*** § 212. Franchise oversight board.** 1. There is hereby created a franchise oversight board which shall consist of five members. Of the five members, three shall be appointed by the governor, one shall be appointed by the temporary president of the senate and one shall be appointed by the speaker of the assembly. Of the initially appointed board, one member appointed by the governor shall serve for a one year term, one member appointed by the governor shall serve for a two year term, and one member appointed by the governor shall serve for a three year term. The members appointed by the temporary president of the senate and the speaker of the assembly shall serve for a four year term. All successors shall serve for a term of four years. All members shall continue in office until their successors have been appointed and qualified. The governor shall designate the chair from among the sitting members who shall serve as such at the pleasure of the governor.

2. The members shall serve without compensation for their services as members, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties. The state shall save harmless and indemnify members of the board and any officer, employee, agent or other person or persons pursuant to section seventeen of the public officers law against any claim, demand, suit or judgment arising by reason of any act or omission to act by such member, officer, employee, agent or person occurring in the discharge of his or her duties and within the scope of his or her service on behalf of the franchise oversight board.

3. Such members, except as otherwise provided by law, may engage in private or public employment, or in a profession or business. The board, its members, officers and employees shall be subject to the provisions of sections seventy-three and seventy-four of the public officers law. No former trustee or officer of a non-profit racing association known as The New York Racing Association, Inc. or its predecessor, no current director or officer of a franchised corporation or any individual registered with the New York commission on public integrity shall be appointed as members to the board nor shall any member of the board have any direct or indirect interest in any racehorse, thoroughbred racing or pari-mutuel wagering business, video lottery terminal facility or any

development at any racing facility.

4. Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state or of any civil division thereof shall be deemed to have forfeited or shall forfeit their office or employment by reason of their acceptance of membership on the board created by this section.

5. The affirmative vote of three members shall be necessary for the transaction of any business or the exercise of any power or function of the franchise oversight board except as otherwise provided here in this article.

6. Within thirty days following the appointment of the members of the franchise oversight board, the members of the oversight board shall establish a local advisory board for each racing operation comprising the following members to meet at least twice yearly:

a. The local advisory board for the Saratoga racetrack facility shall comprise fifteen members and include five designees from each of the following: the board of supervisors, the mayor of the city of Saratoga and the franchised corporation.

b. (i) The local advisory board for the Aqueduct racetrack facility shall comprise of fifteen members, nine of whom shall be designees of New York City Queens Community Board Ten, three designees of the franchised corporation and three designees of the video lottery gaming operator. At substantial completion of the Belmont project, as determined by the gaming commission, this board shall be dissolved.

(ii) (A) Notwithstanding subparagraph (i) of this paragraph, within thirty days after the substantial completion of the Belmont project, as determined by the gaming commission, an Aqueduct Redevelopment Community Advisory Board shall be formed to assess all bids made in response to the request for proposals on developing the Aqueduct property and is required to hold a public hearing and adopt and submit a written recommendation on each bid to the franchise oversight board within sixty days of receiving such bid. The adoption of such recommendation shall be

by a public vote which results in approval by a majority of the appointed members present during the presence of a quorum. The board recommendation shall be in writing via a form provided by the franchise oversight board and shall include a description of the application, the time and place of the public hearing on the application, the time and place of the meeting at which the recommendation was adopted and the vote by which the recommendation was adopted. The community board may include in its submission the reasons for the vote and any conditions attached to its vote.

(B) The Aqueduct Redevelopment Community Advisory Board shall consist of six members, one to be appointed by the governor, one to be appointed by the mayor of the city of New York, one to be appointed by the senator representing the senate district where the Aqueduct property is located, one to be appointed by the assemblymember representing the assembly district where the Aqueduct property is located, one to be appointed by the city councilmember representing the district where the Aqueduct property is located, and one to be appointed by the borough president where the Aqueduct property is located.

c. The local advisory board for the Belmont racetrack facility shall comprise fifteen members, to be appointed as follows:

(i) five members from Nassau county to be appointed by the Nassau county executive. Four of such members must reside in the hamlet of Elmont;

(ii) two members from the town of Hempstead to be appointed by the supervisor of the town of Hempstead. Both members must reside in the hamlet of Elmont;

(iii) two members to be appointed by the mayor of the village of Floral Park, subject to village board approval;

(iv) one member to be appointed by the mayor of the village of South Floral Park, subject to village board approval;

(v) three members to be appointed by the New York Racing Association, Inc.; and

(vi) two members to be appointed by the New York City Queens Community Board 13.

The members of the local advisory boards shall serve for a period of

two years. In the event of a vacancy occurring during a term of appointment by reason of death, resignation, disqualification or otherwise such vacancy shall be filled for the unexpired term in the same manner as the original appointment. The members of the local advisory board shall serve without compensation, except that each member shall be allowed the necessary and actual expenses incurred in the performance of his or her duties pursuant to this section.

7. The Saratoga local advisory boards in cooperation with the state historic preservation office and the franchise oversight board shall compile a complete, updated historic resources inventory identifying all buildings and landscape features and their current condition at the Saratoga Racecourse. The local advisory board may, at its discretion, in the performance of its responsibilities, seek advice from groups or individuals with relevant expertise.

All buildings and landscaped features of historic, architectural or cultural significance at the Saratoga Racecourse may be advanced by the local advisory board for consideration for inclusion in the National and State Registers of Historic Places and in local historic districts.

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

(i) represent the interests of the state in all real estate development proposed for Aqueduct racetrack or real estate development at Belmont Park racetrack. Any such real estate development shall only be undertaken pursuant to a competitive process approved by the board, after consultation with the applicable local advisory boards and consideration of local zoning and planning regulation, and in a manner that will not adversely impact any historic structure that is included in or eligible for inclusion in the National or the State Register of Historic Places, be consistent with any plan approved for such community, and shall be subject to unanimous approval of the franchise oversight board and all statutory and regulatory requirements; provided, however, that, subject to approval of the franchise oversight board and subject to all statutory and regulatory requirements, the franchised corporation shall have full powers and rights to develop, redevelop,

refurbish, renovate or make such other improvements, capital expenditures or otherwise, to the racetracks and the fixtures and improvements thereon consistent with projects specifically identified in the franchised corporation's approved track facility improvement plan.

The franchise oversight board shall be guided by the goals of ensuring the continuation of high quality thoroughbred racing at the thoroughbred racing facilities located within the state, raising revenue for or in aid or support of education in this state from video lottery gaming at facilities of the state racing franchise, and maximizing revenue for governments from pari-mutuel wagering on racing at facilities of the state racing franchise. In consideration of capital expenditure approval, the board shall ensure adequate funds are dedicated for maintenance and repair of existing structures at Saratoga racetrack and Belmont Park racetrack and for the improvement of onsite backstretch personnel housing and quality of life.

(ii) monitor and enforce compliance with definitive documents that comprise the franchise agreement between the franchised corporation and the state of New York governing the franchised corporation's operation of thoroughbred racing and pari-mutuel wagering at the racetracks. The franchise agreement shall contain objective performance standards that shall allow contract review in a manner consistent with this chapter. The franchise oversight board shall notify the franchised corporation authorized by this chapter in writing of any material breach of the performance standards or repeated non-material breaches which the franchise oversight board may determine collectively constitute a material breach of the performance standards. Prior to taking any action against such franchised corporation, the franchise oversight board shall provide the franchised corporation with the reasonable opportunity to cure any material breach of the performance standards or repeated non-material breaches which the franchise oversight board may determine collectively constitute a material breach of the performance standards. Upon a written finding of a material breach of the performance standards or repeated non-material breaches which the franchise oversight board may determine collectively constitute a material breach of the performance standards, the franchise oversight board may recommend that the franchise agreement be terminated. The franchise oversight board

shall refer such recommendation to the commission for a hearing conducted pursuant to section two hundred forty-five of this article for a determination of whether to terminate the franchise agreement with the franchised corporation;

(iii) oversee, monitor and review all significant transactions and operations of the franchised corporation authorized by this chapter; provided, however, that nothing in this section shall be deemed to reduce, diminish or impede the authority of the commission to, pursuant to article one of this chapter, determine and enforce compliance by the franchised corporation with terms of racing laws and regulations. Such oversight shall include, but not be limited to:

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

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

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

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

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

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

(G) receive, review, approve or disapprove capital expense plans 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 the ability of such vendor 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 commission;

(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 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 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;

(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 and the department of taxation and finance, in obtaining information related to the franchised corporation's compliance with the terms of the franchise agreement;

(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

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

* NB Repealed 30 days following the assumption of the franchise by a successor entity.