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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Ezzell/Townsend/Sharer/Scott/Paul **ORIGINAL DATE** 3/10/2025

BILL

SHORT TITLE Horse Racing Group, Gaming & Audits **NUMBER** Senate Bill 323

ANALYST Montano

REVENUE* (dollars in thousands)

| Type | FY25 | FY26 | FY27 | FY28 | FY29 | Recurring or Nonrecurring | Fund Affected |
|------|------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|---------------------------|---------------|
| | | (\$2,616.5) to (\$33,175.3) | (\$2,616.5) to (\$33,175.3) | (\$2,616.5) to (\$33,175.3) | (\$2,616.5) to (\$33,175.3) | Recurring | General Fund |

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

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| Agency/Program | FY25 | FY26 | FY27 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|----------------|------|------------------------------|------------------------------|------------------------------|---------------------------|--------------------------------------|
| SRC | | \$1,445.1 | \$1,445.1 | \$2,890.2 | Recurring | General Fund |
| SRC | | Indeterminate but minimal | Indeterminate but minimal | Indeterminate but minimal | Recurring | Jockey and Exercise rider fund |
| OSA | | \$175.0 | \$175.0 | \$350.0 | Recurring | General Fund |
| Total | | \$1,616.8 | \$1,616.8 | \$3,233.6 | Recurring | General Fund |

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

Relates to House Bill 367 and Senate Bill 513

Sources of Information

LFC Files

Agency Analysis Received From
State Racing Commission (SRC)
Gaming Control Board (GCB)

Agency Analysis was Solicited but Not Received From
Office of the State Auditor (OSA)

SUMMARY

Synopsis of Senate Bill 323

Senate Bill 323 (SB323) makes several amendments to the Horse Racing Act, focusing on simulcasting regulations, casino operational days, and financial oversight of racetracks. The bill specifies pari-mutuel betting on simulcast horse races is only allowed “on weeks” when the

racetrack is importing a race meet from another New Mexico-licensed track. It also changes the times during which a track can operate gaming machines from days when a track is conducting live races or simulcasting any race meet to weeks when the racetrack is conducting live races or simulcasting New Mexico race meets. It specifically designates the New Mexico Horsemen's Association as the official horsemen's group required by the federal Interstate Horseracing Act of 1978. It also grants the State Auditor authority to audit racetracks.

This bill does not contain an effective date and as a result would be effective June 20, 2025.

FISCAL IMPLICATIONS

The enactment of SB323 would lead to a decrease in general fund revenue, primarily because casinos can only operate when a track is conducting a live race or simulcasting, that could be as high as \$33.2 million a year or as low as \$2.6 million. Both the State Racing Commission (SRC) and the Gaming Control Board (GCB) highlight that there is a lack of clarity with what constitutes a valid week for purposes of operation in SB323. GCB and SRC calculated the same ceiling value of \$33.2 million, but GCB also, using alternative assumptions, estimates the loss at \$2.6 million based on the number of weeks in the year when no racing is conducted at any track. Because there is no live racing at any track for just two full weeks, or 3.8 percent, of the year, then there would be 3.8 percent less revenue generated from the gaming tax, or \$2.6 million. However, if casinos can only operate during weeks that have horse races every day of the week, then based on the 187 projected race days, or 26.7 weeks, casinos would not be operable for about 48 percent of the year. If there was a reduction of 48 percent from the total gaming tax generated, then based on the 2024 total, there would be a loss of \$33.2 million.

GCB notes:

It should be noted that the numbers [in the GCB estimate] have such a wide range due to the lack of clarity with how "weeks" will be determined. It is not clear if the change from "days" to "weeks" would mean the gaming machines may be played only if live horse races or simulcasting of New Mexico races is conducted each day of the week or if any number of days in a week will suffice.

In its explanation of its calculations, GCB says 2024 statistics were used in two different ways:

1. The actual number of race days (187) within the State of New Mexico. In this case, the difference in gaming tax revenue would amount to a reduction of \$33,175,343 (48.8 percent).
2. Actual number of weeks racing occurs in New Mexico even if there is only one race day in that week. There are only two full weeks in the year during which New Mexico has absolutely no live racing. This difference resulted in a loss of \$2,616,465 (3.8 percent).

If the bill anticipates that the casinos may operate only on weeks that have New Mexico races on all days of the week, the percentage will be much higher. With that in mind, the best-case scenario is the reduction calculated in #2 above.

This decrease in revenue would affect the purses paid at race meets. Twenty percent of the total net take from slot casinos associated with racetracks account for 95 percent of purses paid on an annual basis. If SRC increased the number of live racing days to compensate for the loss of revenue for purses, SRC would need to add live racing days. For casinos to stay operable year-

round, SRC would need to add 178 live racing days, representing additional operating costs for the agency of \$1.4 million a year (each additional racing day costs SRC about \$8,100 for veterinarians, investigators, racing stewards, and other essential race day workers). If live racing days increase, insurance for jockeys would also increase, which in turn would negatively affect the jockey and exercise fund. SRC projects the Office of the State Auditor (OSA) would have to pay around \$175 thousand a year to audit all five racetracks.

SIGNIFICANT ISSUES

SRC argues adding “on weeks” creates confusion in a section of law that is clear:

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.

The bill’s language specifying casinos can only operate when the track is conducting live races or simulcasting from another New Mexico track also creates confusions, according to SRC:

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 percent of such funding comes from the statutorily required 20 percent net take of horse racetrack casinos' slot machines, as provided for in NMSA 1978, Section 60-1A-4 7(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.

SRC contends the bill’s provision designating the New Mexico’s Horsemen’s Association “as the horsemen’s group required by that act” (the federal Interstate Horseracing Act of 1978), appears to be in contradiction to the act:

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 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.

SRC raises additional objections to moving auditing responsibilities to the State Auditor's Office:

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.

GCB notes:

The limiting of gaming machine operating hours to the simulcasting or conducting of live New Mexico races only would create a significant reduction in gaming taxes paid to the state's general fund. The limitation would not only result in a significant reduction in gaming tax revenue to the state, but it would also greatly reduce horse racing purses as well as the amount paid into problem gambling funds.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB323 relates to House Bill 367 and Senate Bill 513. Both bills aim to add live racing days.

OTHER SUBSTANTIVE ISSUES

SRC notes:

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.

SRC states the Legislature should be cautious in “codifying its support” of the New Mexico Horsemen's Association, which was 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 and has been embroiled in numerous court actions, including an investigation by the State Ethics Commission.

Finally, SRC notes, “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.