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LAW/RWH

P.L.2011, CHAPTER 26, *approved February 23, 2011*
Assembly, No. 1705 (*Third Reprint*)

1 AN ACT concerning off-track wagering and amending and
2 supplementing 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 2 of P.L.2001, c.199 (C.5:5-128) is amended to read
8 as follows:

9 2. The Legislature finds and declares that:

10 a. The horse racing industry is economically important to this
11 State, and the general welfare of the people of the State will be
12 promoted by the advancement of horse racing and related projects
13 and facilities in the State.

14 b. It is the intent of the Legislature, by authorizing off-track
15 wagering and account wagering in this State, to promote the
16 economic future of the horse racing industry in this State, to foster
17 the potential for increased commerce, employment and recreational
18 opportunities in this State **[and]**, to preserve the State's open
19 spaces, to preserve and enhance the overall economic well-being of
20 the horse racing and horse breeding industries, and to generate
21 greater interest in the horse racing industry and the sport of horse
22 racing in New Jersey.

23 c. It is the further intent of the Legislature that facilities
24 offering off-track wagering opportunities to the public also offer
25 other amenities such as quality dining and handicapping facilities
26 and that, in doing so, these facilities strive to be of the highest
27 quality in the country.

28 d. The Legislature has determined that the New Jersey Racing
29 Commission is best suited to oversee, license and regulate off-track
30 wagering and account wagering in the State, and that the New
31 Jersey Sports and Exposition Authority, by virtue of its experience
32 in the operation of parimutuel wagering facilities and other
33 entertainment-related projects in this State, is particularly well-
34 suited **[to coordinate with other parties to promote the uniformity
35 and success of off-track wagering throughout the State and]** to
36 ensure the fiscal soundness and technical reliability of an account

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ARG committee amendments adopted March 18, 2010.

²Senate SSG committee amendments adopted November 8, 2010.

³Assembly amendments adopted in accordance with Governor's recommendations February 17, 2011.

1 wagering system, and to be licensed, along with other well-suited
2 entities, as off-track wagering licensees pursuant to the terms of this
3 act.

4 e. In establishing off-track wagering facilities, the authority
5 and other licensees will not be performing an essential government
6 function but rather an essentially private business function.
7 Numerous municipalities, residents and businesses will be impacted
8 by the establishment of off-track wagering facilities throughout the
9 State. [A municipality may oppose the placement of an off-track
10 wagering facility within its boundaries at the discretion of the
11 authority and the commission.] A municipality [may want] having
12 an off-track wagering facility sited within its boundaries[, but only
13 if the municipality receives] is therefore entitled to receive an
14 appropriate level of property tax ³[, and additional compensation as
15 provided in this act.]³ for municipal services. [Therefore,
16 fundamental fairness dictates that any municipality be empowered
17 to refuse the siting of a facility within its boundaries.] Fundamental
18 fairness [also] dictates that an off-track wagering facility, even if
19 owned and not leased by the authority, be subject to local property
20 tax requirements ³[and be further required to pay a portion of its
21 wagering revenues to its host municipality ²[pursuant to the terms
22 of this act] as provided by law²]³.

23 f. By regulation of the Division of Alcoholic Beverage
24 Control, there exist special licenses that permit the sale of alcoholic
25 beverages on public property. These special licenses ²[,] are²
26 typically available to the authority ²[, are inexpensive and
27 circumvent the traditional method for obtaining a license to sell
28 alcoholic beverages]². Because the establishment of off-track
29 wagering facilities is, in reality, essentially a private business
30 function and not an essential government function ²[, the authority
31 is not permitted to receive a special license. Under this act, only]²
32 a private holder of a Class C plenary retail consumption license is
33 ²[permitted] given priority² to provide alcoholic beverages at an
34 off-track wagering facility. However, many municipalities in New
35 Jersey do not have a sufficient number of liquor licenses ²or
36 licensees who are available². Therefore, in order to ensure the
37 establishment of an off-track wagering facility when a ²license or a²
38 private holder of a plenary retail consumption license is not
39 available, it is necessary in this act to allow for the issuance ²[a
40 non-transferable alcoholic beverage license to permit the sale of
41 alcoholic beverages at an off-track wagering facility, under
42 regulation of the Division of Alcoholic Beverage Control, and to
43 provide for financial compensation to alcoholic beverage licensees
44 in the municipality, as further provided in this act] of a special

1 concessionaire permit to the authority, and a special license to other
2 off-track wagering licensees, under certain limited circumstances² .
3 (cf: P.L.2004, c.116, s.3)
4

5 2. Section 3 of P.L.2001, c.199 (C.5:5-129) is amended to read
6 as follows:

7 3. As used in this act:

8 "Account holder" means a resident of this State over age 18 who
9 establishes an account pursuant to this act through which account
10 wagers are placed.

11 "Account wagering" means a form of parimutuel wagering in
12 which an account holder may deposit money in an account with the
13 account wagering licensee and then use the account balance to pay
14 for parimutuel wagers by the account holder.

15 "Account wagering licensee" means the New Jersey Sports and
16 Exposition Authority or its assignee, provided that the commission
17 has granted its approval for the authority to establish an account
18 wagering system as provided for in this act.

19 "Account wagering system" means the system through which
20 account wagers are processed by the account wagering licensee
21 pursuant to this act.

22 "Applicant" means the New Jersey Sports and Exposition
23 Authority or another entity that submits an application to the
24 commission for a license to establish and conduct an off-track
25 wagering facility pursuant to this act.

26 "Authority" means the New Jersey Sports and Exposition
27 Authority created by section 4 of P.L.1971, c.137 (C.5:10-4).

28 "Backstretch Benevolency" means the Backstretch Benevolency
29 Programs Fund established pursuant to section 1 of P.L.1993, c.15
30 (C.5:5-44.8).

31 "Breeders and Stallions" means the distribution from the special
32 trust account created pursuant to section 46 a. (2) of P.L.1940, c.17
33 (C.5:5-66) for the purposes of subparagraph (c) of that citation.

34 "Breeding and Development" means the New Jersey Horse
35 Breeding and Development Account established pursuant to section
36 5 of P.L.1967, c.40 (C.5:5-88).

37 "Commission" means the New Jersey Racing Commission
38 created by section 1 of P.L.1940, c.17 (C.5:5-22).

39 "Executive Director" means the Executive Director of the
40 commission.

41 "Health and Welfare" means moneys distributed to the
42 Standardbred Breeders' and Owners' Association for the
43 administration of a health benefits program pursuant to section 46 a.
44 (5) of P.L.1940, c.17 (C.5:5-66).

45 "In-State host track" means a racetrack within this State which is
46 operated by a permit holder which conducts a horse race upon
47 which account wagers are placed pursuant to this act.

1 "In-State sending track" means a racetrack within this State
2 which is operated by a permit holder and is equipped to conduct
3 off-track simulcasting.

4 "In-State track" means an in-State host track or an in-State
5 sending track.

6 "Interstate common pool" means the parimutuel pool established
7 within this State or in another state or foreign nation within which
8 is combined parimutuel pools of one or more receiving tracks
9 located in one or more states or foreign nations upon a race at an
10 out-of-State sending track or out-of-State host track for the purpose
11 of establishing payoff prices in the various jurisdictions.

12 "Jockey's Health and Welfare" means a health and welfare trust
13 established by the organization certified by the New Jersey Racing
14 Commission as representing a majority of the active licensed
15 thoroughbred jockeys in New Jersey for the purpose of providing
16 health and welfare benefits to active, disabled and retired New
17 Jersey jockeys and their dependents based upon reasonable criteria
18 by that organization.

19 "New Jersey Racing Industry Special Fund" means the fund
20 established pursuant to section 27 of this act.

21 "New Jersey Thoroughbred Horsemen's Association" means the
22 association representing the majority of New Jersey thoroughbred
23 owners and trainers responsible for receiving and distributing funds
24 for programs designed to aid thoroughbred horsemen.

25 "Off-track simulcasting" means the simultaneous audio or visual
26 transmission of horse races conducted at in-State and out-of-State
27 racetracks to off-track wagering facilities and parimutuel wagering
28 at those off-track wagering facilities on the results of those races.

29 "Off-track wagering" means parimutuel wagering at an off-track
30 wagering facility as authorized under this act.

31 "Off-track wagering facility" means a licensed facility, other
32 than a racetrack, at which parimutuel wagering is conducted
33 pursuant to this act.

34 "Off-track wagering licensee" means the New Jersey Sports and
35 Exposition Authority or its assignee, **【provided that】** or another
36 entity to which the commission has granted its approval **【for the**
37 **authority】** to conduct an off-track wagering facility as provided for
38 in this act.

39 "Out-of-State host track" means a racetrack in a jurisdiction
40 other than the State of New Jersey, the operator of which is lawfully
41 permitted to conduct a horse race meeting and which conducts horse
42 races upon which account wagers may be placed pursuant to this
43 act.

44 "Out-of-State sending track" means a racetrack in a jurisdiction
45 other than the State of New Jersey which is equipped to conduct
46 off-track simulcasting and the operator of which is lawfully

1 permitted to conduct a horse race meeting and to provide simulcast
2 horse races to off-track wagering facilities in this State.

3 "Out-of-State track" means an out-of-State host track or an out-
4 of-State sending track.

5 "Outstanding parimutuel ticket" means a winning parimutuel
6 ticket which is not claimed within six months of sale.

7 "Parimutuel" means any system whereby wagers with respect to
8 the outcome of a horse race are placed with, or in, a wagering pool
9 conducted by an authorized person, and in which the participants
10 are wagering with each other and not against the person conducting
11 the wagering pool.

12 "Participation agreement" means the written contract entered into
13 prior to the effective date of P.L. , c. (pending before the
14 Legislature as this bill), that provides for the establishment or
15 implementation of either (a) an off-track wagering facility or
16 facilities or (b) an account wagering system. Each such contract
17 shall set forth the manner in which the off-track wagering facility or
18 facilities or the account wagering system shall be managed,
19 operated and capitalized, as well as how expenses and revenues
20 shall be allocated and distributed by and among the authority and
21 the other eligible participants subject to the agreement.

22 "Permit holder" means the holder of an annual permit to conduct
23 a horse race meeting issued by the commission.

24 "Racetrack" means the physical facility where a permit holder
25 conducts a horse race meeting with parimutuel wagering.

26 "Racing costs" means the prospective and actual costs for all
27 licensing, investigation, operation, regulation, supervision and
28 enforcement activities and functions performed by the commission.

29 "Simulcast horse races" means horse races conducted at an in-
30 State sending track or an out-of-State sending track, as the case may
31 be, and transmitted simultaneously by picture to a receiving track or
32 an off-track wagering facility.

33 "Sire Stakes" means the Sire Stakes Program established
34 pursuant to section 1 of P.L.1971, c.85 (C.5:5-91).

35 "Standardbred Drivers' Health and Welfare" means a health and
36 welfare trust established by the Standardbred Breeders' and Owners'
37 Association of New Jersey for the purpose of providing health and
38 welfare benefits to active, disabled and retired New Jersey
39 standardbred drivers and their dependents based upon reasonable
40 criteria by that organization.

41 "Takeout" means that portion of a wager which is deducted from
42 or not included in the parimutuel pool, and which is distributed
43 other than to persons placing wagers.

44 "Thoroughbred Breeders and Stallions" means the special trust
45 account created pursuant to section 46 b.(1)(e) of P.L.1940, c.17
46 (C.5:5-66).

47 (cf: P.L.2004, c.116, s.4)

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

3 4. a. The commission is authorized to issue a license to the
4 authority to permit off-track wagering at a specified facility, upon
5 application of the authority and in accordance with the provisions of
6 this act. A license issued pursuant to this act shall be valid for a
7 period of one year. The commission shall issue a license pursuant to
8 this subsection only if the permit holder at Monmouth Park and the
9 thoroughbred ²and standardbred² permit ²[holder] holders² at
10 Meadowlands Racetrack schedule at least the minimum number of
11 race dates required in section 30 of this act, P.L.2001, c.199 (C.5:5-
12 156), and it is satisfied that the authority has entered into a
13 participation agreement with each and every other person,
14 partnership, association, corporation, or authority or the successor
15 in interest to such person, partnership, association, corporation or
16 authority that:

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

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

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

22 An off-track wagering license may not be transferred or assigned
23 to a successor in interest without the approval of the commission
24 and the Attorney General, which approval may not be unreasonably
25 withheld.

26 b. ²(1)² As part of the license application process, any
27 participation agreement entered into for the purposes of subsection
28 a. of this section, or any modification to the agreement made
29 thereafter, shall be reviewed by the commission and the Attorney
30 General to determine whether the agreement meets the requirements
31 of this act and shall be subject to the approval of the commission
32 and the Attorney General. ²Notwithstanding any other law, rule, or
33 regulation to the contrary, a permit holder subject to a participation
34 agreement entered into prior to the effective date of P.L. _____,
35 c. (pending before the Legislature as this bill) shall have made
36 progress since the signing of that agreement toward establishing the
37 permit holder's share of the 15 off-track wagering facilities
38 authorized pursuant to section 10 of P.L.2001, c.199 (C.5:5-136),
39 provided that any facility that has not received a license under
40 section 7 of P.L.2001, c.199 (C.5:5-133) by January 1 of 2012 shall
41 no longer be considered as part of the permit holder's share, and
42 shall be available to be established by a horsemen's organization in
43 this State as provided by paragraph (2) of this subsection.
44 However, if the commission finds that a permit holder is making
45 progress toward obtaining an off-track wagering license and
46 establishing an off-track wagering facility according to specified
47 benchmarks developed by the commission, the commission may

1 allow a permit holder to retain its share of the off-track wagering
2 facilities to be established, provided the permit holder continues to
3 make progress on an annual basis. ³For the purposes of this section,
4 a permit holder shall be deemed to have made progress toward
5 establishing its share of off-track wagering facilities if it has entered
6 into an agreement, in connection with good faith negotiations over
7 the sale or lease of a racetrack under the permit holder's control, to
8 transfer allocated off-track wagering licenses or facilities to an
9 individual or entity that is a bona fide prospective purchaser or
10 lessee, or has demonstrated to the satisfaction of the Commission
11 that the execution of such an agreement is imminent based upon the
12 portions of such an agreement agreed upon in principle by the
13 parties as evidenced by a memorandum of understanding or similar
14 accord.³

15 (2) The commission is authorized to issue a license or licenses
16 to any horsemen's organization in this State, for the establishment
17 of one or more of the remaining off-track wagering facilities in
18 partnership with other horsemen's organizations in this State, the
19 authority, or private investors, in accordance with all applicable
20 provisions of the "Off-Track and Account Wagering Act,"
21 P.L.2001, c.199 (C.5:5-127 et seq.). A horsemen's organization
22 shall make progress on an annual basis in establishing an off-track
23 wagering facility from the date the organization is eligible to apply
24 for an initial license pursuant to this subsection, provided that any
25 facility that has not received a license under section 7 of P.L.2001,
26 c.199 (C.5:5-133) within a reasonable timeframe from the date the
27 horsemen's organization became eligible to apply for its initial
28 license shall no longer be considered eligible to be established by a
29 horsemen's organization under this paragraph, and shall be
30 available to be established by a well-suited entity pursuant to
31 subsection c. of this section.²

32 c. ²[The] With respect to any licenses that remain to be issued
33 under paragraph (2) of subsection b. of this section, the²
34 commission is also authorized to issue a license to a well-suited
35 entity to permit off-track wagering at a specified facility, upon
36 application of the entity and in accordance with the provisions of
37 this act and the provisions of section 14 of P.L.1940, c.17 (C.5:5-
38 34). A license issued pursuant to this act shall be valid for a period
39 of one year²and, if the licensed entity is not a permit holder in this
40 State, the license shall be contingent upon the licensee showing
41 simulcast New Jersey races and allowing wagering thereon at the
42 off-track wagering facility, subject to the rules and regulations of
43 the commission, and shall be issued only if the permit holders
44 schedule at least the minimum number of race dates required in
45 section 30 of P.L.2001, c.199 (C.5:5-156)². In assessing the
46 qualifications of an entity to establish and conduct an off-track
47 wagering facility, the commission shall apply substantially similar

1 standards and criteria to those applied to the authority, its assignees,
2 and other permit holders and licensees in the State. These standards
3 and criteria shall enable the commission to determine by clear and
4 convincing evidence in the opinion of the commission that the
5 person or persons applying for licensure on behalf of the entity are
6 well-suited to receive licensure, and shall include, but may not be
7 limited to:

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

11 (2) evidence of good character, honesty, competency and
12 integrity;

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

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

17 d. (1) The commission, in consultation with the State
18 Treasurer, shall develop a process by which the commission will
19 accept bids for each off-track wagering license to be awarded under
20 this act, P.L.2001, c.199. An off-track wagering licensee and an
21 entity interested in establishing an off-track wagering facility and
22 being licensed as an off-track wagering licensee shall be eligible to
23 submit a bid. The bidding process shall include procedures for the
24 establishment of a minimum bid threshold, for the selection of a
25 successful bidder and, when the successful bidder is not yet
26 licensed as an off-track wagering licensee, for the awarding of a bid
27 to that successful bidder subject to its eligibility to be licensed as an
28 off-track wagering licensee in compliance with the provisions of
29 this act, P.L.2001, c.199. As part of the bidding process, and in
30 addition to submitting a monetary bid, a bidder shall submit to the
31 commission a conceptual plan of the off-track wagering facility the
32 bidder intends to establish, which shall include, but may not be
33 limited to, a description of the proposed facility and the amenities it
34 would offer, and its proposed or intended location. In selecting a
35 successful bidder, the commission shall consider and balance the
36 following: (a) the monetary value of the bid in comparison to other
37 bids submitted; (b) the level of quality of the proposed facility and
38 amenities in striving to be a first-rate experience for the customer
39 ²that includes the provision of first-class dining facilities² ; (c) the
40 potential of the proposed facility and amenities to generate greater
41 interest in the horse racing industry and the sport of horse racing in
42 the State; and (d) the proximity of the bidder's proposed or intended
43 location for the off-track wagering facility and its impact on other
44 planned or existing off-track wagering facilities and racetracks in
45 the State. For the purposes of this act, P.L.2001, c.199, a successful
46 bid shall be conditional upon the successful bidder's compliance

1 with all the provisions of this act, P.L.2001, c.199, and the
2 applicable rules and regulations promulgated by the commission.

3 (2) The commission shall consider the amount of a successful
4 bid pursuant to paragraph (1) of this subsection as a license fee in
5 connection with the issuance of an initial license to an off-track
6 wagering facility licensee. The initial license fee need not be
7 uniform for all off-track wagering facility licenses, and may vary
8 depending on the results of the bidding process for each license.
9 The proceeds generated by the initial license fee shall be distributed
10 as follows: 50% to the New Jersey Thoroughbred Horsemen's
11 Association for programs designed to aid the horsemen, and 50% to
12 '[Sire Stakes] the Standardbred Breeders' and Owners' Association
13 of New Jersey for programs designed to aid the horsemen'¹.

14 ²e. The commission shall, in consultation with the New Jersey
15 Economic Development Authority, develop progress benchmarks,
16 within three months of the effective date of P.L. , c. (pending
17 before the Legislature as this bill), for each off-track wagering
18 licensee to follow for the timely and expeditious establishment of
19 each off-track wagering facility. ³Such benchmarks shall provide
20 that a permit holder shall be deemed to have made progress toward
21 establishing its share of off-track wagering facilities if it has entered
22 into an agreement, in connection with good faith negotiations over
23 the sale or lease of a racetrack under the permit holder's control, to
24 transfer allocated off-track wagering licenses or facilities to an
25 individual or entity that is a bona fide prospective purchaser or
26 lessee, or has demonstrated to the satisfaction of the Commission
27 that the execution of such an agreement is imminent based upon the
28 portions of such an agreement agreed upon in principle by the
29 parties as evidenced by a memorandum of understanding or similar
30 accord.³ The failure of a licensee to meet the benchmarks shall
31 constitute a basis for the denial by the commission of the renewal of
32 the off-track wagering license, except that the licensee shall have
33 the right to appeal the commission's decision.²

34 (cf: P.L.2004, c.116, s.5)

35
36 4. Section 5 of P.L.2001, c.199 (C.5:5-131) is amended to read
37 as follows:

38 5. a. At the time of filing an application for an off-track
39 wagering license, the [authority] applicant shall submit to the
40 commission a non-refundable filing fee in an amount established by
41 regulation by the commission, and a certification in a form
42 prescribed by the commission which specifies, but is not limited to,
43 the following information:

44 (1) a plan depicting the proposed facility and improvements
45 thereon, including information about the size, seating capacity,
46 parking and services to be provided at the facility;

- 1 (2) the location of the proposed facility, and relevant
2 demographic or other information concerning the municipality and
3 surrounding area where the proposed facility is to be located;
- 4 (3) the number of permanent and part-time jobs expected to be
5 created at the proposed facility, and gross revenues expected to be
6 generated by the facility;
- 7 (4) the fire evacuation plan for the proposed facility;
- 8 (5) the type of food and beverages available ², which shall
9 include the provision of first-class dining facilities²; and
- 10 (6) such other information as the commission may require.
- 11 b. The **[authority]** applicant shall file a separate application
12 and certification for each proposed off-track wagering facility.
- 13 c. The commission shall charge each off-track wagering
14 licensee an annual fee in connection with the renewal of the off-
15 track wagering license, and shall establish by regulation procedures
16 and conditions for renewal of licenses issued under this act. The
17 amount of the annual license renewal fee shall be used by the
18 commission to cover commission expenses associated with
19 implementation of the provisions of this act, P.L.2001, c.199, and
20 shall reasonably reflect those costs.
- 21 d. The commission shall by regulation establish the maximum
22 hours of operation of off-track wagering facilities.
- 23 e. (1) Notwithstanding R.S.33:1-42, ²priority for the service
24 of² alcoholic beverages ²[may be offered]² for on-premise
25 consumption at an off-track wagering facility ²[only if provided
26 by] shall be given to² a Class C plenary retail consumption
27 licensee, by an agreement or contract with the **[authority]** off-track
28 wagering licensee, pursuant to the provisions of R.S.33:1-1 et seq.
29 in accordance with such procedures as established by statute and by
30 regulation of the Division of Alcoholic Beverage Control. ²[The]
31 When a Class C plenary retail consumption license or licensee is
32 available in the municipality, the² authority shall not hold a license
33 to provide alcoholic beverages at an off-track wagering facility.
34 However, when a Class C plenary retail consumption licensee ²or
35 license² is not available in the municipality, the Director of the
36 Division of Alcoholic Beverage Control ²shall issue a special
37 concessionaire permit to the authority for the provision of alcoholic
38 beverages at the off-track wagering facility and, if the off-track
39 wagering license is held by an off-track wagering licensee other
40 than the authority, the director² may issue a non-transferable special
41 license to provide alcoholic beverages at the off-track wagering
42 facility pursuant to paragraph (2) of this subsection.
- 43 (2) The Director of the Division of Alcoholic Beverage Control
44 may issue one special license to an individual, corporation, or other
45 type of legal entity to serve alcoholic beverages at an off-track
46 wagering facility located in the municipality where a Class C

1 plenary retail consumption licensee was not available to provide
2 alcoholic beverages at the off-track wagering facility pursuant to
3 paragraph (1) of this subsection. The license shall authorize the
4 sale of alcoholic beverages for immediate consumption on the
5 premises of the off-track wagering facility. The director may issue
6 not more than 15 licenses pursuant to this paragraph. Furthermore,
7 licenses issued pursuant to this paragraph shall be subject to the
8 following requirements:

9 (a) No person who would fail to qualify as a licensee under Title
10 33 of the Revised Statutes shall be permitted to hold an interest in a
11 special license under the provisions of this paragraph;

12 (b) Licenses shall be subject to the provisions of Title 33 of the
13 Revised Statutes and rules and regulations promulgated by the
14 director, to the extent those provisions are not inconsistent with the
15 provisions of this act;

16 (c) No license issued pursuant to this paragraph shall be
17 transferred to any other premises;

18 (d) Application for the initial issuance and renewal of each
19 license shall be made to the director on an annual basis. The fee for
20 the initial issuance of the license shall be ²[two and one half
21 times]² the average sale price for the three most recent sales of
22 plenary retail consumption licenses in the municipality where the
23 license is being issued during the preceding five years. If the off-
24 track wagering facility is located within the boundaries of two or
25 more municipalities, the highest average sale price of the two or
26 more municipalities shall be used. If less than three plenary retail
27 consumption licenses have been sold in the municipality or
28 municipalities, as the case may be, within the previous five years,
29 the director shall obtain an appraisal, at the applicant's expense, to
30 determine the appropriate fee for the license. The appraisal process
31 shall include an examination of previous transactions in the
32 municipality or municipalities, as the case may be, and shall reflect
33 what a willing buyer, under no pressure to buy, would pay a willing
34 seller, under no pressure to sell, for a plenary retail consumption
35 license in that municipality or municipalities, as the case may be.
36 One half of the amount of the application fee for the initial issuance
37 of the license shall be paid upon the issuance of the license and the
38 other half of that amount shall be paid one year later. The director
39 shall establish an annual fee for the license which shall not exceed
40 the fee which may be imposed by a municipality for a plenary retail
41 consumption license pursuant to R.S.33:1-12 ², a portion of which
42 shall be paid by the director to the New Jersey Racing Commission
43 for the funding of horse breeding incentive programs² ;

44 (e) The fee for the initial issuance of the license shall be
45 distributed in the following manner:

46 (i) Twenty-five percent shall be paid to the municipality where
47 the off-track wagering facility is located and if the off-track

1 wagering facility is located within the boundaries of two or more
2 municipalities, the fee shall be divided equally among those
3 municipalities;

4 (ii) Twenty-five percent shall be paid to the Director of the
5 Division of Alcoholic Beverage Control;

6 (iii) Fifty percent shall be ²[divided equally among and paid to
7 the plenary retail consumption licensees in the municipality or
8 municipalities where the licensed premises will be located, except
9 that no payment shall be made to the holders of inactive licenses]
10 paid to the New Jersey Racing Commission for the funding of horse
11 breeding incentive programs² ;

12 (f) The individual corporation or entity holding the license shall
13 not be entitled to sell a license issued pursuant to this paragraph,
14 and the license shall expire upon the closure of the off-track
15 wagering facility;

16 (g) The director shall not issue a special concessionaire permit
17 for any off-track wagering facility or premises which is eligible to
18 obtain a license to serve alcoholic beverages under the provisions of
19 this paragraph; and

20 (h) Pursuant to the "Administrative Procedure Act," P.L.1968,
21 c.410 (C.52:14B-1 et seq.), the director shall adopt rules and
22 regulations to effectuate the purposes of this paragraph.

23 (3) Nothing in this subsection shall be construed to allow the
24 Director of the Division of Alcoholic Beverage Control to issue a
25 special concessionaire permit or a special license described in
26 paragraph (2) of this subsection to the authority pursuant to this act,
27 P.L.2001, c.199, or to issue a special license to any individual,
28 corporation, or other type of legal entity to serve alcoholic
29 beverages in a municipality that prohibits the retail sale of alcoholic
30 beverages within its boundaries.

31 f. Persons under the age of 18 years shall not be permitted in
32 any off-track wagering facility, except in dining areas if
33 accompanied by a parent or guardian.

34 g. The commission shall by regulation establish minimum
35 standards for off-track wagering facilities and timelines for their
36 establishment and completion, including, but not limited to,
37 standards for quality, size, seating capacity, ²the provision of first-
38 class dining facilities,² parking and services to be provided, as well
39 as expected dates of construction, renovations and opening. The
40 failure of an off-track wagering licensee to meet these standards
41 shall be sufficient cause for the commission to revoke, suspend or
42 refuse to renew a license pursuant to the provisions of section 8 of
43 P.L.2001, c.199 (C.5:5-134).

44 h. [The authority, in lieu of obtaining municipal zoning and
45 planning approvals that may otherwise be required in connection
46 with the off-track wagering facility, shall submit a written notice of
47 its intention to site an off-track wagering facility to the governing

1 body of the municipality within which the facility would be sited.
2 The notice shall identify the proposed site of the facility by street
3 address, if any, or by reference to lot and block numbers as shown
4 on the current tax duplicate in the municipal tax assessor's offices.
5 Within 45 days of its receipt of the authority's notice of intention,
6 the municipal governing body may disapprove of the proposed site
7 of an off-track wagering facility by adopting a resolution which
8 shall be valid and binding upon the authority and the commission
9 upon delivery of a duly certified copy of the resolution to the
10 authority and the commission. Whenever a municipality determines
11 to consider a resolution disapproving a proposed off-track wagering
12 facility, the authority shall be given an opportunity to offer a public
13 presentation of the proposed facility prior to consideration of the
14 resolution. A resolution disapproving a proposed off-track
15 wagering facility shall state the reasons for disapproval.

16 In the event the governing body shall not adopt such a resolution,
17 the authority] ²[Notwithstanding the provisions of any law, rule, or
18 regulation to the contrary, the applicant shall submit its plans to the
19 municipal planning board and shall comply with the planning board
20 approval process pursuant to the "Municipal Land Use Law,"
21 P.L.1975, c.291 (C. 40:55D-1 et seq.). The applicant may seek a
22 license for an off-track wagering facility in that municipality and
23 the commission may grant the [authority] applicant the license
24 provided that:

25 (1) the proposed off-track wagering facility site is not in an area
26 zoned residential;

27 (2) the [authority] applicant has submitted its plans to the
28 municipal planning board, [and complied with] notwithstanding the
29 provisions of section 22 of P.L.1975, c.291 (C.40:55D-31) or any
30 law, rule, or regulation to the contrary; and

31 (3) the [authority] applicant has [made reasonable efforts to
32 address the reasonable concerns expressed] obtained site plan
33 approval by the municipal planning board] Notwithstanding the
34 provisions of any law, rule, or regulation to the contrary, an off-
35 track wagering facility shall be a permitted use in all commercial
36 and industrial districts of a municipality².

37 i. In evaluating an application for an off-track wagering
38 license, the commission shall consider the proximity of the
39 applicant's proposed site to other planned or existing off-track
40 wagering facilities and to racetracks in this State. If, in the opinion
41 of the commission, the establishment of the facility at its proposed
42 location would be inimical to the interests of another planned or
43 established off-track wagering facility, or to a State racetrack, the
44 commission shall require the applicant to consider alternative sites
45 for the proposed facility.

46 (cf: P.L.2004, c.116, s.6)

1 5. Section 6 of P.L.2001, c.199 (C.5:5-132) is amended to read
2 as follows:

3 6. Within 14 days of receipt of a completed application,
4 certification and applicable fees, the executive director shall
5 determine whether the same is in due form and meets the
6 requirements of law in all respects, and upon being satisfied thereof,
7 the commission, within 45 days of receipt of a completed
8 application, certification and applicable fees, shall hold a public
9 hearing in the municipality in which the proposed off-track
10 wagering facility is to be located. The costs of the public hearing
11 shall be paid by the **[authority]** applicant. The executive director
12 shall cause a display advertisement, approximately 11 inches by 8
13 inches in size, to be published at least once in a daily newspaper,
14 and at least once in a weekly newspaper, published, or circulated if
15 none is published, in the county where the municipality is located at
16 least 15 days before the date of the public hearing and to be
17 published again in that daily newspaper on the third day preceding
18 the public hearing and in the latest edition of that weekly newspaper
19 that will be in circulation on the third day preceding the public
20 hearing. The advertisement shall contain sufficient information to
21 apprise the public as to the purpose of the hearing, the time and
22 place thereof, and the nature of the license applied for. The
23 advertisement shall be prepared and placed by the executive
24 director, but shall be paid for by the **[authority]** applicant.

25 (cf: P.L.2001, c.199, s.6)

26

27 6. Section 7 of P.L.2001, c.199 (C.5:5-133) is amended to read
28 as follows:

29 7. a. No sooner than 30 days nor later than 60 days following
30 the public hearing, the commission shall make a final determination
31 on the license application. The commission shall approve the
32 application if it determines that the plan for the proposed facility
33 includes appropriate standards of quality for the premises and
34 services it will provide and that the **[authority]** applicant has
35 demonstrated by clear and convincing evidence that establishment
36 of the proposed off-track wagering facility will not be inimical to
37 the interests of the public and the horse racing industry in this State.
38 The commission shall submit its determination to the Attorney
39 General for review and approval. The determination of the
40 commission shall be deemed approved by the Attorney General if
41 not affirmatively approved or disapproved by the Attorney General
42 within 14 days of the date of submission. The decision of the
43 Attorney General shall be deemed a final decision. Upon approval
44 by the Attorney General, the commission shall issue to the
45 **[authority]** applicant an off-track wagering license specifying the
46 location, the periods of time during a calendar year and the hours of
47 operation during which off-track wagering is permitted at the

1 facility, and prescribing any other conditions or terms the
2 commission deems appropriate.

3 b. With the approval of the commission, the authority may
4 assign an off-track wagering license to a permit holder, provided
5 that the authority shall retain responsibility for license renewals. In
6 the event the authority assigns an off-track wagering license, the
7 assignee shall reimburse the authority for its costs associated with
8 the application for the license. With the approval of the
9 commission, ~~the~~ an off-track wagering licensee may enter into a
10 contract or agreement with a person or entity to conduct or operate
11 an off-track wagering facility for the licensee and to act as the agent
12 of the licensee in all off-track wagering matters approved by the
13 commission.

14 (cf: P.L.2004, c.116, s.7)

15

16 7. (New Section) ³[a. An off-track wagering licensee, or its
17 assignee, operating an off-track wagering facility pursuant to the
18 provisions of the "Off-Track and Account Wagering Act,"
19 P.L.2001, c.199 (C.5:5-127 et seq.), shall pay annually to the
20 municipality where the off-track wagering facility is located a sum
21 equal to ²[4%] 1%² of the net proceeds remaining ²after the
22 payment of the off-track wagering facility's operating expenses²
23 from the amounts received by the licensee pursuant to subsection f.
24 of section 21 of P.L.2001, c.199 (C.5:5-147) and subsection b. of
25 section 25 of P.L.2001, c.199 (C.5:5-151).

26 b. The payment requirement established pursuant to subsection
27 a. of this section shall apply to an off-track wagering licensee, or its
28 assignee, opening an off-track wagering facility for business on or
29 after the effective date of this act, P.L. , c. (C.) (pending
30 before the Legislature as this bill), and to an existing off-track
31 wagering licensee, or its assignee, commencing on the license
32 renewal date immediately following the effective date of this act.
33 Thereafter, as a condition for the annual renewal of an off-track
34 wagering license, the New Jersey Racing Commission shall verify
35 that the licensee or its assignee has paid to the municipality the
36 amounts required pursuant to subsection a. of this section. The
37 commission shall not renew the off-track wagering license unless
38 and until the licensee has complied with the payment requirement.

39 c. The amount paid to the municipality pursuant to subsection
40 a. of this section shall be used by the municipality to fund any
41 increase in municipal infrastructure and service costs brought about
42 by the off-track wagering facility, and for general municipal
43 purposes.

44 ²d.]³ Notwithstanding any other law, rule, or regulation to the
45 contrary:

46 (1) when the authority is the owner of the land, building, and
47 premises where an off-track wagering facility is operated pursuant

1 to an initial off-track wagering facility license issued after the
 2 effective date of P.L. , c. (pending before the Legislature as this
 3 bill), the authority shall pay to the municipality where the facility is
 4 located a payment in-lieu-of taxes for the first five years of
 5 operation of the off-track wagering facility, which payment amount
 6 shall be determined upon agreement with the municipality, and shall
 7 pay regular property tax payments beginning on the sixth year and
 8 thereafter; and

9 (2) when a private off-track wagering licensee is the owner of
 10 the land, building, and premises where an off-track wagering
 11 facility is operated pursuant to an initial off-track wagering facility
 12 license issued after the effective date of P.L. , c. (pending before
 13 the Legislature as this bill), the private off-track wagering licensee
 14 shall be eligible to receive a five-year tax exemption, or abatement,
 15 or both, when located in an area in need of rehabilitation as defined
 16 under the "Five-Year Exemption and Abatement Law," P.L.1991,
 17 c.441 (C.40A:21-1 et seq.), except that the private off-track
 18 wagering licensee shall pay to the municipality where the facility is
 19 located a payment in-lieu-of taxes for the first five years of
 20 operation of the off-track wagering facility, which payment amount
 21 shall be less than the amount of regular property tax payments as
 22 determined upon agreement with the municipality pursuant to
 23 section 10 of P.L.1991, c.441 (C.40A:21-10), and shall pay regular
 24 property tax payments beginning on the sixth year and thereafter.²

25
 26 ³8. (New Section) Notwithstanding any provision of P.L.1968,
 27 c.410 (C.52:14B-1 et seq.) to the contrary, the Commission may
 28 adopt immediately upon filing with the Office of Administrative
 29 Law such regulations as the Commission deems necessary to
 30 implement the provisions of this act, which shall be effective for a
 31 period not to exceed 180 days and may thereafter be amended,
 32 adopted or readopted by the Commission in accordance with the
 33 requirements of P.L.1968, c.410.³

34
 35 ³[8.] 9.³ This act shall take effect immediately.

36
 37
 38
 39
 40 _____
 41 Revises various off-track wagering provisions of the "Off-Track
 and Account Wagering Act."

ASSEMBLY, No. 1705

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Assemblyman RONALD S. DANCER

District 30 (Burlington, Mercer, Monmouth and Ocean)

SYNOPSIS

Revises various off-track wagering provisions of the “Off-Track and Account Wagering Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning off-track wagering and amending and
2 supplementing 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 2 of P.L.2001, c.199 (C.5:5-128) is amended to read
8 as follows:

9 2. The Legislature finds and declares that:

10 a. The horse racing industry is economically important to this
11 State, and the general welfare of the people of the State will be
12 promoted by the advancement of horse racing and related projects
13 and facilities in the State.

14 b. It is the intent of the Legislature, by authorizing off-track
15 wagering and account wagering in this State, to promote the
16 economic future of the horse racing industry in this State, to foster
17 the potential for increased commerce, employment and recreational
18 opportunities in this State **[and]**, to preserve the State's open
19 spaces, to preserve and enhance the overall economic well-being of
20 the horse racing and horse breeding industries, and to generate
21 greater interest in the horse racing industry and the sport of horse
22 racing in New Jersey.

23 c. It is the further intent of the Legislature that facilities
24 offering off-track wagering opportunities to the public also offer
25 other amenities such as quality dining and handicapping facilities
26 and that, in doing so, these facilities strive to be of the highest
27 quality in the country.

28 d. The Legislature has determined that the New Jersey Racing
29 Commission is best suited to oversee, license and regulate off-track
30 wagering and account wagering in the State, and that the New
31 Jersey Sports and Exposition Authority, by virtue of its experience
32 in the operation of parimutuel wagering facilities and other
33 entertainment-related projects in this State, is particularly well-
34 suited **[to coordinate with other parties to promote the uniformity**
35 **and success of off-track wagering throughout the State and]** to
36 ensure the fiscal soundness and technical reliability of an account
37 wagering system, and to be licensed, along with other well-suited
38 entities, as off-track wagering licensees pursuant to the terms of this
39 act.

40 e. In establishing off-track wagering facilities, the authority
41 and other licensees will not be performing an essential government
42 function but rather an essentially private business function.
43 Numerous municipalities, residents and businesses will be impacted
44 by the establishment of off-track wagering facilities throughout the

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 State. [A municipality may oppose the placement of an off-track
2 wagering facility within its boundaries at the discretion of the
3 authority and the commission.] A municipality [may want] having
4 an off-track wagering facility sited within its boundaries[, but only
5 if the municipality receives] is therefore entitled to receive an
6 appropriate level of property tax, and additional compensation as
7 provided in this act, for municipal services. [Therefore,
8 fundamental fairness dictates that any municipality be empowered
9 to refuse the siting of a facility within its boundaries.] Fundamental
10 fairness [also] dictates that an off-track wagering facility, even if
11 owned and not leased by the authority, be subject to local property
12 tax requirements and be further required to pay a portion of its
13 wagering revenues to its host municipality pursuant to the terms of
14 this act.

15 f. By regulation of the Division of Alcoholic Beverage
16 Control, there exist special licenses that permit the sale of alcoholic
17 beverages on public property. These special licenses, typically
18 available to the authority, are inexpensive and circumvent the
19 traditional method for obtaining a license to sell alcoholic
20 beverages. Because the establishment of off-track wagering
21 facilities is, in reality, essentially a private business function and
22 not an essential government function, the authority is not permitted
23 to receive a special license. Under this act, only a private holder of
24 a Class C plenary retail consumption license is permitted to provide
25 alcoholic beverages at an off-track wagering facility. However,
26 many municipalities in New Jersey do not have a sufficient number
27 of liquor licenses. Therefore, in order to ensure the establishment
28 of an off-track wagering facility when a private holder of a plenary
29 retail consumption license is not available, it is necessary in this act
30 to allow for the issuance a non-transferable alcoholic beverage
31 license to permit the sale of alcoholic beverages at an off-track
32 wagering facility, under regulation of the Division of Alcoholic
33 Beverage Control, and to provide for financial compensation to
34 alcoholic beverage licensees in the municipality, as further provided
35 in this act.

36 (cf: P.L.2004, c.116, s.3)

37

38 2. Section 3 of P.L.2001, c.199 (C.5:5-129) is amended to read
39 as follows:

40 3. As used in this act:

41 "Account holder" means a resident of this State over age 18 who
42 establishes an account pursuant to this act through which account
43 wagers are placed.

44 "Account wagering" means a form of parimutuel wagering in
45 which an account holder may deposit money in an account with the
46 account wagering licensee and then use the account balance to pay
47 for parimutuel wagers by the account holder.

1 "Account wagering licensee" means the New Jersey Sports and
2 Exposition Authority or its assignee, provided that the commission
3 has granted its approval for the authority to establish an account
4 wagering system as provided for in this act.

5 "Account wagering system" means the system through which
6 account wagers are processed by the account wagering licensee
7 pursuant to this act.

8 "Applicant" means the New Jersey Sports and Exposition
9 Authority or another entity that submits an application to the
10 commission for a license to establish and conduct an off-track
11 wagering facility pursuant to this act.

12 "Authority" means the New Jersey Sports and Exposition
13 Authority created by section 4 of P.L.1971, c.137 (C.5:10-4).

14 "Backstretch Benevolency" means the Backstretch Benevolency
15 Programs Fund established pursuant to section 1 of P.L.1993, c.15
16 (C.5:5-44.8).

17 "Breeders and Stallions" means the distribution from the special
18 trust account created pursuant to section 46 a. (2) of P.L.1940, c.17
19 (C.5:5-66) for the purposes of subparagraph (c) of that citation.

20 "Breeding and Development" means the New Jersey Horse
21 Breeding and Development Account established pursuant to section
22 5 of P.L.1967, c.40 (C.5:5-88).

23 "Commission" means the New Jersey Racing Commission
24 created by section 1 of P.L.1940, c.17 (C.5:5-22).

25 "Executive Director" means the Executive Director of the
26 commission.

27 "Health and Welfare" means moneys distributed to the
28 Standardbred Breeders' and Owners' Association for the
29 administration of a health benefits program pursuant to section 46 a.
30 (5) of P.L.1940, c.17 (C.5:5-66).

31 "In-State host track" means a racetrack within this State which is
32 operated by a permit holder which conducts a horse race upon
33 which account wagers are placed pursuant to this act.

34 "In-State sending track" means a racetrack within this State
35 which is operated by a permit holder and is equipped to conduct
36 off-track simulcasting.

37 "In-State track" means an in-State host track or an in-State
38 sending track.

39 "Interstate common pool" means the parimutuel pool established
40 within this State or in another state or foreign nation within which
41 is combined parimutuel pools of one or more receiving tracks
42 located in one or more states or foreign nations upon a race at an
43 out-of-State sending track or out-of-State host track for the purpose
44 of establishing payoff prices in the various jurisdictions.

45 "Jockey's Health and Welfare" means a health and welfare trust
46 established by the organization certified by the New Jersey Racing
47 Commission as representing a majority of the active licensed

1 thoroughbred jockeys in New Jersey for the purpose of providing
2 health and welfare benefits to active, disabled and retired New
3 Jersey jockeys and their dependents based upon reasonable criteria
4 by that organization.

5 "New Jersey Racing Industry Special Fund" means the fund
6 established pursuant to section 27 of this act.

7 "New Jersey Thoroughbred Horsemen's Association" means the
8 association representing the majority of New Jersey thoroughbred
9 owners and trainers responsible for receiving and distributing funds
10 for programs designed to aid thoroughbred horsemen.

11 "Off-track simulcasting" means the simultaneous audio or visual
12 transmission of horse races conducted at in-State and out-of-State
13 racetracks to off-track wagering facilities and parimutuel wagering
14 at those off-track wagering facilities on the results of those races.

15 "Off-track wagering" means parimutuel wagering at an off-track
16 wagering facility as authorized under this act.

17 "Off-track wagering facility" means a licensed facility, other
18 than a racetrack, at which parimutuel wagering is conducted
19 pursuant to this act.

20 "Off-track wagering licensee" means the New Jersey Sports and
21 Exposition Authority or its assignee, **【provided that】** or another
22 entity to which the commission has granted its approval **【for the**
23 **authority】** to conduct an off-track wagering facility as provided for
24 in this act.

25 "Out-of-State host track" means a racetrack in a jurisdiction
26 other than the State of New Jersey, the operator of which is lawfully
27 permitted to conduct a horse race meeting and which conducts horse
28 races upon which account wagers may be placed pursuant to this
29 act.

30 "Out-of-State sending track" means a racetrack in a jurisdiction
31 other than the State of New Jersey which is equipped to conduct
32 off-track simulcasting and the operator of which is lawfully
33 permitted to conduct a horse race meeting and to provide simulcast
34 horse races to off-track wagering facilities in this State.

35 "Out-of-State track" means an out-of-State host track or an out-
36 of-State sending track.

37 "Outstanding parimutuel ticket" means a winning parimutuel
38 ticket which is not claimed within six months of sale.

39 "Parimutuel" means any system whereby wagers with respect to
40 the outcome of a horse race are placed with, or in, a wagering pool
41 conducted by an authorized person, and in which the participants
42 are wagering with each other and not against the person conducting
43 the wagering pool.

44 "Participation agreement" means the written contract entered into
45 prior to the effective date of P.L. , c. (pending before the
46 Legislature as this bill), that provides for the establishment or
47 implementation of either (a) an off-track wagering facility or

1 facilities or (b) an account wagering system. Each such contract
2 shall set forth the manner in which the off-track wagering facility or
3 facilities or the account wagering system shall be managed,
4 operated and capitalized, as well as how expenses and revenues
5 shall be allocated and distributed by and among the authority and
6 the other eligible participants subject to the agreement.

7 "Permit holder" means the holder of an annual permit to conduct
8 a horse race meeting issued by the commission.

9 "Racetrack" means the physical facility where a permit holder
10 conducts a horse race meeting with parimutuel wagering.

11 "Racing costs" means the prospective and actual costs for all
12 licensing, investigation, operation, regulation, supervision and
13 enforcement activities and functions performed by the commission.

14 "Simulcast horse races" means horse races conducted at an in-
15 State sending track or an out-of-State sending track, as the case may
16 be, and transmitted simultaneously by picture to a receiving track or
17 an off-track wagering facility.

18 "Sire Stakes" means the Sire Stakes Program established
19 pursuant to section 1 of P.L.1971, c.85 (C.5:5-91).

20 "Standardbred Drivers' Health and Welfare" means a health and
21 welfare trust established by the Standardbred Breeders' and Owners'
22 Association of New Jersey for the purpose of providing health and
23 welfare benefits to active, disabled and retired New Jersey
24 standardbred drivers and their dependents based upon reasonable
25 criteria by that organization.

26 "Takeout" means that portion of a wager which is deducted from
27 or not included in the parimutuel pool, and which is distributed
28 other than to persons placing wagers.

29 "Thoroughbred Breeders and Stallions" means the special trust
30 account created pursuant to section 46 b.(1)(e) of P.L.1940, c.17
31 (C.5:5-66).

32 (cf: P.L.2004, c.116, s.4)

33

34 3. Section 4 of P.L.2001, c.199 (C.5:5-130) is amended to read
35 as follows:

36 4. a. The commission is authorized to issue a license to the
37 authority to permit off-track wagering at a specified facility, upon
38 application of the authority and in accordance with the provisions of
39 this act. A license issued pursuant to this act shall be valid for a
40 period of one year. The commission shall issue a license pursuant to
41 this subsection only if the permit holder at Monmouth Park and the
42 thoroughbred permit holder at Meadowlands Racetrack schedule at
43 least the minimum number of race dates required in section 30 of
44 this act, P.L.2001, c.199 (C.5:5-156), and it is satisfied that the
45 authority has entered into a participation agreement with each and
46 every other person, partnership, association, corporation, or

1 authority or the successor in interest to such person, partnership,
2 association, corporation or authority that:

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

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

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

8 An off-track wagering license may not be transferred or assigned
9 to a successor in interest without the approval of the commission
10 and the Attorney General, which approval may not be unreasonably
11 withheld.

12 b. As part of the license application process, any participation
13 agreement entered into for the purposes of subsection a. of this
14 section, or any modification to the agreement made thereafter, shall
15 be reviewed by the commission and the Attorney General to
16 determine whether the agreement meets the requirements of this act
17 and shall be subject to the approval of the commission and the
18 Attorney General.

19 c. The commission is also authorized to issue a license to a
20 well-suited entity to permit off-track wagering at a specified
21 facility, upon application of the entity and in accordance with the
22 provisions of this act and the provisions of section 14 of P.L.1940,
23 c.17 (C.5:5-34). A license issued pursuant to this act shall be valid
24 for a period of one year. In assessing the qualifications of an entity
25 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

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

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

37 (cf: P.L.2004, c.116, s.5)

38

39 4. Section 5 of P.L.2001, c.199 (C.5:5-131) is amended to read
40 as follows:

41 5. a. At the time of filing an application for an off-track
42 wagering license, the **[authority]** applicant shall submit to the
43 commission a non-refundable filing fee in an amount established by
44 regulation by the commission, and a certification in a form
45 prescribed by the commission which specifies, but is not limited to,
46 the following information:

- 1 (1) a plan depicting the proposed facility and improvements
- 2 thereon, including information about the size, seating capacity,
- 3 parking and services to be provided at the facility;
- 4 (2) the location of the proposed facility, and relevant
- 5 demographic or other information concerning the municipality and
- 6 surrounding area where the proposed facility is to be located;
- 7 (3) the number of permanent and part-time jobs expected to be
- 8 created at the proposed facility, and gross revenues expected to be
- 9 generated by the facility;
- 10 (4) the fire evacuation plan for the proposed facility;
- 11 (5) the type of food and beverages available; and
- 12 (6) such other information as the commission may require.
- 13 b. The **【authority】** applicant shall file a separate application
- 14 and certification for each proposed off-track wagering facility.
- 15 c. The commission shall charge each off-track wagering
- 16 licensee an annual fee in connection with the renewal of the off-
- 17 track wagering license, and shall establish by regulation procedures
- 18 and conditions for renewal of licenses issued under this act. The
- 19 amount of the annual license renewal fee shall be used by the
- 20 commission to cover commission expenses associated with
- 21 implementation of the provisions of this act, P.L.2001, c.199, and
- 22 shall reasonably reflect those costs.
- 23 d. The commission shall by regulation establish the maximum
- 24 hours of operation of off-track wagering facilities.
- 25 e. (1) Notwithstanding R.S.33:1-42, alcoholic beverages may
- 26 be offered for on-premise consumption at an off-track wagering
- 27 facility only if provided by a Class C plenary retail consumption
- 28 licensee, by an agreement or contract with the **【authority】** off-track
- 29 wagering licensee, pursuant to the provisions of R.S.33:1-1 et seq.
- 30 in accordance with such procedures as established by statute and by
- 31 regulation of the Division of Alcoholic Beverage Control. The
- 32 authority shall not hold a license to provide alcoholic beverages at
- 33 an off-track wagering facility. However, when a Class C plenary
- 34 retail consumption licensee is not available in the municipality, the
- 35 Director of the Division of Alcoholic Beverage Control may issue a
- 36 non-transferable special license to provide alcoholic beverages at
- 37 the off-track wagering facility pursuant to paragraph (2) of this
- 38 subsection.
- 39 (2) The Director of the Division of Alcoholic Beverage Control
- 40 may issue one special license to an individual, corporation, or other
- 41 type of legal entity to serve alcoholic beverages at an off-track
- 42 wagering facility located in the municipality where a Class C
- 43 plenary retail consumption licensee was not available to provide
- 44 alcoholic beverages at the off-track wagering facility pursuant to
- 45 paragraph (1) of this subsection. The license shall authorize the
- 46 sale of alcoholic beverages for immediate consumption on the
- 47 premises of the off-track wagering facility. The director may issue

1 not more than 15 licenses pursuant to this paragraph. Furthermore,
2 licenses issued pursuant to this paragraph shall be subject to the
3 following requirements:

4 (a) No person who would fail to qualify as a licensee under Title
5 33 of the Revised Statutes shall be permitted to hold an interest in a
6 special license under the provisions of this paragraph;

7 (b) Licenses shall be subject to the provisions of Title 33 of the
8 Revised Statutes and rules and regulations promulgated by the
9 director, to the extent those provisions are not inconsistent with the
10 provisions of this act;

11 (c) No license issued pursuant to this paragraph shall be
12 transferred to any other premises;

13 (d) Application for the initial issuance and renewal of each
14 license shall be made to the director on an annual basis. The fee for
15 the initial issuance of the license shall be two and one half times the
16 average sale price for the three most recent sales of plenary retail
17 consumption licenses in the municipality where the license is being
18 issued during the preceding five years. If the off-track wagering
19 facility is located within the boundaries of two or more
20 municipalities, the highest average sale price of the two or more
21 municipalities shall be used. If less than three plenary retail
22 consumption licenses have been sold in the municipality or
23 municipalities, as the case may be, within the previous five years,
24 the director shall obtain an appraisal, at the applicant's expense, to
25 determine the appropriate fee for the license. The appraisal process
26 shall include an examination of previous transactions in the
27 municipality or municipalities, as the case may be, and shall reflect
28 what a willing buyer, under no pressure to buy, would pay a willing
29 seller, under no pressure to sell, for a plenary retail consumption
30 license in that municipality or municipalities, as the case may be.
31 One half of the amount of the application fee for the initial issuance
32 of the license shall be paid upon the issuance of the license and the
33 other half of that amount shall be paid one year later. The director
34 shall establish an annual fee for the license which shall not exceed
35 the fee which may be imposed by a municipality for a plenary retail
36 consumption license pursuant to R.S.33:1-12;

37 (e) The fee for the initial issuance of the license shall be
38 distributed in the following manner:

39 (i) Twenty-five percent shall be paid to the municipality where
40 the off-track wagering facility is located and if the off-track
41 wagering facility is located within the boundaries of two or more
42 municipalities, the fee shall be divided equally among those
43 municipalities;

44 (ii) Twenty-five percent shall be paid to the Director of the
45 Division of Alcoholic Beverage Control;

46 (iii) Fifty percent shall be divided equally among and paid to the
47 plenary retail consumption licensees in the municipality or

1 municipalities where the licensed premises will be located, except
2 that no payment shall be made to the holders of inactive licenses;
3 (f) The individual corporation or entity holding the license shall
4 not be entitled to sell a license issued pursuant to this paragraph,
5 and the license shall expire upon the closure of the off-track
6 wagering facility;
7 (g) The director shall not issue a special concessionaire permit
8 for any off-track wagering facility or premises which is eligible to
9 obtain a license to serve alcoholic beverages under the provisions of
10 this paragraph; and
11 (h) Pursuant to the "Administrative Procedure Act," P.L.1968,
12 c.410 (C.52:14B-1 et seq.), the director shall adopt rules and
13 regulations to effectuate the purposes of this paragraph.
14 (3) Nothing in this subsection shall be construed to allow the
15 Director of the Division of Alcoholic Beverage Control to issue a
16 special concessionaire permit or a special license described in
17 paragraph (2) of this subsection to the authority pursuant to this act,
18 P.L.2001, c.199, or to issue a special license to any individual,
19 corporation, or other type of legal entity to serve alcoholic
20 beverages in a municipality that prohibits the retail sale of alcoholic
21 beverages within its boundaries.
22 f. Persons under the age of 18 years shall not be permitted in
23 any off-track wagering facility, except in dining areas if
24 accompanied by a parent or guardian.
25 g. The commission shall by regulation establish minimum
26 standards for off-track wagering facilities and timelines for their
27 establishment and completion, including, but not limited to,
28 standards for quality, size, seating capacity, parking and services to
29 be provided, as well as expected dates of construction, renovations
30 and opening. The failure of an off-track wagering licensee to meet
31 these standards shall be sufficient cause for the commission to
32 revoke, suspend or refuse to renew a license pursuant to the
33 provisions of section 8 of P.L.2001, c.199 (C.5:5-134).
34 h. **【**The authority, in lieu of obtaining municipal zoning and
35 planning approvals that may otherwise be required in connection
36 with the off-track wagering facility, shall submit a written notice of
37 its intention to site an off-track wagering facility to the governing
38 body of the municipality within which the facility would be sited.
39 The notice shall identify the proposed site of the facility by street
40 address, if any, or by reference to lot and block numbers as shown
41 on the current tax duplicate in the municipal tax assessor's offices.
42 Within 45 days of its receipt of the authority's notice of intention,
43 the municipal governing body may disapprove of the proposed site
44 of an off-track wagering facility by adopting a resolution which
45 shall be valid and binding upon the authority and the commission
46 upon delivery of a duly certified copy of the resolution to the
47 authority and the commission. Whenever a municipality determines

1 to consider a resolution disapproving a proposed off-track wagering
2 facility, the authority shall be given an opportunity to offer a public
3 presentation of the proposed facility prior to consideration of the
4 resolution. A resolution disapproving a proposed off-track
5 wagering facility shall state the reasons for disapproval.

6 In the event the governing body shall not adopt such a resolution,
7 the authority] Notwithstanding the provisions of any law, rule, or
8 regulation to the contrary, the applicant shall submit its plans to the
9 municipal planning board and shall comply with the planning board
10 approval process pursuant to the "Municipal Land Use Law,"
11 P.L.1975, c.291 (C. 40:55D-1 et seq.). The applicant may seek a
12 license for an off-track wagering facility in that municipality and
13 the commission may grant the [authority] applicant the license
14 provided that:

15 (1) the proposed off-track wagering facility site is not in an area
16 zoned residential;

17 (2) the [authority] applicant has submitted its plans to the
18 municipal planning board, [and complied with] notwithstanding the
19 provisions of section 22 of P.L.1975, c.291 (C.40:55D-31) or any
20 law, rule, or regulation to the contrary; and

21 (3) the [authority] applicant has [made reasonable efforts to
22 address the reasonable concerns expressed] obtained site plan
23 approval by the municipal planning board.

24 i. In evaluating an application for an off-track wagering license,
25 the commission shall consider the proximity of the applicant's
26 proposed site to other planned or existing off-track wagering
27 facilities and to racetracks in this State. If, in the opinion of the
28 commission, the establishment of the facility at its proposed
29 location would be inimical to the interests of another planned or
30 established off-track wagering facility, or to a State racetrack, the
31 commission shall require the applicant to consider alternative sites
32 for the proposed facility.

33 (cf: P.L.2004, c.116, s.6)

34
35 5. Section 6 of P.L.2001, c.199 (C.5:5-132) is amended to read
36 as follows:

37 6. Within 14 days of receipt of a completed application,
38 certification and applicable fees, the executive director shall
39 determine whether the same is in due form and meets the
40 requirements of law in all respects, and upon being satisfied thereof,
41 the commission, within 45 days of receipt of a completed
42 application, certification and applicable fees, shall hold a public
43 hearing in the municipality in which the proposed off-track
44 wagering facility is to be located. The costs of the public hearing
45 shall be paid by the [authority] applicant. The executive director
46 shall cause a display advertisement, approximately 11 inches by 8
47 inches in size, to be published at least once in a daily newspaper,

1 and at least once in a weekly newspaper, published, or circulated if
2 none is published, in the county where the municipality is located at
3 least 15 days before the date of the public hearing and to be
4 published again in that daily newspaper on the third day preceding
5 the public hearing and in the latest edition of that weekly newspaper
6 that will be in circulation on the third day preceding the public
7 hearing. The advertisement shall contain sufficient information to
8 apprise the public as to the purpose of the hearing, the time and
9 place thereof, and the nature of the license applied for. The
10 advertisement shall be prepared and placed by the executive
11 director, but shall be paid for by the **【authority】 applicant**.

12 (cf: P.L.2001, c.199, s.6)

13

14 6. Section 7 of P.L.2001, c.199 (C.5:5-133) is amended to read
15 as follows:

16 7. a. No sooner than 30 days nor later than 60 days following
17 the public hearing, the commission shall make a final determination
18 on the license application. The commission shall approve the
19 application if it determines that the plan for the proposed facility
20 includes appropriate standards of quality for the premises and
21 services it will provide and that the **【authority】 applicant** has
22 demonstrated by clear and convincing evidence that establishment
23 of the proposed off-track wagering facility will not be inimical to
24 the interests of the public and the horse racing industry in this State.
25 The commission shall submit its determination to the Attorney
26 General for review and approval. The determination of the
27 commission shall be deemed approved by the Attorney General if
28 not affirmatively approved or disapproved by the Attorney General
29 within 14 days of the date of submission. The decision of the
30 Attorney General shall be deemed a final decision. Upon approval
31 by the Attorney General, the commission shall issue to the
32 **【authority】 applicant** an off-track wagering license specifying the
33 location, the periods of time during a calendar year and the hours of
34 operation during which off-track wagering is permitted at the
35 facility, and prescribing any other conditions or terms the
36 commission deems appropriate.

37 b. With the approval of the commission, the authority may
38 assign an off-track wagering license to a permit holder, provided
39 that the authority shall retain responsibility for license renewals. In
40 the event the authority assigns an off-track wagering license, the
41 assignee shall reimburse the authority for its costs associated with
42 the application for the license. With the approval of the
43 commission, **【the】 an** off-track wagering licensee may enter into a
44 contract or agreement with a person or entity to conduct or operate
45 an off-track wagering facility for the licensee and to act as the agent

1 of the licensee in all off-track wagering matters approved by the
2 commission.

3 (cf: P.L.2004, c.116, s.7)

4
5 7. (New Section) a. An off-track wagering licensee, or its
6 assignee, operating an off-track wagering facility pursuant to the
7 provisions of the "Off-Track and Account Wagering Act,"
8 P.L.2001, c.199 (C.5:5-127 et seq.), shall pay annually to the
9 municipality where the off-track wagering facility is located a sum
10 equal to 4% of the net proceeds remaining from the amounts
11 received by the licensee pursuant to subsection f. of section 21 of
12 P.L.2001, c.199 (C.5:5-147) and subsection b. of section 25 of
13 P.L.2001, c.199 (C.5:5-151).

14 b. The payment requirement established pursuant to subsection
15 a. of this section shall apply to an off-track wagering licensee, or its
16 assignee, opening an off-track wagering facility for business on or
17 after the effective date of this act, P.L. , c. (C.) (pending
18 before the Legislature as this bill), and to an existing off-track
19 wagering licensee, or its assignee, commencing on the license
20 renewal date immediately following the effective date of this act.
21 Thereafter, as a condition for the annual renewal of an off-track
22 wagering license, the New Jersey Racing Commission shall verify
23 that the licensee or its assignee has paid to the municipality the
24 amounts required pursuant to subsection a. of this section. The
25 commission shall not renew the off-track wagering license unless
26 and until the licensee has complied with the payment requirement.

27 c. The amount paid to the municipality pursuant to subsection
28 a. of this section shall be used by the municipality to fund any
29 increase in municipal infrastructure and service costs brought about
30 by the off-track wagering facility, and for general municipal
31 purposes.

32
33 8. This act shall take effect immediately.

34

35

36

STATEMENT

37

38 This bill revises various provisions of the "Off-Track and
39 Account Wagering Act," P.L.2001, c.199 (C.5:5-127 et seq.) to
40 facilitate the establishment of off-track wagering facilities in this
41 State.

42 The bill revises six aspects related to the establishment of these
43 facilities. First, the bill expands the types of entities who may
44 apply to the New Jersey Racing Commission for a license to
45 establish and conduct an off-track wagering facility. Under current
46 law, the only entities eligible to receive an off-track wagering
47 license are the New Jersey Sports and Exposition Authority

1 (NJSEA) and the two private horse racetrack operators in the State.
2 The bill allows the commission to issue an off-track wagering
3 license to a qualified, well-suited entity that meets standards and
4 criteria provided in the bill and further developed by the
5 commission. As part of the license application process, the
6 commission is to require that a criminal history record background
7 check is conducted in connection with an entity's application for an
8 off-track wagering license. The commission is also to consider the
9 proximity of the proposed facility to other planned or existing off-
10 track wagering facilities or racetracks in New Jersey, and to require
11 the applicant to consider alternative sites for the proposed facility if
12 its proposed location would be detrimental to those planned or
13 existing facilities and racetracks. The bill does not affect the
14 licenses of entities licensed prior to its effective date, who were
15 required to enter into a participation agreement, but establishes a
16 new licensing process and eliminates the need for a participation
17 agreement for all licenses issued after the effective date.

18 Second, the bill requires that off-track wagering licenses be
19 subject to a bidding process, to be developed by the commission in
20 consultation with the State Treasurer. An existing licensee or an
21 entity interested in receiving an off-track wagering license would
22 submit a bid for each license desired. The off-track wagering
23 license would be awarded to a successful bidder, conditional upon
24 the bidder's eligibility to be licensed as an off-track wagering
25 licensee and complying with all of the provisions of the off-track
26 wagering law.

27 Third, the bill authorizes the commission to charge an initial
28 license fee and an annual renewal fee in connection with the initial
29 issuance and annual renewal of the off-track wagering licenses.
30 The amount bid for each license under the bill would be considered
31 the initial license fee. Thereafter, licensees would pay to the
32 commission a renewal fee each year. The proceeds of the annual
33 renewal fee are dedicated to the commission to cover off-track
34 wagering law implementation costs. The bill also authorizes the
35 commission to revoke, suspend or deny the renewal of an off-track
36 wagering license for failure of the licensee to meet quality,
37 timeliness, and other standards.

38 Fourth, the bill allows the Director of the Division of Alcoholic
39 Beverage Control (ABC) to issue a non-transferable special liquor
40 license to provide alcoholic beverages on the off-track wagering
41 facility premises when a private holder of a plenary retail
42 consumption liquor license is not available to partner with the off-
43 track wagering facility licensee to provide such beverages at the
44 facility. The initial fee for the license would be two and a half
45 times the sales price of a liquor license in the municipality, with
46 25% of the proceeds going to the municipality, 25% to the ABC,
47 and 50% to the plenary retail consumption alcoholic beverage

1 licensees in the municipality, excluding the licensees that hold
2 inactive licenses. The special license would not be transferable to
3 another premises, could not be sold, and would expire upon closure
4 of the off-track wagering facility.

5 Fifth, the bill removes from existing law the provision that
6 currently allows a municipality to reject the establishment of an off-
7 track wagering facility within its boundaries within 45 days of
8 receiving a notice of intention to site from the off-track wagering
9 license applicant. Instead, the bill requires municipal planning
10 board approval of each off-track wagering facility to be sited.

11 Sixth, the bill requires an off-track wagering facility licensee to
12 annually pay to the municipality where the off-track wagering
13 facility is located a sum equal to 4% of the net wagering profits
14 made by the off-track wagering facility each year. The bill
15 authorizes the municipality to use these moneys to cover any
16 increase in municipal infrastructure and service costs brought about
17 by the off-track wagering facility, and for general municipal
18 purposes.

19 Revision of these off-track wagering provisions would facilitate
20 the establishment of these facilities, which has progressed at a very
21 slow pace since the law was enacted in 2001 following voter
22 approval of a constitutional amendment in 1998. Although in 2001
23 the act authorized the establishment of 15 off-track wagering
24 facilities by the NJSEA and the two private racetrack owners in this
25 State, only three facilities have been established to date.

ASSEMBLY REGULATORY OVERSIGHT AND GAMING
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1705

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 18, 2010

The Assembly Regulatory Oversight and Gaming Committee reports favorably and with committee amendments Assembly Bill No. 1705.

This bill revises various provisions of the “Off-Track and Account Wagering Act,” P.L.2001, c.199 (C.5:5-127 et seq.) to facilitate the establishment of off-track wagering facilities in this State.

As amended by the committee, the bill revises six aspects related to the establishment of these facilities. First, the bill expands the types of entities who may apply to the New Jersey Racing Commission for a license to establish and conduct an off-track wagering facility. Under current law, the only entities eligible to receive an off-track wagering license are the New Jersey Sports and Exposition Authority (NJSEA) and the two private horse racetrack operators in the State. The bill allows the commission to issue an off-track wagering license to a qualified, well-suited entity that meets standards and criteria provided in the bill and further developed by the commission. As part of the license application process, the commission is to require that a criminal history record background check is conducted in connection with an entity’s application for an off-track wagering license. The commission is also to consider the proximity of the proposed facility to other planned or existing off-track wagering facilities or racetracks in New Jersey, and to require the applicant to consider alternative sites for the proposed facility if its proposed location would be detrimental to those planned or existing facilities and racetracks. The bill does not affect the licenses of entities licensed prior to its effective date, who were required to enter into a participation agreement, but establishes a new licensing process and eliminates the need for a participation agreement for all licenses issued after the effective date.

Second, the bill requires that off-track wagering licenses be subject to a bidding process, to be developed by the commission in consultation with the State Treasurer. An existing licensee or an entity interested in receiving an off-track wagering license would submit a bid for each license desired. The off-track wagering license

would be awarded to a successful bidder, conditional upon the bidder's eligibility to be licensed as an off-track wagering licensee and complying with all of the provisions of the off-track wagering law.

Third, the bill authorizes the commission to charge an initial license fee and an annual renewal fee in connection with the initial issuance and annual renewal of the off-track wagering licenses. The amount bid for each license under the bill would be considered the initial license fee. Thereafter, licensees would pay to the commission a renewal fee each year. The proceeds of the annual renewal fee are dedicated to the commission to cover off-track wagering law implementation costs. The bill also authorizes the commission to revoke, suspend or deny the renewal of an off-track wagering license for failure of the licensee to meet quality, timeliness, and other standards.

Fourth, the bill allows the Director of the Division of Alcoholic Beverage Control (ABC) to issue a non-transferable special liquor license to provide alcoholic beverages on the off-track wagering facility premises when a private holder of a plenary retail consumption liquor license is not available to partner with the off-track wagering facility licensee to provide such beverages at the facility. The initial fee for the license would be two and a half times the sales price of a liquor license in the municipality, with 25% of the proceeds going to the municipality, 25% to the ABC, and 50% to the plenary retail consumption alcoholic beverage licensees in the municipality, excluding the licensees that hold inactive licenses. The special license would not be transferable to another premises, could not be sold, and would expire upon closure of the off-track wagering facility.

Fifth, the bill removes from existing law the provision that currently allows a municipality to reject the establishment of an off-track wagering facility within its boundaries within 45 days of receiving a notice of intention to site from the off-track wagering license applicant. Instead, the bill requires municipal planning board approval of each off-track wagering facility to be sited.

Sixth, the bill requires an off-track wagering facility licensee to annually pay to the municipality where the off-track wagering facility is located a sum equal to 4% of the net wagering profits made by the off-track wagering facility each year. The bill authorizes the municipality to use these moneys to cover any increase in municipal infrastructure and service costs brought about by the off-track wagering facility, and for general municipal purposes.

Revision of these off-track wagering provisions would facilitate the establishment of these facilities, which has progressed at a very slow pace since the law was enacted in 2001 following voter approval of a constitutional amendment in 1998. Although in 2001 the act authorized the establishment of 15 off-track wagering facilities by the NJSEA and the two private racetrack owners in this State, only three facilities have been established to date.

This bill was pre-filed for introduction in the 2010-2011 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS

The committee amended the bill to provide that 50% of the proceeds generated from the initial off-track wagering facility license fee will be distributed to the Standardbred Breeders' and Owners' Association of New Jersey for programs designed to aid the horsemen, instead of Sire Stakes.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 1705

STATE OF NEW JERSEY 214th LEGISLATURE

DATED: JUNE 2, 2010

SUMMARY

- Synopsis:** Revises various off-track wagering provisions of the "Off-Track and Account Wagering Act."
- Type of Impact:** Indeterminate Potential Revenue Increase.
- Agencies Affected:** Department of Law and Public Safety; New Jersey Racing Commission; Division of Alcoholic Beverage Control

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate potential revenue increase		
Local Revenue	Indeterminate potential revenue increase		

- Expands the types of entities that may apply to the New Jersey Racing Commission for a license to establish and conduct an off-track wagering facility.
- Authorizes the New Jersey Racing Commission to charge an initial license fee and an annual renewal fee in connection with the initial issuance and annual renewal of the off-track wagering licenses.
- Allows the Director of the Division of Alcoholic Beverage Control to issue a non-transferable special liquor license to provide alcoholic beverages on the off-track wagering facility premises, under certain circumstances. Establishes a formula by which the revenue generated by liquor license fee is shared between the municipality, State, and active plenary retail consumption licensees in the municipality.
- Requires an off-track wagering facility licensee to annually remit to the jurisdictional municipality a sum equal to four percent of the net wagering profits made by the off-track wagering facility each year for municipal purposes.

BILL DESCRIPTION

Assembly Bill No. 1705 (1R) of 2010 revises various provisions of the “Off-Track and Account Wagering Act,” P.L.2001, c.199 (C.5:5-127 et seq.) to facilitate the establishment of off-track wagering facilities in this State. Currently, only three of the State’s 15 off-track wagering licenses are being used. The bill revises six aspects of the law to facilitate the establishment of additional off-track wagering facilities.

First, the bill expands the types of entities that may apply to the New Jersey Racing Commission for a license to establish and conduct an off-track wagering facility. Under current law, the only entities eligible to receive an off-track wagering license are the New Jersey Sports and Exposition Authority (NJSEA) and the two private horse racetrack operators in the State. The bill allows the commission to issue an off-track wagering license to a qualified, well-suited entity that meets standards and criteria provided in the bill and further developed by the commission. As part of the license application process, the commission is to require that a criminal history record background check is conducted in connection with an entity’s application for an off-track wagering license. The commission is also to consider the proximity of the proposed facility to other planned or existing off-track wagering facilities or racetracks in New Jersey, and to require the applicant to consider alternative sites for the proposed facility if its proposed location would be detrimental to those planned or existing facilities and racetracks. The bill does not affect the licenses of entities licensed prior to its effective date, who were required to enter into a participation agreement, but establishes a new licensing process and eliminates the need for a participation agreement for all licenses issued after the effective date.

Second, the bill requires that off-track wagering licenses be subject to a bidding process, to be developed by the commission in consultation with the State Treasurer. An existing licensee or an entity interested in receiving an off-track wagering license would submit a bid for each license desired. The off-track wagering license would be awarded to a successful bidder, conditional upon the bidder’s eligibility to be licensed as an off-track wagering licensee and compliance with all of the provisions of the off-track wagering law.

Third, the bill authorizes the commission to charge an initial license fee and an annual renewal fee in connection with the initial issuance and annual renewal of the off-track wagering licenses. The amount bid for each license under the bill would be considered the initial license fee. Thereafter, licensees would pay to the commission a renewal fee each year. The proceeds of the annual renewal fee are dedicated to the commission to cover off-track wagering law implementation costs, and the proceeds generated from the initial off-track wagering facility license fee will be distributed in equal parts to the New Jersey Thoroughbred Horseman’s Association and the Standardbred Breeders’ and Owners’ Association of New Jersey for programs designed to aid the horsemen. The bill also authorizes the commission to revoke, suspend or deny the renewal of an off-track wagering license for failure of the licensee to meet quality, timeliness, and other standards.

Fourth, the bill allows the Director of the Division of Alcoholic Beverage Control (ABC) to issue a non-transferable special liquor license to provide alcoholic beverages on the off-track wagering facility premises when a private holder of a plenary retail consumption liquor license is not available to partner with the off-track wagering facility licensee to provide such beverages at the facility. The initial fee for the license would be two and a half times the sales price of a liquor license in the municipality, with 25 percent of the proceeds going to the municipality, 25 percent to the ABC, and 50 percent to the plenary retail consumption alcoholic beverage licensees in the municipality, excluding the licensees that hold inactive licenses.

Fifth, the bill removes from existing law the provision that currently allows a municipality to reject the establishment of an off-track wagering facility within its boundaries within 45 days of

receiving a notice of intention to site from the off-track wagering license applicant. Instead, the bill requires municipal planning board approval of each off-track wagering facility to be sited.

Sixth, the bill requires an off-track wagering facility licensee to annually pay to the municipality where the off-track wagering facility is located a sum equal to 4 percent of the net wagering profits made by the off-track wagering facility each year. The bill authorizes the municipality to use these moneys to cover any increase in municipal infrastructure and service costs brought about by the off-track wagering facility, and for general municipal purposes.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) believes that this bill has potential to generate increased revenues, but actual amounts of that increase and the impact are indeterminate based on the following concerns.

First, the third provision of the bill authorizes the New Jersey Racing Commission to charge an initial license fee and an annual renewal fee in connection with the initial issuance and annual renewal of the off-track wagering licenses. The proceeds of the annual renewal fee are dedicated to the commission to cover off-track wagering law implementation costs and the proceeds from the initial licensing fee will be distributed in equal parts to the New Jersey Thoroughbred Horseman's Association and the Standardbred Breeders' and Owners' Association of New Jersey for programs designed to aid the horsemen. Since it is not known what will be charged for these licenses, it is not possible to estimate the revenue generated from these licensing fees; however, it may be assumed that the fees will be based on the commissions licensing expenditures.

Second, the fourth provision of this bill allows the Director of the Division of Alcoholic Beverage Control (ABC) to issue a non-transferable special liquor license. The initial fee for the license would be two and a half times the sales price of a liquor license in the municipality with: 25 percent of the proceeds going to the municipality; 25 percent to the ABC; and 50 percent to the active plenary retail consumption alcoholic beverage licensees in the municipality. Since the sale price of liquor licenses varies across municipalities, and it is not known which municipalities will be affected, OLS cannot determine the estimated revenue generated by this proposed bill.

Lastly, the sixth provision of the bill requires the off-track wagering facility licensee to annually remit four percent of the net wagering profits to the local municipality. The municipality is authorized to use these funds for increased needs as the result of infrastructure and service costs brought about by the new facility. As reported by the Sports Authority, one of the three existing facilities *Favorites at Woodbridge* reported a net profit of about \$5,000,000 in FY 2009. If new establishments were equally as profitable, the municipality would benefit from about \$200,000 annually. The OLS, however, is concerned that given the current economy establishing additional off-track wagering facilities may dilute the market and thus generate smaller revenues for individual off-track-wagering facilities.

Section: Law and Public Safety

*Analyst: Kristin A. Brunner,
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1705

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 8, 2010

The Senate State Government, Wagering, Tourism & Historic Preservation Committee reports favorably and with committee amendments Assembly, No. 1705 (1R).

This bill revises various provisions of the “Off-Track and Account Wagering Act,” P.L.2001, c.199 (C.5:5-127 et seq.) to facilitate the establishment of off-track wagering facilities in this State.

The bill, as amended, revises six aspects related to the establishment of these facilities. First, the bill expands the types of entities who may apply to the New Jersey Racing Commission for a license to establish and conduct an off-track wagering facility. Under current law, the only entities eligible to receive an off-track wagering license are the New Jersey Sports and Exposition Authority (NJSEA) and the two private horse racetrack operators in the State. As amended by the committee, the bill provides that current entities eligible to receive an off-track wagering license would forgo their ability to establish their share of the 15 off-track wagering facilities under a negotiated participation agreement if they fail to receive a license by January 1, 2012, unless they continue to make progress on an annual basis. The bill, as amended, further provides that any facility licenses forgone by the current permit holders would be available to be established by a horsemen’s organization and their partners, except that such organization must make progress on an annual basis from the date the organization is eligible to apply for the off-track wagering license or licenses, or will forfeit their eligibility to establish an off-track wagering facility. The bill provides that any facilities not established by a horsemen’s organization will be available to be established by well-suited private entities.

The bill allows the commission to issue an off-track wagering license to a qualified, well-suited entity that meets standards and criteria provided in the bill and further developed by the commission. As part of the license application process, the commission is to require that a criminal history record background check is conducted in

connection with an entity's application for an off-track wagering license. The commission is also to consider the proximity of the proposed facility to other planned or existing off-track wagering facilities or racetracks in New Jersey, and to require the applicant to consider alternative sites for the proposed facility if its proposed location would be detrimental to those planned or existing facilities and racetracks.

Second, the bill requires that the off-track wagering licenses available to be established by well-suited private entities to be subject to a bidding process, to be developed by the commission in consultation with the State Treasurer. An existing licensee or an entity interested in receiving an off-track wagering license would submit a bid for each license desired. The off-track wagering license would be awarded to a successful bidder, conditional upon the bidder's eligibility to be licensed as an off-track wagering licensee and complying with all of the provisions of the off-track wagering law, and provided the State's racetracks continue to conduct the required number of live racing days.

Third, the bill authorizes the commission to charge an initial license fee and an annual renewal fee in connection with the initial issuance and annual renewal of the off-track wagering licenses. The amount bid for each license under the bill would be considered the initial license fee. Thereafter, licensees would pay to the commission a renewal fee each year. The proceeds of the annual renewal fee are dedicated to the commission to cover off-track wagering law implementation costs. The bill also authorizes the commission to revoke, suspend or deny the renewal of an off-track wagering license for failure of the licensee to meet quality, timeliness, and other standards.

Fourth, the bill allows the Director of the Division of Alcoholic Beverage Control (ABC) to issue a special concessionaire permit to the authority, and a non-transferable special liquor license to off-track wagering licensees other than the authority, to provide alcoholic beverages on the off-track wagering facility premises when a private holder of a plenary retail consumption liquor license is not available to partner with the off-track wagering facility licensee to provide such beverages at the facility. The initial fee for the license would be the average sales price of a liquor license in the municipality, with 25% of the proceeds going to the municipality, 25% to the ABC, and 50% to the New Jersey Racing Commission for the funding of horse breeding incentive programs. The director would also pay to the commission, for breeding incentive programs, a percentage of the annual fee. The special license would not be transferable to another premises, could not be sold, and would expire upon closure of the off-track wagering facility.

Fifth, the bill removes from existing law the provision that currently allows a municipality to reject the establishment of an off-

track wagering facility within its boundaries within 45 days of receiving a notice of intention to site from the off-track wagering license applicant. Instead, the bill provides that an off-track wagering facility must be a permitted use in all commercial and industrial districts of a municipality.

Sixth, the bill requires an off-track wagering facility licensee to annually pay to the municipality where the off-track wagering facility is located a sum equal to 1% of the net wagering profits made by the off-track wagering facility each year, after payment of operating expenses. The bill authorizes the municipality to use these moneys to cover any increase in municipal infrastructure and service costs brought about by the off-track wagering facility, and for general municipal purposes.

Finally, as amended, the bill provides that, when the authority is the owner of the land, building, and premises where an off-track wagering facility is operated pursuant to an initial off-track wagering facility license issued after the effective date of the bill, the authority must pay to the municipality where the facility is located a payment in-lieu-of taxes for the first five years of operation of the off-track wagering facility, which payment amount will be determined upon agreement with the municipality, and must pay regular property tax payment beginning on the sixth year and thereafter. When a private off-track wagering licensee is the owner of the land, building, and premises where an off-track wagering facility is operated pursuant to an initial off-track wagering facility license issued after the effective date of the bill, the private off-track wagering licensee must be eligible to receive a five-year tax exemption, or abatement, or both, when located in an area in need of rehabilitation as defined under the "Five-Year Exemption and Abatement Law," P.L.1991, c.441 (C.40A:21-1 et seq.), except that the private off-track wagering licensee must pay to the municipality where the facility is located a payment in-lieu-of taxes for the first five years of operation of the off-track wagering facility, which payment amount must be less than the amount of regular property tax payments as determined upon agreement with the municipality pursuant to section 10 of P.L.1991, c.441 (C.40A:21-10), and must pay regular property tax payments beginning on the sixth year and thereafter.

Revision of these off-track wagering provisions would facilitate the establishment of these facilities, which has progressed at a very slow pace since the law was enacted in 2001 following voter approval of a constitutional amendment in 1998. Although in 2001 the act authorized the establishment of 15 off-track wagering facilities by the NJSEA and the two private racetrack owners in this State, only three facilities have been established to date.

This bill is identical to Senate, No. 1980 (1R).

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- provide that current entities eligible to receive an off-track wagering license would forgo their ability to establish their share of the 15 off-track wagering facilities under a negotiated participation agreement if they fail to receive a license by January 1, 2012, unless they continue to make progress on an annual basis;
- provide that any facility licenses forgone by the current permit holders would be available to be established by a horsemen's organization and their partners, except that such organization must make progress on an annual basis from the date the organization is eligible to apply for the off-track wagering license or licenses, or will forfeit their eligibility to establish an off-track wagering facility;
- provide that any facilities not established by a horsemen's organization will be available to be established by the well-suited private entities provided for in the bill;
- provide that an off-track wagering license issued to a well-suited private entity will not be valid upon the failure of the State's racetracks to conduct the minimum number of live racing days required by law;
- provide that an off-track wagering facility must develop first-class off-track wagering facilities;
- require the commission, in consultation with the New Jersey Economic Development Authority, to establish progress benchmarks for each off-track wagering licensee to follow for the timely and expeditious establishment of each off-track wagering facility, and provide that failure of a licensee to meet the benchmarks shall constitute a basis for the denial by the commission of the renewal off-track wagering license, except that the licensee shall have the right to appeal the commission's decision;
- allow for the issuance of a special concessionaire permit to the authority, and a special permit to other off-track wagering licensees, for the service of alcoholic beverages at an off-track wagering facility when a current liquor license holder or a liquor license is not available in the municipality; and provide that the initial special permit fee will be the average sale price for the three most recent sales of plenary retail consumption licenses, rather than two and a half times that price;
- provide that 50% of the initial special liquor license fee will be paid to the New Jersey Racing Commission for the funding of horse breeding incentive programs, instead of to current liquor license holders in the municipality; and provide that a percentage of the annual fee will also be paid to the commission for breeding incentive programs;

- provide that an off-track wagering facility shall be a permitted use in all commercial and industrial districts of a municipality;
- reduce to 1%, from 4%, the percent of net wagering proceeds that the off-track wagering licensee must pay to the host municipality, and clarify that the percentage will apply to wagering proceeds after the payment of facility operating expenses;
- when the authority is the owner of the land, building, and premises where an off-track wagering facility is operated pursuant to an initial off-track wagering facility license issued after the effective date of the bill, the authority must pay to the municipality where the facility is located a payment in-lieu-of taxes for the first five years of operation of the off-track wagering facility, which payment amount will be determined upon agreement with the municipality, and must pay regular property tax payment beginning on the sixth year and thereafter; and
- when a private off-track wagering licensee is the owner of the land, building, and premises where an off-track wagering facility is operated pursuant to an initial off-track wagering facility license issued after the effective date of the bill, the private off-track wagering licensee must be eligible to receive a five-year tax exemption, or abatement, or both, when located in an area in need of rehabilitation as defined under the "Five-Year Exemption and Abatement Law," P.L.1991, c.441 (C.40A:21-1 et seq.), except that the private off-track wagering licensee must pay to the municipality where the facility is located a payment in-lieu-of taxes for the first five years of operation of the off-track wagering facility, which payment amount must be less than the amount of regular property tax payments as determined upon agreement with the municipality pursuant to section 10 of P.L.1991, c.441 (C.40A:21-10), and must pay regular property tax payments beginning on the sixth year and thereafter.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 1705

STATE OF NEW JERSEY 214th LEGISLATURE

DATED: JANUARY 5, 2011

SUMMARY

- Synopsis:** Revises various off-track wagering provisions of the "Off-Track and Account Wagering Act."
- Type of Impact:** Indeterminate Potential Revenue Increase.
- Agencies Affected:** Department of Law and Public Safety; New Jersey Racing Commission; Division of Alcoholic Beverage Control

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate- Potential Revenue Increase		
Local Revenue	Indeterminate- Potential Revenue Increase		

- Expands the types of entities that may apply to the New Jersey Racing Commission for a license to establish and conduct an off-track wagering facility.
- Authorizes the New Jersey Racing Commission to charge an initial license fee and an annual renewal fee in connection with the initial issuance and annual renewal of certain off-track wagering licenses.
- Allows the Director of the Division of Alcoholic Beverage Control (ABC) to issue a non-transferable special liquor license, or special concessionaire permit, as the case may be, to provide alcoholic beverages on the off-track wagering facility premises, under certain circumstances. Establishes a formula by which the revenue generated by liquor license fees is shared between the municipality, State, and the New Jersey Racing Commission for the benefit of horse breeding programs.
- Requires an off-track wagering facility licensee to annually remit to the jurisdictional municipality a sum equal to one percent of the net wagering profits after the payment of the off-track wagering facility's operating expenses made by the off-track wagering facility.

- Authorizes for an agreed upon payment in-lieu-of-taxes to the municipality by the off-track wagering facility for the first five years.

BILL DESCRIPTION

Assembly Bill No. 1705 (2R) of 2010 revises various provisions of the “Off-Track and Account Wagering Act,” P.L.2001, c.199 (C.5:5-127 et seq.) to facilitate the establishment of off-track wagering facilities in this State. Currently, only three of the State’s 15 off-track wagering facilities are operating. The bill revises six aspects of the law to facilitate the establishment of additional off-track wagering facilities.

First, the bill expands the types of entities that may apply to the New Jersey Racing Commission for a license to establish and conduct an off-track wagering facility. Under current law, the only entities eligible to receive an off-track wagering license are the New Jersey Sports and Exposition Authority and the two private horse racetrack operators in the State.

This bill allows existing permit holders to establish the remaining off-track wagering facilities, but provides that a facility that has not been established by January 1 of 2010 will no longer be considered a part of that permit holders share. Instead, a facility that has not yet been issued a license would be available to be established by a New Jersey horseman’s organization. However, the bill further provides that if a horseman’s organization fails to make progress in establishing the facilities, then such facilities would be available to be established by well-suited private entities.

The bill allows the commission to issue an off-track wagering license to a qualified, well-suited entity that meets standards and criteria provided in the bill and further developed by the commission. As part of the license application process, the commission is to require that a criminal history record background check is conducted in connection with an entity’s application for an off-track wagering license. The commission is also to consider the proximity of the proposed facility to other planned or existing off-track wagering facilities or racetracks in New Jersey, and to require the applicant to consider alternative sites for the proposed facility if its proposed location would be detrimental to those planned or existing facilities and racetracks. The bill does not affect the licenses of entities licensed prior to its effective date, who were required to enter into a participation agreement, but establishes a new licensing process and eliminates the need for a participation agreement for all licenses issued after the effective date.

Second, the bill requires that off-track wagering licenses issued to well-suited private entities to be subject to a bidding process, to be developed by the commission in consultation with the State Treasurer. An existing licensee or an entity interested in receiving an off-track wagering license would submit a bid for each license desired. The off-track wagering license would be awarded to a successful bidder, conditional upon the bidder’s eligibility to be licensed as an off-track wagering licensee and compliance with all of the provisions of the off-track wagering law.

Third, the bill authorizes the commission to charge an initial license fee and an annual renewal fee in connection with the initial issuance and annual renewal of the off-track wagering licenses. The amount bid for each license under the bill would be considered the initial license fee. Thereafter, licensees would pay to the commission a renewal fee each year. The proceeds of the annual renewal fee are dedicated to the commission to cover off-track wagering law implementation costs, and the proceeds generated from the initial off-track wagering facility license fee will be distributed in equal parts to the New Jersey Thoroughbred Horseman’s Association and the Standardbred Breeders’ and Owners’ Association of New Jersey for programs designed to aid the horsemen. The bill also authorizes the commission to revoke, suspend or deny the renewal of an off-track wagering license for failure of the licensee to meet quality, timeliness, and other standards.

Fourth, the bill allows the Director of the ABC to issue a non-transferable special liquor license, or a special concessionaires permit, as the case may be, to provide alcoholic beverages on the off-track wagering facility premises when a private holder of a plenary retail consumption liquor license is not available to partner with the off-track wagering facility licensee to provide such beverages at the facility. The initial fee for the license would be the average sales price of a liquor license in the municipality, with 25 percent of the proceeds going to the municipality, 25 percent to the ABC, and 50 percent to the New Jersey Racing Commission for horse breeding initiatives and programs.

Fifth, the bill removes from existing law the provision that currently allows a municipality to reject the establishment of an off-track wagering facility within its boundaries within 45 days of receiving a notice of intention to site from the off-track wagering license applicant. Instead, the bill provides that an off-track wagering facility must be a permitted use in all commercial and industrial districts of a municipality.

Sixth, the bill requires an off-track wagering facility licensee to annually pay to the municipality where the off-track wagering facility is located a sum equal to one percent of the net wagering profits made by the off-track wagering facility each year. The bill authorizes the municipality to use these moneys to cover any increase in municipal infrastructure and service costs brought about by the off-track wagering facility, and for general municipal purposes.

The bill lastly provides for a payment in-lieu-of taxes from the facility to the host municipality for the first five years of operation.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) believes that this bill has potential to generate increased revenues, but actual amounts of that increase and the impact are indeterminate based on the following concerns.

First, OLS notes there is a provision of the bill which authorizes the New Jersey Racing Commission to charge an initial license fee and an annual renewal fee in connection with the initial issuance and annual renewal of the off-track wagering licenses. The proceeds of the annual renewal fee are dedicated to the commission to cover off-track wagering law implementation costs and the proceeds from the initial licensing fee will be distributed in equal parts to the New Jersey Thoroughbred Horseman's Association and the Standardbred Breeders' and Owners' Association of New Jersey for programs designed to aid the horsemen. Since it is not known what will be charged for these licenses, it is not possible to estimate the revenue generated from these licensing fees; however, it may be assumed that that the fees will be based on the commission's licensing expenditures.

Second, the next provision of this bill allows the Director of the ABC to issue a non-transferable special liquor license to the off-track wagering facility when one is not available for sale in the municipality. There are 15 authorized off-track wagering facilities in the State. The initial fee for the license would be the average sales price of a liquor license in the municipality with: 25 percent of the proceeds going to the municipality; 25 percent to the ABC; and 50

percent to the New Jersey Racing Commission. Since the sale price of liquor licenses varies across municipalities, and it is not known which municipalities will be affected, OLS cannot determine the estimated revenue generated by this proposed bill.

The bill allows the authorized off-track wagering facility to provide an agreed upon payment in-lieu-of taxes for the first five years. The OLS notes the lower payment will not provide the maximum property tax payment to the municipality, and depending on the prior occupancy status, may be a loss of revenue to the municipality.

Lastly, the bill requires the off-track wagering facility licensee to annually remit one percent of the net wagering profits to the local municipality. The municipality is authorized to use these funds for increase needs as the result of infrastructure and service costs brought about by the new facility. As reported by the Sports Authority, one of the three existing facilities ***Favorites at Woodbridge*** reported a net profit of about \$5,000,000 in FY 2009. If new establishments were equally as profitable, the municipality would benefit from about \$50,000 annually. The OLS, however, is concerned that given the current economy establishing additional off-track wagering facilities may dilute the market and thus generate smaller revenues for individual off-track-wagering facilities.

Section: Law and Public Safety

Analyst: Kristin Brunner Santos
Senior Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 1980

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MAY 27, 2010

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator JENNIFER BECK

District 12 (Mercer and Monmouth)

SYNOPSIS

Revises various off-track wagering provisions of the “Off-Track and Account Wagering Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning off-track wagering and amending and
2 supplementing 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 2 of P.L.2001, c.199 (C.5:5-128) is amended to read
8 as follows:

9 2. The Legislature finds and declares that:

10 a. The horse racing industry is economically important to this
11 State, and the general welfare of the people of the State will be
12 promoted by the advancement of horse racing and related projects
13 and facilities in the State.

14 b. It is the intent of the Legislature, by authorizing off-track
15 wagering and account wagering in this State, to promote the
16 economic future of the horse racing industry in this State, to foster
17 the potential for increased commerce, employment and recreational
18 opportunities in this State **[and]**, to preserve the State's open
19 spaces, to preserve and enhance the overall economic well-being of
20 the horse racing and horse breeding industries, and to generate
21 greater interest in the horse racing industry and the sport of horse
22 racing in New Jersey.

23 c. It is the further intent of the Legislature that facilities
24 offering off-track wagering opportunities to the public also offer
25 other amenities such as quality dining and handicapping facilities
26 and that, in doing so, these facilities strive to be of the highest
27 quality in the country.

28 d. The Legislature has determined that the New Jersey Racing
29 Commission is best suited to oversee, license and regulate off-track
30 wagering and account wagering in the State, and that the New
31 Jersey Sports and Exposition Authority, by virtue of its experience
32 in the operation of parimutuel wagering facilities and other
33 entertainment-related projects in this State, is particularly well-
34 suited **[to coordinate with other parties to promote the uniformity**
35 **and success of off-track wagering throughout the State and]** to
36 ensure the fiscal soundness and technical reliability of an account
37 wagering system, and to be licensed, along with other well-suited
38 entities, as off-track wagering licensees pursuant to the terms of this
39 act.

40 e. In establishing off-track wagering facilities, the authority
41 and other licensees will not be performing an essential government
42 function but rather an essentially private business function.
43 Numerous municipalities, residents and businesses will be impacted
44 by the establishment of off-track wagering facilities throughout the

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 State. [A municipality may oppose the placement of an off-track
2 wagering facility within its boundaries at the discretion of the
3 authority and the commission.] A municipality [may want] having
4 an off-track wagering facility sited within its boundaries[, but only
5 if the municipality receives] is therefore entitled to receive an
6 appropriate level of property tax, and additional compensation as
7 provided in this act, for municipal services. [Therefore,
8 fundamental fairness dictates that any municipality be empowered
9 to refuse the siting of a facility within its boundaries.] Fundamental
10 fairness [also] dictates that an off-track wagering facility, even if
11 owned and not leased by the authority, be subject to local property
12 tax requirements and be further required to pay a portion of its
13 wagering revenues to its host municipality pursuant to the terms of
14 this act.

15 f. By regulation of the Division of Alcoholic Beverage
16 Control, there exist special licenses that permit the sale of alcoholic
17 beverages on public property. These special licenses, typically
18 available to the authority, are inexpensive and circumvent the
19 traditional method for obtaining a license to sell alcoholic
20 beverages. Because the establishment of off-track wagering
21 facilities is, in reality, essentially a private business function and
22 not an essential government function, the authority is not permitted
23 to receive a special license. Under this act, only a private holder of
24 a Class C plenary retail consumption license is permitted to provide
25 alcoholic beverages at an off-track wagering facility. However,
26 many municipalities in New Jersey do not have a sufficient number
27 of liquor licenses. Therefore, in order to ensure the establishment
28 of an off-track wagering facility when a private holder of a plenary
29 retail consumption license is not available, it is necessary in this act
30 to allow for the issuance a non-transferable alcoholic beverage
31 license to permit the sale of alcoholic beverages at an off-track
32 wagering facility, under regulation of the Division of Alcoholic
33 Beverage Control, and to provide for financial compensation to
34 alcoholic beverage licensees in the municipality, as further provided
35 in this act.

36 (cf: P.L.2004, c.116, s.3)

37

38 2. Section 3 of P.L.2001, c.199 (C.5:5-129) is amended to read
39 as follows:

40 3. As used in this act:

41 "Account holder" means a resident of this State over age 18 who
42 establishes an account pursuant to this act through which account
43 wagers are placed.

44 "Account wagering" means a form of parimutuel wagering in
45 which an account holder may deposit money in an account with the
46 account wagering licensee and then use the account balance to pay
47 for parimutuel wagers by the account holder.

1 "Account wagering licensee" means the New Jersey Sports and
2 Exposition Authority or its assignee, provided that the commission
3 has granted its approval for the authority to establish an account
4 wagering system as provided for in this act.

5 "Account wagering system" means the system through which
6 account wagers are processed by the account wagering licensee
7 pursuant to this act.

8 "Applicant" means the New Jersey Sports and Exposition
9 Authority or another entity that submits an application to the
10 commission for a license to establish and conduct an off-track
11 wagering facility pursuant to this act.

12 "Authority" means the New Jersey Sports and Exposition
13 Authority created by section 4 of P.L.1971, c.137 (C.5:10-4).

14 "Backstretch Benevolency" means the Backstretch Benevolency
15 Programs Fund established pursuant to section 1 of P.L.1993, c.15
16 (C.5:5-44.8).

17 "Breeders and Stallions" means the distribution from the special
18 trust account created pursuant to section 46 a. (2) of P.L.1940, c.17
19 (C.5:5-66) for the purposes of subparagraph (c) of that citation.

20 "Breeding and Development" means the New Jersey Horse
21 Breeding and Development Account established pursuant to section
22 5 of P.L.1967, c.40 (C.5:5-88).

23 "Commission" means the New Jersey Racing Commission
24 created by section 1 of P.L.1940, c.17 (C.5:5-22).

25 "Executive Director" means the Executive Director of the
26 commission.

27 "Health and Welfare" means moneys distributed to the
28 Standardbred Breeders' and Owners' Association for the
29 administration of a health benefits program pursuant to section 46 a.
30 (5) of P.L.1940, c.17 (C.5:5-66).

31 "In-State host track" means a racetrack within this State which is
32 operated by a permit holder which conducts a horse race upon
33 which account wagers are placed pursuant to this act.

34 "In-State sending track" means a racetrack within this State
35 which is operated by a permit holder and is equipped to conduct
36 off-track simulcasting.

37 "In-State track" means an in-State host track or an in-State
38 sending track.

39 "Interstate common pool" means the parimutuel pool established
40 within this State or in another state or foreign nation within which
41 is combined parimutuel pools of one or more receiving tracks
42 located in one or more states or foreign nations upon a race at an
43 out-of-State sending track or out-of-State host track for the purpose
44 of establishing payoff prices in the various jurisdictions.

45 "Jockey's Health and Welfare" means a health and welfare trust
46 established by the organization certified by the New Jersey Racing
47 Commission as representing a majority of the active licensed
48 thoroughbred jockeys in New Jersey for the purpose of providing

1 health and welfare benefits to active, disabled and retired New
2 Jersey jockeys and their dependents based upon reasonable criteria
3 by that organization.

4 "New Jersey Racing Industry Special Fund" means the fund
5 established pursuant to section 27 of this act.

6 "New Jersey Thoroughbred Horsemen's Association" means the
7 association representing the majority of New Jersey thoroughbred
8 owners and trainers responsible for receiving and distributing funds
9 for programs designed to aid thoroughbred horsemen.

10 "Off-track simulcasting" means the simultaneous audio or visual
11 transmission of horse races conducted at in-State and out-of-State
12 racetracks to off-track wagering facilities and parimutuel wagering
13 at those off-track wagering facilities on the results of those races.

14 "Off-track wagering" means parimutuel wagering at an off-track
15 wagering facility as authorized under this act.

16 "Off-track wagering facility" means a licensed facility, other
17 than a racetrack, at which parimutuel wagering is conducted
18 pursuant to this act.

19 "Off-track wagering licensee" means the New Jersey Sports and
20 Exposition Authority or its assignee, **[provided that]** or another
21 entity to which the commission has granted its approval **[for the**
22 **authority]** to conduct an off-track wagering facility as provided for
23 in this act.

24 "Out-of-State host track" means a racetrack in a jurisdiction
25 other than the State of New Jersey, the operator of which is lawfully
26 permitted to conduct a horse race meeting and which conducts horse
27 races upon which account wagers may be placed pursuant to this
28 act.

29 "Out-of-State sending track" means a racetrack in a jurisdiction
30 other than the State of New Jersey which is equipped to conduct
31 off-track simulcasting and the operator of which is lawfully
32 permitted to conduct a horse race meeting and to provide simulcast
33 horse races to off-track wagering facilities in this State.

34 "Out-of-State track" means an out-of-State host track or an out-
35 of-State sending track.

36 "Outstanding parimutuel ticket" means a winning parimutuel
37 ticket which is not claimed within six months of sale.

38 "Parimutuel" means any system whereby wagers with respect to
39 the outcome of a horse race are placed with, or in, a wagering pool
40 conducted by an authorized person, and in which the participants
41 are wagering with each other and not against the person conducting
42 the wagering pool.

43 "Participation agreement" means the written contract entered into
44 prior to the effective date of P.L. , c. (pending before the
45 Legislature as this bill), that provides for the establishment or
46 implementation of either (a) an off-track wagering facility or
47 facilities or (b) an account wagering system. Each such contract
48 shall set forth the manner in which the off-track wagering facility or

1 facilities or the account wagering system shall be managed,
2 operated and capitalized, as well as how expenses and revenues
3 shall be allocated and distributed by and among the authority and
4 the other eligible participants subject to the agreement.

5 "Permit holder" means the holder of an annual permit to conduct
6 a horse race meeting issued by the commission.

7 "Racetrack" means the physical facility where a permit holder
8 conducts a horse race meeting with parimutuel wagering.

9 "Racing costs" means the prospective and actual costs for all
10 licensing, investigation, operation, regulation, supervision and
11 enforcement activities and functions performed by the commission.

12 "Simulcast horse races" means horse races conducted at an in-
13 State sending track or an out-of-State sending track, as the case may
14 be, and transmitted simultaneously by picture to a receiving track or
15 an off-track wagering facility.

16 "Sire Stakes" means the Sire Stakes Program established
17 pursuant to section 1 of P.L.1971, c.85 (C.5:5-91).

18 "Standardbred Drivers' Health and Welfare" means a health and
19 welfare trust established by the Standardbred Breeders' and Owners'
20 Association of New Jersey for the purpose of providing health and
21 welfare benefits to active, disabled and retired New Jersey
22 standardbred drivers and their dependents based upon reasonable
23 criteria by that organization.

24 "Takeout" means that portion of a wager which is deducted from
25 or not included in the parimutuel pool, and which is distributed
26 other than to persons placing wagers.

27 "Thoroughbred Breeders and Stallions" means the special trust
28 account created pursuant to section 46 b.(1)(e) of P.L.1940, c.17
29 (C.5:5-66).

30 (cf: P.L.2004, c.116, s.4)

31

32 3. Section 4 of P.L.2001, c.199 (C.5:5-130) is amended to read
33 as follows:

34 4. a. The commission is authorized to issue a license to the
35 authority to permit off-track wagering at a specified facility, upon
36 application of the authority and in accordance with the provisions of
37 this act. A license issued pursuant to this act shall be valid for a
38 period of one year. The commission shall issue a license pursuant to
39 this subsection only if the permit holder at Monmouth Park and the
40 thoroughbred permit holder at Meadowlands Racetrack schedule at
41 least the minimum number of race dates required in section 30 of
42 this act, P.L.2001, c.199 (C.5:5-156), and it is satisfied that the
43 authority has entered into a participation agreement with each and
44 every other person, partnership, association, corporation, or
45 authority or the successor in interest to such person, partnership,
46 association, corporation or authority that:

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

- 1 (2) has complied with the terms of such permit; and
2 (3) is in good standing with the commission and the State of
3 New Jersey.

4 An off-track wagering license may not be transferred or assigned
5 to a successor in interest without the approval of the commission
6 and the Attorney General, which approval may not be unreasonably
7 withheld.

8 b. As part of the license application process, any participation
9 agreement entered into for the purposes of subsection a. of this
10 section, or any modification to the agreement made thereafter, shall
11 be reviewed by the commission and the Attorney General to
12 determine whether the agreement meets the requirements of this act
13 and shall be subject to the approval of the commission and the
14 Attorney General.

15 c. The commission is also authorized to issue a license to a
16 well-suited entity to permit off-track wagering at a specified
17 facility, upon application of the entity and in accordance with the
18 provisions of this act and the provisions of section 14 of P.L.1940,
19 c.17 (C.5:5-34). A license issued pursuant to this act shall be valid
20 for a period of one year. In assessing the qualifications of an entity
21 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 (c) the potential of the proposed facility and amenities to generate
13 greater interest in the horse racing industry and the sport of horse
14 racing in the State; and (d) the proximity of the bidder's proposed
15 or intended location for the off-track wagering facility and its
16 impact on other planned or existing off-track wagering facilities and
17 racetracks in the State. For the purposes of this act, P.L.2001,
18 c.199, a successful bid shall be conditional upon the successful
19 bidder's compliance with all the provisions of this act, P.L.2001,
20 c.199, and the applicable rules and regulations promulgated by the
21 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 (cf: P.L.2004, c.116, s.5)

34

35 4. Section 5 of P.L.2001, c.199 (C.5:5-131) is amended to read
36 as follows:

37 5. a. At the time of filing an application for an off-track
38 wagering license, the **[authority]** applicant shall submit to the
39 commission a non-refundable filing fee in an amount established by
40 regulation by the commission, and a certification in a form
41 prescribed by the commission which specifies, but is not limited to,
42 the following information:

43 (1) a plan depicting the proposed facility and improvements
44 thereon, including information about the size, seating capacity,
45 parking and services to be provided at the facility;

46 (2) the location of the proposed facility, and relevant
47 demographic or other information concerning the municipality and
48 surrounding area where the proposed facility is to be located;

- 1 (3) the number of permanent and part-time jobs expected to be
2 created at the proposed facility, and gross revenues expected to be
3 generated by the facility;
- 4 (4) the fire evacuation plan for the proposed facility;
- 5 (5) the type of food and beverages available; and
- 6 (6) such other information as the commission may require.
- 7 b. The **[authority]** applicant shall file a separate application
8 and certification for each proposed off-track wagering facility.
- 9 c. The commission shall charge each off-track wagering
10 licensee an annual fee in connection with the renewal of the off-
11 track wagering license, and shall establish by regulation procedures
12 and conditions for renewal of licenses issued under this act. The
13 amount of the annual license renewal fee shall be used by the
14 commission to cover commission expenses associated with
15 implementation of the provisions of this act, P.L.2001, c.199, and
16 shall reasonably reflect those costs.
- 17 d. The commission shall by regulation establish the maximum
18 hours of operation of off-track wagering facilities.
- 19 e. (1) Notwithstanding R.S.33:1-42, alcoholic beverages may
20 be offered for on-premise consumption at an off-track wagering
21 facility only if provided by a Class C plenary retail consumption
22 licensee, by an agreement or contract with the **[authority]** off-track
23 wagering licensee, pursuant to the provisions of R.S.33:1-1 et seq.
24 in accordance with such procedures as established by statute and by
25 regulation of the Division of Alcoholic Beverage Control. The
26 authority shall not hold a license to provide alcoholic beverages at
27 an off-track wagering facility. However, when a Class C plenary
28 retail consumption licensee is not available in the municipality, the
29 Director of the Division of Alcoholic Beverage Control may issue a
30 non-transferable special license to provide alcoholic beverages at
31 the off-track wagering facility pursuant to paragraph (2) of this
32 subsection.
- 33 (2) The Director of the Division of Alcoholic Beverage Control
34 may issue one special license to an individual, corporation, or other
35 type of legal entity to serve alcoholic beverages at an off-track
36 wagering facility located in the municipality where a Class C
37 plenary retail consumption licensee was not available to provide
38 alcoholic beverages at the off-track wagering facility pursuant to
39 paragraph (1) of this subsection. The license shall authorize the
40 sale of alcoholic beverages for immediate consumption on the
41 premises of the off-track wagering facility. The director may issue
42 not more than 15 licenses pursuant to this paragraph. Furthermore,
43 licenses issued pursuant to this paragraph shall be subject to the
44 following requirements:
- 45 (a) No person who would fail to qualify as a licensee under Title
46 33 of the Revised Statutes shall be permitted to hold an interest in a
47 special license under the provisions of this paragraph;

1 **(b) Licenses shall be subject to the provisions of Title 33 of the**
2 **Revised Statutes and rules and regulations promulgated by the**
3 **director, to the extent those provisions are not inconsistent with the**
4 **provisions of this act;**

5 **(c) No license issued pursuant to this paragraph shall be**
6 **transferred to any other premises;**

7 **(d) Application for the initial issuance and renewal of each**
8 **license shall be made to the director on an annual basis. The fee for**
9 **the initial issuance of the license shall be two and one half times the**
10 **average sale price for the three most recent sales of plenary retail**
11 **consumption licenses in the municipality where the license is being**
12 **issued during the preceding five years. If the off-track wagering**
13 **facility is located within the boundaries of two or more**
14 **municipalities, the highest average sale price of the two or more**
15 **municipalities shall be used. If less than three plenary retail**
16 **consumption licenses have been sold in the municipality or**
17 **municipalities, as the case may be, within the previous five years,**
18 **the director shall obtain an appraisal, at the applicant's expense, to**
19 **determine the appropriate fee for the license. The appraisal process**
20 **shall include an examination of previous transactions in the**
21 **municipality or municipalities, as the case may be, and shall reflect**
22 **what a willing buyer, under no pressure to buy, would pay a willing**
23 **seller, under no pressure to sell, for a plenary retail consumption**
24 **license in that municipality or municipalities, as the case may be.**
25 **One half of the amount of the application fee for the initial issuance**
26 **of the license shall be paid upon the issuance of the license and the**
27 **other half of that amount shall be paid one year later. The director**
28 **shall establish an annual fee for the license which shall not exceed**
29 **the fee which may be imposed by a municipality for a plenary retail**
30 **consumption license pursuant to R.S.33:1-12;**

31 **(e) The fee for the initial issuance of the license shall be**
32 **distributed in the following manner:**

33 **(i) Twenty-five percent shall be paid to the municipality where**
34 **the off-track wagering facility is located and if the off-track**
35 **wagering facility is located within the boundaries of two or more**
36 **municipalities, the fee shall be divided equally among those**
37 **municipalities;**

38 **(ii) Twenty-five percent shall be paid to the Director of the**
39 **Division of Alcoholic Beverage Control;**

40 **(iii) Fifty percent shall be divided equally among and paid to the**
41 **plenary retail consumption licensees in the municipality or**
42 **municipalities where the licensed premises will be located, except**
43 **that no payment shall be made to the holders of inactive licenses;**

44 **(f) The individual corporation or entity holding the license shall**
45 **not be entitled to sell a license issued pursuant to this paragraph,**
46 **and the license shall expire upon the closure of the off-track**
47 **wagering facility;**

1 (g) The director shall not issue a special concessionaire permit
2 for any off-track wagering facility or premises which is eligible to
3 obtain a license to serve alcoholic beverages under the provisions of
4 this paragraph; and

5 (h) Pursuant to the "Administrative Procedure Act," P.L.1968,
6 c.410 (C.52:14B-1 et seq.), the director shall adopt rules and
7 regulations to effectuate the purposes of this paragraph.

8 (3) Nothing in this subsection shall be construed to allow the
9 Director of the Division of Alcoholic Beverage Control to issue a
10 special concessionaire permit or a special license described in
11 paragraph (2) of this subsection to the authority pursuant to this act,
12 P.L.2001, c.199, or to issue a special license to any individual,
13 corporation, or other type of legal entity to serve alcoholic
14 beverages in a municipality that prohibits the retail sale of alcoholic
15 beverages within its boundaries.

16 f. Persons under the age of 18 years shall not be permitted in
17 any off-track wagering facility, except in dining areas if
18 accompanied by a parent or guardian.

19 g. The commission shall by regulation establish minimum
20 standards for off-track wagering facilities and timelines for their
21 establishment and completion, including, but not limited to,
22 standards for quality, size, seating capacity, parking and services to
23 be provided, as well as expected dates of construction, renovations
24 and opening. The failure of an off-track wagering licensee to meet
25 these standards shall be sufficient cause for the commission to
26 revoke, suspend or refuse to renew a license pursuant to the
27 provisions of section 8 of P.L.2001, c.199 (C.5:5-134).

28 h. **【**The authority, in lieu of obtaining municipal zoning and
29 planning approvals that may otherwise be required in connection
30 with the off-track wagering facility, shall submit a written notice of
31 its intention to site an off-track wagering facility to the governing
32 body of the municipality within which the facility would be sited.
33 The notice shall identify the proposed site of the facility by street
34 address, if any, or by reference to lot and block numbers as shown
35 on the current tax duplicate in the municipal tax assessor's offices.
36 Within 45 days of its receipt of the authority's notice of intention,
37 the municipal governing body may disapprove of the proposed site
38 of an off-track wagering facility by adopting a resolution which
39 shall be valid and binding upon the authority and the commission
40 upon delivery of a duly certified copy of the resolution to the
41 authority and the commission. Whenever a municipality determines
42 to consider a resolution disapproving a proposed off-track wagering
43 facility, the authority shall be given an opportunity to offer a public
44 presentation of the proposed facility prior to consideration of the
45 resolution. A resolution disapproving a proposed off-track
46 wagering facility shall state the reasons for disapproval.

47 In the event the governing body shall not adopt such a resolution,
48 **the authority】** Notwithstanding the provisions of any law, rule, or

1 regulation to the contrary, the applicant shall submit its plans to the
2 municipal planning board and shall comply with the planning board
3 approval process pursuant to the "Municipal Land Use Law,"
4 P.L.1975, c.291 (C. 40:55D-1 et seq.). The applicant may seek a
5 license for an off-track wagering facility in that municipality and
6 the commission may grant the **【authority】 applicant** the license
7 provided that:

8 (1) the proposed off-track wagering facility site is not in an area
9 zoned residential;

10 (2) the **【authority】 applicant** has submitted its plans to the
11 municipal planning board, **【and complied with】 notwithstanding** the
12 provisions of section 22 of P.L.1975, c.291 (C.40:55D-31) or any
13 law, rule, or regulation to the contrary; and

14 (3) the **【authority】 applicant** has **【made reasonable efforts to**
15 **address the reasonable concerns expressed】** obtained site plan
16 approval by the municipal planning board.

17 i. In evaluating an application for an off-track wagering license,
18 the commission shall consider the proximity of the applicant's
19 proposed site to other planned or existing off-track wagering
20 facilities and to racetracks in this State. If, in the opinion of the
21 commission, the establishment of the facility at its proposed
22 location would be inimical to the interests of another planned or
23 established off-track wagering facility, or to a State racetrack, the
24 commission shall require the applicant to consider alternative sites
25 for the proposed facility.

26 (cf: P.L.2004, c.116, s.6)

27

28 5. Section 6 of P.L.2001, c.199 (C.5:5-132) is amended to read
29 as follows:

30 6. Within 14 days of receipt of a completed application,
31 certification and applicable fees, the executive director shall
32 determine whether the same is in due form and meets the
33 requirements of law in all respects, and upon being satisfied thereof,
34 the commission, within 45 days of receipt of a completed
35 application, certification and applicable fees, shall hold a public
36 hearing in the municipality in which the proposed off-track
37 wagering facility is to be located. The costs of the public hearing
38 shall be paid by the **【authority】 applicant**. The executive director
39 shall cause a display advertisement, approximately 11 inches by 8
40 inches in size, to be published at least once in a daily newspaper,
41 and at least once in a weekly newspaper, published, or circulated if
42 none is published, in the county where the municipality is located at
43 least 15 days before the date of the public hearing and to be
44 published again in that daily newspaper on the third day preceding
45 the public hearing and in the latest edition of that weekly newspaper
46 that will be in circulation on the third day preceding the public
47 hearing. The advertisement shall contain sufficient information to

1 apprise the public as to the purpose of the hearing, the time and
2 place thereof, and the nature of the license applied for. The
3 advertisement shall be prepared and placed by the executive
4 director, but shall be paid for by the **[authority]** applicant.

5 (cf: P.L.2001, c.199, s.6)

6
7 6. Section 7 of P.L.2001, c.199 (C.5:5-133) is amended to read
8 as follows:

9 7. a. No sooner than 30 days nor later than 60 days following
10 the public hearing, the commission shall make a final determination
11 on the license application. The commission shall approve the
12 application if it determines that the plan for the proposed facility
13 includes appropriate standards of quality for the premises and
14 services it will provide and that the **[authority]** applicant has
15 demonstrated by clear and convincing evidence that establishment
16 of the proposed off-track wagering facility will not be inimical to
17 the interests of the public and the horse racing industry in this State.
18 The commission shall submit its determination to the Attorney
19 General for review and approval. The determination of the
20 commission shall be deemed approved by the Attorney General if
21 not affirmatively approved or disapproved by the Attorney General
22 within 14 days of the date of submission. The decision of the
23 Attorney General shall be deemed a final decision. Upon approval
24 by the Attorney General, the commission shall issue to the
25 **[authority]** applicant an off-track wagering license specifying the
26 location, the periods of time during a calendar year and the hours of
27 operation during which off-track wagering is permitted at the
28 facility, and prescribing any other conditions or terms the
29 commission deems appropriate.

30 b. With the approval of the commission, the authority may
31 assign an off-track wagering license to a permit holder, provided
32 that the authority shall retain responsibility for license renewals. In
33 the event the authority assigns an off-track wagering license, the
34 assignee shall reimburse the authority for its costs associated with
35 the application for the license. With the approval of the
36 commission, **[the]** an off-track wagering licensee may enter into a
37 contract or agreement with a person or entity to conduct or operate
38 an off-track wagering facility for the licensee and to act as the agent
39 of the licensee in all off-track wagering matters approved by the
40 commission.

41 (cf: P.L.2004, c.116, s.7)

42
43 7. (New Section) a. An off-track wagering licensee, or its
44 assignee, operating an off-track wagering facility pursuant to the
45 provisions of the "Off-Track and Account Wagering Act,"
46 P.L.2001, c.199 (C.5:5-127 et seq.), shall pay annually to the
47 municipality where the off-track wagering facility is located a sum
48 equal to 4% of the net proceeds remaining from the amounts

1 received by the licensee pursuant to subsection f. of section 21 of
2 P.L.2001, c.199 (C.5:5-147) and subsection b. of section 25 of
3 P.L.2001, c.199 (C.5:5-151).

4 b. The payment requirement established pursuant to subsection
5 a. of this section shall apply to an off-track wagering licensee, or its
6 assignee, opening an off-track wagering facility for business on or
7 after the effective date of this act, P.L. , c. (C.) (pending
8 before the Legislature as this bill), and to an existing off-track
9 wagering licensee, or its assignee, commencing on the license
10 renewal date immediately following the effective date of this act.
11 Thereafter, as a condition for the annual renewal of an off-track
12 wagering license, the New Jersey Racing Commission shall verify
13 that the licensee or its assignee has paid to the municipality the
14 amounts required pursuant to subsection a. of this section. The
15 commission shall not renew the off-track wagering license unless
16 and until the licensee has complied with the payment requirement.

17 c. The amount paid to the municipality pursuant to subsection
18 a. of this section shall be used by the municipality to fund any
19 increase in municipal infrastructure and service costs brought about
20 by the off-track wagering facility, and for general municipal
21 purposes.

22

23 8. This act shall take effect immediately.

24

25

26

STATEMENT

27

28 This bill revises various provisions of the “Off-Track and
29 Account Wagering Act,” P.L.2001, c.199 (C.5:5-127 et seq.) to
30 facilitate the establishment of off-track wagering facilities in this
31 State.

32 The bill revises six aspects related to the establishment of these
33 facilities. First, the bill expands the types of entities who may
34 apply to the New Jersey Racing Commission for a license to
35 establish and conduct an off-track wagering facility. Under current
36 law, the only entities eligible to receive an off-track wagering
37 license are the New Jersey Sports and Exposition Authority
38 (NJSEA) and the two private horse racetrack operators in the State.
39 The bill allows the commission to issue an off-track wagering
40 license to a qualified, well-suited entity that meets standards and
41 criteria provided in the bill and further developed by the
42 commission. As part of the license application process, the
43 commission is to require that a criminal history record background
44 check is conducted in connection with an entity’s application for an
45 off-track wagering license. The commission is also to consider the
46 proximity of the proposed facility to other planned or existing off-
47 track wagering facilities or racetracks in New Jersey, and to require
48 the applicant to consider alternative sites for the proposed facility if

1 its proposed location would be detrimental to those planned or
2 existing facilities and racetracks. The bill does not affect the
3 licenses of entities licensed prior to its effective date, who were
4 required to enter into a participation agreement, but establishes a
5 new licensing process and eliminates the need for a participation
6 agreement for all licenses issued after the effective date.

7 Second, the bill requires that off-track wagering licenses be
8 subject to a bidding process, to be developed by the commission in
9 consultation with the State Treasurer. An existing licensee or an
10 entity interested in receiving an off-track wagering license would
11 submit a bid for each license desired. The off-track wagering
12 license would be awarded to a successful bidder, conditional upon
13 the bidder's eligibility to be licensed as an off-track wagering
14 licensee and complying with all of the provisions of the off-track
15 wagering law.

16 Third, the bill authorizes the commission to charge an initial
17 license fee and an annual renewal fee in connection with the initial
18 issuance and annual renewal of the off-track wagering licenses.
19 The amount bid for each license under the bill would be considered
20 the initial license fee. Thereafter, licensees would pay to the
21 commission a renewal fee each year. The proceeds of the annual
22 renewal fee are dedicated to the commission to cover off-track
23 wagering law implementation costs. The bill also authorizes the
24 commission to revoke, suspend or deny the renewal of an off-track
25 wagering license for failure of the licensee to meet quality,
26 timeliness, and other standards.

27 Fourth, the bill allows the Director of the Division of Alcoholic
28 Beverage Control (ABC) to issue a non-transferable special liquor
29 license to provide alcoholic beverages on the off-track wagering
30 facility premises when a private holder of a plenary retail
31 consumption liquor license is not available to partner with the off-
32 track wagering facility licensee to provide such beverages at the
33 facility. The initial fee for the license would be two and a half
34 times the sales price of a liquor license in the municipality, with
35 25% of the proceeds going to the municipality, 25% to the ABC,
36 and 50% to the plenary retail consumption alcoholic beverage
37 licensees in the municipality, excluding the licensees that hold
38 inactive licenses. The special license would not be transferable to
39 another premises, could not be sold, and would expire upon closure
40 of the off-track wagering facility.

41 Fifth, the bill removes from existing law the provision that
42 currently allows a municipality to reject the establishment of an off-
43 track wagering facility within its boundaries within 45 days of
44 receiving a notice of intention to site from the off-track wagering
45 license applicant. Instead, the bill requires municipal planning
46 board approval of each off-track wagering facility to be sited.

47 Sixth, the bill requires an off-track wagering facility licensee to
48 annually pay to the municipality where the off-track wagering

S1980 SARLO, BECK

16

1 facility is located a sum equal to 4% of the net wagering profits
2 made by the off-track wagering facility each year. The bill
3 authorizes the municipality to use these moneys to cover any
4 increase in municipal infrastructure and service costs brought about
5 by the off-track wagering facility, and for general municipal
6 purposes.

7 Revision of these off-track wagering provisions would facilitate
8 the establishment of these facilities, which has progressed at a very
9 slow pace since the law was enacted in 2001 following voter
10 approval of a constitutional amendment in 1998. Although in 2001
11 the act authorized the establishment of 15 off-track wagering
12 facilities by the NJSEA and the two private racetrack owners in this
13 State, only three facilities have been established to date.

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO

SENATE, No. 1980

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 8, 2010

The Senate State Government, Wagering, Tourism & Historic Preservation Committee reports favorably and with committee amendments Senate, No. 1980.

This bill revises various provisions of the “Off-Track and Account Wagering Act,” P.L.2001, c.199 (C.5:5-127 et seq.) to facilitate the establishment of off-track wagering facilities in this State.

The bill, as amended, revises six aspects related to the establishment of these facilities. First, the bill expands the types of entities who may apply to the New Jersey Racing Commission for a license to establish and conduct an off-track wagering facility. Under current law, the only entities eligible to receive an off-track wagering license are the New Jersey Sports and Exposition Authority (NJSEA) and the two private horse racetrack operators in the State. As amended by the committee, the bill provides that current entities eligible to receive an off-track wagering license would forgo their ability to establish their share of the 15 off-track wagering facilities under a negotiated participation agreement if they fail to receive a license by January 1, 2012, unless they continue to make progress on an annual basis. The bill, as amended, further provides that any facility licenses forgone by the current permit holders would be available to be established by a horsemen’s organization and their partners, except that such organization must make progress on an annual basis from the date the organization is eligible to apply for the off-track wagering license or licenses, or will forfeit their eligibility to establish an off-track wagering facility. The bill provides that any facilities not established by a horsemen’s organization will be available to be established by well-suited private entities.

The bill allows the commission to issue an off-track wagering license to a qualified, well-suited entity that meets standards and criteria provided in the bill and further developed by the commission. As part of the license application process, the commission is to require that a criminal history record background check is conducted in connection with an entity’s application for an off-track wagering

license. The commission is also to consider the proximity of the proposed facility to other planned or existing off-track wagering facilities or racetracks in New Jersey, and to require the applicant to consider alternative sites for the proposed facility if its proposed location would be detrimental to those planned or existing facilities and racetracks.

Second, the bill requires that the off-track wagering licenses available to be established by well-suited private entities to be subject to a bidding process, to be developed by the commission in consultation with the State Treasurer. An existing licensee or an entity interested in receiving an off-track wagering license would submit a bid for each license desired. The off-track wagering license would be awarded to a successful bidder, conditional upon the bidder's eligibility to be licensed as an off-track wagering licensee and complying with all of the provisions of the off-track wagering law, and provided the State's racetracks continue to conduct the required number of live racing days.

Third, the bill authorizes the commission to charge an initial license fee and an annual renewal fee in connection with the initial issuance and annual renewal of the off-track wagering licenses. The amount bid for each license under the bill would be considered the initial license fee. Thereafter, licensees would pay to the commission a renewal fee each year. The proceeds of the annual renewal fee are dedicated to the commission to cover off-track wagering law implementation costs. The bill also authorizes the commission to revoke, suspend or deny the renewal of an off-track wagering license for failure of the licensee to meet quality, timeliness, and other standards.

Fourth, the bill allows the Director of the Division of Alcoholic Beverage Control (ABC) to issue a special concessionaire permit to the authority, and a non-transferable special liquor license to off-track wagering licensees other than the authority, to provide alcoholic beverages on the off-track wagering facility premises when a private holder of a plenary retail consumption liquor license is not available to partner with the off-track wagering facility licensee to provide such beverages at the facility. The initial fee for the license would be the average sales price of a liquor license in the municipality, with 25% of the proceeds going to the municipality, 25% to the ABC, and 50% to the New Jersey Racing Commission for the funding of horse breeding incentive programs. The director would also pay to the commission, for breeding incentive programs, a percentage of the annual fee. The special license would not be transferable to another premises, could not be sold, and would expire upon closure of the off-track wagering facility.

Fifth, the bill removes from existing law the provision that currently allows a municipality to reject the establishment of an off-track wagering facility within its boundaries within 45 days of

receiving a notice of intention to site from the off-track wagering license applicant. Instead, the bill provides that an off-track wagering facility must be a permitted use in all commercial and industrial districts of a municipality.

Sixth, the bill requires an off-track wagering facility licensee to annually pay to the municipality where the off-track wagering facility is located a sum equal to 1% of the net wagering profits made by the off-track wagering facility each year, after payment of operating expenses. The bill authorizes the municipality to use these moneys to cover any increase in municipal infrastructure and service costs brought about by the off-track wagering facility, and for general municipal purposes.

Finally, as amended, the bill provides that, when the authority is the owner of the land, building, and premises where an off-track wagering facility is operated pursuant to an initial off-track wagering facility license issued after the effective date of the bill, the authority must pay to the municipality where the facility is located a payment in-lieu-of taxes for the first five years of operation of the off-track wagering facility, which payment amount will be determined upon agreement with the municipality, and must pay regular property tax payment beginning on the sixth year and thereafter. When a private off-track wagering licensee is the owner of the land, building, and premises where an off-track wagering facility is operated pursuant to an initial off-track wagering facility license issued after the effective date of the bill, the private off-track wagering licensee must be eligible to receive a five-year tax exemption, or abatement, or both, when located in an area in need of rehabilitation as defined under the "Five-Year Exemption and Abatement Law," P.L.1991, c.441 (C.40A:21-1 et seq.), except that the private off-track wagering licensee must pay to the municipality where the facility is located a payment in-lieu-of taxes for the first five years of operation of the off-track wagering facility, which payment amount must be less than the amount of regular property tax payments as determined upon agreement with the municipality pursuant to section 10 of P.L.1991, c.441 (C.40A:21-10), and must pay regular property tax payments beginning on the sixth year and thereafter.

Revision of these off-track wagering provisions would facilitate the establishment of these facilities, which has progressed at a very slow pace since the law was enacted in 2001 following voter approval of a constitutional amendment in 1998. Although in 2001 the act authorized the establishment of 15 off-track wagering facilities by the NJSEA and the two private racetrack owners in this State, only three facilities have been established to date.

This bill is identical to Assembly, No. 1705 (2R)

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- provide that current entities eligible to receive an off-track wagering license would forgo their ability to establish their share of the 15 off-track wagering facilities under a negotiated participation agreement if they fail to receive a license by January 1, 2012, unless they continue to make progress on an annual basis;
- provide that any facility licenses forgone by the current permit holders would be available to be established by a horsemen's organization and their partners, except that such organization must make progress on an annual basis from the date the organization is eligible to apply for the off-track wagering license or licenses, or will forfeit their eligibility to establish an off-track wagering facility;
- provide that any facilities not established by a horsemen's organization will be available to be established by the well-suited private entities provided for in the bill;
- provide that an off-track wagering license issued to a well-suited private entity will not be valid upon the failure of the State's racetracks to conduct the minimum number of live racing days required by law;
- provide that an off-track wagering facility must develop first-class off-track wagering facilities;
- require the commission, in consultation with the New Jersey Economic Development Authority, to establish progress benchmarks for each off-track wagering licensee to follow for the timely and expeditious establishment of each off-track wagering facility, and provide that failure of a licensee to meet the benchmarks shall constitute a basis for the denial by the commission of the renewal off-track wagering license, except that the licensee shall have the right to appeal the commission's decision;
- allow for the issuance of a special concessionaire permit to the authority, and a special permit to other off-track wagering licensees, for the service of alcoholic beverages at an off-track wagering facility when a current liquor license holder or a liquor license is not available in the municipality; and provide that the initial special permit fee will be the average sale price for the three most recent sales of plenary retail consumption licenses, rather than two and a half times that price;
- provide that 50% of the initial special liquor license fee will be paid to the New Jersey Racing Commission for the funding of horse breeding incentive programs, instead of to current liquor license holders in the municipality; and provide that a percentage of the annual fee will also be paid to the commission for breeding incentive programs;
- provide that an off-track wagering facility shall be a permitted use in all commercial and industrial districts of a municipality;

- reduce to 1%, from 4%, the percent of net wagering proceeds that the off-track wagering licensee must pay to the host municipality, and clarify that the percentage will apply to wagering proceeds after the payment of facility operating expenses;
- when the authority is the owner of the land, building, and premises where an off-track wagering facility is operated pursuant to an initial off-track wagering facility license issued after the effective date of the bill, the authority must pay to the municipality where the facility is located a payment in-lieu-of taxes for the first five years of operation of the off-track wagering facility, which payment amount will be determined upon agreement with the municipality, and must pay regular property tax payment beginning on the sixth year and thereafter; and
- when a private off-track wagering licensee is the owner of the land, building, and premises where an off-track wagering facility is operated pursuant to an initial off-track wagering facility license issued after the effective date of the bill, the private off-track wagering licensee must be eligible to receive a five-year tax exemption, or abatement, or both, when located in an area in need of rehabilitation as defined under the "Five-Year Exemption and Abatement Law," P.L.1991, c.441 (C.40A:21-1 et seq.), except that the private off-track wagering licensee must pay to the municipality where the facility is located a payment in-lieu-of taxes for the first five years of operation of the off-track wagering facility, which payment amount must be less than the amount of regular property tax payments as determined upon agreement with the municipality pursuant to section 10 of P.L.1991, c.441 (C.40A:21-10), and must pay regular property tax payments beginning on the sixth year and thereafter.

ASSEMBLY BILL NO. 1705
(Second Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 1705 (Second Reprint) with my recommendations for reconsideration.

This bill revises the "Off-Track and Account Wagering Act" to expedite the establishment of off-track wagering facilities in this State. Specifically, the bill would permit entities other than racetrack operators to obtain licenses from the New Jersey Racing Commission to establish and operate off-track wagering facilities provided that they meet certain requirements, standards and criteria. Under the bill's provisions, current racetrack operators will have the opportunity to demonstrate to the satisfaction of the Commission that they have made progress towards establishing their share of the off-track wagering facilities authorized by law. If a licensee fails to establish the foregoing by January 1, 2012, all unused licenses will be forfeited and offered first to horsemen's organizations, and subsequently to any well-suited entity that meets the bill's requirements.

While I commend the sponsors for their interest in enhancing the horse racing industry and wholeheartedly support the expeditious development of off-track wagering facilities in this State, I am concerned that some of the bill's provisions may impede the Administration's progress in developing a self-sustaining horse racing industry. Specifically, on December 17, 2010, in an effort to preserve live Standardbred racing at the Meadowlands I directed the Sports and Exposition Authority to negotiate with the Standardbred Breeders and Owners Association (SBOA) for the lease of the Meadowlands Racetrack. Moreover, because the full development of the State's off-track wagering

network is essential to the future economic viability of the horse racing industry, I further directed the Authority to assign up to four off-track wagering locations as a component of any such lease agreement.

Moreover, in furtherance of our efforts to develop a self-sustaining horse racing industry, my Administration is also pursuing the sale or lease of Monmouth Park Racetrack. In connection with these proposed transactions, the assignment of additional off-track wagering locations by the Authority may be necessary. Thus, it is essential that the Administration and the Authority retain the flexibility to assign off-track wagering licenses in connection with the sale or lease of Monmouth Park.

Based upon the foregoing, I am concerned that the bill's provision requiring the forfeiture of off-track wagering licenses absent a showing of "progress" toward the development of such facilities may adversely impact the Authority's ability to assign off track wagering locations pursuant to an agreement with the SBOA or its designee in connection with the Meadowlands Racetrack or with a potential purchaser or operator of Monmouth Park. Accordingly, I am recommending that the legislation be revised to clarify that negotiations concerning the transfer or assignment of off-track wagering licenses in the context of a potential sale or lease of a racetrack shall be deemed "progress" toward the establishment of such facilities. Moreover, I am recommending that the bill be revised to require the Racing Commission to adhere to the standard set forth above in its development of progress benchmarks for licensees and to permit the Commission to adopt administrative regulations on an expedited basis.

In addition, I am concerned that the bill's provision requiring licensees to pay annually to their host municipality an amount equal to 1% of profits will be a barrier to the development of off-track wagering facilities. While I fully support the sponsors' efforts to provide economic incentives for municipalities where off-track wagering facilities are being considered, existing law already requires facility operators to pay property taxes and, as such, this new fee would be an additional form of taxation that may discourage the development of new locations. While I am recommending through this conditional veto that the 1% fee be eliminated, I pledge to work with the sponsors to find alternatives to defray any additional cost burdens that host municipalities may incur.

Accordingly, I herewith return Assembly Bill No. 1705 (Second Reprint) and recommend that it be amended as follows:

Page 3, Section 1, Lines 7-8:

Delete ", and additional compensation as provided in this act,"

Page 3, Section 1, Lines 13-15:

Delete "and be further required to pay a portion of its wagering revenues to its host municipality²[pursuant to the terms of this act] as provided by law²"

Page 7, Section 3, Line 43:

After "basis.", insert "For the purposes of this section, a permit holder shall be deemed to have made progress toward establishing its share of off-track wagering facilities if it has entered into an agreement, in connection with good faith negotiations over the sale or lease of a racetrack under the permit holder's control, 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."

Page 10, Section 3, Line 1:

After "facility.", insert "Such benchmarks shall provide that a permit holder shall be deemed to have made progress toward establishing its share of off-track wagering facilities if it has entered into an agreement, in connection with good faith negotiations over the sale or lease of a racetrack under the permit holder's control, 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."

Page 15, Section 7, Line 35:

Delete "a. An off-track wagering licensee, or its"

Page 15, Section 7, Lines 36-47:

Delete Lines 36-47 in their entirety

Page 16, Section 7, Lines 1-15:

Delete Lines 1-15 in their entirety

Page 16, Section 7, Line 16:

Delete "d."

Page 16, Line 45:

Insert new section 8:
 "8. (New Section) Notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Commission may adopt immediately upon filing with the Office of Administrative Law such regulations as the

Commission deems
necessary to implement
the provisions of this
act, which shall be
effective for a period
not to exceed 180 days
and may thereafter be
amended, adopted or
readopted by the
Commission in accordance
with the requirements of
P.L.1968, c.410."

Page 16, Line 46:

Re-number Section 8 as
Section 9

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Jeffrey S. Chiesa

Chief Counsel to the Governor



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Governor Christie Moves Horse Racing Closer to a Self-Sustaining Model with Legislation to Expedite Off Track Wagering

Friday, February 25, 2011 Tags: Budget and Spending

Requests for Proposals To Be Issued Next Week for Monmouth Park

Trenton, NJ – Governor Chris Christie today moved forward with his commitment to making horse racing in New Jersey a self-sustaining industry by signing legislation to expedite the establishment of off-track wagering facilities in New Jersey. Another step forward comes early next week, when the New Jersey Sports and Exposition Authority will issue a request for proposals to bring a long-term solution to Monmouth Park through private operation.

On December 17, 2010, Governor Christie announced a break-through agreement to end public subsidies of operations and purses for Standardbred racing at the Meadowlands Racetrack through the lease of that facility to the Standardbred Breeders and Owners Association (SBOA). Governor Christie is looking forward to similar progress with Monmouth Park and Thoroughbred racing there with the RFP for a private operator.

"We were successful in the Meadowlands, and we can do the same for Monmouth Park to the benefit of New Jersey taxpayers," Governor Christie said. "I want to see a vibrant but self-sustaining horse racing industry in New Jersey, but that can be accomplished without tens of millions of dollars in taxpayer subsidies every year."

Assembly Bill 1705, which Governor Christie conditionally vetoed on January 31 and the Legislature subsequently amended to include the Governor's recommended changes, removes barriers to the establishment of OTWs by permitting persons other than racetrack operators to run OTW facilities, making OTWs a permitted use in all municipal land use zones, and increasing the accessibility to liquor licenses for OTW operators.

Despite enactment of an original OTW law nearly a decade ago, only three of the 15 facilities allowed by law were established. Governor Christie's conditional veto was necessary to preserve the NJSEA's ability to transfer licenses in connection with the sale or lease of the state's racetracks. It also eliminated a 1 percent fee on OTW operators, but expressly noted that the Administration will work with the Legislature to find an alternative source of revenue for OTW host municipalities

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