



REPORT OF THE

SENATE REPUBLICAN MAJORITY TASK FORCE ON THE REVITALIZATION OF THE **RACING INDUSTRY IN NEW YORK**

Senator Dean G. Skelos, Majority Leader
and President Pro Tempore

February 14, 2011

Task Force Members:

Senator John Bonacic, Task Force Chariman

Senator Hugh Farley

Senator Martin Golden

Senator Joseph Griffo

Senator Roy McDonald

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INTRODUCTION

In December, 2010, Senate Republican Leader Dean Skelos directed the formation of a Task Force on the Revitalization of the Racing Industry in New York. He directed Task Force Members to examine current horse racing issues and offer solutions to improve the problems associated with the industry.

Since that time, the Chairman and/or Members of the Task Force, or staff have received substantive information from across the spectrum of racing interests, including:

- Western OTB; Capital OTB; Catskills OTB; Nassau OTB; Suffolk OTB;
- Standardbred Owners Association, Inc.;
- Breeders' Cup;
- Finger Lakes Horsemen's Benevolent & Protective Association;
- NYRA;
- Empire Resorts;
- DC 37 (union).

In addition, Task Force Members participated in the Hearing called by the Senate Committee on Racing, Wagering & Gaming where they heard from:

- Michael Speller, President, Resorts World New York
- Charles Hayward, President & CEO, The New York Racing Association, Inc.
- Michael Amo, Chairman, Board of Directors Thoroughbred Racing Fan Association, Inc.
- Donald Groth, President & CEO, Catskill Off-Track Betting Corporation
- John Signor, President & CEO, Capital District Regional Off Track Betting
- Arthur T. Walsh, General Counsel, Nassau Regional Off-Track Betting Corporation
- Joseph D'Amato, Chief Executive Officer and Charles Degliomini, Executive Vice-President, Empire Resorts
- Phil Palermo, Senior Director of Operations, Finger Lakes Race Track
- Joseph Faraldo, President, Standardbred Owners Association of NY
- Jeffrey Cannizzo, Executive Director NY Thoroughbred Breeders
- Richard Violette, Jr., President, New York Thoroughbred Horsemen's Association, Inc.

Copies of the Testimony from the Committee Hearing are available on the Senate's website and were posted on February 7, 2011, the day of the Hearing.

Lastly, the Members of the Task Force had the opportunity to hear from the Chairman of the State Racing and Wagering Board, John Sabini, who addressed members of the Senate Racing, Wagering & Gaming Committee. Video of Chairman Sabini's presentation is also on the webpage of the Committee.

The Task Force has looked at several issues:

- I. How to develop off track betting operations in New York City, since the Paterson Administration's decision to close NYC OTB.
- II. General consolidation of OTB services or consolidation of OTBs in general.
- III. Elimination of Dark Days/Maintenance of Effort payments to Tracks.
- IV. Treatment of out-of-state Advanced Deposit Wagering entities which permit betting on New York Racing by New Yorkers.
- V. Fan Development.

I.
DEVELOPING OFF-TRACK-BETTING OPERATIONS IN NEW YORK CITY AFTER THE PATERSON ADMINISTRATION'S DECISION TO CLOSE NEW YORK CITY OTB

DC 37 representatives have informed the Task Force Chairman that the decision to close NYC OTB was unnecessary. Clearly that decision not only wreaked havoc on the lives of the NYC OTB employees; it also created a hole in racing revenues, and diminished access to racing for fans.

The State Racing and Wagering Board reacted swiftly to the Paterson administration's closure of NYC OTB by permitting live streaming video of racing on the internet. In addition, NYRA set up buses to Belmont and made capital improvements to Belmont to encourage fan attendance at the tracks. Both laudable efforts made the best of a bad situation.

Potential Senate Actions:

- * Put out an RFP to authorize the re-opening of one or more former NYC OTB Parlors.

- * Allow any OTB to open up one or more former OTB parlors in New York City.
- * Encourage NYRA or some other entity to open up off track betting parlors in New York City.

II **GENERAL CONSOLIDATION OF OTB SERVICES OR** **CONSOLIDATION OF OTBs IN GENERAL**

The race tracks noted that they offer a product which is left to others (i.e. – the OTBs) to promote. The tracks expressed concern that off-track wagering does not appropriately incentivize the promotion of the races the industry offers.

The OTBs generally stressed that they are well regarded in their local communities and that their purpose was to return revenue to local governments. They expressed generally an interest in shared services, but have not substantially acted on that interest over the years. The end result: five OTBs (six when NYC OTB existed), with five sets of management.

Based upon the Task Force’s review, it appears that one or more OTBs are in perilous financial shape. Likewise, it appears others are engaged in making critical financial choices and are innovators. It is noted that Western OTB’s off-track wagering operations have taken a back seat to the operation of Batavia Downs racetrack. It is the Task Force’s position that Western OTB should not be consolidated at this time because of that separate track ownership.

Any privatization or consolidation of OTB operations must keep the fundamental mission of OTB in sharp focus: support of local governments, as well as the betterment of racing. Any RFP to have OTBs taken over by any entity should hold local government payments harmless. Consolidation of OTBs also raises labor issues. For example, Catskill OTB is not unionized, whereas Capital OTB is.

Potential Senate Actions:

- * Let the tracks, in some combination, take over management of the OTBs.
- * Have an RFP to operate one or more OTBs – at least New York City, and perhaps all OTBs, except Western OTB.
- * Consolidate one or more regional OTBs under a shared management structure with the adjacent region.
- * Authorize another OTB to operate the former NYC OTB territory.

- * Consolidate all remaining OTBs, except Western OTB.

III HARNESS TRACK ADJUSTMENTS

The consensusⁱ was that dark days and maintenance of effort payments are not appropriate any longer. The reason behind that determination was that the tracks have since received VLTs which are supposed to enhance the track and horse racing industry.

In addition, it was indicated that harness tracks need great administrative flexibility to schedule races (i.e. – Senate Bill 623). It was also indicated that the surcharge on purses proposed by the Executive Budget will hurt horsemen, breeders, and tracks.

All harness tracks should be eligible for Capital funds. Currently, Monticello is not eligible because when the capital awards law was written, it was assumed the Monticello track was going to be moved physically to the former Concord Resort. That planned move did not happen. Monticello in particular is at a substantial competitive disadvantage when compared to other tracks for several reasons. Among those reasons include its proximity to out-of-state casino gaming and the fact that the tourism market for Monticello is New York City based, and that base has other opportunities for both harness racing and VLTs at Yonkers Raceway.

Potential Senate Actions:

- * Eliminate Dark Dayⁱⁱ, Hold Harmless and Maintenance of Effortⁱⁱⁱ payments as recommended by the State Comptroller and the Task Force on the Future of OTB;
- * Provide a capital award for all Harness Tracks;
- * Reject the Governor's proposal to add a surcharge on purses.

The elimination of Dark Day, Hold Harmless, and Maintenance of Effort payments will be objected to by the tracks, horsemen, and standardbred breeders. Any statutory changes in this area should minimize the impacts to the harness horsemen and standardbred breeders by holding them harmless to any loss in revenue from OTBs.

The fiscal benefit to regional OTBs of eliminating Dark Day, Hold Harmless and Maintenance of Effort payments to each Harness Track (and also thereby

eliminating those payments to the standardbred breeders, and to the horsemen) totals \$4.3 million Statewide (not including NYC OTB, which would have been estimated to benefit by an additional \$4 million by the elimination of these payments).

IV
BAN OR REGULATE OUT OF STATE ADVANCED DEPOSIT
WAGERING

NYRA and OTBs offer Advanced Deposit Wagering on the internet and phone. There are several internet platforms offering ADW betting. The OTBs themselves have different ADW websites, rather than one unified website.

Private sector, for-profit competition in the ADW industry is fierce. Companies such as Twinpires (www.Twinspirer.com) or TVG (www.TVG.com) are selling their product – online horse betting, to New Yorkers, for races produced in New York. However, whereas bets made on OTB’s internet platforms return dollars directly to the taxpayers, out of State private sector companies do not. Rather, these private sector companies, by virtue of better promotions for horse racing fans, siphon what would be dollars for local governments, to their out-of-state corporate pockets.

NYRA has negotiated with some of these out-of-state ADWs for payments. OTBs, however, are not in that position since they are solely competitors of these out-of-state ADWs, rather than the providers of a horse racing service, as NYRA is. Other states have banned residents of their State from using out-of-state ADW systems (or at least regulated them) when it comes to betting on races from those States. NYRA may have a parochial interest in maintaining the status quo because it works for NYRA. However, it does not work for the OTBs, the Harness Tracks, the Horsemen, or the taxpayers of New York State.

Potential Senate Actions:

- * Require that whenever a New Yorker bets on a race held in New York through an out-of-state ADW, that the ADW pays the same statutory payments and distributions, as would be paid, if that New Yorker made the bet through an OTB.
- * The Senate has passed legislation which would require this in 2008 (S.579-a/2008 by Senator Larkin). The Assembly did not pass the legislation.

V.
FAN DEVELOPMENT

In any sport, fans and the product they cheer, need each other. Horse racing is no different. The Task Force believes the racing industry must make a substantive effort to grow the fan base.

The Task Force recommends that the State Racing and Wagering Board convene a summit with fans, NYRA, OTBs, and Harness Tracks to make recommendations in the next ninety days to develop a concerted plan to build the fan base.

The Task Force recommends that a statutory fan advisory board be created and that NYRA and the State Racing and Wagering Board be required to formally respond to suggestions from that Board.

In addition, an I LOVE NY RACING plan should be developed and implemented including but not limited to: (a) on and off track fan education; (b) fan access to backstretch (the area near horse barns and horse workout areas) as part of organized tours; and (c) enhanced agri-tourism in relation to the horse breeding industry.

The Executive, Legislature and the Industry are strongly encouraged to come together in this legislative session to devise potential solutions to areas of disagreement. Failing that, the legislature should be prepared to act with the executive to work out a comprehensive plan to strengthen racing and wagering in New York State so that it becomes a strong and viable industry.

ⁱ The harness tracks appear to begrudgingly admit that the time for Dark Days and Maintenance of Effort payments have passed, though that position may not be acknowledged publicly. However, the Task Force recognizes that these tracks, if they are to lose these payments, should have maximum administrative flexibility in terms of race dates and times they are required to run.

ⁱⁱ Dark Day payments were imposed on the OTB's in 1997 giving harness tracks an off-set for OTBs taking simulcast wagering on out-of-state thoroughbred races on days when NYRA race tracks (Aqueduct, Belmont, and Saratoga) and Finger Lakes are not running. OTBs were required to pay 1.5% of regional handle to harness tracks within that OTB region, which remained closed on NYRA Dark Days. These payments are detailed in Section 1016(e) of the Racing, Pari-Mutuel Wagering and Breeding Law.

ⁱⁱⁱ Maintenance of effort and hold harmless payments: At the request of the OTBs, in 2003 the Legislature permitted OTBs to simulcast unlimited races, including night-time thoroughbred races. In turn, the OTBs were required to make payments to the specific harness tracks to guarantee they would get paid what they were paid in 2002. These payments have come to be known as "maintenance of effort/hold harmless payments". These payments are detailed in Section 1017(2)(a)(b) of the Racing, Pari-Mutuel Wagering and Breeding Law.

