

3706

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 26, 2011

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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 ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivision 8 of section 212 of the racing, pari-mutuel  
2     wagering and breeding law, as added by chapter 18 of the laws of 2008  
3     and subparagraphs (viii) and (xi) of paragraph a as amended by chapter  
4     140 of the laws of 2008, is amended to read as follows:  
5     8. a. The duties and responsibilities of the franchise oversight board  
6     shall include, but not be limited to, the following:  
7     (i) represent the interests of the state in all real estate develop-  
8     ment proposed for Aqueduct racetrack or real estate development at  
9     Belmont Park racetrack. Any such real estate development shall only be  
10    undertaken pursuant to a competitive process approved by the board,  
11    after consultation with the applicable local advisory boards and consid-  
12    eration of local zoning and planning regulation, and in a manner that  
13    will not adversely impact any historic structure that is included in or  
14    eligible for inclusion in the National or the State Register of Historic  
15    Places, be consistent with any plan approved for such community, and  
16    shall be subject to unanimous approval of the franchise oversight board  
17    and all statutory and regulatory requirements; provided, however, that,  
18    subject to approval of the franchise oversight board and subject to all  
19    statutory and regulatory requirements, the franchised corporation shall  
20    have full powers and rights to develop, redevelop, refurbish, renovate  
21    or make such other improvements, capital expenditures or otherwise, to  
22    the racetracks and the fixtures and improvements thereon consistent with  
23    projects specifically identified in the franchised corporation's  
24    approved track facility improvement plan.

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

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1 The franchise oversight board shall be guided by the goals of ensuring  
2 the continuation of high quality thoroughbred racing at the thoroughbred  
3 racing facilities located within the state, raising revenue for or in  
4 aid or support of education in this state from video lottery gaming at  
5 facilities of the state racing franchise, and maximizing revenue for  
6 governments from pari-mutuel wagering on racing at facilities of the  
7 state racing franchise.

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

33 (iii) oversee, monitor and review all significant transactions and  
34 operations of the franchised corporation authorized by this chapter;  
35 provided, however, that nothing in this section shall be deemed to  
36 reduce, diminish or impede the authority of the state racing and wager-  
37 ing board to, pursuant to article one of this chapter, determine and  
38 enforce compliance by the franchised corporation with terms of racing  
39 laws and regulations. Such oversight shall include, but not be limited  
40 to:

41 (A) review and make recommendations concerning the annual operating  
42 budgets of such franchised corporation;

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

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

47 (D) review such franchised corporation's revenue and expenditure  
48 [policies] POLICIES which shall include collective bargaining agreements  
49 management and employee compensation plans, vendor contracts and capital  
50 improvement plans;

51 (E) review such franchise corporation's compliance with the laws,  
52 rules and regulations applicable to its activities;

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

55 (G) receive, review, approve or disapprove capital expense plans  
56 submitted annually by the franchised corporation.

(iv) evaluate, review and approve the racing franchisee's selection of a vendor or vendors to contract with the franchised corporation for provision of totalizator services, and manage, subject to the franchised corporation's unilateral right to opt out, directly or indirectly, integration of any offered internet wagering platform. The franchise oversight board shall consider in its evaluation of any such proposed vendor their ability to reduce the totalizator expenses and general development and production costs of any internet wagering platform of an authorized off-track betting corporation and the state racing franchise holder.

(v) facilitate discussions and voluntary agreements between the franchised corporation and off-track betting corporations to streamline operations, decrease operating costs and maximize opportunities pertaining to costs and revenues, and encourage an exchange of views and experiences from the franchised corporation and the off-track betting corporations to improve the racing product in New York and to realize efficiencies;

(vi) review and approve all purchasing policies pursuant to paragraph (a) of subdivision six of section two hundred eight of this article;

(vii) review and provide any recommendations on all simulcasting contracts (buy and sell) that are also subject to prior approval of the racing and wagering board;

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

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

(x) conduct running races or steeplechases at racing facilities and conduct pari-mutuel betting on the outcome of the same when necessary to assure the continuation of the racing and pari-mutuel betting activities at such racing facilities (A) in the event that the racing and/or pari-mutuel betting franchises of the franchised corporation authorized by this chapter then holding such franchises have either been terminated in the manner provided by law or have been relinquished by such corporation, or such corporation declines to continue conducting race meetings and pari-mutuel betting on the outcome of the same as required by such franchises unless such declination is the result of strikes, acts of God, or other unavoidable causes not under the control of such corporation, or the corporate existence of such corporation has been dissolved in the manner provided by law prior to the end of the term of any such franchise and (B) until such time as a new franchise is granted;

(xi) on behalf of the People of the State of New York, and, acting in such capacity as lessor of the racing facilities and real estate, be

1 responsible for payment of all property taxes related to such racing  
2 facilities and real estate;

3 (xii) report annually to the governor and the legislature, beginning  
4 no later than December thirty-first, two thousand eight, stating its  
5 findings and recommendations to implement policy and legislative changes  
6 necessary to encourage the continuation of high quality thoroughbred  
7 racing in New York state and to protect the legitimate interests of the  
8 state and the thoroughbred racing industry;

9 (xiii) require the franchised corporation to make all records and  
10 documents pertaining to its financial practices, and other documents and  
11 records necessary to carry out its duties, available to the franchise  
12 oversight board within thirty days of a written request;

13 (xiv) examine or cause to be examined by a third party, the books,  
14 papers, records and accounts of the franchised corporation;

15 (xv) sue and be sued;

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

19 (xvii) request and accept the assistance of any state agency, includ-  
20 ing but not limited to, the racing and wagering board, the division of  
21 the lottery office of parks, recreation and historic preservation, the  
22 department of environmental conservation and the department of taxation  
23 and finance, in obtaining information related to the franchised corpo-  
24 ration's compliance with the terms of the franchise agreement; [and]

25 (xviii) ACTING ON BEHALF OF NEW YORK CITY OFF-TRACK BETTING CORPO-  
26 RATION, RETAIN A RESTRUCTURING FIRM TO PREPARE A RESTRUCTURING AND BUSI-  
27 NESS PLAN FOR NEW YORK CITY OFF-TRACK BETTING CORPORATION. SUCH PLAN  
28 SHALL BE REVIEWED BY THE FRANCHISE OVERSIGHT BOARD TOGETHER WITH NEW  
29 YORK CITY OFF-TRACK BETTING CORPORATION AND UPON ACCEPTANCE BY THE FRAN-  
30 CHISE OVERSIGHT BOARD SHALL BE IMPLEMENTED BY NEW YORK CITY OFF-TRACK  
31 BETTING CORPORATION; AND

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

34 b. Notwithstanding any other provision of this article, the franchised  
35 corporation shall be entitled to make capital expenditures, except those  
36 capital expenditures for the Saratoga Racecourse that may, on the advice  
37 of the New York state historic preservation office, adversely impact any  
38 historic structure that is included in or is eligible for inclusion in  
39 the national or state register of historic places, to the physical plant  
40 of the racetracks, grandstand, backstretch, parking and public areas set  
41 forth in the New York Racing Association's capital expenditure plan  
42 ("capital plan") filed with the racing and wagering board in two thou-  
43 sand seven. Any material modification to the capital plan as determined  
44 by the franchise oversight board and each future capital investment plan  
45 for the tracks, grandstand, backstretch, parking and public areas of the  
46 racetracks operated by the franchised corporation involving the expendi-  
47 ture of more than five million dollars in the aggregate shall require  
48 the prior approval of the franchise oversight board. Within five years  
49 from the date of commencement of the video lottery terminal operations  
50 at Aqueduct, and every five years thereafter, the franchised corporation  
51 shall submit to the oversight board a capital plan for the five year  
52 period commencing on January first of the following year. Such plans  
53 shall contain both the intended object of expenditure and the proposed  
54 sources of financing. The franchised corporation shall report to the  
55 franchise oversight board within ninety days following the end of each  
56 fiscal year as to the amount spent pursuant to the capital plan.

1 S 2. This act shall take effect immediately; provided, however, that  
2 the amendments to section 212 of the racing, pari-mutuel wagering and  
3 breeding law made by section one of this act shall take effect upon the  
4 confirmation of the New York Racing Association plan of reorganization  
5 pursuant to section 16 of chapter 18 of the laws of 2008, as amended;  
6 provided further, that the amendments to section 212 of the racing,  
7 pari-mutuel wagering and breeding law made by section one of this act  
8 shall be deemed repealed as provided by chapter 354 of the laws of 2005,  
9 as amended.