TRANSCRIPT OF PROCEEDINGS
BEFORE THE
TEXAS RACING COMMISSION
AUSTIN, TEXAS

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COMMISSIONS MEETING
Thursday, August 10, 2006
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BE IT REMEMBERED THAT ON THE 10th day of August 2006, the above-described matter came on for hearing at the offices of the Texas Race Commission, 6100 Guadalupe, Criminal Law Enforcement, Building E, First Floor Auditorium, Austin, Texas 78752, before THE HONORABLE R. DYKE ROGERS, CHAIRMAN, and the following proceedings were reported by Marlene Erives, CSR in and for the State of Texas as follows:

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PROCEEDINGS
August 10, 2006

CHAIRMAN DYKE ROGERS: We will call this meeting to order. Ms. Giberson, will you call the roll, please.

I. ROLL CALL

MS. GIBERSON: Jesse Adams.

JESSE ADAMS: Here.

MS. GIBERSON: Kent Carter.

KENT CARTER: Here.

MS. GIBERSON: Ernest Angelo. Mike Rutherford.

MICHAEL RUTHERFORD: Here.

MS. GIBERSON: Sonny Sowell.

SONNY SOWELL: Here.

MS. GIBERSON: Jimmy Archer.

JIMMY ARCHER: Here.

MS. GIBERSON: Louis Sturns.

LOUIS STURNS: Here.

MS. GIBERSON: Dyke Rogers.

CHAIRMAN DYKE ROGERS: Here. There’s a quorum present, so we will begin.

II. PUBLIC COMMENT

CHAIRMAN DYKE ROGERS: On the agenda this time, we have a new item called Public Comment. It's
something that we probably should have been doing and
2 done for some time, but we’ve never done it. And for
3 your information, Commissioners, what happens here is
4 that anybody who wants to get up and speak on any
5 subject, this is kind of their opportunity to do that if
6 they choose to. We can and will limit their time to
7 five minutes. Commissioners can ask any questions that
8 they want to ask, but we don’t really engage in a
9 discussion among ourselves about what that topic is.
10 And then the staff can answer any questions,
11 administratively, that needs to happen. And then if you
12 want to talk about this or act on it in some manner or
13 consider action, then any one of you could ask to have
14 that put on the agenda for the next meeting. I don’t
15 know if there will be any public comment on the basis
16 that this is something new, but do we have anybody who
17 is requesting anything?
18 MARK FENNER: We have not requested
19 anybody to provide public comment other than on our
20 items that are listed in the agenda.
21 COMMISSIONER ROGERS: Okay. But this will
22 be -- in future meetings this will be an opportunity for
23 people to speak on any subject that they want to speak
24 on if they choose to.
25 III. GENERAL BUSINESS

In General Business, discussion,
2 consideration and possible action on the following
3 matters, we’ll begin with budget and finance.
4 Ms. Curtsinger, the Chief Financial Officer, will
5 present information.
6 A. BUDGET AND FINANCE UPDATE
7 SHELLY HARRIS-CURTSINGER: Commissioners,
8 the information that is in your packet is as of 6-30 of
9 '06. At that point we are 83.33 percent through the
10 year's fiscal year -- that has lapsed since our -- 83.33
11 of the year has lapsed. We have spent 78.57 percent of
12 the budget as of that point. As you can -- I'm sure
13 you're aware we are running reports very frequently at
14 this point. Since we're almost to the end of the fiscal
15 year, we do expect to come in under budget or near under
16 budget. And within the next three weeks we will be
17 making our end-of-the-year acquisitions. And so at your
18 September meeting we will, of course, have much more
19 information as far as end of the year reports. If you
20 have any questions, I'd be happy to answer them.
21 CHAIRMAN DYKE ROGERS: Commissioners?
22 Thank you. Report and Racetrack
23 Inspections, Mr. Neely.
24 B. REPORT ON RACETRACK INSPECTIONS
25 MR. NEELY: Tom Neely, Director of

1 Enforcement.
2 As you can see from your report, that
3 there were several inspections that were completed. The
4 -- down at the bottom of your report for Gulf, the
5 Racing-Judges’ issues were satisfied on August the 5th,
6 so that would be accurate information. There are
7 numerous items still outstanding on the veterinarian
8 inspections for Gulf. A lot of these are minor repairs,
9 things on the doors, some kennel gates, lights, very
10 minor stuff. But they have to schedule these types of
11 things when the trainers are available to be in the
12 kennels, so that there could be some delays in getting
13 that completed.
14 On the Sam Houston report, there's an
15 issue with the pari-mutuels, and I would defer to
16 Ms. Olewin to explain that to you if you have questions
17 about it; it’s a rather complicated matter.
18 CHAIRMAN DYKE ROGERS: Ms. Olewin.
19 CAROL OLEWIN: Good morning,
20 Commissioners. I'm Carol Olewin, compliance audit for
21 the Racing Commission. Do you have any specific
22 questions?
23 CHAIRMAN DYKE ROGERS: Why don't you
24 explain to us what the issue is.
25 CAROL OLEWIN: Okay. During the

1 inspection back in June, I was doing -- we have an
2 electronic ticket wagering plan, so I was reviewing all
3 the pari-mutuel wagering devices. And during my routine
4 inspection, we were looking at the pari-mutuel wagering
5 devices for a legal electronic wagering program, and
6 during the inspection we found that the self-serve
7 wagering machines at Sam Houston were canceling wagers.
8 And this was a policy that we had put into place several
9 years back when we changed our canceling -- cancellation
10 rules on our tickets to allow cancellations but under
11 certain restrictions. And one of the restrictions was
12 not to have them at self-serving machines. They would
13 take their ticket if they needed to cancel it and go to
14 a manned staff machine with a teller, have the teller
15 cancel the wager and reissue.
16 This has been a policy; it's been ongoing.
17 I found that Sam Houston had deviated from that policy
18 about 18 months ago -- 12 months, 18 months ago. And so
19 we're just in the process of deciding what to do or how
20 to do this. And I think our best recommendation is to
21 go back to our pari-mutuel advisory committee, and
22 review our rules and see if we need to make any changes.
23 CHAIRMAN DYKE ROGERS: Okay.
24 Commissioners, do you have any questions
25 on this particular issue? Yes, Commissioner Boyd.
TREVA BOYD: Why did Sam Houston deviate from the normal practice?
CAROL OLEWIN: That was a management decision on their part.
CHAIRMAN DYKE ROGERS: And as far as you know, there hasn't been -- I mean, it is a violation of the policy, but there hasn't been an integrity problem that's been identified here at this moment, has there?
CAROL OLEWIN: No. We haven't seen any.
CHAIRMAN DYKE ROGERS: If the Commissioners don't disagree, I'd like to recommend that we do reconvene the Pari-mutuel Advisory Committee, that we allow the people involved in this particular area to determine whether this is something that needs to be addressed or not. And I would invite any commissioner who would want to sit in on that to do that. If there's no objection, that's what we'll do. But if there is a Commissioner that would want to sit in on that particular meeting? Okay. You can talk with them later if you choose to do that.
Thank you.
CAROL OLEWIN: Thank you.

C. RACE DATE REQUESTS BY GREYHOUND RACING ASSOCIATIONS

CHAIRMAN DYKE ROGERS: Race date requests

under Tab 3, Greyhound Racing Associations. I guess we will hear from Mr. Triplett to present his Race date request.

JACQUES TRIPLETT: Good morning, Commissioner. I don't think we're percolating here this morning. I'm Jacques Triplett, General Manager of the Corpus Christi Greyhound Racetrack. We have requested basically the same race dates as we had last year, we've changed to -- a matinee year around and added some extra races on a Sunday afternoon, which seems to be a better attended performance. But, overall, we're looking to do 415 performances, 362 days a year, 5,335 races. We're not terribly bright, but we're still pushing and still doing it.

When I came into this business 34 years ago, there were 55 greyhound tracks in 19 states. There's now 42 racetracks in 15 states. There's a message there somewhere, but we haven't gotten it yet. So we're trying to run one more year with your permission. We've also requested to add one more simulcast day. We did not simulcast on Monday last year. We only did six days. In previous years we had done seven days. Patrons who have come to that have asked that we open up Monday again. We have requested that as well. If you have any questions at all, I'll be pleased to try to answer them.

CHAIRMAN DYKE ROGERS: Commissioners.
MIKE RUTHERFORD: Do they have any states where they have less racing, dog racing, where you have seasons, you know. It seems to me it's saturated running that much. If you -- the Texans, the Houston Texans play football all year long, nobody will go out there.

JACQUES TRIPLETT: Right.

MIKE RUTHERFORD: So I just wondered if you all have ever tried -- the industry has never tried the seasons.

JACQUES TRIPLETT: We have not tried it in Texas for 20 years. In Florida we ran seasons. And, of course, we had 20 tracks in the state. That worked very, very well. To be very honest with you, Florida discovered that we produced about $78 million worth of the taxes running five months out of the year, so, hey, if we make them run 12 months out of the year, it would be a lot more. And that's how it came to start running year around, which just literally forced the big tracks to do better and the smaller tracks to be a bit weaker.
The only value that we have in our location is, we're 140 miles from God and everybody; there's just nothing else down there that we're in competition with as far as pari-mutuel wagering goes. We do have a pleasure ship, one of those neat wonderful things nine miles off shore, don't have to pay any income tax, and don't have to take anything out of what people win. That takes about five, 10 percent off the top. And other than that, the lottery, we're kind of down there by ourselves. As you probably know, Commissioner Rutherford, we don't really have enough population in Corpus that a racetrack should have ever been put there, but that's a very long story as to why it is. I won't burden you with it. But we hung on for 16 years, and we'd like to try it for 17 years.

MICHAEL RUTHERFORD: Well, that area is certainly growing.

JACQUES TRIPLETT: Yes, sir.

MICHAEL RUTHERFORD: I knew you had a lot of experience. And I'd just like to, you know -- you've been in the business 30 areas, and I'd like to hear why they don't have seasons. I've always wondered why it saturated that much.

JACQUES TRIPLETT: Well, one of the things that always looms in the minds of the owners that we have is that every bill that came out of the legislature was never made it to fruition, but everyone
that came out did have the stipulation in there that
you’d only be able to have a gaming machine if you were
running live. So everyone we were running live a lot,
all the time, because we wanted them all the time. I
think that’s part of their thinking. And to be very
honest, I think the debt service enters into that as
well. At one time we had 350 employees, we now have
132 running seasonal, and we would be down to about 25
year around and jump up just during that live point. So
we are an added value to the community.

SONNY SOWELL: Mr. Triplett, what is your
average crowd?

JACQUES TRIPLETT: On the weekends about
500, weeknights 200, 300, folks. And on our simulcast
days only, it’s down to 50, 75 people.

MR. SOWELL: What is your trend, what you
handle?

JACQUES TRIPLETT: We are holding -- we’re
actually, by the grace of God, seven policemen, we’re
actually up a little bit this year in handle. We’re
down about five percent on attendance. But our handle
is holding well. It’s basically those that are coming
and learning more about the game, the per capita is up
to $144 per person. So those that are coming are -- the
per capita has gone up, so the people in attendance are
betting a bit more than they ever have before. I think
the per capita last year was 135, this year it’s 144.

MR. SOWELL: You might say betters are
getting better.

JACQUES TRIPLETT: The betters are getting
better, yes, sir. I don’t want to take up a lot of your
time, but in Florida when the lottery came along, we
dropped about 20 percent of every pari-mutuel track in
the state, the five horses, the Jai Alai’s, and the 20
tracks. But within about a year that all came back.
And the reason it came back is because we had been doing
wagering in Florida for 50 years, and we built the base.
In Texas, we had been doing business just
about nine months when the lottery came along, and we
hadn’t really built that folly yet. That really kicked
us. We dropped about 40 percent of which not a whole
lot has ever come back.

CHAIRMAN DYKE ROGERS: Any other questions
or comments, Commissioners? Ms. Boyd.

TREVA BOYD: I’m assuming that later in
this -- under the same tab, that we might have an
opportunity to talk about -- in our conference calls; is
that correct?

JACQUES TRIPLETT: Yes, ma’am, I sincerely
hope so. I’ve -- one of the things that you told me
when we were speaking on a conference call was that you
wanted me to stay in contact with our kennels that
are booked. So I put out a form that said if nothing
happens, if we get no gaming, no tax relief, we don’t
get to let them vote for governor at 18, then they can
buy lottery tickets at 18; but you have to be 21 to buy
a pari-mutuel ticket, if none of that changes, if we
have the same thing we had this year, do you want to be
booked again in 2007? And I have signed papers from
every one of the 12 of the 13 kennels down there that I
brought for you, Ms. Boyd.

TREVA BOYD: If I may, may I make some
comments about a conference call set up by staff earlier
this week concerning Corpus and Valley and going to
maybe an alternate situation involving circuits, would
that be okay?

CHAIRMAN DYKE ROGERS: Sure.

TREVA BOYD: I’d like to thank our staff.

And I think the commissioners have this in their packet.
But staff put together an excellent tool which is very
telling about how each greyhound track is doing. And I
believe that you’ve gotten that in your packets
previously; is that correct?

CHAIRMAN DYKE ROGERS: Yes, everybody has
that.
the patience with which Mr. Triplett and our staff offered me because I did ask some uninformed questions. With the conference call we were able to debate alternative schedules, and what the consequences would be if we went to a racing circuit between Corpus and Valley. With a circuit schedule, Corpus would run a portion of the year while Valley would run another portion of the year. Staff took two uses with these graphs. They used the requested schedule and then they used a circuit example. Comparing these Corpus numbers, if we were running a circuit, the alternative schedule reduced their total earned projected purse by about 20 to 25 percent. However, it increased the average greyhound purse per race, the average greyhound purse per performance, and increased the average point value. And this point value was one of the topics of our group -- working group meetings that we discussed.

When you look at the impact on Valley, it increased the total earning projected purse by only five percent. And, again, I think you'll be able to identify all of this in those packets that the staff provided for you. During the discussion, however, Mr. Triplett offered to us that Corpus didn't want to lose any more race dates by going to that circuit schedule.

And, again, they would run a portion -- one portion of the year while Valley ran another. So they would end up losing some races. But we were able to raise some income by going to the circuit schedule.

It's very clear that Mr. Triplett and management at Valley and Gulf are very committed to their operation, that came across very well in that conference call. When he was asked, he informed us that he's encouraged by the fact that he's got 13 kennels booked, and there are about 40 greyhounds per kennel.

JACQUES TRIPLETT: Actually, yes, ma'am, 70 in the kennel.

TREVA BOYD: This doesn't mean, however, that there won't be problems arising down the road later, possibly with kennel cost or financial difficulty with the kennels -- kennel owners, and that would possibly initiate him coming back to us and requesting a change in the race schedule as a result.

We discussed also staying in close contact with those kennels so that we would get information on a continuing basis and their assessment of how things are going with the kennels so that we, the Agency, could have as much notice as possible when problems are going to arise. And we would be able to react quicker and more appropriately as a result.

The bottom line, though, is: When handles fall, for whatever the reason, so does revenue. We included the discussion about impact revenue shortfall that has on our agency, staffing, and how it affects our budget. When we have a shortfall, we have to consider raising fees. While this is easily said, it's not easy for me to consider. Because if there are kennel owners out there already suffering financially, this could put them out of business altogether. So it's imperative that we continue dialog, in my opinion, concerning how we address changing the way we've been thinking to something more innovative for our current environment.

When we drop race dates, we have a decline in handle. It affects the business. We then have to consider fee hikes, which shouldn't be waived. When race dates are dropped, the Agency still incurs expenses.

Staff reminded us that the Agency has to develop their budget at least two years out. The budget process is long and tedious and has to address everyone's needs in our operation. It cannot be changed on the spur of the moment. And my concerns, the greyhound tracks are in precarious situations with unregulated wagering going on, patrons gambling across our borders, limited access to the product -- patrons have to go to our tracks to bet, just how long can our tracks withstand these kinds of challenges? And, finally, my thought is leaning towards the Agency identifying a cost per day for doing business. And when race dates are cancelled, I think that we should assess the fee amount to the entities making the request.

Thank you.

It was a productive meeting. Although we didn't have the luxury of looking one another in the eye, it was a very positive discussion, I think, and we got our thoughts out on the table about the circuit racing and the positive impact it would have. But, again, I think that Mr. Triplett is requesting a similar schedule.

JACQUES TRIPLETT: Yes, ma'am, very similar to the last 16 years that we have run. And we have to look at a brief history of wagering in the state of Texas. We lost two horse tracks, Bandera Downs, and Trinity Meadows. They went flat out. We lost one dog track for five years because Ladbroke folks just gave up on it. Most of the horse tracks have reformulated from near or close to bankruptcy, and they had to bring in -- I mean, pari-mutuel wagering has not turned out to be the panacea that we all thought Texas might be. But as small as we are and as tough as it is, for 16 years we've been down there struggling along, and we would
like to do at least one more.

CHAIRMAN DYKE ROGERS: And, Mr. Triplett, of course, you know that by statute you can request whatever you’d like, and you’re entitled to race every day if you choose to. So your request, we appreciate. Thank you for your request.

JACQUES TRIPLETT: Thank you, sir. I appreciate it.

CHAIRMAN DYKE ROGERS: Ms. Briggs.

SALLY BRIGGS: Good morning. Sally Briggs, General Manager Gulf Greyhound. We also are requesting the same dates that we have run since 1992. Our schedule this year has not changed. We’re still running the same amount of performances; we’re requesting the same amount of performances for next year that we’re running this year. The only thing that would change would be when the holidays fall, and we’ve tried to manage that where we will be able to have some races on -- some performances on those days.

CHAIRMAN DYKE ROGERS: Any questions?

Thank you. Mr. Vitek.

MIKE VITEK: Good morning. Mike Vitek, General Manager of Valley Race Park. I’d like to echo the commissioners' comments, and thank the working crew and staff for all of their work. Certainly an interesting process over the last few months putting the information on greyhound tracks together. We share the concerns that came out of that group discussion and those of the Texas Greyhound Association regarding possible shortages of Texas bred greyhounds. It’s an issue we’ve struggled with and, clearly, we’ll continue to struggle with for the next couple of years. With that said, our date schedule -- our date request is similar to our or 2005/2006 meet, which we just ended. It starts with a four-day-a-week performance schedule. And after Christmas we added a fifth day, a Wednesday performance. And we did that last year to make sure that our active lists were capable of supporting a five-day racing schedule. We sure prefer to add performances than take them away during the course that they’re in. That works pretty well for us. We’re up in on-track and off-track, ending the last year over the prior period. And we’d like to request that same schedule this year. I do want to ask the Commission to modify our day request by deleting one day, which was Wednesday, November 28th, 2007. It’s a matinee performance, it was placed on the schedule in error, and I apologize for the oversight that we didn’t catch earlier. I did send a letter to Charla Ann, but it was quite late. So we would just ask the Commission for support with our date request with that one modification deleting that Wednesday, November 28th performance.

CHAIRMAN DYKE ROGERS: November 28th?

MIKE VITEK: Yes, sir.

CHAIRMAN DYKE ROGERS: Any questions?

MICHAEL RUTHERFORD: How far is it from Corpus Christi to the Valley track?

MIKE VITEK: It’s about two and a half, three hours.

AUDIENCE: 143 miles.

MIKE VITEK: I would stipulate to 143 miles.

CHAIRMAN DYKE ROGERS: How long it takes depends on how active the DPS is.

MIKE VITEK: I may be making that drive quite often seeing that I tried to fly here this morning, and that was not a good plan.

CHAIRMAN DYKE ROGERS: Any other questions?

Thank you. Sorry for butchering your name there. Ms. Whiteley.

DIANE WHITELEY: Good morning, Commissioners. Diane Whiteley, Executive Director of Texas Greyhound Association. And these are just a few comments from our perspective as representing owners, breeders and kennels. We really do appreciate all of the charts and the graphs and the number crunching. I know how much time that takes for the Commission staff to do that. It was very helpful and very informative. We're trying really hard to look in the future to maintain the profitability, or at least increase the profitability of greyhounds, the entity, and the greyhounds in Texas as well as nationally. We are in a global organization now between all the different racetracks, our Greyhound travel between all the different states on a regular basis. So what happens in Texas does affect the rest of the nation; what happens in the nation, certainly affects Texas.

We very much respect management decisions when they submit the proposed race dates. They are the ones that are down there, they know what their crowds are, they know what their staff levels are, they know what their profitability standards have to be. So we very much respect when they propose their dates, and we have no objection to the dates that they have proposed for 2007. 2007-2008. And Commissioner Boyd mentioned this earlier, I think what we will need is a whole lot of cooperation between everyone.
When I looked at our breeding numbers of greyhounds for Texas, Texas bred greyhounds, we had a precipitous drop between 2004 and 2005. In 2005, we dropped, I think it was 45 percent in the breeding of Texas greyhound puppies.

Now, this is due to a couple of things. One, of course, is profitability. The other one is that we had a -- that was the first major nationwide outbreak of kennel cough. And that certainly affected the number of breeds going into the breeding situation, it affected a lot of people's choices to stay in the business. People that were marginal, that was kind of the tipping point to get out. So 2006 we are projecting to be fairly consistent with 2005. So we are not experiencing any growth, but we're not losing any ground.

We have to look at a two-year out, though, because 2005 puppies, typically it takes two years before they hit the track. So 2005 puppies will be hitting the track in 2007. We'll be okay on that. 2006 we're down again. So 2008 will be a concern if we don't have enough greyhounds to run the proposed dates.

So I look forward to working with the tracks, with the Commission, with our owners and breeders to make sure we have the inventory available to run the dates proposed a year from now, not in 2007, but in 2008. Nationally the breeds are down as well. They're down 15 percent last year, they're running 11 percent down this year. Both Corpus's programs, which I watch a lot of, Gulf's, the Valley, Corpus runs around 70 percent Texas bred, which is great. I love to see those Texas emblems on those programs. They've done just an outstanding job of keeping the Texas bred there. But that's going to affect them significantly, but it will affect Gulf too because there is a requirement at the end of regulation that they have to keep a certain number of Texas bred in the kennels. So if those Texas breeds are not available, it becomes a real issue with rule changes. Valley, another situation, they tend to have to draw from out-of-state kennels. They have difficulty meeting their agendas in their kennels. So we do have some real challenges.

And I hope to, in 2007, really start monitoring these numbers even if it's on a monthly basis to make sure we're okay in 2008. If we get no legislative relief in 2007, whether it's alternative locations, whether off-track sites or VLTs, if we get no legislative relief in 2007, I look for the greyhound industry in 2006, their breeding to drop significantly starting next June after the Session's over. So it's something that we do have to be on top of, and I believe also on a monthly basis of what our inventory will be.

Any questions?

CHAIRMAN DYKE ROGERS: Thank you.

Mr. Ferrara, would you like to make a recommendation to the Commission?

MR. FERRARA: I'd like to recommend approving Gulf Greyhound as proposed.

CHAIRMAN DYKE ROGERS: Okay. Do we need to handle these individually, or do you want to make your recommendation all the way through, and then we'll look at it?

MR. FERRARA: I'd like individually because I just want to make sure on Corpus, his original request, he had racing on Christmas Day.

And I brought up to Jacques, the last year, he did the same thing, came back and asked to drop Christmas Day.

So you'll see in the packet there's a letter amending that, so I'll make sure that we pass the one that was no racing on Christmas Day.

CHAIRMAN DYKE ROGERS: Okay.

MR. FERRARA: As far as Valley, I recommend as requested in allowing them to drop the matinee on November 28th because you can tell by his schedule that he wants to start with the matinees on Wednesday after Christmas. So I recommend to you to allow.
Commissioner Sturms. All in favor?

THE BOARD: Aye.

CHAIRMAN DYKE ROGERS: All opposed? Those dates are approved. Motion carries.

And I guess from a Staff position, we probably need to be looking at the rules on the number of Texas breds and so forth so that we're proactive before that becomes a problem.

TREVA BOYD: Mr. Chairman, I was going to ask a question, although I did make the motion, I thought that we would have questions.

CHAIRMAN DYKE ROGERS: Sorry I didn't give you a chance to do that. You're welcome to ask it now.

TREVA BOYD: It's been brought to my attention, when you look at Valley Race Park numbers --

SONNY SOWELL: 3 dash 17.

TREVA BOYD: 3 dash 17 of the agenda, it's probably self-explanatory, but I need some help. It says opening day is January the 1st, '07, closing day is April the 7th, '07. You get down to the performances, and 5, 13, 3 and 2 don't add up to 143. On the charity days, you add them in there, of course. On page 3 of 17 -- is it just my math? I'm sure they're on the expanded race schedule; it's just on this summary page it looks to be a conflict.

SONNY SOWELL: Sammy, can that be explained easily?

CHAIRMAN DYKE ROGERS: Yes, Dr. Carter.

DR. KENT CARTER: Looking at that it appears to be that perhaps the second set of race dates just needs to be included in that sentence. It says opening and closing, but then there's another opening and closing that's not included if I'm reading it right.

TREVA BOYD: The last part of the year.

DR. KENT CARTER: So what I said is correct?

AUDIENCE: I believe so.

CHAIRMAN DYKE ROGERS: After sorting through this, which I don't have any idea where this confusion is, do we need to amend this motion or are we okay the way we've got it?

MARK FENNER: We're okay.

TREVA BOYD: Thank you very much.

CHAIRMAN DYKE ROGERS: Thanks for keeping us on our toes.

D. Approval of the Commission's Legislative Appropriations Request for Fiscal Years 2008-2009

CHAIRMAN DYKE ROGERS: Okay. Under tab number 4, we come to the most interesting part of this. It's the legislative appropriations request for fiscal years 2008 and 2009.

Ms. King, would you give us a presentation of what we're looking at here?

CHARLA ANN KING: Yes, Mr. Chairman.

Commissioners, we have taken the development of our appropriations request very seriously. We've been asked to propose our budget with a 10 percent reductions from our '06 and '07 budget levels, that most everybody is aware. We have done that with great care and consideration of all that it takes to provide regulation of this racing industry. This has not been easy. The proposed budget includes cuts for key people at our agency, and it has been difficult to put these reductions up for discussion and consideration.

It has been particularly hard because of past budget reductions, which the agency has not recovered. We have gone through the budget in a new way involving key managers trying to open the process of communication to all staff, and to members of the industry's most directly affected by the proposal. I anticipate that lack of discussion will occur after submission of the budget tomorrow opening the door to working with our stakeholders directly as we move forward on the budget.

I need to call to your attention a difference in the proposal compared to years past. To get to the 10 percent reduction, we have included a recommendation that would require a statutory change, and that is somewhat uncommon. I have visited personally with the Governor's office and legislative staff about this approach and feel this is the best way to address the challenge. In addition, the legislative board staff has been very helpful to us throughout the development of the request.

I'm going to turn this over to Sammy who will brief us on the specifics of a request, but first a comment on our exceptional item.

Exceptional items are funding requests above the 90 percent base budget. We have the budget with a 10 percent reduction, and then we have a prioritized list of the items that request funding above the 90 percent. We have seven exceptional items, and you all received a handout on that in your packet that we faxed to you. Now, in terms of those seven exceptional items, three of those requests, restoration of the 10 percent that we will require to take. Those are items 1, 2 and 4, and Sammy will talk in detail about that. Three more of our exceptional items are derived mainly through state auditor office
recommendation, okay, and the need to recover from what  
I call past regulatory losses. These are items 3, 5 and  
6. And then there's Item 7 which shows just how  
complicated this industry can be. We need authority to  
expend funds to cover costs of new racetrack application  
as those with the entrepreneurial spirit, look to the  
Class 2 license model as the successful business  
model.

So we're headed in a couple of directions  
at one time where the industry is struggling  
economically causing a need for increase and improved  
regulations. We also have on the horizon potential  
growth in the industry with the smaller racetrack model.  
And it is a lot to say grace over.

With that, Mr. Chairman, I'd like to turn  
it over to Sammy to go through the specifics and answer  
more of your questions.

CHAIRMAN DYKE ROGERS: Mr. Jackson.

SAMMY JACKSON: Thank you, Chairman.

As the Executive Director just said, we  
have satisfied the LBB's instructions from the  
Governor's office as well about submitting a baseline  
budget with a 10 percent reduction. On page 4-1 in your  
packet as well as information we faxed to you  
yesterday, you'll see a summary of the 2008/09 base  
appropriations.  Along with our legislative appropriations  
request the 2007 operating budget. Along with our legislative appropriations  
request will be the operating budget request for '07.

Those are the three items that I really plan on talking  
about in detail today.

I bring your attention to -- underneath  
the projected 2007, legislative base appropriations, the  
Agency's projecting $10,050,716 in appropriation  
expenditures for the various strategies that we have.  
With the 10 percent reduction, that amount will drop to  
$9,069,711 in '08, and $9,069,710 in '09.

The next section below that details where  
those monies are actually expended out, what we consider  
the object of expense be it salaries of personnel costs,  
professional fees and services, consumable supplies,  
travel, rent-building, rent-machine/other. Grants, it  
can be the ATB program or capital expenditures.

I would like to point out that as you look  
at these things, the one area I would like to address  
and make sure that you're aware of are other personnel  
costs have exceedingly went up over the last four years.  
Some of that is due to legislative change. In the past  
legislative session, the legislature changed the way  
agencies calculate longevity pay for its employees.  
This may seem small and a simple change, but for a small  
state agency, it has dire consequences.

Prior to that legislative session,  
longevity payments calculated based on every three years  
of service for each state employee received $20  
additional amount. They changed it from three years to  
two years in that legislative change. That one change  
causeth the Agency an excess of $30,000. The first year  
every year thereafter it's cost us an additional 10- to  
$11,000. By the time we get to '09, that one change has  
cost us about two FTEs or two positions. The agency did  
not get additional appropriations nor did any other  
agency in the state. We were told to consume that  
within existing appropriations. The only way for us to  
do that is to reduce staff.

The other item that falls underneath that  
is our staff is what we like to joke about as being a  
senior citizen staff. We have a lot of employees who  
are at 60 or even above, and they're eligible to retire.  
We have expectantly, I think, 10 to 12 employees who may  
retire within the next two to three years. Because of  
that they will be owed some allocation that we must pay  
for those employees who have vacation time in the books  
or overtime. We have projected in each of these years  
based on who is eligible for retirement, how much that  
will be. The Agency had to redact an additional 25- to
that have been submitted for the Laredo, Webb County area. I'll give you some estimates on costs that the Agency has incurred to date for this. The background costs, the Department of Public Safety, that we need to transfer funds to cover that have been estimated about $16,000 to date. The court reporter costs for the SOAH hearings that the Agency had to contract and pay for has been about $16,000. In addition, amount that we're not going to have to transfer pay, but the SOAH hearing itself has been estimated $23,000 to date. Those expenses are outside expenditures and do not even cover any of the administrative expenses of the staff. However, we did not have any additional appropriation for those expenses, so we have shrunken our expenditures and our staff levels to make payments on that during this fiscal year. When we get into exceptional, I'll point out to the one that we're asking to alleviate that situation in the future.

That's a brief history of the baseline budget. For now I'd like to flip to the next page, which would be 4-2 which gives you a summary of exceptional items requests in total. We're asking for seven exceptional items, and of those seven, they total to 10.6 additional positions in 2008 and 11.1 in 2009. The total balance of that question is 1,358,752 in '08, 1,386,752 in '09. The breakdown of where those monies will be expended are object-of-expense below. With that piece of information I'd like to go over some of the exceptional items and give you a little detail about them.

Exception Item 1 is the restoration of 10 percent cut to our central administration staff. The cut would eliminate 2.5 positions to the Agency. Specifically, one is a special projects person who deals with our information requests as well as many of the Agency's reports that need to be filed and deal with the wagering public in our racetracks. We would have to -- if this is not fulfilled, we would have to shift those responsibilities to other people within the agency. The other position here would be our receptionist who also assists our licensing program administrator by doing some of the on-line licensing photo and licensing badge requirements where they come into the office to get that done. We would have to go to an automated phone system, and when people call, they would receive an automated answer pickup who would direct them to a number to call. The half position is our purchaser. We have Shelly as our director of accounting/administration, who is also a certified purchaser. The Agency's required to make all purchases through a certified purchaser. But we feel like we can eliminate a half position there and still maintain the requirements that we need. However, we would be compensating because our purchaser also serves as our property plant and equipment manager as well as our HUB coordinator which are requirements by the state. Those functions would also have to be shifted around to existing personnel.

The second item underneath exceptional list is the restoration of 10 percent cut to Texas bred incentive program. These are the funds that are dedicated by statute that the Agency collects and then allocates all to the breed registries for the incentive awards. It is the largest items in the Agency's budget. It makes up over 56 percent of the Agency's current budget. There is no way that we can make a 10 percent cut without dismantling regulatory programs completely. And when I say "dismantling," I mean totally eliminating divisions, which is no auditors, SOAH investigators. That's the type of thing that we would have to do if we did not submit a cut with this program.

The third item is restoration of regulatory staff position. This is the item that Charla spoke about. It is not a 10 percent cut item, but it's these diminishing positions that we're having to cut as
It is expected within the next 18 months from a server centralizing their service sites across North America.

Companies, due to the economic factors that are going on in the industry nationally, not just in Texas, are getting into our authority to travel out of state. The authority. This is a reoccurring exceptional item that gets into our authority to travel out of state. The source of funds to cover this so they will not be passed on to our regulated tracks and occupational licensing. One of my primary role now has completely changed. We have lost that position due to the budget financial worry, and working on these other areas, the only race dates, et cetera. This budget analyst position that we're asking for is to take some of that burden off of myself as well as to assist our director of administration so that I can get back to the work I think the Commission really needs me to do. And since we've been written up by the State auditor's office, we want to make sure we're compliant the next time they come around.

Moving to exceptional item number 4 is the restoration and 10 percent to the supervise racing conduct strategy. As Charla Ann articulated for this to go through, we have to have a legislative change. However, in the event that doesn't occur, we want to request this back to make sure that we can still staff the racetracks so they can run the dates that they requested. Without it, we won't be able to do so.

Exceptional Item 5 is funding for wagering systems/security testing. This is another item that came out of the State auditor's office recommendation.

I will tell you this, this is $75,000 per year of contracted services. The Agency doesn't feel it would be appropriate to hire a person at that level to bring anyone to do work that would not be necessarily required all year. What we do believe, though, is we can contract the service out, and put our racetracks and Tote services on a rotation schedule and achieve what's been asked of us of the State auditor's office.

One of the areas that we will look at if this item is passed is to raise these fees by increasing the vendor license fee that we charge our Tote companies. Currently our Tote companies pay a vendor license fee of $75 a year. So we think we've identified the source of funds to cover this so they will not be passed on to our regulated tracks and occupational licensees.

The sixth item is sufficient travel authority. This is a reoccurring exceptional item that the Agency has requested over the last few years. This gets into our authority to travel out of state. The Agency currently has $5,000 in authority to travel outside of the state of Texas. Point blank, our Tote companies, due to the economic factors that are going on in the industry nationally, not just in Texas, are centralizing their service sites across North America. It is expected within the next 18 months from a server.
checks and background checks. Currently that rider is written only for criminal history checks, which deals with the fingerprint cards that each occupational licensee submits. This goes to DPS, DPS reviews them, and they bill us for that. That specific rider gives the agency up to $25,000 to expend on that function. In the past few years we've only expended about 12,500. However, DPS has been incurring a great deal of costs in doing background checks for transfer or change in ownership of existing license racetracks, i.e., Magna, Austin Jockey Club and a few others. We have not had the authority to pay for those background checks. In the attempt to revise this rider to add it to say criminal history checks and background checks, we are not changing the total amount of funds of 25,000, but just asking to use those funds for more than just the criminal history checks. We've worked a great deal with DPS and Captain Blodgett on that as well as our LBB analyst to try to make sure that they're aware of what we're doing here.

That is the summary of the Agency's budgets requests as well as exceptional items. I would tell you that the grand total for the exceptional items for the two-year period is 2 million, 745 thousand, 504. Of that number 1 million, 960 is just restoration of the 10 percent, which leaves a balance over the two-year period of $785,382. Of that 785,000, 300,000 of that is direct pass-on to someone else. So the total additional cost over a two-year period to the regulated population is a little under $500,000 or about -- excuse me, about 485,000.

If you have any questions, I'd be more than happy to answer them. With that, I would submit this to the Commission for approval.

CHAIRMAN DYKE ROGERS: Sammy, thank you for a very fine presentation on the budget.

There's been a lot work put into this particular deal. I might just kind of give you a little bit of background. Some month ago or so, all of the chairmen of various commissions were invited down to hear from the Governor and the Governor's staff about a request to reduce our budget and to submit our budget with a 10-percenter reduction. And I applaud it for the thought. And in large agencies, I think part of the thinking was that there are a lot of one-time expenses. And then if you had to begin as a starting place at 10 percent off, you would eliminate those one-time expenses that might just be hidden as a line item somewhere, and then you would justify any restoration back from that. So I don't believe the intent was to say that all of the

1 State budget's going to be cut 10 percent because I don't believe that has been the historical background. But I do think that it gives a good starting place to actually look at it and justify where you are.

I think in larger agencies it would be real easy to have some hidden things that are reoccurring that show up. In small agencies, this is going to be not just a challenge, it's going to be something that we'll really kind of get into the ball of the agency, and our agency is one of those. We are one of the few agencies, I believe, who went through the last cut, which was a 7-percent cut, that didn't get any restoration from that cut. Nearly every agency's budget was actually -- what they actually spent was more than what they were prior to the 7-percent cut. So we have not been able to get those things restored.

Part of that cut went to the breed incentive programs last time, 7 percent across the board, and they were not able to get that restored.

And in this budget there's another, over a two-year period, a million-two that comes out of their funds again, and those are designed for -- incentive for breeding within the industry. In this budget, the personnel we're talking about that requires the legislative change, would require that one of our stews at each track be employed by the track, which is an additional expense for the association.

We are a self-leveling agency, and probably the only agency that I can think of or that the staff can think of that actually is required to be on-site on the businesses that we regulate or open. And that's really different than any other agency that operates here within the state. And I would hope that we will be able to, either as commissioners or as staff, be able to make this clear to our legislative board, to the Governor's office and to the other leadership people that are involved in the budget that while everybody is going to have a sad story, this story gets really kind of into the bone. I doubt there is an agency out there that is not going to say that they're having problems with the 10-percent, but I doubt that there are any that are going to be much deeper than this one is. I think the cuts are proportional and they're well-thought out, but the exceptional items are well-thought out, and we need to pursue every angle we can to restore the things that we need restored.

The only exceptional item that we've had in our budget in the last several years has been the breeder's guide, and it's been filtered back out of there because the one-time deal is gone. So everything
else is really cutting right down to the program. And a lot of the things that we have really don't have to do with not having the money. We're under budget again this year. But a lot of times we can't spend the money that we have. And I'll give you just a personal -- this is ticky dock compared to rest of the budget, but it's like this rider on the travel reimbursement. We have $3,000 per commissioner in the budget. Well, most of you drive. And if you ask for reimbursement, it's relatively small.

I fly and have to spend the night. So I get reimbursed for about 60 percent of my travel, so I really am doing this as a charitable contribution, which I'm sure we all appreciate that. But I can afford to do that. But what happens if the next commissioner that they choose to do this is from a far reaching point in the state, El Paso or Amarillo or another area that you have to fly in to get here, you restrict the people who can serve on this commission, and you -- it's not really an equitable situation. We have the money; we just can't expend in the right spot.

I think this agency, even though it has gone through the 7-percent cut, I think it's done an exceptionally good job. It pained me when I heard you say that one of the things it would eliminate is the ability to answer the phone. I deal with some other agencies in the state that I call. I have one agency in particular that I called for five days in a row, had my secretary call them every 15 minutes for five days and never got an answer through the phone. Finally wound up going through somebody else who knew somebody who could call somebody to get them to call me back. That's not the kind of service that we need to provide, that's not the kind of service we have provided.

And I think one of the things in all of the reports and so forth we've done, maybe dozens, get recognized as this agency really does a really good job with the funds that it has, and I think is very prudent on how it spends it. And we will with whatever cuts we have, we will still provide the kind of service we need to provide. But the cost here, because we are self-leveling, all our money either comes from our patrons or our constituents, the constituents wind up paying the costs. And so our associations will be tapped for more costs. And if they're tapped for more costs, it's all going to run downhill before it's over. And we're in an industry that's already suffering. So I just think it's incumbent on all of us to try to restore those areas that really need restoration because we're into an area that we're going to do a good job, but it's going to be much more difficult to do it, and we're asking our people to do a lot more with less. And what we do not want and what I don't think the state or the industry can handle is some type of scandal because we dropped the ball on some regulatory thing that we really could have and should have been there for if we had the funds to do it. So I -- this is -- it's a very difficult budget to say that we need to approve this request, although I know we really have no choice, and you've done a great job to put it together. I know we're going to have some people testify on it, but I think in the end we need to do what we can to restore those things that are critical to our operation.

Thank you, Sammy.

Now, we have some people that would like to talk on the subject.

MR. FENNER: Mr. Hooper has expressed an interest.

CHAIRMAN DYKE ROGERS: Mr. Hooper.

MR. FENNER: And Rob Werstler.

MR. HOOPER: Mr. Chairman, members. I'm David Hooper, director of the Texas Thoroughbred Association. Certainly, the dialogue that's just taken place from three different people, there's a significant amount of work that's been done on this budget. And I've had communication with Sammy and Charla Ann on several occasions, in particular relative to the Texas-bred incentive program.

This is a statutorily dedicated fund, and frankly, should not have been subject to reduction at any time in previous years, but it has been. There has been dialogue among the breed organization about possibly challenging it in court, and it was felt that discretion was the better part of valor because if you challenge it in court, and then we may have some other major legislative issue, and we had -- not getting that passed or we get punished in some other way.

Certainly on behalf of the Texas Thoroughbred Association, I can assure you that we are in great support of the request for restoration of the 10-percent cut of the Texas-bred incentive program. And we believe it's critical, critical at this time in particular because we have people who are sitting on the fence as to whether they need to move their breeding stock to other states where -- already because of the fuel incentive programs and purses and -- at tracks in neighboring states. They can earn a significant higher amount of dollars from those states' incentive programs than what they're earning here. It was somewhat
surprising to me as we conducted five regional meetings around the state in the month of June that I had half a dozen to eight or ten breeders who came up to me and said that they had not bred their mares this last year. And that puzzled me, but that's the kind of quandary that our breeders are facing. It's a serious challenge of what to do. Do you get out of the business, do you continue to push on in Texas and have fewer dollars to run for, which of course, that's what happens when the ATB program is tapped, or do you go out of state? And we've had breeders make all those difficult decisions in one way or the other. I'd be happy to answer any questions.

CHAIRMAN DYKE ROGERS: Any questions?

Thank you. Mr. Werstler.

MR. WERSTLER: Good morning, Commissioners. Rob Werstler representing Texas Quarter Horse Association.

I want to echo Mr. Hooper's eloquent remarks about the industry and his association's stance. We're basically a mirror image of theirs, but we also support the Texas-bred incentive program being part of the exceptional items request. We also are seeing a decline. I had a conversation a couple days ago at the horse sale in Dallas. Their sales are down about 50 horses, our sale two weeks ago was down about 30 horses. Some other sales were also down, and we were wondering where those horses are. It appears that people aren't breeding -- I've asked some of our farmers -- it appears people aren't breeding mares to our stallions. Most of those horses are going to be sold in New Mexico and Louisiana.

We also understand that this Commission and the staff has been placed in a very difficult situation, and we're willing to help you alleviate this in any way we can. Thank you.

CHAIRMAN DYKE ROGERS: Any questions?

Thank you.

Is there anyone else who would like to speak on the subject? Commissioners, your thoughts?

TREVA BOYD: I'd like to ask Charla Ann how does your information gathering speech or whatever go towards the legislature; what was the outcome of that, what was your feeling about how they took it all?

CHARLA ANN: The committee -- the house committee on licensing administrative procedures had the interim charge to look at racetracks and see if they could figure out ways to make racetracks more attractive is the way the charge read. They invited testimony from us and then also from Mr. Azopardi. We testified. They were very interested, they asked a lot of good questions. Where they were headed was they're looking for ways that the legislature can assist the industry. They all have discussed in the past other legislative proposals, VLT legislation; obviously, those efforts are going forward. But really the focus of this discussion was what else can be done. And they asked some questions about the issue of promotion and development of the industry from the state's perspective, and asked questions about what could the agency do, could we coordinate our economic development efforts, perhaps with other agencies. That was kind of the line of their questions. And I indicated to the committee and to the members individually that the Commission was interested in these issues and encouraged them, you know, to be in contact with you all, the members of the Commission, and that we would be happy to explore any of those options and help them study that and provide feedback as they request.

TREVA BOYD: I read a summary -- your summary, and I appreciate it very much because it was aggressive but used appropriate restrain, but I think that it got some things on the table that we needed to discuss, so I appreciate that as well. And I appreciate Mr. Azopardi's contribution to that because I think it just reinforced what we've heard here today.

CHAIRMAN DYKE ROGERS: Any other comments on the budget request? Okay. I'd like to entertain a motion to approve the legislative appropriations request for 2008/2009.

MR. SOWELL: I move.

CHAIRMAN DYKE ROGERS: Moved by Commissioner Sowell. Is there a second?

TREVA BOYD: Second.

CHAIRMAN DYKE ROGERS: Second by Commissioner Boyd.

CHAIRMAN DYKE ROGERS: Is there any discussion?

All in favor?

THE BOARD: Aye.

CHAIRMAN DYKE ROGERS: We will submit this to the proper people.

IV. PROCEEDINGS ON RULEMAKING

Discussion, consideration and possible action on the following rules.

CHAIRMAN DYKE ROGERS: Discussion, consideration of possible action on the following rules.

CHAIRMAN DYKE ROGERS: Discussion, consideration of possible action on the following rules.

MARK FENNER: Mark Fenner, General Counsel.

Commissioner's, Government Code 2001.039 provides that State agencies must review the rules at least once every four years. Therefore, we've put forward Chapters 301 and 303 today. Chapter 301 is the definitions section of our rules. We've made some modest suggestions for changes. The first one you'll find on page 1 of 14, the addition of a definition for concession.

Section 6.03 of the Act provides that Tote and concession contracts must be reviewed by the Commission. But there is no definition of concession. Oddly enough, concessionaire is defined in the Act, which is defined as one who is licensed to sell souvenirs or refreshments. I've had it suggested to me that based on that definition, that the word "concession" can only mean that -- the types of contracts that can be approved by the Commission are limited to refreshment/souvenir concession contracts. I think that that's probably limited to a few, creates opportunity perhaps for mischief. Therefore, I have put forward this definition. And I did not have a model rule to work from. I pulled some definitions from other states and other context. And so this version I put forward, certainly, I'm open to suggestions, but this is what I would put forward as being an appropriate solution. I don't see it as an expansion of the Commission's role, but rather just formalizing what you do already.

The next change that you'll see is on page 9 of 14. You'll see that we're changing the "Odds board" to "Tote board." This change is to bring the terminology that's currently used within the industry up to date in our rules.

And then the third change and last change in Chapter 301 is to redefine "race meeting." If you'll look at the current definition of race meeting is a group of days in which horse or greyhound racing is conducted at a racetrack; we're concerned that the current definition is too narrow, and that one could interpret it to apply only to live racing, not simulcast.

Now, the definition that I've substituted here does come from the model rule, and is broad enough to incorporate both live and simulcast racing. We've looked at it from the perspective that it has consequences elsewhere in the rules, and we don't believe it does.

Those are the only changes that I'm putting forward at this point on Chapter 301. I believe there are a couple of people who would like to provide public comment, Mr. Vitek and Mr. Brown. And I'll be happy to answer any questions that you may have.

CHAIRMAN DYKE ROGERS: Any questions for Mr. Fenner?

Mr. Vitek.

MIKE VITEK: Can I yield to Mr. Brown?

CHAIRMAN DYKE ROGERS: Certainly.

Mr. Brown.

BRYAN BROWN: Good morning, Commissioners.

Bryan Brown, Retama Park.

I want to give you my interpretation of the new definition of "concession" and maybe pose questions of Mr. Fenner as to whether I'm reading it properly, and maybe needing clarification.

The definition of "concession" is important as it relates to Section 309.162 of the rules which calls for the approval of management, totalisator, and concessionaire contracts. And as I read the definition of "concession," this would greatly potentially broaden the definition, or the numbers of contracts we have to come to this Commission for approval. And I'll give you some examples. And first let me kind of interpret this definition as I read it; I could be wrong.

The definition says, "a contract that grants the right to sell products and services to any patron or licensee within the physical boundaries of a racetrack facility." In my opinion, an association would be a licensee. So any contract that the association enters into that grants the right to sell a product or service to that association would be a contract that would have to come to this Commission for approval. The way I broadly read this -- if I'm incorrect, then I have a lot less problems with this definition. And an example of what could happen was that in view of the definition, we have a contract for banking services at Compass Bank, for example, under Section 309.162, paragraph C, we could not have a loan from Compass Bank nor could we get anything of value from Compass Bank by virtue of entering into that contract. We have both a sponsorship agreement with Compass and a loan. Those are both not allowable under 309.162-C.

The other problem with that definition, there's probably -- I'm going to give you a wild guess -- 40 contracts that we have that would fall under this definition. In addition to not being able to get a
loan or anything of value from any of those people, those companies or persons would be potentially subject to the full DPS back -- or a form of the full DPS background check that’s not currently done. And that’s required under 309.162, paragraph B.

In addition to that, all those companies would have to submit annual financial statements to the Commission. And I guess what I’m getting at is we’re talking about a big, huge creation of red tape and bureaucracy that I don’t know that any of us want, particularly given the budget cuts that this staff is looking at. And if I’m incorrect, if an association is not a licensee, all we’re looking at is a copy that purely supplies a product or service to a patron or a licensee other than the association, then you’re talking about a much narrower focus of contracts that would have to come to this Commission. I guess I have a big question there and a great concern if that is how it will be defined.

CHAIRMAN DYKE ROGERS: If it were defined that way, I think it would be a great concern.

Mr. Fenner.

MARK FENNER: That is a good idea, and not what I was anticipating with association. If I may suggest that we could address that concern by end of the definition on page 1 of 14 before the word "licensee," perhaps we could insert the word "occupational" so that it became an occupational licensee rather than an association license.

BRYAN BROWN: And then the only concern could be there -- we don’t have any contracts ourselves with providers, a fee, other equipment, but that may want to be looked at because it may have another unintended consequence of putting a lot of scrutiny on those providers as well.

MARK FENNER: I did anticipate for this to cover things like backsides and -- anywhere where there’s an opportunity for mischief, frankly. I think the Commission should reserve the right to review the contracts. Now, these are not, you know, pay and fee that we provide to the association, but to people on the backside, trainers and such.

BRYAN BROWN: The rule is not reserving the right. The word is "shall" in the rule, so the contract would have to be submitted -- would have to come to this Commission, and then the company itself would be subject to potential DPS background check, which everybody may want. I don’t know. But it does bring a lot to play with Section 309.162. And I would definitely suggest we further study this for -- even moving it to the next step.

CHAIRMAN DYKE ROGERS: Any questions?

MIKE RUTHERFORD: Would a trainer have to break his contract between a trainer and owner since he’s providing services at the racetrack; does anybody know?

MARK FENNER: I’m sorry, would you repeat the question?

MIKE RUTHERFORD: A trainer, would he have to break a contract between either the client or the horse owner since he’s providing services at the racetrack?

MARK FENNER: That was not my anticipation -- or my expectation, sir. This was intended to cover contracts by associations that grant the right to sell products or services to patrons or occupational licensees.

LOUIS STURNS: Mark, this definition, you said you got it from a -- not within the context of racing?

MARK FENNER: Correct.

CHAIRMAN DYKE ROGERS: Any other thoughts?

Mr. Vitek.

MIKE VITEK: Mike Vitek with Valley Race Park. I actually took a different view than Mr. Brown and was looking at just the sale of products or services to a patron. Even by simply narrowing the rules that I focused, I can still come up with tens, maybe hundreds of such contracts, a band performing on our apron and selling a T-shirt to a patron. We’ve had up to three bands a night on some nights. Sponsors that may be doing signups to sell TXU energy, to sell power to customers, park work or jewelry on consignment, video games, shoe shine stand, one-day vendor selling cotton candy on July 4th. My suggestion to the Commission and the staff is that we further study the impacts of this -- wording in this definition even if we just do make the change that you suggested that we could be opening this up to a lot of work.

CHAIRMAN DYKE ROGERS: Okay.

MARK FENNER: If I can address that.

First of all, I would suggest that the Commission already has the broad authority that I was afraid of because it already provides that the Commission shall approve concession contracts. Any definition is going to be limiting beyond what the broad authority already is. I welcome the opportunity to discuss it further as exactly what they believe the comment to read.

CHAIRMAN DYKE ROGERS: Thank you.

KENT CARTER: Tell me the old definition
again, please.

MARK FENNER: There is not one. There is no definition of either the -- of statute or the rules of concession. There is a definition of concessionaire which says "one who is licensed to sell refreshments or souvenirs." It's my belief that that definition is not to define concession, but rather to define those who must be licensed in order to provide concession.

CHAIRMAN DYKE ROGERS: Mr. Philips.

HOWARD PHILIPS: Commissioners, I'm Howard Philips representing Manor Downs.

I agree with what's been said on this concession contract. But what I want to bring to you is more of a historical perspective in that concession/concessionaires originally conceived in 1989 and 1990 was a great concern about outside state influences in concession contracts, literally what they are today, food and beverage, really, and the fact that there would need to be extensive DPS background checks, and that's where the so-called mischief occurs, and we were approached by several of them and were warned about them. And that's where the whole concession concept came from, and I think broadening this, and we're going way overboard. I think the DPS does a very good job checking that, and the tracks are very aware of this.

concession contracts and Tote contracts and who they're dealing with. And we've been very, very diligent in anything that can -- you know, smack of any mischief. But from a historical perspective, I think that's exactly where concession and concessionaire came from.

CHAIRMAN DYKE ROGERS: Any other comments?
We have two choices, we can -- we have several choices. One is to make a motion to publish this as it stands with the change in occupational license, or one is out to refer this back to the staff and let them look at all these different options and see whether there's another way to narrow this down. I think the one thing we don't to do, I don't think we want to approve the hay contract. I mean, we can -- I don't know how this actually fits into the other section on the shallow portion, that's the part that bothers me is, is this going to require something that's a whole lot deeper than what we really plan on doing. I guess my thought would be that rather than publish and then republish, that maybe this is something that we might want to table till the next meeting to be sure what the consequences really are. But I'm open to any motion.

KENT CARTER: I move that motion.

LOUIS STURNS: I second it.

CHAIRMAN DYKE ROGERS: Motion to table this until our next meeting. Seconded. All in favor.

THE BOARD: Aye.

CHAIRMAN DYKE ROGERS: Why don't we take about a five-minute break.

MARK FENNER: Can we ask, are we going to table all the changes or -- is anyone concerned on the other issues?

If you take action on the other two items, in essence, we are moving forward with the rule review. And the concession contract, we would be at liberty to bring forward in the future, but it would -- not within the context of the rule review.

CHAIRMAN DYKE ROGERS: Do you have a recommendation for us here?

MARK FENNER: If you think that the concession contract is an issue that should be addressed, then I would prefer taking it all at one time. If you would prefer to move on and take it up or not, you know, go ahead and move on.

CHAIRMAN DYKE ROGERS: Why don't we leave it as table on the whole section, and we'll have time to discuss this.

Let's take about a five-minute break.

(Break.)

CHAIRMAN DYKE ROGERS: I think we resume now with proposal to -- Chapter 303, general provisions with Mr. Fenner.

B. Chapter 303, General Provisions

MARK FENNER: Commissioners, 303 was also under Government Code 2001.039 of the rule review. The first change that we're proposing is on page 209. What we're suggesting is that Section 211-D of the Racing Act provides its Commission tell about the rules that provides the public with a reasonable opportunity to speak on issues under this jurisdiction. This is one of the Sunset Commission's across the board recommendations. It was enacted -- a statute by the Sunset Review Commission. This is a good opportunity to address that issue before Sunset returns at their next by-in. So what we're proposing is to add the words "The public is invited to comment regarding any agenda item or any issue under the Jurisdiction of the Commission. Public comments may be limited to a reasonable number, frequency and length."

The next change is merely an edit, correcting a typo error. That's at the bottom of page 2 of 9 where we're inserting the word "to." It now says "attempting to enforce or administer the Act for Commission rules." There's another change in section 303.31, inserting the words "live" and "simulcast."
This is the same sort of issue we addressed -- suggested in 301 to broaden the -- clarify that the Commission does have the authority to regulate not only live but simulcast wagering.

The next change is on the next page, page 3 of 9. The Texas Arabian Breeder's Association has notified us that they've re-adopted their rules, but no substantive revisions. This change merely reflects the new date that -- their most currently adopted rule.

Finally, we are suggesting some changes to the x-chart, which is at the back of the materials on Tab 6.

These changes are, first of all, to include theft as a factor that would preclude someone from being licensed for any category. And then we are including "felony driving while intoxicated" as a factor that would preclude somebody who is trying to be licensed as an authorized agent, entry clerk, a tattooer, a tooth floater, or a veterinarian's assistant. The reason we selected these items is these are people who always have the authority to drive on the back side. So, therefore, felony DWI is relevant as to whether or not they should be licensed.

And one last change, we would like to delete the columns labeled "chart rider" and "cool-out."

It's not that we don't have these people on the back side, but they're already licensed under other categories. In fact, our computerized database no longer lists these as types of licenses. Those just kind of reflect the current status.

Those are the only changes that we're proposing for Chapter 303. I have not received any comment cards on this chapter. I'd be happy to answer any questions that you may have.

MICHAEL RUTHERFORD: What's the difference between a felony driving while intoxicated or a plain DWI; is there a difference?

MARK FENNER: Maybe I can defer that to Mr. Neely.

LOUIS STURNS: It's going to be -- a felony DWI you have to have three prior convictions. A third DWI makes it a felony as opposed to a first offense or second offense.

THOMAS NEELY: So this does restrict it to felony DWIs, which under the new penal code it does include some situations, such as having someone under the age of 15 in the vehicle at the same time, and that's a DWI, would also constitute as a felony.

CHAIRMAN DYKE ROGERS: Thank you.

Any comments on this, Commissioners?

KENT CARTER: I have a question. I read through this, and I heard you say a veterinarian's assistant, then I look over here and they have farrier's assistant.

MARK FENNER: Did I misspeak?

KENT CARTER: A farrier's assistant was not included, and I'm wondering what's the difference; are they not licensed to drive? On the first page of the chart, bottom corner, right-hand side.

MARK FENNER: Sure, we can do that.

CHAIRMAN DYKE ROGERS: Add the farrier's assistant to the felony DWI charge.

I would entertain a motion to publish Chapter 303 with the amendments described in the packets and the additional request by Dr. Carter to add the farrier's assistant to the DWI charge for publication in the Texas Register as a proposed rule.

JESSE ADAMS: So moved.

SONNY SOWELL: I second it.

CHAIRMAN DYKE ROGERS: Moved by Commissioner, seconded by Commissioner Sowell. All in favor.

THE BOARD: Aye.

CHAIRMAN DYKE ROGERS: The motion passes.

We are going to skip this next item and we will move to -- and the reason we're going to Skip this proposal by Sam Houston Race Park to change their race dates, we noted that the dates that they're asking to drop, the ones that are on the Christmas dates, are in their request for next year's race date suggestions, so they're -- that they're requesting, and next year they're asking to drop them to this year. And I think we probably will have a discussion about that in that process system as to why we're doing one and not the other. And I think we'll move to proceedings on racetracks.

MARK FENNER: Are you on Tab 7, proposal 303.42?

CHAIRMAN DYKE ROGERS: I'm sorry. I misread that. This is the proposal for 303.42.

Ms. McGovern.

Proposals

Proposal by Sam Houston Race Park to amend 303.42(d)

ANN McGOVERN: Good afternoon. My name is Ann McGovern representing Sam Houston Race Park. This rule addresses the recipient of charity, charity day funds. The change we propose applies to the racing animal portion of the rule. Currently the rule limits racing animal charities for those charities that are...
1 primarily for research equine organizations. We're requesting to expand the rules to include
welfare-oriented organizations. We're very concerned about what happens to animals after their racing careers are over. And this change would allow a racetrack the opportunity to consider adoption/rehabilitation programs as well as research programs when we decided our charity date allocations.

I'd be happy to answer any questions.

KENT CARTER: I have one. I noticed in the greyhound dates, that they have a mixture. Are you talking about replacing research dates or adding charity dates?

ANN McGOVERN: No. The proposal that we submitted would add the word "welfare" to the definition so that a track had the opportunity to either donate their funds to a welfare-oriented organization or a research organization.

KENT CARTER: At your discretion?

ANN McGOVERN: Well, it's always subject to the approval of the Executive Director, but, yes. If we found an adopt program or a rehabilitation program that we felt was worthy, we would like the opportunity to submit them for consideration.

KENT CARTER: Thank you.

CHAIRMAN DYKE ROGERS: Any other questions?

KENT CARTER: The Texas Equine Research Fund is not only for Texas A&M. That's a separate committee that seeks proposals statewide.

ANN McGOVERN: I'm sorry. I thought that's what I read in the bulletin. They are mentioned in the Act. I thought it was referring to them.

KENT CARTER: One of the agencies with the Texas A&M system governs it and coordinates it, but it's a statewide program. It's purposely set up that way. I think one of your questions was would this dilute the research dollars, I think the answer would have to be, yes, would it not.

ANN McGOVERN: I'm not sure "dilute" is the right word. Currently our charity days at Sam Houston Race Park generate 7- to $9,000. My understanding is that the breakage money that goes to the fund overseen by Texas A&M can be up to a million dollars in any given year. I don't know if that's accurate or not, but I've been told that there's a significant amount of money for breakage above what the charity days generate. So the $7,000 change benefitting horses that may end up being recipients of that research eventually -- I don't think that's going to make a huge difference.

KENT CARTER: I don't remember the budget being a million dollars recently.

ANN McGOVERN: That may have been a long time ago.

KENT CARTER: I think that's a little -- that might have been a hope one day, but unfortunately it hasn't made it.

SONNY SOWELL: Mr. Chairman, last year I believe it was 98,000.

ANN McGOVERN: It has gone down.

CHAIRMAN DYKE ROGERS: Well, it's in the neighborhood of a million.
ANN McGOVERN: I think it’s important to realize, though, that the issue of finding racing animals, not just horses but dogs, homes after their career is over is not just something for people who love horses. It’s something the industry has to address. It has become an issue that’s talked about nationally. There’s legislation now regarding the slaughter of horses. It’s something that not only do I personally feel strongly about, but I think it’s the right thing to do for the industry is to support organizations that help find homes for these animals and make them productive after their racing career is over. Michael Rutherford: I’d like to echo what Ms. McGovern is saying because it’s happening all over the country. The press is talking about it. The welfare is getting to be a very big issue for horses after their racing careers end. And I think it’s very important, and I’m glad to see that you all would be willing to do that.

ANN McGOVERN: Thank you. Any other questions?

CHAIRMAN DYKE ROGERS: Thank you.

Okay. I’d entertain a motion that we publish Rule 303.42 with the amendments as described and contained in our packets for publication in Texas.

Register as a proposed rule amendment.

LOUIS STURNS: So moved.

MICHAEL RUTHERFORD: I second it.

CHAIRMAN DYKE ROGERS: It’s been moved by Commissioner Sturns, seconded by Mr. Rutherford.

Any discussion?

All in favor?

THE BOARD: Aye.

CHAIRMAN DYKE ROGERS: Motion passes.

We will have consideration of and possible action on the request by Retama Partners Limited for approval of a change of ownership. Mr. Neely.

V. PROCEEDINGS ON RACETRACKS

A. Request by Retama Partners, Ltd., for Approval of a change in ownership

THOMAS NEELY: These changes are reflective of some situations where estates were disposed of, and these new persons are the ones that inherited the interest. Each one of them was checked through the Department of Public Safety, so each one of them is eligible to be interest owners within the racetrack.

CHAIRMAN DYKE ROGERS: Any questions for Mr. Neely?

A few comments about -- relative to Dallas City Limits. These are basically sort of housekeeping matters, but things that you need to know. We have completed the transaction of the purchase of Longhorn Downs, Inc. from the Austin Jockey Club subject to Commission approval, which we’ll be asking for at a future date, hopefully very soon. But the last payment was made back, I believe, on July the 31st to the Austin Jockey Club. So all money’s changed hands, the stock has changed hands, and we’ll be coming back to give you details and give you approval of that transaction in the very near future. Also I can tell you that Dallas City Limits is in good standing with the offices of both sectors, state and comptrollers. And we do not have any legal actions or litigation pending against us at this time.

I believe yesterday we furnished Charla Ann and your staff with an updated current ownership list which reflects ownership of Dallas Founders and Trinity Crossing which owns Dallas City Limits. We’ve been involved in some dealings, and there’s been talk of some movement of an ownership interest replacing possibly one partner, but those things have been laid to rest. We have the same ownership today that we had when
we furnished information to DPS some months ago. I believe, in fact, that they have done a very complete, a substantial amount of work on those background investigations, and we’ll be going to them also in the very near future to let them know that we’re ready to proceed with that process in bring to finality.

Basically we’ve been very methodical in the process. We’ve got a few members of our team here today that will make some brief remarks, will be talking a little bit about financing, a little bit about the site, and a little bit about some detailed issues, feasibility studies that we’re conducting. If you’ve got any questions of me, I can address those now, or if you’d like to listen to remarks about it by our other two guys, I can come back after they finish, and you can address questions to me at that time if you so desire.

CHAIRMAN DYKE ROGERS: Why don’t we hear from everybody, and then if we have questions, we’ll ask them then.

MIKE BURLESON: At this time I’d like to introduce Mr. Bill Beuck.

BILL BEUCK: Thank you. My name is Bill Beuck. I represent Dallas City Limits. My task in the company is primarily with development and development planning. What we wanted to do and what we presented in your packet that you have today is part of our process.

You’ve engaged a company called Economic Research Associates, which is really one of the nation’s best feasibility groups that involves entertainment engaging and other types of involvement feasibility research to help us with the determination and factors that we would need to bring to bear, and we’ll subsequently come back and present to the Commission.

The other thing that we’ve done is we’ve engaged on an exclusive basis the Henry S. Miller Companies to represent us in the financing of the project in which we’re involved as well as for all of the land acquisitions. We do have a very professional team working extensively on all the planning details, on logistic details and finance and land. I would like to introduce Mr. Vance Miller who is Chairman of the Board of Henry S. Miller Companies. Again, we’ve engaged them on an exclusive basis to represent us, and would like to present Mr. Vance Miller, Chairman of the Board.

VANCE MILLER: Good afternoon, Chairman and Commissioners. I’m Vance Miller, Chairman of Henry S. Miller. We’re a 92-year old real estate firm in Texas, in Austin and throughout the state.

I’ve presented to you two letters, one from our investment banking group, which is a very experienced and capable, successful investor banking team raising capital for entrepreneurs in real estate developments. That letter first says that -- "Well, Van told me," in this letter briefly. Their response has been enthusiastic from the capital sources for this project. So we expect to be a very competitive cost of capital, and very eager to place the funds. So we’re delighted to have this assignment of representing Mr. Barnett and his associates.

Secondly, there’s a letter to head of our land division, president of our land division, Ray Ogelly, and he has had site acquisition. He is one of the most experienced professionals in site acquisition in the state, and he has located three major sites, all of which meet the requirements that Mr. Barnett and Associates have outlined. And we think they will be warmly received in the locations that have been deemed eligible. So with that I would be glad to answer any questions from the Commissioners.

CHAIRMAN DYKE ROGERS: Do you have an anticipated timetable when you’ll actually will settle on a site?

VANCE MILLER: That’s Mr. Barnett’s call. He has hired the most professional research associates to do what works. In other words, he is a very, very creative person. And having his creativity checked with a professional who can really advise what works and what won’t work, he’s done that. And we’re very confident that -- what he’s putting together will be very well received, and it will be exciting for us. We’re very enthusiastic.

CHAIRMAN DYKE ROGERS: I think it will be, but my question really was: Do you have some time frame?

VANCE MILLER: Oh, the time frame, I would -- hopefully, we would go to the market before the end of this year with the research, Dallas, and all -- and the final design.

CHAIRMAN DYKE ROGERS: Okay.

MIKE BURLESON: Mr. Chairman, the feasibility study that the firm is completing for us is underway. It initially was a 90-day project. And we’re about -- I’m going to guess, three weeks into it. So what we anticipate and what we hope for is that we’ll be able to enter into some kind of a definitive agreement real estate acquisition around the first of October, maybe a little bit before.

CHAIRMAN DYKE ROGERS: Okay. Thank you.

Any other questions?

Thank you all for the update.
Is there any other business other than scheduling the next commission meeting? Okay, our next meeting actually is scheduled, so we just need to confirm this for the calendar. Friday, September 8th, 1:00 in the afternoon. That's a little different time schedule, 1:00 p.m. And where it will be, we'll spin the bottle and figure that out a little later. But that's when it will be.

Anything else, Commissioner? Okay. We stand adjourned.

(Proceedings adjourned at 12:44 p.m.)

STATE OF TEXAS     
COUNTY OF TRAVIS   

I, MARLENE ERIVES, Certified Shorthand Reporter, certify that the foregoing is a true and correct transcription of the proceedings held on August 10, 2006.
I further certify that I am neither related to nor employed by any of the parties in which this proceeding was taken.
I further certify that the transcription fee of $640.00 was paid/will be paid in full by Texas Racing Commission.

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