

BEFORE THE  
TEXAS RACING COMMISSION  
AUSTIN, TEXAS

COMMISSION MEETING

APRIL 10, 2012

BE IT REMEMBERED that the above-entitled matter came on for hearing on the 10th day of April 2012, beginning at 10:33 a.m. at 105 W. 15th Street, Room 140, in Austin, Texas, and the following proceedings were reported by Rebecca J. Callow, CSR, RPR, CRR.

APPEARANCES

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Commissioners:       ROBERT SCHMIDT  
                          RONALD F. EDERER  
                          MIKE MARTIN  
                          GLORIA HICKS  
                          VICKI WEINBERG  
                          JOHN T. STEEN, III  
                          ANN O'CONNELL

1                   CHAIRMAN SCHMIDT: Good morning and  
2 welcome. We are calling this meeting of the Texas  
3 Racing Commission on April 10th to order.

4                   Ms. Weiss, can you please call the roll?

5                   COMMISSIONER WEISS: Ron Ederer.

6                   VICE-CHAIRMAN EDERER: Present.

7                   COMMISSIONER WEISS: Gloria Hicks.

8                   COMMISSIONER HICKS: Present.

9                   COMMISSIONER WEISS: Mike Martin.

10                  COMMISSIONER MARTIN: Present.

11                  COMMISSIONER WEISS: Ann O'Connell.

12                  COMMISSIONER O'CONNELL: Here.

13                  COMMISSIONER WEISS: Allan Polunsky.

14                  John Steen?

15                  COMMISSIONER STEEN: Present.

16                  COMMISSIONER WEISS: Vicki Weinberg.

17                  COMMISSIONER WEINBERG: Present.

18                  COMMISSIONER WEISS: Dr. Schmidt.

19                  CHAIRMAN SCHMIDT: Present.

20                  Is there a quorum present?

21                  COMMISSIONER WEISS: Yes, sir.

22                  CHAIRMAN SCHMIDT: Thank you. First item  
23 is -- we have two ceremonial items. Commissioner  
24 Haywood, are you here? We have a small presentation.

25                  As many of you know, Commissioner Haywood,

1 who was formerly a member of this commission, has now  
2 left us for greener pastures.

3 MR. HAYWOOD: I don't know about that.

4 CHAIRMAN SCHMIDT: He's a graduate with a  
5 bachelor's degree from Trinity University. He was  
6 formerly Director of Communications for the Texas  
7 Secretary of State; then moved, in Austin, to the  
8 Astrotech Corporation, where he was director of  
9 corporation communications.

10 Fortunately for us, he was appointed to  
11 the Commission in December of 2009, and he took his role  
12 as commissioner very seriously, assumed a leadership  
13 role very early, and as an Austin resident, we often  
14 called upon him to do sort of the extracurricular  
15 activities that are demanded of many of our Austin  
16 commissioners. He participated in the rules  
17 commission -- committee in a very substantial way, and I  
18 think his past government experience and experience in  
19 communications helped us immensely.

20 Unable to resist the lure of state  
21 employment, Commissioner Haywood has now left us to  
22 accept a position at the Texas Department of  
23 Transportation. So no longer must he ponder the major  
24 issues facing our state such as race stakes or what  
25 constitutes the good faith effort and designating a

1 track as inactive or active. Now he concerns himself  
2 with more mundane and less controversial matters, such  
3 as toll roads and traffic congestion.

4 I would like to thank you very much for  
5 your service for the state.

6 MR. HAYWOOD: Thank you very much.

7 CHAIRMAN SCHMIDT: We really appreciate  
8 it. Take care.

9 And now I'd like to recognize the --  
10 Mr. John Dalton to address the commission. Mr. Dalton?

11 MR. DALTON: Good morning, Mr. Chairman,  
12 Commissioners, ladies and gentlemen. My name is John  
13 Dalton, I'm the vice president for the Texas Greyhound  
14 Association.

15 And as you are all aware, we suffered a  
16 heavy loss recently with the passing our Executive  
17 Director, Diane Whiteley. And when I say "we," I don't  
18 just restrict that to the greyhound community. Pretty  
19 much everybody in this room, it's our collective loss.  
20 Diane was an incredible person; and it was our firm  
21 belief that all of us in the racing industry that our  
22 faiths are tied together, and that if we were going to  
23 make it, we were going to make it together.

24 She was an advocate for the improvement of  
25 racing everywhere; dog, horse, animal welfare, adoption.

1 I never knew Diane to have an adversarial relationship  
2 with anybody. She was a friend and colleague to all, or  
3 she was on her way to becoming a friend and colleague to  
4 all.

5 The job at TGA was pretty much ideal for  
6 Diane. Her passion was the dogs. I think she would  
7 have done a lot of it for free. She wanted nothing  
8 better than to see the best possible environment for the  
9 dogs, from the raising on the farms to the racetracks to  
10 the adoption programs afterwards.

11 We recently had a memorial for Diane up at  
12 Waco, where we had the opportunity to meet with her  
13 family. And that was -- that was very helpful, I think,  
14 for everybody. A lot of us didn't get the opportunity  
15 to say goodbye to Diane. When her illness kicked into  
16 high gear, she was unable to return to Texas as she had  
17 planned, and I think meeting with her family -- I think  
18 it helped them to meet with her friends and colleagues,  
19 and I know it certainly helped us.

20 I think if I was to pick out one thing  
21 about Diane is that she was an incredible teacher. In  
22 the years that I've known her, everything was a lesson  
23 with Diane. She would let you fall and make your  
24 mistakes, and learn from them. She was a mentor, she  
25 was an advocate for us all, and I think we are all the

1 poorer for her passing. I just wanted to say that.

2 Thank you very much.

3 CHAIRMAN SCHMIDT: Thank you very much.

4 She was a wonderful leader and an excellent spokesman  
5 for her organization.

6 Now we'll open this up for public comment.

7 Mr. Sierra-Ortega, are there any people  
8 wishing to speak?

9 MR. SIERRA-ORTEGA: Just one.

10 CHAIRMAN SCHMIDT: Mr. Carr?

11 MR. CARR: Mr. Chairman, members of the  
12 commission, my name is Snapper Carr, I'm an attorney a  
13 consultant representing Dallas City Limits, LLP.

14 I'd appreciate a moment to give a quick --  
15 I wanted to give you all a little status update since  
16 you all took action on February 7th with regards to  
17 Austin Jockey Club's request for change of ownership in  
18 Longhorn Downs. At that time -- and I'm here primarily  
19 because at that time when I provided testimony, there  
20 was some questions from attorneys and representatives  
21 for the other side calling into question some of my  
22 statements regarding the status of the litigation that  
23 occurred in Houston. And through the comments of this  
24 Commission and appearance that day, at least partly your  
25 decision to move forward on that agenda item was based

1 on some of those representations; specifically as it  
2 related to ownership and possession of the stock.

3 I'm here today to testify to you, and we  
4 checked with the Court again today, that that stock  
5 remains in a safe in the district court in the court  
6 registry. No one has ever been granted possession of  
7 that stock since the hearing. Despite -- and I have the  
8 transcript from the Commission hearing on February 7th.  
9 A couple of quick points. Mr. Gallagher, one of the  
10 attorneys and owners, represented to you all, "Pending  
11 your decision -- the decision that you make today, that  
12 will be released to KTAGS upon your approval," and he's  
13 discussing the stock. He said, "And the underlying  
14 stock that's held in Longhorn Downs will be released to  
15 Austin Jockey Club."

16 Mr. Butch Boyd, who also testified in the  
17 transcript, contradicting some of the testimony that I  
18 provided to you all, said the judge -- quote: The judge  
19 entered an order yesterday releasing the stock, my  
20 client. We will be picking that stock up today. We  
21 have a final order, we will have the stock today.

22 Again, as we stand here today on  
23 April 10th, that is incorrect. And, in fact, the judge  
24 has submitted multiple discussions in hearings that have  
25 occurred, including vacating the pending order that was



1 discussed at y'all's hearing when you made that  
2 decision, and even looked to send the stock to this  
3 commission to hold in escrow, if you will, or in your  
4 registry. We, of course, do not believe that was a  
5 proper course.

6           The Court of Appeals in Houston -- which I  
7 have a copy of today and will give to Mr. Fenner, I  
8 assume he probably has this already -- through a  
9 mandamus action have issued a stay vacating that order  
10 of the Court.

11           So the bottom line that I wanted to bring  
12 to your attention today is that we had a pending  
13 litigation matter, and we testified to that fact that  
14 matters of ownership and possession were not clear and  
15 that we needed to allow the court system to move  
16 forward. And primarily, that being through the Court of  
17 Appeals in Dallas, who has dominant jurisdiction over  
18 this matter. That hearing on the items of the contract  
19 that's in place between Dallas City Limits and Austin  
20 Jockey Club ownership and possession will all be decided  
21 on the matter that is set to have oral arguments on  
22 May 1st of this year.

23           And with that, my client -- and we can  
24 visit with counsel offline about this -- would like to  
25 look at avenues for you all to rescind the actions that

1 you took forth on February 7th, maintain the status quo  
2 of the parties, and allow the court system to finally  
3 resolve this private contractual matter before you all  
4 do your business of issuing licensure and ruling on the  
5 validity of an application.

6 I thank you for your time today.

7 CHAIRMAN SCHMIDT: Thank you. Thank you  
8 very much.

9 General business. Work by the executive  
10 staff regarding administrative matters, budget, and  
11 finance update. Shelley Harris-Curtsinger.

12 MS. HARRIS-CURTSINGER: Good morning,  
13 Commissioners. On page 1 through 4 of your commission  
14 materials, you will find an update on the agency's  
15 fiscal year 2012 budget status. As of February 29th,  
16 2012, we are 50 percent through the current fiscal year.  
17 The update in your packet corresponds to that time frame  
18 with the agency having expended 36.37 percent of our  
19 operating budget thus far.

20 I'll be happy to answer any questions.

21 CHAIRMAN SCHMIDT: Any questions from any  
22 of the commissioners?

23 Thank you very much, Shelley.

24 Racetrack inspections, Mr. Sammy Jackson.

25 MR. JACKSON: Good morning, Commissioners.

1 Page 5 of your agenda packet, you'll find the report on  
2 racetrack inspection activities as of March 31st, 2012.  
3 The report reflects the staff conducted six inspections  
4 since our last commission meeting with only one  
5 identified deficient item remaining outstanding.

6 The remaining deficient item is in regards  
7 to an expired Totalisator contract that was found  
8 through our administrative inspection of Gulf Greyhound  
9 Park. Later on today's agenda, you will find a request  
10 by Gulf Greyhound Park for consideration and approval of  
11 a new Totalisator contract. If this is approved, this  
12 will remedy that deficient item.

13 If you have any questions, I'll be more  
14 than happy to answer them at this time.

15 CHAIRMAN SCHMIDT: Any questions of  
16 Mr. Jackson regarding racetrack inspections?

17 Moving to wagering and statistics,  
18 Mr. Jackson.

19 MR. JACKSON: Thank you. Commissioners,  
20 on page 6 through 8 of your agenda packet, you will find  
21 a report on wagers and statistics for the period of  
22 January 1st through April 1st for both 2011 and 2012.  
23 The report reflects that 2012 total wager and activity  
24 continues to show signs of recovery of our past  
25 declines. For the first three months of the year, we

1 have seen the following: Live wager is up by  
2 6.43 percent, simulcast species-same wagering is up  
3 11.71 percent. Simulcast cross-species wagering is down  
4 3.98 percent. And export of our total -- of our Texas  
5 race signals to outside places is up by 23.24 percent.

6 This concludes my report. If you have any  
7 questions, I'll be happy to answer them.

8 CHAIRMAN SCHMIDT: Export is up  
9 23 percent?

10 MR. JACKSON: Yes, sir.

11 CHAIRMAN SCHMIDT: Thank you.

12 Any other questions of Mr. Jackson from  
13 any of the commissioners?

14 Thank you, Sammy. Thank you, Mr. Jackson.

15 Enforcement report, Mr. Gougler?

16 MR. GOUGLER: Good morning, Commissioners.

17 Included on page 9 you'll find the enforcement report.

18 It covers the first three months of the calendar year.

19 During that period we've only had one horse track

20 running, that's Sam Houston completed their thoroughbred

21 meet and now into their quarter horse meet. And one

22 greyhound track running at Gulf Greyhound Park.

23 The number of live races is consistent

24 with past performance, and on a good note we've only had

25 less than 1 percent animal positives in the horse

1 testing and no animal positives with the greyhounds.

2 That concludes my report. If you have any  
3 questions, I'll be glad to answer them.

4 CHAIRMAN SCHMIDT: Any questions of Mike  
5 from any Commissioners?

6 Thank you, Mr. Gougler.

7 MR. GOUGLER: Thank you, sir.

8 CHAIRMAN SCHMIDT: Next is a report by the  
9 Ad Hoc Committee on Rules to Implement HB 2271. We're  
10 going to move that to the more relevant part of the  
11 discussion under Proceedings of Rulemaking. So we'll go  
12 to Item G, report by the Greyhound Advisory Commission,  
13 Dr. Quirk.

14 DR. QUIRK: Good morning, Mr. Chairman and  
15 Commissioners; and kudos to Sam Houston and Gulf for the  
16 beginning of this year. They've gotten off to a pretty  
17 good start. And also to John Dalton and his comments  
18 about Diane. It was -- I happened to attend the service  
19 and there were a number of eulogies that day, and  
20 certainly John's was special, as many of them were, for  
21 a truly special, special person.

22 Today our focus -- first of all, let me  
23 say by virtue of circumstance, this report is somewhat  
24 perfunctory and that we've not had a meeting of the  
25 Greyhound Advisory Group since our last commission

1 meeting; however, that will be corrected shortly after  
2 the conclusion of this meeting and we will be meeting  
3 this afternoon. I think there are a number of people in  
4 town for that and that it should be a productive  
5 experience.

6           That meeting will focus on a number of  
7 items. One of -- first of which will be the enhanced  
8 maintenance activity at Gulf Greyhound in terms of how  
9 they're maintaining their track. It will include a  
10 recent report from Dr. Rob Gillette that I think  
11 Ms. Briggs is in possession of. We're encouraged by the  
12 numbers that we see that that has improved, so we're  
13 going to -- we're going to attribute that to some of the  
14 maintenance issues that have changed.

15           There will be also a discussion of the  
16 availability of greyhounds for racing. This topic has  
17 been heightened, I think, by virtue of a disease  
18 outbreak that some of you may be aware of that's been in  
19 place at Gulf for the last couple of weeks. Seems to  
20 be -- well, we're hopeful in believing that perhaps the  
21 worst is behind us on that issue.

22           We will also be discussing improvements to  
23 the injury tracking program at Gulf, in that we will be  
24 looking at how injuries are classified; not -- obviously  
25 not to diminish the importance of injury by

1 reclassifying, but in an effort to more appropriately  
2 classify injuries which I think is really in order.  
3 Beyond that, we will be looking at rule changes  
4 regarding use of lures and how they may be used. This  
5 was, I think, brought to us by TGA, and we'll be  
6 addressing that concern.

7           And also we will be discussing, at least  
8 briefly, the inspections for greyhound breeding farms  
9 going forward. And I think actually those are maybe  
10 going on right now and are being conducted by NGA, so  
11 that will be an item for discussion.

12           That pretty much concludes my report to  
13 you. I'd be happy to attempt to answer any questions  
14 you may have.

15           CHAIRMAN SCHMIDT: Dr. Quirk, that meeting  
16 is this afternoon at one or 1:30?

17           DR. QUIRK: It's about half hour after  
18 this meeting adjourns, whatever time that happens to be.

19           CHAIRMAN SCHMIDT: Okay. Great. Thank  
20 you.

21           Any further questions of Dr. Quirk by the  
22 commissioners?

23           Okay. Thank you very much, sir.

24           Proceedings on racetracks. Request by  
25 Retama Park for approval of one change of ownership of

1 less than 1 percent. Can you lay out the issue for us,  
2 please?

3 MR. GOUGLER: Yes, sir. On page 10 of  
4 your packet, there's a request for ownership change from  
5 Retama Partners. On February 1st, the Commission  
6 received a request from Retama Partners Ltd. to approve  
7 the transfer of the following ownership interests.

8 From the Estate of Ruskin C. Norman to 210  
9 Muy Buena Suerte Ltd., five interests; and to the Straus  
10 2003 Irrevocable Trust, five interests. Background  
11 information forms for the applicants were forwarded to  
12 DPS on the 22nd of March. We received a written report  
13 from DPS advising there was no disqualifying  
14 information, and it is recommended that the ownership  
15 transfer be approved.

16 CHAIRMAN SCHMIDT: Okay. Jonathan, is  
17 there any public comment?

18 MR. SIERRA-ORTEGA: No, sir.

19 CHAIRMAN SCHMIDT: Any discussion by the  
20 commission?

21 I'll certainly entertain a motion.

22 COMMISSIONER MARTIN: I'll make a motion.

23 CHAIRMAN SCHMIDT: Okay. There's a motion  
24 to approve the request by Retama Park for one change in  
25 ownership of less than 1 percent by Dr. Martin. Is



1 there a second?

2 VICE-CHAIRMAN EDERER: Second.

3 CHAIRMAN SCHMIDT: Second, Mr. Ederer.

4 Any further discussion?

5 I'll call to a vote. All those in favor  
6 signify by saying aye.

7 COMMISSIONERS: Aye.

8 CHAIRMAN SCHMIDT: Motion carries.

9 Second item, request by Gulf Coast Racing,  
10 Laredo Downs, and Valle de los Tesoros for approval of  
11 changes in ownership interests to family and special  
12 trusts.

13 Mr. Gougler, can you lay out this issue  
14 for us?

15 MR. GOUGLER: Yes, sir. On page 12. On  
16 January 13, 2012, we received a request from Laredo  
17 Downs, Tesoros Race Park, and Gulf Coast Racing. The  
18 requests relate to the transfer of some ownership  
19 interests to various special and family trusts.  
20 Although the beneficiaries of these trusts are different  
21 from the original interest holders, control of the trust  
22 remains within the original group of interest holders.  
23 These transfers are more fully described in the enclosed  
24 material related to each track.

25 Background information on the applicants

1 was forwarded to DPS; and on February 2nd of this year,  
2 the Commission received a report from DPS saying there  
3 was no disqualifying information. It's recommended that  
4 these transfers also be approved.

5 CHAIRMAN SCHMIDT: Thank you, sir.

6 Any public comment?

7 MR. MOLTZ: For the record, my name is  
8 Bill Moltz. I don't have anything further to add to  
9 what's in the packet, but I am available for questions.  
10 It is a rather complex transaction. If somebody has any  
11 questions, I'd be happy to answer them.

12 CHAIRMAN SCHMIDT: Are there any questions  
13 for the counselor? Okay.

14 Thank you for your availability.

15 Any discussion? I'll certainly entertain  
16 a motion.

17 COMMISSIONER HICKS: I'll make a motion.

18 CHAIRMAN SCHMIDT: Okay. There's a motion  
19 to approve the request of Gulf Coast Racing, Laredo  
20 Downs, and Valle de los Tesoros to change ownership  
21 interests to a family and special interest trust. The  
22 motion is made by Commissioner Hicks.

23 Is there a second?

24 COMMISSIONER WEINBERG: Second.

25 CHAIRMAN SCHMIDT: Second by Commissioner

1 Weinberg.

2 Any further discussion?

3 We'll call for a vote. All those in favor  
4 signify by saying aye.

5 COMMISSIONERS: Aye.

6 CHAIRMAN SCHMIDT: Opposed?

7 The ayes carry. Motion's approved.

8 Item C, request by Gulf Greyhound Park for  
9 approval of an amendment to the Totalisator contract  
10 with United Tote Company.

11 Mr. Jackson, you discussed this earlier.

12 Can you just bring us up to date a little bit?

13 MR. JACKSON: It's a new contract, sir.

14 If you have any questions, I think we'd have to go into  
15 executive session to discuss certain contracts.

16 CHAIRMAN SCHMIDT: Okay.

17 MR. JACKSON: I will tell you, we have  
18 reviewed it and it meets all the criteria within the  
19 rules and the statutes.

20 CHAIRMAN SCHMIDT: And it addresses the  
21 deficiency that we discussed earlier?

22 MR. JACKSON: Right.

23 CHAIRMAN SCHMIDT: Any questions of  
24 Mr. Jackson?

25 Any public comment?

1 Any further discussion by the Commission?

2 VICE-CHAIRMAN EDERER: Here you go.

3 CHAIRMAN SCHMIDT: Sorry. Okay. Thank  
4 you.

5 Do we have any questions of anyone  
6 regarding this transfer from the Commission? Okay.

7 I'll certainly entertain a motion.

8 COMMISSIONER STEEN: I'll make a motion.

9 CHAIRMAN SCHMIDT: There's been a motion  
10 by Commissioner Steen to approve the request by Gulf  
11 Greyhound Park for approval of an amendment to the  
12 Totalisator contract with United Tote Company.

13 Motion is made by Commissioner Steen. Is  
14 there a second?

15 VICE-CHAIRMAN EDERER: Second.

16 CHAIRMAN SCHMIDT: Second by Commissioner  
17 Ederer.

18 Any further discussion, comments?

19 All those in favor signify by saying aye.

20 COMMISSIONERS: Aye.

21 CHAIRMAN SCHMIDT: Anyone opposed?

22 Motion carries, and the request is  
23 granted.

24 Okay. Item D, request by Gulf Greyhound  
25 on behalf of Gillespie County Fair and Festivals for

1 approval of an amendment to its Totalisator contract  
2 with United Tote Company.

3 Mr. Jackson?

4 MR. JACKSON: Thank you, Mr. Chair. The  
5 amendment extends the current contract that has been  
6 previously approved by this body to 2015. The contract  
7 has already been reviewed by staff prior to this, and  
8 approved by the Commission. We recommend approval of  
9 the amendment.

10 CHAIRMAN SCHMIDT: Great. Contract  
11 extension.

12 MR. JACKSON: Yes, sir.

13 CHAIRMAN SCHMIDT: Any public comment,  
14 Jon?

15 MR. SIERRA-ORTEGA: No.

16 CHAIRMAN SCHMIDT: No public comment on  
17 this issue.

18 Any discussion by the Commission or  
19 questions?

20 Great. I'll certainly entertain a motion.

21 COMMISSIONER HICKS: I'll make a motion.

22 CHAIRMAN SCHMIDT: There's been a motion  
23 to approve the request by Gulf Greyhound on behalf of  
24 Gillespie County Fair and Festival Association for  
25 approval of an amendment to the Totalisator contract

1 with United Tote Company, extending the contract to  
2 2015.

3 Motion in favor by Commissioner Hicks. Is  
4 there is a second?

5 COMMISSIONER MARTIN: Second.

6 CHAIRMAN SCHMIDT: Second, Dr. Martin.

7 All those in favor signify by saying aye.

8 COMMISSIONERS: Aye.

9 CHAIRMAN SCHMIDT: All these opposed?

10 Unanimous approval, so that is carried as  
11 well.

12 Okay. Discussion, consideration of the  
13 possible action of the following matters of rule  
14 proposals.

15 Mark, what I would like to do first is  
16 let's take items A and B, and lay those out together,  
17 and vote on those and go through Item C through H, if  
18 you don't mind. That way...

19 MR. FENNER: Yes, sir. The rule proposal  
20 for new Rules 309.51 and 309.52, are proposed to  
21 implement those provisions of HB 2271 that will require  
22 the Commission to designate the racetrack license as  
23 active or inactive, and then to adopt an annual review  
24 process for those inactive licenses to determine whether  
25 or not they should be renewed.

1                   This has been discussed at multiple Rules  
2 Committee meetings; three meetings of the HB 2271  
3 Meeting Committee, three meetings of the Rules  
4 Committee. We've submitted draft rules -- or taken  
5 draft rules to one of those meetings of the HB 2271  
6 Committee, and one of the Rules Committee meetings which  
7 was held at Lone Star Park.

8                   In brief, these draft rules do the  
9 following things: First, it creates -- it defines an  
10 active license in two different ways. There's either an  
11 active operating license, and that's a racetrack that's  
12 actually not only simulcasting, but conducting live  
13 racing in the previous year. If you're not active  
14 operating, then there are three ways you can become  
15 active other.

16                   Active other, first of all, you have to  
17 have live race dates granted to you. If you meet that  
18 leg of the test, then you must be doing one of three  
19 things: You have to either be currently simulcasting,  
20 you have to be able to come up and demonstrate that  
21 racing and simulcasting is imminent at that racetrack  
22 facility. And that means that you have to be able to  
23 show that -- hang on just a second. I'm sorry -- well,  
24 let me just say in the brief it says you have to show  
25 that it's imminent within four months.

1           Or the third way you can do it is, you can  
2 voluntarily provide a 400,000-dollar bond to ensure that  
3 you will become -- begin simulcasting within the next  
4 year and that you conduct live racing within two years.  
5 If you don't meet one of these criteria to become either  
6 active operating or active other, then it will be  
7 designated as an inactive license.

8           Now, regarding the bond that would be put  
9 up, the 400,000-dollar bond, if you determined that you  
10 wanted to be designated as active other by providing a  
11 bond. That's going to have an automatic forfeiture date  
12 if you don't meet the requirements of either  
13 simulcasting or beginning live racing; however, there is  
14 an opportunity if the racetrack license holder believes  
15 that there is extenuating circumstances, they can come  
16 to the Commission and ask the Commission for authority  
17 to -- ask the Commission to either extend the forfeiture  
18 date or ask the Commission to return the bond. So there  
19 would be an opportunity for the Commission to step in  
20 and prevent the automatic forfeiture of a bond.

21           Also, there is the opportunity for the  
22 Commission to rereview the designation of the license at  
23 any time. And if the circumstances have changed around  
24 that license, you can redesignate it. You can designate  
25 it an inactive one, as active, or change the designation



1 of an active license to inactive. By the way, regarding  
2 bond, the forfeited bond amounts accrue to the benefit  
3 of the purse accounts, if it's a horse racetrack that's  
4 forfeiting the bond; or they accrue to the benefit of  
5 the Accredited Texas-Bred Program for greyhounds, if  
6 it's a greyhound track that's forfeiting a bond.

7 Now, the next rule that's being proposed  
8 is 309.52, the review and renewal process. This will be  
9 done on an annual basis. At the conclusion of a review,  
10 the Commission has a number of options. You can  
11 designate the licenses active operating, you can  
12 designate it as active other using the same criteria as  
13 before, you can just renew it as an inactive license, or  
14 if you're unsatisfied with the progress the license has  
15 made, you can refer it to the State Office of  
16 Administrative Hearings for an evidentiary hearing as to  
17 whether or not the Commission should refuse to renew the  
18 license. Basically means to allow it to lapse, but  
19 that's the language of the statute to refuse to renew.

20 Now, in determining whether to renew a  
21 license, the Commission would consider the license  
22 holder's financial stability, ability to conduct live  
23 racing, ability to construct and maintain a racetrack  
24 facility, other good faith efforts to conduct live  
25 racing, and the other necessary factors that were

1 considered in the issuance of the original license, and  
2 those are statutory elements.

3 Now, one of the issues that we've had a  
4 great deal of discussion about is what constitutes a  
5 good faith effort. Good faith efforts in the rule are  
6 being defined as securing sufficient financial  
7 commitment to actually build a track, purchasing the  
8 racetrack site, executing the construction contracts,  
9 getting Commission approval of the construction plans,  
10 getting your building permits, and/or building and  
11 sustaining construction of the racetrack facility.

12 Now, if, on the other hand, the Commission  
13 decides that the license holder hasn't met those  
14 criteria and determines to refer it to SOAH for an  
15 administrative hearing, then it comes back for -- of  
16 course, it will come back as a proposal for a decision.  
17 You have the option to refuse to renew if that renewal  
18 is not in the best interest of the racing industry or of  
19 the public, or if the license holder has not made good  
20 faith efforts to conduct live racing. And then we also  
21 define what it means that it's not in the good -- in the  
22 best interest of the racing industry or of the public.

23 First of all, if there's a ground for  
24 revoking, suspending, or denying a license, well, then  
25 that is viewed as a ground that's not in the public

1 interest. If an inactive license holder has forfeited a  
2 bond that the Commission required of that license, then  
3 that can be considered by the Commission as not in the  
4 best interest. Failure to comply with any condition or  
5 order imposed on the license by the Commission, failure  
6 to maintain ownership or leasehold interest in the  
7 racetrack site, or any of the public interest factors  
8 that are already identified in Section 6.04 of the Act,  
9 which I believe most of y'all are generally familiar  
10 with through the racetrack licensing process we've gone  
11 through in the past.

12 And then, of course, you do have the  
13 authority in the renewal process to require an inactive  
14 license holder to put up a bond to ensure that they make  
15 progress on some of these good faith efforts during the  
16 intervening year. And once again, if that bond is  
17 forfeited, then we would go to the bonding section of  
18 the rules, which is a different rule, to determine how  
19 we're going to handle the forfeiture of that bond.

20 Do you have any questions about any of  
21 those elements?

22 CHAIRMAN SCHMIDT: Any questions from the  
23 Commissioners of Mr. Fenner?

24 Mark, could you just go over again one  
25 more time for my clarification, because I've been

1 through this with Lone Star. I think the key issue is  
2 the inactive racetrack at one year.

3 MR. FENNER: Yes.

4 CHAIRMAN SCHMIDT: At that time, the  
5 Commission can A, upgrade it to active operating, or  
6 active other; B, continue it as inactive for another  
7 year; or C, refer it to the State Office of  
8 Administrative Hearings. Right?

9 MR. FENNER: Yes.

10 CHAIRMAN SCHMIDT: Up, down, or the same.

11 MR. FENNER: Yes.

12 CHAIRMAN SCHMIDT: If you're inactive  
13 after a year, for whatever reason, we have a hearing,  
14 they can post a bond. Does that bond in turn -- if that  
15 bond is not -- after it's been classified as inactive  
16 for a year and they post a second bond and they're  
17 classified as inactive for a second year, does that  
18 second bond go to the purse fund if that's violated?

19 MR. FENNER: If they're an inactive  
20 racetrack, putting up a bond, not the 400,000-dollar  
21 bond, but a bond that the Commission has required in  
22 order for them to demonstrate progress, then the way  
23 that the Rule 309.6 is set up right now is, a good  
24 portion of it would go to the Accredited Texas-Bred  
25 fund, a portion of it would go to the general revenue

1 fund for the benefit of the state, and a little bit of  
2 it would go to the Commission to cover costs.

3 CHAIRMAN SCHMIDT: But the majority would  
4 go to the horse fund or the greyhound --

5 MR. FENNER: Yes. About half, slightly  
6 more, would go to the horse fund.

7 CHAIRMAN SCHMIDT: Thanks.

8 Any further questions for Mr. Fenner?

9 VICE-CHAIRMAN EDERER: Yes, I do have a  
10 couple, just for clarification purposes.

11 As far as the bond is concerned, what are  
12 the dates that are going to trigger this? Now, I see  
13 August 31st. Is that the 31st of this year the bonds  
14 would be required?

15 MR. FENNER: Yes. They would have to put  
16 up bonds by --

17 VICE-CHAIRMAN EDERER: We're talking about  
18 active other. Is that right?

19 MR. FENNER: Right. Yes. For active  
20 other, they would have to put up a bond by the beginning  
21 of this fiscal year. I believe it's September 1, 2012.  
22 And then they would have one year in order to begin  
23 simulcasting. If they failed to begin simulcasting by  
24 August 31 of 2013, then that 400,000-dollar bond would  
25 be forfeited, and this bond would be forfeited entirely

1 to the purse accounts.

2 Now, if they begin simulcasting but they  
3 have not conducted live racing, then they have one more  
4 year in which to complete their live race dates. So  
5 they must have live race dates allocated to them in  
6 order to become active other. If they begin their --  
7 and complete their live race dates by 2014, August 31,  
8 2014, then that bond would be returned to them.  
9 Otherwise, again, it would be forfeited.

10 Does that answer your question?

11 VICE-CHAIRMAN EDERER: Yes. So if they  
12 started to simulcast and they put up a bond, the date  
13 that we're -- that triggers everything is August the  
14 31st.

15 MR. FENNER: Yes. August 31st of each  
16 year is the date that we'll be looking at. It's a  
17 two-stage implementation for them; simulcasting by the  
18 conclusion of the first fiscal year, live racing by the  
19 conclusion of the second fiscal year.

20 VICE-CHAIRMAN EDERER: Okay.

21 COMMISSIONER O'CONNELL: There are  
22 multiple avenues for achieving active other status, just  
23 one of which of it is the bonding. And so that is a  
24 voluntary method that a track can pursue, it's not  
25 required.

1                   MR. FENNER: Absolutely. No one is  
2 required to provide the bond at all. They could go --  
3 they could either begin simulcasting or get in position  
4 where they're ready to begin simulcasting, or they can  
5 decide not to provide the bond and go inactive. And  
6 during that inactive year, they could make those good  
7 faith efforts of getting themselves in a position to  
8 come back to the Commission and say, I'm ready to start  
9 live racing, I'm ready to start simulcasting, please  
10 redesignate me as active.

11                   VICE-CHAIRMAN EDERER: At that time,  
12 they'd have to put up a bond?

13                   MR. FENNER: For example, if they decided  
14 to become inactive and go about the business of getting  
15 their racetrack in position, then there's no  
16 requirement. By this time, hopefully they'd already  
17 have their live race dates. They don't have to come to  
18 the Commission for approval to begin simulcasting, the  
19 executive director can approve simulcasting. That  
20 authority's been delegated to him. So they could  
21 arguably -- and there's no practical reason they  
22 couldn't open up a simulcast facility, begin  
23 simulcasting, show that they're ready to get that live  
24 racing facility ready for live races, come to the  
25 Commission and say, I'm simulcasting, I'm ready to go,

1 please redesignate me as active right now, active other.  
2 And then once they've conducted their live race date,  
3 they can come to you and say, I'm active operating, and  
4 no requirement for a bond at all.

5 COMMISSIONER O'CONNELL: The bond secures  
6 a promise to perform, and if you're showing that you are  
7 performing, then there's no need for the bond.

8 VICE-CHAIRMAN EDERER: If they don't go to  
9 active racing, though, they then would have to put up a  
10 bond.

11 MR. FENNER: If they do not go to active  
12 racing -- you're saying, for example, if they were to  
13 miss their live race dates?

14 VICE-CHAIRMAN EDERER: Correct.

15 MR. FENNER: If they were to miss their  
16 live race dates, then that would call for a review by  
17 the Commission. The Commission, within -- the following  
18 four months within failing to run those live race dates  
19 that were unexcused, would -- the license holder would  
20 come to you and explain why they failed -- they missed  
21 their live race dates, and at that opportunity -- or  
22 that time, you would have the option of redesignating  
23 them.

24 VICE-CHAIRMAN EDERER: To active other.

25 MR. FENNER: Yes. To designate them as



1 active other.

2 VICE-CHAIRMAN EDERER: Okay.

3 CHAIRMAN SCHMIDT: Okay. Any other  
4 questions of Mr. Fenner? Any of the Commissioners?

5 Commissioner O'Connell, any further input?

6 COMMISSIONER O'CONNELL: I'd just like to  
7 say a few words about the process. I'd like to thank  
8 everyone who participated in the process. The meetings  
9 to start drafting a rule for this began soon after  
10 HB 2271 passed, and it's been a tight time frame because  
11 the bill establishes a deadline by which the Commission  
12 has to make these designations. And so we have to  
13 backtrack from that September 1st deadline to come up  
14 with a draft with enough time to post it in the Texas  
15 Register and have a comment period and adopt it. So I  
16 appreciate everyone's willingness to come to the  
17 meetings and really work hard to hash it out.

18 We've had a lot of input from all of the  
19 stakeholders and we've had participation from our  
20 commissioners at different meetings around the state. I  
21 know that Commissioner Haywood was present when he was  
22 on the Commission, Commissioners Weinberg, Martin, and  
23 Chairman Schmidt were present at the Lone Star meeting,  
24 I believe, and I know that Commissioner Ederer has been  
25 present with me at some of the Austin hearings.

1                   We have really had a lot of discussion  
2                   about this -- the bill and what it means and what the  
3                   legislative intent is. And we've also had discussion  
4                   about the ramifications that the designations with the  
5                   review process is; that the bill seems to want to really  
6                   keep a tighter regulatory oversight approach on the  
7                   inactive tracks requiring this annual renewal process.  
8                   And the bill seems to reward tracks that are active or  
9                   about to be, showing so much good faith efforts that  
10                  there are going to be opportunities for horsemen.

11                  So we really tried to balance a lot of  
12                  different things. We tried to consider that legislative  
13                  intent, we tried to come up with something that would be  
14                  flexible to the tracks, that would allow the tracks to  
15                  have a choice on how to proceed based on where they were  
16                  in their -- based on what their situations are because,  
17                  as we know, they're all very differently situated. We  
18                  tried to come up with something that would address the  
19                  issues of the horsemen that are waiting for these  
20                  opportunities to come to fruition. And we know that  
21                  from our last round of race date designations that there  
22                  are a lot of horsemen that are hurting and, you know,  
23                  struggling to stay in the state, waiting for those  
24                  opportunities to come.

25                  So we've tried to be balanced and address

1 the concerns of all parties. I think we've had some  
2 really good comments. The comments that have come from  
3 the tracks have been very -- very well researched, very  
4 high level, very nuanced. They've been presented  
5 verbally as well as in writing, and they've provided a  
6 lot of food for thought. I know at the last meeting we  
7 were able to -- the last meeting that was on, I believe,  
8 March 27th, the Rules Committee, changes were made to  
9 the draft in response to comments that were received by  
10 the tracks, and I think that those -- that definitely  
11 served to improve the draft.

12 So I do want to thank everyone for their  
13 input. I'm sure there are folks that do have some  
14 issues that were not ultimately addressed, but I think  
15 through the process we were able to close a lot of gaps  
16 and come up with something that most people could --  
17 could work with and that would reflect intent of the  
18 bill. Thank you.

19 CHAIRMAN SCHMIDT: Any questions of  
20 Commissioner O'Connell from any of the commissioners?

21 We sincerely appreciate your efforts,  
22 Haywood's efforts, Mr. Ederer's efforts in working  
23 through it. The devil was in the details, and we very  
24 much appreciate your efforts.

25 Public comment, Jonathan? Thank you very

1 much.

2 Ms. Ruyle? Mary Ruyle, representative of  
3 the Texas Thoroughbred Association.

4 MS. RUYLE: Good morning, Commissioners.  
5 My name is Mary Ruyle, business manager for the Texas  
6 Thoroughbred Association. Mr. Hooper was unable to be  
7 here this morning, so he asked me to read a short  
8 statement.

9 The Texas Thoroughbred Association Board  
10 of Directors took a simplified, common sense approach in  
11 its recommendations to define an active racetrack  
12 license and an inactive racetrack license. In summary,  
13 the TTA approved a recommendation to define an active  
14 racetrack license as a track that had offered live  
15 racing in the past year and an inactive racetrack  
16 license as a track that had not offered live racing in  
17 the past year. Incorporating amendments filled with  
18 legal verbiage could leave the definitions open to  
19 various interpretations of lawyers and the courts, and  
20 TTA recommends that the commission keep it simple in the  
21 interest of using good, common sense judgment.

22 If you have any questions, I'd be pleased  
23 to try to answer them.

24 CHAIRMAN SCHMIDT: Do any of the  
25 Commissioners have any questions of Ms. Ruyle?

1 Thank you very much.

2 MS. RUYLE: Thank you.

3 CHAIRMAN SCHMIDT: Mr. Bryan Brown  
4 representing Retama and KTAGS.

5 MR. BROWN: Good morning, Mr. Chairman,  
6 Commissioners; I'm Bryan Brown. First of all, I'd like  
7 to say I appreciate all the commissioners that  
8 participated in this arduous process. The meetings, I  
9 think, from the industry standpoint were very, very  
10 helpful, allowed us to get a lot of things off our chest  
11 and make suggestions. And with the latest draft that is  
12 before you of these two Rules, 309.51 and 52, a lot of  
13 discussions have been incorporated to make these rules I  
14 think a lot more workable. I do want to make just a  
15 couple comments. These are fairly minor.

16 On page 55, Section A -- excuse me,  
17 Section (b) (2) (B) (i) refers to purchasing the real  
18 property as one of the methods for demonstrating good  
19 faith efforts. There could be an arrangement that would  
20 be akin to that with a long-term lease or something like  
21 that that I would hope would be looked at as well as  
22 satisfying that requirement rather than an out-and-out  
23 purchase. In the case of KTAGS, there is an internal  
24 lease amongst the owners that's in place, and certainly  
25 it involved purchasing the property outright, but it

1 also involved an internal lease between the parties, so  
2 I would hope that language could maybe be modified  
3 slightly.

4                   On the next page up at the top in item  
5 little (v), in the fourth line it talks about simulcast  
6 beginning within four months of the designation. It  
7 could be that due to construction activity, four months  
8 is really not workable, so I'd appreciate the staff  
9 looking at maybe a little bit more flexibility within  
10 that language. It could be out and out having dirt  
11 being moved around, utility lines being placed, and  
12 simulcasting at the site itself if that's what the  
13 license holder intended to do, would be unworkable.  
14 Now, certainly all of us like to look at preopening  
15 simulcast at a site close by, which would alleviate that  
16 concern.

17                   On page 57, if Mr. Fenner could -- and we  
18 talked about this at the last meeting -- kind of walk  
19 through the time line. For instance, if you wanted to  
20 post a bond, get the designation in January of a year --  
21 you know, if you could at some point walk us through how  
22 that takes effect for the following fiscal year, in  
23 which -- the way I read all these rules if we came to  
24 the Commission for the designation and in January posted  
25 the bond, that would take effect for the following

1 fiscal year for preopening simulcasting activities and  
2 then live racing the fiscal year after that. I want to  
3 make sure I'm reading that correctly.

4 This all works real well if you come to  
5 the commission on September 1. That's real easy to  
6 read, but if you come at an earlier time, I think we all  
7 just need to be clear about what the time line would be.  
8 If that makes sense. And we can handle that certainly  
9 with meetings with staff following this meeting.

10 The only other comments that I would make  
11 in general on the language is on page 58, in two places  
12 in Paragraph (E) at the top and -- big (E) at the top  
13 and little (f) at the bottom, the racetracks are  
14 required to run the live race dates that are granted.  
15 There is an exception if the executive secretary excuses  
16 those dates, acts of God, weather, whatnot. What could  
17 happen under this language is, you could have to be  
18 required to cancel a date. Say an hour before the  
19 actual racing is supposed to start due to lightning or  
20 some other weather. If the executive secretary doesn't  
21 excuse that, even though you really have no choice,  
22 you'd be in violation of this rule. And I know that's  
23 highly unlikely, and I know the executive secretary is  
24 going to come back afterward. And it would be the  
25 stewards in this case, I think, for the most part that

1 would cancel the actual live racing, so I think we need  
2 to be more comfortable that when we have to cancel and  
3 we can't run a date for whatever reason. Sam Houston's  
4 race dates during Hurricane Ike are a good example of  
5 that. Even if the executive secretary, for whatever  
6 reason doesn't excuse it, that we're still not in  
7 violation of this rule, if that makes sense. And,  
8 again, this is minor stuff I think we could handle with  
9 staff following this meeting.

10 Another thing I'd like to point out just  
11 in general, I think the worst thing for this industry  
12 would be to lop a whole bunch of racetracks all at the  
13 same time onto the state and onto the industry, so I do  
14 think it's going to be incumbent on the industry and  
15 staff to get together after these rules are passed and  
16 make sure we're doing the right thing for the state.

17 Now, all of us want to get to live racing.  
18 That's clear the legislators want us to get to live  
19 racing, but I do think it needs to be done in a smart  
20 manner, and not just all at once. So I'd be happy to  
21 answer questions if you have any.

22 CHAIRMAN SCHMIDT: Any questions of  
23 Mr. Brown?

24 Is that a -- I just have a question, Mark.  
25 I think Mr. Brown's comments are well thought out. Can



1 we address most of these concerns, do you think, staff,  
2 to track level or do we need to make any changes in the  
3 rule itself?

4 MR. FENNER: To the extent that we need to  
5 make changes, we can certainly make those during the  
6 comment period. So I wouldn't anticipate us trying to  
7 revise it here on the fly today.

8 CHAIRMAN SCHMIDT: I guess my question was  
9 more -- because it does still -- in toto, the Commission  
10 is granted latitude to take care of these special  
11 circumstances.

12 MR. FENNER: Yes.

13 CHAIRMAN SCHMIDT: We're granted the  
14 latitude to work with the tracks in that regard.

15 MR. FENNER: Yes. In the bonding  
16 requirement, of course there is always the opportunity  
17 to come back to the Commission and say, this isn't  
18 right, the Executive Director is acting arbitrarily and  
19 not excusing that performance. I want you to give me  
20 consideration and not forfeit the bond because I missed,  
21 you know, a couple of days from something that was  
22 beyond my control.

23 CHAIRMAN SCHMIDT: Thank you, sir.

24 MR. FENNER: Sure.

25 CHAIRMAN SCHMIDT: Mr. Moltz?

1                   MR. MOLTZ: Thank you, Mr. Chairman, and  
2                   Commissioners. We also appreciate the -- our  
3                   opportunity to participate in developing these rules.  
4                   There are some changes from -- to the -- what we've all  
5                   been talking about as far as they are before the  
6                   Commissioners today. We think it is improved. We still  
7                   believe we do have some issues, however we do realize  
8                   that due to the time frame the legislature set, there's  
9                   got to be something proposed today to get moving, and we  
10                  will submit more specific comments during the comment  
11                  period, as Mr. Fenner suggested, rather than suggesting  
12                  a lot of detailed changes here today. We've got to keep  
13                  things moving, we understand that.

14                 I will mention, however, that just sort of  
15                 from a 10,000-foot level, our primary issue still  
16                 relates to compliance with the statutory mandate that  
17                 the definition of active, that if a racetrack makes good  
18                 faith efforts to conduct live racing. I believe we'll  
19                 submit comments, probably some minor changes in here to  
20                 accomplish this, but the way it is currently written, it  
21                 really has little to do with efforts and everything to  
22                 do with concrete milestones. And I think what Mr. Brown  
23                 just said here a minute ago, it is indicative of what  
24                 that's going to cause. There's really very little  
25                 discretion on behalf of the Commission to consider the

1 efforts that a track may have undergone or where they  
2 stand. It has specific things, do this and this and  
3 this and this, which we don't believe complies with the  
4 statute talking about making good faith efforts and  
5 providing guidance.

6 Now, it does list some of the things that  
7 we had talked about as the factors. Our primary concern  
8 is it changes them from factors to requirements. So  
9 with that in mind, we will submit comments. We believe  
10 this is an improvement over what we've looked at at the  
11 various committee meetings, but we still do have some  
12 issues that hopefully that can be minor-type changes to  
13 these things, and we will submit comments rather than  
14 bore the entirety of the Commissioners on all these  
15 details today. Although, we will answer any questions  
16 if you have any of the tracks.

17 VICE-CHAIRMAN EDERER: When can -- we look  
18 forward to your comments. When will we be getting them?

19 MR. MOLTZ: Very soon after the rule has  
20 appeared -- is proposed in the Texas Register. We can't  
21 really submit comments on the rule until it's --

22 VICE-CHAIRMAN EDERER: Well, of course  
23 not. Of course not.

24 MR. MOLTZ: But it will be very quickly.

25 VICE-CHAIRMAN EDERER: We'd like to have

1       them as soon as we could, because staff needs to work  
2       with them and then all of us that have worked on this  
3       particular rule are -- you know, want to see your  
4       further comments. We appreciate that.

5                   MR. MOLTZ: We'll get them in as quickly  
6       as we can, Commissioner.

7                   VICE-CHAIRMAN EDERER: Okay. Thank you.

8                   CHAIRMAN SCHMIDT: Any other questions for  
9       Mr. Moltz?

10                   Thank you, sir, for your comments.

11                   Ms. Young? Ms. Young from Sam Houston and  
12       Laredo.

13                   MS. YOUNG: Good morning, Commissioners.  
14       I'm going to apologize for interrupting the really great  
15       flow of this meeting. Y'all were moving along so  
16       quickly. I'm not going to belabor too much of this  
17       issue, other than make a brief couple of comments.

18                   I really want to thank all of you all  
19       seated up here, including staff, for the work that has  
20       been done. We do feel like what came out in this agenda  
21       packet is definite progress, and a lot of our comments  
22       that we've submitted have been incorporated and been  
23       given some thought.

24                   Like Mr. Brown and Mr. Moltz, we are going  
25       to -- there are some things we would still like to see.

1 We will submit those as soon as the rule is published.  
2 But one of the things -- I get to wear kind of a unique  
3 hat at some of these sometimes, because I have a horse  
4 track in Sam Houston, I have a dog track in Valley, and  
5 I have an unbuilt track in Laredo. And so, you know, I  
6 get to take this -- to move this hat on and off when I  
7 look at rules like this.

8           And, you know, with my Sam Houston hat,  
9 the thing I'm most sensitive to is probably the amount  
10 of fees that the inactive tracks or unbuilt tracks  
11 currently generate for the commission. It's almost  
12 \$1.4 million every year, and about -- a little over \$6  
13 million of the agency's budget is controllable expense.  
14 So you're talking about upwards of 20 percent, and I  
15 worry about what happens, you know, if those fees stop  
16 coming due, and where does that burden go, because at  
17 the end of the day, I think it will end up on the likes  
18 of Sam Houston and Lone Star and Retama.

19           With Valley, you know, I've been before  
20 this Commission talking about our concern and our fear  
21 frankly of another track opening up in our trade radius.  
22 You know, there is an unbuilt track in McAllen. We're  
23 not super eager for the day that will open. We  
24 anticipate it will, but we would like to be under a set  
25 of circumstances where we can both operate our

1 businesses efficiently and return some value to our  
2 shareholders.

3                   And with Laredo, obviously, you know, we  
4 have an asset that we've invested a lot of time and  
5 money in, we want to get to live racing and we know that  
6 that's what this legislation really is calling for, and,  
7 you know, we just want to make sure that we have some  
8 latitude and that all the factors are considered when  
9 you're making important designations like active,  
10 inactive, active other.

11                   I'm happy to answer any additional  
12 questions. Again, I can't speak enough to the kind  
13 of -- the time and energy that's gone into this. It's  
14 been significant. Thank you.

15                   CHAIRMAN SCHMIDT: Thank you.

16                   Any questions of Ms. Young?

17                   We just had -- I will echo Commissioner  
18 Ederer's earlier comments that we welcome your comments  
19 after publication.

20                   MS. YOUNG: Absolutely. Thank you.

21                   CHAIRMAN SCHMIDT: Rob Werstler, Texas  
22 Quarter Horse Association. Rob?

23                   MR. WERSTLER: I didn't wish to testify,  
24 we just wanted to state that we were in favor of the  
25 rule as proposed.

1 CHAIRMAN SCHMIDT: Okay. Thank you.

2 Ms. Rountree?

3 MS. ROUNTREE: I didn't wish to testify,  
4 I'm just in favor of the proposals.

5 CHAIRMAN SCHMIDT: Thank you. Any further  
6 public comment, Jonathan?

7 MR. SIERRA-ORTEGA: That's it.

8 CHAIRMAN SCHMIDT: Okay. Any further  
9 discussion from any of the Commissioners regarding the  
10 rules before us?

11 Any further questions of Mark?

12 I'll certainly entertain a motion either  
13 to approve or disapprove.

14 MR. FENNER: To publish in the Texas  
15 Register?

16 CHAIRMAN SCHMIDT: Right.

17 COMMISSIONER WEINBERG: I'll make a  
18 motion.

19 CHAIRMAN SCHMIDT: Okay. There's been a  
20 motion by Commissioner Weinberg to publish the rules  
21 listed in Agenda Item VI A and B to the Texas Register  
22 for public comment.

23 Is there a second?

24 VICE-CHAIRMAN EDERER: Second.

25 CHAIRMAN SCHMIDT: Second, Commissioner

1 Ederer. Any further discussion, comments, concerns?

2 All those in favor signify by saying aye.

3 COMMISSIONERS: Aye.

4 CHAIRMAN SCHMIDT: Anyone opposed?

5 Okay. Motion carries.

6 Mark, can you now update us and lay out  
7 the rules for proposals of Items VI C, D, E, F, G, and  
8 H.

9 MR. FENNER: Yes, sir.

10 CHAIRMAN SCHMIDT: Take them all together.

11 MR. FENNER: Rule 313.409. This is a  
12 request offered by the Jockeys' Guild to change the pay  
13 jockeys. It increases the pay scale so that it's very  
14 similar to what's found in the RCI model rules, and it  
15 is also in our surrounding states, who observe that this  
16 would be the first pay increase for the jockeys since  
17 2000, and even that was only a five-dollar increase from  
18 the previous pay scale.

19 The changes also clarify the existing  
20 policy that a jockey who has been pulled off a horse by  
21 the owner or the trainer after being nominated to ride  
22 the horse, if he's pulled off and another jockey is  
23 placed on there and rides, then he is to get the same  
24 pay as the jockey who actually rode the horse is paid.  
25 This is to prevent people from arbitrarily pulling a



1 jockey off a horse, to make sure that he's compensated.

2           The change to -- actually the next few  
3 changes, VI D through VI H, these are all related to the  
4 issue of dual-registered horses. These are horses that  
5 are registered as both a Quarter Horse and as a Paint  
6 Horse. You may recall that at the last Commission  
7 meeting you voted to publish in the Texas Register a  
8 proposal to modify the eligibility requirements which  
9 previously said that a dual registered horse that was  
10 entered in a meet could only run as one or the other.  
11 So if you went to a meet at Retama as a Paint and a  
12 Quarter, you had to declare which one you were going to  
13 run as, and you could only run as that breed for the  
14 remainder of the meet. And the proposal was to strike  
15 that -- that limitation under eligibility to compete.

16           Well, after publishing it in the Texas  
17 Register, staff and the industry sat down to give this  
18 further discussion and found that there were a number of  
19 other issues related to this that needed to also be  
20 addressed. For example, one of the problems was that it  
21 was not clear that both registration certificates needed  
22 to be in the racing office when the horse ran the  
23 claiming race, so that claimant -- the person who won  
24 the right to claim the horse after the race, was able to  
25 collect both registration certificates. So that needed

1 clarification.

2           Also there was the issue about a mixed  
3 race, which was written for both Paint Horses and  
4 Quarter Horses to run in. Does that horse get paid by  
5 both breed associations if he's a Texas bred, or just  
6 one or the other, and the industry weighed it and said  
7 we believe that they should only be paid out of one or  
8 the other. So at the entry time, the person entering  
9 the horse needs to declare which horse the -- which  
10 breed the horse will run as. So all these changes that  
11 you're going to see here in these next few rules relate  
12 to that.

13           For example, 313.103 is the one that was  
14 already published. We're asking you to republish this  
15 rule which clarifies that both registration certificates  
16 need to be in the racing office.

17           There is a change to 313.101, which says  
18 that when you make the entry, the entering person has to  
19 declare which breed the horse will run as for purpose of  
20 breeder's awards. It also makes a technical change for  
21 substituting Equibase for the American Quarter Horse  
22 Association as a source for past performance  
23 information.

24           The changes of 313.104, registration  
25 certificates. It also requires that both certificates

1 be in the racing secretary's office.

2 To transfer, which is 313.306, says that a  
3 person who claims a horse after a claiming race gets  
4 both certificates.

5 303.97, dually registered horse. This  
6 change says a horse can't receive a breeder's award from  
7 more than one breed association.

8 And then there's one other change to  
9 313.103, eligibility requirements, that is being laid on  
10 top of this. And that was a request by the Quarter  
11 Horse Association to extend the period of time before  
12 entering the horse in which he must have a -- a work.  
13 Currently the rule says that before entering a race, the  
14 horse must have at least a race or a work at least --  
15 within the 45 days preceding the entering date. And  
16 because the length of meets has decreased, the length of  
17 period of time between meets has increased, so they've  
18 asked for an additional 15 days. They'd like to have 60  
19 days in which to provide that workout to be able to  
20 enter a horse for a race.

21 Those are the changes that are being  
22 proposed in these rules.

23 CHAIRMAN SCHMIDT: Thank you.

24 Any questions of Mr. Fenner?

25 Thank you. Nice job cleaning this up.

1 Any public comment, Jonathan?

2 MR. SIERRA-ORTEGA: Just one.

3 CHAIRMAN SCHMIDT: Before we begin the  
4 public comment, Commissioner O'Connell, any further  
5 input?

6 COMMISSIONER O'CONNELL: No additional  
7 input on this. I mean, it was an interesting proposal  
8 from a member of the public and they have required a --  
9 it required a lot of changes of other rules that were  
10 not originally anticipated, and I think the staff and  
11 the stakeholders have done a really good job of sorting  
12 through the minutia.

13 CHAIRMAN SCHMIDT: Through two difficult  
14 times; fewer horses, fewer opportunities. Good job.

15 Mr. Beech, with the Jockey Guild.

16 MR. BEECH: Good morning, Mr. Chairman,  
17 Commissioners. My name is John Beech, and I'm the  
18 regional manager of the Jockeys' Guild. First of all,  
19 I'd like to thank the Commission rulemaking body and the  
20 staff, including Mr. Fenner and Ms. Cook for helping me  
21 through this process, along with Ms. Rountree from the  
22 Horsemen's Limited Partnership. And I'm here to answer  
23 any questions that you might need answering.

24 CHAIRMAN SCHMIDT: Thank you for being  
25 here, sir.

1                   Any questions of Mr. Beech from any of the  
2 commissioners?

3                   Okay. Thank you, sir.

4                   MR. BEECH: Thank you.

5                   CHAIRMAN SCHMIDT: No other public  
6 comments listed.

7                   Any further discussion by the Commission?

8                   Any further questions of Mr. Fenner?

9                   Okay. I'll certainly entertain a motion  
10 to publish the rules listed in the agenda Items VI C  
11 through VI H consecutively in the Texas Register for  
12 public comment.

13                   Is there a motion to publish this?

14                   COMMISSIONER STEEN: I'll make a motion.

15                   CHAIRMAN SCHMIDT: Motion made by  
16 Commissioner Steen.

17                   Is there a second?

18                   COMMISSIONER MARTIN: I'll second.

19                   CHAIRMAN SCHMIDT: A second by Dr. Martin.

20 Any further discussion?

21                   All those in favor of publishing, please  
22 signify by saying aye.

23                   COMMISSIONERS: Aye.

24                   Anyone opposed? Motion carries.

25                   Mark, then we can now move to rule

1       adoptions.  And these -- can you work us through Items I  
2       through L.

3                   MR. FENNER:  Yes, sir.  The first two  
4       address the change in HB 2271 that authorizes the  
5       Executive Director to review and modify disciplinary  
6       decisions made by the Board of Stewards or Judges.  The  
7       change of 307.607, which precedes it number-wise, but  
8       really afterwards in the events that will occur,  
9       provides for the appeal from a modified decision by the  
10      Executive Director.

11                   The change to 307.69, Action by the  
12      Commission, now says that the Executive Director can  
13      review a board of -- a stewards' or judges' decision, he  
14      can increase the penalty from five thousand to ten  
15      thousand dollars, he can also increase the suspension  
16      from one year to two years.  The rules also give  
17      guidance on the issues he should review in making a  
18      decision as to whether or not to provide an additional  
19      penalty.

20                   The change to Rule 311.3 is -- is taking  
21      advantage of a new process of the Department of Public  
22      Safety, whereby they can resubmit fingerprints that were  
23      taken as part of the initial licensing process.  By  
24      resubmitting those prints and not claiming new ones, we  
25      can save the license holder about \$10 every three years.

1 So it's a cost savings measure for the industry.

2 And then finally, the change to the 311.3,  
3 the kennel owners, there's a correction of a technical  
4 error, clerical error, made about ten years ago which  
5 removed a provision that prevented a kennel owner at a  
6 track from being residentially domiciled with a person  
7 who owns an interest in another kennel at that same  
8 track. So all this change is doing is reinstating the  
9 rule as it should have been and we thought it was for  
10 the last ten years.

11 CHAIRMAN SCHMIDT: Any questions of  
12 Mr. Fenner? Okay.

13 Commissioner O'Connell, we've gone through  
14 the Rules Committee of the Commission, the publishing of  
15 these now is final. Any other comments?

16 COMMISSIONER O'CONNELL: We've had a lot  
17 of review, I think we had no comments during the comment  
18 period, and we recommend that it be adopted.

19 CHAIRMAN SCHMIDT: Thank you.

20 Jonathan, any public comment?

21 MR. SIERRA-ORTEGA: No, sir.

22 CHAIRMAN SCHMIDT: Any further comments by  
23 the Commissioners? Questions? Concerns? Great.

24 I'll certainly entertain a motion to adopt  
25 the rules listed in agenda Items VI I through L as

1 published in the Texas Register.

2 Is there a motion to adopt these rules?

3 COMMISSIONER MARTIN: I'll make a motion.

4 CHAIRMAN SCHMIDT: The motion was so made  
5 by Dr. Martin.

6 Is there a second?

7 COMMISSIONER HICKS: I'll second.

8 COMMISSIONER SCHMIDT: Seconded by  
9 Commissioner Hicks.

10 CHAIRMAN SCHMIDT: There's been a motion  
11 and a second.

12 All those in favor signify by saying aye.

13 COMMISSIONERS: Aye.

14 CHAIRMAN SCHMIDT: All those opposed?

15 None opposed, the motion carries.

16 There will be no executive session today.

17 After the room clears in approximately 30 minutes, there  
18 will be a meeting of the --

19 MR. FENNER: Mr. Chairman, I believe we  
20 posted at one o'clock for the Greyhound Advisory  
21 Committee, or 30 minutes after the close of this  
22 commission, but it will have to be -- the earliest can  
23 be one o'clock.

24 CHAIRMAN SCHMIDT: The earliest would be  
25 one o'clock. Okay. I'm sorry. I misunderstood that.



1       Okay.

2                       The advisory commission meeting will be at  
3       one o'clock for the Greyhound group. No executive  
4       session today, and our business is now closed. We're  
5       adjourned. Thank you.

6                       (Proceedings concluded at 11:40 a.m.)

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REPORTER'S CERTIFICATION

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I, Rebecca J. Callow, Certified Shorthand Reporter in and for the State of Texas, Registered Professional Reporter, Certified Realtime Reporter, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control, and that the foregoing pages are a full, true, and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of April, 2012.

\_\_\_\_\_  
Rebecca J. Callow, CSR, RPR, CRR  
Firm Registration No. 87  
Sunbelt Reporting & Litigation  
1016 La Posada  
Suite 294  
Austin, Texas 78752  
(512) 465-9100

Job No. 99767