

TITLE 13. NEW MOTOR VEHICLE BOARD

(Notice published October 25, 2013)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California New Motor Vehicle Board ("Board"), pursuant to the authority vested in the Board by subdivision (a) of Vehicle Code section 3050 proposes to adopt the proposed regulations as described below, after considering all comments, objections, and recommendations regarding the proposed regulatory action.

PROPOSED REGULATORY ACTION

The Board proposes to amend sections 553 and 553.20 of Title 13 of the California Code of Regulations pertaining to the Annual Board Fee.

PUBLIC DISCUSSIONS PRIOR TO NOTICE

Prior to the publication of this notice, and at a noticed General Meeting held on January 22, 2013, the Board considered potential amendments to the regulations that are the subject of this rulemaking action. Ten days prior to the meeting, a detailed agenda including the topic of potential amendments to the regulations that are the subject of this rulemaking action was mailed to all individuals and entities on the Board's Public Mailing list, Electronic Public Mailing list, and website subscription list. The agenda was also posted on the Board's website.

Also prior to the publication of this notice, the Board considered and adopted the proposed regulations at a noticed General Meeting held on March 13, 2013. Ten days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulations was mailed to all individuals and entities on the Board's Public Mailing list, Electronic Public Mailing list, and website subscription list. The agenda was also posted on the Board's website.

No comments by the public were received at the January 22, 2013, or March 13, 2013, General Meetings, and no further public discussion was held prior to publication of the notice.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any person interested, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916) 323-1632 or by e-mail at rparker@nmvb.ca.gov or nmvb@nmvb.ca.gov. The written comment period closes at 5:00 p.m. on December 9, 2013. The Board will consider only comments received at the Board's offices by that time. Submit comments to:

Robin P. Parker, Senior Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 323-1536 direct line
(916) 445-1888 main line
(916) 323-1632 fax
rparker@nmvb.ca.gov

AUTHORITY AND REFERENCE

Vehicle Code section 3050, subdivision (a), authorizes the Board to adopt the proposed regulations. The proposed regulations implement, interpret, and make specific Vehicle Code sections 3016, 3050, and 11723.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action clarifies and makes specific the amount of fees required to be paid by licensees under the Board's jurisdiction.

Subdivision (a) of Vehicle Code section 3050 authorizes the Board to adopt rules and regulations governing such matters as specifically committed to it.

The adopted mission of the Board is to: "enhance relations between dealers and manufacturers throughout the state by resolving disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner." In pertinent part, the Board's adopted vision statement provides that the Board "Safeguard for the Board's constituency, a fair, expeditious and efficient forum for resolving new motor vehicle industry disputes, which ultimately improves industry relations and reduces the need for costly litigation, and thereby further reducing the burden on California taxpayers... [and] Develop methods that further improve the delivery of Board services in a timely and cost-effective manner..."

The Board proposes to amend Section 553 to increase the Annual Board Fee from \$300 per year to \$400 per year for new motor vehicle dealers and increase the annual fee paid to the Board by new motor vehicle manufacturers or distributors by raising the numerical coefficient, on which the fee is based, from \$0.45 to \$0.60 per new

motor vehicle sold, leased or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year. The proposed amendment would also limit the Annual Board Fee due from a manufacturer or distributor to \$300 if only 1-250 vehicles were distributed or \$450 if only 251-806 vehicles were distributed.

Section 553.20 specifies the method for calculating the annual fee to be paid by each manufacturer and distributor by multiplying the numerical coefficient (as set forth in Section 553, subdivision (b) and discussed above) by the number of new motor vehicles distributed by the manufacturer or distributor in the preceding calendar year. The Board also proposes to amend Section 553.20 to conform it to the proposed amendments to Section 553.

Vehicle Code section 3016 authorizes the Board to charge a fee to new motor vehicle dealers and other licensees under its jurisdiction in an amount sufficient to fully fund the Board's activities.

Since the economic downturn, the Board has used its cash reserve to supplement annual income. The Board conservatively forecasted continued slow growth and recovery in the new motor vehicle industry. Unfortunately, industry growth has not been as robust as the Board had forecasted. Thus, if the subject fees are not raised, the Board's cash reserve will be entirely depleted by the end of the 2016-2017 fiscal year.

OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The broad objective of the regulations is to ensure that the Board receives funds adequate to maintain a reserve fund that will, in turn, make certain that the Board has funds adequate to fulfill its mandate.

The specific benefit anticipated from the regulation is assurance of the continued operation of the Board, which, in turn, promotes the expeditious and economical resolution of statutorily enumerated disputes between new motor vehicle dealers (franchisees) and their manufacturers or distributors (franchisors). The Board keeps these types of cases from further clogging our already congested courts. It provides a uniformity of decisions across the state, allowing franchisors and their dealers to conduct their business in compliance with California law. Lastly, through its Consumer Mediation Program, the Board offers, at no cost to the consumer, an informal means for efficiently resolving disputes between members of the public and any new motor vehicle dealer, manufacturer, or distributor.

DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The Board has determined that the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that these are the only

regulations that authorize the Board's collection of annual fees that are the subject of the proposed regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- Statewide adverse economic impact directly affecting businesses and individuals:

The proposed regulations raise fees by very modest amounts. The fees were reduced in 2002 to lessen the Board's surplus and that goal was achieved. The fees were reinstated in 2012 in an attempt to rebuild the Board's finances in the wake of the financial down-turn of 2007-2008. Unfortunately, the 2012 fee reinstatement, in light of diminished new motor vehicle sales, failed to provide income sufficient to fully fund the Board's operations. Although the proposed action will directly affect a limited, discreet class of businesses statewide, including small businesses and individuals, the Board has initially determined that the adverse economic impact, including the ability of California businesses to compete with businesses in other states, would not be significant. In making this initial determination, the Board relied on the following documents:

- (1) A Fiscal Committee Memorandum dated January 16, 2013, which analyzed sales of new motor vehicles in 2011-2012, projected new motor vehicle sales for 2013-2015, and analyzed options for amendments to sections 553 and 553.20;

- (2) A Fiscal Committee Memorandum dated February 27, 2013, which analyzed sales of new motor vehicles in 2011-2012, projected new motor vehicle sales for 2013-2015, and analyzed options for amendments to sections 553 and 553.20; and
- (3) The January 2013, California Auto Outlook, sponsored by the California New Car Dealers Association.
- (4) The Economic and Fiscal Impact Statement dated May 21, 2013.

The Board relied upon the following historical documents for background information on its annual fee collection:

- (1) Fund Condition Statement and charts, staff prepared revenue projections, and a February 1, 1999, Memorandum from Larry Holcomb, Department of Motor Vehicles, Budget and Analysis Office.
 - (2) Staff prepared revenue projections for fiscal year 2000-2001 and the Fund Condition Statement for fiscal years 1998-1999 and 2000-2001.
 - (3) November 15, 2000, Fiscal Committee Memo and projections.
 - (4) January 19, 2011, Fiscal Committee Memo, that contained a 17-year fiscal summary (fiscal year 1990-1991 through 2009-2010) along with alternative annual fee projections for five years.
- Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Board concludes that the proposed regulations will not (1) create any jobs within the State of California, (2) eliminate any jobs within the State of California, (3) create any new businesses within the State of California, (4) eliminate any existing businesses within the State of California, or (5) cause the expansion of businesses currently doing business within the State of California.

BENEFITS OF THE REGULATION

The proposed regulations will promote the expeditious and economical resolution of disputes between new motor vehicle, dealers and their manufacturers or distributors. Also, benefits the public or consumer at no cost through Consumer Mediation Program, an informal means in efficiently resolving disputes between the public and any new motor dealer, manufacturer, or distributor.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed regulations will have a minimal effect on small business, in that the proposed regulations will marginally increase fees paid by a small number of small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present comments, statements or arguments with respect to alternatives to the proposed regulations, during the written comment period or at the public hearing, if one is requested.

CONTACT PERSONS

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Parker at the following address:

Robin P. Parker, Senior Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 323-1536 direct line
(916) 445-1888 main line
(916) 323-1632 fax
rparker@nmvb.ca.gov

The backup contact person for these inquiries is:

Nicole Angulo
Management Services Technician
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 323-7204 direct line
(916) 445-1888 main line
(916) 323-1632 fax

nangulo@nmvb.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, the Economic and Fiscal Impact Statement, and all the information upon which the proposal is based. Copies may be obtained by contacting the contact persons identified above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Requests for copies of any modified regulation should be addressed to the Board contact person or back-up contact person at the addresses indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available to the public.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion of the Final Statement of Reasons, copies thereof may be obtained by contacting Ms. Parker or Ms. Angulo at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout font can be accessed through the Board's website at www.nmvb.ca.gov.