



TEXAS RACING COMMISSION
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May 15, 2015

The Honorable Jane Nelson
Texas Senate
P.O. Box 12068
Austin, TX 78711

Re: Repeal of Historical Racing Rules

Dear Senator Nelson:

I am writing to report on the status of historical racing at the Texas Racing Commission. After the Senate Finance Committee hearing on February 25, 2015, I directed agency staff that the Commission would not file an appeal from Judge Livingston's decision of November 10, 2014. As a result, the judge's decision became final as to the Commission on March 9, 2015, and the rules became moot. I felt that the decision to not appeal was the most significant act that the Commission could take to respond to the Senate's request since there is now no action that the Commission can take under those rules.

I intend for the Commission to repeal the rules, and to that end I have directed agency staff to begin the lengthy legal process required to accomplish that goal. Under the Texas Administrative Procedures Act (APA), the repeal of administrative rules requires, in succession: a vote by the Commission to publish for public comment in the *Texas Register*; notice to the public through the *Texas Register* of the opportunity to provide comments; the evaluation of those comments by the Commission; a second vote by the Commission; and notice of the final vote to the *Texas Register*. Once each of these steps has taken place, the repeal will become effective twenty days after the final notice is given.

Each of these steps has its own timeline. For example, the Texas Open Meetings Act requires at least seven complete days' advance notice to the Secretary of State's office for each of the two Commission meetings. The *Texas Register* only publishes on Fridays and requires that items for publication be submitted at least eleven days in advance. Finally, the APA requires that the Commission provide at least thirty days' notice in the *Texas Register* of the intent to repeal the rules. As a result of these statutorily required timelines, the absolute minimum period of time it

will take to repeal the rules, from posting of the initial meeting to final repeal, is seventy days, or ten weeks.

I will undertake this process in an orderly fashion. The first step is to place the matter on the Rules Committee's agenda for May 28, 2015, which is a specially called meeting. At that meeting, I expect the Committee to discuss the process with the public and then to recommend that the rules be placed on the Commission's regular meeting agenda for June 9, 2015. During the Commission meeting, I will request that the Commissioners vote to publish the rules in the *Texas Register* for repeal. Publication in the *Texas Register* will begin the mandatory thirty-day comment period, after which the rules will be eligible for final repeal at the Commission's meeting on August 11, 2015. At that meeting, I will again request that the Commissioners vote for repeal. After the vote, the agency will publish the repeal in the *Texas Register* and it will become effective twenty days later on September 1, 2015. If you have a strong preference, we could move the meeting up to as early as July 28, 2015, and still provide adequate time to meet the various legal requirements.

I hope this answers any remaining questions you may have about the historical racing rules. If you would like to discuss this further, please do not hesitate to contact me

Sincerely,

Handwritten signature of Robert Schmidt MD in black ink.

Robert Schmidt, M.D.
Chairman, Texas Racing Commission

cc: Rep. John Otto, Chairman, House Appropriations Committee
Sen. Juan Hinojosa, Vice-Chairman, Senate Finance Committee