

BEFORE THE
TEXAS RACING COMMISSION
AUSTIN, TEXAS

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COMMISSION MEETING
JUNE 19, 2012

BE IT REMEMBERED that the above entitled matter came on for hearing on the 19th day of June, 2012, beginning at 10:34 A.M. at the John H. Reagan Building, 105 West 15th Street, Room 120, Austin, Travis County, Texas, and the following proceedings were reported by SHERRI SANTMAN FISHER, Certified Shorthand Reporter for the State of Texas.

APPEARANCES

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

1 CHAIRMAN SCHMIDT: If we could please be
2 seated, we'll call the meeting to order. It's 10:34.
3 And we'd like to call to order the meeting of the Texas
4 Racing Commission. Today's date is the 19th of June.

5 Ms. Weiss, can you call the roll,
6 please?

7 MS. WEISS: Commissioner Gary Aber?

8 COMMISSIONER ABER: Here.

9 MS. WEISS: Commissioner Ron Ederer?

10 COMMISSIONER EDERER: Present.

11 MS. WEISS: Commissioner Gloria Hicks?

12 COMMISSIONER HICKS: Here.

13 MS. WEISS: Commissioner Mike Martin?

14 COMMISSIONER MARTIN: Here.

15 MS. WEISS: Commissioner Ann O'Connell?

16 MS. O'CONNELL: Here.

17 MS. WEISS: Commissioner Allan Polunsky?

18 Commissioner John T. Steen, III?

19 COMMISSIONER STEEN: Present.

20 MS. WEISS: Commissioner Vicki Weinberg?

21 Chairman Robert Schmidt?

22 CHAIRMAN SCHMIDT: Here.

23 I think we have a quorum, don't we,

24 Carolyn?

25 MS. WEISS: Yes, sir.

1 CHAIRMAN SCHMIDT: Thank you.

2 A couple of items. Since our last
3 meeting Dr. Aber has been appointed a new Commissioner
4 of the Texas Racing Commission. Dr. Aber is from
5 Simonton. He's a veterinarian and owner of the
6 Simonton Veterinary Clinic and a member of the American
7 Association of Equine Practitioners. He received his
8 Bachelor's degree from Texas Tech. He's a Red Raider.
9 And he received his Doctorate of Veterinary Medicine
10 from Texas A&M.

11 We're fortunate to have someone with your
12 experience to join our Commission. You have tall shoes
13 to fill. Veterinarians have served us well and ably.
14 Dr. Carter and Dr. Martin have done outstanding jobs.
15 We usually call on you for activities above and beyond
16 the duties because of all the medication issues.

17 Would you like to say a few words?

18 COMMISSIONER ABER: May I just say I
19 appreciate it and I think it's a real honor. And I've
20 been practicing veterinary medicine for 35 years and I
21 think I can add something to the committee. And I
22 really hope -- and I know we've been trying for years
23 and years to get everything straightened out,
24 especially on the medicine issue, and I hope we can
25 make real good progress on that. And I just look

1 forward to it and working with everybody.

2 Thank you.

3 CHAIRMAN SCHMIDT: Thank you very much.

4 We welcome you.

5 The next item, I'd like to ask that

6 Shelley Harris-Curtsinger come forward.

7 And as some of you may know, Shelley has
8 recently accepted a position with the Department of
9 Public Safety. It will give her an opportunity to work
10 with a much larger organization, an opportunity to work
11 with a higher -- a higher opportunity for advancement.

12 And we're disappointed that you're leaving, but we
13 expect great work from you with your new employer.

14 Just in history, Shelley joined the
15 Commission in August of 2005 as the agency's CFO. She
16 was promoted to deputy in 2010. She's worked through
17 several sunset reviews. She's worked through three
18 legislative sessions. And she's been our point person
19 in discussing budgetary issues at a very, very
20 difficult budgetary time.

21 She probably received the greatest
22 compliment from Commissioner Hicks, who is an
23 accountant herself, when she said she knew when Shelley
24 made her presentation that she didn't have to
25 double-check the numbers because they were always so

1 accurate.

2 I worked with Shelley -- interestingly,
3 apart from her CFO activities, she had the very
4 difficult task when we were looking for a new
5 director. She actually also serviced the human
6 resources side of our small Commission. And so at one
7 time she had to draft a job description for a
8 Commission which had a bill in the Legislature
9 recommending closure and consolidation of the
10 Commission while at the other time there was a bill in
11 the Legislature recommending that we expand the
12 Commission and gaming be expanded. So that was a
13 difficult job description to seek. You did a super job
14 there as well.

15 Most importantly, prior to her leaving
16 the Commission, she did also work with the Facilities
17 Commission to make sure everyone in our Commission has
18 a paid-up lease through 2017. And the entire staff is
19 very appreciative.

20 So I want to present you with this plaque
21 to publicly thank you for your support and service to
22 the Commission.

23 MS. HARRIS-CURTSINGER: Thank you very
24 much.

25 CHAIRMAN SCHMIDT: Great job.

1 MS. HARRIS-CURTSINGER: Thank you so
2 much.

3 CHAIRMAN SCHMIDT: Jonathan, is there
4 anyone signed up for public comment?

5 MR. SIERRA-ORTEGA: Yes, sir, there is.

6 CHAIRMAN SCHMIDT: Mr. Snapper Carr?

7 MR. CARR: Mr. Chairman, members of the
8 Commission, my name is Snapper Carr. I'm an attorney
9 representing Dallas City Limits. I'd like to take just
10 a quick moment to update you. I know I've spoken at
11 the last several Commission hearings regarding the
12 matter that you all took action on on February 7th, at
13 that hearing, with the change of ownership and
14 licensure transfer.

15 As you will recall, at that time there
16 was a great deal of discussion about the possession of
17 stock related to Austin Jockey Club. My client -- at
18 that time we testified that despite some of the
19 proclamations being made that the Courts had not made a
20 final determination as to the rights and contractual
21 rights and ownership rights to that particular stock.

22 You were told at that hearing that the
23 stock would be picked up as soon as you all made your
24 ruling. It's in the transcript. I think I read some
25 of those notes at the last hearing.

1 I'm here to report today that as we
2 stated at February 7th, that matter has not been
3 resolved. That stock is still in escrow and has not
4 been released to any party. And actually orders
5 barring its release have been entered by the Houston
6 Court of Appeals.

7 Since that time, since the last hearing
8 that you all had, it's also important to note that the
9 Dallas Court of Appeals, which has the superior
10 jurisdiction as it relates to the contractual rights in
11 this matter, had held oral arguments on May the 1st.
12 We are expecting a ruling from the Dallas Court of
13 Appeals any day. Of course, there's no way to know how
14 and when the Court will rule.

15 However, we wanted you all to be aware of
16 that action. We think it is important. And again, we
17 would restate our request that, should this Commission
18 feel so obliged, to reconsider the actions that we feel
19 were taken prematurely at your February 7th hearing.
20 This matter -- your ruling on that day was based partly
21 on the testimony due to the court decisions that were
22 put forth.

23 Those court decisions I believe were,
24 one, not maybe accurately portrayed at that time.
25 Thus, your decision was not based on the fullest amount

1 of facts that you have before you now. And with that,
2 we will probably be coming back to you in the future
3 depending on what the Dallas Court of Appeals rules,
4 again, to ask for your reconsideration of that matter.

5 I'm certainly happy to answer any
6 questions and I appreciate your time.

7 CHAIRMAN SCHMIDT: Thank you.

8 VICE-CHAIRMAN EDERER: I have a
9 question. Mr. Carr, is the Houston Court of Appeals
10 still involved in this?

11 MR. CARR: The Houston Court of Appeals,
12 yes, issued a stay from the release, although it has
13 been clear in the Houston litigation they are basically
14 waiting on the Dallas Court of Appeals because that is
15 the matter that went before trial as it relates to
16 contractual ownership rights. We have a jury verdict
17 there. That is the matter that's on appeal. And so
18 the central issue of the Dallas Court of Appeals will
19 be whether or not there should be some sort of
20 declaratory ruling put in place.

21 VICE-CHAIRMAN EDERER: Do you believe
22 that the Dallas Court of Appeals ruling will control?

23 MR. CARR: Yes, sir. And I believe that
24 the Houston Court and Court of Appeals would affirm
25 that as well.

1 VICE-CHAIRMAN EDERER: And of course, you
2 don't know when it's coming; but if they argued in May,
3 it shouldn't be too long now.

4 MR. CARR: Soon. We would hope soon,
5 yes, sir.

6 VICE-CHAIRMAN EDERER: So hopefully by
7 our next meeting you'll be able to report or someone
8 will be reporting to us?

9 MR. CARR: As soon as a ruling is issued
10 in that matter, we will make sure the general counsel
11 is made aware of it and has a copy of it.

12 VICE-CHAIRMAN EDERER: Thank you.

13 MR. CARR: Thank you.

14 CHAIRMAN SCHMIDT: Drew Shubeck.

15 Mr. Shubeck?

16 MR. SHUBECK: Thank you, Chairman
17 Schmidt, Commissioners.

18 I've delivered to the Texas Racing
19 Commission a study prepared at the request of State
20 Representative Rodney Anderson. It's a study to
21 examine the effects of advance deposit wagering on the
22 State of Texas.

23 At the University of Houston, Dr. Wortman
24 and Dr. Lattin worked on this study throughout the
25 winter. They had a defined scope of the job to

1 accomplish. That was to look at ADW as it's currently
2 going on in the state -- it's illegal in the State of
3 Texas, but it is going on -- to examine the amount of
4 handle that they feel is going on in the State of Texas
5 and make really a recommendation of what to do going
6 forward.

7 In the study -- and everybody has a copy
8 furnished by me -- you'll see that there's over a
9 hundred million dollars a year being wagered right now
10 in the State of Texas illegally. The principal company
11 doing business in the State of Texas right now is
12 Twinspires, which is owned by Churchill Downs. And the
13 wagering is being facilitated by United Tote out of the
14 Oregon hub.

15 These wagers don't benefit the State of
16 Texas at all. Texas horsemen are losing out on
17 millions of dollars in purse money. Texas racetracks
18 are losing out on millions of dollars of income as
19 well.

20 Really what we want to do going forward,
21 we want to join with the horsemen in the State of Texas
22 and lobby to get ADW legalized. But until it's
23 legalized, we need to have it shut down because it's
24 hurting us. It's hurting the horsemen. It's hurting
25 the racetracks. And there's no revenue in it even for

1 the Racing Commission or the general treasury in the
2 State of Texas.

3 If it were legalized, all of the people I
4 just mentioned would benefit by it. They would be
5 regulated by the Texas Racing Commission. They would
6 be licensed to operate in the State of Texas by the
7 Texas Racing Commission. Horsemen would receive a fair
8 amount of purse money from the transactions. And
9 racetracks would receive a part of statewide proximity
10 fees which would go into a pool and it would benefit
11 all active racetracks.

12 I don't want to waste a lot of time
13 during this public comment period, but I would like to
14 entertain any questions that any of the Commissioners
15 have on this topic. And Andrea Young is here as well.
16 Sam Houston and Retama Park partnered with us to have
17 this study done.

18 CHAIRMAN SCHMIDT: Thank you,
19 Mr. Shubeck.

20 Are there any questions of Mr. Shubeck?
21 Thanks very much. We appreciate your
22 report.

23 MR. SHUBECK: Okay.

24 CHAIRMAN SCHMIDT: Appreciate it.

25 Mrs. Young?

1 MS. YOUNG: Thank you, Commissioners. I
2 really just want to follow up on what Mr. Shubeck just
3 spoke about. The study he's putting forth in front of
4 you guys today and to the Commission staff is the
5 result of a lot of work by a great team of professors
6 at the University of Houston.

7 You know, ultimately we would absolutely
8 like to see ADW's be legalized here in Texas; but until
9 the time that they are, we, you know, ask for the help
10 of this Commission in any way possible to help shut
11 down, you know, what we are seeing happen today and the
12 money suck and money grab that's ultimately impacting
13 both the tracks and the horsemen.

14 I'm happy to answer any questions you may
15 have.

16 CHAIRMAN SCHMIDT: Any questions of
17 Ms. Young?

18 VICE-CHAIRMAN EDERER: I don't mean to
19 keep dragging this out.

20 CHAIRMAN SCHMIDT: No.

21 VICE-CHAIRMAN EDERER: Is there something
22 being prepared for the State Legislature?

23 MS. YOUNG: Yes. I mean, this study
24 actually came out of a request from State
25 Representative Rodney Anderson. Drew mentioned that in

1 his comments. And so we'll, you know, be pushing that
2 along as well to the members in both houses.

3 VICE-CHAIRMAN EDERER: Thank you.

4 MS. YOUNG: Thank you.

5 CHAIRMAN SCHMIDT: Corey Johnsen.

6 Mr. Johnsen?

7 MR. ALEXANDER: Mr. Chairman, members of
8 the Commission, thank you very much for giving me the
9 opportunity to come. I'm not Corey Johnsen, but my
10 name is Lynn Alexander. And I am the brother, younger
11 brother, better-looking brother of Drew Alexander of
12 Saddle Brook Park.

13 And so I wanted to come before you and,
14 first of all, apologize to the Commission because of
15 the fact that Saddle Brook Park has not been as
16 involved as they should have been in the past at least
17 couple of years and I wanted to explain to you a couple
18 of reasons why.

19 First and foremost, my brother has been
20 very, very ill. A couple of years ago he was diagnosed
21 as having a couple of aneurysms that were very
22 dangerous in the lower part of his aorta. He had a
23 surgery to correct that and then was in an automobile
24 accident that tore them all loose. He had to go back
25 into an emergency surgery. And during all of that he

1 had some extensive work done, which created some blood
2 clotting.

3 He went back in for a second surgery a
4 couple of months later, emergency type surgeries. He
5 had one surgery. They repaired a bunch of his
6 artery -- arterial work, and then again had another
7 blood clotting incident where he went to the hospital
8 in an ambulance.

9 Six weeks ago he had a third incident and
10 it was very, very serious, extremely dangerous. They
11 did not expect him to live through the surgery. He did
12 live through it; but unfortunately, he lost a leg, and
13 which is a blessing, I guess, because we thought he was
14 going to not make it through the surgery and they told
15 us he would probably lose both of them.

16 So that's the main reason. There are
17 other reasons that just -- they're secondarily, not
18 important in light of Drew's health. And so he's alive
19 and he's in rehab and he's very dedicated to walking
20 again and becoming what he once was.

21 I have volunteered to help my brother and
22 do the best I can for him to move Saddle Brook Park
23 forward and make it a part of this horse industry. I
24 know a lot about horse racing. My mother taught me
25 how -- wanted me to learn how to read and write, and my

1 dad wanted me to learn how to read a Racing Form. So I
2 spent a lot of time driving from Amarillo, Texas, and
3 Phillips, Texas, where we were born and raised, over to
4 Raton in New Mexico at La Mesa Park.

5 I've been in the horse business since, in
6 my adult life. I've owned probably 60 or 70
7 racehorses, both Quarter Horse and Thoroughbred
8 horses. I currently reside in Kentucky and I own a
9 Thoroughbred horse farm and I'm in the breeding and
10 racing business.

11 I don't know a lot about racetracks and
12 so I have -- I have enlisted some people that I believe
13 will be a great deal of help to me in that. And one of
14 them is Corey Johnsen, who is going to address you
15 shortly as well. And Corey was the vice-president and
16 general manager of Lone Star Park from its inception
17 until just recently in the last few years. He
18 currently owns a Thoroughbred horse farm as well. And
19 I'm not sure that makes either one of us very smart,
20 but we do. And he also is the vice-president and
21 general manager of Kentucky Downs in Kentucky.

22 In addition to that, we have hired one of
23 the best minds that we could find, legal minds, Lisa
24 Underwood. I'm sure that some of you have met her. I
25 know she attended the rules committee meetings. And

1 Lisa was the past executive director for the Kentucky
2 Racing Authority for five years. And in addition to
3 that, she is a practicing attorney and is very
4 familiar.

5 I want you to know that going forward
6 that we intend to be very involved. I think I know
7 that the racing in Texas needs help and so we want to
8 be part of that help. We plan to come before the
9 Commission at the next meeting. We're going to work
10 very closely with staff and we have been on the phone
11 with staff and we are working with them very closely
12 and our plans are to be operational as soon as possible
13 with a preopening simulcast facility, a temporary
14 simulcast facility, and follow that up with our plans
15 for a track in Amarillo, Texas.

16 I do not want to overpromise. I would
17 like to overdeliver. And I really appreciate you
18 giving me the opportunity to talk and to speak before
19 you. And if you have any questions of me, certainly
20 I'll be glad to answer them. And you'll be hearing
21 from us very soon.

22 I'd like to thank Mr. Fenner and
23 Mr. Jackson for talking with us over the phone and
24 helping us. We need guidance. As I said, we don't
25 know exactly what the protocol is and so we want to

1 follow it. And I can assure you that we will be
2 working very closely with you guys and gentlemen,
3 ladies and gentlemen, to get Texas racing. We want to
4 put purse money up and I'm sure that's what everybody
5 wants.

6 So thank you very much.

7 CHAIRMAN SCHMIDT: Are there any
8 questions of Mr. Alexander from anyone?

9 I did want to just comment. We
10 appreciate your update. We all wish the best for your
11 brother.

12 MR. ALEXANDER: Thank you.

13 CHAIRMAN SCHMIDT: And we also appreciate
14 the update here and the fact that you came to Texas a
15 month ago to discuss your vision with the staff as well
16 to demonstrate your seriousness. We appreciate that,
17 Mr. Alexander.

18 MR. JOHNSEN: Mr. Chairman, members of
19 the Commission, I'm Corey Johnsen. And as a point of
20 introduction, I was the first person hired at Lone Star
21 Park and ultimately became a part owner and president
22 of that track. And as I think Mr. Jackson and others
23 can attest to, I'm used to working with this regulatory
24 body.

25 And we had a great run. We not only

1 opened Lone Star Park, but in 2004 we hosted the
2 Breeders' Cup at that track. And we worked very
3 closely together with the Commission and its staff.
4 And I look forward to doing that at Saddle Brook Park,
5 working with Lynn. He's put together a great team. I
6 have tremendous respect for Lisa Underwood. And I look
7 forward to making Saddle Brook Park a productive member
8 of the Texas horse racing industry.

9 And I'd be glad to answer any questions
10 at this time.

11 CHAIRMAN SCHMIDT: Any questions of
12 Corey?

13 Thank you very much.

14 The last public comment, David Hooper.

15 David?

16 MR. HOOPER: Mr. Chairman, members of the
17 Commission, I'm David Hooper, the executive director of
18 the Texas Thoroughbred Association. And we certainly
19 would like to welcome Dr. Aber and we look forward to
20 working with you.

21 We start on an unfortunate and a little
22 sad note, but it does seem appropriate to make a matter
23 of public record the passing of a legendary Texas
24 horseman early last Sunday morning, Ed Dodwell, at 72,
25 who had been in failing health for up to as long as

1 eight years.

2 He was a very energetic person. He was a
3 four-time president of the Texas Thoroughbred
4 Association. He was on the board for nine years, from
5 1986 to '95. That's when pari-mutuel legislation was
6 passed. And so he helped get racing under way.

7 His prominent business was the owner and
8 operator of Diamond D Ranch up in North Texas, east of
9 Dallas. And he had one of the most successful training
10 centers in the country. I believe at last count there
11 had been 182 stakes winners that had had their early
12 training at Diamond D Ranch, the most noteworthy being
13 the 2009 -- the great champion, the 2009 horse of the
14 year, Rachel Alexandra.

15 He will be missed for a long period of
16 time. He was a very prominent trainer. He was very
17 noted for winning the Jean Lafitte over at Delta Downs
18 for a number of years and the Friendship Stakes at
19 Louisiana Downs. And when we finally got Class 1
20 racing here in Texas, his horses, particularly the
21 two-year-olds, were often very prominent and often
22 reached the winner's circle after some of our major
23 two-year-old stakes.

24 On a positive note, we had a very busy
25 weekend this past weekend as the Texas Thoroughbred

1 Association board of directors met on Friday
2 afternoon. Near the end of the meeting they elected a
3 new president, Dr. Gearald Farris, a chiropractor by
4 profession and an owner and breeder of past Texas
5 champions off his farm near Longview. He succeeded the
6 veterinarian Dr. David Stephens who completed his one
7 year of serving as president but remains on the board
8 on our executive committee.

9 During our board meeting we were very
10 pleased that the Class 1 track operators, Andrea Young,
11 Drew Shubeck, Bryan Brown, all gave updates on their
12 operations and some plans for the future. And we also
13 had Corey Johnsen and Lynn Alexander, and the board was
14 very pleased to hear the positive movement that is --
15 they told us was going to take place at Saddle Brook.

16 Saturday morning we had our annual
17 membership meeting. It was attended moderately, but it
18 was a very good meeting and very quiet. Only one
19 softball question came from the audience. And then we
20 followed up with our annual awards luncheon honoring
21 the owners and breeder -- the owner and breeder of the
22 2011 Texas horse of the year, Skip a Smile, and all the
23 divisional champions.

24 We also honored Danny Shifflett, the
25 longtime manager of Lane's End Texas near Hempstead,

1 with the T.I. "Pops" Harkins award for lifetime
2 achievement in the industry and Dr. Jacquelyn Rich,
3 also a four-time past president of the TTA, as member
4 of the year with the Allen Bogan award.

5 We had the meeting and the luncheon in
6 conjunction with a major Texas-bred racing day or Texas
7 racing day because we had the two divisions of the TTA
8 Sales Futurity and we also had a new race. It was
9 called the Lane's End Stallion Scholarship Stakes,
10 which was created after the Lone Star season or just
11 about as the Lone Star season got under way. And it
12 was thanks to a 150,000-dollar commitment by Will
13 Farish, the owner of Lane's End Texas as well as Lane's
14 End Farm in Kentucky. Over the next three years he'll
15 be donating \$50,000 a year to the Texas Thoroughbred
16 educational fund to help support -- underwrite the
17 costs of college education for sons and daughters of
18 Texas Thoroughbred Association members.

19 We invited past and present scholarship
20 recipients. And we had five on hand. And they
21 participated in winner's circle ceremonies throughout
22 the afternoon. They were often joined by legislators.
23 We had some legislators at our luncheon and Global
24 Gaming had a suite that hosted a number of legislators
25 during the afternoon which gave us an opportunity to

1 showcase a big day of Texas racing for several
2 legislators and that turned out to be very positive.

3 I'd be happy to answer any questions.

4 CHAIRMAN SCHMIDT: Any questions?

5 Thank you for your remarks. Appreciate
6 it.

7 Jonathan, anyone else signed up to
8 speak?

9 MR. SIERRA-ORTEGA: No, sir.

10 CHAIRMAN SCHMIDT: Okay. We'll move on
11 to general business, a budget and finance update.
12 Mr. Sammy Jackson?

13 MR. JACKSON: Thank you, Mr. Chairman.

14 Commissioners, on pages IV-A-1 through
15 IV-A-4 of your agenda packet, you will find the
16 agency's fiscal year 2012 operating budget reflecting
17 revenue collections and expenditures as of April 30th,
18 2012. With 67 percent of the fiscal year being
19 completed, I'm happy to report that the agency has
20 collected 67 percent of projected revenue as well as
21 only expended 51 percent of our projected
22 expenditures. We are well within our budget and should
23 hit the targets by the end of this fiscal year.

24 Commissioners, I would also like to
25 report the staff has begun work on preparation of the

1 agency's fiscal year 2013 operating budget as well as
2 the 2014 and '15 legislative appropriation request.
3 Staff should have these documents ready for your review
4 and consideration by the next Commission meeting.

5 If you have any questions, I'll be more
6 than happy to answer them.

7 CHAIRMAN SCHMIDT: Any questions of
8 Mr. Jackson?

9 Let's move on to a report of racetrack
10 inspections.

11 MR. JACKSON: All right, sir.

12 Commissioners, on page IV-B-1 of your
13 agenda packet, you will find the report on racetrack
14 inspection activities as of June 5th, 2012. The report
15 reflects that staff conducted 16 inspections since our
16 last meeting, with no unsatisfactory items remaining
17 outstanding.

18 The majority of the inspections conducted
19 covered the opening of the Lone Star Park Thoroughbred
20 meet and the opening of the Retama Park Quarter Horse
21 meet, with the remaining being administrative
22 inspections and random inspections for meets that are
23 still ongoing.

24 If you have any questions on these
25 inspections, I'll be more than happy to answer them.

1 CHAIRMAN SCHMIDT: Any questions of
2 Mr. Jackson?

3 Let's move on to the report on wagering
4 statistics.

5 MR. JACKSON: Thank you, Mr. Chair.

6 Commissioners, on page IV-C-1 through
7 IV-C-3 of your agenda packet, you will find the report
8 on wagering statistics for the periods of January 1st
9 through June 10th for both 2011 and 2012.

10 The report reflects that 2012 total
11 wagering activity has increased at our horse tracks but
12 has declined at the greyhound racetracks. For example,
13 live wagering is up by 8.34 percent at our horse tracks
14 and down by 12.42 percent at the greyhound tracks.
15 Export wagering, or wagering on our Texas races from
16 out-of-state entities, is up by 9.65 percent at our
17 horse tracks and down by 9.8 percent at the greyhound
18 tracks, while simulcast wagering on horse races is up
19 at both horse tracks and greyhound tracks here in
20 Texas, whereas simulcast wagering on greyhounds at both
21 our horse or greyhound tracks is down.

22 In closing, it appears that the wagering
23 on the horse racing appears to be recovering from the
24 declines that have occurred over the past few years.
25 However, wagering on our greyhound racing is continuing

1 to show declines.

2 This concludes my report on the wagering
3 statistics. And if you have any questions, I'll be
4 happy to answer them.

5 CHAIRMAN SCHMIDT: Are there any other
6 questions of Mr. Jackson from any of the
7 Commissioners?

8 Sammy, thank you. Actually I did have
9 one question. It's slightly off point.

10 MR. JACKSON: Yes, Mr. Chairman.

11 CHAIRMAN SCHMIDT: But since our last
12 meeting, I think it's become more public that in New
13 York State there's been an underreimbursement to the
14 patrons for an extended period of time based on tote
15 calculations.

16 MR. JACKSON: Correct.

17 CHAIRMAN SCHMIDT: And we're a different
18 state than New York; but I did want to ask in a general
19 way, do we have procedures in Texas that is designed to
20 double-check the reimbursement following races? Do we
21 have a plan in place or do we need to have a plan in
22 place to avoid a situation in which there was an
23 underreimbursement to the patrons as occurred in New
24 York?

25 MR. JACKSON: We do have a plan in place,

1 Mr. Chair; and if you'll bear with me, I'll kind of
2 read a little something into the record here I think
3 will answer that question --

4 CHAIRMAN SCHMIDT: Appreciate it. Yeah.

5 MR. JACKSON: -- and provide some
6 confidence that we're doing -- we're on the top of that
7 situation.

8 Commissioners, your pari-mutuel auditing
9 staff monitors the wagering activity daily here in
10 Texas. The auditors upload electronic data files that
11 we are in contracts to purchase from the tote companies
12 to our customized regulatory database. This custom
13 system which the Commission designed gives the auditors
14 the ability to test each unique wagering pool offered
15 on every race for accuracy in terms of the amounts paid
16 to the public for winning wagers as well as the takeout
17 rate or the amount withheld.

18 The monitoring system independently
19 calculates the public payout and takeout amounts and
20 then compares these calculations to the wagering system
21 calculations on each unique wagering pool. If the
22 monitoring system detects a difference of more than
23 five cents, the auditor is alerted and the difference
24 has to be reviewed and then appropriate actions would
25 be taken. It is at that time we would know if the

1 takeout rates were inaccurate.

2 After verifying these wagering pools and
3 the amounts in the takeouts, the auditors initiate an
4 allocation of the takeouts to the various stakeholders
5 and then store this verified wagering activity and
6 takeout allocation into the Commission's wagering
7 database.

8 The auditing staff monitor and verify
9 approximately 5.5 million unique wagering pools per
10 year. Over the past five years the auditing staff has
11 monitored and verified in excess of 28.3 million unique
12 wagering pools that Texans have bet on here at our
13 tracks.

14 In doing so and providing these verified
15 takeout allocations, we have also verified the amount
16 of 149.1 million in purse money, 22 million in
17 breeders' awards, and 18.2 million to the State General
18 Revenue Fund that's collected by the comptroller's
19 office.

20 The Commission staff is committed to this
21 ongoing fair and disciplined and rigorous regulation
22 and oversight of the wagering pools and it's with that
23 process that we feel like that we are verifying and
24 making sure that those takeout rates are accurate.

25 CHAIRMAN SCHMIDT: Thank you, Sammy. So

1 just for clarification, the problem in New York State
2 was an error in the takeout rate?

3 MR. JACKSON: That's correct.

4 CHAIRMAN SCHMIDT: It seemed also there
5 was a problem in the sense that the lines of authority
6 regarding who was supervising that was somewhat
7 blurred. It seems here it's fairly clear, the lines of
8 authority. Is that correct?

9 MR. JACKSON: That is correct.

10 CHAIRMAN SCHMIDT: Any other questions of
11 Mr. Jackson?

12 Okay. Thank you very much.

13 MR. JACKSON: You're very welcome.

14 CHAIRMAN SCHMIDT: A report of
15 enforcement. Mr. Gougler?

16 MR. GOUGLER: Good morning,
17 Commissioners. You received an updated enforcement
18 report this morning from Jonathan to include the
19 calendar year January 1st through May 31st of this
20 year.

21 In comparison -- in comparing the
22 statistics this year to last year, things are
23 relatively constant except for three areas: Those
24 relating to the number of greyhounds inspected. And
25 that's attributed to the disease that was at the

1 greyhound track that we were shut down for a short
2 period of time. And the other area has to do with new
3 licenses issued and the renewal licenses being issued.
4 And that's a function of the changes under sunset where
5 we're no longer licensing people on the front side.

6 My report is very brief. I'll answer any
7 questions if you have one.

8 CHAIRMAN SCHMIDT: Any questions of
9 Mike?

10 Thank you, Mr. Gougler. Thank you very
11 much.

12 MR. GOUGLER: Thank you.

13 CHAIRMAN SCHMIDT: We'll move -- we'll
14 move beyond Item E and discuss that later in the
15 session.

16 Next, strategic plan for fiscal years
17 2013-2017. Mr. Trout?

18 MR. TROUT: Good morning, Commissioners.

19 Under Chapter 2056 of the Texas
20 Government Code, the agency is required to provide the
21 Governor and the Legislature a five-year strategic
22 plan. Staff circulated copies of the plan for your
23 review and comment, and I appreciate the time you took
24 to review the plan and provide feedback.

25 We are still working with the LBB to

1 finalize the outcome projections chart at Appendix C,
2 page 61; but aside from that, the plan is complete and
3 I would like your approval today.

4 Thank you.

5 CHAIRMAN SCHMIDT: Any public comment?
6 Jonathan, anyone signed up to speak?

7 MR. SIERRA-ORTEGA: No, sir.

8 CHAIRMAN SCHMIDT: Okay. Any questions
9 of Mr. Trout regarding comments with regards to the
10 plan?

11 Chuck, I think you and Mr. Childs did a
12 wonderful job, first class.

13 MR. TROUT: Sir, this was an effort by
14 the entire staff.

15 CHAIRMAN SCHMIDT: Thank you.

16 MR. TROUT: The entire staff has to work
17 on this.

18 CHAIRMAN SCHMIDT: I'll certainly
19 entertain a motion to approve the strategic plan for
20 the fiscal years 2013 to 2017.

21 VICE-CHAIRMAN EDERER: So move.

22 CHAIRMAN SCHMIDT: A motion by Ederer.

23 COMMISSIONER HICKS: Second.

24 CHAIRMAN SCHMIDT: Seconded by Hicks.

25 Any further discussion?

1 All those in favor signify by saying
2 aye.

3 COMMISSIONERS: Aye.

4 CHAIRMAN SCHMIDT: Anyone opposed?

5 It passed unanimously.

6 Proceedings on racetracks. Designation
7 by the Commission of an application period for race
8 dates under Commission Rule 303.41. Mr. Jackson, can
9 you lay out the agenda item, please, for us?

10 MR. JACKSON: Thank you, Mr. Chairman.

11 Commissioners, as you may know, the
12 racing calendar is a critical document that allows the
13 racetracks as well as the owners, breeders, and
14 trainers of the racing athletes to plan and make
15 business decisions about the future. It's that time
16 again to begin the process of working on the race date
17 calendar by opening an application period for which the
18 associations can submit race dates underneath
19 Commission Rule 303.41.

20 Staff is recommending that the Commission
21 open an application period to receive race date
22 requests for the periods of January 1 of 2013 through
23 December 31st, 2013, and January 1st of 2014 through
24 August 31st, 2014. Staff further recommends that the
25 time frame to submit these applications should begin on

1 June 20th of 2012 and close on July 20th, 2012. This
2 time period would be consistent with what the
3 Commission has approved for over the last three to four
4 years in terms of requesting race dates.

5 If you have any questions, I'll be happy
6 to answer them.

7 CHAIRMAN SCHMIDT: The motion is to
8 designate -- open the period for the next month then,
9 correct?

10 MR. JACKSON: That's correct.

11 CHAIRMAN SCHMIDT: Any public comment?

12 Any discussion by the Commission,
13 questions of Mr. Jackson?

14 I'll certainly entertain a motion to
15 approve. I'll entertain a motion.

16 VICE-CHAIRMAN EDERER: So moved.

17 CHAIRMAN SCHMIDT: A motion by
18 Commissioner Ederer.

19 Second?

20 COMMISSIONER MARTIN: Second.

21 CHAIRMAN SCHMIDT: A second by
22 Dr. Martin.

23 Any further discussion?

24 All those in favor please signify by
25 saying aye.

1 to answer them.

2 CHAIRMAN SCHMIDT: Thank you,
3 Mr. Jackson. We did discuss this previously.

4 Any further questions of Mr. Jackson?
5 Any discussion regarding the proposal?
6 I'll certainly entertain a motion.

7 COMMISSIONER MARTIN: I make a motion.

8 CHAIRMAN SCHMIDT: A motion to approve by
9 Dr. Martin.

10 Second?

11 COMMISSIONER HICKS: Second.

12 COMMISSIONER STEEN: Second.

13 CHAIRMAN SCHMIDT: Seconded by
14 Commissioner Steen.

15 We have a motion and a second. All those
16 in favor signify by saying aye.

17 COMMISSIONERS: Aye.

18 CHAIRMAN SCHMIDT: Anyone opposed?

19 The motion carries.

20 The next item, a request by Retama Park
21 to amend its 2012 live racing schedule. Mr. Brown,
22 Bryan Brown, can you please address the Commission and
23 lay out your request?

24 MR. BROWN: Good morning, Mr. Chairman
25 and Commissioners.

1 Well, we have some good news. Our
2 simulcast wagering has been up this year, as you saw in
3 the reports that Mr. Jackson went over, on horse
4 signals by about 15 percent at Retama. It's a trend
5 that started around midyear last year, really spiked in
6 December where we were up about 11 percent, and has
7 continued on through this month. That's given us
8 additional purse money, definitely additional purse
9 money that's sufficient to run more Quarter Horse days
10 or to increase average daily purses.

11 In our discussions with the Quarter
12 Horsemen and with the breed association, with the TQHA,
13 their desire was to have us add days versus increase
14 our daily purses. So we're coming to you with the
15 request. We're excited about it. We think it's our
16 obligation to do so when we have the opportunity.
17 You've heard us in the past with a desire to keep
18 average daily purses at a reasonable level. At this
19 time we're beyond that reasonable level, we think, and
20 we're able to make this offer to the Quarter Horsemen
21 and are excited to do so.

22 I'll be happy to answer any questions you
23 have.

24 CHAIRMAN SCHMIDT: Encouraging news.

25 Any questions of Mr. Brown?

1 Thank you very much.

2 MR. BROWN: Thank you.

3 CHAIRMAN SCHMIDT: Any other public
4 comment, Jonathan?

5 MR. SIERRA-ORTEGA: No, sir.

6 CHAIRMAN SCHMIDT: Okay. Any further
7 discussion?

8 Okay. There's a motion to approve Retama
9 Park's request to amend its 2012 live racing schedule
10 as presented by Mr. Brown. Is there a motion?

11 COMMISSIONER MARTIN: I make a motion to
12 approve.

13 CHAIRMAN SCHMIDT: A motion to approve by
14 Dr. Martin.

15 VICE-CHAIRMAN EDERER: Second.

16 CHAIRMAN SCHMIDT: Seconded by
17 Commissioner Ederer.

18 We have a motion and a second. All those
19 in favor signify by saying aye.

20 COMMISSIONERS: Aye.

21 CHAIRMAN SCHMIDT: Anyone opposed?

22 That motion also carries unanimously.

23 Proceedings on rulemaking. Rule
24 proposals. A proposal for amendment to Rule 311.3,
25 Information for Background Investigation. Now, this is

1 just a proposal. Mark Fenner, can you lay out the
2 proposal, please?

3 MR. FENNER: Yes, sir.

4 Mr. Chairman, the fee to submit
5 fingerprints and receive a criminal history from the
6 Department of Public Safety and the FBI is currently
7 set within the rule at \$44.20. This amount was
8 established strictly on a cost recovery basis.
9 However, the FBI recently decreased the portion of its
10 criminal history charge by \$2.75 and, as a result, the
11 rule as it's set out now overrecovers for the cost of
12 conducting the background check.

13 So what we'd like to do is propose to
14 amend the rule to delete the \$44.20 and instead allow
15 the Commission to recover the actual cost of the
16 background check and fingerprinting fee and to provide
17 the flexibility rather than setting it -- hard code it
18 into the rule, just allow the Commission to recover and
19 staff would then just determine it on a recovery
20 basis.

21 CHAIRMAN SCHMIDT: I'd like to recognize
22 Commissioner O'Connell or Ederer from the rules
23 committee for any comment or insights.

24 MS. O'CONNELL: We recommend that the
25 rule proposal go forward. It's very straightforward.

1 And we have a number of other rules on the agenda for
2 adoption today.

3 CHAIRMAN SCHMIDT: Any other comments
4 from any of the Commissioners?

5 Are there any public comments or
6 discussion?

7 Okay. The motion -- there's a motion to
8 publish the amendment to Rule 311.3 in the Texas
9 Register for public comment. Is there a motion by a
10 Commissioner?

11 COMMISSIONER STEEN: I'll make a motion.

12 CHAIRMAN SCHMIDT: Commissioner Steen
13 made the motion.

14 Is there a second?

15 COMMISSIONER MARTIN: Second.

16 CHAIRMAN SCHMIDT: A second by
17 Dr. Martin.

18 We have a motion and a second. All those
19 in favor signify by saying aye.

20 COMMISSIONERS: Aye.

21 CHAIRMAN SCHMIDT: Anyone opposed?

22 That motion also carries.

23 We move from rule proposals to rule
24 adoptions. And I think what we'll do here is let's
25 address Rules 309.51 and 309.52, those proposals

1 together, for clarity, and then we'll take up the six
2 remaining rules on the Agenda Items D through I
3 separately.

4 So, Mark, can you first lay out the
5 proposals for the two rules in question?

6 MR. FENNER: Yes, sir.

7 These two rule proposals were published
8 in the April 27th edition of the Texas Register. They
9 are now eligible for adoption. And these are the
10 proposals to implement the provisions of the sunset
11 bill that require the Commission to designate
12 racetracks as either active or inactive and then to
13 conduct annual reviews of the inactive licenses.

14 This has been discussed at many
15 Commission meetings. Several of you have participated
16 in some of those committee meetings. We received
17 written requests and also oral testimony at the last
18 rules committee meeting.

19 And what I'd like to do is kind of walk
20 you through some of the comments that we received and
21 also some of the changes that were made in the rule
22 proposal at the recommendation of the committee and
23 also of the members at the prior rule and ad hoc rule
24 committee discussions.

25 First, several commenters objected that

1 the rule established strict and specific actions that
2 had to be taken in order to be designated as an
3 active-other in order to demonstrate basically that
4 simulcasting or live racing was imminent. They stated
5 that those actions were too performance-based.

6 The committee provided direction that we
7 should amend the rule to provide additional
8 flexibility. So there's no longer the strict
9 requirement of in order to demonstrate that live racing
10 or simulcasting is imminent, you must do A, B, C, D, E,
11 and F. Instead, the Commission has got the flexibility
12 to review the case that a racetrack holder comes
13 forward and say, okay, you need to persuade me that
14 racing is imminent, but it's up to the license holder
15 to be able to do that and they can use any criteria
16 that they find persuasive to the Commission.

17 Also, one requester asked that the rule
18 be modified to allow a track to lease the facility
19 instead of having the rule require them to only
20 purchase it. And the committee agreed and directed
21 staff to make that change. And so the amended rule now
22 says that one of the factors they can do is either to
23 purchase the property or have a long-term lease of 20
24 years or more.

25 One commenter argued that the Commission

1 does not have the authority to require an inactive
2 license holder to put up a bond during the review and
3 renewal process. Without agreeing with the contention
4 of the commenter, the committee did -- I did receive
5 direction to just remove that section of the rule. So
6 there's no longer a provision where the Commission
7 could require an inactive license holder to provide a
8 bond during the annual review and renewal process.

9 Several commenters objected that certain
10 types of good faith efforts are not recognized within
11 the rule. These include negotiating with local
12 authorities, negotiating construction contracts,
13 obtaining or maintaining zoning, submitting an
14 application to change location, demonstrating an
15 ongoing ability to access capital, demonstrating an
16 experienced team of employees, making regular and
17 timely payment of annual fees, and conducting economic
18 viability studies.

19 I did not receive instruction that these
20 things should be included as examples of good faith
21 efforts. However, I mean, there is the flexibility
22 within the rule on the part of the Commission to
23 consider whatever they find to be persuasive. So it's
24 kind of a mixed bag. They're not included in the rule
25 specifically; but then on the other hand, the

1 Commission does have some flexibility to consider what
2 it wants to consider.

3 One commenter asserted during the rules
4 committee that the sunset bill was intended to address
5 two licenses in specific and that the other licenses or
6 recent licenses should be treated somewhat differently
7 because they're not as stale or old as the original two
8 licenses. I did not hear direction from the committee
9 to make that change.

10 One commenter questioned whether the
11 voluntary bond, if forfeited, should go to the horsemen
12 for purses. Again, the committee did not direct that
13 that change be made.

14 So we've made these types of changes. In
15 response to the comments, several changes have been
16 made to the rule. Some requested changes were not
17 made. And the bottom line is no new parties have been
18 affected by these changes to the rule. There's no new
19 policy areas introduced by the changes made to the
20 rule. And the changes that have been made are, if
21 anything, less strict to the affected parties than the
22 original rule. So I believe that this amended rule
23 that's in your packet is suitable and eligible for
24 adoption and does not need to be reposted.

25 If you'd like, I could walk you through

1 the elements of the rule as it is, but I think I've
2 told you the types of changes that have been made in
3 it.

4 Does anybody have any questions or would
5 you like me to go walk you through the rule?

6 CHAIRMAN SCHMIDT: I think we've been
7 through it a couple of times, Mark. We may ask you
8 later, but it's been an issue that's been revisited.
9 Unless -- any other questions of Mister -- of counsel?

10 Okay. Commissioner O'Connell,
11 Commissioner Ederer, any comments, insights?
12 Appreciate your work. It's not easy. Excellent job.

13 MS. O'CONNELL: I'd just like to thank
14 all the stakeholders for their very active
15 participation in the process. It's been a challenging
16 statute to work with. It's a little bit like a Rubik's
17 cube. Everything has to fit together just right. And
18 we've tried hard to be -- to adhere to the statutory
19 language of HB 2271 but also be able to be flexible and
20 responsive to the comments of the stakeholders. And
21 the comments have been very high level, very nuanced,
22 very thoughtful, and we appreciate your involvement.

23 We recommend the amended -- that the
24 amended rules go forward.

25 VICE-CHAIRMAN EDERER: I certainly agree

1 with those comments and would add that sometimes the
2 comments got a little lively and it was, I think, a
3 very good give and take. I do believe and I hope that
4 the stakeholders did express everything that they did
5 want to express. And I can assure you that we
6 certainly took it into consideration. We do believe
7 that the package that has been -- that is going forward
8 right now is in compliance with the Sunset Commission
9 and we request that it go forward.

10 CHAIRMAN SCHMIDT: Jonathan, is there any
11 public comment?

12 MR. SIERRA-ORTEGA: Yes, sir.

13 CHAIRMAN SCHMIDT: What I'd like to do is
14 organize these and start off with the opposed and then
15 start off with the favors -- then in favors. Okay?

16 MR. SIERRA-ORTEGA: Those are all in
17 favor.

18 CHAIRMAN SCHMIDT: All in favor? Okay.

19 Mr. Bennett?

20 MR. BENNETT: Thank you, Mr. Chairman.
21 I'm Bruce Bennett representing Lone Star Park.

22 We submitted comments on May 22nd. The
23 letter, I think, is in your packet. We believe that
24 the rules as proposed and as published are statutorily
25 authorized. They're reasonable. They are in harmony

1 with the act, which is to achieve good faith efforts to
2 conduct live racing, not good faith efforts to continue
3 to make good faith efforts to try. But it's to make --
4 to achieve live racing. And we feel like the rule as
5 amended satisfies and is in compliance with the statute
6 and it will help achieve that goal.

7 CHAIRMAN SCHMIDT: Any questions of
8 Mr. Bennett?

9 Thank you very much, sir.

10 MR. BENNETT: Thank you.

11 CHAIRMAN SCHMIDT: Mr. Cardwell?

12 MR. CARDWELL: I'm with Mr. Bennett.

13 Thank you.

14 CHAIRMAN SCHMIDT: Okay. Thank you,
15 sir.

16 Mr. Hooper? David Hooper?

17 MR. HOOPER: Mr. Chairman, members of the
18 Commission, once again, David Hooper, executive
19 director of the Texas Thoroughbred Association.

20 In your packet is the Texas Thoroughbred
21 Association position on these rules. At the end of
22 that letter, we supported some broader areas whereby
23 the Commission would be able to look at some additional
24 things. That came up in the rules committee meeting,
25 the most recent one, and those have been incorporated

1 into the revisions that are before you today and we're
2 in agreement with the changes that have been made.

3 CHAIRMAN SCHMIDT: Any questions of
4 David?

5 Okay. Thank you.

6 And last in favor is Mr. Bryan Brown.

7 MR. BROWN: Good morning again,
8 Commissioners. Bryan Brown with Retama Park.

9 One thing we'd like to add -- and we've
10 outlined it in the letter that's on page VI-C-16 -- is
11 some language that discusses the cancellation
12 provisions of live race days that are found in two
13 sections of 309.51. The most important one is in
14 309.51(f) and I'll just read that, if I could, because
15 this affects not just the inactives but the current
16 active operating racetracks and any racetrack that
17 would be designated as active.

18 And that section reads "Failure to
19 Conduct Granted Live Race Dates. Except as excused by
20 the executive secretary under 303.41(h) of Chapter 303,
21 General Provisions, if an Active-Operating or
22 Active-Other racetrack fails to conduct any" -- the
23 keyword there being "any" -- "live race dates granted
24 to it by the Commission, the Commission shall review
25 and may change the licensee's designation at a

1 regularly scheduled meeting to be held within the
2 following four months."

3 So if we have, as an example, a live race
4 date where lightning hits 45 minutes before the first
5 post, we have to cancel. If that day is not forgiven,
6 in essence, by the executive secretary, we're now
7 subject to this process.

8 You know, and I think this is an
9 unintended consequence. I think the staff did a great
10 job on these rules and the Commissioners in working
11 with us. But I'd hate to see an example where for
12 whatever reason -- and I don't know why the executive
13 secretary would not excuse that particular day,
14 particularly if it's weather-related. You could have a
15 jockey walkout as well.

16 But if there's something that happens
17 that's beyond the control of the racetrack and the
18 racetrack cannot conduct that particular live race
19 date, we'd like it to be excused automatically from the
20 two rules that are cited here.

21 I'd be happy to answer any questions.

22 CHAIRMAN SCHMIDT: Thank you, Mr. Brown.
23 I think there still is broad latitude in these rules.

24 MR. BROWN: I think there are.

25 CHAIRMAN SCHMIDT: I think you're

1 protected.

2 MR. FENNER: Yes, sir. If the executive
3 director did not forgive those dates and it was an
4 issue related to the bond forfeiture here, the
5 racetracks always have the ability to come back to the
6 Commission and plead their case. And so they can come
7 back to you and say, "Commissioners, the reason why we
8 didn't conduct that live race date is because of the
9 foul weather, the lightning, and so I'd ask that you
10 excuse the performance."

11 And so I do think that the racetracks are
12 protected in that situation. There is a method for
13 them to come and plead their case.

14 MR. BROWN: There is. I just don't know
15 why we'd have to go through that process because we
16 would have to come to you in a Commission meeting and
17 we are going to be a little bit nervous because our
18 license is at stake. And again, I don't think that had
19 anything to do with the sunset provisions that were
20 passed. I don't think that was an intention of the
21 bill at all. It's just the way it comes out.

22 Again, 99.9 percent of the time it's
23 probably not going to be an issue. Mr. Trout or
24 whoever happens to be the executive director at the
25 time will forgive that date, I would imagine. But the

1 language that I've suggested, I think, puts it to bed
2 once and for all and we never have to worry about it.

3 MR. FENNER: If I may respond to that.
4 There could be dispute about whether or not it is an
5 act of God or other events beyond the control of the
6 racetracks. We've already seen examples where
7 racetracks come before the Commission and want to argue
8 about whether events are beyond the control of their --
9 beyond their control. So ultimately, if there's a
10 dispute like that, it's going to wind up before the
11 Commission one way or the other.

12 CHAIRMAN SCHMIDT: I think so, Bryan. I
13 think -- the Commission isn't out to get you. The
14 Commission is --

15 MR. BROWN: I realize that. I'm worried
16 about the people behind me, though. I'm not worried
17 about myself. They're too scared to come up and argue
18 this point.

19 CHAIRMAN SCHMIDT: Any other comments or
20 questions of Mr. Brown?

21 MR. BROWN: Thank you, Commissioners.

22 CHAIRMAN SCHMIDT: Thank you, sir.

23 Jonathan, is there any other public
24 comment?

25 MR. SIERRA-ORTEGA: No, sir.

1 CHAIRMAN SCHMIDT: For or against?

2 MR. SIERRA-ORTEGA: No, sir.

3 CHAIRMAN SCHMIDT: I think the
4 active-inactive issue has been a long process. The
5 topic has been discussed, I think, at seven committee
6 meetings and six different Commissioners have
7 participated in these meetings. We actually
8 deliberately scheduled a meeting at Lone Star in order
9 to expand our base to be transparent and achieve
10 additional input.

11 We really appreciate the input,
12 particularly from those people who oppose the rules. I
13 think they helped it significantly. It's interesting
14 when you see many comments from many of you and from
15 several people you receive multiple comments. Feedback
16 hasn't been uniform. Even similarly situated tracks --
17 while four of the nonoperating tracks have opposed the
18 rules, two of them, Manor and Longhorn Downs, are in
19 support of the rules.

20 I'd again like to thank the yeoman's work
21 of Commissioner Ederer and Commissioner O'Connell and
22 formerly Commissioner Scott Haywood for doing some very
23 heavy lifting early on and attempting to fully
24 understand what the Legislature had directed the
25 Commission to do.

1 In reviewing the letters that I received,
2 I reviewed a letter from Mr. Moltz, from Ms. Young,
3 from Counselor Underwood, from Senator Hinojosa. And I
4 think there was a common theme that while you need to
5 have factors which can guide you for making good faith,
6 you need to allow a little flexibility. And I'm
7 publicly stating that we heard you.

8 And if you look now at the new modified
9 rule under Item (2) (B), "Factors the Commission may
10 consider include, but are not limited to," and that
11 was -- that was in response to certainly a particular
12 circumstance. You have just built your track and a
13 hurricane comes through. We now can address that and
14 we understand that.

15 And also in discussions with Senator
16 Hinojosa's office and also with Counselor Underwood,
17 they emphasized the economic situation of Texas and the
18 fact that if you have an inactive license and are
19 trying to build a track and raise money that adding a
20 400,000-dollar bond at that time would be difficult.
21 We think we could if we desired, but we think -- we
22 decided to strike it so you could use your funds to
23 build the track and meet your obligation.

24 Again, I'm trying to emphasize to you
25 that the Commission has heard your input and I think

1 the rules are better for it.

2 I would also comment that the designation
3 of active and inactive was not our proposal. It was a
4 proposal by the Legislature to us from sunset. In
5 hindsight, I think it was very insightful, but I think
6 the Legislature did send us a message that the status
7 quo did not -- they were not satisfied with the status
8 quo and for this reason they requested changes.

9 So are there any other comments from any
10 of the Commissioners or questions for Mr. Fenner?

11 Okay. Good. I'll certainly entertain a
12 motion to adopt the rule listed in Agenda Items VI-B
13 and C, publish the rules in the Texas Register with the
14 amendments included.

15 MR. FENNER: To adopt.

16 CHAIRMAN SCHMIDT: To adopt, yeah, to
17 adopt the rules.

18 COMMISSIONER MARTIN: I make the motion
19 to adopt.

20 CHAIRMAN SCHMIDT: A motion to adopt by
21 Dr. Martin.

22 Is there a second?

23 VICE-CHAIRMAN EDERER: Second.

24 CHAIRMAN SCHMIDT: A second by
25 Commissioner Ederer.

1 Any further comments, questions?

2 All those in favor signify by saying
3 aye.

4 COMMISSIONERS: Aye.

5 CHAIRMAN SCHMIDT: Anyone opposed?

6 Okay. Those rules are adopted then.

7 Okay. Then let's take the next items
8 together, Items D, E, F, G, H, and I, 313.409, 313.103,
9 313.101, 313.104, 313.306, and 303.97.

10 Mark, can you bring us up to date on
11 these issues?

12 MR. FENNER: Yes, sir.

13 The change to 313.409, Jockey Mount Fees,
14 gives the jockeys their first pay increase since 2000
15 and it also clarifies existing policy that a jockey
16 who's been replaced by the owner or trainer shall be
17 paid the same amount that the replacement jockey
18 receives. We received no comments on this.

19 The changes to the following five rules,
20 which are 313.103, 101, 104, 306, and 97, all relate to
21 the issue of dually registered horses. These proposed
22 amendments make a number of changes that permit dually
23 registered horses to compete as either breed, either a
24 Quarter Horse or as a Paint, during a single meet.

25 The proposal to 313.103 also addresses a

1 request by the Quarter Horse Association that allows a
2 trainer an additional 15 days in advance of a race in
3 which to secure a horse's workout.

4 We've received no comments on any of
5 these rules and I believe the staff recommends adoption
6 of these rules.

7 CHAIRMAN SCHMIDT: Okay. Any further
8 questions of Mark?

9 Any public comment?

10 MR. SIERRA-ORTEGA: One, sir.

11 CHAIRMAN SCHMIDT: Mr. Beech from the
12 Jockey Guild?

13 MR. BEECH: No comment.

14 CHAIRMAN SCHMIDT: No comment? Okay.
15 You just are in favor.

16 Okay. Any further public comment?

17 Okay. Any insight from Commissioner
18 O'Connell or Commissioner Ederer?

19 VICE-CHAIRMAN EDERER: No.

20 CHAIRMAN SCHMIDT: Great. Well, I'd
21 certainly entertain a motion to adopt the rules listed
22 in Agenda Items VI-D through VI-I as published in the
23 Texas Register.

24 COMMISSIONER STEEN: I make a motion.

25 CHAIRMAN SCHMIDT: The motion --

1 MR. FENNER: I'm sorry.

2 CHAIRMAN SCHMIDT: No?

3 MR. FENNER: You're right. I'm sorry.

4 CHAIRMAN SCHMIDT: Good. A motion made
5 by Commissioner Steen.

6 Is there a second?

7 COMMISSIONER MARTIN: Second.

8 CHAIRMAN SCHMIDT: Seconded by
9 Dr. Martin.

10 Any further discussion?

11 All those in favor signify by saying
12 aye.

13 COMMISSIONERS: Aye.

14 CHAIRMAN SCHMIDT: Anyone opposed?

15 The motion carries.

16 We now move to rule reviews, adoption of
17 completed rule reviews, Chapters 301, 303, and 319.

18 Mark, can you lay out these items, please?

19 MR. FENNER: Yes, sir.

20 The Texas Government Code requires each
21 State agency to review all of its rules at least every
22 four years to determine whether the reasons for
23 adopting each of its rules continues to exist.

24 The Commission began the review of
25 Chapters 301, 303, and 319 in June of 2011 and has now

1 concluded the reviews. We've received no comments on
2 the chapters other than the comments made during the
3 amendments to specific rules during the review
4 process. We've made a few changes regarding Chapters
5 301 and 319; but with the inclusion of those changes,
6 staff recommends readopting those chapters, including
7 the changes that have already been made to the rules
8 within those chapters.

9 CHAIRMAN SCHMIDT: Okay. Any public
10 comment?

11 Any comment by any of the Commissioners,
12 discussion?

13 Well, I'll certainly entertain a motion
14 to readopt the rules within Chapters 301, 303, and
15 319.

16 COMMISSIONER HICKS: I'll make the
17 motion.

18 CHAIRMAN SCHMIDT: A motion by
19 Commissioner Hicks.

20 Second?

21 VICE-CHAIRMAN EDERER: Second.

22 CHAIRMAN SCHMIDT: Commissioner Ederer.

23 All those in favor signify by saying
24 aye.

25 COMMISSIONERS: Aye.

1 CHAIRMAN SCHMIDT: Anyone opposed?

2 Those rule reviews are adopted.

3 And now opening of a rule review.

4 MR. FENNER: Commissioners, the same
5 thing. It is time to begin the rule review of the
6 rules within Chapter 309. It's been about four years
7 since the last time the Commission concluded its
8 review. So the staff would recommend publishing
9 Chapter 309 in the Texas Register for rule review.

10 CHAIRMAN SCHMIDT: Jonathan, is there any
11 public comment?

12 MR. SIERRA-ORTEGA: No, sir.

13 CHAIRMAN SCHMIDT: No public comment.

14 Any comment from any of the
15 Commissioners?

16 Okay. I'd certainly entertain a motion
17 to publish rule -- to publish Chapter 309 in the Texas
18 Register for rule review and request public comment.
19 Is there a motion to that effect?

20 COMMISSIONER HICKS: I make a motion.

21 COMMISSIONER MARTIN: Second.

22 CHAIRMAN SCHMIDT: A motion made by
23 Commissioner Hicks and seconded by Dr. Martin.

24 All those in favor signify by saying
25 aye.

1 COMMISSIONERS: Aye.

2 CHAIRMAN SCHMIDT: Anyone opposed?

3 That carries also unanimously.

4 There will be no executive session
5 today.

6 And our next scheduled meeting is August
7 14th, 2012, if that's suitable for everyone.

8 And since there's no further business,
9 we're adjourned at 11:39. Thank you.

10 (Proceedings concluded at 11:39 a.m.)

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1 STATE OF TEXAS)
2 COUNTY OF TRAVIS)

3
4 I, SHERRI SANTMAN FISHER, a Certified Shorthand
5 Reporter in and for the State of Texas, do hereby
6 certify that the above-captioned matter came on for
7 hearing before the TEXAS RACING COMMISSION as
8 hereinbefore set out.

9 I FURTHER CERTIFY that the proceedings of said
10 hearing were reported by me, accurately reduced to
11 typewriting under my supervision and control and, after
12 being so reduced, were filed with the TEXAS RACING
13 COMMISSION.

14 GIVEN UNDER MY OFFICIAL HAND OF OFFICE at Austin,
15 Texas, this 26th day of June, 2012.

16
17
18
19
20

21 _____
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