

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Thursday,
November 14, 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

I N D E X

<u>AGENDA ITEM</u>	<u>PAGE</u>
1. CALL TO ORDER	
A. Roll Call and Establishment of Quorum	5
B. Public Comment	5
C. Comments and Announcements from Chairman	6
§ General Counsel	
§ TxDMV 4th Anniversary	
2. Briefing on Procedures, Standards, Statutory Requirements, and Legislative Changes Regarding Cases under Transportation Code, Chapter 503, and Occupations Code, Section 2301.604	8
3. CONSENT AGENDA (see attached itemized list A)	12
A. Consideration of Enforcement Agreed Orders under Occupations Code, Chapter 2301 and Transportation Code, Chapter 503	
B. Consideration of Enforcement Notice of Violation Citation Agreed Orders under Occupations Code, Chapter 2301 and Transportation Code, Chapter 503	
C. Consideration of Enforcement Dismissal Orders under Occupations Code, Chapter 2301 and Transportation Code, Chapter 503	
D. Consideration of Settlement and Dismissal Orders under Occupations Code, Chapter 2301.204 (Warranty Performance Complaints) and Section 2301.604 (Lemon Law Complaints)	
E. Consideration of Franchise Case Dismissal Orders under Occupations Code, Chapter 2301	
4. RESOLUTIONS for INDIVIDUAL CONSIDERATION - CONTESTED CASES	
A. Consideration of Enforcement Motions for Disposition Based on Default under Occupations Code, Chapter 2301 and Transportation Code, Chapter 503 (see attached itemized list B)	13
B. Consideration of Enforcement Proposal for Decision under Occupations Code, Chapter 2302 § 13-1057 ENF - In the Matter of the License of Roberto A. Olivas d/b/a	14

**Olivas Auto Center, Salvage License
No. 071-6-30677**

C. Warranty Performance Proposals for Decision under Occupations Code, Chapter 2301.204		
1.	13-0201 CAF - Marlon K. Waters v. Ford Motor Company	15
	ALJ recommends repairs	
2.	13-0228 CAF - John Thomaides v. Gulf States Toyota, Inc.	16
	ALJ recommends repairs	
D. Lemon Law Proposals for Decision under Occupations Code, Section 2301.604		
1.	13-0096 CAF - Hilario Hernandez v. Hyundai Motor America	17
	ALJ recommends dismissal	
2.	13-0135 CAF - Adan De Los Santos v. General Motors, LLC	17
	ALJ recommends dismissal	
3.	13-0154 CAF - Carmela Trantham v. Ford Motor Company	17
	ALJ recommends dismissal	
4.	13-0249 CAF - Loshondra Bennett v. Kia Motors America, Inc.	17
	ALJ recommends dismissal	
5.	13-0199 CA - Wesley Tacker v. Ford Motor Company	18
	ALJ recommends repairs	
6.	13-0217 CAF - Carl M. Sartor v. Forest River, Inc.	41
	ALJ recommend repurchase	
5. RESOLUTIONS FOR INDIVIDUAL CONSIDERATION - RULES		
Proposal of Rules under Title 43, Texas Administrative Code, Chapter 217, Vehicle Titles and Registration		
A.	Subchapter A, Motor Vehicle Titles, Section 217.3, Motor Vehicle Titles	42
B.	Subchapter B, Motor Vehicle Registration, Section 217.22, Motor Vehicle Registration	62

6.	BRIEFINGS AND ACTION ITEMS	
A.	Motor Vehicle License Advisory Committee Update	63
B.	Approval to Modify the September 12, 2013, Resolution Adopting Contract Approval Procedures	65
C.	Recommended Credit Card Fee Option(s)	66
D.	Approval of Specialty Plate Designs	73
	1. Texas Southern University - Redesign Non-Vendor Plate	
	2. Olympic Team USA - New Vendor Plate	
E.	Implementation Update - Title 43, Texas Administrative Code, Chapter 219, Oversize and Overweight Vehicles and Loads, Section 219.31, Timber Permits	78
F.	Automation Projects Update and Board Approval of Budgets and Fiscal Years 2014-2015 Spend Plans	81
7.	REPORTS	
A.	Internal Audit's Follow-up to State Auditor's Office Report No. 12-043 On Contract Management	88
B.	Legislative Implementation Progress Report	92
C.	Executive Director Reports	115
	TxDMV - related activities identified as noteworthy, which may include reports.	
	1. Performance Measures	
	2. Select Committee on Transportation Hearing Update	
	3. Uniformity and Service Quality Working Group Update	
	4. WebAgent-Subcontractor Project Completion	
8.	EXECUTIVE SESSION	63
9.	ACTION ITEMS FROM EXECUTIVE SESSION	120
10.	ADJOURNMENT	121

P R O C E E D I N G S

1
2 MR. WALKER: Good morning. We're going to
3 start right on time today. My name is Johnny Walker. I
4 am pleased to have the Board meeting of the Texas
5 Department of Motor Vehicles today. It is 8:00 a.m. I am
6 now calling the Board meeting for November 14, 2013 to
7 order. I want to note for the record that public notice
8 of this meeting, containing all items on the agenda, was
9 filed with the Office of the Secretary of State on
10 November 5, 2013.

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

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

21 Now I'd like to have a roll call of the board
22 members. Vice Chairman Ryan?

23 MS. RYAN: Here.

24 MR. WALKER: Board Member Barnwell?

25 MR. BARNWELL: Here.

1 MR. WALKER: Board Member Caraway?

2 MS. CARAWAY: Here.

3 MR. WALKER: Board Member Ingram?

4 MR. INGRAM: Here.

5 MR. WALKER: Board Member Palacios?

6 MR. PALACIOS: Here.

7 MR. WALKER: Board Member Rodriguez?

8 MR. RODRIGUEZ: Here.

9 MR. WALKER: Board Member Rush can't be with us
10 today. He called me yesterday and he has got a medical
11 issue.

12 Board Member Slovacek? He's supposed to be
13 here. We will just tentatively scratch him out for right
14 now.

15 Let the record reflect that I, Johnny Walker,
16 am here also. We now have a quorum.

17 I do not see that we have any cards from the
18 public, so we will go to the comments and announcements
19 section of our agenda on item number 1.C.

20 I have a couple of comments I'd like to make
21 here, presentations. Number one is I'd like to introduce
22 everybody today our new general counsel, David Duncan.
23 Please stand up right out here. David came to us from the
24 Comptroller's Office. He was assistant general counsel
25 over there. Prior to that he came out of private

1 practice, working for Conoco Phillips. And we're excited
2 about having David here. We think he's going to be a
3 tremendous asset to the organization.

4 Also, today at the conclusion of today's
5 meeting, which I anticipate to be somewhere between eleven
6 and twelve o'clock, we will have a reception to celebrate
7 the fourth anniversary of the agency, and it's going to be
8 in the room next door to the cafeteria. I don't know the
9 name of that.

10 MS. BREWSTER: The Fiesta Room.

11 MR. WALKER: The Fiesta Room. That sounds like
12 a party. So we're going to have a party in the Fiesta
13 Room right after the conclusion of this meeting here.

14 And with that, there is one other announcement
15 I'd like to make to everybody. I know most of you here
16 have been here before and you know Mark Gladney. Mark
17 Gladney works in our Enforcement Division with Bill
18 Harbeson here, and his wife had a stroke this week and
19 passed away. We would like to ask that all of you please
20 keep Mark and his family in your prayers and your
21 thoughts. Mark is a great guy, and so as a consequence of
22 that, Mark obviously won't be here today, but please
23 remember his wife. Thank you.

24 Okay. Any other announcements that you have?

25 MS. BREWSTER: No, sir.

1 MR. WALKER: And I guess there no cards at all?

2 MS. STEENKEN: No, sir.

3 MR. WALKER: Thank you, Stacy.

4 Let's go to item number 2, briefing procedures,
5 standards, statutory requirements, legislative changes
6 regarding cases.

7 MR. HARBESON: Thank you, Mr. Chairman, board
8 members. My name is Bill Harbeson. I'm the director of
9 the Enforcement Division and the Motor Vehicle Division.

10 House Bill 2741, which we often refer to as the
11 clean-up bill, provided for some very broad changes to the
12 agency and its operations, and in particular, the final
13 order authority for two types of cases that we will
14 discuss today. Prior to September 1, 2013, Lemon Law
15 cases, these are 2301.604 cases where the consumer is
16 seeking repurchase or replacement of his new vehicle,
17 these cases were decided by the Motor Vehicle Division
18 director. After September 1, because of House Bill 2741,
19 these cases will be decided by you. So accordingly, today
20 on the agenda you will see for the first time under 3.D
21 these Lemon Law cases, and also you will see them under
22 item 4.D where there has been contested cases and SOAH has
23 made recommendations which now the board will make the
24 final decision on.

25 2741 also changed how certain disciplinary

1 cases, dealer disciplinary cases were handled. Prior to
2 September 1, the Motor Vehicle Division director was the
3 final authority for Transportation Code 503 cases. Those
4 cases are now heard by the board after September 1, and
5 you'll see those on your agenda.

6 Yes, sir.

7 MR. WALKER: Excuse me. I'd like the record to
8 reflect that Member Slovacek has entered the room and is
9 now going to take participation in the board meeting.
10 Thank you, Mr. Slovacek, for being here on time.

11 MR. HARBESON: So what you will see on the
12 agenda today in those areas where you see disciplinary
13 cases under 2301 of the Occupations Code, you will now, in
14 addition, be seeing these disciplinary cases coming out of
15 Transportation Code 503, so the number of cases you will
16 see for dealer disciplinary cases, both on the consent
17 agenda and on the contested case agenda, will increase.

18 Do you have any questions about the changes and
19 the fact that you're going to be seeing more orders today
20 than you have in the past?

21 MR. WALKER: I have one question.

22 MR. HARBESON: Yes, sir.

23 MR. WALKER: Just one, maybe. Bill, I
24 understand the interim lag until we have our own SOAH
25 judge set up in-house, our administrative law judge, so

1 let's say that we do not have a board meeting in December
2 due to a small docket, and so if we were to have those
3 cases that were still there, would the board still need to
4 vote on those cases in January that came before the board
5 in December?

6 MR. HARBESON: Yes, sir. The board going
7 forward is the final order authority for all disciplinary
8 cases regardless of what happens. The Lemon Law cases,
9 which you may be referring to, after January 1, cases
10 brought after January 1 will be going to the Hearings
11 Section or the judges to decide, so there's going to be a
12 tail on the Lemon Law, warranty performance cases, all
13 those cases that are being filed before January 1, so
14 we're looking maybe midyear next year you'll still be
15 hearing those on your agenda.

16 MR. WALKER: So anything that was filed, we'll
17 have to hear those through until they're cleaned out.

18 MR. HARBESON: Until we finish those cases.
19 Yes, sir.

20 MR. INGRAM: And you're speaking about just
21 Lemon Law in terms of the order itself comes to us.

22 MR. HARBESON: Yes, sir. Just Lemon Law and
23 warranty performance cases are going to the new Hearings
24 Section after January 1.

25 MR. WALKER: Can you tell us about how big a

1 docket that is right now sitting out there?

2 MR. HARBESON: We're anticipating approximately
3 fifty cases a year.

4 MR. WALKER: A year?

5 MR. HARBESON: A year.

6 MR. WALKER: So we should have how many sitting
7 on that docket that we will need to hear or need to make a
8 determination on?

9 MR. HARBESON: Well, on your docket -- are you
10 talking about Lemon Law?

11 MR. WALKER: Lemon Law and warranty.

12 MR. HARBESON: There's probably, I'm going to
13 guess, thirty cases between now and January 1 that will go
14 to hearing, go through SOAH, and then come back to you for
15 final decision.

16 MR. WALKER: Anybody else have any questions?

17 MR. INGRAM: I guess I have another question.
18 The largest set of items on this agenda is not so much the
19 warranty or performance, it's the disciplinary action, and
20 so I'm concerned that if we don't have a meeting in
21 December, is that going to be 300 or 400?

22 MR. HARBESON: The agenda you have today is a
23 pretty good indication because there was not a meeting
24 last month.

25 MR. INGRAM: Okay.

1 MR. HARBESON: So what you see today, within
2 reason, will be what would happen if we're looking at
3 January for the next meeting.

4 MR. INGRAM: I understand. Thank you.

5 MR. HARBESON: So we have two months of cases
6 before you today.

7 MR. INGRAM: Okay.

8 MR. HARBESON: May I proceed with item 3?

9 MR. WALKER: Yes, sir.

10 MR. HARBESON: This is the consent agenda.
11 Item 3.A is enforcement agreed orders. There are 119 of
12 those cases before the board today that you've been
13 presented. The NOV's, which are the tickets that are
14 issued by our investigators to dealers for minor offenses,
15 there are 31 of those cases. There's 53 enforcement
16 dismissal cases. In item 3.D, these are Lemon Law and
17 warranty performance cases; there's 30 of those cases.
18 And finally, in 3.E there's two franchise dismissal cases.

19 Staff is asking that you approve these cases:
20 under item 3.A, items 1 through 119; under 3.B, 1 through
21 31; under 3.C, 1 through 53; under 3.D, 1 through 30; and
22 under 3.E, 1 and 2.

23 MR. RODRIGUEZ: So moved, Mr. Chair.

24 MR. SLOVACEK: Second.

25 MR. WALKER: We have a motion to accept the

1 recommendation of Mr. Harbeson to move on items 3.A, 1
2 through 119, item B, 1 through 31, item 3.C, 1 through 53,
3 item D, 1 through 30, item E, 1 and 2. We have a motion
4 by Mr. Rodriguez and we have a second by Mr. Slovacek. Do
5 we have any discussion?

6 (No response.)

7 MR. WALKER: All in favor signify by saying
8 aye.

9 (A chorus of ayes.)

10 MR. WALKER: All opposed, same sign.

11 (No response.)

12 MR. WALKER: The motion carries.

13 Mr. Harbeson, do you want to move on to item 4,
14 contested cases?

15 MR. HARBESON: Yes, sir. On the agenda today
16 under 4.A are 52 motions for disposition. These are
17 contested cases filed by staff or the other party. The
18 respondent has not participated or appeared at the hearing
19 at SOAH, and we're asking for approval of 1 through 52
20 under agenda item 4.A.

21 MR. PALACIOS: So moved.

22 MR. WALKER: We have a motion by Mr. Palacios.
23 Did I get a second yet?

24 MR. RODRIGUEZ: Second.

25 MR. WALKER: We have a second by Mr. Rodriguez,

1 and that's to move on item 4.A. Any discussion?

2 (No response.)

3 MR. WALKER: All in favor signify by saying
4 aye.

5 (A chorus of ayes.)

6 MR. WALKER: All opposed, same sign.

7 (No response.)

8 MR. WALKER: The motion carries.

9 MR. HARBESON: Item 4.B is a PFD issued by SOAH
10 in a salvage case, and that's why we broke it out from
11 4.A. There's one case. The respondent was provided
12 notice of an opportunity for a hearing, he did not appear
13 at the hearing, and staff is recommending approval of the
14 proposed order that's in your package.

15 MR. WALKER: Do we have a motion? I'll make a
16 motion that we accept the staff's recommendation on item
17 4.B to move with their recommendation.

18 MR. SLOVACEK: Second.

19 MR. WALKER: We have a second by Mr. Slovacek.
20 Any discussion?

21 (No response.)

22 MR. WALKER: With no discussion, all signify by
23 saying aye.

24 (A chorus of ayes.)

25 MR. WALKER: All opposed, same sign.

1 (No response.)

2 MR. WALKER: The motion carries. Let's go to
3 item 4.C.

4 MR. HARBESON: 4.C is warranty performance
5 cases. These are PFDs that are sent to you from SOAH
6 after a hearing has been held. In the first case the ALJ
7 recommended reimbursement for expenses or for repairs that
8 were made by the respondent in the case, and that order is
9 in your package, the proposed order, and this is agenda
10 item 4.C.1. Neither of the parties in this case have
11 requested to appear here today, and staff has prepared an
12 order for you. We are requesting that you approve that
13 order.

14 MS. RYAN: We're on C.1, and before we get to
15 C.2, I'll recuse myself.

16 MR. WALKER: We're on 4.C.1 and 2?

17 MR. HARBESON: 4.C.1. Yes, sir.

18 MR. WALKER: So we need a motion on item 4.C.1.

19 MR. SLOVACEK: So moved.

20 MR. WALKER: We have a motion by Mr. Slovacek.

21 MR. PALACIOS: Second.

22 MR. WALKER: Second by Mr. Palacios. Any
23 discussion?

24 (No response.)

25 MR. WALKER: All in favor signify by saying

1 aye.

2 (A chorus of ayes.)

3 MR. WALKER: All opposed, same sign.

4 (No response.)

5 MR. WALKER: The motion carries unanimously.

6 Let's move to item 4.C.2.

7 MR. HARBESON: 4.C.2 is a case where the ALJ
8 after the hearing recommended that additional repairs be
9 made. Neither of the parties in this case have requested
10 to appear here today. Staff has prepared a summary and
11 recommendation that you follow the recommendation of the
12 ALJ, and the order is in your package. Staff is
13 recommending that that order be approved.

14 MS. RYAN: And I'll go on the record that I'll
15 recuse myself from any vote or discussion on this item.

16 MR. WALKER: Ms. Ryan is going to recuse
17 herself from the vote on this due to the fact that there
18 could be potential conflict.

19 Do we have a motion to accept the
20 recommendation of the staff to move forward?

21 MR. BARNWELL: So moved.

22 MR. WALKER: We have a motion by Mr. Barnwell.

23 MR. SLOVACEK: Second.

24 MR. WALKER: Second by Mr. Slovacek. Any
25 discussion?

1 (No response.)

2 MR. WALKER: All in favor signify by saying
3 aye.

4 (A chorus of ayes.)

5 MR. WALKER: All opposed, same sign.

6 (No response.)

7 MR. WALKER: The motion carries. Let the
8 record reflect that Ms. Ryan did not vote on that.

9 Let's go to item 4.D.

10 MR. HARBESON: 4.D is the Lemon Law PFDs, and I
11 have these broken out into three categories. We're first
12 asking you to consider 4.D.1 through 4. In each of these
13 cases after hearing, the ALJ recommended that the case be
14 dismissed. Staff concurs with that recommendation. None
15 of the parties in these cases have requested to appear
16 here today, and you have been provided orders in your
17 package for approval, and staff so recommends that you
18 approve those orders in 4.D.1 through D.4 to dismiss the
19 case.

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

21 MR. WALKER: We have a recommendation that we
22 move with staff's recommendation n items D.1 through 4 on
23 the agenda. We have a motion by Mr. Rodriguez.

24 MS. CARAWAY: Second.

25 MR. WALKER: A second by Ms. Caraway. Any

1 discussion?

2 (No response.)

3 MR. WALKER: All in favor of accepting the
4 recommendation, signify by saying aye.

5 (A chorus of ayes.)

6 MR. WALKER: All opposed, same sign.

7 (No response.)

8 MR. WALKER: The vote was unanimous.

9 Let's go to item, I think, 5 and 6 on there are
10 next that we're going to combine.

11 MR. HARBESON: Yes, sir. 4.D.5 is a hearing
12 again that was held at the State Office of Administrative
13 Hearings under the Lemon Law. The ALJ, after hearing the
14 evidence, recommended repairs be made to the vehicle.
15 Staff, however, when looking at agency precedent and the
16 applicable law, disagrees with the ALJ in this case and is
17 recommending that a repurchase of the vehicle be made.

18 Staff has not heard from either party, even
19 though they were provided staff's position and recommended
20 order, and staff today is recommending that you approve
21 this order in 4.D.5 ordering repurchase of the vehicle.

22 MR. INGRAM: So moved.

23 MR. WALKER: So we have a motion by Mr. Ingram
24 to accept staff's recommendation on item D.5 and 6 which
25 is to allow for the complainants to get repurchase of the

1 vehicles.

2 MR. INGRAM: It's just 5.

3 MR. WALKER: I thought we were combining 5 and
4 6.

5 MR. HARBESON: No, sir. Just 4.D.5.

6 MR. WALKER: I'm sorry. Just 5.

7 MR. RODRIGUEZ: Number 5 is a repurchase.

8 MR. WALKER: So we have a motion by Mr. Ingram.
9 Do we have a second?

10 MS. RYAN: Second.

11 MR. WALKER: We have a second by Ms. Ryan.

12 MR. SLOVACEK: Does it happen often to disagree
13 with the administrative judge?

14 MR. HARBESON: NO, sir. We have very limited
15 grounds under which we can overturn one of these
16 decisions, and in this particular case, the judge did not
17 properly apply prior agency decisions, and we believe the
18 law itself, and so therefore, there are grounds under the
19 statute under the Government Code for us to come down with
20 an order different from what the ALJ gives us.

21 MR. SLOVACEK: Did one of the parties object or
22 appeal?

23 MR. HARBESON: We have heard from neither party
24 after they were provided a copy of what we were proposing
25 to come to the board with.

1 MR. SLOVACEK: Did they object to the findings
2 before you reviewed it?

3 MR. DUNCAN: Yes, Mr. Slovacek, the complainant
4 objected to the findings of the PFD.

5 MR. HARBESON: They would have a period after
6 the hearing to file exceptions to SOAH on the PFD.

7 MR. RODRIGUEZ: In this case we have a
8 recommendation for repair, so you are recommending
9 otherwise, you are recommending repurchase.

10 MR. HARBESON: Yes, sir.

11 MR. RODRIGUEZ: And what is the basis for which
12 we can deviate from the ALJ's recommendation?

13 MR. HARBESON: This would be agency precedent
14 and failure to follow the applicable law.

15 MR. RODRIGUEZ: What is the agency precedent
16 and what is the applicable law?

17 MR. HARBESON: The applicable law that is
18 applicable in this case is whether or not there was a
19 substantial impairment to the value of the vehicle, and
20 this involved the transmission of the vehicle, if I
21 remember correctly. The ALJ felt that all that needed to
22 be done with this transmission would be repair, and our
23 position is that if a reasonable person -- which is the
24 precedent we've followed in previous cases, and that case
25 is discussed in the proposed order -- if a reasonable

1 person would have reduced the value of the vehicle had
2 they known of the impairment that was at issue in this
3 case, then that's a substantial reduction in value that
4 would warrant repurchase and not just repairs.

5 MR. PALACIOS: Mr. Harbeson, I'm a little
6 confused there. So the assertion is that a repair of a
7 transmission would constitute a reasonable impairment of
8 the vehicle?

9 MR. HARBESON: Well, this, again, is a repair
10 that has not corrected the problem. It's gone through
11 the, I think, four or five opportunities for the
12 manufacturer to fix the transmission, and so we're then
13 looking at would a reasonable person buying this vehicle
14 reduce the value of it because there's a problem or defect
15 with the transmission that has not been repaired over
16 multiple attempts.

17 MR. PALACIOS: Well, was the complainant
18 pushing for a repurchase, or were they satisfied having
19 the vehicle repaired?

20 MR. HARBESON: They wanted a repurchase. They
21 felt that the value of the vehicle was substantially
22 diminished because of this ongoing non-correctable
23 transmission problem.

24 MR. PALACIOS: So do we know if the
25 transmission was ever fixed, even on the fourth time?

1 MR. HARBESON: At the time of the hearing it
2 had not been fixed; that's why repairs were ordered.

3 MR. PALACIOS: And then the precedent that
4 you're speaking of, as I understand impairment, it
5 typically has to do something with a serious accident,
6 frame damage or so forth, but I've never heard of
7 impairment due to mechanical, especially a transmission
8 which can be replaced.

9 MR. HARBESON: Well, there's two grounds. One,
10 as you correctly point out, there is a serious problem
11 with the vehicle that can't be corrected that constitutes
12 a safety hazard. The second is there's a serious problem
13 with the vehicle that can't be corrected that reduces the
14 value of the vehicle, and that's the one that we're
15 proceeding under in this case.

16 MR. RODRIGUEZ: Mr. Harbeson, are you of the
17 opinion that no fix can occur?

18 MR. HARBESON: That no fix has occurred and
19 multiple attempts have been made.

20 MR. RODRIGUEZ: That's not my question. Are
21 you forming the opinion that no repair can be made?

22 MR. HARBESON: I'm not really competent to
23 answer that.

24 MR. INGRAM: Is that a necessary question even
25 to ask? I mean, at this point with that type of relief,

1 it's more to the fact that they've tried multiple attempts
2 and haven't succeeded.

3 MR. HARBESON: They have met the statutory
4 requirement for repurchase, that is, multiple attempts and
5 there has been a showing of reduction in value of the
6 vehicle.

7 MR. RODRIGUEZ: I understand that, but the
8 judge has said they must repair and you're saying no
9 repair will fix it, that's why you're here with a
10 different recommendation.

11 MR. HARBESON: I can only guess what the judge
12 was thinking, but I think the judge --

13 MR. RODRIGUEZ: I'm not asking you to guess.
14 I'm asking you the judge has ordered a repair. Right?

15 MR. HARBESON: The judge has recommended to the
16 board that an order be issued for additional repair.

17 MR. RODRIGUEZ: They've ordered to make this
18 whole, make it fixed, make it work. Right?

19 MR. HARBESON: Yes, sir.

20 MR. RODRIGUEZ: And you have formed the opinion
21 that no repair will fix it, so that's why you're
22 recommending the repurchase here.

23 MR. HARBESON: We are recommending that they
24 have met the statutory requirements for repurchase.

25 MR. SLOVACEK: How many times have they tried

1 to fix it?

2 MR. INGRAM: Four, I believe.

3 MR. HARBESON: It was four, I believe. I'd
4 have to go back and make sure. There was four and then an
5 opportunity by the manufacturer after being in the shop to
6 make a correction.

7 MR. SLOVACEK: Apparently Ford is okay with
8 your recommendation to repurchase.

9 MR. HARBESON: Ford has not responded to the
10 recommended order that you have in front of you today.

11 MR. SLOVACEK: They haven't objected to it.

12 MR. WALKER: Well, neither side knows that we
13 are recommending that this be made into a Lemon Law case
14 after the SOAH. Is that correct?

15 MR. HARBESON: Yes, sir, they do.

16 MR. WALKER: Oh, they do know?

17 MR. HARBESON: Prior to the hearing, we send to
18 the parties what we're providing you, that is the summary
19 by Mr. Herring and the proposed order.

20 MR. WALKER: How many days did you say? How
21 many days did we send something prior to this meeting
22 today?

23 MR. HARBESON: I'm not sure. I think it's at
24 least ten days prior to the board meeting we send that
25 notice to both sides. That's why I'm announcing that

1 neither party has contacted us wishing to appear.

2 MR. RODRIGUEZ: How do you deliver that notice?

3 MR. HARBESON: It's by mail.

4 MR. RODRIGUEZ: Regular mail?

5 MR. HARBESON: I believe so, but I can confirm
6 if we sent it by other ways.

7 MS. RYAN: But the complainant did respond
8 after the SOAH ALJ, after the hearing to state that they
9 were not satisfied that the car could be repaired and had,
10 at least in the letter, safety concerns, and that they're
11 aware that they meet the eligibility requirements for
12 repurchase. Correct?

13 MR. HARBESON: That's correct. They believe
14 that the order should have been repurchase.

15 MS. RYAN: So though they're not here and they
16 were notified of the request, they didn't respond after
17 that.

18 MR. HARBESON: They were not happy with the
19 ALJ; we have not heard from them since we have sent what
20 our recommendation.

21 MS. RYAN: And we've not heard from Ford.
22 Correct?

23 MR. HARBESON: No, ma'am.

24 MR. RODRIGUEZ: Once again, your basis for
25 deviating from the ALJ's recommendation is precedent and

1 what else?

2 MR. HARBESON: We stated they failed to follow
3 the law, properly apply and interpret applicable law.
4 This would be under Government Code 2001.058(e)(1).

5 MR. PALACIOS: Mr. Harbeson, I'm not sure I
6 agree with the argument on impairment, however, doesn't
7 the fact that the vehicle has been repaired, the same type
8 of repair for the fourth time, in and of itself constitute
9 a basis for repurchase.

10 MR. HARBESON: If the defect is either a safety
11 hazard or substantially impairs, so there's some things
12 that they may try to fix four times and the judge finds
13 that that does not substantially reduce the value of the
14 vehicle or constitute a safety hazard. We believe that
15 the facts in this case with this transmission and what was
16 reported as occurring with the transmission did
17 substantially, that a reasonable person would have balked
18 at buying this vehicle knowing that these problems existed
19 with this vehicle. So there could be non-repairable
20 defects with a vehicle that don't constitute a safety
21 hazard or do not substantially impair the value of the
22 vehicle.

23 MR. PALACIOS: Okay. So again, the fact that
24 there were four attempts to repair, whether it's a
25 transmission or engine problem, and the attempts were

1 unsuccessfully, notwithstanding the impairment of the
2 vehicle, would that alone constitute grounds for
3 repurchase?

4 MR. HARBESON: If those other two items
5 existed. Like I said, a vehicle could have ongoing
6 problems, but if it's not safety, you're at least in the
7 ball game, you've gone over the first hurdle to at least
8 be arguing a 604 case. The second part of the case would
9 be that it's either a safety issue or it substantially
10 impairs the value of the vehicle. So you're at least in
11 front of the judge on that one.

12 MR. SLOVACEK: As a practical matter, we might
13 view the recommendation in a different light had Ford been
14 here and had Ford objected, but if Ford knows about it and
15 has, in essence, accepted your recommendation by virtue of
16 the fact that they've not complained about it, then I
17 think the board ought to approve staff's recommendation
18 and move forward.

19 MR. RODRIGUEZ: Well, in that light, I'd say we
20 don't know if Ford knows at this point.

21 MR. BARNWELL: Let me ask you a question. Are
22 you required by law to provide notice to the complainant
23 and the respondent?

24 MR. HARBESON: On what we're recommending?

25 MR. BARNWELL: Yes.

1 MR. HARBESON: No. I don't believe we are.
2 I'll let the general counsel argue with it, but it's
3 always been our practice that if we are presenting you,
4 the decision-maker with something, that we're going to
5 present it to the other side.

6 MR. BARNWELL: Now, just to go back for a
7 minute. After the ALJ had made his proposal, his
8 determination, both sides received notice at that point.
9 That's true, isn't it?

10 MR. HARBESON: Yes, sir. They received notice
11 of the judge's proposal.

12 MR. BARNWELL: Okay. And did either party
13 complain?

14 MR. HARBESON: Yes, sir.

15 MR. BARNWELL: The complainant complained?

16 MR. HARBESON: Yes, sir. The complainant
17 complained with the recommendation that there be
18 additional repairs made. That goes to SOAH who then
19 considers whether or not they're going to change their
20 recommendation to the board, and they did not.

21 MR. BARNWELL: What did the respondent say?
22 Nothing, as far as we know?

23 MR. HARBESON: As far as I know, the respondent
24 did not reply, and they do have an opportunity to reply.

25 MR. BARNWELL: At least there's nothing in your

1 record to indicate that Ford stood up and said, We don't
2 like this.

3 MR. WALKER: But it was in favor of Ford at
4 that time.

5 MR. HARBESON: Ford liked it at that point.

6 MR. BARNWELL: They liked it at that point.

7 Then the question is has Ford had an opportunity to appear
8 here. Because you decided to change the decision, the
9 ALJ's decision, because you believe that the law was not
10 properly applied, and so have the parties had an
11 opportunity to argue this or to be represented here today
12 in that event, and you say that the agency is not required
13 to provide notice that you're doing anything different.

14 MR. WALKER: Well, he hasn't done anything,
15 he's making a recommendation.

16 MR. BARNWELL: Well, I know, but there's a
17 recommendation that we don't accept the ALJ's
18 recommendation. I'm just interested in knowing whether
19 the parties have had adequate notice, and if they have,
20 then I don't have a problem.

21 MR. HARBESON: We have advised both parties of
22 what you have in front of you today.

23 MR. RODRIGUEZ: And I asked you how did you
24 advise them, and you said you don't know, you said by
25 mail, maybe. So we don't know here today, no one can tell

1 me here today that Ford actually knows of this meeting and
2 this particular change in the recommendation.

3 MR. HARBESON: If you'd like to proceed on, I
4 can go find out.

5 MR. RODRIGUEZ: I'm just asking.

6 MR. HARBESON: No, I can't tell you how they
7 were advised.

8 MR. SLOVACEK: You don't have a green card, you
9 don't send by certified mail or hand deliver.

10 MR. HARBESON: That's what I don't know, and
11 I'd like to confirm that.

12 MR. SLOVACEK: It's probably good practice. I
13 don't know why you wouldn't, as a matter of practice, send
14 it by certified mail, return receipt requested, or have
15 some evidence of delivery, so these kind of questions
16 don't come up. I think everybody seems to be of the
17 opinion if Ford is aware of it and they do not object,
18 then we're okay with it, but if Ford is not aware of it, I
19 think it would be something different.

20 MR. HARBESON: I can ask staff.

21 MR. BARNWELL: I'd like to move that we table
22 this or pass it.

23 MR. WALKER: Withdraw the motion.

24 MS. BREWSTER: Is there a motion?

25 MR. WALKER: Yes. We have a motion on the

1 table and a second at this point in time.

2 MR. SLOVACEK: It's just a question of did they
3 receive notice.

4 MR. HARBESON: I will find out.

5 MS. SLOVACEK: Could you find out today?

6 MR. HARBESON: Yes, sir. I can find out
7 upstairs.

8 MR. SLOVACEK: Good. Thank you.

9 MR. WALKER: We have a motion by Mr. Ingram.
10 Would you like to maintain your motion, or would you like
11 to withdraw?

12 MR. INGRAM: I guess for the efforts of
13 harmony, I would withdraw. I'm not eager to withdraw it,
14 but if we can table it till later on in the meeting,
15 perhaps Mr. Harbeson can check.

16 MR. WALKER: Mr. Ingram is going to withdraw
17 his motion at this time, and what we would like to do is
18 table this temporarily, I think, until you can get back to
19 us in this meeting with a response as to how the
20 respondent has been notified of the recommended decision
21 of the staff.

22 MR. HARBESON: I can answer that now.

23 MR. INGRAM: I'll withdraw my withdrawal.

24 MR. WALKER: Let the record reflect that Mr.
25 Ingram has withdrawn his withdrawal, so we still have a

1 motion. I guess we can do that.

2 MR. HARBESON: May I proceed?

3 MR. WALKER: Mr. Harbeson, go ahead, please.

4 MR. HARBESON: On October 28, Mr. Gladney sent
5 to both parties a notice of the meeting and also
6 enclosures which include the case summary and the proposed
7 order. That was sent via first class mail to the
8 complainant. To Ford it was sent by first class mail and
9 by facsimile to the number that we've been dealing with
10 them at. And I'm checking here, none of those have been
11 returned, none of that correspondence has been returned.

12 MR. SLOVACEK: Both sides got notice.

13 MR. HARBESON: Yes, sir.

14 MS. BREWSTER: Well, Ford got notice by two
15 ways: by facsimile and by first class mail.

16 MR. HARBESON: That's correct.

17 MR. SLOVACEK: Is there any reason why you
18 wouldn't do it certified mail on these type of matters?

19 MR. HARBESON: No, sir.

20 MR. SLOVACEK: The law doesn't require it?

21 MR. HARBESON: We probably should.

22 MR. SLOVACEK: What about going forward, if one
23 of the parties objects to our order, what's the time frame
24 in which they can object and/or appeal it?

25 MR. HARBESON: They have the opportunity to

1 file a motion for rehearing, in which case Ford or the
2 complainant -- I doubt the complainant would complain if
3 an as proposed is issued, but Ford could come in and ask
4 for a motion for rehearing, present evidence on why they
5 think there should be a rehearing, and then the board
6 could decide we're going to grant a rehearing on this
7 thing, send it back to consider these matters.

8 MR. SLOVACEK: Well, it just seems to me that
9 if Ford does not object to your recommendation, the board
10 should not necessarily take a position contrary to what
11 you're recommending, we should approve your recommendation
12 if Ford doesn't object.

13 MS. RYAN: Well, as I understand it, there's
14 two areas that they can determine repurchase, and that's
15 safety, as well as the decline in value. Correct? And
16 what you're proposing is that they misapplied the law
17 because the transmission definitely devalues the vehicle,
18 however, when the complainant sent their followup letter,
19 their main concern is safety. Is that correct?

20 MR. HARBESON: That's correct.

21 MS. RYAN: And that's not addressed in the
22 staff's recommendation on the misapplication of the law.
23 So the concern I have is that both of those are somewhat
24 subjective opinions and we're only taking one of those
25 subjective opinions into consideration, yet we do have

1 written documentation from the complainant that feels
2 there's a concern for safety. So I guess I don't know why
3 the agency didn't take that into consideration, and I'm
4 asking for the application or the misrepresentation since
5 that's really what their followup letter was, and do we
6 feel that there is a safety issue.

7 MR. HARBESON: The evidence in the record that
8 was discussing the transmission provided evidence for a
9 reasonable person -- which is the agency precedent I'm
10 talking about -- that a reasonable person hearing evidence
11 about all the problems with this transmission would say I
12 am not going to pay full value for this vehicle. The
13 safety issue would be, again, they would have to have
14 presented evidence from somebody indicating that this was
15 an unsafe vehicle. And so we relied on the transmission
16 as the grounds to proceed.

17 MR. WALKER: But, Mr. Harbeson, help me out
18 just one second here because I think we're going the wrong
19 direction on this. In order to meet the Lemon Law
20 requirements for repurchase of a vehicle, the vehicle has
21 to be less than 24 months, I believe.

22 MR. HARBESON: Yes, sir.

23 MR. WALKER: Plus six months after the
24 expiration of that or the greater of the warranty period,
25 not to exceed 24 months and six months. So the car is

1 within the realm of the time limits of where they can file
2 for a Lemon Law case. Correct?

3 MR. HARBESON: Yes, sir.

4 MR. WALKER: The next requirement is the car
5 had been taken back four times or not just necessarily the
6 exact same problem but taken back for four defects on the
7 car during that period of time. Is that not correct also?

8 MR. HARBESON: You'll have to forgive me, but I
9 think it's going to be related issues. In other words,
10 it's one defect or problem with the vehicle that has not
11 been corrected after four times.

12 MR. WALKER: So we have a transmission that was
13 taken in four times during the period within the
14 requirements of the law. Correct?

15 MR. HARBESON: Yes, sir.

16 MR. WALKER: So the car meets all the
17 requirements to be accepted as a Lemon Law case. Correct?

18 MR. HARBESON: Yes, sir. I should also point
19 out that after the complaint -- not after the complaint,
20 but the manufacturer must also be given an opportunity to
21 correct, so that's in addition to the other.

22 MR. WALKER: And in this particular case, did
23 the manufacturer offer to fix the car within the four
24 different times it was surrendered to them.

25 MR. HARBESON: The manufacturer had an

1 opportunity to correct the problem after notice. Yes.

2 MR. WALKER: So by all accounts, the vehicle
3 meets the requirements to be repurchased under the law.
4 Correct?

5 MR. HARBESON: It meets the requirements to be
6 considered for repurchase if we have a safety defect or
7 there's a substantial impairment to the vehicle.

8 MS. RYAN: So the subjectivity is in there by
9 law.

10 MR. WALKER: Yes.

11 MR. SLOVACEK: Ford doesn't object to what
12 you're recommending.

13 MR. HARBESON: Ford has not voiced any
14 opposition to what we propose today. Yes, sir.

15 MS. RYAN: Assuming they've received the
16 notice.

17 MR. HARBESON: Assuming they've received
18 notice.

19 MR. SLOVACEK: After you tell them about and
20 they acknowledge they didn't get notice so we can
21 reconsider it, but right now it appears they've approved
22 it by their silence.

23 MS. RYAN: When you gave them the
24 recommendation, did they know it would be on today's
25 agenda?

1 MR. HARBESON: Yes.

2 MS. RYAN: So they know that today the decision
3 is being made, or was it just we're recommending to the
4 board and they didn't know when it would be heard?

5 MR. HARBESON: They were told that the case
6 would be considered today at the meeting starting at eight
7 o'clock.

8 MR. RODRIGUEZ: So in October you knew about
9 today's meeting?

10 MR. HARBESON: Yes. In October we knew it was
11 going to be on this agenda.

12 MR. RODRIGUEZ: So back in October you knew we
13 would have a meeting today? Because I didn't know we'd
14 have a meeting for sure until about ten days ago.

15 MR. HARBESON: Yes.

16 MR. RODRIGUEZ: You're telling us that in your
17 view the full value of this car cannot be restored because
18 of a repair problem. Right?

19 MR. HARBESON: I don't think I'm telling you it
20 can't be repaired to restore it to full value.

21 MR. RODRIGUEZ: All I'm trying to say is that
22 every car that goes in a shop that needs a repair, if we
23 follow your thought, every time it needs a repair there's
24 a notch against the full value, and I'm just wondering at
25 what degree does it start to where you start recommending?

1 MR. HARBESON: If you're given an opportunity
2 to repair it and you don't or can't.

3 MR. RODRIGUEZ: But we do have an order here
4 trying to get Ford Motor to repair it, and you're saying
5 no, no more, we need a repurchase.

6 MR. HARBESON: Yes, sir.

7 MR. WALKER: But the repurchase doesn't go back
8 to the original purchase price of the vehicle, it goes
9 back to the depreciated cost at that day and time.
10 Correct?

11 MR. HARBESON: Your order, yes, has a
12 calculation based on mileage and time.

13 MR. WALKER: So it's not going to be exactly
14 what they paid for the car.

15 Is there any more discussion?

16 (No response.)

17 MR. WALKER: Mr. Duncan, we're going to let you
18 start earning your keep. Tell me if we need to have a new
19 motion or can he withdraw his request for withdrawing his
20 motion?

21 MR. DUNCAN: I think by withdrawing his
22 withdrawal, he restated the motion, essentially.

23 MR. WALKER: So that takes us back to that we
24 have a motion by Mr. Ingram here and a second by Ms. Ryan
25 to accept the recommendation of staff which would be to

1 reverse the SOAH's decision from a warranty item fix to a
2 repurchase under the Lemon Law Act. Any further
3 discussion? If not, we're going to vote.

4 MS. RYAN: I have a question. Remind, please,
5 of the recourse if one of the parties is not pleased with
6 the decision. Do they have any recourse?

7 MR. HARBESON: Motion for rehearing. And then
8 depending on the outcome of that proceeding, to district
9 court.

10 MS. RYAN: So they have the ability, if one of
11 the parties says they did not receive the notice, they
12 were not aware, they will receive the decision and if one
13 is not pleased, they can request a motion for rehearing?

14 MR. HARBESON: They could request based on that
15 ground. It's the board's decision, and if you say we do
16 not believe that Ford got adequate notice of what might
17 happen today and was not provided an opportunity to voice
18 their position in this case today, therefore, we're going
19 to grant that motion and give them at least an
20 opportunity. You could either send it back to SOAH or you
21 could have them just come in here and argue their position
22 in front of the board.

23 MR. WALKER: Any other questions or discussion?

24 (No response.)

25 MR. WALKER: Let's take a vote. All in favor

1 of the recommendation to the board. Let's do a hand
2 count, motion by raising your right hand.

3 (A show of hands: Barnwell, Caraway, Ingram,
4 Slovacek and Walker.)

5 MR. WALKER: Let the record reflect that we
6 have Ms. Caraway, Mr. Barnwell, Mr. Ingram, Mr. Walker and
7 Mr. Slovacek in favor of the motion.

8 All opposed, same sign, raise your right hand.

9 (A show of hands: Palacios, Rodriguez and
10 Ryan.)

11 MR. WALKER: Let the record reflect that Mr.
12 Rodriguez and Ms. Ryan have both voted against the motion.

13 MR. PALACIOS: I did too.

14 MR. WALKER: And Mr. Palacios. The motion will
15 carry.

16 MR. SLOVACEK: Would you consider certified
17 mail, return receipt requested going forward?

18 MR. HARBESON: Yes, we'll implement that.

19 MR. SLOVACEK: If that's reasonable.

20 MS. BREWSTER: Member Slovacek, it is
21 absolutely reasonable.

22 MR. SLOVACEK: It's very reasonable. I just
23 want to make sure you agree.

24 MR. HARBESON: Of course I do.

25 MR. WALKER: Let's move to item D.6.

1 MR. HARBESON: 4.D.6 is a Lemon Law case.
2 After the hearing, the ALJ recommended repurchase of the
3 vehicle. The staff concurs with that recommendation. Any
4 change in the proposed order is that there was a mis-cite
5 in one of the parts of the PFD, so otherwise, we're
6 accepted the PFD and concurring with the recommendation to
7 the board by the ALJ that repurchase be ordered.

8 MR. INGRAM: I move that we accept the final
9 order, and under 2301, Subchapter M, as recommended by
10 staff.

11 MR. BARNWELL: Second.

12 MR. WALKER: We have a motion by Mr. Ingram and
13 a second by was it Mr. Palacios or Mr. Barnwell?

14 MR. PALACIOS: Barnwell.

15 MR. INGRAM: Let's see if this one goes any
16 faster.

17 MR. WALKER: Do we have any discussion or
18 questions about item D.6? We have a recommendation to
19 accept the repurchase of the vehicle under the Lemon Law.
20 With no questions or discussion, all in favor signify by
21 saying aye.

22 (A chorus of ayes.)

23 MR. WALKER: All opposed, same sign.

24 (No response.)

25 MR. WALKER: The motion carries.

1 MR. WALKER: Is Ms. Kovar here yet? She's not
2 in yet? Okay. When she gets here, I know you're on a
3 pretty tight schedule, would you just please kind of stand
4 up and wave at me so I know so we don't occupy a lot of
5 your time.

6 Let's move to item 5.A and B, Mr. Elliston.

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

11 Today you have before you under agenda item 5.A
12 requested amendments to Subchapters A, 217.3 of our
13 Administrative Code having to do with vehicle titles.
14 What we'll be asking today is that you approve these only
15 for posting for public comment, not for adoption. This is
16 a fairly lengthy section of rules, so I'm going to hit the
17 highlights here, and please, if you have any questions,
18 let me know.

19 The first section is 217.3(a)(5) which
20 authorizes trailers weighing 4,000 pounds or less to be
21 titled and deletes manufacturer rated carry capacity
22 related to carrying capacity. As all of these are cleanup
23 for legislative purposes, the law now makes it permissible
24 to title a trailer under 4,000, where previously it did
25 not. It's not mandatory but is permissive.

1 Section 217.3(a) (6) permits titling of
2 qualified assembled vehicles.

3 Section 217.3(b) (2) creates an alternative
4 location in an adjoining county for titling services under
5 some circumstances. This section basically says if a
6 county tax office is closed for whatever reason for a week
7 or longer, that persons can go to an adjoining county if
8 that adjoining county agrees to accept that work and take
9 care of that work for them.

10 Section 217.3(d) (3) requires that a title
11 applicant include in an application the legal name as
12 stated on their accompanying identification documents.
13 This is some clarification under the ID section. We've
14 had a lot of question about what is legal name, and that
15 just states if it's whatever you present on your driver's
16 license or whatever is on the documents you present,
17 that's what we use. If you've gotten married and your
18 name has changed, you need to go change your driver's
19 license and then we'll title your vehicle. So that's the
20 position the agency has taken and that's what this does
21 here.

22 Section 217.3(c) (1) deletes model and
23 manufacturer rating carry capacity and adds shipping
24 weight and gross vehicle weight to the minimum information
25 required on a certificate of origin.

1 Section 217.3(c) (3) exempts members and
2 immediate families of military personnel returning to
3 Texas with proof of active duty from certain VIN
4 verification requirements. Basically, if they're active
5 military and they're importing a vehicle, they're not
6 required to go get the VIN checked like other persons who
7 are importing a vehicle. And that's in regard to
8 statutory change.

9 Section 217.3(c) (6) clarifies identification
10 required for titling services generally for leasing and
11 corporate application and use of power of attorney. This
12 section also clarifies when identification is current.
13 This came to our attention that DPS issues an
14 identification card and for persons over a certain age
15 it's non-expiring. So current would then be current
16 longer than the 12-month period or whatever, so it just
17 clarifies that, that that is an acceptable identification.

18 Section 217.3(d) (1) and (e) (1) require that the
19 same identification accompany applications for an initial
20 or a certified copy of title so that whether you're
21 getting an original or if you're coming in for a CCO, we
22 require the same things.

23 Section 217.3(b) (2) provides that when title
24 issues it is mailed to the applicant or lienholder if
25 there's a lien. If title is an electronic record, there

1 is no mailing.

2 Section 217.3(d)(2) prohibits a certified copy
3 of a title from being issued within 14 days after the
4 original title is issued. Frequently we'll have someone
5 buy a car and just a couple of days later they show up at
6 our office wanting a certified copy. Obviously it hadn't
7 had time to get the original so we don't want two of them
8 out there, so unless it's been 14 days, we would not issue
9 a CCO.

10 Section 217.3(e)(4) eliminates the title
11 designation Certified Copy when there is a subsequent
12 title. Currently if you get a certified copy and that
13 vehicle goes on as that is a certified copy of the record,
14 even if you sold it to another person, it continues as a
15 certified copy. This changes that procedure and they'll
16 get a new blue title so it will be just like an original
17 title at that point. There's no reason to carry certified
18 forward after a change in ownership.

19 Section 217.3(g) revises the bonded title
20 procedures, and 217.3(h) modifies procedures for appeal of
21 department title determinations. This does kind of two
22 things. It requires that the vehicle be in the person's
23 possession before they can try to get a bonded title, and
24 if they're going to go for a tax assessor-collector
25 hearing, the declination must be from the agency to move

1 to that next procedure.

2 Section 217.3(I) adds a county stamped
3 affidavit to rescind, cancel or revoke a application for
4 title. This just takes the place of the notary, so if
5 they're in the tax office and their employee stamps it
6 with the county seal, then we would accept that just like
7 we would a notary.

8 And these rules we're asking that you approve
9 posting for public comment only today.

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

11 MS. RYAN: Second.

12 MR. WALKER: We have a motion by Chief
13 Rodriguez and we have a second by Ms. Ryan to accept the
14 posting of the proposed rules for the secretary of state's
15 office to amend items of Chapter 217, Vehicle Titles and
16 Registration under 217.3 under Motor Vehicle Titles. Any
17 further discussion about the motion proposed?

18 MR. INGRAM: I have a comment. Mr. Elliston, I
19 know that this is just posting and not critical at this
20 point to get too deep into these items, but I know that
21 one of the things, as a goal for the agency we're trying
22 to be much more focused on the customer, so have we been
23 able to share these with the stakeholders.

24 MR. ELLISTON: These amendments?

25 MR. INGRAM: Yes.

1 MR. ELLISTON: Until we bring them to the
2 board, we typically don't do that. We have had a lot of
3 discussion with industry, we are working on some other
4 changes that hopefully will benefit them. A couple of
5 examples is having to do with corporations or leasing
6 companies that are titling vehicles and what type of
7 identification is required, is it one of their employees
8 or did we come up with some other method of doing that, so
9 that's something we're going to be looking at. These here
10 today do not include that.

11 MR. INGRAM: I guess I'm a little bit shocked
12 by the comment because you said you don't normally do that
13 until you bring something to publish. I would think that
14 that's kind of almost backwards, that you would actually
15 try to get the input from the stakeholders prior to
16 bringing something that we would publish and get feedback.

17 MR. ELLISTON: Member Ingram, my comment was we
18 don't send this package out to them. We do have
19 discussion -- and I'm assuming you're referring to mostly
20 the ID piece, we've had extensive conversations with every
21 part of industry and stakeholder that would be included in
22 this. So I think we have done that, but we don't send
23 this packet out saying this is the packet that's going to
24 the board today. And that's what the publishing for
25 public comment section is for. I mean, it will be out

1 there for everybody to see and bring back their comment at
2 that point, and we will be talking to them and hearing
3 from them when this is published and working on it and
4 many times we'll actually bring those recommendations
5 ourselves to the board if it makes sense to do that.

6 MR. INGRAM: Well, I understand that, but I
7 guess it's not really a question, it's just a comment more
8 for the board and for staff is that we seem to take a lot
9 of steps to get stakeholder involvement, and much like my
10 licensing committee, we actually work to get input prior
11 to bringing something to publish, and I don't know if I
12 totally agree with this concept of let's publish and then
13 get comments.

14 So I don't think there's anything that's going
15 to be a snag in this so I'm not trying to draw a big red
16 flag about any particular piece of this, I think it's all
17 going to probably publish and be fine. It's just more a
18 philosophy of mine, and I think it's just it's not being
19 completely true to what our goals are as an agency.

20 MR. WALKER: But isn't the origin of a lot of
21 this from the last legislative session?

22 MR. ELLISTON: Yes.

23 MR. WALKER: So it's been vetted through the
24 legislative process.

25 MR. ELLISTON: There are some pieces of this,

1 and this is part of what rulemaking does, it's
2 clarification of existing statute, and that's what some of
3 this does. The piece about if you're over 65 years old
4 and DPS says that's a good ID, then that's clarification,
5 that's not in statute, but that's where the board has
6 authority to clarify those pieces. So those kind of
7 things are a part of changes from the legislature but it's
8 clarification of that.

9 MR. SLOVACEK: This is statutory. Correct? We
10 don't have the ability to change the rules, the
11 legislature has to do that.

12 MR. BARNWELL: The legislature has mandated and
13 given us the power to make the rules to enforce the law,
14 and these clarifications, I understand where you're going
15 with it.

16 MS. RYAN: I think really it's more of an
17 agency, it's really more Whitney's call, I believe, and I
18 guess the comment really is as a best practice I think
19 what the board has requested is that we be transparent and
20 try to involve our stakeholders, even if it is a cleanup,
21 and in previous situations where there's a cleanup, we
22 have always tried to engage and just make sure there's no
23 surprises, and that transparency is what the agency is
24 known for. I think what we're requesting -- I won't speak
25 for Blake but I agree with him, so I would request that we

1 always, in not just certain industries but all industries
2 and stakeholders, we try to maintain that transparency and
3 stakeholder involvement prior to the board putting
4 something out.

5 So I guess it's really a direction to you to
6 ask if that's your thought.

7 MR. ELLISTON: I don't think in this particular
8 situation that that wasn't done.

9 MS. RYAN: Well, I'm asking as an agency
10 process, I think.

11 MS. BREWSTER: May I just insert myself here.
12 I think Member Ingram's comments and Vice Chair Ryan's
13 comments are well taken. We have gotten in several
14 instances into the process of gathering that feedback from
15 stakeholders and customers before we bring anything to the
16 board, and I would concur that in most instances we
17 practice that. There may be an exception in terms of
18 timing, if there's a legislative mandate that things need
19 to be done, but we would certainly allow the board that
20 information. But certainly, I think, that has been the
21 philosophy laid out by this board.

22 MR. RODRIGUEZ: Let me ask this question. I'm
23 sorry to interrupt, and I have more things to say, but I'm
24 going to get to this one right here, and that is if this
25 were a substantial industry impacting type of change, we

1 would have had discussions. Right?

2 MR. ELLISTON: Yes, sir, and on many of these
3 we did. Some of these, the clarification is actually as a
4 result of conversations.

5 MR. RODRIGUEZ: Because you can't hold a
6 committee meeting to do anything and everything that you
7 need to do in your office, that's impossible.

8 MR. INGRAM: Okay. So let me clarify that I
9 don't want the agency staff to make a decision that this
10 is or is not a major thing, so what I'm trying to get to
11 is you may think it's minor cleanup and it may be, but I'm
12 trying to say let's get these stakeholders involved to
13 make sure that they agree this is just cleanup. And I
14 don't need a committee meeting.

15 MR. RODRIGUEZ: And if they don't agree, they
16 don't bring it up?

17 MR. INGRAM: If they don't agree, well, then I
18 think there needs to be some discussion about why they
19 don't agree.

20 MR. RODRIGUEZ: I'd like for you to do your job
21 rather than having to check with somebody every time.
22 That's what rulemaking posting is about, to give those
23 areas some opportunities to reflect on it. I'm not going
24 to go along with that recommendation, just my thought on
25 it.

1 MS. BREWSTER: Mr. Chairman, I do believe that
2 there is a happy medium. When we are considering bringing
3 rules before the board, we do bounce certain things off of
4 board members that would be potentially impacted by these
5 rules, we do move forward with that before we bring it to
6 the full board. So I do understand where Mr. Ingram and
7 Vice Chair Ryan are coming from in terms of the agency
8 doesn't want to move blindly ahead with certain things
9 that are going to harm our industry partners.

10 MR. SLOVACEK: But I view this as a starting
11 point. You're putting it before the board, you're posting
12 it, we're not voting on it, now discussion begins and
13 stakeholders would weigh in and agree or disagree and make
14 recommendations. So it's the starting point for us and
15 for them.

16 MR. ELLISTON: Yes, sir.

17 MR. SLOVACEK: When do we need to act and
18 approve?

19 MR. ELLISTON: After it's been posted, then we
20 will come back and we will receive comments, and you will
21 see those comments, we'll bring the comments in, and then
22 the board makes a final decision do we pass these rules or
23 do we not.

24 MR. RODRIGUEZ: The posting period is how long?

25 MR. ELLISTON: The posting period is a minimum

1 of 30 days.

2 MR. RODRIGUEZ: So it would be posted for 30
3 days.

4 MR. SLOVACEK: There's none of those at issue
5 for us to approve your changes.

6 MR. ELLISTON: Well, today all you're doing is
7 approving for me to post them for the 30-day period.

8 MR. SLOVACEK: So it would be on the January
9 meeting, and that's okay?

10 MR. ELLISTON: Yes, sir.

11 MR. SLOVACEK: This is not a state statute that
12 you're looking at?

13 MR. ELLISTON: Well, most of these changes --
14 all these changes are to the Texas Administrative Code.

15 MR. SLOVACEK: How do we have the authority to
16 change that? I thought the legislature did that.

17 MR. ELLISTON: The legislature gives the agency
18 rulemaking authority and we have authority to make rules
19 regarding these sections of the statute.

20 MR. SLOVACEK: So this is a rule, not a
21 statute.

22 MR. ELLISTON: That's correct. It, in essence,
23 becomes law after the board finally adopts and approves it
24 and it goes in the Texas Administrative Code. And the
25 legislature gives agencies those authorities because

1 there's so many things that need to be clarified that this
2 gives you an opportunity to fix those kind of things as
3 you go along. This agency does have that authority.

4 MR. INGRAM: I don't want to beat a dead horse
5 so I would be glad to move on. I do have a second
6 question, so if you don't mind, Mr. Chairman.

7 MR. WALKER: Go ahead, Mr. Ingram.

8 MR. INGRAM: So I'm getting a lot of questions
9 from dealers and I don't know how to answer this question,
10 and some of this is tied into this process. It's talking
11 a lot about we take a customer and we sell him the
12 vehicle, they give us their ID, and we go down to transfer
13 the vehicle, but whenever we do have a hookup with DPS, I
14 presume, or some way to verify that person's ID -- that
15 will be how it's happening, right, you would have some
16 sort of connection?

17 MR. ELLISTON: Yes, sir, at some point. Today
18 a dealer is not required to present the ID to the county.

19 MR. INGRAM: Sure, I'm not saying present the
20 ID, I'm just saying that he/she presents the ID to us, we
21 write the contract, we take everything down to the tax
22 office to transfer, but when we get to the tax office we
23 find out that the ID name doesn't match, and either it
24 doesn't match because of some technical problem because
25 it's junior or senior or because they've gotten married

1 and they haven't changed it, or they have changed it and
2 they haven't done it at the state level. There's just all
3 this different sliding of this name does not match. What
4 happens at that point? Is that just going to be kicked
5 back?

6 MR. ELLISTON: Well, today that does not occur,
7 and so we're talking about the future. We would hope that
8 our automated systems, our WebDealer or something would be
9 in place that when a dealer is using that process -- since
10 we're talking about the future -- when they punch it in
11 there, it will be right. If it's not, they will know it
12 right then. It won't be an option of it being wrong, it
13 will be right when they put it in the system or it won't
14 accept it, so there won't be a back and forth.

15 MR. INGRAM: Right.

16 MR. ELLISTON: And today, if a dealer accepts
17 an ID and they take that to the county, the county is
18 going to accept that just the way the dealer presents it.
19 It's the dealer's responsibility to check the ID.

20 MR. INGRAM: Sure, and I understand that and I
21 explain that to the dealers that call me. But there are
22 some of us that like to plan ahead, so they're thinking
23 ahead of like what's going to happen when, and I'm just
24 trying to say I don't know, I think it's going to be
25 rejected. But you're saying that probably you think or

1 you believe that WebDealer will be up and running before
2 this problem could occur.

3 MR. ELLISTON: Until WebDealer is up and
4 running, I don't know how we can do it any other way other
5 than what we're doing today. Now, if the county gets a
6 document and for some reason the dealer did attach the ID
7 and they did look at it and it was wrong, they should
8 reject that. However, they shouldn't be seeing that today
9 because a dealer is not required to turn that in.

10 MR. INGRAM: Okay.

11 MR. WALKER: So I have a question. I bought
12 three vehicles this week and when they came over to my
13 office they asked me for -- the dealer did, says, hey, we
14 need to get a copy of your driver's license. So I gave
15 him a copy of my driver's license but I'm buying those
16 through a corporate entity. So all I gave him was a
17 driver's license, the corporate entity is in a total
18 different name. How is the tax assessor-collector going
19 to validate that J.H. Walker is a part of JHW Leasing?

20 MR. ELLISTON: Today they don't because they
21 don't see that ID.

22 MR. WALKER: But they accept that ID; it hasn't
23 been rejected as of this morning, I don't think.

24 MR. ELLISTON: The dealer that processes it
25 accepts it. Are you saying they're taking your ID to the

1 county?

2 MR. WALKER: No, they're not taking it. I made
3 of my driver's license and I handed it to the dealer in my
4 office on Monday.

5 MR. ELLISTON: The dealer is not required to
6 present that to the county, so they're not seeing your ID.

7 MR. WALKER: So the purchase is being made
8 without an ID being shown?

9 MR. ELLISTON: No. As required, it's the
10 dealer's responsibility to see the ID, so the dealer is
11 getting your ID but they're not presenting that to the
12 county.

13 MR. INGRAM: But they would be entering it into
14 the DPR form, right, about their driver's license numbers?

15 MR. ELLISTON: Yes. And the corporate, that's
16 one of the things that we're going to have to work on, to
17 get that number, what are we going to do about corporate
18 leasing companies, exempt agencies, things of that nature.

19 MR. BARNWELL: You know, this is a real
20 complicated area that you're wading off into. I
21 understand the problems and why you need to do it, but
22 we've got whether or not you're current on your franchise
23 taxes, whether or not you forfeited your corporate
24 privileges due to a failure to pay, what's the statutory
25 impact of the law and complying with franchise and the

1 annual reports and other organization reports required by
2 law, have you paid those things, or are you, in fact, an
3 entity that does not have a valid existence today. I
4 mean, this is a real problem.

5 In Montgomery County, J.R. Morris has given us
6 fits about registering our vehicles because he says, No,
7 you can't register it unless we have letterhead that says
8 this employee is authorized to go down there and register
9 a vehicle or renew a title or whatever it is that we're
10 trying to do. And so I go into my word processor for this
11 particular company, which has nothing in it to speak of,
12 and create a letterhead and sign it and sent it up there
13 to them and they were just fine with that. Now, that's
14 not real validation, but they were happy enough with that.

15 Of course, I know J.R. and it's not a problem, but a lot
16 of people don't know J.R. and they'll have issues.

17 MR. ELLISTON: And we understand that and the
18 system certainly isn't perfect today, but the whole reason
19 for those kind of processes is trying to protect the
20 owners of those vehicles.

21 MR. BARNWELL: I understand completely.

22 MR. ELLISTON: And so that's kind of the best
23 we have today without inconveniencing.

24 MR. BARNWELL: I'm just saying it's going to be
25 interesting. I want to get some popcorn because it's

1 going to be interesting watching how we implement that
2 control.

3 MR. ELLISTON: Get two bags because I'll
4 probably be there with you.

5 (General laughter.)

6 MR. WALKER: I don't want to shut down any more
7 discussion but I think we've kind vetted this pretty well.
8 Mr. Ingram has voiced, and in all honesty to the staff
9 and what we've done in the past, we have pretty much
10 vetted most, if not all, things that are major items to
11 most of our constituents out there, through committee
12 meetings, through working group meetings that we have had,
13 and the relationships that we have. I know that there's
14 numerous ones sitting over here in this audience here
15 today, and if there's something on the docket, I can
16 ensure that if it's going to impair how they do business,
17 they're aware of what we're doing, Blake, and they are
18 bringing those things forward. But you do have some very
19 valid points that I would agree with you that we always
20 need to take and be a consumer agency and address the
21 public's interests.

22 But today's motion that we have which is a
23 motion to post still allows everybody to make comments,
24 and those comments will be brought back to this board.
25 We're not voting to approve anything today, all we're

1 voting for is to post these so that the public can make
2 further comments before we can take and approve them.

3 So with that, I have a motion by Mr. Rodriguez
4 to accept staff's recommendation to post, I have a second
5 by Ms. Ryan. Any further questions?

6 (No response.)

7 MR. WALKER: With no further questions, I'll
8 call for a vote. All in favor signify by raising your
9 right hand, please.

10 (A show of hands.)

11 MR. WALKER: The motion passes unanimously.
12 Let the record reflect that everybody voted in favor of
13 posting.

14 I'm going to take and go into executive session
15 here right now. Do you have one more?

16 MR. ELLISTON: I have one more. I think it
17 will be quick.

18 MR. WALKER: Okay, I'm sorry.

19 MR. INGRAM: I thought we already voted on both
20 of them.

21 MR. ELLISTON: We were just doing A. May I
22 proceed?

23 MR. WALKER: Yes, please proceed.

24 MR. ELLISTON: You also have before you today
25 under Subchapter B under Motor Vehicle Registration,

1 Section 217.22, amendments to this also has to do with
2 legislative changes. Section 217.22(c)(1) deletes the
3 requirement that the registration sticker on a vehicle
4 windshield must be within six inches of the vehicle
5 inspection sticker. That's as we believe we're going to
6 be moving to one sticker, there wouldn't be one to move it
7 within six inches of, so we tried to clean that up.

8 Section 217.22(c)(3) establishes a vehicle
9 registration period of twelve consecutive months. That's
10 also going to a one-year registration basically because of
11 the single sticker.

12 Section 217.22(f) clarifies that farm trailers
13 and farm semitrailer are registered as farm vehicles. The
14 amendments also mandate the use of the comptroller's
15 agriculture/timber exemption registration number for
16 identification with respect to farm vehicle registration.

17 And Section 217.22(I) removes the titling
18 requirements previously applicable to neighborhood
19 electric vehicles. These vehicles, if they are used as a
20 golf cart within two miles of the golf course are not
21 required to titled and registered as long as they're used
22 for that purpose; otherwise, they would be. So that's
23 clarification for legislative change.

24 And that's all in that section. We'd ask that
25 you approve posting for public comment.

1 MR. BARNWELL: So moved.

2 MS. CARAWAY: Second.

3 MR. WALKER: So we have a motion by Mr.
4 Barnwell, and I have a second by Ms. Caraway that we
5 accept the recommendation to post the rules under item 5.B
6 with the secretary of state's office. Any further
7 questions or discussion?

8 (No response.)

9 MR. WALKER: All in favor signify by saying
10 aye.

11 (A chorus of ayes.)

12 MR. WALKER: All opposed, same sign.

13 (No response.)

14 MR. WALKER: Let the record reflect that the
15 motion carries unanimously.

16 Okay. It's now 9:13 and we're going to go into
17 a closed session for some legal stuff. The attorney
18 general's office is here, and I anticipate that we will be
19 in closed session for roughly about 30 minutes, and I
20 would like to ask our legal counsel to accompany us.

21 MR. DUNCAN: You need to cite the statutory
22 stuff. I'm sorry.

23 MR. WALKER: On November 14 we will go into
24 closed session under Texas Government Code, Section
25 551.071 and Section 551.074. For those in the audience, I

1 anticipate being out for approximately 30 minutes, and we
2 will reconvene the session after that.

3 With that, we are recessed from the public
4 meeting and going into executive session, and I would like
5 to ask that our legal general counsel and the executive
6 director join us in this session.

7 (Whereupon, at 9:13 a.m., the meeting was
8 recessed, to reconvene this same day, Thursday, November
9 14, 2013, following conclusion of the executive session.)

10 MR. WALKER: It's approximately 10:55, November
11 14, 2013. The Board of the Texas Department of Motor
12 Vehicles is now back in open session. I'd like the record
13 to reflect that no action was taken in executive session.

14 I'd like to apologize also. I told you it was going to
15 be 30 minutes and I think we took about an hour and 15
16 minutes, but I apologize to you, and I think we can finish
17 rather expeditiously here.

18 Let's move to item 6.A.

19 MR. INGRAM: That's the License Advisory
20 Committee. We met several weeks ago. We took up the
21 request from TADA for some changes to the advertising
22 rules. I think we worked through most of those rules, and
23 I know Mr. Harbeson is redrafting some changes that will
24 probably be forthcoming, hopefully at the next meeting, I
25 would think. Yes?

1 MR. HARBESON: We should be able to come before
2 the board in January.

3 MR. INGRAM: Super. And then I think we took
4 care of most of the issues on that.

5 The second item, we went back to the criminal
6 fitness or unfitness of dealers, and we proceeded, we went
7 ahead and reconfirmed that everyone is on the same page as
8 far as who this rule will apply to. We also identified
9 what specific laws would be an area of concern for us as
10 the agency on whether a dealer should maintain their
11 license. We will need to meet once more. When is the
12 next meeting?

13 MR. WALKER: December 11.

14 MR. INGRAM: December 11. That's when we can
15 start talking about specifically how these rules would
16 apply or these laws would apply to the fitness, so we'll
17 be talking about how long since that person has been
18 convicted of this rule or law, so we'll get into some more
19 of that. I would anticipate, hopefully, all things
20 considered, we might get through it in one more day, it
21 may take two, I'm not sure, but we're making progress.

22 MR. RODRIGUEZ: Just a question. This is going
23 to result in a proposal of rules later. Right?

24 MR. INGRAM: Yes.

25 MR. RODRIGUEZ: Okay.

1 MR. INGRAM: Do you want to add anything to
2 that?

3 MR. HARBESON: No, sir.

4 MR. WALKER: Thank you, Blake. That was a good
5 report. And let's move to item B. Linda Flores, are you
6 ready to give us a contract update?

7 MS. FLORES: Yes, sir.

8 In your board material on page 323, we
9 concluded an edited version of the board resolution that
10 was discussed at the September board meeting. In your
11 packet you will note that we've allowed the track changes
12 to be reflected on the document, and we believe that these
13 changes incorporate the language that captures the board's
14 intent expressed at the September board meeting.

15 On the last page, page 3, we are changing the
16 dates specified to reflect current dates. And with that,
17 I request your approval of the document.

18 MR. RODRIGUEZ: This fixes all the discussion
19 that we had last time.

20 MS. FLORES: Yes, sir.

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

22 MR. INGRAM: Second.

23 MR. WALKER: We have a motion by Mr. Rodriguez
24 and a second by Mr. Ingram. And I had a question, let me
25 see if I can find it real quick. The emergency

1 procedures, that's what my question was. On page 344, it
2 says in the event that a contract is an emergency basis,
3 the executive director or designee will contact the board
4 chairman or the finance -- okay, either one, I got it.
5 Never mind, I don't have a question.

6 Any other discussion or questions?

7 (No response.)

8 MR. WALKER: If not, all in favor signify by
9 saying aye.

10 (A chorus of ayes.)

11 MR. WALKER: All opposed, same sign.

12 (No response.)

13 MR. WALKER: The motion carries.

14 Let's move to item 6.C, recommended credit card
15 fees. Linda.

16 MS. FLORES: I'm sorry. For the record, my
17 name is Linda Flores. I'm the chief financial officer for
18 the Texas DMV.

19 This particular item has been presented to the
20 board in the past. As you know, we anticipate having a
21 funding shortfall when it comes to credit card service
22 payments that we as a merchant pay to the credit card
23 companies. That shortfall is approximately a million and
24 a half for fiscal year '13. The Finance Committee
25 directed staff to look at options to bring to the board as

1 a resolution to this item.

2 In our research to develop different options --
3 and we did look at a few different service fees -- we
4 determined that we were not in compliance with Government
5 Code 2054 that requires all state agencies to use the
6 Texas.gov business portal for processing credit card
7 payments. So in researching this particular item, we have
8 reached out to the Texas.gov entity. It's a public-
9 private entity that works in conjunction with Department
10 of Information Resources and they provide these type of
11 services for all state agencies. So we have reached out
12 to Texas.gov staff. We're working very closely.

13 By allowing Texas.gov to process our credit
14 card payments, we resolve two issues: one is the funding
15 gap, and the other is not being in compliance with
16 Government Code. My recommendation is that the board
17 direct the agency to make the necessary changes to
18 operations to ensure that we're in compliance with
19 Government Code using the Texas.gov business portal.

20 In doing so, the fee for credit card payments
21 will be a flat fee, 2.25 percent of the transaction plus a
22 25-cent per transaction charge, and that will be passed on
23 to the end user using the credit card.

24 MR. RODRIGUEZ: There was one last thing in
25 that. By virtue of going this way, there is no adverse

1 fiscal effect to projections of the agency or otherwise.

2 MS. FLORES: Correct. All of those funding
3 gaps will be resolved.

4 MR. RODRIGUEZ: So at one point we thought we
5 might have to pay the credit cards their fee, and that's
6 gone away with this proposal.

7 MS. FLORES: Yes, sir.

8 MR. RODRIGUEZ: So moved, Mr. Chairman, move to
9 approve.

10 MR. WALKER: We have a motion from Mr.
11 Rodriguez.

12 MR. PALACIOS: Second.

13 MR. WALKER: Second from Mr. Palacios.

14 MR. PALACIOS: I have a question, Ms. Flores.
15 How much, if any, does the Texas.gov portal retain of the
16 2.25?

17 MS. FLORES: That I do not know.

18 MR. PALACIOS: Well, when will we know?

19 MS. FLORES: What they retain? They retain
20 whatever, you know, the 2.25 percent plus 25 cents, they
21 retain that, they pay the credit card company, and the
22 difference is what they're allowed to retain.

23 MR. INGRAM: And it's going to vary depending
24 on the credit card.

25 MS. FLORES: Correct.

1 MR. PALACIOS: I just want to make sure that it
2 still covers the \$1.5 million shortfall.

3 MS. FLORES: It does.

4 MR. WALKER: Well, but they're going to give us
5 back the money.

6 MS. FLORES: No, no. If they process, they
7 keep.

8 MR. WALKER: Oh, they process and they keep all
9 the money.

10 MS. FLORES: Yes, sir.

11 MR. INGRAM: But it won't cost us any more.

12 MS. FLORES: Correct.

13 MR. WALKER: Okay. So I have one question.
14 2054 Government Code, when did that come about?

15 MS. FLORES: That is legislation that's been
16 around for quite some time.

17 MR. WALKER: So why is it that the agency is
18 just now figuring out that Government Code 2054 existed?

19 MS. FLORES: When we were part of TxDOT, that's
20 when the TxPROS system was being developed. We thought
21 when they came over that we had an exemption. Every state
22 agency who does not use the portal has to request and
23 receive an exemption not to participate. We thought we
24 had an exemption, but in looking in our files, we could
25 not find the exemption.

1 There were some discussions between Texas.gov
2 and DMV because we also offer as a payment option the use
3 of ACHs, the automatic clearing house, as well as permit
4 account cards which is a service provided by Frost Bank
5 where someone can use them as they fill up an account card
6 and then they use that kind of like an escrow account. So
7 there were some email exchanges, and some way, somehow we
8 believed we had an exemption, and that was not the case.

9 MS. BREWSTER: That would have been when the
10 Oversize/Overweight function came over to the agency from
11 TxDOT.

12 MR. WALKER: So did TxDOT assume that they had
13 exemption also?

14 MS. FLORES: I did not reach out to TxDOT.

15 MS. RYAN: It's in our interest because we
16 don't pay it, we don't have the shortage. Right?

17 MR. WALKER: Yes. So one other question. What
18 about are we still going to collect cash for permits or
19 are we still going to maintain the escrow accounts,
20 because there's a cost associated with maintaining escrow
21 accounts that we can maybe go to a credit card use and
22 kind of eliminate more of the cost to the agency.

23 MS. FLORES: At this time we are going to leave
24 the escrow account as an option, but that's probably the
25 next thing that we'll take a look at is moving away from

1 escrows. But that's going to take a little bit more
2 effort.

3 MR. WALKER: So any other questions or
4 discussion? Laura.

5 MS. RYAN: Does the one dollar go away with the
6 2.25 percent?

7 MS. FLORES: Rule changes will need to be made
8 to reflect the 2.25 percent plus 25 cents.

9 MS. RYAN: And at that point, that change, the
10 dollar would go away.

11 MS. FLORES: Yes, ma'am.

12 MR. WALKER: So we will need a rulemaking in
13 order to do this.

14 MS. FLORES: Yes, sir. There are four
15 different rules that will be impacted.

16 MR. WALKER: And so we anticipate seeing this
17 rule by next meeting?

18 MS. FLORES: Mr. Duncan?

19 MR. DUNCAN: I'm looking at my staff. Aline
20 says yes.

21 MS. BREWSTER: That is the goal.

22 MR. WALKER: And in Mr. Ingram's interest,
23 would we need to have any kind of comments with the
24 outside public on that, or do we just move forward with
25 that on rulemaking?

1 MS. AUCOIN: For the record, this is Aline
2 Aucoin. The amount is what it is, and we're not the
3 agency that determines that amount, it's set by the
4 Department of Information Resources, they have statutory
5 to do it. There's not a whole lot to discuss other than
6 fixing our rule to say we're not going to charge you a
7 dollar, we'll charge you what the Department of
8 Information Resources says that we need to charge.

9 MR. INGRAM: I think in this scenario -- and I
10 appreciate your comment -- it's not really an option, it's
11 out there, it's a rule that we need to follow.

12 MS. FLORES: And we will be doing our part to
13 ensure that our stakeholders who do make these type of
14 payments, that they're informed ahead of time.

15 MR. RODRIGUEZ: This will go into effect as
16 soon as we sign off on it today? You're going to put it
17 in play, or when are you going to put this in play?

18 MS. FLORES: What we'd like is for the board to
19 direct the agency to do all the operational changes that
20 need to happen, so that includes things like rule changes,
21 program changes to our website, as well as reaching out
22 and informing the public.

23 MR. RODRIGUEZ: So clearing today puts you down
24 that pathway.

25 MS. FLORES: Yes, sir.

1 MR. WALKER: But it wouldn't take effect until
2 an approved date by the rules. Is that not correct?

3 MS. FLORES: Correct.

4 MR. WALKER: So we're 60-90 days out.

5 MS. FLORES: Correct.

6 MR. WALKER: At best case.

7 MS. FLORES: Best case.

8 MR. WALKER: So any further questions or
9 comments?

10 (No response.)

11 MR. WALKER: All in favor of --

12 MS. RYAN: There's no motion, is there?

13 MR. INGRAM: There is.

14 MS. RYAN: Oh, there is. Got it.

15 MR. WALKER: I had a motion. So we have a
16 motion, we have a second, we've had discussion. All in
17 favor of moving forward to the rulemaking process, to
18 accept the required state minimum of using the 2054 rule,
19 signify by saying aye.

20 (A chorus of ayes.)

21 MR. WALKER: All opposed, same sign.

22 (No response.)

23 MR. WALKER: Okay. The next item on here is
24 number D, Mr. Elliston.

25 MR. ELLISTON: Mr. Chairman, members, for the

1 record, my name is Randy Elliston, director of Vehicle
2 Titles and Registration Division.

3 You have before you today a request to approve
4 two new license plate designs. The first one is from
5 Texas Southern University. This is a redesign, it's
6 currently on the road today, but they just want to
7 redesign their plate. You see the image behind me is what
8 they're asking to put on the road. And also, we have a
9 plate from our private vendor, My Plates, for Olympic Team
10 USA. It's also behind me there.

11 These plates have met all the state and agency
12 standards to be put on the road, and we ask your
13 consideration to approve these designs.

14 MR. WALKER: Can I ask a question? The TSU
15 plate is not a My Plates plate.

16 MR. ELLISTON: No, sir. It's in the state
17 program.

18 MR. WALKER: That's a statutory plate, and
19 there's a current existing plate already that exists.

20 MR. ELLISTON: This one right here, and it's
21 changing to this, so it's a very minor change.

22 MR. WALKER: And so if My Plates doesn't
23 present that change to us, who brings that change to us?

24 MR. ELLISTON: Texas Southern University is in
25 the state program, they have a state sponsor, and came to

1 us. We can make plates based on organizations that go and
2 get a state sponsor to do so, and they've been in the
3 program since 1991 when that plate was first put on the
4 road, and today we have 155 of them that are currently
5 registered.

6 MR. INGRAM: So Texas Southern is not a My
7 Plates?

8 MR. ELLISTON: It is not a My Plates, it's a
9 non-vendor plate. The Olympic Team USA is a My Plates.
10 This one is an additional plate that will be on the road,
11 it adds to the inventory. This one does not, it just
12 trades out one design for the other.

13 MR. INGRAM: Since there may be some different
14 views, I'd like to make a motion that we go ahead and
15 approve the Texas Southern University plate, as presented.

16 MR. PALACIOS: Second.

17 MR. WALKER: So we have a motion to split the
18 plates up and vote on each one independently, and we have
19 a motion from Mr. Ingram to accept the revised TSU plate,
20 and I have a second by Raymond Palacios. Do we have any
21 discussion or question?

22 I have a question. How often can TSU or Texas
23 A&M, or whomever, come to us and say we want to change
24 this plate?

25 MR. ELLISTON: However many times that they

1 desire to do so, but they have to pay for that privilege
2 to do that. They pay us about \$895 to do the redesign, so
3 it costs them money to redesign any time they want to do
4 that. But there's no limit on how many times they can
5 come ask us; it's certainly within your purview to say yes
6 or no.

7 MR. RODRIGUEZ: Randy, question. We have
8 typically three categories of license plates: we have the
9 standard issue plates, we have the legislatively required
10 specialty plates, there's a group of them, I don't know
11 what the number of that is but there's a whole list of
12 them. Right?

13 MR. ELLISTON: Right.

14 MR. RODRIGUEZ: In other words, we have no
15 choice but to implement those. Right?

16 MR. ELLISTON: Correct.

17 MR. RODRIGUEZ: And then we have the specialty
18 plates, and then the specialty plates, part A would be the
19 contracted ones, and part B would be the non-contracted
20 ones. Is that where we're at right now?

21 MR. ELLISTON: Yes, sir.

22 MR. RODRIGUEZ: So my question is with regard
23 to Texas Southern University, there's some discussion
24 about the specialty plate party that contracted this,
25 about where they have room to play with and what they can

1 play with on that license plate. Everything else, for the
2 most part, there are some prerequisites in terms of, for
3 example, the state symbol between the alpha and the
4 numeric area part of the license plate. Right?

5 MR. ELLISTON: Yes, sir.

6 MR. RODRIGUEZ: So the TSU plate, for example,
7 is that exempt from, let's say, the hyphen or in this case
8 the state symbol between the alpha and the numeric area?

9 MR. ELLISTON: Yes, sir. There's a specific
10 exception to that for these types of specialty plates.
11 It's only our standard issue that has to have that.

12 MR. RODRIGUEZ: Question. The Texas Southern
13 license plate, in this case, is one that retains a certain
14 percentage for college awards and grants and scholarships.
15 Right?

16 MR. ELLISTON: Yes, sir.

17 MR. RODRIGUEZ: That's all the questions I
18 have, Mr. Chairman.

19 MR. WALKER: No further questions, I'll call
20 for a vote. All in favor of accepting the modified TSU
21 plate signify by saying aye.

22 (A chorus of ayes.)

23 MR. WALKER: All opposed, same sign.

24 (No response.)

25 MR. WALKER: The motion carries unanimously.

1 Now I have the My Plates plate, the USA.

2 MR. INGRAM: I'll make a motion that we approve
3 the Olympic Team USA plate, as presented.

4 MR. WALKER: We have a motion.

5 MS. RYAN: Second.

6 MR. WALKER: We have a second from Ms. Ryan and
7 a motion originally from Mr. Ingram. Any discussion or
8 questions?

9 (No response.)

10 MR. WALKER: We'll call for a count. All in
11 favor signify by raising your right hand.

12 (A show of hands: Barnwell, Ingram, Ryan,
13 Slovacek.)

14 MR. WALKER: We have Mr. Barnwell, Mr. Ingram,
15 Ms. Ryan and Mr. Slovacek voting in favor of, and Ms.
16 Caraway.

17 All opposed, same sign.

18 (A show of hands: Palacios, Rodriguez,
19 Walker.)

20 MR. WALKER: We have Rodriguez, Walker and
21 Palacios voting in opposition. The motion carries.

22 Thank you very much, Randy.

23 Now we will come to Mr. Archer here on item
24 6.E.

25 MR. ARCHER: Good morning. For the record, my

1 name is Jimmy Archer. I'm the director of the Motor
2 Carrier Division.

3 Before you today is an implementation update of
4 the timber permit and timber rule. The timber permit was
5 authorized by the 83rd Session by House Bill 2741, and the
6 statute, Texas Transportation Code 623, Subchapter Q,
7 Vehicles Transporting Lumber was created.

8 This rule was drafted and submitted to the
9 *Texas Register* with Chairman Walker's permission. This
10 rule was published in the *Register* on October 25, 2013.
11 To date no comments have been received. The earliest this
12 rule could be adopted would be November 24.

13 Subsection (a) outlines the purpose of the new
14 permit which is to transport unrefined timber, wood chips
15 or woody biomass.

16 Subsection (b) outlines requirements for the
17 permit application.

18 Subsection (c) establishes a windshield sticker
19 to be issued as part of the permit and outlines windshield
20 placement, removal requirements and policy replacement of
21 a lost, stolen or mutilated sticker.

22 Subsection (d) outlines that TxDOT and county
23 notifications required by statute must be filed through
24 the TxDMV website.

25 Subsection (e) provides that the permit cannot

1 be transferred to any other vehicle under any condition.
2 This is a standard amendment rule that is on most of our
3 time-based permits, this would be our annual permits or
4 time permits.

5 Subsection (f) says the permit cannot be
6 amended, transfer to another vehicle is not allowed, and
7 counties cannot be changed once the permit is issued due
8 to fee displacement. This is a standard amendment rule on
9 most of our time-based permit. The department will amend
10 a permit if we made an error when issuing it.

11 Subsection (g) outlines when a permit is no
12 longer valid. That would be when the permit expires, the
13 vehicle lease expires, the vehicle is sold, the company
14 closes its doors, or the permittee does not replenish his
15 bond or line of credit within the requested time frame.

16 Subsection (h) references Government Code
17 Section 219.11(I) which outlines movement restrictions for
18 all permitted loads such as prohibited movement during
19 hazardous road conditions, and observations of city and
20 county curfews. Restrictions are listed on the permit
21 itself.

22 The statute is written to allow timber permit
23 holders to travel over load zoned roads or cross long
24 restricted bridges as allowed for over-axle, over-gross
25 weight tolerance permits, because some exceptions were not

1 included in the statute as passed.

2 TxPROS was fully programmed for the timber
3 permit. The statute required county and TxDOT
4 notifications implemented and it appears on the timber
5 permit page of the TxDMV website, and as of today, no
6 timber permits have been issued, and it's been available
7 since the first of November. Industry was notified that
8 the timber permit would be available on November 1, as
9 well as the County Judges and Commissioners Association,
10 Department of Public Safety, and TxDOT.

11 I'll entertain any questions.

12 MS. RYAN: So it was posted, final comments are
13 in November, and it will be back before us?

14 MR. ARCHER: It was actually posted on October
15 25.

16 MS. RYAN: Final comments are due at the end of
17 November?

18 MR. ARCHER: November 24.

19 MS. RYAN: So it will be back at our next board
20 meeting. Thank you.

21 MR. WALKER: Thank you very much, Mr. Archer.
22 I don't think there's any action required on this.

23 Next on the agenda is we have the automation
24 project update. Josh.

25 MR. JOSHUA KUNTZ: Yes, sir. Good morning, Mr.

1 Chairman and members of the board. For the record, my
2 name is Joshua Kuntz. I am the interim director of the
3 Enterprise Project Management Office for the agency.

4 I'd like to direct your attention to pages 391
5 through 397 of your board book for this briefing on the
6 automation project status. We had two projects that
7 completed during this period. The wide area network
8 separation which implemented a core network apart from
9 TxDOT's to build out all the IT services for the agency.
10 This project finished approximately \$72,000 under budget.

11 And then the Fleet Plus project which enhanced the TxIRP
12 application. It actually closed approximately \$9,000 over
13 budget. This was due to delays in the implementation and
14 the number of staff have changed, changing from internal
15 staff to external staff.

16 In the external projects, the RTS refactoring
17 is to bring down all three phases in a parallel work
18 streams, and the work at the West Lake Oaks project site
19 is fully operational.

20 The WebDealer pilot is going well with the
21 third county/dealer combination effort coming online this
22 month. The pilot should conclude in January of 2014,
23 which at that point we will begin the next phase of
24 statewide implementation of the franchise dealer phase of
25 the rollout of this application.

1 For internal projects, the TxIRP project is
2 entering the closing stages as new infrastructure went
3 live on October 20. The project is a good deal over its
4 original schedule to go to a live date of March 30 due to
5 under-provisioning of hardware and services, multiple
6 project manager changes and delays in implementation due
7 to availability of both TxDMV and IT resources at the
8 times that they were needed.

9 The AMSIT project continues to move slowly
10 forward with the DIR-DCS coordination of service
11 transformation. A DBITS statement of work has been
12 evaluated and is ready to move forward with the assessment
13 and a detailed actual plan development for phase two
14 efforts for the mass migration of all TxDMV applications
15 from TxDOT into TxDMV.

16 The activation of the headquarters
17 communications infrastructure projects are well underway
18 without any significant issues, and the regional office
19 communications project initiated its first phase of
20 separation of the Austin office this past week.

21 Do you have any questions on this status
22 update?

23 MR. WALKER: I have a question.

24 MR. JOSHUA KUNTZ: Yes, sir.

25 MR. WALKER: WebDealer, I understand that the

1 application has just won over gangbusters, it's loved by
2 the dealers out there, there was a press release this week
3 and we had a news conference.

4 MR. JOSHUA KUNTZ: Yes, sir.

5 MR. WALKER: How quick will we be able to
6 implement and get this out to the other dealers out there?

7 MR. JOSHUA KUNTZ: So we're developing a
8 schedule for Phase 1B which is the implementation across
9 statewide for franchise dealers that would be able to
10 participate in this project. We're doing a three phase
11 point and at each point in that pilot phase we're making
12 improvements in the application so that by the time we go
13 to a statewide deployment, it's a well vetted program.
14 And after the initial pilot with the Travis County Tax
15 Assessor-Collector and Leif Johnson Ford we've made
16 programmatic changes to ensure that the flow of the
17 application and the processing was improved so that at
18 each point we'd make improvements so that by the time we
19 get to the full implementation, it's a much smoother
20 product.

21 MS. BREWSTER: We will start the statewide
22 deployment starting in January of 2014, with the goal of
23 having statewide deployment by the end of the year.

24 MR. INGRAM: Statewide deployment with
25 franchise dealers?

1 MS. BREWSTER: Yes, sir.

2 MR. WALKER: Just the franchise dealers is all
3 we're doing?

4 MR. JOSHUA KUNTZ: That's the first phase, sir,
5 and then it will be expanded to independent dealers and
6 motorcycles and RVs, person-to-person sales.

7 MR. WALKER: When do you anticipate Mr. Ingram
8 can have that at his dealership?

9 MR. JOSHUA KUNTZ: I wouldn't have that
10 particular number at this time, sir.

11 MR. RODRIGUEZ: I have a question.

12 MR. JOSHUA KUNTZ: Yes, sir.

13 MR. RODRIGUEZ: You're asking us to --

14 MR. JOSHUA KUNTZ: This is a briefing, sir.
15 I'm not actually asking for any action.

16 MR. RODRIGUEZ: So you're not asking anything
17 from us?

18 MR. JOSHUA KUNTZ: No, sir.

19 MR. WALKER: No, there's no action required,
20 just the report.

21 MR. INGRAM: I had a question. According to
22 the chart provided, WebDealer is running significantly
23 over budget. Am I misreading that? Oh, not, it's under
24 budget, you're running under. I am misreading that.

25 MS. BREWSTER: Member Ingram is looking at the

1 spreadsheet.

2 MR. JOSHUA KUNTZ: You've moved on to the next
3 item.

4 MR. INGRAM: I'm sorry. You have more to talk
5 about the chart.

6 MR. RODRIGUEZ: Let me ask a question. If I'm
7 reading your information correctly, all these projects,
8 your new budget amounts are over by \$10 million. Is that
9 right?

10 MR. JOSHUA KUNTZ: We'll move on to the next
11 item then, the budget maps. If you can direct your
12 attention to 398 and 399 of your board book, this is the
13 TxAutomation spending plans and the projected budgets for
14 the TxAutomation projects.

15 In these there's actually one error, the RTS
16 refactoring project actually included \$7.5 million of
17 internal FTE costs in that line so that overall number is
18 actually \$7.5 million less.

19 MR. RODRIGUEZ: So we're over \$2.5-.

20 MR. JOSHUA KUNTZ: And that's the full five-
21 year, that's past this biennium, sir.

22 MR. RODRIGUEZ: Okay. So to the extent that
23 whatever is going to be applicable to this current fiscal
24 period, we can absorb that -- that's my question, we have
25 the means to absorb these costs or not?

1 MR. JOSHUA KUNTZ: Yes, sir. On the spend
2 plan, the first page on 398, actually shows the spending
3 in this biennium. The projections show that we are going
4 to conclude under the appropriated amount for this capital
5 line item.

6 MR. RODRIGUEZ: So your five-year projection is
7 actually \$2.5- as opposed to \$10-.

8 MR. JOSHUA KUNTZ: Correct, sir. It would
9 require some request of the legislature for out year
10 bienniums.

11 MR. RODRIGUEZ: But not now. Right?

12 MR. JOSHUA KUNTZ: Not in this biennium, no,
13 sir.

14 MR. RODRIGUEZ: I'm good.

15 MS. BREWSTER: Mr. Kuntz -- Mr. Chairman, if
16 it's all right?

17 MR. WALKER: Yes, ma'am.

18 MS. BREWSTER: Will you explain the spreadsheet
19 and the budget?

20 MR. JOSHUA KUNTZ: Absolutely.

21 MS. BREWSTER: I think it's important to know.

22 MR. JOSHUA KUNTZ: So let me direct your
23 attention to the spend plan spreadsheet. The top line in
24 green is the funding sources, the next section has our
25 active projects and you can see the spending plans that

1 were developed, the detailed spending plans by the project
2 managers. At the very bottom you'll have a block that
3 currently says \$2.7 million, it's actually \$5.7- when you
4 remove those FTE costs, so there's \$5.7 million of
5 anticipated unspent at the end of this biennium for all
6 capital automation line items.

7 Any further questions?

8 MR. WALKER: Anybody else have any questions of
9 Mr. Kuntz?

10 (No response.)

11 MR. WALKER: Thank you very much, Josh.

12 MR. JOSHUA KUNTZ: Thank you, sir.

13 MR. WALKER: Let the record reflect that it is
14 11:27, and Board Member Rodriguez has exited the meeting.

15 Let's move to item 7, Internal Audit followup.
16 Mr. Lawler.

17 MR. LAWLER: Good morning, Chairman Walker and
18 board members. For the record, my name is Bill Lawler.
19 I'm currently the director of auditing for the DMV. I
20 have with me my colleague, Trey Wood, this morning, to
21 present to you our report on the followup to the State
22 Auditor's Report 12043.

23 If you recall, that report was issued late in
24 fiscal year '12 and focused on the agency's contract
25 management practices. Our work involved following up on

1 the 19 specific recommendations from that report. This
2 included making both inquiries of management, as well as
3 testing records to verify the assertions that management
4 made regarding the stage of those recommendations. You
5 can find this report -- I'm sorry -- starting on page 400
6 of your board binder.

7 I would go back to page 7, it would be 407 of
8 your board binder, the table that shows each of the 19
9 recommendations. There were 16 of the recommendations
10 that we believe to be fully implemented, and then there
11 were, I believe, three recommendations that were in some
12 stage of implementation. Specifically, the requirement to
13 develop and implement a policy for tagging and recording
14 assets. In that case a policy had been implemented but it
15 had not been approved by the executive director or her
16 designee, and as the executive director is responsible for
17 implementing all the policies in the agency, we wanted to
18 make sure that that flowed down and so there was proper
19 accountability on that, and so we've listed that as
20 substantially implemented awaiting her final approval.

21 Also a formal policy for granting and reviewing
22 IT access. That was in draft form at the time of our
23 field work. My understanding it has been subsequently
24 approved by the executive director, and so that would be
25 considered implemented at this point.

1 And then finally, we had an issue with perform
2 a needs assessment over contracts over a threshold amount.
3 That was a stick that we had in that had it been our
4 report in the first place, I don't know that I'd have made
5 that specific recommendation. However, the instance that
6 SAO found in their audit work would not have been covered
7 by our standard procedures which are to run them through
8 the Office of Enterprise Project Management. And so
9 purchasing is actually developing alternative procedures
10 to handle that in-house, so that we expect to be fully
11 implemented shortly.

12 And so the agency will be having to report a
13 followup to the State Auditor's Office prior to December
14 31 online. We'll actually have to enter the stage of the
15 recommendations, our responses to those recommendations at
16 that time.

17 MR. WALKER: Can you tell me where the three
18 items are that were not implemented?

19 MR. LAWLER: Yes, sir. If you'll refer to, I
20 believe, page 407 in your board binder begins the Table 1,
21 and it's actually recommendation 2, recommendation 3, and
22 then recommendation 4. And we had sorted these basically
23 as to the type of response that was needed from the
24 agency, whether it was a change to policies, and these all
25 actually fell within the policies and procedures field.

1 The rest were changes to process and training for staff,
2 and all of those recommendations had been fully
3 implemented, it was some of the policy issues that were
4 outstanding.

5 MR. WALKER: So 16 have been fully implemented,
6 three had not been fully implemented, but at this point in
7 time, two of those, one of these has been implemented, one
8 of them has been substantially implemented, and one is an
9 ongoing process right now?

10 MR. LAWLER: They're currently developing a
11 procedure in purchasing to fully implement that.

12 MS. BREWSTER: Mr. Chairman, that will be
13 implemented by December 31 of this year.

14 MR. WALKER: So all of the recommendations of
15 the SAO will be implemented by the end of the year.

16 MS. BREWSTER: Yes, sir.

17 MR. LAWLER: That's what we anticipate.

18 MR. WALKER: Thank you.

19 Any other questions?

20 MR. PALACIOS: Yes. I have a question, Mr.
21 Lawler. I just need some clarification. The
22 recommendation to perform a needs assessment of contracts
23 over a threshold amount, have we complied with the
24 auditor's recommendation?

25 MR. LAWLER: That is the one that they're

1 devising a procedure in purchasing to document that prior
2 to the process going forward. We had put in place a
3 procedure earlier that if it were a project, it would go
4 through the EPMO, and as part of their standard operating
5 procedures, a needs assessment would be one of the first
6 things conducted. However, as we discovered, there are
7 purchases that are of a substantial amount that wouldn't
8 be covered under a contract or wouldn't be going as a
9 project to the EPMO, and so this is a procedure to
10 basically address those particular situations.

11 MS. BREWSTER: Fill that gap.

12 MR. PALACIOS: Okay. Thank you.

13 MR. WALKER: Any other questions for Mr.
14 Lawler?

15 (No response.)

16 MR. WALKER: Thank you, Bill.

17 Mr. Jeremiah Kuntz. I guess I always have to
18 put a first name in front of those since your brother is
19 here. How about giving us a legislative status update on
20 implementation of last legislative session bills.

21 MR. JEREMIAH KUNTZ: Yes, sir. Jeremiah Kuntz,
22 director of Government and Strategic Communications for
23 the DMV. I'm here today to present a report to you on our
24 implementations to date so far of what has been completed
25 and still ongoing implementing legislation.

1 To date we've got 27 bills that are still on
2 schedule. Fourteen of those will be concluded once rules
3 are adopted, so the last item that needs to be checked off
4 is the final adoption of rules. Many of those rules you
5 have been seeing over the last couple of months and you
6 will take up final adoption in January. You've just heard
7 some of those that Mr. Elliston presented to you today
8 that would relate to House Bill 2741. That's referred to
9 as our Cleanup Bill. Also, Mr. Harbeson presented some
10 rules that had implementation of House Bill 2741, as well,
11 that we've been ongoing implementing to date.

12 We have 17 bills that have been completed to
13 date. There are five that are either delayed or on hold.

14 Most of those that are delayed or on hold, we're waiting
15 on somebody else, another state agency, or some of those
16 are license plate designs, we're waiting on the entity
17 that's wanting the license plate to give us comments on
18 the design of the license plate. So there's not really
19 any major consequences of those being on hold, they're
20 delayed from what we had originally anticipated we'd be
21 complete with them on.

22 The major bills that we have that I want to
23 talk to you about today are really the four that we've
24 been talking about ongoing. House Bill 1692 which relates
25 to the transfer of Lemon Law and warranty performance

1 cases from the State Office of Administrative Hearings
2 over to the agency, there have been ongoing efforts to
3 hire the chief hearings examiner -- I believe is the title
4 that we have. I believe we've also just posted for one of
5 the judges that would work underneath the chief hearings
6 examiner. That was posted this week, and so once that
7 chief hearings examiner is brought onboard, they'll have a
8 stack of resumes that are ready to hire on.

9 We're on track to be up and running when that
10 bill goes into effect at the beginning of 2014 when those
11 cases would start coming over. As Mr. Harbeson has said,
12 really they need to be up and fully operational, I
13 believe, it's 60 days after the first of the year. That's
14 when those cases would actually start hitting them, so any
15 cases that are submitted after January 1, they would start
16 seeing those approximately 60 days after that. But the
17 efforts for that bill are ongoing and are on track.

18 The next bill is House Bill 2202. That is the
19 bill that creates the dedicated account for the agency, as
20 well as transfers the fees related to that account. The
21 comptroller has established an agency fund within the
22 general revenue account. We've worked with the
23 comptroller on identifying the method of finance for our
24 appropriation. We will mainly be a general revenue
25 appropriated agency for this biennium. We still have some

1 appropriations that will continue to be coming from Fund
2 6, the State Highway Fund, and that will continue to be in
3 that method of finance until the legislature makes any
4 changes related to that bill.

5 We're also looking at doing some studies and
6 looking at evaluation of compensation for county tax
7 assessor-collectors, as well as the deputies, the full
8 service and limited service deputies, and so we'll
9 continue to study that issue and look at that. We've had
10 some meetings with Member Palacios on that issue. I know
11 that he's had some inquiries and we've had some other
12 inquiries about where we're at with implementation on
13 that. We don't have a deadline on that, that bill gives
14 us until the board adopts those rules the status quo will
15 continue, and so we will continue to operate in the same
16 fashion that we do today until the board takes that issue
17 up and adopts rules. But we're looking to do a robust
18 study and try and evaluate how to set those compensation
19 fees, as well as the processing and handling fee in that
20 bill.

21 The next bill is House Bill 2305. That is the
22 bill that creates the single sticker, it eliminates the
23 inspection sticker on the windshield. It is ongoing.
24 That bill has an effective date of March 1 of 2015, so
25 there's a long lead time going into the implementation of

1 that. There have been ongoing meetings with DPS, as well
2 as TCEQ. Those are the two partner agency that we have in
3 that bill. TCEQ does all of the emissions, they have the
4 emissions database, DPS has the inspections database, and
5 so we've had ongoing discussions with them as to how to
6 roll out the process, as well as get our databases to talk
7 to one another and make sure that we've got the correct
8 information that's pinging off of those databases.

9 But there have been ongoing meetings, we've had
10 meetings as late as this week between Randy Elliston, as
11 well as the chiefs that are over at DPS, and then the
12 primary folks that we have at TCEQ that work on that
13 program.

14 The final bill is House Bill is 2741. The main
15 thing that I want to cover here, just because there are so
16 many items that you are seeing in rules and there's just
17 little bits and pieces everywhere, the major changes that
18 we've had were the rollout of the timber permit and the
19 ready-mix concrete permit. We had extensive discussions
20 with the legislature, the Governor's Office, as well as
21 the industry on rolling those out. We had a successful
22 rollout on November 1. TxPROS was updated, we were on
23 track with getting the programming done, in fact, we were
24 well ahead of schedule.

25 We had originally told the industry we didn't

1 think that those would roll out until January 1, and we
2 were able to get those rolled out in November, well ahead
3 of schedule of what we originally thought, and that was at
4 the request of some members of the legislature to get
5 those permits in place as soon as possible so that the
6 industry could operate the way that they wanted to.

7 To date we've sold 410, I believe, ready-mix
8 concrete permits, and we have not sold any -- we've sold
9 410 ready-mix concrete permits and zero timber permits.
10 The ready-mix concrete permits are a thousand-dollar
11 permit, so that's a million four into the coffers. That
12 is split 50-50 between the state and the counties, so the
13 state has picked up approximately \$750 million or so on
14 that. It's been quite a nice boon to the -- I mean,
15 \$750,000 -- I'm sorry, not million -- \$750,000 to the
16 State Highway Fund. The counties will get a distribution
17 of that.

18 We still need to adopt rules on how to
19 distribute those funds to the county. The ready-mix
20 concrete permit in statute said that the board will adopt
21 rules on how to distribute that. When they go in and
22 purchase that permit, they actually select counties on the
23 permit. They can operate in all 254 but we anticipate
24 that that data would be used in order to distribute those
25 funds to the counties that they're operating in. It does

1 not restrict their movement, though, they're not hamstrung
2 to only operating in counties that they select, but we
3 would anticipate that the rules would contemplate having
4 to distribute that based on the counties selected.

5 We had talked to the County Judges and
6 Commissioners Courts Association during the session and
7 agreed to work with them on how to distribute those funds,
8 and so we'll be reaching out to them to get their input as
9 to how they would like that formula devised. But we'll be
10 bringing those rules to you at a future meeting.

11 MR. INGRAM: A few quick questions. Does it
12 charge them more if they list more counties?

13 MR. JEREMIAH KUNTZ: No. It's a flat \$1,000
14 fee, and they select the counties that they're primarily
15 going to be operating in, and like I said, that
16 information will really only be used for distribution of
17 funds purposes if you so choose to distribute off of those
18 selections.

19 MR. INGRAM: The second question is more
20 general. Is there anything that we're behind on or that
21 you're concerned that we're not going to get accomplished
22 in time?

23 MR. JEREMIAH KUNTZ: Not at this time. There
24 are those five bills that I laid out that were either
25 delayed or were on hold. When we look at those statuses,

1 really we're trying to track these implementations as a
2 project, so we had set milestones of when we would have
3 different tasks completed, and those are our dates that
4 we've set, they're not statutorily imposed. So I'll say
5 again we're substantially in compliance with the law, we
6 have not gone outside of anything that would put us in
7 jeopardy legally.

8 MR. PALACIOS: Mr. Kuntz, with regard to HB
9 2202, when do you anticipate we'll begin the process of
10 moving forward on determining what these processing and
11 handling fees will be and the other areas regarding the
12 deputization of the different classes of deputies?

13 MR. JEREMIAH KUNTZ: I would anticipate in
14 short order. We're trying to evaluate exactly how to do
15 that study, we're trying to figure out if we should
16 utilize the universities, if we should do it in-house.
17 We're trying to identify resources that can work on it, to
18 be honest, that's where we're at, but as soon as we
19 identify resources, identify who can take that on, then
20 we'll move forward in short order. I would anticipate
21 that we will have that ongoing in 2014, we'll have that
22 study actually taking place during 2014, early 2014.

23 MR. PALACIOS: So we'll have the study done, so
24 the actual recommendations I guess we're looking
25 probably -- I mean, I know you can't tell me

1 specifically -- because I'm being asked constantly, by the
2 end of next year?

3 MR. JEREMIAH KUNTZ: I would anticipate by the
4 end of next year that we would have recommendations for
5 the board to consider.

6 MR. PALACIOS: Thank you.

7 MR. INGRAM: I have one comment just real
8 quick. The number one calls that I get is typically about
9 ID; the number two is the inspection/registration
10 stickers. That's going to have a large impact. I know
11 it's early, but just FYI, it's going to have probably a
12 lot of talk.

13 MR. JEREMIAH KUNTZ: We are anticipated a large
14 public awareness campaign that we will have to put out
15 with cooperation with DPS, as well as TCEQ. Again, that's
16 one where we need to identify resources between the three
17 agencies and then coordinate the message on how we get
18 that message out to media outlets, put it on the website,
19 all those kinds of things.

20 MR. INGRAM: And I think on that one that
21 there's probably some traps that people are not thinking
22 of yet that's going to happen. There's going to be some
23 problems with the implementation. It seems like it's a
24 rather straightforward thing, but you know, most things
25 do, but then after you kind of get into it, it's like

1 well, what about this, well, what about this, so I'm
2 worried that there's going to be some of those holes.

3 MR. JEREMIAH KUNTZ: I know that I've been
4 contacted from different lobbyist or industry groups to
5 talk about it, to ask questions about it. They're
6 generally inquiring. It's not been a lot but I have
7 gotten a couple. And each time we get those specific
8 issues, we're trying to make sure that the process will
9 take into consideration on how it will work.

10 MR. INGRAM: Thank you.

11 MR. JEREMIAH KUNTZ: We're sensitive to that
12 issue.

13 MS. BREWSTER: But as always, if there are
14 specific issues that are being brought to your attention,
15 we're having ongoing meetings with the other impacted
16 agencies, so that would be the perfect opportunity for us
17 to bring those issues up in those forums.

18 MR. INGRAM: I will see if I can start
19 cataloguing some of them.

20 MS. BREWSTER: That would be very helpful.

21 MR. JEREMIAH KUNTZ: And I know that I'm more
22 than happy to take those phone calls, I know that VTR
23 would field those phone call as well. So I mean, if you
24 don't want to have to write it down and you want to refer
25 them to us, we're more than happy to take those phone

1 calls.

2 MR. WALKER: Do you know how many
3 administrative law judges we're going to have for is it
4 1692, I think.

5 MS. BREWSTER: We're currently contemplating
6 two.

7 MR. WALKER: Including the chief?

8 MS. BREWSTER: Yes, sir.

9 MR. WALKER: So it will be one. Because if
10 there's an appeal at the bottom level, it goes to the
11 chief. Is that not correct?

12 MS. BREWSTER: Mr. Chairman, I'd like Bill to
13 address this issue. We've had several conversations about
14 that.

15 MR. WALKER: I'm just concerned. The overall
16 administrative judge cannot hear the case, apparently,
17 because if it is appealed, it has to go to him. Is that
18 not correct?

19 MR. HARBESON: Yes. Bill Harbeson, director of
20 the Motor Vehicle Division.

21 The appeal of a case would go, like any other
22 case, to the district court, so all we're talking about at
23 the judge level would be a motion for rehearing. So it's
24 anticipated we're going to have two judges, one senior,
25 one junior. If a motion for rehearing is filed on a

1 junior judge's decision, it would go to the senior judge.

2 The senior judge would rule on his own motions for
3 rehearing filed on his case.

4 MR. WALKER: Is that fair?

5 MR. HARBESON: We believe it is. In most
6 courts, especially in your civil courts, the motion for
7 rehearing in those cases is filed with the judge that
8 heard the case. Now, this is not, again, appeal of the
9 case, this is just to rehear the case or to reopen the
10 record. The appeal, like all of the administrative
11 hearings, will be going to the district courts here in
12 Travis County.

13 MS. RYAN: I thought we had originally -- and
14 correct me if I'm wrong -- there had been a discussion
15 about two judges and one senior.

16 MR. WALKER: That's what I thought too, yes.

17 MS. RYAN: Did that change, and if so, just
18 what was the thought behind it, or did I misunderstand
19 that?

20 MR. HARBESON: The number of judges needed was
21 based on what our anticipated number of cases going to the
22 judges would be. That number currently is 50 cases a year
23 which would equate to 25 cases per judge per year.

24 MS. RYAN: But the senior judge is not going to
25 have any jurisdiction or oversee anything that the junior

1 judge is doing?

2 MR. HARBESON: The judges themselves are the
3 decision-makers under the statute.

4 MR. WALKER: It won't come back to this board
5 anymore.

6 So you're telling me that there is only 25
7 Lemon Law and warranty cases filed a year?

8 MR. HARBESON: No, sir. There are several
9 hundred but the number of cases that actually have to go
10 through the hearings process currently at SOAH is we
11 estimate approximately 50. Eighty percent of the Lemon
12 Law cases currently are being resolved through some sort
13 of settlement or mediated process by our cases advisors or
14 by the parties themselves.

15 MR. WALKER: So are we still going to maintain
16 case advisors to handle it at the lower level before we go
17 to one of these two judges?

18 MR. HARBESON: Yes, sir. That part of the
19 process is not changing at all. That first 60 days that
20 we have the case remains the same where the case is being
21 received, the case advisor is trying to get the two
22 parties together to resolve the case, and only then is the
23 case sent off to the hearings examiners. The only thing
24 different from the current process is it's going in-house
25 to hearings examiners, as opposed to ALJs at the State

1 Office of Administrative Hearings.

2 MS. RYAN: Who are the case advisors?

3 MR. HARBESON: Case advisors are John Dufore --
4 their names, who are they?

5 MS. RYAN: I'm sorry. Are they agency
6 employees?

7 MR. HARBESON: These are agency employees in
8 the Lemon Law section. They're both experienced in the
9 automotive repair business.

10 MS. RYAN: And that's all they do right now is
11 mediation?

12 MR. HARBESON: All they do is receive the case
13 and try to identify what the issues are and talk between
14 the two parties to see if a resolution can be reached at
15 that stage of the case.

16 MS. RYAN: The change is that that was optional
17 and it's now required. Right?

18 MR. HARBESON: We were doing it.

19 MS. RYAN: We don't anticipate an increased
20 workload there?

21 MR. HARBESON: No, ma'am. We had always been
22 doing it that way in the Lemon Law program. The big
23 change with the statute will be the non Lemon Law cases
24 where there's a mandatory mediation process now.

25 MS. RYAN: Will we get a more detailed or

1 thorough overview on the process maybe at some point?

2 MS. BREWSTER: Absolutely.

3 MR. WALKER: Jeremiah, the thing I'm confused
4 about on this particular item, and I've been this way
5 since day one, is that the author of the bill is
6 Gutierrez, I guess. Is that correct?

7 MR. JEREMIAH KUNTZ: Yes, sir.

8 MR. WALKER: Have we talked to the author about
9 the intent of what their expectation was? Because why
10 would you set up an administrative -- and let's just call
11 it for simplistic sake, I don't know the right words, a
12 chief justice and a sub justice, why would it be set up so
13 that you have somebody sitting at this level and somebody
14 sitting at this level if what we're going to do is say
15 that you make your own decisions? Why wouldn't they both
16 be at the same level?

17 MR. JEREMIAH KUNTZ: I'm going to take a shot
18 at trying to explain it the way that I understand it, and
19 I'm going to have Bill step in if I go awry here. I think
20 that there's a definite distinction between an appeal and
21 a motion for a rehearing, and what we're talking about
22 here is a motion for rehearing is there's something else
23 that has occurred in the case, there is new evidence that
24 has come to light, there's something that one of the
25 parties would like to bring back before the judge.

1 On an appeal -- and again, correct me if I'm
2 wrong; I've got two attorneys, one on each side of me
3 here -- an appeal is where the process was not followed
4 adequately and you're appealing that there was something
5 that went wrong with the process, the process wasn't
6 followed, you were wronged in some way because they were
7 biased or did not make a judgment in accordance with the
8 law. But a motion for a rehearing is not a process
9 violation, it's not that the judge was biased and made a
10 decision because he felt more inclined with one of the
11 parties, it is he just wants to hear more information
12 about the case and so he's going to reopen it and
13 reexamine it again.

14 MR. WALKER: But I still don't understand why
15 we have -- we're talking about two people right now, and
16 I'm not criticizing that -- we have one of them at this
17 level here and one at this level right here.

18 MS. BREWSTER: Yes, but they're also serving to
19 oversee the entire office. I mean, they are managing the
20 staff within that office as well. Does that make sense?

21 MR. WALKER: No. Are they making unilaterally
22 the same decisions legally, one of them making the same
23 decisions that the other one is making?

24 MR. HARBESON: Yes, sir. As Ms. Brewster
25 correctly pointed out, the only reason we have any

1 inequality at all in these two positions is one is running
2 the division and the other is just a judge in the
3 division. So in the administration of the cases, they are
4 the same level, same power, they are making final
5 decisions in the cases. And we have a senior simply
6 because that's the division head in charge of those
7 people, in charge of that budget and hiring everybody else
8 in the division.

9 MR. WALKER: But so let's just hypothetically
10 say you're the senior judge and David is the junior judge,
11 and David hears a case and he makes a determination that
12 the car is not warrantable and it's my car, and so I
13 appeal and say, Hey, you are wrong, I want to appeal this.

14 I'm going to appeal it to David or do I appeal it to you?
15 I know I go to the agency, but who is going to review the
16 appeal?

17 MR. HARBESON: The motion for rehearing that
18 you will file will be considered by the senior judge.

19 MR. WALKER: So if I don't like David's
20 decision, it's going to come to you to make a
21 determination as to whether or not --

22 MR. HARBESON: We're going to reopen the case
23 with him still being the judge.

24 MR. WALKER: Now let's go back and let's flip
25 it, now you have heard the case and I don't like your

1 decision and so I'm going to appeal it. Now tell me what
2 happens.

3 MR. HARBESON: It goes to me, and I will decide
4 whether based on what you have filed with me whether I
5 should reopen my case.

6 MR. BARNWELL: Which is a rehearing.

7 MR. HARBESON: In the civil world, that is what
8 they're called, and outside the administrative practice,
9 I'm familiar -- and I'm sure Board Member Slovacek can
10 tell you -- it's the judge that heard the case that's
11 going to determine whether or not we're going to reopen
12 it.

13 MR. BARNWELL: So we don't like what you said,
14 now what?

15 MR. HARBESON: Then you go to appeal.

16 MS. RYAN: But this division, they're walled
17 off from the agency and they report up to the executive
18 director?

19 MS. BREWSTER: Administratively only.

20 MR. WALKER: I just don't like my odds.

21 MS. RYAN: Probably the overview would help, I
22 guess.

23 MR. HARBESON: There's really not much
24 difference from what is going on today.

25 MR. WALKER: Today it can come before this

1 board and we can evaluate and make a decision that we want
2 it to be reopened.

3 MR. HARBESON: But what comes to you is a PFD
4 which you have very limited ways to disrupt.

5 MR. WALKER: But at least it's an open mind.

6 MS. RYAN: Is there an evaluation period where
7 we have the ability as an agency to quickly respond
8 assuming -- will we be watching for concerns that are
9 being raised?

10 MS. BREWSTER: Yes. We'll be reviewing the
11 workload. We'll also be looking at establishing
12 performance measures very early on.

13 MS. RYAN: And acceptance with the way we've
14 set it up as an agency, because there are stakeholders
15 that will be vested and interested and watching, and if
16 there's concerns we'll want to just be able to respond.
17 Right? And we'll be set up to handle that quickly?

18 MS. BREWSTER: Yes, right.

19 MR. HARBESON: We've discussed performance
20 measures, and of course, one of them would be how many of
21 these cases are ending up in the district court.
22 Currently there's very few of these go up, the Lemon Law
23 and warranty performance cases, very few of them go up.

24 MS. RYAN: The intention of this change was to
25 streamline this process, expedite it, reduce time and

1 impact on both the customer and the industry, so we just
2 want to make sure that all those things are getting done
3 and we're not going the other way.

4 MS. BREWSTER: We say we do it better, faster,
5 cheaper, and this is a vehicle to show that we can do
6 that. Right.

7 MS. RYAN: Okay.

8 MR. HARBESON: And I still believe that's true.
9 We're going to have an informed judiciary -- for lack of a
10 better term -- that just hears these cases.

11 MR. WALKER: I think that's great. I just want
12 to make sure that the fox isn't making the decisions on
13 the decisions that he made in the first place, which I
14 like the fact that you can say that I don't think David's
15 decision is right and another person evaluates that and
16 your decision is not overseen at any level, it has to go
17 to an appeal process.

18 MS. RYAN: It does seem that in one layer of it
19 we are adding a demand, if you want to appeal it to -- the
20 only recourse is to go to civil court, and that doesn't
21 seem to expedite or make it cheaper or better for the
22 consumer.

23 MR. WALKER: I guess, David, maybe you can look
24 at this, at the bill and see what your impression and
25 opinion is from a legal standpoint there.

1 MR. DUNCAN: Again, to second what Mr. Harbeson
2 is saying, the focus of a judge in a motion for rehearing
3 is not a review of a raw error for the most part, it's if
4 they find something specific or if there is additional
5 information that they feel was not considered, in a lot of
6 cases a motion for rehearing is a perfunctory act in order
7 for them to preserve appeal and get the thing they think
8 is wrong -- they don't expect the judge to grant the NFR
9 or do any additional hearing, they want to satisfy, they
10 want to check that box, and then go to district. And so
11 in a lot of cases a motion for rehearing is little more
12 than an act that they take to perfect and make the
13 decision final and appealable and say I tried, I asked
14 them again and they said no.

15 So I agree with Bill that in many cases judges
16 at all levels, whether it's SOAH, and there are a lot more
17 layers at SOAH because there are a lot more people, so if
18 they wanted to set up a system where they would have more
19 senior judges reviewing more junior judges' motions for
20 rehearing, they could do that, but I don't think it's
21 absolutely necessary because it would go back to that same
22 judge. And if there is some concern that that judge is
23 going to be biased against that party or questioning their
24 judgment in the original draft of the PFD, that's going to
25 exist either way because it's going to get sent back to

1 the same judge.

2 MS. BREWSTER: Mr. Chairman, we'll put together
3 a document that we can inform the board about the process,
4 and we'd welcome your comments and feedback. But yes, we
5 would be returning quickly.

6 MR. WALKER: Any question for Ms. Flores? You
7 can just stay there, Linda. Well, maybe not, you need to
8 have a microphone.

9 On House Bill 2202 where we have anticipated
10 that we were going to have a self-directed independent
11 fund, and that didn't pan out which kind of put us into a
12 situation where our money now is going to be some of it
13 going into the general fund and some of it going into Fund
14 6. When we appropriate, is that going to create a problem
15 for the agency going forward about how do we appropriate,
16 whether we appropriate out of the general fund or whether
17 we appropriate for expenses out of the Fund 6.

18 MS. FLORES: We have had lots of discussions
19 with our appropriations control officer at the
20 Comptroller's Office and the Legislative Budget Board.
21 We've worked out all of the method of financing, so no,
22 there won't be any problem going forward. It's just
23 another change in the evolution of our agency, and I
24 anticipate more changes as the next legislative session
25 comes along and this is probably brought back up to the

1 legislators and I anticipate having more funding changes.

2 State agencies go through this throughout their
3 lifetime. Funds come, funds go, the appropriations are
4 very flexible and they just adjust accordingly. So we're
5 flexible enough, we're appropriated out of one but we
6 generate fees for another fund. So all agencies have that
7 kind of method of financing. A lot of state agencies
8 generate fees for general funding or for something else,
9 and they're totally funded out of the general revenue.

10 MR. WALKER: I just didn't know if it was going
11 to create a problem for us.

12 MS. FLORES: No. It's created some interesting
13 discussions with the comptroller.

14 MR. JEREMIAH KUNTZ: The one thing that I'll
15 add to that, many agencies have multiple methods of
16 finance. This is not something that's unique to our
17 agency. The only thing that it does is if you have a
18 specific strategy that's funded out of one bucket of
19 money, you can't blend that across the agency. If you use
20 all your general revenue, then that's all the general
21 revenue you can use and you're done, that's about it. But
22 this is not something that's unique to us.

23 MR. WALKER: Do we have any further questions
24 for Mr. Kuntz on the legislative update?

25 (No response.)

1 MR. WALKER: Jeremiah, thank you very much,
2 appreciate your time. Linda, thank you, and Bill, thank
3 you.

4 That brings us to the executive director's
5 report. You know, we're going to put you at the beginning
6 so we're not always having to rush you.

7 MS. BREWSTER: That's okay. Thank you, Mr.
8 Chairman. For the record, I am Whitney Brewster,
9 executive director of the department.

10 I just want to take a little bit of time to
11 talk about the performance of the agency in terms of our
12 performance measures. Although our overall executive
13 summary has not changed since the board last met, I do
14 want to mention several things specifically, the first
15 pertaining to board measures and the scorecard that we
16 have not reported out on, and those primarily pertain to
17 those that would involve surveying of our customers and
18 our stakeholder groups, just an update on that.

19 We have contracted with the University of Texas
20 to assist the agency in developing a comprehensive
21 customer service satisfaction survey for future use. That
22 would include a review of the agency's existing contracts
23 because there are several divisions that have customer
24 satisfaction surveys specific to their divisions.
25 Additionally, interviews with each of the divisions and

1 subject matter experts. Also, UT would be identifying the
2 specific audiences that we want to target, what are the
3 stakeholder groups and customer groups that we want to get
4 feedback from, and then additionally, developing the
5 survey questions based on the feedback that's received,
6 and then finally, making recommendations as to how we
7 reach out to each of these entities to be most effective.

8 So we are supposed to get those recommendations
9 by March of 2014, and so I just wanted to let the board
10 know that that is moving.

11 We're also really looking at ways to implement
12 working groups -- there's been that subject brought up
13 today -- implementing working groups to encourage
14 participation from our stakeholder groups in the
15 development of improvements to our processes.
16 Specifically, the agency worked with motor carriers
17 regarding permitting as a result of HB 2741, and that was
18 very successful.

19 Also, we're looking at just next week we'll
20 have a Uniformity and Service Quality Working Group
21 meeting which will include all sorts of stakeholders
22 involved in the registering and titling process, either
23 interfacing with the TxDMV or with the county tax
24 assessor-collectors, on how we might be able to improve
25 our processes. And then based on that feedback, we will

1 work with the Texas Tax Assessor-Collector Association on
2 gathering that information and working on an
3 implementation plan. And that is in addition, obviously,
4 to the Motor Vehicle License Advisory Committee. So there
5 is activity going on that encourages stakeholder
6 participation.

7 And then we did see a good vacancy rate spike
8 being reported this month, and that is as a result of a
9 number of retirements that we had hitting at the same time
10 we were separating our interns, our internship programs
11 were over, so we saw a pretty significant spike in the
12 vacancy rate.

13 So those are the few items that I just thought
14 I would bring to the board's attention.

15 Another item on this, though, is that the
16 executive team will be meeting in early December to review
17 the performance measures. There are a number of them that
18 we are hitting consistently at 100 percent and we would
19 like to look at ways to modify the performance measures to
20 bring back before the board in an appropriate forum early
21 next year.

22 So with that, I'd be happy to answer any
23 questions that the board has.

24 MR. HARBESON: How much is this study costing?

25 MR. INGRAM: Less than \$200,000.

1 MS. BREWSTER: Yes, it is.

2 MR. JEREMIAH KUNTZ: Again, Jeremiah Kuntz,
3 director of Government and Strategic Communications. It's
4 around \$22,000.

5 MS. RYAN: Right answer, according to Johnny.
6 Thanks, Jeremiah.

7 MS. BREWSTER: Mr. Chairman, if there are no
8 other questions, may I move on to the next item?

9 MR. WALKER: Sure.

10 MS. BREWSTER: On Wednesday, October 9, the
11 TxDMV was invited to testify before the Select Committee
12 on Transportation to talk about county roads and how
13 they're being impacted, but specifically for us, the
14 funding sources that we provide to the counties through
15 vehicle registration, the road and bridge fund,
16 oversize/overweight permitting, and we also, obviously,
17 took advantage of the time to talk about the TxPROS
18 system.

19 I just would like to point out that it was a
20 very good meeting. We got very high compliments from the
21 committee, specifically Senator Nichols, about the
22 outstanding information that was provided to the
23 committee, and he actually made the comment that it's the
24 best information, written testimony that he'd ever
25 received on the topic.

1 MR. WALKER: Congratulations.

2 MS. BREWSTER: Kudos to everybody. It was
3 definitely a team effort, so thank you to the Motor
4 Carrier Division and Government and Strategic
5 Communications and VTR, all pulled together very well to
6 get that information to them.

7 They are obviously very interested in just
8 moving forward. What the new penalties, the impact that
9 will have on those that are not complying with the law, if
10 we're seeing greater compliance or not. So we said that
11 we would continue to keep them up to date on any
12 information that we have on that.

13 I already talked briefly about the Uniformity
14 and Service Quality Working Group. I would like to point
15 out on the WebAgent subcontractor project, we have now
16 completed that project. VTR employees started
17 implementing this project in early 2012. They worked very
18 closely with the counties and subcontractors to implement
19 the application. A lot of work went into that.

20 Also, contractor locations were implemented in
21 February of 2013 with the exception of H.E.B., which
22 H.E.B. represents about half of all of the transactions in
23 WebSub. They wanted the website application to be
24 incorporated into their point of sale system, so it took a
25 considerable amount of time to make sure that it was

1 programmed and tested and functioning correctly.

2 So I am happy to say that we are now 100
3 percent WebSub implemented. In the past two months we've
4 averaged over 200,000 transactions through the WebSub
5 program, which is significant, and I anticipate the use of
6 the application will continue to grow as subcontractors
7 and counties add locations.

8 I do want to just recognize the team that
9 helped with this implementation. Candy Southerland --
10 raise your hand -- Tammera Parr-Lamb, and Kimberley Jaso.
11 Thank you very much for your hard work.

12 MR. WALKER: Good job, ladies.

13 (Applause.)

14 MS. BREWSTER: Mr. Chairman, that concludes my
15 report.

16 MR. WALKER: Concludes it? Great.

17 If there's no further business, I will
18 entertain a motion to adjourn.

19 MR. DUNCAN: I believe you have number 9, if
20 I'm not mistaken.

21 MR. WALKER: There are no action items.

22 MR. INGRAM: I move to adjourn then.

23 MS. RYAN: Second.

24 MR. WALKER: We have a motion by Mr. Ingram, we
25 have a second by Ms. Ryan, and it is now 12:14, and we

1 will conclude and adjourn today's meeting. Thank you.

2 (Whereupon, at 12:14 p.m., the meeting was

3 concluded.)

C E R T I F I C A T E

MEETING OF: TxDMV Board of Trustees

LOCATION: Austin, Texas

DATE: November 14, 2013

I do hereby certify that the foregoing pages,
numbers 1 through 122, 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.

11/20/2013

(Transcriber) (Date)

On the Record Reporting
3636 Executive Ctr Dr., G-22
Austin, Texas 78731