

LFC Requester:	Noah Montano
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/10/2025 *Check all that apply:*
Bill Number: SB 323 Original Correction
 Amendment Substitute

Sponsor: Ezzell, Townsend, Sharer, Scott, Paul
Short Title: NM Horsemens Assoc. is group for federal law, wagering & gaming limitations, state auditor to audit horserace tracks
Agency Name and Code: 46900
Number: _____
Person Writing: Richard Bustamante
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
0	0	0	0

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
(33,175.343)	(33,175,343)	(33,175,343)	Recurring if proposed change to 60-2E-27(E) is codified	State General Fund

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected

Total	175K	175K	175K	525K	Reoccurring	Note: Funds are for State Auditor if it audits five horse racetracks annually. General and contract funds are impacted.
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ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
1,445,146.4	1,445,146.4	1,445,146.4	4,345,439.20	Recurring	General Fund Note: these Figures are Additional costs to Racing Commission per every additional race day contemplated in proposed change to 60-2E-27(E)

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: The bill impacts three (3) sections of the statutory Horseracing Act and one (1) section of statutory Gaming Control Act. Horseracing Act: 60-1A-16(E): prohibits pari-mutuel wagering on simulcast races at NM horserace tracks “on weeks” when racetrack is importing race meet from another NM track; 60-1A-17(F): new subsection designating the NM Horsemen’s Association as the designated horsemen’s group required for simulcast contract negotiations under federal Interstate Horseracing Act, and; 60-1A-20(C): removes the NM Racing Commission from the auditing of the state’s horserace tracks and replaces it with the NM State Auditor’s Office. Gaming Control Act: 60-2E-27(E): changing from the current “days” to “weeks” regarding when slot machines at the casinos associated with the state’s horserace tracks may be played when either the NM track is either conducting live horse racing or specifically simulcasting live racing from another NM track, as compared to live racing from tracks across the nation and/or internationally.

FISCAL IMPLICATIONS

If the changes to Section 60-2E-27(E) of the Gaming Control Act are implemented limiting racetrack casinos to being operational only when the track is either conducting a live race meet or simulcasting only another New Mexico track’s live race meet, the purses paid for race meets at New Mexico tracks could potentially be reduced by as much as 50% given the statutorily required 20% net take from slot machines at casinos associated with the state’s horse racetracks accounts for approximately 95% of the total amount of purses paid on an annual basis.

If additional live race days are added to race meets to lessen the decrease in slot revenue dedicated to purses, that will stress the current staff of the Racing Commission if no additional personnel is funded. For every additional day of live racing, the Commission would need

\$8,118.80 in additional funding to cover additional personnel and costs, which include veterinarians and investigators. Additional race days means increased post-race testing which might not be possible due to reductions in the Equine Test Fund.

SIGNIFICANT ISSUES

Regarding 60-1A-16(E): respectfully, it is not clear what the intent is by adding “on weeks” when pari-mutuel wagering on simulcast horseraces is permissible. Rather, the addition of “on weeks” seems unnecessary and could lead to confusion. The current language of 60-1A-16(E) is clear and concise: at NM horserace tracks, pari-mutuel wagering on simulcast racing from other racetracks is permissible when the track is running its race meet or when the racetrack is importing a race meet from another NM track or simulcasting live racing from a racetrack in another state or in another country.

Regarding 60-1A-17(F): that proposed subsection appears to be directly contrary to the controlling federal law of the Interstate Horseracing Act regarding simulcast contract negotiations. Section 15 U.S.C. 3004(1)(A) requires as a condition precedent to the consent of the simulcast host racetrack, host racing commission and the off-track racing commission, is the the race track “must have a written agreement with the horsemen’s group” under which the track may give consent to simulcast its live racing to other horserace tracks around the nation or world.

Under Section 15 U.S.C. 3002(12), “horsemen’s group” is defined as “with reference to the applicable host racing association, the group which represents the majority of owners and trainers racing there, for the races subject to the interstate off-track wager on any racing day”. The proposal in the draft legislation to legislatively designate the NM Horsemen’s Association as THE group required by the federal Interstate Horseracing Act is potentially improper and unconstitutional on its face given it ignores the federal definition of “horsemen’s group” by codifying in New Mexico law that the NM Horsemen’s Association will always be the “horsemen’s group” for simulcast contract negotiations. Codifying into NM statutory law that the NM Horsemen’s Association is the designated group by default is potentially an improper and illegal attempt to skirt the plain language and Congressional intent behind the relevant sections of the Interstate Horseracing Act.

Here are the actual sections of the federal Interstate Horseracing Act, 15 U.S.C. Ch. 57:

“§3002. Definitions

For the purposes of this chapter the term—...

(12) **"horsemen's group" means, with reference to the applicable host racing association, the group which represents the majority of owners and trainers racing there, for the races subject to the interstate off-track wager on any racing day...**”

“§3004. Regulation of interstate off-track wagering

(a) Consent of host racing association, host racing commission, and off-track racing commission as prerequisite to acceptance of wager

An interstate off-track wager may be accepted by an off-track betting system only if consent is obtained from—

(1) the host racing association, except that—

(A) **as a condition precedent to such consent, said racing association (except a not-for-profit racing association in a State where the distribution of off-track betting revenues in that State is set forth by law) must have a written agreement with the horsemen's group, under**

which said racing association may give such consent, setting forth the terms and conditions relating thereto...”

Moreover, if enacted, it could be viewed as the NM legislature codifying its support of the NM Horsemen’s Association, a group which neither collects nor receives membership dues from its alleged members, instead claiming its members from the legally-required licensing of owners and trainers by the NM Racing Commission, arguably a suspect method of claiming members. The NM Horsemen’s Association had to be taken to court and ordered by a state district court judge to transfer funds in its gaming accounts to the gaming accounts created and managed by the state’s horserace tracks, pursuant to administrative rule changes by the NM Racing Commission. Furthermore, over the last several years, the NM Horsemen’s Association has engaged in an unsuccessful multi-litigation strategy in both state and federal court, as well as the state’s Ethics Commission, which has cost the taxpayers of the state tens of thousands of dollars in Risk Management legal fees. Finally, that is a group whose Board chose to add to its membership an individual who was federally convicted of and imprisoned for various crimes related to attempting to rig his reelection to the Louisiana Horsemen’s Benevolent and Protective Association as a means of covering up his financial mismanagement of that organization and who also has a pending federal indictment against him for an alleged vast, wide-ranging insurance fraud scheme involving staged automobile accidents with insured motorists, including commercial semi-trucks.

Section 60-1A-20(C): the proposed change would be to remove the NM Racing Commission and instead make the State Auditor’s Office responsible for inspecting and auditing the state’s horserace tracks, private, for-profit business entities. Running a horserace track and regulating the horse racing industry are two incredibly specialized and detailed tasks given the enormous complexity of the horse racing industry. When sufficiently funded to conduct such audits, the NM Racing Commission contracts with an individual or entity with some level of knowledge of the horseracing industry and thereafter acts as an informational resource for the auditor. Respectfully, it appears the personnel at the State Auditor’s Office lacks racing industry knowledge to conduct such audits and, if contracted out, lacks knowledge to be a resource to the contractor if and when needed. Thus, it could be that the contractor would, if permissible, reach out to the NM Racing Commission for information on the industry. Given that, the more reasonable approach would be to not enact the proposed change and instead work with the NM Racing Commission to ensure it has sufficient funding for the auditing of the state’s horse racetracks.

Section 60-2E-27(E): respectfully, it is not clear what the intent is by adding “on weeks” when the casinos associated with the state’s horse racetracks can be operational. Currently, casinos associated with the state’s horse racetracks may be operational when either the track is running its live race meet or simulcasting live racing from another track, whether it be a NM track, a track from another state, or a track in another country. By limiting the times when casinos associated with NM horse racetracks can be operational to either when the track is conducting live racing or simulcasting live racing of another NM horse race meet, that will severely reduce the funding of horserace purses, given approximately 95% of such funding comes for the statutorily required 20% net take of horse racetrack casinos’ slot machines, as provided for in NMSA 1978, Section 60-1A-47(E)(1). With all due respect, if the intent behind this legislation is to increase live racing by New Mexico horserace tracks to literally 365 days a year, it does so unrealistically by ignoring the decades long significant decrease in the breeding of racehorses.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

If the State Auditor's Office becomes responsible for auditing the state's horse racetracks, that agency will face an additional task/burden while at the same time reducing the regulatory mission of the NM Racing Commission despite its knowledge and expertise about the horse racing industry and the complexities involved in running a horse racetrack.

If the changes in this bill are enacted, it very well could result in significant litigation from several different components of the state's horse racing industry resulting in tens of thousands of dollars in Risk Management litigation costs for possibly several years.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

If the proposed legislation is codified, it could possibly conflict with the following federal and state authorities:

The federal Interstate Horseracing Act, 15 U.S.C. Chapter 57.

NM Racing Commission administrative Rule 15.2.7.10(A) NMAC regarding simulcasting.

The New Mexico Gaming Control Act, NMSA 1978, Section 60-2E-1 et al.

OTHER SUBSTANTIVE ISSUES

Given the decades long, nationwide decline in racehorse breeding, additional race days will further strain the decreasing number of racehorses and negatively impact their health, safety, and welfare.

ALTERNATIVES

Maintaining the status quo with respect to current applicable statutory and rule authority and providing sufficient funding to the NM Racing Commission for auditing the state's horse racetracks.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If the proposed change to Section 60-2E-27(E) of the Gaming Control Act is enacted, the very real possibility is the reduction of purses paid by New Mexico horse racetracks by as much as 50%. Currently, the purses paid by New Mexico horse racetracks are the highest in the southwest and will remain so if the proposed change to 60-2E-27(E) is rejected.

AMENDMENTS