

GOVERNMENT LAW CENTER OF ALBANY LAW SCHOOL  
**GOVERNMENT LAW ONLINE**

---

**EFFECTS OF A. 9000 S. 5923 NEW YORK'S 2005  
END OF SESSION RACING LAW**

**JUNE 2005**



80 New Scotland Avenue  
Albany, NY 12208  
[www.als.edu](http://www.als.edu)

© Copyright 2005 Albany Law School

GOVERNMENT LAW ONLINE publications are available at [www.governmentlaw.org](http://www.governmentlaw.org)

# **EFFECTS OF A. 9000 S. 5923 NEW YORK'S 2005 END OF SESSION RACING LAW**

**Bennett Liebman, Esq.  
Coordinator/Staff Attorney  
Racing and Gaming Law Program**

**JUNE 2005**

© Copyright 2005 Albany Law School

These materials are copyright by Albany Law School (ALS) on behalf of its Government Law Center or ALS licensors and may not be reproduced in whole or in part in or on any media or used for any purpose without the express, prior written permission of Albany Law School or the licensor. Neither Albany Law School, the Government Law Center or any licensor is engaged in providing legal advice by making these materials available and the materials should, therefore, not be taken as providing legal advice.

All readers or users of these materials are further advised that the statutes, regulations and case law discussed or referred to in these materials are subject to and can change at any time and that these materials may not, in any event, be applicable to a specific situation under consideration. The information provided in these materials is for informational purposes only and is not intended to be, nor should it be considered to be, a substitute for legal advice rendered by a competent licensed attorney or other qualified professional. If you have any questions regarding the application of any information provided in these materials to a particular situation, you should consult a qualified attorney or seek advice from the government entity or agency responsible for administering the law applicable to the particular situation in question.

**Effects of A. 9000 S. 5923**  
**New York's 2005 End of Session Racing Law**

This is a quick summary of the New York State racing legislation that appears headed for passage on Friday June 24.

1. The main effect of this bill is to legalize the VLT contract between MGM and NYRA at Aqueduct Racetrack. It has generally been conceded that this contract was not bid properly under the Racing Law. Section 213 of the Racing Law requires that all NYRA contracts for goods and services in excess of \$250,000 be “awarded only by a process of competitive bidding approved” by the Racing and Wagering Board. Thus, if the contract is not proper, NYRA could conceivably have been penalized by the Racing and Wagering Board, and/or the contract might have to be rebid.

Instead, the NYRA/MGM contract will be subject to approval only by the lottery division “in all respects including the procedures for procurement based upon the division’s determination that such contract or amendment optimizes quality, cost and efficiency.” In short , the NYRA/MGM contract is retroactively not subject to bidding requirements, the Racing and Wagering Board is taken off the case, and the Lottery Division is given the power to approve the contract.

One wonders where the NYRA opponents – especially Magna Entertainment - are on this provision. One also wonders where the Comptroller and the Attorney General are on this issue. The Comptroller can issue an audit which complains about that NYRA is paying too much for trophies, but does not look at what has to be a billion dollar unbid contract.

2. The special ad hoc commission to review the NYRA franchise can now begin to operate. Previously, it could not start up until on or after December 1, 2005. It now must start up on or before December 1, 2005. On the special ad hoc committee, the Governor and the two legislative leaders each select three members.
3. The bill creates the non-profit racing oversight board whose job it will be to monitor NYRA. This is a five member board with three appointees from the Governor and one each from the legislative leaders. The Governor has proposed this board twice before: first in his Gaming Reform Act of 2004 and secondly in his 2005 Budget.

The board would succeed to the powers of the thoroughbred racing capital investment fund. It would assume the powers that the division of the budget presently has over NYRA in regard to approval of capital expenditure plans and approval of the process of bidding governing NYRA concession contracts. The board would succeed to being the

operator of the franchise if NYRA declined to operate its franchise or if the franchise were to be revoked. The board is given the power to prescribe a plan of operation for NYRA. The board is given the power to make recommendations on NYRA's finances, budgets, accounting systems, and governance systems. Any such recommendations of the oversight board are to be approved and implemented by the NYRA board unless the NYRA board sets forth in writing the reasons why the recommendations were not approved.

4. The OTB's are given a break. They will receive an apparent tax credit for increases on in-state handle over 2004. This credit will equal 54% of the pari-mutuel tax attributable to such corporation's daily increase in wagers on races at each respective track as compared to the results in 2004. (Figuring out this credit will cause some tax issues over how and when to calculate these increases.) The OTB's are also allowed to simulcast out-of-state races in home during the time period that NYRA is racing – without getting NYRA consent.
5. There will be no pari-mutuel taxes collected at Belmont for the Breeders' Cup Meet. While similar "no tax day" legislation has been authorized in New York for past Breeders' Cups, this action continually raises the issue of whether it is constitutional in New York State - where pari-mutuel racing can only be authorized where "the state shall derive a reasonable revenue for the support of government" - to have no pari-mutuel tax races. The Breeders' Cup Meet is also defined to include Breeders' Cup day and the days before and after the Breeders Cup.
6. There are no changes in the Racing and Wagering Board. No new gaming commission is created. The breeding funds and the advisory racing commissions are not affected.