OPEN MEETING

PUBLIC SAFETY COMMISSION

AUGUST 21, 2009

On the 21st day of August 2009, the following meeting was held in Austin, Travis County, Texas.
APPEARANCES

COMMISSIONERS OF THE PUBLIC SAFETY COMMISSION:

Carin Marcy Barth
C. Tom Clowe
Allan B. Polunsky, Chair
John Steen
PROCEDINGS
FRIDAY, AUGUST 21, 2009
(10:36 a.m.)
CHAIRMAN POLUNSKY: Commissioner Barth?
COMM. BARTH: Here.
CHAIRMAN POLUNSKY: Commissioner Brown is absent.
Commissioner Clowe?
COMM. CLOWE: Present.
CHAIRMAN POLUNSKY: Commissioner Steen?
COMM. STEEN: Present.
CHAIRMAN POLUNSKY: Let the record reflect that I am present.
The regular session of the Texas Public Safety Commission is convened in accordance with Chapter 551 of the Texas Government Code, the Open Meetings Act.
During this meeting, the Commission will be conducting business from the agenda posted in the Texas Register.
A quorum of the board is present, and the meeting is now declared open. It is 10:36 a.m.
The first item on the agenda is the approval of the minutes from the Public Safety Commission, July 16th and July 17th, 2009.
COMM. STEEN: Move approval.

COMM. BARTH: Second.

CHAIRMAN POLUNSKY: There is a motion for approval that has been made by Commissioner Steen and seconded by Commissioner Barth.

Is there any discussion on this?

(No response)

CHAIRMAN POLUNSKY: There is no discussion. All in favor, please say "aye."

(All those in favor of the motion so responded.)

CHAIRMAN POLUNSKY: Any against, "no."

(No response)

CHAIRMAN POLUNSKY: Motion passes.

Before I move on to public comment, I would like to let everyone here today be made aware of the fact that someone who has been in the director's office longer than any Colonel, and who has never missed a Public Safety Commission meeting has decided to retire from the department. This individual has been the backbone of this agency, supporting nine directors and has more knowledge of the day-to-day operations of the DPS than probably anyone here today. I mention this today because she will not be at our next Public Safety Commission for me to
recognize for 36 years of dedicated service to the state of Texas and to the Department of Public Safety. Dorothy Wright, the executive assistant to the director, has decided to retire. effective August 31st, to spend time with her family and a new grandchild that is on the way.

Dorothy began her career with the department on March 12th, 1973 as a clerk typist in crime records, and stayed with that division until 1974, when she transferred to the general counsel's office as an administrative secretary. In 1980, she joined the director's office as the executive assistant to director James Adams and has worked for Leo Gossett, Joe E. Milner, James R. Wilson, Dudley M. Thomas, Thomas A. Davis, Jr., Stanley E. Clark, Lamar Beckworth and now Steven McCraw.

I am deeply honored to have worked with Dorothy. She truly will be missed by all of us. I would like to personally thank Dorothy and wish her a very wonderful retirement. And I want you to know that I am in trouble --

(Laughter)

CHAIRMAN POLUNSKY: -- in every sense of the word, because Dorothy asked me not to acknowledge the fact that this would be her last meeting because
Dorothy is a -- as you all know, a very reserved individual who is always trying to stay out of the limelight, but I felt, and I was sure that -- I'm quite confident that my fellow Commissioners would feel the same way, that somebody who has dedicated 36 years of her life to the Department of Public Safety and has done an exemplary job during that period should be recognized in every sense of the word.

So, Dorothy, thank you very much for dedicating your adult life to this department and for all the many, many great things you've done. And this department, without question, is extremely better off for everything that you've done. Thank you very much.

(Applause and standing ovation)

CHAIRMAN POLUNSKY: Don't be too hard on me on that. Thanks, Dorothy.

The next item on the agenda is public comment. Members of the public wishing to address the Commission will be allowed to do so. There will be a five-minute limit for each presentation.

Is there anybody here this morning who would like to address the Commission? Yes, sir.

MR. HENSON: Mr. Chairman, members, my name is Scott Henson. My address is 1403 Hewlett Avenue, here in Austin, and I appreciate the
opportunity to visit with you-all again.

I run the criminal justice blog Grits for Breakfast, just to remind you-all, and since we last spoke have submitted a petition with 25 signatures that I'm sure you-all received and hopefully have in your packet there, that request changes to the rules to driver responsibility program, and I noticed that is on you-all's agenda this afternoon and appreciate you-all -- excuse me -- taking it up.

I also understand that the staff has been working on an alternative proposal, and I appreciate them doing that and working on it, and I have not yet had a chance to see this. They wanted to wait until they presented it to you-all before they released it publicly but -- so I can't really comment on any differences or distinctions.

I would hope that you-all would consider, especially if it's a scaled-back version, if it only goes for an indigency program instead of also the amnesty and incentive programs that were proposed in the petition, that you-all might consider going ahead and taking public comments and holding a public hearing to discuss the full range of options.

You-all have had this authority to take
all this on since 2007. I think, frankly, from what
I've seen and come to understand, it's never been
something that rose to the -- rose up on the radar
screen of the Commission.

But now that you have a rulemaking
opportunity in front of you, be it what we've proposed
or what the general counsel is bringing to you, then,
you know, I think it's a good opportunity to talk
about and open up a discussion about all three of
those programs. And I hope you-all would do so, and I
look forward to seeing what's been proposed by the
general counsel as well, so I just wanted to come up
and say thanks to them for doing that.

I should also add that I had a good
conversation with Stuart recently, and he said he was
a little surprised to hear me say that general counsel
had said X last time, and that he didn't know they had
issued an opinion. And I just wanted to clarify where
that had come from, so that I didn't get in trouble.
I didn't mean to sandbag him by -- with that comment.

I had heard about the very first meeting
where you-all had discussed this with the vendor. I
called your public information office and had asked
Tela in the PIO to -- when these rules were going to
be implemented. She said, "I'll check and get back to
you," and when she did, she said, "Well, the general counsel's office said it's not required until 2011."

So really my source was the public information office.

    She had attributed it to the GC. I'm sure there was some source somewhere and some miscommunication. So I apologize if Stuart didn't know about that, but in any event, I'm glad that we're past that and now they're proposing a version of rules, too. And one way or the other, you-all are going to have, you know, something to move forward on this proposal.

    So that, really, I think is sort of a non-issue now, and I look forward to working with everybody on it. And unless you have any questions, that's really all I wanted to come visit with you-all about.

    CHAIRMAN POLUNSKY: Okay. Well, thank you very much, Mr. Henson, for being here this morning.

    Actually, thank you for bringing this issue to the forefront. I anticipate that the Public Safety Commission will be taking some type of action in some form with respect to the issues that have been raised here and that, as you have pointed out, is on the agenda and will be discussed later on this
morning. So we'll just kind of see where it goes at that point.

MR. HENSON: That sounds great. And I'll stick around, and if there are any questions about the specifics of what's been proposed in our package and how it compares, after I've gotten a chance to look at it, maybe I could be able to speak to that more precisely, but I appreciate you-all taking it up. Thank you very much.

CHAIRMAN POLUNSKY: Okay. Thank you very much. Is there anybody else here today who would like to address the Commission? Okay. I'll get to you, ma'am.

How are you, Senator?

SEN. SHAPLEIGH: How are you, Chairman?

CHAIRMAN POLUNSKY: Good.

SEN. SHAPLEIGH: Commissioners, it's a pleasure to be here from God's Country. My name is Eliot Shapleigh. I'm a senator from El Paso County, have served in that capacity since 1997.

I'm going to be joined by Andres Dura, who is a third-year law student at UT who has worked on this issue with me, and Judge Earle, who is the municipal court judge here in Travis County, to give you an on-the-ground view of how a failed program is
working in the state of Texas today. This, of course, was not your issue. It's the issue of the legislature, and I think we worked to fix it this session.

Let me give you a little history on the driver's responsibility program. When Rick Williamson was looking for a way to fund the Texas mobility fund, he came up with this idea, let's take charges on traffic tickets and basically raise them. The idea came from New Jersey. He was going to take that money and feed it to the Texas mobility fund program to build highways.

The political compromise in the legislature, frankly, to get it passed was to take some of it and get it to hospitals, trauma care. The irony is neither fund has received a cent. The Texas mobility fund gets money, if at all, from general revenue. This -- half of it did go into general revenue. The other half is in an account. Not a penny has gone to hospitals. It's been used to certify the budget since the program was passed.

The program was based on what was happening in New Jersey. Other states, at least two, looked at it and have since dropped it or significantly modified it due to the furor that the
driver responsibility program has caused around the state of Texas.

Politically speaking, this issue was brought to me by a Spanish language newspaper in El Paso, Texas, who ran a week's worth of headlines on that that, "What in the heck are you guys doing down in Austin, Texas?" And I said, "What are you talking about?" They said, "One in nine people in El Paso now have an arrest warrant out for them based on this program." I said, "I don't believe it. Let me look at it."

And that's where I got him involved, overworked and underpaid and on the job. Let's look at some slides here. If we may. This is what -- well, we picked up that slide from somewhere. This is basically research based on what Andres did. He went down to municipal court records in El Paso.

11 percent of the city now have arrest warrants out for them based on failure to appear after being cited under this program. So one in nine in El Paso are now affected by this program. He can walk through his research and get it for you.

I asked him to look at Travis County, too. I figured it would depend on the low income levels in El Paso, and as a result, we had higher than
ordinary numbers of citizens affected by it. He came
down to Travis County, and that's his research. I'll
let him speak to that, and the Judge can talk about
that.

Next. This is basically how it works --
you guys are very familiar. Failure to maintain
financial responsibility is a $250 maximum charge.
You get a surcharge over three years of $250. So a
one-time infraction is $1,000. That's what it costs
today if you're cited under driver's responsibility
program.

There is the suspended license, similar
result. If you have a one-time offense, you end up
paying $1,000. When you're talking about either low,
middle income or students, it's a pretty hefty sum of
money to pay.

Next slide. You have a 70 percent
noncompliance rate. Of those cited, seven out of ten
are not paying. Of 1,600,000 individuals in the
program, more than 1,080,000 cannot pay. It fails to
make the Texas roads safer. The LBB, in a finding,
found that it's lead to a greater number of uninsured
drivers on the road, and the Texas senate
transportation and homeland security committee, in
interim studies, made a recommendation that the
program be abolished, gotten rid of completely, before
the legislature got hooked on the money that was going
to be produced for trauma care. That didn't happen.

What happened is we filed a bill. It
got passed out of the Senate, didn't make it out of
the House due to the meltdown. On your sunset bill, a
piece of legislation was attached as an amendment.
Your general counsel can advise you on how that came
about, but there is an indigency program in the law
today. It won't be effective, my recollection is,
until September of 2011, and that was specifically to
give them the time to certify the budget with the
money that this program was raising.

That's what it -- Senator Ogden came in
and said, "I can't certify the budget unless you get
me to 2011," and so he made a compromise on the Senate
floor in the amendment to make it effective in not
2009 but 2011.

What are we asking you to do? We're
asking you to revise the program now and not collect
funds under the original intent of the program because
you can't do it. Take a look at what you can do under
the law and implement the indigency program today. I
think that is within legislative intent. It's what
the legislature wants you to do. We're going to come
back and revisit the program, and, obviously, the good -- the point system for good driving, I think you should take a look at, too, which was in the legislation that we were carrying in the House and the Senate.

I'm going to let Andres, if he can, speak to you briefly. There should be a letter on each of your desks that we sent to the Commission about a week ago, but if he could, speak briefly to his research and what he found with respect to drivers in the state of Texas.

MR. DURA: Thank you, Senator. Thank you, members of the Commission.

Basically I was asked to find out why there were 78,000 people in El Paso with arrest warrants for traffic violations and Class C misdemeanors. So I went to court, got the numbers, put them on the Access, starting cranking it out.

Over the next couple of months, I found out that, in fact, 11 percent of El Paso's population was under warrant, most of these attributable to violations that accrue surcharges on the driver responsibility -- under the driver responsibility program.

After that, we decided to take a look at
Austin, as the Senator mentioned, and we found out
that the same proportion of the population in Austin
was under warrant and was also suffering with regards
to violations that are attributable to automatic
surcharges under the driver responsibility program.

COMM. BARTH: Can I ask you a question?

MR. DURA: Yes, ma'am.

COMM. BARTH: What percent of the people
have DWIs?

MR. DURA: Let me look that up for you.

Of the 11 percent?

COMM. BARTH: That have surcharges.

MR. DURA: I don't have the exact number
for you right now. I can get that to you later.

COMM. BARTH: I would like that.

MR. DURA: I can tell you it was around
about a third of the 11 percent figure, but I can get
you an exact number on that later.

COMM. BARTH: A third of the 11 percent?

MR. DURA: More or less, but I would
like to get you an exact number, not an approximate.

COMM. BARTH: I would like that number.

Thank you.

MR. DURA: Yes. Most of the violations
that we're looking at was failure to maintain
financial responsibility. That was 34,000 of the 140,000 arrest warrants that were issued; and driving with a license suspended, that was another 30,000. So those two account for about 50 percent of the arrest warrants in both Austin and El Paso.

COMM. BARTH: So more like 50 percent of your numbers are attributable to DWI?

MR. DURA: No, no, no, no; to failure to maintain financial responsibility and either driving with a license invalid or suspended.

The other 50 percent, you would have to look at the 37 other municipal traffic violations that accrue points or automatic surcharges under the program. I can give you an example of these. They include safety belt, motor vehicle inspections.

COMM. BARTH: I'm real concerned about the DWI.

MR. DURA: I'll get you that number, definitely.

COMM. BARTH: So that's an important number to have. And, then, I guess the question is, did you research with respect to uninsured drivers, how many had accidents out there as a result -- you know, where they were written up because they were at-fault accidents, and then they had uninsured --
they didn't have insurance? Do you understand what I'm saying?

MR. DURA: Yeah. Are you asking me what the nature of the -- if they were involved in accidents when they were fined for no insurance?

COMM. BARTH: And not just when they were fined for no insurance, you know -- I assume those numbers would reflect -- somewhere in there in your research you could tell me who was at fault on the wreck.

MR. DURA: That data was not given to me by either El Paso municipal court or Austin municipal court. The data -- the raw data that I extracted and that I complied and classified thereafter did not include that information, so it did not form a part of my research.

SEN. SHAPLEIGH: That would be a different number to come to because you would have to go to a different database entirely. In some cases, that adjudication was not -- it's not part of the record. What he did is he went to look at what was the infraction in the 37 different categories and then what was the percentage of the total attributable to each; I mean, what was DWI, what was failure to drive without a driver's license, what is driver
responsibility to try and determine exactly where these warrants are coming from, what's the --

COMM. BARTH: I understand. I've been hit twice by not -- uninsured drivers having a claim on my insurance, so that's an important number there in my mind.

MR. DURA: Definitely.

COMM. BARTH: Go ahead.

MR. DURA: Well, in fact, what we found then was that the violations for which the driver responsibility program had the least compliance rates were, in fact, violations that are most prevalent under the warrants research that we did. So, for example, failure to maintain financial responsibility, which back during that time had a 29.3 compliance rate, was also one of the most prevalent violations that people were receiving arrest warrants for in El Paso and in Austin.

To give you an example, the same thing holds true for no license; a compliance rate of 18.8 back when the research was performed in 2007. The driver's license violations account for another 30 -- you know, 30,000. So we start seeing connections between these automatic surcharges especially and the burden that is placed on people and the warrants that
ensue afterwards.

SEN. SHAPLEIGH: If I may, I would like
the Judge, if she could, to share with you what it's
doing in the municipal court system.

JUDGE EARLE: Thank you very much,
Senator. My name is Elisabeth Earle. I'm a Judge
here in Travis County. I'm actually a County Court at
Law Judge now, was a Municipal Court Judge for many
years and had all these cases at the city level and
now handle these cases at the county level for driving
while license suspended.

In the past, driving while license
suspended charges were -- most of them were filed in
county courts, which is up to six months in jail and
up to a 2,000-dollar fine you can impose on somebody.
And I think that we are -- I think I can speak for
myself and all the judges that I think that we want to
hold people accountable. I think that's important.

And I believe that currently the system
is -- we're trying to hold people accountable.
However, most of the time, they aren't complying with
the law anyway by not having insurance, like you were
mentioning earlier, or active driver's licenses that
are good.

The problem with the surcharges
currently -- I see it from a court's perspective.
It's very confusing. It's extremely expensive. So
most people that come in front of me on a daily basis
will honestly tell me they will never get out of the
hole. They don't have $2,000. They will not -- they
will continue to drive as long as they can without
getting a driver's license, which means they will not
have insurance, which means our insurance rates go up.

I'm up the same boat as you. And so I
have -- I can't tell you -- countless number of people
I've had my bailiff walk outside and basically see
them get into a car to drive when I tell them right
then and there, "You're not allowed to drive. If you
get caught driving, you could be arrested." That does
not deter people.

It does not deter people, and I think
that the people that I've seen in court -- and some of
these aren't DWI convictions that I see now at the
county court level, but at the municipal court, it was
the uninsured motorist as well as the speeding tickets
they've gotten. And I'm not saying that's good. I
think that we should hold them accountable for that
because I think streets need to be safe from drivers
like that. However, they're still driving, and so we
aren't fixing the problem.
We're basically having, you know, a huge number of people not complying with the law, and they're continuing to do so. The people that do come in court, they'll tell me they just want to sit their time out in jail, which means there's added expense for the jail, of course, because we're housing these offenders.

And that ultimately means another conviction since they plea no contest or guilty to the subsequent charge of driving while license suspended. It's an additional thousand dollars or more. I think it may be a thousand dollars up to three years afterwards.

So it is extremely expensive, and they look at you and say, "I will never get out of this hole, so I just want to plead gully to this charge," which impacts the courts. It impacts our roads, and it impacts people out there driving like you and being in a car wreck with somebody who doesn't have insurance.

So if there is a -- if we could deal -- if the program could fix the system by allowing people who would, if we had a payment plan or had some sort of plan in place where they could get an indigency program, which would maybe reduce the first set of it
or maybe give them an incentive to keep their driver's license for a certain amount of time, I think it might keep them on the road safely.

COMM. BARTH: Judge, let me ask you a question. Is that okay, Chairman?

CHAIRMAN POLUNSKY: Sure. Sure.

COMM. BARTH: Commissioners, Your Honor, do you think an effective way to, let's say, perhaps instead of a fine is -- will they attend courses, a class, or is that just going to be, you know, another bureaucratic situation where we were to, say, eliminate the surcharges or even change the program and get rid of the charges -- you know, I have to understand what we can and can't do. So, you know, this $2,000 is eliminated by you attending however many classes, would, in fact, the person attend the classes?

JUDGE EARLE: I can't tell you what each person would do. I can say that if they had an option besides payment, be it community service, be it work crew, be it working with the trauma centers to see what they're causing, I don't know. There's ways we can fix it where they could see the ramifications of them driving without insurance and driving without a license and also driving unsafely.
I mean, that's what we're trying to prevent people from doing. The fine themselves is not preventing them from doing that because you can see a number of the people who get charged with this, you see them again.

COMM. BARTH: Oh, I agree with that, and, to me, the program is not working.

JUDGE EARLE: I would have to say that we would have to give it a shot and have to see if it would work because I think that giving them an option besides what's going on now has to be better than this.

COMM. BARTH: Thank you.

CHAIRMAN POLUNSKY: I'm sorry.

Mr. Steen?

COMM. STEEN: Senator, thank you for being here. We're always honored to have you at one of our meetings.

I spoke to a Mr. Perry. I think it might be James Perry, who is one of your constituents. I think he's a rodeo clown.

SEN. SHAPLEIGH: I don't know that he's been in my office in the last couple of months, but if he has been, I'll go back and check.

COMM. STEEN: He told me that -- and
maybe, you know, this figure, but he said that it's a whole lot of people that are crossing the border in El Paso to get a Mexican license, people that are affected by this program.

SEN. SHAPLEIGH: You mean U.S. citizens getting a Mexican license and then coming back?

COMM. STEEN: Do you know about that?

SEN. SHAPLEIGH: I have not heard that. I think where you are now is you've got three laws that you've got to sift this thing through. You've got the original law. You've got what was passed in 1722 that Ogden passed, and then you've got the amendment to your sunset bill.

So some lawyer that gets more than $600 a month is going to have to shift through that, and where I think you are is the legislature saying the fine is too high. People can't pay it. It's not resulting in better behavior, and so here is this mess. Figure out what to do with the program. I think that's where the legislature is going.

I think if we said, "Let's just go back and collect this," what you're going to do is criminalize some behavior and have a whole bunch of people that can't get licenses, they can't get jobs -- probably not the way to go. We've got the embedded
costs, three- and 4,000-dollar fines that people can't
pay, particularly now.

    So what we are asking you to do is take
the law as it was written, and I'm telling you it's a
mess. It's not exactly clear because of the -- what
happened in the sunset process, but head us in the
direction of an indigency program that works and that
results in better behavior on the road. And good luck
on how you're going to get that done, but what I do
know is they can't pay the fines that they're
resulting in now.

    They're still getting on the road, and
they're doing it with illegal licenses, and the other
side of it is they can't get jobs, and so we've got
the worst of two worlds. You've got folks whose
behavior has been criminalized for traffic tickets and
they can't get a job. I'm -- and if you ask what
would you do about it, I would sit down and sift
through the material. I'd lower the fines consistent
with what the law provides, particularly with the
indigency program and the points for good behavior,
and then sit down and take a look at this from a
compliance standpoint a year from now so we can go
back to the legislature and say, "We believe this is
working better than what we were doing before."
I'm sorry to hand you this big mess, but good luck.

COMM. STEEN: Senator, just to clarify something, you said earlier that the money hasn't gone to the mobility fund or the trauma care.

SEN. SHAPLEIGH: The political compromise was trauma was going to get half of it, is my recollection; maybe 49 percent. Mobility was going to get 49 percent. 2 is going to run the program. You're going to get that for administration.

What happened to the money to go to the mobility fund, it was put into GR and it goes into the big kitty and is moved around. You're very familiar with Fund 6, and what happens to Fund 6.

The trauma care money was put in an account, never paid to the hospitals. They were letting it build up to get some match money and so forth. So it's only been used to certify the budget. I think that's correct as of today, is that the trauma care money has never been used for hospitals.

And my concern as a legislator was the minute the hospitals get that money, you're never going to fix that program because they're going to say, "We got it. Now we're hooked on the money. We've got to have it." So my concern is let's fix the
I'm here because I'm pulled into a meeting with the editor of a newspaper that has got four days' worth of headlines on one in nine people going to jail over traffic tickets, and I'm saying, "I had no idea that this was happening in my town." So I go in and talk to the editor, and I said, "You know what? I'll be back in 60 days. Let me get an overworked, underpaid intern here and get him on the case," and he went back and he said, "You know, that's exactly what's happening here."

So we know we've got a mess. The other states that had it -- New Jersey, and I think there's one other -- they got rid of it because it wasn't working. And so -- Virginia had it, I think, if you go back and research this. So now we're in Texas, and the question is what do we do about it? I think that what we're here to share is, you've got to pull the fines back. You've got to have some sort of program to handle the folks that just can't pay those kinds of fines, and there's got to be legislative intent reflected in the point program for good behavior, not
Chairman Polunsky: Any other questions?

Comm. Steen: Well, just to clarify, if that money is not going where it should go -- is that what you're saying?

Sen. Shapleigh: I'm saying it's being held in an account.

Comm. Steen: And who bears responsibility for that?

Sen. Shapleigh: That would be me and another 180 people in that building over there that has a dome on it. And the trauma folks have been begging to have it for years because they don't have it in trauma care, and trauma care is severely underfunded in the state of Texas.

That money doesn't go away, of course. It's already been collected. And in future budgets, it will be allocated, and the release of it to the recipients will be done, but that's not uncommon. We did it with education money this session. We've done it with TxDOT money for years. You would be shocked if you went over there and saw what happens in that budget, but that's part of that process.

Comm. Steen: Thank you, Senator.

Chairman Polunsky: I don't think we
would be shocked.

(Laughter)

SEN. SHAPLEIGH: While I do have this
mic, I want to thank the men and women of DPS, what
you do every day in the state of Texas, the risks that
you take for us, the sacrifice that you make on the
streets and on the roads, and particularly in the
fight against these drug cartels.

You and I have had discussions about
this, Mr. Chair, and I think everyone on this
Commission -- there is a big job that DPS does every
day, and I want to tell you, I'm a big supporter of
the men and women that do that job every day. And I
want them to know that everyone that serves in that
legislature appreciates their work and their sacrifice
and the risks that their families take as well, and in
particularly in these border counties where this war
is vicious, and it's real. So I just wanted to get
that on the record.

CHAIRMAN POLUNSKY: Thank you very much
for making that comment because it's extremely
appropriate and true so --

COMM. CLOWE: I want to expand on that
if I may.

CHAIRMAN POLUNSKY: Sure. Sure.
COMM. CLOWE: I appeared before Senator Shapleigh when I was pending approval for nomination to this board, and you dinged me very effectively about that problem. And it certainly raised my awareness, and I made certain that all the members of this board who were pending confirmation, with the exception of the Chairman, got that information. And our new director has a background, a high-level of awareness of that issue, and you and other legislators have raised that awareness and that concern in this agency tremendously.

In my opinion, we're not where we need to be at this point in time, and we're going to continue to strive to improve, and we will be coming back to the legislature asking for financial assistance to do a better job. People ask me constantly, you know, how effective are you in interdicting drugs and the importation of people across the border, south to north, and guns and money going north to south.

My answer is we're not doing nearly as good a job as we need to do, and I think that problem is not going away. And I want to thank you for highlighting that and emphasizing it. I talked to the agent in charge that you recommended for me to reach
with the FBI, had a great conversation. Our new
director is right on top of that. He's current on, I
think, all of those aspects. And, Senator, we're
really concerned about that.

There are a lot of other counties in
Texas that don't touch the border, and we're concerned
about them as well, but this is a growing problem.

And I wanted to thank you for your
emphasis on that subject and the comments as well that
you've made about this agency.

SEN. SHAPLEIGH: Well, I want to thank
you for going through those four or five hours of
listening to that in the two hearings we had in El
Paso. There are 32 counties two in from the border,
but there's 254 counties that are affected by it
because these trade corridors -- and there are four
that come through Texas -- touch every county in some
way or another, and when you look at the strategies
that we need to evolve, the DPS is at the center of
those strategies; no doubt about it.

And I think that your new director, who
has been immersed in this since high school in El
Paso, Texas -- and I do have his grades here if you
would like to see them --

(Laughter)
COMM. CLOWE: We would rather not.

SEN. SHAPLEIGH: I don't want to get into the department's business, but that was a real problem. But I think staying focused on the kind of cartel teams that have had demonstrated success in places like New York going over to Sicily, and Chicago -- this is not a new thing. There are ways to combat it, but you are the agency. This is it. And evolving those strategies, getting them funded and making sure that they work is highly important for Texas.

And I appreciate you orienting the agency to this new threat, making sure that we have the resources there to do it, getting a director who is familiar with it, and as we say on the border, "Adelante."

COMM. CLOWE: Arranca.

CHAIRMAN POLUNSKY: Any other questions?

(No response)

COMM. BARTH: Thank you.

CHAIRMAN POLUNSKY: Thank you very much for being here this morning, and we certainly appreciate it.

SEN. SHAPLEIGH: There is a -- I don't know if you have the time, but there is a DVD of a
soldier back from Iraq who got caught up in this program that you might want to see, if we can run it, with respect to the driver responsibility program. Here is a guy who left, comes back, his license has been revoked. He thought the surcharges -- he didn't know the surcharges he had to pay, and it might be something you want to see. I don't know. We brought it for you if you want it.

CHAIRMAN POLUNSKY: And how long is that?

SEN. SHAPLEIGH: Two minutes.

CHAIRMAN POLUNSKY: All right. Could you run that for us, please?

(Video shown)

COMM. CLOWE: Trying to get your grades back, Steve?

COL. McCRAW: I'm proof that you can still promote when you have a C minus average.

COMM. CLOWE: There you go.

MS. SHARON: Good morning. My name is Pamela Ann Sharon. I'm from Freer, Texas; Duval County. My address is 1375 Old Magnolia Road, and I also want to say that I'm a certified teacher here in the state of Texas.

And the reason I'm here today is that
I'm here to ask for help from the Commission and the director of the Texas DPS. I want to read my statement. Although I'm a speech teacher, I sometimes go long, and I thought, you know, because of the five-minute -- you know, the limit, so I just wanted to read my statement to make sure that I get everything that I wanted to say.

For the past four years, I've been a victim of cyberstalking and cyberharassment, which is criminal harassment. Since May of 2005, I have been harassed and terrorized.

My two dogs, Jack and Bobo, were killed. Animal body parts were thrown in my yard. I, one time, found a leg of a yellow tabby cat thrown in my front door. People know that I'm an animal lover, and that's why they were doing these things to me.

Items were stolen from my house, from my yard. My house was broken into and destroyed. I had to leave my home at 706 Resaca there in Freer because I feared for my life. This is why I now live at 1375 Old Magnolia Road. I thought this was the worst thing that could have happened. Little did I know that even though my dogs were killed, all my material possessions were destroyed and basically I was just kind of homeless, things were -- things much worse.
were happening to me.

The suspects in this crime, which I was a target of, were continuing their assault on me, although I did not know about it. They had already destroyed my things, and I guess they were wanting to destroy the rest of me, which I'll be here and say that, yes, they have destroyed my life.

One of the characteristics that cyberstalkers do or exhibit is that they make false accusations against their victims. They want other people to turn against the victim, and they have accomplished this by posting false accusations against the victim through the Internet, and they also circulate statements; you know, graphics and that sort of thing, by camera or cell phone through texting.

The suspects in this case began circulating via text message and postings on the website that I abused animals, which is -- that is not me. Sometimes in a year I would spend $3,000 spaying and neutering, you know, cats I had found and everything and I would let them go. I believe that the animal population is out of control, and I believe that spaying and neutering is a better alternative than killing them after they're born.

Also, before this time, May 2005, they
came into my yard and dumped -- they had field-dressed
a wild pig in my yard, and they left the intestines,
et cetera, in my backyard. Pictures were taken, and
they were given to the police department there in
Freer.

But, anyway, since May 2005, the things
that were being posted about me on the Internet was
that I abused animals, that I was living like a pig
inside my house, that I smelled bad, and also, a mug
shot of me was included. Photographs of my car were
also included, so people would be able to recognize
not only me, my face, but also be able to recognize me
by the car that I drove.

I have never, in my life, been arrested
for anything, so I don't know where they got a mug
shot. So there's several things have happened, so I
can't really, you know, address all those issues here
in the Commission. I would be here all day.

But to make a long story short, they
had -- the mug shot of me was me wearing a jumpsuit.
It turns out that that photograph was a copy of my
Texas driver's license that had been altered to make
me look like a prisoner. And as I said, the suspects
in this case made several despicable things about me
in these text messages and on their website.
I'm a school teacher. I can no longer work in a school. Basically, I'm just at home and just trying to be self-employed.

I have filed reports with the -- several law enforcements, and I would like to show you a map here of what I've been through for four years. This is where I live in Freer. After being terrorized for such a long time, a good friend of mine -- a friend of the family, his name was William B. McMorey. He was a Texas Ranger back in the days of prohibition. I remembered him telling me, he says, "Pam, if you ever need help, call in a Ranger. He'll help you."

I had never called on a Ranger before, and I thought, when you're terrorized out of your own house and you're being dragged through text messages and websites -- you know, I was telling a friend of mine yesterday, I said, "I feel like I am a carcass, and I'm just being dragged all over the place," you know, because of the things that were being said about me.

Well, anyway, what I did is I contacted DPS, and they told me where I could find a Texas Ranger. It started here in Corpus Christi. It turned out he knew my brother. He said, "Pam, I don't handle that area." He says, "Go to Kingsville." After two
months of calling Kingsville, I finally got a call from the Texas Ranger. He sent me to San Diego. I filed reports with San Diego. And then from there, I was told that this was -- after about two or three months, I was told this was a civil matter. And I was wondering, "How can this be a civil matter?"

Then I went to the city judge in Freer, and I told her, you know, the problems. She said that Deputy Hinojosa -- excuse me -- I wasn't going to mention any names. I'm sorry. They're not here to represent themselves. But she said, "Yes, he told me your problem," and I said, "I'm here to sign a complaint," because I was told to sign a complaint. I've never been involved with anything like this, so I didn't know, not to mention that I was at the end of my rope. So I was asked to sign a blank complaint form.

I'm an educated person, debate teacher, et cetera, forensic coach. And I know better than to sign anything that's blank, but the thing is I was terrorized out of my life, and this was a judge telling me that this was the procedure, to sign a blank form. So this is what I did.

I then sent a letter to the investigator
in this case, and I said, "Last Friday I met with blank teacher" -- excuse me -- "blank municipal court judge in Freer city hall. I signed a form that she said you needed to sign in order to arrest the suspects in the break-in of my home. I wanted to know if arrest warrants had been issued for the blank, blank, blank suspects." And, again, it goes on, the letter, saying when this is going to be taken care of.

In January -- this was signed in December. In January, I called him to ask him what the status of my case was, and he says, "Pam, I have other things to do, other than your case." He said, "Next time I'm in Freer, I will arrest the suspects when I have time."

So, then, I turned around and called the city Judge, and I said, "This is what the investigator just told me," and she said, "Well, the thing is is that they lost your file," and I said, "No. He said it was on his desk, and he just didn't have time." So she said she was going to call him and see where we were at.

So time went by. In March, I went to go visit with her again, and at that point I was very, very suspicious of things that were going on. I took a tape recorder on me because I kept telling people
what I was being told, and they couldn't believe what
I was going through.

She told me it was going to take years.
I said, "Remember when I was here in December, and I
signed those blank forms?" She said, "Yes." And I
said, "Well, it's been, you know, all this time." And
she says, "I can tell you it's going to take years
before anyone is arrested," and I said, "Why that
long?" And she says, "Well, they have to go into long
investigations," et cetera, et cetera. She was
telling me that it would take years to execute an
arrest warrant.

CHAIRMAN POLUNSKY: Ma'am, can you bring
this to a conclusion, please?

MS. SHARON: Pardon me?

CHAIRMAN POLUNSKY: You're past the five
minutes.

MS. SHARON: Pardon me?

CHAIRMAN POLUNSKY: You're past the five
minutes.

MS. SHARON: Well, basically like I'm
saying, I'm here to ask the Commission for help
because the harassment is continuing. The
cyberstalking is continuing. I'm still being
victimized, and I'm asking for help from the director,
from the Commission. I have letters. I have
documents. I have audio tapes, et cetera, and to see
if the people that did this to me can be brought to
justice. All right.

CHAIRMAN POLUNSKY: Thank you very much.
If you care, you can certainly provide that
information to the secretary to the director here at
the table, either now or at the end of the meeting.

MS. SHARON: These are her copies.

CHAIRMAN POLUNSKY: That will be turned
over to the director's office. Thank you for being
here.

MS. SHARON: Thank you.

CHAIRMAN POLUNSKY: Is there anyone else
who would like to address the Commission at this time?
(No response)

CHAIRMAN POLUNSKY: No one else?
(No response)

CHAIRMAN POLUNSKY: The next item on the
agenda is the director's report. Colonel McCraw?

COL. McCRAW: Thank you, Chairman.

First, I would like to underscore two things. One, I
had the privilege of traveling to Midland on behalf of
the Commission here to present to John David Cox the
Commission's medal of valor, which is the highest
award of the department. You recall that Trooper Cox
took a gut shot with a 12-gauge shotgun, and not only
survived but was able to engage a capital murderer and
was able to prevail while they were trying to head
towards Mexico.

So he was there with his family, and I
can tell you he's a -- those are the type of -- you
know, obviously, that's the type of success story that
happens quite frequently around the department that we
don't normally get to hear about, and it was an honor
to be able to do that on your behalf, Chairman. I
appreciate that.

Also, I want to bring up -- we had
another situation this Wednesday when the Department
of Public Safety provided some critical support to our
local law enforcement partners -- and when I say
"DPS," I mean the Texas Rangers -- the Texas Highway
Patrol CLE to the SWAT team when they were able to
assist in rescuing a Katy Independent School District
police officer, and she's safely returned.

It was the result of clear, good
judgment on the scene. When they breached, they
exhibited fire discipline, and, of course, she's back
safely, and I wanted to bring that up as another
eexample of what occurred Wednesday in terms of the
type of work that the department is engaged on a weekly or monthly basis.

With your permission, I would like to, first of all, underscore what Senator Shapleigh said. I would agree that El Paso is God's Country. No. 2, we don't disagree -- in fact, agree that what we contribute -- the program in the way it's currently being conducted is creating basically a circle of noncompliance, and I think you saw that in terms of what he discussed, and also certainly underscored by our brave trooper that was overseas fighting on our behalf.

So there's clearly some things that can be done. We do have a proposal that Chief Michael Kelley can present, and certainly work with Mr. Henson and certainly work with Senator Shapleigh and his office and with your support to be able to get back on the track and do what the program was intended to, and that's get compliance and increase, you know, driver responsibility.

One of the first -- I did get a call and a request that we put an agenda item next agenda. I did receive a call from the state fire marshal and also received a letter faxed to myself and Colonel Beckworth yesterday about some fire issues. I'll say
some fire safety issues at the DPS academy that we were notified about 18 months ago that we'll need to address, and I'll provide -- respectfully request that we put that on the agenda for next time.

One of the first things that you've requested when I was honored to accept this position is to look at how we can embrace what the sunset commission had identified in terms of a vertical, solid structure, and also what the Deloitte study underscored and how working with the leadership team that we can come back to you and make recommendations in terms of what that organizational structure is.

I was able to do that with this leadership team, at the same time also to include, not just in terms of the leadership team, but to make the chart and structure, as well as the regions, available to every employee in the Department of Public Safety. We've seen some tremendous feedback.

They've been changed. The structure has changed and continues to change to what we have today is what we think -- we're quite confident is the way we think that we need to proceed. We want to make that recommendation to you with that structure chart. I don't know if you would like to hold off and do that in the course of the agenda items or if you would like
to take that up right now, Mr. Chairman.

CHAIRMAN POLUNSKY: I believe it is on the agenda, but we can address it now or we can wait until it comes up.

COMM. CLOWE: I would like to suggest we stay with the agenda and take it up at that time.

COL. McCRAW: Okay.

CHAIRMAN POLUNSKY: Any objection to that?

(No response)

CHAIRMAN POLUNSKY: Colonel, we'll just go ahead and wait until it comes up on the agenda.

COL. McCRAW: I'll also hold off on the leadership team at that point. That only two leadership decisions that have been made -- Michael Kelley is the chief -- the permanent chief of driver's license I'm proud to announce. Amanda Arriaga will take over government relations, and she's new on board, just completed her regular background investigation -- our two key positions that have been filled.

COMM. CLOWE: Is she present in the room?

COL. McCRAW: Yes, I believe she is.

COMM. CLOWE: Could we ask her to
identify herself so everyone knows her face and --

COL. McCRAW: Amanda, please stand up.

MS. ARRIAGA: Good morning,

Commissioners. I'm Amanda Arriaga, and I'm very
honored to be your new chief of government relations.

COMM. CLOWE: Thank you very much.

CHAIRMAN POLUNSKY: Amanda, you might
want to briefly give some background, if you don't
mind.

MS. ARRIAGA: DPS really loves
background.

(Laughter)

MS. ARRIAGA: My name is Amanda Arriaga. I attended Texas A&M University and was a business
management major then. I then went to UT Law School, was fortunate enough to graduate and pass the bar.

For the past five years, I have been
working in Governor Perry's office as the homeland
security advisor and also an advisor on other policies
used, such as juvenile justice. I worked on housing
issues, a wide array of issues, including border
issues. So I got to be the person that knows a little
bit about everything to do with all of our different
policy issues.

And I'm very pleased to be coming here
and using some of that knowledge and apply it here as well.

COMM. CLOWE: I would like to add that you are obviously very articulate.

MS. ARRIAGA: Thank you.

COMM. CLOWE: Good choice, Steve.

COL. McCRAW: And opinionated as well, I can assure you.

COMM. CLOWE: I think this comment will stop at that point.

(Laughter)

CHAIRMAN POLUNSKY: And I would also like to add that I dealt with Amanda on the border council that I served on a year or so ago, along with a number of others, and found her to be extremely professional.

And by coincidence, I also know her father who -- there was a slight overlap on -- with my service at the Texas Board of Criminal Justice and his service on the Board of Criminal Justice, and I can tell you he is absolutely one of the most distinguished citizens in McAllen, Texas, and I also believe is serving now on the Texas Real Estate Commission and is providing great leadership over there.
But beyond that, I think that Colonel McCraw has made an excellent selection here with respect to Amanda. I think she's going to have some big shoes to fill with respect to Michael, but nevertheless, I'm quite confident that she will do a very, very good job for the Department of Public Safety and represent us well at the Texas legislature and in other areas of state government.

So welcome aboard. Thank you. Colonel McCraw?

COL. McCRAW: Chairman, if you don't mind, if I could approach not the bench but the Commission anyway. Since it's clear that you didn't follow Dorothy Wright's wishes, I thought I would keep in that tradition.

I would ask, if you don't mind, if you could present that.

CHAIRMAN POLUNSKY: I would be happy to do so and --

COL. McCRAW: So I don't get in trouble.

CHAIRMAN POLUNSKY: I'm going to get in trouble all sorts of different ways here, but this is from the Governor of the State of Texas, dated August 2009. "Greetings to Dorothy Wright, executive assistant to the director of the Texas Department of
Public Safety. Congratulations on your well-deserved retirement after 36 years of service to the people of Texas.

"Public service is an honor for its foundation is in public trust. Daily state employees earn this trust, demonstrating dependability, initiative and wise stewardship of public resources. Their endless dedication highlights that this state's greatest asset lies with the people who call it home.

"First Lady Anita Perry joins me in sending best wishes for an enjoyable and fulfilling retirement. Sincerely, Rick Perry, Governor of the State of Texas."

(Appause)

COL. McCRAW: I've been blessed by working with many outstanding secretaries and executive assistants, and there's none better than Dorothy Wright. Let me tell you that. It's been a pleasure working with Dorothy in the short period of time, and as I told her, I had the benefit of dealing with her when she was in the director's office, and from the outside and the inside, there's none better.

So I -- on the equipment issue, I wanted to bring that to your attention. Obviously we're going to be leveraging some of the stimulus money the
department has been provided, especially in the
category of tactical upgrade.

As part of what all leaders, just like
Colonel Beckworth, had already done in terms of
establishing an open-door policy, we've expanded that
to the e-mail, and one of the continuing themes we're
getting is flak jackets for troopers on the road.
Now, clearly they've been provided, you know, Level 2
body armor, which is important to have because you can
wear it underneath, but at the same point in time,
there's situations where -- especially in some of our
smaller communities that the go-to person is always
going to be the trooper.

And in many of those instances, the
trooper has the opportunity to what we call "armor up"
before they go into that situation, and not too long
ago, prior to my arrival, we had such a situation
where clearly that trooper was placed in that
situation, didn't have the armor.

Thankfully the situation resolved
successfully, but it pointed out a weak point that the
troopers had identified, and the leadership in highway
patrol has already identified a Level 4 capability to
go it up even one higher. And unlike Level 2, it
doesn't have to be replaced.
So we found some stimulus money. We believe it will cover the entire cost of it, which right now is about 2.5 million we believe will be the cost to put every trooper in one. There's 150 CLE-commissioned officers that don't have a flak jacket. CLE has some funding for that as part of a replacement program. So this we can use, internal money, and also as I pointed out, stimulus money so we're not in a position of having to reprogram existing dollars.

So, also, what I would like to do the next session and put it on the agenda, with your permission, Chairman, is the issue of tasers and the use of it and flashlights, simply because these are some of the other things that are coming to the forefront that Colonel Beckworth and I and highway patrol have sat down and talked about that are clearly some equipment that the trooper on the street needs. We feel strongly about that.

Now the issue is where we find the money, and we'll come back with proposals for you at that point in time, with your permission, on the next schedule.

The concealed handgun is on the schedule, so I won't discuss that. We'll handle it
according to the agenda. Obviously it's something that needs to addressed.

The physical readiness test, I know that you've had -- there's been working groups on it. On the 25th a number of individuals that have been involved in this in the past will be coming to Austin. I'll be meeting with them and spending the day to go through the field physical readiness test. I can tell you that the job task scenario that had been created and established and contracted with -- the department had adopted was, in fact, I got to witness Colonel Beckworth take the test, and I had taken the test as well, and although it was clearly -- there's some job tasks that cross-link back to the job on the street, our concern was is that was having a disproportionate impact on our female troopers and our older troopers.

And even though they're passing the test, they weren't making the time, even by seconds. And after taking the test and based on our background and experience, I had no problems making the decision to eliminate the time factor, and even ex post facto.

Going forward, the real solution is a field test because we don't want to have to bring everybody back to Austin to conduct this more elaborate test by pushing a car -- is what things
matter most and how can we do that in the field.

And I can tell you one of the things that we're going to be looking at on the 25th is to include body fat and measuring that particular level as part of the physical requirement.

The other agenda items are going to be incorporated with the region, including the management team, Chairman. So at this point, I conclude my remarks.

CHAIRMAN POLUNSKY: Thank you, Colonel. Are there questions of Colonel McCraw? Mr. Clowe?

COMM. CLOWE: I know it's not on the agenda and you mentioned it would be for next month, but I would like to be assured that whatever issues have been identified in the information you received about fire hazards related not to the academy will be dealt with immediately and not experience any delay in remediation that might be required. Can we be assured of that?

COL. McCRAW: I can't assure you that, Chairman -- or Commissioner Clowe. I will talk to you that there's a substantial time and money issue with it. We're going to do something; I know that. I'm not sure what it is, but I would be -- I'm reluctant to promise you that anything will be completely
addressed by the next commission meeting, and I'll --

as soon as I get information, more details in terms of

what it will take to install the sprinklers and also

the fire alarm system and how long it will take to do

that and where we can find the funds to divert to do

that, I'll bring it immediately to your attention.

COMM. CLOWE: And that's certainly

reasonable, but if there were any issues regarding

improper storage of flammable materials or

something --

COL. McCRAW: Yes, sir.

COMM. CLOWE: -- that obviously could be

dealt with right away, you're taking those steps?

COL. McCRAW: Yes, sir. Those steps

have been taken. And we'll ensure those steps have

been --

COMM. CLOWE: Good. Great.

COL. McCRAW: -- will be addressed.

CHAIRMAN POLUNSKY: And over and above

that, Colonel McCraw, it has been noted that this

issue has been brought to our attention by the state

fire marshal, but over -- beyond that, Senator

Hinojosa has also sent a letter to the Commission and

I believe to you --

COL. McCRAW: Yes, sir.
CHAIRMAN POLUNSKY: -- identifying this problem. So I would ask that any information that is generated on this topic be passed on to Senator Hinojosa or his staff and any other interested legislator because it certainly is an important problem over there that needs to be addressed in an expeditious manner.

COL. McCRAW: Yes, sir. We'll do that.

CHAIRMAN POLUNSKY: Mr. Steen?

COMM. STEEN: And, Colonel, following up on that -- on these fire safety issues, I would like, as part of your report next month, to explain to us how it fell through the cracks --

COL. McCRAW: Yes, sir.

COMM. STEEN: -- that these things were pointed out to us and then they weren't addressed.

COL. McCRAW: Yes, sir.

COMM. STEEN: I do want to say that the letter that you sent us was an excellent letter, really appreciate that.

On the issue of equipment for the trooper on the street -- and I think all of us up here would say this -- you have our full support on that, and whatever it takes, you know, to get these upgraded flak jacket or tasers. You know, it's important that
they have the equipment they need to do the job, and so we'll support you on that.

    COL. McCRAW: Yes, sir.

    COMM. STEEN: How long have you been director?

    COL. McCRAW: It's been about three weeks -- little over three weeks.

    COMM. STEEN: Would you tell us what your three biggest challenges have been?

    COL. McCRAW: The three biggest challenges, I would say is -- looking currently and moving forward is going to be driver's license -- we'll call it the licensing and regulation piece, simply because of the backlog that exists in the driver's license offices where men and women show up to work and they're four hours behind. We have to reinvent and revamp the entire system.

    The same thing with the commercial handgun license permits. We have to -- right now we have over 12,000 hours that were spent of trooper time, off the road, doing background investigations on concealed handguns. That's ridiculous. That's not -- I'm sure the legislative intent wasn't to divert trooper time to background investigations, and yet there's ways -- and that's one of the reasons I got
Brad Rable, the CIO here, involved in the process. And we think we've designed a way that we will be able to present the full spectrum of it next commission meeting, but clearly, we can achieve some economies of scale right now leveraging technology.

So I'll argue that piece. Of course, like anything else, I mean, the thing that's most important, and, of course, rewarding coming to the department is the high caliber of people. That's the secret of success, and in this organization, there's no quality of people higher than the Department of Public Safety.

And that said, that comes with recruitment. That talks about retention. It also talks about -- in terms of when we talk about the HR piece, in terms of appraisals, I think the current system embraces mediocrity. It doesn't distinguish to where it needs. That needs to be reworked, as well as the promotional process that Colonel Beckworth and I have when talking about, how we can streamline that process.

And, of course, the underscoring -- the undercurrent to support all those things is technology. So when you ask, you know, the HR, I'll
say, the business processing, but the information
technology piece. Because we, like many agencies,
have grown up with the disparate Legacy systems that
are antiquated, and until we get that, we really don't
know what we know, number one, to support
investigations -- criminal conspiracy investigations,
RICO-type of prosecutions and even our patrol areas,
but we can't hold people accountable, and I can't tell
you how much cash we have in each program, as
Commissioner Barth has reminded me, at any given time,
and it's very hard to manage where we are and also
hold people accountable for what we need to be doing.

COMM. STEEN: Thank you. I've heard
great things, and you've got lots to work on.

COL. McCRAW: I've got great people, so
thank you.

COMM. STEEN: Great start.

CHAIRMAN POLUNSKY: Any other questions
for the Colonel?

(No response)

CHAIRMAN POLUNSKY: Thank you, sir.

COL. McCRAW: Thank you.

CHAIRMAN POLUNSKY: New business:
Update, discussion and possible action regarding
formulating policy of recommendations to schools with
Chief Colley?

MR. COLLEY: Mr. Chairman,
Commissioners. At the last Commission meeting, I was asked to provide to the Commission the latest update on H1N1 with respect to what the state of Texas' plan is.

There's no better way to do that than to bring those that are charged by the Governor of Texas to make that happen, and I'm very proud today to have with us, to answer your questions and also present what's being -- the process, preparedness, you know, for the state of H1N1 than these two individuals with me. Julie Harris-Lawrence is the deputy commissioner for education -- for the Texas department of education -- Texas Education Agency.

Monday morning 4.5 million students will start school in Texas, another 500,000 faculty. That's 5 million people. That's more people that live in the state of Oklahoma; 8,100 campuses, a thousand school districts. So it's a big state in respect to that, and she has been at the forefront, and Commissioner Scott has charged her with this daunting task of H1N1 preparedness.

To her left is the doctor for the state
of Texas -- commissioner of health for the state of Texas, Dr. David Lakey. He is in charge of the largest health organization outside of the United Nations, in terms of what he does for the state of Texas. And he's taken his time, and we're very pleased that he's done that, to be here this morning. Dr. Lake is, of course, commissioner of health, and is the lead agency for the medical response to H1N1. So they're both here this morning. I appreciate their time to be here, to not only answer your questions, but to give a short update on what they are doing. With that, we've met with the Governor's office many times. Governor Perry is very much involved in the preparation for this potential event. And a lot has been done and will continue to be done. So I'll turn to Commissioner Harris, or, Dr. Lakey, do you want to go?

DR. LAKEY: Sure. I'll go first.

Chairman Polunsky and members, my name is David Lakey. I'm the Commissioner of the Department of State Health Services.

I first want to thank you for the invitation to be here today, and thank you, Jack. We have, over the last several years, figured out that public safety and public health have to work hand in
hand, and there isn't a bigger champion of public
health than Jack Colley. So thank you, Jack.

What I would like to do is to update you
where we are in the current situation and what we're
doing related to planning related to H1N1. Texas has
been on the forefront of this event from the very
beginning in April. The first few cases were in our
backyard, and so we've had to act aggressively, and as
we've acted, we have looked critically at what we've
done and what we can do in order to gather data and to
fine tune that response here in the state of Texas.

The current situation, as of August 1st,
we had over 5,000 confirmed -- laboratory confirmed
cases. That's probably about a tenth of the total
cases we've had in the state of Texas. We've had
about 107 -- excuse me -- 270 hospitalizations, and
we've had 33 deaths in the state of Texas. To put
that into perspective, with seasonal flu, we have
between 1 and 5 million cases a year and about 16,000
hospitalizations, just short of 3,000 deaths from
seasonal flu each year.

The good news of this event is that the
vast majority of patients have continued to have mild
or moderate outpatient disease. We've been able to
take care of individuals as outpatients. There have
been some, especially those with underlying health conditions, that have had more serious disease, and as we've noted that there were 33 deaths so far, but the vast majority of individuals here have had fever. The average fever has been about 102. They've had cough. They have the flu. It looks very similar to what we see with seasonal flu.

We have been watching this very closely throughout the summer. The state of Texas has continued to be busy, and we've had summer camps that have had outbreaks, and so there's been a lot of activity there. We've watched this virus go into south -- you know, the southern hemisphere. It has become a pandemic. It has spread worldwide. It's the first pandemic in 40 years, but, again, the good news: If you're going to have a pandemic, the severity of this one is, one, that can be managed by individuals working together in this state.

We have, from the very beginning, looked at our different plans. And for us, there's a broad array of different plans that we look at and how do we monitor this disease, how do we -- who do we test, how do we provide guidance to clinicians.

A couple of things that are coming up are the antivirals, make sure we have a distribution
system so that if an individual, no matter what their ability to pay, if they need these medicines, can be put on the antiviral medicines, and likewise, vaccine development. The federal government, the CDC, has been working very aggressively to get a vaccine available. There are five vaccine manufacturers, and anticipation is that there will be a vaccine that will be here in the state of Texas by mid-October and we'll start immunizing the priority populations.

But one of those plans that's very important is the -- what we call community medication, the things that we do in our communities to decrease the spread of the virus from one individual to another, and the agenda has that as the focus, and so we're going to discuss that today.

The -- we have much more data now than we had in the spring, and we have adjusted our plans accordingly, not only us but the federal government and our many other different partners. And so issues such as school closure recommendations are significantly different now than they were back in the spring.

Specifically, we will not be recommending that schools be closed on individual cases. What I'll be recommending to -- on public
health measures, we'll continue to watch the severity
of this, and if it becomes more severe, then we'll
readjust those plans, but our plan is not to close
schools unless there's a business reason to close a
school. There's certain -- and Julie Harris-Lawrence
will be discussing that a little bit later, but there
is a certain threshold, that if you have a certain
population that -- you know, a percentage of kids that
aren't there, a certain percentage of teachers that
cannot come in because they're sick or they're taking
care of their kids that it's no longer effective to
keep schools running. So that is our -- again, it's a
switch in the strategy, but we'll continue to watch
this very closely.

One of the challenges we had in the
spring is that if you make that decision to close a
school, there's a lot of kids that are reliant upon
the school lunch program to get their nutrition, and
so we've been working with the Texas Department of
Agriculture to ensure that those federal programs can
continue and that if a school is closed, a child that
has relied upon those programs can still get the food
they need during the day.

We've been working with higher
education. There's actually a new policy that came
out for universities, colleges, et cetera, that came out yesterday. We're disseminating that information and disseminating a lot of other information.

And, then for us, we're also working with our health care providers, getting ready for what will be a busy flu season. It will be a challenge. Just regular seasonal flu is a challenge, and so health care is working right now to make sure that they are ready. One of the ways that we are doing that is we had a large summit here. It was a joint -- actually, I want to thank you.

We had a joint summit about a week and a half ago with the Department of State Health Services and the Governor's department of management and had about 600 individuals that were here, a good representation -- a cross-section of Texas. You had county judges, elected officials, individuals from the legislature, Governor's office, public health, emergency management, schools, that were all in the same room, and the media. We invited them to be a team player in this.

And now we're going throughout the state of Texas, having 13 regional summits to provide the same type of education, but also to have those conversations at the local level of how the different
communities are going to address this in their area. And we're getting about 200 folks at each one of these regional summits, so it's a good turnout, not only here at our state summit but at those regional summits.

The other thing -- and I thank Jack, Chief Colley, for this, is that back in the spring, we realized that we needed to get a lot of information out to a lot of individuals very quickly. We worked in partnership to start our state operation of telephone calls. We had about 3,000 individuals that were on those phone lines every day as we worked through what we were finding out, providing that information. And we're going to have a similar phone call today, and then we'll figure out how often we need to have that phone call to provide that information so everyone really is on the same page.

And for all these type of guidances, we've developed a specific website, texasflu.org where all these different policies are represented, again, so everyone is on the same page.

And with that, I think I'm going to turn it over to Julie Lawrence.

MS. HARRIS-LAWRENCE: Thank you.
us here today. I am Julie Harris-Lawrence. I'm the
deputy commissioner at the Texas Education Agency
charged with health and safety.

We have had an unprecedented level of
support from the Governor's emergency management team,
from the Department of State Health Service, from the
Department of Agriculture. It was my pleasure to sit
next to Colonel McCraw during most of our calls every
day. I want to echo a couple of things in talking
about how we got to where we are today.

We did think there would eventually be a
pandemic. We didn't think it would be in April, and
we didn't think it would be in Texas. We assumed a
pandemic would start somewhere else in the world, and
we would be able to watch it, and we would be able to
formulate plans, and we would be able to move into
action based on that experience. That was not the
case. And so many of the plans and a lot of the
actions that had to take place literally happened
moment to moment, and were it not for the support of
Jack Colley's team and the Department of State Health
Services, I cannot tell you how many more children in
the state of Texas would have been ill.

I can't tell you what the spread of this
disease would have looked like without that support
and that guidance, because while we do have widespread flu in Texas, I do believe that the community mitigation and those non-pharmaceutical interventions that took place in April may well have saved this state literally billion of dollars. And so I want to make sure that you are aware that it is -- it was that level of support that allowed us to protect the kids.

Jack always kind of makes me breathe really deep when he points out that there are more children and teachers that will go to school Monday morning than people who live in the entire state of Oklahoma. You can put 150 Rhode Islands in Texas, so there isn't anywhere else that you can look for a plan.

We're Texas, and we have to have our own. We are in a much better shape for a couple of reasons moving into Monday and Tuesday. One, we know a lot more about this virus than we knew in April. We know it is not the killer that we thought it was going to be. We had a denominator number in Mexico, but we didn't have -- I mean, we didn't know what we were dividing into, where we had 1,000 people dead, but did with 1,500 people sick or did we have 15 million people sick. So we didn't really know what we were dealing with. We have a much better clue now.
School teachers, campuses and districts in Texas have been dealing with flu and communicable disease for, lo, since we swung the doors open in the red schoolhouse. I am going to have to push back a little bit. Coming from east Texas, I do believe God has visited the Piney Woods as well, Colonel, and I think he is just as fond of that as he is of the west, and so we've been dealing with that.

And we have teachers that are used to dealing with it. We have school nurses that are used to dealing with it, so we've developed a three-level plan for schools; what district administrators need to do, plans they need to put into place, and they have been -- we have been working with those superintendents; what a campus-level principal needs to do, what a classroom teacher needs to do, and then a level of parental involvement.

Because I'm going to tell you-all, this is not an emergency that we can send a helicopter to pick you up. We can't send a bus to get you. There's not a boat that's going to come and bring you your supplies. This is an emergency that the citizens of Texas have got to be individually prepared for, and so we have, at the agency, tried to help the districts and the campuses prepare their parents.
Schools will not be closed based on single or even multiple incidences of H1N1 or of seasonal flu. However, the Commissioner is right. There is a level of capacity that campuses reach that depends on student/teacher ratio, can depend on teacher absenteeism, can depend on student absenteeism, and it's different for every school district.

In Gladewater, Texas, if all of the cafeteria ladies get sick at the elementary school, we may not be able to have school. However, in Dallas, if we have all of the cafeteria ladies get sick, we'll be able to bring in some resources. They can make those plans, so that capacity looks very different. There isn't a number that we're going to attach to it. So capacity can look different.

The one thing that Commissioner Scott has made clear repeatedly; in fact, told me on the phone this morning, that the one thing that will never be a point of discussion for a superintendent trying to decide capacity of his building is dollars. The money will never be the issue. We will make sure that the waivers are available for those individual campuses or districts that reach capacity; never, ever, ever is that to be on the table, only the safety
and health of the children and the faculty and staff
that are there.

Now, we have also put into place, in the
back vault, a Level 2 plan. Were this virus to
change, either in its level of severity or in some
other type of mutation to antivirals that does allow
for preemptive closures of school, were we to move
into that type of Level 2 occurrence. I don't believe
that is going to be the case, but I think we would be
foolhardy not to have that type of plan available.

If that comes into play, we have already
made, as Jack said, that initial contact with our
county judges, as the highest ranking elected
officials. The mayors and the Judges will be tasked,
along with the school boards, of determining
preemptive closures of the schools. We have put into
place academic back-up mechanisms, so if the kids go
home, learning doesn't stop.

The Texas Department of Agriculture has
worked to put into place mechanisms so the kids are
still going to get food. So were this to move into
that Level 2 -- God forbid -- playing field, we're
ready for that as well.

So that being said, I'm sure you guys
have some questions, and we'll be happy to try and
CHAIRMAN POLUNSKY: Thank you very much.

Are there questions? Mr. Steen?

COMM. STEEN: I guess this is for the doctor. Help me, as a layman, understand the difference between seasonal flu and this H1N1.

DR. LAKEY: So every year the flu virus changes, and it makes little changes, and it's somewhat similar to the last flu season, and so we have to change our vaccine since we give protection.

But every now and then there's a major change that occurs in the flu virus, and it changes the proteins that are needed in order for you to develop your immunity against, and that's what's happened. You have a major change in this virus so that you haven't seen it before, and so you don't have the protection that you have with seasonal flu, and that's the worry.

Again, the good part of this is that although the virus made those changes, it really didn't become that more aggressive. I guess the other part of it is it looks like people have seen a similar virus before that individuals that are 65 and older really didn't become ill with this. And so sometime in the past, probably about 40 years ago, there was a
similar virus and individuals saw that and developed some immunity, and so there is some protection out there.

COMM. STEEN: Well, you know, we're talking about severity, and if I wrote these stats down right, were you're saying that last year there were 3,000 deaths in Texas from seasonal flu but only 33 from H1N1?

DR. LAKEY: Every year we lose about 3,000 Texans due to seasonal flu. That's mostly the elderly and the very, very young. So far, we have lost about 33 Texans related to H1N1. We'll see the majority of the illness later on, so that number will go up, but that's why we need to continue to combat seasonal flu. And that's important in order for us to have proper perspective related to this H1N1 thing.

COMM. STEEN: Mr. Chairman, a question for Chief Colley.

In a big-picture way, what's the DPS' role in this?

MR. COLLEY: Well, DPS provides a very essential role. They say there's five functional areas to every event; coordination, control, evacuation, search and rescue and re-entry operations. DPS is the thread that runs through with all that.
If there's any operations, whether the
security of the antivirals, the movement of the
antivirals, providing information, our whole system of
response is based on these DDCs, these disaster
district chairmans out there. So our county Judges
and mayors who are charged, you know, with the health
and welfare of their citizens, they're going to turn
to that DPS captain or lieutenant out there for
those -- for that information, which is key, the
coordination of these events.

You know, there's -- we live in a world
of threat, risk, vulnerability. So what is the
threat? It's something you can't see. You can see a
tornado. You can see a stand-off. You can see an
event. You can't see this. It strikes at the heart
of fear of people because you may only have 33 deaths,
but H1N1 is not seasonal. Nobody knows where this
will go.

So that risk out there is what it is and
citizens, and especially our local elected leaders,
turn to these -- turn to DPS for that operational
leadership out there when these things -- if it does
occur. That's the stability of the state in terms of
operations.

No other state agency operates 24 hours
a day, seven days a week except the Department of Public Safety. The Department of Criminal Justice does, but it's a different environment to do that.

So where are we vulnerable? Where is the risk at? Obviously schools is one. The border is one, a 1,208-mile border. We're tied to Mexico, like it, better or not, to that. So we know, based on what we went through in April, what happens in Mexico, crossing that border legally or illegally, it don't make any difference. There's the ability of transmission through there.

The second area is, of course, schools. The third are major events. We track every single day in Texas the number of events that occur where 1,000 Texans are gathered, you know, in any one place across the state. You get into enduring economic impact there; canceling a football game, canceling an event. Those are all issues that came up. So those are things that our local leaders wrestle with.

The other dynamic, of course, is hurricanes. We evacuated 1.9 million people from that coast during Ike. They evacuate. There's large numbers. There's that part that goes in that; you know, all the -- the planning of what if we have H1N1 at the same time we have to evacuate 2 million people
off the coast? Those are all there. So you don't worry about them. You plan for them.

So you plan -- you plan the most where you have your greatest risk, and that's what the department does. So, you know, a lot of talk about antivirals; you know, the guarding of that, the security of the virals. We don't have an issue in Texas. The Department of Public Safety will do that, and they'll coordinate that. So the receipt of that, the movement of that is a very critical piece. It has a lot to do with the confidence in our local leaders that that antiviral is where it should be, and we did that during April, and the department did that. We ran many operations during that time frame where we moved those antivirals around the state to ensure local leaders that they had that very critical silver bullet, if you will, close to them, and the department does that.

COMM. STEEN: Thank you.

COMM. CLOWE: Jack, I would like to add, you know, on the antiviral, you oversaw that -- transport of that into this state. It came into Austin. It was under armed guard. Nobody knew about it. It just got taken care of.

MR. COLLEY: Did it at night, did it on
COMM. CLOWE: Yeah. But I think a point that I would like to add to your answer to Commissioner Steen that sticks in my mind that was so impressive in the spring and April was communication. Those daily telephone calls -- and I was one of the 3,000 that listened in every day. Doctor, Commissioner, I heard you-all briefing people all over the state, telling them what was happening, and that's what people want to know.

You had the media on there. You didn't act secretively about it, and that makes it mysterious and more desirable when you do, but you told them to be careful. And apparently that was respected, and you said you're going to have another call this afternoon, I think, Doctor --

DR. LAKEY: Yes, sir.

COMM. CLOWE: -- and you're going to decide how frequently. You know, to have 3,000 people all over the state of Texas getting daily information on just how bad is this problem is the thing that really puts it in focus and makes it manageable. So I think that's a big part of your answer to Commissioner Steen that I would like to emphasize.

MS. HARRIS-LAWRENCE: And,
Commissioners, both -- if I could just briefly link onto that, not only having 3,000 people get good information, but letting them all hear the same thing at the same time, I think absolutely was the linchpin in us being able to do what we needed to do because everybody heard the same words at the same time, and then those questions that we got asked after the call, any misconceptions could get cleared up, and Jack made his staff available until the very last person in the state of Texas had a question.

COMM. BARTH: I've got a couple of questions all related to the vaccination that you spoke of, Doctor.

So you're thinking somewhere around mid-October this is going to be available, and I understand that the priority is going to be, I guess, young kids up to a certain age and pregnant women. That's at least what I've read, and I guess the question is, one, how quickly do you think you will be able to vaccinate once it's available. And, number two is will it then become a requirement to be in the public -- in a public school to have that vaccination?

DR. LAKEY: We anticipate -- I guess in my conversations with my colleagues in other states and at the federal level, it is my anticipation that
On October 15th, there will be about 45 million doses nationwide. Texas is about a tenth of the population, and so there will be about 4 million doses that should be available here in the state of Texas, a combination injectable vaccine and nasal spray.

We will be using the CDC -- the advisory committee on immunization practices has developed a priority list looking at who really got sick, and so pregnant women; kids less than six months are at risk, but you can't immunize them, so you immunize their household contacts, individuals -- you know, kids and college-aged students up to age 24, and then individuals with chronic disease and health care workers so you have that system to take care of the individuals.

A lot of work is going on to ensure that it's a safe vaccine. They're manufacturing it the same way they make seasonal vaccine, and so it's just a change in some of those proteins that are in there, and so it is our anticipation that it will be very safe, but we're doing that and doing the studies, and we'll watch this very closely.

It is our anticipation -- well, the plan for Texas is that we are going to make it available. We're going to make sure that vaccine is available in
the state for those individuals that choose to be vaccinated, and so a voluntary vaccination program in the state of Texas.

We're not going down the mandatory route, but we will ensure that we do what we can in order to make sure that that vaccine is here. It's a little bit different than the way the seasonal flu vaccine works, in that it is federal procurement. It is the state of Texas then registering providers and ensuring that the vaccine gets sent to those providers, so that if I needed to be vaccinated, I could go to my regular provider, and he could provide that vaccination there in his office, so try to make it as -- you know, use the private system as much as we can.

We are working with our -- you know, Medicaid, with insurance companies, et cetera, to ensure that they are paid for, et cetera, so try to make it as seamless we can using the system that's out there for a voluntary vaccination program.

COMM. BARTH: Do you envision the schools having the ability to vaccinate, or you're basically saying you've got to go to your doctor to get the vaccination?

MS. HARRIS-LAWRENCE: Well, we certainly
can have -- schools can be utilized as far as a facility.

COMM. BARTH: Right.

MS. HARRIS-LAWRENCE: As a -- yes, absolutely.

COMM. BARTH: Is that part of your plan or is it just sort of out there, up to the schools down the road.

DR. LAKEY: The majority of the vaccination will take -- through using the private sector that's out there. Vaccine is also being pushed to local health departments. There's some local health departments, when they're deciding decisions in their community, are looking at whether they use the schools to vaccinate or not, but that's more of a local planning.

Our plan is to have that vaccine out there available and get it into the private sector as much as we can to make it as routine as possible.

COMM. BARTH: And you don't envision -- how do you say this -- there would be sort of a fight for the vaccination, so to speak? There will be enough available so that those that would want it could get it?

DR. LAKEY: This is always something you
watch quite closely, and we had a shortage several years ago, and then there were folks that -- where there was a challenge.

My anticipation is that there will be about 4 million doses that will be hitting us the first -- you know, October 15th, and then every week after that, there will be a significant volume of vaccine that will be coming in so that we can meet that demand. Obviously there will be folks that are very concerned, and there's folks that are concerned on both sides of that vaccination issue. So we'll continue to watch it and make sure that we get it to the folks that need it.

COMM. BARTH: Thank you.

DR. LAKEY: Thank you.

CHAIRMAN POLUNSKY: Are there any other questions?

(No response)

CHAIRMAN POLUNSKY: Thank you-all for being here.

Before you get up, though, Tela, let me ask you a question. Are there representatives of the media here today?

MS. MANGE: Not that I'm aware of, sir.

CHAIRMAN POLUNSKY: Would it be possible
for you to generate some type of media release that
would summarize the information -- or the relevant,
most important parts of the discussion that we've had
here this morning so that the general public is aware
of what's going on here and what has taken place here
at this meeting?

MS. MANGE: Yes, sir.

CHAIRMAN POLUNSKY: And possibly, if our
participants have a few minutes to stay and talk to
our public information officer, I would appreciate it.

CHAIRMAN POLUNSKY: Thank you, again.

MS. HARRIS-LAWRENCE: Thank you

DR. LAKEY: Thank you.

CHAIRMAN POLUNSKY: Thank you for
everything you're doing for the state of Texas.

Commissioner Clowe, I think -- you know,
the really good news that's come out of this meeting
is that since you're a member of the generation that
lived through the plague, you are obviously going to
be immune from any of this.

COMM. CLOWE: I'm immune to everything,
including your remarks.

(Laughter)

COMM. CLOWE: Commissioner. I wanted to
tell you to take the word, if you would, to
Commissioner Scott.

MS. HARRIS-LAWRENCE: Yes, sir.

COMM. CLOWE: I listened to him on the radio this morning.

MS. HARRIS-LAWRENCE: Yes, sir.

COMM. CLOWE: And he didn't have any hesitation to walk into that lions' den, and he did a great job.

MS. HARRIS-LAWRENCE: Well, I will let him know.

COMM. CLOWE: I wish you would. And, you know, that's the kind of opportunity, when you get it in a state agency and you have a Commissioner who performs that way, it really helps the agency. He did a marvelous job.

MS. HARRIS-LAWRENCE: I will tell you he is probably one of the finest men I have had the opportunity in the last (mumbling) years to work for, so I will certainly let him know.

COMM. CLOWE: You can tell him that, too, because he'll appreciate it.

MS. HARRIS-LAWRENCE: I will. Thank you.

COMM. CLOWE: Okay. Great.

CHAIRMAN POLUNSKY: Thank you-all for
Next item: Update, discussion and possible action on providing permanent generators.

Chief Colley, you're back.

MR. COLLEY: Mr. Chairman, Commissioners, at the last Commission meeting, you tasked me to facilitate getting generators on the coastal DPS offices. I've got a long list of things here.

The bottom line is we'll have that accomplished about the 15th of September. To that end, I can get into whatever detail you want, but it's been a big effort of the Texas Facilities Commission. Everybody got together and sort of figured this out.

We're going to put -- we've added some others. We'll put generators at Beaumont, Lufkin -- added Lufkin. It's a backup to the other area -- Houston; Victoria, which is a key area, Corpus and the Valley. So to that end, what we'll do is today, we will -- yeah, the 21st, we'll receive the pricing from the vendors. The Texas Facilities Commission will do this for us. We've done all the wiring. We've had the engineers look at it. We're going to take four existing 450 kW generators DPS has, rewire them. We're going to install what's called ATS switches,
automatic transfer switches on them. That's key and -- that's what I have in the SOC down -- over -- across the street. This will allow the generators to kick on and somebody doesn't have to go outside and try to hook them up and do all that kind of piece.

We're going to put a 2,000 kW generator on Houston because it's a big building, and it will operate the entire building as Commissioner Barth wanted -- be able to do that.

So the bottom line is things have come together, and we should have that completed by the 15th. Now, if we don't have a hurricane by the 15th, we'll build something else, but at the same time, that will be completed by the 15th.

COMM. BARTH: Thank you, Jack.

CHAIRMAN POLUNSKY: Thank you, Chief Colley. Good work.

Next item: Update, discussion and possible action regarding the recruitment policy committee, and that would have been presented by Commissioner Brown. She is obviously not here this morning. I'm not quite sure that there would be a presentation at this time because of her absence.

Is there anything that -- do you have anything?
COL. BECKWORTH: No, sir, Mr. Chairman, we don't have anything available. She said she was going to present that to you, so she's not here, and we'll just have to hold it for the next meeting.

CHAIRMAN POLUNSKY: Okay. She very well may generate a letter that will be sent to the Commissioners and to the director here shortly. So we'll hopefully have that information in the next few days. So I don't think it will be too much of a delay.

Again, discussion and possible action regarding the overtime and compensatory time policies for department employees, that also was something that Commissioner Brown was involved in.

Anything that anyone would have that is beyond what she would have?

COL. BECKWORTH: No, sir, Mr. Chairman. I think that's falling in that same category as the recruiting policy.

CHAIRMAN POLUNSKY: Okay. Hopefully we'll have a report in writing from her on that as well.

Next item: Discussion and possible action regarding procurement of law enforcement equipment, additional body armor and other operational
support items to Commission personnel. Now, of course, Colonel McCraw has referenced this in his report.

Is there something else here that you would like to bring forward at this point?

COL. McCRAW: The one thing I did want to bring forward is -- and I did mention it earlier, is that the discipline matrix, right now general counsel, Stuart Platt, is working on that.

The issue that we had -- Colonel Beckworth and I had in talking with general counsel is we need to standardize punishment across the divisions and in the organization, whether it's in the field or whether it's at headquarters, and you start with a discipline matrix to ensure there is some standardization in the oversight of that.

Also, importantly, for us to -- we'll call it the bright line for lack of a better term, is to make it clear to the employees that the one thing you cannot do, the department will not tolerate, is to prevaricate or lie. If you do, you'll know on the front end, before an interview and you know you'll be terminated from the department. We cannot have -- the public trust that the department has, we can't have commissioned officers or others compromising their
integrity, then later on, getting up and trying to testify. They become useless to us once they prevaricate, and they'll be terminated at that point. To do so, we need a new policy as a part of the discipline matrix, and that's what we're working on right now.

CHAIRMAN POLUNSKY: Thank you, Colonel. And I'm speaking for myself. Hopefully I'm speaking for the balance of the Commission, but we are in full support of that policy and that philosophy. So we encourage you to go forward on that.

COL. McCRAW: All right, sir.

CHAIRMAN POLUNSKY: Next item: Discussion and possible action regarding executive management salary, specifically the director of DPS with respect to the procedure formalizing statutory requirements. Chief Ybarra?

MR. YBARRA: Oscar Ybarra, chief of finance. Good morning, Mr. Chairman, Commissioners.

As far as Agenda Item F, the executive management salary specific to the director of DPS, the 81st legislature approved an increase to the salary limit for the director of the agency. The current salary is set at $157,500. The new salary limit is set at $162,000. The General Appropriations Act
identifies that if the Commission determines to increase the salary to $162,000, it must take formal action. This is submitted for your consideration.

CHAIRMAN POLUNSKY: Thank you.

COMM. STEEN: So move.

COMM. BARTH: Second.

CHAIRMAN POLUNSKY: It has been moved and seconded that the salary for the executive director be increased to 162 --

MR. YBARRA: Thousand.

CHAIRMAN POLUNSKY: Even?

MR. YBARRA: Yes, sir. We will proceed to submit information formally to the comptroller, the Governor's office, and that will be as required by the General Appropriations Act, sir.

CHAIRMAN POLUNSKY: Okay. Let me make a brief comment, and I would like the record to show that the director recused himself from this process. I am the person who put this on the agenda. He had nothing to do with it, so this was at my request.

Any discussion on this motion?

(No response)

CHAIRMAN POLUNSKY: All in favor, please say "aye."

(All those in favor of the motion so
responded.)

CHAIRMAN POLUNSKY: Any against, "no."

(No response)

CHAIRMAN POLUNSKY: Motion passes.

MR. YBARRA: Sir, may I ask permission from the Commission if we could take Agenda Item L, as I have the executive director from the Texas Public Finance Authority here and his deputy director, and I was just wanting permission that we could address that now.

CHAIRMAN POLUNSKY: Certainly.

COMM. CLOWE: I have a question before we move to that agenda item.

CHAIRMAN POLUNSKY: Okay.

COMM. CLOWE: What is the effective date? It was not mentioned in the motion.

MR. YBARRA: September 1st, sir.

COMM. CLOWE: Thank you.

CHAIRMAN POLUNSKY: Did you have a question?

COMM. STEEN: Well, I wanted to ask our counsel, was the motion sufficient? Did we cover everything in the motion?

MR. PLATT: It's adequate for the purposes, and Mr. -- Chief Ybarra will be contacting
the appropriate authorities at the comptroller's office.

CHAIRMAN POLUNSKY: Okay. All right. Then we'll move on to Item L, update and discussion regarding the pending issuance of approximately $110,625,000 in bonds pursuant to the previous approval from the Texas bond review board, the legislative budget board and the Public Safety Commission. Again, Chief Ybarra?

MR. YBARRA: Thank you, Mr. Chairman, Commissioner. Today I have with me Dwight D. Burns, the executive director of the Texas Public Finance Authority, and John Hernandez, his deputy director. Their responsibilities are to sell these bonds for the Texas Department of Public Safety in order to finance these particular construction projects, and they'll be here to have any questions -- if you have any questions regarding that particular transaction.

What I would like to present to you -- to the Commission today is identification of the facilities that are being affected by these dollars. The 80th legislature authorized the agency funding for these projects via general obligation bonds. It required voter approval. We received that approval on November 2007.
In early 2008, the Public Safety Commission approved the resolution which authorized the director of the agency to sign financing agreements and any documents in relation to negotiations with the Texas Public Finance Authority. The agency has received approval from the legislative budget board, the Texas Public Finance Authority and the bond review board.

We will be moving forward with these construction projects. The 110 million would cover the next two years. We are entering into contract with the Texas Facilities Commission, which is the program over the construction of these facilities. They have been provided with the expenditure schedules, which we provided to the Texas Public Finance Authority to estimate the sale of the bonds. That concludes my report, unless you have any questions. I'd be glad to answer any if you have any.

CHAIRMAN POLUNSKY: Are there questions?

COMM. CLOWE: What is the market for these bonds?

MR. BURNS: Mr. Chairman, Commissioners, I'm Dwight Burns, the new executive director of the Texas Public Finance Authority. Thank you for letting us come and talk to you—all today.
The market for these bonds, sir, is pretty good. Last week, we were in New York, and we sold $450 million in bonds, about 110, 111 million for purposes of the Texas Public Safety Department, and we achieved significant and favorable interest rates in the bond market.

Part of the bond proceeds, about 181 million, of which 110 will belong to you-all, were sold as Build America bonds, which included a significant federal tax incentive, and it helped us to achieve some significant savings.

Our issuance was the -- John, correct me if I'm wrong -- was the first state of Texas bond issuance going to market with Build America bond incentives, and they were favorably received by the bond market.

COMM. CLOWE: So you went out at -- you went out tax free, and what rate do you pay?

MR. BURNS: We were -- the issuance is bifurcated. Part of it was tax exempt, and 181 was taxable with the Build America bonds. Overall, looking at tax exempt, the taxable, the interest cost was about 3.3 percent.

COMM. CLOWE: 3.3. What's the term?

MR. BURNS: Twenty years.
COMM. CLOWE: Are these about AAA rated?

They're not insured but --

MR. BURNS: No, sir. Part of our good news was that one of the three rating agencies did give the state of Texas an upgrade in our obligation credit rating to AA+. That was Standard & Poors. So now all three credit rating agencies are one notch below AAA with the state of Texas --

COMM. CLOWE: That's good.

MR. BURNS: -- at AA+, AA1 for Moody's.

Full disclosure, I just left Moody's after eight years as a bond analyst.

COMM. CLOWE: You were working the other side of the street.

MR. BURNS: Yes, sir. Glad to be back working for Texas.

COMM. CLOWE: What's the call date on them?

MR. BURNS: Call date, John?

MR. HERNANDEZ: Ten-year call dates.

MR. BURNS: Ten years.

COMM. CLOWE: That's good.

MR. BURNS: Sir, that was another aspect of the deal. A lot of these Build America bonds were being sold with a "make whole" call provision and not
with the traditional ten-year call. That was our board's -- one of our board's priorities to keep as many of those traditional municipal bond standards in place, and the ten-year call part of it.

COMM. CLOWE: That's a nice package. Good time to go to market with this instrument.

MR. BURNS: Yes, sir.

COMM. CLOWE: Glad to have you on our side of the street.

MR. BURNS: Thank you. Good to be here.

We're proud to serve as your representatives in the bond market and hope to continue to do so.

COMM. CLOWE: Thank you.

CHAIRMAN POLUNSKY: To clarify one thing -- I'm sorry, Carin, but our bond rating is about as high as any state has in this country?

MR. BURNS: There are some states that have AAA. The state of Virginia is one, but it is one of the -- but the state of Texas is rated higher than most of the states, sir.

CHAIRMAN POLUNSKY: I'm sorry.

COMM. BARTH: Mr. Burns, I know enough to be dangerous. I have to be careful here. A couple of questions with respect to the numbers that were presented on the project costs. One, did we present
to you a cash flow with respect to when this money 
would be drawn over the life of the projects? And, 
number two is, was that cash flow projection to 
those -- you know, these are sort of (inaudible) 
projects -- when was it last updated? And do we feel 
certain on these project we're not going to be coming 
up short so that we're starting to say, "Okay. Well, 
we can't put Grade A carpet in. We've got to put 
Grade B carpet in"?

The first question, I think, is to you, 
with respect to what was presented to you from our 
agency.

MR. BURNS: Commissioner, good question. 
I'm going to let our executive director, John 
Hernandez, speak to that.

MR. HERNANDEZ: We did receive -- I'm 
sorry I don't have a copy with me, but we did receive 
cash flows right before we went to market. So they 
were updated, and they were not stale by any means.

MR. YBARRA: We requested an update from 
the Texas Facilities Commission and received it in 
late July.

COMM. BARTH: Did they have any 
contingencies in there?

MR. YBARRA: Yes, ma'am, they did.
COMM. BARTH: And about what percent on these projects?

MR. YBARRA: Anywhere between 6 and 10 percent.

COMM. STEEN: Mr. Burns, thank you for attending this meeting.

In this economic climate, is it unusual for the state to get an upgraded credit rating in this economic climate?

MR. BURNS: It is unusual; yes, sir.

COMM. STEEN: And tell us why that's happened.

MR. BURNS: Well, as reported by Standard & Poors, the spike -- the overall economic environment, the conservative nature of the way the state of Texas manages its finances helps to alleviate the downside risk that -- for example, lower sales tax revenues present, that -- migration trends, population of central taxpayers, those present the culmination of conservative physical policy, conservative debt management policies, all went into the consideration for the rating upgrade and for the maintenance of the rating on the other two grades from the other two rating agencies.

COMM. STEEN: So all of us involved in
state government can really pat ourselves on the back.

MR. BURNS: Yes, sir. It is really difficult, in this kind of environment, to, number one, maintain a credit rating, and, number two, to actually get a rating upgrade.

COMM. STEEN: Thank you.

COMM. BARTH: A curiosity; in terms of the market, last week you went out. How many other offerings were out similar to this?

MR. BURNS: Last week was a heavy time in the marketplace, and ours -- as a matter of fact, we were concerned because we were -- there were deals stacked on top of each other, and we're lucky because ours got ahead of some of the others, and we actually set -- kind of set a low standard for --

COMM. BARTH: These were state deals from other states?

MR. BURNS: Yes. What other state deals were last week?

MR. HERNANDEZ: It was Texas Department of Transportation.

MR. BURNS: Oh, with TxDOT.

COMM. BARTH: So you went against TxDOT, but how about other states?

MR. BURNS: Oh, I can't remember what
other states were in the market last week. The weeks before ours, there were a few states in the market a few months ago. Wisconsin, I think, was in the market and I don't know of any --

COMM. BARTH: No. I commend you for -- this is a very hard market to get things done, so I commend you for getting it done.

MR. BURNS: Yeah. I don't know if there were other states last week that actually -- well, I'm sure there were. I just don't know. I can't remember right now, but there are several large cities, several around Texas -- a lot of Texas entities, local government entities that were in the market last week, too.

COMM. BARTH: Were you oversold -- oversubscribed?

MR. BURNS: Yes. Well, no. We went into the market with several of our maturities oversubscribed, and we, of course, adjusted and renegotiated and made sure that we lowered -- got rates lowered for those that were --

COMM. BARTH: Having served on this board, I commend you for getting this done in this market, and the oversubscription, I suspect, it's a reflection on those that are buying it with respect to
credit quality of the state.

MR. BURNS: Yes, ma'am; also a testament
to the -- to the staff of this authority and the
consultants and our board that showed courage in
undertaking this kind of a new tax incentive program.

COMM. BARTH: Thank you.

MR. YBARRA: May I make a statement?

CHAIRMAN POLUNSKY: Yes, sir.

MR. YBARRA: Speaking of his staff, they
provide excellent customer service, Gabriella Klein,
Judith Porras. My understanding is Judith Porras will
be retiring, and she's been a tremendous help to us.
I just want to make that available to the Commission.

CHAIRMAN POLUNSKY: Thank you very much.

This is all very good news.

MR. BURNS: Thank you.

CHAIRMAN POLUNSKY: It's not something
you would hear in California, I assume.

MR. BURNS: Not at all, sir.

CHAIRMAN POLUNSKY: Good luck --

MR. BURNS: Thank you.

CHAIRMAN POLUNSKY: -- with your
position. Thanks for being here.

Oscar, you're still on here. Discussion
and possible action regarding bad check debt
accounting.

MR. YBARRA: Mr. Chairman; Commissioner Barth, at the last Commission meeting, asked the agency to look at the NSF bad debt expense in reference to driver's license and also the agency as a whole.

We looked at the last three years, and we identified approximately 623-plus million dollars in collected revenue for the agency, of which 510 million was for driver's license. For these three years, the NSF checks' total came up to 700,000 -- approximately $700,000 which is about .11 percent of the total revenue.

Of that amount, it's my understanding that $224,565 remain outstanding to date.

COMM. BARTH: My only comment -- I've talked to Chief Kelley about this. I think it's appalling that we would have one check outstanding. I know this number looks low --

MR. YBARRA: Yes, ma'am.

COMM. BARTH: -- but, I mean, we're a law enforcement agency. It's hard for me to grasp someone giving us a bad check, and, you know, I find any number over zero --

MR. YBARRA: Yes, ma'am. We do have a
process. We do issue letters, and we are looking at what we can do as an agency from a credit bureau perspective. I know Chief Kelley is working on what he can do from a driver's license perspective.

Right now there's a flag. I think we probably can get more aggressive than that.

COMM. BARTH: Because I look at as when you do it on the front end. I've talked to Chief Kelley about this in terms of whether or not we should be taking any checks at all at this point; either a money order or, you know, debit, credit card, and whatever the fees are, I believe we could offset those fees by the amount of bad checks.

MR. YBARRA: He's spoken to me about that and he's identifying steps, and we are looking at other steps that we can do with the other piece of this report.

MR. KELLEY: Mr. Chairman, chief of driver's license. What I've done is some research the last few days after we spoke, Commissioner, about this, and there is a provision in the law that says that a driver's license or identification card that has been issued by the department can be revoked for failure to pay fees. That means any fee to the department, including if you were to pay for a crash
record to the Texas Highway Patrol and we were notified, we could revoke their license.

It is my intent that that's what I would like to move towards, and I have not had a chance to present it to the director, but I wanted to make you aware that that is one option, and I agree with you. How can you get away with writing a hot check to the state police, and what is that appearance that someone could get away with that, and especially if you're getting a document that every other citizen pays for, why shouldn't you have to come in and pay?

And one solution on the driver license side is once the driver license system does roll out, we can use epay so that we're utilizing credit cards and cash only and we're not dealing with checks anymore. And considering more individuals are now doing electronic transactions, I don't think that would adversely impact, especially since it's only once every 12 years, since you go on Texas Online and pay online on your six-year renewal.

COMM. BARTH: I don't necessarily -- I don't disagree with you in terms of revoking, except I listened to the gentleman who blogs backs there and the Judge and Senator Shapleigh. That doesn't seem to work. Okay? I'm pretty sold that that idea is
really -- we need to be on the front end. So, you
know, I would rather just not have someone be able to
get their license because they can't give us whatever
the fee is. The Judge said it's fees upon fees when
they give us a hot check.

MR. KELLEY: Right. And the one
solution to that, again, is after we roll out all the
offices with the new driver license system, we can
then move to only accept credit cards or cash to
ensure that we are getting the money.

COMM. BARTH: And I would like to move
to that. I don't know about the rest of the
Commissioners, but I just think a program where we're
going to put another fee on a fee because of a bad
check, I just -- I suspect, you know, a year from now
we'll have the Senator up here, the gentleman from the
blog, the Judge, and they'll be saying, you know, we
got all these fees. Now we've got to have warrants,
or, whatever; you know, that whole spiraling down
punitive, really no -- one is to change behavior.

MR. KELLEY: Correct.

COMM. BARTH: Okay. And I don't think
adding more surcharges or revoking or whatever is
changing behavior. People drive without their
licenses, without insurance, so I think we should look
towards a more proactive way and one of which is just,
"We don't take checks." I mean, it's pretty simple.

MR. KELLEY: On the concealed handgun license, when that law was written in 1995, it was written in statute you must pay by cashier's check or official certified check. So, therefore, there never was that problem on concealed handgun licenses. The money was going to be guaranteed. We've never had that with driver's license and some other business process, but now that we move forward, we have a new system that we're rolling out, we can do that.

COMM. STEEN: What does it say in the statute? You can pay in what way?

MR. KELLEY: You're talking about the concealed handgun license? That you would have to actually pay by a cashier's check or some type of certified check.

COMM. STEEN: But not a credit card?

MR. KELLEY: Not a credit card, unless you go online or -- in other words, you can't mail a personal check in to pay for an original or a replacement or a renewal of your concealed handgun license. You would actually have to use a certified check from a bank, and that ensured that we got our money.
COMM. STEEN: Chief, am I understanding correctly we've got Texans out there right now who are driving using their driver's license that paid us with a hot check?

MR. KELLEY: Yes, sir, that's correct.

COMM. STEEN: And what are we doing about that?

MR. KELLEY: All we've done is flag their record so that way they are not allowed to apply for and receive any type of duplicate or renewal until they pay us back that money.

So that could mean up to six years before we could actually try and recoup that money if they wanted to renew their license. So we do flag the record, but that doesn't always ensure that they're going to come right back and pay it.

We have found it successful that we will write letters, and we do follow up, and say, "You've written a non-sufficient fund document to us. You owe us $24 for your driver's license." We've found that the fact that it has DPS in the letterhead, it's we're writing to them, there tends to be compliance. We do get compliance, but we don't get 100 percent because some individuals just wait, and they'll try and see how long they can get away with it.
COMM. STEEN: And you and I had this discussion, but for the benefit of everyone else, you know, the district attorneys' offices have hot check divisions.

MR. KELLEY: Most of the -- actually, the county attorneys typically, and some district attorneys handle that, correct.

COMM. STEEN: All right. And we can't utilize that because --

MR. KELLEY: Well, I believe we could utilize it, but the problem is we're talking about a 24-dollar check, and they're dealing with cases in the tens of thousands. So we're not going to get the priority when it comes to prosecution. They're already backlogged, and even the Attorney General has said the base limit is $2,500 before they'll even look at prosecuting on the grounds that they've got so many large, outstanding records that they have to -- funds that are owed that they're going to go after them first. We would inundate and swamp them with all the 24-dollar fees if we were to do that.

CHAIRMAN POLUNSKY: So just so I understand, you're telling me we cannot revoke these licenses?

MR. KELLEY: No, sir; we can revoke
CHAIRMAN POLUNSKY: So what's the -- why aren't you doing that?

MR. KELLEY: I was waiting on guidance. I was waiting for today to present and get further guidance from the leadership. If that's what you want us to do, we'll do it.

CHAIRMAN POLUNSKY: Well, I mean --

COL. McCRAW: We haven't discussed that with them yet, Chairman. We'll get back to you on that.

CHAIRMAN POLUNSKY: Well, what's to get back on?

COL. McCRAW: We haven't discussed -- I haven't had a chance to be briefed by Chief Kelley on it.

CHAIRMAN POLUNSKY: Okay. Well, I would like to have it on the agenda for the September meeting --

COL. McCRAW: It will be; yes, sir.

CHAIRMAN POLUNSKY: -- and a recommendation as to how we would address this, that would include revocation of licenses for individuals who have paid with NSF checks and then not made those good.
MR. KELLEY: Can we look at that also as not just for driver's license items, but we have lots of checks that are paid for other DPS --

CHAIRMAN POLUNSKY: Well, absolutely. And maybe that's why Colonel McCraw would want to defer this on to the next meeting, but there's no reason -- amplifying on what Commissioner Barth has stated here, that a -- that the state police be taking bad checks --

MR. KELLEY: Yes, sir.

CHAIRMAN POLUNSKY: -- for any payment for anything.

MR. KELLEY: Yes, sir.

COMM. BARTH: Mr. Chairman, I would also like to know how we get away from taking checks -- okay -- so we can get away from the problem. All right? I don't know whether we have the power to just say, "We're only going to take cash, money order."

And I guess you're telling me we can't process credit cards right now at all the driver's license offices.

MR. KELLEY: Correct. Until the new driver license systems roll, we still are accepting checks because we don't have the epay system until the new -- once we have the new offices rolled out, then they'll have the epay system to take credit cards.
COMM. BARTH: Does the Commission have the ability to say we're only going to take cash and money orders?

MR. KELLEY: Yes, ma'am.

COMM. BARTH: I would strongly urge we look at that.

COMM. STEEN: Commissioner, do you want to take that up today or do you want to let them bring something to us next month?

MR. KELLEY: Could we add that as part of the recommendations to --

CHAIRMAN POLUNSKY: Well, I think Colonel McCraw is asking that he be briefed on the overall --

COL. McCRAW: Total.

CHAIRMAN POLUNSKY: -- set of issues that revolve around the payment of these different fees and such and the problems, you know, that we're experiencing because of NSF checks and other -- and other portions of that process.

So let's let him have, you know, a month to take a look at it, work with Chief Kelley and the others who are involved in receiving payment for various licenses and services and so on and have the director come back with recommendations at the next
meeting on, you know, how we can address this, and then at that point, we can talk about all aspects of this and what we can do to --

COL. McCRAW: Thank have you, Chairman.

CHAIRMAN POLUNSKY: -- eliminate this problem.

COL. McCRAW: Yes, sir. Thank you.

CHAIRMAN POLUNSKY: Is that okay with everybody?

(No response)

CHAIRMAN POLUNSKY: Anything else?

MR. YBARRA: Thank you.

CHAIRMAN POLUNSKY: Next item:

Executive search firm services for management positions, interview processes for those positions, status report on the search and possible action regarding the employment of management position candidates to include the inspector general and chief financial officer. It would be Commissioners Barth and Clowe and also Colonel McCraw.

Who wants to take the lead on this?

COMM. CLOWE: Commissioner Barth.

COMM. BARTH: I can give us an update on where we are.

CHAIRMAN POLUNSKY: Okay.
COMM. BARTH: With respect to the inspector general's position, we have a candidate description that we, I believe, are comfortable. I haven't talked to Commissioner Clowe, but I believe we have solicited information, both from Colonel Beckworth and from Colonel McCraw, with respect to input, as well as -- I believe that the search firm has reached out to others to make sure they were comfortable with respect to a position description, and so I believe we are set to post it. And from there, we will have it out there for candidates and begin the interview process.

CHAIRMAN POLUNSKY: When do you anticipate that a permanent selection would be made?

COMM. BARTH: Well, we had one date that I've asked to move it up so that we could have someone in place hopefully by the middle of October. It's somewhat of an ambitious schedule, but that would be the timeline.

COMM. CLOWE: Nothing further.

COMM. BARTH: I guess at this point, though, I think we need to -- because of the sunset, we need to put a temporary solution in place, which would be to -- maybe, Colonel McCraw, you might want to speak to what's being proposed.
COL. McCRAW: Well, obviously since we don’t have a candidate and the duties have changed in terms of what it will be doing. So I think it would be best -- or what I would recommend, even though we put it on the list, is to go ahead and keep things as is right now. We do have an inspection component. We certainly -- under Mr. Farrell here, we do have that capability so that we continue till we do get the inspector general, I think is the appropriate way to do it.

I will say that out of the ten key -- other key positions, one other position, the chief financial officer for finance, we’ve had that position open. Right now we don’t have suitable candidates at this point, and discussed this with Commissioner Barth about the need to move forward with Korn Ferry to see how they can do similarly with -- that they’re doing with the inspector general position.

COMM. BARTH: Let me understand. Going back to the inspector general position, as I understood, we’re temporarily going to fold this -- the internal affairs into the inspector general. Has that changed?

COL. McCRAW: Yes. Rather than doing that, since the -- because the responsibility has
changed slightly when that happens. Right now we
already have an internal affairs function right now,
an individual in internal affairs, and if we can just
continue as is until we get the inspector general in
place, that would probably be a better solution. I
would recommend that to you as a better solution.

COMM. BARTH: Okay. So just so I
understand -- because this is new to me. I wasn't
under that assumption when I got here.

We have until -- what would the picture
look like after the inspector -- an inspection general
office was set up? Would we have internal affairs,
inspection -- inspector general and audit and
inspection?

COL. McCRAW: You'll have an audit and
inspection, but internal affairs is completely rolled
over into the inspector general's office.

COMM. BARTH: So why wouldn't we put,
temporarily, internal affairs rolled over to the
inspector general's office today?

COL. McCRAW: If you want to name that,
we certainly can. You could do that, but I would --
my recommendation is we -- since we already have that
function, it's continuing right now, that the
inspector general, the first one that you do select,
be that individual, as opposed to someone that we
already have right now.

       COMM. BARTH: Do we have any issues with
respect to sunset?

       MR. PLATT: The only issue is the
internal affairs section goes away effective 1
September, and so there's a question as to whether
we -- you know, whether they have authority to act,
and that's the issue that we would struggle with.

       The office is established -- the
inspector general's office is established 1 September.
If the Colonel chooses to, with the Commission's
permission, to basically let internal affairs function
in that role, which I think is what you're getting
at --

       COL. McCRAW: It's my proposal.

       MR. PLATT: -- proposing then, I think,
subject to the Commission's approval -- the
legislative history would indicate that we're given
some period of time to make these transitions, but as
of 1 September, there is no internal affairs section
so --

       CHAIRMAN POLUNSKY: All right. But the
inspector general is actually appointed by the Public
Safety Commission. Is that not correct?
MR. PLATT: That's correct.

CHAIRMAN POLUNSKY: And the interim inspector general, I would assume, would also be --

MR. PLATT: That's correct.

CHAIRMAN POLUNSKY: -- an appointee of the Public Safety Commission. So if we roll the internal affairs people into the inspector general's office, shouldn't the Public Safety Commission be part of that process?

MR. PLATT: You would be the appointing authority. The -- there is a dotted line on the organizational chart, and it's based on the statute. The Colonel has -- the inspector general reports to the Colonel for purposes of support logistically and to deal with necessary matters, such as disciplinary matters, obviously, that you would have to execute on, but the Commission is the only authority that can appoint an inspector general.

COL. McCRAW: Mr. Chairman, my recommendation is that we simply keep the internal affairs component we have in place, that it performs the inspector -- although it's dissolved, it, in fact, performs the inspector general function until you select your inspector general so that we don't lose the ability to continue internal investigations.
CHAIRMAN POLUNSKY: Is that something that can be done?

MR. PLATT: It is. In fact, I've prepared a motion to that effect that basically describes that type of action.

COMM. BARTH: I think that's different than what the Colonel is saying. The motion is inconsistent unless you want to -- what I hear you recommending. Am I wrong?

MR. PLATT: I don't know that he's seen the motion that was drafted yesterday and sent out because he was in Dallas so --

COL. McCRAW: I would like to comment on that, but I'm not sure that I can intelligently.

COMM. STEEN: Counsel, I've got a question. How do we take action? Where is it on the agenda that we can do this?

MR. PLATT: Actually, the agenda item you're on now deals with the executive management search. The appropriate location to take that action would be under Subpart F, under ongoing business; discussion and possible action regarding organizational structure.

COMM. STEEN: So, Mr. Chairman, do we want to do that now, or do we want to take it up --
CHAIRMAN POLUNSKY: Why don't we take it up when that comes up, and this would also be something that may fall within personnel issues that can be --

MR. PLATT: It's a personnel issue you could discuss --

CHAIRMAN POLUNSKY: -- discuss in executive session. So then that would be another reason, I think, to move it to that point. Yes, sir?

COMM. CLOWE: But I question -- the organizational issue should be discussed in the public.

MR. PLATT: That's correct, and the actual appointment would need to be done in public.

CHAIRMAN POLUNSKY: What I'm talking about is just a -- you know, whether we're going to appoint somebody.

MR. PLATT: If you want to discuss the personnel issue of whether or not there is someone suitable for appointment, I think that's appropriate for executive session.

CHAIRMAN POLUNSKY: Right.

COMM. CLOWE: But the issue of moving the internal affairs in -- as acting in the inspector general is an organizational issue, and the motion
that you have drafted could not be discussed in executive session.

MR. PLATT: It would not — it needs to be addressed in the public session. That's correct.

COMM. CLOWE: So by skipping and not talking about it now, we shouldn't discuss it in executive session.

MR. PLATT: I think it would be appropriate -- if you want my legal advice on what the statute requires you to accomplish, that would be appropriate. If you want to talk about personnel issues as to who is available, that would be appropriate, and then any other action would need to be in that later session.

COMM. CLOWE: Thank you.

CHAIRMAN POLUNSKY: Mr. Steen, do you have anything? Are you okay with moving this back down?

COMM. STEEN: Just fine.

CHAIRMAN POLUNSKY: Okay. Then that's what we'll do.

Discussion and possible action on department asset forfeiture policy and procedure.

Colonel Beckworth?

COL. BECKWORTH: Mr. Chairman,
Commissioners, approximately four or five months ago, I gave you an overview of the seized fund account and how those funds are distributed and accounted for within the agency.

During that discussion, we were in the process of revising our policy as it would relate to asset forfeiture. Therefore, we could not give you any kind of background as related to how that policy processed through this deal. So from a standpoint of transparency, I provided you our new policy.

This is just a discussion issue, and what it does is this policy governs how we seize and impound property that comes into our care, custody and control by the agency. What has been happening in the past, why I wanted to bring this to your attention, was that each division, in the past, had been pretty well managing their own asset forfeiture, even though their control should have been managing the criminal law enforcement division.

What we've done with this new policy is we've created an asset forfeiture section within the criminal law enforcement and all of those processes are transparent and managed through that division, and now this is a seamless process. It's centralized and it's transparent, and, therefore, it's a good plan for
us to move forward on. And I wanted to bring this policy to your attention. It does not require any kind of an action on your part. It's for discussion only, and with that, I'll answer any questions from the Commission.

CHAIRMAN POLUNSKY: Are there any questions?

COMM. CLOWE: No questions.

(No response)

CHAIRMAN POLUNSKY: Thank you.

Discussion and possible action regarding purchases using seized funds. Colonel Beckworth?

COL. BECKWORTH: During that same discussion three or four months ago, we talked about the seized funds process. In that, we talked about what those funds were to be utilized for, and one of the things that came to our attention was that during the 80th legislative session, the Texas Data Exchange program, TDEX, was given to the agency to manage.

That particular program was not provided -- the agency was not provided any funds to facilitate that program. Annually it costs $6.3 million to run the TDEX program. So the agency has had to -- within its own restraints and budgetary strategies had to identify funding to address those
particular issue.

In the 81st legislative session, the legislature found $12.3 million. Therefore, we will no longer have to find those dollars within the agency, but for this particular process -- and if someone would push that screen down to probably the third or fourth page on that particular screen there -- what you will see here is that for 2009, the expenses to run the TDEx system has been pretty significant.

What we've done, we've identified $1.4 million within our own strategies to address it. We received a grant fund of $800,000 to manage that program. That leaves us a little over $4 million that we need to identify to pay for TDEx in 2009.

So what we're asking the Commission to do is to authorize and approve for us to use $4.1 million to pay for the TDEx funding out of the seized fund account, and that fund has those dollars incorporated in there. And we would ask your consideration to pay that money out of the account because we don't have any funds, any other strategy to address that. And that's our recommendation to the Commission.

CHAIRMAN POLUNSKY: Discussion,
questions?

(No response)

CHAIRMAN POLUNSKY: Colonel McCraw, this is something that you have a history with?

COL. McCRAW: Yes, sir.

CHAIRMAN POLUNSKY: Are there no other sources of funding for this?

COL. McCRAW: We've got stimulus money that will help as well -- augment this, and that will be coming this way. You know, now that the department is going to be charged with, you know, moving forward on addressing, you know, organized criminal enterprises and that have an impact, especially transnational gangs, one of the key pieces to that will be our ability to locate information and connect the dots, if you will. And TDEX will do that for us and help support that.

We've been charged with the -- by the last legislative session, the department is to have the fusion cell -- or in the Fusion Center have a gang intelligence. So that's going to be important in us moving forward in terms of being able to conduct a statewide gang strategy to address -- to address the transnational gang control elements that are in many areas, not just along the border but throughout the
state.

So, clearly, there's stimulus money that will be coming over, that's been identified, but I'll stick with the $4.1 million, a great investment for the department in terms of our mission, in terms of supporting local law enforcement -- and also the local law enforcement, and for that matter, the federal law enforcement community.

CHAIRMAN POLUNSKY: All right. So you're saying that there's the possibility that there are stimulus funds that could replace or augment this or --

COL. McCRAW: Not replace -- augment this, because the ultimate objective is -- even addressing in terms of commercial handgun licenses is the ability to tap into the record management systems that don't just have Class B and Class A misdemeanors, but have access to a Class C so we can do a better job in terms of from an automated standpoint as a patrol as opposed to a person standpoint. So what we want to do at -- if not -- in the long-term, our objective is to be able to have access to that information statewide. So the 4.1 million -- if I'm correct -- am I correct? It's for the adaption. Right?

MR. GAVIN: Yes, and this is 2009.
COL. McCRAW: This is 2009. And so we've got stimulus -- we have funds available for us to be able to pay for the enterprisewide license, which is the next two years. Is that correct?

MR. GAVIN: Yes.

COL. McCRAW: They gave us that money. So what we're paying for right now is to be able to adapt RMS systems and bring more cities in, and we've got a long list that want their systems hooked up until we can provide that type of connectivity.

I think this is a great investment for the department.

COL. BECKWORTH: Mr. Chairman, we have funds coming in, a significant amount of dollars that the Colonel is referring to coming in. However, for this year, ending in August of this year, we need $4.1 million to balance the books for the agency because we've used funds within the agency to address this particular process.

So without these funds, it's a challenge for us to balance the budget for the end of this year, and that's why we're asking for the $4.1 million, but there are clearly funds coming forward from --

COL. McCRAW: Which will be able to supplement and take care of some of those shortfalls
within other programs.

CHAIRMAN POLUNSKY: Any other questions?

COMM. STEEN: Colonel, I was out of the room for part of the discussion, but you're seeking action from the Commission?

COL. McCRAW: Yes, sir.

COL. BECKWORTH: Yes, sir, we are.

COMM. STEEN: What would the motion --

COL. BECKWORTH: The motion would be to ask the Commission to approve allowing the department to take 4.1 -- a little over $4.1 million from our federal seized fund account to pay for the TDEX funding that's necessary for us to balance the budget for 2009.

CHAIRMAN POLUNSKY: And that's the exact amount, I believe, right up there.

COL. BECKWORTH: Yes.

COMM. STEEN: Should we have any -- what concern should we have about this?

COL. McCRAW: We've already spent the money out of different areas to keep TDEX moving forward. Is that correct?

COL. BECKWORTH: That's correct.

COL. McCRAW: That's correct. So now what this would enable us to do is to reconcile that
1 so we can take care of our shortfalls, Commissioner.  
2 And going forward, the legislature has  
3 provided us sufficient funding to do the enterprise  
4 license, and stimulus money is coming over to be able  
5 to take care of the adaptation of the systems, and so  
6 this is really the department stepping forward,  
7 recognizing this as need. A priority was finding  
8 monies to take care of it, and now with this new  
9 biennium, we'll have funds to do so.  
10 CHAIRMAN POLUNSKY: It's a bridge  
11 basically?  
12 COL. McCRAW: Yes.  
13 COL. BECKWORTH: Yes, sir; exactly  
14 right.  
15 COMM. STEEN: So move.  
16 CHAIRMAN POLUNSKY: You so moved?  
17 COMM. STEEN: So move.  
18 CHAIRMAN POLUNSKY: It's been moved by  
19 Commissioner Steen that the 4.1 -- $4,151,555 in  
20 seized asset funds be utilized to --  
21 COMM. CLOWE: Second.  
22 CHAIRMAN POLUNSKY: I'm not done yet.  
23 COMM. CLOWE: Go ahead.  
24 CHAIRMAN POLUNSKY: All right. I'm  
25 done.
COMM. CLOWE: I thought you were.

CHAIRMAN POLUNSKY: Seconded by Commissioner Clowe.

Any discussion on the motion?

COMM. BARTH: I just have one comment. This is just -- becomes the priority of the seized funds, whereas you might be able to use some of this money -- seized funds for other issues, such as, I suspect, maybe the tasers or other equipment, this becomes a priority of that pot of money?

CHAIRMAN POLUNSKY: How much is left in the pot?

COMM. BARTH: Just so everybody knows. You know, it's obviously -- you know, I want to do what the agency wants as a priority.

COL. McCRAW: There's 13 million left in the pot. The federal or both?

COL. BECKWORTH: Federal, a little over $13 million.

COMM. BARTH: Okay. I think, going forward, I would like to see kind of the running total.

COL. McCRAW: Sure.

COMM. BARTH: That would be helpful.

COL. McCRAW: Obviously we won't be
spending any of it unless we come back to the Commission with recommendations in terms of what those are.

COMM. BARTH: That's all.

CHAIRMAN POLUNSKY: All right. There's a motion and second. Any discussion?

(No response)

CHAIRMAN POLUNSKY: All in favor, please say "aye."

(All those in favor of the motion so responded.)

CHAIRMAN POLUNSKY: Any against, "no."

(No response)

CHAIRMAN POLUNSKY: Motion passes.

Next item is discussion and possible action regarding Texas Data Exchange, TDEX, contracting for FY 2010. Mr. Gavin?

MR. GAVIN: Chairman and Commissioners, David Gavin, assistant chief of administration. Just to follow on that discussion -- if you go to Slide 17, please -- the legislature in the past session did appropriate $12.4 million, a one-time operating expense, for us to pay for the enterprise license and the support for the system. We had estimated that we need 29.2 for the biennium. So that leaves us the
need for the rest of the money for the adaptive
development that the Colonel was talking about.

So we have applied, under the stimulus
money, for 13.7 million for that adaptive development
under the southern border grant, the Byrne program.
In addition, the Governor's office has identified
17 million that can be used for -- specifically for
TDEEx, as well as for a program called Remote RMS,
which is a very good program that will allow us to
purchase a Web-based RMS service that local law
enforcement agencies who don't have any RMS to use
to -- for them to get the benefit of an RMS system and
also for them to contribute to TDEEx.

That money will have to come out of the
17 million. In addition, it's to support TxMAP, which
Jack Colley has developed, a very effective statewide
mapping tool. So out of the 17 million, those funds
will have to come out of that as well, but, clearly,
we'll be able to make a significant dent, even if we
don't get the other federal money in completing the
rollout of TDEEx to the remaining 640 agencies who will
be looking to add TDEEx.

So this particular request is simply for
us to be able to move forward during this fiscal year
on those contracts. There is a master contract, but
we will do the enterprise license and the -- purchase
the adapters through the purchase change notices, many
of which would have to come to you for review, but as
we did in 2'09, if you would allow us, we'll move as
fast as we can, but we'll stay within the lines.

And if we see the amount going over half
of 29.2, so if we see the amount going over
$14.6 million, we would come back to you. And, of
course, in the division report, we would keep you up
to date on the purchases that we're doing for TDEX
within those amounts.

CHAIRMAN POLUNSKY: So the action item
is --

MR. GAVIN: Is a request for us to move
forward without Commission review of the purchase
change notices that normally would have come to you
under the Commission review policy, knowing that we'll
remain under that contract and within these amounts.

CHAIRMAN POLUNSKY: Carin, do you want
to get into this? Any discussion or questions?

COMM. STEEN: Anything from the
Colonels?

COL. McCRAW: No.

COL. BECKWORTH: No. We support this
recommendation, and we think that it's the best thing
to do to allow that program not to be staggered in any
case and keep going -- we'll keep you apprised each
month, and if any changes occur, we'll address it
accordingly.

CHAIRMAN POLUNSKY: Somebody would like
to make a motion?

COMM. CLOWE: So move.

CHAIRMAN POLUNSKY: It's moved by
Commissioner Clowe. Is there a second to this motion?

COMM. BARTH: Second.

CHAIRMAN POLUNSKY: A second by
Commissioner Barth. Discussion?

(No response)

CHAIRMAN POLUNSKY: There is no
discussion. I'm sorry.

COMM. STEEN: Commissioner Barth, do you
have concerns?

COMM. BARTH: You know, I don't -- you
know, my concern is the shortfall -- okay -- which
we're shoring up this year. And, you know, I'm not
sure what we do about it, except to apply for stimulus
money. You know, it's a project, I believe, we need
to keep on a good timeline.

Commissioner Steen, I don't -- you know,
I hope that the Colonel doesn't come back to us this
time next year and say, "Okay. Here is the shortfall
for TDEx" but --

COL. McCRAW: Well, the advantage is
that the legislature has taken care of that because
the enterprise license is paid throughout each year.
Correct?

MR. GAVIN: The enterprise license and
support will be covered. The challenge is the
adaptive development, but through CKD, they've
identified the $17 million, which is about the amount
we needed for all adapters, but we need to also apply
that money to TxMAP and to the remote RMS. We'll --
even without federal money, we will make a very large
dent in the total rollout.

COL. McCRAW: Well, we won't -- I won't
be coming back and asking for additional funds for
 adapters. We'll prioritize based upon -- you know,
based on population, where we get the biggest bang for
the buck at that point, and we'll seek federal grants
to be able to increase the adaptation.

DHS is also looking at this as a model
right now to be able to exploit across the southwest
border. So we're also going to be looking at them to
see if they can come up with additional funds, and
we'll be working closely with them to ensure -- and
the advantages, which we haven't talked about yet
because we'll talk about it with the commercial
handgun licensing, how we'll be able to use it to get
troopers back on the road and then be able to do
automated badge fronts against TDEEx to be able to cut
our time -- I won't predict half, but certainly
dramatically in terms of what we're spending right now
in terms of trooper time doing background
investigations on concealed handgun licenses.

MR. YBARRA: Mr. Chairman, just
information to the Commission, there is a rider in our
bill pattern that identifies at the Governor's offices
to try to find dollars to cover these adapter
expenditures up to the limit of, I think, 11 or
$12 million. So there's a rider in our bill pattern
also, and the Governor's office is aware of it.

CHAIRMAN POLUNSKY: Okay. There's a
motion and a second. All in favor, please say "aye."
(All those in favor of the motion so
responded.)

CHAIRMAN POLUNSKY: Any against, "no."
(No response)

CHAIRMAN POLUNSKY: Motion passes.

MR. GAVIN: Thank you.

CHAIRMAN POLUNSKY: Thank you very much.
Update, discussion and possible action regarding energy savings performance contract. Chief Fulenwider?

COMM. BARTH: We cannot be saving money in this room. It is so cold.

MS. FULENWIDER: I hope I'm not stealing Chief Fulmer's thunder, but I would like to let the Commission know that that was the last appearance by Chief David Gavin. He will be retiring.

CHAIRMAN POLUNSKY: I did not know that. I'm sorry. I would like to thank you for your service as well and wish you good luck in whatever you're doing next.

MR. GAVIN: Thank you, sir.

CHAIRMAN POLUNSKY: But thank you very much for years with the Department of Public Safety.

MR. GAVIN: Thank you.

MS. FULENWIDER: The agency has a contract with TAC Americas, an energy savings performance contract that will be expiring at the end of this month, and I would like to give you some background information on that project.

And, Commissioner Steen, I know you were not here last August when this contract was discussed in detail, so I'll try to fill in some of the blanks
An energy savings performance contract is a mechanism to complete energy savings improvement projects without using capital by financing the improvement projects with money saved due to reduced utility expenditures. In the performance contracting process, the agency contracts with an energy services company, an ESCO. The ESCO audits our energy and water consumption. They evaluate our mechanical systems and other components, and then determine measures to reduce consumption.

The ESCO guarantees savings that the utility cost reduction measures should yield. If the owner does not realize the guaranteed savings, then the ESCO pays the owner the difference between the guaranteed and projected savings. These projects -- state projects are generally financed through the Texas Public Financing Authority or the Lone Star program, which is administered by SECO, the state energy conservation office.

An added benefit of going through this process is that when those funding mechanisms are used, there is in-place legislation that prevents the reduction of future utility budget allocations.

Our history with this process is that we
contracted with TAC Americas in late 2007. The original concept was that this would be a two-phased process. Only the headquarters complex, Region 2 and select sites in Region 1 are in Phase I of this project.

In August 2008, TAC Americas and DPS agreed on which utility cost reduction measures would be included in the project, and those items are lighting retrofits, centralized environmental control systems for 15 buildings and programmable thermostats for 46 buildings, vending machine controls, HVAC and mechanical upgrades at 15 buildings and water conservation retrofits.

For most of fiscal year '09, this project has been on hold, pending the results of an audit by the state auditor's office and then awaiting the outcome of the legislative session because there was the thought that the energy savings performance contracting process would be discussed in the legislative session, but it was not.

So where that leaves us right now is that TAC Americas has gone back -- because of the time that's elapsed since we started this project, they've gone back and re-evaluated where we are now. We have made some changes. We had to do one of the projects
that was listed as a cost reduction measure. We had
to go ahead with the replacement of the cooling tower
on Building C. So because of the time that's elapsed
and replacement of that cooling tower, TAC Americas
went back and looked at where we are now, and we just
received that new project information last Friday.

So the project, as it currently exists,
includes over $8.4 million in energy-related facility
improvements. TAC has estimated that the Phase I
utility cost reductions will be over $865,000 per
year, and right now that's about 23 percent of the
current expenditures for those affected sites. While
they project the savings to be over $865,000 per year,
they will guarantee over $841,000 in savings per year.

Now -- so where we are is, what do we do
next? If we want to proceed with any of these, we
will have to renew our contract. That does not
obligate us to do any of these projects because we
still have some more steps to go through.

We still have to actually finalize the
list of the cost reduction measures that we want to
include in the project. Once we do that, we have to
have the review and approval by a third-party
engineer, and then the review and approval by the
state energy conservation office. Are there any
questions?

CHAIRMAN POLUNSKY: Are there questions?

So your request for action is what?

MS. FULENWIDER: Is to renew the contract.

COMM. STEEN: For how long?

MS. FULENWIDER: This will take us through the process, sir. And I'm not sure if -- what the actual date -- expiration date of the new contract would be. The contract would be for us to evaluate this process, and if we determined to go forward, then we would go to the third-party engineer.

COMM. BARTH: Commissioner Steen, I'm familiar with the TAC contract and really familiar with the energy conservation programs, whatever the acronym of the day is.

This is a mechanism to do some projects, as far as I'm concerned, with respect to your capital budget that you're not able to get done.

MS. FULENWIDER: Right.

COMM. BARTH: Okay? Because it's outside of your capital budget because you -- it's set up -- the state has set this up.

Now, one of the questions I have is, I know the SAO is looking at whether, in fact, this...
whole program ought to be dissolved because, you know, my pooling of -- poling of people who have done this project, they never get the savings that they're guaranteed. All right?

    I haven't really heard anyone give me -- maybe you can comment to those people that have done these projects -- that they tend to pay out -- it takes longer for the payout, and it's -- you know, it's being able to do some projects that you aren't doing in your own capital budget, but as far as, you know, us being able to know whether an air conditioning system is more cost efficient, a new one versus an old one, I believe we have the expertise to do that. Changing lightbulbs, changing lighting, I believe we have the expertise.

    MS. FULENWIDER: Yes, we do.

    COMM. BARTH: Whether we have it in our capital budget is another story.

    MS. FULENWIDER: That's correct. The whole advantage to this process is that you fund these projects outside of your capital budget, and so they're funded through the savings that are generated through the energy savings of the new -- of those projects.

    And the state auditor's office did have
some significant concerns about this process. Now -- but they did not put a halt to the process.

COMM. BARTH: Did they actually say you can go -- I know there were a couple -- was it parks and wildlife where they put a halt to it or slowed it down? I mean, something generated the state auditor's looking at this particular project across the state and agencies, and I don't know what the ultimate finding was. I never saw the ultimate finding out of SAO, so I would be curious to know what that finding was.

MS. FULENWIDER: It's been so long since I've read the report, I actually do not remember exactly what the outcome was. I know that they pointed out some -- there seemed to be mixed results from the different entities that had gone through this process.

To date, only three state agencies have gone through this, and that's parks and wildlife, TxDOT and MHMR. Now, MHMR apparently has been very satisfied because they are on Phase VII of their project. I think some of the universities may not have had the same result that MHMR has.

COMM. BARTH: Of those three projects, how many are TAC's projects?
MS. FULENWIDER: None.

COMM. BARTH: And with respect -- where else does TAC have projects throughout the country?

MS. FULENWIDER: That I do not know.

MR. PLATT: There was a question a while ago regarding term of the contract. The contract was signed late November of 2007. The language of the contract ran the term from December 1st, 2007 through August 31st, which is essentially a time period that -- it would be, what, 22 months or thereabouts -- 21 months.

It is renewable up to two terms. So basically if you renew it on one occasion, it's going to be for that same time period, which is the number of months from December of 2007 through August 2009.

COL. McCRAW: Commissioner Barth, if you don't mind, I know that you had some concerns on this. This is why I asked for a briefing. Sandy went through it.

One, do we have viable projects that the department needs to engage in, was your first question, and the answer is we do have some that we've prioritized for you for your review. And the second part was, has the state auditor's report shut down the process because of findings they had? And the answer
is no, they have not done that -- done so.

COMM. BARTH: Is TAC the only approved vendor for -- is it SECO?

MS. FULENWIDER: No; they are not, no. Currently SECO is revamping the approval process, and they have been reviewing the TDCJ proposed project for several months now. In the past, there wouldn't have been that type of in-depth review, but they are making sure that these projects meet -- or take into consideration all of the findings of the state auditor's report.

COMM. BARTH: One of the issues, Commissioner Steen, is the guarantee itself. Originally TAC -- their subsidiary was only going to guarantee it, as opposed to the parent, with respect to the dollars. I don't know where -- what happened there, but I would strongly urge us to look at the credit of the parent here and get a guarantee from the parent, as opposed to TAC.

MS. FULENWIDER: Well, in this particular instance, in October, TAC will be merged into Schneider Electric, which is the parent company, so it will become Schneider Electric.

COMM. STEEN: Ms. Fulenwider, you're asking us today to extend this contract?
MS. FULENWIDER: Yes, sir.

COMM. STEEN: There seems a tentativeness about your presentation.

MS. FULENWIDER: I think Commissioner Barth has kind of rubbed off on me.

(Laughter)

COMM. BARTH: Oops. It just -- you know, I think there's a lot of unknowns.

MS. FULENWIDER: There are. In this process -- the problem that I have with this process -- there are tremendous benefits. We could do the projects more cheaply, more inexpensively without going through this process.

Now, but that means that we would have to be expending appropriated dollars or bond dollars, so that money would be used -- if used for these projects but take away our ability to do some other projects perhaps.

COMM. BARTH: That's exactly correct.

COMM. STEEN: I'll go to the Colonels, and I -- Colonel McCraw, this is so much information in three weeks, but do you-all have a recommendation on this?

COL. McCRAW: Yeah. Our recommendation would be to proceed for this reason alone, is that
there are some projects that will not get done unless we do so, because we'll have to prioritize, either with the capital funds that have been approved or the existing funds that have been appropriated.

So if we don't go forward, you know -- and, again, we'll have to be careful how we prioritize which ones and come back to you with them. If we don't, then they're just not going to -- they're worthy projects. They're just not going to get done, and as release to some of these things, there are infrastructural -- infrastructure-type of projects that we think provide clear value to the department and the public.

COMM. STEEN: Do we have to do it today -- to take action today to renew?

MR. PLATT: Commissioner Steen, the contract expires August 31st, and in support of the Colonel's recommendation, the vendor actually -- we will owe the vendor $190,842 if we do not accomplish a project, and we can accomplish any one or part of a project. Is that correct?

MS. FULENWIDER: That's correct.

MR. PLATT: And then we do not owe that sum of money. So my recommendation is to totally support the Colonel as to get us time to assess the
priorities so that we can -- otherwise, we're going to pay out $191,000 without getting any benefit from this contract?

COMM. STEEN: So what's your recommendation? We do something today?

MR. PLATT: That you renew the contract as Colonel McCraw suggested.

MS. FULENWIDER: And I would like to point out, again, that by renewing the contract, it does not obligate us to do any of the projects. It gives us time to re-evaluate where we are, to look at those projects again, and then we still have to go through -- before we can do any of them through this process, we still have to have the review and approval by the third-party engineer and the state energy conservation office.

COL. McCRAW: Then we would come back to you, and say, "This is the project we would like to proceed with."

COMM. BARTH: Mr. Platt, I'm not certain -- I don't want to play lawyer here because that's bad and I know that, but I recall when we looked at the $191,000 it was -- there was some issue there as to whether or not we would have to pay them.

MR. PLATT: You're correct in that, and
I think there is -- but we would open ourselves to a claim for $191,000, and that's what I wanted the Commission to be aware of. The vendor's position would be that we owe that amount of money. Now --

COMM. BARTH: Have we had other vendors that have had that position before? I would assume so.

MR. PLATT: Sure. Sure.

COMM. BARTH: I just -- I don't want to make the determination on renewing this based on a vendor who believes we owe them $191,000 if we don't go forward.

I agree with you with respect to -- and the Colonel, on getting projects done. I don't want to keep the agency from getting projects done. It's a great way to augment your capital budget.

Having said that, on whether TAC is the right person and they have the financial wherewithal as Schneider Electric, that comes into play quite a bit because I am skeptical that we will see the savings that are being presented, and thus, we will be looking towards the guarantor to come up with the money.

COMM. STEEN: We have ten days to make this decision?
CHAIRMAN POLUNSKY: Yeah. Why is this popping up ten days before the expiration of the contract?

MS. FULENWIDER: I did not know that it expired at the end of this month until last week.

CHAIRMAN POLUNSKY: Why not?

MS. FULENWIDER: Sir, I don't know.

CHAIRMAN POLUNSKY: You don't know why you don't know?

MS. FULENWIDER: I don't -- I don't even have a copy of the contract. I didn't get one until last week.

COMM. STEEN: Counsel, if the ten days went by and we hit August 31st, if we didn't take action today, then it expires, then we might lose this money?

MR. PLATT: We could. We would probably have a claim submitted. It's not an automatic payout situation.

COMM. STEEN: But Commissioner Barth has these issues. Mr. Chairman, should we approve it, subject to some of these things -- some of these issues that you're raising? I know we've only got ten days to work on it, but is somebody looking into these and satisfying you on these?
COMM. BARTH: I think it goes back to
the big satisfaction to me is, like I say, I don't
know where we are on the guarantor of these payments
if we don't get there. And I don't want to spend the
money, borrow the money. You know, we still have to
pay it back --

MS. FULENWIDER: Exactly.

COMM. BARTH: -- with respect to bonds
being issued against these projects. Okay? So I
wouldn't want to have to, then, turn to Chief Ybarra
and say, "Okay. Where are we going to come up with
the shortfall because these projects" -- I know
another entity had to do that, so that's why I'm
concerned.

COL. McCRAW: I would be much more
concerned, from my recommendation, if I didn't know
that by signing this contract all we're doing is
saying that now we have to come back to you for every
project to be approved at that point in time. We're
not committing into anything, other than this
contract -- we can leverage this contract again in the
future.

COMM. BARTH: I guess we go back to is
this the right vendor to do the contract?

MS. FULENWIDER: And I know that the
agency went through the RFP process in 2006 and 2007, and the vendor was selected through that process.

CHAIRMAN POLUNSKY: You know, this is starting to be reminiscent of this other issue that we'll be discussing later on today where we have these contracts that just kind of, you know, keep moving forward and no one seems to have any control, or in some cases, knowledge of what's going on.

I had a brief discussion with the general counsel on the necessity to probably enhance his staff so that issues like this might not present themselves on an ongoing basis, but I can tell you that as far as I'm concerned, I think it's a little short-sighted to be walking into a Public Safety Commission meeting less than ten days before the expiration of a contract and ask that that contract be extended, particularly when the person who is making the presentation doesn't seem to have a full grasp of what's involved in that contract.

COMM. BARTH: I have a question to you. Mr. Platt, do we not have a contracting file, so to speak, so you would know what contracts come up in 90 days before they need renewal?

MR. PLATT: Well, typically the client within the agencies tracks those contracts. I can't
answer what we have. It was brought to my attention ten days ago. I briefed the Colonel at that point in time so --

COMM. BARTH: I would suggest that we should have some tracking mechanism on contracts.

MR. PLATT: Chief Ybarra, do -- you-all do have a tracking mechanism for accounting purposes?

MR. YBARRA: Yes, we do, but it doesn't have a trigger. There's no trigger to identify it's going to be due at a certain time. It's an Access database that we put together.

COMM. BARTH: So it doesn't say, "90 days out, these are the contracts that are up for renewal"?

MR. YBARRA: No, ma'am.

COMM. STEEN: Commissioners, it's a good point. I can't remember what the title of it is, but I've been involved in organizations much smaller than this where there was actually a person that was assigned to that, track all the contracts, all the deadlines, all the key dates and that sort of thing.

COMM. BARTH: It's somewhat between legal and -- you know, I feel for you here. In ten days, you realize it's up for renewal. You're coming to us, you're trying to figure this out and general
counsel says it was just brought to their attention ten days ago. It just seems like this stuff would kick out to give us a 90-day --

COL. McCRAW: This is not going to happen again.

CHAIRMAN POLUNSKY: You're right.

COL. McCRAW: That said, but, you know, in defense of Sandra here is that she did bring it to our attention when she did find out. And we're not going to commit any funds to this program. It would be a continuation. We can opt out at any time for this, and we wouldn't go forward with any project that wasn't approved by the Commission.

All this does is eliminates the -- it eliminates the liability of the $192,000 that we incurred just by going through the initial assessment process, but we're not going to spend a dime with this company unless we think one of the projects is of value or until we go back to you and recommend that to you, and thirdly, you've approved it.

COMM. BARTH: I'd go back and say I'd rather spend a dime with this company and pay them, if we think we owe them, because I'm not sure we do, if we thought there was a vendor out there that was in a better financial position, because I don't know
Schneider from anything else out here. And that would be something that I would ask, you know, you and Stuart before we go and sign another year with them or 20 -- whatever it is, 18 months, 21 months. I definitely will feel for you, and I worked on this last year, and I didn't have a lot of confidence in the vendor. So I'm trying to figure out, putting aside the one -- whatever, if this is the right vendor to do it with.

COL. McCRAW: Well, if the project comes back and it's overpriced and undervalued, we're not going to deal with them. We're not obligated to deal with them. We'll opt out, and if we have to go through -- at that point in time go through the RFP process again, I'm allowed to do that. Are we not?

MR. PLATT: I think we can. This contract was one that was -- and correct me if I'm wrong, Sandra -- one that was thrust upon us to some degree in terms of language and so forth. We didn't -- it's not one that we negotiated, if I'm not mistaken.

CHAIRMAN POLUNSKY: Thrust upon you by who?

MR. PLATT: By the SECO in terms of the -- you can probably speak to that because you were
part of the process.

MR. YBARRA: Right. Hearing process --

Kevin?

MR. JONES: It's the State Energy Conservation, part of the comptroller's office.

MR. YBARRA: Were you part of that process?

MR. JONES: Kevin Jones, Chairman; contract administrator. At that point, I was not -- it was Ray Miller, our purchaser was involved with this, started when Chief Mills was over the administration.

COMM. BARTH: That's right.

MR. JONES: As far as we can recall, it was something that was part of the council of governments requirement.

COMM. BARTH: You know, it wasn't something -- I mean, I believe we could have amended or changed the contract. It wasn't take-or-pay, so to speak -- take it or leave it with respect to TAC.

MR. JONES: Right. All the negotiations should have happened on our side of this contract once we solicited it and it was scored, and we got our high score. Then we should have been involved with the negotiations, so it's our DPS contract.
COMM. BARTH: Right. Okay. It's not a state contract that says, "This is all we're going to" --

MR. JONES: No, it's not like a --

COMM. BARTH: As I understand, this is just one of the -- is it SECO or SECA, whatever, this is one of their vendors out there that they --

MR. JONES: One of -- I believe, like, their approved vendors or something.

COMM. BARTH: Right. One of their approved vendors.

COMM. STEEN: Commissioner Barth, what would you like to do on this?

COMM. BARTH: You know, my feeling would be to not sign it and have us take a look at the contract in some detail and bring it back. I don't think we're hurting our position. I don't feel this ten days we have left to sign this. How is that? I don't feel that pressure at all -- and to go back and make sure we fell comfortable with the vendor and financial condition of the vendor, and make sure that was put in the contract.

COMM. STEEN: So we can defer it to the next meeting?

COMM. BARTH: The question is can you do
that because of procurement?

MR. JONES: Right. And I was wondering

if -- you were stating earlier you believe there's,

like, a year and a half, two year --

(Simultaneous discussion)

MR. PLATT: There's not a provision I

see in the contract that deals with a 30-day renewal.

COMM. BARTH: So if we were to let this

contract go at the end of the month, are you saying we

would have to put out a new RFP?

MR. PLATT: That's correct, if you

wanted to do this type of project.

CHAIRMAN POLUNSKY: Stuart, so it's

self-renewing, or we need to take affirmative --

MR. PLATT: No. You have to take

affirmative action to renew it.

COMM. BARTH: And by taking affirmative

action to renew it then, are we implicitly stating we

owe them money?

MR. PLATT: I don't know that it changes

our position in that regard. As you pointed out

earlier, the language in the contract that talks about

the obligation is one that's been subject to debate

and dispute.

COMM. BARTH: I just remember reading
this and getting some advice on this before from counsel.

COMM. STEEN: I'm just trying to find a way to move on. Would it help, Mr. Chairman, if we moved it to the end of the meeting today? And would it help if you-all had some more time to look at this?

MR. PLATT: I'm not sure at the end of today is going to help us in terms of addressing those issues, to be frank. We can -- I mean, we can give you some legal advice in executive session. Our contract lawyer that has reviewed this is not present, but Dr. Fox has met with her, so he could probably brief you on your legal obligations in terms of $191,000.

CHAIRMAN POLUNSKY: That might be the way to do it and then come back -- defer this until later. However, this is indicative of a systemic problem in this department. Now, I know you've been here for three weeks, so this is --

COL. McCRAW: That's long enough. I get it.

CHAIRMAN POLUNSKY: Well -- but going forward, this situation needs to be addressed. This is probably one small example in a large galaxy of issues that are floating out there that we may or may
not know about, probably not know about; a lot of contract issues, a lot of contracts out there that, you know, we may should -- we should have some concern about.

And so there's going to need to be some restructuring here. There's going to need to be some safeguards put into place, probably augmenting legal staff, maybe have an office to do nothing but review these contracts and tickle them and so on, but I'm very concerned about issues like this in the driver responsibility contract and so on, the way that was handled and --

COL. McCRAW: I'm going to put a new process in place where we're not put in this position, Sandra is not put in this position, nor I, and that the Commission is not put in this position.

CHAIRMAN POLUNSKY: Yeah. Because, you know, the third one isn't going to be a pretty picture.

COL. McCRAW: I understand. The only thing I'll say at this point on this, and then we can talk about the executive session, is that when Commissioner Barth asked me to take a look at it, it was that we've had this discussion. If we go forward from here, we're not committing ourselves to anything.
Am I correct?

MR. PLATT: That's correct.

COL. McCRAW: But we can opt out anytime. We can still say, "Hey, tough luck. You know, come try to get your 192,000. We don't feel that you're doing -- the project you're proposing is not going to give us what we need from the department standpoint." Am I right about the that?

MR. PLATT: That's correct. There's not a termination for convenience clause, but we don't have to do any -- there's no further affirmative action to take beyond their claim they can make.

CHAIRMAN POLUNSKY: But you're still missing the point in the sense that this may not be the best company to be doing business with.

MR. PLATT: I completely -- I understand that.

CHAIRMAN POLUNSKY: So we're sitting here ten days before, you know, the clock strikes 12, and I don't think we can make, you know, a fully informed, objective decision because we're under the gun.

MR. PLATT: I completely understand.

COMM. BARTH: I go back, Colonel McCraw, to in the spirit of doing business, you know, with the
other side, it's really -- we don't get along the way
and say, "Well, gosh we just realized you don't have
the financial wherewithal. We're going to walk from
this." Okay? I mean, I don't want to run an agency
this way. I think it's bad faith.

COL. McCRAW: Let me make it clear
then -- okay -- to you because obviously I didn't
state it clearly enough, Commissioner Barth. It's
that we're not obligated to go through with the
project is my understanding. Okay? In other words,
we're not going to do anything. If they've got -- the
projects that we've proposed don't meet the
standards --

COMM. BARTH: I understand that.

COL. McCRAW: -- one by one, and if the
company comes back and it's not to where we believe
that it's getting the job done, we're not going to
bring that back to you, or we won't go forward with
it. I can assure you of that.

COMM. BARTH: Well, I would like to
think we'd sign the contract, whether it be TAC or
another vendor, feeling like, one, they had the
financial wherewithal to meet the guarantee, and,
number two, that they would be the right -- or at
least the best option out there when we started down
with this project. So that's my concern.

CHAIRMAN POLUNSKY: We'll defer this
until later.

Next item on the agenda: Discussion and
possible action of continued use of written
transcriptions meetings. Commissioner Steen?

COMM. STEEN: Well, when we entered into
the contract with the court reporting firm, we didn't
have minutes. We now have established a system of
minutes that I think is working very well, and I might
call on Stuart Platt just to talk about -- maybe
address the issue of whether we really need these
transcripts.

MR. PLATT: Commissioner Steen asked me
to look at the costs associated with the contract for
court reporting services. Since July of last year, we
expended $14,460.15. We now have several forms of
addressing what goes on at these hearings. We have
minutes. We have the audio that is on the Internet
site and the intranet site, as well as the transcript.

Our office uses the transcript really
for one reason only, and that is to -- and you'll see
an example of that later today. We search the
transcript to go back and see if a particular action
has been ordered by the Commission. We did that in
regard to a particular contract for this last time.

We don't use the transcripts extensively for anything else, other than that. The Internet website has, as I said, all three versions available; the minutes, transcript, as well as the audio section. There are some potential issues if on the Internet you do not provide something that provides the hearing impaired an ability to be able to hear what goes on in Commission meetings, but we could probably work around that issue.

Commissioner Steen asked me yesterday if I had any opposition or how I felt. I don't have any opposition if you choose to do away with the transcript and related expenses. And we have an audio recording.

There's been an issue of accuracy. Quite frankly, the accuracy is one, which for a court reporter it's very difficult in a meeting setting like this -- would require somebody to go back each month, listen to the audio, try to match up. It's not like reviewing just a deposition, because you've got to listen for voices. So I told Commissioner Steen I did not oppose doing away with the transcript. I wasn't -- whatever action the Commission chose to take was fine. I did want to -- we did attempt to gather
information on how many hits there were on the
Internet website, and Chief Rable and I have put in
effect a tracking mechanism to track that, so that we
know how many hits there are on the transcript itself.

COMM. STEEN: I appreciate the job being
done by the court reporters, and nothing I'm saying is
meant as a criticism toward them, but the transcript
has -- you know, it's just the nature of transcripts.
There ends up being lots of errors in it, and it's a
concern that I have that -- and these are sometimes a
couple-hundred page documents that no one is going
back and correcting these.

And an example from last meeting, I was
looking at it and I noticed that something that I
said -- a number of things we're attributed to you,
Allan. I guess we sound alike.

So it's, I guess, two questions: Is
this a good use of DPS funds going forward? But also
what about the transcripts that are now part of our
history? Do we need to, in effect, order someone to
go back and correct those? Do we, as Commissioners,
need to be reviewing all those transcripts?

The problem with -- and I discussed this
with you, Counsel. The problem with someone going
back -- it's very difficult, bringing in an intern or
a lawyer. It's almost like we have to look at -- each
of us have to look at that transcript to make sure
that it's accurate, and I, for one, don't want to be
doing that.

COMM. BARTH: I'm going to let you
fellows figure it out, and I'll vote for it.

COMM. CLOWE: What did you say?

COMM. BARTH: I'm going to let you
fellows figure it out, and I'll vote for it.

(Laughter)

CHAIRMAN POLUNSKY: Commissioner Clowe,
do you have any --

COMM. CLOWE: I have some questions.

First of all, when a person appears before this body
and makes comments, I have noticed they are not
filling out a witness affirmation form. That is
general practice, to my knowledge, when you appear
before a committee of the legislature and before
numerous bodies, one of which upon I have served.

And when you give testimony or you make
a statement, what is the legal status of that comment
that you've made?

MR. PLATT: Commissioner, and you and
I -- I mentioned yesterday, we have implemented a
process which next month there will be witness forms
after our discussion yesterday. It is a statement for
a public hearing or public body. There are penal code
provisions for if someone is not truthful in the
process, but if that's what you're getting at, is
there any penalty if someone makes a false statement?

COMM. CLOWE: I think that's an
important point to make, that when a person makes a
statement before a governmental body, they should
understand that it carries some weight, and they
should not be careless about what they say or
inaccurate. And it goes to the impact that their
comments would have on the board, which is the reason
that they're there.

And I think it is a practice that is
reasonable to ask a person who testifies or makes a
statement to sign a form and give data about who they
are and where they live and that sort of thing.

Secondly, I would make a comment about
the minutes. I have never been in favor of summary
minutes. I appreciate the effort of whomever is doing
that, and I would rather not ask who it is because
that doesn't make any difference. It's a best effort
on whoever's part is doing it, and I appreciate that.
But I have read the minutes and they are summary, and
they are not exact and they may have errors. I
haven't gone through them with critical intent. I have voted to approve the minutes since we've had them, but I'm not comfortable with that being the only record.

Then going to the issue that I've had from the beginning about doing away with the transcript, what is the convenience level or the ease that a trooper or someone in the department or someone outside the department has in accessing this record that we're creating now, one of the third wheels we've got on the ground, and getting exactly what was said in this meeting?

MR. PLATT: Well, right now, if you use the audio, you've got to scroll through the audio. If you use the transcript, you've got to flip all the pages on the website. We have the capability to index the audio, if we choose to, and link it to agenda items. So you could click to it -- and I think we did a demonstration of that recently, where you could click to and move through the audio.

We could probably, with today's technology, leverage it and do something similar with the transcript if we chose to and have an index format of some sort. It would require some resources but --

COMM. CLOWE: And is the audio
certifiably correct? Does anybody -- I know the
Commission doesn't approve it like we do the minutes,
but is it a legal document that would be acceptable in
a court?

MR. PLATT: It probably would be. It's
a document that we're required to maintain and
treat -- as with any commission. So, yes, we do have
to maintain it. Yes, it's a document, which we
don't -- it's subject to records retention and so
forth. The same would be true with the transcript as
well.

COMM. CLOWE: So it could be introduced
as an exhibit in a proceeding?

MR. PLATT: The audio -- well, in
theory, if there was a question about who said what in
a particular matter, yes, it probably could be.
Whether it's the best evidence -- it probably would be
the best evidence, to be honest.

COMM. STEEN: It's the most accurate
obviously.

COMM. CLOWE: Well -- and then to the
accuracy of the transcript, it certainly needs to be
accurate or it's not worth anything, and I was amazed
when some inaccuracies were pointed out in a prior
meeting; the misspelling of names and the misquotes of
individuals and that sort of thing. We're certainly not getting our money's worth if the transcript isn't accurate, and an inaccurate record is worse than no record at all. So I'm certainly not happy about that.

CHAIRMAN POLUNSKY: Mr. Steen, do you have a recommendation, motion, or is this just a discussion or --

COMM. STEEN: Well, I guess I'll give it a try. I'll make the motion that we -- and, Counsel, we can cancel the court reporting contract.

MR. PLATT: There is a termination for convenience provision in the court reporting contract. I don't remember the number of days that's involved but we can --

COMM. STEEN: I'll make a motion to cancel it according -- you know, obviously doing it in the correct way.

CHAIRMAN POLUNSKY: Okay. There's a motion by Mr. Steen that the contract for a verbatim court reporting of the meeting be terminated within the cancellation provisions of the contract.

Is there a second to the motion?

COMM. BARTH: I'll second it.

CHAIRMAN POLUNSKY: It's been seconded by Commissioner Barth. Is there discussion on the
motion?

(No response)

CHAIRMAN POLUNSKY: No discussion. All right. All those in favor, please say "aye."

(All those in favor of the motion so responded.)

CHAIRMAN POLUNSKY: Any against?

COMM. CLOWE: Show me voting no.

CHAIRMAN POLUNSKY: Let the court reporter show that Commissioner Clowe is voting no, the other three Commissioners voting yes. Motion passes.

The Public Safety Commission will now go in a closed session at this time pursuant to the Texas Open Meetings Act, Chapter 551, to consider matters authorized to be considered in executive section under Government Code Sections 551.071, 072, 073, 074, 076 and Government Code Section 411.0041. The time is 2 p.m.

(Recess: 2:00 p.m. to 4:07 p.m.)
AFTERNOON SESSION
FRIDAY, AUGUST 21, 2009
(4:07 p.m.)

CHAIRMAN POLUNSKY: The Texas Public Safety Commission is now reconvened, and a quorum is present. The time is 4:07 p.m.
We'll go back to Item M under new business. Chief Fulenwider?

MS. FULENWIDER: Yes, sir.

CHAIRMAN POLUNSKY: All right.

COMM. BARTH: Are we able to -- for three months?

MR. PLATT: Yes, we checked with --

COMM. BARTH: Okay. So then I would move that we extend the contract -- or renew it for three months, whichever counsel recommends that we do with respect to TAC as we examine the issues that have been mentioned earlier in the discussions. Are you comfortable with that?

MS. FULENWIDER: Yes, ma'am.

CHAIRMAN POLUNSKY: All right. There's a motion that's been made. Is there a second?

COMM. CLOWE: Second.

CHAIRMAN POLUNSKY: Seconded by Commissioner Clowe. And just for clarification
purposes, what we're talking about here is extending
the contract for 90 days while our staff -- or,
actually, staffs in this case -- review the contract
and provisions that are contained therein, and at
that -- at the end of that 90-day period, it could be
terminated or it could be extended.

It could be any number of different
things, but we're going to move forward for 90 days so
we have an opportunity to assess where we are and
where we want to go with it. Is that --

MR. PLATT: That's correct. We'll have
to negotiate that. I see no problem that we'll have
in negotiating that.

CHAIRMAN POLUNSKY: All right. Well,
that's our position, though?

MR. PLATT: Correct.

CHAIRMAN POLUNSKY: Our position is 90
days.

Okay. There's a motion and a second.

Any discussion?

(No response)

CHAIRMAN POLUNSKY: There is no
discussion. All in favor, please say "aye."

(All those in favor of the motion so
responded.)
CHAIRMAN POLUNSKY: Any against, "no."

(No response)

CHAIRMAN POLUNSKY: Motion passes.

All right. The next item on the agenda under ongoing business, A, implementation of driver license system and options regarding implementation.

Chief Kelley?

MR. KELLEY: Mr. Chairman, I may ask a waiver for this preparation to make it flow smoother. We were going to do Items A, B and C in my presentation that's included in that. Is it all right to take them all three up at one time --

CHAIRMAN POLUNSKY: Yes, sir.

MR. KELLEY: -- in that order? Okay.

So the driver license division report -- can we go over driver license system, Item A? Then B is DLD transition to civilian model, and C will be the driver responsibility program.

The driver license system, we brought Paul Nugent with Deloitte is helping us move forward. We are getting the DLS applications and programming fixed while we also go out at the same time with building programs to get our offices set up for the new system, working with us -- very closely with Chief Rable to make sure that the system works properly.
IMS is helping us out to -- along with building programs. We also have got our driver license offices working together to make sure the system we roll out will be functional, allow us to do a good job serving the citizens.

Okay. The -- there was a transaction time study that, Commissioner Barth, you had talked about. So we took a look at 19 offices, and what we looked at was how long is it taking in the Legacy offices versus the new offices because we wanted to get an idea of the average transaction times.

And what we found was there's a huge increase in time, averaging anywhere from 39 to 61 percent increase in time under the new system in the seven offices where we're operating the new system.

And the problems are the new system has so many screens and so many problems that individuals are spending much longer working with customers. That's the part that we have to fix before we can continue to roll out.

Okay. On the DLS, we are updating the manual -- the actual manual itself that the field is using is outdated. It's not been updated since 2000. So there's no way that they can actually know what
policies apply, so we're trying to speed things up by doing that as well.

We have three critical shortfalls we're trying to address right now; a new mailer of the examiners and technician. The mailing machine -- I'm working right now with Chief Rable to see if we can change the contract. The machine continues to break down. It's an eight-year-old machine, old technology, and we did not get LAR exceptional item funding to replace it. So we're going to continue to work with chief Rable to see if we can't come up with a new way to handle that.

COMM. BARTH: How much does it cost to replace it?

MR. KELLEY: Right now we're looking at 2 million-dollar -- if you buy it, have your own persons there, and we're looking at under a million a year for staffing -- this is just averages. If you were to have a company come in and actually run it, they'll put their machine in, and they'll guarantee service. You're talking about .063 cents per item mailed if you were to do a service contract. We're going to look at all options and try and see if there's a way we can do it using current dollars.

Examiners, we are looking at ways that
we can try and increase the number of examiners and offices. The bottom line is we have not increased the number of persons working our lines.

We are -- our goal is try and roll out as many persons from headquarters out to the field once we get the new system going. The system allows us to do more processes in the field, so that should free up some FTEs, but what I don't want to -- but I want to warn you right now, we can roll out DLS right now, send the few FTEs we can out to the field.

Until we get more FTEs, there are going to be lines at DL offices. We're going to have to continue to find ways to try and work those lines down, to re-appoint people to get those offices filled up, and so I've committed to do what I can in the interim, but I ask that we look -- during the next LAR that we ask for more persons to staff those offices to help us out.

Another thing we're working at also -- we're working with the office of audit and inspection as what offices -- Commissioner Clowe, you had asked about what offices possibly should be consolidated. Audit and inspection is helping me do a study to kind of see what can we consolidate so we can also free up some examiners to go work in the bigger offices.
COMM. BARTH: Let me ask you a question.

MR. KELLEY: Yes, ma'am.

COMM. BARTH: You know, I'm always the one that has the kids that will be taking the test here. So I'm looking at this, and so if I have a child who turns 16 in July, they'll have to do a driving test, regardless of whether they took a driving course. Is that correct?

MR. KELLEY: That is correct.

September 1 the new law becomes effective. The first time we're going to see kids coming in for the -- to come in for the test is going to be -- will be March 1st. That will be the first -- because you have a six-month window where you do the classes.

What I'm working on now is to try and determine -- there was no fiscal note added to this provision, even though we know there was a fiscal implication that we needed about 74 examiners to station across the state in order to meet current demand.

So we're going to address that. I've been working with David Baker, highway patrol, to see if I can't work with him to set up maybe a Saturday or some times at the end of the school day after -- like maybe 5 to 8 where we bring our personnel in overtime,
bring some of his people in. We've got motor vehicle inspectors, and we'll try and find a way to augment what I've got to make sure that we get these driving tests -- so that we're providing -- ensuring that only good teen drivers are going to get out there on the roads, but that we also don't have long lines and teens not getting their driving license on time.

COMM. BARTH: I mean, I'm just doing this in my head, but if you go back to the slide that showed 17 minutes, 19 minutes --

MR. KELLEY: Slide 35?

COMM. BARTH: Yeah. Okay. And then just assuming it went like clockwork, you figure a driving test is another ten minutes?

MR. KELLEY: Easily, right now, 20 minutes, but we're looking at a way to try and narrow it down.

COMM. BARTH: So you think a driving test will be another 20 minutes?

MR. KELLEY: Correct. You have to inspect the automobile. Then you have to go do the parking, the short stop.

COMM. BARTH: So if everything went well, forget about the line for me to wait in line, you're telling me it would be just under 40 minutes to
get a person who has to drive a test through under this situation with the new system?

MR. KELLEY: Basically, yes, ma'am.

That's where I'm saying we're -- I ask that you give us some time. I'm working with Colonel McCraw, and we're going to find ways that we can try and work on this.

COL. McCRAW: One of the things we talked about, Commissioner, is contract -- I mean, clearly we can't get the FTEs. We won't be able to discuss FTEs for another two years, or year and a half, but the idea of bringing back retired license examiners, another contract type of capability is to be able to provide them a service capacity. We're going to try and look at that as well.

COMM. BARTH: But, I mean, I look at it, and if you're telling me -- let's just say we make some changes and all, and we get it 30 minutes -- okay -- and I think there were eight windows or whatever. If you look at a kid -- you're asking a parent to take off, who might be working, several hours, you know, between the wait time which --

MR. KELLEY: Sure.

COMM. BARTH: -- could be up to three or four hours, and then another 30, 40 minutes to take
the test. I mean --

MR. KELLEY: Well, I've already been working --

COMM. BARTH: You've got to figure --

I'm just telling you.

MR. KELLEY: Well, one recommendation on that, Commissioner, I've been working with my assistant chief, and we've been working through how can we operate with a schedule so that we can say, "We're going to work Saturday." My goal is not to impact the schools or the kids going to school. So I don't plan on having these tests scheduled during the normal school hours. So I want to do it after.

So we're looking, like, 4 to 8 in the evenings, be able to allow you to schedule, that you'll be coming into the office, your road test will be at five o'clock, and that way the parent knows when they've got to be there. They can schedule. The child knows they're not going to miss school.

Then I would like to come in on Saturdays and just have the whole day of Saturday dedicated to nothing but teen driving, and, again, it will be scheduled. You'll know when your time is, when you've got to be there, so we can speed them through. And so we'll have an examiner --
COMM. BARTH: I mean, I'm just saying to both you and the Colonel, don't underestimate the manpower here. Let's just assume you do the four-day. Okay? It's a half-hour slot, so you know you've got -- and you've got eight windows. Okay?

MR. KELLEY: Right.

COMM. BARTH: Which means you can take 16 people through, which means you can take 64 people through a night? I mean, there are going to be a lot of citizens in the state of Texas breathing down our throats.

MR. KELLEY: Yes, ma'am.

COMM. BARTH: Those numbers don't work. Okay?

MR. KELLEY: And one of the other things that we're looking at as an option is how to shorten the test. We're analyzing and seeing, do we really need three turns to the left or can we do two and it shows that they're proficient and that cuts time off on the test. So there's things like that that we're looking at the old test to determine how can we ensure proficiency but not be wasting time while we do the test.

COMM. BARTH: And I guess the other question is, it would seem, that a person who has
taken a driving school, there ought to be a way to
give recognition with the driving test so as to cut
down the time of the driving test. I mean, we ought
to be looking at some sort of precertification, and
then you only have to done one left turn.

MR. KELLEY: Okay. We'll be glad to do
that.

COMM. BARTH: I just -- I think you
really ought to time this out, and I'm just doing this
in my head and having been out there three times every
year, it seems like, in the last two or three years.

And we now have a system that adds more
time, and we have to by legislature -- not us -- we
now have is to give a driving test.

MR. KELLEY: Right.

COMM. BARTH: You know, I think we
really need to look at manpower here, and you're
telling me we can't add any more FTEs, so I think we
ought to very much consider a program outsourcing,
whatever we need to do, but, you know, the last thing
I want to see is our times go up, which I know I can
see already, with the complaints even getting worse
starting in March.

MR. KELLEY: The Colonel is aware of it.

We had a good staff meeting on Tuesday, and we started
addressing this issue, and what I appreciate is I've got divisions throughout this agency that are working. They know it's a problem, and they're offering to try and help us find a way to solve it.

COMM. BARTH: Do you see the DL time coming off significantly?

MR. KELLEY: I do. The problem is we rolled out a process that was built here at headquarters and told the field, "Here, operate," except that when it was built, it was not built with the application in mind to speed up the processing when the individual comes to that counter for processing. So now you have to scroll through 12 screens, where before you could scroll through two screens and get all the information.

So we're rebuilding the application right now. That's part of the Deloitte consultant helping us out, is to ensure we rebuild the application so that these times will come down.

CHAIRMAN POLUNSKY: Do you look at other states --

MR. KELLEY: On --

CHAIRMAN POLUNSKY: -- on their processes?

MR. KELLEY: Yes, sir.
CHAIRMAN POLUNSKY: And what are the shining examples of success stories of other states?

MR. KELLEY: Well, having been in the office for one month and just trying to keep my head above water, I'll be honest. I haven't studied in detail. I am going to the AAMVA, conference this weekend, and I have meetings with some of the other states there, and they said these are some of the issues that we're going to go over, and intended to try and get more information.

We do have reports from other states and how their models work, but I haven't gone in great depth to study what they're doing, but that is my goal, is to tap into some of the knowledge these other states have on how they do these processes.

COMM. STEEN: Mr. Chairman, Indiana is a shining example.

MR. KELLEY: I've got that written down, that we're looking at that. You had offered that because your friend in Indiana -- you had suggested we look at that.

CHAIRMAN POLUNSKY: It's something to look at.

MR. KELLEY: Yes, sir; we'll do that.

Go to Slide 41. On the transition,
we've got our first civilian supervisor school. We had 27 new supervisors. We were able to give them one week of training to assist them in knowing what they're supposed to do. These are Supervisors 1, 2 and 3. They're replacing what the captains, lieutenants and sergeants used to do.

In August, we had 34 positions that are being -- have been -- being filled right now so that we'll have 63 total supervisors by September 1, and that's 58 percent of our total civilian work force.

Next is the driver responsibility program. You've already heard this morning from Senator Shapleigh. The bottom line is this is a circular process. As soon as an individual gets in the -- has a citation, they decide not to pay for their insurance, decide not to get the license renewed, they just continually stay in this process.

1723 says -- from 2007 says, let's take a look and see how we can try and fix this, so what we're proposing is two programs; amnesty/indigency and incentive. Amnesty/indigency says we're going to reduce the surcharge for points to a one-time fee of $50 as long as they pay it up front. That's reduced from $100 per year for three years.

And then we're going to take the no
driver license surcharge and say that it's a one-time fee $50 if paid in full, and that's reduced from $100 a year for over three years, and that would be effective on September 1 of this year.

The incentive program would break out -- for September 1, we'll look at DWI, no insurance and driving while license invalid.

For DWI, the bottom line is we want you to go get help. We don't want you to have an alcohol or chemical dependency program, so if you'll pay us -- you go complete the drug court program that gets you treatment and says that you've been treated, you can come back and pay us one time $500 for a first DWI, or if you have second or .16 BAC conviction, you can pay $1,000 one time, as long as you go complete the drug and alcohol treatment program.

For no insurance surcharges -- this is the one that seems to cause the most trouble. We basically want those individuals to go get insurance, so for the first time an individual is caught with no insurance, it's a one-time $50 that they pay us, as long as they can prove that -- verify that they get insurance.

The way we'll verify that is through the automated system that we have with the Department of
Insurance, known as Texas Sure. If you have no insurance surcharge for subsequent and multiple ones, it's $50 per year for three years. Costed out, it's $150 that you would have to pay up front, and then you would also have to maintain insurance. Again, over -- we would be checking to verify that you maintain that insurance over three years. Should you not maintain that insurance, then we would go back and charge you the full surcharge.

The goal there, again, is being -- trying -- instead of making them pay more to us, pay up front a small fee but go get your insurance. We just want to make sure that these become licensed and insured drivers.

On the incentive program, we're going to deal with the driving while license invalid. If you -- for your first conviction, it will be a one-time $50. That's down from $750. For driving while license invalid surcharge multiple, the second time, it will be a total of $150 paid up front instead of $750, and we'll verify the compliance with -- automatically in our system through the driver's license system.

So that's Items A, B, C, the driver license system transition, transition to civilian
business model and the driver responsibility program.

Stuart Platt was going to help us with this, because the proposal I just made under Item C, we actually have proposed rule language we want to discuss with you.

MR. PLATT: I have two aspects I would like to address with you. One, I've provided to one member of the Commission the language for a proposed rule consistent with what Chief Kelley has suggested today dealing with an indigency program.

Along those lines, it's appropriate, I think, at this time for me to comment on the MSB contract that we have, the existing vendor. What I did, in conjunction with Chief Kelley, was to examine the integrity of the renewal process.

The reason it's critical for us to do that before we adopt the indigency program is I think it is critical that we have a vendor who will monitor the indigency program and the impact it has on the collection rate of the department. So I examined, in conjunction with Chief Kelley, the integrity of the renewal process, which was renewal for five years. That process occurred in May of 2008. I have examined it.

My findings were such that it is sound
in terms of the renewal process being full and complete in terms of all the legal actions needed to be taken. I think it was free of any integrity challenges, free of any issues of concern from my perspective. However, there was a failure on the part of the staff to report to this Commission in August of 2008 the magnitude of this contract and the renewal.

In August 4th of last year, this Commission established a contract review policy. When that policy was put into place, Commissioner Barth -- and I've read the transcript of it. Commissioner Barth specifically asked that we provide 90 days back from that date, and at that point in time, we were to examine any contracts that would fall under the provisions.

By the way, that was my earlier reference to the transcript we had used, so, Commissioner Clowe, for you -- you're duly noted.

COMM. CLOWE: I have so noted to Commissioner Steen.

(Laughter)

MR. PLATT: When we examined Commissioner Barth's instructions, there was, indeed, at the August 25th meeting of the Commission -- you had two Commission meetings that month. There was a
list promulgated and published for you of contracts that would have fallen under the new contract review policy. The particular MSB contract, through no fault of vendor, through DPS's decision-making, was left off of that.

We tried to examine the cause for that. There are lots of explanations. The bottom line is there's no excuse. It should have been there, and it wasn't. It was not -- you were not informed of the renewal, and that's on us. We fall on our sword and acknowledge that.

So having said that, I will tell you that I have then examined the contract, not just the integrity, but what I found in the process is this contract, as well as many of the DPS contracts, is weak in identifying the deliverables, the metrics for measuring performance. This contract, in my opinion, has had a sound performance by the vendor. The vendor has been extremely cooperative, and as we heard from Mr. Henson and Senator Shapleigh today, the demographics of the individuals who are subject to the types of collections that are sought here are not the type of people that pay their bills on a regular basis. They're people in a downward spiral, and you've heard much about that already today.
So my findings indicated that as I examined other types of agreements with agencies within the state of some similar ilk in terms of the collection process, that this one is sound in the current performance, but I do recognize that the metrics are not in place in the contract to examine performance and to measure it appropriately.

I think the length of the contract was probably too long. Five years is too long for a contract of this nature. I think the metrics can be strengthened so you can measure successful performance by the vendor. Quite frankly, I think this is a vendor that is cooperative and will meet your metrics. I've had numerous meetings, as has Chief Kelley, over the last month with them.

With the indigency program, if adopted by the Commission today, I think it is critical that we not terminate our relationship with MSB because what we need to do is measure the impact of the indigency program that Chief Kelley has laid out, and I think the most sound way to do that is to do it with the existing vendor, and what I would recommend to you is that essentially in the September of 2010 meeting -- you would have 12 months of data at that point in time. Use the 12 months of data and examine
the impact of the indigency program on the collection rate. The vendor has already indicated they will periodically give us feedback as we request it to update the Commission, but take a hard look at the indigency program, which chief Kelly is proposing would be effectively a temporary program being in effect for 12 months, is what I think we agreed to.

MR. KELLEY: Correct.

MR. PLATT: And simultaneously, examine the vendor's performance, that is, MSB's performance, not just looking at their collections on the indigency program but their overall performance. Establish metrics for them as we go forward, and I think you'll find at that point in time that they will meet their metrics, but that's up to them to accomplish.

So my recommendation is that there not be a termination, as was discussed last month; that, in fact, we use them and marry up to move forward on the indigency program that Chief Kelley has proposed.

I think Commissioner Clowe has a copy of a draft motion to adopt an indigency rule -- or indigency program, and I would suggest that that be adopted, and we move forward from there with the vendor for an additional year, then next year in September examine the performance of the contract.
MR. KELLEY: To add to that, the MSB, when they met with us offered -- first of all, they've immediately changed their letterhead. The only thing that refers to DPS is going to be the -- our logo in the upper right-hand corner, just -- and it says in the body that they are collecting this money on behalf of the driver responsibility program. Therefore, it's clearly known that this isn't DPS writing the letter, that they're doing this for us.

Second, they've worked with us to change the nature of the letters that they send out when it comes to collections, to be able to outline -- instead of explaining the program for one full page, it basically will outline, this is the money that you owe. This is how you can pay it, and now they're writing and adding indigency.

If you were to adopt it, that indigency piece would be outlined in that letter to show the amounts, and so that way they could go ahead and pay that money, get in compliance and then move on -- then be a licensed driver with insurance. So that was our goal with the MSB, was to make these changes right now and then be prepared, if you were to continue with them, to implement the indigency program.

CHAIRMAN POLUNSKY: Mr. Platt, if I can
distill this down. What we're talking about doing here is giving MSB one year to justify their existence here?

MR. PLATT: In your words, that's a very effective way of communicating; yes, sir.

COMM. BARTH: Are we planning to give anybody who has these surcharges right now sitting out there amnesty?

MR. PLATT: No.

MR. KELLEY: No, we're not.

COMM. BARTH: So the --

MR. PLATT: Those people that are in that spiral under this program would continue to be in that spiral. There are a couple of reasons that we have chosen to include that, including the fact that people who have complied with it, we have not incentivized -- you know, they've behaved appropriately and paid their surcharges, and these other people have not.

We're trying to incentivize good behavior with the programs, as Chief Kelley referred to, and there is also some constitutional issues that rise in this particular matter in terms of retroactively applying the provisions. We could probably get around those, but, quite frankly, we
didn't think it was sound. We thought it was best to move forward and move proactively on it.

COMM. BARTH: Did we look at any way to incentivize those people in terms of reducing, giving them a chance to pay a reduced amount and then starting, you know, from September 1 -- I mean, I just -- maybe we've cured the problem going forward, but I'm not sure we've cured the current problem.

MR. PLATT: Do you want to address the installment possibilities?

MR. KELLEY: We do have installments plans that we are offering to allow individuals to come into compliance, so that way if they are in a compliance, they can come back to us, and this was strengthened based -- after 1723 that allowed us to do this.

So even if you owe a large amount of money, we can allow -- and you get your surcharges prior to September 1 of '09, under this new plan, that would say, you're allowed to -- under current law, you can come in to get into compliance. As long as you're making your payments, then you're allowed to retain your license, and you can continue going as long as you keep making the payment.

So the payment plan was offered and MSB
was able to implement that to ensure that they were
able to document when these longer payments -- longer
terms of payments were being received.

COMM. BARTH: So the plan was already in
place?

MR. KELLEY: Correct.

COMM. BARTH: So we haven't done
anything different on that end?

MR. KELLEY: That's correct.

MR. PLATT: But I think the piece of it
we're missing is as we go forward with this new plan,
the education piece, I think there are people out
there ignorant of the ability to do the installments,
and as we educate them on our new prospective
implementation program, we can also educate about the
installment opportunities.

COMM. BARTH: I sure would like to look
at something to help the people that are sort of out
there right now, the indigency situation. Okay? I
mean, I just -- we haven't addressed anything -- I
like going forward, but we really haven't addressed
the 11 percent, whatever the number is. Let's take El
Paso. Those people right there, they're still under
the old program, circling around. Maybe they're aware
of the payment or not aware of the payment, not being
able to make the payment.

CHAIRMAN POLUNSKY: Is there legislative intent for us to look at here, as far as amnesty is concerned?

MR. PLATT: Representative Turner, of course, sent a letter to the Commission regarding legislative intent. In my -- my position is that Chapter 15 -- or Article 15 of the legislation that addresses the DRP program in our Sunset bill specifically states that all of this is to be effective 2011, and I think Senator Shapleigh was -- impliedly at least -- indicated that he believed that it was 2011 before -- because of Senator Ogden's negotiations with him -- before we were mandated to take any action.

We've had authority to act on this since the 80th session, but I don't think there's any -- I disagree with Mr. Henson's comment last month, respectfully, that we have a mandate legislatively to act at this point in time. I'm not sure if I hit the answer that you were looking for.

COMM. STEEN: I'm holding Representative Turner's letter. I notice that it's dated April 6, 2009, but that must have been a typo because --

MR. PLATT: It must be a typographical.
I noticed that as well.

COMM. STEEN: Because it shows the director received it August 5th.

MR. PLATT: Correct.

COMM. STEEN: But three different times in the letter he says, "Section 6 of the Sunset bill requires DPS to implement an agency program by September 1, 2009." He says in another place, "Make no mistake, Section 6 of the Sunset bill requires implementation of some sort of an indigency program by September 1, 2009," and then once more, "The Public Safety Commission must" -- in italics -- "create an indigency program by September 1, 2009." So it's a pretty strong letter. What's your reaction to it?

MR. PLATT: Because Article 15 -- he refers to Article -- I believe it's 6 -- and Article 15. It specifically says that the entire segment of Article 15, which includes every section he just referred to there, are not effective till 2011. So I'm not sure -- when I called -- and we checked with the leg. counsel. They said it's a very plain interpretation, and that's my position as well. I respectfully disagree with his opinion on it.

COMM. STEEN: All right. And the proposal that Commissioner Clowe has, tell me again
what we're doing with this motion? I don't know if
you're ready to make the motion.

MR. KELLEY: Well, prospectively, we
would say on those certain charges that we just
discussed; an example, the DWI, you go get treatment
and you pay a one-time payment, then you're allowed to
drive. You're out the DRP surcharge. If you've got a
driving while license invalid, instead of paying out
over the $750, you'll pay, one time, $50, the goal
being to incentivize good driving behavior.

And the way we looked at it, this is an
indigency program, but it's for everybody. It's
basically saying we're looking for good driving
behavior, not for this to be a money-making program.
The idea for us is, as an agency responsible for
traffic and public safety, this needs to be a program
to help us have safe drivers, insured drivers out on
the highways, and by having this high surcharge,
you're creating an economic disincentive for those who
are in the system to get into compliance.

Our goal is to get them into compliance
by giving them a one-time, small surcharge up front to
give them an option in order to get in compliance. So
they're spending money on insurance, spending money on
going a driver's license and getting treatment if
they need to if it's a DWI.

COMM. STEEN: But you're suggesting that we adopt this today and is this --

MR. PLATT: The rule would actually have to be published --

COMM. STEEN: That's what I'm asking.

MR. PLATT: -- which the earliest point would be Monday.

Now, one option would be for the Commission to adopt a rule today and instruct us that we don't have to come back for -- after publication unless there's appropriate queries that would generate a public hearing on it, but it does have to be published for 30 days

So even, though, if you -- Commissioner Clowe, what he's holding is a motion that says as soon as reasonably possible, I believe, or language to that effect -- because we probably cannot meet a September 1 deadline as actually implementing the program with a rule that's been published in the Register and then approved by the Commission.

COMM. STEEN: But you're telling me, as our counsel, that we don't have to meet that September 1st --

MR. PLATT: I don't believe we do. I'm
very -- I think I can very soundly tell you that that September 1 deadline that the Representative refers to is inaccurate in his assessment.

MR. KELLEY: If I may add --

COMM. STEEN: Then I like the idea that -- you know, of the 30 days to get public input. And then maybe we come back at the September meeting -- is that right -- and finally adopt it?

MR. KELLEY: Yes.

COMM. CLOWE: And I would also say that I like the idea of a public hearing which can be conducted during that period, and, you know, we've heard from a Senator, from a member of the House. We've heard from the public, and once this rule is published, a public meeting where members who are interested and public citizens who are interested can come in and give testimony -- would give everyone an opportunity.

MR. PLATT: Yes, sir. And we probably can't meet the September meeting date because we're meeting late -- we're meeting on a Friday, the 21st.

I looked at the -- if Representative Turner's position had been accurate, we could have said, "Well, this is an emergency, and we need to address it on an emergency-rule, but I don't think
that's the case. I don't think we have to, so it
would probably be the October meeting, unless we
happen to have a later September date.

COMM. STEEN: Well, you-all have put a
lot of time and effort into this, and it's somewhat
complex, and so I like the idea of having the time to
really absorb it and make sure we're doing the right
thing --

COMM. CLOWE: And having the public
input.

COMM. STEEN: -- so were not just
pushing through a rule on a rush basis.

MR. KELLEY: And that was our intent.

We knew this would actually be open. We know
Mr. Henson is here. Laura Martin of ACLU has asked,
and we've offered, after we present this today, we
would give that to them so we can get their feedback.
We're open to ideas from all the different interest
groups, all the lawmakers. We're not trying to rush
this, and you asked about the September 1.

Our intent, if this rule is adopted as
we proposed, it would be for any surcharge effective
as of September 1. So the goal was to still try and
meet the intent that -- the interpretation and the
intent that Representative Turner had was he wants a
program effective September 1, so even though we can't have the rule effective on that date, the impact, if it was adopted the way we've proposed it so far, would be anyone, as of September 1, who got a surcharge would fall under this program.

COMM. STEEN: I'm ready to act on the rule if you want to -- do you want to make the motion?

CHAIRMAN POLUNSKY: Well, can I make a comment and also ask you a question?

I tend to agree with Commissioner Barth here with respect to the retroactive issue, and I understand your argument; you know, why reward bad behavior when other people played by the rules or, you know, paid their fines and so on, but the reality is reality, and there are people out there that couldn't -- couldn't make those payments so they're still in that group where, you know, they're in never, neverland, so to speak, and they're not going to come out in all likelihood. So I don't know if we want to ignore the reality of all of that.

MR. PLATT: Certainly during the public comment period, that might be a change that, based on public comment, we could make in the final rule. It would be most likely heard in the October meeting.

COMM. CLOWE: I think if you make a
substantive change to the public's rules you've got to republish.

MR. PLATT: You're correct.

COMM. CLOWE: So you've got another 30 days.

MR. PLATT: You're correct.

COMM. CLOWE: That's just the law so --

MR. PLATT: Right.

COMM. CLOWE: I don't think your response is satisfying the Chairman, unless it's another 30 days that maybe, you know, would satisfy him.

MR. PLATT: I'm sure Chief Kelley -- we can take a look at going back and trying to deal with it retroactively. We will --

CHAIRMAN POLUNSKY: I mean, I guess you could put it into two parts here, too.

MR. PLATT: That's true. You could do that.

COMM. CLOWE: You could make two different motions.

COMM. STEEN: Let's go forward with this, and then at the September meeting, they could come back and report to us on the -- in more detail on the retroactive part of it.
COMM. CLOWE: Well, you could actually move and adopt a motion that they would be separate and apart, dealing with those people who are in the program with some action that they could find themselves able to avail of, but we just haven't discussed that right at this point.

MR. PLATT: That is correct.

COMM. CLOWE: You've just got some general direction from two Commissioners.

MR. PLATT: That's correct, but we could bifurcate it and basically implement one phase of this to start giving relief immediately in September to one group of individuals, and then move forward with a presentation on a program that retroactively -- and we would need to get with MSB to look at how many people might fall in that category.

COMM. CLOWE: I'll tell you what we could do. We could make the motion, if the Commission determined to adopt it, on the program that Chief Kelley has proposed, and then there could be another motion that would make the same provisions applicable to those people who are already in default, and that could be dealt with as a separate proposal that's published separately. You could moderate that in any way during the 30 days it's published and comments
coming in, and you wouldn't affect going forward with the issue that we started talking about.

MR. PLATT: The first program, if published and accepted, would go forward. The other could still be debated if an issue arose.

COMM. CLOWE: Now, that would satisfy, I think, what you heard from two Commissioners. I'm not sure how I feel about that, and I'm not really sure that I want to cast out your argument. I think you have some validity there, but I want time to think about that. I don't want to decision-make right now.

COMM. STEEN: Then I think, then, we are talking about maybe going forward with this motion today, and they could come back and report to us and maybe make a suggestion on this other matter at the September meeting.

COMM. CLOWE: No. What I'm suggesting is two motions. One dealing --

CHAIRMAN POLUNSKY: Today? Today?

COMM. CLOWE: Yes. One dealing with those people that are not in the program and another proposing the same program for those people who are in the program.

MR. KELLEY: Yes, sir.

COMM. STEEN: Are you comfortable with
that, Chief Kelley?

MR. KELLEY: Yes, sir, and I think that we should not delay. If that's where we want to go, is to go back and assist individuals prior to September 1, let us have that as an option.

COMM. CLOWE: And that gives us two opportunities to take --

MR. KELLEY: If not, if we come back next month, it delays it one more month and --

COMM. STEEN: Well, then the whole issue is retro -- the retroactive issue. Right? That's what we're going to be grappling with?

MR. PLATT: That's what two Commissioners have expressed a concern on, yes.

CHAIRMAN POLUNSKY: I think it's something that should be discussed --

MR. PLATT: Yes, sir.

CHAIRMAN POLUNSKY: -- should be looked at. I'm not totally committed to that either, but I don't feel they should be ignored. I think it should be, you know, put on the table and let's, you know, examine it.

COMM. CLOWE: And I would like to hear from people who are interested on that.

MR. KELLEY: Very much so.
COMM. CLOWE: I think there are --

MR. KELLEY: This gives everyone an option to look at the two ideas and see -- and you get the decision if you want to adopt one versus the other or both, and then it gives us more options, but it gives the citizens a chance to come give us feedback on all the options instead of just one.

COMM. CLOWE: And members of the legislature. You know, we keep asking for legislative intent and Senator Shapleigh gave us some very clear insight this morning.

MR. KELLEY: Very clear.

CHAIRMAN POLUNSKY: I mentioned I had a comment. I also have a question.

MR. KELLEY: Yes, sir.

CHAIRMAN POLUNSKY: My question is basically this. We're making all sorts of changes here --

MR. KELLEY: Yes, sir.

CHAIRMAN POLUNSKY: -- as far as fees and this and that. What is the fiscal impact that we should be expecting if we were to adopt -- let's eliminate the retroactive possibility right now, but, you know, prospectively.

MR. KELLEY: If we were to move
prospectively, looking at this from an economics perspective, we've got a maximum 38 percent compliance rate. If you were to lower the fees, and then that -- in effect, 38 percent are paying, it would all depend on how many of the remaining 62 percent would come into compliance.

Theoretically, it should, at the very least, be a wash because you're lowering the price and you're getting a higher amount of money coming in because you've lowered the price, but we have no metrics to be able to -- not even LBB has produced a way to measure that. So that way we could plug in and say, "If we lower it to this amount, then we should expect X amount of income."

So we've had to go under assumptions that approximately 20 percent of persons that were already in the program are now going to pay less and that we're going to have an increase and up to 30 percent in compliance, just as a guess at this point, to try and show what the potential might be, but we really have no way of knowing until we implement it.

MR. PLATT: One of the provisions of a rule is that you have a preamble and you set out the fiscal cost. We've wrestled with that rather powerfully this week, because it's an unknown, to be
COMM. BARTH: Let me ask you an administrative question. Okay? So we go and adopt this in 30 days. Do we have the capacity to roll this out, so that we don't totally confuse the customer, or are we just going to start sending out letters and it's going to be, "Who's on first" here?

MR. KELLEY: They're already confused. Nobody knows about this program. The legislature never authorized dollars to go advertise it. We went and asked in 2005. We were told, "No, don't go advertise," by the Senate finance committee. So they're already confused as it is. So MSB has offered to help us send out more letters and information to assist. We've offered and we've got it at our website, with Tela Mange, our public -- the media relations chief. She's helped us put it on our website.

The reality is DRP is not well known, and you saw the soldier when he said, "I didn't even know this program existed until I got in it." So I don't think it's going to cause any more confusion because individuals don't even know about it now, that the program really exists. On average, most citizens have no clue this program even exists.
COMM. BARTH: Well, there must be 62 percent of the people out there who have received some letter.

MR. KELLEY: Sure.

COMM. BARTH: So they must know it exists. So, now, my question goes back to we then revamp this program. Are we going to roll it out correctly or is it just going to be --

MR. KELLEY: Oh, we will roll it out correctly, only because we have a vendor who can immediately make the changes that are effective and make sure that we track those changes because they're doing the work for us. So we can do this, and with the system we do have now, in our system, the computer system, we can do that as well.

COMM. BARTH: Are you sure?

MR. KELLEY: I've been assured that the changes can be made under the current system we're operating.

COMM. BARTH: If I were sitting there, I would use the line, "to the best of my knowledge."

MR. KELLEY: To the best of my knowledge.

COMM. BARTH: Because I'm just -- I'm very worried here that this is going to be -- it's not
MR. KELLEY: When that program was rolled out September 1 of 2003, we actually did not start collecting the surcharges until over one year later because we did not have the infrastructure in place to even start collecting it. We didn't have a vendor. We didn't have -- we hadn't modeled it.

So, if anything, were there to be a problem with the implementation, we don't have to roll it out immediately. We could take the time to make sure it's done right, advertise, but make it effective back to a certain date. And if you're going to make it retroactive to everybody, then we just make sure that the system is ready to roll before we go.

Then we advertise. Then we send notices and let everybody know, "Hey, here is your chance to get out of the program," either those who are affected after 9/1 or if you want to go all the way back to all the program.

COMM. BARTH: I'm not sure where I stand on retroactive. I just think it's -- I agree with the Chairman. It's something we have to look at a little
bit -- I question constitutionality of your comment, only because I read all the time about these amnesty programs out there, whether it's the city of Houston on fines or whatever. So I'm just trying to, you know, make sure we understand all the ramifications, whether for or against the amnesty. Let's just make sure.

MR. PLATT: And when you mention the roll-out, let me -- there's two parts to roll-out; the DPS piece, and the MSB piece, and quite frankly, I have a great deal of confidence that MSB can -- they're a private corporation that can and is motivated to implement this and roll it out appropriately.

And that's one of the reasons I recommended to you that you not terminate the agreement. We need their piece to fulfill this program in a successful manner.

Commissioner Steen, I did want to clarify for you -- you had questions regarding Representative Turner's letter, Article 15 of the Sunset legislation, driver responsibility program, and when you move to Article 15, Section 15.008, it says, "This article takes effect September 1, 2011." Four paragraphs above that is the language he quotes about,
"we shall adopt September 1." So it's very plain to me. The last sentence in the article says this whole article is not effective till 2011.

CHAIRMAN POLUNSKY: Okay. Well -- I'm sorry?

COMM. STEEN: Chairman, if the -- if we've got an issue with the retroactive part, that it might be unconstitutional, don't you think the better thing to do would be to let them look at that between now and the next meeting and bring that to us like they brought the rule today, rather than trying to do both of them today?

CHAIRMAN POLUNSKY: I think you can do it either way. I mean, I think they would have time between --

COMM. STEEN: I'm reluctant to pass a rule and then --

MR. PLATT: We can do that very rapidly. When Commissioner Barth refers to Houston, we're talking about a Texas constitutional provision that we can research and address pretty quickly for you.

MR. KELLEY: I would still recommend that we -- that you authorize publishing of both of these proposed rules. If we find that there's a problem constitutionally, even if the citizens want to
come say that's what they want to see happen, then
maybe this is a chance for us to take the information
that's presented and give it to the legislature and
see if there's something they can do to fix it. At
the very least, give the citizens a chance to speak
out on it.

COMM. STEEN: I just -- I guess I'm
reluctant to vote for something that may turn out to
be unconstitutional or --

MR. KELLEY: You're not actually voting
for it. You're voting for the citizens to get a
chance to come comment.

CHAIRMAN POLUNSKY: Yeah. I mean, we're
just -- this is Step 1 --

MR. KELLEY: You're not adopting a rule.

CHAIRMAN POLUNSKY: -- but we're not
adopting a rule here.

COMM. STEEN: I would rather find out in
advance, get -- have the benefit of counsel in advance
on something like that, rather than pass it and then
find out after we've passed it that there's a problem
with it from a legal point, but that's my point.

CHAIRMAN POLUNSKY: But we're not
passing it.

MR. KELLEY: We're not passing anything.
This is just saying we can publish a rule in the Texas Register. This will allow the individuals to come to a public hearing here at DPS to tell us what they think about it. Should they comment, and no matter how their feelings, we find out it's unconstitutional, we can't do it, then you don't have to act on the rule. We have to come back and say, "This is the public comment we got, but also, it's unconstitutional. So, therefore, we recommend we not adopt the rule."

COMM. STEEN: I understand that. I just -- I have a different point of view about that.

MR. KELLEY: My concern is you -- if we do find that it's constitutional and the citizens -- and we do get feedback and the Commissioners decide they want the option to go ahead and adopt this, if you don't give us authority today to publish it, that delays it one more month.

COMM. BARTH: Can I ask you a question? What you want to do is -- what you're requesting -- because I think there's a little confusion here -- is to approve the program that you put forward -- okay -- with a 30-day rule commentary, maybe have a hearing in there, if that's the case, with respect to going forward in an indigency program. And then on the
other side is to look at the retroactive --

MR. KELLEY: I believe we're actually looking at both of them at the same time.

MR. PLATT: Here is what I would suggest, Commissioner. We have --

COMM. BARTH: We have nothing out there with respect to a proposal on retroactive.

MR. KELLEY: That's correct.

COMM. BARTH: So how can we be looking at both of them at the same time?

MR. KELLEY: Because you're instructing us to publish a rule that does that.

COMM. BARTH: I'm not asking you to publish a rule at all. Okay? I'm asking you to have someone look at it.

MR. KELLEY: Well, that's what -- you're instructing us to publish in the Texas Register that we intend to look at that, that you intend to adopt this rule, and then the public can make comment on that. And then we can come back, and based on the public comment, we would recommend to you, and you would you have the option to adopt it at the next Commission meeting after that -- have the ability to adopt that rule.

COMM. BARTH: I know this sounds like
"Who's on first," but on the retroactive, you know,
I'm just looking at, "Hey, can we look at that."
Okay? Publishing and not publishing it -- I'm not
talking about publishing that right now. I would like
to see, myself, publish what you're proposing. The
retroactive side, I don't know what's on the table to
publish, except that we're asking you to look at it.
Is that -- why do we need to publish that?

MR. KELLEY: Well, I thought we were
going to look at a rule that you could adopt to go
back retroactively as well as the rule that you could
go --

COMM. CLOWE: Let me help you with that.
What I suggested was that there be a second motion
that would lay out the same provisions for those
people who are already in the program as a starting
point.

COMM. BARTH: Okay. I misunderstood
you.

COMM. CLOWE: Those are known criteria
that the Chief has thrown up on the screen and they're
in the book, and my motion will cover that program to
be effective September the 1st, 2010.

COMM. BARTH: So retroactively, to
clarify, we would go back and reprogram the computer
to recalculate the fees based on -- okay. I
misunderstood.

COMM. CLOWE: That was the suggestion
that I made for consideration to those people that you
expressed concern about --

CHAIRMAN POLUNSKY: If we decide to do
that.

COMM. CLOWE: -- if we decide to do
that. The Chairman said he was sympathetic to your
concern. I said I didn't know how I felt about it.
Commissioner Steen, I don't think, has said anything
about that.

MR. PLATT: I'm sorry. If you choose to
have a second motion, you could move to authorize the
publication retroactively if legally acceptable, and
then we could make a determination of whether or not
it meets the constitutional standards and not publish
if it didn't so --

COMM. STEEN: That satisfies me.

COMM. BARTH: That's fine with me.

COMM. STEEN: I just didn't want to
publish a rule that makes us look like we don't know
what we're doing and then we say, "Oh, by the way, we
published this and got everybody stirred up, but
it's -- we now know it's unconstitutional, so never
MR. PLATT: Okay.

CHAIRMAN POLUNSKY: Okay. Do you have motions?

COMM. CLOWE: Mr. Chairman, I would like to make the following motion: The provisions of Sunset legislation of DPS during the '81st legislative session encouraged DPS to adopt an indigency program for the driver responsibility program.

After hearing from persons such as, Mr. Scott Henson, who has petitioned the Commission to adopt an indigency program, hearing from the department's driver's license chief, program manager for the driver responsibility program, general counsel, and specifically hearing from honorable members of the legislature, it appears sound and beneficial to the citizens of Texas to adopt a rule authorizing an indigency program.

The program presented to the Commission by Chief Kelley appears to create an incentive for good behavior to include providing a reasonable means for citizens with driving issues to pay appropriated as a consequence of their driving practices.

But it also creates an incentive for assuring that Texas drivers maintain insurance and a
driver's license. Both goals are important.

I formally move the rule and program proposed by Chief Kelley be approved for publication in the Texas Register, that the legally required preamble and efforts to assess fiscal costs be attached to the proposed rule and that the Commission consider formal adoption of the rule after publication.

I also make a part of this motion that a public hearing be held during that period. I also formally move that the rule go into effect at the earliest possible date after publication and formal approval.

I want to thank Mr. Henson for his petition filed with the department on August 5, 2009. His actions assisted in sparking the discussion, and hopefully, the action of the Commission today. However, I do believe that the department's proposed program is one that should be adopted.

So I would respectfully ask that as a part of this motion, the Commission note that Mr. Henson's petition is denied. I would ask our general counsel to notify Mr. Henson, under Government Code 2001.021 of the denial in writing, and that the reason for the denial to be described, to include, but
not limited to, the fact that the Commission is
adopting a different rule it believes addresses the
indigency concerns that does not run the risk of
creating a retroactive violation of the Texas
Constitution of any contract supporting the driver
responsibility program, and in comparing the
proposals, found Chief Kelley's proposal to be
appropriate means -- the appropriate means of
initially approaching this issue. That is the motion.

CHAIRMAN POLUNSKY: There's a motion
made by Commissioner Clowe. Is there a second?

COMM. STEEN: Second.

CHAIRMAN POLUNSKY: Seconded by
Commissioner Steen. Discussion?

(No response)

CHAIRMAN POLUNSKY: There is no
discussion. All in favor please say "aye."

(All those in favor of the motion so
responded.)

CHAIRMAN POLUNSKY: Any against, "no."

(No response)

CHAIRMAN POLUNSKY: Motion passes.

You have a second motion here?

COMM. CLOWE: Mr. Chairman, I formally
move the rule and program proposed by Chief Kelley be
approved for publication in the Texas Register, that
the legally required preamble and efforts to assess
fiscal costs be attached to the rule proposal and that
the Commission consider formal adoption of the rule
after publication.

Prior to publication, the staff shall
determine if a rule that is applicable to those
individuals already in the program, that will be a
retroactive action is legal. And this motion applies
to those people who are already in the program at this
time and are in arrears or in default in regard to
payments.

I also formally move that the rule go
into effect at the earliest possible date after
publication and formal approval and that a public
hearing be held during the period of publication.

I'll pause at this time to ask staff if
any verbiage should be added to that motion before I
conclude.

MR. PLATT: I think that's satisfactory.

COMM. CLOWE: That is the motion,

Mr. Chairman.

CHAIRMAN POLUNSKY: Thank you,

Commissioner Clowe. There's a motion that has been
made by Commissioner Clowe. Is there a second to his
motion?

COMM. BARTH: Second.

CHAIRMAN POLUNSKY: Seconded by Commissioner Barth. Is there discussion on the motion?

COMM. STEEN: Mr. Platt, just to state again what you intend to do with this motion if it passes.

MR. PLATT: I will examine it and determine if it is legally acceptable and notify the Commission, so that the motion is considered to be authorized for publication only if it's legally acceptable.

COMM. STEEN: Thank you.

MR. PLATT: That's as to the second motion.

CHAIRMAN POLUNSKY: Okay. There being no further discussion, all in favor please say "aye."

(All those in favor of the motion so responded.)

CHAIRMAN POLUNSKY: Any against, "no."

(No response)

CHAIRMAN POLUNSKY: Motion passes.

Now, I understand quite well that it's very difficult, if not impossible, for you-all to
determine what the fiscal impact would be either -- on
either side of this, but do everything you can --

    MR. KELLEY: Yes, sir.

    CHAIRMAN POLUNSKY: -- between now and
when we take this up next so that we have a -- as good
an idea as possible as to what the impact would be
fiscally, because it would be, certainly, important to
me in voting on any rules that are adopted or not
adopted going forward here.

    MR. KELLEY: Yes, sir.

    COMM. CLOWE: And by way of informing
the public about these meetings, I know it's going to
be published in the Texas Register, but the public
doesn't read that generally.

    I think it would be well to put up
notices in our driver license offices, that there will
be a public meeting in Austin relative to these
proposed rules, and you should get with our public
relations office to see what other efforts are
reasonable to see what can be done to get this out,
and I think it's very important to notify members of
the legislature and the leadership of this action
today, and it may very well be that they would want to
have some members of staff there and perhaps want them
to give testimony as well.
MR. KELLEY: Yes, sir.

COMM. CLOWE: And at that public hearing, up to two Commissioners can be there. I'm not sure that more than two couldn't be there, as long as they don't participate or enter into the hearing.

COMM. BARTH: If you make it a public meeting, why only two?

CHAIRMAN POLUNSKY: Yeah. Why wouldn't --

MR. PLATT: There's a difference between a public hearing on a rule in which we actually -- typically general counsel would preside over and two Commissioners can be present versus the public meeting of the Commission. I think that's what you're referring to, is it not?

COMM. CLOWE: Yeah, I was. But now I've had another thought. If a Commissioner is at that public hearing, and, you know, that's -- I would sort of like to be there to listen to what people have to say, but does that bias me when it comes to voting on the rule, having been exposed to that?

CHAIRMAN POLUNSKY: Isn't that the whole reason you have a public hearing?

MR. PLATT: We would give you --

COMM. CLOWE: I would like to hear that
answer from the general counsel.

    MR. PLATT: I think we would be giving
you the feedback from the meeting anyway, so I think
it's probably appropriate to be there.

    COMM. CLOWE: It's okay?

    MR. PLATT: If it's not, I will notify
you between now and the time of that hearing with
certainty.

    COMM. CLOWE: Okay. Good.

    CHAIRMAN POLUNSKY: Well, let me give
you the answer. The answer is that we will have a
public hearing, and it will be published in such a way
that all the Commissioners will be present. So that's
the answer.

    COMM. CLOWE: Will be present or can be
present?

    CHAIRMAN POLUNSKY: Can be, will be; you
know, if you're in town, come on by, but each
Commissioner will be present for that -- will be able
to attend that meeting, because that is why you have a
public hearing, is for the Commissioners to be able to
hear the public testimony --

    MR. PLATT: Right.

    CHAIRMAN POLUNSKY: -- as to what this
is all about, and certainly, yes, you probably will
come out of it biased one way or another because you're going to be receiving that information, and that's why you're having the public hearing. Are you clear on that?

MR. PLATT: We're clear.

MR. KELLEY: Yes, sir.

CHAIRMAN POLUNSKY: So what do we do on MSB now?

MR. PLATT: My recommendation is that you review that -- the MSB contract in September 2011 after we implement this program.

CHAIRMAN POLUNSKY: All right. So, then, there's no action that needs to be taken at this point?

MR. PLATT: I don't believe it's necessary at this point in time.

COMM. BARTH: Wait a second. Are you arbitrarily moving it from five years to one year?

MR. PLATT: No, that's not the case. What I'm suggesting is that you just -- I'm recommending that you review -- you have a termination for convenience clause that you had considered using that authority, that you review the contract and performance metrics in September of 2011, and then if you want to invoke that provision, you could.
I'm not suggesting you go year-to-year at this point in time because we -- excuse me -- 2010.

I'm sorry.

COMM. BARTH: I would prefer to have a one-year contract, as opposed to a termination on convenience.

MR. PLATT: Well, are you talking about September of 2010 or now?

COMM. BARTH: September of 2010.

MR. PLATT: Well, that certainly can be negotiated. They've actually offered to do that in September of 2010 if there's a performance issue.

COMM. CLOWE: Is that on the agenda?

MR. PLATT: Well, the MSB contract is.

COMM. CLOWE: What item is that, please?

MR. PLATT: If you look at C, Ongoing Business, No. VII.C, Vendor Management HQ-08-37, contract extension.

COMM. CLOWE: Okay.

CHAIRMAN POLUNSKY: Okay. So --

COMM. BARTH: I just think we ought to have a one-year contract as opposed to a termination on convenience for the five years it's out there, or whatever. They've already offered to do it. I think we should do it.
MR. PLATT: They've offered to do that in -- to consider doing that next -- this time next year if their metrics -- if you're dissatisfied with it.

COMM. BARTH: They've offered to do what?

MR. PLATT: They've offered to go to a year-to-year renewal next year if we review this contract and it's determined to be such that you don't think performance is adequate. That's why I was asking earlier, are you talking about reviewing -- going to year-to-year now or year-to-year later.

COMM. BARTH: I'm talking about terminating this contract a year from now -- having the ability, not on cancellation for convenience but termination for --

MR. PLATT: We can negotiate with them to make it a one-year term at this point in time.

COMM. BARTH: That's what I would propose. I mean, I would be fine if we put an option for additional years to help facilitate if we are happy with them and not have a new procurement situation.

MR. PLATT: If that's the guidance of the Commission, we would certainly sit down and
negotiate that.

COMM. BARTH: That's just my vote.

COMM. CLOWE: I don't see any reason to vote to terminate the contract today in one year.

COMM. BARTH: I'm just saying it's a one-year contract with renewals, as opposed to a five-year contract where they --

COMM. CLOWE: I'm sorry. I can't hear you.

COMM. BARTH: I'm saying instead of a five-year contract out there, it's a one-year contract ending in 2010 with an option for the other four years or something.

COMM. CLOWE: Okay. Well, that was different than what I thought I heard you say. I thought I heard you say you wanted to terminate it --

COMM. BARTH: No, sir.

COMM. CLOWE: -- in September of 2010.

COMM. BARTH: I just want to move it to a one-year as opposed to a five-year with options thereafter.

COMM. CLOWE: Is that the offer they made?

MR. PLATT: No. Their offer was that -- watch their performance this next year, and then
examine -- going to year-to-year renewal at that point in time if the Commission was not comfortable.

    COMM. CLOWE: Which is less giving than what Commissioner Barth has just articulated. She said a four-year renewal, didn't she?

    COMM. BARTH: No, I said --

    MR. PLATT: She said year-to-year.

    COMM. BARTH: -- year-to-year renewal.

    COMM. CLOWE: Okay. So you're both saying the same thing? I don't have any objection to that.

    COMM. STEEN: I'm ready to move on.

    CHAIRMAN POLUNSKY: Well, I mean, do you have a position on this?

    COMM. STEEN: I think I'm comfortable with the recommendation, with all due respect to Commissioner Barth, that our general counsel is making on it about looking at it in a year.

    COMM. CLOWE: Well, I think that's what she is proposing in her discussion.

    MR. PLATT: She's proposing that we negotiate with them for it to be a one -- that basically the contract terms be changed, so it's a one-year contract from this date -- or not this date, but this month forward.
COMM. BARTH: With an option for renewal based on --

MR. PLATT: With an option for renewal.

And my recommendation had been that we simply revisit the contract next year.

COMM. BARTH: And then terminate on convenience if we're not --

MR. PLATT: Right.

COMM. STEEN: I would say if you -- go ahead and make a motion if you want to do that.

COMM. BARTH: Somehow put that in a motion that I would like to see a one-year contract with however many -- was it three more -- four more years, one-year options?

MR. PLATT: Actually, we have five years from the end of this month.

COMM. BARTH: With four options going forward --

MR. PLATT: Okay.

COMM. BARTH: -- four one-year options.

MR. PLATT: So what I hear you saying is that, Commissioner Barth, you're moving that general counsel be instructed to -- and the department be instructed to negotiate with MSB to create a one-year -- to try to negotiate a one-year agreement
that would be effective -- I believe our contract renewal date is, like, the 28th of this month, so whatever that date would be, and it would be a one-year renewal from this August, whenever that date is, through next year and with four one-year renewals potentially available after that?

COMM. BARTH: That's right.

CHAIRMAN POLUNSKY: Are you sure you don't want to wait and see what comes out of these public hearings and where we end up with all of this?

COMM. BARTH: I would be happy to wait.

CHAIRMAN POLUNSKY: Well, I mean, just put it out --

COMM. BARTH: No, no, no. That's a very good suggestion. I would be more than happy to wait. So I'll pull my motion.

COMM. CLOWE: How would you do that?

MR. PLATT: Just leave it in tact as it is.

CHAIRMAN POLUNSKY: Leave it in tact? I mean, we can terminate at any point. Right?

MR. PLATT: That's correct.

CHAIRMAN POLUNSKY: So, I mean, it would be 30 days later maybe than today, but we could still do it after, you know, we decide which way we're going
in the larger picture.

COMM. CLOWE: That makes sense.

COMM. BARTH: Fine with me.

CHAIRMAN POLUNSKY: All right. Well, then, I think that's the sense of the Commission as of this moment.

MR. PLATT: Thank you very much.

CHAIRMAN POLUNSKY: All right. Thank you.

COMM. STEEN: Mr. Chairman, before -- I just want to compliment our general counsel and, Chief, you. I know you-all have lots of things you're working on, and I know you had to put things aside and devoted a tremendous amount of time to this, and it's very impressive, what you came up with in the time you had to work on this thing. So thank you very much.

MR. PLATT: Thank you. Chief Kelley's office has been a pleasure to work with.

MR. KELLEY: Thank you.

COMM. STEEN: Mr. Chairman, I do have something. It's 5:15 on Friday, and I'm wondering if we could look at the remaining items on the agenda and consider maybe deferring some of the things or -- I'm just worried about our time at this point.

We've got lots of people out here that
probably need to get places, and I know we've got some important items, but could we spend a few minutes and look at what we have and maybe defer some of the things?

CHAIRMAN POLUNSKY: I'm sure we can defer reports and such. Let's -- I think we can go through this relatively quickly, but, you know, we'll pull out things if people can't stay.

COMM. STEEN: All right. Thank you.

CHAIRMAN POLUNSKY: With respect to the discussion and possible action regarding security measures for the department, we really don't need to take any action on that. Is that correct?

MS. FULMER: Correct.

CHAIRMAN POLUNSKY: Discussion and possible action to include procurement of a project management contract for the purpose of implementing organizational changes and possible next steps in planning regarding the development and administration of the project management plan and project management office for reorganization of the department, that would be Commissioner Clowe.

COMM. CLOWE: I think Director McCraw would you have a comment on that first.

COL. McCRAW: Yes, sir. Well, first, I
certainly believe in the discipline of project management and project portfolio management and certainly with -- it's absolutely critical in IT -- in complex IT and technology projects.

I think that when we talk about the organizational chart a little later that we have that embedded in it to allow for it. However, we also have a CIO, Brad Rable, that is high skilled in project managements, and we can always -- in terms of contract, based on what we're trying to do in terms of the transformation plan at any given time with a -- with project manager. It's not unlike we've done with Deloitte for driver's license.

So I believe in the skill, but I also believe, Commissioners, and recommend to you, that as part of a boxed tied to the office that the project management in this basic form is leadership, and with the leadership team I'll recommend to you that we can do that and outsource as much as needed.

COMM. CLOWE: Commissioners, I've been a proponent of the office of project manager in a workshop from the very beginning of receiving the Deloitte report, but based on what I've seen since Director McCraw has come on the scene, I'm changing my recommendation to the Commission.
He has reached out, through a series of meetings. He has asked for input. He has -- I've attended one of the staff meetings where he's very interactive, and my sense is that we're getting the kind of input, and it is being considered and used in his planning as he goes forward. And, frankly, at this point in time, I think what he's doing satisfies the goals and desires that I had.

So I would suggest to the Commission that his implementation through, I think, a chief of staff of this effort under a different name -- I can't recall what it is right now -- will satisfy our needs in that area, and a workshop is -- frankly, it's ongoing right now, and I'm very satisfied with the level of communication that I see he and Colonel Beckworth taking from the employees of this agency.

So I'm not recommending we go forward in any formal way.

COMM. STEEN: I concur with the Commissioner about that.

CHAIRMAN POLUNSKY: I do, too.

COMM. BARTH: Okay.

CHAIRMAN POLUNSKY: Okay. A vote of confidence for you.

COL. McCRAW: Thank you.
CHAIRMAN POLUNSKY: Thank you for your work on that --

COMM. CLOWE: Certainly.

CHAIRMAN POLUNSKY: -- until now.

Discussion and possible action regarding department organizational structure. That would also be Commissioner Clowe and Colonel McCraw.

COL. McCRAW: If we can go to the regional chart, with your permission, Chairman, and Commission, I'll start with the regional boundaries.

One of the key issues by the Sunset Commission and certainly the Deloitte study identified the number of different regions that we've had -- dozens of regions across different organizations or services in the department, and what we're recommending to you here now is six regions across the state.

And the differences would be, first, in regional headquarters, El Paso -- not because that's where I'm from, but El Paso, based on threat, population and where we're going as an organization needs to be a regional headquarters and what we're recommending.

The other change in San Antonio. It's currently not a regional headquarters, would become a
regional headquarters. Waco would no longer be a regional headquarters and would remain -- would convert to a district within the regional headquarters, and Corpus Christi would no longer be a regional headquarters.

There would be no capitol region as well. That would fold into a security program within the counter-terrorism and intelligence division that I can talk about in a little bit here.

The reason for this breakdown -- it is along, you'll notice on the right side, the council of governments. The 80th legislature established or set forth -- required that the Department of Public Safety align its disaster districts to coincide with the council of governments. And the reason for that is the state had adopted regional catastrophic plans based on cost. So that's where we have our coordination, and every -- all 24 COGs throughout the state have a regional catastrophic plan.

Obviously the Department of Public Safety plays a critical role in anything that happens in a disaster management scenario, from tornadoes to terrorism, certainly hurricanes. And it's important that we provide a leadership role into that particular area, so that's why we're recommending this new
construct here.

If you look at it, for example -- or we'll go through each. Whether it's Region 3 -- certainly there's a border aspect of it, and in Region 3, it encompasses, you know, several COGs. In fact, each -- as it turns out, what we're recommending, there's four COGs per region. Now, obviously, there's a trade-off here in terms of span and control.

The Lubbock region, they're going to need to get around a lot. They've got a lot of territory to cover, but less population. And certainly in the Houston region, a greater population but less territory to cover. So not all regions are created equal, but it does line up with the regional catastrophic plans, and it does -- for some -- based upon some of our intelligence briefs, we're way forward, whether it relates to transnational gangs or border security, we think those are our most critical areas to locate regional headquarters and also to align, whether it's the 35 corridor or having two regional commanders cover the border.

If we can go to the organizational chart, please, obviously the charge, you know, from the Commission from day one has been something that Commissioner Clowe and the Commission has been working
on is the Department of Public Safety moving from a vertically structured organization and flattening that structure to more matrix management, adopting a unified regional approach.

And what I'm presenting today has been based upon feedback that we've been able to receive across the organization, and if you'll allow me, I'll start at the top of the Public Safety Commission.

Before I talk about that, I was notified yesterday that it's the intention, or that if it hasn't happened today it will happen Monday, that the Office of Homeland Security and the Governor's office will be moved to the Department of Public Safety, that I will become also the director of the Office of Homeland Security. So with that, there's --

COMM. STEEN: Colonel, how is that done?

How is that accomplished?

COL. McCRAW: By the chief of staff writing a letter and an interagency agreement to move those existing individuals to the Department of Public Safety so --

COMM. STEEN: And how many individuals?

COL. McCRAW: That'll be five, total.

COMM. STEEN: Thank you.

COMM. CLOWE: Sorry. I beg your pardon.
I missed your question and the answer.

COL. McCRAW: Yes, sir, I was notified -- it was -- the final decision was made yesterday, and we should receive the letter either today or Monday from the chief of staff from the Governor's office that the Office of Homeland Security and the Governor's office is being transferred to the Texas Department of Public Safety. The Texas Department of Public Safety will assume responsibility for the homeland security functions throughout the state.

COMM. CLOWE: Thank you.

COL. McCRAW: I'm recommending a chief of staff position, which currently doesn't exist at the Department of Public Safety, because of the scope and magnitude of the functions and responsibilities of the department, and within that embedding, as noted at the top, strategic transformation planning and innovation, which would also serve from a program management standpoint; government relations, public information and media and the detail -- the Governor's protective detail.

On the other side, the general counsel, obviously is a link and reports to the Public Safety Commission. We have had the EEO office, but we have
not had that position filled for, what, two years now?

COL. BECKWORTH: Yes.

COL. McCRAW: For over two years. I've named -- Rhonda Flemming, a major in driver's license has moved into that position. She's now our EEO officer. Kevin Casey, who currently serves as the employee relations -- what I'm recommending is the creation of an office of dispute resolution, and what is now referred to as employee relations, he would serve in that particular capacity.

As we go down the chart, the deputy director of law enforcement would be -- in fact, perhaps my best personal choice for that would be Colonel Lamar Beckworth. Obviously he's a consummate leader and professional, and these are core competencies of him, and even though he moves into that capacity, frankly, I'm going to still have to use him, from a deputy director standpoint, to address the entire spectrum of the organization, just based on his institutional knowledge and core competencies in those things. I'm going to need him to do a lot of other things as well.

It shows a direct report of the CIO, Brad Rable, who has already been selected for that position. I'd recommend that it be referred to as
assistant director -- rise to an assistant director position, and I think it's vitally important that Brad Rable report directly to me because his core competencies can be used across the entire organization. As I pointed out earlier, he also has the skillset of -- project management skillset. He's already -- I've been able to use Brad Rable, whether it's in driver's license, whether it's in concealed handgun or even over on the other side in terms of the enforcement piece.

What I'm recommending is the creation of assistant director position for emergency management. If you agree to that, I recommend that Jack Colley be that assistant director. I'm also elevating the chief position in the Texas Rangers to an assistant director. I recommend that be Tony Leal, the current chief of the Texas Rangers.

You'll note a direct report on the line of the Texas Rangers. If you'll follow that through, that's a direct report to me. It's required by statute. You'll notice a dotted line over to the deputy director for law enforcement. Obviously there will be coordination in terms of all things that we're doing on the law enforcement side. And, frankly, that coordination already exists because of the excellent...
relationships that I'm very proud that our law
enforcement assistant directors already possess.

    Again, if you agree to the elevation in
terms of CLE to an assistant director position, it
would be -- criminal investigations would be the
title. The assistant director would be Tom Ruocco,
and David Baker would assume the role as assistant
director over the Texas Highway Patrol. He currently
serves at that chief position.

    The far left box, as you're looking at
the chart, would be a new division within the Texas
Department of Public Safety. It would be the
intelligence and counter-terrorism division and would
create an office of intelligence underneath it. It
would have a counter-terrorism program. It would
assume the responsibility of the Fusion Center.

    It would also have -- take over security
programs. And I say "security programs," because that
will include the capitol. That will include the
mansion. That will include the DPS complex, but it
will also include all the facilities that the
Department of Public Safety has. Security doesn't
stop in one area. It's a part of a program and --
within this area.

    The ability to do threat and risk
vulnerability assessments is key to any type of security program, so it would be important -- vitally important to staff this position accordingly. I would like to place in that, with the consent and advice of the Commission, Fred Burton. He's in the private sector right now and has a core of competency in all of the things that I'm looking for in that position.

If we move back over to the left side of the -- right side of the chart, I'm recommending that we create an assistant director position in the law enforcement support division, and this would involve moving crime records, also the forensics, which is vitally important, field -- the crime laboratory piece, and clearly -- and also public safety communications, which includes radio interoperability into this division.

Traditionally, the laboratory has been under the criminal law enforcement side, and obviously it's something that supports not just criminal law enforcement, Texas Rangers, highway patrol, but, really, the laboratory -- crime laboratory system supports all of law enforcement in the state of Texas. So it moves it out of a law enforcement chain of command in that regard.

The assistant director of finance, that
position has been advertised. We're at the point right now that Korn Ferry is going to be enlisted to help in the assistance of locating whoever that person is if you agree that this assistant director position should, in fact, be in place.

I would recommend also an assistant director position for administration -- it rise to that level. If you agree, Valerie Fulmer would be the assistant director.

And on the last end of the chart, I have here an assistant director position for license and regulation, and under that is driver's license, which obviously Chief Kelley, who is the permanent chief, has a tremendous responsibility, and also the regulatory side -- the regulatory license side, which includes some very vital programs, including private security, concealed handgun and motor vehicle inspections and the narcotics regulation. So all these programs, with any of these, all of them are very important; and moving to a civilian model on license and regulation, this would allow a greater focus on that, at least from that civilian standpoint -- subject to any questions that you may have at this time.

COMM. STEEN: A couple of things on the
deputy director of law enforcement, the box to the
left, I think you skipped that. Explain that to me in
just a few words, what that is.

    COL. McCRAW: Aviation --
    COMM. STEEN: And operations support.
    COL. McCRAW: Yes. Aviation and
operations support, we also -- we have a dive team.
So it's all those operational entities that fit under
that. We have a SWAT program. Those things would be
tied to Colonel Beckworth for operations because they
support all of the particular programs.

    COMM. STEEN: You mentioned about the
Governor's homeland security people. Where would they
go?

    COL. McCRAW: Well, that would be --
they would be integrated into the already-existing
organization. So the chief of staff would have one
individual from that, and that person would be -- the
others would be integrated as a part of the
organization. For example, Chief Colley is, in
effect -- would be the homeland security program
manager, and he would take on some of those
responsibilities that he doesn't already have.

    COMM. STEEN: And then looking at -- and
this is an overall question because now we've got this
row of assistant directors, and are we dispensing with
the title "Chief"? Tell me how that works -- will
work under this system.

COL. McCRAW: Well, there's still some
chiefs underneath this system so we're --

COMM. STEEN: But Chief Colley will no
longer be a chief? He'll actually --

COL. McCRAW: I know he likes the title
but --

COMM. STEEN: Is there a chief under
him?

COL. McCRAW: He would be assistant
director, and he would be entitled to a chief under
him; yes, sir.

COMM. BARTH: Can you explain the -- are
you planning on having an assistant director of
license and -- tell me, what's going on on that far
right side.

COL. McCRAW: Yes, ma'am. Oh, you want
me to explain it? Yes. That would be assistant
director. There's two ways -- two schools of thought.
That person would oversee both the functions I
previously described, or you would move those
functions up online as other assistant director
positions.
COMM. CLOWE: Let me give you some input at this point in time. I know this has been a work in progress, and you've changed it a number of times. And I think there's a sense that I'm hearing among the Commissioners that the last option you mentioned would be more desirable.

COL. McCRAW: Okay.

COMM. CLOWE: And that would be to move up the chief of driver license to assistant director and the chief of regulatory license up to assistant director.

COL. McCRAW: Right.

COMM. CLOWE: Would you be acceptable --

COL. McCRAW: Yes, sir. Then at that point, I would recommend that Mike Kelley serve in that position for driver's license and John Jones assume the assistant director position in the other position, if that's what you should decide.

COMM. CLOWE: Well, I think I'm hearing it from the Commissioners, and we want to emphasize the importance of those two areas, and that would seem to accomplish that.

COL. McCRAW: They're certainly vitally important, the responsibilities we've been entrusted to do, and we must do an exceptional job in every one
of them.

COMM. CLOWE: Any further comments?

COL. McCRAW: No, sir.

COMM. CLOWE: Commissioners, Director McCraw has worked hard on this, and it's a 12th or 15th iteration. I don't know how many times it's been changed, and I think at this point, I think it's a recommendation from him and from me that you consider it.

COMM. BARTH: May I ask a question with respect to compensation in terms of the directors and assistant directors? Would you review that to make sure we don't have any issues with respect to some assistant directors more -- I mean, I just want to make sure we have taken into account equity there.

COL. McCRAW: Well, my recommendation would be that an assistant director gets paid an assistant director salary, what that's set at, and I have recommendations of what that should be, and then a chief's salary.

So we're -- you know, everything the department does is important and that we don't have -- even though we recognize the span and control may be greater here; you know, some things over here, like the Texas Rangers do, are also vitally important. So
they may have less people for what they do, so I would recommend that we keep the same salary across the board at the assistant director position.

COMM. BARTH: And what would be the financial implication of doing that?

COL. McCRAW: One forty-seven five is what I would recommend.

CHAIRMAN POLUNSKY: What does this do --

COMM. BARTH: Yeah. That's what --

CHAIRMAN POLUNSKY: -- compared to what are salaries being paid now? How does it compare --

COL. McCRAW: Chiefs are being paid --

CHAIRMAN POLUNSKY: -- in command structure versus command structure.

COL. McCRAW: Yes, sir. The current system, the chiefs are being paid 104,000 --

MR. YBARRA: Yes, sir.

COL. McCRAW: -- 104,000. So, in effect, it takes the -- it will increase the pay closer, you know, far closer to what I'm making than what the current is. Currently, right now, the line across is -- the chief level is who directly reports to me. So if I'm making 157, they're making 102 -- 104,000.

MR. YBARRA: Yes, sir.
COMM. STEEN: They'll go up to what again?

COL. McCRAW: They'd go up to 147 five, is what I'm recommending. The chiefs would go up to 120.

COMM. BARTH: So in total dollars -- I can't do that in my head. What are we talking about on a budget item?

COL. McCRAW: Well, I can't either. We'll look at it and give you the exact numbers.

CHAIRMAN POLUNSKY: Well, but you have to have some type of ballpark, or maybe Oscar does. I don't know but --

MR. YBARRA: If I could share something --

(Brief pause)

COL. McCRAW: Chairman, I'll have to get back to you. We have some calculations of overall cost in terms of reorganization, but we don't have the differences in terms of that salary increase, what it makes -- it looks like -- the subcost looks like it's 245,000 overall for chiefs, but these are creating new positions. This is including the creation of new positions.

COMM. BARTH: The only implication --
COL. McCRAW: So that can't be right.

It's got to be closer -- it's got to be more than that.

COMM. BARTH: I mean, you can do it in your head and figure out it's --

COL. McCRAW: Yeah. We created -- you know, when you look across the board here, we've, in effect, you know, established, you know, two new divisions, created two deputy directors and currently there's only one. I'll get you the exact numbers.

COMM. STEEN: A suggestion might be -- I think, you know, we've worked through this a lot. We've talked to you about it. I think we're generally comfortable with it, and do we have to adopt it today or can he come -- is that the purpose of having it today that we're going to vote on it?

COMM. BARTH: I would like to make a motion to adopt his plan, you know, subject to him getting back to us on the financial implication and where the money is going to come from.

COMM. STEEN: Another way to do it would just be to say, "So far, so good," and he can come back at the next meeting with the financial part of it and then we would have the whole --

CHAIRMAN POLUNSKY: I think we would
vote -- and it's up to you-all, but I think the issue before us now is the organizational structure.

COMM. BARTH: Right.

CHAIRMAN POLUNSKY: Then he can come back with the salaries later, but the salaries and the cost also will need to be approved.

COL. McCRAW: Okay.

COMM. CLOWE: And I certainly agree to that. And I think Commissioner Barth is right. You know, the organization is waiting for marching orders, and it's time to move ahead. And I would be strongly in favor of -- if you said you had a motion --

COMM. BARTH: I have. I agree with you 100 percent. I move to adopt this organizational chart with the Colonel coming back to us at the next meeting with financial implications, but I agree wholeheartedly with Commissioner Clowe.

COMM. STEEN: Your motion to adopt it as changed?

COMM. BARTH: Yes, subject to the changes with respect to the license and regulation.

COL. McCRAW: I know I need the advice and consent also on the individuals that I named. Was that acceptable?

COMM. CLOWE: That's implied in the
motion, I think, isn't it, Commissioner?

COMM. BARTH: Yes, sir.

COMM. STEEN: Do you want -- is it easy for you to go through them again or --

COL. McCRAW: Sure. Fred Burton would be the assistant director of intelligence and counter-terrorism. David Baker would assume the position as assistant director of highway patrol; Tom Ruocco, assistant director of criminal investigations, Tony Leal, assistant director of Texas Rangers; Jack Colley, assistant director or emergency management; Brad Rable as CIO, assistant director of information technology; Mike Simpson, assistant director of law enforcement support.

Still to be named would be the assistant director for finance, based upon future decision.

Valerie Fulmer would assume the position of assistant director of administration, and John Jones would be the assistant director of regulatory license, and Michael Kelley would be the assistant director of driver license.

CHAIRMAN POLUNSKY: Thank you, sir.

There's a motion that has been made by Commissioner Barth that the organizational structure be adopted as presented. I'm not quite sure that we need to get
into the personnel other than --

MR. PLATT: I don't think that's

required. The organizational structure is what's
critical as far as --

COL. McCRAW: And the regions as well.

MR. PLATT: Right.

COMM. CLOWE: There is no objection on
the part of the Commission to anybody you've named.

COL. McCRAW: Okay.

COMM. CLOWE: We can leave it at that,
can't we?

CHAIRMAN POLUNSKY: Yeah. I don't think

we need to affirmatively, you know, authorize those

individuals, but we appreciate the opportunity to

comment on them or --

COL. McCRAW: With respect to the

regions, if you adopt those regions as proposed, then

at that point in time, Colonel Beckworth and I will

issue advertisement for captains and above to apply

for those six regional positions, and we would like to

move forward on that.

CHAIRMAN POLUNSKY: Okay. Well, you've

made a motion on the organizational structure. Would

you like to add to that motion that we adopt the new

regional --
COMM. BARTH: I will amend my motion to adopt the regional structure as proposed by the Colonel.

CHAIRMAN POLUNSKY: All right. We have an amended motion by Commissioner Barth that is adopting the organizational structure as presented, and amended by the director this afternoon, and also to adopt the regional structure as represented by the director this afternoon -- or, I guess, this evening now.

Is there a second to Commissioner Barth's motion?

COMM. STEEN: I'll second. A question for our general counsel.

Are we all right on how it's agendized?

MR. PLATT: The organizational structure, I think, can --

COMM. STEEN: Would encompass the regional? That's what I was --

MR. PLATT: Yes, regional boundaries because each region has a regional commander under the new structure, and each region is only -- not only is it the geography; that's a part of the organizational structure.

COMM. STEEN: I was thinking about it
the same way.

CHAIRMAN POLUNSKY: Okay. There's a motion and a second. Discussion on this?

(No response)

CHAIRMAN POLUNSKY: Okay. There's no discussion. All in favor, please say "aye."

(All those in favor of the motion so responded.)

CHAIRMAN POLUNSKY: Any against, "no."

(No response)

CHAIRMAN POLUNSKY: Motion passes.

If you could please come back at our next meeting with the salary recommendations, then we will take action on those.

COL. McCRAW: Yes, sir. And the total cost in terms of the reorganization.

CHAIRMAN POLUNSKY: Okay.

COMM. CLOWE: Mr. Chairman?

CHAIRMAN POLUNSKY: Yes, sir.

COMM. CLOWE: I have a housekeeping question. How do you like to be addressed?

COL. McCRAW: Well, anything you'd like would be fine.

COMM. CLOWE: So it can be Colonel, Director or Steve?
COL. McCRAW: Steve works for me, quite frankly. I'm having a difficult time adapting to the other names that are used. I'll say this is that -- I defer to what the troops call me, and the troops prefer Colonel thus far. So if that's -- you know, I think it's an important tradition within the department. Wasn't it, Colonel?

COL. BECKWORTH: That's correct.

COL. McCRAW: So I think in this case, the troops should rule.

COMM. CLOWE: All right. And I think that applies to Colonel Beckworth as well.

Now, how about these new assistant directors? They've been called chiefs for the most part. We'll, I think, want to address them all uniformly. What's your sense on that?

COL. McCRAW: Well, the title is assistant director, whether they call them ADs or what will prevail over a period of time, but assistant directors it is.

COMM. CLOWE: Okay.

COMM. STEEN: Colonel, could you have someone update the chart based on what we did today?

COL. McCRAW: Yes, sir.

COMM. STEEN: And it's just a
suggestion; maybe put today's date on it somewhere and we'll know that's what we did today.

COL. McCRAW: Yes, sir. I'll have that done this weekend and sent to you.

COMM. STEEN: Thank you.

COMM. BARTH: Mr. Chairman, could we go back to Item H, which has to do with the inspector general office, which is out there, which, you know, I'd like to move that the office of inspector general for the department be fully established, not just by law, but function and title and supported by the department on September 1, 2009, and the Commission and Director move the personnel functions of internal affairs to this new office of inspector general on September 1, 2009 until the Commission selects and appoints an inspector general, who may then organize and staff the office as supported by the director and approved by the Commission, and that Captain Hank Whitman temporarily fill the role as head of the office.

COMM. STEEN: Second.

CHAIRMAN POLUNSKY: Thank you. There's a motion by Commissioner Barth and seconded by Commissioner Steen on the issue of inspector general -- office of inspector general.
COMM. STEEN:  Mr. Chairman?

CHAIRMAN POLUNSKY:  Yes, sir.

COMM. STEEN:  Could we put the chart back up, just to make a point for the people here?  This is the one that's on the left side there, and that's a direct report to us.  And that's why we're taking this action that involves a specific individual.

CHAIRMAN POLUNSKY:  That's correct.

Discussion?

(No response)

CHAIRMAN POLUNSKY:  If there's no discussion, all in favor, please say "aye."

(All those in favor of the motion so responded.)

CHAIRMAN POLUNSKY:  Against, "no."

(No response)

CHAIRMAN POLUNSKY:  Motion passes.

Thank you.

There will be no discussion; today on the "Diamond Jubilee" committee. I'm going to receive some recommendations for people to serve on that committee going forward, and we will be discussing that in the near future, so no action today.

Let's do some quick reports:  Audit and
inspection. Mr. Walker?

MR. WALKER: Farrell Walker, director of audit and inspection. Mr. Chairman, Commissioners, our report includes copies of completed audit and inspection reports and lists of projects that are currently in various stages of completion.

I would like to point out, in connection with the completed audits of the crime records, TCIC train the trainer project, identified some program management issues and some opportunities to better use IT resources and administration of that program.

You'll see a number of follow-up audits that have been completed included in your packet, and you may have noticed a great deal of emphasis on IT audits in recent years as evidenced by those follow-ups. I would suggest to you that the recent Gartner report has validated our focus on IT, and many of the reported issues contained in those reports.

A major report that is included in your packet is the grant administration audit that was completed by Deloitte. It's a high-level look because we -- because of certain political realities in the past, we had not spent a good deal of time there. Also, because of audit work done by outside sources, we had not spent time there, but we took this
opportunity to have a high-level look at how grants are managed within the department. Bottom line is that there are issues relative to people, processes and IT resources that were identified in need of improvement. Management has either taken action on the recommendations included in the report or have plans to do so in the future.

Regarding audits in progress, I would point out that we're in the throes -- in fact, it's on my desk for technical review -- of doing a performance measure audit.

That's going to, I hope, prove very timely to the Director because we've identified a number of issues in connection with that, and we'll be able to dovetail the issues and recommendations with his vision for the future in using performance management as a way to manage operations here at the department. I'm hoping the report will be available to you in September, depending on how we can work all the management responses out.

I reported to you that there will be a number of projects that will not be completed this year. Those are projects that I anticipated having another staff member on board to do, and due to a number of circumstances, that did not happen, and I
did not inform you until this month about this.

However, I will tell you that the private security bureau audit has been started, and we can complete the other projects in the next few months.

Now, I would suggest that the payroll action letter project that's listed there is not necessary anymore. Next month you should have an HR inspection report that addresses that particular issue. We looked at that a couple of years ago and found that we have the distinction of being, as I recall, the second largest contributor to the comptroller's office of those requests, which is not a marked distinction.

We had issues that we recommended be resolved, and I wanted to take another look at that after some years had passed. Our inspection group did that when we were looking at HR, and it will be reported and dealt with there.

The next slide, please. You have also in your packet, finally, a completed inspection report on the office of general counsel. There's one recommendation in there that's particularly significant, has to do with records management officer and the duties of ensuring record retention compliance
here at the department.

That concludes my report, unless you have questions.

CHAIRMAN POLUNSKY: Are there questions?

COMM. BARTH: My only comment is that with this reorganization, I would like to ask that you get with the Colonel and really look at the risk assessment now that we've reorganized.

MR. WALKER: Very good. Will do. Thank you.

CHAIRMAN POLUNSKY: Thank you.

CHAIRMAN POLUNSKY: Administration.

Wayne Mueller?

MR. MUELLER: Wayne Mueller, assistant chief, regulatory and licensing. In the interest of extreme brevity, Commissioners, Slide No. 5, please. This is what Commissioner Steen had asked for previously.

This is the chart showing the increase in volume of concealed handgun applications that we've been receiving. This is the average number of applications we received per month during the whole history of the program. As you can see, there was a spike during the first full year of the program in 1996, and then it was a steady stream for the next
nine years, 1997 to 2005, and then it began to
increase, and those specific numbers are, in 2006, we
received an average of 6,800 applications per month;
in 2007, 7,300 applications per month; 2008, it jumped
up to 8,700 applications per month, and then so far in
2009, it's been over 12,000, specifically 12,300
applications received per month.

That's where we sit. I think the
Colonel probably wanted to speak to where we're
planning to go forward with specific portions.

COL. McCRAW: Yes. I appreciate it.

Obviously, the backlog -- what are we doing right now,
about 12,000?

MR. MUELLER: Right now, we are about
16,000 behind, although we should be able to issue
several thousand -- about 8,000 here in the next week.

COL. McCRAW: The challenge has been --
and one of the reasons it's been for -- it takes as
long as six months for people to get their concealed
handgun licenses, the requirement that we address as
part of the background investigation the department
has to do is two items. It has to be able to collect
information on domestic disturbances as a Class C
misdemeanor, which is not reported as part of the
normal process and within the department's record
files, and the same thing with disorderly conduct.

So what we've been doing is use troopers
to go to the local jurisdictions where they are
resident in, to take time off the road to have them go
through and locate those types of -- to be sure so we
can meet our legislative requirement, and what we have
right now we've recommended -- or what we're moving
forward on is start to collect Class C misdemeanor
fingerprints from local enforcement across the state.
We have the capability of doing that immediately.

So what that enables us to do from here
forward is to have access to that data so we don't
have to send a trooper to go look for that data, and
we've got a biometric that identifies that data, and
it's not just in the resident county that the
individual is from. It's across the state, or
actually across the nation. So there's value added to
that aspect of it.

The second thing is that we -- what we
need to do going back retrospectively -- we can very
easily -- because Class C -- these violations are
captured in TDEx, which you heard testimony about
earlier today, is to do a batch run and take the 16 to
18,000 individuals we have and batch run against it,
and then identify that and use some of William's
technicians to go through and dig in, you know, identifying those links and actually becoming what we believe is more thorough and certainly more quick -- and certainly a lot quicker.

That's our process design, and, of course, the front end of this is Brad Rable has been involved in it in terms of the design, and I believe that leveraging Texas online and some capabilities so that we can streamline the process leveraging technology for the public. We think that's the way forward, and we would like in the next session -- the next Commission meeting, we should have a report in terms of how we fared, and we can actually go back and check the efficacy of what we're proposing by comparing which ones we've worked in the past and finding out, you know, a related time. So we think this is -- and also, the legislature has given me the power -- correct -- the authority --

MR. MUELLER: Yes, sir.

COL. McCRAW: -- with the advice and consent of us to design what that system looks like. So the system doesn't have to be overly burdensome. It can leverage technology in doing some of the things we've talked about.

COMM. CLOWE: Wayne, we're running about
MR. MUELLER: I think we're much closer than that. Like I said, we're about to issue for manufacture about 8,000 licenses that we have finished the process on. We had a summer project from July to August of this year where we had -- one of our big choke-up points was the actual data entry, putting these applications in our system.

We caught up to where we're current now on that, so we're seeing the effect of that month-long project to where we are getting very, very close, but that's just a one-time patch. Just like summer's month project was a patch then, we have to come up with some automated features moving forward to make sure we don't continue to fall behind.

As Colonel McCraw talked about streamlining the local records check is a big part of that. Brad Rable is helping us, talking about a front-end piece, which would be a comprehensive, online application, and then the third component that I think is very important is we need to move to an electronic fingerprint system.

If we put those three pieces in places, I think we can have a very automated process where we won't come close to the 60-day turnaround time that's
mandated by statute. I really think we can get closer
to 30 days for clean applications.

COMM. CLOWE: But today --

MR. MUELLER: Right now, today, we're
really in between right now. I believe in the next 30
to 45 days I can confidently say, to the best of my
ability, that we will be current, meaning we are
issuing applications -- licenses within 60 days of the
application coming in. We're right at the tail end of
getting the effects of the project we just did.

COMM. CLOWE: How old are the eight that
you're getting ready to issue?

MR. MUELLER: They vary, in time. What
happened was we had a whole slew of background checks
that came from Harris County, which was really one of
our choke points on the background investigations.
They were brought to us in bulk, and so I can't tell
you what they were -- exactly how far in time they
were -- they were waiting on, but we got those all in
together at one point in time.

COMM. CLOWE: I don't know how else to
ask you. You really haven't told me how far we're
running behind.

MR. MUELLER: And I don't have a
specific answer for you, Commissioner. I apologize.
COMM. CLOWE: Would you find that out --

MR. MUELLER: Yes, sir.

COMM. CLOWE: -- and let the Commission know?

MR. MUELLER: Yes, sir.

COMM. CLOWE: Because that's the question that we get asked.

MR. MUELLER: Yes, sir.

COMM. CLOWE: Thank you.

CHAIRMAN POLUNSKY: Anything else?

(No response)

CHAIRMAN POLUNSKY: Thank you. Chief Baker, talk to us about pictures of the recruiting vehicle --

MR. BAKER: Hello, Mr. Chairman.

CHAIRMAN POLUNSKY: -- that Colonel McCraw is driving around now.

MR. BAKER: It's gone. It's on its way to McAllen right now.

CHAIRMAN POLUNSKY: I thought he lives --

COMM. CLOWE: He'll have to walk home.

MR. BAKER: Well, the trooper that picked it up thought he was going to have to walk home.
No. I wanted to show you some pictures of the new recruiting vehicle. I know that Commissioner Clowe has seen it, but not everybody else with the agency has seen it. This was our first vehicle that was issued. It went to Trooper Bill Abel, our recruiter in Corpus Christi. This was his brainchild. We just kind of took his idea and ran with it.

The second vehicle was parked out front this morning, and I hope that everyone got a chance to look at it. We made some modifications to the wraps -- to the photographs on the wrap, the difference being the picture that you see there, our honor guard picture was kind of compressed, therefore, that allowed us to not have to wrap the driver's door. If you'll notice, there's kind of a dull, black paint on the driver's door. That's a result of the wrap. It looks much better. The new wrap does not encompass that -- the door and its --

COMM. STEEN: What's the word you're using?

MR. BAKER: Wrap. That's a plastic film that's applied to the vehicle.

COMM. CLOWE: You can see just fine from the inside out, and it was designed by two employees
of this agency. Would you name them, please, chief?

MR. BAKER: Yes, sir; Don Silvas is an employee in our graphics and reproduction. He is the one that's responsible for taking the actual photographs and placing them on the wrap. Charlie Goebel is our dive team commander. He assisted Don with that venture, and they located a company here in Austin that was able to take the photograph and design that wrap.

COMM. STEEN: And how easy is it to get off?

MR. BAKER: Well, I hope not very easy. Time will tell.

COMM. STEEN: What's the -- is the idea you can just peel it off?

MR. BAKER: It just peels right off; yes, sir. If we have a vehicle that's vandalized, if it's keyed, it will tear through the plastic wrap, but the good thing is they just replace that panel that needs to be replaced.

COMM. STEEN: Well, it's an attention-grabber.

CHAIRMAN POLUNSKY: It's the same material they use on some of the VIA buses in San Antonio that you see that are completely encompassed
with advertising, and then all of a sudden, that advertising is gone.

MR. BAKER: We've received very positive comments on the vehicle, and we're starting to get requests to display these vehicles in car shows and neighborhood events.

CHAIRMAN POLUNSKY: Any questions or comments here?

COMM. CLOWE: This is a working vehicle. It has the in-car computer, and it has a newly designed rack for the long guns that the troopers use with an immediate release electronically, and if that fails, a key release. So although this is a showboat to attract attention and not frighten people when it goes on a school ground or workplace, it's a vehicle that can work on the highway.

MR. BAKER: You're correct, Commissioner. It's fully outfitted and ready to go.

CHAIRMAN POLUNSKY: What kind of results have you had?

MR. BAKER: Well --

CHAIRMAN POLUNSKY: I know it's very early but --

MR. BAKER: The jury is still out. The recruiters love it, and they believe that it will help
them be more effective. That's our rolling billboard that tells our story.

CHAIRMAN POLUNSKY: Well, I like the innovation. I think there's going to be all sorts of innovation here and --

MR. BAKER: Absolutely.

CHAIRMAN POLUNSKY: -- you know, try new thoughts and new concepts and --

MR. BAKER: We're excited.

CHAIRMAN POLUNSKY: -- anything possible to bring in the cream of the crop.

MR. BAKER: Absolutely. We're excited about it.

COMM. CLOWE: Commissioner Steen and I are somewhat disappointed in the design that we don't have a picture of the Chairman on his motorcycle up there.

MR. BAKER: We ran out of room.

(Laughter)

COMM. CLOWE: And a new uniform he wants to wear.

CHAIRMAN POLUNSKY: I'm sure Commissioner Clowe can work with you on this. He'll be happy to volunteer his time on that.

COMM. CLOWE: Chief, you know he does
want that uniform.

(Laughter)

COMM. CLOWE: You're going to have deal
with that sooner or later.

MR. BAKER: We'll work on that.

COMM. BARTH: Chief, thank you for the

error.

MR. BAKER: Yes, ma'am.

COMM. BARTH: I appreciate you staying

on that.

MR. BAKER: Thank you. We'll be on top

of it.

CHAIRMAN POLUNSKY: Anything else?

(No response)

CHAIRMAN POLUNSKY: Thank you very much.

MR. BAKER: Thank you.

CHAIRMAN POLUNSKY: All right. Let's go
to the consent items. Is there anything that anybody

would like to pull?

COMM. STEEN: Mr. Chairman?

CHAIRMAN POLUNSKY: I'm sorry?

COMM. STEEN: Is Mr. Colley going to

report on something or is --

CHAIRMAN POLUNSKY: I don't think so. I
MR. COLLEY: Unless you want me to.

COMM. STEEN: Well, he's on the agenda.

CHAIRMAN POLUNSKY: Well, I mean, I know but he's already done his thing. I mean, do you have something on emergency?

MR. COLLEY: I don't have anything, Mr. Chairman.

COMM. STEEN: You looked like you were ready to report on something, though. That's why I asked.

MR. COLLEY: If you would like me to report, I can report.

COMM. CLOWE: A good tank commander is always ready.

MR. COLLEY: No, sir, I don't have anything.

CHAIRMAN POLUNSKY: Yeah. John, I just thought he had already done all that.

Consent items, would anyone like to pull anything for individual consideration?

COMM. BARTH: I just have one comment. When we have donations, could we give a dollar figure by them?

MR. PLATT: We can put that on there.
COMM. BARTH: I would like to see that, please.

COMM. CLOWE: Mr. Chairman, move the adoption of consent items represented by the Letters A through F.

COMM. BARTH: Second.

CHAIRMAN POLUNSKY: Thank you. There's a motion that has been made by Commissioner Clowe and second by Commissioner Barth.

COMM. STEEN: Colonel Beckworth, anything on here that I need to be worried about?

COL. BECKWORTH: No, sir. Everything is excellent on that consent item docket.

COMM. STEEN: Thank you, sir.

COL. BECKWORTH: You're welcome.

CHAIRMAN POLUNSKY: We have the good housekeeping seal of approval here.

COL. BECKWORTH: Outstanding.

CHAIRMAN POLUNSKY: We have a motion and a second. Any further discussion?

(No response)

CHAIRMAN POLUNSKY: No discussion. All in favor, please say "aye."

(All those in favor of the motion so
responded.)

CHAIRMAN POLUNSKY: Any against, "no."

(No response)

CHAIRMAN POLUNSKY: Motion passes.

Are there any items that any
Commissioner would like to have included for the
September meeting, other than what we've discussed
today, or any future meetings?

COMM. CLOWE: Not at this time.

CHAIRMAN POLUNSKY: Mr. Steen?

COMM. STEEN: No, no.

CHAIRMAN POLUNSKY: The normal meeting
would be on Thursday, September 17th. Does anyone
have a problem with that date?

(No response)

CHAIRMAN POLUNSKY: It's okay. All
right. Then it'll be on that date. Anything else?

(No response)

CHAIRMAN POLUNSKY: The Texas Public
Safety Commission is now adjourned. The time is
6:12 p.m.

(Proceedings concluded at 6:12 p.m.)
CERTIFICATE

STATE OF TEXAS )
COUNTY OF TRAVIS )

I, Evelyn Coder, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control and that the foregoing pages are a full, true and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 22nd day of September 2009.

EVELYN CODER
Certified Shorthand Reporter
CSR No. 2845-Expires 12/31/09

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