§ 1009. Simulcast theaters. 1. The commission may authorize and approve eight licenses, except that any approval of a license for a franchised corporation shall not decrease the number of licenses available, as of July first, nineteen hundred ninety to any other eligible operator under subdivision two of this section, for the operation of simulcast theaters as defined in section one thousand one of this article. One such license shall only be approved for the regional off-track betting corporation defined by paragraph b of subdivision one of section five hundred nineteen of this chapter.

2. Such a simulcast theater, pursuant to a license issued in accordance with the provisions of this section and section one thousand three of this article may be owned or leased, and operated, (a) by one or more racing associations or corporations; (b) by the regional off-track betting corporation of the region where such simulcast theater facility is to be located; (c) jointly by one or more racing associations or corporations and the regional off-track betting corporation of the region where such simulcast theater facility is to be located; or (d) by a franchised corporation; provided, however, that for the purposes of paragraph (a) of subdivision two-a of this section, an entity authorized by paragraph (b) or (c) of this subdivision to own, lease or operate a simulcast theater may, pursuant to a competitive bidding procedure carried out in accordance with rules and regulations issued by the commission, select another person, firm or corporation to operate or jointly own or lease such facility and enter into a written agreement with such person, firm or corporation provided that such party shall be subject to the licensing requirements of the commission.

2-a. Notwithstanding the provisions of subdivision one of this section, the commission may authorize one or more licenses, as provided in paragraphs (b) and (c) of subdivision two of this section, to enter into a written agreement with another person, firm or corporation to jointly operate or lease such facility for the operation of simulcast at entertainment theaters as special demonstration projects for purposes of stimulating economic development, employment opportunities and state and local revenues. Such demonstration projects shall be licensed in accordance with all applicable laws, rules and regulations of this

article.

(a) In Sullivan, Greene and Ulster counties the commission shall determine the number of such projects to be located in privately owned hotels in such counties for the exclusive use of the hotel guests.

(b) The commission may additionally authorize one special demonstration project within the city of New York.

(c) The commission may authorize a special demonstration project to be located in any facility licensed pursuant to article thirteen of this chapter in Schenectady county. Notwithstanding the provisions of paragraph a of subdivision five of this section, an admission fee shall not be required for a demonstration project authorized in this paragraph. On any day when a regional harness track conducts a live race meeting, a demonstration facility within that region shall predominantly display the live video of such regional harness track.

The regional off-track betting corporations operating such demonstration facilities within New York city may elect to apply the provisions of section five hundred thirty-two of this chapter in lieu of any admission charges.

3. Any application for such license shall be subject to those conditions set forth in section one thousand three and shall also include:

a. A written agreement between the sending tracks and the applicant;

b. Letters of consent to the application from any regional track that is not a party to the operation of the proposed theater unless such track is located more than forty miles from the proposed simulcast theater; and a copy of any agreement between the applicant and such corporation pursuant to which such consent has been given, subject to the provision of subdivision two of section one thousand seven of this article. Notwithstanding the foregoing, the Nassau region may apply to locate one simulcast theater within Nassau County without a letter of consent from the operator of the regional track provided the proposed simulcast theater is not within fifteen miles of the closest border of any racing facility operated by a franchised corporation.

c. Except for an application from a franchised corporation to operate within the Suffolk region, Nassau region, New York City region, or Westchester county in the absence of enabling legislation, a letter of consent to the application from the regional off-track betting corporation of the region where such simulcast theater facility is to be located if such corporation is not a party to the operation of the proposed theater.

d. If such theater is to be jointly operated by one or more racing associations or corporations or by one or more racing associations or corporations and the regional off-track betting corporation of the region where such simulcast theater is to be located or if the costs, revenues and/or net profits from the operation of such facility are to be allocated among more than one such party, a copy of a written agreement among such corporations or associations as to the rights and responsibilities of each such party and the provisions pursuant to which costs, revenues and/or net profits are to be allocated.

e. A copy of a resolution adopted by the governing body of the city, town or village in which the proposed simulcast theater is to be located, approving the application and requesting that the application for the proposed simulcasting theater be approved. In a city of one million or more, approval of the mayor shall also be required. Approval of the governing body of the county and the county executive within which such municipality is located shall also be required. If the proposed facility is to be located wholly within a village, approval by the governing body of the town or towns within which such village is located shall also be required.

f. An application from a franchised corporation shall not be considered by a city of one million or more, earlier than eighteen months after this provision shall have become law.

4. Notwithstanding any inconsistent provisions of this chapter, the sums retained by any associations or corporations from the total deposits in pools wagered on simulcast racing events at a simulcast

theater as provided in subdivision one of this section shall be equal to the rates of retained percentage applicable to the sending track.

a. Of the sums retained by the operator as provided in this subdivision, the pari-mutuel tax shall be levied at the rate set forth in subdivision one of section one hundred thirty-six of this chapter.

b. Of the sums retained by the operator as provided in this subdivision, an amount equal to one percent of daily pools derived from bets on simulcasts of harness races shall be paid to the agriculture and New York state horse breeding development fund, and an amount equal to one-half of one percent of daily pools derived from bets on simulcasts of running races shall be paid to the New York state thoroughbred breeding and development fund.

c. The payment of the state tax imposed by this section shall be made to the commissioner of taxation and finance at such regular intervals as the commissioner of taxation and finance may require, and shall be accompanied by a report, under oath, that sets forth such information as the commissioner of taxation and finance may require. A penalty of five percent and interest at the rate of one percent per month from the date the report is required to be filed to the date of payment of the tax shall be payable in case any tax imposed by this section is not paid when due. If the commissioner of taxation and finance determines that any moneys received under this paragraph were paid in error, the commissioner may cause the same to be refunded without interest out of any moneys collected thereunder, provided an application therefor is filed with the commissioner within one year from the time the erroneous payment was made. Such taxes, interest and penalties when collected, after the deduction of refunds of taxes erroneously paid, shall be paid by the commissioner of taxation and finance into the general fund of the state treasury.

d. The operator shall pay to the commission as a regulatory fee, which fee is hereby levied, six-tenths of one percent of the total daily pools.

4-a. Notwithstanding any inconsistent provision of this chapter, of the sums received by a sending track, a portion shall be distributed to purses in accordance with a written agreement between the racing association or corporation operating such track and the horsemen's organization representing owners and trainers at such track, as determined by the commission. In the absence of such an agreement, fifty percent of the sums received by a sending track shall be distributed to purses.

5. a. An admission fee to simulcast theaters shall be charged and the amount of such admission fee shall be subject to the approval of the commission.

c. Any county (except a county wholly within a city) or city, or both, in which a simulcast theater is located, is hereby authorized and empowered to adopt and amend local laws imposing a tax on such admission fee at a rate not to exceed fifteen percent of the admission fee. The provisions of article eight of this chapter relating to the administration and collection of the taxes authorized to be imposed by such article (including the provisions relating to judicial review) shall apply to a tax imposed pursuant to the authority of this paragraph, in the same manner and with the same force and effect as if the language of such provisions had been incorporated in full into this paragraph and had expressly referred to a tax authorized to be imposed pursuant to this paragraph, except to the extent that any such provision is either inconsistent with a provision of this paragraph or is not relevant to this paragraph.

6. The size, location and operation of a simulcast theater shall be subject to local zoning ordinances and the approval of the commission.

7. The sale of food and beverages shall be subject to the applicable state and local alcoholic beverage control laws and sales taxes.

8. All wagers resulting from the simulcast of racing events pursuant to this section shall be combined with wagers at the sending track so as to produce common pari-mutuel betting pools for the calculation of odds

and the determination of payouts from such pool, which payout shall be the same for all winning tickets, irrespective of whether a wager is placed at a sending track or a simulcast theater.

9. Each license to operate a simulcast theater is subject to suspension as provided in section one thousand four of this article.

10. The operator may contract with the city, town or village in which the simulcast theater is located to pay to such municipality a sum not to exceed one percent of pools generated from all wagers at such theater in lieu of any other local tax.

11. The provisions of section one thousand thirteen of this chapter shall apply to any disputes with regard to the requirements of subdivision three of this section provided, however, that binding arbitration shall not be a remedy if the proposed simulcast theater is less than forty miles from a regional track.