

MAINE STATE LEGISLATURE

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STATE OF MAINE
114TH LEGISLATURE
SECOND REGULAR SESSION

Final Report
of the
COMMISSION TO STUDY THE
HARNESS RACING INDUSTRY

November 1990

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EXECUTIVE SUMMARY

This study grew primarily out of difficulties experienced by the Harness Racing Commission in the assignment of racing dates. However, based on testimony received at the public hearing on the study bill, the scope of the study was extended to cover virtually every aspect of harness racing.

Early on in its meetings the Study Commission determined that the quantity and complexity of the issues assigned to it were such that it would not be able to deal with all of them. It also made the decision that many of these issues were the rightful prerogative of the Harness Racing Commission.

I. Recommended Changes in Law

The following is a brief summary of those changes in the law that the Study Commission feels are necessary to deal with what it determined to be the 3 priority issues; namely, strengthening the Commission, improving rule enforcement and improving Racing Commission funding:

A. Strengthen the Racing Commission

1. Four of the five Racing Commission members be allowed to have racing industry affiliation and the fifth be prohibited from having it.
2. The chair of the Commission be a full-time, salaried position in salary range 90. Racing Commission to make decision as to whether executive director position is to be retained.
3. Responsibility for Commission hiring and budgeting be shifted from the Department of Agriculture to the Commission. The Commission would still be affiliated with the Department.

B. Improve Enforcement of Laws & Rules

1. Presiding and associate track judges be hired and paid by the Commission, which would be reimbursed by the track.
2. All licensees be provided with a booklet containing harness racing laws and rules.
3. Commission be required to honor license revocations and suspensions by other states.
4. Fine limit be raised from \$100 to \$1,000.

C. Improve Commission Funding

1. Commission to submit a copy of its budget directly to the Agriculture Committee.

2. License fee limit be raised from \$10 to \$100 annually.
3. As mentioned in section B, fine limits to be increased to \$1,000.

II. Recommendations to Harness Racing Commission

The following, in priority order, are issues on which the Study Commission feels Racing Commission action is needed:

1. Make a request in next year's budget for adequate personnel to enforce the rules and run the drug testing program and for the laboratory equipment needed for the drug program.
2. Review the Commission rules regarding hearings and appeals to assure that they result in an efficient and effective method of dealing with violators. Make sure Commission members are fully briefed on the applicable laws concerning hearings and appeals.
3. Recodify and index Commission rules.
4. Explore with other states their experience with legalizing the drugs Bute & Lasix, the details of their program and the cost of their program. From this information arrive at a Commission decision as to whether to recommend legalization of these drugs and whether to recommend in the budget the funding required to administer the control program which would be involved in their legalization.
5. Explore the possibility of extending the State's simulcasting to include intra-state races and off track locations.

BACKGROUND

For many years the State Harness Racing Commission had assigned racing dates in the spring and fall to Lewiston Raceway and in the summer to Scarborough Downs. Then, because of problems identified by the Commission at Scarborough in 1988, on a 3 to 2 vote the Commission awarded several weeks in May, 1989 to Lewiston. These problems included a decrease in wagering (handle) and attendance, personnel turnover, and race cancellations and delays. Scarborough Downs then sued the Racing Commission charging bias and ex parte communication. This suit was followed by an accusation by Scarborough that the general manager of Lewiston had attempted to sell Scarborough information supporting Scarborough's charges and adding a charge of conflict of interest. Scarborough's suit against the Racing Commission was dismissed by the Superior Court. Scarborough then sued the former Lewiston general manager charging defamation of character. This suit was subsequently settled when the general manager agreed to make the information available to Scarborough in return for payment of past and future legal expenses.

While this courtroom activity was taking place, 2 bills were introduced during the 1989 legislative session which dealt with pertinent issues related to harness racing. Representative John Aliberti sponsored LD 292 which originally allowed the assignment of operating dates for 3 years and gave the Racing Commission the power to revoke this operating license for violation of Commission rules. Currently, only the Administrative Court can revoke a license. This bill was amended to delete the 3 year license provision and to allow the Racing Commission to suspend any license. It also lowered the required Commission vote to allow concurrent racing from two-thirds to 60% of members. The amended bill passed and became PL 1989, c. 203.

At the request of Scarborough Downs, Representative Robert Tardy submitted LD 632 which had the following provisions:

1. It required the Racing Commission to issue a track license if the applicant has complied with all Commission rules. The fee was raised from \$10 to \$260 per year. The license was to be automatically renewed unless the Commission was petitioned to the contrary.
2. The bill allowed the conduct of racing by a licensee at any time so desired unless two licensees were less than 50 miles apart, in which case they both had to agree or receive Commission approval. If there was no agreement or approval, the licensees were to split the time period in question.

This failed to pass.

At this point, the Maine Attorney General began an investigation of all the charges made in the various suits brought by Scarborough Downs.

Since the Attorney General's investigation was still under way at the time that racing dates had to be set for 1990, the Racing Commission was reluctant to set the dates for fear of a court challenge by Scarborough Downs based on the same factors that the Attorney General was considering. Horsemen appealed for action to both the Governor and the Legislature and for a time there was talk of deregulating the setting of racing dates or having the Legislature set them. The resulting controversy resulted in the introduction of four bills; namely,

1. LD 2022 - Senator Bonnie Titcomb

This was a proposal for a study commission with the following specifications:

- a. Membership - Racing Commission, State fairs, Scarborough Downs, Lewiston Raceway, Harness Horsemen's Association, Standard-Bred Breeders Association
- b. Duties - To investigate industry violations, drug testing, enforcement of rules, license fees
- c. Reimbursement - Expenses only

The bill was amended with the following provisions:

- a. Membership - Legislators, fairs, drivers, trainers, breeders
- b. Duties - To investigate industry violations, level of public control, strengthening the Racing Commission, better enforcement, remuneration to and rights of industry participants, drug testing, racing dates, disbursement of handle, qualifying times, and fee structure.
- c. Reimbursement - Per diem for legislators and expenses for all

This bill was indefinitely postponed in favor of LD 2412

2. LD 2146 - Rep. Tardy

This bill was a direct response to the situation regarding racing dates. It called for the Legislature to set dates for the 1990 season by going back to the pre-1989 allocation, with Scarborough getting back the May racing dates. This bill was withdrawn by the sponsor.

3. LD 2147 - Rep. John Martin

This bill was similar to LD 2146 with the important exception that it split the May racing date between Scarborough and Lewiston. This bill was also withdrawn by the sponsor.

4. LD 2412 - Rep. Robert Tardy

This is the bill establishing the study commission that is the author of the present report.

It had the same membership, duties and reimbursements as prescribed by the amended version of LD 2022. Funding was to come from the Stipend Fund and the Sire Stakes Fund in the amount of \$12,400. This amount was reduced to \$10,140 by amendment

It is interesting to note the expansion of the study commission's duties between the original bill submitted by Sen. Titcomb and the bill finally passed. During the public hearing for LD 2022, the Commission heard considerable testimony from the general public concerning facilities, purses, racing dates and favoritism, among other things. The two tracks submitted lengthy briefs consisting of past correspondence and reports. Scarborough's material generally dealt with dissatisfaction with the racing laws and the Racing Commission and made some specific recommendations. Lewiston's brief was critical of Scarborough's financial performance, alleged that Scarborough had succeeded in intimidating the Commission, and alleged that, as a result, the State had failed to investigate charges brought by Lewiston and the U.S. Trotting Association against Scarborough concerning financial mismanagement, substance abuse and race fixing.

With the continuing delay in the allocation of racing dates, Lewiston Raceway announced that it would permanently discontinue racing at its track, citing not only the delay in racing dates, but the continuing wrangling with Scarborough Downs over this subject. Governor McKernan, among many others, met with both tracks to try to work out a solution that was beneficial to the horsemen regarding total racing dates in the state. As a result of these meetings, the Governor indicated that the Racing Commission needed to be "redesigned" and remarked that this would appear to be a task for the study commission that the Legislature was in the process of setting up.

In a several times delayed report issued in May, 1990, the Attorney General concluded that conflicts in the evidence and questions concerning the credibility of the former Lewiston general manager made it impossible to determine whether the Racing Commission or the Lewiston owners or general manager were guilty of criminal offenses and that those wrongdoings that it could identify were not criminal. The Attorney General's cover letter identified some fundamental questions about the operation of the Racing Commission that they suggested be considered by the study commission and offered their office's assistance to the study commission. (These questions are contained in the body of this report. See section III of Research and Testimony in this report.)

METHOD

The Commission held a total of 8 meetings. Its prime method of obtaining information was the public hearing, with such hearings being held in Scarborough, Bangor, Lewiston, Skowhegan and Cumberland. Racing facilities at Scarborough and Bangor were toured. Lewiston Raceway declined a request to tour its facility. The hearing at Cumberland was structured so as to get public reaction to the Commission's draft recommendations. All but 3 or 4 of the people testifying in all the hearings combined were industry participants, principally trainers and breeders. This was in spite of excellent pre-meeting coverage by the media. Several veterinarians spoke and there was major participation by Scarborough Downs personnel, whose comments are cited at various places in the report. State personnel appearing on their own initiative were Commissioner Diann Perkins, Henry Jackson, who was the acting Executive Director, Judge Herman from Scarborough Downs and Dana Taylor, who is the new state steward. The study commission requested and received testimony from acting Racing Commission Chair James Harrington, Philip Tarr, who is the new Executive Director, and James Bivins, who is the counsel provided to the Commission by the Attorney General's office.

In addition to using public hearings and invited testimony as sources of information, staff reviewed for the Commission previous studies and reports in Maine and other states related to the issues being considered. In doing so, it was determined that no current data existed that compared states in terms of laws and rules governing harness racing and their administration. Staff surveyed by structured mail questionnaire the 11 states that appeared to have major harness racing activity and received responses from all 11 states, of which 10 were considered useable. The results are cited at various places in the report.

The logistical and research needs of the Commission were provided by John Knox and Hartley Palleschi of the Office of Policy and Legal Analysis, a non-partisan staff office to the State Legislature. Mr. Knox normally staffs the Committee on Business Legislation and Mr. Palleschi the Agriculture Committee. Mr. Palleschi resigned from the Office of Policy and Legal Analysis shortly after the final Commission meeting. As a result, this report of Commission findings and recommendations was written solely by Mr. Knox.

RESEARCH AND TESTIMONY

Preface

Early in the study the Study Commission developed the following study guidelines, though not in this degree of formality.

1. The Commission recognized that it would, in all probability, receive information and testimony on more subjects than it would be able to properly study in the allotted study period.
2. The Commission felt that there were certain matters that would come before it which were the prerogative of the Racing Commission and should not be made a subject of legislation or detailed Study Commission recommendations.
3. The Commission indicated that it did not wish to rehash the charges and counter charges that took place in conjunction with the recent racing date controversy.
4. Recognizing that it could not or would not wish to act on all information brought before it, the Commission made a decision that it did wish to include at least a mention in the report of all items on which it received testimony and information.

I. Prior General Studies on Harness Racing

A. Maine

Executive Order #3 of FY 1986 set up a Harness Racing Study Advisory Committee consisting of persons from the 2 commercial tracks, horsemen, fair management, racing officials and the Commissioner of Agriculture. The Commission was to examine the following topics:

1. The importance of harness racing to the Maine economy and to the agricultural fairs.
2. The regulatory authority of the Racing Commission, including penalties and personnel.
3. Race date setting.
4. Concurrent racing.
5. Simulcasting.

This commission was required to issue a final report by December 31, 1985, but never did so. A series of 3 reports were issued on the various subjects by Northeast Research, an independent research firm under contract to the study commission. The one covering the first 3 preceding points was dated January 15, 1986 and reported the following conclusions:

1. The racing fan base needs to be enlarged.
2. Penalties for violations need to be increased.

3. The means by which horsemen circumvent the effects of suspension need to be removed.
4. The Commission needs to speed the process for resolving appeals.

One of the other two topics, concurrent racing, is dealt with briefly in a later section of this report.

B. In Other States.

In reviewing materials from other states, it is quite apparent that, with the exception of the specific personalities involved, the problems experienced by the racing industry in Maine are similar to those in other states. This section will deal briefly with the findings of two studies similar to the one conducted by this Study Commission.

1. "The Governor's Conference on the Michigan Horse Industry," June, 1982. (It is understood that Michigan currently has another harness racing study in progress, with a November, 1990 reporting date.)

This conference made the following recommendations:

- a. Institute procedures to facilitate and expedite the authority of the Commissioner (Michigan is the only state with 1 Racing Commissioner), so as to regulate in a less cumbersome and more timely manner while preserving the independent nature of the office. This should include the ability to function outside the Administrative Procedures Act.
- b. Declare fairgrounds to be public places, thereby exempting them from the tax roles.
- c. Repeal the state withholding tax on pari-mutuel winnings over \$1,000.
- d. Place all money received by the State from pari-mutuel wagering in special funds under control of the Department of Agriculture and the Commission, to be allotted by them.
- e. Issue licenses to persons in skilled occupations only after a review of their qualifications and experience, in addition to requiring possession of a license by a national organization.
- f. Establish a committee to adopt regulations regarding controlled medications that are consistent with other jurisdictions.

2. "Sunset Review of Maryland Racing Commission;" October, 1989
 - a. Make the executive director responsible for enforcement of rules and for administrative matters. Make the Commission a policy-making, quasi-judicial body concerned with planning to achieve effective regulation and with the resolution of disputes which the director can not resolve.
 - b. The Department of Licensing and Regulation should improve its oversight of the Commission and the quality of its staff. The Department should be more supportive and advocate more effectively for needed funding, staff and training.
 - c. The Commission should adopt standards for the hiring and evaluation of stewards and judges.
 - d. The Commission should review the structure and operations of the Breed Funds, to ensure that administrative charges reflect actual operational costs.
 - e. Standards for the operation of the racing laboratory should be developed and included in racing rules. Adequate testing equipment should be provided to the public health laboratory.

II. Agency Report to the Committee on Audit & Program Review, May 2, 1990

This year is the year for the sunset review of the Harness Racing Commission. As part of the sunset procedure, the agency to be reviewed is required to make a report to the Committee on Audit and Program Review. This report was submitted May 2, 1990 by Henry Jackson, the Acting Director of the Commission, and Esther Lacognata, the Director of the Bureau of Rural Resources, under whose supervision the Commission comes.

The report indicated the following objectives for the Commission.

1. Increase the percent of horses giving urine samples as part of drug detection and improve the drug detection capabilities.
2. Review, codify and index Commission rules.
3. Develop training program for industry officials.
4. Evaluate current rules relative to safety.

Under the heading of general problem areas the report indicated only insufficient funding and related problems, including inadequate number of regulatory and drug testing staff and inadequate drug testing facilities and equipment.

III. Attorney General's Report on the Awarding of Racing Dates

In a cover letter of May 4, 1990 to his report concerning the Attorney General's investigation of improprieties in the awarding of racing dates, Deputy Attorney General Thomas Warren recommended that the Study Commission explore the fact that for the following reasons the Racing Commission seems unusually vulnerable to charges of bias, conflict of interest and ex-parte communication.

- a. The only people who would be interested in Commission membership would probably be fans or people with some industry connection.
- b. There are numerous Commission issues where legitimate industry communication is required.
- c. Given the nature of the industry, social contact between members and the industry is almost inevitable.

His letter concluded that one thing the preceding situation has resulted in is a charge by both the reviewing Superior Court judge and the former executive director of the Commission that the racing date issue has been conducted in a highly partisan manner by the Commission.

IV. General Testimony

The previous sections, which have the advantage of being a matter of written public record, cover all the major problems that were brought before the Commission at its public hearings. This section on general testimony will, therefore, be limited to a review of several pieces of written testimony which gave typical but somewhat more detailed suggestions for dealing with the various items under consideration, plus presentations that are of interest because of the position in the industry of the presentator.

A. Douglas G. Glendenning

Past President, Down East Harness Horsemen's Association
Former member, Bangor State Fair Board
Former Chairman, Harness Racing Committee, Bangor State Fair
Former Director, Bass Park Corporation
Former owner, trainer, driver

1. Remove Racing Commission from Department of Agriculture and create Harness Racing Department with own full-time commissioner.
2. Commission should have people knowledgeable of the industry, at least 1 of whom should be a veterinarian.
3. Initiate pre-race testing of horses. Utilize enzyme-linked immunosorbent assay test as a means of controlling costs.
4. Make all tracks conform to USTA standards.
5. Screen track officials thoroughly.
6. Fund these improvements from the Agricultural Stipend Fund.

B. Clark P. Thompson

Owner, breeder, trainer
Former Bangor raceway official
Former board member, Bangor State Fair

1. Maine Harness Racing Commission

- a. Members should be appointed without regard to political party, geographic area or other affiliation.
- b. Members must have first hand knowledge of the business of harness racing.
- c. Meetings and hearings must be conducted with order, due process and better support from Department of Agriculture staff.

2. Enforcement of Commission Rules

- a. Increase funding for Department of Agriculture.
 - (1) Consider year round employment of all presiding judges and stewards by the state.
 - (2) Upgrade testing program for horses and drivers.
 - (3) Upgrade licensing procedures for all persons seeking a Maine license.
 - (4) Print and distribute new rule books with periodic updates.
 - (5) Consider continuing education program for all persons holding a Maine license.
- b. Commission should recognize and help enforce penalties issued by other racing jurisdictions.
- c. Commission should deny licenses to persons who cannot obtain a USTA license.
- d. Commission should institute licensing procedures for all racetrack veterinarians as required by present rules.
- e. Commission and Department of Agriculture Staff must make better use of the resources available to them from the following organizations:
 - (1) USTA
 - (2) Association of Racing Commissioners, International
 - (3) The North American Judges & Stewards Association

3. Industry Viability

- a. The racing community, with the support and leadership of the Commission, must reach a consensus on the following items:

- (1) Race dates
 - (2) Simulcasting
 - (3) Sires stakes racing
 - (4) Drug testing/medication rules
 - (5) Promotion/marketing
- b. Increase funding for Department of Agriculture to promote and market harness racing on a scale similar to state lottery.
 - c. Commercial racetracks and fairs must join together in promotion/marketing efforts.
 - d. The racing community must seek out and involve itself with local communities in order to demonstrate the economic importance of the racing industry and to create good will.
 - e. The Commission, with the support of the Attorney General's Office, must vigorously enforce the rules and laws governing the sport/industry to insure the public's confidence in the integrity of racing.
 - f. Department of Agriculture staff must make greater effort to provide standardbred breeders with technical knowledge and expertise necessary to deliver a superior product for the racetrack.
- C. Joseph J. Ricci, President, Scarborough Downs (Complete written testimony is available in staff files.)
1. Opposed to 1 "czar" type commissioner.
 2. Require for Commission members a background check, financial disclosure and disclosure of any industry related biases or conflicts of interest.
 3. Use money now going to general fund in order to pay commissioners.
 4. Appoint full-time, paid chair.
 5. Recodify and index the rule book.
 6. Provide more representation from the Attorney General's office. The industry has a rampant drug problem. Fund full-time person to act as investigator and policing agent in barn areas.
 7. State should join the United States Association of Racing Commissioners. Maine is the only major harness racing state that does not belong. As a result of not belonging, Maine licenses persons who are suspended in other states.
 8. Make the amount of fines for violations commensurate with the magnitude of the violation.
 9. Develop some system to prevent abuses of the appeals process.
 10. Assign racing dates for 3 years.
 11. Have tracks continue to employ the judge, at least the presiding judge.
 12. Allow concurrent racing.
 13. Rewrite "Cap Fund" legislation, so as to allow tracks to borrow against the money returned to them.

14. Leave the Racing Commission with the Department of Agriculture.
15. Convert to the ABC form of racing.
16. Allow an unlimited number of races per day.
17. Instead of providing monies to the General Fund, use them for the Commission and the Breeders Stakes Program.
18. Explore tax incentives for horse breeding farms or utilize a portion of lottery proceeds for the breeders program.
19. Allow intrastate simulcasting.

D. Henry W. Jackson, Former Acting Director, Harness Racing Commission

1. Revise law to allow higher licensing fees, fines and suspensions and revise rules to take advantage of this. Dedicate the resulting increased revenue.
2. Delegate certain of the simpler issues to the executive director.
3. Delegate certain issues to the chair, but do not hire a full-time chair. Compensate the chair for time and expenses.
4. Have Commission hire and pay judges.

E. Diann Perkins, Member, Harness Racing Commission

1. Commission to hire and pay judges.
2. Require yearly review tests of officials.
3. Allow concurrent racing.
4. Opposed to ABC racing.
5. No more than 12 races.
6. Suspend license when suspended or disallowed in another state.
7. Reorganize the rule book and include the applicable portions of the APA.
8. Commission should have right to suspend a license immediately and the violator should be set down immediately.
9. Continue drug ban until the "Pennsylvania" study is thoroughly analyzed. See Section V, A, 3.
10. Upgrade laboratory testing for the more sophisticated drugs.

V. Research and Testimony on Specific Issues

A. Usage of Drugs

It is illegal in Maine for drugs to be in the system of a horse after a race. There is considerable pressure to legalize phenylbutazone (bute), an anti-inflammatory, and furosemide (lasix), a diuretic which is considered useful in the control of pulmonary bleeding. Currently, nine of the 36 racing states and Canada prohibit Lasix. There is no current data on the legalization of Bute.

There is no issue on which the Commission received more testimony than it did on the use of drugs with race horses. (An article in the September 1990 issue of Hoof Beats gives a good overview of the current controversy on a national basis.)

1. Papers related to Racing Commission Workshop, Summer 1988.
 - a. "Discussion Paper on Issues/Problems Related to Drugging" Esther Lacognata, Director, Bureau of Agricultural and Rural Resources, August 1, 1988
 - (1) Drugging administered immediately before a race may not be detectable in urine.
 - (2) Arguments against Lasix:
 - (a) Would make detection of other drugs more difficult.
 - (b) Once Lasix is used, it must always be used.
 - (c) The State veterinarian may have to administer Lasix.
 - (d) A licensed veterinarian would have to prepare a report on the medication given.
 - (e) Every horse would have to pre-test to assure equity.
 - (f) Pre-testing may require a blood sample.
 - (3) Arguments in favor of Lasix:
 - (a) 50% of horses are bleeders and prohibiting Lasix would reduce the stock of raceable horses to an unacceptable level.
 - (b) Horsemen are using Lasix and withholding water.
 - (c) It is impossible to enforce the rule against Lasix.
 - (4) There is a long delay between detection of the use of a drug and punishment for that use.
 - (5) The penalties are too low to act as a deterrent.
 - (6) It has not been possible to get a sample from about 35% of winning horses.
 - (7) There is a perception of laxity in sample handling and a perception that positive tests are being ignored, pardoned or covered up.
 - b. "Summary Notes on Discussion of Harness Racing Commission Workshop" August 1, 1988
 - (1) Commission wishes to determine the details and cost in other states of programs to allow the use of Lasix.
 - (2) Commission wishes to improve the deterrent effect of its penalties for using drugs.
 - (3) Commission feels that it is very desirable to find ways to increase the percentage of winning horses from whom a urine sample can be obtained.

- c. "Drug Related Problems in Harness Racing", Michael Lindey, State Veterinarian, August, 1988. (See Appendix A)

This report indicated that Mr. Lindey was opposed to a controlled medication program for the following reasons:

- (1) The use of drugs represents an attempt to stabilize a medically impaired contestant.
- (2) The use of drugs results in the contestant being misrepresented to the racing public. There is no constant dosage treatment for either Lasix or Bute. The amount must vary between horses and for the same horse over a period of time.
- (3) Paddock security is currently inadequate for a controlled medication program.
- (4) There is an adequate supply of horses without resorting to a medication program.

- d. "Urine Sampling" Esther Lacognata, Director, Bureau of Agriculture and Rural Resources, October 6, 1988

Esther Lacognata of the Bureau of Agriculture and Rural Resources made the following comments based on a meeting with Commissioner Perkins, Michael Lindey, the State Veterinarian, and Steve Fields, the former State Racing Steward:

- (1) Horses are not being watched from time of race finish until going to the sampling stall. There is inadequate staff to do so. There is no post-race receiving area.
- (2) Because Lasix is an instant diuretic, its use makes it very difficult to obtain a post race urine sample.
- (3) It is difficult to obtain a sample from some horses under normal conditions, but these horses don't constitute a large portion of the population.

- e. "Components of a Controlled Lasix Program," Esther G. Lacognata, March 23, 1989 (See Appendix B)

This paper was prepared in conjunction with Steve Fields, the State Steward at the time, and was based on discussions with 4 other states. It makes the following points:

- (1) There should be certification or an affidavit that a horse is a bleeder.
- (2) The administration of Lasix should be supervised by the State Veterinarian.
- (3) Monitoring the amount of Lasix would be very difficult and expensive.

- (4) Lasix must be administered at least 3 1/4 to 4 hours prior to race time. Otherwise it will mask other drugs.
- (5) Horses receiving the drug must be kept in a supervised barn.
- (6) All horses being given Lasix must be tested prior to a race. It may be necessary to take blood samples.

2. Testimony of Maine Veterinarians

It appeared to the Commission that the great majority of Maine veterinarians favored the use of Bute and Lasix with race horses. However, other members of the racing community made the comment to the Commission that the veterinarians were in a conflict of interest situation because of the financial advantages to them of the legalization of these drugs.

The Commission asked a panel of 6 veterinarians to appear before it. Four of these veterinarians were suggested by Commission members. The other two were obtained by staff in response to Commission direction that both sides of the issue be represented, if possible. As it turned out, only three veterinarians appeared for the panel discussion and they were all suggested by the Commission and all were in favor of legalization. Below is summarized testimony of the three invitees, 2 in favor and 1 opposed, who submitted written testimony.

a. Lawrence B. Buggia, DVM

- (1) Either prevent bleeders from racing or establish a controlled medication program.
- (2) Enforce licensing of track veterinarians.
- (3) Allow the controlled use of Bute & Lasix. Use the Florida program as a model.

b. Denise L. McNitt, DVM

- (1) Bute decreases an abnormal hypersensitivity to pain. It does not alter the normal sensation or stimulate horses.
- (2) There is controversy over the effectiveness of Lasix. It can mask other drugs. It does not improve performance.
- (3) Both these drugs should be allowed for the following reasons:
 - (a) These medications return the horse to normal performance.
 - (b) The use of these medications across the country is widespread and successful.
 - (c) The State has inadequate funds to enforce its current program prohibiting the use of these drugs.

There should be a nominal fee paid by the horsemen to support a controlled medication program, e.g. \$1.50/horse/performance. (Other suggestions made to the Commission were for the owner to pay for State personnel to wait for a urine sample and for the assessment of a penalty against a trainer with a consistent record of horses not giving a sample.)

c. David A. Jefferson, DVM

- (1) Because of the recent University of Pennsylvania Jockey Club Study, the issue of legalizing Lasix should be tabled for the time being.
- (2) Because Bute masks pain, it allows a horse to race when it is physically unfit to do so. This will ultimately lead to the horse "breaking down", as the injured structure deteriorates under the pressure of competitive racing. The United States Equestrian Team has recently prohibited the use of Bute.
- (3) The dosage of Bute can be tampered with and it is questionable whether the State laboratory could detect the levels of Bute in the system.
- (4) Because of what he feels to be the rampant use of drugs in connection with harness racing, Dr. Jefferson reports that he has virtually eliminated harness horses from his practice.

3. University Studies on Lasix

- a. "Effects of Furosemide on the Racing Times of Thoroughbreds" Department of Clinical Studies, New Bolton Center, School of Veterinary Medicine, University of Pennsylvania. Supported by the Jockey Club

This study appeared in the May, 1990 issue of the American Journal of Veterinary Research. It dealt with the use of Lasix and created a major controversy within the racing industry. To a layman it appeared to draw the following conclusions:

- (1) Geldings without exercise-induced pulmonary hemorrhage (EIPH) had significantly faster racing times when given Lasix.
- (2) Lasix failed to prevent the development of (EIPH) in many horses.
- (3) Lasix had questionable efficacy for prevention of (EIPH) in horses who previously evidenced the problem.

The results concerning the treatment of EIPH are not new but have been contained in some previous studies. The results of this study regarding the effect of Lasix on racing times have been subject to wide spread criticism. Leading the criticism was the American Association of Equine Practitioners, which currently endorses the use of both Bute and Lasix.

However, a past president of the Association of Equine Practitioners, Joseph O'Dea, was quoted as saying that repeated attempts to treat 'regulatory bleeders' have been shown to be of little value and that a regulatory bleeder is in all likelihood "organically impaired." He defined a regulatory bleeder as a horse that bleeds from the nose and suggested that other types of bleeding do not present a medical problem to the horse. He suggested phasing out the use of Lasix. In conjunction with the report of the University of Pennsylvania study, the Harness Tracks of America repeated their continuing opposition to Lasix, as did the Hambletonian Society.

b. Study by Michigan State University

Preliminary results of a study recently completed at Michigan State University suggests that Lasix may act as a bronchodilator, which would put it into a class of drugs which are now generally prohibited for race horses. A presentation of this report is to be made to the December meeting of the American Association of Equine Practitioners.

4. Phone conversation by Study Commission staff with the Chief Veterinarian of the Race Track Division of Agriculture Canada

Staff conducted a phone interview with the Chief Veterinarian of Agriculture Canada after the Commission learned that Canada had postponed a decision to legalize Lasix based on the University of Pennsylvania study. (Neither Bute nor Lasix are currently legal in Canada). Canada centralizes control of the drug aspect of harness racing with its federal government.

a. This is the program that they had planned to put into effect prior to the University of Pennsylvania study.

- (1) Horse would have to have been diagnosed as a bleeder through an endoscopic test finding of blood in the trachea after exercise, with this finding endorsed by the federal vet.
- (2) Such a horse could be given 150-250 mg. of Lasix exactly 4 hours before race time. If closer to the race then that time, they find that Lasix will mask other drugs.
- (3) They would test blood and urine of the winner and a random horse. If the blood picks up Lasix this means that has been administered less than 4 hours before the race. They feel that unless you have retention barns or security areas, you must have the blood test.

- (4) The administration would be at a central location by a federal technician under supervision of the federal vet, using state needles and drug. The horse could then return to its stall.
 - (5) The horsemen would pick up all costs involved. (Estimated at about \$20 per horse/race).
- b. Comments on the Effect of Lasix
- (1) They have done considerable research of their own on this subject. Their vet was also on a committee that reviewed the University of Pennsylvania article with its writers after publication.
 - (2) They don't know for certain the effect of Lasix on bleeding and determining this was not one of the purposes of the University of Pennsylvania Study. They feel a key issue that makes it difficult to research this subject is that bleeders do not bleed all the time or to the same degree each time. The goal of Lasix should be seen as reducing bleeding not eliminating it.
 - (3) They feel that Lasix does not affect performance and feel that the University of Pennsylvania Study was faulty in drawing this conclusion.
 - (4) The Canadian chief veterinarian reported that California will be holding a major conference on this issue in November.
- c. Urine Sample Problems
- (1) If they don't get a urine sample within an hour of track closing, they take a blood sample.
 - (2) He doesn't feel that illegal use of Lasix and/or withholding of water should create problems in obtaining a sample.
 - (3) He feels the real problem is probably improper handling of the horse and attributes Canada's success to the use of trained and experienced test inspectors.
 - (4) They contract their sample analysis to private firms and subsidize their equipment, which he feels must be extensive to get the job done. He feels that the large volume of testing done by these labs brings the cost down. They do quality checks of those private labs.

B. The Appeals Process

As noted previously, there was a considerable amount of testimony dealing with violators of Commission rules manipulating the appeals process to postpone their penalties. At the request of the Commission, staff reviewed the laws and rules as they pertain to this issue. It was the conclusion of the Study Commission from this review that the Racing Commission has in law most of the tools needed to deal with the problems concerning appeals, that failure to know this is largely due to lack of detailed knowledge of the Administrative Procedures Act, that a portion of the Commission's problems in this area were caused by its own rules, and that a good part of the entire problem is the current disorganized state of the Commission rules, which has been commented on earlier in this report.

Among the laws and rules about which it appears that some Racing Commission members may not be completely informed are the following.

1. U.S. Constitution

- a. In an emergency when public welfare is involved, violators may be suspended prior to the hearing that the U.S. Constitution normally provides. (Summary suspension.)
- b. There is no right to an appeal in the United States Constitution.

2. Maine Law

- a. The Commission can refuse to grant or renew a license. This normally requires an APA type hearing or an Administrative Court hearing.
- b. According to the APA, only the Administrative Court can revoke or suspend a license. However, the harness racing laws give the Commission the power to suspend indefinitely. (No mention is made of a hearing. However, most situations coming before the Commission would be covered by item c following.)
- c. A Commission can refuse to renew or can revoke or suspend a license without an APA-type hearing and without going to Administrative Court when:
 - (1) The health or safety of a person is in immediate jeopardy. (For 30 days only)
 - (2) The action is based solely upon the physical test of a state-certified inspector. (30 days only)

- (3) The action is based on physical contact prohibited by the rules of a sporting event.
 - (4) The action is based on the use of drugs prohibited by the rules of the sport.
 - (5) The action is based on violations of racing rules which must be dealt with immediately to meet the needs of the sport. (30 days only)
- d. There is a right to judicial review before the Superior Court on all Commission decisions.
 - e. A person desiring a stay of enforcement must first apply to the Commission.
3. Commission Rules
- a. Commission may grant a stay of enforcement of a penalty in cases of disputed rule interpretation or where a close question of fact exists. (This is also in APA.)
 - b. All track judges decisions may be appealed to the Commission. (This is a key rule.)
 - c. The Commission may modify or increase a penalty. (Must be based on evidence, not a punishment for appealing. However, appeal costs may be assessed to person making unsuccessful appeal.)
 - d. The burden of proof in appeals is on the State.

C. Race Dates, Concurrent Racing and Number of Races

As mentioned previously in this report, Scarborough Downs took an initial position before the Commission in favor of setting race dates for 3 years and in favor of concurrent racing. As the hearings progressed, Scarborough personnel several times reiterated their desire for assignment of dates for a period of longer than 1 year and changed their request to three to five year assignments. They also indicated a desire that the number of races allowed not be restricted. Currently, Commission permission is required for more than 10 races per day but in the past this permission has been easily obtainable. The Study Commission's survey indicates that 8 of the 10 reporting states limit the number of races, with the range being 10-13 and the average between 11 and 12. The same survey indicated that only 1 state assigns racing dates for more than 1 year.

The arguments advanced by Scarborough for the multiple year assignments were its necessity relative to obtaining bank financing and attracting and retaining personnel. The arguments advanced to the Commission against multi-year licensing were the difficulty of entry for a new track and the complexity relative to scheduling dates with other states, who assign dates only a year ahead.

Scarborough's current concern for multi-year racing may be compared to a letter in the files for LD 292 dated May 1, 1989, in which Salvator DiMario, the former Scarborough General Manager, opposed that LD, which allowed multiple year licensing, on the grounds that it eliminated the Commission's ability to react promptly to recent track developments, both positive and negative.

As to concurrent racing, the State currently prohibits concurrent racing within 50 miles except by a vote of 60% of the Commission. The 1985 Governor's Study Commission contracted for a study of this issue with Northeast Research. Their report dated June 15, 1986 concluded that concurrent racing at Scarborough and Lewiston would result in revenue losses to at least one, and probably both, of the commercial tracks and to the fairs.

D. "Comparative Distribution of Takeout and Legislative Review,"
Harness Tracks of America, 1989

Harness Tracks of America, Inc., publishes a yearly comparison of their member tracks based on distribution of takeout. The three Maine tracks accounted for 3 of the 7 tracks that were not members in 1989 out of a total of 50 tracks in the country. However, the association was kind enough to obtain the Maine data and provide a special ranking to the Study Commission. Scarborough was a member in 1988, so it is possible to make a year-to-year comparison for that track. Membership in the association is based on track income and for Scarborough would be about \$5,600 per year.

Preliminary data from the 1989 Comparative Distribution of Takeout and Legislative Review indicates that the three Maine harness tracks averaged a ranking of 3rd of 43 reporting tracks in the percent of the handle that is taken out, i.e. is not returned to the betting public. In terms of where the takeout goes, the State is 11th in the percent going to the government, 14th in the percent going to special funds, 3rd in the percent to horsemen and 29th in the percent to the tracks. The 3 Maine tracks are quite similar in their 1989 ranking on these measures, with Bangor ranking slightly higher in all the percentages. As indicated below, the tracks were also surprisingly close in measures of daily activity.

Ranking Based on Average Daily

	<u>Handle</u>	<u>Attendance</u>	<u>Purses</u>
Bangor	43	41	41
Lewiston	35	39	37
Scarborough	36	38	38

Because data in this study is normally restricted to member tracks and membership changes from year to year, year-to-year comparisons of rankings are not very useful. Looked at in terms of absolute data, a comparison of 1988 data to 1989 data for Scarborough shows a gain of 1.96 in the percent of handle going to the horsemen and a drop of 2.03 in the percent going to the tracks. The other measures were essentially unchanged. Since Bangor and Lewiston were not members in 1988, data is not available on them.

E. Recent Developments

Harness racing proved to be a moving target for the Study Commission, in the sense that new developments continued to present issues that did not exist when the Commission was impaneled. Among the more important of these issues were:

1. Resignations.

Two members of the Harness Racing Commission, one of whom had been the principal figure in the Attorney General's investigation, resigned in 1989. Two more resigned in 1990, one of them the long-term chair and the other the newest member. The latter was quoted as saying he had a feeling of frustration, a feeling that the Commission doesn't get a lot done. He further stated that he felt that the Commission didn't have enough money to operate. At the time of this commissioner's resignation, the then chair stated that he felt it will be very difficult to get qualified people to serve on the Commission. He suggested that maybe a "giant revamping" is needed.

Nineteen-ninety also saw the resignation of the long time executive director of the Commission and the state steward.

2. Race Fixing

During the summer, the Racing Commission passed a rule that allowed trifecta wagering if a scratch turned a 7-horse race into a 6-horse race. Several weeks later, a 6-horse race was run with long shots finishing 1st and 2nd, the heavy favorites out of the money and the payoffs considered by some as low. This resulted in an investigation by the track judge and newspaper editorials implying that this was not a unique situation and criticizing the appeals process as a major contributing factor.

The track judge subsequently suspended several drivers, but these suspensions were stayed by the Commission, citing the fact that it was "usual practice" to stay suspensions. The law and the Commission rules, on the other hand, state that stays may only be granted in cases of disputed rule interpretation or when a close question of fact exists. (For industry and media comment see Appendix C).

3. Cancellation of Races

The issue of cancellation of races at Scarborough which had surfaced during the 1989 racing date hearings was brought up again this year with the cancellation of two Maine championships and the postponement of a third. Horsemen complained that they had kept their horses at Scarborough in anticipation of those championships.

4. Track Handle

Track handle became an issue during the summer, both because the media were reporting decreases and because Scarborough Downs took exception as to what the significance of the reports were. The media reported Scarborough's daily handle off 11% and that of Bangor off 12%. Scarborough responded that at the time of their letter handle was, in fact, down 14%, but that attendance was down 23%, which they considered "an amazing feat." On a national basis, harness racing handle was off 4.6% from 1988 to 1989 with Maine being off 7.4%. This was the second year of a decrease for Maine after 3 years of good growth. (Appendix D).

5. Scarborough's Financial Situation

The law requires that a person making application for a license to conduct racing submit a statement of assets and liabilities. It further requires the Commission to determine if the applicant is financially responsible before issuing a license. It also requires that, in assigning dates to licensees, among the eleven factors to be considered are:

- a. The revenues to be generated, consistent with the profitability and financial health of the licensee, for the General Fund
- b. The quality of race programs and facilities to be offered.
- c. The necessity of maintaining proper physical facilities for racing meetings, and consequently, to insure the continuance of the facilities, the quality of the licensee's maintenance, the adequacy of its provisions for rehabilitation and capital improvements

Ideally, the Racing Commission needs the financial statements in October in order to begin its deliberations on racing dates. With Scarborough Downs' fiscal year ending October 31st, this has not been possible. However, delays in receiving the report have gone beyond what might seem reasonable. The auditor's report for 1988 was dated April 9, 1989 and the one for 1989 was dated March 2, 1990 but not received by the Commission until June 8, 1990.

Obviously, with these receipt dates, it has been necessary to assign dates before receipt of this material.

In 1989 Scarborough lost \$1,891,000, consisting of \$1,497,000 operating loss and \$345,000 in interest expense. This raised the track's accumulated deficit to \$4,630,000. Through 1987 the track had been experiencing progressively greater annual deficits, going from \$100,000 in 1983 to \$500,000 in 1987. November 1988 saw a major increase in the deficit to \$1.6mm which was followed by this year's \$1.8mm.

Even though the Commission does not receive financial information on the parent company of the track, it has, apparently, generally been the practice of the Commission to look to the financial ability of the track's parent organization and its owner, rather than the track itself, in granting racing days. However, the continuing presence of a substantial operating loss has raised concerns within the industry about the long-term viability of the track and its ability to maintain its facility. (Detailed financial data is in Appendix E).

6. Appointment of Executive Director

One of the criteria set by the Department of Agriculture for selection of a new executive director for the Commission was that the applicant not have recent affiliation with the racing industry. This criteria and the subsequent appointment of a person with no racing background was commented upon negatively by portions of the industry. The Study Commission's research indicated that in 5 of the 8 states having an executive director that person had previous industry experience.

RECOMMENDATIONS

Preface

As explained in detail in the preface to the Research and Testimony section, the Commission made it clear early in the study that it would not be making recommendations concerning all items brought before it. The reader can assume that, if an item is not covered in this section, the Commission is not making a recommendation concerning it.

I. Recommended Changes in Law

A. Strengthen the Commission

1. Membership

a. Recommendations

- (1) Maintain membership at 5
- (2) Eliminate geographic and political qualifications
- (3) Maintain requirement that 1 member be connected with the agricultural fairs
- (4) Require 1 public member
- (5) Require industry knowledge of remaining 3 members and allow industry involvement
- (6) Broaden APA conflict of interest provisions to require that persons with a conflict excuse themselves rather than requiring a filing of conflict and rather than leaving it up to the conflicted persons as to whether they can be impartial in spite of the conflict.

b. Discussion

- (1) Some people in the industry wanted only 1 Commissioner, a so-called "czar." The Commission's survey determined that only 1 state, Michigan, had a 1 member Commission and that the powers of that person were quite limited. A study of all racing commissions by the State of Maryland indicated that 11 states have 5 member Commissions and 8 states have 3 member Commissions.
- (2) Only 2 states require qualifications of Commission members. Both require industry knowledge, residency, qualification as a voter, and being over 25 years old.

- (3) Seven of the 10 reporting states prohibit industry affiliation by law and 1 of the remaining ones does so by rule. According to the Maryland study, 55% of the states with restrictions prohibit financial interest in racing, while 41% prohibit financial interest in race tracks.

The Study Commission felt that it would be unlikely that a sufficient number of the true "general public" could be found who were willing to serve on the Commission and, therefore, bias and conflict charges would always be made, as they have in the past. On the other hand, there have also been recent charges that the Commission doesn't understand the industry. The Study Commission concluded that the best response to these two issues would be to require industry knowledge of 4 members, require fair association of 1 of these members and allow industry association by the remaining 3.

2. Chair

a. Recommendations

- (1) Full-time, salaried chair
- (2) Appointed by Governor with legislative approval
- (3) Unclassified position in salary range 90
- (4) To serve at the pleasure of the Governor
- (5) Racing Commission to make determination as to whether an executive director or executive secretary is also required

b. Discussion

It was evident to the Study Commission, as it may be to the readers of this report, that neither the problems nor solutions presented to it during the course of its activities were new. The Commission concluded, then, that the major issue was, not determining the problems or finding solutions, but taking action on already known information and that failure to take action in the past was due to the lack of industry experience and part-time nature of the body charged with policy-making and planning for successful industry regulation. This conclusion resulted in the Study Commission's number one recommendation being for a senior person, probably with industry background, to work full time on the regulation of the industry.

The last legislatively approved salary for range 90, to take affect April 1, 1991, is \$48,000-\$70,000. There is a schedule published for budgeting purposes that calls for a salary of \$60,000-\$88,000 effective July 1, 1991. The Commission assumed that this would be the salary spread at the time of hiring the 1st chair and that the person would be hired toward the bottom of that range. Other positions at that level are the Superintendents of Banking, Insurance and Consumer Credit Protection and the Associate Commissioners of Programs and Administration in the Department of Mental Health and Mental Retardation. The current executive director of the Racing Commission is in range 28 which will be \$29,500-\$41,000 as of April 1, 1991. The average pay for an executive director across the country is \$66,000.

3. Responsibility

a. Recommendation

Budget and staffing responsibility should be shifted from the Department of Agriculture to the Racing Commission. Commission to be affiliated with the Department of Agriculture, much as several major professional commissions are affiliated with the Department of Professional and Financial Regulation.

b. Discussion

Of 15 states reporting, 12 have their Commission independent of any other agency. In all but 1 of 10 reporting states the Commission selects its own executive director.

4. Budget

Commission should submit a copy of its budget to the Agriculture Committee.

5. Report

Recipient of required annual report should be changed from the Governor to the Commissioner of Agriculture. The report should contain all items required by the law, which recently it has not. A copy to go to the Agriculture Committee, together with a proposal for any needed legislation.

B. Improve Enforcement of Laws and Rules

1. Pay of Track Judges

a. Recommendation

Presiding and associate judges should be assigned and paid by the Commission with the Commission being reimbursed by the tracks to which the judges are assigned.

b. Discussion

Currently the Commission licenses the judges and the track hires them. In five of the eight states questioned the judges are paid by the track. The mean per diem for presiding judges in the 5 states reporting that information is \$204. For associates it is \$197.

It is the Study Commission's understanding, at the time of issuance of this report, that the Department of Agriculture, in compliance with the Commission's recommendations, would intend to pay judges a per diem equivalent to the per diem paid to them by Scarborough Downs in 1990. The Commission was told that this would translate to range 24 for presiding judges and 22 for associate judges. The Commission was also told that the Department would plan to have the State stewards involved with the supervision of the judges and would raise their salary from range 21 to range 26 to compensate for this added responsibility and place them in a range above the persons they are supervising.

2. Fines

a. Recommendation

Limit of a fine that the Commission can assess should be increased from \$100 to \$1,000.

b. Discussion

The level of \$1,000 was selected in order that the violations would continue to be considered civil violations and not crimes and in order that the violation may continue to be dealt with by the more abbreviated summary proceedings. For the year 1989 approximately \$13,000 was collected in fines.

There is the possibility of confusion between the fines that the Commission can assess and the fines that be assessed, in general. Currently, 8 MRS §279b states that the Commission may establish a schedule of fines not to exceed \$100. This is the statute that is utilized by the Commission in setting up actual fine limits, regardless of who imposes the fines. Section 273 states that violation of Commission rules is punishable by a fine of not more than \$5,000. The proceedings required for levying a fine of this size require provisions for protection of defendant rights which are generally only available in a judicial court and, accordingly, the Commission is not allowed to establish a schedule of fines up to that limit.

4. Rule Book

All licensees should be provided with a booklet containing harness racing laws and rules and relevant portions of the Administrative Procedures Act. The cost, not to exceed \$10, is to be included in the license fee.

5. Reciprocal Disciplinary Action

a. Recommendation

Commission should be required to refuse, or indefinitely suspend licenses on a reciprocal basis with other states.

b. Discussion

The Commission will have to develop ways of obtaining information from other states on a current basis. It will probably be necessary for Maine to join the Association of Racing Commissioners to obtain this information. Maine is the only state that does not belong and membership was suggested by a number of persons at the public hearings. The annual dues for this association are approximately \$4,000.

The Maine Commission currently is not empowered to revoke a license. It can, however, indefinitely suspend.

C. Improve Funding to the Commission

a. Recommendation

The allowed limit for license fees for track operation should be increased from the current \$10 per week to the greater of \$10 per week or \$100 annually. The allowed limit for license fees for other participants in the industry should be increased from \$10 to \$100 annually.

b. Discussion

Actual license fees in 1989 were \$5.00 for owners, drivers and trainers and \$2.00 for grooms, officials and clerks. A total of approximately \$22,000 was collected from some 5,400 licensees.

II. Recommendations to the Racing Commission

The Commission makes the following recommendations to the Racing Commission, in order of priority:

- A. Make a request in next year's budget for the personnel required to implement and enforce the racing laws and rules, including personnel required for all aspects of the drug testing program. The average regulatory budget for 10 harness racing states was reported to the Commission to be \$4.3mm.
- B. Revise the schedule of fines so that they act as a deterrent and so that the "punishment fits the crime."
- C. Review the rules regarding hearings and appeals so as to assure that they result in an efficient and effective method of dealing with violations. Assure that all Commission members are familiar with the law regarding hearings and appeals, including the APA provisions.
- D. Set licensing fees, within the statutory limit, so that they cover the cost of administering and enforcing the licensing program.
- E. Recodify and index the Commission rules.
- F. Make a formal Commission decision regarding a rule change to allow the use of Bute and/or Lasix. Base this decision on the following information.
 1. Familiarity with the position of the various national associations involved with harness racing.
 2. The ultimate resolution of current university studies on Lasix.
 3. The experience of other states that have legalized these drugs, including the details of their control program and its cost.
- G. Explore the possibility of allowing additional forms of simulcasting, including intra-state, off-track, and intra-state, inter-track. (Maine currently allows interstate, inter-track.)
- H. Create a committee of industry members to make recommendations concerning the promotion of harness racing.

APPENDIX A

Drug Related Problems in Harness Racing

**Michael Lindsey
State Veterinarian
Augusta, 1988**

The introduction into Maine racing of a controlled medication program presents no advantages whatsoever. As Commission veterinarian, I cannot support any change in our present program for the following reasons.

My primary objection to the use of medication during a race is humanitarian. The use of drugs represents an attempt to stabilize a medically impaired contestant. With the use of Lasix, pulmonary hemorrhage is minimized, not eliminated, by lowering the quantity of liquid in the body. The medical description of its action is to cause diuresis to achieve hypotensive state. This is not a life threatening situation but it is nevertheless abnormal, particularly for a contestant in a competitive athletic event. In the case of butazolidin, the pain produced by extreme exercise of arthritic or otherwise traumatized bone and muscle tissue is not perceived by the animal due to a simple chemical blocking effect at the level of the brain. The damage then resulting to an already painful condition is multiplied and the dependence on medication for even casual functioning between contests is complete. In both situations, utilization of lasix on the pulmonary and butazolidin on the musculo-skeletal systems represents an abuse, curing nothing, but rather masking problems. Animals requiring these medications would normally be utilized in our society for less demanding tasks. No pushed to expend maximal exertion. To my mind, they should not be subjected to this amount of manipulation. They should not, if lame or bleeders, be considered suitable for the purpose of racing. They are as contestants being misrepresented.

This latter statement, contest misrepresentation, makes my second argument. Employment as a veterinarian by the Racing Commission requires primarily that the public interest be served. Any manipulation of a race by whatever means is not in the public interest. If programming a horse as medicated is a variable for handicapping then I would have to feel that it would be an unwelcome variable for the following reason. There is no single dosage for either lasix or butazolidin. The severity of the medical impairment can be considerable, requiring normally adjusting amounts for each condition in each patient. In a controlled medication program, precise amounts of a drug are agreed to and not varied. It is reasonable then to expect uneven results from contestants over a period of time reflecting a changing severity in their medical impairment.

APPENDIX A

Racing necessarily aggravates an already serious medical condition. No single dosage regimen will maintain a horse over an extended period. In Maine we presently race 10 months each year, a very long racing season.

Wherever security in the paddock is inadequate, the use of lasix from 2 to 4 hours prior to post represents an opportunity to introduce other drugs. The large volumes of urine produced by the use of lasix prior to racing would minimize and most likely make impossible the detection of any other substance introduced in the period immediately prior to a race due entirely to its diluting action. The concentration of a substance would be reduced below its detectable level in most instances and post race sampling rendered useless. The prevention of this occurring requires the surveillance of every animal - a very expensive obligation. At the present time there is no paddock in Maine constructed in such a manner that allows any surveillance. To achieve this control against the introduction of additional drugging would require reconstruction of the present paddock/stabling areas and the hiring of additional personnel. In addition, an absolute requirement would be minimizing the number of people present. There are now considerable numbers of individuals in the paddock during racing hours who have no legitimate right to be there. In addition, no serious effort has been expended to control this situation.

My final argument against the use of medication in racing is a question. IS IT NEEDED? In the seven years that I have served as Commission veterinarian the numbers of races and the length of the racing season has increase considerably. It is also significant, that in spite of this increase in demand for contestants, the quality of racing as measured by time has vastly improved. Our present inventory of horses has met, to a great extent, the demands of the tracks to enlarge their programs and lengthen their meets. We have accomplished this in spite of not having medication programs. It may very well be that some animals have been under the influence of various drugs but I do not believe that all of the improvement or even a significant percentage of improved performances were drug related and escaped detection. We are simply bringing better horses to the races and we have what Mr. Aliberti describes as a unique situation - a drug free or at a minimum, a drug intolerant setting. Allowing medicated racing would certainly increase the numbers of horses available. It is well established that up to 50% of all standardbred horses are subject to pulmonary hemorrhage. We do not have anywhere near that frequency here in Maine at present and the reason is simple: Bleeders without lasix cannot compete successfully. Our detection for lasix is very practicable at present. Allowing medication usage would swell the numbers of this undesirable malady and it is unlikely that our racing overall would be of any better quality. Remember that controlled medication does not unnecessarily improve performance, medication programs merely allows medically undesirable contestants to compete.

APPENDIX B

Maine Department of Agriculture, Food and Rural Resources

Deering Bldg. (AMHI). State House Station 28. Augusta, Maine, 04333



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Esther G. Lacognata
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TO: MEMBERS OF THE HARNESS RACING COMMISSION
FROM: Esther G. Lacognata *Esther*
RE: Components of a Controlled Lasex Program
DATE: March 23, 1989

This is Steve Fields' and Esther's judgement of the essential components of a program to adequately regulate a lasex medication program.

The purpose of this paper is to guide the Commission's decisions in whether or not to consider a controlled lasix program. This should not be interpreted as input in a regulatory hearing. There are many decisions to be made before the Commission initiates the rulemaking to allow the controlled use of lasex.

The information for this paper is derived from communications with representatives of New Jersey, Pennsylvania, Michigan and Ohio State University, and our own laboratory Harness Racing staff.

1. There should be certification or an affidavit that a horse is a bleeder. There is then a list of horses who must be medicated in order to race.

Cost: Negligible

2. The administration of the lasex must be supervised by the State Vet.

Cost: 1/2 of a State Vet
\$14,235

3. Monitoring the amount of lasex administered as does Florida, (and perhaps other states) through quantitative sampling may either be impossible (according to Tom Dwyer of our lab) or prohibitively expensive. (I have discussed with Asst. Director of Ohio State lab but will still need to talk further to the Director, Dr. Sams.)

Cost: Probably very high

4. Lasex has to be given at least 3 1/4 to 4 hours prior to racing. (If administered before that it isn't effective, and if in less time, the urine is so diluted that other drugs could not be detected.)

5. The horse should be detained in a supervised barn.

Cost: Track would have
to provide paddock

State Supervision at
Range 13 (\$16,900)

6. Pretesting to control lasex on urine - of all lasex horses assure 3,000 samples @ \$21.00 - urine sampling

Cost: \$63,000

(This is conservative - blood may have to be taken)

An additional urine sampler **Cost \$14,898**

7. Post race - conservatively

No different (Blood could be sampled but Dr. Diane Gerken, Assistant Director of Ohio State lab recommends against it because its value is limited for the following reasons:

- more limited capability in detecting variety and concentration of drugs
- container handling more complex - legally
- technically more demanding

Regretfully, I have to add that the demands of my time from my ever expanding responsibilities prevent me from continuing this work for the Commission. I only hope that this and my urine analysis memo will help you make some decisions.

EL/lab

xc: Tom Webster
Steve Fields
Mike Lindey

APPENDIX C

DiMario is only one not discussing probe

The investigation into last Sunday's 10th race at Scarborough Downs is now nearly a week old.

Downs presiding judge Sal DiMario is conducting the investigation, but he won't say anything about what's going on.

DiMario, however, is probably the only person in harness racing who isn't talking loud and long about the race. Even the drivers in the race know something's up.

"The exotic payoffs were too low," explains Walter Case Jr., who drove the even-money favorite to a fifth-place finish.

"I don't usually pay attention to payoffs," says Robert Sumner, who finished sixth with the second favorite. "But maybe they were a little low."

Sunday's 10th race started out with seven horses, but Calculated Risk was scratched early in the afternoon, leaving but six horses and six drivers: JC's Pippiniello and Todd Dubois, Mulligan and John Beckwith, Erindale Skippy and John Nason, Pancho Hanover and Robert Sumner, Decoy Venture and Bruce Aldrich Jr., and Fail Safe and Walter Case Jr.

Mulligan, a 19-1 long shot, won the race. JC's Pippiniello, at 43-1, finished second. Decoy Venture, 7-2, finished third.

The public had installed the fast but erratic Fail Safe as the even-money favorite and Pancho Hanover was the second favorite at 2-1.

But both horses finished out of the money. Fail Safe, who had broken stride the week before, broke stride again and finished fifth. Pancho Hanover broke stride at the gate and finished sixth.

"I brought him to the gate too early," Sumner said. "The same thing happened at Bangor."

"I didn't surprise me they broke," said Nason, who finished fourth with 6-1 Erindale Skippy. "I trained Fail Safe once, and he offers to break often."

With the two longest shots on the board finishing first and second and the two heavy favorites out of the money, the quinela paid \$41.60, the exacta paid \$55.20, and the trifecta came back \$202.80.

Despite the short field, which reduces the number of exotic combinations, many think those payoffs were way too low, considering that the race was an absolute upset.

"Someone hammered on the exotics," Case said.

The popular theory is that someone may have bet Mulligan, JC's Pippiniello, and Decoy Venture in the exotics with incredible confidence. In other words, someone may have had strong reason to believe one or more of the favorites would run out of the money.

In his investigation of the race's wagering patterns, DiMario will look for evidence of such confidence. The pari-mutuel printouts will tell him if unusually large bets, such as a series of \$50 exacta boxes, were placed on the longshots.

That's the easy part of the investigation. The difficult part is linking the action on the track with action at the windows.

While we wait for the outcome,



Jay Burns

Harness Racing

we can mull over a few lessons:

- A new state rule went into effect just a few days earlier that permits trifecta wagering if a scratch turns a seven-horse race into a six-horse race.

It's another stroke of genius from the racing commission.

I don't care if six nuns are in a race: I don't want trifecta wagering with fewer than seven horses. Knock out two favorites, and you can box the rest for \$24 and net perhaps a \$1,200 trifecta payoff. The saying goes that few eight-horse races are fixed because eight drivers can't get together for two minutes. But just two drivers in a six-horse field can do amazing things.

- Some of you may be cringing at an open discussion of race fixing, but it's about time some attention is focused in that direction.

I can't remember when there has been less faith among Maine harness fans in the conduct on the track, whether it be at Scarborough Downs, Bangor Raceway, or the fairs. The fans' complaints are typical of paranoid, frustrated, and losing bettors everywhere, but this spring and summer the bellyaching has reached a new pitch — and a new believability.

DiMario, in only his second week in the Downs stand, is to be commended, nay, cheered for at least looking into this race, if only to send out a warning to horsemen and an assurance to the fans that the judges stand at Scarborough, at least, is occupied by living, breathing human beings with keen eyesight.

- On the other hand, few horsemen really worry about what a presiding judge might do because they know they can appeal a fine or suspension to the racing commission, which will either uphold the penalty (maybe), lessen the penalty (a good chance), or overturn it (possibly). Nothing bad has ever come of a trip to Augusta. So every time the racing commission overturns or lessens a judge's penalty — which is all too often — it sends a subtle message to drivers and trainers: Go for what you can get, because no one is ever going hold you accountable.

MY BILL TROY, the kicking colt of Androscoggin County, is destroying that reputation as he politely manhandles the competition in the 2-year-old colt division of Maine Standardbred Breeders Stakes.

On Tuesday night at Topsham, My Bill Troy made his first early-evening start at a fair.

The colt, already the fastest 2-year-old even seen in Maine, behaved perfectly for the third start in a row, winning the non-betting event in 2:01, a second off French Major's track record of 1987.

Maine

Harness Horsemen's Association

Representing Horsemen

of

LEWISTON
SCARBOROUGH
CUMBERLAND
BANGOR
SKOWHEGAN

UNION
WINDSOR
TOPSHAM
FRYEBURG
FARMINGTON

SEPTEMBER 1990 NEWSLETTER



Anyone who does not understand that harness racing is in serious desperate trouble either is not in the sport, or is in it and should not be. We as Directors of the Maine Harness Horsemen's Association, believe that if we do not take strong affirmative action now we'll have no sport in the very near future.

Lets start with our Racing Commission and recent events at Scarborough Downs. In September, 1989 we drafted a rules change to stiffen, not lessen but stiffen, penalties for drug using drivers. The Commission wrestled with the very positive step for nine months and ultimately weakened it before final passage in June 1990.

In May 1990 the Commission was asked to allow trifecta wagering on six horse fields. We opposed that rule change and Ken Ronco, our Executive Secretary, went on record pointing out the ease with which six horse fields could be manipulated so as to control the outcome. The Commission, as usual, ignored our objection and allowed the change.

On August 5, 1990, Sal DiMario, Presiding Judge at Scarborough Downs, noted something in the tenth race a six horse trifecta field with unusual betting patterns and to his credit announced an investigation. On Thursday August 30, DiMario entered suspensions of the driver of a co-favorite and a trainer both for the balance of 1990 with a further recommendation to the Commission that the driver be refused a license for an additional two years and the trainer who apparently cashed his own winning tickets get ten.

The racing community, us included, applauded DiMario's action. Imagine the surprise of the public on Presidents Pace day, our annual showcase, imagine the feeling of the horsemen and women, when the two suspended parties participated in the days Open pacing event. Their horses have continued to be programmed. Confusion seemed to reign as everyone explained how this had happened or whether or not a stay of the suspension had been granted and all as the public roundly booed the drivers appearance in the winners circle.

Now we are told the Commission voted on Wednesday September 5 to deny a stay, but unofficially recanted on Thursday September 6 and said they had granted a stay. On Friday September 7 the fans were told by the public address announcer that the driver was sick. What in the devil you may ask, is going on? We wish we knew.

What we, the leadership of the Maine Harness Horsemen's Association and the men and women of our membership want from the Commission is a prompt resolution of this matter and an explanation of what has happened, what they are doing and what will be done for the future. Ultimate conviction of this sort of race maneuvering labels each of our members a cheat. Until the Commission stands up to be counted and lets the entire racing community and the public know that bad actors have no place on our stage we will continue our downward turn.

Racing Commissioners, lets clear the air over Maine racing. Now.

Officers and Directors of
The Maine Harness Horsemen 's Association

M.H.H. SCHOLARSHIP FUND

You still have time to make application for scholarship funds for the 1990-1991 school year. The applications are available and may be obtained from the Executive Secretary Ken Ronco by mail or can be picked up at the trailer at Scarborough. The following criteria will be followed:

1. Applicant, parent or guardian must be members of M.H.H.A.
2. Applicant must be accepted in progress of further study.
3. Applicant must file application to the Scholarship Committee by date announced in the newsletter.

The deadline is November 15, 1990.

SCARBOROUGH DOWNS TO SEPTEMBER 3, 1990

TOTAL 1990 MEET

HANDLE:	\$20,785,880
DAYS RACED:	150
DAILY AVERAGE:	138,573
DASHES RACED:	2098
DASH AVERAGE:	9907
PURSES PAID:	1,989,100
PURSE AVERAGE:	948

It's time to clamp down on cheating

It is time for the Maine Harness Racing Commission, and Maine race tracks to get tough on anyone involved in cheating.

The Maine harness racing industry, worth millions of dollars to this state, will be nothing but a memory unless the MHRC grows some teeth and starts using them. Maine fans are running out of patience.

Cheating in horse racing has various forms: holding a fit horse back for several races, until the odds are long, then beating the same class of horses with ease; using illegal medication, and outright race fixing by one or more drivers.

The sure way to fix a race is to have several drivers in on the fix.

Having kept records on every race in Maine for the past 15 years, it is my opinion that this type of race fixing is extremely rare in Maine because a high percentage of the drivers are honest.

It also is my opinion that "shoot-up" horses is not a wide scale occurrence because there is a good chance of detection.

Holding back favorites, however, does appear to be a trend in some driver records that include the odds.

Causing a horse to break stride, getting him parked or boxed on the rail is not difficult.

There are drivers, an extremely small percentage to be sure, who seldom win with favorites. This, in itself, is not proof of wrongdoing. Such drivers, however, should be under constant scrutiny.



**Lee
Allen**

Guy Gannett
News Service

HARNESS RACING

When anyone connected with harness racing is convicted of race fixing, it automatically should bring a two-year ban from racing. One more conviction should result in a lifetime ban. Foxes must be kept out of the henhouse.

If a fan poll were taken, it would be clear that no one charged with race fixing should be allowed to race until they have been cleared of the charges. And the opinion of fans should have high priority. Without them racing expires.

Race tracks can ban anyone they have reason to suspect of wrongdoing. Over the years, Scarborough Downs, to its credit, has imposed bans on undesirables.

An overwhelming majority of Maine horsemen strongly support integrity in the racing industry.

The Maine Harness Horsemen's Association has repeatedly asked the MHRC to stop dragging its feet on race-fixing charges that finally are scheduled for hearing on Oct. 17, some five weeks after the investigation of a race at Scarborough Downs.

The future of Maine racing is shaky at best. Its time for positive steps. Let there be no doubt about integrity in the minds of Maine fans.

APPENDIX D

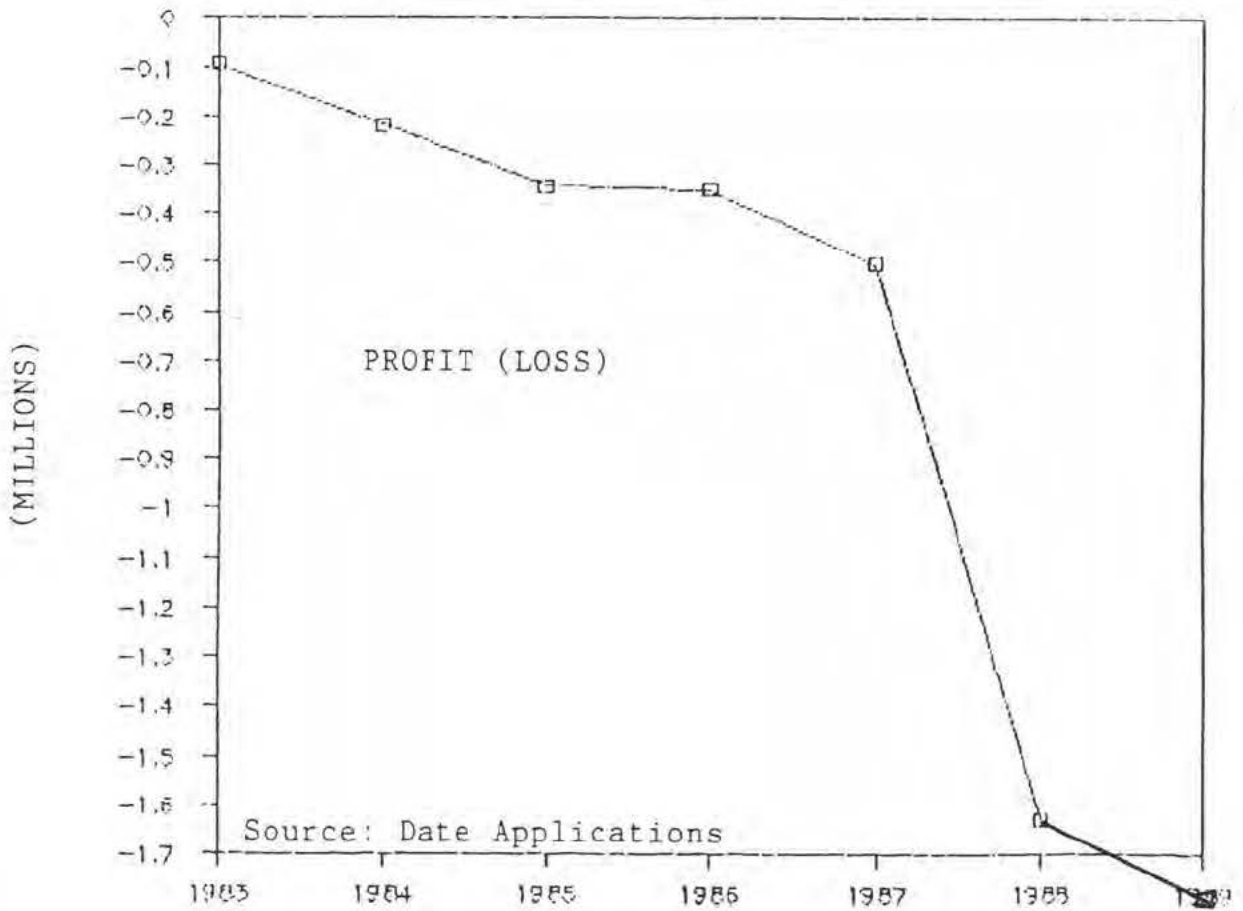
APPENDIX D

Trend in Total Handle
Maine Harness Racing

	<u>Total Handle</u> <u>(000's)</u>	<u>% Change</u> <u>v. Yr. Ago</u>
1974	\$ 24,415	
1975	22,775	-6.8%
1976	22,837	+ .3%
1977	23,175	+1.5%
1978	23,618	+1.9%
1979	23,021	-2.6%
1980	27,730	+20.5%
1981	29,773	+7.4%
1982	27,936	-6.2%
1983	30,997	+9.6%
1984	30,893	- .3%
1985	35,950	+16.4%
1986	37,467	+4.2%
1987	45,192	+20.6%
1988	44,321	-2.1%
1989	41,020	-7.5%

APPENDIX E

COMPARISON: SCARBOROUGH DOWNS
TOTAL HANDLE TO PROFIT (LOSS)
1983 - 1989



APPENDIX E

Scarborough Downs

Current Assets to Current Liabilities Analysis

	<u>Current Assets</u>	<u>Current Liabilities</u>		<u>Ratio</u>
1982	\$ 183,288	\$ 517,832	1:	2.83
1983	258,594	521,585	1:	2.02
1984	1,166,859*	466,128		
1985	240,557	901,642	1:	3.75
1986	453,626	1,403,796	1:	3.09
1987	195,419	888,127	1:	4.54
1988	319,110	2,113,569	1:	6.62
1989	253,912	2,460,405	1:	9.61

This is the Year of the Insurance Claim

Lewiston Raceway

Current Assets to Current Liabilities Analysis

	<u>Current Assets</u>	<u>Current Liabilities</u>		<u>Ratio</u>
1982	\$ 110,161	56,253	1.96 :	1
1983	199,734	130,442	1.53 :	1
1984	121,772	106,177	1.15 :	1
1985	130,283	177,013	1 :	1.36
1986	516,132	204,808	2.52 :	1
1987	537,670	207,916	2.59 :	1
1988	662,107	426,546	1.55 :	1
1989	Not Available			

Source: All information from the track's date applications

APPENDIX F

Harness Racing Study Comm.
LR #353
Sponsor:
Drafted by: JBK
Date: 08/23/90 (Rev. 10/24/90)
Doc. #1269LHS

Submitted by the Harness Racing Study Commission pursuant to
Public Law 787

FIRST REGULAR SESSION

ONE HUNDRED AND FIFTEENTH LEGISLATURE

Legislative Document

No.

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:

Sec. 1. 2 MRSA §6 sub-§2 is amended to add the following:

Chair, State Harness Racing Commission

Sec. 2. 8 MRSA §261 is repealed and the following enacted in
its place:

§261. Commission

1. Establishment. The Harness Racing Commission as established by Title 5, §12004-G, sub-§32 shall carry out the purposes of this chapter. The Commission shall be affiliated with the Department of Agriculture, herein after in this chapter called the "Department", with the relationship to be as specified in this chapter.

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

3. Term of Office. Except as provided in subsection 5, members of the Commission shall serve 3 year terms. Any vacancy shall be filled by appointment for the remainder of the unexpired term. Members whose terms expire shall serve until their successors are qualified and appointed.

4. Confirmation. Appointees shall be reviewed by the joint standing committee of the Legislature having jurisdiction over agriculture and are subject to confirmation by the Legislature.

5. Chair. The Governor shall appoint one of the 5 Commission members as chair. This position is a full time, unclassified, major policy-influencing position and is to receive an annual salary as determined by the Governor within salary range 90, as established by Title 2, §6, sub-§2. The chair shall serve at the pleasure of the Governor.

6. Removal. Except as provided in section 5, the Governor may remove any member of the Commission for just cause. A member who is subject to removal shall be given a copy of the charges against the member and an opportunity to be heard upon 10 days notice, if so requested by the member.

7. Conflict of Interest. No Commission member may participate in any matter before the Commission in which that member has a direct or indirect pecuniary interest, personal bias or if any other conflict of interest is established.

Sec. 3. 8 MRSA §262 is amended to read:

§262. Organization

~~The Commissioners shall select one from their number to be chairman of the Commission. The Commissioner of Agriculture, Food and Rural Resources or his designee shall ex officio be secretary of the Commission but shall not be a voting member thereof.~~ Three of the members of the Commission shall constitute a quorum to do business. The Commission shall meet at least monthly and it shall be the duty of the secretary to keep a record of all proceedings of the Commission and to preserve all books, maps, documents, papers and records entrusted to its care.

Sec. 4. 8 MRSA §264 is repealed and the following enacted in its place:

§264. Employees

The Commission shall contract with or employ, and shall prescribe the duties of, all such persons as it deems necessary to carry out the purposes of this chapter. Except as provided in this section, the appointment and compensation of this staff shall be subject to the Civil Service Law.

The Commission shall contract for the services of such qualified persons to serve as presiding and associate track judges as are necessary to provide adequate policing and enforcement. The judges shall not be considered employees of the State for any purpose. They shall be paid a per diem fee as determined by the Commission. They shall not be reimbursed separately for expenses. The race tracks and fairs shall reimburse the Commission for the per diem compensation of those presiding and associate judges assigned to them.

Sec. 5. 8 MRSA §265 is amended to read:

Except as provided for the chair in section 261, subsection 5, members of the Commission shall be compensated as provided in Title 5 chapter 379.

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

§267. Budget and report

1. Budget. The Commission shall submit to the Commissioner of Agriculture, hereinafter in this chapter called the "Commissioner", in the manner provided in Title 5, §1665, a budget sufficient to carry out the provisions of this chapter and the Commissioner shall, in turn, transmit these requirements to the Bureau of the Budget without any revision, alteration or change. The Commission shall submit a copy of this budget with any desired comments to the Joint Standing Committee of the Legislature having jurisdiction over agriculture and to the Executive Director of the Legislative Council.

2. Report. Coincident with the submission of its budget, the Commission shall make an annual report to the Commissioner with copies to the Governor, the Committee having jurisdiction over Agriculture, and the Executive Director of the Legislative Council. This report shall include an account of the Commission's operations and actions, a report of its financial position, including receipts, the practical effects of application of this chapter and any recommended legislation.

The operations report shall include the number and types of violations of racing laws and rules, their disposition and the time until their disposition, including a history of any appeals.

Sec. 7. 8 MRSA §271 subsection 1 is amended to read:

§271. Issuance of licenses for the conduct of racing

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

Sec. 8. 8 MRSA §279-A is amended to read:

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

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

The Commission shall set licensing and license renewal fees sufficient to carry out the administration and enforcement of the licensing program, but not to exceed \$100 annually. The Commission shall provide a booklet containing harness racing laws and rules and relevant portions of the Administrative Procedures Act to every initial licensee and a fee not to exceed \$10 shall be included in the license fee to cover the cost of this publication. The Commission shall provide necessary revisions of this booklet to those renewing licenses at the time of their renewal and shall include the cost not to exceed \$10 in the renewal fee.

The Commission shall have the power to make and adopt rules and regulations for the conduct on the race track and grounds of owners, trainers, drivers, grooms and all other persons participating in harness horse racing. The rules and regulations shall be reasonably necessary for any one or more of the following purposes: To protect the wagering public, to protect the state's share of pari-mutuel pools, to protect the health and welfare of spectators and participating owners, trainers, drivers grooms and all other persons participating in harness horse racing, including pari-mutuel employees and race officials and to protect the health and welfare of standard-bred horses.

The Administrative Court Judge shall have the power to revoke or suspend any license for violations of the rules and regulations.

Sec. 9. 8 MRSA §279-B is amended to read:

§279-B. Fines, suspensions and revocations

In order to enforce the provisions of this chapter and rules referred to in section 279-A, the Commission is authorized to establish a schedule for fines not to exceed ~~\$100~~ \$1,000 for each violation of the law or rules-and-regulations. The Commission is authorized to levy a fine, after notice and hearing, for each violation of the rules or laws.

The Commission is further authorized to establish a schedule of suspensions of licenses and may levy suspensions for each violation of the rules or laws.

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

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

§283. Reciprocal disciplinary action

The Commission shall take action to obtain current listings from other states of persons in harness racing occupations regulated by the state who have been refused a license or who have had their license revoked or suspended. The Commission shall refuse to license or shall suspend the license of such persons until notification that they are again eligible for licensing in the state or states in question.

Sec. 11. Transition. As soon as possible after the effective date of this Act, the Governor shall either select a chair meeting the qualifications of 8 MRSA §261, sub-§5 from the existing members or shall appoint a new member to serve as chair replacing that existing member whose term is to expire next.

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

Sec. 12. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this act:

	<u>1991-92</u>	<u>1992-93</u>
AGRICULTURE, DEPARTMENT OF		
Harness Racing Commission		
Positions	(1)	(1)
Personal Services	\$ 54,069	\$ 75,000
All Other	217,271	280,741
Capital Expenditures	<u>2,000</u>	<u> </u>
	\$273,340	\$355,998

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 Association of Racing Commissioners International membership and related travel, annual reporting requirements and general operating expenses.

FISCAL NOTE

This bill will have the following impact:

General Fund	<u>FY 92</u>	<u>FY 93</u>
Revenues	\$287,471	\$379,341
Appropriation	273,340	355,998

Enactment of this legislation will result in an increase in general fund revenue in the amount of \$287,471 for FY 92 and \$379,341 for FY 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 legislation will require a general fund appropriation to the Harness Racing Commission in the amount of \$273,340 for FY 92 and \$355,998 for FY 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 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 a Range 90, Step A and includes fringe benefits. The amounts are \$46,847 for FY 92 and \$65,627 for FY 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 legislation 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

This bill accomplishes the following:

1. Removes the requirement that Racing Commission members have geographic and political party representation and allows all but 1 member to have industry affiliation.

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 toward the bottom of the new salary schedule for range 90 which is planned to go into effect July, 1991.

3. Broadens the Administrative Procedures Act conflict of interest provision to require persons with conflict not to participate in a matter before the Commission rather than requiring a filing regarding conflict and rather than leaving it to the conflicted person's judgment as to whether they can be impartial.

4. Gives the Racing Commission authority to hire its own employees, subject to Civil Service law. Currently, the Department of Agriculture hires Commission personnel. It is anticipated that the full-time Commissioner will determine if the Commission's staffing needs require an executive secretary or executive director, and will include an appropriate salary in the Commission budget.

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 those judges assigned to them. Currently, the state licenses judges and the tracks employ them.

6. Requires that the Commissioner of Agriculture transmit the Racing Commission's budget as submitted. Currently, the Commissioner is permitted to revise the budget. Also, requires that a copy of the budget be submitted to the Agriculture Committee.

7. Changes the recipient of the Commission's annual report from the Governor to the Commissioner of Agriculture, with copy to the Governor and the Agriculture Committee.

8. Raises permitted annual fees for conducting racing from \$10 per week to not more than the greater of that sum or \$100.

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

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

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

12. Raises the maximum fine that the Commission is authorized to levy in section 279-B from \$100 to \$1,000. Section 273 provides for fines up to \$5,000 or imprisonment of not more than 1 year. Because of their severity, however, these penalties require provisions for protection of defendant rights which result in their use by a judicial court, not the Commission.

13. Requires that the Racing 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 data to implement this requirement may require membership in the Association of Racing Commissioners International for which the annual dues are \$4,000.