

TEXAS RACING COMMISSION

MEETING

10:31 a.m.
Tuesday,
February 13, 2018

Room JHR140
John H. Reagan State Office Building
105 West 15th Street
Austin, Texas

COMMISSIONERS PRESENT:

JOHN T. STEEN III, Chair
RONALD F. EDERER, Vice-Chair
GLORIA HICKS
TIM KLEINSCHMIDT (for SID MILLER)
A. CYNTHIA LEON (for STEVEN P. MACH)
MARGARET L. MARTIN

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P R O C E E D I N G S

1
2 CHAIRMAN STEEN: The time is now 10:31. At
3 this time, I would like to call today's meeting of the
4 Texas Racing Commission to order.

5 Jean, could you please call the roll.

6 MS. COOK: Yes.

7 Commissioner Hicks.

8 COMMISSIONER HICKS: Here.

9 MS. COOK: Commissioner Leon.

10 COMMISSIONER LEON: Here.

11 MS. COOK: Commissioner Martin.

12 COMMISSIONER MARTIN: Here.

13 MS. COOK: Commissioner Kleinschmidt.

14 COMMISSIONER KLEINSCHMIDT: Here.

15 MS. COOK: Commissioner Schmidt.

16 COMMISSIONER SCHMIDT: (No response).

17 MS. COOK: Vice Chair Ederer.

18 COMMISSIONER EDERER: Here.

19 MS. COOK: Chairman Steen.

20 CHAIRMAN STEEN: Here. Do we have a quorum?

21 MS. COOK: Yes, we do.

22 CHAIRMAN STEEN: Thank you. Moving on to Item
23 II, public comment, Jean, has anyone signed up for public
24 comment?

25 MS. COOK: No, sir.

1 CHAIRMAN STEEN: Okay. The first item of
2 business today is the election of a vice chair.

3 Devon, will you please present this item.

4 MS. BIJANSKY: Yes, sir.

5 Commissioners, as we discussed at the last
6 meeting, the Racing Act provides for the election of a
7 vice chair every two years, at the first meeting of each
8 odd-numbered year.

9 Any of you are eligible to serve, and it's a
10 very simple majority vote process.

11 CHAIRMAN STEEN: Commissioners, do you have any
12 questions?

13 (No response.)

14 CHAIRMAN STEEN: Okay. If not, I will
15 entertain nominations of commissioners to serve as vice
16 chair.

17 COMMISSIONER HICKS: I'll nominate Ron Ederer.

18
19 CHAIRMAN STEEN: Okay. Commissioner Ederer has
20 been nominated to serve as vice chair. Are there any
21 other nominations?

22 (No response.)

23 CHAIRMAN STEEN: Okay. So then I will take
24 that as a motion by Commissioner Hicks to elect
25 Commissioner Ederer as vice chair, assuming you will do

1 it.

2 COMMISSIONER EDERER: Yes.

3 CHAIRMAN STEEN: Okay.

4 COMMISSIONER EDERER: You're raising the pay,
5 though.

6 (General laughter.)

7 CHAIRMAN STEEN: Okay. Do we have a second?

8 COMMISSIONER MARTIN: Yes.

9 CHAIRMAN STEEN: Okay. Motion made by Hicks,
10 seconded by Martin. Any further discussion?

11 (No response.)

12 CHAIRMAN STEEN: If not, we will take it up for
13 a vote. All in favor, please signify by saying aye.

14 (A chorus of ayes.)

15 CHAIRMAN STEEN: Any opposed?

16 (No response.)

17 CHAIRMAN STEEN: Congratulations, Vice Chair
18 Ederer.

19 COMMISSIONER EDERER: Thank you.

20 CHAIRMAN STEEN: Okay. The next item is Agenda
21 Item III.B.1., Budget and finance update.

22 Adrienne Courtney, would you give us the
23 update, please.

24 MS. COURTNEY: Good morning, Commissioners. On
25 pages 5 through 9 of your agenda packet is the Agency's

1 fiscal year 2018 operating budget through the end of
2 December.

3 As of December 31st, the Agency collected a
4 total of 1.5 million in annual track license fees,
5 occupational license revenue, and other revenue. This is
6 approximately 97 percent of the revenue that was projected
7 through December for collection. Texas bred revenue and
8 pass-through amounted to \$874,000.

9 The Agency spent \$1.4 million in operating
10 expenses and benefits and had an accounts payable balance
11 of 65,000 at the end of December. This is approximately
12 the amount of expenditures that were budgeted. As of the
13 end of December, the Agency had a cash balance of
14 approximately \$60,000.

15 This operating budget is based on the adoption
16 of amendments to Rule 309.8, Racetrack License Fees and
17 the approval of the fiscal year 2018 operating budget,
18 which is on today's agenda. I would be happy to answer
19 any questions you may have.

20 CHAIRMAN STEEN: Commissioners, do you have any
21 questions?

22 (No response.)

23 CHAIRMAN STEEN: Thank you, Adrienne. The next
24 item is Agenda III.B.2., report on wagering statistics.

25 Curley Trahan.

1 MR. TRAHAN: Thank you, Mr. Chairman. Good
2 morning, Commissioners. In your meeting materials, on
3 pages 10 through 12, is the comparison report on wagering
4 statistics for the calendar years ending 2017 and 2016.

5 For the year 2017, total wagering activities at
6 the greyhound racetracks showed a decrease of 11.24
7 percent from 2016 figures, equating to a decrease of
8 approximately \$4.9 million in the handle.

9 Total wagering activities at the horse
10 racetrack showed a decrease of 2.71 percent for calendar
11 year 2017 from calendar year 2016. The decrease
12 represents approximately \$9.88 million in handle.
13 Overall, the total wagers placed in Texas decreased by
14 5.25 percent, or approximately \$15.9 million.

15 However, total wagers placed on Texas races
16 reflected an increase of .04 percent, or approximately
17 \$56,000 in additional handle. I would be happy to answer
18 any questions.

19 CHAIRMAN STEEN: Commissioners, do you have any
20 questions?

21 (No response.)

22 CHAIRMAN STEEN: Thank you, Curley.

23 MR. TRAHAN: Thank you.

24 CHAIRMAN STEEN: The next item is agenda item
25 III.B.3., enforcement report.

1 Jim Blodgett.

2 MR. BLODGETT: Mr. Chairman, Commissioners,
3 good morning. Commissioners, your enforcement report this
4 morning is found on pages 13 and 14 in your materials
5 packet.

6 As you will notice, this report differs from
7 our usual enforcement format that provides only data
8 collected from the latest completed race meets at
9 individual racetracks. Your enforcement report this
10 morning provides a cumulative enforcement activities
11 comparison between 2016 and 2017.

12 Commissioners, page 13 reflects comparative
13 data by specific enforcement categories. With slightly
14 fewer approved race dates in 2017, this report documents a
15 33 percent increase in overall enforcement activities
16 during live race meets.

17 I would like to draw your attention to several
18 specific categories this morning. You will notice that --
19 you will see activity spikes that have occurred over this
20 period of time that account for the overall increase.

21 The most notable increases come within the
22 categories of contraband, human drug violations, animal
23 medication violations, licensing violations, and trainer
24 infractions.

25 Commissioners, page 14 documents the different

1 substances and medications found in racehorses during this
2 period of time. The overall horse positives in 2016 was
3 79. 2017, it was 98.

4 The numbers represent a 24 percent increase in
5 overall horse positives, with the most significant
6 increases seen in the use of clenbuterol, which spiked
7 within its specific enforcement category to more than
8 double the 2016 level.

9 Commissioners, one final note: As you review
10 the material, there are several additional cases within
11 the 2017 animal drug categories that are not included in
12 these figures. The reason for this is they have not been
13 fully adjudicated at this time.

14 And I would be happy to answer any questions
15 that you might have.

16 CHAIRMAN STEEN: Commissioners, do you have any
17 questions?

18 (No response.)

19 CHAIRMAN STEEN: I have a question for you,
20 Jim. If you don't mind, would you just comment on looking
21 at the meth, cocaine, anabolic steroids, the zero in '17,
22 versus the 17 that we had in '16, and then also on the
23 clenbuterol more than doubling.

24 Just give us a feel for what you think is going
25 on with this.

1 MR. BLODGETT: Yes, sir. I wish I had some
2 real solid answer for you, Mr. Chairman. We did see a
3 spike in the methamphetamines in the summer of 2016. It
4 was very concerning to us.

5 We spent a lot of man hours testing feed
6 products, food, hay, shavings, humans that might have had
7 access or have been handling those specific horses. We
8 did -- we found no traces of methamphetamine in any type
9 of environmental testing that we did: hay, the food, the
10 shavings, anything like that.

11 What we did find was a lot of -- or some
12 individuals that had tested positive for methamphetamine
13 when we did a urinalysis test on them in the field. I
14 wish I could say that maybe this was the result of good
15 enforcement, that it dipped from 17 in '16 to none
16 reported in 2017, but like a lot of things on the
17 racetrack, it could have been pure coincidence, that maybe
18 the fear of being caught or bounced off the track, you
19 know, maybe that caused it. I just don't have a real
20 solid answer for you on that.

21 With regard to the clenbuterol, the specific
22 increase on clenbuterol from 2016 to 2017 by category
23 itself was 133 percent; it more than doubled.

24 Clenbuterol is a therapeutic medication used
25 for respiratory issues in horses. However, from

1 conducting interviews, people that have come up with the
2 positives for this particular drug, many of them do not
3 even have a diagnosis or prescription. They use it more
4 for a steroidal-type effect that it's known to cause with
5 extended use, hoping to get the horse or the animal off of
6 the drug before it tests in the post race.

7 CHAIRMAN STEEN: And what have we done in that
8 regard? I mean, have we increased fines, or has the
9 agency done anything?

10 MR. BLODGETT: The Executive Director did
11 increase the fines. I believe it was last summer, to the
12 best of my memory of the calendar, to double the fine for
13 the first offense.

14 And I'd have to rely on the ED to let me know
15 what --

16 MR. TROUT: That's right.

17 MR. BLODGETT: -- where there was a second
18 offense, it went up from there. Is that correct?

19 MR. TROUT: It went up also.

20 MR. BLODGETT: Okay.

21 CHAIRMAN STEEN: Is this something we are
22 looking into further?

23 MR. TROUT: Yes, sir. We'd like to have a
24 medication working group to meet and discuss the possible
25 complete elimination of -- go to zero tolerance, but we're

1 not at zero tolerance right now.

2 CHAIRMAN STEEN: Okay.

3 MR. BLODGETT: With the individuals that we
4 have identified through the course of our interviews that
5 have done a lot of self-medicating with regard to
6 clenbuterol, one problem that we are noting is the brand
7 name for clenbuterol is Ventipulmin in the United States.

8 I believe there may be one other company brand name that
9 does sell it.

10 A lot of the individuals are buying from
11 Mexico, a brand in Mexico that's somewhere around 2- to
12 300 times stronger than the American-made clenbuterol. We
13 feel like that potentially could be a problem that is
14 showing up in these numbers; that they don't realize the
15 strength, or maybe the withdrawal period is longer to get
16 it down below 140.

17 CHAIRMAN STEEN: Any further questions?

18 COMMISSIONER EDERER: I had a question for
19 Chuck. Chuck, if we had a veterinarian, would that help
20 us?

21 MR. TROUT: Yes, sir.

22 COMMISSIONER EDERER: But we don't have one.
23 Anything on the radar, for --

24 MR. TROUT: Not that I know of.

25 COMMISSIONER EDERER: Thank you.

1 CHAIRMAN STEEN: Thank you, Jim.

2 MR. BLODGETT: Yes, sir.

3 CHAIRMAN STEEN: The next item is Agenda Item
4 IV.A., proceedings on occupational licenses. We have
5 before us a proposal for decision in SOAH 476-17-5681,
6 Judd Kearl v. Texas Racing Commission.

7 Ted Ross with the Attorney General's Office
8 will be representing the Agency on this matter, and can
9 advise the Commission on this item, if Commissioners have
10 any legal or procedural questions.

11 Devon Bijansky will represent the staff. Do we
12 have anyone here on behalf of Mr. Kearl?

13 (No response.)

14 CHAIRMAN STEEN: Ms. Bijansky, please.

15 MS. BIJANSKY: Mr. Chairman, I haven't heard
16 from them. I don't know whether they are planning to be
17 here. I think a year or two ago we had a similar
18 situation where we ended up pushing the item back, and by
19 the time we got back to it, the attorney had appeared, so
20 that may be something that you want to do. I just don't
21 know whether we're expecting them or not.

22 CHAIRMAN STEEN: Okay. Would that be the case
23 on the other, as well? Would be the same attorney, or
24 would there be a different attorney?

25 MS. BIJANSKY: There are two different

1 attorneys for the three cases, and I haven't heard from
2 any of them. So I couldn't say whether --

3 CHAIRMAN STEEN: Are any of them present?

4 MS. BIJANSKY: They are not.

5 CHAIRMAN STEEN: Okay. Why don't we move this
6 back and try to come back to it later in the meeting.

7 COMMISSIONER EDERER: Have they been notified
8 to be here?

9 MS. BIJANSKY: They have. Yes.

10 COMMISSIONER LEON: Do they know what time the
11 meeting is?

12 MS. BIJANSKY: Yes. I sent them all the
13 information.

14 COMMISSIONER EDERER: And you have confirmation
15 of that, that they did receive the notice, like a return
16 receipt?

17 MS. BIJANSKY: Not a return receipt
18 specifically. But I sent, I believe, two separate emails
19 about it.

20 COMMISSIONER EDERER: Okay. Thank you.

21 CHAIRMAN STEEN: Is there a way to proceed
22 without them, you presenting one side, and --

23 MS. BIJANSKY: Yes. We can proceed. I just --
24 I don't know whether they are on the way or -- if they
25 don't appear, I am happy to give my presentation, and you

1 can continue and take action.

2 CHAIRMAN STEEN: Do you have a recommendation?

3 COMMISSIONER EDERER: Well, my recommendation
4 is that we go ahead and proceed and not push it back. If
5 they have been notified to be here at a certain time, just
6 like any other court hearing, if you don't show up, and
7 your case is set for a particular period of time -- but if
8 Devon believes we should push it back, let's push it back.
9 Let's give them a little time. She knows the attorneys,
10 and she knows the --

11 MS. BIJANSKY: That is entirely your decision,
12 Commissioners.

13 COMMISSIONER EDERER: Well, if we have -- if
14 the experience has been to push it back, let's give them a
15 little time.

16 CHAIRMAN STEEN: Okay. So then we are going to
17 skip over, for now, Items B, C -- let's see -- A, B and C.
18 And we'll move on to Item V, matters related to Agency
19 funding. The next item is V.A., discussion and possible
20 action to adopt amendments to Rule 309.8, Racetrack
21 License Fees.

22 Devon, I believe you also will be presenting
23 this item?

24 MS. BIJANSKY: Yes, Mr. Chairman.

25 Commissioners, at the September meeting, you

1 voted to propose amendments to this rule, which would
2 provide for a new racetrack fees consistent with the
3 agreement reached by nine of the ten racetracks. As you
4 know, the proposed amendments would increase fees for the
5 Class 1 tracks and decrease them for Class 2 and 3 tracks
6 and the greyhound tracks.

7 We received 151 comments in response to the
8 proposed amendments. Your materials said 150. We just
9 identified a 151st that we had received back in
10 December -- November but hadn't made its way into the
11 stack. That comment was from the five tracks in the fee
12 lawsuit, and they commented in support of the proposal.

13 The other 150 comments were in opposition to
14 the proposal, and the majority were opposed based on a
15 belief that increased fees would lead to reduced race
16 dates. And the comments are in your materials.
17 Additionally, I set the one new comment at each of your
18 places.

19 The draft rule in your materials has a number
20 of changes from the draft that was proposed back in
21 September. I've tried to highlight those changes in your
22 materials with a double underline, and it starts on page
23 63.

24 The first change is the dollar amount of the
25 fee for each type of racetrack license is slightly

1 increased from what was proposed. As you may recall,
2 there was also a proposal back in September to increase
3 occupational license fees by 20 percent.

4 Instead of doing that, the draft in your
5 materials would raise that same amount, totaling \$65,000
6 per year, through slightly higher track fees. For
7 example, instead of the proposed new fee of \$700,000,
8 Class 1 tracks would pay \$714,650.

9 Second, in subsection (b)(2), the current rule,
10 refers to the calendar year. That is changed in the draft
11 of the materials to "fiscal year," to reflect the Agency
12 practice of charging for a track's additional days beyond
13 the base by fiscal year.

14 Next, the timing of the payment of 2018 fees is
15 changed to reflect that, if adopted, this rule would take
16 effect in March instead of in December, as was anticipated
17 back when it was proposed. Accordingly, rather than nine
18 payments, the remaining amount due will be paid in six
19 monthly payments.

20 And last, the new fee schedule would only be in
21 effect for the current fiscal year ending August 31st. In
22 September of 2018, the fees would revert to the current
23 fees, \$500,000 for a Class 1 license and so on, unless the
24 Commission takes action to adopt new fees before then.

25 We anticipate that that would coincide with the

1 audit plan that has been set in motion and you will be
2 taking up a little bit later. Enacted fees would also be
3 due quarterly under the current rule but would revert back
4 in September, rather than monthly.

5 So those are the changes to the draft that was
6 proposed back in September, and the amendments are before
7 you for action today.

8 COMMISSIONER LEON: Do we need to republish the
9 rule for comment as a result of the changes that are
10 being --

11 MS. BIJANSKY: No, Commissioner. They are not
12 considered substantial enough that it would require
13 reposting.

14 COMMISSIONER LEON: Is the amount -- I haven't
15 added; I am not great at math. Is it the same amount,
16 just redistributed differently?

17 MS. BIJANSKY: It is. And I believe that the
18 increase for the Class 1 tracks -- the increase over what
19 the increase that was already proposed is about 3 percent,
20 so it is minimal.

21 COMMISSIONER LEON: So this does not require --
22 this is for final action and not for republication?

23 MS. BIJANSKY: That is correct.

24 COMMISSIONER LEON: Okay.

25 COMMISSIONER EDERER: Did I hear you correctly

1 it terminates in August?

2 MS. BIJANSKY: Right. In this draft, the
3 increase would only be for the 2018 fiscal year.

4 COMMISSIONER EDERER: Only for 2018.

5 MS. BIJANSKY: Yes, sir.

6 COMMISSIONER EDERER: All right.

7 COMMISSIONER LEON: Then the Commission would
8 have to react -- I mean, reenact another rule, if they
9 wanted it changed? Is that correct, ma'am?

10 MS. BIJANSKY: That is correct.

11 COMMISSIONER EDERER: By then of course,
12 hopefully we will have the audit finished, and we will be
13 a lot further along as far as our finances are concerned.

14 MS. BIJANSKY: Yes, sir.

15 COMMISSIONER EDERER: Thank you.

16 CHAIRMAN STEEN: I will just comment on that.
17 You know, I think that that -- as we have kind of gone
18 through the year here, if we were to pass as proposed, it
19 kind of puts us right back into the same discussion that
20 we are already having, because it puts it right back upon
21 us.

22 You know, it puts -- I think the positive
23 aspect of that -- the negative is it puts it right back
24 upon us. The positive aspect is coinciding with the
25 efficiency audit.

1 And I think it puts the Commission and the
2 staff and the industry on the same page with continuing to
3 work on this matter. And hopefully we are able to realize
4 some savings and come up with a proposal that we can reach
5 a broader consensus on industrywide, is my opinion.

6 COMMISSIONER LEON: Is the efficiency audit
7 supposed to be complete at this -- at the end of this
8 period?

9 CHAIRMAN STEEN: It's a tight schedule, and we
10 have it later on there. But if -- that will be part of
11 the incentive here, is to kind of move that along at that
12 pace, so that we would have the results in time.

13 COMMISSIONER LEON: So you think this is on
14 time at this point, until September, we reevaluate again,
15 with the efficiency audit.

16 CHAIRMAN STEEN: Yes.

17 COMMISSIONER LEON: Okay.

18 CHAIRMAN STEEN: Commissioners, any other
19 questions?

20 COMMISSIONER EDERER: Just for clarification.
21 So what we are doing is we are more or less kicking the
22 can down the road, but with purpose and hopefully a
23 successful outcome.

24 CHAIRMAN STEEN: Right. I mean, we would be
25 settling --

1 COMMISSIONER EDERER: We are not just passing
2 it.

3 CHAIRMAN STEEN: Right. We'd be settling the
4 issue, essentially, for this fiscal year, where we are
5 already sort of on a month to month, as far as being able
6 to keep the Agency funded. But it keeps pressure on
7 everyone involved to continue to look for solutions. All
8 stakeholders --

9 COMMISSIONER EDERER: With purpose.

10 COMMISSIONER EDERER: -- with purpose. Do we
11 have anyone signed up to speak?

12 MS. COOK: Yes.

13 CHAIRMAN STEEN: Thank you. Okay. We are
14 going to limit the comments period to, what do we usually
15 do? Two or three minutes?

16 MS. BIJANSKY: I don't recall. Yes, two or
17 three.

18 CHAIRMAN STEEN: Okay. Two or three, let's
19 say. First we have Kris Fullerton, wishing to testify
20 against.

21 MS. FULLERTON: Good morning, Commissioners.
22 Good to see you, Ms. Hicks; it's been a while.

23 I have one quick question, before I start my
24 testimony, that we brought up with the proposal that you
25 are looking to enact, being for six months, through the

1 31st of August at which point you said the fees would
2 revert.

3 What about the base days? Will those revert
4 back to 40, or will it be \$500,000 for 20?

5 MS. BIJANSKY: Everything reverts back to the
6 current.

7 MS. FULLERTON: Everything. So the base days
8 revert back as well. Thank you very much for answering
9 that.

10 The racing industry is a microcosm of society.
11 We have a few wealthy and powerful individuals in
12 racetrack and large farm owners. We have farmers who are
13 the breeders. We have a wide assortment of tradesmen,
14 which are racetrack office staff, officials, trainers and
15 jockeys; many service providers and vets, farriers, feed,
16 tack and vendors; a large population of supporting
17 personnel in grooms, exercise riders, hot walkers and
18 other track employees; our racetrack church. We even have
19 our few borderline indigent folks and our governing body,
20 the Texas Racing Commission.

21 Just as has happened in larger society, our
22 governing body has over time insidiously shifted from
23 serving the industry as its regulatory branch to enslaving
24 the industry to keep the Agency operating comfortably.

25 Only a government agency could be so enamored

1 of its own self-worth to have the temerity to print
2 blatant falsehoods in an official state publication when
3 proposing rule changes that will financially cripple the
4 industry, proclaiming there would be no adverse economic
5 impact on small businesses, no adverse effect on
6 employment in Texas, and a positive effect on the horse
7 and dog breeding industries. Those can be found in
8 paragraphs 5 through 7, as published in the *Texas Register*
9 October 6, 2017.

10 Despite pointing out the probable untruths in
11 those statements, the Commission shrugged and ignored
12 them. Since the greyhound racing lost over 200 of their
13 live days, their crowd size in Texas has reduced by 49
14 percent, 49 percent.

15 The loss of live horse racing days will result
16 in similar or worse reduction in race horse breeding.
17 That is not a positive effect for the industry. Only a
18 government agency so secure in its autonomy and lacking in
19 accountability would break its own laws with impunity when
20 it serves the Agency's purpose.

21 Section 3.07 subsection (a) of the Texas Racing
22 Act states -- and I quote -- "The Commission shall employ
23 all of the judges, all of the stewards for the supervision
24 of a horse race or greyhound meeting. Three stewards for
25 horse racing. Three judges for greyhound.

1 "For each meeting, the Commission shall employ
2 at least one state veterinarian. The Commission may, by
3 rule, impose a fee on an association to offset the cost of
4 compensating the stewards, judges, and state
5 veterinarians.

6 "The amount of the fee for compensation of
7 stewards, judges, and veterinarians must be reasonable
8 according to industry standards for the compensation of
9 those officials at other racetracks, and may not exceed
10 the actual cost to the Commission for compensating the
11 officials."

12 Under the proposal for Rule change 309.8, the
13 racetracks will be charged \$6,313 per day for every live
14 day to compensate those officials, over their lowered
15 allotment.

16 So as "this may not exceed the actual cost to
17 the Commission for compensating officials" is the law in
18 the Texas Racing Act, how can the per diem amount be
19 legally raised so much, unless there has been a massive
20 nationwide increase in officials' pay.

21 The Texas --

22 CHAIRMAN STEEN: Ms. Fullerton, would you
23 please wrap up your comments. You are over the --

24 MS. FULLERTON: Yes. Well, I didn't have the
25 question figured in there that you presented me earlier,

1 with the days.

2 CHAIRMAN STEEN: Okay.

3 MS. FULLERTON: It also states in the Texas
4 Racing Act, Section 309, subsection (b), that "The
5 Legislature may appropriate money from the General Revenue
6 fund for the administration and enforcement of this Act.
7 Any amount of General Revenue appropriated for the
8 administration and enforcement of this Act in excess of
9 cumulative amount deposited by the TxRC shall be
10 reimbursed from the TxRC."

11 Basically, you guys could borrow the money if
12 you want to, and you'd pay 6.3 percent interest, but you
13 would much rather just take it from the industry.

14 I don't know if you don't want the
15 accountability and oversight that comes with general
16 funds, but there are other ways that nobody has wanted to
17 pursue. Instead, we are going to cripple a \$5 billion
18 agricultural industry.

19 Every time I have watched a horse man or a dog
20 man testifying before you, there is little attention paid
21 to their testimony from the dais, with the exception of
22 one or two commissioners at any given time.

23 At a recent industry stakeholder meeting, the
24 horsemen's representatives were literally not even
25 afforded a seat at the table, being relegated to chairs

1 along a wall.

2 Now, maybe many of you didn't want this
3 Commission appointment. Maybe you view the horse and
4 greyhound breeders, owners, and trainers as beneath your
5 notice.

6 You may view us as the great unwashed. You
7 customarily dismiss our representatives' invocations and
8 information out of hand. Let them eat cake, you say.
9 Rest assured, we will soon be eating it in another state,
10 along with our horses and our greyhounds, and then what
11 will you have to regulate.

12 CHAIRMAN STEEN: Thank you, Ms. Fullerton.

13 Do we have any questions?

14 (No response.)

15 CHAIRMAN STEEN: Thank you.

16 MS. FULLERTON: Okay.

17 CHAIRMAN STEEN: Okay. Up next we have Marsha
18 Rountree, which will testify against, representing the
19 Texas Horsemen's Partnership.

20 MS. ROUNTREE: Mine is very brief, for a
21 change. Marsha Rountree, representing Texas Horsemen's
22 Partnership. I do have a question. What would constitute
23 a substantive change requiring reposting of the rule?

24 MS. BIJANSKY: I can't answer that in abstract.

25 MS. ROUNTREE: You didn't have any guidance or

1 legal clarification on what would make this rule become
2 necessary to republish, since we changed the amount of the
3 fees, we changed the timing and a lot of the other
4 provisions in the originally posted rule? So none of
5 those things were substantive enough to change it? It was
6 just a decision?

7 MS. BIJANSKY: The timing, for instance, is
8 just a change to reflect the fact that the rule, if
9 adopted, would be taking effect later than anticipated.
10 So it really wouldn't change the amount of each monthly
11 payment. It just -- because we have been collecting
12 money all along, it just changes, essentially, the wording
13 of the rule to match the circumstances. So like I said, I
14 can't describe specifically what that --

15 MS. ROUNTREE: But there was no legal precedent
16 for you to go to, nothing -- an instruction manual to look
17 at, to see what would be considered substantive, that
18 required reposting?

19 MS. BIJANSKY: I can say that we looked very
20 closely at these four items and concluded that none of
21 them would require reposting.

22 MS. ROUNTREE: Okay. Thank you. I really
23 don't have anything else to add. Everything that I have
24 had to say is on record multiple times.

25 Just one more time to go on the record, to say

1 that the horsemen that you regulate are adamantly opposed
2 to this rule. And while we do appreciate the changes that
3 were made with the timing on there, and we do support that
4 within the rule, we are just still against the rule.

5 Thank you.

6 CHAIRMAN STEEN: Any questions for Ms.
7 Rountree?

8 (No response.)

9 CHAIRMAN STEEN: Thank you, Marsha.

10 Up next, we have Mary Ruyle, wishing to testify
11 on, representative of TTA.

12 MS. RUYLE: Good morning, Commissioners. Mary
13 Ruyle for the Texas Thoroughbred Association. I too, have
14 a question, and it has to do with the increase of the
15 track fees, in lieu of increased individual license fees.

16

17 I will be interested to see what the tracks
18 have to say about this. I assume -- did you have any
19 input on them when you were crafting this?

20 MS. BIJANSKY: I would defer to the Chairman on
21 that. I can't answer that.

22 CHAIRMAN STEEN: We can have the tracks speak
23 on that, if you like.

24 MS. RUYLE: Okay. Thank you. I also would
25 like to say that our association still is against this

1 rule. We feel it is bad for the horsemen.

2 But I am -- we are pleased to see lines 29 and
3 30 have been added to this that says, unless the
4 Commission amends the provision, the fees for the state
5 fiscal years beginning September 1, '18 and thereafter
6 will revert back to the prior number of race days and the
7 prior fees.

8 So we do feel that that is a step in the right
9 direction, because, you know, there is the opportunity for
10 great change in things by the end of this fiscal year.

11 And I would be happy to answer any questions.

12 CHAIRMAN STEEN: Any questions for Ms. Ruyle?

13 (No response.)

14 MS. RUYLE: Thank you.

15 CHAIRMAN STEEN: Thank you.

16 Okay. Up next, we have Scott Wells against the
17 rule, wishing to testify representing Lone Star Park.

18 MR. WELLS: Thank you, Mr. Chairman, members of
19 the Commission. I will be very brief, too, because we
20 remain opposed to the rule and its basic intent, which we
21 feel unfairly burdens the tracks that are conducting
22 racing.

23 And I would disagree with the comment that
24 there are 10 racetracks. There are three racetracks,
25 actually four, with the Gillespie County. But the others

1 are not operating races. And if you are not operating
2 races for years on end, you are not a racetrack.

3 If you don't have a racetrack to gallop horses
4 on, or undergo the expenses and the career opportunities
5 that we present by conducting live racing, then you are
6 not a verified racetrack.

7 So we remain opposed to the rule in principle;
8 however, we do appreciate the extension, which hopefully
9 will allow us to have further clarity in the situation.

10 Any questions for me?

11 CHAIRMAN STEEN: Questions for Mr. Wells?

12 (No response.)

13 CHAIRMAN STEEN: Thank you, Scott.

14 Okay. We have no further comments. Any -- one
15 more.

16 MS. YOUNG: If you don't mind, Commissioners, I
17 apologize. I walked in a little bit late and didn't turn
18 in my card.

19 On behalf of our three licenses, Sam Houston
20 Race Park, Valley Race Park, and Manor, we do support the
21 rule. We have supported the rule since the beginning.

22 I can tell you that we really like the
23 amendments that have been made and proposed before you
24 today. We have always, you know, known this was a very
25 difficult process. It has taken a lot of time.

1 The most important part to us was always and
2 has always been the third-party study. We are ready to
3 roll our sleeves up and get that work going.

4 I like the fact that -- you know, I would love
5 to revert back to the old fee schedule. If that is an
6 opportunity, that will be amazing and I think a really
7 positive outcome for the industry.

8 But the study is what enables us to kind of
9 figure this out and kind of focus on a real end game here.
10 So we think those are excellent additions.

11 Finally, I'd just like -- in response to Mr.
12 Wells comments, there are more than four operating
13 racetracks in the state. Gulf Greyhound is running a meet
14 right now. Valley Race Park has dates coming up. So
15 there are other racetracks in the state, in addition to
16 horse tracks that are running live dates. So I just
17 wanted to put that on the record as well.

18 I would be happy to answer any questions you
19 may have.

20 CHAIRMAN STEEN: Would you be open to
21 addressing Ms. Ruyle's question on moving the occupational
22 licenses up into the track fees, the base fees. I don't
23 know if you heard her when --

24 MS. YOUNG: I didn't -- I don't know that I
25 really understood the question.

1 MS. RUYLE: My question was, rather than the
2 \$700,000 that's now increased a bit more, was something
3 that the tracks are okay with?

4 MS. YOUNG: We are okay with that. We don't
5 like it. I would have preferred the answer to have been,
6 hey, the Agency has saved \$65,000 over the last six
7 months.

8 So I am a little frustrated by that, in all
9 honestly, so I don't like it, but we're willing. We are
10 going to live with it, because as a percentage, it really
11 is relatively small.

12 Let's just move forward and get this third-
13 party study going. Does that help, Mary?

14 MS. RUYLE: Yes.

15 CHAIRMAN STEEN: Any further questions?

16 (No response.)

17 CHAIRMAN STEEN: Thank you, Andrea.

18 MS. YOUNG: You're welcome.

19 CHAIRMAN STEEN: So now I don't think we have
20 any more comments. I don't know if there is any more
21 discussion by the Commission?

22 COMMISSIONER LEON: I move to adopt the rule.

23 CHAIRMAN STEEN: Okay.

24 COMMISSIONER EDERER: Second.

25 CHAIRMAN STEEN: All right. We have a motion

1 to adopt the amendments to Rule 309.8, Racetrack License
2 Fee. Motion made by Commissioner Leon, seconded by
3 Ederer. Any further discussion?

4 (No response.)

5 CHAIRMAN STEEN: We will take this up for a
6 vote.

7 MS. BIJANSKY: Mr. Chairman, can we clarify
8 that that is the rule as proposed, or the rule as
9 reflected in the --

10 COMMISSIONER LEON: The amended rule as --

11 MS. BIJANSKY: As reflected in the materials.

12 COMMISSIONER LEON: -- reflected in the
13 materials.

14 MS. BIJANSKY: Thank you, Commissioner.

15 CHAIRMAN STEEN: Thank you. I will take this
16 up for a vote. All in favor, please signify by saying
17 aye.

18 (A chorus of ayes.)

19 CHAIRMAN STEEN: Any opposed?

20 (No response.)

21 CHAIRMAN STEEN: The motion carries. The next
22 item is Agenda Item V.B. Discussion and possible action
23 to adopt new Rule 309.13, Supplemental Fee, regarding
24 funding of a third-party economy, efficiency, and
25 effectiveness audit.

1 Devon, will you please present this item.

2 MS. BIJANSKY: Yes, Mr. Chairman.

3 At the December meeting, you proposed a rule
4 that would create a one-time supplemental fee to pay for
5 an independent efficiency audit of the Agency. The
6 proposal provided for up to \$200,000 divided equally among
7 the tracks, and it also provides for refunds of any amount
8 that isn't used for the audit.

9 The draft in your materials includes a minor
10 change from the rule as proposed. And that change is the
11 date for refunds, from a fixed date of December 31 of this
12 year, to 60 days after the date the Commission's final
13 payment for the audit is due. And that was intended to
14 better align with whatever the time line of the audit
15 turns out to be.

16 No comments were received in response to the
17 proposal of this rule. And it is before you today for
18 possible adoption.

19 CHAIRMAN STEEN: Commissioners, do you have any
20 questions?

21 (No response.)

22 CHAIRMAN STEEN: Do we have anyone signed up to
23 speak?

24 MS. COOK: No.

25 COMMISSIONER EDERER: I could have some

1 clarification. Just let's go ahead and get the vote out
2 of the way, and then I will ask the questions.

3 CHAIRMAN STEEN: Take it up on the next item?

4 COMMISSIONER EDERER: Yes.

5 CHAIRMAN STEEN: Okay. So then I will
6 entertain a motion to adopt the new Rule 309.13,
7 Supplemental Fee, as written in the materials.

8 COMMISSIONER MARTIN: So moved.

9 CHAIRMAN STEEN: Motion made by Martin. Do I
10 have a second?

11 COMMISSIONER LEON: Second.

12 CHAIRMAN STEEN: Second by Leon. Any further
13 discussion?

14 (No response.)

15 CHAIRMAN STEEN: Okay. Let's take this up for
16 a vote. All in favor, please signify by saying aye.

17 (A chorus of ayes.)

18 CHAIRMAN STEEN: Any opposed?

19 (No response.)

20 CHAIRMAN STEEN: That motion carries.

21 All right. The next item is Agenda Item V.C.,
22 discussion and possible action regarding a third-party
23 economy, efficiency and effectiveness audit.

24 I guess maybe you want to go ahead and ask your
25 question at this point.

1 COMMISSIONER EDERER: Well, I would like to
2 have some clarification as to what steps have to be taken
3 before the auditing action will begin? And then is there
4 any type of a deadline when the audit must be submitted?
5 Can we set a deadline on that? I just need some
6 clarification.

7 MR. DUBE: Commissioners, Gerry Dube with the
8 Texas Racing Commission.

9 Just to give you, Commissioner Ederer, a little
10 bit of an idea, we have, at the request after your last
11 meeting, submitted as soon as possible a request to the
12 State Auditor's Office, a request for delegated authority
13 to conduct this audit. That is the first step that must
14 occur; the State Auditor must give us permission.

15 We submitted that request on February 5th. We
16 are waiting. They have to do their analysis; that's
17 internal. It's independent to them. We are not sure
18 exactly how much time that would take. They generally
19 take a week to 30 days.

20 COMMISSIONER LEON: So it's possible they could
21 say no?

22 MR. DUBE: They could say no, absolutely. We
23 don't know.

24 COMMISSIONER EDERER: But they have got it now?

25 MR. DUBE: They have it now for review.

1 COMMISSIONER EDERER: And how long have they
2 had it?

3 MR. DUBE: They have had it approximately a
4 little over a week, since February 5th.

5 CHAIRMAN STEEN: Can we push them?

6 MR. DUBE: No, we can't push them. That is
7 all -- it's really all internal. It is really all
8 internal to their process with their analysts and their
9 review.

10 The next step, once we get a response from
11 them, will be to submit it to the Comptroller's contract
12 advisory team. They usually take, according to their
13 directors, approximately 30 days for that review. That
14 review involves the Comptroller's Office looking at our
15 Request for Proposal and deliverables and contract
16 provisions.

17 Once that team approves that particular
18 document, we can then submit it to bid in the Texas
19 system, where we request proposals to go out to various
20 firms for that type of audit.

21 COMMISSIONER LEON: What is the period of time
22 they have to respond to a request for proposal?

23 MR. DUBE: A minimum of 30 days. So right now
24 we are looking at anywhere from -- you know, I can't
25 predict how long the State Auditor is going to take.

1 But assume possibly 30 days at the Auditor's
2 Office, 30 days at the Comptroller's Office, and 30 days,
3 out to bid. So we are at least 90 days before we can
4 actually review the bidders and then hire someone.

5 COMMISSIONER LEON: And what is the period of
6 the contract? I mean, have you --

7 MR. DUBE: It could be -- excuse me. It could
8 be flexible. Initially, with the State Auditor's
9 proposal, we submitted the request that it be at least 60
10 days, the reason being, if they have to review efficiency
11 and effectiveness within the office under the scope and
12 auspices of the Texas Racing Act, we don't know if they
13 will have to go out to the tracks. But I imagine they
14 will. So that could involve some time and cost as well.
15 So we put a minimum, I guess, at 60 days, although that
16 could be expanded.

17 COMMISSIONER LEON: It seems like there is a
18 lot of uncertainty in terms of, number one, somebody could
19 say no to the whole process, period. And, two, the
20 Auditor and the Comptroller's Office could say, well, we
21 are not going to go forward on this.

22 The third thing is the timing of this. If you
23 want it to be done by September, September is right around
24 the corner. And there seems to be a lot of ifs, ands, or
25 buts in the whole thing.

1 MR. DUBE: The state procedures are set. They
2 are really set by the rule and statute. We have to go to
3 the State Auditor and whatnot.

4 COMMISSIONER LEON: No, I understand the
5 process, but it just seems like there's a lot of --

6 MR. DUBE: Yes. Right. Yes. Yes, you're
7 right.

8 COMMISSIONER LEON: -- uncertainty as to timing
9 and approvals and all that.

10 MR. DUBE: We could set a firm time as to how
11 long the auditor that we hire has to do that audit. But
12 my only caution is that you want to give them enough time
13 to do a good job.

14 COMMISSIONER LEON: Uh-huh.

15 COMMISSIONER EDERER: After the bid has been
16 submitted, then would they have a minimum 60 days, you
17 said?

18 MR. DUBE: That's what we put in the proposal
19 to the State Auditor, at least 60 days.

20 COMMISSIONER EDERER: Right. We can expand
21 that, or we can --

22 MR. DUBE: Correct.

23 COMMISSIONER EDERER: But a minimum of 60 days.

24 MR. DUBE: Correct.

25 COMMISSIONER EDERER: Can we put a soft maximum

1 on it?

2 MR. DUBE: We could. We would have to submit
3 that to the State Auditor and say, you know, we're going
4 to consider a maximum.

5 COMMISSIONER EDERER: We don't want to submit
6 anything further. We want to get it moving.

7 MR. DUBE: Substantial changes require
8 resubmittal, so if we put new clocks on things, and new
9 dollars --

10 COMMISSIONER EDERER: But right now, this is
11 the way it is set up.

12 MR. DUBE: Correct.

13 COMMISSIONER EDERER: All right. And this
14 would be the fastest way forward with that?

15 MR. DUBE: It really is. It really is. And,
16 you know, the agencies do tell us -- you know, set their
17 bar at 30 days, because they want to give themselves
18 enough time to review.

19 Hopefully, it will be less. But as just the
20 submitting agency, we can't promise that they will deliver
21 in fewer than 30 days, so -- but we're trying to ramp up
22 so that we are ready -- as soon as one says yes, we can go
23 to the next one.

24 As soon as they say yes, we can post it. As
25 soon as they say yes, we can do the review. And as soon

1 as we figure out who we want to hire, then we can just
2 bring them on board and set them up.

3 So we are -- the Agency on this is working as
4 fast as we can. That's for sure.

5 COMMISSIONER EDERER: Let's push it if
6 possible. So we are looking at a minimum of 90 days right
7 now -- excuse me -- a minimum of five months.

8 MR. DUBE: Before we get a report. Correct.
9 From whoever does the audit.

10 COMMISSIONER EDERER: Okay. Okay. I've got
11 it.

12 COMMISSIONER LEON: So that is tight.

13 CHAIRMAN STEEN: It is a tight, tight time
14 line. Of course, I think it puts everybody under a tight
15 time line to get things done. You know, technically the
16 time line works. If something slipped a month,
17 potentially there is something we could do in the interim.

18 But in that vein, Vice Chair Ederer, I would
19 like to ask you if you would head up -- I know there is a
20 staff committee, But from the Commission side, to be
21 helping us watch that time line and the subject matter.

22 COMMISSIONER EDERER: I'll do that.

23 CHAIRMAN STEEN: And you don't need to do it
24 here. But if you would like to add a couple of other
25 members from the Commission, I think that would be

1 helpful.

2 COMMISSIONER EDERER: That is what you get for
3 opening your mouth, isn't it? In fact, I would be happy
4 to do that. And I appreciate it. And we had already
5 discussed it, and so we can get that. From the
6 discussions that we have had for the last 10 years, I
7 expect complete cooperation from the track and the
8 horsemen.

9 It is in everybody's best interest to get this
10 audit completed as fast as possible -- certainly by
11 August -- so we will know where we are going, so we don't
12 have to kick the can down the road; we can make final
13 decisions, come August, hopefully.

14 MR. DUBE: And we will keep you posted on every
15 step, every time we get an approval to move forward.

16 COMMISSIONER EDERER: And I will keep the
17 Commission posted, of course, with information I receive.

18 CHAIRMAN STEEN: Great. Excellent. Any
19 further discussion?

20 (No response.)

21 CHAIRMAN STEEN: Can we take a comment on this
22 item?

23 MS. COOK: I don't have a card, but I'm sure
24 you could fill one out. Please come forward.

25 MR. CARDWELL: I apologize. I didn't realize

1 it would come to this. This audit, which is very welcome
2 by the industry and I think staff and everybody has kind
3 of been a moving target, evolving.

4 We started last May and June, talking about we
5 really need to save dollars. We were spending too much
6 money. We need to spend less. That is still true.

7 But as we continue to talk and these rules
8 evolve. One of the things I have heard the Chairman and
9 others speak of is that maybe there is an alternative to
10 the structure of the Texas Racing Commission.

11 Maybe it gets folded into something, maybe they
12 farm out some of their functions to some other entity.
13 And so I am not sitting here listening to this thinking
14 that the typical accounting firm auction -- I'm sorry --
15 auditor is the right process.

16 I think that's part of it, but I hear the time
17 delays and look where we really are on this, and I'm
18 almost thinking that what we really need is, in addition
19 to counting paperclips, is maybe a consultant like the
20 Innovation Group, or somebody who is an expert in the
21 racing industry to come in and take a look.

22 Now, I don't know, and I didn't hear whether or
23 not the people that are open, are eligible to bid through
24 the state processes would include a group like that. But
25 I think that the real change for the future is to have

1 somebody who has got a tremendous amount of experience
2 nationwide with the various racing commissions and
3 agencies saying, hey, there is a better way to go do this.

4 And I don't even know, for example -- and the
5 Innovation Group happens to be one of those types or
6 others. But I don't even know if they are even eligible
7 to bid or be approved.

8 So I just bring that up as something to be
9 considered. I'm sure somebody has considered it. But I
10 didn't hear any conversation about it. Thank you.

11 COMMISSIONER HICKS: Who are you, sir? Sir?

12 MR. CARDWELL: I'm sorry. John Cardwell. I
13 represent Lone Star Park.

14 CHAIRMAN STEEN: Sure.

15 I mean, Gerry, do you want to comment on that?
16 Or -- I know it/s not -- you are not the approved -- the
17 ultimate approver of that.

18 MR. DUBE: Correct. The bid that will go out,
19 the request for proposal will go for an internal
20 effectiveness, and efficiency audit.

21 Depending on the credentials that we get back
22 from the bidders, if that -- and the deliverables that we
23 post, any bidder who gets a Texas ID number can bid. If a
24 consulting firm that also does auditing work comes in,
25 they could be a candidate.

1 But the Comptroller, honestly, will tell us,
2 because they'll give us the analysis matrix and the cost
3 matrix to do the analysis of the bidders.

4 The Comptroller will actually pretty much
5 direct what type of bids from what types of entities we
6 can take. That purchasing office in the Comptroller's
7 Office, through that advisory team, will actually be
8 directing us as to what type of bids.

9 But anybody can bid. They just have to meet
10 the qualifications of what the bid requests.

11 CHAIRMAN STEEN: Go ahead.

12 COMMISSIONER EDERER: Who ultimately decides
13 who gets the bid?

14 MR. DUBE: We will -- we will have a team of
15 reviewers who review the bids. They will be sequestered
16 and review those bids. And the Comptroller actually gives
17 us, like I mentioned, an analysis matrix and a cost
18 matrix, and that team of reviewers will actually have to
19 go through that.

20 COMMISSIONER EDERER: And that team is made up
21 of?

22 MR. DUBE: The team -- we don't have that team
23 yet, but the team will be made up of probably folks from
24 the Racing Commission, and we are allowed to bring in
25 someone from an outside state agency.

1 They all have to be agency personnel, but we
2 could bring in somebody from -- if we could get a
3 volunteer from the State Auditor's Office or some other
4 state office, we could bring someone in from there as
5 well.

6 COMMISSIONER EDERER: We couldn't have John
7 Cardwell do it then.

8 MR. DUBE: To my knowledge, no, but -- I can't
9 give a firm answer to that. My understanding is it has to
10 be state employees.

11 MR. CARSWELL: There's not enough money in the
12 state of Texas.

13 COMMISSIONER EDERER: All right. Thanks. I
14 want to make the statement that -- and see if I can do
15 this. But I am going to say it. I want to say it to
16 John.

17 John, as far as I am concerned and this audit
18 is concerned, if I will be with the guidance of, of
19 course, the Chair, everything is on the table. As far as
20 I am concerned, everything is on the table. And I think
21 that it has to be on the table.

22 You know, there has been comments for years
23 now, we understand, that of course, the Commission needs
24 to be revised, revisited, changes be made. Maybe it does;
25 maybe it doesn't. Obviously, something has to be done.

1 But as far as I am concerned, everything is on the table.

2

3 It would be wonderful if we could shift some of
4 the burdens that are on the Commission right now to the
5 State Comptroller's Office, or to Agriculture or to
6 wherever, DPS. DPS could be a very big help to us in many
7 ways.

8 So am I correct in saying that we can do
9 that -- that I can do it? That my group can look at this,
10 in that light?

11 MR. DUBE: The scope for the audit is extremely
12 broad, if you read it. So I think you would be correct in
13 saying it is pretty much casts a large umbrella.

14 COMMISSIONER EDERER: Okay.

15 COMMISSIONER HICKS: I would like to make one
16 comment.

17 MR. DUBE: Yes.

18 COMMISSIONER HICKS: We work with a lot of
19 consultants. A \$200,000 fee, you're not going to get
20 somebody like you're talking about, I don't think, that
21 does the nationwide consulting for racing firms.

22 It just seems like it wouldn't be enough that
23 they would be interested in bidding. But maybe they are
24 cheaper than the ones that we deal with. I don't know.

25 MR. DUBE: For the range, we did ask the

1 Comptroller's purchasing office what they thought would be
2 a reasonable range at the beginning of all this. And they
3 said, anywhere from 75- or 50- -- you know, 75- to about
4 250-. We set on 200- as the bar. I think that is
5 reasonable.

6 CHAIRMAN STEEN: I think the tracks said that
7 they thought that was high, actually. So yes.

8 MR. DUBE: So that's where we got our
9 information, just for full disclosure, Commissioner Hicks.
10 That's where we got it from.

11 COMMISSIONER HICKS: Auditors and consultants
12 are two different animals.

13 MR. DUBE: Right. Yeah, I understand.

14 CHAIRMAN STEEN: Any further discussion?

15 COMMISSIONER EDERER: I'm sure that the
16 auditors would welcome input from the tracks, too, and
17 from the industry. Just suggestions. And I would say
18 prepare the suggestions; think about it. Let's not push
19 it off until August.

20 MR. DUBE: It's not my call. It's really going
21 to be the advisory team out of the Comptroller's Office
22 that really pushes those deliverables.

23 We can -- like I said, we cast a pretty big
24 umbrella. And we are using, I think, the Racing Act as
25 the kind of model to follow for what we are asking them to

1 look at.

2 Anything else?

3 CHAIRMAN STEEN: Thank you, Gerry.

4 MR. DUBE: All right. Thank you.

5 CHAIRMAN STEEN: We also have Tommy Azopardi
6 wanting to testify on this issue.

7 MR. AZOPARDI: Commissioners, for the record,
8 my name is Tommy Azopardi. And today I'm here making
9 comments on behalf of Gulf Greyhound Park.

10 I wasn't prepared to talk about this, but this
11 does give us a good opportunity to just refresh our
12 memory.

13 I wish Commissioner Mach was here today,
14 because he summed it up best, I think, the position -- the
15 direction that I want to go. But I also know,
16 Commissioner Ederer, you were here, so you can help me if
17 I get this wrong.

18 But when we were talking about the ability to
19 explore different ways to save money and talking about
20 doing an efficiency review, one of the things Commissioner
21 Mach said was, I don't want to use a bureaucratic process
22 to review a bureaucracy in whether it can save money. And
23 we all agreed with that.

24 And I think even though we have all been
25 divided on some of these fees, I think all of the

1 racetracks are in agreement on the fact that we are
2 willing to pay for this audit one way or the other.

3 I mean, if it goes through this process that
4 you are talking about, we will be given a supplemental
5 invoice, and we will pay it.

6 But I think a more efficient way to do it would
7 be to allow the industry to go out and find somebody with
8 specific knowledge that we agree that we can trust and
9 work with and have them look at the Agency.

10 And to me, there's two ways of doing it. One
11 is full cooperation of the Agency, transparency, and
12 opening the doors to this person that comes to look. Or
13 we get it through open information requests, which is a
14 little bit slower.

15 But it would be -- either one of those would be
16 much quicker than the process of having two state agencies
17 allow a bidding process to go through and get the low
18 bidder or someone in that neighborhood that may not have
19 specific knowledge.

20 So, Commissioner Ederer, what you said I
21 welcome and the fact that if everything is still on the
22 table. I would like for us to discuss alternative process
23 that would be maybe be quicker.

24 And I don't know that we would save any money.
25 But at least we would all feel comfortable that we can

1 get it done quicker, and it would be something that we
2 would all agree with.

3 And the one thing that I would remind everybody
4 is that whatever this individual and this firm comes back
5 with are just suggestions to present to you Commissioners
6 of ways that we think that there could be some money
7 saved. It is not like it is a mandate and whoever we hire
8 puts any kind of restrictions on the Agency itself.

9 So I'd like for you all to consider that
10 approach, rather than going through the bureaucratic
11 approach of getting the Auditor's Office and the
12 Comptroller's Office and a bidding process.

13 I think we can do this much more efficiently.
14 And if I am misstating on any of the tracks' behalf, I'm
15 sure they will come up and correct me.

16 COMMISSIONER KLEINSCHMIDT: I think those are
17 two separate things, though. I mean, the tracks can
18 certainly undertake a private industry review, based upon
19 public knowledge or the information that is available to
20 the public. However, as an agency, we are going to be
21 constrained through procurement processes and the rules of
22 procurement.

23 And so the money that flows through the Agency
24 to pay for this is going to have to go through those
25 standardized procurement rules. It's just two different

1 things.

2 MR. AZOPARDI: I just -- I'm going back to the
3 committee that we did, on trying to find ways and
4 recommendations to save the Agency money. And I just
5 think that as far as the structure of the Agency, as Mr.
6 Cardwell pointed out, things like that can be done without
7 going through the procurement process.

8 I think it is just a way of looking at the way
9 this Agency regulates the industry, the fact that the
10 industry has been in decline for well over a decade, and
11 some of the frustration is that it doesn't look like the
12 Agency has shrunk to that decline.

13 But maybe it can't. But I think somebody
14 coming in and looking at this, from that aspect, and not
15 necessarily the price of paperclips that you are paying,
16 or things like that, would be the best way to achieve some
17 significant savings.

18 COMMISSIONER KLEINSCHMIDT: But once the fees
19 would come in through this agency, through this amendment
20 to Rule 309.13, once that becomes Agency money, the only
21 way it can spend it is through -- according to state
22 procurement rules.

23 It won't be able to -- in essence, I guess it
24 will go into a grant process of some type that could be
25 arranged possibly, but in essence, what you'd have is two

1 different pots of money.

2 You'd have private industry conducting an
3 analysis with a consultant, a review, and you'd have the
4 agency which would be constrained through the procurement
5 rules as far as the audit and consultants it could hire.

6 MR. AZOPARDI: And I guess that's what I'm
7 saying, Mr. Kleinschmidt, is I don't know that we need to
8 do that, that other one, of sending the money into the
9 Agency and having the Agency hire somebody that the
10 industry could go out and hire directly.

11 COMMISSIONER EDERER: Why not do both?

12 MR. AZOPARDI: Is there a need to?

13 COMMISSIONER EDERER: I think to be efficient,
14 we'd have to do both, because no matter what your -- we'll
15 separate this into two -- what the industry's
16 recommendations would be, they still have to be reviewed
17 by the Commission and through the state agency.

18 Am I correct? If there are any major changes
19 to the Commission, it has to be done through an audit and
20 recommendations of the State Comptroller's Office. I
21 don't know if it is the Comptroller, but --

22 COMMISSIONER LEON: Well, it depends on who's
23 paying for it. If they are paying for it 100 percent,
24 they can do whatever they want to do with their money.

25 COMMISSIONER EDERER: Agreed, agreed. But I

1 mean, as far as us making any changes.

2 COMMISSIONER LEON: Well, that would be
3 something -- any changes we decide are independent of --
4 we use a variety of information resources to make changes.
5 That would just be an input.

6 COMMISSIONER EDERER: Yes. That would be an
7 input, but it would certainly supplement.

8 COMMISSIONER LEON: Right. Sure.

9 COMMISSIONER EDERER: But I think both have to
10 go forward. And we certainly don't want to delay going
11 forward with the audit, any more than it has already been
12 delayed.

13 But I think we'd welcome the industry. If they
14 want to put something together, you bet, we'd love to hear
15 what they have to say. I think it would supplement the
16 audit that's being conducted.

17 MR. DUBE: Commissioner Kleinschmidt is correct
18 about the Agency's process. We must go through these
19 regulatory hoops, really. An independent audit done by
20 the industry, there's -- from my understanding -- and I'm
21 not a lawyer, but we can look into this further.

22 My understanding when we initially got into
23 this was that regardless of what we do in terms of the
24 Agency, we cannot accept outside gifts except through a
25 rule. We have to raise revenue through our fees. That's

1 number one.

2 Number two is any type of consulting or audit
3 that we do, we have to go through the RFP process and the
4 bidding process. If it's an audit, we have to go through
5 the State Auditor's Office.

6 Anything over \$100,000, whether it is a
7 consultant or an audit, we have to go through the
8 Comptroller's advisory team to have that bid reviewed. So
9 there's going to be a level of bureaucracy to review this,
10 based on state rules, regardless of what we do.

11 So Commissioner Kleinschmidt is correct. We
12 are limited in what -- in our approach to this. I don't
13 know what other things could be done from the outside.
14 But we can't do a consulting contract ourselves without
15 still going through some of these hoops.

16 CHAIRMAN STEEN: Tommy, I would say I don't
17 think at this point we should slow down where we are, as
18 far as the process that we have underway, anymore. I
19 don't think any -- when does any real spending actually
20 happen is not until we actually bid the process.

21 So I'm not -- I don't think I would be in favor
22 of slowing that down. If there is a parallel path that --
23 and I don't know if that's possible or not in the rules of
24 what can -- you know, what's open book and what's not.

25 I think we would be willing to listen to that.

1 But I don't think we should slow down where we are on the
2 agency front.

3 MR. AZOPARDI: I totally agree. I wouldn't
4 suggest that we slow it down. But before any trigger is
5 fired and creating more fees on an industry that is
6 already burdened with a lot of fees, hopefully, we can get
7 together as an industry and then get together with you,
8 Commissioner Ederer, and talk about the different
9 possibilities that are in front of us.

10 CHAIRMAN STEEN: I think that would be helpful.

11 MR. AZOPARDI: Thank you, Commissioners.

12 CHAIRMAN STEEN: Thank you. Okay. If there is
13 no further comment, we will move on to Agenda Item D.

14 The next item is Agenda Item V.D., Discussion
15 and possible action to approve the Fiscal Year 2018
16 operating budget.

17 Adrienne, would you please present the budget.

18 MS. COURTNEY: Commissioners, I would like to
19 present the fiscal year 2018 proposed operating budget for
20 your consideration and approval. And this is on pages 101
21 through 105 of your agenda packet.

22 The budget was prepared to support the
23 regulation of 173 live horse race dates, 36 live greyhound
24 performances, approximately 2,230 simulcast dates, and the
25 administrative operations of the agency. The proposed

1 budget totals 7.4 million.

2 Of that total, 3.5 million is for the cost of
3 regulatory operations, 1 million is for unappropriated
4 expenses, or the cost of employee benefits, and 2.9
5 million is for the Texas Bred Fund.

6 Staff estimates the Agency will need 38.8 FTEs,
7 or full-time equivalent positions, for the year. This is
8 a decrease of 4.5 FTEs compared to 2017.

9 The proposed budget is approximately 220,000
10 less in appropriated costs and employee benefits than in
11 2017. This is due to the reduction of FTEs and cost
12 savings from a reduction in the overlap of race days among
13 the tracks.

14 On pages 104 and 105 is the cash flow statement
15 prepared for the regulatory operations. The Agency
16 carried forward a cash balance of \$44,500.

17 The Agency proposes to collect 3.8 million in
18 annual fees from the racetracks and approximately \$714,000
19 in occupational licensing fees and other revenue. We
20 anticipate the ending balance to be estimated at
21 approximately \$67,000.

22 I would be happy to answer any questions that
23 you may have, and I ask for your approval of the 2018
24 operating budget.

25 CHAIRMAN STEEN: Commissioners, any questions?

1 (No response.)

2 CHAIRMAN STEEN: Do we have anyone signed up to
3 speak?

4 MS. COOK: No.

5 CHAIRMAN STEEN: If not, I will entertain a
6 motion to approve the fiscal year 2018 operating budget?

7 COMMISSIONER MARTIN: So moved.

8 CHAIRMAN STEEN: Motion made by Commissioner
9 Martin.

10 COMMISSIONER EDERER: Second.

11 CHAIRMAN STEEN: Seconded by Commissioner
12 Ederer. Any further discussion?

13 (No response.)

14 CHAIRMAN STEEN: We will take this up for a
15 vote. All in favor, please signify by saying aye.

16 (A chorus of ayes.)

17 CHAIRMAN STEEN: Any opposed?

18 (No response.)

19 CHAIRMAN STEEN: That motion carries. Thank
20 you.

21 Okay, the next item is Agenda Item IV.A.1.,
22 Proposal to adopt amendments to Rule 303.93, Quarter Horse
23 Rules.

24 Devon, will you please present the item.

25 MS. BIJANSKY: Yes, Mr. Chairman.

1 These amendments that you proposed at the
2 December meeting were requested by the TQHA and would make
3 changes to the requirements for an accredited mare that
4 leaves Texas to race. Currently that mare would need to
5 be back by August 31st. The amendments would allow the
6 mare to keep its accreditation as long as it was back by
7 December 31st.

8 No comments were submitted in response to this
9 proposal. And I believe Rob Worstler is here on behalf of
10 the TQHA and can speak to the proposal.

11 MR. WORSTLER: I just signed the card in favor
12 and don't wish to speak unless you have questions.

13 CHAIRMAN STEEN: Commissioners, do you have any
14 questions of Rob?

15 (No response.)

16 CHAIRMAN STEEN: Do we have anyone else signed
17 up to speak.

18 MS. COOK: No, sir.

19 CHAIRMAN STEEN: Okay. If not, I will
20 entertain a motion to adopt the amendments to Rule 303.93,
21 Quarter Horse Rules.

22 COMMISSIONER MARTIN: So moved.

23 CHAIRMAN STEEN: Motion made by Commissioner
24 Martin.

25 COMMISSIONER HICKS: Second.

1 CHAIRMAN STEEN: Seconded by Commissioner
2 Hicks. Any discussion?

3 (No response.)

4 CHAIRMAN STEEN: We will take this up for a
5 vote. All in favor, please signify by saying aye.

6 (A chorus of ayes.)

7 CHAIRMAN STEEN: Any opposed?

8 (No response.)

9 CHAIRMAN STEEN: The motion carries. The next
10 item is Agenda Item VI.A.2., proposal of amendment to Rule
11 321.30, Super Hi-Five.

12 Devon, please present the item.

13 MS. BIJANSKY: Yes, sir. These amendments that
14 you proposed in December were requested by Sam Houston
15 Race Park. They would create a fourth option, called the
16 unique payout option for a Super Hi-Five wager.

17 We received no comments in response to this
18 proposal. And I believe Frank Hopf is here and can answer
19 any questions that you have.

20 CHAIRMAN STEEN: Commissioners, do you have any
21 questions?

22 (No response.)

23 CHAIRMAN STEEN: Anyone else signed up to
24 speak?

25 MS. COOK: No.

1 CHAIRMAN STEEN: If not, I will entertain a
2 motion to adopt Rule 321.30, Super Hi-Five.

3 COMMISSIONER HICKS: Make the motion.

4 CHAIRMAN STEEN: Motion made by Commissioner
5 Hicks.

6 COMMISSIONER MARTIN: Second.

7 CHAIRMAN STEEN: Seconded by Commissioner
8 Martin. Any further discussion?

9 (No response.)

10 CHAIRMAN STEEN: We'll take it up for a vote.
11 All in favor, please signify by saying aye.

12 (A chorus of ayes.)

13 CHAIRMAN STEEN: Any opposed?

14 (No response.)

15 CHAIRMAN STEEN: That motion carries. I think
16 we will at this time go back to Agenda Item IV.A. Do we
17 have anyone here at this point on behalf of Mr. Kearl?

18 (No response.)

19 CHAIRMAN STEEN: If not, Devon, I will ask you
20 to present.

21 MS. BIJANSKY: Mr. Chairman, Commissioners, I
22 am here to present for final action three cases involving
23 very similar facts. I am standing here because, as I
24 believe you know, I am here as prosecutor and not as
25 counsel for the Agency, consistent with my role throughout

1 these cases.

2 Before the stewards and at the State Office of
3 Administrative Hearings, we combined the cases into a
4 single hearing, which might also be the most efficient way
5 to proceed today. So I will address all of them together
6 generally in my comments now. But if you would like to
7 take a look at any particular case in more detail, we can
8 do that.

9 Back in May and June of last year, three
10 quarter horse trainers had horses test positive for a drug
11 called nomifensine a total of eight times within three
12 weekends of racing. The first of these trainers, Judd
13 Kearl, had five positives. The second, Jose Sanchez, had
14 two. And the third, Brian Stroud, had one.

15 Nomifensine is a human antidepressant from the
16 1980s. It was withdrawn from the market in 1986 by the
17 manufacturer because of serious side effects in humans,
18 and the FDA withdrew its approval in 1992.

19 It has never been approved for use in horses,
20 it has never been tested in horses, and it has certainly
21 not been proven safe in horses.

22 As is the usual process, when the Texas A&M
23 drug lab reported these positives to the Agency's
24 investigative staff, the trainers were given the
25 opportunity to request additional testing at a lab of

1 their choosing.

2 They chose to send samples to the Pennsylvania
3 Equine Toxicology and Research Lab, which confirmed all
4 eight positives.

5 Staff then filed a motion with the stewards,
6 asking them to summarily suspend all three trainers'
7 licenses while the rest of the case -- the cases played
8 out.

9 A hearing was held -- actually, it was two
10 hearings, and the stewards summarily suspended the three
11 trainers' licenses. Their decision was based on a number
12 of factors, including the number of positives, the
13 seriousness of the drug, and the fact that it hasn't been
14 commercially available in so long.

15 The trainers argued that their veterinarian had
16 administered the drug without their knowledge. But the
17 stewards didn't find it plausible that a veterinarian
18 would administer a drug without telling the clients about
19 it, without billing for it, without the clients knowing
20 anything about it.

21 Now, these cases have two parts: the summary
22 suspension and the main case to determine what action
23 against these trainers, if any, is appropriate.

24 The main cases are still making their way
25 through the administrative process, so they are not before

1 you today. Today the only issue is the summary
2 suspensions, which were in effect from July 31st to
3 October 26th of last year.

4 Each of the three trainers appealed the summary
5 suspensions, and a hearing was held at the State Office of
6 Administrative Hearings, or SOAH, back in November. The
7 legal standard at that hearing was, was the stewards'
8 decision clearly in error?

9 The licensees' lawyers made their arguments,
10 staff responded. And following the hearing, the
11 administrative law judge who heard the case issued
12 proposals for decision, in which she said, essentially,
13 no, the stewards' decision to summarily suspend was not in
14 error -- not clearly in error.

15 The trainers had the opportunity to file what
16 are called exceptions; basically an appeal of certain
17 elements of the proposal for decision. But they declined
18 to do so, and that brings us to today.

19 These summary suspensions are before you today
20 for final action. There are draft orders in your
21 materials adopting the proposals for decision and
22 upholding the stewards' decision to summarily suspend the
23 trainers. And I have clean copies. So I would ask that
24 you adopt the proposals for decision and uphold the
25 stewards' rulings summarily suspending these three

1 trainers. And I am happy to answer any questions that you
2 may have.

3 COMMISSIONER KLEINSCHMIDT: Just as a practical
4 effect, their summary suspensions ended in October?

5 MS. BIJANSKY: That's correct.

6 COMMISSIONER KLEINSCHMIDT: Okay. And so their
7 process of going forward at this point in time, it would
8 just be sort of a record clearing one way or the other.

9 MS. BIJANSKY: Exactly.

10 COMMISSIONER KLEINSCHMIDT: But the action
11 before us today is to either accept, reject, or add to the
12 proposal for decision by the SOAH Judge.

13 MS. BIJANSKY: Essentially, yes. The licensees
14 apparently felt very strongly about the principle of it,
15 and so that was discussed before SOAH. By the time we had
16 our hearing there, their summary suspensions had already
17 ended. But they felt strongly that they wanted to, as you
18 said, clear the record.

19 CHAIRMAN STEEN: Commissioners, do we have any
20 other discussion?

21 (No response.)

22 CHAIRMAN STEEN: A question for you. Are we
23 taking up all of these at the same time, or are we taking
24 them up as separate?

25 MS. BIJANSKY: I think you can do either.

1 CHAIRMAN STEEN: Okay. So I guess we can
2 address IV.B., IV.C. -- I'm sorry -- IV.A., B., and C. Do
3 we have a motion to adopt -- well, would you like to
4 make -- anybody like to make a motion in this regard?

5 COMMISSIONER KLEINSCHMIDT: I'll do it.

6 CHAIRMAN STEEN: Okay.

7 COMMISSIONER KLEINSCHMIDT: I do -- I move to
8 adopt the proposal for decision to uphold as to Judd
9 Kearl, Jose Sanchez, and Brian Stroud.

10 CHAIRMAN STEEN: And just one amendment to that
11 on this SOAH document, item (f), after the word
12 "decision," adding in, "which is attached hereto and fully
13 adopted and incorporated" in addition to that.

14 MS. BIJANSKY: Could I ask that you repeat
15 that, sir?

16 CHAIRMAN STEEN: On this SOAH docket, each of
17 those, item (f), after the word -- first sentence, after
18 the word "decision," "which is attached hereto and fully
19 adopted and."

20 MS. BIJANSKY: Thank you.

21 CHAIRMAN STEEN: So we have a motion by
22 Commissioner Kleinschmidt. Do we have a second?

23 COMMISSIONER EDERER: Second.

24 CHAIRMAN STEEN: Second by Commissioner Ederer.
25 Do we need further clarification?

1 MS. BIJANSKY: No, sir.

2 CHAIRMAN STEEN: Okay. Then let's take this up
3 for a vote. All in favor, signify by saying aye.

4 (A chorus of ayes.)

5 CHAIRMAN STEEN: Any opposed?

6 (No response.)

7 CHAIRMAN STEEN: That motion carries. Thank
8 you.

9 MS. BIJANSKY: Thank you. And if you would,
10 when we finish up, wait a few minutes for me to make
11 these -- write these changes in to each of the three, and
12 then I will get your signatures before you leave. Thank
13 you.

14 COMMISSIONER HICKS: Does everyone have to
15 sign?

16 MS. BIJANSKY: Yes, ma'am.

17 COMMISSIONER HICKS: Okay.

18 CHAIRMAN STEEN: Okay. Moving on, back to Item
19 VII, executive session, we're not having the executive
20 session today.

21 On Item VIII, Commissioners, my goal is to
22 return to the schedule of having meetings on the second
23 Tuesday of even months; therefore, the next meeting will
24 be on Tuesday, April 10th.

25 The time is now 11:47. With all business

1 concluded, we are now adjourned. Thank you.

2 (Whereupon, at 11:47 a.m., the meeting was
3 concluded.)

4
5 I certify that the foregoing is a correct
6 transcript from the electronic sound recording of the
7 proceedings in the above-entitled matter.
8

9
10 /s/ Nancy H. King
11 Certified Electronic Reporter
12 AAERT No. CER-153
13

02/21/2018
Date