

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

OPEN MEETING VIA TELEPHONE CONFERENCE CALL  
PURSUANT TO GOVERNOR'S MARCH 16, 2020,  
TEMPORARY SUSPENSION OF CERTAIN  
OPEN MEETING PROVISIONS

Thursday,  
February 4, 2021  
8:00 a.m.

BOARD MEMBERS:

Guillermo "Memo" Treviño, Chair  
Charles Bacarisse, Vice Chair  
Stacey Gillman  
Brett Graham  
Tammy McRae  
John Prewitt  
Manny Ramirez  
Paul Scott

*ON THE RECORD REPORTING*  
*(512) 450-0342*

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determination letter issued November 16, 2020)

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#### CLOSED SESSION

9. The Board may enter into closed session under 157  
one or more of the following provisions of the  
Texas Open Meetings Act, Government Code  
Chapter 551:

Section 551.071  
Section 551.074  
Section 551.076  
Section 551.089

10.	Action Items from Closed Session	--
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P R O C E E D I N G S

1  
2 MR. TREVIÑO: Good morning. My name is Memo  
3 Treviño and I'm pleased to open the Board meeting of the  
4 Texas Department of Motor Vehicles.

5 It is approximately 8:00 a.m., and I am now  
6 calling this meeting to order. I'm now calling the Board  
7 meeting for February 4, 2021 to order. I want to note for  
8 the record that the public notice of this meeting,  
9 containing all items on the agenda, was filed with the  
10 Office of the Secretary of State on January 27, 2021.

11 This meeting is being held by telephone  
12 conference call in accordance with Texas Government Code  
13 Chapter 551, as temporarily modified under Governor Greg  
14 Abbott's authority to suspend certain statutes due to  
15 COVID-19. Governor Abbott suspended various provisions of  
16 the Texas Open Meetings Act that require government  
17 officials and members of the public to be physically  
18 present at specified meeting locations.

19 Under that suspension, the public will not be  
20 able to physically attend this meeting in person.  
21 Instead, the public may attend this meeting by using the  
22 link or by calling the toll free telephone number, which  
23 are both posted in our agenda which was filed with the  
24 Office of the Secretary of State on January 27, 2021. All  
25 board members, including myself, will be participating

1 remotely via Webex.

2 At this time, will all attendees please mute  
3 your phone for the entire duration of this meeting. I'm  
4 asking our Webex meeting host to make sure all attendees'  
5 phones are muted and their videos turned off, except for  
6 board members and those who are presenting. Callers will  
7 be removed for any disruption including background noise.

8 I would like to remind all participants that  
9 this is a telephone conference call meeting. Because this  
10 meeting is held by telephone conference call, there are a  
11 few things that will assist in making the meeting run  
12 smoother and will assist the court reporter in getting an  
13 accurate record.

14 Please identify yourself before speaking; speak  
15 clearly. Remember there may be a slight delay due to the  
16 telephone conference call meeting so please wait a little  
17 longer than usual before responding to participants. Do  
18 not speak over others, and please ask the chairman to  
19 proceed and be sure to get recognized before speaking.

20 I would like to also thank our court reporter,  
21 because this is a very, very difficult job, so please,  
22 board members and people presenting, try to speak clearly  
23 and slowly because there have been some concerns reported.

24 If you wish to address the board or speak on an  
25 agenda item during today's meeting, please send an email

1 to GCO\_General@TxDMV.gov. Please identify in your email  
2 the specific item you're interested in commenting on, your  
3 name and address, and whether you're representing anyone  
4 or speaking for yourself. If your comment does not  
5 pertain to a specific agenda item, we will take your  
6 comment during the general public comment portion of the  
7 meeting.

8 In accordance with department administrative  
9 rule, comments to the board will be limited to three  
10 minutes, then the call will be muted by the meeting host  
11 when your time is up. I believe also there will be a 30-  
12 second cue that your time is approaching. Comments should  
13 be pertinent to the issues stated in your email. When  
14 addressing the board, please state your name and  
15 affiliation for the record.

16 Before we begin today, I'd like to remind all  
17 presenters and those in attendance of the rules of conduct  
18 at our board meetings. In the department's rules under  
19 Section 206.22, the board chair is given authority to  
20 supervise the conduct of meetings.

21 This includes the authority to determine when a  
22 speaker is being disruptive of the meeting or is otherwise  
23 violating the timing or presentation rules I just  
24 discussed. Disruptive speakers will be muted, given a  
25 warning about disruptive behavior, then removed from the

1 meeting for any continued disruption.

2 Okay. So will now have our first agenda item  
3 and the roll call and establishment of quorum.

4 I'd also like to take a moment here. Member  
5 Washburn has resigned her appointment to the board, and  
6 she's served since 2019. And she was very involved in a  
7 variety of things pertaining to the work of this board,  
8 and we appreciate her service as a citizen of Texas. And  
9 she will be missed -- greatly missed. And we wish her  
10 great luck in all her future endeavors. We will also take  
11 time at some future board meeting to recognize her and to  
12 thank her for her efforts.

13 So with that, I'd like to have a roll call of  
14 the board members. Please respond verbally when I call  
15 your name.

16 Board Member Bacarisse, are you here?

17 MR. BACARISSE: Present.

18 MR. TREVIÑO: Member Gillman? Member Gillman?

19 MS. GILLMAN: Present.

20 MR. TREVIÑO: There you go.

21 Member Graham?

22 MR. GRAHAM: Present.

23 MR. TREVIÑO: Member McRae?

24 MS. McRAE: Here.

25 MR. TREVIÑO: Member Prewitt?



1 MR. PREWITT: Present.

2 MR. TREVIÑO: Member Ramirez?

3 MR. RAMIREZ: Here.

4 MR. TREVIÑO: Member Scott?

5 MR. SCOTT: Here.

6 MR. TREVIÑO: And let the record reflect that  
7 I, Memo Treviño, am here as well. We have a quorum.

8 Okay. On to agenda item 2, pledges of  
9 allegiance. Before we begin, I'd ask that the board and  
10 other panelists please turn off their audio and video. I  
11 will also turn off my video as well.

12 I'm going to ask Member Bacarisse and Member  
13 Graham to lead us in the pledge of allegiance. We're  
14 going to pause to give presenters and board members and  
15 opportunity to turn off their audio and video.

16 Please all stand and honor our country and  
17 state with the pledges of allegiance.

18 MR. BACARISSE: Thank you, Mr. Chairman. It's  
19 my honor to lead us in the Pledge of Allegiance to the  
20 United States. Please join me.

21 (The Pledge of Allegiance was recited.)

22 MR. GRAHAM: All right. We will now honor the  
23 Texas flag.

24 (The Texas Allegiance was recited.)

25 MR. TREVIÑO: Okay. Thank you, Member

1 Bacarisse and Member Graham.

2 We will now move on to item 3, chair's  
3 report. Let's see, item 3. Section 1001.023 of the  
4 Transportation Code sets out the duties of the board chair  
5 and vice chair.

6 One of the duties of the board chair is to  
7 report to the governor on the state of affairs of the  
8 department. The annual report is in the final draft and  
9 will be submitted this month. This report includes  
10 updates on the agency's key accomplishments, revenues,  
11 expenditures, performance data, technological  
12 improvements, and significant legislation enacted by the  
13 86th Legislature.

14 Once published, the report will be distributed  
15 to legislators and board members electronically. It will  
16 also be sent to govDelivery subscribers and posted on the  
17 agency's external website at [www.TxDMV.gov](http://www.TxDMV.gov), at the bottom  
18 of the page located under Reports and Data.

19 The only other thing I would like to add to the  
20 chair's report is to recognize Member Washburn again for  
21 all her hard work, and also send a shout out to all our  
22 frontline workers during the COVID crisis who are in  
23 harm's way, and also that includes all our people working  
24 in the branches --

25 MS. BREWSTER: Regional service centers.

1 MR. TREVIÑO: -- regional service centers.  
2 Thank you very much. Apologize, sign of age. All the  
3 department staff working in the regional service centers  
4 for all they're doing to continue to provide services to  
5 people in the face of a very devastating pandemic.

6 So with that, I will turn it over to Executive  
7 Director Whitney Brewster for agenda item number 4.

8 Whitney.

9 MS. BREWSTER: Thank you, Mr. Chairman. For  
10 the record, I'm Whitney Brewster, executive director.  
11 Good morning, Mr. Chairman, members, guests, and staff.

12 I appreciate the time to share a few things  
13 with you this morning, and the first being an update on  
14 the COVID-19 response by the department. Thank you so  
15 much for recognizing the work that our essential staff are  
16 doing on a daily basis to continue to move this agency  
17 forward. Whether it's mailroom, whether it's in our  
18 regional service centers directly serving customers, they  
19 are doing a fantastic job during this time, and I really  
20 appreciate you recognizing them and the work that they're  
21 doing.

22 Back in March, as you all know, the governor  
23 issued a suspension on vehicle title and registration  
24 requirements in response to COVID-19 and the availability  
25 of services for motorists during that time. Since the

1 board last met, a big item has come up, and that is the  
2 lifting of those suspensions.

3 And on December 15 the governor did make that  
4 announcement that the waivers would be lifted and that  
5 they will conclude as of midnight on April 14, 2021.  
6 Certainly this will have a significant impact on motorists  
7 throughout the state, so our team has really been busy  
8 preparing communications and working side-by-side with the  
9 county tax assessor-collectors to make sure that we're  
10 providing resources and information on what Texans really  
11 need to do to make sure that they come into compliance.

12 The agency did issue a press release that same  
13 day that the announcement was made, and we will continue  
14 to provide and post information on our social media  
15 channels. We have also met and continue to meet with the  
16 Tax Assessor-Collector Association leadership and talking  
17 about ways in which we can work together to make sure that  
18 customers are informed as of what they need to do to come  
19 into compliance.

20 I'm very appreciative that the governor made  
21 the announcement and did not wait till the 60-day  
22 window. By making that announcement back in December,  
23 that gives all of us a four-month window to make sure that  
24 motorists come into compliance. I think it only helps us  
25 during this time in giving us a good amount of time to

1 comply.

2 It balances customers coming into county and  
3 regional service centers, and especially, I know during  
4 property tax season for the majority of the tax assessor-  
5 collectors was a very, very busy month in January. And so  
6 being able to spread it out over a longer period of time I  
7 know has been helpful.

8 In addition to drafting press releases and  
9 templates for all of us to use to make sure we're on the  
10 same page, we have lots of reference materials for our tax  
11 assessor-collector partners to use.

12 And I did just want to mention that we are  
13 working also very closely with the Department of Public  
14 Safety. The announcement made on December 15, the lifting  
15 of the waivers, also applies to the end of the suspension  
16 of driver licensing requirements. And so we are very  
17 coordinated with the Department of Public Safety so that  
18 we are communicating, we are in line and we are correctly  
19 referencing dates and wording in our messaging.

20 So all in all, I just wanted to make sure that  
21 you as the board, the public, since this is a public  
22 meeting, all of the things that are going into making sure  
23 that we are ready to serve customers as they all come into  
24 compliance with that registration and titling  
25 requirement. The great news is that we've seen a huge

1 number of folks already being in compliance with these  
2 requirements.

3 We estimate we have about 1.4 million across  
4 the state that are lagging a bit in terms of historical  
5 data. That's what we're estimating that we need to make  
6 up, but we're seeing strides month over month in this  
7 respect.

8 So I will pause there and see if there are any  
9 questions from the board before I move on to item 4.B.

10 MR. TREVIÑO: Any questions from the board?

11 (No response.)

12 MR. TREVIÑO: Whitney, I'd also like to  
13 recognize you guys. I think you guys are third in the  
14 Governor's Well Challenge and it's a close third, you know  
15 what I mean? And so I know you guys are actively trying  
16 to move that up, but I did want to recognize you for the  
17 effort there. I think it's a great thing you're doing.

18 MS. BREWSTER: Thank you so much.

19 MS. McRAE: Chairman?

20 MR. TREVIÑO: Member McRae.

21 MS. McRAE: I would just also like to thank  
22 Executive Director Brewster and her team. They have  
23 worked very closely -- I think that she may have  
24 understated how closely she has worked with some of our  
25 tax assessor-collectors throughout this process,

1 specifically Michelle French from Denton County and Shay  
2 Luedecke from Bell County. And we really appreciate that  
3 partnership and I just wanted her to know that.

4 MS. BREWSTER: Thank you so much, Member McRae.

5 MR. TREVIÑO: Thank you very much, Member  
6 McRae. It's great to hear.

7 MS. BREWSTER: Mr. Chairman, I'll move on to  
8 item 4.B if that's all right.

9 MR. TREVIÑO: Please continue.

10 MS. BREWSTER: All right. I wanted to just  
11 share the good news regarding our Practice and Learn  
12 project, also known as our County Sandbox project. This  
13 is where the agency has stood up a new environment for  
14 counties to practice registration and titling  
15 transactions.

16 This is something that the counties have asked  
17 for for quite a while and I am so happy that we as an  
18 agency are able to announce that today we officially  
19 rolled that out to the TAC work stations. And this is  
20 just a great tool to provide support to those who are  
21 trying to learn the system as a first-time user, or those  
22 that are looking to expand their expertise in the  
23 registration and titling system. This has been a project  
24 that has required enterprise-wide support.

25 I do believe that we will continue to make --

1 this is Phase 1. We will continue to make enhancements to  
2 the system, but this is a great opportunity for us to  
3 provide another tool to all of our users of the  
4 registration and titling system so that we can all be more  
5 proficient in the system.

6 And we've scheduled various trainings with the  
7 tax assessor-collectors. We had one this Tuesday. We  
8 also have one today, Thursday, at 10:00 and two o'clock,  
9 and Wednesday the 10th at 2:00.

10 So all these things going on certainly in  
11 partnership with the counties and we're glad that this is  
12 a new tool that they can also use. And with that, I'd be  
13 happy to answer any questions.

14 MR. TREVIÑO: Thank you, Whitney.

15 Any questions from the board?

16 (No response.)

17 MR. TREVIÑO: Please continue.

18 MS. BREWSTER: Thank you, Mr. Chairman.

19 We've had some personnel changes within the  
20 department at the senior level that I wanted to just make  
21 sure that the board is aware of, and certainly the public  
22 and our stakeholders. I would like to introduce the new  
23 Vehicle Titles and Registration Division director for our  
24 department, Roland Luna, Sr.

25 He took on this new role on January 19 of this



1 year. Prior to that, I think you all know Roland as our  
2 previous director of the Motor Vehicle Division.

3 So please join me in welcoming Roland to this  
4 new position and he's off to a great start, digging right  
5 in and meeting with stakeholders and learning the ropes.  
6 So congratulations to Roland and please join me in  
7 welcoming him.

8 (Applause.)

9 MR. TREVIÑO: Roland, welcome aboard. We  
10 expect great things from you.

11 MR. LUNA: Yes, sir. Thank you, Mr. Chairman.

12 MR. TREVIÑO: Would you like to say a few  
13 words?

14 MR. LUNA: I would like to say, Chairman, good  
15 morning, board members and Chairman Treviño. I'm Roland  
16 Luna, VTR director.

17 This is a very exciting opportunity. As all of  
18 you know, VTR is a very large division with partners  
19 internally and externally with so many stakeholders. The  
20 work that we perform is rewarding. It's also complex and  
21 very important to the State of Texas.

22 And I'm looking forward to continuing our work  
23 and continuing to identify opportunities to improve  
24 partnerships with our TACs and other stakeholders,  
25 continuing to be innovative and improve our services, and

1 just be the very best division that we can be as part of  
2 the Department of Motor Vehicles. So I'm very excited  
3 about this opportunity and looking forward to working with  
4 everyone.

5 MR. TREVIÑO: Thank you, Roland, and thank you  
6 for your commitment to public service. And we expect  
7 great things from you. We're very happy you are here.

8 MR. LUNA: Yes, sir. Thank you.

9 MS. BREWSTER: Well, thank you, Mr. Chairman.

10 With Mr. Luna accepting this position, Monique  
11 Johnston, our Motor Vehicle Licensing manager, will be the  
12 interim director while we are filling the position, so  
13 just wanted to mention that as well.

14 And if I might move on to item 4.D, which is  
15 also personnel related.

16 MR. TREVIÑO: Great.

17 MS. BREWSTER: Thank you, sir.

18 I did want to also take a moment to announce  
19 that effective February 8, Corrie Thompson will serve as  
20 the interim director for the Compliance and Investigations  
21 Division. And as the board knows, Corrie currently serves  
22 as the director of our Enforcement Division.

23 So in addition to her existing Enforcement  
24 responsibilities, Corrie will be working closely with the  
25 Compliance and Investigations staff to make sure that

1 we're coordinated with law enforcement, certainly our tax  
2 assessor-collectors on training and compliance. So just  
3 did want to mention that change.

4 Tim Menke, our director of Compliance and  
5 Investigations, has accepted a director of compliance and  
6 ethics position with the Choctaw Nation of Oklahoma, so  
7 his last day is tomorrow. And I do want to say thank you  
8 so much to Tim for his professionalism, his relationship-  
9 building with the law enforcement community, the tax  
10 assessor community, and building and strengthening our  
11 fraud prevention program.

12 He has been exceptional in building the  
13 Compliance and Investigations Division, and I didn't want  
14 him to depart the department without saying thank you to  
15 him for his service to Texas.

16 And Mr. Chairman, that concludes this portion  
17 of my report.

18 MR. TREVIÑO: Thank you, Whitney.

19 I don't know if Tim is on the call here today,  
20 but I know I speak for the board when I thank him for his  
21 professionalism, his work ethic, and all he's done for the  
22 citizens of Texas.

23 MS. BREWSTER: Thank you, Mr. Chairman.

24 And if I might go on to awards and  
25 recognitions. At this time I'd like to recognize our

1 employees who have reached that major state service  
2 milestone, and Chairman Treviño and board members, if  
3 you'd please join me in congratulating the following  
4 employees who have reached that major milestone.

5 With 20 years of state service is Lucy Prieto  
6 of our Motor Vehicle Division. She came to the department  
7 in October of 2013 as administrative assistant to the  
8 Motor Vehicle Division's Licensing manager. And while she  
9 skillfully handled various administrative functions for  
10 MVD's Licensing Section, Lucy's duties quickly changed in  
11 2016 when she took over the division's criminal history  
12 review process for our licensing applicants.

13 And her previous experience includes the  
14 Department of Criminal Justice. That certainly made for a  
15 natural fit into her new role and her new job title was  
16 changed to lead background research analyst in 2018. So  
17 with her extensive knowledge of the state's criminal  
18 justice system and outstanding research skills, Lucy has  
19 been an integral part of the continued development of the  
20 Motor Vehicle Division's criminal history process and  
21 implementation of that evaluation. So congratulations to  
22 Lucy on 20 years of state service.

23 For 25 years of state service, April Marshall  
24 from our Vehicle Titles and Registration Division. April  
25 came to DMV on December 1 of 2011 and works as an

1 operations specialist for our department. She responds to  
2 internal RTS registration and titling inquiries and she  
3 handles many of the important updates to motor vehicle  
4 records.

5 She is a dedicated and selfless employee, and  
6 she is so admired for her strength and her caring  
7 spirit. We appreciate her loyalty and commitment to our  
8 agency's mission and she's a true asset to our department  
9 and the division. Congratulations to her on 25 years.

10 Also with 25 years is John Dufour with our  
11 Enforcement Division. John has been with our agency and  
12 its predecessor, TxDOT, as a Lemon Law advisor, and that's  
13 been since January of 1996. And John is a dedicated  
14 public servant and a consummate professional who works to  
15 achieve the best results for our customers.

16 He has literally helped thousands of Texans  
17 over his career and he is really a shining example to the  
18 rest of our team on true service. He is an absolute  
19 pleasure to work with. So congratulations to him on  
20 meeting that 25-year milestone.

21 I also want to recognize with 30 years of state  
22 service, Cindy Prieto Sedillo from our Enforcement  
23 Division. Cindy is an invaluable member of the Lemon Law  
24 and administrative teams in Enforcement. She started her  
25 career in public service in 1991 with DPS, but she has

1 spent the last 20 years with TxDOT and TxDMV.

2 And Cindy has exceptional, as you can imagine,  
3 exceptional knowledge concerning her programs and she  
4 continues to really embrace learning more every day. And  
5 we are just really blessed to have someone as dedicated as  
6 Cindy on our team.

7 Congratulations to Cindy on her 30 years of  
8 amazing state service, and I do know that we have Cindy on  
9 the line.

10 MR. TREVIÑO: That's great.

11 MS. BREWSTER: And she would like to say a few  
12 things, if that's okay with you, Mr. Chairman.

13 MR. TREVIÑO: Absolutely. Let's hear from her.

14 MS. SEDILLO: Mr. Chairman, I thank you for  
15 recognizing my 30 years. Thank you very much.

16 MR. TREVIÑO: No. Thank you, Cindy. So you're  
17 working with the Lemon Law and when you have a lemon if  
18 you find it pretty quickly, I would think so. If you've  
19 been at this for 30 years you are clearly not a lemon; you  
20 are a gem. So thank you very much for all your hard work  
21 and your service to the citizens of Texas.

22 MS. SEDILLO: Thank you very much.

23 MS. BREWSTER: Thank you, Cindy. Thank you,  
24 Mr. Chairman.

25 There are just a few more that I would like to

1 mention who also have major years of state service:  
2 Deborah Hujar of Consumer Relations Division, Rhonda  
3 Guajardo in our Information Technology Services Division,  
4 Judy Baxter in Vehicle Titles and Registration Division in  
5 our Fort Worth Regional Service Center; and with 25 years,  
6 Christopher Harrigan in our Office of General Counsel; for  
7 30 years, Tracy Papke in our Consumer Relations Division,  
8 and David Flathman in our IT Application Management  
9 Division; and for 35 years, Dewitt Juul in our Finance and  
10 Administrative Services Division.

11           Congratulations to all of our service award  
12 recipients. That is just truly remarkable, and what an  
13 honor to have you serving at our department.

14           Last but certainly not least, I did want to  
15 mention those that have recently retired from the  
16 department: Theresa Patridge in our Motor Carrier  
17 Division, Raul Vele in Enforcement in our Pharr Region.

18           And someone who did not retire but he is no  
19 longer with our department, and that's Tim Thompson in our  
20 Vehicle Titles and Registration Division. I just want to  
21 congratulate Tim. He was our deputy director of VTR on  
22 his second retirement.

23           His last day with the agency was January 31 and  
24 he joined our department in 2011 and has twice served as  
25 the interim director. And obviously this is not Tim's

1 first attempt at retirement. Before coming to our  
2 department he did serve with the Department of Public  
3 Safety after a distinguished a 27-year career with the  
4 Highway Patrol Division.

5 So I know Tim has departed the department, but  
6 I did want to say a huge thank you to him for his  
7 leadership and knowledge and experience that he  
8 contributed to the department over the years.

9 MR. TREVIÑO: Hear, hear.

10 MS. BREWSTER: Thank you, Mr. Chairman and  
11 members, for allowing me the time to recognize these  
12 employees for these great achievements. It's a lot of  
13 hard work and dedication and I appreciate the time.

14 Just one other thing that I wanted to make sure  
15 that I made an announcement on under this particular item,  
16 and that is the 2020 Performance Quality Recognition  
17 Program. And so how does one achieve recognition for  
18 public service, and we all know that that's hard work and  
19 dedication.

20 And I wanted to mention two Texas counties that  
21 have earned the Performance Quality Recognition Program  
22 Award from our department this year, and this recognizes  
23 exemplary customer service and really going above and  
24 beyond in providing vehicle title and registration  
25 services to Texans.



1           And just to give you kind of an idea of what  
2 the focus of this program is, and that is developing  
3 industry best practices, making sure that transactions are  
4 being performed efficiently and with low error rates,  
5 implementing cost-saving measures, having a program around  
6 customer satisfaction, fraud, waste, and abuse awareness,  
7 and so all of these things that we are all trying to make  
8 improvements in these areas.

9           And I just wanted to recognize two of the  
10 counties who have met major milestones, and that is Randy  
11 Riggs, the tax assessor-collector for McLennan County, and  
12 they received a bronze recognition. There are three  
13 levels of recognition, bronze, silver and the highest  
14 being gold.

15           And I am so pleased to be able to announce that  
16 our own board member, tax assessor-collector for  
17 Montgomery county, Tammy McRae, achieved gold recognition  
18 for a job well done. Congratulations to both of these tax  
19 assessor-collectors.

20           Just so you have an idea of this elite group,  
21 we have a total of four gold since the inception of the  
22 program, five silver and 14 bronze recipients. And so  
23 this is a voluntary program for all tax assessor-  
24 collectors, but I do want to recognize Board Member McRae  
25 and Mr. Riggs for an exceptional job.

1           And with that, Mr. Chairman, that concludes my  
2 remarks under this item.

3           MR. TREVIÑO: Thank you very much. And I'd ask  
4 all board members to unmute themselves and join me in a  
5 round of applause for these outstanding employees and  
6 especially for Member McRae. She does stellar work in  
7 everything she touches, and congratulations.

8           (Applause.)

9           MS. McRAE: Thank you all. Thank you, Whitney.

10          MR. TREVIÑO: Thank you, Whitney. And thank  
11 everyone for all the hard work and all the years of  
12 service, and thank you very much for your report and we  
13 expect to see you move up in that wellness competition.

14          MS. BREWSTER: We are working on it, Mr.  
15 Chairman, we are working on it.

16          MR. TREVIÑO: And Member McRae, did I cut you  
17 off? Were you going to say something?

18          MS. McRAE: No, Chairman, I wasn't. I wasn't  
19 speaking. Thank you.

20          MR. TREVIÑO: No worries. Sorry.

21                I'm sorry, Whitney, and I cut you off. Go  
22 right ahead.

23          MS. BREWSTER: No worries. Mr. Chairman, I  
24 just have one last item that leads into the rest of the  
25 agenda and that is around the Sunset Advisory Commission

1 meeting that occurred. I just wanted to give you a quick  
2 overview of the Sunset compliance report and hearing that  
3 occurred since the last board meeting in December.

4 The Sunset Advisory Commission met on January  
5 13 to consider recommendations for those agencies that are  
6 currently going through the process during the 87th  
7 Legislature, and also to go back and review implementation  
8 efforts around those agencies that underwent review in the  
9 prior cycle, and General Counsel Beaver and I represented  
10 the agency at that Sunset hearing.

11 And I just wanted to let the board know that  
12 there are two remaining items which the board is hearing  
13 in today's meeting that were still in progress that were  
14 referenced during the hearing. One is the risk-based  
15 monitoring rules, and then the contested case rules. And  
16 that's really where the focus of the questions were,  
17 around those contested case rules.

18 And I just explained to the commission that the  
19 board had considered rules around contested cases in the  
20 December board meeting, but they did not adopt those and  
21 that, Chairman, you had established a Contested Case Rules  
22 Subcommittee, chaired by Vice Chair Bacarisse, and that a  
23 meeting was going to be occurring on January 19 so that we  
24 could certainly have a further in-depth conversation  
25 regarding the board's rule on hearing contested cases.

1 Vice Chair Bacarisse and General Counsel Beaver  
2 will go into more detail about these items, but I did just  
3 want to let the board know that there was some caution  
4 suggested by Vice Chair Buckingham around the contested  
5 case rules and making sure that the recommendations of  
6 Sunset were considered when passing these rules.

7 And so with that, Mr. Chairman, I know that  
8 there's going to be a lot of discussion around this  
9 item. I will stop talking and see if there are any  
10 questions from the board members.

11 MR. TREVIÑO: Thank you, Ms. Brewster.

12 Do any members of the board have any questions  
13 for Ms. Brewster?

14 MS. GILLMAN: I have a question.

15 MR. TREVIÑO: Member Gillman.

16 MS. GILLMAN: Whitney, have you had any  
17 discussion since that hearing to clarify some of the --  
18 you used the word "caution"?

19 MS. BREWSTER: Yes, ma'am. Thank you for that.

20 Through various conversations, I think the  
21 general word of caution is to ensure that what comes  
22 before the board is truly a summary of information that is  
23 contained within the record to minimize the risk of  
24 additional materials, whether intentionally or  
25 unintentionally, being considered by the board that could

1 be a procedural violation. The caution was around that,  
2 and to avoid anything that looks like a trial structure,  
3 things around rebuttals, anything that resembles a  
4 trial-like structure, and to minimize the ability for  
5 re-litigation to occur.

6 MR. TREVIÑO: Great. Member Gillman, any other  
7 questions?

8 MS. GILLMAN: No, sir. Thank you.  
9 Thanks, Whitney.

10 MS. BREWSTER: Yes, ma'am.

11 MR. TREVIÑO: Great. Does anybody have any  
12 other questions for Ms. Brewster?

13 (No response.)

14 MR. TREVIÑO: Thank you, Whitney, for that  
15 update, and I know I speak for this board when I say that  
16 we take our charge seriously and take seriously the  
17 recommendations of Sunset.

18 MS. BREWSTER: Thank you, Mr. Chairman.

19 MR. TREVIÑO: Anything else you'd like to  
20 cover?

21 MS. BREWSTER: No, sir. Thank you very much  
22 for the time today. That concludes my report.

23 MR. TREVIÑO: Great. Thank you very much, Ms.  
24 Brewster, for an excellent report.

25 We will now move on to agenda item number 5,

1 and I think first we'll turn it over to Member Bacarisse,  
2 who served as the chair for the Contested Case Rules  
3 Subcommittee meeting held on January 19, to give us a  
4 brief summary of the subcommittee's recommendations.

5 Member Bacarisse.

6 MR. BACARISSE: Thank you, Mr. Chair.

7 Members, I first would like to thank our fellow  
8 Board Members Washburn and Gillman whose active  
9 participation on that subcommittee that you appointed,  
10 with equal representation from myself as the public  
11 member, and members with backgrounds as manufacturer and  
12 dealer representatives, I think was successful.

13 All of us spent a great deal of time reviewing  
14 materials and the Sunset Advisory Commission report, our  
15 statutes, and the materials provided for the subcommittee  
16 by staff. I appreciate the opportunity to work with my  
17 fellow board members and having active deliberation to  
18 really dig into the issues concerning contested cases,  
19 while keeping in mind our roles as board members to  
20 represent the State of Texas.

21 Additionally, we received great comments from  
22 the stakeholders who are really experts in their field and  
23 who were able to provide the subcommittee several very  
24 good points for additional discussion that we had. I  
25 appreciate the commenters' time, each of them, and the

1 information that they provided to our subcommittee. And I  
2 want to make sure that all points of view had been heard  
3 and considered and discussed before we voted on any  
4 recommendations for the contested case rules that we are  
5 now preparing to bring to the full board.

6 And with that, I'll turn it to General Counsel  
7 Tracey Beaver to go over the background of the contested  
8 case rules and the subcommittee's recommendation that was  
9 adopted and presented today for the full board's  
10 consideration.

11 Thank you, Mr. Chairman.

12 MR. TREVIÑO: Great. Thank you very much, Vice  
13 Chair Bacarisse. And also, I'd like to thank you for  
14 chairing that committee. I know that's a lot of work, and  
15 I appreciate your hard work and diligence on that.

16 And also mention that I had appointed Member  
17 Prewitt as well to be a part of that body, but Member  
18 Prewitt had a very good reason to not participate but want  
19 to, thank you very much.

20 MR. BACARISSE: Let me say we missed Member  
21 Prewitt, his participation that day, but we're really glad  
22 he's with us today.

23 MR. TREVIÑO: Hear, hear.

24 MR. BACARISSE: Good to have him.

25 MR. TREVIÑO: Always glad to have Member

1 Prewitt here with us.

2 Okay. So we'll turn it over now to General  
3 Counsel Tracey Beaver to continue the presentation on the  
4 subcommittee.

5 MS. BEAVER: Thank you, and Chairman, members,  
6 Ms. Brewster, good afternoon. For the record, I'm Tracey  
7 Beaver, general counsel.

8 Today I'm presenting an updated recommendation  
9 regarding the contested case rules to implement Senate  
10 Bill 604 and the Sunset Advisory Commission  
11 recommendations that require the board to establish rules  
12 for conduct and handling of contested cases coming before  
13 you for a final order.

14 The recommendation from staff is listed on our  
15 agenda as item 5 and it may be found starting on page 7 of  
16 your board books that have also been posted online. But  
17 before we go into the details of the staff recommendations  
18 today, I wanted to first start with the timeline of the  
19 board's consideration of these contested case rules so  
20 that you have some history, some context of where we've  
21 been that led up to today.

22 I'll then give an overview of the Sunset  
23 Commission recommendations regarding the board's role in  
24 hearing contested cases, go over some of the statutory  
25 requirements which are legislative mandates, and also then



1 I'll give an overview of the process at SOAH, which is the  
2 State Office of Administrative Hearings. So if you'll  
3 bear with me, I'm just going to go over this overview and  
4 context and then, of course, get into some more detail  
5 about the actual staff recommendation, and then, of  
6 course, welcome any questions.

7           So first, the contested case rules timeline.  
8 It was back in April of 2020 when we did have an informal  
9 draft of these amendments and new sections that were  
10 posted to the department's website for public comment.  
11 Staff recommended at that time that parties should not  
12 submit documents and left discretion to the chairman on  
13 oral presentation. The department received six written  
14 informal comments and made changes to the rule text based  
15 on that informal comment period and from that feedback  
16 that we got from stakeholders, which was very helpful.

17           Then on August 6 in 2020, the board approved  
18 publishing the rule proposal in the *Texas Register* for  
19 additional public comment and made some modifications to  
20 the staff proposal. The proposal gave parties 20 minutes  
21 of oral presentation time, allowed parties to submit  
22 proposed final orders to the board within the presentation  
23 aids that were up to four pages for initial presentation  
24 and two pages for rebuttal.

25           That was for a total of six pages of written

1 materials that were going to be allowed at the proposal  
2 stage of the rules. The rule proposal was published in  
3 the *Texas Register* on August 21, 2020 for that public  
4 comment period that closed September 21, 2020.

5 Then at the December board meeting, the board  
6 tabled the vote on the adoption of those amendments to the  
7 rules so that we could have further discussion on how many  
8 pages of written materials should be permitted by the  
9 parties to be submitted to the board for these contested  
10 cases. The Sunset Commission subsequently issued a  
11 compliance report to the department and it was based on  
12 the recommendations from their 2019 final report. The  
13 Sunset Commission found that the rules that the board had  
14 proposed back in August were not in compliance with the  
15 Sunset recommendation.

16 The TxDMV portion of that Sunset compliance  
17 report can be found on page 346 of your board books. I'll  
18 just give a really quote from that compliance report as it  
19 relates to the contested case rules. It states in part  
20 that, "the proposed rules insufficiently address the  
21 problems identified in the Sunset report and do not ensure  
22 current and future board members and stakeholders  
23 appropriately limit regarding contested cases." And  
24 Executive Director Brewster just gave you an update on the  
25 Sunset Commission hearing from January that occurred after

1 that compliance report came out.

2 In response to the board meeting in December,  
3 the chairman appointed a Contested Case Rules Subcommittee  
4 that met on January 19. The rules subcommittee adopted  
5 amendments to the rules for the board's consideration and  
6 the specifics of those requirements as it relates to oral  
7 presentation and written documents.

8 The rules subcommittee voted to have the board  
9 consider allowing 15 minutes of oral presentation time by  
10 the parties without any rebuttal or closing statements.  
11 The rules subcommittee also recommended that no written  
12 materials be presented by the parties for contested cases  
13 before the board as the board already receives the SOAH  
14 record for review.

15 So with that context, I'd like to revisit just  
16 some portions of Senate Bill 604 which is our Sunset Bill  
17 and the Sunset Commission report on TxDMV from 2019. The  
18 Sunset Bill, Senate Bill 604, in part amended the  
19 Occupations Code by adding a section that requires the  
20 board to establish standards and rules for reviewing  
21 contested cases. So that's what these rules are about is  
22 to implement Senate Bill 604 and ensure that we have  
23 standards and rules for reviewing these contested cases in  
24 a consistent and transparent manner.

25 The final Sunset Advisory Commission staff

1 report from 2019 emphasized that the board has an  
2 important but limited role as the final decision-maker on  
3 all cases that come before the board. And that Sunset  
4 Advisory Commission staff report that I'm referencing can  
5 be found on page 323 of your board books.

6 So the report stated, in part, that the board  
7 should not re-litigate contested cases by considering new  
8 information or testimony presented in a board meeting that  
9 was not presented in the formal SOAH proceeding. This is  
10 a very important part because I think this is the crux of  
11 much of the overview of the Sunset Commission report that  
12 I'll be giving today.

13 The Sunset Commission went on to explain that  
14 re-litigating contested cases could also include actions  
15 such as allowing extensive oral argument for each party  
16 during a board meeting that would then turn into hours of  
17 discussion of information that was not presented at  
18 SOAH. SOAH proceedings do provide the parties to a  
19 contested case an opportunity to make arguments and  
20 produce evidence in accordance with standard processes  
21 under the APA, which is the Administrative Procedure Act  
22 in the Government Code that the board is subject to in  
23 hearing these contested cases. The board must base their  
24 final decision on evidence from the SOAH administrative  
25 record and must not consider new issues or evidence.

1           The Sunset Commission report also stated that  
2 these protest cases can cause difficulty for industry  
3 members of the board to separate the interests of their  
4 business sector from the role of deciding these cases in  
5 an unbiased manner. And finally, when the board members  
6 attempt to affect the market in which they participate,  
7 they risk, at a minimum, the appearance of being  
8 anti-competitive, which not only puts the department at  
9 risk of costly litigation but also jeopardizes the  
10 reputation of the board as a policy-making body and the  
11 integrity of the regulatory process.

12           And I know this is much the same information  
13 that we've provided in training and in prior meetings. I  
14 thought it would be helpful to just go over this in the  
15 context of considering these contested case rules for this  
16 board meeting today.

17           Just a brief overview of the legislative  
18 mandates for the board in hearing these contested cases.  
19 The overarching role of the board with final order and  
20 decision-making authority on contested cases is that they  
21 must base their final decision on evidence contained  
22 solely within the administrative record from SOAH. The  
23 board has strict guidelines it has to adhere to in  
24 reviewing a SOAH proposal for decision, and those  
25 guidelines are also outlined in the APA, the Occupations

1 Code Chapter 2301 and Transportation Code 1001. Those are  
2 also in your board books.

3           Occupations Code Section 2301.709 provides that  
4 the board, in adopting rules governing the review of a  
5 contested case must, in part: specify the role of  
6 division personnel that are managing these cases before  
7 the board, specify appropriate conduct and discussion by  
8 the board or persons delegated from the board regarding  
9 proposals for decision issued by the ALJ, specify clear  
10 expectations limiting arguments and discussion to evidence  
11 in the record of the contested case hearing, address ex  
12 parte communication, and distinguish between using  
13 industry expertise and representing or advocating for an  
14 industry when reviewing a case.

15           And then, of course, Government Code Section  
16 2001.058(e) -- also available on page 355 of your board  
17 books -- states, in part, that a state agency may change a  
18 finding of fact or conclusion of the law made by the  
19 administrative law judge at SOAH or can vacate or modify  
20 an order issued by the judge only if the agency determines  
21 did not properly apply or interpret applicable law, agency  
22 rules, written policies, prior administrative decisions,  
23 or that a prior administrative decision on which the judge  
24 relied on is incorrect or should be changed, or that a  
25 technical error in a finding of fact should be changed.

1 Of course, with changing anything in a proposal for  
2 decision from SOAH, the agency must also state in writing  
3 the specific reason and legal basis made for any changes.

4 The APA that I just went over and the  
5 Occupations Code provide guidance and directives for the  
6 board hearing these contested cases, including limiting  
7 arguments and discussion to evidence contained in the  
8 record at SOAH.

9 And then, of course, Government Code Section  
10 2001.060 gives an overview of those materials that parties  
11 submit to SOAH when the case is before the administrative  
12 law judge, so I thought it would be helpful in talking  
13 about limiting information to the record at SOAH for you  
14 to get an overview of what is actually submitted to SOAH  
15 by those parties, and those include pleadings, motions,  
16 evidence, questions and offers of proof, objections,  
17 proposed findings, exceptions, rulings, and any other  
18 information. All of this is available to board members in  
19 making their final decision. And the administrative  
20 record at SOAH is developed when the parties to a  
21 contested case present their cases to that SOAH judge and  
22 that happens in the fact-finding trial at SOAH.

23 These cases, especially protest cases, can  
24 result in multiple days of testimony and hundreds, if not  
25 thousands of pages of materials at SOAH. Even after the

1 judge at SOAH issues that proposal for decision that comes  
2 to the board, the parties to the case get an extra 20 days  
3 to respond to the administrative law judge explaining why  
4 they think something in that proposal for decision should  
5 change.

6 And so the parties' information that's  
7 presented at SOAH that's part of the administrative record  
8 is all available to the board members.

9 So now going to the staff recommendations, a  
10 little more specifics, these amendments and new sections  
11 before you will align with the Sunset recommendations in  
12 Senate Bill 604. The rules specify clear expectation is  
13 limiting argument and discussion to evidence in the record  
14 with SOAH, they address a prohibition on ex parte  
15 communication, and address the requirement that the board  
16 members use their industry expertise to help them  
17 understand the case and make effective decisions, however,  
18 board members are not advocates for a particular industry.

19 However, it is in the board's discretion  
20 whether to prohibit or allow any oral presentation or  
21 written materials to be presented. If some briefs or  
22 summaries of the case in written format are permitted by  
23 the board, I would highlight that it's important the board  
24 consider these five main points?

25 Consistency and a clear transparent process is



1 the goal of the rules.

2 Any oral presentation or written materials  
3 allowed to be presented by the parties to the board must  
4 consist of information solely within the administrative  
5 record.

6 The board must not re-litigate cases which  
7 means no trial-like structure or new information. For  
8 example, allowing rebuttals and closing statements where  
9 there's a back-and-forth between the parties can start to  
10 look like a trial structure.

11 Any oral presentation time should be limited so  
12 as not to look like a trial structure. The Sunset  
13 Commission report provided that the board in the past  
14 allowed 20 minutes oral presentation that went into hours  
15 of discussion which appeared to allow a re-litigation of  
16 the case so I would caution going over too much time for  
17 oral presentation for the parties if that's the goal of  
18 the board.

19 And written materials, if the board would like  
20 to permit them from the parties, should be limited in page  
21 number and content to make sure that there are safeguards  
22 in place to ensure the written materials are a brief or a  
23 summary and do not bring in new evidence outside the  
24 record.

25 And members, this concludes my remarks. I'm

1 happy to answer any questions that the board may have.

2 MR. TREVIÑO: Thank you, Ms. Beaver.

3 Do any of the board members have questions for  
4 Ms. Beaver at this point?

5 Member Gillman.

6 MS. GILLMAN: Thank you, Mr. Chairman.

7 Tracey, I have a question. During the -- you  
8 said there's 20 days to respond after a SOAH judge makes a  
9 determination. Right?

10 MS. BEAVER: Tracey Beaver, general counsel,  
11 for the record.

12 Yes, that's correct.

13 MS. GILLMAN: And is that considered the  
14 exceptions portion?

15 MS. BEAVER: Yes.

16 MS. GILLMAN: Okay. So is there a difference  
17 between comments presented during exceptions to the PFD  
18 and briefs that we may hear, that the board would hear  
19 before us, briefs, proposed final orders in front of the  
20 board?

21 MS. BEAVER: Tracey Beaver, general counsel,  
22 for the record.

23 It would depend on what the parties chose to  
24 submit. They could resubmit what they had already  
25 submitted to the SOAH judge in the exceptions period, or

1 if they wanted to provide briefs and summaries to the  
2 board, if the board allowed written materials, the parties  
3 could reference any part of the materials that they  
4 presented during the exceptions period or any materials  
5 submitted during the pendency of the SOAH case that was  
6 included in the administrative record.

7 Does that answer your question?

8 MS. GILLMAN: I think you said it could be the  
9 same, it could be different.

10 MS. BEAVER: That's correct, as long as it's  
11 information that was contained within the entire record.

12 MS. GILLMAN: Of course. That is always the  
13 frame. But I was wondering if during exceptions that  
14 attorneys provided briefs of the entire record or they  
15 provided proposed final orders in that exception period.

16 MS. BEAVER: Tracey Beaver, general counsel.

17 We have had cases where the parties have  
18 submitted proposed final orders during the exceptions  
19 period and additional information to the SOAH judge, so  
20 it's really dependent on the counsel for the parties of  
21 what they choose to submit during that exceptions period.

22 MS. GILLMAN: Thank you.

23 And I have one other question.

24 MR. TREVIÑO: Go right ahead.

25 MS. GILLMAN: I know -- I can't remember the

1 section, I'm very sorry -- I know it is our charge as a  
2 board to read the record and the record is provided. And  
3 when you say the record, to me that means the thousands of  
4 pages of testimony, witnesses, exhibits; that is the  
5 record. That's what I think.

6 Is that what you mean by read the record? Can  
7 you clarify for me what is my charge when it says I need  
8 to read the record?

9 MS. BEAVER: Tracey Beaver, general counsel,  
10 for the record.

11 So it's Government Code Section 2001.062 that  
12 provides that parties are allowed to submit briefs, but  
13 there is a big if in that section that if the board reads  
14 the record, then it's not necessary that the parties are  
15 required to submit briefs or allowed to submit briefs.  
16 There have been very few court cases on this issue and  
17 it's really dependent on the board to read a sufficient  
18 material portion of the record sufficient to make a  
19 decision in the case.

20 So it is a subjective statute, 2001.062, what  
21 is a sufficient amount of the record for the board to  
22 read.

23 MS. GILLMAN: Sufficient amount of the big  
24 stack -- I mean, of the whole case. So it's not just the  
25 PFD and conclusions of law. If I just read the PFD and

1 conclusions of law, am I reading the record?

2 MS. BEAVER: Tracey Beaver, general counsel,  
3 for the record.

4 It really is dependent on how much of the  
5 record is necessary for you to read in order to be able to  
6 make an informed educated decision. Oftentimes a proposal  
7 for decision does contain the evidence, excerpts of  
8 testimony, information that was relevant to the case and  
9 the findings of fact and conclusions of law with any  
10 evidence that supports those findings of fact and  
11 conclusions of law. I don't know that the courts have  
12 made a decision on whether only reading a PFD would be  
13 sufficient.

14 MS. GILLMAN: Only reading the PFD may be  
15 insufficient.

16 Okay. Thank you, General Counsel Beaver.

17 MR. TREVIÑO: Great. Thank you, Member  
18 Gillman, for those questions.

19 Any other questions from the board? Member  
20 Graham.

21 MR. GRAHAM: Many of y'all know that I consider  
22 this duty which was provided by the legislature to the  
23 board as one of the most important and unique things that  
24 we do as a board. I am also in support of virtually all  
25 of the items brought forward by the subcommittee, with the

1 exception of one.

2 I think it's important -- I would like to take  
3 a moment and read those first three items in Statute  
4 2301.709 which outlines the general powers of the board  
5 and which grants the power to do the following things:  
6 hear oral argument from any party, set clear --

7 MR. TREVIÑO: Member Graham, before you  
8 proceed, one second.

9 Tracey, is this the discussion phase?

10 MR. GRAHAM: I'm sorry.

11 MR. TREVIÑO: Do you have a question? If it's  
12 a statement, then we'll go to discussion. I just want to  
13 make sure we're following procedure here.

14 MR. GRAHAM: Thank you.

15 MR. TREVIÑO: And sorry to cut you off because  
16 we definitely want to hear your perspective on this, but  
17 any questions for Member Beaver -- excuse me -- General  
18 Counsel Beaver? I apologize.

19 (No response.)

20 MR. TREVIÑO: General Counsel Beaver, are we  
21 good to move on to the next phase here?

22 MS. BEAVER: Tracey Beaver, general counsel.

23 Yes, we are ready to move on to the public  
24 commenters and we have six people signed up.

25 MR. TREVIÑO: Great. Okay. So we do have six

1 people so I'll just go over the general rules. We'll now  
2 hear from -- well, who is our first speaker?

3 MS. BEAVER: Leon Komkov.

4 MR. TREVIÑO: Okay. Leon Komkov. We will now  
5 hear from Leon Komkov. Please raise your hand using the  
6 instructions provided to you and please be mindful about  
7 limiting any background noise. Also, please state your  
8 name for the record and if you're representing anyone.

9 You will have three minutes. You will be given  
10 a prompt after two minutes that you have one minute  
11 remaining. You will be muted by the host after speaking  
12 for three minutes.

13 MR. KOMKOV: Mr. Chairman, can you hear me?

14 MR. TREVIÑO: Yes, I can, Mr. Komkov. It's  
15 great to have you here. Go right ahead.

16 MR. KOMKOV: I'm so pleased when the technology  
17 works, sir.

18 Thank you, Mr. Chairman, members, and staff. I  
19 am Leon Komkov. I'm an attorney from Austin, Texas, and I  
20 represent myself.

21 Respectfully, I've continued to suggest that  
22 the adoption of version 215.60 that is currently before  
23 the board will actually cause this board unnecessary  
24 troubles and will be a self-inflicted wound.

25 First, I submit for this board's consideration

1 that the rule prohibiting all briefing -- which is the one  
2 before the board today -- has never been properly noticed  
3 to the public. The board is advised on page 31 of its  
4 board book that the adopted rule does not materially alter  
5 the issue raised in the proposed rule which is whether the  
6 parties may provide materials to the board.

7 But the agency's notice that was published last  
8 August was a rule limiting written materials that could be  
9 submitted to the board. That does not adequately apprise  
10 the public that a new rule is being proposed saying all  
11 briefing is banned.

12 I was interested to hear what General Counsel  
13 Beaver was talking about earlier and I admit to  
14 confusion. She was referencing that it's discretionary  
15 whether the board reviews briefings, but in fact, the rule  
16 that's emerged from the subcommittee that's before you  
17 prohibits all written materials whatsoever.

18 This is a major change in philosophy from a  
19 published rule that was a page restriction on what parties  
20 could submit to you. It's not a logical outgrowth to ban  
21 briefing, when you said we should limit it to focus the  
22 board.

23 Second, I urge this board, a prohibition on all  
24 briefs not only violates Section .062 of the APA but it  
25 does a practical disservice in the proper discharge of



1 your duties. A brief, as I said before, is for the  
2 benefit of the board. It's not for the edification of the  
3 lawyers.

4 It gives the board a concise road map as to  
5 what issues are important and what issues are not  
6 important amongst those thousands and thousands of  
7 pages. The lawyers who tried the case know here are the  
8 points of dispute; it's usually two or three or a  
9 handful.

10 Certainly throwing a record in front of you and  
11 telling you to read it --

12 MEETING HOST: You have one minute remaining.

13 MR. KOMKOV: Okay. A plain reading of the APA  
14 reveals that submissions of exceptions and briefing to  
15 SOAH is not a submission of a brief to this board. .062  
16 says this board -- parties must be given an opportunity to  
17 file exceptions and briefs -- that's the quote from  
18 .062 -- unless and there is no "sufficient amount" of  
19 review contained in the statute.

20 The statute says in a contested case, if a  
21 majority of the state officials who render final decision  
22 have not heard the case -- which you haven't, because it's  
23 been in SOAH -- or have not read the record, then the  
24 decision can't be made until adversely affected parties  
25 can file exceptions and present briefs. Nowhere in that

1 statute does "sufficient amount" appear.

2 The courts may later interpret you read enough  
3 of the record, but I submit to you again a 5-, 10-, 15-,  
4 20-page brief with skilled counselors saying, here are the  
5 issues at stake, is --

6 MEETING HOST: Your three minutes are up.

7 MS. BREWSTER: Mr. Chairman, you are muted.

8 MR. TREVIÑO: I apologize. Mr. Komkov, thank  
9 you very much for those comments. And I apologize for the  
10 abrupt nature of how we shut off commenters, but trying to  
11 get through this today.

12 Tracey, do we have any other commenters?

13 MS. BEAVER: Yes. Tracey Beaver, general  
14 counsel.

15 We have -- Bruce Bennett is the next commenter  
16 on this agenda item.

17 MR. TREVIÑO: Great. We'll now hear from Mr.  
18 Bennett. And Mr. Bennett, the same rules apply. Are you  
19 there, Mr. Bennett?

20 MR. BENNETT: Yes, sir, I'm here. May I  
21 proceed?

22 MR. TREVIÑO: Please go right ahead. Glad to  
23 have you here.

24 MR. BENNETT: Thank you. I'm Bruce Bennett.  
25 I'm an attorney here in Austin and I'm representing

1 myself.

2           The proposed rule 215.60 total prohibition on  
3 presenting briefs is unlawful. The APA says that if a  
4 majority of the agency officials making the final decision  
5 did not hear the case or have not read the record, then  
6 the final decision cannot be made until: one, a PFD is  
7 served on the parties; two, the adversely affected parties  
8 have the opportunity to file exceptions; and three, they  
9 have the opportunity to present briefs to the final  
10 decision-makers.

11           Now, you, the board, do not hear contested  
12 cases. The Occupations Code requires the ALJ to do so.  
13 The ALJ hears the evidence and prepares the PFD to which  
14 the parties can file exceptions. The APA requires you to  
15 accept briefs from the parties before making the decision  
16 unless a majority of you -- that's five members -- have  
17 read the record.

18           What does "read the record" mean? The courts  
19 say it means reading the transcript of the testimony and  
20 such exhibits as needed to clarify the testimony. The  
21 Third Court has held that twice and the Waco court has  
22 said that.

23           None of you must read the record and the  
24 exhibits before making a final decision if you allow the  
25 parties to present the briefs, but if you prohibit briefs,

1 then it means five of you must commit to read the  
2 testimony and review the exhibits. The courts will not  
3 presume that you have read the testimony and reviewed the  
4 exhibits. The staff cannot read the record for you or  
5 designate the portions of the record that you should read.

6 The Gulf Oil case that's cited in the materials  
7 today does not hold that you are presumed to have read the  
8 record. If you prohibit the parties from presenting the  
9 briefs, and that means five of you have got to read the  
10 record, this will be burdensome and raise difficult legal  
11 issues.

12 First, at least five of you must commit to read  
13 the record in advance of the meeting so that the parties  
14 will know whether or not they have the right to present  
15 briefs. Second, questions can be raised on appeal about  
16 whether you actually read the record before making a final  
17 decision. Courts have allowed parties to interrogate  
18 agency officials over their reading of the record.

19 MEETING HOST: You have one minute remaining.

20 MR. BENNETT: There is no presumption this  
21 record will be read. You're going to have to read it.

22 Third, questions can be raised about what  
23 constitutes a quorum for the purposes of adopting a final  
24 order. Does the quorum consist of the five members who  
25 read the record which requires three votes to adopt the

1 final order, or is the quorum nine, which means five votes  
2 are needed to adopt the final order, and all five who read  
3 the record must vote the same way.

4 Fourth, requiring a majority of you to read the  
5 record can take hours and it's inconsistent with Sunset  
6 Commission's concerns over members re-weighing the  
7 evidence and engaging in fact-finding missions.

8 These legal issues and these problems can be  
9 avoided by removing the prohibition on presenting written  
10 briefs. Don't go down this road that this prohibition  
11 will force you to take.

12 Thank you, Mr. Chairman and board.

13 MR. TREVIÑO: Thank you very much, Mr. Bennett,  
14 for those comments.

15 Do we have another presenter, Ms. Beaver?

16 MS. BEAVER: Yes. Tracey Beaver, general  
17 counsel, for the record.

18 Mr. McCalla is next.

19 MR. TREVIÑO: We'll now hear from Mr. McCalla.  
20 Mr. McCalla, the same rules apply. Are you ready to go?  
21 Mr. McCalla?

22 MR. McCALLA: I'm here.

23 MR. TREVIÑO: Mr. McCalla, are you there?  
24 Good. You can start whenever you like.

25 MR. McCALLA: Thank you, Mr. Chairman, board

1 members.

2 I share the view of Mr. Komkov about surprise,  
3 hearing what I believe is discretion to submit written  
4 materials. This rule, as proposed, bars and prohibits  
5 someone who has been adversely affected by a SOAH PFD from  
6 submitting written material to the board in connection  
7 with the board's consideration of this issue. And this  
8 rule has been very recently changed to forbid that  
9 practice and it has not been published.

10 We're not talking about republication here,  
11 we're talking about first time publication of this rule,  
12 which has not been done. And to forbid an adversely  
13 affected party -- and understand those parties may be  
14 recommended from SOAH to lose a permit or a license that  
15 entitles them to earn a livelihood. So to prohibit them  
16 from filing any written materials with this board, in  
17 light of the Administrative Procedure Act, has no  
18 reasonable factual basis, nor a reasonable justification  
19 for its adoption.

20 Mr. Bennett and Mr. Komkov have laid out  
21 clearly the significant legal issues that would follow  
22 from adoption of this rule. Legal issues of this  
23 magnitude all too often wind up in the courthouse, but  
24 that can be avoided here by the simple and fair act of  
25 allowing an adversely affected party to present a

1 reasonable brief in a timely manner to this board.

2 Thank you, Mr. Chairman and board members.

3 MR. TREVIÑO: Thank you, Mr. McCalla, for those  
4 comments and we're glad you're here.

5 Tracey, can we have the next presenter?

6 MS. BEAVER: The next presenter is Mr. Martin  
7 Alaniz.

8 MR. TREVIÑO: Great. Mr. Alaniz, are you ready  
9 to go? And the same rules apply.

10 MR. ALANIZ: Yes. Can you hear me?

11 MR. TREVIÑO: We can hear you fine, Mr. Alaniz.  
12 Go right ahead.

13 MR. ALANIZ: I waive my one-minute notice.

14 Hello. My name is Martin Alaniz from Coffey &  
15 Alaniz and I'm here today representing myself to  
16 respectfully request that the board reject the new revised  
17 contested case rules and allow interested parties to  
18 participate in a negotiated rulemaking process.

19 The new proposed rules are, frankly, harsher  
20 and more draconian than those proposed at the last board  
21 meeting. Oral argument time was arbitrarily reduced from  
22 20 minutes with a five-minute rebuttal to only 15 minutes,  
23 while presentation aids, which were already limited to the  
24 record, were removed completely for no apparent reason.

25 I have three simple points for your

1 consideration.

2           The first point is, the board should initiate a  
3 negotiated rulemaking proceeding, as suggested by the  
4 Sunset Advisory Commission in its June 2019 report. This  
5 will allow for the board to get real-time back-and-forth  
6 input from interested parties and stakeholders about the  
7 real world consequences of these rules before reaching a  
8 consensus, rather than just the three minutes that we are  
9 allowed to speak today.

10           In the June 2019 report on page 17, the  
11 Commission noted that the board missed opportunities for  
12 negotiated rulemaking and stated: these alternative  
13 methods could improve rulemaking and policymaking through  
14 a more open, inclusive, and conciliatory process designed  
15 to solve problems by building consensus.

16           My second point is that I fully support the  
17 ability to present briefs to the board, but I'm dismayed  
18 by the position to completely remove a party's ability to  
19 use presentation aids that are limited to the record.  
20 There is no justification for this. If an exhibit  
21 illustrates the support or rejection of a PFD, a party  
22 should be able to present it to the board, and if it's  
23 oral argument, to illustrate that point.

24           Finally, please don't be misguided by the use  
25 of the terms "new evidence outside the record" and



1 "re-litigating the case" as a pretext for adopting these  
2 new rules that go beyond the legislative mandate. No one  
3 is advocating that these new rules should go outside the  
4 record.

5 The original published rules and the draft  
6 submitted by industry counsel to the subcommittee do not  
7 allow for evidence from outside the record. Simply  
8 allowing parties oral argument with presentation aids  
9 before the decision-maker in the case is not new evidence  
10 since the parties have a right under .058(e). That is all  
11 we are asking.

12 I've said it before that it's important for the  
13 board to be the true final decision-maker and not just a  
14 rubber stamp for SOAH. So I ask the board again, since  
15 there are so many issues to be resolved here, to please  
16 allow parties comment to these new rules before adopting  
17 them so that the board makes an informed decision, or  
18 allow for a negotiated rulemaking process.

19 Thank you very much.

20 MR. TREVIÑO: Thank you very much, Mr. Alaniz,  
21 for your comments.

22 Tracey, do we have another presenter?

23 MS. BEAVER: The next presenter is Ms. Karen  
24 Phillips.

25 MR. TREVIÑO: Ms. Phillips, are you there? The

1 same rules apply. Great to have you here.

2 MS. PHILLIPS: Thank you very much, Chairman  
3 Treviño, and good morning. Karen Phillips, general  
4 counsel for TADA.

5 First, I want to say that I know that the board  
6 and the staff have worked diligently to meet Sunset  
7 statutory recommendations and recognize that COVID has  
8 made the staff's job more difficult, especially with the  
9 non-conducting of in-person meetings and discussions.

10 The primary concern of the board and the  
11 legislature is that a party receive a fair hearing, and in  
12 order to be fair, the hearing is to be compliant with the  
13 APA. These issues are addressed in 43 TAC 215.22, 215.60,  
14 and 215.61.

15 215.22 prohibits ex parte communications;  
16 215.60 requires presentation aids to include a cite to the  
17 SOAH record, and 215.61 limits discussion to evidence in  
18 the administrative record. No disagreement that any party  
19 is responsible to objecting if the arguments go outside  
20 the record, and there is no dispute that the evidence  
21 that's contained is what the board should hear.

22 Now we're hearing proposing no presentation  
23 aids, briefing or otherwise. There's some confusion for  
24 me today from today's presentation as to whether the board  
25 is considering the subcommittee's rule proposal or what

1 was published in the *Texas Register* in August, and I think  
2 that I'm not the only one on this phone call that's a bit  
3 confused.

4           However, it should be argued that filing a  
5 brief or presenting an argument is not anti-competitive.  
6 It should also be obvious that asking questions by the  
7 board of counsel is not re-litigating a case. No one  
8 disputes that following the APA is required of any  
9 decision-maker in the administrative arena and an  
10 understanding of the Occupations Code and the Government  
11 Code --

12           MEETING HOST: You have one minute remaining.

13           MS. PHILLIPS: -- are also required.

14           The legislature continues to recognize the  
15 distribution and sale of motor vehicles vitally affects  
16 the general economy and the interests and welfare of the  
17 citizenry because the franchised dealers are located in  
18 289 Texas towns and \$4 billion in Texas sales tax titling  
19 fees are remitted annually.

20           TADA respectfully requests the board adopt  
21 rules that allow for a fair hearing and urges the board to  
22 adopt the amendments given to the board on January 7,  
23 which are located on page 311 of the board book today.

24           Thank you.

25           MR. TREVIÑO: Ms. Phillips, thank you for your

1 comments today and thank you for being with us.

2 Tracey, who do we have as our next presenter?

3 MS. BEAVER: The last person signed up to  
4 present on agenda item 5 is Mr. Jarod Stewart.

5 MR. TREVIÑO: Mr. Stewart. We'll now hear from  
6 Mr. Stewart.

7 Are you there, Mr. Stewart? Same rules apply.

8 MR. STEWART: Mr. Chairman, can you hear me?

9 MR. TREVIÑO: We can hear you fine, Mr.  
10 Stewart. Go right ahead.

11 MR. STEWART: Mr. Chairman and board members  
12 and staff, thank you for this opportunity. My name is  
13 Jarod Stewart, I'm an attorney in Houston, Texas and I'm  
14 representing myself.

15 In addition to all the comments that have been  
16 made so far, which I agree with wholeheartedly, I have two  
17 primary objections to focus on.

18 First, I object to the proposed rule from the  
19 subcommittee in its entirety because it prohibits briefs  
20 and written materials from being provided to the board,  
21 which is a wholesale departure from the board's discussion  
22 about this issue at the December meeting, including Member  
23 Gillman's concerns that were raised and that were the  
24 reason for the subcommittee meeting.

25 The APA says that adversely affected parties

1 must be given the opportunity to present briefs to those  
2 who make the final decisions. It has been suggested to  
3 the board that exceptions to the PFDs can satisfy that  
4 rule, and they cannot. They are not the same thing as the  
5 briefs required by the APA.

6 The APA actually distinguishes between briefs  
7 and exceptions. They are two different things. There is  
8 a different standard for the arguments presented to the  
9 ALJ in an exception to the PFD and the arguments that are  
10 presented to the board in a brief.

11 For example, for the ALJ, the parties can make  
12 any arguments they want based on anything in the record,  
13 including the sufficiency of the evidence or credibility  
14 of the witnesses and ask the ALJ to reconsider. Those  
15 arguments are focused to the ALJ.

16 The arguments that a party would make to the  
17 board after entry of a PFD would be reacting to the PFD  
18 and any errors that are in that PFD after exceptions, and  
19 to the board the parties would be making argument in the  
20 brief about what the board can do under 2001.058(e) of the  
21 Government Code, which says when and for what reasons the  
22 board can change an ALJ's finding of fact or conclusion of  
23 law if that party believes it to be erroneous.

24 And so the exceptions to the PFD will not  
25 address the standards that the board is to consider, and

1 will not assist the board in determining whether the ALJ  
2 has made an error and how the board can correct that error  
3 in compliance with Government Code 2001.058(e). So the  
4 briefs must be allowed to be presented in order to assist  
5 the board in discharging its duties, not only in  
6 identifying and summarizing the record and what's  
7 important and what's disputed, but also how the board can  
8 fulfill its function lawfully under the Government Code.

9 Secondly, I object to the proposed rule because  
10 it violates the APA.

11 MEETING HOST: You have one minute remaining.

12 MR. STEWART: It is a material change to the  
13 rule that was published. The rule that was published had  
14 a time for oral argument and rebuttal, and it also had  
15 pages that would be able to be presented to the board,  
16 which the interested stakeholders commented on that, and  
17 now this is a wholesale departure to change it from a  
18 certain number of pages to zero pages.

19 That is a material change. Contrary to what it  
20 says in the board book, it's a material change, and it  
21 would require new publication of the rules.

22 Rather than doing that, I urge the board to  
23 consider the proposals that have been made by the  
24 interested stakeholders in various letters that we've  
25 submitted, including a letter that was submitted this

1 week. I hope that it's been provided to the board. And  
2 we have submitted our proposals in terms of briefs that  
3 should be allowed to educate and help the board in  
4 fulfilling its function.

5 Thank you very much.

6 MR. TREVIÑO: Great. Thank you very much, Mr.  
7 Stewart, for those comments and for being with us here  
8 today.

9 Tracey, so is that all our presenters?

10 MS. BEAVER: Chairman, Tracey Beaver, general  
11 counsel, for the record.

12 That's all the presenters for this agenda item.  
13 Thank you.

14 MR. TREVIÑO: Great. So do we have any other  
15 comments?

16 MS. BEAVER: No other commenters for this  
17 agenda item.

18 MR. TREVIÑO: Okay, great.

19 So, Tracey, has the Sunset Commission provided  
20 us any guidance on how the board should comply with the  
21 Sunset final report and our legislature on these draft  
22 rules regarding contested cases?

23 MS. BEAVER: Tracey Beaver, general counsel,  
24 for the record.

25 Yes, the Sunset Commission has given us

1 guidance that the proposed rules from August were not in  
2 compliance with the Sunset guidance. However, the Sunset  
3 Commission report from 2019 did emphasize, to the  
4 commenter's point, that it is important that the board not  
5 consider evidence outside of the administrative record,  
6 and it does appear that the most important portions are to  
7 have consistency and transparency in the process.

8 Just to clarify, I know that there was some  
9 question about the presentation where I mentioned there's  
10 discretion. The board today has the discretion to decide  
11 whether to allow written documents or not, and if they do  
12 allow written documents, how many pages. The rules  
13 subcommittee did make a recommendation to the full board;  
14 however, the board is not bound to that recommendation.

15 MR. TREVIÑO: Okay. Does anybody have any  
16 questions for Ms. Beaver? Member Gillman.

17 MS. GILLMAN: Mr. Chairman, I have a question  
18 for one of the stakeholders that spoke.

19 MR. TREVIÑO: Okay.

20 MS. GILLMAN: And actually, my question could  
21 go to any of them, but I'll just choose one. If Mr.  
22 Bennett is still available?

23 MR. TREVIÑO: Mr. Bennett, are you there, are  
24 you still on the line? Can we unmute Mr. Bennett?

25 MR. BENNETT: I'm here, Mr. Chairman.



1 MR. TREVIÑO: Mr. Bennett, great.

2 Ms. Gillman, you've got Mr. Bennett there so  
3 fire away.

4 MS. GILLMAN: Mr. Bennett, thank you for your  
5 comments. I have a question. It's basically the same  
6 question I asked our general counsel, Tracey Beaver, and  
7 that is, I know that I'm charged with reading the  
8 record. Can you clarify one more time: is the PFD -- is  
9 focusing my efforts on just the PFD and conclusions of  
10 law, is that sufficient or insufficient in reading the  
11 record?

12 MR. BENNETT: Member Gillman, that would be  
13 insufficient. The Court of Appeals -- and I can read what  
14 they said. They said that if you're going to read the  
15 record, that means read "the entire transcript of the  
16 hearing and review those exhibits or portions thereof  
17 necessary to clarify the testimony of the witnesses."

18 You have to read the evidence that was  
19 presented at SOAH and the transcript of that and you have  
20 to review such exhibits as you need to clarify that  
21 testimony. The Third Court of Appeals has said you do not  
22 have to read every word in the record; it is sufficient to  
23 read the testimony given before the hearings examiner and  
24 then review "those exhibits or portions thereof necessary  
25 to clarify the testimony of the witnesses."

1 MS. GILLMAN: Thank you, Mr. Bennett.

2 MR. BENNETT: In the Lone Star Greyhound  
3 case -- yes, ma'am, I can go on and on, but that's clear  
4 that reading the PFD is not sufficient. Thank you very  
5 much.

6 MS. GILLMAN: Okay. My next question for you,  
7 and it's just the same, because I have been told that one  
8 reason that we might not need any briefs or proposed final  
9 orders is because attorneys have the opportunity to  
10 provide comments in the exceptions period when it's still  
11 at SOAH.

12 Can you tell me: if you have comments in the  
13 exceptions period, why do we need briefs or proposed final  
14 orders when it comes before us? Is it the same, or is it  
15 different?

16 MR. BENNETT: It's different, because when  
17 you're dealing with the ALJ, you know, the standard is the  
18 preponderance of the evidence, and you are trying to  
19 convince the ALJ to adopt findings in your favor. And  
20 that is a completely different standard when we come to  
21 the board.

22 You are now, under .058(e) of the APA, sitting,  
23 in effect, as an appellate body, and we're having to  
24 present and persuade you that errors of law were  
25 committed, and that the PFD needs to be changed. And we

1 have to help provide guidance about how the board can make  
2 the changes that are necessary consistent with the APA.

3 So it's a whole different deal. Your focus  
4 shifts from trying to get the ALJ to find the facts in  
5 your favor versus now we're talking about legal matters,  
6 and you know, navigating .058(e) is a tricky business.

7 But you're sitting basically as an appellate  
8 body. And just like an appellate court, you get to file  
9 briefs with the appellate court. Oral argument you may  
10 not get, but you always get to file briefs and that's to  
11 help focus your attention on the legal points.

12 And if a finding that the ALJ makes has no  
13 evidence to support it, that is a legal point. But most  
14 of the time we'd be saying that the law was not properly  
15 applied, policy was not properly applied, your entire  
16 precedent was not followed.

17 But that's it. It's a completely different  
18 focus, Ms. Gillman, and that's why the APA says exceptions  
19 and briefs to the final decision-makers because they're  
20 performing different functions. I hope that answers your  
21 question.

22 MS. GILLMAN: It does. Thank you, Mr. Bennett,  
23 I appreciate it.

24 MR. TREVIÑO: Member Gillman, any other  
25 questions?

1 MS. GILLMAN: No. I'm good.

2 MR. TREVIÑO: Any other questions from members  
3 for Ms. Beaver or any of the presenters here today?

4 (No response.)

5 MR. TREVIÑO: And I will remind board members  
6 that we will have plenty of time for discussion coming up,  
7 but the one thing -- and I would like to thank all the  
8 commenters today. Do not think that the comments aren't  
9 taken seriously, and we really appreciate you taking the  
10 time to come before us and express your thoughts.

11 One thing that I would like to remind board  
12 members is that the Sunset report for Texas DMV  
13 specifically states the governing boards with final order  
14 authority on contested cases -- including us, Texas DMV  
15 Board -- must base our final decisions on evidence  
16 contained solely within the official administrative record  
17 of SOAH.

18 So with that, if there's no further discussion,  
19 the chair would entertain a motion on agenda item 5. The  
20 chair recognizes Member Gillman.

21 MS. GILLMAN: Member Gillman, you're on mute.

22 MS. GILLMAN: I'm sorry, I can't hear you.

23 MR. TREVIÑO: Okay. You were on mute.

24 MS. GILLMAN: Okay.

25 MR. TREVIÑO: Do you have a motion? You raised

1 your hand.

2 MS. GILLMAN: Yes. Can you hear me?

3 MR. TREVIÑO: I can hear you fine, yes, ma'am.

4 MS. GILLMAN: Okay. I move that the board  
5 approve the adoption of amendments to Section 206.22,  
6 215.22, 215.55 and New Sections 215.59 and 215.61 through  
7 215.63, as recommended by staff, with the following  
8 amendments. To Section 206.22 and the addition of  
9 language in Section 215.62 regarding a rebuttal and  
10 closing statement.

11 Okay, here comes the good stuff: allow 20  
12 minutes oral presentation time and 5 minutes for rebuttal,  
13 and a closing statement for each party to the SOAH  
14 contested case for a total oral presentation time of 25  
15 minutes per party, with the intervening party sharing time  
16 allotted to the party that the intervening party is  
17 supporting. I'd like to give the board chairman  
18 discretion to grant each party additional time to make  
19 oral presentations. Of course, any oral presentation must  
20 be limited to evidence contained within the SOAH  
21 administrative record.

22 I also move that the board approve adoption of  
23 proposed 215.60, as published in the *Texas Register* on  
24 August 21, 2020, with the following amendments. Here  
25 comes more good parts: allow 25 pages for initial

1 presentation materials and 10 pages rebuttal written  
2 materials per party for a total of 35 pages of written  
3 materials per party. These 35 pages would include the  
4 proposed final order.

5 Let's substitute the term "written materials"  
6 for "presentation aids". Written materials are defined as  
7 language or images that are contained in the SOAH record  
8 that are recorded in paper form. The language or images  
9 in the written materials must be taken without changes  
10 from evidence in the administrative record, and the  
11 written materials shall be consistent with the scope of  
12 the board's authority to take action under Government Code  
13 2001.058 and Occupations Code Chapter 2301.

14 So Mr. Chairman, that long motion to summarize  
15 oral limited to 20 minutes and 5-minute rebuttal, written  
16 limited to 25 pages and 10 for rebuttal.

17 MR. TREVIÑO: And chair discretion is also  
18 included as well?

19 MS. GILLMAN: And stay within the record.

20 MR. TREVIÑO: Stay within the record.

21 Okay. Is that clear to board members? We have  
22 a motion before us. Do we have a second?

23 MR. GRAHAM: This is Graham. I'll second.

24 MR. TREVIÑO: Okay. We have a second from  
25 Member Graham, and now we will have some discussion on the

1 motion. Would anybody like to -- I'll open up the floor  
2 for any thoughts.

3 Member Graham. The chair recognizes Member  
4 Graham.

5 MR. GRAHAM: I apologize for jumping the gun  
6 there. Wow, there was a lot in between here and there, so  
7 my apologies, Mr. Chairman, but I think it was good  
8 because my thoughts are tracking a lot with what many of  
9 the presenters have said, so I'll probably remove some of  
10 that. I'll just say I agree with most of what was said.

11 I was going to mention Statute 2301.709, which  
12 outlines the general powers of the board. And within  
13 that, I think it's section (c) that says the board can  
14 take any further action conducive to the issuance of the  
15 final order. So I think that just tells us that the  
16 statute allows us some latitude on how we believe we can  
17 best come to a conclusion on these contested cases, which  
18 is so very important.

19 I'd also like to mention Section 2001.062,  
20 which has also been commented on and includes some  
21 commentary that states, and if I may read, "The purpose of  
22 this section is to make sure that the persons who are  
23 responsible for the decision shall have mastered the  
24 record either by hearing the evidence or reading the  
25 record, or at the very least by receiving briefs and

1 hearing oral argument. It is intended to preclude signing  
2 on the dotted line." Which is what we are trying to  
3 avoid. We are not intended to be a rubber stamp, nor do  
4 we want to be. I think that helps us achieve that.

5 In order to make an educated decision on an  
6 contested case -- and I know we have a couple of board  
7 members that haven't gone through that yet -- it's  
8 important that we understand the facts of the case. And  
9 in my mind, there's only two ways to do that. The first  
10 is to read the entire record; the second is to allow the  
11 attorneys of the case to provide a briefing and to use the  
12 case record that we have at our discretion to research  
13 their points before we walk in the door to the board  
14 meeting.

15 By only allowing oral arguments and not written  
16 briefs, we really have no idea what the parties of the PFD  
17 are going to bring forward until the day of the board  
18 meeting, when we hear their oral presentation. This does  
19 not allow us the time to research the record and come to a  
20 sound decision.

21 It also, I would say, is counterproductive to  
22 the intent of what the Sunset Commission has, because the  
23 Sunset Commission has made it clear repeatedly that we are  
24 not to consider anything outside the record, which I agree  
25 with entirely. By doing that, our general counsel will



1 also not have the briefs to ensure that what is said is  
2 not outside the record. You get the point there.

3 So I really think not having this information  
4 in advance of the board meeting makes it difficult to make  
5 a good informed decision. And it's clear by statute and  
6 by the history of this agency that it is not the intent of  
7 the statute for us to be a rubber stamp.

8 We serve on this board because of our  
9 expertise, and I think we are obligated to ensure that any  
10 SOAH decisions are correct. The reality is that in the  
11 vast majority of cases SOAH gets it right. Most of their  
12 decisions are accurate and it's based on proper  
13 interpretations, but it's always a possibility that a SOAH  
14 judge who has no actual experience as either a dealer or a  
15 manufacturer interprets something improperly. That's what  
16 we are to guard against.

17 So regarding the recommendations being brought  
18 forward by the subcommittee, I am generally in support of  
19 most of those recommendations, but I do have a concern  
20 that not allowing briefs is going to be detrimental to  
21 getting us to a better-educated and informed decision as a  
22 result of good solid final orders in advance.

23 So those are my comments, Mr. Chairman. Thank  
24 you again.

25 MR. TREVIÑO: Great. Thank you, Member Graham.

1           And before we move on, I would just like to  
2 remind the board that the reason we're here discussing  
3 this is we have direction from Sunset. It's not like we  
4 just decided to do this. Sunset has asked us to review  
5 this.

6           I'm very sympathetic to your comments, Member  
7 Graham, absolutely, but just reminding people that that's  
8 why we're here.

9           I think Member McRae had her hand up next.  
10 Member McRae.

11           MS. McRAE: Thank you, Chairman.

12           I actually took the time to listen not just  
13 once but twice to Senator Buckingham's discussion during  
14 the Sunset Commission. I also heard the comments back  
15 that were made from our Executive Director Brewster and  
16 from our General Counsel Tracey Beaver during that  
17 presentation.

18           I thought that Vice Chair Buckingham was very  
19 deliberate with the words that she chose, I think, with  
20 the direction that she expected this board to go in this  
21 rulemaking process. And I agree that we certainly are not  
22 a rubber stamp board and would never want to be perceived  
23 as a rubber stamp board, but I also think that the more  
24 pages -- and I am in favor -- let me first state I am in  
25 favor of allowing oral presentation.

1 I am in favor of allowing written materials,  
2 but I do think, based upon Vice Chair Buckingham's  
3 comments and caution to the board that the more pages that  
4 are allowed or the more time that is given for the oral  
5 presentation that we put ourselves in a position to where  
6 we might be possibly allowing more information that's  
7 outside of the record that was presented in the SOAH  
8 documents.

9 So I don't want us to go directly against what  
10 the Sunset Commission has charged us with doing. And it's  
11 a fine line that we're walking, because we want to do the  
12 right thing, and we are on this board for our expertise in  
13 the industry and I am very mindful of every decision. I,  
14 in fact, have sleepless nights sometimes over some of  
15 these contested cases because I take it very seriously.

16 I think that any time we are affecting a  
17 livelihood that are taking a license, shutting down a  
18 dealership or manufacturer from doing their job, I think  
19 that is very serious and we should all take that as  
20 serious as it is charged. But I am concerned by the  
21 number of pages and the rebuttal that was stated in the  
22 original motion.

23 That's my comments. Thank you, Chairman.

24 MR. TREVIÑO: Thank you very much, Member  
25 McRae.

1 I believe Member Ramirez had his hand up as  
2 well?

3 MR. RAMIREZ: Yes, sir. Thank you, Chairman.

4 And I want to thank all the presenters for  
5 tuning in and for providing us with that great context.

6 I know staff has done tremendous work, you  
7 know, working with Sunset Commission and really hearing  
8 all of our thoughts, and the subcommittee did great work  
9 too and I'm supportive of what the subcommittee came up  
10 with.

11 I think, you know, in speaking with several of  
12 our state senators as well, including Senator Buckingham  
13 recently, the issue is very serious, you know. As a state  
14 agency, we don't need to be looking at coloring outside of  
15 the lines or expanding our authority or scope and I think  
16 that's where we are dangerously walking that line here, as  
17 Member McRae mentioned.

18 You know, I think that this is something that's  
19 been on our plate since August and especially since the  
20 Sunset Committee review came up. We need to put it to  
21 bed, and we need to put it to bed and put that line in the  
22 sand and say, this is where we're going going forward.  
23 Now, not everybody is going to be happy with our decision  
24 but ultimately, it's this board's decision to make.

25 I am supportive of some sort of briefs being

1 put forward, but we have to understand that the amount of  
2 pages that are allowed, all that does is create more  
3 responsibility for our staff and for our general counsel  
4 to go through and make sure no new information from the  
5 record is included, so that's going to be a burden on  
6 them.

7 I'm also supportive, if it's the direction the  
8 majority of the board wants to go, in adopting the  
9 recommendation of the subcommittee of not having briefs  
10 and potentially having contested case participants submit  
11 items to be highlighted from the administrative record to  
12 our general counsel prior to a hearing. I do think that  
13 we have to be very careful, and we need to say, look, we  
14 have the record before us and it's very clear that we're  
15 not to consider any information outside of that official  
16 record.

17 So those are my comments. I'm supportive of  
18 limiting the scope, limiting the procedure, and making  
19 sure that we are in line with the Sunset Commission's  
20 recommendations, because ultimately the State of Texas  
21 gives us the authority to operate as an agency, and they  
22 can limit that scope or reduce it at any time if they feel  
23 like we've overstepped those bounds.

24 So I want to present a stark reminder of that  
25 fact that in trying to have the perfect solution, you

1 know, we might endanger the entire process. So those are  
2 my comments.

3 MR. TREVIÑO: Thank you very much, Member  
4 Ramirez.

5 Vice Chair Bacarisse.

6 MR. BACARISSE: Thank you, Mr. Chairman.

7 I just appreciate the conversation here, and  
8 obviously those public members that provided testimony  
9 today as well.

10 I have a question, a couple of questions for  
11 General Counsel Beaver, if I may, on this motion that is  
12 before us. Let me ask, I'm trying to remember, typically  
13 in our board meetings we hear at least two, maybe  
14 sometimes three contested cases. We're not obviously  
15 hearing any today, but typically we hear several.

16 Go back and do the math for me if you would,  
17 because it's not my strong suit, in this motion, as  
18 presented, how many pages would we be responsible for  
19 reviewing that have been submitted per case based on the  
20 motion as submitted?

21 MS. BEAVER: Tracey Beaver, general counsel.  
22 If I may, Chairman?

23 MR. TREVIÑO: Yes, please go right ahead.

24 MS. BEAVER: Yes, thank you for that question.  
25 According to the motion made by Member Gillman, each

1 party would be allowed 35 total pages. So that would be  
2 70 pages per case that the parties would be submitting for  
3 the board to consider, so if there were two contested  
4 cases or three, that would be 140 or 210 additional  
5 documents for the board to review.

6 MR. BACARISSE: Okay. Thank you.

7 I just think it's important that we kind of  
8 take the bigger picture here in terms of the amount of  
9 time, effort and energy required to manage the caseload  
10 that comes through to us.

11 Secondly, if I may, General Counsel Beaver,  
12 this chairman and this board is tremendous, and I have  
13 great respect and admiration for everybody, but what we're  
14 doing here is putting rules in place that will outlive all  
15 of us probably in our time and tenure on this board. Do  
16 we, in your view, regarding what Sunset has put in their  
17 report and has verbally said to us as a commission, do we  
18 allow -- in this motion do we allow too much discretion  
19 for the chairman to decide how a certain case is going to  
20 be presented to our board, or are we okay in the motion as  
21 presented?

22 My concern is if the chair has too much  
23 discretion, then it's not going to be the same from case  
24 to case as the board hears each case. That's my  
25 concern. So how are we lined up in that regard?

1 MS. BEAVER: Tracey Beaver, general counsel,  
2 for the record.

3 Member Gillman's motion did leave open  
4 discretion for the chairman. I just would caution that  
5 the Sunset Commission has in the report, and of course,  
6 the requirements under the law and the general proceedings  
7 and administrative law, leaned toward consistency and  
8 transparency.

9 So from a legal standpoint, I would caution  
10 that leaving discretion to the chairman on a case-by-case  
11 basis could leave open -- if it was a whole new board and  
12 whole new chairman, it could leave open the possibility  
13 that consistency and transparency would not be achieved  
14 anymore if each case that discretion was utilized that  
15 would have been allowed based on this motion. There would  
16 not be transparency because each party to a case would not  
17 be aware in advance of what they were being allowed to  
18 present in each particular case.

19 MR. BACARISSE: Thank you, Mr. Chairman. That  
20 concludes my questions.

21 Thank you, General Counsel Beaver.

22 MR. TREVIÑO: Great. Thanks, Vice Chairman  
23 Bacarisse.

24 Any other comments? Member Graham.

25 MS. GILLMAN: Go ahead.



1           MR. GRAHAM: I have three questions. The first  
2 would be if general counsel could remind me how many  
3 contested cases do we hear, or maybe have we heard, over  
4 the last few years. They all run together so I'm not sure  
5 in my mind.

6           MS. BEAVER: Absolutely. Tracey Beaver,  
7 general counsel, for the record.

8           In the past two years I believe we have heard  
9 eleven contested cases.

10          MR. GRAHAM: Okay. Thank you.

11          MS. BEAVER: Thank you.

12          MR. GRAHAM: Secondly, I would ask for  
13 clarification on the motion on I think it was 206.22,  
14 because there was a lot in there and I wasn't sure. If  
15 Member Gillman wouldn't mind clarifying that.

16          MS. GILLMAN: I have no idea.

17          (General laughter.)

18          MS. GILLMAN: If that's the very beginning of  
19 my motion, I moved that the board approve the adoption of  
20 amendments to 206.22, 215.22 and 215.55, and to be honest,  
21 I don't have that section pulled up, so I might have to  
22 defer to general counsel to help me.

23          MR. TREVIÑO: Member Graham, what is the scope  
24 of your question? What is the areas that you're concerned  
25 with or that you're asking for clarification?

1 MR. GRAHAM: As I recall, it was about the  
2 parties' time and what counted against their time versus  
3 the other time, and I kind of went past it. It's okay,  
4 it's not a big deal.

5 I was just trying to make sure I understood,  
6 which is going to lead me to my third question. And I  
7 mean, clearly there's a lot of mixed feelings on this  
8 about what is the right balance in allowing briefings to  
9 help the board but not cross the line that is going too  
10 far in the eyes of the Sunset Commission or whoever is  
11 involved.

12 So I would just ask Member Gillman if she might  
13 consider a middle ground here that can kind of get us all  
14 on the same page, hopefully, where we can at least get  
15 limited briefings. And I think that general counsel has  
16 told us that that's well within our bounds. No one is  
17 going to be upset with limited briefings.

18 Is that something you could support, Member  
19 Gillman?

20 MS. GILLMAN: Yes.

21 Mr. Chairman, may I answer?

22 MR. TREVIÑO: Member Gillman, go right ahead.  
23 Jump right in.

24 MS. GILLMAN: Okay. I very much appreciate all  
25 the comments of this board and I respect the comments of

1 this board. The reason I came up with allow 25 pages for  
2 initial presentation materials and 10 pages of rebuttal is  
3 I pretty much just came up with that number because I cut  
4 what the attorneys have requested in half. That was my  
5 scientific method.

6 And I so appreciate Member McRae, Member  
7 Ramirez, Member Graham saying that yes, you are okay with  
8 briefs because I feel I really need it. And also, Mr.  
9 Chairman, the number 25 is not very magical. I, too,  
10 allow flexibility.

11 I told you exactly how I came up with it. I'm  
12 not a lawyer and I'm not very scientific, but I, too, am  
13 flexible in the allowance of pages. I think it's 15 as  
14 minimum, it was somewhere between zero and 50 and that's  
15 why I chose 25.

16 And I also respect Vice Chairman Bacarisse in  
17 his how many pages do we need to read per case, and if  
18 it's 35 for each side, that's 70 per case. Is that  
19 right?

20 That sounds so reasonable to me rather than the  
21 thousands of pages. And I have to say as a board member I  
22 desperately would like to have those briefs in order to  
23 make a good decision because I don't think -- I think that  
24 I could be challenged if I was charged with reading the  
25 record. So I definitely appreciate those pages.

1           And with regard to the chairman discretion,  
2 honestly, I would never want inconsistency but when  
3 presenters are at the dais and they are just finishing a  
4 sentence or a thought, I have always thought it polite if  
5 the chairman says, yes, you may finish your sentence,  
6 beyond their time limit. Certainly it was not for the  
7 chairman to rewrite any rules, statutes or any of that.

8           It was merely to allow the chairman to extend  
9 the courtesy to the attorneys, not rewriting statute.  
10 That was not my intention.

11           MR. TREVIÑO: Thank you, Member Gillman.  
12 Member Ramirez.

13           MR. RAMIREZ: Thank you again, Member  
14 Gillman. Your industry expertise and context is very  
15 valuable and I rely on it a great deal.

16           You know, I would say that I'm supportive of  
17 anything that's limiting our scope here to bring us into  
18 further compliance with the Sunset Advisory Commission, so  
19 I'm supportive of the subcommittee's recommendation to  
20 limit the oral presentations to 15 minutes. I'm also  
21 supportive of, you know, eliminating rebuttals, anything  
22 that sounds like we're re-litigating a case.

23           I think a rebuttal is an argument, and if we're  
24 just considering facts that are already in the SOAH  
25 record, even a brief that we might allow, I don't think

1 rebuttal is necessary. It might be problematic going  
2 forward.

3 So I would like to see the scope of the  
4 documentation or any written documents that were provided  
5 be limited. I'm not sure if 25 pages is the right number  
6 or I'm not sure if we go with the staff recommendation --  
7 I believe last time it was six pages -- or somewhere in  
8 between for a brief, but I do think that expanding the  
9 scope is not the goal here. We should be looking to  
10 restrict it.

11 MR. TREVIÑO: Thank you very much, Member  
12 Ramirez.

13 Any other questions or any other comments?  
14 Member Scott.

15 MR. SCOTT: Yes, thank you, Mr. Chairman.

16 My question is for Member Gillman. After  
17 hearing from other board members, we're going to have your  
18 motion, it's been seconded, so next up would be a vote on  
19 that, and before we get to that point, would you like to  
20 amend your motion?

21 MR. TREVIÑO: Member Gillman?

22 MS. GILLMAN: Can I hear your opinion?

23 MR. BACARISSE: Mr. Chairman, if I may?

24 MR. TREVIÑO: The chair will recognize Member  
25 Bacarisse.

1 MR. BACARISSE: The question is for Member  
2 Scott -- I'm just a Robert's Rules freak here -- the  
3 question is would Member Gillman entertain a friendly  
4 amendment, in that the question is either yes or no, and  
5 then Member Scott would make his friendly amendment.  
6 That's how it would work normally.

7 MR. TREVIÑO: Great. I think Counsel Aucoin  
8 was going to jump in here.

9 MS. GILLMAN: Mr. Chairman?

10 MR. TREVIÑO: One second here. Counsel Aucoin.

11 MS. AUCOIN: Thank you. For the record, this  
12 is Aline Aucoin, associate general counsel for the Texas  
13 Department of Motor Vehicles.

14 I wanted to circle back to Member Graham's  
15 question about what the motion actually said about Section  
16 206.22, so I wanted to make sure that you all had the  
17 benefit of that information before you moved forward. So  
18 the motion from Member Gillman was that she moved that  
19 the board approve the adoption of amendments to Section  
20 206.22 but allow 20 minutes for oral presentation time  
21 with 5 minutes for rebuttal and a closing statement for  
22 each party to the SOAH contested case for a total oral  
23 presentation time of 25 minutes per party, with the  
24 intervening party sharing time allotted to the party that  
25 the intervening party is supporting, also giving the board

1 chairman the discretion to grant each party additional  
2 time to make an oral presentation to the board, and any  
3 oral presentation must be limited to evidence contained  
4 within the SOAH administrative record.

5 And that was the portion of motion on 206.22.  
6 If anyone needs a refresher on the entire motion, if  
7 Member Gillman wants to present it, that's fine, or if she  
8 wants me to present it, I can do that as well.

9 MR. TREVIÑO: Thank you, Aline Aucoin.  
10 Appreciate the update there.

11 So if I could, before we move on, just to kind  
12 of bring us back to kind of where we are. So we're here  
13 because of Sunset, and Sunset has asked us to review the  
14 rules around this area. They feel that they need to be  
15 tightened up.

16 We are clearly not a rubber stamp. I think none  
17 of us believe that this board should be a rubber stamp for  
18 things that come before us, and we need to deliberate them  
19 and we need to figure out ways to do that.

20 Clearly there needs to be limits around the  
21 presentation materials, not only because of the appearance  
22 of what is considered to be proper but simply also from  
23 the board members' perspective, what is a reasonable  
24 number of documents we should review to get the full  
25 understanding of the case and people can make their

1 arguments to us.

2 And what that number is, you know, 15 clearly,  
3 I think, was a number that's been thrown out there. And I  
4 think going over that, I think Sunset has suggested that  
5 maybe 15 is already actually going over that, is maybe too  
6 much.

7 So consistency is another key word that we have  
8 heard discussed. I think discretion from a chair's  
9 perspective puts the chairperson in a difficult position  
10 because a chair wants to be consistent. A chair does not  
11 want to be inconsistent. So if you allow the chair to  
12 have that discretion, it will be asked almost every single  
13 time, so I would caution on discretion from the chair's  
14 perspective.

15 The other point that we need to be thoughtful  
16 of is not appearing to be a trial; is there anything that  
17 makes it look like a trial. Rebuttals, things of that  
18 nature have been clearly articulated as things we should  
19 consider in making any kind of changes to the rules.

20 So with that, I really would like to commend  
21 the board for the way they've discussed this issue from  
22 all different perspectives to try and craft a good  
23 solution to this.

24 Ms. Beaver, you popped on here. Is there a  
25 comment you wanted to make?



1 MS. BEAVER: Yes. Thank you, Chairman. Tracey  
2 Beaver, general counsel, for the record.

3 We had somebody sign up late to provide comment  
4 on this agenda item, so it's within your discretion if you  
5 would like to allow an additional commenter on this agenda  
6 item.

7 MR. TREVIÑO: Right. So at this point I think  
8 since we're already well into the discussion phase, I  
9 think we're not allowing the additional comments.

10 But with that said, Member Gillman, you have a  
11 motion on the floor. There is a second. The question  
12 before you is would you be willing -- and I believe,  
13 Member Bacarisse, the best way to phrase this is a  
14 friendly amendment to your motion. Is that correct?  
15 Allow a friendly amendment to your motion, would you be  
16 sympathetic to that?

17 MS. GILLMAN: Yes, sir. Yes, Mr. Chairman, I  
18 would be flexible and consider an amendment not to  
19 eliminate but to re-discuss the number of pages and  
20 rebuttal allowed. Yes.

21 MR. TREVIÑO: Great. So would someone like to  
22 jump in and make a suggestion? Member Graham.

23 MR. BACARISSE: Mr. Chairman, if I may?

24 MR. TREVIÑO: Member Bacarisse.

25 MR. BACARISSE: Just follow rules. You've got

1 someone who wants to make a friendly amendment. I think we  
2 ought to have the amendment laid out and then we can have  
3 further discussion. I think that's how you'd want to do  
4 it.

5 MR. TREVIÑO: I think Member Graham is going to  
6 jump in there and provide that. Is that correct, Member  
7 Graham?

8 MR. GRAHAM: Yes. I'll now make the amendment  
9 at this point in an attempt to bring this all together. I  
10 might consider making an amendment.

11 MR. BACARISSE: Mr. Chairman, we have Member  
12 Scott who was going to make a friendly amendment first.

13 MR. TREVIÑO: Okay.

14 MR. BACARISSE: We're just kind of getting out  
15 of order here. So Member Scott asked for a friendly  
16 amendment, Ms. Gillman has agreed to accept it, so she can  
17 do that first, and then, of course, anyone could do  
18 another one, if we want to stay in order. That's all.

19 MR. TREVIÑO: Thank you very much, Member  
20 Bacarisse for that clarification and for bringing us back  
21 to center.

22 So Member Scott, you have the floor if you  
23 would like to make any type of friendly amendment to  
24 Member Gillman's original.

25 MR. SCOTT: Yes. Thank you, Mr. Chairman.

1 I actually don't have an amendment to make. My  
2 question was would Member Gillman entertain a friendly  
3 amendment.

4 MR. TREVIÑO: Great --

5 (Several people talking at the same time.)

6 MR. SCOTT: At this point I'm open to anyone  
7 actually making that amendment.

8 MR. TREVIÑO: Good. So Member Graham, would  
9 you be willing to make a friendly amendment to Member  
10 Gillman's, or should we move on and see if anybody else on  
11 the board would like to do that.

12 MR. GRAHAM: I will not at this point make an  
13 amendment; I will just tell you what I might consider  
14 making as an amendment so that there -- what I might  
15 consider as an amendment would be allowing 15 pages of  
16 briefings, 20 minutes of oral discussion with 5 minutes of  
17 closing but no rebuttal. I'll throw that spaghetti on the  
18 wall --

19 MR. TREVIÑO: That's actually not a friendly  
20 motion, that is just a talking point --

21 MR. GRAHAM: A talking point. Thank you,  
22 Chairman.

23 MR. TREVIÑO: Okay. Member McRae.

24 MS. McRAE: Chairman, I would just like Board  
25 Member Graham to repeat what he just said, and I would

1 like to know if his amendment includes removing the  
2 discretion of the chairman. Thank you.

3 MR. GRAHAM: I'll be glad to do so. I would  
4 consider, not currently, but consider making an amendment  
5 allowing 15 pages of briefings, 20 minutes of oral  
6 discussion, with 5 minutes closing, not to include any  
7 rebuttal, and not including discretion of the chair.

8 MR. TREVIÑO: Member Graham, how does the  
9 closing not become a rebuttal?

10 MR. GRAHAM: That's a good question, Mr.  
11 Chairman.

12 MR. TREVIÑO: I think we're moving in the right  
13 direction, though. Slowly, but I think we're moving in  
14 the right direction here.

15 MR. GRAHAM: You know, just to talk this out,  
16 so one of the questions I had when we think about these  
17 contested cases that we've heard is who goes first, who  
18 goes second. The second gets the advantage. The first  
19 never gets to come back and go, okay, I disagree with what  
20 he said, here's why.

21 That's kind of what I just like about letting  
22 them wrap up. You know, we limit it, 20 minutes, 5-minute  
23 wrap-up. You can disagree, agree or whatever you want to  
24 do, or not close at all. I guess, you know, it just  
25 doesn't seem right to one of the two parties that the

1 other one gets to come back, hit him on all those points  
2 and he's dead in the water.

3 You know, I just want to be fair. Fair,  
4 transparent, that's what we need to achieve. I don't  
5 know, that's why I had the five.

6 The rebuttal, I agree, you know, when we've had  
7 rebuttals in the past, it kind of has turned into a tennis  
8 match somewhat. We don't need that, but I do want to be  
9 fair to both parties.

10 So that was the reason I put the closing in  
11 there. I know it's tough. So that's my thoughts. Thank  
12 you.

13 MR. TREVIÑO: Understood.

14 Member Ramirez.

15 MR. RAMIREZ: Just to be clear, whenever we're  
16 considering the motion or any amendments, we're also  
17 considering the language that specifies the scope and  
18 really nails down that we're not to consider any outside  
19 information and all the other things that are considered  
20 in these proposed rules, not just these specific page  
21 numbers and time limits that we're discussing. That was  
22 number one. I want to make sure we're considering the  
23 other things also.

24 But on this, I do think that the oral  
25 presentations, there is no need for a rebuttal because

1 they're not trying to prove the other wrong. They're  
2 trying to express to us their opinion on why the SOAH  
3 judge was right or wrong. It's not a competition between  
4 the parties in the room.

5 I went back and I've read through five or six  
6 of the contested cases in the last couple of years and  
7 I've seen them turn into what appears to mini-trials. And  
8 I can definitely understand how it would appear to be so,  
9 providing rebuttals and closing arguments and things like  
10 that.

11 So while you're right, Member Graham, I think  
12 the second party, you know, has the ability to finish  
13 out. And I wouldn't necessarily say that they have an  
14 advantage if both are speaking directly to the facts in  
15 the SOAH record, and not introducing anything new in the  
16 form of an argument to us.

17 MR. TREVIÑO: Member McRae?

18 Thank you, Member Ramirez, for your comments.

19 Member McRae?

20 MS. McRAE: Chairman, I just have a question  
21 for clarification, and I will ask the question of you. In  
22 the Sunset review in our original rules that were posted  
23 for public comment, did that include 15 pages and did  
24 Sunset come back and say that -- I want clarification that  
25 they thought that was maybe too broad.

1 MR. TREVIÑO: General Counsel Beaver, can you  
2 clarify that? I think the original proposal was six.  
3 Right?

4 MS. BEAVER: That's correct. The original  
5 proposal that was published in the *Texas Register* gave 20  
6 minutes of presentation time and allowed parties to submit  
7 proposed final orders with four pages initial presentation  
8 and two rebuttal. We did not get specifics, but I do  
9 believe that this rebuttal back and forth could have an  
10 impact on why we might not have been in compliance,  
11 because it had a trial-like structure. Thank you.

12 MR. TREVIÑO: So initially it was four and two,  
13 and this is a pretty broad departure from that. So I  
14 think anything that gets us closer to that makes it easier  
15 for the board to make a decision and still keep Sunset --  
16 or we can try to comply with Sunset.

17 So okay. Would anybody else like to make an  
18 attempt? Member Gillman.

19 MS. GILLMAN: Yes, sir. This is to make an  
20 attempt. May I amend my original motion, which stated  
21 allowing 20 minutes oral presentation and 5 minutes for  
22 rebuttal and a closing statement, can I eliminate the word  
23 "rebuttal"? Allow 20 minutes oral presentation and 5  
24 minutes for a closing statement. That's number one.

25 And number two amendment to my original is

1 instead of allowing 25 pages, allow 15 pages for  
2 presentation of written materials.

3 And then the last bullet point of giving the  
4 chairman discretion to grant each party additional time, I  
5 defer to you, Mr. Chairman. My intent was only for them  
6 to be able to finish a sentence or a thought, but I defer  
7 to your thoughts here.

8 MR. TREVIÑO: Member Gillman, the chair always  
9 has the discretion for civility but it doesn't have the  
10 discretion for policy, so I think those are the  
11 distinctions there. The chairman always has discretion  
12 for civility.

13 MS. GILLMAN: What I said in my motion is give  
14 the board chairman discretion to grant each party  
15 additional time to make an oral presentation to the board,  
16 not policy at all. It was in their oral presentation. I  
17 don't know if that makes a difference.

18 MR. TREVIÑO: I think any time you allow a  
19 chair to have discretion, it's a problem in the  
20 consistency piece.

21 MS. GILLMAN: So if that is a point of  
22 contention, certainly I have the flexibility to take that  
23 out of the motion.

24 MR. TREVIÑO: Okay. And so coming back to your  
25 general amendment, if I have it right, it's 20 minutes but



1 you still have a rebuttal -- or not a rebuttal but a  
2 closing statement. Right?

3 MS. GILLMAN: Right. I took out the word  
4 "rebuttal".

5 MR. TREVIÑO: Right, but the ability to make a  
6 rebuttal in a closing statement still hangs out there, you  
7 know, hangs over us. So any time you have a closing  
8 statement, it's an opportunity for rebuttal. And to  
9 Member Ramirez's comments, I think it may pose a problem.

10 MS. GILLMAN: If you make an oral presentation  
11 and a closing statement, I guess I did not think of that  
12 as a rebuttal to the opposing counsel. It's just your own  
13 presentation and closing statement, your own, not a  
14 rebuttal, all within the record, of course.

15 MR. TREVIÑO: Of course. I'm sympathetic to  
16 that. I'm just suggesting to us that we open ourselves up  
17 to problems with Sunset.

18 And I just might remind the board that clearly  
19 everything that we're discussing here, I'm sympathetic  
20 too. I want to make that very, very clear. But again,  
21 the reason that we are here is that we want to craft a  
22 solution that takes into account Sunset's recommendations  
23 to us and doesn't put us in a position that Sunset will  
24 take further action against this board and this  
25 department.

1 MS. GILLMAN: How about just instead of  
2 separating oral presentation and closing comment just say  
3 oral presentation 25 minutes per party, period?

4 MR. TREVIÑO: So we have that before us. Is  
5 there any other thoughts on the amount of time that Member  
6 Gillman is suggesting?

7 Member Ramirez.

8 MR. RAMIREZ: Just a quick question for  
9 clarification. I thought that the main conflict was  
10 involving the number of pages of written documentation and  
11 rebuttal and closing inclusion. Was there a reason for  
12 restricting the time period and have we had problems in  
13 the past on time overages and things like that?

14 So I know that we had a recommendation for 15  
15 minutes from the rules subcommittee. I'm just curious if  
16 the time of oral presentation was problematic in the past.

17 MR. TREVIÑO: General Counsel Beaver, would you  
18 like to answer that?

19 MS. BEAVER: Yes. Tracey Beaver, general  
20 counsel, for the record.

21 In the Sunset Advisory Commission's 2019 report  
22 to the department, they found that the board had  
23 previously in the past had presentation time from parties  
24 of 20 minutes that would then lead into hours of  
25 deliberation that would then lead into a re-litigation of

1 the case that was not appropriate.

2 MR. TREVIÑO: And General Counsel, at any time  
3 board members care to ask any of the parties involved for  
4 further clarification, so it's something that could be  
5 extended beyond the 15 minutes. Is that correct?

6 MS. BEAVER: Tracey Beaver, general counsel,  
7 for the record.

8 The proposed rules did contemplate that the  
9 questions from the board did not count against the  
10 presentation time for the oral presentation of the  
11 parties.

12 MR. TREVIÑO: So the 15-minute oral  
13 presentation could be extended by questions or would be --  
14 they've contemplated it would be extended by questions and  
15 clarification.

16 MS. BEAVER: From the board. That's correct.

17 MR. TREVIÑO: Okay, great.

18 MS. GILLMAN: Mr. Chairman?

19 MR. TREVIÑO: Yes, Member Gillman.

20 MS. GILLMAN: Stacey Gillman. As I understood,  
21 it's been 20 minutes for years and years and years, and  
22 that it was staff that recommended the 15, and I'm  
23 thinking that in million-dollar cases 25 minutes is  
24 probably justified and respectful to the parties.

25 MR. TREVIÑO: I'm sorry. Could you clarify?

1 Did you say 25 minutes is justified and respectful to the  
2 parties? Is that what you said?

3 MS. GILLMAN: Yes, sir.

4 MR. TREVIÑO: Twenty minutes?

5 MS. GILLMAN: Well, I said 25 total for oral  
6 presentation.

7 MR. TREVIÑO: Twenty-five total. Okay.  
8 Member McRae, you had your hand up.

9 MS. McRAE: No, I did not. Thank you.

10 MR. TREVIÑO: Okay. Yes, Ms. Brewster, please  
11 jump in.

12 MS. BREWSTER: Thank you, Mr. Chairman. For  
13 the record, and this is to respond to Member Ramirez's  
14 question about specific time allotment, I would just refer  
15 to page 323 in your board books. And this is the  
16 reference that General Counsel Beaver was making regarding  
17 reference in the 2019 Sunset report.

18 If you look on that page and you look in the  
19 box, the highlighted box there, it does indicate unique  
20 features of the board's review of contested protest cases  
21 and it does clearly say, "20-minute oral arguments for  
22 each party that regularly turn into hours of  
23 discussion." And so there has been some discussion about  
24 the specific amount.

25 I did want the board to be aware of this

1 because it is specifically laid out in the report. And  
2 that's the extent of my comments, Mr. Chairman. Thank  
3 you.

4 MR. TREVIÑO: Great. Thank you.

5 Okay. Member McRae, now you do have your hand  
6 up.

7 MS. McRAE: I do now, Chairman. Thank you.

8 Would it be appropriate to offer another  
9 friendly amendment to Board Member Gillman's motion?

10 MR. TREVIÑO: You can make a suggestion, if  
11 she'll accept it.

12 Member Bacarisse has got his hand up.

13 MR. BACARISSE: Only if Member Gillman accepts  
14 the friendly amendment.

15 MR. TREVIÑO: This is a proposed amendment,  
16 it's not accepted. We can vote down hers and come back to  
17 Member McRae's motion later, or vote her up or down.

18 Member McRae, would you make a suggestion?

19 MS. McRAE: Yes. Thank you, Chairman.

20 Again, I want to thank all of our presenters  
21 today. I think that each board member feels the same way;  
22 this is very important, and we appreciate the time and  
23 their presentations to the board, and I think all of us  
24 take this very seriously.

25 But we also have to remember that we are

1 charged by the Sunset Commission. We wouldn't be doing  
2 this if it were not for our recommendation from the Sunset  
3 Commission, and I did flip to the page that Executive  
4 Director Brewster was just referring to again to look and  
5 see what it said.

6 I would like to offer an amendment to the oral  
7 presentation to 15 minutes versus 25, and no closing, no  
8 rebuttal, and I would be fine with a 15-page briefing to  
9 the board.

10 MR. TREVIÑO: And to the question of chairman's  
11 discretion, would you like to opine on that in your  
12 amendment? Chairman's discretion, yes or no?

13 MS. McRAE: Yes. And remove the chairman's  
14 discretion.

15 MR. TREVIÑO: Remove the chairman's discretion?

16 MS. McRAE: Yes. Thank you.

17 MR. TREVIÑO: So Member McRae has made a  
18 suggestion that's a friendly amendment to Member Gillman's  
19 original proposal and amendment is 15 minutes of oral  
20 argument, no rebuttal, 15 pages of documents, and removal  
21 of the chairman's discretion.

22 Member Gillman, what do you think? Do you  
23 think we can live with that, knowing that clarification  
24 and comment can continue for hours and days afterwards if  
25 necessary?

1 MS. GILLMAN: I would just say we shouldn't be  
2 afraid to ask a question. We shouldn't be afraid to have  
3 discussion. These decisions in these contested cases can  
4 affect an entire industry. They can affect millions and  
5 millions of dollars and employees, and I don't think we  
6 should be discouraged to have discussion.

7 I think in some of the comments today it's  
8 making -- limiting the scope of what the board hears and  
9 what you're allowed to say restricts our responsibility to  
10 the State of Texas. And while, yes, of course, we will  
11 come up with a compromise today, I am confident that I  
12 think that Sunset does not want to restrict us so much  
13 that we're unable to do our job.

14 And I'm afraid that too much restriction and  
15 too much of the board just not being encouraged to talk is  
16 not the direction of Sunset.

17 MR. TREVIÑO: Clearly, Member Gillman, you're  
18 obviously addressing, I don't think anyone on this board  
19 would like to limit discussion in any way, shape or  
20 form. That's not clearly the intent of any of this. The  
21 board is here for that purpose to deliberate and make sure  
22 that everybody's perspective is heard and listened to.

23 Member Bacarisse.

24 MR. BACARISSE: Mr. Chairman, the question  
25 before us currently is does Member Gillman accept Member

1 McRae's friendly amendment, yes or no, and I think I heard  
2 a no, but that has to come from her.

3 MR. TREVIÑO: Exactly.

4 MR. BACARISSE: I'm just trying to keep us in  
5 our reins here.

6 MR. TREVIÑO: Thank you very much, Member  
7 Bacarisse.

8 Member Gillman, this falls in your court.  
9 Would you accept what's behind door number 3?

10 MS. GILLMAN: Door number 3. Yes, sir, I will  
11 accept a 15-minute oral presentation and a 15-page  
12 briefing and removing the discretion of the chairman.

13 MR. TREVIÑO: Great. Member Gillman has  
14 accepted the amendments as suggested by Member McRae.

15 Member Ramirez, you have your hand up.

16 MR. RAMIREZ: Thank you, Chairman.

17 I know that the parties are explicitly told  
18 that no information, new evidence can be introduced either  
19 in the written documents that they submit or in their oral  
20 presentations, but ultimately there is on way to check the  
21 oral presentations until it occurs. Is there a way that  
22 we can craft language on the written presentations, if  
23 it's going to be 15 pages, that puts sufficient bumper  
24 rails on there that say you cannot -- this information  
25 will not be submitted to the board if it contains evidence



1 outside of the SOAH record once submitted to staff?

2 I do think that that's a concern of Sunset, is  
3 in these written briefs there will be an attempt to  
4 include additional evidence that was not included in the  
5 SOAH record, as opposed to simply pointing to the bullet  
6 points in that 1,000-page SOAH document that the parties  
7 particularly care about.

8 So I just want to make sure that if we're  
9 including 15 pages of documentation that there is  
10 sufficient protections in place to make sure that that  
11 documentation is not going to put us in any danger of  
12 future litigation.

13 MR. TREVIÑO: I think you're absolutely right,  
14 Member Ramirez. It needs to be clearly articulated in  
15 other language around that that it has to be in the  
16 record.

17 Member McRae, you had your hand up?

18 MS. McRAE: Yes, Mr. Chairman.

19 I'm just going to also clarify that as part of  
20 my friendly amendment motion that it included no closing  
21 remarks and no rebuttal as well.

22 MR. TREVIÑO: Thank you very much. And also, I  
23 think it needs to be spelled out in there as well that the  
24 staff has plenty of time to review the documents to make  
25 sure that there's nothing in there that's not in the SOAH

1 record, so that it's not something that's given to staff  
2 the night before or something like that, so there's plenty  
3 of time for them to review and make sure that the record  
4 is -- I'm sorry.

5 So Member Graham, we have a motion and we have  
6 some amendments. Member Graham, I think you have to agree  
7 to that as a second. Right? Are you okay with that?

8 MR. GRAHAM: I will agree to that, yes, sir.

9 MR. TREVIÑO: Great. So we have a motion and a  
10 second.

11 Member Bacarisse, you're on mute.

12 MR. BACARISSE: Sorry about that, slow finger.

13 May I ask, Mr. Chair, if you're feeling  
14 comfortable with this, would you ask our general counsel  
15 to recite the current motion with the amendments and  
16 everything in it so we know where we are right now? I  
17 think that might be helpful.

18 MR. TREVIÑO: Thank you for jumping in there,  
19 and that is exactly where we need to go, and I appreciate  
20 you keeping us on task. Well done, well done.

21 General Counsel Beaver, would you mind  
22 reviewing to make sure that we understand clearly what the  
23 motion and the amendments are?

24 MS. BEAVER: Absolutely.

25 The motion with the amendments that will need

1 to be voted on by the full board is that the board approve  
2 the adoption of Sections 206.22, 215.22 and 215.55 and New  
3 Sections 215.59-215.63, as recommended by staff, with  
4 amendments to Section 206.22 and the language addition in  
5 215.62.

6 We're striking the rebuttal and closing  
7 statement. It would allow 15 minutes oral presentation  
8 time for each party to the contested case for a total oral  
9 presentation time of 15 minutes per party, with the  
10 intervening party sharing the time allotted to the party  
11 that the intervening party is supporting.

12 We're striking the portion about giving the  
13 board chairman discretion to grant each party additional  
14 time. It would require any oral presentation to be  
15 limited to evidence contained within the SOAH  
16 administrative record.

17 It would also approve the adoption of Proposed  
18 Section 215.60, as published in the *Texas Register*, with  
19 the following amendment: allow 15 pages for any  
20 presentation time, striking any rebuttal, for a total of  
21 15 pages of written materials per party. It would  
22 substitute the term "written materials" for "presentation  
23 aids" in the proposal.

24 Written materials are defined as language or  
25 images that are contained within the SOAH administrative

1 record that are recorded in paper form. The language or  
2 images in the materials will be taken without changes from  
3 evidence in the administrative record. It would allow for  
4 proposed final orders. And the written materials would be  
5 consistent with the scope of authority to take action  
6 under Government Code Section 2001.058(e) and Occupations  
7 Code Chapter 2301.

8 MR. TREVIÑO: Great. Thank you very much,  
9 Tracey.

10 And just to clarify something I said. The  
11 chairman does have the authority to grant three minutes or  
12 a de minimis amount of time for somebody to finish their  
13 thought. Is that correct?

14 MS. BEAVER: The board chair does have the  
15 authority to cover the decorum of the meeting if somebody  
16 did need additional time. The board members also may ask  
17 questions of the commenters if there's additional  
18 questions from their presentation.

19 MR. TREVIÑO: Great. I just want to clarify  
20 that my comment on civility is something that is within  
21 the chairman's discretion.

22 Okay, good. Is everybody clear on the motion  
23 with the amendments and where we sit at this point?

24 Member Graham.

25 MR. GRAHAM: Just making sure that I did hear

1 that it could include proposed final orders. Correct?

2 MR. TREVIÑO: General Counsel Beaver?

3 MS. BEAVER: That is correct. The parties can  
4 submit anything within those written materials that they  
5 would like. There is no specific definition of a proposed  
6 final order or briefing or summary, so I would just  
7 emphasize the fact that it can only be information that's  
8 taken without changes from evidence in the administrative  
9 record.

10 So whatever they call the document, they can  
11 submit it within that 15 pages as long as it's from the  
12 record.

13 MR. TREVIÑO: From the record.

14 Does that clarify that, Member Graham?

15 MR. GRAHAM: It does. You know, I wish there  
16 was a way -- well, anyway, leave that alone. Yeah, that  
17 clarifies it. Thank you.

18 MR. TREVIÑO: Great. Okay, good.

19 Yes, Member Bacarisse.

20 MR. BACARISSE: Mr. Chair, just to again be the  
21 Robert's Rules guy -- and General Counsel needs to check  
22 me on this -- thank you for recitation of the rule as  
23 amended -- or motion as amended currently. General  
24 Counsel -- Mr. Chairman, the question is just procedurally  
25 when we're ready to call the question, do we need to first

1 vote on the amendments and then the motion, or can we do  
2 it all at once?

3 How is that properly done? I want to make sure  
4 we all know kind of how we're operating.

5 MS. BEAVER: Tracey Beaver, general counsel,  
6 for the record.

7 Once there's a second to the amendment, the  
8 full board would need to vote on the amendment. And then  
9 once that vote is completed, the board would need to vote  
10 on the motion as amended, so there would be two votes.

11 MR. BACARISSE: Great.

12 MR. TREVIÑO: Thank you very much for that.  
13 Member Ramirez.

14 MR. RAMIREZ: I would second Member McRae's  
15 amendment.

16 MR. TREVIÑO: Great. And I would also ask,  
17 since none of us are governance professionals, that any  
18 time you think we need a clarification or to accomplish  
19 something, General Counsel, you jump right in here and  
20 please feel free to interject your thoughts.

21 So we have a variety of motions and seconds, so  
22 at this point, General Counsel Beaver, I guess we will  
23 vote on the amendments. Is that correct?

24 MS. BEAVER: That is correct. Thank you.

25 MR. TREVIÑO: Great. We have a motion and a

1 second on the amendments to Member Gillman's original  
2 proposal. Do we have any further discussion on this?

3 (No response.)

4 MR. TREVIÑO: Hearing none, I would call for  
5 the vote, and let me get my little tally sheet out here  
6 and we'll jump right in.

7 MR. TREVIÑO: Board Member Bacarisse?

8 MR. BACARISSE: Aye.

9 MR. TREVIÑO: Member Gillman?

10 MS. GILLMAN: Aye.

11 MR. TREVIÑO: Member Graham?

12 MR. GRAHAM: Aye.

13 MR. TREVIÑO: Member McRae?

14 MS. McRAE: Aye.

15 MR. TREVIÑO: Member Prewitt?

16 MR. PREWITT: Aye.

17 MR. TREVIÑO: Member Ramirez?

18 MR. RAMIREZ: Aye.

19 MR. TREVIÑO: Member Scott?

20 MR. SCOTT: Aye.

21 MR. TREVIÑO: And I, Chairman Treviño, also  
22 vote aye. Let the record show that the vote is unanimous.

23 Okay. Now, General Counsel Beaver, we're going  
24 to vote on the original proposal. Is that correct, the  
25 original motion?

1 MS. BEAVER: So that vote was to approve the  
2 changes, and so since the vote approved the changes, now  
3 you vote on the motion with all of the changes included as  
4 a whole.

5 MR. TREVIÑO: Very good. So now we will vote  
6 on the motion with all the changes as proposed by Member  
7 Gillman and seconded by Member Graham.

8 So with that, any further discussion?

9 (No response.)

10 MR. TREVIÑO: Hearing none, I would call for  
11 the vote.

12 MR. TREVIÑO: Member Bacarisse?

13 MR. BACARISSE: Aye.

14 MR. TREVIÑO: Member Gillman?

15 MS. GILLMAN: Aye.

16 MR. TREVIÑO: Member Graham?

17 MR. GRAHAM: Aye.

18 MR. TREVIÑO: Member McRae?

19 MS. McRAE: Aye.

20 MR. TREVIÑO: Member Prewitt?

21 MR. PREWITT: Aye.

22 MR. TREVIÑO: Member Ramirez?

23 MR. RAMIREZ: Aye.

24 MR. TREVIÑO: Member Scott?

25 MR. SCOTT: Aye.



1 MR. TREVIÑO: And I, Chairman Treviño, also  
2 vote aye. Let the record show that the vote is unanimous.

3 And if there's any question that there won't be  
4 discussion going forward, we've been talking about this  
5 for two hours, two hours. So I think you've all earned a  
6 break at this point and so we'll take a 5-minute break.

7 Is that good with everybody, five minutes? All  
8 right. We'll take a 5-minute break, and so what time is  
9 it right now? It's 10:36, we'll be back at around 10:42  
10 or something like that.

11 Member Bacarisse, I'm sorry, go right ahead.

12 MR. BACARISSE: Just a quick thank you to you,  
13 Mr. Chairman, and all my board colleagues. This is a  
14 wonderful example of a collegial, collaborative,  
15 thoughtful process. Thank you all very much.

16 MR. TREVIÑO: Well, said, well, said, and I  
17 agree wholeheartedly. Thank you very much for all your  
18 efforts. Back in five.

19 (Whereupon, at 10:36 a.m., a brief recess was  
20 taken.)

21 MR. TREVIÑO: I guess we can go ahead and get  
22 started. Member Gillman can jump right in, we've got a  
23 quorum. So I think we'll move on to agenda item 6. We'll  
24 go over to Sandra Menjivar-Suddeath.

25 Sandra, are you there?

1 MS. MENJIVAR-SUDDEATH: Good morning, Chairman.  
2 Can you hear me?

3 MR. TREVIÑO: Yes, I can. Speak slowly so we  
4 can get Member Gillman caught up. Okay?

5 MS. MENJIVAR-SUDDEATH: I will do my best.

6 For the record, Sandra Menjivar-Suddeath,  
7 Internal Audit director. I'm presenting agenda item 6  
8 with Tracey Beaver, general counsel.

9 Item 6 is the approval to publish the adopted  
10 sections related to rules for the risk-based monitoring  
11 and prevention of title registration fraud. There are two  
12 sections to these rules. One is related to internal  
13 fraud, the other is to external fraud. Ms. Beaver will be  
14 presenting the external fraud side of the rule package.

15 Both rule parts implement Transportation Code  
16 520.004 that requires, by rule, for the department to  
17 establish a risk-based system of monitoring and preventing  
18 fraudulent activity to vehicle registration and titling.  
19 This requirement was included in the Sunset Advisory  
20 Commission, and specifically recommendation 2.4. I  
21 apologize. The information is on page 362 of your board  
22 book.

23 For the internal fraud, Section 206.151 will be  
24 amended to create an internal risk-based monitoring system  
25 for potential fraud in the regional service centers and

1 the department. It also includes developing criteria to  
2 determine varying risk levels in the internal fraud  
3 monitoring program, as well as providing training. When  
4 these rules were proposed, we received no comment on the  
5 internal fraud package.

6 With that, I'm open to any questions. If not,  
7 I'll defer to Ms. Beaver to present the external fraud.

8 MR. TREVIÑO: Any questions for Ms. Menjivar-  
9 Suddeath?

10 (No response.)

11 MR. TREVIÑO: Hearing none, go right ahead,  
12 Sandra, or does General Counsel Beaver want to jump right  
13 in.

14 Tracey, you're on mute.

15 MS. BEAVER: Thank you, Chairman.

16 Thanks, Chairman and Sandra. For the record,  
17 I'm Tracey Beaver, general counsel. I'm going to address  
18 the rules, as Sandra mentioned, regarding the external  
19 fraud in Section 223.101 as the second part of agenda item  
20 number 6. You'll find it on page 370 of your board books.

21 Staff are requesting the board approve adoption  
22 of this new section that implements Senate Bill 604 and  
23 amended Transportation Code Section 520.004, which  
24 requires in part the department to establish a risk-based  
25 system of monitoring and preventing fraudulent activity

1 related to vehicle registration and titling, and this is  
2 to be done by rule.

3 The latest amendments respond to the board's  
4 comments from the December board meeting, as well as  
5 comments received from the Tax Assessor-Collectors  
6 Association of Texas. The tax assessor-collectors worked  
7 closely with the department to notify us of potential  
8 fraudulent activity which is a vital step in determining  
9 if fraud might be occurring.

10 The department and the tax assessor-collector  
11 offices will then work together in their common goal to  
12 combat any potential fraud. The partnership between the  
13 Compliance and Investigations Division and the tax  
14 assessor-collectors really helps ensure that information  
15 can be gathered quickly and forwarded to law enforcement  
16 properly to combat that fraud.

17 The comments we received from the Tax Assessor-  
18 Collectors Association on the proposed rules requested  
19 that we include the phrase that we would notify them or  
20 have disclosure procedures concerning possible fraudulent  
21 activity in our offices. The department agrees with this  
22 and has added the requested language.

23 Through this rule, the department will develop  
24 disclosure procedures to ensure that tax assessor-  
25 collectors are aware of possible fraudulent activity in

1 their offices, as authorized by law enforcement, and so we  
2 also added that to the rule text in coordination and  
3 collaboration with the Tax Assessor-Collectors Association  
4 so that we can ensure that we work together to help  
5 monitor and actively prevent fraud.

6 The department also understands from the Tax  
7 Assessor-Collectors Association comments that the  
8 department's current methods of communicating with our  
9 valued partners at the TAC offices may not be as effective  
10 as we would like. So we've had some really good  
11 discussion that, in addition to these rules, internally  
12 we're reviewing the content and procedures surrounding our  
13 communications with the TACs to make sure that we're being  
14 clear and helpful and effective regarding the progress of  
15 any referrals received, and this, of course, includes  
16 evaluating procedures for providing updates periodically  
17 and upon request.

18 So I just wanted to kind of do a shout-out to  
19 the Tax Assessor-Collectors Association in helping to make  
20 sure that we're effectively communicating with them and  
21 also working together on this particular rule.

22 So the department is requesting your approval  
23 to adopt the amendments and new sections presented. And  
24 members, this concludes my remarks. I'm happy to answer  
25 any questions. Thank you.

1 MR. TREVIÑO: Great. Thank you, General  
2 Counsel Beaver.

3 Does anybody have any questions for General  
4 Counsel Beaver or for Ms. Sandra Menjivar-Suddeath?

5 (No response.)

6 MR. TREVIÑO: Great. Hearing none -- wait a  
7 minute. Member Bacarisse, you have a question? No.  
8 Okay, good.

9 Tracey, do we have any comments from the  
10 public?

11 MS. BEAVER: Yes, Chairman. We have one  
12 commenter, Michelle French.

13 MR. TREVIÑO: Great. Well, put Ms. French on  
14 then.

15 MS. FRENCH: Good morning, Chairman Treviño and  
16 board. Can you hear me?

17 MR. TREVIÑO: Yes, I can. Since you've spoken  
18 before us before I don't have to go through the rules, but  
19 great to have you here today.

20 MS. FRENCH: Thank you so much.

21 Just for the record, my name is Michelle French  
22 and I serve as the tax assessor-collector for Denton  
23 County and also the DMV liaison for the Tax Assessor-  
24 Collectors Association.

25 And first of all, thank you, everyone, for all

1 that you do. You have such an important position and job  
2 to do and we really do appreciate it.

3 Kind of going off of what Ms. Beaver said, I  
4 want to just go a little bit deeper into why this is such  
5 an important subject for us. As independently elected  
6 officials and a valued business partner to DMV, we want to  
7 work hand-in-hand with the department and CID in all  
8 facets of detecting and preventing any type of fraudulent  
9 activity.

10 Probably the highest priorities to us as tax  
11 assessor-collectors is fraud detection and prevention.  
12 Our official bonds only cover up to \$100,000, and we all  
13 know that tax assessor-collectors process more than this  
14 sometimes in a month, weekly or even daily. So if there  
15 is an event that causes a claim on our bonds, it could  
16 likely result in us not being able to hold office any  
17 longer and we could be held personally liable.

18 So in other words, it could cost us our job and  
19 destroy us financially. So this is why we say we are  
20 highly invested in detecting and prevention of fraud. We  
21 just cannot stress that enough how important this is to  
22 us.

23 No other elected official has such risk and  
24 liability in the discharging of their duties, and we take  
25 on that risk every day because we believe in public

1 service. And we know that you all and the department  
2 understands and appreciates that risk that we take on  
3 every day.

4 So to kind of build on what we would like to  
5 see happen is unless the tax assessor-collector is  
6 personally the subject of an investigation, we have to be  
7 included in all communications regarding suspicion of  
8 fraud. And we do look forward to collaborating with the  
9 department on the development of procedures --

10 MEETING HOST: You have one minute remaining.

11 MS. FRENCH: -- such as notification,  
12 preferably within 72 hours on the opening of an  
13 investigation and the process from beginning to end,  
14 including finding of any new discoveries or evidence or  
15 new events, regardless if the investigation is at the  
16 department level or turned over to law enforcement.

17 We need to have monthly reporting on the status  
18 of red flag transactions, including the resolution of that  
19 transaction. We need to have notification of dealer title  
20 transactions or title runner or title service fraud that's  
21 proceeded with our offices. And we know it's already in  
22 statute but that we have training, and there is training  
23 on RTS. We'd like to work closer with the department and  
24 CID to ensure that as tax assessors we receive targeted  
25 training in the detection and prevention of fraud.



1 I want to thank you very much for having the  
2 opportunity to speak on this subject. I know this is as  
3 important to you all as it is to us, and thank you very  
4 much.

5 MR. TREVIÑO: Thank you, Ms. French. I have  
6 the pleasure to have you come before this board, and I  
7 know I speak for the department and all the board that we  
8 consider you all very valuable partners in what we do and  
9 can't thank you enough for all the work you do for Texans.

10 Okay. So any other comments, Tracey, or is  
11 that the only one?

12 MS. BEAVER: No other comments for this agenda  
13 item.

14 MR. TREVIÑO: Okay. So hearing no further  
15 comments, the chair would entertain a motion.

16 Yes, Member Bacarisse.

17 MR. BACARISSE: Well, I'll wait till after we  
18 have a motion on the floor. I just have a question.  
19 Thanks.

20 MR. TREVIÑO: Very good. Thank you for that.

21 The chair will entertain a motion on agenda  
22 item number 6, anyone who would like to. Member McRae.

23 MS. McRAE: Chairman, I would like to thank  
24 General Counsel Beaver, Executive Director Brewster,  
25 Michelle French, Shay Luedecke and their whole team. They

1 have done a tremendous job in working through this and we  
2 really appreciate the partnership.

3 I would like to move that the board approve the  
4 adoption of New Sections 206.151 and 223.101, as  
5 recommended by staff.

6 MR. TREVIÑO: Thank you very much, Member  
7 McRae.

8 We've got a motion. Member Ramirez, do we have  
9 a second?

10 MR. RAMIREZ: Second.

11 MR. TREVIÑO: Great. Second by Member Ramirez.  
12 Any discussion?

13 Member Bacarisse, you had your hand up first.

14 MR. BACARISSE: I'm certainly sensitive, being  
15 a former county elected official, I'm sensitive to the  
16 idea that there's a lot of personal liability in so many  
17 aspects of the job that is done at that level that Member  
18 McRae and Ms. French and others perform for us. I just  
19 want to make sure, just remind me, if I may, Mr. Chairman,  
20 that what we have here before us would allow for this kind  
21 of collaborative transparency to occur when there is an  
22 investigation, except if the elected official themselves  
23 is under investigation. Is that correct?

24 MR. TREVIÑO: General Counsel Beaver, would you  
25 like to clarify that? And also, I think law enforcement

1 has some discretion there too. Right?

2 MS. BEAVER: Tracey Beaver, general counsel,  
3 for the record.

4 Absolutely, unless authorized by law  
5 enforcement, to your point, Chairman, that yes, we would  
6 be able to disclose that information unless law  
7 enforcement says not to.

8 MR. BACARISSE: Okay, great. Thank you.

9 MR. TREVIÑO: Great. Thank you, Member  
10 Bacarisse, for that question.

11 Are there any other questions? I think I saw  
12 somebody else with their hand up.

13 (No response.)

14 MR. TREVIÑO: Well, hearing none, we've got a  
15 motion and a second. No further discussion, I would call  
16 for the vote.

17 MR. TREVIÑO: Member Bacarisse?

18 MR. BACARISSE: Aye.

19 MR. TREVIÑO: Member Gillman?

20 MS. GILLMAN: Aye.

21 MR. TREVIÑO: Member Graham?

22 MR. GRAHAM: Aye.

23 MR. TREVIÑO: Member McRae?

24 MS. McRAE: Aye.

25 MR. TREVIÑO: Member Prewitt?

1 MR. PREWITT: Aye.

2 MR. TREVIÑO: Member Ramirez?

3 MR. RAMIREZ: Aye.

4 MR. TREVIÑO: Member Scott?

5 MR. SCOTT: Aye.

6 MR. TREVIÑO: And I, Chairman Treviño, also  
7 vote aye. Let the record reflect that the vote is  
8 unanimous.

9 And I would like to also thank staff and also  
10 tax assessor-collectors for working so collaboratively on  
11 this project to get to a good solution for all Texans.

12 Okay. We will now move to agenda item number  
13 7. Agenda item number 7 is license plates. Is that  
14 correct?

15 MS. BEAVER: That is correct, Chairman.

16 MR. TREVIÑO: There is a gap in the documents  
17 that I have on the agenda.

18 Okay. So we're going to have a briefing on  
19 specialty license plates. Roland Luna.

20 Roland, your inaugural presentation in front of  
21 this board, I believe.

22 MR. LUNA: Yes, sir. Good morning, Chairman  
23 Treviño, board members. Roland Luna, director of Vehicle  
24 Titles and Registration.

25 The action item before you is a request from

1 the Vehicle Titles and Registration Division for board  
2 approval or denial, in accordance with the board's  
3 statutory authority. The three plate designs submitted  
4 for your consideration can be referenced on page 376 of  
5 your board book. One plate design is from My Plates and  
6 the remaining two plate designs are from nonprofit  
7 organizations.

8 The first plate design is from My Plates and  
9 seeks approval of the design and issuance of a new Texas  
10 Diver plate, in accordance with the City of Houston  
11 Underwater Mariners Club. The department posted the  
12 proposed design for public comment in December of 2020;  
13 677 liked this design and 115 did not.

14 The remaining two plate designs are from  
15 nonprofit organizations. The second plate in your board  
16 packet is from the nonprofit organization Houston Audubon  
17 and seeks approval for the design and issuance of a new  
18 Houston Audubon plate. This plate is sponsored by the  
19 Houston Audubon in coordination with the Texas Parks and  
20 Wildlife Department. The department posted the proposed  
21 design for public comment in December of 2020; 486 people  
22 liked this design but 108 did not.

23 The third and final plate design for  
24 consideration for the board is also from a nonprofit  
25 organization, Texas Realtors Association, who seeks

1 approval for the redesign and issuance of the new Texas  
2 Realtor plate. The plate design was coordinated with the  
3 Texas Realtors Association. The department posted the  
4 proposed design for public comment in December of 2020;  
5 551 people liked the design and 300 did not.

6 The agency requests your consideration for  
7 approval of these plates.

8 This concludes my presentation of this agenda  
9 item and I'm happy to take any questions that you have.

10 MR. TREVIÑO: Thank you, Mr. Luna. Thank you  
11 for your presentation.

12 Does anybody have any questions for Mr. Luna?

13 (No response.)

14 MR. TREVIÑO: Hearing none, I suggest we take  
15 this board agenda item with one motion.

16 General Counsel Beaver, do you have a point to  
17 make?

18 MS. BEAVER: Yes. Thank you, Chairman.

19 We have one commenter, Robin Harris.

20 MR. TREVIÑO: Thank you very much.

21 Robin Harris, are you on the line?

22 MR. HARRIS: Yes, Mr. Chairman. Can you hear  
23 me okay?

24 MR. TREVIÑO: We can hear you fine. Thank you  
25 for being here.

1 MR. HARRIS: Thank you, and I don't mean to  
2 impede the progress for your 4:30 end date today, so I'll  
3 be quick as possible.

4 (General laughter.)

5 MR. HARRIS: Thank you for allowing me to  
6 speak. Good morning, Chair Treviño, Director Brewster and  
7 board members. My name is Robin Harris, associate counsel  
8 for Texas Realtors, and I'm speaking on behalf of the  
9 association today.

10 I'm here to speak in favor of approval of the  
11 redesign specialty plate and to give a little background  
12 to the board on that specific plate.

13 Revenue from our Realtor plate goes directly to  
14 support the Texas Realtors Housing Opportunity Foundation  
15 which provides grants supporting affordable and workforce  
16 housing programs statewide, with thanks to the Department  
17 of Housing and Community Affairs who acts as our state  
18 agency sponsor. To give you an example of our board's  
19 work, at our most recent board meeting held in January,  
20 the board awarded \$15,000 in grants to two organizations,  
21 one in Houston and one in the Austin area.

22 In 2018, Texas Realtors underwent a re-branding  
23 from Texas Association of Realtors to just Texas  
24 Realtors. This redesigned specialty plate is the final  
25 piece to complete that redesign and will be available to

1 all association members and continuing to support our  
2 foundation's mission.

3 Finally, I'd like to thank staff for their  
4 helpfulness and patience with all of my questions during  
5 this process to get this plate through.

6 That concludes my comments and I thank you for  
7 the opportunity to speak today. I'm available if you have  
8 any questions.

9 MR. TREVIÑO: Any questions for Mr. Harris?

10 (No response.)

11 MR. TREVIÑO: Mr. Harris, I just wanted to  
12 thank you for coming before this board and also to thank  
13 you for your efforts and all the Realtors in affordable  
14 housing. It's a huge issue and I commend you and your  
15 board for all the great opportunity for the citizens of  
16 Texas.

17 So any further comments or questions?

18 (No response.)

19 MR. TREVIÑO: If not, the chair would entertain  
20 a motion.

21 MR. GRAHAM: Mr. Chairman, this is --

22 MR. TREVIÑO: Member Ramirez had his hand up.

23 MR. GRAHAM: He's got it.

24 MR. RAMIREZ: I move that the board accept all  
25 three plate designs as presented by staff.



1 MR. TREVIÑO: Great. We've got a motion from  
2 Member Ramirez. Do we have a second?

3 MR. PREWITT: Second.

4 MR. TREVIÑO: Okay. Member Prewitt, thank you.  
5 We've got a motion and a second. We'll now  
6 call for the vote. Any discussion?

7 (No response.)

8 MR. TREVIÑO: No discussion. Then we'll call  
9 for the vote.

10 MR. TREVIÑO: Member Bacarisse?

11 MR. BACARISSE: Aye.

12 MR. TREVIÑO: Member Gillman?

13 MS. GILLMAN: Aye.

14 MR. TREVIÑO: Member Graham?

15 MR. GRAHAM: Aye.

16 MR. TREVIÑO: Member McRae?

17 MS. McRAE: Aye.

18 MR. TREVIÑO: Member Prewitt?

19 MR. PREWITT: Aye.

20 MR. TREVIÑO: Member Ramirez?

21 MR. RAMIREZ: Aye.

22 MR. TREVIÑO: Member Scott?

23 MR. SCOTT: Aye.

24 MR. TREVIÑO: And I, Chairman Treviño, also  
25 vote aye. Let the record show that the vote is unanimous.

1 I'm glad I caught myself there about the  
2 discussion piece. If not, Member Bacarisse will rake me  
3 over the coals on that one.

4 We'll now move on to agenda item number 8, and  
5 I will turn it over to Public Affairs Committee Chairman  
6 Paul Scott, assisted by Caroline Love.

7 MR. SCOTT: Thank you, Mr. Chairman.

8 Yesterday the Legislative and Public Affairs  
9 Committee received an update from several TxDMV staff,  
10 including Government and Strategic Communications Director  
11 Caroline Love, Enforcement Division Director Corrie  
12 Thompson, and Vehicle Titles and Registration Division  
13 Director Roland Luna.

14 Ms. Love will be joining us in a moment to  
15 provide an update on legislative activities and discuss  
16 two additional potential recommendations to provide to  
17 members of the legislature for this legislative  
18 session. But before she begins, I wanted to provide the  
19 board with a summary of the committee's discussion.

20 At the December 10 meeting of the TxDMV Board,  
21 additional recommendations to the 87th Legislature were  
22 presented by staff, however, two of those recommendations  
23 were not adopted. Each recommendation is related to  
24 opportunities to prevent abuse of temporary tags and to  
25 increase surety bonds for dealers to help customers when a

1 dealer goes out of business.

2           These topics were originally considered by the  
3 Consumer Protection Advisory Committee to the board and  
4 after they were not adopted, staff worked to schedule  
5 another meeting of this committee to revisit these items  
6 and provide additional suggestions for our further  
7 consideration. Ms. Love will provide additional details  
8 on these recommendations in her presentation under item  
9 8.B.

10           Before she begins, I would like to thank Ms.  
11 Thompson for her presentation on the background and  
12 history of the temporary tags abuse that staff has seen  
13 and how current avenues do not currently prevent misuse of  
14 the system. I would also like to thank Mr. Luna who  
15 provided a helpful perspective on how other states address  
16 these issues. As Ms. Love presents these additional  
17 recommendations today that will reference this  
18 information, please know that Ms. Thompson and Mr. Luna  
19 are available if the board would like any questions.

20           Additionally, I would like to thank the  
21 commenters who provided insightful feedback to the  
22 committee which helped the committee consider these  
23 important topics to bring for full board consideration.  
24 We heard from law enforcement, Sgt. Escribano of the Clean  
25 Air Task Force, and David Kohler of the Travis County

1 Sheriff's Office, Jeff Martin of TIADA, and Karen Phillips  
2 of TADA. We very much appreciate hearing from our  
3 stakeholders and interested parties during the development  
4 of these recommendations, both at the advisory committee  
5 level as well as the Legislative and Public Affairs  
6 Committee.

7 This board adopted recommendations to the 87th  
8 Legislature at our October and December meetings last  
9 year. Ms. Love will present two new recommendations today  
10 that were further vetted by staff with stakeholders before  
11 being brought to the Legislative and Public Affairs  
12 Committee yesterday and the full board today.

13 At this time, I'd like to turn it over to  
14 Caroline Love, director of Government and Strategic  
15 Communications, to present these items to the board for  
16 consideration as an action item.

17 MR. TREVIÑO: Thank you, Chairman Scott. And I  
18 also would like to thank you and congratulate you on a  
19 very well run meeting yesterday. It was great work, great  
20 work.

21 MR. SCOTT: Thank you, thank you.

22 MR. TREVIÑO: Okay. Ms. Love, would you like  
23 to comment on that.

24 I'm sorry. Chairman Scott.

25 MR. SCOTT: I was just going to make a

1 comment. I mentioned it in my prepared remarks, but it  
2 was really great to have stakeholders involved at the  
3 beginning at the advisory committee meeting. We had  
4 people that testified there for us, and then we had them  
5 back again yesterday, and so we were able to work our way  
6 through some stuff at the advisory committee and then back  
7 at our committee level.

8 So it was great to have that involvement early  
9 enough in the process that some of this stuff could be  
10 resolved before the committee makes its recommendation  
11 before we present it. Very grateful for that.

12 MR. TREVIÑO: Well, said, Chairman Scott. I  
13 know there are some many examples where state government  
14 in this process that works well that aren't highlighted.  
15 We tend to focus on the negative, but your work is an  
16 example of how state government can do good things for the  
17 citizens of Texas, so thank you.

18 MR. SCOTT: Thank you, Chairman.

19 MR. TREVIÑO: Ms. Love, would you like to  
20 comment on that, or anything you'd like to add?

21 MS. LOVE: First I can start with agenda item  
22 8.A. Good morning, Mr. Chairman and members. I have a  
23 brief overview of where the status of the session is at  
24 the moment.

25 We are approximately four weeks into the

1 20-week session, and while the House and Senate chambers  
2 have not met frequently on the floor there has been a lot  
3 of activity. As Ms. Brewster mentioned earlier, the  
4 Sunset Advisory Commission met on January 13 and the  
5 Senate committees have been announced.

6           The Senate Finance Committee has posted for  
7 several redistricting and also Senate Finance hearings,  
8 and so the Senate Finance Committee will begin meeting  
9 next week, and the TxDMV budget will be considered by that  
10 committee on February 18. And so that's something that  
11 we're planning for, and other agencies will be up that day  
12 as well. So we'll keep the board informed of activities  
13 there.

14           And the House has not yet announced  
15 committees. It was rumored that that would happen but  
16 nothing just yet to report there.

17           Also, the governor did have his State of the  
18 State Address on Monday and he announced some emergency  
19 priority items for the legislature to consider, and point  
20 of reference there, the legislature cannot consider  
21 legislation on the floor before ending the first 60 days  
22 of a legislative session unless it is an emergency item as  
23 declared by the governor. So those items that he brought  
24 up included the expansion of broadband internet access,  
25 reforming the bail system, and providing civil liability

1 protections for businesses during the pandemic are things  
2 that the legislature can consider before March 12.

3 So that wraps what I have for agenda item 8.A,  
4 and if it's okay with the board, I can go ahead and move  
5 on to agenda item 8.B and an overview of the updated  
6 recommendations.

7 MR. TREVIÑO: If there's no comments from the  
8 board, go right ahead.

9 Any comments?

10 (No response.)

11 MR. TREVIÑO: Okay, Caroline.

12 MS. LOVE: Thank you.

13 As Chairman Scott mentioned, the two  
14 recommendations that were not adopted by the board to the  
15 legislature in December have been reconsidered by the  
16 Consumer Protection Advisory Committee. And I have before  
17 you today, starting on page 367 of your board books, an  
18 outline of the two updated recommendations.

19 And the CPAC committee really wanted to impress  
20 upon this board that they understand the importance of  
21 these two items and were very much trying to find that  
22 balance between the protection of the consumers as well as  
23 preserving the stakeholder business aspects as well, so  
24 they have considered more stringent recommendation when  
25 taking these items on to consideration.

1           What we have before you today is, the first  
2 recommendation relates to opportunities to prevent abuse  
3 of the temporary tag system by granting rulemaking  
4 authority to the department to develop rules establishing  
5 a limit to the total number of temporary tags a dealer may  
6 issue through the eTAG system, and this would allow a  
7 dealer to make a request to the department as well for  
8 additional tags should they reach their limit. And these  
9 limits would be identified through quantifiable metrics  
10 that would be considered through that monitoring  
11 process. And of course, that is something that we would  
12 work closely with the stakeholder community on if that  
13 rulemaking authority was granted to the department.

14           And then the second recommendation --

15           MR. TREVIÑO: I'm sorry, Caroline. That begins  
16 on page 382, for the board, just so everybody is  
17 consistent.

18           MS. LOVE: I apologize.

19           MR. TREVIÑO: No, not at all, not at all.

20           MS. LOVE: And the second recommendation  
21 relates to an updated surety bond requirement for  
22 dealers. The update to this requires independent dealers  
23 only to an increased surety bond from \$25,000 to \$50,000.

24           And yesterday the Legislative and Public  
25 Affairs Committee adopted the proposed recommendation, as



1 developed by CPAC and with department staff, but had two  
2 changes to the recommendation that were adopted. So in  
3 addition to the increase of the surety bond for  
4 independent dealers, the recommendation was updated to  
5 require the department to update our website with  
6 information on how consumers can find out more information  
7 on how to make a claim against a dealer's surety bond, and  
8 also with department contact information. And as well,  
9 the updated recommendation requires independent dealers to  
10 post the notice of how consumers can access the surety  
11 bond and in the same location as they post their license  
12 in their office.

13 And that concludes what I have prepared, but  
14 I'm happy to answer any questions.

15 MR. TREVIÑO: Thank you, Caroline.

16 Member Bacarisse.

17 MR. BACARISSE: I just have a question, based  
18 out of ignorance really, for Member Gillman. You know, as  
19 it relates to the authority that we're asking for to  
20 limit -- potentially limit the number of tags that can be  
21 issued through the system to a dealer, obviously you want  
22 to prevent fraud and so forth where it's out of the  
23 ordinary that a certain dealer would be issuing way more  
24 tags than they normally do.

25 How do we -- or maybe the question is for Ms.

1 Love -- how do we -- what's the metric by which we're  
2 measuring this to catch anomalies in the system versus --  
3 how are we doing this monitoring, in a sense?

4 MS. GILLMAN: Member Bacarisse, my comment is I  
5 recognize also the temp tag abuse, even just in my  
6 neighborhood, and you know, signs on telephone poles.  
7 There is temp tag abuse. I will be very interested in  
8 what metric is derived on how to limit.

9 I only know from a franchised dealer's  
10 perspective that this is just a very broad example: if  
11 you sell a thousand cars in a year, you deliver over  
12 double that because you allow for test drive, take it  
13 home, come back if you don't like it, any mechanical  
14 problems, things like that. So developing the metric on  
15 how many to limit I think -- I get the impression from  
16 CPAC and from the staff that the metric will be generous  
17 enough to allow business to continue and restrictive to  
18 catch the abusers.

19 And I've also talked to Ms. Brewster that our  
20 data system currently does catch the abuse -- I mean, they  
21 can see when someone is printing 10,000 temp tags. But  
22 this agenda item, this proposed statute change will give  
23 the agency to do something about it in a faster manner.

24 So I'm very happy to volunteer to be a part of  
25 any group discussion regarding the metric for dealers on

1 how many to allow, and I'm definitely for this proposal.

2 MR. BACARISSE: Thank you, Member Gillman.

3 MR. TREVIÑO: Thank for the comments.

4 Mr. Bacarisse.

5 MR. BACARISSE: Oh, I'm sorry. Is someone else  
6 seeking to speak?

7 MR. TREVIÑO: Member Scott was about to jump  
8 in.

9 MR. BACARISSE: Yeah, please, Member Scott. I  
10 was going to ask you a question.

11 MR. TREVIÑO: Chairman Scott.

12 MR. BACARISSE: Yes, Chairman Scott.

13 MR. SCOTT: Thank you.

14 We had some conversation about this yesterday  
15 during our meeting and it will take a while for staff to  
16 come up with the proper metric. We just need to get this  
17 authority. But there's lots of ways to figure it out.  
18 You know, we submit VIT taxes monthly, yearly.

19 And yes, to follow up with what Member Gillman  
20 said, we know that this is not designed to restrict or  
21 impair a dealer's ability to do business. There are just  
22 some bad actors out there that we need the ability to shut  
23 down.

24 By doing it this way, it's my belief that this  
25 provides a continuous ability to monitor and police this

1 problem. If we rely on catching somebody and then having  
2 to go through a long process, that person could just shut  
3 down and open up at a different deal and then here we are  
4 again. So we need to have the ability to handle this on  
5 an ongoing basis.

6 So there's lots of discussion, and again, we  
7 had people from TADA and TIADA, and I'm sure we will have  
8 more discussion with those people, with staff and with the  
9 committees to come up with what the metrics will be.

10 MR. BACARISSE: That's great. Okay. Thank  
11 you.

12 MR. TREVIÑO: Thank you, Chairman Scott.

13 Member Ramirez, any comments on this?

14 MR. RAMIREZ: First I'd like to thank Director  
15 Love and all of the staff for the attention they've put  
16 into this, and Chairman Scott, his attention in his  
17 meeting yesterday.

18 I do want to stress to the board -- and I know  
19 we'll have further discussion, but I do want to stress to  
20 the board that this problem, you know, it falls far beyond  
21 the four corners of temp tag fraud. I mean, this affects  
22 law enforcement. We've had officers killed for pulling  
23 over vehicles with fraudulent tags when they weren't ably  
24 notified that that was a stolen vehicle or something like  
25 that. So it's a serious problem.

1 I'm very glad that TADA and some of the  
2 associations have provided such great input to where we  
3 can actually find a solution like limiting the ability on  
4 the front-end, so that it doesn't become a problem in the  
5 future. But we do need to do our level best to ensure  
6 that the licensing process is shaped up to where we don't  
7 let these folks in the front door to begin with.

8 And also, we have to do a much better job of  
9 working hand in glove with law enforcement on these  
10 investigations so that we catch them quicker, because as  
11 it proliferates it not only costs the state money but,  
12 like I said, it has the potential to be dangerous. And by  
13 providing the board with this rulemaking authority, I  
14 think that we're only doing our due diligence to make sure  
15 that we're following the charge that the state has given  
16 this agency in making sure that we're responsibly  
17 monitoring the situation.

18 And you guys know me, I'm not one to expand  
19 authority of any government agency. As a matter of fact,  
20 I think you need to do real good at doing real little, but  
21 when I think in this regard this rulemaking authority is  
22 very important to ensure that we can stem the bleeding, so  
23 to speak.

24 MR. TREVIÑO: Hear, hear. Well said. Well  
25 said, Member Ramirez.

1           Okay, Caroline. Any other thoughts on this or  
2 are you done with the presentation?

3           MS. LOVE: Yes, thank you. I would like to  
4 just add as the members have been talking about the  
5 process that this rulemaking authority would, as Member  
6 Gillman has mentioned, limit the access to the system  
7 based on quantifiable metrics but does not address the  
8 current process -- or include the current process, I  
9 should say, where if we identify those abusers of the  
10 system, we do so through the SOAH process that's utilized  
11 but that takes time and that is something that is outside  
12 of this recommendation.

13           Thank you.

14           MR. TREVIÑO: Great. Thank you.

15           I would just to add that having worked with the  
16 Auto Theft Prevention task force just how fundamentally  
17 important auto theft is to all kinds of crime. It's the  
18 basis. You don't use your car to commit a crime, you go  
19 steal a car to commit a crime is generally what happens.  
20 You don't think of that. So this temp tag and auto theft  
21 go hand in hand, which is the basis of the majority of  
22 crime in the State of Texas as essentially we work on this  
23 issue.

24           I'd also like to thank staff for their time and  
25 effort on developing the language around these rules.

1           So with that, do we have any public comments,  
2           Caroline or Tracey?

3           MS. BEAVER: Tracey Beaver, general counsel.

4           We have three public commenters and the first  
5           one is David Kohler.

6           MR. TREVIÑO: Great. Mr. Kohler, are you  
7           there? Mr. Kohler? While you're getting on the line,  
8           I'll just mention that you have three minutes and we'll  
9           give you a warning at two minutes, and that will be true  
10          for all our presenters today.

11          Mr. Kohler?

12          (No response.)

13          MR. TREVIÑO: Tracey, is Mr. Kohler still on  
14          the line?

15          MS. BEAVER: I do see that we have a call-in  
16          user who used the instruction to raise hand and IT has  
17          unmuted that person.

18          MR. TREVIÑO: Why don't we move Mr. Kohler to  
19          the end if he's having an issue and we can take the next  
20          presenter and we'll try once at the end to try and get Mr.  
21          Kohler back on, if that's all right.

22          MS. BEAVER: Yes, Chairman.

23          The next commenter is Sgt. Escribano.

24          MR. TREVIÑO: Sgt. Escribano, are you on the  
25          line? Sgt. Escribano?

1                   SGT. ESCRIBANO: Yes, sir, I am here.

2                   MR. TREVIÑO: Sgt. Escribano, welcome. We're  
3 glad to have you here, and you have three minutes and  
4 we're looking forward to hearing what you have to say.

5                   SGT. ESCRIBANO: I am Sgt. Escribano with the  
6 Travis County Constable's Office, Precinct 3, Stacy Suits,  
7 Constable, with the Clean Air Task Force. I would like to  
8 address preventing, deterring, detecting, the misuse of  
9 dealer temporary tags.

10                   During previous meetings and today the subject  
11 of limiting the production of tags to a designated amount  
12 was brought up as a possibility. Although well  
13 intentioned, we do not believe this will stop the arterial  
14 flow.

15                   At present, what is needed is the application  
16 of a tourniquet; that would be pretty much the rules  
17 change. Legislation will be the surgery that will  
18 eventually be the cure, but this much-needed surgery will  
19 not be scheduled for months to come.

20                   Through our investigation, we have uncovered  
21 dealers that have obtained multiple GDNs through a third-  
22 party GDN broker. These dealers create shell dealerships  
23 in an effort to go undetected by law enforcement. These  
24 brokers do extraordinarily little to contribute to an  
25 effective vetting process. The dealer's MO is amazingly



1 simple: when the GDN is shut off, they simply activate  
2 one of many GDNs they have obtained and continue  
3 production unabated.

4 The tourniquet I spoke of is the immediate  
5 measure needed for the vetting process that will include  
6 but will not be limited to in-person identification, ID  
7 verification at a regional office and fingerprinting. By  
8 applying this immediate process, you will effectively  
9 unmask the fraudulent dealers.

10 The possibility of having to show up to be  
11 vetted will reduce the chances that these dealers will  
12 actually show up because they are a minority. Most  
13 dealers are very hardworking and are honest. We predict  
14 that they will continue to report dealers with fraudulent  
15 information that if kept unchecked will reach two million  
16 fraudulent tags by year's end and that will be in TLETS.

17 MEETING HOST: You have one minute remaining.

18 SGT. ESCRIBANO: Texas will pay a high price  
19 not only in road safety and crime, but also in the  
20 revenues as they continue to circumvent the registration  
21 and the vehicle safety inspections.

22 That is all.

23 MR. TREVIÑO: Thank you very much, Sgt.  
24 Escribano, for those comments. We appreciate your service  
25 to the citizens of Texas.

1           Okay. Tracey, do we have another presenter?

2           MS. BEAVER: Yes. If we could try David  
3 Kohler, Mr. Kohler again. It looks like we do have call-  
4 in user 31's hand up.

5           MR. TREVIÑO: Mr. Kohler, are you there? Mr.  
6 Kohler?

7           MR. KOHLER: Are you there.

8           MR. TREVIÑO: Yes, Mr. Kohler. Sorry we  
9 skipped you last time. Are you there now?

10          MR. KOHLER: No, that's quite all right, sir,  
11 and I was going to ask if I could defer to Sgt. Escribano  
12 first so it worked out perfectly.

13          MR. TREVIÑO: Well, there you go. Welcome.

14          MR. KOHLER: Yes. Thank you, Mr. Chairman and  
15 all the board members for this opportunity to speak. I  
16 would like to address the need for DMV to have the  
17 seller/dealer information to a tag returned, whether it's  
18 a dealer/agent specific, buyer's or internet down tag.

19                 When we as law enforcement run that tag on our  
20 computer system, all we get is the vehicle return, the  
21 name and the buyer, but we don't identify who the dealer  
22 is on our end. Anyone who has access to the eTAG system  
23 can fraudulently enter the above information and  
24 unsuspecting law enforcement officers will not have any  
25 knowledge of what vehicle they're actually stopping until

1 they stop it and actually verify the VIN on the vehicle,  
2 since the eTAG system does not do VIN verification when  
3 the eTAG is generated.

4 Law enforcement has had emails with DMV dating  
5 back to June of '19, telephone conferences, and in-person  
6 roundtable discussions requesting this information be  
7 added to the return that we see on the street. I have  
8 emails from DMV that led law enforcement to believe that  
9 this information would be added in March of '20, and I  
10 guess that was delayed because of COVID.

11 In an email from Ms. Candy Sutherland, dated  
12 July 20, 2020, law enforcement was led to believe that  
13 this would be tentatively scheduled for the December '20  
14 release, and that hasn't happened. And now law  
15 enforcement is being led to believe this will be part of  
16 the March '21 release.

17 With that said, my request is this: since  
18 anyone with access to the eTAG system can enter a name,  
19 address or VIN to a vehicle and a person that does not  
20 exist, the seller name, d/b/a, and address of the  
21 seller/dealer/agent should be part of the MV return that  
22 we see and should be grayed out so that it cannot be  
23 manipulated or altered when the tag is generated.

24 I support Sgt. Escribano's positions and  
25 comments. I support the Texas DMV having the authority to

1 turn off a fraudulent dealer's access to the eTAG system.

2 MEETING HOST: You have one minute remaining.

3 MR. KOHLER: And I appreciate an opportunity to  
4 be part of this solution to address the problem that has  
5 spiraled out of control.

6 To support Chairman Scott's comment, I also  
7 appreciate the ability for DMV to work closer with law  
8 enforcement on fraudulent matters, on law enforcement  
9 being able to pick up the phone and communicate with a DMV  
10 investigator, preferably to be included in DMV meetings  
11 rather than having to submit VCR-275 requesting that  
12 information.

13 Thank you, and I appreciate any comments or  
14 questions you may have.

15 MR. TREVIÑO: Mr. Kohler, thank you very much  
16 for your comments.

17 Does anybody have any questions on Mr. Kohler's  
18 comments? Chairman Scott.

19 MR. SCOTT: Yes. Mr. Kohler, could you expand  
20 again on your request on the ability to read the tag the  
21 selling dealer sold? If I understand what you're saying,  
22 you need to be able to read that tag number prior to  
23 approaching the vehicle and matching up the VIN, and you  
24 would need to be able to read that tag number to see the  
25 selling dealer from a distance maybe, and also so that you

1 would have kind of database, general knowledge in your  
2 area, whatever, that XYZ dealer is a suspected person of  
3 nefarious dealings, or this would allow you to approach  
4 the car differently.

5 MR. KOHLER: Mr. Chairman, am I allowed to  
6 respond?

7 MR. TREVIÑO: Absolutely. Please, Mr. Kohler,  
8 go right ahead.

9 MR. KOHLER: Yes, sir, Chairman Scott. So part  
10 of our investigations or part of law enforcement's  
11 investigation into these unscrupulous dealers that only  
12 sell tags and they do not sell cars is the identification  
13 of those dealers. However, be it nighttime or when a  
14 vehicle has a paper tag with a bracket on there that you  
15 cannot read who the seller is in the lower left-hand  
16 corner, giving only the advantage on the streets -- and I  
17 run that tag, if I get the information in my return that I  
18 see on my computer and I see that it says King's Ranch  
19 Autoland, or it says one of the other unscrupulous dealers  
20 that have been identified, yes, not only does my approach  
21 and that officer's approach change a little bit because we  
22 know 99 percent that tag is going to be an illegitimate  
23 tag.

24 And we also know that the vehicle information  
25 that I see on the screen and the name and the address,

1 that can all be manipulated in the system, and I can make  
2 up a VIN number and I can make up an address that does not  
3 exist. So if that vehicle is involved in a criminal  
4 offense and that vehicle leaves the scene, law enforcement  
5 is going to be hard pressed to find who actually owns that  
6 car and where that car actually is because we cannot  
7 verify the information that's been uploaded into LETS.

8 MR. SCOTT: Thank you for that.

9 MR. TREVIÑO: Chairman Scott, does that answer  
10 your question?

11 MR. SCOTT: Yes, sir. Thank you.

12 MR. TREVIÑO: Great. Any other questions or  
13 comments for Mr. Kohler at this point? Member Gillman.  
14 We can't hear you, you're on mute.

15 MS. GILLMAN: Sorry. It's just my suggestion  
16 that at the time we are developing a metric, that also  
17 let's consider adding the selling dealer to the name on  
18 the temp tag.

19 MR. TREVIÑO: Great. So are you in the process  
20 of doing this now, Caroline?

21 MS. LOVE: I would need to check with our  
22 staff, but that is something that I'll make sure we add to  
23 those lists of considerations when we do develop that  
24 quantifiable metric.

25 MR. TREVIÑO: Great. Thank you very much. If

1 you could report back to us at the next board meeting on  
2 what you find, that would be very useful. Okay?

3 MS. LOVE: Sure.

4 MR. TREVIÑO: Great. Any other questions at  
5 this point?

6 (No response.)

7 MR. TREVIÑO: Great. We have another  
8 presenter. Is that correct, Tracey?

9 MS. BEAVER: Yes. Karen Phillips.

10 MR. TREVIÑO: Ms. Phillips.

11 MS. PHILLIPS: Yes. Good morning, Chairman.

12 MR. TREVIÑO: Welcome again.

13 MS. PHILLIPS: Thank you. Karen Phillips,  
14 general counsel for TADA.

15 Again, TADA is here and supportive of the CPAC  
16 recommendations that have been brought forward today and  
17 has had many concerns with respect to law enforcement and  
18 wants to make certain that law enforcement is safe and  
19 taken care of.

20 Yesterday I mentioned several means of coming  
21 up with some metrics just in general form. One was  
22 referenced by Chairman Scott on sales, which would be  
23 referencing a buyer's tag, or that particular tag, with  
24 respect to looking at the inventory tax statements, and of  
25 course, you're going to want to add a percentage for

1 growth, whether that be 10 percent, 20 percent. You may  
2 want to have an average because we know that 2020 sales  
3 are down because of COVID and 2021 are going to be a  
4 challenge because we're having difficulty obtaining  
5 inventory. As far as new licensees, looking at similarly  
6 situated dealers in similar markets with the size, the  
7 same line make, et cetera.

8 I would also suggest that it might be prudent  
9 at this time, since we're looking at who is issued a  
10 license, to perhaps look at the GDN rules with respect to  
11 established and permanent place of business. Those  
12 particular rules have to do with business hours, office  
13 structure, your sign, office equipment, display of a  
14 minimum of only five automobiles. It's possible that that  
15 might be another avenue to try to stem GDN brokers from  
16 being able to go forward with these fraudulent types of  
17 tags.

18 MEETING HOST: You have one minute remaining.

19 MS. PHILLIPS: Thank you.

20 As to the bond, TADA obviously is supportive of  
21 the proposal that is on the table that has been  
22 recommended by CPAC.

23 I am happy to continue to work with the staff  
24 and board on any metrics, as well as I know Mr. Graham and  
25 Ms. Gillman would be too, and I know that the RV dealers



1 and the motorcycle dealers also would need to bring some  
2 input to the table.

3 As far as the demo tags go, that is correct as  
4 far as Member Gillman indicated. There's going to be more  
5 demo tags that need to be able to be printed versus  
6 buyer's tags.

7 Happy to respond to any questions.

8 MR. TREVIÑO: Thank you, Ms. Phillips.

9 Any questions for Ms. Phillips or any of the  
10 presenters so far or anyone else at this point?

11 (No response.)

12 MR. TREVIÑO: No. Hearing none, Tracey, we  
13 have no other commenters?

14 MS. BEAVER: No other commenters for this  
15 agenda item.

16 MR. TREVIÑO: Okay. Then at this point the  
17 chair would entertain a motion for agenda item 8.B.

18 The chair recognizes Member Ramirez.

19 MR. RAMIREZ: I move that the board adopt the  
20 proposed legislative recommendation to give the department  
21 rulemaking authority to limit temp tag abuse, found on  
22 page 382 of our board books, those developed by the  
23 Consumer Protection Advisory Committee, as adopted by the  
24 Legislative and Public Affairs Committee.

25 MR. TREVIÑO: Member Ramirez, thank you very

1 much.

2 Can I have a second?

3 MR. PREWITT: Second.

4 MR. TREVIÑO: Member Prewitt. Okay. We've got  
5 a motion and a second. Is there any further discussion on  
6 this point?

7 (No response.)

8 MR. TREVIÑO: Hearing none, I will call for the  
9 vote.

10 MR. TREVIÑO: Member Bacarisse?

11 MR. BACARISSE: Aye.

12 MR. TREVIÑO: Member Gillman?

13 MS. GILLMAN: Aye.

14 MR. TREVIÑO: Member Graham?

15 MR. GRAHAM: Aye.

16 MR. TREVIÑO: Member McRae?

17 MS. McRAE: Aye.

18 MR. TREVIÑO: Member Prewitt?

19 MR. PREWITT: Aye.

20 MR. TREVIÑO: Member Ramirez?

21 MR. RAMIREZ: Aye.

22 MR. TREVIÑO: Member Scott?

23 MR. SCOTT: Aye.

24 MR. TREVIÑO: And I, Chairman Treviño, also  
25 vote aye. Let the record reflect that the vote is

1 unanimous. And I know we're all very happy that we're  
2 moving forward in this direction and hopefully can add a  
3 little bit more structure around it as time goes on.

4 Okay. So at this point we will now take up  
5 agenda item number 9, and for those in the audience, and  
6 that is going into closed session.

7 MS. BEAVER: Chairman?

8 MR. TREVIÑO: Yes.

9 MS. BEAVER: Just to interject, we also had the  
10 surety bond legislative recommendation. I believe that  
11 that motion and second was for the temp tag item.

12 MR. TREVIÑO: Okay. So we will move on. So  
13 that is agenda item 8.A. Is that correct?

14 MS. BEAVER: Chairman, they're both agenda item  
15 8.B, so we just split them up into two motions since they  
16 were separate topics.

17 MR. TREVIÑO: I see. It would be nice to have  
18 it reflected on my documents.

19 MS. BEAVER: Sorry about that.

20 MR. TREVIÑO: Moving on, so this would be 8.B.  
21 Is that correct?

22 MS. BEAVER: That is correct.

23 MR. TREVIÑO: The chair would entertain a  
24 motion on item 8.B as well. Member Scott.

25 MR. SCOTT: Thank you, Chairman.

1 I move that the board adopt the surety bond  
2 recommended, as adopted by the Legislative and Public  
3 Affairs Committee yesterday, to increase the surety bond  
4 from \$25,000 to \$50,000, which only applies to independent  
5 dealers, and requires the department to update its website  
6 with information on how consumers can find out more  
7 information on making a claim on the dealer's surety bond,  
8 along with the department contact information.

9 This recommendation also requires the  
10 independent dealer to post notice of how consumers can  
11 access the surety bond in the same location as they post  
12 their license in their office.

13 MR. TREVIÑO: Great. We have a motion from  
14 Member Scott. Do we have a second?

15 MR. PREWITT: Second.

16 MR. TREVIÑO: Member Prewitt seconds. Do we  
17 have any discussion at this point?

18 (No response.)

19 MR. TREVIÑO: Hearing none, I will call for the  
20 vote.

21 MR. TREVIÑO: Member Bacarisse?

22 MR. BACARISSE: Aye.

23 MR. TREVIÑO: Member Gillman?

24 MS. GILLMAN: Aye.

25 MR. TREVIÑO: Member Graham?

1 MR. GRAHAM: Aye.

2 MR. TREVIÑO: Member McRae?

3 MS. McRAE: Aye.

4 MR. TREVIÑO: Member Prewitt?

5 MR. PREWITT: Aye.

6 MR. TREVIÑO: Member Ramirez?

7 MR. RAMIREZ: Aye.

8 MR. TREVIÑO: Member Scott?

9 MR. SCOTT: Aye.

10 MR. TREVIÑO: And I, Chairman Treviño, also  
11 vote aye. Let the record reflect this is also  
12 unanimous. And thank you very much, General Counsel  
13 Beaver, for keeping us on track on these very important  
14 items.

15 Okay. We're now going into closed session. We  
16 will now take up agenda item number 9. For those of you  
17 in the audience, I anticipate being in executive session  
18 for approximately an hour and we will reconvene in open  
19 session after that. We will go into closed session under  
20 Texas Government Code Section 551.071, 551.074, 551.076,  
21 and 551.089.

22 Will the meeting host please move all  
23 panelists, except for board members and those needing to  
24 be in closed session, to attendees.

25 It is now approximately 11:42 a.m. on February

1 4, 2021, and we're going into closed session.

2 (Whereupon, at 11:42 a.m., the meeting was  
3 recessed, to reconvene this same day, Thursday, February  
4 4, 2021, following conclusion of the closed session.)

5 MR. TREVIÑO: It's approximately 12:07 p.m.,  
6 and the Board of the Texas DMV is now back in open  
7 session.

8 I ask the meeting host to move Tracey Beaver as  
9 a panelist.

10 And board members, please turn your audio and  
11 video back on, and we will now move to agenda item number  
12 11, public comment.

13 General Counsel Beaver, do we have any comments  
14 from the public?

15 MS. BEAVER: Yes. We have one public  
16 commenter, Mr. Crocker.

17 MR. TREVIÑO: Great. Mr. Crocker, you're aware  
18 of the rules, you have three minutes, and we'll give you a  
19 warning at the two-minute mark, and welcome, glad to have  
20 you here. Mr. Crocker? Mr. Crocker?

21 (No response.)

22 MR. TREVIÑO: Art, is Mr. Crocker on the line  
23 available?

24 MR. GARCIA: I don't see Mr. Crocker or a hand  
25 raised, I do not, no, sir.

1 MR. TREVIÑO: So, General Counsel Beaver, do we  
2 wait a minute, or what do we do? Can we move on? I'd  
3 like to hear from Mr. Crocker if he's available.

4 MS. BEAVER: Tracey Beaver, general counsel.  
5 Staff is currently reaching out to Mr. Crocker  
6 to confirm that he's able to raise his hand to comment.  
7 It should just be another 30 seconds.

8 MR. TREVIÑO: Perfect. Thank you very much.  
9 (Pause.)

10 MS. BEAVER: Chairman?

11 MR. TREVIÑO: Yes.

12 MS. BEAVER: Tracey Beaver, general counsel,  
13 for the record.

14 We still have not seen a hand raised and the  
15 instructions have been sent, so if you would like to move  
16 on, I can ask that staff reach out personally to Mr.  
17 Crocker to gather his input regarding the public comment  
18 portion, or we could take a break if you would prefer to  
19 wait. Thank you.

20 MR. TREVIÑO: No. If staff can reach out to  
21 Mr. Crocker, and if you could, please give us an update at  
22 the next board meeting if anything came of it, just so we  
23 can make sure that Mr. Crocker's comments are heard. But  
24 I think in the interest of time and board members'  
25 schedules, I think I'd like to move on if everyone is in

1 agreement. Everybody okay? Nod of the head, sure,  
2 everybody good? Okay. We're going to move on, but I  
3 would like some type of report on Mr. Crocker.

4 There's no one else, no commenters, Tracey?

5 MS. BEAVER: No other commenters.

6 MR. TREVIÑO: Great. So before we move on to  
7 agenda item 12, I would like to thank the board and all  
8 the staff for all their hard work today and just the  
9 deliberative process that everyone took, and I can't thank  
10 you all enough, it's a pleasure to work with you.

11 So with that, we move on to agenda item number  
12 12, and the chair would entertain a motion to adjourn. Do  
13 we have a motion?

14 MR. BACARISSE: So moved.

15 MR. TREVIÑO: Member Bacarisse. Do we have a  
16 second?

17 MS. GILLMAN: Second.

18 MR. TREVIÑO: Member Gillman. Terrific. We  
19 have a motion and a second. When I call your name, please  
20 state your vote for the record.

21 MR. TREVIÑO: Member Bacarisse?

22 MR. BACARISSE: Aye.

23 MR. TREVIÑO: Member Gillman?

24 MS. GILLMAN: Aye.

25 MR. TREVIÑO: Member Graham?



1 MR. GRAHAM: Aye.

2 MR. TREVIÑO: Member McRae?

3 MS. McRAE: Aye.

4 MR. TREVIÑO: Member Prewitt?

5 MR. PREWITT: Aye.

6 MR. TREVIÑO: Member Ramirez?

7 MR. RAMIREZ: Aye.

8 MR. TREVIÑO: Member Scott?

9 MR. SCOTT: Aye.

10 MR. TREVIÑO: And I, Chairman Treviño, also  
11 vote aye. Let the record show the vote is unanimous, and  
12 at about 12:11 p.m., this meeting is adjourned.

13 Thank you, everyone.

14 (Whereupon, at 12:11 p.m., the meeting was  
15 adjourned.)

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MEETING OF: TxDMV Board

LOCATION: via Webex

DATE: February 4, 2021

I do hereby certify that the foregoing pages, numbers 1 through 162, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Motor Vehicles.

DATE: February 12, 2021

/s/ Nancy H. King  
(Transcriber)

On the Record Reporting  
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