

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMISSION MEETING
TUESDAY, JULY 23, 2002

The Texas Alcoholic Beverage Commission met on this date in Room 185 at 5806 Mesa Drive, Austin, Travis County, Texas. Members present: John T. Steen, Jr., Chairman; Gail Madden, Member and Kel Seliger, Member. Staff present: Rolando Garza, Administrator; Lou Bright, General Counsel; Greg Hamilton, Chief of Enforcement; Jeannene Fox, Director of License and Compliance and Denise Hudson, Director of Resource Management. Comment was received from Jim Haire, Texas Alcohol Abuse Prevention Volunteer; Joye C. Hyman and Glen Garey, Texas Restaurant Association.

The agenda follows:

1:30 p.m.- Call to order.

1. Consider resolution in memory of Roy J. Sturdivant; discussion, comment, possible vote.
2. Recognition of agency employees with 20 or more years of service.
3. Approval of minutes of June 3, 2002; discussion, comment, possible vote.
4. Administrator's report:
 - a. discussion of staff reports;
 - b. dates and times of future meetings;
 - c. recognitions of achievement; and
 - d. discussion of management controls.
5. Fiscal stewardship of agency; discussion, comment, possible vote.
6. Acknowledge acceptance of \$2,100 from Ms. Barbara Boyer to purchase logo shirts and caps to be worn by members of the A.V.E.R.T. Task Force in the Longview district; discussion, comment, possible vote.
7. Report on Fetal Alcohol Syndrome/Fetal Alcohol Effect; discussion, comment, possible vote.
8. Consider proposed amendments to 16 TAC §37.60 as published in 27 TexReg 5348-5349 and 27 TexReg 5566-5571 on June 21, 2002; discussion, comment, possible vote. (Standard Penalty Chart)
9. Seller/server training update; discussion, comment, possible vote.
10. Consider Legislative Appropriations Request for 2004-2005 biennium; discussion, comment, possible vote.
11. Public comment.
12. Executive session:

Announcement of executive session:

- a. the commission will meet in executive session to discuss the evaluation of the administrator pursuant to Texas Government Code, §551.074(a)(1); and
- b. the commission may go into executive session to consult with legal counsel regarding items 7, 8, and 9 of this agenda pursuant to Texas Government Code, §551.071.

Continue open meeting.

13. Take action, including a vote if appropriate, on topics listed for discussion under executive session.
14. Adjourn.

The meeting was called to order at 1:30 p.m. by Chairman Steen.

MR. STEEN: I'd like to call to order the meeting of the Texas Alcoholic Beverage Commission and begin by considering a resolution in memory of Roy J. Sturdivant. I'm going to ask Ms. Madden if she would please read the resolution.

MS. MADDEN: "Whereas, Roy J. Sturdivant, Agent of the Texas Alcoholic Beverage Commission, departed from this life on the 8th day of July, 2002; and

"Whereas, his outstanding service with the commission led him to achieve a position of leadership both within the commission and the community; and

"Whereas, the favorable impression of the commission reflected to the community he served his personal ethics and integrity; and

"Whereas, all his endeavors, large and small, reflected a sense of honor and righteousness which never failed; and

"Whereas, as an emissary of the commission in his position as an outpost agent, he was a role model for all agents and law enforcement; and

"Whereas, his wisdom, personality and character earned the respect of all those who knew him; and

"Whereas, Roy J. Sturdivant gave all of us a lesson on how to live our lives to the fullest and how to never take our loved ones for granted.

"Now, therefore, be it resolved by the Texas Alcoholic Beverage Commission that this salute to the memory of Roy J. Sturdivant be entered into the records of this commission so they will forever reflect the esteem of the commission and its staff; and

"Be it further resolved that a copy of this resolution be presented to his wife, Vivian, as an expression of our gratitude and a token of the high regard in which Roy J. Sturdivant was held by all in the commission."

MR. STEEN: Do we have a motion to adopt the resolution?

MS. MADDEN: Yes. I so move.

MR. SELIGER: Second.

MR. STEEN: Any discussion? All in favor, say aye.

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. I know the family of Mr. Sturdivant is here, and I'd like to call them forward. Chief Hamilton, do you have some words?

MR. HAMILTON: One of the things I would like to say about Roy Sturdivant, I've heard the comment said by our esteemed legal counsel that if you can't get along with TABC, you just can't get along, and I would like to say that Roy Sturdivant epitomized that saying.

When I was at the services, there were many people that came up to me that told me - not just law enforcement, but members of the community - that talked about how he touched their lives. I had an opportunity to go and visit with him while he was going through treatment in San Antonio, and the administrator and I went to Granbury to visit him. Knowing that he was sick, he never mentioned anything about being sick. He talked about how he can make the commission better and how much he loved his wife and his son. I just want you to know that Roy Sturdivant is going to be missed physically, but he has touched many lives and many hearts and he will live forever here at TABC.

MR. STEEN: Thank you, Chief Hamilton. Mr. Garza?

MR. GARZA: I would just like to say I also was in attendance at Roy's funeral and burial and, during the last few months, I had a chance to talk with Roy frequently. Ironically, he was the one that gave me the inspiration. Every time I talked to Roy he always had something good to say about the agency and about his family. I made a comment before, and I think it bears saying again, this agency is a better place for people like Roy, and I want to thank Vivian and Paul for sharing him with us.

MR. HAMILTON: I would also like to mention that Roy's brother-in-law and sister are here, too, if we could get them in the picture also?

MR. STEEN: Sure.

The next item on the agenda is recognition of agency employees with 20 or more years of service. I'm going to begin by calling on Chief Hamilton to recognize certain individuals.

MR. HAMILTON: The first individual we have is Captain Richard Jauregui. Richard has been part of this agency since July 26, 1982. He's been pretty much all

over the state. He's been in Baytown, Brownsville, McAllen, El Paso, Beaumont and San Antonio. Right now, he's trying to get back down home into McAllen but I'm keeping him in San Antonio. I would like to say that Captain Jauregui is not just a colleague of mine, he's a real good friend of mine and he seems to excel in everything that he does. He is truly an asset to TABC. I'd like to say thank you, Richard, for serving 20 years.

MR. STEEN: Chief Hamilton, we are really grateful to have him in the San Antonio office, and I know the community of San Antonio appreciates you, Captain. They don't want to let you go, so I hope you're not planning to leave. Congratulations.

MR. JAUREGUI: Thank you.

MR. HAMILTON: Our next individual is John Peek. John Peek has served the agency for 20 years also. He has been a big part of headquarters over his career. You can give him an assignment and you can rest assured that he is going to be thorough and complete. He is truly an asset to the agency, and he is a good person also. He graduated from my alma mater, Southwest Texas State University. I'd like to say thank you to John Peek for his service of 20 years.

COMMISSIONERS: Congratulations.

MR. PEEK: Thank you.

MR. HAMILTON: Our next individual is Jerry Phillips, who is stationed in the Huntsville outpost. He's here with his wife and I would like for her to come up also.

Jerry has spent a great deal of time in the Huntsville outpost. In order to work in an outpost, you've got to have a certain "umph" about you. He's been there for a while and I think he's a second generation TABC person. His father worked here also. He is constantly giving us quality work, he's consistent and he's doing everything in a timely manner. I'd like to say congratulations to you, Agent Phillips, and we appreciate all the hard work you have been doing.

COMMISSIONERS: Congratulations.

MR. PHILLIPS: Thank you.

MR. HAMILTON: Our next individual is Trey Rusk. He's a lieutenant, and he's located in the Longview office. Lieutenant Rusk has worked in a lot of locations:

Baytown, Bay City, Houston, Galveston, McAllen and Longview. I would call him our in-house politician. He seems to get along real well with all the politicians in the area in which he works. I had contacted him one time when he was in Houston, and told him that I wanted him to go down to McAllen. I told him, "I know that you don't speak Spanish, but we'd like for you to get down there and get involved in the community." I don't know what words he knows, but he has learned a few Spanish words, and we moved him back to Longview. He's done a wonderful job. He's a community builder. He reaches out to the members of the community and gets them involved in the issues of underage drinking, bootlegging, sale to intox. He's really entrenched in his community and I applaud him for that. Thanks a lot, Trey.

COMMISSIONERS: Congratulations.

MR. RUSK: Thank you.

MR. HAMILTON: Our next individual is Agent James White. James White has been with this agency 20 years. Talking about being involved in the community, James White volunteers in the community and is also a trustee for the Coahoma School Board. He was also nominated in 2001 as the agency Employee of the Year. Myself, the administrator and Mr. Lou Bright went to Tulia a couple of weeks ago to have a town hall meeting. We stayed there for three and a half hours talking with the community folks, and I can say that we didn't get very many compliments while we were there, but when we were leaving, there was one individual that was part of a newspaper from that area that couldn't say enough good things about the work that James White was doing. So I think that he was our saving grace. We got out of that meeting and we felt good about something about the work that he is doing up in that particular area. I would just like to say to James "keep on keeping on." Thank you.

MR. GARZA: And also, James, that's his way of saying that you're going to be transferred to Tulia.

COMMISSIONERS: Congratulations.

MR. WHITE: Thank you.

MR. STEEN: Thank you, Chief Hamilton. Ms. Fox?

MS. FOX: We have Mr. Machado with our Ports of Entry program. He's celebrating his 20 years with the agency. He started as a tax collector in the Brownsville Port of Entry, and luckily for him he hasn't had to move and

is still in Brownsville. The wonderful thing about Mr. Machado is that he is always so accurate in all his daily work and he serves as an excellent representative to the agency. In welcoming people across the border, he is always very courteous, professional. He serves as sort of a tourist director for the State of Texas. He is always answering everyone's questions and we always get a lot of nice comments about him. So we would like to congratulate him today on his 20 years.

Mary Baldeschwiler is here in Austin in the compliance department. She joined the agency 25 years ago as an auditor in what was then the auditing division. She serves in many capacities. Now we might call her the multi-project person. She wears many hats and does a lot of great things for us. However, I think the one thing we certainly want to mention about Mary today is her customer service. One of the many duties she has is to interact with the package store local distributors in issuing stamps that they have to have in order to sell products to holders of Mixed Beverage Permits. She is always going out of her way to help them, making sure they have what they need when they need it and are not waiting on us. They may be ordering later than they should be many times. I think one of the things that really stands out about Mary is when we had a gentleman come to town to pick up some stamps probably three or four months ago, or it may be longer than that. He had not been to Austin, he wasn't familiar with the area, and he also had to go to another state agency. Mary, dutifully and as concerned as she is, wanted to make sure he didn't get lost. So she drove him over there. She got in her car so he could follow her to the next destination to ensure that he didn't get lost in Austin and found his way home. I think that is an example of the wonderful customer service and the way she goes out of her way. By the way, that was not on state time, that was her lunch hour she took to go take him to this office. So I think she is certainly the epitome of good customer service at the agency. We would like to congratulate her on her 25 years of service.

COMMISSIONERS: Congratulations.

MS. BALDESCHWILER: Thank you.

MS. FOX: The compliance department has one other employee to recognize today. Judy Wycuff, who has been with us for 30 years, is currently in the seller/server training section of the compliance department. She began her career in the accounting section as a clerk. She has been in many different programs and is always the backbone of the work that is being done. Probably she didn't know we were talking about her the other day, but we were having a meeting on seller training issues. Judy is one of two staff

members there that is always keeping them current with over 300,000 certified trainees, answering the phone and trying to give as much information and help as possible. We were talking about the staffing in that section because we have some concerns there that we can handle the current workload. Basically, what is so noteworthy about Judy and really speaks volumes is that her supervisor basically said, "Judy's the work horse. She does enough work for two people." That kind of sums it all up that she is always here and always doing the work and is always someone that we can depend on. We congratulate her. She's been here 30 years and we hope she remains more.

COMMISSIONERS: Congratulations.

MS. WYCUFF: Thank you.

MR. STEEN: Thank you, Ms. Fox.

The next item: Approval of minutes of the June 3, 2002, meeting.

MS. MADDEN: I so move.

MR. SELIGER: Second.

MR. STEEN: Any discussion? All in favor?

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. Next, the administrator's report. Mr. Garza?

MR. GARZA: Mr. Chairman and Members, first of all I'd like to say as you can tell just from the group of folks who have come up here today, we are blessed at this agency to have some very dedicated, long-serving employees of the state who have given their life to this organization. I think we ought to be proud of their work. I know I am certainly proud of all the work that they do day-in and day-out. We have some employees who have gotten to a point in their careers where it is time for them to move on to another chapter in their lives, so they are going to be looking at retirement. This year alone, which ends August 31st, we will have 16 employees who will have tendered their retirement from state service for a total of about 434 years of service. So I think that is noteworthy. Some of those people will come back to us, through our retire/rehire policy and come back in another position. We will be fortunate to have that institutional knowledge and

experience be put to work again. Others are just going to move on. Ms. Madden, you know Captain Rogers in your area, for example. He has retired and he has been replaced by David Alexander. So we will have some individuals who will be in new positions, starting the new fiscal year, and I think we look forward to their growth and development also. So it is a time of mixed feelings for some people, but it is also an opportunity for us to grow and expand and give new leadership an opportunity to take seed. I just wanted to bring that to your attention.

We have some housekeeping issues, Mr. Chairman, to address with you this afternoon. One of them has to do with our monthly board meetings. I have talked with each of you individually on this. We have usually met on the fourth Monday of the month at 1:30 p.m. You wouldn't know that necessarily from our last two meetings because in June we met June 3rd and then today's meeting is on a Tuesday. But I do believe that we were at a point where we wanted to get some discussions, some agreement from you all as to what you felt comfortable with in regard to your schedule for having regularly scheduled meetings. If it is still your pleasure, we will work from the fourth Monday at 1:30. I believe you all had indicated to me that would work with your personal schedules.

MR. STEEN: Ms. Madden?

MS. MADDEN: Yes, I like that.

MR. SELIGER: That's fine, Mr. Chairman.

MR. STEEN: That's fine with me also.

MR. GARZA: One of the other items we have addressed before, and not with any great deliberation, was the possibility of this agency considering taking some of its meetings outside of Austin. I personally am supportive of that because I believe that there is a responsibility we have to take government out to the community and wherever we can to be able to take TABC business out to the different areas of the state that are affected by the work that we do and by the deliberations that you all pass on whenever you meet. While I am not asking for any kind of a direction or decision at this point, I certainly would like for you all to give some consideration to do that. We would consider taking one meeting a year outside of Austin. It could be in Amarillo, Mr. Seliger. We could go to Dallas; we could go to San Antonio. Give people in those communities an opportunity to see TABC at work.

MS. MADDEN: I like the idea and wanted to do it for a long time. I hope you all would

concur. I would love to host you all in Dallas. I bet you would like to do it in Amarillo, and how about San Antonio?

MR. STEEN: I believe it was Ms. Madden's suggestion. My thought would be why don't we try Dallas as sort of the pilot one.

MS. MADDEN: The pressure's on.

MR. GARZA: I'd like to consult with staff, take a look at our schedules. Certainly I'd like to look at having a fall meeting in Dallas in October or November, conceivably. We will get back to you all next month with a recommendation.

MR. SELIGER: I think it's an important idea because this agency regulates and affects the activities of both consumers and people in related industries all over the state of Texas. Ours is not an Austin enterprise; it is a State of Texas enterprise and it is an important thing to do. I think that people who have business before this agency and are interested in activities of the agency all around the state and, for one reason or another can't come to Austin, will very enthusiastically attend a meeting held in their area to see exactly what the agency does.

MR. GARZA: I will tell you the last 11 months that I have had a chance to travel across the state, Mr. Seliger, that it would be a welcome event in communities across the state. Certainly where we have offices, our staff would welcome the opportunity to put a name with a face, certainly with its governing board. I think that there are opportunities for us to be able to reach out and address individuals in different parts of the state who may have concerns or issues they would like to bring before this commission. So we will pursue that and give you a report with a recommendation next month.

With respect to calendars we have been informed by the Legislative Budget Board that they would like for us to have our Legislative Appropriations Request Hearing next month. They have given us a deadline of having to have it done by August 23rd, which means that we would need to come back to LBB with some possible dates of when we would like to do that. I bring that up to your attention because in the past we have asked our commissioners to be present for those hearings, and we would certainly like to have you all present. What it does to us in terms of our schedule, we are not supposed to meet or scheduled to meet until August 26th. So I would like you all to give some thought to moving your August meeting to the week of August 19th and give Cheryl a couple of dates when you might be available and we can relay that information back to LBB and try to schedule both the hearing and our commission meeting

in the same day. We would go downtown to the Capitol area, have our hearing in the morning - about a two-hour hearing - then go ahead and conduct business here that afternoon.

MR. STEEN: I like that plan.

MS. MADDEN: And you are thinking about August the 19th?

MR. GARZA: The week of August 19th. We do have to have those hearings conducted by the 23rd of August.

The last thing that I would bring to your attention - actually, a couple of things - one, in case you were wondering, Assistant Administrator Randy Yarbrough is in Washington this afternoon. Actually he's been there since yesterday, attending a Joint Committee of the States with the National Conference of State Liquor Administrators. One of the key things there is they are going to get a briefing from the Bureau of Alcohol, Tobacco and Firearms on some of their review of this whole notion of "malternative" beverages or flavored beverages. So when Randy gets back - I believe tomorrow - we should be able to get some information and send it out to you forthwith because that is an issue you all have expressed an interest in in the past.

Lastly, in your briefing materials you will see a recently designed stationery that we have worked with and we intend to start using and unveiling that probably some time next August. I have shared that with you individually. It is in your briefing materials. I think it will give us a good clean design that we can use with all our communications. That's all I have, Mr. Chairman.

MR. STEEN: Any questions?

MS. MADDEN: No.

MR. SELIGER: No.

MR. STEEN: Fiscal stewardship of the agency. Ms. Hudson?

MS. HUDSON: Yes, sir. This month we took a look at the workforce. We currently have 24 vacant positions, 10 of those are in enforcement, eight are in POE with seven of those being positions for new bridges, and a small number in compliance, licensing and resource management. As Mr. Garza stated, and if you look at our years of service on the page that has the charts, you will see that our tenure is going down. That is one of the few changes; it is a small change, but we expect to see more of that as employees retire.

We also took a look at the radio task force. This task force is being renamed to The Interagency Radio Work Group. They have hired an engineer that will be housed at DPS, and they will be putting together their recommendations for the next session on where the state should be moving with regards to communications between all the state agencies.

We also looked at budget. The budget has been going very well this year. We have used salary savings to pay for a number of things, including lump sum terminations, workers' comp, some body armor for enforcement, some increased printing costs and some software upgrades.

Any questions or anything that I can add for you?

MR. STEEN: Any questions?

MS. MADDEN: No.

MR. SELIGER: No.

MR. STEEN: Thanks, Ms. Hudson. I know it takes a lot of effort to do these reports every month, and we appreciate it.

MS. HUDSON: Thank you. I have a very good staff that puts it together.

MR. STEEN: The next item is to acknowledge acceptance of a gift to the agency. Mr. Garza?

MR. GARZA: I believe Lieutenant Trey Rusk is going to bring that forth to the commission.

MR. RUSK: We have an Enforcement Division Task Force in northeast Texas in the Longview district. At this time we have 33 member law enforcement agencies on that task force with over 50 individual officers. One of the task force officer's mother wanted to donate 2,100 dollars so that all of the agents on special assignment would have uniform "golf" type shirts. She donated that money for the task force officers.

MR. STEEN: So I think we need a motion to accept it?

MS. MADDEN: I so move.

MR. SELIGER: Second.

MR. STEEN: Any discussion?

MS. MADDEN: No.

MR. STEEN: All in favor, say aye.

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Any opposed? Mr. Garza, is there anyone here today to thank?

MR. RUSK: No, sir, her name is Barbara Boyer.

MR. GARZA: We will send a formal thank you and acknowledgement on behalf of the board.

MR. STEEN: We will send a letter to her and tell her how grateful we are. Thank you.

The next item is a report on Fetal Alcohol Syndrome/Fetal Alcohol Effect; discussion, comment and possible vote. Mr. Garza?

MR. GARZA: Mr. Chairman and Members, I have submitted to you in your briefing materials a report that staff put together regarding some possible options for you to consider with respect to this initiative. I'll walk through this list and you can stop me if you have any questions.

One of the obvious options was the development of a sign as is attached in your briefing materials that we borrowed from one of the states with the same language. There is a cost figure attached to that, printing costs for about 30,000 would be about 1,000 dollars. The second item we are also looking at in terms of a possible option should you direct us to pursue this project would be the printing of a four inch by six inch decal, which is the second item that you'll look at, with similar wording that is used, I believe, up in the State of Washington. These would be sent out with every new application, every renewal through Jeannene's staff as that goes out. So it would be part of a package that would include other information to the recipient of a permit/license or renewal. We also looked at the issue of the curriculum that is being taught in 162 server training schools and found out that 62 of them currently offer some information with respect to the Fetal Alcohol Syndrome/Fetal Alcohol Effect. Under current rule, Chapter 50, that deals with education, the administrator has the authority to add curricula to that current format or to that information. So I would suggest that that would be something that we strongly push forth and instruct Ms. Dixon, who is the director of that program, to notify the schools that we will be including some information with respect to Fetal Alcohol Syndrome.

I have met personally with Texas Department of Health's Dr. Charles Bell, who is the executive deputy director, and talked to them about a brochure that they currently produce. They are interested in possibly partnering with us in producing this brochure and making it available to license and permit holders, and hopefully they will share that information with their employees.

We have some ongoing discussions with Dr. Wanser over at Texas Commission on Alcohol and Drug Abuse and Karen Hale, the commissioner of Texas Mental Health and Mental Retardation Department. They currently do not have any ongoing initiatives directly targeting FAS, but have expressed to me an interest in working with us, should we develop some new campaigns along education or public information efforts.

We did a survey, Members, as you will see in your material, of the states with respect to their use of signage. You'll find in the breakdown of that information that currently 22 states do have mandatory signage with respect to Fetal Alcohol Syndrome/Fetal Alcohol Effect; 28 do not. One state has adopted this by rule and that is Delaware. All the other states have done so by legislative statute. One question we did ask the states with respect to this information was for those that did have the mandatory signage whether or not there had been any effort to measure any change in information or knowledge in terms of people viewing these signs and not one state had conducted any studies to that respect. I'm aware there are some studies out there that do show that there is some increase in awareness in information by people who are exposed to those signs, but none of the states that contacted us that currently have mandatory signage requirement have undertaken any study to assess that through their alcoholic beverage regulatory agency. And that's all we have.

I believe there are some folks here who are prepared to address the board on the subject.

MR. STEEN: Yes, we have some citizens signed up to speak.

MR. SELIGER: Mr. Garza, if I may ask for a moment, you included in our booklet a copy of the letter from the Governor of Alabama to the alcohol retailers and physicians in the state.

MR. GARZA: Correct.

MR. SELIGER: The wording on this letter leads me to believe that such a display is voluntary?

MR. GARZA: This was a voluntary initiative.

MR. SELIGER: In how many of the states is it voluntary?

MR. GARZA: That I don't have the data for, Mr. Seliger, I apologize.

MR. SELIGER: Okay.

MR. GARZA: We can go back and see if we have collected that with the information we've got, but I don't have that available with me in terms of who would have done it on a voluntary nature. But this was a voluntary campaign that the governor signed off on.

MR. SELIGER: All right.

MR. STEEN: Any questions at this point?

MS. MADDEN: No, not at this point.

MR. STEEN: Let me, then, turn to the people who have signed up to speak. Jim Haire? Would you like to lead off?

MR. HAIRE: Sure.

MR. STEEN: Good, come forward, please.

MR. HAIRE: I'm Jim Haire from Tyler. Chairman Steen, Commissioners Madden and Seliger, thank you for this opportunity.

At your June 3rd commission meeting, I, along with March of Dimes, a nationally known FAS researcher from Texas A & M University, the Executive Director of the Texas Office for Prevention of Developmental Disabilities, the ARC of Texas and two mothers of FAS children, spoke in support of point of sale birth defect warnings. Today, I'll summarize some of my points for you and also share some new information, including research that supports the use of alcohol health warning signs.

FAS is the leading known cause of mental retardation in the Western Hemisphere according to the World Health Organization. FAS is not curable, but totally preventable. The Texas Office for Prevention of Developmental Disabilities (TOP) has raised its estimates on the impact of FAS on Texans based on the 2000 results. It's now estimated there were approximately 4,000 FAS/FAE babies born in Texas in the year 2000. That means if all these babies can make it to high school, every year they would fill up two new 5A high schools, Texas' largest. A front page story

from the March 1, 2002, *Austin American Statesman*, along with a March 3, 2002, *Dallas Morning News* article, tells of the financial crisis plaguing state facilities for the retarded. A mother of an FAS child recently commented at an FAS town hall meeting at the Capitol, that having your child diagnosed with FAS today in Texas just means that you can assume a spot in line for the wait for state services. Texas Department of Mental Health and Mental Retardation's web page reports almost 19,000 Texans waiting for mental retardation services, including 5,809 children under the age of 18.

A study discussed in the journal, *OBGYN* (August 1998) shows surprising results about which groups of women are more likely to drink during pregnancy. That study showed babies born to mothers in the following groups are at the highest risk: women with a college education; unmarried women; female students; women who smoke; women of households with greater than 50,000 dollars annual income.

In regard to awareness, their web page tells us that the National Institutes of Health (NIH) is one of the world's foremost medical research centers and the federal focal point for medical research in the U.S. NIH is part of the U.S. Department of Health and Human Services. The goal of NIH research is to acquire new knowledge to help prevent, detect, diagnose and treat disease and disability. NIH research indicates that most women (61 percent) of child bearing age are unaware of FAS.

In my June 26 letter to you I listed eight people in a row that my wife and I have talked with that were not familiar with FAS. We do not recall talking to anyone who knew what FAS was except for those individuals involved with the issue. And neither my wife nor I were aware of FAS until I got involved in it a little over a year ago, and we have two young children. Christopher is here today. One of the reasons for my passion about this issue is that looking back, I know my wife and I were walking through mine fields and no one told us. We were just lucky. You should not depend on luck to avoid a life long disability like mental retardation, when it is preventable.

As demonstrated to you on June 3rd, most alcoholic beverages served to women in Texas carry no birth defect warning labels. Beer bottles are the only serving containers used that carry warning labels. The more popular drinks for women, such as beer in mugs, wine, margaritas, daiquiris and other mixed drinks, carry no warning labels. After calls to the FDA that I made, March of Dimes and the Center for Science in the Public Interest, it appears that alcoholic beverages are the only consumer products that are known to cause birth defects that are being sold without warning labels.

A few points about the signs, themselves. The national organizations that favor point of sale health and safety signs include: the American Medical Association; the American Public Health Association - that, by the way, is the largest organization of public health professionals in the world - the National Association of State Alcohol and Drug Abuse Directors, like TCADA - that's Dr. Wanser and all his counterparts across the nation - the U.S. Department of Health and Human Services; the ARC; the March of Dimes; I know there are others. Twenty-two states, now as you've heard, require point of sale birth defect warning signs in all retail outlets for alcohol and the number of states is growing.

The following are examples of research that documents the success of alcohol health warning signs: in New York City, 54 percent of persons interviewed before warning signs were required mentioned birth defects as a possible consequence of a pregnant woman's alcohol consumption. A year later, after signs had appeared, 68 percent mentioned birth defects. On each item I am mentioning here, I'm giving on your written handout I've got for you a full reference on each one so you can track it anytime you wish. Also, a 1993 study evaluating Arizona's first year with warning signs found an immediate effect on college students. Right here it says college students is the population they tested. They didn't go around and say, "In this group they responded." This is the group they tested. But, anyway, they found an immediate effect on college students' awareness of the sign and memory of the warning message, as well as some evidence that the warning sign led to more accurate beliefs about maternal alcohol consumption birth defects. Similar warning signs with an addiction message raised awareness of alcohol addiction from 25 percent to 95 percent among middle and high school students after warning signs were introduced in Lake County, Florida.

Now here's some research supporting the effectiveness of point of sale alcohol warning signs in general. First, a poster - again, a reference is given after each one of these in your handout - a poster might be an efficient means of conveying the hazards of alcohol consumption because 1) it can be made more conspicuous than the current warning label and is more likely to attract attention; 2) it can complement or extend the information on the warning label; 3) it does not require the drinker be near the alcohol can or bottle and can be seen when alcohol is served from a keg or other bulk method; and mainly to me, a key point is that it does not require that a person consume alcohol to learn about alcohol hazards. Also, warnings serve an important information function, warnings in general. Empirical research supports that warning messages increase consumer awareness of potential product hazards. Awareness also tends to increase the probability that consumers will take measures to protect themselves from potential hazards. Again, full references are given on

your handout for each one of these items.

The Center for Science in the Public Interest (CSPI) reports the following advantages of alcohol health warning signs. 1) Warning signs provide a low cost effective means of educating the public. Over a third of all pregnant women do not see a doctor during the first trimester, so there has to be a way to get information to people who drink. For those seeing a doctor, consider for a minute that the survey showed 41 percent of physicians place the threshold for FAS at one to three drinks per day, while 38 percent placed the threshold at one or fewer drinks per day. According to CSPI, both opinions directly contradict the surgeon general's advice that women should not consume any alcohol during pregnancy because of the risk of birth defects. It's not doing any good to go to the doctor half the time. Warning signs reach most consumers - moderate, heavy, and potential drinkers - before they drink. The alcohol industry spends two billion dollars - again, this is according to CSPI's research, not my opinion - the alcohol industry spends about two billion dollars each year promoting drinking as a glamorous, fun part of a healthy, successful life. It is left to the community to balance these messages with facts about alcohol related harm. Ironically, I recently saw seven point of sale alcohol promotions from my table in a local restaurant in Austin. So there's probably room for an eight and a half by eleven sign to tell women how to take care of themselves. Point of sale warning messages can reach 95 percent of consumers with critical information about alcohol related health risks.

Just a few comments about alternatives mentioned by TABC. In regard to a voluntary sign program, CSPI reports that the alcohol industry is against point of sale health warnings because they are afraid the signs will hurt sales. Therefore, a voluntary program of any kind obviously stands little chance of being successful. Also, a voluntary effort would be inconsistent with the size and seriousness of the problem. The messages to drink, including those at point of sale, as part of the industry's annual two billion dollar advertising effort, cannot be avoided and, therefore, are not voluntary. It is inconsistent, then, for warnings to be voluntary. In regard to public service announcements, I asked a TV station to tell me what their policy was on PSA's. They said they run them when and where time permits. This is inconsistent with the size and seriousness of the problem. A blue ribbon list of national organizations support the use of point of sale warning signs, not PSA's. The PSA's would be a logical supplement to the signs. In regard to server training, that's not a viable alternative due to several factors; frequent inability to identify a pregnant woman when she comes in the door; the large turnover of servers and the fact that during busy times when most alcohol is being consumed and sold, servers will have little time for health discussions. Not much weight can be put on this as a strategy, but certainly there is nothing wrong with making servers

aware of alcohol related brain damage for their own good.

In conclusion, TABC's code passed by a previous legislature says TABC will protect the welfare, health and safety of the people of the state. The code then states, "It shall be liberally construed to accomplish this purpose." The people of the state are obviously being harmed by alcohol related birth defects about which there is currently little or no warning for the public. TABC is in a position to administrate the sign program efficiently and economically.

One of the strongest cases for the warning signs is simply the estimated 4,000 babies born in Texas each year with alcohol related brain damage. One of the reasons for my passion in this issue is that I know now that my wife and I were just lucky because neither one of us was familiar with the issue. As you saw in my June 26th letter, we did not poll a large number of friends, but the ones we talked to about FAS were not familiar with the problem and that is consistent with the research done by the National Institutes of Health mentioned earlier. I think you'll agree, regardless of the level of results reported in other states, Texas families have the right to be told in the most reliable manner possible about alcohol related birth defects. The first time I met TABC's administrator, Rolando Garza, I asked him to take a minute and imagine one of his children being mentally retarded. I then asked him what he would give to make that child normal. His answer was the same as mine - anything and everything. What's being asked of this commission today is very little. Thanks very much.

MR. STEEN: Thank you, Mr. Haire. Next we have Joye Hyman?

MS. HYMAN: Thanks for giving me the opportunity to speak.

At the end of the testimony given in your last meeting on the request for health warning signs laid before this board by Jim Haire, the question was asked as to why this board needed to be involved? Quite frankly, that question had the same impact upon me as a direct slap across my face, and had it not been for the voices of my Junior League mother and grandmother whispering in my ear that "ladies don't make scenes in public; two wrongs don't make a right; and there is no excuse for rudeness," I might have stood up and said something I would have regretted later.

I thought about my experience here long and hard, but it was the first time I had spoken in a public forum about what it's like to live with an alcohol-affected child. I realized that questions like that, even in the face of expert testimony, were questions I would have to learn to deal with in my efforts to prevent alcohol related disabilities. I realized that I needed to be able to answer that question and answer it well if I were ever to help you or anyone else understand that my ability to retain what my mother and

grandmother taught me, to remember it when I needed it, to help me make accurate decisions and to control my emotions, are skills that these children won't ever have because their biological mothers drank during their pregnancies and to also help you understand the terrible impact that it is having, not only on the citizens of Texas, but on our entire country. So it is that question that I will address in my testimony.

The first reason I believe this board needs to be involved in this issue quite simply is, as I read it, it is your job to do so. It is my understanding that the Alcoholic Beverage Code of Texas gives this board, and I quote, "the authority to enact such measures as are necessary for the public health, peace, safety, temperance and morals." Now some literature I read says morals and some doesn't, so I don't know if you all are supposed to work on people's morals as well. And your powers are, and I again quote, "liberally construed to accomplish this." It is also my understanding that you can adopt rules or policies establishing the minimum requirements for approved seller training programs.

A vital part of protecting the health, peace, safety, temperance and morals of the citizens of Texas has often been education. If this board didn't already recognize the value of education, it would not have established such an extensive training outline for its servers, would not have created Project SAVE and would not have sponsored a brainstorming session with college presidents to find the best methods for reducing underage drinking on the campuses of Texas. Because knowledge about the serious toxic effects of alcohol on the developing human fetus is so recent, the danger of drinking during pregnancy is not now part of common knowledge. It is something that must be learned, either in school, from a physician or nurse, or through public education sources. Warning posters and warning labels are an important part of public education. Those who have an interest in keeping this information from becoming common knowledge will tell you that a poster or a label won't prevent someone from drinking and that is true. The purpose of the poster is to inform and to make the information it contains common knowledge. A doctor doesn't need to go to medical school to learn that overeating causes weight gain because it is part of our common knowledge. The fact that alcohol causes birth defects should be equally well known so that a person who missed the service announcement on TV or the pamphlet in the obstetrician's office will not be left uninformed.

How well informed are each of us about the health and safety issues involved with alcohol? How many people know that alcohol consumption is a factor in approximately 100,000 deaths a year in the United States? To put that number into perspective for you, that is almost twice the number of people who died in the Vietnam War. What that means is that every year in this country, with alcohol, we do twice the damage it took 10 years to do in a bloody war. Did all that loss of life take place on the

highways or through over-consumption, both of which are health and safety issues that your current training program addresses? No, it didn't. Alcohol plays the role in a range of fatal events from homicide to suicide to stroke and cancer and it has a toxic effect on the developing human fetus. Your current training program stresses intervention techniques for situations involving over-consumption, drink tampering, sales to minors and preventing the intoxicated guest from driving. When teaching intervention techniques, your training outline notes, and I quote, "This part of the program is of considerable importance to the public peace and safety and shall therefore receive due emphasis." The mission statement of Project SAVE, a project developed by the TABC for fourth through ninth graders, states, and I quote, "Project SAVE will contribute to the accomplishment of our agency's mission of ensuring the welfare, health, peace, temperance and safety of the people of Texas by implementing a strategic, statewide public education and awareness effort. Because by stopping alcohol violations early, we all win." Both of those statements seem to indicate that this board recognizes the importance of educating the public as a valuable tool in protecting the health and safety of the citizens of Texas, young and old. So I have found it a little puzzling that there seems to be such a great resistance to placing health warning signs mentioning Fetal Alcohol Syndrome at points of sale. Which brings me to the second reason I believe this agency needs to be involved, which is simply because it is the right thing to do.

Since the June 3rd meeting, I've learned a lot about the industry I once made my living in, and what I found and learned made me sick. I found that 82 percent of adults favor an increase in the drink tax to pay for treatment and prevention programs. I found that 77 to 90 percent of adults want alcohol restricted in a variety of public places, sports events and college campuses. I found that 59 to 70 percent of adults want alcohol advertising strictly controlled or banned all together. In a democracy where the majority rules, "Why," I asked myself, "wasn't the obvious will of the people being enacted?" For I discovered, while the tobacco industry was being taxed out of existence, the alcohol industry went 34 years without an increase and the number of outlets they sold in and their advertising budgets soared. I found that the alcohol industry contributed hundreds of millions of dollars each year to prevention and treatment programs, and that each of those bodies has consistently voted against alcohol initiatives a greater percentage of times than prevention and treatment entities that don't accept alcohol money. The alcohol industry influencing the votes of people charged with prevention and treatment? Somehow that just didn't seem quite right to me. I began to read more about the alcohol industry, its money, its power, its organization, its advertising. I learned that two of my favorite restaurants, Outback and TGI Fridays, are in the top 10 of restaurants lobbying against drunk driving standards. I learned about the three major distillers in the industry and all that they owned that had nothing at all to do with alcohol but

which always seemed to help them defeat/pass the legislation they wanted. I learned that the Seagrams Company was the first major distiller to violate the liquor industry's self-imposed 48-year-old ban on broadcast ads, and that they did it here in Texas in 1996 at an NBC affiliate. I learned that on a list compiled by the Federal Election Committee of U. S. House that members who took contributions from alcohol lobby PACS from January 1, 1987, to December 31, 1997, Tom Delay ranked number seven on that list; Richard Arney ranked number 25; Henry Bonilla ranked number 36; and Martin Frost ranked number 46. I learned that if you look at that same list for the last five years only, Tom Delay moves up to number three; Henry Bonilla moves up to number 22; Richard Arney moves up to 23; and Mr. Frost seems to have disappeared. I also learned that in the Senate for that same five-year time period, Kay Bailey Hutchison was number two on the list of people who accepted the most money from the alcohol industry and Phil Gramm was number 22. This is only money that has been reported to the Federal Election Commission. It does not include contributions made at the state level. Judging by what the federal representatives of Texas are doing, I imagine we would find a similarly interesting picture on the state level. I urge everybody within the sound of my voice to call their own representative or the Ethics Committee and find out just exactly how much they are accepting from the alcohol industry.

In 1999, Harvard University's School of Public Health College Alcohol Study surveyed students at 119 colleges. Forty-four percent of them engaged in binge drinking, which is defined as four to five drinks in a sitting in a row, during the two weeks before the survey. Students more likely to binge drink are white, age 23 or younger, and are residents of a fraternity or sorority. In surveying a younger population it found that 31 percent of 12th graders, 25 percent of 10th graders, and 15 percent of 8th graders binged in the two weeks prior to the survey. That study also found that binge drinkers were 21 times more likely than non-binge drinkers to have engaged in unplanned sexual activity and not used protection when having that sex. The potential damage to unborn children and to our society as a whole from just the under-30 drinkers alone is staggering, especially when you consider that on the average each one of these alcohol effected individuals cost the tax payer more than four million dollars in his or her lifetime - that's with health problems, special education that's required, psychotherapy and counseling, welfare, crime and the justice system. More than 60 percent of prisoners are likely effected by alcohol exposure before birth and it costs approximately 120,000 dollars a year to house a youthful offender and 82,000 dollars a year for an adult. You add on to that the individual's own lifetime loss of income, the high cost to the families - whether they are foster, adoptive or biological - who raise and care for these children and adults, the lost income of a parent who must care for the exceptionally high needs of the child, cost to the family whose child is permanently dependent upon them,

the cost of legal services for defending their child in the courts, and the cost of stress-caused divorce, etcetera, etcetera, etcetera. I add up the costs of all these figures and I balance it against the one to two dollars it may cost each outlet in Texas to post a health warning sign. And just as I put it to every trainee that ever hesitated to “card” or refuse service for fear of losing a tip, when you balance that dollar against your job, when you balance that dollar against a jail term or fine, when you balance this dollar against the life of a human being, that’s an easy decision for me to make, but is one that everybody has to make for themselves.

Public education and health warning signs do work. I do have information about studies that have been done in states that have these signs as well as copies of statutes and laws and training programs from some of them if you are interested in seeing any of that material. It does work. One year after warning posters about drinking during pregnancy were posted in New York City, a Gallup Poll showed a 19 percent rise in awareness among both sexes of the danger of drinking while pregnant. Other states with warning signs that have done follow-up show a similar increase. Among women of child-bearing age, those with a higher dose of message exposure, meaning that they have exposure to multiple messages, were more likely to have limited their drinking during the last year and to have had a conversation on the topic of drinking during pregnancy. Among those who have been pregnant and were exposed to the respective message sources, about half in each instance said the warning labels, signs, conversation or fear of what others would think had an effect on their alcohol consumption while pregnant, two-thirds said an advertisement had an effect and almost all said fear of birth defects or feeling it is wrong to drink while pregnant had an effect. Your own follow-up research to the SAVE program on the web site states, and I quote, “single session prevention is ineffective” and that “multiple sessions” - meaning multiple exposures to information - are needed for retention, and that this project “has resulted in a significant increase in the knowledge about alcohol and the effects of underage drinking” and “a significant change in attitude concerning underage drinking.” So both your own and national research shows the positive impact of public education received from multiple exposures to information on issues of health and safety. If you can reduce underage drinking in Texas through education, you can reduce the number of children born with birth defects caused by the alcohol consumption of their mothers.

This is all very simple to me, but it isn’t for everyone. So I had to sit and think of what arguments the alcohol industry or anyone else might pose against educating the public of the dangers of drinking while pregnant. A lot of people would say to you that only alcoholics have babies who are affected by alcohol, and no poster in the world is going to make an alcoholic seek help or stop drinking. There is no safe amount of alcohol to drink during pregnancy, but FAS babies are born to moderate drinkers as

well, and moderate drinkers are affected by warning posters. Since most problem drinkers usually enter treatment programs with strong encouragement from those closest to them, family members who have learned of the danger to the fetus from posters can help motivate the individual to seek help.

Some people will tell you that all the damage is already done within the first trimester, most of the time before a woman knows she's pregnant so that the warning will come too late. Researchers have established no safe time to drink. One study shows that heavy drinkers who stop in the middle of their second trimester significantly improve their pregnancy outcomes. Another study in monkeys found that drinking during the third trimester cuts off the oxygen supply to the fetus, demonstrating the benefit from abstaining during that time. And the fact that some women will find out about the danger of drinking late in their pregnancy or after the child is born further underscores the need to inform women before they become pregnant.

Some people may argue that warning posters may scare pregnant women who drink or mothers who drank during a previous pregnancy, and may result in hysteria or anxiety or even lead to an abortion. This is a disturbing, and to me personally, an insulting argument. It is based, as Dr. Sheila Blume testified before a U.S. Senate hearing on, and I quote, "a typical archaic attitude that women are such nervous creatures and so untrustworthy that they cannot be trusted with the truth." And I have to agree after some of the things I have learned about the effects of alcohol on women. Perhaps they don't want us to know about the damage alcohol does to our unborn babies for the same reason they don't want us to know that we increase our risk of breast cancer by nine percent for every 10 grams of alcohol we consume on a daily basis - I measured out 10 grams of alcohol, it doesn't even fill up a shot glass - or that we are more susceptible than men to the toxic effects of alcohol on the heart muscle and the liver even though we consume 40 percent less, or that non-smokers who drank alcohol have a 60 percent higher risk of oral cancer than non-smokers who don't drink. Maybe they don't want us to know all this because the truth is they are afraid of what we might do if we knew the truth.

Yes, the incredible guilt and sorrow that biological mothers of alcohol-affected children feel is one burden that I am grateful I don't have to bear. But the women I have met on this journey are anything but hysterical, and though the truth is hard they have each been moved to action in their own way to prevent this nightmare from happening to others. Many of the women I met have been searching for the truth about their children for decades; searching for someone to tell them for sure what they had already come to believe in their own mother's hearts. The mothers I have met care for these children, even when advised to put them in homes or give

them back to the adoption agencies they came from. The only time I personally have heard abortion mentioned as a solution, the suggestion came from a man.

Another argument they make is that it is going to cost too much to require the posters and create an enforcement program. As stated earlier, the cost of a poster versus the cost to society of this disability is an underwhelming argument in my book. In the State of Florida, food inspectors monitor the placement of signs so that no additional personnel or monies are required for enforcement. In many states that require health warning signs, no sign in the establishment simply means no renewal of the liquor license.

The last argument I thought of is that a lot of these signs lose their effectiveness over time. Yes, that is true from what follow-up studies have shown, they do. But those studies also show that designing a series of signs before implementing the program, paying special attention to design, colors, font and content will maintain their effectiveness over time. These studies also show that the placement of signs is extremely important in increasing their effectiveness. It is important not only to place at least one sign in a conspicuous place, but to place them over urinals and in bathroom stalls, which also increases the chances that they will be seen. The signs must supplement alcohol education programs and reinforce federally required labels on bottles. I really hope that when the time comes for each of you to place your vote on the issue of health warning signs that you are able to act on the voice of the concerned citizens of Texas.

Personally, while we are talking about doing the right thing here, I think that if the State of Texas needs money to fund putting these signs in its establishments at points of sale, they need to go knocking on the door of the industry that created this ad for funding. I have a copy of this ad for each of you in the testimony. I will be happy to give a copy of this ad to anyone sitting in this room because to me this is the most irresponsible piece of advertising that I have ever seen in my life - sperm swimming through a sea of vodka carrying a bunch of roses to the egg. All the money the alcohol industry has ever donated to education, prevention, or treatment programs can't undo the damage from this one ad. And if you doubt the success of this ad, let me share the comment made to me by the printer when he saw it. "Oh, that's really nice." "Define nice," I asked. "Well, it's very warm and intimate." "What about this ad makes you feel warm and intimate?" I asked. "Well, the colors are very warm," he replied, "the blues, they're vibrant." He was a much younger man so at this point he began to hesitate a little bit and blush and said, "The little things that appear to be sperm and the roses, it just makes you feel good." "Feel good how?" I asked. "Like a blind date just went good" was his response. This young man appeared to me to be in his early to mid-twenties. His response scared me to death and I hope it scares you,

because as I testified before a federal panel from Washington last month, when I brought this same ad to their attention, no way shape or form will your life be a bed of roses if Fetal Alcohol Syndrome is a part of the picture. That's why I'm here today and this is why I want, not just the citizens of Texas but the citizens of every state in this country, to know about Fetal Alcohol Syndrome.

The final reason I would like to offer as to why I believe this board needs to become involved in educating the citizens of Texas about the dangers of drinking while pregnant is because you are human. FAS is more than just a disability. It's a social disorder which causes many of the expensive problems which plague governments and each of us as well. On both a financial and personal level, we are all affected by the secondary disabilities of people who were born with disabilities caused by alcohol. The majority of them will display many or all of the following symptoms: learning disabilities, early school drop-out, juvenile delinquency, poverty, chronic unemployment, sexual acting-out, promiscuity, early pregnancy, prostitution, sexual assault, mental illness, homelessness, violence, crimes against property, alcoholism and addiction. There is no "inclusiveness" for people with FAS. In general, our society has little compassion for those thousands of individuals who's damaged brains lead them to crime, homelessness and addiction. Instead, we assume they have chosen to behave as they do. Few people realize that the severely acting-out teenager, the addicted prostitute on the corner, the couple living in your park, or the man charged with killing his girlfriend's baby may all behave as they do as a result of the brain damage caused by their mother's drinking in pregnancy.

This lack of compassion was evidenced here in this room the last time this board met by all the people who rolled their eyes toward the ceiling, or laughed, or made comments about me and the child I care for as I gave my testimony. Perhaps they would all give me and my husband the same piece of advice that a former friend did when he advised that the best thing for all concerned would be to take the child off into the woods and put a bullet in his head. This lack of compassion was further evidenced by comments made later by people who were in this room, that both we and our children needed psychiatric help and good parenting classes. Much worse comments were generated later on the airwaves during a live show on KLBJ. To make fun of disabled people and the people who care for them? This, as a compassionate human being, I just cannot understand. Right now, I have never been more ashamed of having been a part of an industry that sold the product that generated this ad and never been prouder of the men who trained me in that industry. For I was taught that the most valuable resource I had to make myself successful in this industry was my human resources - my customers and my employees. I was taught to be good to them and value them and take care of them. I was taught to think long-term. I was taught to think in terms of

generations of customers. I was taught that the two-year-old who throws spaghetti on my new carpet and stomps in it on his way out today will be my future American Express card holder. I was taught that how I treat customers today determines whether they come back tomorrow and whether my customer base grows. I was taught that cutting off service to a consuming guest might make him mad at me tonight, but it helped insure his safe return tomorrow. In short, I was taught to care. These lessons were not always a part of me. I had to learn them, sometimes the hard way. It took losing a very special customer, the kind of customer you let stay inside when the doors are locked; it took losing three of my employees in one night, because someone served them too much alcohol for them to safely make it home, to give me the ability I have to look a customer dead in the eye and to mean it when I say to him, "I love you and I don't want to lose you and I'm not going to serve you another drink." And it took meeting these children to help me understand the even greater danger that alcohol poses to those who are least able to defend themselves against it and the monumental costs of the disabilities that alcohol causes to our society. God, when I think of what our country could do with the money we could save by simply educating the public, and with the money that the alcohol industry has spent in many other states fighting health warning signs being posted. There are close to four million babies born each year in the United States. Close to 47 thousand of those will be born with disabilities caused by drinking alcohol while pregnant, which is more than Downs Syndrome, Spina Bifida and Muscular Dystrophy combined.

Each year there are 198 babies born with HIV. In press releases two weeks ago, it was announced that the incidence of HIV-infected babies had been dropped 80 percent in the last 10 years. Our country did that with education in the classrooms, with public service announcements, with the availability of information in all forms, and by caring citizens across this country who sat down and quilted squares in honor of their loved ones and put them together and asked America the question, "How many deaths will it take till you know that too many people have died?" The incidence of FAS alone is twenty times that of HIV.

My mother and grandmother also taught me that if a thing is wrong, it is wrong even if the whole world tells you it is right. And if a thing is right, it is right even if the whole world tells you that it is wrong. Placing health warning signs at points of sale is the right thing to do. Protecting the citizens of Texas against this disability is the right thing to do. By raising awareness one person at a time we can minimize the effects of drinking during pregnancy and save our country billions of dollars in the process. A sign won't do it all, but it is an important contribution. And the reason that this board needs to be involved is that it really does take a village to raise a successful and healthy child. Thank you.

MR. STEEN: Thank you, Ms. Hyman. We had two other individuals who had signed up, but they just wanted to make us aware that they are available to answer questions. That's Glen Garey of the Texas Restaurant Association and Larry Camp of the Texas Office for Prevention of Developmental Disabilities.

Mr. Garza, did you have any further comments?

MR. GARZA: The only observation I would make is that I think that staff agrees with each of the folks that have come up before you, certainly with Mr. Haire in the conversations I've had, that raising awareness is the focal point of this whole issue. How we get to that place in the awareness is where, I think, we have a difference of opinion.

MS. MADDEN: Well, I'd like to ask...I mentioned last month public service announcements. Your background today was very compelling. You all have certainly done your homework. I was just curious if you had looked into public service announcements, which we all know reaches huge audiences?

MR. STEEN: Mr. Haire, could you come forward so that your comments could be picked up by the microphone?

MR. HAIRE: In regard to the PSA's, I called a TV station or two and asked them about PSA's because I was not that familiar with them. The first thing they told me, the only thing they told me was that they work them in when and where possible. My response to that is that the size and magnitude and seriousness of this problem is inconsistent with that kind of effort. We need a statewide effort so that when some ladies leave this building this afternoon to go to their favorite watering hole, and they have a mentally retarded child as a result of that, somebody can say that we did everything we could. Mr. Steen can say we did everything we could. He shouldn't say, "Well, Channel 3 in San Antonio said they'd carry that during the month of August and maybe they didn't. Maybe you didn't see it." If I were in your shoes, I promise you I would want to do everything possible from the PSA's, the signs, the education, coordination with other state agencies. And let's try to play catch-up a little bit because Texans don't deserve four thousand babies a year, like I said, filling up two 5A high schools every year with mentally retarded children to some level because we're not telling them. It's like somebody said one time during this process, it's a no-brainer.

MS. MADDEN: I work with a lot of non-profits and I have found PSA's to be very, very effective. This is such a compelling issue that it would be so easy for you to go to foundations in the state, different community foundations and they would underwrite a video. If you blanket enough television stations across the state, they will run them. And they run them at various hours,

but in Dallas I see them all the time and they are very, very effective. It just takes a little work. It sounds to me like you all are very committed to this effort.

MR. HAIRE: My curiosity is overwhelming me. I'm curious why we continue to debate this issue when alcohol is the only consumer product out there on I-35 this afternoon that's going to be advertised and sold to someone without an alcohol warning on it? And we say, but how can we get around these warning signs? And, I'm saying what's with the warning sign? I sat in a restaurant on I-35 the other night, and from my restaurant table I could see seven point of sale alcohol promotions making me want to order a beer or some other product. To think we are so hesitant to put up an eight and a half by eleven laminated sign somewhere is...I do not comprehend that. I guess because I freshly have new children and I love them so much that I can relate to another person who has a mentally retarded child. I can't even imagine having a mentally retarded child and find out later that it was preventable; finding out later that some industry didn't tell me about it; some government didn't tell me about it because they said try PSA's, try these other brochures, try anything but these warning signs, which the American Medical Association, March of Dimes, all on the blue ribbon list I gave you all say do this. CSPI, the Center for Science Public Interest, who's probably done more research on this than all of us put together, says do this. Why are Texans having such a hard time with alcohol these days? We know we are head of the nation. The only measurable alcohol problem we've got is DWI. We are 10 to 20 percent ahead of the nation on the average, depends on how you do the arithmetic. We've got a terrible problem and this one, we've not even taken a good shot at this one yet. So you are going to get a lot of bang for your buck when you hit this with your first shot. Let's go ahead and hit it. Let's go ahead and tell these people what's happening and get the community talking about this. But random TV spots? I want to take my kids fishing. I cannot volunteer and work on this from now on. Please put up these signs...because you are going to run out of volunteers pretty soon. I think it's time for the government and for the industry to step forward and say, "Hey, we'll pay for the signs. Go ahead and put them up." What other industry is out there making a product causing birth defects that's not putting a label on their container? And why is it that we are having this discussion?

MS. MADDEN: I don't think anybody in this room disagrees with what you are saying. We certainly understand the issue, and the issue is not that we don't want to do something about it. The issue is we are just trying to help you maximize your case.

MR. SELIGER: Mr. Haire, which designs specifically are you endorsing? The sign to be placed at the point of sale, at the bar, the decal on the front window of the establishment?

MR. HAIRE: The one I threw on the table for people to look at, for people with the FAS consortium and for TABC to look at is the one from Arizona, which simply says be aware that drinking of beer, vodka, etcetera can cause birth defects if you don't know you're pregnant. It is very brief, to the point sign, which research says that's the kind of sign that can be most effective.

MR. SELIGER: This one?

MR. HAIRE: Yes. Right.

MS. MADDEN: Thank you. I don't have any more questions.

MR. STEEN: Any more questions?

MR. SELIGER: I have no more questions.

MR. STEEN: We have been presented a number of options by the staff. I don't know how you all want to go about tackling this. I think there are certain things...and Mr. Haire, I wouldn't down-play what goes on in the seller/server training. You brought up a very important issue and I think that this idea that we are going to incorporate this into the curriculum of seller/server training, that's an important accomplishment.

MR. HAIRE: I agree.

MR. STEEN: I think that we are waiting for a motion on it, but I for one feel like that's one we could certainly do without even further discussion.

MS. MADDEN: I agree. I move that we adopt number three recommendation from the staff.

MR. STEEN: I'll just read it into the record, but it is:

Currently, 62 of the 162 seller/server schools offer information on the FAS/FAE as part of their curriculum. We are prepared to offer a mandatory section on the FAS/FAE as allowed under Rule 50, entitled Alcohol Awareness and Education.

You provided sample wording of the added curricula in the briefing materials, so there's a motion that we do that.

MR. SELIGER: I second.

MR. STEEN: Okay, any further discussion? All in favor, say aye.

COMMISSIONERS: Aye.

MR. STEEN: Then there are a number of other things we could consider. I don't know if we need to vote on these? Of course, we are leading up to the question of the signage. What is your pleasure?

MS. MADDEN: I would like to see us partner with some other health agencies. I'm not prepared to vote on the signs at this point.

MR. SELIGER: I would like to know how, and I guess the staff can give us this information, how would this be displayed so that it plays a truly educational role? The reason I ask that is that in the information that Mr. Haire has given us, the study that discussed the journal, *Obstetrics and Gynecology*, where that study shows "the babies born to mothers in the following groups are at the highest risk: women with a college education; unmarried women; female students; women who smoke; women in households with greater than \$50,000 annual income." It presumes a certain level of prenatal care, in which I would imagine that the effects of alcohol on the fetus are covered. And so, I'm sort of curious as to what sort of display here is going to have the most effect. You point out accurately I think, that when people are served with other than a beer bottle there is no warning. By the same token, I think if you go into any establishment where alcohol is served that by far the minority of those people are served at the point of sale, i.e. the bar or served at a table, at which they would not be exposed to a warning. So I'm wondering how many...I think PSA's are effective and I think seller/server is unquestionably effective because the message, people get the message if they are within any proximity to the service and the other seems a little bit "ify." And so, I would like to know what the proposal from the staff would be for the exhibit or exhibition of this warning, so that it does what it's intended to do?

MR. GARZA: I think a lot of it would have to do, Mr. Seliger, in terms of placement. If we were to direct the establishment or the business owner in terms of placing this at a location, I know Mr. Haire's talked about it in bathrooms and at the cashier, arguably a decal would be at the entrance or the exit so somebody would be able to see. Shy of us providing some direction and, Jeannene, I'll ask you to interject, I would think that the business owner would place it any place that he or she would deem appropriate in terms of within his or her establishment.

MR. SELIGER: Okay. That's an answer.

MR. HAIRE: Mr. Seliger, I might just inject here real quickly that the other states I've read about use the word "conspicuous." They ask that they be placed in a "conspicuous" place.

MS. FOX: The current signage that we have that's required by statute, we require it to be - not the license and permit itself - but just the complaint sign and

the felony weapon sign, we require those to be at an entrance where the public enters. If you have two entrances to your restaurant or bar, then they should be at each entrance. I won't tell you that is complied with with one hundred percent accuracy.

MR. SELIGER:

Sure.

MS. FOX:

That's generally where we require them now.

MR. STEEN:

Mr. Haire, I wanted to mention to you and members of the audience - a lot of you are aware of this - there are obviously only three of us on this commission, and because of the Texas open meetings law, we are prohibited from discussing these issues outside of this public forum. I have not been able to talk with Mr. Seliger or Ms. Madden about this issue so we are talking about it for the first time together. We are trying to work our way through it.

MR. HAIRE:

I think that's great.

MR. STEEN:

You set out these five options and we've addressed number three. Do we want to talk about four or five?

MS. MADDEN:

Mr. Garza, on number four, what are your thoughts on that?

MR. GARZA:

Four is this brochure that's done over at the Texas Department of Health. They are getting ready to revise this with some minor revisions and they have indicated they are interested in working with TABC in mass producing this brochure and distributing it to our license and permit holders. As a matter of fact, I am waiting to get a bid from them and we are trying to see if we can share the cost of that printing expense.

MR. STEEN:

Mr. Garza, do you view these options as either/or, or we could do all of them? What's your thought on that?

MR. GARZA:

I think there are a series of options that we could act on, Mr. Chairman. Certainly, the signs, the decals, they are up for your consideration. Whether we move in a direction that you want to enact a rule that's mandatory as opposed to taking an option such as the governor of Alabama did with that letter where it goes out to all the retailers, all the business holders, saying, "Enclosed is this sign. I strongly encourage you to place it in a conspicuous location in your establishment. This board strongly supports this public awareness campaign." We could have a letter signed by all three commissioners. We could approach the governor's office. I think each of those options are just a component to an overall strategy.

MR. STEEN:

Mr. Haire, you make a very compelling argument. I'm pretty close to

thinking we might go this mandatory route, but I also think - and I know Mr. Garey is here today representing the restaurants of Texas - that perhaps we should give them an opportunity from a good citizen point of view if we distributed these signs to them to see if they would, on a voluntary basis, display these signs. Maybe you could help us do this, but monitor this over a period of time and see if we are having an effect, and if we are not, come back and we could talk again about whether we should make it mandatory. That's just one commissioner's view.

MR. HAIRE:

Let it be part of the record that my recent comment certainly didn't apply to what you said. I was talking when I should have been listening. What you are talking about is trying out a voluntary program. The main issue I guess I take with that is that the Center for Science and Public Interest has an alcohol department and they full-time study alcohol issues and report on alcohol issues. One of the many areas in this issue they have covered was they said the industry opposes these signs, and the reason they gave was it may hurt sales. Given that, I cannot imagine a volunteer program being successful. If I was selling widgets out of my store and somebody came up and said put a sign in the window that says these widgets will harm your children, I would either get out of the widget business or fight that sign. I'd have a problem with that, probably. I don't have to make this decision because CSPI has done the research, they have done the interviews, they have talked to people and they say the industry opposes the signs, so I can only deduct that the volunteer program would not be successful. Let me say this. These signs - I don't care if it's written in the sky with an airplane. I don't care how it's done. I'm going with the one that I found the most support for, the most justification for, and it's the mandatory signs. Believe me, nothing here except the objective viewpoint that that's the way to go.

MR. STEEN:

Mr. Garey, I saw you stand up. Would you like to come forward?

MR. GAREY:

I have to take an umbrage with the thought that our industry's opposition is the idea we are going to sell alcohol to pregnant women. That's not the issue at all. There are so many health issues that are involved in the sale or service of alcohol, food - any of the products that we have out there - and each year we are faced with literally 10's or 20's of warnings that people want to put up. We can litter the inside of every restaurant with every possible health threat that's out there and what you will find is that those signs will begin to disappear in people's minds. That's the reason that we oppose it. We can't address every single issue. I understand what you are saying, and I understand that Fetal Alcohol Syndrome is something that we need to get educated on. We support the idea of putting it in seller/server training. I think one of the things you should go to is before these women become of the age that they can conceive children that you hit them in the high schools or the middle schools with education on health things and it shouldn't be just Fetal Alcohol Syndrome. You

have to focus on all the other health risks and health concerns that are out there. For example, we are going through this thing on obesity right now. I'm sure there will be all sorts of things where they are going to want to do warnings on all sorts of different kinds of food and we will have that same issue, and it will say it's only because you want to superbike a fry; it's only because you want to serve alcohol to a pregnant woman. That's not the issue and that's not the reason for our opposition.

MS. MADDEN: Mr. Garey, isn't it true that in the schools that the subject of health is now mandatory?

MR. GAREY: Yes, ma'am.

MS. MADDEN: And that might be a place to start?

MR. GAREY: If you go to the Texas Education Agency, you can make that part of the curriculum. We have certainly gone over there to talk to them about food safety issues and making those part of the curriculum and they've been very open to that idea.

MR. STEEN: Mr. Garey, what about a voluntary program? How would you feel about that?

MR. GAREY: I'd be happy to support that and I think you will find that industry is not opposed to putting up signs for a short period of time because what you can do there is you can get out and make an issue of the thing. It is something that people will pay attention to for that. But, to slap a sign up there as a mandatory thing and have it there for the next 20 years, people are going to phase past that. I don't know how many people even look at the handgun sign or warning signs or anything else that we've got out there. Oysters are a good example. I'm sure you have all seen that on the menus, but after a while does it ever sit there and phase you anymore? You begin to ignore it because it's been there forever. If we had made a big push on that and talked to people about the dangers involved with eating raw anything - if you have a liver condition or immune compromised or what have you, then that might have made an impact at that time, but we are not doing anything with that other than taking up space on a menu right now.

MR. STEEN: So, your association would get behind it?

MR. GAREY: Absolutely. We'd be happy to push it and I'd be happy to work with them on it. I had already written down that we had brochures available from the Texas Department of Health and was intending on doing some sort of article in our magazine on that even before you began to discuss that issue. Thank you, Commissioners.

MS. MADDEN: Thank you.

MR. STEEN: What's your pleasure? Do we want to take this up today, defer it to another day?

MS. MADDEN: Perhaps we could try the voluntary since Mr. Garey has been so gallant...

MR. HAIRE: May I make a comment, Commissioners?

MS. MADDEN: No. Sorry. We have to do our appropriations later today and we have a huge agenda. You all have been on the agenda an hour and we love you all and we appreciate it, but...

MR. HAIRE: Thank you very much.

MS. MADDEN: Thank you. I'm willing to consider, if you all are, within a time frame, perhaps, a voluntary sign. Mr. Garza, how do you feel about that? Do you think that's feasible? I have a concern. I heard Mr. Garey's comments and I'm just remembering back - I'm probably the oldest person in this room - so I can remember these things, but I remember when the surgeon general put the sign on the back of the cigarettes. Sorry, folks, I don't think the warning did a whole lot of good.

MR. GARZA: I think there's a very viable campaign that we could work with TRA and some other associations where we make use of public service announcements, press releases. All our associations and agencies have web sites we could put information on that people turn to with increased frequency. We could develop a sign using the language from Arizona, either in a flat format or in a decal, and we could send it out to all our license and permit holders. I know in talking to Mr. Haire that he has indicated to me before that if cost was an issue that he would be glad to help find some organizations that could help defray some of that cost. Certainly, we would want to engage into some of that discussion because the high cost - Jeannene, I think, would tell me would be in the postage.

MS. FOX: The postage and whatever you use to mail it; however we decide to distribute it has a pretty high cost to it.

MR. GARZA: We are looking at sending it out to all of our licensed establishments, we are looking at over 30,000 locations.

MR. SELIGER: I think there's a real value, obviously, in this admonition; the effect of alcohol on unborn children. I think in a lot of respects when it comes to regulatory items like this most people would prefer that everyone step up to the plate and volunteer to participate in a public health initiative, which is really what this is. I have no problem with challenging private industry to volunteer in what's a public health initiative that does have some merit.

How, then, over the next six months, twelve months, do we measure the voluntary compliance with such an admonition? Clearly, if voluntary compliance is not very good, then I think probably mandatory is the way to go, but how do we measure it? How do you come back, say in eight or ten months, of our permittees 50 percent are complying, 20 percent are complying, 100 percent are complying? We know with mandatory they will, but how do we determine they are doing so in a voluntary fashion?

MR. GARZA: Just thinking off the top of my head, one of the things we could do, is when we send out a letter with whatever sign or decal we are going to send out, is ask them to please inform us if they do, in fact, intend to place these signs up. We have enforcement folks out there, compliance folks out there on a regular basis. They could make that as part of their inspection during a given period of time to find out if, in fact, those signs have been placed at those establishments and report back to us.

MR. SELIGER: How many compliance inspections, between compliance and enforcement visits, do we have a year?

MS. FOX: About 100,000, but some of those are to the same locations. Our goal, at least in enforcement, is to visit at least 70 percent a year of the licensed premises.

MR. SELIGER: So if that was part of those inspections, it would be statistically relevant over that period of time as to who was voluntarily complying and who was not?

MS. FOX: Probably.

MR. GARZA: We could also have reports from different trade associations and their own members in terms of self reporting, the usage of said signs. A survey is possible. We have an external publication that goes out to all our license and permit holders. We could in that publication also address the issue. Mr. Haire and his people, I'm sure, could be invaluable in different parts of the state in monitoring this to one degree or another, however scientifically that might be. Certainly, it would be worthy to have that input in terms of observation so we can come back and get an idea in terms of what is the usage of the signage that we have distributed out there. I agree with Glen. I think that members of the industry, members of the restaurant association, other groups, if they have a chance to take a look at the campaign, its purpose, its objective, its scope, get some kind of support letter from the chairman, from all three members in terms of saying that our agency is strongly encouraging this, that we strongly want to give them the benefit of that opportunity to see if, in fact, they see equal concern, equal interest in doing that first. Knowing full well always that you reserve the right to come back and reconsider this issue down the road with a possible mandatory perspective.

MR. STEEN: As Ms. Madden said, we better move on with our agenda. Do we want to take action today or do we want to just give you some direction? You can come back and talk to us at the next meeting about a plan you have developed?

MR. GARZA: I better check with general counsel on that. Do we need to vote on it or can they just give us some direction?

MR. BRIGHT: No. I don't think so.

Mr. Chairman and Members, I think taking things short of engaging in rule making is well within Mr. Garza's authority to do on his own hook, obviously, with guidance and direction from you. I don't think a vote is necessary. If you want to instruct Mr. Garza very clearly - please do this by this time - I think you can do that either by vote or just by making your views known. I bet he doesn't ignore you.

MR. STEEN: Do we feel like that has been accomplished? Do you need any more direction?

MR. GARZA: It has in my mind, Mr. Chairman.

MR. STEEN: Will you put it on the agenda for next meeting?

MR. GARZA: Absolutely, with an update on where we are on our part.

MR. STEEN: And come up with a plan and work with Mr. Garey and Mr. Haire, etcetera. Thank you.

MS. FOX: Mr. Steen, if I may just interrupt a second to let you know, I know that you have already indicated that you would like it to be included in the seller training curriculum. That will take us approximately six months to notify all the schools that it's now a required element and enough time for us to verify in fact that it has been included in all the various curriculum. So that's not an immediate type of change that we can make. We might can do it in a little shorter time frame, but generally that kind of change in the curriculum takes us that long to implement.

MR. STEEN: Thank you. Let's move on to the next agenda item which is consider proposed amendments to 16 TAC Section 37.60 as published in 27 TexReg, pages 5348 to 5349 and 27 TexReg, pages 5566 to 5571 on June 21, 2002; discussion, comment, possible vote. This is on the Standard Penalty Chart.

MR. BRIGHT: It is indeed on the Standard Penalty Chart, Mr. Chairman and Members. If you'll remember, we have published nine proposed changes to our chart and now is the moment of decision. Time for you to decide if you want to

adopt any or all of these changes as a permanent part of our rule. As I mentioned, there are nine changes. I would be more than happy to talk about them all with you, but I would point out that of eight of those changes, those proposed changes to our rule, there have been absolutely no comment, no discussion, no screams of alarm or cries of outrage. The staff would recommend that you adopt those changes as published in the *Texas Register*.

The remaining issue, of course, is the open saloon violation, and there has been some comment and discussion and back and forth about that. Remember an open saloon violation happens when a private club gives an alcoholic beverage to a person who is not a member. An original suggestion, and the one that we published as a proposed change, was based on the idea that that is essentially like a failure to keep records accurately. In those kinds of violations we punish them at significantly lower levels than we do currently our open saloon violations. So we offered the suggestion that perhaps we should lower the open saloon punishment to those levels. The agency discussed it among ourselves; we took counsel from our wise field people who are actually involved in enforcing this law. They brought out the very valid point that the staff agrees with that an open saloon violation is not analogous to a record violation. The great majority, as I understand it, of private clubs sit in dry areas. That is an area where the populous has specifically voted “we don’t want alcoholic beverages sold in this area.” What happens when you give an alcoholic beverage to someone who is not a member is just that sale that the population has voted against. So it is something more serious of a violation. At the suggestion of the Texas Restaurant Association we considered and discussed among ourselves the suggestion that what an open saloon violation is analogous to is a prohibited sale violation in other areas. That is, for example, a sale during prohibited hours or allowing someone to consume after two o’clock in the morning, for example. We think that’s a pretty close analogy, and we are comfortable with that analysis. What that would do is that would leave our first violation recommended sanction at the same, which is five days. Currently, our recommended sanction for second violations for an open saloon is anywhere from a 15 to 60-day suspension or cancellation. Our recommendation would be to lessen that to a seven to 10-day cancellation. Currently, the third violation is just flat cancellation recommended punishment. Our recommendation today would say, change that to a range for the third violation from between 25 days to inflicting a cancellation on the third violation. Bear in mind that under paragraph (f) of our rule, our agents and those people who determine what the sanction for a violation should be always maintain the right in individual cases, based on the specific circumstances of that case, to recommend that we deviate from this punishment chart. Hearings examiners ultimately exercise a clear right to deviate from this punishment chart. Having said all that, that’s our recommendation. We have communicated that to the

restaurant association, also communicated very clearly to them that that's our recommendation and we weren't betting how you guys were going to vote. So, I think I'm through talking. Mr. Garey may want to speak about it.

MS. MADDEN: How do you feel?

MR. SELIGER: My assumption is from your letter of 9 July that you endorse just precisely that recommendation.

MR. GAREY: Absolutely. One of my brethren back here pointed out that we had removed the cliff entirely and I think that was too radical a change to the landscape. So we are right with the staff on this one.

MR. STEEN: Are there any other comments?

MS. MADDEN: I want to just say that I appreciate the thorough analysis that was given to this subject because this was one that I was concerned about, but I feel very comfortable with what the staff is recommending. And thank you for all your input.

MR. GAREY: Thank you.

MR. STEEN: Thank you, Mr. Garey.

MR. SELIGER: Mr. Chairman, I move that the penalty for the open saloon violation be as recommended by staff, that the first violation be - I guess it's a five-day suspension; second violation - seven to 10; and third violation - 25 to cancellation.

MR. BRIGHT: Let me suggest that you also consider voting on adopting the rest of those changes.

MR. SELIGER: I'm sorry. But that being the one for open saloon violation with the motion also including the approval of the other penalties as recommended.

MS. MADDEN: I second.

MR. STEEN: Any discussion? All in favor, say aye.

COMMISSIONERS: Aye.

MR. STEEN: All right, that carries.

I have a suggestion. The next item on the agenda is a seller/server training update and I had requested that at the last meeting. What we could do if you feel it is appropriate, could we push that to our next meeting?

MR. GARZA: You most certainly can.

MS. MADDEN: That's great.

MR. GARZA: I would like to, however, acknowledge Mr. Steve Carlson, who is in the audience, who is no doubt going to prepare a similar presentation that he is ready for today, but I would like for you all to see Steve back there. He spent some time getting this ready and he'll deliver it next month.

MR. STEEN: Mr. Carlson, thank you. We let you off the hook today, but we've got a long agenda, and if that's all right we'll just do it next month.

Let's then move to consider Legislative Appropriations Request for 2004 - 2005 Biennium; discussion, comment, possible vote.

MR. GARZA: Ms. Hudson is here as the division director over that department. I also notice out in the audience we have Mr. Dave Pollard, who is a member of the Fiscal Services Department. They both will be here to help walk us through this request. You all have been briefed, Members, on this by both Mr. Kerr and myself and Assistant Administrator Yarbrough, so we will lay out essentially what those briefings were in a general format. Denise?

MS. HUDSON: We present to you today the base line budget of 26.7 million dollars, which is the same as we had last year. When we look at adding the indirect costs to that, the total cost for the biennium of this budget will be 68.8 million dollars. The major capital equipment that you see in that base line budget is 68 replacement vehicles for the enforcement area at a total of almost 1.4 million dollars. Other capital items are just reoccurring costs for the replacement of PC's and for our mainframe lease.

I'll look now to go through our exceptional items that we have. I think Charlie went over these with everyone.

Our first exceptional item that we have is a re-engineering of the legacy database. This is similar to one of the exceptional items that we had last year. We have adjusted the time frame for this item. Instead of trying to accomplish everything in two years or one biennium, we have spread this over four years and reduced the cost to this biennium. The total of that project for the biennium would be about two million dollars. The second exceptional item that we have is an enforcement agent career ladder. This will pay for the automatic step promotions that are given to enforcement agents. We had this also as an exceptional item last year. We did get this funded. These are additional shortfalls that we have and we are asking that it be funded again. The next item is 10 agents and three licensing investigators - 13 FTE's. Total cost for this would be 1.6 million dollars. The agents would be located throughout the state and the licensing investigators would be housed at headquarters. This is also similar to a

request we took downtown last session that was not funded. The fourth item is 10 additional compliance officers. Total cost for that over the biennium would be about 800,000 dollars. These also would be stationed over the state, and this is an item that was taken downtown last year that was not approved. The fifth item is a seller training voice system and additional FTE's for that area. They have had a huge increase in the volume of work, telephone call, faxes, and other things. Total cost for this item for the biennium is 197,000 dollars. About 35,000 of that is for capital. The sixth item would be to upgrade our wide area networks across the state. We currently have about 22 servers that service the field offices that need to be upgraded. We would also enhance the communication in 35 of the outposts and 15 of the bridges. Total cost for the biennium for that would be 324,000 dollars. Then the last one would be one of the ports of entry bridges, Anzalduas. That bridge would not come into play until 2005. There would be four FTE's associated with that bridge. Total cost of 171,000 dollars.

This is a lot less than our exceptional items that we had last year. We took downtown nine exceptional items previously, totaling 8.5 million. This total comes in at 3.5 million.

MS. MADDEN: I like the way you all broke up the re-engineering. That was real smart. I think we'll have a better chance. Let me ask you, do you think five million is going to be okay? Everything seems like we really need it all, so I wouldn't know where to cut. Given the economic climate we are in...I guess it's just a flyer. We'll just have to do the best we can.

MS. HUDSON: We do have the ability to raise the surcharges to cover this so these items, the industry is responsible for paying those. This is not a drain on regular GR that could be used for other issues.

MS. MADDEN: But of course we have just increased the surcharges.

MR. STEEN: Ms. Hudson, on the bridge? We are requesting that money for employees and operating expenses to man the bridge - I guess that's supposed to open in 2005? Even though that is a low priority, don't we have a pretty good shot on that because can't we argue that we can generate revenues that will certainly justify those expenses?

MS. FOX: Generally, in the first year of operation it's not going to pay for itself, but we haven't had any problems with the legislature in the last two sessions, when there are new bridges that have come on line, to get the funds to man those bridges. We do it at a very minimum amount until we ascertain the volume and the level of traffic that will be there after a year or two.

MR. STEEN: But we won't be offering them any projections?

MS. FOX: No. It's always a mix between commercial traffic and your pedestrian/vehicular traffic. If it's highly commercial then we may not have much of a presence there, because all of the cigarette tax and alcoholic beverage tax we collect are generally those for personal use and those come in with your pedestrians and your individual vehicular traffic.

MR. SELIGER: Haven't we found that in areas in border crossings where we do not have such a facility, that ensures that's where the traffic will gravitate?

MS. FOX: Certainly. There are some bridges that are just commercial bridges, not many, but there are some that way. There are a few that we don't man so we'll go spot check to make sure the traffic is still primarily commercial. But we do spot check them. When you've had two bridges that are pretty much pedestrian/vehicular bridges, if you don't man both of those, you'll find all your revenues decreasing at the one you man. When you start manning both again, then the revenues start going back up. Even at the one you man full time because they know they can't drive a mile or two down the road and go across the bridge where no one is there. We do look at that issue and we frequently spot check to make sure we are where we need to be.

MR. STEEN: Ms. Hudson, I had a meeting, and I think the other commissioners did also. I met with Mr. Garza and Mr. Kerr and Mr. Yarbrough and we went over this, but at the time we were looking at the statement on the front - what do you call that? Well, Statement of the Governing Board, which is our statement. We were looking at the one from last year. So today for the first time we are seeing one that has been written for now. I think we'd want to have some input into that. Mr. Garza, how are we going to go about providing our input?

MR. GARZA: I believe - Lou, correct me if I'm wrong - I believe the board if they so choose can vote approval of the LAR request and then they will still be able to - I mean of our budgetary request - and still reserve the right to review this introductory letter before it goes out there. August 2nd is the deadline.

MR. BRIGHT: Absolutely correct.

MR. STEEN: This statement is our statement and we want to make sure it says

MS. MADDEN: Make sure it's what we want. That's a good point.

MR. GARZA: And we will have some time, Members, to get your input, your revision and your comments before the final document is submitted downtown on the second of August.

MR. STEEN: So then we submit those comments to Ms. Hudson?

MR. GARZA: Yes.

MR. STEEN: By when? When do you need them? Right away?

MS. HUDSON: Sometime before the second.

MR. GARZA: By the end of this week, preferably.

MR. STEEN: Okay.

MS. MADDEN: Thank you, Ms. Hudson, because you kind of had to pinch hit today so that's kind of a tough deal, especially with the appropriations request.

MR. STEEN: We have to act on this today because of the deadline.

MS. MADDEN: Aren't we going into executive session? Do we vote before we go into executive session or afterwards on this?

MR. BRIGHT: There are questions in the executive session that may have an impact on what you think this Legislative Appropriations Request ought to say. I think you can vote on the other parts of the request now if you want to. You can defer that until after your executive session and vote on what you think it ought to say in toto, either way.

MR. SELIGER: Why don't we just wait until after executive session and deal with it one time?

MS. MADDEN: I like that.

MR. STEEN: So we want to go ahead and do the executive session?

MR. SELIGER: Yes.

MR. STEEN: Before we do that, do we have any other public comment? Hearing none, the commission will now go into a closed executive session to discuss the evaluation of the administrator pursuant to Texas Government Code Section 551.074(a)(1).

The commission convened in executive session at 3:37 p.m. and reconvened in open meeting at 4:30 p.m.

MR. STEEN: The commission meeting of July 23, 2002, is now back in open session. During executive session no votes were taken, no final decisions were made. We will now take up those matters deliberated for final consideration.

MR. SELIGER: Mr. Chairman, since a good deal of the discussion in executive session was a personnel issue impinging directly upon the Legislative Appropriations Request, I move that we approve the Legislative Appropriations Request. It appears that a draft with the exception that salaries and wages for fiscal years 2004, 2005 be amended to read respectively - 20,481,921 dollars in fiscal 2004 and 20,472,423 dollars in fiscal 2005.

MR. STEEN: Just to clarify, that's looking on page two - that's Roman Numeral C, Page 1 of 1. And it's that top line - 1001 Salaries and Wages - and just run your eye across the line, and it's the top of the last two columns.

Is there a second?

MS. MADDEN: Second.

MR. STEEN: Any further discussion? All in favor, say aye.

COMMISSIONERS: Aye.

MR. STEEN: Do I hear a motion to adjourn?

MS. MADDEN: I so move.

MR. SELIGER: Second.

MR. STEEN: The meeting is adjourned.

The meeting adjourned at 4:31 p.m.