement;
2. One member is the chairman of the racing commission;

3. One member is a public member who must have experience in business; and
4. No more than three members can be from the same political party.

Section 33 amends the age requirement for gaming employees. This section states that no gaming employee may be under the age of twenty-one years. There are currently an very large number of occupational licensees under the Horse Racing Act who are under the age of twenty-one. By previously defined amendment to the term “gaming employee,” any jockey, groom, trainer, etc. must now be over the age of twenty-one.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 27 – Extend Daily Capital Outlay Horse Racing Tax
Senate Bill 114 – Racing Commission Sunset & Fair Tax Delay

TECHNICAL ISSUES

The AGO notes that the amendment in section 2 of the bill, § 60-2E-2(B) NMSA 1978, refers to licensees in connection with gaming activities and pari-mutuel wagering. As such, this does not refer to licensees of a racetrack facility without gaming or wagering. As written, the Horse Racing Act provides for a racetrack without gaming or wagering. As amended, Senate Bill 85 would eliminate this possibility.

In the preliminary analysis of this bill, “the the New Mexico Racing Commission (NMRC) raises a number of discussion issues, noting that the ‘statutory provisions of the commission allow for the existence of a racetrack without the addition of a casino. Thus, the focus of the two entities is not aligned, nor do they have similar purposes.’” It may be that the bill deliberately aligns the focus of the two entities to the “racinos” by eliminating race tracks without gaming or wagering.

The AGO does not note any defects as identified in the preliminary analysis of this bill, where the GCB notes, “...this bill eliminates the requirement that gaming machines must be operated on the ‘premises where live racing is conducted.’ This could lead to a claim by the tribes that the bill constitutes an expansion of gaming that would nullify the revenue-sharing provisions of the state-tribal gaming compacts. The potential of “expansion of gaming” tribal claims appears to be a valid concern.” Confirming that this is no longer a problem is posed as a potential question below.

The AGO notes, “...section 3, subsection Y, ‘horse racetrack’ does not properly define a racetrack. The Horse Racing Act’s definition of “racing grounds” should instead be used. The Horse racing Act states that this means the area of the restricted area of licensed premises used for the purpose of conducting horse races and all activities ancillary to the conduct of horse races, including the track, stable area, jockey's quarters and horse training areas.”

SRC and AGO note the following:

Section 7 of Senate Bill 85 amends the Gaming Control Board’s power and duties. As a regulatory board, this section requires the power to discipline licensees. Section 60-1A-5 of the Horse Racing Act may need to be incorporated to fulfill the objective of Senate Bill 85.

Section 11 amends the “conflicts of interest” provision of the Gaming Control Act. This section may need to be reviewed, as horsemen and breeder board members necessarily have a direct or indirect interest in the activity that they regulate.

Section 14 amends the categories of licensure within the Gaming Control Act. “Gaming employees,” as previously amended to include horse owners, trainers, jockeys, veterinarians, etc. are not included within this section. Moreover, “occupational licenses” within the Horse Racing Act are not included within the proposed amendment. Inclusion of such individuals is necessary to fulfill the objective of Senate Bill 85. In addition, amendments to the Gaming Control Act within Senate Bill 85 refer to Class A and Class B racetrack gaming operator licenses (see Section 43). However, designation of such different classes of licenses are not included anywhere within Senate Bill 85.

Section 29 amends the “investigations” provision of the Gaming Control Act. This section does not provide for the disciplinary actions taken by the Stewards at a racetrack facility. Inclusion of such a provision is necessary in order to conduct horse racing and fulfill the objective of Senate Bill 85.

OTHER SUBSTANTIVE ISSUES

From the LFC/DFA GRTG staff briefing document:

Primary Benefits to the Industry, the State and the Taxpayer:

1. Streamlined processes with particular emphasis on single background investigations
2. Common licensing procedures
3. Single board meetings
4. More rapid response to issues
5. In-house legal representation and research
6. Enhanced customer service
7. Cost savings to licensees
8. Cost Savings to the state and the taxpayer
9. Reduction of redundancy in staffing levels

Currently, one of the performance measures of the Gaming Control Board is that revenues collected for the general fund should be a multiple of 28 times the general funds required to regulate the industry. A similar performance measure for the State Racing Commission is that the SRC should return \$900.0 in revenue to that general fund for an expenditure of \$2,200 a ratio of .4.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Compared to the 28 to 1 ratio of general fund revenues collected to general fund appropriations expended for the Gaming Control Board, the State Racing Commission collects \$.40 in general fund revenues for each \$1 in appropriation. If this bill does not pass, this revenue disparity will continue.

POSSIBLE QUESTIONS

Can the AGO or the GCB confirm that this bill will not compromise the Indian gaming compacts through some inadvertent provision?

LG/bym

APPENDIX A: 2010 APPROPRIATIONS

STATE RACING COMMISSION:

(1) Horse racing regulation:

The purpose of the horse racing regulation program is to provide regulation in an equitable manner to New Mexico’s pari-mutuel horse racing industry and to protect the interest of wagering patrons and the state of New Mexico in a manner that promotes a climate of economic prosperity for horsemen, horse owners and racetrack management.

Appropriations:

(a) Personal services and employee benefits	1,227.9	1,227.9
(b) Contractual services	749.5	749.5
(c) Other	202.0	202.0

Authorized FTE: 17.30 Permanent; .60 Term; 1.80 Temporary

Performance measures:

(a) Outcome: Percent of equine samples testing positive for illegal substances	0.8%
(b) Output: Total amount collected from pari-mutuel revenues, in millions	\$0.9
Subtotal	2,179.4

GAMING CONTROL BOARD:

(1) Gaming control:

The purpose of the gaming control board program is to provide strictly regulated gaming activities and to promote responsible gaming to the citizens of New Mexico so they can attain a strong level of confidence in the board's administration of gambling laws and assurance that the state has competitive gaming that is free from criminal and corruptive elements and influences.

Appropriations:

(a) Personal services and employee benefits	4,049.9	4,049.9
(b) Contractual services	731.9	731.9
(c) Other	967.2	967.2

Authorized FTE: 63.00 Permanent; .50 Temporary

Performance measures:

(a) Quality: Percent of time central monitoring system is operational	100%
(b) Output: Percent variance identified between actual tribal quarterly payments to the state and the audited revenue sharing as calculated by the gaming control board for the current calendar year	<10%
(c) Outcome: Ratio of gaming revenue generated to general funds expended	28:1
Subtotal	5,749.0

60-1A-3. Commission created; appointment of members; terms of office. (Repealed effective July 1, 2012.) (2007)

A. The "state racing commission" is created and is administratively attached to the tourism department.

B. The commission shall consist of five members, no more than three of whom shall be members of the same political party. The commission members shall be appointed by the governor and be confirmed by the senate. All members of the commission shall hold at-large positions on the commission.

C. At least three of the members of the commission shall be practical breeders of racehorses within New Mexico.

D. A commission member shall have primary residence in New Mexico and shall be of high character and reputation so that public confidence in the administration of horse racing is maintained.

E. The term of each member of the commission shall be six years from the date of the member's appointment. The member shall serve until a successor is appointed. In the case of a vacancy in the membership of the commission, the governor shall fill the vacancy by appointment for the unexpired term.

F. A person shall not be eligible for appointment as a member of the commission who is an officer, official or director in a corporation conducting horse racing within the state.

G. Members of the commission shall receive no salary, but each member of the commission shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 NMSA 1978].

H. The commission may appoint an executive director and establish the executive director's duties and compensation.

60-1A-4. Commission; powers; duties. (Repealed effective July 1, 2012.) (2007)

A. The commission may:

(1) grant, deny, suspend or revoke occupational licenses, secondary licenses and racetrack licenses, establish the terms for each classification of a racetrack license and set fees for submitting an application for a license;

(2) exclude or compel the exclusion of a person from all horse racetracks who the commission deems detrimental to the best interests of horse racing or who willfully violates the Horse Racing Act, a rule or order of the commission or a law of the United States or New Mexico;

(3) compel the production of documents, books and tangible items, including documents showing the receipts and disbursements of a racetrack licensee;

(4) investigate the operations of a licensee and place a designated representative on the licensed premises of a racetrack licensee for the purpose of observing compliance with the Horse Racing Act and rules or orders of the commission;

(5) employ staff as required to administer the Horse Racing Act and employ staff with basic law enforcement training to be stationed at racetracks to maintain peace and order, enforce the law, conduct investigations and enforce the Horse Racing Act or rules or orders of the commission; provided that staff employed with law enforcement training may not carry firearms or other deadly weapons while on duty for the commission;

(6) summon witnesses;

(7) administer oaths for the effective discharge of the commission's authority; and

(8) appoint a hearing officer to conduct hearings required by the Horse Racing Act or a rule adopted pursuant to that act.

B. The commission shall:

(1) make rules to hold, conduct and operate all race meets and horse races held in the state and to identify and assign racing dates;

(2) require the following information for each applicant on an application for a license:

(a) the full name, address and contact information of the applicant, and if the applicant is a corporation, the name of the state of incorporation and the names, addresses and contact information of officers, members of the board of directors and managers of the corporation;

(b) the exact location at which the applicant desires to conduct a horse race or race meet;

(c) whether the horse racetrack is owned or leased, and, if leased, the name and residence of the fee owner of the land or, if the owner is a corporation, the names of the directors and stockholders;

(d) a statement of the assets and liabilities of the person or corporation making the application;

(e) the kind of racing to be conducted;

(f) the beginning and ending dates desired for the race meet and the days during that time period when horse races are to be scheduled; and

(g) other information determined by the commission to be necessary to assess the potential for success of the applicant;

(3) require a statement under oath by the applicant that the information on the application is true;

(4) supervise and oversee the making of pari-mutuel pools and the distribution from those pools;

(5) make on-site inspections of horse racetracks in New Mexico at reasonable intervals;

(6) approve all improvements proposed to be completed on the licensed premises of a horse racetrack, including extensions, additions or improvements of buildings, stables or tracks;

(7) monitor and oversee the pari-mutuel machines and equipment at all horse races or race meets held in the state;

(8) approve contracts for simulcasting, pari-mutuel wagering and capital improvements funded pursuant to Section 60-1A-20 NMSA 1978 entered into by horse racetracks;

(9) regulate the size of the purses to be offered at horse races run in the state;

(10) require background investigations of employees of a racetrack licensee as set forth in the rules of the commission; and

(11) provide an annual report to the governor regarding the commission's administration of horse racing in the state.

History

History: Laws 2007, ch. 39, § 4.

Annotations

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

Cross references. — For continuation of terms of commissions, see 60-1A-30 NMSA 1978.

For rule-making authority of racing commission, see 60-1A-4 NMSA 1978.

For Uniform Parentage Act, see 40-11-1 NMSA 1978 et seq.

ANNOTATIONS