

# STATE OF NEW YORK

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1900

2017-2018 Regular Sessions

## IN ASSEMBLY

January 13, 2017

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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 the New York city off-track betting corporation  
14 or any individual registered with the New York commission on public  
15 integrity shall be appointed as members to the board nor shall any  
16 member of the board have any direct or indirect interest in any  
17 racehorse, thoroughbred racing, off-track betting or pari-mutuel wager-  
18 ing business, video lottery terminal facility or any development at any  
19 racing facility.

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 off-  
9 track betting corporation's revenue and expenditure [~~policies~~] policies  
10 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 off-  
14 track betting corporation's compliance with the laws, rules and regu-  
15 lations 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. The New York city off-track betting corporation shall  
42 provide a report from its totalizator provider of all wagering accounts  
43 including individual customer account balances. The franchise oversight  
44 board shall enter into a management services agreement on behalf of the  
45 New York city off-track betting corporation with the franchise corpo-  
46 ration for the operation of the account deposit wagering for telephone  
47 and internet 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 the New York city off-track betting corporation;

51 (vii) the New York city off-track betting corporation and the fran-  
52 chised corporation shall jointly negotiate all simulcasting contracts  
53 with out of state entities and the franchise oversight board shall  
54 review and provide any recommendations on all simulcasting contracts  
55 (buy and sell) that are also subject to prior approval of the racing and  
56 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, and to conduct all operations and pari-mutuel wagering as authorized pursuant to this chapter for the New York city off-track betting corporation in the event that the system of off-track pari-mutuel betting in the city of New York operated by the New York city off-track betting corporation has either been terminated or relinquished by such corporation, or such corporation declines to continue to operate unless such declination is the result of strikes, acts of God or other unavoidable causes not under control of such corporation until such time as otherwise provided for in statute;

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

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

(xiii) require the franchised corporation and the New York city off-track betting corporation to make all records and documents pertaining to its financial practices, and other documents and records necessary to carry out its duties, available to the franchise oversight board 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 § 2. This act shall take effect immediately; provided, however, the  
41 amendments to section 212 of the racing, pari-mutuel wagering and breed-  
42 ing law made by section one of this act shall be deemed repealed as  
43 provided by chapter 354 of the laws of 2005, as amended.