

2007 Annual Report

Senate Committee on Racing, Gaming and Wagering



Senator William J. Larkin, Jr.
Chairman

Picture of the Goshen Historic Track, Goshen, NY

Photo courtesy of the Harness Racing Museum, Goshen, NY: Monica Thors Collection

NEW YORK STATE SENATE STANDING COMMITTEE ON RACING, GAMING, AND WAGERING

2007 Annual Report

**Honorable William J. Larkin, Jr.
Chairman**

2007 Committee Members

Honorable Michael F. Nozzolio

Honorable Mary Lou Rath

Honorable Thomas W. Libous

Honorable Elizabeth Little

Honorable Joseph Griffo

Honorable John Sabini (Ranking Minority Member)

Honorable William T. Stachowski

Honorable George Onorato

Honorable John L. Sampson

Honorable Craig Johnson

Committee Staff

J. Stephen Casscles, Esq., Counsel

Charlotte Johnson, Committee Director

Robert D. Nickol, Legislative Aide



WILLIAM J. LARKIN, JR.
SENATOR, 39TH DISTRICT

SECRETARY
MAJORITY CONFERENCE

PLEASE RESPOND TO:
□ ROOM 612
LEGISLATIVE OFFICE BLDG.
ALBANY, NY 12247
(518) 455-2770

□ 1093 LITTLE BRITAIN ROAD
NEW WINDSOR, NY 12553
(845) 567-1270

INTERNET ADDRESS:
LARKIN@SENATE.STATE.NY.US

WEB ADDRESS:
WWW.SENATORBILLLARKIN.COM

THE SENATE
STATE OF NEW YORK

CHAIRMAN
RACING, GAMING &
WAGERING COMMITTEE

COMMITTEES
AGRICULTURE
COMMERCE, ECONOMIC DEVELOPMENT
& SMALL BUSINESS

FINANCE
HEALTH

INSURANCE

RULES

TRANSPORTATION
VETERANS, HOMELAND SECURITY &
MILITARY AFFAIRS

May 23, 2008

Honorable Joseph L. Bruno
President Pro Tempore
New York State Senate
Room 330, State Capitol Building
Albany, New York 12247

Dear Senator Bruno:

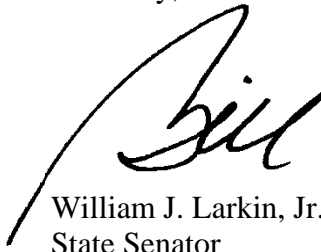
I am pleased to submit to you the 2007 Annual Report of the New York State Senate Standing Committee on Racing, Gaming, and Wagering.

During 2007, the Committee conducted three public hearings on issues surrounding the award of the state racing franchise. Further, the Committee continued to encourage the successful implementation of the video lottery gaming program so that more revenue could be generated to support state education programs.

For six years now, the annual report has contained a study on financial trends in New York's horse racing industry. This study outlines the troubles faced by this industry and the prospects for its revival.

I would like to thank you, your staff, and our Committee members whose work and dedication helped to make this a productive year.

Sincerely,



William J. Larkin, Jr.
State Senator



TABLE OF CONTENTS

Introduction	1
Racing, Gaming, and Wagering Legislation Enacted in 2007.....	2
Racing, Gaming, and Wagering Committee Meetings	3
Public Hearings	4
Court Decisions That Affect Gaming.....	9
<i>Citizens Against Casino Gambling in Erie County v. Kempthorne</i>	9
<i>New York v. Shinnecock Indian Nation</i>	9
<i>New York Racing Association v. New York City Off-Track Betting Corporation</i>	10
<i>Suffolk Regional Off-Track Betting Corporation v. New York State Racing and Wagering Board</i>	10
Compulsive Gambling.....	11
Related Legislation.....	11
Horse Racing	14
Related Legislation.....	14
Equine Drug Testing Program.....	18
New York State Thoroughbred Breeding and Development Fund	18
Agriculture and New York State Horse Breeding Development Fund	19
Trends in New York's Horse Racing Industry	20
Status of the Industry.....	20
NYRA and the Prospects for New York's Thoroughbred Industry	21
New York Harness Racing	23
Conclusion.....	24
New York Racing Association	25
Related Legislation.....	25
Simulcasting and Off-Track Betting.....	26
Related Legislation.....	27
New York State Comptroller Audits	30
New York Racing Association, Inc.: Capital Program Operations	30
Division of The Lottery	32
Related Legislation.....	32
Video Lottery Terminals	35
Related Legislation.....	36
Casino Gambling	39
Games of Chance.....	41
Related Legislation.....	41
Trends in Bell Jar, Bingo and Games of Chance Total Handle and Net Profits to Charitable Organizations	44
State Racing and Wagering Board and Lottery Division Department Bills	46
Conclusion.....	47
Appendix	48
Map of Existing and Proposed Gambling Establishments in New York State	48
Table A. Purses Paid at Thoroughbred Tracks in 2007, by State (ranked by average purse per race).....	49
Table B. Purses Paid at Harness Tracks in 2007, by State (ranked by total purses)	50
Chart A. Annual On-Track Handle at Harness Tracks in New York, 1990-2006.....	51
Chart B: Annual Handles at NYRA Racetracks, 1990-2005	52

INTRODUCTION

This annual report outlines the condition of the state's gaming industry. It covers legislation that was considered in 2007 and topics such as casino gambling, horse racing, simulcasting, video lottery terminals (VLTs), games of chance, and compulsive gambling. As with earlier annual reports, it analyzes the condition of the state's horse racing industry and games-of-chance activities.

The year 2007 may be one of the most significant years for this state's horse racing industry since the New York Racing Association (NYRA) was first incorporated in 1955. The New York State racing franchise, as managed by NYRA, expired on December 31, 2007. This presented a golden opportunity to reform the state's racing and gaming laws and to select a qualified manager for the franchise. The new manager must, above all, be capable of earning a profit, pay an appropriate level of state and local taxes, and strengthen the financial condition of the state's horse racing industry. In addition, significant reforms to the VLT vendor rate are needed to encourage the construction of gaming facilities that can become regional tourist destinations that simultaneously raise more revenue to support state education programs.

The New York State Senate Standing Committee on Racing, Gaming, and Wagering (the Committee) oversees gaming activities that support a wide range of charitable and non-charitable causes. The Committee's jurisdiction includes overseeing casino gambling, VLTs, off-track betting (OTB) facilities, pari-mutuel wagering at horse tracks, harness and thoroughbred racing, lottery games, games of chance, and compulsive-gambling issues.

Gaming not only offers entertainment for our state's citizens; it raises revenue to support public education and state and local government operations. In addition, it helps to finance the charitable purposes of a variety of not-for-profit religious, fraternal, and veterans' organizations.

With more gaming facilities being established in New York, it is highly likely that some families will spend much more on gambling than is appropriate for their financial well-being. In New York, spending on gambling is expected to reach into the tens of billions of dollars. This increase of expenditures raises two concerns: (1) increased instances of problem gambling, which will hurt certain family budgets, and (2) increased reliance on gambling revenue to support government programs. The Committee recognizes both of these concerns and is working to address them.

RACING, GAMING, AND WAGERING LEGISLATION ENACTED IN 2007

CHAPTER 162 (S. 504, Maziarz)	Authorizes organizations permitted by a locality to conduct bingo to conduct bonus ball bingo
CHAPTER 169 (S. 1581, Larkin)	Clarifies that Workers' Compensation benefits and coverage secured by the New York Jockey Injury Compensation Fund, Inc. shall be limited to licensed personnel
CHAPTER 197 (S. 4060, Larkin)	Relates to service as a director on certain public benefit corporations
CHAPTER 293 (S. 2825, Larkin)	Directs the Task Force on Retired Race Horses to study the feasibility of installing artificial turf at racetracks to reduce injuries to horses and jockeys
CHAPTER 440 (S. 2895-A, Larkin)	Increases contributions by a nonprofit racing association to backstretch employee pensions for a period of one year
CHAPTER 441 (S. 2939, Larkin)	Authorizes the conducting of bingo games where no fee is charged for participation without a license
CHAPTER 535 (S. 4059-A, Larkin)	Relates to reciprocity of racing and gambling licenses
CHAPTER 681 (S. 5745-A, Stachowski)	Extends the period of time during which the Buffalo raceway would receive a portion of the surcharge collected on off-track winnings

RACING, GAMING, AND WAGERING COMMITTEE MEETINGS

The Committee conducted three committee meetings during the 2007 legislative session. At these committee meetings, in addition to reporting-out legislation, committee members heard from speakers who presented information on various aspects of the racing and gaming industries in New York. The dates of the committee meetings and those who spoke are as follows:

First Committee Meeting: Tuesday, March 27, 2007, at 9:00 AM in Room 123, State Capitol. In addition to reporting 12 bills, the Committee heard testimony from Daniel D. Hogan, Chairman of the New York State Racing and Wagering Board. At this meeting, Chairman Hogan spent most of his time discussing the Board's efforts to curb illegal drugging of horses to enhance their racing performance. The discussion centered on monitoring programs conducted by the Board such as random testing of horses for steroids and "milkshakes" and monitoring backstretch areas to ensure that drugs are not administered to horses. Some discussion also centered on a recent press report on the use of cobra venom to enhance racing performance.

Second Committee Meeting: Tuesday, April 24, 2007, at 9:00 AM in Room 123, State Capitol. At this committee meeting, 13 bills were reported out of the Committee. In addition, the Committee heard presentations from Peter Goold, Executive Director of the Agriculture and New York State Horse Breeding Development Fund, and M. Kelley Young, Executive Director of the Harness Horse Breeders of New York State. Both speakers spoke about their organizations' efforts to promote harness racing and breeding of standardbred horses. Items discussed included the New York State Sires Stakes program, the beneficial influence that VLT revenue has had to revive the harness racing industry, and the relationship between the Breeding Development Fund and the Harness Horse Breeders Association.

Third Committee Meeting: Monday, May 21, 2007, at 11:30 AM in Room 123, State Capitol. The Committee's final committee meeting reported out five bills. Also, Ray Casey, President of the New York City OTB Corporation, was the guest speaker. Mr. Casey outlined the financial difficulties faced by all of New York's OTBs, including the New York City OTB. The reason for this financial distress is because OTBs are required by statute to distribute increasing amounts of money to subsidize losses sustained by racetracks and to provide payments to horse owners and breeding funds.

To help bring balance back to the relationship between the racing industry and OTBs, Mr. Casey suggested that the law be amended to limit distributions to net earnings, phase out statutory payments to VLT tracks, eliminate the hold-harmless obligations of OTBs, and simplify and consolidate various distribution sections of the Racing Law.

PUBLIC HEARINGS

During 2007, the Committee held a meeting to look at the future of thoroughbred racing in this state and to accept comments from three racing industry experts. Further, Senator Larkin conducted three public hearings on issues surrounding which organization should be awarded the bid to operate the state racing franchise and whether the laws that regulate the franchise should be revised to facilitate the ability of any such future franchisee to make a profit. Transcripts of all four Committee meetings and hearings are on file in the New York State Legislative Library, State Capitol. The Committee meetings and public hearings that occurred during 2007 are as follows:

1.) Committee Meeting on the Future of Thoroughbred Racing in New York

A Committee meeting was held on Wednesday, September 12, 2007, at 11:00 AM in Hearing Room A, Legislative Office Building, Albany, New York, to explore the “Future of Thoroughbred Racing in New York.” The senators who attended included Chairman William J. Larkin, Jr.; Senator John D. Sabini, ranking minority member; and Committee members Senators Joseph Griffo, Thomas Libous, Elizabeth Little, Michael Nozzolio, Mary Lou Rath, George Onorato, and William Stachowski.

At this Committee meeting, no bills were reported out. However, three racing industry experts were asked to give their opinion on the future of thoroughbred racing in this state, how the State Senate should proceed to evaluate the future of the state racing franchise, and how prospective bidders should be evaluated in awarding the franchise. The experts who provided comments were:

- Professor Bennett Liebman, Coordinator, Racing and Wagering Law Program, Government Law Center, Albany Law School, Albany, NY. Professor Liebman operates an on-line news source for the racing and gaming industry (<http://racing.albanylaw.edu>).
- Mr. Paul Bowlinger, Executive Vice-President, Racing Commissioners International (RCI), an organization that represents racing and pari-mutuel regulators in the United States, Canada, Mexico, Jamaica, Puerto Rico, and Trinidad-Tobago, and President of RCI Integrity Services, a not-for-profit company that is a subsidiary of RCI and provides wagering security services.
- Mr. Charles E. Vickery, III, Charles Vickery Consulting, a racing industry analyst, 273 E. Mt. Vernon Street, Oxford, PA 19363. His business provides statistical research and economic and geodemographic analysis of the horse racing industry.

2.) Public Hearing: Evaluate Governor Spitzer’s Recommendation That NYRA Retain the State Racing Franchise After December 31, 2007

The Committee conducted a public hearing on Thursday, September 27, 2007, at 11:00 AM in Hearing Room A, Legislative Office Building, Albany, New York, to evaluate Governor Spitzer’s recommendation that NYRA retain the state racing franchise and the memorandum of understanding (MOU) to implement that recommendation. The senators who attended included Chairman William J. Larkin, Jr.; Senator John Sabini, ranking minority member; and Committee members Senators Elizabeth Little, Thomas Libous, and William Stachowski. The public hearing lasted approximately one and three-quarters hours.

At this public hearing, four members of Governor Spitzer's administration outlined the governor's recommendation that NYRA retain the state racing franchise after December 31, 2007, and the proposed MOU to implement this recommendation. The four panelists, who sat at the witness table simultaneously, were Paul E. Francis, Director of the NYS Division of the Budget; Patrick Foye, Downstate Chair, Empire State Development; David I. English, Chief Budget Examiner, NYS Division of the Budget; and Richard Rifkin, Special Counsel, Office of the Governor.

Patrick Foye, who spoke first, talked at length about the "high" quality of the "new" NYRA management team. Further, he maintained that the other three bidders for the franchise—Excelsior Racing, Empire Racing, and Capital Play—had certain deficiencies that made them unsuitable to be awarded the franchise.

Paul Francis was the second speaker. Mr. Francis devoted most of his comments to the financial implications of awarding the bid to NYRA and issues surrounding the installation of VLTs at Aqueduct and possibly at Belmont Park.

3.) Public Hearing: Belmont Park and the Future of the State Racing Franchise

This hearing looked at issues concerning NYRA's operation of Belmont Park and its relationship with the communities that surround this racetrack. The public hearing was conducted on Monday, October 1, 2007, at 4:00 PM at the Elmont Memorial Library Theater, 700 Hempstead Turnpike, Elmont, New York. The senators who attended included Chairman William J. Larkin, Jr. and Senator John Sabini, ranking minority member. The other senators who participated included Senators John Flanagan, Kemp Hannon, Craig Johnson, Jeffrey Klein, George Onorato, and Dean Skelos.

The purpose of this second hearing was to explore the current operation of Belmont Park by NYRA and how that operation is having a detrimental effect on the living conditions of those who live in the communities that surround Belmont Park. Further, the hearing accepted testimony on the impact of awarding the state racing franchise to communities that surround Belmont Park. A secondary issue that was discussed was the communities' thoughts on authorizing the installation of VLTs at Belmont Park.

Unlike the other two public hearings conducted by the Committee, the witnesses at this hearing were primarily local community leaders who had an opinion on the operation of Belmont Park as it affects their communities. The witnesses, in order of their appearance, were:

- Thomas Alfano, NYS Assemblyman, who represents this area
- John Ciotti, Nassau County Legislator
- Christopher Rosado, President, Elmont Chamber of Commerce
- Sandra Smith, Co-Chairperson, Coalition for Sustainable Development
- Joyce Stowe, President, Elmont Community Coalition Council
- Cheryl Lee, Director, Elmont Community Awareness Program
- Thomas Suozzi, Nassau County Executive

- Kate Murray, Supervisor, town of Hempstead
- Edward Ambrosio, Councilman, town of Hempstead
- James Rhatigan, Trustee, village of Floral Park
- Donna Sherrer, Mayor, village of Bellerose
- Patrick Nicolosi, President, Elmont East End Civic Association
- Chet Collins, Parkhurst Civic Association
- Ruth Jakab, President, Locustwood/Gotham Civic Association
- Jean Fichtl, President, Sewanhaka Central High School District Board
- Aubrey Phillips, Trustee, Elmont Union Free School District
- Carol Parker-Duncanson, Trustee, Elmont Union Free School District
- Frank Kirby, Inspector, Commanding Officer, 5th Precinct
- Father Donald Babinski, Pastor, St. Vincent De Paul

4.) Public Hearing: Presentations by the Four Bidders for the State Racing Franchise

The last hearing conducted by the Committee accepted testimony from the four bidders that filed proposals for the future operation of the franchise. The hearing was conducted on Wednesday, October 10, 2007, at 10:00 AM in Hearing Room A, Legislative Office Building, Albany, New York. The senators who attended were Chairman William J. Larkin, Jr.; Senator John Sabini, ranking minority member; and Senators Thomas Libous and Joseph Griffo.

This four-hour hearing gave each of the four bidders applying to operate the state racing franchise an opportunity to outline their plans for the management of this franchise. Included in their outlines was a presentation of the financial assumptions for their plans and the amount of money to be generated for the applicant and the State of New York. Much discussion centered on adopting the right business model to manage the franchise and the qualifications of each bidder.

The participants who testified were, in order of appearance:

- A. Excelsior Racing Associates—Bill Mulrow, Jerry Bailey, and Richard Bronson: Mr. Mulrow would not comment on the other three bidder proposals or on the proposed Spitzer MOU. However, he emphasized that a comprehensive approach is needed which includes an integrated plan that combines racing, gaming, and real estate development for the business model to be successful. Such a model is in the best interests of the state and racing. For Excelsior's financial plan to work, VLTs are needed at Belmont and the share of VLT revenue retained by the gaming operator must be much higher than is currently the law. This panel emphasized that its partner, Steve Wynn, had extensive experience in building other gaming facilities, and that they would devote a large amount of capital to this endeavor.
- B. New York Racing Association—C. Steven Duncker, Charles Hayward, James Heffernan, and Patrick Kehoe: Most of this panel's discussion was presented by Charles Hayward and

Steven Duncker. Mr. Hayward and Mr. Duncker emphasized that there is a “new” management team at NYRA that has remediated all of NYRA’s past improprieties. This “new” management team has instituted new corporate governance standards that include better integrity standards and a new code of ethics. The panelists briefed the Committee on the solid experience of the current NYRA board of trustees and its experience in operating horse racing events.

The speakers outlined how the New York racing business model is “broken.” This is because over 80% of NYRA’s bets are now placed off-track and not at its facilities, as was the case when the corporation was formed in 1955. Racetracks retain a higher percentage of bets placed on-track as opposed to off-track bets. However, NYRA did not offer many suggestions on how to fix the broken model, except to use VLT revenue to subsidize its racing operations. The speakers did maintain that the not-for-profit model should be kept in the best interests of racing. In conclusion, the NYRA panel contended that NYRA was the best applicant to obtain the franchise because of its experience in conducting horse racing at the state’s three racetracks.

Both Chairman Larkin and Senator Libous asked numerous questions concerning NYRA’s award of a contract to Getnick & Getnick, Esq. as its integrity counsel. These two senators questioned the high cost of the contract and how the contract was not awarded by competitive bid, in violation of the state’s racing laws. In a different line of questioning, Senators Libous and Griffo questioned Governor Spitzer’s proposed MOU and whether the state’s taxpayers should continue to subsidize the operations of NYRA in the future.

- C. Empire Racing—Jeff Pearlee and Dennis Brida: Mr. Pearlee devoted a large part of his presentation to aver that this racing franchise bidding process was a golden opportunity to revive New York racing. Further, he criticized Spitzer’s racing recommendations, the MOU, and the underlying assumptions of such recommendations and MOU. While the trend in the successful operation of a racing enterprise is to integrate its operation with other gaming and real estate development activities, the proposed MOU split the operation of VLTs from racing operations. Further, Empire Racing questioned why the franchise term was increased from 20 to 30 years without any notice to the bidders about this substantial change in the bid terms. Unlike NYRA, Empire Racing maintained that it would have a much better and more profitable relationship with the state’s OTBs, to the benefit of all parties concerned. Empire Racing pointed to its racing experience and that under its proposal, more money would be generated for the State of New York than under the proposed MOU.

Mr. Pearlee stated that NYRA clearly does not own the Aqueduct, Belmont, or Saratoga racetracks. Further, that unlike the other bidders, their proposal called for substantial resources to be devoted to improved living conditions of backstretch employees, with better housing and provision of social services.

- D. Capital Play—Karl O’Farrell, Steve Cauthen, Joe Bencivenga, Mitchell Grossinger Etess, Neal Brickman, Betsy Berns, Jacques Cornet, and Andrew Goodell: Mr. O’Farrell primarily spoke on behalf of Capital Play and introduced his management team. His comments were that Capital Play had significant racing experience due to its profitable operation of the Victoria Club in Australia. Further, that its racing operations were successful because it improved its racing facilities and enhanced the racing experience. The consequence of this was increased attendance that drew on a younger fan base.

The proposed Spitzer MOU was a bad deal for New York's taxpayers because much more money could be generated by the Capital Play proposal. Further, the proposed MOU encouraged disintegration between VLT operations and racing, and not integration, which is required to lead the state racing franchise to profitability. Mr. O'Farrell also insisted that for the financial plan to work, it was highly desirable to have VLTs at Belmont. Moreover, he claimed that the current VLT revenue splits were insufficient to allow any applicant to invest the amount of money required to properly develop the assets of the franchise.

Mr. O'Farrell devoted a significant amount of time to Capital Play's ambitious plans to redevelop Aqueduct Racetrack. He said that its proximity to JFK International Airport and to a mass transit line made Aqueduct's location ideal for a racing and gaming facility. He also stressed that Capital Play's partner, Mohegan Sun, had the expertise to redevelop Aqueduct so that it could raise significant amounts of revenue to support the state's racing industry and the State of New York.

COURT DECISIONS THAT AFFECT GAMING

Citizens Against Casino Gambling in Erie County v. Kempthorne

In the case, *Citizens Against Casino Gambling in Erie County and the County of Erie, Intervenor-Plaintiffs v. Kempthorne*, 471 F.Supp.2d 295 (WDNY 2007), the plaintiffs, who are casino opponents, brought an action for declaratory and injunctive relief against the Department of Interior, the National Indian Gaming Commission (NIGC), and officials from both federal agencies. The plaintiffs maintain that the defendants violated the Indian Gaming Regulatory Act (IGRA) in approving a tribal gaming ordinance and in declining to disapprove a tribal-state compact that had been ratified by the State of New York, thereby permitting an Indian tribe to construct a casino on land that it purchased with funds appropriated pursuant to the Seneca Nation Settlement.

The defendants moved to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim. The casino opponents filed a motion for summary judgment and the Seneca Nation filed a motion for leave to file an amicus brief to seek dismissal of the complaint. Federal District Court Judge Skretny held that: (a) the Senecas' participation as an amicus curiae was appropriate, (b) neither the tribe nor the State of New York was a necessary party to this action, (c) the action did not fall within the Quiet Title Act's reservation of the federal government's sovereign immunity, (d) the NIGC chairman's approval of the gaming ordinance, without making a determination as to whether the land designated for construction of the casino was gambling-eligible Indian land, was not made as the result of a reasoned decision-making process and was remanded back to the NIGC for further consideration, and (e) the Secretary of Interior's letter opinion was not a final agency action that is subject to court review.

New York v. Shinnecock Indian Nation

In *State of New York, NYS Racing and Wagering Board, NYS Department of Environmental Conservation, and Town of Southampton v. Shinnecock Indian Nation*, 523 F.Supp.2d 185 (EDNY 2007), the State of New York and Southampton sued the Shinnecock Nation, seeking to bar the construction and operation of a gaming casino on land allegedly owned by the tribe. A preliminary injunction barring such construction was granted (280 F.Supp.2d 1), and both parties' cross-motions for summary judgment were denied (400 F.Supp. 486). Following a "lengthy and thorough" bench trial on this matter, Federal District Judge Joseph F. Bianco held that (a) the Nation's aboriginal title to the land at issue was extinguished, (b) the proposed casino development was barred by the *Sherrill* doctrine, (c) the operation of a casino would have violated New York State's anti-gaming and environmental laws and the Southampton Town Code, (d) sovereign immunity did not bar action in this matter, and (e) a permanent injunction is proper to be issued in this matter. In sum, the judgment was for the plaintiffs.

New York Racing Association v. New York City Off-Track Betting Corporation

The plaintiff, the New York Racing Association (NYRA), initiated *The New York Racing Association v. New York City Off-Track Betting Corporation*, 2007 N.Y. Slip Op 50110U, 14 Misc.3d 1221A, 836 N.Y.S.2d 487 (2007), in which NYRA alleged in its complaint two causes of action. First, it had a contractual claim for an increase in its simulcast fee and a supplemental simulcast fee. The second cause of action was for unjust enrichment by New York City OTB for violation of the contract. By an agreement dated January 1, 1996, and memorandum of understanding (MOU) dated November 13, 1998, NYRA agreed to provide the New York City OTB its simulcast signal on which bets could be placed. The MOU expired on November 13, 2002, and, pursuant to its provisions, either party could elect to have the terms and conditions for a new 2-year agreement established through compulsory binding arbitration. NYRA maintained that it was entitled to contractual damages for the claimed increase of the simulcast fee. No binding arbitration was ever commenced as provided for in the agreement. NYRA moved for summary judgment awarding it contractual damages. OTB cross-moved for summary judgment dismissing the complaint for failure to file a timely notice of claim in compliance with NYS Racing, Pari-Mutuel Wagering and Breeding Law (hereinafter Racing Law) §618. NYRA's motion was denied and the OTB cross-motion was granted.

Suffolk Regional Off-Track Betting Corporation v. New York State Racing and Wagering Board

In this case, *In the Matter of Suffolk Regional Off-Track Betting Corporation v. New York State Racing and Wagering Board et al.*, 47 A.D. 3d 133; 846 N.Y.S.2d 687, 2007, N.Y., petitioners Suffolk Regional OTB Corporation and several other regional OTB corporations sought review of a judgment entered by the Supreme Court, Albany County, which dismissed petitioners' applications, in five proceedings pursuant to CPLR Article 78, to review three determinations of the respondent, the New York State Racing and Wagering Board (the Board), concerning payments to be made by petitioners to regional harness tracks.

The four determinations at issue involved a maintenance-of-effort determination under Racing Law §1017-a(2)(a), a separate calculation determination under the same provision, and a dark-day payment determination under Racing Law §1017. With respect to maintenance of effort, petitioners claimed that they were entitled to a credit for all payments made under Racing Law §1016 regardless of the time of day; the court agreed based on the clear and ambiguous language of the provision. The Supreme Court agreed with the Board's interpretation of Racing Law §1017-a(2)(a) that the schedule of payments made to "tracks and purses" meant that payments were to be calculated to an individual, as opposed to a regional, track based on the clear and unambiguous language of the statute. Because the heading of Racing Law §1017(1)(b)(5)(E) and (6)(F) regarding dark-day payments specified that the payments were to be made only by facilities licensed under Racing Law §1007 and thus limited the statute's effect under N.Y. Stat. 123(b), the Supreme Court held that petitioners were not required to make such payments.

The Appellate Division, Third Department, modified the Supreme Court's judgment by reversing the Board's maintenance-of-effort determination and its dark-day payment determination. The petitions were granted to that extent, and those determinations were annulled. As so modified, the Supreme Court's judgment was affirmed.

COMPULSIVE GAMBLING

Problem gambling is considered to be a “hidden addiction” by many experts. This is because there are often no outward warning signs of the problem, but the ramifications of this addictive condition are very real.

The New York Council on Problem Gambling reports that calls to the Council’s 24-hour help line increased by 9% from 2003 to 2007, a period that saw the launching of two new casinos and eight racinos. Some of the sharpest increases in the number of calls from individuals and families seeking help to address problem gambling issues came from counties where these new gaming facilities were established or from neighboring counties (see figure 1). In 2004, New York more than doubled its support for the treatment of compulsive gambling disorders, increasing funding from \$1.6 million to \$3.6 million. In 2007, state funding for treatment increased again to \$4.3 million. However, support must continue to increase to effectively combat this growing problem.

The increased incidence of gambling by our state’s youth is also of growing concern. A recent study by the State Office of Alcoholism and Substance Abuse Services (OASAS) indicated that for students in grades 7 through 12, almost 20% of these youths have a gambling problem based on diagnostic criteria. Further, males surveyed were nearly twice as likely as females to have gambled within the past 30 days. Also, of those students identified with a substance abuse problem, 42% also had a gambling problem. It is important to curtail youth gambling because the earlier a child begins to gamble, the higher the incidence that he or she will develop a compulsive-gambling problem.

One way to combat this problem is to educate the public about the dangers of compulsive gambling. The second week of March is National Problem Gambling Awareness Week. Each March, compulsive-gambling advocacy groups participate in radio talk shows, conduct seminars, and issue press releases to raise public awareness about this problem.

Related Legislation

S. 80/A. 7404 (Padavan/Hoyt)

Referred to Health (Senate and Assembly)

This bill prohibits the advertising, marketing, or promotion of casinos within 1,000 feet of any school, day care center, playground, or youth center. Prohibiting these advertisements near places

Fig. 1. Percent Change in Gambling Helpline Call Volumes From 2003 to 2007 for Selected Counties

<i>County</i>	<i>Change</i>	<i>County</i>	<i>Change</i>
Albany	87%	Rockland	41%
Broome	58%	Saratoga	32%
Cattaraugus	317%	Sullivan	467%
Chautauqua	57%	Ulster	15%
Nassau	41%	Westchester	38%
Orange	21%	All counties in	
Rensselaer	19%	New York City	15%

Source: New York Council on Problem Gambling, 2007.

where children congregate would further the state's policy of protecting children from the hazards presented by casino gambling.

Unfortunately, teenagers are currently the fastest-growing group of compulsive gamblers. In western New York, a Canadian casino has bought space on billboards immediately across the street from several area high schools. According to the sponsor, these ads tout that millions of dollars can be won at the casino, but do not describe the horrors of compulsive gambling or state that the odds of winning are far less than the odds of losing. A ban on advertising may help reverse the trend of compulsive gambling among young people by limiting children's exposure to the glamorization and promotion of casino gambling, the sponsor maintains.

S. 83/A. 3823 (Padavan/McEneny)

Referred to Racing, Gaming, and Wagering (Senate and Assembly)

This legislation would prohibit the selling of lottery tickets by vending machine and limit the power of the Lottery Division to promulgate rules and regulations on the method of sale for such tickets.

As with cigarette vending machines, according to the sponsor, unattended lottery ticket vending machines are easily accessible to young people. Although lottery tickets may legally be sold only to those age 18 or older, these machines can be used by teenagers and even younger children. This legislation would ensure that no one under the legal age of 18 has access to the sale of lottery tickets.

S. 97/A. 6299 (Padavan/Hoyt)

Referred to Racing, Gaming, and Wagering (Senate and Assembly)

This bill raises the minimum legal betting age in New York, for all gambling activities except charitable bingo, from age 18 to age 21.

The sponsor maintains that the 21-year-old drinking age has saved lives on the highway and deferred the age at which young people first experience alcohol. Similarly, the sponsor hopes that by raising the legal gambling age to 21, individuals will postpone such gambling activities until they are older and hopefully less susceptible to forming compulsive-gambling habits.

S. 340/A. 2336 (Larkin/Hoyt)

Referred to Finance/Racing and Wagering

This legislation was introduced to ensure adequate funding for educational programs that relate to the treatment of compulsive or problem gamblers. Included in these educational programs are elements to help prevent problem or compulsive gambling and to provide treatment for those afflicted with this condition.

With the expansion of gaming, there is a need to ensure that educational programs are available to help those afflicted with a compulsive or problem gambling condition. This bill allocates up to 5% of revenues generated by video lottery terminals and casinos, up to \$4 million annually, to fund such programs.

S. 1323/A. 2337 (Padavan/Hoyt)

Referred to Racing, Gaming, and Wagering (Senate and Assembly)

This bill would prohibit the use of lottery revenues to promote the sale of lottery tickets. The use of lottery revenues for advertising, marketing, and promoting the lottery, the sponsor maintains, raises

State Constitutional questions. This is because such expenditures are not inherent to the operation of the lottery. According to the sponsor, the current use of the funds on lottery promotion is extravagant and constitutes an improper use of the gamblers' betting money and is improperly diverting moneys from state educational programs.

S. 1333/A. 2759 (LaValle/Pretlow)

Referred to Racing, Gaming, and Wagering/Ways and Means

The purpose of this bill is to further ensure that people who buy lottery tickets are of the appropriate age. The sponsor maintains that, in some cases, lottery vending machines are not closely supervised and children under the age of 18 are able to purchase lottery tickets illegally. This bill would require the installation and maintenance of a lockout device on all lottery vending machines. The lockout device would enable each lottery vendor or the merchant to activate a lottery machine before each purchase.

S. 5193/A. 2334 (Padavan/Hoyt)

Referred to Racing, Gaming, and Wagering (Senate and Assembly)

Under current law, racetracks and OTBs are prohibited from accepting horse race bets from individuals who are actually or apparently under the age of 18. This measure heightens this prohibition by making it a misdemeanor for an employee of a racetrack or OTB to accept a bet from such underage persons. This bill is trying to address the growing problem of underage gambling and the destructive patterns caused by learning betting habits at a young age.

HORSE RACING

Many bills were considered in 2007 to revise the regulatory structure that governs horse racing. The goal of these bills was to restore public confidence, trust, and integrity in the conduct of horse racing and to make New York's horse racing industry profitable once again. Below is a summary of legislation related to horse racing. This section also outlines the operation of the state's horse breeding funds, trends in the state's horse racing industry, and equine drug testing issues.

In 2006, Senator Larkin endeavored to implement Chapter 342 of the Laws of 2005, which established the Task Force on Retired Race Horses. The purpose of this task force was to encourage more productive uses for racehorses after their racing days had ended. The Senate made its appointments to the Task Force, but it was never impaneled because no appointments were made by the State Assembly and by then-Governor George Pataki. Hence, the Task Force could not begin its work. In 2007, Chapter 293 was signed into law to extend the life of the Task Force on Retired Race Horses so that its worthwhile work could be completed.

Related Legislation

S. 347/A. 3385 (Larkin/DelMonte) Passed Senate/Reported to Codes

In 2003, NYRA was indicted on federal felony criminal charges of conspiring to commit tax fraud. The organization operated under a deferred prosecution agreement, whereby it submitted to federal-monitor supervision to change its management structure and paid a \$3 million fine to the federal government. In addition, in 2004, there were allegations that the principal owner of Vernon Downs had committed felonies directly related to his past financial dealings.

This bill codifies what should have been long inferred in the law: that convicted felons are ineligible to apply for or continue to hold a racing license in New York State.

In light of the NYRA indictment and the inquiries surrounding the questionable background of an owner of Vernon Downs, it would be prudent to clearly state in the law that convicted felons should not be allowed to conduct race meets or handle betting moneys generated at such tracks. For the prestige and stature of New York racing, it is important that those who hold racing licenses are held to the highest moral and ethical standards so that the betting public will have a high level of confidence about the fairness of race meets that are held in New York.

This bill establishes a procedure whereby a horse racing licensee who has been convicted of a felony can be quickly replaced with another qualified licensee, on a temporary basis, to ensure that race meets can be conducted without interruption. Without this provision, race meets could not be held, to the detriment of horse owners, track employees, and the betting public.

S. 349/A. 1522 (Larkin/Magee) Passed Senate/Reported to Ways and Means

This bill provides that those racetracks that apply for and obtain a VLT vendor license must better integrate their video lottery gaming facilities with live horse racing events sponsored at these tracks.

It states that the Division of the Lottery, in consultation with the Racing and Wagering Board, when approving a race facility license and VLT vendor's license, is required to provide an integrated and quality racing and VLT facility. Providing quality racing facilities integrated with VLT parlors will help to increase patronage at such facilities, encourage more tourism in this state, and ultimately generate more revenue to support state education programs and local governments.

S. 350/A. 1490 (Larkin/Magee)

Referred to Racing, Gaming, and Wagering (Senate and Assembly)

The purpose of this bill is to arrive at an optimum allocation of revenues to harness tracks and to horse owners and breeders' funds in order to encourage the racing and breeding of more standard-bred and other types of horses in New York. It is important to increase the financial strength and profitability of the New York State racing industry and to support the equine industry in general. Doing so will strengthen the upstate economy in counties that have harness tracks and horse farms that supply horses to such racing facilities.

As reported in the New York State Senate Racing, Gaming, and Wagering Committee's annual report for 2004, the New York horse racing and equine industries are under great stress. For the past 20 years, it has continued to precipitously lose market share in its own home market. In addition, at OTB parlors, racing events produced out-of-state are supplanting New York-produced racing events. This is detrimental to New York's agricultural economy and racing industry since New York racing products are being rapidly replaced by racing events initiated elsewhere.

The regulations under which the New York racing industry operates need to be reformed to encourage the production and sale of more New York-produced racing events that use New York-bred horses and to generate more revenue for New York's standard-bred breeding fund, which also supports other equine industries in the state.

To this end, the bill provides that harness racing associations are to enter into an agreement with the Agriculture and New York State Horse Breeding Development Fund for an amount to be paid to such fund from revenues resulting from wagers placed on such tracks' races at out-of-state facilities.

The bill also gives more discretion to the Fund to disburse moneys for additional purposes, as follows: a New York-based equine research and/or equine drug detection and monitoring program; educational programs that support, advise, or provide planning services to the equine industry; the construction and development of horse riding trails and the development, operation, or funding of programs to support retired racehorses; support and maintenance of the Harness Racing Museum and Hall of Fame and/or the Goshen Historic Track, in Goshen, New York; and the funding of harness race purses involving exclusively horses bred and foaled in New York.

S. 1047-A/A. 6594-A (Larkin/Gunther)

Passed Senate/Reported to Ways and Means

The purpose of this bill is to grant to the Agricultural and NYS Horse Breeding Development Fund the clear statutory authority to transfer funds to support either the works of the Harness Racing Museum and Hall of Fame or the Goshen Historic Track, in Goshen, New York. Both of these institutions help to promote the standard-bred horse industry and harness racing in this state.

S. 1358/A. 3363 (Larkin/DelMonte)

3rd Reading, Senate Cal. #607/3rd Reading, Assembly Cal. #615

The purpose of this bill is to increase, from \$5,000 to \$20,000, the fines that the Racing and Wagering Board may impose for infractions of Racing Law provisions. The board needs the authority to impose heavier fines to ensure that all horse racing events are conducted in an honest and above-board manner. The last time the fine limits were raised was in 1953 (a dollar today is equivalent to about 13 cents in 1953).

S. 1581/A. 7918 (Larkin/Pretlow)

Chapter 169 of the Laws of 2007

The proposal clarifies the existing law that a jockey, apprentice jockey, or exercise rider licensed under Racing, Pari-mutuel Wagering and Breeding Law Article 2 or Article 4 and who is an employee covered under Workers' Compensation Law section 2 is eligible to receive Workers' Compensation benefits secured by the New York Jockey Injury Compensation Fund (the Fund). This bill was introduced at the request of the Fund and is in reaction to *Adames v. NY Jockey Injury Compensation Fund, Inc.* (15 AD 3rd 696, 2005). The Fund maintains that the Third Appellate Division in *Adames* overlooked the legislative intent and statutory framework of the Racing, Pari-mutuel Wagering and Breeding Law in rendering its decision.

S. 1585 (Libous)

Referred to Racing, Gaming, and Wagering

The bill amends the Racing, Pari-mutuel Wagering and Breeding Law to provide that any officer, director, or executive of a corporation that is licensed to conduct harness horse racing, or such person's spouse, is allowed to enter a horse that he or she has an ownership interest in to race at such person's facility provided that the Racing and Wagering Board has not prohibited such person from entering such race at his or her own facility. This is similar to the current standard used at tracks operated by NYRA.

S. 1680/A. 3634 (Larkin/Lafayette)

Referred to Racing, Gaming, and Wagering (Senate and Assembly)

The Racing and Wagering Board, under this bill, is authorized to promulgate regulations concerning jockey advertising at thoroughbred and harness racetracks. This is a study bill to obtain public comment on this concept and to explore the possibility that the state's laws affecting jockey and driver advertising should be altered.

S. 1882/A. 3384 (Larkin/DelMonte)

Passed Senate/3rd Reading, Cal. #509

This measure authorizes horse racetrack operators to issue more free passes to promote attendance at live horse racing events. Allowing for the issuance of more free passes will not only increase attendance and the excitement of those horse racing events, it may also encourage an increase in betting handle at such racing facilities and increase patronage at restaurants located at or near such tracks. Under current law, horse owners may obtain free passes to enter racetracks; however, members of the horse owner's family and other members of the public are precluded from receiving such passes.

S. 2825/A. 5511 (Larkin/Magee)
Chapter 293 of the Laws of 2007

The purpose of this bill is to extend the provisions of Chapter 342 of the Laws of 2005, which established the Task Force for Retired Race Horses. While Chapter 342 was enacted into law, the Task Force was never impaneled. This bill extends the life of the Task Force so that its work can be completed.

S. 2892/A. 7916 (Larkin/Pretlow)
Passed Senate/Referred to Racing and Wagering

This bill would facilitate racetracks and other racing event producers or retailers to band together to establish agreements governing the scheduling of their races and to establish joint agreements involving the sale and purchase of broadcasting and simulcasting rights without violating state and federal anti-trust statutes. Competitors would be permitted to coordinate the timing of their race dates and jointly sell their simulcast signal. To protect against abuse, the Racing and Wagering Board would need to approve of such contracts.

S. 2897/ (Larkin)
Referred to Racing, Gaming, and Wagering (Senate)

The purpose of this bill is to enhance the agricultural benefits and economic impact of the New York State horse breeding program. This bill establishes a minimum number of races restricted to New York-bred horses to be run at New York racetracks, ensures purse parity between open and restricted races, and provides that a share of revenue generated from international simulcasting of New York horse races is returned to the state breeders programs.

Ultimately, these measures will enhance the New York horse breeding program, promote jobs in the state's equine and agricultural industries, and strengthen the state's rural economy.

S. 5745-A/A. 8224-A (Stachowski/Quinn)
Chapter 681 of the Laws of 2007

This bill extends the period of time during which Buffalo Raceway would continue to receive a portion of the surcharge collected on off-track winnings. The Racing Law imposes a 5% surcharge on pari-mutuel wagering that takes place at OTB facilities. The revenues generated from the surcharge are distributed to the city and county in which the racetrack is located. This bill extends a provision, due to sunset in 2007, to continue to reallocate to Buffalo Raceway one-half of such money that would have been directed to local municipalities. This provision was extended to August 31, 2012. This money, the sponsor maintains, is needed to keep Buffalo Raceway in operation so that it can retain its employees and those associated with western New York harness racing.

S. 6109 (Larkin)
Referred to Rules

The laws that established the criteria for forming a racing corporation were first instituted in 1940. At that time, limited liability companies (LLCs) either did not exist or were not commonly used as a common business practice. Today, however, LLCs are commonly used in the formation of business companies. This bill amends the Racing Law so that LLCs can clearly hold a racing license to conduct horse race meets. This bill merely updates the law so that more types of commonly used business company structures can be used when developing a business plan to operate a racetrack.

S. 6236/A. 9324 (Rules/Pretlow)**Passed Senate/Referred to Racing and Wagering**

This bill extends for one year the temporary funding increase of \$1 million for the NYS Thoroughbred Breeding and Development Fund, to March 31, 2008. The bill memo for this measure maintains that this bill is necessary to provide temporary increased funding to enable the Fund to pay higher award limits. This law was first enacted in 2006 in anticipation of VLTs being established at Aqueduct prior to its expiration. Future financing of this item would have been derived from the new Aqueduct VLT money.

Equine Drug Testing Program

The Racing and Wagering Board and some within the state's horse racing industry have made it a priority to crack down on owners, trainers, and veterinarians who administer performance-altering drugs to horses to gain a competitive edge. This crackdown is due, in part, to the increased use of illegal practices to enhance a horse's performance. At the Racing Committee meeting held on March 27, 2007, our guest speaker was NYS Racing and Wagering Board Chairman Daniel D. Hogan, who discussed the Board's efforts to curb the use of illegal drugs and other practices to enhance horse race performance.

In 2007, 36,856 post-race samples of blood and 30,870 samples of urine were tested at the New York State College of Veterinary Medicine at Cornell University. There has been an increased number of reports in the press about the use of steroids, cobra venom, and other substances to enhance horse race performance. The Board is working diligently to curtail these new methods to drug horses.

New York State Thoroughbred Breeding and Development Fund

A large and diverse horse population is critical to sustain New York's equine industry. For the past 35 years, the NYS Thoroughbred Breeding and Development Fund (the Fund) has encouraged growth in the state's thoroughbred horse breeding industry. The Fund helps to contribute to the success of over 400 breeding farms throughout the state. These farms account for over 43,000 acres of working rural landscapes.

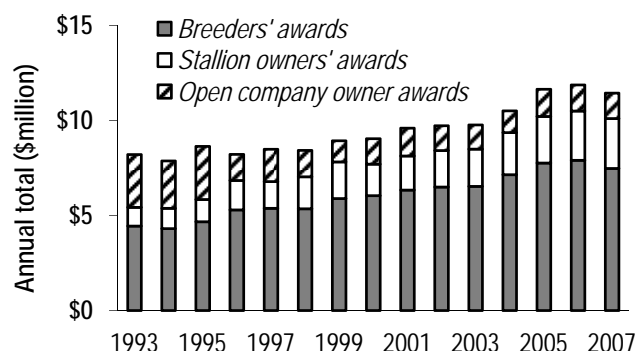
Since its inception, the Fund has distributed over \$327 million to support New York's equine economy. In 2007, the Fund disbursed over \$13 million to New York's horse breeding and racing industry through its awards program and purse enrichments.

In 2007, the Fund's awards and purse amounts declined slightly from 2006 levels. Comparing 2006 Fund distributions to 2007 distributions, breeder and open company awards declined slightly (see figure 2), while stallion awards increased nominally. However, the horse breeding industry is gradually expanding as the number of mares participating in the New York Program, resident mares, and total mares bred increased ever so slightly. The Fund also supports equine research and education through its continued support of the Harry M. Zweig Memorial Fund for Equine Research at the College of Veterinary Medicine at Cornell University. For more information on the New York Thoroughbred Breeding Program, see www.nybreds.com.

Agriculture and New York State Horse Breeding Development Fund

The Agriculture and NYS Horse Breeding Development Fund (the Fund) promotes standard-bred horse breeding and other agricultural activities in New York. Increasing VLT revenue has driven more money to support the state's breeding programs and New York Sire Stakes program. This, in turn, has encouraged breeders to purchase more stallions and brood mares. While the number of yearlings nominated to the Sire Stakes program in 2007 decreased by 22% over the number of 2006 nominations (961 vs. 1,231) the number of brood mares increased by 29%, going from 1,687 to 2,173 (see figure 3).

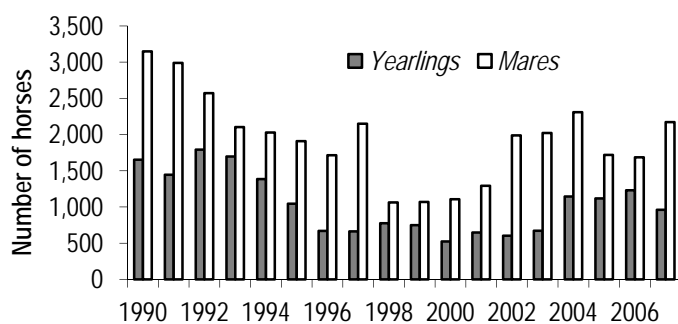
Fig. 2. NYS Thoroughbred Breeding and Development Fund Awards for New York-breds, 1993-2007



Source: NYS Thoroughbred and Breeding Development Fund, 2008.

Receipts totaling \$13.34 million were contributed to the Fund in 2007 (an increase of more than 150% compared to 2006). Of this amount, \$4.81 million was paid by OTB corporations (an increase of 2% compared to 2006), \$7.55 million came from VLT payments (an increase of over 215% compared to 2006), and \$0.98 million from raceways (an increase of 169% compared to 2006). This money was used to pay \$5.44 million for purses for 2-year-old horses and \$7.0 million for 3-year-olds in 2007. Another \$420,000 was distributed in purses at 22 county fairs where harness horse racing occurred.

Fig. 3. Annual Number of Standardbred Mares Bred and Yearlings Nominated to the NY Sire Stakes Program, 1990-2007



Source: Agriculture and NYS Horse Breeding Development Fund, 2008.

It is important to note that new VLT money has been the main reason why harness breeding funds have increased so markedly. From 2004 to 2007, VLT-derived funds increased from \$1.55 million to \$7.55 million, or 487%. This increase has more than offset the loss of \$340,000 that was generated from OTB bets on harness racing events, which went from \$5.15 million in 2004 to \$4.81 million in 2007. This recent trend has diminished the harness industry's heavy dependence on revenue derived from OTB operations.

The fund also supported worthwhile agricultural programs, such as the 4-H Standard-bred Development Program, which educates youngsters on possible careers within the breeding industry, and equine veterinarian research through the Zweig Fund. For more information, see the Fund's Web site (www.nysirestakes.com).

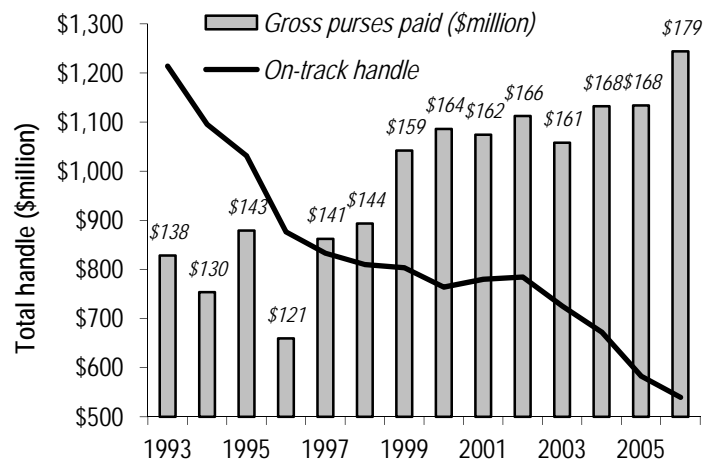
TRENDS IN NEW YORK'S HORSE RACING INDUSTRY

This annual report contains an analysis of trends within the state's horse industry similar to earlier annual reports from 2002 to 2005. The state's horse racing industry needs to refocus its marketing strategies to attract larger crowds at its facilities and younger patrons to replace its aging clientele. The industry must chart a new course if it is going to become profitable once again and retain a significant presence in the national gaming market.

Status of the Industry

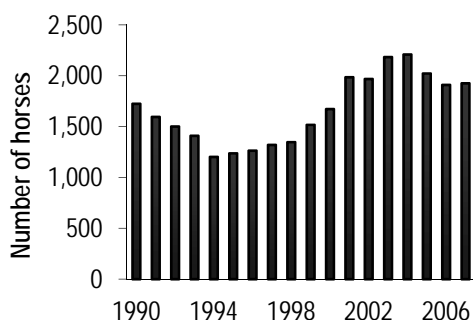
The expansion of other gaming venues such as casino gambling, sports betting, and Internet gaming continues to place more competitive pressures on the state's racing industry. This situation is not unique to New York; other states' racing organizations are up against similar market forces. Indicative of this new competition is that revenue earned from on-track total handle continues its long, steady decline, while the cost of conducting races and purse expenses keep rising (see figure 4).

Fig. 4. Annual On-Track Handle and Purses Paid in New York, 1993-2006



Source: NYS Racing & Wagering Board, 2007.

Fig. 5. Thoroughbred Foals Produced Annually in New York, 1990-2007



Source: NYS Thoroughbred Breeding and Development Fund Corp., 2008.

New York's thoroughbred industry has seen a small, but steady expansion of New York breeding programs. However, these gains are unsustainable unless horse race operators once again begin to earn a profit from their operations. New York breeder awards increased from \$4.4 million in 1993 to \$7.76 million in 2005 (see figure 2). However, since 2005, breeder awards declined to \$7.47 million in 2007. After sustaining a 30% drop from 1990 to 1994 in the number of foals bred, foal production began to climb again, going from 1,202 in 1994 to 2,209 in 2004. However, since 2004, foal production has moderately declined to 1,925 in 2007 (see figure 5). This goes against the national trend, which saw a small increase in foal production.

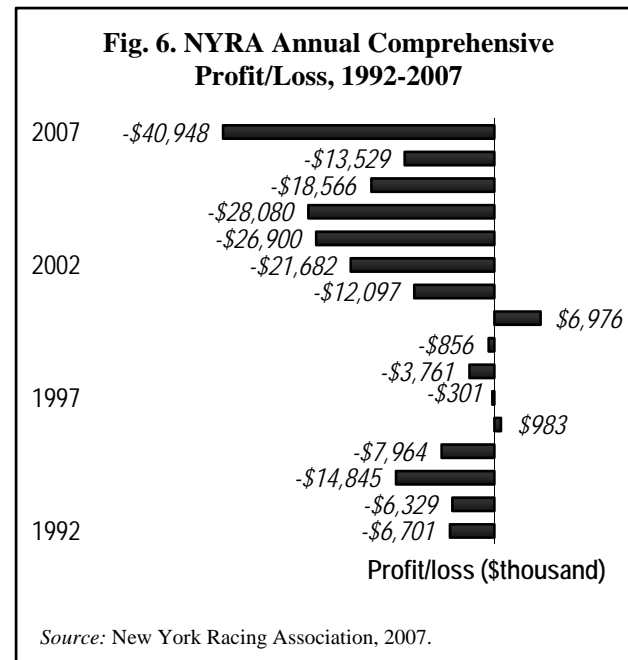
In anticipation of larger purse awards due to the enactment of the VLT law in 2001, the number of New York standard-bred mares bred has increased moderately since 2001, which in turn has resulted

in a substantial increase in the number of yearling nominations to 961 in 2007 (see figure 3). It is anticipated that substantial increases in 2007 in the number of mares bred will lead to more yearling nominations in 2008 and beyond.

NYRA and the Prospects for New York's Thoroughbred Industry

Since 1955, the New York Racing Association (NYRA), under a franchise agreement with the State of New York, has operated the state racing franchise and the state-owned thoroughbred racetracks at Aqueduct, Belmont, and Saratoga. This franchise represents a significant share of New York's thoroughbred racing operations, so any discussion of the prospects for New York's thoroughbred industry must consider how best to manage the franchise.

NYRA's comprehensive losses nearly doubled every year between 1999 and 2003 (see figure 6). Since 1992, NYRA has had a comprehensive loss of over \$202 million. Most disturbing is that NYRA's annual comprehensive loss ballooned from \$13.5 million in 2006 to \$40.9 million in 2007.

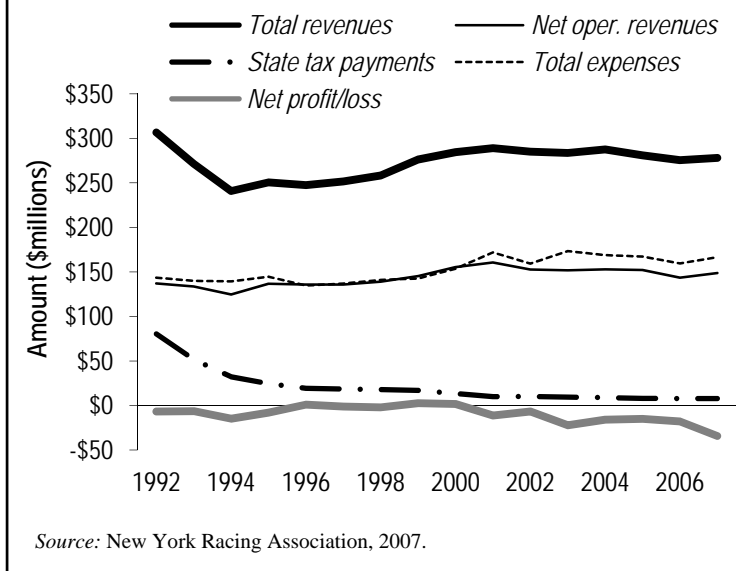


NYRA's financial status would have been much worse if the State of New York had not substantially reduced NYRA's state tax obligations. For example, in 1992 NYRA paid over \$80 million in taxes to the State Tax Commission. However, by 2007, that number dropped to an abysmally low amount of \$7.8 million, the lowest tax collection in NYRA's history.

NYRA's long-term financial problems occurred because its total revenue over the past 16 years has not increased as quickly as its expenses. In 1992, NYRA's total revenues were over \$306 million. This revenue stream decreased to \$247.4 million in 1996, a loss of 19.3%. Since 1996, revenue has slowly increased, reaching \$280.9 million in 2005; however, since 2005, its total revenue has declined to \$278 million in 2007. This amount is still below the revenue collected in 1992, and would be much lower if adjusted for inflation.

Compounding NYRA's financial difficulties is that the amount it spends to run the racetracks has increased inordinately. In 1992, NYRA's operating expenses (total expenses minus state taxes) equaled \$63.3 million; this figure nearly doubled in 1995 to \$120.2 million. From 1995 to 1999, the expenses incurred to operate the tracks stabilized. Then, from 1999 to 2001, expenses again increased rapidly by 28.8%. Since 2001, NYRA's annual operating expenses have stabilized at approximately \$165 million (see figure 7).

Fig. 7. NYRA Annual Expenses, Revenues, Tax Payments, and Net Profit/Loss, 1992-2007



NYRA experienced a \$34.3 million net loss in 2007, as compared to a \$17.8 million loss in 2006. Since NYRA could not sustain these large losses over the long term, it filed for bankruptcy protection in December 2006.

In 2003, NYRA, for the first time, derived more revenue from OTB receipts than it did from its own on-track handle (see figure 8). NYRA's on-track revenue has decreased substantially, from \$150.8 million in 1992 to \$78.8 million in 2007.

The percentage of handle generated by on-track betting continues to decrease, while handle generated by simulcasting has stabilized. This transition in

the way that wagers are placed means that less money is retained by the thoroughbred racetracks actually hosting the races.

Another troubling trend has been the continued decline in total handle that is generated at in-state racetracks (see figure 9). Out-of-state horse racing events continue to supplant New York racing even in the lucrative New York metropolitan market. A steady increase in handle was generated by out-of-state racing, which accounted for 56% of the handle generated in 2006, compared to less than 2% in 1990. Conversely, New York racing is in steady decline, with only 44% of the total handle generated by in-state races; this is down from 98.1% in 1990. A similar trend is present in the OTB numbers. In both cases, there is no sign that either trend is abating. It should be of great concern to the New York horse racing industry that it is losing its market share at such a rapid rate in its own home market.

In 2006, New York slipped from first to third place in the amount of average purses paid at thoroughbred tracks behind Kentucky and New Jersey. In 2007, New York had the third highest average purses paid in the nation, with an average purse per race of \$35,775 for the running of 3,707 races (see table A in Appendix).

Fig. 8. Annual NYRA Revenues by Source, 1992-2007

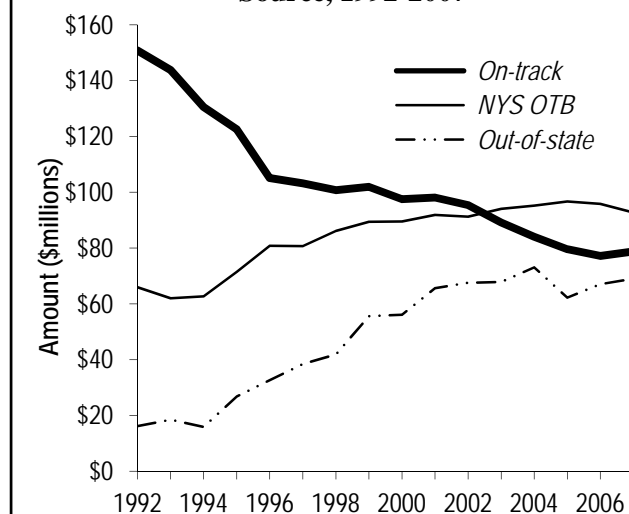
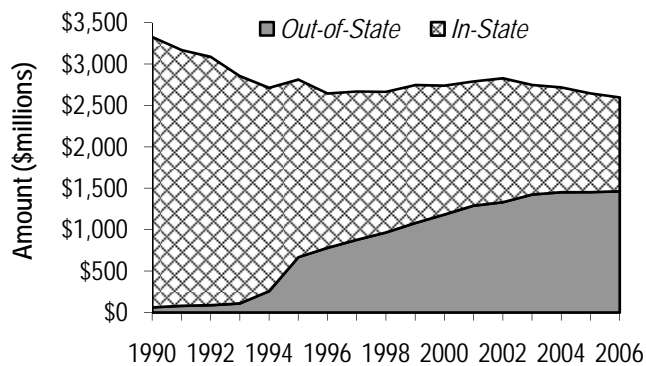


Fig. 9. Annual Handle in New York, 1990-2006: Out-of-State vs. In-State



Source: NYS Racing & Wagering Board, 2007.

New York was second only to California in gross purses paid. However, California had to conduct 5,094 races to earn its \$177.1 million in gross purses, compared to only 3,707 races conducted in New York. Large purses can translate into quality New York racing and higher handle. However, it also means that the expenses to conduct these racing events remain high. NYRA's difficulty is that it continues to pay big purse amounts to attract quality horses, but it has not attracted sufficient handle to support these high purse levels.

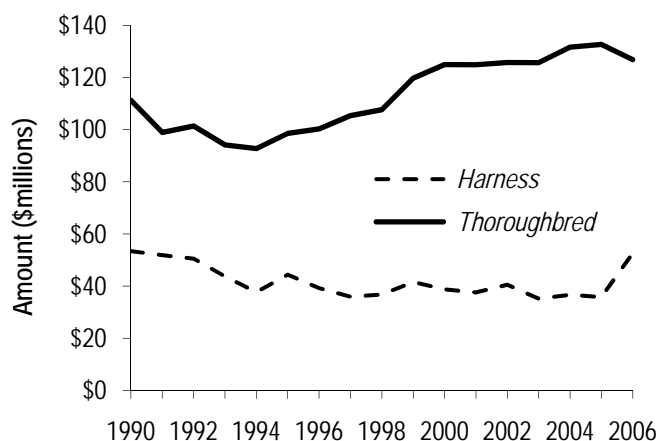
New York Harness Racing

For the past 25 years, the New York harness racing industry has declined rapidly. This industry was acutely affected by a severe drop in total handle of 58.6% from 1990 to 2005. Further, up to 2004, the purse structure for harness racing showed that the industry was in distress. However, with the addition of new VLT revenue after 2004, the gross purses paid at participating tracks has increased substantially.

Gross total purses paid at New York's thoroughbred tracks continued to rise gradually until 2006, when they moderately declined from \$132.6 million to \$126.8 million. Statewide, gross total purses at harness tracks declined from \$53.4 million in 1990 to \$35.7 million in 2005. However, with new VLT money, harness purses have rebounded to \$52.6 million in 2006 (see figure 10). If present trends continue, total purse levels for harness tracks may soon surpass those for thoroughbred tracks.

Looking to 2008, gross purse amounts, average purse per race, and breeder fund contributions for the harness industry should continue to increase markedly. For most tracks, VLT facilities are now fully operational, and the number of races conducted should either stabilize or increase. The only aspect of the VLT program that needs to be addressed is a revision upward of the VLT vendor fee so that New York's racetracks are no longer the lowest-paid tracks in the nation. Once this situation is addressed, the VLT program should greatly expand, with commensurate increases in revenue to support state education programs and the racing industry.

Fig. 10. Gross Annual Purses Paid at Racetracks in New York, 1990-2006



Source: NYS Racing & Wagering Board, 2007.

New York's national ranking for gross purse amounts is very high because the state, on average, conducts far more races than any other state. New York conducted 12,038 races in 2007 (up from 7,692 races in 2005), while the annual average for all other states that conduct harness races was 2,551, about the same number of races (2,665) conducted in 2006. In New York, the average purse per race was \$8,615, up significantly from \$5,295 in 2005. For the first time, New York's average purse was above the national average of \$8,026 (up from \$7,018 in 2005).

New York conducted 7,992 more races than its nearest geographical and numerical competitor, New Jersey. However, New Jersey's average purse per race of \$17,016 was much higher than New York's \$8,615 average purse per race (see table B in Appendix). New York's harness racing industry seems to mirror Ohio's in that New York far exceeds the national average in the number of races conducted by state, but is below the state average in purse awards per race when compared to other major harness racing states such as Delaware, New Jersey, and Pennsylvania.

Conclusion

NYRA failed financially because its revenue declined slowly over time, while its expenses, particularly the purses it awarded, grew rapidly. The resulting shortfall in revenue was replaced by ever-growing subsidies from the State of New York in reduced tax payments, larger OTB contributions, and additional loans made by the state.

To prop up a declining racing industry, OTBs were statutorily mandated to make enhanced payments to support racetrack operations and purses. In the end, OTBs are no longer able to retain sufficient profits to break even. The ultimate loser continues to be those municipalities that own OTBs. Consequently, local governments, by accepting much lower profits from OTBs, are currently subsidizing the horse racing industry and are financing the enhanced purse levels.

Given the financial stress faced by local governments, and rising property taxes, the current racing regulatory system and statutory racing revenue allocations to racetracks, horse owners, and breeder funds must be revised so that local governments and the state can stop subsidizing the horse racing industry and begin retaining profits that can be used to curtail future real property tax increases.

NEW YORK RACING ASSOCIATION

The New York Racing Association (NYRA), after borrowing over \$130 million from the State of New York and ceasing to pay meaningful amounts of franchise taxes to the state, filed for bankruptcy protection in December 2006. The main reason for NYRA's financial predicament was its rapid growth of expenses with no commensurate increase in revenues. During 2007, NYRA found itself in a holding pattern because it was under the jurisdiction of the Bankruptcy Court, while it vied with three other bidders to obtain a new state racing franchise to start on January 1, 2008.

Related Legislation

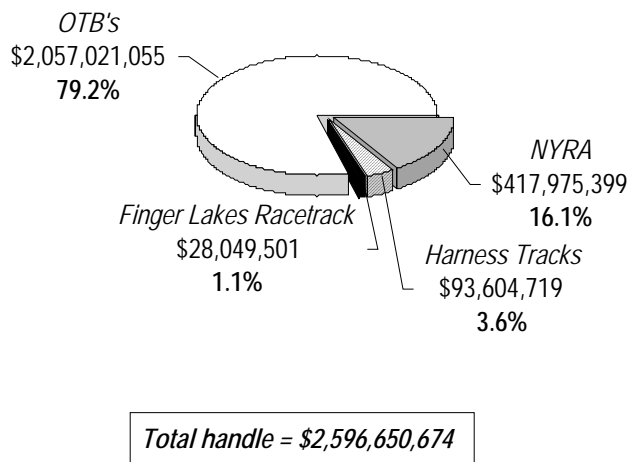
S. 2895-A/A. 7921-A (Larkin/Pretlow) Chapter 440 of the Laws of 2007

This bill provides a 1-year increase, from 1% to 2%, in the portion of the purse money that is to be withheld for the administrative and benevolent activities of NYRA's recognized horse owners' organization, the New York Thoroughbred Horsemen's Association. This temporary increase in the assessment was needed to fund the costs associated with hiring and retaining bankruptcy counsel to represent the horse owners' association in the NYRA bankruptcy proceeding.

SIMULCASTING AND OFF-TRACK BETTING

New York's six regional OTBs collect an overwhelming 79% of all betting handle wagered in this state for our state's horse racing industry (see figure 11). Handle collected by OTBs continues to gradually increase as the state's on-track handle continues to decline. However, while OTB handle keeps increasing, the amount of revenue OTBs generate for local governments has declined from \$96.6 million in 2000 to -\$69.8 million in 2006 (see figure 12).

Fig. 11. Percentage of Total New York Handle by Betting Entity, 2006



Source: NYS Racing & Wagering Board, 2008.

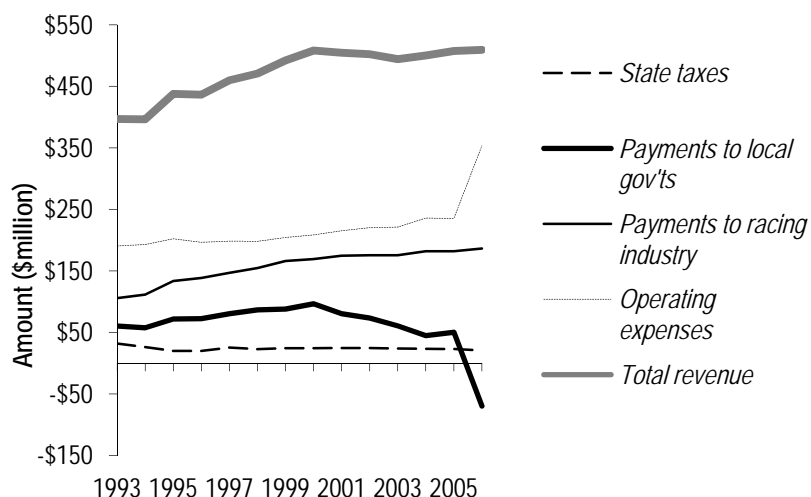
Pursuant to the Racing Law, OTBs are statutorily charged with raising funds to support participating local governments. However, as OTB support for local governments steadily drops, the amount of money OTBs generate to support the horse racing industry continues to climb, going from \$105.6 million in 1993 to \$186.4 million in 2006 (see figure 12). There is an inverse relationship between increasing OTB support to subsidize the racing industry and declining revenue retained by OTBs to support local government. As stated in our earlier annual reports, the state's racing laws need to be revised so that local governments can once again retain a reasonable portion of the profits generated by OTB operations.

For the past 16 years, as the state's racing industry has declined, OTBs have been required to gradually increase their financial contributions to subsidize racetrack operations. Unfortunately, OTBs are now no longer financially capable of increasing their payments to subsidize the horse racing industry. The state's racing laws need to be reformed so that racetracks can generate their own profits to support their own operations instead of relying on OTB subsidies. Once this occurs, OTBs will once again be able to return their profits to local governments as was envisioned by state law.

Certain elements of the state's racing industry have advocated that the operator of the state racing franchise should merge its operations with some or all of the state's regional OTBs. This would be a serious mistake for two reasons. First, OTB profits might be inappropriately shifted to further subsidize racing operations instead of assisting local governments. Second, if OTBs were controlled by the franchise operator, that would add additional stress to OTB relations with the state's harness tracks, which also rely heavily on OTB betting handle.

OTB retail betting operations should remain separate from race event producers. However, to maximize OTB profits to benefit local governments and to support the state's racing industry, a new cooperative relationship should be developed between OTBs and racetracks. OTBs should strive to broadcast more New York-produced races whenever possible, and racetrack operators should tailor their racing product so that it satisfies the needs of OTB's customers.

Fig. 12. Annual Revenue and Distributions for All OTBs, 1993-2006



Source: NYS Racing and Wagering Board, 2007.

New York's racetracks should establish a nighttime thoroughbred racing event or expand twilight racing to fulfill OTB's need for evening thoroughbred entertainment products. Conducting more twilight or evening thoroughbred races in New York would also increase on-track handle and track attendance because it would occur after working hours, when patrons can attend these races. Harness tracks, for their part, should: (a) cooperatively arrange their racing schedules to maximize participation of horses at each meet to increase the races' excitement, and (b) alter race times so that more harness racing product can be sold in-state and packaged to be sold in out-of-state and international markets.

Related Legislation

S. 339 (Larkin)

Referred to Racing, Gaming, and Wagering

Events over the past decade demonstrate that the Racing and Wagering Board needs additional powers to prevent wrongdoing at certain regional off-track betting corporations. Giving the Board the power to remove OTB officers and the authority to levy fines against such officers and directors should help to deter officials from engaging in misconduct. The ability to remove and fine such directors and officers would be similar to the power that the Board has over officials at racetracks.

S. 342/A. 7915 (Larkin/Pretlow)

3rd Reading, Senate Cal. #604/Referred to Racing and Wagering

OTB corporations are public benefit corporations that should be operated as efficiently as possible and in the public interest. Further, they should be operated in a manner consistent with the Racing Law. Recent events have focused attention on the practices of these public benefit corporations and demonstrated the need to require managerial and business examination, when necessary, to provide a basis for assuring compliance with the law and generally accepted business practices. Submission of already approved OTB annual budgets will enhance the ability to monitor off-track betting corporation activities.

S. 577-A/A. 2347-A (Larkin/Lafayette)

Vetoed, Veto Message #86

The purpose of this bill is to enhance the ability of host racetracks, simulcast racetracks, and regional OTBs to offer rebate benefits to preferred customers and to volume bettors. This measure creates a statutory framework in which to establish such rebate programs in this state and offers similar programs as are now being offered by out-of-country betting organizations. This study bill is similar to S. 7157/A. 11385 (Larkin/Lafayette), which takes a slightly different approach to authorizing rebate programs within the state.

S. 579/A. 7917 (Larkin/Pretlow)

Referred to Racing, Gaming, and Wagering (Senate and Assembly)

To help stabilize the amount of New York's racing product that its racetracks and OTBs produce and sell, more needs to be done to encourage such producers to cooperatively offer and market New York-produced racing events. This bill establishes a mechanism so that OTBs and racetracks can, in a cooperative manner, consolidate their simulcasting programs. This could help to increase profits for all participants by reducing overhead costs and by offering a more comprehensive racing event package for sale in out-of-state markets. The bill also permits patron access to legal deposit wagering accounts via personal computers and establishes procedures to establish new account wagering programs by multi-jurisdictional account wagering providers.

S. 1725-B/A. 8613 (Sabini/Pretlow)

Passed Senate/Reported to Rules

This bill phases out, over time, additional payments made by OTBs to "hold harmless" harness tracks that suffered declining betting handle due to OTBs simulcasting nighttime thoroughbred races. Under current law, regional harness tracks that are not running live races receive maintenance-of-effort payments notwithstanding that they are closed for that race day. The original purpose of this law was to "hold harmless" harness tracks to offset anticipated losses when OTB bettors defected to other nighttime thoroughbred races held around the country and the world.

S. 2721/A. 7919 (Larkin/Pretlow)

Passed Senate/Reported to Codes

This bill explicitly empowers the Racing and Wagering Board to impose fines for violations with regard to pari-mutuel thoroughbred racing. It also empowers the Board to impose fines on OTBs and other persons or corporations participating in off-track betting. The maximum fine that could be levied is \$5,000 for each violation.

S. 6047/A. 8711 (Golden/Brennan)

Referred to Rules/Racing and Wagering

This bill would reduce certain OTB payments to racetracks, which payments have been used to subsidize long-term racetrack operational deficits. The purpose of this bill is to allow OTBs to retain a higher percentage of betting handle so that they can stabilize their operations. With the advent of VLTs, racetracks are earning more money and do not need to continue receiving OTB subsidies to continue their racing operations. In addition, OTBs are starting to become financially stressed organizations that need to retain a higher percentage of their earnings so they can remain in operation and transfer funds to support local governments.

Among other provisions, the bill: (a) reduces OTB distributions to the racing industry based on net revenue available instead of gross revenue, (b) reduces simulcasting statutory fees collected from OTBs that subsidize racetracks that operate VLT facilities, (c) suspends OTB “hold harmless” payments which subsidize harness tracks that compete against OTB out-of-state thoroughbred simulcasting, (d) eliminates forced racetrack contractual payments to simulcast in-state tracks, and (e) eliminates the need to pay unclaimed ticket money to the state. The cost savings to the New York City OTB alone would be approximately \$27 million annually.

NEW YORK STATE COMPTROLLER AUDITS

The New York State Comptroller issued two audits in 2007 to review the activities and financial records of NYRA. This section outlines the audits that were issued by the Office of the State Comptroller (the Comptroller) in 2007.

New York Racing Association, Inc.: Capital Program Operations

Report 2005-S-52 (June 15, 2007)

The Comptroller, in the Audit Results – Summary section, said, “NYRA is required to plan and implement its capital projects in conformance with Section 258 of the Racing Law. As such, capital projects must be properly planned, which includes documenting the need/justification for each project estimating project costs based on sound information in consideration of NYRA’s available budget.” Overall, the Comptroller found that “NYRA officials continue to pay for projects where the justification is not documented as required. In addition, NYRA officials do not always analyze the costs or address the individual priority of projects.” While NYRA’s “new management team has begun addressing several of these issues raised in this report” there were more than several adverse observations about NYRA’s capital program operations.

As stated in the Comptroller’s Audit, many of NYRA’s capital projects lacked “adequate written justification supporting the reason for those projects.” In addition, the Comptroller found “no evidence of discussions or analyses regarding priorities for any of these projects. It is not evident why NYRA officials decided to go ahead with certain projects, while shelving others. There was also no evidence of any analyses to support estimated costs/benefits, or to determine which projects should be done in house and which projects should be outsourced.” Further, “NYRA officials did not always use the bid process effectively or comply with their own policy regarding competitive bidding.... NYRA did not always provide potential vendors with useful details when requesting bids and/or quotes on NYRA capital projects...and did not always keep its potential bidders list up to date.” More importantly, “NYRA does not open any of its bid openings to bidders or have in place any other mechanism for bidders to review its contract awards. Going forward...NYRA should make its bid openings public.” More troubling is that the Comptroller has cited these same bid-related issues in a previous audit, “but NYRA has still not addressed them.”

New York Racing Association, Inc.: Audit of the Annual Franchise Fee for Calendar Years 2004 and 2005

Report 2006-S-111 (December 7, 2007)

As stated in the audit, “NYRA is required to pay an annual franchise fee to the State and operate in a sound, economical, and efficient manner....Prior audits of the franchise fee have consistently identified deteriorating financial conditions at NYRA, underpayments of the franchise fee, and unsupported or inappropriately categorized expenses.” Ultimately, the Comptroller “found similar conditions in this audit.”

The Comptroller has “historically disagreed with the methodology NYRA employs to calculate the annual franchise fee” and maintains that “our major area of disagreement focuses on NYRA’s use of tax basis expenses versus actual expenses when determining allowable expenses for the ‘106 percent’ and ‘90 percent’ tests, which are components of the franchise fee calculation.” In using actual expenses, the Comptroller calculated that NYRA understated its franchise fees in 2004 and 2005 by a combined cost of \$10.9 million. The audit contains six recommendations that NYRA should follow to accurately calculate its appropriate franchise fee; unfortunately, NYRA has ignored this and previous Comptroller audit recommendations on this issue.

DIVISION OF THE LOTTERY

In fiscal year 2006-07, the New York State Division of the Lottery generated \$2.36 billion to support public education in New York State. The Lottery Division sponsors games such as the New York Lottery, Lotto, Quick Draw, Mega Millions, and the video lottery gaming program.

Related Legislation

S. 88/A. 2333 (Padavan/Hoyt)

Referred to Racing, Gaming, and Wagering (Senate and Assembly)

This bill would require the Lottery Division to give notice to local communities when Quick Draw is proposed to be offered at a new location. In addition, an opportunity for submitting community objections to the Division must be provided.

Newspaper and other accounts indicate that Quick Draw may have a significant adverse impact on local communities. These impacts include increased traffic near Quick Draw vendors, access to the game by children, and the creation of a “mini-casino” atmosphere at some locations. This legislation would ensure that local communities have notice and an opportunity to provide comments before a new license to sell Quick Draw tickets can be issued.

S. 89/A. 1339 (Padavan/McEneny)

Referred to Racing, Gaming, and Wagering (Senate and Assembly)

This measure requires the Lottery Division to print on each lottery ticket the statistical chance of winning the lottery game in question. The bill’s sponsor maintains that any buyer of a product should know what they are getting for his or her money. This is even more important when the state is selling the product to its own citizens. New Yorkers should know the minuscule odds of winning when they play the state’s lottery games.

S. 264 (Alesi)

3rd Reading, Senate Cal. #436

As a result of the indoor-smoking ban in 2003, many New York State bar and tavern owners have lost a significant number of patrons and income. This measure benefits such bar and tavern owners by creating an avenue for patrons to spend money on Quick Draw tickets regardless of their percentage of food sales. The sponsor maintains that Quick Draw sales will increase the amount of revenue for small-business owners hosting the game and increase revenue for the State Lottery.

The original restriction on approving Quick Draw vendor licenses to businesses that had substantial food sales was implemented to reduce the risk of encouraging excessive gambling by minimizing its conduct in areas where large amounts of alcoholic beverages were consumed. However, the sponsor maintains that there is little proof that Quick Draw players either eat or drink more than nonplayers or gamble more extensively due to the consumption of alcohol. Additionally, other lottery games are not monitored in relation to food and/or alcohol intake. This legislation would give all bar and tavern owners the option to have a Quick Draw machine regardless of food sales requirements.

S. 1539/A. 6677 (Fuschillo/Rivera)**Referred to Racing, Gaming, and Wagering/Ways and Means**

This bill amends Tax Law §1614(a) to provide that any unclaimed prize money is to be paid to the State Comptroller, who will credit such amount to the Education Department General Fund/Aid to Localities, Local Assistance Account, for general support for public schools. The measure also provides that any abandoned prize amounts are to be paid to the State Comptroller to be credited as stated above. The amendments specifically provide that these moneys are in addition to moneys otherwise appropriated.

The purpose of the Lottery is to help finance the state's education system. Each year, the sponsor maintains, there is approximately \$47 million to \$68 million in unclaimed lottery receipts. Directing these substantial sums of unclaimed New York Lottery funds to the Education Department and providing that these moneys are in addition to those moneys otherwise appropriated, the bill's sponsor maintains, would better fulfill the Lottery's intended purpose of assisting education in this state.

S. 1958 (Leibell)**Referred to Racing, Gaming, and Wagering**

This initiative enables the Division of the Lottery to transfer unclaimed and abandoned lottery prize moneys to the State Comptroller for deposit into the "Love Your Library Fund." These proceeds would then be distributed to public library systems to support the statewide summer reading program.

S. 2284 (Klein)**Passed Senate**

This bill would require a lottery sales agent to return a lottery ticket to a customer after checking to see if such ticket is a winning ticket. Under current law, it is possible that a lottery sales agent could fraudulently inform the lottery patron that his or her ticket did not win, and then on a later date claim the ticket and winnings as the agent's own. This bill would curtail this fraud. Also, the sponsor maintains, losing tickets can be claimed as a tax deduction against a taxpayer's other gambling winnings.

S. 2998/A. 6269 (Wright/Abbate)**Referred to Racing, Gaming, and Wagering/Ways and Means**

The goal of this bill is to establish a sufficient compensation rate for licensed lottery agents which reflects the high actual costs and risks associated with selling lottery tickets. Further, as is the standard for Division of the Lottery employees, it prohibits lottery agents and their families from purchasing lottery tickets.

S. 3325 (Flanagan)**Referred to Racing, Gaming, and Wagering**

This bill repeals the Tax Law provision that limits the use of unclaimed prize money to fund special or supplemental prize jackpots or for the promotion of other games. The bill calls for any prize money unclaimed after six months to be transferred from the State Lottery to a fund that provides aid to students with special educational needs and handicapping conditions. Additionally, the bill provides for payments to ticket holders of those prizes when the claim is filed after six months but before one year and the money has already been transferred to the new special education fund.

The lottery in New York was created to provide funds to education. Directing unclaimed prize money to be used to aid pupils helps to carry out the lottery's original purpose.

S. 5192/A. 2430 (Padavan/Hoyt)

Referred to Racing, Gaming, and Wagering/Ways and Means

Although lottery tickets may legally be sold only to persons 18 years or older, lottery ticket machines are easily accessible to young people. This measure would restrict the location of lottery vending machines to places frequented primarily by adults and therefore reduce the possibility that underage persons could purchase lottery tickets from such vending machines.

VIDEO LOTTERY TERMINALS

In 2001, New York authorized the installation of video lottery terminals (VLTs) to create a new revenue stream to support state education programs. In establishing the VLT program, provision was made for the operator of a vendor track to be paid for serving as a lottery agent under the program, in an amount equal to a percentage of the total revenue wagered at the facility after payout for prizes. Unfortunately, these racetrack vendor fees were set far below what was financially necessary to establish economically viable VLT facilities. Consequently, no racetrack did so. The rates, the lowest in the nation, were set at 15% for racetracks, 8.75% for horse owners, 1.25% for breeder funds, and 15% for lottery administration costs; the remaining 60% was devoted to aid state education programs. The fees received were after 92% of the revenue was disbursed to gaming participants.

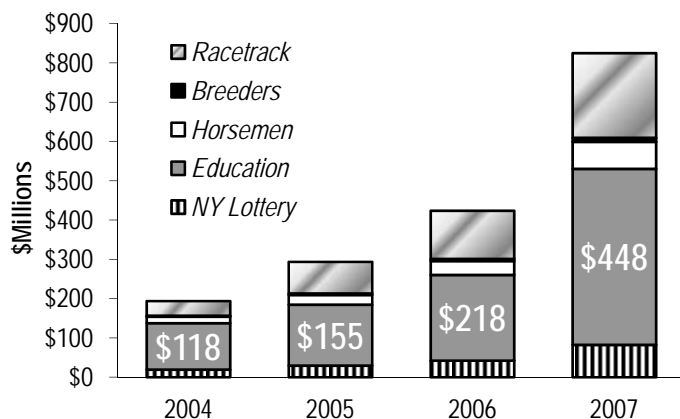
Since no racetrack expressed an interest in establishing a VLT facility, the state budget for fiscal year 2003-04 increased the blended rate for racetracks to approximately 19% and reduced the Division of Lottery administrative fee to 10%. This enticed Buffalo Raceway, Finger Lakes, Monticello Raceway, and Saratoga Harness to participate in the VLT program. Unfortunately, again, because VLT vendor fees were still set so low, most participating facilities struggled financially, and revenue for state education programs languished.

In subsequent years, the racetrack vendor fee was marginally increased yet again to 32% for all tracks whose annual wager amount was less than \$50 million. Also, a marketing fee of 8% was added to promote VLT gaming. Above the \$50 million threshold, VLT vendor fees continued to be set at the low rate of 29% for the next \$100 million wagered at such facility and 26% of total revenue wagered annually above that amount. This fee increase encouraged Vernon Downs to reopen and participate in the VLT program. Further, it encouraged financiers to reestablish Tioga Downs as a racetrack and VLT vendor.

Even with the most recent VLT vendor fee increase, New York still has the lowest VLT rate in the nation. Consequently, this has suppressed investment in VLT facilities and limited their ability to become regional tourist destinations. This, in turn, has made New York's VLTs some of the lowest-earning gaming machines in the country. Because of this, the amount of money such machines generate to support state education programs has been suppressed.

Most gaming industry financial models demonstrate that marginal gaming tax rates do matter and that high tax rates do not maximize state revenue. With high tax rates (i.e., the state retains a relatively high portion of gaming proceeds), the only gaming facilities that can survive financially are low-quality facilities that cannot attract high-quality ancillary entertainment and dining establishments that enhance the local economy. The logic is counterintuitive, but increasing the VLT vendor fee, up to a point, and decreasing the percentage that is retained by the state, up to a point, will generate more revenue for state education programs. It is important to note that even with our low VLT vendor rates, New York raised \$448 million to support state education programs in 2007 (see figure 13). However, racetrack vendors such as Batavia Downs, Buffalo Raceway, Tioga Downs, and Vernon Downs are financially struggling and may soon not be able to continue to participate in the VLT program and raise funds to support state education (see figure 14). Further, a VLT vendor such as Monticello Raceway may become more financially unstable because it cannot compete with the new gaming facilities that have been built in its market area in neighboring Pennsylvania.

Fig. 13. Distribution of VLT Net Revenues, Including Support for Education, 2004-2007



Source: NYS Division of the Lottery, 2008.

In 2007, Senator Larkin introduced several measures to increase vendor fees. The goal of these bills was to: (1) maximize state revenue for state education programs, and (2) raise the capital necessary to construct ancillary nongaming businesses such as hotels, restaurants, entertainment and other recreational facilities so that such VLT facilities can become regional tourist destinations that do not rely on gambling to make a profit.

In 2007, the VLT program raised \$68.8 million for horse owner purses (an increase of 93% over 2006) and \$10.3 million for breeder

funds (an increase of 87% over 2006). Further, the presence of VLT facilities at harness tracks seems to have begun to stabilize the steep decline in betting handle. Because the establishment of VLT facilities is still relatively new and some tracks continue to reconfigure their racing facilities and race meets to accommodate their VLT facilities, it is too early to analyze the relationship between the presence of VLT facilities and the increase in horse owner purses with the amount of betting handle generated at each track. In the end, horse owners and breeders have done exceedingly well because of new VLT revenue.

Below is an outline of legislation that affected VLTs.

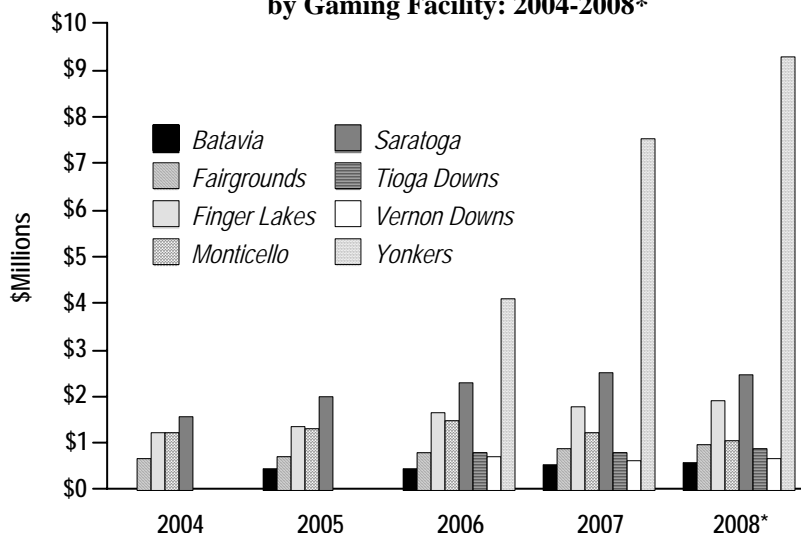
Related Legislation

S. 573-A (Larkin)

3rd Reading, Senate Cal. #605

Without a binding-arbitration law, racetrack operators, horse owner associations, and appropriate breeding funds seem to be having a great deal of difficulty in negotiating in good faith to arrive at fair contracts that are mutually beneficial to all parties. This situation has diminished the ability of the State of New York to generate VLT revenue that is needed to support state education programs.

Fig. 14. Weekly Average VLT Net Revenue, by Gaming Facility: 2004-2008*



*Year-to-date as of the week ending May 3, 2008.

Source: NYS Division of the Lottery, 2008.

This bill establishes a binding-arbitration process that can be used by horse owners, breeders funds, or racetrack operators that have VLT gaming licenses who cannot agree on a contract to conduct horse racing events. The bill provides procedures that all these parties can use to help resolve their disputes. Under this bill, a horse track that does not have a horse racing contract with its horse owners or the appropriate breeding fund will not be allowed to operate its VLT facilities.

S. 2893/A. 7920 (Larkin/Pretlow)

Passed Senate/Referred to Ways and Means

The purpose of this bill is to clarify the law to ensure that horse racetrack operations and racing events can clearly and prominently be included in advertisements that are used to promote VLT facilities that are located at a vendor's racetrack. Encouraging such advertisements can increase the prosperity of both the VLT facility and the racetrack and create a synergy that raises additional revenue to support state education programs.

S. 3830-C/A. 7168-B (Larkin/Magee)

Passed Senate/Referred to Racing and Wagering

This is the first in a line of several bills introduced in 2007 that attempted to strategically increase the VLT racetrack vendor license fee so that vendors, particularly smaller Upstate gaming facilities, could have sufficient financial resources to build and maintain top quality VLT gaming facilities that could offer quality patron amenities. Establishing such facilities will increase the patronage of VLT gaming facilities and increase the amount of revenue raised to support state education programs. Further, it should encourage such facilities to add ancillary businesses such as quality lodging, entertainment, dining, and recreational facilities, particularly in the economically depressed Upstate region. The provisions of the bill are rather complicated, but the bill memo explains its provisions in detail. Also see related Senate Bills 6011-A, 6409, and 6512-A.

S. 6011-A (Larkin)

Passed Senate, but Recalled and Amended, 3rd Reading Cal. #1754

This bill, like S. 3830-C described above, revises the VLT vendor fees so that VLT facilities can become true tourist destinations that can maximize revenue generated to support state education programs. In addition, the VLT program can be a vehicle to encourage expansion of the state's agricultural economy by dedicating additional revenue to support the activities of horse owners and breeders that race at VLT tracks. This bill has similar VLT percentages as S. 3830-C for VLT operators, but alters substantially the provisions that allocate VLT revenue for horse owners and breeders. The memorandum in support of this bill gives a detail explanation of the terms of this legislation and how those percentages were arrived at. Before this bill was amended on June 20, 2007, it was the same as A. 8519.

S. 6409/A. 9352 (Larkin/Magee)

Passed Senate/Referred to Ways and Means

This bill is a freestanding amendment to S. 3830-C, which alters the percentage of VLT revenue allocated to racetrack vendors, horse owners, and breeders. The amendment reduces, from \$5 million to \$2.5 million, the annual amount of capital investments that a VLT vendor track is eligible to receive. It also reduces the aggregate amount of capital investments from \$40 million to \$20 million over the life of this investment program. These revisions were suggested by Assemblyman Pretlow for the Assembly to enact S. 3830-C.

S. 6512-A/A. 9474-A (Larkin/Magee)
Passed Senate/Referred to Racing and Wagering

This bill is yet another permutation of S. 3830-C, which alters the percentage of VLT revenue allocated to racetrack vendors, horse owners, and breeders. The goals of S. 6512-A and many of its provisions are similar to those of S. 3830-C (see bill memo for a detailed description). While S. 6512-A, like the other similar VLT bills described above, did not pass the Assembly in 2007, an agreed-upon version of this bill was enacted into law in the early part of 2008 as Chapter 18 of the Laws of 2008.

CASINO GAMBLING

The State Senate has conceptually supported limited expansions of casino gambling, if implemented properly, to raise revenue to support state and local governments. The State Senate has encouraged only those developers and Indian Nations that have been accepted by the local community and that can comply with all state environmental and labor laws, use safe building codes, and abide by personal injury common law to protect casino patrons.

Related Legislation

S. 67/A. 7669 (Padavan/Clark) Passed Senate/Codes

The highest criminal punishment available for the illegal possession of a gambling device is a misdemeanor, found under Penal Law §§225.05 and 225.30. This bill increases the degree of the charge to reflect the extent to which a person profits from such illegal activity. The bill sponsor maintains that an enhanced penalty for the possession of five or more illegal gambling devices reasonably addresses the aggravated nature of the offenses and should have a more deterrent effect.

The bill adds a new section to the Penal Law (§225.31) to create the crime of possession of a gambling device in the first degree, punishable as a class E felony. The bill also amends Penal Law §225.10 by adding a new subdivision that would cover any gambling activity resulting in the receipt of more than \$5,000 in any one day. In this way, those who profit greatly from conducting unlawful gambling activities would be punished more severely.

S. 2306 (Maziarz) Referred to Finance

This bill creates the Tourism Economic Development Fund, to be funded by revenues generated from the negotiated state share of electronic gaming profits from casino gambling pursuant to the Tribal-State Compact Revenue Account. The bill creates a funding formula, as well as a new program, which provides for supplemental tourism grants. The bill seeks to increase the amount of money available for tourism-related marketing and promotion programs run by the State Department of Economic Development through the “I ♥NY” campaign as well as those programs and services administered by tourism promotion agencies statewide.

S. 4805 (Nozzolio) Referred to Investigations and Government Operations

Chapter 13 of the Laws of 2003 was enacted to further protect New York State’s workers and the public from the dangers of exposure to secondhand tobacco smoke. However, under the current law, the Clean Indoor Air Act is not applicable to Indian-sponsored casino facilities.

This bill expands those protections provided under Chapter 13 to include all workers and patrons of Native American casinos. The lives of casino employees and customers, the majority of whom may be New York State citizens, are no less valuable than those of the employees or customers of other businesses located in New York. This measure is necessary to protect all of the state’s citizens from

the dangers of secondhand smoke, no matter where they work or which businesses they choose to patronize.

GAMES OF CHANCE

The Committee has two objectives when overseeing the regulation of games of chance: (1) protect consumers by ensuring that such games are conducted fairly, and (2) facilitate a nonprofit organization's ability to conduct games of chance efficiently without spending unnecessary money on administrative costs. Both objectives will increase the amount of money that can be devoted to charitable purposes.

Related Legislation

S. 325 (Nozzolio)

Referred to Racing, Gaming, and Wagering

This bill authorizes charitable organizations located within 50 miles of an Indian gaming operation to increase the value of their prizes. The sponsor maintains that increasing prize value to the level allowed by Indian gaming operations would allow these nonprofit charitable organizations to better compete with their neighboring Indian gaming competitors.

S. 341/A. 2298 (Larkin/Schimminger)

3rd Reading, Senate Cal. #603/Economic Development

This proposal would remove costly and burdensome regulatory requirements for retailers who want to promote their products by giving away free prizes. Currently, General Business Law §369-e provides that any person, firm, or corporation that engages in promotional activities that offers free prizes through a raffle or other games-of-chance scheme must register with the Secretary of State. This requirement applies where the total value of the prizes offered exceeds \$5,000.

This law was enacted in 1969 to prevent unscrupulous retailers from using giveaway contests to prey on citizens. However, the sponsor is unaware of any real harm that has been prevented by the statute. On the other hand, it imposes costly and burdensome requirements on retailers seeking to promote their products by giving away free prizes. In fiscal year 1996-97, the filing fee alone cost businesses \$217,000. Moreover, this figure does not represent the cost of completing the paperwork or obtaining the required bond.

S. 421-A/A. 7201-A (Larkin/Magee)

3rd Reading, Senate Cal. #439/Racing and Wagering

The popularity of playing poker in homes has increased recently due to television shows such as "Celebrity Poker," "Texas Hold'em Poker Tournament," and "ESPN World Series of Poker." Further, the amount of revenue generated by charitable gaming has, at best, remained static due to increased competition from other entertainment sources and gambling venues. This bill allows charitable organizations to conduct similar tournaments for the entertainment of their members and to raise small amounts of funds for the support of their charitable activities. Under current law, such poker games are not an authorized game of chance.

The bill places limits on the amount of money that can be bet on such games and the prizes that can be won. The purpose of this bill is to facilitate the playing of the game of poker; however, it is done

in a way that encourages fun and social fellowship, but does not allow for any high-stakes poker games that can increase the incidence of compulsive gambling habits or adversely affect family finances.

S. 504/A. 2966 (Maziarz/Reilly)
Chapter 162 of the Laws of 2007

The purpose of this bill is to authorize organizations permitted by a locality to conduct bingo to also conduct “bonus ball bingo.” Bonus ball is a bingo game that is played in conjunction with one or more regular or special bingo games where the sponsor designates a bonus ball number. The prize for having the bonus ball may not exceed 75% of the money received from the sale of bonus ball tickets or \$6,000, whichever is less.

S. 505/A. 2958 (Maziarz/Reilly)
3rd Reading, Senate Cal. #441/Passed Assembly

The bill requires the Racing and Wagering Board to apply in-kind contributions to community causes made by benevolent orders toward the financial contribution requirements regarding the use of games-of-chance proceeds. Unfortunately, many benevolent orders are disappearing because of reductions in revenue raised and the escalating cost of operating such organizations. Currently, Board regulations mandate that at least one-third of the net profits derived from games-of-chance profits must be used for charitable purposes. This bill allows such orders to satisfy these requirements with in-kind services so that more of the cash raised by such charitable gaming operations could go to the organization’s overhead expenses such as heating and insurance costs.

S. 518/A. 4514 (Maziarz/DelMonte)
Referred to Racing, Gaming, and Wagering/Passed Assembly

This legislation authorizes individuals who are 16 and 17 years of age to assist in conducting bingo games, but would not allow them to run games. Instead, it would expand the areas where they can work.

Younger members at volunteer organizations are encouraged to assist at bingo fund-raising events to increase community involvement. Additionally, many organizations that operate bingo do so with limited staffing. Current law severely limits the work younger members can legally do. This legislation, while preventing them from conducting bingo games, would expand their range of work beyond the food counter.

Governor Pataki vetoed a similar version of this bill in September 2003 (S. 2626). In his Veto Message (#160), the Governor said that the legislation was unnecessary and would have undesired consequences. In particular, the legislation was unnecessary because minors were not prohibited from operating concession stands or vendor booths at facilities where bingo is conducted. In addition, the Governor believed the old version of the bill would have the unintended and undesirable consequence of allowing minors to “participate in the operation of bingo games.”

S. 1738 (Sabini)
Referred to Health

This bill would allow smoking in bingo facilities, but only under very strict guidelines. In particular, smoking would be allowed only at volunteer-operated bingo games that are not on public school grounds and do not take place during school hours. Members would be required to sign a waiver

acknowledging that smoking will be allowed during the game. A separate smoking room would also be required. Additionally, participants in the nonsmoking section would not be required to enter the smoking room to gain access to restrooms, refreshments, entrances, or exits.

New York's Clean Indoor Air Act significantly expanded the locations where smoking was prohibited. While the goals of the bill are laudable, the financial consequences for nonprofit organizations were not adequately contemplated, according to the sponsor. While the law does authorize the granting of waivers when financial hardship is documented, the fee for such waiver can be up to \$150. It is unfair that nonprofit organizations that are already struggling due to the smoking ban must also pay this fee.

This bill is the same bill as S. 1123, which was sponsored by Senator Brown before he was elected as the mayor of Buffalo. The bill was inactive during the 2006 legislative session.

S. 2024 (Robach)
Passed Senate

This bill would raise the maximum bingo prize on games run by charitable organizations from \$1,000 to \$3,000 and increase the aggregate total prize award from \$3,000 to \$6,000. According to the sponsor, in these times of fiscal restraint, not-for-profit and charitable organizations need alternative funding methods. By increasing the bingo prizes available, these organizations would be able to increase their revenue by charging more based upon the larger prize award.

S. 2078/A. 3822 (Montgomery/McEneny)
3rd Reading, Senate Cal. #1194/Referred to Racing and Wagering

This bill makes certain limited exceptions for the issuance of licenses to conduct bingo games for rehabilitation programs that are licensed or certified by a state agency and conducted by an applicant that provides such rehabilitation programs. Under current law, persons convicted of a crime are ineligible to conduct bingo games to reduce the possible occurrence of fraud or deception. This bill allows felons to conduct bingo games if it is part of a felon program. The money raised by such bingo games generally goes to support felon treatment programs.

S. 2939/A. 8454 (Larkin/DelMonte)
Chapter 441 of the Laws of 2007

The purpose of this bill is to allow for the conduct of "free bingo" games for recreational and social purposes without a license. Under previous law, all bingo games needed to be conducted under a license. This blanket prohibition also applied to bingo games where the participants did not pay to play and the prizes were of minimal value. This new law allows bingo games to be played without a license if the participants do not pay to play and the prizes are limited to a value of \$10.

S. 2984 (Robach)
Passed Senate

This measure authorizes a restaurant to conduct bingo games where the prizes awarded are of nominal value. The purpose of the bill is to allow family restaurants to conduct free bingo games so that they can entertain their patrons while waiting for their tables or meals to be served.

S. 3885 (Flanagan)

Passed Senate

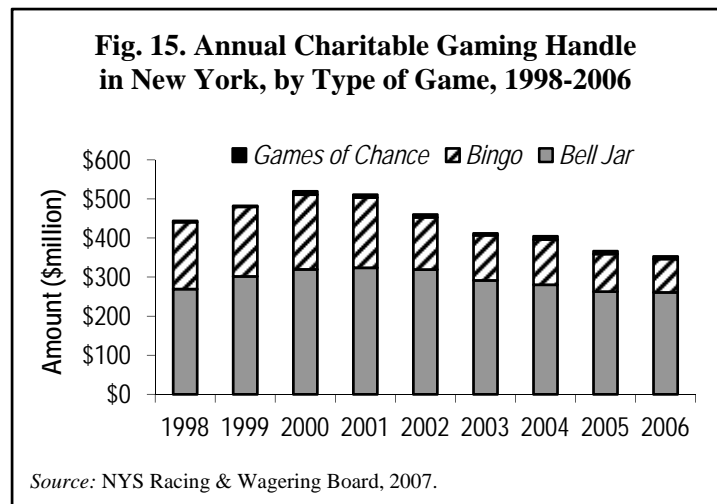
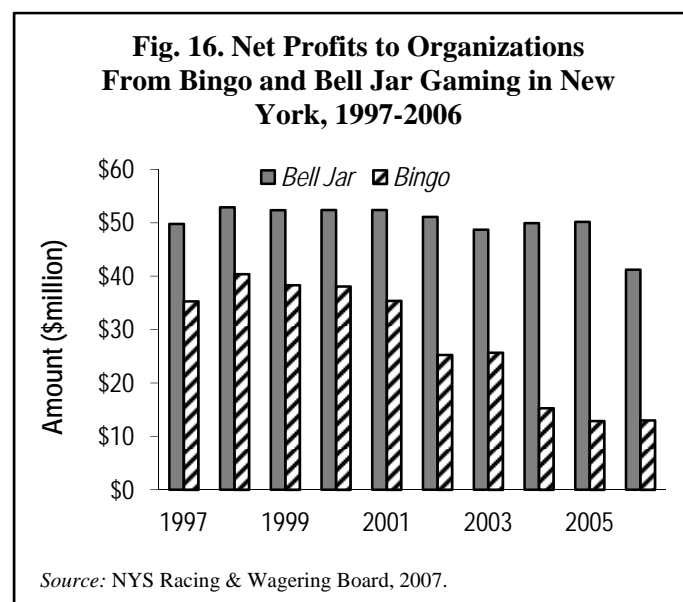
Under current law, the conduct of games of chance are restricted to the premises of an authorized charitable organization. This bill would allow charitable organizations to conduct raffles and other games of chance at restaurants or other facilities leased by the charitable organization for events such as their annual meetings or dinner meetings. In the end, this bill would facilitate fundraising activities for charitable organizations so that they can help support their worthy causes.

Trends in Bell Jar, Bingo and Games of Chance Total Handle and Net Profits to Charitable Organizations

In 2000, charitable gaming handle peaked at \$519.9 million. However, since 2000, it has steadily declined by 32% and sank to \$353.1 million in 2006 (see figure 15).

Between 2003 and 2005, bell jar ticket sales declined by \$28.5 million (a 10% drop). However, while the handle for bell jar ticket sales decreased by 10% from 2003 to 2005, charitable organizations' net profits from such sales increased by \$1.46 million, or 3% (see figure 16). However, between 2005 and 2006, bell jar ticket sales declined only slightly, by \$2.37 million (0.9%).

While the handle for bell jar ticket sales decreased by 0.9% from 2005 to 2006, charitable organizations' net profits from such sales decreased substantially, by \$9 million (17.8%). It is interesting that, in the late 1990s and early 2000s, bell jar handle increased substantially while net profits remained stable. As bell jar handle began to decline after 2001, net profits began to increase slightly, until 2006, when profits declined by 17.8%.



The relationship between handle and profitability differs for bingo and bell jar games. The 26% drop in bingo handle is reflected in a smaller percentage decrease in bingo profits of \$2.3 million (14.8%) from 2004 to 2006. Overall, bingo handle since 1998 has decreased by over \$85.3 million (50%). This reduction in bingo handle was reflected in a more than proportional 68% drop in profits generated by bingo games.

Interestingly, games-of-chance handle increased by \$3.2 million, a 64% jump from 2003 to 2004, but declined again in 2006 by \$1.7 million (21%). This is a staggering reversal from 2002 to 2003, when handle for games of chance decreased by 32%. It seems that games-of-chance betting handle is much more volatile than that of either bell jars or bingo games. This may be because the handle for games of chance is very small when compared to either bell jar or bingo handle and, hence, may be more sensitive to who conducts the games and when they are offered.

The reasons for the continuing decline in charitable gaming handle and profits continues to deserve attention. The Committee will continue to monitor trends in charitable gaming betting handle and the profits earned by such games for charitable organizations. Further, several senators on the Committee have introduced bills to expand the types of games that can be conducted by charitable organizations to assist them in raising needed funds to support their charitable purposes. One bill, S. 421-A, authorizes charitable organizations to conduct poker games such as Texas Hold 'em and other card games. Another bill, S. 7773, expands the types of bell jar games that can be played.

STATE RACING AND WAGERING BOARD AND LOTTERY DIVISION DEPARTMENT BILLS

In 2007, three Department Bills were introduced in the State Senate at the request of the Racing and Wagering Board. Of these three bills (listed below), two were signed into law.

Related Legislation

S. 3898/A. 7738 (Larkin/Pretlow) Passed Senate/Reported to Rules

Racing and Wagering Board Departmental Bill #68 is a technical bill that revises existing procedures which result in the situation where the determination to refuse a track its license is issued by the Board, and then such determination is subject to administrative appeal to the Board. When this happens, the Board needs to determine the application again after a de novo hearing. This bill advances the cause of due process and expedites hearing processes by providing the applicant with an opportunity for a hearing prior to a determination. The ultimate determination is made by the Board consistent with due process standards subject to judicial review.

S. 4059-A/A. 7736-A (Larkin/Pretlow) Chapter 535 of the Laws of 2007

Racing and Wagering Board Departmental Bill #69 provides for automatic reciprocity and enforcement of disciplinary actions and license refusals issued by other racing and gaming jurisdictions. The measure provides for recognition and enforcement of disciplinary actions and license refusals issued by such other jurisdictions. The bill does allow the New York licensee to apply for a hearing and show cause why such penalty should not be enforced.

S. 4060/A. 7737(Larkin/Pretlow) Chapter 197 of the Laws of 2007

This Racing and Wagering Board Departmental Bill (#70) allows the chairman of the Racing and Wagering Board to designate another person to act in his or her stead in the event such chairman is unable to attend certain meetings. Many other departmental commissioners and chairmen are allowed to designate a person to act in his or her stead on the very boards on which the Racing and Wagering Board chairman now sits.

CONCLUSION

The Committee remains concerned about the nationwide perception that holds New York racing in a questionable light. Clearly, more must be done to bolster the integrity and economic prospects of New York racing.

State and local government leaders must continue to communicate with those who are interested in New York thoroughbred and harness racing. A fresh approach is needed to reorganize the relationships of the various racing stakeholders and establish a more effective way to regulate racing in this state. NYRA's contract to operate the three racetracks expired on December 31, 2007. This deadline should have provided the impetus needed to encourage racing industry stakeholders and state governmental leaders to substantially reform the state's racing laws.

While the trends outlined in this report could be more encouraging, horse racing in New York is still a large and diverse industry that has a strong national presence. Further, the VLT program has raised additional revenue to support state education programs and assisted participating racetrack vendors, horse owners, and breeding funds. This new revenue should be invested in track facilities to convert them into large, aesthetically pleasing, regional tourist destinations which can generally contribute to the local economy.

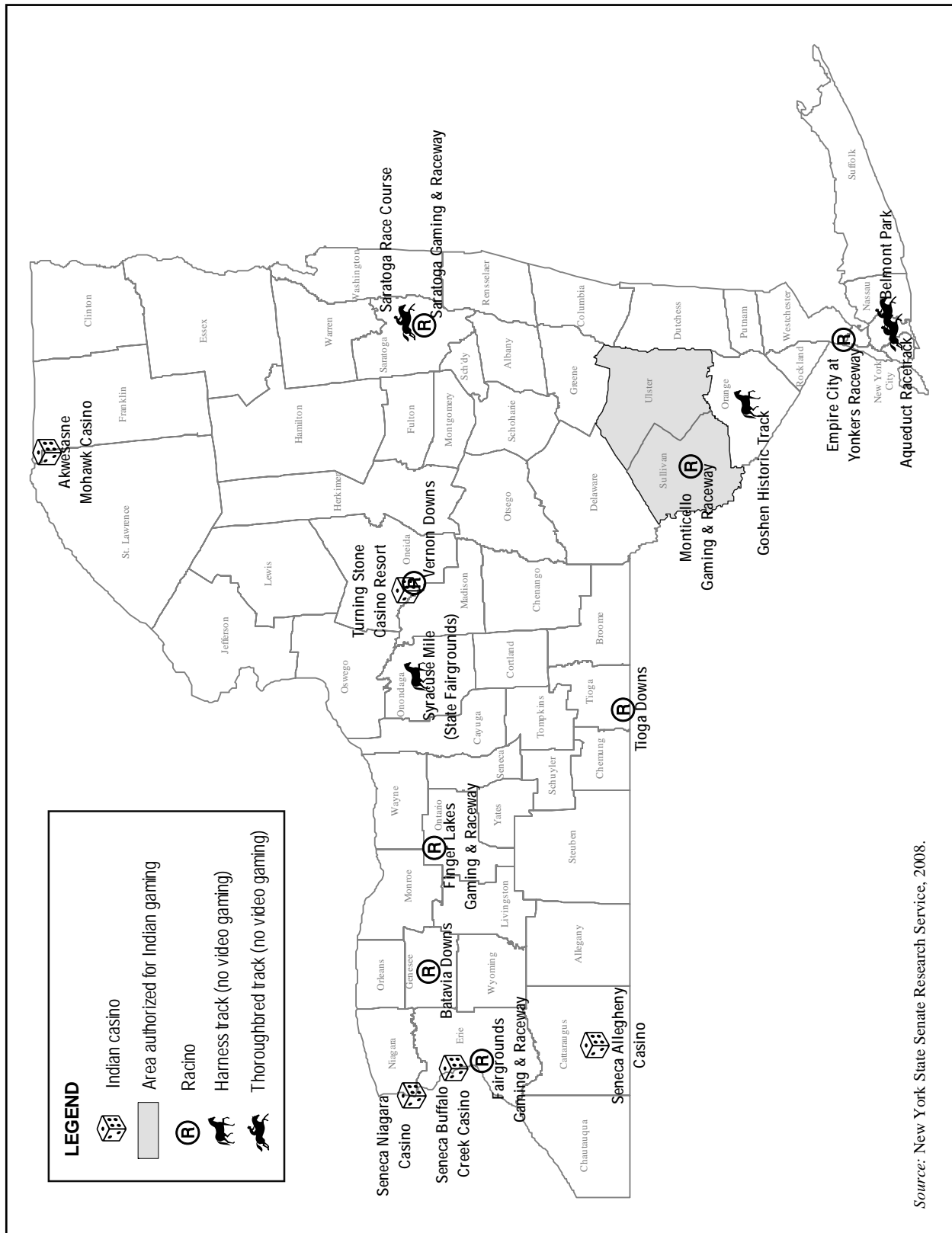
The Committee will continue to work with charitable and fraternal organizations to minimize unnecessary regulatory paperwork requirements and to expand the types of games they can sponsor. With the continued expansion of gaming venues in this state, such as VLT facilities and casinos to benefit state education programs, the State General Fund, and local governments, it is important that the financial needs of charitable organizations are not forgotten.

Additional copies of this report are available on-line at www.senatorbilllarkin.com.

Acknowledgements: The Committee would like to thank Charles Vickery, a racing consultant, for his invaluable work in providing statistical analysis of trends in the horse racing industry. Also, the Committee would like to thank the staff at the New York State Senate Research Service, State Racing and Wagering Board, New York State Thoroughbred Breeding and Development Fund Corporation, and Agriculture and New York State Horse Breeding Development Fund for their assistance.

APPENDIX

Map of Existing and Proposed Gambling Establishments in New York State



Source: New York State Senate Research Service, 2008.

**Table A. Purses Paid at Thoroughbred Tracks in 2007, by State
(ranked by average purse per race)**

<i>State</i>	<i>No. of races</i>	<i>Gross purses*</i>	<i>Avg. purse per race</i>
California	5,094	\$177,135,184	\$ 34,773
New York	3,707	132,618,831	35,775
Kentucky	2,660	103,550,913	38,929
Florida	3,733	85,409,600	22,880
West Virginia	4,434	81,888,629	18,468
Louisiana	3,083	75,115,145	24,364
Illinois	2,856	69,856,840	24,460
Maryland	1,835	46,425,300	25,300
New Jersey	1,173	44,381,833	37,836
Pennsylvania	3,374	42,903,619	12,716
Delaware	1,182	34,168,810	28,908
New Mexico	1,556	29,282,717	18,819
Texas	1,820	25,932,670	14,249
Ohio	2,980	25,198,383	8,456
Oklahoma	1,199	18,070,550	15,071
Arizona	1,966	15,430,730	7,849
Iowa	641	14,621,141	22,810
Arkansas	539	14,594,900	27,078
Indiana	1,105	13,488,700	12,207
Virginia	425	11,968,150	28,160
Minnesota	594	10,521,405	17,713
Massachusetts	956	10,520,700	11,005
Washington	932	10,321,040	11,074
Michigan	905	9,351,127	10,333
Nebraska	915	7,121,999	7,784
Oregon	861	3,479,398	4,041
Colorado	243	1,817,564	7,480
Kansas	271	1,624,075	5,993
Idaho	263	1,019,802	3,878
South Carolina	21	591,600	28,171
Other states (7)	345	1,938,657	128,812
Total	51,668	\$1,120,350,012	\$21,684

*Purses include moneys not won and returned to state breeder or other funds.

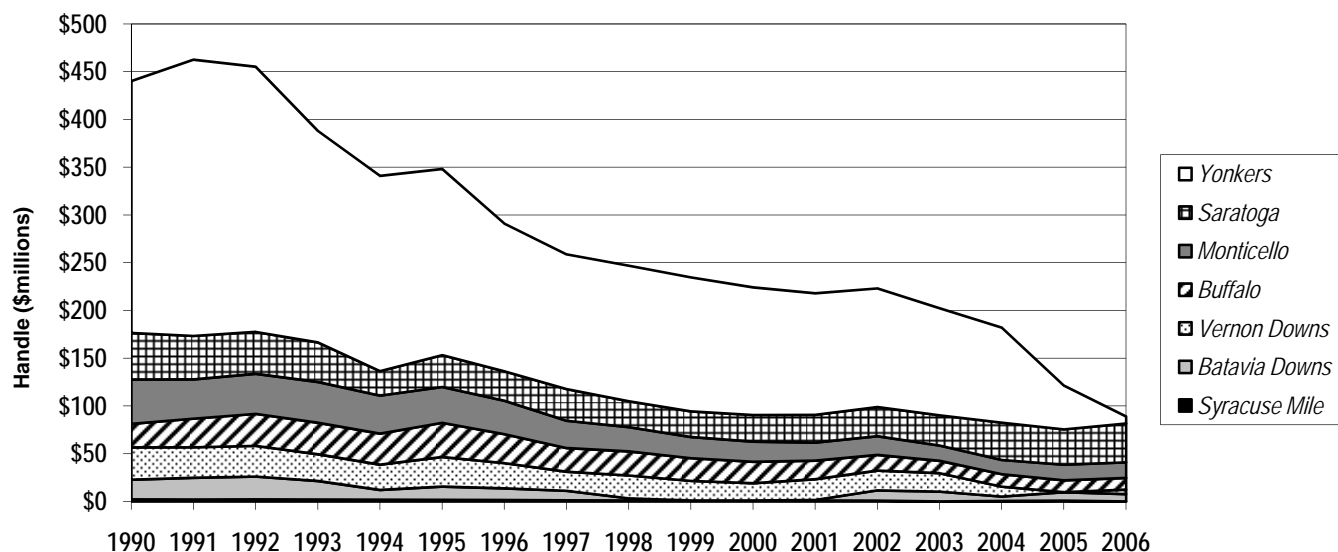
Source: The Jockey Club, 2008.

Table B. Purses Paid at Harness Tracks in 2007, by State
(ranked by total purses)

<i>State</i>	<i>Gross purses</i>	<i>No. of races</i>	<i>Avg. purse per race</i>
New York	\$103,704,992	12,038	\$8,615
New Jersey	\$68,846,157	4,046	\$17,016
Pennsylvania	\$58,820,298	5,469	\$10,755
Delaware	\$45,024,000	3,607	\$12,482
Illinois	\$30,488,560	3,976	\$7,668
Ohio	\$21,242,327	5,785	\$3,672
Indiana	\$15,498,167	1,913	\$8,101
Michigan	\$14,997,832	3,650	\$4,109
Maryland	\$12,958,130	2,849	\$4,548
Florida	\$12,892,411	1,961	\$6,574
Kentucky	\$12,575,150	794	\$15,838
California	\$9,708,200	2,345	\$4,140
New Hampshire	\$5,915,000	1,160	\$5,099
Maine	\$5,661,473	1,795	\$3,154
Massachusetts	\$3,279,690	951	\$3,449
Virginia	\$2,067,560	343	\$6,028
Iowa	\$599,800	179	\$3,351
Total	\$424,279,747	52,861	\$8,026

Source: U.S. Trotting Association, 2008.

Chart A. Annual On-Track Handle at Harness Tracks in New York, 1990-2006



Year	Total annual handle						
	Batavia Downs	Buffalo ¹	Monticello ²	Saratoga	Syracuse Mile ³	Vernon Downs ⁴	Yonkers ⁵
2006	\$ 7,708,163	\$12,262,514	\$16,359,753	\$40,631,280	N/A	\$ 4,601,536	\$ 7,314,408
2005	8,822,082	12,473,830	16,296,276	37,044,965	810,501	0	45,782,377
2004	4,558,187	13,081,519	14,872,537	39,092,822	495,449	10,421,499	99,522,397
2003	10,291,457	12,920,173	16,052,175	31,644,865	N/A	19,289,465	112,131,597
2002	10,696,674	16,433,612	19,575,363	30,487,685	861,829	20,773,338	124,259,323
2001	577,344	19,422,863	18,933,894	29,033,039	935,807	21,767,222	127,316,541
2000	N/A	22,403,168	21,124,621	27,943,724	961,041	18,098,808	133,650,350
1999	N/A	23,818,138	22,162,641	26,864,001	915,250	20,569,236	140,357,615
1998	2,269,744	25,236,772	25,344,009	27,162,647	953,317	23,996,471	141,882,501
1997	9,924,965	24,727,132	28,614,030	33,174,789	1,178,914	20,061,288	141,070,822
1996	12,184,000	30,267,000	35,014,000	30,922,000	1,516,000	26,426,000	154,634,000
1995	13,857,000	35,765,000	37,537,000	33,311,000	1,672,000	31,018,000	195,010,000
1994	10,207,031	32,497,996	39,838,335	25,552,736	1,817,360	26,477,347	204,632,183
1993	19,465,742	32,999,706	42,743,445	41,433,172	1,971,594	27,946,984	221,560,777
1992	23,913,010	33,474,147	41,986,812	43,884,416	2,108,750	32,182,579	277,700,423
1991	22,867,297	29,975,514	41,162,413	45,496,141	1,926,726	31,907,503	289,351,703
1990	20,623,354	24,645,761	46,405,635	48,844,751	2,138,985	33,793,402	263,789,808

1. Buffalo Raceway changed its name to Fairgrounds Gaming and Raceway in 2004.

2. Monticello Raceway changed its name to the Mighty M in 2004.

3. In 2006, the "Syracuse Mile" pari-mutuel meet was held at the newly opened Tioga Downs. There was no pari-mutuel handle at the 2003 race meet.

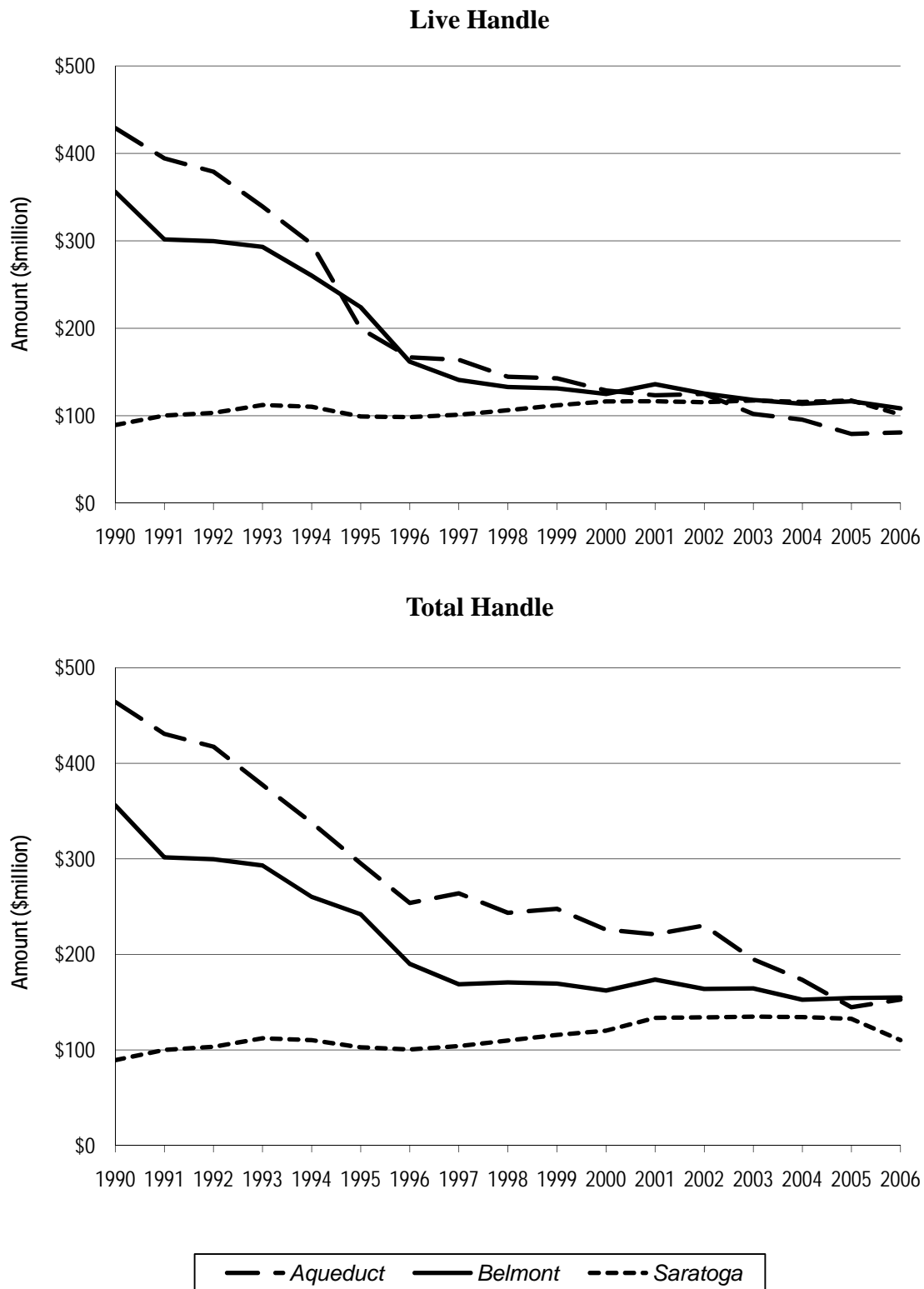
4. Vernon Downs closed in July 2004 and remained closed throughout calendar year 2005. A total of only 30 race dates were held in 2006.

5. Yonkers Raceway held a total of only 32 race dates in 2006. The track was closed for six months in 2005.

N/A = Not available.

Source: NYS Racing & Wagering Board, 2007.

Chart B: Annual Handles at NYRA Racetracks, 1990-2005



Source: NYS Racing & Wagering Board, 2007.