

4588

2009-2010 Regular Sessions

I N S E N A T E

April 24, 2009

Introduced by Sen. FOLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Racing, Gaming and Wagering

AN ACT to amend the racing, pari-mutuel wagering and breeding law and the tax law, in relation to allowing off-track betting corporations in the state to host video lottery terminals

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

1 Section 1. Section 503 of the racing, pari-mutuel wagering and breed-
2 ing law is amended by adding a new subdivision 10-a to read as follows:

3 10-A. IN A REGION IN WHICH NO PARTICIPATING COUNTY CONTAINS EITHER A
4 THOROUGHBRED OR STANDARD BRED RACE TRACK LICENSED TO OPERATE BY THE
5 RACING AND WAGERING BOARD, TO OPERATE VIDEO LOTTERY GAMING AT A CORPO-
6 RATION'S FACILITY WHICH IS LICENSED PURSUANT TO SECTION ONE THOUSAND
7 EIGHT OR ONE THOUSAND NINE OF THIS CHAPTER;

8 S 2. Subparagraph (ii) of paragraph 1 of subdivision b of section 1612
9 of the tax law, as amended by section 1 of part O-1 of chapter 57 of the
10 laws of 2009, is amended to read as follows:

11 (ii) less a vendor's fee the amount of which is to be paid for serving
12 as a lottery agent to the track operator of a vendor track[:]; AND LESS
13 A VENDOR'S FEE TO BE PAID FOR SERVING AS A LOTTERY AGENT TO THE REGIONAL
14 OFF-TRACK BETTING CORPORATION OPERATOR AT AN AUTHORIZED PARTICIPATING
15 OFF-TRACK BETTING FACILITY LICENSED PURSUANT TO EITHER RACING, PARI-MU-
16 TUEL WAGERING AND BREEDING LAW SECTION ONE THOUSAND EIGHT OR SECTION ONE
17 THOUSAND NINE.

18 (A) having fewer than one thousand one hundred video gaming machines,
19 at a rate of thirty-six percent for the first fifty million dollars
20 annually, twenty-nine percent for the next hundred million dollars annu-
21 ally, and twenty-six percent thereafter of the total revenue wagered at
22 the vendor track after payout for prizes pursuant to this chapter;

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

LBD10036-02-9

1 (B) having one thousand one hundred or more video gaming machines, at
2 a rate of thirty-two percent of the total revenue wagered at the vendor
3 track after payout for prizes pursuant to this chapter, except for such
4 facility located in the county of Westchester, in which case the rate
5 shall be thirty-four percent of the total revenue wagered at the vendor
6 track after payout for prizes pursuant to this chapter, for a period of
7 twenty-four months effective beginning April first, two thousand eight;
8 provided, however, that in the event that the vendor track located in
9 Westchester county completes a successful restructuring prior to March
10 thirty-first, two thousand ten, the vendor fee will be reduced to thir-
11 ty-two percent ninety days following the completion of the successful
12 restructuring. A successful restructuring is defined as a restructuring
13 of the existing debt obligations of such vendor track located in West-
14 chester county that meets the following two conditions:

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

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

18 Notwithstanding the foregoing, the vendor fee at such track OR VENDOR
19 OFF-TRACK BETTING FACILITY will become thirty-one percent effective
20 April first, two thousand ten and remain at that level for a period
21 equal to two times the period of time (measured in days) that the vendor
22 fee was thirty-four percent or until March thirty-first, two thousand
23 twelve, whichever is later. Notwithstanding the foregoing, not later
24 than April first, two thousand twelve, the vendor fee shall become thir-
25 ty-two percent and remain at that level thereafter; and except for Aque-
26 duct racetrack, in which case the vendor fee shall be thirty-eight
27 percent of the total revenue wagered at the vendor track after payout
28 for prizes pursuant to this chapter;

29 (C) notwithstanding clauses (A) and (B) of this subparagraph, when the
30 vendor track OR VENDOR OFF-TRACK BETTING FACILITY is located in an area
31 with a population of less than one million within the forty mile radius
32 around such track, at a rate of forty percent for the first fifty
33 million dollars annually, twenty-nine percent for the next hundred
34 million dollars annually, and twenty-six percent thereafter of the total
35 revenue wagered at the vendor track OR VENDOR OFF-TRACK BETTING FACILITY
36 after payout for prizes pursuant to this chapter;

37 (D) notwithstanding clauses (A), (B) and (C) of this subparagraph,
38 when the vendor track OR VENDOR OFF-TRACK BETTING FACILITY is located
39 within fifteen miles of a Native American class III gaming facility at a
40 rate of forty-two percent of the total revenue wagered at the vendor
41 track after payout for prizes pursuant to this chapter;

42 (E) notwithstanding clauses (A), (B), (C) and (D) of this subpara-
43 graph, when a Native American class III gaming facility is established,
44 after the effective date of this subparagraph, within fifteen miles of
45 the vendor track OR VENDOR OFF-TRACK BETTING FACILITY, at a rate of
46 forty-two percent of the total revenue wagered after payout for prizes
47 pursuant to this chapter;

48 (E-1) for purposes of this subdivision, the term "class III gaming"
49 shall have the meaning defined in 25 U.S.C. S 2703(8).

50 (F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subpar-
51 agraph, when a vendor track, is located in Sullivan county and within
52 sixty miles from any gaming facility in a contiguous state such vendor
53 fee shall, for a period of five years commencing April first, two thou-
54 sand eight, be at a rate of forty-two percent of the total revenue
55 wagered at the vendor track after payout for prizes pursuant to this

1 chapter, after which time such rate shall be as for all tracks in clause
2 (C) of this subparagraph.

3 (G) notwithstanding any other provisions of this section, when a relo-
4 cated vendor track at which a qualified capital investment has been made
5 and no fewer than two thousand full-time, permanent employees have been
6 newly hired, is located in Sullivan county and is within sixty miles
7 from any gaming facility in a contiguous state, then for a period of
8 forty years the division shall pay into the state treasury, to the cred-
9 it of the state lottery fund created by section ninety-two-c of the
10 state finance law the greater of (i) twenty-five percent of total reven-
11 ue after payout for prizes for "video lottery games" or (ii) for the
12 first eight years of operation thirty-eight million dollars, and begin-
13 ning in the ninth year of operation such amount shall increase annually
14 by the lesser of the increase in the consumer price index or two percent
15 plus the division shall retain an amount equal to all actual expenses
16 related to operations, administration and procurement of the video
17 lottery terminal operation at the relocated vendor track, provided,
18 however, such amount retained by the division shall not exceed seven
19 percent of total revenue after payout of prizes. In addition, in the
20 event the division makes a payment pursuant to subclause (i) of this
21 clause, the division shall pay to the credit of the state lottery fund
22 created by section ninety-two-c of the state finance law 11.11 percent
23 of the amount by which total revenue after payout for prizes exceeds two
24 hundred fifteen million dollars, but in no event shall such payment
25 exceed five million dollars.

26 The balance shall be paid as a vendor's fee to the track operator of
27 the relocated vendor track for serving as a lottery agent under this
28 chapter.

29 Provided, however, that in the case of a relocated vendor track with a
30 qualified capital investment, if at any time after July first, two thou-
31 sand ten the vendor track experiences an employment shortfall, then the
32 recapture amount shall apply, for only such period as the shortfall
33 exists.

34 For the purposes of this section "qualified capital investment" shall
35 mean an investment of a minimum of one billion dollars as reflected by
36 audited financial statements of which not less than three hundred
37 million dollars shall be comprised of equity and/or mezzanine financing
38 as an initial investment in a county where twelve percent of the popu-
39 lation is below the federal poverty level as measured by the most recent
40 Bureau of Census Statistics prior to the qualified capital investment
41 commencing that results in the construction, development or improvement
42 of at least one eighteen hole golf course, and the construction and
43 issuance of certificates of occupancy for hotels, lodging, convention
44 centers, spas, dining, retail and entertainment venues, parking garages
45 and other capital improvements at or adjacent to the licensed video
46 gaming facility or licensed vendor track which promote or encourage
47 increased attendance at such facilities.

48 For the purposes of this section, "full-time, permanent employee"
49 shall mean an employee who has worked at the vendor track or related and
50 adjacent facilities for a minimum of thirty-five hours per week for not
51 less than four consecutive weeks and who is entitled to receive the
52 usual and customary fringe benefits extended to other employees with
53 comparable rank and duties; or two part-time employees who have worked
54 at the vendor track or related and adjacent facilities for a combined
55 minimum of thirty-five hours per week for not less than four consecutive

1 weeks and who are entitled to receive the usual and customary fringe
2 benefits extended to other employees with comparable rank and duties.

3 For the purpose of this section "employment goal" shall mean two thou-
4 sand full-time permanent employees.

5 For the purpose of this section "employment shortfall" shall mean a
6 level of employment that falls below the employment goal, as certified
7 annually by vendor's certified accountants and the chairman of the
8 empire state development corporation.

9 For the purposes of this section "recapture amount" shall mean the
10 difference between the amount of the vendor's fee paid to a vendor track
11 with a qualified capital investment, and the vendor fee otherwise paya-
12 ble to a vendor track pursuant to clause (F) of this subparagraph, that
13 is reimbursable by the vendor track to the division for payment into the
14 state treasury, to the credit of the state lottery fund created by
15 section ninety-two-c of the state finance law, due to an employment
16 shortfall pursuant to the following schedule only for the period of the
17 employment shortfall:

18 (i) sixty-six percent of the recapture amount if the employment short-
19 fall is greater than fifty percent of the employment goal;

20 (ii) sixty percent of the recapture amount if the employment shortfall
21 is greater than forty percent of the employment goal;

22 (iii) forty-five percent of the recapture amount if the employment
23 shortfall is greater than thirty percent of the employment goal;

24 (iv) twenty percent of the recapture amount if the employment short-
25 fall is greater than twenty percent of the employment goal;

26 (v) ten percent of the recapture amount if the employment shortfall is
27 greater than ten percent of the employment goal.

28 (H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of
29 this subparagraph, the track operator of a vendor track OR OFF-TRACK
30 BETTING OPERATOR OF A VENDOR OFF-TRACK BETTING CORPORATION shall be
31 eligible for a vendor's capital award of up to four percent of the total
32 revenue wagered at the vendor track OR VENDOR OFF-TRACK BETTING FACILITY
33 after payout for prizes pursuant to this chapter, which shall be used
34 exclusively for capital project investments to improve the facilities of
35 the vendor track OR VENDOR OFF-TRACK BETTING FACILITY which promote or
36 encourage increased attendance at the video lottery gaming facility
37 including, but not limited to hotels, other lodging facilities, enter-
38 tainment facilities, retail facilities, dining facilities, events
39 arenas, parking garages and other improvements that enhance facility
40 amenities; provided that such capital investments shall be approved by
41 the division, in consultation with the state racing and wagering board,
42 and that such vendor track OR VENDOR OFF-TRACK BETTING FACILITY demon-
43 strates that such capital expenditures will increase patronage at such
44 vendor track's OR VENDOR OFF-TRACK BETTING facilities and increase the
45 amount of revenue generated to support state education programs. The
46 annual amount of such vendor's capital awards that a vendor track shall
47 be eligible to receive shall be limited to two million five hundred
48 thousand dollars, except for Aqueduct racetrack, for which there shall
49 be no vendor's capital awards. Except for tracks OR OFF-TRACK BETTING
50 FACILITIES having less than one thousand one hundred video gaming
51 machines, each track operator OR OFF-TRACK BETTING FACILITY OPERATOR
52 shall be required to co-invest an amount of capital expenditure equal to
53 its cumulative vendor's capital award. For all tracks OR OFF-TRACK
54 BETTING FACILITIES, except for Aqueduct racetrack, the amount of any
55 vendor's capital award that is not used during any one year period may
56 be carried over into subsequent years ending before April first, two

1 thousand thirteen. Any amount attributable to a capital expenditure
2 approved prior to April first, two thousand thirteen and completed
3 before April first, two thousand fifteen shall be eligible to receive
4 the vendor's capital award. In the event that a vendor track's capital
5 expenditures, approved by the division prior to April first, two thou-
6 sand thirteen and completed prior to April first, two thousand fifteen,
7 exceed the vendor track's cumulative capital award during the five year
8 period ending April first, two thousand thirteen, the vendor shall
9 continue to receive the capital award after April first, two thousand
10 thirteen until such approved capital expenditures are paid to the vendor
11 track subject to any required co-investment. In no event shall any
12 vendor track OR VENDOR OFF-TRACK BETTING FACILITY that receives a vendor
13 fee pursuant to clause (F) or (G) of this subparagraph be eligible for a
14 vendor's capital award under this section. Any operator of a vendor
15 track OR VENDOR OFF-TRACK BETTING FACILITY which has received a vendor's
16 capital award, choosing to divest the capital improvement toward which
17 the award was applied, prior to the full depreciation of the capital
18 improvement in accordance with generally accepted accounting principles,
19 shall reimburse the state in amounts equal to the total of any such
20 awards. Any capital award not approved for a capital expenditure at a
21 video lottery gaming facility by April first, two thousand thirteen
22 shall be deposited into the state lottery fund for education aid; and

23 S 3. Subparagraph (iii) of paragraph 1 and the opening paragraph of
24 paragraph 2 of subdivision b of section 1612 of the tax law, as amended
25 by section 1 of part O-1 of chapter 57 of the laws of 2009, are amended
26 to read as follows:

27 (iii) less an additional vendor's marketing allowance at a rate of ten
28 percent for the first one hundred million dollars annually and eight
29 percent thereafter of the total revenue wagered at the vendor track OR
30 VENDOR OFF-TRACK BETTING FACILITY after payout for prizes to be used by
31 the vendor track OR VENDOR OFF-TRACK BETTING FACILITY for the marketing
32 and promotion and associated costs of its video lottery gaming oper-
33 ations and pari-mutuel horse racing operations, as long as any such
34 costs associated with pari-mutuel horse racing operations simultaneously
35 encourage increased attendance at such vendor's video lottery gaming
36 facilities, consistent with the customary manner of marketing comparable
37 operations in the industry and subject to the overall supervision of the
38 division; provided, however, that the additional vendor's marketing
39 allowance shall not exceed eight percent in any year for any operator of
40 a racetrack located in the county of Westchester or Queens; provided,
41 however, a vendor track OR VENDOR OFF-TRACK BETTING FACILITY that
42 receives a vendor fee pursuant to clause (G) of subparagraph (ii) of
43 this paragraph shall not receive the additional vendor's marketing
44 allowance. In establishing the vendor fee, the division shall ensure the
45 maximum lottery support for education while also ensuring the effective
46 implementation of section sixteen hundred seventeen-a of this article
47 through the provision of reasonable reimbursements and compensation to
48 vendor tracks OR VENDOR OFF-TRACK BETTING FACILITIES for participation
49 in such program. Within twenty days after any award of lottery prizes,
50 the division shall pay into the state treasury, to the credit of the
51 state lottery fund, the balance of all moneys received from the sale of
52 all tickets for the lottery in which such prizes were awarded remaining
53 after provision for the payment of prizes as herein provided. Any reven-
54 ues derived from the sale of advertising on lottery tickets shall be
55 deposited in the state lottery fund.

1 As consideration for the operation of a video lottery gaming facility,
2 the division, shall cause the investment in the racing industry of a
3 portion of the vendor fee received pursuant to paragraph one of this
4 subdivision in the manner set forth in this subdivision. With the
5 exception of ANY VENDOR OFF-TRACK BETTING FACILITY AND Aqueduct race-
6 track, each such track shall dedicate a portion of its vendor fees,
7 received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of
8 subparagraph (ii) of paragraph one of this subdivision, solely for the
9 purpose of enhancing purses at such track, in an amount equal to eight
10 and three-quarters percent of the total revenue wagered at the vendor
11 track after pay out for prizes. In addition, with the exception of Aque-
12 duct racetrack, one and one-quarter percent of total revenue wagered at
13 the vendor track after pay out for prizes, received pursuant to clause
14 (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph
15 one of this subdivision, shall be distributed to the appropriate breed-
16 ing fund for the manner of racing conducted by such track.

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

20 a. The division of the lottery is hereby authorized to license, pursu-
21 ant to rules and regulations to be promulgated by the division of the
22 lottery, the operation of video lottery gaming at (1) Aqueduct, Monti-
23 cello, Yonkers, Finger Lakes, and Vernon Downs racetracks, or at any
24 other racetrack licensed pursuant to article three of the racing, pari-
25 mutuel wagering and breeding law that are located in a county or coun-
26 ties in which video lottery gaming has been authorized pursuant to local
27 law, excluding the licensed racetrack commonly referred to in article
28 three of the racing, pari-mutuel wagering and breeding law as the "New
29 York state exposition" held in Onondaga county and the racetracks of the
30 non-profit racing association known as Belmont Park racetrack and the
31 Saratoga thoroughbred racetrack; AND (2) AT ONE REGIONAL OFF-TRACK
32 BETTING CORPORATION FACILITY LICENSED PURSUANT TO SECTION ONE THOUSAND
33 EIGHT OR ONE THOUSAND NINE OF THE RACING, PARI-MUTUEL WAGERING AND
34 BREEDING LAW WITHIN ANY REGION IN WHICH NO PARTICIPATING COUNTY CONTAINS
35 EITHER A THOROUGHBRED OR STANDARD BRED RACETRACK LICENSED TO OPERATE BY
36 THE RACING AND WAGERING BOARD. Such rules and regulations shall
37 provide, as a condition of licensure, that racetracks OR REGIONAL
38 OFF-TRACK BETTING CORPORATIONS, AS CREATED BY SECTION FIVE HUNDRED TWO
39 OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, to be licensed are
40 certified to be in compliance with all state and local fire and safety
41 codes, that the division is afforded adequate space, infrastructure, and
42 amenities consistent with industry standards for such video gaming oper-
43 ations as found at racetracks in other states, that racetrack OR
44 REGIONAL OFF-TRACK BETTING CORPORATION employees involved in the opera-
45 tion of video lottery gaming pursuant to this section are licensed by
46 the racing and wagering board, and such other terms and conditions of
47 licensure as the division may establish. Notwithstanding any inconsis-
48 tent provision of law, video lottery gaming at a racetrack OR REGIONAL
49 OFF-TRACK BETTING CORPORATION pursuant to this section shall be deemed
50 an approved activity for such racetrack OR REGIONAL OFF-TRACK BETTING
51 CORPORATION under the relevant city, county, town, or village land use
52 or zoning ordinances, rules, or regulations. No entity licensed by the
53 division operating video lottery gaming pursuant to this section may
54 house such gaming activity in a structure deemed or approved by the
55 division as "temporary" for a duration of longer than eighteen-months.
56 Nothing in this section shall prohibit the division from licensing an

1 entity to operate video lottery gaming at an existing racetrack as
2 authorized in this subdivision whether or not a different entity is
3 licensed to conduct horse racing and pari-mutuel wagering at such race-
4 track pursuant to article two or three of the racing, pari-mutuel wager-
5 ing and breeding law.

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

14 (1) possesses superior consumer amenities and conveniences to encour-
15 age and attract the patronage of tourists and other visitors from across
16 the region, state, and nation.

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

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

22 S 5. Subdivision a of section 1617-a of the tax law, as separately
23 amended by chapter 286 of the laws of 2008 and section 2 of part O-1 of
24 chapter 57 of the laws of 2009, is amended to read as follows:

25 a. The division of the lottery is hereby authorized to license, pursu-
26 ant to rules and regulations to be promulgated by the division of the
27 lottery, the operation of video lottery gaming at [a vendor track pursu-
28 ant to clause (G) of subparagraph (ii) of paragraph one of subdivision b
29 of section sixteen hundred twelve of this article.] (1) AQUEDUCT, MONTI-
30 CELLO, YONKERS, FINGER LAKES, AND VERNON DOWNS RACETRACKS, OR AT ANY
31 OTHER RACETRACK LICENSED PURSUANT TO ARTICLE THREE OF THE RACING, PARI-
32 MUTUEL WAGERING AND BREEDING LAW THAT ARE LOCATED IN A COUNTY OR COUN-
33 TIES IN WHICH VIDEO LOTTERY GAMING HAS BEEN AUTHORIZED PURSUANT TO LOCAL
34 LAW, EXCLUDING THE LICENSED RACETRACK COMMONLY REFERRED TO IN ARTICLE
35 THREE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AS THE "NEW
36 YORK STATE EXPOSITION" HELD IN ONONDAGA COUNTY AND THE RACETRACKS OF THE
37 NON-PROFIT RACING ASSOCIATION KNOWN AS BELMONT PARK RACETRACK AND THE
38 SARATOGA THOROUGHBRED RACETRACK; AND (2) AT ONE REGIONAL OFF-TRACK
39 BETTING CORPORATION FACILITY LICENSED PURSUANT TO SECTION ONE THOUSAND
40 EIGHT OR ONE THOUSAND NINE OF THE RACING, PARI-MUTUEL WAGERING AND
41 BREEDING LAW WITHIN ANY REGION IN WHICH NO PARTICIPATING COUNTY CONTAINS
42 EITHER A THOROUGHBRED OR STANDARD BRED RACETRACK LICENSED TO OPERATE BY
43 THE RACING AND WAGERING BOARD. Such rules and regulations shall provide,
44 as a condition of licensure, that such [racetrack] RACETRACKS OR
45 REGIONAL OFF-TRACK BETTING CORPORATIONS, AS CREATED BY SECTION FIVE
46 HUNDRED TWO OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, TO BE
47 LICENSED ARE certified to be in compliance with all state and local fire
48 and safety codes, that the division is afforded adequate space, infras-
49 tructure, and amenities consistent with industry standards for such
50 video gaming operations as found at racetracks in other states, that
51 racetrack OR REGIONAL OFF-TRACK BETTING CORPORATION employees involved
52 in the operation of video lottery gaming pursuant to this section are
53 licensed by the racing and wagering board, and such other terms and
54 conditions of licensure as the division may establish. Notwithstanding
55 any inconsistent provision of law, video lottery gaming at a racetrack
56 OR REGIONAL OFF-TRACK BETTING CORPORATION pursuant to this section shall

1 be deemed an approved activity for such racetrack OR REGIONAL OFF-TRACK
2 BETTING CORPORATION under the relevant city, county, town, or village
3 land use or zoning ordinances, rules, or regulations. No entity
4 licensed by the division operating video lottery gaming pursuant to this
5 section may house such gaming activity in a structure deemed or approved
6 by the division as "temporary" for a duration of longer than eighteen-
7 months. Nothing in this section shall prohibit the division from licens-
8 ing an entity to operate video lottery gaming at an existing racetrack
9 as authorized in this subdivision whether or not a different entity is
10 licensed to conduct horse racing and pari-mutuel wagering at such race-
11 track pursuant to article two or three of the racing, pari-mutuel wager-
12 ing and breeding law.

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

21 (1) possesses superior consumer amenities and conveniences to encour-
22 age and attract the patronage of tourists and other visitors from across
23 the region, state, and nation.

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

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

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

42 S 6. This act shall take effect January 1, 2010, provided, however,
43 that the amendments to subdivision a of section 1617-a of the tax law
44 made by section four of this act shall not affect the repeal of such
45 section and shall be deemed repealed therewith; provided however, the
46 amendments to subdivision a of section 1617-a of the tax law made by
47 section five of this act shall take effect on the same date and in the
48 same manner as chapter 286 of the laws of 2008 takes effect; and
49 provided further that the amendments to subdivision a of section 1617-a
50 of the tax law made by section five of this act shall be subject to the
51 repeal of such subdivision pursuant to section 4 of part C of chapter
52 383 of the laws of 2001, as amended by chapter 286 of the laws of 2008.