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FISCAL IMPACT REPORT

02/12/13
ORIGINAL DATE 03/10/13
LAST UPDATED 03/14/13 **HB** _____

SPONSOR SJC

SHORT TITLE Horse Racing Licensing, Testing and Penalties **SB** 444/SJCS/aSFI#1

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 72, SB 292

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Racing Commission (SRC)

Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of SFI Amendment #1

The Senate Floor Amendment #1 to the Senate Judiciary Committee substitute for Senate Bill 444 (SB 444) strikes a portion of a stipulation under Section 2 “Granting a License Standards” as follows:

(2) has not been denied a license, had a license revoked or does not currently have a license suspended by a horse racing licensing authority in another jurisdiction;

Synopsis of Original Bill

The Senate Judiciary Committee substitute for Senate Bill 444 (SB 444) amends various sections of the Horse Racing Act, Section 60-1A-1, et seq, NMSA 1978, and increases civil penalty fines up to one-hundred thousand dollars (\$100,000), a substantially more severe cap than what is currently available if any licensed race horse owners or trainers violate the act or its rules. The bill also mandates that when one of the civil penalties is imposed, the violation must be reported

to the district attorney for the county where the violation occurred, and to the horse racing licensure authority in any other jurisdiction in which the licensee being penalized is also licensed.

It also adds “performance-altering substance (PAS) defined as a class 1 or class 2 penalty class A drug by the Association or Racing Commissioners International, Incorporated,” (ARCI) or a similar organization if the ARCI is no longer in existence to the list of prohibited substances banned for use on race horses, and states the only acceptable item is a “commission-approved riding crop.” It also makes changes in the procedures specified for handling test samples from race horses, including testing for performance altering substances, and specifies criteria that an independent laboratory must meet to perform testing. It also adds language that New Mexico shall not license anyone who was denied a license or had their license suspended or revoked by a horse racing licensing authority in another jurisdiction.

FISCAL IMPLICATIONS

No Fiscal Impact.

SIGNIFICANT ISSUES

SB 444’s changes relating to Section 60-1A-14 (Testing Specimens) adds blood serum plasma, urine or other appropriate test samples and specifies that these samples must be tested at a laboratory that meet or exceeds the current national laboratory standards for the testing of drugs or other foreign substances in a horse.

SB 444 also strikes “foreign substances not naturally occurring in a horse” and adds for clarity “performance-altering substance defined as a class 1 or class 2 penalty class A drug by the ARCI, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the Commission.”

ADMINISTRATIVE IMPLICATIONS

The State Racing Commission writes in its earlier analysis of SB 444:

The bill creates a felony for administering foreign substances to a race horse in an attempt to influence the speed or stamina of that racehorse. The changes would limit the scope of what constitutes a felony by restricting it to the injection of specific drugs. This does not allow for advances in chemistry or technology.

The Administrative Office of the District Attorneys writes in its earlier analysis of SB 444:

Under Senate Bill 444, drugging a racehorse, including administering performance-altering substance (PAS), “for the purpose of stimulating or depressing the racehorse or affecting the speed or stamina of the racehorse during a horserace” is a fourth degree felony.

There are different standards of proof and different methods for investigating and proving violations that can result in civil fines and other penalties, and what is required under the criminal law. Because of the differences, extreme care would be necessary to avoid tainting a

potential criminal prosecution. Even if that is done, it is still possible that although the executive director of the racing commission reported a penalty imposed for a violation to the district attorney where the offense occurred, criminal charges may not be pursued. Even if there is no ambiguity in whether a substance is specifically named as a prohibited PAS, in order to prosecute criminal charges it would still be necessary to prove the substance was given to the racehorse to stimulate or depress it, or to affect its speed or stamina during a horse race. If there is any other potential use for the substance(s) involved, that would be a defense to criminal prosecution.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

In Section 3, the proposed amendments to 60-1A-14(A), could potentially supersede or conflict with state case law regarding proper handling of evidence. Currently the Commission has a policy in place that addresses the collection and preservation of evidence, along with chain of custody rules in compliance with state law.

RM/blm