



State of New York

SEP 1 2009

Department of State
Secretary of State

State of New York

Executive Chamber

No. 27

EXECUTIVE ORDER

AUTHORIZING NEW YORK CITY OFF-TRACK BETTING CORPORATION TO FILE PETITION UNDER PROVISIONS OF THE LAWS OF THE UNITED STATES FOR COMPOSITION OR ADJUSTMENT OF MUNICIPAL INDEBTEDNESS

WHEREAS, Article I, Section 9 of the New York State Constitution recognizes, as a permissible exception to an otherwise general prohibition against the authorization or allowance of gambling in this State, "pari-mutuel betting on horse races as may be prescribed by the legislature and from which the state shall derive a reasonable revenue for the support of government;" and

WHEREAS, pursuant to a series of Chapters of the Laws of New York, commencing with Chapter 143 of the Laws of 1970, the Legislature has authorized establishment, conduct and operation of off-track pari-mutuel betting systems on horse racing by designated public benefit corporations in participating municipalities within this State; and

WHEREAS, pursuant to such legislation, including among other Chapter Laws, Chapter 865 of the Laws of 1982, the operation of an off-track pari-mutuel betting system by a public benefit corporation known as the New York City Off-Track Betting Corporation ("NYCOTB") in New York City, is deemed to be a matter of State concern and a public purpose that cannot be adequately attained except by the powers of government, and that such public benefit corporation, as a body politic and corporate exercising the powers conferred upon it by the Legislature, performs a governmental function; and

WHEREAS, since inception nearly forty years ago, NYCOTB cumulatively has generated more than \$4.515 billion, for the support of the State, local governmental units within New York State and the horse racing industry; and

WHEREAS, in the Report of the independent certified public accountants to NYCOTB for each fiscal year since Fiscal Year 2005, NYCOTB's outside auditing firm has noted that NYCOTB has been required to make distributions in excess of its operating income before statutory distributions, thereby prompting the outside auditor to highlight the existence of uncertainty as to the ability of NYCOTB to continue to maintain operations as a "going concern"; and

WHEREAS, in consequence of the recurring circumstance of NYCOTB being required to make distributions that have exceeded revenue available for distribution after satisfaction of expenses of operation, the Mayor of the City of New York and the Board of Directors of NYCOTB, all of whom were appointees of the Mayor, directed NYCOTB management to prepare a plan for a full shut down of NYCOTB operations as of June 15, 2008; and

WHEREAS, pursuant to the provisions of Chapter 115 of the Laws of 2008, effective as of June 17, 2008, control of NYCOTB was transferred from the City of New York to the State, and the responsibility and power to appoint the members of the NYCOTB Board of Directors shifted to the Governor from the Mayor of New York City; and

WHEREAS, in the ensuing fourteen months following the effective date of Chapter 115, the financial circumstances of NYCOTB have continued to deteriorate, leading to the further depletion of cash available for operations and to the realistic prospect that NYCOTB may completely exhaust cash available to fund continued operations beyond the close of its current 2010 fiscal year on March 31, 2010; and

WHEREAS, as recently as August 14, 2009 the Office of the State Comptroller publically reported that:

“The New York City Off-Track Betting Corporation (NYC OTB), is facing financial insolvency if current financial trends continue The NYC OTB’s operating expenses and accumulated losses have increased steadily in the last four years, resulting in an operating deficit of approximately \$38 million. In total, the organization has an outstanding deficit of more than \$228 million. . . . NYC OTB provides millions of dollars in revenues to the horse racing industry, which in turn provides employment for thousands of New Yorkers. The industry is too important to fail. Something has to be done. Inaction will mean insolvency”; and

WHEREAS, the conclusions announced by the Comptroller validate and reinforce the public policy expressed by the Legislature when it transferred NYCOTB to the control of the State and adopted Chapter 115 of the Laws of 2008, which provides:

“The legislature hereby finds that the New York City off-track betting corporation (NYC OTB) is insolvent and facing closure. The legislature further finds that nearly 1.1 billion dollars, almost half of all money wagered on horse racing in New York state, is wagered through NYC OTB. The revenue distributed to the racing industry, which is derived from wagering through NYC OTB, plays an integral role in sustaining the viability of the entire horse racing industry, and NYCOTB employs almost 1,500 people in New York. The legislature therefore determines that the continued operation of NYC OTB Corporation is of paramount importance to the public interest”; and

WHEREAS, the Board of Directors of NYCOTB is considering actions to restore fiscal equilibrium to NYCOTB and enable it to continue to fulfill its tri-partite statutory mission of: (i) generating reasonable revenue for the support of government, (ii) preventing and curbing unlawful bookmaking and illegal wagering on horse races, and (iii) ensuring that off-track betting is conducted in a manner compatible with the well being of the horse racing and breeding industries in this State; and

WHEREAS, it is in the public interest to afford maximum flexibility to the NYCOTB Board of Directors as it charts a course to return NYCOTB to fiscal solvency and enable fulfillment and attainment of the mission assigned to it by the Legislature.

NOW, THEREFORE, I, DAVID A. PATERSON, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York do hereby order as follows:

The New York City Off-Track Betting Corporation, as reconstituted and continued in existence pursuant to Section 27 of Chapter 115 of the Laws of 2008, is hereby authorized to and may file any petition with any United States district court or court of bankruptcy under any provision of the laws of the United States, now or hereafter in effect, for the composition or adjustment of municipal indebtedness.



G I V E N under my hand and the Privy Seal of the
State in the City of Albany this first day
of September in the year two thousand
nine.

BY THE GOVERNOR

Louise K. Schwab
Secretary to the Governor

David A. Paterson