

SUBJECT: Continuing the Racing Commission

COMMITTEE: Committee substitute recommended

VOTE: 8 ayes — Wilson, Kubiak, Goolsby, Haggerty, D. Jones, Pickett, Torres,
Yarbrough

1 nay — Hamric

WITNESSES: For — Robert Spellings, Texas Thoroughbred Association; Jeff True, Texas
Quarter Horse Association; Robert E. Johnson, Jr., Gulf Greyhound
Partners, Dr. Charles Graham, DVM; Mario Martinez, Valley Greyhound
Park; Jim Frey, Texas Greyhound Association

Against — Demarious K. Frey; Charles Hurwitz

On — Larry J. Christopher, David J. Freeman, Texas Racing Commission;
Byron L. Wade, Sam Houston Race Park

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.

Seven horse tracks and three greyhound tracks are currently licensed by the commission to conduct pari-mutuel wagering, but as of April 1997, only five horse tracks and two greyhound traces were operating or scheduled to operate in 1997. Three of the horse track licenses are for class 1 tracks (large tracks with as many race days as the commission grants), three 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). In addition to live racing, tracks may present "simulcast" races that allow bettors at one track to bet on races televised from another track.

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 borrowed a total of about \$8.4 million and was charged 12 percent interest on the funds through August 1993 and 6.75 percent interest thereafter. At the end of fiscal 1996 the interest totaled about \$5.1 million. The commission had paid back a total of approximately \$4.1 million and still owed about \$9.5 million.

The Racing Commission was scheduled to be abolished September 1, 1995, unless continued by the Legislature. In 1995 a sunset bill continuing the agency (HB 1305 by Gray, Black and Wilson) until September 1, 2001, died when a conference committee report on the bill was subjected to a point of order in the House on May 28. The commission subsequently was continued in SB 374 by Armbrister for two years, until September 1, 1997, when it will be abolished unless continued by the Legislature.

For more information on pari-mutuel wagering in Texas, including proposals for changes, see *Safe Bet — More Gambling Debate in 1997*, House Research Organization, Focus Report Number 74-29, November 19, 1996.

DIGEST: CSHB 1445 would continue the Texas Racing Commission until September 1, 2005, and change the composition and duties of the commission. The bill would make numerous other changes, including allowing bettors at horse tracks to wager on televised races from greyhound tracks and bettors at greyhound tracks to wager on televised races from horse tracks and moving an allocation of part of the simulcast racing pool. The commission would be required to review all of its rules and to readopt, modify or repeal the rules before January 1, 2002.

The bill would make other changes including standard Sunset Advisory Commission recommendations on conflict of interest, grounds for removal, commission member training, public testimony at commission meetings, legislative review of funds, compliance with state and federal accessibility laws, development of an equal opportunity policy, complaint handling, and advertising practices.

Commission structure. CSHB 1445 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 special knowledge or experience related to greyhound racing and one member would have to have special knowledge or experience relating to horse racing. The bill would eliminate current 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's presiding officer (formerly called the chairman). As current commission member's terms expire, the governor would have to make appointments to achieve the new membership plan as soon as possible.

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 able 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.

Commission duties. HB 1445 would eliminate as current purposes of the Racing Act the encouragement of agriculture, the horse breeding industry, the horse training industry, the greyhound breeding industry, tourism, and employment opportunities related to racing. The purpose of the act would be to provide for the strict regulation of horse and greyhound racing and the control of pari-mutuel wagering. The Department of Commerce would be required, if appropriated funds, to promote and encourage the horse and greyhound industry. The commission would have to consider the effect of its actions on the state's agricultural, horse breeding and training, and greyhound breeding and training industries.

Cross-species simulcasting. CSHB 1445 would allow bettors at horse tracks to wager on televised simulcast greyhound races, and bettors at greyhound tracks to wager on simulcast horse races. Horse tracks could not be required to accept greyhound simulcast signals, and greyhound tracks could not be required to accept horse simulcast signals.

If a horse track were to simulcast greyhound races, it would have to first try to reach an agreement concerning the simulcasting with the nearest greyhound track. If that could not be done by September 1 of the year before the calendar year that the simulcasting was to occur, the horse track could conduct betting on greyhound simulcasting pursuant to an agreement with any greyhound track in the state. Similarly, a greyhound track wishing to simulcast horse racing would have to first try and reach an agreement with the nearest Class 1 horse track. If an agreement could not be reached by September 1 of the year before the calendar year that the simulcasting was to occur, the greyhound track could purchase a signal from any Class 1 horse track in the state, pursuant to an agreement.

A horse track would have to offer wagering on all simulcast Texas greyhound races before it could offer wagering on out-of-state simulcast greyhound races. Similarly, a greyhound track would have to offer wagering on all available simulcast Texas horse races before it could offer wagering on out-of-state simulcast horse races.

If a horse track that conducted its first race within 12 months of CSHB 1445's effective date or a horse track within 60 miles of such a track wanted to simulcast greyhound races, they would have to have an agreement with each other.

Repayment of commission debt, gambling prevention funds. The 0.25 percent of each simulcast race betting pool that is currently set aside for the Texas Commission on Alcohol and Drug Abuse (TCADA) for the prevention of problem gambling would instead go to reimburse the general revenue fund for the commission's debt.

Employment of race judges and stewards. The commission would be required to employ all three of the 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. The track would be able to submit written comments to the commission about the job performance of judges and stewards, but the comments would not be binding on the commission. The commission would be able to impose a fee on tracks for employing the judges and stewards.

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 applicant and to reimburse DPS for the cost of the check.

Criminal offenses. CSHB 1445 would consolidate provisions dealing with criminal offenses. The bill also would change some of the penalties for some current offenses and add criminal offenses including: hindering a search, unlawful possession of credentials, and forging a pari-mutuel ticket.

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 racing. The organizations would have to file an annual independent audit with the commission. The commission would be able to review an organization's records and to suspend or withhold funds if an organization failed to comply with the requirements or performance measures or had material questions raised about the use of the funds.

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

- giving the commission authority regarding security bonds, cease and desist orders, injunctions, and summary suspensions;
- requiring the commission to adopt rules for regulating, inspecting and correcting inappropriate or unsafe racetrack premises, including actions to be taken if a track does not correct an inappropriate or unsafe condition and requiring the commission to adopt a method of supervising changes to racetrack premises;
- adding to the items for which the commission can refuse, 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 track;
- authorizing the commission to waive licensing prerequisites for license applicants who have a license from another state with substantially equivalent licensing requirements and for applicants from states with which Texas has a reciprocal agreement;
- authorizing the commission to monitor horseman's account funds which are used to pay race prizes; and
- 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, in interactions between members and a track or the commission.

The bill would take effect September 1, 1997

**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 remove an illogical prohibition on “cross-species” simulcasting and to help the commission pay off its debt to the state. Strengthening the commission's oversight of racing would help ensure fair races and prevent industry financial abuses, poor track management and other problems.

The Racing Commission is needed to oversee and regulate the pari-mutuel industry and to ensure it is fair and honest. 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 employees 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 eight years instead of the usual 12, and all commission rules should be evaluated and either adopted or repealed by January 1, 1998.

Commission structure. Currently, all appointed commissioners are required to have special knowledge in either greyhound or horse racing or to be a veterinarian. These restrictions should be eliminated for some of the commissioners because the basic racing rules have now been promulgated, and the regulatory duties of the commission no longer require special racing or veterinary expertise. Veterinary expertise was especially necessary when tracks were being built and rules established but is no longer needed by the commission on a daily basis.

CSHB 1445 would allow for four public members with no special knowledge and one commissioner each with knowledge in horse and greyhound racing. This would let the commission to retain expertise in horse and greyhound areas while ensuring broad representation and would not prohibit the appointment of any qualified person, including a veterinarian. 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 officially divide the commission into horse and greyhound panels, but the bill would still allow them to establish sections to review or propose rules and to utilize experts when it needs technical expertise. The major decisions such as track licensing and rule promulgation that necessitated the panels to balance competing interests have been accomplished. The panel structure has been problematic,

allowing a small 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 for policy decisions.

Commission duties. 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 from the state's efforts to promote businesses, which are usually handled by the Department of Commerce or the Department of Agriculture. CSHB 1445 would give the Department of Commerce the authority to promote and encourage the racing because it has the necessary experience and expertise in promoting Texas' industries.

Cross-species simulcasting. While the Racing Act allows bettors at one track to bet on races simulcast by television from another track, it illogically specifies that betting on horse racing can take place only at a horse track and betting on greyhound racing can take place only at a greyhound track. The prohibition should be lifted to stimulate interest in pari-mutuel racing and meet the demands of bettors whose travel possibilities are limited. For example, cross-species simulcasting would allow bettors in Corpus Christi, far away from any horse track, to go to their greyhound track to wager on horse races.

CSHB 1445 would require tracks to try and work out deals with neighboring tracks before beginning cross-species simulcasting. This would allow the tracks to develop agreements so that betting revenue could be shared. However, if an agreement cannot be reached with a neighboring track, tracks could work with other Texas tracks.

The bill also would require Lone Star Park in Grand Prairie, which is scheduled to begin live racing in 1997, and possibly Trinity Meadows, the only park within 60 miles of Lone Star, to have a have an agreement before either could begin cross-species simulcasting. This would ensure that these horse tracks operating in the same market would have to work together so

that neither would be unfairly harmed by cross-species simulcasting at the other. (However, Trinity Meadows no longer has a license to operate, although there is litigation on the issue.)

To promote Texas racing, the bill would require Texas tracks to take all the simulcasting signals from all Texas tracks before taking any signals from out-of-state tracks.

Repayment of commission debt, gambling prevention funds. The best way for the commission to pay off its debt to the state would be to shift general revenue funds set aside for the simulcast betting pool that currently go to TCADA for problem gambling. The level of racing in Texas is less than expected and problem gambling related to horse racing has not been widespread yet these funds continue to accumulate. CSHB 1445 would allow about \$900,000 per year to be credited against the commission's debt. Although the law now requires these funds to be set aside for TCADA, in the past they have not always been appropriated to TCADA but have been swept into the general revenue fund. Redirecting these funds raised through pari-mutuel wagering to pay commission debt would not betray any intent of the original Racing Act. Reportedly, problem gambling related to the lottery has increased, and, if necessary, lottery funds — not racing funds — should be used for problem gamblers.

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, called 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. The current situation inappropriately gives authority affecting licensees to a non-state employee. In addition, it can lead to conflicts of interest in which track employees make decisions affecting tracks. CSHB 1445 would establish procedures so tracks would be able to comment on the performance of judges and stewards, but those comments would not bind the commission. The commission would be able to impose a fee for the race officials to ensure the state does not incur additional costs. It is proper for the tracks to pay this cost of regulation.

Cost of criminal history check. The DPS and the Racing Commission currently absorb the costs of criminal history checks, but the commission does not collect this fee from the licensee. The estimated cost of these checks is about \$230,000 for each year of fiscal 1998-99. CSHB 1445 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, about \$39 for an initial check and \$24 for a renewal, would not be prohibitive for licensees.

Criminal offenses. CSHB 1445 would consolidate the criminal offenses related to racing into one section, adjust the penalties so they are in line with the Penal Code, and add offenses that are necessary to deter and prosecute criminal offenses related to racing.

Oversight of pari-mutuel funds. CSHB 1445 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 to ensure it does not overreach its authority.

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

Automated teller machines. Automated teller machines should not be allowed at racetracks. They could encourage patrons to gamble more than they could afford.

Age of bettors. The minimum age to bet on a horse or greyhound race should remain 21, the legal age to purchase alcohol.

OPPONENTS
SAY:

It might be best to let the Racing Commission be abolished and put an end to pari-mutuel racing in Texas. The industry has failed to live up to its projections and pari-mutuel racing is a dying industry. The state would be better off without this form of gambling.

Another alternative would be to merge the Racing Commission with the Lottery Commission into one agency to regulate gambling. This would be an efficient way to oversee both pari-mutuel wagering and the lottery.

Some of the changes that CSHB 1445 would make to the Racing Commission and its oversight of racing are unnecessary and could actually hurt, not help, racing in Texas.

Commission structure. The requirements that all commissioners have a background in racing should be retained because pari-mutuel racing is a unique industry that requires expertise to understand and regulate. It could take many months for a member of the general public or a business person 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 each 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. Having a veterinarian on the commission would demonstrate the state's commitment to overseeing the health and safety of race animals.

Commission duties. Current law 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 takes into account the effect of its decisions on the industry and remembers that economic development was part of the intent in allowing pari-mutuel wagering.

Cross-species simulcasting. The voters approved live racing, with no mention of televised racing, and cross-species simulcasting would expand this form of unauthorized gambling. Simulcasting emphasizes gambling, not the sport of racing, and simulcast races do little to create jobs or improve the economies of race track towns in the way live racing can.

Cross-species simulcasting would not necessarily benefit all tracks. For example, either the Houston area horse track or greyhound track could be hurt if bettors chose to go to the closer track to bet on simulcast races of the other species instead of traveling to the other type of track. A track should have the right to the market the races that were allowed when it was licensed without having to compete with a nearby track of another species. This could be especially unfair to horse tracks that have more track investment and more expenses than greyhound tracks.

Repayment of commission debt, gambling prevention funds. The approximately \$900,000 per year that is currently earmarked to help combat problem gambling should continue to go to TCADA. This was the intent of the original Racing Act, and the state should not turn its back on gamblers who need help and the problems that may be created by pari-mutuel wagering. The Racing Commission should be held to the deal that it repay its start-up funds out of the money it generates.

Employment of race judges and stewards. Tracks should continue to employ some of the race officials to ensure that the impact of decisions on the tracks is considered. Tracks should not be charged for state costs to employ judges and stewards, especially because the tracks 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. An alternative would be to allow the tracks to choose the officials from an approved list or to have two of the three officials employed by the state.

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 lower-paid staff.

Oversight of pari-mutuel funds. The provision that would allow the commission to adopt reporting and other requirements 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.

OTHER
OPPONENTS
SAY:

Cross-species simulcasting. If cross-species simulcasting is going to be allowed, it should be done without any restrictions on what signals a track can and must take.

Off-track betting, card rooms. 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. Allowing track patrons to play and bet on card games of skill such as poker and blackjack would give Texans more entertainment options while stimulating interest in pari-mutuel racing and would allow Texas to compete with Louisiana, Las Vegas and other places where gambling is permitted.

Automated teller machines. CSHB 1445 should allow automated tellers at racetracks. 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 be programmed to allow access to a checking account only or to limit the amount of a withdrawal. The machines could relieve some of the hassle tracks experience in cashing checks. Since automatic teller machines are often close to or in lottery ticket sales outlets, it would only be fair to allow them at racetracks.

Age of bettors. The minimum age to bet on a pari-mutuel race should be lowered so that 18-year olds — who are permitted to purchase lottery tickets — would be able to bet. This is only fair since the lottery competes with the pari-mutuel industry for Texans entertainment dollars.

NOTES:

The committee substitute changed the original version of the bill by removing the prohibition on cross-species simulcasting, moving the allocation of .25 percent of the simulcast betting pool, and giving the commission authority relating to security bonds, cease and desist orders, injunctions, and summary suspensions.

The companion bill, SB 356 by Armbrister, has been referred to the Senate State Affairs Committee.