



REGULATORY AGENCY ACTION

quires the CEC, in consultation with the University of California, the Department of Food and Agriculture, and other state bodies, to coordinate a study on how global warming trends may affect California's energy supply and demand, economy, environment, agriculture, and water supplies. This bill was signed on September 28 (Chapter 1506, Statutes of 1988).

AB 4655 (Tanner), as amended, requires the CEC to consider the impact that new building standards relating to energy conservation have on indoor air pollution. This bill was signed on September 26 (Chapter 1286, Statutes of 1988).

SB 1821 (Rosenthal) directs the Commission to prepare and submit a report to the legislature containing a summary of CEC loans and grants exceeding \$10,000 made during the previous fiscal year. This bill was signed on August 25 (Chapter 585, Statutes of 1988).

SB 2431 (Garamendi) requires the CEC, in consultation with the PUC, to prepare a report on the projected need for additional electrical transmission rights-of-way during the next five, twelve, and twenty years. This bill was signed on September 27 (Chapter 1457, Statutes of 1988).

AB 4216 (Bronzan), as amended, would have required the CEC to expend \$100,000 for a program to educate small farmers on options available to conserve energy or shift energy use to off-peak times. The bill also would have required \$900,000 to be spent for an additional revolving loan fund program for loans to small farmers to purchase equipment necessary to mitigate increased electrical energy costs. The bill passed the Assembly on June 9 but died in the Senate Committee on Energy and Public Utilities.

RECENT MEETINGS:

The CEC held hearings on May 5 and June 8 regarding proposed amendments to its Appliance Efficiency Regulations, California Code of Regulations, Title 20, sections 1601-1608. The pertinent regulations specify energy efficiency requirements and test methods for major appliances. This annual review of these regulations led the Commission to propose amendments to delete obsolete material, update references to test methods and other procedures, clarify existing regulations, require approval of laboratories which test commercial water heaters, and update the method of compliance testing. There was no public comment at either of the hearings, and

the proposed amendments were approval in full by the Commission. They are currently awaiting approval by the Office of Administrative Law.

On July 27, the Commission considered the possible adoption of an order to San Diego Gas & Electric Company (SDG&E) regarding the Residential Peak-shift Program. This program reduces energy consumption during peak air conditioner use hours. SDG&E has resisted the implementation of this program in the past due to skepticism of its productivity. However, the Commission agreed to require SDG&E to test the program and report back in the next year as to its cost-effectiveness. If it is determined that the Peakshift Program is not cost-effective, SDG&E must offer an alternative plan which will achieve an equal reduction in electricity use.

FUTURE MEETINGS:

General CEC meetings are held every other Wednesday in Sacramento.

HORSE RACING BOARD

Secretary: Leonard Foote
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The California Horse Racing Board (CHRB) is an independent regulatory board consisting of seven members. Each member serves a four-year term and receives no compensation other than expenses incurred for Board activities.

The purpose of the Board is to allow parimutuel wagering on horse races while assuring protection of the public, encouraging agriculture and the breeding of horses in this state, generating public revenue, providing for maximum expansion of horse racing opportunities in the public interest, and providing for uniformity of regulation for each type of horse racing.

The Board has jurisdiction and power to supervise all things and people having to do with horse racing upon which wagering takes place. If an individual, his/her spouse, or dependent holds a financial interest or management position in a horse racing track, he/she cannot qualify for Board membership. An individual is also excluded if he/she has an interest in a business which conducts parimutuel horse racing or a management or concession contract with any business entity which conducts parimutuel horse racing. (In parimutuel betting, all the bets for a race are pooled and paid out on that race based on the horses' finishing positions, absent the

state's percentage and the track's percentage.) Horse owners and breeders are not barred from Board membership. In fact, the legislature has declared that Board representation by these groups is in the public interest.

The Board licenses horse racing tracks and allocates racing dates. It also has regulatory power over wagering and horse care.

MAJOR PROJECTS:

"Select Four" Regulation Approved. At its July 29 meeting, the CHRB adopted the proposal to add section 1978, Article 18, Title 4 of the California Code of Regulations (CCR). (See CRLR Vol. 8, No. 3 (Summer 1988) p. 122 for background information.) Section 1978 allows an additional method of parimutuel wagering called the "Select Four", whereby a selection would be made for win only in each of four races designated by the racing association. The Office of Administrative Law (OAL) approved the regulation by accelerated review at the CHRB's request.

Emergency Regulation Regarding Payment of Intertrack Stewards. Following its regularly-scheduled July 29 meeting, the CHRB held an emergency meeting to discuss its ability to pay intertrack stewards, because of the legislature's enactment of a budget bill reducing the money available to the CHRB to pay them. At the commencement of the emergency meeting, Vice-Chair Leslie Liscom noted that the topic had been discussed for two or three months in public and private meetings, and also at the Parimutuel and Stewards Committee meetings on July 28; and that CHRB had enough money to pay the stewards until October. However, the Board found that an "emergency" existed and proceeded to discuss the unagended item. No section of the Bagley-Keene Open Meetings Act was cited as authorizing the emergency meeting.

At the meeting, the Board adopted an emergency regulation to amend section 2058(g), Title 4, Chapter 4 of the CCR. Section 2058(g) requires the presence of a licensed CHRB satellite steward at each facility; a facility is not approved to operate unless such a satellite steward is present. Thus, the CHRB would have to order the satellite facility closed if it could not afford to pay its intertrack stewards. The emergency amendment adopted on July 29 would have allowed the intertrack association to hire a Satellite Facility Supervisor in



lieu of a facility manager in the event the CHRБ cannot appoint a satellite steward as its direct representative at a facility. The Supervisor would be required to hold a steward's license or to pass an examination equivalent to that required for steward licensure. This would have prevented the closing of the facilities.

However, on August 15, the OAL disapproved the emergency regulation, partly due to CHRБ's failure to establish an "emergency" as required by Government Code sections 11346.1(b) and 11346.5. OAL also found that the proposed revision failed to meet the clarity standard in section 11349.1(a)(3).

Proposed Regulatory Change. At its August 26 meeting, the Board discussed a proposal that section 1656, Title 4, Chapter 4 of the CCR, be amended to permit the voiding of a claim for a horse whose sex is erroneously designated in the official program. Currently, there are no provisions permitting invalidation of a claim should it be found that the sex of the claimed horse is incorrectly reported on the official registration papers by the trainer who entered the horse, and/or by the owner who submitted the Jockey Club Registration Certificate to the Racing Secretary. The CHRБ decided to conduct a full study of the issue and postpone a decision until its next meeting.

Regulations Set for Hearing. On September 23, the CHRБ was scheduled to hold a public hearing on three proposed regulations. The Board proposes to amend section 1976.5, Title 4 of the CCR, relating to multiple-selection (exotic) parimutuel wagering, the Pick Nine "Special Unlimited Sweepstakes". The amendment will allow the racing association, if it so desires, to designate days when the Pick Nine must be paid off. At the time it files its license application with the Board, the association must designate one or more racing days on which retained distributable amounts carried over from any prior Special Unlimited Sweepstakes pool shall be distributed, even though the retained amount is less than the maximum amount designated.

CHRБ seeks to add new section 1976.7, Title 4 of the CCR. With regard to the Pick Nine "Special Reserved Unlimited Sweepstakes", this section would provide a carryover distribution scheme should no one select the official winner in each of the nine races comprising the Pick Nine.

Finally, CHRБ proposes to amend section 1459, Title 4 of the CCR, to

delete the requirement that public telephones within the racing enclosure be locked during the racing program, and would leave this matter to each racing association.

LEGISLATION:

AB 2739 (Costa) was signed by the Governor on June 20 (Chapter 199, Statutes of 1988). The bill amends sections 19611.5, 19614.2, and 19617 of the Business and Professions Code. It revises the provisions for distribution of owners' premium awards and breeder awards by increasing premium awards to owners, and deleting the prohibition against the distribution of stallion awards to the owner of a stallion which has been out of the state for breeding purposes during the calendar year.

The following is a status update on bills discussed in detail in CRLR Vol. 8, No. 3 (Summer 1988) at page 122 and Vol. 8, No. 2 (Spring 1988) at page 118:

SB 532 (Keene), as amended on June 13, was signed by the Governor on August 22 (Chapter 424, Statutes of 1988). The bill authorizes the CHRБ to permit quarter horse racing over distances of up to 5-1/2 furlongs.

AB 3933 (Hill) was substantially amended on August 11. Previously, the bill prescribed the amounts required to be paid by an association conducting a meeting to the horsemen's organization representing thoroughbred horsemen at the meeting. This bill now also requires, for meetings commencing after the effective date of the bill, that owners' premiums be paid from purse funds from satellite wagering facilities for harness, quarter horse, appaloosa, mixed breed, and fair meetings in the same relative percentage as owners' premiums are paid at the racing meeting. This bill further requires that a breeders' award equal to 5% of the winning horse's share be paid for all races won by California-bred quarter horses at all meetings in the state, except fair or mixed breed meetings. This bill was signed by the Governor on September 12 as an urgency statute (Chapter 853, Statutes of 1988).

AB 3162 (Floyd), as amended on August 26, would have revised the Board's authority to license and regulate stewards and racing officials, and created a stewards' committee to advise the Board on matters relating to stewards and racing officials. It also would have repealed the requirement that a satellite steward be present at satellite wagering facilities, to instead require the Board to establish requirements for the position of "satellite facility supervisor" for all

satellite wagering facilities operated by the state or on public land. The Governor vetoed AB 3162 on September 30.

AB 3095 (Mojonnier) was substantially amended on August 26. The bill requires the 22nd District Agricultural Association to deduct 0.33 of 1% from wagers at its satellite wagering facilities for distribution to the City of Del Mar and the City of Solana Beach, with each receiving 40% of the funds (if the city elects to receive such funds). The bill also requires the remaining amount of the deduction to be distributed to the County of San Diego to be held in trust for the enhancement of the San Dieguito River Valley and Lagoon. This bill was signed by the Governor on September 24 (Chapter 1277, Statutes of 1988).

The following bills died in committee, were dropped by their authors, or were vetoed by the Governor: **AB 3161 (Floyd)**, regarding the establishment of an information pool between CHRБ and its counterpart regulatory agencies in other states; **AB 523 (Condit)**, regarding the deduction from parimutuel pools for deposit in the Fair and Exposition Fund; **AB 3136 (Floyd)**, regarding revision estimates for the aggregate handle; **SB 1700 (Maddy)**, deleting the requirement of a satellite steward at the track where the meeting is being conducted, and **AB 4085 (Leslie)**, which would have required that CHRБ members be selected from both the northern and southern areas of California.

LITIGATION:

In *Sangster v. California Horse Racing Board*, 202 Cal. App. 3d 1033, 249 Cal. Rptr. 235 (1988), the Second District Court of Appeal affirmed a lower court decision holding that the Board may retroactively disqualify a horse from a race if it acts within a reasonable time.

The CHRБ retroactively disqualified a horse from a race limited to horses winning less than \$25,000, because it discovered the horse had won \$25,100. The horse was a first-place finisher in the 1984 San Matean Handicap, and his portion of the statutory purse was \$22,400. Additionally, his portion of the Breeders' Cup award was \$2,700, for a total of \$25,100. However, on the official record of the horse's earnings, on the reverse side of his Jockey Club Registration Certificate, he was erroneously credited with only the statutory purse amount. The horse then entered the Henry P. Russell Handicap, which was restricted to horses three years old and up which had not won more than



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\$25,000 in 1984. The horse won, and ten days later it came to the stewards' attention that the horse had in fact earned \$25,100 in 1984. Within one day of the receipt of this information, the stewards conducted an investigation and disqualified the horse. A hearing was subsequently conducted by Commissioner Felton of the CHRB as referee, who upheld the stewards' decision. Based on section 1754, Title 4, California Code of Regulations, which requires any protest or complaint against a horse to be made within 72 hours of the race, the horse's owner petitioned for a writ of mandate under Code of Civil Procedure section 1094.5, but the trial court denied the petition.

The Court of Appeal affirmed. It held that the CHRB had acted within a reasonable time in disqualifying the horse, since it was acting under Title 4, CCR, section 1750 (inquiry into complaints by stewards), and section 1592 (disqualification of ineligible horses), to which the 72-hour limitation of section 1754 does not apply. The court further held the CHRB did not engage in surreptitious rulemaking in violation of the Administrative Procedure Act in disqualifying the horse, and that its decision was supported by substantial evidence.

RECENT MEETINGS:

At its August 26 meeting in La Jolla, the CHRB passed a measure requiring that official programs include an indicator as to which horses are currently receiving Lasix medication or have recently been taken off Lasix medication.

FUTURE MEETINGS:

December 16 at Los Angeles.

NEW MOTOR VEHICLE BOARD

Executive Officer: Sam W. Jennings
(916) 445-1888

The New Motor Vehicle Board (NMVB) licenses new motor vehicle dealerships and regulates dealership relocations and manufacturer terminations of franchises. It reviews disciplinary action taken against dealers by the Department of Motor Vehicles. Most licensees deal in cars or motorcycles.

The Board also handles disputes arising out of warranty reimbursement schedules. After servicing or replacing parts in a car under warranty, a dealer is reimbursed by the manufacturer. The manufacturer sets reimbursement rates which a dealer occasionally challenges as unreasonable. Infrequently, the manu-

facturer's failure to compensate the dealer for tests performed on vehicles is questioned.

The Board consists of four dealer members and five public members. The Board's staff consists of an executive secretary, three legal assistants and two secretaries.

On August 22, Governor Deukmejian removed automobile dealer Eminiano Reodia from the Board after he failed to explain the suspension of his automobile seller's license by the Department of Motor Vehicles. The Governor had appointed Reodia to the NMVB in 1983.

MAJOR PROJECTS:

Regulations for Third Party Dispute Resolution Certification Program Adopted. The Office of Administrative Law has approved amendments to the NMVB's regulations, which appear in Title 13, California Code of Regulations. These regulations have been adopted pursuant to the passage of AB 1367 (Tanner), which amends the existing statute requiring the NMVB to administer the collection of manufacturers' fees to fund the Bureau of Automotive Repair's (BAR) Certification Program for Qualified Third Party Dispute Resolution Processes. (See *supra* LEGISLATION; see also CRLR Vol. 8, No. 3 (Summer 1988) p. 123 for background information.)

New regulatory section 553.50 requires every new motor vehicle manufacturer to file a statement containing specified information by May 1 of each year. Section 553.60 sets forth a presumption of liability if the information required by section 553.50 is not received by the Board within the applicable time period, or it is determined by the Board that the information received is substantially inaccurate. Finally, section 553.70 assesses the fee for each vehicle by dividing the dollar amount necessary to fund BAR's certification program by the number of new motor vehicles sold, leased, or otherwise distributed in California during the preceding calendar year.

LEGISLATION:

AB 582 (Harris), as amended, regulates advertisements for the sale of new motor vehicles by motor vehicle brokers. Under existing law, it is unlawful for a licensed vehicle dealer to advertise or offer for sale any vehicle not actually on the dealer's premises or available to the dealer from the manufacturer or distributor. As specified, this bill makes it lawful to advertise or offer for sale any vehicle, if the advertising dealer has an

enforceable right of delivery of the vehicle from another dealer who has a similar right with the manufacturer or distributor of the vehicle. AB 582 was signed by the Governor on September 30 (Chapter 1583, Statutes of 1988).

AB 4020 (Sher), as amended on August 2, proscribes specified acts by a vehicle dealer licensed under the Vehicle Code relating to advertisements for the sale of vehicles. The bill requires specified information to be disclosed in those advertisements, and makes related changes regarding supplemental price stickers. AB 4020 was also signed by the Governor on September 30 (Chapter 1584, Statutes of 1988).

The following is a status update of bills discussed in CRLR Vol. 8, No. 3 (Summer 1988) at pages 123-24:

AB 1367 (Tanner) amends section 9889.75 of the Business and Professions Code, which requires the NMVB to establish and administer the collection of fees for the purpose of funding BAR's Certification Program for Qualified Third Party Dispute Resolution Processes. Manufacturers are required to file a statement with the NMVB which reports the number of new motor vehicles distributed by the manufacturer which were sold, leased, or otherwise distributed in California during the preceding calendar year. This bill also requires the NMVB to adopt regulations to implement section 9889.75, to include a formula for calculating the fee to be collected for each motor vehicle and the total amount of fees to be collected from each manufacturer. (See *supra* MAJOR PROJECTS for related discussion.) This bill was signed by the Governor on June 23 (Chapter 203, Statutes of 1988).

AB 3659 (Duplisseea), as amended August 17, requires specified information to be disclosed in advertisements for the sale of vehicles. This bill also provides a definition of the term "manufacturer's suggested retail price" for purposes of those advertisements. On September 13, this bill was signed by the Governor (Chapter 843, Statutes of 1988).

AB 4513 (Tanner), as amended April 20, revises the definition of "motor vehicle" for the purpose of warranties, to include the chassis and that portion of a motorhome devoted to its propulsion. This bill also defines "motorhome" for warranty purposes. AB 4513 was signed by the Governor on August 29 (Chapter 697, Statutes of 1988).

SB 2863 (Doolittle), as amended on May 5, would have provided that any