

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 402

H.P. 282

House of Representatives, February 6, 1991

Reported by Representative TARDY for the Commission to Study the Harness Racing Industry pursuant to Public Law 1989, chapter 787.

Reference to the Joint Standing Committee on Agriculture suggested and printing ordered under Joint Rule 18.

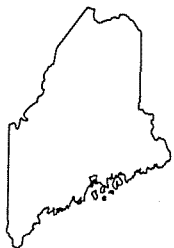
A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Revise the Harness Racing Laws.



Be it enacted by the People of the State of Maine as follows:

2
3 Sec. 1. 2 MRSA §6, sub-§2, as repealed and replaced by PL
4 1989, c. 878, Pt. A, §3, is amended to read:

6 2. Range 90. The salaries of the following state officials
and employees shall be are within salary range 90:

8 Superintendent of Banking;

10 Bureau of Consumer Credit Protection Superintendent;

12 State Tax Assessor;

14 Superintendent of Insurance;

16 Associate Commissioner for Programs, Department of Mental
18 Health and Mental Retardation;

20 Associate Commissioner of Administration, Department of
Mental Health and Mental Retardation;

22 Associate Commissioner for Institutional Management; and

24 Executive Director, Maine Waste Management Agency; and

26 Chair, State Harness Racing Commission.

28 Sec. 2. 8 MRSA §261, as amended by PL 1989, c. 503, Pt. B,
30 §48, is repealed and the following enacted in its place:

32 §261. Commission

34 1. Establishment. The State Harness Racing Commission as
36 established by Title 5, section 12004-G, subsection 32, shall
38 carry out the purposes of this chapter. The commission is
40 affiliated with the Department of Agriculture, Food and Rural
42 Resources as specified in this chapter. For the purposes of this
chapter, "department" means the Department of Agriculture, Food
and Rural Resources and "commissioner" means the Commissioner of
Agriculture, Food and Rural Resources.

44 2. Members. The commission consists of 5 members appointed
46 by the Governor. One member must be a member of the general
48 public with no industry affiliation. One member must be
affiliated with an agricultural society that conducts an annual
agricultural fair. The other 3 members must be persons with a
knowledge of harness racing.

50 3. Term of office. Except as provided in subsection 5,
52 members of the commission serve 3-year terms. Any vacancy is
filled by appointment for the remainder of the unexpired term.

2 Members whose terms expire serve until their successors are
3 qualified and appointed.

4 4. Confirmation. Appointees must be reviewed by the joint
5 standing committee of the Legislature having jurisdiction over
6 agricultural matters and are subject to confirmation by the
7 Legislature.

8 5. Chair. The Governor shall appoint one of the 5
9 commission members as chair. This position is a full-time,
10 unclassified, major policy-influencing position and is entitled
11 to an annual salary as determined by the Governor within salary
12 range 90, as established by Title 2, section 6, subsection 2.
13 The chair serves at the pleasure of the Governor.

14 6. Removal. Except as provided in subsection 5, the
15 Governor may remove any member of the commission for just cause.
16 A member who is subject to removal must be given a copy of the
17 charges against that member and must, upon request, be given an
18 opportunity to be heard upon 10 days' notice.

19 7. Conflict of interest. A commission member may not
20 participate in any matter before the commission in which that
21 member has a direct or indirect pecuniary interest or personal
22 bias or if any other conflict of interest is determined by the
23 commission to exist, either on its own motion or in response to a
24 written complaint.

25 Sec. 3. 8 MRSA §262, as amended by PL 1983, c. 834, §2, is
26 further amended to read:

27 **§262. Organization**

28 ~~The commissioners shall select one from their number to be~~
29 ~~chairman of the commission. The Commissioner of Agriculture,~~
30 ~~Feed and Rural Resources or his designee shall ex officio be~~
31 ~~secretary of the commission but shall not be a voting member~~
32 ~~thereof. Three of the members of the commission shall constitute~~
33 ~~a quorum to do business. The commission shall meet at least~~
34 ~~monthly and it shall be the duty of the secretary to keep a~~
35 ~~record of all proceedings of the commission and to preserve all~~
36 ~~books, maps, documents, papers and records entrusted to its care.~~

37 Sec. 4. 8 MRSA §264, as amended by PL 1985, c. 785, Pt. B,
38 §50, is repealed and the following enacted in its place:

39 **§264. Employees**

40 The commission shall contract with or employ, and shall
41 prescribe the duties of, all persons it determines necessary to
42 carry out the purposes of this chapter. Except as provided in

2 this section, the appointment and compensation of this staff are
3 subject to the Civil Service Law.

4 The commission shall contract for the services of qualified
5 persons to serve as presiding and associate track judges as
6 necessary to provide adequate policing and enforcement. The
7 judges are not employees of the State for any purpose. They are
8 entitled to be paid a per diem fee as determined by the
9 commission. They are not entitled to be reimbursed separately
10 for expenses. The race tracks and fairs shall reimburse the
11 commission for the per diem compensation of those presiding and
12 associate judges assigned to them.

13 Sec. 5. 8 MRSA §265, as repealed and replaced by PL 1983, c.
14 812, §56, is amended to read:

15 §265. Compensation

16 Members Except as provided for the chair in section 261,
17 subsection 5, members of the commission shall are entitled to be
18 compensated as provided in Title 5, chapter 379.

19 Sec. 6. 8 MRSA §267 is repealed and the following enacted in
20 its place:

21 §267. Budget and report

22 1. Budget. The commission shall submit to the commissioner
23 as provided in Title 5, section 1665, a budget sufficient to
24 carry out the provisions of this chapter and the commissioner
25 shall transmit these requirements to the Bureau of the Budget
26 without any revision, alteration or change. The commission shall
27 submit a copy of this budget with any desired comments to the
28 joint standing committee of the Legislature having jurisdiction
29 over agricultural matters and to the Executive Director of the
30 Legislative Council.

31 2. Report. Coincident with the submission of its budget,
32 the commission shall make an annual report to the commissioner
33 with copies to the Governor, the joint standing committee of the
34 Legislature having jurisdiction over agricultural matters and the
35 Executive Director of the Legislative Council. This report must
36 include an account of the commission's operations and actions, a
37 report of its financial position, including receipts, an account
38 of the practical effects of application of this chapter and any
39 recommended legislation. The operations report must include the
40 number and types of violations of racing laws and rules, the
41 disposition of those violations and the amount of time required
42 for their disposition, including a history of any appeals.

2 Sec. 7. 8 MRSA §271, as amended by PL 1989, c. 203, §2, is
further amended to read:

4 **§271. Issuance of licenses for the conduct of racing**

6 1. **Licensing.** If the commission is satisfied that all of
8 this chapter and rules prescribed by the commission have been
substantially complied with during the past year and will be
10 fully complied with during the coming year by the person,
association or corporation applying for a license; that the
12 applicant, its members, directors, officers, shareholders,
employees, creditors and associates are of good moral character;
14 that the applicant is financially responsible; and that the award
of racing dates to the applicant is appropriate under the
16 criteria contained in subsection 2, it may issue a license for
the holding of harness horse races or meets for public exhibition
18 with pari-mutuel pools, which shall ~~must~~ expire on December
31st. The commission shall set licensing and license renewal
20 fees sufficient to carry out the administration and enforcement
of the licensing program. ~~The fee for the license shall be~~ These
22 fees may not exceed annually the greater of \$100 or \$10 for each
calendar week or part of a week of harness racing regardless of
24 whether ~~or not~~ pari-mutuel pools are sold. The commission shall
provide a booklet containing harness racing laws and rules and
26 relevant portions of the Maine Administrative Procedure Act to
every initial licensee and a fee not to exceed \$10 must be
28 included in the license fee to cover the cost of this
publication. The commission shall provide necessary revisions of
30 this booklet to those persons renewing licenses at the time of
renewal and shall include the cost of the revisions, not to
32 exceed \$10, in the renewal fee. The license shall ~~must~~ set forth
the name of the licensee, the place where the races or race meets
34 are to be held and the specific dates and time of day or night
during which racing may be conducted by the licensee. The
36 location stated in the license where the race or race meet is to
be held may be transferred to any other licensee on the dates set
38 forth in the license during which the racing may be conducted,
but, with respect to ~~such a~~ that transfer, the transfer shall may
40 only be made to another licensee and the licensee shall ~~be~~ is
liable for compliance with all laws and regulations governing the
42 conduct of harness racing. Any such license issued shall is not
be transferable or assignable. The Administrative Court Judge,
44 as designated in Title 4, chapter 25, may revoke any license
issued at any time for violation of the commission's rules or
46 licensing provisions upon notice and hearing. The license of any
corporation shall ~~be~~ is automatically revoked, subject to Title
48 5, chapter 375, upon the change in ownership, legal or equitable,
of 50% or more of the voting stock of the corporation and the
50 corporation shall may not hold a harness horse race or meet for
public exhibition without a new license.

2 **2. Criteria for date awards.** In assigning dates to
licensees, the commission shall consider the following factors:

4 A. The revenues to be generated, consistent with the
profitability and financial health of the licensee, for the
6 General Fund pursuant to section 275; the purse supplements
pursuant to section 275; the Sire Stakes Fund pursuant to
8 section 281; and the Stipend Fund pursuant to Title 7,
section 62;

10 B. The quality of race programming and facilities offered
and to be offered by the licensee and the suitability of the
12 applicant's racing facilities for operation at the season
for which the dates are requested;

14 C. The necessity of having and maintaining proper physical
16 facilities for racing meetings; and consequently, to insure
the continuance of the facilities, the quality of the
18 licensee's maintenance of its track and plant, the adequacy
of its provisions for rehabilitation and capital
20 improvements and the necessity of fair treatment of the
economic interests and investments of those who, in good
22 faith, have provided and maintained racing facilities;

24 D. The desirability of reasonable consistency in the
26 pattern of date assignments from year to year;

28 E. With respect to agricultural societies seeking licenses
to conduct harness racing meets at the time of their annual
30 fairs, the scheduling of agricultural fairs determined by
the Commissioner of Agriculture, Food and Rural Resources
32 pursuant to Title 7, sections 65 and 65-A;

34 F. The preservation of a diversity of harness racing tracks
in the State;

36 G. The quality of the licensee's observance and enforcement
38 of this chapter and the rules promulgated pursuant to this
chapter during the past year;

40 H. The extent to which the licensee fully utilized racing
42 dates granted to it for the past year;

44 I. The personnel and resources available to the commission
for the enforcement of this chapter and the rules
46 promulgated pursuant to this chapter;

48 J. The likely availability of race-worthy horses throughout
the year; and
50

2 K. Such other criteria consistent with the betterment of
harness racing and the public health, safety and welfare as
the commission may establish by rule.

4
6 3. **Overlapping race dates.** The commission shall may not
award overlapping race dates for extended meets to licensees
which are within 50 miles of each other without the approval of
8 60% or more of the entire commission.

10 ~~4. Evaluation. The Commissioner of Agriculture, Feed and
Rural Resources shall thoroughly evaluate the effects of
12 concurrent racing in Maine, including a survey and analysis of
racing patrons, during April and May of 1986. The commissioner
14 shall report his findings and recommendations to the Joint
Standing Committee on Agriculture for legislative action prior to
16 July 1, 1986.~~

18 **Sec. 8. 8 MRSA §279-A**, as repealed and replaced by PL 1975,
c. 35, is amended to read:

20 **§279-A. Licenses, rules and regulations for participating in**
22 **racing**

24 For the purpose of enabling the State Harness Racing
Commission to exercise and maintain a proper control over racing
26 conducted under this chapter, the commission shall ~~have the power
to make and may~~ adopt rules and regulations for the licensing,
28 with or without fee in the discretion of the commission, of
owners, trainers, drivers, grooms and all other persons
30 participating in harness horse racing, including pari-mutuel
employees and race officials.

32 ~~The fee for any such license or registration, if imposed,
34 shall not in any case exceed \$10 per annual license to be
credited to the General Fund.~~

36 The commission shall set licensing and license renewal fees
38 sufficient to carry out the administration and enforcement of the
licensing program. These fees may not exceed \$100 annually. The
40 commission shall provide a booklet containing harness racing laws
and rules and relevant portions of the Maine Administrative
42 Procedure Act to every initial licensee and a fee not to exceed
\$10 must be included in the license fee to cover the cost of this
44 publication. The commission shall provide necessary revisions of
this booklet to those persons renewing licenses at the time of
46 renewal and shall include the cost not to exceed \$10 in the
renewal fee.

48
50 The commission shall ~~have the power to make and may~~ adopt
rules and regulations for the conduct on the race track and
grounds of owners, trainers, drivers, grooms and all other
52 persons participating in harness horse racing. The rules and

2 regulations--shall must be reasonably necessary for any one or
3 more of the following purposes: ~~To~~ to protect the wagering
4 public, to protect the state's State's share of pari-mutuel
5 pools, to protect the health and welfare of spectators and
6 participating owners, trainers, drivers, grooms and all other
7 persons participating in harness horse racing, including
8 pari-mutuel employees and race officials and to protect the
health and welfare of standard-bred horses.

10 The Administrative Court Judge ~~shall have the power to~~ may
11 revoke or suspend any license for violations of this chapter or
12 the rules and regulations.

14 Sec. 9. 8 MRSA §279-B, as amended by PL 1989, c. 878, Pt. A,
15 §22, is further amended to read:

16 **§279-B. Fines, suspensions and revocations**

18 ~~In order to~~ To enforce the provisions of this chapter and
19 the rules referred to in section 279-A, the commission is
20 authorized to establish a schedule for fines not to exceed \$100
21 \$1,000 for each violation of this chapter or the rules. The
22 commission is authorized to levy a fine, after notice and
23 hearing, for each violation of this chapter or the rules.

26 The commission is further authorized to establish a schedule
27 of suspensions of licenses and may levy suspensions for each
28 violation of this chapter or the rules.

30 Any person aggrieved by any fine or suspension imposed by
31 the commission may seek judicial review pursuant to the Maine
32 Administrative Procedure Act, Title 5, chapter 375.

34 Sec. 10. 8 MRSA §283 is enacted to read:

36 **§283. Reciprocal disciplinary action**

38 The commission shall act to obtain current listings from
39 other states of persons in harness racing occupations regulated
40 by the state who have been refused a license or who have had
41 their license revoked or suspended. The commission shall refuse
42 to license or shall suspend the license of these persons until
43 notification that they are again eligible for licensing in the
44 state or states in question.

46 Sec. 11. Transition. As soon as possible after the effective
47 date of this Act, the Governor shall either select a chair
48 meeting the qualifications of the Maine Revised Statutes, Title
49 8, section 261, subsection 5, from the existing members or shall
50 appoint a new member to serve as chair replacing that existing
51 member whose term is to expire next.

2 Except as provided in this section, all members of the State
 4 Harness Racing Commission who are qualified and confirmed and are
 6 serving on the effective date of this Act shall continue to serve
 8 under this Act for a period at least equal to the terms under
 10 which they were previously appointed. Except as provided in
 12 Title 8, section 261, subsection 5, beginning in October 1991, as
 14 a current commission member's term expires, the resulting vacancy
 16 must be filled by persons meeting the qualifications specified in
 18 Title 8, section 261, subsection 2.

20 **Sec. 12. Appropriation.** The following funds are appropriated
 22 from the General Fund to carry out the purposes of this Act.

	1991-92	1992-93
AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF		
Harness Racing Commission		
Positions	(1.0)	(1.0)
Personal Services	\$54,069	\$75,257
All Other	217,271	280,741
Capital Expenditures	2,000	
Provides for a full-time chair position, a range change for the State Racing Steward positions, compensation for presiding and associate judges, recodifying and printing racing laws, the expenses of the Association of Racing Commissioners International membership and related travel, annual reporting requirements and general operating expenses.		
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES		
TOTAL	\$273,340	\$355,998

FISCAL NOTE

This bill will have the following impact.

	1991-92	1992-93
General Fund		
Revenues	\$286,720	\$379,341
Appropriations	273,340	355,998

Enactment of this bill will result in an increase in General Fund revenue in the amount of \$286,720 for fiscal year 1991-92 and \$379,341 for fiscal year 1992-93. The projected increase in General Fund revenue is based on a proposed increase in license fees and reimbursements from race tracks and fairs for the cost of presiding and associate judges. Also, this bill will require a General Fund appropriation to the State Harness Racing Commission in the amount of \$273,340 for fiscal year 1991-92 and \$355,998 for fiscal year 1992-93. This appropriation provides funds for a full-time chair position, a range change from 21 to 26 for the State Racing Steward positions to reflect additional supervisory responsibilities, compensation for presiding and associate judges, recodifying racing rules, the expenses of the Association of Racing Commissioners International membership and travel, annual reporting requirements and other general operating expenses.

It should be understood that the above-mentioned fiscal implications are based on the following.

1. The full-time chair position is budgeted at range 90, step A and includes fringe benefits. The amounts are \$46,847 for fiscal year 1991-92 and \$65,627 for fiscal year 1992-93.

2. The increase in General Fund revenue is based on proposed license fees of \$35 for owners, \$30 for drivers, \$25 for trainers, \$10 for grooms, \$15 for officials and \$10 for pari-mutuel clerks.

3. This bill requires membership in the Association of Racing Commissioners. The membership is \$4,000 a year and additional funds are budgeted for anticipated expenses for all 5 commission members to attend the annual meeting.

4. This bill raises the limit of maximum fines from \$100 to \$1,000. This increase is expected to serve as a deterrent and no additional collection of General Fund fine revenue is anticipated for the upcoming biennium.

STATEMENT OF FACT

2

4 This bill is recommended unanimously by the Commission to
Study the Harness Racing Industry. The bill accomplishes the
following:

6

8 1. Removes the requirement that State Harness Racing
Commission members have geographic and political party
10 representation and allows all but one member to have industry
affiliation;

12

14 2. Provides for a full-time, salaried chair to be appointed
by the Governor in salary range 90. It is assumed that the chair
would be paid in the low \$60,000's, which would put the salary
16 toward the bottom of the new salary schedule for range 90 that is
planned to go into effect in July 1991;

18

20 3. Broadens the Maine Administrative Procedure Act
conflict-of-interest provision to require that persons with
conflict not participate in a matter before the commission.
Present law requires a filing regarding conflict and leaves it to
22 the conflicted person's judgment as to whether that person can be
impartial;

24

26 4. Gives the commission authority to hire its own
employees, subject to Civil Service Law. Currently, the
Department of Agriculture, Food and Rural Resources hires
28 commission personnel. It is anticipated that the full-time,
salaried chair will determine if the commission's staffing needs
require an executive secretary or executive director, and will
30 include an appropriate salary in the commission budget;

32

34 5. Requires that the commission contract with, pay and
assign presiding and associate track judges. The commission is
to be reimbursed by the tracks and fairs for the per diem of
36 those judges assigned to them. Currently, the State licenses
judges and the tracks employ them;

38

40 6. Requires that the Commissioner of Agriculture, Food and
Rural Resources transmit the commission's budget as submitted.
Currently, the commissioner is permitted to revise the budget.
42 Also, the bill requires that a copy of the budget be submitted to
the joint standing committee of the Legislature having
44 jurisdiction over agricultural matters and the Executive Director
of the Legislative Council;

46

48 7. Changes the recipient of the commission's annual report
from the Governor to the Commissioner of Agriculture, Food and
Rural Resources with a copy to the Governor, the joint standing
50 committee of the Legislature having jurisdiction over
agricultural matters and the Executive Director of the
52 Legislative Council;

2 8. Raises permitted annual fees for conducting racing from
\$10 per week to \$10 per week or \$100, whichever is greater;

4
6 9. Raises permitted annual fees for participating in any
other licensed racing activity from \$10 to not more than \$100;

8 10. Requires, within the limits specified in paragraphs 8
and 9, that fees be sufficient to cover the expenses of the
10 licensing program;

12 11. Requires that all licensees be provided with a booklet
of racing laws and rules. Up to \$10 of the cost of this booklet
14 is to be included in the licensing fee;

16 12. Raises the maximum fine that the commission is
authorized to levy in the Maine Revised Statutes, Title 8,
18 section 279-B, from \$100 to \$1,000. Title 8, section 273
provides for fines up to \$5,000 or imprisonment of not more than
20 one year. Because of the severity of the fines authorized in
Title 8, section 273, however, these penalties require provisions
22 for protection of defendant rights that result in their use by a
judicial court, not the commission; and

24
26 13. Requires that the commission honor license action
imposed by other states. The commission is currently empowered
to honor these actions, but not required to do so. The necessary
28 data to implement this requirement may require membership in the
Association of Racing Commissioners International for which the
30 annual dues are \$4,000.