S T A T E O F N E W Y O R K

2827--B

2009-2010 Regular Sessions

I N S E N A T E

March 4, 2009

Introduced by Sen. C. JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Racing, Gaming and Wagering -- recommitted to the Committee on Racing, Gaming and Wagering in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to authorizing video lottery gaming at Belmont Park; and to repeal sections 4 and 5 of chapter 286 of the laws of 2008, amending the tax law and other laws relating to annual capital improvement credits for video lottery gaming operators, relating thereto

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

Section 1. Clause (B) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 1 of part O-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(B) having one thousand one hundred or more video gaming machines, at a rate of thirty-two percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, except for such facility located in the county of Westchester, in which case the rate shall be thirty-four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, for a period of twenty-four months effective beginning April first, two thousand eight; provided, however, that in the event that the vendor track located in Westchester county completes a successful restructuring prior to March thirty-first, two thousand ten, the vendor fee will be reduced to thirty-two percent ninety days following the completion of the successful restructuring. A successful restructuring is defined as a restructuring

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

LBD09633-05-0

of the existing debt obligations of such vendor track located in Westchester county that meets the following two conditions:

(i) it requires no more than twenty million dollars of additional equity invested in such track; and

(ii) results in average net interest costs of less than nine percent.

Notwithstanding the foregoing, the vendor fee at such track will become thirty-one percent effective April first, two thousand ten and remain at that level for a period equal to two times the period of time (measured in days) that the vendor fee was thirty-four percent or until March thirty-first, two thousand twelve, whichever is later. Notwithstanding the foregoing, not later than April first, two thousand twelve, the vendor fee shall become thirty-two percent and remain at that level thereafter; and except for Aqueduct racetrack, in which case the vendor fee shall be thirty-eight percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter; AND EXCEPT FOR BELMONT RACETRACK, IN WHICH CASE THE VENDOR FEE SHALL BE THIRTY-SIX PERCENT OF THE TOTAL REVENUE WAGERED AT THE VENDOR TRACK AFTER PAYOUT FOR PRIZES PURSUANT TO THIS CHAPTER;

S 2. Paragraph 2 of subdivision b of section 1612 of the tax law, as amended by section 1 of part O-1 of chapter 57 of the laws of 2009, is amended to read as follows:

2. As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct [racetrack] AND BELMONT RACETRACKS, each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, solely for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total revenue wagered at the vendor track after pay out for prizes. In addition, with the exception of Aqueduct [racetrack] AND BELMONT RACETRACKS, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track.

Provided, further, that nothing in this paragraph shall prevent each track from entering into an agreement, not to exceed five years, with the organization authorized to represent its horsemen to increase or decrease the portion of its vendor fee dedicated to enhancing purses at such track during the years of participation by such track, or to race fewer dates than required herein.

S 3. Section 1612 of the tax law is amended by adding three new subdivisions h, i and j to read as follows:

H. THE VIDEO LOTTERY GAMING OPERATOR SELECTED TO OPERATE A VIDEO LOTTERY TERMINAL FACILITY AT BELMONT SHALL BE SELECTED BY THE DIVISION OF THE LOTTERY PURSUANT TO A PUBLIC REQUEST FOR PROPOSALS AND IN CONJUNCTION WITH THE REQUIREMENTS AND PROVISIONS SET FORTH IN SECTION SIXTEEN HUNDRED TWENTY OF THIS ARTICLE. NOTWITHSTANDING SUBPARAGRAPH (I) OF PARAGRAPH A OF SUBDIVISION EIGHT OF SECTION TWO HUNDRED TWELVE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, THE STATE, PURSUANT TO AN AGREEMENT WITH THE VIDEO LOTTERY GAMING OPERATOR TO OPERATE A VIDEO LOTTERY TERMINAL FACILITY AT BELMONT, MAY AUTHORIZE, AS PART OF SUCH AGREEMENT OR IN CONJUNCTION WITH SUCH AGREEMENT AT THE TIME IT IS EXECUTED, ADDITIONAL DEVELOPMENT AT THE BELMONT RACING FACILITY. THE

SELECTION SHALL BE MADE IN CONSULTATION WITH THE FRANCHISED CORPORATION, BUT IS NOT SUBJECT TO SUCH CORPORATION'S APPROVAL. THE FRANCHISED CORPORATION SHALL NOT BE ELIGIBLE TO COMPETE TO OPERATE OR TO OPERATE A VIDEO LOTTERY TERMINAL FACILITY AT BELMONT. THE STATE WILL USE ITS BEST EFFORTS TO ENSURE THAT THE VIDEO LOTTERY TERMINAL FACILITY AT BELMONT IS OPENED AS SOON AS IS PRACTICABLE AND WILL, IF PRACTICABLE, PURSUE THE CONSTRUCTION OF A TEMPORARY VIDEO LOTTERY TERMINAL FACILITY AT BELMONT SUBJECT TO STAYING WITHIN AN AGREED BUDGET FOR SUCH VIDEO LOTTERY TERMINAL FACILITY AND SUBJECT TO SUCH TEMPORARY FACILITY NOT HAVING AN ADVERSE IMPACT ON OPENING OF THE PERMANENT FACILITY AT BELMONT.

I. IN CONSIDERATION OF ITS LICENSURE AND PARTICIPATION IN THIS PROGRAM, THE VIDEO LOTTERY GAMING OPERATOR AT BELMONT RACETRACK SHALL REINVEST IN THE RACING INDUSTRY A PERCENTAGE OF THE VENDOR FEE RECEIVED PURSUANT TO SUBDIVISION B OF THIS SECTION IN THE MANNER SET FORTH IN THIS SUBDIVISION. THE VIDEO LOTTERY GAMING OPERATOR AT BELMONT RACETRACK SHALL PROVIDE THE FOLLOWING PERCENTAGES OF ITS VENDOR FEE TO THE FRANCHISED CORPORATION ESTABLISHED PURSUANT TO SECTION TWO HUNDRED SIX OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, AS FOLLOWS:

1. THREE AND THREE-QUARTERS PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR THE PURPOSE OF ENHANCING PURSES AT AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

2. ONE PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR AN APPROPRIATE BREEDING FUND FOR THE MANNER OF RACING CONDUCTED AT AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

3. TWO PERCENT OF THE TOTAL REVENUE WAGERED AFTER PAYOUT OF PRIZES TO BE DEPOSITED INTO AN ACCOUNT OF THE FRANCHISED CORPORATION ESTABLISHED PURSUANT TO SECTION TWO HUNDRED SIX OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW TO BE USED FOR CAPITAL EXPENDITURES IN MAINTAINING AND UPGRADING AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

4. ONE AND ONE-HALF PERCENT OF THE TOTAL REVENUE WAGERED AFTER PAYOUT FOR PRIZES TO BE DEPOSITED INTO AN ACCOUNT OF THE FRANCHISED CORPORATION ESTABLISHED PURSUANT TO SECTION TWO HUNDRED SIX OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW TO BE USED FOR GENERAL THOROUGHBRED RACING OPERATIONS AT AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

5. PARAGRAPHS ONE, TWO, THREE AND FOUR OF THIS SUBDIVISION SHALL BE KNOWN COLLECTIVELY AS THE "BELMONT RACING SUPPORT PAYMENTS".

J. NOTWITHSTANDING ANY PROVISION OF SUBDIVISION B OR F OF THIS SECTION TO THE CONTRARY, UPON COMMENCEMENT OF THE OPERATION OF VIDEO LOTTERY GAMING AT BELMONT RACETRACK, THE VENDOR FEE TO BE PAID FOR SERVING AS A LOTTERY AGENT TO THE TRACK OPERATOR OF AQUEDUCT RACETRACK, SHALL BE THIRTY-SEVEN AND ONE-QUARTER PERCENT OF THE TOTAL REVENUE WAGERED AT THE VENDOR TRACK AFTER PAYOUT FOR PRIZES PURSUANT TO THIS ARTICLE FOR THE FIRST YEAR OF OPERATION OF VIDEO LOTTERY GAMING AT AQUEDUCT RACETRACK, THIRTY-SIX AND EIGHT HUNDRED SEVENTY-FIVE-THOUSANDTHS PERCENT OF THE TOTAL REVENUE WAGERED AT THE VENDOR TRACK AFTER PAYOUT FOR PRIZES PURSUANT TO THIS ARTICLE FOR THE SECOND YEAR OF OPERATION OF VIDEO LOTTERY GAMING AT AQUEDUCT RACETRACK, AND THIRTY-SIX AND ONE-HALF PERCENT OF THE TOTAL REVENUE WAGERED AT THE VENDOR TRACK AFTER PAYOUT FOR PRIZES PURSUANT TO THIS ARTICLE FOR THE THIRD YEAR OF OPERATION OF VIDEO LOTTERY GAMING AT AQUEDUCT RACETRACK AND THEREAFTER. AS CONSIDERATION FOR THE OPERATION OF THE VIDEO LOTTERY GAMING FACILITY AT AQUEDUCT RACETRACK, THE DIVISION SHALL CAUSE THE INVESTMENT IN THE RACING INDUSTRY OF THE FOLLOWING PERCENTAGES OF THE VENDOR FEE DESCRIBED IN THIS SUBDIVISION TO BE DEPOSITED OR PAID, AS FOLLOWS:

1. THREE AND ONE-QUARTER PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR THE FIRST YEAR OF OPERATION OF VIDEO LOTTERY GAMING AT AQUEDUCT RACETRACK, THREE AND ONE-HALF PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR THE SECOND YEAR OF OPERATION, AND THREE AND THREE-QUARTERS PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR THE THIRD YEAR OF OPERATION AND THEREAFTER, FOR THE PURPOSE OF ENHANCING PURSES AT AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

2. ONE-HALF PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR THE FIRST YEAR OF OPERATION OF VIDEO LOTTERY GAMING AT AQUEDUCT RACETRACK, SIX HUNDRED TWENTY-FIVE THOUSANDTHS PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR THE SECOND YEAR OF OPERATION, AND THREE-QUARTERS PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR THE THIRD YEAR OF OPERATION AND THEREAFTER, FOR AN APPROPRIATE BREEDING FUND FOR THE MANNER OF RACING CONDUCTED AT AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

3. TWO PERCENT OF THE TOTAL REVENUE WAGERED AFTER PAYOUT OF PRIZES TO BE DEPOSITED INTO AN ACCOUNT OF THE FRANCHISED CORPORATION ESTABLISHED PURSUANT TO SECTION TWO HUNDRED SIX OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW TO BE USED FOR CAPITAL EXPENDITURES IN MAINTAINING AND UPGRADING AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

4. ONE AND ONE-HALF PERCENT OF THE TOTAL REVENUE WAGERED AFTER PAYOUT FOR PRIZES TO BE DEPOSITED INTO AN ACCOUNT OF THE FRANCHISED CORPORATION ESTABLISHED PURSUANT TO SECTION TWO HUNDRED SIX OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW TO BE USED FOR GENERAL THOROUGHBRED RACING OPERATIONS AT AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

5. PARAGRAPHS ONE, TWO, THREE AND FOUR OF THIS SUBDIVISION SHALL BE KNOWN COLLECTIVELY AS THE "AQUEDUCT RACING SUPPORT PAYMENTS".

S 4. Subdivision a of section 1617-a of the tax law, as amended by section 2 of part O-1 of chapter 57 of the laws of 2009, is amended to read as follows:

a. The division of the lottery is hereby authorized to license, pursuant to rules and regulations to be promulgated by the division of the lottery, the operation of video lottery gaming at Aqueduct AND BELMONT, Monticello, Yonkers, Finger Lakes, and Vernon Downs racetracks, or at any other racetrack licensed pursuant to article three of the racing, pari-mutuel wagering and breeding law that are located in a county or counties in which video lottery gaming has been authorized pursuant to local law, excluding the licensed racetrack commonly referred to in article three of the racing, pari-mutuel wagering and breeding law as the "New York state exposition" held in Onondaga county and the [racetracks] RACETRACK of the [non-profit racing association] FRANCHISED CORPORATION known as [Belmont Park racetrack and] the Saratoga thoroughbred racetrack. Such rules and regulations shall provide, as a condition of licensure, that racetracks to be licensed are certified to be in compliance with all state and local fire and safety codes, that the division is afforded adequate space, infrastructure, and amenities consistent with industry standards for such video gaming operations as found at racetracks in other states, that racetrack employees involved in the operation of video lottery gaming pursuant to this section are licensed by the racing and wagering board, and such other terms and conditions of licensure as the division may establish. Notwithstanding any inconsistent provision of law, video lottery gaming at a racetrack pursuant to this section shall be deemed an approved activity for such

racetrack under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations. No entity licensed by the division operating video lottery gaming pursuant to this section may house such gaming activity in a structure deemed or approved by the division as "temporary" for a duration of longer than eighteen-months. Nothing in this section shall prohibit the division from licensing an entity to operate video lottery gaming at an existing racetrack as authorized in this subdivision whether or not a different entity is licensed to conduct horse racing and pari-mutuel wagering at such racetrack pursuant to article two or three of the racing, pari-mutuel wagering and breeding law.

The division, in consultation with the racing and wagering board, shall establish standards for approval of the temporary and permanent physical layout and construction of any facility or building devoted to a video lottery gaming operation. In reviewing such application for the construction or reconstruction of facilities related or devoted to the operation or housing of video lottery gaming operations, the division, in consultation with the racing and wagering board, shall ensure that such facility:

(1) possesses superior consumer amenities and conveniences to encourage and attract the patronage of tourists and other visitors from across the region, state, and nation.

(2) has adequate motor vehicle parking facilities to satisfy patron requirements.

(3) has a physical layout and location that facilitates access to and from the horse racing track portion of such facility to encourage patronage of live horse racing events that are conducted at such track.

S 5. Subdivision a of section 1617-a of the tax law, as separately amended by chapter 140 of the laws of 2008 and section 2 of part O-1 of chapter 57 of the laws of 2009, is amended to read as follows:

a. The division of the lottery is hereby authorized to license, pursuant to rules and regulations to be promulgated by the division of the lottery, the operation of video lottery gaming at Aqueduct [racetrack] AND BELMONT RACETRACKS. Such rules and regulations shall provide, as a condition of licensure, that [such racetrack is] RACETRACKS TO BE LICENSED ARE certified to be in compliance with all state and local fire and safety codes, that the division is afforded adequate space, infrastructure, and amenities consistent with industry standards for such video gaming operations as found at racetracks in other states, that racetrack employees involved in the operation of video lottery gaming pursuant to this section are licensed by the racing and wagering board, and such other terms and conditions of licensure as the division may establish. Notwithstanding any inconsistent provision of law, video lottery gaming at a racetrack pursuant to this section shall be deemed an approved activity for such racetrack under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations. No entity licensed by the division operating video lottery gaming pursuant to this section may house such gaming activity in a structure deemed or approved by the division as "temporary" for a duration of longer than eighteen-months. Nothing in this section shall prohibit the division from licensing an entity to operate video lottery gaming at an existing racetrack as authorized in this subdivision whether or not a different entity is licensed to conduct horse racing and pari-mutuel wagering at such racetrack pursuant to article two or three of the racing, pari-mutuel wagering and breeding law.

The division, in consultation with the racing and wagering board, shall establish standards for approval of the temporary and permanent physical layout and construction of any facility or building devoted to a video lottery gaming operation. In reviewing such application for the construction or reconstruction of facilities related or devoted to the operation or housing of video lottery gaming operations, the division, in consultation with the racing and wagering board, shall ensure that such facility:

(1) possesses superior consumer amenities and conveniences to encourage and attract the patronage of tourists and other visitors from across the region, state, and nation.

(2) has adequate motor vehicle parking facilities to satisfy patron requirements.

(3) has a physical layout and location that facilitates access to and from the horse racing track portion of such facility to encourage patronage of live horse racing events that are conducted at such track.

The division shall not approve the construction or alteration of any facility or building devoted to the operation or housing of video lottery gaming until the person or entity selected to operate such video lottery gaming shall have submitted to the division a statement of the location of the proposed facility or building, together with a plan of such racetrack, and plans of all existing buildings, seating stands and other structures on the grounds of such racetrack, in such form as the division may prescribe, and such plans shall have been approved by the division. The division, at the expense of the applicant, may order such engineering examination thereof as the division may deem necessary. Such construction or alteration may be made only with the approval of the division and after examination and inspection of the plans thereof and the issuance of a permit therefor by the division.

S 6. Sections 4 and 5 of chapter 286 of the laws of 2008, amending the tax law and other laws relating to annual capital improvement credits for video lottery gaming operators, are REPEALED.

S 7. This act shall take effect immediately; provided, that section five of this act shall take effect on the same date and in the same manner as section 13 of chapter 140 of the laws of 2008, as amended; provided, further, that the amendments to section 1617-a of the tax law, made by sections four and five of this act, shall not affect the expiration and repeal of such section, and shall expire and be deemed repealed therewith.