

TEXAS RACING COMMISSION

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COMMITTEE ON RULES TO IMPLEMENT HB 2271

Tuesday, March 13, 2012

1:00 p.m.

Lone Star Park at Grand Prairie

1000 Lone Star Parkway

Grand Prairie, Texas 75050

Agenda

The Committee will meet to continue its effort to develop rule changes to implement the requirements of HB 2271, 82nd Regular Legislative Session. In particular, the Committee will discuss approaches and potential rules to implement Sections 7, 10, 11 and 28 of HB 2271. These sections relate to bonds, Commission review of active racetrack licenses, the designation of active and inactive racetrack licenses, the renewal of inactive racetrack licenses and associated fees, and disciplinary action.

Chapter 309. Racetrack Licenses and Operations

Subchapter A. Racetrack Licenses

Subdivision 2. Active and Inactive Racetrack Licenses

1 **Sec. 309.51. DESIGNATION OF ACTIVE AND INACTIVE RACETRACK**
2 **LICENSES**

3 (a) Initial Designation. The Commission shall designate a
4 racetrack license as either active or inactive as those
5 terms are defined in subsection (b). The Commission shall
6 make the initial designation for each track by September 1,
7 2012.

8 (b) Definitions.

9 (1) "Active-Operating" means the license holder
10 conducted live racing events at the racetrack during the
11 previous fiscal year and has been granted future live race
12 dates.

13 (2) "Active-Other" means the license holder has made
14 the following specific good faith efforts to conduct live
15 racing:

16 (A) applied for and received live race dates
17 under §303.41, Allocation of Race Dates, that remain
18 pending; and

19 (i) conducted pre-opening simulcasting; or

20 (ii) provided a bond under subsection (e) of
21 this section to ensure that the license holder
22 conducts pre-opening simulcasting and completes
23 the pending allocated live race dates.

24 (3) "Inactive" means the license holder does not meet
25 the requirements for the racetrack license to be designated
26 as Active-Operating or Active-Other.

27 (c) Subsequent Designation. After the initial racetrack
28 designation is made under subsection (a) of this section,
29 the Commission may change the designation of the racetrack

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Subdivision 2. Active and Inactive Racetrack Licenses

1 license at any time if the facts that supported the current
2 designation change.

3 (d) Racetrack Reviews.

4 (1) Racetracks designated "Active-Operating" or
5 "Active-Other" will undergo an ownership and management
6 review every five years pursuant to §6.06(k) of the Act.

7 (2) Racetracks designated "Inactive" will undergo an
8 annual review described by §309.52 of this Chapter.

9 (e) Bonds.

10 (1) To be designated as Active-Other under clause
11 309.51(b)(2)(A)(ii) of this section, a license holder shall
12 submit a bond by September 1 of the fiscal year for which
13 it is offered.

14 (2) The amount of the bond for the State Fiscal Year
15 beginning September 1, 2012, and each year thereafter is
16 \$400,000.

17 (3) Return or Forfeiture of Bond.

18 (A) If the racetrack conducts pre-opening
19 simulcasting during the first fiscal year of the bond,
20 the bond shall be retained for an additional fiscal
21 year or until the racetrack completes its first live
22 race meet. Upon completion of the racetrack's first
23 live race meet within the first two fiscal years of
24 the bond, the Commission shall return the bond to the
25 license holder.

26 (B) If the racetrack does not conduct pre-opening
27 simulcasting during the initial fiscal year of the
28 bonding period, the bond shall be forfeited on August
29 31 of the same fiscal year.

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1 (C) If the racetrack conducts pre-opening
2 simulcasting during the first fiscal year but fails to
3 conduct all of its allocated live race dates during
4 the first two fiscal years of the bond, the bond shall
5 be forfeited on August 31 of the second fiscal year.

6 (4) The bond of a horse racetrack that is forfeited
7 under this section shall accrue to the Escrowed Purse
8 Account under §321.509 of Chapter 321 and shall be
9 distributed in accordance with that section. The bond of a
10 greyhound racetrack that is forfeited under this section
11 shall accrue to the state greyhound breed registry and be
12 distributed through the Accredited Texas Bred Program.

13 (5) If an Active-Other racetrack forfeits a bond under
14 this section, the Commission shall review and may change
15 the license's designation as Active-Other at a regularly
16 scheduled meeting to be held within the following four
17 months of the bond forfeiture.

18 (f) Failure to Conduct Granted Live Race Dates.
19 Except as authorized by the Executive Secretary under
20 §303.41(h), if an Active-Operating or an Active-Other
21 racetrack fails to conduct any live race dates granted to
22 it by the Commission, the Commission shall review and may
23 change the license's designation at a regularly scheduled
24 meeting to be held within the following four months of the
25 bond forfeiture.

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Subchapter A. Racetrack Licenses
Subdivision 2. Active and Inactive Racetrack Licenses

1 **Sec. 309.52. REVIEW AND RENEWAL OF INACTIVE RACETRACK**
2 **LICENSES.**

3 (a) The Commission shall annually review each inactive
4 racetrack license. At the conclusion of each review, the
5 Commission may:

6 (1) designate the license as Active-Operating;

7 (2) designate the license as Active-Other;

8 (3) designate the license as Inactive; or

9 (4) refer the inactive racetrack license to the State

10 Office of Administrative Hearings for an evidentiary
11 hearing and Proposal for Decision as to whether the
12 Commission should refuse to renew the license.

13 (b) Application for Review.

14 (1) Each inactive racetrack license holder must submit
15 an application for renewal on a form prescribed by the
16 executive secretary.

17 (2) The applicant must submit one original and two
18 copies of the application and any supplemental documents.

19 (3) The applicant must swear before a notary public to
20 the truth and validity of the information in the
21 application and its supplemental documents. If the
22 applicant is not an individual, the chief executive officer
23 of the applicant must swear before a notary public to the
24 truth and validity of the information in the application
25 and its supplemental documents.

26 (4) The applicant must state the name, address, and
27 telephone number of an individual designated by the
28 applicant to be the primary contact person for the
29 Commission during the review and renewal process.

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Subdivision 2. Active and Inactive Racetrack Licenses

1 (c) Renewal Criteria. In determining whether to renew an
2 inactive racetrack license, the Commission shall consider:

3 (1) the inactive racetrack license holder's:

4 (A) financial stability;

5 (B) ability to conduct live racing;

6 (C) ability to construct and maintain a racetrack
7 facility;

8 (D) other good faith efforts to conduct live racing;

9 and

10 (2) other necessary factors considered in the issuance
11 of the original license.

12 (3) For purposes of this section, the Commission will
13 consider, but is not limited to, the following factors as
14 evidence that a license holder is making good faith efforts
15 to conduct live racing:

16 (A) securing financial support to construct the
17 racetrack facility;

18 (B) purchasing the real property of the designated
19 location for which the racetrack license was granted;

20 (C) entering into contracts for the construction of
21 the simulcasting and racetrack facilities;

22 (D) securing Commission approval of construction
23 plans;

24 (E) securing permits from regulatory authorities
25 concerning pre-construction matters such as utilities
26 and road improvements; and

27 (F) beginning and sustaining construction of the
28 simulcasting and live racing facilities.

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Subchapter A. Racetrack Licenses

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1 (d) Nonrenewal. The Commission may refuse to renew an
2 inactive racetrack license if, after notice and a hearing,
3 the Commission determines that:

4 (1) renewal of the license is not in the best
5 interests of the racing industry or the public; or

6 (2) the license holder has failed to make a good faith
7 effort to conduct live racing.

8 (e) For purposes of this section, the Commission will
9 consider, but is not limited to, the following factors as
10 evidence that renewal of a license is not in the best
11 interests of the racing industry or the public:

12 (1) the presence of any ground for denial, revocation,
13 or suspension of a license under §6.06 or §6.0603 of the
14 Act;

15 (2) forfeiture of any bond by an inactive racetrack
16 license holder that was required by the Commission;

17 (3) failure by an inactive racetrack license holder to
18 comply with any condition or order placed on the license by
19 the Commission;

20 (4) failure to maintain the ownership or leasehold
21 interest in the real property constituting the designated
22 location; or

23 (5) any factor identified in subsection (a) of §6.04
24 of the Act.

25 (f) The presence of any particular factor or factors under
26 this section does not require the Commission to renew or
27 refuse to renew an inactive racetrack license.

28 (g) Bonds. The Commission may require an inactive racetrack
29 license holder to provide a bond under §6.032 of the Act to

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1 ensure completion of any or all of the factors listed in
2 subsection (c) of this section. The amount of the bond
3 shall be determined by the Commission.

4 (h) Review Fees.

5 (1) Each inactive racetrack license must submit a
6 review fee with its application for renewal. The review
7 fee is composed of a variable processing charge. The
8 processing charge is the amount needed by the Commission to
9 cover the administrative and enforcement costs of
10 processing the request for renewal, including any costs
11 associated with processing a hearing at the State Office of
12 Administrative Hearings. A license holder must pay the
13 initial review fee contemporaneously with filing the review
14 application. The Commission shall hold the review fee in
15 the state treasury in a suspense account. The Commission
16 may transfer the processing funds due to the Commission to
17 the Texas Racing Commission Fund as costs are incurred. If
18 the actual cost to the Commission of processing the request
19 exceeds the amount deposited for the applicable charge, the
20 requestor shall pay the remaining amount not later than 10
21 business days after receipt of a bill from the Commission.
22 If the costs of processing the request are less than the
23 amount of the charge, the Commission shall refund the
24 excess not later than 10 business days after the
25 Commission's decision on the request becomes final.

26 (2) The initial review fee for an inactive racetrack
27 license is \$5,000. If the Commission refers an application
28 to the State Office of Administrative Hearings under
29 subsection (a) of this section, the applicant for renewal

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- 1 shall submit an additional \$50,000 review fee within 30
- 2 days of the referral.

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TEXAS RACING ACT – RELEVANT SECTIONS

Sec. 6.0601. Designation Of Active And Inactive Racetrack Licenses

- (a) The commission shall designate each racetrack license as an active license or an inactive license. The commission may change the designation of a racetrack license as appropriate.
- (b) The commission shall designate a racetrack license as an active license if the license holder:
- (1) holds live racing events at the racetrack; or
 - (2) makes good faith efforts to conduct live racing.
- (c) The commission by rule shall provide guidance on what actions constitute, for purposes of this Act, good faith efforts to conduct live racing.
- (d) Before the first anniversary of the date a new racetrack license is issued, the commission shall conduct an evaluation of the license to determine whether the license is an active or inactive license.
- (e) An active license is effective until the license is designated as an inactive license or is surrendered, suspended, or revoked under this Act.

Sec. 6.0602. Renewal of Inactive Racetrack License; Fees

- (a) The commission by rule shall establish an annual renewal process for inactive licenses and may require the license holder to provide any information required for an original license application under this Act. An inactive license holder must complete the annual renewal process established under this section until the commission:
- (1) designates the license as an active license; or
 - (2) refuses to renew the license.
- (b) In determining whether to renew an inactive license, the commission shall consider:
- (1) the inactive license holder's:
 - (A) financial stability;
 - (B) ability to conduct live racing;
 - (C) ability to construct and maintain a racetrack facility; and
 - (D) other good faith efforts to conduct live racing; and
 - (2) other necessary factors considered in the issuance of the original license.
- (c) The commission may refuse to renew an inactive license if, after notice and a hearing, the commission determines that:
- (1) renewal of the license is not in the best interests of the racing industry or the public; or
 - (2) the license holder has failed to make a good faith effort to conduct live racing.
- (d) The commission shall consult with members of the racing industry and other key stakeholders in developing the license renewal process under this section.
- (e) The commission shall set and collect renewal fees in amounts reasonable and necessary to cover the costs of administering and enforcing this section.

(f) The commission by rule shall establish criteria to make the determinations under Subsections (c)(1) and (2).

Sec. 6.032. Bond.

(a) The commission at any time may require a holder of a racetrack license or an applicant for a racetrack license to post security in an amount reasonably necessary, as provided by commission rule, to adequately ensure the license holder's or applicant's compliance with substantive requirements of this Act and commission rules.

(b) Cash, cashier's checks, surety bonds, irrevocable bank letters of credit, United States Treasury bonds that are readily convertible to cash, or irrevocable assignments of federally insured deposits in banks, savings and loan institutions, and credit unions are acceptable as security for purposes of this section. The security must be:

- (1) conditioned on compliance with this Act and commission rules adopted under this Act; and
- (2) returned after the conditions of the security are met.