

**John R. Kasich, Governor**  
Thomas H. Bainbridge, *Chairman*  
Jodie M. Taylor, *Member*  
Karen L. Gillmor, Ph.D., *Member*  
Tim Adams, *Executive Director*

**Meeting Minutes**

**September 23, 2015**

**10:00 A.M.**

**TYPE OF MEETING**

Commission Meeting

**ATTENDEES**

Chairman Thomas H. Bainbridge  
Commissioner Jodie M. Taylor  
Commissioner Karen L. Gillmor  
Tim Adams, Executive Director  
Tom Connor, Director of Hearing Services  
Rachael T. Rentas-Black, Chief Legal Counsel  
Jacob Bell, Director of Operations/Legislation  
Casaundra Johnson, Administrative Assistant  
Kim Ferkany, Administrative Assistant  
Debbie Fodey, Administrative Assistant  
Russ Keith, Program Administrator  
Greg Hickman, Assistant Legal Counsel  
Jennifer Rohrbaugh, Assistant Legal Counsel

**CALL TO ORDER**

The meeting was called to order by Chairman Bainbridge.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Present
Commissioner Taylor	Present
Chairman Bainbridge	Present

**OLD BUSINESS**

Commissioner Gillmor requested to move to amend the January 7, 2015 Meeting Minutes. Ms. Rentas-Black indicated the changes were made and passed out to all of the commission members. The minutes currently reflect the changes Commissioner Gillmor requests. Commissioner Gillmor indicated the changes made were for typos/grammatical errors and not substantive in nature. Chairman Bainbridge confirmed all commission members have the changed minutes before them for review.

**John R. Kasich, Governor**  
Thomas H. Bainbridge, *Chairman*  
Jodie M. Taylor, *Member*  
Karen L. Gillmor, Ph.D., *Member*  
Tim Adams, *Executive Director*

Commissioner Gillmor asked if she should withdraw her motion to amend the minutes since the minutes were already amended, and Mrs. Rentas-Black answered in the affirmative.

**MOTION**

Chairman Bainbridge moved for the January 7, 2015 minutes to be approved as amended and presented. Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

**MOTION**

Chairman Bainbridge moved for January 14, 2015 minutes to be approved as amended and presented. Commissioner Gillmor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

**MOTION**

Chairman Bainbridge moved for the April 21, 2015 minutes to be approved as amended and presented. Commissioner Taylor did not have the second page of the meeting minutes reflecting the changes made. Mr. Hickman and Ms. Rentas-Black obtained and provided copies of page 2 to the Commission. The Commission then reviewed the changes made.

Chairman Bainbridge moved for the April 21, 2015 minutes to be approved as amended and presented. Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**John R. Kasich, Governor**  
Thomas H. Bainbridge, *Chairman*  
Jodie M. Taylor, *Member*  
Karen L. Gillmor, Ph.D., *Member*  
Tim Adams, *Executive Director*

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

**NEW BUSINESS**

**DISCUSSION**

IC-2 Permanent Total Disability Application

Tom Connor led the discussion regarding changes to the IC-2 Permanent Total Disability Application. He indicated this is an ongoing topic and provided a memo regarding the suggested changes the Commission is to vote upon. Mr. Connor compiled all of the suggestions, and only made grammatical changes. No substantive changes were made to the IC-2 application. The Rules Advisory Group met regarding the substantive changes and was unanimous in its recommendation to not make substantive changes on pages two through six. The last draft was November 2014.

Commissioner Taylor inquired as to whether the Commission should talk about each change systematically. Chairman Bainbridge and Ms. Rentas-Black agreed.

Mr. Connor began the discussion regarding the language on page two in the section "Daily Activities". It was suggested to include the doctor that prescribed the cane, brace, etc., for what condition it was prescribed, and when it was first prescribed. The Rules Advisory Group found this questioning was not needed in order to start the process of the application and thus recommended not to include the language.

Commissioner Taylor asserted it was her understanding the Rules Advisory Group did not mind the original question, just not the additional language regarding the physician. Mr. Connor agreed and Ms. Rentas-Black added that the Rules Advisory Group recommended to not amend or modify the current question as the additional information is not necessary. Chairman Bainbridge gave deference to the Rules Advisory Group.

**MOTION**

Chairman Bainbridge moved to maintain the original question and eliminate the additional portion. Commissioner Gillmor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.



**John R. Kasich, Governor**  
Thomas H. Bainbridge, *Chairman*  
Jodie M. Taylor, *Member*  
Karen L. Gillmor, Ph.D., *Member*  
Tim Adams, *Executive Director*

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Mr. Connor presented the proposed changes to the “Other Disability Benefits” section located on page three. This section seeks to add the question regarding whether the injured worker is involved in any organizations, clubs, charities or associations of any kind. The Rules Advisory Group recommended not to amend, as it is not relevant all of the time and does not need to be in the application. Commissioner Taylor indicated as an employer attorney she would want the question in the application because the application is the first thing an attorney would view. The application provides a lot of information on what the injured worker can or cannot do. She further added it is important to know the volunteer activities an injured worker is involved in as it lends itself to the ability to work. Also, these are things an employer’s attorney would want to know and would not want the PTD hearing being the first time the information is being heard. Commissioner Gillmor indicated she supports Commissioner Taylor’s reasoning. Chairman Bainbridge indicated this questioning should not be a part of the application whatsoever and this evidence can be obtained in the process prior to the hearing. Chairman Bainbridge added that the questions go too far and he would give deference to the Rules Advisory Group who recommended no changes be made.

**MOTION**

Commissioner Taylor moved to include the “Other Disability Benefits” section that asks whether injured worker is involved in any organizations, clubs, charities, or associations of any kind.  
Commissioner Gillmor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	No

Mr. Connor noted a second question on page two of the application that was suggested to be amended regarding the questioning of basis for disability benefits. Mr. Connor indicated this could put a burden on injured worker to divulge non-workers’ compensation related conditions and can cause a red herring.

Commissioner Gillmor disagreed stating it is in favor of the injured worker if receiving social security benefits for the same allowed conditions. Although it is adjudicated elsewhere, it is in favor for the injured worker.

**John R. Kasich, Governor**  
Thomas H. Bainbridge, *Chairman*  
Jodie M. Taylor, *Member*  
Karen L. Gillmor, Ph.D., *Member*  
Tim Adams, *Executive Director*

Mr. Connor also noted there may be HIPPA concerns if the injured worker is asked to divulge the reasoning for the social security benefits and it is not for an allowed condition with the Commission. Commissioner Taylor did not believe this would be a HIPPA issue since workers' compensation is excluded from HIPPA. Mr. Connor replied, like the medical release, it only pertains to the allowed conditions in a claim, anything else would not be released. Mr. Connor added the Rules Advisory Group recommended to make no changes. Commissioner Taylor continued that this is an issue that can be discussed in the hearing conference, and added she is comfortable with this being on the application. Chairman Bainbridge responded that he does not see the necessity in including this on the application as it can open it up to non-allowed conditions. Further, Chairman Bainbridge gave deference to the Rules Advisory Group that recommended not to include on the application.

**MOTION**

Chairman Bainbridge moved to not include on page three under "Other Disability Benefits" the question regarding the basis for disability benefits.  
Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Mr. Connor then presented the proposed changes on page four under section "Vocational Rehabilitation History." This section seeks to ask the injured worker whether the injured worker completed a program and, if not, why. Mr. Connor indicated the injured worker may not know for certain whether the program was completed or not. Further, the injured worker would be speculating on what went on in the program and why it was terminated. The fact that an injured worker engaged in the program is relevant; however, the documentation in the file would provide better evidence on the outcome of the program. Further, the Rules Advisory Group recommended not to add the question. Chairman Bainbridge agreed with Mr. Connor and the Rules Advisory Group.

Commissioner Taylor responded that, as a former employer attorney, she did not want the injured worker to explain the outcome because it can provide insight beyond what the report provides. Otherwise, the attorney is limited to what the case manager writes and there may be reasoning outside the report that could be relevant.

**John R. Kasich, Governor**  
Thomas H. Bainbridge, *Chairman*  
Jodie M. Taylor, *Member*  
Karen L. Gillmor, Ph.D., *Member*  
Tim Adams, *Executive Director*

**MOTION**

Chairman Bainbridge moved to eliminate the language on page four under section “Vocational Rehabilitation History” regarding if injured worker completed a program as recommended by the Rules Advisory Group.

Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Tom Connor then suggested to move from page four to page five the “last date worked” as it seems to fit well on page five and there are no substantive changes in the move. Chairman Bainbridge indicated he had no problem with the move if the Rules Advisory Group recommended the change.

**MOTION**

Chairman Bainbridge moved to amend the application to reflect the matter under page four “Vocational History” be changed to page five as a more appropriate location.

Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Mr. Connor then brought to the Commission’s attention on pages five and six regarding the questioning of the rate of pay. The Rules Advisory Group suggested removing the questioning regarding the rate of pay and whether the injured worker invested in a business. Mr. Connor added pursuant to case-law the rate of pay and investment in a business is irrelevant to an application of permanent total disability.

**MOTION**

Chairman Bainbridge moved to not include the questioning regarding rate of pay and investment in a business.

Commissioner Taylor seconded the motion.



**John R. Kasich, Governor**  
Thomas H. Bainbridge, *Chairman*  
Jodie M. Taylor, *Member*  
Karen L. Gillmor, Ph.D., *Member*  
Tim Adams, *Executive Director*

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Mr. Connor then discussed the inclusion of the question regarding why injured worker’s employment ended. The Rule Advisory Group did not come to a consensus regarding this question. The Employer group contended the information regarding the employment ending should be included on the application. However, on the other side, the injured workers’ group did not want to include it as it creates an affirmative defense to overcome. Mr. Connor indicated there is no way to have a unanimous recommendation from the groups.

Commissioner Taylor asked how long the current application has been in effect. Mr. Connor replied it has been some time. Commissioner Taylor then asked Ms. Rentas-Black her opinion as a former hearing officer if this information would be relevant on an application. Ms. Rentas-Black responded it would be relevant to the hearing officer, but it is not relevant to the process of the application. The question of why the injured worker left employment is more a legal matter than a processing one. Mr. Connor added retirement is relevant; however, the problem is that it can set up an affirmative defense and can be especially problematic for *pro se* injured workers. It can also open the door for additional questions that would need to be added to the application.

**MOTION**

Chairman Bainbridge moved for the language regarding why work ended, periods of unemployment, and reference to retirement benefits not be included on the application.

Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Mr. Connor pointed out that the suggestion to include a warning that the injured worker is not permitted to work if permanent total disability should be moved to the first page of the application and in bold lettering.

**John R. Kasich, Governor**  
Thomas H. Bainbridge, *Chairman*  
Jodie M. Taylor, *Member*  
Karen L. Gillmor, Ph.D., *Member*  
Tim Adams, *Executive Director*

Commissioner Taylor pointed out the MEDCO-14 has similar language and the BWC has experienced problems with this in the past with the language being insufficient. Mr. Connor opined the purpose for the MEDCO-14 is for temporary total, whereas here it is for permanent total disability and the injured worker is not able to work in any capacity. Commissioner Taylor again pointed out defining “work” can be troublesome. Chairman Bainbridge agreed with Mr. Connor. Also, the Rules Advisory Group suggested the language and placement. The placement on the first page was done on the November 2014 draft; therefore, a motion is not needed.

**MOTION**

Chairman Bainbridge moved to adopt the November 2014 draft version of the IC-2 application with the amendments presented at the meeting, and with the warning language on top of the form to be approved. In addition, the Chairman clarified that the amendment approved by Commissioners Taylor and Gillmor regarding “Other Disability Benefits” (involvement in any organizations, clubs, charities, or associations of any kind) be adopted as well.

Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

**MOTION**

Chairman Bainbridge moved that the IC-2 be effective on September 28, 2015.  
Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes



**John R. Kasich, Governor**  
Thomas H. Bainbridge, *Chairman*  
Jodie M. Taylor, *Member*  
Karen L. Gillmor, Ph.D., *Member*  
Tim Adams, *Executive Director*

Asbestosis Resolution

Mr. Connor stated that Resolution No. R03-1-02 has been in effect since 1996. In 2003, it was modified after the *Hubbard* decision. The resolution provided that a baseline of medical information should include an X-ray with B-reading, causal connection, and a pulmonary function study. The idea behind the baseline was to address the concern of the influx of applications. If an injured worker has better medical testing that is fine, the resolution was merely to provide a baseline on what was required. Now, pulmonology has moved away from the B-reading and instead does a high resolution CT scan. The federal government may no longer be certifying B-readers. Mr. Connor reached out to Dr. Stanko who confirmed this change. Further, SHO William Brill asked to include in the resolution that it is not intended to control death claims. According to Mr. Connor, the hearing officers generally follow this policy. However, the language should be added so that the resolution does not act as an impediment to death claims involving asbestosis.

Mr. Connor further indicated the draft of the resolution should have included a “Whereas” section referring to the modification in 2003 describing the reason for the change. Ms. Rentas-Black added there will need to be additional language throughout the resolution referencing the 1996 and 2003 resolutions.

Ms. Fodey stated the Commission will be hearing a claim regarding this issue on September 24, 2015.

Commissioner Gillmor asked Mr. Connor if there is anywhere else that would set forth the requirements of a death claim in relation to asbestosis. Mr. Connor stated it would be up to the Commission to set forth a policy. The current asbestosis resolution was enacted in response to a concern for the volume of claims rather than death claims.

**MOTION**

Chairman Bainbridge moved to modify Resolution No. R03-1-02 as reflected by the discussion in regards to including a high resolution CT scan as a basis of diagnosis effective September 28, 2015.

Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

John R. Kasich, Governor  
Thomas H. Bainbridge, *Chairman*  
Jodie M. Taylor, *Member*  
Karen L. Gillmor, Ph.D., *Member*  
Tim Adams, *Executive Director*

### Commission Member Voting Procedures

Chairman Bainbridge started the discussion by stating that currently *Ormet* provides a process for an absent commission member to vote when there is a split vote situation. In the past, when a commissioner was absent and a majority had been reached, that absent commissioner did not vote. It has never been a pressed issue in the past, and currently there is no written policy. After long consideration and thought, Chairman Bainbridge would like to permit the absent commissioner to vote if so desired, in the interest of due process. Chairman Bainbridge went on to add that the ability to vote should be granted, however, with some time constraints. He shared concerns that future Commissions could interpret this as allowing a member to hold up a majority order for years.

Chairman Bainbridge recommended that the Commission establish a policy that an absent commissioner, who desires to vote on a matter, be permitted to cast a vote within fourteen days of the date of hearing. Further, if the absent commissioner desires to write a dissenting opinion, they be permitted to submit that opinion within fourteen days from the date the majority order is presented for signature. Commissioner Taylor stated that she agreed with the Chairman's suggestion and would second such a motion.

Commissioner Gillmor continued the discussion by stating that she has a right to vote on claims matters and that one only need look to Phillip Fulton's *Ohio Workers' Compensation Law* for evidence supporting the existence of this right. Commissioner Gillmor further stated that Fulton's provides that there only needs to be reasonable time to vote. Commissioner Gillmor asserted that, if a time constraint is set for an absent commission member to provide a dissent, then all dissenting opinions should have a time limit. Commissioner Gillmor reminded those in attendance that *State ex rel. Ormet v. Indus. Comm.*, 54 Ohio St.3d 102 (1990) and *Morgan v. United States*, 298 U.S. 468 (1936) established that a commission member, who was absent at the hearing and is later apprised of the proceedings, can vote.

Commissioner Gillmor stated that she went to meet with Mr. Michael Grodhaus, Chief Legal Counsel with the Governor's Office. Commissioner Gillmor explained Mr. Grodhaus stated the Governor is opposed to voter suppression and this is an issue the Governor might want to take on. Commissioner Gillmor continued she has the right to vote and that her right is being taken away by imposing time limits. Commissioner Gillmor also stated that, with regard to the three cases on which she has previously asked to be *Ormetted*, her right to vote on those cases was cancelled and the Hearing Officers, who were present at the hearings, have not met with her. Commissioner Gillmor stated she had been told that this Commission's decision on the proposed policy could have a negative impact on other state agencies. Commissioner Gillmor stated that she related this concern to Mr. Grodhaus, who was very surprised anyone would have that opinion because the Industrial Commission is an anomaly in that it is in continuous open session unlike the other state agencies. Commissioner Gillmor stated that she finds the imposition of time limits on an absent commissioner's preparation of a dissent to be spurious and that she is aware of other commissioners' dissenting opinions taking months to be prepared. Commissioner Gillmor added that the motion to provide an ability to vote is unnecessary as she has the right to vote and she does not support the time limits.



**John R. Kasich, Governor**  
Thomas H. Bainbridge, *Chairman*  
Jodie M. Taylor, *Member*  
Karen L. Gillmor, Ph.D., *Member*  
Tim Adams, *Executive Director*

Chairman Bainbridge agreed regarding the precedent set forth by *Ormet*. However, Chairman Bainbridge, again, shared his concerns regarding future Commissions holding up a majority decision indefinitely. Commissioner Gillmor added that any decision can be held up indefinitely with a dissenting opinion when all commission members are present. Chairman Bainbridge responded the Commission is often beyond its statutory timelines for issuance of its orders, and he has no problem putting time constraints on all orders.

Commissioner Taylor added that, in the past, all dissents were required to be finished within two weeks of the date of hearing. Commissioner Taylor stated that, when she was a legal assistant to Commissioner Gannon, the majority decided that all dissenting opinions were to be submitted within fourteen days of the date of hearing. Commissioner Taylor asked Ms. Rentas-Black to confirm this unwritten practice. Ms. Rentas-Black confirmed that was the practice when she was a Commission staff attorney in the 1990s. Commissioner Taylor added she agrees with time frames suggested by Chairman Bainbridge for both the casting of votes and the submission of dissenting opinions. Commissioner Taylor further stated that the Commission should not treat absentee commissioners different from those that are present.

Commissioner Taylor noted that, currently, the law requires that the Commission publish its orders within seven days of its hearings. Commissioner Taylor stated this time limit is impossible to satisfy, and the Commission struggles to be in compliance, but that this is the law. Commissioner Taylor stated the Commission needs to show reasonable effort to comply with the legislature's mandate to issue orders within 52 days from the filing of an appeal. Commissioner Taylor pointed out that the Commission's effort to meet its statutory mandate is demonstrated by its issuance of orders in roughly 80 days from the date of the filing of an appeal as compared to the 160 days it previously took. Commissioner Taylor continued it is unreasonable to allow an absentee commissioner to vote without any time limitations as it puts businesses and injured workers in limbo.

Commissioner Gillmor responded that the imposition of a time limit has a chilling effect on writing dissents. Commissioner Gillmor further stated such short time limits are unreasonable because claims are complicated and it can take a lot of time to speak with constituent groups regarding an order prior to making a decision. Commissioner Gillmor further noted that she has the largest constituency since she is the public member. In addition, Commissioner Gillmor stated she is always the last to receive an order so it always appears that it has taken her longer to complete.

Commissioner Taylor stated R.C. 4123.511(E) provides the timeframe for all orders. Commissioner Taylor then read the following from the Revised Code: "The commission shall hold the hearing within forty-five days after the filing of the notice of appeal and, within seven days after the conclusion of the hearing, the commission shall issue its order affirming, modifying, or reversing the order issued under division (D) of this section. The commission shall notify the parties and their respective representatives in writing of the order."



**John R. Kasich, Governor**  
Thomas H. Bainbridge, *Chairman*  
Jodie M. Taylor, *Member*  
Karen L. Gillmor, Ph.D., *Member*  
Tim Adams, *Executive Director*

Commissioner Taylor concluded by stating that the time limits by which the Commission must abide are mandates from the legislature and the Commission needs to make a reasonable effort in completing its orders in a timely manner.

Chairman Bainbridge concluded by stating what is done here today will be applicable to future commissions. Chairman Bainbridge decided to proceed with the motion as presented and not expand it to include all concurring and dissenting opinions.

**MOTION**

Chairman Bainbridge moved that, in the event a commission member is absent and there is a majority vote, the absent commission member has the ability to vote within 14 days of hearing. If the absent commission member wishes to provide a dissent, there is an additional 14 days from the date the majority order is presented for signature. Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	No
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

The Commission then went into Executive Session.

**MOTION**

Chairman Bainbridge moved for the Executive Session to conclude.  
Commissioner Gillmor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

**John R. Kasich, Governor**  
Thomas H. Bainbridge, *Chairman*  
Jodie M. Taylor, *Member*  
Karen L. Gillmor, Ph.D., *Member*  
Tim Adams, *Executive Director*

Mr. Adams stated that prior to Executive Session beginning, but after Commissioner Taylor and Chief Counsel Rachael Black had exited the room, Commissioner Gillmor made a comment which was not related to the Executive Session topic but was related to the prior discussion of Commission voting procedures and that he believed Commissioner Taylor should be made aware of this comment. Chairman Bainbridge directed Mr. Adams to proceed. Commissioner Gillmor had commented she wanted her explanation on record, of why she opposed the motion on time limitations and that it was because the Commission is implementing a policy that is contrary to the statute Commissioner Taylor had just read. Mr. Adams asked Ms. Gillmor to please correct him if he misstated her comment, but she did not disagree with his remark.

**ADJOURNMENT**

Chairman Bainbridge moved to adjourn.  
Commissioner Taylor seconded the motion.

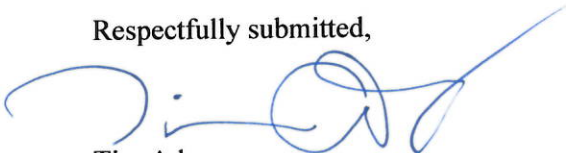
**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Respectfully submitted,



Tim Adams  
Executive Director