



APPEARANCES

Commissioners:        ROBERT SCHMIDT  
                             RONALD F. EDERER  
                             MIKE MARTIN  
                             GLORIA HICKS  
                             GARY P. ABER  
                             JOHN T. STEEN, III  
                             VICTORIA NORTH  
                             A. CYNTHIA LEON

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1 CHAIRMAN SCHMIDT: Good morning.  
2 Welcome. It's 10:31 and I'd call the June 9th meeting  
3 of the Texas Racing Commission to order.

4 Ms. Welch, will you please call the roll  
5 call?

6 MS. WELCH: I will.

7 Chairman Robert Schmidt?

8 CHAIRMAN SCHMIDT: Here, please.

9 MS. WELCH: Commissioner Ron Ederer?

10 VICE-CHAIRMAN EDERER: Here.

11 MS. WELCH: Commissioner Gloria Hicks?

12 COMMISSIONER HICKS: Present.

13 MS. WELCH: Commissioner Michael Martin?

14 COMMISSIONER MARTIN: Here.

15 MS. WELCH: Commissioner Vicki Weinberg?

16 Commissioner Gary Aber?

17 COMMISSIONER ABER: Here.

18 MS. WELCH: Commissioner John Steen?

19 COMMISSIONER STEEN: Here.

20 MS. WELCH: Commissioner Cynthia Leon?

21 MS. LEON: Here.

22 MS. WELCH: Commissioner Victoria North?

23 MS. NORTH: Here.

24 CHAIRMAN SCHMIDT: Do we have a quorum?

25 MS. WELCH: Yes, we do.

1 CHAIRMAN SCHMIDT: Devon, any cards for  
2 public comment?

3 MS. BIJANSKY: No, sir.

4 CHAIRMAN SCHMIDT: Okay. The first item  
5 of business is the recognition of Dr. Ken Quirk, our  
6 chief veterinarian, who retired in May.

7 Do any Commissioners have any comments?

8 COMMISSIONER HICKS: I do.

9 CHAIRMAN SCHMIDT: Commissioner Hicks?

10 COMMISSIONER HICKS: I would just like to  
11 thank Dr. Quirk for the absolutely amazing job he did  
12 the years that I have known him. And I felt just very  
13 privileged to work in a lot of the different  
14 conferences we had and the different meetings. And he  
15 was so there for the animals and for the horses and the  
16 dogs and so on top of your game.

17 And thank you so much for the time and  
18 the energy that you gave. You'll be very difficult to  
19 replace if -- I don't think we can. But we really  
20 appreciate what you gave to the Racing Commission.  
21 Thank you.

22 MR. QUIRK: Thank you.

23 COMMISSIONER MARTIN: And I second that.  
24 He -- when I came on the Commission, he did a great job  
25 of teaching me the ropes and letting me kind of know

1 how things went and went above and beyond on everything  
2 he did. And I really appreciate it, Dr. Quirk.

3 CHAIRMAN SCHMIDT: Commissioner Aber,  
4 Dr. Aber?

5 COMMISSIONER ABER: I just want to say  
6 how classy he is and how he handles everything real  
7 well and he does everything with class. It's a very  
8 difficult job when you deal with these medications and  
9 such as that on the track and all the rules and  
10 regulations and have all these people that can get mad  
11 at you. He does a tremendous job. And, you know, one  
12 of the most important things to me is somebody to tell  
13 you you did a good job and you worked hard. And I say  
14 good job.

15 COMMISSIONER MARTIN: Good job.

16 VICE-CHAIRMAN EDERER: Dr. Quirk, thank  
17 you. You're the best. We appreciate your help.

18 MR. QUIRK: Thank you. It's very kind of  
19 all of you.

20 VICE-CHAIRMAN EDERER: It's been  
21 terrific. And good fishing for you.

22 MR. QUIRK: Thanks for that as well.

23 CHAIRMAN SCHMIDT: Now, Dr. Quirk,  
24 unfortunately, you have to come up and we have to take  
25 a photograph.

1           And most of our thunder has already been  
2 stolen. Doctor of veterinary medicine, Thoroughbred  
3 owner, consultant, and breeder, and most recently chief  
4 veterinarian for the Texas Racing Commission.  
5 Congratulations on a job well done.

6           He joined us in 2009. He brought  
7 extensive experience to the Racing Commission from the  
8 private side, worked well with our staff vets, really  
9 helped us implement what I consider a state-of-the-art  
10 drug testing program.

11           But I think, more importantly, as was  
12 discussed by the other Commissioners, he really  
13 provided us -- he educated the Commissioners. The drug  
14 testing world is constantly changing. He provided us  
15 with insight and in always a very gracious, levelheaded  
16 character.

17           You'll be sorely missed. We want to  
18 thank you on behalf of the agency. The horsemen thank  
19 you. And the animals thank you. You took care of them  
20 all. And we really appreciate you. You'll be  
21 difficult to replace. Thank you very much.

22           MS. LEON: Maybe he has something he  
23 wants to say.

24           MR. QUIRK: You know, I'm going to -- I'm  
25 going to resist the temptation to editorialize and just

1 walk away and say I've enjoyed the trip. It's --  
2 thanks to you for all your -- the sacrifice you make.  
3 You know, I've raced in a number of jurisdictions. I  
4 really think your approach to regulating racing is the  
5 most objective of any Commission that I've ever been  
6 involved with. So kudos to you for that.

7 CHAIRMAN SCHMIDT: Moving on to general  
8 business, reports by the executive director regarding  
9 administrative matters, budget and finance.

10 Adrienne, can you present us a budget  
11 update?

12 MS. COURTNEY: Yes.

13 CHAIRMAN SCHMIDT: Thank you.

14 MS. COURTNEY: Good morning,  
15 Commissioners. I'm Adrienne Courtney, chief financial  
16 officer.

17 On pages eight and nine of your agenda  
18 packet you will find the agency's fiscal year 2015  
19 operating budget reflecting revenue collection and  
20 expenditures as of April 30th, 2015. With 66.7 percent  
21 of the year completed, the agency has collected 6.6  
22 million or 71 percent of our projected revenue and has  
23 spent 5.1 million or 57.8 of our budgeted  
24 expenditures. We are well within the budget  
25 constraints of the year.

1 I'd be happy to answer any questions if  
2 you have them.

3 CHAIRMAN SCHMIDT: Any questions for  
4 Ms. Courtney?

5 Thank you, ma'am. Thank you very much.

6 MS. COURTNEY: You're welcome.

7 CHAIRMAN SCHMIDT: Report on wagering  
8 statistics. Lila Smith, director of pari-mutuels.

9 Welcome, Ms. Smith.

10 MS. SMITH: Good morning, Commissioners.  
11 I'm Lila Smith.

12 On pages 10 through 12 of your agenda  
13 packet is the wagering statistic report for the periods  
14 of January 1st through May 31st for both 2014 and  
15 2015. The report reflects total wagering activities  
16 for 2015 has increased for both the greyhound and horse  
17 tracks. Total wagers placed on Texas races has  
18 increased by 2.25 percent in 2015.

19 Is there any questions, comments?

20 CHAIRMAN SCHMIDT: Any questions by any  
21 Commissioners?

22 Thank you, Lila. Appreciate you.

23 Enforcement and inspection reports. Joel  
24 Speight, deputy director.

25 MR. SPEIGHT: Good morning,

1 Commissioners.

2 CHAIRMAN SCHMIDT: Joel.

3 MR. SPEIGHT: On pages 13 and 14 you will  
4 find the report on racetrack inspections and regulatory  
5 activities. The Sam Houston Race Park spring Quarter  
6 Horse meet began on March 27th, 2015, and concluded on  
7 May 16th. Lone Star Park began its Thoroughbred meet  
8 on April 9th. And Gulf Greyhound Park continues to  
9 operate on its annual schedule.

10 Racetrack inspections during this period  
11 were conducted at Lone Star Park, Sam Houston Race  
12 Park, Retama Park, Gillespie Race Barn, Gulf Greyhound  
13 Park, Valley Greyhound Park, and Gulf Coast Racing.  
14 Working closely with the association, a number of  
15 deficiencies were remediated during this past reporting  
16 period.

17 For Sam Houston Race Park, the Quarter  
18 Horse meet, the TVMDL reported a total of 11  
19 positives. Two of those were Class 2. Four were Class  
20 3. And we had five permitted medication overages. No  
21 drug positives were reported for Gulf Greyhound during  
22 this same time.

23 I'll answer any questions you have at  
24 this time.

25 CHAIRMAN SCHMIDT: Any Commissioners have

1 any questions of Mr. Speight?

2 Thank you, Joel. Thank you very much for  
3 the job you do.

4 Proceedings on racetracks, a request by  
5 Gillespie County Fair for approval of tote services  
6 agreement with United Tote Company.

7 Mr. Fenner, can you lay out this request  
8 for us?

9 MR. FENNER: Yes, sir.

10 Gillespie County Fair has submitted a new  
11 tote contract. This entirely replaces the prior  
12 contract with United Tote. We have reviewed the  
13 contract and they have made a couple of adjustments  
14 that we requested and we believe that this agreement is  
15 now in compliance with the act and the rules. If  
16 approved, it will become effective retroactively as to  
17 February 1, 2015.

18 The staff recommends approval.

19 CHAIRMAN SCHMIDT: Thank you, Mark.

20 Any cards for public comment, Devon?

21 MS. BIJANSKY: No, sir.

22 CHAIRMAN SCHMIDT: No public comment.

23 Okay.

24 Any discussion by the Commission?

25 I'll certainly entertain a motion to

1 approve the totalisator services agreement between  
2 Gillespie County Fair and United Tote Company.

3 COMMISSIONER HICKS: I'll make a motion.

4 CHAIRMAN SCHMIDT: A motion made by  
5 Commissioner Gloria Hicks, seconded by Dr. Martin.

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

8 COMMISSIONERS: Aye.

9 CHAIRMAN SCHMIDT: Anyone opposed?

10 That motion carries unanimously.

11 Moving to the rules section, in  
12 considering Items A through H, if the Commission will  
13 indulge me, what I'd like to do, Mark, is, reviewing  
14 them in anticipation of this meeting, I'll ask --  
15 they're very diverse rules.

16 MR. FENNER: Yes, sir.

17 CHAIRMAN SCHMIDT: The way I'm going to  
18 work through this -- but I'd also like to avoid 25  
19 votes. So what I'd like to do is ask you to lay out  
20 each rule, the rationale and so forth. We'll see if  
21 there's any public comment and if Vice-Chair Ederer has  
22 any comments and discussion. Then we'll move on to the  
23 next rule and then vote at the end because I don't  
24 think there's going to be a lot of -- if we sense a  
25 dispute, we'll move forward as needed.

1 MR. FENNER: Yes, sir, we can do that.

2 CHAIRMAN SCHMIDT: Okay. So we're first  
3 going to consider a Proposal A to amend Rule 309.8,  
4 Racetrack License Fees.

5 MR. FENNER: Yes, sir.

6 As you all may recall, during the  
7 designation discussion as to Saddle Brook Park there  
8 was some discussion about whether or not there was some  
9 flexibility to allow the nonoperating racetracks to pay  
10 their annual fees on a more prorated basis rather than  
11 having to pay what's \$230,000 up front.

12 We have looked at this from the staffing  
13 and the budget of the agency's budget standpoint and we  
14 believe that this could be done on a quarterly basis  
15 and still allow the agency to have enough cash flow,  
16 particularly at the beginning of the biennium, to  
17 continue to operate.

18 So what this rule would do would -- it  
19 would keep the same mechanism in place for operating  
20 racetracks. That is, they pay their annual fee on a  
21 monthly basis prorated. But for those that are  
22 nonoperating, it would allow them to prorate their  
23 annual fee on a quarterly basis.

24 MS. LEON: So one is on monthly and one  
25 is on quarterly.

1 MR. FENNER: Yes, ma'am.

2 CHAIRMAN SCHMIDT: Yes. Yes.

3 Commissioner -- or, Mark, you might also point out that  
4 the financing of the racetracks changed significantly  
5 with sunset, which was two years earlier.

6 MR. FENNER: Yes, sir. Previously the  
7 annual fee for the nonoperating racetracks was only  
8 \$20,000 a year for the -- for the Class 2's. And when  
9 the sunset process completed and we had this addressing  
10 of whether or not inactive tracks were making good  
11 faith efforts, one of the things that they offered to  
12 do was to pay a greater percentage of the agency's  
13 operating budget and this subsidizes, in essence, the  
14 operating racetracks and I think has gained some  
15 favorable consideration from the Commission in the  
16 past, that they are paying a substantially larger  
17 amount than they have in the past.

18 So \$230,000 for Class 2 horse racetracks  
19 is a lot of money for them to be paying, considering  
20 that the cost of actually regulating that racetrack is  
21 fairly minimal.

22 CHAIRMAN SCHMIDT: Any public comment,  
23 Devon?

24 MS. BIJANSKY: No, sir.

25 CHAIRMAN SCHMIDT: Okay. Vice-Chair

1 Ederer, any comment?

2 VICE-CHAIRMAN EDERER: No.

3 CHAIRMAN SCHMIDT: Okay. Any further  
4 questions or concerns by any of the Commissioners?

5 Okay. Let's move on to Proposal B,  
6 309.365.

7 MR. FENNER: This came as a proposal from  
8 Valley Race Park and it addresses the issue of  
9 breakage. Breakage is the amount of a wager that's  
10 left over after payouts are calculated down to the  
11 dime. So anywhere from zero to nine cents is this  
12 amount that exceeds the dime per payout and this amount  
13 gets accumulated.

14 Now, until 2007, half of the greyhound  
15 breakage went to the accredited Texas-bred program and  
16 half of it went to the operating budget of the agency.  
17 But at the time the agency was trying to move away from  
18 using breakage and also the outstanding unclaimed  
19 tickets as a way of funding the agency. So the agency  
20 approached Representative Flores about getting a bill  
21 changed -- or a bill passed to change the method of  
22 funding.

23 This portion about the breakage passed at  
24 that time and it eliminated the direction of the  
25 breakage -- the 50 percent breakage that went to the

1 agency, it no longer described it as going to the  
2 agency, but it did not describe where it went. So as a  
3 practical matter, that money was retained by the  
4 association, the three greyhound racetracks, that  
5 generated the greyhound breakage. And it's been doing  
6 that for the last eight years.

7           Valley Race Park would like to put that  
8 into a rule, make sure that it is clear, and so that  
9 they can plan ahead and be assured that that is where  
10 it's going to go. The staff has no objection to this  
11 proposal. And the staff has made a proposal that's a  
12 little different than what they put forward. Our  
13 proposal is to create a new rule, 309.365, Breakage.  
14 It's in your materials. And this was discussed at the  
15 rules committee and a representative of Valley Race  
16 Park was fine with the staff alternative approach to  
17 reaching the same end.

18           CHAIRMAN SCHMIDT: And this is what we've  
19 really been doing for the past couple of years.

20           MR. FENNER: Yes, sir.

21           CHAIRMAN SCHMIDT: So it just codifies  
22 it, as it were.

23           MR. FENNER: Yes.

24           CHAIRMAN SCHMIDT: Good.

25           Any public comment, Devon?

1 MS. BIJANSKY: No, sir.

2 CHAIRMAN SCHMIDT: Vice-chair?

3 VICE-CHAIRMAN EDERER: Just recommend  
4 posting.

5 CHAIRMAN SCHMIDT: Any comments,  
6 questions, concerns from any of the Commissioners?

7 Proposal 3, 315.111, Schooling, for  
8 greyhounds.

9 MR. FENNER: We've learned that there is  
10 actually an error in the Administrative Code dating  
11 back to 2005. This is the subsection of this rule that  
12 should be talking about the minimum distance at which  
13 schooling races must be run, but instead it talks about  
14 scratches.

15 What we would like to do is correct the  
16 error, follow the model rule that says that the minimum  
17 distance for a greyhound schooling race must be  
18 three-sixteenths of a mile. This was -- this rule was  
19 requested by our racing judges at Gulf Greyhound Park,  
20 and I believe and understand it's supported by the  
21 association.

22 CHAIRMAN SCHMIDT: Yes. Okay.

23 No comment?

24 MS. BIJANSKY: No comment.

25 CHAIRMAN SCHMIDT: Commissioner Ederer,

1 recommend posting?

2 VICE-CHAIRMAN EDERER: Yes.

3 CHAIRMAN SCHMIDT: Any questions about  
4 this rule change? Great.

5 Item D, 319 -- 319.1.

6 MR. FENNER: This addresses a change in  
7 the testing abilities of the racing labs across the  
8 country. They have learned and gathered the ability to  
9 start testing for these naturally occurring substances  
10 that are in race animals' bodies but that trainers  
11 could be manipulating to try and improve the animal's  
12 performance and affect the outcome of the race. And  
13 there has been some record of high levels of cobalt,  
14 which is a naturally occurring mineral, occurring in  
15 the Meadowlands and in Australia.

16 The RCI model rule has been changed to  
17 address this type of issue. Our rules don't address  
18 this naturally occurring substance issue. What we  
19 would like to do is amend our rule to track the model  
20 rule language and say that prohibited drugs, chemicals,  
21 or other substances include those substances present in  
22 the horse in excess of concentrations at which such  
23 substances could naturally occur. And this would allow  
24 us to have the flexibility going forward to try and  
25 address those issues when they come up. We're a bit

1 away from that, but we need the flexibility to do it in  
2 the future.

3 CHAIRMAN SCHMIDT: Any public comment?

4 MS. BIJANSKY: No, sir.

5 VICE-CHAIRMAN EDERER: Recommend  
6 posting.

7 CHAIRMAN SCHMIDT: Good.

8 I just would like to ask one of our  
9 veterinary colleagues, what's the normal cobalt level?  
10 Does anyone have an idea?

11 COMMISSIONER ABER: Well, it's less than  
12 25 parts per billion.

13 CHAIRMAN SCHMIDT: So that's the upper  
14 limits of normal? I saw that. I just wasn't sure if  
15 that was allowing --

16 COMMISSIONER ABER: I don't know exactly  
17 what it is; but parts per billion, that's awful small  
18 there.

19 MR. QUIRK: It's said to be 10 parts per  
20 billion.

21 COMMISSIONER ABER: Natural is 10 parts?

22 MR. QUIRK: Natural, yeah, background.

23 CHAIRMAN SCHMIDT: So do we test for  
24 erythropoietin administration? Do we test for that?

25 COMMISSIONER MARTIN: You'll have to ask

1 the labs about that.

2 CHAIRMAN SCHMIDT: Okay. I'll ask no  
3 further questions.

4 COMMISSIONER MARTIN: Yeah.

5 CHAIRMAN SCHMIDT: Any other questions?  
6 Okay. Then we'll move on.

7 MR. FENNER: Yes, sir.

8 We have proposals related to safety  
9 equipment. And the Texas rules have gotten out of date  
10 with the model rules. In particular, the Texas rules  
11 address that safety helmets must meet ASTM requirements  
12 and that the safety vest rules have to have a rating of  
13 at least five as defined by the British Equestrian  
14 Trade Association.

15 However, the model rules now recognize a  
16 variety of other testing consortiums and the standards  
17 adopted by those and this has become a problem because  
18 our surrounding jurisdictions have recognized the model  
19 rule and these other standards. So if we were to start  
20 beginning to strictly enforce our rule, we might  
21 require people to go out and purchase this ASTM  
22 equipment when they have perfectly satisfactory other  
23 equipment. And it's quite expensive to purchase the  
24 vest and the safety helmet.

25 So what we would like to do is go ahead

1 and follow the model rule, recognize these alternative  
2 safety standards, and update it. And so we have a  
3 number of changes. Basically what we're doing is  
4 creating a new rule, 311.218, Safety Equipment, that  
5 follows the model rule and then there's some references  
6 in these other three rules that we're going to amend so  
7 that they point back to 311.218.

8 COMMISSIONER ABER: And these are ARCI  
9 compliant.

10 MR. FENNER: Yes, sir, it follows the  
11 model rule.

12 CHAIRMAN SCHMIDT: All of them linked  
13 together.

14 MR. FENNER: Yes, sir.

15 CHAIRMAN SCHMIDT: Okay. Great. So  
16 that's conduct, whips and other equipment, and colors  
17 and numbers, right?

18 MR. FENNER: Yes. And safety equipment.

19 CHAIRMAN SCHMIDT: And safety equipment,  
20 right. That's the three -- the new rule is 311.218,  
21 which is the new rule, the mother rule, and then those  
22 would refer back to it.

23 MR. FENNER: Yes, sir.

24 CHAIRMAN SCHMIDT: Great.

25 VICE-CHAIRMAN EDERER: At the rules

1 committee meeting we had testimony from representatives  
2 from the jockeys and they went along with all these  
3 changes and said that as far as they were concerned, it  
4 was in the interest of safety.

5 CHAIRMAN SCHMIDT: Great. So they're  
6 in.

7 VICE-CHAIRMAN EDERER: Yes.

8 CHAIRMAN SCHMIDT: We have Mr. John Beech  
9 with the Jockey Guild.

10 Are you here, sir? Welcome.

11 MR. BEECH: Good morning, Mr. Chairman,  
12 Commissioners, and staff. My name is John Beech. I'm  
13 the regional manager for the Jockeys' Guild,  
14 Incorporated. And we are in support of the proposal to  
15 adopt the ARCI model rule pertaining to safety  
16 equipment for jockeys in its entirety.

17 CHAIRMAN SCHMIDT: Great. Thank you.

18 Any questions of any of the Commissioners  
19 of Mr. Beech?

20 MR. BEECH: Thank you very much.

21 VICE-CHAIRMAN EDERER: Mr. Beech is who I  
22 was referring to that gave testimony before.

23 I didn't see you sitting back there.  
24 Thank you again.

25 MR. BEECH: Thank you very much.

1                   CHAIRMAN SCHMIDT: Thank you for helping  
2 us with this rule. Appreciate it.

3                   Any further questions regarding these  
4 changes?

5                   Then let's move to colors and number.

6                   MR. FENNER: Yes, sir.

7                   The current rule provides that Quarter  
8 Horses, Paints, and Appaloosas shall wear head numbers  
9 corresponding to the numbers in the program but  
10 provides only that Thoroughbreds and Arabians may wear  
11 such head numbers. So this "shall" for Quarter Horses,  
12 Paints, and Appaloosas has caused problems on occasion  
13 when either there's equipment malfunction, where they  
14 have a head number but it won't state on, or you have a  
15 horse who is averse to wearing such a head number.

16                   So this proposed change would allow the  
17 stewards the authority to waive the head number  
18 requirement in the case of equipment failure, if  
19 there's missing equipment, or in the interest of  
20 safety.

21                   CHAIRMAN SCHMIDT: No public comment?

22                   MS. BIJANSKY: No.

23                   VICE-CHAIRMAN EDERER: Recommend  
24 approval.

25                   CHAIRMAN SCHMIDT: Okay. Any comments or

1 concerns by any of the Commissioners?

2                   Okay. Item G?

3                   MR. FENNER: All right. This is a  
4 proposal to amend 311.101, Horse Owners. It has two  
5 separate issues that we're trying to address in it.  
6 First is the issue of the owner's and trainer's  
7 license.

8                   As it stands right now, in order to have  
9 an owner's license, you must demonstrate that you  
10 actually own a racehorse. However, for trainers,  
11 trainers frequently are in the business of buying and  
12 selling horses throughout the year and so it sometimes  
13 happens that when it comes to them renewing their  
14 license that they are currently in between horses.  
15 They don't have a horse. But they intend to have a  
16 horse. They intend to buy horses throughout the year.

17                   And the way it works right now is if they  
18 don't own a horse at the time they renew, then when  
19 they get a horse and want an owner's license, then they  
20 have to come back and, for another hundred dollars,  
21 we'll sell them an owner's license.

22                   What this rule would do is allow them to  
23 say, "Listen, I'm a trainer. I'm in the business of  
24 buying and selling horses. I intend to own a horse."  
25 And we will issue them then an owner/trainer's license

1 for the single hundred-dollar fee just as if they  
2 currently owned the license.

3           And the rationale for this is that the --  
4 you know, for requiring an owner to have a horse is  
5 that it provides them with access to the backside.  
6 That's why we require the evidence of ownership.  
7 However, in the case of a trainer, he already has  
8 access to the backside, so you're not really  
9 accomplishing that same goal.

10           The second issue that this rule change  
11 would propose is about emergency licenses and Social  
12 Security numbers. Right now, if an owner is unable to  
13 complete an application for an owner's license because  
14 of absence or illness, the trainer can get an emergency  
15 license on behalf of the owner. And the emergency  
16 license requires that they provide the name, address,  
17 phone number, and Social Security number.

18           However, this has provided a problem in  
19 the past in which some owners are not particularly  
20 happy about releasing their Social Security number to a  
21 trainer because of identity theft concerns.

22           So what this would do is say that the  
23 trainer can get the emergency license based on the name  
24 and the address and the telephone number and not  
25 require the Social Security number. And then within a

1 short period of time after the emergency license has  
2 been issued and we're trying to get the full license,  
3 of course, we will get all of the information,  
4 including the Social Security number, at that time.

5 CHAIRMAN SCHMIDT: Thanks, Mark.

6 Any public --

7 COMMISSIONER ABER: I don't -- what would  
8 this do with like illegal aliens that wanted to run a  
9 horse that don't have a Social Security number?

10 MR. FENNER: Can I ask that Cathy  
11 Cantrell, our director of licensing, come address this  
12 issue? She's our subject matter expert.

13 MS. CANTRELL: Good afternoon. My name  
14 is Cathy Cantrell. I'm the director of licensing.

15 To answer your question, the emergency  
16 license is good for 21 days, so we hold the purse  
17 money -- or the Horsemen's Partnership holds the purse  
18 money on these emergencies. So no purse money is  
19 released until the application is provided to us with  
20 the appropriate documentation.

21 So that's where that is. I mean, it's  
22 not a required -- the paperwork is not required until  
23 the 21 days, the complete paperwork, fingerprints,  
24 application.

25 COMMISSIONER MARTIN: So is there a

1 problem -- and I know you say you're holding the purse,  
2 but I know awhile back there was a problem where  
3 somebody, I guess, got an emergency license and they  
4 owed child support or something like that and weren't  
5 supposed to run in the first place but something  
6 happened with the -- are we concerned about this at  
7 all?

8 MS. CANTRELL: They cannot get an  
9 emergency if they owe child support, sir.

10 COMMISSIONER MARTIN: But if you don't  
11 have a Social Security number, how do you know?

12 MS. CANTRELL: Well, that's true. And  
13 then what will happen, the 21 days, when that comes  
14 back -- see, we won't know that they owe child support  
15 until that file is given to the OAG, which is after the  
16 fact. So the denial of renewal will happen after the  
17 fact.

18 COMMISSIONER MARTIN: Okay.

19 CHAIRMAN SCHMIDT: Thank you. Thank you  
20 very much.

21 COMMISSIONER ABER: In the meantime,  
22 they've run a horse and they're competing against other  
23 people; and then in 21 days, if it comes up that  
24 they're not eligible for this, you're punishing those  
25 people that ran against them in the first place.

1 MS. CANTRELL: Well, we won't know the 21  
2 days because we -- at the -- the purse money will be  
3 held, you know.

4 COMMISSIONER ABER: That's what I'm  
5 saying. But they did participate in the race and then  
6 21 days later you find out that -- you know, they won  
7 the race. They're still punishing the people -- other  
8 people that were in the race.

9 MR. FENNER: The direction we get from  
10 the Attorney General's office about child support is  
11 about not renewing. And it's not the original  
12 license.

13 MS. CANTRELL: That's correct.

14 MR. FENNER: So if somebody is coming in  
15 for a brand-new license and we don't have their Social  
16 Security number on file, then requiring the Social  
17 Security number as part of the emergency licensing  
18 process won't have any difference on the outcome  
19 because what happens is we send all Social Security  
20 numbers and the licensing file over to the AG's office  
21 and they tell us which ones there's a problem with and  
22 tell us "Do not renew this person's license."

23 MS. CANTRELL: And that happens  
24 quarterly.

25 MR. FENNER: And it happens quarterly.

1 So if we don't have that licensee's Social Security  
2 number in the file already, then there's no way for us  
3 to stop that person from competing preemptively before  
4 they've gotten their first license. Now, if they're  
5 renewing a license, we're not going to have this issue,  
6 right?

7 MS. CANTRELL: No.

8 MR. FENNER: Because we'll be able to  
9 pull their Social Security number from their prior  
10 licensing process.

11 MS. CANTRELL: That's correct. And they  
12 will be flagged for the OAG if it's a renewal and they  
13 will not get a license, emergency or otherwise.

14 COMMISSIONER MARTIN: Was there any  
15 comments on that during the rules committee meeting?

16 VICE-CHAIRMAN EDERER: Yes, there was,  
17 considerable. And the answers that were given here  
18 today were receptive. I mean, they were the same as  
19 they are here today. Because I had the exact same  
20 question.

21 The problem -- I don't know if we can  
22 possibly overcome it -- would be on the betting. I  
23 mean, if they run a horse and they win, they're going  
24 to get paid, the people that bet on it, even though the  
25 horse should not be running.

1 MS. CANTRELL: You mean the owner will  
2 get paid?

3 VICE-CHAIRMAN EDERER: Well, if the owner  
4 bets a lot of money on his horse, he would certainly  
5 get paid.

6 MS. CANTRELL: On the wagering side.

7 VICE-CHAIRMAN EDERER: The wagering could  
8 not be controlled.

9 MR. FENNER: Right. I think, though,  
10 that's an issue with the process of getting the  
11 information back from the AG's office about the child  
12 support delinquency rather than it is about whether we  
13 get the Social Security number up front because if we  
14 have the Social Security number up front, even if we  
15 have the SSN up front, if the person hasn't been  
16 licensed by us, he's going to be allowed to compete  
17 because it's not until quarterly that we exchange this  
18 information with the AG's office and they send us  
19 something back that says "Do not renew."

20 For example, during a year we may get  
21 information back saying this person owes us -- owes  
22 child support, but we don't stop that person from  
23 competing in racing until the time comes around to  
24 renew their license.

25 MS. CANTRELL: It's a denial of renewal

1 is the OAG's process.

2 VICE-CHAIRMAN EDERER: I understand  
3 that. But as far as the particular race, if we've got  
4 an illegal alien -- forget about child support. If we  
5 have an alien come in or a dope peddler from across the  
6 border that comes in and doesn't have a Social Security  
7 number, runs a horse and wins, he's going to be paid  
8 his pari-mutuel bet. He's not going to get the purse,  
9 agreed; but, you know, it -- I don't believe that that  
10 can be controlled, though, can it?

11 MR. FENNER: I don't know how you can  
12 control it.

13 COMMISSIONER MARTIN: How many emergency  
14 licenses do we do a year?

15 MS. CANTRELL: I would say, on average,  
16 probably about 150.

17 COMMISSIONER MARTIN: That many?

18 MS. CANTRELL: Yes, sir.

19 MR. FENNER: How many of them have a  
20 problem subsequently?

21 MS. CANTRELL: "A problem" being?

22 COMMISSIONER MARTIN: Where they're not  
23 renewed or something.

24 MS. CANTRELL: That go to expired? I  
25 would probably say, right off the top of my head, maybe

1 one, two percent.

2 CHAIRMAN SCHMIDT: Commissioner Aber,  
3 would you prefer to vote on these items together or do  
4 you want to vote on Items G and H separately?

5 COMMISSIONER ABER: I would like to do it  
6 separate because I'm against that.

7 CHAIRMAN SCHMIDT: Okay.

8 VICE-CHAIRMAN EDERER: At the rules  
9 committee meeting, the pari-mutuel was not discussed.  
10 I thought about it afterwards and I knew we would be  
11 discussing this today. So it's a separate issue that I  
12 believe should possibly -- there should be more  
13 investigation by staff into this area.

14 CHAIRMAN SCHMIDT: Okay. I would comment  
15 that we're just posting the rules. We're not voting on  
16 them.

17 VICE-CHAIRMAN EDERER: Correct.

18 CHAIRMAN SCHMIDT: Let's -- any  
19 further -- thank you, Cathy, Ms. Cantrell.

20 Any other further questions or concerns  
21 of anyone?

22 First of all, I would, again, like to  
23 thank the vice-chair and also Dr. Aber. As you can  
24 see, this is hard work. It's detailed work. It's very  
25 diverse issues. The rules committee does a terrific

1 job. Thank you for your time very, very much.

2 I'll certainly -- if there's no further  
3 discussion, I'll certainly entertain a motion to  
4 publish the proposed amendments and new rules described  
5 in Sections V-A through F, V-A through F, in the Texas  
6 Register for public comment.

7 A motion made by Commissioner Steen,  
8 seconded by Commissioner Hicks.

9 I'll call this to a vote. All those in  
10 favor signify by saying aye.

11 COMMISSIONERS: Aye.

12 CHAIRMAN SCHMIDT: All those opposed?

13 No? None? Okay. That carries.

14 Now we're going to consider Items G  
15 through H. Again, all we're doing is posting these for  
16 discussion. We're not voting on the rules themselves.

17 If there's no further discussion, I'll  
18 certainly entertain a motion to publish the proposed  
19 amendments and new rules described in Sections G  
20 through H in the Texas Register for public comment.

21 Is there a motion?

22 COMMISSIONER ABER: I'll make the  
23 motion.

24 CHAIRMAN SCHMIDT: To publish. We have a  
25 motion to publish.

1 Is there a second?

2 COMMISSIONER MARTIN: I'll second.

3 CHAIRMAN SCHMIDT: Seconded by

4 Dr. Martin.

5 Okay. Let's call this to a vote. Let's  
6 do a roll call vote. There's been a motion by Dr. Aber  
7 and a second by Dr. Martin, so we'll call it to a  
8 vote. Okay?

9 MS. WELCH: Chairman Robert Schmidt?

10 CHAIRMAN SCHMIDT: I think it needs more  
11 attention, but I would vote for -- in favor of  
12 publishing it. I would not vote for it probably as it  
13 stands now.

14 MS. WELCH: Commissioner Ron Ederer?

15 VICE-CHAIRMAN EDERER: Same comments. I  
16 would vote to go ahead and publish it, but it will need  
17 some more investigation.

18 MS. WELCH: Commissioner Gloria Hicks?

19 COMMISSIONER HICKS: To publish.

20 MS. WELCH: Commissioner Michael Martin?

21 COMMISSIONER MARTIN: To publish.

22 MS. WELCH: Commissioner Gary Aber?

23 COMMISSIONER ABER: To publish.

24 MS. WELCH: Commissioner John Steen?

25 COMMISSIONER STEEN: Publish.

1 MS. WELCH: Commissioner Cynthia Leon?

2 MS. LEON: To publish.

3 MS. WELCH: Commissioner Victoria North?

4 MS. NORTH: To publish.

5 CHAIRMAN SCHMIDT: That passes  
6 uniformly -- unanimously. Great.

7 And, Mark, let's take up the next  
8 section, which is to take up the historical racing  
9 rules, as a second group. Obviously this is the area  
10 of controversy today. This matter was requested by one  
11 of the tracks and a segment of the horse racing  
12 community. Another one of the tracks and another  
13 segment vigorously opposes these changes in racing  
14 rules, the historical racing rules.

15 I would again remind everyone that what  
16 we're voting on today is not whether to change or not.  
17 What we're voting on today is simply to publish these  
18 rules in the Texas Register for public comment. So the  
19 bar is a little lower. All we're saying is do these  
20 changes to historical racing, requesting repeal -- are  
21 they worthy of public comment.

22 I would again point out our previous  
23 votes. People who vote in favor of publishing may not  
24 vote in favor of actually repealing the rules. People  
25 who vote against publishing may vote in favor. So two

1 separate votes. This vote is simply a vote to publish  
2 to ask other people for their comments.

3 Mark, can you bring us up to date?

4 MR. FENNER: Yes, sir. I think I'll keep  
5 my description short in this case.

6 These rules set out in I through V have  
7 been challenged in court and the District Court ruled  
8 that the rules relating to historical racing exceeded  
9 the Commission's authority. The Commission has not  
10 appealed that decision and it's become final.  
11 Therefore, the Commission can take no action under the  
12 historical racing rules, can't authorize historical  
13 racing, can't entertain an application, can't do  
14 anything with these rules.

15 Further, a number of these rules,  
16 particularly I through U here, are preexisting rules  
17 that are necessary and we need, and yet we've amended  
18 them to make references to historical racing; and so  
19 I'm concerned that continuing to have the historical  
20 racing references in needed rules could lead to  
21 challenges in the future. Then Subsection V and all  
22 the parts below it, 1 through 10, those are all adopted  
23 as new rules to authorize historical racing.

24 So what this proposal would do is take I  
25 through U and restore them back to the original

1 status. I want to make one tweak there, and that is  
2 the rule about 309.8 which you've already voted to  
3 publish a change in paying quarterly. What this change  
4 for that one would do is I would meld them to -- I can  
5 only post once in the Texas Register for a rule  
6 proposal, so we'll do both at the same time.

7 But otherwise, we're restoring everything  
8 back to the original place and then all the Parts 1  
9 through 10 under V would be repealed in its entirety.

10 MS. LEON: Let me ask a clarification.

11 MR. FENNER: Yes, ma'am.

12 MS. LEON: So if you vote for the  
13 publication of this, we're asking for comment on  
14 restoring it back to the way it was.

15 MR. FENNER: Yes, ma'am. Yes, ma'am.

16 MS. LEON: Without the historic racing in  
17 it.

18 MR. FENNER: That's correct.

19 MS. LEON: Okay. Except for what  
20 provision? 309?

21 MR. FENNER: Yes. That's number --

22 CHAIRMAN SCHMIDT: 309.8.

23 MR. FENNER: Remember, earlier we talked  
24 about the annual license fees for the nonoperating  
25 tracks, allowing them to pay --

1 MS. LEON: Right. Since that's changing,  
2 you can't just eliminate that because we address that  
3 in some other rule that we published, right?

4 MR. FENNER: Right. So I'm asking for --

5 MS. LEON: That to be eliminated.

6 MR. FENNER: No. I'm asking to  
7 incorporate both of these things.

8 MS. LEON: The rule that we did before  
9 and this one together.

10 MR. FENNER: They're separate issues.  
11 They're separate language. So I'm going to put them  
12 together. We're going to change the business about  
13 allowing nonoperating tracks to pay on a quarterly  
14 basis and do that, and then we're also going to repeal  
15 a few references to historical racing in it.

16 MS. LEON: So voting for publication  
17 would actually take the historic racing out of the  
18 rules.

19 MR. FENNER: It would publish it in the  
20 Texas Register for public comment and then it would be  
21 eligible to complete that process at the August  
22 meeting.

23 MS. LEON: Okay. But if we vote no,  
24 against the publication of this, what's the consequence  
25 of that?

1 MR. FENNER: If the Commission were to  
2 vote to not publish, then the rules stay exactly like  
3 they are right now. Historical racing references  
4 remain in the rules. Subchapter F authorizing  
5 historical racing would remain in place.

6 MS. LEON: Okay. So if I vote no, I  
7 authorize historic racing; but if I vote yes, I don't  
8 support it -- I mean, I don't authorize historic  
9 racing.

10 MR. FENNER: That's correct. If you vote  
11 yes to publish, you are --

12 MS. LEON: I just want to be clear here.

13 CHAIRMAN SCHMIDT: Mark, could you -- I  
14 don't want to interrupt, but could you just review with  
15 the Commissioners the fact that our rulemaking and our  
16 rule repealing process follows, I guess, statute? In a  
17 sense, it would go from --

18 MR. FENNER: Yes. This is set out under  
19 the Administrative Procedures Act, how a State agency  
20 or a body adopts rules. And what has to happen is a  
21 Commission or a body like you has to, in a public  
22 meeting, vote to publish the rules or the proposed  
23 changes in the Texas Register and then they need to be  
24 open for a public comment period, which is usually a  
25 minimum of 30 days.

1           After they have been commented on, then  
2 the Commission has to review the comments, consider the  
3 comments, and then you are able to make a decision as  
4 to whether to go forward in a subsequent open meeting  
5 by voting to, in this case, repeal and/or amend rules.  
6 And this is a process -- I counted it up. I mean, it's  
7 a minimum of 77 days from start to finish to complete  
8 the process.

9           But it's exactly the same process that  
10 the Commission follows in adopting rules. You have to  
11 follow the same process for repealing rules.

12           COMMISSIONER ABER: So all we're doing  
13 here is if we vote yes on it, we haven't decided  
14 against historical racing. That's decided after the  
15 public comment.

16           MR. FENNER: Yes, sir. You need to take  
17 the public comment into consideration and review it.

18           CHAIRMAN SCHMIDT: Which is why we  
19 postponed our August meeting. So this is just -- this  
20 is a low bar. All we're asking is, is this worthy of  
21 public comment. It doesn't reflect your ultimate vote  
22 either for or against. All we're saying is, is this  
23 worthy of public comment, should we consider it for  
24 that. Okay?

25           Any other questions?

1                   COMMISSIONER STEEN: Mark, can you just  
2 update us on where the legal -- the legal challenge is  
3 on this, the appeals process? What would be the  
4 implications of what's going on outside of the  
5 Commission and if that process were to go one way or  
6 the other?

7                   MR. FENNER: The biggest significance is  
8 that right now there are racetracks and horsemen's  
9 groups who are pursuing an appeal separate from the  
10 Commission's decision to not pursue an appeal. If the  
11 Commission repeals the rules and restores everything  
12 back to its prior condition, then it is very likely  
13 that the case will be dismissed as moot because there  
14 are no longer rules in place for them to -- for them to  
15 base their appeal on. So it is significant to the  
16 industry.

17                   COMMISSIONER STEEN: And the implications  
18 of leaving them in place, there are some sort of  
19 cleanup items we could do -- if they were to be left in  
20 place while this legal process plays out, there's a way  
21 to handle some of these outstanding items that you said  
22 are sort of intermingled with the historic racing  
23 rules?

24                   MR. FENNER: I mean, the problem is that  
25 the judge has said that the historical racing is beyond

1 the Commission's authority. And so we've amended a  
2 number of rules, such as the provisions relating to the  
3 horsemen's representative, the pari-mutuel auditor, the  
4 wagering information, and the posting of race results,  
5 in such a way that it incorporates references to  
6 historical racing.

7           And so if the Commission were to try and  
8 take administrative action, penalty action, against a  
9 track or someone else for a violation of this rule, I  
10 could see them coming back and saying, "Wait a minute.  
11 This rule is not even any good. You have this -- the  
12 judge has said it's an invalid rule."

13           So I don't know how to quite solve that  
14 other than --

15           COMMISSIONER ABER: Let me ask you this.  
16 The tracks are going to appeal this on themselves,  
17 aren't they?

18           MR. FENNER: Yes, they are appealing  
19 this.

20           COMMISSIONER ABER: Okay. So then that  
21 will be dependent on that appeal. But the first  
22 judgment was for it, right?

23           MR. FENNER: The first judgment -- you're  
24 talking about from Mr. Krause.

25           COMMISSIONER ABER: Yes.

1 MR. FENNER: Yes.

2 COMMISSIONER ABER: Then the second  
3 judgment was against it.

4 MR. FENNER: Yes, sir.

5 COMMISSIONER ABER: And now we're going  
6 to have the other -- the tracks and the industry is  
7 probably going to want to support this, you know. And  
8 you're saying we're not going to be able to appeal it?  
9 They're not going to be able to appeal it?

10 MR. FENNER: That is very likely. It is  
11 very likely that if these things are pulled down that  
12 their appeal will be dismissed. It's a significant  
13 decision.

14 COMMISSIONER ABER: You know, the General  
15 Appropriations Act, the Racing Commission -- everybody  
16 knows that -- got full funding, but they put a rider on  
17 it where the Legislative Budget Board -- they're going  
18 to decide whether they're going to give the money that  
19 the tracks and the licensees have given the money -- I  
20 mean, have supported this. It's not the State of  
21 Texas. So, you know, I want to stand up and say I get  
22 a little tired of somebody calling me a rogue, you  
23 know, when we thought and you -- your opinion was to do  
24 it.

25 MR. FENNER: I had believed that you had

1 the authority to make this decision.

2 COMMISSIONER ABER: Right.

3 MR. FENNER: But the judge disagreed.

4 COMMISSIONER ABER: So I just -- you  
5 know, I just want to discuss that a little bit. And  
6 we've got a big industry here that needs to be  
7 represented, too.

8 COMMISSIONER MARTIN: Do we have any more  
9 information on the rider and what it actually means?

10 MR. FENNER: We do not. I have received  
11 informal information from representatives of the  
12 Legislature that it is about historical racing, but  
13 Chuck has sent a letter to the LBB asking for  
14 clarification and we've not received a response yet.

15 COMMISSIONER ABER: You know, the  
16 Legislative Budget Board, does anybody know who's on  
17 it? We've got Joe Straus, Drew Darby in the House,  
18 John Otto and John Zerwas. And then in the Senate it's  
19 Dan Patrick, Kevin Eltife, Craig Estes, Juan Hinojosa,  
20 and Jane Nelson. So that's -- you know, we need to  
21 know that. And I'm not so sure that's real great for  
22 them saying if we don't do this, you know, they may  
23 come back and not fund us.

24 MR. FENNER: It is unclear from the rider  
25 what criteria they will use to make the decision.

1 COMMISSIONER ABER: Yeah.

2 MS. LEON: Okay. Let me be clear about  
3 this. I want to make sure I understand.

4 MR. FENNER: Yes, ma'am.

5 MS. LEON: If we vote yes to publish this  
6 rule, this is the only way to repeal the rule.

7 MR. FENNER: Yes, ma'am. This is the  
8 first -- it's a two-step process or a multistep  
9 process, but this is the essential part.

10 MS. LEON: If we don't do anything or we  
11 vote no, then what happens? Again, what's the  
12 consequence then?

13 MR. FENNER: Well, the consequence of  
14 voting no is that the rules remain in place. There is  
15 not going to be an option to complete the repeal in  
16 August. And the appeal of the racetracks may be able  
17 to continue on. I understand that there's a separate  
18 motion to dismiss unrelated to this, but you know how  
19 it is when you get into courts.

20 MS. LEON: So if we vote no, we cannot  
21 repeal it.

22 MR. FENNER: If you vote no, yes, you  
23 will not be able to repeal them.

24 CHAIRMAN SCHMIDT: The process stops.

25 MS. LEON: But then the rule never gets

1 completed, so there's no historic racing anyway,  
2 right?

3 MR. FENNER: Well, there's no historic  
4 racing anyway at this point because --

5 MS. LEON: But either way it doesn't.

6 COMMISSIONER MARTIN: If the appeal goes  
7 forward and the appeal wins, then, yes, there would  
8 possibly be historic racing. Is that correct?

9 MS. LEON: But it would go forward with  
10 the publication of the rule.

11 CHAIRMAN SCHMIDT: Separate.

12 MS. LEON: Okay. So let's say the body  
13 votes no. Then it never gets an opportunity for the  
14 appeal -- let's say the legal process never gets  
15 completed. I mean, never -- if the appeal wins from  
16 the industry, if this votes no today, it never gets  
17 voted on, right? I mean, if we decide no to not to  
18 publish, right?

19 COMMISSIONER MARTIN: If we decide not to  
20 publish, then that would give the tracks an opportunity  
21 to go forward with their appeal.

22 MS. LEON: If we -- if we vote no, it  
23 gives them an opportunity to appeal.

24 COMMISSIONER MARTIN: Is that correct?

25 MR. FENNER: It is. It continues their

1 opportunity to appeal. Of course, if you vote no --

2 MS. LEON: Okay.

3 MR. FENNER: -- then you also take some  
4 risk that we hit August and we have to write in for  
5 approval of the rider, the expenditures under the  
6 rider, and they said it was about historical racing and  
7 it's too late to fix.

8 MS. LEON: So by voting no, if this body  
9 voted no, then that would give the opportunity for  
10 further appeals to take place.

11 MR. FENNER: Yes.

12 COMMISSIONER STEEN: Regardless of how we  
13 vote -- today we can vote to publish the rules. They  
14 still have the authority to continue their process.  
15 It's once we -- if we were to make a final vote to  
16 repeal, that's when potentially they would lose --

17 MR. FENNER: Yes, sir, that is correct.

18 MS. LEON: But that won't affect their  
19 right to go appeal today.

20 MR. FENNER: Not today, no.

21 MS. LEON: That's what I wanted to --

22 COMMISSIONER STEEN: Correct.

23 MS. LEON: So if we voted no, it's not  
24 going to affect their ability to appeal one way or the  
25 other today.

1                   COMMISSIONER STEEN:  However we vote, it  
2 won't affect their ability today.

3                   MS. LEON:  Either way.

4                   MR. FENNER:  Right.  Today's action is  
5 not dispositive of their appeal.

6                   CHAIRMAN SCHMIDT:  All we're voting on  
7 today is to say should we publish this to get public  
8 information, does this issue warrant enough attention,  
9 is it a serious enough issue that it should be  
10 published in the Register to get feedback from the  
11 public.  The issue will come presumably -- may come at  
12 a later meeting and that will be the issue.  That will  
13 be the vote.  Everybody understands this?  That's why I  
14 said it's a low bar today.

15                   COMMISSIONER ABER:  One thing about the  
16 public comment, you know, if they're over -- we've got  
17 to listen to them.  If they're overwhelming one way or  
18 the other, you know, we need to see what the public  
19 comment is.

20                   CHAIRMAN SCHMIDT:  Is everybody clear?

21                   MS. LEON:  As mud.

22                   VICE-CHAIRMAN EDERER:  I have one  
23 question.  In fact, I have a lot of questions and a lot  
24 of comments, but I will withhold them.

25                   But I do have one question for you.  Why

1 didn't we appeal?

2 MR. FENNER: Two reasons. First of all,  
3 not having the resources, not having the money; and  
4 then second of all, not having the appropriations. I  
5 mean, our appropriations are dedicated to certain  
6 functions; and in order to appeal, you're going to have  
7 to divert appropriations from other purposes to an  
8 appeal. And we don't really have the authority to do  
9 that.

10 VICE-CHAIRMAN EDERER: Because the person  
11 who would handle our appeal would be the solicitor  
12 general and the solicitor general declined to handle  
13 our appeal. Is that correct?

14 MR. FENNER: Yes, sir.

15 VICE-CHAIRMAN EDERER: So when our  
16 solicitor general said "I'm not going to give you the  
17 money to handle your appeal," that was the end of it.

18 MR. FENNER: Yes, sir.

19 VICE-CHAIRMAN EDERER: Otherwise, we'd  
20 have to come out of our own pockets to pay for the  
21 appeal.

22 MR. FENNER: Yes, sir.

23 VICE-CHAIRMAN EDERER: And that's where  
24 we are.

25 CHAIRMAN SCHMIDT: Do the Commissioners

1 have any questions at this time?

2           Okay. Let's move to public comment. And  
3 again, I would like to echo what we've discussed here.  
4 I know most of the folks who will be talking. And I  
5 just want to stress again that obviously this is a very  
6 controversial issue. It's an issue that -- you know,  
7 the Commissioners have also worked, literally, years on  
8 this issue. And we're going to have a fair, open, and  
9 comprehensive debate at the right time. And we're  
10 going to have one debate, though. We're not going to  
11 have two.

12           So today's discussion and today's public  
13 comments should be about whether we should publish  
14 this. And then if we decide to publish it, then we'll  
15 have another discussion. I'll welcome your comments  
16 again. We're not going to decide the issue today.  
17 We're simply deciding whether or not it warrants enough  
18 attention to be published.

19           Okay. Jan Haynes, can you speak up  
20 first? Welcome, Jan.

21           MS. HAYNES: Mr. Chairman, Commissioners,  
22 staff, my name is Jan Haynes and I'm president of the  
23 Texas Thoroughbred HBPA. I'm speaking on behalf of the  
24 Texas Thoroughbred owners and trainers.

25           We strongly oppose the proposal to repeal

1 the HRT rules at this time. As you know, there's  
2 ongoing litigation regarding these rules and the  
3 litigation is the only thing that is giving our members  
4 any cause for optimism. The horsemen formed a united  
5 front; and while we haven't spent as much in legal fees  
6 as Sam Houston Race Park, we have spent a considerable  
7 amount of money to defend these rules. This is money  
8 our association couldn't afford to spend, but we felt  
9 it was necessary for the horsemen to have a voice and  
10 be represented in the appeal alongside Sam Houston Race  
11 Park.

12           The process that was put in place to  
13 promulgate the rules was very thoughtful and  
14 deliberate. It took all things into account and sought  
15 input from literally every affected party. We strongly  
16 urge you to take the similar steps now and have the  
17 same transparency. We think it would only be proper to  
18 thoroughly sort out what steps are available and allow  
19 all the industry participants to work through a  
20 committee process to explain what any repeal would mean  
21 to them and specifically the timing of the repeal as it  
22 relates to the litigation.

23           The Texas Thoroughbred HBPA is aware  
24 there are concerns regarding legislation and funding  
25 for the agency. We are very respectful of that and we

1 are hopeful that everything could be resolved with  
2 proper timing. A vote today to post these rules and  
3 start the ball rolling that will ultimately crush the  
4 industry will send the worst message possible to  
5 horsemen, tracks, and patrons.

6 I'd also like to set the record  
7 straight. The horsemen have never been in favor of the  
8 repeal of these rules. I've been told that a lobbyist  
9 representing Global Gaming told Senator Nelson's office  
10 that they were in favor of repealing the rules and the  
11 horsemen were, too. That could not be more incorrect  
12 as it relates to the Thoroughbred horsemen.

13 All horsemen have worked together really  
14 hard, in harmony, to get to this point and we're  
15 looking forward to joining the tracks in Appellate  
16 Court. Again, please consider the same approach for  
17 the repeal and vote today to form an industry study  
18 working group before engaging in the repeal.

19 And the best analogy I have for this is  
20 the horsemen only have one horse saddled in the barn.  
21 There's not a horse over here that's been bred. We  
22 don't have a two-year-old in training. We have this  
23 one horse. And the horse may not have the best chance  
24 to win the race; but if you unsaddle him, we'll never  
25 know. So I'm asking you, on behalf of the horsemen,

1 please give our horse a chance and see what he can do.

2 Thanks. Any questions?

3 COMMISSIONER ABER: Let me ask you a  
4 question.

5 MS. HAYNES: Yes, sir.

6 COMMISSIONER ABER: Are you against  
7 publishing it?

8 MS. HAYNES: Yes, sir, I am.

9 COMMISSIONER ABER: Well, why would you  
10 be against it when we can get all the public -- you can  
11 get all the public comment and let everybody see how  
12 strong you are?

13 MS. HAYNES: We had that before, sir; and  
14 we had, what, 13,000, or something like that, from our  
15 members. But you're also giving the opposition another  
16 chance, too. And we went through all this process last  
17 year and it was -- and we're grateful. Don't get me  
18 wrong. But it was agonizing, you know. You go through  
19 all the industry working group. Then you go -- you had  
20 the one public comment meeting. And then you vote to  
21 publish it in the Register, so we have to wait the 60  
22 days and -- you know, and then you have a meeting, you  
23 know. It's -- it -- it was -- it's hard to keep  
24 everybody upbeat for that long of a time.

25 CHAIRMAN SCHMIDT: Ms. Haynes, I think

1 you actually crystallized the issue, though. I think  
2 the whole issue comes down to, if we repeal the rules,  
3 there's no appeal, whether you think the appeal has a  
4 chance or not. I think the horsemen --

5 MS. HAYNES: That's right. All we're  
6 asking is a chance.

7 CHAIRMAN SCHMIDT: So that's the issue we  
8 have before us. I think we have different views about  
9 whether it should be published or not, but I think  
10 that's the issue.

11 Any other -- any other questions of Jan?  
12 Thank you, Jan.

13 MS. HAYNES: Thank you.

14 CHAIRMAN SCHMIDT: Ms. Rountree,  
15 representing the THP?

16 MS. ROUNTREE: Good morning,  
17 Mr. Chairman, Commissioners. I'm Marsha Rountree,  
18 executive director of the Texas Horsemen's  
19 Partnership.

20 I had something prepared here; and since  
21 you've directed us that the only issue today is whether  
22 or not these should be published, I'm going to go ahead  
23 and read it because I think these are reasons why it  
24 should not be published.

25 You had said something earlier,

1 Mr. Chairman, that I would really -- hopefully someone  
2 can clarify because I've been told this over and over  
3 again in the last couple of weeks. Some of you I've  
4 already talked to about this issue; so if I'm  
5 redundant, please forgive me; but a lot of you have not  
6 heard some of these things.

7 I've been told on numerous occasions that  
8 a segment of the horsemen were seeking the repeal of  
9 these rules. And I can find no truth in that. I can  
10 find no one in this industry representing horsemen that  
11 will come forward and say, "Yes, we went forward and  
12 asked for this repeal."

13 So unless someone is willing to come  
14 forward and say, "Yes, we are the segment being  
15 referred to as the horsemen," then it's not the  
16 horsemen. It's someone else.

17 So as you've discussed already today,  
18 this court ruling on historical racing terminals is  
19 being challenged in the court, in the Appellate Court.  
20 And we understand that the chance of winning that case  
21 is small. But in today's racing climate, however small  
22 that chance may be, it's our only chance of making  
23 something positive happen in this industry.

24 And with overwhelming support you passed  
25 the rules relating to historical racing and there's

1 nobody in this room who didn't think that it was going  
2 to be challenged in court. And it has been. You  
3 passed those rules under enormous pressure. And that  
4 court challenge was just a process in implementation of  
5 those rules.

6           This industry has a huge investment, both  
7 financially and in principle, in the appeals case. And  
8 we deserve to be heard in court. Kentucky went through  
9 challenges and they stood firm in their belief and  
10 their authority to pass their rules. They persevered  
11 and they won. We, the THP, the horsemen, have an  
12 obligation to our members to do everything that we can  
13 to follow through with the appeal and persevere to the  
14 end. And however small the odds of winning might be,  
15 we still need the opportunity to pursue this glimmer of  
16 hope for our industry.

17           So due to circumstances which have  
18 absolutely nothing to do with the horsemen, the idea of  
19 repealing the historical racing rules has been brought  
20 forward; and it appears to be, once again, that this  
21 agency's funding is tied to you taking action on  
22 historical racing rules. But from what I understand,  
23 the funding was approved. There's nothing in the bill  
24 that says the funds are contingent upon the Commission  
25 taking any action. It simply contains that rider which

1 states that money for Strategy D.1.1 needs LBB  
2 approval. And there's no reason to believe that the  
3 Legislative Budget Board will place any contingency on  
4 your funding.

5           There is no reason for urgency to repeal  
6 these rules. There is no reason that this can't be  
7 tabled for a later date because without at least the  
8 chance of winning in the courts, there's absolutely no  
9 reason for the decline in our industry to slow down.

10           How far in the future do we have to look  
11 before one of our Class 1 racetracks closes its doors?  
12 And how long can we remain in existence without the  
13 opportunity for additional purse revenue?

14           So the horsemen in this state are asking  
15 you to let us have our day in court. By going forward  
16 and publishing these proposed rules in the  
17 historical -- the repeal of historical racing rules in  
18 the Texas Register, you are essentially closing the  
19 door permanently on any opportunity for us to move  
20 forward. The appeal will be dead. There are no new  
21 ideas. There are no good options for additional purse  
22 money. This is the best chance that we have; and  
23 however small that chance may be, we ask that you table  
24 this issue and let us pursue it through the courts to  
25 its conclusion.

1 Thank you.

2 CHAIRMAN SCHMIDT: Any questions by any  
3 of the Commissioners?

4 Thank you.

5 MS. ROUNTREE: Thank you.

6 CHAIRMAN SCHMIDT: Mary Ruyle, Texas  
7 Thoroughbred Association.

8 Mary, are you here?

9 MS. RUYLE: I do not wish to testify,  
10 sir. I just signed the card.

11 CHAIRMAN SCHMIDT: I'm sorry. Okay.  
12 Great. Thank you.

13 Andrea Young, Sam Houston?

14 MS. YOUNG: Good morning, Commissioners.  
15 Thank you for the opportunity to address you on this  
16 topic this morning.

17 I want to take a second and just start  
18 out by saying obviously I think it comes as no surprise  
19 to anyone here that Sam Houston Race Park is strongly  
20 opposed to the publication of these rules, but I'd like  
21 to take a second and remind ourselves a little bit why  
22 we considered these rules to begin with and why they  
23 were pursued.

24 They were the result of many months of  
25 working. Many of the Commissioners here spent, you

1 know, the better part of a year working on this issue.  
2 We had numerous public meetings and lots of opportunity  
3 for debate. Someone referenced something like over  
4 15,000 letters and comments received last summer.

5 In 2003 total handle on Texas live races  
6 was 443 million. By a decade later, in 2013, that had  
7 dropped more than 70 percent to 130 million.

8 Thoroughbred earned purses have gone from 27.5 million  
9 to 14.5 million, and in the same period Quarter Horse  
10 purses dropped more than 40 percent.

11 In 2003 there were 201 Thoroughbred race  
12 dates at the three Texas Class 1 tracks. In 2013 there  
13 were 109, including 32 at the track I operate, Sam  
14 Houston Race Park.

15 And maybe in one of the biggest examples  
16 of how far the industry has fallen, when you look at  
17 jobs and what has happened through the Commission's  
18 occupational license program, nearly 15,000 licenses  
19 were issued in 2003 and less than 6,000 a decade  
20 later.

21 I'd also like to take the chance to  
22 remind the Commissioners that historical racing was a  
23 legal option available to the Commission to provide a  
24 boost to purses and the industry. Despite a District  
25 Court ruling, there were numerous attorney opinions,

1 including the agency's own general counsel who has  
2 referenced that today, agreeing that the rule is within  
3 the agency's power.

4           We're puzzled as a racetrack at Sam  
5 Houston because we've spent considerable time, money,  
6 effort; and now, despite any legal restriction on the  
7 agency's funding, the Racing Commission is considering  
8 a repeal of these very important rules.

9           I'd like to echo what Ms. Haynes said a  
10 few minutes ago about alternatives to publication of  
11 this rule, a committee process similar to what we  
12 pursued last summer. I'd also like to say that there  
13 are implications -- and I do not agree that it is a low  
14 bar today -- to simply go ahead and publish the rule.  
15 There is an active appeal. The horsemen have addressed  
16 that. There are deadlines over the course of the  
17 summer. And while it's not definitive, it does have  
18 implications.

19           The industry urges you not to publish --  
20 not consider the publication of repeal of these rules.  
21 We believe they should remain in place while the  
22 industry pursues what it believes to be a successful  
23 appeal.

24           I'd be happy to answer any questions you  
25 might have.

1 CHAIRMAN SCHMIDT: Thank you, Ms. Young.  
2 Any questions?

3 COMMISSIONER MARTIN: What's your opinion  
4 on the future of Sam Houston without instant racing?

5 MS. YOUNG: Not good. I mean, I think  
6 the signs are all around you. The stats I read were  
7 real. You know, we probably have had the most success  
8 of any racetrack in this state over the last four or  
9 five years. We do a whole heck of a lot of something  
10 with nothing.

11 But, you know, I feel like I have  
12 exhausted -- when I go to work today, I have exhausted  
13 every option available to us and I don't have anything  
14 else in my bag of tricks. And so this one is important  
15 to us and that's why we've spent the time and energy  
16 and, you know, frankly, our pocketbooks supporting it  
17 to this point.

18 CHAIRMAN SCHMIDT: Any other questions of  
19 Mrs. Young?

20 Thank you, Ms. Young.

21 MS. YOUNG: Thank you.

22 CHAIRMAN SCHMIDT: Ken Carson?  
23 Mr. Carson?

24 Welcome.

25 MR. CARSON: Good morning, Chairman

1 Schmidt, Commissioners, staff.

2 First I want to thank you for adopting  
3 these rules last summer. That took a lot of courage  
4 and it gave us more hope than you can imagine. There  
5 are horsemen and women in every county and corner of  
6 this state like myself, thousands of them, that depend  
7 on this for their livelihood. And I would tell you  
8 that not only did it give us hope, but it united the  
9 horsemen like I have never seen it before ever. And I  
10 would just ask you respectfully not to publish and to  
11 do whatever it takes to keep this alive and keep this  
12 going.

13 Thank you.

14 CHAIRMAN SCHMIDT: Any questions of  
15 Mr. Carson?

16 Thank you, Ken. Thank you very much,  
17 sir.

18 Mr. Beech with the Jockey Guild?

19 MR. BEECH: Mr. Chairman, Commissioners,  
20 and staff, my name is John Beech. I'm regional manager  
21 for the Jockeys' Guild.

22 First of all, I'd like to thank you for  
23 all the time you've put in on this racing bill. And  
24 also, when it came about, the jockeys in the State of  
25 Texas signed a petition to support historical racing

1 and they're still looking forward to that and hope that  
2 it can come to pass. So the jockeys are in support of  
3 it.

4 That's all I've got.

5 COMMISSIONER ABER: Could you tell me  
6 what the feeling is on Kentucky, on their betting and  
7 their betting on the historical machines? From what  
8 I've read, it's a billion dollars growth? Is that what  
9 you hear?

10 MR. BEECH: Pretty close to it. And  
11 also, I can say one thing that I'm very well familiar  
12 with. When historical racing came to Oaklawn Park in  
13 Arkansas, it increased tax revenue. It increased purse  
14 structure, everything. So it's a benefit to the  
15 industry and also to the state it's in.

16 CHAIRMAN SCHMIDT: Thank you, Mr. Beech.  
17 Appreciate your comments.

18 MR. BEECH: Thank you.

19 CHAIRMAN SCHMIDT: Ms. Bijansky, any  
20 other comments for or against?

21 MS. BIJANSKY: No, sir.

22 CHAIRMAN SCHMIDT: Okay. Let's move  
23 forward. We've had a good discussion. Any further  
24 discussion by other Commissioners? Any questions?  
25 Everyone understands what we're voting for? If we vote

1 to approve, then we will publish this, wait for public  
2 comment, and consider placing it on the agenda at some  
3 other time and that will be the definitive vote. If we  
4 vote not to approve, then it will not be published and  
5 the issue will be dead.

6 Okay? Everyone understand that? Great.

7 I'll certainly entertain a motion to  
8 publish the proposed amendments and new rules described  
9 in Sections V-I --

10 MR. FENNER: Mr. Chairman, the amendments  
11 and repeal.

12 CHAIRMAN SCHMIDT: I'm sorry. You  
13 corrected that. I misread it. Yes.

14 I'll certainly entertain a motion to  
15 publish the proposed amendments and repeals described  
16 in Sections V-I through V-V in the Texas Register for  
17 public comment.

18 Okay. Approved by -- a motion made by  
19 Commissioner Leon.

20 Is there a second?

21 MS. NORTH: Second.

22 CHAIRMAN SCHMIDT: Seconded by  
23 Commissioner North.

24 Great. We've had a motion. We have a  
25 second. Any further discussion?

1                   Okay. I think we'll call this to a  
2 vote.

3                   MS. WELCH: Chairman Robert Schmidt?

4                   CHAIRMAN SCHMIDT: I'm in favor of  
5 publishing.

6                   MS. WELCH: Commissioner Ron Ederer?

7                   VICE-CHAIRMAN EDERER: In favor of  
8 publishing, reluctantly.

9                   MS. WELCH: Commissioner Gloria Hicks?

10                  COMMISSIONER HICKS: Publish.

11                  MS. WELCH: Commissioner Michael Martin?

12                  COMMISSIONER MARTIN: Not in favor.

13                  MS. WELCH: Commissioner Gary Aber?

14                  COMMISSIONER ABER: No.

15                  MS. WELCH: Commissioner John Steen?

16                  COMMISSIONER STEEN: Publish.

17                  MS. WELCH: Commissioner Cynthia Leon?

18                  MS. LEON: Publish.

19                  MS. WELCH: Commissioner Victoria North?

20                  MS. NORTH: Publish.

21                  MS. WELCH: Six yes, two nos.

22                  CHAIRMAN SCHMIDT: Okay. The motion  
23 carries six to two.

24                  Again, I would caution people, this is a  
25 motion to publish. It's not a motion to make the

1 decision. That carries.

2           There will be no executive session.

3           The next meeting we'll tentatively  
4 schedule for the 11th of August.

5           VICE-CHAIRMAN EDERER: Before we end, I'd  
6 just encourage the industry to do everything they can  
7 possibly do to cooperate and to organize and to put as  
8 much information as you possibly can forward so when  
9 this issue comes up again in two months that the  
10 Commissioners will have a full understanding of exactly  
11 your position, the unification of the industry for  
12 support, and I'd just encourage you to go forward.

13           That's all.

14           COMMISSIONER ABER: I'd like to make a  
15 comment, too. You need to -- every one of you all need  
16 to get this to grass roots and go to these congressmen,  
17 especially the ones on the Legislative Budget Board,  
18 and they need to know your views and how many votes you  
19 have. It doesn't take that many votes. If you'll see  
20 what the teachers did on that education bill, they got  
21 75,000 signatures and got that defeated.

22           You go to those horsemen. You get people  
23 to vote. You know, and you get the public -- the  
24 public is for -- they're for this, you know. And if  
25 you get -- if you get this big comment here and you

1 get -- overwhelmingly you show your congressmen that  
2 you're overwhelmingly for it, you can do it. You have  
3 to get active. You've got to know your congressman.  
4 You've got to go talk to him. You've got to be on  
5 there.

6 CHAIRMAN SCHMIDT: Any other comments?

7 Okay. We're tentatively scheduled for  
8 the 11th of August. You'll be notified. If you have  
9 any conflicts, please notify us and we'll certainly try  
10 to accommodate them.

11 Thank you for your time today. The time  
12 is now 11:42 and we're adjourned.

13 (Proceedings concluded at 11:42 a.m.)

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1 STATE OF TEXAS )

2 COUNTY OF TRAVIS )

3

4 I, SHERRI SANTMAN FISHER, a Certified Shorthand  
5 Reporter in and for the State of Texas, do hereby  
6 certify that the above-captioned matter came on for  
7 hearing before the TEXAS RACING COMMISSION as  
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9 I FURTHER CERTIFY that the proceedings of said  
10 hearing were reported by me, accurately reduced to  
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14 GIVEN UNDER MY OFFICIAL HAND OF OFFICE at Austin,  
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