

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.

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APPEARANCES

COMMISSIONERS OF THE PUBLIC SAFETY COMMISSION:

Carin Marcy Barth

C. Tom Clowe

Allan B. Polunsky, Chair

John Steen

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P R O C E E D I N G S

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.

1 COMM. STEEN: Move approval.

2 COMM. BARTH: Second.

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

6 Is there any discussion on this?

7 (No response)

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

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

12 CHAIRMAN POLUNSKY: Any against, "no."

13 (No response)

14 CHAIRMAN POLUNSKY: Motion passes.

15 Before I move on to public comment, I
16 would like to let everyone here today be made aware of
17 the fact that someone who has been in the director's
18 office longer than any Colonel, and who has never
19 missed a Public Safety Commission meeting has decided
20 to retire from the department. This individual has
21 been the backbone of this agency, supporting nine
22 directors and has more knowledge of the day-to-day
23 operations of the DPS than probably anyone here today.

24 I mention this today because she will
25 not be at our next Public Safety Commission for me to

1 recognize for 36 years of dedicated service to the
2 state of Texas and to the Department of Public Safety.

3 Dorothy Wright, the executive assistant
4 to the director, has decided to retire. effective
5 August 31st, to spend time with her family and a new
6 grandchild that is on the way.

7 Dorothy began her career with the
8 department on March 12th, 1973 as a clerk typist in
9 crime records, and stayed with that division until
10 1974, when she transferred to the general counsel's
11 office as an administrative secretary. In 1980, she
12 joined the director's office as the executive
13 assistant to director James Adams and has worked for
14 Leo Gossett, Joe E. Milner, James R. Wilson, Dudley M.
15 Thomas, Thomas A. Davis, Jr., Stanley E. Clark, Lamar
16 Beckworth and now Steven McCraw.

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

22 (Laughter)

23 CHAIRMAN POLUNSKY: -- in every sense of
24 the word, because Dorothy asked me not to acknowledge
25 the fact that this would be her last meeting because

1 Dorothy is a -- as you all know, a very reserved
2 individual who is always trying to stay out of the
3 limelight, but I felt, and I was sure that -- I'm
4 quite confident that my fellow Commissioners would
5 feel the same way, that somebody who has dedicated 36
6 years of her life to the Department of Public Safety
7 and has done an exemplary job during that period
8 should be recognized in every sense of the word.

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

14 (Applause and standing ovation)

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

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

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

23 MR. HENSON: Mr. Chairman, members, my
24 name is Scott Henson. My address is 1403 Hewlett
25 Avenue, here in Austin, and I appreciate the

1 opportunity to visit with you-all again.

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

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

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

25 You-all have had this authority to take

1 all this on since 2007. I think, frankly, from what
2 I've seen and come to understand, it's never been
3 something that rose to the -- rose up on the radar
4 screen of the Commission.

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

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

21 I had heard about the very first meeting
22 where you-all had discussed this with the vendor. I
23 called your public information office and had asked
24 Tela in the PIO to -- when these rules were going to
25 be implemented. She said, "I'll check and get back to

1 you," and when she did, she said, "Well, the general
2 counsel's office said it's not required until 2011."
3 So really my source was the public information office.

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

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

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

20 Actually, thank you for bringing this
21 issue to the forefront. I anticipate that the Public
22 Safety Commission will be taking some type of action
23 in some form with respect to the issues that have been
24 raised here and that, as you have pointed out, is on
25 the agenda and will be discussed later on this

1 morning. So we'll just kind of see where it goes at
2 that point.

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

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

14 How are you, Senator?

15 SEN. SHAPLEIGH: How are you, Chairman?

16 CHAIRMAN POLUNSKY: Good.

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

21 I'm going to be joined by Andres Dura,
22 who is a third-year law student at UT who has worked
23 on this issue with me, and Judge Earle, who is the
24 municipal court judge here in Travis County, to give
25 you an on-the-ground view of how a failed program is

1 working in the state of Texas today. This, of course,
2 was not your issue. It's the issue of the
3 legislature, and I think we worked to fix it this
4 session.

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

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

22 The program was based on what was
23 happening in New Jersey. Other states, at least two,
24 looked at it and have since dropped it or
25 significantly modified it due to the furor that the

1 driver responsibility program has caused around the
2 state of Texas.

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

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

18 11 percent of the city now have arrest
19 warrants out for them based on failure to appear after
20 being cited under this program. So one in nine in El
21 Paso are now affected by this program. He can walk
22 through his research and get it for you.

23 I asked him to look at Travis County,
24 too. I figured it would depend on the low income
25 levels in El Paso, and as a result, we had higher than

1 ordinary numbers of citizens affected by it. He came
2 down to Travis County, and that's his research. I'll
3 let him speak to that, and the Judge can talk about
4 that.

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

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

17 Next slide. You have a 70 percent
18 noncompliance rate. Of those cited, seven out of ten
19 are not paying. Of 1,600,000 individuals in the
20 program, more than 1,080,000 cannot pay. It fails to
21 make the Texas roads safer. The LBB, in a finding,
22 found that it's lead to a greater number of uninsured
23 drivers on the road, and the Texas senate
24 transportation and homeland security committee, in
25 interim studies, made a recommendation that the

1 program be abolished, gotten rid of completely, before
2 the legislature got hooked on the money that was going
3 to be produced for trauma care. That didn't happen.

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

14 That's what it -- Senator Ogden came in
15 and said, "I can't certify the budget unless you get
16 me to 2011," and so he made a compromise on the Senate
17 floor in the amendment to make it effective in not
18 2009 but 2011.

19 What are we asking you to do? We're
20 asking you to revise the program now and not collect
21 funds under the original intent of the program because
22 you can't do it. Take a look at what you can do under
23 the law and implement the indigency program today. I
24 think that is within legislative intent. It's what
25 the legislature wants you to do. We're going to come

1 back and revisit the program, and, obviously, the
2 good -- the point system for good driving, I think you
3 should take a look at, too, which was in the
4 legislation that we were carrying in the House and the
5 Senate.

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

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

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

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

25 After that, we decided to take a look at

1 Austin, as the Senator mentioned, and we found out
2 that the same proportion of the population in Austin
3 was under warrant and was also suffering with regards
4 to violations that are attributable to automatic
5 surcharges under the driver responsibility program.

6 COMM. BARTH: Can I ask you a question?

7 MR. DURA: Yes, ma'am.

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

10 MR. DURA: Let me look that up for you.
11 Of the 11 percent?

12 COMM. BARTH: That have surcharges.

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

15 COMM. BARTH: I would like that.

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

19 COMM. BARTH: A third of the 11 percent?

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

22 COMM. BARTH: I would like that number.

23 Thank you.

24 MR. DURA: Yes. Most of the violations
25 that we're looking at was failure to maintain

1 financial responsibility. That was 34,000 of the
2 140,000 arrest warrants that were issued; and driving
3 with a license suspended, that was another 30,000. So
4 those two account for about 50 percent of the arrest
5 warrants in both Austin and El Paso.

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

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

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

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

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

20 COMM. BARTH: So that's an important
21 number to have. And, then, I guess the question is,
22 did you research with respect to uninsured drivers,
23 how many had accidents out there as a result -- you
24 know, where they were written up because they were
25 at-fault accidents, and then they had uninsured --

1 they didn't have insurance? Do you understand what
2 I'm saying?

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

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

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

17 SEN. SHAPLEIGH: That would be a
18 different number to come to because you would have to
19 go to a different database entirely. In some cases,
20 that adjudication was not -- it's not part of the
21 record. What he did is he went to look at what was
22 the infraction in the 37 different categories and then
23 what was the percentage of the total attributable to
24 each; I mean, what was DWI, what was failure to drive
25 without a driver's license, what is driver

1 responsibility to try and determine exactly where
2 these warrants are coming from, what's the --

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

7 MR. DURA: Definitely.

8 COMM. BARTH: Go ahead.

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

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

1 ensue afterwards.

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

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

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

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

25 The problem with the surcharges

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

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

16 It does not deter people, and I think
17 that the people that I've seen in court -- and some of
18 these aren't DWI convictions that I see now at the
19 county court level, but at the municipal court, it was
20 the uninsured motorist as well as the speeding tickets
21 they've gotten. And I'm not saying that's good. I
22 think that we should hold them accountable for that
23 because I think streets need to be safe from drivers
24 like that. However, they're still driving, and so we
25 aren't fixing the problem.

1 We're basically having, you know, a huge
2 number of people not complying with the law, and
3 they're continuing to do so. The people that do come
4 in court, they'll tell me they just want to sit their
5 time out in jail, which means there's added expense
6 for the jail, of course, because we're housing these
7 offenders.

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

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

21 So if there is a -- if we could deal --
22 if the program could fix the system by allowing people
23 who would, if we had a payment plan or had some sort
24 of plan in place where they could get an indigency
25 program, which would maybe reduce the first set of it

1 or maybe give them an incentive to keep their driver's
2 license for a certain amount of time, I think it might
3 keep them on the road safely.

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

6 CHAIRMAN POLUNSKY: Sure. Sure.

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

18 JUDGE EARLE: I can't tell you what each
19 person would do. I can say that if they had an option
20 besides payment, be it community service, be it work
21 crew, be it working with the trauma centers to see
22 what they're causing, I don't know. There's ways we
23 can fix it where they could see the ramifications of
24 them driving without insurance and driving without a
25 license and also driving unsafely.

1 I mean, that's what we're trying to
2 prevent people from doing. The fine themselves is not
3 preventing them from doing that because you can see a
4 number of the people who get charged with this, you
5 see them again.

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

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

13 COMM. BARTH: Thank you.

14 CHAIRMAN POLUNSKY: I'm sorry.
15 Mr. Steen?

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

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

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

25 COMM. STEEN: He told me that -- and

1 maybe, you know, this figure, but he said that it's a
2 whole lot of people that are crossing the border in El
3 Paso to get a Mexican license, people that are
4 affected by this program.

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

7 COMM. STEEN: Do you know about that?

8 SEN. SHAPLEIGH: I have not heard that.
9 I think where you are now is you've got three laws
10 that you've got to sift this thing through. You've
11 got the original law. You've got what was passed in
12 1722 that Ogden passed, and then you've got the
13 amendment to your sunset bill.

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

21 I think if we said, "Let's just go back
22 and collect this," what you're going to do is
23 criminalize some behavior and have a whole bunch of
24 people that can't get licenses, they can't get jobs --
25 probably not the way to go. We've got the embedded

1 costs, three- and 4,000-dollar fines that people can't
2 pay, particularly now.

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

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

1 I'm sorry to hand you this big mess, but
2 good luck.

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

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

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

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

21 And my concern as a legislator was the
22 minute the hospitals get that money, you're never
23 going to fix that program because they're going to
24 say, "We got it. Now we're hooked on the money.
25 We've got to have it." So my concern is let's fix the

1 program now with the legislation that's on the books
2 and then get some compliance rates and go back to the
3 legislature and say, "I think this is working better
4 than what you had before."

5 I'm here because I'm pulled into a
6 meeting with the editor of a newspaper that has got
7 four days' worth of headlines on one in nine people
8 going to jail over traffic tickets, and I'm saying, "I
9 had no idea that this was happening in my town." So I
10 go in and talk to the editor, and I said, "You know
11 what? I'll be back in 60 days. Let me get an
12 overworked, underpaid intern here and get him on the
13 case," and he went back and he said, "You know, that's
14 exactly what's happening here."

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

1 just bad behavior.

2 CHAIRMAN POLUNSKY: Any other questions?

3 COMM. STEEN: Well, just to clarify, if
4 that money is not going where it should go -- is that
5 what you're saying?

6 SEN. SHAPLEIGH: I'm saying it's being
7 held in an account.

8 COMM. STEEN: And who bears
9 responsibility for that?

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

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

24 COMM. STEEN: Thank you, Senator.

25 CHAIRMAN POLUNSKY: I don't think we

1 would be shocked.

2 (Laughter)

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

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

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

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

25 CHAIRMAN POLUNSKY: Sure. Sure.

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

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

21 My answer is we're not doing nearly as
22 good a job as we need to do, and I think that problem
23 is not going away. And I want to thank you for
24 highlighting that and emphasizing it. I talked to the
25 agent in charge that you recommended for me to reach

1 with the FBI, had a great conversation. Our new
2 director is right on top of that. He's current on, I
3 think, all of those aspects. And, Senator, we're
4 really concerned about that.

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

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

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

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

25 (Laughter)

1 COMM. CLOWE: We would rather not.

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

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

17 COMM. CLOWE: Arranca.

18 CHAIRMAN POLUNSKY: Any other questions?

19 (No response)

20 COMM. BARTH: Thank you.

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

24 SEN. SHAPLEIGH: There is a -- I don't
25 know if you have the time, but there is a DVD of a

1 soldier back from Iraq who got caught up in this
2 program that you might want to see, if we can run it,
3 with respect to the driver responsibility program.
4 Here is a guy who left, comes back, his license has
5 been revoked. He thought the surcharges -- he didn't
6 know the surcharges he had to pay, and it might be
7 something you want to see. I don't know. We brought
8 it for you if you want it.

9 CHAIRMAN POLUNSKY: And how long is
10 that?

11 SEN. SHAPLEIGH: Two minutes.

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

14 (Video shown)

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

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

19 COMM. CLOWE: There you go.

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

25 And the reason I'm here today is that

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

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

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

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

1 were happening to me.

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

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

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

25 Also, before this time, May 2005, they

1 came into my yard and dumped -- they had field-dressed
2 a wild pig in my yard, and they left the intestines,
3 et cetera, in my backyard. Pictures were taken, and
4 they were given to the police department there in
5 Freer.

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

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

19 But to make a long story short, they
20 had -- the mug shot of me was me wearing a jumpsuit.
21 It turns out that that photograph was a copy of my
22 Texas driver's license that had been altered to make
23 me look like a prisoner. And as I said, the suspects
24 in this case made several despicable things about me
25 in these text messages and on their website.

1 I'm a school teacher. I can no longer
2 work in a school. Basically, I'm just at home and
3 just trying to be self-employed.

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

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

21 Well, anyway, what I did is I contacted
22 DPS, and they told me where I could find a Texas
23 Ranger. It started here in Corpus Christi. It turned
24 out he knew my brother. He said, "Pam, I don't handle
25 that area." He says, "Go to Kingsville." After two

1 months of calling Kingsville, I finally got a call
2 from the Texas Ranger.

3 He sent me to San Diego. I filed
4 reports with San Diego. And then from there, I was
5 told that this was -- after about two or three months,
6 I was told this was a civil matter. And I was
7 wondering, "How can this be a civil matter?"

8 Then I went to the city judge in Freer,
9 and I told her, you know, the problems. She said
10 that Deputy Hinojosa -- excuse me -- I wasn't going to
11 mention any names. I'm sorry. They're not here to
12 represent themselves. But she said, "Yes, he told me
13 your problem," and I said, "I'm here to sign a
14 complaint," because I was told to sign a complaint.

15 I've never been involved with anything
16 like this, so I didn't know, not to mention that I was
17 at the end of my rope. So I was asked to sign a blank
18 complaint form.

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

25 I then sent a letter to the investigator

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

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

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

22 So time went by. In March, I went to go
23 visit with her again, and at that point I was very,
24 very suspicious of things that were going on. I took
25 a tape recorder on me because I kept telling people

1 what I was being told, and they couldn't believe what
2 I was going through.

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

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

15 MS. SHARON: Pardon me?

16 CHAIRMAN POLUNSKY: You're past the five
17 minutes.

18 MS. SHARON: Pardon me?

19 CHAIRMAN POLUNSKY: You're past the five
20 minutes.

21 MS. SHARON: Well, basically like I'm
22 saying, I'm here to ask the Commission for help
23 because the harassment is continuing. The
24 cyberstalking is continuing. I'm still being
25 victimized, and I'm asking for help from the director,

1 from the Commission. I have letters. I have
2 documents. I have audio tapes, et cetera, and to see
3 if the people that did this to me can be brought to
4 justice. All right.

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

9 MS. SHARON: These are her copies.

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

13 MS. SHARON: Thank you.

14 CHAIRMAN POLUNSKY: Is there anyone else
15 who would like to address the Commission at this time?

16 (No response)

17 CHAIRMAN POLUNSKY: No one else?

18 (No response)

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

21 COL. McCRAW: Thank you, Chairman.

22 First, I would like to underscore two things. One, I
23 had the privilege of traveling to Midland on behalf of
24 the Commission here to present to John David Cox the
25 Commission's medal of valor, which is the highest

1 award of the department. You recall that Trooper Cox
2 took a gut shot with a 12-gauge shotgun, and not only
3 survived but was able to engage a capital murderer and
4 was able to prevail while they were trying to head
5 towards Mexico.

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

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

21 It was the result of clear, good
22 judgment on the scene. When they breached, they
23 exhibited fire discipline, and, of course, she's back
24 safely, and I wanted to bring that up as another
25 example of what occurred Wednesday in terms of the

1 type of work that the department is engaged on a
2 weekly or monthly basis.

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

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

21 One of the first -- I did get a call and
22 a request that we put an agenda item next agenda. I
23 did receive a call from the state fire marshal and
24 also received a letter faxed to myself and Colonel
25 Beckworth yesterday about some fire issues. I'll say

1 some fire safety issues at the DPS academy that we
2 were notified about 18 months ago that we'll need to
3 address, and I'll provide -- respectfully request that
4 we put that on the agenda for next time.

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

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

19 They've been changed. The structure has
20 changed and continues to change to what we have today
21 is what we think -- we're quite confident is the way
22 we think that we need to proceed. We want to make
23 that recommendation to you with that structure chart.
24 I don't know if you would like to hold off and do that
25 in the course of the agenda items or if you would like

1 to take that up right now, Mr. Chairman.

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

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

7 COL. McCRAW: Okay.

8 CHAIRMAN POLUNSKY: Any objection to
9 that?

10 (No response)

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

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

22 COMM. CLOWE: Is she present in the
23 room?

24 COL. McCRAW: Yes, I believe she is.

25 COMM. CLOWE: Could we ask her to

1 identify herself so everyone knows her face and --

2 COL. McCRAW: Amanda, please stand up.

3 MS. ARRIAGA: Good morning,

4 Commissioners. I'm Amanda Arriaga, and I'm very

5 honored to be your new chief of government relations.

6 COMM. CLOWE: Thank you very much.

7 CHAIRMAN POLUNSKY: Amanda, you might

8 want to briefly give some background, if you don't

9 mind.

10 MS. ARRIAGA: DPS really loves

11 background.

12 (Laughter)

13 MS. ARRIAGA: My name is Amanda Arriaga.

14 I attended Texas A&M University and was a business

15 management major then. I then went to UT Law School,

16 was fortunate enough to graduate and pass the bar.

17 For the past five years, I have been

18 working in Governor Perry's office as the homeland

19 security advisor and also an advisor on other policies

20 used, such as juvenile justice. I worked on housing

21 issues, a wide array of issues, including border

22 issues. So I got to be the person that knows a little

23 bit about everything to do with all of our different

24 policy issues.

25 And I'm very pleased to be coming here

1 and using some of that knowledge and apply it here as
2 well.

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

5 MS. ARRIAGA: Thank you.

6 COMM. CLOWE: Good choice, Steve.

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

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

11 (Laughter)

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

17 And by coincidence, I also know her
18 father who -- there was a slight overlap on -- with my
19 service at the Texas Board of Criminal Justice and his
20 service on the Board of Criminal Justice, and I can
21 tell you he is absolutely one of the most
22 distinguished citizens in McAllen, Texas, and I also
23 believe is serving now on the Texas Real Estate
24 Commission and is providing great leadership over
25 there.

1 But beyond that, I think that Colonel
2 McCraw has made an excellent selection here with
3 respect to Amanda. I think she's going to have some
4 big shoes to fill with respect to Michael, but
5 nevertheless, I'm quite confident that she will do a
6 very, very good job for the Department of Public
7 Safety and represent us well at the Texas legislature
8 and in other areas of state government.

9 So welcome aboard. Thank you. Colonel
10 McCraw?

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

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

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

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

21 CHAIRMAN POLUNSKY: I'm going to get in
22 trouble all sorts of different ways here, but this is
23 from the Governor of the State of Texas, dated August
24 2009. "Greetings to Dorothy Wright, executive
25 assistant to the director of the Texas Department of

1 Public Safety. Congratulations on your well-deserved
2 retirement after 36 years of service to the people of
3 Texas.

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

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

14 (Applause)

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

23 So I -- on the equipment issue, I wanted
24 to bring that to your attention. Obviously we're
25 going to be leveraging some of the stimulus money the

1 department has been provided, especially in the
2 category of tactical upgrade.

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

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

20 Thankfully the situation resolved
21 successfully, but it pointed out a weak point that the
22 troopers had identified, and the leadership in highway
23 patrol has already identified a Level 4 capability to
24 go it up even one higher. And unlike Level 2, it
25 doesn't have to be replaced.

1 So we found some stimulus money. We
2 believe it will cover the entire cost of it, which
3 right now is about 2.5 million we believe will be the
4 cost to put every trooper in one. There's 150
5 CLE-commissioned officers that don't have a flak
6 jacket. CLE has some funding for that as part of a
7 replacement program. So this we can use, internal
8 money, and also as I pointed out, stimulus money so
9 we're not in a position of having to reprogram
10 existing dollars.

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

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

24 The concealed handgun is on the
25 schedule, so I won't discuss that. We'll handle it

1 according to the agenda. Obviously it's something
2 that needs to addressed.

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

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

22 Going forward, the real solution is a
23 field test because we don't want to have to bring
24 everybody back to Austin to conduct this more
25 elaborate test by pushing a car -- is what things

1 matter most and how can we do that in the field.

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

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

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

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

20 COL. McCRAW: I can't assure you that,
21 Chairman -- or Commissioner Clowe. I will talk to you
22 that there's a substantial time and money issue with
23 it. We're going to do something; I know that. I'm
24 not sure what it is, but I would be -- I'm reluctant
25 to promise you that anything will be completely

1 addressed by the next commission meeting, and I'll --
2 as soon as I get information, more details in terms of
3 what it will take to install the sprinklers and also
4 the fire alarm system and how long it will take to do
5 that and where we can find the funds to divert to do
6 that, I'll bring it immediately to your attention.

7 COMM. CLOWE: And that's certainly
8 reasonable, but if there were any issues regarding
9 improper storage of flammable materials or
10 something --

11 COL. McCRAW: Yes, sir.

12 COMM. CLOWE: -- that obviously could be
13 dealt with right away, you're taking those steps?

14 COL. McCRAW: Yes, sir. Those steps
15 have been taken. And we'll ensure those steps have
16 been --

17 COMM. CLOWE: Good. Great.

18 COL. McCRAW: -- will be addressed.

19 CHAIRMAN POLUNSKY: And over and above
20 that, Colonel McCraw, it has been noted that this
21 issue has been brought to our attention by the state
22 fire marshal, but over -- beyond that, Senator
23 Hinojosa has also sent a letter to the Commission and
24 I believe to you --

25 COL. McCRAW: Yes, sir.

1 CHAIRMAN POLUNSKY: -- identifying this
2 problem. So I would ask that any information that is
3 generated on this topic be passed on to Senator
4 Hinojosa or his staff and any other interested
5 legislator because it certainly is an important
6 problem over there that needs to be addressed in an
7 expeditious manner.

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

9 CHAIRMAN POLUNSKY: Mr. Steen?

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

14 COL. McCRAW: Yes, sir.

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

17 COL. McCRAW: Yes, sir.

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

21 On the issue of equipment for the
22 trooper on the street -- and I think all of us up here
23 would say this -- you have our full support on that,
24 and whatever it takes, you know, to get these upgraded
25 flak jacket or tasers. You know, it's important that

1 they have the equipment they need to do the job, and
2 so we'll support you on that.

3 COL. McCRAW: Yes, sir.

4 COMM. STEEN: How long have you been
5 director?

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

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

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

18 The same thing with the commercial
19 handgun license permits. We have to -- right now we
20 have over 12,000 hours that were spent of trooper
21 time, off the road, doing background investigations on
22 concealed handguns. That's ridiculous. That's not --
23 I'm sure the legislative intent wasn't to divert
24 trooper time to background investigations, and yet
25 there's ways -- and that's one of the reasons I got

1 Brad Rable, the CIO here, involved in the process.

2 And we think we've designed a way that
3 we will be able to present the full spectrum of it
4 next commission meeting, but clearly, we can achieve
5 some economies of scale right now leveraging
6 technology.

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

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

23 And, of course, the underscoring -- the
24 undercurrent to support all those things is
25 technology. So when you ask, you know, the HR, I'll

1 say, the business processing, but the information
2 technology piece. Because we, like many agencies,
3 have grown up with the disparate Legacy systems that
4 are antiquated, and until we get that, we really don't
5 know what we know, number one, to support
6 investigations -- criminal conspiracy investigations,
7 RICO-type of prosecutions and even our patrol areas,
8 but we can't hold people accountable, and I can't tell
9 you how much cash we have in each program, as
10 Commissioner Barth has reminded me, at any given time,
11 and it's very hard to manage where we are and also
12 hold people accountable for what we need to be doing.

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

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

17 COMM. STEEN: Great start.

18 CHAIRMAN POLUNSKY: Any other questions
19 for the Colonel?

20 (No response)

21 CHAIRMAN POLUNSKY: Thank you, sir.

22 COL. McCRAW: Thank you.

23 CHAIRMAN POLUNSKY: New business:
24 Update, discussion and possible action regarding
25 formulating policy of recommendations to schools with

1 respect to shutting down the schools due to H1N1.

2 Chief Colley?

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

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

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

25 To her left is the doctor for the state

1 of Texas -- commissioner of health for the state of
2 Texas, Dr. David Lakey. He is in charge of the
3 largest health organization outside of the United
4 Nations, in terms of what he does for the state of
5 Texas. And he's taken his time, and we're very
6 pleased that he's done that, to be here this morning.
7 Dr. Lake is, of course, commissioner of health, and is
8 the lead agency for the medical response to H1N1.

9 So they're both here this morning. I
10 appreciate their time to be here, to not only answer
11 your questions, but to give a short update on what
12 they are doing. With that, we've met with the
13 Governor's office many times. Governor Perry is very
14 much involved in the preparation for this potential
15 event. And a lot has been done and will continue to
16 be done. So I'll turn to Commissioner Harris, or,
17 Dr. Lakey, do you want to go?

18 DR. LAKEY: Sure. I'll go first.
19 Chairman Polunsky and members, my name is David Lakey.
20 I'm the Commissioner of the Department of State Health
21 Services.

22 I first want to thank you for the
23 invitation to be here today, and thank you, Jack. We
24 have, over the last several years, figured out that
25 public safety and public health have to work hand in

1 hand, and there isn't a bigger champion of public
2 health than Jack Colley. So thank you, Jack.

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

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

22 The good news of this event is that the
23 vast majority of patients have continued to have mild
24 or moderate outpatient disease. We've been able to
25 take care of individuals as outpatients. There have

1 been some, especially those with underlying health
2 conditions, that have had more serious disease, and as
3 we've noted that there were 33 deaths so far, but the
4 vast majority of individuals here have had fever. The
5 average fever has been about 102. They've had cough.
6 They have the flu. It looks very similar to what we
7 see with seasonal flu.

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

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

24 A couple of things that are coming up
25 are the antivirals, make sure we have a distribution

1 system so that if an individual, no matter what their
2 ability to pay, if they need these medicines, can be
3 put on the antiviral medicines, and likewise, vaccine
4 development. The federal government, the CDC, has
5 been working very aggressively to get a vaccine
6 available. There are five vaccine manufacturers, and
7 anticipation is that there will be a vaccine that will
8 be here in the state of Texas by mid-October and we'll
9 start immunizing the priority populations.

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

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

23 Specifically, we will not be
24 recommending that schools be closed on individual
25 cases. What I'll be recommending to -- on public

1 health measures, we'll continue to watch the severity
2 of this, and if it becomes more severe, then we'll
3 readjust those plans, but our plan is not to close
4 schools unless there's a business reason to close a
5 school. There's certain -- and Julie Harris-Lawrence
6 will be discussing that a little bit later, but there
7 is a certain threshold, that if you have a certain
8 population that -- you know, a percentage of kids that
9 aren't there, a certain percentage of teachers that
10 cannot come in because they're sick or they're taking
11 care of their kids that it's no longer effective to
12 keep schools running. So that is our -- again, it's a
13 switch in the strategy, but we'll continue to watch
14 this very closely.

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

24 We've been working with higher
25 education. There's actually a new policy that came

1 out for universities, colleges, et cetera, that came
2 out yesterday. We're disseminating that information
3 and disseminating a lot of other information.

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

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

22 And now we're going throughout the state
23 of Texas, having 13 regional summits to provide the
24 same type of education, but also to have those
25 conversations at the local level of how the different

1 communities are going to address this in their area.
2 And we're getting about 200 folks at each one of these
3 regional summits, so it's a good turnout, not only
4 here at our state summit but at those regional
5 summits.

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

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

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

24 MS. HARRIS-LAWRENCE: Thank you.
25 Chairman Polunsky, Commissioners, thank you for having

1 us here today. I am Julie Harris-Lawrence. I'm the
2 deputy commissioner at the Texas Education Agency
3 charged with health and safety.

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

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

24 I can't tell you what the spread of this
25 disease would have looked like without that support

1 and that guidance, because while we do have widespread
2 flu in Texas, I do believe that the community
3 mitigation and those non-pharmaceutical interventions
4 that took place in April may well have saved this
5 state literally billion of dollars. And so I want to
6 make sure that you are aware that it is -- it was that
7 level of support that allowed us to protect the kids.

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

15 We're Texas, and we have to have our
16 own. We are in a much better shape for a couple of
17 reasons moving into Monday and Tuesday. One, we know
18 a lot more about this virus than we knew in April. We
19 know it is not the killer that we thought it was going
20 to be. We had a denominator number in Mexico, but we
21 didn't have -- I mean, we didn't know what we were
22 dividing into, where we had 1,000 people dead, but did
23 with 1,500 people sick or did we have 15 million
24 people sick. So we didn't really know what we were
25 dealing with. We have a much better clue now.

1 School teachers, campuses and districts
2 in Texas have been dealing with flu and communicable
3 disease for, lo, since we swung the doors open in the
4 red schoolhouse. I am going to have to push back a
5 little bit. Coming from east Texas, I do believe God
6 has visited the Piney Woods as well, Colonel, and I
7 think he is just as fond of that as he is of the west,
8 and so we've been dealing with that.

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

18 Because I'm going to tell you-all, this
19 is not an emergency that we can send a helicopter to
20 pick you up. We can't send a bus to get you. There's
21 not a boat that's going to come and bring you your
22 supplies. This is an emergency that the citizens of
23 Texas have got to be individually prepared for, and so
24 we have, at the agency, tried to help the districts
25 and the campuses prepare their parents.

1 Schools will not be closed based on
2 single or even multiple incidences of H1N1 or of
3 seasonal flu. However, the Commissioner is right.
4 There is a level of capacity that campuses reach that
5 depends on student/teacher ratio, can depend on
6 teacher absenteeism, can depend on student
7 absenteeism, and it's different for every school
8 district.

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

17 The one thing that Commissioner Scott
18 has made clear repeatedly; in fact, told me on the
19 phone this morning, that the one thing that will never
20 be a point of discussion for a superintendent trying
21 to decide capacity of his building is dollars. The
22 money will never be the issue. We will make sure that
23 the waivers are available for those individual
24 campuses or districts that reach capacity; never,
25 ever, ever is that to be on the table, only the safety

1 and health of the children and the faculty and staff
2 that are there.

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

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

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

24 So that being said, I'm sure you guys
25 have some questions, and we'll be happy to try and

1 address them.

2 CHAIRMAN POLUNSKY: Thank you very much.

3 Are there questions? Mr. Steen?

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

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

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

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

1 similar virus and individuals saw that and developed
2 some immunity, and so there is some protection out
3 there.

4 COMM. STEEN: Well, you know, we're
5 talking about severity, and if I wrote these stats
6 down right, were you're saying that last year there
7 were 3,000 deaths in Texas from seasonal flu but only
8 33 from H1N1?

9 DR. LAKEY: Every year we lose about
10 3,000 Texans due to seasonal flu. That's mostly the
11 elderly and the very, very young. So far, we have
12 lost about 33 Texans related to H1N1. We'll see the
13 majority of the illness later on, so that number will
14 go up, but that's why we need to continue to combat
15 seasonal flu. And that's important in order for us to
16 have proper perspective related to this H1N1 thing.

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

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

21 MR. COLLEY: Well, DPS provides a very
22 essential role. They say there's five functional
23 areas to every event; coordination, control,
24 evacuation, search and rescue and re-entry operations.
25 DPS is the thread that runs through with all that.

1 If there's any operations, whether the
2 security of the antivirals, the movement of the
3 antivirals, providing information, our whole system of
4 response is based on these DDCs, these disaster
5 district chairmans out there. So our county Judges
6 and mayors who are charged, you know, with the health
7 and welfare of their citizens, they're going to turn
8 to that DPS captain or lieutenant out there for
9 those -- for that information, which is key, the
10 coordination of these events.

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

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

25 No other state agency operates 24 hours

1 a day, seven days a week except the Department of
2 Public Safety. The Department of Criminal Justice
3 does, but it's a different environment to do that.

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

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

20 The other dynamic, of course, is
21 hurricanes. We evacuated 1.9 million people from that
22 coast during Ike. They evacuate. There's large
23 numbers. There's that part that goes in that; you
24 know, all the -- the planning of what if we have H1N1
25 at the same time we have to evacuate 2 million people

1 off the coast? Those are all there. So you don't
2 worry about them. You plan for them.

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

19 COMM. STEEN: Thank you.

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

25 MR. COLLEY: Did it at night, did it on

1 the weekend.

2 COMM. CLOWE: Yeah. But I think a point
3 that I would like to add to your answer to
4 Commissioner Steen that sticks in my mind that was so
5 impressive in the spring and April was communication.

6 Those daily telephone calls -- and I was
7 one of the 3,000 that listened in every day. Doctor,
8 Commissioner, I heard you-all briefing people all over
9 the state, telling them what was happening, and that's
10 what people want to know.

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

17 DR. LAKEY: Yes, sir.

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

25 MS. HARRIS-LAWRENCE: And,

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

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

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

23 DR. LAKEY: We anticipate -- I guess in
24 my conversations with my colleagues in other states
25 and at the federal level, it is my anticipation that

1 on October 15th, there will be about 45 million doses
2 nationwide. Texas is about a tenth of the population,
3 and so there will be about 4 million doses that should
4 be available here in the state of Texas, a combination
5 injectable vaccine and nasal spray.

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

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

23 It is our anticipation -- well, the plan
24 for Texas is that we are going to make it available.
25 We're going to make sure that vaccine is available in

1 the state for those individuals that choose to be
2 vaccinated, and so a voluntary vaccination program in
3 the state of Texas.

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

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

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

25 MS. HARRIS-LAWRENCE: Well, we certainly

1 can have -- schools can be utilized as far as a
2 facility.

3 COMM. BARTH: Right.

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

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

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

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

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

25 DR. LAKEY: This is always something you

1 watch quite closely, and we had a shortage several
2 years ago, and then there were folks that -- where
3 there was a challenge.

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

14 COMM. BARTH: Thank you.

15 DR. LAKEY: Thank you.

16 CHAIRMAN POLUNSKY: Are there any other
17 questions?

18 (No response)

19 CHAIRMAN POLUNSKY: Thank you-all for
20 being here.

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

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

25 CHAIRMAN POLUNSKY: Would it be possible

1 for you to generate some type of media release that
2 would summarize the information -- or the relevant,
3 most important parts of the discussion that we've had
4 here this morning so that the general public is aware
5 of what's going on here and what has taken place here
6 at this meeting?

7 MS. MANGE: Yes, sir.

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

11 CHAIRMAN POLUNSKY: Thank you, again.

12 MS. HARRIS-LAWRENCE: Thank you

13 DR. LAKEY: Thank you.

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

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

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

23 (Laughter)

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

1 Commissioner Scott.

2 MS. HARRIS-LAWRENCE: Yes, sir.

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

5 MS. HARRIS-LAWRENCE: Yes, sir.

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

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

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

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

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

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

24 COMM. CLOWE: Okay. Great.

25 CHAIRMAN POLUNSKY: Thank you-all for

1 being here.

2 Next item: Update, discussion and
3 possible action on providing permanent generators.

4 Chief Colley, you're back.

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

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

15 We're going to put -- we've added some
16 others. We'll put generators at Beaumont, Lufkin --
17 added Lufkin. It's a backup to the other area --
18 Houston; Victoria, which is a key area, Corpus and the
19 Valley. So to that end, what we'll do is today, we
20 will -- yeah, the 21st, we'll receive the pricing from
21 the vendors. The Texas Facilities Commission will do
22 this for us. We've done all the wiring. We've had
23 the engineers look at it. We're going to take four
24 existing 450 kW generators DPS has, rewire them.
25 We're going to install what's called ATS switches,

1 automatic transfer switches on them. That's key
2 and -- that's what I have in the SOC down -- over --
3 across the street. This will allow the generators to
4 kick on and somebody doesn't have to go outside and
5 try to hook them up and do all that kind of piece.

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

10 So the bottom line is things have come
11 together, and we should have that completed by the
12 15th. Now, if we don't have a hurricane by the 15th,
13 we'll build something else, but at the same time, that
14 will be completed by the 15th.

15 COMM. BARTH: Thank you, Jack.

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

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

24 Is there anything that -- do you have
25 anything?

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

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

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

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

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

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

23 Next item: Discussion and possible
24 action regarding procurement of law enforcement
25 equipment, additional body armor and other operational

1 support items to Commission personnel. Now, of
2 course, Colonel McCraw has referenced this in his
3 report.

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

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

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

17 Also, importantly, for us to -- we'll
18 call it the bright line for lack of a better term, is
19 to make it clear to the employees that the one thing
20 you cannot do, the department will not tolerate, is to
21 prevaricate or lie. If you do, you'll know on the
22 front end, before an interview and you know you'll be
23 terminated from the department. We cannot have -- the
24 public trust that the department has, we can't have
25 commissioned officers or others compromising their

1 integrity, then later on, getting up and trying to
2 testify. They become useless to us once they
3 prevaricate, and they'll be terminated at that point.
4 To do so, we need a new policy as a part of the
5 discipline matrix, and that's what we're working on
6 right now.

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

12 COL. McCRAW: All right, sir.

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

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

20 As far as Agenda Item F, the executive
21 management salary specific to the director of DPS, the
22 81st legislature approved an increase to the salary
23 limit for the director of the agency. The current
24 salary is set at \$157,500. The new salary limit is
25 set at \$162,000. The General Appropriations Act

1 identifies that if the Commission determines to
2 increase the salary to \$162,000, it must take formal
3 action. This is submitted for your consideration.

4 CHAIRMAN POLUNSKY: Thank you.

5 COMM. STEEN: So move.

6 COMM. BARTH: Second.

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

10 MR. YBARRA: Thousand.

11 CHAIRMAN POLUNSKY: Even?

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

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

21 Any discussion on this motion?

22 (No response)

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

25 (All those in favor of the motion so

1 responded.)

2 CHAIRMAN POLUNSKY: Any against, "no."

3 (No response)

4 CHAIRMAN POLUNSKY: Motion passes.

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

11 CHAIRMAN POLUNSKY: Certainly.

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

14 CHAIRMAN POLUNSKY: Okay.

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

17 MR. YBARRA: September 1st, sir.

18 COMM. CLOWE: Thank you.

19 CHAIRMAN POLUNSKY: Did you have a
20 question?

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

24 MR. PLATT: It's adequate for the
25 purposes, and Mr. -- Chief Ybarra well be contacting

1 the appropriate authorities at the comptroller's
2 office.

3 CHAIRMAN POLUNSKY: Okay. All right.
4 Then we'll move on to Item L, update and discussion
5 regarding the pending issuance of approximately
6 \$110,625,000 in bonds pursuant to the previous
7 approval from the Texas bond review board, the
8 legislative budget board and the Public Safety
9 Commission. Again, Chief Ybarra?

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

19 What I would like to present to you --
20 to the Commission today is identification of the
21 facilities that are being affected by these dollars.
22 The 80th legislature authorized the agency funding for
23 these projects via general obligation bonds. It
24 required voter approval. We received that approval on
25 November 2007.

1 In early 2008, the Public Safety
2 Commission approved the resolution which authorized
3 the director of the agency to sign financing
4 agreements and any documents in relation to
5 negotiations with the Texas Public Finance Authority.
6 The agency has received approval from the legislative
7 budget board, the Texas Public Finance Authority and
8 the bond review board.

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

19 CHAIRMAN POLUNSKY: Are there questions?

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

22 MR. BURNS: Mr. Chairman, Commissioners,
23 I'm Dwight Burns, the new executive director of the
24 Texas Public Finance Authority. Thank you for letting
25 us come and talk to you-all today.

1 The market for these bonds, sir, is
2 pretty good. Last week, we were in New York, and we
3 sold \$450 million in bonds, about 110, 111 million for
4 purposes of the Texas Public Safety Department, and we
5 achieved significant and favorable interest rates in
6 the bond market.

7 Part of the bond proceeds, about
8 181 million, of which 110 will belong to you-all, were
9 sold as Build America bonds, which included a
10 significant federal tax incentive, and it helped us to
11 achieve some significant savings.

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

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

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

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

25 MR. BURNS: Twenty years.

1 COMM. CLOWE: Are these about AAA rated?
2 They're not insured but --

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

9 COMM. CLOWE: That's good.

10 MR. BURNS: -- at AA+, AA1 for Moody's.
11 Full disclosure, I just left Moody's after eight years
12 as a bond analyst.

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

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

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

19 MR. BURNS: Call date, John?

20 MR. HERNANDEZ: Ten-year call dates.

21 MR. BURNS: Ten years.

22 COMM. CLOWE: That's good.

23 MR. BURNS: Sir, that was another aspect
24 of the deal. A lot of these Build America bonds were
25 being sold with a "make whole" call provision and not

1 with the traditional ten-year call. That was our
2 board's -- one of our board's priorities to keep as
3 many of those traditional municipal bond standards in
4 place, and the ten-year call part of it.

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

7 MR. BURNS: Yes, sir.

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

10 MR. BURNS: Thank you. Good to be here.
11 We're proud to serve as your representatives in the
12 bond market and hope to continue to do so.

13 COMM. CLOWE: Thank you.

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

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

21 CHAIRMAN POLUNSKY: I'm sorry.

22 COMM. BARTH: Mr. Burns, I know enough
23 to be dangerous. I have to be careful here. A couple
24 of questions with respect to the numbers that were
25 presented on the project costs. One, did we present

1 to you a cash flow with respect to when this money
2 would be drawn over the life of the projects? And,
3 number two is, was that cash flow projection to
4 those -- you know, these are sort of (inaudible)
5 projects -- when was it last updated? And do we feel
6 certain on these project we're not going to be coming
7 up short so that we're starting to say, "Okay. Well,
8 we can't put Grade A carpet in. We've got to put
9 Grade B carpet in"?

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

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

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

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

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

25 MR. YBARRA: Yes, ma'am, they did.

1 COMM. BARTH: And about what percent on
2 these projects?

3 MR. YBARRA: Anywhere between 6 and
4 10 percent.

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

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

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

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

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

25 COMM. STEEN: So all of us involved in

1 state government can really pat ourselves on the back.

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

6 COMM. STEEN: Thank you.

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

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

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

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

20 MR. HERNANDEZ: It was Texas Department
21 of Transportation.

22 MR. BURNS: Oh, with TxDOT.

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

25 MR. BURNS: Oh, I can't remember what

1 other states were in the market last week. The weeks
2 before ours, there were a few states in the market a
3 few months ago. Wisconsin, I think, was in the
4 market and I don't know of any --

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

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

15 COMM. BARTH: Were you oversold --
16 oversubscribed?

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

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

1 credit quality of the state.

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

6 COMM. BARTH: Thank you.

7 MR. YBARRA: May I make a statement?

8 CHAIRMAN POLUNSKY: Yes, sir.

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

14 CHAIRMAN POLUNSKY: Thank you very much.
15 This is all very good news.

16 MR. BURNS: Thank you.

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

19 MR. BURNS: Not at all, sir.

20 CHAIRMAN POLUNSKY: Good luck --

21 MR. BURNS: Thank you.

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

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

1 accounting.

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

7 We looked at the last three years, and
8 we identified approximately 623-plus million dollars
9 in collected revenue for the agency, of which
10 510 million was for driver's license. For these three
11 years, the NSF checks' total came up to 700,000 --
12 approximately \$700,000 which is about .11 percent of
13 the total revenue.

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

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

20 MR. YBARRA: Yes, ma'am.

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

25 MR. YBARRA: Yes, ma'am. We do have a

1 process. We do issue letters, and we are looking at
2 what we can do as an agency from a credit bureau
3 perspective. I know Chief Kelley is working on what
4 he can do from a driver's license perspective.

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

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

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

18 MR. KELLEY: Mr. Chairman, chief of
19 driver's license. What I've done is some research the
20 last few days after we spoke, Commissioner, about
21 this, and there is a provision in the law that says
22 that a driver's license or identification card that
23 has been issued by the department can be revoked for
24 failure to pay fees. That means any fee to the
25 department, including if you were to pay for a crash

1 record to the Texas Highway Patrol and we were
2 notified, we could revoke their license.

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

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

21 COMM. BARTH: I don't necessarily -- I
22 don't disagree with you in terms of revoking, except I
23 listened to the gentleman who blogs backs there and
24 the Judge and Senator Shapleigh. That doesn't seem to
25 work. Okay? I'm pretty sold that that idea is

1 really -- we need to be on the front end. So, you
2 know, I would rather just not have someone be able to
3 get their license because they can't give us whatever
4 the fee is. The Judge said it's fees upon fees when
5 they give us a hot check.

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

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

21 MR. KELLEY: Correct.

22 COMM. BARTH: Okay. And I don't think
23 adding more surcharges or revoking or whatever is
24 changing behavior. People drive without their
25 licenses, without insurance, so I think we should look

1 towards a more proactive way and one of which is just,
2 "We don't take checks." I mean, it's pretty simple.

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

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

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

18 COMM. STEEN: But not a credit card?

19 MR. KELLEY: Not a credit card, unless
20 you go online or -- in other words, you can't mail a
21 personal check in to pay for an original or a
22 replacement or a renewal of your concealed handgun
23 license. You would actually have to use a certified
24 check from a bank, and that ensured that we got our
25 money.

1 COMM. STEEN: Chief, am I understanding
2 correctly we've got Texans out there right now who are
3 driving using their driver's license that paid us with
4 a hot check?

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

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

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

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

17 We have found it successful that we will
18 write letters, and we do follow up, and say, "You've
19 written a non-sufficient fund document to us. You owe
20 us \$24 for your driver's license." We've found that
21 the fact that it has DPS in the letterhead, it's we're
22 writing to them, there tends to be compliance. We do
23 get compliance, but we don't get 100 percent because
24 some individuals just wait, and they'll try and see
25 how long they can get away with it.

1 COMM. STEEN: And you and I had this
2 discussion, but for the benefit of everyone else, you
3 know, the district attorneys' offices have hot check
4 divisions.

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

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

10 MR. KELLEY: Well, I believe we could
11 utilize it, but the problem is we're talking about a
12 24-dollar check, and they're dealing with cases in the
13 tens of thousands. So we're not going to get the
14 priority when it comes to prosecution. They're
15 already backlogged, and even the Attorney General has
16 said the base limit is \$2,500 before they'll even look
17 at prosecuting on the grounds that they've got so many
18 large, outstanding records that they have to -- funds
19 that are owed that they're going to go after them
20 first. We would inundate and swamp them with all the
21 24-dollar fees if we were to do that.

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

25 MR. KELLEY: No, sir; we can revoke

1 them.

2 CHAIRMAN POLUNSKY: So what's the -- why
3 aren't you doing that?

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

8 CHAIRMAN POLUNSKY: Well, I mean --

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

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

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

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

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

21 CHAIRMAN POLUNSKY: -- and a
22 recommendation as to how we would address this, that
23 would include revocation of licenses for individuals
24 who have paid with NSF checks and then not made those
25 good.

1 MR. KELLEY: Can we look at that also as
2 not just for driver's license items, but we have lots
3 of checks that are paid for other DPS --

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

10 MR. KELLEY: Yes, sir.

11 CHAIRMAN POLUNSKY: -- for any payment
12 for anything.

13 MR. KELLEY: Yes, sir.

14 COMM. BARTH: Mr. Chairman, I would also
15 like to know how we get away from taking checks --
16 okay -- so we can get away from the problem. All
17 right? I don't know whether we have the power to just
18 say, "We're only going to take cash, money order."
19 And I guess you're telling me we can't process credit
20 cards right now at all the driver's license offices.

21 MR. KELLEY: Correct. Until the new
22 driver license systems roll, we still are accepting
23 checks because we don't have the epay system until the
24 new -- once we have the new offices rolled out, then
25 they'll have the epay system to take credit cards.

1 COMM. BARTH: Does the Commission have
2 the ability to say we're only going to take cash and
3 money orders?

4 MR. KELLEY: Yes, ma'am.

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

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

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

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

15 COL. McCRAW: Total.

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

21 So let's let him have, you know, a month
22 to take a look at it, work with Chief Kelley and the
23 others who are involved in receiving payment for
24 various licenses and services and so on and have the
25 director come back with recommendations at the next

1 meeting on, you know, how we can address this, and
2 then at that point, we can talk about all aspects of
3 this and what we can do to --

4 COL. McCRAW: Thank have you, Chairman.

5 CHAIRMAN POLUNSKY: -- eliminate this
6 problem.

7 COL. McCRAW: Yes, sir. Thank you.

8 CHAIRMAN POLUNSKY: Is that okay with
9 everybody?

10 (No response)

11 CHAIRMAN POLUNSKY: Anything else?

12 MR. YBARRA: Thank you.

13 CHAIRMAN POLUNSKY: Next item:

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

21 Who wants to take the lead on this?

22 COMM. CLOWE: Commissioner Barth.

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

25 CHAIRMAN POLUNSKY: Okay.

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

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

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

20 COMM. CLOWE: Nothing further.

21 COMM. BARTH: I guess at this point,
22 though, I think we need to -- because of the sunset,
23 we need to put a temporary solution in place, which
24 would be to -- maybe, Colonel McCraw, you might want
25 to speak to what's being proposed.

1 COL. McCRAW: Well, obviously since we
2 don't have a candidate and the duties have changed in
3 terms of what it will be doing. So I think it would
4 be best -- or what I would recommend, even though we
5 put it on the list, is to go ahead and keep things as
6 is right now. We do have an inspection component. We
7 certainly -- under Mr. Farrell here, we do have that
8 capability so that we continue till we do get the
9 inspector general, I think is the appropriate way to
10 do it.

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

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

24 COL. McCRAW: Yes. Rather than doing
25 that, since the -- because the responsibility has

1 changed slightly when that happens. Right now we
2 already have an internal affairs function right now,
3 an individual in internal affairs, and if we can just
4 continue as is until we get the inspector general in
5 place, that would probably be a better solution. I
6 would recommend that to you as a better solution.

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

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

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

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

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

1 be that individual, as opposed to someone that we
2 already have right now.

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

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

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

16 COL. McCRAW: It's my proposal.

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

23 CHAIRMAN POLUNSKY: All right. But the
24 inspector general is actually appointed by the Public
25 Safety Commission. Is that not correct?

1 MR. PLATT: That's correct.

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

4 MR. PLATT: That's correct.

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

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

19 COL. McCRAW: Mr. Chairman, my
20 recommendation is that we simply keep the internal
21 affairs component we have in place, that it performs
22 the inspector -- although it's dissolved, it, in fact,
23 performs the inspector general function until you
24 select your inspector general so that we don't lose
25 the ability to continue internal investigations.

1 CHAIRMAN POLUNSKY: Is that something
2 that can be done?

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

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

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

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

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

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

24 COMM. STEEN: So, Mr. Chairman, do we
25 want to do that now, or do we want to take it up --

1 CHAIRMAN POLUNSKY: Why don't we take it
2 up when that comes up, and this would also be
3 something that may fall within personnel issues that
4 can be --

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

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

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

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

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

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

22 CHAIRMAN POLUNSKY: Right.

23 COMM. CLOWE: But the issue of moving
24 the internal affairs in -- as acting in the inspector
25 general is an organizational issue, and the motion

1 that you have drafted could not be discussed in
2 executive session.

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

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

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

15 COMM. CLOWE: Thank you.

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

19 COMM. STEEN: Just fine.

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

22 Discussion and possible action on
23 department asset forfeiture policy and procedure.
24 Colonel Beckworth?

25 COL. BECKWORTH: Mr. Chairman,

1 Commissioners, approximately four or five months ago,
2 I gave you an overview of the seized fund account and
3 how those funds are distributed and accounted for
4 within the agency.

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

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

20 What we've done with this new policy is
21 we've created an asset forfeiture section within the
22 criminal law enforcement and all of those processes
23 are transparent and managed through that division, and
24 now this is a seamless process. It's centralized and
25 it's transparent, and, therefore, it's a good plan for

1 us to move forward on. And I wanted to bring this
2 policy to your attention. It does not require any
3 kind of an action on your part. It's for discussion
4 only, and with that, I'll answer any questions from
5 the Commission.

6 CHAIRMAN POLUNSKY: Are there any
7 questions?

8 COMM. CLOWE: No questions.

9 (No response)

10 CHAIRMAN POLUNSKY: Thank you.

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

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

20 That particular program was not
21 provided -- the agency was not provided any funds to
22 facilitate that program. Annually it costs
23 \$6.3 million to run the TDEx program. So the agency
24 has had to -- within its own restraints and budgetary
25 strategies had to identify funding to address those

1 particular issue.

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

11 What we've done, we've identified
12 \$1.4 million within our own strategies to address it.
13 We received a grant fund of \$800,000 to manage that
14 program. That leaves us a little over \$4 million that
15 we need to identify to pay for TDEx in 2009.

16 So what we're asking the Commission to
17 do is to authorize and approve for us to use
18 \$4.1 million to pay for the TDEx funding out of the
19 seized fund account, and that fund has those dollars
20 incorporated in there. And we would ask your
21 consideration to pay that money out of the account
22 because we don't have any funds, any other strategy to
23 address that. And that's our recommendation to the
24 Commission.

25 CHAIRMAN POLUNSKY: Discussion,

1 questions?

2 (No response)

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

5 COL. McCRAW: Yes, sir.

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

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

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

1 state.

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

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

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

25 MR. GAVIN: Yes, and this is 2009.

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

5 MR. GAVIN: Yes.

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

11 I think this is a great investment for
12 the department.

13 COL. BECKWORTH: Mr. Chairman, we have
14 funds coming in, a significant amount of dollars that
15 the Colonel is referring to coming in. However, for
16 this year, ending in August of this year, we need
17 \$4.1 million to balance the books for the agency
18 because we've used funds within the agency to address
19 this particular process.

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

24 COL. McCRAW: Which will be able to
25 supplement and take care of some of those shortfalls

1 within other programs.

2 CHAIRMAN POLUNSKY: Any other questions?

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

6 COL. McCRAW: Yes, sir.

7 COL. BECKWORTH: Yes, sir, we are.

8 COMM. STEEN: What would the motion --

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

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

17 COL. BECKWORTH: Yes.

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

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

23 COL. BECKWORTH: That's correct.

24 COL. McCRAW: That's correct. So now
25 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.

1 COMM. CLOWE: I thought you were.

2 CHAIRMAN POLUNSKY: Seconded by
3 Commissioner Clowe.

4 Any discussion on the motion?

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

11 CHAIRMAN POLUNSKY: How much is left in
12 the pot?

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

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

18 COL. BECKWORTH: Federal, a little over
19 \$13 million.

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

23 COL. McCRAW: Sure.

24 COMM. BARTH: That would be helpful.

25 COL. McCRAW: Obviously we won't be

1 spending any of it unless we come back to the
2 Commission with recommendations in terms of what those
3 are.

4 COMM. BARTH: That's all.

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

7 (No response)

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

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

12 CHAIRMAN POLUNSKY: Any against, "no."

13 (No response)

14 CHAIRMAN POLUNSKY: Motion passes.

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

18 MR. GAVIN: Chairman and Commissioners,
19 David Gavin, assistant chief of administration. Just
20 to follow on that discussion -- if you go to Slide 17,
21 please -- the legislature in the past session did
22 appropriate \$12.4 million, a one-time operating
23 expense, for us to pay for the enterprise license and
24 the support for the system. We had estimated that we
25 need 29.2 for the biennium. So that leaves us the

1 need for the rest of the money for the adaptive
2 development that the Colonel was talking about.

3 So we have applied, under the stimulus
4 money, for 13.7 million for that adaptive development
5 under the southern border grant, the Byrne program.
6 In addition, the Governor's office has identified
7 17 million that can be used for -- specifically for
8 TDEx, as well as for a program called Remote RMS,
9 which is a very good program that will allow us to
10 purchase a Web-based RMS service that local law
11 enforcement agencies who don't have any RMS to use
12 to -- for them to get the benefit of an RMS system and
13 also for them to contribute to TDEx.

14 That money will have to come out of the
15 17 million. In addition, it's to support TxMAP, which
16 Jack Colley has developed, a very effective statewide
17 mapping tool. So out of the 17 million, those funds
18 will have to come out of that as well, but, clearly,
19 we'll be able to make a significant dent, even if we
20 don't get the other federal money in completing the
21 rollout of TDEx to the remaining 640 agencies who will
22 be looking to add TDEx.

23 So this particular request is simply for
24 us to be able to move forward during this fiscal year
25 on those contracts. There is a master contract, but

1 we will do the enterprise license and the -- purchase
2 the adapters through the purchase change notices, many
3 of which would have to come to you for review, but as
4 we did in 2'09, if you would allow us, we'll move as
5 fast as we can, but we'll stay within the lines.

6 And if we see the amount going over half
7 of 29.2, so if we see the amount going over
8 \$14.6 million, we would come back to you. And, of
9 course, in the division report, we would keep you up
10 to date on the purchases that we're doing for TDEx
11 within those amounts.

12 CHAIRMAN POLUNSKY: So the action item
13 is --

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

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

21 COMM. STEEN: Anything from the
22 Colonels?

23 COL. McCRAW: No.

24 COL. BECKWORTH: No. We support this
25 recommendation, and we think that it's the best thing

1 to do to allow that program not to be staggered in any
2 way and keep going -- we'll keep you apprised each
3 month, and if any changes occur, we'll address it
4 accordingly.

5 CHAIRMAN POLUNSKY: Somebody would like
6 to make a motion?

7 COMM. CLOWE: So move.

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

10 COMM. BARTH: Second.

11 CHAIRMAN POLUNSKY: A second by
12 Commissioner Barth. Discussion?

13 (No response)

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

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

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

24 Commissioner Steen, I don't -- you know,
25 I hope that the Colonel doesn't come back to us this

1 time next year and say, "Okay. Here is the shortfall
2 for TDEx" but --

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

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

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

21 DHS is also looking at this as a model
22 right now to be able to exploit across the southwest
23 border. So we're also going to be looking at them to
24 see if they can come up with additional funds, and
25 we'll be working closely with them to ensure -- and

1 the advantages, which we haven't talked about yet
2 because we'll talk about it with the commercial
3 handgun licensing, how we'll be able to use it to get
4 troopers back on the road and then be able to do
5 automated badge fronts against TDEx to be able to cut
6 our time -- I won't predict half, but certainly
7 dramatically in terms of what we're spending right now
8 in terms of trooper time doing background
9 investigations on concealed handgun licenses.

10 MR. YBARRA: Mr. Chairman, just
11 information to the Commission, there is a rider in our
12 bill pattern that identifies at the Governor's offices
13 to try to find dollars to cover these adapter
14 expenditures up to the limit of, I think, 11 or
15 \$12 million. So there's a rider in our bill pattern
16 also, and the Governor's office is aware of it.

17 CHAIRMAN POLUNSKY: Okay. There's a
18 motion and a second. All in favor, please say "aye."

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

21 CHAIRMAN POLUNSKY: Any against, "no."

22 (No response)

23 CHAIRMAN POLUNSKY: Motion passes.

24 MR. GAVIN: Thank you.

25 CHAIRMAN POLUNSKY: Thank you very much.

1 Update, discussion and possible action
2 regarding energy savings performance contract. Chief
3 Fulenwider?

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

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

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

14 MR. GAVIN: Thank you, sir.

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

17 MR. GAVIN: Thank you.

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

23 And, Commissioner Steen, I know you were
24 not here last August when this contract was discussed
25 in detail, so I'll try to fill in some of the blanks

1 here for you.

2 An energy savings performance contract
3 is a mechanism to complete energy savings improvement
4 projects without using capital by financing the
5 improvement projects with money saved due to reduced
6 utility expenditures. In the performance contracting
7 process, the agency contracts with an energy services
8 company, an ESCO. The ESCO audits our energy and
9 water consumption. They evaluate our mechanical
10 systems and other components, and then determine
11 measures to reduce consumption.

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

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

25 Our history with this process is that we

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

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

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

21 So where that leaves us right now is
22 that TAC Americas has gone back -- because of the time
23 that's elapsed since we started this project, they've
24 gone back and re-evaluated where we are now. We have
25 made some changes. We had to do one of the projects

1 that was listed as a cost reduction measure. We had
2 to go ahead with the replacement of the cooling tower
3 on Building C. So because of the time that's elapsed
4 and replacement of that cooling tower, TAC Americas
5 went back and looked at where we are now, and we just
6 received that new project information last Friday.

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

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

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

1 questions?

2 CHAIRMAN POLUNSKY: Are there questions?

3 So your request for action is what?

4 MS. FULENWIDER: Is to renew the
5 contract.

6 COMM. STEEN: For how long?

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

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

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

20 MS. FULENWIDER: Right.

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

24 Now, one of the questions I have is, I
25 know the SAO is looking at whether, in fact, this

1 whole program ought to be dissolved because, you know,
2 my pooling of -- pooling of people who have done this
3 project, they never get the savings that they're
4 guaranteed. All right?

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

16 MS. FULENWIDER: Yes, we do.

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

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

25 And the state auditor's office did have

1 some significant concerns about this process. Now --
2 but they did not put a halt to the process.

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

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

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

24 COMM. BARTH: Of those three projects,
25 how many are TAC's projects?

1 MS. FULENWIDER: None.

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

4 MS. FULENWIDER: That I do not know.

5 MR. PLATT: There was a question a while
6 ago regarding term of the contract. The contract was
7 signed late November of 2007. The language of the
8 contract ran the term from December 1st, 2007 through
9 August 31st, which is essentially a time period
10 that -- it would be, what, 22 months or thereabouts --
11 21 months.

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

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

20 One, do we have viable projects that the
21 department needs to engage in, was your first
22 question, and the answer is we do have some that we've
23 prioritized for you for your review. And the second
24 part was, has the state auditor's report shut down the
25 process because of findings they had? And the answer

1 is no, they have not done that -- done so.

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

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

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

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

24 COMM. STEEN: Ms. Fulenwider, you're
25 asking us today to extend this contract?

1 MS. FULENWIDER: Yes, sir.

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

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

6 (Laughter)

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

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

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

19 COMM. BARTH: That's exactly correct.

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

24 COL. McCRAW: Yeah. Our recommendation
25 would be to proceed for this reason alone, is that

1 there are some projects that will not get done unless
2 we do so, because we'll have to prioritize, either
3 with the capital funds that have been approved or the
4 existing funds that have been appropriated.

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

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

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

22 MS. FULENWIDER: That's correct.

23 MR. PLATT: And then we do not owe that
24 sum of money. So my recommendation is to totally
25 support the Colonel as to get us time to assess the

1 priorities so that we can -- otherwise, we're going to
2 pay out \$191,000 without getting any benefit from this
3 contract?

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

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

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

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

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

25 MR. PLATT: You're correct in that, and

1 I think there is -- but we would open ourselves to a
2 claim for \$191,000, and that's what I wanted the
3 Commission to be aware of. The vendor's position
4 would be that we owe that amount of money. Now --

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

8 MR. PLATT: Sure. Sure.

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

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

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

24 COMM. STEEN: We have ten days to make
25 this decision?

1 CHAIRMAN POLUNSKY: Yeah. Why is this
2 popping up ten days before the expiration of the
3 contract?

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

6 CHAIRMAN POLUNSKY: Why not?

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

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

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

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

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

20 COMM. STEEN: But Commissioner Barth has
21 these issues. Mr. Chairman, should we approve it,
22 subject to some of these things -- some of these
23 issues that you're raising? I know we've only got ten
24 days to work on it, but is somebody looking into these
25 and satisfying you on these?

1 COMM. BARTH: I think it goes back to
2 the big satisfaction to me is, like I say, I don't
3 know where we are on the guarantor of these payments
4 if we don't get there. And I don't want to spend the
5 money, borrow the money. You know, we still have to
6 pay it back --

7 MS. FULENWIDER: Exactly.

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

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

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

25 MS. FULENWIDER: And I know that the

1 agency went through the RFP process in 2006 and 2007,
2 and the vendor was selected through that process.

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

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

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

24 MR. PLATT: Well, typically the client
25 within the agencies tracks those contracts. I can't

1 answer what we have. It was brought to my attention
2 ten days ago. I briefed the Colonel at that point in
3 time so --

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

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

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

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

15 MR. YBARRA: No, ma'am.

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

22 COMM. BARTH: It's somewhat between
23 legal and -- you know, I feel for you here. In ten
24 days, you realize it's up for renewal. You're coming
25 to us, you're trying to figure this out and general

1 counsel says it was just brought to their attention
2 ten days ago. It just seems like this stuff would
3 kick out to give us a 90-day --

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

6 CHAIRMAN POLUNSKY: You're right.

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

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

21 COMM. BARTH: I'd go back and say I'd
22 rather spend a dime with this company and pay them, if
23 we think we owe them, because I'm not sure we do, if
24 we thought there was a vendor out there that was in a
25 better financial position, because I don't know

1 Schneider from anything else out here. And that would
2 be something that I would ask, you know, you and
3 Stuart before we go and sign another year with them or
4 20 -- whatever it is, 18 months, 21 months.

5 I definitely will feel for you, and I
6 worked on this last year, and I didn't have a lot of
7 confidence in the vendor. So I'm trying to figure
8 out, putting aside the one -- whatever, if this is the
9 right vendor to do it with.

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

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

22 CHAIRMAN POLUNSKY: Thrust upon you by
23 who?

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

1 part of the process.

2 MR. YBARRA: Right. Hearing process --
3 Kevin?

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

6 MR. YBARRA: Were you part of that
7 process?

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

13 COMM. BARTH: That's right.

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

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

21 MR. JONES: Right. All the negotiations
22 should have happened on our side of this contract once
23 we solicited it and it was scored, and we got our high
24 score. Then we should have been involved with the
25 negotiations, so it's our DPS contract.

1 COMM. BARTH: Right. Okay. It's not a
2 state contract that says, "This is all we're going
3 to" --

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

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

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

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

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

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

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

25 COMM. BARTH: The question is can you do

1 that because of procurement?

2 MR. JONES: Right. And I was wondering
3 if -- you were stating earlier you believe there's,
4 like, a year and a half, two year --

5 (Simultaneous discussion)

6 MR. PLATT: There's not a provision I
7 see in the contract that deals with a 30-day renewal.

8 COMM. BARTH: So if we were to let this
9 contract go at the end of the month, are you saying we
10 would have to put out a new RFP?

11 MR. PLATT: That's correct, if you
12 wanted to do this type of project.

13 CHAIRMAN POLUNSKY: Stuart, so it's
14 self-renewing, or we need to take affirmative --

15 MR. PLATT: No. You have to take
16 affirmative action to renew it.

17 COMM. BARTH: And by taking affirmative
18 action to renew it then, are we implicitly stating we
19 owe them money?

20 MR. PLATT: I don't know that it changes
21 our position in that regard. As you pointed out
22 earlier, the language in the contract that talks about
23 the obligation is one that's been subject to debate
24 and dispute.

25 COMM. BARTH: I just remember reading

1 this and getting some advice on this before from
2 counsel.

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

7 MR. PLATT: I'm not sure at the end of
8 today is going to help us in terms of addressing those
9 issues, to be frank. We can -- I mean, we can give
10 you some legal advice in executive session. Our
11 contract lawyer that has reviewed this is not present,
12 but Dr. Fox has met with her, so he could probably
13 brief you on your legal obligations in terms of
14 \$191,000.

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

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

22 CHAIRMAN POLUNSKY: Well -- but going
23 forward, this situation needs to be addressed. This
24 is probably one small example in a large galaxy of
25 issues that are floating out there that we may or may

1 not know about, probably not know about; a lot of
2 contract issues, a lot of contracts out there that,
3 you know, we may should -- we should have some concern
4 about.

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

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

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

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

1 Am I correct?

2 MR. PLATT: That's correct.

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

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

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

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

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

23 MR. PLATT: I completely understand.

24 COMM. BARTH: I go back, Colonel McCraw,
25 to in the spirit of doing business, you know, with the

1 other side, it's really -- we don't get along the way
2 and say, "Well, gosh we just realized you don't have
3 the financial wherewithal. We're going to walk from
4 this." Okay? I mean, I don't want to run an agency
5 this way. I think it's bad faith.

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

14 COMM. BARTH: I understand that.

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

20 COMM. BARTH: Well, I would like to
21 think we'd sign the contract, whether it be TAC or
22 another vendor, feeling like, one, they had the
23 financial wherewithal to meet the guarantee, and,
24 number two, that they would be the right -- or at
25 least the best option out there when we started down

1 with this project. So that's my concern.

2 CHAIRMAN POLUNSKY: We'll defer this
3 until later.

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

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

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

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

1 regard to a particular contract for this last time.

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

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

16 There's been an issue of accuracy.
17 Quite frankly, the accuracy is one, which for a court
18 reporter it's very difficult in a meeting setting like
19 this -- would require somebody to go back each month,
20 listen to the audio, try to match up. It's not like
21 reviewing just a deposition, because you've got to
22 listen for voices. So I told Commissioner Steen I did
23 not oppose doing away with the transcript. I
24 wasn't -- whatever action the Commission chose to take
25 was fine. I did want to -- we did attempt to gather

1 information on how many hits there were on the
2 Internet website, and Chief Rable and I have put in
3 effect a tracking mechanism to track that, so that we
4 know how many hits there are on the transcript itself.

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

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

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

23 The problem with -- and I discussed this
24 with you, Counsel. The problem with someone going
25 back -- it's very difficult, bringing in an intern or

1 a lawyer. It's almost like we have to look at -- each
2 of us have to look at that transcript to make sure
3 that it's accurate, and I, for one, don't want to be
4 doing that.

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

7 COMM. CLOWE: What did you say?

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

10 (Laughter)

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

13 COMM. CLOWE: I have some questions.
14 First of all, when a person appears before this body
15 and makes comments, I have noticed they are not
16 filling out a witness affirmation form. That is
17 general practice, to my knowledge, when you appear
18 before a committee of the legislature and before
19 numerous bodies, one of which upon I have served.

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

23 MR. PLATT: Commissioner, and you and
24 I -- I mentioned yesterday, we have implemented a
25 process which next month there will be witness forms

1 after our discussion yesterday. It is a statement for
2 a public hearing or public body. There are penal code
3 provisions for if someone is not truthful in the
4 process, but if that's what you're getting at, is
5 there any penalty if someone makes a false statement?

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

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

18 Secondly, I would make a comment about
19 the minutes. I have never been in favor of summary
20 minutes. I appreciate the effort of whomever is doing
21 that, and I would rather not ask who it is because
22 that doesn't make any difference. It's a best effort
23 on whoever's part is doing it, and I appreciate that.
24 But I have read the minutes and they are summary, and
25 they are not exact and they may have errors. I

1 haven't gone through them with critical intent. I
2 have voted to approve the minutes since we've had
3 them, but I'm not comfortable with that being the only
4 record.

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

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

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

25 COMM. CLOWE: And is the audio

1 certifiably correct? Does anybody -- I know the
2 Commission doesn't approve it like we do the minutes,
3 but is it a legal document that would be acceptable in
4 a court?

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

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

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

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

21 COMM. CLOWE: Well -- and then to the
22 accuracy of the transcript, it certainly needs to be
23 accurate or it's not worth anything, and I was amazed
24 when some inaccuracies were pointed out in a prior
25 meeting; the misspelling of names and the misquotes of

1 individuals and that sort of thing. We're certainly
2 not getting our money's worth if the transcript isn't
3 accurate, and an inaccurate record is worse than no
4 record at all. So I'm certainly not happy about that.

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

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

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

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

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

22 Is there a second to the motion?

23 COMM. BARTH: I'll second it.

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

1 motion?

2 (No response)

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

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

7 CHAIRMAN POLUNSKY: Any against?

8 COMM. CLOWE: Show me voting no.

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

13 The Public Safety Commission will now go
14 in a closed session at this time pursuant to the Texas
15 Open Meetings Act, Chapter 551, to consider matters
16 authorized to be considered in executive session under
17 Government Code Sections 551.071, 072, 073, 074, 076
18 and Government Code Section 411.0041. The time is
19 2 p.m.

20 (Recess: 2:00 p.m. to 4:07 p.m.)

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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

1 purposes, what we're talking about here is extending
2 the contract for 90 days while our staff -- or,
3 actually, staffs in this case -- review the contract
4 and provisions that are contained therein, and at
5 that -- at the end of that 90-day period, it could be
6 terminated or it could be extended.

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

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

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

16 MR. PLATT: Correct.

17 CHAIRMAN POLUNSKY: Our position is 90
18 days.

19 Okay. There's a motion and a second.
20 Any discussion?

21 (No response)

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

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

1 CHAIRMAN POLUNSKY: Any against, "no."

2 (No response)

3 CHAIRMAN POLUNSKY: Motion passes.

4 All right. The next item on the agenda
5 under ongoing business, A, implementation of driver
6 license system and options regarding implementation.
7 Chief Kelley?

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

13 CHAIRMAN POLUNSKY: Yes, sir.

14 MR. KELLEY: -- in that order? Okay.
15 So the driver license division report -- can we go
16 over driver license system, Item A? Then B is DLD
17 transition to civilian model, and C will be the driver
18 responsibility program.

19 The driver license system, we brought
20 Paul Nugent with Deloitte is helping us move forward.
21 We are getting the DLS applications and programming
22 fixed while we also go out at the same time with
23 building programs to get our offices set up for the
24 new system, working with us -- very closely with Chief
25 Rable to make sure that the system works properly.

1 IMS is helping us out to -- along with building
2 programs. We also have got our driver license offices
3 working together to make sure the system we roll out
4 will be functional, allow us to do a good job serving
5 the citizens.

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

12 And what we found was there's a huge
13 increase in time, averaging anywhere from 39 to
14 61 percent increase in time under the new system in
15 the seven offices where we're operating the new
16 system.

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

22 Okay. On the DLS, we are updating the
23 manual -- the actual manual itself that the field is
24 using is outdated. It's not been updated since 2000.
25 So there's no way that they can actually know what

1 policies apply, so we're trying to speed things up by
2 doing that as well.

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

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

15 MR. KELLEY: Right now we're looking at
16 2 million-dollar -- if you buy it, have your own
17 persons there, and we're looking at under a million a
18 year for staffing -- this is just averages. If you
19 were to have a company come in and actually run it,
20 they'll put their machine in, and they'll guarantee
21 service. You're talking about .063 cents per item
22 mailed if you were to do a service contract. We're
23 going to look at all options and try and see if
24 there's a way we can do it using current dollars.

25 Examiners, we are looking at ways that

1 we can try and increase the number of examiners and
2 offices. The bottom line is we have not increased the
3 number of persons working our lines.

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

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

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

1 COMM. BARTH: Let me ask you a question.

2 MR. KELLEY: Yes, ma'am.

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

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

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

21 So we're going to address that. I've
22 been working with David Baker, highway patrol, to see
23 if I can't work with him to set up maybe a Saturday or
24 some times at the end of the school day after -- like
25 maybe 5 to 8 where we bring our personnel in overtime,

1 bring some of his people in. We've got motor vehicle
2 inspectors, and we'll try and find a way to augment
3 what I've got to make sure that we get these driving
4 tests -- so that we're providing -- ensuring that only
5 good teen drivers are going to get out there on the
6 roads, but that we also don't have long lines and
7 teens not getting their driving license on time.

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

11 MR. KELLEY: Slide 35?

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

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

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

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

23 COMM. BARTH: So if everything went
24 well, forget about the line for me to wait in line,
25 you're telling me it would be just under 40 minutes to

1 get a person who has to drive a test through under
2 this situation with the new system?

3 MR. KELLEY: Basically, yes, ma'am.
4 That's where I'm saying we're -- I ask that you give
5 us some time. I'm working with Colonel McCraw, and
6 we're going to find ways that we can try and work on
7 this.

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

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

23 MR. KELLEY: Sure.

24 COMM. BARTH: -- could be up to three or
25 four hours, and then another 30, 40 minutes to take

1 the test. I mean --

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

4 COMM. BARTH: You've got to figure --
5 I'm just telling you.

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

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

20 Then I would like to come in on
21 Saturdays and just have the whole day of Saturday
22 dedicated to nothing but teen driving, and, again, it
23 will be scheduled. You'll know when your time is,
24 when you've got to be there, so we can speed them
25 through. And so we'll have an examiner --

1 COMM. BARTH: I mean, I'm just saying to
2 both you and the Colonel, don't underestimate the
3 manpower here. Let's just assume you do the four-day.
4 Okay? It's a half-hour slot, so you know you've
5 got -- and you've got eight windows. Okay?

6 MR. KELLEY: Right.

7 COMM. BARTH: Which means you can take
8 16 people through, which means you can take 64 people
9 through a night? I mean, there are going to be a lot
10 of citizens in the state of Texas breathing down our
11 throats.

12 MR. KELLEY: Yes, ma'am.

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

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

24 COMM. BARTH: And I guess the other
25 question is, it would seem, that a person who has

1 taken a driving school, there ought to be a way to
2 give recognition with the driving test so as to cut
3 down the time of the driving test. I mean, we ought
4 to be looking at some sort of precertification, and
5 then you only have to done one left turn.

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

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

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

15 MR. KELLEY: Right.

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

24 MR. KELLEY: The Colonel is aware of it.
25 We had a good staff meeting on Tuesday, and we started

1 addressing this issue, and what I appreciate is I've
2 got divisions throughout this agency that are working.
3 They know it's a problem, and they're offering to try
4 and help us find a way to solve it.

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

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

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

20 CHAIRMAN POLUNSKY: Do you look at other
21 states --

22 MR. KELLEY: On --

23 CHAIRMAN POLUNSKY: -- on their
24 processes?

25 MR. KELLEY: Yes, sir.

1 CHAIRMAN POLUNSKY: And what are the
2 shining examples of success stories of other states?

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

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

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

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

22 CHAIRMAN POLUNSKY: It's something to
23 look at.

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

25 Go to Slide 41. On the transition,

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

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

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

18 1723 says -- from 2007 says, let's take
19 a look and see how we can try and fix this, so what
20 we're proposing is two programs; amnesty/indigency and
21 incentive. Amnesty/indigency says we're going to
22 reduce the surcharge for points to a one-time fee of
23 \$50 as long as they pay it up front. That's reduced
24 from \$100 per year for three years.

25 And then we're going to take the no

1 driver license surcharge and say that it's a one-time
2 fee \$50 if paid in full, and that's reduced from \$100
3 a year for over three years, and that would be
4 effective on September 1 of this year.

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

8 For DWI, the bottom line is we want you
9 to go get help. We don't want you to have an alcohol
10 or chemical dependency program, so if you'll pay us --
11 you go complete the drug court program that gets you
12 treatment and says that you've been treated, you can
13 come back and pay us one time \$500 for a first DWI, or
14 if you have second or .16 BAC conviction, you can pay
15 \$1,000 one time, as long as you go complete the drug
16 and alcohol treatment program.

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

24 The way we'll verify that is through the
25 automated system that we have with the Department of

1 Insurance, known as Texas Sure. If you have no
2 insurance surcharge for subsequent and multiple ones,
3 it's \$50 per year for three years. Costed out, it's
4 \$150 that you would have to pay up front, and then you
5 would also have to maintain insurance. Again, over --
6 we would be checking to verify that you maintain that
7 insurance over three years. Should you not maintain
8 that insurance, then we would go back and charge you
9 the full surcharge.

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

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

24 So that's Items A, B, C, the driver
25 license system transition, transition to civilian

1 business model and the driver responsibility program.

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

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

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

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

25 My findings were such that it is sound

1 in terms of the renewal process being full and
2 complete in terms of all the legal actions needed to
3 be taken. I think it was free of any integrity
4 challenges, free of any issues of concern from my
5 perspective. However, there was a failure on the part
6 of the staff to report to this Commission in August of
7 2008 the magnitude of this contract and the renewal.

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

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

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

21 (Laughter)

22 MR. PLATT: When we examined
23 Commissioner Barth's instructions, there was, indeed,
24 at the August 25th meeting of the Commission -- you
25 had two Commission meetings that month. There was a

1 list promulgated and published for you of contracts
2 that would have fallen under the new contract review
3 policy. The particular MSB contract, through no fault
4 of vendor, through DPS's decision-making, was left off
5 of that.

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

12 So having said that, I will tell you
13 that I have then examined the contract, not just the
14 integrity, but what I found in the process is this
15 contract, as well as many of the DPS contracts, is
16 weak in identifying the deliverables, the metrics for
17 measuring performance. This contract, in my opinion,
18 has had a sound performance by the vendor. The vendor
19 has been extremely cooperative, and as we heard from
20 Mr. Henson and Senator Shapleigh today, the
21 demographics of the individuals who are subject to the
22 types of collections that are sought here are not the
23 type of people that pay their bills on a regular
24 basis. They're people in a downward spiral, and
25 you've heard much about that already today.

1 So my findings indicated that as I
2 examined other types of agreements with agencies
3 within the state of some similar ilk in terms of the
4 collection process, that this one is sound in the
5 current performance, but I do recognize that the
6 metrics are not in place in the contract to examine
7 performance and to measure it appropriately.

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

16 With the indigency program, if adopted
17 by the Commission today, I think it is critical that
18 we not terminate our relationship with MSB because
19 what we need to do is measure the impact of the
20 indigency program that Chief Kelley has laid out, and
21 I think the most sound way to do that is to do it with
22 the existing vendor, and what I would recommend to you
23 is that essentially in the September of 2010
24 meeting -- you would have 12 months of data at that
25 point in time. Use the 12 months of data and examine

1 the impact of the indigency program on the collection
2 rate. The vendor has already indicated they will
3 periodically give us feedback as we request it to
4 update the Commission, but take a hard look at the
5 indigency program, which chief Kelly is proposing
6 would be effectively a temporary program being in
7 effect for 12 months, is what I think we agreed to.

8 MR. KELLEY: Correct.

9 MR. PLATT: And simultaneously, examine
10 the vendor's performance, that is, MSB's performance,
11 not just looking at their collections on the indigency
12 program but their overall performance. Establish
13 metrics for them as we go forward, and I think you'll
14 find at that point in time that they will meet their
15 metrics, but that's up to them to accomplish.

16 So my recommendation is that there not
17 be a termination, as was discussed last month; that,
18 in fact, we use them and marry up to move forward on
19 the indigency program that Chief Kelley has proposed.

20 I think Commissioner Clowe has a copy of
21 a draft motion to adopt an indigency rule -- or
22 indigency program, and I would suggest that that be
23 adopted, and we move forward from there with the
24 vendor for an additional year, then next year in
25 September examine the performance of the contract.

1 MR. KELLEY: To add to that, the MSB,
2 when they met with us offered -- first of all, they've
3 immediately changed their letterhead. The only thing
4 that refers to DPS is going to be the -- our logo in
5 the upper right-hand corner, just -- and it says in
6 the body that they are collecting this money on behalf
7 of the driver responsibility program. Therefore, it's
8 clearly known that this isn't DPS writing the letter,
9 that they're doing this for us.

10 Second, they've worked with us to change
11 the nature of the letters that they send out when it
12 comes to collections, to be able to outline -- instead
13 of explaining the program for one full page, it
14 basically will outline, this is the money that you
15 owe. This is how you can pay it, and now they're
16 writing and adding indigency.

17 If you were to adopt it, that indigency
18 piece would be outlined in that letter to show the
19 amounts, and so that way they could go ahead and pay
20 that money, get in compliance and then move on -- then
21 be a licensed driver with insurance. So that was our
22 goal with the MSB, was to make these changes right now
23 and then be prepared, if you were to continue with
24 them, to implement the indigency program.

25 CHAIRMAN POLUNSKY: Mr. Platt, if I can

1 distill this down. What we're talking about doing
2 here is giving MSB one year to justify their existence
3 here?

4 MR. PLATT: In your words, that's a very
5 effective way of communicating; yes, sir.

6 COMM. BARTH: Are we planning to give
7 anybody who has these surcharges right now sitting out
8 there amnesty?

9 MR. PLATT: No.

10 MR. KELLEY: No, we're not.

11 COMM. BARTH: So the --

12 MR. PLATT: Those people that are in
13 that spiral under this program would continue to be in
14 that spiral. There are a couple of reasons that we
15 have chosen to include that, including the fact that
16 people who have complied with it, we have not
17 incentivized -- you know, they've behaved
18 appropriately and paid their surcharges, and these
19 other people have not.

20 We're trying to incentivize good
21 behavior with the programs, as Chief Kelley referred
22 to, and there is also some constitutional issues that
23 rise in this particular matter in terms of
24 retroactively applying the provisions. We could
25 probably get around those, but, quite frankly, we

1 didn't think it was sound. We thought it was best to
2 move forward and move proactively on it.

3 COMM. BARTH: Did we look at any way to
4 incentivize those people in terms of reducing, giving
5 them a chance to pay a reduced amount and then
6 starting, you know, from September 1 -- I mean, I
7 just -- maybe we've cured the problem going forward,
8 but I'm not sure we've cured the current problem.

9 MR. PLATT: Do you want to address the
10 installment possibilities?

11 MR. KELLEY: We do have installments
12 plans that we are offering to allow individuals to
13 come into compliance, so that way if they are in a
14 compliance, they can come back to us, and this was
15 strengthened based -- after 1723 that allowed us to do
16 this.

17 So even if you owe a large amount of
18 money, we can allow -- and you get your surcharges
19 prior to September 1 of '09, under this new plan, that
20 would say, you're allowed to -- under current law, you
21 can come in to get into compliance. As long as you're
22 making your payments, then you're allowed to retain
23 your license, and you can continue going as long as
24 you keep making the payment.

25 So the payment plan was offered and MSB

1 was able to implement that to ensure that they were
2 able to document when these longer payments -- longer
3 terms of payments were being received.

4 COMM. BARTH: So the plan was already in
5 place?

6 MR. KELLEY: Correct.

7 COMM. BARTH: So we haven't done
8 anything different on that end?

9 MR. KELLEY: That's correct.

10 MR. PLATT: But I think the piece of it
11 we're missing is as we go forward with this new plan,
12 the education piece, I think there are people out
13 there ignorant of the ability to do the installments,
14 and as we educate them on our new prospective
15 implementation program, we can also educate about the
16 installment opportunities.

17 COMM. BARTH: I sure would like to look
18 at something to help the people that are sort of out
19 there right now, the indigency situation. Okay? I
20 mean, I just -- we haven't addressed anything -- I
21 like going forward, but we really haven't addressed
22 the 11 percent, whatever the number is. Let's take El
23 Paso. Those people right there, they're still under
24 the old program, circling around. Maybe they're aware
25 of the payment or not aware of the payment, not being

1 able to make the payment.

2 CHAIRMAN POLUNSKY: Is there legislative
3 intent for us to look at here, as far as amnesty is
4 concerned?

5 MR. PLATT: Representative Turner, of
6 course, sent a letter to the Commission regarding
7 legislative intent. In my -- my position is that
8 Chapter 15 -- or Article 15 of the legislation that
9 addresses the DRP program in our Sunset bill
10 specifically states that all of this is to be
11 effective 2011, and I think Senator Shapleigh was --
12 impliedly at least -- indicated that he believed that
13 it was 2011 before -- because of Senator Ogden's
14 negotiations with him -- before we were mandated to
15 take any action.

16 We've had authority to act on this since
17 the 80th session, but I don't think there's any -- I
18 disagree with Mr. Henson's comment last month,
19 respectfully, that we have a mandate legislatively to
20 act at this point in time. I'm not sure if I hit the
21 answer that you were looking for.

22 COMM. STEEN: I'm holding Representative
23 Turner's letter. I notice that it's dated April 6,
24 2009, but that must have been a typo because --

25 MR. PLATT: It must be a typographical.

1 I noticed that as well.

2 COMM. STEEN: Because it shows the
3 director received it August 5th.

4 MR. PLATT: Correct.

5 COMM. STEEN: But three different times
6 in the letter he says, "Section 6 of the Sunset bill
7 requires DPS to implement an agency program by
8 September 1, 2009." He says in another place, "Make
9 no mistake, Section 6 of the Sunset bill requires
10 implementation of some sort of an indigency program by
11 September 1, 2009," and then once more, "The Public
12 Safety Commission must" -- in italics -- "create an
13 indigency program by September 1, 2009." So it's a
14 pretty strong letter. What's your reaction to it?

15 MR. PLATT: Because Article 15 -- he
16 refers to Article -- I believe it's 6 -- and Article
17 15. It specifically says that the entire segment of
18 Article 15, which includes every section he just
19 referred to there, are not effective till 2011. So
20 I'm not sure -- when I called -- and we checked with
21 the leg. counsel. They said it's a very plain
22 interpretation, and that's my position as well. I
23 respectfully disagree with his opinion on it.

24 COMM. STEEN: All right. And the
25 proposal that Commissioner Clowe has, tell me again

1 what we're doing with this motion? I don't know if
2 you're ready to make the motion.

3 MR. KELLEY: Well, prospectively, we
4 would say on those certain charges that we just
5 discussed; an example, the DWI, you go get treatment
6 and you pay a one-time payment, then you're allowed to
7 drive. You're out the DRP surcharge. If you've got a
8 driving while license invalid, instead of paying out
9 over the \$750, you'll pay, one time, \$50, the goal
10 being to incentivize good driving behavior.

11 And the way we looked at it, this is an
12 indigency program, but it's for everybody. It's
13 basically saying we're looking for good driving
14 behavior, not for this to be a money-making program.
15 The idea for us is, as an agency responsible for
16 traffic and public safety, this needs to be a program
17 to help us have safe drivers, insured drivers out on
18 the highways, and by having this high surcharge,
19 you're creating an economic disincentive for those who
20 are in the system to get into compliance.

21 Our goal is to get them into compliance
22 by giving them a one-time, small surcharge up front to
23 give them an option in order to get in compliance. So
24 they're spending money on insurance, spending money on
25 getting a driver's license and getting treatment if

1 they need to if it's a DWI.

2 COMM. STEEN: But you're suggesting that
3 we adopt this today and is this --

4 MR. PLATT: The rule would actually have
5 to be published --

6 COMM. STEEN: That's what I'm asking.

7 MR. PLATT: -- which the earliest point
8 would be Monday.

9 Now, one option would be for the
10 Commission to adopt a rule today and instruct us that
11 we don't have to come back for -- after publication
12 unless there's appropriate queries that would generate
13 a public hearing on it, but it does have to be
14 published for 30 days

15 So even, though, if you -- Commissioner
16 Clowe, what he's holding is a motion that says as soon
17 as reasonably possible, I believe, or language to that
18 effect -- because we probably cannot meet a
19 September 1 deadline as actually implementing the
20 program with a rule that's been published in the
21 Register and then approved by the Commission.

22 COMM. STEEN: But you're telling me, as
23 our counsel, that we don't have to meet that
24 September 1st --

25 MR. PLATT: I don't believe we do. I'm

1 very -- I think I can very soundly tell you that that
2 September 1 deadline that the Representative refers to
3 is inaccurate in his assessment.

4 MR. KELLEY: If I may add --

5 COMM. STEEN: Then I like the idea
6 that -- you know, of the 30 days to get public input.
7 And then maybe we come back at the September
8 meeting -- is that right -- and finally adopt it?

9 MR. KELLEY: Yes.

10 COMM. CLOWE: And I would also say that
11 I like the idea of a public hearing which can be
12 conducted during that period, and, you know, we've
13 heard from a Senator, from a member of the House.
14 We've heard from the public, and once this rule is
15 published, a public meeting where members who are
16 interested and public citizens who are interested can
17 come in and give testimony -- would give everyone an
18 opportunity.

19 MR. PLATT: Yes, sir. And we probably
20 can't meet the September meeting date because we're
21 meeting late -- we're meeting on a Friday, the 21st.

22 I looked at the -- if Representative
23 Turner's position had been accurate, we could have
24 said, "Well, this is an emergency, and we need to
25 address it on an emergency-rule, but I don't think

1 that's the case. I don't think we have to, so it
2 would probably be the October meeting, unless we
3 happen to have a later September date.

4 COMM. STEEN: Well, you-all have put a
5 lot of time and effort into this, and it's somewhat
6 complex, and so I like the idea of having the time to
7 really absorb it and make sure we're doing the right
8 thing --

9 COMM. CLOWE: And having the public
10 input.

11 COMM. STEEN: -- so were not just
12 pushing through a rule on a rush basis.

13 MR. KELLEY: And that was our intent.
14 We knew this would actually be open. We know
15 Mr. Henson is here. Laura Martin of ACLU has asked,
16 and we've offered, after we present this today, we
17 would give that to them so we can get their feedback.
18 We're open to ideas from all the different interest
19 groups, all the lawmakers. We're not trying to rush
20 this, and you asked about the September 1.

21 Our intent, if this rule is adopted as
22 we proposed, it would be for any surcharge effective
23 as of September 1. So the goal was to still try and
24 meet the intent that -- the interpretation and the
25 intent that Representative Turner had was he wants a

1 program effective September 1, so even though we can't
2 have the rule effective on that date, the impact, if
3 it was adopted the way we've proposed it so far, would
4 be anyone, as of September 1, who got a surcharge
5 would fall under this program.

6 COMM. STEEN: I'm ready to act on the
7 rule if you want to -- do you want to make the motion?

8 CHAIRMAN POLUNSKY: Well, can I make a
9 comment and also ask you a question?

10 I tend to agree with Commissioner Barth
11 here with respect to the retroactive issue, and I
12 understand your argument; you know, why reward bad
13 behavior when other people played by the rules or, you
14 know, paid their fines and so on, but the reality is
15 reality, and there are people out there that
16 couldn't -- couldn't make those payments so they're
17 still in that group where, you know, they're in never,
18 neverland, so to speak, and they're not going to come
19 out in all likelihood. So I don't know if we want to
20 ignore the reality of all of that.

21 MR. PLATT: Certainly during the public
22 comment period, that might be a change that, based on
23 public comment, we could make in the final rule. It
24 would be most likely heard in the October meeting.

25 COMM. CLOWE: I think if you make a

1 substantive change to the public's rules you've got to
2 republish.

3 MR. PLATT: You're correct.

4 COMM. CLOWE: So you've got another 30
5 days.

6 MR. PLATT: You're correct.

7 COMM. CLOWE: That's just the law so --

8 MR. PLATT: Right.

9 COMM. CLOWE: I don't think your
10 response is satisfying the Chairman, unless it's
11 another 30 days that maybe, you know, would satisfy
12 him.

13 MR. PLATT: I'm sure Chief Kelley -- we
14 can take a look at going back and trying to deal with
15 it retroactively. We will --

16 CHAIRMAN POLUNSKY: I mean, I guess you
17 could put it into two parts here, too.

18 MR. PLATT: That's true. You could do
19 that.

20 COMM. CLOWE: You could make two
21 different motions.

22 COMM. STEEN: Let's go forward with
23 this, and then at the September meeting, they could
24 come back and report to us on the -- in more detail on
25 the retroactive part of it.

1 COMM. CLOWE: Well, you could actually
2 move and adopt a motion that they would be separate
3 and apart, dealing with those people who are in the
4 program with some action that they could find
5 themselves able to avail of, but we just haven't
6 discussed that right at this point.

7 MR. PLATT: That is correct.

8 COMM. CLOWE: You've just got some
9 general direction from two Commissioners.

10 MR. PLATT: That's correct, but we could
11 bifurcate it and basically implement one phase of this
12 to start giving relief immediately in September to one
13 group of individuals, and then move forward with a
14 presentation on a program that retroactively -- and we
15 would need to get with MSB to look at how many people
16 might fall in that category.

17 COMM. CLOWE: I'll tell you what we
18 could do. We could make the motion, if the Commission
19 determined to adopt it, on the program that Chief
20 Kelley has proposed, and then there could be another
21 motion that would make the same provisions applicable
22 to those people who are already in default, and that
23 could be dealt with as a separate proposal that's
24 published separately. You could moderate that in any
25 way during the 30 days it's published and comments

1 coming in, and you wouldn't affect going forward with
2 the issue that we started talking about.

3 MR. PLATT: The first program, if
4 published and accepted, would go forward. The other
5 could still be debated if an issue arose.

6 COMM. CLOWE: Now, that would satisfy, I
7 think, what you heard from two Commissioners. I'm not
8 sure how I feel about that, and I'm not really sure
9 that I want to cast out your argument. I think you
10 have some validity there, but I want time to think
11 about that. I don't want to decision-make right now.

12 COMM. STEEN: Then I think, then, we are
13 talking about maybe going forward with this motion
14 today, and they could come back and report to us and
15 maybe make a suggestion on this other matter at the
16 September meeting.

17 COMM. CLOWE: No. What I'm suggesting
18 is two motions. One dealing --

19 CHAIRMAN POLUNSKY: Today? Today?

20 COMM. CLOWE: Yes. One dealing with
21 those people that are not in the program and another
22 proposing the same program for those people who are in
23 the program.

24 MR. KELLEY: Yes, sir.

25 COMM. STEEN: Are you comfortable with

1 that, Chief Kelley?

2 MR. KELLEY: Yes, sir, and I think that
3 we should not delay. If that's where we want to go,
4 is to go back and assist individuals prior to
5 September 1, let us have that as an option.

6 COMM. CLOWE: And that gives us two
7 opportunities to take --

8 MR. KELLEY: If not, if we come back
9 next month, it delays it one more month and --

10 COMM. STEEN: Well, then the whole issue
11 is retro -- the retroactive issue. Right? That's
12 what we're going to be grappling with?

13 MR. PLATT: That's what two
14 Commissioners have expressed a concern on, yes.

15 CHAIRMAN POLUNSKY: I think it's
16 something that should be discussed --

17 MR. PLATT: Yes, sir.

18 CHAIRMAN POLUNSKY: -- should be looked
19 at. I'm not totally committed to that either, but I
20 don't feel they should be ignored. I think it should
21 be, you know, put on the table and let's, you know,
22 examine it.

23 COMM. CLOWE: And I would like to hear
24 from people who are interested on that.

25 MR. KELLEY: Very much so.

1 COMM. CLOWE: I think there are --

2 MR. KELLEY: This gives everyone an
3 option to look at the two ideas and see -- and you get
4 the decision if you want to adopt one versus the other
5 or both, and then it gives us more options, but it
6 gives the citizens a chance to come give us feedback
7 on all the options instead of just one.

8 COMM. CLOWE: And members of the
9 legislature. You know, we keep asking for legislative
10 intent and Senator Shapleigh gave us some very clear
11 insight this morning.

12 MR. KELLEY: Very clear.

13 CHAIRMAN POLUNSKY: I mentioned I had a
14 comment. I also have a question.

15 MR. KELLEY: Yes, sir.

16 CHAIRMAN POLUNSKY: My question is
17 basically this. We're making all sorts of changes
18 here --

19 MR. KELLEY: Yes, sir.

20 CHAIRMAN POLUNSKY: -- as far as fees
21 and this and that. What is the fiscal impact that we
22 should be expecting if we were to adopt -- let's
23 eliminate the retroactive possibility right now, but,
24 you know, prospectively.

25 MR. KELLEY: If we were to move

1 prospectively, looking at this from an economics
2 perspective, we've got a maximum 38 percent compliance
3 rate. If you were to lower the fees, and then that --
4 in effect, 38 percent are paying, it would all depend
5 on how many of the remaining 62 percent would come
6 into compliance.

7 Theoretically, it should, at the very
8 least, be a wash because you're lowering the price and
9 you're getting a higher amount of money coming in
10 because you've lowered the price, but we have no
11 metrics to be able to -- not even LBB has produced a
12 way to measure that. So that way we could plug in and
13 say, "If we lower it to this amount, then we should
14 expect X amount of income."

15 So we've had to go under assumptions
16 that approximately 20 percent of persons that were
17 already in the program are now going to pay less and
18 that we're going to have an increase and up to 30
19 percent in compliance, just as a guess at this point,
20 to try and show what the potential might be, but we
21 really have no way of knowing until we implement it.

22 MR. PLATT: One of the provisions of a
23 rule is that you have a preamble and you set out the
24 fiscal cost. We've wrestled with that rather
25 powerfully this week, because it's an unknown, to be

1 frank.

2 COMM. BARTH: Let me ask you an
3 administrative question. Okay? So we go and adopt
4 this in 30 days. Do we have the capacity to roll this
5 out, so that we don't totally confuse the customer, or
6 are we just going to start sending out letters and
7 it's going to be, "Who's on first" here?

8 MR. KELLEY: They're already confused.
9 Nobody knows about this program. The legislature
10 never authorized dollars to go advertise it. We went
11 and asked in 2005. We were told, "No, don't go
12 advertise," by the Senate finance committee. So
13 they're already confused as it is. So MSB has offered
14 to help us send out more letters and information to
15 assist. We've offered and we've got it at our
16 website, with Tela Mange, our public -- the media
17 relations chief. She's helped us put it on our
18 website.

19 The reality is DRP is not well known,
20 and you saw the soldier when he said, "I didn't even
21 know this program existed until I got in it." So I
22 don't think it's going to cause any more confusion
23 because individuals don't even know about it now, that
24 the program really exists. On average, most citizens
25 have no clue this program even exists.

1 COMM. BARTH: Well, there must be
2 62 percent of the people out there who have received
3 some letter.

4 MR. KELLEY: Sure.

5 COMM. BARTH: So they must know it
6 exists. So, now, my question goes back to we then
7 revamp this program. Are we going to roll it out
8 correctly or is it just going to be --

9 MR. KELLEY: Oh, we will roll it out
10 correctly, only because we have a vendor who can
11 immediately make the changes that are effective and
12 make sure that we track those changes because they're
13 doing the work for us. So we can do this, and with
14 the system we do have now, in our system, the computer
15 system, we can do that as well.

16 COMM. BARTH: Are you sure?

17 MR. KELLEY: I've been assured that the
18 changes can be made under the current system we're
19 operating.

20 COMM. BARTH: If I were sitting there, I
21 would use the line, "to the best of my knowledge."

22 MR. KELLEY: To the best of my
23 knowledge.

24 COMM. BARTH: Because I'm just -- I'm
25 very worried here that this is going to be -- it's not

1 a "change some windows in a computer program that our
2 vendor does." Okay? And so then some people get one
3 letter and other people get another letter. Okay?

4 It just --

5 MR. KELLEY: When that program was
6 rolled out September 1 of 2003, we actually did not
7 start collecting the surcharges until over one year
8 later because we did not have the infrastructure in
9 place to even start collecting it. We didn't have a
10 vendor. We didn't have -- we hadn't modeled it.

11 So, if anything, were there to be a
12 problem with the implementation, we don't have to roll
13 it out immediately. We could take the time to make
14 sure it's done right, advertise, but make it effective
15 back to a certain date. And if you're going to make
16 it retroactive to everybody, then we just make sure
17 that the system is ready to roll before we go.

18 Then we advertise. Then we send notices
19 and let everybody know, "Hey, here is your chance to
20 get out of the program," either those who are affected
21 after 9/1 or if you want to go all the way back to all
22 the program.

23 COMM. BARTH: I'm not sure where I stand
24 on retroactive. I just think it's -- I agree with the
25 Chairman. It's something we have to look at a little

1 bit -- I question constitutionality of your comment,
2 only because I read all the time about these amnesty
3 programs out there, whether it's the city of Houston
4 on fines or whatever. So I'm just trying to, you
5 know, make sure we understand all the ramifications,
6 whether for or against the amnesty. Let's just make
7 sure.

8 MR. PLATT: And when you mention the
9 roll-out, let me -- there's two parts to roll-out; the
10 DPS piece, and the MSB piece, and quite frankly, I
11 have a great deal of confidence that MSB can --
12 they're a private corporation that can and is
13 motivated to implement this and roll it out
14 appropriately.

15 And that's one of the reasons I
16 recommended to you that you not terminate the
17 agreement. We need their piece to fulfill this
18 program in a successful manner.

19 Commissioner Steen, I did want to
20 clarify for you -- you had questions regarding
21 Representative Turner's letter, Article 15 of the
22 Sunset legislation, driver responsibility program, and
23 when you move to Article 15, Section 15.008, it says,
24 "This article takes effect September 1, 2011." Four
25 paragraphs above that is the language he quotes about,

1 "we shall adopt September 1." So it's very plain to
2 me. The last sentence in the article says this whole
3 article is not effective till 2011.

4 CHAIRMAN POLUNSKY: Okay. Well -- I'm
5 sorry?

6 COMM. STEEN: Chairman, if the -- if
7 we've got an issue with the retroactive part, that it
8 might be unconstitutional, don't you think the better
9 thing to do would be to let them look at that between
10 now and the next meeting and bring that to us like
11 they brought the rule today, rather than trying to do
12 both of them today?

13 CHAIRMAN POLUNSKY: I think you can do
14 it either way. I mean, I think they would have time
15 between --

16 COMM. STEEN: I'm reluctant to pass a
17 rule and then --

18 MR. PLATT: We can do that very rapidly.
19 When Commissioner Barth refers to Houston, we're
20 talking about a Texas constitutional provision that we
21 can research and address pretty quickly for you.

22 MR. KELLEY: I would still recommend
23 that we -- that you authorize publishing of both of
24 these proposed rules. If we find that there's a
25 problem constitutionally, even if the citizens want to

1 come say that's what they want to see happen, then
2 maybe this is a chance for us to take the information
3 that's presented and give it to the legislature and
4 see if there's something they can do to fix it. At
5 the very least, give the citizens a chance to speak
6 out on it.

7 COMM. STEEN: I just -- I guess I'm
8 reluctant to vote for something that may turn out to
9 be unconstitutional or --

10 MR. KELLEY: You're not actually voting
11 for it. You're voting for the citizens to get a
12 chance to come comment.

13 CHAIRMAN POLUNSKY: Yeah. I mean, we're
14 just -- this is Step 1 --

15 MR. KELLEY: You're not adopting a rule.

16 CHAIRMAN POLUNSKY: -- but we're not
17 adopting a rule here.

18 COMM. STEEN: I would rather find out in
19 advance, get -- have the benefit of counsel in advance
20 on something like that, rather than pass it and then
21 find out after we've passed it that there's a problem
22 with it from a legal point, but that's my point.

23 CHAIRMAN POLUNSKY: But we're not
24 passing it.

25 MR. KELLEY: We're not passing anything.

1 This is just saying we can publish a rule in the Texas
2 Register. This will allow the individuals to come to
3 a public hearing here at DPS to tell us what they
4 think about it. Should they comment, and no matter
5 how their feelings, we find out it's unconstitutional,
6 we can't do it, then you don't have to act on the
7 rule. We have to come back and say, "This is the
8 public comment we got, but also, it's
9 unconstitutional. So, therefore, we recommend we not
10 adopt the rule."

11 COMM. STEEN: I understand that. I
12 just -- I have a different point of view about that.

13 MR. KELLEY: My concern is you -- if we
14 do find that it's constitutional and the citizens --
15 and we do get feedback and the Commissioners decide
16 they want the option to go ahead and adopt this, if
17 you don't give us authority today to publish it, that
18 delays it one more month.

19 COMM. BARTH: Can I ask you a question?
20 What you want to do is -- what you're requesting --
21 because I think there's a little confusion here -- is
22 to approve the program that you put forward -- okay --
23 with a 30-day rule commentary, maybe have a hearing in
24 there, if that's the case, with respect to going
25 forward in an indigency program. And then on the

1 other side is to look at the retroactive --

2 MR. KELLEY: I believe we're actually
3 looking at both of them at the same time.

4 MR. PLATT: Here is what I would
5 suggest, Commissioner. We have --

6 COMM. BARTH: We have nothing out there
7 with respect to a proposal on retroactive.

8 MR. KELLEY: That's correct.

9 COMM. BARTH: So how can we be looking
10 at both of them at the same time?

11 MR. KELLEY: Because you're instructing
12 us to publish a rule that does that.

13 COMM. BARTH: I'm not asking you to
14 publish a rule at all. Okay? I'm asking you to have
15 someone look at it.

16 MR. KELLEY: Well, that's what -- you're
17 instructing us to publish in the Texas Register that
18 we intend to look at that, that you intend to adopt
19 this rule, and then the public can make comment on
20 that. And then we can come back, and based on the
21 public comment, we would recommend to you, and you
22 would you have the option to adopt it at the next
23 Commission meeting after that -- have the ability to
24 adopt that rule.

25 COMM. BARTH: I know this sounds like

1 "Who's on first," but on the retroactive, you know,
2 I'm just looking at, "Hey, can we look at that."
3 Okay? Publishing and not publishing it -- I'm not
4 talking about publishing that right now. I would like
5 to see, myself, publish what you're proposing. The
6 retroactive side, I don't know what's on the table to
7 publish, except that we're asking you to look at it.
8 Is that -- why do we need to publish that?

9 MR. KELLEY: Well, I thought we were
10 going to look at a rule that you could adopt to go
11 back retroactively as well as the rule that you could
12 go --

13 COMM. CLOWE: Let me help you with that.
14 What I suggested was that there be a second motion
15 that would lay out the same provisions for those
16 people who are already in the program as a starting
17 point.

18 COMM. BARTH: Okay. I misunderstood
19 you.

20 COMM. CLOWE: Those are known criteria
21 that the Chief has thrown up on the screen and they're
22 in the book, and my motion will cover that program to
23 be effective September the 1st, 2010.

24 COMM. BARTH: So retroactively, to
25 clarify, we would go back and reprogram the computer

1 to recalculate the fees based on -- okay. I
2 misunderstood.

3 COMM. CLOWE: That was the suggestion
4 that I made for consideration to those people that you
5 expressed concern about --

6 CHAIRMAN POLUNSKY: If we decide to do
7 that.

8 COMM. CLOWE: -- if we decide to do
9 that. The Chairman said he was sympathetic to your
10 concern. I said I didn't know how I felt about it.
11 Commissioner Steen, I don't think, has said anything
12 about that.

13 MR. PLATT: I'm sorry. If you choose to
14 have a second motion, you could move to authorize the
15 publication retroactively if legally acceptable, and
16 then we could make a determination of whether or not
17 it meets the constitutional standards and not publish
18 if it didn't so --

19 COMM. STEEN: That satisfies me.

20 COMM. BARTH: That's fine with me.

21 COMM. STEEN: I just didn't want to
22 publish a rule that makes us look like we don't know
23 what we're doing and then we say, "Oh, by the way, we
24 published this and got everybody stirred up, but
25 it's -- we now know it's unconstitutional, so never

1 mind."

2 MR. PLATT: Okay.

3 CHAIRMAN POLUNSKY: Okay. Do you have
4 motions?

5 COMM. CLOWE: Mr. Chairman, I would like
6 to make the following motion: The provisions of
7 Sunset legislation of DPS during the '81st legislative
8 session encouraged DPS to adopt an indigency program
9 for the driver responsibility program.

10 After hearing from persons such as,
11 Mr. Scott Henson, who has petitioned the Commission to
12 adopt an indigency program, hearing from the
13 department's driver's license chief, program manager
14 for the driver responsibility program, general
15 counsel, and specifically hearing from honorable
16 members of the legislature, it appears sound and
17 beneficial to the citizens of Texas to adopt a rule
18 authorizing an indigency program.

19 The program presented to the Commission
20 by Chief Kelley appears to create an incentive for
21 good behavior to include providing a reasonable means
22 for citizens with driving issues to pay appropriated
23 as a consequence of their driving practices.

24 But it also creates an incentive for
25 assuring that Texas drivers maintain insurance and a

1 driver's license. Both goals are important.

2 I formally move the rule and program
3 proposed by Chief Kelley be approved for publication
4 in the Texas Register, that the legally required
5 preamble and efforts to assess fiscal costs be
6 attached to the proposed rule and that the Commission
7 consider formal adoption of the rule after
8 publication.

9 I also make a part of this motion that a
10 public hearing be held during that period. I also
11 formally move that the rule go into effect at the
12 earliest possible date after publication and formal
13 approval.

14 I want to thank Mr. Henson for his
15 petition filed with the department on August 5, 2009.
16 His actions assisted in sparking the discussion, and
17 hopefully, the action of the Commission today.
18 However, I do believe that the department's proposed
19 program is one that should be adopted.

20 So I would respectfully ask that as a
21 part of this motion, the Commission note that
22 Mr. Henson's petition is denied. I would ask our
23 general counsel to notify Mr. Henson, under Government
24 Code 2001.021 of the denial in writing, and that the
25 reason for the denial to be described, to include, but

1 not limited to, the fact that the Commission is
2 adopting a different rule it believes addresses the
3 indigency concerns that does not run the risk of
4 creating a retroactive violation of the Texas
5 Constitution of any contract supporting the driver
6 responsibility program, and in comparing the
7 proposals, found Chief Kelley's proposal to be
8 appropriate means -- the appropriate means of
9 initially approaching this issue. That is the motion.

10 CHAIRMAN POLUNSKY: There's a motion
11 made by Commissioner Clowe. Is there a second?

12 COMM. STEEN: Second.

13 CHAIRMAN POLUNSKY: Seconded by
14 Commissioner Steen. Discussion?

15 (No response)

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

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

20 CHAIRMAN POLUNSKY: Any against, "no."

21 (No response)

22 CHAIRMAN POLUNSKY: Motion passes.

23 You have a second motion here?

24 COMM. CLOWE: Mr. Chairman, I formally
25 move the rule and program proposed by Chief Kelley be

1 approved for publication in the Texas Register, that
2 the legally required preamble and efforts to assess
3 fiscal costs be attached to the rule proposal and that
4 the Commission consider formal adoption of the rule
5 after publication.

6 Prior to publication, the staff shall
7 determine if a rule that is applicable to those
8 individuals already in the program, that will be a
9 retroactive action is legal. And this motion applies
10 to those people who are already in the program at this
11 time and are in arrears or in default in regard to
12 payments.

13 I also formally move that the rule go
14 into effect at the earliest possible date after
15 publication and formal approval and that a public
16 hearing be held during the period of publication.

17 I'll pause at this time to ask staff if
18 any verbiage should be added to that motion before I
19 conclude.

20 MR. PLATT: I think that's satisfactory.

21 COMM. CLOWE: That is the motion,
22 Mr. Chairman.

23 CHAIRMAN POLUNSKY: Thank you,
24 Commissioner Clowe. There's a motion that has been
25 made by Commissioner Clowe. Is there a second to his

1 motion?

2 COMM. BARTH: Second.

3 CHAIRMAN POLUNSKY: Seconded by
4 Commissioner Barth. Is there discussion on the
5 motion?

6 COMM. STEEN: Mr. Platt, just to --
7 state again what you intend to do with this motion if
8 it passes.

9 MR. PLATT: I will examine it and
10 determine if it is legally acceptable and notify the
11 Commission, so that the motion is considered to be
12 authorized for publication only if it's legally
13 acceptable.

14 COMM. STEEN: Thank you.

15 MR. PLATT: That's as to the second
16 motion.

17 CHAIRMAN POLUNSKY: Okay. There being
18 no further discussion, all in favor please say "aye."

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

21 CHAIRMAN POLUNSKY: Any against, "no."

22 (No response)

23 CHAIRMAN POLUNSKY: Motion passes.

24 Now, I understand quite well that it's
25 very difficult, if not impossible, for you-all to

1 determine what the fiscal impact would be either -- on
2 either side of this, but do everything you can --

3 MR. KELLEY: Yes, sir.

4 CHAIRMAN POLUNSKY: -- between now and
5 when we take this up next so that we have a -- as good
6 an idea as possible as to what the impact would be
7 fiscally, because it would be, certainly, important to
8 me in voting on any rules that are adopted or not
9 adopted going forward here.

10 MR. KELLEY: Yes, sir.

11 COMM. CLOWE: And by way of informing
12 the public about these meetings, I know it's going to
13 be published in the Texas Register, but the public
14 doesn't read that generally.

15 I think it would be well to put up
16 notices in our driver license offices, that there will
17 be a public meeting in Austin relative to these
18 proposed rules, and you should get with our public
19 relations office to see what other efforts are
20 reasonable to see what can be done to get this out,
21 and I think it's very important to notify members of
22 the legislature and the leadership of this action
23 today, and it may very well be that they would want to
24 have some members of staff there and perhaps want them
25 to give testimony as well.

1 MR. KELLEY: Yes, sir.

2 COMM. CLOWE: And at that public
3 hearing, up to two Commissioners can be there. I'm
4 not sure that more than two couldn't be there, as long
5 as they don't participate or enter into the hearing.

6 COMM. BARTH: If you make it a public
7 meeting, why only two?

8 CHAIRMAN POLUNSKY: Yeah. Why
9 wouldn't --

10 MR. PLATT: There's a difference between
11 a public hearing on a rule in which we actually --
12 typically general counsel would preside over and two
13 Commissioners can be present versus the public meeting
14 of the Commission. I think that's what you're
15 referring to, is it not?

16 COMM. CLOWE: Yeah, I was. But now I've
17 had another thought. If a Commissioner is at that
18 public hearing, and, you know, that's -- I would sort
19 of like to be there to listen to what people have to
20 say, but does that bias me when it comes to voting on
21 the rule, having been exposed to that?

22 CHAIRMAN POLUNSKY: Isn't that the whole
23 reason you have a public hearing?

24 MR. PLATT: We would give you --

25 COMM. CLOWE: I would like to hear that

1 answer from the general counsel.

2 MR. PLATT: I think we would be giving
3 you the feedback from the meeting anyway, so I think
4 it's probably appropriate to be there.

5 COMM. CLOWE: It's okay?

6 MR. PLATT: If it's not, I will notify
7 you between now and the time of that hearing with
8 certainty.

9 COMM. CLOWE: Okay. Good.

10 CHAIRMAN POLUNSKY: Well, let me give
11 you the answer. The answer is that we will have a
12 public hearing, and it will be published in such a way
13 that all the Commissioners will be present. So that's
14 the answer.

15 COMM. CLOWE: Will be present or can be
16 present?

17 CHAIRMAN POLUNSKY: Can be, will be; you
18 know, if you're in town, come on by, but each
19 Commissioner will be present for that -- will be able
20 to attend that meeting, because that is why you have a
21 public hearing, is for the Commissioners to be able to
22 hear the public testimony --

23 MR. PLATT: Right.

24 CHAIRMAN POLUNSKY: -- as to what this
25 is all about, and certainly, yes, you probably will

1 come out of it biased one way or another because
2 you're going to be receiving that information, and
3 that's why you're having the public hearing. Are you
4 clear on that?

5 MR. PLATT: We're clear.

6 MR. KELLEY: Yes, sir.

7 CHAIRMAN POLUNSKY: So what do we do on
8 MSB now?

9 MR. PLATT: My recommendation is that
10 you review that -- the MSB contract in September 2011
11 after we implement this program.

12 CHAIRMAN POLUNSKY: All right. So,
13 then, there's no action that needs to be taken at this
14 point?

15 MR. PLATT: I don't believe it's
16 necessary at this point in time.

17 COMM. BARTH: Wait a second. Are you
18 arbitrarily moving it from five years to one year?

19 MR. PLATT: No, that's not the case.
20 What I'm suggesting is that you just -- I'm
21 recommending that you review -- you have a termination
22 for convenience clause that you had considered using
23 that authority, that you review the contract and
24 performance metrics in September of 2011, and then if
25 you want to invoke that provision, you could.

1 I'm not suggesting you go year-to-year
2 at this point in time because we -- excuse me -- 2010.
3 I'm sorry.

4 COMM. BARTH: I would prefer to have a
5 one-year contract, as opposed to a termination on
6 convenience.

7 MR. PLATT: Well, are you talking about
8 September of 2010 or now?

9 COMM. BARTH: September of 2010.

10 MR. PLATT: Well, that certainly can be
11 negotiated. They've actually offered to do that in
12 September of 2010 if there's a performance issue.

13 COMM. CLOWE: Is that on the agenda?

14 MR. PLATT: Well, the MSB contract is.

15 COMM. CLOWE: What item is that, please?

16 MR. PLATT: If you look at C, Ongoing
17 Business, No. VII.C, Vendor Management HQ-08-37,
18 contract extension.

19 COMM. CLOWE: Okay.

20 CHAIRMAN POLUNSKY: Okay. So --

21 COMM. BARTH: I just think we ought to
22 have a one-year contract as opposed to a termination
23 on convenience for the five years it's out there, or
24 whatever. They've already offered to do it. I think
25 we should do it.

1 MR. PLATT: They've offered to do that
2 in -- to consider doing that next -- this time next
3 year if their metrics -- if you're dissatisfied with
4 it.

5 COMM. BARTH: They've offered to do
6 what?

7 MR. PLATT: They've offered to go to a
8 year-to-year renewal next year if we review this
9 contract and it's determined to be such that you don't
10 think performance is adequate. That's why I was
11 asking earlier, are you talking about reviewing --
12 going to year-to-year now or year-to-year later.

13 COMM. BARTH: I'm talking about
14 terminating this contract a year from now -- having
15 the ability, not on cancellation for convenience but
16 termination for --

17 MR. PLATT: We can negotiate with them
18 to make it a one-year term at this point in time.

19 COMM. BARTH: That's what I would
20 propose. I mean, I would be fine if we put an option
21 for additional years to help facilitate if we are
22 happy with them and not have a new procurement
23 situation.

24 MR. PLATT: If that's the guidance of
25 the Commission, we would certainly sit down and

1 negotiate that.

2 COMM. BARTH: That's just my vote.

3 COMM. CLOWE: I don't see any reason to
4 vote to terminate the contract today in one year.

5 COMM. BARTH: I'm just saying it's a
6 one-year contract with renewals, as opposed to a
7 five-year contract where they --

8 COMM. CLOWE: I'm sorry. I can't hear
9 you.

10 COMM. BARTH: I'm saying instead of a
11 five-year contract out there, it's a one-year contract
12 ending in 2010 with an option for the other four years
13 or something.

14 COMM. CLOWE: Okay. Well, that was
15 different than what I thought I heard you say. I
16 thought I heard you say you wanted to terminate it --

17 COMM. BARTH: No, sir.

18 COMM. CLOWE: -- in September of 2010.

19 COMM. BARTH: I just want to move it to
20 a one-year as opposed to a five-year with options
21 thereafter.

22 COMM. CLOWE: Is that the offer they
23 made?

24 MR. PLATT: No. Their offer was that --
25 watch their performance this next year, and then

1 examine -- going to year-to-year renewal at that point
2 in time if the Commission was not comfortable.

3 COMM. CLOWE: Which is less giving than
4 what Commissioner Barth has just articulated. She
5 said a four-year renewal, didn't she?

6 COMM. BARTH: No, I said --

7 MR. PLATT: She said year-to-year.

8 COMM. BARTH: -- year-to-year renewal.

9 COMM. CLOWE: Okay. So you're both
10 saying the same thing? I don't have any objection to
11 that.

12 COMM. STEEN: I'm ready to move on.

13 CHAIRMAN POLUNSKY: Well, I mean, do you
14 have a position on this?

15 COMM. STEEN: I think I'm comfortable
16 with the recommendation, with all due respect to
17 Commissioner Barth, that our general counsel is making
18 on it about looking at it in a year.

19 COMM. CLOWE: Well, I think that's what
20 she is proposing in her discussion.

21 MR. PLATT: She's proposing that we
22 negotiate with them for it to be a one -- that
23 basically the contract terms be changed, so it's a
24 one-year contract from this date -- or not this date,
25 but this month forward.

1 COMM. BARTH: With an option for renewal
2 based on --

3 MR. PLATT: With an option for renewal.
4 And my recommendation had been that we simply revisit
5 the contract next year.

6 COMM. BARTH: And then terminate on
7 convenience if we're not --

8 MR. PLATT: Right.

9 COMM. STEEN: I would say if you -- go
10 ahead and make a motion if you want to do that.

11 COMM. BARTH: Somehow put that in a
12 motion that I would like to see a one-year contract
13 with however many -- was it three more -- four more
14 years, one-year options?

15 MR. PLATT: Actually, we have five years
16 from the end of this month.

17 COMM. BARTH: With four options going
18 forward --

19 MR. PLATT: Okay.

20 COMM. BARTH: -- four one-year options.

21 MR. PLATT: So what I hear you saying is
22 that, Commissioner Barth, you're moving that general
23 counsel be instructed to -- and the department be
24 instructed to negotiate with MSB to create a
25 one-year -- to try to negotiate a one-year agreement

1 that would be effective -- I believe our contract
2 renewal date is, like, the 28th of this month, so
3 whatever that date would be, and it would be a
4 one-year renewal from this August, whenever that date
5 is, through next year and with four one-year renewals
6 potentially available after that?

7 COMM. BARTH: That's right.

8 CHAIRMAN POLUNSKY: Are you sure you
9 don't want to wait and see what comes out of these
10 public hearings and where we end up with all of this?

11 COMM. BARTH: I would be happy to wait.

12 CHAIRMAN POLUNSKY: Well, I mean, just
13 put it out --

14 COMM. BARTH: No, no, no. That's a very
15 good suggestion. I would be more than happy to wait.
16 So I'll pull my motion.

17 COMM. CLOWE: How would you do that?

18 MR. PLATT: Just leave it in tact as it
19 is.

20 CHAIRMAN POLUNSKY: Leave it in tact? I
21 mean, we can terminate at any point. Right?

22 MR. PLATT: That's correct.

23 CHAIRMAN POLUNSKY: So, I mean, it would
24 be 30 days later maybe than today, but we could still
25 do it after, you know, we decide which way we're going

1 in the larger picture.

2 COMM. CLOWE: That makes sense.

3 COMM. BARTH: Fine with me.

4 CHAIRMAN POLUNSKY: All right. Well,
5 then, I think that's the sense of the Commission as of
6 this moment.

7 MR. PLATT: Thank you very much.

8 CHAIRMAN POLUNSKY: All right. Thank
9 you.

10 COMM. STEEN: Mr. Chairman, before -- I
11 just want to compliment our general counsel and,
12 Chief, you. I know you-all have lots of things you're
13 working on, and I know you had to put things aside and
14 devoted a tremendous amount of time to this, and it's
15 very impressive, what you came up with in the time you
16 had to work on this thing. So thank you very much.

17 MR. PLATT: Thank you. Chief Kelley's
18 office has been a pleasure to work with.

19 MR. KELLEY: Thank you.

20 COMM. STEEN: Mr. Chairman, I do have
21 something. It's 5:15 on Friday, and I'm wondering if
22 we could look at the remaining items on the agenda and
23 consider maybe deferring some of the things or -- I'm
24 just worried about our time at this point.

25 We've got lots of people out here that

1 probably need to get places, and I know we've got some
2 important items, but could we spend a few minutes and
3 look at what we have and maybe defer some of the
4 things?

5 CHAIRMAN POLUNSKY: I'm sure we can
6 defer reports and such. Let's -- I think we can go
7 through this relatively quickly, but, you know, we'll
8 pull out things if people can't stay.

9 COMM. STEEN: All right. Thank you.

10 CHAIRMAN POLUNSKY: With respect to the
11 discussion and possible action regarding security
12 measures for the department, we really don't need to
13 take any action on that. Is that correct?

14 MS. FULMER: Correct.

15 CHAIRMAN POLUNSKY: Discussion and
16 possible action to include procurement of a project
17 management contract for the purpose of implementing
18 organizational changes and possible next steps in
19 planning regarding the development and administration
20 of the project management plan and project management
21 office for reorganization of the department, that
22 would be Commissioner Clowe.

23 COMM. CLOWE: I think Director McCraw
24 would you have a comment on that first.

25 COL. McCRAW: Yes, sir. Well, first, I

1 certainly believe in the discipline of project
2 management and project portfolio management and
3 certainly with -- it's absolutely critical in IT -- in
4 complex IT and technology projects.

5 I think that when we talk about the
6 organizational chart a little later that we have that
7 embedded in it to allow for it. However, we also have
8 a CIO, Brad Rable, that is high skilled in project
9 managements, and we can always -- in terms of
10 contract, based on what we're trying to do in terms of
11 the transformation plan at any given time with a --
12 with project manager. It's not unlike we've done with
13 Deloitte for driver's license.

14 So I believe in the skill, but I also
15 believe, Commissioners, and recommend to you, that as
16 part of a boxed tied to the office that the project
17 management in this basic form is leadership, and with
18 the leadership team I'll recommend to you that we can
19 do that and outsource as much as needed.

20 COMM. CLOWE: Commissioners, I've been a
21 proponent of the office of project manager in a
22 workshop from the very beginning of receiving the
23 Deloitte report, but based on what I've seen since
24 Director McCraw has come on the scene, I'm changing my
25 recommendation to the Commission.

1 He has reached out, through a series of
2 meetings. He has asked for input. He has -- I've
3 attended one of the staff meetings where he's very
4 interactive, and my sense is that we're getting the
5 kind of input, and it is being considered and used in
6 his planning as he goes forward. And, frankly, at
7 this point in time, I think what he's doing satisfies
8 the goals and desires that I had.

9 So I would suggest to the Commission
10 that his implementation through, I think, a chief of
11 staff of this effort under a different name -- I can't
12 recall what it is right now -- will satisfy our needs
13 in that area, and a workshop is -- frankly, it's
14 ongoing right now, and I'm very satisfied with the
15 level of communication that I see he and Colonel
16 Beckworth taking from the employees of this agency.

17 So I'm not recommending we go forward in
18 any formal way.

19 COMM. STEEN: I concur with the
20 Commissioner about that.

21 CHAIRMAN POLUNSKY: I do, too.

22 COMM. BARTH: Okay.

23 CHAIRMAN POLUNSKY: Okay. A vote of
24 confidence for you.

25 COL. McCRAW: Thank you.

1 CHAIRMAN POLUNSKY: Thank you for your
2 work on that --

3 COMM. CLOWE: Certainly.

4 CHAIRMAN POLUNSKY: -- until now.
5 Discussion and possible action regarding department
6 organizational structure. That would also be
7 Commissioner Clowe and Colonel McCraw.

8 COL. McCRAW: If we can go to the
9 regional chart, with your permission, Chairman, and
10 Commission, I'll start with the regional boundaries.

11 One of the key issues by the Sunset
12 Commission and certainly the Deloitte study identified
13 the number of different regions that we've had --
14 dozens of regions across different organizations or
15 services in the department, and what we're
16 recommending to you here now is six regions across the
17 state.

18 And the differences would be, first, in
19 regional headquarters, El Paso -- not because that's
20 where I'm from, but El Paso, based on threat,
21 population and where we're going as an organization
22 needs to be a regional headquarters and what we're
23 recommending.

24 The other change in San Antonio. It's
25 currently not a regional headquarters, would become a

1 regional headquarters. Waco would no longer be a
2 regional headquarters and would remain -- would
3 convert to a district within the regional
4 headquarters, and Corpus Christi would no longer be a
5 regional headquarters.

6 There would be no capitol region as
7 well. That would fold into a security program within
8 the counter-terrorism and intelligence division that I
9 can talk about in a little bit here.

10 The reason for this breakdown -- it is
11 along, you'll notice on the right side, the council of
12 governments. The 80th legislature established or set
13 forth -- required that the Department of Public Safety
14 align its disaster districts to coincide with the
15 council of governments. And the reason for that is
16 the state had adopted regional catastrophic plans
17 based on cost. So that's where we have our
18 coordination, and every -- all 24 COGs throughout the
19 state have a regional catastrophic plan.

20 Obviously the Department of Public
21 Safety plays a critical role in anything that happens
22 in a disaster management scenario, from tornadoes to
23 terrorism, certainly hurricanes. And it's important
24 that we provide a leadership role into that particular
25 area, so that's why we're recommending this new

1 construct here.

2 If you look at it, for example -- or
3 we'll go through each. Whether it's Region 3 --
4 certainly there's a border aspect of it, and in Region
5 3, it encompasses, you know, several COGs. In fact,
6 each -- as it turns out, what we're recommending,
7 there's four COGs per region. Now, obviously, there's
8 a trade-off here in terms of span and control.

9 The Lubbock region, they're going to
10 need to get around a lot. They've got a lot of
11 territory to cover, but less population. And
12 certainly in the Houston region, a greater population
13 but less territory to cover. So not all regions are
14 created equal, but it does line up with the regional
15 catastrophic plans, and it does -- for some -- based
16 upon some of our intelligence briefs, we're way
17 forward, whether it relates to transnational gangs or
18 border security, we think those are our most critical
19 areas to locate regional headquarters and also to
20 align, whether it's the 35 corridor or having two
21 regional commanders cover the border.

22 If we can go to the organizational
23 chart, please, obviously the charge, you know, from
24 the Commission from day one has been something that
25 Commissioner Clowe and the Commission has been working

1 on is the Department of Public Safety moving from a
2 vertically structured organization and flattening that
3 structure to more matrix management, adopting a
4 unified regional approach.

5 And what I'm presenting today has been
6 based upon feedback that we've been able to receive
7 across the organization, and if you'll allow me, I'll
8 start at the top of the Public Safety Commission.

9 Before I talk about that, I was notified
10 yesterday that it's the intention, or that if it
11 hasn't happened today it will happen Monday, that the
12 Office of Homeland Security and the Governor's office
13 will be moved to the Department of Public Safety, that
14 I will become also the director of the Office of
15 Homeland Security. So with that, there's --

16 COMM. STEEN: Colonel, how is that done?
17 How is that accomplished?

18 COL. McCRAW: By the chief of staff
19 writing a letter and an interagency agreement to move
20 those existing individuals to the Department of Public
21 Safety so --

22 COMM. STEEN: And how many individuals?

23 COL. McCRAW: That'll be five, total.

24 COMM. STEEN: Thank you.

25 COMM. CLOWE: Sorry. I beg your pardon.

1 I missed your question and the answer.

2 COL. McCRAW: Yes, sir, I was
3 notified -- it was -- the final decision was made
4 yesterday, and we should receive the letter either
5 today or Monday from the chief of staff from the
6 Governor's office that the Office of Homeland Security
7 and the Governor's office is being transferred to the
8 Texas Department of Public Safety. The Texas
9 Department of Public Safety will assume responsibility
10 for the homeland security functions throughout the
11 state.

12 COMM. CLOWE: Thank you.

13 COL. McCRAW: I'm recommending a chief
14 of staff position, which currently doesn't exist at
15 the Department of Public Safety, because of the scope
16 and magnitude of the functions and responsibilities of
17 the department, and within that embedding, as noted at
18 the top, strategic transformation planning and
19 innovation, which would also serve from a program
20 management standpoint; government relations, public
21 information and media and the detail -- the Governor's
22 protective detail.

23 On the other side, the general counsel,
24 obviously is a link and reports to the Public Safety
25 Commission. We have had the EEO office, but we have

1 not had that position filled for, what, two years now?

2 COL. BECKWORTH: Yes.

3 COL. McCRAW: For over two years. I've
4 named -- Rhonda Flemming, a major in driver's license
5 has moved into that position. She's now our EEO
6 officer. Kevin Casey, who currently serves as the
7 employee relations -- what I'm recommending is the
8 creation of an office of dispute resolution, and what
9 is now referred to as employee relations, he would
10 serve in that particular capacity.

11 As we go down the chart, the deputy
12 director of law enforcement would be -- in fact,
13 perhaps my best personal choice for that would be
14 Colonel Lamar Beckworth. Obviously he's a consummate
15 leader and professional, and these are core
16 competencies of him, and even though he moves into
17 that capacity, frankly, I'm going to still have to use
18 him, from a deputy director standpoint, to address the
19 entire spectrum of the organization, just based on his
20 institutional knowledge and core competencies in those
21 things. I'm going to need him to do a lot of other
22 things as well.

23 It shows a direct report of the CIO,
24 Brad Rable, who has already been selected for that
25 position. I'd recommend that it be referred to as

1 assistant director -- rise to an assistant director
2 position, and I think it's vitally important that Brad
3 Rable report directly to me because his core
4 competencies can be used across the entire
5 organization. As I pointed out earlier, he also has
6 the skillset of -- project management skillset. He's
7 already -- I've been able to use Brad Rable, whether
8 it's in driver's license, whether it's in concealed
9 handgun or even over on the other side in terms of the
10 enforcement piece.

11 What I'm recommending is the creation of
12 assistant director position for emergency management.
13 If you agree to that, I recommend that Jack Colley be
14 that assistant director. I'm also elevating the chief
15 position in the Texas Rangers to an assistant
16 director. I recommend that be Tony Leal, the current
17 chief of the Texas Rangers.

18 You'll note a direct report on the line
19 of the Texas Rangers. If you'll follow that through,
20 that's a direct report to me. It's required by
21 statute. You'll notice a dotted line over to the
22 deputy director for law enforcement. Obviously there
23 will be coordination in terms of all things that we're
24 doing on the law enforcement side. And, frankly, that
25 coordination already exists because of the excellent

1 relationships that I'm very proud that our law
2 enforcement assistant directors already possess.

3 Again, if you agree to the elevation in
4 terms of CLE to an assistant director position, it
5 would be -- criminal investigations would be the
6 title. The assistant director would be Tom Ruocco,
7 and David Baker would assume the role as assistant
8 director over the Texas Highway Patrol. He currently
9 serves at that chief position.

10 The far left box, as you're looking at
11 the chart, would be a new division within the Texas
12 Department of Public Safety. It would be the
13 intelligence and counter-terrorism division and would
14 create an office of intelligence underneath it. It
15 would have a counter-terrorism program. It would
16 assume the responsibility of the Fusion Center.

17 It would also have -- take over security
18 programs. And I say "security programs," because that
19 will include the capitol. That will include the
20 mansion. That will include the DPS complex, but it
21 will also include all the facilities that the
22 Department of Public Safety has. Security doesn't
23 stop in one area. It's a part of a program and --
24 within this area.

25 The ability to do threat and risk

1 vulnerability assessments is key to any type of
2 security program, so it would be important -- vitally
3 important to staff this position accordingly. I would
4 like to place in that, with the consent and advice of
5 the Commission, Fred Burton. He's in the private
6 sector right now and has a core of competency in all
7 of the things that I'm looking for in that position.

8 If we move back over to the left side of
9 the -- right side of the chart, I'm recommending that
10 we create an assistant director position in the law
11 enforcement support division, and this would involve
12 moving crime records, also the forensics, which is
13 vitally important, field -- the crime laboratory
14 piece, and clearly -- and also public safety
15 communications, which includes radio interoperability
16 into this division.

17 Traditionally, the laboratory has been
18 under the criminal law enforcement side, and obviously
19 it's something that supports not just criminal law
20 enforcement, Texas Rangers, highway patrol, but,
21 really, the laboratory -- crime laboratory system
22 supports all of law enforcement in the state of Texas.
23 So it moves it out of a law enforcement chain of
24 command in that regard.

25 The assistant director of finance, that

1 position has been advertised. We're at the point
2 right now that Korn Ferry is going to be enlisted to
3 help in the assistance of locating whoever that person
4 is if you agree that this assistant director position
5 should, in fact, be in place.

6 I would recommend also an assistant
7 director position for administration -- it rise to
8 that level. If you agree, Valerie Fulmer would be the
9 assistant director.

10 And on the last end of the chart, I have
11 here an assistant director position for license and
12 regulation, and under that is driver's license, which
13 obviously Chief Kelley, who is the permanent chief,
14 has a tremendous responsibility, and also the
15 regulatory side -- the regulatory license side, which
16 includes some very vital programs, including private
17 security, concealed handgun and motor vehicle
18 inspections and the narcotics regulation. So all
19 these programs, with any of these, all of them are
20 very important; and moving to a civilian model on
21 license and regulation, this would allow a greater
22 focus on that, at least from that civilian
23 standpoint -- subject to any questions that you may
24 have at this time.

25 COMM. STEEN: A couple of things on the

1 deputy director of law enforcement, the box to the
2 left, I think you skipped that. Explain that to me in
3 just a few words, what that is.

4 COL. McCRAW: Aviation --

5 COMM. STEEN: And operations support.

6 COL. McCRAW: Yes. Aviation and
7 operations support, we also -- we have a dive team.
8 So it's all those operational entities that fit under
9 that. We have a SWAT program. Those things would be
10 tied to Colonel Beckworth for operations because they
11 support all of the particular programs.

12 COMM. STEEN: You mentioned about the
13 Governor's homeland security people. Where would they
14 go?

15 COL. McCRAW: Well, that would be --
16 they would be integrated into the already-existing
17 organization. So the chief of staff would have one
18 individual from that, and that person would be -- the
19 others would be integrated as a part of the
20 organization. For example, Chief Colley is, in
21 effect -- would be the homeland security program
22 manager, and he would take on some of those
23 responsibilities that he doesn't already have.

24 COMM. STEEN: And then looking at -- and
25 this is an overall question because now we've got this

1 row of assistant directors, and are we dispensing with
2 the title "Chief"? Tell me how that works -- will
3 work under this system.

4 COL. McCRAW: Well, there's still some
5 chiefs underneath this system so we're --

6 COMM. STEEN: But Chief Colley will no
7 longer be a chief? He'll actually --

8 COL. McCRAW: I know he likes the title
9 but --

10 COMM. STEEN: Is there a chief under
11 him?

12 COL. McCRAW: He would be assistant
13 director, and he would be entitled to a chief under
14 him; yes, sir.

15 COMM. BARTH: Can you explain the -- are
16 you planning on having an assistant director of
17 license and -- tell me, what's going on on that far
18 right side.

19 COL. McCRAW: Yes, ma'am. Oh, you want
20 me to explain it? Yes. That would be assistant
21 director. There's two ways -- two schools of thought.
22 That person would oversee both the functions I
23 previously described, or you would move those
24 functions up online as other assistant director
25 positions.

1 COMM. CLOWE: Let me give you some input
2 at this point in time. I know this has been a work in
3 progress, and you've changed it a number of times.
4 And I think there's a sense that I'm hearing among the
5 Commissioners that the last option you mentioned would
6 be more desirable.

7 COL. McCRAW: Okay.

8 COMM. CLOWE: And that would be to move
9 up the chief of driver license to assistant director
10 and the chief of regulatory license up to assistant
11 director.

12 COL. McCRAW: Right.

13 COMM. CLOWE: Would you be acceptable --

14 COL. McCRAW: Yes, sir. Then at that
15 point, I would recommend that Mike Kelley serve in
16 that position for driver's license and John Jones
17 assume the assistant director position in the other
18 position, if that's what you should decide.

19 COMM. CLOWE: Well, I think I'm hearing
20 it from the Commissioners, and we want to emphasize
21 the importance of those two areas, and that would seem
22 to accomplish that.

23 COL. McCRAW: They're certainly vitally
24 important, the responsibilities we've been entrusted
25 to do, and we must do an exceptional job in every one

1 of them.

2 COMM. CLOWE: Any further comments?

3 COL. McCRAW: No, sir.

4 COMM. CLOWE: Commissioners, Director
5 McCraw has worked hard on this, and it's a 12th or
6 15th iteration. I don't know how many times it's been
7 changed, and I think at this point, I think it's a
8 recommendation from him and from me that you consider
9 it.

10 COMM. BARTH: May I ask a question with
11 respect to compensation in terms of the directors and
12 assistant directors? Would you review that to make
13 sure we don't have any issues with respect to some
14 assistant directors more -- I mean, I just want to
15 make sure we have taken into account equity there.

16 COL. McCRAW: Well, my recommendation
17 would be that an assistant director gets paid an
18 assistant director salary, what that's set at, and I
19 have recommendations of what that should be, and then
20 a chief's salary.

21 So we're -- you know, everything the
22 department does is important and that we don't have --
23 even though we recognize the span and control may be
24 greater here; you know, some things over here, like
25 the Texas Rangers do, are also vitally important. So

1 they may have less people for what they do, so I would
2 recommend that we keep the same salary across the
3 board at the assistant director position.

4 COMM. BARTH: And what would be the
5 financial implication of doing that?

6 COL. McCRAW: One forty-seven five is
7 what I would recommend.

8 CHAIRMAN POLUNSKY: What does this do --

9 COMM. BARTH: Yeah. That's what --

10 CHAIRMAN POLUNSKY: -- compared to what
11 are salaries being paid now? How does it compare --

12 COL. McCRAW: Chiefs are being paid --

13 CHAIRMAN POLUNSKY: -- in command
14 structure versus command structure.

15 COL. McCRAW: Yes, sir. The current
16 system, the chiefs are being paid 104,000 --

17 MR. YBARRA: Yes, sir.

18 COL. McCRAW: -- 104,000. So, in
19 effect, it takes the -- it will increase the pay
20 closer, you know, far closer to what I'm making than
21 what the current is. Currently, right now, the line
22 across is -- the chief level is who directly reports
23 to me. So if I'm making 157, they're making 102 --
24 104,000.

25 MR. YBARRA: Yes, sir.

1 COMM. STEEN: They'll go up to what
2 again?

3 COL. McCRAW: They'd go up to 147 five,
4 is what I'm recommending. The chiefs would go up to
5 120.

6 COMM. BARTH: So in total dollars -- I
7 can't do that in my head. What are we talking about
8 on a budget item?

9 COL. McCRAW: Well, I can't either.
10 We'll look at it and give you the exact numbers.

11 CHAIRMAN POLUNSKY: Well, but you have
12 to have some type of ballpark, or maybe Oscar does. I
13 don't know but --

14 MR. YBARRA: If I could share
15 something --

16 (Brief pause)

17 COL. McCRAW: Chairman, I'll have to get
18 back to you. We have some calculations of overall
19 cost in terms of reorganization, but we don't have the
20 differences in terms of that salary increase, what it
21 makes -- it looks like -- the subcost looks like it's
22 245,000 overall for chiefs, but these are creating new
23 positions. This is including the creation of new
24 positions.

25 COMM. BARTH: The only implication --

1 COL. McCRAW: So that can't be right.
2 It's got to be closer -- it's got to be more than
3 that.

4 COMM. BARTH: I mean, you can do it in
5 your head and figure out it's --

6 COL. McCRAW: Yeah. We created -- you
7 know, when you look across the board here, we've, in
8 effect, you know, established, you know, two new
9 divisions, created two deputy directors and currently
10 there's only one. I'll get you the exact numbers.

11 COMM. STEEN: A suggestion might be -- I
12 think, you know, we've worked through this a lot.
13 We've talked to you about it. I think we're generally
14 comfortable with it, and do we have to adopt it today
15 or can he come -- is that the purpose of having it
16 today that we're going to vote on it?

17 COMM. BARTH: I would like to make a
18 motion to adopt his plan, you know, subject to him
19 getting back to us on the financial implication and
20 where the money is going to come from.

21 COMM. STEEN: Another way to do it would
22 just be to say, "So far, so good," and he can come
23 back at the next meeting with the financial part of it
24 and then we would have the whole --

25 CHAIRMAN POLUNSKY: I think we would

1 vote -- and it's up to you-all, but I think the issue
2 before us now is the organizational structure.

3 COMM. BARTH: Right.

4 CHAIRMAN POLUNSKY: Then he can come
5 back with the salaries later, but the salaries and the
6 cost also will need to be approved.

7 COL. McCRAW: Okay.

8 COMM. CLOWE: And I certainly agree to
9 that. And I think Commissioner Barth is right. You
10 know, the organization is waiting for marching orders,
11 and it's time to move ahead. And I would be strongly
12 in favor of -- if you said you had a motion --

13 COMM. BARTH: I have. I agree with you
14 100 percent. I move to adopt this organizational
15 chart with the Colonel coming back to us at the next
16 meeting with financial implications, but I agree
17 wholeheartedly with Commissioner Clowe.

18 COMM. STEEN: Your motion to adopt it as
19 changed?

20 COMM. BARTH: Yes, subject to the
21 changes with respect to the license and regulation.

22 COL. McCRAW: I know I need the advice
23 and consent also on the individuals that I named. Was
24 that acceptable?

25 COMM. CLOWE: That's implied in the

1 motion, I think, isn't it, Commissioner?

2 COMM. BARTH: Yes, sir.

3 COMM. STEEN: Do you want -- is it easy
4 for you to go through them again or --

5 COL. McCRAW: Sure. Fred Burton would
6 be the assistant director of intelligence and
7 counter-terrorism. David Baker would assume the
8 position as assistant director of highway patrol; Tom
9 Ruocco, assistant director of criminal investigations,
10 Tony Leal, assistant director of Texas Rangers; Jack
11 Colley, assistant director or emergency management;
12 Brad Rable as CIO, assistant director of information
13 technology; Mike Simpson, assistant director of law
14 enforcement support.

15 Still to be named would be the assistant
16 director for finance, based upon future decision.
17 Valerie Fulmer would assume the position of assistant
18 director of administration, and John Jones would be
19 the assistant director of regulatory license, and
20 Michael Kelley would be the assistant director of
21 driver license.

22 CHAIRMAN POLUNSKY: Thank you, sir.
23 There's a motion that has been made by Commissioner
24 Barth that the organizational structure be adopted as
25 presented. I'm not quite sure that we need to get

1 into the personnel other than --

2 MR. PLATT: I don't think that's
3 required. The organizational structure is what's
4 critical as far as --

5 COL. McCRAW: And the regions as well.

6 MR. PLATT: Right.

7 COMM. CLOWE: There is no objection on
8 the part of the Commission to anybody you've named.

9 COL. McCRAW: Okay.

10 COMM. CLOWE: We can leave it at that,
11 can't we?

12 CHAIRMAN POLUNSKY: Yeah. I don't think
13 we need to affirmatively, you know, authorize those
14 individuals, but we appreciate the opportunity to
15 comment on them or --

16 COL. McCRAW: With respect to the
17 regions, if you adopt those regions as proposed, then
18 at that point in time, Colonel Beckworth and I will
19 issue advertisement for captains and above to apply
20 for those six regional positions, and we would like to
21 move forward on that.

22 CHAIRMAN POLUNSKY: Okay. Well, you've
23 made a motion on the organizational structure. Would
24 you like to add to that motion that we adopt the new
25 regional --

1 COMM. BARTH: I will amend my motion to
2 adopt the regional structure as proposed by the
3 Colonel.

4 CHAIRMAN POLUNSKY: All right. We have
5 an amended motion by Commissioner Barth that is
6 adopting the organizational structure as presented,
7 and amended by the director this afternoon, and also
8 to adopt the regional structure as represented by the
9 director this afternoon -- or, I guess, this evening
10 now.

11 Is there a second to Commissioner
12 Barth's motion?

13 COMM. STEEN: I'll second. A question
14 for our general counsel.

15 Are we all right on how it's agendized?

16 MR. PLATT: The organizational
17 structure, I think, can --

18 COMM. STEEN: Would encompass the
19 regional? That's what I was --

20 MR. PLATT: Yes, regional boundaries
21 because each region has a regional commander under the
22 new structure, and each region is only -- not only is
23 it the geography; that's a part of the organizational
24 structure.

25 COMM. STEEN: I was thinking about it

1 the same way.

2 CHAIRMAN POLUNSKY: Okay. There's a
3 motion and a second. Discussion on this?

4 (No response)

5 CHAIRMAN POLUNSKY: Okay. There's no
6 discussion. All in favor, please say "aye."

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

9 CHAIRMAN POLUNSKY: Any against, "no."

10 (No response)

11 CHAIRMAN POLUNSKY: Motion passes.

12 If you could please come back at our
13 next meeting with the salary recommendations, then we
14 will take action on those.

15 COL. McCRAW: Yes, sir. And the total
16 cost in terms of the reorganization.

17 CHAIRMAN POLUNSKY: Okay.

18 COMM. CLOWE: Mr. Chairman?

19 CHAIRMAN POLUNSKY: Yes, sir.

20 COMM. CLOWE: I have a housekeeping
21 question. How do you like to be addressed?

22 COL. McCRAW: Well, anything you'd like
23 would be fine.

24 COMM. CLOWE: So it can be Colonel,
25 Director or Steve?

1 COL. McCRAW: Steve works for me, quite
2 frankly. I'm having a difficult time adapting to the
3 other names that are used. I'll say this is that -- I
4 defer to what the troops call me, and the troops
5 prefer Colonel thus far. So if that's -- you know, I
6 think it's an important tradition within the
7 department. Wasn't it, Colonel?

8 COL. BECKWORTH: That's correct.

9 COL. McCRAW: So I think in this case,
10 the troops should rule.

11 COMM. CLOWE: All right. And I think
12 that applies to Colonel Beckworth as well.

13 Now, how about these new assistant
14 directors? They've been called chiefs for the most
15 part. We'll, I think, want to address them all
16 uniformly. What's your sense on that?

17 COL. McCRAW: Well, the title is
18 assistant director, whether they call them ADs or what
19 will prevail over a period of time, but assistant
20 directors it is.

21 COMM. CLOWE: Okay.

22 COMM. STEEN: Colonel, could you have
23 someone update the chart based on what we did today?

24 COL. McCRAW: Yes, sir.

25 COMM. STEEN: And it's just a

1 suggestion; maybe put today's date on it somewhere and
2 we'll know that's what we did today.

3 COL. McCRAW: Yes, sir. I'll have that
4 done this weekend and sent to you.

5 COMM. STEEN: Thank you.

6 COMM. BARTH: Mr. Chairman, could we go
7 back to Item H, which has to do with the inspector
8 general office, which is out there, which, you know,
9 I'd like to move that the office of inspector general
10 for the department be fully established, not just by
11 law, but function and title and supported by the
12 department on September 1, 2009, and the Commission
13 and Director move the personnel functions of internal
14 affairs to this new office of inspector general on
15 September 1, 2009 until the Commission selects and
16 appoints an inspector general, who may then organize
17 and staff the office as supported by the director and
18 approved by the Commission, and that Captain Hank
19 Whitman temporarily fill the role as head of the
20 office.

21 COMM. STEEN: Second.

22 CHAIRMAN POLUNSKY: Thank you. There's
23 a motion by Commissioner Barth and seconded by
24 Commissioner Steen on the issue of inspector
25 general -- office of inspector general.

1 COMM. STEEN: Mr. Chairman?

2 CHAIRMAN POLUNSKY: Yes, sir.

3 COMM. STEEN: Could we put the chart
4 back up, just to make a point for the people here?
5 This is the one that's on the left side there, and
6 that's a direct report to us. And that's why we're
7 taking this action that involves a specific
8 individual.

9 CHAIRMAN POLUNSKY: That's correct.
10 Discussion?

11 (No response)

12 CHAIRMAN POLUNSKY: If there's no
13 discussion, all in favor, please say "aye."

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

16 CHAIRMAN POLUNSKY: Against, "no."

17 (No response)

18 CHAIRMAN POLUNSKY: Motion passes.

19 Thank you.

20 There will be no discussion; today on
21 the "Diamond Jubilee" committee. I'm going to receive
22 some recommendations for people to serve on that
23 committee going forward, and we will be discussing
24 that in the near future, so no action today.

25 Let's do some quick reports: Audit and

1 inspection. Mr. Walker?

2 MR. WALKER: Farrell Walker, director of
3 audit and inspection. Mr. Chairman, Commissioners,
4 our report includes copies of completed audit and
5 inspection reports and lists of projects that are
6 currently in various stages of completion.

7 I would like to point out, in connection
8 with the completed audits of the crime records, TCIC
9 train the trainer project, identified some program
10 management issues and some opportunities to better use
11 IT resources and administration of that program.

12 You'll see a number of follow-up audits
13 that have been completed included in your packet, and
14 you may have noticed a great deal of emphasis on IT
15 audits in recent years as evidenced by those
16 follow-ups. I would suggest to you that the recent
17 Gartner report has validated our focus on IT, and many
18 of the reported issues contained in those reports.

19 A major report that is included in your
20 packet is the grant administration audit that was
21 completed by Deloitte. It's a high-level look because
22 we -- because of certain political realities in the
23 past, we had not spent a good deal of time there.
24 Also, because of audit work done by outside sources,
25 we had not spent time there, but we took this

1 opportunity to have a high-level look at how grants
2 are managed within the department. Bottom line is
3 that there are issues relative to people, processes
4 and IT resources that were identified in need of
5 improvement. Management has either taken action on
6 the recommendations included in the report or have
7 plans to do so in the future.

8 Regarding audits in progress, I would
9 point out that we're in the throes -- in fact, it's on
10 my desk for technical review -- of doing a performance
11 measure audit.

12 That's going to, I hope, prove very
13 timely to the Director because we've identified a
14 number of issues in connection with that, and we'll be
15 able to dovetail the issues and recommendations with
16 his vision for the future in using performance
17 management as a way to manage operations here at the
18 department. I'm hoping the report will be available
19 to you in September, depending on how we can work all
20 the management responses out.

21 I reported to you that there will be a
22 number of projects that will not be completed this
23 year. Those are projects that I anticipated having
24 another staff member on board to do, and due to a
25 number of circumstances, that did not happen, and I

1 did not inform you until this month about this.

2 However, I will tell you that the
3 private security bureau audit has been started, and we
4 can complete the other projects in the next few
5 months.

6 Now, I would suggest that the payroll
7 action letter project that's listed there is not
8 necessary anymore. Next month you should have an HR
9 inspection report that addresses that particular
10 issue. We looked at that a couple of years ago and
11 found that we have the distinction of being, as I
12 recall, the second largest contributor to the
13 comptroller's office of those requests, which is not a
14 marked distinction.

15 We had issues that we recommended be
16 resolved, and I wanted to take another look at that
17 after some years had passed. Our inspection group did
18 that when we were looking at HR, and it will be
19 reported and dealt with there.

20 The next slide, please. You have also
21 in your packet, finally, a completed inspection report
22 on the office of general counsel. There's one
23 recommendation in there that's particularly
24 significant, has to do with records management officer
25 and the duties of ensuring record retention compliance

1 here at the department.

2 That concludes my report, unless you
3 have questions.

4 CHAIRMAN POLUNSKY: Are there questions?

5 COMM. BARTH: My only comment is that
6 with this reorganization, I would like to ask that you
7 get with the Colonel and really look at the risk
8 assessment now that we've reorganized.

9 MR. WALKER: Very good. Will do. Thank
10 you.

11 CHAIRMAN POLUNSKY: Thank you.

12 CHAIRMAN POLUNSKY: Administration.
13 Wayne Mueller?

14 MR. MUELLER: Wayne Mueller, assistant
15 chief, regulatory and licensing. In the interest of
16 extreme brevity, Commissioners, Slide No. 5, please.
17 This is what Commissioner Steen had asked for
18 previously.

19 This is the chart showing the increase
20 in volume of concealed handgun applications that we've
21 been receiving. This is the average number of
22 applications we received per month during the whole
23 history of the program. As you can see, there was a
24 spike during the first full year of the program in
25 1996, and then it was a steady stream for the next

1 nine years, 1997 to 2005, and then it began to
2 increase, and those specific numbers are, in 2006, we
3 received an average of 6,800 applications per month;
4 in 2007, 7,300 applications per month; 2008, it jumped
5 up to 8,700 applications per month, and then so far in
6 2009, it's been over 12,000, specifically 12,300
7 applications received per month.

8 That's where we sit. I think the
9 Colonel probably wanted to speak to where we're
10 planning to go forward with specific portions.

11 COL. McCRAW: Yes. I appreciate it.
12 Obviously, the backlog -- what are we doing right now,
13 about 12,000?

14 MR. MUELLER: Right now, we are about
15 16,000 behind, although we should be able to issue
16 several thousand -- about 8,000 here in the next week.

17 COL. McCRAW: The challenge has been --
18 and one of the reasons it's been for -- it takes as
19 long as six months for people to get their concealed
20 handgun licenses, the requirement that we address as
21 part of the background investigation the department
22 has to do is two items. It has to be able to collect
23 information on domestic disturbances as a Class C
24 misdemeanor, which is not reported as part of the
25 normal process and within the department's record

1 files, and the same thing with disorderly conduct.

2 So what we've been doing is use troopers
3 to go to the local jurisdictions where they are
4 resident in, to take time off the road to have them go
5 through and locate those types of -- to be sure so we
6 can meet our legislative requirement, and what we have
7 right now we've recommended -- or what we're moving
8 forward on is start to collect Class C misdemeanor
9 fingerprints from local enforcement across the state.
10 We have the capability of doing that immediately.

11 So what that enables us to do from here
12 forward is to have access to that data so we don't
13 have to send a trooper to go look for that data, and
14 we've got a biometric that identifies that data, and
15 it's not just in the resident county that the
16 individual is from. It's across the state, or
17 actually across the nation. So there's value added to
18 that aspect of it.

19 The second thing is that we -- what we
20 need to do going back retrospectively -- we can very
21 easily -- because Class C -- these violations are
22 captured in TDEx, which you heard testimony about
23 earlier today, is to do a batch run and take the 16 to
24 18,000 individuals we have and batch run against it,
25 and then identify that and use some of William's

1 technicians to go through and dig in, you know,
2 identifying those links and actually becoming what we
3 believe is more thorough and certainly more quick --
4 and certainly a lot quicker.

5 That's our process design, and, of
6 course, the front end of this is Brad Rable has been
7 involved in it in terms of the design, and I believe
8 that leveraging Texas online and some capabilities so
9 that we can streamline the process leveraging
10 technology for the public. We think that's the way
11 forward, and we would like in the next session -- the
12 next Commission meeting, we should have a report in
13 terms of how we fared, and we can actually go back and
14 check the efficacy of what we're proposing by
15 comparing which ones we've worked in the past and
16 finding out, you know, a related time. So we think
17 this is -- and also, the legislature has given me the
18 power -- correct -- the authority --

19 MR. MUELLER: Yes, sir.

20 COL. McCRAW: -- with the advice and
21 consent of us to design what that system looks like.
22 So the system doesn't have to be overly burdensome.
23 It can leverage technology in doing some of the things
24 we've talked about.

25 COMM. CLOWE: Wayne, we're running about

1 six months now?

2 MR. MUELLER: I think we're much closer
3 than that. Like I said, we're about to issue for
4 manufacture about 8,000 licenses that we have finished
5 the process on. We had a summer project from July to
6 August of this year where we had -- one of our big
7 choke-up points was the actual data entry, putting
8 these applications in our system.

9 We caught up to where we're current now
10 on that, so we're seeing the effect of that month-long
11 project to where we are getting very, very close, but
12 that's just a one-time patch. Just like summer's
13 month project was a patch then, we have to come up
14 with some automated features moving forward to make
15 sure we don't continue to fall behind.

16 As Colonel McCraw talked about
17 streamlining the local records check is a big part of
18 that. Brad Rable is helping us, talking about a
19 front-end piece, which would be a comprehensive,
20 online application, and then the third component that
21 I think is very important is we need to move to an
22 electronic fingerprint system.

23 If we put those three pieces in places,
24 I think we can have a very automated process where we
25 won't come close to the 60-day turnaround time that's

1 mandated by statute. I really think we can get closer
2 to 30 days for clean applications.

3 COMM. CLOWE: But today --

4 MR. MUELLER: Right now, today, we're
5 really in between right now. I believe in the next 30
6 to 45 days I can confidently say, to the best of my
7 ability, that we will be current, meaning we are
8 issuing applications -- licenses within 60 days of the
9 application coming in. We're right at the tail end of
10 getting the effects of the project we just did.

11 COMM. CLOWE: How old are the eight that
12 you're getting ready to issue?

13 MR. MUELLER: They vary, in time. What
14 happened was we had a whole slew of background checks
15 that came from Harris County, which was really one of
16 our choke points on the background investigations.
17 They were brought to us in bulk, and so I can't tell
18 you what they were -- exactly how far in time they
19 were -- they were waiting on, but we got those all in
20 together at one point in time.

21 COMM. CLOWE: I don't know how else to
22 ask you. You really haven't told me how far we're
23 running behind.

24 MR. MUELLER: And I don't have a
25 specific answer for you, Commissioner. I apologize.

1 COMM. CLOWE: Would you find that out --
2 MR. MUELLER: Yes, sir.
3 COMM. CLOWE: -- and let the Commission
4 know?
5 MR. MUELLER: Yes, sir.
6 COMM. CLOWE: Because that's the
7 question that we get asked.
8 MR. MUELLER: Yes, sir.
9 COMM. CLOWE: Thank you.
10 CHAIRMAN POLUNSKY: Anything else?
11 (No response)
12 CHAIRMAN POLUNSKY: Thank you. Chief
13 Baker, talk to us about pictures of the recruiting
14 vehicle --
15 MR. BAKER: Hello, Mr. Chairman.
16 CHAIRMAN POLUNSKY: -- that Colonel
17 McCraw is driving around now.
18 MR. BAKER: It's gone. It's on its way
19 to McAllen right now.
20 CHAIRMAN POLUNSKY: I thought he
21 lives --
22 COMM. CLOWE: He'll have to walk home.
23 MR. BAKER: Well, the trooper that
24 picked it up thought he was going to have to walk
25 home.

1 No. I wanted to show you some pictures
2 of the new recruiting vehicle. I know that
3 Commissioner Clowe has seen it, but not everybody else
4 with the agency has seen it. This was our first
5 vehicle that was issued. It went to Trooper Bill
6 Abel, our recruiter in Corpus Christi. This was his
7 brainchild. We just kind of took his idea and ran
8 with it.

9 The second vehicle was parked out front
10 this morning, and I hope that everyone got a chance to
11 look at it. We made some modifications to the
12 wraps -- to the photographs on the wrap, the
13 difference being the picture that you see there, our
14 honor guard picture was kind of compressed, therefore,
15 that allowed us to not have to wrap the driver's door.
16 If you'll notice, there's kind of a dull, black paint
17 on the driver's door. That's a result of the wrap.
18 It looks much better. The new wrap does not encompass
19 that -- the door and its --

20 COMM. STEEN: What's the word you're
21 using?

22 MR. BAKER: Wrap. That's a plastic film
23 that's applied to the vehicle.

24 COMM. CLOWE: You can see just fine from
25 the inside out, and it was designed by two employees

1 of this agency. Would you name them, please, chief?

2 MR. BAKER: Yes, sir; Don Silvas is an
3 employee in our graphics and reproduction. He is the
4 one that's responsible you for taking the actual
5 photographs and placing them on the wrap. Charlie
6 Goebel is our dive team commander. He assisted Don
7 with that venture, and they located a company here in
8 Austin that was able to take the photograph and design
9 that wrap.

10 COMM. STEEN: And how easy is it to get
11 off?

12 MR. BAKER: Well, I hope not very easy.
13 Time will tell.

14 COMM. STEEN: What's the -- is the idea
15 you can just peel it off?

16 MR. BAKER: It just peels right off;
17 yes, sir. If we have a vehicle that's vandalized, if
18 it's keyed, it will tear through the plastic wrap, but
19 the good thing is they just replace that panel that
20 needs to be replaced.

21 COMM. STEEN: Well, it's an
22 attention-grabber.

23 CHAIRMAN POLUNSKY: It's the same
24 material they use on some of the VIA buses in San
25 Antonio that you see that are completely encompassed

1 with advertising, and then all of a sudden, that
2 advertising is gone.

3 MR. BAKER: We've received very positive
4 comments on the vehicle, and we're starting to get
5 requests to display these vehicles in car shows and
6 neighborhood events.

7 CHAIRMAN POLUNSKY: Any questions or
8 comments here?

9 COMM. CLOWE: This is a working vehicle.
10 It has the in-car computer, and it has a newly
11 designed rack for the long guns that the troopers use
12 with an immediate release electronically, and if that
13 fails, a key release. So although this is a showboat
14 to attract attention and not frighten people when it
15 goes on a school ground or workplace, it's a vehicle
16 that can work on the highway.

17 MR. BAKER: You're correct,
18 Commissioner. It's fully outfitted and ready to go.

19 CHAIRMAN POLUNSKY: What kind of results
20 have you had?

21 MR. BAKER: Well --

22 CHAIRMAN POLUNSKY: I know it's very
23 early but --

24 MR. BAKER: The jury is still out. The
25 recruiters love it, and they believe that it will help

1 them be more effective. That's our rolling billboard
2 that tells our story.

3 CHAIRMAN POLUNSKY: Well, I like the
4 innovation. I think there's going to be all sorts of
5 innovation here and --

6 MR. BAKER: Absolutely.

7 CHAIRMAN POLUNSKY: -- you know, try new
8 thoughts and new concepts and --

9 MR. BAKER: We're excited.

10 CHAIRMAN POLUNSKY: -- anything possible
11 to bring in the cream of the crop.

12 MR. BAKER: Absolutely. We're excited
13 about it.

14 COMM. CLOWE: Commissioner Steen and I
15 are somewhat disappointed in the design that we don't
16 have a picture of the Chairman on his motorcycle up
17 there.

18 MR. BAKER: We ran out of room.

19 (Laughter)

20 COMM. CLOWE: And a new uniform he wants
21 to wear.

22 CHAIRMAN POLUNSKY: I'm sure
23 Commissioner Clowe can work with you on this. He'll
24 be happy to volunteer his time on that.

25 COMM. CLOWE: Chief, you know he does

1 want that uniform.

2 (Laughter)

3 COMM. CLOWE: You're going to have deal
4 with that sooner or later.

5 MR. BAKER: We'll work on that.

6 COMM. BARTH: Chief, thank you for the
7 crash report -- I mean, staying on the crash report
8 error.

9 MR. BAKER: Yes, ma'am.

10 COMM. BARTH: I appreciate you staying
11 on that.

12 MR. BAKER: Thank you. We'll be on top
13 of it.

14 CHAIRMAN POLUNSKY: Anything else?

15 (No response)

16 CHAIRMAN POLUNSKY: Thank you very much.

17 MR. BAKER: Thank you.

18 CHAIRMAN POLUNSKY: All right. Let's go
19 to the consent items. Is there anything that anybody
20 would like to pull?

21 COMM. STEEN: Mr. Chairman?

22 CHAIRMAN POLUNSKY: I'm sorry?

23 COMM. STEEN: Is Mr. Colley going to
24 report on something or is --

25 CHAIRMAN POLUNSKY: I don't think so. I

1 mean --

2 MR. COLLEY: Unless you want me to.

3 COMM. STEEN: Well, he's on the agenda.

4 CHAIRMAN POLUNSKY: Well, I mean, I know
5 but he's already done his thing. I mean, do you have
6 something on emergency?

7 MR. COLLEY: I don't have anything,
8 Mr. Chairman.

9 COMM. STEEN: You looked like you were
10 ready to report on something, though. That's why I
11 asked.

12 MR. COLLEY: If you would like me to
13 report, I can report.

14 COMM. CLOWE: A good tank commander is
15 always ready.

16 MR. COLLEY: No, sir, I don't have
17 anything.

18 CHAIRMAN POLUNSKY: Yeah. John, I just
19 thought he had already done all that.

20 Consent items, would anyone like to pull
21 anything for individual consideration?

22 COMM. BARTH: I just have one comment.
23 When we have donations, could we give a dollar figure
24 by them?

25 MR. PLATT: We can put that on there.

1 COMM. BARTH: I would like to see that,
2 please.

3 COMM. CLOWE: Mr. Chairman, move the
4 adoption of consent items represented by the Letters A
5 through F.

6 COMM. BARTH: Second.

7 CHAIRMAN POLUNSKY: Thank you. There's
8 a motion that has been made by Commissioner Clowe and
9 second by Commissioner Barth.

10 COMM. STEEN: Colonel Beckworth,
11 anything on here that I need to be worried about?

12 COL. BECKWORTH: No, sir. Everything is
13 excellent on that consent item docket.

14 COMM. STEEN: Thank you, sir.

15 COL. BECKWORTH: You're welcome.

16 CHAIRMAN POLUNSKY: We have the good
17 housekeeping seal of approval here.

18 COL. BECKWORTH: Outstanding.
19 Outstanding.

20 CHAIRMAN POLUNSKY: We have a motion and
21 a second. Any further discussion?

22 (No response)

23 CHAIRMAN POLUNSKY: No discussion. All
24 in favor, please say "aye."

25 (All those in favor of the motion so

1 responded.)

2 CHAIRMAN POLUNSKY: Any against, "no."

3 (No response)

4 CHAIRMAN POLUNSKY: Motion passes.

5 Are there any items that any

6 Commissioner would like to have included for the

7 September meeting, other than what we've discussed

8 today, or any future meetings?

9 COMM. CLOWE: Not at this time.

10 CHAIRMAN POLUNSKY: Mr. Steen?

11 COMM. STEEN: No, no.

12 CHAIRMAN POLUNSKY: The normal meeting

13 would be on Thursday, September 17th. Does anyone

14 have a problem with that date?

15 (No response)

16 CHAIRMAN POLUNSKY: It's okay. All

17 right. Then it'll be on that date. Anything else?

18 (No response)

19 CHAIRMAN POLUNSKY: The Texas Public

20 Safety Commission is now adjourned. The time is

21 6:12 p.m.

22 (Proceedings concluded at 6:12 p.m.)

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25

1 C E R T I F I C A T E

2 STATE OF TEXAS)

3 COUNTY OF TRAVIS)

4 I, Evelyn Coder, a Certified Shorthand
5 Reporter in and for the State of Texas, do hereby
6 certify that the above-mentioned matter occurred as
7 hereinbefore set out.

8 I FURTHER CERTIFY THAT the proceedings
9 of such were reported by me or under my supervision,
10 later reduced to typewritten form under my
11 supervision and control and that the foregoing pages
12 are a full, true and correct transcription of the
13 original notes.

14 IN WITNESS WHEREOF, I have hereunto set
15 my hand and seal this 22nd day of September 2009.

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EVELYN CODER
Certified Shorthand Reporter
CSR No. 2845-Expires 12/31/09

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