

1 BEFORE THE
2 TEXAS RACING COMMISSION
3 AUSTIN, TEXAS

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5
6 COMMISSION MEETING

7
8 DECEMBER 14, 2006

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Reported by: SHERRI SANTMAN FISHER

Job #9-60320

1 BE IT REMEMBERED that the above entitled matter
2 came on for hearing on the 14th day of December, 2006,
3 beginning at 10:35 A.M. at 2105 Kramer Lane, Austin,
4 Travis County, Texas, and the following proceedings
5 were reported by SHERRI SANTMAN FISHER, Certified
6 Shorthand Reporter for the State of Texas.

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APPEARANCES

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11 Commissioners: R. DYKE ROGERS
12 MICHAEL G. RUTHERFORD
13 JESSE R. ADAMS
14 TREVA J. BOYD
15 CHARLES L. "SONNY" SOWELL
16 ERNEST ANGELO, JR.
17 JIMMY ARCHER

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1 I don't think there is anyone.

2 Ms. King, do you have an administrative
3 announcement?

4 MS. KING: I didn't actually rehearse
5 this announcement, but it's something I'm fairly
6 pleased about that they told me that we were going to
7 do this morning. And I have mine here. Today we're
8 going to be passing out new rule books with the Texas
9 Racing Act and all the rules in a new format. And I
10 think the industry is probably interested in that,
11 too.

12 What I've found since I came is that the
13 format has been challenging to use because it's been so
14 small and it's been hard to evaluate and understand the
15 policy that we've set without getting to look at all of
16 the policy. And so we've been using the new rule books
17 at the office and so we're ready to distribute those to
18 the Commissioners so that you can have your copy and
19 then I believe that the industry is going to be getting
20 their copy shortly, too.

21 So we're hoping that it will -- yeah,
22 Gloria, if you'll go ahead and pass those out. We're
23 hoping that it improves our discussions of policy and
24 regulations and that as we're assessing what our policy
25 is and making changes to it that it will go more

1 smoothly.

2 CHAIRMAN ROGERS: Thank you.

3 We'll move to discussion, consideration,
4 and possible actions on the following matters: Budget
5 and finance update.

6 Ms. Curtsinger?

7 MS. HARRIS-CURTSINGER: Good morning,
8 Commissioners. You will see in your packet we are now
9 25 percent through the current fiscal 2007 year. The
10 agency's projections are holding true so far. One item
11 you may notice in the budget is that the expenditures
12 for the Texas-bred do not include November since that
13 is not complete until about the 20th of each month.

14 In addition to the usual budget update,
15 we have included the cash flow statement for the
16 current fiscal year. If you look at the projection
17 cash flow balance at the bottom of the page, you will
18 see the deficit balance projected for the end of the
19 month of June. This does not include or show the
20 carryover the agency must have to fund payroll in
21 September for fiscal year 2008 which is necessary since
22 the main revenue for the agency does not come until
23 October of each fiscal year.

24 Are there any questions?

25 Thank you.

1 CHAIRMAN ROGERS: Thank you.

2 Okay. Mr. Neely, a report on racetrack
3 inspections?

4 MR. NEELY: Good morning, Commissioners.
5 As you can see, we've had quite a few inspections over
6 the last period and we have a few that are still
7 outstanding. The Gulf issue relates to some tower
8 lighting and it's causing them some scheduling because
9 they have to have a high lift crane to get those lights
10 fixed. Also, at Valley we're waiting on a fire
11 inspection to be completed there. The pari-mutuel
12 issues at Sam Houston will be addressed with you all
13 shortly when we go over rule reviews.

14 CHAIRMAN ROGERS: Any questions,
15 Commissioners?

16 Thank you, Mr. Neely.

17 I think we're going to skip over the next
18 three items and go down to F. We'll take those up a
19 little later when we have a discussion from a couple of
20 the groups. We will move to the internal audit plan
21 for '07-'08.

22 Mr. Rufus?

23 MR. RUFUS: Good morning, Commissioners.
24 My name is Monday Rufus representing the firm of Monday
25 N. Rufus, PC. I'd like to introduce one of my

1 associates as well, Robert Gonzales, CPA.

2 As required by the Texas Internal
3 Auditing Act, Government Code 2102.008, we have
4 prepared the audit plan for fiscal year 2007 and 2008
5 for the Texas Racing Commission. As a result of the
6 risk assessment we did, we are recommending the
7 following audits for fiscal year 2007 and '08.

8 For '07, it will be the Texas-bred
9 incentive program, looking at three of the
10 associations, which is the Texas Thoroughbred
11 Association, the Texas Quarter Horse Association, and
12 the Texas Greyhound Association. We will be looking at
13 the distributions made to them and how they are
14 utilizing those funds.

15 For fiscal year 2008, we will be looking
16 at business continuity and disaster recovery within the
17 agency. We'll also be looking at selected performance
18 measures. And we will do a follow-up on an audit that
19 we did in 2005 related to inspection processes at the
20 agency.

21 We need your approval of the audits so
22 that we can begin internal audit activities for fiscal
23 year 2007 and 2008.

24 I'll be more than happy to answer any
25 questions you may have.

1 CHAIRMAN ROGERS: Mr. Rufus, what
2 determines what you decide to propose to audit each
3 year?

4 MR. RUFUS: Basically what we do is --
5 the risk assessment is what determines the audit that
6 we do. We obtain the LAR, the financial report, the
7 strategic plan for the agency, the operating budget for
8 the agency. We also sent a questionnaire to each
9 division head. We look at all the information that we
10 have available to us related to the agency. And based
11 on that, we came up with what we call areas of
12 interest. And that would be -- if you go to page seven
13 and eight of the audit plan, it will have the areas of
14 interest. That would be cash receipts, cash
15 disbursement, travel, all the way down to fixed asset
16 management.

17 And after determining the areas of
18 interest, we are able to use the criteria that you see
19 on page eight as well. The criteria include the
20 exposure level within each program or each unit, the
21 exposure level meaning if something happened within
22 that program or that unit, how would the public
23 perceive the Texas Racing Commission.

24 The next one is the complexity, which is
25 the complexity of the unit, of that particular program,

1 how complex it is. The more complex it is, the
2 likelihood of making a mistake is there. So we'll
3 assign a risk based on that.

4 We also look at the materiality, which is
5 the dollar amount that flows through that particular
6 program or the unit itself. The quality of controls.
7 We look at the controls that exist within the area of
8 interest.

9 Changes in systems and processes is
10 another one. We look at what the changes that have
11 been made within that particular unit or division or
12 even program. For example, if a highly tenured
13 employee has left a unit and a new person has come in,
14 we look at that because it would take them time to
15 really understand what goes on within that unit or the
16 program.

17 We also look at the result of the last
18 audit. If that area has been audited before by us,
19 what did we find, were there some significant issues
20 that we noted when we did that.

21 Then extent of other coverage or
22 controls. Does somebody else other than internal audit
23 division actually look at what a particular division or
24 program is doing. For example, is the comptroller's
25 office looking at that. Sometimes the comptroller's

1 because an area is classified as high risk does not
2 necessarily mean that that area is poorly run. It's
3 just when you add all the risk factors that we're
4 using, the eight factors we're using, it just came up
5 high.

6 So as a result of the risk assessment
7 I've shown on page 12 of the audit plan, that's why we
8 are recommending the audit of the Texas-bred incentive
9 program and the associations, three of the
10 associations. And these associations have received
11 over 95 percent of the total distributions that go
12 out.

13 CHAIRMAN ROGERS: Commissioner Boyd?

14 COMMISSIONER BOYD: Mr. Rufus, when
15 you -- when you come up with the rankings on page 12 --

16 MR. RUFUS: Yes.

17 COMMISSIONER BOYD: -- do you do that
18 strictly from your group or from input from our agency
19 as well?

20 MR. RUFUS: Well, as part of the risk
21 assessment, we send a questionnaire to each division
22 head within the agency.

23 COMMISSIONER BOYD: Then you compile it.

24 MR. RUFUS: And then we compile it based
25 on that.

1 COMMISSIONER SOWELL: Mr. Chairman?

2 CHAIRMAN ROGERS: Yes, Mr. Sowell.

3 COMMISSIONER SOWELL: Mr. Rufus, I'm
4 confused. And my lack of knowledge has been displayed
5 on a number of occasions and I'm fixing to do it
6 again.

7 I don't understand. It almost seems out
8 of place that the Texas-bred incentive program is
9 ranked highest of all the risk areas. Can you explain
10 that for me?

11 MR. RUFUS: Number one, you look at the
12 exposure level. If the associations didn't spend the
13 money the way they're supposed to and that information
14 gets to the public, how would the public perceive the
15 agency. That's one.

16 Two is complexity. That program is
17 complex in terms of making sure that the money is
18 distributed appropriately to the right organizations or
19 individuals. You're looking at the materiality, the
20 dollar amount that flows through that, over five
21 million dollars. That's over half of the money that is
22 appropriated to the Texas Racing Commission. That
23 alone is a high risk.

24 Quality of control. We know the controls
25 that exist within the Texas Racing Commission, but we

1 are not aware or we have limited understanding even
2 though the associations are being audited by outside
3 CPA's. The outside CPA's look at the financial
4 statement as a whole and they also determine
5 materiality. What we are doing is going out there to
6 measure that they have good controls in place that
7 pertain to the money that they are receiving from the
8 Texas Racing Commission.

9 Also changes in systems and processes.
10 The processes have not changed that much. They've
11 pretty much been the same in the past few years. The
12 last time it was audited -- that program has not been
13 audited outside the Texas Racing Commission, and that
14 is why for that risk factor it's a high risk.

15 The extent of other controls or
16 coverage. We understand that there is limited coverage
17 outside the Texas Racing Commission.

18 Also the normal audit interval. That
19 program has never been audited before by the internal
20 audit division.

21 So if you add all that together, that
22 would classify it as a high risk. High risk, again,
23 has nothing whatsoever to do with the people that run
24 the program. It has nothing to do with that. It's
25 just when you add all the factors, it's a 42; and that

1 was the reason that we are proposing that we do that
2 audit.

3 COMMISSIONER SOWELL: Thank you for your
4 explanation. With all due respect, I would think
5 that -- I would question the applicability of these
6 risk factors to that particular program. You know more
7 than I do, but my comment is simply that it doesn't
8 look -- it doesn't look to me like it ought to be in
9 that position.

10 CHAIRMAN ROGERS: Any other questions or
11 comments, Commissioners?

12 Commissioner Adams?

13 COMMISSIONER ADAMS: Yes, Mr. Chairman.
14 I don't see any dollars associated with this. Is this
15 not -- are we not also to consider what the cost of
16 this audit is?

17 CHAIRMAN ROGERS: I think the audit is in
18 the budget and is pretty much set on an annual basis
19 and we are required by law to do it.

20 COMMISSIONER ADAMS: So they have to work
21 within our budget? They have a given quantity of
22 money?

23 MS. KING: They do. Yes, sir, they do.

24 CHAIRMAN ROGERS: And then they determine
25 how much they can audit for that amount of money so

1 that the dollar amount -- and I think it's somewhere in
2 the 25,000 --

3 MS. KING: It's 20,000.

4 CHAIRMAN ROGERS: 20,000-dollar range per
5 year.

6 And the reason -- Commissioners, the
7 reason that we are in an audit program internally is
8 because we have a budget of more than 10 million
9 dollars. They count the incentive bred program as part
10 of our budget even though it's all flow-through money,
11 otherwise we would just be audited by the State.

12 Any other questions?

13 I would entertain a motion to approve the
14 internal audit plan for 2007 or '08 -- and '08.

15 COMMISSIONER BOYD: I move.

16 VICE-CHAIRMAN RUTHERFORD: Second.

17 CHAIRMAN ROGERS: Moved by Commissioner
18 Boyd, seconded by Commissioner Rutherford.

19 All in favor?

20 COMMISSIONERS: Aye.

21 CHAIRMAN ROGERS: All opposed?

22 Thank you, Mr. Monday -- I mean,
23 Mr. Rufus.

24 Okay. Ms. King, we're going to talk
25 about legislative proposals by the Texas Racing

1 Commission for the 80th Texas Legislature regular
2 session. And, Commissioners, that's under Tab No. 7.
3 And there's quite a lot of these, and would you like to
4 walk us through the thought process? And then would
5 you prefer that after each one of these we -- if we
6 have discussion, we discuss each one as we come along?

7 MS. KING: I think we should discuss it
8 as we go along. You can choose to adopt them
9 individually, one at a time, or to adopt it as a
10 package, whichever you prefer.

11 CHAIRMAN ROGERS: Let's see how the
12 discussion goes and then we'll see how the motion needs
13 to go.

14 MS. KING: All right. Very good. Under
15 Tab 7, let me characterize the package in two
16 categories. One category is minor modifications to the
17 statute that would not be considered substantive
18 changes to policy but are clarifications, updates, some
19 technical corrections to make sure that we're
20 maintaining the statute that matches the practices of
21 the industry. So we have -- most of them are in that
22 category.

23 Then we have a couple of another category
24 which are more budget and administrative changes. And
25 those came as a result of our LAR and some of our

1 financial issues that we're facing. So those are kind
2 of the two categories and I'll walk you through each
3 one of these changes and take your questions.

4 The first three changes, starting on 7-1,
5 was an effort to try to make more consistent language
6 that applies to horse racing to greyhound racing also,
7 for clarity's sake. For example, in the first one,
8 adjusting the definition of trainer to apply to
9 greyhounds in addition to racehorses.

10 Over on 7-2, the same instance with
11 handicapper so that this would apply to a horse or a
12 greyhound race because we have both of these happening
13 out at the track.

14 The third one, on 7-3, is an adjustment
15 to the definition of judge so that it reflects that the
16 definition of a steward meaning the racing official who
17 has general authority and supervision over the live
18 racing. And that's what happens now, but the statute
19 just didn't reflect it.

20 So those first three are some consistency
21 issues between horse and greyhound racing.

22 Over on --

23 CHAIRMAN ROGERS: There's not any comment
24 to that, is there? Okay.

25 MS. KING: On 7-4, this is -- addresses

1 the definition of executive secretary to be equal to an
2 executive director. We ran into some problems, in
3 State government lore, that people don't understand
4 what an executive secretary is. Sometimes I have
5 trouble getting my mail, explaining to people who I
6 am. And that's mostly in the area of State government
7 and the public sector. And so we thought if we put
8 this in the definition, then I could use both terms;
9 but when I'm working with the industry, they all know
10 executive secretary. So we thought that that would be
11 a good change, it would be efficient, and kind of
12 reduce some communication issues that we've had since
13 I've arrived.

14 The next change, on 7-5, this -- we
15 talked about this previously at the legislative
16 appropriations request part of our process where we
17 were needing to make a change to the statute to reduce
18 the number of judges and stewards that are employed by
19 us.

20 Remember, each of the three-member panel,
21 they're all employed by us now; but in order to submit
22 a budget of a 10 percent reduction, we had to propose
23 that we would return one of those three members to
24 association employment. And so that's what this change
25 does. And we've told the leadership that when we

1 know if anybody is planning to comment on it. I hadn't
2 heard that anybody was planning on it. But we talked
3 to them about that when we made the proposal and they
4 were amenable to it and they could see pluses to that.
5 And of course, what I anticipated was is that during
6 the legislative session it would probably get discussed
7 in a fair detail, remembering that the sunset process
8 made this all three, you know, back in the mid '90's
9 and some people will feel it was good public policy
10 then, why isn't it good public policy now. So when it
11 gets into committee and the bill is considered, people
12 will talk about the pros and cons of doing it.

13 We made the commitment to doing this
14 because it was a new -- it was the only option we had
15 in order to get the 10 percent reduction because that
16 is where a lot of our expenditure or expenses are in
17 this particular staff and so that was the only way we
18 could really make a 10 percent reduction.

19 CHAIRMAN ROGERS: Basically the
20 association pays for the regulation as it is, so this
21 is not particularly -- adjustments are made to reduce
22 those regulatory costs accordingly, so their fees
23 should go down somewhat commensurate with what these
24 costs are.

25 MS. KING: Ideally that would --

1 CHAIRMAN ROGERS: Ideally.

2 MS. KING: Ideally that would be the
3 case. I can't say that would be the case. But when
4 they're taking on those expenses for those individuals,
5 they have a different pay structure, they have
6 different benefits. It's not locked in like it is for
7 us.

8 CHAIRMAN ROGERS: Commissioner Boyd?

9 COMMISSIONER BOYD: And so in employing
10 two of three judges, two of three stewards, we have had
11 many discussions, I'm sure, about during a race the
12 arbitrary results factor of that race because one is
13 employed by the association and two by the Racing
14 Commission? I mean, we've run those traps and we're
15 confident about the outcome of those specific
16 situations?

17 MS. KING: Yes, we are. The important
18 thing to remember is that the presiding judge or
19 steward would be a Commission -- would be a Commission
20 employee. And in visiting with stewards and judges and
21 our director of racing, people believe that a good
22 steward and a good judge is a good steward or a good
23 judge regardless. And so that would be the standard
24 that we would be hoping for.

25 CHAIRMAN ROGERS: Commissioner Angelo?

1 MR. ANGELO: But you're not really
2 recommending this if the money could be restored.

3 MS. KING: Well, that's a very good
4 question. And I'm going to probably sit on the fence a
5 little bit with that because when we went -- we went in
6 good faith to the budget reduction process and we said
7 we would propose it and that we could see the arguments
8 on both sides and we would support it.

9 It puts us, as staff, in a difficult
10 position because we don't want to be, you know, turning
11 out our employees; and that's a difficult position for
12 us to be in. But when it gets into committee, people
13 will talk about the pros and cons of that. Some people
14 feel very strongly that you absolutely have to have all
15 three employed and then other people think, oh, not
16 such a big deal. And so we'll try to provide the
17 pluses and the minuses to that and see what the will of
18 the Legislature is. We'll see how long I can sit on
19 the fence.

20 CHAIRMAN ROGERS: In the end -- in the
21 end, though, either they appropriate the budget and
22 there is no choice -- or they may have a choice, but
23 they will -- if they don't give us the money to do it,
24 then they will pretty much have to pass it.

25 MS. KING: Right. And so we'll have to

1 keep a real close eye on this particular piece during
2 the process and the budget process to make sure that
3 they're consistent.

4 CHAIRMAN ROGERS: Any other comments on
5 that section?

6 VICE-CHAIRMAN RUTHERFORD: Yes. Some
7 states do it that way, don't they?

8 MS. KING: Yes, sir, they do. And when
9 Texas started, it was two association, one State.

10 VICE-CHAIRMAN RUTHERFORD: That's what I
11 thought it was when we started.

12 MS. KING: Yeah, it was. But we hadn't
13 tried this version, so we thought we'd give this a
14 whirl.

15 VICE-CHAIRMAN RUTHERFORD: So we have to
16 go one way or the other. We cannot say we may.

17 MS. KING: No. It's a decision that
18 needs to be made by the Legislature.

19 CHAIRMAN ROGERS: In the end, it's not
20 our decision. It's only our decision to propose.

21 MS. KING: Yeah.

22 CHAIRMAN ROGERS: Okay. Any other
23 comments on that?

24 Go ahead.

25 MS. KING: Okay. On 7-6, this change

1 relates to our drug testing program. The focus came
2 from the State auditor's office in their write-up of us
3 earlier this year. It addresses the difference in
4 greyhound drug testing versus horse drug testing.

5 The statute currently requires that in a
6 mandatory way that we do post-race testing, which is
7 much more challenging in the case of the greyhounds.
8 And so the practice that has evolved is that you do
9 both prerace and post-race specimen collection with the
10 greyhounds.

11 But the "shall" -- we got -- the State
12 auditor wasn't satisfied that we were doing enough or
13 requiring that post-race testing occur. So we think it
14 would be better that testing is required and then the
15 Commission determine prerace or post-race. We do
16 plenty of testing, and they acknowledged that. They
17 acknowledged there wasn't a problem with the testing
18 program, just that this requirement said you had to do
19 it post-race and it's just not always practical to do
20 that as reported by our Commission veterinarians.

21 CHAIRMAN ROGERS: Any comments?

22 Okay.

23 MS. KING: At 7-7, this is related to the
24 submission of our fingerprints to DPS, our fingerprint
25 cards to DPS. When they drafted the statute, they

1 asked that it be done the next day. That hasn't turned
2 out to be practical or necessary. What happens is it
3 occurs within 10 days and that seems to have been
4 satisfactory to everyone so we thought we should update
5 that so people didn't have an expectation that it came
6 the next day.

7 We're very proud of our fingerprinting
8 process. We don't get many returns at all. We've got
9 a really good way. So our staff is doing a very good
10 job in this area.

11 CHAIRMAN ROGERS: Is this one of our
12 performance measures? Is this under performance
13 measures?

14 MS. KING: I think it is. No. Jean is
15 shaking her head no.

16 Okay. This one, 7-8, and then we have
17 another one over on 7-11, is where we have some expired
18 date references in the statute that were instructional
19 provisions -- style provisions that were applying to
20 certain circumstances of either a racetrack or the way
21 that money was to be collected and paid out. You
22 remember how we had a loan in the beginning with the
23 Racing Commission and it had to be paid back to general
24 revenue. And that money has already been paid back.

25 There are a lot of requirements that were

1 date-sensitive at one time or another; and it's
2 customary to -- after they've expired, to have them
3 taken back out. And so as long as we saw these, we
4 thought we should recommend taking them out because
5 they are no longer usable. So that's the case on 7-8
6 and 7-11. On --

7 COMMISSIONER BOYD: Can I ask one
8 housekeeping kind of thing?

9 MS. KING: Sure.

10 COMMISSIONER BOYD: It's going to be
11 retyped from this page right here, right? This is not
12 going to -- because that A -- B becomes A, and C
13 becomes --

14 MS. KING: Absolutely. That's a good
15 clarification, Commissioner. I should have mentioned
16 at the beginning that all this draft language is really
17 a sample of the direction that we're going. We'll be
18 working directly with the Legislative Council to get
19 these items drafted. We've already been invited to do
20 so by the Speaker's office because we have budgetary
21 items. And so Leg Council will make sure, working with
22 Mark, that all of this stuff is appropriately drafted.
23 And that's a good thing for all of us.

24 COMMISSIONER BOYD: Because I noticed
25 there's some words kind of left out and misspelled in

1 some other places. So I just wanted to ask. Thank
2 you.

3 MS. KING: Sure.

4 On 7-9, we have the authorizing
5 background check fees for ownership transfers. There's
6 been a lot of activity in that area. This is of
7 special interest to DPS because they have expended
8 tremendous amounts of resources doing background checks
9 for which we do not collect -- you know, recover fees
10 to cover the costs. And we've been pretty active in
11 that area and so this is an item that we think should
12 be included to make sure that we can collect that
13 revenue.

14 COMMISSIONER BOYD: Now, does the DPS
15 come up with those fees? Is it based on time, research
16 time? Or --

17 MS. KING: I know that Sammy has been
18 working with DPS. He might want to comment on that.
19 That they have been talking about the costs and how
20 much it is and how that process would work.

21 So, Sammy, do you want to --

22 MR. JACKSON: The actual cost is the cost
23 that is given to us by DPS based on their actual
24 incurred costs, if I understood it correctly. I'm
25 seeing a nodded head, so --

1 COMMISSIONER BOYD: Okay. Thanks.

2 MS. KING: Okay. On 7-10, we have
3 reducing the restriction on employment -- our
4 employment prohibition to a one-year period. Right now
5 staff is prevented from going -- from being employed by
6 a racetrack association for a two-year period following
7 their leaving the Commission. That is a much stricter
8 guideline or requirement than the State government
9 employees usually abide by. For most State employees,
10 it's just one year.

11 And I know this has run by the
12 Legislature a couple of times. I don't think it's
13 gotten much attention. But one of the things I've
14 found since I've been here is that a two-year revolving
15 door prohibition is an obstacle to recruiting people so
16 that if we had our eye, for example, on a steward or a
17 judge or a person at the track who was working in the
18 industry, had lots of experience, was pursuing their
19 accreditation through the University of Arizona, they
20 would have to, if they came to work for us, make a
21 commitment not to go back to work for the racetrack for
22 two years.

23 That's a very long time. People will
24 contemplate one. Maybe they'll go off to a neighboring
25 state for a year or so and work doing some other

1 things, but then to wait two years to go back to work
2 for a track in Texas is a very long time. And so we're
3 proposing to include this and bring that to the
4 attention of the Legislature.

5 CHAIRMAN ROGERS: Comments?

6 MS. KING: I've already mentioned the
7 expired language on 7-11, which brings us to the last
8 portion of the discussion on our legislative change
9 proposals on 7-12; and this is addressing the agency's
10 method of finance. And I'm going to just introduce
11 this and then Sammy is going to talk about it.

12 I would comment first that the Commission
13 has an out-of-the-ordinary method of supporting the
14 revenue stream for supporting the activities at the
15 agency and I've listed out there for you to see that we
16 get our revenue from racetrack fees, occupational
17 license fees, uncashed tickets, and breakage. It comes
18 from all those four areas.

19 The out-of-the-ordinary portion is the
20 uncashed tickets and the breakage. Of course, the
21 outs, as it's referred to, we get the portion of that
22 money after the drug testing costs are paid for. The
23 breakage, we get 50 percent of the greyhound breakage,
24 which is also unusual.

25 The revenue from uncashed tickets and

1 from breakage is becoming too unreliable to be a source
2 of funding for the agency. The general decline in
3 wagering has affected that, of course; but the other
4 piece of that that's affected it and accelerated it is
5 the fact that there's been a lot of innovations in
6 betting technology and we have more self-serve machines
7 and fewer paper tickets and so people -- which is good
8 for the patron, you know, because then they're making
9 sure that they're getting all the money due to them.
10 But that means that the uncashed ticket revenue is in a
11 fairly strict or rapid -- more rapid decline than we
12 thought.

13 Sammy, did you want to add anything to
14 that?

15 MR. JACKSON: No.

16 MS. KING: Okay. So we've made a
17 recommendation on the statutory change which is for a
18 statutory change which would delete the provision
19 requiring the associations to pay the uncashed tickets
20 to the Commission and delete the provision that
21 allocates 50 percent of the greyhound breakage to the
22 Commission and then add some clarifying language to the
23 statute that's in its own section that talks about the
24 fee authority and collecting revenue to support our
25 regulatory effort.

1 Most statutes, particularly regulatory
2 statutes, say in them you shall set fees to recover
3 costs. And we just don't have that language quite so
4 plainly. The Legislature looked at it in the mid
5 '90's, but people were very committed to this other
6 form of financing so they didn't put the language in.
7 But it's time to do that and that's our
8 recommendation.

9 Sammy will pick it up here because this
10 leads into another issue about uncashed ticket revenue
11 and the expiration of tickets.

12 Sammy, do you want to cover that?

13 MR. JACKSON: Yes, ma'am.

14 Once you start discussing this, there's
15 two items that come into play that have to be discussed
16 along with that. And one is the expiration date of the
17 pari-mutuel ticket and the expiration date of the
18 pari-mutuel voucher.

19 The act both currently gives the
20 association the authority to use those sources to pay
21 for drug testing costs. One of the things that we've
22 had to do over the past couple of years is define a
23 mutuel year for when outs tickets would expire because
24 the act reads that the outs ticket expires 61 days from
25 the end of the meet.

1 And since the majority of outs revenue
2 now comes from simulcast racing, "meet" is a very fluid
3 term in terms of simulcasting; and this stuff was in
4 the act prior to simulcasts really taking over in
5 Texas. And we termed in our rules what we call a
6 mutuel outs year. And currently that runs from August
7 1st to July 31st and that year is predicated upon so
8 that that 61st day would come as close to the beginning
9 of the agency's fiscal year so that the cash flow hits
10 and it could be there to last us throughout the year.

11 And that's mainly because outs has made
12 up as much as almost 40 percent of our budget at one
13 time and I think now it's down to about 30. So it's a
14 huge cash payment all in one lump and we have to make
15 it last over that period of time.

16 So we're hoping that by doing this and
17 taking this out of our budget, it puts us in a better
18 position to deal with policy issues when it comes to
19 wagering public interest and what is in the best
20 interest of the wagering public.

21 And we've had several discussions about
22 this through our pari-mutuel advisory committee and as
23 well as patrons who file complaints with us every year
24 whenever that 61st day hits. They do not understand
25 why they were out at the track on Derby Day and they

1 showed back up on Breeders' Cup, five months later, and
2 they cannot cash their ticket. They just do not
3 understand that concept. And I have to agree with
4 them. I don't blame them.

5 So by taking this out of our budget
6 cycle, one of the things we think could be done is to
7 propose that the expiration date would be 365 days from
8 the date the ticket is purchased regardless. Money
9 would then go back to the tracks for their use in drug
10 testing costs and to them.

11 Also, we would also like to propose that
12 the pari-mutuel voucher have the same expiration date
13 period so that the customer has consistent information
14 there in front of them. It allows us to communicate
15 better with them.

16 CHAIRMAN ROGERS: Sammy, as I understand
17 it, though, unless this method of finance is approved,
18 this other would be disastrous for us, would it not?

19 MR. JACKSON: Yes, sir.

20 CHAIRMAN ROGERS: So if one -- if one is
21 approved, the other one could be; but if we don't drop
22 the outs from our budget, then we certainly wouldn't
23 want to have this other one approved.

24 MR. JACKSON: It would make it very
25 difficult.

1 MS. KING: They really work together as a
2 package. They're drafted together in the same
3 section.

4 CHAIRMAN ROGERS: So it's together, so it
5 would be -- we would wind up with either none or both.

6 MS. KING: Right.

7 CHAIRMAN ROGERS: We wouldn't wind up
8 with one, would be the plan.

9 MS. KING: Right. The provision that's
10 in the statute right now with the 61-day thing is
11 completely out of date. We don't do it. We've
12 invented this other way to do it. And that's the --
13 that really does need to be fixed because it doesn't
14 reflect current public policy.

15 VICE-CHAIRMAN RUTHERFORD: What do other
16 states do? What's the time?

17 MR. JACKSON: Many states have moved to a
18 date-of-purchase expiration, so many days after date of
19 purchase. 365 is very common. It's very common in the
20 states who are around us. I did pick up the phone and
21 call some of our brethren in other states and talked to
22 some people at ARCI.

23 CHAIRMAN ROGERS: Do other states
24 participate in financing their commissions with outs
25 and breakage or is this unique to Texas?

1 MR. JACKSON: I think Texas is unique in
2 the fact that it's a self-generated agency. Most
3 Racing Commissions that I'm aware of are appropriated
4 from the General Revenue Fund and the agency doesn't
5 look for revenue. You get your appropriation from the
6 General Revenue Fund and there's some taxing mechanism
7 that goes to the General Revenue Fund. And outs -- I
8 know whenever I worked in Louisiana, outs was a revenue
9 source to the General Revenue Fund, as was percentage
10 of handle, as was some other issues, breakage being --
11 I think half the breakage was as well. The other half
12 of the breakage was used for breeder supplement
13 programs.

14 So most of the agencies that I've talked
15 to through our years of experience here and one of --
16 and my experience outside of this state is that you're
17 just another State agency who's appropriated from the
18 General Revenue Fund and these issues of being
19 self-leveling and self-directed, they don't understand
20 that. That's a new concept to them.

21 MS. KING: I see John, our director of
22 racing, nodding his head.

23 MR. FERRARA: I just wanted to say that
24 while I was a steward in Louisiana, when you fined
25 someone, that money went to the general fund also. But

1 I'm pretty sure Sammy is right.

2 VICE-CHAIRMAN RUTHERFORD: I can't
3 imagine anybody waiting 365 days. Five minutes seems
4 like a long time to me.

5 CHAIRMAN ROGERS: I think I have one of
6 those tickets.

7 VICE-CHAIRMAN RUTHERFORD: Me, too.

8 CHAIRMAN ROGERS: Any other comments?

9 MS. KING: I'll just add one on the
10 365-day, which we've been sensitized to this issue by
11 the Legislature. There's a member of the Legislature
12 who had someone in their district who didn't get to
13 cash their ticket and so we've been in communication
14 with their office and they're very interested in the
15 change.

16 And so Sammy covered both the 7-13 and
17 7-14, so that concludes the recommended staff changes
18 for the legislative session.

19 CHAIRMAN ROGERS: I think it would be
20 appropriate, if anyone wants to comment on any of
21 these, to hear from the public out here. I would say
22 not so much if you support them; but if you have a
23 reason to think that we should not be going one of
24 these routes, I'd sure like to hear from you.

25 Okay. Commissioners, what's your

1 pleasure?

2 COMMISSIONER BOYD: Will we pass them all
3 at the same time -- will we make our motion including
4 all of them or are we going to --

5 CHAIRMAN ROGERS: Unless you would like
6 to leave one out.

7 COMMISSIONER BOYD: -- exclude 7-12 and
8 13 and 14, those that have to be --

9 CHAIRMAN ROGERS: Well, all of these
10 would require legislative changes and they're all
11 individual; so I guess the question would be for the
12 motion, in concept, do we believe that these will be
13 good changes for the agency to make as an agency bill.
14 Now, this isn't an industry bill. This isn't -- this
15 isn't do you, you know, want off-track betting or VLT's
16 or whatever. This is an agency bill that just goes to
17 help the agency.

18 MR. ANGELO: I move approval of the
19 package as presented.

20 COMMISSIONER ADAMS: Second.

21 CHAIRMAN ROGERS: A motion made by
22 Commissioner Angelo --

23 COMMISSIONER SOWELL: Comment.

24 CHAIRMAN ROGERS: -- seconded by
25 Commissioner Adams.

1 Questions or comments?

2 COMMISSIONER SOWELL: Yes. If we're
3 going to the Legislature with a series of
4 recommendations as we're talking about here, I think
5 it's important to know that the industry supports what
6 we're trying to do. And we've got a lot of bashful
7 people in this room today. They rarely ever speak
8 their minds. But what I'm saying is I think we want
9 them to do it now because we're going to need your help
10 to change anything. And in order to do that, I think
11 it would be great for us to have the support of the
12 industry or find out now if there's some flies on some
13 of these proposals proposed.

14 CHAIRMAN ROGERS: I had asked if anybody
15 wanted to speak against it.

16 COMMISSIONER SOWELL: I know you did. I
17 just want to be a little more forceful about it and
18 tell them, by golly, let's hear from you.

19 MS. KING: I can respond to that. I did
20 visit with an industry group, going through the
21 package, walked through it with them. It was the
22 method of finance that drew the most questions and
23 comments. And so there was some concern about it.
24 Though they seemed to understand, I think they might
25 have held back a little with me that day, too; so I'm

1 just not quite sure, Commissioner. But that was the
2 one that people had the most questions about.

3 COMMISSIONER SOWELL: If somebody would
4 like to say something, I think it's time to step
5 forward. Otherwise I think we should reflect, whatever
6 our vote is, that there was no objection to it at the
7 time of this hearing.

8 CHAIRMAN ROGERS: Okay. Does anybody --
9 Mr. Brown?

10 MR. BROWN: Bryan Brown with Retama
11 Park.

12 I think what Ms. King said was accurate,
13 but I do think all of us are going to need some time to
14 reflect on particularly the treatment of outs and how
15 that impacts us. And that also has to do with the fees
16 and how they're timed and whatever is changed. So I
17 think at this time there's no real objections; but
18 there's also a lot to study and I don't think anybody
19 is ready to come up and say we a hundred percent
20 support the treatment of outs, nor is anybody ready to
21 stand up and say we're against it.

22 It makes a lot of sense conceptually,
23 particularly the things that Mr. Jackson said. So
24 other than that, if you'll just give us some time to
25 the next meeting to do all our financial analysis of

1 how outs would work, I don't think any of us can really
2 say for certain that it's a perfect scenario but it
3 does make a lot of sense.

4 COMMISSIONER SOWELL: Good point.
5 Procedurally, would it be appropriate to -- whatever
6 action we take, to make it subject to hearing from the
7 industry at a later time or is it better to postpone
8 the vote?

9 CHAIRMAN ROGERS: The Legislature is
10 going to be meeting before we meet again, so I --

11 COMMISSIONER SOWELL: But not by much.

12 CHAIRMAN ROGERS: No. But I guess from
13 my perspective -- and we have a motion on the floor and
14 a second. But I guess from my perspective, I think we
15 should move forward; and if we see that there's a
16 glitch in the system or that there is opposition, then
17 we can always be relooking at that if we chose to.

18 MR. ANGELO: It can always be modified in
19 the legislative drafting process.

20 CHAIRMAN ROGERS: But at least we're -- I
21 think we're headed in the direction. There are going
22 to be questions about the outs. As Mr. Brown said,
23 there's going to be questions about, like with the
24 breakage on the greyhound tracks, who gets that money.
25 There's questions on the outs, is that track money, is

1 that horse money, is that -- you know, how is all that
2 going to work, how does it affect the ATB funds, and
3 some other things.

4 So I think there's going to be questions
5 and there will be things that have to be sorted out,
6 but I don't know that we can sort out all of the ifs.
7 Just conceptually the question is do we want to move
8 forward with this type of a program.

9 MR. BROWN: I think we'd be supportive of
10 that. At this time I don't see any reason not to move
11 forward with the programs.

12 CHAIRMAN ROGERS: We have a motion on the
13 floor and a second. All in favor say aye.

14 COMMISSIONERS: Aye.

15 CHAIRMAN ROGERS: All opposed?

16 Okay. We will get this drafted up and
17 move forward.

18 MS. KING: Thank you.

19 CHAIRMAN ROGERS: Okay. Proceedings on
20 rulemaking, consideration and possible actions on the
21 following: Rule reviews under Texas Government Code,
22 Section 2001.039, adoption of Chapter 303, general
23 provisions, with amendments.

24 Mr. Fenner?

25 MR. FENNER: Commissioners, this item was

1 addressed by the Commission at the August meeting. You
2 voted to publish this particular chapter in the Texas
3 Register for public comment. It was published in the
4 November 3rd edition as part of the agency's rule
5 review with the proposed amendments. The 30-day public
6 comment period has closed. We've received no comments
7 on this rule -- or this chapter and the proposals.

8 The changes that are addressed within the
9 proposal are, first of all, to clarify that the
10 Commission is welcoming public comment at Commission
11 meetings; second, that the Commission's regulatory
12 authority extends to both live and simulcast racing.
13 It modifies the rules to reflect the date of the most
14 current rules of the Texas Arabian Breeders
15 Association.

16 And then it amends the X chart following
17 the chapter that correlates the type of occupational
18 licenses with the types of criminal offenses that
19 relate to a person's ability or inability to gain that
20 license. In particular, it deletes the columns for the
21 obsolete occupational licenses for chart writer and
22 cool-out. The chart writers are right now licensed as
23 association staff and cool-outs are licensed as grooms
24 at horse racetracks and as kennel helpers at greyhound
25 tracks.

1 In addition, the changes now designate
2 the offense of theft as directly relating to the
3 occupational licenses for adoption program personnel,
4 announcers, association chaplains, and medical staff.
5 They also designate the offense of felony driving while
6 intoxicated as directly relating to the occupational
7 licenses for authorized agents, entry clerks,
8 farrier/plater/blacksmith's assistants, tatoosers, tooth
9 floaters, and veterinarian's assistants.

10 So at this time the staff is ready to
11 publish it for adoption in the Texas Register. If you
12 have any questions, I'll be happy to try and answer
13 them.

14 CHAIRMAN ROGERS: So we'd take a motion
15 to readopt Chapter 303 with amendments as published in
16 the Texas Register.

17 COMMISSIONER BOYD: So move.

18 COMMISSIONER SOWELL: Second.

19 CHAIRMAN ROGERS: Moved by Commissioner
20 Boyd, seconded by Commissioner Sowell.

21 All in favor?

22 COMMISSIONERS: Aye.

23 CHAIRMAN ROGERS: The motion passes.

24 A review of Chapter 301, definitions,
25 with proposed amendments.

1 Mr. Fenner, again, please.

2 MR. FENNER: Commissioners, Chapter 301
3 we discussed also at the August meeting. Some
4 controversy came up about the definition of concession
5 and I had some concerns arising from a particular
6 contract that was pending out there, but there is now a
7 request pending before the Attorney General's office
8 for an AG opinion on legality of that problem. And so
9 my concerns regarding the definition of concession have
10 been alleviated some.

11 At this point I wish I had taken
12 Commissioner Adams' suggestion that we move ahead at
13 that time without that definition, but we didn't. So
14 now we're proposing just the two original amendments,
15 that is, to rename an odds board to the more customary
16 term "tote board" and to redefine the race meeting to
17 clarify that it's regulating both live and simulcast
18 racing.

19 CHAIRMAN ROGERS: Any comments?

20 I would accept a motion to publish
21 Chapter 301 with amendments in the Texas Register.

22 COMMISSIONER SOWELL: So move.

23 COMMISSIONER ADAMS: Second.

24 CHAIRMAN ROGERS: Moved by Commissioner
25 Sowell, seconded by Commissioner Adams.

1 All in favor?

2 COMMISSIONERS: Aye.

3 CHAIRMAN ROGERS: The motion passes.

4 A report on medication and drug testing
5 group meeting.

6 Dr. Marsh? You're already up there.

7 MR. MARSH: Excuse me?

8 CHAIRMAN ROGERS: You just showed right
9 up.

10 MR. MARSH: Yes, sir.

11 On November 16th we had a meeting of the
12 drug and medication working group. Those present were
13 Commissioner Carter, Commissioner Rutherford, members
14 of the industry, various staff members, and some
15 practicing veterinarians.

16 Our primary focus of this meeting was to
17 allow a proposal of the addition of permissible levels
18 of two additional nonsteroidal antiinflammatory drugs.
19 Presently we do have a permissible level for
20 phenylbutazone, otherwise known as bute, which is five
21 micrograms per ml. The proposal would have included
22 two other drugs: One, Flunixin, commonly known as
23 Banamine, that level would have been 40 nanograms per
24 ml, and Ketoprofen, which would have been a level of 10
25 nanograms per ml.

1 We discussed it through various people
2 there who had a lot of opinions. I want to ensure that
3 you know now that all these levels fall within the
4 24-hour rule. This would not have allowed these drugs
5 to be given on race day. The levels are determined 24
6 hours out or longer.

7 The rule would have allowed one of the
8 three nonsteroidal antiinflammatories. They could
9 choose one. If another was present in the serum
10 sample, well, that would key a different penalty or
11 violation.

12 So we discussed the cost of the
13 additional testing and we discussed the penalties. The
14 penalties were higher because we have a proposal today
15 to increase the penalties even on phenylbutazone. But
16 at that time those penalties were unveiled.

17 The biggest penalty was with two
18 nonsteroidals in your sample. This is called
19 stacking. It's felt to potentiate the action of both
20 nonsteroidals that are there. So the penalties were
21 very severe.

22 After discussion with the group, the
23 penalties were pretty scary to most people and the
24 consensus of opinion was we want to stick with what we
25 have. So we did not include the two additional

1 nonsteroidal antiinflammatories in our Section 319
2 changes that you will consider.

3 The rest of the meeting was a
4 consideration of those revisions. There was really not
5 much comment on that. There was a comment about our
6 penalties or our vet list time for a horse that bleeds
7 through furosemide without having an incident of
8 exercise-induced pulmonary hemorrhage. Currently that
9 is 30 days. There was a discussion about that. That
10 is not in our proposed rule changes today. But there
11 was a discussion about it.

12 And at the end Commissioner Rutherford
13 brought up the polytrack, the new synthetic surface
14 that is being used across the country.

15 Yes, sir?

16 VICE-CHAIRMAN RUTHERFORD: We still -- if
17 you stack drugs, we still have penalties for them, for
18 stacking them.

19 MR. MARSH: Well, it would be the
20 penalties that are in place right now. It would be --
21 say you have a Flunixin positive. That's very severe.

22 MR. ANGELO: But the other two drugs are
23 banned at this time.

24 MR. MARSH: No levels are allowed.

25 VICE-CHAIRMAN RUTHERFORD: While you're

1 up there, I'd like to comment. First, our staff did a
2 great job. They had more information there than we
3 needed really or understood. But they did a wonderful
4 job.

5 And also, we had budget reasons that we
6 didn't -- it costs us about \$75,000 for testing for
7 expenses. We weren't going to add the two additional
8 inflammatory drugs. Plus, the RCI, the Racing
9 Commissioners International, is doing a
10 million-and-a-half-dollar study which is going to be --
11 what was it, a two- or three-year study. So I think we
12 were smart to wait on that.

13 I do think that the mood of the staff and
14 the mood of the -- everybody there, that we need to
15 modernize our penalties on bute and to bring them up to
16 modern standards, especially on the 10 milligrams or
17 higher. Wouldn't you agree, Doctor?

18 MR. MARSH: Yes, I agree.

19 VICE-CHAIRMAN RUTHERFORD: And the staff
20 here, we have -- on page 5-1 and 5-2 we have two
21 alternatives that we can use. My personal and strong
22 recommendation is that we use the RCI qualifications --
23 I mean, guidelines. They're on page 5-2. Especially
24 on the 10 milligrams or higher.

25 Texas has an unusually high percentage of

1 breakdowns and we receive a lot of bad press. When a
2 horse is hurting or sore, with the high doses of bute,
3 it makes him hide the pain; and even our State vet,
4 when a horse has had too much bute, when a horse goes
5 by, he can't tell. The few minutes he gets to view a
6 horse, if a horse has too much bute in him, he's not
7 going to show the pain. Would you not agree, Doctor?

8 MR. MARSH: I would agree that a mild
9 lameness we could not detect.

10 VICE-CHAIRMAN RUTHERFORD: And so he
11 cannot tell -- he cannot make a good decision on
12 whether the horse is sound to race.

13 Mr. Chairman, Commissioners, the RCI has
14 spent millions of dollars doing this study. They have
15 had field studies. They've had the best veterinarians
16 from all over the country. So I think we would be
17 foolish not to take these recommendations. So that's
18 really all I had to add.

19 COMMISSIONER BOYD: Mr. Chairman?

20 CHAIRMAN ROGERS: Yes.

21 COMMISSIONER BOYD: I agree. I thought
22 that the RCI proposal -- the first thing that struck me
23 was in the first RCI penalty for overages of 10 mcg or
24 higher, they have down here to examine the horse.

25 MR. MARSH: Yes.

1 COMMISSIONER BOYD: We left that out. I
2 think we're responsible for the animal, too, not just
3 the people that run it, run the horses. But I noticed
4 that was left out; and two, I got kind of concerned
5 because, you know, being on the vet's list. If the
6 horse is going through that, to me, that's a concern
7 for the animal. So I like the RCI version better than
8 ours.

9 VICE-CHAIRMAN RUTHERFORD: I can't really
10 imagine a trainer or an owner having over 10 cc's in
11 one year on one horse anyway. He's got to be crazy to
12 do that. It's never happened, has it?

13 MR. MARSH: I don't think so.

14 VICE-CHAIRMAN RUTHERFORD: No. But
15 anyway, but the message is there; and the message to
16 the betting public and the public, to me, is very
17 important.

18 MR. MARSH: I think we're ahead of
19 ourselves on this. This is John Ferrara's part of
20 doing this.

21 MR. FERRARA: Can we just jump to that?

22 MS. KING: Mr. Chairman?

23 CHAIRMAN ROGERS: Yes.

24 MS. KING: Recognize John so he can help
25 out.

1 MR. MARSH: Is there questions about my
2 report on the working group?

3 CHAIRMAN ROGERS: I think you just about
4 shut those off.

5 Mr. Ferrara?

6 MR. FERRARA: A lot was said that I want
7 to -- that I was going to say already, Commissioners.
8 But what I'd like to -- why we are bringing this up,
9 from January the 1st, 2000, to yesterday, we had 790
10 equine positives. Of those 790, 419 were bute
11 positives, which is 53 percent. In 2004, we had 102
12 equine positives, 62 bute, 61 percent; in 2005, 132
13 equine positives, 92 bute, 69 percent.

14 Our penalties are not working. So that
15 is why we need to go -- and if you look at the chart on
16 5-1 and 5-2, we're way off base. A second offense, 10
17 and over, by the RCI guidelines is a 1,000-dollar fine,
18 15 days, loss of purse, vet's list. Currently ours is
19 \$250. So like Mr. Rutherford said, we've got to get
20 closer to the modern times.

21 And the reason that there was one
22 proposal without the vet's list and without a fine to
23 the owner is because I could not find another
24 jurisdiction that has passed that yet, and I found out
25 yesterday afternoon about 4:30 that I was wrong.

1 Arkansas, one of our border states, has adopted the RCI
2 bute medication penalty guidelines.

3 COMMISSIONER BOYD: But good for us. You
4 know, good for us.

5 MR. FERRARA: So I could not argue why
6 not to accept theirs totally.

7 CHAIRMAN ROGERS: Is there a -- I guess
8 I'm a little bit confused. There are two of these in
9 here for consideration. Was one of these proposed by
10 the working group and the other is the RCI?

11 MR. FERRARA: Correct.

12 CHAIRMAN ROGERS: Okay. So --

13 MR. FERRARA: One was -- the one on 5-1
14 was my proposal. The one on 5-2 is the RCI proposal.

15 CHAIRMAN ROGERS: Okay. So you proposed
16 5-1, but you're now saying you really would prefer
17 5-2. Is that -- I'm a little confused.

18 MR. FERRARA: I have no problem with 5-2,
19 with the -- exactly the way the RCI guidelines is
20 proposed.

21 CHAIRMAN ROGERS: Dr. Marsh, do you have
22 an opinion here?

23 MR. MARSH: I think examining the horses
24 would be good. There's a reason they're on high levels
25 of bute. Putting them on the vet list for 45 days is

1 very severe. It will keep people from doing -- having
2 a second offense of a very high level. So I agree.

3 CHAIRMAN ROGERS: You know, the more -- I
4 know we belong to the RCI; and I think the more we move
5 toward a uniform drug policy across the nation, the
6 better off we all will be. So if there's -- if that's
7 your recommendation, I think we ought to be considering
8 it.

9 COMMISSIONER BOYD: Can I ask one more?

10 CHAIRMAN ROGERS: Yes.

11 COMMISSIONER BOYD: John, is this the
12 appropriate place to ask about that endoscopy or is
13 that further on?

14 MR. MARSH: Further on.

15 MR. FENNER: That is the next item.

16 COMMISSIONER BOYD: Okay. Thank you.

17 CHAIRMAN ROGERS: Okay. This is -- what
18 we're looking for here is to publish this in the
19 Register for the rule review? No, we're not?

20 MR. FENNER: No, sir.

21 VICE-CHAIRMAN RUTHERFORD: It's not a
22 rule.

23 MR. FENNER: It's not a rule.

24 Let me be clear on this. Under the
25 existing rules, the executive secretary has the

1 authority to promulgate a schedule for disciplinary
2 action for various types of medication violations; and
3 so this goes as part of the agency policy, but it's not
4 a formal Commission rule. It's posted for an
5 opportunity for the Commission to be aware of this
6 proposed substantial change in agency policy and for
7 you to be able to provide some guidance and feedback to
8 the executive secretary.

9 CHAIRMAN ROGERS: Okay. Commissioner
10 Rutherford?

11 VICE-CHAIRMAN RUTHERFORD: Also, I don't
12 think we mentioned that we're not -- the staff is not
13 just going to put this in. We're going to have a grace
14 period. You're not going to put it in in the middle of
15 a Thoroughbred meet or a Quarter Horse meet. Isn't
16 that correct?

17 MR. FERRARA: Correct. I talked to two
18 horse representatives yesterday, Tooter Jordan and
19 Terry Blanton; and I suggested March the 15th; and they
20 were fine with March the 15th.

21 VICE-CHAIRMAN RUTHERFORD: There would be
22 a grace period. And it's a recommendation, I think,
23 from the Commission to the staff.

24 MS. KING: That's right.

25 VICE-CHAIRMAN RUTHERFORD: I don't know

1 whether we vote on that or what, Mr. Chairman.

2 CHAIRMAN ROGERS: No. Just if you would
3 express your feelings one way or the other. If this is
4 just direction for the staff, let's please give it to
5 them.

6 Commissioner Rutherford, would you like
7 to put your opinion out there at one time officially?

8 VICE-CHAIRMAN RUTHERFORD: I'm for the
9 RCI rules, new penalty guidelines.

10 COMMISSIONER SOWELL: I agree.

11 COMMISSIONER ADAMS: I will yield to
12 Mike's knowledge of the situation, and I agree.

13 COMMISSIONER BOYD: For the horse, me,
14 too.

15 MR. ARCHER: I agree.

16 CHAIRMAN ROGERS: So we're unanimous.
17 We're pretty unanimous that the RCI guidelines should
18 be applied.

19 MS. KING: Okay. Thank you.

20 CHAIRMAN ROGERS: Thank you.

21 Okay. We will look at a review of
22 Chapter 319, veterinary practices and drug testing,
23 with proposed amendments.

24 Mr. Fenner?

25 It's under Tab 10.

1 MR. FENNER: Yes, sir.

2 Commissioners, this is -- Chapter 319 is
3 also up for rule review; and after the meetings with
4 the working group and the work we've done in-house, we
5 are proposing publishing this in the Texas Register for
6 rule review with the following amendments: First of
7 all, a change to 319.102 to clarify that once a horse
8 is placed on the veterinarian's list, if that horse is
9 subsequently examined in another racing jurisdiction by
10 that racing jurisdiction's Commission veterinarian and
11 he okays it that he can remove it on the vet's list --
12 from the vet's list and we will accept that in Texas as
13 an examination, as if it had been done by our own
14 Commission veterinarian.

15 COMMISSIONER BOYD: So in or out of
16 state, it doesn't matter.

17 MR. FENNER: Yes, ma'am.

18 We have a new section, 319.108, which
19 would regulate the use of extracorporeal shock wave
20 therapy and radial pulse wave therapy. For a
21 description of that, I think I'd have to defer to
22 Dr. Marsh. In fact, why don't you tell them what that
23 is, if you don't mind.

24 MR. MARSH: Sure. This is a therapeutic
25 treatment that's been developed probably within the

1 last 10 years where the pulse waves actually are put on
2 an injury. It stimulates healing, stimulates
3 circulation so the healing is speeded up. So far we
4 have had none of these machines on the track in Texas
5 until the Lone Star Park Quarter Horse meet, so we felt
6 the need to incorporate it in our rules at this time.

7 It's a very good treatment when used
8 judiciously. It's designed to be a series of
9 treatments, two to three weeks apart, until the lesion
10 is healed. The sticky part about this is after the
11 treatment you get a period of analgesia, anywhere from
12 two to 10 days; so these horses still have the problem
13 but they don't feel the pain. So that's why we felt it
14 necessary that treatments be reported and we put the
15 horse on the vet list and force it not to race.

16 CHAIRMAN ROGERS: I have a question about
17 this, just the -- not the procedure or whatever. But
18 to put in the rule that we're going to be consistent
19 with provisions of the Association of Racing
20 Commissioners International model rule, what happens if
21 they change that, I mean, if we put this into the rules
22 and they change their rule? Should we not just spell
23 out what that rule is, what it is that we're actually
24 asking to have approved so that we're not subject then
25 to their changing it?

1 MR. FENNER: Where you're seeing that
2 language is in my draft preamble that will be published
3 in the Texas Register which explains to the public what
4 the rule says, but the rule itself does spell out
5 exactly the terms of the therapy.

6 CHAIRMAN ROGERS: Thank you for the
7 clarification.

8 MS. KING: And that's something new that
9 Mark is adding to the rule proposal packages is to try
10 to do the preamble at the beginning. You all haven't
11 had that in your packages before. And it really helps,
12 I think.

13 COMMISSIONER BOYD: It does.

14 VICE-CHAIRMAN RUTHERFORD: Dr. Marsh, are
15 there any other states that allow you to do the shock
16 wave treatments on track?

17 MR. MARSH: Yes, there are states; and
18 there are some states that prohibit it from being on
19 the backside. But we need to address this because
20 there's nothing to keep them from driving out the gate
21 and going to a veterinary clinic and getting the same
22 thing done. At least we have some control of what
23 we're doing on our backside. So I feel that it's
24 necessary.

25 COMMISSIONER BOYD: So, Dr. Marsh, it

1 would be like comparing it to a football game where a
2 football player had a knee injury or something and
3 comes over to the bench and they shoot it up with
4 something so he doesn't feel the pain and he goes back
5 out and can really hurt himself?

6 MR. MARSH: Yes. Right. Most of this is
7 used on soft tissue injuries such as, you know, the
8 ligaments and tendons around the ankle or the flexor
9 tendons. It really speeds up healing there. But the
10 lesion is still there. So we have to give them time on
11 the shelf. I mean, the injury is diagnosed with
12 ultrasound. The lesion is -- we can say it's gone with
13 ultrasound. So everything in between, they get to
14 feeling better but they're not healed.

15 VICE-CHAIRMAN RUTHERFORD: Did
16 California -- didn't they outlaw this?

17 MR. MARSH: They did. They did outlaw
18 it.

19 CHAIRMAN ROGERS: Any other comments?

20 VICE-CHAIRMAN RUTHERFORD: Does the
21 RCI -- what are their comments on this?

22 MR. MARSH: I think it's very similar to
23 what we have, same wording, just in a different order.

24 VICE-CHAIRMAN RUTHERFORD: I'm like you.
25 They can go outside to another vet.

1 MR. MARSH: Sir?

2 VICE-CHAIRMAN RUTHERFORD: They can go
3 off the racetrack and go to another vet. So outlawing
4 it doesn't really mean they're not going to do it, so
5 I'd rather control it.

6 MR. MARSH: I know this will be something
7 difficult to control and it depends on the integrity of
8 the people that are dealing with it is what counts.

9 MR. FENNER: They would still be required
10 to report the treatment even if it took place off the
11 backside.

12 CHAIRMAN ROGERS: Any other comments?

13 Okay. We would entertain a motion to
14 publish Chapter 319 with amendments in the Texas
15 Register.

16 COMMISSIONER ADAMS: So move.

17 MS. KING: We've got a few more.

18 MR. FENNER: If we could, I think there
19 are some other changes that maybe we should walk
20 through, particularly the one about the furosemide
21 program.

22 CHAIRMAN ROGERS: Go ahead.

23 COMMISSIONER SOWELL: Do them all at
24 once, huh?

25 CHAIRMAN ROGERS: Go ahead.

1 MR. FENNER: Okay. The next changes will
2 be in 319.111. We've got five changes in this section;
3 and if you want to look at that, that would be on page
4 10-6 and 10-7 and 10-8.

5 First, we'll make a technical
6 correction. In 319.111(a)(1) we're going to insert the
7 word "occurs". That's a technical correction only.

8 We're creating a new 319.111(a)(2). This
9 is going to provide an opportunity for a trainer to
10 seek reconsideration if the Commission veterinarian
11 diagnoses that a horse has suffered from an EIPH or a
12 bleeding event. So to put it plainly, if the
13 Commission vet says the horse has had a bleeding event
14 and he needs to go on the vet's list for 12 or 30 days,
15 the trainer would have an opportunity to go get his own
16 veterinarian, have that horse brought to the Commission
17 vet, have the horse scoped by his own veterinarian, and
18 demonstrate to the Commission veterinarian that his
19 diagnosis was in error and that it should be modified
20 or corrected.

21 Third, we're going to propose some
22 changes to 319.111(e) to eliminate many of the barriers
23 to removing a horse from the furosemide program. These
24 changes will align those requirements for withdrawing
25 from the program to match the ones for entering the

1 program. Under the rules right now, you simply have to
2 declare that the horse will run on furosemide and
3 you're allowed to enter them that way; but we have
4 retained some previous requirements for withdrawing
5 them from that program that involves additional
6 paperwork; and so we would just kind of bring those
7 withdrawal requirements in line with entry
8 requirements.

9 There's a change for 111(f)(2) to correct
10 a typographical error.

11 And then finally a change to (g),
12 111(g). Now, this is not a change in substance. It's
13 just after reviewing (g) as it is written now, it is
14 difficult to understand; and when we looked at the
15 model rules, they achieved almost exactly the same
16 thing but in a much clearer fashion; so we used that
17 kind of as a guide for drafting purposes to set out
18 what are the consequences in terms of time on the vet's
19 list of having a bleeders -- a bleeding event,
20 particularly if it was a first, second, third, or
21 fourth bleeding event. So it's a correction or a
22 restatement of the substance but not a change to
23 policy.

24 The next changes that we're proposing are
25 on 319.202 which you will find on page 10-9. What

1 we're doing is inserting the words "or trainer". Right
2 now the rule says that if a veterinarian places a
3 greyhound on the veterinarian's list that he's supposed
4 to notify the owner. But the fact is many times the
5 owner is not there on a daily basis, that, in fact,
6 he's relegated or delegated that responsibility to the
7 trainer; so it will provide flexibility to the
8 veterinarian to notify either the owner or the
9 trainer.

10 The next page, there's a change to
11 319.203; and what we're trying to do here is
12 distinguish between the types of monitoring and
13 inspection efforts made by Commission veterinarians at
14 greyhound racetracks. Commission veterinarians monitor
15 the health and care of greyhounds on a daily basis and
16 focus their kennel inspections on the physical
17 infrastructure of the facility. So the proposed
18 changes kind of reflect the different natures of those
19 two activities, the daily monitoring versus the more
20 infrequent formal kennel inspections.

21 In addition, they're going to specify how
22 often kennels should be inspected. Year-round
23 greyhound tracks will be inspected semiannually; and
24 the seasonal tracks, where you have specifically
25 defined meets, will be inspected at the beginning of

1 each race meet.

2 And then finally we have a change to
3 319.204 which is on page 10-12. You'll see at the very
4 end of that there's a reference to in order for a
5 greyhound to enter a greyhound racetrack compound that
6 they have to have proof of the necessary vaccinations
7 and has a health certificate, entry permit, or
8 veterinarian inspection pursuant to the rules of the
9 Animal Health Commission. The Animal Health Commission
10 doesn't have rules relating to that, so we thought we
11 would delete that ineffective reference.

12 That's the summary of the proposed
13 changes.

14 CHAIRMAN ROGERS: Is there anybody that
15 would like to speak on any of this prior to hearing a
16 motion?

17 Okay. I would entertain a motion at this
18 point -- the motion we had a moment ago was a little
19 premature -- to publish Chapter 319 with the amendments
20 in the Texas Register for a rule review.

21 COMMISSIONER ADAMS: Move.

22 COMMISSIONER SOWELL: Second.

23 CHAIRMAN ROGERS: Moved by Commissioner
24 Adams and seconded by Commissioner Sowell.

25 COMMISSIONER BOYD: Discussion?

1 CHAIRMAN ROGERS: Discussion.

2 COMMISSIONER BOYD: Pardon me. I thought
3 I might have time to ask this question right after you
4 finished reviewing those and now I would like to ask
5 Dr. Marsh about that endoscopy.

6 Am I -- I'm informed that the Commission
7 vet does not do that. It has some risks involved in
8 doing that to shore up what our suspicions are, so we
9 rely upon the horse's vet to do that?

10 MR. MARSH: That is correct.

11 COMMISSIONER BOYD: Okay. And the risk
12 involved with that procedure for the animal?

13 MR. MARSH: Well, it's passing the
14 endoscope to the back of the throat and down the
15 trachea. Well, you have two choices.

16 COMMISSIONER BOYD: I just had it done,
17 so I know what the process is. I'm asking about the
18 risk.

19 MR. MARSH: You've got two choices, the
20 trachea or the esophagus. Actually the trachea is
21 easier to fall into than the esophagus. But having a
22 stiff tube in the back of the epiglottal area is a
23 risk. It's not a tremendous risk. The endoscopy is --
24 endoscope itself, \$1500 it will probably cost to get a
25 pretty good one. So there would be some expense.

1 It really works well. We've never turned
2 down a trainer that wanted to bring their horse back to
3 get scoped. If they think that the blood in the
4 nostrils is from the gate or from some other reason
5 that it got injured, we've never turned one down. So
6 this is basically just putting in the rule what we
7 already do.

8 COMMISSIONER BOYD: Okay. That makes me
9 feel better.

10 The only other -- I had just a comment.
11 I probably am concerned about going that many steps
12 before you get a lifetime ban. But that's just my
13 opinion anyway.

14 Thank you. Thank you. That was the only
15 question I had. Thank you.

16 CHAIRMAN ROGERS: We have a -- any other
17 discussion?

18 We have a motion on the floor and a
19 second. All in favor?

20 COMMISSIONERS: Aye.

21 CHAIRMAN ROGERS: All opposed?

22 The motion passes.

23 We have rule proposals, a proposal to
24 amend 309.8, the racetrack license fee, Tab 11.

25 Mr. Jackson?

1 MR. JACKSON: Good morning,
2 Commissioners.

3 309.8 requires the staff, at the end of
4 each fiscal year, to determine whether the total amount
5 of fees paid by all associations, together with the
6 revenues received by the Commission from all other
7 sources excluding occupational license fees, is
8 sufficient to pay the Commission's costs to administer
9 and enforce the act and provide racing officials for
10 the associations' live race meets.

11 We began that process after our outs
12 revenue came in on October -- around October 1st. The
13 final reports on the outs stuff cannot be performed
14 until the end of October when the final reimbursements
15 are made to the racetracks if any mistakes and stuff
16 were made. So our finalization of that process really
17 got kicking in about the second week in November.

18 The agency projections and stuff that we
19 had done all along and reported to the Commission
20 during that past fiscal year were there as far as our
21 revenue collections and our expenditures. And when we
22 got through with that process, we were projecting a
23 788,000-dollar shortfall for this current fiscal year
24 that we're in, just compared to revenue collected in
25 this fiscal year to our expenditures for this fiscal

1 year.

2 And I want to point out that our
3 expenditures are mostly based around our race date
4 calendars that had been approved with those requests
5 and stuff that had come in.

6 Getting with Shelley and the accounting
7 department about cash that we were able to move over
8 from '06 into the '07 fiscal year, we were able to move
9 \$400,000 in there. We always need about \$200,000 in
10 our bank account in September because our outs revenue
11 does not come in until October; and since we take that
12 outs revenue and prorate it out over a 12-month period
13 to cover the shortfall that we have every month for
14 what we do collect, that's how we make up our cash
15 disbursement each month. So that -- you know, the
16 400,000, pretty much we used, I think, a hundred and
17 forty, fifty thousand that first month just for the
18 shortfall of fees that we collected in September.

19 So we believe our projections are
20 accurate and true. Shelley pointed to them in our cash
21 flow analysis that she updated you on earlier at the
22 beginning of the meeting. The fee schedules that you
23 have brought before you today take into account -- I
24 faxed that information to you that we also provided to
25 the racetracks in our memo to them on November 23rd

1 about we're looking for \$450,000 in cash for this
2 fiscal year. That's because we carry cash over. We're
3 not looking for the full \$788,000.

4 I provided a schedule as far as the
5 breakdown between greyhound, horse tracks, and other
6 because we cannot, by this rule, include occupational
7 licensing fees in this analysis. It stands alone as
8 its own thing. And that's because there's reference in
9 the act about background, DPS fingerprinting, and those
10 kind of costs that are associated with that. So that
11 analysis has been provided. It breaks down where it
12 is.

13 I'm going to walk through what I've
14 provided as a staff recommendation as well as three
15 alternatives in this section that would recoup -- or
16 provide an additional \$450,000. That's the goal in
17 revenue for this fiscal year. And of course, then if
18 that stays into effect, then it would have an impact
19 over the next fiscal year as it goes along.

20 I want to point out, though, as I get
21 into this, is that we would be doing this same
22 procedure again for next fiscal year to review where
23 we're at based on what occurs during that year, if
24 there's changes in the race dates requests that are
25 going to adjust our expenditures downward if dates are

1 cut, upward if there's more, these types of things.

2 So even though we're looking for 450 now
3 and there is a cash projection of what that would do
4 for 12 months after that, starting September 1 of next
5 year, we would have to be going through this process
6 again and see if the fees had to be upped or lowered.

7 There were two approaches in looking at
8 these fee structures as to how we were going to
9 approach it; and before I get into the detail, I'm just
10 going to go right at it. One of them was our current
11 fee structure and how it works, and that is
12 appropriating costs per race day for live racing and
13 focusing on that and that's -- the staff-recommended
14 proposal does that.

15 The reason why we approach it that way is
16 because by linking it to the race day, it doesn't put
17 an undue cash burden, we believe, on the racetrack of
18 making a cash call all at once based on costs that are
19 associated over a period of time. That was really why
20 we proposed that one. Otherwise, it's much easier for
21 us to implement a cash call type fee structure with an
22 annual license fee that we know the cash is going to be
23 there on said date and we don't have to worry about it
24 thereafter.

25 With that said, I'll go ahead and walk

1 through the alternatives now.

2 The staff-recommended version, starting
3 on Tab 11-1, would establish or raise the greyhound
4 live performance fee from 550 a performance to 1100 and
5 raise the abbreviated performance fee, which is based
6 on an amount per race, from 45 to 90. It would also
7 raise the Class 1 horse track per-day fee from 2,075 to
8 2500. It would drop the Class 2 from 2,075 to 1,750,
9 raise a Class 3 from 650 to 1,000, and establish a
10 Class 4 at 750. It would also provide that if any of
11 those tracks race more than 13 races, there would be an
12 additional 200-dollar amount added to the fee per
13 race.

14 This proposal would also establish an
15 annual license fee for active racetracks. It would
16 establish greyhounds and Class 1 horse tracks at 25,000
17 per year, Class 2 racetracks at 15,000 per year, Class
18 3 horse racetracks at 5,000 per year, Class 4 at 2500
19 per year. It would make the fee due -- on these active
20 licenses due -- for this current fiscal year due on
21 April 16th and thereafter due on September 1st of each
22 fiscal year.

23 It would also raise the inactive fee
24 licenses. An inactive greyhound track license would go
25 from 25,000 to 125,000. A Class 1 horse track would go

1 from 25,000 to 125,000. A Class 2 horse track would go
2 from 20,000 to 75,000. A Class 3 would go from 3500 to
3 25,000. And a Class 4 would go from 1250 to 12,500.

4 That's a quick synopsis of the staff
5 recommendation.

6 Alternative Plan A basically looks at not
7 having an annual license fee per racetrack for an
8 active racetrack and just adjusting the per-day
9 amount. If we follow that approach on A, the live fee
10 on the greyhounds would go from 550 to 1250 per
11 performance and the per-race amount for abbreviated
12 would go from 45 to 100.

13 Live racing on a Class 1 horse track
14 would go from 2,075 to 2875. A Class 2 would go to --
15 excuse me. That was for a Class 1. A Class 2 would go
16 from 2,075 to 2250. And a Class 3 and 4 would go from
17 650 to 1625.

18 We'd raise the inactive license fees from
19 25,000 on a greyhound track to 125,000, from 25,000 to
20 125 on a Class 1 horse track, from 20,000 to 75,000 on
21 an inactive Class 2 horse track, from 3500 to 25,000 on
22 a Class 3, and from 1250 to 25,000 on a Class 4.

23 Alternative Plan B basically moves away
24 from changing the current day fee structures and just
25 tries to recoup this money in a onetime annual fee.

1 Basically it becomes almost a cash call equivalent due
2 one time.

3 Starting with B, we would create an
4 active license fee and it would be -- for this current
5 fiscal year, it would be due on April 16th, 2007.
6 Every year thereafter it would be due on September the
7 1st. That fee would be 115,000 per greyhound track,
8 27,500 for a Class 1 horse track, 15,000 for a Class 2
9 horse track, and 5,000 for a Class 3 or 4 horse track.

10 Beginning on September 1, those amounts
11 would be 175,000 for a greyhound track, 45,000 for a
12 Class 1 horse track, 15,000 for a Class 2 horse track,
13 and 5,000 for a Class 3 or 4 horse track. And that's
14 what it would be thereafter.

15 We would also change the inactive license
16 fees from 25,000 on a greyhound track to 125, from
17 25,000 on a Class 1 horse track to 125, from 20,000 on
18 a Class 2 horse track to 75,000, and from 3500 on a
19 Class 3 to 25,000 and from 1250 on a Class 4 to
20 25,000.

21 That's a synopsis of Plan B.

22 Alternative Plan C is one I believe the
23 industry has more interest in that we adopt. It
24 basically takes the same approach. The difference is
25 that it increases -- or changes the active date on the

1 inactive license fees to also kick in in April for 2007
2 which helps to reduce some of the costs for the active
3 tracks in this current fiscal year.

4 The other thing I believe the industry
5 would like to do is to change the amount that would be
6 due in the next fiscal year, instead of starting on
7 September 1st, to begin on January 31st. The staff has
8 no problem with that.

9 Going over those dollar amounts, the
10 active license fee for a greyhound track for fiscal
11 year '07 would be 30 -- excuse me, 80,000; for a Class
12 1 horse track, 27,500; for a Class 2 horse track,
13 15,000; for a Class 3 and 4 racetrack, 5,000.

14 The active license fee for every fiscal
15 year thereafter due on January 31st of that fiscal year
16 would be 175,000 for a greyhound racing association,
17 45,000 for a Class 1 horse race association, 15,000 for
18 a Class 2 racetrack, 5,000 for a Class 3 or 4
19 racetrack.

20 It would also change the inactive license
21 fees and make those due, for fiscal year '07, on April
22 16th of 2007, 125 for a greyhound track, 125 for a
23 Class 1 racetrack, 55,000 for a Class 2 racetrack, and
24 25,000 for a Class 3 or 4 racetrack.

25 The inactive license fees thereafter

1 would be 125 for a Class 1 horse racetrack, 125 for a
2 greyhound racetrack, 75,000 for a Class 2 horse
3 racetrack, 25,000 for a Class 3 or 4 racetrack.

4 In summary, all of these alternatives --
5 or all of these plans, the one we recommend or the
6 alternatives, achieve one goal. They give the agency
7 approximately \$450,000 in operating revenue in this
8 current fiscal year.

9 If I can answer any questions, I'd be
10 more than happy to do so.

11 Yes, ma'am.

12 COMMISSIONER BOYD: Let me ask a
13 clarifying question on 11-9. An active license fee
14 thereafter is due on September 1st?

15 MR. JACKSON: It's currently, in this
16 rule, drafted as September 1st. I believe the industry
17 would like for us to make that January 31st.

18 COMMISSIONER BOYD: That's what I thought
19 you said.

20 MR. JACKSON: Staff has no problem with
21 that.

22 MR. ANGELO: Mr. Chairman?

23 CHAIRMAN ROGERS: Yes.

24 MR. ANGELO: What percentage of the
25 shortfall is due to reduced revenue as opposed to

1 increased expense?

2 MR. JACKSON: Well, our outs revenue
3 decreased 15 percent this year. It dropped 300,000.
4 There was an additional decrease in breakage revenue of
5 about 15,000. The increase that the agency had in
6 expenditures from just new expenditures was 113,000.
7 That was the three percent State salary increase that
8 all State employees got. That's our only new
9 expenditure.

10 MR. ANGELO: So essentially it's due to
11 lost revenue.

12 MR. JACKSON: Yes, sir. We knew going
13 into this, based on the fee structure review that we
14 had done in the prior fiscal year and reported to the
15 Commission, that what we did at that time did not solve
16 our problems. And we had reported to the Commission at
17 that time and projected the shortfall to be 315,000,
18 possibly 360,000.

19 So all of our numbers that we have
20 projected are coming in right in line with what we have
21 said since May of '05 and actually before. You know,
22 we did not expect the outs revenue to fall 15 percent.
23 I'll be the first one to admit that.

24 MR. ANGELO: Do you think that that kind
25 of a decline is going to continue or is that something

1 that can be reversed?

2 MR. JACKSON: My gut is it's going to
3 continue. If it's that percentage, I'm not sure. One
4 of the main issues we're facing with outs revenue, as
5 we talked earlier today about the instability of
6 counting on it, is that there are some major changes
7 within the industry about the use of self-service
8 machines and paperless wagering.

9 Our racetracks are moving in that
10 direction because it allows them to cut costs through
11 the mutuel tellers. They don't have to have a mutuel
12 teller now that they pay a salary for, that they have
13 to pay employee benefits for, that they have to pay
14 health insurance for, et cetera, et cetera.

15 So our tracks, in trying to make cuts and
16 reduce costs at their establishment to keep the doors
17 open, are moving toward these types of technology; and
18 I believe a great deal of the change of that whole move
19 to that is the cause of just the doing away of outs.

20 I can't fault the racetracks for trying
21 to keep the doors open. We all want to do that. So --
22 but that is the nature of that as being a part of our
23 funding source, of having to accept and work within
24 those parameters.

25 CHAIRMAN ROGERS: The difficult thing

1 about all this is that while our revenue has fallen,
2 everybody's revenue in the whole industry has fallen.
3 So unfortunately, we are tasked with having to regulate
4 it regardless of what the revenue in the industry is.

5 And I think your question is a really
6 good question. There's just not much increase in our
7 costs and not many places we can cut it, but the
8 revenue has to continue and somebody has got to pay
9 it.

10 I think the industry is more supportive
11 of C; and in this particular case, if both things -- if
12 the recommended -- if the staff recommendation
13 originally or C both accomplish the same thing and the
14 industries who's paying the bill for it, I would like
15 for us to look at considering C.

16 And I think it would be good maybe to
17 hear from somebody from the industry at this point.

18 Bryan?

19 MR. BROWN: Mr. Chairman and
20 Commissioners, Bryan Brown with Retama Park.

21 I think Mr. Jackson did an excellent job
22 of summarizing where we are. I usually get up and say
23 something funny. I'm not going to do it because
24 there's nothing real funny about what's happening to
25 our industry and what's happening that has driven the

1 reduction in outs revenue, which to some extent is the
2 self-service machine but it's also a reduction in
3 wagering.

4 And so we're at a time where, as you
5 said, Mr. Chairman, we're having additional fees we
6 have to pay one way or the other -- you can't do
7 anything about it -- yet our revenues are dropping and
8 business is becoming tougher and tougher.

9 Plan A in particular -- I shouldn't say
10 Plan A. The original staff recommendation, the
11 industry felt, made racing live far more punitive than
12 it needed to be and gave a lot of tracks incentives to
13 go inactive, in effect, and become more profitable,
14 meaning losing less money, by not racing. And that's
15 not something, I don't think, any of us want.

16 We had some good conversations with
17 staff. Again, I really feel bad for staff having to
18 come with any kind of proposal because it's taking
19 money out of shallow pockets and, no matter how you
20 divide up the pie, it's not a lot of fun.

21 So Mr. Jackson has capsulized our
22 approach which has moved forward with Plan C. We would
23 like to be able to come back, if the industry is able
24 to reach an agreement on an alternative plan, say, 30
25 days from now or whenever the next Commission meeting

1 is. That may not happen. It may be that Plan C is the
2 best that anybody can come up with.

3 But the only other thing the industry
4 would like the Commission to look at is an equalization
5 of the inactive fees between the Class 1's and 2. It
6 just seems that that's fair. Class 1 and Class 2
7 requires about the same supervision as an inactive
8 license. There's really not much differentiation in
9 our opinions.

10 But other than that and changing the date
11 for the second fiscal year payment due from September
12 1st to January 31st would help us a lot. We are on
13 a -- all on a calendar-year basis whereas the
14 Commission is on the August 31 fiscal-year basis. So
15 that would help us out. We have not budgeted for much
16 in the way of fee increases. We just all did our
17 budgets a couple of months ago. But that would push
18 off some of the expense into the next fiscal year where
19 we can plan for it and budget for it.

20 But in general, this is just, I think,
21 symptomatic of what's going on in our industry. It's a
22 shame. Hopefully there's something down the road that
23 can be done. But for today, we've got to increase
24 fees; and there's not a good way to do it; but Plan C
25 seems to be the best for the industry.

1 CHAIRMAN ROGERS: Thank you.

2 If we -- I would just say that -- and I
3 think I can speak for the Commission to say that we are
4 always supportive of industry agreements; and since the
5 industry is paying this bill, if you came with a
6 proposal that you thought was more palatable to the
7 industry and still accomplish the goals that we have to
8 accomplish with the Commission, I think we would be
9 very open to that. One of the problems in this is,
10 though, a time constraint because we're kind of in the
11 year.

12 Mr. Fenner, if we --

13 MR. FENNER: Yes, sir.

14 CHAIRMAN ROGERS: If we say that we would
15 be open to them coming back with another proposal, what
16 kind of posting requirement would we have on that?
17 What kind of time problem could we have?

18 MR. FENNER: Well, I know that you and we
19 have discussed tentatively a January 31 meeting. Let's
20 use that perhaps as a starting point. If we met on
21 January 31 and if I can get this Draft C or Alternative
22 C to the Register by Monday noon, then we would be able
23 to take up the issue at a January 31 meeting.

24 If, for example, they came forward with
25 an alternative plan that you wanted to move forward

1 with, then we would have to consider whether or not it
2 would require a republishing. If it did require a
3 republishing, we could still make it happen and have it
4 adopted by March 26; but this is hitting every
5 cylinder, every earliest opportunity with the Register
6 possible, to make sure --

7 CHAIRMAN ROGERS: We wouldn't expect
8 anything else from you.

9 MR. FENNER: I will give it my best shot,
10 yes, sir. So it's doable. It's doable. And if a
11 change that they come to is not that substantial, we
12 might not have to republish at all.

13 CHAIRMAN ROGERS: So if I'm hearing you
14 correctly as a spokesman for the industry -- and I know
15 that several of you have caucused on this -- you would
16 prefer that we adopt C and that we would say from here
17 that if you come up with a solution that is more
18 palatable to the industry and acceptable to the
19 Commission, we would consider that at our next
20 meeting.

21 MR. BROWN: That's correct, with the
22 changes that we've noted.

23 CHAIRMAN ROGERS: With those changes.
24 Okay. Commissioners, questions or
25 comments?

1 COMMISSIONER SOWELL: A question of
2 Sammy. I'd like -- Sammy, what is the projected
3 revenue from inactive tracks under C or any of the
4 others for that matter?

5 MR. JACKSON: It raises it from 20,000
6 per track to 75,000. We only have two and they're 2
7 Class horses, so --

8 COMMISSIONER SOWELL: So you're talking
9 about \$150,000.

10 MR. JACKSON: 150,000, yes, sir.

11 COMMISSIONER SOWELL: What is the
12 likelihood or the probability, if anybody knows -- this
13 is a general question. At what point does the owner of
14 an inactive track say, "Hey, this is too rich for me.
15 I'm getting out of here," and just turns his license
16 back in?

17 MR. JACKSON: I think that would be on
18 how deep his pockets are.

19 COMMISSIONER SOWELL: Well, do we know --
20 Bryan, could you address that? What's the likelihood?

21 MR. BROWN: Yeah. I'll put together a
22 group to buy any inactive license right now. So I will
23 promise you there will be many that will step forward.

24 COMMISSIONER SOWELL: What you're saying
25 is that's not a likely happenstance.

1 MR. BROWN: I really would think no one
2 in their right mind would do it.

3 COMMISSIONER SOWELL: Obviously what I
4 was driving at is we don't want to get caught in a trap
5 of having supposedly increased our revenues to the
6 point that we have to and then all of a sudden have
7 that disappear.

8 MR. BROWN: I would see very little risk
9 in that in my opinion.

10 COMMISSIONER SOWELL: Thank you.

11 CHAIRMAN ROGERS: Well, and I think
12 there's two schools of thought there, too. And I
13 appreciate that comment. I think -- one is I think
14 it's not in our interest or in the State's interest or
15 in the industry's interest to have a whole lot of
16 inactive licenses floating around. But we are looking
17 at at least three more license possible applications
18 that we're going to be addressing in the next meeting
19 or two.

20 And so those numbers -- I don't know how
21 that works on Sammy's calculations. I don't know if
22 they become inactive the moment that they're -- that
23 they are approved, if they're approved. Are they
24 subject to this or are they an active license at that
25 point whether they have a track or not? Where really

1 does that fit?

2 COMMISSIONER SOWELL: That sounds like a
3 legal question to me.

4 MR. FENNER: It is a good question.

5 CHAIRMAN ROGERS: Do you know the answer
6 to that question?

7 MR. FENNER: I don't want to shoot from
8 the hip.

9 CHAIRMAN ROGERS: Okay. So that's
10 probably something we need to look at in this budget
11 and it might be something that -- I don't know if it
12 can be taken into consideration whenever you're looking
13 at the industry alternative.

14 MR. BROWN: Absolutely.

15 CHAIRMAN ROGERS: Maybe none will be
16 approved. Maybe all will be approved. Who knows how
17 that will come out.

18 COMMISSIONER BOYD: Mr. Chairman?

19 CHAIRMAN ROGERS: Yes.

20 COMMISSIONER BOYD: Does Mr. Brown --
21 does he speak for the industry as a whole or just the
22 horse side? Are the -- are we going to hear from
23 the -- I see somebody standing up there.

24 MR. BROWN: I do speak for the greyhound
25 tracks, I believe. Now, is that a hundred percent of

1 everybody? You know, I don't speak for a hundred
2 percent of everybody; but enough that we could get
3 together and caucus, yes, and it included greyhound
4 participants.

5 CHAIRMAN ROGERS: Thank you.

6 Does anyone else wish to address this
7 that might have a different view than this?

8 Then what is the proper motion here,
9 Mr. Fenner?

10 MR. FENNER: I think a good motion would
11 be to publish Alternative Plan C of Rule 309.8 in the
12 Texas Register for public comment.

13 CHAIRMAN ROGERS: Okay.

14 COMMISSIONER SOWELL: So move.

15 MR. FENNER: I'm sorry. Also with the
16 amendments discussed. And let me get those clear. The
17 amendments we're talking about is, for (c)(2), that
18 date reference, where it says "Active license fee for
19 State fiscal years beginning September 1, 2007, and
20 thereafter," is that where we're making that
21 amendment?

22 MR. JACKSON: Correct.

23 MR. FENNER: It will be January 31,
24 2008?

25 MR. JACKSON: Right. The fee is due to

1 the Commission on January 31st of that fiscal year.

2 MR. FENNER: No, that doesn't follow.

3 I'm sorry. We're going to have to --

4 MS. KING: I think it's January 31st,
5 2008. Is that what it would be?

6 CHAIRMAN ROGERS: I tell you what. I
7 think -- are we about ready to take this lunch break?
8 Because if we are, why don't we -- I think we're going
9 to take about 30 minutes here at this point and
10 reconvene back here at one o'clock. In the meantime,
11 why don't we get a motion together that will work.

12 COMMISSIONER SOWELL: Good idea.

13 CHAIRMAN ROGERS: We're in recess.

14 (Recess from 12:23 p.m. to 1:03 p.m.)

15 CHAIRMAN ROGERS: Okay. We're going to
16 come back into session here.

17 Mr. Fenner, do you have proper wording
18 for a motion for us that somebody might make?

19 MR. FENNER: Yes, sir. First of all, let
20 me -- let me describe the modification that we're
21 making. And that would be on the ninth line from the
22 bottom of page 11-9. Where it says "September 1st,"
23 we'll be striking that and --

24 COMMISSIONER SOWELL: You said the ninth
25 line from the bottom?

1 proposition -- or Alternative Plan C in what you're
2 giving us?

3 MR. FENNER: Yes, sir. What I described,
4 that modification, would be the change to Alternative
5 Plan C.

6 COMMISSIONER SOWELL: C is what you're
7 looking at right now, right?

8 MR. FENNER: Yes, sir. And so if you're
9 looking for a motion, I would suggest something along
10 the lines of -- or not something along, but exactly, a
11 motion to publish in the Texas Register for public
12 comment and possible adoption Alternative Plan C of
13 Section 309.8 as modified by description.

14 CHAIRMAN ROGERS: Anybody accept that
15 motion?

16 COMMISSIONER ADAMS: So move.

17 COMMISSIONER SOWELL: Second.

18 CHAIRMAN ROGERS: A motion made by
19 Commissioner Adams, seconded by Mr. Sowell.

20 All in favor?

21 COMMISSIONERS: Aye.

22 CHAIRMAN ROGERS: The motion passes.

23 I'd just like to say thank you to the
24 industry for -- I guess just for having to swallow this
25 the way that you are and trying to work with us in

1 trying to figure this out. So thank you.

2 Okay. A report on the pari-mutuel
3 advisory committee meeting.

4 Ms. Olewin?

5 MS. OLEWIN: Commissioners, I'm Carol
6 Olewin.

7 The pari-mutuel advisory committee
8 meeting convened on October 25th, 2006. Our working
9 group consisted of participants from the mutuel
10 departments from Corpus Christi Greyhound Park, Gulf
11 Greyhound, Lone Star Park, Retama Park, Sam Houston
12 Race Park, Valley Race Park, representatives from
13 AmTote, Scientific Games, United Tote, the State
14 comptroller's office, and members of the Commission.

15 The committee discussed three areas of
16 regulatory concern: Odds manipulation, wager
17 cancellations, and expiration of mutuel tickets.

18 On odds manipulation, the committee
19 reviewed the need for a rule addressing odds
20 manipulations to include the intentional manipulation
21 of odds and will-pays as a detrimental practice.
22 Although odds manipulation is a commonly used term, no
23 written definition currently exists.

24 Because the wagering public relies upon
25 the odds and will-pays as a handicapping tool, the

1 committee agreed that maintaining the integrity of
2 these publicly disseminated numbers will help to ensure
3 that the public will trust the accuracy of the pools.

4 The committee discussed the
5 interpretation of odds manipulation and explored who
6 would make those determinations. The racetracks were
7 concerned about patrons being expelled from the
8 racetrack without due cause or due process of law.

9 The committee agreed that to provide
10 continuity, our pari-mutuel auditors will review
11 canceled ticket reports, bring any suspicious activity
12 to the attention of the mutuel manager, and then report
13 the activity to the stewards or judges for further
14 disciplinary action.

15 A tote company representative suggested
16 that will-pays on daily doubles, exactas, and quinellas
17 were just as sensitive to manipulation as win pool
18 odds; and it was proposed to add will-pays to the rule
19 definition in addition to win pool odds.

20 The committee voted unanimously to submit
21 a draft odds manipulation rule, as discussed, to the
22 Texas Racing Commission.

23 Cancellation of wagers. Commission staff
24 proposed to clarify the cancellation of win wager rule
25 in regard to the cancellation of wagers on self-serve

1 wagering machines. Currently the rule is silent
2 regarding the cancellation of wagers on self-serve
3 machines; however, there's been a longstanding policy
4 of not allowing cancellations on these machines.

5 The Commission staff and Department of
6 Public Safety staff have concerns about the unmonitored
7 and/or unregulated cancellation of wagers on self-serve
8 machines and the potential impact for odds
9 manipulation.

10 The committee discussed in detail the
11 circumstances that led to the need for a rule in this
12 area. Without notification to the Commission, Sam
13 Houston Race Park began allowing cancellations on
14 self-serve wagering machines approximately two years
15 ago. Sam Houston implemented the change to provide
16 better customer service by more efficient use of
17 self-serve machines as racetracks are increasing the
18 use of self-serve wagering machines to lower the cost
19 of teller payroll.

20 At the time of the committee meeting, Sam
21 Houston and Valley Race Park were the only two
22 racetracks that allowed cancellation on the self-serve
23 machines. After the meeting, Gulf Greyhound Park began
24 allowing its self-serve wagering machines to cancel
25 wagers.

1 Although the other Texas tracks do not
2 allow self-serve cancellations, they are all in favor
3 of allowing this practice as the industry is moving to
4 an increasing number of self-serve machines in an
5 attempt to lower personnel costs.

6 The racetracks indicated that they could
7 regulate themselves, with State oversight, in regard to
8 the cancellation of wagers and detecting odds
9 manipulation. They reported they were doing a good job
10 since there's only been one recently reported
11 incident. And that particular incident took place in
12 August.

13 A licensed -- a licensee placed a series
14 of four 200-dollar win wagers on a horse beginning at
15 about 30 minutes to post. The initially -- this
16 initially caused the odds on that horse to drop to
17 one-to-nine and the odds on every other horse to rise.
18 At five minutes before post, the licensee went to a
19 manned teller window and canceled those four wagers.
20 This change caused the odds on the horse to drop from
21 seven-to-two to eight-to-one.

22 He then replaced those wagers with a
23 series of bets involving a different horse, one that he
24 owned. His horse began the day at odds of five-to-two
25 and was listed in the program as the race's favorite.

1 The general manager of the racetrack noticed the
2 dramatic fluctuations and began an investigation.

3 The teller identified the bettor to the
4 investigators; and as a result, both the agency and the
5 association were able to take action against the
6 licensee.

7 In the draft rule discussed by the
8 committee, the racetracks that wish to permit
9 cancellations on self-serve machines would be required
10 to provide a written plan to the executive secretary
11 for approval. The agency will require the plan to
12 address the procedures for detecting odds manipulation
13 on self-serve wagering machines and for identifying the
14 individuals responsible for the action.

15 At this time self-serve wagering machines
16 at Lone Star Park, Retama Park, and Corpus Christi
17 Greyhound Park are not programmed to allow cancels.
18 Software and hardware modifications will have to be
19 tested and implemented before cancellations are
20 enabled. The other racetracks currently have the
21 ability to cancel at self-serve wagering machines.

22 The committee voted unanimously to submit
23 the proposed changes of the cancellation of win wager
24 rule to the Commission.

25 Expiration dates. The committee

1 discussed draft language addressing mutuel tickets and
2 their expiration dates. This discussion focused on a
3 modification that would add the printing of the
4 expiration date on the face of the ticket.

5 There have been repeated incidents of
6 patron complaints regarding tickets that have expired
7 and the patron cannot claim their winnings. To help
8 clarify to the patron the expiration date of the wager,
9 the expiration date will be printed on the ticket.

10 All tote companies have the ability to
11 print this information on tickets. The racetracks will
12 have to sacrifice the line space which had previously
13 been used for advertising, promotional items, or patron
14 information.

15 The committee voted unanimously to submit
16 this rule to the Commission.

17 Do you have any questions regarding these
18 rules or the advisory committee?

19 CHAIRMAN ROGERS: It sounds to me like
20 good work. Thank you.

21 MS. OLEWIN: Thank you.

22 CHAIRMAN ROGERS: Okay. This is going to
23 require a number of motions, so we're going to handle
24 all of these separately.

25 We need a motion to publish Rule 321.2 in

1 the Texas Register for public comment.

2 MR. ANGELO: So move.

3 COMMISSIONER SOWELL: Second.

4 CHAIRMAN ROGERS: Okay. A motion to
5 amend Rule 321.29 -- or to publish the amended rule in
6 the Texas Register for public comment.

7 MR. FENNER: I think that you can combine
8 them at one time; but if you have a separate motion, I
9 think you have to --

10 COMMISSIONER ADAMS: Vote on each
11 separate.

12 MR. FENNER: Yes, sir.

13 CHAIRMAN ROGERS: Darn. These darn rules
14 just get in the way, don't they?

15 Well, I tell you what. Why don't we --

16 MR. ANGELO: Let me just withdraw the
17 motion and start over.

18 COMMISSIONER SOWELL: Withdraw the
19 second.

20 CHAIRMAN ROGERS: How about a motion to
21 publish the proposed Rule 321.2, 321.29, 321.33, and
22 321.43 in the Texas Register for public comment.

23 MR. ANGELO: Move that.

24 COMMISSIONER SOWELL: Second.

25 CHAIRMAN ROGERS: That has been moved and

1 seconded.

2 Any discussion?

3 Should we vote?

4 MR. FENNER: Yes, sir.

5 CHAIRMAN ROGERS: I call for a vote. All
6 in favor?

7 COMMISSIONERS: Aye.

8 CHAIRMAN ROGERS: All opposed?

9 The motion passes.

10 Okay. Proceedings on racetracks.

11 Discussion, consideration, and possible action on the
12 following matters: We have a request from Gulf
13 Greyhound to modify its 2007 live race dates.

14 Ms. Briggs?

15 MS. BRIGGS: Thank you. Sally Briggs,
16 Gulf Greyhound Park.

17 In 2006 at Gulf Greyhound Park, we had 16
18 kennels. We now have 15. One left, I believe, the
19 beginning of September, the middle of September. In
20 2007 we have -- we are going to have 14 kennels. We
21 have just received our last two kennel contracts, in
22 fact, a couple of weeks ago.

23 Of the 14 kennels that we have -- that we
24 will have, one only has 15 active dogs now, which he's
25 only been there a couple of months and we have given

1 him through 2006 to get his active list up. We have
2 another kennel that we're concerned about that we're
3 monitoring that only has 20 active kennels. So when we
4 learned -- I mean, 20 active greyhounds. I'm sorry.

5 So when we learned that we had one kennel
6 that was not going to renew that is one of the 15, that
7 we were only going to end up with 14, we knew that we
8 were not going to have enough greyhounds to run the
9 schedule that we are now running.

10 So we went back and looked at our budget
11 and looked at the performances that I can't say were
12 profitable because none of them are but the least
13 profitable ones happen to be Tuesday and Wednesday
14 evenings. So that's the ones that we are proposing
15 that we're going to need to cut.

16 However, we are going to run 13 races for
17 every performance. That would be Sunday, Wednesday
18 matinee, Thursday night, Friday night, Saturday
19 matinee, and Saturday night. We will run 13
20 performances -- I mean, 13 races instead of 12. We're
21 going to add two extra races to our Thursday, Friday,
22 and Saturday performance, Saturday evening
23 performances. And then we will continue to run our
24 twilight race with four races on Sunday after our
25 matinee.

1 Hopefully, if all of these kennels will
2 keep their list active, then this is what we will be
3 able to do in 2007.

4 CHAIRMAN ROGERS: I guess I'd like to ask
5 Mr. Jackson, how does this request affect what you just
6 gave us on what we're going to have to do finance-wise
7 in terms of how does that change the economics? Or do
8 you know?

9 MR. JACKSON: I do not know. This is
10 going to -- depending on what the outcome here today
11 is, we will have to go back and review all this.

12 CHAIRMAN ROGERS: Do you have an
13 in-general thought about whether it helps it, hurts
14 it? I'm not looking for -- just a general direction.

15 MR. JACKSON: In all candor, I really
16 don't. I, you know, think part of it is because, as
17 Sally knows, breakage will go down. I assume --

18 MS. BRIGGS: Oh, yeah. We're aware that
19 it will affect all of it. But if we don't have the
20 greyhounds to run, well, we can't run those
21 performances.

22 MR. JACKSON: The other thing that I'll
23 have to pull into this part of it is Dr. Marsh and John
24 Ferrara because they'll have to relook at their
25 schedules and determine what cost reductions will be

1 there, you know, how that works. So these two
2 gentlemen have to be brought in. They'll have to give
3 me updated schedules for those events. And then from
4 there, we'll start making calculations and those
5 things.

6 CHAIRMAN ROGERS: And you're proposing
7 wanting to start this the first of January?

8 MS. BRIGGS: Yes, sir.

9 CHAIRMAN ROGERS: Commissioners?

10 COMMISSIONER BOYD: Well, I will say that
11 I was quite concerned with Sally's letter right on the
12 heels of already approving a race date schedule. I was
13 very concerned that here we had a proposed change
14 already.

15 And in visiting with Sally, a light bulb
16 kind of went off in that conversation where I didn't --
17 I wasn't on the same page with you guys, Sally, before
18 because I didn't understand your budget process.
19 You're on a different schedule than our agency is.

20 MS. BRIGGS: Right.

21 COMMISSIONER BOYD: However, we all know
22 what -- I mean, we've been doing this a long time.

23 MS. BRIGGS: Right, exactly.

24 COMMISSIONER BOYD: We all know the
25 deadline rules. And if your corporate management are

1 putting you in that position -- I mean, I think I'm
2 speaking to the choir when I visit with you about --
3 that doesn't really change my opinion of us sticking by
4 what the rules specify for us.

5 MS. BRIGGS: Right.

6 COMMISSIONER BOYD: So the -- I'd like to
7 go on record, I guess, in saying to you to pass along
8 to corporate in my opinion, corporate management, that
9 they need to help you get your budget in so that when
10 we require race dates, you're right there with us, with
11 not going past then trying to determine how it fits
12 your budget. Race dates and budget all seem to -- they
13 need to go together.

14 But kennels, to me, Mr. Chair, is a
15 different issue. If they don't have the hounds, it's
16 when they find out that they don't have the hounds in
17 the kennels to match their schedules. I don't know --
18 Sally, you'll have to help me. If you were -- I know
19 in some -- on some of these tracks, you are in
20 conversation all the while with kennels.

21 MS. BRIGGS: All the time.

22 COMMISSIONER BOYD: Sometimes maybe you
23 may not know, where the association would know. And
24 Diane is standing back there, I see, ready to add some
25 information. But I think we need to get better about

1 putting all of our information in at the time that we
2 need to do -- have it.

3 MS. BRIGGS: Well, and another thing that
4 affects us is, as you all know, our schedule is due for
5 the next year to you all on July the 1st; and at that
6 time we're assuming that we're going to have all of our
7 kennels returning. Our kennel contracts run on a
8 calendar year, so we send those contracts out in
9 October and ask for them to be back in two weeks. And
10 that doesn't -- even that doesn't happen. We end up
11 calling a few of them because they haven't made up
12 their minds if they're going to come back or not. So
13 we don't know until sometime in December how many
14 kennels are going to return for the next year.

15 COMMISSIONER BOYD: Your kennel contracts
16 run on a calendar year because your budget runs on a
17 calendar year?

18 MS. BRIGGS: No.

19 COMMISSIONER BOYD: Why?

20 MS. BRIGGS: That's just always the way
21 it's been done.

22 Diane, you might be able to --

23 MS. WHITELEY: I think that's just the
24 way they do all over the country. It's just the
25 standard.

1 COMMISSIONER BOYD: Is it that way with
2 every greyhound track?

3 MS. WHITELEY: Pretty much.

4 COMMISSIONER BOYD: Is there any way we
5 can move to make that change?

6 MS. WHITELEY: We can always forge new
7 territory.

8 COMMISSIONER BOYD: Well, I, for one,
9 would like to see us make that change. You know, the
10 impact -- the negative impact on the agency, we have to
11 jump through hoops.

12 MS. BRIGGS: We realize that.

13 COMMISSIONER BOYD: Because as some
14 Commissioner just requested from Sammy Jackson, how
15 does that impact our agency. Well, they have to
16 provide those scenarios all the while for us so that we
17 can make intelligent decisions.

18 MS. BRIGGS: Right. And this was not a
19 decision that was made even in one day because it
20 affects our entire organization also. It affects a lot
21 of our employees. It affects our kennel people. We
22 have talked to the kennel people. And one of the
23 salvations is that there will be less kennels so you
24 will have a piece of pie that will be divided in a
25 lesser amount for each of them and where they would --

1 instead of being divided by 16 kennels, they'd be
2 divided by 14. So it kind of evens out with us not
3 having enough greyhounds to run those other two
4 performances.

5 COMMISSIONER BOYD: My concern with
6 kennels is a non-answerable question, I think. I don't
7 know that we can ever depend on what's going to move a
8 kennel out. I don't know that we can ever stand up
9 there and say, "We've got X amount of kennels that we
10 can depend on, so I'm proposing a race date schedule
11 likewise."

12 I think Mr. Triplett stood up there at
13 our last meeting and guaranteed a certain amount of
14 kennels. So he was, you know, pretty --

15 MS. BRIGGS: See, I don't know how you
16 can do that because, you know, you just don't know
17 until the end of the year whenever you get those kennel
18 contracts back. And Diane can probably address some of
19 that also.

20 COMMISSIONER BOYD: But again, we've been
21 at this for a very long time; and I think that my
22 concern with operating on information involving our
23 budgets, kennels fall right in there. I mean, we've
24 got to take our very best shot and make our decision
25 and go on down the road. And so I would really like to

1 see us not come back to the Commission after we've
2 already decided upon a race date schedule.

3 In this case, I understand what you're
4 saying about kennels; but I think -- I think you can
5 run those traps a little bit better in the future on
6 how much we have to have and doing some other things.
7 So I would suggest that we get together as a greyhound
8 industry and visit about those kinds of issues going
9 forward. And in this -- in this request, Mr. Chairman,
10 I probably would vote to recommend her change in the
11 schedule.

12 CHAIRMAN ROGERS: Okay. I guess I'd like
13 to just add a couple of words. I don't think we have a
14 choice but to recommend the change, but I would echo --
15 I don't think we ought to tell you when you do your
16 contracts and when you don't. You're going to do that
17 as a business decision however you want. But we have
18 always sort of just as a matter of course granted
19 greyhound race date changes just sort of almost without
20 discussion. But we've not closed days to do that.
21 It's been we drop a couple of performances here, we
22 drop a couple there.

23 I could see where this could
24 significantly affect our budget; and while I would
25 support doing this, I probably would look really

1 unfavorably on trying to do this on a regular basis.
2 And if you were to decide at some point that we were
3 more seasonal, where it might be a circuit or something
4 along those lines, where the budget can be better
5 balanced, that would be one thing; but to just drop
6 days when we have people who are there every day
7 anyway, I don't know that we're going to get a
8 commensurate cut in expenses. And everybody shares
9 those expenses of our agency whenever they fall.

10 So I just would say I understand what
11 your request is and I will vote to approve it
12 personally. But I hope we don't have a whole lot more
13 of these after we do the race dates.

14 MS. BRIGGS: We hope we don't either.
15 Diane, did you --

16 CHAIRMAN ROGERS: Mr. Adams?

17 COMMISSIONER ADAMS: Mr. Chairman, along
18 those same lines, maybe we need to consider some
19 reimbursement for changed dates after we've gone
20 through an exhaustive process to -- and we did this for
21 the greyhounds as well as horses. We went through
22 numerous meetings to try to come up with the ultimate
23 race date calendar for 2007. And if, in fact, changes
24 need to be made after that fact, there should be a
25 penalty for that in my opinion and we may need to have

1 some kind of a fee associated with changing race dates,
2 or at least look into that.

3 CHAIRMAN ROGERS: I think that's a good
4 suggestion to look into. I think the staff could take
5 that up, not in this instance. But I think we probably
6 ought to look at that in the future so that those dates
7 become a little more solid and tracks can set their
8 budgets accordingly and horsemen can make their plans
9 and the agency can make their plans.

10 COMMISSIONER ADAMS: And that there's
11 some incentive for doing it right the first time.

12 CHAIRMAN ROGERS: Okay.

13 COMMISSIONER BOYD: I would like to add
14 that -- and I know you know this. But when our staff
15 is having to rearrange all the numbers with every
16 change, it's time that it's taken to dedicate their
17 time to doing that and not other things. So I think
18 that's the point. And I know you have to do that as
19 well, Sally. You understand that. And I know that.

20 MS. BRIGGS: Yes, we do.

21 COMMISSIONER BOYD: But that's why I'm in
22 agreement with maybe proposing something of that in the
23 future. Thank you very much.

24 MS. BRIGGS: Diane?

25 MS. WHITELEY: Diane Whiteley with the

1 Texas Greyhound Association.

2 We really appreciated that race date
3 meeting. That was the first time since I started that
4 all the greyhound tracks sat in the same room. So that
5 was just a big step forward just to be in the same
6 room. And then we got the opportunity to talk about
7 some concerns that we all have, whether from an
8 owner/breeder perspective or a track operator's
9 perspective. So I view that as really, really positive
10 and I'd certainly like to see those things continue and
11 maybe even a little bit more frequently.

12 And in defense a little bit of our
13 industry, you know, we didn't quite know what to
14 expect. We don't have regular meetings like the
15 horsemen do on dates. And we don't share dates. So we
16 don't have the same kinds of problems. So if sometimes
17 we come in maybe a little bit behind the eight ball,
18 it's not intentional. Plus we're also dealing with a
19 totally different system with our kennel system.

20 What hurt us quite a bit this year is
21 Arkansas, quite frankly, because they passed their slot
22 machines and we lost a lot of greyhounds that went to
23 Arkansas. Our greyhounds are very mobile. They have
24 about a one-year life -- racing life. So if there's an
25 opportunity to make money somewhere else, they will

1 take that opportunity immediately. They don't wait 60
2 days or until the meet is over. They're on the next
3 truck out if they can get there.

4 Part of it is our old kennel system to
5 where in other states -- not Texas, to its credit. In
6 other states kennels are very reluctant to let the
7 tracks know what they're thinking because they get
8 their kennel -- they get their papers handed to them
9 and told to leave. So there has been historically a
10 very bad communication between the track owners and the
11 track operators -- or the kennel owners and the track
12 operators.

13 I think it's getting better. I think
14 they realize now that the tracks are willing to work
15 with these kennels, they're not going to dismiss them
16 because they need some more assurances. But we're
17 fighting 30, 40 years of that system.

18 I know some of the kennel owners that
19 called me earlier this year and said what do we think
20 about legislation because they weren't sure whether or
21 not to sign their contracts. They're losing \$20,000 a
22 month in their kennels. How long can they hang on? So
23 to their credit, the majority of them hung on because
24 of their loyalty to the track, to Gulf Greyhound, and I
25 view that as a real credit to Gulf.

1 industry viable; and if we need to make some changes,
2 we're open to discussing any changes.

3 COMMISSIONER BOYD: And, Mr. Chairman, I
4 would like to suggest that because our greyhound
5 industry is so different from the horse side that we
6 schedule some regular opportunities for these groups to
7 come together with staff and the Commission so that we
8 can brainstorm and at least air concerns and problems
9 so that we can get more in tune with your situation.

10 MS. WHITELEY: Right.

11 COMMISSIONER BOYD: I know that we have
12 named a greyhound representative on the Commission and
13 it's a foreign subject to some of us, so we -- I
14 learned a whole lot from those meeting -- from that one
15 meeting and could use several more. So I think it's a
16 good thing if we plan those out on a regular basis to
17 give us the opportunity to come together as a group.

18 MS. WHITELEY: And we can do that just as
19 an industry, too, and report back to the Commission.
20 We don't have to wait on the Commission to do those
21 kinds of things.

22 COMMISSIONER BOYD: It makes it easier,
23 when you have the tough issues, when you're thrown
24 together more often, I think, too.

25 MS. WHITELEY: Absolutely.

1 Thank you.

2 CHAIRMAN ROGERS: Thank you,
3 Ms. Whiteley. We are going to need a card from you, if
4 you don't mind, too.

5 Okay. Any other discussion?

6 I would entertain a motion to modify Gulf
7 Greyhound Race Park's 2007 live racing schedule as
8 requested.

9 COMMISSIONER BOYD: So move.

10 COMMISSIONER SOWELL: So move.

11 CHAIRMAN ROGERS: Okay. A motion made by
12 Commissioner Boyd, seconded by Commissioner Sowell.

13 All in favor?

14 COMMISSIONERS: Aye.

15 CHAIRMAN ROGERS: The motion passed.

16 We have a request by Sam Houston Race
17 Park and Valley Race Park for approval of an amendment
18 to its totalisator contract with Scientific Games.

19 Mr. Fenner?

20 MR. FENNER: Commissioners, we have
21 received a request for, I believe, what is a very minor
22 amendment to the tote contract between SGI and Sam
23 Houston Race Park. It involves the relocation of their
24 server. We are comfortable that we can inspect that
25 facility and we are recommending that the Commission

1 approve that change.

2 CHAIRMAN ROGERS: I would entertain a
3 motion to that effect.

4 MR. ANGELO: So move.

5 COMMISSIONER SOWELL: Second.

6 CHAIRMAN ROGERS: A motion made and
7 seconded.

8 All in favor?

9 COMMISSIONERS: Aye.

10 CHAIRMAN ROGERS: The motion passes.

11 Any other business to come before the
12 Commission other than setting a date for the next
13 meeting?

14 Okay. We need to schedule a meeting.
15 I've got two dates to propose, only two that I know
16 of. So one would be January 31st, which is a
17 Wednesday. The other would be February 2nd, which is a
18 Friday.

19 MR. ANGELO: Wednesday would be much
20 better for me.

21 CHAIRMAN ROGERS: Will the 31st work?
22 Okay. January 31st, we're on then.

23 Any other business?

24 We're adjourned. Thank you.

25 (Proceedings concluded at 1:34 p.m.)

1 STATE OF TEXAS)

2 COUNTY OF TRAVIS)

3

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

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

14 GIVEN UNDER MY OFFICIAL HAND OF OFFICE at Austin,
15 Texas, this 20th day of December, 2006.

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