

- SUBJECT:** Continuing the Racing Commission
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 9 ayes — Hamilton, Quintanilla, Driver, Geren, Gutierrez, Harless, Kuempel, Menendez, Thompson  
0 nays
- WITNESSES:** For — Bryan Brown, Retama Development Corp.; Drew Shubeck, Lone Star Park  
Against — David Hooper, Texas Thoroughbred Association; Marsha Rountree, Texas Horsemen’s Partnership  
On — Mark Fenner and Chuck Trout, Texas Racing Commission; David Forrest, Texas Equine Research Account Advisory Committee; David Lunt, Texas AgriLife Research; Steven Ogle, Sunset Advisory Commission
- 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, 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, 2011, under the Sunset process unless continued by the Legislature.  
  
Texas has four active horse tracks, three 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); none of the operating tracks are class 2 tracks (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). The three operating greyhound tracks are Gulf Greyhound Park in LaMarque, Gulf Coast Racing in Corpus Christi, and Valley Race Park in Harlingen.

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 if it is \$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 \$3.3 million in 2010.

**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 qualifications specified in statute, 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 three sessions, the Legislature has not appropriated funds from the account, and Texas AgriLife Research has given the committee funds for grants and covered the administrative costs of the committee.

DIGEST:

CSHB 2271 would continue the Texas Racing Commission until September 1, 2017. The bill would repeal the current provision that racetrack licenses are perpetual, require the commission to designate tracks as active or inactive, and require the commission to develop an annual license renewal process for inactive tracks. The bill also would modify the commission's oversight powers, 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 Account Advisory Committee.

The bill would apply standard Sunset language to the Racing Commission, including provisions for conflicts of interest and the development and use of alternative rulemaking, and dispute resolution procedures.

The bill would take effect September 1, 2011.

**Racetrack license review and renewal.** CSHB 2271 would repeal the current provision of the Racing Act that states that racetrack licenses are perpetual. Instead, the Racing Commission would have to designate each racetrack license as active or inactive.

A license would have to be designated as active if the track held live racing or made a good faith effort to conduct live racing. Active racetrack licenses still would have to be reviewed by the commission at least once every five years, and inactive licenses would be subject to an annual renewal process.

The commission would have to establish by rule a renewal and review process for inactive racetrack licenses. Inactive licensees would have to complete the annual renewal process until the commission designated them as active or refused to renew their license.

The bill would establish certain criteria that the commission had to consider when deciding whether to renew an inactive license, including the license holder's financial stability and ability to conduct live racing. The commission would be authorized to refuse to renew an inactive 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 or that the license holder failed to make a good faith effort to conduct live racing.

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;
- requiring the commission to adopt a staggered schedule to review licenses;
- requiring persons applying for a license renewal to submit fingerprints, just as license applicants must do;
- requiring the commission to designate each track license as active or inactive by September 1, 2012; and
- requiring the commission to set and collect renewal fees;

**Commission oversight.** The executive director of the racing commission would be given new authority to modify a decision of a steward or judge concerning violations of racing rules or unethical practices. Penalties modified by the executive director could include a fine of up to \$10,000, a suspension of up to two years, or both, while under current law, the penalties imposed by judges and stewards can include a fine of up to \$5,000, a suspension of up to one year, or both. Stewards' and judges' decisions could be appealed, regardless of whether the decision was modified. The bill would repeal the current authority of stewards and judges to refer cases to the Racing Commission if they thought penalties were not sufficient.

CSHB 2271 would authorize the commission to require holders of racetrack licenses to post a surety bond or other security. The security would be to ensure track license holders' compliance with the Racing Act and with commission rules, and the amount would be determined by rule.

CSHB 2271 would 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 during a review or renewal that the track was ineligible for a license. The commission's statutory authority would include revoking, suspending, or refusing to renew a track's license, imposing administrative penalties, and taking any other action as established by commission rule.

**Worker licensing.** CSHB 2271 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 use rules to categorize the occupations of racetrack employees. The rules would have to require licenses of:

- employees who work in an occupation determined by the commission to give the employee an opportunity to influence the racing; and
- employees who likely would have significant access to the backside of racetracks or to restricted areas of the front side of a racetrack.

Racetracks would be responsible for ensuring that their employees complied with the Racing Act and Racing Commission rules. The commission would be authorized to impose disciplinary action against a licensed 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 applicants when they renewed their occupational licenses and at least every 36 months.

**Agency financing.** CSHB 2271 would eliminate uncashed winning tickets as a source of funding for the agency and allow tracks to keep the revenue from uncashed tickets.

The bill also would change the amount of money that is swept from the Texas Racing Commission fund at the end of each fiscal biennium. Instead of all the funds in the account at the end of a biennium being transferred to the General Revenue Fund, only money exceeding \$750,000 would be swept.

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

**Restrictions on betting.** Persons would be prohibited from accepting — in person, by telephone, or over the Internet — a wager on a horse or greyhound race, run in or outside of Texas, 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, except as permitted by law.

Persons who were 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.

**Eliminating the Equine Research Account Advisory Committee.**

CSHB 2271 would eliminate the Equine Research Account Advisory Committee and continue the authority of the executive director of Texas AgriLife Research to expend the appropriated funds from the equine research account. Proposals for equine research grants no longer would be subject to a mandatory evaluation by a 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 provide it. Because the racing industry has been in decline, CSHB 2271 would require review of the commission after six years instead of the standard 12 years. This would allow the Legislature to reassess the agency's role in the context of a changing industry.

CSHB 2271 should remain a sunset bill focused on the agency's operations and would not be an appropriate place to authorize slot machines or other gambling at racetracks.

**Racetrack license review and renewal.** CSHB 2271 would clarify the Racing Commission's authority so that it could provide adequate, ongoing oversight of racetrack licensees and ensure that licensees actually ran races or were making progress toward holding 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 authority, give the commission authority to revoke a track license. These questions have resulted in the commission's taking no action against the two inactive track licensees that have held licenses since 1989 but have yet to build a track.

CSHB 2271 would address this problem by ending perpetual licenses and establishing a system of active and inactive licenses. Active licenses

would be those actually racing or making good faith efforts toward live racing.

Even without the word “perpetual” in the statute, active tracks would be secure. The Racing Act outlines the due process requirements that the tracks would have if the commission moved to revoke or suspend a license. Any revocation or suspension would be a long process that followed other attempts to remedy a problem.

Active licenses would continue under the current requirement that the commission review their ownership and management every five years. There is no need for a formal, annual renewal process for these tracks since they are running races and the commission has a constant presence at the tracks. This allows the tracks to 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.

Inactive licenses would be targeted for annual renewal so that the commission could evaluate them and renew only those making progress toward holding live racing. 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.

Tracks with concerns about being designated inactive simply would have to make a good faith effort to hold races to be tagged as active. The commission’s authority would be clear with the language in CSHB 2271 that says it could refuse to renew an inactive license if renewing the license were not in the best interests of racing or the public or if the license holder failed to make a good faith effort to conduct live racing.

CSHB 2271 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 the bill would be inconsistent with other lending situations involving licensed industries.

**Commission oversight.** Other provisions in the bill would improve commission oversight and help better regulate licensees.

Allowing the executive director to modify the decisions of judges and stewards would give the agency another tool to enforce compliance with

the Racing Act and agency rules. It also would make the current process for appealing these penalties more logical, with an appeal going to the State Office of Administrative Hearings and then to the Racing Commission.

CSHB 2271 would allow the commission to require license holders as well as applicants to post security bonds to ensure ongoing compliance with commission rules or with the statute, even after a license had been issued. This would give the state another regulatory tool and could help protect the state if it had to take over a failing track. The commission is a public, accountable body that would act in a reasonable matter, and there is no reason to think it would treat licensees unfairly by requiring bonds in an unfair or capricious way.

CSHB 2271 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 in a reasonable, measured way when taking disciplinary actions, and there would be an appeals process available to tracks who disagreed with an action.

**Worker licensing.** CSHB 2271 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. Adopting this change could reduce by almost 2,000 the number of persons licensed by the commission whose occupations do not affect racing, 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 2271 would address this problem by requiring licensing only of those who could affect pari-mutuel racing, such as trainers, jockeys, and grooms. The commission still would have authority over other employees through their employers and the tracks, and racetracks are responsible for their employees' compliance with the Racing Act and commission rules.

CSHB 2271 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.

**Agency financing.** CSHB 2271 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 their amount of uncashed tickets and drug-testing costs reimbursed with OUTs revenue.

To make up for the loss of uncashed tickets as a source of revenue, the commission would adjust the racing-related regulatory fees it charges, giving it a more consistent revenue stream and making 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.

The bill also would address a problem the commission has with cash flow by allowing only money above \$750,000 in the Texas Racing Commission fund to be swept into general revenue at the end of a biennium. This would leave the commission with the funds necessary for day-to-day operations.

**ATM limit.** CSHB 2271 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. Texans should be free to spend their money however they wish.

**Restrictions on betting.** CSHB 2271 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 2271 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 2271 should bring some bettors and on-line sites into compliance.

**Eliminating the Equine Research Account Advisory Committee.**

CSHB 2271 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 three sessions the Legislature has not appropriated funds from the Equine Research Account, and AgriLife Research has awarded the small amount of grant money 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 proposal review and award process. Under CSHB 2271, 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:**

**Racetrack license review and renewal.** With CSHB 2271's repeal of current law designating racetrack licenses as perpetual, it would be best to make it clear in statute that active tracks hold their licenses unless they are suspended, revoked, or surrendered. This would ensure that the Racing Commission and the tracks understood the nature of their licenses. Although the commission likely would use its authority to conduct the currently required five-year ownership and management review judiciously, it would be better to establish clear language about retaining licenses than to rely on interpretations of the law. Making clear that tracks hold their licenses unless action is taken also would help tracks secure financing when needed for additional investments

The annual review and renewal process that CSHB 2271 would establish for inactive tracks could be burdensome for both the tracks and the agency. It might be better to authorize the commission to hold periodic reviews because annual reviews may not be necessary in all cases. Reviewing half a dozen or so tracks annually could tax commission staff. If the commission required voluminous information from the tracks, it

could distract the tracks from making progress toward racing. Annual reviews also could make obtaining financing to build a track more difficult and more costly.

**Commission oversight.** Allowing the Racing Commission's executive director to modify the decisions of stewards and judges would be unnecessary and could give the executive director too much power. The executive director could override judges' and stewards' decisions with arbitrary modifications. This could undermine the authority of stewards and judges, all of whom are trained and experienced. The current system works well.

CSHB 2271's provisions allowing the commission to require a bond from licensees would be too broad and could be subject to abuse. The commission would have unrestricted authority to require a bond under any circumstance, including something as minor as a track not being clean enough. It would be better to limit this authority to when a licensee was not complying with commission rules or the Racing Act.

The bill also has overly broad language that would allow license revocations if track employees violated the law or a commission rule. A better approach would be for any new commission authority to be targeted toward individuals who did wrong or to limit the commission's actions to those other than revocation.

**Worker licensing.** The commission should continue to license all those involved with racing. No matter what the track-related job, it would be best to license them all 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.

**ATM limit.** 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 to place wagers.

**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.

**Eliminating the Equine Research Account Advisory Committee.**

Abolishing the committee could hurt 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 made numerous changes to the original version of the bill, including adding the following provisions:

- the authority for the executive director to modify the decisions of judges and stewards;
- the requirement that only amounts above \$750,000 be swept from the Texas Racing Fund at the end of a biennium ;
- the elimination of the \$200 limit on ATM withdraws at tracks; and
- the change in the definition of “performance” as it relates to greyhound races so that the Racing Commission determined the number of races instead of it being a set 13 races.

The companion bill, SB 659 by Hinojosa, has been referred to the Senate Government Organization Committee and scheduled for a hearing on April 11.

During the first called session of the 81st Legislature in 2009, SB 2 by Hegar extended the Texas Racing Commission until September 1, 2011. The agency’s sunset bills, HB 2081 by Isett and its companion bill, SB 1013 by Hinojosa, were not enacted during the regular session.