

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee  
FROM Jon Catlett, JBC Staff (303-866-4386)  
DATE January 23, 2023  
SUBJECT Supplemental Comeback  
Department of Revenue  
S1 Racing Compliance Requirements

During consideration of the supplemental requests from the Department of Revenue, the JBC decided to table a decision until a later date on *S1 Racing Compliance Requirements*. Most of the publicly stated concerns were related to current race operations and the possible duplicitous nature of some of the requested FTE with existing resources. JBC members raised questions about the need for more explanation from the Department as to how the Horseracing Integrity Safety Act creates an additional workload above current racing compliance requirements.

Below is a copy of the original staff write-up on the request for consideration by the JBC, as well as additional information pertinent to the request provided by the Department.

### S1 RACING COMPLIANCE REQUIREMENTS

	REQUEST	RECOMMENDATION
<b>TOTAL</b>	<b>\$245,052</b>	<b>\$210,414</b>
FTE	4.0	4.0
General Fund	0	0
Cash Funds	245,052	\$210,414
Reappropriated Funds	0	0
Federal Funds	0	0

**Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? YES**

[An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]

**Explanation:** JBC staff and the Department agree that this request is the result of an unforeseen contingency. According to the Department, the passage of the Horseracing Integrity and Safety Act has led to significant oversight responsibilities by the Division of Racing. The Division has needed time since the passage of the Act to decide the most efficient and practical approach to comply with this legislation.

**DEPARTMENT REQUEST:** The Department is requesting \$245,052 in Racing Cash Fund spending authority and 4.0 FTE for FY 2022-23. The request is ongoing, and the Department has also submitted a request for \$583,300 Racing Cash Fund spending authority and 4.0 FTE as part of its FY 2023-24 budget package. This request is to comply with the newly implemented federal Horseracing Integrity and Safety Act enacted to protect thoroughbred racehorses and the horseracing industry. The Division of Racing requires additional resources to implement this federal legislation.

**STAFF RECOMMENDATION:** Staff recommends approving the request, with minor adjustments that are consistent with JBC policies.

STAFF ANALYSIS: The federal Horseracing Integrity and Safety Act (the Act) was passed in September of 2020. The Act created a private self-regulatory organization called the Horseracing Integrity and Safety Authority (HISA) and charged it with establishing and enforcing federal racetrack safety, anti-doping, and medication control rules. The legislation has two distinct components, the Racetrack Safety Program, which went into effect on July 1, 2022, and the Anti-Doping and Medication Program, which was scheduled to go into effect on January 1, 2023, but court challenges have delayed implementation. The recently passed federal Omnibus Bill includes an amendment that addresses these legal challenges. The Department feels that HISA, and its oversight capacity, will not be impacted by these legal challenges.

The Horseracing Integrity Safety Act includes two components:

- 1 The Racetrack Safety Program - includes track operational safety guidelines and national accreditation standards implemented to protect thoroughbred racehorses and reduce risks to jockeys. This program expands veterinary oversight, imposes track surface safety standards, and implements voided claim rules.
- 2 The Anti-Doping and Medication Control Program - creates a standardized testing and results management process and imposes uniform penalties for violations across the United States. The Horseracing Integrity and Welfare Unit, a newly formed independent agency, will oversee testing, inform stakeholders, accredit laboratories, and prosecute rule violations.

This legislation was passed to protect the health, safety, and welfare of equine athletes, creating a unified set of national standards for the thoroughbred racing industry. This legislation was spurred by recent track tragedies, including a significant spike in horse breakdowns at Santa Anita race track in California in 2019, which received widespread national media attention. Additionally, prominent doping scandals have recently plagued the sport, including a post-race failed drug test which stripped the 2021 Kentucky Derby winner of their title. Before the Act, there was no uniform set of track guidelines, meaning that sanctions imposed in one jurisdiction were not necessarily binding in another. This lack of consistency and uniformity in the horseracing industry was detrimental to the horses, jockeys, and the overall sport.

The request includes \$245,052 Racing Cash funds and 4.0 FTE, prorated in FY 2022-23, and ongoing to implement the additional horseracing industry oversight necessitated by the Act. The four additional FTE requested include the following:

- 1 Regulatory Veterinarian I – a permanent position overseeing the temporary veterinary staff during the race season and performing regulatory out-of-competition testing on horses during the off-season.
- 2 Criminal Investigator II – a permanent position that would report to the agent in charge at the track and whose primary responsibility would be to perform inspections at places where horses are stabled. Additionally, this position would support the regulatory veterinarian by witnessing and ensuring the chain of custody security for biological samples collected at stabling locations.
- 3 Permanent State Steward (Program Manager II) – a permanent position that would replace one temporary steward during the race meet. Temporary stewards are challenging to hire due to the

specific skill set, training, and time demands required. This position would bring stability and consistency to the steward role, a principal goal of the HISA Act.

- 4 Auditor IV – a full-time position that would ensure that proper accounting principles are followed. Previously purse funding was reviewed and audited by a third-party examination agency. This position would provide a more cost-effective and consistent approach to ensure proper accounting and financial management protocols are followed.

The recommendation and request are outlined in the table below. Differences are primarily driven by centrally appropriated line items, which, per JBC policy, are not typically appropriated in the request year.

S1 RACING COMPLIANCE REQUIREMENTS			
	REQUEST	RECOMMENDATION	DIFFERENCE
FTE	4.0	4.0	0.0
Personal services	\$97,838	\$89,954	7,884
Operating expenses	120,460	120,460	0
Centrally appropriated costs	26,753	0	26,753
<b>Total</b>	<b>\$245,052</b>	<b>\$210,414</b>	<b>\$34,638</b>

In addition to this FY 2022-23 supplemental request, the Department has submitted a corresponding request (R3 Racing Compliance Requirements) with the FY 2023-24 budget package. The funding details of the two requests are outlined in the table below. All appropriations related to this request are from the Department’s Racing Cash Fund.

S1 / R3 RACING COMPLIANCE REQUIREMENTS		
	FY 2022-23 REQUEST	FY 2023-24 REQUEST
FTE	4.0	4.0
Personal services	\$97,838	\$399,450
Operating expenses	120,460	92,460
Centrally appropriated costs	26,753	91,390
<b>Total</b>	<b>\$245,052</b>	<b>\$583,300</b>

## ADDITIONAL INFORMATION

According to the Department, the additional resources requested, driven by the Horseracing Integrity Safety Act, are the additional requirements for the regulatory program during the race season, which includes shifting responsibilities and additional regulations, and new requirements even during the off-season to support the national industry. Stewards, veterinarians, and compliance investigators have historically only worked the three or four months during the race season that the live race meet is running. The main difference driving cost is the shift from seasonal staff to year-round staff to comply with the new HISA Act requirements.

Historically, the Division has been responsible for enforcing the Colorado Racing Commission Rules and state statutes concerning the Colorado racing industry. The Act has shifted responsibility to the Authority in two areas, racetrack safety and anti-doping and medication control. The following sections outline the differences in the program that the Department expects to occur as a result of HISA regulations.

## **VETERINARIAN**

The Division currently employs the equivalent of one full-time state veterinarian during the racing season (sometimes shared across several veterinarians). The Division is now required to have 1 permanent full-time veterinarian all year long. The Authority (HISA) recommends two regulatory veterinarians during the live racing season. Currently, there is a non-regulatory veterinarian employed by the track and a regulatory vet employed by the state. HISA regulations require that some of the once shared responsibilities now belong solely to regulatory veterinarians. These responsibilities include:

- Pre-race exams of horses
- Veterinarian's list administration and maintenance
- Observing workouts during training days
- Clearing horses from the veterinarian's list regardless of cause

HISA regulations add new responsibilities including:

- Additional random pre-race blood tests (TCO2)
- Mandatory observation, examinations and drug screenings for horses claimed from a claiming race
- Reporting to the national HISA database

New year-long requirements include:

- Random anti-doping tests performed at any location in Colorado where a horse is stabled throughout the year
- Collaborate with and assist HISA staff in the investigation of positive drug tests

The Department states that it is increasingly challenging to staff seasonal veterinarians due to national labor issues, and demand for seasonal veterinarians exceeds supply. Additionally, a full-time veterinarian will provide consistency and efficiency in the training processes of seasonal staff. The veterinarian could also possibly assist in other jurisdictions at HISA request and expense, offsetting Division costs.

## **STEWARD**

Currently, the Racing Division employs two full-time, seasonal stewards. HISA requires the Division to have one permanent full-time steward all year long. Additional responsibilities of the steward as a result of HISA include:

- Daily detailed reports from the steward's office in addition to current reports completed by the stewards for the Division. This reporting is separate from the report on Quarterhorses and Arabians.
- Collaborate with the Authority during the off-season to ensure Colorado staff is trained and compliant with HISA requirements and regulations
- Change in adjudicatory duties
- Enforcing HISA rules related to the running of a race in addition to existing state rules, requiring separate HISA hearings and rulings

- Participating on adjudicatory panels for anti-doping and medication control violations occurring in jurisdictions other than Colorado

The Division also states that good stewards are difficult to recruit and retain in Colorado as they are often recruited to more prestigious tracks or are unavailable due to shifting meet dates in other jurisdictions. The continuity provided in having one full-time steward positions would reduce complications and issues arising from the steep learning curve of Colorado regulations and statutes. The permanent steward would be instrumental in getting the seasonal steward up to speed for the race meet, and could participate in adjudicatory hearings for anti-doping and medication control violations at HISA/HIWU request and expense, offsetting Division costs.

#### CRIMINAL INVESTIGATOR

The Department currently employs a Criminal Investigator supervisor, a Criminal Investigator II, and two full-time seasonal compliance investigators. The Department requests an additional Criminal Investigator I in order to comply with HISA and the oversight responsibilities created by the federal legislation.

- HISA regulations have implemented additional requirements for sample security and chain of custody
- Additional requirements related to all Colorado licensees required to be registered with the Authority
- Work with the Authority's systems to verify Colorado participants meet both Division licensing and HISA registration requirements.
- Work with the Criminal Investigator II and the Authority to enhance national procedures
- Support other jurisdictions in security and enforcement operations in other jurisdictions which will in turn lead to reimbursements to the state and provide funding and other training opportunities
- HISA regulations provide for off-season random anti-doping and medication control testing
- The Criminal Investigator I would travel with the veterinarian for chain of custody security and perform inspections as requested from the Authority.

#### AUDITOR

According to the Department, the processes that the Division and the industry currently use are nearly 25 years old and are in desperate need of an update. The Division has needed an auditor to develop these new policies, procedures, and Internal Control Minimum Procedures and to administer the updated audit program. While the auditor is not directly tied to HISA, it was included to meet the proper standard of operations for the Racing Division. The Department is agreeable to removing the auditor from the supplemental request if the Committee prefers only to consider items directly resulting from HISA in this process. The auditor is part of the FY 2023-24 Decision Item, along with the continuation of the other supplemental FTE.

The table below lists the amounts associated with the Department request, JBC staff recommendation, and the Committee motion made during the supplemental presentation to exclude the auditor from the appropriation.

S1 RACING COMPLIANCE REQUIREMENTS			
	REQUEST	RECOMMENDATION	COMMITTEE MOTION
FTE	4.0	4.0	3.0
Personal services	\$97,838	\$89,954	\$64,489
Operating expenses	120,460	120,460	112,845
Centrally appropriated costs	26,753	0	0
<b>Total</b>	<b>\$245,052</b>	<b>\$210,414</b>	<b>\$177,334</b>