

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Friday,
November 13, 2015

Lone Star Room
Building 1
4000 Jackson Avenue
Austin, Texas

BOARD MEMBERS:

Laura Ryan, Chair
Robert "Barney" Barnwell, III
Luanne Caraway
Blake Ingram
Raymond Palacios
Marvin Rush
Gary Swindle
Memo Treviño
Johnny Walker

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P R O C E E D I N G S

1
2 MS. RYAN: Good morning, everyone. My name is
3 Laura Ryan, and I am pleased to open the Board meeting of
4 the Texas Department of Motor Vehicles. It is 8:04 a.m.,
5 and I am now calling the Board meeting for November 13,
6 2015 to order. I want to note for the record that the
7 public notice of this meeting, containing all items on the
8 agenda, was filed with the Office of Secretary of State on
9 November 4, 2015.

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

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

19 On September 2, 2015, Governor Abbott appointed
20 Gary M. Swindle of Tyler to replace Victor Rodriguez, and
21 Guillermo Memo Treviño of Laredo to replace Joe Slovacek,
22 whose terms have expired. Mr. Swindle is the board's new
23 law enforcement member, and Mr. Treviño is the board's new
24 public representative. The new members have fulfilled
25 their requirements of training and have been duly sworn in

1 to the office.

2 And now I'd like to take a roll call of the
3 board members. Board Member Barnwell?

4 MR. BARNWELL: Present.

5 MS. RYAN: Board Member Caraway?

6 MS. CARAWAY: Present.

7 MS. RYAN: Board Member Ingram?

8 MR. INGRAM: Present.

9 MS. RYAN: Board Member Palacios?

10 MR. PALACIOS: Here.

11 MS. RYAN: Board Member Rush?

12 MR. RUSH: Here.

13 MS. RYAN: Board Member Swindle?

14 MR. SWINDLE: Here.

15 MS. RYAN: Board Member Treviño?

16 MR. TREVIÑO: Here.

17 MS. RYAN: Board Member Walker?

18 MR. WALKER: Here.

19 MS. RYAN: And let the record reflect that I,
20 Laura Ryan, am here also. We have a quorum. It's been a
21 long time. We have no members absent.

22 I see we have a comment sheet from the public
23 so we'll now hear comments before we got into
24 announcements on 1.C. Mr. Hickman, are you present?

25 Thank you.

1 MR. DUNCAN: While Mr. Hickman is getting
2 situated, I'd like to read the standard statement on
3 public comment again. Under the Texas Open Meetings Act,
4 the board can't comment or deliberate on public comment
5 unless it relates to an item posted on the agenda. This
6 is because the public would not have been on notice that
7 the board might discuss that subject. If the board so
8 desires, we can schedule some aspect of the commenters'
9 comments for a future agenda with the approval of the
10 chairman. Pursuant to Board Rule 34, Texas Administrative
11 Code 206.22(b)(3), open public comment is limited to three
12 minutes per presenter. We have a timer which will go to a
13 yellow light when the commenter has one minute remaining
14 and a red light when their time is up.

15 MS. RYAN: Mr. Hickman, we'll start the timer.

16 MR. HICKMAN: The timer is over there, though.
17 I can't see it.

18 MS. RYAN: Okay. We'll move it for you. Can
19 you see it now?

20 MR. HICKMAN: Yes. For the record, my name is
21 Howard Anthony Hickman. I'm a retired enforcement
22 attorney for this agency.

23 After the last board meeting, I reviewed
24 TxDMV's quarterly performance measures. My initial
25 thought was just how much taxpayer money was wasted on a

1 system that 27 percent of the performance measures were
2 zero equivalents yet the agency received a passing score.

3 It brought to mind the old axiom: Figures lie and liars
4 figure.

5 In looking at government production statistics,
6 I'm always reminded of a story an old boss of mine used to
7 tell about the manager of a Soviet shoe factor who
8 determined that he could double shoe production by making
9 only pairs of size four left shoes. So he implemented the
10 change and doubled the factory production. The Soviet
11 Politburo was so impressed with the increased production
12 that it made the factory manager the regional manager for
13 shoe production. He then implemented the manufacture of
14 only pairs of size four left shoes in all the factories in
15 the region and again doubled shoe production. The
16 Politburo was so impressed that it made him the first
17 People's Commissar of Soviet Shoe Production and awarded
18 him the Order of Lenin.

19 That story illustrates the problems with
20 government performance statistics: they're bigger in
21 production numbers but lacking in product quality and
22 product utility. The last report of the Enforcement
23 Division classically only production numbers but totally
24 lacks any measures of product quality or product utility.

25 To achieve the division's merit production quotas, motor

1 vehicle investigators are allocated six and two-thirds
2 hours of investigation time per case and attorneys are
3 allocated two hours and thirteen minutes of attorney time.

4 The result is that no complicated investigations occur,
5 and as I mentioned in last lecture, only paperwork and
6 technical violations are prosecuted. I know of cases
7 where the Federal Trade Commission assessed and \$8 million
8 fine on one set dealers and another Texas dealer was
9 facing \$16,000 a day FTC fine. In neither case did this
10 agency pursue an investigation.

11 Let me give you a quick performance measure to
12 gauge the Enforcement Division's product quality and
13 product utility. From the news coverage you should know
14 that Volkswagen has defrauded 32,000 Texans with
15 substandard diesel engines for six model years. Under
16 TxDMV civil penalty guidelines, each count of fraud
17 carries a minimum penalty of \$1,000. Thirty-two thousand
18 times \$1,000 is \$32 million. Just check and see if the
19 Enforcement Division has issued a notice of violation to
20 Volkswagen assessing at least a \$32 million fine. If they
21 have not, do not ask why not because there is no good
22 excuse for such failure, but rather ask why does the
23 Enforcement Division continue to manufacture only pairs of
24 size four left shoes.

25 It is time the TxDMV regulation of the special

1 interest, by the special interest and for the special
2 interest ends. Texas expects you to do your duty.

3 And since I have lots of time left, let me say
4 have a happy Friday the 13th, and unlike the HMS Friday
5 the 13th that was launched on Friday the 13th, made its
6 maiden voyage on Friday the 13th and was never seen again,
7 you will see me at the next board meeting. Thank you.

8 MS. RYAN: Thank you, Mr. Hickman.

9 We're going to at this point change the agenda
10 slightly and go into a very brief executive session to
11 prepare for some of the future agenda items. We don't
12 plan to be in long so don't go far. We are going to go
13 into a closed session. It is now 8:11 a.m. on November
14 13. We will go into closed session under Texas Code
15 Section 551.071. For those of you in the audience, I
16 anticipate being in executive session for approximately
17 fifteen minutes and we will reconvene in open session
18 after that. With that, we are recessed from the public
19 meeting and we are going into executive session.

20 (Whereupon, at 8:11 a.m., the meeting was
21 recessed, to reconvene this same day, Friday, November 13,
22 2015, following conclusion of the executive session.)

23 MS. RYAN: It's approximately 8:45 a.m. on
24 November 13, and the Board of the Texas Department of
25 Motor Vehicles is now in open session. I want to note

1 that no action was taken in closed session.

2 We're going to go back to our agenda and we are
3 now on item 1.C.1, recognition of service. We've got, as
4 I mentioned earlier, some transition and as I mentioned,
5 we've got a couple of new board members, but I also wanted
6 to take a few minutes and recognize the two board members
7 that are leaving us after one lots of years and one
8 several years. And I see Joe.

9 MR. WALKER: Where is Victor? Is he here?

10 MS. RYAN: He's hiding, he's over there with
11 Joe.

12 We did get one of them here only at the promise
13 not to have a parade. So we promised not to have a
14 parade, so for those of you that are disappointed.

15 (General laughter.)

16 MS. RYAN: I did want to take a few minutes and
17 recognize our two incoming board members, so welcome Gary
18 and Memo, and our outgoing board members. And we're
19 pleased to have you both on the board of the DMV and the
20 DMV team. Serving on this board I think you'll find is a
21 truly rewarding experience. You'll find that you're able
22 to be a part of positive change for the both industries we
23 serve and represent and the citizens of the state in which
24 we live. In addition, and it's my opinion, you'll find
25 that it represents an active definition of servant

1 leadership.

2 Since the inception of this agency, the
3 leadership team and the board have worked together to
4 establish a culture and an environment that creates a
5 vision and inspires our employees to embrace the strategy
6 and the values and the goals of the Texas DMV. We've
7 committed and continued our focus on being customer-
8 centric, performance-driven and to optimize the
9 efficiencies that drive for innovation, all of which are
10 supported by the common characteristic that everyone on
11 this board and in the agency has, and that is to serve.

12 To that end, I'd like to take a minute and
13 thank both Victor Rodriguez and Joe Slovacek for their
14 service, time, leadership and their efforts to assist in
15 setting up the vision strategy and for putting the
16 governance policies in place for this agency, and without
17 their dedication, time and support, we wouldn't be where
18 we're at today.

19 Victor was appointed in September 2009 and has
20 served on this board for a little over six years. Victor
21 was one of the original appointees on the board and helped
22 establish the solid foundation that is in place today.
23 Victor has provided wise counsel and always made himself
24 available to assist when needed, often making multiple
25 trips to Austin to participate in committees or working

1 groups in between meetings and board meetings, and he's
2 always helped us stay on track. Many of us have joked
3 that we're not really going to know when noon is anymore
4 now that he does not sit on the board.

5 Over the past five years Victor has often been
6 a voice of reason and has truly become a personal and
7 respected friend. For both your service to the Texas DMV
8 and the State of Texas, as well as your friendship, I
9 personally thank you.

10 Joe was appointed in May of 2013 and has served
11 on the board for the past two and half years. Joe has
12 provided direction and wise guidance to the board and
13 served as chair of the Legislative and Public Affairs
14 Committee. Joe has also provided a unique and direct
15 approach to the needs of this agency. Also, we have been
16 able to work together through the unique challenges of
17 this agency and face the goals of the agency and strive to
18 reach for common results and through all of this we have
19 developed a mutual respect and friendship for each other
20 as well, and for your service to the DMV and the State of
21 Texas, I also personally thank you.

22 So on behalf of the agency and the board
23 members, I want to let you know how grateful we all are
24 for your service, both of you, for your time and attention
25 to this agency, and I am personally thankful to have had

1 the opportunity to work alongside both of you. Johnny and
2 I and the agency do have something for you, but before we
3 present that, I know Whitney and Johnny have something
4 they want to say also.

5 MR. WALKER: First off, get up here to the
6 front of the room. We can't even see you hiding behind a
7 post back there.

8 (General laughter.)

9 MR. WALKER: I'll tell you what, Victor, I
10 didn't know you before I got on the DMV Board up here, and
11 I'll never forget as we started this thing and all the
12 experiences that we went through from the first days and
13 what we were supposed to do and how we were going to do
14 it, and I kind of just sat back and I was kind of shy to
15 be around a police chief. I didn't know whether to be
16 concerned about whether I had an outstanding ticket.

17 MS. RYAN: Did he just say he was shy?

18 (General laughter.)

19 MR. WALKER: Well, I was around Victor because
20 I always have probably an outstanding ticket I didn't know
21 about and I was worried.

22 Over the years I've really learned to respect
23 you and your character and the things that you bestow upon
24 yourself, and you've always been cordial to me, you've
25 invited me to say hey, come on down to my home any time

1 you're in the area down there, and I really appreciate
2 that. And I learned to respect your opinion. I know you
3 have a lot of knowledge about state government, you've
4 been around it a long time, and every time I was kind of
5 hesitant about what I should do, I kind of looked back to
6 you as a mentor to help me out and I appreciate all that
7 you did for me.

8 Joe, I've known you not through the DMV Board
9 but it goes all the way back to Joe and I -- I've never
10 told anybody this before, but Joe and I live right around
11 the corner from each other, and I met Joe, and I know
12 you're going to say lightning is going to strike the
13 building probably, but I know Joe through Sunday School
14 class.

15 (General laughter.)

16 MR. WALKER: Joe and I were in Sunday School
17 class for years together and I got to know he and his
18 wife, Pam, quite well. But I know where you're coming
19 from, I know your characteristics from years of experience
20 in the neighborhood, and his kids went to school with my
21 kids, and so forth. I've enjoyed working for the last
22 year and a half with you, and I really appreciate it. And
23 I know I'll be seeing you around the neighborhood. His
24 brother-in-law lives right across the street from me. But
25 I've really enjoyed it.

1 Thanks, guys, and you're always welcome to come
2 back and straighten us out when we need to be straightened
3 out.

4 MR. RODRIGUEZ: If I may, Mr. Chairman. Do you
5 want to start the clock?

6 (General laughter.)

7 MR. RODRIGUEZ: It's been a privilege, it's
8 always a privilege to be able to serve Texas, and it's an
9 honor to serve Texas. When we serve in this capacity, the
10 paycheck is not very big, as you know, but there is a
11 reward, and the reward is being able to gain friends and
12 to work with people that you can later call board
13 colleagues. And there's also the reward of working with
14 what I call one of the best state staffs in Texas at DMV,
15 and that's my reward as I leave today. I've been able to
16 meet outstanding Texans, like yourselves on the board, and
17 I think we have the most outstanding state employees at
18 DMV, currently led by Whitney Brewster.

19 And Whitney, it's been a privilege to meet you
20 throughout the process to bring you to Texas again. And
21 was and I am today very proud of all the staff. The staff
22 here does an outstanding piece of work each and every
23 time.

24 So for all of those things it's been a honor,
25 and the reward is highly valued by me. So thank you very

1 much for having us here, inviting me here today. I
2 appreciate it very much. Thank you.

3 (Applause.)

4 MR. SLOVACEK: Victor, thank you for your seven
5 years of service. That's above and beyond the call of
6 duty.

7 And I would tell each of you folks thank you
8 for your service. Thank you for everything you do for the
9 State of Texas. Thank you for your friendship. I do
10 consider you friends. I appreciate the notes that I've
11 received. I knew I was filling a two-year unexpired term.

12 I enjoyed my two years and I really appreciate all of the
13 benefits and personal relationships that I've developed
14 while I was here, wonderful staff. Thank you very much.
15 Thank you for the gifts, but I'm going to have to return
16 those size four left foot shoes because I'm a size twelve
17 and they won't work. Other than that, thank you very
18 much.

19 (General laughter and applause.)

20 MS. RYAN: Please don't leave. Don't go
21 anywhere.

22 (Pause for presentations and photographs.)

23 MS. RYAN: Hold on one second, Joe and Victor.
24 Victor, it's not noon yet, don't leave. Joe and Victor,
25 if you can hang with us one more second, Whitney has a few

1 things she'd like to say.

2 MS. BREWSTER: On behalf of all the staff of
3 the Texas Department of Motor Vehicles, I want to express
4 our heartfelt gratitude to you, Chief Rodriguez, and to
5 you, Joe Slovacek.

6 Chief Rodriguez, as an original board member of
7 the TxDMV, you've seen this agency through a great
8 transition. It has been a great commitment on your part,
9 and this department and the state is indebted to you.
10 Your perspective on issues has enriched the debate on
11 topics of importance to this agency and the state. I will
12 be forever grateful to you not only for your contribution
13 to the growth and support of this agency over the years,
14 but of me as its executive director. You have helped me
15 better understand my role and helped me grow more fully
16 into the position that I hold, and I will be forever
17 grateful to you for that. You will be greatly missed.

18 Mr. Slovacek, I am grateful to you for the
19 trust that you have placed in the staff at this agency.
20 You have consistently supported the staff in what it needs
21 to conduct business, whether it's been facilitating
22 meetings with decision-makers on agency priorities or
23 trying to understand from the staff's perspective the
24 impact of board decisions. It is clear that you care
25 about the perspective and impact on the employees of this

1 agency and I am grateful to you for that. Thank you so
2 much.

3 (Applause.)

4 MS. RYAN: Thank you, everyone, for allowing us
5 time for this transition. As you can see, everyone on
6 this board is grateful for the board members and the time
7 on this transition.

8 We have one last recognition that we'd like to
9 take a minute and recognize, and Johnny, I wanted to take
10 a minute on behalf of the agency leadership and the rest
11 of the board and acknowledge our transition. You've also
12 served this agency and the board since its inception when
13 you were appointed in 2009 and have also provided insight
14 and leadership and have been a large part of setting the
15 vision and the strategy and helped put the governance
16 policies in place for this agency, and this has allowed
17 for the strong foundation that this agency can continue to
18 build on for years to come.

19 For the past two and a half years you have led
20 the Texas DMV as chairman of this agency and the
21 leadership has been in great hands. We have also made a
22 great team and I look forward to a continued strong
23 working relationship as we move into the next chapter of
24 this agency's future.

25 As a token of appreciation for your time and

1 dedication and attention to this board and agency, I would
2 like to present the token of our appreciation of the
3 agency staff and the board and myself in sincere
4 appreciation and thank you for your service as chairman of
5 the Board of the Texas Department of Motor Vehicles.

6 MR. WALKER: Thank you, Laura.

7 (Applause.)

8 MR. WALKER: Well, I know that the agency is in
9 good hands and I've worked with you very closely for the
10 last six years, five years, and I know that -- and I'm not
11 being disrespectful to anybody else on the board, but I
12 know that Laura has taken a very strong interest in
13 management of the department, she has put a lot of work
14 into it, hard work into it, and she is very deserving of
15 the position that she has. And I'm not going anywhere any
16 time soon. I will be her to offer my support always and
17 help her in any way I can to benefit the agency going
18 forward. Thank you.

19 MS. BREWSTER: Mr. Walker.

20 MR. WALKER: What did I do now?

21 (General laughter.)

22 MS. BREWSTER: This goes without saying, you
23 have a larger than life personality, but also the heart to
24 match. I am grateful for your common sense and leadership
25 on issues. Your sacrifice of time and energy over the

1 course of your time as chair is commendable, and I am
2 truly grateful for the strong working relationship that we
3 have developed during that time. Thank you for your
4 support of the agency, and we look forward to your
5 continued leadership on the board. Thank you very much.

6 MS. RYAN: Thanks, everyone, for your time and
7 attention and patience with us.

8 MR. WALKER: Now let's get down to business.

9 MS. RYAN: Get down to business.

10 Victor, Joe, thank you again for your time.
11 And Victor, there's a parade out there so you might want
12 to put your flashers on as you leave Austin.

13 (General laughter.)

14 MS. RYAN: We'd like to 1.B, committee member
15 appointments. We just quickly want to review the list.
16 We just really wanted to make everybody aware of the
17 revised committee members. The board members currently
18 are aware of them. Our Finance and Audit Committee will
19 be chaired by Raymond Palacios; members will include
20 Luanne Caraway, Marvin Rush, Gary Swindle. Our Projects
21 and Operations Committee will be chaired by Blake Ingram;
22 members will include Barney Barnwell, Gary Swindle, Johnny
23 Walker. And our Legislative and Public Affairs Committee
24 will be chaired by Blake Ingram, Barney Barnwell, Luanne
25 Caraway and Memo Treviño. Committee meetings will be held

1 on an as needed basis, as we've always had.

2 We'll also continue on to item 1.C. We've
3 posted our proposed board meeting schedule which is also
4 in your books, just mainly to keep everyone aware. You'll
5 see that with the exception of January and October, the
6 meetings are currently on Thursdays, the first Thursday of
7 every month. January, I think it's on Friday and I think
8 in October it's on a later date but still on a Thursday.
9 So mainly just for awareness.

10 With that, we'll move to item 2, executive
11 director reports, and I'll turn it over to Whitney.

12 MS. BREWSTER: Thank you, Madam Chair.

13 I want to recognize a man that really needs no
14 introduction. Our own Bill Harbeson has hit a milestone
15 in his career with the state. I want to thank Bill for
16 his fifteen years of service with the State of Texas.

17 (Applause.)

18 MS. BREWSTER: I am grateful for his
19 contribution to this agency. He adds levity to what we do
20 and always tries to do the right thing for our customers
21 and stakeholders. And I want to thank you very much,
22 Bill.

23 May I move on, Madam Chair?

24 MS. RYAN: Absolutely.

25 MS. BREWSTER: At its August meeting the board

1 approved the creation of the Household Goods Rules
2 Advisory Committee. If you will recall, the board
3 delegated the authority to me as the executive director to
4 finalize the membership of that committee which I have
5 done. Just a reminder, the committee is authorized by the
6 Transportation Code as a means to facilitate review of the
7 rules affecting this industry. The committee may make
8 recommendations to the board about proposed rule changes.

9 On November 10 the committee held its initial
10 meeting right here at TxDMV headquarters. Serving on the
11 committee are: Jim French of Scobey Moving and Storage,
12 who was elected as chairman of the committee; Chris Moucka
13 of IMS Relocation; Conrad Gwaltney of Allied North
14 American Van Lines; Steve Lancashire of American
15 Relocation and Storage, Inc.; Tracy McCullough of WestStar
16 Moving and Storage, Inc.; and the three public members:
17 Carrie Hurt from the Better Business Bureau, Mark Weiss
18 from the University of Texas at Austin; and Jason Badder,
19 Commercial Vehicle Enforcement for the Williamson County
20 Sheriff's Office. The two members from the TxDMV staff
21 are: Bill Harbeson, our Enforcement director; and Carol
22 Fallin, Motor Carrier Household Goods chief investigator.

23 After hearing testimony from the industry, the
24 public and staff, the committee made twelve
25 recommendations for changes to the rules, and these

1 recommendations surrounded three key areas: the first
2 being conditional acceptance of applications for
3 registration, the second being claim for damages to
4 household goods shipments, and finally, tariff filings.

5 Staff will now draft rules to propose. Those
6 rules will be submitted to the advisory committee for
7 their review and comments, followed by proposal to this
8 board by the committee, and it is the committee's ultimate
9 goal to present a recommended rule revision to the board
10 for consideration and approval.

11 And the general consensus from the meeting was
12 that all in attendance felt that the process was very
13 beneficial. With that, I have no other comments on that
14 agenda item.

15 If I may, I'll move to the next item, Madam
16 Chair, performance measures. In your board packets you
17 will find the dashboard of the agency's performance
18 measures.

19 For our new board members, the agency reports
20 quarterly at the board meetings on its progress on these
21 key performance indicators. Our performance measures are
22 broken out by three strategic goals set by the board: the
23 first being that the agency be performance driven; the
24 next optimizing services and innovation; and finally, that
25 the agency is customer-centric.

1 Terri Tuttle has refined the dashboard to make
2 it clearer based on some of the feedback she received from
3 you all. Of course, if there are other things that you
4 would like to see reported, please don't hesitate to let
5 either of us know.

6 There are fifty-three different measures that
7 roll up to an overall score for each of the goals, and
8 that's what you see in the dashboard, and I'm happy to
9 provide you with that information on those specific
10 measures if anyone would like to see a more drilled down
11 view of where these scores come from. And in fact, in
12 light of Mr. Hickman's comments, I will, following this
13 meeting, send all of those performance measures out to you
14 for your review.

15 The agency has set targets for each of those
16 goals and please note that these targets were
17 intentionally set high to allow the agency to stretch
18 towards those goals. Today I am reporting to you the
19 agency's third quarter measures for 2015. In general,
20 where we saw the biggest decline in the overall score this
21 quarter comes in our area of optimized performance and
22 innovation. And the primary drivers of the decline in
23 this measure are in two key areas of the agency, the first
24 being in the agency's enterprise-wide projects.

25 As most of you know, the agency has about

1 twenty large scale enterprise-wide projects. We have done
2 a very good job of staying within budget to complete those
3 projects, however, we have struggled with completing some
4 of our projects on time. And you all should be aware that
5 this is not due to a lack of initiative across this
6 agency, what this is a reflection of is resources. Many
7 of the same resources are needed across the enterprise
8 projects, and therefore, we are continuously having to be
9 flexible when it comes to the availability of those key
10 resources. The governance team, comprised of all division
11 directors and various advisors, continuously look at the
12 resource plan and make adjustments to help align resources
13 to get the work done.

14 RTS refactoring has required significantly more
15 resources than originally anticipated, and therefore, has
16 eaten up many key resources, particularly as we've moved
17 through the county deployments for point of sale and now
18 the cut-over off of the main frame that is occurring on
19 November 20.

20 Another area that the agency needs to improve
21 upon that led to the dip in this quarter is the timeliness
22 in which we complete performance evaluations of employees
23 in this agency. Again, I believe that this is reflection
24 of time, or lack thereof, and frankly, this activity has
25 taken a backseat to many of the other activities this

1 agency has going on. Timely feedback and goal setting is
2 important for all employees, we recognize that, and I know
3 we can do better, and we will -- myself included.

4 An area that you might be interested in where
5 we've seen improvement is in the area of online
6 registration renewal. I think it has reached the highest
7 level that I've seen in the three years that I've been
8 here, and we have a long way to go in driving more people
9 to do transactions online, however, we've reached 19
10 percent of our renewals being completed online. I know
11 that this number will only get better. VTR, the Vehicle
12 Titles and Registration Division, coupled with efforts by
13 the Government and Strategic Communications Division, have
14 really started to push the use of eReminder, the
15 electronic noticing program that the agency has for
16 renewing registration, and I think maybe in front of you
17 some of you have the pin that looks like this. This is
18 being sent out to customers across the state. This is
19 actually scanable, you can scan this and sign up. It will
20 immediately take you to the online application for
21 eReminder.

22 So I just wanted to let the board know that,
23 yes, there are areas that have taken a dip this quarter
24 but there are also very positive things that are
25 continuing to occur to the agency and contributing to the

1 success of the agency.

2 With that, Madam Chair, I'm happy to answer any
3 questions that the board has.

4 MR. INGRAM: Ms. Brewster, I have one question.
5 On the 19 percent on the online renewals, can you give me
6 sort of a baseline of where we were perhaps a year ago so
7 that I understand what the increase is?

8 MS. BREWSTER: Yes, Member Ingram. When I
9 first arrived in 2012, I believe that the online was about
10 12 percent, and last year it was around 15 percent, and
11 now we've moved up to 19 percent. And we are going to
12 really continue to make a concerted effort to drive more
13 of our customers to the most convenient way of doing a
14 transaction which is online from the comfort of their
15 homes.

16 MR. INGRAM: Do we have a specific goal that
17 we're shooting for on the online renewals? One hundred?

18 MS. BREWSTER: One hundred would be fantastic.

19 (General laughter.)

20 MR. INGRAM: That's optimistic. I like that.

21 MS. BREWSTER: That's very optimistic. Our
22 original goal for this fiscal year was 20 percent, and I
23 think that that's achievable.

24 MR. INGRAM: Thank you very much.

25 MS. BREWSTER: And Madam Chair, if there aren't

1 any other questions, if I could move into the final item.

2 MS. RYAN: Any other questions? No.

3 MS. BREWSTER: The agency has worked hard to
4 finalize its operational plans. We went through this
5 effort to chart the course of operational activities for
6 the year to come based on the strategic plan and goals set
7 out by the department, and in particular this board, to
8 also coordinate our resources needed to accomplish
9 initiatives in the year to come and to ensure that all
10 employees have a better understanding of what and why we
11 are doing the things that we do within this agency.

12 For our new board members, this is not an
13 activity required by statute or requested by the board,
14 this is something that the executive team of this agency
15 initiated to make sure that we get the things done that we
16 need to get done, despite the unanticipated things that
17 continually pop up that take time. We have provided you
18 with a copy of the operational plan, should you desire to
19 have one. This information is on the agency's intranet
20 site and the division directors provide ongoing updates on
21 their division initiatives at executive team meetings, as
22 well as one-on-one meetings that Shelly Mellott and I have
23 with each of the division directors. As initiatives are
24 completed, we will continue to update the board on the
25 agency's progress.

1 With that, I'd be happy to answer any questions
2 that you have.

3 MS. RYAN: Any questions?

4 (No response.)

5 MS. RYAN: Thank you.

6 MS. BREWSTER: Thank you.

7 MS. RYAN: So with that, we will move to item
8 3.A.

9 Good morning.

10 MR. AVITIA: Good morning. Madam Chair, board
11 members, Ms. Brewster, good morning. For the record, my
12 name is Daniel Avitia. I have the pleasure of serving as
13 the director of the Motor Vehicle Division. Alongside me
14 this morning is Ms. Michelle Lingo, staff attorney with
15 the Motor Vehicle Division. Ms. Lingo is the attorney and
16 legal subject matter expert that was assigned to review
17 this specific case.

18 Agenda item 3.A is being presented for the
19 board's consideration to adopt a final order. This case
20 involves Sweeten Truck protested the franchise agreement
21 modifications proposed by Volvo Trucks to reduce Sweeten's
22 area of responsibility from twenty-four Texas counties to
23 fourteen Texas counties. The issue presented in this case
24 is whether Volvo Trucks established, by a preponderance of
25 the evidence, good cause for the proposed franchise

1 modification.

2 The SOAH administrative law judge in this case
3 found that the evidence introduced into the record by
4 Volvo Trucks establishes that good cause and supports
5 granting the franchise modifications proposed by Volvo
6 Trucks, and the ALJ recommends that the board approve the
7 franchise modifications proposed by Volvo Trucks to reduce
8 Sweeten Truck's area of responsibility, as stated in the
9 proposal for decision, from twenty-four to fourteen
10 counties.

11 In determining whether good cause has been
12 established to modify the franchise, the law requires that
13 the board consider all existing circumstances, including
14 seven specific factors. Those seven factors are: one,
15 the dealer's sales in relation to the sales market; two,
16 the dealer's investment and obligations; three, injury or
17 benefit to the public; four, the adequacy of the dealer's
18 service facilities, equipment, parts and personnel in
19 relation to those of other dealers of new motor vehicles
20 of the same line make; five, whether warranties are being
21 honored by the dealer; six, the party's compliance with
22 the franchise; and seven, the enforceability of the
23 franchise from a public policy standpoint.

24 Now, in issuing the PFD, the ALJ found that
25 good cause was established by the evidence presented in

1 factors one, two and four. In factors three, five, six
2 and seven, the ALJ held that a lack of evidence and/or
3 argument presented by the parties as to each of the four
4 factors resulted in each constituting neutral factors, and
5 thus, not an existing circumstance that affects the good
6 cause analysis.

7 That being said, today the SOAH ALJ's proposal
8 for decision, Sweeten's exceptions to the PFD, and Volvo
9 Trucks' reply to Sweeten's exceptions are before you for
10 your consideration. Texas Government Code Section
11 2001.058(e) allows an agency to modify an order issued by
12 a SOAH ALJ only if the ALJ misapplied or misinterpreted
13 the law, relied on a prior agency decision that is
14 incorrect or should be changed, or made a technical error
15 in a finding of fact. After staff's review of all the
16 documents that are before this board today, the Motor
17 Vehicle Division recommends that the board issue an order
18 that adopts the ALJ's proposed findings of fact and
19 conclusions of law as modified.

20 Staff believes the ALJ's analysis of the law
21 and the evidence presented is thorough and that the
22 conclusions reached in this case are reasonable. Staff
23 has prepared a final order for your consideration which,
24 again, aligns with the SOAH ALJ's recommendation to the
25 board to determine that there is good cause for the Volvo

1 Trucks proposed modification to Sweeten Truck's franchise.

2 Ms. Lingo and I are happy to answer any
3 questions you may have.

4 MR. PALACIOS: I do have a question. This is a
5 question regarding the summary here of staff concerns
6 regarding the PFD from the ALJ. It states: The ALJ did
7 not provide all the required findings and conclusions.
8 For the board's consideration, the final draft order adds
9 findings of fact and conclusions of law.

10 I guess my question is, first off, why did
11 staff come in and, I guess, fill in the gaps, if you will,
12 for the ALJ, and what specifically were those findings and
13 conclusions of law that staff filled in?

14 MS. LINGO: Good morning. Michelle Lingo for
15 the record.

16 Member Palacios, that's a very good question.
17 One of the responsibilities of the Motor Vehicle Division
18 is to evaluate the PFD, the findings of fact and
19 conclusions of laws, and see that everything aligns with
20 the law and the requirements. Occupations Code 2301.711
21 requires that there be a finding of fact on each of the
22 seven factors, and because the ALJ didn't complete each of
23 those, what I did was to make sure that for each of the
24 factors that you are required to consider as the board
25 that you have a finding of fact for each of those. So

1 what I did is make sure that the order that's before you
2 comports with the requirements of the law, and that's my
3 job, that's my responsibility to make sure that that
4 happens.

5 MR. PALACIOS: Okay. So it's staff's
6 responsibility to fill in the voids and gaps that the ALJ
7 may miss. That's what I'm understanding?

8 MS. LINGO: Yes, sir. Under the Occupations
9 Code 2001.058(e), there are certain parameters where the
10 ALJ's decision, including the findings of fact and
11 conclusions of law that the ALJ prepared, have to be
12 evaluated, and there's limitations on how and when we can
13 modify those, so within the parameters of 2001.058(e), we
14 made recommendations to add findings of fact and
15 conclusions of law that will then make the order that's
16 before you comport with the law.

17 MR. DUNCAN: And if I may, Mr. Palacios. David
18 Duncan, general counsel.

19 It's not that there was nothing in the ALJ's
20 PFD discussion about the factors. The ALJ did have
21 discussion of the factors, just didn't in that bottom part
22 of the PFD in the findings and conclusions actually write.

23 It's not that the staff invented evidence or added
24 anything to the record, we used the record to create these
25 findings and conclusions.

1 MR. PALACIOS: Thank you.

2 MR. AVITIA: Board members, I also failed to
3 mention, and I do apologize, the screen before you is the
4 state representation. The dark outlined counties indicate
5 the current area of responsibility, the shaded in red
6 outline the proposed modification and the removal of those
7 counties.

8 MS. RYAN: Thank you. That's helpful.

9 Any other questions before we take the
10 comments?

11 (No response.)

12 MS. RYAN: Okay. We do have public comment.
13 We have two public comment cards on this particular agenda
14 item. We'll take them in order with Volvo first. We'd
15 like to call Keith Russell on this agenda item,
16 representing this Volvo.

17 David, I think it's been discussed fifteen
18 minutes?

19 MR. DUNCAN: Fifteen minutes per party. Yes,
20 ma'am.

21 MS. RYAN: Per party. And I think it's been
22 addressed that if you'd like to reserve some of that for
23 rebuttal, we'll certainly keep it in mind. We do
24 understand how important these matters are, so if you can
25 reserve some of that, that will be great, although we'll

1 consider the questions that the board may ask and take
2 that into consideration.

3 So Mr. Russell, we'll turn the time over to
4 you.

5 MR. RUSSELL: Thank you, Madam Chair. My name
6 is Keith Russell, and I represent Volvo Trucks. Here with
7 me today for Volvo Trucks is Mr. Scott Finley. Scott is
8 in charge of the dealer network and is based in
9 Greensboro, North Carolina.

10 In this case, as you've heard, Volvo Trucks
11 seeks to modify Sweeten's area of responsibility, as it is
12 expressly permitted to do under the statute upon a showing
13 of good cause. And here the administrative law judge
14 found that we did show good cause, and the ALJ is correct,
15 the staff did a good job of reviewing the record and
16 preparing its recommendation which is to adopt the ALJ's
17 PFD with minor revisions that neither party objected to.
18 There is no basis under the Government Code 2001.058(e)
19 for the board to change or modify or vacate the PFD in
20 this case.

21 Turning to the facts of this case -- and I have
22 just a very few boards to show you -- so Sweeten's
23 assigned area is the orange shading on this map, and as
24 you can see, it's an enormous geographic area that Sweeten
25 has in Texas. However, Sweeten has failed to adequately

1 represent Volvo Trucks in that market. After carefully
2 studying Sweeten's performance in the market, Volvo Trucks
3 determined that it would take this action to modify
4 Sweeten's territory so that the territory assigned to it
5 reflected what Sweeten was actually doing, where it was
6 actually making sales. As a result, Volvo Trucks sent
7 Sweeten a notice on September 23, 2013 that it intended to
8 modify its area of responsibility.

9 I'll show you one more board that's a zoomed in
10 look at Sweeten's assigned territory. Now, on the map in
11 front of you, the orange counties represent the counties
12 that will remain in Sweeten's AOR and blue are those that
13 will be removed. Now, the September 23 notice of intent
14 was eleven counties that were being removed, and it
15 included Washington County. During discovery in this
16 case, after Sweeten filed its protest, we learned that
17 Sweeten had developed a relationship with the Blue Bell
18 Creameries located in Washington County and had made a
19 number of sales there, so out of fairness to Sweeten,
20 Volvo issued an amended notice in July of 2014 that put
21 Washington County back into the counties that Sweeten
22 would keep. So the order that the ALJ entered was to
23 remove the ten counties that are shown in blue on the map
24 in front of you.

25 Now, the ALJ found good cause to remove those

1 counties, and you can see why on the map. The numbers
2 that are shown inside each of the counties that are being
3 removed constitute the total number of truck sales that
4 Sweeten had in each of those counties from the time period
5 January 1, 2009 all the way through the time of trial
6 which was September 2014, nearly six years, and as you can
7 see, there are zero sales in eight of the ten counties --
8 talking about new truck sales. In the other two, Burleson
9 County there's one sale that represents about a 2 percent
10 market share, and then the other, Fort Bend County,
11 there's eight sales out that's eight out of nearly 800
12 industry sales for about a 1 percent market share. So
13 Sweeten clearly is not doing much in those removed
14 counties.

15 Now, the parties had a fair trial. There was
16 six days of trial testimony, there were fourteen
17 witnesses, the parties introduced 154 exhibits. After the
18 trial the parties submitted closing briefs, responded to
19 the other side's closing briefs. The ALJ took all of that
20 into consideration and wrote a 42-page proposal for
21 decision, finding good cause for the modification.

22 And the good cause, as Mr. Duncan mentioned,
23 was based on three of the statutory factors. First was
24 Sweeten's sales in relation to sales in the market. You
25 can see that they're substandard, the ALJ Found that

1 they're substandard. In the PFD he said that their
2 performance overall was exceedingly low and that it's even
3 more glaring in the removed counties, as you can see for
4 yourself that's true. Sweeten's market share in the
5 removed counties from 2010 through 2013, which was the
6 relevant time period under the notice of modification,
7 ranged from 0.3 percent to a high of 1.9 percent. Now,
8 during that time frame, Volvo Trucks national market share
9 was about 11 percent to 14 percent. So you can see that
10 the ALJ was correct when he held that Sweeten's
11 performance was unacceptable in the removed counties.

12 The board that I just put up in front of you
13 shows Sweeten's new truck sales from 2010 to 2013, again,
14 the time frame that was relevant at the hearing. 97.4
15 percent of all of Sweeten's truck sales were in the
16 retained counties, the counties that it's keeping. Only
17 2.6 percent of those sales were in the removed counties,
18 and as the ALJ noted in the PFD, Sweeten can continue to
19 sell to customers in the removed counties after the
20 modification, it's not an exclusive sales territory.

21 And the last board I'm going to show you, this
22 one tells the same story as the previous one with new
23 truck sales, this one tells the same story about service
24 and parts sales. Service is shown in blue and parts sales
25 are shown in orange. Again, only 2.2 percent of Sweeten's

1 service business and only 1.5 percent of its parts
2 business is from customers in the removed counties, and
3 Sweeten can continue to service customers and sell parts
4 to customers in the removed counties after the
5 modification.

6 When Sweeten's counsel gets up here in a few
7 minutes and tells you that Volvo is trying to take away
8 half of the sales territory, please remember what they're
9 doing in that territory that's being removed, which is not
10 much.

11 The second factor that the ALJ relied upon to
12 find good cause was investments and obligations, and put
13 simply, Sweeten has made no investments of any kind in the
14 removed counties -- that was the evidence at trial. In
15 fact, the ALJ said there would be no impact at all on
16 Sweeten's investments and obligations caused by the
17 modification, and that's true, there is no contrary
18 evidence.

19 Third, the ALJ found that the modification was
20 warranted based on the inadequacy of Sweeten's service
21 facility and personnel. They've had an inordinate amount
22 of turnover in their service department, including in the
23 critical position of their service manager, their
24 facilities are inferior to those of other dealers, they
25 have an insufficient number of sales staff and trained

1 service technicians going back historically to 2009
2 through the time of trial.

3 I'd like to show you one other thing that's not
4 a board. This binder was a trial exhibit, it's trial
5 exhibit number 105, and it is some of the customer service
6 complaints that Volvo Trucks received about the service
7 department at Sweeten, and they're broken down and tabbed
8 by customer name, and as you can see, there are a lot of
9 them, it's a lot of customer service complaints, and it's
10 not all of them. And some of them were pretty severe,
11 some of them are customers like H.E.B. saying we're not
12 going to buy Volvo trucks anymore because the service
13 department at Sweeten can't service them for us. That's
14 in the record in the case and relied upon by the ALJ in
15 its finding.

16 So this evidence that I've mentioned and the
17 other evidence relied upon by the ALJ do show good cause.

18 Now, I want to spend just a couple of minutes
19 talking about what you're going to hear from Sweeten's
20 counsel. They're going to have two main arguments, I
21 think, against the PFD. One is they're going to argue
22 that this existing circumstances language in Section 455
23 means that the ALJ should have only considered evidence
24 that was contemporary -- in other words, at the trial he
25 should have only looked at how is Sweeten doing right now

1 on its sales, on its investments and so forth. And the
2 ALJ properly rejected that argument and noted that Sweeten
3 has no authority for it, there's no case law authority for
4 that argument, and it's clearly not workable, so the ALJ's
5 rejection of that argument was proper.

6 The ALJ held the issue is not what Sweeten is
7 trying to do now but what the evidence shows has been the
8 case over the last few years, particularly in light of the
9 fact that the modification proceeding began at the end of
10 2013. In other words, when the manufacturer sends the
11 notice in 2013 that says here's the reasons why we have
12 good cause to modify your AOR, that's what the trial is
13 about, is about do you have good cause based on the
14 performance leading up to that notice.

15 Please note that here on this issue Sweeten's
16 counsel is going to say existing circumstances means now,
17 what are we doing now, that's what existing means. Just
18 remember that and then notice how their position changes
19 on the next topic.

20 The next argument is that Sweeten is going to
21 say, well, all this is just a pretext because Volvo wants
22 to put a new dealership out on the west side and make sure
23 that Sweeten can't protest it, and that's an existing
24 circumstance that the ALJ should have considered. Again,
25 the ALJ properly rejected that argument. The reason that

1 it was rejected is because there's a previous precedent
2 from the board that's squarely against Sweeten. It's a
3 case called Cardenas Enterprises v. Toyota Motor Sales and
4 Gulf States Toyota. It was the exact same issue. Toyota
5 and Gulf States wanted to modify the dealer's territory in
6 Brownsville, and later at another point the dealer
7 protested the modification and said it's going to harm me
8 when you add a dealership in the future. And the board
9 said evidence of modification in the future is not
10 relevant to a modification case, different statutory
11 factors apply, there are different requirements in an add
12 point case and it's not an add point case, it's not
13 relevant, that's the decision. The ALJ relied upon it
14 properly in the PFD and it's not an existing circumstance.

15 Note in Sweeten's exceptions their counsel
16 dropped a footnote talking about the existing
17 circumstances argument, the first one, and said, Existing
18 circumstances means something that exists now, in
19 existence now. Well, any establishment of a future Volvo
20 Trucks dealership in the west Houston area, the removed
21 counties, does not exist now, there's no application for a
22 Volvo Trucks dealership in those territories now, it's not
23 an existing circumstance.

24 The remaining counties would still make up the
25 second largest Volvo Trucks AOR in the State of Texas. We

1 have a population of over six million people, it has both
2 Houston airports, major rail hubs and the Port of Houston,
3 has 87.3 percent of the population of the current AOR, and
4 as you saw, it's almost every bit of Sweeten's current
5 business. In fact, 27 percent of all of the economic
6 activity in the entire State of Texas is in the counties
7 that Sweeten is going to retain.

8 So the ALJ's decision and the staff's
9 recommendation are correct. There is good cause for the
10 proposed modification and there's no legal basis to change
11 the ALJ's PFD, so we ask that the board adopt the PFD and
12 follow the staff's recommendation.

13 Thank you for your consideration, and I'm happy
14 to answer any questions that you may have.

15 MR. WALKER: I have a question.

16 MR. RUSSELL: Yes, sir.

17 MR. WALKER: When you remove these counties
18 from his area but you say that he can still sell trucks in
19 those particular areas, let's say you established a new
20 dealer, let's say that Bob Smith goes in there and you
21 give him the franchise for that territory, does that
22 preclude Sweeten from selling trucks in that area at that
23 time, or how does that work?

24 MR. RUSSELL: Thank you, Member Walker.
25 Excellent question. The answer is it absolutely does not

1 preclude them from selling in that territory. They're not
2 exclusive sales territories. The answer is quite simply
3 regardless of whether another dealership is established
4 out there or where any such dealership is located, Sweeten
5 is still perfectly free to compete with any such
6 dealership in the future and can sell trucks and service
7 trucks and sell parts to customers wherever they're
8 located in the entire world, whether it's in those
9 counties or anywhere else, it's free competition.

10 MR. WALKER: So the only thing he is precluded
11 from doing would be brick and mortar?

12 MR. RUSSELL: Yes, Member Walker, but the
13 dealer agreement gives Volvo Trucks the discretion to
14 approve or disapprove any second location, so they don't
15 have a right per se to establish another location within
16 that territory anyway. But under the dealer agreement, to
17 address what I think is your question, having the
18 territory assigned to them just precludes the
19 establishment of another dealership in that territory
20 under the dealer agreement.

21 MR. WALKER: Thank you.

22 MS. RYAN: Can you pull the first map up, and
23 where is the dealership currently located now?

24 MR. RUSSELL: The dealership is currently
25 located here on the east side of Houston.

1 MS. RYAN: And with the proposed carve, where
2 would they be located?

3 MR. RUSSELL: Madam Chair, that's the most
4 important point that I could have possibly been asked a
5 question about. There is no proposed dealership.

6 MS. RYAN: I'm sorry. With the change, where
7 is it? You had the other slide

8 MR. RUSSELL: The change with respect to a new
9 dealership?

10 MS. RYAN: No, no, no. The existing one, with
11 regard to that other slide, in that one where is that?

12 MR. RUSSELL: East side of Houston, currently
13 the east side of Harris County.

14 MS. RYAN: Okay. I just wanted to get my
15 bearings. Thank you.

16 MR. RUSSELL: Sorry.

17 MS. RYAN: No. That's okay.

18 MR. SWINDLE: I had a quick question. What
19 type of notification was given to Sweeten as far as their
20 poor performance or their complaints before the
21 notification went out in September of '13?

22 MR. RUSSELL: Thank you, Member Swindle. A
23 lot. In the evidence, among those 154 exhibits that I
24 mentioned to you, it is a lot of correspondence with
25 Sweeten going back over time, trying to encourage them to

1 perform better. We even for a while tried to encourage
2 them to establish a second location on the west side of
3 Houston, which they may mention in their remarks, and
4 Volvo could not get Sweeten to commit to doing it. Many
5 of the trial exhibits were about Volvo Trucks
6 communication with Sweeten saying we need you to do stuff
7 out there, we need you to sell, we need you to be active,
8 we need you to cover your whole territory. It's a big
9 market out there in those removed counties that they've
10 completely ignored. And so, yes, sir, there was extensive
11 communication and extensive efforts, even to the point of
12 trying to get them to set up a second location out there
13 which they just would never do.

14 And they're going to tell you in a few minutes
15 that they tried to buy a property out there to set up a
16 dealership and we wouldn't let them, and the reality on
17 that point is that the first time that Sweeten put
18 property under contract in those removed counties was
19 after the protest had already been filed and after Volvo
20 Trucks had already determined that they were not serious
21 about setting up out there, and so we had told them that
22 we were not going to approve them establishing a second
23 location. So please bear that in mind when you hear that
24 argument.

25 MR. PALACIOS: Counselor, how frequently does

1 Volvo modify a dealer's AOR when they underperform? Is
2 this common practice?

3 MR. RUSSELL: Member Palacios, you're asking
4 how many cases like this are there?

5 MR. PALACIOS: For Volvo.

6 MR. RUSSELL: The only one I'm aware of is this
7 one right here.

8 MS. RYAN: In Texas or the country?

9 MR. RUSSELL: In the country, as far as I know.

10 MR. PALACIOS: So normally how does Volvo
11 handle then underperforming dealers? If this is the only
12 case where you've actually tried to modify territory, I
13 would assume there's other practices that you use to get
14 them to comply.

15 MR. RUSSELL: Well, there are a host of other
16 ways that performance issues can be handled. Sometimes
17 dealers may agree to changes to their territory, sometimes
18 things can be worked out that don't get to this point.
19 Sometimes the dealers, similar to in the automotive
20 industry, you may send notices to them of the deficiencies
21 in their performance and then they take steps to correct
22 it. Maybe additional satellite locations are established.
23 There's a whole host of other things that can happen that
24 most dealers respond to. Most dealers will take action.

25 It benefits the dealer to perform better in

1 these areas. That would have been to Sweeten's benefit if
2 they had actually gone and done something in those
3 territories. So it's the rare case when you have a dealer
4 like Sweeten that just simply refuses to cover its
5 territory.

6 MR. WALKER: So Keith, what is Volvo's market
7 penetration statewide?

8 MR. RUSSELL: In Texas?

9 MR. WALKER: In Texas.

10 MR. RUSSELL: The Texas average. Member
11 Walker, I don't know what it is today as we stand here.

12 MR. WALKER: The market penetration nationwide.

13 MR. RUSSELL: Roughly 15 percent.

14 MR. WALKER: Fifteen percent? And of the
15 removed area here, what would be the percentage of truck
16 sales in that particular area and what percentage does
17 nine trucks represent?

18 MR. RUSSELL: That's the numbers I mentioned
19 earlier. Depending upon the time frame that you're
20 looking at as to when the trucks were sold, from that time
21 period of 2009 through the time of trial, the market share
22 ranged from 0.3 percent to a high of 1.9 percent, because
23 that's our dealer there.

24 MR. WALKER: Total truck sales?

25 MR. RUSSELL: I'm sorry?

1 MR. WALKER: I thought that was in relationship
2 to their sales, but what is that in relationship to --
3 what's the potential market in those particular counties?
4 I mean, I don't know how many trucks are sold in Fayette
5 county, I don't have the foggiest idea. There may be zero
6 potential buyers there.

7 MR. RUSSELL: I have those numbers and the ALJ
8 had those numbers and considered them, and I gave you a
9 couple of them with Burleson and with Washington counties.
10 So in general terms, the total market there where we've
11 got the nine sales for the time period that that relates
12 to, there are about 1,700 industry registrations, 1,734.

13 MR. INGRAM: The counties being removed, that's
14 the number, the potential?

15 MR. RUSSELL: That's the number of industry
16 registrations in that market during that time period.
17 Yes, sir.

18 MR. RUSH: It's the blue?

19 MR. RUSSELL: In the blue, yes, Member Rush.

20 MR. BARNWELL: Those are new vehicle
21 registrations?

22 MR. RUSSELL: Those are new heavy truck
23 registrations. Yes, Member Barnwell.

24 And all of that argument related to the market
25 share. That was all presented to the ALJ in the hearing,

1 it was all presented to the ALJ in the briefing, and it
2 was all addressed in the PFD, and the ALJ still found good
3 cause for the modification, just as the staff noted.

4 MS. RYAN: Any other questions?

5 (No response.)

6 MS. RYAN: Thank you very much.

7 MR. RUSSELL: Thank you.

8 MS. RYAN: The second comment card we have,
9 we'd like to recognizes and welcome Representative Travis
10 Clardy to the Texas Department of Motor Vehicles. Thank
11 you for your service. And also representing Sweeten Truck
12 Center.

13 MR. CLARDY: Thank you, Madam Chairman. I
14 would like to reserve five minutes if you could put that
15 in the timer, so I'll do ten minutes and then the five
16 minutes for rebuttal. Thank you, members and chairman,
17 and thank you for your service to the State of Texas, for
18 what you do. I know it's a lot of time out of your life
19 and a lot of effort and appreciate what you're doing.

20 I would like to introduce a few folks before I
21 get into the merits of the cases. Sitting in the back is
22 Mr. R.C. Sweeten, Sweeten Truck Center. Sitting next to
23 him is Dane Yeager, his general manager. And then, of
24 course, counsel I worked with on this case, Mr. Bill
25 Crocker. I think most of you may know Bill. It's good to

1 have them here in the courtroom. As I told them, this is
2 our last chance for romance, and so we wanted to be here
3 and give it our best shot.

4 The hard part about a case like this is boiling
5 it down. We've been at this for over two years and we've
6 been asked to summarize this to you in less than fifteen
7 minutes, and I will tell you this is really about the last
8 place that I wanted to be today, last place I expected to
9 be today. I've asked myself from day one on this case:
10 Why are we here, why is this going on, why does this
11 dispute even exist over this? It just makes no sense; it
12 didn't make it then, doesn't make it now.

13 The funny thing with lawsuits, when you get
14 into them it nearly always goes back to that first gut
15 reaction, that first instinct you have when you analyze
16 the facts. And one thing I'm particularly appreciative of
17 the board today, the questions you have asked. I think
18 you're having that same instinctual reaction that I had
19 with the questions that you're asking. They just don't
20 make a lot of sense.

21 I do want to just make one aside. The first
22 question, commissioners, you asked, I had the same
23 question. In my experience as a trial lawyer, usually the
24 court's clerks don't clean up the failings of a party to
25 point out the errors in the record or they're not getting

1 the right issues in front of the court, they're not
2 hitting the right points. There was, I believe, a fatal
3 flaw by the ALJ, but that's been corrected now. That's
4 okay. We're going to win this on the strength of the
5 merits of the claims and what we're going to discuss here
6 today, what you're considering. That is an unusual thing;
7 I had the exact same reaction. Why didn't we go back to
8 the ALJ and point out the things that needed to be fixed.

9 This case really, when you think about it, what
10 is it about, what did we start with. It really comes down
11 to why are they taking these counties away from Sweeten
12 Truck Center? Mr. Russell made a comment that they're not
13 taking it, there's not another dealer that's been located.

14 Well, it kind of begs the question: Well, why take them,
15 why not leave them alone, they're not exclusive sales
16 areas. What is the purpose for taking them? I will tell
17 you everything that's happened in this case from day one
18 has been pretextual that Volvo wanted to take away these
19 sections not to serve those counties that have been
20 identified in blue, the counties to the west, it is, in
21 fact, it's entire purpose to put a new dealer just on this
22 side of the line somewhere around Katy in that part of
23 Houston. Our dealership currently is in the northeast 610
24 Loop area where there's a lot of trucking activity. They
25 want to put a place just outside that line to service that

1 area. This is about splitting R.C. Sweeten's dealership ,
2 this is about depriving him of half of the affected area.

3 It's not about these counties, it's never been about
4 these counties, I don't care what the letters say or
5 anything else. It is about breaking up his valuable
6 dealership and putting a new dealership in there.

7 You know, you guys are businesspeople, you know
8 this. This has been something that R.C. has been working
9 towards and trying to build. The comment was made that
10 they've made no efforts for establishing another location.

11 That is absolutely not true. We've had at least four
12 properties under contract, they tried to identify prior to
13 this ever coming up, and currently we have bought a
14 property that is perfectly suitable for a location in west
15 Houston. We do agree that would be a great way to service
16 this market and provide Volvo services, parts and sales in
17 this entirety of the existing AOR.

18 But to go back a little bit in time, some
19 things you have to know about the history of the company.
20 First off, Volvo came to R.C., not the other way around:
21 Would you please be our dealer in Texas in the Houston
22 area? And the place opened in 2004. They've had a
23 stellar record as a dealer for years and years and years.

24 Admittedly, there were problems in the 2011-2012 period,
25 but let's remember we tried this in 2014. This is the

1 central framing of what the ALJ did when he reviewed this
2 case. He locked in, and as Mr. Russell said a moment ago,
3 look at this from 2013. That is not the right time
4 period.

5 Volvo sent a second amended notice letter two
6 months before the trial. Frankly, I think the trial
7 should have been and let us work on those issues. But
8 they moved the time period forward into 2014, and within
9 the record you will see that Sweeten Truck Center had
10 solid service, solid parts, low turnover, all the things
11 they said existed that may have been some problems in 2011
12 or '12 were no longer there. As we stand here today,
13 Sweeten Truck Center as the best CSI, consumer
14 satisfaction index, of any dealership in the country, 100
15 percent across the board all the time. It's a deal that
16 we have continued to do a good job, but nevertheless, this
17 litigation has persisted, and here we are trying to undo
18 this difficult thing.

19 What they want to do is set up a Volvo
20 dealership across the way in a thought that that could
21 somehow create more sales for Volvo. And that's not what
22 it's going to do, it's going to weaken. I feel sorry for
23 whoever the second person is that gets talked into taking
24 this dealership from Volvo in another part of the city.
25 It's not going to work. They're going to have two

1 extremely weak dealers not being able to provide the
2 quality service that the public deserves.

3 And let's think about what we're talking about.
4 These are Volvo trucks. Some of you may not realize that
5 Volvo makes heavy trucks. Until Chuck Norris got on TV, I
6 don't think most people knew that. But why have their
7 trucks underperformed where some markets they sell 15-20
8 percent and others in the oilfield applications it's a
9 very low single digit number? Why is that? They make a
10 fine truck, Volvo is a quality manufacturer, we're proud
11 to represent Volvo, but what they don't make is a service
12 truck, they don't make an oilfield truck. What's been our
13 economy in the last five years? Where has the need for
14 sales of heavy equipment been? It's been in the oilfield
15 and oilfield applications in the service industry. That's
16 not their niche, that's not their market.

17 And I'm reminded, I think they have Shakespeare
18 in Sweden, they probably read that over there, what was it
19 the Bard said: Dear Brutus, the fault lies not with the
20 stars, it falls with us. And perhaps a little critical
21 self-examination by our friends in the manufacturing
22 industry would tell them we need to do something different
23 if we're going to sell in Houston, we need to make a truck
24 that people want to buy. There's no problem with other
25 dealers sell with Kenworth, with Mack, with Peterbilt, et

1 cetera. Those are proven trucks in that industry; Volvo
2 doesn't have that product. I think they've done an
3 exceptional job at Sweeten Truck Center in selling with
4 they have.

5 Now, I will tell you that the thing I think is
6 not fairly addressed by the ALJ is the effect this is
7 going to have on Sweeten Truck Center. This has been a
8 business that R.C.'s has been building for over ten years,
9 he's put a lot time, sweat, money, capital. He's prepared
10 to do more. He's bought the property; he looked forward
11 to establishing a new location in west Houston again if
12 the manufacturer will allow him. We're ready and we're
13 able to do that.

14 But you look at where it is now, you wouldn't
15 be surprised to know -- I believe this is in the record --
16 that several attempts were made by Mr. Sweeten. Sometimes
17 you're in a bad relationship and you just need to let it
18 go and move on. He tried to do that. But you know how
19 this is, there's no secrets in this business, once word is
20 on the street, it's on the street. If somebody finds out
21 you're involved in a litigation with the DMV, you're
22 fighting with your manufacturer, you might lose half of
23 your dealership, you tell me what effect that's going to
24 have on the value of your business, what's that going to
25 do to your ability to sell it in a fair way.

1 And so the decision was made to march forward
2 with this and try to hold on. Efforts have been made to
3 move the business and try to come to some resolution, all
4 to no avail. So here we are with you, you're our last
5 recourse to talk about these things, to try to do what's
6 fair and what's reasonable and come back and correct what
7 I think is a mistake of the ALJ in saying that Volvo is
8 entirely correct in being able to these counties.

9 I would just as an aside, you have to notice
10 that they did give us Brenham back. Now, I'm not saying
11 Volvo is responsible of the closing of Blue Bell, but it
12 is kind of interesting that's the county they gave us
13 right before it happened.

14 But the point of it is, if you look in those
15 counties, the sales aren't there, it's not about the
16 sales. This is what I'm asking this board, the people
17 that live in Texas, that know Texas, that travel in
18 Houston, just use your common sense, what's going on here.

19 If what they want to do is take the area and take half of
20 it, just tell us what you're doing and why, and that's not
21 what's happening here. This is a matter of fairness, of
22 decency, of doing the right thing in the law and the right
23 thing in business.

24 So I'm going to reserve the rest of time, I
25 think I've got a few seconds left, and I'll come back and

1 finish with rebuttal. I'll answer any questions then or
2 now, the board's pleasure.

3 MR. PALACIOS: Can I ask a question?

4 MS. RYAN: Absolutely.

5 MR. PALACIOS: Representative Clardy, I have a
6 question. Twenty-six exceptions were filed I guess in
7 response to the ALJ's PFD. Of those twenty-six, how many
8 of those apply specifically to the three factors that
9 would allow a modification or the vacancy of that PFD
10 decision? How do they relate specifically to these three
11 factors?

12 MR. CLARDY: Well, that's going to take a lot
13 longer for me to go through and identify them. I will
14 tell you that all these exceptions were specifically
15 tailored with the able help of Bruce and Mr. Crocker, but
16 my reading of these is they all very much relate to those
17 factors of what you have to do for them to be able to take
18 these areas. We can go through each one.

19 MR. PALACIOS: You don't have to go through all
20 twenty-six of them, but I guess, obviously, for us to make
21 any decision they really have to pertain to these three
22 factors, so that end, that's your best thought?

23 MR. CLARDY: Right. And that's a fair
24 question. What I'd like to do on that one, let me, as I'm
25 sitting here listening to the next little portion, go

1 visit with my counsel and in my final five minutes I will
2 nail that. I want to make sure that I get the right
3 ones, because the smart guys are sitting over there, I'm
4 just up here talking. Thank you.

5 MS. RYAN: Go ahead, and I've got a question
6 after you.

7 MR. WALKER: I heard, I thought, in your
8 comments -- and I may have misunderstood what you said --
9 you said you had looked at property in the particular area
10 but then you just said they purchased property in the
11 area. Which is it?

12 MR. CLARDY: It's both. I think the
13 implication was that Sweeten did nothing to try to locate
14 a west Houston location, and that's patently false, that's
15 counter to the record. There were at least four attempts
16 to locate property in the west Houston area, got them
17 under contract, weren't able to close. Subsequent to the
18 trial, in the last fourteen months, one of those
19 properties, I think it was the very last property that we
20 were dealing with, has actually been closed and is
21 presently owned by Sweeten.

22 MR. WALKER: Where is that piece of property?

23 MR. CLARDY: It is inside the Houston area, the
24 Katy-Brookshire area. Can't say that I've been there, but
25 it's a property that's been looked at. And there was a

1 lot of due diligence. In fact, Volvo had people come from
2 corporate and were identifying properties, because they
3 have to give the green light to do that.

4 MR. WALKER: How bit a piece of property did
5 you buy?

6 MR. CLARDY: What's the acreage? Six acres.
7 That all happened after the trial, they were closing, we
8 were doing some of the stuff. But it's acceptable and
9 it's the same size -- and I'm going on what I hear from
10 Mr. Yeager who handled that sale -- but it's the same size
11 of those similar locations, operations for this sort of
12 facility in the area, more than adequate.

13 MS. RYAN: Go ahead, Marvin.

14 MR. RUSH: Can you tell me did you do any -- I
15 see that that area where he only sold whatever it was,
16 eight or nine trucks or something, how far back did you
17 go, was that just one year, six years, three years, ten
18 years?

19 MR. CLARDY: The last fiscal analysis on this,
20 I think that was just for the last year. And then you can
21 get into the weeds where they're not given credit for some
22 sales within that area and others because of where the
23 registrations were, where the trucks were actually
24 utilized. But the point is there have been minimal sales
25 throughout the entire period because there's not companies

1 operating fleets.

2 MR. RUSH: I would like to see what he's done
3 in the last five-six years.

4 MR. CLARDY: Within the area they propose to
5 take?

6 MR. RUSH: What's that?

7 MR. CLARDY: You asked me how many were sold in
8 the area?

9 MR. RUSH: No. I said I would like to see what
10 happened in those areas over the last five or six years
11 prior to being here.

12 MR. CLARDY: And let me ask you is that
13 industry-wide truck sales or specifically Volvo?

14 MR. RUSH: Volvo trucks.

15 MR. CLARDY: Volvo trucks.

16 MR. RUSH: That's all I care about.

17 MS. RYAN: Quick question on the site -- two
18 questions, and I agree with Marvin's question, in the
19 sales it says that in the area, the proposed area in red
20 that there's a little over 1,200 competitive registrations
21 which means there is a market in that area, yet Sweeten
22 Trucks did not sell into that market. So the question I
23 would have is why, which goes to the statutory question of
24 harm. So if in that three-year time frame sales were not
25 made into that market and that market was carved, the

1 opportunity, you could still sell into that market, so
2 there is still a sales market there, so that is a
3 statutory factor of harm. So my question would be the
4 opportunity to still sell into that market is there and
5 there is still a buyer there because vehicles/trucks are
6 still being registered there, so my question is you still
7 have the opportunity that you had then yet the opportunity
8 wasn't taken when it was in your area of responsibility.
9 So it's kind of a question and a statement: help me
10 understand where the harm is.

11 MR. CLARDY: Two points on that. One is it
12 goes back to the vehicles that are made and manufactured
13 and what their purpose is, and the registrations that are
14 in the west boundary of the area aren't the ones that fit
15 that market, that fit the oilfield market. That's why
16 those sales are low of the Volvo truck compared to other
17 registrations. That's one of the reasons that you see
18 that drop off.

19 The harm, quite frankly, to me it's very
20 obvious, yes, it's a non-exclusive area, you can sell
21 outside that area, but I think the business ethics, as Mr.
22 Sweeten testified to, are that you stay within your
23 boundary lines and you don't directly compete with those
24 that run up against you. Now, are you precluded from
25 doing that, is it illegal to do that? No. But the course

1 and custom of the industry is to respect those lines. You
2 put someone in west Houston that services those counties,
3 they're going to be competing on that same entire Houston
4 market. The counties are just the window dressing to get
5 a second dealer in the western portion of the area. There
6 are sales opportunities there, and again, they spent money
7 and time and resources going into the ten counties to the
8 west.

9 MS. RYAN: But I read that one of the reasons
10 that the sales didn't look so good was that you didn't get
11 credit for some of the sales that were outside of your
12 area of responsibility.

13 MR. CLARDY: Right. And that's where I think
14 you need to start parsing those up, where were the
15 registrations, where were the trucks purchased and where
16 are they domiciled and those things.

17 MS. RYAN: Okay. Understand.

18 MR. CLARDY: But I think that the value and
19 what the obvious effect is on Mr. Sweeten's business, you
20 take half of the geographic area with the knowledge that
21 there's going to be a new competitor in that market, it
22 greatly devalues his business, and I think at the end of
23 the day, it's going to hurt the public in the service and
24 parts because it's going to have two weakened businesses
25 instead of one very strong vibrant business that's

1 operated by Mr. Sweeten.

2 MS. RYAN: Last question. Thank you. The land
3 that was purchased, was that site approved by Volvo?

4 MR. CLARDY: No, and despite our best efforts
5 before, during and after the trial. That's where I think
6 the frustration at least on our side is, you know, why are
7 we here. This is a good reputable solid company, a good
8 operator, knows what they're doing, been in the business
9 for years. We're prepared, willing and able to do exactly
10 what they want to do and have been making good faith
11 efforts throughout. Again, you go back to 2012-13, there
12 have been some service issues, some parts issues. That's
13 part of some turnover, but that's been handled, that's
14 been dealt with. If you block up there and say we're only
15 going to look at 2012-2013, then maybe you have a problem.

16 There's a question that you asked about is this
17 the only place this has happened. I asked those questions
18 during deposition. This is the only dealership that has
19 gotten this treatment across the United States. You would
20 think that means Sweeten Truck Center must be the very
21 worst performing dealership in the country, the very worst
22 sales, the very worst service, the very worst parts, the
23 very worst turnover in management, et cetera. At the end
24 of the day, if you add about a dozen trucks into the
25 existing sales in this relevant time period, Sweeten comes

1 up to actually the average of Volvo sales for the country.
2 We're slightly below average, we're not at the bottom of
3 the barrel. There's no reason for Sweeten Truck Center to
4 be singled out like they're being singled out before this
5 board to have half the business stripped away, sold to
6 somebody else, and they're not going to tell you that's
7 what they're going to do.

8 MR. INGRAM: I have just a followup question to
9 that, if you don't mind. You say that you're about
10 average. Average compared to what? I mean, there's a lot
11 of ways to look at that.

12 MR. CLARDY: Sure. We're going off of their
13 numbers. They can explain that. But off of Volvo's
14 numbers of market share, penetration, volume of sales,
15 we're near the median point of sales.

16 MR. INGRAM: Is that the median point as in
17 number of sales, or is that a median point as in
18 penetration in that market that he's responsible for?

19 MR. CLARDY: Median point as far as penetration
20 of Volvo trucks in that market, I think the expectations
21 of them, but also in the volume of trucks. And again,
22 this point was very much made in the record. I'm not here
23 saying that Sweeten Truck is in the top 10 percent of
24 sales of Volvo trucks. I don't think that's a problem
25 with the sales force at Sweeten. R.C. can sell an Eskimo

1 an icebox. It's not the problem with the salesmen, it's a
2 problem that the product doesn't fit in this market at
3 this time. We would love nothing better. We've made
4 these suggestions in the years we've operated the
5 business: Volvo, help us, we will help you develop the
6 market, let us give you the input what's going to sell in
7 Louisiana, in Texas, in North Dakota, in the heavily
8 intensive oil and gas markets. So far those have fallen
9 on deaf ears, and so far the sales have stayed down as
10 compared to their over-the-road trucks which perform
11 exceptionally well and have a great market penetration.

12 MR. SWINDLE: Just a quick question so I can
13 understand this. Does Sweeten have any other franchise
14 agreements or do they operate any other trucks, or is the
15 Volvo franchise agreement so limited they can only sell
16 Volvo?

17 MR. CLARDY: It's a Volvo dealership only at
18 this location and that was the intention of the west
19 Houston location as well. And if I'm going to be very
20 true with this, Mr. Sweeten does own and operate other
21 dealerships that sell other products, okay, but they're
22 not in the Sweeten Truck Center group. There's the
23 Performance group, separate entity, and again, the same
24 people operating these things, and I think you know this,
25 the relationship between Volvo and Mack, so you look over

1 there and we're the same people, same folks, same business
2 model, same effort, same everything, and they're blowing
3 the top out of the market selling Macks. They did a great
4 job holding their own and growing and developing the Volvo
5 brand in this same market, albeit without the real
6 vehicles they need to sell.

7 Now, I know a good carpenter doesn't blame his
8 tools, and they're salesmen, it's their job to sell, but
9 they have a remarkable job in the last since this -- I
10 think before this started was making -- a year before this
11 all came up, they were coming to us do the west Houston
12 location. I don't know what happened. I don't know why
13 this started. You know the history of R.C., they came to
14 him, he's built the money, done the deal, done all of this
15 a year before, why don't you look at Corpus Christi as a
16 location, why don't you look at west Houston, we want to
17 into these.

18 Then all of a sudden we're getting a letter
19 saying we're taking half your -- and the most galling
20 think about it -- and Mr. Russell actually said something
21 to this effect -- literally have said we're doing you a
22 favor by taking half your business, we're just trying to
23 help you out, you've just got too much to handle, let us
24 take half your business. You know, that's the old Cool
25 Hand Luke line: Boss, I wish you'd quit being so good to

1 me. That's kind of what it reminds me of. They want to
2 act like they're doing us a favor by stripping away half,
3 obviously devaluing the business of Mr. Sweeten and
4 whether to operate it or to try to sell it, and to say
5 that it's about those counties and the sales, it's just
6 not, it doesn't make sense.

7 MR. BARNWELL: Excuse me. How do you calculate
8 it strips half the value of the business when less than 2
9 percent of the sales, parts, new truck sales is in those
10 counties, how does that calculate?

11 MR. CLARDY: When I say half, I'm saying
12 geographically we're taking of this. But the question you
13 asked is what Volvo obviously wants you to believe. We're
14 not harming him, we're just removing counties where he's
15 not doing anything anyway, that's not going to affect the
16 98 percent of the business where the real sales made of
17 Sweeten are.

18 MR. BARNWELL: Well, that sounds like a fact,
19 though.

20 MR. CLARDY: But let's follow it through. Then
21 if that's a fact, why move them at all, why not leave them
22 where they are if they're not making sales? Because those
23 aren't markets that they're going to sell the kind of
24 trucks that Volvo sells. The only logical explanation,
25 you're all right, you're seeing the same way we've seen it

1 since day one, since the first time that letter was
2 received, this is about setting up a second dealer to
3 compete with Sweeten because I think Volvo believes if I
4 have two competing dealerships with Volvo going head to
5 head with each other, somehow we'll sell more trucks. And
6 the manufacturer should want to sell more trucks, but that
7 is not what is going to occur.

8 Maybe the other side of it is it will so weaken
9 Sweeten that he has to give up his business in a fire sale
10 and they sell it to the people they really want. And it's
11 not Joe Smith, we don't know who it is, but it's somebody,
12 and it's one of those things that just doesn't pass the
13 smell test. It is not about doing us a favor by taking
14 away areas we can't currently serve, it's not about we can
15 make sales in that area, it is about establishing a second
16 competing dealership on the edge of that border where the
17 population is where they think sales will be. Which, by
18 the way, we see the same opportunity which is why we've
19 looked at four properties and why we've closed on one and
20 are ready to do exactly that. I would love nothing better
21 than for this board to help Volvo solve its own problem,
22 which is to support a dealer who can help them grow the
23 Volvo market share of business in the greater Houston
24 area, and there's nobody better than Sweeten Truck Center
25 to do that.

1 MR. RUSH: Can I ask you a question?

2 MR. CLARDY: Please.

3 MR. INGRAM: I've been in the heavy duty truck
4 business for fifty and a half years, about 150 or 160
5 dealerships in forty-one states, been doing this a long
6 time. But in all my experience I've never had a
7 manufacturer -- and I've had a lot of them -- ever, ever
8 try to take some territory away from me, and that's
9 because I do the job I'm supposed to do -- my people do,
10 not me. I'm not defending anything, but it bothers me
11 that all this time that territory hasn't been serviced,
12 and if it was me I would be scared to death they were
13 going to take it away from me. But I don't have that
14 problem, never had that problem.

15 MR. CLARDY: And I will say neither has Mr.
16 Sweeten. I think you gentlemen know each other, I think
17 you know his business reputation, his sales and everything
18 else.

19 MR. RUSH: I do, but I didn't know anything
20 about this until I got here.

21 MR. CLARDY: But when you go through there, if
22 you spend much time driving through those areas, you're
23 not dealing with the businesses that are going to be
24 buying over-the-road Volvo trucks which is the prominent
25 use of that vehicle. And so I know that better efforts

1 could be made, and that is again why -- I don't mean to
2 argue, Mr. Rush, that is exactly why we were making
3 efforts to locate that new spot in west Houston before the
4 letter went out.

5 MR. RUSH: Was anything bought prior to this
6 thing coming up?

7 MR. CLARDY: Had two deals fall through, so the
8 answer, did we close on property, no.

9 MR. RUSH: Was there any property bought or a
10 deal on.

11 MR. CLARDY: The property had not been closed.

12 MR. RUSH: It's not hard to buy property if
13 you've got the money to pay for it.

14 MR. CLARDY: Well, Mr. Sweeten has the money to
15 pay for it and has. Again, we stand ready, willing and
16 able.

17 MR. RUSH: I'm not blaming anybody, I'm just
18 trying to get the story straight here. I'm not saying he
19 did a bad job there or he did a good job there, but
20 sometimes you have to -- the Volvo people know more about
21 this than I do, I don't know anything about it. I used to
22 be a Volvo dealer in a couple of places, and I can't stand
23 the Swedes so I got out of it, I sold it back to them.

24 (General laughter.)

25 MR. CLARDY: And so I appreciate the fact that

1 you understand some of the personality issues involved.

2 MR. RUSH: That was a long time ago. You're
3 telling Noah about the flood.

4 MR. CLARDY: All righty then.

5 MS. RYAN: Thank you.

6 MR. CLARDY: Thank you.

7 MS. RYAN: Let the record reflect that Board
8 Member Walker is stepping out. We do still have a quorum,
9 though, so I will bring Mr. Russell back up. Thank you.

10 MR. RUSSELL: Thank you, Madam Chair. I think
11 I only have about three minutes left so I'm just going to
12 very quickly make a couple of points, and one of them is
13 to address your comments, Member Rush. The time period of
14 those sales was not one year, as Representative Clardy
15 just said, that was almost six years.

16 MR. RUSH: That's a six-year number, they are
17 not a one-year number.

18 MR. RUSSELL: That was nine sales in all ten of
19 those counties from January 1, 2009 through the time of
20 trial which was September 2014.

21 MR. RUSH: About five years. Okay. I
22 understand that. I didn't understand that was for the
23 five or six-year period, whatever it was, so it's not just
24 a one-year picture.

25 MR. RUSSELL: That's correct.

1 MR. RUSH: You're telling me the six or nine
2 trucks or whatever was sold, that's in essence five years?

3 MR. RUSSELL: Yes, sir.

4 And I also want to address the comment that
5 Representative Clardy made about the market share. All
6 these arguments, by the way, everything they mentioned,
7 was all raised at trial, was all briefed to the ALJ, and
8 was all rejected by the administrative law judge. All
9 these arguments have been made and reviewed by the staff,
10 and the ALJ's decision should stand. All these arguments
11 have been hashed out before the ALJ already.

12 I want to address the one point, though, about
13 the margin share because I thought I heard Representative
14 Clardy say that they only had to sell about twelve trucks
15 and they're already average. That's completely contrary
16 to all of the evidence in the case. Sweeten's market
17 share, I mentioned earlier that Volvo trucks during that
18 time period was in the range of 11 to 14 percent.
19 Sweeten's overall market share ranged from 1.2 percent to
20 5.8, so in the whole AOR they're not an average dealer,
21 they're below average. And when you look at a market like
22 Houston, Texas, that's a big important market for a
23 manufacturer like Volvo Trucks, and when you have a dealer
24 sitting in Houston, Texas clocking a 1.2 percent market
25 share, that's harmful to the manufacturer. The

1 representation that was made that they're just a few
2 trucks away and they're average, that's totally contrary
3 to all of the evidence, and all that's in the PFD.

4 The other thing I wanted to mention was I also
5 thought I heard him say that this issue with the findings
6 of fact was a fatal flaw. The general counsel sent us a
7 letter three weeks ago or more that said, Here's what I'm
8 going to do in my staff recommendation to the board, and
9 here's the findings of fact that I'm going to propose, and
10 if you have any questions or you have anything you want to
11 say about it, send me a letter by November 2 -- I think
12 was the date. No letter was forthcoming. Sweeten didn't
13 complain about those findings of fact, and neither did we.

14 The reason is because the PFD contains an
15 analysis on all those points. The judge analyzes the
16 evidence, and he says, for example: The parties presented
17 evidence of benefit or harm to the public, I don't find
18 any impact. So that's already in the PFD and now through
19 this addition it's added. But to suggest that it's a
20 fatal flaw, after not even raising an objection, I think
21 should be disregarded.

22 The other thing I wanted to address is this
23 issue about the effect on Sweeten and talking about how
24 taking away those counties is going to take away half the
25 value of their dealership, which it was stated and then

1 retracted. That issue was precluded at trial because they
2 never disclosed it to us. At trial Sweeten tried to put
3 on evidence of diminished value of its dealership, and we
4 objected because we asked in discovery give us your
5 evidence of any loss of value of your dealership and they
6 gave us nothing, zero. There was no testimony given to
7 us, there was no documentation given to us, and so when we
8 got to trial and they tried to tell the ALJ, hey, you're
9 going to take away value from our dealership, we objected
10 and said, They never disclosed any of this. And the judge
11 said, That's correct, you're not allowed to testify about
12 something that you don't disclose in discovery.

13 So the record in this case, the record that
14 controls the decision that's made here today has zero
15 evidence of any diminished value to Sweeten Truck Center
16 as a result of this modification. We asked in discovery:
17 How's this going to harm you; if you think it's going to
18 harm you, show us how. Nothing, not one piece of paper,
19 not one bit of deposition testimony, nothing in the trial.

20 So really to raise that here today, after the judge's
21 ruling that it was inappropriate and couldn't come up at
22 trial, I think is inappropriate here too.

23 The issue on the purchased property, I think
24 we've covered. I didn't say that Sweeten didn't make any
25 efforts to buy property, I said they didn't buy any, and

1 we had been asking them to buy property, we had been
2 asking them to set up a second location, and they would
3 not do it. During that same time period when we were
4 asking them to buy property, they bought property in that
5 same territory for their Performance Truck operations. So
6 the same place where they're saying, well, we looked and
7 we couldn't find any property and we tried but couldn't
8 find any, somehow they bought some for their other brand
9 in the same area, so you can understand the reason why
10 Volvo Trucks didn't want to continue to talk to them about
11 this, and instead needs to go a different way.

12 Volvo Trucks is entitled to be represented in
13 that market and it's a big strong independent truck
14 market. I think the testimony at trial was that that's a
15 stand-alone area of responsibility just through the
16 counties --

17 MR. DUNCAN: Madam Chair, I'd just like to
18 point out that he ran out of time about two minutes ago.

19 MR. RUSSELL: I'm sorry. It's the seventh
20 largest area of responsibility in the State of Texas just
21 through those counties, so this notion that they just
22 can't sell it because a good enough truck is just false.

23 MR. INGRAM: I have a clarification questions,
24 Mr. Russell. The Volvo national market share is somewhere
25 between 11 and 14 percent. Is that what I heard

1 originally?

2 MR. RUSSELL: During the time of trial for the
3 time period, that was the testimony at trial for the time
4 period that was relevant at trial.

5 MR. INGRAM: So between 11 and 14 percent
6 nationwide.

7 MR. RUSSELL: That's correct.

8 MR. INGRAM: Okay. And then for the entire
9 area, the entire AOR, Mr. Sweeten's penetration you're
10 telling me is around 2 percent?

11 MR. RUSSELL: It ranged from 1.2 percent to 5.8
12 percent.

13 MR. WALKER: Total truck sales in the market?

14 MR. RUSSELL: I'm sorry. That's Sweeten Truck
15 Center's market share.

16 MR. WALKER: That wasn't the question. The
17 question was what was his market penetration in the entire
18 territory.

19 MR. RUSSELL: That is the combined number, that
20 is the number for the combined territory, Member Walker.

21 MR. TREVIÑO: Mr. Russell, you showed a binder
22 filled with customer complaints. Is that unusual for a
23 Volvo dealer? Is that a higher volume than normal?

24 MR. RUSSELL: Yes, Member Treviño. Wonderful
25 question and I thank you for it, because I think the

1 statement was made earlier that Sweeten is being singled
2 out and they're a great dealer. The testimony at trial,
3 the undisputed testimony at trial was that that is the
4 most egregious service history of any dealer. David
5 Waring from Volvo Trucks testified -- and he was in Mr.
6 Finley's previous position being in charge of the dealer
7 network -- that he'd never seen it before, he'd never seen
8 a dealer with such a pervasive history of serious customer
9 service complaints that it rose up to the level of having
10 to be addressed at the executive level of Volvo Trucks.
11 It's extremely unusual.

12 The dealerships, that's their bread and butter,
13 their service department and their parts department,
14 that's their bread and butter, and most dealers work hard
15 to make sure that their customers are satisfied, and that
16 stack of complaints is extremely unusual, it's not
17 indicative of a dealership that you would want to have
18 representing you in a new territory, and it's not
19 indicative of a dealership who is really trying hard to
20 represent the brand properly.

21 MS. RYAN: Thank you very much.

22 MR. RUSSELL: Thank you.

23 MR. CLARDY: Thank you. I appreciate the
24 opportunity to close on this.

25 I want to come back to the question that you

1 asked, which specific special exceptions. They all deal
2 generally with the notion of all existing circumstances
3 and the failure to consider all existing proof. The
4 answer is they focus on all existing circumstances. There
5 were a number of special exceptions that were attached.
6 Unfortunately, the way we found this, we did not enumerate
7 those, but if you look on page 14, it would really be the
8 first three which makes sense, make our strongest
9 arguments in the first three special exceptions on that
10 point were that all existing circumstances weren't
11 included.

12 And as an example, the box was put up here of
13 all these customer complaints. Those aren't all customer
14 complaints, and as you would expect, having been in the
15 business, you go back and look at things and you analyze
16 what happened here. There were several complaints from
17 large fleets that within months were writing letters
18 thanking the dealership for the good work they'd done to
19 correct these and look forward to doing business with
20 Sweeten in the future.

21 There are going to be times where mistakes are
22 made and things have to be fixed. That's what they were
23 doing, and those have been cured. And again, when the
24 first letter was sent on July 13 and the letter right
25 before the trial, the letter we received just a couple of

1 months before the trial, remarkable improvement had been
2 made. They went out, got the right kind of people, put
3 them in the right spots, and to this date continue to
4 enjoy exceptional customer satisfaction indexes, part
5 sales, et cetera, service are really exemplary.

6 So you know, they pull out some documents from
7 four or five years ago of those historical complaints to
8 say you need to take these ten counties away from their
9 responsibility just doesn't really hold up, I don't think.

10 For the little bit of time I have remaining, a
11 couple of things I think that I would like to point out.
12 One is about the errors being pointed out. They were
13 pointed out. We didn't need to send a letter, we filed
14 the special exceptions, we filed a response by that time.

15 I do appreciate the staff's work on this, and again, I
16 think that they were technically correct, it's just,
17 again, I think my way of viewing things as a trial lawyer
18 it's kind of unusual to see the staff do that.

19 But as far as what we've done, again, nothing
20 was done to cure the substantive failure of the ALJ to
21 consider all the facts and circumstances that are relevant
22 to show that this modification of the dealer agreement
23 should not be approved by this board.

24 You know, when you get down to it, Mr. Rush,
25 whether we had under contract, anybody that's ever bought

1 a piece of property know that things can fall out, going
2 to fall through, decide if you have the earnest money. It
3 was never a problem of the money or the commitment to do
4 it, there are times when it won't pass an environmental
5 check, or it's not going to be quite large enough, or
6 there was a problem with the title. All those things.
7 Now, we all know what excuses are and what that sounds
8 like. Did they close? No, but they have.

9 And that's kind of where I think what I would
10 suggest to you is there's been comments about what can you
11 do and what's the authority for this and there's no cases
12 to support this. Well, that's exactly what you are,
13 that's what this board is. You have the statutory
14 authority completely within your bounds and your
15 discretion to look at this and determine what the law is
16 and also what the law should be. This is your opportunity
17 to deal with this fairly.

18 You've heard things about maybe some of the
19 difficulty of dealing with a particular manufacturer.
20 That said, we have a long history with Volvo. I believe
21 that this relationship is salvageable, and not only
22 salvageable, it can prove to be very beneficial and
23 fruitful for both. I think the right thing to do to go
24 forward is for this board to take action, and frankly,
25 they've said that we're doing you a favor by taking nearly

1 half of the counties from you. Well, maybe this is your
2 chance to do Volvo a favor. Maybe they started something
3 and gotten down the road they didn't really mean to go
4 down or get down and didn't expect it to get to this point
5 either, but sometimes you get locked in and you get there
6 and you're in a place you never wanted to be.

7 I don't think these are bad people, I've
8 enjoyed and appreciated working with counsel on this case.

9 I appreciate the sincerity and if you have the business
10 and you want to sell your trucks, you ought to do what you
11 think is best. But I think right now, using the hindsight
12 that's available to you, the authority that you have to
13 make this decision, now is the time to do Volvo a favor.
14 You know, Keith Richards and Mick Jagger said it pretty
15 well not too long ago: You can't always get what you want
16 but you can get what you need. And what they need is what
17 they've already got. They've got R.C. Sweeten and Dane
18 Yeager and a fine team at Sweeten Truck Center that does
19 exactly what they want to do: prepare to stay in the
20 market to sell these trucks, to promote them, to spend
21 money, to service them, to have parts, to have good
22 quality people. They're the brand name for Volvo.

23 I think by doing what they asked they will look
24 back in a few years and say that was not a good sound
25 business decision. Sometimes courts have to do things

1 like save parties from themselves. We think this is an
2 opportunity for, again, you to do that with Volvo and
3 let's do our very best job of helping this dealership sell
4 trucks for Volvo.

5 And I appreciate your time and attention. I'll
6 be happy to answer any more questions, or I can go try to
7 see if I can make that flight.

8 MS. RYAN: And thank you.

9 Any questions?

10 (No response.)

11 MR. CLARDY: Thank you.

12 MR. WALKER: Madam Chair, I would like to make
13 a motion.

14 MS. RYAN: Yes, sir.

15 Let's take a quick recess real quick. We'll
16 take a five-minute recess very quickly. Thank you.

17 (Whereupon, at 10:31 a.m., a brief recess was
18 taken.)

19 MS. RYAN: All right. We'd like to get started
20 again, please. For the record, it's 10:37 and the meeting
21 will be called back into order. We're almost all ready.
22 Thank you.

23 MR. WALKER: Madam Chair, I'd like to make a
24 motion.

25 MS. RYAN: Yes, sir.

1 MR. WALKER: Under Government Code 2001.05(a),
2 it allows for the agency to overrule or to look at a
3 reversal of an administrative law judge's decision only if
4 we find that there has been a misapplication or
5 misinterpretation of the applicable law or that a
6 technical error has been found within the rulings. In
7 light of that, today I do not feel like that there has
8 been any proof shown to me or presented to the board today
9 that there has been a misapplication or a
10 misinterpretation of the law, therefore, I would like to
11 make a motion that the board move to accept the
12 administrative law judge's decision on this case and to
13 move it forward.

14 MS. RYAN: We have a motion to accept the ALJ's
15 PFD. Does that include the additional recommendations by
16 staff, or as proposed by the ALJ?

17 MR. WALKER: I think we just take it as it was
18 proposed by the ALJ.

19 MR. INGRAM: I think that -- do you have a
20 comment?

21 MR. WALKER: We don't even have a second yet.

22 MS. RYAN: So before we have a second, can I
23 ask if we make a second on that does that put us in a
24 precarious situation since it doesn't have all seven
25 factors?

1 MR. DUNCAN: The staff would prefer that all
2 seven factors be addressed simply because the statute does
3 seem to direct that the final conclusion of the case will
4 present a finding on all seven factors.

5 And just to remind the board and to sort of
6 walk you through that draft final order that we have, each
7 one of those, if you jump back and forth between the
8 staff's summary, primarily on page 3 going to page 4, the
9 only items that were truly -- and I won't say added -- the
10 only items that were really further elaborated on greatly
11 by the staff are numbers five, six and seven, which in our
12 draft final order would be proposed findings of fact 94,
13 95 and 96, and even with those, and with all of the ones
14 that we have drafted, if you will look at the staff's
15 summary in section 3 beginning on page 3, each one of
16 those has a footnote and that footnote refers to material
17 in the PFD. So we're taking the judge's words and just
18 turning them into findings of fact and conclusions of law.

19 It's not that the judge did not discuss these in the PFD
20 at all, the judge did, we think that it's cleaner to have
21 specific findings of fact and conclusions because that's
22 what the statute seems to direct.

23 MS. RYAN: So procedurally, if I hear you
24 correctly, procedurally the staff is recommending that any
25 motion that this board takes up that we should include the

1 complete statutory seven factors for any decision that we
2 make a decision on?

3 MR. DUNCAN: Yes, ma'am.

4 MS. RYAN: So I would recommend that either,
5 Johnny, you amend your motion so that any decision this
6 board makes a decision on includes all seven of the
7 statutory factors. That would be my recommendation.

8 MR. WALKER: So let me amend my motion in order
9 to, I guess, implant the seven factors into the motion
10 recommended by the staff. Is that a correct way to do
11 that, Ms. Lingo?

12 MS. LINGO: Your general counsel would probably
13 answer that.

14 MR. WALKER: Mr. Duncan.

15 MR. DUNCAN: If it incorporates the findings
16 and conclusions that we suggest in our draft final order,
17 yes, sir.

18 MR. WALKER: So attach that to my motion then,
19 please.

20 MR. BARNWELL: Second.

21 MS. RYAN: Is there any discussion?

22 MR. INGRAM: So I think it's clear but just to
23 make sure that we're 100 percent clear -- is it accept or
24 adopt this final order?

25 MR. DUNCAN: Adopt.

1 MR. INGRAM: This is to adopt the final order
2 written by staff, including the findings of fact 90
3 through 96. Correct?

4 MR. DUNCAN: Yes, sir. And conclusion of law
5 10-A. There's a conclusion of law that accompanies that.

6 MS. RYAN: So we have a motion to accept the
7 staff's recommendation with regard to amend the ALJ's PFD
8 to include all seven factors and the conclusion of law 10-
9 A. Is that correct? We have a motion and second, motion
10 by Member Walker and a second by Member Ingram.

11 MR. WALKER: Barnwell.

12 MS. RYAN: Barnwell. Sorry, Barney.

13 MR. WALKER: And the motion is to accept the
14 decision of the PFD of the administrative law judge.

15 MR. DUNCAN: The conclusion, yes.

16 MS. RYAN: The conclusion.

17 MR. WALKER: With the conclusion, yes.

18 MS. RYAN: Discussion?

19 (No response.)

20 MR. WALKER: I call for the vote.

21 MS. RYAN: All in favor raise your right hand,
22 please.

23 (A show of hands: Barnwell, Caraway, Ingram,
24 Ryan, Swindle, Treviño and Walker.)

25 MS. RYAN: We have seven. We have Members

1 Swindle, Walker, Ryan, Caraway, Treviño, Barnwell and
2 Ingram.

3 All opposed?

4 (A show of hands: Palacios and Rush.)

5 MS. RYAN: Members Palacios and Rush.

6 The motion carries seven to two. Thank you.

7 Next we will move to -- we're going to skip
8 item 4.A before we go back into our second executive
9 session because we aren't able to take any action items
10 until we go into the second executive session, so we're
11 going to go to 5.A. and take the finance and audit.
12 5.A.1, quarterly financial reports, Ms. Flores.

13 MS. FLORES: Good morning. For the record, my
14 name is Linda Flores. I'm the chief financial officer for
15 the Texas Department of Motor Vehicles. And today we are
16 reviewing the quarter ending August 31 financial division
17 for the department.

18 The agency's revenues for the last quarter of
19 the fiscal year did show a dip, a slight dip in
20 registration revenue. We believe that this is a result of
21 the single sticker program that was initiated in March.
22 So you will see on the last line -- which is not easily
23 seen -- June, July and August revenue seems to dip. It
24 goes from \$155 million to \$146 million to \$141 million,
25 but overall for the year we did collect more revenue than

1 we anticipated. We are closely monitoring the impacts of
2 the single sticker program that was implemented in March.

3 We won't really know or be able to identify what that
4 trend is until we have more data points. And in the next
5 March of 2016 we are implementing what we're calling
6 single sticker phase II which is where we're syncing up
7 both registration and inspection, so once we hit that
8 milestone we'll be able to identify what the true impact
9 was for single sticker.

10 For the first couple of months for the next
11 fiscal year we have seen a little bit of a rise in those
12 revenues but as I mentioned, we have seen a slight dip.
13 We're also not projecting our normal growth trend for
14 registration. Normally we project a 2.25 or 2.5 percent
15 growth rate. For the next fiscal year we're only
16 anticipating to grow by 1.5 percent.

17 The other revenue that seems to be on a decline
18 is associated with the motor carrier industry. We have
19 identified some declines in that revenue as it kind of
20 matches up with the oil and gas industry. So a lot of the
21 data that we have out there for oil and gas indicates that
22 that revenue is also in a decline.

23 For the My Plates contract, this is a new
24 contract, it's the second five-year term, and that
25 particular program is doing well. They have brought in

1 approximately \$3.8 million on new sales for the fiscal
2 year -- since the inception of the contract -- excuse
3 me -- and they're on target to meet their obligation to
4 the state in the next five years.

5 MR. WALKER: Back to single sticker and the
6 revenues going on, why would single stickers have a
7 negative impact on registration sales?

8 MS. FLORES: Before the single sticker program
9 went into effect last March, we believe a lot of people
10 went in early to avoid having to deal with inspections and
11 registration and having to be within a certain timeline.
12 So we saw a big spike last March and we believe it was
13 people going in early just to avoid the change that they
14 knew was coming. We do have some issues where we believe
15 people are being turned away because they don't have valid
16 inspection, and so there might be some timing issues going
17 on where people are having to go get their car inspected,
18 then come back in. There could be some instances where
19 people are not able to get their car inspected for
20 whatever reason, and so they're having to work through
21 those issues.

22 The other thing that we can identify is -- and
23 I'm looking over at Jeremiah Kuntz to kind of help me
24 explain some of the things that are going on -- exempt
25 registrations are also part of the equation.

1 MR. WALKER: Well, I'm just not sure how single
2 sticker which says that they have to do both things that
3 they had to do in the past would reduce registration
4 revenue.

5 MS. CARAWAY: If they don't have their
6 inspection done, then we send them away.

7 MR. WALKER: So they're not registering their
8 cars.

9 MR. INGRAM: Well, they can't. I hadn't
10 thought about this, but there is going to be a subset of
11 the population that has a car that will not pass and they
12 do not have the ability or funds to fix it, and so they
13 don't have a choice at this point now, they can't register
14 the car, they can't get it inspected, so they're kind of
15 locked into a trap.

16 MR. WALKER: So either there's going to be less
17 cars on the road or ticket revenue is going to be up.

18 MR. INGRAM: Ticket revenue might be up, yes.

19 (General laughter.)

20 MS. RYAN: Jeremiah.

21 MR. KUNTZ: For the record, Jeremiah Kuntz,
22 director of Vehicle Titles and Registration Division.

23 We are monitoring this closely. We are looking
24 at the number of registered vehicles that are on the road.

25 We have not seen a dramatic dip in the number of

1 registered vehicles that we have in the system. That is
2 something that we're monitoring; we're monitoring the
3 revenues as they come in. There are a lot of things that
4 we're looking at.

5 Part of what Ms. Flores was talking about is
6 we're still early in this, we do not have a full year's
7 worth of data. We really believe that we need to have
8 this run for a full year to really be able to assess what
9 the impact has been. We know that there are going to be
10 some challenges with the initial year rollout. There's
11 going to be people that are adjusting. All we have right
12 now is anecdotal evidence, we don't have anything that we
13 could point to that says that there is a specific known
14 cause, we do hear anecdotally.

15 We actually testified in front of the House
16 Transportation Committee, one of the questions that came
17 up was in regards to trailers that are over 4,500 pounds.

18 There have been a lot of folks that are in the public
19 that did not know that a trailer that is over 4,500 pounds
20 required an inspection, so for years they did not know
21 that they were out of compliance with that. Because of
22 the single sticker program, they are now being made aware
23 that there is an inspection required and so that they're
24 having to go and get those vehicles inspected and come
25 back in.

1 So as Ms. Flores talked about, we believe,
2 anecdotally, that there are some timing issues going on
3 with people that are coming in that would have normally
4 been registered this month that maybe it's taking them a
5 month or two to get registered because they're having to
6 go out and do those inspections that they either were not
7 aware of or that they just hadn't done it yet.

8 MR. WALKER: So when I looked at this the other
9 night, for the last two years, those same quarters, we
10 had -- sometimes y'all have told us that, well, people
11 register or there's a big bunch of cars that come in
12 around Christmastime or whatever, but if you look
13 historically back at our revenues, they increased in this
14 third quarter always and gone up by about 5 percent, and
15 now we have about a 5 percent downtrend in our deposits.
16 So there's a loss somewhere of no new growth and a
17 diminishment of the vehicles that we do have registered,
18 apparently.

19 MR. KUNTZ: I believe as Ms. Flores was talking
20 about, when we looked at the year, the full fiscal year,
21 we are in line with normal growth in our registration
22 revenue which is around 2 to 2.5 percent, and that's why
23 we're hesitant to make a determination as to the impact
24 that single sticker has had just in this six-month period
25 because we don't have a full year's worth of data to see

1 on a full year what happened. There are many factors that
2 can drive registration revenue during the year: the
3 number of vehicles that are traded in, new sales, if
4 there's a large event like a flooding event that causes a
5 bunch of vehicles to be salvaged and replaced. So there
6 are a lot of different factors that get factored in and
7 it's difficult for us in only six months of time to be
8 able to make a full determination as to the impact that
9 this program has had.

10 MR. WALKER: So you're saying on one hand that
11 registration numbers are diminishing by very much but
12 deposits have diminished and it's a direct correlation
13 between the two unless you're saying that there's been
14 more diminishment and more expensive registrations than
15 there has been in auto registrations.

16 MS. FLORES: At this point we still don't have
17 enough data points to really pinpoint which particular
18 category of vehicles are not coming in with the deposits.

19 All we know right now is that, yes, we've seen a slight
20 dip, we are not projecting the same type of growth that
21 we've had in the past, and we continue to monitor. But
22 overall, we did collect more revenue than we did last
23 year.

24 MR. BARNWELL: Why are you projecting the
25 smaller growth this year and where do you get that?

1 MS. FLORES: For FY16? A couple of factors.
2 One is that oil and gas industry is going to be impacting
3 oversize/overweight so that's one fee type. For
4 registration, we have no seen the same type of growth in
5 registered vehicles that we have in the past. It's
6 tending to increase a lot slower or not as great, 2.25
7 percent has been the trend, we're just estimating 1.5
8 percent.

9 MR. BARNWELL: For your budgeting.

10 MS. FLORES: For the next year.

11 MR. BARNWELL: Okay.

12 MS. FLORES: Because we're taking into account
13 some of this dip that we've seen for the last quarter.

14 MS. BREWSTER: Madam Chair, if I may?

15 MS. RYAN: Yes.

16 MS. BREWSTER: Whitney Brewster, executive
17 director.

18 I think it's important to note that if you look
19 at FY15, the August numbers for FY15 over FY14, they are
20 very comparable, and so although for the months of June
21 and July we've seen things flatten a little, we've seen a
22 slight uptick in August. And so as we said earlier, it's
23 premature to say if this is a long-term trend or just a
24 short little anomaly, but we will certainly keep the board
25 in the loop as we move forward.

1 MS. FLORES: Moving on, for the last quarter of
2 the year on our expenditures we did very well. We are
3 anticipating to lapse a million and a half of our total
4 budget, and this is compared to approximately \$3 million
5 that we lapsed in fiscal year 2014. So this was a result
6 of a midyear review process where we redirected some of
7 our budget to those areas that we had identified that had
8 some gaps, and so we're doing much better than we have in
9 the past.

10 For our capital projects, we are anticipating
11 to carry forward, and you'll see this number, \$29.8
12 million into fiscal year 2016. And these particular line
13 items which make up the automation projects are the detail
14 to support that carryforward into the next year. You'll
15 notice it's primarily composed of a couple of items, the
16 automation system project, \$23.9 million, and technology
17 upgrades.

18 We are in them midst, if I can say that, we are
19 really close to completing our financial statements for
20 the fiscal year 2016. There is a report that's due to the
21 Comptroller this month, and so we will be bringing you a
22 report back probably in January to kind of give you an
23 update as to how the agency's financial statements look.

24 And with that, I'll conclude my presentation
25 and address any questions you may have.

1 MR. WALKER: I have one more question about the
2 budget.

3 MS. FLORES: yes, sir.

4 MR. WALKER: Under professional fees and
5 services, we budgeted for \$39 million and we still have
6 half that left, there's about \$19 million, roughly, out
7 there.

8 MS. FLORES: That's primarily --

9 MR. WALKER: RTC stuff that we haven't spent?

10 MS. FLORES: Correct.

11 MR. WALKER: So it's just strictly the
12 automation stuff.

13 MS. FLORES: Yes, sir, the automation
14 refactoring project.

15 MR. WALKER: And that's just because we haven't
16 funded that or it's just not scheduled to be funded at
17 this point?

18 MS. FLORES: It's scheduled to continue into
19 the next fiscal year.

20 MS. RYAN: Any other questions?

21 (No response.)

22 MS. RYAN: Thank you.

23 MS. FLORES: Thank you.

24 MS. RYAN: We'll move to Internal Audit
25 Division status. Sandra and Arby. Item 2.A.

1 MS. VICE: Madam Chairman, members, Ms.
2 Brewster. I'm Sandra Vice, I'm the Internal Audit
3 director. And with me is Arby Gonzales who is the deputy
4 director of Internal Audit. And today we are just
5 providing a status update on division activities, and this
6 is for informational purposes only, there is on item that
7 requires board action today.

8 The report that I'll be reading from starts on
9 page 43 of your board book, and the first thing is we
10 wanted to let you know how we're doing closing out last
11 year's annual audit plan. We had two outstanding audits
12 and we have completed both of them. One is a confidential
13 report that followed up on implementation of information
14 security recommendations, and the other report is on your
15 desk, it is a hard copy, looks like this, and I'm going to
16 let Mr. Gonzales, who was the lead auditor, talk about
17 that audit and give you a summary of the report.

18 MR. GONZALES: Good morning, Madam Chair, board
19 members, Ms. Brewster. For the record, I'm Arby Gonzales,
20 the deputy director of the Internal Audit Division. I'm
21 presenting the report for an audit of the Texas Department
22 of Motor Vehicles administration of statutes and rules
23 through tax assessor-collectors, which you should have a
24 hard copy of.

25 The first chapter of the report focused on

1 whether TACs remitted registration and title fees to the
2 TxDMV on a timely basis. We determined that more than 65
3 percent of TAC offices sent either a registration or title
4 fee collection late to the TxDMV for the periods that we
5 tested, and that represents about \$31 million out of the
6 \$180 million which were late for the periods that we
7 tested. We recommended actions that the TxDMV management
8 can take to strengthen its enforcement over late
9 registration and title fee remittances. Management has
10 agreed with the recommendations and has begun working on
11 implementing them.

12 The second chapter of the report which you can
13 find on page 9 provides information on TAC office
14 practices related to the gold standard. Please note that
15 our duty was to compile information for the TxDMV to use
16 as a starting point for developing a recognition program
17 which is commonly referred to as the gold standard. We
18 did not intend to provide a final product. We obtained
19 feedback from TxDMV management and the Tax Assessor-
20 Collector Association's education TXDMV liaison
21 subcommittee on the gold standard. We also surveyed fifty
22 TAC offices of various sizes across the state, forty-four
23 of which provided responses to us.

24 There are five key points that summarize our
25 work on the recognition program which are: number one,

1 the TxDMV can verify participation and recognition levels
2 on a periodic basis; number two, a tiered recognition
3 program that consists of bronze, silver and gold stars
4 could recognize various service levels at TAC and TxDMV
5 regional offices; number three, criteria for the
6 recognition levels can take county size into
7 consideration; number four, achievements could align with
8 TxDMV philosophies and goals related to performance-
9 driven, optimize services and innovation, and consumer-
10 centric; and number five, the TxDMV will have to create
11 processes and tools to support this recognition program.

12 Sandra and I are available to answer any
13 questions or comments you may have regarding this report.

14 Thank you.

15 MS. VICE: If there are no questions about the
16 report, just to finish my update, we've already begun work
17 on the 2016 which is the current Internal Audit plan.
18 We've completed the first project which is completing the
19 annual internal audit report that goes to the Governor's
20 Office and external legislative agencies, so that was
21 submitted before November 1, as is required. In addition,
22 we've started work on the fraud prevention program and
23 we'll present that report at the next board meeting.

24 Finally, I wanted to let you know that we are
25 engaged in several external audits. For example, the

1 Motor Carrier Division, which Mr. Jimmy Archer heads,
2 successfully underwent a review of the heavy vehicle use
3 tax. The money that's collected through this goes to the
4 trust fund for transportation projects, and Mr. Archer and
5 John Poole, who works for him, successfully underwent that
6 review. They're going to have another review coming up,
7 and I made a mistake, I put November 11-12, the actual
8 onsite visit is the 18th and 19th of this month, and they
9 will be undergoing a peer review of the international
10 registration plan.

11 And finally, the State Auditor's Office
12 continues to do followup work on the previous audit that
13 they did. They do a financial audit every year, and so
14 they're completing their work. The result of that is
15 expected in February.

16 And that concludes our briefing. Any
17 questions?

18 MS. RYAN: No. Just thank you for the
19 briefing. I'll add regarding the tax assessor-collectors
20 and the gold standards, that work will continue through a
21 working group committee. Is that correct?

22 MS. VICE: That's correct. It is just a
23 starting point and so the agency will identify other
24 stakeholders to work with to continue to develop that.

25 MS. RYAN: So that will be ongoing?

1 MS. VICE: Yes, ma'am.

2 MR. PALACIOS: Ms. Vice, I have a question. I
3 know we've had various audits and investigations that come
4 up that were unforeseen. In light of that, are you going
5 to be able to complete the current audit plan with the
6 staff that you have, and I guess, looking forward maybe we
7 need to make sure that we take into consideration what's
8 been happening throughout the year. Again, these things
9 were unforeseen but I know they do take up an ample amount
10 of your staff's time.

11 MS. VICE: Thank you, Mr. Palacios, for that.

12 This is the first time that we have been fully
13 staffed for a long time, and the results are showing in
14 that we've just completed the plan. We are on track right
15 now to hopefully complete the plan on time instead of
16 carrying over projects. That can change if there are a
17 lot of other projects that we're not anticipating to take
18 up our time.

19 The other thing is that the audit plan that I
20 presented to you included about five projects, but then it
21 also included additional projects that we could do if we
22 had additional resources. So the more resources we have,
23 the more work, the more assurances that we can provide the
24 agency.

25 MR. PALACIOS: Thank you.

1 MS. VICE: Thank you.

2 MS. RYAN: Thank you.

3 We'll move to item 5.B, legislative
4 implementation. Caroline Love.

5 MS. LOVE: Good morning, Madam Chair, members
6 of the board. I'm Caroline Love, the director of
7 Government and Strategic Communications for the
8 department.

9 This morning I have an update for you on our
10 efforts for implement, but I thought first I'd cover a
11 couple of the interim charges that have come out within
12 the recent past so you are aware of some of the efforts
13 that we'll be undergoing during the interim.

14 In mid October the lieutenant governor issued
15 several interim charges for Senate committees to consider,
16 and Senate Transportation does have a couple that we'll be
17 monitoring closely and provide input on as those hearings
18 come up. They include a review of transportation funding,
19 including new and anticipated revenues for transportation
20 projects, and of course, many of our revenues, such as the
21 registration revenues, are deposited for transportation
22 funding, so that's something we may be involved in.

23 Another charge relates to the vehicle
24 inspection program and looking at the efficiency and
25 effectiveness and looking at recommendations on how to

1 streamline that process. And then there's also a review
2 that the Senate Transportation Committee has of oversize
3 and overweight vehicle registrations and penalties
4 associated with violations, so I'm sure we'll be involved
5 in that one as well.

6 In addition, the Senate Business and Commerce
7 Committee has a review of all occupational licenses that
8 are currently issued by the state to determine which ones
9 are still necessary and which ones are no. In addition,
10 when Speaker Strauss released his interim charges last
11 week, there was a House Licensing and Administrative
12 Procedures Committee interim charge that was very similar
13 to that one, so both the House and the Senate plan to look
14 at occupational licensing in pretty good depth in this
15 interim.

16 And so on to the House committees. The House
17 Homeland Security and Public Safety Committee has an
18 interim charge looking at the implementation of Two Steps,
19 One Sticker, the single sticker program, and how that has
20 been implemented and how well it's going. So that's
21 something we can anticipate providing testimony on during
22 the interim. And in addition, the House Judiciary and
23 Civil Jurisprudence Committee has an interim charge
24 related to a full review of the Lemon Law, so that will be
25 an interesting one as well.

1 The House Transportation Committee has a few
2 interim charges that we'll be monitoring but they don't
3 have as much of an impact on our day-to-day activities.
4 Those include looking at the future of autonomous vehicles
5 and how they add to safety and congestion relief but also
6 probably how they would operate on the roads, and a review
7 of the oversight/overweight corridors that are currently
8 in existence and how those fees that are assessed cover
9 impacts to those roadways they travel on.

10 So we'll continue to monitor those hearings and
11 interim charges as they come up for review. There was a
12 hearing earlier this week of the House Select Committee on
13 Transportation Planning. There was a bill that passed
14 during the session, House Bill 20, that put several
15 planning related performance measures in place for the
16 Texas Department of Transportation, and one of the charges
17 of the bill was for the House and the Senate to create
18 joint committees to look at the planning efforts on that,
19 and the House committee met on Monday and asked us to
20 provide testimony on projected revenues for transportation
21 funding. So Linda Flores and Jeremiah Kuntz provided that
22 testimony earlier this week and gave the committee
23 information on what we have received when it comes to
24 transportation revenues and what we anticipate will be
25 available in the next biennium.

1 Before I move on to the summary of our
2 implementation efforts, are there any questions on the
3 interim charges or anything?

4 (No response.)

5 MS. LOVE: And since the time when I prepared
6 the information for the board briefing book, I did went to
7 note there have been a few more bills that we've moved
8 towards implementation on, so some of the figures are
9 slightly different. But we have identified seventy-one
10 bills that were passed by the 84th Legislature that do
11 have some measurable impact in terms of implementation for
12 the department.

13 Currently we have ten bills that are on hold
14 for further implementation due to third party
15 prerequisites, and that can include anything from there
16 are specialty license plate bills that were passed that
17 require a deposit by the private entity requesting those
18 plates and those are waiting for those deposits to come
19 in. And then there's also some other efforts related to
20 Senate Bill 20 which was on state contracting. The
21 Department of Information Resources and the Comptroller
22 are still working on some of those implementation efforts
23 and defining the rules that will impact all agencies on
24 that.

25 We also have now fully implemented twenty-three

1 bills from the session, and thirty-eight bills are on
2 schedule for full implementation. Seventeen of those
3 thirty-eight have a delayed implementation date of January
4 1 in the law t allow us time to complete the RTS
5 refactoring project to implement those bills, and we are
6 on target for those implementation efforts. And then
7 twenty-one of those bills are currently in effect but we
8 have pretty much implemented them, there are just minor
9 manual revisions that we're waiting on.

10 There are a few bills that will be fully
11 implemented after you take further action later today.
12 Those include a House Bill 763 by Susan King that the
13 people who can petition state agency boards and
14 commissions for rulemaking must be state residents or
15 state businesses. And so there will be rules considered
16 later in Chapter 206 of our Administrative Code that will
17 fully implement that.

18 We also have rules for your consideration in
19 Chapter 208 later today that will fully implement House
20 Bill 3337 by Representative Clardy which would require the
21 executive director to approve any reimbursements for
22 tuition expenses incurred by state employees.

23 And in addition, there will be Chapter 210 for
24 your consideration later that adds a segment related to
25 contracting in line with Senate Bill 20, and that will be

1 up later. And then lastly, there's some rules that are up
2 for proposal for Chapter 217 that implement Senate Bill
3 449 by Senator Bettencourt which allows for autocycles to
4 be consistent with what's currently in statute and
5 recognized as motorcycles for the purposes of titling.

6 I wanted to move on to our single sticker
7 continued implementation efforts from the bills passed in
8 the 83rd Legislative Session, but before I do so, did
9 anyone have any questions about the 84th Legislative
10 implementation efforts?

11 (No response.)

12 MS. LOVE: And so we are still in the
13 implementation phase of House Bill 2305 from the 83rd
14 Legislative Session, which has the language related to the
15 Two Steps, One Sticker program. And during this first
16 year of implementation, which will conclude at the end of
17 February in 2016, there is the ability for people, in
18 order to sync up the Texas fleet, people will just need to
19 have a valid inspection prior to moving forward with
20 registration. And then as we move into the second year of
21 the program, starting on March 1, we will start messaging
22 more information to people about their requirement to have
23 that inspection no earlier than 90 days prior to the
24 expiration of their registration.

25 And so certainly we kind of are in a window

1 where there could be some confusion. There are people who
2 will go through this process for the first time through
3 February, but yet we want to make sure that those who are
4 looking toward their March renewal process that they are
5 aware of their inspection requirement prior to when they
6 go in for registration renewal.

7 So we have several efforts underway that we are
8 looking to utilize to help inform the public and our
9 stakeholders about those efforts. We're utilizing
10 stakeholder communication, newsletters and magazines to
11 the extent that we can. Groups such as the Texas Auto
12 Dealers and Texas Independent Auto Dealers associations
13 have magazine publications and we're submitting articles
14 for inclusion in those efforts. We've also reached out to
15 all legislators and staff with information about the
16 program for inclusion in their newsletters to
17 constituents. In fact, the Alice News Journal had an op-
18 ed about this from Representative Lozano earlier this
19 month, so that was very nice.

20 In addition, I think you all saw, and Whitney
21 mentioned this earlier, we're trying to move more people
22 to the eReminder system, and part of that effort has
23 included the development of this QR code, and that is
24 currently something that works and I think each of have
25 one. In addition to doing pins, we will have these

1 standup cards that we are handing out to tax assessor-
2 collectors around the state, and we'll be doing that at
3 the VGM conference next week where many tax assessor-
4 collectors attend, and hopefully this will help people in
5 signing up for our eReminder system.

6 We currently have, I believe, about 1.7 million
7 people signed up for the system, but we have 23 million
8 registered vehicles, so we're hoping to capture more
9 people signing up for the system, and in that eReminder
10 we'll be able to provide information to people about when
11 they're eligible for their inspection requirement as well.

12 And in addition to these efforts, we're looking
13 at very heavy use of social media to the extent that we
14 can. We have Facebook and Twitter accounts, and at the
15 beginning of each inspection period that will start,
16 ninety days prior to that next registration date, we will
17 put reminders up on Facebook and Twitter. What we do is
18 we have an image of the inspection sticker, say March 2016
19 and say: Does this look familiar? If so, you can start
20 your inspection process now. And we'll continue to
21 utilize those efforts.

22 And then we'll also try to use some rather
23 inexpensive geo-targeted efforts through social media.
24 You can have sponsored Tweets and sponsored Facebook ads
25 and banners that help get the word and message out, and

1 we'll be utilizing that as well. And then we are also
2 looking at options for other paid advertising, to include
3 possibly billboards or maybe ads prior to movies, so we're
4 looking at those efforts and we'll have more information
5 on that as we get details related to those.

6 And that concludes my remarks and I'm happy to
7 answer any questions you may have. Thank you.

8 MS. RYAN: Caroline.

9 MS. LOVE: I did actually request earlier -- I
10 do need to get a camera, though. The Texas Department of
11 Transportation is currently running a social media
12 awareness campaign called "End the Streak" and what it
13 refers to is that since November 7 of 2000, not one day
14 has passed where there has not been a death on Texas
15 roadways. And this is an effort to try to raise awareness
16 of people to be more cautious and cognizant of what
17 they're doing while they're driving. And they have a
18 black board that says "End the Streak" with a hashtag on
19 it which I have given to our chair, and she's going to
20 hold it up and if you would hold on a moment, I will get
21 my camera and we'll take a quick picture which we'll then
22 post to our Facebook page. Thank you.

23 MS. RYAN: It's for a good cause, especially on
24 Friday the 13th and since we're all driving home. Many of
25 us are driving home.

1 (Pause for photographs.)

2 MS. RYAN: Okay. Thank you.

3 Next we'll move to 5.C. Judy Sandberg, and
4 Eric and Jeremiah -- sorry -- and team, the A-Team.

5 MS. SANDBERG: Yes. We travel in groups.

6 MS. RYAN: Safety in numbers.

7 MS. SANDBERG: Good morning, Madam Chair,
8 members, and Ms. Brewster. For the record, Judy Sandberg,
9 director of TxDMV Enterprise Project Management Office.
10 I'm joined by my colleagues this morning, Eric Obermier,
11 chief information officer for the agency, and Jeremiah
12 Kuntz, director of VTR.

13 I am going to provide you a report this morning
14 on enterprise project status. My report is available in
15 your agenda briefing book beginning on page 116. This is
16 primarily a briefing, I will not be requesting any
17 decisions during this briefing, but later in the agenda
18 there is a contract request related to the single sticker
19 phase II project.

20 Moving on to page 117 in your briefing book, an
21 update on the RTS refactoring project. This project is
22 behind schedule but it is within budget. The project
23 began on August 15, 2013 and is currently to end on
24 December 31, 2018. The overall project budget for that
25 time period is \$72 million.

1 Achievements to date, the refactored RTS and
2 enterprise reporting system using Cognos are operational
3 now in all 254 counties. Maintenance of the refactored
4 RTS system is now in full swing. This is known
5 contractually as work stream four, and we've actually
6 completed releases one and two for RTS, as well as release
7 one for the enterprise reporting system. Work that is in
8 progress is migration off of the mainframe onto servers in
9 the Data Center Services, or DCS, environment. That is
10 currently scheduled to happen the weekend of November 20
11 through November 22.

12 We have started a public information campaign
13 which began on November 6. This is a very comprehensive
14 campaign led primarily by staff in Caroline Love's office,
15 Government and Strategic Communications. They have
16 identified primary stakeholders who need to be aware of
17 the mainframe outage that will occur that weekend of
18 November 20 through 22, and communications have begun to
19 various organizations and entities who need to be aware of
20 this outage. They have included information for the
21 motoring public, counties, deputies, car dealers, toll
22 road authorities, fifty cities related to scofflaw, fellow
23 agencies, including the Governor's Office, DPS, TCEQ, the
24 Comptroller's Office, and several organizations,
25 including TACA, TIADA, and external users of IVTRS and

1 NVInet. This communication will extend for the next week
2 until we actually go live on November 20.

3 MR. BARNWELL: What are the chances?

4 MS. SANDBERG: We think they're good. There
5 are some continued risks, in fairness. The greatest risk
6 to us at this moment is the batch processing moving from
7 the mainframe onto the servers. We've made significant
8 progress in all testing areas, including all the
9 interfaces. The primary remaining high risk that we're
10 encountering is one particular batch job that we continue
11 to see challenges with. It does not have to be fully
12 implemented on November 20, but it must be operational by
13 December 11 because it has to do with the new renewals
14 related to single sticker. We have a final go/no-go
15 meeting at the executive steering committee this coming
16 Wednesday where we expect to receive information from the
17 technical team on whether that has been addressed
18 sufficiently to allow us to vote to go. If we do not, we
19 also are working on mitigation strategies and on plans for
20 communication if we do have to postpone this for any
21 reason.

22 MS. RYAN: The postponement would be for the
23 complete move from the mainframe or just for this
24 particular area, this last batch?

25 MS. SANDBERG: It would most likely be

1 postponement for the complete move if it comes to that.
2 We're hoping to have information -- even though the
3 correction might not be fully implemented by November 20,
4 we want to know before November 20 that we know exactly
5 what needs to be done and what's required and that it can
6 be accomplished before the December 11 date when it must
7 run successfully.

8 MR. BARNWELL: Or what?

9 MS. SANDBERG: Or what? We stay on our current
10 environment so that we can run those renewal notices on
11 December 11, but that results in some potential increased
12 costs to the agency if we stay on the mainframe. The
13 longer we stay on the mainframe, that begins to have an
14 impact on cost.

15 MR. BARNWELL: And it's not just monetary.
16 There's also legislative, let's say, frustration and
17 disappointment that you'll have to wade through, and we
18 sure don't want to do that. So the chances are -- you
19 can't give me a percentage because you have no idea, but
20 you're hopeful.

21 MS. SANDBERG: We are very hopeful.

22 MR. BARNWELL: I'll be hopeful with you.

23 MS. SANDBERG: Okay, good. Yes. We often ask
24 staff in the executive steering committees to weigh in on
25 their percentages. We are right now very optimistic and

1 very hopeful. A tremendous amount of progress has been
2 made in the last two weeks in addressing many of the
3 issues that we have found through testing. We've had very
4 aggressive testing and it's good that we've done that
5 because that has allowed us to uncover several issues
6 which needed to be addressed, mostly related to
7 interfaces. The majority of the interface issues have
8 been addressed.

9 Eric has some information on regression
10 testing, if you're interested in that, and we have had
11 some larger issues with this same batch process and we
12 have narrowed them down to this remaining one major issue
13 that we need to deal with.

14 MR. BARNWELL: Okay. It looks encouraging.

15 MR. INGRAM: Can I ask that you try to convert
16 the problem with the batch jobs to car dealer speak where
17 car dealers would understand?

18 MS. SANDBERG: Do you want to take that one,
19 Eric?

20 MR. OBERMIER: Sure, yes. For the record, Eric
21 Obermier, CIO for the DMV.

22 So if I understand your question correctly,
23 Member Ingram, it's what would the batch process that's
24 currently having some struggles that needs to run by
25 December 11, what would that mean to car dealers?

1 MR. INGRAM: No. I'm sorry. I'm just trying
2 to say for somebody --

3 MS. SANDBERG: Layman's terms, what does it
4 mean.

5 MR. OBERMIER: Layman's terms. So basically
6 what it would mean is that if we could not execute that
7 job on schedule, then we would not be able to generate the
8 hard copy renewals that go out to the motoring public via
9 the U.S. mail, so those would be delayed, potentially.

10 MR. INGRAM: So I get that the renewals have to
11 be done on the 11th, like that's the drop-dead date for
12 you to get the renewals in the mail in time. Right,
13 that's where we're going with that? But the batch job
14 itself, what is it doing. You indicated like there's more
15 than one batch job and so there's one particular batch
16 job, give me more about what is the batch job doing.

17 MR. OBERMIER: So it has to come through every
18 record that's in our database and determine which ones are
19 going to need to be renewed. There's actually a series of
20 batch jobs that make up this overall effort, and there is
21 one of them that was running very long, and I don't know
22 the exact number but it was more than eighteen hours when
23 they decided, okay, it's obviously not going to be within
24 tolerance, so they ended up killing that job activity to
25 go back and see what would need to be changed for it.

1 They have identified some potential fixes and some
2 solutions for it -- this is just as of yesterday
3 morning -- so they were going to start trying to put some
4 of those on paper, so to speak, today to see how much
5 progress could be made with that.

6 MR. INGRAM: Jeremiah, you're just itching.

7 MR. KUNTZ: I was going to say I'll try and
8 take a shot at this. The batch job process is basically
9 the computer going through and looking at all the records
10 and compiling a list that is needed to be sent to our
11 printer to create the renewal notices, so that's the batch
12 job. We've got many batch jobs that run, and when we say
13 batch jobs, that's just a code that goes through the whole
14 database looking for things. So we've got a nightly batch
15 that runs so when the counties process a title or
16 registration, we take all that work that was done during
17 the day and we move it over into the database to update
18 all the records. That's called a batch job.

19 So there's lots of those different batch jobs
20 that run that basically just take information and create
21 either a list or update files, but we've got lots and lots
22 of those. So there were numerous batch jobs that had to
23 be refactored over to the new code and then tested to make
24 sure that when they run it's moving the right files, it's
25 doing it at the right time, all those kinds of things.

1 MR. INGRAM: And so we're down to just one of
2 these batch jobs that is causing us a problem?

3 MR. OBERMIER: One that would cause us a
4 serious enough problem that we would consider not actually
5 launching.

6 MR. INGRAM: Got it now. Awesome. Thank you.

7 MS. BREWSTER: And Madam Chair, if I might. To
8 Ms. Sandberg's point about a go/no-go, the governance
9 team, the executive steering committee for this project
10 meets weekly and we follow up on all issues, and although
11 we are very confident that we will go live on the 20th, we
12 do headset checks regularly just to make sure that we're
13 all buttoned up ready to go, ready to launch, and that's
14 the meeting that she is referring to. We are confident
15 that we are going to make the 20th, but this is a meeting
16 where we talk about any remaining issues so that we can
17 just make sure we're absolutely sure and ready to go.

18 MS. RYAN: And that committee meets on a weekly
19 basis anyway. Right?

20 MS. BREWSTER: And then there is a subset of
21 that group that meets with our vendor partner almost daily
22 just to ensure that things are moving forward, and that's
23 comprised of the A-Team that you see before you, as well
24 as Shelly Mellott and myself.

25 MS. RYAN: And the whole group is an A-Team,

1 we're not meaning to diminish anyone. Complete confidence
2 and support in the whole agency leadership team.

3 (General laughter.)

4 MR. OBERMIER: If I may, I would like to take a
5 moment to thank all of the project team staff that has
6 been doing all of the hard work over the last year-plus
7 actually, but especially over the last four to six weeks
8 with this date approaching, many of the staff have been
9 working six-plus day work weeks, they've been giving up
10 every Saturday for the last month and this next one will
11 also be included in that, in an effort to make sure these
12 last defects do get checked off the list.

13 And we know also that when we do go live that
14 there will be some issues that we will find, and as such,
15 we are already making plans such that both the Deloitte
16 staff as well as the TxDMV subject matter experts, that a
17 portion of them are not going to be wait to be woken up
18 for an issue on the first night of batch runs, they're
19 going to be babysitting it every night until we see that
20 we're not getting alerts. So we're going to have
21 rotational staff until everything is running smoothly
22 enough to go back to just a normal operational one shift
23 mode.

24 MS. RYAN: I would concur and I would thank
25 everyone for that, and Blake will be getting those emails

1 on Sunday morning or Saturday afternoon now, but as the
2 RTS rollout was going on, Johnny and I were getting them,
3 and as you guys were rolling out the counties over the
4 weekends, I know the staff was there to do that. So I
5 would thank everyone for that work that was on that team
6 because I know you all worked hard to get the counties
7 rolled out and make sure everything was done right to get
8 us to the point that we could get off the mainframe. And
9 I know there's a lot more to do, but thank you. So thank
10 you for recognizing them, and your work too, all of you.

11 MR. WALKER: Have those large counties come
12 back and apologized and thanked us?

13 MS. SANDBERG: I've had some favorable
14 feedback.

15 MS. RYAN: I think they're appreciative of the
16 work that got done. Yes.

17 MR. WALKER: They were really concerned about
18 not turning them on until we knew it was going to work.

19 MS. RYAN: I think they're appreciative.

20 MS. SANDBERG: Any other questions about the
21 RTS project?

22 MS. RYAN: We've all got our fingers crossed.

23 MS. SANDBERG: Thank you.

24 Moving on to single sticker phase II, which
25 you've already heard a good bit about, phase II is on

1 schedule and within budget. We started working on this
2 project back on May 12 and need to implement by March 1,
3 meaning we have about 3-1/2 months left to finish this
4 project.

5 Achievements to date is we have organized and
6 started holding meetings of an interagency executive
7 partner group. This includes our own agency, as well as
8 executives from DPS, TCEQ, representatives from TAC, as
9 well as from the Texas State Inspection Association. We
10 also have an interagency staff project team which meets
11 weekly and TxDMV staff and our project manager participate
12 in that particular meeting.

13 Requirements have been completed and design is
14 well underway on the renewal notices. We are actually
15 doing the new programming that's necessary to implement
16 that.

17 Work in progress is planning on the public
18 information campaign, which Caroline shared with you. We
19 are also in the process of printing new mail-out inserts.

20 Later in the meeting we'll be requesting approval on a
21 contact. This is related to TxIRP to get it prepared for
22 single sticker phase II.

23 The schedule, as I already mentioned, May 12
24 through March 1. The budget is currently \$2.3 million.
25 That includes all of the systems that need to be modified,

1 as well as the public information campaign. The risks to
2 this project is that the schedule may slip due to the RTS
3 refactoring project. Because many of those system changes
4 are being made in RTS, we have some of the same staff
5 trying to work on both efforts simultaneously. We already
6 discussed in detail the risk related to the batch job
7 which has a direct impact on the timely printing of the
8 renewals. And the TxIRP schedule may slip if we have any
9 delays on the external contract that we'll be seeking
10 approval on.

11 Our mitigation strategy for single sticker has
12 been to add some additional vendor resources as well as
13 some workarounds, particularly in the Motor Carrier
14 Division, that we'll describe later. But at the moment we
15 are on track but we do have some risks which we are
16 striving to mitigate and make sure that we deliver on
17 time.

18 Are there any questions about single sticker
19 phase II?

20 (No response.)

21 MS. SANDBERG: So moving on to WebDealer, the
22 reason MR. Kuntz has joined me is we have some exciting
23 news to share about WebDealer.

24 MR. KUNTZ: So early this morning at about nine
25 o'clock we hit our half million approved WebDealer title

1 transaction. The title was processed in Hays County.

2 MS. RYAN: Where's the confetti?

3 (General laughter.)

4 MR. KUNTZ: So we actually have a certificate
5 of appreciation. "On November 13, 2015, Hays County
6 approved the 500th title transaction submitted by Nissan
7 of San Marcos through the Texas Department of Motor
8 Vehicles WebDealer application. Congratulations to Nissan
9 of San Marcos and Luanne Caraway, Hays County Tax
10 Assessor-Collector, for their exceptional involvement and
11 support of the WebDealer application."

12 (Applause.)

13 MR. WALKER: Has this deal been fixed?

14 (General laughter.)

15 MS. CARAWAY: It was a shock to me.

16 MR. KUNTZ: Thank you.

17 MS. SANDBERG: Now we'll go to a status update
18 on WebDealer which is on page 19 of your briefing book.

19 Overall, the status is on schedule and within
20 budget. The project began September 1, 2012 and is
21 scheduled to end on February 1, 2017 which is just
22 fourteen and a half months away. Achievements to date:
23 we have implemented new cars, used cars, document
24 management, commercial fleet buyers and adoption
25 improvements part one. Work that is in progress:

1 adoption improvements part two are on schedule to be
2 implemented in January, salvage is on track for May 2016,
3 eTags in July 2016, and we've actually already started
4 work on the final three phases, eTitles, centralized
5 payments, and private party.

6 The budget is \$9.6 million, a combination of
7 internal and external costs. We are still within budget.

8 The risks to this project are the same risks I've
9 mentioned previously: the schedules may slip primarily
10 due to RTS refactoring, single sticker phase II, and the
11 resource constraints which have already been mentioned.
12 Our mitigation strategies are additional services from
13 staff contractors. We have hired two to three staff
14 augmentation contractors to assist the team with work on
15 WebDealer, but we have forecasted that that will keep us
16 within the budget, we will not exceed budget.

17 Are there any questions about WebDealer?

18 MR. INGRAM: Just a very high level overview of
19 what is in the adoption improvements two.

20 MR. KUNTZ: So after we rolled out new car and
21 used car functionality to the counties, we received
22 feedback from numerous counties about different processes,
23 including batching transactions on the county side, so
24 probably the largest thing that is the adoption
25 improvement phase II which would go in January are some

1 enhancements that would allow the counties to batch title
2 transaction applications by the dealerships so that they
3 can process those, basically put them in a reviewed status
4 to where they've already looked at them and approved them
5 from the paperwork standpoint, and then set them aside
6 waiting on payment to come in, and then once payment is
7 received, approve all of those at one time. So it's an
8 efficiency issue for the counties to be able to get through
9 those transactions in a faster fashion.

10 It also will help them in dealing with bulk
11 volumes. One of the things that we've heard is it's
12 difficult, especially in the large counties, is when
13 they've got hundreds or thousands of transactions that are
14 coming in, it's difficult to kind of sort through those,
15 batch them together, kind of move them around. So these
16 functionalities will help them with that to streamline
17 their processes.

18 The phase one adoption improvement was a
19 request that we had received from a couple of counties
20 that have an external inventory control system that they
21 use in their county to control the inventory of license
22 plates and stickers that are issued to dealers, so some
23 dealers actually take an inventory of plates and issue
24 those out to the customers directly. They needed a way to
25 more seamlessly manage that inventory that those

1 dealerships had, so we actually built a report, basically
2 flat file, that could be sent and uploaded into their
3 inventory system that would allow them to control that
4 inventory in an external system outside of WebDealer, so
5 that was the phase one that went in November. So those
6 were really mainly improvements to help out on the county
7 side.

8 There's also a potential improvement that's
9 being looked at on the dealership side to do batch
10 printing of stickers of all the transactions that they've
11 approved, and so that's something else that's being looked
12 at to help the dealers if they've done a hundred
13 transactions, being able to print all the stickers at one
14 time.

15 MR. INGRAM: I know that some new car stores
16 are carrying an inventory of plates. Is that being done
17 on the used car level at this time too, or is it just new?

18 MR. KUNTZ: The decision on whether or not a
19 dealership is going to carry an inventory of plates and
20 stickers is purely up to the tax assessor-collector.

21 MR. INGRAM: I wasn't sure.

22 MR. KUNTZ: So that is a deputization. You
23 would need to be deputized, have a bond with the county,
24 in order to get the inventory.

25 MS. SANDBERG: Jeremiah's team did some hard

1 work I providing me some metrics on adoption improvements
2 so I wanted to just share some of those with you at a high
3 level. For dealer title transactions, we've increased
4 from 2.4 percent in December 2014 to 21 percent in
5 September 2015. For new vehicle transactions, an increase
6 of 550 percent between December 2014 and October 2015.
7 For used vehicle transactions, an increase of 400 percent
8 since statewide implementation in March 2015. For DTA
9 dealers, 240 former DTA dealers now use WebDealer, and of
10 those, 192 use WebDealer only, and so there are thirty-
11 eight DTAs still to go to adopt WebDealer.

12 MR. WALKER: So what percent of the state do we
13 have on WebDealer now?

14 MS. SANDBERG: I'm sorry?

15 MR. WALKER: What percent of the dealers do we
16 have on now?

17 MS. SANDBERG: On WebDealer, I'm not sure what
18 the percentage is. There are ninety-two counties signed
19 up with WebDealer. I can give you some raw numbers if
20 you're interested in that, but I'm not sure what the
21 percentage is.

22 MR. WALKER: That's okay.

23 MS. SANDBERG: Any other questions?

24 Moving on to the LACE project. This project is
25 currently on schedule and within budget. The current

1 schedule is September 1, 2015 through February 28, 2017,
2 fourteen months. The budget is just over \$13 million.
3 Our achievements to date: we have awarded the services
4 contract to Deloitte, the independent verification and
5 validation contract to Software Engineering Services; the
6 project team has been established and the kickoff meeting
7 has been held. The work is in progress on gathering
8 requirements which are on track for now to be finished by
9 December 29. We are also in the process of purchasing
10 software licenses that begin to allow us to start looking
11 at our existing data and preparing it or cleansing it to
12 be used with the new replacement system.

13 Risks. The project is significantly behind its
14 original schedule due to other priorities and the time to
15 procure. Our mitigation strategy was to obtain your
16 approval for Executive Director Brewster to approve an
17 increased budget and contracts, which have now been
18 awarded. We used the agency project governance process to
19 re-baseline the budget and the schedule. So we are moving
20 forward and there is tremendous activity involving staff
21 from Motor Vehicle Division, IT, other business areas,
22 Enforcement, and of course, the vendors in getting this
23 project moved forward.

24 Any questions about LACE?

25 MR. WALKER: I have a question about your

1 overall. And I love your format, Judy. You've done a
2 real nice job here. When you have down here these
3 budgets, like there's on LACE \$13 million, could you also
4 give us how much of it's been expensed, maybe, and how
5 much remaining we have? I think the \$13 million is what
6 we budgeted for the entire project?

7 MS. SANDBERG: Right.

8 MR. WALKER: If we could also maybe say this is
9 how much we've used on that budget and what percentage of
10 the project is completed.

11 MS. SANDBERG: I can certainly do that.

12 MR. WALKER: Would it be too much?

13 MS. SANDBERG: It would not be too much. That
14 would be easy to do, we have that information.

15 MR. WALKER: I just don't want to require a lot
16 of work but it would be nice to see how much more we have
17 left on some of these.

18 MS. SANDBERG: We have that information, I'll
19 be happy to share it.

20 MR. WALKER: Thank you.

21 MS. SANDBERG: Finally, on page 121 is a list
22 of closed projects to date. RTS data purification, CAPPS
23 HR phase I time and leave, temporary permits; single
24 sticker phase I, CAPPS finance, and active directory have
25 been closed so far.

1 Are there any other questions about the
2 enterprise projects?

3 (No response.)

4 MS. SANDBERG: That concludes our briefing.
5 Thank you.

6 MS. RYAN: Thank you.

7 At this time we're going to go into our second
8 executive session. We're going into closed session. It
9 is now 11:51 a.m. on November 13, 2015. We will go into
10 closed session under Texas Government Code Section
11 551.071, Section 551.074, and Section 551.076. For those
12 of you in the audience, I anticipate being in executive
13 session for approximately forty-five minutes at the
14 longest, so if you'd like to grab lunch, please do so.

15 MR. WALKER: Are we going to have lunch?

16 (General laughter.)

17 MS. RYAN: Yes, we're going to eat, Johnny. We
18 will convene in open session at that time. With that, we
19 are recessed from the public meeting and we will go into
20 executive session. Thank you.

21 MR. DUNCAN: David Duncan, general counsel.

22 Several parties are here being careful because
23 their item has not been officially disposed of. Would you
24 like to announce that Audi will not be heard today.

25 MS. RYAN: Yes. I'm sorry. I thought you had

1 taken care of that.

2 MR. DUNCAN: I told them, but technically it's
3 still on the agenda because it was published last week.

4 MS. RYAN: I'm sorry if we've kept you here all
5 morning. My apologies. Audi will not be heard today.
6 It's my understanding that that was settled and it was
7 taken off the agenda. And if we've kept you here all
8 morning because of our technicality, I apologize that
9 we've taken up your time. Thank you so much. I
10 apologize. Thank you for your time.

11 (Whereupon, at 11:51 a.m., the meeting was
12 recessed, to reconvene this same day, Friday, November 13,
13 2015, following conclusion of the executive session.)

14 MS. RYAN: It is approximately 12:59 p.m. on
15 November 13, and the Board of the Texas Department of
16 Motor Vehicles is now in open session. I want to make
17 note that no action was taken in closed session.

18 We are going to pick up with item 4. We're not
19 going to take item 4.A at this time, we're going to skip
20 that item, it will not be taken up on today's agenda. We
21 are going to take item 4.B. Do I have a motion?

22 MR. PALACIOS: Madam Chairman, I move the board
23 approve an increase to the salary of the executive
24 director, Ms. Brewster, to the full amounts authorized and
25 budgeted in the TxDMV bill pattern in Article 7 of the

1 General Appropriations Act for the 2016-17 biennium, and
2 to authorize the staff to take the necessary actions under
3 the Act to implement the change.

4 MS. RYAN: I have a motion from Member
5 Palacios. Do I have a second?

6 MR. BARNWELL: Second.

7 MS. RYAN: Second from Member Barnwell. Any
8 questions, discussion?

9 (No response.)

10 MS. RYAN: All in favor raise your right hand.

11 (A show of hands.)

12 MS. RYAN: Motion carries unanimously.

13 MS. BREWSTER: Thank you.

14 MS. RYAN: Thank you.

15 MR. WALKER: Are you buying tonight?

16 MS. RYAN: She is.

17 (General laughter.)

18 MS. RYAN: All right. I would like to move to
19 the area of 6 on our agenda, so I'd like to move to 6.A.
20 Could I have a motion on 6.A or any discussion before we
21 have a motion? I'm open to discussion first.

22 MR. INGRAM: Well, I'll go ahead and make a
23 motion to recommend that we elect Raymond Palacios as
24 vice-chair.

25 MR. WALKER: Second.

1 MS. RYAN: I have a motion from Member Ingram
2 and I have a second from Member Walker. Any discussion?

3 (No response.)

4 MS. RYAN: All in favor raise your right hand,
5 please.

6 (A show of hands.)

7 MS. RYAN: Do I have anyone that's opposed?

8 MR. PALACIOS: Only if you double my
9 compensation.

10 (General laughter.)

11 MS. RYAN: I can't say the motion carries
12 unanimously.

13 MR. WALKER: He raised his hand.

14 MS. RYAN: Did you raise your hand? Okay.
15 Then the motion carries all in favor. Congratulations.

16 MR. PALACIOS: Thank you, Chairman.

17 MS. RYAN: Thank you.

18 MR. WALKER: I have a question.

19 MS. RYAN: Yes, sir.

20 MR. WALKER: Don't we normally elect the vice
21 chairman once a year on an annual basis?

22 MS. RYAN: We do. It's usually in December is
23 what we have done in the past.

24 MR. WALKER: So does this mean that this is for
25 a sixteen-month period?

1 MS. RYAN: We reelect him in December?

2 MR. WALKER: That's my question.

3 MS. RYAN: Well, I think since it's November,
4 we won't hold it again next month.

5 MR. WALKER: I just didn't know the protocol.

6 MS. RYAN: I guess we could have another
7 election next month, but I think what we would do is carry
8 over till next December, so it would be a thirteen-month.

9 MR. WALKER: So your term is thirteen months,
10 not one month.

11 MR. PALACIOS: I'm fine.

12 MS. RYAN: Unless you want us to redo this
13 again in December. We don't have a meeting in December.

14 (General talking and laughter.)

15 MR. DUNCAN: David Duncan, general counsel. I
16 just wanted to point out that that's not in statute or
17 rule anywhere, that's just the convention that the board
18 has developed.

19 MS. RYAN: We have set that up to where we
20 would take that vice chair position on an annual basis to
21 be looked at by the board because that position is an
22 election of the board, and so December of next year we
23 will re-look at that position and take nominations from
24 the board again.

25 So thank you, and I think we are losing you.

1 Is that correct?

2 MR. PALACIOS: Yes. Have a Happy Thanksgiving.

3 MS. RYAN: It is 11:05 and Member Palacios is
4 leaving. Thank you. Safe travels.

5 And you are representing the contracts, so we
6 are on 6.B.1, Commercial Vehicle Information Systems.

7 MR. ARCHER: Good afternoon, Chair Ryan, board
8 members, Executive Director Brewster. For the record, my
9 name is Jimmy Archer and I'm the director of the Motor
10 Carrier Division.

11 I'm seeking board approval to allow Executive
12 Director Brewster to renew and add \$334,000 to the
13 contract with Southwest Research Institute, a contractor
14 that provides specialized services and consulting to the
15 agency with the FMCSA Commercial Vehicle Information
16 System Network, or CVISN, as we call it. This will core
17 CVISN compliance and developing new projects under
18 expanded CVISN.

19 Texas Department of Motor Vehicles has been
20 using Southwest Research's expertise and services to
21 assist in CVISN projects and responsibilities since
22 January 2012. Southwest Research is also a contractor for
23 TxDOT, performing work on the Texas Intelligent
24 Transportation System. The knowledge attained through
25 Southwest Research Institute's TxDOT work, along with

1 their CVISN expertise, has made them an excellent
2 contractor in assisting with our CVISN system.

3 We have funds of \$205,000 set aside from one
4 federal CVISN grant and this is a 50/50 grant with the
5 Federal Motor Carrier Safety Administration has awarded
6 half of these funds and the state has matched the other
7 half. We'll also be using Motor Carrier Division funds of
8 \$130,000 for monthly operational expenses through August
9 2017.

10 This is the first of two two-year renewals of
11 the contract. I request that the board give Ms. Brewster
12 the authority to execute the contract.

13 MR. WALKER: Did you say an amount on that?

14 MR. ARCHER: Three hundred and thirty-four
15 thousand dollars.

16 MR. WALKER: I so move that the board give Ms.
17 Brewster the authority to enter into a contract on the
18 Vehicle Information System Network, CVISN annual
19 maintenance contract.

20 MR. RUSH: Second.

21 MS. RYAN: We have a motion by Member Walker
22 and a second by Member Swindle. Any discussion?

23 MR. WALKER: It was Marvin.

24 MS. RYAN: Marvin, I'm sorry. We have a second
25 by Member Rush. Any discussion?

1 (No response.)

2 MS. RYAN: All in favor raise your right hand.

3 (A show of hands.)

4 MS. RYAN: Motion carries. Thank you.

5 We'll move to item number 2.

6 MS. SANDBERG: For the record, Judy Sandberg,
7 director of EPMO.

8 The EPMO and Motor Carrier Division seek board
9 approval to issue a statement of work and contract award
10 for vendor services to revise the Texas International
11 Registration Plan, TxIRP, system to be in compliance with
12 House Bill 2305 and House Bill 1888, and to enable
13 realtime communication with the inspection database via
14 secure web services. TxIRP is maintained by a third party
15 vendor. All maintenance or enhancements to TxIRP must be
16 outsourced to meet the single sticker phase II
17 implementation timeline of March 2016.

18 If approved, the enhancement will provide
19 increased customer service through realtime electronic
20 query of the inspection database, increased efficiency in
21 the verification of inspection and emission compliance,
22 streamlining the process and management of vehicle
23 inspection stickers, reducing cost, and potentially
24 reducing fraud by electronic verification of inspection.

25 If denied, the agency will continue the current

1 manual process for management of vehicle inspections and
2 will not realize increased efficiency in the verification
3 of inspection and emission compliance. The current volume
4 of work exceeds staff capacity when the manual process is
5 used. This may result in a longer time to process
6 registration requests and the department may be out of
7 compliance with House Bill 2305 for incomplete actions.

8 MR. WALKER: You're wanting to enter into a
9 contract or go for a bid?

10 MS. SANDBERG: We're requesting to release a
11 proprietary statement of work.

12 MR. WALKER: Just to go out for an RFP?

13 MR. INGRAM: Madam Chair, I move that the board
14 authorize the executive director, or her designee, to
15 solicit bids and select the best value vendor or vendors
16 for programming services to implement single sticker phase
17 II requirements within the TxIRP system in compliance with
18 House Bills 2305 and 1888. I also move to delegate to the
19 agency's executive director, or her designee, the
20 authority to negotiate, execute and sign appropriate
21 contracts with the selected vendors in consultation with
22 the chairwoman.

23 MR. SWINDLE: Second.

24 MS. RYAN: We have a motion by Member Ingram
25 and a second by Member Swindle. Any discussion?

1 (No response.)

2 MS. RYAN: All in favor raise your right hand.

3 (A show of hands.)

4 MS. RYAN: Motion carries. Thank you.

5 We will move to item 3.

6 MR. OBERMIER: Good afternoon, members of the
7 board. For the record, my name is Eric Obermier, CIO for
8 the DMV. The information I'll be covering today can be
9 found on page 124 of your board book.

10 I'm seeking board approval for TxDMV to solicit
11 and engage technology services vendors to perform various
12 aspects of the ongoing TxDMV-TxDOT technology separation
13 effort. This effort will be managed as a project through
14 the EPMO with oversight of the CIO and the EPMO director.

15 While TxDMV has made significant progress with
16 technology separation from TxDOT over the last three
17 years, a number of applications and servers remain in the
18 TxDOT domain. Completion of the technology separation
19 from TxDOT requires assistance from a technology services
20 vendor or vendors. TxDMV existing technical and project
21 management staff are already working on multiple high
22 priority projects and initiatives. As part of the
23 separation effort, TxDMV will also migrate applications
24 and servers into the consolidated DCS, or Data Center
25 Services, data centers managed by the Department of

1 Information Resources.

2 Funding for the remaining technology
3 infrastructure separation effort comes from the one dollar
4 automation fee that is included in automobile registration
5 renewal transactions.

6 This concludes my comments and I'll be happy to
7 answer any questions.

8 MR. BARNWELL: Madam Chairman, I move that the
9 board authorize the agency's executive director, or her
10 designee, to solicit bids and select the best value vendor
11 or vendors for all services necessary to assist with
12 moving applications and databases from TxDOT supported
13 systems to TxDMV supported systems. I also move to
14 delegate to the agency's executive director, or her
15 designee, the authority to negotiate, execute and sign
16 appropriate contracts with the selected vendors in
17 consultation with the chairman .

18 MS. RYAN: We have a motion by Member Barnwell.
19 Do we have a second?

20 MR. RUSH: Second.

21 MS. RYAN: We have a second by Member Rush.

22 Any discussion?

23 (No response.)

24 MS. RYAN: All in favor raise your right hand,
25 please.

1 (A show of hands.)

2 MS. RYAN: Motion carries unanimously. Thank
3 you very much.

4 We will now move to item 4, amended
5 resolutions.

6 MR. DUNCAN: Good afternoon, ladies and
7 gentlemen of the board. David Duncan, general counsel.

8 This one is mine, and I apologize because I
9 made a minor error in a resolution from the last board
10 meeting. At the time Senate Bill 20 had not take effect
11 but when we were revisiting that after the board meeting,
12 when Ms. Flores presented the annual budget to you in the
13 last board meeting, attached to that was a list of
14 contracts, and in the resolution where you acted on the
15 budget and approved the budget, you also approved of those
16 contracts. But the language in Senate Bill 20 says in
17 order for Ms. Brewster to execute those contracts, you
18 have to specifically delegate the authority to sign.
19 That's the word that's used.

20 So I'm requesting that you amend that
21 resolution from the last board meeting, and the amendment
22 would say: The board approves delegation to the executive
23 director for negotiation, execution and signature of the
24 contracts listed on page 31 of the fiscal year 2016
25 operating budget as presented to the board in the August

1 14, 2015 meeting. And I'm available for any questions.

2 MS. RYAN: What did it say previously?

3 MR. DUNCAN: Approved, just the word approved,
4 the board approves of the contracts at that location on
5 that page.

6 MS. RYAN: It didn't say sign.

7 MR. DUNCAN: Sign. Sorry about that.

8 MS. CARAWAY: I'll make a motion. I move that
9 the board amend the resolution entered at the August 14,
10 2015 board meeting which approved the 2016 fiscal year
11 operating budget to state that, "The board approves the
12 budget and attached list of essential agency contracts and
13 approves delegation to the executive director for the
14 negotiation, execution and signature of the contracts
15 listed on page 31 of the fiscal year 2016 operating
16 budget, as presented to the board at the August 14, 2015
17 meeting."

18 MR. WALKER: Second.

19 MS. RYAN: Motion by Member Caraway and a
20 second by Member Walker. Any discussion?

21 (No response.)

22 MS. RYAN: All in favor raise your right hand.

23 (A show of hands.)

24 MS. RYAN: Motion carries unanimously Thank
25 you.

1 MR. DUNCAN: Thank you, Madam Chair.

2 MS. RYAN: We will move to 6.C.

3 MR. AVITIA: Madam Chair, board members, Ms.
4 Brewster, good afternoon. For the record, my name is
5 Daniel Avitia. I have the pleasure of serving as the
6 director of the Motor Vehicle Division.

7 Agenda item 6.C. relates to the continuation of
8 the Motor Vehicle License Advisory Committee. I seek the
9 board's approval to continue the Motor Vehicle License
10 Advisory Committee. On December 8 of 2011, the existing
11 Motor Vehicle License Advisory Committee was created by
12 board resolution. Without approval of a new resolution,
13 the committee will expire on the 8th of next month of this
14 year.

15 The existing advisory committee, chaired by
16 Board Member Ingram, provided invaluable guidance and
17 recommendations towards the department's efforts to
18 simplify and modernize the process of obtaining a motor
19 vehicle dealer license. The committee's efforts and
20 support significantly, and more importantly, positively
21 impacted the department's customers. Given the good work
22 this committee has done in the past, staff certainly sees
23 value in keeping the committee for future projects. The
24 department continues to need the committee's input in the
25 area of motor vehicle related licensing and regulation

1 practices.

2 At this time, I only ask that the board
3 authorize the continued existence of the Motor Vehicle
4 License Advisory Committee. With the board's permission,
5 the selection of new committee members will be considered
6 during a future open meeting. I'm happy to answer any
7 questions the board may have.

8 MR. WALKER: I have a question. We've created
9 a lot of board committees through the years here, and to
10 my knowledge, we have never put an expiration date on a
11 committee before, so I'm kind of confused at how we put a
12 discontinuation date on this committee.

13 MR. DUNCAN: You actually didn't. By statute,
14 if any state agency creates an advisory committee, it's
15 subject to a separate statute called the Advisory
16 Committee Act, and it says if you don't specify a date, it
17 dies after four years.

18 MR. WALKER: After how long?

19 MR. DUNCAN: Four years.

20 MR. WALKER: So all committees that we create
21 die after four years?

22 MR. DUNCAN: We won't let them because we'll
23 bring them back to you. We'll remind you; that's why
24 we're here.

25 MR. WALKER: Okay. We've never done this

1 before so I just didn't know.

2 MS. RYAN: This is the first one. Right?

3 MR. DUNCAN: Yes.

4 MR. WALKER: I move that we continue and
5 recreate the License Advisory Committee.

6 MR. TREVIÑO: Second.

7 MS. RYAN: So we have a motion on the floor by
8 Member Walker and a second by Member Treviño. Any
9 discussion?

10 (No response.)

11 MS. RYAN: All in favor raise your right hand.

12 (A show of hands.)

13 MS. RYAN: Motion carries unanimously. Thank
14 you.

15 MR. DUNCAN: And Daniel and I will be working
16 with Member Ingram and you, Member Ryan. One manufacturer
17 distributor member has retired and one dealer, and we had
18 spoken to Blake about this already, so we'll be reaching
19 out to you guys for January for possible membership lists,
20 and recall that Whitney actually brings you a suggested
21 membership list, so if anybody has any thoughts, me or
22 Daniel or Whitney will get you guys a list in January.

23 MS. RYAN: Okay. Thank you.

24 Item D, specialty plate design.

25 MR. KUNTZ: Good afternoon, members. Jeremiah

1 Kuntz, director of Vehicle Titles and Registration
2 Division.

3 Before you are two license plate designs for
4 your consideration, the Southern Miss license plate and
5 what we are referring to as the Classic Black license
6 plate. The plates have met all of our standards. They
7 were posted for eView. This approval is contingent upon
8 the approval of the contract with MyPlates that they pre-
9 sell 200 license plates prior to this plate being offered
10 for sale or production. And so we would move your
11 favorable consideration.

12 MR. WALKER: Are we talking about both or
13 individually?

14 MR. KUNTZ: At the board's discretion.

15 MR. BARNWELL: Are they both MyPlates plates?

16 MR. KUNTZ: They are both plates being offered
17 by MyPlates.

18 MR. INGRAM: Just to make it simple, I move
19 that we approve the Southern Miss plate.

20 MR. RUSH: Second.

21 MS. RYAN: We have a motion by Member Ingram
22 and a second by Member Rush to approve the Southern Miss
23 plate. Any discussion?

24 MR. WALKER: They didn't beat the Aggies this
25 year, did they?

1 (General laughter.)

2 MS. RYAN: I'm not aware that they did. I
3 don't even know that they played, although with the year
4 that they're having, maybe it's a good thing, but I don't
5 think so. Any discussion?

6 (No response.)

7 MS. RYAN: All in favor raise your right hand.

8 (A show of hands.)

9 MS. RYAN: The motion carries unanimously.
10 Thank you. I needed to double check.

11 MR. INGRAM: I move that we approve the Classic
12 Black plate as presented.

13 MR. TREVIÑO: Second.

14 MS. RYAN: We have a motion from Member Ingram
15 and a second from Member Treviño to approve the Classic
16 Black plate. Any discussion?

17 (No response.)

18 MS. RYAN: All in favor raise your right hand.

19 (A show of hands.)

20 MS. RYAN: Motion carries unanimously.

21 MR. KUNTZ: Thank you.

22 MS. RYAN: Thank you very much. I guess you
23 key to success is after lunch. Thank you.

24 We will move to item E.1, adoption of rules.
25 David, I guess you're in a good spot.

1 MR. DUNCAN: I am. Again, members, David
2 Duncan, general counsel.

3 This is the adoption of rules that were
4 proposed in your last meeting regarding the requirement
5 newly passed in statute in the last legislative session
6 that a person who is submitting a petition for rulemaking
7 is only an interested person if they are a resident of
8 Texas or an entity that's located in Texas, so we're
9 making people tell us where they're from if they're going
10 to ask us to make a rule. That's all this is, very
11 simple. Of course, we received no comments, and I'm
12 available for any questions.

13 MR. WALKER: I move that we accept the adopted
14 changes by the staff.

15 MS. RYAN: We have a motion by Member Walker.

16 MR. BARNWELL: Second.

17 MS. RYAN: A second by Member Barnwell. Any
18 discussion? You said there was no comment. Correct?
19 That's what I wanted to confirm.

20 Any other discussion or questions?

21 (No response.)

22 MS. RYAN: All in favor raise your right hand.

23 (A show of hands.)

24 MS. RYAN: Motion carries unanimously. Thank
25 you.

1 Item b.

2 MS. BREWER: Good afternoon, Madam Chair, board
3 members, Ms. Brewster and staff. And welcome Board
4 Members Treviño and Swindle. Glad you're here. My name is
5 Sharon Brewer. I'm director of Human Resources for the
6 agency.

7 Agenda item 6.E.1.b can be found on page 139 of
8 your board briefing book. And the purpose of this agenda
9 item is to request the board's approval to adopt an
10 amendment to Chapter 208, Employment Practices, Section
11 208.12 of the Texas Administrative Code. The proposed
12 amendment to this rule will add subsection (d)(4) which
13 establishes that the executive director must authorize
14 tuition reimbursement to an employee prior to
15 reimbursements being made.

16 The rule amendment is necessary to implement
17 House Bill 3337. Caroline mentioned that bill earlier in
18 her report. This bill amends Government Code 656.048(b),
19 Payment of program expenses. The Government Code was
20 amended effective September 1, 2015.

21 Our current practice of providing tuition
22 assistance is in compliance with Chapter 656, as amended
23 by House Bill 3337 and the tuition assistance policy can
24 be found in the agency's human resources manual that's
25 available to all employees on our intranet and it is also

1 posted on our external website which is another
2 requirement of House Bill 3337.

3 The policy requires the executive director's
4 approval for tuition reimbursements, that an employee must
5 be full-time continuously employed for one year and
6 maintain satisfactory performance and have no disciplinary
7 actions, courses must be job-related, and the tuition is
8 reimbursed, it is not paid in advance. Employees who
9 participate sign a commitment to remain employed with the
10 agency for six months after reimbursement is received, and
11 courses must be taken from an accredited institution of
12 higher education.

13 In fiscal year 2015 the agency reimbursed
14 twelve employees for a total of \$24,873.

15 So the board approved the publication of the
16 proposed rule amendment on August 15, 2015, the proposal
17 was posted for comment on September 4, and the agency did
18 not receive any comments by the 5:00 p.m. deadline on
19 October 5.

20 The agency requests the board to consider
21 adoption of the amendment to 208.2 by adding subsection
22 (b) (4) which establishes that the executive director must
23 authorize tuition reimbursement to an employee prior to
24 reimbursement being paid.

25 MR. WALKER: I move that we adopt House Bill

1 3337, as required by statute, for the reimbursement
2 requirements of reimbursement of tuition in our rules.

3 MR. BARNWELL: Second.

4 MS. RYAN: Motion by Member Walker and second
5 by Member Barnwell. Any discussion?

6 MR. INGRAM: So we're adopting the amendment to
7 Section 208.12?

8 MR. WALKER: So the only thing that changed is
9 just the requirement that the executive director approve
10 it prior to sending it for approval. Right?

11 MS. BREWER: That is correct in the rule.
12 That's the amendment to the rule.

13 MS. RYAN: All in favor raise your right hand.

14 (A show of hands.)

15 MS. RYAN: Motion carries unanimously. Thank
16 you.

17 Item c. Mr. Harbeson, David Duncan, and
18 Daniel.

19 MR. DUNCAN: Madam Chair, David Duncan, general
20 counsel.

21 MS. RYAN: The other A-Team.

22 MR. DUNCAN: This relates to a significant
23 review of the Chapter 215 rules, Motor Vehicle
24 Distribution, which was worked on extensively by staff and
25 in discussions with industry, and then we had comments on

1 the rules when we proposed them, and then you and I, Madam
2 Chair, had some discussions yesterday about the
3 possibility of leaving this open for a period after the
4 board's action today. So I just wanted to bring up that
5 we have prepared redline versions of this rule which show
6 the changes that were made by staff after the proposal
7 that would be in support of this adoption, and those
8 changes are corresponded -- I've got an example here if
9 somebody wants to see what it's going to look like, but
10 it's going to be about this thick, and we will provide
11 that for all the board members today for you to review,
12 and if there's no additional concerns raised, if no one
13 sees anything in there where we made a change in response
14 to a comment that strikes your interest, then we would
15 send those for final publication to the *Texas Register*.
16 It's a little more than two weeks, it's two weeks from
17 next Monday since Thanksgiving is two weeks from today.

18 But what I would ask is would you members
19 prefer to get that electronically or a hard copy. If it's
20 hard copy, we can probably get it made before you leave
21 today and give it to you before you leave, or we can have
22 it sent, your choice. It's going to be about most of an
23 inch thick, even two-sided.

24 MS. RYAN: And to clarify, that same packet of
25 information that you would provide to the board members

1 would also go to anyone that commented as well. Correct?

2 MR. DUNCAN: Yes, ma'am, and we would send it
3 to all of them electronically probably this afternoon.
4 I'm looking at my poor beleaguered staff. But we would
5 get it to the m ASAP, certainly no later than first thing
6 Monday, but hopefully today.

7 MS. RYAN: And also to clarify, if there was
8 any concerns by the board members and/or anyone that
9 commented, then any action that the board may or may not
10 take today would change.

11 MR. DUNCAN: It could be stayed, and we would
12 have discussions with you, Madam Chair, about next steps,
13 what we would do next, either schedule perhaps a very
14 short video teleconference meeting in December, or whether
15 to repropose the rules if it's a fundamental issue.

16 MS. RYAN: And so if I may, just to maybe not
17 be so cryptic, there's a concern that what would normally
18 occur when we look at rules is that we would be able to
19 see the changes in the rules that we would be voting on,
20 and this is a very large -- the changes that were sent out
21 is there were comments sent in to the agency from industry
22 stakeholders that the agency replied back to, but the
23 actual changes to the rules were not submitted to the
24 board or back to the stakeholders, and that was
25 concerning, I think, in discussion. And what we wanted to

1 be sure of is that instead of just an understanding that
2 maybe there be clarification before the board was able to
3 take action, we would be able to review them, however,
4 based on the timing, the agency might have to start over.

5 So the discussion that we had was that if the
6 board found that we could get comfortable to take action
7 and decided to adopt the rules, there would be a time
8 period that we could review the rules, that he
9 stakeholders could review the rules -- two weeks is what
10 David had said, with a date -- and if there were any
11 concerns with any of the changes that we can now see and
12 read and anyone that posted comment can see and read, they
13 could get back with anyone on with either anyone on the
14 board, because it's not a contested case or anything, or
15 the agency and we could not send it to be posted in the
16 *Texas Register* which is what makes any action final if
17 we're going to adopt the rules. And in that case, then
18 any changes would have to come back before the board and
19 the board would have to decide to post those changes for
20 additional comments. And that's basically the process
21 that this board and this agency is really proposing.

22 MR. DUNCAN: And just to be clear from
23 henceforth, regardless of the size of the rule package, at
24 proposal and adoption we're going to give you the whole
25 thing. In the board backup we're going to give you all

1 four hundred pages or however many it is. At your
2 leisure, you can read it.

3 MS. RYAN: So instead of being cryptic, that's
4 really kind of, I think, what's before the board to try to
5 make a decision on what we truly are deciding to adopt or
6 not adopt at this point. Otherwise, we will not make our
7 six-month deadline from when we posted the rules, and our
8 other option is to post all the changes again and it comes
9 back to the board and we have a December meeting, or it
10 comes back to the board in January, we post them again,
11 and it goes back out for comment.

12 So we felt this was a fair and transparent way
13 to have the board take a look at it, the agency and our
14 stakeholders and industries also have a chance to actually
15 see what we were looking at. So that's kind of the
16 thought process.

17 MR. INGRAM: And I guess, Madam Chair, my
18 question would be are there any stakeholders or industry
19 groups here that have a say one way or the other in terms
20 of this strategy.

21 MS. RYAN: I'll ask David that.

22 MR. DUNCAN: I think TADA is the only one
23 that's here that commented on the rule.

24 MS. RYAN: Again, they'd have the same two
25 weeks.

1 MR. INGRAM: I understand, they'd have the same
2 time frame.

3 MS. RYAN: Well, do you want to ask? Karen?

4 MS. PHILLIPS: (Speaking from audience.) I'm
5 happy with the two weeks.

6 MR. INGRAM: Awesome.

7 MS. RYAN: Okay. Wonderful. All right. Thank
8 you.

9 MR. DUNCAN: Bill will summarize the rest of
10 it.

11 MS. RYAN: Fair enough. I just wanted to make
12 sure everybody understood the process that was being
13 thought about and discussed. We didn't mean to highjack
14 it, Bill or Daniel.

15 MR. HARBESON: My name is Bill Harbeson. I'm
16 the director of the Enforcement Division at the Texas
17 Department of Motor Vehicles.

18 I think the best way for me to accomplish my
19 purpose today, first of all, these rules were first
20 published in June and we received comments from the Texas
21 Automobile Dealers Association, the Texas Independent
22 Automobile Dealers Association, from Gulf States Toyota,
23 and from Buddy Ferguson, a local attorney who represents a
24 number of manufacturers, so they all made comments. And
25 in your package you will see that the general counsel

1 prepared a very good summary of each of the sections that
2 they made a comment on and what our response was. In many
3 cases we made changes, in some cases we didn't feel
4 changes were necessary.

5 One of the items that is not in your package
6 that I'd like to just mention is a change to Rule
7 215.250(j), and this was resolved with staff toward the
8 end of the process and we just didn't have time to get it
9 in. But essentially, what happened was TADA approached us
10 with a problem and that was our general rule provides that
11 when you have a featured price, what I call a grab price,
12 the one that you go see the dealer about, you cannot have
13 any conditions on that so that anybody anywhere could buy
14 that vehicle. So if you had a special discount for
15 financing if you're a previous owner, college graduate,
16 former military, that would all go below the featured
17 price. The featured price everybody gets; any of those
18 additional savings would go below that.

19 Recently a number of the manufacturers have
20 been offering regionally conditioned pricing. In other
21 words, if you're a Texas resident, Metroplex resident or
22 whatever, you would get a featured price, but following
23 the existing rule, it would throw it down below that
24 featured price. And the suggested resolution to this
25 problem would be to allow only in the geographically

1 conditioned specials that there would be two prices that
2 the customer would see: one would be everybody gets, the
3 second would be the price that you geographically
4 qualified, provided that it was no larger than the
5 everybody gets it price; and two, it clearly disclosed
6 that this is the Texas resident price.

7 And it was believed that this limited change to
8 the prohibition against conditional offers would solve the
9 problem that a lot of the dealers had been talking to me
10 and TADA about. In other words, these Texas dealers would
11 still be able to qualify for these regional or special
12 pricing deals offered by the manufacturer and be able to
13 offer it other than sort of down in this small print below
14 the featured price. But that is not in the discussion
15 provided to you by general counsel's office simply because
16 we worked on this last week and the mailing date had
17 passed.

18 So other than that, the general counsel's
19 description of what came in and how we handled it is in
20 the board package, and unless you have any questions, I'll
21 turn it over to Daniel. Are there any questions about 215
22 or any of the changes that have been proposed or how we
23 handled any of the comments?

24 (No response.)

25 MR. HARBESON: Thank you.

1 Daniel, do you want to add anything?

2 MR. AVITIA: I think you covered it well, Bill.

3 Thank you.

4 MS. RYAN: Thank you.

5 MS. CARAWAY: Do you want a motion?

6 MS. RYAN: Yes, ma'am.

7 MS. CARAWAY: I'll make a motion. Move that
8 the board adopt the rules as drafted by the staff,
9 contingent on a two-week review of the full redline
10 version of the rule adoption package by the members of the
11 board and any persons who commented on the proposed rules.

12 If after the passage of two weeks, Monday, November 30,
13 no concerns have been raised regarding the adoption
14 package b board members or the previous commenters, the
15 staff may send the rules to the *Texas Register* for final
16 publication. If any concerns are raised, the staff shall
17 consult with the chairman regarding next steps for
18 additional consideration by the board or reproposal of the
19 rules.

20 MR. INGRAM: Second.

21 MS. RYAN: We have a motion by Member Caraway
22 and a second by Member Ingram. Any discussion?

23 (No response.)

24 MS. RYAN: All in favor raise your right hand.

25 (A show of hands.)

1 MS. RYAN: Motion carries unanimously. Thank
2 you very much.

3 MR. DUNCAN: And just to clarify, Madam Chair
4 and members, the issue that Bill was discussing, we'll
5 make sure that that's in this package before we send it
6 out to you and to the commenters.

7 MS. RYAN: So we should expect that electronic
8 then?

9 MR. DUNCAN: Electronic unless somebody raises
10 their hand and says they want paper.

11 MS. RYAN: Okay. Electronic, and then anyone
12 that commented as well?

13 MR. DUNCAN: Yes, ma'am.

14 MS. RYAN: Wonderful. Thank you so much.

15 Item d.

16 MR. HARBESON: Yes. My name is Bill Harbeson,
17 and I'm the director of the Enforcement Division.

18 I'm here today asking that the board approve
19 the adoption of the repeal of Section 217, Subchapter I,
20 and the adoption of a new Chapter 221 of our rules under
21 Title 43. These are the salvage rules. The first thing
22 I'm asking the board to do is approve the repeal of that
23 section of 217 where they used to be found. We're
24 repealing that section, taking it out and creating a new
25 chapter just for salvage.

1 The new chapter on salvage is found at 221 and
2 it's summarized by the general counsel's office, it has a
3 number of things. It, first of all, defines certain
4 license types for the first time. It's organized so it's
5 a little easier to follow. Perhaps most significantly, it
6 provides for the first time a notice requirement that when
7 a sale is made of a piece of salvage or a non-repairable
8 motor vehicle that ht purchaser be advised by the seller
9 that it is salvage or a non-repairable motor vehicle. And
10 comments were received on the rules as a whole from the
11 Insurance Auto Auctions, from the Texas Auto Recycles
12 Association, and from the Texas Automobile Dealers
13 Association.

14 As I said, one of the more significant changes
15 with this notice requirement, and TADA suggested that the
16 rule be slightly amended so that all buyers, including
17 dealers, be advised that what they're buying is salvage or
18 non-repairable, and that the only people exempted from
19 this disclosure requirement would be the Insurance Auto
20 Auctions which staff agrees should be exempt because if
21 you're going into the salvage auction, you know you're
22 buying salvage. So that is the slight change that was
23 suggested last week that staff is asking that you approve
24 that we amend the rule that slight way, along with the
25 other sections that have been published.

1 And again, the comments were very few, mostly
2 dealt with changes in syntax and sentence structure to
3 make them a little easier to read. That was probably the
4 most work I did was one section on flood damaged vehicles.

5 So with that said, are there any questions by
6 any of the board members?

7 MR. WALKER: I move that we adopt the proposed
8 changes.

9 MR. BARNWELL: Second.

10 MS. RYAN: We have a motion by Member Walker
11 and a second by Member Barnwell. Any comments,
12 discussion?

13 (No response.)

14 MS. RYAN: All in favor raise your right hand.

15 (A show of hands.)

16 MS. RYAN: Motion carries unanimously. Thank
17 you.

18 MR. HARBESON: Thank you.

19 MS. RYAN: Item e.

20 MR. ARCHER: Madam Chair, board members, again
21 my name is Jimmy Archer, director of the Motor Carrier
22 Division.

23 For the board's consideration I'm requesting
24 that the board adopt amendments to 43 Administrative Code,
25 Chapter 219 relating to Oversize and Overweight Vehicles

1 and Loads. The proposed amendments were presented to the
2 board at the August 14 board meeting and were published in
3 the *Texas Register* on September 18, 2015.

4 Since the executive summary is so detailed, I
5 will point out some of the more notable amendments to this
6 rule. Amendments include changing the definition of the
7 term "non-divisible load" to be consistent with the
8 federal definition. Texas must comply with certain
9 federal size and weight laws and regulations to receive
10 Federal Highway funding. The rule also updates the
11 requirements of providing evidence of a permit to allow a
12 permit holder to provide an electronic copy of certain
13 permits on a wireless communications device, and adds a
14 new annual over-length permit authorized by Senate Bill
15 662 during the 84th Legislative Session.

16 As of October 2015, DMV received the following
17 responses regarding the proposed amendments: Texas
18 Trucking Association provided a letter in support of the
19 proposed amendments and urged adoption. A written comment
20 from Mr. Ray Cernosek with Cernosek Wrecker at Deer Park
21 Paint and Body stating he didn't see how the overweight
22 and over-length exemptions to Chapter 219 for tow truck
23 hauling vehicles from the scene of an accident or after a
24 breakdown, however, these exemptions are currently
25 included in other statutes, there is no need to repeat the

1 language in this rule. And also we received written
2 requests from TxDOT to modify certain language regarding
3 TxDOT authority for certain permits. DMV agreed to modify
4 the language in response to TxDOT's request. These mostly
5 have to do with routing and restrictions.

6 The proposed amendments create only minimal
7 fiscal implications. If the board votes adoption of this
8 rule, we anticipate it will be published in the *Register*
9 on or about December 4, 2015 and the effective date will
10 be December 10, 2015.

11 I respectfully ask the board to adopt the
12 proposed amendments to Chapter 219 for posting in the
13 *Texas Register*, and I'll be happy to answer any questions.

14 MS. RYAN: Questions?

15 (No response.)

16 MS. RYAN: I'll be happy to entertain a motion.

17 MR. WALKER: I make a motion that we accept the
18 adopted changes to 219 for the Oversize and Overweight
19 changes.

20 MR. RUSH: Second.

21 MS. RYAN: Motion by Member Walker, second by
22 Member Rush. Any discussion?

23 MR. WALKER: Question.

24 MS. RYAN: Yes, sir.

25 MR. WALKER: Mr. Archer, so after we sign this

1 today and my truck driver gets pulled over on the side of
2 the road, I can send an electronic copy of his permit to
3 him and DPS is going to accept that, I do not have to have
4 a hard copy in the truck anymore?

5 MR. ARCHER: Of certain permits. The annual
6 envelope will not work because that is on special security
7 paper. Any other kind of permit you would be able to.

8 MR. WALKER: So no more hard copies, just
9 electronic copies work fine.

10 MR. ARCHER: With the exception of the annual
11 envelope permit. And we will provide notice to law
12 enforcement about that.

13 MR. WALKER: I'll send you any tickets that I
14 get.

15 (General laughter.)

16 MS. RYAN: Any other discussion?

17 (No response.)

18 MS. RYAN: All in favor raise your right hand.

19 (A show of hands.)

20 MS. RYAN: Motion carries. Thank you.

21 Item f.

22 MR. ARCHER: You've still got me. Right?

23 MS. RYAN: Yes, sir.

24 MR. ARCHER: Again, for the board's
25 consideration I'm requesting the board adopt amendments to

1 Administrative Code Chapter 217 related to Registration
2 and Reciprocity Agreements. The proposed amendments to
3 section 217.56 are: they adopt by reference any
4 amendments to the International Registration Plan that
5 will become effective on January 1, 2016; to correct
6 language is inconsistent with the International
7 Registration Plan; and a new definition of a personal
8 vehicle so that it's consistent with IRP definition .391;
9 changes language listing vehicle types with gross weight
10 of 26,000 pounds or less to be consistent with Section
11 1015 of the Texas IRP; and clarifies the title application
12 process by restructuring one sentence.

13 No comments were received regarding the
14 proposed rule during the comment period. Again, if the
15 board votes adoption of this amended rule, it will be
16 published on or about December 4, 2015 and become
17 effective on December 10, 2015.

18 I respectfully ask the board to adopt the
19 proposed amendments to the Chapter 217.

20 MS. RYAN: Any questions?

21 (No response.)

22 MR. SWINDLE: Madam Chairman, I move that we
23 approve the proposed adoption for Section 217 as proposed.

24 MR. TREVIÑO: Second.

25 MS. RYAN: I have a motion by Member Swindle

1 and a second by Member Treviño. Any discussion?

2 (No response.)

3 MS. RYAN: All in favor raise your right hand.

4 (A show of hands.)

5 MS. RYAN: Motion carries unanimously. Thank
6 you very much.

7 We will move to item E.2.a, proposal for rules.
8 This would be David Duncan.

9 MR. DUNCAN: Members, David Duncan, general
10 counsel, again.

11 This is a proposal of a rule that may seem like
12 we're doing belt and suspenders, and to a degree we are.
13 The Advisory Committee Act that I mentioned earlier
14 requires that agencies do rules for each advisory
15 committee that we have. We have traditionally had just a
16 general rule that covered all our advisory committees.
17 What we've decided to do is to break that down by the
18 actual advisory committees and have specific rules for
19 each, and so with this rule we would propose specific rule
20 sections for the Household Goods Rules Advisory Committee
21 and the Motor Vehicle License Advisory Committee. So you
22 just reauthorized the Motor Vehicle License Advisory
23 Committee, and now we're going to have a rule that governs
24 its operations.

25 They're very simple straightforward rules and

1 they just deal with the constitution of the committee and
2 the dates that they exist. And I'm available for any
3 questions.

4 MR. WALKER: So the statute that created the
5 Department of Motor Vehicles required that we have
6 advisory committees.

7 MR. DUNCAN: It only required one, and that was
8 the Rules Advisory Committee, and only if somebody
9 requested it.

10 MR. WALKER: It said that we had to create
11 committees, it said we had to, it's statutorily required.
12 Look at the original bill. And so why would we take and
13 need a rule to govern those committees?

14 MR. DUNCAN: Again, it's that separate statute
15 that says you have to have rules to govern your advisory
16 committees. It's the Advisory Committee Act.

17 MR. WALKER: Where is that rule that says that?

18 MR. DUNCAN: Chapter 2110 of the Government
19 Code. There's a whole chapter of the Government Code that
20 governs advisory committees of state agencies, and it
21 talks about whether you can reimburse the members.

22 MR. WALKER: But that is stated in the statute,
23 though, Aline. In the statute it says when the agency was
24 created that we had to create advisory committees and that
25 the advisory committees would not be compensated per the

1 Act.

2 MS. RYAN: Well, I don't know that the statute
3 says that they wouldn't be compensated.

4 MR. WALKER: I promise, it's in the statute.

5 MS. AUCOIN: For the record, my name is Aline
6 Aucoin.

7 Our governing statute did initially state that
8 we had to have one or more advisory committees and it
9 spelled them out. That statute was amended, and it does
10 actually still currently say we have to have at least one
11 advisory committee, which we do. That's our enabling
12 statute in the Transportation Code.

13 What David Duncan was saying is there's a
14 separate statute in the Government Code, Chapter 2110, I
15 believe the section is 2110.005 says that when an advisory
16 committee is created, the agency shall pass rules that
17 state the purpose of the committee, and that's what these
18 particular rules do, they state the purpose of the
19 committee.

20 That statute also says that an advisory
21 committee only lasts four years unless you state otherwise
22 by rule. Our rule says that the committee is going to
23 last for four years, but it's a nice record keeping
24 documentation for us that we automatically know how long
25 that committee is going to last and when it's going to

1 end.

2 MR. WALKER: So is this a new rule, or is it
3 just we have not been in compliance?

4 MS. AUCOIN: We have not been in compliance.

5 MS. RYAN: So is it fair to say that by posting
6 these and putting these things in place, we're trying to
7 add additional governance processes to our agency to be
8 more administratively -- I think we're trying to add more
9 governance to the way we do things?

10 MR. WALKER: Always. That's what government is
11 about.

12 MS. RYAN: No. Governance, not more
13 government.

14 MS. AUCOIN: That's a true statement, and it
15 also puts us in compliance with Government Code Chapter
16 2110.

17 MR. WALKER: So why have we not caught this in
18 the last six years?

19 MS. AUCOIN: I'm sorry. What was the question?

20 MR. WALKER: Why have we not caught this in the
21 last six years?

22 MR. DUNCAN: Busy with other things? I
23 honestly don't know.

24 MR. WALKER: Too many rules.

25 MR. DUNCAN: Actually, Aline told me about it,

1 it was one of the first things she told me about when I
2 got here, and we decided we would get to it and we did get
3 to it eventually. It's just one of those administrative
4 cleanup things we've been trying to address. We deciding
5 doing a rule review was actually more important than this
6 so we did those first, and I think we're done now.

7 MS. RYAN: Is it fair to say it's part of
8 standing up our agency? Right? It's part of us breaking
9 away from TxDOT, and as we continue to mature as an
10 agency, I believe we will find more and more of these
11 things that make us a stand-alone mature agency to where
12 we become and look like an independent agency that we have
13 more and more of these things in place.

14 I have said often that I am learning that
15 breaking away -- separation of a business from another
16 business is much harder than a merger of a business.
17 These are the types of things I think we start to find.

18 MR. WALKER: When we moved over we adopted
19 TxDOT rules, all of them that applied at that time.

20 MS. RYAN: But you're assuming that everybody
21 looks at things the same way, which is why breaking away
22 from a business is harder than a merger of a business.
23 When you merge a business, you can apply your culture;
24 when you break away, you accept theirs.

25 MR. WALKER: So David, can you give me a

1 summary kind of real quick of what is required of the
2 formation of committees that's required in this rule? And
3 I know you just did.

4 MR. DUNCAN: This doesn't really relate to the
5 formation. You still do the formation as a stand-alone.
6 That's why we did the Motor Vehicle License Advisory
7 Committee earlier. This is rules governing the
8 committees. This is their operations and their dates of
9 existence and those sorts of things, and it's done to
10 comport with our statutes and with 2110 of the Government
11 Code. It gets all of those committees in compliance with
12 that.

13 MR. WALKER: So we're not changing any of the
14 statutory -- like for example, it's the chairman's
15 prerogative to create advisory committees. Is that not
16 correct?

17 MR. DUNCAN: Board committees. That's
18 different.

19 MR. WALKER: No. I think the advisory
20 committees go through the chairman also here.

21 MR. DUNCAN: The board shall establish, the
22 board shall retain or establish advisory committees.
23 Board committees, like the Legislative Committee that
24 Laura did her appointments, that's delegated to the chair.

25 MS. RYAN: Advisory committees are

1 shareholders, they're industry issues.

2 MR. WALKER: So you're requesting that we post
3 these rules for proposal.

4 MR. DUNCAN: For proposal. Yes, sir.

5 MR. WALKER: Okay. I make a motion that we
6 post the rule for the administration and oversight of
7 committees.

8 MS. RYAN: Well, they're advisory committee
9 operations specific to two areas. Correct? Specific to
10 Household Goods Rules Advisory Committee and Motor Vehicle
11 License Advisory Committee.

12 MR. DUNCAN: We have three sections. One is
13 advisory committee operations generally and then there's a
14 section for the Household Goods Rules Advisory Committee
15 and the Motor Vehicle License Advisory Committee.

16 MR. WALKER: Those are just the current
17 existing committees, but you're asking for permission to
18 post a rule for all committees created. Right?

19 MR. DUNCAN: That's the first one, and then one
20 for each.

21 MS. RYAN: Two existing.

22 MR. WALKER: Okay.

23 MR. INGRAM: So Johnny, your motion is to
24 publish the amendment to Section 206.93 and propose new
25 sections 206.94 and 206.95 relating to advisory

1 committees?

2 MR. WALKER: I like Mr. Ingram's proposal.
3 I'll drop my proposal and we'll accept his.

4 MR. BARNWELL: I'll second Mr. Ingram's
5 proposal.

6 MS. RYAN: So we have a motion by Mr. Ingram
7 and a second by Mr. Barnwell. Any discussion?

8 (No response.)

9 MS. RYAN: Seeing no discussion, all in favor
10 raise your right hand.

11 (A show of hands.)

12 MS. RYAN: Motion carries. Thank you.

13 Item b.

14 MS. FLORES: Good afternoon. For the record,
15 Linda Flores, CFO for the Texas Department of Motor
16 Vehicles.

17 I'm here to request the board's approval to
18 post a new section in Chapter 210, Contract Management,
19 with a new title: Enhanced Contract Monitoring Program.
20 This can be found on page 331 of your board briefing
21 document.

22 The new section is proposed to implement Senate
23 Bill 20, that Caroline mentioned this morning, to include
24 a procedure for the department to use in identifying
25 contracts that require enhanced contract or performance

1 monitoring. Senate Bill 20 requires each state agency to
2 establish by rule a procedure to identify each contract
3 that requires enhanced contract or performance monitoring
4 and to submit information on the contract to its governing
5 board.

6 I do not anticipate any fiscal implications.
7 The new section would be published in the *Texas Register*
8 on or before December 4. Comments will be accepted until
9 5:00 p.m. on January 4, 2016. And I'm available to answer
10 any questions.

11 MS. RYAN: Any discussion, questions?

12 MR. INGRAM: I move that we publish the -- is
13 this a modification or new?

14 MS. FLORES: It's a brand new section.

15 MR. INGRAM: A brand new section. Publish the
16 section 210.3 for comment.

17 MR. RUSH: Second.

18 MS. RYAN: Motion by Member Ingram and second
19 by Member Rush. Any discussion?

20 (No response.)

21 MS. RYAN: All in favor raise your right hand.

22 (A show of hands.)

23 MS. RYAN: Motion carries unanimously. Thank
24 you.

25 Move to item c.

1 MR. KUNTZ: Good afternoon, members. For the
2 record, Jeremiah Kuntz, director of Vehicle Titles and
3 Registration. I'll try and move quickly through this as
4 this is our last agenda item.

5 MR. WALKER: Two minutes on that clock back
6 there.

7 MR. KUNTZ: Do I need to slow down? Is there
8 an over/under on this one?

9 MR. BARNWELL: Johnny is going to have some
10 questions for you.

11 (General laughter.)

12 MR. KUNTZ: Before you today are rules for your
13 consideration to be posted for public comment. The rules
14 make various changes to Chapter 217.13 of the
15 Administrative Code relating to motor vehicle titles.

16 The rules address three main areas relating to
17 titling of vehicles. The first is relating to adding a
18 new vehicle class known as autocycles. That was a result
19 of Senate Bill 449 that passed during the last legislative
20 session. That is being added to the definition of a
21 motorcycle; those vehicles will be treated just like
22 motorcycles in the titling and registration process.

23 The other change is related to travel trailers.

24 This is to clarify the requirements for length and width
25 of travel trailers to ensure that there's no confusion

1 between statute and our rule on what is allowed to be
2 titled. This creates the envelope of no wider than eight
3 feet wide or anything longer than forty feet is considered
4 a travel trailer.

5 The last issue that is addressed in these rules
6 is related to assembled vehicles. As we have gone through
7 the process of doing assembled vehicles and applying
8 brands to those vehicle titles as replicas, we have
9 figured out that there's other language that needs to be
10 added to our rules to clarify our processes and procedures
11 relating to those vehicles and how parts may be
12 interchanged between different vehicle classes. This
13 ensures that parts of like vehicles may be interchanged
14 such as the bodies of trucks may be interchanged with one
15 another but you would not be able to mix things such as
16 motorcycles with motor vehicle parts to create a hybrid
17 type vehicle.

18 So these are just clarifying amendments to the
19 existing rules.

20 MR. INGRAM: Madam Chair, I move to go ahead
21 and publish the amendment to Texas Administrative Code,
22 Section 217.3 relating to motor vehicle titles for public
23 comment.

24 MS. RYAN: Motion by Member Ingram. Do we have
25 a second?

1 MR. WALKER: Second.

2 MS. RYAN: We have a second by Member Walker.

3 Any discussion?

4 (No response.)

5 MS. RYAN: Seeing none, all in favor raise your
6 right hand, please.

7 (A show of hands.)

8 MS. RYAN: Motion carries unanimously. Thank
9 you very much.

10 (General talking and laughter.)

11 MS. RYAN: Do I have a motion to adjourn?

12 MS. CARAWAY: So moved.

13 MR. INGRAM: Second.

14 MS. RYAN: All in favor raise your right hand.

15 (A show of hands.)

16 MS. RYAN: Thank you very much for everyone's
17 patience today. Thanks, everybody.

18 (Whereupon, at 2:00 p.m., the meeting was
19 adjourned.)

C E R T I F I C A T E

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2
3 MEETING OF: TxDMV Board
4 LOCATION: Austin, Texas
5 DATE: November 13, 2015

6 I do hereby certify that the foregoing pages,
7 numbers 1 through 181, inclusive, are the true, accurate,
8 and complete transcript prepared from the verbal recording
9 made by electronic recording by Nancy H. King before the
10 Texas Department of Motor Vehicles.
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13
14
15

16 /s/ Nancy H. King 11/27/2015
17 (Transcriber) (Date)
18

19 On the Record Reporting
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