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FISCAL IMPACT REPORT

SPONSOR <u>Ezzell/ Duncan</u>	LAST UPDATED <u>3/10/23</u>	ORIGINAL DATE <u>3/2/23</u>
SHORT TITLE <u>Racehorse Testing Fund Fines & Audits</u>	BILL NUMBER <u>House Bill 390/aHJC</u>	ANALYST <u>Anderson</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Audit	No fiscal impact	\$0-\$25.0	\$0-\$25.0	\$0-\$50.0	Recurring	SRC Operating Budget
Fund Management	No fiscal impact	\$0-\$86.6	\$0-\$86.6	\$0-\$173.2	Recurring	SRC Operating Budget
Total		\$0-\$111.6	\$0-\$111.6	\$0-\$223.6	Recurring	SRC Operating Budget

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From
 Gaming Control Board (GCB)
 State Racing Commission (SRC)
 Office of the Attorney General (NMAG)

No Response Received
 Office of the State Auditor (OSA)

SUMMARY

Synopsis of HJC Amendment House Bill 390

The House Judiciary Committee amendment to House Bill 390 changes Section 1 (D) of the original bill to clarify no single fine shall exceed \$100 thousand per violation. There is further clarification that 100 percent of the purse shall be forfeited in addition to the \$100 thousand fine per violation.

The amendment does not address analysis from the NMAG regarding concerns about the constitutionality of diverting funds from the current school fund to the racehorse testing fund. (See “Significant Issues.”)

Synopsis of House Bill 390

House Bill 390 would amend 60-1A-5 NMSA 1978 by changing the fine for a positive racehorse

drug test from the greater of \$100 thousand or 100 percent of the purse to a fine no larger than \$100 thousand that includes the related purse. The bill would also change the fund the fines are paid into from the “current school fund” to the “racehorse testing fund,” which would be subject to a yearly audit.

This bill does not contain an effective date, and as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed.

FISCAL IMPLICATIONS

The State Racing Commission (SRC) could be impacted between \$20 thousand and \$25 thousand for the cost of the additional audit of the testing fund by a private, independent company. However, the agency already undergoes an annual audit so it is possible the current yearly audit would likely include monitoring of the racehorse testing fund.

The racehorse testing fund is going to be expanded significantly and may require additional FTE for both state and federal regulatory purposes. The average cost per FTE at SRC is \$86.6 thousand. The agency reported an FY23 vacancy rate of 16.6 percent and possibly could absorb the additional cost.

SIGNIFICANT ISSUES

SRC expresses concerns about collecting the fines:

[The commission] recognizes the reality that studies have shown that approximately 90 percent of Americans have difficulties financially dealing with an unplanned expense of \$400. The Racing Commission sees that reality when many of its fined licensees never pay their fines, whether they be a few hundred dollars or several thousands of dollars.

SRC has faced challenges in collecting penalty fines, with the agency’s 2020 audit noting the agency’s “ability to collect the imposed fines is limited and often impossible, [and] as a result, the uncollectable portion is very high.” According to the audit, 87 percent of the \$2.1 million in fines receivable as of the end of FY20 are estimated to be uncollectable.

Fines are required to be paid within 30 days, and unpaid fines can result in a suspension for the offending owner or trainer, but offenders often appeal, keeping fines tied up in legal proceedings, sometimes for years. In FY21, it took the agency an average of 75 days to collect fines.

NMAG has provided some additional information regarding the provision to divert funds from the school fund to the racehorse testing fund. Article XII, Section 4, of the New Mexico Constitution states:

All forfeitures, unless otherwise provided by law, and all fines collected under general laws; the net proceeds of property that may come to the state by escheat; the rentals of all school lands and other lands granted to the state, the disposition of which is not otherwise provided for by the terms of the grant or by act of congress shall constitute the current school fund of the state.” (Emphasis added.)

NMAG has said, unless 60-1A-5 NMSA 1978 is not considered a general law, any fines collected pursuant to its authority must revert to the school fund. Under the analysis provided by case law below, it appears 60-1A-5 is likely to be categorized as a general law. From NMAG:

According to [*Espinoza v. City of Albuquerque*](#), a general law is “one that [a]ffects the community at large, as opposed to a local law that deals with a particular locality.” 2019-NMCA-014 A general law “applies generally throughout the state, relates to a matter of statewide concern, and impacts inhabitants across the entire state.” See also, [*Apodaca v. Wilson, 1974-NMSC-071*](#) ... (emphasizing that in order “to control or limit municipal enactments, the general law must be of general concern to the people of the state”).

An example of a general law is a statute governing utility rate-making, which is a matter of statewide rather than local concern “because a proposed service rate for one municipality can affect rates to other municipalities in the state.” [*City of Albuquerque v. N.M. Pub. Serv. Comm'n \(Public Service Commission\), 1993-NMSC-021*](#). In contrast, state provisions setting the allowable number of municipal commissioners is not a matter of general concern because the number of commissioners a municipality has “is predominately, if not entirely, of interest to the citizens of the municipality for which the commissioners serve.”

ADMINISTRATIVE IMPLICATIONS

Oversight of an expanded racehorse testing fund would place additional administrative responsibilities on the State Racing Commission.

TECHNICAL ISSUES

The House Judiciary Committee amendment addresses an NMAG concern that the language around the maximum fine suggested the total of all fines could not exceed \$100 thousand. However, the amendment does not address NMAG concerns about diverting the funds from the current school fund.

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