

7382--A

I N S E N A T E

April 5, 2010

Introduced by Sen. ADAMS -- read twice and ordered printed, and when printed to be committed to the Committee on Racing, Gaming and Wagering -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the racing, pari-mutuel wagering and breeding law, in relation to the franchise oversight board

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Subdivisions 3 and 8 of section 212 of the racing, pari-mu-
2 tuel wagering and breeding law, subdivision 3 as amended and subdivision
3 8 as added by chapter 18 of the laws of 2008, and subparagraphs (viii)
4 and (xi) of paragraph a of subdivision 8 as amended by chapter 140 of
5 the laws of 2008, are amended to read as follows:
6 3. Such members, except as otherwise provided by law, may engage in
7 private or public employment, or in a profession or business. The board,
8 its members, officers and employees shall be subject to the provisions
9 of sections seventy-three and seventy-four of the public officers law.
10 No former trustee or officer of a non-profit racing association known as
11 The New York Racing Association, Inc. or its predecessor, no current
12 director or officer of a franchised corporation, NO FORMER OR CURRENT
13 DIRECTOR OR OFFICER OF NEW YORK CITY OFF-TRACK BETTING CORPORATION or
14 any individual registered with the New York commission on public integ-
15 rity shall be appointed as members to the board nor shall any member of
16 the board have any direct or indirect interest in any racehorse,
17 thoroughbred racing, OFF-TRACK BETTING or pari-mutuel wagering business,
18 video lottery terminal facility or any development at any racing facili-
19 ty.
20 8. a. The duties and responsibilities of the franchise oversight board
21 shall include, but not be limited to, the following:
22 (i) represent the interests of the state in all real estate develop-
23 ment proposed for Aqueduct racetrack or real estate development at
24 Belmont Park racetrack. Any such real estate development shall only be
25 undertaken pursuant to a competitive process approved by the board,
26 after consultation with the applicable local advisory boards and consid-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD16782-02-0

1 eration of local zoning and planning regulation, and in a manner that
2 will not adversely impact any historic structure that is included in or
3 eligible for inclusion in the National or the State Register of Historic
4 Places, be consistent with any plan approved for such community, and
5 shall be subject to unanimous approval of the franchise oversight board
6 and all statutory and regulatory requirements; provided, however, that,
7 subject to approval of the franchise oversight board and subject to all
8 statutory and regulatory requirements, the franchised corporation shall
9 have full powers and rights to develop, redevelop, refurbish, renovate
10 or make such other improvements, capital expenditures or otherwise, to
11 the racetracks and the fixtures and improvements thereon consistent with
12 projects specifically identified in the franchised corporation's
13 approved track facility improvement plan.

14 The franchise oversight board shall be guided by the goals of ensuring
15 the continuation of high quality thoroughbred racing at the thoroughbred
16 racing facilities located within the state, raising revenue for or in
17 aid or support of education in this state from video lottery gaming at
18 facilities of the state racing franchise, and maximizing revenue for
19 governments from pari-mutuel wagering on racing at facilities of the
20 state racing franchise.

21 (ii) monitor and enforce compliance with definitive documents that
22 comprise the franchise agreement between the franchised corporation and
23 the state of New York governing the franchised corporation's operation
24 of thoroughbred racing and pari-mutuel wagering at the racetracks. The
25 franchise agreement shall contain objective performance standards that
26 shall allow contract review in a manner consistent with this chapter.
27 The franchise oversight board shall notify the franchised corporation
28 authorized by this chapter in writing of any material breach of the
29 performance standards or repeated non-material breaches which the fran-
30 chise oversight board may determine collectively constitute a material
31 breach of the performance standards. Prior to taking any action against
32 such franchised corporation, the franchise oversight board shall provide
33 the franchised corporation with the reasonable opportunity to cure any
34 material breach of the performance standards or repeated non-material
35 breaches which the franchise oversight board may determine collectively
36 constitute a material breach of the performance standards. Upon a writ-
37 ten finding of a material breach of the performance standards or
38 repeated non-material breaches which the franchise oversight board may
39 determine collectively constitute a material breach of the performance
40 standards, the franchise oversight board may recommend that the fran-
41 chise agreement be terminated. The franchise oversight board shall refer
42 such recommendation to the racing and wagering board for a hearing
43 conducted pursuant to section two hundred forty-five of this article for
44 a determination of whether to terminate the franchise agreement with the
45 franchised corporation;

46 (iii) oversee, monitor and review all significant transactions and
47 operations of the franchised corporation AND THE NEW YORK CITY OFF-TRACK
48 BETTING CORPORATION authorized by this chapter; provided, however, that
49 nothing in this section shall be deemed to reduce, diminish or impede
50 the authority of the state racing and wagering board to, pursuant to
51 article one of this chapter, determine and enforce compliance by the
52 franchised corporation OR THE NEW YORK CITY OFF-TRACK BETTING CORPO-
53 RATION with terms of racing laws and regulations. Such oversight shall
54 include, but not be limited to:

1 (A) review and make recommendations concerning the annual operating
2 budgets of such franchised corporation AND THE NEW YORK CITY OFF-TRACK
3 BETTING CORPORATION;

4 (B) review and make recommendations concerning operating revenues and
5 the establishment of a financial plan;

6 (C) review and make recommendations concerning accounting, internal
7 control systems and security procedures;

8 (D) review such franchised corporation's AND THE NEW YORK CITY
9 OFF-TRACK BETTING CORPORATION'S revenue and expenditure [polices] POLI-
10 CIES which shall include collective bargaining agreements management and
11 employee compensation plans, vendor contracts and capital improvement
12 plans;

13 (E) review such franchise corporation's AND THE NEW YORK CITY
14 OFF-TRACK BETTING CORPORATION'S compliance with the laws, rules and
15 regulations applicable to [its] THEIR activities;

16 (F) make recommendations for establishing model governance principles
17 to improve accountability and transparency; and

18 (G) receive, review, approve or disapprove capital expense plans
19 submitted annually by the franchised corporation AND THE NEW YORK CITY
20 OFF-TRACK BETTING CORPORATION.

21 (iv) evaluate, review and approve the racing franchisee's AND THE NEW
22 YORK CITY OFF-TRACK BETTING CORPORATION'S selection of a vendor or
23 vendors to contract with the franchised corporation AND THE NEW YORK
24 CITY OFF-TRACK BETTING CORPORATION for provision of totalizator
25 services, and manage, subject to the franchised corporation's unilateral
26 right to opt out, directly or indirectly, integration of any offered
27 internet wagering platform. The franchise oversight board shall consider
28 in its evaluation of any such proposed vendor their ability to reduce
29 the totalizator expenses and general development and production costs of
30 any internet wagering platform of an authorized off-track betting corpo-
31 ration and the state racing franchise holder.

32 (v) facilitate discussions and voluntary agreements between the fran-
33 chised corporation and off-track betting corporations to streamline
34 operations, decrease operating costs and maximize opportunities pertain-
35 ing to costs and revenues, and encourage an exchange of views and expe-
36 riences from the franchised corporation and the off-track betting corpo-
37 rations to improve the racing product in New York and to realize
38 efficiencies, EXCEPT THE NEW YORK CITY OFF-TRACK BETTING CORPORATION
39 SHALL TRANSFER ALL WAGERING ACCOUNTS, INCLUDING INDIVIDUAL ACCOUNT
40 BALANCES HELD FOR TELEPHONE AND INTERNET WAGERING TO THE FRANCHISE OVER-
41 SIGHT BOARD. NEW YORK CITY OFF-TRACK BETTING CORPORATION SHALL PROVIDE A
42 REPORT FROM ITS TOTALIZATOR PROVIDER OF ALL WAGERING ACCOUNTS INCLUDING
43 INDIVIDUAL CUSTOMER ACCOUNT BALANCES. THE FRANCHISE OVERSIGHT BOARD
44 SHALL FORTHWITH ENTER INTO A MANAGEMENT SERVICES AGREEMENT ON BEHALF OF
45 NEW YORK CITY OFF-TRACK BETTING CORPORATION WITH A THIRD PARTY VENDOR
46 SELECTED BY THE FRANCHISE OVERSIGHT BOARD SUBJECT TO STATE PROCUREMENT
47 LAW AND REGULATIONS FOR THE OPERATION OF THE ACCOUNT DEPOSIT WAGERING
48 FOR TELEPHONE AND INTERNET WAGERING. ANY SUCH MANAGEMENT FEE DERIVED
49 FROM SAID AGREEMENT SHALL BE DEDICATED TO OUTSTANDING LIABILITIES AND
50 CONTRACTUAL OBLIGATIONS WITH UNIONIZED EMPLOYEES OF NEW YORK CITY
51 OFF-TRACK BETTING TO THE EXTENT SUCH EXIST;

52 (vi) review and approve all purchasing policies pursuant to paragraph
53 (a) of subdivision six of section two hundred eight of this article AND
54 USED BY NEW YORK CITY OFF-TRACK BETTING CORPORATION;

55 (vii) NEW YORK CITY OFF-TRACK BETTING CORPORATION AND THE FRANCHISED
56 CORPORATION SHALL JOINTLY NEGOTIATE ALL SIMULCASTING CONTRACTS WITH OUT

1 OF STATE ENTITIES AND THE FRANCHISE OVERSIGHT BOARD SHALL review and
2 provide any recommendations on all simulcasting contracts (buy and sell)
3 that are also subject to prior approval of the racing and wagering
4 board;

5 (viii) act on behalf of the People of the State of New York to enter
6 into any real property transactions in furtherance of the purposes and
7 intent of this statute, including, without limitation, one or more
8 ground leases, for one dollar in consideration annually, for each of
9 Aqueduct racetrack, Belmont Park and Saratoga racecourse to the fran-
10 chised corporation, for a term that will extend until the racing fran-
11 chise expires, is revoked, terminated or ends by any other means
12 provided by law. Such leases shall be executed contemporaneously with
13 the conveyance of the racetracks by the franchised corporation's prede-
14 cessor to the state;

15 (ix) enter into on behalf of the state as licensor, a long term
16 license agreement with the franchised corporation for the use of the
17 simulcast signal and associated intellectual property rights, for
18 consideration of one dollar annually and for a term that will extend
19 until the racing franchise expires, is revoked, terminated or ends by
20 any other means provided by law. Such license agreement shall be
21 executed contemporaneously with the conveyance of the franchised corpo-
22 ration's assets associated with the franchise agreement.

23 (x) conduct running races or steeplechases at racing facilities and
24 conduct pari-mutuel betting on the outcome of the same when necessary to
25 assure the continuation of the racing and pari-mutuel betting activities
26 at such racing facilities (A) in the event that the racing and/or pari-
27 mutuel betting franchises of the franchised corporation authorized by
28 this chapter then holding such franchises have either been terminated in
29 the manner provided by law or have been relinquished by such corpo-
30 ration, or such corporation declines to continue conducting race meet-
31 ings and pari-mutuel betting on the outcome of the same as required by
32 such franchises unless such declination is the result of strikes, acts
33 of God, or other unavoidable causes not under the control of such corpo-
34 ration, or the corporate existence of such corporation has been
35 dissolved in the manner provided by law prior to the end of the term of
36 any such franchise and (B) until such time as a new franchise is
37 granted, AND TO CONDUCT ALL OPERATIONS AND PARI-MUTUEL WAGERING AS
38 AUTHORIZED PURSUANT TO THIS CHAPTER FOR NEW YORK CITY OFF-TRACK BETTING
39 CORPORATION IN THE EVENT THAT THE SYSTEM OF OFF-TRACK PARI-MUTUEL
40 BETTING IN THE CITY OF NEW YORK OPERATED BY NEW YORK CITY OFF-TRACK
41 BETTING CORPORATION HAS EITHER BEEN TERMINATED OR RELINQUISHED BY SUCH
42 CORPORATION, OR SUCH CORPORATION DECLINES TO CONTINUE TO OPERATE UNLESS
43 SUCH DECLINATION IS THE RESULT OF STRIKES, ACTS OF GOD OR OTHER UNAVOID-
44 ABLE CAUSES NOT UNDER CONTROL OF SUCH CORPORATION UNTIL SUCH TIME AS
45 OTHERWISE PROVIDED FOR IN STATUTE;

46 (xi) on behalf of the People of the State of New York, and, acting in
47 such capacity as lessor of the racing facilities and real estate, be
48 responsible for payment of all property taxes related to such racing
49 facilities and real estate;

50 (xii) report annually to the governor and the legislature, beginning
51 no later than December thirty-first, two thousand eight, stating its
52 findings and recommendations to implement policy and legislative changes
53 necessary to encourage the continuation of high quality thoroughbred
54 racing in New York state and to protect the legitimate interests of the
55 state and the thoroughbred racing industry;

(xiii) require the franchised corporation AND THE NEW YORK CITY OFF-TRACK BETTING CORPORATION to make all records and documents pertaining to [its] THEIR financial practices, and other documents and records necessary to carry out [its] THEIR duties, available to the franchise oversight board within thirty days of a written request;

(xiv) examine or cause to be examined by a third party, the books, papers, records and accounts of the franchised corporation AND THE NEW YORK CITY OFF-TRACK BETTING CORPORATION;

(xv) sue and be sued;

(xvi) make and execute contracts and all other instruments necessary or convenient for the exercise of [its] THEIR powers and functions under this article;

(xvii) request and accept the assistance of any state agency, including but not limited to, the racing and wagering board, the division of the lottery office of parks, recreation and historic preservation, the department of environmental conservation, THE OFFICE OF GENERAL SERVICES and the department of taxation and finance, in obtaining information related to the franchised corporation's compliance with the terms of the franchise agreement; and

(xviii) do all things necessary, convenient or desirable to carry out its purposes and for the exercise of the powers granted in this article.

b. Notwithstanding any other provision of this article, the franchised corporation shall be entitled to make capital expenditures, except those capital expenditures for the Saratoga Racecourse that may, on the advice of the New York state historic preservation office, adversely impact any historic structure that is included in or is eligible for inclusion in the national or state register of historic places, to the physical plant of the racetracks, grandstand, backstretch, parking and public areas set forth in the New York Racing Association's capital expenditure plan ("capital plan") filed with the racing and wagering board in two thousand seven. Any material modification to the capital plan as determined by the franchise oversight board and each future capital investment plan for the tracks, grandstand, backstretch, parking and public areas of the racetracks operated by the franchised corporation involving the expenditure of more than five million dollars in the aggregate shall require the prior approval of the franchise oversight board. Within five years from the date of commencement of the video lottery terminal operations at Aqueduct, and every five years thereafter, the franchised corporation shall submit to the oversight board a capital plan for the five year period commencing on January first of the following year. Such plans shall contain both the intended object of expenditure and the proposed sources of financing. The franchised corporation shall report to the franchise oversight board within ninety days following the end of each fiscal year as to the amount spent pursuant to the capital plan.

S 2. This act shall take effect upon the confirmation of the New York Racing Association plan of reorganization pursuant to section 16 of chapter 18 of the laws of 2008, as amended; provided further, that the amendments to section 212 of the racing, pari-mutuel wagering and breeding law made by section one of this act shall be deemed repealed as provided by chapter 354 of the laws of 2005, as amended.