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FISCAL IMPACT REPORT

ORIGINAL DATE 2-8-09

SPONSOR Lopez LAST UPDATED _____ HB _____

SHORT TITLE Racing Commission Member Background Checks SB 488

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1		\$0.1	Non-Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney Generals Office (AGO)

State Racing Commission (SRC)

SUMMARY

Synopsis of Bill

Senate Bill 488 amends 60-1A-3B of the Horse Racing Act (NMSA Chapter 60 Article 1A) with a provision stating that the Governor shall nominate individuals for appointment to the Commission, and that the nominated individuals are subject to confirmation by the Senate. Currently, members of the State Racing Commission are appointed by the Governor and confirmed by the Senate. The bill replaces that language. The bill also amends that section to add a provision stating that the Commission shall conduct background investigations of the nominated individuals, and the results of the investigations shall be provided to the Governor and to the Senate Rules Committee. Finally, the bill amends NMSA Section 60-1A-3E to require Senate confirmation of members appointed by the Governor to fill a vacancy on the Commission.

FISCAL IMPLICATIONS

There will be minimal costs associated with conducting a background check. The costs will likely be infrequent since commissioners serve six year terms.

SIGNIFICANT ISSUES

This bill changes statutory language regarding who has the duty to conduct background checks, but, states the AGO, also may raise legal arguments over the Governor's authority with respect to new State Racing Commission members taking office at the beginning of their terms, to grant him the authority to "nominate" those members, as opposed to "appoint" them. However, that amendment does not appear to actually affect the Governor's authority, since NMSA Section 60-1A-3E provides that a member whose term expires continues to serve until their successor is "appointed." If a member's term expires, and they refuse to or are unable to continue to serve on the Commission, this would create a "vacancy" on the Commission which the Governor would be able to fill by appointment, subject to Senate confirmation, in accordance with NMSA Section 60-1A-3E, and Article XX Section 5 of the New Mexico Constitution. See *Denish v. Johnson*, 121 N.M. 280, 910 P.2d 914 (1996). The bill does not require background investigations for members "appointed" by the Governor to fill vacancies on the Commission who, if confirmed by the Senate, would serve for the duration of the unexpired term.

EO/mt