

Texas Board of Criminal Justice
153rd Meeting



Minutes

February 11, 2011
Austin, Texas

TEXAS BOARD OF CRIMINAL JUSTICE

**Sheraton Austin Hotel – Capitol Ballroom D
701 East 11th Street
Austin, Texas 78701**

**February 11, 2011
1:00 PM – 2:00 PM**

ORDER OF BUSINESS

Call to Order

Reconvene Texas Board of Criminal Justice (TBCJ)

I. Regular Session

A. Recognitions

B. Discussion, Consideration, and Possible Action Regarding Consent Items

1. Hazardous Duty Pay Authorization Requests
2. Personal Property Donations
3. Sale or Disposal of Surplus Agricultural Goods and Agricultural Personal Property
4. 152nd TBCJ Meeting Minutes
5. Excused Absences

C. Report from the Presiding Officer, Texas Board of Pardons and Paroles (BPP)

D. Report from the Chairman, Judicial Advisory Council (JAC)

E. Report from the Executive Director, Texas Department of Criminal Justice (TDCJ) – Update on the 82nd Legislative Session

F. Report from the Executive Director, Correctional Managed Health Care Committee (CMHCC)

G. Report from the Chairman, Advisory Committee on Offenders with Medical or Mental Impairments (ACOOMMI)

H. Report from the Chairman, TBCJ

1. Community Work Projects
2. Chairman's Fitness Challenge

I. Internal Audit Status Report for Fiscal Years 2010-2011

- J. Discussion, Consideration, and Possible Action Regarding Purchases and Contracts Over \$1 Million
- K. Discussion, Consideration, and Possible Action Regarding Proposed Amendments to Board Rules, Title 37 Texas Administrative Code
 - 1. §163.34, Carrying of Weapons
 - 2. §163.46, Allocation Formula for Community Corrections Program
 - 3. §195.61, Method of Payment for Parole Supervision and Administrative Fees
 - 4. §§195.71 – .78, Testing for Controlled Substances Relating to Parole
- L. Discussion, Consideration, and Possible Action Regarding Adoption of Repeal of Title 37 Texas Administrative Code Chapter 153
 - 1. Subchapter A, Investigations of Abuse, Neglect, or Exploitation in a Facility Operated by the Texas Department of Criminal Justice
 - 2. Subchapter B, Private Real Property Rights Preservation
- M. Discussion, Consideration, and Possible Action Regarding Adoption of Title 37 Texas Administrative Code Section 156.1, Investigations of Allegations of Abuse, Neglect, or Exploitation of an Elderly or Disabled Offender
- N. Discussion, Consideration, and Possible Action Regarding Prison Industry Enhancement (PIE) Program Operations at the Texas Youth Commission, Gainesville State School, Gainesville, Texas
- O. Discussion, Consideration, and Possible Action Regarding Facilities Division Construction Project to Replace Plumbing Fixtures at the Clemens Unit in Brazoria County, Brazoria, Texas

Adjourn

The TBCJ may discuss and/or take action on any of the items posted on this meeting agenda. The TBCJ may also convene into Executive Session on any of these matters when attorney-client privilege is warranted.

MINUTES OF THE TEXAS BOARD OF CRIMINAL JUSTICE

Meeting No. 153

The Texas Board of Criminal Justice (TBCJ) convened in regular session on Friday, February 11, 2011, at 11:38 a.m. and immediately adjourned into executive session. The executive session adjourned at 12:20 p.m. The regular session reconvened at 1:24 p.m. and finally adjourned at 2:09 p.m. The meeting was held at the Sheraton Austin Hotel, Austin, Texas.

TBCJ MEMBERS PRESENT:

Oliver Bell, Chairman
Tom Mechler, Vice Chairman
Leopoldo (Leo) Vasquez, III, Secretary
Eric Gambrell
Janice Harris Lord
Terrell McCombs
J. David Nelson

TBCJ MEMBER ABSENT:

Carmen Villanueva-Hiles
Pastor C.L. Jackson

TEXAS DEPARTMENT OF CRIMINAL JUSTICE STAFF PRESENT:

Brad Livingston, Executive Director
Bryan Collier, Deputy Executive Director
Jeff Baldwin
Mike Bell
Melinda Bozarth
Celeste Byrne
Jackie Edwards
C. F. Hazlewood
Frank Inmon
Stuart Jenkins
Sherry Koenig
Lannette Linthicum, M.D.
Michelle Lyons
Angie McCown
Jerry McGinty
Susan McHenry
John Moriarty
Madeline Ortiz
Raymond Pyeatt
Ron Steffa
Rick Thaler
Jan Thornton
Kim Vernon
Carey Welebob
Dee Wilson

OTHERS PRESENT:

Chelsea Buchholtz, Advisor, Office of the Governor; the Honorable Larry Gist, Chairman of the Judicial Advisory Council; the Honorable Dale Sturgeon, Jones County Judge; Debbie Roberts, Superintendent of the Windham School District; and members of the media.

Convene the Texas Board of Criminal Justice

Chairman Oliver Bell convened the 153rd meeting of the TBCJ on Friday, February 11, 2011, at 11:38 a.m., noted that a quorum was present, and declared the meeting open in accordance with Texas Government Code Chapter 551, the *Open Meetings Act*. Chairman Bell adjourned the meeting into executive session, which is closed to the public in accordance with Texas Government Code Chapter 551.071, 551.074, and 551.076.

Reconvene the Texas Board of Criminal Justice

Chairman Bell reconvened the regular session of the 153rd meeting of the TBCJ on Friday, February 11, 2011, at 1:24 p.m., noted that a quorum was present, and declared the meeting open in accordance with Texas Government Code Chapter 551, the *Open Meetings Act*. He stated that the TBCJ would conduct business from the agenda posted in the Texas Register.

Chairman Bell requested that cell phones or pagers be placed on the silent or vibrate mode. He recognized Chelsea Buchholtz, Advisor-Budget, Planning and Policy, Office of the Governor, and the Honorable Dale Sturgeon, Jones County Judge.

Chairman Bell stated that the TBCJ is committed to providing the opportunity for public presentations on topics posted on the meeting agenda or public comments on topics within its jurisdiction in accordance with Board Rule 151.4, "Public Presentations and Comments to the Texas Board of Criminal Justice." He reviewed the requirements for speaker registration. As no registration cards were received prior to the required deadline, the TBCJ did not hear public presentations on posted agenda topics.

Recognitions

Chairman Bell recognized Kim Vernon, Director of the State Counsel for Offenders, for obtaining her 20 Year Service Award with the State of Texas. He thanked Ms. Vernon for the years of dedicated service and presented her with a plaque signifying her accomplishment.

Chairman Bell recognized the TDCJ employees who have achieved 25, 30, 35, and 40 or more years of service with the State of Texas during the months of December 2010 and January 2011. The TBCJ, along with Mr. Livingston, expressed their deepest gratitude for the continued service of these employees who represent the commitment of the TDCJ's staff. To each of these employees, the TBCJ offered congratulations and thanks for their unwavering loyalty and dedication to the citizens of Texas. As a symbol of appreciation, these individuals will receive a TBCJ certificate along with a personal letter of gratitude.

(Attachment A – Employee Names)

Discussion, Consideration, and Possible Action Regarding Consent Items

- 1. Hazardous Duty Pay Authorization Requests**
- 2. Personal Property Donations**
- 3. Sale or Disposal of Surplus Agricultural Goods and Agricultural Personal Property**
- 4. 152nd TBCJ Meeting Minutes**
- 5. Excused Absences**

Chairman Bell noted that the proposed consent items include the excused absence of Pastor Jackson from the October 2010 meeting, as he was unable to attend due to personal business. He asked if there were any amendments or objections to the proposed consent items. Eric Gambrell stated that his firm does pro bono work for the San Antonio Food Bank and as there are personal property donations from the food bank brought before the TBCJ for approval, he would abstain from voting on the consent items. Seeing no further objections, Chairman Bell stated the consent items stand approved, noting for the record that Mr. Gambrell abstained from voting on the items.

Report from the Presiding Officer, Texas Board of Pardons and Paroles (BPP)

Ms. Rissie Owens, Presiding Officer of the BPP, had no report.

Report from the Chairman, Judicial Advisory Council (JAC)

The Honorable Larry Gist, Chairman of the JAC, had no report.

Report from the Executive Director, Texas Department of Criminal Justice (TDCJ) – Update on the 82nd Legislative Session

Brad Livingston, TDCJ Executive Director, noted that since the December TBCJ meeting there have been ongoing discussions regarding TDCJ's fiscal challenges. The Speaker of the House and the Lieutenant Governor named committee chairmen and members during the past week. Mr. Livingston stated that there appears to be a significant continuity in place among the leadership offices. TDCJ has long standing working relationships with many of the chairmen of the committees in both the House and the Senate. He noted that the proposed budget is somewhat different in the House and Senate, which is a deviation from previous legislative sessions. The budget on the House side is approximately \$750 million below TDCJ's current biennial level and on the Senate side the budget is approximately \$550 million below the current biennial level. These funding amounts represent an austere starting point. In both the House and Senate, significant discussions have occurred with respect to the budget and the challenges facing TDCJ based upon the proposed bills. Mr. Livingston stated that he has testified before the

House Appropriations Committee, not as a formal budget hearing, but as part of an overview of the main budget drivers within state government, of which criminal justice is one of the areas highlighted. He noted that the hearing was a productive dialogue with the committee in which TDCJ outlined the importance of continued funding for many of the key components within the TDCJ system. Mr. Livingston felt it was important that everyone acknowledge the criminal justice system is now stable for a variety of reasons. For the last several years, the population has been flat with some recent growth; the Legislative Budget Board projects moderate growth over the course of the next five years. Mr. Livingston emphasized that the treatment programs continue to be important and should continue to receive funding for those that are effective and which span the spectrum of criminal justice (probation, prison, and parole). Mr. Livingston stated that he is committed to focusing on the responsibilities that he and his staff have as fiscal stewards. He stated that he and his staff would provide clear and concise testimony, relevant to the various funding levels and what the impact would be on the TDCJ system. Mr. Livingston noted that he has been referencing the Fiscal Years (FY) 2012 and 2013 budget process and overlaid on top of the challenges for FY 2011. While the increments are smaller, FY 2011 budget concerns are more urgent and timely with respect to budget reductions. Mr. Livingston cautioned that not everything presented by media sources is fact. He advised the TBCJ that some reductions in force are likely but that decision makers responded favorably to the criticality of TDCJ functions. Mr. Livingston stated he felt upbeat about the current fiscal year cuts as compared to where the TDCJ could have been. He noted that the session was only 25% through the process and many changes and challenges were yet to come.

Chairman Bell asked if there were any questions or comments. He praised Mr. Livingston and his staff for taking the leadership role and making an incredible effort to ensure the TDCJ is staying in touch with all the key offices in the executive and legislative branches. He also commended Mr. Livingston for his composed demeanor, noting that many changes can happen along the way until June, most of them positive. Chairman Bell stated that under Mr. Livingston's leadership the TDCJ has established an enormous amount of credibility with the executive, legislative, and other governmental offices. He stated that the state's leadership and legislative offices have confidence that the information given from TDCJ is solid and reliable.

**Report from the Executive Director,
Correctional Managed Health Care Committee (CMHCC)**

Chairman Bell stated that the CMHCC has not met since the December TBCJ meeting. Therefore, there would be no report.

**Report from the Chairman,
Advisory Committee on Offenders with Medical
or Mental Impairments (ACOOMMI)**

Mr. John Bradley, Chairman of the ACOOMMI, had no report.

Report from the Chairman, TBCJ

1. Community Work Projects

Chairman Bell stated that through the community work project program the TDCJ provides offender labor to eligible nonprofit organizations and governmental agencies that offer services, which enhance social welfare and general well-being of the community. During FY 2010, offenders provided assistance with 2,681 projects, giving more than 880,000 hours of labor to community work projects. The largest beneficiary of the community work program by project and hours are local communities. Across the state offenders help maintain city parks and cemeteries as well as city buildings and surrounding property. They provide lawn care services, clear trees and brush, and repair sprinkler systems and potholes. They also provide cities with janitorial services and basic facility maintenance such as painting and repairing floors, doors, and walls. In addition, they assist local non-profit projects with set-up and clean-up for county fairs and community events.

Another beneficiary of the offender community work program is the Texas Food Banks' Second Chance Program. Offenders assist in receiving, sorting, cleaning, and distributing donated goods. During FY 2010, offenders handled over 159 million pounds of food with more than half of that being distributed to families in need. TDCJ's partnership with food banks across the state varies based on the local community, local need, and unit proximity. For instance, in nine of the major food banks in Texas, offenders assist in product recovery by sorting donated food for distribution. TDCJ also participates in the Texas Fresh Approach and the Unit Food Bank Garden Program. Offenders at a number of units grow fresh fruits and vegetables and provide them to local area food banks. In addition to having the opportunity to give back to the communities, offenders learn marketable skills through community service projects. For instance in collaboration with the Dallas, Houston, and San Antonio food banks offenders can participate in the culinary training program to help prepare meals benefiting the children of hungry families. Offenders at the Dominguez State Jail can participate in the Windham School District vocational course on plant processing and warehouse equipment operations. In conjunction, they work for the San Antonio Food Bank receiving, sorting, packaging, and inventorying food and dry good items. Community work projects are a valuable tool in serving local communities while enhancing the rehabilitative efforts of the TDCJ. Chairman Bell thanked everyone participating in those programs.

2. Chairman's Fitness Challenge

For the second quarter of the 2011 Chairman's Football League (CFL), the following teams were at the top of their division:

- Division One: The Parole Division Region III Office won the championship by obtaining 11,754 points. The Parole Division's Specialized Programs Department won second place. Support Operations of the Correctional Institutions Division placed third.
- Division Two: The Houston III Parole Office achieved the championship with 18,556 points. The TDCJ Administrative Review Office placed second. The Agribusiness, Land and Minerals Department placed third.

- Division Three: For the second time, the championship goes to the Fort Stockton Unit, which achieved 12,538 points. The Tulia Unit placed second. The Information Technology Division placed third.
- Division Four: For the second time, the Lynaugh Unit took the championship with 45,492 points. The Cole State Jail took second place. The Stevenson Unit took third place.
- Division Five: The Jester IV Unit achieved the championship with 6,085 points. The Manufacturing and Logistics Division placed second. The Hightower Unit placed third.
- Division Six: No private facilities participated during the quarter; therefore the championship for this quarter was waived.
- Division Seven: The Windham School District achieved 15,939 for the quarter.

Chairman Bell stated that registration for the 2011 CFL Round-Up would be starting soon. He noted that for this six-week challenge, employees would be encouraged to complete 30 minutes of physical activity five days a week or 150 minutes per week. The Texas Round-Up Run/Walk event is scheduled for April 30, 2011 in Austin, Texas. Chairman Bell encouraged all interested TDCJ employees to participate.

Internal Audit Status Report for Fiscal Years 2010-2011

Raymond Pyeatt, Director for the Internal Audit Division, provided the following revision to the handout of the Internal Audit Status Report for the Fiscal Years 2010-2011:

- **1020 – Parole Division, Specialized Programs:** The draft report was released on February 8, 2011.

Chairman Bell asked if there were any questions or comments. There were none.

Discussion, Consideration, and Possible Action Regarding Purchases and Contracts Over \$1 Million

Jerry McGinty, Chief Financial Officer, reviewed the purchases over \$1 million. Items 1 and 2 are increases to previously approved FY 2011 orders for beef and pork trimmings. Item 3 is an increase to a FY 2010-11 electronic monitoring contract initially approved at the June 2009 TBCJ meeting. Item 4 is a one-year renewal contract for the operations and management of the East Texas Intermediate Sanction Facility. Items 5-7 are renewal contracts for the next six months for the West Texas Intermediate Sanction Facility, the Mineral Wells Pre-Parole Transfer Facility, and the Bridgeport Pre-Parole Transfer Facility.

Chairman Bell asked if there were any questions or comments. Mr. Gambrell stated that he wished to abstain from the vote on purchases and contracts over \$1 million as his firm represents Corrections Corporation of America, who is the facility operator for two of the four presented contract renewals. Chairman Bell noted Mr. Gambrell's abstention.

Leo Vasquez requested additional information about Item 6, noting that the contract was for six months at a contracted rate of \$12.9 million. Mr. McGinty responded the contract was a six-month contract renewal for over 2,000 beds. He advised Mr. Vasquez that the per diem rate is approximately \$33, and during the recent contract negotiations, the vendors extended the current per diem rate. Seeing no further questions, Chairman Bell called for a motion and a second.

Tom Mechler made a motion that the TBCJ approve the purchases and contracts over \$1 million, as presented.

David Nelson seconded the motion, which prevailed unanimously when called to a vote (Eric Gambrell abstained).

Discussion, Consideration, and Possible Action Regarding Proposed Amendments to Board Rules, Title 37 Texas Administrative Code

1. §163.34, Carrying of Weapons

Melinda Bozarth, TDCJ General Counsel, stated that the revisions to §163.34, Carrying of Weapons, were presented to the JAC, the Probation Advisory Counsel (PAC), and the Community Supervision and Corrections Department (CSCD) directors for review and comment. Comments were received from Judge Keller who serves on the JAC; her comments were incorporated into the proposed revisions. These revisions are necessary to conform the rule according to state and federal law. Ms. Bozarth noted that in section (d)(2)(A) a clause has been added that a community supervision officer (CSO) cannot carry a firearm if he was discharged from the armed forces under dishonorable conditions. This complies with current law. She further noted that section (i)(1) sets forth a time period by which the training program must be completed. The CSO has six months to complete the training program after obtaining a psychological release. Ms. Bozarth stated the rest of the revisions are nonsubstantive.

Chairman Bell asked if there were any questions. Seeing none, he called for a motion and a second.

Terrell McCombs made a motion that the TBCJ approve for publication in the Texas Register the proposed amendments to Board Rule, 163.34, Carrying of Weapons to receive public comment, as presented.

Mr. Mechler seconded the motion, which prevailed unanimously when called to a vote.

2. §163.46, Allocation Formula for Community Corrections Program

Ms. Bozarth stated that the revisions to §163.46, Allocation Formula for Community Corrections Program were submitted to the JAC, PAC, and the CSCD directors for review and comment. No comments were received. All revisions are nonsubstantive and clarify the existing process.

Chairman Bell asked if there were any questions. Seeing none, he called for a motion and a second.

Mr. Vasquez made a motion that the TBCJ approve for publication in the Texas Register the proposed amendments to Board Rule, 163.46, Allocation Formula for Community Corrections Program to receive public comment, as presented.

Mr. Mechler seconded the motion, which prevailed unanimously when called to a vote.

3. §195.61, Method of Payment for Parole Supervision and Administrative Fees

Ms. Bozarth reviewed the revision to §195.61, Method of Payment for Parole Supervision and Administrative Fees, which allows the TDCJ the option to explore payment of supervision fees through electronic means instead of limiting it to a money order or cashier's check.

Chairman Bell asked if there were any questions. Seeing none, he called for a motion and a second.

Mr. McCombs made a motion that the TBCJ approve for publication in the Texas Register the proposed amendments to Board Rule, 195.61, Method of Payment for Parole Supervision and Administrative Fees to receive public comment, as presented.

Mr. Nelson seconded the motion, which prevailed unanimously when called to a vote.

4. §§195.71 – .78, Testing for Controlled Substances Relating to Parole

Ms. Bozarth stated that the revisions to §§195.71-.78, Testing for Controlled Substance Relating to Parole, were recommended to clarify current procedures pursuant to the state law requirement that rules are reviewed every four years. There are no substantive revisions.

Chairman Bell asked if there were any questions. Seeing none, he called for a motion and a second.

Mr. Nelson made a motion that the TBCJ approve for publication in the Texas Register the proposed amendments to the Board Rules, 195.71-.78, Testing for Controlled Substance Relating to Parole, to receive public comment, as presented.

Mr. McCombs seconded the motion, which prevailed unanimously when called to a vote.

Discussion, Consideration, and Possible Action Regarding Adoption of Repeal of Title 37 Texas Administrative Code Chapter 153

1. Subchapter A, Investigations of Abuse, Neglect, or Exploitation in a Facility Operated by the Texas Department of Criminal Justice

Ms. Bozarth stated that the proposed repeal of Subchapter A, Investigations of Abuse, Neglect, or Exploitation in a Facility Operated by the Texas Department of Criminal Justice, was published in the October 29, 2010, issue of the Texas Register, 35 TexReg 9672. Thirty days have passed with no comments received. Ms. Bozarth recommended that the TBCJ move forward with the adoption of the repeal of the rule.

Chairman Bell asked if there were any questions. Seeing none, he called for a motion and a second.

Janice Lord made a motion that the TBCJ adopt the repeal of Title 37 Texas Administrative Code Chapter 153 Subchapter A, Investigations of Abuse, Neglect, or Exploitation in a Facility Operated by the Texas Department of Criminal Justice, as published in the Texas Register and that the Chairman sign the order to this effect.

Mr. Gambrell seconded the motion, which passed unanimously when called to a vote.

2. Subchapter B, Private Real Property Rights Preservation

Ms. Bozarth stated that the proposed repeal of Subchapter B, Private Real Property Rights Preservation, was published in the October 29, 2010, issue of the Texas Register, 35 TexReg 9672. Thirty days have passed with no comments received. Ms. Bozarth recommended that the TBCJ move forward with the adoption of the repeal of the rule.

Chairman Bell asked if there were any questions. Seeing none, he called for a motion and a second.

Mr. Gambrell made a motion that the TBCJ adopt the repeal of Title 37 Texas Administrative Code Chapter 153 Subchapter B, Private Real Property Rights Preservation, as published in the Texas Register and that the Chairman sign the order to this effect.

Ms. Lord seconded the motion, which prevailed unanimously when called to a vote.

(Attachment B – Adoption Orders 37 TAC 153 Subchapter A and Subchapter B)

Discussion, Consideration, and Possible Action
Regarding Adoption of Title 37 Texas Administrative Code
Section 156.1, Investigations of Allegations of Abuse, Neglect,
or Exploitation of an Elderly or Disabled Offender

Ms. Bozarth explained that the new rule was published in the October 29, 2010, issue of the Texas Register, 35 TexReg 9673. Thirty days have passed with no comments received. Ms. Bozarth recommended that the rule be adopted as presented.

Chairman Bell asked if there were any questions. Seeing none, he called for a motion and a second.

Mr. Nelson made a motion that the TBCJ adopt Title 37 Texas Administrative Code Section 156.1, Investigations of Allegations of Abuse, Neglect, or Exploitation of an Elderly or Disabled Offender, as published in the Texas Register and that the Chairman sign the order to this effect.

Mr. Vasquez seconded the motion, which prevailed unanimously when called to a vote.

(Attachment C – Adoption Order 37 TAC 156.1)

Discussion, Consideration, and Possible Action Regarding
Prison Industry Enhancement (PIE) Program Operations
at the Texas Youth Commission, Gainesville State School,
Gainesville, Texas

C.F. Hazlewood, Director of the Manufacturing and Logistics Division, presented the Notice of Undesignation in accordance with the Prison Industry Enhancement Certification Program. WJ Welding Company has stopped operations at the Texas Youth Commission's Gainesville State School in Gainesville, Texas. WJ Welding ceased operations on August 1, 2010. Additionally, their contract was terminated on October 14, 2010. Mr. Hazlewood advised the TBCJ needed to take official action by approving the Notice of Undesignation and the TBCJ Chairman signing the form.

Chairman Bell asked if there were any questions. Seeing none, he called for a motion and a second.

Mr. Vasquez made a motion that the TBCJ undesignate WJ Welding at the Texas Youth Commission Gainesville State School, Gainesville, Texas, as a cost accounting center under the Private Sector Prison Industry Enhancement Program, as presented.

Mr. McCombs seconded the motion, which prevailed unanimously when called to a vote.

Discussion, Consideration, and Possible Action Regarding
Facilities Division Construction Project to
Replace Plumbing Fixtures at the Clemens Unit
in Brazoria County, Brazoria, Texas

Frank Inmon, Director of the Facilities Division, stated he had briefed the TBCJ earlier at the Business and Financial Operations Committee. He noted the project was to replace broken plumbing fixtures at the Clemens Unit. He requested the TBCJ's approval for a total project amount of \$1,266,000.

Chairman Bell asked if there were any questions. Seeing none, he called for a motion and a second.

Mr. McCombs made a motion that the TBCJ approve a not to exceed budget of \$1,266,000 to replace the ancient plumbing fixtures at the Clemens Unit in Brazoria, Texas, as presented.

Ms. Lord seconded the motion, which prevailed unanimously when called to a vote.

Adjournment

There being no further business, Chairman Bell adjourned the regular session of the Texas Board of Criminal Justice at 2:09 p.m.

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Chairman

Secretary

*Signature on File

Note: Referenced attachments for the approved minutes are available upon request from the Office of Record, Executive Services.