

NYS Gaming Commission - Public Meeting Transcript

March 27, 2023 1 p.m.

317 Lenox Avenue, 6th Floor Conference Room, New York, NY

Executive Director Robert Williams: New York State Racing, Pari-Mutuel Wagering and Breeding Law § 102 provides that the New York State Gaming Commission shall consist of seven members appointed by the governor by and with the advice and consent of the Senate. Four members confirmed by the New York State Senate are necessary to afford the Commission an ability to establish a quorum and undertake action. This present meeting of the Commission is now called to order.

This meeting is being conducted by video conferencing in two locations, New York and Schenectady. Both locations have been appropriately noticed and accommodate public attendance.

Ms. Secretary, will you please call the roll?

Acting Secretary Kristen Buckley (via video): John Crotty

Commissioner John Crotty: Here.

Kristen Buckley: Peter Moschetti. Brian O'Dwyer.

Chair Brian O'Dwyer: Here.

Kristen Buckley: Christopher Riano

Kristen Buckley: Marissa Shorenstein

Kristen Buckley: Jerry Skurnik

Commissioner Jerry Skurnik: Here.

Robert Williams: Ms. Secretary, please have the record reflect the quorum of established members is present, thus enabling the transaction of business.

Chair O'Dwyer: Minutes of the Commission meeting conducted on February 27, 2022, have been provided to the members in advance. At this time, I'd like to ask the members if there are any edits, corrections or amendments. Hearing none, Ms. Secretary, please let the record reflect the minutes were accepted.

I now call on our Executive Director to give a report on his activities since our last meeting.

Executive Director Robert Williams: As previously discussed, the Governor's Executive Budget was introduced on February 1, 2023. The legislation and appropriations materials have been previously circulated. Since we last met, both the New York State Senate and New York State Assembly issued their one-house resolutions regarding the Fiscal Year 2023-2024 budget. At the Chairman's request, I will provide an overview of each house's position on the Executive proposal. There are five Executive proposals within Article VII Revenue Bills:

Part X, would amend the tax law, in relation to requiring The New York Racing Association, Inc. to enter into an agreement with the state of New York for the repayment of funds provided by the state for the renovation of Belmont Park. The Assembly modified the Executive proposal to authorize The New York Racing Association's \$455 million Belmont Redevelopment Project, but requiring the project be undertaken pursuant to a project labor agreement and removing requirements of Aqueduct Racetrack closing following the completion of the redevelopment project. The Senate modified the Executive proposal by adding provisions ensuring that specific commitments for renovations are undertaken, clarifying Franchise Oversight Board and Division of Budget oversight of the agreement, providing for labor protections including MWBE and service-disabled veteran protections, and requiring an affordable housing component on the Aqueduct Racetrack land once NYRA vacates the property.

Part Y, would amend the tax law, in relation to a keno style lottery game. Specifically, it would remove restrictions on where the lottery game Quick Draw could be played. The Assembly rejected the proposal, while the Senate modified, accepting the portion of the Executive proposal that would eliminate the minimum 2,500 square foot threshold for facilities offering Quick Draw but omitting the Executive proposal to permit those under 21 years of age to play Quick Draw in establishments offering alcohol.

Part Z, would amend the racing, pari-mutuel wagering and breeding law, in relation to the operations of off-track betting corporations, specifically requiring the closure of Catskill Regional Off-Track Betting Corporation. The Executive proposal would also allow Catskill participating counties to migrate to a differing regional corporation. Both the Assembly and Senate rejected the proposal.

Part AA, would amend the racing, pari-mutuel wagering and breeding law, in relation to the utilization of funds in the Capital region off-track betting corporations' capital acquisition funds. Both the Assembly and Senate modified the

Executive proposal to extend, for one year, the authorized use of the capital acquisition funds to include the Catskill Regional Off-Track Betting Corporation.

And the final part of the Governor's Revenue proposals is

Part BB, would amend the racing, pari-mutuel wagering and breeding law, in relation to licenses for simulcast facilities, sums relating to track simulcast, simulcast of out-of-state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of wagers; to amend chapter 281 of the laws of 1994 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting; to amend chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to extending certain provisions thereof; and to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof. Both the Assembly and Senate accepted the proposal.

In the Governor's Executive Transportation, Economic Development and Environmental Conservation Proposal ...

Part R, would amend the racing, pari-mutuel wagering and breeding law, the state finance law and the public authorities law, in relation to the disposition of money from certain gaming activity; and providing for the repeal of such provisions upon expiration thereof. Specifically, this would redirect downstate casino license fees and tax revenue paid by a facility or facilities sited in the City of New York to the Metropolitan Transportation Authority. While the Assembly accepted this proposal, the Senate modified to ensuring that recurring casino tax revenues would be dedicated to public education. Finally, the Assembly rejected the Executive proposal to provide \$1 million for a Racing Impact Study.

As far as additions, only the Senate proposed language.

The Senate proposed to amend the racing, pari-mutuel wagering and breeding law, in relation to prohibiting regional off-track betting corporations from providing items of value exceeding fifteen dollars to certain associates of the corporation, to amend the racing, pari-mutuel wagering and breeding law, in relation to prohibiting off-track betting corporation vehicles from being used as take-home vehicles, and to amend the racing, pari-mutuel wagering and breeding law, in relation to the membership of the board of directors of the Western Regional Off Track Betting Corporation. Meetings regarding the budget continue, with the April 1st deadline on the horizon.

The other item of significance I'd like to discuss today is the implementation of the Horse Racing Integrity and Safety Authority Anti-Doping & Medication Program.

Today marks the scheduled start of HISA Program administration by their selected vendor, the Horseracing Integrity and Welfare Unit. HIWU was established last year by Drug Free Sport International, a privately held corporation based in Kansas City, Missouri which offers drug testing and compliance services. HIWU will be undertaking the responsibility for the biologic sampling of horses competing in thoroughbred racing in New York, as well as out-of-competition testing for horses eligible to compete. HIWU and HISA will also be undertaking the testing of the samples, evaluation of results, and investigation and prosecution of transgressions. This transition has affected Commission barn staff, who have been displaced. While some staff will be continuing other employment with the Commission, and several will be engaged with HIWU as independent contractors performing similar duties, several have determined to move on. While we appreciate the efforts of all these employees, I would like to take a moment to highlight the extraordinary careers of two:

Steve Feduniak and John Jones.

Both employees had been with the Commission or its predecessor agency the Racing & Wagering Board since ... the first term of the Hugh Carey Administration, coming to our employment in July 1977. Mr. Feduniak served in the position of racing inspector, while Mr. Jones served as Assistant to the Supervising Racing Veterinarian, effectively ensuring the appropriate chain of custody for all biologic samples drawn by the State on NYRA racetracks. A back of the envelope calculation estimates nearly 1 million samples moved through NYRA barns during their tenure. With a collective 90 years' experience, suffice to suggest that they have seen it all, and have earned retirement.

For all the former barn employees that have departed our employment we offer gratitude for your dedicated service. Thank you Mr. Chairman.

Chair O'Dwyer: Mr. Williams just a question, how many samples what is our policy in regard to taking blood samples?

Executive Director Robert Williams: As a general sense and Ron will you please correct me if I'm wrong or at least supplement any answers that I provide on the Thoroughbred side it's the winner and second place uh beaten favorites and specials. pending upon the determination of the steward of the presiding racetrack so there's a minimum of two and a possibility of much more every single race that's conducted so every single race is conducted in the state. Mr Ochrym did I miss anything?

Ron Ochrym: No that's correct, if it's a Grade 1 Stakes race we actually take Four.

Chair O'Dwyer: Is it your understanding that HISA will be doing the same?

Executive Director Robert Williams: We don't know. HISA is suggesting that they're moving to intelligence-based testing which might indicate that there they have something a little bit different than taking a mandatory samples at each race this is something that I think we'll see evolve over a period of time as they acclimate to their new positions.

Chair O'Dwyer: I assume our position is that we think that the most favorable way for this to be done is a sample taken at every single race

Executive Director Robert Williams: That's been our position over years it's been consistent probably for at least what four decades.

Chair O'Dwyer: Any of the other Commissioners have questions.

Commissioner Crotty: I think you raised a good point. We should not accept a lesser standard. If HISA is going to do this, at the minimum requirement would be the same so Rob maybe you could tell us how many we did over you pick whatever the chairman says a couple period of time last year two years three years so the HISA has at least a minimum standard to be evaluated against.

Executive Director Robert Williams: I can certainly put some numbers together relative to that. As a general sense publish those numbers on an annualized basis in the annual report so I can just simply pull them together and apply that.

Chair O'Dwyer: I think I'll I'll discuss and bring back to the commission at our next meeting that I think a letter from me to HISA urging them to do that is the proper way of doing it.

Thank you Mr. Williams for that.

N.Y.S. Racing, Pari-Mutuel Wagering and Breeding Law § 104.19 authorizes the Commission to promulgate rules and regulations that it deems necessary to carry out its responsibilities. To that regard, the Commission will from time-to-time promulgate rules and rule amendments pursuant to the State Administrative Procedure Act.

Today we have one rule for consideration.

Executive Director Robert Williams: For Commission consideration a revised proposed rulemaking to govern interactive fantasy sports. Recall, in 2016 the legislature authorized certain types of interactive fantasy sports contests. Racing, Pari-Mutuel Wagering and Breeding Law Article 14 set forth various provisions governing interactive fantasy sports, including defining requirements for interactive fantasy sports contests, registration of interactive fantasy sports operators, required safeguards for interactive fantasy sports contestants, reporting requirements, levying of a state tax on interactive fantasy sports revenues and the imposition of regulatory costs on operators. The law also directed the Commission to issue temporary permits only to those operators who had been offering interactive fantasy sports in New York prior to November 10, 2015, which the Commission did.

The legislature directed the Commission to, among other things, promulgate regulations to implement the provisions of and effectuate the policy and objectives of Article 14. During the development of proposed regulations, the Commission was sued by plaintiffs alleging that Article 14 violated the State Constitution's general prohibition against gambling. Following the conclusion of the litigation, a Notice of Proposed Rulemaking was published in the State Register. During the public comment period, six were received, four from interactive fantasy sports temporary permittees, one from a trade association that purports to represent more than 150 companies offering fantasy sports contests, and one from a company that may wish to seek registration after the Commission adopts regulations.

Overall, there were approximately 45 suggested revisions within the public comments and staff review suggest nearly one-third be accepted. Many of these changes are substantial revisions, which is defined as any addition, deletion or other change in the text of a rule proposed for adoption which materially alters its purpose, meaning or effect. The consequence of acceptance of substantial revisions is that the revised rulemaking must be re-proposed and be subject to an additional public comment period.

Rather than reading into the public record each of the comments received on the initial proposed rule, staff will provide a written narrative to each commentator illustrating whether there was acceptance or rejection of their comment, and the reasons for the determination. This will allow the commentator understanding of staff positioning as we enter a potential revised rulemaking public comment period.

Staff recommends the Commission re-propose the Interactive Fantasy Sports Rules, as amended.

Chair O'Dwyer: Commissioners, any questions on the re-proposal of rules regarding Interactive Fantasy Sports?

May I have a Motion to re-propose this rule?

Commissioner Crotty: So moved.

Second?

Commissioner Crotty: Second.

Discussion on the Motion?

All in favor?

ALL: Aye

Opposed?

Chair O'Dwyer: The Motion carries 4-0.

Chair O'Dwyer: The next item of scheduled business regards adjudications. Today, we have two matters for adjudication. Mr. Williams?

Executive Director Robert Williams: On September 1, 2022, State Steward Stuart Rainey at Finger Lakes Racetrack issued a Notice of Violation to Thoroughbred owner and trainer Timothy P. Murphy for disrespecting and intimidating behavior toward a racetrack employee in the paddock before a race on August 16, 2022, constituting action detrimental to the best interests of racing in violation of Commission Rules 4022.12 and 4022.13. Steward Rainey fined Mr. Murphy \$1,000 and banned him from accessing the paddock for one month. After Mr. Murphy requested a hearing, the fine and paddock exclusion were stayed pending the Commission's determination of the matter. A hearing was conducted on January 26, 2023.

The Hearing Officer submitted a report to the Commission's Secretary dated February 20, 2023, recommending that the Commission fine Mr. Murphy \$350, but impose no suspension nor bar entry to the paddock.

The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1.

Chair O'Dwyer: The Commission duly deliberated and considered this matter and determined, upon a vote of 4-0 the Hearing Officer's Report and would be accepted and modified to this extent. In terms of the penalty, to fine Mr. Murphy \$350 to suspend the fine for 12 months and to further waive that fine after 12 months if no further infraction occurs.

Executive Director Robert Williams: On November 16, 2022, the Bureau of Licensing issued a Notice of License Suspension to 135 East 3rd Food Mart Inc. which conducts business at 135 East 3rd Street in Mount Vernon. The notice informed 135 East 3rd Food Mart of a suspension for engaging in conduct that constitutes a fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the state lottery. Specifically, the notice stated that action was undertaken as the licensee was found in possession of untaxed cigarettes.

The notice also stated that the suspension would remain in effect until disposition of the investigation by the Department of Taxation and Finance into the untaxed cigarettes possession.

135 East 3rd Food Mart requested a Commission hearing. On December 1, 2022, Taxation and Finance issued a decision revoking 135 East 3rd Food Mart Certificate of Registration as a Retail Dealer of Cigarettes and Tobacco Products and banning re-application for one year from the date of the violation, which was November 9, 2022.

The Commission hearing was conducted on February 9, 2023, and the Hearing Officer submitted a report to the Commission's Secretary dated March 13, 2023 recommending that 135 East 3rd Food Mart lottery agent license be suspended for a period of one year beginning November 9, 2022.

The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1.

Chair O'Dwyer: The Commission duly deliberated and considered this matter and determined, upon a 4-0 vote to sustain the Hearing Officer's Report and Recommendation.

Are they any other new and old business? Before we adjourn I just want to discuss or to bring up the fact as Mr Williams had indicated there has pursuant to my work as chair of both the Thoroughbred and Standard Bred funds there are considerable amount of money owed to those funds by Catskill OTB. We have asked Catskill OTB to remit those funds and they have continued and refused to. We are in the process of hiring pursuant to state regulation and thank you Mr. Williams for getting me through that morass of finding counsel to bring an action to recover those funds. It is substantial funds and is something I don't take lightly as chair. I know the rest of the staff doesn't, either. So I will keep you apprised of that at the next meeting.

Hearing none I think our next meeting is scheduled for and the end of next month

Executive Director Robert Williams: Ordinarily it would be the fourth Monday which would be the 24th, April 24th

Chair O'Dwyer: If I hear no other um no other business come before the commission take a motion to adjourn so moved. Meeting is adjourned. Thank you

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