

2021 SENATE JUDICIARY

SB 2071

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2071
1/6/2021

A BILL for an Act to amend and reenact sections 53-06.2-01, 53-06.2-03, and 53-06.2-04, subsection 3 of section 53-06.2-07, and sections 53-06.2-10, 53-06.2-10.1, 53-06.2-11, and 53-06.2-15 of the North Dakota Century Code, relating to pari-mutuel wagering events and requiring the racing commission to adopt model rules and standards.

Chairwoman Larson called the meeting to order at
Senators present: Myrdal, Dwyer, Fors, Bakke, Luick, Heitkamp, Larson

Discussion Topics:

- Pari-Mutual Wagering restrictions
- Charitable Gaming tax incentives

Jack Schjulz, Executive Director ND Racing Commission, testified in favor #46 [2:02pm]

Collette Brown, Spirit Lake Tribal Gaming, testified in opposition #226 and #353 [2:25pm]

Senator Heitkamp moved for a DO NOT PASS on SB 2071 [2:42pm]

Senator Myrdal seconded the motion (2:42pm)

Motion passes 7-0-0

Senator Luick will carry the bill

Additional written testimony:

Jamie Azure submitted written testimony #143.

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Chairwoman Larson called the hearing to a close at 2:47pm

Jamal Omar, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2071: Judiciary Committee (Sen. Larson, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2071 was placed on the Eleventh order on the calendar.

Senate Bill 2071
ND Racing Commission
Jack K Schulz, Director
January 6, 2021

67th Legislative Assembly
Senate Judiciary Committee
Senator Diane Larson, Chairperson

To the Honorable Chairperson Senator Larson and other Honorable members of the Senate Judiciary Committee. Thank you for the opportunity to appear before you to present my testimony for SB 2071, the ND Racing Commission recommended changes to definitions involving pari-mutuel wagering, directors title, and Association of Racing Commissioners' International (ARCI) standard procedures and rules adoption.

The three areas covered in this bill have distinct goals and reasoning behind their submission.

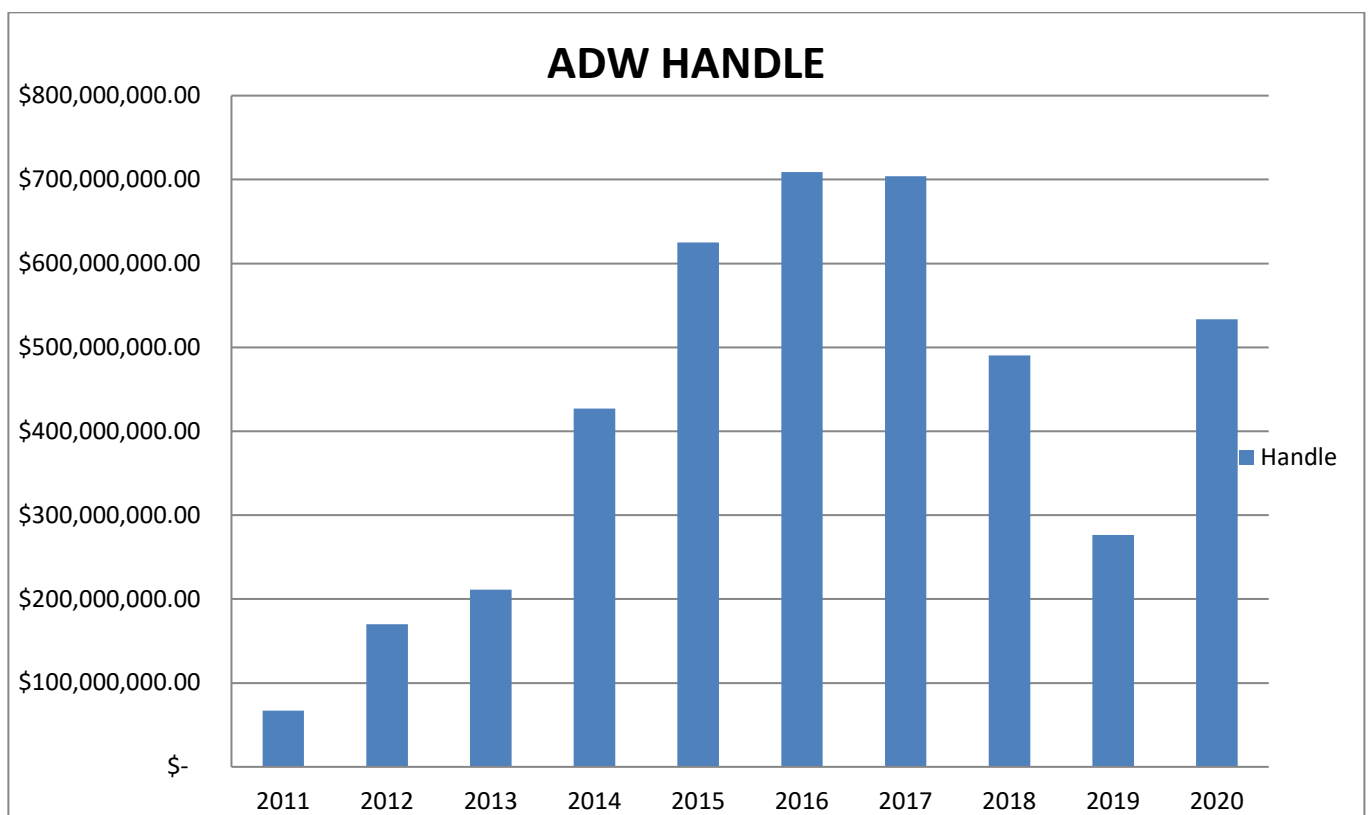
First, we would like to standardize the Directors title to Executive Director. When applying, I applied for the position of Executive Director. Upon accepting the position, I learned the position was referred to as Director, Executive Director and Executive Officer in different areas of the Century Code, Administrative Rules, job descriptions and others. The standard for the position in the industry is Executive Director, including the States of Minnesota, Wyoming, Oklahoma, Kentucky, New York and others. This should also help clarify the position when we hire my replacement when I retire. There would be no fiscal impact with this change.

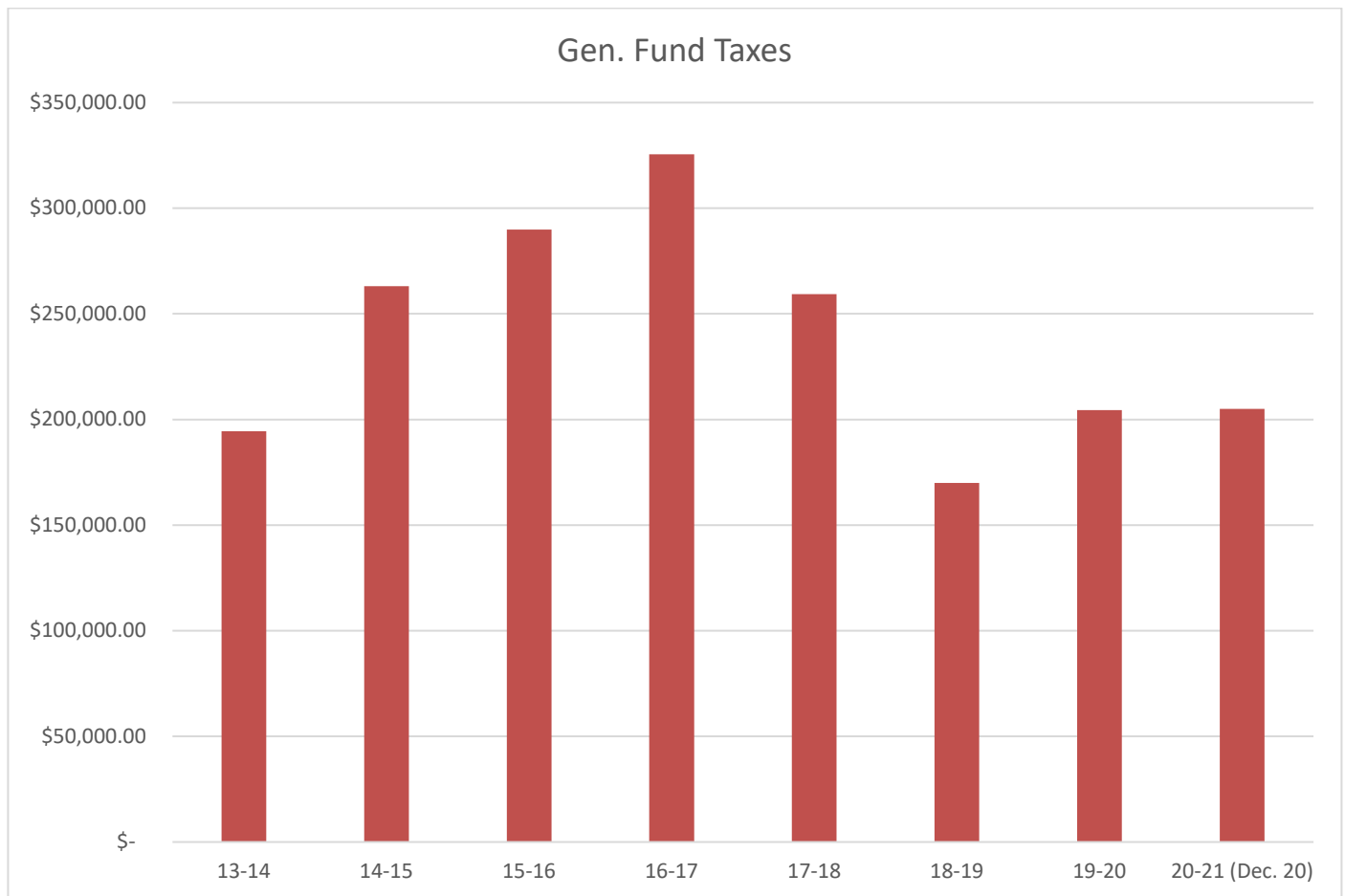
The second item is the adoption of the ARCI Standard Rules into the duties of the commission. These Rules are widely accepted around the country and would

help standardize rules for North Dakota Horsemen throughout the Industry. An earlier version of the ARCI Rules is part of the administrative rules, this addition would ensure continued use with the most updated version from ARCI. There would be no fiscal impact with this change.

The third item is removing the limitation of horses and greyhounds to our definition of pari-mutuel wagering. The change would allow our Account Deposit Wagering (ADW's) licensees to add other forms of pari-mutuel wagering in other jurisdictions including events like boat racing, drone racing and Jai alia.

The racing industry has seen significant financial variances over the last few years as documented by the charts below.





The rapid changes in handle are caused by many different items including the decline of ADW retail operations, consolidation and buyouts of smaller ADW's by larger organizations, the expansion of sports betting, racino's and historic horse racing, along with the closing of most of the greyhound tracks in the U.S. These events along with COVID-19 have caused a situation where it is difficult to predict and maintain a stable revenue stream in our current environment. It is our belief that by eliminating the restriction on our ADW's to accepting wagers only on horse and greyhounds we can stabilize the revenue stream by balancing it over several different areas rather than relying on only two. Additional areas that have been requested over the last two years include boat and drone racing along with Jai alia.

The future of racing in North Dakota has other significant risks as other states expand their allowable wagering activities. While North Dakota maintains a favorable tax structure for ADW's, we are limiting in the types of wagering that ADW's can accept. By removing the limitation of horses and greyhounds it would allow our current licenses to diversify their wagering into different areas thereby not relying on one industry for their entire revenue stream. We are seeing that minor changes in a company's business structure, regulatory changes in other jurisdictions, sports betting or rate differences between companies result in significant shifts in wagering volume away from North Dakota. We are also at risk from the loss of ADW's to jurisdictions that allow an expanded betting menu including sports betting even though their taxes are greater than ours. Our goal is to maintain our current base of licensees and not lose them to other jurisdictions. I believe that with this change we would be able to maintain our current fiscal status with no immediate increase to revenues based on our largest ADW hitting its yearly tax and breakage caps this year. Failure of this change may result in the loss of one or more of our licensees. If these losses occurred, it could result in a reduction of over 50% of our annual revenue.

Another area of concern is the Federal Horse Racing Integrity & Safety Act (HISA) was passed this past December by Congress and signed into law with the continuing appropriations spending bill. HISA creates an independent authority to regulate horse racing nationwide with few if any controls put on their actions or taxing authority. At this time, we don't know what impact this agency may have on our budget or horse racing in the State of North Dakota. Consensus in the industry is that it has the potential to close most small and medium sized tracks across the country

that don't have additional sources of income to support these new racing regulation costs produced by the creation of this agency. Items such as lifting the restrictions on pari-mutuel wagering would allow us to at least maintain our licensees and tax revenue stream for the general and special funds.

Madam Chair and the members of the committee

My name is Collette Brown from Warwick, representing the Spirit Lake Tribe. My professional title in the gaming industry is, Gaming Commission Executive Director of the Gaming Regulations and Compliance Department, our casino is located seven miles south of Devils Lake.

Indian gaming is our Native American success story, where we have established our Gaming and Resort complex to provide gaming and recreation, restaurants, fine dining, fishing and hunting, lodging and an entertainment venue. In short, the Spirit Lake Tribe has established a full Resort experience. Our resort means jobs and opportunity, funding for essential tribal government services. The Spirit Lake Casino and Resort is value added to North Dakota, our Tribe, and the surrounding community, where we create jobs through our contracting, employment, and procurement of goods and services.

The Spirit Lake Tribe expressed serious concerns about the electronic pull tabs because the electronic pull tabs has a tendency to transform into slot machines. Right now, the etabs are far removed from actual pull tabs because there is no requirement to read the pull-tab, cash out prizes or actually play the game of pull-tabs. In reality, the etabs are played like slot machines, as convenience games are attractive and accessible to problem gamblers, and the machine manufacturers taking the lion's share of revenue. The large influx of etabs throughout North Dakota, reaching a billion dollars in gross gaming revenues, has undermined Indian gaming, reducing our revenues substantially and undercutting our ability to provide jobs and generate essential government revenues

The problem is that oversaturation of the gambling industry undermines your neighbors, our Indian nations and tribes. That means less education, less health care, loss of jobs, and less tourism throughout North Dakota. A careful study and a cautious approach must be applied to any further expansion of gambling in North Dakota.

Today I come to you with concerns on SB2071.

1. **Wagering on Any Events:** "a race, contest, game, or competition in which a wager can legally be made in the jurisdiction the wager is made." First of all, the bill comes in the guise of racing and pari-mutuel bill but actually allows wagering on any type of "event," rendering the reference to horseracing irrelevant.
2. Under this Bill, the Horseracing Commission becomes the Gambling Commission. And not just any Gambling Commission but an International Internet Gambling Commission. Is that the intent? "Adopt by rule model rules

and standards, such as the association of racing commissioners international's model rules and standards.”

3. The reference is not a limitation, but is simply illustrative—so the bill would allow for the adoption of any “model rules and standards”—and clearly authorizes a resort to international law, meaning foreign law, without further approval of the legislature. This proposal is objectionable as a delegation of unlimited legislative authority to a regulator and appears to violate constitutional due process because the unlimited power created thereby is void for vagueness.
4. By opening gambling up to any “event,” the bill strikes the limit to live horseracing and simulcast horse racing from other live venues. The term “event” allows wagering on any type of activity: horseracing, historical horseracing, dog-racing, NASCAR racing, high school **state tournaments**, college, or professional sports—baseball, football, soccer, pool, dog or cock fighting, the performance of the stock market, federal, state or local elections, along with any other “event”—like the Oscars, Grammys or Emmys.
5. The chances for corruption and mischief concerning these unregulated activities is clear and a potentially part-time Horseracing Commission Executive Director is ill-equipped to handle a new authorization of unlimited, universal, international gambling on virtual internet or wires.
6. Abandoning Horse-Tracks in Favor of Any “Arena.” Traditionally, horseracing is the gambling activity regulated by Horseracing Commissions. Congress just passed the Federal Horseracing Integrity and Safety Act to stop doping and abuse of live horses—the North Dakota Commission has more than enough to do regulating horses and horseraces without venturing outside the horse track to high school track and field, 4H rodeo, square dance pavilion, or Movie Theater.
7. The definition says “‘Arena’ means any indoor or outdoor venue where an event may be held....” There is simply no limit to betting and wagering without a reference to live horses and horse tracks.
8. Last session, the North Dakota Legislature voted down “historical horseracing machines” because they actually operated as slot machines with no need to conduct or pay any attention to a horserace. SB 2071 would empower the Executive Director of the Horseracing Commissions unlimited power to

establish rules for betting and wagering on undefined “events,” which might include randomly shuffled past events like “historical horse-racing.”

9. **National Conference of Legislators from Gaming States.** NCLGS has been considering topics on emerging forms of gaming, including “Sports Role’s in Sports Betting:” “State governments and industry focus on what the legalization, regulation and revenue generation of sports betting, to what extent should stakeholders who deliver content – such as the sports leagues, the television networks, and the athletes themselves – be considered?” Is it right for Horseracing to take over the whole universe of “event” wagering, which would include Sports Betting.
10. **Sports Betting Should Be Regulated As Sports Betting.** The gambling industry will bring forward sports betting issues and those questions should be dealt with as sports betting, not shoehorned into horseracing under a weak regulatory structure which in reality provides little or no standards for regulation.
11. As TMBCI has mentioned they are in the development of a bill to offer internet sports betting within the State, this will be the best way for ND to enter into internet sports betting, not with ambiguous language under the racing commissions’ authority.
12. SB 2071 would result in unlimited gambling on any event in any forum (arena) where human activity takes place. Such an unlimited, universal, perhaps international betting and wagering expansion would wipe out existing forms of gambling, including Indian gaming and etabs for charitable purposes.

Lastly, we cannot economically sustain anymore expansion of gaming that does not benefit the tribes. With that being said Spirit Lake Tribe and **Standing Rock Sioux Tribe** **are** in opposition of this bill.

Thank you for your time.

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Thank you for your time.



4180 HIGHWAY 281
BELCOURT, ND 58316
TMBCI.ORG

JAMIE AZURE
TRIBAL CHAIRMAN
JAMIE.AZURE@TMBCI.ORG

701.477.2673

January 6, 2021

Senate Judiciary Committee

North Dakota Assembly

Re: SB 2071

Dear Senate Judiciary Committee:

Please accept this written testimony in opposition to SB 2071.

SB 2071 redefines the scope of pari-mutuel betting in the State of North Dakota. The proposed bill adds the defined term: "Event" means a race, contest, game, or competition in which a wager can legally be made in the jurisdiction the wager is made. The proposed bill then deletes "horse racing" from the definition of "Racing," and replaces it with: "Racing" means a live or simulcast event under the certificate system. Since the definition of "event" is broad enough to include betting on single-event sporting events across much of the country, effectively it seems that this bill legalizes sports betting for pari-mutuel licensees. If this is not the intent of this bill, then it needs to be drafted much more narrowly.

Currently in North Dakota sports betting, other than horse racing and dog racing, is exclusively legal for the Tribes pursuant to our Compacts with the State. Turtle Mountain opposes any effort to deny the Tribes exclusivity for sports betting.

Retaining exclusive rights is critical to Tribal economic sustainability and progress. North Dakota Tribes have already been hard hit by the loss of exclusivity. Nationwide, tribal gaming revenues from 2017 to 2018 went up by 4%, but in North Dakota over that same time period tribal gaming revenues plummeted by 18%. We all know why, Tribal exclusivity in gaming in North Dakota has given way to the rapid expansion of ETAB machines, and it accelerated even more in 2019.

Tribes desperately need the revenues. Tribes are governments, working without a tax base, to serve the most vulnerable population in the State. Turtle Mountain has a much higher unemployment rate than the State. Turtle Mountain has a much higher percentage of people living below the poverty line than the State. Turtle Mountain has a much lower median household income than the State. Turtle Mountain has a housing crisis, homelessness and overcrowding. Turtle Mountain has a much higher percentage of kids in the foster care system than the State. By one recent North Dakota study, Native American children constitute 8% of the child population of the State, and 40% of its foster care population. There is a myriad of ways that poverty on reservations impacts the State and its budget.

It is in the best interests of the State to support Tribal governments, to make sure we have the revenues we need to build stronger social safety nets on our reservations, and to improve economic opportunities for our members. It is in the best interests of the State to make sure sports betting remains exclusive to Tribes.

Turtle Mountain is proposing legislation this session to expand Tribal gaming exclusivity, to give the Tribes more tools. We look forward to working with this Committee on those proposals.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Jamie Azure', written over a horizontal line.

Jamie Azure
Chairman