

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SECOND CHANCE JAI-ALAI, LLC,

Petitioner,

and

RB JAI ALAI, LLC,

Intervenor,

vs.

Case No. 15-4352RP

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL
WAGERING,

Respondent.

_____/

WEST FLAGLER ASSOCIATES, LTD.,

Petitioner,

vs.

Case No. 15-4353RP

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL
WAGERING,

Respondent.

_____/

FINAL ORDER

On November 6, 2015, Robert E. Meale, Administrative Law
Judge of the Division of Administrative Hearings (DOAH),
conducted the final hearing in Tallahassee, Florida.

APPEARANCES

For Petitioners: John M. Lockwood, Esquire
Kala Shankle, Esquire
The Lockwood Law Firm
106 East College Avenue, Suite 810
Tallahassee, Florida 32301

For Intervenor: Michael D. Jones, Esquire
Michael D. Jones & Associates, P.A.
361 South Central Avenue
Oviedo, Florida 32765

For Respondent: Caitlin R. Mawn, Esquire
Louis Trombetta, Esquire
Department of Business and
Professional Regulation
Division of Pari-Mutuel Wagering
1940 North Monroe Street, Suite 40
Tallahassee, Florida 32399-2202

STATEMENT OF THE ISSUE

The issue is whether Proposed Florida Administrative Code Rule 61D-2.026(4) and (6) is an invalid exercise of delegated legislative authority, pursuant to sections 120.52(8) and 120.56(1)(a), Florida Statutes.

PRELIMINARY STATEMENT

On July 30, 2015, Petitioner Second Chance Jai Alai, LLC (Second Chance), filed a Petition Challenging Validity of Rule 61D-2.026(6), Florida Administrative Code. This petition commenced DOAH Case No. 15-4352RP. On the same date, Petitioner West Flagler Associates, Ltd. (WFA), filed a Petition Challenging Validity of Rule 61D-2.026(4), Florida Administrative Code. This petition commenced DOAH Case NO. 15-4353RP.

Among other things, the petitions allege that proposed rule 61D-2.026(4) and (6) is an invalid exercise of delegated legislative authority because, in violation of section 120.52(8)(b), Respondent is exceeding its grant of rulemaking authority in adopting this rule and, in violation of section 120.52(8)(c), the proposed rule enlarges, modifies, or contravenes the law implemented. The petitions request attorneys' fees and costs under section 120.595(2).

On August 11, 2015, the Administrative Law Judge issued an Order consolidating the two cases. On August 14, 2015, Intervenor filed a Motion to Intervene in DOAH Case No. 15-4352RP. The motion adopts the petition of Petitioner Second Chance. On the same date, the Administrative Law Judge issued an Order Granting Motion to Intervene.

On October 22, 2015, Petitioners filed a Motion for Summary Final Order. On October 28, 2015, the parties filed a Joint Prehearing Stipulation. On October 29, 2015, Respondent filed a response to the motion for summary final order. As the Administrative Law Judge explained at the final hearing, time constraints prevented the issuance of a ruling on the motion prior to final hearing. However, at the invitation of the Administrative Law Judge, the parties substantially relied on these filings as their proposed final orders, although, as

permitted by the Administrative Law Judge, Petitioners and Intervenor filed supplemental arguments on November 23, 2015.

Intervenor's counsel was unable to attend the final hearing due to medical reasons. Without objection, the Administrative Law Judge provided Intervenor additional time to present evidence establishing that Intervenor is substantially affected by the proposed rules. Intervenor filed an affidavit of its general manager on November 20, 2015.

The parties did not order a transcript. At the final hearing, the parties presented legal argument in the place of testimony.

FINDINGS OF FACT

1. Pursuant to chapter 550, Florida Statutes, Petitioner Second Chance operates jai alai games at its facility in Marion County, and Petitioner WFA owns and operates a greyhound permit and summer jai alai permit at its facility in Miami-Dade County. Petitioner WFA also indirectly owns a summer jai alai permit at the Miami Jai Alai in Miami-Dade County and owns partial interests in two jai alai permits operated at the Dania Jai Alai facility in Broward County. Pursuant to chapter 550, Intervenor owns and operates a jai alai permit at its facility in Seminole County, where it conducts live jai alai permits. Petitioners and Intervenor are regulated by the proposed rules that they challenge in these cases.

2. Proposed rule 61D-2.026(4) (the Court Rule) provides:

Jai alai games must be conducted on a three-walled court meeting the following requirements:

(a) The side wall must be at least 175 feet long and at least 35 feet in height;

(b) The front wall and back wall must be at least 35 feet in width and height;

(c) The front wall must be made of granite.

(d) All courts must have sufficient overhead coverage to ensure for the operation of scheduled performances.

(e) All courts must have a live viewing area for games.

3. Proposed rule 61D-2.026(6) (the Roster Rule) provides:

"Jai Alai permit holders must utilize a rotational system of at least eight different players or teams."

4. The rulemaking authority cited for the Court Rule and the Roster Rule is sections 550.0251 and 550.105(3) and (10)(a). The law implemented cited for the Court Rule and the Roster Rule is sections 550.0251, 550.105, and 550.70.

CONCLUSIONS OF LAW

5. DOAH has jurisdiction over the subject matter because Petitioners and Intervenor are substantially affected by the proposed rules. §§ 120.56(1)(a) and (e), 120.569, and 120.57, Fla. Stat.

6. Section 120.56(1) authorizes a substantially affected person to seek the invalidation of a rule on the ground that it is an invalid exercise of delegated legislative authority. In a challenge of a proposed rule, Petitioners and Intervenor have the burden of "going forward," and Respondent has the burden of proving by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. § 120.56(2)(a), Fla. Stat. In this proceeding, the proposed rule is not presumed to be valid or invalid. § 120.56(2)(c), Fla. Stat. It is unnecessary to discuss these provisions because no reasonable interpretation of these provisions could lead to a different result.

7. Section 120.52(8)(b) and (c) provides that a rule is an invalid exercise of delegated legislative authority if:

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.; [and]

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1[.]

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary

and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

Section 120.52(9) defines the "law implemented" as the "language of the enabling statute being carried out or interpreted by an agency through rulemaking." Section 120.52(17) defines "rulemaking authority" as "statutory language that explicitly authorizes or requires an agency to adopt . . . any . . . 'rule.'"

8. Section 550.0251 provides:

The division shall administer this chapter and regulate the pari-mutuel industry under this chapter and the rules adopted pursuant thereto, and:

(1) The division shall make an annual report to the Governor showing its own actions, receipts derived under the provisions of this chapter, the practical effects of the application of this chapter, and any suggestions it may approve for the more effectual accomplishments of the purposes of this chapter.

(2) The division shall require an oath on application documents as required by rule, which oath must state that the information contained in the document is true and complete.

(3) The division shall adopt reasonable rules for the control, supervision, and direction of all applicants, permittees, and

licensees and for the holding, conducting, and operating of all racetracks, race meets, and races held in this state. Such rules must be uniform in their application and effect, and the duty of exercising this control and power is made mandatory upon the division.

(4) The division may take testimony concerning any matter within its jurisdiction and issue summons and subpoenas for any witness and subpoenas duces tecum in connection with any matter within the jurisdiction of the division under its seal and signed by the director.

(5) The division may adopt rules establishing procedures for testing occupational licenseholders officiating at or participating in any race or game at any pari-mutuel facility under the jurisdiction of the division for a controlled substance or alcohol and may prescribe procedural matters not in conflict with s. 120.80(4)(a).

(6) In addition to the power to exclude certain persons from any pari-mutuel facility in this state, the division may exclude any person from any and all pari-mutuel facilities in this state for conduct that would constitute, if the person were a licensee, a violation of this chapter or the rules of the division. The division may exclude from any pari-mutuel facility within this state any person who has been ejected from a pari-mutuel facility in this state or who has been excluded from any pari-mutuel facility in another state by the governmental department, agency, commission, or authority exercising regulatory jurisdiction over pari-mutuel facilities in such other state. The division may authorize any person who has been ejected or excluded from pari-mutuel facilities in this state or another state to attend the pari-mutuel facilities in this state upon a

finding that the attendance of such person at pari-mutuel facilities would not be adverse to the public interest or to the integrity of the sport or industry; however, this subsection shall not be construed to abrogate the common-law right of a pari-mutuel permitholder to exclude absolutely a patron in this state.

(7) The division may oversee the making of, and distribution from, all pari-mutuel pools.

(8) The department may collect taxes and require compliance with reporting requirements for financial information as authorized by this chapter. In addition, the secretary of the department may require permitholders conducting pari-mutuel operations within the state to remit taxes, including fees, by electronic funds transfer if the taxes and fees amounted to \$50,000 or more in the prior reporting year.

(9) The division may conduct investigations in enforcing this chapter, except that all information obtained pursuant to an investigation by the division for an alleged violation of this chapter or rules of the division is exempt from s. 119.07(1) and from s. 24(a), Art. I of the State Constitution until an administrative complaint is issued or the investigation is closed or ceases to be active. This subsection does not prohibit the division from providing such information to any law enforcement agency or to any other regulatory agency. For the purposes of this subsection, an investigation is considered to be active while it is being conducted with reasonable dispatch and with a reasonable, good faith belief that it could lead to an administrative, civil, or criminal action by the division or another administrative or law enforcement agency. Except for active criminal intelligence or criminal investigative information, as

defined in s. 119.011, and any other information that, if disclosed, would jeopardize the safety of an individual, all information, records, and transcriptions become public when the investigation is closed or ceases to be active.

(10) The division may impose an administrative fine for a violation under this chapter of not more than \$1,000 for each count or separate offense, except as otherwise provided in this chapter, and may suspend or revoke a permit, a pari-mutuel license, or an occupational license for a violation under this chapter. All fines imposed and collected under this subsection must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.

(11) The division shall supervise and regulate the welfare of racing animals at pari-mutuel facilities.

(12) The division shall have full authority and power to make, adopt, amend, or repeal rules relating to cardroom operations, to enforce and to carry out the provisions of s. 849.086, and to regulate the authorized cardroom activities in the state.

(13) The division shall have the authority to suspend a permitholder's permit or license, if such permitholder is operating a cardroom facility and such permitholder's cardroom license has been suspended or revoked pursuant to s. 849.086.

9. Section 550.105 provides:

(1) Each person connected with a racetrack or jai alai fronton, as specified in paragraph (2)(a), shall purchase from the division an occupational license. All moneys collected pursuant to this section each fiscal year shall be deposited into the Pari-mutuel Wagering Trust Fund. Pursuant

to the rules adopted by the division, an occupational license may be valid for a period of up to 3 years for a fee that does not exceed the full occupational license fee for each of the years for which the license is purchased. The occupational license shall be valid during its specified term at any pari-mutuel facility.

(2)(a) The following licenses shall be issued to persons or entities with access to the backside, racing animals, jai alai players' room, jockeys' room, drivers' room, totalisator room, the mutuels, or money room, or to persons who, by virtue of the position they hold, might be granted access to these areas or to any other person or entity in one of the following categories and with fees not to exceed the following amounts for any 12-month period:

1. Business licenses: any business such as a vendor, contractual concessionaire, contract kennel, business owning racing animals, trust or estate, totalisator company, stable name, or other fictitious name: \$50.

2. Professional occupational licenses: professional persons with access to the backside of a racetrack or players' quarters in jai alai such as trainers, officials, veterinarians, doctors, nurses, EMT's, jockeys and apprentices, drivers, jai alai players, owners, trustees, or any management or officer or director or shareholder or any other professional-level person who might have access to the jockeys' room, the drivers' room, the backside, racing animals, kennel compound, or managers or supervisors requiring access to mutuels machines, the money room, or totalisator equipment: \$40.

3. General occupational licenses: general employees with access to the jockeys' room, the drivers' room, racing animals, the backside of a racetrack or players' quarters

in jai alai, such as grooms, kennel helpers, leadouts, pelota makers, cesta makers, or ball boys, or a practitioner of any other occupation who would have access to the animals, the backside, or the kennel compound, or who would provide the security or maintenance of these areas, or mutuel employees, totalisator employees, money-room employees, or any employee with access to mutuels machines, the money room, or totalisator equipment or who would provide the security or maintenance of these areas: \$10.

The individuals and entities that are licensed under this paragraph require heightened state scrutiny, including the submission by the individual licensees or persons associated with the entities described in this chapter of fingerprints for a Federal Bureau of Investigation criminal records check.

(b) The division shall adopt rules pertaining to pari-mutuel occupational licenses, licensing periods, and renewal cycles.

(3) Certified public accountants and attorneys licensed to practice in this state shall not be required to hold an occupational license under this section while providing accounting or legal services to a permitholder if the certified public accountant's or attorney's primary place of employment is not on the permitholder premises.

(4) It is unlawful to take part in or officiate in any way at any pari-mutuel facility without first having secured a license and paid the occupational license fee.

(5) (a) The division may:

1. Deny a license to or revoke, suspend, or place conditions upon or restrictions on a license of any person who has been refused a license by any other state racing commission or racing authority;

2. Deny, suspend, or place conditions on a license of any person who is under suspension or has unpaid fines in another jurisdiction;

if the state racing commission or racing authority of such other state or jurisdiction extends to the division reciprocal courtesy to maintain the disciplinary control.

(b) The division may deny, suspend, revoke, or declare ineligible any occupational license if the applicant for or holder thereof has violated the provisions of this chapter or the rules of the division governing the conduct of persons connected with racetracks and frontons. In addition, the division may deny, suspend, revoke, or declare ineligible any occupational license if the applicant for such license has been convicted in this state, in any other state, or under the laws of the United States of a capital felony, a felony, or an offense in any other state which would be a felony under the laws of this state involving arson; trafficking in, conspiracy to traffic in, smuggling, importing, conspiracy to smuggle or import, or delivery, sale, or distribution of a controlled substance; or a crime involving a lack of good moral character, or has had a pari-mutuel license revoked by this state or any other jurisdiction for an offense related to pari-mutuel wagering.

(c) The division may deny, declare ineligible, or revoke any occupational license if the applicant for such license

has been convicted of a felony or misdemeanor in this state, in any other state, or under the laws of the United States, if such felony or misdemeanor is related to gambling or bookmaking, as contemplated in s. 849.25, or involves cruelty to animals. If the applicant establishes that she or he is of good moral character, that she or he has been rehabilitated, and that the crime she or he was convicted of is not related to pari-mutuel wagering and is not a capital offense, the restrictions excluding offenders may be waived by the director of the division.

(d) For purposes of this subsection, the term "convicted" means having been found guilty, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere. However, the term "conviction" shall not be applied to a crime committed prior to the effective date of this subsection in a manner that would invalidate any occupational license issued prior to the effective date of this subsection or subsequent renewal for any person holding such a license.

(e) If an occupational license will expire by division rule during the period of a suspension the division intends to impose, or if a license would have expired but for pending administrative charges and the occupational licensee is found to be in violation of any of the charges, the license may be revoked and a time period of license ineligibility may be declared. The division may bring administrative charges against any person not holding a current license for violations of statutes or rules which occurred while such person held an occupational license, and the division may declare such person ineligible to hold a license for a period of time. The division may impose a civil fine of up to \$1,000 for

each violation of the rules of the division in addition to or in lieu of any other penalty provided for in this section. In addition to any other penalty provided by law, the division may exclude from all pari-mutuel facilities in this state, for a period not to exceed the period of suspension, revocation, or ineligibility, any person whose occupational license application has been denied by the division, who has been declared ineligible to hold an occupational license, or whose occupational license has been suspended or revoked by the division.

(f) The division may cancel any occupational license that has been voluntarily relinquished by the licensee.

(6) In order to promote the orderly presentation of pari-mutuel meets authorized in this chapter, the division may issue a temporary occupational license. The division shall adopt rules to implement this subsection. However, no temporary occupational license shall be valid for more than 90 days, and no more than one temporary license may be issued for any person in any year.

(7) The division may deny, revoke, or suspend any occupational license if the applicant therefor or holder thereof accumulates unpaid obligations or defaults in obligations, or issues drafts or checks that are dishonored or for which payment is refused without reasonable cause, if such unpaid obligations, defaults, or dishonored or refused drafts or checks directly relate to the sport of jai alai or racing being conducted at a pari-mutuel facility within this state.

(8) The division may fine, or suspend or revoke, or place conditions upon, the license of any licensee who under oath

knowingly provides false information regarding an investigation by the division.

(9) The tax imposed by this section is in lieu of all license, excise, or occupational taxes to the state or any county, municipality, or other political subdivision, except that, if a race meeting or game is held or conducted in a municipality, the municipality may assess and collect an additional tax against any person conducting live racing or games within its corporate limits, which tax may not exceed \$150 per day for horseracing or \$50 per day for dogracing or jai alai. Except as provided in this chapter, a municipality may not assess or collect any additional excise or revenue tax against any person conducting race meetings within the corporate limits of the municipality or against any patron of any such person.

(10) (a) Upon application for an occupational license, the division may require the applicant's full legal name; any nickname, alias, or maiden name for the applicant; name of the applicant's spouse; the applicant's date of birth, residence address, mailing address, residence address and business phone number, and social security number; disclosure of any felony or any conviction involving bookmaking, illegal gambling, or cruelty to animals; disclosure of any past or present enforcement or actions by any racing or gaming agency against the applicant; and any information the division determines is necessary to establish the identity of the applicant or to establish that the applicant is of good moral character. Fingerprints shall be taken in a manner approved by the division and then shall be submitted to the Federal Bureau of Investigation, or to the association of state officials regulating pari-mutuel wagering pursuant to the Federal Pari-mutuel Licensing Simplification Act of 1988. The cost of processing fingerprints shall be borne by the applicant and paid to

the association of state officials regulating pari-mutuel wagering from the trust fund to which the processing fees are deposited. The division, by rule, may require additional information from licensees which is reasonably necessary to regulate the industry. The division may, by rule, exempt certain occupations or groups of persons from the fingerprinting requirements.

(b) All fingerprints required by this section that are submitted to the Department of Law Enforcement shall be retained by the Department of Law Enforcement and entered into the statewide automated biometric identification system as authorized by s. 943.05(2)(b) and shall be available for all purposes and uses authorized for arrest fingerprints entered into the statewide automated biometric identification system pursuant to s. 943.051.

(c) The Department of Law Enforcement shall search all arrest fingerprints received pursuant to s. 943.051 against the fingerprints retained in the statewide automated biometric identification system under paragraph (b). Any arrest record that is identified with the retained fingerprints of a person subject to the criminal history screening requirements of this section shall be reported to the division. Each licensee shall pay a fee to the division for the cost of retention of the fingerprints and the ongoing searches under this paragraph. The division shall forward the payment to the Department of Law Enforcement. The amount of the fee to be imposed for performing these searches and the procedures for the retention of licensee fingerprints shall be as established by rule of the Department of Law Enforcement. The division shall inform the Department of Law Enforcement of any change in the license status of licensees whose fingerprints are retained under paragraph (b).

(d) The division shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for a national criminal history records check at least once every 5 years following issuance of a license. If the fingerprints of a person who is licensed have not been retained by the Department of Law Enforcement, the person must file a complete set of fingerprints as provided in paragraph (a). The division shall collect the fees for the cost of the national criminal history records check under this paragraph and forward the payment to the Department of Law Enforcement. The cost of processing fingerprints and conducting a criminal history records check under this paragraph for a general occupational license shall be borne by the applicant. The cost of processing fingerprints and conducting a criminal history records check under this paragraph for a business or professional occupational license shall be borne by the person being checked. The Department of Law Enforcement may invoice the division for the fingerprints submitted each month. Under penalty of perjury, each person who is licensed or who is fingerprinted as required by this section must agree to inform the division within 48 hours if he or she is convicted of or has entered a plea of guilty or nolo contendere to any disqualifying offense, regardless of adjudication.

10. Section 550.70 provides:

(1) A chief court judge must be present for each jai alai game at which pari-mutuel wagering is authorized. Chief court judges must be able to demonstrate extensive knowledge of the rules and game of jai alai and be able to meet the physical requirements of the position. The decisions of a chief court judge are final as to any incident relating to the playing of a jai alai game.

(2) The time within which the holder of a ratified permit for jai alai or pelota has to construct and complete a fronton may be extended by the division for a period of 24 months after the date of the issuance of the permit, anything to the contrary in any statute notwithstanding.

(3) This chapter does not prohibit any fronton, jai alai plant, or facility from being used to conduct amateur jai alai or pelota contests or games during each fronton season by any charitable, civic, or nonprofit organization for the purpose of conducting jai alai contests or games if only players other than those usually used in jai alai contests or games are permitted to play and if adults and minors may participate as players or spectators. However, during such jai alai games or contests, betting and gambling and the sale or use of alcoholic beverages are prohibited.

(4) A jai alai player shall not be required to perform on more than 6 consecutive calendar days.

(5) The provisions of s. 550.155(1) allow wagering on points during a game; however, the pari-mutuel machines must be locked upon the start of the serving motion of each serve for wagers on that game.

11. Sections 550.0251(3) and 550.105(3) and (10)(a) do not explicitly authorize or require Respondent to adopt the Court Rule or the Roster Rule. Section 550.0251(3) authorizes the adoption of "reasonable rules for the control, supervision, and direction of all applicants, permittees, and licensees." This provision falls within the meaning of the last sentence of the flush-left language of section 120.52(8): it is a statutory

grant of rulemaking authority of a general nature that is to be construed as extending no further than implementing or interpreting the specific powers and duties conferred by the enabling statute. For this reason, the determination of whether Respondent has exceeded its grant of rulemaking authority depends on the determination of whether the Court Rule and the Roster Rule enlarge, modify, or contravene the specific provisions of the law implemented.

12. The Court Rule and the Roster Rule do not implement or interpret the specific powers and duties granted by any enabling statute. Not one of the many provisions within sections 550.0251, 550.105, or 550.70 even mentions jai alai courts or rosters. Section 550.0251 confers upon Respondent powers and duties to process applications, conduct investigations, drug testing officials who are occupational licensees, exclude certain persons from pari-mutuel facilities, oversee pari-mutuel pools, collect taxes and enforce reporting requirements, impose discipline on regulated persons who violate the law, supervise the welfare of racing animals at pari-mutuel facilities, and regulate cardroom operations. Section 550.105 confers upon Respondent powers and duties to process applications for occupational licenses, grant occupational licenses, deposit receipts in a specified trust fund, exempt certified public accountants and licensed attorneys from occupational licensing,

and discipline occupational licenses. Section 550.70 confers upon Respondent powers and duties to extend the time for a permittee to complete the construction of a fronton. Assuming that the remaining provisions of section 550.70 confer powers or duties upon Respondent, even though these provisions operate as criteria directly applicable to jai alai operators, Respondent is thus empowered to require that a competent, physically fit chief court judge be present for each jai alai game, to allow certain persons to use a jai alai facility for certain jai alai games, to prohibit an operator from requiring a jai alai player from performing on more than six consecutive calendar days, and to ensure that pari-mutuel machines are locked on the start of the serving motion of each serve for waters on that game.

13. The Court Rule and Roster Rule do not contravene these statutory provisions any more than they contravene a statute governing the permitting of a power plant: the cited statutes do not address court dimensions and roster sizes. Clearly, though, the path from the cited statutes to the Court Rule and the Roster Rule required Respondent to enlarge and modify one or more of these statutes to construe them as authority for a proposed rule governing court dimensions and roster sizes.

ORDER

It is

ORDERED that:

1. Proposed Florida Administrative Code Rule 61D-2.026(4) and (6) is invalidated as an invalid exercise of delegated legislative authority, pursuant to section 120.52(8)(b) and (c).

2. The Administrative Law Judge reserves jurisdiction on the request of Petitioners and Intervenor for attorneys' fees and costs under section 120.595(2), Florida Statutes. The Administrative Law Judge will address this issue only if, within 30 days of the date of this final order, one of these parties files with DOAH a petition for attorneys' fees and costs.

DONE AND ORDERED this 17th day of December, 2015, in Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of December, 2015.

COPIES FURNISHED:

Caitlin R. Mawn, Esquire
Louis Trombetta, Esquire
Department of Business and
Professional Regulation
Division of Pari-Mutuel Wagering
1940 North Monroe Street, Suite 40
Tallahassee, Florida 32399
(eServed)

John M. Lockwood, Esquire
Kala Shankle, Esquire
The Lockwood Law Firm
106 East College Avenue, Suite 810
Tallahassee, Florida 32301
(eServed)

Michael D. Jones, Esquire
Michael D. Jones & Associates, P.A.
361 South Central Avenue
Oviedo, Florida 32765
(eServed)

Jonathan Zachem, Director
Division of Pari-Mutuel Wagering
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399
(eServed)

William N. Spicola, General Counsel
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399
(eServed)

Ken Lawson, Secretary
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399
(eServed)

Ken Plante, Coordinator
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
(eServed)

Ernest Reddick, Chief
Department of State
R. A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250
(eServed)

Alexandra Nam
Department of State
R. A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250
(eServed)

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.