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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 3/3/23

SPONSOR Maestas

BILL
NUMBER Senate Bill 330

SHORT TITLE Transfer Horse Racing Regulation

ANALYST Anderson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

FY23	FY24	FY25	Recurring or Nonrecurring	Fund Affected
No fiscal impact	(\$3,765.9)	(\$3,765.9)	Recurring	General Fund, SRC
No fiscal impact	\$3,765.9	\$3,765.9	Recurring	General Fund, RLD
No fiscal impact	(\$67,200.0)	(\$67,200.0)	Recurring	General Fund, GCB tax revenues
No fiscal impact	\$67,200.0	\$67,200.0	Recurring	General Fund, RLD tax revenues
No fiscal impact	(\$50,000.3)	(\$50,000.3)	Recurring	General Fund, GCB purse revenue
No fiscal impact	\$50,000.3	\$50,000.3	Recurring	General fund, RLD racing purse revenue

Parentheses () indicate revenue increases.

*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 336, House Bill 390, House Bill 168, and Senate Bill 130

Relates to appropriation in the General Appropriation Act

Sources of Information

LFC Files

Responses Received From

Gaming Control Board (GCB)

State Racing Commission (SRC)

Regulation Licensing Department (RLD)

Taxation Revenue Department (TRD)

Office of the Attorney General (NMAG)

New Mexico State Fair

SUMMARY

Synopsis of Senate Bill 330

Senate Bill 330 proposes an executive reorganization, moving the regulation of horse racing to

the Regulation and Licensing Department (RLD). The bill provides the transfer of functions, appropriations, money, personnel, property, contractual obligations, statutory references, and rules will also be transferred. Section 19 removes the distribution of daily capital outlay tax to the State Fair Commission, a repeal that expired on December 31, 2014.

The effective date of this bill is July 1, 2024.

FISCAL IMPLICATIONS

The House Appropriations and Finance Committee Substitute for House Bill 2 (the General Appropriation Act) appropriates \$3.7 million to the State Racing Commission (SRC) for FY24, which would be transferred to RLD if SB330 is enacted. The transfer of funds and responsibilities in the case of a reorganization is provided for in the act:

If any other act of the first session of the fifty-sixth legislature changes existing law with regard to the name or responsibilities of an agency or the name or purpose of a fund or distribution, the appropriation made in the General Appropriation Act of 2023 shall be transferred from the agency, fund or distribution to which an appropriation has been made as required by existing law to the appropriate agency, fund or distribution provided by the new law.

Data from Gaming Control Board (GCB) indicates racinos contributed \$67.2 million in tax revenue and \$50.3 million to horse racing purses in FY22. Both the tax and purse revenue funds would be administered by RLD before reverting to the general fund.

The State Racing Commission suggests that vesting RLD with the authority to administer all federal programs required by the Horseracing Integrity and Safety Act (HISA) and the Anti-Doping and Medication Control Program, scheduled to roll out on March 27, 2023, could be costly.

SRC anticipates rising costs for testing, investigation, prosecution, and rulemaking under the anti-doping law, which could significantly increase the cost of regulating horseracing in the state and likely result in additional fees for racing participants. SRC has been uncertain about the total fiscal impact of that program.

TRD replied the bill will have a minimal impact on its Information Technology Division (ITD), estimating approximately 200 hours or about 1.5 months for an estimated staff workload cost of \$11.1 thousand. These costs can be absorbed by the agency.

SIGNIFICANT ISSUES

According to the Gaming Control Act, 60-2E-5A NMSA 1978, one of the five members of the GCB must be the chairman of the State Racing Commission. GCB said it would no longer be in compliance with the Gaming Control Act unless the act is modified. The loss of a statutorily required board member creates will create issues with respect to voting, obtaining a quorum, and general pursuit of GCB's mission and duties, as they would be short one member.

Both SRC and GCB commented that reduced scrutiny of licensees leaves the industry vulnerable to an increase in criminal conduct. GCB said the removal of federal convictions for consideration is in conflict with the Gaming Control Act.

RLD raised questions about the need to establish a horse racing division in RLD and suggested, if the intent is to move SRC under other supervision, a move to GCB is more logical:

While SB330 places all regulatory and licensing power of the act under the RLD, the bill does not establish a division within RLD to execute the powers and responsibilities of the act. If SB330 is enacted and horse racing licensing and regulation are placed under the authority of the RLD, the language of 9-16-4 NMSA 1978 will need to be amended to specifically list a new horse racing division. Without the creation of a specific division within the RLD to administer the act, the superintendent of RLD, in addition to all presently mandated tasks and duties, would be tasked with overseeing the day-to-day operations of administering the act.

When considering all relevant factors concerning the effective and efficient regulation and enforcement of the New Mexico horse racing industry, it may prove more prudent to move all powers and responsibilities of the Racing Commission to the New Mexico Gaming Control Board, as opposed to RLD. Arguably, there is much greater similarity between the operations of the Gaming Control Board and the Racing Commission. Currently, horse racing tracks and casinos already co-exist (i.e., racinos), with the physical facilities being effectively “under one roof.” Additionally, much of the customer behavior, and licensee action, in both the racetrack and casino environments tend to be similar. (There is a placing of a wager by customer, receiving the wager by licensee or its employee, with similar end results, either the licensee keeps the wager as profits or provides the customer with a payout.)

In the event the Legislature and Governor were to determine that all gaming and horseracing regulatory authority would be best housed within the RLD, the Gaming Control Board could then be placed under RLD as its own division within the department.

ADMINISTRATIVE IMPLICATIONS

From the Office of the Attorney General:

The Office of the Attorney General provides legal counsel to the Racing Commission, and the elimination of the commission would mean that legal counsel to the Department and Superintendent would likely shift to a staff attorney within the Department. The Office of the Attorney General would likely continue to provide administrative prosecution for administrative disciplinary proceedings.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 330 relates to the committee substitute for Senate Bill 336, which reduces the gaming tax for a licensee that is a racetrack (racino) from 26 percent to 21.4 percent for three and a quarter fiscal years; and House Bill 390, which concerns fines for positive racehorse drug tests.

SB330 also relates House Bill 168 and Senate Bill 130, which prohibit smoking in facilities with

a racetrack licensed by the state Racing Commission and with a gaming operator's license issued by the Gaming Control Board while still permitting smoking in other state-licensed gaming facilities, casinos, or bingo parlors.

OTHER SUBSTANTIVE ISSUES

GCB commented on the unique identity and specialized knowledge of SRC and commented on the close interrelatedness of the two agencies:

When the Legislature created the State Racing Commission, it indicated an understanding that this industry is unique and requires specialized knowledge and experience to be successful. Such a substantial shift in administrative perspective would further serve to jeopardize an already tenuous strain on an industry struggling now with additional Federal regulations and shifting patronage.

With the racetracks in jeopardy, the attached casinos are also in jeopardy as they are not permitted to exist without an attached racetrack. Without the attached casinos, the State loses a significant amount of revenue from the taxes paid by those casinos through the Gaming Control Act.

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