

# STATE OF NEW YORK

3619

2023-2024 Regular Sessions

## IN ASSEMBLY

February 3, 2023

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, subparagraph  
7 (iv) of paragraph a of subdivision 8 as amended by chapter 243 of the  
8 laws of 2020, subparagraphs (viii) and (xi) of paragraph a of subdivi-  
9 sion 8 as amended by chapter 140 of the laws of 2008 and paragraph b of  
10 subdivision 8 as amended by chapter 367 of the laws of 2021, are amended  
11 to read as follows:

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

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

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

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

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

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

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

1 the authority of the commission to, pursuant to article one of this  
2 chapter, determine and enforce compliance by the franchised corporation  
3 or the New York city off-track betting corporation with terms of racing  
4 laws and regulations. Such oversight shall include, but not be limited  
5 to:

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

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

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

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

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

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

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

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

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

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

55 (vii) the New York city off-track betting corporation and the fran-  
56 chised corporation shall jointly negotiate all simulcasting contracts

1 with out of state entities and the franchise oversight board shall  
2 review and provide any recommendations on all simulcasting contracts  
3 (buy and sell) that are also subject to prior approval of the commis-  
4 sion;

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

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

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

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

50 (xii) report annually to the governor and the legislature, beginning  
51 no later than December thirty-first, two thousand eight, stating its  
52 findings and recommendations to implement policy and legislative changes  
53 necessary to encourage the continuation of high quality thoroughbred  
54 racing in New York state and to protect the legitimate interests of the  
55 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;

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

(xv) sue and be sued;

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

(xvii) request and accept the assistance of any state agency, including but not limited to, the commission, office of parks, recreation and historic preservation, the department of environmental conservation, the office of general services and the department of taxation and finance, in obtaining information related to the franchised corporation's compliance with the terms of the franchise agreement; and

(xviii) when the franchise oversight board determines the financial position of the franchised corporation has deviated materially from the franchised corporation's financial plan, or other such related documents provided to the franchise oversight board, and such deviation is not mitigated by the franchised corporation within one hundred eighty days of the franchise oversight board providing notice of such determination to the franchised corporation, or when the implementation of such plan would, in the opinion of the franchise oversight board, pose a significant risk to the liquidity of the franchised corporation, in any order or combination:

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

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

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

The director of the budget shall, upon warrant of the franchise oversight board, approve the use of withheld racing support payments necessary to satisfy financial instruments used to fund board-approved capital investments, as approved by the franchise oversight board.

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

b. Notwithstanding any other provision of this article, the franchised corporation shall be entitled to make capital expenditures, except those

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

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