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# **GOVERNOR PATAKI'S BUDGET AND HORSE RACING**

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## Governor Pataki's Budget and Horse Racing

Governor Pataki's budget proposal for horse racing in 2005 contains one of the more ambitious horse racing initiatives to be found in any executive budget. But while its placement in the budget is new, much of its substance is not new. It contains the Governor's unsuccessful attempt in last year's budget to add eight free-standing VLT parlors to New York State. It also contains much of the Governor's "Gaming Reform Act of 2004" (S. 7364) which passed the Republican controlled State Senate last year but did not clear the State Assembly. The Democrats who are in the majority in the Assembly introduced their own "Gaming Reform Act of 2004" (A.11791). This bill also did not get out of committee.

The 2004 gaming reform bills were basically similar. They abolished the Racing and Wagering Board and replaced it with a five member State Gaming Commission. The Thoroughbred Racing Capital Investment Fund was terminated and placed within the new Gaming Commission. Any successor to the NYRA franchise would be bound for a time to NYRA's contract for video lottery terminals. The most significant difference was that the Assembly bill contained more appointments for the legislature by giving each of the legislative leaders a selection on the new gaming commission, retaining the ad hoc committee to review the NYRA franchise (under which the leaders had three appointees) and retention of the State breeding funds. The Governor's bill eliminated the breeding funds and created a Non-Profit Racing Oversight Board to oversee NYRA on which the legislative leaders each had one appointment. A detailed analysis showing the difference between these two proposals can be found at [The Two Gaming Reform Act of 2004](#).

The purpose of this paper is to point out the differences between Governor's 2004 bill and the 2005 budget proposals contained in A. 1923. It should be pointed out that most of the changes in the Governor's proposal are minor. Again, there is a new gaming commission, an oversight board for NYRA, the elimination of the breeding funds, the elimination of the Capital Investment Fund, and a provision for VLT's to continue in use at Aqueduct should NYRA lose its franchise.

Here's what's different in 2005 in the bill:

- 1.) There are more restrictions on the outside activities of gaming commission members under new § 102.2 of the Racing Law. These restrictions are similar to those contained in current §101.2 of the Racing Law.
- 2.) The gaming commission chairperson is formally given greater control over the management of the agency. Under the 2004 bill, the commission itself made certain executive decision under §103. These decisions are now to be made by the chairperson.

- 3.) Under the 2004 bill, no officer or employee of the gaming commission could wager on a race or gaming conducted in the state. Under the 2005 bill, they cannot “wager on gaming or horse racing activity subject to the supervision of the commission.” §107.4 The difficulty here is that it is difficult to determine what activity is, in fact, “subject to the jurisdiction of the commission.” If you posit a gaming commission employee in Mexico placing a wager with a legal Mexican bookie on a race run in Dubai that is also being simulcast to licensees in New York, is that horse racing activity- because of the simulcast - subject to the gaming commission’s supervision? There’s a need for an unambiguous rule here which this proposal does not supply.
- 4.) Under current law and the 2004 proposal, a licensed entity was not to take a wager from a person actually or apparently under age 18. Under the new proposal, you simply can’t take a bet from someone under 18. §108.2
- 5.) The gaming commission will no longer have power to set minimum or maximum charges for admission to racetracks.
- 6.) The compulsive gambling program is significantly increased and strengthened in the 2005 proposal. §111.
- 7.) The powers of the Non-Profit Racing Oversight Board are increased in the 2005 proposal. The form of NYRA’s plan of operation is to be set by the oversight board. In the 2004 proposal, it was set pursuant to an agreement between the oversight board and NYRA. §208.10 The oversight board is to set the annual fee to be paid by the winner of the NYRA franchise and is also to set a onetime franchise fee payment for winning the right to the franchise. There is no dollar amount set for the onetime franchise fee award. § 208.11(g). Under the 2004 bill, the legislature was to establish the annual fee, and there was no onetime fee to be paid for winning the franchise.
- 8.) The Division of the Lottery is to license VLT operations at racetracks. Under the 2004 legislation, the gaming commission licensed the racetracks. §1617-a, Tax Law.
- 9.) The 2005 budget proposes a technical shift in the way that the racing industry would receive revenue from VLT’s. Under current law, the

racing industry receives a statutory share. Instead, that share will now go the State Lottery Division which will then contract with the racetracks for a vendor fee. The vendor fee will then be shared with horsemen and the breeding funds. The percentages that will go to the racing industry are not changed from current law. The racing industry would receive a maximum of 29% of VLT revenues. Since under the Appellate Division decision in Dalton v. Pataki, the State's direct vendor fee to racetracks could not be shared with breeders and/or horsemen, this is an attempt to do indirectly what the Appellate Division said could not be done directly.

- 10.) The 2005 bill provides for eight stand alone VLT parlors to be known as video franchise gambling. Five can be in New York City but only in Brooklyn, Staten Island, and south of 59<sup>th</sup> Street in Manhattan. In other locations, video franchises are to be at least 15 miles from a racetrack with VLT's. Additionally, video franchises cannot be in Westchester, Rockland, and Putnam Counties, which should in theory provide a machine-free buffer zone protecting the VLT operation of Yonkers Raceway. The maximum amount of a vendor's fee would be 20% of video franchise revenues. These proposals mirror what the Governor proposed in his 2004 budget. See A. 9560 for the 2004 legislation.
- 11.) The 2005 bill increased the payment that NYRA has to make to the thoroughbred breeding fund. Previously it was .5% on regular, multiple, and exotic wagers. At NYRA, this rate will increase to .7% until December 31, 2007. §421.
- 12.) The regulatory fee for all wagers – which finances the Racing and Wagering Board - in New York is increased from .39% to .5%. This is a fairly significant hit on the OTB's in New York which have been in financial difficulty. It represents about a million dollar fiscal hit on New York City OTB. If NYRA's overall handle is \$500 million, then the fee increases for the regulatory fee and the breeding fund (in #11) would cost NYRA more than \$1.5 million. The OTB's are intensely political and by and large Republican in New York State. It will be interesting to see how the OTB's communicate their dislike of the increase in the regulatory fee while not directly criticizing the Governor.