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2130

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Operator's Signature

*Yubereca J. Lee*

Date

10-16-03

2003 SENATE JUDICIARY

SB 2130

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10-16-03  
Date

# 2003 SENATE STANDING COMMITTEE MINUTES

## BILL/RESOLUTION NO. 2130

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 01/20/03

Tape Number	Side A	Side B	Meter #
2	X		18.0- end
3	X		0.0 - 15.3
4	X		27.5 -38.8
Committee Clerk Signature <i>M. J. J. J.</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill.

### Testimony in support of SB 2130

Paul Bolinger (meter 18.3) Commissioner of Racing. Bill was introduced by the racing Commission at the request of the racing commission. Described bill. Listed the people on the racing committee (meter 23.5) Discussed the pros and cons of term limits. This appointment is by the Governor. Read statute for appointment of persons (meter 20.5) People who are on the committee can not have any financial stake in horses. They have very little knowledge and have to learn a large book of rules. Receive \$75 per meeting. Stated some of the rules (meter 22.0)

Senator Dennis Bercier questioned the worth of hiring people who have no racing background. Should this be changed to people who don't need so much time to learn the skill to people who know horses. Not "Neophyte"

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Senate Judiciary Committee  
Bill/Resolution Number 2130  
Hearing Date 01/20/03

as you Mr. Bolinger refer to them. Mr. Bolinger (meter 27) spoke of the rotating five year new appointments. One member leaves and is replaced by one new member every year in July answered Senator Stanley W. Lyson, Vice Chairman. Will this bill keep a person reelected indefinitely?

Sen. Dever (28.3 meter) Have we reelected people in the past? They have wanted to Elect someone who had filled in for someone else. I wanted to elect him for a full term but as the law reads-I had to elect a "new" person. In the past we have. There is question on the word "new".

Senator Carolyn Nelson asked if all four appointments could be from the same association? Yes it is possible. Do the appointments have to be members of these associations? No. Really?

Sen. Dever (33.7 meter) Questioned the language as giving to much preference to the incumbent.

Discussed and amendment meter (34.4)

#### Testimony in opposition of SB 2130

Merle Boucher - Rep. District 9 (meter 35) I have heard the testimony here today. What we have here is a problem greater then this bill. The election of what Mr. Bolinger refers to as "neophytes" that make up the commission. This committee is to complicated to have this of persons elected. This learning curve is to long! We do not want to make these people institutionalized. In court "shall" means must. Statute ND Century Code 5306.202 sub 2 describes the persons elected (attachment #1

Doug DeMontigny (43.8 meter) Represent Chippawa Downs race track in Belcourt.

This committee has latterly shut us down in favor of the "Big Race Track" The only hope we have is the five year term limits in hopes of the election of people who actually have prior horse experience. Senator Thomas L. Trenbeath asked if they had appeared before this commission?

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Bill/Resolution Number 2130  
Hearing Date 01/20/03

Twice, and we were shut down we asked for reconsideration twice. Did you have an attorney with you? We did not due to costs. Senator John T. Traynor, Chairman replied that the Judicial committee would like to look at the duties of the commission and what appeal rights the be grieved parties have.

Doug Plummer (53.0 meter to tape 3 side 1) Mandan Horse owner. Term limits are in everything but a dictatorship. Sited two discrimination acts he witnessed from the present committee.

Peter Davis - Belcourt Horse owner (tape 3 side 1) My issues are about people being elected who do not have experience with horses and racing. Horses/Horse racing has a great economic impact in my area. Discussed a five year breeders fund and submitted it to Mr. Bolinger. He approved a plan total unrelated to what the people who are raising the horses.

Sen. Døver asked what is the size of the pool of people with horse knowledge? 200 people own race horse.

Norman Glinz, Horse Trotter/Pacer owner (meter 10.8) We need to appoint someone who has horse knowledge.

Charlie Paysted, Ft Yates Horse Owner (meter 13.4) I urge you to recommend people with knowledge.

#### Neutral Testimony to SB 2130

Senator John T. Traynor (meter 13.8) Thank you for your valuable testimony regarding the operation of the racing commission its composition and also its functions. SB 2130 does not lend itself to many of the areas that concern you. Your concerns are broader than what this bill focuses on. It may be that this legislature should decide that your concerns need to be addressed in a study. Another committee takes a good hard look of the racing committee how it is

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Senate Judiciary Committee

Bill/Resolution Number 2130

Hearing Date 01/20/03

constituted what its functions are and how it can operate with more appropriate satisfaction to the citizens who are here this morning this committee will look at the appointment apparatus and we will do something with SB 2130. I do not believe that we can do everything that you folks have asked us to do with this one bill. I hope you understand that. We appreciate you coming hear and expressing your views.

**Senator John T. Traynor, Chairman Closed Hearing**

**Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested committee work starts on the bill (tape 2 4, side 1 meter 28.0) Discussion on amendment.

**Sen Thomas L. Trenbeath** moved a to amend SB 2130 Seconded by

**Roll Call Vote: 5Yes. 1 No. 0 Absent**

Discussion (meter 31.0)

Senator Carolyn Nelson asked for the Appointment and Duties of the Racing Committee.

**Senator John T. Traynor, Chairman Closed Hearing**

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*Yubereca d. Lee*  
Operator's Signature

10-16-03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2130

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 01/27/03

Tape Number	Side A	Side B	Meter #
4	X		28.9 - 37
Committee Clerk Signature <i>my Halberg</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with committee work on the bill.

Hand out attachment # 1. Last sessions Racing Commission Study. (meter 28.9) Senator Thomas L. Trenbeath said that the commission did not cover the concerns that were brought to our attention. A Separate resolution should be made by this committee and if we all are in agreement of it we may all be cosponsors.

Discussion on retro active dates and action vs. no-action (meter 36.8) and two amendments.

Senator John T. Traynor, Chairman Closed Committee Work

Senator Dennis Bercler moved a to amend SB 2130 to take out section 2 Seconded by

Senator Thomas L. Trenbeath

Roll Call Vote: 6 Yes. 0 No. 0 Absent

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*10-16-03*  
Date

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Senate Judiciary Committee  
Bill/Resolution Number 2130  
Hearing Date 01/27/03

Senator Stanley W. Lyson, Vice Chairman moved a to DO PASS with two amendments SB

2130. Seconded by Senator Thomas L. Trenbeath.

Roll Call Vote: 6 Yes. 0 No. 0 Absent

Motion Prevails

Floor Assignment: Senator Dennis Bercier

Senator John T. Traynor, Chairman Closed Hearing

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10-16-03  
Date



38085.0101  
Title.0200

Adopted by the Judiciary Committee  
January 21, 2003

*P3*  
*1-21-03*

PROPOSED AMENDMENTS TO SENATE BILL NO. 2130

Page 2, line 1, overstrike "shall" and insert immediately thereafter "may"

Renumber accordingly

Page No. 1

38085.0101

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*Yubereca d. Lee*  
Operator's Signature

*10-16-03*  
Date

Date: January 21, 2003  
Roll Call Vote #: 1

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2107**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38085.0102

Action Taken Amend #1 May-Shall

Motion Made By Senator Thomas L. Trenbeath Seconded By Senator Dennis Bercier

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) SIX (6) No ZERO (0)

Absent Zero (0)

Floor Assignment \_\_\_\_\_

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

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Yuberead J. Lee  
Operator's Signature

10-16-03  
Date

38085.0102  
Title.0300

Adopted by the Judiciary Committee  
January 27, 2003

903  
1-30-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2130

Page 1, line 2, replace "; and to provide" with a period

Page 1, remove line 3

Page 2, line 1, overstrike "shall" and insert immediately thereafter "may"

Page 2, remove lines 3 and 4

Renumber accordingly

Page No. 1

38085.0102

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Operator's Signature

*Yubereca J. Lee*

Date

10-16-03

Date: January 27, 2003  
Roll Call Vote #: 2

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2107**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38085.0102

Action Taken Amend #2 Take out section 2

Motion Made By Senator Dennis Bercier Seconded By Sen. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) SIX (6) No ZERO (0)

Absent Zero (0)

Floor Assignment \_\_\_\_\_

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

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Date

Date: January 27, 2003  
Roll Call Vote #: 3

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2107**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38085.0102

Action Taken DO PASS with two Amendments

Motion Made By Senator Stanley W. Lyson, Seconded By Sen. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) SIX (6) No ZERO (0)

Absent Zero (0)

Floor Assignment Senator Dennis Bercier

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

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Y. Theresa J. Lee  
Operator's Signature

10-16-03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
January 30, 2003 3:41 p.m.

Module No: SR-18-1408  
Carrier: Bercler  
Insert LC: 38085.0102 Title: .0300

**REPORT OF STANDING COMMITTEE**

**SB 2130: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2130 was placed on the Sixth order on the calendar.

Page 2, remove lines 3 and 4

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

SR-18-1408

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2003 HOUSE JUDICIARY

SB 2130

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10-16-03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2130

House Judiciary Committee

☐ Conference Committee

Hearing Date 3-5-03

Tape Number	Side A	Side B	Meter #
2	x		25.4-39.1 / 9-13
Committee Clerk Signature <i>J. Penrose</i>			

**Minutes:** 11 members present, 2 members absent (Rep. Wrangham & Rep. Bernstein).

**Chairman DeKrey:** We will open the hearing on SB 2130.

**Paul Bollinger, Racing Commissioner:** Introduced the bill (tape 2, side A, 25.8-30.5). I would like to give you something that will help you conceptualize what the Racing Commission is, because the people look at the horse racing commission as it should be made up of horsemen. I would like to draw an analogy for you about the Racing Commission. Our job is not to look out for the horsemen, we regulate the horsemen. What we look out for is first the fans. The fans are who we ultimately have to sell the product to. Secondly, we then look out for the race tracks. The horsemen are like the players association. They would like high salaries and would like all of the money to come to them, and the Racing Commission has to balance the needs of those three entities in order to make the whole system work. I think you are going to hear some comments from the horsemen, who say they don't like the present system, but I would like to emphasize to you that the Racing Commission has to look out at the entire industry, and not just

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*10-16-03*  
Date



Page 2  
House Judiciary Committee  
Bill/Resolution Number SB 2130  
Hearing Date 3-5-03

for the horseman. They are an integral part of the racing industry, but they are the base product, they are not the end user. Obviously this passed through the Senate with a 6-0 in Committee, and only 4 votes against on the floor.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition.

**Doug Dealoutguy:** Opposed. This legislation was introduced the state race commission. It wasn't introduced by any horse organizations or any horse associations or any horse members. It appears to me what this legislation does in allowing the current commission to stay intact, it cements in place what I call the Fargo Mandate. The present commission has, in effect, rewritten ND Century Code in taking out, without due process, the current terminology that is contained therein. When the mission of the Race Commission, and the provision in the Century Code, if you look at them, you'll see that it's plural terminology. All the way through they talk about tracks, fair meets, etc. In other words, it has never been the intent of the State Legislature or the legislation to pass it so that only one track and one facility. The present Race Commission is the result of I think an insidious, deliberate, and apparently effective plan to place Fargo operatives on the Commission and all other racing in the state is to receive no consideration by the current Commission. Clearly, I cannot support having this Commission in place ad infinitum, with no opportunity to ever have a horseman's voice placed on it. The five year term limits in SB 2130 is there for a reason. It was put in there for very good reason. If the Commissioners policies and goals in seeing the horse racing in the state have not been realized in five years in office, then perhaps those policies, goals are not legitimate and maybe we should hear from someone else, at least have the opportunity to hear from somebody else. We are asking you to leave the five year limitations in place and give the horsemen an opportunity for a voice on the Commission.

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Hearing Date 3-5-03

**Chairman DeKrey:** Thank you.

**Rep. Grande:** Where are the commissioners from.

**Mr. Dealoutiguy:** Two are from Fargo, one is from Mandan, Beach and Center.

**Rep. Kretschmar:** So it is your position that you would like to have Commissioners appointed for five years, and they could not be reappointed.

**Mr. Dealoutiguy:** That's the way it is supposed to be now.

**Rep. Kretschmar:** It is kind of ambiguous.

**Mr. Dealoutiguy:** We would like to see it that way. We would like to see an opportunity to put a friendly face on the Commission.

**Chairman DeKrey:** Thank you. Further testimony in opposition.

**Doug Plummer:** Opposed. Simulcast racing is paralyzing the racing industry, it has become a monopoly in the state and is controlling the Racing Commission, the Racing Director and that's where our problem lie. Unless something is done, we're not going to have racing when it's all said and done. The Attorney General is aware of some of these things. I don't know how it can happen that this bill, the 1987 bill, which was set up for economic development to spur the horse racing industry has been so plagiarized and defeated. We have a Commissioner who is sitting on there who is illegal on there now, and we have an assistant Attorney General sitting in on most meetings, and nothing has been done about it. These things can't go on. The Racing Commission has not been enforcing the law. This has been brought to the Attorney General's attention and to the Racing Commission's attention and nothing ever happens and thousands of dollars are paid out in breeder's funds. Something needs to be done to correct these problems.

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10-16-03  
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Bill/Resolution Number SB 2130  
Hearing Date 3-5-03

**Chairman DeKrey:** Thank you. Further testimony in opposition. We will close the hearing.

What are the committee's wishes in regard to SB 2130.

**Rep. Onstad:** I move a Do Not Pass.

**Rep. Kretschmar:** Seconded.

7 YES 4 NO 2 ABSENT      DO NOT PASS      CARRIER: Rep. Kretschmar

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*Y. Herrera*  
Operator's Signature

*10-16-03*  
Date

Date: 3/5/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2130

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Rep. Onstad Seconded By Rep. Kretschmar

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos		✓	Rep. Eckre	✓	
Rep. Bernstein	AB		Rep. Onstad	✓	
Rep. Boehning		✓			
Rep. Galvin	✓				
Rep. Grande		✓			
Rep. Kingsbury	✓				
Rep. Klemin		✓			
Rep. Kretschmar	✓				
Rep. Wrangham	AB				

Total (Yes) 7 No 4

Absent 2

Floor Assignment Rep. Kretschmar

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

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Yvonne J. Lee  
Operator's Signature

10-16-03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
March 5, 2003 3:24 p.m.

Module No: HR-39-4031  
Carrier: Kretschmar  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2130, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS (7 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2130 was placed on the Fourteenth order on the calendar.**

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Date

2003 TESTIMONY

SB 2130

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10-16-03  
Date

Attachment # 1

armed services or forces of the United States, and which has so been in existence in this state for at least two years.

**53-06.2-02. Racing commission - Members - Appointment - Term - Qualifications - Compensation.**

1. A North Dakota racing commission is established in the office of the attorney general. The commission is subject to the supervision and direction of the attorney general, except with regard to the commission's authority to spend the funds described in subsection 6 of section 53-06.2-11. The attorney general may require payment for any services rendered to the racing commission. Payment for such services must be deposited into the attorney general's operating fund. The commission consists of the chairman and four other members appointed by the governor. Of the members appointed by the governor, one must be appointed from a list of four nominees, one of whom is nominated by the state chapter or affiliate of the American quarter horse racing association, one of whom is nominated by the state chapter or affiliate of the United States trotting association, one of whom is nominated by the state chapter or affiliate of the International Arabian horse association, and one of whom is nominated by the state chapter or affiliate of the North Dakota thoroughbred association. The members serve five-year terms and until a successor is appointed and qualified. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves only for the unexpired portion of the term. The terms of the commissioners must be staggered so that one term expires each July first. At the expiration of the five-year term of each incumbent member of the commission, the governor shall appoint a new member to the commission.
2. A person is ineligible for appointment to the commission if that person has not been a resident of this state for at least two years before the date of appointment. A person is also ineligible if that person is not of such character and reputation as to promote public confidence in the administration of racing in this state. A person who has a financial interest in racing cannot be a member of the commission and cannot be employed by the commission. Failure to maintain compliance with this subsection is grounds for removal from the commission or from employment with the commission. For purposes of this section, a person has a financial interest in racing if that person has an ownership interest in horses running at live or simulcast meets conducted or shown in this state subject to this chapter or rules of the commission, is required to be licensed under this chapter or the rules of the commission, or who derives any direct financial benefit from racing, individually or by or through an entity or other person, as regulated by this chapter or the rules of the commission.
3. Commission members are entitled to seventy-five dollars per day for compensation, and mileage and expense reimbursement as allowed to other state employees.

**53-06.2-03. Director of racing - Appointment - Qualifications - Salary - Duties - Other personnel.**

1. The commission shall appoint a director of racing. The commission shall establish the director's qualifications and salary.
2. The director shall devote such time to the duties of the office as the commission may prescribe. The director is the executive officer of the commission and shall enforce the rules and orders of the commission. The director shall perform other duties the commission prescribes.
3. The director may employ other persons as authorized by the commission.

**53-06.2-04. Duties of commission. The commission shall:**

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*Yuberead L. Lee*

Date

10-16-03

### Performance Audit

Section 2 of 2001 Senate Bill No. 2007 provided that the State Auditor conduct a performance audit of the Veterans Home during the 2001-03 biennium. The section authorized the State Auditor to use the services of a consultant and to review the contractual arrangements for physician services at the Veterans Home as part of the audit. The State Auditor's office contracted with Pathway Health Services, a consulting firm from Minnesota, to assist in the performance audit at a cost of \$16,800, which was paid by the Veterans Home.

The committee received the performance audit report at its last meeting, which contained the auditor's findings and recommendations in the following areas:

1. Management and administrative structure:
  - a. Enhance the administrative structure and organization.
  - b. Improve the monitoring and oversight of the commandant.
  - c. Change the membership structure of the Administrative Committee on Veterans Affairs.
  - d. Develop a strategic plan.
  - e. Improve the accounting, budgeting, and financial systems.
  - f. Improve the admission process.
  - g. Update the North Dakota Administrative Code.
  - h. Improve personnel management.
2. Financial resources:
  - a. Ensure compliance with state laws relating to the use of the general fund appropriation.
  - b. Generate additional revenue from sources other than the general fund.
  - c. Make improvements to the use of the commandant's custodial fund.
  - d. Improve accountability for the use of appropriated funds.
  - e. Improve project accounting.
  - f. Improve the procurement process.
  - g. Automate the skilled care unit accounting process.
  - h. Reimburse employees for mileage at the statutory level.
  - i. Establish new policies for accounting, budgeting, and other financial areas.
  - j. Close the "petty cash" account.
3. Staffing and level of care:
  - a. Improve levels of care.
  - b. Improve staffing levels.
  - c. Monitor employee satisfaction.
  - d. Monitor resident satisfaction.

Refer to the report of the Legislative Audit and Fiscal Review Committee for detailed information on the Veterans Home performance audit report.

### Other Activities and Testimony

The committee learned that the Veterans Home bond payment is approximately \$276,000 per biennium and that nine years remain on the bond issue. The bonds

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were initially issued in 1990 for \$1,169,000 for construction of the nursing home wing, new heating and ventilating systems, and road and parking lot improvements.

The committee learned that 1999-2001 expenditures from the veterans' postwar trust fund for veteran-related programs totaled \$519,652 and the estimated June 30, 2003, balance in the veterans' postwar trust fund is \$4.4 million. Money in the veterans' postwar trust fund is spent by the Administrative Committee on Veterans Affairs for veterans' purposes pursuant to a continuing appropriation.

Residents of the Veterans Home testified regarding the Veterans Home study, including comments that:

1. The Veterans Home provides high-quality care to its residents.
2. No changes are needed at the Veterans Home.
3. Any negative findings are not reflective of the high-quality care provided at the Veterans Home.
4. The staff and management of the Veterans Home listen to the concerns and ideas of residents to improve the quality of care and services.

The committee conducted a budget tour of the Veterans Home, including the gazebo, skilled care unit, chapel, multiuse room, conference room, basic care unit, and exercise room areas.

### Recommendations

The committee recommends House Bill No. 1027 to change the residency requirement for a veteran to be eligible for admission to the Veterans Home from one year to 30 days.

The committee recommends House Bill No. 1028 to change the requirement for a spouse or surviving spouse of a veteran to be admitted to the Veterans Home. The bill reduces the number of years the spouse or surviving spouse must be married to a veteran from five years to one year and eliminates the requirement that the spouse or surviving spouse be at least 45 years old.

The committee recommends House Bill No. 1029 to allow a veteran's service-connected compensation to be included in the veteran's contribution to the cost of care at the Veterans Home.

The committee recommends House Bill No. 1030 to provide for a Legislative Council study during the 2003-04 interim of the future role of the Veterans Home, including the development of a strategic plan for the operations of the home and the implementation of the recommendations included in the performance audit. The bill includes a \$30,000 general fund appropriation to the Legislative Council for hiring a consultant to assist in the review of the future role of the Veterans Home and the development of a strategic plan for the Veterans Home.

### RACING COMMISSION STUDY

Section 14 of House Bill No. 1003 directed the Legislative Council to study the Racing Commission, including



authority to schedule, promote, support, and regulate pari-mutuel or simulcast racing in North Dakota. The study was also to address the effectiveness of the commission's authority to both promote and regulate racing and whether the authority is appropriate for the commission.

#### History and Statutory Authority of Racing Commission

The Racing Commission was established and pari-mutuel horse racing was authorized by the 1987 Legislative Assembly in Senate Bill No. 2319. Initially the Racing Commission was established in the office of the Secretary of State. Original members of the commission were the Secretary of State and four other members appointed by the Governor.

The 1989 Legislative Assembly approved House Bill No. 1184, which moved the Racing Commission from the Secretary of State's office to the Attorney General's office. The Secretary of State was removed as chairman of the commission, and one other member appointed by the Governor was added. This bill also established the breeders' fund and purse fund. The bill provided that one-half of 1 percent of the pari-mutuel pool and other wagering pools for each day of racing were to be deposited in the breeders' fund, one-half of 1 percent were to be deposited in the purse fund, and depending on the total of the pool, either 3 or 4 percent were to be deposited in the state general fund. The bill also authorized offtrack wagering on races held either in state or out of state.

The 1991 Legislative Assembly approved House Bill No. 1260 that replaced the offtrack wagering statute enacted by the 1989 Legislative Assembly with a similar statute providing for simulcast wagering for in-state or out-of-state races. This bill also created the promotion fund and provided that unclaimed tickets and breakage from each live race or simulcast program be deposited in the promotion fund. The bill also provided that the money in the breeders' fund, purse fund, and promotion fund be spent by the commission pursuant to a continuing appropriation. In addition, the bill reduced the percentage of the pools deposited in the state general fund from 3 or 4 percent to 2 or 3 percent.

The 1991 Legislative Assembly approved Senate Bill No. 2354 providing that of the Governor's five appointees, the chairman and one each must be nominated by the state chapter or affiliate of the American Quarter Horse Racing Association, the United States Trotting Association, the International Arabian Horse Association, and the North Dakota Thoroughbred Association.

The 1993 Legislative Assembly approved Senate Bill No. 2155 authorizing simulcast dog racing in the state.

The 1995 Legislative Assembly approved House Bill No. 1365 providing that for each live race or simulcast wagering pool, excluding win, place, and show pools, one-half of 1 percent of the pool must be deposited in the promotion fund. The percentage deposited in the general fund from these pools was reduced from 3 to 2.5 percent.

The 2001 Legislative Assembly approved Senate Bill No. 2381 authorizing pari-mutuel wagering to be conducted through account wagering and providing that an account wager may be made on an account only through a licensed simulcast services provider authorized to operate the simulcast pari-mutuel wagering system under the certificate system.

The 2001 Legislative Assembly also approved House Bill No. 1003, the Attorney General's appropriations bill, which appropriated \$300,000 for the operating expenses of the Racing Commission of which \$150,000 was from the general fund, \$50,000 from the promotion fund, \$50,000 from the purse fund, and \$50,000 from the breeders' fund.

The bill also changed statutory provisions relating to the Racing Commission and pari-mutuel horse racing included in NDCC Chapter 63-06.2 to provide that:

1. The Racing Commission is under the supervision of the Attorney General.
2. The Attorney General may charge the Racing Commission for services provided to the commission.
3. The Attorney General rather than the Emergency Commission may authorize the Racing Commission to spend up to 25 percent of the promotion fund for operating expenses of the commission.
4. Compensation of Racing Commission members is \$75 per day, which is an increase of \$35 per day from the previous rate of \$40.

#### Funding

The following schedule provides the legislative appropriations for the Racing Commission since 1993:

Biennium	General Fund	Estimated Income	Total
1993-95	\$222,421		\$222,421
1995-97	\$211,300		\$211,300
1997-99	\$219,744		\$219,744
1999-2001	\$222,067		\$222,067
2001-03	\$150,000	\$150,000	\$300,000

#### Racing Taxes and Fees

Racing-related taxes and fees include:

1. For each live race or simulcast program wager on win, place, and show pari-mutuel pools:
  - a. One-half of 1 percent is deposited in the breeders' fund;
  - b. One-half of 1 percent is deposited in the purse fund; and
  - c. 2 percent is deposited in the general fund.
2. For each live race or simulcast program for daily double, quinella, exacta, trifecta, or other wager combining two or more horses for winning payoffs in a pool:
  - a. One-half of 1 percent is deposited in the breeders' fund;
  - b. One-half of 1 percent is deposited in the purse fund;

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- c. One-half of 1 percent is deposited in the promotion fund; and
  - d. 2.5 percent is deposited in the general fund.
3. Unclaimed tickets and breakage from each live race or simulcast program are deposited in the promotion fund.

The following schedule details the income, expenditures, and balances of the breeders' fund, purse fund, and promotion fund:

	Breeders' Fund	Purse Fund	Promotion Fund	Total All Funds
<b>1993-95</b>				
Revenues	\$63,093	\$59,534	\$126,412	\$249,039
Expenditures	\$76,196	\$68,811	\$89,603	\$214,610
<b>1995-97</b>				
Revenues	\$58,683	\$56,605	\$183,326	\$298,614
Expenditures	\$110,621	\$48,490	\$116,759	\$275,870
<b>1997-99</b>				
Revenues	\$138,068	\$136,485	\$331,237	\$603,810
Expenditures	\$72,197	\$64,500	\$220,938	\$357,635
<b>1999-2001</b>				
Revenues	\$1,541,530	\$1,541,790	\$2,831,934	\$5,915,254
Expenditures	\$239,448	\$263,640	\$333,104	\$836,192
<b>2001-03 (through June 2002)</b>				
Revenues	\$691,259	\$692,036	\$1,232,633	\$2,615,928
Expenditures	\$272,448	\$196,637	\$432,591	\$901,676
<b>June 30, 2002, fund balance</b>	<b>\$1,802,601</b>	<b>\$1,869,811</b>	<b>\$3,576,235</b>	<b>\$7,248,447</b>

The following schedule presents general fund revenues generated from racing activities since 1993:

Biennium	General Fund Revenues
1993-95	\$331,373
1995-97	\$235,521
1997-99	\$614,588
1999-2001	\$6,418,549
Fiscal year 2002	\$3,680,481

#### Regulatory and Promotion Functions

Racing Commission regulatory functions include:

1. Promulgating rules and assuring compliance with applicable laws relating to live and simulcast horse racing.
2. Responding to horsemen's concerns and other inquiries directed toward live and simulcast racing.
3. Approving and licensing live racing.
4. Approving and licensing simulcast racing.
5. Monitoring live and simulcast racing by providing veterinarians, stewards, and other personnel required to assure compliance with applicable rules and regulations.

Racing Commission promotion functions include:

1. Administering the promotion fund to promote live and simulcast racing and oversee compliance with promotion awards.
2. Administering the purse fund and dispersing amounts to live racetracks to promote live racing and assure compliance by the award recipients.
3. Administering the breeders' fund by controlling registration and dispersing awards.

The committee learned that the Attorney General's office provides legal advice to the Racing Commission

and assists the commission with its accounting responsibilities. The committee learned that the Attorney General believes it may be appropriate for the commission to be involved in both regulating and promoting racing in the state; however, as betting and racing expands, these responsibilities may need to be segregated.

The Racing Commission suggested that it be allowed to retain its license fee collections for use in performing its regulatory functions, such as hiring veterinarians and stewards, performing drug testing, and paying for other racing-related expenses. These collections, which are currently being deposited in the general fund, include simulcast license fees, live track license fees, breeders' application fees, and fines. The commission collected \$15,568 from these collections in calendar year 2000 and estimates collecting from \$30,000 to \$40,000 in the 2003-05 biennium.

The committee learned that the costs for a three-day weekend race include approximately \$2,500 for a race steward, \$2,500 for a veterinarian, and \$3,000 for related drug testing.

#### Racing Activities

Live horse races are in Belcourt and Bottineau and over 1,800 horses are registered by North Dakota breeders. Simulcast racing is the wagering on races held at licensed racetracks at another location.

The following schedule details the total amounts bet (handled) each year in the North Dakota simulcast system:

1990	\$28,000
1991	\$4,500,000
1992	\$5,631,088
1993	\$6,892,599
1994	\$6,961,396
1995	\$4,336,330
1996	\$5,168,000
1997	\$5,970,640
1998	\$8,963,637
1999	\$88,563,478
2000	\$151,883,021
2001	\$168,883,021

Of the total amounts bet in the simulcast system, approximately 80 percent is returned to the bettors, 5 percent is provided to the track, 5 percent is provided to the simulcast site, 5 percent is provided to the signal carrier, and 5 percent is provided to the state.

The committee learned that the substantial increase in simulcast betting reflected in those numbers began during the 1999-2001 biennium in the Fargo area.

#### North Dakota Horse Park in Fargo

The committee learned that the Racing Commission in November 2000 committed funding to assist in the construction of a new live racetrack in North Dakota. Fargo and Mandan submitted proposals for a track, and the commission, in December 2000, chose the Fargo proposal. The Racing Commission allocated \$2.5 million for the Fargo racetrack, including \$1.5 million for the

construction of a racetrack, \$100,000 per year for five years for operating costs, and \$100,000 per year for five years for enhancing the purses at the track.

The committee toured the North Dakota horse park, which is under construction and is located one and one-half miles west of I-29 on 19th Avenue in Fargo. The North Dakota Horse Park Foundation will own and operate the racetrack. The racetrack consists of 113 acres, 99 acres of which are operated by the North Dakota Horse Park Foundation and 14 acres of which are operated by the North Dakota State University Development Foundation. The committee learned that the land for the horse park was donated to the City of Fargo, and the city has leased the land to the North Dakota Horse Park Foundation for \$1 per year for 99 years. The North Dakota Horse Park will be developed in three phases. Phase I includes construction of the racetrack, which will be six furlongs (three-fourths mile) in length; parking for 400 cars; parking for horsemen; underground utilities; bleachers for 900 people; a tent for parimutuel betting; and a portable restroom trailer. Barn space will be available for 200 horses as part of the North Dakota State University facility, which will also house the university Equine Sciences Department. Phases II and III will include construction of a grandstand, permanent restroom facilities, two more barns, and additional parking. The first racing events are tentatively planned for four weekends in August and September 2003.

The committee reviewed the funding that has been designated for the horse park as follows:

North Dakota Racing Commission grant	\$2,500,000
City of Fargo tax increment financing district	1,000,000
Gift of land	597,500
Cass County economic development - Loan for land purchase	250,000
Fargo-Moorhead Convention and Visitors Bureau	100,000
<b>Total</b>	<b>\$4,447,500</b>

#### Other Testimony

Representatives of the North Dakota Horsemen's Association expressed concerns regarding the 2001 Legislative Assembly's appropriations of funds from the promotion fund, the breeders' fund, and the purse fund for the operating costs of the Racing Commission.

#### Recommendations

The committee recommends Senate Bill No. 2028 to provide that any money collected by the Racing Commission from license fees and fines be deposited in the Racing Commission operating fund rather than the general fund and, subject to legislative appropriations, may be spent for operating costs of the commission. The committee learned that the estimated fiscal impact of the bill for the 2003-05 biennium is an additional

\$30,000 to \$40,000 being deposited in the Racing Commission special funds with a related reduction of \$30,000 to \$40,000 in general fund revenue.

#### HIGHWAY FUNDING STUDY

Section 5 of Senate Bill No. 2159 directed the Legislative Council to study highway construction and maintenance funding, including revenue sources and distribution formulas for the state, cities, and counties.

#### North Dakota Highway System

The North Dakota highway system is comprised of 86,616 miles--7,378 miles on the state highway system, 18,949 miles on the county highway system, 3,823 on the urban system, and 56,466 miles of other roads.

#### State Highway Funding Sources

Article X, Section 11, of the Constitution of North Dakota provides:

**Section 11.** Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, except revenue from aviation gasoline and unclaimed aviation motor fuel refunds and other aviation motor fuel excise and license taxation used by aircraft, after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.

Revenue sources as dedicated in the state constitution (motor vehicle fuel taxes and motor vehicle registration fees) provide the majority of funds used for state highway purposes. These funds are deposited in the state highway tax distribution fund and distributed in the following proportions to the state, counties, and cities:

State	63%
Counties	23%
Cities	14%
<b>Total</b>	<b>100%</b>

In addition, other revenues are deposited directly in the state highway fund and are not considered "dedicated" for highway purposes, which means those funds are not required by the state constitution to be used for highway construction. Those revenues are estimated to total \$34.4 million for the 2001-03 biennium and include truck regulatory fees, driver's license fees, interest earned on the highway fund, and other miscellaneous revenues.

The following charts illustrate the sources, transfers, and uses of state highway funding for the 2001-03 biennium: