

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Thursday  
September 12, 2013

Lone Star Room  
Building 1  
4000 Jackson Avenue  
Austin, Texas

BOARD MEMBERS:

Johnny Walker, Chair  
Laura Ryan, Vice Chair  
Robert ABarney@ 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. I'm pleased to open the Board Meeting of the  
4 Texas Department of Motor Vehicles. It is 9:08 a.m. I am  
5 now calling the Board Meeting for September 12, 2013 to  
6 order.

7 I want to note for the record that public  
8 notice of this meeting, containing on the agenda was filed  
9 with the Office of Secretary of State on August 29, 2013.

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

13 If you wish to address the board during today's  
14 meeting, please complete a speaker's card at the  
15 registration table. To comment on an agenda item, please  
16 complete a yellow card and identify the agenda item. If  
17 it is not an agenda item, we will take your comments  
18 during the public comment portion of the meeting.

19 Now I'd like to have a roll call of the board.  
20 Vice Chairman Ryan?

21 MS. RYAN: Present.

22 MR. WALKER: Board Member Barnwell?

23 MR. BARNWELL: Present.

24 MR. WALKER: Board Member Ingram?

25 MR. INGRAM: Present.

1 MR. WALKER: Board Member Palacios?

2 MR. PALACIOS: Here.

3 MR. WALKER: Board Member Rodriguez?

4 MR. RODRIGUEZ: Here.

5 MR. WALKER: Board Member Rush?

6 MR. RUSH: Here.

7 MR. WALKER: Board Member Slovacek?

8 MR. SLOVACEK: Here.

9 MR. WALKER: Now let the record reflect that I,  
10 Johnny Walker, am here also. We have a quorum. Let the  
11 record also reflect that Member Caraway is absent today.

12 Before we move forward, I'd like to call your  
13 attention to agenda item 5.K, and this item was to  
14 consider a request for a formal opinion seeking to clarify  
15 protest rights for certain franchise dealers. This agenda  
16 item will not be heard today. Our rules regarding formal  
17 opinions prohibit consideration of matters that are  
18 actively before the agency. When this request was made in  
19 April of 2013, the staff determined that the subject  
20 matter was not a part of the active investigation or  
21 proceeding. Staff continued to screen for the subject  
22 matter of the pending formal opinion and was alerted that  
23 a proceeding was initiated on August 21, 2013.

24 Accordingly, the board cannot proceed with consideration  
25 of this matter due to the fact that it is before us at

1 this time.

2 I'd like to note that all the parties  
3 interested in this matter, several of whom have traveled  
4 from out of state to appear, were advised of this decision  
5 made last week that we were not going forward on this  
6 matter today. I'm making this announcement at the outset  
7 of the meeting just in case someone might be in attendance  
8 just to hear agenda item 5.K.

9 MR. RODRIGUEZ: Mr. Chairman, what's the proper  
10 action, to table or withdraw?

11 MR. WALKER: I think it's probably appropriate  
12 just to withdraw it from the agenda.

13 MS. AUCOIN: This is Aline for the record.

14 The proper action, the chairman has the  
15 authority to state what's going to be on the agenda.  
16 Although it's listed on the agenda, he has the authority  
17 to pass on an item, so he's passing. No action of the  
18 board will be taken.

19 MR. WALKER: And I do see that we have several  
20 cards here from the public on comments that they'd like to  
21 make before the board, so I guess we can take these up at  
22 this time.

23 We have a Van A. Hurst, who would like to come  
24 and talk to us about electronic use of display of oversize  
25 permits. Van, if you'll just step forward right here.



1 And can I ask you about how long you think this is going  
2 to take?

3 MR. HURST: Three or four minutes.

4 MR. WALKER: Okay, good.

5 MR. HURST: I represent URS Flint Energy  
6 Services. We're an oilfield hauling company, we move the  
7 actual drill rigs from one location to another. We use  
8 extensively the oversize/overweight permits issued by the  
9 TxPROS system of the Department of Motor Vehicles.

10 We are currently running into an issue on  
11 electronic display of the permit. Certain justices of the  
12 peace and public safety officers will not accept us  
13 displaying them on a smart tablet, on a computer laptop or  
14 on a cell phone. These permits are obtained  
15 electronically through the TxPROS system, they're paid for  
16 electronically, and they're transmitted to us by email.

17 What we're asking is instead of us having to  
18 drive miles and miles in the Eagle Ford Shale area to just  
19 get a paper copy of the permit, that the board provide  
20 guidance that in the general conditions on page 2 of each  
21 permit that a notation be put in there that electronic use  
22 and display is acceptable for all oversize permits issued  
23 through the TxPROS system.

24 We're spending literally thousands of dollars  
25 sending people to an area where they can get to a fax

1 machine or get a printer. We tried even putting printers  
2 in our trucks and we were losing them due to dust getting  
3 in and eating up the printers. So I would appreciate the  
4 board's consideration of adopting that policy and putting  
5 that as a general condition of all permits in the future.

6 MR. WALKER: Excellent idea. I think we can  
7 look into that because we're already accepting some  
8 electronic data in trucks today. As a matter of fact, on  
9 our licensing today, we do not have to have the  
10 registration forms anymore in the truck. The officers are  
11 accepting electronic forms of those. Is that not correct,  
12 Randy?

13 MR. ELLISTON: That's correct.

14 MR. WALKER: So I'm sure we can do it with  
15 permits also. Thank you for bringing it to our attention.

16 MR. HURST: Thank you.

17 MR. WALKER: Karen, do you want to address this  
18 now or do you want to wait till later?

19 MS. PHILLIPS: (Speaking from audience.) I'd  
20 prefer to wait. Thank you.

21 MR. WALKER: Okay. Let's move to agenda item  
22 2, Bill Harbeson, the consent agenda.

23 MR. HARBESON: Chairman, may I proceed?

24 MR. WALKER: Yes, sir.

25 MR. HARBESON: Good morning. My name is Bill

1 Harbeson. I'm the director of the Enforcement Division  
2 for the department. I'm going to be addressing you today  
3 regarding the consent agenda, which can be found starting  
4 at page 5 of your board notebooks.

5 On the agenda today are 79 agreed orders, and  
6 these are cases where the licensee and the department have  
7 reached an agreement regarding the offenses and a penalty  
8 has been paid already to the department. B is the  
9 Enforcement NOVs; these are also agreed orders but for  
10 minor offenses, and there's 37 of those on the agenda  
11 today. There are 16 enforcement motions for dismissal.  
12 These are cases that were filed but because of various  
13 reasons, the department is now dismissing the action and  
14 not going forward.

15 On item D, there are nine Lemon Law settlements  
16 and dismissals. These are cases filed either under the  
17 warranty performance or the Lemon Law, the purchase  
18 statutes, and because a settlement has been reached  
19 between the manufacturer and the consumer, the case is now  
20 being placed before you to be dismissed. And three cases  
21 where franchise cases were filed and now the parties are  
22 seeking to have those cases dismissed.

23 So I am today asking for an action by the board  
24 to approve these consent agenda items.

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

1 2.A, items 1 through 79, B.1 through 37, C.1 through 16,  
2 D.1 through 9, and E.1 through 3.

3 MR. INGRAM: Second.

4 MR. WALKER: So we have a motion by Board  
5 Member Rodriguez, we have a second by Blake. Any  
6 discussion?

7 (No response.)

8 MR. WALKER: All in favor signify by saying aye  
9 and raising your right hand.

10 (A show of hands.)

11 MR. WALKER: All opposed same sign.

12 (No response.)

13 MR. WALKER: The motion carries unanimously.

14 Let's move to agenda item number -- I guess we  
15 covered all of 2, did we not, Bill?

16 MR. HARBESON: Yes, sir.

17 MR. WALKER: Let's move to agenda item number  
18 3.A.

19 MR. HARBESON: Again, my name is Bill Harbeson,  
20 the director of the Enforcement Division here at the  
21 department.

22 Before you today are 19 enforcement motions for  
23 disposition. These are default cases where after notice  
24 and appearance at the State Office of Administrative  
25 Hearings, staff is seeking a default order from you

1 because of the fact that either side did not appear at  
2 either SOAH or otherwise engage us in the case. So there  
3 are 19 of these and we're asking the board action to  
4 approve these 19 default proceedings.

5 MR. RODRIGUEZ: So moved, Mr. Chairman, 1  
6 through 19.

7 MR. RUSH: Second.

8 MR. WALKER: We have a motion by Board Member  
9 Rodriguez and a second by Board Member Marvin Rush. Any  
10 discussion?

11 (No response.)

12 MR. WALKER: All in favor signify by saying aye  
13 and raising your right hand.

14 (A show of hands.)

15 MR. WALKER: The motion carries unanimously.

16 MR. WALKER: Let's go to item 3.B, a warranty  
17 performance proposal for decision under Occupations Code  
18 2301. We have Mr. Gladney coming forth.

19 MR. GLADNEY: Good morning. For the record,  
20 Mark Gladney, Lemon Law Section.

21 This is in your board book at page 90, Owens v.  
22 Ford Motor Company. Right now we do not have any notice  
23 that any of the parties wish to address the board at this  
24 time on this case.

25 Complainant Owens complained of vibration noise

1 issues while driving a used 2010 Ford Focus purchased on  
2 January 13 of last year. The vehicle at purchase had  
3 slightly over 9,300 miles. There was a service warranty  
4 for three years, 36,000 miles, however, the complainant  
5 also purchased an extended service plan for six years,  
6 72,000 miles. The vehicle was brought to the dealer for  
7 the vibration issues five times from August 27 of '12 to  
8 January 15 of '13. Ford performed servicing to address  
9 the vibration issues, with apparently no success until the  
10 last repair. The last test of the vehicle was on March 7  
11 of '13. No further vibration issues were reported at that  
12 time.

13 The hearing was held approximately one month  
14 later on April 5 of 2013. While there was no evidence  
15 apparent of a current defect on the vehicle at the time of  
16 the hearing, the ALJ still issued an order of repair.  
17 Staff recommends denial of repair relief under Government  
18 Code 2001.058(e)(1), and the reason for that is that the  
19 ALJ did not properly apply the applicable law in the case  
20 or adhere to past precedent by the agency.

21 The applicable statute, 2301.204 of the  
22 Occupations Code does not allow for preemptive repairs.  
23 The crux of 204 relief is the proof of existence of a  
24 current defect at the time of a hearing. This is the  
25 burden of proof that's borne by every complainant, and

1 precedent has been established by this board in past  
2 cases, in the Curian v. BMW case, Latin v. Nissan, and  
3 most recently the Aldridge case that you heard back in  
4 June. The evidence did not bear out the existence of a  
5 defect at the time of the hearing, it bore out the  
6 existence of a current defect that had been apparently  
7 serviced by Ford and was tested less than one month before  
8 the hearing and shown that the vehicle vibration issues  
9 were within the normal range under the warranty.

10 With no apparent issue of defect, it is the  
11 opinion of staff that no relief can be issued or verified  
12 without evidence of same. The PFD is recommending repair  
13 relief for a defect not shown to currently exist at the  
14 time of the hearing and impose a duty on the respondent  
15 that it would otherwise have under the existing warranty  
16 anyway. So staff respectfully requests adoption of the  
17 proposed order that's currently in your packet.

18 MR. BARNWELL: It says ALJ recommends  
19 dismissal. Do you mean staff?

20 MR. GLADNEY: Staff.

21 MR. BARNWELL: I move that we accept the staff  
22 recommendation to dismiss.

23 MR. RODRIGUEZ: Second.

24 MR. WALKER: We have a motion by Mr. Barnwell  
25 to accept the recommendation of staff, and we have a

1 second by Mr. Slovacek. Any discussion? I have some  
2 questions.

3 Mark, the ALJ has made a determination that  
4 they wanted to grant relief. What relief is the ALJ  
5 granting?

6 MR. GLADNEY: That's a good question. Under  
7 2301.204, the ALJ can only grant repair relief. The  
8 problem here is repair what. If you'll note in the PFD,  
9 there is no real finding of fact that states that there is  
10 an existing defect, in this case, the vibration issues.

11 As I stated previously, less than a month  
12 before the hearing they put the vehicle on a Vibronics  
13 vibration analyzer and tested all the different areas  
14 where vibration was previously known to have existed.  
15 When they put it on the Vibronics, the areas complained of  
16 tested all within the normal operating parameters for the  
17 vehicle. They even tested it against another 2010 Ford  
18 Focus that they had on the lot. That particular vehicle  
19 tested worse than the complainant's vehicle. And if  
20 you'll note on page 4 of the PFD, the complaints even  
21 acknowledged that the engine vibration was better.

22 So it's kind of difficult to issue an order  
23 saying repair when the evidence that was presented at the  
24 hearing doesn't say what the problem is. In fact, it  
25 doesn't show a problem.



1 MR. WALKER: Well, you're painting a picture  
2 differently than the picture I read when I read the case,  
3 and I read this case probably two times last night to be  
4 prepared for this. The vehicle has been to the dealership  
5 six times with a vibration problem, and to sit and say  
6 that they didn't find anything wrong when they put a  
7 vibrometer -- I guess is what it's called -- on to the  
8 engine to compare it, they did find five times that the  
9 car had a problem: the harmonic balancer was out, the  
10 engine mounts were loose, the engine mounts were worn out,  
11 the gravel shield on the casing in there had gotten debris  
12 in there and it was a defect that they have asked that  
13 they change those out, it was under a warranty recall  
14 issue.

15 So the car, the way I read it, had been six  
16 times in about a little over a year's time with a  
17 continual vibrating problem. The last time they fixed the  
18 car, granted the vibrometer says okay, it's now fixed and  
19 the problem is resolved, but that's not the interpretation  
20 of what I read that the ALJ said. The ALJ was coming back  
21 and saying to Ford that hey, you've fixed this car six  
22 times continually for the same problem and you need to  
23 continue to fix the car until we get this right.

24 Now, what I understand you to say is that by  
25 law that we have the authority -- we don't have the

1 authority to tell Ford to go forward and continually fix  
2 the car but that we can only fix the car based on each  
3 particular request. So every time that there's going to  
4 be another problem, you're saying that the consumer has to  
5 come back or the complainant has to come back to this  
6 board and make a request if Ford does not continually fix  
7 the problem. Is that correct?

8 MR. GLADNEY: I'm not necessarily agreeing with  
9 your interpretation of that.

10 MR. WALKER: Okay. Help me.

11 MR. GLADNEY: When a manufacturer sells a  
12 vehicle and warrants a vehicle, the vehicle is expected to  
13 operate in a certain manner, certainly within the  
14 parameters of the warranty and certainly in a way a  
15 consumer would expect a vehicle to operate. Now, it is  
16 true that here was a number of repairs made, and you  
17 recounted the repairs that were made accurately.

18 The issue there, though, is at the hearing,  
19 were these issues addressed or were they not, did the  
20 complainant make a prima facie case and prove by a  
21 preponderance of the evidence that this vibration issue  
22 existed and it constituted a defect in that it caused the  
23 vehicle to operate outside of the normal parameters of the  
24 vehicle warranty.

25 By the testimony that was given during the

1 hearing and the Ford service engineer -- I think his name  
2 was Mr. Hochgraber -- on page 4 of the POD, he is the one  
3 who conducted the vibronics test.

4 MR. WALKER: Who is Hochgraber? I saw that  
5 name and I could never figure out who he actually is.

6 MR. GLADNEY: I understood him to be the Ford  
7 service engineer or the subject matter expert that they  
8 brought in to testify. So it was his testimony that the  
9 vehicle was operating within the norms.

10 Now, yes, they had to do a lot of work to get  
11 it to that point.

12 MR. WALKER: Six times.

13 MR. GLADNEY: Replacing the motor mounts, the  
14 service shields, there was even some axle work done,  
15 bearings were replaced, so there was a lot of work done.  
16 But by the time this vehicle got to hearing, the  
17 complainant were unable to show that it was operating  
18 outside of its warranty parameters.

19 MR. WALKER: And that's because they came to us  
20 with a 2301.201 request, which is a Lemon Law request.

21 MR. GLADNEY: This is a warranty repair case.

22 MR. WALKER: The initial application, though,  
23 was for a Lemon Law request.

24 MR. GLADNEY: Right, and we get that a lot. We  
25 allow people to file 204s when they're not eligible. This

1 was a used vehicle so they wouldn't be eligible for Lemon  
2 Law.

3 MR. WALKER: A motor with 9,000 miles on it.  
4 So let me ask you this question, and I know we can  
5 speculate all day long, but had the car been a brand new  
6 car and they had brought this before us as a 2301.601?

7 MR. GLADNEY: 604.

8 MR. WALKER: A 604, what would have been the 1  
9 likelihood that we would have granted a Lemon Law relief  
10 on it?

11 MR. GLADNEY: I have seen cases where we have  
12 had multiple repair attempts made and we have granted a  
13 repurchase, so in this case it's quite a possible that a  
14 repurchase might have been done in this case, but  
15 unfortunately, as an agency, we are a creature of the  
16 legislature, we are limited by the powers that the  
17 legislature gives us, so 204 says repair only, 604 would  
18 allow for either repair, repurchase or replacement.

19 MS. RYAN: Is the car still under factory  
20 warranty?

21 MR. GLADNEY: This car is no longer under the  
22 original factory warranty, but they purchased -- and they  
23 were wise to do this -- the Ford ESP Premium Care plan,  
24 which gives them an additional six years or 72,000 miles.

25 Now, also remember they can still come back and

1 file another 204 if there are other problems, and this has  
2 been a bone of contention, I think, with the board in the  
3 past, we have had people who had a previous 204 and maybe  
4 say a year or two later, even after the warranty has  
5 expired, they come back with the same problem and we still  
6 grant them repair relief. So if the Owens come back with  
7 this same exact problem again, they could petition for 204  
8 relief pretty much ad infinitum, as long as they own the  
9 vehicle.

10 MS. RYAN: When the ALJ on the finding of fact  
11 36 through 38 states that the defect is covered by Ford's  
12 warranty, and then 38, an order requiring Ford to perform  
13 repair work or take action to comply with its warranty  
14 obligations would address complainant's concern that the  
15 engine will again unbalance and cause damage, if it's not  
16 under warranty, what order would they be referencing, the  
17 extended warranty order, or are they suggesting that the  
18 warranty be extended?

19 MR. GLADNEY: The way I read this particular  
20 finding of fact -- and it's interesting that you saw this  
21 because I saw this as well -- I think what the ALJ is  
22 referring to is that this order, the POD that the ALJ is  
23 presenting, this is his basis for actually issuing this  
24 order. It's kind of like an insurance policy but it's not  
25 a necessary insurance policy because they have extended

1 care, not to mention the fact that since they reported  
2 this defect prior to the expiration of the original  
3 warranty, they're still going to get 204 relief for these  
4 problems if they return again.

5 And the other interesting thing about this  
6 finding of fact is if you'll notice, sort of reading  
7 toward the middle where it says in the second line:  
8 warranty obligations would address the complainant's  
9 concern that the engine will again unbalance and cause  
10 damage. It's clear that the judge, one, was looking at  
11 this as what could happen in the future, and we don't  
12 necessarily issue orders that way. They're just trying to  
13 head off what they think may happen by virtue of the  
14 complainant saying we're fearful that his could happen  
15 again.

16 MS. RYAN: They have recommended in the past  
17 when an extended service contract wasn't in place that one  
18 get put in place by the manufacturer.

19 MR. GLADNEY: Pardon?

20 MS. RYAN: They have made recommendations in  
21 the past where there was not an extended service contract  
22 that the manufacturer put one in place to protect against  
23 anything. I think I've seen those. Correct?

24 MR. GLADNEY: Not necessarily because the way  
25 204 operates, as I said before, if they report a problem

1 before expiration of the warranty and let's just say that  
2 the problem is addressed but it comes back again after the  
3 expiration, they can still file the 204 and they can get  
4 relief for that particular situation.

5 MS. RYAN: So because they have a warranty, if  
6 it comes back, they can re-file

7 MR. GLADNEY: Yes. And they could also get  
8 relief under the extended warranty plan that they have  
9 right now, so they are not without remedy.

10 MS. RYAN: So even if it's covered under the  
11 extended warranty plan, they could still file a complaint,  
12 though. Correct?

13 MR. GLADNEY: For that particular situation,  
14 yes, they could re-file if they wanted to pretty much for  
15 as many times as they wanted to.

16 MS. RYAN: It could be to be reimbursed for  
17 deductibles or any out-of-pocket expense that they may  
18 have even though had it.

19 MR. GLADNEY: That's what this board has done  
20 in the past. In fact, if you'll remember back in May we  
21 had the Novosad case, and that was the second time that  
22 those parties were back here on that case on the same  
23 exact issues, and that's a 2007 or 2008 Ford truck. If  
24 they were to experience the same problems again, they  
25 could very well come back again and we'd be having this

1 discussion all over again.

2 MS. RYAN: So is it fair to say that since it's  
3 not under warranty, the order from the ALJ is very hard to  
4 enforce because there's no warranty to require them to  
5 comply with?

6 MR. GLADNEY: Well, the problem with this order  
7 is that the judge appears to be basing it on insufficient  
8 evidence in here or a finding of fact that states that  
9 this defect exists currently at the time of the hearing.

10 MR. SLOVACEK: There's no repair that can be  
11 made.

12 MR. WALKER: They fixed it prior to the  
13 hearing.

14 MR. SLOVACEK: At this point there's no repair  
15 that could be made.

16 MR. GLADNEY: At this point it appears to be  
17 fixed, it is operating within the warranty parameters of  
18 Ford's warranty.

19 MR. PALACIOS: Mr. Gladney, it appears to be  
20 that the complainant still has two levels of relief here:  
21 he has the extended warranty, which would cover whatever  
22 defect, the prospective defect going forward, and then he  
23 still has relief under 204. What the ALJ is asking for  
24 now is respective relief at a third level, I guess, in the  
25 event that these other two, which, again, is not in



1 accordance with the law, as I understand it.

2 MR. GLADNEY: Correct.

3 MR. RODRIGUEZ: Call the question, Mr.  
4 Chairman.

5 MR. WALKER: We have a call for the question.  
6 So we have a motion and we have a second on the table,  
7 we've had discussion. All in favor signify by raising  
8 your right hand.

9 (A show of hands: Barnwell, Ingram, Palacios,  
10 Rodriguez, Rush, Ryan, Slovacek.)

11 MR. WALKER: All opposed same sign.

12 (A show of hands: Walker.)

13 MR. WALKER: The motion carries seven to one,  
14 with Chairman Walker voting against.

15 Let's go to item 4.A. Mr. Harbeson, you're  
16 still there.

17 MR. HARBESON: Yes, sir. My name is Bill  
18 Harbeson. I'm the director of the Motor Vehicle Division  
19 and we have before you, first of all, item 4.A. found at  
20 page 103 of your book, and this is a matter for vote by  
21 you today to adopt a rule which has previously been before  
22 you, was published and we received comments from TADA and  
23 TIADA, both in support of the rule.

24 And I'll be very brief here. What the rule  
25 does is for dealers when the internet goes down, we have

1 what's called an internet-down tag, the allocation of  
2 those tags is governed by this rule. At the time we went  
3 in and looked at the rule and looked what the system was  
4 actually doing, we were seeing that there was an  
5 insufficient number of these tags available for dealers  
6 when the system went down. So the rule essentially  
7 increase that allotment from five for a new dealer to  
8 thirty across the board. This is an essentially an item  
9 that we feel is very important to provide dealers enough  
10 of these internet-down tags so that if there's an  
11 internet-down situation, either because of our problem or  
12 their problem with the internet, they're going to be able  
13 to continue to sell cars at their dealership by using  
14 these tags.

15 So today I'm asking for an actual vote to adopt  
16 the rule as it has been published and commented on.

17 MR. BARNWELL: Mr. Chairman, I move that we  
18 adopt the rule on the internet-down tag numbers, the  
19 increase in those numbers.

20 MR. INGRAM: Second.

21 MR. WALKER: We have a motion by Mr. Barnwell,  
22 we have a second by Mr. Ingram. Any discussion?

23 (No response.)

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

1 (A show of hands.)

2 MR. WALKER: The motion carries unanimously.

3 Let's move to item 4.B. Mr. Harbeson, you're  
4 still on the table.

5 MR. HARBESON: The rule before you is to  
6 delegate board authority in file order situations, and to  
7 best understand it, I divided the three categories of  
8 orders. The first is what we call the consent agenda,  
9 which we just went through, and these are the agreed  
10 orders, the settlements where the parties have gotten  
11 together, money has been paid, and those orders all have  
12 to come in front of you. With House Bill 2741,  
13 approximately half of those orders, prior to September 1,  
14 were signed by the Motor Vehicle Division director. So  
15 the effect of 2741 is that all of those will come before  
16 the board now, so we're actually talking about twice as  
17 many of these consent orders as you're seeing today.

18 So for instance, in the meeting today you heard  
19 144 cases, as of yesterday we have 109 already ready to go  
20 next month if there's a meeting next month, and if there's  
21 not a meeting next month, that number will continue to  
22 grow, so we estimate you're possibly going to be seeing  
23 twice as many of the consent orders as you are now going  
24 forward into the future.

25 MR. RODRIGUEZ: Let me just ask if I've got

1 this right. Bill, you're asking permission to post a rule  
2 proposal that would delegate final order authority to the  
3 executive director.

4 MR. HARBESON: No, sir.

5 MR. RODRIGUEZ: Then tell me what you're  
6 asking.

7 MR. HARBESON: You're right up to where the  
8 order authority would be going. The statute provides  
9 several options on where the order authority will be  
10 delegated. The executive director is one of those; the  
11 other options are the division directors.

12 MR. RODRIGUEZ: And so what is it that you're  
13 asking?

14 MR. HARBESON: The order that is before you  
15 for, as you said, posting, would be directing the Motor  
16 Vehicle Division director to sign the orders under this  
17 rule.

18 MR. RODRIGUEZ: Just so that we're clear,  
19 before I relinquish this point, these are agreed orders,  
20 enforcement motions to dismiss, settlement dismissals, and  
21 franchise case dismissals, so these are agreed orders or  
22 dismissals only.

23 MR. HARBESON: Yes, sir. And that's why I've  
24 divided them in three areas because the rule actually  
25 discusses three types. This is the first. The second

1 category of orders which the rule addresses would be the  
2 default cases.

3 MR. RODRIGUEZ: And the third?

4 MR. HARBESON: And the third would be Lemon Law  
5 and warranty performance cases. The case you just heard  
6 from Mr. Gladney plus the cases that I heard before  
7 September 1, which are the Lemon Law cases, the repurchase  
8 cases.

9 MR. RODRIGUEZ: So the question before us is  
10 whether or not we want to post a rule that would defer  
11 final authority to the division director for the default  
12 or agreed, the second group is what?

13 MR. HARBESON: The second group would be the  
14 default cases.

15 MR. RODRIGUEZ: Agreed orders or dismissals,  
16 default and Lemon Law cases.

17 MR. HARBESON: Yes, sir, the third category  
18 being the Lemon Law and warranty performance cases.

19 MR. WALKER: Can in interject here for just a  
20 second? Victor, what's happening is that we have been  
21 hearing most of these, right now the board has been  
22 hearing these. Under the new law that just passed, that  
23 authority is going to be transferred from the board over  
24 to the new presiding SOAH judge that we are going to have  
25 in-house. Is that not correct, Bill?

1 MR. HARBESON: That's on this third category.

2 Yes, sir.

3 MR. WALKER: And so when we transfer these all  
4 on January 1, all this is moot because we're not going to  
5 be doing any of this anyway, it's all going to be going  
6 over to our in-house counsel judge. Correct?

7 MR. HARBESON: For this category only. Yes,  
8 sir.

9 MR. WALKER: For just Lemon Law.

10 MR. HARBESON: Just Lemon Law and warranty  
11 performance.

12 MR. WALKER: But defaults is going to stay  
13 where they are currently?

14 MR. HARBESON: Defaults, going forward, and the  
15 consent agenda, the settlements, going forward will all be  
16 with the board or its delegate.

17 MR. RODRIGUEZ: And that's why I was trying to  
18 make clear that these are agreed orders, motions to  
19 dismiss, default cases and Lemon Law cases. The question  
20 is do we want to defer that authority to someone, and if  
21 so, the division director or the executive director, and  
22 that's basically the question.

23 MR. WALKER: And they're asking permission to  
24 take it to the division director.

25 MR. SLOVACEK: The alternative is wait for a

1 board meeting 30 days or 60 days or whatever, so this just  
2 speeds up the process.

3 MR. HARBESON: It does, sir.

4 MR. RODRIGUEZ: And it's rule posting only at  
5 this time, but it gives us an opportunity right now, if  
6 this board is of a mind and says we're okay with the  
7 division director doing this, or no, we'd rather have the  
8 ED do this, that's basically the proposition. I was just  
9 trying to lay it out a little bit clearer.

10 MR. HARBESON: And you're exactly right. We're  
11 at the very start here, we're just putting it out on the  
12 table for your comment and comment of the public.

13 MR. RODRIGUEZ: Even if we post it as it is  
14 right now, we could always change it to an ED designation  
15 when we finally adopt it.

16 MS. RYAN: Also, if there's feedback that  
17 there's things we didn't realize, that feedback would come  
18 in and we would make that decision when it comes back to  
19 the board.

20 MR. WALKER: So your comment, Bill, to the  
21 board in the packet was that there's a tremendous amount  
22 of time savings that we'll relieve from staff. I mean, it  
23 doesn't take -- and you made comment in your deal that it  
24 takes Victor Rodriguez to say I so move, and for Marvin to  
25 second that, but how much time is being consumed and paper

1 or trees torn down if we want to go there -- but we're  
2 going to get away from trees, I think, when we go to these  
3 e-pads -- but tell me about the savings that it's going to  
4 realize the agency.

5 MR. HARBESON: There's a tremendous amount of  
6 time saved by my staff and the Office of General Counsel's  
7 staff to get all of this together and posted. I think  
8 more importantly, delay in justice sometimes is not good,  
9 and particularly when you're dealing with settlements. We  
10 have calls saying where's this order.

11 MR. RODRIGUEZ: And that's really what drives  
12 this is because these are already settled matters, all  
13 we're doing is holding them up. These are agreed orders  
14 or we've agreed to dismiss or they are default cases,  
15 that's the only type of cases being caught in this right  
16 here, so there's no real question, all questions are moot,  
17 basically, by the time they come to us.

18 MR. WALKER: But my question is going to be the  
19 current status quo went away on September 1. Is that not  
20 correct?

21 MR. HARBESON: Yes, sir. The status quo  
22 changed in that half of what happens in these areas was  
23 handled by the Motor Vehicle Division director and they  
24 lost that authority as of September 1, so we're talking  
25 about doubling the cases here.



1 MR. WALKER: But let's go the next step  
2 forward. So next month the division director does not  
3 have the ability to do that and it has to go to the board  
4 next month for those determinations until this rule is  
5 posted if we decide to post it, and until after it comes  
6 back for a vote by the board at the next scheduled board  
7 meeting, so we're looking at at least 60 days that the  
8 board is going to have to move forward and do this stuff  
9 independent of itself. Is that not correct?

10 MR. HARBESON: Probably the next two board  
11 meetings you're going to see this increased number. I  
12 signed up until September 1 and it was sort of get them  
13 all in here today so we can minimize the problem.

14 MR. RODRIGUEZ: What he's saying is that in the  
15 meantime, someone that basically has an agreed upon  
16 situation is having to wait for us to meet two months to  
17 finalize it, and what they want to do is get away from  
18 that, basically.

19 MR. HARBESON: That's exactly right. And I put  
20 this up on the slide regarding the consents -- I mean in  
21 the default cases. In a lot of these cases we're dealing  
22 with bad guys and we're trying to get them out of the  
23 business. The quicker we can get them off the eTag system  
24 and get them out of the auction where they're competing  
25 with our licensed good dealers and buying cars and putting

1       them on the street, the better.

2                       So again, I want to make sure everybody  
3 understands that this is the different part. Everything  
4 else is going forward forever, the warranty and Lemon Law  
5 cases is a short-term fix for those cases filed before  
6 January 1, and those cases filed before January 1 will  
7 continue on, we estimate, into mid 2014.

8                       MR. INGRAM: So after January 1, if it was  
9 filed after January 1, we're not going to see the warranty  
10 and the Lemon Laws anyway.

11                      MR. HARBESON: Exactly right.

12                      MR. INGRAM: So that's only a modest change  
13 before what's going to happen automatically.

14                      MR. HARBESON: Right. We estimate this will  
15 affect four to five cases a month after the effective date  
16 of the rule, which would be January, so for half a year  
17 you would not hear four cases if you do this. That's why  
18 I divided it up. You could take one, two or three or a  
19 combination of them. The biggest time-saver for us is one  
20 and two, of course.

21                      MR. WALKER: So how many cases do you  
22 anticipate, Lemon Law cases that we've not been hearing  
23 that the board is going to have to hear in the next 60 to  
24 90 days?

25                      MR. HARBESON: We look at two a month coming

1 out of the Lemon Law which you do not hear now.

2 MR. WALKER: And so for the next two months  
3 we're going to have to listen to those cases in order to  
4 grant relief?

5 MR. HARBESON: No. You will not listen to the  
6 case. A PFD will come to you just like in the warranty  
7 performance cases.

8 MR. RODRIGUEZ: The percentage is likely to  
9 double without this is what he's saying.

10 MR. HARBESON: All of this is going to double.  
11 The most significant part of this, Board Member Rodriguez  
12 is correct in pointing out, the consent agenda is going to  
13 look a lot bigger.

14 MR. RODRIGUEZ: The only point of discussion,  
15 Mr. Chairman, that I have is they're asking for division  
16 director authority. I'd like to see this be the executive  
17 director that signs off on these.

18 MR. SLOVACEK: Doesn't that just add to her  
19 workload unnecessarily?

20 MR. RODRIGUEZ: I don't mind that.

21 (General laughter.)

22 MR. HARBESON: If I could comment on that. The  
23 Motor Vehicle Division director licenses these people, so  
24 we thought that might be the logical choice, and the Motor  
25 Vehicle Division direct has been hearing half of these up

1 to September 1.

2 MR. SLOVACEK: Why don't we get the chairman to  
3 do it.

4 MR. HARBESON: The statute provides that as an  
5 option.

6 MR. INGRAM: I really believe that the Motor  
7 Vehicle Division director should be the person. They're  
8 the person that's going to be most in the know about these  
9 cases.

10 MR. WALKER: I'm with you, Blake, on that.

11 MR. RODRIGUEZ: I'm okay with it.

12 MR. INGRAM: I would like to move that we go  
13 ahead and publish the proposals as stated.

14 MR. BARNWELL: I second.

15 MR. RUSH: No. I second.

16 MR. WALKER: You lost, Rush.

17 We have a proposal by Board Member Ingram to  
18 accept the proposed rulemaking by the agency, we have a  
19 second by Mr. Barnwell. Any discussion? I think we've  
20 pretty well vetted it. All in favor signify by raising  
21 your right hand.

22 (A show of hands.)

23 MR. WALKER: The motion carries unanimously.

24 Let's move to item 4.B.2.

25 MR. RODRIGUEZ: I thought you were passing on

1 that.

2 MR. WALKER: As chairman, I'm going to pass on  
3 this item 4.B.2 and refer this to the Motor Vehicle  
4 Advisory Committee. Mr. Ingram, I'd like you to take this  
5 into your committee, look this over, prior to us vetting  
6 it before the board, if you don't mind. This will allow,  
7 also, greater stakeholder input into an important and  
8 complex issue that's facing us.

9 Okay. Let's go to item 4.B.3, Chapter 215,  
10 Motor Vehicle Distribution. Mr. Harbeson.

11 MR. HARBESON: Yes, sir. This matter is found  
12 at 142 of your books. We're before you today asking for  
13 permission to publish for public comment this rule.

14 With House Bill 2741, one of the items that we  
15 requested to be changed and the legislature did change was  
16 in the area of enforcement against motor vehicle dealers,  
17 the statute had said that we could not take action until a  
18 licensee actually had a hearing, and that, in most cases,  
19 is not a problem for us because we would issue the notice,  
20 the licensee would contact us, we would negotiate a  
21 settlement of the case, or if a settlement couldn't be  
22 reached, we'd proceed to hearing.

23 But in the default cases it created a rather  
24 absurd situation where once a month we'd proceed 20 or 30  
25 cases down to SOAH, on the hearing date stood in front of

1 the judge, said we are here, we are ready to go. The  
2 judge would ask is anybody else here, and typically nobody  
3 else was there. They then would dismiss the case, return  
4 it to us. We then would bring it back here, put it on  
5 your agenda, and a month and a half or two months later  
6 we'd actually hear the case.

7 So when the legislature met, they changed that  
8 hearing section to say that what a licensee was entitled  
9 to was an opportunity for hearing. And so what this rule  
10 does, it changes our procedures to provide that we still  
11 provide notice to the licensee of the alleged violation,  
12 we still cite them to the proper code section that was  
13 alleged to be violated, we still advise them of their  
14 right to have a hearing, and we still provide them an  
15 opportunity to try to settle the case, which typically 90-  
16 something percent of our cases are settled after we  
17 communicate with the licensee.

18 What this rule changes is that if within the  
19 26-day period provided by the rule and the letter there is  
20 not a response, an order may then be issued. They still  
21 then have an opportunity to request a motion for rehearing  
22 and they still have the same appeal rights that they have  
23 under the AP today of being able to go to district court  
24 after that order has been issued.

25 What this rule does is brings our automotive

1 enforcement actions in line with the procedures that we  
2 use in salvage, motor carrier and oversize/overweight  
3 cases. Those three all have this same 26-day notice,  
4 issuance of final order thereafter provision. And as we  
5 go forward and look at a consolidated or unified case  
6 management system, this is an important element of that.

7 So if you have any questions about the rule and  
8 what it does and how it changes how we currently do  
9 business, I would be glad to answer those.

10 MR. PALACIOS: Mr. Harbeson, how much time do  
11 they have to appeal the order?

12 MR. HARBESON: Appeal is governed by the AP,  
13 and an appeal, again, is after, but the motion for  
14 rehearing -- is that what you're talking about -- that  
15 would come to us.

16 MR. PALACIOS: I guess once the decision is  
17 made.

18 MR. HARBESON: Twenty days.

19 MR. PALACIOS: Twenty days.

20 MR. HARBESON: And that's currently the  
21 situation.

22 MR. PALACIOS: So that would stay intact, that  
23 doesn't change.

24 MR. HARBESON: The only thing that's changing  
25 is the time period to get an order out is going to change.

1 Under this statute, on the 27th day an order could be  
2 issued after the case is initiated. Currently we have to  
3 provide them notice, set a hearing, go to SOAH -- this is  
4 in a default case, of course -- and then bring it back  
5 here, so we're talking about taking in the default area  
6 maybe three to four months off the duration for a case  
7 where somebody is not even participating.

8 In the case where somebody is participating and  
9 they respond to the letter, nothing changes. We want a  
10 hearing, we set the hearing, we go to SOAH and try the  
11 case. So what we're doing, essentially, the one group  
12 that this affects the most is the people who are not  
13 responding to us. And as I said earlier, that's really  
14 the area where I get the most concern about taking quick  
15 action and getting them off the books and out of our  
16 systems.

17 MR. INGRAM: I move that we publish the  
18 proposed rules as stated.

19 MR. RUSH: Second.

20 MR. WALKER: We have a motion by Board Member  
21 Ingram, we have a second by Board Member Rush. Any  
22 discussion?

23 (No response.)

24 MR. WALKER: All in favor signify by raising  
25 your right hand.



1 (A show of hands.)

2 MR. WALKER: The motion carries unanimously.

3 Ms. Phillips, I apologize that I skipped over  
4 you. I know you wanted to make some public comments on  
5 4.B.2.

6 MS. PHILLIPS: (Speaking from audience.) In  
7 light of your sending it to a subcommittee, I'll just hold  
8 off.

9 MR. WALKER: Thank you. And we'd like your  
10 comments for that subcommittee.

11 MS. PHILLIPS: (Speaking from audience.) All  
12 right. Thank you. I'll be proud to do that.

13 MR. WALKER: Thank you very much.

14 Let's move to item next on the agenda 4.B.4.  
15 Mr. Elliston, we have a license plate again.

16 MR. ELLISTON: Mr. Chairman, good morning,  
17 Chairman and members. For the record, my name is Randy  
18 Elliston. I'm the director of the Vehicle Titles and  
19 Registration Division for the agency.

20 Today I have before you some proposed changes  
21 or amendments to our rules in Chapter 217. After the  
22 presentation we'll be asking you to allow us to propose  
23 these for public comment only at this point, not for final  
24 adoption. Also, you'll find these on page 155 of your  
25 board book. After the presentation, we'll be asking you

1 to allow us to propose these for public comment only at  
2 this point, not for final adoption. Also, you'll find  
3 these on page 155 of your board book.

4 All of these, there's about five sections or  
5 parts of 217 that we'll be talking about today, all of  
6 these are as a result of change in legislation, which most  
7 of it's cleanup, we're talking about changes in definition  
8 or language in those areas.

9 The first section is 217.21, which is in  
10 reference to carry capacity. It deletes the term in tons  
11 and replaces with maximum safe load that a commercial  
12 vehicle may carry as defined by the manufacturer. That's  
13 typically referred to as GVWR, or Gross Vehicle Weight  
14 Rating. These change are as a result of the legislation  
15 that changed the definitions and we no longer use tons in  
16 relation to vehicle weight but it's actually the actual  
17 weight, or GVWR, of the vehicle.

18 These changes were made, Texas was one of the  
19 only, if not the only one of the last holdouts using  
20 tonnage. It actually required manufacturers to put that  
21 on their MCOs, which made it difficult for them because we  
22 were the only ones that required that, so now it's just  
23 the weight that's on there. So that's all that does is  
24 makes that change in the definition.

25 Under Section 217.23, it changes the language

1 for calculating additional weight permit fees from tonnage  
2 to gross vehicle weight, so again, it's just a change to  
3 remove tons and change it to GVWR. It also changes  
4 exemption language relating to semi-trailers, all it does  
5 it changes it from registered to currently registered in  
6 the definition.

7 It also denotes authorize the return of unused  
8 temporary registration permits to the county tax assessor-  
9 collector's office, as well as to the department, to  
10 increase customer convenience. Today if a person gets a  
11 temporary permit for a vehicle, say it's a 30-day permit,  
12 15 days later they sell that vehicle or move that vehicle  
13 out of their inventory, they're required to return that  
14 permit to us. Since we have 16 locations in Texas,  
15 sometimes that creates a little bit of burden for them.  
16 this way they can take it to the local tax office so it  
17 will make it easier to return those permits.

18 The next section is 217.24, which deletes  
19 basically a big part of that section, having to do with  
20 color and renewal requirements regarding windshield  
21 identification placards for disabled placards. It removes  
22 that section because it's duplicative of the statute so  
23 there's not any need to have that in there so we're just  
24 removing that piece.

25 It also permits disabled person license plates

1 to be transferred to qualified recipients. Today a  
2 disabled person has the license plate on their car, if  
3 they sell the vehicle, they take the license plate off,  
4 they have to get a new plate. This will allow them, if  
5 they take their license plate off, they can go to the  
6 county tax office, as long as they can verify that person  
7 is the one that owns that license plate, then they can  
8 just add it to their new vehicle.

9 It also allows law enforcement who seize  
10 disabled placards, the hanging placards that you put on  
11 the rearview mirror. Today if a law enforcement officer  
12 seizes one because they're being used inappropriately,  
13 they're required to return those back to the agency. We  
14 keep those in a file here, which becomes very burdensome.

15 We hold those for a period of time so if the person goes  
16 back in to the county tax office and says I need my  
17 placard back, typically where we see these is some other  
18 person has used that placard, maybe the grandson, the  
19 daughter, whatever uses grandmother's car or uses her  
20 placard, hangs it on the deal and gets caught, and when  
21 they do, law enforcement seizes that.

22 This will allow for law enforcement to  
23 actually, instead of returning those to us, they will just  
24 destroy them locally, provide us a notice by either email,  
25 fax or in the mail, so that we can mark the record, and

1 then they will destroy those locally.

2 Section 217.26 adds a number of license plates  
3 that were legislatively mandated. The Defense Superior  
4 Service Medal, Air Medal, Air Medal with Valor, and  
5 Enduring Freedom Afghanistan, and Retired Armed Forces  
6 military specialty license plates to our inventory. It  
7 also adds that surviving spouses of disabled veterans are  
8 authorized to obtain a first set of surviving spouse  
9 Disabled Veteran license plates for their own use for \$3.

10 A disabled veteran today pays \$3 for the license plate  
11 but does not pay registration. In the past, if a disabled  
12 veteran was deceased, the spouse then had to go pay full  
13 registration. This just allows them to have that license  
14 plate to continue on as long as they remain unmarried and  
15 not pay the registration on that vehicle.

16 MR. WALKER: As long as they remain unmarried  
17 you said?

18 MR. ELLISTON: Unmarried, yes, sir.

19 Section 217.29 then makes mandatory  
20 participation by a county tax assessor-collector in the  
21 online registration renewal system approved by the  
22 department. This is our IVTRS internet renewal system.  
23 The statute previously made it permissive. We had a  
24 number of counties that did not participate, but the  
25 statute changed so all counties are mandated that they

1 participate so in all 254 counties you should be able to  
2 go online and renew your registration.

3 So with that, we'd ask for your approval to  
4 post for public comment.

5 MR. RODRIGUEZ: So moved, Mr. Chairman.

6 MR. WALKER: We have a motion by Board Member  
7 Rodriguez.

8 MS. RYAN: Second.

9 MR. WALKER: Second by Ms. Ryan. Any  
10 discussion?

11 MS. RYAN: Randy, most of these are mandated.  
12 Correct?

13 MR. ELLISTON: All of these are required by  
14 statute. One exception may be the section that we're just  
15 removing because it's duplicative of the statute. We  
16 could leave that in there but it's unnecessary.

17 MR. WALKER: Randy, do you see these seized  
18 handicapped stickers?

19 MR. ELLISTON: They come into the agency here.  
20 They actually are held by our consumer relations  
21 division.

22 MR. WALKER: How often do we get them back if  
23 they have been seized by law enforcement?

24 MR. ELLISTON: Pretty frequently. Ginny, do  
25 you want to come forward and answer that?

1 MS. BOOTON: For the record, I'm Ginny Booton.  
2 I'm the director of the Consumer Relations Division.

3 Would you ask your question again, please?

4 MR. WALKER: How many law enforcement seized  
5 disabled tags do we see come back to the agency?

6 MS. BOOTON: We probably average about a  
7 hundred a month.

8 MR. WALKER: That many law enforcement seized  
9 those?

10 MS. BOOTON: We have quite a few.

11 MR. ELLISTON: Mr. Walker, I'll tell you from  
12 previous experience, many areas, and I'll just give you  
13 the State Capitol Complex as an example, where you have a  
14 lot of parking meters, people can use those to park free  
15 on those parking meters, the statute allows them to park  
16 free using one of those hanging tags. When parking is  
17 tight in an area like that, employees will frequently say,  
18 well, it's just a whole lot easier to take mother's  
19 hanging tag and I'll just park at the front of the  
20 building. So we actually have an officer assigned to kind  
21 of watch for that stuff, and after you arrest a few  
22 people -- or write them citations, I should say, and  
23 confiscate those, it begins to get known and so it keeps  
24 that down.

25 But most cities or a lot of cities and places

1 like that do have people that watch for that. And it's  
2 important, people should not use those inappropriately.

3 MR. WALKER: This is kind of just an off-the-  
4 cuff question, but I know we issue those but I think I've  
5 seen then like you can buy them at the hardware store  
6 also. Where all can you get those handicapped stickers?

7 MR. ELLISTON: Well, they're issued by the  
8 county tax office today. You should not be able to buy  
9 them at the hardware store. I'd like to know. If you see  
10 one, call me.

11 (General talking and laughter.)

12 MR. WALKER: Well, I'm curious. I'm sure  
13 somebody could make one of them. We do go to great pains,  
14 we do have some security features on those things that law  
15 enforcement certainly is aware of. The general public  
16 might look at it and say that's whatever, but they are  
17 pretty easy to see that they're counterfeited. I would  
18 think people who are working in that business know that.

19 MR. WALKER: So by and large, you think that  
20 most of the ones hanging on cars are legitimate?

21 MR. ELLISTON: I think the tags are legitimate.  
22 Now, whether they're using it illegitimately is the  
23 question. And so you frequently see people get out of  
24 cars and hang one on there and they're in better shape  
25 than I am -- no comment about that, please -- but you



1 wonder about those things.

2 MR. WALKER: We have a motion and we have a  
3 second and we've had discussion. All in favor signify by  
4 raising your right hand.

5 (A show of hands.)

6 MR. WALKER: The motion carries unanimously.  
7 We're an agreeable group today.

8 On agenda item 5.A we've got the committee  
9 updates, and the Projects and Operations Committee did not  
10 meet so we're going to pass that over, but let's go to  
11 item 2, the Finance and Audit Committee report. Raymond,  
12 do you want to report?

13 MR. PALACIOS: Yes, I'll report. The Finance  
14 and Audit Committee did meet yesterday and went over three  
15 agenda items: the internal audit plan, the operating  
16 budget, and the contract and project approval procedures.

17 The fourth item, which was the credit card fee options,  
18 was tabled due to pending litigation that we were advised  
19 could possibly affect any decisions we make on the credit  
20 card fees. That litigation, it's my understanding, is  
21 happening today. The court should render a decision, so  
22 going forward I guess we'll decide where to go with the  
23 credit card fee options once we have more clarity on  
24 whatever the results of this lawsuit are.

25 MR. WALKER: So we have a tab in here with a

1 recommendation on credit card fee proposal. We're going  
2 to can that also?

3 MR. PALACIOS: Yes, sir. We did not discuss it  
4 yesterday.

5 So with that, if we can go to Mr. Harbeson --  
6 or who is on the agenda -- Mr. Lawler.

7 MR. RODRIGUEZ: You're bringing up which agenda  
8 item?

9 MR. PALACIOS: The internal audit plan.

10 MR. WALKER: We can do that if you want to do  
11 that. Let's go ahead and do that. We're going to skip  
12 down to the internal audit plan for the year, which is  
13 5.I.

14 MR. LAWLER: Good morning, Mr. Chairman and  
15 board members. For the record, my name is Bill Lawler.  
16 I'm the director of auditing for the Texas Department of  
17 Motor Vehicles. This morning I have with me, Trey Wood,  
18 one of my colleagues.

19 You can find our proposed audit plan at page  
20 310 of your board books. We are asking this morning that  
21 you approve this plan as submitted.

22 MR. RODRIGUEZ: Mr. Palacios, do you have a  
23 recommendation on this?

24 MR. PALACIOS: Yes, Board Member Rodriguez.  
25 The Finance and Audit Committee recommends that the board

1 approves the 2014 internal audit plan that's presented in  
2 the binder.

3 MR. RODRIGUEZ: So moved, Mr. Chairman.

4 MR. SLOVACEK: Second.

5 MR. WALKER: We have -- I'm sorry, who made the  
6 motion, Rodriguez?

7 MR. RODRIGUEZ: Yes, sir.

8 MR. WALKER: We have Board Member Rodriguez  
9 making a motion and we have a second by Mr. Slovacek. Do  
10 we have any discussion on the proposed internal audit plan  
11 for the year?

12 MR. RODRIGUEZ: Just for consumption, Mr.  
13 Chairman, we would have done this in August to meet the  
14 requirement, but we didn't meet in August, so therefore,  
15 we're doing it now. Right?

16 MR. LAWLER: Yes, sir.

17 MR. WALKER: And this has an effective date of  
18 September 1. And my question is we've left some hours in  
19 here, I guess, about 500 hours under item 8 on your  
20 internal audit program here. It says: Board/executive  
21 management requests.

22 MR. LAWLER: That is basically reserved. We  
23 have a lot of items come up, most notably last year we had  
24 the State Auditor's audits come up that weren't in our  
25 plan, and so we used some of that time to deal with those,

1 as well as we do get requests from management for various  
2 items, either providing information or I have in the past  
3 gotten requests from the chairman or other board members  
4 to investigate certain items.

5 MR. WALKER: And we did our time in the barrel,  
6 as I call it, on this State Auditor doing somebody else's  
7 audit. Right?

8 MR. LAWLER: We currently have two audits  
9 underway from external entities. The State Auditor, I  
10 believe, has wrapped up their control work and we will be  
11 having an update meeting with them later this month, but  
12 they will be coming back to do their substantive testing  
13 later in the fall. Also, the Comptroller's Office has  
14 completed their field work and is, I believe, in the  
15 reporting stage at this point.

16 MR. WALKER: But my question is how often do we  
17 have to do that. Don't we have to do that only once every  
18 five years?

19 MR. LAWLER: Well, in the case of the State  
20 Auditor's Office, last year we had two audits by them on  
21 various subjects, one, the contract management, which  
22 we're currently completing our followup of, as well as a  
23 state use and historically underutilized business program  
24 audit that was part of a cluster, as well as this year  
25 we've been picked up as part of the statewide single audit

1 of the state's financial statements, and that's the audit  
2 that's currently underway.

3 We would expect these to be infrequent,  
4 however, due to the large amount of money that the agency  
5 brings in, I expect that we will probably in the future be  
6 picked up on a regular basis on the statewide audit.

7 MS. RYAN: A question with regard to those 500  
8 hours to the board and executive, you made a comment that  
9 it was either the chairman or board members?

10 MR. LAWLER: That's what I've had before.

11 MS. RYAN: I'd maybe suggest that any of those  
12 requests to use these hours go through the chairman,  
13 unless you have a concern. You should know, at least.

14 MR. WALKER: There's 500 hours out there -- I'm  
15 sorry, Victor.

16 MR. RODRIGUEZ: My point kind of relative to  
17 that is if you have an audit plan, it's an audit plan. If  
18 it's going to be modified, it should be modified through  
19 the Audit Committee, and obviously, the board thereafter.  
20 So you can't have at-will.

21 MR. WALKER: That's what this 500 hours.

22 MS. RYAN: We have 500 hours for that.

23 MR. WALKER: There's 500 hours of just fluff  
24 time in here.

25 MR. RODRIGUEZ: I understand allocating the

1 hours for what may come up, but when it comes up, the plan  
2 should be modified, that's what I'm suggesting.

3 MR. LAWLER: And we expect to, on a regular  
4 basis, as allowed by schedules, report that to the Finance  
5 and Audit Committee to give updates as we go along so that  
6 adjustments, if needed, can be reported and approved.

7 MR. RODRIGUEZ: At the end of any work product  
8 that you perform should result in a report to the Audit  
9 Committee, and if appropriate, to the entire board.  
10 Right?

11 MR. LAWLER: Yes, sir.

12 MR. SLOVACEK: Were any adjustments required  
13 after your last audit?

14 MR. LAWLER: Sir?

15 MR. SLOVACEK: Any adjustments required after  
16 the last audit?

17 MR. LAWLER: Not adjustments. We made a number  
18 of recommendations regarding possible improvements and a  
19 number of those are currently underway. We found out that  
20 some may not -- I know one of the recommendations that we  
21 had was to look at turning over some of our collections  
22 work to the Comptroller's Office.

23 MR. RODRIGUEZ: I think he's asking were there  
24 any adjustments to the audit plan made last year?

25 MR. LAWLER: Made last year? We had some

1 carryover items

2 MR. SLOVACEK: Were there any significant  
3 savings as a result of the audit?

4 MR. LAWLER: We haven't been able to quantify  
5 those as of yet, but we look at improvements in operations  
6 and would hope to find the metrics to identify the savings  
7 in both personnel and possible --

8 MR. SLOVACEK: We talked about this yesterday,  
9 3,600 hours to perform the audit. That's a lot of time.

10 MR. WOOD: It's not just a single audit, it's  
11 multiple audits.

12 MR. SLOVACEK: I understand that. That's a lot  
13 of second guessing and looking over everybody's shoulder.

14 MR. RODRIGUEZ: That's 3,600 hours, two FTEs  
15 for a full year.

16 MR. INGRAM: It would also be true that you're  
17 also maintaining audits to determine the amount of risk  
18 and keeping our risk low, it's not just necessarily money.

19 MR. LAWLER: Yes. Our charge is broad in that  
20 by standards is that we're required to look at risk  
21 control and governance activities in the agency.

22 MR. INGRAM: Compliance.

23 MR. LAWLER: Yes, sir.

24 MR. WALKER: Well, Bill, here is the question  
25 that I'm confused about with respect to this conversation

1 down here, because I think Victor and I are on the same  
2 page, I'm not sure that Mr. Slovacek is exactly asking the  
3 same question that he and I want the answer to. Going  
4 back to last year, did you have this 500 hours in your  
5 plan last year that says we have 500 hours worth of open  
6 time for the board to make some requests for some other  
7 audits?

8 MR. LAWLER: Yes, we did.

9 MR. WALKER: And then I think that the question  
10 went to did you use those hours and where were they used.

11 MR. LAWLER: A number of those hours were used  
12 up in support of the State Auditor's audit that we  
13 participated, especially the HUB audit where there were a  
14 number of questions regarding the conduct of the audit,  
15 and we did quality control as well as assistance in  
16 responding to the audit findings.

17 MR. RODRIGUEZ: But I think the large question  
18 is you did not perform any audit function outside of the  
19 audit plan last year.

20 MR. INGRAM: That was not in the audit plan  
21 last year, was it?

22 MR. LAWLER: No.

23 MR. RODRIGUEZ: We understand we helped, I  
24 understand, but you didn't do an audit that we don't know  
25 about.



1 MR. LAWLER: No. It's required in the Internal  
2 Auditing Act that all final reports go up through the  
3 board.

4 MR. RODRIGUEZ: Did I get that correct?

5 MR. WALKER: I think we're all trying to ask  
6 the same question. We've got 500 hours of fluff time out  
7 there in this plan, you use the fluff time on doing some  
8 work for the State Comptroller's Office to do an audit for  
9 them.

10 MR. LAWLER: No. Now, in the '13 plan we did  
11 participate in external peer review and we had that  
12 scheduled in the plan and we performed those. It's part  
13 of the mandated peer review program that we, in turn, now  
14 have banked sufficient hours to get our peer review from  
15 another state agency.

16 MR. WALKER: That's what it was, a peer review  
17 where you did another agency.

18 MR. LAWLER: Yes, sir. And that was included  
19 in the plan.

20 MR. RODRIGUEZ: And just to kind of settle  
21 this, these 500 hours that you have built in there, in the  
22 event that you're tasked with a new audit, that would be  
23 the result of a modification of the audit plan. If  
24 somebody asks we want to know the TVs are working, if all  
25 the TVs in the department are working, that's a good

1 request, it goes to the Audit Committee, everybody agrees,  
2 we modify the audit plan, and now you've got 200 hours to  
3 go check TVs. So long as we -- if we use the 500 hours to  
4 leave room for potential new audit requests and that when  
5 they come and if they come, that the audit plan is so  
6 adjusted, that's fine. I understand that.

7 MR. LAWLER: And that is our intention.

8 MR. SLOVACEK: Bill, who do you audit to  
9 confirm that we had our savings account and our checking  
10 account swept into the general account?

11 MR. LAWLER: Well, that's part of what the  
12 State Auditor's Office is looking at, and we operate in  
13 part of a matrix with other functions, as the State  
14 Auditor's Office as the statewide auditor looks at the  
15 interagency and especially the revenue accounts, but we  
16 also look at deposits when we looked at the field and the  
17 central to verify that what was being collected out in the  
18 field matched with what was going in the bank.

19 MR. RODRIGUEZ: Do we have a motion already?

20 MR. WALKER: We already have a motion, I think  
21 by you, and seconded by Slovacek. No further discussion.  
22 Let's vote on we have a proposal to accept the internal  
23 audit for the 2013-2014 year. All in favor signify by  
24 raising your right hand.

25 MR. PALACIOS: '14-15.

1 MR. WALKER: '14-15. I'm sorry.

2 MS. BREWSTER: Just for 2014.

3 MR. WALKER: For 2014. Raise your right hand.

4 (A show of hands.)

5 MR. WALKER: The motion carries unanimously.

6 While we're on this, do you want to go to Linda  
7 right now?

8 MR. PALACIOS: The operating budget? Yes.

9 MR. WALKER: Yes. Let's go to item 5.G. Ms.  
10 Flores.

11 MS. FLORES: For the record, my name is Linda  
12 Flores. I'm the chief financial officer for the agency,  
13 and at yesterday's Finance Committee meeting, I presented  
14 the preliminary operating budget, and this is the same  
15 material that was included in the July board meeting, and  
16 I'll just give you a real quick summary.

17 The agency requested a total of \$324.8 million  
18 in its appropriations request for the most recent  
19 legislative appropriations process. Senate Bill 1  
20 appropriates \$298.7 million for the biennium, a difference  
21 of \$26.1 million. It maintains the agency's current FTE  
22 cap of 763 full-time equivalents. The major items that  
23 were funded included continued funding for the automation,  
24 the RTS refactoring project. We received \$5.1 million for  
25 an integrated accounting payroll and personnel system

1 called CAPPS, as well as \$800,000 for regional office  
2 security for the regional service centers, including  
3 cameras, badge access into the building.

4 Those things that were not included, however,  
5 included money for expansion improvements that we had  
6 requested called MOVES, and these were the added modules  
7 of that RTS refactoring that we wanted to move on. That  
8 did not get funded. So for example, the agency's contact  
9 center that provided multiple ways of doing business  
10 online was not included.

11 We also asked for \$3 million for increasing  
12 grants to local law enforcement entities through the Auto  
13 Burglary and Theft Prevention Authority, that was not  
14 approved. \$2 million for a federal grant received from  
15 the Federal Motor Carrier Safety Association and the  
16 agency was also not approved, but we do have money in our  
17 budget for core activities and the Commercial Vehicle  
18 Information System Network, and it's a data sharing  
19 between multiple state agencies, like Department of  
20 Information Resources, the Comptroller, DPS. They all  
21 monitor our commercial vehicle inspection program, and  
22 that is data sharing.

23 And we also didn't get \$800,000 for vehicles.  
24 We requested 15 replacement vehicles; that as not  
25 approved. We received one for \$27,000 and that is

1 incorporated into the agency's operating budget.

2 (General talking and laughter.)

3 MS. FLORES: In your agenda board book, just  
4 very briefly, this is an outline by year for the next two  
5 years, by division. We've laid out what each division was  
6 allocated from that appropriation, as well as the capital  
7 line items that have been approved.

8 And that concludes my presentation.

9 (General talking and laughter.)

10 MR. RODRIGUEZ: So you're asking that we adopt  
11 this?

12 MR. PALACIOS: Yes, Board Member Rodriguez.  
13 The Finance and Audit Committee recommends the board  
14 approve the fiscal year 2014-2015 operating budget as  
15 presented.

16 MR. WALKER: We have a motion by the chairman  
17 of the committee, Mr. Palacios.

18 MR. RODRIGUEZ: I second, Mr. Chairman.

19 MR. WALKER: We have a second by Board Member  
20 Rodriguez. Questions? Anybody have any questions?

21 (No response.)

22 MR. WALKER: Of course, I do.

23 MS. FLORES: Yes, sir.

24 MR. WALKER: My book has got some changes in  
25 yellow where we have reduced some numbers down, and so we

1 went from a \$3.35- to a \$3.31 reduction in the amount of  
2 our revenue stream, so why did we project downward?

3 MS. FLORES: Yes, sir. Your board book made a  
4 good point. There were some highlights and strike-outs  
5 since the preliminary budge that was included in your July  
6 document. We updated it for the most current information  
7 that we have. We also met with our divisions regarding  
8 the revenue estimate. The Comptroller has numbers and  
9 that is not going to change, so that is included in your  
10 board book on page --

11 MR. WALKER: But does this match up, Linda, to  
12 our LAR request that we made last year?

13 MS. FLORES: It modifies the revenue estimate.

14 MR. WALKER: So we're modifying our revenue  
15 stream to go down this year?

16 MS. FLORES: Yes, sir.

17 MR. WALKER: And tell me why.

18 MS. FLORES: There's two reasons.

19 MR. WALKER: That's what I want to hear.

20 MS. FLORES: One, in the registration fees, we  
21 reduced that approximately \$27 million because we  
22 anticipate going to a single sticker for both registration  
23 and vehicle inspections. Right now there is a multi-year  
24 option for registration, but because we're anticipating  
25 going to just one sticker, we're reducing that revenue.

1 Before we were seeking a spike, two years worth of revenue  
2 and now we're going to go down to one year.

3 MR. WALKER: But that's still the same amount  
4 of money that the agency realizes over the long run, is it  
5 not?

6 MS. FLORES: Cash basis. The other thing we  
7 also did was to reduce the growth factor from 3 percent  
8 down to 2 percent for the next two years, so that, as  
9 well, factored into that change.

10 MR. WALKER: So we are going to reduce the  
11 state's growth factor by 2 percent, or the Comptroller's  
12 Office?

13 MS. FLORES: One percent. We have, just based  
14 on what we're seeing the trends. The Comptroller's  
15 numbers, we are not changing, we just anticipate not  
16 hitting that original target.

17 MR. WALKER: Have we notified the Governor's  
18 Office on that?

19 MS. FLORES: We will do that in November.  
20 There is a survey that all state agencies have to submit  
21 and it's the LBB's survey of revenue, and so we will  
22 submit that at that time. And they'll ask us questions  
23 and we'll respond.

24 MR. WALKER: Be sure you warn me before you go  
25 over there so that I can expect the call.

1 MS. FLORES: Well, you know, for them it's kind  
2 of a blip.

3 The second item that we did change we modified  
4 the growth rate in oversize and overweight permits. We  
5 saw boom years with permits going off the chart and we had  
6 included a 4 percent growth rate. We're taking that down  
7 to 2-1/2 after meeting with the division. So we have  
8 knocked that revenue estimate down by approximately \$9.2  
9 million. So those were the major changes in our revenue  
10 estimates driving that change.

11 MR. WALKER: What was our growth?

12 MS. FLORES: Four percent, we knocked it down  
13 to 2-1/2 percent.

14 MR. WALKER: What was our true growth factor on  
15 permitting for the last year? Do we know? And you may  
16 not have that number. --

17 MS. FLORES: I don't have it with me. I can  
18 tell you that we had originally estimated, I believe, it  
19 was 500,000 permits issued, we hit 700,000.

20 MR. WALKER: I know it was huge.

21 MS. FLORES: It was major.

22 MR. WALKER: But we're only anticipating that  
23 that number that grew by 20 percent or whatever is only  
24 going to grow 4 percent this year?

25 MS. FLORES: Two and a half. And that was



1 after conversations with the division.

2 MS. FLORES: So I need to tighten my belt.

3 We have a motion and we have a second. Any  
4 further discussion?

5 (No response.)

6 MR. WALKER: All in favor of accepting the  
7 treasurer's report, signify by saying aye or raising your  
8 right hand.

9 (A show of hands.)

10 MR. WALKER: The motion carries unanimously.

11 And I think we have another item, Linda, while  
12 we've still go you up here. Let's go to item number 5.C.

13 MR. RODRIGUEZ: That's procedures. You've got  
14 contracts.

15 MR. WALKER: Well, we're going to approve the  
16 contracts first. She wants to do that and then come back  
17 to this. 5.D, so we need Mr. Kuntz and Mr. Obermier.

18 MR. RODRIGUEZ: So is Finance and Audit done  
19 with their report?

20 MR. WALKER: We're going to have to come back.  
21 Raymond, you're through?

22 MR. PALACIOS: No. We have one other issue  
23 regarding contract procedures.

24 MR. WALKER: Well, we're going to come back to  
25 that. She wants to come back to that. The director would

1 like for us to do the contracts first and then come back  
2 to that.

3 MR. PALACIOS: Okay.

4 MR. JOSHUA KUNTZ: Good morning, Mr. Chairman,  
5 members of the board. For the record, my name is Josh  
6 Kuntz. I'm the interim director of the Enterprise  
7 Management Office.

8 In item 5.D.1 through 8 we're requesting  
9 approval of 12 existing contractors and the additional of  
10 two new contractors to support automation project efforts  
11 at the DMV, for a total of 14 contractors. Of these,  
12 seven directly support the RTS refactoring project, two  
13 indirectly support the RTS refactoring project by backing  
14 FTE resources assigned to RTS, four directly support the  
15 WebDealer project, one directly supports the active  
16 directory project. All contractor roles directly  
17 supporting these automation projects can be released at  
18 the completion of their associated projects.

19 All but one of these contractors will be  
20 engaged through the Texas Department of Information  
21 Resources staff augmentation contracts, adhering to the  
22 not-to-exceed hourly rates for their roles, and the  
23 remaining contractor would be engaged through the existing  
24 DMV TIBH Industries contract to provide temporary staffing  
25 services. The funding for all of these contractors is

1 within the budget for these projects.

2 MR. WALKER: I guess I can't say Mr. Kuntz  
3 because I have two of them at the table.

4 MR. JEREMIAH KUNTZ: You can't use J. Kuntz  
5 either.

6 MR. WALKER: I have a question for you there.  
7 The number that you have listed under each one of these,  
8 it says approximate. Let's just go to information  
9 technology staff augmentation, it says approximately  
10 \$769,000, and then it goes down here that this request is  
11 a current contract manager at a rate of \$249,000.

12 MR. JOSHUA KUNTZ: Yes, sir. That is a renewal  
13 of that current contractor's rate.

14 MR. WALKER: Is this one person is going to  
15 make \$249,000 a year

16 MR. JOSHUA KUNTZ: This is one person's  
17 contracting company that will make \$249,000 a year. Yes,  
18 sir.

19 MR. WALKER: Is that one person

20 MR. JOSHUA KUNTZ: It is for the staff  
21 augmentation of one individual. Yes, sir.

22 MR. WALKER: So we're paying one individual  
23 \$249,000 to work on this particular deal.

24 MS. RYAN: We're paying the company, we don't  
25 know what the individual makes

1 MR. JOSHUA KUNTZ: The company that employs  
2 that person; that person doesn't actually get that money.  
3 But it does cost the agency that much to employ that  
4 person.

5 MR. INGRAM: And that amount is set. Right

6 MR. JOSHUA KUNTZ: The not-to-exceed pricing is  
7 set by DIR in their IT staff augmentation contracts that  
8 they negotiate with these consulting companies. There's a  
9 range of costs; for this particular individual that not-  
10 to-exceed range -- or for that level of individual, that  
11 not-to-exceed range goes to \$260,000 a year.

12 MS. RYAN: These consulting contracts were  
13 recommendations from the DIR. Correct

14 MR. JOSHUA KUNTZ: Correct.

15 MS. AUCOIN: Just for clarification, they're  
16 not consulting contracts, they're just staff augmentation  
17 contracts.

18 MS. RYAN: I'm sorry. But the person -- DIR  
19 was involved with regard to when and how we selected this  
20 particular company

21 MR. JOSHUA KUNTZ: Correct. These companies  
22 are vetted and negotiated with by DIR, and then they are  
23 on an approved contract company list to be able to solicit  
24 individuals to be temporary staff in these positions.

25 MR. WALKER: So Josh, she kind of asked my

1 question, do we look at these people or these positions  
2 competitively, or do we just accept that DIR says call  
3 Buddy Smith Consulting

4 MR. JOSHUA KUNTZ: No, sir. We put out a  
5 solicitation to the contracting companies on the approved  
6 list that have contracts for contractors in these  
7 particular areas. They then submit resumes for proposed  
8 candidates, and those candidates are then reviewed and  
9 interviewed to select the best candidate based on best  
10 value, both experience, knowledge and the price that  
11 they're offering, the hourly rate at they're offering.

12 MR. WALKER: And so let's go down to item  
13 number 8 on here, temporary staff services for the TIBH  
14 Industries, Inc., whatever that is, and it says that this  
15 company we're going to pay \$204- and that this person was  
16 an employee of ours we were bringing back

17 MR. JOSHUA KUNTZ: I'll defer to Mr. Obermier,  
18 that's one of his.

19 MR. WALKER: Eric, yes.

20 MR. OBERMIER: For clarification on that, it  
21 would be \$40,320 for the upcoming renewal period.

22 MR. WALKER: \$40,000, not the \$204-?R

23 MR. OBERMIER: Right. So the \$204,000 is the  
24 cumulative value of what has been paid to that company  
25 since they have been engaged here.

1 MR. WALKER: But you're not requesting for a  
2 request of \$204,000.

3 MR. OBERMIER: No, sir. So for items 2 through  
4 8 on this list, what's being requested is the amount in  
5 the parentheses for every one of those items. So for  
6 instance, on this one it's \$40,320 for the next renewal  
7 period, which is this current fiscal year.

8 MS. RYAN: And to clarify, though we did not  
9 have a committee meeting, this was reviewed with the chair  
10 of the committee from an informational standpoint, and I  
11 asked similar questions, but the reason is the  
12 accumulation to that one contract is over \$200,000, they  
13 have to present it to us for \$40,000. So that's what's  
14 causing it. But all of these funds are allocated to a  
15 project budget that the board has already approved.

16 MR. WALKER: But we need to approve these  
17 particular -- each one of these individually today. Is  
18 that not correct?

19 MS. RYAN: Correct, but only because we've  
20 accumulated enough towards that contract that it exceeds  
21 the \$200,000.

22 MS. BREWSTER: The contract resolution that  
23 this board adopted requires the agency to come before the  
24 board for any contract that is \$200,000 or above. That  
25 includes if it's a cumulative amount or if there are

1 change orders associated with that contract. So in the  
2 spirit of that resolution, that's why the agency is now  
3 coming before you because the cumulative amount puts us  
4 over the \$200,000 mark.

5 MS. RYAN: And so in that particular instance,  
6 for a \$40,000 approval or higher, we have to approve that.

7 MR. WALKER: I understand that.

8 MR. RODRIGUEZ: We've reached a threshold where  
9 they've got to come back because of our requisite  
10 resolution.

11 MR. WALKER: But the question for clarity  
12 purposes is how do we, as the board members up here, know  
13 what we're asking for today for approval because I read  
14 that as that we're asking for \$204,000 worth of approval  
15 for expenditure there and that's really not true, we're  
16 asking for an additional \$40,000. Is that not correct?

17 MR. OBERMIER: That is correct.

18 MR. WALKER: And how many of these other ones  
19 are like that that are in this deal?

20 MR. OBERMIER: So to address that question,  
21 sir, on items 2 through 8 the reason I put both numbers  
22 there was to show you the cumulative value and then in  
23 parentheses show you what the upcoming fiscal year request  
24 was.

25 MR. WALKER: So on number 7, let's just look at

1 7, \$402,000, \$115,000 for the next one. So we've already  
2 approved \$402-, and so now what we're asking for is  
3 \$115,00 additional on that. Is that right?

4 MR. OBERMIER: The \$402- would be inclusive of  
5 the \$115,000.

6 MS. RYAN: So we've already approved three-  
7 something.

8 MR. PALACIOS: But I'm hearing we approved the  
9 \$402- but we didn't specifically approve a contract.

10 MS. RYAN: We've approved \$300-.

11 MR. PALACIOS: So in the operating budget did  
12 we not approve the total amount of the project, in this  
13 case I guess the \$402-.

14 MS. RYAN: The project may have been  
15 significantly higher.

16 MR. BARNWELL: This would be a lot easier if we  
17 said under each item what was originally approved, what  
18 the total is and what we're approving now. Even I can do  
19 the math on most of things.

20 MS. FLORES: Excuse me. In the annual  
21 operating budget there is a schedule in the back of that  
22 document that lists all the known contracts line by line  
23 and what amounts they are, whether they're ITSAC. There's  
24 a little acronym that stands for IT staff augmentation  
25 contractors, that's included. In the overall umbrella for



1 the automation project, we have a certain amount of money  
2 set aside for that, 40-something million dollars, but  
3 within that big umbrella there's all these different  
4 projects that the EPMO will bring to you and say here are  
5 all these projects we've identified, these fall under this  
6 umbrella.

7 So to a certain extent, you've approved the  
8 agency's ability to go out and start working on that large  
9 umbrella project, but any time there is a contractor skill  
10 set needed or specific hardware/software that we need to  
11 buy and it's over \$200,000, even though you've approved  
12 the umbrella, we still come back to the board to meet the  
13 terms of that current resolution.

14 MS. RYAN: I might add these are contracts  
15 we've approved, we're holding the agency accountable for  
16 the completion and those deadlines, yet they're having to  
17 come back to us to be able to hire the people to do the  
18 job. We, in essence, are maybe slowing it down and then  
19 impacting a deadline.

20 MR. RODRIGUEZ: But this is an interpretation  
21 problem and it was not here before. I think the intent of  
22 the resolution we adopted sometime back was to require any  
23 contracts of X amount of dollars to come up to the board.

24 I don't see anything on the contracts for this year as  
25 being one of those, but I think they're playing it safe

1 and saying thus far we have paid this company over  
2 \$200,000, we'd better get it approved. I don't think the  
3 language in the resolution intended for it to be a  
4 cumulative amount figured at one point.

5 So I know we're looking at modifying the  
6 authority language in that resolution later today, and  
7 maybe that needs to be clarified. But that's the only  
8 reason they're here is because they think they've passed  
9 that threshold.

10 MS. AUCOIN: So just for the record, the  
11 current resolution, dated April 11, 2013, regarding  
12 contract and project approval, there is a provision for  
13 change orders or amendments, so if a change order or  
14 amendment causes the contract or the project to exceed  
15 \$200,000, that does trigger the requirement for the board  
16 to approve it.

17 MR. RODRIGUEZ: I understand that, but if you  
18 follow that concept, a lot of the things that we're going  
19 to do at DMV are going to fall within this here at one  
20 point or another. Yes, you have a project and you have  
21 amendments and you have change orders that are relative to  
22 the whole project. I understand those kinds of things and  
23 I would expect those things to be so brought up to us  
24 accordingly. But this is a contract for this year for X  
25 particular set of labor services that we're doing and we

1 paid them last year and we paid them the year before and  
2 they were not brought to us. The reason they're here  
3 today is because they've seen oh, wait a minute, we've  
4 reached that cumulative amount that now exceeds that  
5 \$200-. I don't see that as a change order or a  
6 modification, this is simply a renewal of another year,  
7 we're buying your services one more year.

8 All I'm telling you is my impression on this. I  
9 don't think that the resolution intended that to be. It's  
10 never been, in my view, the intention of that resolution  
11 to do that, and maybe it needs to be clarified today.  
12 That's all I'm saying.

13 MS. AUCOIN: So the good news is there's a  
14 proposed resolution you're going to consider today.

15 MR. RODRIGUEZ: And that's what I'm saying,  
16 maybe that's where we clarify it today.

17 MS. AUCOIN: And I guess for the purposes of  
18 voting on these particular contracts, the way the  
19 purchases are done, when a renewal is made it's done with  
20 a document called a purchase order change notice and it's  
21 all part of the same file.

22 MR. RODRIGUEZ: I understand, I got it.

23 MR. WALKER: But Aline, wouldn't this be really  
24 covered under the big contract, the \$43 million contract  
25 that we already approved without going back into and

1 individually approving the sub deals?

2 MS. AUCOIN: The way the current resolution is  
3 written, it covers both projects and individual contracts,  
4 so the board could very well have approved the overall  
5 project and dollar amount, but then the moment a contract  
6 under that project triggers the dollar amount, we have to  
7 come to the board for approval.

8 MR. WALKER: So before we get to the  
9 resolution -- and maybe I should just wait -- but this  
10 resolution that we're going to look in a little bit, does  
11 it correct that so that we don't have to look at those  
12 subcontracts again?

13 MR. RODRIGUEZ: Not in its current form, but I  
14 think we should correct it if you want to correct it.

15 MR. WALKER: There's a proposal.

16 MR. RODRIGUEZ: Right, there's a proposal today  
17 but that's not addressing this interpretation.

18 MS. RYAN: We have to vote on this and then we  
19 can vote on the change.

20 MR. WALKER: I understand that.

21 MR. INGRAM: So just to move things along, I'd  
22 like to go ahead and move to authorize the agency's  
23 executive director or her designee to ratify or negotiate  
24 and execute the automation contracts listed in agenda item  
25 5.E. In addition, I also move to authorize the agency's

1 executive director to execute any amendments to the  
2 contract with the approval of the chairman.

3 MS. RYAN: Second.

4 MR. WALKER: We have a recommendation by Blake  
5 Ingram and we have a second by Laura Ryan. Any further  
6 discussion?

7 MR. RODRIGUEZ: Just to be clear, that's not  
8 intending to address the subsequent item we're looking at.

9 MR. WALKER: No. Just to authorize these  
10 expenditures.

11 MS. RYAN: 5.D. Correct?

12 MR. WALKER: All in favor signify by raising  
13 your right hand.

14 (A show of hands.)

15 MR. WALKER: The motion carries unanimously.  
16 Let's go to 5.D, as in dog.

17 MR. INGRAM: Are we on D or E?

18 MS. RYAN: We're on E.

19 MR. WALKER: Jeremiah, you're still onboard.

20 MR. JEREMIAH KUNTZ: Jeremiah Kuntz, director  
21 of Government and Strategic Communications.

22 The agenda item you see before you today, 5.E  
23 for Objectwin Technologies contract renewal is the same  
24 exact issue that we were talking about on 5.D. This is  
25 for a communications and change management contractor.

1 This contractor specifically works on the automation  
2 projects but is not paid for out of the automation bucket,  
3 it's paid out of the operating dollars for my division's  
4 budget. She is specifically tasked on the RTS  
5 refactoring, WebDealer and other automation projects that  
6 are ongoing, as we move through the process of  
7 implementing those, she works on communication plans,  
8 change management activities to ensure that stakeholders  
9 and the like are informed about what's going on with those  
10 projects and have the tools that they need to implement  
11 them correctly.

12 MR. RODRIGUEZ: Same issue as 5.D?

13 MR. JEREMIAH KUNTZ: Yes. This is a six-month  
14 renewal and it's for \$110,000 for that six months. We are  
15 looking to renew that and we are going to be evaluating  
16 over the next six months potentially other ways to handle  
17 some of those management activities for change management.

18 MR. RODRIGUEZ: But the reason it's here is  
19 because of the same viewpoint that they had on 5.D.

20 MR. JEREMIAH KUNTZ: Yes, sir.

21 MR. RODRIGUEZ: Move to approve, Mr. Chairman.

22 MR. WALKER: We have a motion by Board Member  
23 Rodriguez to accept.

24 MR. RUSH: Second.

25 MR. WALKER: Second by Board Member Rush. Any

1 discussion?

2 (No response.)

3 MR. WALKER: All in favor signify by raising  
4 your right hand.

5 (A show of hands.)

6 MR. WALKER: The motion carries unanimously.

7 Let's go to item 5.F.

8 MS. FLORES: 5.F, again same type of issue that  
9 you have previously discussed. One is for FedEx services,  
10 receiving, shipping overnight express priority mail. We  
11 are exercising our option to renew that service at  
12 \$155,000 for the next fiscal year. Item number 2,  
13 regional office janitorial services. We modified that  
14 original contract from \$197,000 to include a part-time  
15 porter in the Houston regional service center. These two  
16 items were not brought to the board to begin with because  
17 they were under the \$200,000 mark, but because we've made  
18 changes or exercised that renewal option, we're here for  
19 your approval.

20 MR. INGRAM: I move to authorize the agency's  
21 executive director to negotiate and execute the  
22 administrative contracts listed in agenda item 5.F. In  
23 addition, I also move to authorize the agency's executive  
24 director to execute any amendments to the contract.

25 MR. RUSH: Second.

1 MR. WALKER: We have a motion by Mr. Ingram and  
2 a second by Mr. Rush.

3 There's not any negotiating to do in this, is  
4 there?

5 MS. FLORES: We did negotiate as far as what  
6 type of activities we wanted the janitorial services to  
7 include, whether it's once a week, twice a week, so we did  
8 some of that and that's done by our purchasing staff.

9 MR. INGRAM: But there could be small changes  
10 at some point.

11 MS. FLORES: Sure. In case another regional  
12 service center needs more hours for the porter services  
13 during the day versus what we've contracted for.

14 MR. INGRAM: I'm just saying by adding the  
15 changes, I don't want to see this if it comes back and it  
16 crosses this threshold. Right? So if it adds on another  
17 \$25,000, I don't want to see this again.

18 MS. RYAN: I second that.

19 MR. BARNWELL: How about \$30,000? We all have  
20 a limit.

21 (General laughter.)

22 MR. WALKER: So we have a motion and we have a  
23 second, and do we have any further discussion to accept  
24 the contracts or to negotiate the contracts with the  
25 janitorial service and with FedEx?



1 (No response.)

2 MR. WALKER: All in favor of moving forward on  
3 this, signify by raising your right hand.

4 (A show of hands.)

5 MR. WALKER: The motion carries unanimously.  
6 Let's go to item 5.C, page 218 in your book.

7 MS. FLORES: For the record, Linda Flores,  
8 chief financial officer.

9 As part of your previous discussion, the agency  
10 is requesting a change to the current contract and project  
11 approval procedures. The Finance Committee met yesterday  
12 and has directed staff to modify the procedures so that  
13 there are multiple triggers that would cause staff to come  
14 back to the board for approval. The current limit of  
15 \$200,000 remains but we've included some carve-outs for  
16 routine operations, such as lawn services, janitorial, the  
17 manufacture of license plates.

18 There is a trigger that would cause us to come  
19 back and that's if a change order individually or in  
20 combination increases the original contract by 25 percent,  
21 as long as the dollar amount is more than \$50,000, or a  
22 change order individually or in combination with other  
23 change orders increases the original contract by \$100,000.

24 So if those triggers were initiated, staff would come  
25 back to the board for their approval.

1           As I mentioned, it does carve out several items  
2 that we incur on a routine basis, such as copier  
3 maintenance, trash disposal, digital imaging that we're  
4 required to use certain vendors, temporary staff services,  
5 as previously provided by the last contracts that you've  
6 heard. There are still some emergency procurement  
7 provisions in case there was an emergency, and it would  
8 have to meet certain criteria to be an emergency, that  
9 would allow the executive director to execute and then  
10 contact the board after the fact.

11           MS. RYAN: Linda, may I ask a question?

12           MS. FLORES: Yes, ma'am.

13           MS. RYAN: It's actually the executive  
14 director. This is different than what's in our board  
15 book. Can you help me understand how the -- there  
16 obviously was a reason that the original was at one level  
17 and I understand the reason of why it changed. Can you  
18 help me understand what keeping it at \$200- does to impact  
19 to allow you to run this agency?

20           MS. BREWSTER: Absolutely. For the record,  
21 Whitney Brewster, executive director. What is currently  
22 in your agenda book on page 218 was the proposed language  
23 that the agency was bringing forward and it was for a do-  
24 not-exceed amount of \$500,000, so anything above \$500,000,  
25 the agency would come before the board for approval to

1 execute those contracts. After meeting with the Finance  
2 and Audit Committee yesterday, that committee voted to  
3 keep that threshold at \$200,000.

4 MS. RYAN: What does that change by leaving it  
5 at \$200,000, what does it do to you and the organization?

6 MS. BREWSTER: So the agency looked very  
7 closely at what other agencies are doing in terms of  
8 contract management and board approval and authorization,  
9 and I think Ms. Flores has put up on the screen there kind  
10 of some of the results of that.

11 Ms. Flores, do you want to go into that a  
12 little bit.

13 MS. FLORES: Sure. We canvassed other  
14 agencies, we tried to find similar size agencies and the  
15 amount of contracts they execute. We identified five  
16 different agencies and the different levels that staff  
17 take things to their board or commission.

18 As you can see, some agencies are at the  
19 million dollar level, while other agencies are at the  
20 \$250,000 level, so it's not consistent across state  
21 agencies, it's whatever the board or commission is  
22 comfortable with. Because of the large items that we  
23 execute, we felt that we could make you comfortable with  
24 the \$500,000 amount.

25 We did provide some carve-outs, as I mentioned,

1 things that we have to use certain agencies or vendors, so  
2 we have carved those items out. That's going to take it  
3 down. In your operating budget document, I think we  
4 identified 13 contracts that are over \$200,000, but some  
5 of them have to do with the manufacture of license plates,  
6 so with this proposed resolution that won't be brought to  
7 you for approval, but it will still be included in the  
8 operating documents

9 MS. RYAN: I guess my question is do we slow  
10 down the agency or the process, or do we make the agency  
11 less efficient if it's \$200- than \$500-, or is it an  
12 administrative number? That's what I'm trying to  
13 understand.

14 MR. RODRIGUEZ: Maybe this helps you with that  
15 question. Of these agencies that you basically scanned,  
16 which ones compare to us in terms of the operating budget,  
17 the FTEs, funds generated or otherwise? Which ones  
18 compare?

19 MS. FLORES: I would say DPS.

20 MR. RODRIGUEZ: Only DPS. And close to that  
21 maybe DIR. After that, everybody else doesn't even come  
22 close. And that's my point that they've got a million and  
23 \$500,000 markers, and we are that much bigger of an  
24 agency. The stuff that we might do here is larger in  
25 scope than, let's say, some of the things that these

1 smaller agencies would do.

2 I know we have a committee recommendation, Mr.  
3 Chairman, but in light of the discussion we had earlier, I  
4 think it might be -- and maybe you're comfortable at this  
5 point, but I'd like to see a resolution that addresses all  
6 the issues, whether it's a dollar amount, that addresses  
7 that it's not cumulative and not for renewals, and a  
8 little bit more clear so we can avoid this.

9 MR. WALKER: Well, we've sent it to a  
10 committee, and a committee of board members has looked  
11 over this and made a recommendation. Now, we can modify  
12 their recommendations.

13 MR. PALACIOS: Well, should I make a motion  
14 first and then we can have discussion?

15 MR. WALKER: Yes, sir, that's appropriate.

16 MR. PALACIOS: I move to approve the resolution  
17 adopting contract approval procedures as presented today  
18 which reflects the modifications recommended by the  
19 Finance and Audit Committee.

20 MR. WALKER: I will second that.

21 MR. BARNWELL: On my page 218 I've got a number  
22 of things written in, and frankly, I don't understand  
23 what's been written. I get the bullet point one, exceeds  
24 \$500,000 and the number \$200,000 has been put in. Then on  
25 the second line of bullet point two at the end of the

1 second line it says 25, and then something has been  
2 written there, it looks like 50,000, and then the words  
3 percent or more in the third line of bullet point two. So  
4 I don't know that I can vote on this because it's vague, I  
5 don't understand what it is. Can you clarify it for me?

6 MS. FLORES: Yes, sir.

7 MR. WALKER: Barney, there's some confusion  
8 because there's one in our binder, which is the one that I  
9 read, and then I was given this this morning.

10 MR. BARNWELL: I see.

11 MS. BREWSTER: And Mr. Chairman, this is a  
12 result of the recommendations made by the Finance and  
13 Audit Committee yesterday.

14 MR. BARNWELL: So as Roseanne Roseannadanna  
15 would say: Never mind.

16 MR. WALKER: So we have a motion, I have a  
17 second, and then there's some discussion. Maybe I  
18 shouldn't have seconded because I should have modified. I  
19 can still modify it, I guess.

20 There's two things that I would like to  
21 comment, I don't think this change -- let me ask you this,  
22 Raymond, what we got in the binder last night to read and  
23 what we have from your committee that met yesterday, is  
24 the only change the dollar amount, basically the context  
25 has stayed the same?

1           MR. PALACIOS: Yes, that is correct. If you'd  
2 like, I can elaborate a little bit more as to why the  
3 change was made.

4           MR. WALKER: No. I'm okay with that. My  
5 suggestion might be, however, to make two changes to this,  
6 and those changes would be that it says that we are giving  
7 authority to the executive director and her designee --  
8 his or her designee, I should say, and my personal opinion  
9 is that when we give that authority to somebody, we're  
10 giving it to the executive director, and I don't really  
11 think it's her position to go delegate that down the  
12 stream and ask Randy to go sign the contracts or Linda, or  
13 whoever. I think that this board is giving her the  
14 authority and it should stop at the executive director,  
15 that's where the contracts need to be signed, either by  
16 the board or by the executive director, not by somebody  
17 else. That's my first comment.

18           The Second comment I'd like to make is that in  
19 an emergency situation, if we could go to that, it says  
20 that if we need to make a contract prior to that, that the  
21 executive director would come to the chairman and the  
22 Finance and Audit Committee for approval of that, and I  
23 think that is too cumbersome. I think that if she's going  
24 to make that decision that it needs to go only to the  
25 chairman at that point in time and not back to the Finance

1 and Audit Committee.

2 MR. INGRAM: Well, I was confused because it's  
3 not the entire Finance and Audit Committee, it's just the  
4 chairman of the Finance and Audit Committee, so it's just  
5 basically two board members.

6 MR. WALKER: Well, okay. What if this is an  
7 emergency and we can't get a hold of Raymond, or I don't  
8 know, maybe me, but what if Raymond says no and I say yes,  
9 now what do we do? You're in a standoff because you have  
10 two people.

11 MR. PALACIOS: I would agree with you, so long  
12 as the chair is apprised. I'm okay with that.

13 MS. RYAN: I'd like to think that if it was a  
14 matter of hazard to life, health, safety, Whitney would  
15 make a decision even if she couldn't get a hold of any of  
16 us. Right?

17 MR. WALKER: But the rules are the rules and we  
18 need to modify the rules.

19 MS. RYAN: No. I agree with you.

20 MR. RODRIGUEZ: Are you saying that the  
21 emergency procurement requires the approval? Is that what  
22 you're saying?

23 MR. WALKER: That's what this says right here.

24 MR. SLOVACEK: We should modify it to chairman  
25 only, not the chairman and the chairman.



1 MR. PALACIOS: Executive director with the  
2 approval of the chairman.

3 MS. RYAN: I would suggest, to your point,  
4 Johnny, is if rules are rules, then I would say maybe it's  
5 either/or. If you can't be reached and she has to make a  
6 decision, she would go to the chairman of the committee.

7 MR. WALKER: I agree. That's a better way.

8 MS. RYAN: That way it's not both but you have  
9 two people to get hold of in case of an emergency.

10 MR. WALKER: I like that, either/or, that's  
11 good.

12 MR. SLOVACEK: The vice chair or the chairman  
13 of the Finance Committee?

14 MS. RYAN: The chairman of the committee is  
15 what was suggested.

16 MS. AUCOIN: So I'd like to address Chairman  
17 Walker's first point about when the board delegates to the  
18 executive director that you want just the executive  
19 director to sign the contract, some of the contracts that  
20 we sign are actually just purchase orders that are issued  
21 by our purchasing department and people have to be  
22 certified to actually sign a purchase order. For example,  
23 Whitney doesn't have authority to sign a purchase order.  
24 So on the delegation, it really does need to be to the  
25 executive director or designee because Whitney can't sign

1 purchase orders.

2 And also, if there is a problem and Whitney is  
3 not available, for the agency to operate it would be  
4 preferable to have more than one person who can sign when  
5 Whitney is out.

6 MS. RYAN: But it's fair to say if she  
7 delegates that authority, she is still ultimately  
8 accountable.

9 MS. BREWSTER: Absolutely.

10 MS. RYAN: So we still have that accountability  
11 and oversight with the executive director.

12 MR. WALKER: Aren't you using probably some  
13 rubber stamp, somebody just stamps her name on something,  
14 but she needs to be cognizant that that's happening?

15 MS. BREWSTER: No. When I execute a contract,  
16 when you tell me to execute a contract, I execute the  
17 contract, I physically sign my name.

18 MR. RUSH: Can I ask a question?

19 MR. WALKER: Yes, sir, Mr. Rush.

20 MR. RUSH: It was \$500,000.

21 MR. WALKER: The proposal was that.

22 MR. RODRIGUEZ: But he's recommended \$200,000.

23 MR. RUSH: I thought we were trying to get rid  
24 of this \$200,000.

25 MS. RYAN: Well, that's what we're discussing.

1       You're not lost.

2                   MR. RUSH: We'll be right back in the same soup  
3 we were before.

4                   MS. RYAN: Do we have to vote on the motion  
5 that's there and then have a new motion to change it or do  
6 we need to modify? Do we have to turn down this motion or  
7 do we make a suggestion to modify?

8                   MS. AUCOIN: If someone made a motion, that  
9 motion needs to be voted on. Another board member  
10 shouldn't modify another board member's motion.

11                   (General talking.)

12                   MR. WALKER: One at a time, one at a time.

13                   MR. PALACIOS: If I can just present the  
14 committee's case as to why we changed it and then we can  
15 vote.

16                   MR. WALKER: Mr. Palacios, you have the floor.

17                   MR. PALACIOS: We saw the \$500,000 threshold,  
18 and the committee does recognize the need for convenience  
19 and we vetted that over the board's duty of oversight and  
20 accountability, and looking at the number of contracts  
21 that we have that exceed \$200,000, there are only 13 of  
22 them, and of those 13, only five were in excess of the  
23 \$500,000, so we're not talking about a significant amount  
24 of contracts. We don't believe that this would be  
25 cumbersome upon the agency or certainly the board to look

1 at these contracts that are over \$200,000. I mean, it's  
2 a very, very small amount. As has been evidenced by the  
3 presentations that these gentlemen gave, the contracts  
4 were properly vetted, and I think it would be a mistake of  
5 us to abdicate those responsibilities, given the small  
6 number of them.

7 Again, this is one of our primary duties is  
8 oversight and accountability, and if we're saying now  
9 going to forward we're only going to look at a handful of  
10 contracts because we think it's inconvenient, I think that  
11 would be irresponsible of us. And I see the other  
12 agencies and they're free to make their own decisions, but  
13 again, the number of contracts is very, very small, I  
14 think it's important that we at least give these contracts  
15 proper attention. Some may fly, some are going to require  
16 extra time and attention, but we felt uncomfortable going  
17 to half a million dollars, that's just a lot of money.

18 There are several carve-outs here that would  
19 absolve the agency now of bringing things to the board,  
20 you've got a number of them, you've got emergency clauses  
21 here that would not preclude any efficiencies within the  
22 agency. So that is why we stuck to the \$200,000  
23 threshold, and we also included other provisions in there,  
24 the \$50,000 and \$100,000 for change orders. So again, it  
25 was the committee's belief that we've given the agency

1 plenty of flexibility in making decisions without  
2 encumbering any efficiencies within the operation, and  
3 that is wh we've made the recommendations that we have.

4 MR. RODRIGUEZ: I have one question. Is it  
5 \$200,000, it's non-cumulative, it will address the problem  
6 we had earlier today?

7 MR. PALACIOS: Yes.

8 MR. RODRIGUEZ: The carve-out addresses that.  
9 So if you spend \$100,000 at Company A this year, next year  
10 they're going to spend \$100,000, they don't have to bring  
11 it back next year. It's non-cumulative. Right?

12 MR. INGRAM: I don't think it addresses that  
13 issue.

14 MS. RYAN: No, it doesn't. It says any change  
15 order individually or in combination with other change  
16 orders.

17 MR. RODRIGUEZ: Let me ask you this question.  
18 If they contract with Company A for \$100,000 this year,  
19 during this fiscal year, this new year, and next year they  
20 see fit to contract with that same company again for  
21 another \$100,000 for a new year --

22 MR. WALKER: New contract or same contract?

23 MR. RODRIGUEZ: The same company, another  
24 \$100,000 contract.

25 MR. WALKER: New contract?

1 MS. BREWSTER: Exercising a renewal option.

2 MS. RYAN: It would have to be a new contract  
3 but it would be a renewal.

4 MS. AUCOIN: And the scenario you're talking  
5 about is a renewal like most of what we had today. That  
6 would not trigger the board's requirement to approve that  
7 contract.

8 MR. RODRIGUEZ: So contract renewals not  
9 exceeding the margin of \$200,000 are not subject to be  
10 brought to us again. Am I reading that correct? Yes or  
11 no?

12 MS. AUCOIN: So a mere renewal of a contract is  
13 not going to add dollars to that contract, and therefore,  
14 somehow trigger the board approval requirement.

15 MR. INGRAM: That third bullet point is going  
16 to cover it.

17 MR. RODRIGUEZ: And I just want to be clear. I  
18 know I think that's what I'm hearing here but I just want  
19 to be sure that it is what we're addressing, I just want  
20 to make sure.

21 MS. AUCOIN: And we could certainly be maybe  
22 more clear on the first bullet, the contract exceeds  
23 \$200,000 or \$500,000, we could even put, in parentheses,  
24 excluding any renewals.

25 MR. RODRIGUEZ: And all I'm saying is any

1 contract in the amount of \$200,000, you're going to bring  
2 it up here. I understand that; that's what we want to do,  
3 that's what the committee wants to do. So if it was  
4 \$201,000, you would bring it here today, but if it's  
5 \$100,000 this year and next year we want to do that same  
6 company again, another \$101,000, you're not going to bring  
7 it back next year, it's a whole new contract next year.  
8 Right? Even if it's a renewal.

9 MR. WALKER: It's under the threshold also.

10 MR. RODRIGUEZ: The threshold at that time is  
11 under \$200,000, so it's okay.

12 MR. WALKER: Yes.

13 MS. AUCOIN: So if it's a renewal, it won't  
14 trigger the dollar amount, if it's a separate contract  
15 next year, a whole new purchase order, the \$101,000 won't  
16 trigger the \$200,000.

17 MR. RODRIGUEZ: Just to be really clear, let's  
18 suppose it's a renewal for technical purposes but the  
19 renewal is for \$201,000, now you've got two things in  
20 there. You have a renewal but you're saying renewals  
21 don't come up here, but now you've got a renewal in the  
22 amount that exceeds the threshold so now that one would  
23 come up here.

24 MS. AUCOIN: That renewal would not come to the  
25 board.

1           MR. RODRIGUEZ: That's what I'm trying to be  
2 clear with. If you're signing off of anything over the  
3 threshold in that fiscal period, it ought to come here; if  
4 it's not, it shouldn't be here, regardless of how many  
5 years we've done it.

6           MS. RYAN: And I respect, Raymond, the  
7 committee's, but I would just add a counter, and certainly  
8 no disrespect, but I do think that most of these  
9 contracts, if not all, are to allow the agency day-to-day  
10 operational activities, and I think that we have hired an  
11 executive director to run the day-to-day and to be able to  
12 execute contracts to support that. I personally don't see  
13 that as being irresponsible. We approve the budget, they  
14 cannot spend money that's not included in a budget that we  
15 already approved, and I think that we do have an oversight  
16 responsibility and my personal opinion is this agency has  
17 multiple things of significant issues that require this  
18 board's attention and I do think that this could be  
19 distracting for both the executive management of the  
20 agency as well as the board. So that's the thought  
21 process I'm raising it to, just kind of both sides.

22           But if we have a motion for \$200-, then maybe  
23 it's voted on and if it passes, it passes, and if it  
24 doesn't, then there would be maybe another motion.

25           MR. WALKER: But Laura, I think the committee



1 has addressed your concerns. They have excluded all the  
2 trash contracts.

3 MS. RYAN: Then I'd call for the question and  
4 have the vote.

5 MR. WALKER: Okay.

6 MR. INGRAM: But theoretically, there could be  
7 a motion to amend.

8 MS. RYAN: That's what I asked.

9 MR. PALACIOS: We already have one.

10 MR. WALKER: You made a motion and I seconded.

11 MS. AUCOIN: We could do that, a motion to  
12 amend if that motion passes.

13 MR. BARNWELL: He would have to withdraw his  
14 motion or the motion will have to fail and then you can  
15 make a new motion.

16 MR. SLOVACEK: Just fix it the way it needs to  
17 be fixed.

18 MR. INGRAM: So a motion to amend would  
19 actually become his motion.

20 MS. AUCOIN: If the motion to amend is passed  
21 by the correct amount, it will overrule his motion and  
22 trump his motion.

23 (General talking.)

24 MR. WALKER: We can only talk one at a time  
25 because this meeting is being recorded, so let's try to

1 keep it to one person at a time.

2 MR. INGRAM: Raymond, let me ask you a quick  
3 question. There are relatively two minor adjustments that  
4 have been talked about. One is that the first bullet  
5 point be changed so that we add the words "excluding  
6 renewals," which is the intent of the third bullet point  
7 but it makes the first one more obvious.

8 MR. RODRIGUEZ: Well, that needs to be cleared  
9 up because excluding renewals that don't exceed the  
10 threshold, that would be a little bit closer to what we're  
11 talking about.

12 MR. INGRAM: Sorry?

13 MR. RODRIGUEZ: Excluding renewals alone leaves  
14 open the possibility that a contract could be renewed that  
15 would exceed -- that contract renewal would be in an  
16 amount greater than -- if the number of \$200,000 or if  
17 it's \$500,000, whatever that number is, it could be a  
18 renewal, and technically, according to this, not have to  
19 come back here. But the renewal could also be a renewal  
20 for an amount greater than the threshold where we want  
21 them to come back.

22 MR. PALACIOS: The wording would be excluding  
23 renewals that don't exceed the threshold.

24 MR. RODRIGUEZ: Right. Whatever that threshold  
25 ends up being.

1 MR. INGRAM: The other one that I heard was  
2 changing the word "and" to "or" when talking about the  
3 emergency procedures could go to either the chairman or  
4 the accounting chair.

5 MR. PALACIOS: Right, the Finance and Audit  
6 Committee chair.

7 MR. INGRAM: You could just change your motion.

8 MR. PALACIOS: Okay. So what do I do

9 MS. AUCOIN: You can retract your motion and  
10 pose a new motion.

11 MR. PALACIOS: So I'd like to retract my  
12 motion.

13 MS. AUCOIN: And it might be helpful to just  
14 state on which resolution we're talking about, the  
15 resolution that had the \$500,000 trigger or the modified  
16 resolution from the committee that has the \$200,000  
17 trigger.

18 MR. WALKER: Before you go there, can I ask one  
19 more question?

20 MR. PALACIOS: Yes.

21 MR. WALKER: Aline, help me out on this  
22 designee deal one more time.

23 MS. AUCOIN: So the agency enters into lots of  
24 contracts. Some of those contracts are the contracts that  
25 most people think about where both parties sign on the

1 dotted line; some of the contracts don't have a signature  
2 where both parties sign on the dotted line, the agency  
3 issues what's called a purchase order, and only certain  
4 people who have the certification under Texas law are  
5 authorized to sign a purchase order. So every contract  
6 that this agency enters into, not all of them are signed  
7 by Whitney, some of them are signed just by a purchaser.

8 MR. WALKER: But we're talking about here  
9 contracts only. A purchase order is not a contract.

10 MS. AUCOIN: A purchase order is a contract, it  
11 is an obligation.

12 MR. WALKER: Okay. So this needs to include  
13 purchase orders then.

14 MS. AUCOIN: So my one thing is it needs to say  
15 executive director or designee because of the purchase  
16 order issue, but also there could be times when Whitney is  
17 not available and our agency would need to function and we  
18 would need to have other people who can sign.

19 MR. WALKER: Okay. Go ahead.

20 MR. RODRIGUEZ: I'm okay with that. The only  
21 question I have, I think we're still at \$200- or something  
22 like that, I don't know if anybody wants to throw another  
23 number on it.

24 MR. RUSH: I think it's too low. I think we're  
25 dealing with the same thing.

1 MR. RODRIGUEZ: I'm wondering if there's room  
2 for that now.

3 MR. PALACIOS: We just felt uncomfortable with  
4 more than doubling the threshold. Again, given the small  
5 number of contracts that we're talking about, it's not a  
6 significant amount.

7 So I will retract my motion and amend the  
8 motion that I just made to include a change on the third  
9 bullet point, which would include the phrase "excluding  
10 renewals that don't exceed the \$200,000 threshold." In  
11 addition, we'd like to make a change to the procurement  
12 provision that would seek approval from the board chairman  
13 or the chairman of the Finance and Audit Committee.

14 MR. INGRAM: Raymond, I would second that if we  
15 could move that first item to the first bullet point. It  
16 just seems like it makes more sense there, perhaps.

17 MR. PALACIOS: Okay.

18 MR. RODRIGUEZ: And let me ask you this, you  
19 didn't mention the renewals part of that.

20 MR. PALACIOS: Yes. Excluding renewals that  
21 don't exceed the \$200,000 threshold.

22 MS. RYAN: Would it be a fair request to have  
23 this rewritten and brought back to us then so we clearly  
24 understand what we're writing, or would we do it? I mean,  
25 we're making an awful lot of amendments.

1 MR. INGRAM: There's two amendments.

2 MR. WALKER: Let's clean this up.

3 MR. RODRIGUEZ: What could happen is we approve  
4 the concept and then before you sign off on it, make sure  
5 that we've all read it and agreed on it.

6 MS. BREWSTER: Mr. Chairman, if the board would  
7 consider amending the first bullet to say the contract  
8 exceeds \$200,00, excluding renewal options that do not  
9 exceed whatever amount, the threshold that the board sets.

10 MR. WALKER: So Raymond, can we put it on the  
11 first bullet point?

12 MR. PALACIOS: I'm fine with that.

13 MR. WALKER: So on the first bullet point we're  
14 going to put on there: the contract exceeds \$200,000,  
15 excluding renewal options that do not exceed the  
16 threshold, whatever that number is.

17 MR. PALACIOS: And then we have the change to  
18 the emergency procurements.

19 MR. WALKER: And we're going to change that so  
20 that it's either/or. Right?

21 MR. PALACIOS: Yes.

22 MR. INGRAM: Could you restate that first  
23 bullet point. It sounded like it was not quite correct.

24 MR. WALKER: The first bullet point would read:  
25 the contract exceeds \$200,000, excluding renewal options

1 that do not exceed the threshold, whatever that number is

2 MR. INGRAM: The do not part is what's throwing  
3 me off. It's excluding renewals that exceed.

4 MR. WALKER: That do not exceed. If the  
5 renewal is for \$100,000 and the original contract was  
6 \$100-, you still haven't exceeded the threshold.

7 MS. AUCOIN: So the language about excluding,  
8 I'd prefer to phrase it as excluding renewals that don't  
9 exceed the threshold. It addresses Board Member  
10 Rodriguez's issue where you might have an original  
11 contract of \$100,000 but then you have a renewal -- I  
12 guess it would be strange to have a renewal, but you could  
13 potentially have a renewal that's for \$300,000.

14 MR. WALKER: Then you exceeded the threshold  
15 and it comes back for approval.

16 MS. AUCOIN: Right.

17 MR. RODRIGUEZ: We're not going to bring  
18 renewals that in the cumulative exceed a threshold.  
19 Right?

20 MS. AUCOIN: Right. We're looking at the  
21 individual renewal, the situation you addressed where the  
22 original is \$100,000, at the renewal itself, a single  
23 renewal.

24 MR. RODRIGUEZ: We've got it on tape. Right?

25 MR. PALACIOS: Okay. That's my motion.

1 MS. AUCOIN: And are we talking about the  
2 resolution that has the \$200,000 trigger?

3 MR. PALACIOS: That's the one that I presented,  
4 yes.

5 MR. SLOVACEK: And let me say, I guess for  
6 purposes of discussion, three of us agreed to the \$200,000  
7 level and I hear others say that they think that's too  
8 low. I don't know if it's possible for you guys to talk  
9 about that further and get comfortable with a number that  
10 you like. In other words, I'm counting the numbers here  
11 and we could lose that vote on a five to three vote. I  
12 think Raymond and Blake and I would probably stick with  
13 the \$200-, but if the rest of the board strongly believes  
14 it should be \$500-, I think that's something you should  
15 talk about and fully discuss and not bring this up at  
16 another meeting, let's get that done today too.

17 MR. PALACIOS: Well, should we take a vote?

18 MR. WALKER: I think let's just call for the  
19 vote.

20 MR. PALACIOS: We need a second too.

21 MR. WALKER: I second it.

22 MR. RODRIGUEZ: Can I ask question before you  
23 vote? The number of contracts between the \$200,000 margin  
24 and the \$500,000, I know you had margin, how many is it?

25 MR. PALACIOS: Five.



1 MS. FLORES: There were five.

2 MR. WALKER: But are those including the  
3 statutory contracts?

4 MS. FLORES: It does.

5 MR. WALKER: So it's less than the give because  
6 the statutory have been thrown out.

7 MS. RYAN: But we just approved the budget and  
8 they're there.

9 MS. FLORES: Right. And in order to do that,  
10 just like we did, we skipped an August board meeting so I  
11 had to have contracts approved in July because we weren't  
12 having a board meeting and you weren't approving the  
13 budget.

14 MR. WALKER: That's the reason we had the  
15 meeting primarily was to approve the contracts.

16 MS. RYAN: But it's on money we've already  
17 approved and allocated.

18 MR. WALKER: We haven't approved it -- well,  
19 we've approved the budget, that's correct.

20 MR. PALACIOS: Call the question.

21 MR. WALKER: We have a motion, we have a  
22 second, we've had discussion, I'm calling for a vote. All  
23 in favor of the motion signify by raising your right hand.

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

1 MR. WALKER: It's six. All opposed same sign.

2 (A show of hands: Rush and Ryan.)

3 MR. WALKER: So we have everybody on the board  
4 in favor of that with the exception of Marvin Rush and  
5 Laura Ryan. The motion carries.

6 Let's move to Randy Elliston real quick. Come  
7 up here and do this license plate and get this finished  
8 up.

9 MR. ELLISTON: Mr. Chairman, members, for the  
10 record, my name is Randy Elliston. I'm the director of  
11 the Vehicle Titles and Registration Division.

12 You'll find this item in your board book on  
13 page 317. We'll be asking for your consideration this  
14 morning on approving a redesign of the Dallas Stars plate.

15 The state specialty plate vendor, My Plates, is  
16 requesting approval of a proposed redesign of their  
17 existing plate for the Dallas Stars. This would not be an  
18 increase to our inventory but would be merely a  
19 replacement for the existing plate, and we request your  
20 consideration for approval of this redesign.

21 You'll see the actual plate behind me on the  
22 board that they're asking that we use for the redesign.  
23 The one that I have here is the plate that's currently on  
24 the road today. Basically, there's very little change,  
25 the logo has changed, the color instead of gold is green,

1 they've removed the Texas off the right corner and the  
2 Dallas at the bottom of it, there's a little difference in  
3 the logo on the bottom.

4 Like I say, this is not an additional plate,  
5 it's just a redesign, it would replace the current plate  
6 that's out there.

7 MR. INGRAM: Can I turn it down if I just like  
8 that one better?

9 MR. ELLISTON: That's your prerogative as a  
10 board member, absolutely.

11 (General laughter.)

12 MR. BARNWELL: I move that we accept the new  
13 plate.

14 MR. RUSH: Second.

15 MS. RYAN: Second. Did you second, Marvin?  
16 Marvin seconded.

17 MR. WALKER: We have a motion from Raymond  
18 Palacios --

19 MS. RYAN: Mr. Barnwell.

20 MR. WALKER: Mr. Barnwell, and we have a second  
21 from Mr. Rush. Any discussion?

22 (No response.)

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

25 (A show of hands: Barnwell, Ingram, Palacios,

1 Rush, Ryan, Slovacek and Walker.)

2 MR. WALKER: All opposed same sign.

3 (A show of hands: Rodriguez.)

4 MR. WALKER: Mr. Rodriguez voted in opposition  
5 to the plate. It passes.

6 Let's go to number 5.B on the interagency  
7 contract real quick.

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

9 In your board books on page 205 you will find  
10 an interagency agreement for fiscal year 2014. It is an  
11 interagency agreement between the TxDMV and the Department  
12 of Transportation, TxDOT. This is the negotiated and  
13 agreed upon agreement for services provided by TxDOT, as  
14 well as how the agencies will also interact with one  
15 another on the particular items of interest between the  
16 agencies.

17 I am requesting board authorization to move  
18 forward with executing this agreement for a not-to-exceed  
19 amount of \$4 million.

20 MR. WALKER: I so move that we accept the  
21 motion of the executive director to accept the interagency  
22 contract.

23 MR. INGRAM: Second.

24 MR. WALKER: We have a second by Board Member  
25 Ingram. Any discussion?

1 (No response.)

2 MR. WALKER: All in favor signify by raising  
3 your right hand.

4 (A show of hands.)

5 MR. WALKER: The motion carries unanimously.  
6 Jeremiah. Hold on just one second. How long  
7 is it going to take you to give your report if we don't  
8 ask a lot of questions.

9 MR. BARNWELL: Oh, that's not going to happen.

10 MR. JEREMIAH KUNTZ: I can probably get it done  
11 in five minutes if you don't have many questions.

12 MR. BARNWELL: Now, if the chairman had duct  
13 tape.

14 (General laughter.)

15 MR. WALKER: I'm going to lose a board member  
16 here and I need him for an executive session, so as long  
17 as you don't take more than ten minutes of my time, you  
18 got it. We may have to come back.

19 MR. JEREMIAH KUNTZ: I'll do my best.

20 MS. RYAN: We'll kick him if he asks questions.  
21 You've got a full ten minutes.

22 MR. JEREMIAH KUNTZ: Jeremiah Kuntz, director  
23 of Government and Strategic Communications.

24 This is item 6.A in your board packet, page  
25 372. The purpose of the presentation today is to provide

1 you with an update of the implementation activities  
2 identified in the TxDMV 83rd Legislative Session final  
3 bill report.

4 I believe that you all received hard copies of  
5 the report and we presented that report to you at the last  
6 board meeting. This is just a quick update as to the  
7 status of the implementation activities that have been  
8 ongoing leading up to the effective dates of the bills.  
9 Of the bills that required implementation by the staff, 46  
10 of them had immediate effective dates or effective dates  
11 of September 1, which has now passed and now have 46 of  
12 those bills have become law.

13 Two of the bills have delayed implementation  
14 dates, that's HB 2305, which we refer to as the Single  
15 Sticker bill, the bill that consolidates registration and  
16 inspection. That bill has an effective date of March 1,  
17 2015. There are milestones prior to that but the bill  
18 will not go into full effect until that date.

19 Also, HB 1692, which transferred the SOAH  
20 hearings for Lemon Law and warranty performance, has an  
21 effective date of January 1, 2014. There are ongoing  
22 activities associated with that bill as well to stand up  
23 the division that's required to hear those cases and get  
24 the administrative law judges in place so that we are  
25 ready for January 1 when that becomes effective and the

1 cases are transferred over.

2 To date, staff has completed all the  
3 implementation activities identified in the final bill  
4 report for eight of the bills. That means everything that  
5 was required on those has been checked off and we have  
6 closed those out. While most of the bills became  
7 effectively immediately or on September 1, not all of the  
8 implementation activities were required to be completed on  
9 the effective date. Many of the bills are permissive in  
10 nature or they don't require any changes that are really  
11 to the rules or anything, so while they became effective  
12 September 1, we have time to get processes and stuff in  
13 place.

14 There are 21 bills that we still have items  
15 that need to be completed on them, and those are ones that  
16 we thought we would be done with them by September 1, and  
17 we still have some activities that still need to take  
18 place on those. Twelve of those, just for an example,  
19 require an update to the registration and title manuals.  
20 Those manuals are being worked on, we're anticipating that  
21 they'll be ready in October, we had identified that they  
22 would be ready in September. It has no operational  
23 impacts on the agency but we need to get those manuals  
24 updated to make sure that they reflect the most current  
25 processes. So we've got ongoing operations, ongoing

1 implementation activities going on.

2 As you're aware, the agency is in the process  
3 of proposing new rules. You saw some of those rules  
4 today. Fourteen bills required the board to adopt rules.

5 We've identified all of the rules that need to be put  
6 into place and we have those scheduled out for the next  
7 coming months for implementation. You saw a large chunk  
8 of those in one of the rules that Mr. Elliston presented  
9 to you today that covered a lot of the implementation from  
10 2741, which was one of our large bills.

11 Particular bills of interest, I've already  
12 mentioned a couple of those, 1692, which is the SOAH  
13 transfer. We've also got 2202, which was our dedicated  
14 account and processing and handling fee. The agency,  
15 specifically the Finance Division, has been working  
16 extensively with the Comptroller's Office, as well as the  
17 Legislative Budget Board, to get all of the accounting put  
18 in place in the state treasury to make sure all of the  
19 revenues are deposited to the correct accounts and that  
20 those are being tracked correctly.

21 There was a provision that was in that bill  
22 also that returned a portion of the county road and bridge  
23 fee back to the counties. It's that 3 percent that we  
24 were taking off their \$10 road and bridge fee. That bill  
25 repealed the state getting that 3 percent and the



1 programming changes have been implemented to make sure  
2 that the counties get to retain 100 percent of their  
3 county road and bridge fees.

4 2305 I alluded to a little bit, the single  
5 sticker. There's a multi-agency working group that held  
6 its first meeting on August 20 of 2013 to discuss  
7 implementation activities, so we've kind of kick-started  
8 the talking with the other agencies, TCEQ and DPS, to make  
9 sure that we have a coordinated effort to get that bill  
10 fully implemented. We will have a collaborative outreach  
11 program that we'll work with them on to educate the public  
12 and stakeholders about the provisions of that bill, so  
13 we'll start the planning for that as soon as possible as  
14 well to make sure everybody is aware of that. That  
15 starts, again, March 1 of 2015.

16 2741 I alluded to a little bit there as well.  
17 We've got a lot of rules on that. MVD is in the process  
18 of creating two new permits for concrete trucks and timber  
19 trucks. Those are oversize/overweight permits.

20 MS. BREWSTER: MCD.

21 MR. JEREMIAH KUNTZ: I'm sorry. MCD. And  
22 they're working right now to get those permits in place,  
23 the programming for them. We are hoping that those will  
24 all be in place and available to the public no later than  
25 the first of the year. We're trying to see if we can get

1 it done prior to that, but we've told stakeholders that  
2 they should be in place before the beginning of the new  
3 calendar year.

4 We've also had a working group or we brought in  
5 stakeholders to discuss all of the new penalty provisions  
6 that were in that bill for the motor carriers. While we  
7 don't administer a lot of those penalties, we do have some  
8 administrative penalties that we can assess, but we  
9 brought in all of the stakeholders, as well as DPS and  
10 TxDOT to talk with them about those new penalties that  
11 will be in place so that the motor carrier industry is  
12 aware of those. We actually have plans to send out a  
13 letter to every motor carrier that we credential or that  
14 we permit in the state to try and just give them a  
15 courtesy notification that these laws have gone into place  
16 and they need to make sure that they have permits that are  
17 adhering to the weight limitations that are in law so that  
18 they can avoid paying the penalties.

19 The last thing was covered earlier. Ms. Flores  
20 has covered the budget, our appropriations, SB 1. You  
21 have now covered and implemented those activities with the  
22 adoption of the operating budget. There will be ongoing  
23 activities to make sure that we're tracking against that,  
24 but we've fulfilled all the requirements for the budget.

25 With that, that completes my presentation.

1 Hopefully I made ten minutes.

2 MR. WALKER: You did it in four minutes so I  
3 have six minutes to ask questions.

4 MR. JEREMIAH KUNTZ: Well, there you go.

5 MR. WALKER: I only have one real important  
6 question. In your honest opinion, are we pretty much on  
7 schedule with where we need to be with respect to  
8 implementing the legislation?

9 MR. JEREMIAH KUNTZ: I believe that we are  
10 substantially in compliance with the requirements that  
11 were laid out in the bills that have passed. Whether  
12 there are work-arounds that needed to be put in place or  
13 programmatic changes that needed to be done on a temporary  
14 basis while we get formal processes in place, we've taken  
15 those steps to make sure that we're in compliance.

16 MR. WALKER: And I may have just not heard  
17 you --

18 MR. INGRAM: This is two questions.

19 MR. RODRIGUEZ: You only had one.

20 MR. WALKER: I didn't say I had one, I said I  
21 had six minutes.

22 MR. RODRIGUEZ: One six-minute question.

23 (General talking and laughter.)

24 MR. WALKER: Tax assessor standards, what is  
25 the implementation date on that one?

1 MR. JEREMIAH KUNTZ: Standards were actually in  
2 the prior session, however, there were implementation  
3 activities to look at the processing and handling fee as  
4 well as compensation for the county tax assessor-  
5 collectors, as well as their deputies. That's in HB 2202.

6 I believe I provided a memo to the board members outside  
7 of this, it wasn't included in here, provided a memo to  
8 you regarding the implementation of that. We are  
9 requesting to do a study on those compensations of the  
10 counties and their deputies, to do an in-depth look at how  
11 exactly we should be compensating them accurately for the  
12 work that's performed. We have not started that study yet  
13 but we'll be working very shortly to get that done.

14 The bill 2202 does not require you to adopt  
15 that immediately. There's a transition provision that's  
16 at the back of the bill that says until you adopt it in  
17 rule, the current structure stays in place so they will  
18 continue to be compensated the way they are today, and  
19 then once you adopt rules, then they will be compensated  
20 under your rule. So we are in compliance, there's no  
21 immediate need to make sure that that is put in place in a  
22 rule right away.

23 MR. INGRAM: On 2305, when is the first  
24 milestone? Do you know, do you remember?

25 MR. JEREMIAH KUNTZ: I believe there's rules

1 that have to be adopted. I would have to look again.  
2 I've got it in here. There are some rules that are  
3 required to be adopted by March 1 of 2014, I believe for  
4 both us as well as DPS. There's a March 1, 2014 database  
5 needs to be put in place, so they want us to have the  
6 systems talking to each other by March 1 of 2014. And  
7 then there are additional rules, so there's two sets of  
8 rules that are required, the first set was March 1 of  
9 2014, the second set is by March 1 of 2015.

10 MR. WALKER: Anybody have any more questions?

11 (No response.)

12 MR. WALKER: Thank you very much for you  
13 report, Jeremiah. I appreciate it.

14 MR. SLOVACEK: Can I ask one question that may  
15 turn into something? We've postponed the credit card  
16 consideration.

17 MR. PALACIOS: That is correct.

18 MR. SLOVACEK: And we did it because of a judge  
19 that we are waiting on?

20 MR. PALACIOS: Well, there's litigation that's  
21 occurring today.

22 MR. SLOVACEK: And in light of how these judges  
23 never make decisions, why did we think that we had to wait  
24 on this judge? Why couldn't we have taken action and  
25 authorized the program subject to whatever this judge

1 decides, if this judge ever decides?

2 MR. PALACIOS: And that's a very good question,  
3 and we took that into consideration, and our directive to  
4 staff was in the interim, proceed with recommendations  
5 that they could come back to the board with that would fit  
6 within the guidelines of where we think the litigation  
7 decision may come.

8 MR. SLOVACEK: So staff believes that that  
9 court, number one, will make a decision, and whatever the  
10 decision is, it could affect us?

11 MR. PALACIOS: Yes.

12 MR. SLOVACEK: And you're okay with putting it  
13 off?

14 MR. PALACIOS: No, we're not. The decision was  
15 made, we didn't want to proceed with the options that we  
16 had because we felt that some of those options may be in  
17 conflict with whatever court decision could be rendered.  
18 So in the interim, we've given directive to staff to come  
19 up with other options that we felt may be a safeguard,  
20 that would not be in contradiction or contrast to whatever  
21 decision would be rendered.

22 MR. SLOVACEK: After sleeping on it, I just  
23 don't want this court to control our decision.

24 MR. PALACIOS: And we agree a hundred percent.  
25 So we did give directive to staff to come back to us with

1 another option that we thought, again, would be more of a  
2 safe harbor that would not violate any of the provisions.

3 MR. SLOVACEK: And it will require board  
4 approval?

5 MR. PALACIOS: Yes, it will.

6 MR. SLOVACEK: Are we meeting in October?

7 MR. PALACIOS: That's a question for the chair.

8 MR. WALKER: We can, and my suggestion was  
9 going to be, after you made these comments, that maybe if  
10 we do not have a big schedule, then we might even try to  
11 do just a single item like that on a teleconference. I  
12 think we can do that, can we not?

13 MS. AUCOIN: If we meet the standards of that  
14 statute.

15 MR. SLOVACEK: That's not an item we could  
16 approve subject to?

17 MR. WALKER: It's a pretty large amount of  
18 money that the agency is losing due to this.

19 MR. SLOVACEK: My point is can you approve the  
20 item subject to any revisions that the court would somehow  
21 require. I wonder if we couldn't consider it and approve  
22 it, because I've got a feeling that the court is either  
23 not going to rule, or whatever the court does, it will not  
24 affect our present policy.

25 MS. AUCOIN: So I guess just for the purposes

1 of agenda items, I defer to the chair of this board. He  
2 controls or dictates what items are addressed. I  
3 understand you asked the question and you want the answer.  
4 I'll answer the question and then defer to the chairman  
5 if he wants to further discuss this item.

6 MR. WALKER: We have passed the item and we  
7 passed the item due to the fact that there is some legal  
8 court rulings that we're waiting for in order to determine  
9 what we can and cannot do. It's my understanding that it  
10 could affect what we can or cannot do?

11 MR. SLOVACEK: We are a party to the  
12 litigation?

13 MR. PALACIOS: No, we're not a party.

14 MS. RYAN: We actually provided options that we  
15 don't know we have access to right now.

16 MS. AUCOIN: So we're not a named party but it  
17 is a class action lawsuit. There are two parts of the  
18 lawsuit: one deals with money, we could submit a claim or  
19 decide not to submit a claim for money, but that's not  
20 what we're here to talk about; there's another part that  
21 deals with the rules for credit card companies, that  
22 portion will affect us.

23 And I understand your issue or your question,  
24 could the board not rule on something subject to being in  
25 compliance with whatever the court rules. The answer is



1 yes, but I can tell you that staff is not ready today.

2 MR. SLOVACEK: That answers the question.  
3 Because I'm going to tell you, first of all, this judge  
4 will never rule.

5 MR. PALACIOS: We understand.

6 MR. SLOVACEK: And we need to move forward in  
7 spite of these lawyers trying to get 40 percent of some  
8 ridiculous number that they're not entitled to in the  
9 first place.

10 MR. PALACIOS: Yes, we agree with you. Again,  
11 the issue was the options that we had, we didn't feel  
12 comfortable presenting any of the options with this  
13 pending litigation.

14 MR. SLOVACEK: I'll defer to the staff. I just  
15 don't want this to go on forever, we need to implement the  
16 plan.

17 MR. WALKER: We need to get back on target  
18 because I'm going to lose a board member. Victor, do not  
19 leave, do not leave.

20 MR. RODRIGUEZ: Okay.

21 MR. WALKER: I need you.

22 Can you give me an executive report real quick?

23 MS. BREWSTER: Yes. Mr. Chairman, just a  
24 couple of quick things. On the RTS refactoring project, I  
25 would propose that we go into greater depth in the next

1 board meeting, but just some quick highlights. The  
2 project work plan has been submitted and is under review.

3 Our DMV staff who are going to be working on this project  
4 are scheduled to move to the Westlake Oaks project office  
5 starting in September, the last of September, and work  
6 streams 1 through 3 start on October 1 at that office. So  
7 things are well underway and we'll give a more in-depth  
8 briefing of that in the next board meeting.

9 And then the second item, I would just direct  
10 the board's attention to the performance measures within  
11 your board binders. If you have any questions about  
12 those, please feel free to let me know and we can  
13 certainly go, again, into more depth on those items in the  
14 next board meeting.

15 MR. WALKER: Thank you very much, Whitney.

16 Now we're going to go into a short, brief  
17 closed session meeting. It is now 11:43 a.m., September  
18 12. We're going into the closed session under Texas  
19 Government Code Section 551.071 and Section 551.074.

20 For the audience, I anticipate being in  
21 executive session for probably about 30 minutes, and we  
22 will reconvene after that but when we come back to  
23 convene, we've covered all the items so we would just  
24 convene the meeting, so there will not be any further  
25 business today, we will just do that. So thank everybody

1 very much for coming today and appreciate it.

2 (Whereupon, at 11:43 a.m., the meeting was  
3 recessed, to reconvene this same day, Thursday, September  
4 12, 2013, following conclusion of the executive session.)

5 MR. WALKER: It is now approximately 12:39 p.m.  
6 on September 12, 2013. The Board of the Texas Department  
7 of Motor Vehicles is now back in open session.

8 We want to note no action was taken in closed  
9 session. Let the record reflect that Board member  
10 Rodriguez left at 12:15 and Board Member Barnwell left at  
11 12:30.

12 MR. INGRAM: May I move to adjourn?

13 MR. WALKER: Unless there's any further  
14 business, I would like to entertain a motion to adjourn.

15 MR. PALACIOS: Second.

16 MR. WALKER: All in favor?

17 (A show of hands.)

18 MR. WALKER: Thank you very much.

19 (Whereupon, at 12:40 p.m., the meeting was  
20 concluded.)

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MEETING OF: TxDMV Board

LOCATION: Austin, Texas

DATE: September 12, 2013

I do hereby certify that the foregoing pages, numbers 1 through 124, 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.

\_\_\_\_\_  
(Transcriber) 09/18/2013  
(Date)

On the Record Reporting  
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