

BEFORE THE
TEXAS RACING COMMISSION
AUSTIN, TEXAS

COMMISSION MEETING
JUNE 13, 2017

BE IT REMEMBERED that the above entitled matter came on for hearing on the 13th day of June, 2017, beginning at 10:30 A.M. at 2105 Kramer Lane, Austin, Travis County, Texas, and the following proceedings were reported by SHERRI SANTMAN FISHER, Certified Shorthand Reporter for the State of Texas.

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APPEARANCES

Commissioners: JOHN T. STEEN, III
 RONALD F. EDERER
 MARGARET MARTIN
 GLORIA HICKS
 VICTORIA NORTH
 STEVEN P. MACH

1 CHAIRMAN STEEN: Good morning, everyone.
2 Can you hear me okay?

3 The time is now 10:30. At this time I'd
4 like to call today's meeting of the Texas Racing
5 Commission to order.

6 Jean, could you please call the roll?

7 MS. COOK: Yes.

8 Commissioner Hicks?

9 COMMISSIONER HICKS: Present.

10 MS. COOK: Commissioner Mach?

11 MR. MACH: Present.

12 MS. COOK: Commissioner Martin?

13 COMMISSIONER MARTIN: Present.

14 MS. COOK: Commissioner North?

15 MS. NORTH: Here.

16 MS. COOK: Commissioner Schmidt?

17 Vice-Chair Ron Ederer?

18 VICE-CHAIRMAN EDERER: Present.

19 MS. COOK: And Chairman Steen?

20 CHAIRMAN STEEN: Here.

21 Do we have a quorum?

22 MS. COOK: Yes, sir.

23 CHAIRMAN STEEN: Thank you.

24 Okay. Proceeding to Item II, public
25 comment, Devon, has anyone signed up for public

1 comment?

2 MS. BIJANSKY: No, sir.

3 CHAIRMAN STEEN: Okay. The next item is
4 Agenda Item III-A, budget and finance update.

5 Adrienne Courtney, could you give us the
6 update, please?

7 MS. COURTNEY: Good morning,
8 Commissioners.

9 On pages five through 10 of your agenda
10 packet is the agency's fiscal year operating budget
11 showing revenue collected and expenditures as of the
12 end of April.

13 With 67 percent of the year completed,
14 the agency has collected approximately 5.7 million or
15 71 percent of projected revenue and expended 4.9
16 million or 58 percent of budgeted expenditures.

17 As of the end of April, the Commission
18 had a cash balance of \$753,117 but projects a cash
19 deficit of \$81,485 by the end of 2017, of the fiscal
20 year. A cash deficit of \$686,322 is also projected for
21 FY 2018 based on the current fee structure and the
22 agency's expenditures outlined and approved in the
23 conference committee at Senate Bill 1.

24 Both of these deficits were addressed at
25 the joint meeting of the committee on rules and the ad

1 hoc committee on finance held on June 6th. The meeting
2 was held to discuss the agency's budget and cash flow
3 and also to receive input from the racetracks and
4 industry participants to address funding the agency's
5 operations. The items discussed included the need for
6 a supplemental fee for fiscal year 2017 and racetrack
7 license fees, occupational license fees, and the
8 agency's expenses for fiscal year 2018 and fiscal year
9 2019.

10 After carefully reviewing the agency's
11 budget, staff has identified \$140,000 in operational
12 cuts in each year of the next biennium. Most of the
13 savings will be realized by not filling two positions
14 and by some reduction in staff hours. These savings
15 include the salaries for these positions and the
16 associated benefit costs.

17 A discussion of approval of a
18 supplemental fee and proposed rule changes regarding
19 the agency funding is on today's agenda.

20 I'd be happy to answer any questions you
21 may have.

22 CHAIRMAN STEEN: Commissioners, do you
23 have any questions?

24 Thank you, Adrienne.

25 The next item is Agenda Item III-B,

1 report on wagering statistics.

2 Curley Trahan?

3 MR. TRAHAN: Thank you, Mr. Chairman.

4 Good morning, Commissioners.

5 On pages 11 through 13 of your meeting
6 materials is the comparison report on wagering
7 statistics for the period of January 1 through May 28
8 for calendar years 2016 and 2017.

9 For the reporting period, total wagering
10 activities at the horse racetracks showed a decrease
11 from 2016 of 5.51 percent. Likewise, total wagering
12 activities at the greyhound racetracks showed a
13 decrease of 10.35 percent from 2016 for the same
14 period. Overall total wagers placed in Texas decreased
15 by 6.57 percent, while total wagers placed on Texas
16 races decreased by 5.42 percent.

17 I'd be happy to answer any questions.

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

20 Thank you, Curley.

21 MR. TRAHAN: Thank you, sir.

22 CHAIRMAN STEEN: The next item is Agenda
23 Item III-C, inspection and enforcement reports.

24 Jim Blodgett?

25 MR. BLODGETT: Mr. Chairman,

1 Commissioners, good morning.

2 Commissioners, you'll find an updated
3 inspection report with your agenda due to a minor
4 last-minute adjustment to the inspection counts.

5 Commissioners, from a period of time of
6 April 1st, 2017, until May 31st, 2017, staff conducted
7 a total of eight facility inspections. From these
8 inspections, a total of five unsatisfactory items were
9 identified at the Valley Race Park related to some
10 minor corrections required by the racetrack. These
11 issues are detailed further in your inspection report
12 in your agenda.

13 Additionally, one unsatisfactory item,
14 which was also detailed within your inspection report,
15 was located or identified at Gulf Coast Racing. Staff
16 is presently working to resolve all these issues with
17 the associations.

18 Commissioners, currently Lone Star Park
19 and Retama Park are conducting live race meets. Sam
20 Houston Race Park recently conducted its -- concluded
21 its Quarter Horse meet on May 22nd. Sam Houston Race
22 Park, Valley Race Park, Gulf Greyhound Park, Gulf Coast
23 Racing, and The Race Barn in Fredericksburg are
24 currently conducting simulcast operations.

25 Commissioners, the stewards' rulings

1 report from Sam Houston Race Park is provided in your
2 material on page 15 and includes a wide variety of
3 infractions. The largest numbers of completed rulings
4 by our Stewards Board there were medication positives,
5 trainer infractions, and licensing issues.

6 I'd be happy to answer any questions that
7 you may have.

8 CHAIRMAN STEEN: Commissioners, do you
9 have any questions?

10 Thank you, Jim.

11 The next item is Agenda Item IV,
12 proceedings on occupational licenses. We have before
13 us a motion for rehearing or reconsideration on behalf
14 of Roman Chapa. I've asked the attorneys for Mr. Chapa
15 and the staff to limit their comments to two minutes.
16 Mark will monitor the time. I'd like to hear from both
17 sides before we take up any questions. Let's begin
18 with Mr. Chapa's attorney, Paul Vick.

19 Mr. Vick, are you here?

20 MR. FENNER: Mr. Chairman, it doesn't
21 appear that Mr. Vick is here. I think it's your option
22 whether you'd like to defer this item until later in
23 the agenda or go ahead and take it up right now. The
24 materials are in the --

25 CHAIRMAN STEEN: Do you know if he has

1 plans to be here?

2 MS. BIJANSKY: I didn't hear specifically
3 from him that he did plan to come; but after I sent him
4 notice of the meeting, he e-mailed asking for a
5 transcript, so I assumed that he was preparing to be
6 here.

7 CHAIRMAN STEEN: Okay.

8 MR. MACH: I would suggest we give him
9 until the end of the hearing.

10 CHAIRMAN STEEN: Okay. We'll just defer
11 on this one until --

12 MR. FENNER: Yes, sir, we can defer until
13 later in the Commission meeting and take it up out of
14 order.

15 CHAIRMAN STEEN: Do we need a motion to
16 do that?

17 MR. FENNER: No, sir.

18 CHAIRMAN STEEN: Okay.

19 All right. Moving to Agenda Item V,
20 approval of a supplemental fee, I'd like to recognize
21 Mark Fenner.

22 Mark, can you lay out this item?

23 MR. FENNER: Yes, sir.

24 As you heard from Ms. Courtney earlier,
25 the Commission is facing a shortfall of \$81,485 during

1 the current fiscal year, meaning the agency can't fund
2 its operations through the month of August and into FY
3 2018 unless it secures additional funds.

4 Now, the rules do address this type of
5 situation. They provide that if the executive
6 secretary determines that the revenue from annual fees
7 is insufficient to pay the Commission's costs during a
8 fiscal year that he will recommend to the Commission a
9 supplemental fee, in addition to the license fee that
10 they're already paying, each association would be
11 required to pay to generate the necessary revenue to
12 pay the Commission's costs.

13 So in accordance with that rule, you'll
14 see on page 26 that the executive director is
15 recommending that the Commission approve a supplemental
16 fee of \$181,485 to be shared among the tracks. And
17 this is done proportionately in proportion to the share
18 that each is currently bearing in their annual
19 revenues. This will allow the Commission to operate
20 through the current fiscal year and carry a very small
21 carryforward into FY '18 to make sure that we don't go
22 immediately negative then, too.

23 So what we would ask is that the
24 Commission approve the supplemental fee as described on
25 page 26 of your materials.

1 CHAIRMAN STEEN: Chuck, can you describe
2 any actions you've taken on this?

3 MR. TROUT: Sir, just to remind you, the
4 reason for this shortfall is that three licensees
5 turned in their licenses during the last -- during this
6 fiscal year and that was a loss of about \$690,000.

7 In September we reported to you that we
8 had a shortfall of about \$400,000 because, when they
9 turned their licenses in, they had already paid part of
10 their fees for this year. Since that time, Sam Houston
11 Race Park has taken over the license at Manor Downs and
12 they paid \$172,500 in fees that we weren't expecting.
13 We also had about another \$10,000 in unexpected
14 revenue. And then we've had some savings due to an
15 unanticipated reduction in staff hours. There is a
16 hiring freeze currently going on. That has also had
17 some savings. And then we had some unappropriated
18 savings because of those two issues.

19 All told, we now -- that 400,000-dollar
20 deficit is now down to \$80,790 and that's why -- that's
21 why there's the difference between the 80,000 and what
22 we reported to you in September.

23 CHAIRMAN STEEN: Commissioners, do you
24 have any questions for Mark or Chuck on this?

25 I'd ask Commissioners Ederer and North

1 and Mach if you have any comments from the finance
2 committee about this issue.

3 VICE-CHAIRMAN EDERER: Well, we discussed
4 the issue at length. And of course, it's bifurcated.
5 I mean, as far as the issue is concerned, the only
6 issue we're taking up at this point in time is the
7 immediate shortfall.

8 This was discussed. As far as the tracks
9 are concerned, I mean, everyone realizes they have
10 to -- we have to go forward. Of course, the tracks and
11 the people that will be doing the contributing, you
12 know, don't especially like the contribution, but I
13 think they realize that they have to come forward with
14 a contribution.

15 It was thoroughly discussed. And the
16 \$100,000 extra that is stuck in the request, it
17 certainly appears to be necessary and I think that
18 the -- excuse me. And the tracks understand it.

19 MR. MACH: I would just concur with
20 that. I don't see any reason to not -- (inaudible).

21 MR. FENNER: Mr. Mach, would you repeat
22 that for the court reporter?

23 MR. MACH: I'm sorry. I would concur
24 with that. I don't see any reason to not approve that
25 supplemental.

1 CHAIRMAN STEEN: Devon, has anyone signed
2 up to speak on this?

3 MS. BIJANSKY: Just the one card I've
4 given you.

5 CHAIRMAN STEEN: Okay. Mr. Steve Ross
6 has signed up to speak.

7 MR. ROSS: Yes, Commissioners. I'm Steve
8 Ross from Retama Park. And I may have signed up for
9 the wrong item in that my intention was to talk about
10 the fiscal year '17-'18 --

11 CHAIRMAN STEEN: Okay.

12 MR. ROSS: -- more so than this
13 particular item.

14 I do know -- I will say that Mickey
15 Parenton, who's the senior vice-president of Pinnacle
16 who manages Retama Park -- I spoke with him this
17 morning and he would have been here today had he
18 realized this was on the agenda. I think there was
19 some confusion on his part. At the meeting last week,
20 what we remember is a talk of coming back in July after
21 the Commission staff has had a chance to review its
22 budget, had some time to maybe find some savings, and
23 then we'd be better prepared to discuss funding moving
24 forward.

25 So generally speaking, Pinnacle would

1 like to explore ways in which the Commission can save
2 money without the fees being increased. Now, this
3 particular -- I would say this is more of an immediate
4 need and I am tasked to -- I will report back to Mickey
5 the results of whatever we decide today.

6 CHAIRMAN STEEN: So for this agenda item,
7 would you like to come back and speak on the next one
8 or --

9 MR. ROSS: Sure. Yes.

10 CHAIRMAN STEEN: Okay.

11 MR. ROSS: Yes, I would. I would just
12 shift my item.

13 CHAIRMAN STEEN: Okay.

14 MR. ROSS: Okay. Thank you.

15 CHAIRMAN STEEN: Thank you.

16 Do we have any more discussion on this
17 item?

18 If not, I'll entertain a motion to
19 approve the supplemental fee as laid out in Chuck's
20 memo on page 26 of the packet.

21 MR. MACH: I'll make that motion.

22 VICE-CHAIRMAN EDERER: I'll second.

23 CHAIRMAN STEEN: I'm sorry. A motion
24 made by Mach, seconded by Ederer.

25 Any discussion?

1 Okay. We'll take this one up for a
2 vote. All in favor please signify by saying aye.

3 COMMISSIONERS: Aye.

4 CHAIRMAN STEEN: Any opposed?

5 The motion carries.

6 MR. FENNER: Commissioner, I would like
7 to note for the record Mr. Vick has arrived, so you can
8 take him up any time at your convenience.

9 CHAIRMAN STEEN: Okay. Let's go ahead
10 and get through VI here and then we'll proceed to
11 that.

12 Okay. Moving to Item -- Agenda Item
13 VI-A, rule proposals, Mark, can you lay this one out
14 for us, please?

15 MR. FENNER: Yes, sir.

16 Okay. As you've been discussing, the
17 agency is facing a budget shortfall of \$690,000 in each
18 of the next two fiscal years. And of course, this is
19 from the loss of the three Class 2 horse racetracks
20 licenses. That means the agency is going to run out of
21 money early next fiscal year unless it executes some
22 combination of fee increases and cost reductions to
23 achieve that 690,000-dollar shortfall. And after
24 closely inspecting the agency's budget, the staff has
25 been able to identify \$140,000 in operational savings,

1 leaving a deficit of \$550,000.

2 After some discussions with you,
3 Mr. Chairman, we have prepared a proposal -- or
4 actually a proposal to amend 309.8, which is the
5 racetrack license fees, and also 311.5, which is the
6 occupational license fees. And what we're doing is
7 proposing an across-the-board cut -- increase of 15
8 percent for all license types. This will generate
9 approximately \$550,000, leaving us with a positive cash
10 balance of about \$129,000 at the end of the fiscal year
11 2018. And you'll see these fee increases on pages
12 seven through nine of your packet.

13 Even though it's talking about a
14 129,000-dollar increase, the occupational licenses are
15 decreasing over time, so that's kind of not a hard
16 number. And of course, the amount from the tracks
17 depends on a stable supply of racetrack licenses. If
18 that decreases, then we're going to have to adjust that
19 as well or come up with some sort of solution.

20 So at this point, the materials are in
21 your packet. I'm prepared to answer any questions you
22 may have about the rule changes or rule proposals.

23 CHAIRMAN STEEN: Thanks, Mark.

24 And I'd just like to provide everyone
25 here with some background and my thoughts on this

1 proposal.

2 As of the meetings a few weeks back on
3 this subject, we had a lot of people put forward a lot
4 of good ideas for ways for the agency to save money,
5 but we didn't have really any solid numbers on
6 potential savings that the agency could count on. So
7 in an attempt to address this situation as quickly as
8 possible, as late -- late last week Chuck provided me
9 and the rest of the staff with around \$140,000 that we
10 thought he could feel good about cutting out of our
11 budget for the next fiscal year.

12 The way that I look at that 140,000 is
13 that these are savings that don't involve another third
14 party, such as a vendor or another government agency.
15 I feel that given we have that number, which happens to
16 be about 20 percent of the deficit if everything stays
17 the same for the next fiscal year, then we should get
18 that out there as a starting point for the budget for
19 the following fiscal year and I think it's a pretty
20 good start.

21 You know, we're already down, hopefully,
22 20 percent from the 700K or 690 deficit. I hope we can
23 find some more in the coming months. But the majority
24 of things -- of the other things on the list require
25 some outside cooperation and that may take a little bit

1 of time to fully flesh out and potentially negotiate.
2 Chuck will go over some of those items shortly.

3 I know that the industry opposes what
4 amounts to what I think of as an official working draft
5 of a budget for the next fiscal year. You know, I sit
6 here. I'm a full-time businessman and a part-time
7 unpaid regulator. I always find, in business, it's
8 prudent to have a baseline scenario for your business
9 rather than have a cliff with some uncertainty beyond a
10 date. And I'm sure each of you owe an annual budget to
11 whomever you report to.

12 So I do support the proposal today, the
13 posting of the potential rule changes, and I look at
14 that as a baseline scenario to work through in our July
15 rules and finance meetings and into August and
16 potentially even beyond, into October, where we
17 would -- with the current pass, where we would run out
18 of money for the agency and the industry would be
19 forced to stop running.

20 And since a proposal like this, even if
21 published, isn't set in stone -- it can be modified or
22 even abandoned -- I don't really see that taking them
23 up now is significantly different from the finance
24 committee meetings outcome that we just heard about and
25 I think we'll hear some more about.

1 I can personally assure the industry that
2 any proposal that's considered that I will direct staff
3 to continue to look for ways to be more efficient and
4 have -- you know, look for additional savings and there
5 will be an onus to report on that on a regular basis to
6 the Commission and the industry.

7 So I don't know the rest of the
8 Commission views, but I just want to express that
9 that's my view on this subject that's at hand here.

10 And I guess I would ask, again,
11 Commissioners Ederer, North, and Mach if you have
12 anything to add in that regard given that you were
13 present in the finance committee meetings.

14 VICE-CHAIRMAN EDERER: Yes, I do.

15 As far as this matter being placed on the
16 agenda, if there's confusion whether it was going to be
17 on the agenda or not on the agenda, I believe that I'm
18 part of that confusion because as we left the finance
19 meeting, we had discussed whether or not this matter
20 would actually be on the agenda and we would work
21 toward coming up with a number.

22 The shortfall was definitely going to be
23 on the agenda and everyone understood that. As far as
24 the long haul is concerned, it was pretty well
25 understood that that matter would not be taken up at

1 this meeting, it would be taken up in a finance meeting
2 in July, and then put on the agenda -- excuse me -- in
3 August.

4 Now, after talking to the chairman, the
5 chairman, being a good businessman and I'm being a
6 lawyer, so he -- he said that he'd prefer to have a
7 number for us to work from. Now -- and after we
8 discussed it, you know, at length, I agree with that.

9 These numbers that we're talking about
10 here today, as I understand them, Mark, and what we're
11 doing here today is we're discussing whether or not
12 this will be posted at the next meeting. Is that
13 correct?

14 MR. FENNER: What we're doing today is
15 considering whether to publish them in the Texas
16 Register, where they'll be there for a 30-day public
17 comment period, and then they'll be eligible for you to
18 take further action on in the August meeting.

19 VICE-CHAIRMAN EDERER: But between now
20 and August we're going to have a finance meeting and
21 we'll have another rules meeting. Is that correct?

22 MR. FENNER: Yes, sir.

23 VICE-CHAIRMAN EDERER: And as I
24 understand it, the staff is looking into a number of
25 areas for future possibilities of cutting. Is that

1 correct?

2 MR. FENNER: Yes, sir. Yes, sir.

3 VICE-CHAIRMAN EDERER: And will continue
4 to do so. In fact, I think staff was going to look
5 into a couple of matters, one being the CHRIM in
6 California, I believe, is what it's referred to.

7 MR. FENNER: Yes, sir. The CHRIMS.

8 VICE-CHAIRMAN EDERER: CHRIMS. And there
9 was another item that staff was going to look into and
10 I'll ask you as we go on, just because I'm sure we're
11 going to have quite a bit of discussion, as to what
12 staff has done in the past week and what staff expects
13 to do in the coming period of time.

14 I agree with the chairman that we need a
15 bottom line. We need to know what our total exposure
16 is. And then we start chipping at it. But you know
17 the old saying, "Trust me. I'm with the Government.
18 I'm going to work at doing something."

19 We discussed this and we talked about it
20 in the finance meeting and everyone understands that
21 when you're dealing with the Federal -- with the
22 Government, State Government, or any entity, the
23 Government has a tendency, once the finances are there,
24 to kick the can down the road. And we can't do that
25 because we've been kicking the can down the road for at

1 least the last 10 years that I'm aware of.

2 So I think that if we go forward with
3 this, it's incumbent upon all of us, and including
4 staff even more so, to continue to report back to the
5 Commission and to the public just what is being dealt
6 with and what they're working on and what potential
7 savings there are. I think that that will be very
8 important that we do that. And I know that the Chair
9 has agreed with that also, that he -- he will be
10 requesting, I know, that staff make regular reports
11 back to all of us as to what's going on.

12 And of course, we're going to be asking
13 the industry to be doing the same thing. I mean, it's
14 not all just on the staff. We're going to need help
15 from the industry.

16 I didn't really mean to get into that;
17 but anyway, I did. And so that's where we are. I
18 believe that -- I know that there are a number of
19 people here that want to discuss this matter. I know
20 that this is going to hurt. Nobody is happy about it.
21 But it is what it is.

22 (Inaudible discussion)

23 MS. NORTH: Well, Mr. Chairman, we're not
24 ready to support a rule amendment yet. We think
25 everyone needs to work together to find a solution and

1 some of it may be a fee increase. And we might not, at
2 the end of the day, agree on everything. But I think
3 that with the authority to do the supplemental
4 assessments that we're not at a -- in an emergency
5 situation where we have to adopt a rule in August. And
6 with the Racing Commission being excepted from HB 1290,
7 we'll continue to have the authority to assess and
8 raise fees to support your revenue.

9 I just think we need to all work together
10 to come up with a solution openly at the same time in
11 the same room and I think we have time to do that.

12 MR. MACH: I would agree that it is a
13 group effort. But to your point, we do need a baseline
14 plan. A cliff was not attractive at the meeting last
15 week and it was something that, as I have thought about
16 this quite a bit since then, I do believe we need to
17 have some sort of a baseline and I think your cuts of
18 20 percent are ahead -- are heading in the correct
19 direction. And so I am prepared to support some sort
20 of rule at such time as we do take that up.

21 VICE-CHAIRMAN EDERER: And, Mark, it's my
22 understanding that just because we place the matter in
23 the public -- the Texas -- the Register, and because it
24 will be on the agenda next August, that doesn't
25 necessarily mean at that point in time -- if we

1 still -- you know, if we're kind of in flux and
2 everyone agrees, that number can change or it could
3 actually be postponed even further. I don't think that
4 will happen, but the number certainly can change.

5 MR. FENNER: Yes, sir, the numbers can
6 change. Also you have up to six months -- once it's
7 published in the Texas Register, you have six months to
8 take action on it. So there is quite a bit of time to
9 continue reviewing and take action after it's been
10 published.

11 MR. MACH: And just to not tie the
12 Commission's hands on any of this, does this Commission
13 work the same way in the sense that any time after 30
14 days with a duly noticed -- or properly noticed duly
15 called meeting, the Commission may take action?

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

17 MR. MACH: So it doesn't have to be in
18 August. I just want to be clear. It just needs to be
19 within the notice provision?

20 MR. FENNER: Yes, sir, you are correct.

21 MR. MACH: I'm not suggesting that would
22 be the case, but I want it to be perfectly clear that
23 if the chairman decided to call a special meeting that
24 he was not -- we were not making any assurances to the
25 public that -- or the industry that it was going to be

1 August. It could be --

2 MR. FENNER: Any time after the 30 days
3 is completed, yes, sir.

4 CHAIRMAN STEEN: I think maybe at this
5 time, Chuck, could you address some of the things
6 you'll be looking at in terms of the additional cost
7 savings?

8 And I do want to commend the staff for
9 coming up with 20 percent. I know we've been working
10 and working pretty regularly and I've been in regular
11 communication with the staff on trying to identify
12 savings and I really think that's a good start. I want
13 to commend you on that.

14 But of course, we all want to know what
15 are some of the additional things that we're looking at
16 and what are the status of those, if you don't mind
17 just going through some of that.

18 MR. TROUT: Okay. In the meeting, the
19 industry came up with several things that they would
20 like for us to look at, using a different database for
21 licensing, relocating our offices, sharing staff with
22 other agencies, allowing DPS to take the law
23 enforcement function, transferring the licensing
24 function to the Texas Department of Licensing and
25 Regulation, increasing occupational licensing fees,

1 pursuing financial assistance from organizations such
2 as the Jockey Club.

3 Before this happened, we already had
4 meetings scheduled with DIR. This is the Department of
5 Information Resources. My IT director and I met with
6 them last Friday where we had laid out our architecture
7 and what it is we do and then they briefed us on what
8 they can do for us.

9 Now, in the past we've been evaluated by
10 that organization and their conclusion was that it
11 would cost too much money -- it would cost more money
12 for them to do for us what we were already doing for
13 ourselves. However, they have recently changed the way
14 they do business. Before it was an all or nothing type
15 of thing and now it's kind of an a la carte situation
16 where you can buy into only certain services. And so
17 they are supposed to get back to me within the next two
18 weeks and give us some idea of what that's going to
19 cost if they were to take over some of those services
20 for us.

21 CHAIRMAN STEEN: So we think we'd have
22 the results of that prior to the July meeting?

23 MR. TROUT: Yes, sir. Yes, sir. I
24 believe I'll be able to report on that at that time.

25 I assigned -- these eight items that the

1 industry came up with, I assigned that to different
2 people on the staff for them to reach out. I know
3 we've already reached out to the Kentucky Racing
4 Commission to see how they are using these same
5 services that have been brought up and so I think we're
6 going to be able to report on some of that at that
7 time.

8 The licensing, we will be getting in
9 contact with the TDLR.

10 Let's see. We've already discussed with
11 another agency -- and I don't want to identify the
12 agency yet because their executive director doesn't
13 know about this yet. We've been talking about it at
14 the lower level. But there is another agency where, at
15 the lower level, they would like to share the cost of
16 investigators. And so I expect to have that meeting
17 sometime between now and next week where I'll sit down
18 with the executive director of that agency and see if
19 we can't work out an agreement there.

20 Let's see. We have already started
21 reaching out also to the Facilities Commission. As far
22 as relocating our offices, we have no control over
23 that. The Facilities Commission, they have a plan as
24 to how they're going to handle housing different
25 agencies. And right now we are expecting to be

1 relocated in I believe it's 2020, is what they told
2 us. That's their plan. And that is to get us into a
3 government facility.

4 That doesn't mean we won't be paying
5 rent. We are reaching out to them to find out if
6 there's going to be some savings there, whether or not
7 it's cheaper to be in a government agency building --
8 or a government-owned building or in a leased building
9 like we're in right now.

10 CHAIRMAN STEEN: And who controls that
11 process, that organization?

12 MR. TROUT: That's the Facilities
13 Commission.

14 So we have no control over where we are.
15 We have no control over the contract. In fact, I don't
16 even sign that contract. The Facilities Commission
17 signs the contract and they determine where we're going
18 to be and they determine if we're going to move, when
19 we're going to move. So we really don't have much
20 control over that.

21 And that's about all I have for you
22 today, sir.

23 CHAIRMAN STEEN: But you've reached out
24 to them?

25 MR. TROUT: Well, we've reviewed the

1 contract. We will be reaching out to them and seeing
2 what options there are there and to just ask them again
3 if maybe they can speed up that process. But, you
4 know, they probably have a five-year plan or whatever
5 where they're trying to move other agencies into
6 government offices. My understanding is that's their
7 goal is to get all agencies into government-owned
8 buildings.

9 CHAIRMAN STEEN: Commissioners, do you
10 have any questions of Chuck or Mark?

11 MR. TROUT: I'm sorry. One last thing.
12 I think it would be prudent if I reported to you about
13 once a month on the progress and then, if I have
14 something significant, to report to you as that
15 happens.

16 CHAIRMAN STEEN: Okay. I think that's a
17 good plan.

18 VICE-CHAIRMAN EDERER: Within two weeks
19 you'll have something from IT?

20 MR. TROUT: Yes, sir.

21 VICE-CHAIRMAN EDERER: And hopefully in
22 the next week or so you'll have more information as far
23 as sharing investigators?

24 MR. TROUT: I hope to, yes, sir.

25 VICE-CHAIRMAN EDERER: So we'll have

1 that -- the benefit of that information certainly for
2 the next finance meeting.

3 MR. TROUT: I hope to, yes, sir.

4 VICE-CHAIRMAN EDERER: As far as the
5 Jockey Club is concerned, we've had some input from the
6 industry so far, but we've got a long way to go to
7 follow up on that. Staff will be looking into that.

8 I understand as far as your officing, the
9 office, the problem in 2020. I'm well aware of the
10 situations that you run into. So maybe we'll do some
11 good on that and maybe you won't, but I wouldn't expect
12 anything to come from that.

13 Other agencies you say you're discussing
14 assistance with, one is the investigating, one is IT.
15 Anything else?

16 MR. TROUT: There are other ideas as far
17 as -- there is an agency that has an individual that in
18 the past has facilitated agencies getting together and
19 sharing resources. One of the -- our IT director has
20 talked to DIR, for example, and DIR told her that they
21 were looking at the possibility of consolidating the
22 function of the ISO. That's the information security
23 officer.

24 As you well know, legislators will give
25 us what we refer to as unfunded requirements, so they

1 tell you you have to do this but they don't give you
2 the money to do it. And that's one of the functions
3 that we have to have. We have to have an ISO and this
4 is an individual who has to be certified. They have to
5 have so many hours of continuing education every year.

6 And so -- but for an agency our size, we
7 don't need a full-time ISO. Right now our IT director
8 is doing that job. But she's not an expert in that
9 area, but you need an expert in that area because
10 computer security is very important. So if we can get
11 somebody who is a professional at that and that
12 individual is taking care of two or three or four
13 different agencies, then we can all share in that. So
14 DIR evidently is looking at that issue.

15 So like I said, there is another
16 individual that facilitates these kinds of things and
17 we're reaching out to him to see where they are, where
18 these other small agencies are, because other agencies
19 have the same issues that we have. They can't afford
20 to have a full-time ISO or a full-time purchaser or,
21 you know, different -- different positions that you
22 have to have. You have to have the function taken care
23 of. Whereas if you go to a large agency, they may have
24 five or six people doing that, but we don't have a
25 requirement for a full-time person.

1 So that's what we're going to be
2 exploring, what are those things, such as purchasing,
3 maybe HR. It's possible we could get help in that
4 area, where that could be consolidated, possibly some
5 in the finance area. So we do have some functions that
6 we can say, you know, we can save money if we could
7 share an individual with other agencies. And so we're
8 going to be exploring that in all areas.

9 VICE-CHAIRMAN EDERER: I don't know if
10 you can answer this or not, but let's say that
11 something works out with IT. What are we talking about
12 money-wise?

13 MR. TROUT: I have no idea.

14 VICE-CHAIRMAN EDERER: The same with
15 investigators?

16 MR. TROUT: Well, I would hope that we
17 would share 50/50, but I couldn't give you a number.

18 VICE-CHAIRMAN EDERER: Could you maybe
19 look into that one? I think that will be very
20 important to have.

21 MR. TROUT: Right. Yeah, we are. We're
22 looking at how many investigators do they need, how
23 many investigators do we need, where would the
24 placement of those investigators be, and how would we
25 divide up their duties. Those are all questions that

1 we'll have to determine.

2 Right now I'm not even sure their
3 executive director knows about this. Right now it's
4 our chief investigator talking to their chief
5 investigator.

6 VICE-CHAIRMAN EDERER: Thank you.

7 CHAIRMAN STEEN: Any other questions for
8 Chuck or Mark?

9 I think we have several people signed up
10 to speak. Mr. Ross, would you like to come back up
11 representing Retama?

12 MR. ROSS: Sure. Steve Ross, Retama
13 Park.

14 I think Commissioner Ederer laid it out
15 very well, what transpired at the June 6th meeting.
16 I'm just here to say Retama Park has struggled for a
17 long, long time. And I do commend what Chuck just
18 said. It looks like there's a lot of opportunity there
19 to potentially save some money and reduce the
20 shortfall.

21 In fact, I think it's a good thing we had
22 that meeting on June 6th because I think that was an
23 impetus to taking a look. I'm concerned that if we
24 hadn't, maybe things would have gone on as they always
25 have. So I do think that's good.

1 And just simply, we really -- we object
2 to a fee increase. When the time comes, if one is put
3 in place, then that will -- people higher than me in
4 the company will address that at that time. But I was
5 sent here just to express the fact that we would prefer
6 no fee increase.

7 Now, I do understand that this is not
8 being passed today, so if, you know, something moving
9 forward -- I do understand the need for something
10 potentially that would be addressed down the line, but
11 it's a little scary that we don't know what's in the
12 future. So that's --

13 VICE-CHAIRMAN EDERER: At the finance
14 meeting Retama was represented. You were there.

15 MR. ROSS: I was there and Mickey
16 Parenton was there.

17 VICE-CHAIRMAN EDERER: Yes, he was
18 present.

19 MR. ROSS: Yes.

20 VICE-CHAIRMAN EDERER: And he was very
21 concerned. And his position is what?

22 MR. ROSS: He is a senior vice-president
23 of Pinnacle. Pinnacle is the management company for
24 Retama Park. He -- just to sort of structure it, he
25 would be my boss' boss. He is a high-ranking official

1 in the company, one who reports directly to the
2 president and the chairman. So he would be the one who
3 would go to our company president and lay out the
4 situation and get any kind of additional fee payments
5 approved. So, yeah, he would have liked to be here
6 today. And I'll report back to him what has happened
7 today.

8 And then -- and we're sort of in
9 transition right now. We have a -- we lost a general
10 manager on May 29th. We have a new guy coming in at
11 the end of the month. So everyone else is in Lake
12 Charles or Baton Rouge, so I'm actually the local
13 representative.

14 So anyway, that's just -- I'm happy to
15 answer any questions about what we've been going
16 through. I think you probably know the situation down
17 in San Antonio is not -- not the greatest financially.
18 And it would hurt us to go for another -- another
19 75,000 is 75,000 we can't spend on something else. We
20 can't fix up barns. We can't buy a tractor. You know,
21 it's just -- we don't have unlimited funds.

22 So I'm happy to answer any questions.

23 CHAIRMAN STEEN: Any questions of
24 Mr. Ross?

25 MR. ROSS: Or I'm happy to sit down.

1 Okay? Thank you.

2 CHAIRMAN STEEN: Thank you, Mr. Ross.

3 VICE-CHAIRMAN EDERER: I did want the
4 Commissioners to know that his boss' boss was present,
5 did participate, and he's very concerned, but he's
6 also -- he gave us the impression that he's very
7 willing to work with us as much as he can, just as
8 Mr. Ross described.

9 CHAIRMAN STEEN: Next I'll call Andrea
10 Young representing Sam Houston, Valley, and Manor.

11 MS. YOUNG: Good morning, Commissioners.

12 The first thing I'd like to do this
13 morning -- I don't know if you've been provided, but
14 yesterday the industry collectively met, all of the
15 horsemen organizations.

16 MR. FENNER: I've given a -- placed a
17 copy of that letter at their places.

18 MS. YOUNG: Yeah. And we have sent a
19 letter to Governor Abbott noting our strong opposition
20 to any fee increases. So I wanted to make sure you
21 guys had that in your packet. In that letter, we laid
22 out, you know, several of the reasons why.

23 You know, to emphasize the strong
24 opposition to this path, I hear kind of the
25 conversation that's, you know, come before my testimony

1 here right now. I think this is a huge mistake to
2 publish this rule.

3 We started working on this issue last
4 week. You know, we had two separate meetings with
5 staff, including the larger rules committee meeting
6 that three of the Commissioners attended. We, as an
7 industry, really felt -- and, Commissioner Ederer, I
8 heard what you said earlier, but we left with one
9 concept at that meeting and we're being presented with
10 another one here today. And so it feels to us as an
11 industry -- and I can say this on behalf of the
12 industry -- as a little bit of a bait and switch.

13 We said, "Hey, you know, supplemental, we
14 don't love it, but we'll suck it up." But, you know,
15 if that's going to get us to November, which the
16 finance director of the agency said, that gives us
17 plenty of time and you still have the ability through
18 supplemental rulemaking to come back and ask us for
19 additional funds just like you did today.

20 And, you know, once you have a
21 permanent -- a rule that exists that increases your
22 fees, I think everybody on this Commission and
23 everybody in this room knows you almost never get it
24 back and it never goes down.

25 A year ago the Commission first came to

1 us on an agency shortfall situation. They reported
2 earlier that it was, you know, in the magnitude of over
3 \$450,000. At that time the industry stepped up and
4 said, which hasn't been mentioned here today, "Hey, we
5 will accelerate our monthly payments to the Commission
6 to fix your cash flow problem to get it to later."

7 And look at what happened in the
8 interim. That deficit went from 450 to 81. And based
9 on your trailing 12-month cash flow, I'm going to guess
10 that if you really -- that, you know, it was just
11 projected, if you built in your actual savings that
12 you've been incurring, be it based on the hiring freeze
13 over the last few months, your actual shortfall is
14 going to be less than \$81,000. So I'm going to think
15 that is a really good example of why a rule proposal
16 really, frankly, isn't necessary at this time.

17 I do want to commend the staff. I'm
18 hearing a lot more great ideas than we've seen before.
19 I think it's our belief that the Racing Commission can
20 reduce its budget by 10 percent. That is not atypical
21 in the State of Texas. Governors -- almost every
22 Governor has done that over the last decade, you know,
23 asking for reductions in spending.

24 We have questions about the cash flow
25 that we raised last week. From September of April --

1 September to April 2018, the agency was projecting to
2 spend 200,000 more dollars than it did from September
3 to April 2017.

4 A 15 percent increase on the industry is
5 just not sustainable. If you look at the audited
6 financials of the racetracks that are provided to you
7 every year, you'll see over 10 million dollars in
8 losses from those tracks. And earlier Curley got up
9 and talked about a five to 10 percent decrease year to
10 date in wagering activity.

11 You know, frankly, we feel like a rule
12 proposal like this is going to regulate some people out
13 of business. And we think a permanent fee increase is
14 really unnecessary and we'd much rather look to
15 continue to work with the agency on reducing spending
16 in this kind of very difficult economic time for the
17 industry.

18 We had 222 race dates in Texas last
19 year. That means that we spend about \$22,000 per race
20 day to regulate the industry. By way of comparison,
21 Ohio, 700 live race dates, four-million-dollar annual
22 budget; Massachusetts, 90 race dates,
23 1.7-million-dollar annual budget; West Virginia, 900
24 dates, 3.1-million-dollar annual budget; Kentucky, who
25 races every single week of the year, four million

1 dollars; Louisiana, Oklahoma, both less than
2 four-million-dollar annual budgets.

3 I could go on and on. I've had this
4 discussion with many of you. But I think publishing
5 this rule proposal today is going to cause a lot of
6 panic and it's going to cause a firestorm in the
7 industry. I don't think the panic is the same if we
8 all know we're working on something collectively
9 together.

10 Chairman Steen, you said, you know, you
11 think it's prudent to lay out, you know, a baseline
12 plan. Look, we're all operators. I can look at these
13 numbers and I have -- I've got my baseline. You've
14 already given it to me. And so we can prepare for
15 that, you know, and kind of work towards something
16 better. So, you know, we don't need this for our
17 operations.

18 We feel like, you know, taking -- going
19 forward with any sort of permanent increase is not
20 sustainable. It's going to result in further damage to
21 the industry and I think, if you do it today, probably
22 sooner than later.

23 I'm happy to answer any questions that
24 you might have.

25 CHAIRMAN STEEN: Any questions?

1 MS. YOUNG: Thank you.

2 CHAIRMAN STEEN: Thank you.

3 Next we have Bruce Bennett representing
4 Lone Star Park.

5 MR. BENNETT: Mr. Chairman,
6 Commissioners, I'm Bruce Bennett. I'm here for Lone
7 Star Park.

8 I don't have much to add other than I
9 noticed that much of the increase on the tracks is tied
10 to live racing dates. And, you know, the other tracks
11 have reduced their live racing dates from around 75
12 races to 56, 46 days, to save money because the more
13 you run live races, the more you're losing. Lone Star
14 Park has stayed at 76 live race dates to help the
15 industry. But again, the more -- but the more it costs
16 us to run live races, the more difficult it will be to
17 continue doing this if this fee increase goes through.

18 So, you know, raising our taxes, so to
19 speak, because of the impact of regulatory constraints
20 or statutory constraints that increase our losses is
21 not a conservative approach to solving the problem and
22 seems to be inconsistent with our state's philosophy of
23 how our government is funded.

24 I'm happy to entertain any questions.

25 Thank you.

1 CHAIRMAN STEEN: Any questions?

2 Thank you.

3 Up next, Rob Werstler representing TQHA.

4 MR. WERSTLER: Good morning,

5 Mr. Chairman, Commissioners. My name is Rob Werstler.

6 I'm representing the Texas Quarter Horse Association.

7 We are also opposed to the proposed fee increases.

8 Everyone in our industry is struggling.

9 We're not in a death spiral, but I feel we're
10 dangerously close and it wouldn't take much to set that
11 in motion.

12 For example, if one of our greyhound
13 tracks turns in their license, this is the last straw,
14 the fee increase, and they decide they can no longer
15 afford to stay in business, it has much deeper
16 implications than just license fees.

17 For example, both Thoroughbred and
18 Quarter Horse purses rely on cross-species revenue,
19 which is money wagered on horses at dog tracks. We
20 rely on this for our stakes programs as well as our
21 purses. This is a significant amount of money that may
22 no longer be available.

23 Less purse money means less race days.
24 Less race days means less horses -- or less races.
25 Less races means less horses. Less horses means less

1 handle. Less handle means less purses. Death spiral,
2 point of no return. Once you go down that, there's no
3 turning back from it.

4 It was said during our rules committee
5 that without the Texas Racing Commission, there's no
6 horse racing. But the opposite is also true. With no
7 horse racing, there's no Texas Racing Commission.

8 Again, I urge you to table this issue.
9 We have time. We're in this together. Let's find a
10 solution together.

11 And thank you for my time.

12 CHAIRMAN STEEN: Any questions?

13 Thank you, Rob.

14 Up next, Mary Ruyle representing Texas
15 Thoroughbred Association.

16 MS. RUYLE: Good morning, Commissioners.
17 I'm Mary Ruyle, executive director for the Texas
18 Thoroughbred Association.

19 As the representative of over 1100 TTA
20 members, I would like to state our opposition to the
21 proposed changes to TRC Rules 309.8 and 311.5. I also
22 attended the June meeting of the ad hoc committee on
23 finance and it was my understanding that there would be
24 no proposed rule changes at today's meeting, so it is a
25 bit of a surprise.

1 The proposal to increase occupational
2 license fees is just one more burden to individuals who
3 are now struggling to make ends meet in today's horse
4 industry. We should be encouraging people to get into
5 racing, not keep adding straw to the camel's back.

6 The TTA board of directors has long
7 believed that a bit of goodwill far outweighs any
8 financial gain from fee increases. For instance, our
9 membership dues have remained the same for over 17
10 years. We have made the hard decisions necessary to
11 stay within our budget, cutting our expenditures,
12 downsizing our office space, reducing the number of
13 staff, with remaining staff members taking on
14 additional duties.

15 As far as increasing racetrack license
16 fees, any decision should not be made in haste.
17 Mr. Trout's authority to assess supplemental fees will
18 provide time for further discussions between industry
19 stakeholders and Commission staff and allow Commission
20 staff to fully research possible cost-saving measures
21 to be implemented within which the agency can
22 adequately perform its regulatory duties.

23 Further, we believe that changing the
24 rules to increase racetrack license fees will not
25 provide a good solution to the Commission budget

1 shortfalls. Instead, it would likely result in more
2 racetracks having to surrender their licenses,
3 triggering a death spiral in the industry.

4 We fully recognize the seriousness of
5 these issues and would like the opportunity to continue
6 to explore alternative situations and solutions.
7 Therefore, we implore you to take no action today
8 regarding license fee increases.

9 I'd be happy to answer any questions.

10 CHAIRMAN STEEN: Any questions?

11 Thank you, Ms. Ruyle.

12 MS. RUYLE: Thank you.

13 CHAIRMAN STEEN: Up next we have James
14 Shearer representing the Texas Horsemen's Partnership.

15 MR. SHEARER: Good morning,
16 Commissioners. My name is Jim Shearer. I represent
17 the Texas Horsemen's Partnership.

18 We also are very aware of the fragile
19 industry that we look at today. Any fee increases to
20 horse owners, trainers, no matter how small, would be
21 damaging to our entire industry. We oppose any
22 proposal to increase supplemental fees and future fees
23 that place an unfair burden on our members.

24 That's all I have. Any questions?

25 CHAIRMAN STEEN: Questions?

1 Thank you.

2 MR. SHEARER: Thanks.

3 CHAIRMAN STEEN: Up next we have Tommy
4 Azopardi representing Gulf Greyhound, Gulf Coast
5 Racing, Valle de los Tesoros, Laredo Downs, and
6 Gillespie County Fair.

7 MR. AZOPARDI: Good morning, Chairman
8 Steen, Commissioners.

9 CHAIRMAN STEEN: Good morning.

10 MR. AZOPARDI: My name is Tommy
11 Azopardi. Before I get started, I do want to thank you
12 all. You made a comment earlier about an unpaid
13 regulator and I do appreciate the fact that many of you
14 up here are doing this with no compensation and we
15 appreciate your leadership in tackling this difficult
16 assignment in front of us.

17 As the chairman pointed out, I'm
18 representing five licenses here today from Gulf
19 Greyhound in La Marque all the way to Gillespie County
20 Fair in Fredericksburg, Texas. I would like to point
21 out that Gillespie County Fair -- both Lee DeLong and
22 Billy Roeder who normally attend meetings are having
23 issues. They're noncompensated as well on the
24 Gillespie County Fair. They are having some crop
25 issues in Fredericksburg and couldn't be here. Also,

1 they thought that there would not be a rule proposal
2 being put up today, so they didn't make plans.

3 And the same with Sally Briggs. We are
4 running a skeleton crew and Mrs. Briggs was needed in
5 La Marque, didn't think that there would be a rule
6 proposal today.

7 I've been employed in the industry since
8 1997, so almost 20 years; and sadly, I've seen a
9 decline in our industry since about 2004. And I state
10 that because even though I know all of you up here and
11 many in the audience are aware of the fact that that
12 decline is not solely attributed to our industry, but
13 the fact that we are a regulated industry, and the only
14 way that we can have the competitive tools to allow
15 different forms of existing legal wagers, but also
16 other forms of gambling, is because we're regulated and
17 depend on this Commission and, more importantly, the
18 Legislature.

19 It's important to say that because I
20 think that some people read transcripts and follow the
21 Racing Commission at a distance, some reporters and
22 all. They don't fully realize how limited our industry
23 is on the tools that we have to increase our business.

24 We had high hopes. Many of us in this
25 industry had worked countless hours with members of the

1 Legislature in this most recent legislative session.
2 We had some very good dialogue. I was very encouraged
3 that some of our more ardent critics in the past, most
4 recently with this Commission about the rules for
5 historical racing -- that some of those very critics
6 were interested in sitting down and discussing ways
7 that we could, at the very least, stabilize the funding
8 of this agency.

9 And one of the issues that got a lot of
10 traction and held a lot of substantive talks was taking
11 the one percent tax that's levied on interstate
12 simulcast wagers that's roughly almost three million
13 dollars and directing that to the agency. Some of the
14 comments that we had from Senate staff members and
15 Senators themselves was that it was truth in budgeting,
16 that we were actually taxing an industry and we were
17 going to use that tax to pay for the regulation.
18 Sadly, and for many reasons, we didn't get any
19 legislative relief.

20 So we find ourselves today here with this
21 rule proposal. It's ironic that we are because, as the
22 staff will verify to you, over the last two years
23 they've worked with me very diligently -- and my hat is
24 off to them for the work that they've done and the time
25 that they've taken to hear me. But we've worked to

1 reduce those fees.

2 As you know, the current fees that are --
3 that we feel like are not reasonable are -- now we're
4 talking about making them higher and more
5 unreasonable. And we just simply cannot afford this
6 cost of regulation. And further increases of that cost
7 just make it more economically unviable to operate
8 these tracks or to hold these licenses.

9 Let me give you a quick glimpse of what
10 that means. Currently, the five licenses that we're --
11 that I'm up here today representing pay \$1,250,000 in
12 fees. Under the proposed increase, that figure would
13 elevate to \$1,437,125, or nearly 1.5 million dollars.

14 When I first started talking to your
15 staff about fee reductions, I was asked -- I asked if
16 there was any way the agency could reduce their fees
17 and I was told that the agency was already operating as
18 lean as it possibly could and that there was a baseline
19 of regulation in place. And I do understand that
20 there's a baseline of regulation in place.

21 However, there's an old saying that it
22 is -- necessity is the motherhood of invention. And I
23 think right now, where we're at, we have the necessity
24 to completely shake everything up, the way we regulate,
25 and put it back together. And the meetings that we had

1 last week, both Monday and Tuesday, I think started the
2 process of yielding some of those ideas on how to
3 completely look at the way -- re-look at the way we do
4 regulation.

5 When we started those talks, I was told
6 that one of the easiest ways that we could reduce our
7 fees was to reduce the number of live racing
8 opportunities, that that would help reduce the expense
9 of regulation, that it costs money to regulate live
10 racing.

11 At that point my client Gulf Greyhound
12 was running 252 days of racing. We felt those
13 opportunities were important. We felt that those dates
14 were necessary to have a viable greyhound industry.
15 But we finally recognized that we just could not afford
16 to lose that much money and run that many days. So the
17 entire greyhound industry got together and came up with
18 a drastic innovative change that last year resulted in
19 having 16 days of racing. When that plan is fully in
20 place, I think yearly there will be 36 days in a
21 calendar year of greyhound racing.

22 Did we receive a decrease in our
23 regulation? No. In fact, we're sitting here today
24 talking about an increase of 94 percent. I mean, we
25 reduced -- excuse me -- our live racing 94 percent and

1 we're sitting here looking at an increase in our fees
2 from \$360,000 a year for a greyhound track to \$413,892,
3 or a 53,892-dollar increase.

4 Just to put that in perspective, when you
5 take 36 days of racing and divide that into the
6 \$1,241,677 to regulate greyhound racing -- to regulate
7 36 days of greyhound racing, that's over 34,000 --
8 almost \$35,000 a day to regulate that racing.

9 These tracks cannot bear that cost. And
10 I think it's important to note that if greyhound racing
11 ceases to exist, as Rob Werstler said, it has more than
12 just an effect on the greyhound industry. Last year
13 the three greyhound tracks produced \$1,234,000 in horse
14 purses. If that goes away, that is a detrimental
15 impact to the horse racing industry as well.

16 I'm concerned about this fee increase
17 because, as you've heard from Andrea and from Steve
18 Ross and others, it is a perception. Proposing a rule
19 today makes it seem like that is the only choice that
20 you have. And, Commissioner Steen, I respect your
21 comments about a baseline because, as Andrea said,
22 we've got that baseline figured out. I think there are
23 different ways, though, that you can address paying for
24 that. And with the process that you have in place that
25 you've just approved in a previous agenda item of

1 levying a supplemental fee goes to what Commissioner
2 North said, that there are other ways that we can do
3 this without putting a permanent proposal, a permanent
4 rule, in place to address fees.

5 And actually, as I look at it and think
6 about it, I don't know if that really gets us anywhere
7 we want to be. I'm concerned that if that rule
8 proposal sends a signal and, as Rob Werstler said,
9 starts a death spiral in the industry -- and we've
10 already seen that happen. In the last year we've lost
11 three of the unbuilt licenses that caused us to be in
12 that situation we are now -- that you could see more.

13 And if the five licenses that I represent
14 were to fold, then you have another \$287,000 per
15 license for the five remaining licensees that you're
16 going to have to levy. And so you're going to have to
17 have a new rule proposal to address more licenses that
18 fall out.

19 So I want to encourage you, before you
20 post a rule and start having comment -- because, by the
21 way, you've heard from all 10 of the license holders.
22 I don't know who else would comment. I can't imagine
23 anybody from the general public would say "Don't
24 increase a fee on a racetrack" or "Yes, more taxes and
25 more fees are good." So the 30 days of comment --

1 you've already heard the comment. We expressed it very
2 vividly in the rules committees.

3 So I beg you to seriously consider not
4 voting on a proposal today to post a rule and to
5 permanently raise fees when we are in the process of
6 finding more ways to reduce that agency -- this
7 agency's budget and then come up with a better, clearer
8 picture of how much money we actually need.

9 And with that, I will answer any
10 questions that anybody has.

11 CHAIRMAN STEEN: Any questions?

12 VICE-CHAIRMAN EDERER: A couple. Do
13 you -- as far as the Legislature is concerned and any
14 help coming from the State, is that dead at this point
15 in time?

16 MR. AZOPARDI: I'm the eternal optimist,
17 Mr. Ederer.

18 VICE-CHAIRMAN EDERER: I understand
19 that. That's why I'm asking you, because you've always
20 been positive.

21 MR. AZOPARDI: I think we have a special
22 session coming up. State agencies, because certain
23 agencies were not sunsetted, are going to require there
24 to be a sunset bill. I guess I'm optimistic or
25 hopeful, especially with the dialogue that we intend to

1 share with the members of the Senate and members of the
2 House on where we are today with this agency, that
3 maybe there's a way we could -- maybe we could go back
4 and readdress that one percent pari-mutuel tax at the
5 very least, Commissioner. I'm certainly going to try.
6 All they can do is tell me no. And I'm used to that.

7 VICE-CHAIRMAN EDERER: When will you
8 know?

9 MR. AZOPARDI: I think we will probably
10 have a very -- that's difficult to say because I'll
11 tell you I don't believe -- as of yesterday, I don't
12 believe the Governor has actually issued the
13 proclamation. There's been some press conferences, but
14 the proclamation hasn't been released. And until the
15 proclamation is written, it's tough to tell how broadly
16 or narrowly the call is going to be structured and
17 we'll need to have some dialogue with the members of
18 the Senate and members of the House. Understandably,
19 they all left town after the sine die of the last
20 session.

21 VICE-CHAIRMAN EDERER: But we can't count
22 on it.

23 MR. AZOPARDI: No, sir, we cannot count
24 on it.

25 VICE-CHAIRMAN EDERER: And you said the

1 perception. Would you expand upon that? And maybe I
2 would like to have Andrea -- Andrea said that it would
3 cause panic in the industry if this was posted. Could
4 you expand upon that some?

5 MR. AZOPARDI: I'll expand on my comment
6 about the perception. And that is that I thought we
7 had two days of really productive meetings. And that
8 sent a good signal. The perception was that everyone
9 was willing to roll up their sleeves and completely
10 reevaluate the way we do regulation, whether it's
11 through interagency agreements, as Chuck Trout just
12 talked about, of finding ways to share enforcement
13 costs or IT costs. Those sent very good signals to the
14 industry.

15 But I'm afraid that if we -- and by the
16 way, I reported that back to all my stakeholders, that
17 we weren't going to do a rule increase, that it was the
18 recommendation of the rules committee that we study
19 this further and we realize what cost savings might be
20 out there before we actually go forward with the formal
21 rulemaking process to set fees in stone, so to speak,
22 in the rules.

23 I'm afraid that if we go back and say,
24 "Oh, King's X, they're going to do a rule increase
25 without having seen what the final budget is going to

1 be and how much of a need there is for this \$500,000
2 specifically," it looks like that the Commission has
3 just resigned itself to the fact that that's going to
4 be the fee increase.

5 And I think that's a bad perception. I
6 think it sends a signal to the industry, specifically
7 the stakeholders, that we're not going to explore these
8 costs. We're going to move forward with this rule
9 increase because we don't think that there will be
10 enough savings, so therefore we need a rule.

11 And then I'll let Andrea speak to her
12 comment if you want.

13 MR. MACH: I mean, I had one question on
14 that as well. Don't you feel that for us to continue
15 to study this as being proposed by the industry is a
16 disincentive to the Legislature to consider doing
17 something in the special session?

18 MR. AZOPARDI: I don't know that
19 proposing the rule -- which will not be in effect while
20 they're there. And I don't know that just proposing --
21 I mean, I think the transcript today will be telling
22 enough to those members of the Legislature without
23 actually proposing the rule.

24 Andrea?

25 MS. YOUNG: Are you sure you really want

1 to hear from me again?

2 VICE-CHAIRMAN EDERER: Yes, ma'am.

3 MS. YOUNG: Okay. I think your question
4 is specific to the firestorm. I think what Tommy --
5 what I was alluding to is kind of what Tommy just said,
6 that you've heard from all the stakeholders, the
7 racetracks, the horsemen, who are also -- you know,
8 this isn't just racetrack fees we're talking about
9 here. These are occupational license fees which
10 trickle down to a trainer, a groom, to a mutuel teller
11 at Sam Houston Race Park. So the entire industry is
12 impacted by this.

13 And I feel the firestorm is you're going
14 to open it up. You're going to open yourselves up to
15 potentially more criticism. I really believe that.
16 There may be an emotional decision by a stakeholder or
17 two. I can't predict that. I can just tell you based
18 on my 10 years of experience coming before this
19 Commission that you have other options.

20 You have the cash flow accelerated
21 payment option, which we've already done once and
22 during that time you reduced expenses after a rule
23 proposed -- a fee increase was proposed. We had that
24 meeting in Corpus last summer. And you have a
25 supplemental fee increase.

1 And so what I think this industry is
2 saying loud and clear is, you know, let's keep -- you
3 know, let's bite the apple -- take a bite one bite at a
4 time, keep working, and not send the message that your
5 fees are going to go up, no matter what, and take the
6 pressure off, because that's what this message says.
7 No matter what anyone says before us here, you know, it
8 is the message it sends that we feel and we hear.

9 Anything else?

10 VICE-CHAIRMAN EDERER: Well, but the fees
11 are going to go up, no matter what. It's just a matter
12 of how much.

13 MS. YOUNG: Well, they're clearly already
14 going up because we already proposed the supplemental.

15 VICE-CHAIRMAN EDERER: Yes.

16 MS. YOUNG: Our view, honestly, is that
17 it doesn't have to go up anymore, that there are --
18 that you can find another half a million dollars in
19 your budget. That's our honest-to-God view. And it's
20 going to be hard and not super fun and, you know, it's
21 not a personal attack on anyone that works for the
22 agency. You know, we think they do good work.

23 But, you know, it's like death by a
24 thousand paper cuts. You've got to reinvent yourself.
25 You know, the database system that we discussed at

1 length at the rules meeting is a great example. It's
2 like the Ferrari of database systems. It's so great
3 that Chuck said, you know, other Commissions --
4 Kentucky called and wanted to buy it but couldn't
5 afford it. You know, do we really even need that when
6 there are a number of off-the-shelf systems? And
7 you're right. They may not be the Ferrari. But
8 they're good enough. They're going to get you from
9 Point A to Point B.

10 CHAIRMAN STEEN: So you agree that there
11 will be a rule proposal at some point that has some
12 change.

13 MS. YOUNG: No, I don't, not sitting here
14 today. I think there's more work to be done. Might we
15 end up there? Sure. But I don't think we have to.

16 CHAIRMAN STEEN: Okay.

17 MS. YOUNG: Thank you.

18 CHAIRMAN STEEN: Any other discussion?

19 COMMISSIONER HICKS: I'd like to say one
20 thing. I wasn't in the meeting, so I don't know what
21 you all -- the conclusion. But it sounds to me like
22 the conclusion was that we weren't going to do this
23 today, that you were going to have more time. So I
24 feel like it's -- that we told them something that
25 we're not doing and I don't feel comfortable with that

1 myself.

2 CHAIRMAN STEEN: I understand that is the
3 perception. I guess all we're doing is, in my mind,
4 proposing an official working draft of what would be
5 looked at in the next following meetings. And so there
6 is no rule going into effect today at all.

7 And as I said before, my feeling was we
8 worked hard to find that 20 percent. Let's get that
9 out there, get that in a proposal, open up the official
10 working draft of that proposal, and continue to work
11 through July, August, and maybe even until October when
12 we run out of money.

13 But my thought is let's get started on
14 that now rather than -- and put some real numbers down
15 on paper rather than just kicking the can down the road
16 to the end of the summer and then here we are again in
17 the fall at the brink.

18 COMMISSIONER HICKS: It just seems like
19 what they said in the meeting -- and I wasn't there --

20 CHAIRMAN STEEN: And I wasn't either.

21 COMMISSIONER HICKS: -- is not what we're
22 doing today. And so I feel uncomfortable with that.

23 MR. MACH: Well, I take a little issue
24 with what has been said about the meeting and how it
25 was characterized. You know, I don't think it was a

1 hard and fast determination. Number one, it wasn't a
2 meeting of the Commission. Number two, I don't recall
3 anybody saying "Absolutely not, we're not going to
4 publish a rule."

5 Ultimately, that's the chairman's
6 decision as to whether or not something is going to be
7 put on the agenda. And so I just -- I want to clarify
8 that. From where I sat in the meeting, I don't think
9 there was any absolute determination that this is what
10 we were going to do or not do or take this off the
11 table.

12 So, you know, from where the -- from the
13 chairman's position, I think getting your foot in the
14 door on a draft from a timing perspective is
15 important. It doesn't have to be the final rule. But
16 it is starting the process. And we may abandon that.

17 COMMISSIONER MARTIN: I'm going to kind
18 of continue on that. So it would be a draft. It's not
19 set in stone. It's just a draft to work off of or work
20 from basically?

21 CHAIRMAN STEEN: Mark, do you want to
22 comment on that?

23 MR. FENNER: It is a proposal. And
24 that's all it is. You put it out there. You get
25 public comment, which, they're correct, we have heard

1 much of the same in the last few minutes that you'll
2 hear in the 30-day public comment period. But it has
3 no effect other than it becomes eligible after 30 days
4 for the Commission to take some action on and you
5 can -- you can adopt it as it is, you can tweak it, you
6 can change some of the numbers, you can republish it,
7 or you can just abandon it.

8 COMMISSIONER MARTIN: Thank you, Mark.

9 MR. MACH: I have no doubt we'll have a
10 lot of public comment on that. But maybe it is time
11 for people across the spectrum to weigh in. We've put
12 down a marker on what we think is at least doing our
13 regulatory function, doing what we're here to do on
14 behalf of the people of the State of Texas; and if
15 other stakeholders want to weigh in and can say that's
16 really not a good idea, then here's their opportunity.

17 COMMISSIONER MARTIN: Correct.

18 VICE-CHAIRMAN EDERER: I have to do
19 this. Mrs. North, what was your opinion or your
20 feeling that we left the meeting on, the finance
21 meeting?

22 MS. NORTH: While it is true it's an
23 advisory committee and so its recommendation to the
24 Commission is not binding and the Commission had it on
25 the agenda that they could adopt a rule today, so

1 legally there's no barrier to proposing the rule today,
2 I left the Commission -- or the committee meeting with
3 the impression that we were going forward with the
4 supplemental assessment, that they were -- we were
5 going to delay the rule proposal in favor of exploring
6 cost-saving measures with the industry, and that we
7 would not be -- that the -- that the advisory committee
8 would not be recommending today to the Commission to
9 propose a rule.

10 And I feel like if we're going to go
11 ahead and propose a rule, we need to have another
12 meeting with the industry, another finance committee
13 meeting, where we all leave with the impression that
14 we're going to go forward with a rule, you know. Even
15 if we don't all come to an agreement, we need to try.
16 We need to work together to come up with a solution.
17 And if there are still things to be explored, we need
18 to explore them.

19 MR. MACH: Okay, Commissioner. I have to
20 ask the question.

21 COMMISSIONER HICKS: Yes, Mr. Ederer.
22 How did you leave the meeting?

23 VICE-CHAIRMAN EDERER: There was no doubt
24 in my mind that I made the statement as we left the
25 meeting that we would take up the 19 -- the 2017 budget

1 at this meeting and the proposal would be made but that
2 we would postpone placing on the agenda, or whatever
3 the proper term is, the 2018 supplement. And that's
4 the way -- as I remember, that was the last thing I
5 said to the committee that was present, that it would
6 not be taken up.

7 Since that time, of course, I have talked
8 to the chairman and it is the chairman's prerogative
9 and he has told me exactly why he wants to go forward
10 with it. And that's certainly reasonable. I mean,
11 it's another way of looking at things. Did we bait and
12 switch the industry? No, I don't think we did. Or not
13 intentionally, we certainly didn't. Does the
14 industry -- did we put them in a position where they
15 were not prepared to respond today? Yes, I think I
16 did. I mean, I don't like to do that. I certainly
17 want to support the chairman and I think the chairman's
18 statement is certainly valid, that we need something to
19 shoot for. We need to have that.

20 But how do you -- is it the amount of
21 money that we're talking about, Andrea, that is the
22 problem or is it just the fact that we're stating that
23 we have to -- we're going to have to ask for more
24 money?

25 MS. YOUNG: Maybe the third time is the

1 charm.

2 So look, I think it's -- let me make sure
3 I was listening to your question correctly. Is it the
4 amount of the money that's the problem? Yeah, the
5 amount of money is a problem. And that's why we need
6 to work on it.

7 And again, you have additional means to
8 address this. You don't need a rule to do what you're
9 going to do. And so the goodwill that this suggests is
10 real and meaningful to people who are losing over 10
11 million dollars a year. So goodwill matters.

12 And, you know, I'm a businessperson.
13 Many of you are businesspeople. And sometimes, you
14 know, that's the little bit you need to keep working in
15 earnest. And that's how we felt when we left on
16 Tuesday. And I respect the differing approaches; but,
17 you know, we don't agree with them.

18 I do have a question, if I may ask one,
19 at least of Mark, on the technicality. If this rule
20 were posted, what is -- like, you know, how much can
21 you amend a rule in a subsequent meeting kind of from
22 the stand here or can you -- would you have to
23 republish it?

24 MR. FENNER: When it comes to issues of
25 republishing and whether you have to do it or not, you

1 can't -- it requires republishing if you're bringing in
2 new parties, if you're bringing in new subject
3 matters. If we started to increase the fees -- let's
4 say somebody dropped out and was no longer
5 participating as a racetrack and we had to increase the
6 amount of that. If that were a surprise issue, I would
7 have some heartburn about adopting it except for the
8 fact that it is now on the table. Everybody knows that
9 that's a problem and that wouldn't be a surprise
10 that -- you know, and then I would publish it and put
11 it into the preamble of the Texas Register that if a
12 racetrack turns in its license, the fees that are
13 proportionally distributed would increase so that you
14 know you have an opportunity to address it.

15 But in general, you have to republish if
16 you're bringing in new parties, bringing in new subject
17 matters, some matter of surprise. So I think everybody
18 has a pretty good idea of the issues that are on the
19 table. And if there's some tweaking of the numbers, I
20 wouldn't necessarily see that as a problem that would
21 require republishing. And certainly if the numbers
22 decline, that doesn't require republishing because that
23 doesn't adversely impact anybody.

24 MS. YOUNG: I think the other question,
25 too, that a few folks here had is, you know, we

1 referenced \$140,000 in savings. And at the meeting I
2 know Joel mentioned that he had already cut 130 out of
3 his group and -- or his division, which I think is a
4 fairly big division within the agency. Is that
5 incremental to that 130 or is it the same?

6 MR. SPEIGHT: It's not the same.

7 MS. YOUNG: It's incremental to the 130.

8 MR. SPEIGHT: This is additional. The
9 140 is additional.

10 MS. YOUNG: Okay. Thank you.

11 Do you need me back here?

12 VICE-CHAIRMAN EDERER: No. Thank you.

13 MS. YOUNG: Okay.

14 CHAIRMAN STEEN: Thank you.

15 VICE-CHAIRMAN EDERER: Mark, what would
16 the rule -- the proposal that is on the table, what is
17 it? Do we have a copy?

18 MR. FENNER: Yes, sir. In your
19 supplemental packet --

20 VICE-CHAIRMAN EDERER: In the
21 supplemental packet?

22 MR. FENNER: In the supplemental packet
23 that was just given to you yesterday, on page seven of
24 nine you'll see that the -- this is the change to the
25 racetrack license fees. So for example, for a Class 1

1 racetrack, the increase would be 500 thousand up to
2 574; Class 2, 230 to 264; for a greyhound track, 360 to
3 413,892. So it's a 15 percent increase.

4 I'd also like to point out that down
5 there on line 20 of page seven of nine that we're
6 striking the word "monthly". That's because that
7 portion of the rule provides for a moratorium on fees,
8 either in full or in part, if the executive director
9 determines that we don't need as much money as we're
10 collecting or going to collect.

11 So for example, if the rule were
12 published and then adopted and then he were able to
13 achieve some significant savings during the year, he
14 could recognize that and then he could reduce the fees
15 paid by the racetracks in order to collect less because
16 he didn't need quite as much as originally determined.
17 We're striking through the "monthly" because some of
18 the tracks pay quarterly. This, as it's written, only
19 applies to those who pay monthly, which are the
20 operating tracks; so by striking the word "monthly," he
21 could allow the nonoperating tracks that pay quarterly
22 to also participate in the reduction in fees.

23 Does that answer your question?

24 VICE-CHAIRMAN EDERER: Yes.

25 MR. FENNER: Okay.

1 VICE-CHAIRMAN EDERER: I guess.

2 MR. FENNER: The change to the --

3 VICE-CHAIRMAN EDERER: The numbers have
4 to be here. Is that what you're saying?

5 MR. FENNER: Yes. I have to put the
6 numbers down to publish it in the Texas Register. And
7 you'll see on the next page, eight and nine, are the
8 similar changes in occupational licenses.

9 COMMISSIONER MARTIN: Are those numbers
10 set in stone? I mean, is that -- they can be --

11 MR. FENNER: They can be adjusted.

12 COMMISSIONER MARTIN: -- lowered.

13 MR. FENNER: They can be lowered. And I
14 mean, we all have to acknowledge the possibility that a
15 track may decide to turn in their license. And if they
16 do, then we have to -- we may have to reallocate, after
17 figuring in what additional savings the executive
18 director can recognize, and realign those numbers. And
19 I'm telling everybody -- I'll put them on notice right
20 now -- that that's a possibility. So everybody should
21 understand that and it should not be a surprise. If
22 they're too drastic a change, we may elect to
23 republish. That's always a possibility, too. So you
24 have a lot of options.

25 CHAIRMAN STEEN: Any more discussion?

1 VICE-CHAIRMAN EDERER: No. I just
2 believe that I -- I definitely feel that I made a
3 misrepresentation to the industry that this matter
4 would not be taken up. And I understand where the
5 Chair is coming from. But I don't know that it would
6 have any effect one way or the other. If I would have
7 told the industry that we were going to take it up, I
8 don't know that it would have had any effect. However,
9 it would have given them the opportunity to be present
10 and to have their argument better prepared, I believe.
11 I don't know. I'm just wrestling with it, is all I'm
12 saying --

13 CHAIRMAN STEEN: Sure.

14 VICE-CHAIRMAN EDERER: -- because I know
15 what happened and I know what my thinking was and I
16 know what I told the industry at the time.

17 MS. NORTH: Mr. Chair, we are
18 available -- if we want to call additional Commission
19 meetings or additional finance meetings --

20 CHAIRMAN STEEN: Sure.

21 MS. NORTH: -- we're available to
22 participate in those.

23 CHAIRMAN STEEN: Sure. No, I realize
24 that and I expect there to be additional meetings and I
25 expect there to be changes to this that are made along

1 the way. And I hope they're in a positive direction.
2 With the uncertainty of someone turning in a license,
3 with all the things that we're looking at, I just am
4 particularly nervous about not having a baseline out
5 there that we're working through officially and waiting
6 until, you know, through the summer, into August, and
7 we wind up in a situation where we're kind of -- we
8 haven't fully fleshed out everything.

9 I think this is an official way to kind
10 of do that starting now through -- it could last all
11 the way through until we run out of the supplement
12 that's already been paid. And so that's my thought on
13 a prudent way to handle it.

14 I understand your position and I
15 understand that there's different ways to look at it.
16 I don't think that what happens from here on out is
17 going to change because this rule is proposed. I
18 think -- and I've been spending a lot of personal time
19 on this matter. I will continue to. I think it's good
20 to get out what we've -- you know, in the eyes of
21 everyone, what we've got so far.

22 And so I think it's a good start and
23 we'll continue to spend a lot of time on it and that
24 may require meetings beyond just the July or August
25 meetings that we have already on the calendar.

1 MR. MACH: Chuck, is it correct to say
2 that the numbers that are proposed would be the
3 high-water mark; that assuming no tracks turned in
4 licenses, those would be the highest amount expected?

5 MR. TROUT: Yes, sir. Well --

6 MR. MACH: And that any cost savings,
7 those numbers would be reduced and so we wouldn't --

8 MR. TROUT: Right.

9 MR. MACH: We wouldn't be republishing.
10 We would be revising the numbers downward. Because I
11 don't like to collect taxes for the sake of collecting
12 taxes and I am very sympathetic to the notion of once
13 something is set in stone, it's very difficult to roll
14 it back.

15 And so I like the idea of getting some
16 numbers on the table in draft form and then working as
17 hard as we can before we get to the final rule
18 acceptance stage to get those numbers down as low as
19 possible if there is room to go, understanding -- I'm
20 also very understanding -- cognizant of the regulatory
21 baseline that we need to be doing as an agency.

22 So I'm in agreement with the chairman. I
23 do stand corrected, I guess, by my other two
24 Commissioners as to what was the understanding from the
25 meeting the other day. I don't recall that being

1 said. But regardless, I think that the chairman has
2 the right approach here in getting a draft on the table
3 for public comment.

4 So I would move approval of this rule
5 proposal.

6 CHAIRMAN STEEN: An initial motion made
7 by Mach.

8 Do we have a second?

9 COMMISSIONER MARTIN: Second.

10 CHAIRMAN STEEN: Second by Martin.

11 MR. FENNER: Mr. Chairman, may I
12 clarify? This is a motion to publish the 311.5 and
13 309.8 in the Texas Register?

14 MR. MACH: Yes, that is the motion.

15 CHAIRMAN STEEN: Yes.

16 Should we have a roll call or just --

17 MR. FENNER: We can do that.

18 MS. COOK: Roll call?

19 Commissioner Hicks?

20 COMMISSIONER HICKS: No.

21 MS. COOK: Commissioner Mach?

22 MR. MACH: Aye.

23 MS. COOK: Commissioner Martin?

24 COMMISSIONER MARTIN: Aye.

25 MS. COOK: Commissioner North?

1 MS. NORTH: No.

2 MS. COOK: Commissioner Ederer?

3 VICE-CHAIRMAN EDERER: No.

4 MS. COOK: Chairman Steen?

5 CHAIRMAN STEEN: Aye.

6 MR. FENNER: The rule provides that you
7 have to have a majority of those present to make a
8 motion carry, so it does not carry today.

9 CHAIRMAN STEEN: The motion doesn't
10 carry. Thanks.

11 Okay. Let's quickly go through the rest
12 of the rule adoptions and then we'll go back to the
13 earlier item.

14 Okay. Moving to Agenda Item VI-B-1
15 through 3, rule adoptions, Mark, would you lay these
16 out?

17 MR. FENNER: Yes, sir.

18 The first is an adoption of an amendment
19 to 311.5, License Types. This is the creation of two
20 new combination licenses, the groom/exercise rider and
21 groom/pony person. This was published in the April
22 28th edition of the Texas Register. We received no
23 written comments, no response. We discussed it at the
24 rules committee. No attendee spoke in opposition. So
25 staff would recommend adoption of the proposal.

1 The amendment to Rule 311.104, Trainers,
2 addresses two separate issues. The first is about
3 making -- or requiring trainers to provide us a list of
4 their employees with our licensing office so that they
5 can be subject to the random drug testing policy. And
6 also it requires trainers to notify the owners they
7 work for of any disciplinary action involving
8 suspensions to the owners.

9 Again, this was published in the March
10 24th edition of the Register. We received no written
11 comments in response. And it was discussed at the
12 rules committee meeting with no opposition.

13 And finally, we have a change proposed to
14 313.24, Records and Reports. This would allow the
15 presiding steward to complete the end-of-meet report.
16 Right now the rule says that all three stewards
17 participate in that.

18 We didn't receive any written opposition
19 in response to the April 28th publication. At the
20 rules committee no one spoke in opposition.

21 Commissioner Mach did make a good point about allowing
22 the other two stewards to look at the report and
23 provide some input without necessarily coauthoring it;
24 and we said yes, we could make sure administratively
25 that they'd have that opportunity.

1 So again, we'd recommend adoption of that
2 proposal.

3 CHAIRMAN STEEN: Any questions of Mark?
4 Rules committee, any comments?

5 Devon, has anyone signed up to speak?

6 MS. BIJANSKY: No, sir.

7 CHAIRMAN STEEN: Okay. Mark, will you
8 help me with the motion?

9 MR. FENNER: It would be the second, the
10 second variation.

11 CHAIRMAN STEEN: Okay. I'll entertain a
12 motion to adopt the amendments to Rules 311.5, 311.104,
13 and 313.24 as published in the Texas Register.

14 MR. MACH: I'll make that motion.

15 CHAIRMAN STEEN: A motion made by Mach.

16 VICE-CHAIRMAN EDERER: I'll second.

17 CHAIRMAN STEEN: Seconded by Ederer.

18 Any discussion?

19 Okay. Let's take this up for a vote.
20 All in favor please signify by saying aye.

21 COMMISSIONERS: Aye.

22 CHAIRMAN STEEN: Any opposed?

23 The motion carries.

24 So we're going to go back to Item IV,
25 proceedings on occupational licenses. This is the

1 motion for rehearing and reconsideration on behalf of
2 Roman Chapa.

3 Do we have Mr. Vick present?

4 MR. VICK: We do, Your Honor.

5 CHAIRMAN STEEN: I'll have both attorneys
6 speak on the matter. We're going to limit time to two
7 minutes and Mark is going to monitor that.

8 Mr. Vick, do you want to go first?

9 MR. VICK: Yes, sir, if I may.

10 CHAIRMAN STEEN: Okay.

11 MR. VICK: Thank you, Commissioners. And
12 I apologize for being late today. I come in from
13 Fredericksburg and had a little bit of a traffic
14 issue. So my apologies to you for that and thank you
15 for your indulgence in letting me speak.

16 I've been given two minutes. I think I
17 can actually shave a little time off of that. This
18 will be very, very short and sweet. I think the motion
19 itself -- well, first off, Paul Vick on behalf of Roman
20 Chapa.

21 I think the motion for rehearing itself
22 is fairly explanatory in terms of the grounds that
23 we're looking at in asking the Commission to reconsider
24 the ruling that they made back in April, but a couple
25 of things that I would like to elaborate on.

1 First off, there was a second violation
2 alleged back in 2015 that was never pursued. And I
3 want to give a little bit of history on that because I
4 think it's very pertinent to our argument in the motion
5 for rehearing.

6 First off, the first allegation was
7 appealed by Mr. Chapa on March 4th, 2015. On March 5th
8 of 2015 Mr. Trout upped that fine from the
9 25,000-dollar fine proposed by the stewards to
10 \$100,000. On March 28th, 2015, there was a notice of a
11 second violation from the stewards at the Sam Houston
12 Race Park and that was alleging that Mr. Chapa had
13 committed similar acts back in 2014 at the same race
14 and that sought a lifetime suspension of Mr. Chapa.

15 Number one, it was set for hearing. I
16 requested a continuance, which the Commission
17 graciously granted. But number two, I asked for any
18 evidence that was associated with that violation. I
19 never received anything. And the hearing was never --
20 it never took place. In other words, that violation
21 was never pursued by the Commission.

22 So we've got, in a month period of time,
23 an appeal filed by Mr. Chapa, a fine raised from 25,000
24 to 100,000 dollars, and an allegation of a second
25 violation that was never pursued seeking a lifetime

1 suspension.

2 The other thing that I think is important
3 to note is that on September 1st, 2013 -- and
4 Ms. Bijansky has raised this in her response -- the
5 Legislature allowed the Commission the ability to go
6 from -- to increase a fine up to \$100,000. And if you
7 all will recall, in the last hearing I raised a bunch
8 of -- well, 18 actually -- violations that had occurred
9 where there was a fine over \$5,000.

10 What's really interesting to note is that
11 of those 18, 13 were issued after the September 1st,
12 2013 enactment of that House bill, 1187 I believe it
13 was, and one fine was \$25,000 and a three-year
14 suspension. That was the most. That involved a second
15 violation for drug use or drugs in a horse that had
16 altered the outcome of the race. Both purses were
17 redistributed. In fact, eight of those that occurred
18 after September 1st, 2013, involved violations -- drug
19 violations with horses, redistribution of purses, and
20 the maximum fine other than that 25,000 was 10,000.

21 So what we've got is we've got a
22 situation where Mr. Chapa, where no electronic shocking
23 device was ever found, was fined \$100,000. There's
24 three questions that will have to be asked going
25 forward. The first question is was there ever any

1 other instance where the Commission abated or stayed a
2 proceeding and did not allow the claimant to go forward
3 to the State Office of Administrative Hearings based on
4 a criminal case.

5 The second would be has the Commission
6 ever based their fine on a violation that occurred out
7 of state, an alleged violation that occurred out of
8 state.

9 And I think the third thing that would be
10 out there is has the Commission ever sought a
11 lifetime -- has a steward or a park ever sought a
12 lifetime suspension and then never pursued that. And
13 those are questions that will have to be asked going
14 forward.

15 I would ask that the Commission
16 reconsider their ruling from April and that they would
17 ask -- or fine Mr. Chapa in the amount that we had
18 requested back in the April meeting.

19 Thank you much. Any questions?

20 CHAIRMAN STEEN: Thank you, Mr. Vick. I
21 think we'll have Devon speak and then we'll get
22 questions.

23 MR. VICK: Okay. Thank you, sir.

24 CHAIRMAN STEEN: Thanks.

25 MS. BIJANSKY: Mr. Chairman,

1 Commissioners, good afternoon.

2 Most of what Mr. Vick has raised today
3 has already been addressed either in writing or at the
4 last meeting or, in most cases, both, so I won't
5 address everything he said item by item. I do want to
6 address this issue that he raised of the second
7 violation.

8 First, I would have to go back and review
9 my records as to a request for documents, but I can say
10 that if there was a request, I responded to it. So
11 again, I don't recall the details. I'd have to look
12 into that. But I'm confident that if there was a
13 request, I fulfilled it.

14 As to the suggestion that the Commission
15 retaliated against Mr. Chapa for appealing the
16 stewards' ruling, he has all of the dates. And again,
17 I addressed that in my written response to his motion.
18 But in short, that was all flowing from the same set of
19 facts. The stewards issued a ruling. He appealed it.
20 And our executive director reviewed it and enhanced
21 it. It wasn't cause and effect. Both of those things
22 just happened.

23 As to the suggestion that it was
24 retaliation, I heard a saying the other day -- the
25 other lawyers in the room may already be familiar with

1 it, but it was new to me. It went: If you have the
2 facts on your side, pound the facts. If you have the
3 law on your side, pound the law. If you have neither,
4 pound the table.

5 I say this not to criticize Mr. Vick's
6 advocacy on behalf of his client but rather to point
7 out that as a result of Mr. Chapa's decision to race
8 with an electronic shocking device back in January of
9 2015, pounding the table is really all they have left
10 at this point.

11 Thank you.

12 CHAIRMAN STEEN: Thank you.

13 Commissioners, do you have any questions
14 for either attorney?

15 Any other discussion on the matter?

16 MR. MACH: This is a request for an
17 appeal -- this is an appeal of our decision, correct?

18 MR. FENNER: It's a motion for
19 reconsideration or rehearing. So you have a number of
20 options available to you. You could grant the motion
21 for rehearing, in which case we would have another
22 hearing. You could deny the motion. Or you could take
23 no action and just let it expire as a matter -- by
24 operation of law.

25 CHAIRMAN STEEN: What does that last

1 option mean?

2 MR. FENNER: Don't do anything. Don't
3 take any motions. And basically when you leave here,
4 it will be denied by operation of law because the
5 period of time has passed.

6 MR. MACH: Mr. Chairman, I'm comfortable
7 that the Commission made the correct decision on the
8 first round and so I move that we deny a motion for a
9 rehearing.

10 CHAIRMAN STEEN: Okay. So there's a
11 motion on the floor to deny the motion for
12 rehearing/reconsideration which leaves the Commission's
13 prior order in place by Mach.

14 Do we have --

15 MS. NORTH: Second.

16 CHAIRMAN STEEN: Second, North.

17 We'll take this up for a vote. All in
18 favor signify by saying aye.

19 COMMISSIONERS: Aye.

20 CHAIRMAN STEEN: Any opposed?

21 Okay. The motion carries.

22 Okay. We'll go over to Item VII. There
23 is no executive session today.

24 Item VIII, scheduling of the next
25 Commission meeting. The next meeting is scheduled for

1 August 8th. And I believe a finance committee meeting
2 will also happen sometime in July.

3 The time is now 12:14. And with all
4 business concluded, we are now adjourned. Thank you.

5 (Proceedings concluded at 12:14 p.m.)

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1 STATE OF TEXAS)

2 COUNTY OF TRAVIS)

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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 22nd day of June, 2017.

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