

GOVERNMENT LAW CENTER OF ALBANY LAW SCHOOL
GOVERNMENT LAW ONLINE

THE TWO GAMING REFORM ACTS OF 2004

AUGUST 12, 2004



80 New Scotland Avenue
Albany, NY 12208
www.als.edu

GOVERNMENT LAW ONLINE publications are available at www.governmentlaw.org

THE TWO GAMING REFORM ACTS OF 2004

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

AUGUST 12, 2004

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.

The Two Gaming Reform Acts of 2004

On May 27, Governor Pataki announced his Gaming Reform Act of 2004 to reform and centralize the manner in which gambling activity is regulated in New York State. That proposal was introduced in the Senate the next day by Senator Larkin (S. 7364)¹ and passed the full Senate six days later by a vote of 49 -10. It was not acted on by the Assembly. Instead, the Assembly complained about “technical flaws” and the overreaching of the bill.² An Assembly aide called it “a very detailed, even elegant attempt to solve no known problem.”³

Apparently conditions change, and the Assembly Majority on Friday August 4 introduced its own bill (A. 11791)⁴ similarly entitled the “Gaming Reform Act of 2004.” Even the entire section of the Assembly bill governing “legislative intent” is exactly the same as the Governor’s bill. That said, there are obviously significant points of agreement between the Assembly bill and the Governor’s bill. This memo will try to highlight the major points of agreement, the major points of disagreement, and some of the more minor distinctions between the bills.

Major Points of Agreement

Both bills terminate the Racing and Wagering Board and replace it with a new five member Gaming Commission. The commissioners serve five year terms, and the functions of the Commission are identical in both bills. The Governor selects the chairman of the commission. The Commission is to be in charge of five divisions: video lottery gaming, charitable gaming, Indian gaming, horse racing, and law enforcement. The salaries of the commissioners are similar in both bills.

The Thoroughbred Racing Capital Investment Fund is abolished by both bills, and its functions are taken over by the new Gaming Commission. Similarly, the advisory Racing Commission for thoroughbred racing, the Harness Racing Commission, the Quarter Horse Racing Commission, and the OTB Commission are abolished.

The bills each maintain some continuity for the provider of VLT services at Aqueduct in the event that the New York Racing Association does not secure a renewal of its franchise.

The bills also let the racetracks and OTB’s stay open everyday. Current law forbids racing on Christmas, Easter, and Palm Sunday.

¹ The bill is available at <http://assembly.state.ny.us/leg/?bn=S07364&sh=t>.

² Matt Hegarty, “Gaming Bill Sees Resistance,” *Daily Racing Form*, June 4, 2004.

³ Jim Odato, “Senate Oks Gaming Commission Bill,” *Albany Times Union*, June 4, 2004 Pg. B3.

⁴ The bill is available at <http://assembly.state.ny.us/leg/?bn=A11791&sh=t>.

Major Points of Disagreement

1. Appointment of the Gaming Commission - Under the Governor's bill, the Governor appoints all five members of the Gaming Commission subject to the approval of the Senate. Only three commissioners may be members of the same political party. The initial appointees all serve for staggered terms, with terms expiring for one to five years after appointment. Under the Assembly version, the Governor only appoints three members. The Speaker of the Assembly and the Temporary President of the Senate each have an appointment. The initial appointees of the Governor serve three year terms. The initial appointees of the legislative leaders serve four year terms. There are no restrictions on the political party memberships of the appointees.
2. The Breeding Funds – The Governor abolishes the breeding funds and folds their functions into the Department of Agriculture and Markets. The Assembly bill makes no changes in the breeding funds.
3. NYRA Oversight – The Governor's bill created a new non-profit racing advisory board to oversee operations at NYRA and to help determine who obtained the franchise when NYRA's current franchise expires. The oversight board would have five members, three selected by the Governor and two by the legislative leaders. The oversight board was given significant responsibility to review and make recommendations to the NYRA Board. These recommendations appeared to be binding on the NYRA Board. In the event, that NYRA lost or gave up its franchise to run the tracks, the oversight board could serve as a video lottery operator. The Assembly rejects the notion of an advisory board and continues the utilization of the special ad hoc committee to review the franchise in Section 208.11 of the Racing Law. Under the nine member special ad hoc committee, the Governor, the Speaker, and the Temporary President of the Senate each get three appointees. In the event NYRA loses the franchise before December 31, 2007, (the date the franchise expires), the Gaming Commission runs the franchise (or it can contract with another party to run the franchise) until a new franchisee is determined.
4. The VLT's at Aqueduct – Under the Governor's bill, the successor to the NYRA franchise has to honor the VLT commitment to vendors at Aqueduct until the end of 2009. Under the Assembly bill, the successor to the NYRA franchise has to honor the VLT commitment. There is no ability for a new franchise holder to opt out of the VLT agreement at a later date.
5. Make Them Race - Under the Assembly provision a racetrack with VLT's has to race 95% of the dates that it ran in the previous year.
6. NYRA Purses - The successor to the NYRA franchise is liable to the horsemen to pay up the shortfall to the purse account pursuant to an agreement between NYRA and the owners at the conclusion of the NYRA franchise.
7. Increased Power of the Gaming Commission to Operate the Tracks - While both the Governor's bill and the Assembly bill give the Gaming Commission power to

operate a racetrack not in use for a period of up to 360 days, the Assembly bill gives the Gaming Commission enhanced authority to take over a racetrack and select its vendor, without regard to any 360 day period.

Minor Differences

While the Assembly bill basically tracks the provisions of the Governor's bill, there are a number of instances where the wording of the Assembly bill differs from the Governor's bill. Most of these instances are of minor significance, and this memo will indicate some but not all of these differences. The references to section numbers in the memo refers to the sections of the Racing Law as amended by the Assembly bill.

1. Section 101 – The Assembly defines “public officer” and “public employee” more inclusively than the Governor's bill which simply tracks existing law. All part-time officers and employees now fall within the definitions of “public officer” and “public employee” in the Assembly bill. The Assembly also adds a definition of “corporation” to the bill.
2. Section 102 – The chair of the Gaming Commission is required to have five years of “responsible administrative experience” or “possess broad management skills.” The Assembly also specifies some of the charges that the Governor can file against Commission members.
3. Section 103 - The law enforcement division of the Gaming Commission is given authority to enforce the “gaming laws of the United States” as well as the laws of New York State.
4. Section 104 – The Assembly authorizes the Gaming Commission to monitor “contractual obligations undertaken” by engaged in gaming activity. The Gaming Commission is authorized to examine the books of a gaming entity licensed by the **State** [Emphasis added] and not simply by the Gaming Commission. The Gaming Commission is empowered to seize equipment or records from a gaming entity, but the authority of the Gaming Commission to revoke licenses for failure to submit to a subpoena is limited. The Assembly concurs with the provision in the Governor's bill allowing the Gaming Commission to arbitrate disputes, but it withholds simulcasting disputes from these broad powers. Limited simulcasting arbitration will continue to be conducted pursuant to Section 1013 of the Racing Law. The Gaming Commission is not specifically authorized to obtain data from the Department of Taxation and Finance and the Attorney General's Office.
5. Section 107 – For purposes of the revolving door provision, the Assembly bill limits ex-Commission employees from holding both direct and **indirect** [Emphasis Added] interests in license holders or applicants. The Governor's bill limits only direct interests. While under the Governor's bill, Commission officers, members and employees cannot wager in-state, the Assembly allows them to bet inside New York during non-employment hours if authorized pursuant to a rule of the Commission.

6. Section 117 – In dealing with the transfer of functions from former agencies to the Gaming Commission, the Commission is to take into consideration the reports and recommendations of the NYRA monitor.
7. Section 208 – The special ad hoc committee dealing with the NYRA franchise award is supposed to authorize bidding on the franchise only for those entities which demonstrate “experience in the pari-mutuel horse racing industry, the casino gaming industry, or related amusement endeavors.”