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

3334--B

2011-2012 Regular Sessions

I N S E N A T E

February 17, 2011

Introduced by Sens. LANZA, GOLDEN, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Racing, Gaming and Wagering -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 state finance law, in relation to the New York city off-track betting corporation and establishing the New York city off-track betting corporation fund; and to repeal certain provisions of the racing, pari-mutuel wagering and breeding law relating thereto

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

Section 1. Subdivision 9 of section 602 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 115 of the laws of 2008, is amended and a new subdivision 15 is added to read as follows:

9. "Cost of corporation's functions." All costs and expenses incurred by the corporation in connection with the performance of the functions of the corporation, including, but not limited to, operating expenses of the corporation, the cost of acquiring, constructing or equipping branch offices and other facilities and premises of the corporation, [and interest and principal on bonds,] notes or other obligations of the corporation issued to finance the acquisition, construction or equipment of such offices, facilities or premises.

15. "VENDOR OPERATOR." THE VENDOR OPERATOR SHALL BE SELECTED PURSUANT TO THE PROVISIONS SET FORTH IN SECTION SIX HUNDRED TWENTY-FIVE OF THIS ARTICLE AND SHALL BE RESPONSIBLE FOR THE ADMINISTRATION AND OPERATION OF THE CORPORATION.

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

LBD08961-05-2

S 2. Section 603 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 115 of the laws of 2008, is amended to read as follows:

S 603. New York city off-track betting corporation. 1. A corporation to be known as the "New York city off-track betting corporation" is hereby created. Such corporation shall be a body corporate and politic constituting a public benefit corporation. It shall be [administered] OVERSEEN by a board of directors consisting of five members, who may be public officers, appointed by the governor for fixed terms as hereinafter provided, one of whom shall be appointed on the recommendation of the temporary president of the senate, and one of whom shall be appointed on the recommendation of the speaker of the assembly.

2. THE TERMS OF ALL DIRECTORS SERVING A TERM THAT ENCOMPASSED JANUARY TWENTY-FIFTH, TWO THOUSAND TWELVE, SHALL BE DEEMED TO HAVE EXPIRED AND NEW DIRECTORS SHALL BE APPOINTED. Of the directors, one shall be appointed for a term ending on December thirty-first, two thousand [nine] TWELVE, one for a term ending on December thirty-first, two thousand [ten] THIRTEEN, one for a term ending on December thirty-first, two thousand [twelve] FOURTEEN, and the two directors appointed on the recommendation of the temporary president of the senate and the speaker of the assembly, for a term ending December thirty-first, two thousand [fourteen] FIFTEEN. Upon the expiration of such terms, the terms of office of their successors shall be six years. Vacancies occurring otherwise than by expiration of term shall be filled for the unexpired term.

3. The governor shall designate one of the directors to be chairman of the board of directors and may at his pleasure, change his designation of any such director to be chairman.

4. Each director shall continue to serve until the appointment and qualification of his successor.

5. The directors shall be removable for cause by the governor, upon charges and after a hearing.

6. The [powers] OVERSIGHT of the corporation shall be vested in and exercised by the board at a meeting duly held at a time fixed by any by-law adopted by the board, or at any duly adjourned meeting of such meeting or at any meeting held upon reasonable notice to all of the directors, or upon written waiver thereof, and a majority of the whole number of directors shall constitute a quorum[; provided that neither the business nor the powers of the corporation shall be transacted or exercised except pursuant to the favorable vote of at least a majority of the directors present at a meeting at which a quorum is in attendance].

7. The board may delegate to one or more of the directors, officers, agents or employees of the corporation such powers and duties as it may deem proper.

8. The directors shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

9. The directors may engage in outside employment or in a profession or business EXCEPT AS AN EXECUTIVE OR LEGISLATIVE EMPLOYEE OR unless otherwise prohibited from doing so by virtue of holding another public office subject to the provisions of section seventy-three of the public officers law.

10. The board shall hold an annual meeting.

11. The fiscal year of the corporation shall be the same as [that of the city, provided, however, that the corporation shall have a nine month fiscal year from July first, two thousand eight through March

thirty-first, two thousand nine, and then the fiscal year of the corporation shall be the same as] the state.

12. THE CORPORATION WILL BE ADMINISTERED BY THE VENDOR OPERATOR AND THE POWERS OF THE CORPORATION SHALL BE VESTED IN THE VENDOR OPERATOR.

S 3. Section 617 of the racing, pari-mutuel wagering and breeding law is amended to read as follows:

S 617. Exemption from taxation. [1.] The moneys and property of the corporation and any property under its jurisdiction, control or supervision, and all of its activities and operations shall be exempt from taxation.

[2. The state covenants with the purchasers of and with all subsequent holders and transferees of bonds and notes issued by the corporation pursuant to this article, in consideration of the acceptance of and payment for the said bonds and notes, that the said bonds and notes and the income therefrom, and all moneys, funds and revenue pledged to pay or secure the payment of such bonds and notes shall at all time be free from taxation, except for estate and gift taxes and taxes on transfers.]

S 4. The opening paragraph of section 621 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 115 of the laws of 2008, is amended to read as follows:

Within one hundred twenty days after the end of the fiscal year of the corporation, the [directors thereof] VENDOR OPERATOR shall submit to the governor, the legislature, the racing and wagering board and the state comptroller a complete and detailed report setting forth:

S 5. The racing, pari-mutuel wagering and breeding law is amended by adding a new section 625 to read as follows:

S 625. SELECTION OF VENDOR OPERATOR. 1. THE NEW YORK STATE RACING AND WAGERING BOARD SHALL SUBMIT, WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, A REQUEST FOR PROPOSALS FROM QUALIFYING ENTITIES AS DESCRIBED IN THIS SECTION FOR THE PURPOSE OF THE ADMINISTRATING OF THE CORPORATION. THE ENTITY CHOSEN TO ADMINISTER THE CORPORATION SHALL ENTER INTO A CONTRACT WITH THE STATE FOR A TERM OF TEN YEARS, WHICH MAY BE RENEWED SUBJECT TO THE APPROVAL OF THE STATE RACING AND WAGERING BOARD AND THE APPROVAL OF THE NEW YORK CITY OFF-TRACK BETTING BOARD OF DIRECTORS.

2. ELIGIBLE ENTITIES SHALL CONSIST OF INDIVIDUALS, PARTNERSHIPS OR CORPORATIONS, PUBLIC OR PRIVATE, WHICH ARE REQUIRED AS PART OF THEIR PROPOSAL TO SUBMIT AT LEAST ONE BUSINESS PLAN FOR THE RE-ESTABLISHMENT AND CONTINUATION OF A PROFITABLE CORPORATION. IN AWARDING THE CONTRACT, THE STATE RACING AND WAGERING BOARD MUST CONSIDER THE FOLLOWING CRITERIA WITH RESPECT TO EACH APPLICANT: ITS EXPERIENCE IN MANAGING SUCCESSFUL BUSINESS ENTERPRISES, ITS EXPERIENCE IN THE RACING INDUSTRY, ITS EXPERIENCE IN THE PARI-MUTUEL AND/OR OFF-TRACK BETTING INDUSTRIES, ITS EXPERIENCE IN THE ENTERTAINMENT INDUSTRY, THE FEASIBILITY OF ITS PROPOSED BUSINESS PLAN OR PLANS, AND ITS COMMITMENT TO USE ITS BEST EFFORTS TO SUPPORT THE VIABILITY OF OFF-TRACK BETTING IN THE CITY OF NEW YORK AS WELL AS THE RACING INDUSTRY THROUGHOUT THE STATE.

3. ALL BUSINESS PLANS SUBMITTED BY AN ENTITY MUST INCLUDE PROVISIONS FOR PRIORITY FOR CONSIDERATION FOR EMPLOYMENT BY ANY FORMER EMPLOYEE OF THE CORPORATION WHOSE EMPLOYMENT TERMINATED OTHER THAN FOR CAUSE, BY RETIREMENT, OR WITH A SEVERANCE AWARD. SUCH PLANS MUST ALSO PROVIDE FOR REPRESENTATION OF OFF-TRACK BETTING BRANCH OFFICES, OR AN EQUIVALENT, IN ALL OF THE BOROUGHS OF THE CITY OF NEW YORK, WITH PREFERENCE GIVEN FOR BUSINESS PLANS THAT HAVE AT LEAST THREE FACILITIES IN EACH BOROUGH AND THAT MAINTAIN THE SAME RATIO OF ACCESS TO OFF-TRACK BETTING FACILITIES

AS WAS PREVIOUSLY PROVIDED BY THE CORPORATION PRIOR TO DECEMBER FIRST, TWO THOUSAND TEN.

4. THE STATE RACING AND WAGERING BOARD SHALL MAKE PUBLIC ITS PRELIMINARY SELECTION OF THE VENDOR OPERATOR NO LATER THAN THREE MONTHS AFTER THE SUBMISSION OF THE REQUEST FOR PROPOSALS, AND ALLOW FOR TWO WEEKS FOR PUBLIC COMMENT. THE FINAL SELECTION AND THE CONTRACT BETWEEN THE VENDOR AND THE STATE MUST BE FINALIZED WITHIN THIRTY DAYS OF THE PRELIMINARY SELECTION, BUT NO SOONER THAN THE END OF THE TWO WEEK PUBLIC COMMENT PERIOD.

5. THE SELECTION OF VENDOR MAY BE REVOKED AND CANCELLED BY THE STATE RACING AND WAGERING BOARD FOR A MATERIAL BREACH OF CONTRACT OR FOR A VIOLATION OF THE RULES OF THE STATE RACING AND WAGERING BOARD OR IF SUCH VENDOR OR ITS OFFICERS OR DIRECTORS SHALL KNOWINGLY VIOLATE THE PROVISIONS OF THIS CHAPTER OR OF THE PENAL LAW. THE ACTION OF THE STATE RACING AND WAGERING BOARD IN REVOKING THE SELECTION SHALL BE REVIEWABLE IN THE SUPREME COURT IN THE MANNER PROVIDED BY AND SUBJECT TO THE PROVISIONS OF ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

6. FOR CONTRACTS IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS, ENTERED INTO BY THE VENDOR FOR THE PROCUREMENT OF GOODS OR SERVICES, THE BOARD MAY REVIEW THE CHARACTER AND FITNESS OF THE ENTITY OR ITS PRINCIPALS ENTERING INTO CONTRACTS WITH THE VENDOR.

S 6. Clause (E) of subparagraph 5 and clause (F) of subparagraph 6 of paragraph b of subdivision 1 of section 1016 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 18 of the laws of 2008, are amended to read as follows:

(E) On days when a franchised corporation is not conducting a race meeting and when a licensed harness track is neither accepting wagers nor displaying the signal from an in-state thoroughbred corporation or association or an out-of-state thoroughbred track:

(i) Such licensed regional harness track shall receive in lieu of any other payments on wagers placed at off-track betting facilities outside the special betting district on races conducted by an in-state thoroughbred racing corporation, [two and eight-tenths] ONE AND FOUR-TENTHS percent on regular and multiple bets during a regional meeting and [one and nine-tenths] NINETY-FIVE HUNDREDTHS percent of such bets if there is no regional meeting and [four and eight-tenths] TWO AND FOUR-TENTHS percent on exotic bets on days on which there is a regional meeting and [three and four-tenths] ONE AND SEVEN-TENTHS percent of such bets if there is no regional meeting.

(ii) Such licensed regional harness track shall receive [one and one-half] SEVENTY-FIVE HUNDREDTHS per centum on total regional handle on races conducted at out-of-state or out-of-country thoroughbred tracks.

(iii) In those regions in which there is more than one licensed regional harness track, if no track is accepting wagers or displaying the live simulcast signal from the out-of-state track, the total sum shall be divided among the tracks in proportion to the ratio the wagers placed on races conducted by each track bears to the corporation's total in-region harness handle. If one or more tracks are accepting wagers or displaying the live simulcast signal, the total amount shall be divided among those tracks not accepting wagers or displaying the simulcast signal for an out-of-state track or in-state thoroughbred corporation or association.

(F) Of the sums retained by a licensed harness facility, [fifty] ONE HUNDRED percent shall be used exclusively for purses awarded in races conducted by such licensed facility [and the remaining fifty percent shall be retained by such licensed facility for its general purposes,

provided, however, that in a harness special betting district the portion of the sums retained by a licensed harness facility to be used for purses or the methodology for calculating the amount to be used for purses may be specified in a written contract between a harness racing association or corporation and its representative horsemen's association].

S 7. Section 1017 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 18 of the laws of 2008, is amended to read as follows:

S 1017. Out-of-state or out-of-country races. 1. Licensed simulcast facilities may accept wagers and display the signal of out-of-state or out-of-country thoroughbred tracks after 7Labor P.M. in accordance with the provisions of this section. Such simulcasting may include mixed meetings if such meetings are integral to such racing programs and all such wagering on such races shall be construed to be thoroughbred races. For facilities located within the special betting district, such approval shall also be required from a thoroughbred racing corporation during the period a racing program is being conducted at such track. Such approval shall not be required on any day such thoroughbred racing corporation is also accepting an out-of-state or out-of-country signal and wager, as authorized by this section. The provisions of section one thousand sixteen of this article shall be applicable to the conduct of such simulcasting and the provisions of clauses (A) and (B) of subparagraph four of paragraph b of subdivision one of section one thousand sixteen of this article shall apply to those facilities licensed in accordance with sections one thousand eight and one thousand nine of this article and the provisions of clauses (A) and (B) of subparagraph six of paragraph b of subdivision one of section one thousand sixteen of this article shall apply to those facilities licensed in accordance with section one thousand seven of this article, when such provisions are in full force and effect pursuant to such section. Provided, however, the provisions of section one thousand fourteen of this article shall be applicable to the conduct of such simulcasting, when such provisions are in full force and effect pursuant to such section.

2. a. Maintenance of effort. Any off-track betting corporation which engages in accepting wagers on the simulcasts of thoroughbred races from out-of-state or out-of-country as permitted under subdivision one of this section shall submit to the board, for its approval, a schedule of payments to be made in any year or portion thereof, that such off-track corporation engages in nighttime thoroughbred simulcasting. In order to be approved by the board, the payment schedule shall be identical to the actual payments and distributions of such payments to [tracks and] purses made by such off-track corporation pursuant to the provisions of section one thousand fifteen of this article during the year two thousand two, as derived from out-of-state harness races displayed after 6:00 P.M. If approved by the board, such scheduled payments shall be made from revenues derived from any simulcasting conducted pursuant to this section and section one thousand fifteen of this article.

b. Additional payments. During each calendar year, to the extent, and at such time in the event, that aggregate statewide wagering handle after 7Labor P.M. on out-of-state and out-of-country thoroughbred races exceeds one hundred million dollars, each off-track betting corporation conducting such simulcasting shall pay to its regional harness track or tracks, an amount equal to [two] ONE percent of its proportionate share of such excess handle. In any region where there are two or more regional harness tracks, such two percent shall be divided between or

among the tracks in a proportion equal to the proportion of handle on live harness races conducted at such tracks during the preceding calendar year. [Fifty percent of the] THE sum received by each track pursuant to this paragraph shall be used exclusively for increasing purses, stakes and prizes at that regional harness track.

S 8. Subdivision 2 of section 529 of the racing, pari-mutuel wagering and breeding law is amended to read as follows:

2. [Ninety-five percent of the balance of such account remaining unclaimed as of the last day of February of such year shall be paid to the state tax commission by March fifteenth. On or before April tenth of each year the balance of such account and any other unclaimed amounts received in the course of conducting off-track betting shall be paid by such corporation to the state tax commission. A penalty of five percent and interest at the rate of one percent per month from the due date to the date of payment of the unclaimed balance due March fifteenth or April tenth, as the case may be, shall be payable in case such balance is not paid when due. Such amounts, interest and penalties when collected by the state tax commission shall be deposited into the general fund of the state treasury] ON APRIL FIRST OF EACH YEAR, THE AMOUNT OF TICKETS REMAINING UNCLAIMED FROM THE PRIOR YEAR MAY BE USED FOR CORPORATE PURPOSES.

S 9. Subdivision 7 of section 532 of the racing, pari-mutuel wagering and breeding law, as added by chapter 115 of the laws of 2008, is amended to read as follows:

7. Notwithstanding any other provision of this section, any payments otherwise payable to a city with a population of one million or more, pursuant to this section, [other than payments pursuant to subparagraphs (i) and (iii) of paragraph b of subdivision three of this section, shall be payable to the corporation and shall be available for its corporate purposes] SHALL PAY REMAINING AMOUNTS TO THE COMPTROLLER OF THE STATE OF NEW YORK FOR DEPOSIT IN THE NEW YORK CITY OFF-TRACK BETTING CORPORATION FUND.

S 10. Subdivision 2 of section 610 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 115 of the laws of 2008, is amended to read as follows:

2. All moneys due the city pursuant to article five-A of this chapter shall be paid to the New York city [comptroller] OFF-TRACK BETTING CORPORATION FUND.

S 11. Subdivision 6 of section 527 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 115 of the laws of 2008, is amended to read as follows:

6. The net amount remaining to each regional corporation after payment of taxes and distributions pursuant to this section and after payment of operating expenses and principal and interest on any obligations shall, in the case of the New York city off-track betting corporation, be retained by the corporation, and in the case of other regional corporations shall accrue and be payable to participating counties pursuant to section five hundred sixteen of this chapter; provided, however, that the [New York city off-track betting corporation] VENDOR OPERATOR, after payment of all current taxes and distributions shall use such net amount to pay all [liabilities] OPERATING EXPENSES of such corporation [as of the effective date of the chapter of the laws of two thousand eight which amended this subdivision], and at such time as all [liabilities] OPERATING EXPENSES have been paid, such [corporation] VENDOR OPERATOR shall pay ANY remaining amounts to the comptroller of the state of New

York for deposit in the [general fund of the state] NEW YORK CITY OFF-TRACK BETTING CORPORATION FUND.

S 12. The racing, pari-mutuel wagering and breeding law is amended by adding a new section 626 to read as follows:

S 626. VENDOR OPERATOR FEE. AS CONSIDERATION FOR THE OPERATION OF THE CORPORATION, THE COMPTROLLER SHALL PAY A VENDOR FEE IN EXCHANGE FOR THE DAILY OPERATIONS AND CAPITALIZATION OF A NEW YORK CITY OFF-TRACK BETTING OPERATION TO BE PAID AS FOLLOWS: IF THE ANNUAL DEPOSIT INTO THE NEW YORK CITY OFF-TRACK BETTING CORPORATION FUND IS LESS THAN TWO AND ONE-HALF MILLION DOLLARS, THE VENDOR OPERATOR SHALL RECEIVE ONE HUNDRED PERCENT OF THE ANNUAL DEPOSITS; IF THE ANNUAL DEPOSIT INTO THE NEW YORK CITY OFF-TRACK BETTING CORPORATION FUND IS LESS THAN OR EQUAL TO TEN MILLION DOLLARS, THE VENDOR OPERATOR SHALL BE PAID TWO AND ONE-HALF MILLION DOLLARS AND THE REMAINING FUNDS SHALL BE DEPOSITED TO THE STATE GENERAL FUND; IF THE ANNUAL DEPOSIT IS MORE THAN TEN MILLION DOLLARS, THE VENDOR OPERATOR SHALL BE PAID TWENTY-FIVE PERCENT OF THE TOTAL ANNUAL DEPOSITS AND THE REMAINING FUNDS SHALL BE DEPOSITED TO THE STATE GENERAL FUND.

S 13. The state finance law is amended by adding a new section 95-h to read as follows:

S 95-H. NEW YORK CITY OFF-TRACK BETTING CORPORATION FUND. 1. THERE IS HEREBY ESTABLISHED IN THE CUSTODY OF THE COMPTROLLER, A SPECIAL FUND TO BE KNOWN AS THE "NEW YORK CITY OFF-TRACK BETTING CORPORATION FUND".

2. SUCH FUND SHALL CONSIST OF ALL MONIES RECEIVED BY THE STATE PURSUANT TO SUBDIVISIONS ONE AND SIX OF SECTION FIVE HUNDRED TWENTY-SEVEN AND SUBDIVISION SEVEN OF SECTION FIVE HUNDRED THIRTY-TWO OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW. ANY INTEREST EARNED BY THE INVESTMENT OF MONEYS IN SUCH FUND SHALL BE ADDED TO SUCH FUND, BECOME A PART OF SUCH FUND, AND BE USED FOR THE PURPOSE OF SUCH FUND.

3. MONEYS OF THE NEW YORK CITY OFF-TRACK BETTING CORPORATION FUND SHALL BE MADE AVAILABLE TO THE COMPTROLLER FOR THE PURPOSE OF PAYING THE NEW YORK CITY OFF-TRACK BETTING VENDOR OPERATOR FEE DISTRIBUTED ACCORDING TO SECTION SIX HUNDRED TWENTY-SIX OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW; ALL REMAINING MONEY SHALL BE DISBURSED INTO THE STATE GENERAL FUND.

S 14. The racing, pari-mutuel wagering and breeding law is amended by adding a new section 113 to read as follows:

S 113. TELEPHONE AND INTERNET WAGERING. THE STATE RACING AND WAGERING BOARD SHALL DETERMINE WHETHER ELIMINATING OR REGULATING THE AUTHORITY OF OUT-OF-STATE ENTITIES TO ACCEPT TELEPHONE AND/OR INTERNET WAGERING FROM STATE RESIDENTS PLACED WHILE IN THIS STATE, WOULD BE CONSISTENT WITH THE OBJECTIVES OF OFF-TRACK PARI-MUTUEL BETTING AS DEFINED IN SECTION FIVE HUNDRED EIGHTEEN OF THIS CHAPTER, AND IF SO DETERMINED, THE STATE RACING AND WAGERING BOARD SHALL ESTABLISH SUCH GENERAL REGULATIONS TO ELIMINATE OR REGULATE THE PRACTICE OF OUT-OF-STATE ENTITIES OF ACCEPTING SUCH WAGERS.

S 15. Subdivision 4 of section 606 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 115 of the laws of 2008, is amended to read as follows:

4. All [employees and officers] PRESENT AND FUTURE RETIREES of the corporation in classes or positions whose incumbents, in equivalent classes or positions of the city, are eligible, as of the effective date hereof, to participate in, and receive benefits from any city authorized health insurance or welfare benefit program, shall be eligible to participate in, and receive benefits from any such health insurance or welfare benefit program; provided, however, that the [corporation] STATE

shall reimburse the city or its designee for the actual cost of benefits under this subdivision.

S 16. Subdivisions 4 and 5 of section 610 of the racing, pari-mutuel wagering and breeding law are REPEALED.

S 17. Sections 611, 612, 613, 614, 616 and 620 of the racing, pari-mutuel wagering and breeding law are REPEALED.

S 18. This act shall take effect immediately.