

3650

2011-2012 Regular Sessions

I N A S S E M B L Y

January 26, 2011

Introduced by M. of A. PRETLOW, REILLY -- 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 ASSEM-
BLY, 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,

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

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

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

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

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

1 (A) review and make recommendations concerning the annual operating
2 budgets of such franchised corporation AND THE NEW YORK CITY OFF-TRACK
3 BETTING CORPORATION;
4 (B) review and make recommendations concerning operating revenues and
5 the establishment of a financial plan;
6 (C) review and make recommendations concerning accounting, internal
7 control systems and security procedures;
8 (D) review such franchised corporation's AND THE NEW YORK CITY
9 OFF-TRACK BETTING CORPORATION'S revenue and expenditure [policies] POLI-
10 CIES which shall include collective bargaining agreements management and
11 employee compensation plans, vendor contracts and capital improvement
12 plans;
13 (E) review such franchise corporation's AND THE NEW YORK CITY
14 OFF-TRACK BETTING CORPORATION'S compliance with the laws, rules and
15 regulations applicable to its activities;
16 (F) make recommendations for establishing model governance principles
17 to improve accountability and transparency; and
18 (G) receive, review, approve or disapprove capital expense plans
19 submitted annually by the franchised corporation AND THE NEW YORK CITY
20 OFF-TRACK BETTING CORPORATION.
21 (iv) evaluate, review and approve the racing franchisee's AND THE NEW
22 YORK CITY OFF-TRACK BETTING CORPORATION'S selection of a vendor or
23 vendors to contract with the franchised corporation AND THE NEW YORK
24 CITY OFF-TRACK BETTING CORPORATION for provision of totalizator
25 services, and manage, subject to the franchised corporation's unilateral
26 right to opt out, directly or indirectly, integration of any offered
27 internet wagering platform. The franchise oversight board shall consider
28 in its evaluation of any such proposed vendor their ability to reduce
29 the totalizator expenses and general development and production costs of
30 any internet wagering platform of an authorized off-track betting corpo-
31 ration and the state racing franchise holder.
32 (v) facilitate discussions and voluntary agreements between the fran-
33 chised corporation and off-track betting corporations to streamline
34 operations, decrease operating costs and maximize opportunities pertain-
35 ing to costs and revenues, and encourage an exchange of views and expe-
36 riences from the franchised corporation and the off-track betting corpo-
37 rations to improve the racing product in New York and to realize
38 efficiencies, EXCEPT THE NEW YORK CITY OFF-TRACK BETTING CORPORATION
39 SHALL TRANSFER ALL WAGERING ACCOUNTS, INCLUDING INDIVIDUAL ACCOUNT
40 BALANCES HELD FOR TELEPHONE AND INTERNET WAGERING TO THE FRANCHISE OVER-
41 SIGHT BOARD. NEW YORK CITY OFF-TRACK BETTING CORPORATION SHALL PROVIDE A
42 REPORT FROM ITS TOTALIZATOR PROVIDER OF ALL WAGERING ACCOUNTS INCLUDING
43 INDIVIDUAL CUSTOMER ACCOUNT BALANCES. THE FRANCHISE OVERSIGHT BOARD
44 SHALL ENTER INTO A MANAGEMENT SERVICES AGREEMENT ON BEHALF OF NEW YORK
45 CITY OFF-TRACK BETTING CORPORATION WITH THE FRANCHISE CORPORATION FOR
46 THE OPERATION OF THE ACCOUNT DEPOSIT WAGERING FOR TELEPHONE AND INTERNET
47 WAGERING;
48 (vi) review and approve all purchasing policies pursuant to paragraph
49 (a) of subdivision six of section two hundred eight of this article AND
50 USED BY NEW YORK CITY OFF-TRACK BETTING CORPORATION;
51 (vii) NEW YORK CITY OFF-TRACK BETTING CORPORATION AND THE FRANCHISED
52 CORPORATION SHALL JOINTLY NEGOTIATE ALL SIMULCASTING CONTRACTS WITH OUT
53 OF STATE ENTITIES AND THE FRANCHISE OVERSIGHT BOARD SHALL review and
54 provide any recommendations on all simulcasting contracts (buy and sell)
55 that are also subject to prior approval of the racing and wagering
56 board;

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

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

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

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

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

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

1 (xiv) examine or cause to be examined by a third party, the books,
2 papers, records and accounts of the franchised corporation AND THE NEW
3 YORK CITY OFF-TRACK BETTING CORPORATION;
4 (xv) sue and be sued;
5 (xvi) make and execute contracts and all other instruments necessary
6 or convenient for the exercise of its powers and functions under this
7 article;
8 (xvii) request and accept the assistance of any state agency, includ-
9 ing but not limited to, the racing and wagering board, the division of
10 the lottery office of parks, recreation and historic preservation, the
11 department of environmental conservation, THE OFFICE OF GENERAL SERVICES
12 and the department of taxation and finance, in obtaining information
13 related to the franchised corporation's compliance with the terms of the
14 franchise agreement; and
15 (xviii) do all things necessary, convenient or desirable to carry out
16 its purposes and for the exercise of the powers granted in this article.
17 b. Notwithstanding any other provision of this article, the franchised
18 corporation shall be entitled to make capital expenditures, except those
19 capital expenditures for the Saratoga Racecourse that may, on the advice
20 of the New York state historic preservation office, adversely impact any
21 historic structure that is included in or is eligible for inclusion in
22 the national or state register of historic places, to the physical plant
23 of the racetracks, grandstand, backstretch, parking and public areas set
24 forth in the New York Racing Association's capital expenditure plan
25 ("capital plan") filed with the racing and wagering board in two thou-
26 sand seven. Any material modification to the capital plan as determined
27 by the franchise oversight board and each future capital investment plan
28 for the tracks, grandstand, backstretch, parking and public areas of the
29 racetracks operated by the franchised corporation involving the expendi-
30 ture of more than five million dollars in the aggregate shall require
31 the prior approval of the franchise oversight board. Within five years
32 from the date of commencement of the video lottery terminal operations
33 at Aqueduct, and every five years thereafter, the franchised corporation
34 shall submit to the oversight board a capital plan for the five year
35 period commencing on January first of the following year. Such plans
36 shall contain both the intended object of expenditure and the proposed
37 sources of financing. The franchised corporation shall report to the
38 franchise oversight board within ninety days following the end of each
39 fiscal year as to the amount spent pursuant to the capital plan.
40 S 2. This act shall take effect immediately; provided, however, that
41 the amendments to section 212 of the racing, pari-mutuel wagering and
42 breeding law made by section one of this act shall take effect upon the
43 confirmation of the New York Racing Association plan of reorganization
44 pursuant to section 16 of chapter 18 of the laws of 2008, as amended;
45 provided further, that the amendments to section 212 of the racing,
46 pari-mutuel wagering and breeding law made by section one of this act
47 shall be deemed repealed as provided by chapter 354 of the laws of 2005,
48 as amended.