

2015 HOUSE JUDICIARY

HB 1091

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1091
1/14/2015
21952

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to registration of North Dakota with bred horses with the breeders' fund.

Minutes:

Testimony #1, #2

Acting Chairman Kretschmar: Opened the hearing on HB 1091 with testimony in support.

Rep. Maragos: I sponsored this bill on behalf of the Racing Commission of ND. If this bill is passed it will transfer the administrative cost managing the breed fund; which pays all the horse breeders a reward based on their horse winning races. It shifts the cost away from the general fund into the breeder's fund. It has plenty of revenue in it to take care of this.

Rep. K. Hawken: Didn't we use to use the breeder's fund?

Rep. Maragos: I was gone when they crafted this bill. Former Rep. Meier did this bill in my absence.

Gunner laCour, Director of the ND Racing Commission: (See Testimony #1) (4:00-8:32)

Rep. P. Anderson: Give me a brief explanation of the breeder's fund. Why is it so difficult to administer?

G. laCour: It doesn't seem that difficult to administer, but that is because I have a background in the racing industry operations etc. There are a number of data basis that have to be checked. One of them is Eco base that holds all race results. Sometimes those race results are not accurate so we have to go back and review them. There are not very many people who have that background because the industry in ND is small.

Rep. Mary Johnson: The state auditor audits the Racing Commission so an independent third party is auditing and will audit the breeders fund also?

G. laCour: We have no only the state auditor, but we also have an independent contractor that we engage every year that come in and audits the fund. So we have our administer

who administers the fund; then we have our auditor come in and then we have the state auditor.

Acting Chair. Kretchmar: Our hearing for this bill was scheduled for 10:10 AM and it is only 9:20 AM so we will recess the hearing and if anyone else wants to testify later they can.

Recessed:

Acting Chair Kretchmar reopened the hearing.

Scott Horst, President of the ND Thoroughbred Assoc: We support this bill. We would like the Racing Commission to be able to control the money or the process of distributing the money out our breed fund. Currently we hire and put out bids and hire a certain company or individual and they have had a lot of problems in the past and it has cost us quite a bit of money. The bred program is designed for the horsemen of ND; Quarter horse, Trotters, Thoroughbreds and Paints and that money should be distributed to them rather than given out to individuals who are having a lot of errors within the system and taking money out of our fund. We would like to purchase a computer program where we can pay one fee and it is a lot less problems or errors and a lot less funds coming out of our fund.

Lay Bockhouse: Members of both the Thoroughbred and Quarter horse Assoc.: When this went out of office there were other problems in the office. Horsemen for years wanted a computer program and this is outdated. This is a step in the right direction.

Rep. P. Anderson: You have full confidence that the personnel in the office now can handle this without any problems?

Lay Bockhouse: Absolutely.

Leon Glaser, President of the ND Quarter horse Racing Assoc.: Support it.

Acting Chair Kretchmar: Do all the horse people in ND support this bill.

Leon Glaser: I would not say all because I have not had the opportunity to poll every one. Our board and our membership favor it.

Opposition: None

Hearing recessed.

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1091
1/19/2015
22114

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to registration of North Dakota with bred horses with the breeders' fund.

Minutes:

Chairman K.Koppelman: reopened the hearing on HB 1091.

Gunner laCour, Director of the ND Racing Commission: We introduced this bill because we have had a number of difficulties relating to the administration of the ND breeders' fund. It is a continuing appropriation from which we provide awards to our horse breeders in the state based on the outcome of races. We would provide awards not only to the horses that are successful in those races but also to the owner of the mother or the sire or father so we promote the continue breeding of horses in the state. Over the last four or so years we have run into a number of errors. The state does an audit of everything we do and they were alerted to these errors by myself. We also so an annual audit of the breeders fund to double check the administration because we are required by statue to bid this out to a private third party. We are not allowed to administer the fund ourselves. It does provide some pretty specific knowledge regarding horses so it is not overly appealing to most companies and we don't receive very many bids. I think if we are allowed to administer this in house we can do it at no additional cost or a small administrative cost whereas right now per biennium we are at about \$50,000. I think a onetime cost to develop a system we could reduce the cost greatly and also the number of errors.

Rep. L. Klemin: What is the person that is maintaining the register doing?

Gunner laCour: In order to be registered with our fund a foal would be born and at that time the owner of the foal would send the necessary paperwork to our fund. At that time they would determine eligibility for ND Breed status of that horse. That includes checking on the status of the mare; sire and if all paperwork is in order those foal papers which are issued by a national register would be stamped to indicate they were ND breed and they would be eligible. That happens all the time and each year as they get older. Every year they take the outcome of the races as reported by another national register and look at those horses that are ND breed and therefore eligible for the breed fund money and then determine out of the money that has been allocated from the breed fund how much each

horse owner gets. There are specific percentages that each of those is accorded and there is a specific amount of money that every year is allocated from the breed fund to pay out those breeders fund awards.

Rep. L. Klemin: So it is a paperwork thing for the registration part to start with and then a bookkeeping thing afterwards to allocate the breeders fund?

Gunner laCour: Yes it is.

Rep. L. Klemin: Would you need additional personnel in your office to do this job if you were going to be doing it?

Gunner laCour: No the plan would be to continue with the administrator that we have through the end of the year because then if this bill got passed we would find ourselves in the middle of a cycle so I would let it run through the end of the year. Then go out to companies that I am aware of and do procurement to find out if anybody could bid creating a breeders fund data base for us into which we would enter all this information and have it automatically based on the results; automatically run who was entitled to awards with the data base. I do know of one company that may be able to do this and then we could administer this in house after that with me and my administrative assistant.

Rep. L. Klemin: What was the cost of the contract now?

Gunner laCour: \$51,000 for the 2011-2013 bienniums. As of December we were setting at \$36,970.

Rep. P. Anderson: How much is in the breeders' fund?

Gunner laCour: The last time I checked last week it was \$839,000. That has been building over a number of years than we take in. We try to keep a nice reserve there.

Opposition: None

Hearing closed.

Motion Made to Do Pass by Rep. Kretschmar: Seconded by Rep. Lois Delmore:

Discussion:

Rep. Kretschmar: There was a lot of support from various horse breeders when the meeting had opened on January 14 and I think we should go ahead with this.

Roll Call Vote: 12 Yes 0 No 1 Absent Carrier: Rep. Maragos

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL NO. HB 1091**

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations

Other Actions: Reconsider _____

Motion Made By Rep. Kretschmar Seconded By Rep. Lois Delmore

| Representative | Yes | No | Representative | Yes | No |
|-----------------------|-----|----|----------------------|-----|----|
| Chairman K. Koppelman | X | | Rep. Pamela Anderson | X | |
| Vice Chairman Karls | X | | Rep. Delmore | X | |
| Rep. Brabandt | X | | Rep. K. Wallman | X | |
| Rep. Hawken | X | | | | |
| Rep. Mary Johnson | X | | | | |
| Rep. Klemin | X | | | | |
| Rep. Kretschmar | X | | | | |
| Rep. D. Larson | X | | | | |
| Rep. Maragos | --- | | | | |
| Rep. Paur | X | | | | |
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| | | | | | |
| | | | | | |

Total (Yes) 12 No 0

Absent 1

Floor Assignment: Rep. Maragos

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1091: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1091 was placed on the Eleventh order on the calendar.

2015 SENATE JUDICIARY

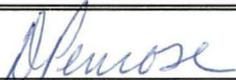
HB 1091

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1091
3/9/2015
24478

- Subcommittee
 Conference Committee

Committee Clerk Signature 

Minutes:

1,2,3

Ch. Hogue: We will open the hearing on HB 1091.

Gunner laCour, Director, ND Racing Commission: Support (see attached 1, 2 and 3).

Ch. Hogue: The bill would no longer compel you to contract to do this administration outside of the Commission.

Gunner laCour: Correct.

Sen. Nelson: So what exactly do you do? Why did they have such large errors?

Gunner laCour: We allocate a certain amount of money each year; for example, this year it would be \$150,000. There is a mathematical formula that distributes that between ND bred horses that win races and the breeders' of those horses (the owner of the dam and the sire). The formula isn't overly complicated but if you mess up one little part, let's say you make somebody as having won a race but because of an objection or something like that, the horse was taken down to third place, so they should have received 3rd place money and they received 1st place money. There are a number of different databases that report these kinds of things, so if you're not very careful and go through the commission's notes, you go through the various databases that report the outcomes of the races, you can get one or two things wrong and have the outcome skewed and then one of the problems is that in order to fix it, you probably already sent out checks by the time the audit is completed; in order to fix it we end up making up the difference to make it right.

Sen. Nelson: So the \$23,250 in overpayments is in addition to the \$51,000 in your administration costs.

Gunner laCour: The \$23,000 in overpayments for that year would have been in addition to any allocated funds for payments to the horsemen. The \$51,000 in administrative costs is an entirely separate entity. It does come out of the fund as well but those are two separate issues.

Sen. Nelson: Couldn't you hire somebody for that. I think there are some people around that would work for \$51,000/year.

Gunner laCour: Yes. That was the payment to the contractor for that biennium, and the point I was trying to make there that \$51,000 for a biennium was 1/4 of the payments that we were making to the Horsemen. It was a very large amount of money for something that really should not be as difficult as it seems to have become. I feel like we're not getting our monies worth out of this. If we spent some money to perhaps put together a program that would pull some of the state automatically, it would allow us to input results and it would calculate everything. We could do it in-house, for a one-time cost, no additional staff and that way if it is screwed up, at least it's my fault.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing. What are your wishes in regard to HB 1091.

Sen. Luick: I move a Do Pass.

Sen. Grabinger: Second the motion.

6 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Sen. Luick

Date: 3/9/15
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 1091

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Seconded By

Motion Made By Sen. Luick

Sen. Grabinger

| Senators | Yes | No | Senators | Yes | No |
|----------------|-----|----|----------------|-----|----|
| Ch. Hogue | ✓ | | Sen. Grabinger | ✓ | |
| Sen. Armstrong | ✓ | | Sen. C. Nelson | ✓ | |
| Sen. Casper | ✓ | | | | |
| Sen. Luick | ✓ | | | | |

Total (Yes) 6 No 3

Absent 0

Floor Assignment Sen. Luick

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1091: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1091 was placed on the
Fourteenth order on the calendar.

2015 TESTIMONY

HB 1091

#1
HB1091
1-14-15
pg 1

House Bill 1091
ND Racing Commission
Gunner laCour, Director
January 14, 2015

64th Legislative Assembly
House Judiciary Committee
Representative Kim Koppelman, Chairman

Over the past two bienniums the Racing Commission has worked diligently to improve its processes and procedures. Examples include engaging a preeminent pari-mutuel auditor to audit wagering activity, contracting with the Thoroughbred Racing Protective Bureau to perform extensive background checks on all regulated companies, and the passage of the Association of Racing Commissioners International Uniform Medication Rules. These and other activities have garnered the Commission a reputation both nationally and internationally as a leading regulatory body focused on transparency and best practices in the equine industry. However, despite these positive improvements, the Commission has repeatedly faced problems related to the administration of the Breeders' Fund.

Pursuant to statute, the Commission is required to bid out the administration of the Breeders' Fund, the cost of such administration then being paid from that Fund. Over the past four years the Commission audit of yearly disbursements has repeatedly found errors. Prior to the 2013-2015 biennium, the contractor responsible for these errors during the 2011-2013 biennium resigned from their position. However, when the

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1-14-15
Pg 2

Commission again bid out the services, the only bid received was from the same contractor at a significantly increased price. After discussions with State Procurement, the Commission had no choice but to accept the bid. The Breeders' Fund requires some special expertise in the equine industry and is therefore somewhat difficult to administer and not particularly appealing to many companies.

As you can see from our single finding in the Commission's most recent audit which has been included with this testimony, these errors have resulted in \$23,250 in overpayments from the fund in addition to time and effort expended by Commission personnel. Additionally, the total cost for administration of the Breeders' Fund during the 2011-2013 biennium was \$51,000, or approximately one quarter of the total disbursements made to the horsemen during the same period. As of December, the total cost of administration to the Breeders' Fund for the 2013-2015 biennium was \$36,970, on pace to meet the prior biennium's expenses.

The Commission hopes that with this change to statute it will be able to more effectively and efficiently administer the fund in-house. Pursuant to the recommendation of the auditor, the Commission has explored the possible cost of developing a new database which would significantly decrease the difficulty of administration and allow the services to be performed in-house without the necessity of

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HB1091
1-14-15
Pg 3

additional staff. It appears that it may be possible to achieve this goal at a one-time cost less than previously paid for entire biennium of administration.

You will note that the statute does not preclude administration by outside contractors if that is found to be the more efficient solution. If a contractor was identified who could properly administer the fund for a reasonable price, the Commission would certainly consider such an alternative. However, the statute also provides significant latitude to the Commission in the event any contractor was improperly administering the fund. Currently, one of the largest problems the Commission has faced is that if it cancels a contract, the Breeders' fund remains without administration until such time new bids can be received. If limited or no bids are received, the Commission can find itself in a very difficult position.

Ultimately, this change to statute will ensure that the Commission has the ability to explore all effective options for Breeders' Fund administration with an eye towards reducing costs to the fund. The Commission believes that there are in-house solutions available to solve many of the current problems. But, regardless of whether the Breeders' Fund is administered in-house or by a contractor, the Commission will be in a position to implement more effective oversight and control costs.

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HB1091
1-14-15
Pg 4

Operations

Our audit of the North Dakota Racing Commission identified the following area of potential improvement to operations:

- Is the contract for administrative services of the Breeders' Fund as required by NDCC 53-06.2-04.1 the proper use of the Breeders' Fund monies?

Breeders' Fund Registry Cost Savings (Finding 14-1)

Condition:

It may be more cost effective for the Horse Racing Commission (Commission) to maintain and administer the North Dakota-bred horse registry themselves. However, North Dakota Century Code (NDCC) section 53-06.2-04.1 requires the Commission to contract with a private person (Contractor) to maintain the registry which is used to determine qualification for breeders' fund awards or purse supplements.

The Contractor's rate during the 2011-2013 biennium was \$25 per hour but increased dramatically to \$65 per hour for the 2013-2015 biennium. Per review of the Commission's meeting minutes, errors made by the Contractor caused the Commission to expend staff time to make corrections and to disburse an additional \$23,250 from the Breeder's Fund beyond what it would have disbursed had the errors not been made by the Contractor.

Criteria:

NDCC 53-06.2-04.1 states through a competitive bidding process, the Commission shall award the contract to the lowest responsible bidder. The cost of the contract must be paid from the Breeders' Fund.

Cause:

Due to the Commission only receiving one bid, they were forced to accept the bid at a significantly increased hourly rate.

Effect or Potential Effect:

The Contractor was paid approximately \$51,000 during the audit period and the 160% increase in the hourly rate will result in substantial future payments. Additionally, the errors made by the Contractor during calendar years 2011 through 2013 resulted in the Commission spending numerous hours making corrections as well as additional costs to the Breeder's Fund.

Operational Improvement:

We recommend the North Dakota Racing Commission determine if it is cost effective to administer the Breeders' Fund themselves. If so, the Commission should consider proposing changes to NDCC section 53-06.2-04.1 which requires the Commission to contract those services with a private person.

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1-14-15
pg 3

North Dakota Racing Commission Response:

The Commission is in full agreement with the State Auditor's findings and recommendations.

More specifically, the Commission has been frustrated by an inability to effectively control the Breeder's Fund for which it is responsible. The Commission by necessity relies on the accuracy of the Contracted Entity as it would otherwise incur significant costs in reviewing all calculations and awards. However, this problem has been compounded by the lack of available outside entities that have sufficient expertise to effectively administer the fund. This has ultimately led to a drastic increase in cost to the Breeder's Fund and numerous errors in its administration, imposing significant costs on both the Commission and the horsemen of North Dakota.

At the April 25, 2014 Commission meeting, authorization was provided to the Director to begin planning the appropriate corrective action. Specifically, the Director will draft and submit legislation which removes the language in NDCC 53-06.2-04.1 requiring the Commission to obtain Breeder's Fund administrative services from an outside entity. If the legislation is successful, the Commission has been exploring possible solutions such as the hiring of a half-time person for approximately half the current costs and/or the development of a Breeder's Fund database (one-time cost equal to or less than one year of services) which would significantly reduce the effort required to administer the fund allowing the Commission to rely on current personnel only.

#2
HB 1091
1-14-15
PZ

LaCour, Gunner

From: sethdem@utma.com
Sent: Tuesday, January 13, 2015 11:55 AM
To: LaCour, Gunner
Subject: Breed Fund Administration bill

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Gunner

I am writing in support of the proposed legislation that will give the Racing Commission the option of administering the Breed Fund. The current contract situation saw several difficulties in the administration of that Fund. I believe that the Fund could be administered more efficiently from within and probably at less cost. Please count me in favor of the proposed bill giving the Racing Commission the option of administering the Breed Fund. Please note that I own or have an interest in many horses enrolled in this Fund.

Doug DeMontigny

1-1

House Bill 1091
ND Racing Commission
Gunner laCour, Director
March 9, 2015

64th Legislative Assembly
House Judiciary Committee
Senator David Hogue, Chairman

Over the past two bienniums the Racing Commission has worked diligently to improve its processes and procedures. Examples include engaging a preeminent pari-mutuel auditor to audit wagering activity, contracting with the Thoroughbred Racing Protective Bureau to perform extensive background checks on all regulated companies, and the passage of the Association of Racing Commissioners International Uniform Medication Rules. These and other activities have garnered the Commission a reputation both nationally and internationally as a leading regulatory body focused on transparency and best practices in the equine industry. However, despite these positive improvements, the Commission has repeatedly faced problems related to the administration of the Breeders' Fund.

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1-2

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3/9/15

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Contractor

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3/9/15

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3/9/13
HB1091

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HB 1091

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LaCour, Gunner

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HB 1091

3-9-15

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