

SUBJECT: Continuing the Texas Racing Commission

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Kuempel, Chisum, Geren, Gutierrez, Hamilton, Quintanilla
0 nays
3 absent — Thompson, Jones, Menendez

WITNESSES: For — None
Against — Bryan Brown, Retama Development Corp.
On — Kelly Kennedy, Sunset Commission; Charla Ann King, Texas Racing Commission; Drew Shubeck, Lone Star Park; Rob Werstler, Texas Quarter Horse Association

BACKGROUND: The Texas Racing Commission oversees and regulates pari-mutuel horse and greyhound racing in Texas, which was authorized in 1986 by the Texas Racing Act, found in VTCS, art. 179e. The commission issues racetrack licenses, oversees wagering, licenses racetrack employees and all racing industry occupations, establishes rules for racing and enforces those rules, enforces the Texas Racing Act, and administers the Texas-bred incentive program. The commission will be abolished on September 1, 2009, under the Sunset process unless continued by the Legislature.

Texas has five active horse tracks and two greyhound tracks and six non-operational racetrack licenses. In addition to live racing, tracks may present simulcast races, which allow bettors at one track to bet on races televised from another track, as approved by the commission. Three of the operating horse tracks are class 1 tracks (large tracks in counties with populations of more than 1.3 million and with as many race days as the commission grants); one operating track is a class 2 track (entitled to 60 days of live racing per year); and one is a class 3 track (up to 16 racing days a year and operating as a non-profit or a county fair). Ownership of the greyhound track in Corpus Christi, which is not

operational, was recently changed, and the track is expected to reopen for wagering on simulcast races in 2009 and for live racing in 2010.

Sec. 6.18(a) of the Racing Act states that racetrack licenses are perpetual. The section also authorizes the commission to suspend or revoke licenses.

The racing commission is funded through fees assessed to racetracks, occupational license fees, and a portion of uncashed winning tickets. The uncashed winning tickets are used to reimburse the racetracks for drug-testing costs, and after deducting their expenses, tracks submit the remaining portion of these tickets, called OUTs to the commission.

Each racetrack is required to pay to the state a pari-mutuel tax, which increases as the track's handle, which is the total amount wagered, increases. For example, the tax is 1 percent if the track's handle is \$100 million to \$200 million and 2 percent from \$200 million to \$300 million. The tax increases to 5 percent on handles of \$500 million or more. Tracks also pay a 1 percent tax on same-species simulcast wagers and 1.25 percent on cross-species simulcast wagers. Today, the state is collecting only simulcast revenue because the tracks have not met the minimum betting handle threshold since 1999, according to the Sunset Commission. The state pari-mutuel tax receipts were \$4.4 million each year for fiscal 2006 and fiscal 2007.

Equine Research Account Advisory Committee. A portion of pari-mutuel wagers placed on Texas horse races goes into the Equine Research Account to fund equine research relating to the horse racing and breeding industries. The director of Texas AgriLife Research administers the account funds, and the Equine Research Account Advisory Committee advises the director on the grant process. The committee's primary duties involve selecting research priorities and recommending research funding.

The committee has 11 members who must have the qualifications specified in the statutes, including representatives of various colleges and organizations in Texas and members of the horse breeding and racing industries. They are appointed by the Texas AgriLife Research director.

For the past two sessions, the Legislature has not appropriated funds from the account, and Texas AgriLife Research has given the committee funds equal to the amount collected in the Equine Research Account.

DIGEST:

CSHB 2081 would continue the Texas Racing Commission until September 1, 2015. The bill would repeal the current provision that racetrack licenses are perpetual and would require the commission to develop a process for reviewing and renewing the licenses. It also would reduce the types of workers that the commission was required to license, revise the method of financing the commission, revise the law on unlawful betting, and abolish the Equine Research Advisory Committee.

The bill would apply standard Sunset language to the TRC in several areas, including conflicts of interest, use of technology to increase public access, the development and use of alternative rulemaking, and dispute resolution procedures.

Racetrack license review and renewal. CSHB 2081 would repeal the current provision of the Racing Act that states that racetrack licenses are perpetual. CSHB 2081 would require the commission to establish by rule a renewal and review process for racetrack licenses. The commission would be required to review each active racetrack license at least once every five years. Inactive licenses would have to be reviewed annually.

The bill would establish certain criteria that the commission would have to consider when reviewing a license or when deciding whether to renew a license, including the license holder's financial stability and ability to conduct live racing. The commission would be authorized to refuse to renew a license or to revoke a license if it determined that allowing the licensee to hold the license was not in the best interests of the racing industry or the public. Licenses also could be revoked or not renewed if the commission found, after a hearing, that a license holder had violated the Racing Act or a commission rule.

The commission would have to determine the expiration date of each license issued under the Racing Act by January 1, 2010. By September 1, 2010, the commission would have to complete a review of each inactive racetrack license. The commission would have to conduct the initial review of racetrack licenses issued on or after January 1, 2007, by either September 1, 2011, or the second anniversary of the date the license was issued, whichever was later. The current requirement that the commission review the ownership and management of racetrack licenses every five years would be repealed.

Other provisions dealing with racetrack licenses include:

- requiring the commission to consult with members of the racing industry and other stakeholders in developing the renewal process;
- authorizing the commission to adopt a system for licenses to expire on various dates throughout various years;
- requiring persons applying for a license renewal to submit fingerprints, just as license applicants must do; and
- requiring the commission to set and collect renewal and review fees to cover the cost of administering the Racing Act.

CSHB 2081 would expand the commission's current statutory authority to require applicants for racetrack licenses to post security to include holders of licenses. The security would be to ensure track license holders' and applicants' compliance with the Racing Act and with commission rules, and the amount would be determined by rule.

CSHB 2081 would statutorily require the commission to use rules to establish procedures for taking disciplinary action against racetrack license holders. The commission would be given statutory authority to take certain actions if, after notice and hearing, it found that a license holder or a person employed by a track had violated the Racing Act or a commission rule or if the commission found that the racetrack was ineligible to have a license renewed. The commission's statutory authority would extend to revoking, suspending, or refusing to renew a track's license, imposing administrative penalties, and taking any other action as established by commission rule.

Licenses for workers required. CSHB 2081 would narrow the scope of the commission's mandate to license each person, except for spectators or persons wagering, involved with racing. Instead of having to license each person involved in any capacity with pari-mutuel wagering, the commission would have authority to use rules to categorize the occupations of racetrack employees and to require licenses only of:

- those who worked in an occupation determined by the commission to give the employee an opportunity to influence the racing; and
- those who likely would have significant access to the back side of a racetrack or to a restricted area of the front side of a racetrack.

Racetracks would be responsible for ensuring that their employees complied with the Racing Act and the commission rules. The commission would be authorized to impose disciplinary action against a track for violations of the Racing Act and commission rules by its employees.

The commission would be required to obtain criminal history record information on license applicants when they renewed their licenses and at least every 36 months.

Eliminate uncashed winning tickets as source of agency revenue. CSHB 2081 would eliminate uncashed winning tickets as a source of funding for the agency

Restrictions on betting; ATM limit. Persons would be prohibited from accepting — in person, by telephone, or over the Internet — a wager on a horse or greyhound race from a person in Texas unless the wager was authorized by the Racing Act. Persons also would be prohibited from placing — in person, by telephone, or over the Internet — a wager for a horse or greyhound race conducted inside or outside of Texas. Persons who are not licensed under the Texas Racing Act to conduct racing would be prohibited from accepting from Texas residents while they were in Texas a wager on a race run inside or outside of Texas.

The bill would eliminate a current \$200 limit on withdrawals from automatic teller machines at tracks.

Equine Research Account Advisory Committee. CSHB 2081 would eliminate the Equine Research Advisory Committee and give authority to expend the funds in the equine research account to the executive director of Texas AgriLife Research. Proposals for equine research grants no longer would be subject to a mandatory evaluation peer review committee. Instead, they could be reviewed by such a committee and by subject matter experts.

SUPPORTERS
SAY:

The Texas Racing Commission should be continued because there is a need for oversight of the pari-mutuel racing industry, and the commission is the only agency with the infrastructure and expertise to do so. Because the racing industry has been in decline, CSHB 2081 would require review of the commission after six years, instead of the standard 12 years. This would allow the Legislature reassess the agency's role in the context of a changing industry.

Review and renewal process for racetrack licenses, authority for disciplinary actions. CSHB 2081 would clarify TRC's authority so that it could provide adequate, ongoing oversight of racetrack licensees and to ensure that licensees actually run races. The Racing Act states that licenses are perpetual, and questions have been raised about whether that language, combined with unclear statutory language on the commission's revocation authority, give the commission statutory authority to revoke a track license.

The clear authority to revoke licenses in CSHB 2081 would help answer questions about the TRC's authority. These questions have resulted in the commission taking no action against the two inactive track licensees that have held licenses since 1989 but have yet to build a track. To address this problem, CSHB 2081 would repeal the provision that grants track licenses in perpetuity and would require the commission to establish a process for racetrack license review and renewal. The commission's authority would be strengthened by stating that it could revoke a license if letting the licensee hold the license was not in the best interests of racing or the public.

A license review and renewal process would allow the commission to exercise ongoing regulation of track license holders to ensure continued competency and compliance. This authority would be consistent with other state licensing programs. Information gathered from a renewal process would differ from information that is gathered and interactions that occur at the tracks during the running of races or during simulcasting and could be more like an audit. Other provisions in the bill also would help better regulate licensees. For example, the bill would allow the commission to require license holders as well as applicants to post security bonds to ensure compliance.

CSHB 2081 also would clarify the commission's authority to take disciplinary actions against tracks, which would help the commission move forward quickly when necessary.

The commission would act reasonably and establish a renewal system that made sense for the both the tracks and the commission. The commission would have no interest in developing a burdensome or repetitive renewal process and could develop one that provided for routine approval of active licenses. The commission would act the same, reasonable, measured way

in reference to the language in CSHB 2081 dealing with disciplinary action.

CSHB 2081 would not harm tracks' ability to gain financing. The lending industry is familiar with licensed industries that commonly carry a license renewal period, and nothing in CSHB 2081 would be inconsistent with other lending situations involving licensed industries.

Licensing racing occupations. CSHB 2081 would change the current requirement that the commission license all people involved in racing because it results in the licensing of too many people with little or no chance to affect pari-mutuel racing, which serves no clear public interest. In 2007, more than 2,400 persons whose occupations do not affect racing were licensed by the commission, such as popcorn vendors and parking lot attendants. Licensing everyone involved in any job at a track results in the commission overseeing a much larger number of individuals than necessary, which adds to the costs of the agency and diverts resources from focusing on those who should be licensed.

CSHB 2081 would address this problem by requiring licensing only of those who can affect pari-mutuel racing. This would allow the commission to focus on licensing persons such as trainers, jockeys, and grooms. The commission still would have authority over non front-side employees through their employers and by having the racetracks be responsible for their employees' compliance with the Racing Act and commission rules.

CSHB 2081 would make other changes to improve worker licensing. The bill would require criminal background checks every three years, instead of the current five years, which would provide the public better protection and be in line with national standards.

Eliminate uncashed winning tickets as a source of agency revenue. CSHB 2081 would eliminate uncashed winning tickets, called OUTs, as a source of funding for the agency because it is unreliable, hard to predict, and declining as the amount of wagering decreases and as changes in technology, such as electronic teller machines, result in more tickets being cashed. Using OUTs as a source of agency revenue results in an inequitable burden on tracks because they differ in the amount of uncashed tickets and drug-testing costs reimbursed with OUTs revenue.

To make up the revenue lost by eliminating uncashed tickets as a source of revenue, the commission would adjust the racing-related regulatory fees it charges, which would give it a more consistent revenue stream and make the fees paid by each track proportionate to their activities. With this change, tracks could keep all the revenue from uncashed tickets to offset the cost of animal drug testing.

Restrictions on betting; ATM limit. CSHB 2081 would update and clarify Texas' policy that prohibits betting on pari-mutuel wagering outside of Texas tracks. When the Racing Act was enacted, it did not contemplate the current rise of telephone and off-track betting and of out-of-state businesses that offer on-line or phone accounts. CSHB 2081 would make Texas law more clear and easier for bettors and out-of-state companies to understand by stating that persons without a pari-mutuel track license were prohibited from taking bets from Texas residents no matter how the bet was placed — including by telephone or over the internet. Even though enforcement could be difficult, the language in CSHB 2081 should bring some bettors and on-line sites into compliance.

CSHB 2081 would remove the current automatic teller withdrawal limit of \$200 because it is outdated. Many people today carry little or no cash and depend on automatic teller machines. Many race patrons travel a long way to get to a track and do not realize that once they are at the track, their ability to withdraw their own money is limited. The limit makes no sense, given that there is no such limit on other machines. Texans should be free to spend their money however they wish.

Eliminating the Equine Research Account Advisory Committee. CSHB 2081 would eliminate the Equine Research Account Advisory Committee because its benefits are not clear and its duties could be more efficiently performed directly by Texas AgriLife Research. The committee acts only in an advisory role to Texas AgriLife Research, which has been administering the grant program. For the past two sessions the Legislature has not appropriated funds from the Equine Research Account, and AgriLife Research has given all of the small amount of grant money awarded and has covered the administrative costs for the program.

The state does not need a separate committee to review and recommend equine research grants. There are other ways for Texas AgriLife to obtain input and opinions from the racing industry without a statutory advisory committee. Abolishing the committee would simplify the grant awarding

process while providing greater oversight of the projects through Texas AgriLife's existing research proposals review and award process. Under CSHB 2081, Texas AgriLife would continue its fair and effective administration of equine research grants and likely would use a similar ad hoc external committee to get broad input into the grant awards.

OPPONENTS
SAY:

Review and renewal process for racetrack licenses. Removing the current provision making track licenses perpetual and instituting a review and renewal process is unnecessary and would be burdensome for the tracks. It also could make obtaining financing to build a track or to make additional investment in a licensed track more difficult and more costly.

Currently, the tracks are reviewed on an ongoing basis by the Racing Commission. The commission has a constant presence at the tracks, and the tracks address any issue raised by commission staff. In addition, the tracks must apply annually for live racing dates, giving the commission another opportunity to raise issues.

Layering a review and renewal process on top of all of this would be a burden to the active tracks. Under the broad language in CSHB 2081, the commission could require tracks to submit voluminous information, much of which the commission already knows. Although the commission would likely use this authority judiciously, it would be better to establish an appropriate framework for retaining licenses than to rely on interpretations and implementations of that authority.

Currently the commission has adequate power to address any problems with licensees, including inactive tracks. It would be better to use this power or to develop some tool targeted specifically for inactive tracks that do not build facilities or ask for race dates than to place a new regulatory burden on active tracks.

The language in CSHB 2081 that would enumerate the commission's authority to take disciplinary action against tracks also is too broad. The commission has adequate authority under current law and rules to take necessary actions against tracks, including revoking and suspending licenses. The bill also has overly broad language allowing license revocations if track employees violated the law or a commission rule. CSHB 2081 could lead to actions being taken against track licenses, which should be protected. A better approach would be for any new commission authority to be targeted toward individuals who do wrong.

Licensing racing occupations. The commission should continue to license all those involved with racing. No matter what a worker's job, it would be best to license them due to their presence at the track. For example, it may be inappropriate to employ at a track food vendors or parking lot attendants with criminal histories involving loan sharking or book making. Licensing all employees ensures fair treatment of all workers.

Restrictions on betting. Rather than further an unenforceable policy that tries to prohibit Internet wagering, the state should move in a different direction and authorize advance deposit wagering, which allows bettors to use the Internet to place wagers on races using funds already placed in their accounts. In other states this type of wagering is done with an agreement that allows a portion of betting revenue to go to the tracks, horsemen, and the state.

The current limit on withdrawals from track automatic teller machines ensures that track patrons do not go too far in the heat of racing moments in withdrawing their money.

Eliminating the Equine Research Account Advisory Committee. Abolishing the ERAAC would be detrimental to equine research in the state because it would eliminate from the grant awarding process the formal input of broad and diverse groups in both industry and academia. This diversity ensures various points of view are considered and is valuable in fostering an inclusive approach to equine research.

NOTES:

The committee substitute added the provision requiring the commission to obtain criminal history record information on worker license holders at least every 36 months.

The companion bill, SB 1013 by Hinojosa, was reported favorably, as substituted, by the Senate Government Organization Committee on May 1.