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I N   A S S E M B L Y

April 2, 2010

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Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Racing and Wagering

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-  
27    eration of local zoning and planning regulation, and in a manner that  
28    will not adversely impact any historic structure that is included in or

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

LBD16611-03-0

1 eligible for inclusion in the National or the State Register of Historic  
2 Places, be consistent with any plan approved for such community, and  
3 shall be subject to unanimous approval of the franchise oversight board  
4 and all statutory and regulatory requirements; provided, however, that,  
5 subject to approval of the franchise oversight board and subject to all  
6 statutory and regulatory requirements, the franchised corporation shall  
7 have full powers and rights to develop, redevelop, refurbish, renovate  
8 or make such other improvements, capital expenditures or otherwise, to  
9 the racetracks and the fixtures and improvements thereon consistent with  
10 projects specifically identified in the franchised corporation's  
11 approved track facility improvement plan.

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

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

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

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

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

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

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

10 (E) review such franchise corporation's AND THE NEW YORK CITY  
11 OFF-TRACK BETTING CORPORATION'S compliance with the laws, rules and  
12 regulations applicable to its activities;

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

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

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

29 (v) facilitate discussions and voluntary agreements between the fran-  
30 chised corporation and off-track betting corporations to streamline  
31 operations, decrease operating costs and maximize opportunities pertain-  
32 ing to costs and revenues, and encourage an exchange of views and expe-  
33 riences from the franchised corporation and the off-track betting corpo-  
34 rations to improve the racing product in New York and to realize  
35 efficiencies, EXCEPT THE NEW YORK CITY OFF-TRACK BETTING CORPORATION  
36 SHALL TRANSFER ALL WAGERING ACCOUNTS, INCLUDING INDIVIDUAL ACCOUNT  
37 BALANCES HELD FOR TELEPHONE AND INTERNET WAGERING TO THE FRANCHISE OVER-  
38 SIGHT BOARD. NEW YORK CITY OFF-TRACK BETTING CORPORATION SHALL PROVIDE A  
39 REPORT FROM ITS TOTALIZATOR PROVIDER OF ALL WAGERING ACCOUNTS INCLUDING  
40 INDIVIDUAL CUSTOMER ACCOUNT BALANCES. THE FRANCHISE OVERSIGHT BOARD  
41 SHALL ENTER INTO A MANAGEMENT SERVICES AGREEMENT ON BEHALF OF NEW YORK  
42 CITY OFF-TRACK BETTING CORPORATION WITH THE FRANCHISE CORPORATION FOR  
43 THE OPERATION OF THE ACCOUNT DEPOSIT WAGERING FOR TELEPHONE AND INTERNET  
44 WAGERING;

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

48 (vii) NEW YORK CITY OFF-TRACK BETTING CORPORATION AND THE FRANCHISED  
49 CORPORATION SHALL JOINTLY NEGOTIATE ALL SIMULCASTING CONTRACTS WITH OUT  
50 OF STATE ENTITIES AND THE FRANCHISE OVERSIGHT BOARD SHALL review and  
51 provide any recommendations on all simulcasting contracts (buy and sell)  
52 that are also subject to prior approval of the racing and wagering  
53 board;

54 (viii) act on behalf of the People of the State of New York to enter  
55 into any real property transactions in furtherance of the purposes and  
56 intent of this statute, including, without limitation, one or more

1 ground leases, for one dollar in consideration annually, for each of  
2 Aqueduct racetrack, Belmont Park and Saratoga racecourse to the fran-  
3 chised corporation, for a term that will extend until the racing fran-  
4 chise expires, is revoked, terminated or ends by any other means  
5 provided by law. Such leases shall be executed contemporaneously with  
6 the conveyance of the racetracks by the franchised corporation's prede-  
7 cessor to the state;

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

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

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

43 (xii) report annually to the governor and the legislature, beginning  
44 no later than December thirty-first, two thousand eight, stating its  
45 findings and recommendations to implement policy and legislative changes  
46 necessary to encourage the continuation of high quality thoroughbred  
47 racing in New York state and to protect the legitimate interests of the  
48 state and the thoroughbred racing industry;

49 (xiii) require the franchised corporation AND THE NEW YORK CITY  
50 OFF-TRACK BETTING CORPORATION to make all records and documents pertain-  
51 ing to its financial practices, and other documents and records neces-  
52 sary to carry out its duties, available to the franchise oversight board  
53 within thirty days of a written request;

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

1 (xv) sue and be sued;

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

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

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

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

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