

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

4588--A

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 -- recommitted to the Committee on Racing, Gaming and Wagering in accordance with Senate Rule 6, sec. 8 -- 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 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 0-1 of chapter 57 of the
10 laws of 2009, clause (G) as amended by chapter 342 of the laws of 2009,
11 is amended to read as follows:
12 (ii) less a vendor's fee the amount of which is to be paid for serving
13 as a lottery agent to the track operator of a vendor track[:]; AND LESS
14 A VENDOR'S FEE TO BE PAID FOR SERVING AS A LOTTERY AGENT TO THE REGIONAL
15 OFF-TRACK BETTING CORPORATION OPERATOR AT AN AUTHORIZED PARTICIPATING
16 OFF-TRACK BETTING FACILITY LICENSED PURSUANT TO EITHER SECTION ONE THOU-
17 SAND EIGHT OR ONE THOUSAND NINE OF THE RACING, PARI-MUTUEL WAGERING AND
18 BREEDING LAW.
19 (A) having fewer than one thousand one hundred video gaming machines,
20 at a rate of thirty-six percent for the first fifty million dollars

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

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1 annually, twenty-nine percent for the next hundred million dollars annu-
2 ally, and twenty-six percent thereafter of the total revenue wagered at
3 the vendor track after payout for prizes pursuant to this chapter;

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

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

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

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

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

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

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

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

53 (F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subpar-
54 agraph, when a vendor track, is located in Sullivan county and within
55 sixty miles from any gaming facility in a contiguous state such vendor
56 fee shall, for a period of five years commencing April first, two thou-

1 sand eight, be at a rate of forty-two percent of the total revenue
2 wagered at the vendor track after payout for prizes pursuant to this
3 chapter, after which time such rate shall be as for all tracks in clause
4 (C) of this subparagraph.

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

31 The balance shall be paid as a vendor's fee to the track operator of
32 no more than one vendor track located in the town of Thompson in Sulli-
33 van county at the site of the former Concord Resort for serving as a
34 lottery agent under this chapter.

35 Provided, however, that in the case of no more than one vendor track
36 located in the town of Thompson in Sullivan county at the site of the
37 former Concord Resort with a qualified capital investment, and one thou-
38 sand full-time, permanent employees as of July first, two thousand elev-
39 en if at any time after three years of opening operations of the
40 licensed video gaming facility or licensed vendor track, the vendor
41 track experiences an employment shortfall, then the recapture amount
42 shall apply, for only such period as the shortfall exists.

43 For the purposes of this section "qualified capital investment" shall
44 mean an investment of a minimum of six hundred million dollars as
45 reflected by audited financial statements of which not less than three
46 hundred million dollars shall be comprised of equity and/or mezzanine
47 financing as an initial investment in a county where twelve percent of
48 the population is below the federal poverty level as measured by the
49 most recent Bureau of Census Statistics prior to the qualified capital
50 investment commencing that results in the construction, development or
51 improvement of at least one eighteen hole golf course, and the
52 construction and issuance of certificates of occupancy for hotels, lodg-
53 ing, spas, dining, retail and entertainment venues, parking garages and
54 other capital improvements at or adjacent to the licensed video gaming
55 facility or licensed vendor track which promote or encourage increased
56 attendance at such facilities.

1 For the purposes of this section, "full-time, permanent employee"
2 shall mean an employee who has worked at the video gaming facility,
3 vendor track or related and adjacent facilities for a minimum of thir-
4 ty-five hours per week for not less than four consecutive weeks and who
5 is entitled to receive the usual and customary fringe benefits extended
6 to other employees with comparable rank and duties; or two part-time
7 employees who have worked at the video gaming facility, vendor track or
8 related and adjacent facilities for a combined minimum of thirty-five
9 hours per week for not less than four consecutive weeks and who are
10 entitled to receive the usual and customary fringe benefits extended to
11 other employees with comparable rank and duties.

12 For the purpose of this section "employment goal" shall mean one thou-
13 sand five hundred full-time permanent employees after three years of
14 opening operations of the licensed video gaming facility or licensed
15 vendor track.

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

20 For the purposes of this section "recapture amount" shall mean the
21 difference between the amount of the vendor's fee paid to a vendor track
22 with a qualified capital investment, and the vendor fee otherwise paya-
23 ble to a vendor track pursuant to clause (F) of this subparagraph, that
24 is reimbursable by the vendor track to the division for payment into the
25 state treasury, to the credit of the state lottery fund created by
26 section ninety-two-c of the state finance law, due to an employment
27 shortfall pursuant to the following schedule only for the period of the
28 employment shortfall:

29 (i) one hundred percent of the recapture amount if the employment
30 shortfall is greater than sixty-six and two-thirds percent of the
31 employment goal;

32 (ii) seventy-five percent of the recapture amount if the employment
33 shortfall is greater than thirty-three and one-third percent of the
34 employment goal;

35 (iii) forty-nine and one-half percent of the recapture amount if the
36 employment shortfall is greater than thirty percent of the employment
37 goal;

38 (iv) twenty-two percent of the recapture amount if the employment
39 shortfall is greater than twenty percent of the employment goal;

40 (v) eleven percent of the recapture amount if the employment shortfall
41 is greater than ten percent of the employment goal.

42 (H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of
43 this subparagraph, the track operator of a vendor track OR OFF-TRACK
44 BETTING OPERATOR OF A VENDOR OFF-TRACK BETTING CORPORATION shall be
45 eligible for a vendor's capital award of up to four percent of the total
46 revenue wagered at the vendor track OR VENDOR OFF-TRACK BETTING FACILITY
47 after payout for prizes pursuant to this chapter, which shall be used
48 exclusively for capital project investments to improve the facilities of
49 the vendor track OR VENDOR OFF-TRACK BETTING FACILITY which promote or
50 encourage increased attendance at the video lottery gaming facility
51 including, but not limited to hotels, other lodging facilities, enter-
52 tainment facilities, retail facilities, dining facilities, events
53 arenas, parking garages and other improvements that enhance facility
54 amenities; provided that such capital investments shall be approved by
55 the division, in consultation with the state racing and wagering board,
56 and that such vendor track OR VENDOR OFF-TRACK BETTING FACILITY demon-

1 strates that such capital expenditures will increase patronage at such
2 vendor track's OR VENDOR OFF-TRACK BETTING facilities and increase the
3 amount of revenue generated to support state education programs. The
4 annual amount of such vendor's capital awards that a vendor track shall
5 be eligible to receive shall be limited to two million five hundred
6 thousand dollars, except for Aqueduct racetrack, for which there shall
7 be no vendor's capital awards. Except for tracks OR OFF-TRACK BETTING
8 FACILITIES having less than one thousand one hundred video gaming
9 machines, each track operator OR OFF-TRACK BETTING FACILITY OPERATOR
10 shall be required to co-invest an amount of capital expenditure equal to
11 its cumulative vendor's capital award. For all tracks OR OFF-TRACK
12 BETTING FACILITIES, except for Aqueduct racetrack, the amount of any
13 vendor's capital award that is not used during any one year period may
14 be carried over into subsequent years ending before April first, two
15 thousand thirteen. Any amount attributable to a capital expenditure
16 approved prior to April first, two thousand thirteen and completed
17 before April first, two thousand fifteen shall be eligible to receive
18 the vendor's capital award. In the event that a vendor track's capital
19 expenditures, approved by the division prior to April first, two thou-
20 sand thirteen and completed prior to April first, two thousand fifteen,
21 exceed the vendor track's cumulative capital award during the five year
22 period ending April first, two thousand thirteen, the vendor shall
23 continue to receive the capital award after April first, two thousand
24 thirteen until such approved capital expenditures are paid to the vendor
25 track subject to any required co-investment. In no event shall any
26 vendor track OR VENDOR OFF-TRACK BETTING FACILITY that receives a vendor
27 fee pursuant to clause (F) or (G) of this subparagraph be eligible for a
28 vendor's capital award under this section. Any operator of a vendor
29 track OR VENDOR OFF-TRACK BETTING FACILITY which has received a vendor's
30 capital award, choosing to divest the capital improvement toward which
31 the award was applied, prior to the full depreciation of the capital
32 improvement in accordance with generally accepted accounting principles,
33 shall reimburse the state in amounts equal to the total of any such
34 awards. Any capital award not approved for a capital expenditure at a
35 video lottery gaming facility by April first, two thousand thirteen
36 shall be deposited into the state lottery fund for education aid; and
37 S 3. Subparagraph (iii) of paragraph 1 and the opening paragraph of
38 paragraph 2 of subdivision b of section 1612 of the tax law, as amended
39 by section 1 of part 0-1 of chapter 57 of the laws of 2009, are amended
40 to read as follows:

41 (iii) less an additional vendor's marketing allowance at a rate of ten
42 percent for the first one hundred million dollars annually and eight
43 percent thereafter of the total revenue wagered at the vendor track OR
44 VENDOR OFF-TRACK BETTING FACILITY after payout for prizes to be used by
45 the vendor track OR VENDOR OFF-TRACK BETTING FACILITY for the marketing
46 and promotion and associated costs of its video lottery gaming oper-
47 ations and pari-mutuel horse racing operations, as long as any such
48 costs associated with pari-mutuel horse racing operations simultaneously
49 encourage increased attendance at such vendor's video lottery gaming
50 facilities, consistent with the customary manner of marketing comparable
51 operations in the industry and subject to the overall supervision of the
52 division; provided, however, that the additional vendor's marketing
53 allowance shall not exceed eight percent in any year for any operator of
54 a racetrack located in the county of Westchester or Queens; provided,
55 however, a vendor track OR VENDOR OFF-TRACK BETTING FACILITY that
56 receives a vendor fee pursuant to clause (G) of subparagraph (ii) of

1 this paragraph shall not receive the additional vendor's marketing
2 allowance. In establishing the vendor fee, the division shall ensure the
3 maximum lottery support for education while also ensuring the effective
4 implementation of section sixteen hundred seventeen-a of this article
5 through the provision of reasonable reimbursements and compensation to
6 vendor tracks OR VENDOR OFF-TRACK BETTING FACILITIES for participation
7 in such program. Within twenty days after any award of lottery prizes,
8 the division shall pay into the state treasury, to the credit of the
9 state lottery fund, the balance of all moneys received from the sale of
10 all tickets for the lottery in which such prizes were awarded remaining
11 after provision for the payment of prizes as herein provided. Any reven-
12 ues derived from the sale of advertising on lottery tickets shall be
13 deposited in the state lottery fund.

14 As consideration for the operation of a video lottery gaming facility,
15 the division, shall cause the investment in the racing industry of a
16 portion of the vendor fee received pursuant to paragraph one of this
17 subdivision in the manner set forth in this subdivision. With the
18 exception of ANY VENDOR OFF-TRACK BETTING FACILITY AND Aqueduct race-
19 track, each such track shall dedicate a portion of its vendor fees,
20 received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of
21 subparagraph (ii) of paragraph one of this subdivision, solely for the
22 purpose of enhancing purses at such track, in an amount equal to eight
23 and three-quarters percent of the total revenue wagered at the vendor
24 track after pay out for prizes. In addition, with the exception of Aque-
25 duct racetrack, one and one-quarter percent of total revenue wagered at
26 the vendor track after pay out for prizes, received pursuant to clause
27 (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph
28 one of this subdivision, shall be distributed to the appropriate breed-
29 ing fund for the manner of racing conducted by such track.

30 S 4. Subdivision a of section 1617-a of the tax law, as amended by
31 section 2 of part 0-1 of chapter 57 of the laws of 2009, is amended to
32 read as follows:

33 a. The division of the lottery is hereby authorized to license, pursu-
34 ant to rules and regulations to be promulgated by the division of the
35 lottery, the operation of video lottery gaming at (1) Aqueduct, Monti-
36 cello, Yonkers, Finger Lakes, and Vernon Downs racetracks, or at any
37 other racetrack licensed pursuant to article three of the racing, pari-
38 mutuel wagering and breeding law that are located in a county or coun-
39 ties in which video lottery gaming has been authorized pursuant to local
40 law, excluding the licensed racetrack commonly referred to in article
41 three of the racing, pari-mutuel wagering and breeding law as the "New
42 York state exposition" held in Onondaga county and the racetracks of the
43 non-profit racing association known as Belmont Park racetrack and the
44 Saratoga thoroughbred racetrack; AND (2) AT ONE REGIONAL OFF-TRACK
45 BETTING CORPORATION FACILITY LICENSED PURSUANT TO SECTION ONE THOUSAND
46 EIGHT OR ONE THOUSAND NINE OF THE RACING, PARI-MUTUEL WAGERING AND
47 BREEDING LAW WITHIN ANY REGION IN WHICH NO PARTICIPATING COUNTY CONTAINS
48 EITHER A THOROUGHBRED OR STANDARD BRED RACETRACK LICENSED TO OPERATE BY
49 THE RACING AND WAGERING BOARD. Such rules and regulations shall
50 provide, as a condition of licensure, that racetracks OR REGIONAL
51 OFF-TRACK BETTING CORPORATIONS, AS CREATED BY SECTION FIVE HUNDRED TWO
52 OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, to be licensed are
53 certified to be in compliance with all state and local fire and safety
54 codes, that the division is afforded adequate space, infrastructure, and
55 amenities consistent with industry standards for such video gaming oper-
56 ations as found at racetracks in other states, that racetrack OR

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

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

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

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

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

35 S 5. Subdivision a of section 1617-a of the tax law, as separately
36 amended by chapter 286 of the laws of 2008 and section 2 of part 0-1 of
37 chapter 57 of the laws of 2009, is amended to read as follows:

38 a. The division of the lottery is hereby authorized to license, pursu-
39 ant to rules and regulations to be promulgated by the division of the
40 lottery, the operation of video lottery gaming at [a vendor track pursu-
41 ant to clause (G) of subparagraph (ii) of paragraph one of subdivision b
42 of section sixteen hundred twelve of this article.] (1) AQUEDUCT, MONTI-
43 CELLO, YONKERS, FINGER LAKES, AND VERNON DOWNS RACETRACKS, OR AT ANY
44 OTHER RACETRACK LICENSED PURSUANT TO ARTICLE THREE OF THE RACING, PARI-
45 MUTUEL WAGERING AND BREEDING LAW THAT ARE LOCATED IN A COUNTY OR COUN-
46 TIES IN WHICH VIDEO LOTTERY GAMING HAS BEEN AUTHORIZED PURSUANT TO LOCAL
47 LAW, EXCLUDING THE LICENSED RACETRACK COMMONLY REFERRED TO IN ARTICLE
48 THREE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AS THE "NEW
49 YORK STATE EXPOSITION" HELD IN ONONDAGA COUNTY AND THE RACETRACKS OF THE
50 NON-PROFIT RACING ASSOCIATION KNOWN AS BELMONT PARK RACETRACK AND THE
51 SARATOGA THOROUGHBRED RACETRACK; AND (2) AT ONE REGIONAL OFF-TRACK
52 BETTING CORPORATION FACILITY LICENSED PURSUANT TO SECTION ONE THOUSAND
53 EIGHT OR ONE THOUSAND NINE OF THE RACING, PARI-MUTUEL WAGERING AND
54 BREEDING LAW WITHIN ANY REGION IN WHICH NO PARTICIPATING COUNTY CONTAINS
55 EITHER A THOROUGHBRED OR STANDARD BRED RACETRACK LICENSED TO OPERATE BY
56 THE RACING AND WAGERING BOARD. Such rules and regulations shall provide,

1 as a condition of licensure, that such [racetrack] RACETRACKS OR
2 REGIONAL OFF-TRACK BETTING CORPORATIONS, AS CREATED BY SECTION FIVE
3 HUNDRED TWO OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, TO BE
4 LICENSED ARE certified to be in compliance with all state and local fire
5 and safety codes, that the division is afforded adequate space, infras-
6 tructure, and amenities consistent with industry standards for such
7 video gaming operations as found at racetracks in other states, that
8 racetrack OR REGIONAL OFF-TRACK BETTING CORPORATION employees involved
9 in the operation of video lottery gaming pursuant to this section are
10 licensed by the racing and wagering board, and such other terms and
11 conditions of licensure as the division may establish. Notwithstanding
12 any inconsistent provision of law, video lottery gaming at a racetrack
13 OR REGIONAL OFF-TRACK BETTING CORPORATION pursuant to this section shall
14 be deemed an approved activity for such racetrack OR REGIONAL OFF-TRACK
15 BETTING CORPORATION under the relevant city, county, town, or village
16 land use or zoning ordinances, rules, or regulations. No entity
17 licensed by the division operating video lottery gaming pursuant to this
18 section may house such gaming activity in a structure deemed or approved
19 by the division as "temporary" for a duration of longer than eighteen-
20 months. Nothing in this section shall prohibit the division from licens-
21 ing an entity to operate video lottery gaming at an existing racetrack
22 as authorized in this subdivision whether or not a different entity is
23 licensed to conduct horse racing and pari-mutuel wagering at such race-
24 track pursuant to article two or three of the racing, pari-mutuel wager-
25 ing and breeding law.

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

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

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

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

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

55 S 6. This act shall take effect the first of January next succeeding
56 the date on which it shall have become a law, provided, however, that

1 the amendments to subdivision a of section 1617-a of the tax law made by
2 section four of this act shall not affect the repeal of such section and
3 shall be deemed repealed therewith; provided however, the amendments to
4 subdivision a of section 1617-a of the tax law made by section five of
5 this act shall take effect on the same date and in the same manner as
6 chapter 286 of the laws of 2008 takes effect; and provided further that
7 the amendments to subdivision a of section 1617-a of the tax law made by
8 section five of this act shall be subject to the repeal of such subdivi-
9 sion pursuant to section 4 of part C of chapter 383 of the laws of 2001,
10 as amended by chapter 286 of the laws of 2008.