

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMISSION MEETING
MONDAY, JUNE 3, 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; Randy Yarbrough, Assistant Administrator; Lou Bright, General Counsel; Sam Smelser, Assistant Chief of Enforcement; Brian Guenthner, Director of Licensing and Denise Hudson, Director of Resource Management. Comment was received from: Jim Haire, Texas Alcohol Abuse Prevention Volunteer; Travis Leah, March of Dimes Volunteer; Claudia Barker; Joye Hyman; Amy Mizcles, The Arc of Texas; Larry Camp, Texas Office for Prevention of Developmental Disabilities; James R. West, Ph.D., The Texas A&M University System Health Science Center; Glen Garey, Texas Restaurant Association; Cord Switzer, Fredericksburg Winery and Gary Elliott, Driftwood Vineyards.

The agenda follows:

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

1. Administer Oath of Office for Kel Seliger, new appointment to the commission.
2. Adoption of resolution honoring Allan Shivers, Jr.; discussion, comment, possible vote.
3. Approval of minutes of April 22, 2002 meeting; discussion, comment, possible vote.
4. Administrator's report:
 - a. discussion of staff reports;
 - b. recognitions of achievement; and
 - c. discussion of management controls.
5. Fiscal stewardship of agency; discussion, comment, possible vote.
6. Consider proposed amendment to 16 TAC §33.23 as published in 27 TexReg 3691-3692 and 27 TexReg 3795-3797 on May 3, 2002; discussion, comment, possible vote. (Alcoholic Beverage Licenses & Permits Surcharges)
7. Consider publication of proposed amendment to 16 TAC §37.60; discussion, comment, possible vote. (Standard Penalty Chart)
8. Presentation by Jim Haire regarding Fetal Alcohol Syndrome/Fetal Alcohol Effect; discussion, comment, possible vote.
9. Public comment.
10. Executive session:

Announcement of executive session:

- a. the commission will meet in executive session to consult with legal counsel regarding pending litigation pursuant to Texas Government Code, §551.071; and
- b. the commission may go into executive session to consult with legal counsel regarding items 6, 7, and 8 of this agenda pursuant to Texas Government Code, §551.071.

Continue open meeting

11. Take action, including a vote if appropriate, on topics listed for discussion under

- executive session.
12. Consider approval of agency's strategic plan for the period 2003-2007; discussion, comment, possible vote.
 13. Consider dates and times of future board meetings; discussion, comment, possible vote.
 14. Adjourn.

The meeting was called to order at 1:35 p.m. by Chairman Steen.

MR. STEEN: I want to call to order the regular meeting of the Texas Alcoholic Beverage Commission. Our first item of business is the swearing in of a new commissioner, Kel Seliger of Amarillo, and I have the pleasure of doing that. His wife has accompanied him to the meeting today, and I'd like to call her forward for the swearing in.

At this time, the Oath of Office was administered to Mr. Seliger by Chairman Steen.

MR. STEEN: Welcome, Mr. Seliger.

MR. SELIGER: Thank you very much.

MR. STEEN: Would you like to say anything?

MR. SELIGER: No. At some point, surely.

MR. STEEN: We have an item on the agenda which is a presentation by Jim Haire. We thought, if there are no objections, that we would take that item first. Are there any objections from anyone? We will begin with a presentation by Jim Haire regarding Fetal Alcohol Syndrome/Fetal Alcohol Effect. Mr. Haire?

MR. HAIRE: Thank you very much. I might want to mention first that I'm not sure what the list of speakers today on this consists of. There are some people who want to appear in support of this idea and some are here. Some have been told that we would be down the agenda, like item number eight or so. They might be here at two fifteen or so. Hopefully, we can give them an opportunity if they arrive late. For example, Larry Camp with the Texas Office for Prevention of Developmental Disabilities, is not here yet.

I'm Jim Haire from Tyler, and I want to thank Chairman Steen, Commissioner Madden and Commissioner Seliger for this opportunity. I've volunteered in the past with a coalition to reduce underage drinking, and it was during that time that I became aware of a number of other much less publicized but serious alcohol problems. Fetal Alcohol Syndrome is one of those. The World Health Organization calls FAS/E the leading

cause of mental retardation in our hemisphere. The U.S. Surgeon General says women should stop drinking completely during pregnancies.

The Texas Office for the Prevention of Developmental Disabilities says there may be as many as 196,000 Texans today with some level of alcohol-related brain damage. They add that babies with alcohol-related brain damage are being born in Texas at the rate of about 3,400 each year and the costs to Texans is about 518 million dollars annually. In spite of all of this, it appears that most Texans are unaware of the problem.

Larry Camp, the Executive Director of the Texas Office for the Prevention of Developmental Disabilities, who will be here today, has expressed his opinion to me in the past that most Texans are unaware of FAS. The National Institute of Health says that nationwide about 61 percent of women of childbearing age are unaware of FAS.

I'm here today to join with others in proposing that TABC require point-of-sale health warning signs be displayed in conspicuous locations in the alcohol retail outlets in Texas. Exhibit number one in my handout is an example of such a sign that's required by your counterpart agency in Arizona and it reads as follows - quote - WARNING. DRINKING ALCOHOLIC BEVERAGES, INCLUDING DISTILLED SPIRITS, BEER, COOLERS AND WINE DURING PREGNANCY CAN CAUSE BIRTH DEFECTS - unquote. The use of these signs is supported by the American Medical Association, March of Dimes, Center for Science in the Public Interest, Association of Directors of the State Commissions for Alcohol and Drug Abuse, such as TCADA in Texas, among other groups. Four years ago, there were 19 states already requiring the signs and the number is growing. CSPI says the alcohol industry opposes the signs because they're afraid the signs may hurt sales, but we're hopeful the alcohol industry in Texas will be supportive.

Health warnings are already made available on the containers, but customers are frequently served in glasses and mugs, etcetera. I conducted an informal survey by visiting five large bars and restaurants in Texas that indicated that only about one in eight drinks served to women carry such a warning. The eight containers you see here on the table are representative of what the survey showed are used to serve drinks ordered by women. About 25 percent of the total would be beer and about half of that served in bottles and half in mugs. The other 75 percent of the drinks would be margaritas, wine, etcetera, served in various glasses. Only one of the eight containers here carries a health warning, but even that warning is written vertically and from bottom to top, making it difficult to notice, much less read. Exhibit number two lists the actual restaurants and survey

results.

I've heard that some may favor a voluntary program that would give the alcohol industry and retailers the choice of whether or not to display health warning signs. However, it's already been reported that the industry may be against the signs, but there's also other reasons a voluntary program is a non-starter. Texans, beginning with childhood, are not given a choice about the continuous stream of pro alcohol messages that they see. School children on field trips have seen the beer cartoon lizard names installed on the lizard cages at the Houston Zoo. Our families see beer flags lining the Dallas city streets leading to their State Fair. Inside the fair, families see a virtual beer circus with tents, horses, etcetera. I have photographs of children and teenagers being attracted to a state agency's display of large fish which contained a beer ad reading "You've caught a great fish. Now catch a great feeling." There's about three million Texans that fish and hunt that are a captive audience to this state agency that uses fishing and hunting to convey pro alcohol messages.

A March 3, 2002, front-page article in the *Dallas Morning News* told about the financial crisis at the state's mental retardation facilities. That's exhibit number three. A similar front-page article in the March 1 *Austin American Statesman* warned about the same problem. The Texas Department of Mental Health and Mental Retardation web page reported that almost 19,000 Texans are waiting for mental retardation services, including 5,809 children under the age of 18.

Regarding warning signs in general, the CSPI refers to how numerous warnings alert consumers to dangers associated with many products from lawn mower blades to over-the-counter drugs. Studies show that clearly worded and visible warnings increase awareness and lead some people to change behaviors. In one study in New York, awareness of alcohol-related birth defects went from 54 percent before the signs to 68 percent one year after the signs were required.

TABC's statute says that this commission will protect the welfare, health and safety of our citizens. The statute goes on to say that this part of the statute - and I quote - shall be liberally construed to accomplish this purpose - unquote. I know that TABC will take advantage of this economical and effective opportunity to make Texans aware of the connection between alcohol and birth defects. Thanks very much.

MR. STEEN:

Thank you. We do have other people signed up to speak on this issue. Travis Leah?

MR. LEEAH:

I want to thank you for letting me come and speak on behalf of the March of Dimes. I'm just going to go through my comments that were given to you all. If you have any questions, just let me know.

Good afternoon, Commissioners. My name is Travis Leeah and I am Vice-President of Pharmacy Operations at the Unique Pharmaceuticals Limited and I am here as a volunteer and advocate for the March of Dimes. I am a pharmacist that specializes in the field of addictionology. For the last eight years, I have attended biannual seminars and workshops on the pharmacology of addiction. I'm also on the Texas Pharmacy Association's Pharmacists Recovery Network Advisory Committee for the last two years. I am here because I believe in the mission of the March of Dimes. Also, my boy was born with a congenital heart defect that was not preventable. Birth defects due to Fetal Alcohol Syndrome can be prevented. The March of Dimes' mission is to improve the health of babies by preventing birth defects and infant death. I want to talk to you briefly today about the importance of educating the public about the dangers of consuming alcohol during pregnancy.

Alcohol-related birth defects are completely preventable. Each year, thousands of babies are born with health problems related to alcohol use during pregnancy. The most serious of these effects is known as Fetal Alcohol Syndrome. FAS is characterized by stunted growth (before and after birth), facial abnormalities (small eyes, flattened cheeks, small jaw, etcetera), and central nervous system defects that include mental retardation, hyperactivity, delayed development of gross motor skills (rolling over, sitting up and crawling), delayed development of fine motor skills (finger coordination), impaired language development, memory problems, problems in learning and seizures. According to the U.S. Department of Health and Human Services, FAS affects an estimated one out of every 1,000 newborns and is the leading known cause of mental retardation. It is the only cause that we know of that is entirely preventable.

While Fetal Alcohol Syndrome is usually the result of heavy drinking, some studies have suggested that even moderate amounts of alcohol may cause developmental problems. Alcohol use also increases the risk of miscarriage and stillbirth. No completely safe level of alcohol use during pregnancy has been established.

At least 10 times the number of babies born with Fetal Alcohol Syndrome are born with lesser degrees of alcohol-related damage. This condition is sometimes referred to as the Fetal Alcohol Effect.

The April 5, 2002 issue of *Morbidity and Mortality Weekly* report contained a report entitled Alcohol Use Among Women of Childbearing Age in the United States from 1991 through 1999. The survey was a continuation of a previous survey from 1991 to 1995. Between 1991 and 1995, there was a substantial increase in alcohol use among pregnant women. Four times more pregnant women drank frequently in 1995 than in 1991. Even the percentage of women who had only one drink increased. In 1999, however, there was a decrease in alcohol use among pregnant women. In 1999, 12.8 percent of pregnant women reported having had a least one drink during pregnancy, compared to 16.3 percent in 1995. But alarmingly, the rates of binge drinking (more than five drinks on one occasion) and frequent drinking (more than seven drinks per week) did not decline and remained high. The survey suggests that 130,000 pregnant women consumed risky levels of alcohol in 1999. These are just studies. It could be a lot higher than what the studies indicate.

When a pregnant woman drinks, the alcohol passes swiftly through the placenta to her fetus. In the unborn baby's immature body, alcohol is broken down much more slowly than in an adult's body. In fact, extremely slowly because they don't have the enzyme system basically in place that breaks down alcohol. As a result, the alcohol level of the fetus' blood can be even higher and can remain elevated longer than in the mother's blood. This sometimes can cause the baby to suffer lifelong damage.

Since 1989, federal law has required warning labels on all wine, beer and liquor containers that warn pregnant women about the risk of birth defects if they consume alcohol. Many states now require point-of-sale signs - posted in liquor stores, restaurants and bars - warning of the dangers of alcohol use during pregnancy since many women are served alcoholic beverages that do not come in their original containers.

The March of Dimes has long been involved with the issue of alcohol-related birth defects. The March of Dimes funded the two researchers and others who first described Fetal Alcohol Syndrome in 1973. In addition to funding research on the effects of alcohol use during pregnancy, the March of Dimes works to prevent alcohol-related birth defects through public health education programs, professional training seminars and advocacy for appropriate warning labels, such as point-of-sale health warnings.

Basically, what the research shows out there is what we know of who has Fetal Alcohol Syndrome, but if you look at the possible effects, you have

primary symptoms and you have secondary symptoms. The problem is that most of your secondary symptoms go into hyperactivity, ADD, slow learning. They even have some research showing that children who are affected with Fetal Alcohol Syndrome, even in a minute amount, if they are not one of the more serious that are affected, have problems with school. They have learning disabilities. They get into trouble more. They have more problems with getting in trouble with the law, acting out and so on. This is just stuff we know.

Like I said, being relatively new as far as knowing it as a syndrome since 1973, we are learning more and more every day. One thing we've got to know is whenever we talk to victims, especially the mothers who have children with Fetal Alcohol Syndrome, the thing we always hear is, "I didn't know. I had no idea." Let's do something from an educational standpoint. If we put a point-of-sale sign that warns of the risk of drinking while pregnant...if we save one child, that's enough for me, at least. No telling how many we will save. It's an educational issue. I've known doctors who have given suggestions, "Just have a drink to settle the baby down." That's wrong. That's just an educational issue. I ask that you look at the point-of-sale warning. Like I said, we are not going to totally wipe it off the face of the earth with it, but if we save one child, that's enough for me. That's all I've got. Thanks.

MR. STEEN: Thank you. Our next speaker is Claudia Barker.

MS. BARKER: I was asked to give my association. I guess Citizen of Texas is my association. My name is Claudia Barker, and I am the adoptive mother of a child with Fetal Alcohol Spectrum Disabilities, which is the new term for FAS/E. I'm sure that in your positions, you know what alcohol does to a developing child, so I won't bore you with the gruesome truths. I would like to remind you that it is the number one cause of birth defects in the United States and Canada according to the American Pediatrics Association, the World Health Organization and the Centers for Disease Control.

My daughter's birth mother was an underage drinker. The people who bought the alcohol for her, though, were of age, and they knew she was pregnant. But, in the words of the man who supplied most of the alcohol that damaged my child's brain, "It was just beer." Somehow she and her boyfriend both assumed that hard liquor might hurt the baby, but not beer. My daughter will live for the rest of her life with the results of that misunderstanding.

I'm also a CASA - Court Appointed Special Advocate - for children in

Bastrop County and, as such, I am painfully aware of another child who was born with FASD. When his mother, also a teen whose alcohol was supplied by adults, gave her prenatal history to CPS, she freely admitted drinking vodka every day during her pregnancy. She switched to vodka as soon as she found out she was pregnant because, "Everyone knows that vodka won't hurt the baby." In her mind, she was doing her baby a favor by only drinking vodka.

Neither of these teens bought the drink that damaged their children, but adults did; adults who knew that they were pregnant. In both cases, even the adults didn't think that beer in one case or vodka in the other would hurt the baby. They thought these were safe drinks.

It's just possible that signage warning that all beverages containing alcohol poses a very serious threat to a developing child would finally get the message across to everyone, making serving alcohol in any form to a pregnant woman and her unborn child socially unacceptable. People will still do unlawful and immoral things to children and they still will if we have the signage. We can't say this will stop Fetal Alcohol Spectrum Disabilities, but there will be no excuse if everyone is fairly warned.

I would give anything if the adults or the birth mothers involved in these two examples had known the facts and taken the dangers seriously. From an economic point of view, alone, the money saved on the education, medical care and potential institutionalization of just a few damaged children justifies the cost of signage. If you could live one day watching my daughter struggle to do the things that she could have and should have been able to do with ease, had she not been poisoned before birth, I can't help but believe you would find this small gesture - signage - more than justified. Thank you.

MR. STEEN: Thank you. The next speaker is Amy Mizcles, The Arc of Texas.

MS. MIZCLES: Good afternoon. I am Amy Mizcles. I'm here on behalf of The Arc of Texas, the state's largest nonprofit volunteer organization creating opportunities for people with mental retardation and other developmental disabilities to be included in their communities.

The Arc of Texas believes that people with mental retardation have the right to life, liberty, the pursuit of happiness and equal treatment under the law. In addition, The Arc is also committed to reducing the incidence and limiting the consequences of mental retardation through education, research, advocacy and by supporting people with mental retardation, their families, friends and the community.

An individual is considered to have mental retardation if his/her intellectual functioning (IQ) is below 70, if there are significant limitations in two or more adaptive skill areas and if the condition is present before the age of 18. In Texas, there are an estimated 555,000 people with mental retardation.

As you've heard previously, Fetal Alcohol Syndrome is the leading preventable cause of birth defects that typically lead to mental retardation. FAS can be prevented simply by abstaining from drinking alcohol during pregnancy.

In 1998, a national survey conducted by the Substance Abuse and Mental Health Services Administration reported that 58.8 percent of women drank while pregnant. That's unacceptable. As you've heard previously, some women just don't know. Thousands of babies are born with Fetal Alcohol Syndrome each year. Many more will display signs as they grow and develop. Thousands of lives are impacted in all areas of life - socially, educationally, through health and so on.

Given that FAS is preventable, a serious, comprehensive effort is needed to drastically reduce the incidence of FAS. To that end, I ask the commission to require Texas alcohol retail outlets to display health warnings about alcohol-related defects.

I have a packet for you and it's simple. Jim Haire read this to you. All it says is: "WARNING. DRINKING ALCOHOLIC BEVERAGES DURING PREGNANCY CAN CAUSE BIRTH DEFECTS. Alcoholic beverages include beer, wine, liquor, alcohol and spirits." - simple, one page. Thank you.

MR. STEEN: Thank you. Joye Hyman?

MS. HYMAN: My name is Joye Hyman. I moved to the State of Texas about a year and a half ago. This is the first time I've spoken in front of people in quite sometime, so I'm a little bit nervous today, if you will excuse me.

What brought me here was love. My husband happens to have two children who we suspect of having Fetal Alcohol Syndrome. To tell you a little bit about my background, the hospitality business has been my business literally all of my life. I started out in the industry like many people did in college waiting on tables; one of the best jobs in the world you can get and fit it around any schedule. I worked my way up in the business into management. I worked for many years for Cape Fear Food Systems out of Wilmington, North Carolina; then for the Campbell Soup

Company in the hospitality division. My main purpose was to manage restaurants, to open new units in various states, hire and train the staff. I then learned the hotel industry through working for Sands Properties which is based in Myrtle Beach, South Carolina, owning hotels, restaurants, signature golf courses in multiple states. I was their director of training. I was also a college instructor for 20 years, teaching the hospitality industry to those who wanted to learn and get a degree, working with both city and county governments, teaching their elected and non-elected officials and departmental managers how to deal with the public and how to deal with their employees as well. I've trained people in the medical profession and education. I have taught hundreds of police officers, teachers, professionals of all walks of life - anyone who possibly had contact with the public - how to resolve conflict and defuse physically threatening situations.

I tell you all these things not to impress you but so that you will have some idea of how shocked I was myself to find myself earlier this year at seven o'clock in the morning on top of a child with my hands around his throat ready to choke the last living breath out of him. I wanted to do that and it would have been so easy. His neck was so soft and so pliable and I was so angry. But fortunately for everyone, the part of my brain that does not function in my stepson was working that morning. I realized what I was doing. I backed away. I called my husband to come home and I locked myself in my room until he did. I had forgotten one of the main principles that no one who works with these children or lives with them can afford to forget; and that is that you can't take what they say seriously or personally and let it get to you, but he managed that morning to push a button in me that few people ever have in my life. I reacted as an animal reacts in self-defense and out of fear. That was a sobering experience for someone like me to be brought to my knees by a child.

What we would like to ask of you today is what I assume this board wants for the citizens of Texas and the people who serve alcohol to them and that is responsible alcohol service. All caring establishments promote responsible alcohol service. All caring states require it. I demanded it of every employee I ever had. I taught it to all of my students in the hospitality industry.

Those of us in the industry who are taught responsible service of alcohol are taught what its physical effects are. We are taught how to spot intoxication. We are taught how to deal with it and prevent it in our customers. We are taught that when alcohol is consumed, the first part of the brain that it begins to affect is the central nervous system. The central nervous system is the part of your brain that controls your inhibitions. We

are taught during responsible alcohol training that we are going to see a loss of inhibitions; that we are going to see changes in behavior. We are going to see behavior that is not normal for that person when they are sober, and we are taught that those changes can go in either direction. The person can get a whole lot more friendly and a whole lot more loving or a whole lot more belligerent and a whole lot more dangerous. Guess what? The same thing happens to that fetus when the alcohol is consumed, only the effects of alcohol don't ever wear off - not ever - not for the rest of their lives.

I want to tell you in plain terms, day-to-day living, what a child without inhibitions means to the people who deal with him. What it means is that you have a guest exit your bathroom in your own home and inform you that your child is masturbating on the towels that they've wiped their hands with in the bathroom. It means almost daily trips or phone calls to your child's school because your child has caused property damage or called the teacher a bitch and thrown his work in the floor and refused to do it. It means keeping matches in a locked box because he has a fascination with setting fires anytime he can get around them. It means building secret compartments in the walls and ceiling of your home to hide food for your husband's lunch because, like the alcoholic who cannot regulate his own consumption, your child doesn't stop eating or doesn't know when to stop once he starts. It means a visit from your neighbor late at night after you are already asleep in the bed to tell you that your child has broken into their home and stolen a computer, stolen a knife, stolen a gun. It means dealing on a daily basis with what seems to be a compulsive liar who isn't even good enough at it not to get caught. It means rarely ever having the opportunity to participate in adult conversation because the child needs 24 hours a day, seven days a week, supervision to prevent injury to themselves and to others. It means unending sleep deprivation because a lot of things happen at night; screaming nightmares, going outside and wandering around, deciding to cook a meal or take the telephone or the computer apart. It means never again in your life being able to pick up a newspaper and thumb through it and look and say, "Oh, Lyle Lovett is playing this weekend. Let's go listen."

And that's only a small part of how alcohol affects these children and the people who care for them, because I haven't said much about the physical damage that alcohol does to these children. Thank God, in my own particular case, I am lucky there because I don't have a child who has daily seizures. I don't have a child who screams in pain when he's touched by another human. I don't have a child who will grow up to only be four feet tall or have a cleft palate or have to wear their clothes inside

out because the touch of seams in clothes irritates them and is painful. I don't have a child with a sugar content in their blood so high that they shouldn't even be living.

The only physical things I have to deal with are dyslexia; the fact that he eats plastic; the fact that he was born without tubes in his ears and has chronic ear infections.

In my own experience in teaching the responsibilities of responsible alcohol service to the hospitality industry, I can tell you that there is a great deal of concern from the line level employee who waits on the table to the corporate level manager who sits in the glass office about this question of serving alcohol to pregnant women. My students in my hospitality class have brought it up so often that I incorporated it as part of regular role playing in the class, so I am very aware that the law of this land does not support us presently in refusing alcohol service to women.

That's not what I'm asking. What I'm asking is that the responsible service of alcohol be expanded to include a more visible warning to the people who have the most power to prevent this disability all together, and that's the pregnant customers of the State of Texas.

These children have a 90 percent chance of ending up in jail. They normally end up in jail for one of three reasons; for robbery - again, the impulse is not there. They see it. It's pretty. I'll pick it up and take it home - for arson because they like to set fires or as sexual predators - again because they can't control the impulses. They have a 90 percent chance of ending up as a ward of the state or in a mental institution, which means if you reverse the percentage, these kids have only a 10 percent chance of ever holding a job, living independently or becoming a productive citizen. What it means is that because somebody didn't consume alcohol responsibly, they never even have a chance at life and neither do the people charged with their care.

I look at the world a whole lot differently than I did two years ago. I look through it now as one mother refers to looking at the world now through FAS glasses when I see children misbehaving and running wild in restaurants; when I read that a teacher in an anger management class has her job on the line because she lost it in class with a student; when I hear about a young, uneducated couple who locked their daughter in a closet and starved her for years because she wouldn't act right; when I channel-surf through talk shows in the afternoon and see topics like, "My Teenager is Out of Control." When I think back in my life about all the employees I ever encountered who argued with me vehemently that an assigned task

had been completed when it was obvious that it hadn't; when I think about employees who had returned to work after two days of no call, no show, and actually be shocked that their name was still not sitting on the schedule; when I think about all the employees who, for one reason or another, just didn't seem to get it or get the picture. I don't sit in judgment anymore because I know this could be a situation, this could be an individual, this could be a child who is dealing with Fetal Alcohol Spectrum Disorders.

This is a terrible disability and it is 100 percent preventable. I think of it myself as an octopus because its arms seem to reach out and touch everything from education with the teachers who have to deal with them and have not been prepared to deal with children with these types of disabilities; to the business world, to the criminal justice system where so many of them end up; social security, medicaid, welfare systems, the mental health system; the adoption system and the medical profession. Unfortunately, one way or another, it touches all of society.

You have the ability, as the governing board here, to stop it or help to stop it by expanding the responsible service of alcohol to include the education of your customers as well as the employees of this industry with a simple sign. What no one involved in the responsible service of alcohol can ever afford to forget is that when you stand behind a bar or a counter and you hand alcohol across it to your customer, you are handing them something that potentially can make their evening a whole lot more enjoyable for them. You are also handing them what potentially can be a very deadly weapon and, yes, as we've learned, though it might be funny to watch a drunk in a bar making a jerk of himself, flirting with women who don't want to talk to him, and while it might be funny to watch a drunk stumble over his own feet and fall face down on the floor and it might even be funny to watch them throw up on the bar if you aren't the one who has to clean it up, what we've all learned is that what isn't funny is that that person belongs to someone. It's someone's mother, father, sister, brother, best friend, and that someone will miss them when they are gone. So, as a part of responsible alcohol service, we have learned to either stop consumption before it gets to that point or take measures to deal with the intoxication to make sure that guest gets home safely.

Please help the guest that can't regulate themselves by putting a sign where their mother can see it. Serving alcohol with care is not just a legal responsibility that the hospitality industry has to the State of Texas. It's a moral obligation that you have to society.

I've seen a lot of things since I started down this path. This one probably

hit me harder than anything else and what it says - any of you that own, work in or manage bars have seen this person a hundred times every night. Karen doesn't know she is pregnant. By the time she finds out, her child will already have Fetal Alcohol Syndrome and it's too late because then it's forever. A simple sign will help. Like was said by a previous speaker, if it saves one life, if it helps one person, it's a good thing.

MR. STEEN: Thank you. Our next speaker is Larry Camp, then I think there's just one more speaker and that's Doctor West. Is that correct? Mr. Haire, is that all?

MR. HAIRE: As far as I know. If there is anyone else here, I wish they would speak up because I may not be aware of them.

MR. STEEN: We have Larry Camp and Doctor West.

MR. CAMP: Good afternoon, Chairman Steen, Commissioner Seliger, Commissioner Madden. My name is Larry Camp. I am the Executive Director of the Texas Office for Prevention of Developmental Disabilities. The operative words in that title are prevention and developmental disabilities. I was contacted by Mr. Haire a few weeks ago about his proposal to require signage in places that sell alcohol for on-premises and off-premises consumption, warning of the dangers of drinking while pregnant and the risk of birth defects which would result.

Because that issue is so central to the mission of my agency, I felt it important to come in to speak in support of that proposal. The mission of my agency is quite similar to yours. Mine is to help minimize the economic, the human and the social costs associated with developmental disabilities which are preventable and to work to cause the promotion of preventable disabilities. We work to coordinate the different activities that occur in Texas among the public and private entities, as well as the activities that are promoted by public citizens such as Mr. Haire. We work to raise awareness of the preventability of disabling conditions so that there can be minimal cost socially, financially and personally.

I have a packet that I've given you and if I can just quickly go through the contents of it with you. I won't repeat much of the testimony that's been given to you before. I'll simply give you some things in writing that support the verbal testimony which you have received.

The first thing is a simple tri-fold brochure that my agency created along with the Texas Department of Health a few years ago warning about the dangers of drinking while pregnant because that could result in Fetal

Alcohol Syndrome.

I have a synopsis of the position statement of the American Academy of Pediatrics that relays 10 things one needs to know about Fetal Alcohol Syndrome; what it is, the preventable nature of it and there are things that can and must be done about it.

I have two pieces from the Centers for Disease Control. One of them is a frequently asked question list that gives a primer - FAS 101, as you will - of what alcohol-related birth defects, including Fetal Alcohol Syndrome, are. The second one is a set of talking points, a set of issues that talk about the relation of prenatal alcohol exposure to social problems and the estimated incidence and prevalence rates of them.

I have a copy of another CDC report which was referred to by one of the other speakers that gives the details of the drinking patterns among women of childbearing age in the country, and the Texas subset is not specified in here but, upon request, I can get that information for you.

I have a copy of a newspaper article from the *Austin American Statesman* dated December 30th of last year wherein they report a section of a Texas Department of Health study showing there is an unusually higher rate of birth defects recorded in the Coastal Bend of Texas. While people may speculate about the causes and the circumstances surrounding that statistical event, I call your attention to the second paragraph from the bottom in the center section where it says, "The five other defects are ventricular septal defect, atrial septal defect, patent ductus arteriosus, obstructive genitourinary defect and possible/probable fetal alcohol syndrome." Curiously enough, I spoke to the senior epidemiologist who conducted this study at the Texas Department of Health and alerted him to the content of the next item in your packet which is a subset from the publication *Fetal Alcohol Syndrome Diagnosis, Epidemiology, Prevention and Treatment* which was published by the Institute of Medicine in 1996. The right side of that handout lists the alcohol-related birth defects, and you will find that the first three defects, which are included in the Texas Department of Health study and they found the higher than normal incidences in the Coastal Bend are indeed alcohol-related birth defects, those were not included in the last category which they looked at of possible/probable Fetal Alcohol Syndrome.

When I brought that error of admission to their attention, the response was one word, "Oh." The next words were, "Thank you for bringing this to our attention. We need more study in this."

We've talked about the social cost. Other speakers have spoken from their heart and from their personal experiences about what it's like to live with a person affected by prenatal alcohol exposure.

The next item in your packet is a more nuts and bolts data driven - if you will - description of what those speakers told you about. It's a Prevalence and Cost Calculator. Using actually fairly conservative estimates of incidence and prevalence rates of these disorders of one person with full Fetal Alcohol Syndrome born per every 1,000 live births and approximately 10 times that many for every person who is affected by prenatal alcohol exposure that has some brain damage as a result but may not have the full syndrome only because they lack the facial features.

We then look into the handout and see how many Texans are born each year likely with this full syndrome; how many Texans are born each year affected by prenatal alcohol exposure and the total numbers. We then go into the numbers within the total Texas population; those with brain damage and related disabilities, including Attention Deficity-Hyperactivity Disorder, Speech and Language Disorders; Sensorineural Hearing Loss and other disabilities. Then we get into costs. The costs are on the next to the last page. We find that given the rates I gave you, a conservative estimate of one FAS birth per 1,000 and 10 births totally affected, that the annual cost for special education and juvenile justice, alone - just those two human service agencies, alone - not including medicaid, not including mental health services, the figures are staggering. I believe it's 115,600,800 dollars. The total cost for FAS and all other disabilities related to that are 604,388,312 dollars per year. Then it gives you the cost per day, etcetera.

My agency is very concerned about the preventability of all developmental disabilities and of all disabling conditions. This set of disorders is clearly the most preventable, likely the most costly and, as you've heard some of the testimony presented today, some of the most devastating.

I have other literature which I can provide you outside of this meeting, which is a copy of the *Institute of Medicine Report*. It was published in 1996 that gives further background to what we've been talking about today; a Centers for Disease Control study on the secondary disabilities associated with fetal alcohol disorders. These include disruptive school experiences that were spoken about earlier, involvement with the law, the criminal justice system, mental health concerns, mental retardation and school and learning disabilities and a number of other conditions.

I have a November 2001 special issue of *Alcohol Research and Health*. The subtitle is *Alcohol-related Birth Defects - An Update*. This is an excellent primer and gives more details about these conditions. There is also a publication, *Fetal Alcohol Syndrome - A Guide for Families and Communities* that talks about the preventable nature of these disorders; what can be done, what should be done and what is being done.

The words that you have heard today from the speakers that are parents are quite moving. By training, I'm a clinical social worker, a psychiatric social worker. I have spent about 20 years in direct practice in out-patient settings and hospital settings, as well as in residential treatment. I can only tell you that one of the stories - I believe it was Ms. Hyman that reported about being on the floor with her child at night - I can tell you I was on many a floor many a night with many a child and many an adult, either with my life at stake or my health and welfare at stake or the welfare of other patients and residents at stake because people with the more extreme versions of these conditions - the brain damage being most severe - are the most out of control, the most impulsive and the scariest.

We are not talking about signage being able to prevent all of these disorders. We are not talking about signage being the silver bullet or the end-all. We are talking about signage being one element of an overall prevention strategy that includes public awareness or public education. It also includes professional education and professional development; the development of public policy; the provision of services and the focus to at-risk populations.

Each of these publications notes that the cornerstone of all prevention strategies is public awareness and public education. What we believe is that every Texan should know, but most Texans don't know about the dangers of drinking while pregnant or the dangers of drinking if women are considering being pregnant, yet they deserve to know.

We are very happy that the beverage industry has taken a much stronger stance in the last number of years to promote the concept of drinking responsibly and the patrons being responsible for their behavior. We laud that and we would like to bring them into a coalition - if there were such a coalition to be developed - to promote the welfare and the health and the safety of Texans; to have them do their part to include in their messages of drinking responsibly to know what responsible drinking and responsible behavior are. That responsibility is manifested by making informed decisions of what the risks and benefits are - the positives and negatives, if you will, of drinking while pregnant, so that the individual women, their men partners, our sons and daughters, can know what they need to know so that they can make informed decisions. That's where the element of choice and voluntariness comes into this issue.

I support the proposal that's brought before you to require establishments to inform and educate and to help make Texans aware of the issues so that they can make informed decisions. I urge that to be the chain of events rather than leaving it to the establishments to voluntarily post signs because that potentially leaves patrons, our sons and daughters, out of the information loop.

As the director of my agency, and as my agency the lead agency in Texas for these disorders, I've received several consultations and inquiries by phone, by mail and by e-mail from people seeking information to clarify the myth and to help them make informed decisions and then to know what to do about it. At another time, I'd be happy to share the identified written correspondence with you about that, but I can only tell you that I have heard many a story from many a woman of childbearing age who has been drinking, who was drinking while pregnant, who had a child affected by her drinking and who, to her chagrin, one woman said is still living with it. She chagrined that she has to live with the results of her behavior. I have several examples of that that I can share with you.

In closing, what I wanted to do is to elicit your support and your collaboration with me and my agency and with the other agencies that I work with, including the Texas Department of Health, the Texas Commission on Alcohol and Drug Abuse, the Texas Department of Mental Health and Mental Retardation, as state agencies who provide services to people who are affected with these conditions and whose budgets are woefully underfunded to provide services to these and other persons like them with these disabilities.

In speaking with my fellow commissioners and directors, to the individual they would say, we'd much rather not do what we are doing or do so much of what we are doing. We would like to have decreased service demand and decreased service utilization among each of our agencies, but we can't. Every dollar we get has to be maximized and put into services to deal with people who were already downstream, if you will, having already been affected with the disability. They would hope to be able to put more money into prevention, themselves, but they are not able to, so at some point, that's why my agency was created and why I elicit your support and your collaboration in this effort to work to prevent the further occurrence and the increased cost of these disabilities.

If nothing else, I'd just like to leave myself as a resource person to you either later on in this meeting and certainly outside this meeting in your further deliberations and any other proceedings that I'm sure you will have about this. Do you have any questions for me, otherwise, my formal remarks are concluded.

MR. STEEN: Thank you, Mr. Camp. Our last speaker on this issue is Doctor James West.

DR. WEST: Good afternoon. I'm Doctor James West. I am head of the Department of Anatomy and Neurobiology in the College of Medicine and Interim Vice-President for Research for the Texas A&M University System Health Science Center, but I'm not here representing the University Health Science Center nor am I here as administrator. I am here speaking to you as a researcher.

I have been funded from the National Institutes of Health for the past 23 years to investigate the effects of alcohol on the developing brain. I'd like to talk to you a little bit this afternoon about birth defects in general and about Fetal Alcohol Syndrome and alcohol-related birth defects in specific.

You might be surprised to note that the field of teratology of birth defects is only about 40 years old. In 1960, starting with the thalidomide tragedy, which you may have heard about - thalidomide was a sedative that when taken by pregnant women during a very short time during the first trimester, just a three-week period during the first trimester, caused babies to be born without arms or legs. Prior to that time, scientists and physicians alike thought that the placenta functioned as a barrier to prevent drugs or other chemicals from crossing it to affect the fetus. That was a dramatic change in terms of the way we started looking at birth defects. Up until that time, we had no idea what caused any kind of birth defect.

Fetal Alcohol Syndrome was defined in 1973. Research since then has proven conclusively that alcohol is a neuro-teratogen. It causes birth defects related to the central nervous system. This isn't a point of conjecture. This data is so solid that more research has been done relating to FAS than all other drugs combined. In fact, the methods for FAS now are used whenever someone wants to investigate another drug. It's the leading known cause of mental retardation. You've heard some similar comments today, but it's the leading known cause of mental retardation in every country of the world that allows alcohol. This is a clear and present danger to our children.

We've talked about how devastating it can be for someone who has full-blown FAS, but it can also be a major problem in a variety of ways to children who are less affected and whose mothers were not hard core alcoholics and who drank less. By calling alcohol a neuro-teratogen, what I mean by that is that in the developing embryo and fetus, alcohol prevents dividing cells from dividing, so it prevents the brain from becoming as big as it's supposed to be. It kills cells that have already been formed. Our laboratory was the first in the world to demonstrate that late in

development, alcohol can actually cause abnormal brain connections. If you think about taking some wires from your television set and repositioning those in different connections and how that might abnormally affect your television, well think about how that might affect something as subtle as learning and memory.

How much alcohol does it take to cause damage? That's one of the key questions. We still don't know the answer to that. What we do know is this. As the years go by, the more sophisticated techniques that we have and the more sensitive the techniques we have to look at this, the lower and lower the amount of alcohol that it takes. We know that animal studies have shown that binge drinking for as little as one day can kill neurons in the developing brain, and animal studies are very closely correlated with human studies. When our lab showed that short-term memory was affected in rodents, our colleagues at Seattle, who had a cohort of children with FAS and with children whose mothers were binge drinkers, but the kids did not have full-blown FAS, what they found was that binge drinking was a major component of what was involved in terms of determining the effects on these kids and that short-term memory was a problem there. The problem with short-term memory, as you may know, is that when you learn something you hold it for just a short period of time and then it has to be transferred into a long-term memory under normal structure. If there are difficulties in doing that then children aren't able to learn as well. So, this is one of the problems that these kids have, and it's not nearly as severe as some of the things that you heard earlier this afternoon, but it can be devastating on that child's life as it tries to learn in school and keep up with normal kids.

Last month, I had a grandson that was born. My daughter didn't drink at all. I encouraged her not to drink. I wanted my grandson as the military - when you watch television and you see the ad - "Be As Good As You Can Be." I wanted my grandson to be as good as he could be, so I encouraged her not to drink at all.

My research today is working on the mechanisms of damage; how alcohol kills neurons in the developing brain. It's frustrating because I think the idea is wrongheaded. I call this the Humpty Dumpty Syndrome. I think we are all familiar with Humpty Dumpty. Humpty Dumpty sat on the wall and fell off and all the king's horses and all the king's men couldn't put him back together. What we are trying to do with understanding how alcohol destroys the developing brain is the idea that we can come up with some kind of therapeutic intervention and somehow fix these broken brains. I am particularly concerned about those kids that don't have full-blown Fetal Alcohol Syndrome. FAS really represents the tip of the iceberg. In terms of these other kids - we may not be able to get a chronic alcoholic woman to stop drinking because she sees a sign in a bar, but someone who drinks less and who doesn't know about it, very well might.

In terms of that, I suspect that those of you who are here today who deal with alcohol and are educated didn't know all the nuances about how alcohol can damage the developing brain. I can tell you that as part of my job, I give grand rounds to departments of OBGYN, pediatrics and psychiatry, and this question that I brought up a while ago about how much alcohol is harmful, some of the people that ask that question most are the physicians and the residents after I give grand rounds because they don't know. If the physicians of Texas and Iowa - where I was before I moved here - are as naive in terms of the consequences of alcohol exposure during development, then how can we possibly expect our lesser educated Texans to be knowledgeable on that?

Therefore, I urge you to support this measure to put signage in bars to warn women who are pregnant, who are thinking about becoming pregnant, not to drink or to reduce their drinking. This really isn't a type situation of pro and con of whether we ought to do this. This is the responsible thing to do and, if we do it, there's a good chance that some of those people with fetal alcohol effects today, that we won't be generating those day-after-day and year-after-year. Thank you for your attention.

MR. STEEN: Thank you. Ms. Madden, do you have any questions?

MS. MADDEN: Yes.

MR. STEEN: Would you like a particular person to come forward?

MS. MADDEN: I just wanted to say that obviously this is a very chilling report, and you all are trying to maximize your effort to inform the public about this. I believe Mr. Haire was the one who said he had done an informal survey. I did that, too. When I received this report, I really did think it was just shocking. I am aware of Fetal Alcohol Syndrome. I know a whole lot of young adults who are aware of it, too. I thought there must be a certain population in our state that's not aware, so I called hospitals in my area which is Dallas. I called our county hospital. I called our private hospitals, and they all do give information packets that addresses this in their clinics. I did speak with some private physicians, obstetricians, and they, too, do that. In my mind, I'm thinking what is the best way for you all to get out your message here because in my heart I'm not sure that a mandatory sign is going to accomplish your goal. I'm thinking of PSA's. Public service announcements reach a huge audience. I know that the Texas Safety Network which addresses alcohol issues in a public forum would be a wonderful vehicle. I see our agency as one that perhaps could coalesce with other agencies in helping in some way. Perhaps we need to do a little bit more research on this, but to me this is really a health issue than more of a regulatory issue.

In closing, let me just say that you certainly have a sympathetic ear in this

group. There is no one sitting in this room that wasn't touched by what all the speakers have said.

MR. STEEN: Thank you. Mr. Seliger?

MR. SELIGER: I have nothing, Mr. Chairman.

MR. STEEN: Mr. Garza, I have a question. We do the seller/server training.

MR. GARZA: Correct.

MR. STEEN: I took the course. I may be wrong, but I don't recall that we talked about this in the seller/server training.

MR. GARZA: Currently, Mr. Chairman - I see Debbie Dixon out in the audience and she can correct me if I'm wrong - we don't offer information in the curriculum about these programs; however, under Chapter 50 of our rules, the administrator or his designee is allowed the authority to add a new curriculum to the subject matter. If this is something you all would like for us to pursue, we certainly could in working with Mr. Haire and some of the folks who have come before you this afternoon to take a look at seeing if we could add some subject matter curricula to be added to that training program. I know some of the speakers have alluded to the fact about the importance of responsible alcohol sales and service, and I know that that's a subject matter that this agency and the industry have addressed with a lot of passion over the last few years. That is part of the cornerstone of any responsible licensed establishment to be responsible in how they sell and serve their product. We certainly would be willing to explore possible entry of that information into the curriculum that's currently used.

MR. STEEN: Do you have any other comments, Mr. Garza?

MR. GARZA: I would just say, and I've talked with Mr. Haire about this before and I know he spoke eloquently about this at one of our public forums earlier in the year when we went about the business of starting to assemble our strategic plan. I think that Jim and every speaker who has come before you has made a very compelling case for the need for greater public awareness and education as to the effects of Fetal Alcohol Syndrome and Fetal Alcohol Effect.

The time that I spent working with the Texas Commission on Alcoholism, MHMR and the Department of Health, I will tell you that each of those agencies view this as a very serious public health issue today. So you may be better prepared to address this issue, with your permission, I would like to speak to Doctor Sanchez at the Health Department, Karen Hale at MHMR and Doctor Wanser at the Commission on Alcohol and Drug

Abuse and find out from them in terms of what public information or education campaign they have with respect to FAS and FAE and how we could partner with them in developing a program, as you say, Ms. Madden, to explore ways of getting the information out beyond just a mandatory sign. The use of public service announcements, the use of educational campaigns, get television stations and radio stations involved in getting this information out. If we do that, I think we might have a better chance of reaching a far wider audience with this message. With your permission, I would be prepared to do that along with staff and have some information for you for next month's meeting with respect to my findings, as well as have an opportunity to contact other ABC's across the country in terms of how they have dealt with this and what have been the results of those mandatory signs. Have they noticed an increase in information? Has anybody measured the effects of having these signs placed at on-premise licensed establishments?

MS. MADDEN: I'd like to see you do that.

MR. SELIGER I would, too.

MR. STEEN: So, you are going to get together with your staff and outside people and you are going to look at this, and at our next meeting which will be when?

MR. GARZA: July the 23rd. I believe, Mr. Chairman, we are scheduled to meet on a Tuesday. With your direction, we will have a report prepared by that time.

MR. STEEN: Will you do that and give us some options?

MR. GARZA: Yes, sir.

MR. CAMP: Mr. Chairman, may I add just a quick note in support of what Mr. Garza just said and Commissioner Madden? I think those are excellent suggestions and I welcome your outreach effort to those other agencies as I mentioned in my testimony. I'd be happy to include my office to that list of agencies that you reach out to. Commissioner Madden, I'm really impressed with your homework you did on this issue and I appreciate that.

MS. MADDEN: Very informal, as I said.

MR. CAMP: That's fine. I've spoken on this issue to bodies down at the capitol and elsewhere and few have been as educated and have done their homework as you. One point I'd like to bring out, however, is that we see it as not an either/or issue - regulatory or public health - but an "and" issue. It's a regulatory and public health issue, where the regulatory arm supports the public health arm, going forward together using all the powers and authority of the State of Texas to support the health and safety and welfare

of our citizens, using the regulations and the programs and the services to create effective public policies to make a difference. Thank you very much.

MR. STEEN: Thank you.

MS. MADDEN: Thank you.

MR. STEEN: Mr. Haire, thank you very much for bringing this important issue to our attention. I assure you we will deal with it.

Now we will go back to our regular order in the agenda. The next item of business is the adoption of a resolution honoring Allan Shivers, Jr. Ms. Madden, would you read that please?

MS. MADDEN: “WHEREAS, with sound judgment and uncompromising dedication, Allan “Bud” Shivers, Jr. has dutifully fulfilled his oath to preserve, protect and defend the constitution and the laws of the great State of Texas, as a member and chairman of the Texas Alcoholic Beverage Commission; and

“WHEREAS, through his able leadership and guidance, Chairman Shivers has provided invaluable service to the TABC, the alcoholic beverage industry and the citizens of Texas; and

“WHEREAS, Chairman Shivers’ unyielding dedication and professionalism will forever mark his legacy of service to the Texas Alcoholic Beverage Commission in an immeasurable manner; and

“WHEREAS, Chairman Shivers’ admirable integrity, commitment and passion for public service have marked his contributions to the State of Texas as a true Texan.

“NOW, THEREFORE, BE IT RESOLVED that Allan “Bud” Shivers, Jr. be duly recognized for his noteworthy public service as a member and chairman of the Texas Alcoholic Beverage Commission; that his contributions and accomplishments be memorialized by this resolution in the permanent minutes of the commission; and that the sincere appreciation and warm congratulations of the commission be hereby extended to the Honorable Allan “Bud” Shivers, Jr.”

MR. STEEN: Do you move that this resolution be adopted?

MS. MADDEN: I do indeed. I move that we adopt this.

MR. SELIGER: Second.

MR. STEEN: A motion has been made and seconded. Any further discussion?

MS. MADDEN: I'm delighted that we are doing this. I think he's very well deserving.

MR. STEEN: All in favor, say aye.

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. The resolution carries. We are working - and I've spoken with Ms. Madden and Mr. Garza about it - on an appropriate time to honor Bud Shivers, and at that time we will present this resolution to him. We will go ahead and sign it today.

MS. MADDEN: Are we going to frame it?

MR. STEEN: We will have it framed.

Let's move on to the approval of the minutes of the April 22nd meeting.

MS. MADDEN: I so move.

MR. SELIGER: Second.

MR. STEEN: The motion has been seconded. Any discussion? All in favor, say aye.

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. The minutes are approved.

The administrator's report. Mr. Garza?

MR. GARZA: Just briefly, Mr. Chairman, just for the record I'd like to note that we did change this month's meeting date to accommodate Ms. Jeannene Fox, and you will note she's not here this afternoon. I wanted to make sure she read that in the minutes. Actually, she is fulfilling a civic responsibility by answering a jury call this afternoon and sends her regrets and, I'm sure, her apologies.

Mr. Brian Guenther is the gentleman in the middle who is replacing her this afternoon. He is the director of our licensing department, as many of you already know.

On a sadder note, this afternoon Chief Hamilton is not here. He is up in

Killeen, Texas for the burial services for his brother. We have extended our condolences to him and his family. We have some staff up there for those services, and we have Assistant Chief of Enforcement Sam Smelser here with us this afternoon.

That's all I have.

MR. STEEN: Thank you.

The next item is fiscal stewardship of the agency. Ms. Hudson?

MS. HUDSON: Yes, sir. This month we looked at the legislative caps that we are under. We are still below on those caps. We are below on the out-of-state travel cap. We have a balance of about 3,000 dollars left to spend out of those funds. We are well under also on the FTE cap with about 18 vacancies, is what we have been averaging. We currently are at 16 vacancies. We are also below on our capital budget cap. There is about 64,000 dollars left there and that will be used to make payments on our mainframe lease.

The other part that we looked at, we looked at our contract workforce. This is how many people that we employ as consultants. We are using some part-time positions throughout the agency, and we've used about four consultants. Our internal auditor is an example of one of the consultants that we would use. We've also had a trainer come in from outside and we've had some programming work done.

With regard to office leases, we have three office leases that are going to be renewed. The Austin district office just relocated. I think they are actually working on it today. They started on it Sunday. They stayed in their same location. They have just moved down to a lower floor and, in doing so, they added some square footage due to some new FTE's that they have taken on and to enlarge their confiscated liquor area. The two others that we will be looking at will be Bryan and Victoria that will be coming up.

MS. MADDEN: I'd like to go back to the caps for enforcement. Is this a fluid number? I know we are under. Is this kind of a fluid number? I know we made some new hires, but I know people are retiring.

MS. HUDSON: Right. Currently right now in enforcement we have four vacancies, and that posting for the new agents went out this month. Once we get this eligibility list - in the future they will be hiring off of an eligibility list as these come open.

MS. MADDEN: Did we ever hit our full cap?

MS. HUDSON: We've never gotten there yet. We've always been under, but I think this

change in hiring off that eligibility list will bring us closer to the cap.

MS. MADDEN: I think it's important to get the number up a little bit, because if we want to ask for more money in our LAR, we just need to be closer to our cap.

MR. YARBROUGH: Ms. Madden, I think in enforcement staffing the day we offered the letters of employment to the agents for the last class, we hit the cap on that day. Immediately - probably before they started the academy - we had another retirement. That's what we hope to accomplish by an eligibility list. As one person retires, we immediately are able to fill that position so that we can keep closer to those caps. As you've expressed, as well as all the other commissioners in the past, that we keep as full a force as possible out in the field with the limited number of enforcement people we have.

MS. MADDEN: Thank you.

MR. STEEN: Mr. Seliger?

MR. SELIGER: I have no questions. Thanks.

MR. STEEN: Ms. Hudson, thank you. I know you put a lot of work into these reports. We appreciate it.

Item six is to consider proposed amendment to 16 TAC Section 33.23 as published in *27 Texas Register*, pages 3691-3692 and *27 Texas Register*, pages 3795-3797 on May 3, 2002. That's Alcoholic Beverage Licenses & Permits Surcharges.

MR. YARBROUGH: Mr. Chairman and Members, let me draw your attention to how we got to this position. This is what Ms. Fox would say, had she been here, since this is one of her projects. Section 5.50 of the Alcoholic Beverage Code says, "The commission by rule shall assess and collect annual surcharges from all holders of a certificate, permit or license issued by the commission in addition to any fees set by this code. The surcharges shall be set at a level so that the anticipated total of all fees collected by the commission for a fiscal year and all surcharges for a fiscal year are equal to the legislative appropriation to the commission for the regulation of alcoholic beverages. In assessing a surcharge the commission may not overly penalize any segment of the alcoholic beverage industry or impose an undue hardship on small businesses."

During sunset several years ago, this language was put in to insure that the agency would be self-funded from fees. We have been able to go with the same surcharges for about the last three or four years. When we first developed these initially right after the legislature put them in, we did just a flat fee for everyone. Shortly thereafter, we came back in and did a weighted average, trying to calculate the amount of service that we

provided the different segments of people in the alcoholic beverage industry. Once again, this was back when we calculated these before we had totally gotten away from the gross receipts tax and transferred that function. So a lot of those things were weighted somewhat differently.

We have reviewed that weighted average now to look at what segments of the industry - to what type of license and permit holders are we required to devote the most amount of our time. Of course, there are a lot of things that are spread equally across everything, for example, ports of entry. Even though that is a sizable program, we offset some of those costs with revenues they bring in through their surcharges, but we have additional costs that have to be spread among all licenses and permits. This is not attributable just to one. We weight some of those to protect the interest of package stores. That would protect those stores on the border or areas of the state where people are bringing alcohol back from Mexico. We look at other things; our enforcement and our compliance, the people that pay taxes, the people that day-to-day we are doing the most amount of our inspections. We sat down with senior members of the staff, with licensing people, with Assistant Chief Smelser, with our compliance people and asked, "What do you spend your time doing?" We looked at those licensees and permittees that we spend our time really using our personnel for and the personnel costs amount to 80 to 90 percent of the total agency budget. Then we tried to weight those license and permit fees to that. We have come up then with the weighted average and we have to bring an approximate amount of 10 million dollars- 9.9 million dollars - starting this next year to cover the amount that we will need for the remainder of the biennium. This is the biggest jump we have had since we have done the surcharges.

It is brought about by two or three things. One is through some miscommunications between our offices and the comptroller. The amount that we are going to have to bring in is a little higher than we thought we would have to because the legislative appropriation process for salary increases was not directly to the agency, but was instead to the comptroller, who then makes that money available to the agency. We didn't, at first, think we were going to have to collect that money, yet that is allocated as an indirect appropriation. As we run the payroll each month, those salary increases are then appropriated on a monthly basis from the comptroller then directly to the agency. We had to pick that up. We also have the increases in health insurance. Essentially, this agency is just like a business. We have to project and collect the revenues that it costs us to operate. This would include such things as payments we make to the State Office of Administrative Hearings to provide our hearings, to the Comptroller's Office for running our payroll for us, all the other indirect things, matching for retirement contributions, insurance contributions, and so forth. Overall the agency, in addition to the state fees and those other fees that we collect from seller training, surcharges

that we collect from the ports of entry - 50 cents per importation - label approvals that we collect, we can use all of that money to offset, but we still have to raise for the remainder of the biennium 9.9 million dollars.

In Ms. Fox's weighting, and basing this on the estimated number of licenses and permits - we used last year's number of permits issued - we estimate that we will have to bring in that 9.9 million. Ms. Fox figured that very closely. This would bring in close to 64,000 dollars she left on the table. But that is about as close as we could calculate those fees and still fulfill our fiduciary responsibility.

There may be some question as to how we allocated those out, but the retailers of the state seem to bear a little bit of a brunt of an increase this time compared to some of the others. Two things account for that. When we looked at the amount of work that we are doing, obviously, as you know from the monthly reports, as you know from reading the newspapers, unfortunately, even though we are doing a better job of curbing minors possessing alcohol, there is still a number of them that are able to buy from vendors who are not actively engaged in the responsible vendor programs. So we spend a lot of our time doing stings, still working Cops in Shops, things in the retail communities. We also are called many times to respond to problems at retail locations, so we spend a great amount of our time in that. What we found is not only that in their allocation, frankly, it jumped because we probably had not allocated enough previously in our weighting, so that shows more of an increase to them than possibly some of the others.

These are the surcharges we need to collect and need to put this into effect for your adoption today so they can be effective September 1st. We have worked closely with the comptroller to insure that this would cover the amount necessary for this biennium. We hope that at the current fee level, unless there are large increases in the legislature, that this will work well into the next biennium and that we won't have to come back immediately in September 1, 2003, and make a radical change. With that in mind, I would be happy to answer any questions that you might have. We may have some interested people in the audience who also have comments on that.

MS. MADDEN: This is such a significant increase. Have you received negative comments about this?

MR. YARBROUGH: We have received interested comments. Obviously, as anyone who is a taxpayer in this state, which would include everybody in the room, if it's going to affect you, you are interested. We've received a lot of comments concerning how much their fees went up compared to others. Part of that has been because of the quickness with which we've had to run this through and maybe we haven't explained it well enough for people to

understand how we got the calculations. I know Ms. Fox, in the last week, has spent a good amount of time calling back anybody we got comments from. I think she has talked to people with the Petroleum Marketers Convenience Stores Association. I don't know if she has answered all those questions. She has talked with people from the wineries that have commented to us. Again, I don't know if we have answered all their questions, but we have tried to explain to them how we derived those figures, so they may be better informed even if they are not happy paying a higher fee. Some people have asked why do we have to go through this? Why doesn't the legislature just raise this? As I explained to Commissioner Seliger about our fee structure, and would point out again, if it was a legislative fee, then that would also impose an additional 50 percent increase at the city and county level. So even though this is an increase, it is only half of what it would be if it were passed by the legislature and put into statute. We have tried to control costs by making this fee only to fund the agency, not windfall costs for other people in the licensing process.

MS. MADDEN: I know you all have thought this through, but is there any way to have a little bit softer landing, any way to rob from Peter to pay Paul besides this huge increase?

MR. YARBROUGH: If we could roll back the calendar nine months and increase it last September instead would have been the only way to have caused less of an increase. In hindsight maybe we should have done that, but we deliberately postponed it, thinking that it would not be as big of an increase. Upon consultation with the Comptroller's Office we found out that we were going to have to recover some costs that we did not initially anticipate. That is one of the things that has caused the increase.

MS. MADDEN: There are no other places that we can receive revenues? Obviously, we can't from the legislature.

MR. YARBROUGH: Not even grants or things like that will offset this. This is just to cover appropriated receipts and it has to come from the surcharges statutorily. We have searched high and low for other things that we can charge for and we will continue to. If there are services that we are providing for free that have a cost associated with them, we are authorized under the code to charge for those, and we will continue to look diligently for them. Unfortunately, I think if they were significant in terms of revenue, we probably would have already ferreted those out, but we will continue to look for those.

MR. SELIGER: Mr. Yarbrough, is this 9.9 million dollars simply to meet the shortfall between now and the end of the fiscal year 2003?

MR. YARBROUGH: Yes, that would cover the entire revenue for the biennium that is needed.

Let me back up and make sure everyone understands how we do it.

From our appropriation, both directly in the appropriations bill and the indirect costs, we have a bottom line for the biennium. It's 56 or 57 million dollars, something like that, this year. We then can allocate all the statutory fees that we anticipate collecting. We run those by the comptroller; all of the seller/service revenues that we get; the ports of entry surcharges - we cannot count excise taxes, but the surcharges we collect we can offset - and the label approvals that we receive through marketing practices. Brian, Denise, is there anything I've left out?

MS. HUDSON: No.

MR. GUENTHNER: No

MR. YARBROUGH: I think those are all the significant areas of revenues. Obviously, if we sell copies of the Alcoholic Beverage Code, printing, things of that nature, add into that, but they are insignificant. From that, whatever revenue there is, the difference between that and the appropriations, we are required to collect from surcharges to license and permit fee holders. That's the proposal that we bring to you today. Of the increases, I think the most significant one is to a private club wine and beer retailer's permit - 162 dollars a year increase. There are several that are 102 dollar increases on down to three or four that are actual decreases. For some of the agent's permits, beverage cartage, manufacturer's agents, as I said, it is more of a paper work cost. We are handling reports as opposed to having to do a lot of inspections. The big increases are seen on the retail end of the industry and that is where most of our workload is being spent.

MR. STEEN: Mr. Yarbrough, we have in our notebooks a number of letters from vineyard owners or wineries.

MR. YARBROUGH: Yes, sir. We have looked at that and they would have a 29 dollar increase on a winery permit. A wine bottler would have a 44 dollar a year increase over what they have had in the past. Their surcharges would be 160 dollars for a wine bottler, 186 dollars for a winery permit. That's up from 116 and 157 dollars, respectively, previously. I know there has been some concern about what we do to regulate wineries. We have spent a considerable amount of time with the wine marketing program that was passed last session of the legislature. We have spent a lot of time working with wineries trying to insure that we publicize the Texas wine industry. We spent that time with the Commission on Agriculture. All that adds up. Again, there are not many of those. You'll notice that for a winery permit, there were only 39 of those issued last year and 27 wine bottler's. They don't add a tremendous amount to the total revenue we bring in - approximately 11,500 dollars as compared to the off-premise wine and beer license that will bring in 1.5 million dollars, just because of the sheer

number of those, and their increase is an additional 102 dollars.

MR. STEEN: When we get correspondence, do we respond to each of those?

MR. YARBROUGH: Yes, to the best of my knowledge, Jeannene has personally called and talked to people from everyone we have received correspondence, or attempted to, whether or not she was able to get through to them. We made a concerted effort to include everyone. We also wrote to all the trade associations to inform them of these increases; sent them copies of this so they could be informed.

MR. STEEN: No one has signed up to speak, so does that mean that they are comfortable with it?

MR. YARBROUGH: Maybe they are accepting of it, I'm not sure. If you open it up, you may have several who want to speak.

Mr. Switzer with the Fredericksburg Winery is never afraid to have a comment on any subject. I guess, Cord, you can probably speak for a number of the wineries.

MR. SWITZER: Good afternoon. My name is Cord Switzer with the Fredericksburg Winery, Fredericksburg Texas. A number of us have expressed interest, letters have been written, and I had a personal conversation with Ms. Fox. It goes back to the same basic question. A lot of us do not understand if we do a comparison of a winery permit of 186 dollars versus an off-premise retail beverage permit, that's less time spent. Where you are spending your time, it seems to us, is doing those sting operations, doing Cops in Shops, etcetera, etcetera, etcetera. So the question was where do we fall in the ranking process by how much time you are spending versus the actual dollar permit compared to the others on the list? And that's been the question and I think Randy just answered part of it to some extent. We go back to the wine marketing program, which I didn't know the cost was being covered in that area, but that answers most of the questions. Again, the information initially did not include - I'll qualify that - the wine marketing program assistance that was being provided by the Texas Alcoholic Beverage Commission, it was our understanding that this was under the Department of Agriculture.

MR. YARBROUGH: We have to look at all of our costs. Yes, they are doing most of it, but we still work closely with them and we factor in what we do. We fund that. For Mr. Seliger's benefit, that was a bill that was passed the last session of the legislature. In addition to all this, four dollars of every license and permit fee, except for the agent's permits, goes to the Agriculture Department each year. That's to cover the Texas Wine Assistance Marketing Program, so everybody is helping to pay for that, not just the wineries. We do look at our portion of that. In addition, there are

compliance and enforcement costs in the winery area because they are tax paying entities. A retailer only pays sales tax, but we have the excise tax that we collect from the wholesalers, from the wineries, so we have both compliance costs involved in those as well as enforcement costs.

MR. STEEN: Mr. Switzer...

MR. SWITZER: Yes, sir.

MR. STEEN: You own, what is the name...?

MR. SWITZER: It's a family business. Three brothers, our wives, my 82-year-old mother, my 12-year-old nephew, my 7-year-old niece, Chardonnay. My 82-year-old mother is my antique labeling machine.

MR. STEEN: As someone in the business, tell me how the action that we are taking today will impact you.

MR. SWITZER: Again, there's a number of small wineries that are trying to come on-line. As with any small business coming on-line, the cost factor for any kind of permit - because not only do we have your permits, we have city permits, county permits and federal permits also, and I forgot the health permits - all these permits make it, to some degree, a barrier for entry into the marketplace by a small business. That is true with any small business in any environment. So it is always the consideration of what is happening. What is going on? Why are we being increased this amount versus somebody else? Nobody is denying that you need the revenues, that's not the question. The question is whether there is a better allocation process. Should we be looking at not only something in size, sales revenues, or something along those lines as a marking point or ceiling points for certain levels of fees? Should a winery or any business that is just starting out and only has "x" number of sales - or we can use the excise tax paid by wineries, in particular - should they be at one level of permit and then once they pass another stage, move into a higher cost factor? That would allow a more effective entry into the marketplace. It would allow the person trying to start out to have a lesser cost factor, then as they came on-line and as their business progressed, the additional revenues...again, it's just part of the process. In excise tax at the federal level, small wineries and small businesses, to some degree - and I can't speak to the other types of alcohol manufacturers - but for small wineries, if you produce less than - and I'm doing this off the top of my head - one million gallons per year, then you are taxed at an excise tax less than somebody above that level. There are different tiers. So I'd say it should be the same concept here about permits. Should we be looking at a permitting tier that says at the entry level your dollar sales or your excise tax - that would be an easier way - based upon the number of gallons produced will be paid at a certain level fee and once you pass another tier, then your fee increases, and when

you pass that tier another fee increases. The problem with that is, because there are so few of us, the administrative costs of publishing those tiers, etcetera, etcetera, will probably off weigh any benefit. That is always the question we are looking at in the industry.

MR. STEEN: You drove here today from Fredericksburg?

MR. SWITZER: Affirmative, sir.

MR. STEEN: On this issue?

MR. SWITZER: Yes, sir.

MR. STEEN: Just quantify to me what it would cost you? What does this mean to you?

MR. SWITZER: Again, it's going to increase my costs. I have to have both permits to function effectively in Texas. I have to have, not only a winery permit, but a wine bottler's permit. I can't just buy one permit. We've never combined those permits, which we have suggested numerous times in the industry here in Texas, that we combine the two permits and make it one permit. So as a result, instead of paying just to function as a winery for 186 dollars, I'm paying 186 dollars and 160 dollars and there's the transportation one.

MR. YARBROUGH: The cartage? The beverage cartage?

MR. SWITZER: Okay.

MR. YARBROUGH: Basically, for your winery permits, there will be an increase of 73 dollars for both of those for this next year.

MR. STEEN: So the total is a 73 dollar increase per year?

MR. YARBROUGH: Plus they have, I think, the beverage cartage or caterer's or private carrier, another 14 or 15 dollars - about a 90 dollar increase.

MR. SWITZER: What percentage is that, sir? What percentage increase is that?

MR. YARBROUGH: Over the previous year?

MR. SWITZER: Yes, sir.

MR. YARBROUGH: A winery was 157 before. You are 186 now.

MR. SWITZER: A 35 percent increase there.

MR. YARBROUGH: Twenty-nine dollars over 157, that's about a 15 percent increase.

MR. SWITZER: But add the total of all of them up.

MR. YARBROUGH: Again, as I have said, we allocated those based on the amount of time and effort that we can estimate. We didn't just apply a flat increase to everybody across-the-board because we found that the weighting was different than it had been some six or seven years ago when it was last done.

MR. STEEN: Any other questions?

MR. SELIGER: I don't.

MS. MADDEN: No.

MR. SWITZER: Thank you, folks.

MR. STEEN: Thank you for your time.

MS. MADDEN: Thank you.

MR. ELLIOTT: Good afternoon, my name is Gary Elliott, and I'm probably the newest winery in Texas. I just received my license just a couple of weeks ago. I'm one of those very small ones that Mr. Switzer was talking about. I'll probably only produce about 1,000 cases of wine this year in my first year. The impact of the fees are probably greater on me than on any of the wineries. I was very pleased to learn from Mr. Yarbrough that there is a way of weighting these fee increases so that the burden is placed on those who receive the greater portions of time spent by the agency and also, as he reminded me, this money is going to the wine marketing program which is probably one of the best things that has happened to the wine and winery industry since I've been around. I personally have no problem with the fee increases, knowing where they are going and knowing that it has been adjusted and weighted according to where time is spent.

I'm not here in an official capacity. I'm a member of the board of directors for the Texas Wine and Grape Growers Association, but I am not here officially in that capacity, but I have spoken to several other smaller winery owners in the last few days and they have told me if the fees have to be increased, they have to be increased and they are willing to go along with that.

MR. STEEN: Thank you for your comments and thank you for taking the time to come talk to us today.

MR. ELLIOTT: Thank you.

MR. STEEN: Any other comments? Do I hear a motion?

MS. MADDEN: I so move.

MR. SELIGER: Second.

MR. STEEN: I have a motion and a second. Any further discussion? All in favor, say aye.

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. Opposed? The motion carries.

Mr. Switzer, thank you for coming here, and I hope that you feel like we are being responsive to you.

MR. SWITZER: Yes, sir. Never had a problem with that in any way, shape, size of form. The Texas Alcoholic Beverage Commission has been a good service companion to the Texas wine industry as a whole. We are always looking for ways to help the wine industry, especially for the small start up wineries to get additional assistance, so that's what we are always looking for.

MR. STEEN: I hope you will continue your dialog with Ms. Fox about some of the ideas that you have.

MR. SWITZER: Thank you, and I have been known to talk to Mr. Randy Yarbrough, too.

MR. STEEN: The next item on the agenda is to consider publication of proposed amendment to 16 TAC Section 37.60. Standard Penalty Chart. Mr. Bright?

MR. BRIGHT: Mr. Chairman and Members, under this agenda item, we are here to ask you for your permission to publish these proposed amendments which are contained in your book and which we have circulated among our friends in the industry and other interested people in the community about doing some amendments to our penalty chart. If I've counted them right, we are proposing about nine different changes and we can discuss each of those changes if you like.

Let me tell you a couple of things that I think are significant to note. First, unlike what you just did with the surcharge rule, we are not asking you to do anything final today. Remember under our system for rulemaking, we will publish this as proposed amendments to provoke comments and start a discussion about what these amendments, if any, should be.

The second thing, perhaps, that's important to note is how we got into this.

We got a request that we engage in rulemaking from the Texas Restaurant Association who suggested that we change the recommended penalty values for the open saloon violation. If you will look, that is on the third page of the chart, about the fifth entry from the bottom.

What happens in an open saloon violation is that a private club serves someone who is not a member. It's still a violation if that person is an adult. It's still a violation if that person is sober. The Texas Restaurant Association suggests that that is analogous to failure to keep records accurately. There is a different violation for that on the fifth page of the penalty chart. Our proposal is to make those two sanctioning levels equivalent and our proposal would do that. Whether it's a good idea or not remains to be seen.

The only formal comments we've received to our request for argument and comments, to date, are the eight or nine letters from restaurants that you have in your materials that suggest that adopting that amendment ultimately would be the path of wisdom and true justice.

Another thing that is important to note is that since circulating this around, we have talked among ourselves and had things called to our attention and thought about it some more. There are two changes to what you have in front of you that we would like your approval to publish.

The first is on page three of the chart. It is the third entry up from the bottom which governs the offense of selling wine over 14 percent alcohol content during prohibited hours. A session or so ago, the legislature changed that 14 percent level to 17 percent. We've been charging people correctly and not charging them falsely for selling 14 percent wine, but we suggest that you change that and we didn't put that in here.

The second change that we would recommend you authorize us publish is on the last page of the chart and it is the offense of retail cash or credit law violation contrary to several provisions of the Alcoholic Beverage Code. You will notice as we initially circulated this chart, we suggested that the first violation have a recommended punishment of a warning only, and we are suggesting now that we publish as a proposed amendment to keep that warning to three which is what the current violation level is. So, the staff's proposed amendments would only be changes to the second and third violation for cash law. The reasoning for that is that we at least want at every level of violation some discretionary space for the people out in the field to decide in this individual case should it be a warning, one day, two days or three days.

Having said all that, I would be more than happy to answer any of your questions that I can and try to artfully dodge the rest. I bet there are folks here who are willing to talk to you about this.

MS. MADDEN: Mr. Bright, the first one which is increasing the penalty of illegal open saloon, that's private clubs, right?

MR. BRIGHT: Yes.

MS. MADDEN: In Dallas, we have a real problem with private clubs, and I'm not sure that the rest of the state appreciates our problem. I know you addressed this and I know you said it, but it seems to me if we want to use this as a deterrent that we shouldn't be decreasing the penalty from six to three. I'm afraid if we just give a warning - you said a warning from one to two to three days - if we just say warning with the other options, the option is always going to be a warning.

MR. BRIGHT: It could well be so, and that could well be something that you all want to make a decision about now or want to make a decision about later. When we talk about proposed penalty values in this violation, what should the state in normal circumstances do about that? Should that be a warning to three days? Should it be a five to 10 day suspension? Those values are subject to a lot of different disagreements. That is a more serious violation than this other violation. It is, in the staff's judgment, at least worthy of some argument and debate as to whether or not the Texas Restaurant Association and the restaurants are right when they say that this violation of maintaining an open saloon really is a failure to keep or refer to your records accurately and so it is like, on the fifth page, that violation of improper record keeping in violation of agency rules, etcetera, etcetera, that begins in the first with a warning to three. That's at least subject to some discussion. It may not be in your mind. In that case, one of the things that you could do at this juncture legally is to say, "Go ahead and publish the rest of this stuff, but the commission is not willing to discuss or doesn't want to publish as a proposed amendment that open saloon violation change." You can allow publication of these proposed values or some other proposed values that seem just to you and then at final adoption, either in July or August when we bring that back to you, based on the comments and arguments and the final staff recommendation, do what you think just and fair.

MS. MADDEN: Perhaps, your second option is the best because maybe I just need to be a little bit more educated on this. You and I have talked about this before. It seems in a way, at first blush, it seems silly because private clubs - so what if there's violations, but it is the law. We have so many private clubs in our area and I'm not sure that the rest of the state has the kind of problem that we have in our area. I would, at this point, say let's keep it in there but just know that some of us are going to be educating ourselves further, and maybe for further comment at the next meeting. Would it be the next meeting or is it three months?

MR. BRIGHT: Let me talk about adoption. Usually when we propose a publication at

your meeting at the end of the month, we can't get it published in the *Texas Register* for 30 days before your very next meeting. In this case, because you are meeting at the beginning of June and the end of July, we can do so. So, it is legally possible for you to adopt or decline to adopt any of these amendments in July. Whether we will bring that back to you in July or not is a function, of course, on what you want and what you instruct us to do, but historically what the staff has done is not brought a rule back for final adoption as long as productive discussions were still going on. Given kind of the level of response that we've got formally and informally from this proposal, I don't think we will be talking about this into August, but it may well be that we bring it to you in August.

MR. STEEN: We do have one person signed up to speak and that's Glen Garey who is the general counsel for the Texas Restaurant Association.

MR. GAREY: Commissioners, Glen Garey with the Texas Restaurant Association. I want to thank you for taking this rule up for consideration and hope you will publish it. I'm curious what problems you are encountering in Dallas because I'm not aware of how this was creating a problem. Can you enlighten me on that?

MS. MADDEN: I was called by the mayor of Addison to come and discuss this because they feel they are following the rules there - their retailers are - but right across the street - you know how the laws are in Texas - right across the street, they are not following the rules. That is not in his area. It's on Beltline Road. So, we had to go in - not me physically - but the TABC in Dallas went in and did some stings because people were selling liquor when it was supposed to be a private club but they never asked for - they never told the customers about...

MR. GAREY: So, you've got an operation that's basically out there ignoring this entirely? In other words, not checking memberships, period, and doing it as a matter of course. Is that the case?

MS. MADDEN: Yes. And we have addressed that to a certain degree. We have a lot of licensed establishments in our city and not enough enforcement officers.

MR. GAREY: I well understand that. In fact, this was brought to me by one of the restaurants that was in the Dallas area. It wasn't my intention in bringing this forward to in any way try and lessen the penalty for someone who is doing this knowingly or repetitiously. I think if you will notice later on in this same rule that you are publishing, that your general counsel has added something that I think addresses that which talks about, and needed to be in this rule, on the very last page in (f) it says, "Any person responsible for assessing a penalty for a violation may deviate from the standard penalty chart if aggravating or mitigating circumstances are involved." I certainly think that anyone who is knowingly violating this should have something

more than just a warning because you have an obvious and ongoing, an intentional violation there.

What brought this to my attention was a restaurant that had had one violation. They were afraid because the next violation can go all the way up to cancel, which is a serious punishment for twice neglecting to check a membership. So, the person decided they would just go through and re-permit the entire club, in other words, reestablish it, get a new club set up which is a significant expense but something they felt was justified by just the mere threat of a cancellation. One of the things that made it a threat to them was the fact that an employee told them was, "All we have to do is just go ahead and let people drink in here and you are going to get popped for it, so you can't do anything to me." Having that employee sitting there threatening this person is what drove them to the expense of going through the re-permitting process, and it was brought to me and they said, "Why is this like this?" It seems terribly unfair to them that they can be faced with a cancellation on the second violation. I looked at it and said, "Well that's strange," because if you look - and certainly you saw from my letter - we treat this more strongly than we do an intoxicated person. There you have an actual danger to the public. I certainly wouldn't ever want to defend someone who knowingly violates the private club laws and wouldn't want to suggest in any way that's where we are coming from. But, I do think someone who has an inadvertent violation shouldn't be faced with cancellation and a loss of their livelihood. So, that's where we were coming from with it.

MR. SELIGER: Mr. Chairman, let me ask how often - and I'm not sure to whom this question should be asked - how often, on the second violation in statistical terms, is the permit cancelled rather than suspended?

MR. BRIGHT: I'm embarrassed to say I don't have the slightest idea, but I have such confidence in the quantitative ability of our enforcement division and our computer folks that I bet we can produce an answer to that question.

MR. SELIGER: The reason I ask the question is clearly in the case of a bookkeeping flaw, you don't want to cancel somebody's license but, at the same time, if that conserve prevents someone from meting out an appropriate action against a willful violator, a repeat willful violator, I don't know that that's enough punishment for them. So, the question is is the punishment being meted out unfairly or disproportionately in this case?

MR. GAREY: May I address that?

MR. SELIGER: Please.

MR. GAREY: It's almost like facing a cliff. You go from one violation where you are going to get a penalty of some sort which is fine. I can understand that.

You have made a violation of the law. You should be penalized. The second one, you are right at the abyss of the cliff. You don't know whether you are going over or not and, third, you are pushed over. You are gone. You are very familiar with private clubs in the Dallas area and I think you have private clubs in Amarillo, too.

MR. SELIGER: We do.

MR. GAREY: You can understand that on a busy night, the servers in there they make a mistake. Even if you are enforcing it, going after it, pushing it with your employees, it's going to occur on occasion. To be faced with being pressed to the edge of the cliff just on a second time and then being thrown over on the third was something that gave great concern to a number of our members.

MR. SELIGER: Once again, we are talking about two different things, though, when we talk about simple record keeping and employee negligence - two different things.

MR. GAREY: Either one of them would be negligence. You should keep your records properly, too. There's no denying that. It's just as important to have those out there, otherwise, we wouldn't even know what members we had.

MR. YARBROUGH: Normally, any cancellation proceeding would end up either so egregious that they sign a waiver for cancellation or it goes into contested case. I can't recall, in all the contested cases that have come across my desk, that we have cancelled for a second violation. We have, though, cancelled for multiple violations, and that might be one of the other things you would want to look at before this comes up for final adoption. In this change, we actually even go for a third violation, making it only five to seven days. We might want to do away with the second violation in the face of automatic cancellation, but retain it somewhat for three or possible more violations as some sort of action that that would indicate repetitive negligence or someone who is just totally disregarding the requirements under private clubs.

I think the agency has always looked at this strongly, simply because the people in that area...the reason it's a private club in the first place is the people in that area have voted to maintain that it's dry, and it's only under this certain fact situation that they can even allow the service of alcohol to the members only. It's also something that a lot of the members of the communities don't even like the idea, especially since the legislature has wet up the private club statute so much to allow restaurants, as opposed to what we normally think of as a country club or you have to be a member to come in. Now in restaurants, anybody that walks in, the general public, they may have a private club permit legally, totally legally, but, on the other hand, the people have still voted this dry and they'd like to know

there's some significant difference in that location than in the same restaurant in Houston where it's wet and they have a mixed beverage in Austin, San Antonio. Maybe this is one that we really need to discuss. First and second penalties are too harsh, but we want to maintain some stern punishment on the back end of this if there are continued repetitive violations.

MR. GAREY: There would be no objection on our part to that kind of proposal, whatsoever, because you are getting after the repetitive type there. Also I would say and we would hope - and we would go on record for this - that if you find someone who is knowingly doing it, encouraging it amongst their employees, that you step over to that section (f) and skip past warnings or anything else.

MR. YARBROUGH: We will keep that record in hand.

MR. GAREY: Are there any other questions, Commissioners?

MR. SELIGER: I have none, Mr. Chairman.

MR. STEEN: Thank you.

MR. GAREY: Thank you, and I would urge you to go forward with publication, although, again, we are absolutely open to the idea of going ahead and putting cancel as the - whatever number of days to cancel for the third option, and if you would like to go ahead and make that amendment there then, perhaps, we won't have to go through it all when we get through publishing the rule.

MR. STEEN: Thank you, Mr. Garey.

MS. MADDEN: Does this require a motion?

MR. STEEN: I think it does. It would require a motion to go forward with the publication, correct, Mr. Bright?

MR. BRIGHT: Say that again, sir. I'm sorry.

MR. STEEN: It requires a motion to go forward with the publication?

MR. BRIGHT: Yes, it does.

MS. MADDEN: I appreciate all the discussion because it's helped me. I certainly want to take a common sense approach, that's for sure, and this gives us some time. I move that we publish.

MR. SELIGER: Second.

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

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. Motion carries.

The next item on the agenda is public comment. We've had a lot of it today. Is there any more? We will move to our executive session.

The commission will now go into a closed, executive session to consult with legal counsel regarding pending litigation pursuant to Texas Government Code, Section 551.071.

The commission convened in executive session at 3:45 p.m. and reconvened in open meeting at 4:06 p.m.

MR. STEEN: The commission meeting of June 3, 2002, is now back in open session. During executive session, no votes were taken, no final decisions were made.

The next item on the agenda is to consider approval of the agency's strategic plan for the period 2003-2007.

MR. GARZA: I'll go ahead and make some opening comments, Mr. Chairman and Members, and then staff is prepared to answer any questions you might have.

Regarding this document, it's been set out before you. It's about 151 pages in length. It's excellent reading. I think you'd attest to that, Ms. Madden, because I know you spent many hours going over that.

I would tell you that we got here by going through a long process of requesting and receiving public input from a number of different groups and individuals across the state. You will remember that earlier in the year, we went around the State of Texas holding public forums in seven different locations. We were fortunate to have a very good turn out at these gatherings. Many of the individuals sitting here today attended some of those forums. We had individual license and permit holders attend. We had different trade associations and groups that we work with and partner with on different projects. Individuals from members of the citizenry at large came to these forums and offered their input.

We had about a two-day work session involving some of our staff over at the Joe C. Thompson Conference Center. We had some brainstorming sessions in this room. Jeannene was able to get input from different

employees across the state by e-mail, by memo and other means, and we also had surveys of our employees that we conducted.

The whole purpose of this was to take an assessment of ourselves as an agency. Dating back to 1991, with passage of House Bill 2009 during the 72nd Legislature, every agency was directed with the mission of conducting strategic planning and coming up with a document which essentially is the finality of that process; to take a look at your organization; to outline your goals and objectives; to conduct a self-assessment of your strengths and your weaknesses; to lay out some opportunities for the future, and that's what this document is. In essence, it's a blueprint that will tell TABC and will help guide TABC in the future, knowing that at a two-year interval we will update these plans.

I think I've mentioned to you, Mr. Chairman, in conversations regarding this document, one of the things that we always have to be careful about is that we just don't rush out to the print shop and produce a document that's going to adorn one of our bookshelves and we never turn to it again until two years from now when we rush out and amend it and upgrade it. One of the things that we have discussed at the executive staff level is to make sure that we use this as a viable tool and that we report to you as commissioners on a regular basis on where we are in meeting the goals that we have set out in this document, and we would ask that you hold us to that charge. I think it's important that as we unveil any new programs, as we strengthen new programs, as we develop partnerships with industry members and other groups, that we always make sure that we focus on what it is that we said we were going to do in our strategic plan and that guides us and directs us as we go into the next legislative session, as we start working with Charlie Kerr, our chief financial officer, in developing our legislative appropriations request; that we make sure that whatever we are requesting is reflected in this document. I see Jay Webster out here. Jay has spent a lot of time. If you will remember, there is a whole section in here that talks about the information technology strategic plan. Much of what Jay does in his group and with his staff will have impact to this agency and to this industry with respect to the automation and to the technology that's out there as we move forth to develop some of those technological applications to our licensing department, for example, in processing the things that we do.

Randy has reviewed, particularly, pages 38 to 40 which I think is the central focus of this document. It talks about opportunities; opportunities that lay before this agency, and I'm going to ask him to go through those for you and then I will open it up to any questions you might have.

MR. YARBROUGH: As Rolando said, we have spent a considerable amount of time on this. In visiting the other day with Chairman Steen, one of the questions he asked was does this lock us into anything? Jeannene wanted me to emphasize

this is a living, breathing, moving document. It changes as the needs of the commission change. It's really a process that state government has asked agencies to utilize to evaluate yourself and to determine what you are doing; how it compares to benchmarks with other states; are there things you can be doing better; are there things you are not doing that you should be doing; things that you are doing that you shouldn't be doing; all of those things and to create a benchmark for where we are going to go in the future. This then rolls into how we are going to get there when we start working on our legislative appropriation request.

On Page 37 is a survey of state liquor law enforcement agencies, specifically how we benchmark against some other states. Georgia has 16,000 licenses compared to our 38,000 retail establishments around the state. Some of the inspection rates - just simply we have so many compared to the number of officers we have to do inspections, but yet our minor sting compliance rates are equal to or better than most all the other states. Louisiana has 90 percent as does the State of Alabama. When we compared those, we found that we compare favorably in most every aspect. There are things we can be doing better. We still strive to do better in our minor stings. We are getting an 80 percent compliance rate, yet we find Alabama and Louisiana are doing 90 percent, so we can do better always on some things. I guess we shouldn't be satisfied until we get to 100 percent. As the administrator in Alabama told me a couple of weeks ago, he said, "We are getting a 90 plus percent rate of compliance of our retail establishments on selling to minors, yet our number of minors that are actually getting alcohol hasn't gone down a bit." So, just as some of the people in the industry have told us, kids are entrepreneurs. They are also pretty bright about finding different ways to do it; they are getting older brothers, sisters, friends to acquire alcohol. So it's still a problem, as well as the initiative that Chief Hamilton and his staff has started on addressing the intoxicated persons in establishments, because we've got to do something to lower Texas leading the nation in alcohol-related fatalities on our highways. I think we've got a commitment with local law enforcement, state police, the DPS and TABC all working together on this.

In doing all of this, we've tried to identify the opportunities that we think are the most important things that we can do. This starts at the bottom of Page 38 in your book. We have seen in the last two years that education is a very important component of what we do, but we've got to balance that with the amount of law enforcement we do, especially utilizing those officers that are commissioned peace officers. We can't be everything and be everywhere, so we have to re-evaluate that program. We have determined that we should probably focus not more than 15 percent of our total effort of our enforcement and compliance work time on education efforts, especially in the schools. It's still important that we be there, that we partner with schools, but we be smarter in how we do it and maybe

focus those things a little bit better than we have.

MS. MADDEN: Have we cut out any educational programs?

MR. YARBROUGH: Not in terms of programs, but we may not be teaching in as many schools. We might not be reaching the same population, but we are going to try to focus where it will do the most good.

MS. MADDEN: I noticed under the program initiatives, it looked to me like maybe there was one new one.

MR. YARBROUGH: We don't seem to be short. Chief Hamilton keeps bringing new things to the table. We are trying to do them smarter. The Shattered Dreams is one of the things that if we can do it and time it right, it has a tremendous opportunity impact on the high school kids before graduation, before prom. We are probably backing off more on the fourth, fifth and sixth grades because not only have we not been real happy with our evaluations, but there are other groups that are going in and teaching and they may be able to do a better job than we can.

MS. MADDEN: Is that Project SAVE?

MR. YARBROUGH: Yes. Most all of those educational things are under our Project SAVE umbrella. We want to try to focus those things where we get the most bang for our buck. I know Chief Hamilton is very interested in using some of our educational allocation to address college-age students, the underage kids that are still in college. We've still got some problems - you read about it in the newspaper every day - about binge drinking on college campuses. Part of that is going to be aimed at focusing on meeting with college administrators and college deans of students to engage them in this process, too, in that education effort on how we can partner together in the college communities.

The next thing is seller training. We are never going to accomplish anything without voluntary compliance. We are looking for ways to encourage more retailers to avail themselves of the seller training programs. Approximately half of the retailers in the state do take this program seriously and avail themselves of it. That's the good side. The other side of it is half of the retailers in the state are not. We want to up that number. We want to encourage people to voluntarily participate in that. I know Mr. Steen has really had an interest in that, and we've got to do everything we can to sell that program.

MS. MADDEN: Has it increased over the last...

MR. YARBROUGH: It is still increasing. I know that Debbie Dixon and her staff will tell us it's really increasing in terms of the numbers, but we've got just to get the

buy-in of people. I think requiring the management - for them to get the benefit of the protection, management has to participate, too. That has helped us somewhat in the increase because they see the importance of it. That buy-in is so important, not just, "Okay, we are going to require employees to go get seller trained, but we make that part of our corporate culture. That is so important because we don't want violations. We don't want them for all the reasons that some of these people talked about today. We want to protect our customers and we want to protect ourselves, as well." I think we are getting more and more buy-in on that. We are spending a great deal of time trying to deal with corporate groups that own multiple locations to get their buy-in to make sure they understand how easy it is if they want to get their own training program certified. Many of them will have training programs but they are not part of the seller training certification process, and we are trying to sell that; make sure their program has all the core requirements to meet our standards and we can certify their programs. I think that is going to be a big initiative of what we do.

As I have already mentioned, Chief Hamilton has identified for you the problem that we have on the sale of alcoholic beverages to intoxicated persons. The statistics are clear cut and we have got to focus on ways to implement measures that will decrease those violations, those numbers. We think that is one of the key initiatives, that we have to work with other traditional law enforcement to do that. Some of the ways we are already doing it is with our liaison officers in some of the big cities. Here in Austin, we have someone stationed with Chief Knee, selling some of the local law enforcement on alcohol units. Here in Austin, we've got such a problem in certain areas of town that the chief of police has created an alcohol enforcement unit to concentrate on those. It's not just the bars on 6th Street, the entertainment district. It's also the place that the people that consume too much on the streets, the street people population. Those convenience stores that they are constantly known for going to, that keep selling to those people when they are intoxicated. Usually that kind of lax care about their business also indicates that they are selling to kids. The chief is doing that in working with us. We just simply, in that case, help them in knowing what the alcoholic beverage laws are; how we can use administrative procedures to work with them in the criminal aspect. Tell these people, "If you want to keep your liquor license, you are going to comply with the laws." That has been a great working relationship with our agents and local law enforcement working together. Sam, I think you are doing that in some other cities, maybe not as formally.

MR. SMELSER: Yes.

MR. YARBROUGH: We are trying to sell that program because those local law enforcement people that get educated in alcohol laws are an additional arm of this agency. Commissioner Seliger, I believe, when you were mayor that you

and the chief of police worked closely with the Amarillo office to do some of those same things. I think we are doing that more and more, and it's vital to make more of an impact, especially in the intoxicated area. It's always seemed to have fallen more on the traditional law enforcement. We arrest the people that get drunk for PI, and so forth. We are trying to back that up somewhat and say, "How can we stop it before they get in the car, before they operate a motor vehicle and kill themselves or somebody else?" We think that's going to be a big initiative.

The industry education program balanced with enforcement, Chief Smelser has really done a good job in building this program. Again, we are not trying to put everybody out of business. We are trying to get people smarter and in voluntary compliance. The chief has come forward and said, "Can't we develop educational programs, especially in areas of trade practices," and things of this nature in working with our wholesalers, to say if you've got a violation, we really don't want a fine; we don't want to suspend your license. We want to get you to understand the laws and the rules of the agency, especially in these areas where we are all on the same page. So, we are offering training programs throughout the state for people in the wholesale tiers. We are hoping to do more and more of this, not just for the wholesalers, but increase the number of people that are taking our retailer programs to get them to voluntarily comply with the laws. We think that those have a direct relationship with compliance and reduces violations. We will be using both our enforcement and our compliance people to teach those classes, depending on the population in the area, with the level of training that we have.

Tied-house is something we talk about every once in a while. The manufacturing and wholesale levels of the alcoholic beverage industry have consolidated an awful lot. There is increased competition between the various interests. If you read the news last week you saw the consolidation in the brewing industry where South African Breweries have bought Miller Brewing Company. We are seeing worldwide consolidation, mergers, acquisitions unprecedented in the alcoholic beverage industry. We need to get smarter in what does that mean in terms of regulatory authority.

Next week, Ms. Fox and Mr. Bright and I will be meeting with our other ABC administrators in a meeting in Albuquerque at our national liquor administrators meeting to discuss some of these issues with national industry leaders as well as looking for ways that we can be better educated on how this industry does business. There is a lot of stuff that we don't know, and it's become increasingly more complicated as we've seen a lot of brands that we traditionally thought of as American brands that are becoming foreign brands and vice versa. We are having to learn more about the international business, how some of these things are set up because with those consolidations we find concerns with tied-house laws.

When you get a huge liquor conglomerate in Great Britain that may also buy hotel chains in the United States and subsequently have liquor licenses in Texas, you've got tier problems that create all sorts of problems for us that may not be the same to BATF or to other states. We are trying to stay abreast of those issues.

One of the other things that we have really identified and that's our training and communication. Those are things in our Survey of Organizational Excellence that we did. Our employees told us that we are doing a good job but we need to do a better job in terms of internal training and communication. We need to train more on the alcoholic beverage laws. We get so caught up in our enforcement training on police tactics, interventions, ways that you go about being a good police officer, that sometimes we forget that we are also the specialist in the alcoholic beverage law. Because we anticipate turnover due to retirements in the next five years, we are looking forward to succession planning. We've got to increase our training of our own in-house staff on the alcoholic beverage laws of the state so we pass on that knowledge to the next generation of officers and leaders within the organization.

The next thing, as Mr. Garza has already alluded to, is our electronic changes that we need to do. We are using the web page. We are trying to communicate internally and externally through electronic means, but keeping up with the technology, keeping up with things that we need to do is Jay Webster's responsibility. Jay says, "Just give me a little bit of money and I can do wonders with it." That is going to be one of our key initiatives in our budget request. We've got to stay ahead with that. The State Auditor's Office did a good job in reviewing some of our technology and has assisted us in writing an audit report that says it's time for us to move ahead with our technology. We have got to do a good job of selling that to the legislature. Jay has been asked to break that down into more chewable bites so that we can sell that to the legislature rather than one lump sum so we are not coming back here asking for another 10 million dollars in surcharges, asking people to pay for that. We need to stage that in. We may also be looking in terms of legislative changes that will help us get some of that done as we talk about legislative and budget requests later on.

Last, but not least, is looking at strategic partnerships with outside groups, both inside and outside of the industry. Mr. Garza has set new standards for that, yet we want to make sure we evaluate these thoroughly to make sure that we make smart partnerships; that we don't just jump in with anybody who thinks they've got a good idea for education or regulation or whatever, but that we look for smart partnerships that we have a good hand and glove approach with and have the message aimed at kids, aimed at stopping intoxicated persons driving vehicles, whatever those programs may be. We don't need to recreate the wheel, but we want to make sure

that somebody isn't just saying, "Here's a great program. You go do it and do all the work, too," and they are not bringing their part to the table. We anticipate doing more of that during the next several years ahead.

Those are key opportunities that we think that we have identified that are doable for the agency, given the staff that we have and the resources that we have. It's pretty ambitious. It doesn't limit us if other things come up. As Mr. Steen has said, "What if other initiatives that we don't know anything about today come up in six months from now?" We can address those. We can modify this. We can even modify our measures that we have from the legislature if we go to the budget board and explain to them, "These things have changed now. We need to modify our measures to make sure that we respond to what the needs of the people of Texas are." This is all given that flexibility to be able to do that.

The rest of the document then goes into support this; to identify population changes; to identify things that we heard from the public; things we heard from our own employees as to what we need to be doing and how we need to get there. We will roll from this then into action plans. These are high-level policy things and that's why we bring them to you. These are the ideas that we think that the commissioners should be looking at to charge us with. If you adopt this, we will roll those more into detailed action plans; how we are going to get there from here; roll that into the budget; what is it going to cost and what is going to be our responsibilities that we've got to sell to the legislature to implement this plan.

MS. MADDEN: Are these enough changes where you had to go to the LBB and Governor's Office to alert them of the changes because I know we have a format we have to go by?

MR. YARBROUGH: Right. We've involved them in talks about this. I don't think it will require any measure changes at this present time. We have been talking with them about fine-tuning our measures anyway to make sure it will be reflected in these types of programs. For example, the number of students we teach, the number of educational programs, things like that. They are well aware of the concern that we have, that if we just do "x" number of those just to get numbers, it takes officers off the streets; that it's counterproductive. So, they are working with us to make sure that if we move with this that those measures will reflect what we are actually doing in our budget cycle as we go into the next legislative session. I don't see any of them that stayed over, but they have been working closely with us, both the Governor's Budget Office as well as the Legislative Budget Board on these issues.

MS. MADDEN: Also, under the Five-Year Projections for Outcomes where we talk about percent of licensed establishments inspected annually, in 2003, we have

70 percent and then we are decreasing to 65 percent in the subsequent years. Here we are limiting our focus on education to 15 percent to accommodate the fact that we need to balance enforcement with education. I was wondering..

MR. YARBROUGH: We are dropping back somewhat because what we want to do is...we've been between 65 and 70 percent, I think, over the last several years. We would rather be at the lower end and focus our inspections on the problem areas which take longer because those are usually the ones that result in arrest, result in problems that need to be addressed, as opposed to just going out and trying to get "x" number which would be a lot of times hitting places to get a number up where you know there aren't any violations. You walk in and walk out and haven't spent the time. We still need to inspect those. It's still our goal to inspect every place every two years, but we want to spend more of our time in those establishments that we identify, that local law enforcement identifies as problem locations. Those are the people we need to get in compliance or maybe help them find a new line of work to get into, whichever is the more appropriate way of doing that. Chief, do you have any further comments on that?

MR. SMELSER: One of Chief Hamilton's ideas was in order for us to move those resources over to concentrate on sale to intoxicated folks, the way we work that, we send two agents into the bar to sit there for up to an hour to wait for an intoxicated person to come in and be served, to observe that when we have a complaint. It does take a longer period of time. It takes some of those time constraints and a little bit of the pressure off of the field in some of these other areas so we can move those resources and concentrate in that area.

MS. MADDEN: Two of the areas that I think are so important for us in setting the stage for our appropriations request is, number one, increasing our enforcement agents and, secondly, the computer. We have to do something about our computer. We just have too. From everything I've read in the strategic plan, it does set the stage for that, and I'm very pleased that we are - as you said - making it more manageable and putting it into more "chewable bites" where we don't just go and ask for one huge lump sum. This way, it's more manageable and maybe we'll have a better chance. I know I'm talking to the choir here, but...

MR. YARBROUGH: Getting back to your question on the measure, one of the things that we tend to do, just like in everything, we always want to do better. If we did 10,000 inspections last year, we'd want to do 10,020 the next year and we fall into a trap sometimes of just wanting to increase numbers. In talking to our employees, they just frankly said, "Look, if you want us to deal with problem establishments, if you want us to deal with intoxicated, you need to know, supervisors, it's going to take us longer and it's going to make our numbers go down on inspections." That's an honest approach

and explanation of why it's going to take longer, because the only way to work that is actually send someone in to physically observe someone selling to intoxicated persons or determine that they are a danger to themselves and shouldn't be driving a motor vehicle so that we can make those cases. It's just going to be fewer numbers. We hope to have better cases and have a better overall outcome in terms of public safety.

MS. MADDEN: Thank you.

MR. SELIGER: No comments from me.

MR. STEEN: Mr. Yarbrough, on Page 38 it says, "Though agency educational programs are an integral part of achieving voluntary compliance, the agency should focus no more than 15 percent of the total effort of enforcement agents' and compliance officers' work time." What is the percentage now?

MR. GARZA: It's about 13 percent.

MR. YARBROUGH: I think as we are bringing more and more programs on, though, including the wholesale program, and so forth, we don't want to just take more man hours away. We don't want to...

MR. STEEN: We are not looking at...

MR. YARBROUGH: Really decreasing, but if we do more wholesale programs and things like that, it means it's going to have to shift. As we shift priorities within education, it's not going to be just adding more programs. It will have to come from education. We will decide which ones are more important. If we are going to be in that 13 or 15 percent range, if we are going to do new programs, it means we will take away from other educational efforts that we do, trying to balance that out. We may come back. That's one of the things, as we see what the impact of that is, we may be back 12 months from now saying we need to up that, the balance has gotten out of adjustment, or after the next biennium, saying we've tried that. That's our best guesstimate right now. We want to limit our educational efforts to 15 percent of the time of the officers and compliance agents giving 85 percent of their time to the other regulatory and enforcement efforts. But, that could change based on overall results. It could change because of dramatic instances that come up, whatever that might be, that would give us need to make those changes. In terms of doing that, it really doesn't take a big change by the legislature to do that. You, as a board, can direct us and Mr. Garza, Chief Hamilton can make those changes as we think those are needed to respond to what the needs of the agency and the needs of the state are.

MR. STEEN: Thank you.

MR. GARZA: One of the things that we found out, Mr. Chairman, during the work session, in particular, was perhaps there was a mis-communication in terms of how much time the agency was actually spending out there in terms of doing education in the classrooms. In listening to some of the people we had come into Austin from different parts of the state, I think what they were telling us is essentially they don't want us to withdraw or take a back step in terms of our commitment to education. I think they see the value and importance of that. I think that we have to take a look at this in terms of whether or not the use resources in that utilization is best applied in its current format. We've been doing Project SAVE in the elementary schools now since the early 90s, I believe, and one of the things that has not occurred is that we have not taken a very honest or critical assessment of our effectiveness in that program. If that is not the best utilization of our resources - we have the high school group who we have not done much other than Shattered Dreams. Randy alluded to the whole notion of problems in college and university campuses. We are working with some groups now where they are going to have a session in July, a think-tank session for about 10 or 15 presidents of leading colleges and universities in Texas and we've been invited to participate in that session, trying to put greater responsibility on the shoulders of these presidents in terms of how they are going to address the drinking problem on their campus. You will see us evolve more and more in our educational efforts in terms of the industry at different levels, as Chief Smelser has taken the lead on, and also looking at high school and college and university campuses.

MS. MADDEN: I think that's wonderful. That's where a lot of the problems are.

MR. STEEN: I think we've been doing a great job in this educational area and maybe what we are doing is somewhat underappreciated by the legislature.

MR. GARZA: And, I think unknown, in many cases, Mr. Chairman.

MR. STEEN: I think unknown is probably the better way to put it. That's one of the things I know, Mr. Garza, you've been working on is to let them know what we are doing. I think these programs, Shattered Dreams, particularly, are very effective.

MR. YARBROUGH: One of the things that Mr. Garza alluded to is we have done such a good job talking among ourselves and among the industry of the educational components that we've done and they have participated to help us with a number of those. The perception that we got from some of the public forums is that we were doing much, much more because we're really proud of that and we've talked about that so much. I think sometimes we didn't talk about the other things we are doing in enforcement, that in setting this benchmark they know that isn't going to overshadow the fact that we are going to be responsible about going out and doing proper

inspections. We are going to be working in the regulatory arena, too. That's something you can see and you can measure against, where before I think there was kind of an unknown because education was all we were talking about. It was probably thought you are doing 50-50 as opposed to 15-85 that we really were doing. This is putting it in writing. This is our commitment that we are going to do that. We are not backing off of it, and you can also say that we are going to spend 85 percent of our time actually engaged in our regulatory and enforcement responsibilities so that the people that we regulate understand that too and they support that balanced approach.

MR. STEEN: We just need to talk to our legislators more so they understand our most effective people in this education area are our enforcement agents, but there's this pull on them, and if we want to do more education, we are going to have to have more resources.

MR. YARBROUGH: For the first time, we had a member of the legislature contact us last week. He came out and visited with Mr. Garza and said, "I understand what you are doing and I want to help you." He's doing some good and making some inroads down at the capitol. We've got a few people willing to champion our cause a little bit better, and I think that really says a lot for the work he's been doing to open communication with the members of the legislature, as well as the three of you all who have contacts every day with legislators who have helped us tremendously to open doors.

MS. MADDEN: Mr. Garza and Mr. Yarbrough are just premiere at talking to legislators. I think we can do it okay. We need to get involved here. I think we all need to be making our appointments at the appropriate time.

MR. STEEN: I agree. I have a couple more questions. I like that, that we are going to try to encourage more retailers to avail themselves to the benefits of the seller training programs. When I have brought that up before and the issue of mandatory seller/server training, Mr Bailey was here and he said if it began to increase beyond 50 percent that we didn't have the resources here to handle that. Is that still the case today?

MR. YARBROUGH: We've added a person to our seller training staff over what we had at that time to handle those increases. Obviously, if we saw it jump to 75 immediately, we'd probably be asking for another. Again, that can be handled by transfer of people in-house. Yes, we need more resources to handle those, and if you transferred from another position, then you are hurting there. I hope that's the problem we have.

MR. STEEN: We need to be thinking about that because I've got some ideas about how we may be able to get that percentage up, but we've got to be prepared for it.

MR. YARBROUGH: Again, if we are serious about that, we need to be willing to put that into our legislative increase request. In that program, because we do the administrative end of it - we are not out there teaching the programs or things like that - it's done by the private industry, we can get a lot more bang for our buck by adding one person to assist in that, as opposed to if we were teaching and we had a 25 percent increase, we would be hiring dozens of people to go out around the state to go out and teach. That's the good side of that by not being in charge of that other than approving the program and doing the certification process. Jeannene has really worked trying to automate as much of that as possible and we are looking at other ways to apply automation to that to speed up the process.

MR. STEEN: Thank you. The last issue, and that's, Mr. Garza, what you talked about was the reporting mechanism, but we just talked about it in general terms and maybe we can get some specific times, because I think it's good for us to be looking at these long-range goals and it's easy to get caught up in the things that we are dealing with on a day-to-day basis. Maybe you could have some suggestions for that, maybe not at this meeting but at the next meeting.

MR. GARZA: I would say at the very minimum quarterly we should come to the commission with some kind of activity report and I can include that in my monthly report and also include that in our administrator's report in what we are doing.

MR. YARBROUGH: Because Mr. Seliger is a new member, and we would offer this at any time to any of the commissioners, as you look through the administrator's report that we send you each month, any of the statistical information, if it doesn't have any value to you and you would just as soon not see it or if there are things that we are not reporting that you would like to see, don't hesitate to let us know. A lot of those things evolve over time and may stay in there only because one commissioner 20 years ago asked for it and nobody ever said take it out, but there may be more meaningful things to you as commissioners that you want to see. Let us know and we can do that for you.

MR. STEEN: I know we set up a procedure like that for the fiscal stewardship reports.

MR. YARBROUGH: Exactly. That's exactly what I'm talking about.

MR. STEEN: I would like something like that for the strategic plan.

MR. YARBROUGH: Good.

MR. STEEN: I notice that Ms. Madden has closed her notebook.

MS. MADDEN: I have one thing I want to say. I would like to thank the staff for all their

hard work on this strategic plan. It was long. Anybody that read it, it takes a lot of time, but it was interesting and it gives a wonderful overview of the agency. It's very comprehensive, and I know that you all took it out in the field, and I know you involved community groups in the public forums. That was a wonderful effort around the state. I just want to thank you for your hard work. This takes a lot of time and you have to care to put this much effort into it.

MR. GARZA: No one showed more care and concern than the lady sitting between us, Ms. Madden, who spent countless hours putting it in a format that you could decipher in working with Jeannene Fox on that.

MS. MADDEN: Thank you very much.

MR. YARBROUGH: We have kidded about Jeannene being gone today for jury duty, but she spent countless hours on this, and the last two or three strategic plans she has taken the lead and has done an excellent job in keeping the rest of the staff focused.

MR. STEEN: Thank you. I think we need some action today because we have a deadline for submitting this.

MR. GARZA: June 17th.

MR. STEEN: Do I hear a motion?

MS. MADDEN: I so move.

MR. SELIGER: Second.

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

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. The motion carries.

The last item on the agenda - maybe we should take this up at the next one, but it's to consider dates and times of future board meetings. Mr. Garza, we fall into this pattern of doing it on the fourth Monday of the month at 1:30. With Mr. Seliger coming on board, there may be some new approaches to that as to when we meet and how often we meet.

MR. SELIGER: Sure.

MR. STEEN: Maybe we can think about it and put it on the agenda for next meeting.

MR. GARZA: That will be fine.

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

MS. MADDEN: First, I want to say what a great job you've done as chairman.

MR. STEEN: Thank you.

MS. MADDEN: Again, welcome.

MR. SELIGER: Thank you very much.

MS. MADDEN: I so move that we adjourn.

MR. SELIGER: Second.

MR. STEEN: The meeting is adjourned.

The meeting adjourned at 4:45 p.m.