



# REGULATORY AGENCY ACTION

lation in this area.) This bill is pending in the Assembly Natural Resources Committee.

**AB 3555 (Moore)**, as introduced on February 17, would require the CEC to follow specified priorities in determining the location of new electric transmission lines. This bill is pending in the Assembly Natural Resources Committee.

**AB 3993 (Baker)** would appropriate \$147,345,000 from the PVEA; \$116,400,000 of that appropriation would be allocated to the CEC. (See CRLR Vol. 7, No. 1 (Winter 1987) p. 91 for background information on the PVEA.) This bill is pending in the Assembly Natural Resources Committee.

**AB 4420 (Sher)** would require the CEC, in consultation with the Air Resources Board, to conduct a study and report to the legislature and the Governor on or before March 1, 1990, on how global warming trends may affect California's agriculture and water supplies. AB 4420 is pending in the Assembly Natural Resources Committee.

**AB 4655 (Tanner)** would require the CEC to consider the impact that new building standards for residential and nonresidential buildings relating to energy conservation have on indoor air pollution. This bill is pending in the Assembly Natural Resources Committee.

**SB 1821 (Rosenthal)** would direct the Commission, by February 1, 1989, 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. SB 1821 has passed the Senate and is awaiting Assembly committee assignment.

**SB 1823 (Rosenthal)** would require the Commission, by December 1, 1989, to prepare and submit to the legislature a report analyzing the extent to which public utility investments in new electric transmission lines and electric power purchases contribute to excess capacity and oversupply and the need for customers to pay for that excess capacity and oversupply through increased electric rates. SB 1823 is pending in the Senate Committee on Energy and Public Utilities.

**SB 2144 (Rosenthal)**, as amended on March 21, would require the CEC, on or before January 1, 1990, to establish guidelines for the award of reasonable advocate's fees, expert witness fees, and other costs of participation or intervention in any CEC hearing or proceeding, other than one for power facility and site certification, to any participant or intervenor meeting specified requirements regarding substantial contribution to the proceeding and financial hardship

as a result of participation. This bill was scheduled for an April 11 hearing in the Senate Appropriations Committee.

**SB 2431 (Garamendi)** would require the CEC to prepare and submit a report to the legislature by July 1, 1989, on the projected need for additional electrical and gas transmission rights-of-way for the next five, twelve, and twenty years, including specified studies, analyses, and recommendations regarding public and private ownership and control. This bill was set for an April 12 hearing in the Senate Committee on Energy and Public Utilities.

**SB 2434 (Alquist)** would require the CEC's biennial electricity report to include specified additional information on power plant air pollution emissions, and estimated costs for control of air pollution emissions. This bill was set for an April 12 hearing in the Senate Committee on Energy and Public Utilities.

## RECENT MEETINGS:

At its February 17 meeting, the Commission unanimously directed staff to proceed with rulemaking procedures to change the Fuel and Energy Reporting System contained in Title 10, California Code of Regulations. The forms and instructions in question are used to compile the Quarterly Fuel and Energy Report. The most recent revision of these forms took place in January 1984. The Commission's vote is not legally required to start this process, but the vote approved resources for staff to begin collecting testimony on the proposed revisions. Staff plans to solicit and compile suggested changes from the public, and publish a summary of these changes by this summer.

Three contracts were also approved at the February meeting: URS Corporation was awarded \$63,000 to develop methodology for the seismic-resistant design of power plants by using input from both the power industry and seismic design experts; a contract for \$99,983 went to C.M.J. Engineering, Inc., which will gather data from local building departments on residential and nonresidential building characteristics, monitor building department enforcement of the Energy Efficiency Standards, and provide on-site training on the Second Generation Energy Efficiency Standards; and the GAMA Corporation received \$30,000 to design communications and data flow systems for the Energy Emergency Center.

## FUTURE MEETINGS:

General CEC business meetings are held every other Wednesday in Sacramento.

## HORSE RACING BOARD

*Secretary: Leonard Foote*  
(916) 920-7178

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:

*OAL Disapproval of Regulatory Action.* On November 3, 1987, the CHRB submitted to the Office of Administrative Law (OAL) nineteen pages of proposed regulations (sections 2056 through 2061, Title 4 of the California Code of Regulations) to govern inter-track simulcast wagering. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 103; Vol. 7, No. 3 (Summer 1987) p. 128; and Vol. 7, No. 2 (Spring 1987) p. 101 for background information.) The regulations pertain to the intrastate simulcasting of horse races for wagering at extended facilities; the permitting of and standards for extended wagering facilities and



simulcast operators; and the criteria for approval of interstate simulcasts. On December 3, 1987, OAL once again disapproved the proposed simulcast wagering regulations adopted by the CHRB on July 30, 1987.

OAL found that the CHRB did not provide the public with a meaningful opportunity to comment on the proposed simulcast wagering regulations because of technical deficiencies in CHRB's notice of proposed regulatory action issued on May 29, 1987. After the Board took public testimony on and adopted the proposed regulations, the legislature significantly amended the statutory authorization in the Horse Racing Law for simulcast wagering (Chapter 1273, Statutes of 1987, effective as an urgency measure on September 28, 1987). Enactment of Chapter 1273 took place before the proposed regulations could become effective. This meant that the statutory authority which was listed in the notice of proposed changes was inaccurate. As a result, the Board must again publish a notice of proposed rulemaking, as required by section 11346.4 of the Government Code, and otherwise comply with the minimum procedures for the adoption of regulations set out in Article 5 of the Administrative Procedure Act (APA), Government Code section 11340 *et seq.*

As indicated in its decision of disapproval, OAL also found that CHRB's proposed simulcast wagering regulations were not easily understood. Proposed regulatory language must meet the APA's clarity standard, which is defined in section 11349(c) of the Government Code to mean that regulatory language must be "written or displayed so that the meaning of the regulations will be easily understood by those persons directly affected by them." OAL stated, for example, that a number of simulcast regulation definitions did not satisfy the clarity standard because of inconsistencies in usage and confusion in application.

Finally, OAL found that the "statement of fiscal impact" for the simulcast wagering regulations was incomplete. OAL noted that the initial statement of reasons, made available to the public in the notice of proposed action published in the *Notice Register* in May 1987, did not satisfy the requirements of section 11346.14(b) of the Government Code. That subdivision requires the Board to consider performance standards as alternatives to prescriptive standards, which OAL found the proposed regulations to contain, and requires the initial state-

ment of reasons in support of the regulatory changes to document the Board's consideration of such alternatives. In this regard, OAL found CHRB's supporting documentation to be deficient.

CHRB has appealed OAL's disapproval of its parimutuel wagering regulations to the Governor. (*See supra* agency report on OFFICE OF ADMINISTRATIVE LAW.) As of this writing, no ruling has been issued on CHRB's appeal.

*1987 Annual Report.* In January, the CHRB released its 1987 Annual Report, which provides an overview of the Board's 1987 activities and operations, and includes other information relating to the California horse racing industry.

The report reveals that the gross amount wagered in 1987 (parimutuel handle) totalled \$2.3 billion—an increase of 5.2% over the amount wagered in 1986. The \$2.3 billion figure represents annual per capita wagering of \$196. California realized \$140 million in revenue from 1987 parimutuel wagering, a figure which constitutes 6.3% of the total amount wagered by the approximately 12 million people who attended California race tracks in 1987.

Simulcast wagering mainly benefited thoroughbred races and fair meetings. Approximately 12.5% of the total thoroughbred handle now comes from simulcast wagering facilities. Thoroughbred race meetings now account for just over 80% of the total California parimutuel handle. Simulcast wagering generated 28.5% of the handle at all fairs. In total, nearly \$300,000,000 was handled at simulcast wagering facilities during 1987.

Further expansion of simulcast wagering will occur during 1988 as additional facilities are approved and become operational. (For background information on simulcast wagering in California, see CRLR Vol. 7, No. 4 (Fall 1987) p. 103; Vol. 7, No. 3 (Summer 1987) pp. 127-28; and Vol. 7, No. 2 (Spring 1987) p. 101.)

The 1987 Report also noted that the CHRB developed additional measures to maintain the propriety and integrity of California horse racing. During 1987, the Board increased its investigative staff, improved the quality assurance program for the official racing laboratory, and, with its computer program enhancement, scrutinized the qualifications and fitness of its licensees and license applicants. During 1988, the CHRB will add to the licensing process a tracking system for conducting criminal background checks through the Department of Justice. (*See infra* discussion of AB 3161 in LEGISLATION.)

*CHRB Recommendations.* Business

and Professions Code section 19441 provides that the Board, in making its annual report, shall embody therein any recommendations for improved horse racing laws. Three such recommendations were adopted by the CHRB and proposed to the legislature for consideration during the current legislative session.

At present, sections 19598 and 19641 of the Business and Professions Code govern the period during which a person is entitled to cash a parimutuel ticket following the close of a racing meeting. The CHRB recommended that amendments to sections 19598 and 19641 be made to extend the term from 60 to 120 days after close of the meeting in which any outstanding valid ticket may be cashed. On February 10, Senator Maddy introduced legislation which would extend the period to 180 days. (*See infra* SB 2010 in LEGISLATION.)

The CHRB also recommended that modifications be made to the provisions of SB 14 (satellite wagering), which was enacted as Chapter 1273, Statutes of 1987. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 103.) The Board was primarily concerned with the lack of clarity in the statute's intent as it pertains to agreements between host tracks and satellite centers. On January 4, Senator Maddy introduced legislation which addressed concerns of the CHRB and the horse racing industry regarding SB 14. Subsequent amendments have changed the legislation substantially. (*See infra* SB 1700 in LEGISLATION.)

The CHRB's final recommendation was to exempt the CHRB from the formal rulemaking procedures found in the Administrative Procedure Act (Government Code sections 11340-11345) and in the California Code of Regulations when the Board is promulgating procedural regulations to establish or revise a form of parimutuel wagering. At present, the Board may not authorize any new type of parimutuel wagering without formally promulgating regulatory changes and securing the approval of OAL.

The CHRB contends that because of APA rulemaking requirements, innovative parimutuel wagering events cannot be immediately authorized upon being conceived by the Board or the horse racing industry. As the Board sees it, the racing industry is placed at a disadvantage *vis-a-vis* the state's other gambling entity, the California Lottery Commission, which has the ability to implement new lottery games at its own instigation. The Board's recommendation for exemption would pertain only to



# REGULATORY AGENCY ACTION

parimutuel wagering regulations and would not apply to any other regulation which may impact its licensees or the general public.

## LEGISLATION:

*AB 523 (Condit)*, which would change the requirement that every racing association which conducts a racing meeting at a fair must deduct an additional 1% from the parimutuel pools for deposit in the Fair and Exposition Fund, was referred to the Committee on Governmental Organization on January 28.

*AB 3161 (Floyd)* was introduced on February 10. The bill would require that the CHRB establish an information pool with its counterpart regulatory agencies in other states in order to share information concerning the background of applicants for various CHRB licenses. This bill was referred to the Assembly Ways and Means Committee on March 22.

*AB 3402 (Floyd)* was introduced on February 16. The bill, which would require the Department of Finance and the Legislative Analyst to jointly perform an analysis of the fiscal impact of legalized sports wagering in California, was referred to the Assembly Ways and Means Committee on March 22.

*AB 3198 (Bane)* was introduced on February 10. The bill, which would delete legislative restrictions as to specified months during which the CHRB is authorized to allocated harness racing dates to the 22nd District Agricultural Association (Del Mar), was referred to the Assembly Committee on Governmental Organization on February 18.

*AB 3136 (Floyd)*, introduced on February 9, would authorize a race track association to revise the estimate for the aggregate handle during a meeting if the Board determines that the revision is necessary. The bill was sent to third reading in the Assembly on March 24.

*AB 3095 (Floyd)*, introduced on February 9, would authorize the use of electronic data processing equipment for parimutuel wagering, as specified. Existing law allows only the use of a totalisator or other mechanical equipment approved by the CHRB. The measure was sent to Assembly third reading on March 24.

*SB 1700 (Maddy)* was introduced on January 4. As amended on March 22, the bill would delete the requirement under existing law that in the case of satellite wagering in the northern zone, 10% of the funds deducted for purses be distributed in the form of purses to horsemen who participate in racing fairs which operate satellite wagering facili-

ties pursuant to a specific program. The bill would also require the CHRB to contract with persons licensed as stewards to perform duties as Board representatives and to assign them to perform duties at satellite wagering facilities with an average daily handle of \$100,000 or more. SB 1700 was scheduled for an April 11 hearing before the Senate Appropriations Committee.

*SB 2010 (Maddy)*, introduced on February 10, would require a person to file a claim for money from a parimutuel pool with the race track association issuing the ticket within 180 days after the close of the meeting and would delete the provisions for filing claims with the CHRB. The bill would also require any unclaimed money from a parimutuel pool to be paid to the Board 180 days after the close of the meeting. SB 2010 was to be heard in the Senate Appropriations Committee on April 11.

The following is a status update of bills reported in CRLR Vol. 8, No. 1 (Winter 1988) at p. 103:

*AB 2318 (Waters)*, which formerly concerned the makeup of CHRB membership, as well as providing for CHRB establishment of a central registry for horses, changed entirely with February 4 amendments.

The bill now concerns state license fees for mixed breed meetings. Among other things, it would provide that any association which conducts a mixed breed meeting at Cal Expo shall retain the state license fee if the daily handle is \$400,000 or less, and shall pay a license fee of 26% of the handle in excess of \$400,000.

*AB 310 (Floyd)*, which authorizes CHRB to permit owners to enter thoroughbred horses in quarter horse races, as specified, has been approved by the Governor (Chapter 6, Statutes of 1988).

As of this writing, no further action has been taken on *AB 2597 (Hill)* and *SB 532 (Keene)*.

## RECENT MEETINGS:

At the January meeting, Board Chair Paul R. Deats and Vice-Chair Leslie M. Liscom were unanimously reelected to their respective CHRB positions.

The California Horsemen's Benevolent and Protective Association (CHBPA) requested that the Board enforce its order of October 16, 1987, relating to the payment of purses generated from satellite wagering on fair racing programs. At the October meeting, the Board ordered the distribution of "75% of the amount from the simulcast handle which was retained for distribution in

the form of purses." (For background information, see CRLR Vol. 8, No. 1 (Winter 1988) pp. 103-04.)

Nathaniel Colley, legal counsel for CHBPA, stated that the Board operates pursuant to the Administrative Procedure Act, and that if any person disobeys or resists a lawful agency order, the agency shall certify the facts to the superior court for a show-cause contempt order. Deputy Attorney General Robert Mukai disagreed, stating that there is no further action required of the Board and therefore no need for certification to a superior court for contempt proceedings.

Mr. Mukai contended that the principal "enforcement" provision at CHRB's disposal is its licensee disciplinary system. That authority is found in Business and Professions Code section 19461, as well as general authority in Business and Professions Code sections 19420 and 19440. Other than this authority, there is little the Board can do. Therefore, parties on both sides of the dispute are free to seek their civil remedies without the further assistance from the Board.

As of this writing, the matter remains unresolved. The money which the CHBPA seeks is in special accounts maintained by each of the fairs.

## FUTURE MEETINGS:

June 17 in Los Angeles.

July 29 in Del Mar.

August 26 in Sacramento.

September 23 in San Mateo.

October 21 in Arcadia.

November 18 in Los Angeles.

December 16 in 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 manufacturer's failure to compensate the