

2011 HOUSE JUDICIARY

HB 1280

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1280
January 24, 2011
13294

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1280.

Rep. Andy Maragos: Sponsor, support. I introduced HB 1280 at the request of the Racing Commission and others who are interested in helping the racing industry heal itself. All this bill does, is to allow the simulcast operators to feature previously historically run races.

Mike Cichy, President, Horse Race North Dakota: Support (see attached 1).

Rep. Delmore: As I look at this, with the debts you have, have you paid some of that down. Are these remaining balances that you owe to Cass County, the city, and the bank loan? Are they still outstanding?

Mike Cichy: They are still outstanding. We are paying from last to first. We are paying regular payments on the bank loan which was negotiated a year ago to pay down the outstanding debt. The ECD loan is not due until 2014 and the tax increment financial was due a year ago, but the City of Fargo is more than willing to work with us, however long it takes. What they'd really like is to have a building built at the track to pay taxes.

Rep. Delmore: What's to prevent someone a big roller, has watched a lot of races, from coming in to this simulcast and being dishonest.

Mike Cichy: The sheer volume of the races and the fact that there is a computer software program that randomly selects from that batch. The professional players that we're talking about, the very good ones use a system of quantitative analysis that is also used by stockbrokers. They do better than stockbrokers in picking, not the least of which is because the variables are more limited. So the "quansis" as they are referred to, will take a look at tomorrow's card at Gulf Stream and run it through their computer with all the variables and by this time, has already selected what they believe to be the winning horses. It's apples and oranges. The genius'

that know how to actually win, they don't play the stock market they play the horse racing tracks.

Rep. Klemin: Could you explain exactly how this is done, does a person sit at a video monitor and insert money into a machine to do this.

Mike Cichy: If you would visualize a walk-up parlor, I would walk in to the parlor in Fargo, there is a self-served self-bet terminal. I make my deposit, in my case, I would probably put in \$20 in, then the race that is coming up, appears on the screen. This is the instant racing system, and I'm given past performance information on the horses that are running without giving me the name. It gives me information about each horse so I can make an "educated pick". Then I send my wager that wager goes to the totalizator hub in Oak Lawn, Arkansas, just as if I were betting a live race at Gulf Stream. The pari-mutuel system is set up there in AR. My bet goes in, I see the race and if my horse wins, I am automatically credited and if I want to cash out, just like on a regular terminal, I take the voucher and go to the teller and collect the money. That is how the system works on those bets. If I were wagering on a live track, such as Gulf Stream in Hot Springs, AR, they only run 8-10 races; I do the same thing, I see the past performance information, I make my selection, and hit the Send button and the money is transferred to the on-track pools.

Rep. Klemin: In the parlor, is there only one of these game machines that a person uses, or are there dozens of them, that dozens of people can use at the same time.

Mike Cichy: If we set this up at the track, in Fargo, we would start with 20-30 machines and see what kind of response we had. We would lease the machines.

Rep. Klemin: When a person is playing these races, is everybody on the 30 machines all seeing the same race at the same time or are they all playing different races.

Mike Cichy: If they send their bets at the same time, they will see the same race. The machine itself randomly selects what race they are going to see. Then the money goes into a pari-mutuel pool for that particular race.

Rep. Klemin: So someone on machine 1 is watching something different from someone on machine 2.

Mike Cichy: Correct. That is the case on regular terminals.

Rep. Klemin: How is this different from video gaming?

Mike Cichy: Video gaming, are we talking video poker or video slot machines.

Rep. Klemin: I'm not sure there is a big difference.

Mike Cichy: To a geek like me there is a difference. In a slot machine, there is a erasable read-only programmable memory chip that is a random number generator, so if the slot machine is set to pay off at 80%, then each particular play is unique on to itself and it's paid off at that ratio, so you're not competing with other players. Your payoff on this system is determined by the amount of money that is actually in the pool. A good example is with this system, the house, which is to say the track, pari-mutuel doesn't lose money. We take our 5-10%, whatever the state allows us to do by statute, and pay the rest to the players. In a slot machine, the payout is determined by the computer. Theoretically the house could go short for a while on the slot machine, because it's like flipping coins. Sometimes you're going to get 5 in a row, one way or the other.

Rep. Klemin: But basically you're looking at a video machine, putting money into the machine and getting money out of the video machine.

Mike Cichy: Certainly.

Rep. Klemin: Besides Horse Racing ND, who else would benefit from this in the State, using these machines.

Mike Cichy: Theoretically you could put them everywhere, but that would be limited by the Racing Commission, which authorizes all sites. That's not the vision right now. The problem is that we don't have enough sites in ND.

Rep. Klemin: When you say theoretically you could put them everywhere. Can you explain what you mean by that.

Mike Cichy: Theoretically we could put self-bet terminals on live horse racing everywhere too, technically we could. However the Racing Commission has first and final say on where your sites go and then we need tellers, everybody has to be licensed, it all has to be regulated, the level of infrastructure that you need to operate one of those sites immediately precludes putting them everywhere.

Rep. Klemin: In actuality, how many sites would there be in ND.

Mike Cichy: At one time, we had a half dozen parlors. I would say on the high end would be...

Rep. Klemin: How many parlors do we have that we use.

Mike Cichy: One.

Rep. Klemin: That's yours.

Mike Cichy: We don't have any that we use, it would go on track at Horse Race ND's site in Fargo.

Rep. Klemin: Realistically if we were to pass this bill, the only place we would be doing this is at your business.

Mike Cichy: To be honest, it's conceivable that we would put one in Fargo, closer in to the town. I was out at the track yesterday and saw the height of the snow drifts. We might have to ask for approval from the Commission to put one in on a snow emergency route.

Rep. Klemin: What other states actually do this now.

Mike Cichy: Hot Springs, AR.

Rep. Klemin: So AR is the only other place in the United States where you can do this.

Rep. Kretschmar: What would the time that you would do these, would it be everyday or would you have a season, how would that work.

Mike Cichy: That is the advantage of the machines that we would run every day that it was legal. Now we'd probably have them out of the track, so there would be a symbiotic relationship between running the live feed and attracting horse players and then hopefully generating more horse players. We'd run 7 days a week, if the activity warranted it.

Rep. Kretschmar: You would need the permission of the Racing Commission to do whatever you're going to do.

Mike Cichy: Yes. Just like the parlors now, the ones that I'm familiar with, will open up at 11:00 am and dog races go till 11:00-11:30 pm. Major holidays, sometimes they run New Years Day. On Thanksgiving and Christmas they're closed.

Rep. Boehning: When we're looking at the previously run games, basically it's the same thing as what we currently have in the parlor down here at Expressway Hotel. When you go to watch the horse race or dog race, you are watching the same thing on the terminal currently.

Mike Cichy: No, you're watching live races.

Rep. Boehning: Watching live races on the big screen.

Mike Cichy: Big screen that is correct.

Rep. Boehning: Would something like this be able to work on say the big screen if you would want to do that, project it on the screen, instead of having individual

terminals, everybody would bet on the same race at the same time, like we do at a live track.

Mike Cichy: With my limited knowledge of technology I would say yes.

Rep. Steiner: What would be the chance for abuse with this proposal. What are some things that you could see that could go wrong.

Mike Cichy: Technically, none, because we're not talking new technology here. Theoretically if somebody could get in and see the race before it went off, they could forecast the race. There's a computer software system that's set up to block that. The best reason I can give for why it's not possible now, is that this system has been in business for about 10 years in Hot Springs and nobody's figured it out yet, as to how to do it. There isn't a real reason to do it, it's not feasible because just like our machines for regular walk-up parlors, there's a computer system that can do a transaction report, a bet print, that shows precisely when the wagers were placed, who placed them, what site and what time was the actual off time of the race. Even if a smarter than me computer guy figured out how to do it, it would get tracked down in a hurry. You can't scheme the system like that, because the data is all there. Somebody would notice in real short order if you're winning.

Rep. Klemin: How is this bill different from the bills you've had on this very same subject in the last couple of sessions, or is this the same bill again.

Mike Cichy: I didn't do the last one. It's my belief that we are looking for the same product that we looked for in 2007, and this is the same system that we looked at in 2005. The biggest change is how critical this has become, because the model that built everything in ND on track paid the purses, funded the breed fund were the big players. Due to a combination of several factors, not the least of which is that the major tracks who send the signal, have the races that the big players bet on were not and are not very happy with the fact that ND is taking their players, betting on their races, and we're taking the money, they made it consistently more difficult to get the signals and operate on that model. Would we like it the way it was when Secretariat won the Triple Crown, yes sir, I certainly would. But this is what I believe, and I was one of the first ones that was speaking in favor of this system. This is the way that racing survives in ND. We take the money from this system, we put it into the purses, the breed fund, so that the men and women who are racing the horses in ND will have someplace to run and make some money. The big player model, we don't have access to that kind of money any more.

Rep. Beadle: Do you have clear numbers as far as what the economic impact in AR has been, with the historic racing simulcast, how has that affected their revenue streams.

Mike Cichy: I do, but I didn't want to waste anybody's time, can I deliver it to you.

Rep. Beadle: Okay.

Mike Cichy: It is astronomical.

Chairman DeKrey: Thank you. Further testimony in support of HB 1280.

Winston Satran, Director, ND Racing Commission: Support (see attached 2). The Horsemen's Advisory Council, at their last meeting, voted to support this bill as well.

Chairman DeKrey: So the long and short of it is if you don't get this, the taxpayers of Fargo and the state, will end up footing the bill.

Winston Satran: That concerns me, yes.

Rep. Kingsbury: Well, horse racing will have a season in Fargo this summer, no matter if you have this or not, right.

Winston Satran: That's a great question, because I don't know. We're working very hard to create it. We have some possible funding sources and we're working very hard and we have to clear up some of the legal considerations with those funding sources.

Rep. Kingsbury: What other funding sources to you have, would they be in the form of games also, that would come under the same conditions like this one, where you would need legislation to go forward.

Winston Satran: This is an awkward moment for me, this is nothing illegal. In 2004, money was collected from letters of credit from two banks because Racing Services had not paid their taxes, and there was \$500,000 collected. A number of months ago, I was reviewing files and I was looking to see what happened to that \$500,000 and it was deposited in the General Fund. So I started to search why it was deposited in the General Fund because it was collected for the Racing Commission taxes and partially for the General Fund taxes. I began to pursue what had happened. I started with the Bank of North Dakota, OMB and the State Treasurer's Dept. When I collected that information then I wrote to the Attorney General's office and asked to have a meeting with them and I presented the case. It was the conclusion that a good portion of the money should have gone to the Racing Commission because it was a letter of credit for the Racing Commission's taxes. After completion of the meeting, I received the information that one of the big players back in 2003-2004, is suing the state of ND and the Racing Commission because he alleges that Susan Bala took money out of his account to pay these taxes, and he wants to have the money paid back to him. That suit is presently before the state and we're in the process of working with OMB and the AG's office to transfer that money back into the Racing Commission, the portion that is the Racing Commission's, the remainder of it will stay in the General Fund. We're still going through the process of clearing up this matter. This information isn't for public

consumption yet, that is why I was loathe to bring this matter up at all. We feel a strong responsibility to have racing in Fargo this year. We're very concerned, Dr. Osburn and I have talked at length; if we go one more year the interest to support racing in Fargo will dwindle away, so we have this dilemma that we're actually trying to solve right now. How it comes out, we don't know yet. If it comes out like we're hoping, we will be able to have horse racing. If Peter Wagner and his company would drop the suit that they've had for six years, we would have horse racing, but we don't know.

Rep. Beadle: You mentioned HB 1551 passed in 2009, has allowed five more account deposit wagering companies added on top of the original two, have you been able to see any type of financial benefit from that at all, or has the issues with being able to actually get races run is hindered.

Winston Satran: Yes, we are seeing results from that.

Rep. Beadle: Do you have any numbers.

Winston Satran: This past calendar year, we had \$73 million dollars in wagering. Two new companies just came on line. The startup process for a company getting a license and then actually being able to conduct wagering takes about a year. We have two companies coming online this month and Avatar, a company that came online about 16 months ago is doing quite well. So our revenues on the tax side are going up. But I do want to caution us, this business changes rapidly through the use of technology. So what seems solid that I present to you today, could be changing in the next six months, and that's the reality of the business we're in.

Rep. Beadle: So you had \$73 million in wagering during the calendar year. Of that, what's the tax revenue that you receive.

Winston Satran: We get 1/16 of 1% into each of the funds.

Rep. Klemin: You heard the testimony from Mr. Cichy, that if this is allowed, then they would probably have a betting parlor somewhere in Fargo, not at the track. As I understood the testimony, this is a form of video gaming that would be somewhere in Fargo, we don't know exactly. The Racing Commission would then be in the position of regulating this video gaming operation. Is what you foresee.

Winston Satran: Yes, that's the way I would view it, because this gaming would be under pari-mutuel racing. The races are considered pari-mutuel and as I mentioned in my testimony, if this passes, the first thing we would do is to sit down with the AG's office and review our administrative regulations and if we needed some adjustment, then we would have to go through the Administrative Rules process and change our rules to cover this type. We have not done this at this time.

Rep. Klemin: Assuming this bill passes, and becomes effective on August 1, 2011, when would you start the process of rulemaking.

Winston Satran: We are in the process of changing rules right now, we are about ready to present those to the Attorney General and we expect to be done with that process in April. If this bill passed, we would then between now and April, review and see if we needed to make additional changes. I believe we would start that process at the end of April if we needed to make changes.

Rep. Klemin: I thought there something in ND law now, that prohibits video gaming and I don't see anything in this bill to change that, how would you reconcile that conflict.

Winston Satran: I'm not familiar with that statute, so I cannot answer that.

Chairman DeKrey: Thank you. Further testimony in support of HB 1280.

Lee Harsche: I raised and raced thoroughbred horses, as you are probably all aware by now. I'm here to speak in favor of it and lend my support to it. I'm president of the ND Thoroughbred Owners and Breeders Association, but I'm speaking for myself personally. I also act as the secretary for the ND Horsemen's Advisory Council, which is comprised of one member from each horse racing associations in the state. They voted unanimously at the last meeting to support this bill.

Chairman DeKrey: Thank you. Further testimony in support of HB 1280.

Keith Lauer, Director of the Gaming Division for the Attorney General's Office: Back in 1989 the Legislature did pass a bill that allowed electronic forms of all types of gaming. That was later referred to the voters in December of that year and voted down. I think in making this change to the statute you probably would be allowing at least this type of pari-mutuel wagering system, but it would allow the previous horse races to be broadcast and wagered on. It is different than electronic gaming. About four years ago, the State Gaming Commission tried to, through Administrative Rules, changed the rules to allow electronic pull tabs. There you have a set deal, a set number of tickets and everything else, and our office had to come out and tell them, you've got to go to the Legislature if you want to do that. Now, I see there is a bill for paperless pull tabs this session that this committee will be looking at. I think if this gets changed, it would be legal.

Rep. Klemin: You said that if this bill passed, this would be legal.

Keith Lauer: I think this type of wagering would be legal, because it is a pari-mutuel wagering on previously run horse races and dog races. It is different than going down to the casino, with the slot machines, because as it was mentioned those are done with a computer chip and it's based on 13 million plays of a device. You could

maybe that number of plays over 3-5 years based on being played 7 days a week, it is different than pure electronic slot machines.

Rep. Klemin: The difference would be that, instead of the chip being in the machine that you're standing next to, it would be in Arkansas.

Keith Lauer: Well the selection of the races is certainly random, but the wagering is done on a pari-mutuel basis. Basically, my understanding is that it is based on the number of people playing. It's kind of like a Bingo game, you pay prizes based on how much is wagered on that particular game, and I understand that this is similar to that type of thing, as opposed to where the House could actually lose money. If you go down to a tribal casino, let's say their top prize is any slot machine goes out the first day. They're already behind, but they're going to make that up eventually, but this kind of racing is not that way. This is based on the number of people that are playing in it. It is somewhat different.

Chairman DeKrey: Thank you. Testimony in opposition to HB 1280.

Warren DeKrey, ND Council on Gambling Problems: Opposed, as I listened to the testimony, what they're talking about this morning is the horse racing group having financial problems, and as I remember this, it's not a new problem, this has been a problem for several years. We are being asked as citizens to approve a new gambling type, by doing that we would be asking the people of ND to say we are going to take care of the indebtedness of the Racing Commission by gambling and sending our money to the Racing Commission that way. This is an expansion of gambling. It's very much like Gov. Link always said, gambling has an insatiable appetite that is never satisfied. I would ask for a Do Not Pass.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing. Let's take a look at HB 1280. I don't think anyone had amendments, it's either up or down, you like it or you don't.

Rep. Klemin: I move a Do Not Pass.

Rep. Koppelman: Second the motion.

Rep. Maragos: I would hope that the committee would resist this motion. I think this is a bill that has been put in to assist the Horse Park Foundation, and the Horse Race Park in Fargo. This is voluntary, we're not taxing the citizens of ND. This is a voluntary tax paid by the people who like to enjoy this activity. I would hope that this committee would reject the Do Not Pass recommendation and I will vote against it.

Chairman DeKrey: We know that the citizens of Fargo alone are going to be holding the bag for over \$2 million if horse racing fails in ND. We still have the breed fund in place and those producers, if horse racing fails in ND, are not going to get any money for breeding race horses.

Rep. Maragos: I think if they race in other states based on their wins, they will be able to access money out of the breed funds, as long as they can still race. We would prefer to have them race in ND, and of course, Belcourt still operates, they are getting better, but we have invested all that money and \$8 million more in making that a viable race track in ND and married it up with NDSU with their equine department and I think it behooves us to give them all the help they need to not only survive, but to exceed and move forward for the horse production and the horse racing industry.

Chairman DeKrey: My other question, this is the 3rd or 4th session in a row that the Racing Commission has come in with a bill that is going to fix horse racing and they think that this is just the one little thing they need to get it going over the top. Here we again, we're getting another story on this, same story, if we just had this, we could make it go. If it would make some members more comfortable if there was a sunset clause on the bill, so that we could look at it again in two years and evaluate whether it was successful or not.

Rep. Maragos: I wouldn't be opposed to that, as a member of the Racing Commission, let me bring you up to speed. I'm somewhat new on the Commission, I was asked to be on the Commission to help provide some stability and rational decision-making going on in the Racing Commission, and I think we're succeeding. The real problem with the Horse Park ND, as I understood it, came as a result of some additional races that were requested to be run. Harness racing, previously, had been held at Bottineau. Then the Racing Commission in their infinite wisdom decided to slam dunk Bottineau and not have it at all. Then, the harness racers requested the Fargo race track to establish some dates and they did. I can't remember how it happened, but there was no additional monies in those extra days, it cost quite a bit more money and it put the race park, along with some mismanagement or bad judgment. A lot of things came in to play there. We think that, on the Racing Commission, we have gotten the Horse Park board to understand what they have to do to bring about sound fiscal management and to run their races properly. We believe that they will be able to do that, but the only problem is, is that with the decline in revenues, because of the economy or whatever, the simulcast company, those that are presently conducting simulcast racing, which is the genesis for all their funds, practically, that go into the breed fund, the promotion fund and the purse fund. They are now starting to come back. These account wagering companies like the climate in ND, they like doing business in ND, they like the way they are regulated soundly and the way they are treated with respect, and we've got five more and that's all coming about. This is going to help Horse Park ND with its particular problems with the local entities. They've gotten some loans to pay off their bills, so they will be able to get some credit to run their races. Without getting more deeply involved, I think I've given you a look at how we see it on the Racing Commission. I think the Racing Commission, as I look at its make-up right now and the leadership it has from Director Satran, it is going to stabilize everything, even the horse people seem to be talking to each other once in

a while now. That always was a little bit of a problem and I think everyone's pulling in the same direction, but I wouldn't be opposed to a sunset clause. If that gives somebody comfort in the notion that they should be able to be given a chance to try it, see if it gets them additional revenues, see if it stabilizes their own fiscal situation, I wouldn't be opposed to it.

Rep. Klemin: Well, I'm opposed to it. The sun has set. Passing this and allowing this company to invest, it's going to take more investment – with 20-30 video gaming machines set up at some location, not at the track but somewhere else in Fargo, where you have a video gaming parlor basically is a whole new direction for the company engaged in live racing. Whether it's on site or by simulcast. He told us that it was only being in one other state and that's in Arkansas. We've heard this, I think this is the 3rd time we've had this actual bill, but this is the first time that the Racing Commission is actually come in. For us to pass a law to allow video gaming of this sort, because one company has some financial problems, is clearly not in the best interest of the people of this state. If we put a sunset clause in the bill, and the company puts in all this equipment and then with the sunset on it we would have to look at it again and they'd come back and say, well you've got to take that sunset off because now we have all this money we owe for buying this equipment that we put in. It just keeps going down and down. I don't think is just the right approach to take at all. As we heard, the people voted and referred an electronic gaming bill here not too long ago, and now we're supposed to, what was it that we didn't understand about no. This is it again, this is just a video gaming machine to me, starting with 20-30 machines and going where, I don't know. I don't think this is good public policy.

Rep. Beadle: What would be the costs be to implement these machines. He mentioned that they will just have the machines in Fargo and then maybe trying to get them elsewhere if they are able to. What would the start-up costs be.

Rep. Maragos: These are business decisions and smart businessmen will make them. Smart businessmen will know that this might only be good for two years, and they may say no, this isn't worth the investment, we're not going to bother with you. I've heard some of these trite arguments and I guess sometimes they succeed and many times they do, but that's the way it is. I would allow the marketplace to decide whether it's a smart investment or not.

Rep. Beadle: I agree with it. I did check with the Fargo City Auditor, just before session today and the City of Fargo is on the hook for a little over \$2.1 million right now for the Horse Park. This bill will provide them with additional revenue. Based off the receipts that they talked about in the last calendar year, \$73 million, they are only able to collect 4/16th of 1%, 1/16 of 1% goes to the General Fund and based on the numbers they told us, that's only contributing \$45,625 to the General Fund. I would like to see us try to do something to allow them to have some sort of sustainability there, because I don't view it as video poker or video gambling, I view it as more of playing BINGO, where you are playing against the other people

involved. You're not going against a computer where you only have 80% payout. I think it's a little more on the up and up than some of the other video games, because the difference is there. I'd like to see it either wait and see. Some of the information as far as the revenue benefit that it could have based on the precedent in Hot Springs, AR or I'd like to see it pass with a sunset clause.

Rep. Maragos: A little history of the race park and how they ended up with it and I'm not sure what the \$2.1 million entails, the TIF portion can't be \$2.1 million. Are you talking about the total amount.

Rep. Beadle: Yes, the total amount, the TIF money is \$1.4 million but I believe there was some additional money that went into it as well from the City's perspective. They view it as them being on the hook for \$2.1 million if it goes under right now. The city auditor has a spreadsheet as far as what the horse park's cost towards the city.

Rep. Maragos: I don't know if we've seen that in the horse Racing Commission, but I'm sure now that you've brought it up, I'll ask them to provide that information to the Racing Commission too. I think having made such a substantial investment in that horse park, on behalf of the horse production and the horse racing industry of ND, I think it behooves us to allow this vehicle to be put in place for Horse Park ND to consider to continue the mission that they've embarked on.

Rep. Beadle: I completely agree with Rep. Maragos. I don't come to it from a horse racing point of view, I come to it from the point of view of the City of Fargo, where I would like to work to make the park viable so that the City of Fargo can get back their investment that they paid through the TIF money, as well as the additional investment they put in. I would like to see at least trying it out, because I don't see simulcast historic races as really being a detriment or considered video gambling to the extent that some are considering it.

Chairman DeKrey: The clerk will call a roll on a Do Not Pass on HB 1280.

4 YES 10 NO 0 ABSENT DO NOT PASS MOTION FAILS

Rep. Boehning: I move a Do Pass.

Rep. Delmore: Second.

10 YES 4 NO 0 ABSENT DO PASS CARRIER: Rep. Beadle

FISCAL NOTE

Requested by Legislative Council
01/11/2011

Bill/Resolution No.: HB 1280

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Section 1. Amendment. Subsection 11 of section 11 of section 53-06.2-01. It is anticipated this amendment will generate additional revenue, however, the amount cannot be determined at this time. Moneys will be appropriated to the General Fund, the NDRC's Promotion, Purse and Breeders' Funds.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Fiscal impact can not be determined at this time.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Fiscal impact can not be determined at this time.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Winston E. Satran	Agency:	ND Racing Commission
Phone Number:	701-328-4290	Date Prepared:	01/13/2011

Date: 1/24/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1280

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey		✓	Rep. Delmore		✓
Rep. Klemin	✓		Rep. Guggisberg		✓
Rep. Beadle		✓	Rep. Hogan	✓	
Rep. Boehning		✓	Rep. Onstad		✓
Rep. Brabandt		✓			
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar		✓			
Rep. Maragos		✓			
Rep. Steiner		✓			

Total (Yes) 4 No 10

Absent —

Floor Assignment _____

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

Motion Failed

Date: 1/24/11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1280

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Boehning Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin		✓	Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan		✓
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury		✓			
Rep. Koppelman		✓			
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 10 No 4

Absent ~~1~~ ABSENT

Floor Assignment Rep. Beadle

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

REPORT OF STANDING COMMITTEE

HB 1280: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS**
(10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1280 was placed on the
Eleventh order on the calendar.

2011 TESTIMONY

HB 1280

January 24, 2011
Testimony before the House Judiciary Committee
House Bill 1280
Representative Duane DeKrey, Chairman

HB 1280- Relating to the definition of racing and the taxation on racing

Chairman DeKrey members of the House Judiciary Committee:

My name is Mike Cichy and I am president of Horse Race North Dakota. Horse Race North Dakota supports House Bill 1280.

Instant racing is a method of pari-mutuel wagering on horse and dog races. The racetrack deducts a predetermined percentage from the pari-mutuel pool (expenses, taxes, purses for horse racing) and returns the balance to the players who placed winning wagers.

The only substantive difference between Instant Racing and traditional wagering on horse and dog races is that in Instant Racing the patron wagers on previously-run races.

The Instant Racing system is connected to a central processing unit (computer) that stores digital images of previously run races. Each race was conducted at a licensed U.S. pari-mutuel facility and concluded with official results. Instant Racing presently has a database containing nearly 500,000 races conducted at licensed U.S. pari-mutuel facilities. All race selections are random and are made by a software program within the system.

The identity of the races, the tracks at which they were conducted and the horses or dogs

in the races are withheld until after the patron has placed the wager. However, prior to placing a wager the patron does have the opportunity to study the past performance data showing the relative merits of the entries as actually existed on the day of the race.

All wagers are placed on a self serve terminal. This terminal provides the past performance data, the video of the race, the order of finish and pay outs to the winning players.

The purpose of this new system is to replace the steep decline in simulcast handle. This decline has occurred at both the national and local level.

The North American handle (net amount wagered) has fallen from \$15 billion to \$12 billion in the last 10 years. The decline in wagering at North Dakota sites is worse.

Instant Racing would allow Horse Race North Dakota to reopen and run more race days with larger purses.

HRND would also pay the debt to the City of Fargo for its share of the Tax Increment Financing. This is approximately \$400,000. Cass County EDC \$250,000. Bank Loan \$100,000.

The "professional player" model that worked from 1997 to 2002 is not functional in North Dakota or on a national level.

HRND asks for your support of HB 1280.

Thank You.

HOUSE BILL NO. 1280
ND Racing Commission
Winston E. Satran, Director
January 24, 2011

62nd Legislative Assembly
House Judiciary Committee
Prairie Room, State Capitol
Representative Duane DeKrey, Chairman

House Bill No. 1280 affects the definition of racing and taxation on racing. The change to the language of the existing statute section 53-06.2-01 will allow the transmission of historic previously run horse and dog races. This would then allow individuals to play wagering devices that contain these historic races which are disguised so that they are not identifiable to the player.

Wagering on historic races is legal in Arkansas. Historic races have been proposed in the State of Kentucky, and Franklin Circuit Judge Thomas Wingate ruled on December 29, 2010 that historic racing is legal in Kentucky. These states approved this activity to support horse racing.

If historic racing is approved in North Dakota, the Racing Commission would have to review the present administrative regulations and analyze if the present rules have the capability of regulating historic racing. If they do not, then the Racing Commission would have to begin to go through the process of changing the administrative regulations to regulate this gambling activity.

The reality of successful horse racing in the United States is that it has to be supplemented by other forms of revenue. At least 13 states have developed racinos which supplement the cost of operating of the tracks and adding to purse monies. Horse racing is strong in these states that are supplemented by racinos and languishing in states that do not have an alternate source of funding. Other entities have developed significant corporations on their own to fund horse racing. Churchill Downs in Kentucky

has become a substantial enterprise owning several race tracks, their own account deposit wagering company, a totalizator company, and a casino on the Mississippi Gulf Coast. This has been created to support their horse racing activities.

In North Dakota we have relied on taxation of business activity from account deposit wagering companies licensed in North Dakota. This business activity is increasing due to the passage of House Bill 1551 in the 2009 session which lowered the taxes to the Racing Commission and the State General Fund. This legislative change made it more financially viable to conduct business through a North Dakota license. Since that action has taken place we have licensed five additional account deposit wagering companies to add to the two existing licensed companies.

The most important lesson I have learned from being part of the administration of the Racing Commission is that the horse racing wagering business is changing rapidly due to technology. We are presently considering possibilities that never existed two years ago because of innovations in this industry. My point to the Committee is that it would appear prudent from my vantage point to have more than one source of funding for this striving industry.

Horse Race North Dakota, a non profit organization, would be the first home for historic racing. There is a reality that Horse Race North Dakota needs money to meet its financial obligations. When the track was constructed, they were awarded a \$250,000 loan from Cass County Economic Development and that loan payment must begin to be made in 2012. North Dakota Horse Race and the North Dakota Horse Park Foundation received tax incremental financing of approximately \$1,400,000 and those payments will begin in 2013. The financial shortfall of the 2009 race season caused Horse Race North Dakota to secure a loan of \$100,000 on which payments are being made at the present time. It is my opinion that the race meets held in Fargo will not generate the funding to

pay off these financial obligations. Horse Race North Dakota will have to look to other funding sources to stabilize racing in Fargo and to meet their financial obligations.

As the Racing Commission looks to the future of horse racing in North Dakota, we need to be flexible in developing methods to support this activity and strengthen its appeal to the public.