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LAW/KR

P.L.2011, CHAPTER 205, *approved January 17, 2012*
Senate, No. 3185

1 AN ACT concerning the establishment of off-track wagering
2 facilities and amending P.L.2001, c.199.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 4 of P.L.2001, c.199 (C.5:5-130) is amended to read
8 as follows:

9 4. a. The commission is authorized to issue a license to the
10 authority to permit off-track wagering at a specified facility, upon
11 application of the authority and in accordance with the provisions of
12 this act. A license issued pursuant to this act shall be valid for a
13 period of one year. The commission shall issue a license pursuant to
14 this subsection only if the permit holder at Monmouth Park and the
15 thoroughbred and standardbred permit holders at Meadowlands
16 Racetrack schedule at least the minimum number of race dates
17 required in section 30 of this act, P.L.2001, c.199 (C.5:5-156), and
18 it is satisfied that the authority has entered into a participation
19 agreement with each and every other person, partnership,
20 association, corporation, or authority or the successor in interest to
21 such person, partnership, association, corporation or authority that:

22 (1) held a valid permit to hold or conduct a race horse meeting
23 within this State in the calendar year 2000;

24 (2) has complied with the terms of such permit; and

25 (3) is in good standing with the commission and the State of
26 New Jersey.

27 An off-track wagering license may not be transferred or assigned
28 to a successor in interest without the approval of the commission
29 and the Attorney General, which approval may not be unreasonably
30 withheld.

31 b. (1) As part of the license application process, any
32 participation agreement entered into for the purposes of subsection
33 a. of this section, or any modification to the agreement made
34 thereafter, shall be reviewed by the commission and the Attorney
35 General to determine whether the agreement meets the requirements
36 of this act and shall be subject to the approval of the commission
37 and the Attorney General. Notwithstanding any other law, rule, or
38 regulation to the contrary, a permit holder subject to a participation
39 agreement entered into prior to the effective date of P.L.2011, c.26
40 shall have made progress since the signing of that agreement toward
41 establishing the permit holder's share of the 15 off-track wagering

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 facilities authorized pursuant to section 10 of P.L.2001, c.199
2 (C.5:5-136), provided that any facility that has not received a
3 license under section 7 of P.L.2001, c.199 (C.5:5-133) **【by January**
4 **1 of 2012】** on the effective date of this act, P.L. , c. (pending
5 before the Legislature as this bill) shall be subject to a cash deposit,
6 a bond, or an irrevocable letter of credit to be posted or deposited
7 by the permit holder in the amount of \$1 million for each facility in
8 the permit holder's share that remains to be licensed, which deposit
9 shall be paid to the commission within 180 days of the effective
10 date of this act, P.L. , c. (pending before the Legislature as this
11 bill). A permit holder making a deposit or posting a bond, or
12 irrevocable letter of credit, in connection with one or more of the
13 off-track wagering facilities in the permit holder's share that remain
14 to be established shall obtain the license and make substantial
15 progress in the commission's judgment pursuant to the progress
16 benchmarks issued by the commission and the New Jersey
17 Economic Development Authority under subsection e. of this
18 section toward establishing the off-track wagering facility or
19 facilities within one year of making the deposit, or posting the
20 bond, or irrevocable letter of credit, and if so the deposit, bond, or
21 irrevocable letter of credit shall be returned to the permit holder at
22 the end of the one-year period, or the amount deposited or posted
23 shall be forfeited and distributed by the commission to the
24 representative horsemen's organization in this State for use in
25 establishing an off-track wagering facility or facilities under
26 paragraph (2) of this subsection. Any facility that has not been
27 licensed on the effective date of this act, P.L. , c. (pending before
28 the Legislature as this bill), and for which a deposit, bond, or
29 irrevocable letter of credit is not made or posted, and any facility
30 for which a deposit, bond, or irrevocable letter of credit is made or
31 posted which has not been licensed and made progress toward
32 establishment within one year of making such deposit or posting the
33 bond, or irrevocable letter of credit, shall no longer be considered as
34 part of the permit holder's share, and shall be available to be
35 established by a horsemen's organization in this State as provided
36 by paragraph (2) of this subsection. However, if the commission
37 finds that a permit holder is making progress toward obtaining an
38 off-track wagering license and establishing an off-track wagering
39 facility according to specified benchmarks developed by the
40 commission, the commission may allow a permit holder to retain its
41 share of the off-track wagering facilities to be established, provided
42 the permit holder continues to make progress on an annual basis.
43 For the purposes of this section, a permit holder shall be deemed to
44 have made progress toward establishing its share of off-track
45 wagering facilities, and shall not be subject to a cash deposit or be
46 required to post a bond or irrevocable letter of credit as set forth in
47 this section, if it has entered into an agreement, in connection with
48 good faith negotiations over the sale or lease of a racetrack under

1 the permit holder's control, to transfer allocated off-track wagering
2 licenses or facilities to an individual or entity that is a bona fide
3 prospective purchaser or lessee, or has demonstrated to the
4 satisfaction of the Commission that the execution of such an
5 agreement is imminent based upon the portions of such an
6 agreement agreed upon in principle by the parties as evidenced by a
7 memorandum of understanding or similar accord, or has
8 demonstrated to the satisfaction of the commission that negotiations
9 concerning such an agreement have been unsuccessful and the
10 permit holder has plans for soliciting new sources of interest or
11 entering into new negotiations that, in the judgment of the
12 commission, have a reasonable likelihood of resulting in a
13 successful conclusion.

14 (2) The commission is authorized to issue a license or licenses
15 to any horsemen's organization in this State, for the establishment
16 of one or more of the remaining off-track wagering facilities in
17 partnership with other horsemen's organizations in this State, the
18 authority, or private investors, in accordance with all applicable
19 provisions of the "Off-Track and Account Wagering Act,"
20 P.L.2001, c.199 (C.5:5-127 et seq.). Notwithstanding any provision
21 of this paragraph to the contrary, a representative standardbred
22 horsemen's organization shall have the right to establish the off-
23 track wagering facilities not established by the permit holder at
24 Freehold Raceway as provided under paragraph (1) of this
25 subsection, and to receive any deposit, bond, or irrevocable letter of
26 credit forfeited by that permit holder for the establishment of one or
27 more of those off-track wagering facilities, except that if a
28 representative standardbred horsemen's organization does not make
29 application therefor, or fails to make progress in establishing the
30 facility or facilities as provided herein, any amounts received shall
31 be returned as provided in this paragraph and the facility or
32 facilities shall be available to be established in accordance with
33 subsection c. of this section. A horsemen's organization shall make
34 progress on an annual basis in establishing an off-track wagering
35 facility from the date the organization is eligible to apply for an
36 initial license pursuant to this subsection, provided that any facility
37 that has not received a license under section 7 of P.L.2001, c.199
38 (C.5:5-133) within a reasonable timeframe from the date the
39 horsemen's organization became eligible to apply for its initial
40 license shall no longer be considered eligible to be established by a
41 horsemen's organization under this paragraph, and shall be available
42 to be established by a well-suited entity pursuant to subsection c. of
43 this section. When a horsemen's organization under this paragraph
44 has received the sum of \$1 million as provided under paragraph (1)
45 of this subsection, the horsemen's organization shall have one year
46 from the date the funds are allocated to it by the commission to
47 obtain a license and make substantial progress in establishing the
48 off-track wagering facility or facilities, provided that, if the

1 horsemen's organization fails to make progress within that year, in
2 the commission's judgment pursuant to the progress benchmarks
3 issued by the commission and the New Jersey Economic
4 Development Authority under subsection e. of this section, the
5 horsemen's organization shall be liable to return to the commission
6 the funds allocated to it in their entirety at the end of the one year
7 period, and the commission shall return such funds to the permit
8 holder originally making the deposit, or posting the bond or
9 irrevocable letter of credit, to be used for capital improvements at
10 the permit holder's racetrack.

11 c. With respect to any licenses that remain to be issued under
12 paragraph (2) of subsection b. of this section, the commission is
13 also authorized to issue a license to a well-suited entity to permit
14 off-track wagering at a specified facility, upon application of the
15 entity and in accordance with the provisions of this act and the
16 provisions of section 14 of P.L.1940, c.17 (C.5:5-34). A license
17 issued pursuant to this act shall be valid for a period of one year
18 and, if the licensed entity is not a permit holder in this State, the
19 license shall be contingent upon the licensee showing simulcast
20 New Jersey races and allowing wagering thereon at the off-track
21 wagering facility, subject to the rules and regulations of the
22 commission, and shall be issued only if the permit holders schedule
23 at least the minimum number of race dates required in section 30 of
24 P.L.2001, c.199 (C.5:5-156). In assessing the qualifications of an
25 entity to establish and conduct an off-track wagering facility, the
26 commission shall apply substantially similar standards and criteria
27 to those applied to the authority, its assignees, and other permit
28 holders and licensees in the State. These standards and criteria
29 shall enable the commission to determine by clear and convincing
30 evidence in the opinion of the commission that the person or
31 persons applying for licensure on behalf of the entity are well-suited
32 to receive licensure, and shall include, but may not be limited to:

33 (1) proof of financial resources sufficient to enable the entity to
34 establish and conduct a quality off-track wagering facility or
35 facilities with appropriately staffed and managed operations;

36 (2) evidence of good character, honesty, competency and
37 integrity;

38 (3) the absence of a conviction for a crime involving fraud,
39 dishonesty or moral turpitude; and

40 (4) any additional standards and criteria the commission may
41 establish by rule or regulation in accordance with this act.

42 d. (1) The commission, in consultation with the State
43 Treasurer, shall develop a process by which the commission will
44 accept bids for each off-track wagering license to be awarded under
45 this act, P.L.2001, c.199. An off-track wagering licensee and an
46 entity interested in establishing an off-track wagering facility and
47 being licensed as an off-track wagering licensee shall be eligible to
48 submit a bid. The bidding process shall include procedures for the

1 establishment of a minimum bid threshold, for the selection of a
2 successful bidder and, when the successful bidder is not yet
3 licensed as an off-track wagering licensee, for the awarding of a bid
4 to that successful bidder subject to its eligibility to be licensed as an
5 off-track wagering licensee in compliance with the provisions of
6 this act, P.L.2001, c.199. As part of the bidding process, and in
7 addition to submitting a monetary bid, a bidder shall submit to the
8 commission a conceptual plan of the off-track wagering facility the
9 bidder intends to establish, which shall include, but may not be
10 limited to, a description of the proposed facility and the amenities it
11 would offer, and its proposed or intended location. In selecting a
12 successful bidder, the commission shall consider and balance the
13 following: (a) the monetary value of the bid in comparison to other
14 bids submitted; (b) the level of quality of the proposed facility and
15 amenities in striving to be a first-rate experience for the customer
16 that includes the provision of first-class dining facilities; (c) the
17 potential of the proposed facility and amenities to generate greater
18 interest in the horse racing industry and the sport of horse racing in
19 the State; and (d) the proximity of the bidder's proposed or intended
20 location for the off-track wagering facility and its impact on other
21 planned or existing off-track wagering facilities and racetracks in
22 the State. For the purposes of this act, P.L.2001, c.199, a successful
23 bid shall be conditional upon the successful bidder's compliance
24 with all the provisions of this act, P.L.2001, c.199, and the
25 applicable rules and regulations promulgated by the commission.

26 (2) The commission shall consider the amount of a successful
27 bid pursuant to paragraph (1) of this subsection as a license fee in
28 connection with the issuance of an initial license to an off-track
29 wagering facility licensee. The initial license fee need not be
30 uniform for all off-track wagering facility licenses, and may vary
31 depending on the results of the bidding process for each license.
32 The proceeds generated by the initial license fee shall be distributed
33 as follows: 50% to the New Jersey Thoroughbred Horsemen's
34 Association for programs designed to aid the horsemen, and 50% to
35 the Standardbred Breeders' and Owners' Association of New Jersey
36 for programs designed to aid the horsemen.

37 e. The commission shall, in consultation with the New Jersey
38 Economic Development Authority, develop progress benchmarks,
39 within three months of the effective date of P.L.2011, c.26, for each
40 off-track wagering licensee to follow for the timely and expeditious
41 establishment of each off-track wagering facility. Such benchmarks
42 shall provide that a permit holder shall be deemed to have made
43 progress toward establishing its share of off-track wagering
44 facilities if it has entered into an agreement, in connection with
45 good faith negotiations over the sale or lease of a racetrack under
46 the permit holder's control, to transfer allocated off-track wagering
47 licenses or facilities to an individual or entity that is a bona fide
48 prospective purchaser or lessee, or has demonstrated to the

1 satisfaction of the Commission that the execution of such an
2 agreement is imminent based upon the portions of such an
3 agreement agreed upon in principle by the parties as evidenced by a
4 memorandum of understanding or similar accord, or has
5 demonstrated to the satisfaction of the commission that negotiations
6 concerning such an agreement have been unsuccessful and the
7 permit holder has plans for soliciting new sources of interest or
8 entering into new negotiations that, in the judgment of the
9 commission, have a reasonable likelihood of resulting in a
10 successful conclusion. The failure of a licensee to meet the
11 benchmarks shall constitute a basis for the denial by the
12 commission of the renewal of the off-track wagering license, except
13 that the licensee shall have the right to appeal the commission's
14 decision.

15 (cf: P.L.2011, c.26, s.3)

16

17 2. This act shall take effect immediately and shall be
18 retroactive to December 31, 2011.

19

20

21

STATEMENT

22

23 Under current law, a horse racing permit holder must obtain a
24 license by January 1 of 2012 to establish its share of the 15 off-
25 track wagering facilities the permit holder is entitled to establish in
26 this State. The law also provides that if a permit holder does not
27 meet this deadline, the facilities not yet licensed would no longer be
28 considered as part of the permit holder's share, and would be
29 available to be established by a horsemen's organization and other
30 entities as further provided. However, the New Jersey Racing
31 Commission may allow a permit holder to retain its share of the off-
32 track wagering facilities to be established, provided the permit
33 holder is found to be making progress toward establishing its share
34 of the facilities on an annual basis. Under the law, a permit holder
35 is deemed to have made progress toward establishing its share of
36 off-track wagering facilities if it has complied with promulgated
37 benchmarks, or if the permit holder has entered into an agreement
38 to transfer allocated off-track wagering licenses or facilities to an
39 individual or entity that is a bona fide prospective purchaser or
40 lessee, or has demonstrated to the satisfaction of the commission
41 that the execution of such an agreement is imminent based upon the
42 portions of such an agreement agreed upon in principle by the
43 parties as evidenced by a memorandum of understanding or similar
44 accord.

45 This bill provides that any facility that remains to be licensed on
46 the effective date of the bill would be subject to a \$1 million cash
47 deposit, bond, or irrevocable letter of credit within 180 days of the
48 effective date of the bill. The licensees making such deposit, or

1 posting such bond or irrevocable letter of credit, would have one
2 year to obtain a license and make substantial progress toward
3 establishing the facility or facilities, and if so the deposit will be
4 returned to the permit holder at the end of the one-year period.
5 However, if the permit holder fails to obtain the license and make
6 progress within that year, the amount deposited would be forfeited
7 and distributed by the commission to the representative horsemen's
8 organization in this State for use in establishing an off-track
9 wagering facility or facilities as provided by law. Under the bill,
10 any facility that has not been licensed by the effective date of the
11 bill and for which a deposit is not made, and any facility for which
12 a deposit is made which has not been licensed and has not made
13 progress toward establishment within one year of making such
14 deposit, would no longer be considered as part of the permit
15 holder's share, and would be available to be established by a
16 horsemen's organization and other entities as further provided by
17 law.

18 The bill also provides that when the \$1 million deposit, bond, or
19 irrevocable letter of credit is forfeited by a permit holder and
20 allocated to a horsemen's organization, the horsemen's organization
21 would be liable to return to the commission the funds allocated to it
22 in their entirety within one year if it fails to obtain a license and
23 make substantial progress in establishing an off-track wagering
24 facility. In those cases, the commission would return such sum to
25 the permit holder originally depositing such funds, to be used for
26 capital improvements at the permit holder's racetrack.

27 Under the bill, a representative standardbred horsemen's
28 organization would have the right to establish the off-track
29 wagering facilities not established by the permit holder at Freehold
30 Raceway as provided in the bill, and to receive any deposit, bond,
31 or irrevocable letter of credit forfeited by that permit holder for the
32 establishment of one or more of those off-track wagering facilities,
33 except that if a representative standardbred horsemen's organization
34 does not make application therefor, or fails to make progress in
35 establishing the facility or facilities, any amounts received would be
36 returned to the permit holder as provided in the bill, and the facility
37 or facilities would be available to be established by private entities.

38 The bill also provides that a permit holder shall be deemed to
39 have made progress in establishing its share of off-track wagering
40 facilities, and would not have to make the \$1 million deposit, or
41 post a bond or irrevocable letter of credit, if it has entered into an
42 agreement for the sale or lease of a racetrack or if such an
43 agreement is imminent, or has demonstrated to the satisfaction of
44 the commission that negotiations concerning an agreement to lease
45 or sell its racetrack have been unsuccessful and the permit holder
46 has plans for soliciting new sources of interest or entering into new
47 negotiations that, in the judgment of the commission, have a
48 reasonable likelihood of resulting in a successful conclusion.

S3185

8

1 The bill's effective date is retroactive to December 31, 2011,
2 thereby voiding the January 1, 2012 deadline by which outstanding
3 off-track wagering facilities are currently required by law to have
4 obtained a license.

5

6

7

8

9 Extends deadline for licensing of certain off-track wagering
10 facilities that remain to be established.

SENATE, No. 3185

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JANUARY 5, 2012

Sponsored by:

Senator JIM WHELAN

District 2 (Atlantic)

Senator JENNIFER BECK

District 12 (Mercer and Monmouth)

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Assemblyman RONALD S. DANCER

District 30 (Burlington, Mercer, Monmouth and Ocean)

Assemblywoman CAROLINE CASAGRANDE

District 12 (Mercer and Monmouth)

Co-Sponsored by:

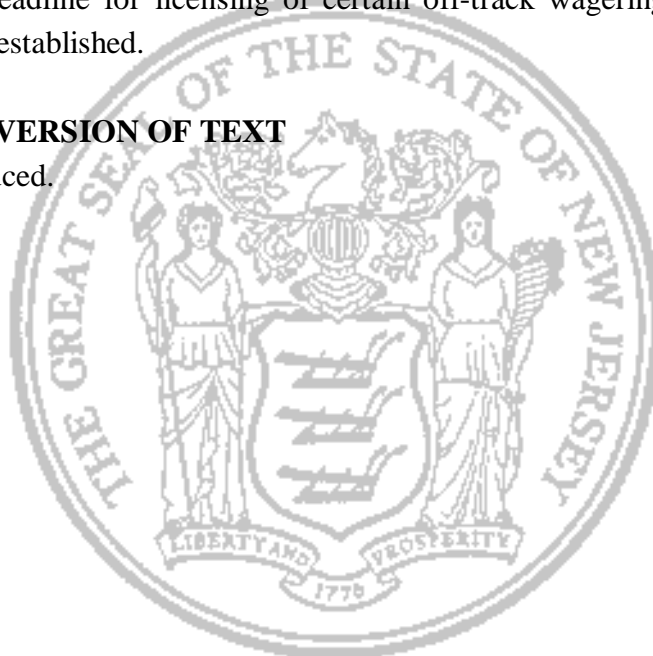
Assemblyman Diegnan

SYNOPSIS

Extends deadline for licensing of certain off-track wagering facilities that remain to be established.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/10/2012)

1 AN ACT concerning the establishment of off-track wagering
2 facilities and amending P.L.2001, c.199.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 4 of P.L.2001, c.199 (C.5:5-130) is amended to read
8 as follows:

9 4. a. The commission is authorized to issue a license to the
10 authority to permit off-track wagering at a specified facility, upon
11 application of the authority and in accordance with the provisions of
12 this act. A license issued pursuant to this act shall be valid for a
13 period of one year. The commission shall issue a license pursuant to
14 this subsection only if the permit holder at Monmouth Park and the
15 thoroughbred and standardbred permit holders at Meadowlands
16 Racetrack schedule at least the minimum number of race dates
17 required in section 30 of this act, P.L.2001, c.199 (C.5:5-156), and
18 it is satisfied that the authority has entered into a participation
19 agreement with each and every other person, partnership,
20 association, corporation, or authority or the successor in interest to
21 such person, partnership, association, corporation or authority that:

22 (1) held a valid permit to hold or conduct a race horse meeting
23 within this State in the calendar year 2000;

24 (2) has complied with the terms of such permit; and

25 (3) is in good standing with the commission and the State of
26 New Jersey.

27 An off-track wagering license may not be transferred or assigned
28 to a successor in interest without the approval of the commission
29 and the Attorney General, which approval may not be unreasonably
30 withheld.

31 b. (1) As part of the license application process, any
32 participation agreement entered into for the purposes of subsection
33 a. of this section, or any modification to the agreement made
34 thereafter, shall be reviewed by the commission and the Attorney
35 General to determine whether the agreement meets the requirements
36 of this act and shall be subject to the approval of the commission
37 and the Attorney General. Notwithstanding any other law, rule, or
38 regulation to the contrary, a permit holder subject to a participation
39 agreement entered into prior to the effective date of P.L.2011, c.26
40 shall have made progress since the signing of that agreement toward
41 establishing the permit holder's share of the 15 off-track wagering
42 facilities authorized pursuant to section 10 of P.L.2001, c.199
43 (C.5:5-136), provided that any facility that has not received a
44 license under section 7 of P.L.2001, c.199 (C.5:5-133) **[by January**
45 **1 of 2012]** on the effective date of this act, P.L. , c. (pending

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 before the Legislature as this bill) shall be subject to a cash deposit,
2 a bond, or an irrevocable letter of credit to be posted or deposited
3 by the permit holder in the amount of \$1 million for each facility in
4 the permit holder's share that remains to be licensed, which deposit
5 shall be paid to the commission within 180 days of the effective
6 date of this act, P.L. , c. (pending before the Legislature as this
7 bill). A permit holder making a deposit or posting a bond, or
8 irrevocable letter of credit, in connection with one or more of the
9 off-track wagering facilities in the permit holder's share that remain
10 to be established shall obtain the license and make substantial
11 progress in the commission's judgment pursuant to the progress
12 benchmarks issued by the commission and the New Jersey
13 Economic Development Authority under subsection e. of this
14 section toward establishing the off-track wagering facility or
15 facilities within one year of making the deposit, or posting the
16 bond, or irrevocable letter of credit, and if so the deposit, bond, or
17 irrevocable letter of credit shall be returned to the permit holder at
18 the end of the one-year period, or the amount deposited or posted
19 shall be forfeited and distributed by the commission to the
20 representative horsemen's organization in this State for use in
21 establishing an off-track wagering facility or facilities under
22 paragraph (2) of this subsection. Any facility that has not been
23 licensed on the effective date of this act, P.L. , c. (pending before
24 the Legislature as this bill), and for which a deposit, bond, or
25 irrevocable letter of credit is not made or posted, and any facility
26 for which a deposit, bond, or irrevocable letter of credit is made or
27 posted which has not been licensed and made progress toward
28 establishment within one year of making such deposit or posting the
29 bond, or irrevocable letter of credit, shall no longer be considered as
30 part of the permit holder's share, and shall be available to be
31 established by a horsemen's organization in this State as provided
32 by paragraph (2) of this subsection. However, if the commission
33 finds that a permit holder is making progress toward obtaining an
34 off-track wagering license and establishing an off-track wagering
35 facility according to specified benchmarks developed by the
36 commission, the commission may allow a permit holder to retain its
37 share of the off-track wagering facilities to be established, provided
38 the permit holder continues to make progress on an annual basis.
39 For the purposes of this section, a permit holder shall be deemed to
40 have made progress toward establishing its share of off-track
41 wagering facilities, and shall not be subject to a cash deposit or be
42 required to post a bond or irrevocable letter of credit as set forth in
43 this section, if it has entered into an agreement, in connection with
44 good faith negotiations over the sale or lease of a racetrack under
45 the permit holder's control, to transfer allocated off-track wagering
46 licenses or facilities to an individual or entity that is a bona fide
47 prospective purchaser or lessee, or has demonstrated to the
48 satisfaction of the Commission that the execution of such an

1 agreement is imminent based upon the portions of such an
2 agreement agreed upon in principle by the parties as evidenced by a
3 memorandum of understanding or similar accord, or has
4 demonstrated to the satisfaction of the commission that negotiations
5 concerning such an agreement have been unsuccessful and the
6 permit holder has plans for soliciting new sources of interest or
7 entering into new negotiations that, in the judgment of the
8 commission, have a reasonable likelihood of resulting in a
9 successful conclusion.

10 (2) The commission is authorized to issue a license or licenses
11 to any horsemen's organization in this State, for the establishment
12 of one or more of the remaining off-track wagering facilities in
13 partnership with other horsemen's organizations in this State, the
14 authority, or private investors, in accordance with all applicable
15 provisions of the "Off-Track and Account Wagering Act,"
16 P.L.2001, c.199 (C.5:5-127 et seq.). Notwithstanding any provision
17 of this paragraph to the contrary, a representative standardbred
18 horsemen's organization shall have the right to establish the off-
19 track wagering facilities not established by the permit holder at
20 Freehold Raceway as provided under paragraph (1) of this
21 subsection, and to receive any deposit, bond, or irrevocable letter of
22 credit forfeited by that permit holder for the establishment of one or
23 more of those off-track wagering facilities, except that if a
24 representative standardbred horsemen's organization does not make
25 application therefor, or fails to make progress in establishing the
26 facility or facilities as provided herein, any amounts received shall
27 be returned as provided in this paragraph and the facility or
28 facilities shall be available to be established in accordance with
29 subsection c. of this section. A horsemen's organization shall make
30 progress on an annual basis in establishing an off-track wagering
31 facility from the date the organization is eligible to apply for an
32 initial license pursuant to this subsection, provided that any facility
33 that has not received a license under section 7 of P.L.2001, c.199
34 (C.5:5-133) within a reasonable timeframe from the date the
35 horsemen's organization became eligible to apply for its initial
36 license shall no longer be considered eligible to be established by a
37 horsemen's organization under this paragraph, and shall be available
38 to be established by a well-suited entity pursuant to subsection c. of
39 this section. When a horsemen's organization under this paragraph
40 has received the sum of \$1 million as provided under paragraph (1)
41 of this subsection, the horsemen's organization shall have one year
42 from the date the funds are allocated to it by the commission to
43 obtain a license and make substantial progress in establishing the
44 off-track wagering facility or facilities, provided that, if the
45 horsemen's organization fails to make progress within that year, in
46 the commission's judgment pursuant to the progress benchmarks
47 issued by the commission and the New Jersey Economic
48 Development Authority under subsection e. of this section, the

1 horsemen's organization shall be liable to return to the commission
2 the funds allocated to it in their entirety at the end of the one year
3 period, and the commission shall return such funds to the permit
4 holder originally making the deposit, or posting the bond or
5 irrevocable letter of credit, to be used for capital improvements at
6 the permit holder's racetrack.

7 c. With respect to any licenses that remain to be issued under
8 paragraph (2) of subsection b. of this section, the commission is
9 also authorized to issue a license to a well-suited entity to permit
10 off-track wagering at a specified facility, upon application of the
11 entity and in accordance with the provisions of this act and the
12 provisions of section 14 of P.L.1940, c.17 (C.5:5-34). A license
13 issued pursuant to this act shall be valid for a period of one year
14 and, if the licensed entity is not a permit holder in this State, the
15 license shall be contingent upon the licensee showing simulcast
16 New Jersey races and allowing wagering thereon at the off-track
17 wagering facility, subject to the rules and regulations of the
18 commission, and shall be issued only if the permit holders schedule
19 at least the minimum number of race dates required in section 30 of
20 P.L.2001, c.199 (C.5:5-156). In assessing the qualifications of an
21 entity to establish and conduct an off-track wagering facility, the
22 commission shall apply substantially similar standards and criteria
23 to those applied to the authority, its assignees, and other permit
24 holders and licensees in the State. These standards and criteria
25 shall enable the commission to determine by clear and convincing
26 evidence in the opinion of the commission that the person or
27 persons applying for licensure on behalf of the entity are well-suited
28 to receive licensure, and shall include, but may not be limited to:

29 (1) proof of financial resources sufficient to enable the entity to
30 establish and conduct a quality off-track wagering facility or
31 facilities with appropriately staffed and managed operations;

32 (2) evidence of good character, honesty, competency and
33 integrity;

34 (3) the absence of a conviction for a crime involving fraud,
35 dishonesty or moral turpitude; and

36 (4) any additional standards and criteria the commission may
37 establish by rule or regulation in accordance with this act.

38 d. (1) The commission, in consultation with the State
39 Treasurer, shall develop a process by which the commission will
40 accept bids for each off-track wagering license to be awarded under
41 this act, P.L.2001, c.199. An off-track wagering licensee and an
42 entity interested in establishing an off-track wagering facility and
43 being licensed as an off-track wagering licensee shall be eligible to
44 submit a bid. The bidding process shall include procedures for the
45 establishment of a minimum bid threshold, for the selection of a
46 successful bidder and, when the successful bidder is not yet
47 licensed as an off-track wagering licensee, for the awarding of a bid
48 to that successful bidder subject to its eligibility to be licensed as an

1 off-track wagering licensee in compliance with the provisions of
2 this act, P.L.2001, c.199. As part of the bidding process, and in
3 addition to submitting a monetary bid, a bidder shall submit to the
4 commission a conceptual plan of the off-track wagering facility the
5 bidder intends to establish, which shall include, but may not be
6 limited to, a description of the proposed facility and the amenities it
7 would offer, and its proposed or intended location. In selecting a
8 successful bidder, the commission shall consider and balance the
9 following: (a) the monetary value of the bid in comparison to other
10 bids submitted; (b) the level of quality of the proposed facility and
11 amenities in striving to be a first-rate experience for the customer
12 that includes the provision of first-class dining facilities; (c) the
13 potential of the proposed facility and amenities to generate greater
14 interest in the horse racing industry and the sport of horse racing in
15 the State; and (d) the proximity of the bidder's proposed or intended
16 location for the off-track wagering facility and its impact on other
17 planned or existing off-track wagering facilities and racetracks in
18 the State. For the purposes of this act, P.L.2001, c.199, a successful
19 bid shall be conditional upon the successful bidder's compliance
20 with all the provisions of this act, P.L.2001, c.199, and the
21 applicable rules and regulations promulgated by the commission.

22 (2) The commission shall consider the amount of a successful
23 bid pursuant to paragraph (1) of this subsection as a license fee in
24 connection with the issuance of an initial license to an off-track
25 wagering facility licensee. The initial license fee need not be
26 uniform for all off-track wagering facility licenses, and may vary
27 depending on the results of the bidding process for each license.
28 The proceeds generated by the initial license fee shall be distributed
29 as follows: 50% to the New Jersey Thoroughbred Horsemen's
30 Association for programs designed to aid the horsemen, and 50% to
31 the Standardbred Breeders' and Owners' Association of New Jersey
32 for programs designed to aid the horsemen.

33 e. The commission shall, in consultation with the New Jersey
34 Economic Development Authority, develop progress benchmarks,
35 within three months of the effective date of P.L.2011, c.26, for each
36 off-track wagering licensee to follow for the timely and expeditious
37 establishment of each off-track wagering facility. Such benchmarks
38 shall provide that a permit holder shall be deemed to have made
39 progress toward establishing its share of off-track wagering
40 facilities if it has entered into an agreement, in connection with
41 good faith negotiations over the sale or lease of a racetrack under
42 the permit holder's control, to transfer allocated off-track wagering
43 licenses or facilities to an individual or entity that is a bona fide
44 prospective purchaser or lessee, or has demonstrated to the
45 satisfaction of the Commission that the execution of such an
46 agreement is imminent based upon the portions of such an
47 agreement agreed upon in principle by the parties as evidenced by a
48 memorandum of understanding or similar accord, or has

1 demonstrated to the satisfaction of the commission that negotiations
2 concerning such an agreement have been unsuccessful and the
3 permit holder has plans for soliciting new sources of interest or
4 entering into new negotiations that, in the judgment of the
5 commission, have a reasonable likelihood of resulting in a
6 successful conclusion. The failure of a licensee to meet the
7 benchmarks shall constitute a basis for the denial by the
8 commission of the renewal of the off-track wagering license, except
9 that the licensee shall have the right to appeal the commission's
10 decision.

11 (cf: P.L.2011, c.26, s.3)

12

13 2. This act shall take effect immediately and shall be
14 retroactive to December 31, 2011.

15

16

17

STATEMENT

18

19 Under current law, a horse racing permit holder must obtain a
20 license by January 1 of 2012 to establish its share of the 15 off-
21 track wagering facilities the permit holder is entitled to establish in
22 this State. The law also provides that if a permit holder does not
23 meet this deadline, the facilities not yet licensed would no longer be
24 considered as part of the permit holder's share, and would be
25 available to be established by a horsemen's organization and other
26 entities as further provided. However, the New Jersey Racing
27 Commission may allow a permit holder to retain its share of the off-
28 track wagering facilities to be established, provided the permit
29 holder is found to be making progress toward establishing its share
30 of the facilities on an annual basis. Under the law, a permit holder
31 is deemed to have made progress toward establishing its share of
32 off-track wagering facilities if it has complied with promulgated
33 benchmarks, or if the permit holder has entered into an agreement
34 to transfer allocated off-track wagering licenses or facilities to an
35 individual or entity that is a bona fide prospective purchaser or
36 lessee, or has demonstrated to the satisfaction of the commission
37 that the execution of such an agreement is imminent based upon the
38 portions of such an agreement agreed upon in principle by the
39 parties as evidenced by a memorandum of understanding or similar
40 accord.

41 This bill provides that any facility that remains to be licensed on
42 the effective date of the bill would be subject to a \$1 million cash
43 deposit, bond, or irrevocable letter of credit within 180 days of the
44 effective date of the bill. The licensees making such deposit, or
45 posting such bond or irrevocable letter of credit, would have one
46 year to obtain a license and make substantial progress toward
47 establishing the facility or facilities, and if so the deposit will be
48 returned to the permit holder at the end of the one-year period.

1 However, if the permit holder fails to obtain the license and make
2 progress within that year, the amount deposited would be forfeited
3 and distributed by the commission to the representative horsemen's
4 organization in this State for use in establishing an off-track
5 wagering facility or facilities as provided by law. Under the bill,
6 any facility that has not been licensed by the effective date of the
7 bill and for which a deposit is not made, and any facility for which
8 a deposit is made which has not been licensed and has not made
9 progress toward establishment within one year of making such
10 deposit, would no longer be considered as part of the permit
11 holder's share, and would be available to be established by a
12 horsemen's organization and other entities as further provided by
13 law.

14 The bill also provides that when the \$1 million deposit, bond, or
15 irrevocable letter of credit is forfeited by a permit holder and
16 allocated to a horsemen's organization, the horsemen's organization
17 would be liable to return to the commission the funds allocated to it
18 in their entirety within one year if it fails to obtain a license and
19 make substantial progress in establishing an off-track wagering
20 facility. In those cases, the commission would return such sum to
21 the permit holder originally depositing such funds, to be used for
22 capital improvements at the permit holder's racetrack.

23 Under the bill, a representative standardbred horsemen's
24 organization would have the right to establish the off-track
25 wagering facilities not established by the permit holder at Freehold
26 Raceway as provided in the bill, and to receive any deposit, bond,
27 or irrevocable letter of credit forfeited by that permit holder for the
28 establishment of one or more of those off-track wagering facilities,
29 except that if a representative standardbred horsemen's organization
30 does not make application therefor, or fails to make progress in
31 establishing the facility or facilities, any amounts received would be
32 returned to the permit holder as provided in the bill, and the facility
33 or facilities would be available to be established by private entities.

34 The bill also provides that a permit holder shall be deemed to
35 have made progress in establishing its share of off-track wagering
36 facilities, and would not have to make the \$1 million deposit, or
37 post a bond or irrevocable letter of credit, if it has entered into an
38 agreement for the sale or lease of a racetrack or if such an
39 agreement is imminent, or has demonstrated to the satisfaction of
40 the commission that negotiations concerning an agreement to lease
41 or sell its racetrack have been unsuccessful and the permit holder
42 has plans for soliciting new sources of interest or entering into new
43 negotiations that, in the judgment of the commission, have a
44 reasonable likelihood of resulting in a successful conclusion.

45 The bill's effective date is retroactive to December 31, 2011,
46 thereby voiding the January 1, 2012 deadline by which outstanding
47 off-track wagering facilities are currently required by law to have
48 obtained a license.

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO

SENATE, No. 3185

STATE OF NEW JERSEY

DATED: JANUARY 5, 2012

The Senate State Government, Wagering, Tourism and Historic Preservation Committee reports favorably Senate Bill No. 3185.

Under current law, a horse racing permit holder must obtain a license by January 1 of 2012 to establish its share of the 15 off-track wagering facilities the permit holder is entitled to establish in this State. The law also provides that if a permit holder does not meet this deadline, the facilities not yet licensed would no longer be considered as part of the permit holder's share, and would be available to be established by a horsemen's organization and other entities as further provided. However, the New Jersey Racing Commission may allow a permit holder to retain its share of the off-track wagering facilities to be established, provided the permit holder is found to be making progress toward establishing its share of the facilities on an annual basis. Under the law, a permit holder is deemed to have made progress toward establishing its share of off-track wagering facilities if it has complied with promulgated benchmarks, or if the permit holder has entered into an agreement to transfer allocated off-track wagering licenses or facilities to an individual or entity that is a bona fide prospective purchaser or lessee, or has demonstrated to the satisfaction of the commission that the execution of such an agreement is imminent based upon the portions of such an agreement agreed upon in principle by the parties as evidenced by a memorandum of understanding or similar accord.

This bill provides that any facility that remains to be licensed on the effective date of the bill would be subject to a \$1 million cash deposit, bond, or irrevocable letter of credit within 180 days of the effective date of the bill. The licensees making such deposit, or posting such bond or irrevocable letter of credit, would have one year to obtain a license and make substantial progress toward establishing the facility or facilities, and if so the deposit will be returned to the permit holder at the end of the one-year period. However, if the permit holder fails to obtain the license and make progress within that year, the amount deposited would be forfeited and distributed by the commission to the representative horsemen's organization in this State for use in establishing an off-track wagering facility or facilities as

provided by law. Under the bill, any facility that has not been licensed by the effective date of the bill and for which a deposit is not made, and any facility for which a deposit is made which has not been licensed and has not made progress toward establishment within one year of making such deposit, would no longer be considered as part of the permit holder's share, and would be available to be established by a horsemen's organization and other entities as further provided by law.

The bill also provides that when the \$1 million deposit, bond, or irrevocable letter of credit is forfeited by a permit holder and allocated to a horsemen's organization, the horsemen's organization would be liable to return to the commission the funds allocated to it in their entirety within one year if it fails to obtain a license and make substantial progress in establishing an off-track wagering facility. In those cases, the commission would return such sum to the permit holder originally depositing such funds, to be used for capital improvements at the permit holder's racetrack.

Under the bill, a representative standardbred horsemen's organization would have the right to establish the off-track wagering facilities not established by the permit holder at Freehold Raceway as provided in the bill, and to receive any deposit, bond, or irrevocable letter of credit forfeited by that permit holder for the establishment of one or more of those off-track wagering facilities, except that if a representative standardbred horsemen's organization does not make application therefor, or fails to make progress in establishing the facility or facilities, any amounts received would be returned to the permit holder as provided in the bill, and the facility or facilities would be available to be established by private entities.

The bill also provides that a permit holder shall be deemed to have made progress in establishing its share of off-track wagering facilities, and would not have to make the \$1 million deposit, or post a bond or irrevocable letter of credit, if it has entered into an agreement for the sale or lease of a racetrack or if such an agreement is imminent, or has demonstrated to the satisfaction of the commission that negotiations concerning an agreement to lease or sell its racetrack have been unsuccessful and the permit holder has plans for soliciting new sources of interest or entering into new negotiations that, in the judgment of the commission, have a reasonable likelihood of resulting in a successful conclusion.

The bill's effective date is retroactive to December 31, 2011, thereby voiding the January 1, 2012 deadline by which outstanding off-track wagering facilities are currently required by law to have obtained a license.

ASSEMBLY, No. 4338

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JANUARY 5, 2012

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Assemblyman RONALD S. DANCER

District 30 (Burlington, Mercer, Monmouth and Ocean)

Assemblywoman CAROLINE CASAGRANDE

District 12 (Mercer and Monmouth)

Co-Sponsored by:

Assemblyman Diegnan

SYNOPSIS

Extends deadline for licensing of certain off-track wagering facilities that remain to be established.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/10/2012)

1 AN ACT concerning the establishment of off-track wagering
2 facilities and amending P.L.2001, c.199.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 4 of P.L.2001, c.199 (C.5:5-130) is amended to read
8 as follows:

9 4. a. The commission is authorized to issue a license to the
10 authority to permit off-track wagering at a specified facility, upon
11 application of the authority and in accordance with the provisions of
12 this act. A license issued pursuant to this act shall be valid for a
13 period of one year. The commission shall issue a license pursuant to
14 this subsection only if the permit holder at Monmouth Park and the
15 thoroughbred and standardbred permit holders at Meadowlands
16 Racetrack schedule at least the minimum number of race dates
17 required in section 30 of this act, P.L.2001, c.199 (C.5:5-156), and
18 it is satisfied that the authority has entered into a participation
19 agreement with each and every other person, partnership,
20 association, corporation, or authority or the successor in interest to
21 such person, partnership, association, corporation or authority that:

22 (1) held a valid permit to hold or conduct a race horse meeting
23 within this State in the calendar year 2000;

24 (2) has complied with the terms of such permit; and

25 (3) is in good standing with the commission and the State of
26 New Jersey.

27 An off-track wagering license may not be transferred or assigned
28 to a successor in interest without the approval of the commission
29 and the Attorney General, which approval may not be unreasonably
30 withheld.

31 b. (1) As part of the license application process, any
32 participation agreement entered into for the purposes of subsection
33 a. of this section, or any modification to the agreement made
34 thereafter, shall be reviewed by the commission and the Attorney
35 General to determine whether the agreement meets the requirements
36 of this act and shall be subject to the approval of the commission
37 and the Attorney General. Notwithstanding any other law, rule, or
38 regulation to the contrary, a permit holder subject to a participation
39 agreement entered into prior to the effective date of P.L.2011, c.26
40 shall have made progress since the signing of that agreement toward
41 establishing the permit holder's share of the 15 off-track wagering
42 facilities authorized pursuant to section 10 of P.L.2001, c.199
43 (C.5:5-136), provided that any facility that has not received a
44 license under section 7 of P.L.2001, c.199 (C.5:5-133) **[by January**
45 **1 of 2012]** on the effective date of this act, P.L. , c. (pending

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 before the Legislature as this bill) shall be subject to a cash deposit,
2 a bond, or an irrevocable letter of credit to be posted or deposited
3 by the permit holder in the amount of \$1 million for each facility in
4 the permit holder's share that remains to be licensed, which deposit
5 shall be paid to the commission within 180 days of the effective
6 date of this act, P.L. , c. (pending before the Legislature as this
7 bill). A permit holder making a deposit or posting a bond, or
8 irrevocable letter of credit, in connection with one or more of the
9 off-track wagering facilities in the permit holder's share that remain
10 to be established shall obtain the license and make substantial
11 progress in the commission's judgment pursuant to the progress
12 benchmarks issued by the commission and the New Jersey
13 Economic Development Authority under subsection e. of this
14 section toward establishing the off-track wagering facility or
15 facilities within one year of making the deposit, or posting the
16 bond, or irrevocable letter of credit, and if so the deposit, bond, or
17 irrevocable letter of credit shall be returned to the permit holder at
18 the end of the one-year period, or the amount deposited or posted
19 shall be forfeited and distributed by the commission to the
20 representative horsemen's organization in this State for use in
21 establishing an off-track wagering facility or facilities under
22 paragraph (2) of this subsection. Any facility that has not been
23 licensed on the effective date of this act, P.L. , c. (pending before
24 the Legislature as this bill), and for which a deposit, bond, or
25 irrevocable letter of credit is not made or posted, and any facility
26 for which a deposit, bond, or irrevocable letter of credit is made or
27 posted which has not been licensed and made progress toward
28 establishment within one year of making such deposit or posting the
29 bond, or irrevocable letter of credit, shall no longer be considered as
30 part of the permit holder's share, and shall be available to be
31 established by a horsemen's organization in this State as provided
32 by paragraph (2) of this subsection. However, if the commission
33 finds that a permit holder is making progress toward obtaining an
34 off-track wagering license and establishing an off-track wagering
35 facility according to specified benchmarks developed by the
36 commission, the commission may allow a permit holder to retain its
37 share of the off-track wagering facilities to be established, provided
38 the permit holder continues to make progress on an annual basis.
39 For the purposes of this section, a permit holder shall be deemed to
40 have made progress toward establishing its share of off-track
41 wagering facilities, and shall not be subject to a cash deposit or be
42 required to post a bond or irrevocable letter of credit as set forth in
43 this section, if it has entered into an agreement, in connection with
44 good faith negotiations over the sale or lease of a racetrack under
45 the permit holder's control, to transfer allocated off-track wagering
46 licenses or facilities to an individual or entity that is a bona fide
47 prospective purchaser or lessee, or has demonstrated to the
48 satisfaction of the Commission that the execution of such an

1 agreement is imminent based upon the portions of such an
2 agreement agreed upon in principle by the parties as evidenced by a
3 memorandum of understanding or similar accord, or has
4 demonstrated to the satisfaction of the commission that negotiations
5 concerning such an agreement have been unsuccessful and the
6 permit holder has plans for soliciting new sources of interest or
7 entering into new negotiations that, in the judgment of the
8 commission, have a reasonable likelihood of resulting in a
9 successful conclusion.

10 (2) The commission is authorized to issue a license or licenses
11 to any horsemen's organization in this State, for the establishment
12 of one or more of the remaining off-track wagering facilities in
13 partnership with other horsemen's organizations in this State, the
14 authority, or private investors, in accordance with all applicable
15 provisions of the "Off-Track and Account Wagering Act,"
16 P.L.2001, c.199 (C.5:5-127 et seq.). Notwithstanding any provision
17 of this paragraph to the contrary, a representative standardbred
18 horsemen's organization shall have the right to establish the off-
19 track wagering facilities not established by the permit holder at
20 Freehold Raceway as provided under paragraph (1) of this
21 subsection, and to receive any deposit, bond, or irrevocable letter of
22 credit forfeited by that permit holder for the establishment of one or
23 more of those off-track wagering facilities, except that if a
24 representative standardbred horsemen's organization does not make
25 application therefor, or fails to make progress in establishing the
26 facility or facilities as provided herein, any amounts received shall
27 be returned as provided in this paragraph and the facility or
28 facilities shall be available to be established in accordance with
29 subsection c. of this section. A horsemen's organization shall make
30 progress on an annual basis in establishing an off-track wagering
31 facility from the date the organization is eligible to apply for an
32 initial license pursuant to this subsection, provided that any facility
33 that has not received a license under section 7 of P.L.2001, c.199
34 (C.5:5-133) within a reasonable timeframe from the date the
35 horsemen's organization became eligible to apply for its initial
36 license shall no longer be considered eligible to be established by a
37 horsemen's organization under this paragraph, and shall be available
38 to be established by a well-suited entity pursuant to subsection c. of
39 this section. When a horsemen's organization under this paragraph
40 has received the sum of \$1 million as provided under paragraph (1)
41 of this subsection, the horsemen's organization shall have one year
42 from the date the funds are allocated to it by the commission to
43 obtain a license and make substantial progress in establishing the
44 off-track wagering facility or facilities, provided that, if the
45 horsemen's organization fails to make progress within that year, in
46 the commission's judgment pursuant to the progress benchmarks
47 issued by the commission and the New Jersey Economic
48 Development Authority under subsection e. of this section, the

1 horsemen's organization shall be liable to return to the commission
2 the funds allocated to it in their entirety at the end of the one year
3 period, and the commission shall return such funds to the permit
4 holder originally making the deposit, or posting the bond or
5 irrevocable letter of credit, to be used for capital improvements at
6 the permit holder's racetrack.

7 c. With respect to any licenses that remain to be issued under
8 paragraph (2) of subsection b. of this section, the commission is
9 also authorized to issue a license to a well-suited entity to permit
10 off-track wagering at a specified facility, upon application of the
11 entity and in accordance with the provisions of this act and the
12 provisions of section 14 of P.L.1940, c.17 (C.5:5-34). A license
13 issued pursuant to this act shall be valid for a period of one year
14 and, if the licensed entity is not a permit holder in this State, the
15 license shall be contingent upon the licensee showing simulcast
16 New Jersey races and allowing wagering thereon at the off-track
17 wagering facility, subject to the rules and regulations of the
18 commission, and shall be issued only if the permit holders schedule
19 at least the minimum number of race dates required in section 30 of
20 P.L.2001, c.199 (C.5:5-156). In assessing the qualifications of an
21 entity to establish and conduct an off-track wagering facility, the
22 commission shall apply substantially similar standards and criteria
23 to those applied to the authority, its assignees, and other permit
24 holders and licensees in the State. These standards and criteria
25 shall enable the commission to determine by clear and convincing
26 evidence in the opinion of the commission that the person or
27 persons applying for licensure on behalf of the entity are well-suited
28 to receive licensure, and shall include, but may not be limited to:

29 (1) proof of financial resources sufficient to enable the entity to
30 establish and conduct a quality off-track wagering facility or
31 facilities with appropriately staffed and managed operations;

32 (2) evidence of good character, honesty, competency and
33 integrity;

34 (3) the absence of a conviction for a crime involving fraud,
35 dishonesty or moral turpitude; and

36 (4) any additional standards and criteria the commission may
37 establish by rule or regulation in accordance with this act.

38 d. (1) The commission, in consultation with the State
39 Treasurer, shall develop a process by which the commission will
40 accept bids for each off-track wagering license to be awarded under
41 this act, P.L.2001, c.199. An off-track wagering licensee and an
42 entity interested in establishing an off-track wagering facility and
43 being licensed as an off-track wagering licensee shall be eligible to
44 submit a bid. The bidding process shall include procedures for the
45 establishment of a minimum bid threshold, for the selection of a
46 successful bidder and, when the successful bidder is not yet
47 licensed as an off-track wagering licensee, for the awarding of a bid
48 to that successful bidder subject to its eligibility to be licensed as an

1 off-track wagering licensee in compliance with the provisions of
2 this act, P.L.2001, c.199. As part of the bidding process, and in
3 addition to submitting a monetary bid, a bidder shall submit to the
4 commission a conceptual plan of the off-track wagering facility the
5 bidder intends to establish, which shall include, but may not be
6 limited to, a description of the proposed facility and the amenities it
7 would offer, and its proposed or intended location. In selecting a
8 successful bidder, the commission shall consider and balance the
9 following: (a) the monetary value of the bid in comparison to other
10 bids submitted; (b) the level of quality of the proposed facility and
11 amenities in striving to be a first-rate experience for the customer
12 that includes the provision of first-class dining facilities; (c) the
13 potential of the proposed facility and amenities to generate greater
14 interest in the horse racing industry and the sport of horse racing in
15 the State; and (d) the proximity of the bidder's proposed or intended
16 location for the off-track wagering facility and its impact on other
17 planned or existing off-track wagering facilities and racetracks in
18 the State. For the purposes of this act, P.L.2001, c.199, a successful
19 bid shall be conditional upon the successful bidder's compliance
20 with all the provisions of this act, P.L.2001, c.199, and the
21 applicable rules and regulations promulgated by the commission.

22 (2) The commission shall consider the amount of a successful
23 bid pursuant to paragraph (1) of this subsection as a license fee in
24 connection with the issuance of an initial license to an off-track
25 wagering facility licensee. The initial license fee need not be
26 uniform for all off-track wagering facility licenses, and may vary
27 depending on the results of the bidding process for each license.
28 The proceeds generated by the initial license fee shall be distributed
29 as follows: 50% to the New Jersey Thoroughbred Horsemen's
30 Association for programs designed to aid the horsemen, and 50% to
31 the Standardbred Breeders' and Owners' Association of New Jersey
32 for programs designed to aid the horsemen.

33 e. The commission shall, in consultation with the New Jersey
34 Economic Development Authority, develop progress benchmarks,
35 within three months of the effective date of P.L.2011, c.26, for each
36 off-track wagering licensee to follow for the timely and expeditious
37 establishment of each off-track wagering facility. Such benchmarks
38 shall provide that a permit holder shall be deemed to have made
39 progress toward establishing its share of off-track wagering
40 facilities if it has entered into an agreement, in connection with
41 good faith negotiations over the sale or lease of a racetrack under
42 the permit holder's control, to transfer allocated off-track wagering
43 licenses or facilities to an individual or entity that is a bona fide
44 prospective purchaser or lessee, or has demonstrated to the
45 satisfaction of the Commission that the execution of such an
46 agreement is imminent based upon the portions of such an
47 agreement agreed upon in principle by the parties as evidenced by a
48 memorandum of understanding or similar accord, or has

1 demonstrated to the satisfaction of the commission that negotiations
2 concerning such an agreement have been unsuccessful and the
3 permit holder has plans for soliciting new sources of interest or
4 entering into new negotiations that, in the judgment of the
5 commission, have a reasonable likelihood of resulting in a
6 successful conclusion. The failure of a licensee to meet the
7 benchmarks shall constitute a basis for the denial by the
8 commission of the renewal of the off-track wagering license, except
9 that the licensee shall have the right to appeal the commission's
10 decision.

11 (cf: P.L.2011, c.26, s.3)

12

13 2. This act shall take effect immediately and shall be
14 retroactive to December 31, 2011.

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16

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STATEMENT

18

19 Under current law, a horse racing permit holder must obtain a
20 license by January 1 of 2012 to establish its share of the 15 off-
21 track wagering facilities the permit holder is entitled to establish in
22 this State. The law also provides that if a permit holder does not
23 meet this deadline, the facilities not yet licensed would no longer be
24 considered as part of the permit holder's share, and would be
25 available to be established by a horsemen's organization and other
26 entities as further provided. However, the New Jersey Racing
27 Commission may allow a permit holder to retain its share of the off-
28 track wagering facilities to be established, provided the permit
29 holder is found to be making progress toward establishing its share
30 of the facilities on an annual basis. Under the law, a permit holder
31 is deemed to have made progress toward establishing its share of
32 off-track wagering facilities if it has complied with promulgated
33 benchmarks, or if the permit holder has entered into an agreement
34 to transfer allocated off-track wagering licenses or facilities to an
35 individual or entity that is a bona fide prospective purchaser or
36 lessee, or has demonstrated to the satisfaction of the commission
37 that the execution of such an agreement is imminent based upon the
38 portions of such an agreement agreed upon in principle by the
39 parties as evidenced by a memorandum of understanding or similar
40 accord.

41 This bill provides that any facility that remains to be licensed on
42 the effective date of the bill would be subject to a \$1 million cash
43 deposit, bond, or irrevocable letter of credit within 180 days of the
44 effective date of the bill. The licensees making such deposit, or
45 posting such bond or irrevocable letter of credit, would have one
46 year to obtain a license and make substantial progress toward
47 establishing the facility or facilities, and if so the deposit will be
48 returned to the permit holder at the end of the one-year period.

1 However, if the permit holder fails to obtain the license and make
2 progress within that year, the amount deposited would be forfeited
3 and distributed by the commission to the representative horsemen's
4 organization in this State for use in establishing an off-track
5 wagering facility or facilities as provided by law. Under the bill,
6 any facility that has not been licensed by the effective date of the
7 bill and for which a deposit is not made, and any facility for which
8 a deposit is made which has not been licensed and has not made
9 progress toward establishment within one year of making such
10 deposit, would no longer be considered as part of the permit
11 holder's share, and would be available to be established by a
12 horsemen's organization and other entities as further provided by
13 law.

14 The bill also provides that when the \$1 million deposit, bond, or
15 irrevocable letter of credit is forfeited by a permit holder and
16 allocated to a horsemen's organization, the horsemen's organization
17 would be liable to return to the commission the funds allocated to it
18 in their entirety within one year if it fails to obtain a license and
19 make substantial progress in establishing an off-track wagering
20 facility. In those cases, the commission would return such sum to
21 the permit holder originally depositing such funds, to be used for
22 capital improvements at the permit holder's racetrack.

23 Under the bill, a representative standardbred horsemen's
24 organization would have the right to establish the off-track
25 wagering facilities not established by the permit holder at Freehold
26 Raceway as provided in the bill, and to receive any deposit, bond,
27 or irrevocable letter of credit forfeited by that permit holder for the
28 establishment of one or more of those off-track wagering facilities,
29 except that if a representative standardbred horsemen's organization
30 does not make application therefor, or fails to make progress in
31 establishing the facility or facilities, any amounts received would be
32 returned to the permit holder as provided in the bill, and the facility
33 or facilities would be available to be established by private entities.

34 The bill also provides that a permit holder shall be deemed to
35 have made progress in establishing its share of off-track wagering
36 facilities, and would not have to make the \$1 million deposit, or
37 post a bond or irrevocable letter of credit, if it has entered into an
38 agreement for the sale or lease of a racetrack or if such an
39 agreement is imminent, or has demonstrated to the satisfaction of
40 the commission that negotiations concerning an agreement to lease
41 or sell its racetrack have been unsuccessful and the permit holder
42 has plans for soliciting new sources of interest or entering into new
43 negotiations that, in the judgment of the commission, have a
44 reasonable likelihood of resulting in a successful conclusion.

45 The bill's effective date is retroactive to December 31, 2011,
46 thereby voiding the January 1, 2012 deadline by which outstanding
47 off-track wagering facilities are currently required by law to have
48 obtained a license.

ASSEMBLY REGULATORY OVERSIGHT AND GAMING
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4338

STATE OF NEW JERSEY

DATED: JANUARY 5, 2012

The Assembly Regulatory Oversight and Gaming Committee reports favorably Assembly Bill No. 4338.

Under current law, a horse racing permit holder must obtain a license by January 1 of 2012 to establish its share of the 15 off-track wagering facilities the permit holder is entitled to establish in this State. The law also provides that if a permit holder does not meet this deadline, the facilities not yet licensed would no longer be considered as part of the permit holder's share, and would be available to be established by a horsemen's organization and other entities as further provided. However, the New Jersey Racing Commission may allow a permit holder to retain its share of the off-track wagering facilities to be established, provided the permit holder is found to be making progress toward establishing its share of the facilities on an annual basis. Under the law, a permit holder is deemed to have made progress toward establishing its share of off-track wagering facilities if it has complied with promulgated benchmarks, or if the permit holder has entered into an agreement to transfer allocated off-track wagering licenses or facilities to an individual or entity that is a bona fide prospective purchaser or lessee, or has demonstrated to the satisfaction of the commission that the execution of such an agreement is imminent based upon the portions of such an agreement agreed upon in principle by the parties as evidenced by a memorandum of understanding or similar accord.

This bill provides that any facility that remains to be licensed on the effective date of the bill would be subject to a \$1 million cash deposit, bond, or irrevocable letter of credit within 180 days of the effective date of the bill. The licensees making such deposit, or posting such bond or irrevocable letter of credit, would have one year to obtain a license and make substantial progress toward establishing the facility or facilities, and if so the deposit will be returned to the permit holder at the end of the one-year period. However, if the permit holder fails to obtain the license and make progress within that year, the amount deposited would be forfeited and distributed by the commission to the representative horsemen's organization in this State for use in establishing an off-track wagering facility or facilities as

provided by law. Under the bill, any facility that has not been licensed by the effective date of the bill and for which a deposit is not made, and any facility for which a deposit is made which has not been licensed and has not made progress toward establishment within one year of making such deposit, would no longer be considered as part of the permit holder's share, and would be available to be established by a horsemen's organization and other entities as further provided by law.

The bill also provides that when the \$1 million deposit, bond, or irrevocable letter of credit is forfeited by a permit holder and allocated to a horsemen's organization, the horsemen's organization would be liable to return to the commission the funds allocated to it in their entirety within one year if it fails to obtain a license and make substantial progress in establishing an off-track wagering facility. In those cases, the commission would return such sum to the permit holder originally depositing such funds, to be used for capital improvements at the permit holder's racetrack.

Under the bill, a representative standardbred horsemen's organization would have the right to establish the off-track wagering facilities not established by the permit holder at Freehold Raceway as provided in the bill, and to receive any deposit, bond, or irrevocable letter of credit forfeited by that permit holder for the establishment of one or more of those off-track wagering facilities, except that if a representative standardbred horsemen's organization does not make application therefor, or fails to make progress in establishing the facility or facilities, any amounts received would be returned to the permit holder as provided in the bill, and the facility or facilities would be available to be established by private entities.

The bill also provides that a permit holder shall be deemed to have made progress in establishing its share of off-track wagering facilities, and would not have to make the \$1 million deposit, or post a bond or irrevocable letter of credit, if it has entered into an agreement for the sale or lease of a racetrack or if such an agreement is imminent, or has demonstrated to the satisfaction of the commission that negotiations concerning an agreement to lease or sell its racetrack have been unsuccessful and the permit holder has plans for soliciting new sources of interest or entering into new negotiations that, in the judgment of the commission, have a reasonable likelihood of resulting in a successful conclusion.

The bill's effective date is retroactive to December 31, 2011, thereby voiding the January 1, 2012 deadline by which outstanding off-track wagering facilities are currently required by law to have obtained a license.

This bill is identical to Senate Bill No. 3185.