

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
TEXAS WORKFORCE COMMISSION
AUSTIN, TEXAS

PUBLIC MEETING)
FOR THE TEXAS)
WORKFORCE COMMISSION)

COMMISSION MEETING

TUESDAY, JANUARY 30, 2007

BE IT REMEMBERED THAT at approximately
9:00 a.m., Tuesday, the 30th day of January 2007, the
above-entitled matters came on for hearing at the
Texas Workforce Commission, TWC Building, 101 East
15th Street, Room 244, Austin, Texas, before DIANE
RATH, RON LEHMAN and RONALD G. CONGLETON,
COMMISSIONERS, and LARRY TEMPLE, EXECUTIVE DIRECTOR,
of the Texas Workforce Commission; and the following
proceedings were reported by Janis Simon, a Certified
Shorthand Reporter of:

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P R O C E E D I N G S

TUESDAY, JANUARY 29, 2007

(9:00 a.m.)

AGENDA ITEM NO. 1

CHAIR RATH: Okay. We'll go ahead and
come to order, and we can start. And I think we start
with Wage Claims.

AGENDA ITEM NO. 2

Discussion, Consideration and Possible
Action Regarding Whether to Assume Continuing
Jurisdiction on Unemployment Compensation Cases, Wage
Claim Cases, and/or Tax Liability Cases and
Reconsideration of Unemployment Compensation Cases,
Wage Claim Cases, and/or Tax Liability Cases, if Any
No discussion.

AGENDA ITEM NO. 3

Discussion, Consideration and Possible
Action Regarding Tax Liability Cases Listed on the
Texas Workforce Commission Docket 5
No discussion.

AGENDA ITEM NO. 4

Discussion, Consideration and Possible
Action Regarding Higher Level Appeals in Wage Claim
Cases Listed on the Texas Workforce Commission
Docket 5

1 Matching Funds, and we have a total pledge of
2 \$469,791, with cash pledges from Heart of Texas of
3 40,000 and then certifications from Dallas, Heart of
4 Texas and North East. Are there any questions, or is
5 there a motion?

6 COMM. LEHMAN: I have no questions, and
7 I'll enter a motion to approve these pledges.

8 COMM. CONGLETON: And I'll second the
9 motion.

10 CHAIR RATH: And I agree, and that
11 brings us up to a little over 26 million. So, we're
12 sort of in the home stretch now.

13 AGENDA ITEM NO. 8

14 CHAIR RATH: And next, we have several
15 requests for waivers of the definition of parent,
16 Ms. Verver.

17 MS. VERVER: Good morning, Chair Rath,
18 Commissioners; Nicole Verver, Workforce Development.
19 I think this will be the last week that we're actually
20 doing the waivers.

21 So, today for consideration are eight
22 waiver requests submitted by Child Care applicants
23 asking the Commission to waive the definition of a
24 parent, Section 809.2(6) of the Commission rules.
25 Case Nos. 56 and 58 involve voluntary placements. A

1 CPS case has not been open, but CPS supports placement
2 of the child with the applicant.

3 Staff recommends approval of these
4 waiver requests.

5 COMM. LEHMAN: I agree with staff
6 recommendation.

7 COMM. CONGLETON: I approve.

8 CHAIR RATH: And that's fine with me.

9 MS. VERVER: Case No. 57 has withdrawn
10 their application.

11 Case No. 59 involves a foster parent who
12 is caring for two foster children. D -- DFPS has not
13 authorized care at this time. Staff recommends
14 approval to waive the definition of a parent; however,
15 we want to instruct the Board to place the individual
16 on the At-Risk waiting list since they are not a
17 priority.

18 COMM. LEHMAN: I agree.

19 COMM. CONGLETON: Agree.

20 CHAIR RATH: I agree. I also would ask
21 y'all to use this specific instance as another
22 conversation with DFPS about, at least, my confusion
23 over when they use the funds that are appropriated for
24 that and the limitations on these parents accessing
25 it --

1 MS. VERVER: Yes, ma'am, we will do
2 that.

3 CHAIR RATH: -- since we have a specific
4 instance right now.

5 MS. VERVER: Yes, ma'am.

6 CHAIR RATH: Thank you.

7 MS. VERVER: Case No. 60 involves a
8 grandmother caring for her grandchildren. She has an
9 active TANF and Food Stamp case, and we've received a
10 power of attorney. Staff recommends approval of this
11 waiver request.

12 COMM. LEHMAN: I agree.

13 COMM. CONGLETON: Agree.

14 CHAIR RATH: And I agree.

15 MS. VERVER: Okay. Case Nos. 61 and 62
16 the parent is incarcerated. Case No. 63 is a former
17 CPS case, and Case No. 64 involves a parent in the
18 military. We've received documentation on all four of
19 these waivers, and we ask the Commission for approval.

20 COMM. LEHMAN: I agree with all four.

21 COMM. CONGLETON: And I agree, as well.

22 CHAIR RATH: And I also do, and I just
23 want to clarify that the reason we think it's the last
24 weekend is because our rule is -- will be in effect.
25 So, we hopefully won't need to do these, unless it is

1 unusual --

2 MS. VERVER: Yes --

3 CHAIR RATH: -- in the future.

4 MS. VERVER: -- absolutely.

5 CHAIR RATH: Thank you.

6 AGENDA ITEM NO. 9

7 CHAIR RATH: Okay. On -- next, we have
8 proposed rules relating to minimum qualifications for
9 Relative Child Care Providers.

10 MS. VERVER: Again, for the record,
11 Nicole Verver, Workforce Development.

12 Today for your consideration are the
13 proposed rules requiring relative providers to list
14 with the Texas Department of Family and Protective
15 Services and, as such, undergo background checks prior
16 to providing subsidized care. On January 2nd staff
17 brought forward a policy concept establishing some
18 health and safety standards for relative providers.
19 Specifically, the policy concept recommended that the
20 relative Child Care provider be listed with DFPS in
21 order to be eligible as a provider of subsidized care.

22 Staff received many comments regarding
23 the policy comments. The comments received were
24 supportive of requiring background checks of relative
25 providers; however, the commenters had many questions

1 surrounding implementation. Staff tried to address
2 these concerns within the preamble and the language of
3 the rules.

4 One of the primary concerns that was
5 expressed was some confusion between TWC's current
6 rule regarding listed family homes and how this new
7 requirement would be implemented. The proposed rule
8 language clarifies the difference between a
9 nonrelative listed family home and a relative child
10 care provider that is listed with DFPS.

11 The proposed rules retains the current
12 option of the Boards not to include a listed family
13 home as an eligible child care provider. However,
14 that option is only for individuals caring for
15 children who are unrelated to the provider. If a
16 Board chooses to use a nonrelative listed family home,
17 they have to ensure that local safe -- health and
18 safety laws and regulations are in place designed to
19 protect the -- the health and safety of the children
20 being cared for.

21 Relative providers, however, will be
22 required to list with DFPS and, as such, will be
23 required to undergo a background check. But in
24 accordance with federal regulations, relatives are
25 exempt from the health and safety standards. Boards

1 takes about 48 hours to do the background check, and
2 the relative will receive the listing within one week
3 of application. The Board's sole responsibility is to
4 ensure that the Child Care contractor verifies that
5 the relative is listed with DFPS, and they can do this
6 through checking DFPS's Web site or they can get a
7 copy of the permit that is sent to the relative.

8 We also included language in the rule to
9 clarify that the Child Care contractor cannot
10 authorize child care prior to the individual listing
11 with DFPS. Since the 20 -- \$20 fee does not
12 automatically go to DFPS for conducting the background
13 checks, TWC will be responsible for -- for paying
14 costs associated with DFPS's implementation of this
15 new requirement. We have worked closely with DFPS on
16 this rule, and we really appreciate their help. And
17 we believe that they're ready to move forward with
18 this upon adoption.

19 At this time, I will be glad to answer
20 any questions you may have.

21 CHAIR RATH: No. I really appreciate
22 the work that y'all have done and particularly I think
23 the clarification in the preamble, because there was a
24 great deal of confusion I think when we looked at the
25 comments. And I -- and I'm hoping between your

1 comments today and the language that's included that
2 will help clarify the situation for folks,
3 particularly emphasizing that the Boards have the
4 ability to continue to use any listed home if they can
5 provide for the health and safety.

6 But that continues to be their
7 responsibility but that for any relative provider to
8 be eligible to care for the children they must be
9 listed. And hopefully they'll -- they'll understand
10 it a little bit better after today, and I -- I do
11 think it's important.

12 I think the action that we're taking is
13 very important, particularly when we look not only at
14 our responsibility for the well-being of the children
15 and wise stewards, but when we look at the legislative
16 interest that is very closely mirroring this proposal.
17 And I think the comments we've received back from
18 members are -- are very supportive of the action we're
19 taking, and I think it goes a long way to being able
20 to ensure a safe environment for the children well
21 before any proposed legislation could become
22 effective.

23 So, I really salute y'all, and I think
24 it's a -- a really good indication of how seriously we
25 take our responsibilities.

1 COMM. LEHMAN: I would echo the Chair's
2 remarks. Thank you and the -- and our partner
3 agencies for their cooperation.

4 And I think this very modest fee and
5 expectation will, perhaps, heighten the recognition by
6 all parties of the importance of making sure that
7 children are protected. And I think it's probably --
8 while -- while some comments commented about the \$20
9 fee as being a negative thing, I think what that
10 serves to do is reinforce the importance of focusing
11 on this. And so I'm in full support of it.

12 COMM. CONGLETON: I support it, as well.
13 Thank you.

14 CHAIR RATH: Very good. Then, is there
15 a motion to publish the proposed rules regarding Child
16 Care?

17 COMM. LEHMAN: So made.

18 COMM. CONGLETON: Second.

19 CHAIR RATH: And I agree.

20 MS. VERVER: Great. Thank you.

21 CHAIR RATH: Thank you very much.

22 AGENDA ITEM NO. 10

23 CHAIR RATH: Next, I think we have some
24 guidance for Boards regarding the definition of
25 parents.

1 MS. VERVER: Okay. Again, for the
2 record, Nicole Verver, Workforce Development.

3 Today for your consideration is a
4 discussion paper regarding the definition of -- of an
5 individual standing in place of the parent, also
6 referred to as in loco parentis. As you're aware,
7 since September of 2006, the Commission has been
8 approving waivers for applicants of Child Care who are
9 not recognized by court order as the guardian but have
10 possession of the child.

11 In our recently-adopted Child Care rules
12 that came into effect yesterday, the Commission
13 adopted the definition of a parent to include certain
14 individuals standing in place of the parent, thereby
15 allowing Boards to authorize care for these
16 individuals. During the waiver process, the
17 Commission and TWC staff have examined situations in
18 which the applicant is not the legal guardian,
19 however, is the primary caregiver of the child.

20 Some of the waivers that we received
21 involve parents who were incarcerated or deployed in
22 the military, instances where Child Protective
23 Services removed the child from the parent, parents
24 were in a treatment facility center or were medically
25 incapacitated, and there were situations where the

1 parent voluntarily left the child. Through the waiver
2 process the Commission has accepted various forms of
3 documentation to verify that the applicant for Child
4 Care has responsibility for the child. In each case
5 the Commission requires documentation from a third
6 party verifying the reason why the parent cannot care
7 for the child and, also, that the individual
8 requesting the child care waiver is responsible for
9 the child.

10 Staff has three recommendations for
11 implementing the definition of a parent.

12 First, we would like to amend our CCDF
13 State Plan so that it is broad enough to allow for a
14 wide range of situations in which the parent is unable
15 to care for the child.

16 Recommendation 2 is we would like to
17 offer guidance to the Boards in terms of a WD letter,
18 specifically outlining the procedures and
19 documentation that are required for determining an
20 individual's in loco parentis.

21 And Recommendation 3 is that any
22 criteria that we do not specifically outline in the
23 discussion paper or in the WD letter be brought before
24 the Commission for your consideration.

25 At this time, I will be glad to answer

1 any questions.

2 CHAIR RATH: Thank you. No, I think
3 y'all did a good job of reviewing it and providing
4 guidance, and I think this will go a long way to
5 resolving a lot of the issues that we've had. So,
6 thank you.

7 COMM. LEHMAN: I agree. No questions.

8 COMM. CONGLETON: No questions.

9 CHAIR RATH: Then, if there's no
10 disagreement, we'll go ahead and approve this
11 information regarding our guideline for Boards in the
12 determination of in loco parentis status.

13 (No response)

14 CHAIR RATH: Hearing none, we'll move
15 forward with it.

16 And I also would ask GR if they could
17 let Representative Villarreal be aware of this action,
18 because I know he's been very interested in those
19 activities, too. So, I think that that rule is final,
20 and -- and this is the guidance given. I think that
21 would be helpful.

22 Okay. Item No. 11, about
23 confidentiality, we're going to take in -- in
24 conjunction with Item No. 14 in a little bit.

25

1 AGENDA ITEM NO. 12

2 CHAIR RATH: And that brings us to
3 No. 12, which is rules relating for UI insurance.
4 It's been previously published.

5 MS. MILLER: Good morning, Chair Rath,
6 Commissioners. Reagan Miller with Workforce
7 Development, and Steve Riley is with me from the UI
8 Division.

9 On November 15th you approved amendments
10 to Chapter 815 relating to Unemployment Insurance for
11 public comment. As a reminder, the rules included the
12 following amendments: Ensuring that our rule clearly
13 indicates that claims may be taken electronically, via
14 the Internet; including the definition of farm and
15 ranch labor consistent with the definitions found in
16 federal law; outlining the process that employers must
17 follow when requesting to become a reimbursing
18 employer; outlining the process that an employer must
19 use when notifying -- notifying TWC of their voluntary
20 election of coverage; describing the process that TWC
21 follows when granting an extension past the due date
22 for payment of contributions due; implementing House
23 Bill 3250 regarding SUTA Dumping; adding a new
24 section, which -- which cross-references the
25 Commission's Payday rules and contains the official

1 employer status guidelines that are used to determine
2 employment versus independent contractor; and lowering
3 the existing threshold from 250 or more employees to
4 10 or more employees for employers who file quarterly
5 reports.

6 We did receive one public comment
7 expressing some concern regarding having to enter
8 quarterly reports manually. The commenter was
9 concerned about the increased likelihood of
10 typographical errors. The commenter did note that
11 they would be pleased if TWC had some sort of an
12 electric means of transferring the required data
13 elements to assist them with this.

14 So, in our response we did note that it
15 could be impractical for employers with a large number
16 of employees to enter quarterly reports manually.
17 Therefore, the agency does provide a free program,
18 QuickFile, to enable employers to upload data on-line.
19 That is available from our Web site to help them with
20 this issue.

21 So, for your consideration today, we're
22 bringing forward the final rules for Chapter 815 for
23 adoption. And Steve is here to answer any of the
24 technical questions you may have.

25 (Laughter)

1 CHAIR RATH: Very good. Thank you.

2 Commissioner, do you have any questions
3 or comments?

4 COMM. LEHMAN: No, I don't. I still
5 have a fundamental concern.

6 I do appreciate the -- the modifications
7 and approach, and I do appreciate the fact that --
8 that we have good cause exemptions in the threshold of
9 filing. I still have a concern about that part of the
10 rule, because I still believe that, while I agree with
11 the goal, I believe that the mandate is unnecessary
12 and will cause more friction and more work than it
13 would have to otherwise. But on balance the -- the
14 rule has more desirable traits than it does
15 undesirable traits.

16 So, I have no questions. I just want to
17 make that statement.

18 CHAIR RATH: Thank you.

19 Commissioner?

20 COMM. CONGLETON: No comment.

21 CHAIR RATH: Very good. Then, is there
22 a motion to adopt the rules without change?

23 COMM. CONGLETON: Move that we adopt the
24 amendments and new sections of Chapter 815 of the
25 rules without changes as previously published in the

1 Texas Register.

2 COMM. LEHMAN: I'll second it,
3 reluctantly.

4 CHAIR RATH: And I agree.

5 COMM. LEHMAN: (Laughter)

6 MS. MILLER: Thank you.

7 CHAIR RATH: Thank you very much.

8 AGENDA ITEM NO. 13

9 CHAIR RATH: Okay. Next, we have
10 Workforce Board Nominees before us, and we have
11 nominees from Middle Rio, Coastal Bend, Heart of
12 Texas, Brazos, Panhandle and Dallas. Are there any
13 questions, or is there a motion?

14 COMM. LEHMAN: I have no questions.
15 I'll enter a motion. My motion would be to approve
16 the nominees from Middle Rio, Heart of Texas, Brazos
17 Valley and Dallas, excluding the nominee from Coastal
18 Bend and Panhandle.

19 COMM. CONGLETON: I don't have a problem
20 with any of them.

21 CHAIR RATH: Very good. And I am
22 also -- I am comfortable with all of them, and
23 particularly with Panhandle.

24 What I have understood about the
25 individual is that he is a new attorney who is

1 extremely committed to economic development. He is
2 very anxious to become active to be involved to really
3 bring the full focus of the Board on his region. And
4 he's a new attorney, but he certainly is expecting to
5 have a growing law practice and is very much aware
6 of -- of the goal and the -- and very committed to the
7 business of the Board.

8 So, I will --

9 COMM. LEHMAN: If -- if I may --

10 CHAIR RATH: Uh-huh.

11 COMM. LEHMAN: -- just for the record?

12 CHAIR RATH: Uh-huh.

13 COMM. LEHMAN: I -- I, too, wrestled
14 with this one, one, because it was a rural county,
15 two, because it was a -- a nomination from the
16 chamber. But my view of that is there were 50
17 employers in this county. 33 of them were
18 nongovernmental and not educational, and all of them
19 were also suitable nominees for the Board.

20 And so, while this individual to me is
21 highly motivated and a high-quality individual, I
22 didn't see any of the background that makes him have
23 a -- having the stature or acknowledgment by other
24 employers as being able to represent workforce issues
25 of employers. So, while I see that he might be an

1 excellent candidate for economic development or other
2 types of positions on the Board, I just didn't want to
3 support the private sector nomination at this time,
4 partly because, upon reappointment, it's even more
5 difficult to make these decisions.

6 So, just for the record. And, again, no
7 reflection on the individual.

8 CHAIR RATH: Thank you.

9 And so all of the nominees before us,
10 then, will be approved today. Thank you.

11 AGENDA ITEM NOS. 11 & 14

12 CHAIR RATH: Okay. And that brings us
13 to a combination of Item 11 with program
14 confidentiality and other legislative proposals by
15 TWC, Mr. Lewis.

16 MR. LEWIS: Good morning, Chair Rath,
17 Commissioners; Jesse Lewis, External Relations.

18 Behind Tab 14 you should have two
19 legislative proposals: One regarding UI
20 confidentiality; one regarding conforming with the
21 Federal Pension Protection Act of 2006. We only plan
22 on taking up the UI confidentiality one. Staff has
23 reevaluated the recommendation and -- and finds that
24 we should be in conformity with current law on the
25 Pension Protection Act.

1 So, with that, I'll proceed with the UI
2 confidentiality --

3 COMM. LEHMAN: "Should be," meaning we
4 are?

5 MR. LEWIS: Yes. Yes, sir.

6 COMM. LEHMAN: Okay.

7 MR. LEWIS: We are in --

8 COMM. LEHMAN: We already --

9 MR. LEWIS: -- compliance.

10 (Simultaneous discussion)

11 MR. LEWIS: That's correct.

12 COMM. LEHMAN: Thank you.

13 MR. LEWIS: It is current practice.

14 COMM. LEHMAN: Thank you very much.

15 MR. LEWIS: Thanks for the

16 clarification.

17 COMM. CONGLETON: Run that by me one
18 more time. What's current practice?

19 MR. LEWIS: We are currently in
20 conformity with the Federal Pension Protection Act of
21 2006.

22 COMM. CONGLETON: Okay.

23 MR. LEWIS: Okay.

24 On September 27th U.S. DOL published
25 final rules on confidentiality and disclosure of state

1 Unemployment Compensation information. The rules set
2 forth minimum requirements for confidentiality and
3 make clear that states may adopt more stringent
4 confidentiality provisions than those imposed by the
5 final regulations. The final rules are effective
6 October 27th, but DOL gives a reasonable time for us
7 to enact the state rule and state law.

8 The final rules address three primary
9 categories of information: Information that may be
10 open to the public; information that must be kept
11 confidential; and information that a state may choose
12 to keep confidential and/or release under limited
13 circumstances.

14 For your consideration today are three
15 options. The minimum requirement must include keeping
16 the -- keeping confidential individual identifiers,
17 including names and addresses of employers and
18 claimants before an appeal record is developed. In
19 addition, if any disclosure to entities that are not
20 public officials is permitted, criminal penalties must
21 apply to nonpublic employees for misuse of
22 information.

23 So, all three of these recommendations
24 would include that criminal provision.

25 Option 1 is to provide TWC with the

1 rulemaking authority and provide that Unemployment
2 information is not subject to the Public Information
3 Act.

4 Option 2 would include conformity
5 provisions that expressly enumerate each
6 confidentiality provision.

7 And Option 3 would -- would provide for
8 just the minimum conformity under federal law.

9 Staff recommends adopting Option 1,
10 which would allow the Commission to determine by rule
11 those things that may be released and provides the
12 best opportunity to maintain the -- the Commission's
13 current practices of protecting the information of
14 employers and claimants.

15 And with that, I'll be glad to answer
16 any questions.

17 CHAIR RATH: Thank you. And I
18 appreciate the work that y'all have been doing,
19 because I know staff has really been looking at
20 details and has invested of great deal of time among
21 themselves in working with our offices on -- on how we
22 proceed with that.

23 So, Commissioner, do you have any
24 questions?

25 COMM. LEHMAN: No, I do not.

1 CHAIR RATH: Okay.

2 Commissioner?

3 COMM. CONGLETON: Well, I generally
4 favor openness in government but -- however, we need
5 to be sure that information about private individuals,
6 some financial sensitive information about employers
7 remains confidential. So, I'm tempted to go along.

8 CHAIR RATH: Thank you.

9 And I really wrestled with it, because I
10 truly believe in openness in government. And, yet,
11 when I began to really focus on the -- the information
12 that comes before us in our hearings and -- and for
13 both sides, both for the employers and either some of
14 their business practices, some of their proprietary
15 information sometimes that we become aware of, some of
16 the occurrences that happen, and when I reflect upon
17 some of the personal, very personal nature of some of
18 the cases that come to us that could be, I think,
19 extremely difficult if that were public, I really
20 thought it would truly have a chilling effect or have
21 some significant repercussions if -- if either side or
22 constituency had full public awareness of some of it.
23 And I thought the long-term ramifications of open,
24 complete, unfettered access to that could be
25 concerning.

1 So, I -- I also agree with Option No. 1,
2 but I think we need to have staff continue doing
3 research and working on preparatory work in case it
4 becomes apparent during the session that we would have
5 to modify the approach we're taking. I think much of
6 that would be done later in rulemaking in order to be
7 responsive. So, I'm -- I think that will provide a
8 good foundation for when we do embark upon it, if
9 we're able to go with Option No. 1 all the way
10 through.

11 So, I think that would be important, in
12 case we -- we ask for additional information as we go
13 along. But I -- I also am -- am comfortable with
14 No. 1, particularly, as I said, when I thought of some
15 of the information that comes before us.

16 COMM. LEHMAN: I echo the -- the desire
17 to be open about government; however, my look -- my
18 view of this is that Employee X and Employer X and
19 those relationships are not the public's business, in
20 general, and I guess I view that Option 1 better
21 protects that relationship and avoids opportunities to
22 embarrass either party. So, I'm in favor of Option 1,
23 as well.

24 CHAIR RATH: Very good.

25 COMM. CONGLETON: I agree.

1 CHAIR RATH: Then, I think I heard full
2 consensus that we'll move forward with Option No. 1.

3 COMM. LEHMAN: You did --

4 MR. LEWIS: And continue --

5 (Simultaneous discussion)

6 CHAIR RATH: The work, continue work,
7 continue research --

8 MR. LEWIS: -- exploring the -- on
9 Option 2?

10 CHAIR RATH: Uh-huh --

11 MR. LEWIS: Great.

12 CHAIR RATH: -- in case it becomes
13 apparent that we need to alter our approach.

14 MR. LEWIS: Great. Thank you --

15 CHAIR RATH: I just want to make sure --
16 and y'all are comfortable with that?

17 COMM. LEHMAN: Yes.

18 CHAIR RATH: Okay.

19 MR. LEWIS: Great.

20 CHAIR RATH: Very good. Thank you.

21 MR. LEWIS: Thank you.

22 CHAIR RATH: Okay.

23 AGENDA ITEM NO. 15

24 MR. LEWIS: Okay. Item 15?

25 CHAIR RATH: Uh-huh.

1 MR. LEWIS: Okay. Again, Jesse Lewis,
2 External Relations.

3 The Senate continues debate on the
4 minimum wage bill, including amendments adding
5 business tax relief. Senator Cornyn spoke at length
6 on the merits of workforce development through
7 education. In addition, the Senator introduced an
8 amendment to expire the FUTA tax -- FUTA surtax, that
9 is.

10 Staff worked hard to find an offset and
11 the Senate staff were -- hard to find an offset to the
12 cost of expiring the FUTA tax. Unfortunately, they
13 were not able to do so. Most amendments that have not
14 been able to provide an additional offset for that
15 decrease in taxation have been defeated. It has not
16 been voted on yet. So, we will continue to watch
17 that.

18 Also included in the package is a
19 five-year extension of the Work Opportunity Tax
20 Credit. I wanted to bring that to your attention.

21 On the budget front, the House is
22 expected to take up a continuing resolution to fund
23 government operations through the end of the fiscal
24 year at '06 appropriated levels. Senator Kennedy and
25 Senator Murray have sent a letter raising concerns

1 regarding DOL rulemaking regarding changes to WIA and
2 Employment Service regulations.

3 Staff has mentioned to our Washington
4 staff that there may be an amendment to the continuing
5 resolution to prohibit DOL from implementing new rules
6 until -- until WIA is reauthorized by Congress.

7 Here at home the Speaker has made
8 committee assignments in the House. Of particular
9 interest, Appropriations Chair, Representative Chisum;
10 Vice Chair, Representative Guillen; Corrections,
11 Representative Madden; Vice Chair, Representative
12 Hochberg. In Economic Development, Representative Joe
13 Deshotel is the Chair; Vice Chair, Joe Straus, and the
14 CBO would be Lois Kolkhorst. Also on the committee is
15 Jim Dunnam, Geanie Morrison, Solomon Ortiz, Jr. and
16 Marc Veasey.

17 In the Human Services, the Chair is
18 Patrick Rose; Susan King, the Vice Chair; John Davis
19 as the C -- CBO. Abel Herrero, Elliott Naishtat, Rob
20 Eissler, Bryan Hughes, Tan Parker and Paula Pierson
21 are also on that committee. Additionally, TWC is
22 slated to appear before the Senate Finance Committee
23 to discuss our funding request in relation to the
24 newly-published Senate Bill 1.

25 With more information, Gene Crump and

1 Randy Townsend will brief you on that.

2 CHAIR RATH: Very good.

3 MR. LEWIS: Are there any other
4 questions --

5 CHAIR RATH: Any questions for
6 Mr. Lewis?

7 COMM. LEHMAN: None.

8 COMM. CONGLETON: No.

9 MR. LEWIS: Thank you.

10 CHAIR RATH: Thank you.

11 Mr. Townsend and Mr. Crump.

12 MR. TOWNSEND: Good morning,
13 Commissioners. My name is Randy Townsend.

14 As Jesse mentioned, as far as the Senate
15 Bill 1 is introduced, I put together a summary page
16 and then a -- a little bit more detail for the capital
17 budget that I provided to you electronically last
18 night and brought copies for you this morning. I was
19 going to work off of that as a -- as a briefing
20 document.

21 The -- there's really three items we
22 wanted to go over with you. The first will deal with
23 the TWC's request as it relates to Senate Bill 1 in
24 terms of amounts over -- appropriated amounts included
25 in Senate Bill 1.

1 I also want to talk to you about the
2 capital budget, Rider 2 projects, the authorizations
3 for those projects that were not included in our -- in
4 the Senate Bill 1 as introduced, as we had requested
5 and then, finally, would want to go over with you the
6 Executive Director's authorized salary limit that was
7 discussed previously as part of our appropriations
8 request. So, those would be the three items.

9 With -- with regard to the first item,
10 in terms of the TWC's request, I guess it's first most
11 appropriate to recognize that we are certainly
12 appreciative of the fact that our general revenue was
13 restored that had been reduced, according to the
14 instructions at the time, for both the Project RIO
15 program, as well as our Skills Development. So, those
16 items are back included in the Senate Bill 1.

17 And, therefore, Exceptional Item 1 that
18 had been requested previously as part of our
19 appropriation request would no longer be necessary
20 from that standpoint. So, that is in our -- now in
21 our base, as far as the Senate -- the Appropriations
22 Bill at this -- at this state. So, that -- that is a
23 very good thing.

24 So, that -- that left, then, four
25 exceptional items that -- that we had requested that

1 are not included. The first being -- and I'll do
2 these in the order they were presented at the time
3 that you had approved them for the -- for our
4 appropriations request.

5 The TANF Choices item, which was
6 Exceptional Item 2 at the time, we had requested
7 almost 46 million to serve additional clients relating
8 to caseloads that we had projected at the time, based
9 on estimates that we were working with Health and
10 Human Services Commission. It's important to note --
11 and I think your offices and some of you were briefed
12 yesterday about some of the details of this, and if we
13 need more, we can certainly have staff provide that.

14 But essentially for the first time ever,
15 that I recall anyway, we have caseload projections
16 that the Legislative Budget Board staff have estimated
17 for Fiscal Year '08 and '09 that are different from
18 Health and Human Service projections. And so, in
19 looking at the reasonableness of the -- of the
20 numbers, that makes sense in terms of the TANF Choices
21 program, staff is proposing that we consider using
22 the -- and the LBB projections are certainly less in
23 terms of the caseloads.

24 And if you look at those numbers, as it
25 relates to our program, we believe with the current

1 funding level included in the introduced bill for --
2 for this program that we would not need to request
3 additional appropriations for '08 and '09. I might
4 also mention that one of the things you may want to
5 consider and I -- in -- in -- as part of this, though,
6 in case those caseload projections are off, in case
7 they're too low, it may be something we want to
8 consider, mentioning the possibility of Contingency
9 Fund -- it's been done in the past -- as part of an
10 Article 9 provision, something along that line.

11 So, I'll just leave that for your --
12 your discussion, consideration this morning. And
13 Mr. Temple may want to also provide some additional
14 insight. So, certainly, he's the recognized expert in
15 terms of the -- the TANF program.

16 But I might just stop there for a
17 moment. That -- that's a deviation from what had been
18 suggested previously as part of our appropriation
19 request. So, I'll -- I'll -- I'll pause for a moment
20 and see if there's any discussion or questions as it
21 relates to that item.

22 CHAIR RATH: Very good.

23 I -- I think it's also important to say
24 that we are concerned about our ability not to provide
25 the services but to meet the participation rate if

1 there is no action taken on bringing the -- those
2 individuals with mandatory work requirements into
3 alignment with the federal law, and that as long as we
4 continue to have such a large number of exemptions,
5 that we will certainly be in a very difficult position
6 and that we do need our state law to be modified to
7 include the child-only cases.

8 So, if we look at the funding levels
9 available in conjunction with those two activities,
10 then I think we're comfortable of success if the
11 caseload projections are accurate. So, I wanted to
12 add that and then to see if Mr. Temple wanted to add
13 anything.

14 MR. TEMPLE: Looking at their -- at
15 their numbers, they predicted about an 8 percent
16 decrease in the All-Family through '09, and they
17 actually stop short -- stopped, I think, August of '09
18 in their projections, LBB did. And then they
19 predicted a 30 percent decrease in the Two-Parent.

20 We've always seen a reduction greater
21 than what HHSC has ever projected, and I think
22 that's -- they're -- they're getting more real-time
23 with it. HHSC did revamp their projections for the --
24 a couple days early. They're actually due February 1.
25 And, as you know, we would always bring those in the

1 past back to you, and we would make those adjustments.

2 But they did -- they did reduce what
3 they thought the caseload increases were going to be,
4 but they're still projecting an increase, as opposed
5 to HHSC proposing the decrease. So, I think looking
6 at -- at -- the introduced bill and with the caseload
7 projections, it -- it does appear that we would have
8 adequate funding.

9 As you said, Chair, the -- the big
10 challenge is going to be getting rid of those -- those
11 exemptions. If we don't get the exemptions, then
12 we're going to have to spend a lot of money in trying
13 to coax people to volunteer. That -- that will be
14 very expensive. And if we do get the exemptions, we
15 will still have to try to coax some individuals to
16 volunteer until all of those exemptions are worked out
17 of the system, because it won't just be flipping a
18 switch.

19 And I think logic dictates that some of
20 these individuals will be more costly to serve than
21 what our average -- a little less than a thousand
22 dollars now is. So, with or without the exemptions
23 it's going to cost more money, but you're right. Our
24 big person concern would be being able to make
25 those -- excuse me -- those federal rates without the

1 exemptions, and that's -- has been our concern all
2 along.

3 So -- but as Randy had talked about on
4 the Contingency Fund, when we had our briefing from
5 LBB, they said that at this point in time, there
6 appears to be about a hundred -- just shy of a \$124
7 million TANF surplus after the introduced bill, all
8 their recommendations. There are several ideas,
9 obviously, and a lot of people that eye that money.
10 But one of the things they talked about was a
11 possibility of -- of holding some back for a
12 Contingency Fund, in the event.

13 So -- so, it certainly -- certainly
14 would behoove us to -- to mention that in our -- in
15 our testimony.

16 CHAIR RATH: Uh-huh. And I -- and I
17 think that's a -- I mean, I appreciate y'all
18 mentioning it, because I think it's a very reasonable
19 approach to take, because if the projections are
20 wrong, then many agencies are going to be tremendously
21 affected. And I think they do need to have a -- a,
22 you know, safety provision so that the services can be
23 delivered by every agency that interacts with those
24 individuals.

25 So, I -- I personally think that's a

1 good idea.

2 Commissioner, regarding the TANF item,
3 do you have any questions or thoughts?

4 COMM. LEHMAN: No, I do not. Thank you.

5 COMM. CONGLETON: I have no questions.

6 CHAIR RATH: Okay. Then, I -- I just
7 want to make sure I'm not misunderstanding. We are
8 comfortable not asking for any additional TANF funds
9 for Choices and should mention, perhaps, our interest
10 in a Contingency Fund.

11 COMM. LEHMAN: Yes.

12 CHAIR RATH: Am I --

13 COMM. CONGLETON: I agree.

14 CHAIR RATH: Okay. Very good. Thank
15 you.

16 MR. TOWNSEND: Thank you.

17 Moving on to what was, at the time in
18 our appropriation request, listed as Exceptional Item
19 No. 3 for the Project ReIntegration of Offenders, RIO
20 program --

21 CHAIR RATH: Can -- can I go back to
22 that? Are we costing out -- are we going to ask as a
23 Contingency Fund a specific amount, or how are we
24 going to approach that?

25 MR. TOWNSEND: I had not spent a lot of

1 time thinking about the amount --

2 CHAIR RATH: And you don't have to
3 respond right now, but I think -- and maybe we just
4 make it proportional to what is set aside for
5 caseload. But I mean, I do think we need to give some
6 thought to that, and --

7 MR. TOWNSEND: Okay.

8 CHAIR RATH: -- and I think as y'all
9 work with LBB and with HHSC, I'm comfortable that
10 y'all will have a better feel for how we should frame
11 that discussion.

12 COMM. LEHMAN: Yeah, I would -- I would
13 echo, if -- if not an amount, at least a range.

14 MR. TOWNSEND: Right. I understand.

15 COMM. LEHMAN: So, best case
16 scenario/worst case scenario.

17 MR. TOWNSEND: We will do that.

18 CHAIR RATH: Okay.

19 MR. TOWNSEND: With regard to Project
20 RIO, which was, again, Exceptional Item 3 at the time,
21 this was to expand the program from our current
22 services level by adding -- requesting 1.4 million in
23 each year of '08 and '09 to serve an additional 10,000
24 RIO customers. That would have -- if -- if approved,
25 that would allow us to serve about half of what we

1 estimate to be the number of parolees in Fiscal Year
2 2008 and '09.

3 Staff is recommending we continue with
4 that particular request at that funding level, and --
5 and what I will do is also come back for your
6 consideration after I go through all these for the
7 priorities. But that would be the -- the same amount.

8 CHAIR RATH: And I just want to clarify
9 for my edification, the amount we're requesting would
10 be to serve about half of the parolees that we
11 estimate for '08/'09?

12 MR. TOWNSEND: That's correct, yes,
13 ma'am.

14 CHAIR RATH: Okay. Thank you.

15 MR. TOWNSEND: The fourth exceptional
16 item at the time of our appropriation request was a
17 Skills Development item that would -- allowed us to
18 fully access or have appropriated the 40 million that
19 we're -- we're estimating would be the -- the 25
20 percent share, if you will, of the Employment and
21 Training Investment Assessment Funds that are
22 available for the Skills program.

23 If funded, this would bring the total
24 Skills program for '08 and '09 to about 50 million for
25 the biennium. These funds are set aside as part of

1 that one-tenth of 1 percent assessment. Included in
2 the base bill is about 20 million currently. This
3 would allow us to access the remaining 20 million
4 of -- of that particular assessment for the Workforce
5 Commission.

6 That would serve about -- almost 7800
7 Skills -- Skills customers served in each year of the
8 biennium. The total request would be about 19 and a
9 half million for the biennium.

10 The final item, as far as the
11 exceptional items at the time, was No. 5 for the
12 Career Schools and Colleges program. It was asking
13 for 117,000 just under each year to add two FTEs,
14 full-time -- full-time equivalent positions, to allow
15 us to address the additional regulatory needs for that
16 particular program. And that would complete the above
17 item request as it relates to Senate Bill 1 as
18 introduced.

19 At this point, unless you have questions
20 or comments about those three items, I guess we have
21 at this point, I would -- just wanted to see if the
22 priority order needed to be revisited considering the
23 other changes that have occurred.

24 COMM. LEHMAN: I think there's two
25 issues, actually. One is the amounts themselves,

1 which I agree with --

2 MR. TOWNSEND: Yes.

3 COMM. LEHMAN: -- and two is the
4 priority. And I would recommend we change the
5 priority to put the Skills Development program first,
6 RIO second and Career Schools third.

7 CHAIR RATH: Uh-huh.

8 COMM. CONGLETON: And I agree with that.

9 CHAIR RATH: And I'm comfortable with
10 that.

11 MR. TOWNSEND: Thank you, Commissioners.
12 That completes the first item.

13 The -- the second item relates to
14 capital budget, and this is actually authority as it
15 relates to these two capital budget items that were
16 not approved. The funding is included in the -- in
17 the bill.

18 These are -- these two projects, the
19 E-Strategy, as it's listed in the -- in the bill,
20 which is -- and I have it listed as UI/ES -- I think
21 it should have been the other way around, as we refer
22 to it -- ES/UI Integration, also known as that
23 project, which is requested at -- at just under
24 940,000 in Fiscal Year '08. And then the additional
25 amount was just under 193,000 in '09 for a total of

1 about 1.1 million, again, in authority. This is
2 funded out of federal funds, 100 percent.

3 The second item that was not approved,
4 as far as authority goes, was scanners for the Appeals
5 and Telecenters for \$200,000 in Fiscal Year '08.
6 Again, all federal funds being requested for those two
7 projects. There is a separate two-page document
8 covering more -- in more detail those two capital
9 items, capital project items.

10 And I believe Mr. Crump if -- has -- may
11 have a few more details to share with you this
12 morning.

13 MR. CRUMP: For the record, Gene Crump,
14 Deputy Executive Director.

15 Commissioners, not much more to talk
16 about. ES/UI Integration we've discussed many times
17 at the Quarterly IT Work Sessions. That, if you will,
18 is Phase 3 of -- of the project. It is a -- a
19 continuation of E-Strategy, which was initially funded
20 and requested by the Commissioners back in the '04/'05
21 biennium.

22 The scanners, Appeals and Telecenters,
23 not much more to talk about that, other than they have
24 exceeded their projected useful life. I have some
25 details around that; for example, the scanners

1 normally expect to process about 1 million pieces of
2 paper. Most of them are at -- have processed over 4
3 million pieces of paper scanned.

4 So, staff would be recommending that we
5 seek authority for both those projects. Again, they
6 are federal funds and funded within the base bill.
7 We're just looking for authority.

8 Are -- are there any specific questions
9 about the projects?

10 CHAIR RATH: No, I -- I think it is
11 important that we continue to pursue both of those
12 things. I think if we're going to continue to deliver
13 good customer service and if we're to be timely and if
14 we really are to be efficient and effective in how we
15 deliver it, both of those continue to be necessary.

16 COMM. LEHMAN: I agree. And the -- the
17 reality is, once those scanners start failing, they
18 become more of a processing nightmare. Then, we have
19 to go back and ask for permission anyway. So, we
20 might as well ask for it now.

21 MR. CRUMP: Oh, concur. Yes, sir. Good
22 point.

23 MR. TEMPLE: And, Commissioners -- and,
24 Randy, jump in -- but my understanding, when we had
25 our -- the ones that they were picking on TWC or

1 picking on these two, they just were across the board
2 on all of their --

3 (Simultaneous discussion)

4 MR. TOWNSEND: Right. These are capital
5 projects --

6 MR. TEMPLE: -- capital budgets on all
7 agencies. So, they're just letting everybody make
8 their pitch to -- to the committee.

9 MR. TOWNSEND: That's right.

10 COMM. CONGLETON: I agree.

11 CHAIR RATH: Okay. Very good.

12 MR. TOWNSEND: The -- the third and
13 final item I have this morning relates to the -- the
14 authorized salary for the Executive Director in 2008
15 and 2009. At the time of the appropriation request,
16 if you'll recall, you agreed to include that requested
17 salary increase for the authorized salary limit, which
18 was not approved as part of the base bill.

19 The current amount of 135,000 authorized
20 limit remains in -- in -- as Senate Bill 1 is
21 introduced for -- for the salary position there. Just
22 so you know, just as a note there, I've noted for
23 Group 5 salary limit, at the time the -- the maximum
24 in this current biennium was 139,140 in the introduced
25 bill. The amount for that particular group is 149052,

1 just so you have the idea of the new range that's
2 been -- been authorized.

3 So, this morning I just wanted to have
4 that for your consideration. And we would -- I -- if
5 this happens as it has in the past, there's typically
6 a subcommittee or a group within -- that's set aside
7 to look at salary issues in both the House and the
8 Senate side. Typically, they do want to -- just so
9 you know, they do want -- if you're making a request
10 for salary authorization, they do want to know what --
11 what that amount is.

12 And, again, this is authorization.
13 Obviously, at the time you would -- you would make
14 your own determination, as far as the actual -- actual
15 amount. So, I -- I leave that now for your
16 consideration.

17 CHAIR RATH: I will tell you, I continue
18 to be supportive of our having that authority, because
19 then the Commission would make the ultimate decision
20 and it is -- comes out of existing dollars. So, it
21 does not require any additional cost. And so I'm in
22 favor of our having that authority so decisions can be
23 made as appropriate by the Commission in the future.

24 COMM. LEHMAN: I, too. I echo that, and
25 I recommend we go to -- back from a range so we can

1 operate within that range.

2 CHAIR RATH: Uh-huh. Uh-huh. Very
3 good, and I would agree with that.

4 COMM. CONGLETON: And I don't have a
5 problem with it.

6 CHAIR RATH: Very good. Thank you.
7 Okay.

8 MR. TOWNSEND: Thank you, Commissioners.
9 And that's all I have --

10 CHAIR RATH: Anything else you need?

11 MR. TOWNSEND: I don't believe so.
12 Thank you.

13 CHAIR RATH: Very good.

14 Any questions for either Randy or Gene
15 before they leave?

16 (No response)

17 CHAIR RATH: Hearing none, very good.

18 And thanks for all the information you
19 keep sending us. Thank you.

20 AGENDA ITEM NO. 16

21 CHAIR RATH: Okay. Anything on the
22 hurricanes?

23 (No response)

24 AGENDA ITEM NO. 17

25 CHAIR RATH: Hearing none, State Data

1 Center, anything to update us on, Mr. Crump?

2 MR. CRUMP: Sorry. No, Commissioners,
3 nothing -- nothing at this time.

4 We do know -- Government Relations has
5 identified that Department of Information Resources
6 will be testifying before Senate Finance on Wednesday.
7 So, we'll be monitoring that hearing.

8 CHAIR RATH: Very good. Any questions
9 for Mr. Crump?

10 COMM. LEHMAN: None. Thank you.

11 CHAIR RATH: Okay. Thank you.

12 AGENDA ITEM NO. 18

13 CHAIR RATH: Mr. Temple, do you have
14 anything?

15 MR. TEMPLE: No staff reports today.

16 CHAIR RATH: Very good.

17 Commissioner Lehman?

18 COMM. LEHMAN: I have nothing. Thank
19 you.

20 CHAIR RATH: Commissioner Congleton?

21 COMM. CONGLETON: Nothing. Thanks.

22 CHAIR RATH: Very good.

23 The only thing I wanted to mention was
24 to comment that Central Texas will be recognized
25 tomorrow, once again, as one of the best companies --

1 the Top 50 (sic) Best Companies to Work For. And they
2 moved up from No. 37 to 21, I think, so really
3 improved.

4 And I think it says an awful lot about
5 the system, that we can have a Workforce Board who is
6 really recognized and -- by the employees as a just
7 superb place to work. So, I wanted to compliment
8 them, and they are noticed in this month's edition of
9 Texas Monthly.

10 AGENDA ITEM NO. 21

11 CHAIR RATH: So, with that, if there's
12 nothing else to come before us, it's 10:18, and we
13 will stand adjourned.

14 (Meeting adjourned: 10:18 a.m.)

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1 C E R T I F I C A T E

2 STATE OF TEXAS)
3 COUNTY OF TRAVIS)
45 I, JANIS SIMON, a Certified Shorthand
6 Reporter in and for the State of Texas, do hereby
7 certify that the above-mentioned matter occurred as
8 hereinbefore set out.9 I FURTHER CERTIFY THAT the proceedings
10 of such were reported by me or under my supervision,
11 later reduced to typewritten form under my supervision
12 and control and that the foregoing pages are a full,
13 true, and correct transcription of the original notes.14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and seal this day of 2007.

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