

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Thursday,
May 23, 2013

Lone Star Room
Building 1
4000 Jackson Avenue
Austin, Texas

BOARD MEMBERS:

Johnny Walker, Chair
Laura Ryan, Vice Chair
Robert "Barney" Barnwell, III
Luanne Caraway
Blake Ingram
Raymond Palacios
Victor Rodriguez
Marvin Rush
Joseph Slovacek

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P R O C E E D I N G S

1
2 MR. WALKER: Good morning. My name is Johnny
3 Walker and I'm pleased to welcome you here today to the
4 meeting of the Board of the Department of Motor Vehicles.

5 I'm now calling the meeting for May 23, 2013 of
6 the board of the Texas Department of Motor Vehicles to
7 order. I want to note for the record that the public
8 notice of this meeting, containing all items on the
9 agenda, was filed with the Office of Secretary of State on
10 May 14, 2013.

11 Before we begin today's meeting, please place
12 all cell phones and communication devices in a silent
13 mode.

14 And if you wish to address the board at today's
15 meeting, please complete a speaker's card at the
16 registration table. To comment on the agenda items,
17 please complete a yellow card and identify the item on the
18 agenda that you're going to want to speak about. If it is
19 not an agenda item, we will take your comments during the
20 public portion comment of this meeting.

21 At last month's meeting, Chairman Vandergriff
22 announced that there would be new board appointments, and
23 also that he would be resigning from the board and move on
24 to the Transportation Commission. I can assure that it
25 was not a demotion, he was promoted by the governor.

1 On May 1, Governor Perry appointed met to
2 succeed Mr. Vandergriff as chairman of the Department of
3 Motor Vehicles. The governor also appointed Joe Slovacek,
4 who is to my right --

5 MR. BARNWELL: To your left.

6 MR. WALKER: Well, I was looking that way when
7 I said that, I had my right hand over there.

8 (General laughter.)

9 MR. WALKER: He appointed Joe Slovacek as the
10 board's new public representative to represent the general
11 sector of the public in the State of Texas. And he
12 appointed Ms. Luanne Caraway to my left -- I had to keep
13 it consistent, Barney -- as the new tax assessor-collector
14 member of the board, taking Cheryl Johnson's place, who
15 was on here for a long time since the original board.
16 Current members, Mr. Palacios and Mr. Barnwell were
17 reappointed to their terms, so we have another six years
18 to enjoy their presence.

19 These appointments have been confirmed by the
20 Senate which was done this Monday in the legislative
21 session over there, and they have fulfilled their
22 requirements of training -- I think both of them went
23 through training this Monday on Tuesday, and so they
24 understand what we do and how we do and where all of the
25 skeletons are hidden. They showed you all the closets,

1 correct, Luanne?

2 MS. CARAWAY: Not all of them.

3 MR. WALKER: More importantly, did they show
4 you where the safe is with all the cash?

5 (General laughter.)

6 MR. WALKER: Under state law, board chairs may
7 administer oaths to new members, and I'd like to at this
8 point ask both of these people to come forward and step
9 down on the front step so we can swear you in to this
10 office.

11 (Whereupon, Ms. Caraway and Mr. Slovacek were
12 sworn in as members of the Board of the Texas Department
13 of Motor Vehicles.)

14 (Applause; pause for photos.)

15 MR. WALKER: Now I'd like to do a roll call,
16 please. Say aye if you're here.

17 Board Member Barnwell?

18 MR. BARNWELL: Here.

19 MR. WALKER: Board Member Caraway?

20 MS. CARAWAY: Aye.

21 MR. WALKER: Board Member Ingram?

22 MR. INGRAM: Present.

23 MR. WALKER: Board Member Rodriguez?

24 MR. RODRIGUEZ: Present.

25 MR. WALKER: Marvin Rush is not here today.

1 And let the record reflect that I, Johnny Walker, am also
2 here, so we do have a quorum.

3 MS. BREWSTER: And Mr. Slovacek?

4 MR. WALKER: He's not on my list. And Mr.
5 Slovacek?

6 MR. SLOVACEK: I am here.

7 (General laughter.)

8 MR. WALKER: Maybe I shouldn't read, maybe I
9 should do this off the cuff, I could probably do a better
10 job.

11 Let's go to the agenda here, and do we have any
12 further comments at this time? I have no cards so I guess
13 we can move on.

14 The first thing I would like to do is I'm going
15 to skip around the agenda here because we have a
16 legislative session going on today, and we're down to the
17 final minutes with some crucial bills over there going on
18 that affect the agency, so I think we need to have Mr.
19 Jeremiah Kuntz give us his report so that he can get back
20 over there and continue to work on our behalf to make sure
21 that we're correctly defended and honored over there,
22 whatever you call it.

23 MR. KUNTZ: Good morning, board members.
24 Jeremiah Kuntz, director of Government and Strategic
25 Communications.

1 What I've passed out to you today is our bill
2 tracking list. It lists all of the bills and kind of
3 where they are in the process that we are currently
4 tracking. As you can see, there are quite a few that have
5 been sent to the governor that will have a direct impact
6 on us, so we're tracking those as they're going through.
7 I'll leave that with you so that you have the opportunity
8 to kind of look through it at your leisure.

9 What I really want to focus on, though, this
10 morning is the three main bills that we have as part of
11 the board's agenda. First is 1692 which was a bill that
12 originally started in the House, House Bill 1692, and it
13 originally was a bill that the dealers had filed. Through
14 working with them, as well as the manufacturers, we were
15 able to get part of our agenda on to that bill which had
16 to do with transferring SOAH hearings for Lemon Law and
17 warranty performance cases from SOAH back over to the
18 agency.

19 That bill, as late as night, I believe, around
20 11:30 pass off the Senate local and uncontested calendar.

21 The bills matched in both the House and Senate, and so at
22 this point it will return to the House to be signed in the
23 presence of the House and then sent to the governor. That
24 one shouldn't have any issues, it should get to th
25 governor's desk.

1 MR. INGRAM: You said it's now House Bill --
2 tell me again the number.

3 MR. KUNTZ: 1692, I believe, was the number.

4 MS. BREWSTER: It's House Bill 1692.

5 (General discussion regarding page numbers in
6 document.)

7 MR. KUNTZ: So that bill is headed to the
8 Governor's Office in short order.

9 The next two bills that we've got, the first
10 one, House Bill 2202, was a bill that created a dedicated
11 account for the Department of Motor Vehicles. It also
12 transferred all of our administrative fees that we collect
13 regarding our industries that we serve into that dedicated
14 account to allow us to be a self-funded agency. It also
15 allowed us to adjust the county tax assessor-collectors'
16 compensation and the deputy compensations through a
17 processing and handling fee which was a consolidation of
18 all of the different processing and handling fees
19 associated with registration renewal.

20 That bill also, about 11:45 last night, passed
21 off the Senate floor on the local and uncontested
22 calendar. Again, the House version and Senate version
23 matched, there were no amendments in the Senate, and
24 therefore, it will return to the House to be signed in the
25 presence of the House and then sent to the governor.

1 There is no conference anticipated on that because the
2 bills matched. So that one is well on its way as well.

3 The last bill, which is the one that's right
4 now sitting in the House's hands, it's House Bill 2741.
5 That was a bill that was an omnibus bill for the agency,
6 it had a lot of cleanup provisions for the agency to help
7 improve our processes. That bill came out of the house
8 with, I believe, five amendments on it. Those amendments
9 were taken off in the Senate, passed out of committee,
10 sent to the Senate floor, and there were two amendments
11 added on the Senate floor.

12 Those two amendments were two stand-alone bills
13 of Chairman Nichols, Senate Bills 1670 and 1671. Those
14 two bills had not made it out of the calendars committee
15 in the House, they weren't able to get to the floor for a
16 vote. Senator Nichols added those on to our bill as a
17 lifeboat, if you will, as a last effort to get those
18 pieces of legislation passed, and then sent it back to the
19 House. So the bill has passed both chambers and it has
20 been sent back to the House.

21 At this point it is up to the House author,
22 Chairman Phillips, to concur or to send it to conference.

23 We are anticipating that that bill will be sent to
24 conference. The amendments that were added on in the
25 house, we're anticipating those will be debated. I don't

1 believe there's too much controversy over most of the
2 amendments that were added in the House. The amendments
3 that were added in the Senate right now seem to be the
4 main sticking point that is going on right now and we're
5 trying to work through all of those at this moment in
6 time.

7 MR. INGRAM: Can you give me just a brief
8 outline of 1670 and 1671?

9 MR. KUNTZ: Those two bills, the first bill,
10 1670, took what we refer to as a weight tolerance permit
11 fee and that is a fee that allows divisible loads to have
12 a tolerance on their weight up to 84,000 gross. It allows
13 them to get up to, I believe, it's a 5 percent tolerance.
14 There's a base fee associated with that permit. The bill
15 raised the base fee up to \$180, I believe. There was a
16 \$90 increase on the county's portion which was currently
17 \$50, so it raised it \$90, plus there's another base fee
18 for the state of \$40 that brings the total to \$180.

19 The other fee schedule that's associated with
20 that depends on the number of counties that are selected
21 on the permit. Those fees were also increased in that
22 schedule, and so it basically raises revenue for the
23 counties to fund the county road system, mainly because of
24 the damage that they're seeing out of the shale areas, the
25 gas production. That was the main genesis of that bill.

1 MR. WALKER: You missed the big part, the
2 \$5,000 fine.

3 MR. KUNTZ: We'll go into that, that's in the
4 next one, in 1671.

5 So that's 1670, that's the first one.

6 The second bill is 1671. That bill mainly
7 dealt with all of the various oversize/overweight permit
8 penalties, so anybody that was running overweight, they
9 didn't have a permit, they were in excess of their permit,
10 it had a completely new rewrite of the penalty schedule
11 for those vehicles. The main penalty that Chairman Walker
12 is referring to was a single line item penalty for \$5,000
13 for failure to obtain a permit, regardless of the weight
14 that you are over. So if you should have had a permit and
15 you did not have one, there is an automatic \$5,000
16 penalty, and then there was a schedule based on the weight
17 that the vehicle was over its allowable weight. And so
18 that went up in a couple thousand pound increments,
19 essentially, it was like 0 to 2,500, 2,500 to 5,000, 5,000
20 to 10,000, 10,000 to 20,000, I believe, 20,000 and up.

21 MR. WALKER: But the tolerances are not put on
22 to that particular bill, are they not?

23 MR. KUNTZ: The tolerances?

24 MR. WALKER: The tolerances are not in there?

25 MR. KUNTZ: So there was a tolerance in statute

1 that basically said there is an intent to violate the law
2 if a person loads or causes to be loaded a truck that is
3 more than 15 percent over the allowable weight. That was
4 an intent provision in the statute that existed on loading
5 of a vehicle. That percent was lowered to 7 percent,
6 basically taking the tolerance out, and that was something
7 that could be used either by law enforcement or by the
8 courts to show that somebody was intending to violate, it
9 was an incidental overage.

10 There was an additional 7 percent added in on
11 the shipper side, and it was a new provision, that said if
12 somebody is carrying a load that is in excess of 7
13 percent, there is an intent to violate, and that put a new
14 intent, basically, on the person that's hauling, that's
15 driving the truck as well. So by lowering, compressing
16 that tolerance, it makes it more stringent, you're going
17 to hit people at a lower tolerance for the weight.

18 MR. WALKER: May I ask you a question?

19 MR. KUNTZ: Yes, sir.

20 MR. WALKER: Have you relayed this message to
21 the legislators over there with respect to these
22 amendments is that who's going to get that ticket?

23 MR. KUNTZ: The way that the bill is laid out,
24 there are two parties responsible in the bill. One is the
25 actual driver, the person that's hauling. Statute refers

1 to somebody as a person that is carrying the load.
2 There's also some further language that discusses the
3 concept of a corporation not being a person. So in the
4 instance that I believe you're referring to, you may have
5 a driver that works for a trucking company, ultimately the
6 trucking company is going to be paying those fines.

7 MR. WALKER: Why do you say that?

8 MR. KUNTZ: I believe the way that it's
9 structured that there is some intent that's laid into the
10 statute as it references a person. It's definitely
11 referencing the driver, but there's also further language
12 in that penalty that references a corporation. The reason
13 that they've got language in there is there is a general
14 penalty provision in Chapter 623 that actually calls for
15 jail time, potential jail time, multiple subsequent
16 violations. It goes on to clarify later in that same
17 chapter that a corporation is not subject to jail time or
18 confinement, so it's contemplating the concept that a
19 corporation is a person in that penalty provision.

20 MR. WALKER: And that person would be the
21 trucking company or the shipper?

22 MR. KUNTZ: It would be the trucking company.

23 MR. WALKER: So they're going to come put
24 Johnny Walker in jail if one my truck drivers goes out
25 here, picks up a load and it's going to be overweight?

1 MR. KUNTZ: That is in current law. In current
2 law there is a provision dealing with jail time. It is
3 not used, to my knowledge, but there is a provision in
4 there that calls for potential jail time.

5 MR. WALKER: Well, we have Mr. Rodriguez over
6 here and myself, we have law enforcement and I'm a trucker
7 So let me just kind of explain to you because this is the
8 message that needs to be relayed over to the legislators
9 about this bill. We do not, absolutely we do not pay
10 tickets that our truck drivers get. Okay? And the reason
11 we don't do that as a trucking company is because we think
12 if we told our drivers don't worry about it, we'll pay the
13 ticket, that the consequential damage of that in the
14 courtroom would be that Ms. Wilson over here would eat our
15 lunch and say: Look, the guy pays the tickets, he
16 condones this kind of action. So trucking companies don't
17 pay those tickets.

18 Mr. Rodriguez's officers out here, if they were
19 to write tickets, they don't write them to trucking
20 companies, and it's never been written to a trucking
21 company in my life, and I've been doing this for 35 years.

22 The tickets are written in the name of the driver who is
23 operating that vehicle, so he's the person who is breaking
24 the law the way the law looks at it currently. And I
25 think that's the way this new amendment is also looking at

1 it, from the bill that I personally read. And it changes
2 over there in the legislature on an hourly basis while all
3 this action is taking place.

4 But my thoughts on this are that when they put
5 a \$5,000 fine on a truck driver who can't afford to buy
6 new tires for his car, which would be a higher priority
7 than paying a \$5,000 penalty, they're not going after the
8 right people. I have no way, as a trucker, of knowing the
9 weight when a customer sends send a truck over and pick up
10 this machine, it goes from A to B, we don't carry a scale
11 to lift stuff up. So they're really attacking the wrong
12 people on this bill when you put \$5,000 fines. What
13 they're trying to say is that the shippers are over here.
14 So there needs to be some relay of message on the
15 consequences of this bill.

16 MR. KUNTZ: So at the end of the bill there is
17 an additional concept that is contemplated, and that is an
18 additional \$5,000 penalty on the shippers themselves, so
19 that is a new concept that is in the back of that
20 amendment.

21 MR. WALKER: And I have seen that, but if it is
22 the responsibility of the shipper to certify the bill,
23 certify the weight, and how does a shipper certify weight
24 in an oilfield location when a machine is coming off of a
25 well site that's got drilling mud residue in it, anything

1 else. He doesn't know those certified weights, there is
2 no scale at a drilling location or at most of these
3 locations that these trucks go to, and I do it every day.

4 And it's my understanding also that the ticket
5 is still not going to be issued to the responsible party
6 in this particular deal, it's going to be the
7 responsibility of the carrier to go back and tell the
8 shipper that this has been changed, hey, now you're
9 responsible, and you have to sue your shipper to go
10 collect the consequential damages of this \$5,000. So what
11 trucking company is going to go sue their customer to try
12 to recoup this consequential damage?

13 Because Mr. Rodriguez's officers aren't going
14 to get in their car and say: Oh, is this one of Mr.
15 Barnwell's truckloads of pipe, let's go to Mr. Barnwell's
16 office and write him a ticket because he should have told
17 you that the pipe weighed 48,000 instead of 46,000. Is
18 there consequential damage that says you're going to go
19 and write that ticket to the shipper? The answer is no,
20 and the bill says that you will certify those particular
21 weights. I'm just telling you that this whole deal is
22 kind of screwy.

23 MR. KUNTZ: So from the agency's perspective,
24 as far as our role in all of this, it is somewhat limited.
25 I've been involved in the discussions that are going on in

1 the Capitol mainly because of its relationship to the bill
2 that we were pursuing in 2741 and because these amendments
3 were added onto that, I've been brought into the
4 discussion. However, I have a very limited role in these
5 discussions. These negotiations that are occurring are
6 mainly occurring between the House and the Senate over
7 differences on the view of how to write that amendment.

8 MR. WALKER: But this has been attached onto
9 our bill which drastically affects this agency on how we
10 plan on running in the future with due respect on setting
11 our fees on administering it. And so we've stuck a virus
12 onto something that was viable that was a good thing over
13 here -- and we don't do any of this but somebody does, and
14 we need to relay a message. I'm not sure I understand all
15 the processes over there but I know that our bill has been
16 amended by Nichols and our other bill was originally
17 Nichols's bill. Is that correct?

18 MR. KUNTZ: Yes. There was a companion to this
19 bill that Nichols was the author of. He is the sponsor of
20 this bill as well, being that the two were companion
21 bills.

22 So at this point the most that I'm able to
23 really do is to watch and to pay attention and to report
24 back where they are as far as the negotiations on the
25 amendment and where they'll be coming out of conference.

1 There isn't a whole lot that I'm able to do to try and
2 influence or make any kind of major headway, I guess, if
3 you will, in this issue.

4 MS. BREWSTER: Mr. Chairman, if I might.
5 Jeremiah has done an excellent job being involved in the
6 discussions and providing information on behalf of the
7 department. We have to walk a very fine line in not
8 appearing to be for or against any legislation, and so to
9 the extent that we are able to provide information, we
10 are, and we're able to talk about what the impact would
11 be. Another factor is that we speak when we're asked a
12 question. To go in and tell the legislature what to do on
13 a particular matter is strongly discouraged. So we will
14 continue to work with them.

15 MR. SLOVACEK: Chairman, it sounds like there
16 may be a concern on your part that they don't understand
17 the impact of a fine like that and who they're actually
18 intending to fine. Not hitting the truck owner, not
19 hitting the truck driver, versus hitting the shipper.

20 MR. KUNTZ: My assessment is that Senator
21 Nichols is very well aware of who he is fining. He has a
22 very specific goal of what he is trying to accomplish in
23 the bill. He has stated pretty plainly that he is trying
24 to go after bad actors that are not obtaining permits that
25 should. That is his main objective, and he is willing to

1 go to whatever means he has to in order to try and curtail
2 that activity out on the roadways.

3 MR. SLOVACEK: The ticket is issued to the
4 driver.

5 MR. KUNTZ: Yes, sir.

6 MR. SLOVACEK: They're the bad actors?

7 MR. KUNTZ: At this point, I don't believe that
8 he is trying to distinguish between the driver or the
9 company or the shipper, he is trying to go after all
10 parties to make sure that all parties are watching this
11 with a close eye to ensure they're in compliance with the
12 laws.

13 MS. WILSON: Mr. Chairman.

14 MR. WALKER: Yes, ma'am.

15 MR. WILSON: I want to concur with what the
16 executive director, Ms. Brewster, said.

17 MR. WALKER: Do you have any other bills you
18 would like to review us on?

19 MR. KUNTZ: Those are the main ones that I
20 wanted to make sure we covered. And Mr. Ingram, I think
21 that there is one other that is of interest that you had
22 asked a question about last time. It was the single
23 sticker bill that was moving its way through. Senate Bill
24 1350 did not make it to the House calendar, however, that
25 bill was amended yesterday onto a House bill in the

1 Senate. Senator West, who was the author of that bill,
2 added that amendment onto, I believe, 2305 and that bill
3 has now been sent back to the House.

4 I'm not exactly sure what the House will do
5 with that. My early radar was telling me that they are
6 probably going to go to conference on that bill, so what
7 the ultimate outcome of it ends up being, I'm not real
8 sure, but I would anticipate that that bill will probably
9 go to conference because of that issue.

10 MR. INGRAM: Was the bill moving, it was doing
11 well?

12 MR. KUNTZ: It didn't really have anything to
13 do with that specific issue, it had to do, actually, with
14 inspections of vehicles that had a natural gas tank on
15 them, basically, natural gas propane vehicles.

16 MR. INGRAM: I'm just want to make sure that
17 I'm on the same page.

18 MR. KUNTZ: We're watching that one as well, o
19 I'll keep you informed as things develop on that bill as
20 well.

21 MR. WALKER: How about the Auto Burglary and
22 Theft bill?

23 MR. KUNTZ: The Auto Burglary and Theft bills,
24 there were a couple of them, none of them made it out of
25 committees. They are basically dead at this point, they

1 never made it through any of the processes.

2 MS. BREWSTER: Mr. Chairman.

3 Jeremiah, would you please talk about the
4 capability of teleconferencing on meetings.

5 MR. KUNTZ: So there is a bill that was passed
6 and sent to the governor -- I'd have to find the bill
7 number on it here -- that will allow for greater
8 flexibility in doing teleconferenced board meetings.

9 Previously under current law, there was a
10 requirement that a quorum must be present in the location
11 that the meeting was posted. That is now gone. That
12 provision is now stating that in order to do a video
13 teleconference, the presiding officer is the only person
14 that needs to be present at the posted location for the
15 board meeting.

16 This should provide a lot more greater
17 flexibility to the board to be able to try and handle
18 board meetings through video teleconference for emergency
19 items or anything like that that potentially would come
20 up.

21 MR. RODRIGUEZ: Senate Bill 984.

22 MR. KUNTZ: Thank you.

23 The bill also contemplates that a quorum on the
24 video teleconference must be maintained, so if you ever
25 lose the video feed for an extended amount of time, the

1 meeting is over, it's adjourned automatically. So there
2 is some burden to make sure your teleconference feed stays
3 live so that you actually have a quorum during the
4 meeting.

5 MR. WALKER: Well, there were some original
6 words when I saw the original bill that there had to be a
7 quorum of the board at one location. Is that not correct
8 still?

9 MR. KUNTZ: That's under current law, and the
10 way that the bill changed current law was to say that the
11 presiding officer is the only party that is required to be
12 at the posted location. The quorum must be maintained on
13 the video teleconference; you must have a quorum of
14 members available.

15 MR. RODRIGUEZ: Just for clarity, that's the
16 main change. One is a group of people representing a
17 quorum at a posted location.

18 MR. KUNTZ: Correct.

19 MR. RODRIGUEZ: The posted location can change.

20 MR. KUNTZ: Yes, sir. And you can post the
21 location for wherever you want, just as long as the
22 presiding officer is at that location.

23 MR. WALKER: So only the presiding officer has
24 to be at the posted location?

25 MR. KUNTZ: Correct.

1 MR. WALKER: Everybody else can be at remote
2 location somewhere.

3 MR. KUNTZ: A video teleconference location.
4 Yes, sir.

5 MR. WALKER: And it all has to be video
6 streamed. Correct?

7 MR. KUNTZ: Yes, sir.

8 MR. WALKER: And that has passed and that's
9 gone to the governor.

10 MR. KUNTZ: Yes, sir.

11 MR. WALKER: Any other questions on this?

12 (No response.)

13 MR. WALKER: Thank you very much. You can go
14 back and do what you do best.

15 MR. KUNTZ: Thank you, Mr. Chairman.

16 MR. WALKER: Head over to the Capitol and tell
17 everybody we said hi.

18 MR. KUNTZ: I'll do that.

19 MR. WALKER: Let's go to agenda item 1.C, and
20 since we've had a lot of turnover/change in board members
21 and chairmen, we're going to make some changes to the
22 committee assignments. And I don't know whether everybody
23 got a copy of this. Did all of you get a copy of the
24 board assignments?

25 MS. BREWSTER: Yes.

1 MR. WALKER: You should have in front of you a
2 copy of our new board assignments. We have an
3 Administrative Committee which I'm going to ask Victor
4 Rodriguez to chair, and Laura Ryan will serve on that with
5 him and Joe Slovacek.

6 The Finance and Audit Committee, Raymond
7 Palacios is going to chair that, he has been chairing that
8 for the past two years, I believe, and he will be
9 accompanied by Blake Ingram, Barney Barnwell, and Marvin
10 Rush.

11 The Projects and Operations Committee which I
12 chaired in the past is now going to be chaired by Laura
13 Ryan, with Blake Ingram, Luanne Caraway and Barney
14 Barnwell serving on that committee also.

15 And then the Legislative Committee is going to
16 be headed up by our brand new member, Mr. Joe Slovacek,
17 with Victor Rodriguez, Luanne Caraway, and Raymond
18 Palacios serving on that.

19 I would anticipate that our committees meet
20 only when they need to meet, other than the Finance and
21 Audit, I think that they probably ought to meet on a
22 quarterly basis to review the financials of the agency.
23 But the Projects and Operations, depending on what's going
24 on with projects, how often. The Administrative, I think
25 that they work with our executive director, and you know

1 how and what you've been doing along those lines, and just
2 continue that work over there.

3 So with that, let's go on and move on to -- do
4 you want to give us your comments now or do you want to
5 hold back on that? Do you have a couple?

6 MS. BREWSTER: I do, I have a couple.

7 MR. WALKER: Okay.

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

9 I just wanted to take a moment to recognize the
10 newest member of the executive team, Eric Obermier is our
11 chief information officer. He joined us about a month
12 ago, and he comes to us from the Employee Retirement
13 System, ERS. We're excited to have him onboard. Like I
14 said, he's been on about a month, he's already hit the
15 ground running, met with every division director, had a
16 couple of IT division-wide meetings to set a vision, and
17 strategy for moving forward. He's certainly got his hands
18 full but I know he's up to the task and we're really
19 excited to have him onboard.

20 The other thing that I would like to mention, I
21 would like to recognize two members of the executive team,
22 Linda Flores and Ginny Booton, for 20 years of state
23 service.

24 (Applause.)

25 MS. BREWSTER: They're outstanding servants and

1 just appreciate the work that they do. We will later
2 present them with their plaque and a token of appreciation
3 for 20 years of service.

4 Thank you.

5 MR. WALKER: Probably not money, though, Linda.

6 (General laughter.)

7 MS. BREWSTER: And that's all I have, sir.

8 Thank you.

9 MR. WALKER: Okay. Let's move on up to the
10 consent agenda. Bill Harbeson.

11 MR. HARBESON: Good morning, Chairman Walker,
12 board members. My name is Bill Harbseon. I'm the
13 director of the Enforcement Division and of the Motor
14 Vehicle Division.

15 I'm here today to present first the consent
16 agenda. There are twenty enforcement agreed orders.
17 These are cases where we've initiated disciplinary actions
18 against a licensee and subsequent to our initiating the
19 case, a settlement was reached with the licensee and an
20 agreed order was executed. The enforcement notices of
21 violation, or NOVs, these are minor violations,
22 essentially tickets or citations that are issued by our
23 investigators in the field when they come upon a violation
24 of the laws that awe enforce.

25 There are five enforcement motions for

1 dismissal. These are cases that were initiated and
2 subsequent to the initiation, the case is being dismissed
3 by staff for a number of reasons. One, we will sometimes
4 find the entity is no longer licensed and it's just not a
5 good investment of our resources to continue. In other
6 cases we will have facts presented to us by the licensee
7 where we determine that there actually has not been a
8 violation.

9 Lemon Law settlements and dismissals, these are
10 cases that are initiated under the Lemon Law that we
11 administer, and this is where the parties have reached
12 some sort of resolution of the case, short of going to the
13 State Office of Administrative Hearings and continuing on
14 the contested case proceeding.

15 And finally, there's one franchise dismissal
16 case. This is where a manufacturer, dealer or dealer vs.
17 dealer case has been started but subsequent to it being
18 started, the parties have reached an agreement or decided
19 not to proceed with the case.

20 So I'm asking for the board's approval of these
21 consent agenda items today.

22 MR. BARNWELL: Could I ask you a question?

23 MR. HARBESON: Yes, sir.

24 MR. BARNWELL: On number 14, Aaron Tucker,
25 d/b/a Aarons Autos --

1 MR. RODRIGUEZ: Is that A.14, B.14?

2 MR. BARNWELL: It's on page 2.

3 MR. HARBESON: This would be A.14. Yes, sir.

4 MR. BARNWELL: So there's a \$4,500 penalty
5 there.

6 MR. HARBESON: Yes, sir.

7 MR. BARNWELL: Do we pursue collection, what
8 are the chances of collection? How does that work?

9 MR. HARBESON: We have a hundred percent on
10 these because these are actually where the party has
11 reached an agreement with us, they have submitted the
12 penalty to us, it's been deposited with the state to make
13 sure the check is good, and so they've come to the board
14 only after the money has actually been paid.

15 MR. BARNWELL: I see.

16 MR. HARBESON: So we're doing real well on
17 these.

18 MR. BARNWELL: That's good to know. I like
19 that.

20 MR. HARBESON: Yes, sir.

21 MR. RODRIGUEZ: Mr. Harbeson, just for clarity,
22 you have twenty cases under 2.A?

23 MR. HARBESON: Yes, sir.

24 MR. RODRIGUEZ: Fifty-two cases under 2.B?

25 MR. HARBESON: Yes, sir.

1 MR. RODRIGUEZ: Five cases under 2.C?
2 MR. HARBESON: Yes, sir.
3 MR. RODRIGUEZ: Six cases under 2.D?
4 MR. HARBESON: Yes, sir.
5 MR. RODRIGUEZ: And one case under 2.E?
6 MR. HARBESON: Yes, sir.
7 MR. RODRIGUEZ: Move we approve, Mr. Chairman.
8 MR. INGRAM: Second.
9 MR. WALKER: We have a motion by Board Member
10 Victor Rodriguez, we have a second by Blake Ingram. All
11 in favor signify by saying aye.
12 (A chorus of ayes.)
13 MR. WALKER: Let's move on to your next item,
14 Bill.
15 MR. HARBESON: Yes, sir. Under the contested
16 case items, first of all, the staff is presenting to you
17 today two enforcement motions for disposition. These are
18 cases where we've initiated a case but the respondent, the
19 licensee has not responded to us. We've removed the case
20 from the State Office of administrative Hearings and
21 present it to you today in a package showing that we've
22 served the party, they've failed to answer, and there's a
23 recommended penalty on both these cases, and we're asking
24 for approval of those two orders.
25 MR. RODRIGUEZ: So move, Mr. Chairman.

1 MS. BREWSTER: Second.

2 MR. WALKER: We have a motion by Board Member
3 Rodriguez and a second by Barnwell. Any discussion?

4 MR. RODRIGUEZ: Just same question on these,
5 what's the collection rate on these?

6 MR. HARBESON: Well, we have initiated a new
7 procedure where after --

8 MR. RODRIGUEZ: My point is these are
9 different, as opposed to the other ones with the agreed
10 upon settlements.

11 MR. HARBESON: Yes, sir. These parties have
12 not paid us, and so we have now initiated a proceeding
13 post-order.

14 MR. RODRIGUEZ: That's the whole point. Thank
15 you.

16 MR. HARBESON: Yes, sir.

17 MR. WALKER: All in favor of the motion signify
18 by raising your right hand.

19 (A show of hands.)

20 MR. WALKER: The motion carries unanimously.

21 Next item.

22 MR. GLADNEY: Good morning. Mark Gladney,
23 Lemon Law Section manager.

24 The parties in the case I'm about to present, I
25 don't believe neither the complainant or the respondent

1 are present or wish to speak on this issue, Novosad v.
2 Ford, 13-0034.

3 In this particular case, the complainant filed
4 a warranty repair case with defects related to the
5 operation of his 2007 Ford 250 truck bought in 2006. The
6 complainant first reported the same problems with engine
7 operation in a previous cause number 10-0265. The board
8 at that time ordered Ford to repair on April 14, 2011.
9 The repairs consisted of new radiator hoses, they replaced
10 the engine long block assembly, including the oil cooler,
11 turbocharger and the exhaust gas re-circulation, that's
12 what they replaced. The repairs were completed by Ford's
13 dealer on May 27, 2011 with a two-year warranty.

14 This case we have at present addresses the same
15 engine problems as noted in the first case: overheating
16 and starting issues. The complainant filed his complaint
17 on September 12 of 2012 prior to the end of the two-year
18 warranty from the board's previous order which would have
19 expired on May 27 of '13.

20 The hearing was held January 11 of this year.
21 The complainant produced evidence of the same engine
22 problems and expenses incurred as a consequence of the
23 issues. The vehicle was inspected by a Ford engineer at
24 the time of hearing and noted the overheated engine and
25 check engine warning. Upon close of the hearing, the ALJ

1 issued a PFD in favor of the complainant and recommended
2 repair and reimbursement for customer-paid repair
3 expenses, towing and rental expenses.

4 After review by staff, staff concurs with the
5 PFD as it is consistent with the previous actions taken
6 under Occupations Code 2301.204 and 2301.603, and
7 recommends adoption of the PFD with the proposed order in
8 your packet.

9 Now, I would also note in the proposed order in
10 the packet, if you'll turn and take note of ordering
11 paragraph number 1, about the fourth sentence down, it
12 starts with the correct citation 43 Texas Admin Code,
13 Section 215.208(8). That should read 43 Texas Admin Code,
14 Section 215.208(e) as in Edward. Further, it says:
15 Therefore, the citations in 43 Texas Admin Code, Section
16 215.208(c) and (e) and conclusions of law 6 and 7 are
17 rejected and replaced with 43 Texas Admin Code, Section
18 215.208(e). That should be corrected as well, it should
19 be (e), and the (c) removed, and also, conclusion of law 6
20 is fine but 7 should be deleted from that.

21 So with those suggested changes, staff
22 recommends the proposed order for approval.

23 MR. RODRIGUEZ: Mr. Gladney, if I read this
24 record correctly, it's a 2006 purchase?

25 MR. GLADNEY: Yes.

1 MR. RODRIGUEZ: 2012 complaint?

2 MR. GLADNEY: Yes.

3 MR. INGRAM: When we looked at those previously
4 and then we ordered that the repair take place, and they
5 did repair, but now it's back, basically.

6 MR. GLADNEY: Yes.

7 MR. INGRAM: And so we've gone through this a
8 couple of times in the past, and either I've forgotten the
9 answer or I never could get a good answer, we were talking
10 about what happens now, because if we go ahead and adopt
11 this order for relief, then they're going to replace it
12 but now he is out -- the warranty was through May, yes,
13 May 2013?

14 MR. GLADNEY: Uh-huh.

15 MR. INGRAM: So he's out of warranty, so if
16 this engine -- and of course, he's got a really bad track
17 record so far with this, this is engine number 2 or 3 or
18 whatever it is -- what happens if this engine that we put
19 in this time goes bad in September? I mean, do we have to
20 ask that the manufacturer put a warranty on this
21 replacement engine that we're talking about now?

22 MR. GLADNEY: Well, generally speaking, if the
23 manufacturer is going to be ordered to replace, they're
24 going to put a warranty on there, just like they did in
25 this case, they put a two-year warranty on parts and

1 workmanship.

2 Now, this is a discussion that we've had
3 previously -- I believe, Board Member Rodriguez and
4 Chairman Walker and I think that Board Member Rush brought
5 this up -- the problem with 2301.204 is that there is no
6 real deadline or time period associated with it like it is
7 with Lemon Law. Lemon Law, there are specific statutory
8 provisions that say if you file it after a specific period
9 of time, you're not going to get Lemon Law relief. You
10 may be able to get warranty relief but you're not going to
11 be able to get Lemon Law relief.

12 In this particular instance, the legislature,
13 for whatever reason, they decided we're not going to put
14 that type of limitation on this. Now, as long as the
15 defect or non-conformity is reported prior to the
16 expiration of the original warranty period, then yes, this
17 person could conceivably come back if that same problem
18 crops up again after the expiration of the original
19 warranty.

20 Now, it's not something that we see on a
21 regular basis. I consulted with one of our case advisors
22 who is an ASC certified technician who has been doing
23 Lemon Law work for seventeen years, and he says this is
24 about the second time he's ever seen this actually occur.

25 So it's not something that really comes up that often.

1 I would also note that since the first case we
2 have intermittently been in contact with both parties with
3 regard to the future disposition of the vehicle. Now, the
4 old saying about you can lead a horse to water, but we are
5 continuing to talk to both parties and the ice is
6 beginning to thaw, so we're hoping that this vehicle may
7 somehow find its way out of the stream of commerce
8 eventually.

9 MR. WALKER: Mark, I have a question for you.
10 This case has been before us -- these parties have been
11 before us before and we have granted relief. Do you know
12 what meeting that was we granted the last relief on this?

13 MR. GLADNEY: I have the date as April 14,
14 2011, that's when the order was signed, so I'm assuming it
15 was signed that same day.

16 MR. WALKER: But it's been before this board
17 int the last five to six months, I believe.

18 MR. GLADNEY: Not to my knowledge.

19 MS. BREWSTER: It hasn't since I've been here,
20 and I've been here eight months.

21 MR. INGRAM: Time flies.

22 MR. WALKER: It does. I remember this case,
23 though, when it came before us.

24 So we granted some relief to this person before
25 in the past. Correct?

1 MR. GLADNEY: Yes.

2 MR. WALKER: And now the car broke again and so
3 we're granting relief again on the same deal, and he had
4 to go back to Ford and ask -- or he went to a SOHA, I
5 guess, judge to get relief?

6 MR. GLADNEY: Yes.

7 MR. INGRAM: And this is where I'm going with
8 this is that he was under the warranty. Why did he have
9 to go to SOAH and go through this process again? It's
10 alarming.

11 MR. GLADNEY: All I can tell you is that the
12 parties have had a rather colorful past -- which I don't
13 know if I really want to get into specifically in a public
14 meeting -- but they have been at loggerheads for quite
15 some time which is why we've been working with them since
16 the first case, off and on, to try to get the parties to
17 come to a meeting of the minds, and we think they're
18 getting to that particular point.

19 But this particular 6.0 liter engine had
20 problems with it for quite some time. Ford discontinued
21 the manufacture of this engine back in 2008 because there
22 were just so many warranty repairs associated with it. I
23 believe that there was some testimony in the first case
24 that Ford's director of diesel engineering said that this
25 6.0 liter engine, while it only represented 15 percent of

1 Ford's engine production, resulted in about 80 percent of
2 the warranty repairs. So they knew they had an issue with
3 it which is why they discontinued it. This is just one of
4 these few engines that's still kind of out there. The
5 individual is still using that truck and he's having the
6 same particular problems.

7 But it doesn't appear that the statute, as
8 written at present, as it applies to him, that he could
9 come back again if this actually occurred again within
10 that warranty period if we repaired it again and they gave
11 him an additional warranty. We're hoping that's not going
12 to be the case.

13 MR. RODRIGUEZ: Mr. Chairman, I don't know
14 where the board is on this, but I'll go ahead and make a
15 motion to deny the requested relief

16 MR. WALKER: We have a motion by Board Member
17 Rodriguez to deny.

18 I think what's being asked here, Member
19 Rodriguez --

20 MR. RODRIGUEZ: Not approve.

21 MR. WALKER: -- is asking for our approval of
22 the SOAH's decision to uphold that or to deny it. I guess
23 you are saying you want to disapprove the allowance of the
24 repairs?

25 MR. RODRIGUEZ: We have a request for us to

1 approve a proposal. I'm suggesting that we deny the
2 request to approve, whether that means denial of relief or
3 whatever. I'm moving to not approve your request today.
4 Is that more properly stated: move to not approve?

5 MR. WALKER: Not accept staff's recommendation
6 to approve the SOAH's decision.

7 MR. GLADNEY: My only question on that, Board
8 Member Rodriguez, is what our justification would be under
9 Government Code 2001.058(e) in trying to deny this. There
10 have been factual findings that have been made by SOAH,
11 and I'm not entirely certain that we have the authority
12 under the Government Code to necessarily -- what we would
13 be doing is making modifications to adjudicative facts in
14 the case.

15 MR. RODRIGUEZ: And we can disagree with them
16 on one of three points. Right?

17 MR. GLADNEY: Yes.

18 MR. RODRIGUEZ: What are those three points?

19 MR. GLADNEY: The three points would be: the
20 administrative judge did not properly apply or interpret
21 the applicable law, agency rules, written policies or
22 prior administrative decisions; two, that a prior
23 administrative decision on which the administrative law
24 judge relied is incorrect or should be changed; or three,
25 that a technical error in the finding of facts should be

1 changed. I'm not entirely sure under that set of
2 criterion we would be able to do what you're suggesting.

3 MR. RODRIGUEZ: And again, I disagree with you.
4 I find basis in all three of them, and that would be my
5 reason and you have my motion. I don't know what the
6 board will do but that's my motion.

7 MR. INGRAM: It might be a moot point if
8 there's not a second.

9 MR. BARNWELL: Just to take this a step
10 further, just a quick question. If we don't approve it,
11 what happens to Mr. Novosad's pickup truck?

12 MR. GLADNEY: I can only assume, I can't put
13 words in his mouth, but if it were denied, I would assume
14 that he would file a motion for rehearing.

15 MR. RODRIGUEZ: But this is not about his
16 truck, this is about a reimbursement of costs that he's
17 already borne to get his vehicle repaired.

18 MR. GLADNEY: In the first case he did
19 experience reimbursement issues and he did get
20 compensation for it, however, this is a brand new case for
21 which he's encountered new expenses, and we do have
22 precedent for doing this. In fact, this board has done
23 that very thing in the last year, I believe the Vinita
24 case, the DeLong case, the Hines case, and in the first
25 Novosad case it was done. And I've gone back and I've

1 checked the records and at least as far back as 2002,
2 TxDOT, and of course this agency as well, have provided
3 incidental expense relief in those three areas.

4 MR. SLOVACEK: Has the respondent agreed to
5 these terms, Ford?

6 MR. GLADNEY: Pardon?

7 MR. SLOVACEK: Has Ford agreed to these terms?

8 MR. GLADNEY: The respondent has been ordered
9 to do this, and certainly in all those cases they've been
10 ordered to do this, so there is past precedent for this
11 type of reimbursement.

12 MR. SLOVACEK: Do they support his order or do
13 they oppose it?

14 MR. GLADNEY: Pardon?

15 MR. SLOVACEK: Do they support it or oppose it?

16 MR. GLADNEY: They would support what the
17 recommendation is in this particular order. And again, I
18 might note that in the Novosad I case, the 2002 case Sharp
19 v. Mazda where reimbursement was given in addition to
20 repairs, it was cited in that particular order.

21 MR. WALKER: I just became confused because you
22 said they would support it. When you said they, I'm
23 assuming that you're talking with respect to Ford?

24 MR. WALKER: I'm not entirely sure of the
25 question. What was it again?

1 MR. WALKER: He asked a question about whether
2 they were disputing it, you said that they would support
3 this motion here. I'm assuming that the word "they"
4 you're referring to Ford. Is that correct?

5 MR. GLADNEY: Support which motion?

6 MR. WALKER: To pay for the repair and the
7 towing of the Ford that we've got in question here, the
8 F-250, what year is it, 2007.

9 MR. HARBESON: Maybe I can help.

10 MR. WALKER: I got lost when he said they would
11 support it.

12 MR. HARBESON: Ford and Mr. Novosad were
13 provided a copy of SOAH's proposal, and there were no
14 exceptions filed by either side, so both parties knew that
15 a proposal from SOAH was coming to this board with these
16 proposed findings of fact and conclusions of law.

17 MR. SLOVACEK: And my point is Ford does not
18 oppose our approval of this order as the respondent.

19 MR. GLADNEY: They did not file exceptions when
20 given a copy. Yes, sir.

21 MR. SLOVACEK: Correct. They may not like it
22 but they're not going to oppose it.

23 MR. GLADNEY: Right. And certainly if they had
24 any opposition to it, they know where we're at.

25 MR. SLOVACEK: At some point warranties do run

1 out, do they not?

2 MR. GLADNEY: Yes. At some point the warranty
3 is going to run out.

4 MR. SLOVACEK: How old is this truck?

5 MR. GLADNEY: This truck is a 2007 bought in
6 2006.

7 MR. BARNWELL: I'd like to take exception to
8 that. I know the Ford 6.0 liter and I don't think the
9 warranty will ever run out on that engine.

10 MR. WALKER: I don't think it will either.

11 MR. BARNWELL: That is a dog and everybody
12 knows it and it's just unfortunate, but that's the way it
13 is.

14 MR. WALKER: This is a replacement engine in
15 this truck. Listen, let's go back to what's going on. We
16 have a motion right now, we do not have a second, so if we
17 do not have a second, it's going to die for lack of a
18 second, so I need to know if anybody is going to second
19 Mr. Rodriguez's motion.

20 (No response.)

21 MR. WALKER: So the motion fails due to a lack
22 of a second.

23 MR. INGRAM: Mr. Chairman, I'll make a motion
24 that we approve the final order granting 2301.204 relief,
25 with the modifications as suggested by Mark Gladney.

1 MR. WALKER: And I will second that motion. Do
2 we have any discussion?

3 (No response.)

4 MR. WALKER: I have a question that I need to
5 ask before we vote, and that is if you'll go over to the
6 conclusions and you mentioned about, Mark, on the last
7 page of the proposal.

8 MR. GLADNEY: Yes.

9 MR. WALKER: It says that you want to change
10 that 215.208(c) to (e), but in my book you have that
11 crossed through and it says (8).

12 MR. GLADNEY: Yes, it did say (8), and the
13 reason for that is that last July the board adopted
14 changes to the warranty repair rules, and this particular
15 complaint was filed after the adoption and effective date.

16 MR. WALKER: So the (8) needs to change, I need
17 to delete the (8), and we are going to apply (e) as being
18 the correct application of the TAC?

19 MR. GLADNEY: I want to double check that
20 again. Yes, 215.208 was adopted to be effective July 5 of
21 2012. This particular case was filed after that date.

22 MR. WALKER: So (e) is correct, (8) is not
23 correct?

24 MR. GLADNEY: Yes. It's the same statutory
25 language, it's just there was a renumbering or

1 relettering.

2 MR. WALKER: And so Blake's motion here is to
3 accept the 2301.603 (a) and (b) and 43 TAC, 215.208(e).
4 Correct?

5 MR. GLADNEY: Yes.

6 MR. WALKER: We have a motion. Any other
7 discussion?

8 (No response.)

9 MR. WALKER: All in favor signify by raising
10 your right hand.

11 (A show of hands: Barnwell, Caraway, Ingram,
12 Slovacek and Walker.)

13 MR. WALKER: All opposed, same sign.

14 (A show of hands: Rodriguez.)

15 MR. WALKER: Let the record reflect that all
16 were in favor except for Mr. Rodriguez.

17 MR. WALKER: Let's move to the next item which
18 will be resolution item number 4, Resolutions for
19 Individual Consideration - Rules. Mr. Harbeson.

20 MR. HARBESON: Yes. Chairman Walker, I'm
21 pleased to have with me today Michelle Lingo, one of our
22 staff attorneys who actually did the writing of this rule,
23 to present to you today, so I'm going to ask Ms. Lingo if
24 she would explain the proposed rule, with your permission.

25 MR. WALKER: Ms. Lingo, you have the floor.

1 MS. LINGO: Good morning. For board
2 consideration as agenda item number 4 is the proposal of
3 publication in the *Texas Register* of amendments proposed
4 to Rule Section 215.158. The proposed amendments have
5 been discussed with stakeholder associations and increase
6 the number of preprinted tags allotted to each dealer,
7 continue to allow the department to increase tags allotted
8 to a particular dealership upon showing of good cause, and
9 reflect the actual operation of the electronic data
10 system.

11 If the board approves the proposal package
12 today, staff anticipates the *Texas Register* publication
13 will occur approximately June 7, followed by a 30-day
14 comment period that will close on July 8, 2013. Staff
15 will respond to any comments received and will prepare an
16 adoption package for board consideration at an open
17 meeting in the future.

18 Staff recommends that the board approve the
19 publication of the proposed amendments in the *Texas*
20 *Register*, and I'm happy to answer any questions that you
21 might have on this item.

22 MR. RODRIGUEZ: Move we approve, Mr. Chairman.

23 MR. WALKER: WE have a motion to accept the
24 posting of the rule.

25 MR. INGRAM: Second.

1 MR. WALKER: We have a second by Mr. Ingram.
2 Any discussion?

3 (No response.)

4 MR. WALKER: If not, all in favor signify by
5 raising your right hand.

6 (A show of hands.)

7 MR. WALKER: Motion carries unanimously.

8 Let's move on to our next item, let's do Mr.
9 Elliston real quick. Randy, would you come up and give us
10 a quick presentation?

11 MR. ELLISTON: Good morning, Mr. Chairman,
12 members. For the record, my name is Randy Elliston. I'm
13 the director of the Vehicle Titles and Registration
14 Division for the agency.

15 You have before you today a request from our
16 specialty plate vendor, My Plates, for a redesign of the
17 University of Nebraska license plate. This is not a new
18 plate, it's just a redesign so will not increase our
19 inventory of plates, it will just change their current
20 plate. The primary difference in what they're asking for
21 is the current plate says University of Nebraska in the
22 legend which is at the bottom between the bolt holes, and
23 now they're asking for it to say Huskers, as you can see
24 behind me on that license plate.

25 The application presented in this packet has

1 been reviewed and certified complete. All legislative and
2 agency requirements have been met by the vendor, and
3 they're asking for your consideration this morning of this
4 redesign.

5 MR. INGRAM: Mr. Chairman, I move that we
6 approve the redesign of the University of Nebraska plate.

7 MR. WALKER: We have a motion to accept the
8 redesign.

9 MR. BARNWELL: Second.

10 MR. WALKER: I have a second by Mr. Barnwell.
11 Any discussion?

12 MR. RODRIGUEZ: This is redesign number one,
13 number two?

14 MR. ELLISTON: This plate was originally
15 launched in September of 2010, so this will be the first
16 redesign.

17 MR. RODRIGUEZ: The contract provides for
18 redesign?

19 MR. ELLISTON: Yes, sir.

20 MR. WALKER: Any further discussion?

21 (No response.)

22 MR. WALKER: All in favor signify by raising
23 your right hand.

24 (A show of hands: Barnwell, Caraway, Ingram,
25 Slovacek and Walker .)

1 MR. WALKER: All opposed.

2 (A show of hands: Rodriguez.)

3 MR. WALKER: Let the record reflect that the
4 entire board voted for the redesign with the exception of
5 Victor Rodriguez.

6 Let's go to Bill Lawler. Can I get you to give
7 us the Internal Audit report on the cash handling today?

8 MR. LAWLER: Good morning, Chairman Walker,
9 board members. For the record, my name is Bill Lawler,
10 director of auditing for the Department of Motor Vehicles.

11 I have with me Trey Wood, our lead auditor in the
12 Internal Audit Division.

13 To give you a high-level overview, in our
14 fiscal year '13 audit plan we originally proposed doing an
15 audit of the regional cash handling, as well as the
16 central office cash handling. We subsequently combined
17 these two projects into one report and are presenting
18 those results for you today.

19 Our basic objectives of the audit, as you can
20 see, were to determine: do sufficient controls exist in
21 the safeguarding of the cash against fraud and misuse, is
22 the cash being physically safeguarded, and are
23 reconciliations being performed to compare cash
24 collections to transaction activity, and is the revenue
25 being properly classified. Inferred in these objectives

1 was to review the operations for the efficiency and
2 economy of those to look for opportunities where we could
3 improve the operations, and in that regard, we found a
4 number of those.

5 Our overall conclusion was that there are
6 sufficient controls in place. There were a number of
7 opportunities that we were able to identify where we could
8 either simplify operations or actually offload,
9 potentially, some of these operations to the Comptroller's
10 Office, as well as consolidate money-handling operations
11 where it was being performed at multiple locations, as
12 well as try to minimize the intake of certain funds that
13 were no longer supposed to be taken in. So there were a
14 number of smaller recommendations in those regards.

15 A high-level overview of the recommendations
16 that we have in the report, including opportunities to
17 strengthen controls. These included ensure cash-handling
18 policies and procedures in light of version control number
19 date and date that the policy went into effect, and note
20 the approval by the appropriate level of management. This
21 basically just related to keeping track of our policies
22 and knowing when it was put into effect and ensuring that
23 we had proper identification of those.

24 One of the things that we noted when we went
25 out to the field offices, and in fact, we ended up

1 visiting all sixteen regional offices during the course of
2 our work, and noted that a number of them had yet to
3 receive the DMV endorsement stamps for their deposits, and
4 so that was one of the recommendations that we brought
5 forward as that process is completed.

6 MR. WALKER: Bill, I hate to interrupt your
7 report, but I read the entire report and you mentioned
8 there about the number of stamps, insufficient amounts,
9 but you never specify what the sufficient amount is in
10 your report.

11 MR. LAWLER: Well, we believe, based upon the
12 limited cost of those stamps, that for each individual
13 processing payments, and that's dependent on each office.

14 MR. WALKER: You might want to clarify that in
15 the report because it just says that there's insufficient
16 amount and the recommendation would be to provide more,
17 but there's not a specific amount. And I assume the
18 stamps cost two bucks apiece, or something like that,
19 probably.

20 MR. LAWLER: That would probably not be too far
21 off.

22 MR. WALKER: So the recommendation would be
23 that all people who handle -- I'm confused how many people
24 that is.

25 MR. LAWLER: Well, there are 180-odd in the

1 regional offices. Of those, I would say roughly about 160
2 to 170 are involved in the processing of payments.

3 MR. WALKER: Let me ask you another question
4 while I'm interrupting you, I guess. In my company we
5 handle a lot of -- and when you say cash, I was confused a
6 little bit because you never specify between cash and
7 checks.

8 MR. LAWLER: For the purposes of this audit, we
9 identified cash as actual currency and negotiable
10 instruments. Now, in some of the areas of the report we
11 did identify specifically the amounts that represented
12 currency, and especially in our recommendations regarding
13 possible safeguarding of the delivery of the deposits.

14 MR. WALKER: And I was always questioning when
15 I read this report here is how much of this is dollar
16 bills, five dollar bills, tens, hundreds, versus how much
17 of it is checks.

18 MR. LAWLER: We identified at least four
19 offices that received over \$1 million in currency.

20 MR. WALKER: Green currency and coins.

21 MR. LAWLER: And coins, yes.

22 MR. WALKER: And so we also have the other
23 portion of this -- well, the total handling was \$163
24 million, wasn't it?

25 MR. LAWLER: Actually, '11 was the base year

1 that we used and I think we identified about \$115 million,
2 but that is going up because that only included a partial
3 year with Oversize/Overweight which is a considerable
4 amount of money, so going forward from '12 on, the number
5 is probably over \$150 million.

6 MR. WALKER: Okay. In your report, what I did
7 not notice as a recommendation that I would question why
8 is why wouldn't we be clearing those checks at the
9 location when we receive them?

10 MR. LAWLER: Well, we did bring that up.

11 MR. WALKER: I don't see that anywhere in
12 there.

13 MR. LAWLER: I believe we put in the
14 recommendation to evaluate a check-clearing process. One
15 of the problems that we get into in that regard is that a
16 great number of the checks that we receive are for \$2 and
17 \$5.45, and we get to a breakeven point where it may or may
18 not pay for the service.

19 MR. WALKER: Well, wait a minute. We clear
20 checks every day at our company and there is no cost for
21 us to clear checks. We have a machine, just like the bank
22 does, in our office today, stack all those checks in a
23 tray, reads them all, clears every one of those checks
24 immediately, puts the money into our account, and we throw
25 the checks away thirty days later, and there's no cost to

1 do that today.

2 MR. LAWLER: That's part of your bank service,
3 but that would be an option for management to explore. We
4 didn't identify that as a particular option in this
5 review, but we did note that the cost of the insufficient
6 fund checks were considerable, as well as the handling,
7 the time and handling and the charges that we experienced,
8 as well as sending out certified mail to try to recover \$2
9 bad checks.

10 MR. WALKER: I bet we can clear a hundred in
11 less than fifteen minutes. We put them in that tray and
12 that scanner reads it and we're finished. We don't go to
13 the bank anymore at our company. And why wouldn't we do
14 that?

15 MR. LAWLER: And I would hope that we'd be
16 there as well, sir.

17 MR. BARNWELL: Well, the electronic deposit of
18 a check -- which is the coming thing, it's a really neat
19 idea, we do it every month -- is fine but that still
20 doesn't clear the check.

21 MR. WALKER: No, they're cleared.

22 MR. BARNWELL: No, it doesn't. Because the
23 bank that you're using is not Podunk Bank & Trust in
24 Slippery Rock, Pennsylvania, and that check has to go
25 through the Fed to get that Slippery Rock bank and then

1 you get credit. So you're getting provisional credit on
2 that check. It can still bounce, and we have that happen,
3 and when it does, it's hell to pay. We have to figure out
4 why a \$12 check is costing us \$30 to collect.

5 What are the collection fees on this?

6 MR. LAWLER: I believe it was \$25.

7 MR. WALKER: It's the maximum set by law.

8 MR. RODRIGUEZ: Are you done, because I've got
9 a series of questions but I wasn't sure whether you were
10 going to present more on this or not.

11 MR. WALKER: I apologize.

12 MR. RODRIGUEZ: That's fine. I'm just
13 wondering do you have any more on your overview you're
14 going to present? I want to wait till you're done.

15 MR. INGRAM: Well, actually, Mr. Chairman, if I
16 may. I mean, you've done a nice job and it's interesting
17 that none of the management disagrees with you which is
18 awesome, which is really what we like to see, but as
19 opposed to going through it item by item by item -- which
20 we, of course, all have it in the packets, and I know,
21 Chairman, Board Member Rodriguez has some questions -- I
22 think it would be better utilized if we just do specific
23 questions.

24 MR. LAWLER: I'll go ahead and entertain those.

25 MR. RODRIGUEZ: So you're done?

1 MR. LAWLER: Yes, sir.

2 MR. RODRIGUEZ: Your fiscal year 2013 audit
3 plan, this is part of that. Right?

4 MR. LAWLER: Yes, sir.

5 MR. RODRIGUEZ: What percentage of your FY '13
6 audit plan is complete at this point?

7 MR. LAWLER: I would have to go back and get
8 those numbers for you, but I would probably put it in the
9 60 to 70 percent.

10 MR. RODRIGUEZ: And FY '14 plan draft is coming
11 up sometime pretty soon?

12 MR. LAWLER: We plan to have that before the
13 board probably for the September meeting.

14 MR. RODRIGUEZ: So right now you're about 50 to
15 60 percent on your FY '13?

16 MR. LAWLER: I would say at least 60 percent.

17 MR. RODRIGUEZ: Do you know the average receipt
18 to deposit time for negotiable instruments or cash?

19 MR. RODRIGUEZ: As far as from the time we
20 receive them to the --

21 MR. RODRIGUEZ: -- time to deposit.

22 MR. WOOD: I don't know that we have an exact
23 number for that. That being said, the regional service
24 centers who collect those funds, they do a daily closeout
25 in the afternoon and then they make a deposit the next

1 morning, so based on that, less than twenty-four hours.

2 MR. RODRIGUEZ: So if a check hits our office
3 today, you're suggesting that it's in deposit tomorrow?

4 MR. LAWLER: Yes.

5 MR. RODRIGUEZ: It doesn't sit around the
6 office anywhere?

7 MR. LAWLER: No.

8 MR. WOOD: And the Comptroller requires that
9 they get those deposits in within three business days, but
10 based on the agency practice, we're doing it inside of
11 that already.

12 MR. RODRIGUEZ: But we don't know that, you
13 didn't determine that in this process.

14 MR. LAWLER: We observed the process for making
15 the deposits, as well as closing out, and so there were
16 fairly tight controls on that and so we saw no exceptions
17 on that.

18 MR. RODRIGUEZ: Do you know the rate of non-
19 sufficient funds checks or accounts closed checks, do you
20 what that rate is for us?

21 MR. WOOD: Well, we've looked at the percent of
22 bad checks as it relates to the regional service centers,
23 because we were looking at establishing a check
24 verification service. One of the things that we noted was
25 that 37 percent of all the bad checks received by the

1 agency are related to the collections out in the regional
2 service centers, however, as Bill indicated, because the
3 dollar amount is so low, \$2 or \$5.45, the actual dollar
4 value associated with those specific bad checks is less
5 than one percent, which is part of the reason we wanted to
6 recommend a check verification service, something that we
7 could do on the front-end because that creates so much
8 additional work for the Finance Division in terms of
9 having to chase those downs, plus there additional cost
10 that the agency has to spend to chase that money. So
11 anything that we could do to eliminate that up front is
12 something that we would like to see the agency do.

13 MR. BARNWELL: Quickly, what does a check
14 verification service cost?

15 MR. WOOD: That would be basically where you
16 could go in --

17 MR. BARNWELL: I understand what it is. What
18 does it cost?

19 MR. LAWLER: I looked at one, it was running
20 about twenty-five cents per check, and that's where when
21 you get into the \$2 checks.

22 MR. BARNWELL: It starts to get in your pocket
23 but it's \$2. I understand what you're doing, we deal with
24 it all the time, is that at some point we're spending a
25 lot more time and effort to collect the two bucks plus

1 whatever than it's worth to do it, and we could verify it
2 and just go on about our business. I see what you're
3 saying. So twenty-five cents is what you've found so far.

4 How would you implement that, Bill?

5 MR. LAWLER: Well, actually, that wouldn't be
6 up to me, that would be management to actually put that in
7 place.

8 MR. BARNWELL: Yes, we'd have to recommend that
9 and then we'd have to get some people to bid on it, et
10 cetera.

11 MR. LAWLER: It would have to go through,
12 probably, the project process. And one of the
13 recommendations that we had was to move forward with the
14 credit card payment option in the regional offices as
15 going forward as a project. And that would hopefully cut
16 down on a lot of the exposure we have on the small checks
17 and offer our customers another option.

18 MR. INGRAM: Nobody wants to write a \$2 check.

19 MR. RODRIGUEZ: So I know that your answer was
20 37 percent of your insufficient or closed account checks
21 are coming from the field offices. Right?

22 MR. LAWLER: Yes, sir.

23 MR. RODRIGUEZ: But we don't know what the rate
24 of good checks and bad checks is right now?

25 MR. LAWLER: No. We could go back and analyze

1 that to see exactly what the particular percentage of
2 insufficient checks are.

3 MR. RODRIGUEZ: I notice you make a
4 recommendation about a courier service. We don't have any
5 at any given place?

6 MR. LAWLER: No.

7 MR. RODRIGUEZ: Employees are doing this?

8 MR. LAWLER: Yes.

9 MR. WOOD: Yes, sir. And that was actually one
10 of the risks we noted because some of the employees have
11 to drive quite a bit of distance to make those deposits,
12 there's a risk to the employees themselves. And in fact,
13 one of the observations we made was that there was an
14 actual break-in that occurred during the course of this
15 audit where an employee vehicle was broken into and the
16 deposit was stolen.

17 MR. LAWLER: Actually, it was the change fund
18 on the way back.

19 MR. WOOD: After they had made the deposit,
20 that's right.

21 MR. RODRIGUEZ: And my last question is did
22 your audit spot check in any way, shape or form to verify
23 any particular activity to make sure that, for example,
24 John Doe wrote a check -- or a John Doe transaction which
25 would be first, the transaction of an activity, that that

1 check was credited to us?

2 MR. LAWLER: We didn't trace any checks through
3 the system. In this regard we were looking at the
4 controls: were there multiple people handling the money,
5 looking at were there opportunities for payments to be
6 taken. We have to consider the possibility of fraud in
7 all these engagements.

8 MR. RODRIGUEZ: So it's possible, then, for an
9 employee to transact an activity without having to be
10 required to balance out deposits.

11 MR. LAWLER: No, no. They're balanced every
12 day.

13 MR. WOOD: One of the objectives that we had
14 was objective three: are reconciliations being performed
15 to compare those cash collection to the transaction
16 activities. So that is what we went through, and we
17 didn't verify the individual transactions, we verified, as
18 Bill said, that the controls are in place and that they
19 are doing those reconciliations.

20 MR. RODRIGUEZ: You've verified reconciliations
21 but not transactions.

22 MR. WOOD: Right. And those reconciliations
23 are being done both by the regional service centers, the
24 employees there themselves, and then also the Finance
25 Division does a reconciliation where they compare the

1 transaction detail to the deposits to ensure that we're
2 getting all the cash collection.

3 MR. INGRAM: So you have two people verifying
4 the bulk transactions for that period.

5 MR. LAWLER: And then those are verified with
6 the Finance Division prior to releasing the information to
7 the Comptroller's system for release to the treasury so
8 that the cash deposits match what we're showing in our
9 revenue system so those jive.

10 MR. WALKER: One of your other recommendations
11 was that we centralize a collection point and process the
12 money there, and you've identified Wichita Falls, it says.

13 MR. LAWLER: That was management's option. One
14 of the things that we noticed is that the regional offices
15 are currently each handling the mail-in payments. Well,
16 not all the regional offices can handle all the mail-in
17 payments that they get. And first of all, you have
18 sixteen different systems handling it sixteen different
19 ways, but then you also have different workloads between
20 the offices. And in fact, what's been occurring is
21 management has been taking some of the load from some of
22 the offices and mailing it to other offices in order to
23 get it processed in a timely fashion. In this kind of
24 operation there's economies of scale in centralizing that
25 into one operation, you have one set of policies and

1 procedures for handling the mail coming in, you have a
2 secure mail opening operation, and then you can handle it
3 all in one place.

4 One of the other risks that we noted in the
5 fraud range was that you have one product that has two
6 different prices. The CCO by mail is actually a \$2
7 product, whereby if I come in and get it in person, it's
8 \$5.45. And so one of the opportunities that we noted is
9 that an individual could come in and get me \$5.45 but as a
10 clerk I could enter that into the system as \$2, and it's
11 not much money but if you do enough of them, you could
12 skim that.

13 MR. BARNWELL: Kind of like a lockbox
14 operation?

15 MR. LAWLER: That would be close, a secure mail
16 opening operation.

17 MR. BARNWELL: So secure mail. How many items
18 is that a year?

19 MR. LAWLER: Actually, I don't have those
20 numbers in front of me.

21 MR. BARNWELL: Oh, just grossly.

22 MR. LAWLER: I would say tens of thousands, at
23 least, maybe more. Probably tens of thousands per month,
24 I suspect.

25 MR. BARNWELL: And how many registrations do we

1 have a month?

2 MR. LAWLER: Renewals?

3 MR. WALKER: Two million a year.

4 MR. INGRAM: Is your recommendation -- well,
5 not the Wichita Falls but the idea of consolidating,
6 that's just for CCOs, though. Yes?

7 MR. LAWLER: And that is the primary thing
8 that's done by mail in the regional offices at this time.

9 MR. INGRAM: So just the certified copies.

10 MR. LAWLER: Yes, sir.

11 MR. WALKER: It says here also in your report
12 that all of our offices should have an electronic safe.
13 How many do not?

14 MR. WOOD: We identified four that did not.

15 MR. WALKER: So we have four locations where we
16 have no way of securing cash overnight?

17 MR. LAWLER: No. We have safes in there but
18 they're the older with the mechanical locks on them where
19 you can't go in and change the combination readily, and so
20 when you have turnover in staff, you're vulnerable, and so
21 that was one of the things that we noted that most of the
22 offices are fitted with the new electronic safes and it
23 would probably benefit the others. I know one of the
24 offices, Houston in particular, had three smaller safes
25 but they couldn't fit all of their items, not only the

1 cash deposit that was going out the next morning, but also
2 the startup cash for the next morning, the cash drawers
3 were actually being locked into a room rather than a safe
4 because they didn't have sufficient enough room in the
5 safes for those.

6 MR. SLOVACEK: Can you get away from cash
7 altogether and just go debit card -- excuse me -- checks
8 altogether and go with cash or debit card?

9 MR. LAWLER: That would be my ideal world.

10 MR. SLOVACEK: No checks.

11 MR. LAWLER: The irony of the situation is
12 we're one of the few people still taking checks and not
13 taking credit cards.

14 MR. SLOVACEK: How do you change that? You
15 just need the chairman to agree?

16 (General laughter.)

17 MR. LAWLER: Well, actually, Ms. Brewster is, I
18 believe, onboard with at least getting the credit card
19 option in the offices, and that's the start.

20 MR. WOOD: I think part of the problem that
21 we've had in the past is there hasn't really been a
22 process in place to facilitate when you've got a project
23 of this nature that cuts across multiple divisions, and
24 you've obviously got VTR, you've got the IT Division,
25 we've got Finance. We haven't really had a process that

1 can facilitate getting all those moving in one direction.

2 Now that we have the EPMO office, I think that will help.

3 MR. SLOVACEK: Look for a way to get rid of
4 checks and go credit card/cash.

5 MS. BREWSTER: Mr. Chairman, Member Slovacek,
6 we are already well underway, we are looking very closely
7 at that.

8 MR. SLOVACEK: Good. Problem solved.

9 MR. RODRIGUEZ: Do you know what the cost
10 exposure might be overall if you go to credit card, versus
11 your loss to NSF right now?

12 MS. BREWSTER: Member Rodriguez, I don't
13 currently have that information. Perhaps that's something
14 Audit can look at.

15 MR. LAWLER: Well, I think the idea, and what's
16 currently being envisioned in the rest of the agency, is
17 that the credit card fee would be passed on to the
18 customer, and so we would be whole at the time of payment,
19 and so we would, in effect, be offloading any risk
20 associated with the NSF payments.

21 MR. WALKER: Bill, does the agency have the
22 ability to take debit cards today?

23 MR. WOOD: Not in the regional service centers,
24 no.

25 MR. WALKER: I mean, there are huge number that

1 use debit cards today. Why wouldn't we be using debit
2 cards? If I walked in with my debit card that I have in
3 my pocket right now, you wouldn't accept that as a
4 payment?

5 MR. WOOD: There's no way for them to do that.

6 MR. WALKER: Well, that's cash in your bank
7 without any handling.

8 MR. BARNWELL: They wouldn't even accept cash
9 from you without two forms of ID, I'm telling you.

10 MR. WALKER: But I can vote.

11 (General laughter.)

12 MR. WOOD: We spoke to several in the agency
13 about this and actually after a meeting one day I happened
14 to go home and I stopped by the grocery store as I was
15 leaving, I walked out and the Girl Scouts were there and
16 they said, Would you like to buy some cookies? And I
17 said, I don't have any cash with me. And they said, Well,
18 that's okay, we take credit cards. She pulled out her
19 smartphone with the little card reader and we swiped it,
20 and I got my cookies and I got an electronic receipt. So
21 I thought it was kind of crazy in this day and age that
22 the Girl Scouts are doing it but we're not.

23 MR. WALKER: But we're moving in that
24 direction.

25 MS. BREWSTER: Yes, sir, we are.

1 And to speak to Member Rodriguez's question
2 about passing the cost of credit card use along to the
3 consumer, we are researching that right now very closely.

4 MR. RODRIGUEZ: I was going to ask you if
5 legislation authorizes us, number one, to do credit card
6 transactions, and two, to pass it on. I don't know the
7 answer to that.

8 MR. LAWLER: I would believe that we do.

9 MR. SLOVACEK: You do on registration.

10 MS. CARAWAY: Well, the tax office does. We
11 have that in the tax office and we can pass it on.

12 MR. ELLISTON: Mr. Chairman, if I may? Randy
13 Elliston, director of Vehicle Titles and Registration.

14 We do have the authority to pass that on. We
15 have been working on this issue for at least the last year
16 or so to try to get the credit card operations in the
17 regional offices. I think we're well on track with that
18 now. Many of the recommendations that the auditors have
19 made, as you saw, we agreed with them. A lot of them
20 we've already been working on, the safes are already
21 ordered, we're working on the credit card issues. All
22 these things we've been working very diligently to get in
23 place. We'd like to get rid of the checks.

24 After this legislative session, if everything
25 goes the way we believe it is, we'll have a lot more

1 ability to work with these types of financial issues.
2 Charging \$2 for a CCO in one of our offices is something
3 we need to address, and all those kind of things. And so
4 we're poised here, very shortly, to be able to do a lot of
5 these things a lot quicker and better than we have been
6 able to in the past.

7 MR. WALKER: Well, one of the recommendations
8 of the Internal Audit also was that we put all of our fees
9 into a whole number and get rid of nickels, dimes and
10 quarters, and how hard would that be to do that?

11 MR. ELLISTON: And that's what I was speaking
12 of. Once we get through this legislative session, we
13 believe we're going to have the legislative authority, if
14 everything passes and is signed -- there's a lot of ifs
15 right now -- but if, if, if, then we're going to be in
16 good shape that the board will have authority to do those
17 things which will make operations a lot more efficient and
18 effective, all that kind of stuff.

19 MS. BREWSTER: The board would have the ability
20 to set those fees.

21 MR. ELLISTON: To set those fees, change those
22 fees, and things like that. So taking nickels and dimes
23 is ridiculous in today's world.

24 MR. WALKER: Let me ask you this. The bill
25 proposal that's over there right now allows us to set

1 fees, it's not going to allow us to set registrations.

2 Okay?

3 MS. BREWSTER: That's correct.

4 MR. WALKER: So registration fees are set by
5 statute, and those still are not in whole numbers on
6 those. Is that not correct?

7 MR. ELLISTON: Correct.

8 MR. WALKER: So how would we fix that problem?

9 MR. LAWLER: Those are taken by the TACs.

10 MR. WALKER: Oh, so we're just talking about
11 only the regional offices.

12 MR. LAWLER: The CCOs, primarily, as well as
13 the IRP registrations.

14 MR. WALKER: I guess we do no registration
15 renewals in any of the regional offices.

16 MR. LAWLER: No, sir.

17 MR. WALKER: Okay. So we can get all of our
18 fees down to whole dollars.

19 And I have one more question, Bill, on your
20 report back here -- I've probably got more than one. It
21 says here that your recommendation was to change the
22 electronic lock numbers periodically, and I didn't know
23 exactly how long periodically was, but who has that number
24 on that combination and how do we safeguard if that person
25 is not there, if we needed to get into the safe, how many

1 people is the recommendation to have the safe combination?

2 MR. LAWLER: Well, we leave that to the
3 particular management to set the number, but you want it
4 controlled. First of all, that was why the new safes were
5 needed to allow the electronic changing of the passwords,
6 but to have some kind of policy in that regard, either
7 tied to having if one of the people that is involved in
8 the cash handling or with the safe combination leaves, you
9 have a turnover in management, then those kind of
10 iterations would be situations that would automatically
11 trigger a change in the combinations.

12 MR. WOOD: In VTR you have the policy to make
13 the combination and the safe change, we just ask that they
14 make it more specific to actually delineate those exact
15 circumstances of when it would be appropriate to change
16 the combination. So right now it's such a high level of
17 just change it when it's appropriate, we wanted them to
18 specify what is appropriate.

19 MR. WALKER: To identify a schedule of changes.

20 MR. WOOD: Exactly. That was what our
21 recommendation was.

22 MR. ELLISTON: If I may, that may not be the
23 same for each office. It's going to depend, you'll have
24 broad policy, because or offices range from very small to
25 very large, so we would handle that by policy. But that's

1 certainly something that we need to be able to do, and
2 these older type safes, you can't do that without calling
3 a locksmith out.

4 MR. BARNWELL: Let me ask you a question
5 generally. Are you in the process of looking at doing
6 this, are you studying this?

7 MR. ELLISTON: We actually have a purchase
8 order for that, and the four offices that don't have
9 safes, they're on order right now.

10 MR. BARNWELL: And so we're looking at credit
11 cards, and that's being studied, and there are legal
12 ramifications to a convenience fee, as we all know, and so
13 you're looking at those things. Have you got a time
14 frame, approximately, when it will be time to really bring
15 that before the board so that we can consider it?

16 MS. FLORES: For the record, Linda Flores,
17 chief financial officer.

18 We have actually started down the path of
19 looking at both a convenience fee and a surcharge and all
20 the legal implications. We're also looking at maybe
21 limiting the credit cards we take.

22 MR. BARNWELL: I understand you're studying
23 something. When are you going to have something to bring
24 to us, whatever it is that you decide you want to study?
25 I mean, being staff, you know what it is that needs to be

1 looked at, I guess.

2 MS. FLORES: Yes, sir. We are looking to put a
3 proposal in front of Executive Director Brewster probably
4 this summer, so it may be sometime around September.

5 MR. BARNWELL: So perhaps we can implement this
6 by the fourth quarter?

7 MS. FLORES: Yes, sir.

8 MR. BARNWELL: Okay.

9 MR. ELLISTON: Mr. Barnwell, if I may. Many of
10 these things will be done well before that, and we'll be
11 happy to bring a report back to the board. But we do have
12 some statutory things that are going to occur, hopefully,
13 on September 1 that will give us some other authorities,
14 and so that would make it easier to implement.

15 MR. BARNWELL: My only point is that I'm here
16 once a month, I'm looking at this stuff for six-eight
17 hours, maybe less than that sometimes, to be honest about
18 it, sometimes a little more. There's no way that I can
19 have the familiarity and the detail that you do. It
20 doesn't behoove me as a board member -- and I'm just
21 speaking for myself here -- to get down into the weeds
22 with you people. You're staff, we rely on staff to do
23 these things. And I think, by the way, that we've got an
24 outstanding staff here, and that's why I'm pretty
25 comfortable with the way that you're going.

1 What I want to see or what I would like to
2 know, personally, is what your direction is, what are your
3 targets, what are you trying to accomplish, what are you
4 investigating, generally. Go find it out and bring it and
5 let the board make a decision at that point. That's the
6 way I prefer to try to be a board member here. If I'm
7 going to be on the staff, they're going to have to pay me
8 a lot of money, and they're not willing to do it -- and I
9 don't understand that, personally, I take that as a
10 personal insult.

11 MR. WALKER: They can't afford you.

12 (General laughter.)

13 MR. BARNWELL: But I'm just simply saying that
14 the way that I want to approach this thing is -- you
15 people are professionals, you do it every day, all day
16 long, I think you do a really fine job -- I'd like to have
17 some information about your direction, about what you're
18 doing, what you've identified as problems, how you're
19 maybe approaching fixing those things, and let's have some
20 reports as you move through the process of evaluating the
21 different opportunities, problems and situations that we
22 have so that I can be aware of it as we go. That's the
23 way I want to approach it.

24 And we're talking about a lot of well, what if
25 this and what if that, and we're talking about \$2 fees.

1 Hell, I'll pay the \$2 fees if we can move on.

2 MR. WALKER: Get your billfold out.

3 MR. BARNWELL: Well, I'll write you a check.

4 (General laughter.)

5 MR. BARNWELL: And so anyway, that's just what
6 I want to do, because there's an awful lot of work here to
7 be done and I can't afford to sit here and tell you how to
8 do your business. I'm not above doing that once you come
9 back with a report I don't like or have questions about,
10 but generally, I think we can have a meeting of the minds
11 on these things is the way I look at it.

12 So I'll shut up now, and that's all I had to
13 say about that.

14 MS. BREWSTER: Mr. Chairman, if I might just
15 address some of the things that Member Barnwell talked
16 about.

17 The first is that the agency really agrees with
18 the recommendations made by Internal Audit. I thought
19 they did an excellent job of pointing out some of the
20 areas where we could certainly improve, and we have
21 included the management's response in the audit plan which
22 lays out the dates by which we are intending to have these
23 items complete. Some of them area already completed, I
24 would like to point out.

25 Certainly in terms of credit cards, that's a

1 big deal to the agency. We believe that it will be a huge
2 added customer service option and one that makes absolute
3 sense. The agency is looking at what credit card options
4 are out there, what the costs are. As you know, that's a
5 large item to take on. We intend to be before the Finance
6 and Audit Committee by July with some information, so you
7 should have, Member Barnwell, direct reporting from the
8 agency on that once we've fully researched the legalities
9 of passing on the credit card fees, potentially, to the
10 consumer.

11 But again, we thought that it was an excellent
12 audit report. Those items that we would need board
13 approval for, we will certainly bring to this board for
14 approval, we'll lay out our recommendations, and if the
15 board agrees, we'll move forward with those. But
16 certainly, there are things in the audit plan that we do
17 not need board approval for, and we have already moved
18 forward aggressively on those.

19 That's all I have.

20 MR. WALKER: Another question that was a
21 concern to me when I read your report that the \$5 fee that
22 is being collected that is no longer allowed on the forms
23 because some of them are still using an old form.

24 MR. LAWLER: Yes, sir.

25 MR. WALKER: My concern there -- which I didn't

1 see that you addressed it -- it says that there's a cost
2 associated with refunding. I didn't understand whether or
3 not we are fully getting all of that money refunded, and
4 the first thing that came to my mind when I read that was
5 the Meyers lawsuit which was a huge concern to me because
6 the agency in the past has charged where we should not
7 have charged and we had a lawsuit that cost the State of
8 Texas \$43 million, and I don't want to see us go down and
9 travel that road again.

10 MR. LAWLER: My understanding -- and Trey can
11 fill me in if I'm wrong -- is that we're turning around
12 and mailing those checks right back to the individuals,
13 that money is just being basically bounced back.

14 MR. WOOD: The costs we're talking about
15 associated with are the manpower and the time that staff
16 have to take to track those funds and make sure that we
17 keep track of what we did receive and then actually go
18 through and physically refund them.

19 MR. LAWLER: And then the return postage.

20 MR. BARNWELL: Are you refunding it, or are you
21 simply returning the check?

22 MR. WOOD: That would be a better way to say
23 it, yes, returning the check.

24 There's a form the Finance Division currently
25 has --

1 MR. RODRIGUEZ: I'm sorry, we could be here all
2 day on this and I don't mean to, but I think you get the
3 point.

4 MR. WOOD: And that was our whole reason for
5 making this recommendation, there's a risk there, and so
6 that's why we want to see if we can't get rid of it.

7 MR. RODRIGUEZ: Well, I don't agree we can't
8 get rid of it but I just wanted to make sure you
9 understood the risk.

10 MR. WOOD: Right.

11 MR. WALKER: My question is -- I'm the biggest
12 tightwad, probably, up here at this dais -- wouldn't it be
13 prudent just to get rid of these old forms if it could
14 create a huge problem down the road for us and let's just
15 buy some new forms that don't have that fee attached to
16 it?

17 MR. WOOD: We've issued updated forms. What
18 happens is in some of the TAC offices they have like an
19 old electronic copy of the form on file and they may just
20 print it off as needed, and so then they print off a stack
21 of those, someone comes in, picks up a form to submit it
22 and they're using an old form.

23 MR. WALKER: But then we need to educate
24 somebody at that regional level, and that's probably the
25 biggest concern I see in this whole report that needs to

1 be addressed is we do not want to be charging people a fee
2 that we're not entitled to be charging them, and we've
3 been down this road and it's a huge problem. So that
4 really needs to be sure we address that we do not charge
5 this \$5 fee and just eliminate the problem, tell the
6 people to get rid of all those forms and let's use the
7 correct form so that we don't have that. That ought to be
8 a directive, an important directive.

9 MS. BREWSTER: I completely agree. When you
10 have the number of offices that the agency has, coupled
11 with the offices that we partner with to provide service,
12 form control is an issue, and certainly one that we need
13 to and will continue to pay close attention to.

14 MR. WALKER: Well, I read your report front to
15 back and I've read all the reports that you've given, and
16 I think you and your staff do an excellent job. I think
17 our staff here has done an excellent job of responding to
18 it. There's a recommendation, a response and an action
19 item, what we've been doing, what we're going to do and
20 what we need to do, and I just don't think you could have
21 done a better job, personally, and I just want to commend
22 you and your people. This is probably the best report
23 I've ever seen come out of your division.

24 MR. LAWLER: Well, I would just like to give
25 all the credit to my staff because I just get to head it

1 up, but the real work is Mr. Wood and Mr. Kress, who is
2 here.

3 MR. WALKER: Take that back and tell them they
4 did an excellent job on this report.

5 MR. INGRAM: I would second that it is a good
6 job, and I've seen a lot of them, that's a good one.

7 MR. WALKER: Does anybody else have anything?
8 Otherwise, we need to kind of move our schedule along.

9 (No response.)

10 MR. WALKER: This requires no action. Thank
11 you very much for your report.

12 At this time I'd like to take a short break and
13 go into a closed session. It is now 10:53 a.m. on May 23,
14 2013. We will go into closed session under the following
15 Texas Code Section 551.071 to obtain advice of legal
16 counsel regarding agenda item number 7, to consult
17 regarding pending and contemplated litigation or a
18 settlement offer or a matter regarding the duty of an
19 attorney for the governing body, legal issues raised in
20 connection with the awarding of contracts, or any other
21 item on this agenda, and Section 551.074 to discuss
22 personnel matters.

23 For those of you who are in attendance, I
24 anticipate being in this session for probably about I'd
25 say thirty minutes to an hour, probably, depending on how

1 deep we get into some of these legal issues, and we will
2 convene in an open session right after that. So I would
3 anticipate that we will be back in here by between 11:30
4 and 12:00, probably.

5 With that, we'll recess the public meeting.
6 Thank you.

7 (Whereupon, at 10:53 a.m., the meeting was
8 recessed, to reconvene this same day, Thursday, May 23,
9 2013, following conclusion of the executive session.)

10 MR. WALKER: It's approximately 1:10 in the
11 p.m. The Board of the Texas Department of Motor Vehicles
12 is coming back into an open session . We will note that
13 there were not items voted on or inappropriately discussed
14 in the executive session. So we are now back in open
15 meeting.

16 I guess I need to make a note that Barney
17 Barnwell is not in attendance right now but he should be
18 back shortly.

19 Let's go to item 5.B, Eric Obermier.

20 MR. OBERMIER: Chairman Walker, members of the
21 board. For the record, my name is Eric Obermier, CIO.

22 The item that I've got to present today is just
23 kind of a statement that IT is working closely with the
24 Enterprise Project Management Office to determine what
25 additional spend authority, if any, would be needed for

1 the three projects listed on the agenda, which are
2 Regional Office Communications Infrastructure,
3 Headquarters Communications, Application Migration and
4 Server Infrastructure. So we're going through scoping
5 some of the outstanding work to be done on those projects,
6 and the plan would be to meet with the Projects and
7 Operations Committee of the board, brief them on what we
8 would likely need in the month of June in preparation or
9 in anticipation of a formal request for additional spend
10 authority, if needed, at the July board meeting.

11 MS. BREWSTER: So, Mr. Chairman, these three
12 projects, this is a heads up, if you will, that these need
13 to be re-scoped. These are three that we identified as
14 not being properly scoped and budgeted for, and what Mr.
15 Obermier is essentially saying is that once our work is
16 complete, we will be coming before the Projects and
17 Operations Committee to present those findings, and then
18 with the anticipation that we would request additional
19 spend authority in the July board meeting.

20 MR. WALKER: Okay.

21 MR. RODRIGUEZ: No action on our part right
22 now. Is that right?

23 MR. WALKER: No action.

24 Let's go to item 6.C, the executive director
25 reports.

1 MS. BREWSTER: Okay. Thank you, Mr. Chairman.
2 Included in your board binders are two
3 documents that deal with the agency's performance
4 measures. The first is the executive summary which is a
5 rollup of the second document which is the key performance
6 indicators scorecard. If you will recall, and for the
7 benefit of our two new board members, the agency just
8 recently started reporting out on its key performance
9 indicators and we just started including that information
10 for the board's review just within the last several
11 months.

12 It is a process that is continuously being
13 refined. At the last board meeting there was a request
14 that the agency develop and include in the scorecard its
15 baselines. You will see that that indeed has been
16 included in the key performance indicators scorecard.

17 One thing that I would like to note is that
18 some of these we had no baselines for and we have just
19 recently started measuring them, so that became the
20 baseline, but there are other things like within the Motor
21 Vehicle Division where they've been measuring many of
22 these items for years, and so you'll find those baselines.

23 We did include what the basis of the baseline or how the
24 baseline was developed in the status and remarks portion
25 of the scorecard.

1 Just a couple of things to note for this month.
2 Our Oversize/Overweight permits that were eligible for
3 self-issuance has increased to 72.7 percent which is
4 significant for us in our drive to provide more self-
5 issuance processes for customers. We've hid 72.7 percent,
6 our ultimate goal is 80 percent, so we're within 10
7 percent of our target, so I thought that that was
8 certainly noteworthy.

9 Another thing that I would like to mention is
10 the agency has not reported out on customer satisfaction
11 because we have not had an independent satisfaction survey
12 vendor, and we anticipate entering into an interagency
13 agreement before June 1, so that process will be underway
14 very, very soon.

15 So those are the two items that I just
16 mentioned. Are there any questions on that that board
17 members have?

18 (No response.)

19 MS. BREWSTER: I am also pleased to mention
20 that we have officially launched the new website and have
21 gotten very positive feedback on that. The whole goal was
22 that this would be a customer-driven business site that
23 makes it easier for the consumer to get around and
24 navigate, and we've gotten, by all accounts, and some from
25 other DMVs in other states, very positive feedback on

1 that. So I do want to mention that.

2 One thing about this that is really important
3 to note is that this is a milestone in separation from
4 TxDOT, and we now have control over our own website, which
5 we did not before, we manage the content and so that's an
6 exciting step in the right direction.

7 Any questions on that?

8 MR. WALKER: No. Looks good.

9 MS. BREWSTER: Quarterly financial reports. A
10 new financial report has been compiled to provide an
11 overview of revenue and expenditures to the board. This
12 is a result of many discussions on what the board would
13 like to see contained in that report. It's gone from
14 twenty-seven pages to six, and this has been from input.
15 This whittling down of the report has been in conjunction
16 with discussions with Victor Vandergriff, Vice Chair Ryan,
17 Rodriguez, I think everyone, pretty much, with the
18 exception of our two newest board members who did have the
19 opportunity to see it, so we've had a lot of input. So
20 the agency will report out on this on a quarterly basis
21 and so the next report that you will see is in July.

22 MR. WALKER: We anticipate no June board
23 meeting. Correct?

24 MS. BREWSTER: That is correct, sir.

25 And then finally, I've included in your board

1 binders communication from Chairman Vandergriff to
2 Governor Perry and the director of the Legislative Budget
3 Board regarding the agency's reorganization, and this is
4 in accordance with Administrative Code that that
5 information was provided to those entities. I will note
6 that I've worked very closely Vice Chair Ryan, Member
7 Rodriguez, and Chairman Vandergriff on the development of
8 this reorganization. I also discussed this in the board
9 workshop in January with the board members then.

10 The reorganization is the result of
11 recommendations made in the Azimuth report, as well as
12 things that I have seen in my time here that needed to be
13 streamlined. And so just wanted to let you know that that
14 is in your board binder. I am in the process of
15 recruiting for the deputy executive director position, so
16 this will officially kick off once that position is hired,
17 this reorg.

18 So with that, I'm happy to answer any
19 questions.

20 MR. WALKER: Questions?

21 MR. INGRAM: I have one comment that I thought
22 the reorg looked really good.

23 MS. BREWSTER: Oh, thank you very much.

24 MR. WALKER: When do we anticipate a deputy
25 director? Qualifications, obviously.

1 MS. BREWSTER: Right, qualifications, but we
2 are in the process of scoring the applications now, and so
3 I would anticipate, depending on whoever the selected
4 person is and the commitments they currently have, I would
5 hope within the next month to two months.

6 MR. WALKER: And what are we going to do on a
7 board support? Are we still going to fill that, or not?

8 MS. BREWSTER: Yes, sir. That position has
9 closed and the applications are being scored now.

10 MR. WALKER: And who's doing the evaluation on
11 that?

12 MS. BREWSTER: I am doing the initial
13 evaluation, and then once they have been scored, bringing
14 in you, and I know Vice Chair Ryan has expressed an
15 interest to sit in on those interviews.

16 MR. WALKER: Good. Any other questions? If
17 not, there is one other thing we need to talk about, the
18 refactoring project that's going on out there, 5.C.

19 Jonathan, if you could just kind of come give
20 the board a brief, and not a long dissertation. We are
21 running behind schedule and I don't want to rob you of any
22 of your time, but we need to kind of get moving along, if
23 we can.

24 MR. TAYLOR: My name is Jonathan Taylor. I'm
25 the EPMD director of the Texas Department of Motor

1 Vehicles.

2 As you know, roughly fifty-six weeks ago we put
3 out an RFP out for the refactoring. That is the lift and
4 shift of the code for the Registration and Titling System.

5 We put out that RFP, it has been extensively reviewed,
6 scored, and the respondents have been scored, and the
7 organization is at a point where we need some board
8 movement to decide what to do next as far as what we have
9 the authority to do. And that's pretty much where we are.
10 We've kind of checked all our boxes off so far.

11 MR. WALKER: I'm sure we have a few questions,
12 but you're looking for the board to give you some advice
13 as to what direction to go based upon where you think you
14 are with your negotiations in the contract.

15 MR. TAYLOR: That's right. So at this point --
16 I was trying to be very brief; I might have been too
17 brief.

18 MR. WALKER: No, that's okay.

19 MR. TAYLOR: So after the review, receiving RFP
20 responses, scoring different vendors, we've entered into a
21 series of negotiations, what we need is the board's
22 approval -- board's recommendation or approval, I don't
23 know what the legal words are -- for the executive
24 director to be able to negotiate or to enter into a
25 contract at this time.

1 MR. WALKER: So we need to come up with some
2 authority given to the executive director to enter into a
3 contract, if all the criteria has been met.

4 MR. TAYLOR: That's correct, sir.

5 MR. BARNWELL: Mr. Chairman, I'd like to make a
6 motion. After hearing and considering the facts and
7 recommendations of the staff, I move that the board vote
8 to authorize the executive director to negotiate and
9 execute a contract for the refactoring of the Registration
10 and Titling System.

11 MR. RODRIGUEZ: Second, Mr. Chairman.

12 MR. WALKER: We have a motion by Mr. Barnwell
13 and we have a second by Mr. Rodriguez, and do we have any
14 discussion? And the recommendation is to give the
15 executive director the ability to enter into a contract or
16 the project with -- do you have the wording exactly on
17 that?

18 So move that the board authorize the executive
19 director to negotiate and execute a contract for the
20 refactoring of the Registration and Titling System.

21 MR. SLOVACEK: And report back to us, I
22 presume?

23 MR. WALKER: No. We wouldn't need to, but this
24 gives her the authority to enter into a contract after
25 satisfactory negotiations have been finalized, I assume.

1 MR. INGRAM: Do we need a monetary amount on
2 this?

3 MR. WALKER: No.

4 MR. TAYLOR: We would, of course, report to
5 you, as with all of the projects, during the next board
6 meeting.

7 MR. WALKER: So we're at a point now, we've
8 been working on this thing for two years and we're getting
9 close to a point where we think we're capable of moving
10 forward.

11 MR. TAYLOR: Yes, sir.

12 MS. BREWSTER: We are hopeful.

13 MR. RODRIGUEZ: If the contract is agreed upon
14 by the executive director within the authority she's got.
15 Right?

16 MR. WALKER: That's right. And wouldn't we
17 want -- do you want to put in there -- well, we can't
18 change the motion, I guess.

19 MR. INGRAM: You can amend the motion. What
20 were you going to say?

21 MR. SLOVACEK: We're going to be talking to the
22 executive director, I presume, as we go?

23 MR. WALKER: Yes.

24 MR. SLOVACEK: I'm perfectly okay with
25 authorizing her, giving her the authority to negotiate and

1 contract, keeping us informed.

2 MR. WALKER: Well, she has the ability through
3 the agency to negotiate. She does not have signing
4 authority right now for a contract of this size, unless we
5 authorize that.

6 MR. SLOVACEK: This motion would do that.

7 MR. WALKER: We would give her authorization to
8 enter into a contract of the magnitude of what this has
9 been posted at the public docket level to enter into
10 because she needs that authority from us to enter a
11 contract. So we're giving her that authority, provided
12 that -- but it doesn't say provided that -- all the
13 details have been worked out, I guess, that she negotiates
14 to the satisfaction of the agency.

15 MR. INGRAM: Would it make the executive
16 director more comfortable to have an exact amount as far
17 as an agreement up to.

18 MR. WALKER: Well, we've already posted this
19 amount.

20 MR. INGRAM: The amounts are different coming
21 back from the RFP.

22 MS. BREWSTER: It would be my preference to not
23 have a definitive amount. At this point, we have not
24 executed the contract yet.

25 MR. INGRAM: Okay, I understand.

1 MR. WALKER: So we have a motion and a second
2 and we've discussed. All in favor of this motion signify
3 by right hand.

4 (A show of hands.)

5 MR. WALKER: All opposed same sign.

6 (No response.)

7 MR. WALKER: So motion passes unanimously by
8 the board, so you have the authority to finalize that
9 contract.

10 MS. BREWSTER: To continue negotiations to a
11 point that I feel comfortable.

12 MR. BARNWELL: And then you're authorized to
13 execute it.

14 MS. BREWSTER: Yes. Thank you.

15 MR. TAYLOR: Any other questions for me?

16 MR. WALKER: No. Thank you very much,
17 Jonathan.

18 And I think that brings us to the end here.
19 So if that's it, I will entertain a motion to adjourn
20 today's meeting. It is now 1:28 on May 23, 2013.

21 MR. RODRIGUEZ: So moved, Chairman.

22 MR. WALKER: We have a motion to adjourn. I
23 need a second.

24 MR. BARNWELL: Second.

25 MR. WALKER: We have a second from Mr.

1 Barnwell.

2 All in favor, signify by saying aye.

3 (A chorus of ayes.)

4 MR. WALKER: Thank you very much.

5 (Whereupon, at 1:28 p.m., the meeting was
6 concluded.)

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C E R T I F I C A T E

MEETING OF: DMV Board
LOCATION: Austin, Texas
DATE: May 23, 2013

I do hereby certify that the foregoing pages, numbers 1 through 94, 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.

/s/ Nancy H. King 05/31/2013
(Transcriber) (Date)

On the Record Reporting
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