

**SUBJECT:** Continuing the Racing Commission

**COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended

**VOTE:** 6 ayes — Kubiak, Brimer, Goolsby, Pickett, Torres, Yarbrough

0 nays

3 absent — Wilson, Dear, D. Jones

**WITNESSES:** For — Debbie Schauf, Texas Quarter Horse Association, Jeff Hooper, Texas Thoroughbred Association; William McLaughlin, Valley Greyhound Park; James Frey, Texas Greyhound Association; David Hooper, Horsemen's Benevolent and Protective Association; Jack Triplett

Against — None

On — John P. Moore, Sunset Advisory Commission; David J. Freeman, Texas Racing Commission

**BACKGROUND:** The Texas Racing Commission, created in 1986, oversees and regulates pari-mutuel horse and greyhound racing in Texas. The commission adopts rules and regulations for tracks and races, issues licenses for tracks, supervises races, issues occupational licenses for track employees and allocates racing dates.

The commission has eight members — six appointed by the governor subject to Senate confirmation and two ex-officio members. Two of the appointed members must be veterinarians, one specializing in the treatment of small animals, and one specializing in large animals. Two appointed members must be non-veterinarians with special knowledge or experience related to horse racing, and two appointed members must be non-veterinarians with special knowledge or experience related to greyhound racing. The six appointed members are divided into a horse section and a greyhound section that vote on issues relating exclusively to each area. The two ex-officio members, the state comptroller and the chair of the

Public Safety Commission, sit on both sections. All eight members vote on matters pertaining to both horse and greyhound racing.

Nine horse tracks and three greyhound tracks have been licensed by the commission to conduct pari-mutuel wagering. Four of the horse track licenses are for class 1 tracks (large tracks with as many race days as the commission grants), four are for class 2 tracks (entitled to 60 days of live racing per year) and one is for a class 3 track (up to 16 racing days a year). Tracks may present simulcast races (allowing bettors at one track to bet on races televised from another track) as approved by the commission.

The racing commission is funded through racetrack license fees, occupational license fees, fines assessed against licensees, uncashed winning tickets, and a portion of the breakage (a small amount of winnings, above a specified multiple, not paid to successful bettors) from greyhound tracks. For fiscal 1993-94 earned operating revenue is projected to be about \$7.1 million. In fiscal 1988 through fiscal 1991 the Racing Commission was appropriated general revenue funds for start-up expenses. Under the Racing Act the funds must be repaid, with interest. The commission currently has about \$9.8 million in principal and interest outstanding.

The Racing Commission is subject to the Sunset Act and underwent Sunset Advisory Commission review during the past interim. The committee will be abolished September 1, 1995, unless continued by the Legislature.

**DIGEST:**

CSHB 1305 would continue the Texas Racing Commission until September 1, 2001, change the composition and duties of the commission, require all race officials to be state employees, restrict appeals of race officials' decisions, allow the state to recover the cost of criminal justice history checks, authorize the oversight of race funds going to other organizations and make changes in the criminal penalty provisions. The commission would be required to review all of its rules and to readopt, modify or repeal the rules before January 1, 1998.

The bill would make other changes including standard Sunset Advisory Commission recommendations on legislative review of funds, financial reporting, complaint information, compliance with state and federal

accessibility laws, the open meetings and administrative procedure law, conflict of interest and public information. CSHB 1305 would take effect September 1, 1995.

**Structure of the commission.** CSHB 1305 would change the appointment criteria for the commission so that four of the appointed members would have to be representatives of the general public and have general knowledge of business or agribusiness, one member would have to have knowledge or experience relating to greyhound racing and one member would have to have knowledge or experience related to horse racing. The bill would eliminate requirements that one commissioner be a small animal veterinarian and one a large animal veterinarian. The governor would appoint one of the public members as the commission chair.

The commission would no longer vote by separate horse and greyhound panels on some issues but would make rules, issue licenses and make all decisions as one body. The commission would be authorized to establish separate sections to review or propose rules. The commission or a section would be able to appoint a committee of experts, members of the public or others to advise it about proposed rules.

The commission or a section would have to hold a meeting on proposed rules before they were published in the Texas Register. Notice of the meetings, including a summary of the proposed rule, would have to be posted at each racetrack. Notice also would have to be posted when the proposed rule is published in the Texas Register.

**Duties of the commission.** CSHB 1305 would eliminate as a current purpose of the Racing Act to encourage agriculture, the horse breeding industry, the horse training industry, the greyhound breeding industry, tourism and employment opportunities relating to racing. The Department of Commerce would be required, if funds are appropriated, to promote and encourage the horse racing and greyhound racing industry.

**Employment of race judges and stewards.** The commission would be required to employ all of the three judges or stewards required at each race instead of having the commission employ only the presiding judge or steward and the track employ the other two. Before a race, the commission

would have to publish a list of stewards and judges approved by the commission, forward it to the track and give the track an opportunity to review and comment on the list. After reviewing the comments and consulting with the track, the commission would designate the judges or stewards and appoint one to be the presiding officer. The commission would be authorized to impose a fee on tracks for employing the judges and stewards.

**Appeal of judges' and stewards' decisions.** CSHB 1305 would eliminate the current ability for persons to appeal some of the decisions of judges and stewards to the commission and would make judges' and stewards' decisions on a disqualification for a foul or on a finding of fact regarding the running a race final.

**Cost of criminal history check.** The commission would be required to set license fees to cover the cost of the criminal history check on the license applicant and to reimburse DPS for the cost of the check.

**Oversight of pari-mutuel funds.** The commission would be required to adopt reporting, monitoring and auditing requirements or other performance measures for organizations that receive funds from live or simulcast pari-mutuel racing. The commission would be required to consult the affected organizations before adopting requirements or performance measures. Independent audits would have to be conducted annually of the organizations receiving racing funds. The commission would be able to review an organizations record's and to suspend or withhold funds if an organization failed to comply with the requirements or performance measures or had material questions raised on the use of the funds.

**Automated teller machines.** The commission would be required to prohibit track patrons from using automated methods of obtaining money (automated teller machines) while on racetrack premises.

**Admission fee.** CSHB 1305 would prohibit racetrack admission fees from being charged to persons who are licensed by the commission

**Criminal offenses.** CSHB 1305 would consolidate provisions dealing with criminal offenses into one section and place the commission's rulemaking

authority over conduct into one section. The bill would also change some of the penalties for some current offenses and add criminal offenses including: bookmaking, forging a pari-mutuel ticket, impersonating a license holder, unlawful influence on racing, coercion and intimidation; unlawful racing; and failure to display credentials.

**Miscellaneous.** The bill would make numerous other changes including:

- adding cities to the current authorization for counties and nonprofit fairs to operate a class 3 racetrack and allowing a city with a population of at least 5,000 that owned a racetrack in 1986 to conduct an annual race meeting of up to 16 racing days, subject to licensing requirements;
- adding to the items for which the commission can suspend or revoke racetrack licenses a finding that an applicant failed to fully disclose the true owners of all interests, beneficial or otherwise, in a racetrack;
- authorizing the commission to adopt rules for regulating, inspecting and correcting inappropriate or unsafe racetrack premises including actions to be taken if a racetrack does not correct an inappropriate or unsafe condition;
- establishing criteria for the commission to restrict false, misleading or deceptive practices;
- requiring the commission to adopt criteria to recognize an organization to represent members of a part of the racing industry, including owners, breeders, trainers and kennel operators;
- authorizing the commission to waive licensing prerequisites for license applicants who have a license from another state that has substantially equivalent requirements or for applicants from states with which Texas has a reciprocal agreement;
- authorizing the commission to adopt a system of staggered license expiration dates;
- outlining the search and seizure powers of the DPS and the commission;

- authorizing the commission to assist in adult or continuing education programs that use distance learning and
- requiring the commission to report the results of licensing exams within 30 days and to furnish persons who fail an exam with an analysis of their performance.

SUPPORTERS  
SAY:

The Racing Commission should be continued and the commission structure and duties changed to ensure broad representation and efficient operation. Other changes are needed to strengthen the commission's oversight of racing and to help the state recover some of the cost of regulating racing. A few changes recommended by the Sunset Advisory Commission are needed to include and update commission across-the-board recommendations.

The Racing Commission is needed to oversee and regulate the pari-mutuel industry and to ensure it is a fair and honest industry. An independent agency is the best way to regulate pari-mutuel racing because of its unique structure and the necessity of day-to-day oversight of tracks and wagering. Any transfer of functions would result in little or no savings because a similar number of persons would be needed.

Because the Texas racing industry is changing rapidly and significant changes may take place in the next few years, the commission should be subject to sunset review again in six years and all commission rules should be evaluated and either adopted or repealed by January 1, 1998.

**Structure of the commission.** Currently, all appointed commissioners are required to have special knowledge in either the greyhound or horse racing or to be a veterinarian. This criteria should be eliminated for some of the commissioners because the basic rules have been promulgated, and the regulatory duties of the commission do not require racing or veterinary expertise. CSHB 1305 would allow for four public members with no special knowledge and one commissioner each with knowledge in horse and greyhound racing. This would allow the commission to retain expertise in horse and greyhound areas while ensuring broad representation. The most important qualification for membership on the Racing Commission should be impartiality, not industry knowledge. Most Texas boards and

commissions require general public membership, and other states require public membership on their racing boards.

It is no longer necessary to divide the commission into horse and greyhound panels, but the bill would still allow them to divide into sections to review or consider rules and to utilize experts when it needs technical expertise. The major decisions such as track licensing and rule promulgation that necessitated the panels so that competing interests would be balanced have been accomplished. The panel structure has been problematic, allowing the majority of a panel, two persons, to make controversial licensing decisions and leading to inconsistent rules for the two industries. No other state boards, even ones with divergent responsibilities, are divided into separate sections.

**Duties of the commission.** The Racing Commission should be responsible only for regulating — not encouraging or promoting — racing. The distinct jobs of regulating the industry and protecting the public should not be meshed with promoting the industry. In general, the regulation and promotion of industries are separated with the state's efforts to promote businesses usually handled by the Department of Commerce or the Department of Agriculture. CSHB 1305 would give the Department of Commerce the authority to promote and encourage the racing industry because it has necessary experience and expertise.

**Employment of race judges and stewards.** To avoid conflicts of interests and ensure that races are fair and honest, the top regulatory officials at each track, stewards or judges, should all be state employees. Currently, two of the three officials are track employees. Judges and stewards make decisions about the fairness of races and the discipline of licensees. This inappropriately gives state authority affecting licenses to a non-state employee. In addition, it can lead to conflicts of interest in which track employees make decisions affecting tracks.

CSHB 1305 would establish procedures so tracks would have input into the commission list of approved judges and stewards. The commission would be authorized to impose a fee for the race officials to ensure the state does not incur additional costs.

**Appeal of judges' and stewards' decisions.** Race officials' decisions about fouls or regarding the running of a race should be unappealable to ensure that someone at the race has the final say. Judges and stewards are best able to make these decisions in the same way that referees are the best persons to make decisions during other sport competitions. The judicial appeal process wastes both time and money and so far has not resulted in a decision being overturned. Other decisions besides those about what happened in a race such as license suspensions would remain appealable.

**Cost of criminal history check.** About \$230,000 of the DPS budget is being spent annually for the criminal history check for license applicants. CSHB 1305 would allow this money to be recovered through the license fees. This would be consistent with authority for other non-criminal justice agencies to recover all or some of the costs of criminal background checks and other provisions that require fees paid by licensees to cover the cost of regulation. The total cost for a criminal history check is about \$39 which would not be prohibitive for licensees.

**Oversight of pari-mutuel funds.** CSHB 1305 would give the commission much-needed authority to monitor breed registries and others that receive a portion of the deductions from track funds to encourage the breeding of racehorses and greyhounds in Texas. This would allow the commission to ensure the funds are spent in an effective manner and that someone is accountable for them. The commission would be able to adopt uniform standards and require the independent audits.

**Automated teller machines.** Allowing automated teller machines at racetracks could encourage patrons to gamble more than they could afford.

**Admission fee.** Eliminating admission fees for licensees would allow track workers and others who have paid license fees to enter a track without an additional payment and would ensure that tracks do not have to pay to local governments the portion of the admission fee that is dedicated to cities and counties for employees entering the track for work.

**Criminal offenses.** CSHB 1305 would consolidate the criminal offenses related to racing into one section, adjust the penalties so they are in line



with ones in the Penal Code and add offenses that are necessary to deter and prosecute criminal offenses related to racing.

**Off-track betting.** The racing commission sunset legislation would be the wrong place to consider legalizing off-track betting. Sunset bills are supposed to look at departmental policies and procedures, not major policy changes such as legalizing off-track betting.

OPPONENTS  
SAY:

Some of the changes that this bill would make to the Racing Commission and the commission's oversight of the industry are unnecessary and could actually hurt, not help, racing in Texas.

**Structure of the commission.** The requirements that commissioners have a background in racing should be retained because pari-mutuel racing is a unique industry that requires expertise and experience to understand and regulate. It could take many months for a member or the general public or a businessperson to understand racing and to make informed decisions about its regulation.

The horse and greyhound panels should be retained because the industries have some fundamental distinctions and require decision making that should be considered only by persons with expertise in that area. It is more efficient to allow decisions affecting only one industry to go through panels. Panels also reduce some of the competition between the industries. There are still potential areas of conflicts between the two industries.

The requirement that veterinarians be appointed to the commission should be retained because of the expertise and knowledge that they bring to the commission and the importance of overseeing the health and safety of race animals.

**Duties of the commission.** The current language does not require the commission to "promote" racing but states that one of the purposes of the Racing Act is to "encourage" racing and related industries. This language should not be eliminated because it ensures that the commission take into account the effect of its decisions on the industry.

**Employment of race judges and stewards.** Tracks should continue to employ some of the race officials to ensure the effect of decisions on the tracks is considered. Tracks should not be charged for state costs to employ judges and stewards, especially because they would have no input into the salary of the officials.

Tracks should retain at least some authority over the race officials. Without any type of managerial authority over track officials, tracks could have difficulty overseeing their work hours and other functions. Tracks should have input into the hiring of race officials. For instance, the state could allow the tracks to choose the officials from an approved list.

**Appeal of judges' and stewards' decisions.** CSHB 1305 would unfairly eliminate current due process procedures available for persons to appeal some judges' and stewards' decisions. As the industry grows and purses become larger, the decisions of race officials could become even more controversial, and it is important that this avenue be available for persons who feel an official's decision was unfair or wrong. The ability of persons to appeal judges' and stewards' decisions can act as a deterrent to ensure they make sound, fair rulings.

**Cost of criminal history check.** The cost of checking the background of licensees should be borne by the state as a cost of regulating pari-mutuel wagering. A \$39 fee on top of the license cost, which can range from \$20 to \$75, could be a burden on licensees, especially low-paid food service or maintenance staff.

**Oversight of pari-mutuel funds.** The language allowing the commission to adopt reporting and other requirement for funds going to breed associations and others is overly broad. The bill should clearly state that the commission has no authority to look into parts of an organization other than the expenditure of racing funds.

**Automated teller machines.** Patrons are able to cash checks at racetracks, so it seems irrational to deny them access to automatic teller machines. In fact, since most machines have a limit on daily withdraws and do not let persons overdraw an account, they would provide a better check on patrons

overspending than current practices. The machines could relieve some of hassle tracks experience in cashing checks.

**Admission fee.** Exempting all license holders from admission fees could cost tracks a significant amount of money. It would be better to let each track develop its own policy.

OTHER  
OPPONENTS  
SAY:

**Off-track betting.** The Legislature should legalize off-track betting to stimulate interest in pari-mutuel racing and to meet the demands of Texans who may want to wager on a race but are unable to travel to a track.

NOTES:

The committee substitute made numerous changes in the original bill, including changing the composition of the appointed members from all public members with no special knowledge, authorizing the commission to split into sections to consider rules, requiring the commission to publish a list of approved race officials, giving cities authority to operate a class 3 track and placing criminal offenses in one section.

Another bill dealing with the continuation of the Racing Commission, HB 2511 by Wilson, is pending in the House Licensing and Administrative Procedures Committee. A Senate bill dealing with the continuation of the Racing Commission, SB 367 by Armbrister, is pending in the Senate State Affairs Committee.