

STATE OF NEW YORK

3848

2019-2020 Regular Sessions

IN ASSEMBLY

January 31, 2019

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, subparagraphs (ii), (iii),
4 (vii) and (xvii) as amended, subparagraphs (xviii) and (xix) as added
5 and subparagraph (xx) of paragraph a of subdivision 8 as renumbered by
6 section 2 of part NN of chapter 59 of the laws of 2017, and subpara-
7 graphs (viii) and (xi) of paragraph a of subdivision 8 as amended by
8 chapter 140 of the laws of 2008, are amended to read as follows:

9 3. Such members, except as otherwise provided by law, may engage in
10 private or public employment, or in a profession or business. The board,
11 its members, officers and employees shall be subject to the provisions
12 of sections seventy-three and seventy-four of the public officers law.
13 No former trustee or officer of a non-profit racing association known as
14 The New York Racing Association, Inc. or its predecessor, no current
15 director or officer of a franchised corporation, no former or current
16 director or officer of the New York city off-track betting corporation
17 or any individual registered with the New York commission on public
18 integrity shall be appointed as members to the board nor shall any
19 member of the board have any direct or indirect interest in any
20 racehorse, thoroughbred racing, off-track betting or pari-mutuel wager-
21 ing business, video lottery terminal facility or any development at any
22 racing facility.

23 8. a. The duties and responsibilities of the franchise oversight board
24 shall include, but not be limited to, the following:

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

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1 (i) represent the interests of the state in all real estate develop-
2 ment proposed for Aqueduct racetrack or real estate development at
3 Belmont Park racetrack. Any such real estate development shall only be
4 undertaken pursuant to a competitive process approved by the board,
5 after consultation with the applicable local advisory boards and consid-
6 eration of local zoning and planning regulation, and in a manner that
7 will not adversely impact any historic structure that is included in or
8 eligible for inclusion in the National or the State Register of Historic
9 Places, be consistent with any plan approved for such community, and
10 shall be subject to unanimous approval of the franchise oversight board
11 and all statutory and regulatory requirements; provided, however, that,
12 subject to approval of the franchise oversight board and subject to all
13 statutory and regulatory requirements, the franchised corporation shall
14 have full powers and rights to develop, redevelop, refurbish, renovate
15 or make such other improvements, capital expenditures or otherwise, to
16 the racetracks and the fixtures and improvements thereon consistent with
17 projects specifically identified in the franchised corporation's
18 approved track facility improvement plan.

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

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

51 (iii) oversee, monitor and review all significant transactions and
52 operations of the franchised corporation and the New York city off-track
53 betting corporation authorized by this chapter; provided, however, that
54 nothing in this section shall be deemed to reduce, diminish or impede
55 the authority of the commission to, pursuant to article one of this
56 chapter, determine and enforce compliance by the franchised corporation

1 or the New York city off-track betting corporation with terms of racing
2 laws and regulations. Such oversight shall include, but not be limited
3 to:

4 (A) review and make recommendations concerning the annual operating
5 budgets of such franchised corporation and the New York city off-track
6 betting corporation;

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

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

11 (D) review such franchised corporation's and the New York city off-
12 track betting corporation's revenue and expenditure policies which shall
13 include collective bargaining agreements management and employee compen-
14 sation plans, vendor contracts and capital improvement plans;

15 (E) review such franchise corporation's and the New York city off-
16 track betting corporation's compliance with the laws, rules and regu-
17 lations applicable to its activities;

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

20 (G) receive, review, approve or disapprove capital expense plans
21 submitted annually by the franchised corporation and the New York city
22 off-track betting corporation.

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

34 (v) facilitate discussions and voluntary agreements between the fran-
35 chised corporation and off-track betting corporations to streamline
36 operations, decrease operating costs and maximize opportunities pertain-
37 ing to costs and revenues, and encourage an exchange of views and expe-
38 riences from the franchised corporation and the off-track betting corpo-
39 rations to improve the racing product in New York and to realize
40 efficiencies, except the New York city off-track betting corporation
41 shall transfer all wagering accounts, including individual account
42 balances held for telephone and internet wagering to the franchise over-
43 sight board. The New York city off-track betting corporation shall
44 provide a report from its totalizator provider of all wagering accounts
45 including individual customer account balances. The franchise oversight
46 board shall enter into a management services agreement on behalf of the
47 New York city off-track betting corporation with the franchise corpo-
48 ration for the operation of the account deposit wagering for telephone
49 and internet wagering;

50 (vi) review and approve all purchasing policies pursuant to paragraph
51 (a) of subdivision six of section two hundred eight of this article and
52 used by the New York city off-track betting corporation;

53 (vii) the New York city off-track betting corporation and the fran-
54 chised corporation shall jointly negotiate all simulcasting contracts
55 with out of state entities and the franchise oversight board shall
56 review and provide any recommendations on all simulcasting contracts

1 (buy and sell) that are also subject to prior approval of the commis-
2 sion;

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

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

21 (x) conduct running races or steeplechases at racing facilities and
22 conduct pari-mutuel betting on the outcome of the same when necessary to
23 assure the continuation of the racing and pari-mutuel betting activities
24 at such racing facilities (A) in the event that the racing and/or pari-
25 mutuel betting franchises of the franchised corporation authorized by
26 this chapter then holding such franchises have either been terminated in
27 the manner provided by law or have been relinquished by such corpo-
28 ration, or such corporation declines to continue conducting race meet-
29 ings and pari-mutuel betting on the outcome of the same as required by
30 such franchises unless such declination is the result of strikes, acts
31 of God, or other unavoidable causes not under the control of such corpo-
32 ration, or the corporate existence of such corporation has been
33 dissolved in the manner provided by law prior to the end of the term of
34 any such franchise and (B) until such time as a new franchise is
35 granted, and to conduct all operations and pari-mutuel wagering as
36 authorized pursuant to this chapter for the New York city off-track
37 betting corporation in the event that the system of off-track pari-mutu-
38 el betting in the city of New York operated by the New York city off-
39 track betting corporation has either been terminated or relinquished by
40 such corporation, or such corporation declines to continue to operate
41 unless such declination is the result of strikes, acts of God or other
42 unavoidable causes not under control of such corporation until such time
43 as otherwise provided for in statute;

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

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

54 (xiii) require the franchised corporation and the New York city off-
55 track betting corporation to make all records and documents pertaining
56 to its financial practices, and other documents and records necessary to

1 carry out its duties, available to the franchise oversight board within
2 thirty days of a written request;

3 (xiv) examine or cause to be examined by a third party, the books,
4 papers, records and accounts of the franchised corporation and the New
5 York city off-track betting corporation;

6 (xv) sue and be sued;

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

10 (xvii) request and accept the assistance of any state agency, includ-
11 ing but not limited to, the commission, office of parks, recreation and
12 historic preservation, the department of environmental conservation, the
13 office of general services and the department of taxation and finance,
14 in obtaining information related to the franchised corporation's compli-
15 ance with the terms of the franchise agreement; and

16 (xviii) when the franchise oversight board determines the financial
17 position of the franchised corporation has deviated materially from the
18 franchised corporation's financial plan, or other such related documents
19 provided to the franchise oversight board, and such deviation is not
20 mitigated by the franchised corporation within one hundred eighty days
21 of the franchise oversight board providing notice of such determination
22 to the franchised corporation, or when the implementation of such plan
23 would, in the opinion of the franchise oversight board, pose a signif-
24 icant risk to the liquidity of the franchised corporation, in any order
25 or combination:

26 (A) hire, at the expense of the franchised corporation, an independent
27 financial adviser to evaluate the financial position of the franchised
28 corporation and report on such to the franchise oversight board; and

29 (B) require the franchised corporation to submit for the franchise
30 oversight board's approval a corrective action plan addressing any
31 concerns identified as risks by the franchise oversight board.

32 (xix) when the franchise oversight board finds the franchised corpo-
33 ration has experienced two consecutive years of material losses due to
34 circumstances within the control of the franchised corporation, as
35 determined by the franchise oversight board, and when the franchised
36 corporation has failed to address concerns identified by the franchise
37 oversight board pursuant to subparagraph (xviii) of this paragraph, the
38 board may by unanimous vote request the director of the budget to
39 impound and escrow racing support payments accruing to the benefit of
40 the franchised corporation pursuant to paragraphs three and four of
41 subdivision f of section sixteen hundred twelve of the tax law. The
42 director of the budget shall release such impounded and escrowed racing
43 support payments upon notice from the franchise oversight board that the
44 franchised corporation has achieved the goals of a new corrective action
45 plan approved by the board.

46 The director of the budget shall, upon warrant of the franchise over-
47 sight board, approve the use of withheld racing support payments neces-
48 sary to satisfy financial instruments used to fund board-approved capi-
49 tal investments, as approved by the franchise oversight board.

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

52 b. Notwithstanding any other provision of this article, the franchised
53 corporation shall be entitled to make capital expenditures, except those
54 capital expenditures for the Saratoga Racecourse that may, on the advice
55 of the New York state historic preservation office, adversely impact any
56 historic structure that is included in or is eligible for inclusion in

1 the national or state register of historic places, to the physical plant
2 of the racetracks, grandstand, backstretch, parking and public areas set
3 forth in the New York Racing Association's capital expenditure plan
4 ("capital plan") filed with the racing and wagering board in two thou-
5 sand seven. Any material modification to the capital plan as determined
6 by the franchise oversight board and each future capital investment plan
7 for the tracks, grandstand, backstretch, parking and public areas of the
8 racetracks operated by the franchised corporation involving the expendi-
9 ture of more than five million dollars in the aggregate shall require
10 the prior approval of the franchise oversight board. Within five years
11 from the date of commencement of the video lottery terminal operations
12 at Aqueduct, and every five years thereafter, the franchised corporation
13 shall submit to the oversight board a capital plan for the five year
14 period commencing on January first of the following year. Such plans
15 shall contain both the intended object of expenditure and the proposed
16 sources of financing. The franchised corporation shall report to the
17 franchise oversight board within ninety days following the end of each
18 fiscal year as to the amount spent pursuant to the capital plan.

19 § 2. This act shall take effect immediately; provided, however, the
20 amendments to section 212 of the racing, pari-mutuel wagering and breed-
21 ing law made by section one of this act shall be deemed repealed as
22 provided by chapter 354 of the laws of 2005, as amended.