

<b>LFC Requester:</b>	<b>Clint Elkins</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

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

Check all that apply: **Date** March 4, 2015  
**Original**        **Amendment**        **Bill No:** SB403s (SJC)  
**Correction**        **Substitute**   

**Sponsor:** Sen. George K. Munoz    **Agency Code:** Attorney General's Office (305)  
**Short Title:** Horse Racing Act    **Person Writing:** Roscoe A. Woods, AAG  
**Title:** \_\_\_\_\_    **Phone:** 505.827.7416    **Email:** RWoods@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**BILL SUMMARY**

Synopsis:

In regards to the Horse Racing Act, 1978 NMSA, Section 60-1A-1 *et seq.*, Senate Judiciary Committee Substitute for SB403 is seeking to raise the cap of the horse racing fund from \$600,000 to \$1Mil so that any moneys in excess of \$1Mil will revert to the state’s general fund.

Senate Judiciary Committee Substitute for SB403 includes, *inter alia*, amending SB403 to:

- Require New Mexico Racing Commission (NMRC) to hold hearings within twenty (20) days of the date the notice of a hearing was sent to the licensee;
- Require NMRC to render a decision within 30 days of the hearing or if the review is heard by a hearing officer within 30 days of receiving the hearing officer’s recommendation;
- Require hearing officers to submit to the commission within 30 days after the end of the hearing written findings of fact, conclusions of law, and a recommendation for commission action;
- Require a licensee subject to an adjudicatory decision by the commission to appeal said decision pursuant to Section 39-3-1.1 NMSA 1978;
- Providing that it is violation of the Horse Racing Act AND the Gaming Control Act for anyone to hold a public horse race for profit or gain;
- Require any suspension of an occupational license conform with rules published by the Association of Racing Commissioners International (ARCI) or successors thereto;
- Provide for temporary licensure;
- Require a licensee to send a review fee of \$500 to NMRC when the licensee requests a

review or reconsideration of a stewards' ruling;

- Rename the Racehorse Testing Fund the "Racehorse Testing and Enforcement Fund"; and,
- Make the possession of a drug defined as a class 2 or class 2 penalty class A drug by the ARCI a fourth degree felony.

## **FISCAL IMPLICATIONS**

None pertaining to the AGO

## **SIGNIFICANT ISSUES**

Section 2 proposes to address the racing of horses on premises that are not licensed by the Commission. Specifically, this seems aimed at addressing "bush tracks" A/K/A unlicensed premises, and imposing a fourth degree felony for same.

In regards to:

[a] hearing shall be held within twenty days of the date of notice of hearing...hearing may be held before commission or before hearing officer...hearing officer, within thirty days.....unless the hearing is held before a hearing officer, within thirty days...the commission shall render findings of facts...and decision...[if] hearing is held before a hearing officer, the hearing offer shall submit to the commission within thirty days...findings of fact...and recommendation...[and] within thirty days after receiving the hearing officer's submission, the commission shall render its...decision.

Section 60-1A-5(D) *as proposed amendment* (SB403).

As proposed, 60-1A-5(D) may establish a presumptive statute of limitations barring the commission of its enforcement authority.

Further, proposed amendment 60-1A-5(H), proposing that all administrative Racing Commission appeals be taken pursuant to Section 39-3-1.1 may be in conflict with the Horse Racing Act (Act) because there is no codified language in the Act enabling a specific statutory appeal. This is why Rule 1-075 NMRA is utilized in such appeals. In other words, "The provisions of this section [39-3-1.1] shall apply only to judicial review of agency final decisions that are placed under the authority of this section by specific statutory reference." 1978 NMSA, Section 39-3-1.1(A). The Act has no such reference.

Providing that it is violation of the Horse Racing Act and the Gaming Control Act for anyone to hold a public horse race for profit or gain may be interpreted as to apply to Indian Reservations and any race tracks thereon; however, the Gaming Control Act empowers the NM Gaming Commission to regulate gaming in the state of New Mexico including monitoring compliance of the New Mexico gaming tribes under the 2001 Tribal/State gaming compacts.

The “moral clause’ under Section 60-1A-11(A)(1) may be unconstitutional due to vagueness. It may be cured by adding “but at a minimum” after the word “integrity.”

Section 60-1A-12(B), as amended, conflicts with NMAC 15.2.1.9(B)(9).

In regards to criminalizing the possession of the above-mentioned drugs may directly conflict with the Control Substance Act, Section 30-31-1 *et seq.*

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

See above.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

See SB406 RACEHORSE TESTING FUND & DISTRIBUTIONS TO IT (also sponsored by Sen. Munoz)—appears to be a companion or a duplication of Section 7 of SB403 as it pertains to Section 60-1A-14.1 to wit: the renaming the racehorse testing fund and the addition of resources for same;

SB 366 PROHIBITED SUBSTANCES IN RACEHORSES (sponsored by Sen. Michael Sanchez)—Appears to relate to SB403 but adds language to Section 60-1A-5(F), conflicts with SB403 as it pertains to Section 60-1A-11 and globally adds language to the Horse Racing Act not included in SB403.

## **TECHNICAL ISSUES**

Duplication and conflicts with other Bills as mentioned above.

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

In regards to 60-1A-5(H) and the appeal process, perhaps the addition of “or Rule 1-075 NMRA” would resolve any issues.

Pursuant to the Horse Racing Act, specifically Section 50-1A-5(A), the commission is empowered to implement and adopt rules that govern the industry.

Perhaps a Severability Clause would be prudent—if any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

**Status quo**

**AMENDMENTS    N/A**