

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Thursday,  
August 17, 2017

Lone Star Room  
Building 1  
4000 Jackson Avenue  
Austin, Texas

BOARD MEMBERS:

Raymond Palacios, Chair  
Blake Ingram, Vice Chair  
Robert "Barney" Barnwell, III  
Luanne Caraway  
Brett Graham  
Kate Hardy  
Gary Painter  
Guillermo "Memo" Treviño  
Johnny Walker

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P R O C E E D I N G S

1  
2 MR. PALACIOS: Good morning, everyone. It's a  
3 great day in Austin, Texas. So happy to see so many  
4 people here on this fine day.

5 My name is Raymond Palacios, and I'm pleased to  
6 open the Board meeting of the Texas Department of Motor  
7 Vehicles. It is exactly 8:00 a.m., and I am now calling  
8 the Board meeting for August 17, 2017 to order. I want to  
9 note for the record that public notice of this meeting,  
10 containing all items on the agenda, was filed with the  
11 Office of Secretary of State on August 9, 2017.

12 Before we begin today's meeting, please place  
13 all cell phones and other communication devices in the  
14 silent mode, and please, as a courtesy to others, do not  
15 carry on side conversations or other activities in the  
16 meeting room.

17 If you wish to address the Board or speak on an  
18 agenda item during today's meeting, please complete a  
19 speaker's sheet at the registration table. Please  
20 identify on the sheet the specific item you are interested  
21 in commenting on and indicate if you wish to appear before  
22 the Board and present your comment, or if you wish only to  
23 have your written comment read into the record. If your  
24 comment does not pertain to a specific agenda item, we  
25 will take your comment during the general public comment

1 portion of the meeting.

2 I would like to note for the record that we  
3 will not be considering agenda item 8, bullet 3 during  
4 today's meeting, however, we will bring this item back to  
5 the Board at a later date.

6 Now I would like to have a roll call. Board  
7 Member Barnwell?

8 MR. BARNWELL: Present.

9 MR. PALACIOS: Board Member Caraway?

10 (No response.)

11 MR. PALACIOS: Board Member Graham?

12 (No response.)

13 MR. PALACIOS: Board Member Hardy?

14 MS. HARDY: Here.

15 MR. PALACIOS: Board Member Ingram?

16 MR. INGRAM: Present.

17 MR. PALACIOS: Board Member Painter?

18 MR. PAINTER: Present.

19 MR. PALACIOS: Board Member Treviño?

20 MR. TREVIÑO: Here.

21 MR. PALACIOS: Board Member Walker?

22 MR. WALKER: Present.

23 MR. PALACIOS: And let the record reflect that  
24 I, Raymond Palacios, am here too. We have a quorum.

25 Also, let the record reflect that Board Members Caraway

1 and Graham are absent today.

2 We will begin today's meeting with agenda item  
3 2, and that is pertaining to our 100 year anniversary of  
4 Texas license plates. In July 1917, the very first  
5 license plate was issued by the State of Texas. In July  
6 2017 this body met to approve a commemorative 100 year  
7 license plate which will be available for one year only  
8 starting September 1. If you are one of the lucky first  
9 100 to order this plate, which is also available for  
10 purchase as a plate you can hang on your wall and not  
11 register to a vehicle, you will receive a 100 sequence as  
12 the first three characters assigned to your plate. This  
13 plate will cost you only \$30.

14 To help celebrate the availability of this  
15 plate and 100 years license plates in Texas, please join  
16 me, members of the Board, TxDMV staff, Texas State  
17 Representative Joe Pickett, current Transportation  
18 Commissioner and the first chair of this Board, Victor  
19 Vandergriff, and TxDOT Executive Director James Bass,  
20 among others, at 2:00 p.m. today in this room for cake,  
21 fun, and a great time, and the opportunity to mingle with  
22 one another.

23 One other auspicious moment to recognize here.  
24 For all the bachelors in Texas, sad times, I hate to say  
25 that there is one less bachelorette in Texas right now.

1       Congratulations to Ms. Whitney Brewster on her marriage.  
2       On behalf of the Board, we wish you all the best and a  
3       lifetime of happiness.    Congratulations.

4                MS. BREWSTER:   Thank you.

5                (Applause.)

6                MR. PALACIOS:   I'll turn it over to Ms.  
7       Brewster.

8                MS. BREWSTER:   Thank you, Mr. Chairman, members  
9       of the Board.

10               I have several things to mention to the Board  
11       and the attendees regarding the performance of our TxDMV  
12       staff, and wanted to recognize them for their hard work.  
13       First, the eLICENSING project was recognized at the Texas  
14       Association of State Systems for Computing and  
15       Communications, or TASSCC, at their annual conference on  
16       August 8 in San Antonio.   eLICENSING received the project  
17       excellence award for high value impact, high value  
18       business impact projects.

19               As a first of it's kind web-based application  
20       developed by the TxDMV, eLICENSING revolutionizes the way  
21       the department interacts with our licensee groups  
22       comprised of tens of thousands of Texans and others from  
23       around the globe.   This system has enabled TxDMV to offer  
24       new digital services to licensees such as the ability to  
25       use electronic signatures and make payments, scout and

1 verify locations via Google Maps, streamline legislative  
2 mandated background checks, and all while drastically  
3 reducing license application processing time.

4           Additionally, eLICENSING eliminates redundant  
5 data entry for both the public and private sectors.  
6 Through the use of forced fields, the system has all but  
7 eliminated the submission of a license application which  
8 formerly would have been returned to the applicant as a  
9 result of information deficiency. I'm happy to say that  
10 that has all but been eliminated by this new system.

11           The award was accepted by Eric Obermier on  
12 behalf of the agency and the project team. So I just want  
13 to congratulate the project team for a job well done. It  
14 was recognized outside of the agency for high business  
15 impact, so this is the award that was received, and just  
16 wanted to share that information with the Board.

17           (Applause.)

18           MS. BREWSTER: The other item that I wanted to  
19 mention, over the weekend of July 21, the AMSIT project  
20 team -- and the AMSIT project is where we're separating  
21 from TxDOT from the information infrastructure side of the  
22 house -- this AMSIT team updated the login security for  
23 the eTAG and webDEALER applications, and this update moved  
24 the TxDMV a huge step closer to completion of the AMSIT  
25 project and full technology separation from TxDOT.

1           I want to congratulate the team. I appreciate  
2 so much the hard work of that team. They moved more than  
3 40,000 user accounts for eTAG and webDEALER to a TxDMV  
4 managed system which was an enormous effort. It increased  
5 the security associated with the systems, while providing  
6 users with new self-service functionality associated with  
7 forgotten user names and passwords. The team worked  
8 literally around the clock for migration to ensure that  
9 all systems were up and available on Monday morning at the  
10 start of business. The TxDMV service desk hours were  
11 extended, additional staff were brought on for the call  
12 center from multiple divisions in the agency, and I just  
13 could not thank this group enough.

14           I'd like to personally thank the Enterprise  
15 Project Management Office, Information Technology  
16 Services, Consumer Relations, and the Motor Vehicles teams  
17 for their tireless efforts that helped accomplish a  
18 successful migration, and for everything that have and  
19 continue to do to assist customers with this transition.

20           MR. PALACIOS: Congratulations.

21           (Applause.)

22           MS. BREWSTER: The Board will hear a little  
23 more about this project later on and where we are. We're  
24 at the eleventh hour of the project, and I won't steal Ms.  
25 Sandberg's thunder, so I'll wait for her to give that

1 update.

2 Chairman Palacios, members of the Board, would  
3 you join me at the front of the dais to recognize some  
4 individual staff?

5 MR. PALACIOS: Certainly.

6 MS. BREWSTER: Thank you.

7 Robert Foster, an investigator in Vehicle  
8 Titles and Registration, was awarded the Lance D. Thomas  
9 Achievement Award at the National Odometer and Title Fraud  
10 Enforcement Association's conference in North Carolina on  
11 June 7. I think it's important for you all to know that  
12 this is the association's most prestigious award. It  
13 recognizes members for noteworthy achievement in odometer  
14 and vehicle fraud cases. Robert is a trusted colleague  
15 and tenacious investigator that fulfills the association's  
16 purpose and our agency's mission on a daily basis.

17 Since 2014 -- I'll give you some fun facts  
18 about Robert -- since 2014, Robert identified over 2,100  
19 cases of title or odometer fraud, reviewed thousands of  
20 suspected transactions, identified 29 cloned and stolen  
21 vehicles, and assisted in the recovery of stolen vehicles  
22 at a combined value of nearly \$320,000. This does not  
23 include the thousands of tax fraud cases he identified,  
24 totaling over a million dollars.

25 We appreciate Robert, we're so proud of Robert

1 and the work that he does, and we're so excited for him to  
2 receive this recognition. Congratulations, Robert, for  
3 receiving this distinguished award. Thank you for your  
4 dedication to your job, the agency, and the State of  
5 Texas.

6 (Applause; pause for presentation and photos.)

7 MS. BREWSTER: Dave Childers, manager in our  
8 Information Technology Services Division was awarded the  
9 outstanding IT Service and Support Award in June at the  
10 Texas Digital Government Summit on June 8, 2017. Dave was  
11 a driving force behind the registration and title system  
12 refactoring project, while leading his team to maintain  
13 the legacy system until project go-live. Dave worked long  
14 hours -- that's an understatement -- long hours alongside  
15 his team to ensure the project was successful and the  
16 citizens of Texas experienced no degradation in service  
17 levels. He worked tirelessly to ensure that. Dave also  
18 shepherded his team through the single sticker and  
19 centralized sticker printing projects, both large projects  
20 as well. Both of these projects provided significant  
21 service improvement to the public. His superior work  
22 ethic inspires loyalty in his team who have had work many  
23 hours of overtime to complete these projects while  
24 providing production support.

25 Thank you so much, Dave, for all of your work,

1 and we're very proud of you and thrilled that you were  
2 able to receive this award.

3 (Applause; pause for presentation and photos.)

4 MS. BREWSTER: I want to welcome the family and  
5 friends of our celebrants who have joined us this morning.  
6 We appreciate the support you have provided over these  
7 years, for sharing your loved ones. We're now going to  
8 move to the state service awards, and I'd like to welcome  
9 Martha Yancey, with the Human Resource Division, to the  
10 podium to announce those service awards.

11 MS. YANCEY: Good morning. My name is Martha  
12 Yancey, Human Resources Division.

13 And we have one employee reaching a state  
14 service milestone of 20 years today, Michael Barraba.  
15 Michael came to work for the DMV on January 1, 2012 as an  
16 information systems analyst. He is vital to the IT  
17 Division's infrastructure services, where he works as a  
18 voice over internet protocol, or VoIP, engineer,  
19 supporting the agency's contact center, VoIP and network  
20 infrastructure. Michael served in the U.S. Army from 1988  
21 to 1994, living in Germany for most of that time. He  
22 moved back to the states in 1996 and began his IT career.  
23 He enjoys spending time with his children, working on old  
24 cars and trucks and riding motorcycles, and being here in  
25 Austin, he also enjoys the live music scene with family

1 and friends.

2 Thank you, Michael.

3 (Applause; pause for presentation and photos.)

4 MS. YANCEY: The following employees also  
5 reached a 20-year state service milestone but were unable  
6 to join us this morning: Sylvia Cantu, VTR, Midland-  
7 Odessa Regional Service Center. That was just one  
8 employee. Then employees who recently retired from the  
9 agency are: Stephanie Early, Enforcement Division, and  
10 Reney Clayton, Vehicle Titles and Registration Division.

11 And now we would also like to recognize Phil  
12 Pettit, who will be retiring from the agency on August 31  
13 with over 36 years of state service.

14 Phil currently serves as the chief investigator  
15 of the motor carrier section of the Enforcement Division.

16 Phil graduated with a bachelor of science degree in  
17 criminal justice from the University of Texas at Arlington  
18 in 1980. In 1981 he was hired by the Texas Railroad  
19 Commission as a rate auditor, and he moved all around  
20 Texas while working for the Railroad Commission until the  
21 Transportation Division of the Railroad Commission was  
22 transferred to the Texas Department of Transportation in  
23 August 1995.

24 Bear with me, I've got a lot to say about Phil.

25 In September 1995, Phil moved to Austin to work in

1 TxDOT's newly formed Motor Carrier Division. During his  
2 tenure at TxDOT, he and his employees underwent a number  
3 of organizational changes, including the transfer of his  
4 enforcement investigators and support staff to the newly  
5 formed Texas Department of Motor Vehicles in November  
6 2009. Between 2009 and 2012, Phil remained employed by  
7 TxDOT in its Motor Carrier Division as manager of the  
8 compliance and enforcement section dealing with  
9 oversize/overweight issues. On January 1, 2012, the  
10 remaining Motor Carrier Division employees were  
11 transferred to the DMV, and the oversize/overweight  
12 investigative staff was incorporated into the Enforcement  
13 Division here at the DMV.

14 Phil leaves the agency as a highly respected  
15 leader. He has served the state well as the subject  
16 matter expert on oversize and overweight permitting  
17 enforcement and motor carrier operations. His passion for  
18 protecting the integrity of our highways and those who  
19 travel on those highways is legendary.

20 We wish Phil and his family the very best in  
21 the future. When you pass him on the highway riding his  
22 bicycle, always at a dangerous speed, please shout out  
23 your thanks for a job very well done, but please, do not  
24 honk.

25 Thank you.

1 (Applause; pause for presentation and photos.)

2 MR. PALACIOS: Congratulations again to  
3 everyone for your accomplishments. The Board and the  
4 agency, we truly appreciate all you've done through the  
5 years.

6 We will now move on to agenda item number 4  
7 which is the approval of the minutes from July 6, 2017.

8 Mr. Duncan.

9 MR. DUNCAN: Thank you, Mr. Chairman. David  
10 Duncan, general counsel.

11 Members, you've not seen minutes approvals on  
12 your Board agendas before, a little bit of explanation.  
13 The meeting to approve the 100 year plate that Chairman  
14 Palacios mentioned earlier was set on relatively short  
15 order. It was a meeting where four members were in Austin  
16 and Member Walker participated by video teleconference.  
17 It was a very short meeting. We didn't have the  
18 opportunity to get our wonderful court reporter here, and  
19 by law, we're required to file either a transcript of a  
20 meeting or minutes, and so we've done some short minutes  
21 from that meeting, it's a single page. And on behalf of  
22 the staff, so we can get those filed, I urge that the  
23 Board adopt those minutes.

24 MR. WALKER: I so move that we accept the  
25 minutes of the previous Board meeting.

1 MR. PAINTER: Second.

2 MR. PALACIOS: Motion by Board Member  
3 Walker, second by Board Member Painter to accept the  
4 minutes. All in favor, please signify by raising your  
5 right hand.

6 (A show of hands.)

7 MR. PALACIOS: Motion passes unanimously.  
8 Thank you.

9 We will now move on. We're going into a short  
10 closed session. It is now 8:20 a.m. on August 17, 2017.  
11 We will go into closed session under Texas Government Code  
12 Section 551.071.

13 For those of you in the audience, I anticipate  
14 being in executive session for approximately 20 minutes,  
15 and we will reconvene in open session after that. With  
16 that, we are recessed from the public meeting and we are  
17 going into executive session.

18 (Whereupon, at 8:20 a.m., the meeting was  
19 recessed, to reconvene this same day, Thursday, August 17,  
20 2017, following conclusion of the executive session.)

21 MR. PALACIOS: It is 8:42 a.m. on August 17,  
22 2017, and the Board of the Texas Department of Motor  
23 Vehicles is now in open session. We want to note that no  
24 action was taken in closed session.

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

1 contested case. Daniel Avitia and Michelle Lingo will now  
2 address agenda item 5, contested case involving World Car  
3 v. Hyundai Motors.

4 Members, this case was thoroughly argued and  
5 debated by the Board in our November 3, 2016 meeting. The  
6 Board adopted an order which was then debated by the  
7 parties in their motions for rehearing, and we ultimately  
8 voted to grant a rehearing. Unless there is a  
9 disagreement at this point, it is my desire, as chair of  
10 the Board, to initially limit deliberation on this case to  
11 only one issue: that is whether we should adopt a  
12 modified order based on our previous decision.

13 Because we will first consider only whether we  
14 should adopt an amended order in that case, I ask that  
15 both parties limit their arguments in this matter to that  
16 issue. If a motion is not made or is not successful, we  
17 can move on to the broader discussion of the case. Based  
18 on this, each side will initially have five minutes to  
19 present their argument on the issue of a possible amended  
20 order.

21 And I guess we have a few people that would  
22 like to make public comment. Mr. Lee Kaplan, attorney for  
23 World Car.

24 MR. KAPLAN: Thank you, Mr. Chairman. The  
25 Board already has our power point, I believe. We're not

1 going to argue anything from the prior hearing, which, as  
2 you pointed out, was thorough.

3 We have submitted a limited order that reflects  
4 the Board's rulings and what it considered relevant from  
5 the prior hearing, and what that order does is gives us  
6 only the relief which the Board granted us. It does not  
7 give us the relief we asked for under other sections of  
8 the statute. To the extent that we have replaced any of  
9 the findings of fact, that's because the ALJ made legal  
10 decisions to disregard relevant facts which the Board  
11 considered material and which were undisputed at the last  
12 hearing.

13 So that's all we have, a simple order. The  
14 Board cannot be a rubber stamp for the ALJ. Just like a  
15 judge in a jury trial, it makes decisions as to what is  
16 legally relevant, the jury finds facts. The only facts we  
17 talked about the last time were undisputed and they were  
18 material. That's what we've done with our proposed order  
19 which we submitted on July 27. So I'll wait to hear  
20 whatever people on the other side have to say and then  
21 respond in rebuttal.

22 Do you have any questions at this time?

23 MR. PALACIOS: Are there any questions for Mr.  
24 Kaplan?

25 (No response.)

1 MR. PALACIOS: Thank you, Mr. Kaplan.

2 We'll now ask Mr. Kevin Young to please come  
3 up.

4 MR. YOUNG: Thank you, Chairman. Good morning.

5 MR. PALACIOS: Good morning. Please identify  
6 who you're with, Mr. Young.

7 MR. YOUNG: I will. Thank you, Your Honor. My  
8 name is Kevin Young. I'm here with my law partner, David  
9 Prichard, with the law firm of Prichard Young in San  
10 Antonio. I'm here on behalf of Hyundai Motor America.  
11 With me from Hyundai Motor America today is Rosemary  
12 McDonald and Mr. Tom Headrick.

13 MR. PALACIOS: Please continue.

14 MR. YOUNG: Thank you, Your Honor -- or Mr.  
15 Chairman. Sorry about that. It's a habit.

16 MR. PALACIOS: Got elevated here.

17 (General laughter.)

18 MR. YOUNG: Given that we have five minutes, I  
19 am not going to walk completely through a power point. We  
20 have handouts which I will give the Board at the  
21 conclusion of my remarks which has some of the exhibits in  
22 there, but in answer to the chairman's question, should  
23 the Board adopt a new order, the answer is yes, the Board  
24 should adopt and sign the order that was proposed to it by  
25 the director, Mr. Avitia, in November of 2016, as prepared

1 and approved by the staff attorneys of the DMV. That  
2 order, in fact, supports the PFD issued by the ALJ. That  
3 is the order that we believe that this Board should enter.

4 And let me tell you why that is and let me tell  
5 you, first of all, that you cannot sign the order that Mr.  
6 Kaplan wants you to sign. I've seen that order, it's been  
7 floating around for a long time. It contains material  
8 changes in the findings of fact. Some of them are couched  
9 as this is a misinterpretation or a misapplication of the  
10 law, but make no mistake about it, there are material  
11 changes of findings of fact. The ALJ has made these  
12 findings of fact, and to enter the proposed order that  
13 they would have you enter requires contortions, and what I  
14 want to emphasize in the next few minutes, actions that  
15 actually this Board is not permitted to take and should  
16 not take according to statute. So for a variety of  
17 reasons, that order that they propose is full of changes  
18 of fact and should not be signed.

19 The order that we believe should be entered is  
20 the one that was already proposed to you in November 2016.

21 It contains very minor changes from the PFD as  
22 recommended by the ALJ, minor changes that the staff  
23 attorneys looked at and they found very technical changes  
24 that needed to be made, and they proposed an order which  
25 encompassed all of those technical changes and asked the

1 Board to approve it. We ask that hate Board sign that  
2 today.

3 And here's why. To do what World Car wants you  
4 to do and to engage in the discussion that was frankly  
5 held in November 2016, this Board engages in a fact-  
6 finding mission. Now, I understand that World Car wants  
7 to couch it in terms of: Well, we're just discussing  
8 misapplication or misinterpretation of the law. But  
9 that's not the case. What World Car wants you to do is  
10 reinterpret the facts that the ALJ already heard without  
11 this Board having the opportunity to see all of the  
12 evidence and see the witnesses and hear everything that  
13 the ALJ heard. World Car asks you to change all that with  
14 very limited information that you have.

15 And the reason that you can't do that, we  
16 believe it's impermissible to do that is because that's  
17 not the way the legislature set this Board up. This Board  
18 is a policy-making board, it has the important job of  
19 making policy all over Texas about the issues that it's  
20 charged to handle. It is not a board that is supposed to  
21 be deciding contested cases on the facts. The Board has  
22 delegated that job of deciding these adjudicated facts,  
23 that is someone, an ALJ, to hear the arguments of the  
24 parties, to hear both sides, to hear all of the things  
25 that Mr. Kaplan has trotted out, to hear all of the things

1 that Hyundai says, to listen to witnesses, to review all  
2 of the evidence, to do everything and then make those  
3 decisions.

4 The Board's job at that point is then to say  
5 did the ALJ follow the rules. And the answer is yes, as  
6 confirmed by the DMV attorneys. Did the ALJ apply the  
7 appropriate law? And the answer is yes, it's cited, it's  
8 applied, fully briefed in the PFD.

9 World Car wants you to now say, well, we want  
10 to reinterpret the facts and we want to say that you  
11 misapplied the law. And as I was preparing for this  
12 today, I came across an article written by a very famous  
13 administrative expert lawyer and judge named Judge Scott  
14 McCown, and he wrote this article which is on point, and  
15 the reason I'm going to read some of it to you today is  
16 because this is an article that was cited by World Car in  
17 their briefing. They're the ones that brought this  
18 article.

19 The article says: When can an agency change  
20 the findings or conclusions of an administrative law  
21 judge? Their article. And in that article, let me just  
22 read two short passages from it and then I'll be  
23 essentially finished and take questions. The judge says  
24 that the ALJ is the one that's supposed to make  
25 adjudicative fact findings. He says: The ALJ is a

1 disinterested hearings officer who will call them as they  
2 are. The ALJ, unlike the agency, has focused entirely on  
3 the proceeding and presumably has heard all of the  
4 evidence. Third, as a part of hearing the evidence, the  
5 ALJ, again unlike the agency, has seen the demeanor of the  
6 witnesses.

7 MR. PALACIOS: Thank you, Mr. Young.

8 Are there any questions for Mr. Young?

9 MR. PAINTER: I've got one. Mr. Kaplan made a  
10 comment a while ago that the facts were undisputed. Do  
11 you have an answer for that?

12 MR. YOUNG: That's absolutely false. We  
13 maintained that in November. The facts are absolutely  
14 disputed and have been all the way along, and some of the  
15 handouts that I will present and give this Board to look  
16 at puts some of these things in context. Mr. Kaplan  
17 continues to say they're undisputed. That's just wrong.  
18 The ALJ heard this case for five days, listened to all the  
19 evidence, reviewed all the documents. It's not undisputed  
20 at all.

21 So to answer your question, Mr. Painter, no,  
22 the facts are not undisputed. No matter how many times he  
23 says that, they are disputed and they always have been.

24 MR. PAINTER: Thank you.

25 MR. PALACIOS: Mr. Young, I do have a question.

1       You made a comment regarding our responsibilities in  
2       contrast to the ALJ, and I think you said something to the  
3       effect that it is the ALJ's responsibility to discern  
4       facts and not this Board's responsibility. Are you saying  
5       then that this Board should accept all information  
6       presented to us by an ALJ as fact and accept everything at  
7       face value?

8               MR. WALKER: As undisputed.

9               MR. PALACIOS: Exactly.

10              MR. YOUNG: I'm sorry. What was that?

11              MR. PALACIOS: As undisputed.

12              MR. WALKER: As undisputed.

13              MR. YOUNG: Well, first of all, they're not  
14       undisputed, that's first of all. But secondly, to answer  
15       your question directly, I think the best way I could  
16       answer that is to read exactly what Judge McCown says  
17       because this is Hyundai's argument all along. Judge  
18       McCown says when the board is considering whether to  
19       disturb the ALJ's findings of fact or conclusions of law  
20       in this kind of proceeding under this particular  
21       statute -- this paper is that specific, talking about the  
22       very statute that you're considering today, here's what he  
23       says: If you want to disturb the fact findings of the ALJ  
24       "give up." This is a decision the agency doesn't get to  
25       make. This is a bitter pill to swallow, but if it's truly

1 an adjudicative fact, then it's just one case. Do not  
2 cheat by attempting to create a fictitious policy reason.

3 The agency is not empowered to change the finding simply  
4 because the agency would have reached a different  
5 decision.

6 That's how Judge McCown said it and that's the  
7 position that Hyundai believes is the accurate position.  
8 Even if you would feel differently if you were the judge  
9 or the trier of the facts, even if you would take things  
10 differently, it's not the agency's position to do that,  
11 not in this case, not in this situation.

12 Can I answer any other questions?

13 MR. PALACIOS: Thank you, Mr. Young.

14 MR. YOUNG: How do you prefer that I do the  
15 handouts? Should I do them right now or wait till after  
16 Mr. Kaplan is finished? What is your preference?

17 MR. PALACIOS: I believe Mr. Kaplan is already  
18 finished, unless there are any further questions.

19 Yes, please.

20 MR. WALKER: So I have a question.

21 MR. PALACIOS: Yes.

22 MR. WALKER: It's my understanding that the  
23 Board made a determination that if there were going to be  
24 handouts that they were going to be given to the Board  
25 prior to this meeting so that we could review those so

1 that we don't have to spend our time up here reading 20-  
2 page documents about cases before the Board. We can't  
3 intelligently make decisions with somebody handing out a  
4 20-page document to us and say, hey, read it now and make  
5 a determination, that we would review these prior to any  
6 hearings.

7 MR. PALACIOS: That was the process that was  
8 discussed.

9 Mr. Duncan, would you like to comment on that?

10 MR. DUNCAN: I did request that all the parties  
11 three weeks before, and I sent those materials on, and I  
12 believe -- I'm not exactly sure what's the handout  
13 exactly.

14 MR. YOUNG: The handouts are exactly what we  
15 filed on July 27.

16 MR. WALKER: And we have that, we don't need  
17 them again.

18 MR. DUNCAN: It's in their board books. It's  
19 all in their materials, it's been provided.

20 MR. PALACIOS: We've had an opportunity to  
21 review the materials, Mr. Young.

22 MR. YOUNG: Thank you.

23 MR. PALACIOS: Mr. Kaplan, I'm sorry, you had a  
24 few minutes left.

25 MR. KAPLAN: The point we've made from the

1 beginning, at the last hearing and now we're hearing an  
2 attempt to re-argue that, is that the ALJ's legal  
3 decisions to disregard material facts, and that's why in  
4 our proposed order some of the fact-findings are revised,  
5 but very limited fashion.

6 Let me give you an example. To say that World  
7 Car turned down allocations is a fact, undisputed, but the  
8 rest of the undisputed facts which are material are that  
9 Red McCombs turned down three times as many cars as World  
10 Car did and Red McCombs walked away from an entire  
11 franchise, it had three and went down to two. Those are  
12 facts which were disregarded, not even discussed by the  
13 ALJ. Everything we talked about the last time, Mr. Young  
14 admitted was undisputed, and in all the briefings -- and  
15 I've read every bit of it, including again this week -- no  
16 one has ever said that any fact that we've represented as  
17 undisputed is untrue or misrepresented to the Board.

18 So that's the reason that some of the fact-  
19 findings are revised in our proposed order that we  
20 submitted July 27. If we do what they recommend, the  
21 Board's a rubber stamp and it gets to let the ALJ decide  
22 what is unreasonable discrimination. The legislature gave  
23 the Board the responsibility. The difference between this  
24 and a jury trial, as I say, is in a jury trial the judge  
25 instructs the jury on what is relevant, here the ALJ made

1 decisions that material undisputed facts just didn't  
2 matter to her. It's clear from our prior discussion that  
3 those are relevant.

4 Now, the order we've prepared only enters a  
5 ruling of discrimination, unreasonable discrimination  
6 under 2301.068(2). We think, for example, a finding of  
7 failure to act in good faith and fair dealing is  
8 consistent with what the Board held, but our order that we  
9 presented to the Board for consideration reflects only  
10 what the Board ruled way back in November. And while we  
11 think the Board's current order could be sustained, in  
12 view of all the arguments they've made, the efforts  
13 they've made to throw doubt on what the Board did, we've  
14 provided the limited order that reflects exactly what the  
15 Board said in the last hearing. We think this order  
16 reflects it. It doesn't overreach, it's only what you  
17 ruled. Things we wanted you to rule and you didn't rule,  
18 things that you rejected that we argued are reflected by  
19 the order that you rejected some of our other findings.  
20 We've given you the order that if this goes to some other  
21 place, it will be upheld.

22 If there are any questions, I'm here to answer  
23 them. Thank you for your time.

24 MR. PALACIOS: Thank you, Mr. Kaplan.

25 Are there any further questions of either of

1 the two parties, Mr. Young or Mr. Kaplan, from the Board

2 (No response.)

3 MR. PALACIOS: Hearing none, I will entertain a  
4 motion.

5 MR. WALKER: Mr. Chairman, I'd like to make a  
6 motion. Since I made the original motion on the original  
7 case back in November, I'd like to amend that motion. I  
8 move that the Board amend the PFD by changing the  
9 following findings of facts and conclusions of law because  
10 the administrative law judge misapplied applicable law,  
11 specifically Texas Occupation Code, Section 2301.468, made  
12 a technical error in the findings of facts: Number one,  
13 add necessary findings of facts regarding the dates of the  
14 complaint filing and the renewal of the parties'  
15 agreement; number two, amend findings of fact number 30,  
16 add an additional finding of fact to reflect that Hyundai  
17 discriminated unreasonably between franchisees in the sale  
18 of motor vehicles owned by Hyundai; three, modify finding  
19 of fact number 52 to reflect that Hyundai's sales  
20 efficiency requirements were unreasonable; number four,  
21 amend findings of fact number 53 to state that the  
22 discretionary allocations made by Hyundai were unfair due  
23 to the disparity in allocations made among different  
24 dealers in the market; number five, modify conclusions of  
25 law number 3 to correct the citation for the Texas

1 Administrative Procedure Act; six, modify conclusion of  
2 law 6 to correct the citation to the correct version of  
3 the law; number seven, modify conclusions of law 8 to  
4 state that Hyundai's discretionary vehicle allocations are  
5 unreasonably discriminatory and correct the typographical  
6 error in the citation; eight, modify conclusions of law  
7 number 9 to conclude that World Car met the burden of  
8 proof to show that Hyundai violated its good duty and  
9 faith of fair dealing through the allocations of sales  
10 efficiency.

11 The final order should reflect that world Car  
12 prevails on its protest of Hyundai's actions and reject  
13 any remaining exceptions or objections of the parties.

14 MR. BARNWELL: Second.

15 MR. PALACIOS: Motion by Board Member Walker,  
16 second by Board Member Barnwell. All in favor of the  
17 motion please signify by raising your right hand.

18 (A show of hands: Board Members Barnwell,  
19 Ingram, Palacios, Treviño, Walker.)

20 MR. PALACIOS: I'd like to reflect in favor  
21 Board Member Walker, Board Member Treviño, Board Member  
22 Ingram, Board Member Barnwell.

23 All opposed, signify by raising your right  
24 hand.

25 (A show of hands: Board Members Hardy and

1 Painter.)

2 MR. PALACIOS: For the record as well, Board  
3 Member Palacios is also in favor of the motion.

4 Against are Board Member Hardy and Board Member  
5 Painter. Motion carries.

6 Let's move on now to agenda item number 6.  
7 Daniel Avitia and Michelle Lingo will now address agenda  
8 item 6, contested case involving Atkission Chrysler v.  
9 Fiat Chrysler America.

10 Members, similar to the last matter, this is a  
11 case that the Board has seen before. The Board heard  
12 lengthy presentations by the parties and deliberated for  
13 some time. The Board remanded this to SOAH for  
14 consideration of some specific issues in the case and SOAH  
15 has produced a supplemental proposal for decision, or PFD.  
16 If there is no disagreement, I believe we should start in  
17 this case by considering only the supplemental PFD, and  
18 furthermore, only the items that for which this issue was  
19 remanded back to the ALJ in the PFD, and it's potential  
20 effect on the possible outcome of this case. If a motion  
21 is not made or is not successful, we can move on to a  
22 broader discussion of the case.

23 Based on this, each side will have seven  
24 minutes to present their argument.

25 We have people representing each party. I

1 would like to ask that the attorney for Fiat Chrysler  
2 please come forward.

3 Good morning. Please identify yourself.

4 MR. CLOUATRE: Good morning. My name is Mark  
5 Clouatre, and I'm here on behalf of FCA US. Along with me  
6 is Katherine Trust who is an in-house counsel with FCA, as  
7 well as Brian Freeman who's the network dealer development  
8 manager from the southwest business center in Dallas. We  
9 are pleased to be before you and thank you for the  
10 opportunity.

11 We understand we're here, as Chair Palacios  
12 just said, to discuss the remand order and SOAH's order on  
13 that remand. Of course, we'll be pleased to discuss any  
14 issue as you see fit.

15 The Board, during its January hearing a few  
16 months ago, wanted to learn more from the ALJs on the  
17 issue of contributions to the dealership by the protestant  
18 in this case, the dealer, and specifically, contributions  
19 to the dealership from the dealer principal on an  
20 individual basis. During the hearing, the principal  
21 testified that he made contributions personally to the  
22 dealership over the last nine years, and those funds were  
23 used by the dealership to buy down the floor plan on  
24 vehicles he had purchased from the manufacturer. They  
25 were also used to distribute monies to other dealerships

1 for the same purpose that were owned by Mr. Atkission.  
2 Importantly, they were not used for day-to-day operations  
3 such as advertising, to pay salaries or to pay rent.

4 The payments on these contributions were made  
5 on a daily basis, and as such, the substance of these  
6 loans were short-term in nature, not long-term obligations  
7 of the dealership. Additionally, there was no expectation  
8 by anyone, whether Mr. Atkission, the CFO, the bookkeeper  
9 at the dealership, that Mr. Atkission would be repaid the  
10 principal on those contributions. Instead, he received a  
11 4 percent return on those annually.

12 Now, because of some questions that were raised  
13 by the Board, I'd like to discuss those two issues with  
14 you. The first is the legal nature of the dealer's  
15 financial contribution. In their supplemental decision,  
16 the ALJs reiterated that the contributions could not be  
17 considered an investment of the dealer, which was the good  
18 cause factor. Here under the statute and by the language  
19 of the statute, the dealer is defined as that person or  
20 entity that holds the general distinguishing number issued  
21 by this Board, and as the transcript at 928 and 29 found,  
22 it was the dealership, not Mr. Atkission that held that  
23 number. Thus, the ALJs concluded it couldn't be an  
24 investment of the dealer as defined by the statute.

25 The ALJs also found the contributions weren't

1 obligations of the dealership for the same reason. The  
2 contributions were shown essentially as short-term  
3 subordinated debt on the financial statement for the  
4 entire existence of the dealership until three months  
5 before the hearing when they were recast after the  
6 retention of an expert witness to testify. And as I  
7 mentioned before, these were not long-term investments  
8 functionally, there was no expectation of repayment and  
9 they weren't used as long-term investments.

10 On the second question, whether the  
11 contributions support termination on --

12 MR. PALACIOS: Mr. Clouatre, I'm sorry, your  
13 time is up.

14 MR. BARNWELL: No, I don't think so.

15 MR. PALACIOS: It's not? Okay. I apologize.

16 MR. CLOUATRE: No problem.

17 MR. PALACIOS: Please continue.

18 MR. CLOUATRE: You bet. On the net working  
19 capital and net worth, the dealership reported them as  
20 short-term liabilities which during the life of the  
21 dealership prior to the hearing would have subtracted  
22 those amounts out of working capital and net worth. When  
23 they were recast shortly before the hearing as long-term  
24 investments, they would have taken the short-term  
25 liabilities out of that equation so they then didn't

1 impact the net working capital and net worth, thus that's  
2 why there was an increase in both amounts, so the ALJs did  
3 find that those contributions did not change functionally,  
4 so they were appropriately accounted for by the dealership  
5 initially.

6 And I'll stop there and save the rest for  
7 rebuttal.

8 MR. PALACIOS: Thank you. Are there any  
9 questions for Mr. Clouatre?

10 (No response.)

11 MR. PALACIOS: I have a few questions for you  
12 because I'm still confused. Is Mr. Atkission the dealer?

13 MR. CLOUATRE: He is the dealer principal and  
14 he is the individual who signed the dealer agreement on  
15 behalf of an entity. Yes.

16 MR. PALACIOS: So you see him as a dealer?  
17 Because I'm still trying to clarify in my head who the  
18 dealer is. According to I guess what you said and what  
19 the ALJ said, he's not the dealer, Atkission Chrysler is  
20 the dealer. Is that your interpretation as well?

21 MR. CLOUATRE: The legal entity is the name on  
22 not only the dealer agreement but also the general  
23 distinguishing number which is licensed by the Board.

24 MR. PALACIOS: Okay. So help me out here. Who  
25 is the dealer, is it Mr. Atkission or is it the

1 organization?

2 MR. CLOUATRE: The organization.

3 MR. PALACIOS: So what is Mr. Atkission?

4 MR. CLOUATRE: He is the dealer principal.

5 Like any corporation, corporations act through their  
6 individuals. For purposes of legal responsibility,  
7 however, assuming those responsibilities are carried out  
8 in the normal course and within the confines of the law,  
9 then it is the entity that is the business. In fact,  
10 under the statute, a person under this particular  
11 provision that you're referring to can be an individual  
12 but a corporation or limited liability company as well.

13 MR. PALACIOS: To your knowledge, are most  
14 dealerships organized as sole proprietorships, or are they  
15 LLCs, Sub Ss, C corporations, what are they?

16 MR. CLOUATRE: That's an interesting question.

17 It wasn't part of the record. But just in general  
18 discourse, I believe that there's been a move away from  
19 sole proprietorships, however, many folks still operate  
20 them as sole proprietors.

21 MR. PALACIOS: Because I'm trying to understand  
22 if Mr. Atkission, I guess, is not a dealer, I'm trying to  
23 struggle with how would you make an investment in a  
24 dealership unless you're a sole proprietor. I mean, how  
25 is that possible?

1           MR. CLOUATRE: Well, dealerships routinely plow  
2 profits and earnings back into their operations. That's  
3 how they generate the working capital traditionally on a  
4 daily basis. And remember that these contributions were  
5 not used for day-to-day operations, they were used -- a  
6 business decision was made by Mr. Atkission to place his  
7 contribution in the dealership rather than a bank to get  
8 that 4 percent return. They weren't used to buy  
9 advertising, to pay the service techs, to pay the rent on  
10 the facility.

11           MR. PALACIOS: Okay. I'm still hazy on the  
12 first point but since you raised this point about day-to-  
13 day operations and you stated that he used it to pay down  
14 floor plan, is that not a day-to-day operation?

15           MR. CLOUATRE: A floor plan is a liability of  
16 the dealership, and he already had floor plan loans on the  
17 vehicles, and so there was a decision made instead of  
18 paying 4 percent to the floor plan lender, I'm going to  
19 instead pay down that fund amount and essentially pay  
20 myself the 4 percent. And so again, it doesn't go to the  
21 day-to-day operations.

22           MR. PALACIOS: You're saying purchasing  
23 vehicles is not a day-to-day operation.

24           MR. CLOUATRE: It is but it's functionally how  
25 those funds are used. Floor plan liabilities are

1 traditionally not considered working capital.

2 MR. PALACIOS: How is that so?

3 MR. CLOUATRE: I guess it's the function of  
4 what that short-term liability is. His function of the  
5 contribution was not to invest in the dealership, instead  
6 it was to invest -- instead of putting it in a bank, he  
7 put it to the floor plan which instead of getting 4  
8 percent in a CD or a savings account at a bank, it was  
9 simply paid by the dealership. Again, I've got to go back  
10 to the fact that it wasn't used as a traditional working  
11 cap contribution would be by the dealership plowing its  
12 earnings back into the dealership.

13 MR. PALACIOS: Just one more question because  
14 I'm still baffled here. Is inventory a short-term asset?

15 MR. CLOUATRE: Yes, because hopefully -- well,  
16 it depends on how quickly that asset is turned by the  
17 dealer.

18 MR. PALACIOS: Automobile inventory, is that a  
19 short-term asset on a financial statement?

20 MR. CLOUATRE: I think it depends on how the  
21 dealership turns those units.

22 MR. PALACIOS: Well, ideally you want to turn  
23 it within a year, that's the goal. So by definition then,  
24 if he's paying down floor plan, would that not be a  
25 working capital contribution?

1 MR. CLOUATRE: Because he already had a floor  
2 plan loan, this is just a substitution of capital in for  
3 that. Functionally there's no difference. I would concur  
4 and agree with you if the capital contributions were done  
5 to make emergency payments to pay the techs or to pay a TV  
6 account.

7 MR. PALACIOS: So to be clear, in your  
8 definition, purchasing inventory, paying down floor plan  
9 is not a day-to-day operation, but paying down advertising  
10 and other things, in your definition, that would suffice.

11 MR. CLOUATRE: I think there's a slight  
12 difference. Certainly a short-term liability as a floor  
13 plan loan can be a short-term liability. The way that  
14 these funds were used functionally from an accounting  
15 purpose were not to do that, it was simply to substitute  
16 funds out to get the 4 percent return personally.

17 MR. INGRAM: So you're essentially saying he  
18 substituted the debt.

19 MR. CLOUATRE: Correct.

20 MR. INGRAM: If he had made the money instead  
21 as a contribution to paid-in capital of the entity, that  
22 would have been acceptable.

23 MR. CLOUATRE: Except that would take it out of  
24 the working capital calculation which is short-term assets  
25 minus short-term liabilities if indeed it was going into a

1 long-term liability account.

2 MR. PALACIOS: I'm confused. You just said it  
3 was not a working capital contribution, now you're saying  
4 it would have taken it out.

5 MR. CLOUATRE: But I think Mr. Ingram's  
6 question was a little bit different, and I apologize if I  
7 misunderstood. If the contribution was going into a  
8 retained capital account for purposes of being retained in  
9 the dealership for whatever purpose --

10 MR. INGRAM: That would increase cash, though.

11 MR. CLOUATRE: Yes, but again, it depends how  
12 that cash would be used. Again, none of that was part of  
13 the record.

14 MR. INGRAM: This is all hypothetical for me.  
15 I understand this is not what happened, I'm not saying  
16 this is what happened, I'm mentally working through it  
17 with Raymond. I guess if I'm thinking if the money had  
18 been put in as paid-in capital, then there's cash and then  
19 the cash was used then to pay down expenses and  
20 liabilities, and therefore, you're good.

21 MR. CLOUATRE: Totally different situation.  
22 And again, back to the functional use of how those funds  
23 are used. And I apologize, Mr. Ingram, I thought it was  
24 just to be housed in the dealership for a 4 percent  
25 interest-earning vehicle. But if those funds are

1 deposited in such a way and then used for daily  
2 operations, I would agree with you.

3 MR. PALACIOS: I just have one last question.  
4 Again, these funds have been referred to as Cecil Money  
5 which I guess is cash, so I assume the transaction is  
6 something Mr. Atkission would write a check to his  
7 dealership that was put in a cash account and then a  
8 liability is set up. I guess what you're saying is that  
9 those funds were used exclusively to pay down floor plan.  
10 How do you know that those funds weren't being used for  
11 anything else?

12 MR. CLOUATRE: The funds were also being used  
13 if another one of the Atkission dealerships needed funds  
14 to buy down their floor plan, a check would be written  
15 from the Orange dealership to whatever the other  
16 dealership was for that purpose, so there was a twofold  
17 purpose. And that was the testimony of the bookkeeper as  
18 well as the DCFO as to how those funds were used.

19 MR. WALKER: Can you back up one second? You  
20 lost me. You're mixing dealerships up, I think. He's  
21 taking out of one dealership the loan and taking that  
22 money back to another dealership?

23 MR. CLOUATRE: That's correct. And I will tell  
24 you the accounting on that was very difficult to decipher.

25 MR. WALKER: That's confusing me.

1 MR. CLOUATRE: Mr. Atkission would write a  
2 check to the dealership, it would be put in short-term  
3 notes.

4 MR. WALKER: Which dealership?

5 MR. CLOUATRE: Into the Orange dealership. T he  
6 Orange dealership would book it as a short-term note  
7 payable. That note payable would be used to buy down  
8 floor plan at the Orange dealership, and on occasion we  
9 started noticing checks written to Atkission Toyota,  
10 Atkission Dealership ABC.

11 MR. WALKER: From the Chrysler dealership?

12 MR. CLOUATRE: From the Orange dealership. So  
13 we said what were those for.

14 MR. WALKER: But they're two different legal  
15 entities?

16 MR. CLOUATRE: Correct. So that's further  
17 evidence that was presented that this money wasn't used  
18 for the day-to-day operations of the Orange store,  
19 instead, it was going to the other stores for floor plan  
20 liabilities, and that's the testimony in the record.

21 MR. WALKER: Is there a reason why you'd do it  
22 this way other than do a capital infusion? I mean, was  
23 there an IRS reason?

24 MR. CLOUATRE: To bring up the IRS, the  
25 dealership reported the net worth in net working capital

1 as they reported to Chrysler for eight years the same way,  
2 so I can't answer that question, Mr. Walker.

3 MR. WALKER: Does each entity file its own  
4 income tax return?

5 MR. CLOUATRE: I can't answer that, that wasn't  
6 in the record.

7 MR. BARNWELL: Does Mr. Atkission own 100  
8 percent of this LLC?

9 MR. CLOUATRE: I believe he does.

10 MR. BARNWELL: So it's a disregarded entity.

11 MR. CLOUATRE: Actually, Mr. Barnwell, I am not  
12 sure if this is set up as an LLC. That might be better  
13 left to my colleague Mr. Crocker.

14 MR. BARNWELL: It says it's an LLC, Cecil  
15 Atkission Orange, LLC, d/b/a Cecil Atkission. So if it is  
16 in fact a d/b/a, he was financing this and his other  
17 dealerships as a convenient way for him to get money from  
18 one dealership to another without making capital  
19 contributions, calling it a loan, he was actually paid  
20 interest on it, and he was using this money to pay down  
21 floor plan. Who is the floor plan with? It wasn't  
22 Chrysler Credit or whatever you call it nowadays?

23 MR. CLOUATRE: At the time of the hearing it  
24 was Allied Bank, I think.

25 MR. BARNWELL: So from time to time he would

1 pay down that floor plan. Why was he having to pay down  
2 the floor plan? Was he selling cars out of trust?

3 MR. CLOUATRE: There was no evidence of that.  
4 It was simply a business decision by Mr. Atkission. He  
5 wanted to house his founds at the dealership.

6 MR. BARNWELL: So he was basically eliminating  
7 Allied's, or whomever, floor plan loans in increments.

8 MR. CLOUATRE: He would buy it down to the  
9 minimal amount. Apparently there's some amount of floor  
10 plan required to maintain some type of insurance, so he  
11 wouldn't buy it all the way down but he'd buy it down, I  
12 think it was down to a \$5,000 level.

13 MR. BARNWELL: So he put a million dollars in  
14 and he pay down half a million -- this is totally  
15 hypothetical -- on floor plan reduction, and then the  
16 other say two or \$300,000, or grab a number that you like,  
17 would go to Atkission Subaru, or whatever, and were those  
18 loans paid back?

19 MR. CLOUATRE: No. The testimony was there was  
20 no expectation of repayment on that principal

21 MR. BARNWELL: From those other dealerships?

22 MR. CLOUATRE: Correct. Instead, the interest  
23 was just being paid by the Orange dealership.

24 MR. BARNWELL: So the other dealerships never  
25 paid anything back?

1 MR. CLOUATRE: That's my understanding. That  
2 was the evidence in the record that there was no  
3 expectation.

4 MR. BARNWELL: All right. So we don't know  
5 absolutely, but from what you do know, that's your  
6 assumption that they were never paid back.

7 MR. CLOUATRE: There was clear testimony from  
8 Mr. Atkission, the CFO, and the bookkeeper that there was  
9 no expectation of principal repayment.

10 MR. BARNWELL: From Subaru to -- I don't know  
11 if he owns a Subaru dealership or not -- whatever.

12 MR. CLOUATRE: From anyone.

13 MR. BARNWELL: So when Orange loaned to  
14 wherever, Houston, let's say -- and I'm not saying there  
15 was one in Houston -- but when Orange loans to the  
16 Atkission dealership in Houston, the Houston dealership  
17 never repaid that loan.

18 MR. CLOUATRE: Correct. And it really wasn't a  
19 loan, it was just a check coming in from Mr. Atkission to  
20 the Orange store and then a check from the Orange store to  
21 Toyota store.

22 MR. BARNWELL: Well, I suppose we could  
23 classify it in a number of different ways, and you don't  
24 know how the other stores classified that. How did the  
25 Orange store classify that transfer of funds?

1 MR. CLOUATRE: You know, that's a good  
2 question. I assume it was just a buy-down of that short-  
3 term note payable account.

4 MR. BARNWELL: I don't understand that.

5 MR. CLOUATRE: We did not get into the record  
6 on that.

7 MR. BARNWELL: But what you found was that from  
8 time to time the Orange store would write checks for  
9 undisclosed reasons to the other dealerships.

10 MR. CLOUATRE: Correct.

11 MR. BARNWELL: And this was money that Mr.  
12 Atkission had put into the dealership, so basically he was  
13 moving the money around as he saw fit.

14 MR. CLOUATRE: Correct.

15 MR. BARNWELL: Nothing necessarily wrong with  
16 that.

17 MR. CLOUATRE: But for purposes of this  
18 analysis -- agreed, FCA is not making a comment on  
19 proprieties or improprieties at all, all we're saying for  
20 purposes of this analysis, for purposes of net working  
21 capital and net worth of this dealership, it shouldn't be  
22 considered.

23 MR. BARNWELL: With regard to Mr. Palacios's  
24 issues, he's concerned, I'm concerned, I think we're all a  
25 little concerned that we're defining dealer too narrowly.

1 Now, when Mr. Atkission started Atkission, whatever it  
2 is, Chrysler or Atkission Orange, when he started that, he  
3 owned was it 23 percent, and then over a period of time he  
4 acquired the remaining outstanding equity interest in the  
5 company?

6 MR. CLOUATRE: I believe he was the sole owner  
7 from day one in 2008.

8 MR. BARNWELL: I'll bet you a dollar that's  
9 different. But in any event, he owned the whole thing at  
10 some point in time.

11 MR. CLOUATRE: Correct.

12 MR. BARNWELL: And so owning the whole thing,  
13 once you own 100 percent of it, then it becomes a  
14 disregarded entity for tax purposes and it goes on your  
15 Schedule C of your tax return, your 1040. And I'm subject  
16 to be corrected on that because I went to LSU and we have  
17 certain issues. So if that's the case, then are we  
18 defining dealer too narrowly, and why do you define it so  
19 narrowly? Is it to accomplish your purposes of  
20 terminating the dealership?

21 MR. CLOUATRE: Mr. Barnwell, that's the way the  
22 statute defines it. And I understand the frustration and  
23 the concerns expressed, I do, but that's the decision for  
24 this case, the decision for this case is within that  
25 statutory rubric. And I understand the point that you're

1 making. And I'll be honest with you, this statute is not  
2 dissimilar to statutes in other states, the way that  
3 dealers is defined and the way that it's applied.

4 MR. BARNWELL: How long has Mr. Atkission been  
5 a car dealer?

6 MR. CLOUATRE: The evidence in the record for  
7 this dealership, 2008.

8 MR. BARNWELL: And before that, do you have any  
9 idea?

10 MR. CLOUATRE: For some time. I would leave  
11 that to Mr. Crocker as well.

12 MR. BARNWELL: Does he own multiple  
13 dealerships?

14 MR. CLOUATRE: He does.

15 MR. BARNWELL: So he has some expertise in the  
16 operation of auto dealerships and some familiarity with  
17 the rules that FCA has. Does he have any other Chrysler  
18 dealerships?

19 MR. CLOUATRE: He does.

20 MR. BARNWELL: Are they being terminated?

21 MR. CLOUATRE: No, sir.

22 MR. WALKER: Do they move cash in and you the  
23 same way this does?

24 MR. CLOUATRE: Mr. Walker, we did not obtain  
25 any of the ledgers or accounting records of the other

1 stores.

2 MR. BARNWELL: Thank you. I appreciate your  
3 answers.

4 MR. PALACIOS: Are there any other questions  
5 for Mr. Clouatre?

6 (No response.)

7 MR. PALACIOS: If not, thank you very much for  
8 your time. We truly appreciate it.

9 MR. CLOUATRE: You may see me back for  
10 rebuttal. I think I have three minutes.

11 MR. PALACIOS: Three minutes? Okay. Great.

12 I'd like to now call up Mr. Bill Crocker. Good  
13 morning, sir.

14 MR. CROCKER: Good morning. Mr. Chairman,  
15 members of the Board, I'm Bill Crocker. I'm here  
16 representing Cecil Atkission, the fellow sitting over  
17 there.

18 We're here again, back again, just as the  
19 chairman predicted in January when this case was remanded  
20 to SOAH. Some of us spent time and money preparing for an  
21 additional hearing that never happened. Instead, all we  
22 got was a supplemental proposal for decision and a written  
23 lecture on not understanding how right the ALJs were the  
24 first time they wrote a PFD on this cases. I have just a  
25 few points to cover and am committed to not running out of

1 time.

2 I pointed out Cecil Atkission to you. You  
3 heard the last time we were here that he has been in the  
4 car business since 1975, he's been a franchised dealer  
5 since 1982, that he currently owns and operates 19  
6 franchises in seven Texas dealerships, that his franchises  
7 include the Chrysler, Dodge, Jeep and Ram lines, the  
8 Chevrolet, Buick and Cadillac lines, the Ford and Lincoln  
9 lines, the Toyota line, and every one of them he accounts  
10 for his contribution to those dealerships exactly as he  
11 has accounted for his contributions to this dealership.

12 As directed, I will restrict my comments to the  
13 supplemental PFD. Six pages into that eleven-page  
14 document the ALJs finally began to deal with the question  
15 you wanted them to answer: What is the legal status of  
16 the dealer's financial contributions to the business?  
17 They immediately demonstrated that they never understood  
18 and still don't understand that an investment of \$6.25  
19 million simply cannot be ignored. They first said that it  
20 could not be a debt, then they said it was not an  
21 investment. Presumably they meant not equity.

22 At the bottom of page 7 they identified Cecil  
23 Atkission's \$6.25 million of financial contributions to  
24 the business as merely a capital contribution with no  
25 terms of repayment. On the next page they said that

1 regardless of how it is classified, it was plainly not  
2 enough to prevent the business from being a poorly  
3 operated and money losing enterprise. You know very well  
4 that is not the issue in this matter. The issue is  
5 whether or not the manufacturer has proven the specific  
6 grounds set out in the notice of termination and proven  
7 that those grounds constitute good cause for termination.

8           There were only three specific grounds set out  
9 in the notice of termination, and they were: insufficient  
10 sales, insufficient working capital, insufficient net  
11 worth. In the supplemental PFD, the ALJs had no problem  
12 wrongly reconfirming their original conclusions that the  
13 dealership had insufficient working capital and  
14 insufficient net worth. They continued to simply ignore  
15 the \$6.25 million that Cecil Atkission had pumped into the  
16 dealership to keep it alive. One statement on page 9 of  
17 the supplemental PFD summarizes their view. This is what  
18 they wrote: "It is critical to keep in mind that the  
19 dealership's financial statements have never ignored or  
20 omitted the Cecil Money; instead, the statements have  
21 accounted for the Cecil Money in a way that does not count  
22 toward the company's working capital or net worth  
23 figures."

24           The record is absolutely clear, the dealership  
25 at all times had sufficient capital to meet FCA's working

1 capital and net worth requirements. It had been that way  
2 for the last seven years since the dealership had been  
3 losing money, he started lending that dealership money,  
4 according to the record, when he bought it, and that's the  
5 way he put additional capital into the dealership. You  
6 can't torture that into a short-term debt. Cecil just  
7 didn't have it recorded on what the ALJs considered the  
8 right line of the dealership's financial statement. The  
9 decision of the ALJs regarding the legal status of Cecil's  
10 contribution was error and must not be allowed to stand as  
11 a precedent.

12 FCA could not and did not prove two of its  
13 three specific grounds for termination. The only specific  
14 ground for termination FCA proved is inadequate sales.  
15 That point was conceded from the start. Nobody knows that  
16 better than Cecil Atkission, haven't sold enough cars, but  
17 that specific ground for termination by itself, under the  
18 clear and unmistakable terms of the Texas Occupations  
19 Code, cannot constitute good cause for termination.

20 What about the seven things which must be  
21 considered as a part of all existing circumstances? The  
22 ALJs discussed them at length in the supplemental PFD, but  
23 they are not additional grounds for termination as the  
24 ALJs treated them. They are facts which must be  
25 considered in determining whether the specific grounds set

1 out in the notice of termination constitute good cause for  
2 termination. They are included in the statute to preclude  
3 termination on any specified grounds without consideration  
4 of all of the existing circumstances of the dealership.  
5 They cannot be used as additional grounds as the ALJs used  
6 them in this case. That was error and must not be allowed  
7 to stand as a precedent.

8 You must also specifically rule that the Code's  
9 statutory stay provision does not prohibit a dealer from  
10 applying to a manufacturer for approval to sell or  
11 relocate a dealership after receipt of a notice of  
12 termination. The decision of the ALJs on that issue was  
13 error and must not be allowed to stand as a precedent.

14 How should you rule in this case? Let me  
15 suggest to you that FCA has not shown good cause for the  
16 termination of Cecil Atkission's dealership. The ALJs  
17 made technical errors in findings of fact and did not  
18 properly apply or interpret applicable law as required by  
19 statute. You must reject the PFDs, both of them, and not  
20 allow termination. Cecil Atkission does not deserve to be  
21 terminated, he deserves a medal for keeping the lights on  
22 and the doors open to sell Chrysler products in this place  
23 that has not had a profit since the Highway Department  
24 rebuilt Interstate 10 in front of it.

25 Whatever course you take, I would urge you to

1 simply vote to accept or reject the PFD today, state for  
2 the record the reasons for your vote, then direct counsel  
3 for whoever you decide should prevail to draft a final  
4 order incorporating those reasons, require that it be  
5 approved as to form by counsel for the other party, then  
6 it should be submitted to your general counsel for his  
7 approval and submission to the chairman for his approval  
8 and signature. I would urge you not to burden your staff  
9 with that, put the lawyers to work. And I'll be happy to  
10 respond to any questions you might have.

11 MR. WALKER: Excuse me, sir. Let me ask a  
12 question of Daniel.

13 Daniel, when we remanded this back to SOAH, did  
14 it go back to the same ALJ or did a different ALJ look at  
15 the findings?

16 MR. AVITIA: Mr. Walker, it went back to the  
17 same ALJ.

18 MR. WALKER: So the same person that made the  
19 first determination.

20 MR. AVITIA: There were two ALJs, it went back  
21 to the same two.

22 MR. WALKER: So we didn't get an unbiased  
23 opinion when we went back? I mean, is it proper that we  
24 should have maybe asked for a different ALJ's  
25 determination, or do we have any leeway to do that?

1 MR. DUNCAN: If I may. David Duncan, general  
2 counsel.

3 The assignment of resources by SOAH, they're a  
4 separate state agency, we have no authority to tell them  
5 who to assign or ask for specific expertise.

6 MR. WALKER: Well, if the Board gets some  
7 decision that we don't think maybe is correct, that maybe  
8 we want to review back to SOAH and we send it back and it  
9 goes back to the same person, we really don't get a  
10 different opinion, we're just getting the same opinion  
11 again, and I'm not sure that that's really fair.

12 MR. DUNCAN: Again, it's up to SOAH what  
13 resources to assign and I have had conversations with  
14 their management and their general counsel on specific  
15 cases, but it's always with a view towards in the future  
16 we think it would be ideal if this. Again, we just have  
17 no ability to tell them what to do with their resources.

18 MR. WALKER: Thank you.

19 MR. PALACIOS: Mr. Crocker, I have a couple of  
20 questions for you. Does Mr. Atkission own other Chrysler  
21 dealerships?

22 MR. CROCKER: Yes, sir, two others.

23 MR. PALACIOS: Okay. And I assume he owns  
24 multiple dealerships throughout the state of Texas. Is  
25 that correct?

1 MR. CROCKER: He does. Is he an LLC in all  
2 these other dealerships?

3 MR. CROCKER: I believe that to be the case.  
4 He's absolutely a sole owner LLC in the Orange Chrysler  
5 dealership.

6 MR. PALACIOS: So to your knowledge, is he in  
7 any violation of any, I guess, manufacturer's requirements  
8 that would interpret him as I think the word was a dealer  
9 principal? In other words, this issue of investing in the  
10 dealerships unless the funds come from within the  
11 dealership, is what I'm understanding, it's not considered  
12 a viable investment. To your knowledge, is he in  
13 violation with any other manufacturers, or for that  
14 matter, with Chrysler in the other two dealerships for  
15 personally putting funds into these operations?

16 MR. CROCKER: No, sir. His bookkeeping system  
17 is a GM statement. He translates the GM figures into the  
18 Chrysler statement to report them to Chrysler, the same  
19 thing with Toyota. Chrysler didn't have a line for loans  
20 by owners. They have a place that you have to go into  
21 their manual to find out what their instructions are. But  
22 he was simply accounting for it as a loan to the  
23 dealership and it was a long-term capital loan for  
24 whatever use the dealership needed. The accounts work the  
25 same way in all his dealerships. Nobody has ever taken

1 issue with that except Chrysler, or FCA now.

2 MR. PALACIOS: Yes, Board Member Walker.

3 MR. WALKER: Have the parties in this case sat  
4 down and tried to mediate their differences, or is just  
5 everybody too dug in to get to a common ground here?

6 MR. CROCKER: We have tried earnestly, both  
7 parties have, to mediate the difference. That is  
8 confidential, I would be delighted to tell you the story  
9 but I can't, but we came away with no resolution. Part of  
10 the problem is the dealership needs to be relocated and  
11 how it's relocated and where it's relocated has been an  
12 issue. That's why I mentioned that we tried to make  
13 application for relocation while this was going on, and  
14 wrongly, I think, the statutory stay that is put in place  
15 when you file a protest of a proposed termination was  
16 interpreted to apply to the dealer trying to make  
17 application to relocate. We have a statutory stay,  
18 according to the interpretation that was made, and we  
19 couldn't even apply to relocate it while this was going  
20 on. That is the wrong interpretation of that department  
21 statute.

22 MR. WALKER: So that request to move, I guess  
23 it would come to the DMV?

24 MR. CROCKER: No, sir.

25 MR. WALKER: You have to go to Chrysler?

1 MR. CROCKER: You have to ask permission from  
2 Chrysler first before you even have authority to come to  
3 the DMV to request relocation.

4 MR. WALKER: Because don't we have dealer  
5 territories that we establish based on parameters and  
6 mileages and so forth?

7 MR. CROCKER: Yes, sir. And those were not  
8 issues. The simple question was were we statutorily  
9 prohibited from asking Chrysler if we could relocate, and  
10 the answer was you are statutorily prohibited. I think  
11 that is a horrible misconstruction of the statute.

12 MR. WALKER: Chrysler told you that?

13 MR. CROCKER: No. That was this agency and  
14 SOAH. We were barred from asking the question, asking  
15 permission.

16 MR. BARNWELL: Had you tried to relocate the  
17 dealership before the notice of termination?

18 MR. CROCKER: Yes, sir. There had been a  
19 couple or three efforts and they were in concept, not the  
20 detailed requirements that Chrysler would make, and  
21 frankly, they weren't good proposals. Chrysler was  
22 wanting a better proposal and a better proposal now exists  
23 but we can't ask them for it.

24 MR. BARNWELL: Do you have a full and complete  
25 proposal now?

1 MR. CROCKER: Yes, sir.

2 MR. BARNWELL: Why wasn't that done before?

3 MR. CROCKER: For two reasons. Cecil  
4 Atkission, when he bought this dealership, thought he had  
5 to have a five-year lease in order for Chrysler to  
6 approve -- and all of this is in the record -- for  
7 Chrysler to approve his purchase, and he had to wait for  
8 the lease to run out and then there was a number of  
9 difficulties with the owners of additional property. He  
10 wanted to move it adjacent to his Toyota dealership which  
11 is also in Orange. There were a number of difficulties,  
12 first with the city and then with the owner of the  
13 additional property that he needed to properly site the  
14 Chrysler dealership there. Those were resolved but not  
15 until after the notice of termination was received.

16 MR. BARNWELL: How many different grounds did  
17 FCA allege for the reasons for the termination?

18 MR. CROCKER: Only three, and they were in the  
19 materials that we submitted for your attention.

20 MR. BARNWELL: It looked like their letter had  
21 seven or eight different things.

22 MR. CROCKER: Well, that Chrysler did, two  
23 things. Number one, if you look at the letter, it's very  
24 clear there are only three grounds: lack of sales, lack  
25 of working capital, and lack of net worth. The other

1 grounds that they cited there were contributing factors  
2 to, not separate grounds for termination but separate  
3 factors contributing to the lack of sales. It's clear  
4 from the context of the letter, it's even clear from the  
5 way they put their headings on the paragraphs, only three  
6 grounds.

7 MR. BARNWELL: Was this notice of termination,  
8 especially with respect to the lack of working capital,  
9 was this a surprise? Had there been conversations or  
10 letters or any notice that, hey, we don't think you're in  
11 compliance with your dealer agreement here, you working  
12 capital is simply inadequate?

13 MR. CROCKER: I believe it's fair to say that  
14 part was a surprise. It was a surprise to me when I saw  
15 what the facts were on the financial statement.

16 MR. BARNWELL: There's nothing in the record  
17 indicating there was eve any conversations or notices that  
18 the dealership was in jeopardy of being terminated due to  
19 a lack of working capital.

20 MR. CROCKER: That's correct. And he has two  
21 other Chrysler dealerships, all accounted for the same  
22 way. They have since sent him a letter about one of his  
23 dealerships saying the way the Board ruled on the way you  
24 set up your financial statement, now we're going to take  
25 the position that you don't qualify in the other

1 dealership either.

2 MS. HARDY: So just piggybacking on your  
3 comments, Member Barnwell, so there was no formal process  
4 six months, twelve months, eighteen months, two years out  
5 of notice of performance issues in any of the areas that  
6 they're attributing to the termination clause and followup  
7 with that? No notice of cure?

8 MR. CROCKER: There were cure letters sent, but  
9 I honestly cannot recall whether or not they mentioned  
10 lack of capital, but they did highlight lack of sales, and  
11 that was valid. In spite of not having a dealership  
12 there, Chrysler was selling 113 percent of their market  
13 share in that market, so it wasn't that Chrysler was  
14 losing sales, the dealership is the only person that was  
15 suffering.

16 MS. HARDY: And just another question on SOAH.  
17 How long was this case deliberated?

18 MR. CROCKER: It was about two years.

19 MS. HARDY: And then I heard there were two  
20 judges, or ALJs involved?

21 MR. CROCKER: That's correct.

22 MS. HARDY: Is that normal?

23 MR. CROCKER: Yes, ma'am.

24 MS. HARDY: Having two ALJs?

25 MR. DUNCAN: Two ALJs is not unheard of but

1 it's not really, really common either. Most cases have  
2 one judge.

3 MR. CROCKER: It has become the norm for  
4 contested cases from the DMV, two judges.

5 MS. HARDY: Thank you.

6 MR. BARNWELL: Why does Chrysler and other  
7 manufacturers have these working capital requirements?  
8 Why should they care? Is it because you're not able to  
9 advertise correctly, you're not able to hire people,  
10 you're not able to put up signs and things of that sort?

11 MR. CROCKER: Exactly. I think it's fair to  
12 say that an under-capitalized dealership cannot perform  
13 effectively, and it's a fair inquiry as to whether or not  
14 the dealership is adequately capitalized. We don't  
15 contest that.

16 MR. BARNWELL: The dealership had access to  
17 Cecil Money -- which I think is a great name, and I wish I  
18 could get a hold of some of that Cecil Money myself -- but  
19 it had access to the Cecil Money so was it spending money  
20 on advertising, was it spending money on signage?

21 MR. CROCKER: Sure.

22 MR. BARNWELL: What about the bag over the sign  
23 for seven years, what's the deal with that?

24 MR. CROCKER: Well, that sign was damaged in a  
25 hurricane. There was a dispute over whether or not the

1 company that put it up could maintain it or would maintain  
2 it or whatever.

3 MR. BARNWELL: And so for seven years you had a  
4 bag over a sign for your dealership?

5 MR. CROCKER: Well, it's more than a bag.

6 MR. BARNWELL: I understand what it is.

7 MR. CROCKER: It's kind of a sailcloth thing,  
8 it's not just a plastic bag that somebody put over the  
9 sign.

10 MR. BARNWELL: What about television, newspaper  
11 and radio advertising?

12 MR. CROCKER: They have done all of that.

13 MR. BARNWELL: Relative to the other  
14 dealerships, they're on a par with them?

15 MR. CROCKER: As far as I know, yes, sir.

16 MR. BARNWELL: Okay.

17 MR. CROCKER: The dealership was more than  
18 adequately capitalized.

19 MR. BARNWELL: Well, it can be more than  
20 adequately capitalized, and I'm not going to argue that  
21 point because I'm no accountant, but how you spend the  
22 money is something else again. I could have all the  
23 working capital in the world, if I chose not to spend it,  
24 then it's of very little use to the dealership.

25 MR. CROCKER: You couldn't find that pattern in

1 that dealership. If it were going to be that way, it  
2 would be in all his dealerships, and he's been very  
3 successful.

4 MR. BARNWELL: This one does appear to be an  
5 outlier.

6 MR. CROCKER: It is an outlier. It is a mess  
7 because of the highway circumstance in front of it.  
8 Instead of a grade level highway, they built a wall in  
9 front of the dealership and it has needed to be moved ever  
10 since.

11 MR. BARNWELL: I understand, but we really  
12 can't get into business practices or methods or plans that  
13 the dealer may have.

14 MR. CROCKER: I agree.

15 MR. BARNWELL: We're kind of limited here to  
16 the facts of the record. And I'm sure everybody has got  
17 ideas, and perhaps Mr. Atkission does too, about how he  
18 might do things differently, but Elvis has left the  
19 building on this deal.

20 MR. CROCKER: Well, it was ruled that Elvis had  
21 left the building. I'm not sure Elvis had really left the  
22 building because we thought we should be entitled to an  
23 opportunity to relocate it.

24 MR. BARNWELL: Well, I understand your position  
25 on that. Having been issued a termination basically

1 you're walking dead, so why would you go through the  
2 relocation issue when you're already not fogging a mirror.

3 MR. CROCKER: You're not dead, number one. You  
4 still have a franchise, you still have an operating  
5 dealership.

6 MR. BARNWELL: But there's a step to take to  
7 get there. I understand what you're saying and I can't  
8 really disagree with you or agree with you, I see both  
9 sides of that issue, but the case law or the ruling from  
10 SOAH was for the stay. Is that not correct? Is that in  
11 the statute?

12 MR. CROCKER: Say that again.

13 MR. BARNWELL: The stay. In other words, it's  
14 a standstill at that point.

15 MR. CROCKER: Exactly. And I think that was  
16 misapplied. That should only be applied when the rights  
17 of another party are threatened. Nobody is threatening  
18 anybody's right at that point in time.

19 MR. BARNWELL: That would be for you to argue  
20 in another forum.

21 MR. CROCKER: I think it's your forum also. I  
22 hope this Board will not go on record as supporting that  
23 construction of the statute because I think it's  
24 fundamentally wrong.

25 MR. INGRAM: I have a question for Mr. Duncan,

1 please. So the question is we had this case, we have this  
2 one issue, we remanded it back to SOAH for this one issue,  
3 now the case is back. So in essence, the case is not  
4 about the one issue, it's about the entire all seven  
5 factors that we have to look at. Right? Because I mean,  
6 in the end we have just those seven things that we looked  
7 at. Is that a fair assessment, we're looking at the case  
8 for the first time and we have the seven factors that we  
9 need to look at?

10 MR. DUNCAN: David Duncan, general counsel.

11 The way the Occupations Code is worded, it's  
12 all existing circumstances, including, and then it lists  
13 the seven factors. So the Board has broad authority but  
14 is constrained to look at at least the seven.

15 MR. INGRAM: So I just want to make sure that  
16 that's where we're at in this process is examining those  
17 seven factors.

18 MR. PALACIOS: And I'll add again, including  
19 all existing circumstances which includes these seven  
20 factors. So it's broader.

21 MR. INGRAM: Sure.

22 MR. CROCKER: If I may, your decision has to be  
23 made, though, on the three noticed reasons for  
24 termination. Those are not independent grounds for  
25 termination, those seven factors, they're just additional

1 things that must be considered, but your decision is based  
2 on the three noticed bases or reasons for the proposed  
3 termination.

4 MR. INGRAM: Well, then I guess I'd ask for  
5 clarification because I understand that there's three that  
6 was on the notice but based on what the chairman just said  
7 and all additional information which would include the  
8 seven factors.

9 MR. DUNCAN: That's correct.

10 MR. CROCKER: Not quite, if I may disagree  
11 politely. Those seven factors are to be considered in  
12 determining whether or not the three noticed reasons for  
13 termination have been proven.

14 MR. INGRAM: If I could argue that point and  
15 just say that I felt like that some of the seven factors  
16 that were not part of the notice needed to be in part of  
17 the ALJ's decision. I've just thrown it back to the ALJ  
18 and then have it come right back and it's still the same  
19 seven factors?

20 MR. CROCKER: It's still the same three reasons  
21 for termination. They reiterated their analysis as they  
22 apply to those three factors, but the three factors -- and  
23 all the seven things really focus on lack of sales, and  
24 there's no question, the dealership did not sell enough  
25 automobiles or cars, vehicles, but you've got one factor

1       there by itself which statutorily cannot support  
2       termination, you've got the two other bases for  
3       termination they couldn't prove because we had plenty of  
4       money in the dealership.

5               MR. INGRAM:   Okay.

6               MR. PALACIOS:  Are there any other questions  
7       for Mr. Crocker?

8               MR. WALKER:  One more.  So it says the dealer  
9       is no obligation to repay the principal, and I think you  
10      said this but let me clarify this, there is no written  
11      documentation of the cash contribution as being a loan,  
12      it's just recorded on the books, I guess, as being a loan.

13      It says there's never been a principal reduction also, so  
14      it's just, hey, here's the money and pay me back when you  
15      want to.

16              MR. CROCKER:  Well, it's like I'm transferring  
17      from one pocket to the other, and it's really not true  
18      that none of that money was ever paid back.  Early, early  
19      in this dealership some of it was paid back but never all  
20      of it, and no payments since the dealership has been  
21      losing money, he's just been pumping additional money into  
22      it.  His only documentation, for all practical purposes,  
23      was the entry on the books.

24              MR. INGRAM:  But to be clear, not the principal  
25      but the interest has been paid.  Correct?

1 MR. CROCKER: Sure, absolutely.

2 MR. INGRAM: So interest is being paid on it.

3 MR. CROCKER: And understand his mentality was  
4 I'm going to pay myself what I would be paying Allied Bank  
5 or GMAC or whoever is floor planning the cars for the  
6 money I put into the dealership.

7 MR. WALKER: I don't criticize that, that's  
8 just good business practice maybe. I own multiple  
9 companies but generally we try to take and create  
10 paperwork that kind of tracks those kind of things so we  
11 can keep it straight. And there's not any paper trail  
12 other than to enter it on the books.

13 MR. CROCKER: Well, that's not true. We  
14 offered some documentation, I drew up a note form, but the  
15 ALJs decided that was too late and too little, and  
16 therefore, they were going to disregard it. So for  
17 purposes of this hearing, there is no other documentation  
18 other than the way it's recorded on the books.

19 MR. WALKER: When you go to this net worth  
20 issue, and this is a limited liability partnership --

21 MR. CROCKER: He's not a partnership, he's a  
22 limited liability company, sole owner, a disregarded  
23 entity, as Mr. Barnwell indicated earlier.

24 MR. BARNWELL: Is it elected for taxes as a  
25 partnership?

1 MR. CROCKER: I think not. I think I  
2 understand that it is reported.

3 MR. BARNWELL: It's a disregarded entity.

4 MR. WALKER: So if it's a limited liability  
5 corporation -- not a corporation but a limited  
6 liability --

7 MR. CROCKER: Company.

8 MR. WALKER: -- company, all of the income and  
9 expenditures transfer to him personally under the IRS  
10 Code.

11 MR. CROCKER: The bottom line transfers to him  
12 personally.

13 MR. WALKER: Yes, and he has to pay taxes on  
14 the earned income or gets the deductions on the  
15 expenditure that are outside that.

16 MR. CROCKER: Yes, sir.

17 MR. WALKER: So the net worth is what it is.  
18 If the dealership is not selling cars and not making  
19 profits, then there's obviously a net capital worth there,  
20 and so it is what it is, but Mr. Atkission's personal net  
21 worth has never been entered into any of the findings. Is  
22 that fact?

23 MR. CROCKER: That is correct. The only net  
24 worth figure that is appropriate is what the bottom line  
25 is on that entity.

1 MR. WALKER: Just the entity.

2 MR. CROCKER: And it has never been under-  
3 capitalized, just put on the wrong line and ultimately  
4 absolutely disregarded.

5 MR. WALKER: So what is the net worth of the  
6 dealership?

7 MR. CROCKER: At the time of the hearing it was  
8 approximately \$2 million.

9 MR. WALKER: There was a net worth of \$2  
10 million?

11 MR. CROCKER: Yes, sir, between a million and a  
12 half and two million, and I'm recalling that figure from  
13 memory but it's in that range.

14 MR. WALKER: And that is one of the arguments  
15 of Chrysler/FCA is that there's not enough net worth.  
16 What would be acceptable?

17 MR. CROCKER: They have a standard. The  
18 publish a standard for this dealership and the dealership  
19 was over it if you understand that the Cecil Money counts  
20 as part of the net worth, he just had it on the wrong  
21 line.

22 MR. WALKER: So had the Cecil Money been  
23 included into a capital infusion, that wouldn't change the  
24 net worth, though -- well, maybe it would.

25 MR. CROCKER: It would change the mentality of

1 the people who looked at the financial statement and they  
2 say, oh, now it's on the right line, we see that there's  
3 net worth there.

4 MR. WALKER: Thank you.

5 MR. PALACIOS: Are there any other questions  
6 for Mr. Crocker?

7 (No response.)

8 MR. PALACIOS: Thank you, Mr. Crocker. I  
9 believe you have some time reserved.

10 MR. CROCKER: NO, I don't have any time  
11 reserved. Mr. Clouatre has time reserved if he wants it.

12 MR. PALACIOS: Okay. Thank you.

13 MR. CLOUATRE: Hello again. A couple of  
14 points. First on the remand back to SOAH, it was to the  
15 same two judges, there was no motion to recuse, there was  
16 no motion to permit discovery, there was no motion to  
17 permit evidence. Second point --

18 MR. WALKER: You said it was not the same two  
19 SOAH judges?

20 MR. CLOUATRE: It was the same two SOAH ALJs.

21 Second point is -- Mr. Barnwell, you asked a  
22 question if it had been tried to work out -- it had been  
23 tried to work out before and after the notice. For years  
24 FCA had counseled the dealership, had provided written  
25 notice of issues. There was testimony from the area

1 manager who explicitly said what he had counseled the  
2 dealership on, including the net worth issue.

3 Number three, there was no request to relocate,  
4 there still is not request to relocate. It's a concept,  
5 and as Mr. Crocker alluded, that's not a formal proposal.

6 So whether there's a stay or not, there's never been a  
7 request to relocate. Even though the dealer committed in  
8 2008 to review that principle of becoming a dealer, there  
9 still is no formal request to relocate.

10 Number four, I can't recall who said it, but  
11 this is one of seven factors, and I respectfully disagree  
12 with Mr. Crocker's derivation of what the termination  
13 notice said because there were other provisions in there,  
14 there was signage, there was advertising, there was  
15 personnel, there was facility referenced in that notice of  
16 termination. And then I also respectfully disagree with  
17 his position, and as the ALJs did find, that you consider  
18 the notice of termination plus the seven factors. It's  
19 not confined to the notice, it's all existing  
20 circumstances.

21 So I think this is one factor of seven. There  
22 were six that were found in favor of good cause, one was  
23 neutral. One of the factors, whether the dealer was  
24 complying with contractual requirements, there were eight  
25 bases of breach found, so this but a fraction of that.

1           And I think what I'd like to conclude with is  
2 if there ever was a case for termination in Texas, this is  
3 it, and if there is not good cause to terminate, what  
4 policy is that sending to the existing dealer body of all  
5 brands who are doing a good job? Does that suggest that  
6 performance doesn't matter, that compliance with contracts  
7 don't matter, that there be no reason to excel and treat  
8 customers well, to retain those customers, to make them  
9 loyal customers to return? And for customers, what  
10 message are we sending: that it's okay to drive 40 to 80  
11 miles to buy a vehicle, that it's okay to have outdated,  
12 antiquated facilities, that it's okay to have poor  
13 service, that it's okay to have high prices? I don't  
14 think that's the policy message that you want to send.

15           MR. PALACIOS: Thank you, Mr. Cloutre.

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

17           MR. CLOUATRE: Yes, sir.

18           MR. BARNWELL: Mr. Crocker said that Chrysler  
19 had not suffered any harm because you were at 119 percent  
20 of your expected market penetration in Orange. How can  
21 you be there and this dealership have such poor sales?

22           MR. CLOUATRE: The answer to that is it's on  
23 the backs of the customer. So in the local market, the  
24 market was 119 percent of state average which means that  
25 the customers that were registering vehicles in this

1 market were driving outside of the market to buy their  
2 vehicles.

3 MR. BARNWELL: So you've got Orange. How many  
4 Chrysler dealers are in Orange?

5 MR. CLOUATRE: One.

6 MR. BARNWELL: One, and that's Atkission.

7 MR. CLOUATRE: Correct.

8 MR. BARNWELL: And you have other dealers in  
9 outlying towns that aren't considered the Orange area,  
10 district, whatever it's called?

11 MR. CROCKER: Yes. And I call it a pie, so  
12 Orange has its own pie, there's Port Arthur, there's  
13 Beaumont, there's other neighboring adjacent sales  
14 localities or pies, and those customers were going to  
15 those other dealerships, driving their cars back to Orange  
16 and registering them in Orange, which reflects a purchase  
17 by the dealership. And frankly, that is part of the  
18 policy reason for customers, that Orange customers are  
19 entitled to an Orange dealership that's efficient, that's  
20 updated, that operates in a consumer-friendly and  
21 advantageous manner.

22 And also to suggest that Chrysler is okay  
23 because they're 119 percent of the market does away with  
24 the fact that Chrysler might be able to do better in that  
25 market and frankly should be entitled to try. It's not a

1 fixed pie, as I think any dealer would admit. They're  
2 constantly trying to improve market share.

3 MR. WALKER: Obviously we all know who the  
4 Golden Triangle is over at Port Arthur, Orange. The big  
5 gorilla over there in the Golden Triangle is Beaumont,  
6 you've got Beaumont, Port Arthur, Orange, Nederland. So  
7 in the Triangle, in a little city here does Mr. Atkission  
8 own the Chrysler dealership in Beaumont and in Port  
9 Arthur?

10 MR. CLOUATRE: No. They're all owned by  
11 different dealers. And I will say Silsbee, who is another  
12 adjacent town, tells its vehicles into Orange.

13 MR. WALKER: There's one in Silsbee also?

14 MR. CLOUATRE: They're all about -- and I don't  
15 want to bastardize the record -- 20 to 40 to 60 miles  
16 away, one way.

17 MR. PALACIOS: Are there any other questions  
18 for Mr. Clouatre?

19 (No response.)

20 MR. PALACIOS: Thank you very much for your  
21 time, Mr. Clouatre. Appreciate it.

22 MR. CLOUATRE: Thank you.

23 MR. PALACIOS: Hearing no questions, I will  
24 entertain a motion.

25 MR. WALKER: Don't look at me.

1 MR. PALACIOS: I would like to call a recess  
2 with Mr. Duncan, and I would estimate that we will be out  
3 for about fifteen minutes.

4 MS. BREWSTER: This is a recess, not an  
5 executive session.

6 MR. PALACIOS: It's a recess.

7 (Whereupon, at 10:04 a.m., a brief recess was  
8 taken.)

9 MR. PALACIOS: Thank you, everyone, for your  
10 patience. I apologize for the delay. I know I said it  
11 would be fifteen minutes, we've gone quite past that. It  
12 is 10:55 a.m.

13 MR. DUNCAN: Probably should recognize that  
14 Member Walker is out of the room. I apologize.

15 MR. PALACIOS: Yes, Member Walker, he's back.

16 We will reconvene. This is a very, very  
17 important matter, and as such, we need to devote all the  
18 time necessary to resolve this matter.

19 MR. BARNWELL: Mr. Chairman, I've got a motion  
20 I'd like to make.

21 MR. PALACIOS: Yes.

22 MR. BARNWELL: In regard to the MVD Docket  
23 Number 15-0015.LIC, Cecil Atkission Orange, LLC, I'd like  
24 to make a motion that we adopt the ALJs' as set forth in  
25 the PFD before us today. Period.

1 MR. WALKER: I'll second.

2 MR. PALACIOS: A motion by Member Barnwell and  
3 a second by Member Walker. I will, I guess, open this up  
4 for discussion. I must say we heard this case back in  
5 January, it was remanded back to the ALJs for  
6 clarification by Board Member Graham on a couple of  
7 matters, issues regarding the investment in a dealership  
8 and the nature of that investment, the nature of so-called  
9 Cecil Money that amounted to \$6.25 million. There were  
10 two Board members at the time that voted against remanding  
11 that back to the ALJ.

12 My concern, I believe I used statements to the  
13 effect that this was one of the most egregious  
14 misunderstandings of basic accounting principles. There  
15 was some hope when the clarification came back from the  
16 ALJs that there would be some clarification. Not to my  
17 surprise but to my disappointment what was unclear is now  
18 completely -- the ALJs have just, from my perspective, dug  
19 themselves into a deeper hole.

20 We start with the issue of what is a dealer.  
21 The ALJ clearly states in their PFD that a dealer is not  
22 Mr. Atkission, and therefore, since Mr. Atkission is not a  
23 dealer, he could have invested a billion dollars, it  
24 doesn't matter because he is not a dealer. The dealer is  
25 Atkission Chrysler. If we accept that interpretation,

1 that narrow interpretation of what a dealer is, we are  
2 throwing everything we know in Texas regarding franchisees  
3 upside down. Because what the ALJs are stating now is  
4 unless you're a sole proprietor, there's no way you can  
5 invest in a dealership because the dealer is the  
6 dealership in some convoluted logic. Perhaps by reading  
7 the true definition of statute, that's what that means,  
8 but common everyday practice, we all know the dealer is  
9 the person that owns the dealership, the person on  
10 paragraph three, the person that invests in that  
11 dealership.

12 So to start off with, the ALJs say it doesn't  
13 matter how much money he put in because he is not the  
14 dealer, therefore, the dealer did not invest in itself.  
15 And again, I'm still not clear as to how in the world you  
16 would invest in yourself if you're an abstract entity.

17 The other point the ALJs try to make is even if  
18 we somehow recognize the \$6.25 million, even if we were to  
19 recognize it, they go out of the way to say it did not  
20 impact net worth, it did not impact working capital, and  
21 then they go through this explanation of trying to explain  
22 why it doesn't impact net worth. First they say it's a  
23 long-term obligation that was never to be repaid, and they  
24 further state since it wasn't going to be repaid, it  
25 should be a capital contribution. Well, by definition, a

1 capital contribution is paid-in capital which would impact  
2 net worth, but they don't recognize that, they say it's a  
3 capital contribution but it's not net worth.

4 And then they get into, well, it was a long-  
5 term obligation that was a capital contribution that  
6 didn't affect net worth. Atkission then comes back and  
7 says we're going to reclassify that. So the ALJs now  
8 attempt to give us an accounting lesson and say that it's  
9 improper to reclassify long-term debt to net worth, which  
10 is inherently false. In fact, if this entity were to be  
11 audited, that's exactly what an auditor would require is  
12 for them to reclassify it because debt that is not to be  
13 repaid should be reclassified to capital contribution. No  
14 different than if you have a receivable that will never be  
15 repaid, do you keep it on the books? No. You write it  
16 down and it negative affects net worth.

17 So to suggest now that Mr. Atkission has not  
18 contributed anything and then further suggest that he has  
19 nothing to lose which is the other statement here.  
20 There's no loss here the assets are only worth a couple  
21 hundred thousand dollars, there's no loss. Well, what  
22 about the \$6.25 million? He has no means now to recoup  
23 that money. Once this franchise is terminated, he's lost  
24 everything. He has no opportunity to recoup his  
25 investment and he's out. But the ALJs dismiss that.

1 Again, they treat this Cecil Money as if it's some kind of  
2 monopoly money or funny money. This is hard cash, \$6.25  
3 million which is just completely disregarded by the ALJs.  
4 It's mind boggling.

5 If we move forward with this motion, we are  
6 turning everything upside down about what we know about --  
7 the manufacturers will now say to any dealer: well,  
8 according to the precedent set by the Texas DMV Board, you  
9 don't have an investment because you are not a dealer. Is  
10 that the precedent we're going to set here? That is  
11 bewildering to me. And then to further say now even if we  
12 recognize, again, you put a billion dollars into this  
13 franchise and if you put on the wrong line, well, it's too  
14 bad because we can't recognize it because of some complete  
15 misunderstanding of basic accounting principles and your  
16 investment is worthless.

17 That's the message we are sending here if we go  
18 forward with this motion. So for that, I would implore  
19 these Board members. And I'm going to say this, I have  
20 been on this Board for six years now, I also serve as a  
21 mediator for General Motors where I help mediate disputes  
22 between manufacturers and dealers, I attended several of  
23 these and I've never seen a case like this before. In the  
24 six years that I've been on this Board, I will tell you  
25 this case more than any other case makes me understand and

1 truly appreciate why this Board was set up the way it is.  
2 The composition, we have business people, we have dealers,  
3 we have tax assessors, we have people from manufacturing,  
4 law enforcement, trucking industry people, independent  
5 dealers, because collectively we have a comprehension of  
6 the issues that this agency is charged with writing rules  
7 on, overseeing, enforcing and making decisions on.

8           So when there is a case like this one where an  
9 ALJ -- and I'm not knocking these ALJs because they're  
10 smart people but their understanding of certain issues  
11 sometimes is limited and that's why now we have this Board  
12 to come in and to be able to see the truth, because of our  
13 expertise, because of our experience, because of our  
14 firsthand knowledge by being in these professions, we  
15 understand what is the difference between semantics and  
16 real-life application. And this one is beyond anything  
17 I've ever seen. If we move forward with this motion, we  
18 are setting a precedent now that I would say is very,  
19 very, very dangerous.

20           MR. BARNWELL: Mr. Chairman, in response to  
21 that impassioned plea -- which I appreciate your feelings  
22 on that very much -- to me the ALJs interpretation of the  
23 contributions by Mr. Atkission could be interpreted  
24 differently. He owns the whole thing, there's no question  
25 he contributed \$6.25 million over a period of years to the

1 dealership, primarily used as floor plan and then part of  
2 it was used to fund other dealerships' cash requirements,  
3 so I don't have too much problem with that. It's the  
4 other six issues that give me pause.

5           You say this is a terrible decision, but Mr.  
6 Atkission has ignored -- from the record, has ignored  
7 multiple opportunities to fix the problem over a period of  
8 years. He's talked about relocating the dealership but  
9 he's never done anything about it. Now, he's got six and  
10 a quarter million dollars up, and maybe that's not a lot  
11 of money to him and it just never did matter, but he had  
12 the opportunity to present a complete package for  
13 relocation prior to the termination notice. In fact,  
14 according to the attorney for FCA, he was supposed to do  
15 that within a couple of years after buying it in 2008. I  
16 don't know if that's true, I don't have that record before  
17 me.

18           So there are many reasons besides the  
19 capitalization that make this a case. You say it's  
20 egregious, I think it is too, I think there's never been a  
21 case more likely to result in a termination of a  
22 dealership than this one. There's just multiple acts and  
23 failures to act on the part of the dealer that have caused  
24 the problems that the dealer has today, and the violation  
25 of the various terms and conditions of the dealer

1 agreement simply can't be ignored. So that's my position  
2 on it and why I support the ratification of the ALJs'  
3 conclusion as set forth in the PFD.

4 MR. INGRAM: So I have a quick question and  
5 this is to legal counsel. So is there a logical way to  
6 amend Board Member Barnwell's motion to remove the cash  
7 Cecil Money issue from the ALJ decision but still uphold  
8 the overall decision? Because you still have all the  
9 other factors, as Member Barnwell pointed out, that weigh  
10 heavily in the factor of FCA.

11 MR. DUNCAN: Were that motion made, seconded  
12 and voted on, we could write that order.

13 MR. WALKER: Blake, excuse me. I don't  
14 understand what you're asking for.

15 MR. INGRAM: Well, I think that referring back  
16 to the chairman's position that in a lot of ways it feels  
17 a little bit kind of like a "gotcha" on the loans, where  
18 if the loans had been done differently, it wouldn't have  
19 been a violation, and certainly they could be easily  
20 converted to the paid-in capital. But the facts remain  
21 that you still have the other issues that we have that  
22 weigh heavily in favor of FCA. So I'm trying to remove  
23 the concern of we're setting a precedent on this cash  
24 issue or this loan issue but still maintaining the ALJs'  
25 decision based on the other factors.

1           MR. WALKER: Well, the cash issue is, in my  
2 mind, the only argument they really have on the  
3 cancellation, that's in their favor, in my mind, against  
4 canceling the dealership. I'm with Mr. Barnwell on this  
5 deal, all the other things he's ignored and not done and  
6 tried to cover up the tracks of them, but you want to take  
7 and remove the capital contribution as being a  
8 contributing factor for the cancellation. Is that what  
9 you're asking for?

10           MR. INGRAM: Essentially, yes.

11           MR. PALACIOS: I really don't understand. What  
12 really is at issue here is should we overturn the ALJs'  
13 ruling in the termination of the franchise. That's what  
14 it comes down to. If we're saying the ALJ gave us some  
15 good reasons and on really bad one that we can't accept  
16 and we don't want to admit and I guess align ourselves  
17 with that decision, the net effect is still Mr. Atkission  
18 loses his dealership. My point is the decision -- there  
19 were seven factors, the ALJs, I guess, had five of them  
20 that were for termination, one including the issue of net  
21 investment. I think the sixth factor was really an all-  
22 encompassing which had to do with the net worth and the  
23 sales.

24           So again, carving out one exception because we  
25 don't believe it doesn't change the outcome here. My

1 position is there is not sufficient evidence -- there has  
2 been, number one, a complete misunderstanding of facts  
3 which has led to a misapplication of law. And that \$6.25,  
4 again, if you read through the PFD, that is mentioned over  
5 and over and over how he is not a dealer, how the \$6.25  
6 million was not relevant. Did Mr. Atkission run the best  
7 dealership? Perhaps not. But is that in and of itself  
8 grounds for termination. He owns two other dealerships.  
9 Again, we're considering all other factors.

10 MR. WALKER: Nineteen.

11 MR. PALACIOS: He owns nineteen total, and I  
12 don't see those cases before us asking for termination for  
13 those dealerships. I don't know about the timing of this  
14 relocation and so forth, but by all indications, Mr.  
15 Atkission is a good dealer. I think Chrysler, if they  
16 didn't believe so, they'd probably be taking action  
17 against the other two stores, but we don't see that  
18 happening. Again, I will say this, Board Member Ingram,  
19 what this comes down to is terminating a person's  
20 franchise, essentially taking away an investment that they  
21 made, a business that they poured millions of dollars into  
22 and we are going to terminate it based on the ALJs'  
23 interpretation of a key factor of what working capital is.

24 And I will tell you, again, I have respect for  
25 ALJs, but in this case they have no comprehension of what

1 working capital is, what net worth is, what investment is.

2 They go out of their way to try to explain working  
3 capital and the more they try to explain it, the more  
4 obvious it is that they are clueless. And I will state  
5 again this is a misapplication of law due to complete and  
6 egregious misunderstanding of basic facts. So we can  
7 carve out this one huge part of this case, but it doesn't  
8 change the outcome.

9 MR. BARNWELL: Well, I don't think we can pick  
10 and choose reasons why we affirm or reject the decision of  
11 the ALJs, well, we like number three and we like number  
12 six, but number seven, we can't go with that. I think we  
13 have to vote up or down on the PFD, and overall, the  
14 problem that I have here is that in spite of the fact that  
15 I tend to agree with you on the interpretation, the narrow  
16 interpretation of the working capital portion of the  
17 decision, the remaining violations of the dealer agreement  
18 rise to a level that you cannot send this back and say,  
19 Mr. Atkission, you know, the ALJs screwed this up on how  
20 we're going to do your working capital, it really is  
21 equity in the company, let's say it's equity.

22 Okay. So I've got one there, but I've got five  
23 other reasons why it ought to be terminated for failure to  
24 comply with the dealer agreement, failure to make efforts  
25 to comply with the dealer agreement, failure to pursue

1 remedies that would have mitigated the damages that he was  
2 suffering due to low sales. And I understand what you're  
3 saying, Mr. Chairman, about the message you're sending, I  
4 don't think that this memorializes the ALJs'  
5 interpretation of what capital is, I think this is their  
6 interpretation of this particular dealer's situation in  
7 this particular case.

8 I would hope that dealers in the future would  
9 take from this decision that they don't need to be  
10 cavalierly throwing money at their dealerships and not  
11 classifying it correctly. There is a way to classify your  
12 investments in an LLC or in a corporation or anything  
13 else, and they're considered as equity. He never intended  
14 for this to be equity, and I understand there may be some  
15 tax reasons and those are fine, but the fact is that the  
16 dealer here, the one with the general distinguishing  
17 number, is Atkission Chrysler, LLC, an independent entity.

18 He could own zero in it or he could own 100 percent of it  
19 or he could own any part of anything in between, but the  
20 fact is that the dealer was that.

21 And the GDN was in his name, he said he'd be  
22 there half the time and he wasn't. I mean, I'm not going  
23 to rehash all of the different reasons what's going on  
24 here, but he could have had a manager there, he could have  
25 had an F&I person onsite instead of somewhere else, and I

1 understand that could be a violation even of state law.  
2 So this is a case where I don't know if he's going to lose  
3 \$6.25 million or some portion of it, I assume some of  
4 those cars are floor planned and he has a lien on those  
5 cars, surely he'll be able to -- I don't know about  
6 surely, but hopefully he'll be able to recover \$3- or \$4  
7 million or \$5 million or whatever it is.

8 But remember, you're in business to make money  
9 and you take a risk and you could lose it all, and that is  
10 the overriding consideration here is that he was in  
11 business to make money and he hasn't made money, and in  
12 fact, he's violated the dealer agreement in multiple ways  
13 for multiple years. I have not seen very many termination  
14 cases. I'll admit, Mr. Chairman, that you've seen many,  
15 many more of these situations, but from the evidence  
16 educed at the trial and in the ALJs' consideration, I  
17 don't see how you can vote any other way.

18 If you give the capitalization issue to Mr.  
19 Atkission. That leaves me with five and maybe one is a  
20 draw.

21 MR. PALACIOS: Well, actually, for the record,  
22 the ALJ I guess found in favor of termination on five, if  
23 you concede this one, it brings it down to four. One of  
24 them I will say, factor number six, encompasses many of  
25 the other factors. The statute doesn't say whether or not

1 it's four out of five or four out of seven, whatever it  
2 is, but I would just again state that there would not be  
3 five factors that would be in favor of termination, it  
4 would be closer to perhaps three.

5 I guess regarding your statement regarding  
6 precedent, this is not just a matter of properly  
7 accounting for investments. You had stated that Mr.  
8 Atkission holds a GDN, it is actually the dealership that  
9 holds the GDN, so again, under the ALJs' interpretation,  
10 since the dealership holds the GDN, the dealership is the  
11 dealer. Under that interpretation, which perhaps by  
12 statute that is a strict definition of what a dealer is,  
13 but we all know the dealer is the person that invests the  
14 money that's on paragraph three of a dealership. So by  
15 now following this precedent, we are agreeing with the  
16 ALJs and saying there can be no investment in a dealership  
17 unless it somehow invests in itself.

18 And I was trying to think about, I thought  
19 about it, and the only legal way to do that is if you're a  
20 sole proprietorship. Under this interpretation, the ALJs  
21 are very clear in stating that the dealer did not invest  
22 in itself because the dealer is not Mr. Atkission, it is  
23 Atkission Chrysler, so it is impossible to ever have an  
24 investment under that definition, under that  
25 interpretation. So I disagree with you, Mr. Barnwell, we

1 are setting precedent.

2 MR. BARNWELL: The fact is that's simply wrong.

3 An investment in a dealership can be made in a number of  
4 different ways. It can be made with preferred stock, it  
5 can be made with common stock, it can be made with  
6 membership units, it can be made in a lot of different  
7 ways, but it is an investment by any person, doesn't have  
8 to be the dealer, could be a group of people who just like  
9 to invest in car dealerships.

10 MR. PALACIOS: And I agree with you, however,  
11 the ALJs will disagree with what you just said.

12 MR. BARNWELL: I disagree with that.

13 MR. TREVIÑO: But that would be a reason why we  
14 should explore Member Ingram's suggestions about trying to  
15 figure out language that says we recognize investment in  
16 dealerships as being essential and that we don't believe  
17 that we would like to establish precedent the way entities  
18 are described is the issue. But the ALJs' opinion is very  
19 strong here, it's a strong case. That's why I think we  
20 should explore something like Member Ingram suggested,  
21 recognizing those things and making sure they're not  
22 precedent for future decisions.

23 MR. BARNWELL: Well, what we have to do if  
24 we're going to do that, Member Treviño, we're going to  
25 have to, first of all, figure out what the ALJs said

1 regarding investment, whether, as Chairman Palacios said,  
2 nobody could ever invest in a dealership. Well, that's  
3 just not right. What did they say? If they said nobody  
4 could ever invest in a dealership, then they're going to  
5 get slapped down a hundred different ways in a hundred  
6 different courts.

7 MR. PALACIOS: Well, I'd like to start with  
8 this Board.

9 MR. BARNWELL: Well I don't think that this  
10 Board can pick and choose the PFD, what we're doing on  
11 this PFD. We're either going to have to vote it up or  
12 vote it down and let it go from there. I don't see how we  
13 could do it. Perhaps we could ask Counsel Duncan.

14 MR. WALKER: Daniel, can I ask a question here?  
15 I'm still perplexed about when we sent this back to SOAH  
16 that we told SOAH they had it wrong and they need to look  
17 at it and determine and reevaluate their facts. The same  
18 person that said they had it wrong, without any arguments  
19 from the parties, no argument whatsoever, says, Oh, I'm  
20 right. That bothers me that we didn't go to a different  
21 SOAH judge and that we didn't go out here and allow both  
22 parties an opportunity to say the DMV Board had it right,  
23 this is a cash contribution, it is equity in the  
24 dealership. I mean, those points should have been thrown  
25 out of this deal, as far as I'm concerned. And I'm with

1 Mr. Barnwell, there's a lot of other problems with this  
2 case, but nobody was given their fair day at the table,  
3 either side of the parties, when it went back to SOAH to  
4 say, hey, here's why you're wrong and here's why you're  
5 right. Why can't we change that?

6 MR. AVITIA: I'll defer to Duncan as to this  
7 question that you're asking.

8 MR. WALKER: That's a tough question, isn't it?

9 MR. AVITIA: Yes, sir. What I can tell you is  
10 the Board remanded this case with a very narrow focus. As  
11 far as what the ALJs can do with that and whether or not  
12 they want to reopen the record, I believe that is their  
13 decision.

14 General Counsel, is that your position?

15 MR. WALKER: It was our decision to send it  
16 back to reopen it.

17 MR. DUNCAN: It was our decision to send it  
18 back. In the remand that was sent back to the ALJs, we  
19 did not specifically say that the ALJs were incorrect, we  
20 asked them to further explore the issues. And we did not  
21 direct specifically that they reopen the record. It would  
22 have been incumbent on the parties to say that they had  
23 additional evidence or that they wished to reopen the  
24 record, and as far as I'm aware, no one did.

25 MR. WALKER: That's not what I understood Mr.

1 Crocker to say up here, was that they were not allowed to  
2 give any more further evidence into it. Now, he may be  
3 wrong or I may have interpreted it wrong, but that's what  
4 he said.

5 MR. DUNCAN: When you're dealing with a judge  
6 or a trier of fact, you have to ask for a hearing. If you  
7 don't ask for a hearing, then they just decide it on the  
8 written documents.

9 MR. BARNWELL: Was any hearing requested?

10 MR. DUNCAN: Not that I'm aware of.

11 MR. PALACIOS: So is it my understanding the  
12 ALJs refused to hear -- for whatever reason, I guess, they  
13 did not hear evidence that would refute their position?

14 MR. DUNCAN: They did not reopen the record.

15 MR. WALKER: No. They just said we were right

16 MR. BARNWELL: But the salient fact her is that  
17 there was no request by either side to reopen the record  
18 and submit additional testimony is the way I read the PFD  
19 information. Is that not true, or not?

20 MR. DUNCAN: That's my understanding as well

21 MR. BARNWELL: So they didn't request it. They  
22 liked the record the way it was, apparently.

23 MR. PALACIOS: Suffice to say, the ALJ did not  
24 hear any evidence that would, I guess, help them with  
25 their understanding of the issues for which this case was

1 remanded back.

2 MR. DUNCAN: No additional evidence. That is  
3 correct.

4 MR. PALACIOS: Well, I will state again, Board  
5 members, we are in fact setting precedent if we go forward  
6 with this, and it is a very bad precedent. To Member  
7 Barnwell's point, other courts will pound on this, it  
8 should start with us.

9 MR. WALKER: Okay. So let's ask this question  
10 then: Can we request and send it back to SOAH another  
11 time? Is that possible?

12 MR. PALACIOS: What would the purpose of that  
13 be? We sent it back twice.

14 MR. WALKER: Open it back up and put evidence n  
15 there as to what the capital contributions were as to the  
16 Cecil Money put into the deal.

17 MR. PALACIOS: Not to be facetious, but are  
18 they going to take accounting classes in the interim?

19 MR. WALKER: I would hope Mr. Crocker would  
20 bring somebody in there who is an expert in financial  
21 documents.

22 MR. BARNWELL: Let me ask a question of our  
23 general counsel. If we just approve the motion as made to  
24 affirm the PFD, what effect does that have with respect to  
25 future cases?

1 MR. DUNCAN: In my opinion, none. There is no  
2 precedential value to a contested case being heard by this  
3 Board on any future contested case. As a rule-making  
4 body, you do not do that. If you guys want to do a rule  
5 and want to say it's a contribution, you can do that.

6 MR. BARNWELL: So there's no res judicata.

7 MR. DUNCAN: No.

8 MR. BARNWELL: It doesn't have any weight on  
9 future cases.

10 MR. DUNCAN: I know the long-time practitioners  
11 in this are would argue till their dying breath that I'm  
12 wrong, but they're wrong. You cannot make rules by a  
13 contested case.

14 MR. BARNWELL: You can hold it up as an example  
15 of what was done in a similar case, but it doesn't have  
16 any bearing or weight.

17 MR. DUNCAN: It has no precedential value  
18 before SOAH, before a court. And they cite cases from  
19 SOAH and by the Board's decision for every proposition in  
20 the world, and I just say that is not the way the world is  
21 supposed to work in administrative law. If you guys want  
22 to make an absolute rule across the board, you can.

23 MR. BARNWELL: So it's only a final judgment of  
24 a court of law that has precedential value.

25 MR. DUNCAN: Correct.

1 MR. BARNWELL: So in a final judgment where all  
2 appeals are exhausted, boom, finally we have a case that  
3 we can point to and say this is precedent.

4 MR. DUNCAN: And that's because the facts of  
5 this case are the facts of this case, they're not the  
6 facts of the next case.

7 MR. BARNWELL: But this is not a court of law  
8 either.

9 MR. DUNCAN: Correct.

10 MR. BARNWELL: That's my position.

11 MR. PALACIOS: I would argue that the facts of  
12 this case are not just the facts of this case. The  
13 explanation given by the ALJs would have ramifications for  
14 all dealerships. I mean, these issues are not specific to  
15 Atkission Chrysler. I mean, these are pertinent to every  
16 dealer in Texas. So that I understand won't affect  
17 rulemaking, but we absolutely are setting precedent here  
18 by accepting the ALJs' interpretation. For what that's  
19 worth, whether or not that's used in further court cases,  
20 but we have accepted this logic as a reason to terminate  
21 Mr. Atkission.

22 Is there any further discussion?

23 MR. TREVIÑO: One directed to counsel. Is  
24 there a way to craft language to say we disagree with  
25 aspects of this?

1 MR. DUNCAN: You could overcome specific  
2 findings of fact and conclusions of law. That would take  
3 us some time to draft that order. We want to hear some  
4 specific rationale as to why the conclusions of the ALJs  
5 were incorrect, but yes, that could be written without  
6 changing the outcome.

7 MR. PALACIOS: Mr. Barnwell, does your motion  
8 stand?

9 MR. BARNWELL: Yes. I'm going to leave my  
10 motion up just like it is. Let's vote it up or down.

11 MR. PALACIOS: Okay. Let's move forward with  
12 the motion by Mr. Barnwell, the second by Mr. Walker. All  
13 in favor of the motion please signify by raising your  
14 right hand.

15 (A show of hands: Board Members Barnwell,  
16 Hardy, Painter, Treviño and Walker.)

17 MR. PALACIOS: Board Member Walker, Board  
18 Member Treviño, Board Member Hardy, Board Member Barnwell,  
19 Board Member Painter are in favor.

20 All opposed.

21 (A show of hands: Board Members Ingram and  
22 Palacios.)

23 MR. PALACIOS: Board Member Ingram and myself  
24 are opposed, the previous in favor, the motion carries.

25 All right. Let's move on. I guess something a

1 little lighter, specialty plate design. Tim Thompson.

2 MR. TIM THOMPSON: Good morning, Mr. Chairman,  
3 members of the Board. For the record, my name is Tim  
4 Thompson. I serve as deputy director of the Vehicle  
5 Titles and Registration Division.

6 You have before you now a specialty license  
7 plate item. The state's specialty plate vendor, MyPlates,  
8 is requesting approval for the redesign of the current  
9 Purdue University specialty plate which you see on the  
10 easel before you, and it's also in your briefing book.  
11 The plate redesign as presented meets all of our agency  
12 and legislative requirements. The department did invite  
13 public comment on this design in July of 2017. We  
14 received no negative comments. There were 92 people that  
15 indicated they like the plate and 80 that did not.

16 And at this time the agency requests your  
17 consideration for approval of this plate.

18 MR. WALKER: Just out of curiosity, it didn't  
19 change much, it only changed the smoke going to the left  
20 and the color just slightly.

21 MR. TIM THOMPSON: Yes, sir. They changed  
22 basically the angle of the locomotive.

23 MR. WALKER: Why did they want to change it?  
24 Was there a reason?

25 MR. TIM THOMPSON: The university themselves

1 changed their logo that the school is using.

2 MR. WALKER: Turned the train just a little  
3 bit.

4 MR. TIM THOMPSON: Yes, sir.

5 MR. WALKER: I move that we accept --

6 MR. PALACIOS: We have public comment.

7 MR. WALKER: On this?

8 MR. PALACIOS: Yes.

9 Mr. Hickman, good morning.

10 MR. HICKMAN: For the record, my name is Howard  
11 Anthony Hickman. I'm a retired enforcement attorney for  
12 this agency.

13 To quote a man who won three Academy Awards for  
14 acting in a four-year period and who was the first person  
15 to have a top ten hit on both the pop and country charts  
16 at the same time in his role as Grandpa McCoy, I'm agin  
17 it, I'm agin it, I'm agin it. I have four reasons.

18 I'm against the state promoting one of the  
19 seven deadly sins for profit. The plethora of plate  
20 designs make criminal identification hard for both law  
21 enforcement and civilians, given many states engage in  
22 this dubious promotion and use the same plate numbers and  
23 similar designs. Number three, the plate design, like  
24 most of Texas MyPlates plates is mugly. That's an old  
25 surfer expression for more than ugly, and apparently 47

1 percent of the people in your survey agree with me on  
2 that. Number four, since Purdue is historically an  
3 agricultural school, Texas should not promote that  
4 inferior school but rather shame those thinking about  
5 going to Purdue into going to Texas A&M for a far better  
6 education. 176 plates sold to the misguided does not  
7 justify the expenditure.

8 Thank you.

9 MR. PALACIOS: Thank you, Mr. Hickman.

10 MR. WALKER: Thanks for the pitch there.  
11 Appreciate that.

12 (General laughter.)

13 MR. PALACIOS: Do I hear a motion?

14 MR. WALKER: I so move that we accept the  
15 modification changes on the Purdue license plate.

16 MR. TREVIÑO: Second.

17 MR. PALACIOS: The motion made by Board Member  
18 Walker to accept the plate, second by Board Member  
19 Treviño. All in favor please signify by raising your  
20 right hand.

21 (A show of hands: Board Members Barnwell,  
22 Hardy, Ingram, Painter, Treviño and Walker.)

23 MR. PALACIOS: Board Members Walker, Treviño,  
24 Hardy, Barnwell, Painter and Ingram in favor; Board Member  
25 Palacios opposed. Motion carries.

1                   Let's move forward to agenda item number 8,  
2 Rules - proposal.

3                   MR. TIM THOMPSON: Thank you, Mr Chairman. Tim  
4 Thompson, deputy director of Vehicle Titles and  
5 Registration Division, and joining me on this item is  
6 Clint Thompson, chief of Title Services, Vehicle Titles  
7 and Registration Division.

8                   MR. WALKER: Where's Jeremiah, is he on  
9 vacation?

10                  MR. TIM THOMPSON: Yes, sir, if you call having  
11 young children in Florida this time of year a vacation.

12                  (General laughter.)

13                  MR. PALACIOS: Please proceed.

14                  MR. CLINT THOMPSON: Good morning. Clint  
15 Thompson, chief of Title Services. I'm on page 23, the  
16 recommendation to the Board to approve the publishing of  
17 proposed amendments to Administrative Rule 217.3, 217.4,  
18 217.82, and 217.84.

19                  The purpose of these amendments is to implement  
20 portions of Senate Bill 2076 effective September 1 of this  
21 year, and also of punctuation throughout the subchapter.  
22 The amendments to 217.3 is regarding updating maximum size  
23 to travel trailers, again, which is a byproduct of the  
24 passage of SB 2076, and to also clarify that for trailers  
25 and semi-trailers 4,000 pounds and under that were

1 previously titled must remain titled.

2           The amendment to 217.4 is relative to the place  
3 of application for a title. This allows when a county is  
4 going to be closed for a protracted period of time or will  
5 be closed for a protracted period of time, a willing  
6 county can accept those transactions. Previously they had  
7 to be adjacent to that county, now it is any county that  
8 is willing to accept those transactions.

9           The amendment to 217.82 amends the definition  
10 of non-repairable. It spelled out some criteria that are  
11 now not consistent with statute with the passage of SB  
12 2076, so we are merely making the referral to the actual  
13 definition in statute, so we don't have to continue to  
14 update that and be redundant.

15           MR. WALKER: So I have a question. When I read  
16 that last night, I was confused about this no-repairable.  
17 Why do we even care about that?

18           MR. CLINT THOMPSON: Relative to changes in SB  
19 2076? There were additional transactions, additional  
20 vehicles, if you will, that we've identified that we  
21 wanted to specifically call out that they are non-  
22 repairable, and the reason that we're pulling the actual  
23 criteria in administrative rule is we either had to update  
24 it to be consistent with the new statute or just make the  
25 reference. That way if there are any future changes, we

1 would not have to continue to update those.

2 MR. WALKER: But aren't we deleting them from  
3 the title files is what I think it said?

4 MR. CLINT THOMPSON: Some of the changes we  
5 made to non-repairable were reference to a vehicle sold as  
6 export only. We're specifically calling out that those  
7 vehicles sold as export only are considered non-  
8 repairable. That was one of the changes we made to the  
9 definition of non-repairable with SB 2076.

10 The last amendment that we have for 217.84, we  
11 are removing some of the criteria in administrative rule  
12 that required on the application for salvage and non-  
13 repairable vehicle titles. Specifically, we're removing  
14 the manufacturer's carrying capacity in tons. That is  
15 obsolete so it's just cleanup. And in addition, we are  
16 moving the requirement for the previous owner information.  
17 That is programmatically done when these applications are  
18 processed and issued for the salvage titles, so it was  
19 redundant for an applicant to actually have to put that  
20 information in. If necessary, it is also on the back of  
21 the title. So again, those two items were cleanup.

22 I'll be glad to take any other questions you  
23 may have.

24 MR. WALKER: So this is to post, you're wanting  
25 permission to post?

1 MR. CLINT THOMPSON: Yes, sir.

2 MR. PAINTER: Mr. Chairman, I make a motion  
3 that the Board approve the proposed amendments to Sections  
4 217.3, 217.4, 217.82 and 217.84 for publication in the  
5 *Texas Register* for public comment.

6 MR. BARNWELL: Second.

7 MR. PALACIOS: Motion by Board Member Painter  
8 to accept the proposal, second by Board Member Barnwell.  
9 Any discussion?

10 (No response.)

11 MR. PALACIOS: Otherwise, all in favor please  
12 signify by raising your right hand.

13 (A show of hands.)

14 MR. PALACIOS: Motion passes unanimously.

15 Thank you.

16 MR. TIM THOMPSON: Mr. Chairman, the next item  
17 before you falls on page 58 of your Board books. The  
18 proposal before you is for your consideration to approve  
19 the proposed amendments in the *Texas Register* for public  
20 comment. The specific amendments are to Texas  
21 Administrative Code 217.45 and 217.182.

22 The department is seeking your approval in  
23 order to implement House Bill 561 which passed during this  
24 past legislative session. House Bill 561 requires the  
25 agency to establish rules for the issuance of

1 distinguishing license plates for package delivery  
2 vehicles. Package delivery vehicles was a new vehicle  
3 class that was created during this last session of the  
4 legislature.

5 Particularily, Mr. Chairman, members, the new  
6 statute requires the Board to establish by rule procedures  
7 to issue the license plates that include the words  
8 "Package Delivery" and the statute also allows us to  
9 charge a fee not to exceed \$25 annually. This particular  
10 fee also would be a credit to the TxDMV Fund.

11 Just in short, if you look at 217.45(c)(e)(B),  
12 this proposal would add the new vehicle to the list of  
13 vehicles that only require one license plate.  
14 217.45(k)(1), that addition would allow tax assessor-  
15 collectors to issue these plates as long as it's done so  
16 in compliance with the statute that was passed, and in  
17 short, that regards operation of vehicles in counties and  
18 municipalities upon approval by those entities. He final  
19 addition to that particular section is (k)(2) and that  
20 recommends that the fee be set at the \$25 level. The  
21 final section to be added to is 217.182, paragraph 6, and  
22 that would actually enable us to apply the processing and  
23 handling fee to these transactions.

24 MR. PAINTER: Does that state whether the plate  
25 would go front or back?

1 MR. TIM THOMPSON: Statute, I don't think  
2 actually addresses that. I'd have to look. I think by  
3 rule we require it to be on the back.

4 MR. WALKER: So what did they decide on vehicle  
5 inspections on these?

6 MR. TIM THOMPSON: That would not apply to  
7 these.

8 MR. WALKER: So there's no vehicle inspection  
9 required, so when it comes through the plate process, the  
10 single sticker process today, we can't do that without an  
11 inspection being done on a vehicle. How do the TACs know  
12 that it is a small package vehicle? I guess they would  
13 know because of the classification.

14 MR. TIM THOMPSON: I'm not really sure.

15 MR. WALKER: Will that require modification to  
16 RTS?

17 MR. TIM THOMPSON: The statute actually does  
18 have equipment requirements on it, so yes, you're probably  
19 right. It does require them to have head lamps, tail  
20 lamps, a couple of other items. I don't really know  
21 personally of any inspection stations, though, that  
22 currently inspect any of these.

23 MR. WALKER: I don't either, that's why I'm  
24 asking the question. But they're going to be used on the  
25 roadways.

1 MR. TIM THOMPSON: And they're required  
2 actually to have insurance as well.

3 MR. WALKER: But we didn't create the statute,  
4 I don't believe, so how is that addressed, because it will  
5 require modifications to RTS.

6 MS. BREWSTER: Member Walker, yes, it will  
7 indeed require changes to the registration and titling  
8 system. I don't believe that there was information  
9 specific in the bill related to inspections.

10 MR. TIM THOMPSON: There is no information in  
11 the bill pertaining to inspection. But you're right,  
12 that's really probably the biggest push on this because it  
13 does require across the gamut of RTS for us to do this.

14 MR. WALKER: So what is it going to cost our  
15 agency to go in here and make the modifications after we  
16 just spent \$43 million?

17 MR. TIM THOMPSON: IT services estimated 1,400  
18 hours, so roughly \$140,000, which frankly, is the reason  
19 why we are recommending the \$25 fee which is the maximum  
20 allowable. Actually, if you just do the math, it would  
21 take us about 28 years to recoup our cost on this.

22 MR. WALKER: Twenty-five years?

23 MR. TIM THOMPSON: Twenty-eight. I think it's  
24 '33.

25 MR. PAINTER: What size vehicle does this

1 include?

2 MR. TIM THOMPSON: Member Painter, this  
3 actually brings in --

4 MR. WALKER: Like a Polaris Ranger, to deliver  
5 the mail in small subdivisions is what I was told.

6 MR. TIM THOMPSON: Actually, the statute  
7 itself, and I can read it to you, it brings in ATVs, golf  
8 carts, neighborhood electric vehicles, recreational off-  
9 highway vehicles and utility vehicles. The statute  
10 actually refers to the current definition of each of those  
11 vehicle classes and provides for them to be used as a  
12 package delivery vehicle. Actually, you have to be a  
13 motor carrier and be using this vehicle specifically for  
14 the purpose of delivering packages.

15 MR. WALKER: So we don't have a choice here, we  
16 don't make the laws, the legislators made this law, we  
17 have to apply the rules. Was there a fiscal note attached  
18 to this?

19 MS. BREWSTER: It's my understanding that yes,  
20 TxDMV did submit a fiscal note. There were not funds that  
21 came with the passage of this bill.

22 MR. WALKER: So it's going to cost our agency  
23 \$140,000 on reprogramming.

24 MR. TIM THOMPSON: I'll just say by  
25 observation, most bills in that price range were not shown

1 to have significant impact on agencies by the LBB. And  
2 you are correct, Member Walker, our ability here today is  
3 only to implement the registration process, we don't have  
4 any provision to address the operational issues.

5 MR. WALKER: You can't say no, it's a statute.

6 MR. TIM THOMPSON: Yes, sir.

7 MR. DUNCAN: And apologies. David Duncan,  
8 general counsel. Took a minute to find this. This is  
9 specifically by statute a non-registered vehicle, we're  
10 not allowed to require registration for it, and as a non-  
11 registered vehicle you go to the inspection code and any  
12 vehicle that's not required to get registration doesn't  
13 require an inspection, so they don't require an inspection  
14 by statute. That is in House Bill 561.

15 MR. TIM THOMPSON: Probably the best analogy I  
16 think about is today we issue a license plate for golf  
17 carts and we certainly don't put those through the  
18 inspection process.

19 MR. WALKER: So I can't remember now, ATVs  
20 don't necessarily come with a title either.

21 MR. TIM THOMPSON: Those actually are titled.

22 MR. WALKER: Well, I've bought them both ways,  
23 I have multiple of these, and sometimes you get a title,  
24 sometimes you don't.

25 MR. TIM THOMPSON: It should be titled.

1 MR. INGRAM: Well, the stolen ones don't have a  
2 title.

3 MR. WALKER: Mine are new.

4 (General laughter.)

5 MR. TREVIÑO: So we'll incur a \$140,000  
6 reprogramming fee, so can we direct staff to make our  
7 legislative officials aware of it that perhaps in the next  
8 legislative session there is some way we can address that?

9 MR. DUNCAN: We can ask.

10 MR. TREVIÑO: This is for the convenience of  
11 the package delivery industry, and you know, there's a  
12 cost associated with that and we're bearing that cost.

13 MS. BREWSTER: Member Treviño, we can certainly  
14 provide that information to legislative members in the  
15 future. I will let the Board know that they are aware  
16 that the Legislative Budget Board sometimes will zero out  
17 fiscal notes or say no significant impact. They are aware  
18 of that, but certainly we will let them know in the future  
19 legislative session.

20 MR. TREVIÑO: Thank you.

21 MR. INGRAM: Mr. Chairman, I move that the  
22 Board approve the publication of the proposed amendments  
23 to Sections 217.45 and 217.182 to the *Texas Register* for  
24 public comment.

25 MS. HARDY: Second.

1 MR. PALACIOS: We have a motion by Board Member  
2 Ingram to accept the proposal, second by Board Member  
3 Hardy. Any discussion?

4 (No response.)

5 MR. PALACIOS: If not, I'll ask for a vote.  
6 All in favor please signify by raising your right hand.

7 (A show of hands.)

8 MR. PALACIOS: Motion carries unanimously.  
9 Thank you.

10 Let's move on now to agenda item number 8.

11 MR. INGRAM: Are we skipping this one?

12 MR. PALACIOS: Yes. We're skipping amendments  
13 217.123 and 217.124, so we're moving to 9 now. We will  
14 defer that for a further meeting.

15 So we will now move on to Chapter 219,  
16 Oversize/Overweight Vehicles and Loads. Mr. Jimmy Archer.

17 Please proceed, Mr. Archer.

18 MR. ARCHER: For the record, my name is Jimmy  
19 Archer. I'm the director of the Motor Carrier Division.  
20 This agenda item may be found on pages 105 through 121 of  
21 your Board book. I'm asking the Board's approval to post  
22 these proposed rules to the *Texas Register*.

23 The 85th Legislature authorized three new  
24 permits: House Bill 2319 authorized the North Texas  
25 Intermodal Permit, Senate Bill 1383 authorized the Fluid

1 Milk Transport Permit, and Senate Bill 1524 authorized the  
2 Intermodal Shipping Container Port Permit

3           The North Texas Intermodal Permit allows the  
4 transport of a sealed intermodal shipping container in  
5 portions of Bowie County. The statute provides specific  
6 axle configurations and weights for the vehicle  
7 combination, with the gross weight not to exceed 93,000  
8 pounds on six total axles.

9           The Fluid Milk Transport Permit allows for the  
10 transport of fluid milk in Texas. The statute provides  
11 specific axle configurations again, with a gross weight  
12 not to exceed 90,000 pounds.

13           The Intermodal Shipping Container Port Permit  
14 allows for the transport of a sealed intermodal shipping  
15 container within 30 miles of a port authority or port of  
16 entry that is located in a county contiguous to the Gulf  
17 of Mexico or a bay or inlet opening into the Gulf. The  
18 statute provides specific axle configurations and weights  
19 for the vehicle combinations, with gross weights not to  
20 exceed either 93,000 pounds on six axles or 100,000 pounds  
21 on seven axles.

22           The three proposed rules establish  
23 requirements, restrictions and procedures regarding these  
24 new permits such as application method, movement  
25 restrictions during hazardous conditions, and curfew

1 restrictions. The Fluid Milk Transport Permit and  
2 Intermodal Shipping Container Port Permit also include  
3 provision regarding windshield stickers as required by  
4 statute, so we'll have to have stickers for those.

5 Additionally, the statute authorized the  
6 department to set the permit fee for the North Texas  
7 Intermodal Permit at an amount not to exceed \$2,000. The  
8 proposed rules set the permit fee at \$2,000. Based on  
9 testimony provided for this legislation during the 85th  
10 session, staff proposes an initial permit fee of \$2,000.  
11 We reached out to TxDOT to ask their guidance on setting  
12 the amount of the fee since TxDOT is responsible for  
13 maintaining the highways on which these loads will be  
14 traveling. We have not heard back from TxDOT as of yet.

15 Fees for the other two permits are set in  
16 statute. The Fluid Milk Transport Permit fee is \$1,200  
17 per year and the Intermodal Shipping Container Port Permit  
18 is \$6,000 per year.

19 The proposed amendments create no fiscal  
20 implications for state or local governments. If the Board  
21 approves, these proposed rules will be posted in the *Texas*  
22 *Register* on September 8, with comments until October 9. I  
23 would be happy to answer any questions you may have.

24 MR. WALKER: I have a couple.

25 MR. PALACIOS: We have some guest speakers, but

1 go ahead.

2 MR. WALKER: In the rule that we're posting  
3 right here, one thing that I noticed last night was it  
4 doesn't specify the weights in any of the rules.

5 MR. ARCHER: It doesn't need to. The weights  
6 are established in the statute so the weights do not have  
7 to be in the rule itself. The weights will be on the  
8 applications for the particular permits.

9 MR. WALKER: So the weight would be on the  
10 application but we wouldn't put it in the rule so that the  
11 general citizenry would know what the weights are specific  
12 to that? If I wanted to look up, as a trucker, and know  
13 that I could do that or couldn't do that, where would I go  
14 to look?

15 MR. ARCHER: You'd look on our website and  
16 you'd look under that particular permit.

17 MR. WALKER: And what about the specific  
18 routes? Are they not route-specific?

19 MR. ARCHER: What's going to happen, Member  
20 Walker, is TxDOT is going to tell us what roads -- are you  
21 talking about all these permits?

22 MR. WALKER: Well, I think the 30-mile one is  
23 anywhere on the 30-mile on state and county roads. Is  
24 that not correct? The milk permit is it specific at all?

25 MR. ARCHER: It's going to be specific because

1 the milk production areas are located in certain areas of  
2 the state so these routes are pretty well set, so what  
3 they've asked TxDOT to do and TxDOT is working with the  
4 milk industry on setting those routes and they will have a  
5 set route for those. They're going to give us those roads  
6 as, I think, restrictions; rather than saying this is the  
7 route, they're going to say you can't go on these roads  
8 but you can go on these.

9 MR. WALKER: The North Texas route is a very  
10 specific route, it's like five miles or something like  
11 that, I think.

12 MR. ARCHER: I think it's less than a mile.

13 MR. WALKER: Less than a mile.

14 MR. ARCHER: It's very short.

15 MR. WALKER: It's one little bitty segment of  
16 road.

17 MR. ARCHER: It's a very short segment. Yes.

18 MR. WALKER: So we're setting the fee at \$2,000  
19 and it says a maximum of \$2,000, we've asked TxDOT for an  
20 opinion on the damages to that road. I would think that  
21 they would want to wait for TxDOT's opinion before we make  
22 that determination on the \$2,000?

23 MR. ARCHER: We can certainly do that. We're  
24 trying to get the rules -- these are proposed rules.

25 MR. WALKER: Can we modify it after the rule?

1 MR. ARCHER: I'll leave that to counsel.

2 MR. DUNCAN: After proposal, between proposal  
3 and adoption, if we find items that need correcting to  
4 comport with the statute or directed from the Board or  
5 public comment, that's the purpose of putting rules out  
6 for public comment.

7 MR. WALKER: Curfew definition, why does it  
8 need to be in there because it's under the statute?

9 MR. ARCHER: We like to ensure that the  
10 conditions are on the permits for any permit that we  
11 issue, so we put those on there. I mean, if it's the will  
12 of the Board to direct us to look at some other way of  
13 stating that, we can do that.

14 MR. WALKER: Because general conditions apply  
15 to all permits on the statute. No permitted load can move  
16 during hazardous weather conditions. Is that not correct?

17 MR. ARCHER: That's what the rules say.

18 MR. WALKER: That's in statute?

19 MR. ARCHER: No, it's not in statute.

20 MR. WALKER: You're sure?

21 MR. ARCHER: The lawyer is telling me it's not.

22 MR. WALKER: It's in the rule?

23 MR. ARCHER: It's in the rule.

24 MR. WALKER: That's the only questions I have.

25 MR. PALACIOS: Any other questions for Mr.

1 Archer?

2 (No response.)

3 MR. PALACIOS: We have three people who have  
4 registered to speak on I guess all or a few of these  
5 topics, so I will start with Mr. Colin Parrish.

6 MR. WALKER: I have one more question. I'm  
7 sorry. Very important question. I forgot. Sorry, Jimmy.

8 The permit is specific to a one truck operation  
9 one time a year. In other words I have truck 100 and I  
10 buy that \$6,000 permit for it and it's non-transferable  
11 from one truck to another truck.

12 MR. ARCHER: That's correct.

13 MR. WALKER: If I were to go and had a wreck  
14 tomorrow and totaled that truck out, I've lost \$6,000 that  
15 I can't ever recoup because I can't transfer that permit  
16 from one truck to another truck. I have a wreck on that  
17 truck or it's my trade season on that truck, maybe I trade  
18 my trucks in June and so I'm operating six months of the  
19 year with that permit and now my new truck, because it's  
20 time to replace my vehicle, I can't transfer it and now  
21 I'm going to have to buy another \$6,000 permit, so it's  
22 going to cost me \$12,000 for the year?

23 MR. ARCHER: Well, to answer your question,  
24 currently the way the rules are written, it's a non-  
25 transferable permit. It can be replaced if the windshield

1 is destroyed or the sticker is destroyed, but in your  
2 situation you're speaking of, if you sell your truck, then  
3 you would have to buy a new permit if you want to replace  
4 that permit.

5 MR. WALKER: So is that in statute that that's  
6 the way that is or is that that we could change that here?

7 MR. ARCHER: That's in rule.

8 MR. WALKER: That's in the rule. So we could  
9 change that rule so that if a carrier decides to get rid  
10 of a vehicle, let's say I buy the \$6,000 permit at my  
11 company and I want to buy a new truck because I'm having  
12 mechanical problems with it, I would like to be able to  
13 transfer that at least a one-time transfer of that permit  
14 to another truck so that I can continue to operate without  
15 having to spend another \$6,000, because my customer,  
16 whoever it might be, doesn't want to spend. They're going  
17 to say, hey, we've already paid for annual permit on that  
18 truck to move my product, and if you made a decision to  
19 buy a new truck, do that. So I'd like to modify that  
20 rule, if I could, so that we could get some kind of  
21 substitution, maybe one-time substitution or something or  
22 another.

23 MR. ARCHER: Mr. Walker, if I may. If we could  
24 be very specific and careful about how we craft the  
25 transfer rule, because if we're not careful, we could have

1 unscrupulous people out there -- which I'm not suggesting  
2 that anybody in this room is that -- that they could be  
3 transferring those permits to trucks back and forth. And  
4 it also causes some accounting issues to do that. We have  
5 to issue a new sticker, in some cases refunds, we have to  
6 back that out, so we have to be very specific about that.

7 MR. WALKER: But, Mr. Archer, we can be  
8 specific but your accounting issues are very small  
9 compared to my \$6,000 permit that all of a sudden just  
10 became invaluable to me at the end of the week because my  
11 driver had a wreck out here and now I can't use my  
12 vehicle.

13 MR. DUNCAN: And I think that's what Jimmy was  
14 asking. If I may, David Duncan, general counsel. I think  
15 what Jimmy was saying is if we specify the conditions  
16 where the truck is damaged or destroyed, the truck has  
17 sold or traded.

18 MR. BARNWELL: I think for any reason  
19 whatsoever during the term of that permit is fine, but  
20 there should be a charge for it. \$200, can you do that,  
21 or is that prohibited by the statute?

22 MR. ARCHER: We can do whatever the will of the  
23 Board is.

24 MR. BARNWELL: I mean, are we permitted to  
25 charge a transfer fee if we transfer from one truck to

1 another.

2 MR. ARCHER: No transfer fee.

3 MR. BARNWELL: So you can't do anything you  
4 want to do.

5 MR. DUNCAN: A fee has to be allowed by  
6 statute.

7 MR. BARNWELL: So you can't do that, so you  
8 need to craft it narrowly enough to satisfy your concerns  
9 regarding abuse.

10 MR. WALKER: What is your concern on the  
11 transfer of that permit?

12 MR. ARCHER: My concern is that these permits  
13 have stickers, we're talking specifically about two of  
14 these permits, ready-mix, those kind of permits,  
15 theoretically, a carrier could buy one permit and have  
16 five trucks and want to switch that permit among those  
17 five trucks daily.

18 MR. WALKER: But there's still not any more  
19 loads being moved down the highway.

20 MR. ARCHER: That's true, but they're required  
21 to have a sticker. My point is this, we can craft some  
22 specific language in the situation we're talking about, if  
23 you get rid of a vehicle within the term of the permit and  
24 you want to use whatever is left on that permit term and  
25 get a sticker for your truck, I think we could probably

1 accommodate that, or if the truck is wrecked or if you  
2 have mechanical problems. I think we should narrowly  
3 define that, though.

4 MR. WALKER: Mr. Duncan, do we need to just  
5 kind of table this and come back the next time, or do we  
6 want to go ahead and post and make those changes before we  
7 approve?

8 MR. DUNCAN: We could actually do that, if  
9 that's the Board's directive, on the actual rule. We'll  
10 redraft it before we publish it, we'll put those changes  
11 in before we publish it if you direct us to have  
12 transferability on specific conditions, we can write that  
13 by next week.

14 MR. TREVIÑO: Do you need a motion to that  
15 effect?

16 MR. DUNCAN: That would be ideal. Yes.

17 MR. TREVIÑO: I'll go ahead and direct staff to  
18 craft language to make some transferability options, one-  
19 time transfer or damage or sale of vehicle or something  
20 like that, that would satisfy the spirit of the rule and  
21 also cover the interests of the industry.

22 MR. WALKER: I second that.

23 MR. PALACIOS: We have a motion by Board Member  
24 Treviño to amend the current rule to include a  
25 transferability option, the motion has been seconded by

1 Board Member Walker. All in favor please signify by  
2 raising your right hand.

3 (A show of hands.)

4 MR. WALKER: That's on all three of the rules  
5 here, there's three rules here.

6 MR. DUNCAN: Yes.

7 MR. WALKER: Okay.

8 MR. PALACIOS: Motion passes unanimously.

9 MR. INGRAM: We still have to do the posting  
10 and we still have public comment.

11 MS. BREWSTER: Yes.

12 MR. PALACIOS: Right.

13 MR. DUNCAN: And Member Walker and Member  
14 Treviño, this will provide an excellent opportunity for  
15 the industry to see how we set those transferability  
16 rules. It may come back on our other permits that Jimmy  
17 was referring to, and that may be sort of the next round.

18 For these, it would just be these rules because that's  
19 all we have before us, but this will be an excellent  
20 opportunity for them to see how we might craft a transfer.

21 MR. PALACIOS: We have three people who  
22 requested to speak on this topic. First I'd like to call  
23 Mr. Colin Parrish.

24 MR. PARRISH: Hello, members of the Board,  
25 Chairman, Director Brewster. My name is Colin Parrish.

1 Thank you for allowing us to be here today. I'll try and  
2 keep it brief.

3 I have the privilege of working as a  
4 legislative consultant for a company called Domtar, and  
5 following me there will be a member who works directly for  
6 Domtar talking a little bit about the company, but I  
7 wanted to talk very briefly just about a few things that  
8 happened during the legislative session and just for  
9 context and for the purposes of this rule.

10 As Director Walker pointed out earlier, the one  
11 in North Texas is the only one where you're allowed to set  
12 the rate up to, all the others are statutorily outlined  
13 permit fees. So to that point, I do want to say that your  
14 staff deserves kudos. They have been a breath of fresh  
15 air to work with. I do a lot of work with another  
16 slightly larger agency that deals with transportation  
17 issues, and your staff is a breath of fresh air, so thank  
18 you for that. Throughout this entire process, we had the  
19 opportunity to talk through the challenges of this permit.

20 At one House hearing in particular, I will say  
21 that the Bowie County judge basically chartered a plane,  
22 flew all of the leadership down from Bowie County to  
23 attend this hearing, the in fact skipped a commissioners  
24 court meeting, so it is a strongly supported permit back  
25 in Bowie County. But they came down and they talked bout

1 the functions of the permit, and one of the exchanges that  
2 happened at that hearing was between one of the members on  
3 the dais and I believe it was with Mark Marek from TxDOT.  
4 They talked about this permit fee and up to \$2,000, what  
5 does that mean, how would it be applied, how would it be  
6 determined. At that time the exchange consisted of Mark  
7 Marek said that it would be based on some sort of vehicle  
8 miles traveled fee, some sort of calculation, but they  
9 didn't set the fee, that it was just put in statutorily.

10 Further, in the legislation there is a  
11 provision, and I think it's 2021 where the DMV gets to set  
12 the fee completely at no \$2,000 max based on the actual  
13 consumption of the roadway. This is something that the  
14 company Domtar agreed to because they do believe that with  
15 the axle configuration with the six axles, running the  
16 loads as they do where there are no bridges, where it's  
17 all flat surface. Unlike in the port transportation  
18 corridor bills where there are lots of bridges and other  
19 structures that could be consumed differently, they were  
20 very confident that they would be able to have a  
21 reasonable and perhaps lower permit fee based on the  
22 actual consumption of the roadway.

23 So to summarize, Domtar is a great company,  
24 Tammy will be here to tell a little bit about the company  
25 and the product that's being moved. I'm just here to ask

1 leniency during this process, that the legislature gave  
2 the ability to the Board to go up to \$2,000, not set it at  
3 \$2,000, and because the actual route that they're going to  
4 be using is less than half the distance total authorized  
5 in the permit, we're just looking for some leniency.  
6 They're not looking for a free ride but the major product  
7 they are producing is baby diapers and adult incontinence  
8 products and those are kind of feel-good products and keep  
9 the cost of goods down for baby diapers bottoms dry.

10 And I'll pass out some samples of the actual  
11 product that's being moved so you understand you can't  
12 fill a shipping container full enough with baby diapers to  
13 make it make sense, so it is based on fluff pulp.

14 Thank you very much for your time.

15 MR. PALACIOS: Thank you, Mr. Parrish.

16 I guess we'll follow up with Ms. Tammy Waters.

17 (Mr. Parrish passed out samples of material to  
18 Board members.)

19 MS. WATERS: Hi. MY name is Tammy Waters, and  
20 I'm with Domtar. But just to kind of add on to the  
21 product, so basically what you have is a large roll of  
22 that material which we actually ship out, but then it goes  
23 to the hammer mill, and once it goes through that, it's  
24 beat up and then it becomes like cotton. So basically  
25 this is what goes into your baby diapers, adult diapers,

1 feminine hygiene products, and that's your absorbent  
2 material. And it's flying all over the room, so sorry.  
3 That's a little show-and-tell lesson.

4 MR. WALKER: So this is that?

5 MS. WATERS: Yes.

6 MR. WALKER: In exact quantity?

7 MS. WATERS: Well, maybe not exact quantity.

8 We have huge rolls, this is just a sample, just because  
9 most people, when you think about the fluff you think of  
10 it this way and that's not what we're shipping, so just to  
11 kind of give you a little bit of context.

12 MR. PALACIOS: Please proceed.

13 MS. WATERS: Okay. Thanks. Again, my name is  
14 Tammy Waters and I'm with Domtar. Domtar is an integrated  
15 pulp and paper manufacturer. What we manufacture is what  
16 we've already talked about. We actually distribute a wide  
17 variety of fiber-based products, including copy paper and  
18 packaging paper, but mainly what we're focused on today is  
19 the absorbent hygiene materials that we've just talked  
20 about.

21 As far as Domtar, we actually have a facility  
22 in Ashdown, Arkansas which is located about 15 miles north  
23 of Texarkana, Texas. In addition, we do have a paper  
24 converting facility in Irving, Texas and a diaper plant in  
25 Waco, Texas. Of the nearly 850 employees in Ashdown,

1 about one-third of those reside in Texarkana and northeast  
2 Texas.

3 The Ashdown mill is transitioning to serve  
4 export markets and this requires us to seek deepwater  
5 ports to ship our product by the sealed oceangoing  
6 containers. That's why this permit is so important to us.

7 We've invested over \$200 million and what we did was we  
8 took our largest paper machine and converted it to a fluff  
9 pulp machine. We're a company that's trying to reinvent  
10 ourselves. Unfortunately, because of the wonderful thing  
11 that we all walk around with all the time, technology, in  
12 our hands, copy paper is just not needed as much as it  
13 used to be, so that's why we made the move to this type of  
14 product.

15 We need the flexibility to move these  
16 containers with this product and what this permit will do,  
17 it gives us the ability to move it from our mill over the  
18 2.5-mile stretch in Texas to Arkansas which is actually  
19 right at I-49, and then we're going to go through the  
20 State of Arkansas to West Memphis marina area and then put  
21 our product on rail. That's ultimately what we're looking  
22 at doing right now.

23 Since our new fluff pulp machine came online  
24 right at a year ago, we have worked diligently to build  
25 our customer base.

1 I've got to stop now?

2 MR. PALACIOS: Yes. Thank you.

3 MS. WATER: Okay. Sorry.

4 MR. PALACIOS: Unless there are any questions  
5 (No response.)

6 MR. PALACIOS: Thank you so much for your time.

7 MS. WATERS: Thank you. We appreciate your  
8 consideration.

9 MR. PALACIOS: Thank you.

10 We have one more speaker on this topic, Mr.  
11 Hickman.

12 MR. HICKMAN: For the record, my name is Howard  
13 Anthony Hickman. I'm a retired enforcement attorney for  
14 this agency.

15 I'm here to oppose any new rule creating a  
16 North Texas Intermodal Permit, a Fluid Milk Transfer  
17 Permit, or an Intermodal Shipping Container Port Permit.  
18 The last time I looked, all these activities covered by  
19 these permits are already occurring. Am I to believe that  
20 suddenly whole new lines of transportation have appeared?

21 Is there something in North Texas that does not exist in  
22 South Texas, East Texas, West Texas or the Panhandle? Is  
23 the transportation of fluid milk something new? The last  
24 time I looked, fluid milk somehow made it to my  
25 refrigerator without any new special permits. Have

1 shipping containers stopped moving in our ports? Maybe  
2 someone should tell Walmart that they've not been getting  
3 any goods from China.

4 What we're talking about here today is the  
5 government giving special advantages to special interests.

6 In economics this is called rent sharing which is defined  
7 as securing market advantages from government that enhance  
8 individual wealth without creating societal wealth.  
9 Government should not be in the business of choosing  
10 winners and losers. The free market does a far better job  
11 at that without the need to create a Fluid Milk Transport  
12 Permit, or an Intermodal Permit. All that is needed is a  
13 level playing field for everyone which is why I have never  
14 had any problem getting milk transported to my  
15 refrigerator.

16 Additionally, I'd like to point out that only  
17 the issuance of the permit under HB 2319 is mandatory.  
18 The other two statutes are permissive which means you  
19 don't have to issue any permits.

20 And additionally, a further point I'd like to  
21 point out in terms of the refundability or the need on the  
22 permit to be able to transfer it, if you think about it,  
23 when you go out and buy a new car, you don't get to  
24 transfer the length of time on your current plate to a new  
25 plate, at least I've never been able to get that

1 accomplished.

2 So with that, if there are no questions, thank  
3 you.

4 MR. PALACIOS: Thank you, Mr. Hickman.

5 I am going to move the agenda item around a  
6 little bit and out of consideration for --

7 MR. INGRAM: We still need a vote to publish.

8 MR. PALACIOS: Oh, that's right. I apologize.

9 MR. TREVIÑO: Mr. Chairman, I would move that  
10 the Board approve the proposed new sections of 219.34,  
11 219.35 and 219.36 for publication in the *Texas Register*  
12 for public comment.

13 MR. WALKER: Second.

14 MR. PALACIOS: Motion by Board Member Treviño,  
15 second by Board Member Walker to adopt the proposal. All  
16 in favor signify by raising your right hand.

17 (A show of hands.)

18 MR. PALACIOS: Motion carries unanimously.

19 Thank you.

20 MR. DUNCAN: And just to clarify, that is  
21 subject to the earlier motion. Correct?

22 MR. TREVIÑO: Yes. The amendments.

23 MR. PALACIOS: So I'm going to move the order  
24 around a little bit out of consideration for some of the  
25 tax assessors who have traveled very, very far from

1 throughout the state to be with us today. So we will  
2 begin item number 11 now, staff review of county and  
3 deputy compensation, and Ms. Linda Flores will give us a  
4 briefing.

5 MR. DUNCAN: Members, before Ms. Flores  
6 starts -- David Duncan, general counsel -- I'd like to  
7 just lead in a little bit and give a little context. What  
8 Ms. Flores is going to talk about is a lot of facts, a lot  
9 of numbers and kind of how we're doing against our  
10 predictions in the rule. I want to give it a little  
11 context in that there's a large number of people here from  
12 the county offices and I want to give some air time to  
13 some of the things that they've been telling us about.

14 We do have a pending petition for rulemaking.  
15 It doesn't relate directly to this, it's one of the  
16 subjects that's covered in this presentation. It relates  
17 to dealer deputies and the distribution of the money  
18 between the counties and the dealer deputies in the  
19 original P&H fee setting. And I wanted to mention that  
20 we've received comments from Mr. Uresti, the San Antonio  
21 TAC -- I'm sorry, Bexar County, Mr. Wyatt Wainwright who  
22 is with the Houston Auto Dealers Association, and Mr. Mike  
23 Leitz who is the chief of staff for Harris County TAC, and  
24 all of them are speaking for and on behalf of the petition  
25 for rulemaking that was originally made by the county tax

1       assessor-collector from Nueces County.

2                   And that petition for rulemaking is still  
3 pending, it is not technically what is before you in this.

4       What we wanted to do is give you the facts first and let  
5 you know where we are, and if you would like for us to  
6 bring that petition for rulemaking back with a draft rule  
7 in the next Board meeting, we can be prepared to do that.  
8 So I wanted to give you that context so as you're thinking  
9 about this, you can think about directing the staff to  
10 bring that back as a rule in October.

11                   MR. PALACIOS: Do we need to formally do that  
12 in this meeting?

13                   MR. DUNCAN: That would just be directed to the  
14 staff to schedule something for the agenda.

15                   MR. PALACIOS: Okay. Sounds good. Thank you.

16                   MR. DUNCAN: Thank you.

17                   MR. PALACIOS: Good afternoon.

18                   MS. FLORES: Thank you. For the record, Linda  
19 Flores, chief financial office for the Texas Department of  
20 Motor Vehicles. And the material that we're going to be  
21 discussing begins on page 250 of your Board book.

22                   The first twelve pages of your material  
23 beginning on 253 is a general overview and background  
24 specifically for the benefit of some of our new Board  
25 members. This agency began this journey several years

1 ago. We got to the point where the agency was created in  
2 2009, conversations were taking place even then on how  
3 best to finance the operations of the Texas Department of  
4 Motor Vehicles. It was carved out initially from TxDOT  
5 which was primarily funded with the State Highway Fund, so  
6 to begin our preparations, we were financed out of the  
7 State Highway Fund, Fund 6.

8 In the 83rd Legislative Session, which was  
9 fiscal years '14 and '15, you will see the legislative  
10 history on your page 254 of the document. We had a  
11 significant piece of legislation that was approved, it was  
12 House Bill 2202, sponsored by Representative Pickett. It  
13 charged the agency with creating efficiencies, driving  
14 down costs, modernizing our processes to better serve the  
15 citizens of Texas. It was followed by the 84th  
16 Legislative Session to create the DMV Fund. That occurred  
17 in the '16-17 biennium.

18 On page 255 of your document, it goes on to  
19 talk about the intent of the initial legislative bill.  
20 House Bill 2202 was to consolidate some add-on fees. We  
21 had several fees, the automation fee, there were little  
22 pieces, and so they wanted us to consolidate all of those  
23 fees as much as possible. It was to end also the agency's  
24 "diversion" from the State Highway Fund. They considered  
25 our financing a diversion from the Highway Fund, so by

1 establishing a processing and handling fee, it would set  
2 aside all of those dollars that were previously being  
3 diverted from Fund 6 to finance this agency could now in  
4 turn be used on state roads.

5 The legislation also required that we  
6 streamline the processes for customers and to increase the  
7 transparency of the registration service delivery cost.  
8 Some of the things that we looked at when we were  
9 considering a processing and handling fee was exactly how  
10 much would the State Highway Fund benefit. On top of our  
11 appropriations at the time, it was over \$100 million a  
12 year. Besides that, how would this processing and  
13 handling fee help the fund. Well, at that time, the  
14 county compensation was also being financed by the Highway  
15 Fund. They were receiving approximately \$47 million a  
16 year. So by creating a new fee, those dollars would in  
17 turn flow back to the Highway Fund.

18 We also looked at how can we increase the  
19 compensation for walk-in registration transactions at the  
20 county offices while also trying to reduce the workload  
21 that was flowing through those offices. And we also  
22 wanted to continue funding the equipment that is currently  
23 in our appropriations. I believe it's about \$5 million a  
24 year. There's a capital item in the agency's budget  
25 specifically for new computers, printers and toner

1 cartridges. And there were some other things that we  
2 wanted to try to reduce and create some efficiency:  
3 reduce the online transaction cost to the public, and to  
4 establish a performance quality recognition program that  
5 was put in place for the counties to try to achieve.

6 On page 257 of your document you'll see exactly  
7 how the dollars used to flow before the processing and  
8 handling fee and how it now flows after P&H into the Fund  
9 6.

10 There were some other cost savings that we  
11 anticipated. With the elimination of the automatic plate  
12 replacement cycle that used to occur every seven years, we  
13 removed that requirement to replace license plates, so we  
14 knew that there would be some savings for the counties  
15 when it came to postage, handling and plate envelopes. We  
16 also knew that the replacement cost for plates would only  
17 be issued upon request from a customer. If their plate  
18 had been damaged they could come in and ask for a  
19 replacement plate. There was a \$6.50 fee for replacement  
20 plates.

21 On page 259 of your material you'll see exactly  
22 how all those computations came to be for the annual plate  
23 replacements and the assumed county savings.

24 As part of the processing and handling fee, one  
25 of the efficiencies that we did put in place was to

1 centralize online fulfillment to try to drive some of our  
2 customers to our online portals for processing their  
3 registration renewals. This would be a benefit to the  
4 counties since they would no longer have to pay for the  
5 postage and the return envelope, they would not have to  
6 print the sticker at their respective offices. We also  
7 could identify a vendor, it is run through the Data Center  
8 consolidation services through the state, that could meet  
9 some of our next-day demands for processing our  
10 transactions.

11           There is a service level agreement in place and  
12 we also put in place something where you could track your  
13 renewal process. If you go online, you can see where that  
14 transaction is in the process: has it been sent for  
15 printing or is it pending. You can actually see it  
16 tracked through the process.

17           The rule proposal that we established last year  
18 is reflected on page 263 of your document. These were  
19 some of our assumptions going into the year. For '17,  
20 because the fee did not get implemented until January  
21 2017, there was only eight-month actuals that we would be  
22 incurring, it is not a full year, and '18 will be our  
23 first full year of having this fee in place, and we will  
24 actually see what those trends are after '18.

25           And for those of you who would like to see what

1 the compensation looked like before and after, you will  
2 see that on page 264 of your materials. There were  
3 different compensations for the county when it came to  
4 walk-in, online, mail, limited service deputies, full  
5 service deputies and dealer deputies which were really not  
6 in place until this year. So at one time a walk-in was  
7 only compensate for \$1.90, whereas, today it's compensated  
8 at \$2.30. Online transactions were compensated at \$2.90  
9 and they're not compensated at 25 cents, primarily because  
10 the state is now processing all of those centralized  
11 renewal notices.

12 On page 265 we talk about the different deputy  
13 types, and this is again for your benefit. We have a full  
14 service deputy which we do have four counties that utilize  
15 full service deputies. They're allowed to process any  
16 transaction that is processed by a county. They could be  
17 limited by the county on what types of transactions they  
18 process, but they do process all transactions. There is a  
19 dealer deputy which is new. They can process transactions  
20 related to title initial registration and an optional  
21 registration renewal. Limited service deputy  
22 transactions, these are your typical grocery stores like  
23 the H-E-Bs where you can go in and get your registration  
24 renewed.

25 And this is where I get to what the current

1 observations have been. Last year when the Board was  
2 considering to approve this fee, we had a lot of guest  
3 speakers address the Board when it came to the full  
4 service deputies. There was a lot of concern about  
5 ongoing business and what the impact of this processing  
6 and handling fee, how it would impact these individuals  
7 and these companies once this fee was in place. So the  
8 Board asked that the agency come back and provide a six-  
9 month review of what that impact has been to the full  
10 service deputy. But once we began the review, we decided  
11 that we would also include the county compensation, and so  
12 our current observations do encompass both the deputies,  
13 the counties, and I will touch on how it's also impacted  
14 the state.

15 Overall, registrations are down approximately 4  
16 percent this year for the entire year, September through  
17 June. And that needs to be very clear: registration  
18 transactions are down this year. Month after month when  
19 I've been coming to you reporting on our quarterly  
20 revenue, I've indicated that registrations are  
21 significantly different than what we've seen in the past.

22 We're not going to hit our projection. We've been trying  
23 to determine what is driving that trend. Transactions are  
24 down by 4 percent. In 2016, transactions were roughly 20  
25 million transactions, we're at 19- this year. So what has

1 been the driving factor?

2           This review has led us to consider that the  
3 single sticker phase II which create multi-year  
4 registration transactions has been the single driver  
5 that's affecting those transactions. I see Board Member  
6 Walker. Hang with me. So last year when we brought the  
7 rule about trying to line up registrations with vehicle  
8 inspections, when you buy a new car you get a two-year  
9 inspection, we lined up our sticker to have a two-year  
10 registration. That way you match up, you won't have to  
11 renew your registration the following year so you would be  
12 off. It synced them both up.

13           Before that rule was in place, we had 154,000  
14 vehicles who had multi-year registration. After the rule  
15 was implemented last summer and by the time we started  
16 programming in RTS in October, that jumped up to 1.4  
17 million cars, 1.4 million cars. They only had to pay the  
18 processing and handling fee one time for two years worth  
19 of registration. They didn't have to pay \$9.50, they paid  
20 \$4.75. They didn't have to come and renew in 2017.  
21 Granted, not all of those 1.4 million would come back and  
22 renew, maybe some got wrecked or maybe they got sold, but  
23 a substantial number of those vehicles did not come into  
24 either the online portal or the county offices to get  
25 renewed in '17. That is going to be a one-time blip and

1 will self-correct moving forward. We'll re-baseline and  
2 start moving back up like we've seen in the past.

3 MR. WALKER: Wasn't that '16?

4 MS. FLORES: It was '16 but they don't have to  
5 renew in '17. Cars sold in '16 after the rule was passed,  
6 1.4 million cars, will not renew their registration in '17  
7 because they're good for two years; they won't have to come  
8 back in until '18.

9 MR. WALKER: But we recognized the revenue in  
10 '16.

11 MS. FLORES: Yes, sir.

12 MR. WALKER: So we're not selling any less cars  
13 in the State of Texas.

14 MS. FLORES: No, sir. We continue to see an  
15 increase in titles. I will say, though, that we've seen  
16 more sales through third parties than new car sales.

17 MR. WALKER: So when you budgeted, Linda, two  
18 years ago, did you know that this anomaly -- I mean, we  
19 all knew that this was going to happen but didn't we take  
20 into in consideration in our budgets?

21 MS. FLORES: We did. However, we did not have  
22 a fiscal impact of what the two-year registration would  
23 do, not to our transactions.

24 MR. WALKER: But we are still going to -- the  
25 agency is going to be still in a good financial position

1 to pay our bills. Correct?

2 MS. FLORES: Mr. Walker, Mr. Walker.

3 MR. WALKER: Yes, Ms. Flores.

4 MS. FLORES: I've been doing governmental  
5 accounting for a long time. As I mentioned yesterday  
6 during the Finance and Audit Committee, we don't pivot  
7 like the private sector, we have to anticipate two years  
8 in advance and we have to plan. Yes, sir, we will have  
9 enough money to pay our bills and pay our folks.

10 MR. WALKER: That's the important thing.

11 MS. FLORES: Yes, sir. And we will have a  
12 positive fund balance when we're done.

13 MR. WALKER: And as long as you are at the helm  
14 there, I don't think we'll ever have to worry about that.

15 MS. FLORES: Time is ticking. I've been doing  
16 this a long time, sir.

17 (General laughter.)

18 MS. FLORES: I would like to say that the  
19 temporary permits, it used to be that the counties were  
20 only compensated \$1.50 for temporary permits. If they  
21 handle a temporary permit, they are compensated at the  
22 \$4.75, so that's helped in some of the revenue.

23 The other thing that's different is in our rule  
24 proposal this was the rule package estimate versus what  
25 we've seen in the first six months of the implementation,

1 and this is also in your Board material on page 271. The  
2 transactions are different. We had assumed that the walk-  
3 in rate would be 64 percent of transactions, it's actually  
4 62 percent. Mail-in is actually 4 percent. Online it's  
5 really 13 percent and this is where we, the state, had  
6 hoped that we would have more adoptees, and we had a very  
7 aggressive adoption rate for online transactions. That is  
8 not being realized, but that is to the benefit of the  
9 counties, so if folks are not using the online portal,  
10 they're either walking in or they're processing their  
11 transactions at either the county, the full service deputy  
12 or a limited service deputy location, and you will  
13 actually see that. We had assumed that the limited  
14 service deputy would be at 5 percent, it's actually 11  
15 percent. So more people are walking into the grocery  
16 stores to renew their registrations than we had  
17 anticipated.

18 We also have a new classification, the dealer  
19 deputies, and they're also taking up 5 percent of the  
20 share of transactions. So were we on target? You know,  
21 it's kind of a mixed bag.

22 MR. INGRAM: Is there a theory on the limited  
23 service deputy and why that would jump to that level?

24 MS. FLORES: We have not really had time to  
25 delve into that, so no, sir. We have not had time.

1 MR. INGRAM: Has the number of limited service  
2 deputies increased?

3 MS. FLORES: No, sir, they have not. As I've  
4 always said every time I come to you, there's something  
5 going on, we just can't really put our finger on it, but  
6 at least we have more data at this point.

7 MR. BARNWELL: Prior to the change, what were  
8 the limited service deputies percentage of total  
9 transactions?

10 MS. FLORES: It was roughly 5 percent. That's  
11 what we had seen through the registration and titling  
12 system. So what's driving the 11 percent, like I said, we  
13 really don't know at this point.

14 MR. WALKER: So that takes away from the TACs?

15 MS. FLORES: Yes, sir. The limited service  
16 deputies receive a dollar for that compensation, and the  
17 do have, I believe, agreements with each of those vendors  
18 they utilize.

19 MS. BREWSTER: Mr. Chairman, just to be a  
20 little more specific, the counties deputize the limited  
21 service deputies so they are in control of who they  
22 utilize as limited service deputies.

23 MS. FLORES: The other item that's kind of  
24 driving the registration revenue, when I say it's flat,  
25 even though we have less transactions, we are seeing that

1 there's a different mix in the type of vehicle that is  
2 being renewed. We have less motorcycles and light  
3 vehicles being renewed versus heavy duty trucks and  
4 passenger vehicles over 6,000 pounds, so those could be  
5 your larger SUVs. When it comes specifically to trucks  
6 over a ton, there's 10,000 vehicles associated with that  
7 classification. They pay a registration fee anywhere from  
8 \$200 to \$800, so even at a minimum if they're only paying  
9 \$200, that's a significant revenue stream. So it's  
10 offsetting some of those lower transactions. You have  
11 vehicles that are paying more, so that kind of helps  
12 stabilize the revenue flow.

13 MR. WALKER: So thank the trucking industry,  
14 you're saying.

15 MS. FLORES: Yes, sir. Thank you very much.

16 So now we get to the county compensation, and  
17 I'm sure this is of a lot of interest to our guests in the  
18 room. In FY16 we estimated that the counties received  
19 \$51.5 million; in FY17 we believe that they'll receive  
20 approximately \$47.8 million, and there is a delta. This  
21 does not include any of the labor savings that we had  
22 assumed in the rule package. Because the agency was  
23 taking on centralized fulfillment and we were eliminating  
24 the need to automatically the need to replace license  
25 plates, we assumed that there would be some labor savings,

1 not having to stuff the envelopes and that there would be  
2 some savings. For the purposes of this analysis, we only  
3 stuck to the hard cost of postage that would be saved for  
4 the counties. That is that \$2.1 million. So their  
5 revenue is less but they should have incurred some savings  
6 when it came to postage, and that's where we get the  
7 \$47.8 million. Is it the same as it was last year? No.  
8 But remember, registration transactions are down, they're  
9 down not only for the counties, they're also down for the  
10 state, they're down for anyone who processes a  
11 registration renewal.

12 MR. TREVIÑO: And that is a full fiscal year  
13 projection, and this is through what month at least with  
14 hard numbers?

15 MS. FLORES: This is actually an annual  
16 projection.

17 MR. TREVIÑO: Right, but the hard numbers that  
18 you have to make the projections are through June, July?

19 MS. FLORES: Through June.

20 MR. TREVIÑO: June.

21 MS. FLORES: Yes, sir.

22 MR. TREVIÑO: Thanks.

23 MR. PALACIOS: Ms. Flores, I guess the question  
24 that I would have looking at these numbers, as we're  
25 reviewing the impact of P&H on various entities, including

1 county revenues, and it's really difficult to ascertain  
2 looking at this chart what that impact is because part of  
3 this, as you said, has a lot to do with the decrease in  
4 overall registrations. So if we factor that in, do we  
5 know ultimately where we'd be? Is that the next slide?

6 MS. FLORES: That is later in the slides. Yes,  
7 sir.

8 In looking at some of the counties, we did  
9 determine that there are some counties who are receiving  
10 more compensation versus less compensation. Overall, 187  
11 counties will see more revenue flowing through their  
12 offices, while 67 will experience a decline.

13 MR. WALKER: Is there a reason?

14 MS. FLORES: Some of the smaller offices  
15 because they're receiving \$2.30 for each transaction,  
16 they're actually seeing more revenue.

17 MR. WALKER: What about the ones that are  
18 receiving less, why?

19 MS. FLORES: I'm sorry?

20 MR. WALKER: What about the ones that are  
21 receiving less, the 67?

22 MS. FLORES: I would probably classify those as  
23 some of the larger county offices where perhaps their end  
24 users are using some of the online services. They're not  
25 actually coming in through their offices.

1 MS. BREWSTER: Mr. Chairman.

2 MR. PALACIOS: Yes.

3 MS. BREWSTER: Ms. Flores is correct. I'd just  
4 add on that it depends on their mixture of business. Do  
5 they utilize a full service deputy, limited service  
6 deputies, how many walk-in transactions, so as you can  
7 imagine, in some of the smaller counties there's a much  
8 higher walk-in transaction rate than let's say a larger  
9 county.

10 MR. WALKER: Because they want to go see Betty,  
11 they know Betty.

12 MS. BREWSTER: I'm sorry, sir?

13 MR. WALKER: They want to go see Betty, they  
14 know her.

15 MS. BREWSTER: That may be. Betty may be very  
16 nice and they want to go see Betty.

17 MS. FLORES: The counties also do receive other  
18 compensation, just like the Texas DMV. The processing and  
19 handling fee is one fee of several that flow into our  
20 coffers. As we presented yesterday, the DMV Fund has  
21 other types of fees that help support this agency's  
22 operations, such as certificates of title, business  
23 licenses. The county too also has other revenue that they  
24 collect associated with duplicate receipts, special  
25 plates, replacement plates. And this number here, this

1 154- does not include the optional road and bridge fees  
2 and the county's share of oversize/overweight revenue.

3 The impact to the full service deputies.  
4 Again, this table reflects the reduction in transactions  
5 which everyone is seeing, so this just kind of validates  
6 again that everyone is being impacted by fewer  
7 transactions.

8 Because we really didn't have a whole lot of  
9 data flowing through the registration and titling system,  
10 we knew that the full service deputies were authorized  
11 prior to the rule, that they were authorized to charge \$5  
12 on registrations. Based on the number of transactions  
13 from the prior year times that \$5 registration, we  
14 estimated that they should have collected approximately  
15 \$1.5 million. Because now things are being processed in  
16 the registration and titling system, we have identified  
17 \$6.1 million collections January through June of this year  
18 for the first six months. If we estimate out for the  
19 year, we believe that they'll collect \$10.4 million.  
20 Again, the full service deputies, just like the DMV and  
21 the counties, also charge fees for services such as  
22 notary, delivery, surety bonds that are not captured in  
23 these amounts.

24 MR. WALKER: Ms. Flores, \$6 million for six  
25 months, if we annualize that number will be \$12 million.

1 MS. FLORES: But again, January to June.  
2 August is our end of year so it's another two months  
3 worth.

4 MR. WALKER: Oh, okay. I'm thinking calendar  
5 dates.

6 MR. BARNWELL: It's not really estimated  
7 annually then, is it?

8 MS. FLORES: No, sir. It's just from January  
9 to August, so it's an eight month. Because our fiscal  
10 year ends August 31, so we estimated those six months and  
11 we just straight-lined out to the end of August.

12 MR. BARNWELL: January through June.

13 MR. WALKER: January through June was six  
14 months, you had \$6 million.

15 MR. BARNWELL: And you add two more to that  
16 because we had a million a month.

17 MR. WALKER: We add \$4 million to it. It goes  
18 to \$10 million.

19 MR. BARNWELL: July and August is only two  
20 months.

21 MR. WALKER: Yes, but she's adding \$4 million.

22 MR. BARNWELL: I don't care if it goes to \$10  
23 million. I'm looking at the math and I don't see the  
24 math. I'm just wondering what's going on with that.

25 MS. FLORES: Member Barnwell, you're correct,

1 this is six months annualized to twelve months, and then  
2 we factored in a little bit of a conservative factors, we  
3 estimated 85 percent. So we took those six months, we  
4 annualized it, then we backed it down a little bit to be  
5 conservative as to what their collections would be.

6 MR. BARNWELL: So the problem I've got with  
7 that is that these numbers are gerrymandered, they're  
8 massaged, they're not real. There's all kinds of factors  
9 that you're putting in there, and I'm not saying they're  
10 unreasonable factors, they're just factors that aren't  
11 disclosed.

12 MS. FLORES: Correct. I mean, the January  
13 through June, those are actual receipts.

14 MR. BARNWELL: That's actual, and the rest of  
15 it is a projection that's based on certain assumptions  
16 that aren't listed on this.

17 MR. WALKER: How does he get by without turning  
18 is mic on and I get chewed out every time?

19 MR. BARNWELL: Because I talk very loud.

20 (General laughter.)

21 MS. FLORES: I hear what you're saying, Board  
22 Member.

23 MR. BARNWELL: So that's an issue that I've got  
24 with a lot of the numbers, and I'm not questioning that  
25 you know what you're doing, I'm questioning that I don't

1 understand what you're doing. Now, that's more my fault  
2 than your fault, but you've got to help me a little bit  
3 here, please.

4 MS. FLORES: Yes, sir.

5 MS. BREWSTER: So, Mr. Chairman, if I may?

6 MR. PALACIOS: Yes, please.

7 MS. BREWSTER: So the reason why Ms. Flores and  
8 her team took a conservative approach of 85 percent  
9 instead of straight-lining at 100 percent of the amounts  
10 from January to June is that our highest registration  
11 month is in March, and it would not be a fair comparison  
12 to continue that projection at the amount that we saw from  
13 January to June through the rest of the year, knowing that  
14 those are the lower registration months. And that's why  
15 an 85 percent projection was made.

16 MR. BARNWELL: And I don't have any particular  
17 heartburn over that, I think that's probably a reasonable  
18 assumption and change that you made, and I agree with it,  
19 I'd just like to know about it. So that's all I'm saying  
20 is it's just a disclosure on the page that I'd like to see  
21 so that I can say, okay, I understand why Ms. Flores did  
22 what she did because that makes a certain amount of sense.

23 We know March, as you said, Madam Director, is the high  
24 month and we're not going have that high month in the last  
25 four months of the year and we're annualizing this. Those

1 things all mean things to me that make these numbers look  
2 like okay, and as I throw a thumb up and say is that about  
3 right, you know, I'm getting comfortable that your numbers  
4 are not skewed some way that I don't understand. I'm just  
5 asking for disclosure, that's all.

6 MS. FLORES: Absolutely. I hear you, Board  
7 Member.

8 MR. BARNWELL: Thank you. I don't mean to  
9 offend.

10 MS. FLORES: Oh, no, sir.

11 MR. BARNWELL: I'm strictly interested in  
12 information.

13 MS. FLORES: Absolutely.

14 MR. BARNWELL: Okay.

15 MS. FLORES: The next table identifies what we  
16 have seen, what we have captured for January through June  
17 in the way of deposits for the dealer deputies. We've  
18 identified \$719,263 fees related to title convenience fees  
19 and they've processed 551,057 transactions, and therefore,  
20 they receive a dollar for each P&H transaction.

21 So as I previously mentioned, there are several  
22 factors affecting the registration collectors, not only  
23 for the counties but also for the state and all of our  
24 business partners who are processing registration, and  
25 that is the reduction in transactions is the driving

1 factor that's affecting all of our revenue.

2           The State Highway Fund is flat. TxDOT did  
3 reach out to use last week asking about the trends that  
4 they were seeing which coincided with ours, and they were  
5 asking for our help in understanding why the registration  
6 revenues were flat. The original rule package did include  
7 postage and labor savings to be taken into account when it  
8 came to the centralized fulfillment of online  
9 transactions. There are some limitations, as Board Member  
10 Barnwell pointed out. We have very limited insight into  
11 some of the economics that are being played out in the  
12 state, we have limited insight into some of the financials  
13 of our business partners, but we've tried to update the  
14 county compensation revenue based on what we've seen for  
15 the first six months.

16           There has been a silver lining, I would say,  
17 for our fee paying customers. When we embarked on the  
18 processing and handling fee, the Board authorized a one  
19 dollar online discount for online registration renewals.  
20 To date fee payers will save approximately \$1.5 million  
21 for the first six months of this fee implementation. In  
22 addition, as I previously mentioned, if you bought your  
23 vehicle in 2016, you saved \$4.75 for that second year's  
24 registration renewal, so fee payers have actually saved  
25 \$6.56 million. They also got to skip the lines at their

1 choice of location. We estimate that they've actually  
2 saved another \$507,500, and the way we computed that,  
3 Board Member Barnwell, we took approximately three minutes  
4 in a vehicle, we came up with some minutes that they would  
5 save driving to their local location, and we multiplied  
6 that by the minimum wage of \$7.25. So this involved  
7 everyone involved with processing new registration  
8 renewals to focus on other operational tasks or other  
9 complicated transactions.

10 Our next steps is to continue to look at these  
11 transaction counts and breakouts and all the data that we  
12 have compiled through the end of this year as well as next  
13 year. We need to have more data points in order to really  
14 determine what the impact of his fee implementation will  
15 be in the future. Every month we look at our registration  
16 revenue, every month we look at our counts, so as we get  
17 more data points, we'll be able to provide a clearer  
18 understanding of what this fee has done for the state.

19 And that concludes my presentation.

20 MR. PALACIOS: Thank you, Ms. Flores.

21 Are there any questions regarding Ms. Flores's  
22 briefing?

23 MR. INGRAM: I don't have any questions but I  
24 have a comment. You had asked previously, Mr. Duncan had  
25 asked and just a comment to staff from a dealer

1 perspective, I would like the staff to go back and take a  
2 look at the dealer deputy part of that rule. I am very  
3 cognizant to the harm, I will say, to the tax assessor-  
4 collectors, so I'm totally in favor of taking a look at  
5 that and seeing how we could fix it.

6 MR. WALKER: I'm not sure I understand.

7 MR. INGRAM: Well, when the dealer is a dealer  
8 deputy and does the tax, the tax assessor-collector  
9 basically gets, I think, 25 cents?

10 MS. BREWSTER: May I?

11 MR. PALACIOS: Yes, please.

12 MS. BREWSTER: For the record, Whitney  
13 Brewster.

14 The county compensation is typically \$2.30. If  
15 there is a dealer deputy doing the work, they get a dollar  
16 of that \$2.30 fee, so the counties receive \$1.30 for those  
17 transactions.

18 MR. INGRAM: And then if you remember, going  
19 back to the study that we did, \$1.30 is below their cost,  
20 so it's a loser for them.

21 MR. WALKER: But you're doing the work for  
22 free, basically.

23 MR. INGRAM: I am, but they have to review the  
24 work and they also have to look at it to make sure it's  
25 been done correctly. They have to monitor the plates,

1 they have to make sure the plates are being accounted for,  
2 so it's not free.

3 MR. PALACIOS: I would also add that one dollar  
4 reduction for the tax assessors, by using a dealer deputy,  
5 also applies to full service deputies, so it's the same  
6 effect.

7 MR. WALKER: I wasn't referring to that. I was  
8 referring to you do it basically for free. You do it as a  
9 benefit to your customer.

10 MR. INGRAM: That's true, but there's a huge  
11 savings to us in terms of timing.

12 MR. PALACIOS: Any more comments for Ms. Flores  
13 (No response.)

14 MR. PALACIOS: If not, I would like to ask that  
15 Mr. Kevin Kieschnick come forward. He is here to discuss  
16 this agenda item. He's representing the Tax Assessor-  
17 Collectors Association and he is the tax assessor from  
18 Nueces County.

19 MR. KIESCHNICK: Thank you very much. I  
20 appreciate you guys bringing this up. And I want to thank  
21 staff as well for the work that they've done on this and  
22 for also just including us in this conversation because  
23 this partnership is really critical.

24 A couple of words that I want to go back on,  
25 though. You guys were talking about registrations

1 earlier. I've got some other things that you might want  
2 to consider on that end before I get into the dealer  
3 deputy issue.

4 MR. PALACIOS: I'm sorry. I identified you,  
5 but please identify yourself.

6 MR. KIESCHNICK: It's Kevin Kieschnick, Nueces  
7 County Tax Assessor-Collector, also the DMV liaison for  
8 Tax Assessor-Collectors Association of Texas.

9 Prior to single sticker, the people could  
10 actually renew their registrations even if their cars did  
11 not pass inspection, so some of that drop may also be  
12 related to that. Just something you guys might want to  
13 consider.

14 I've just got a couple of minutes here so I'm  
15 just going to jump right on. Revenue for the larger  
16 counties, there's 172 rural counties in Texas, this is as  
17 defined by Department of Statistics, and the rest are  
18 considered urban, and so it matches up with what she was  
19 saying earlier about the smaller counties seeing some  
20 increase in funding, the larger counties that actually  
21 produce the majority of the vehicle transactions, are  
22 seeing the reduction.

23 And this dealer deputy issue that you bring up  
24 is really key. We did lose some revenue, especially the  
25 urban counties. We had a \$117,000 investment that we had

1 in an automated service for our online and mail-in  
2 transactions where we were issuing mail-ins and online  
3 transactions the same day, and so that investment that our  
4 county made is now only being used for property tax where  
5 we were actually using it for property and motor vehicle,  
6 and so we really didn't have a major savings in that arena  
7 because we already had an automated process in place. And  
8 that probably stands true for a lot of the larger  
9 counties, larger than me, as well.

10 So really, if we look at this dealer deputy  
11 issue, if we could somehow bring that back, a lot of us  
12 are really hurting for revenue because we're seeing tax  
13 rates cut, Chairman Palacios and I were talking about the  
14 major refunds we had to do as a result of the Valero  
15 refinery challenges, and various urban areas have those  
16 same sort of challenges that they're dealing with. When  
17 our commissioners set our budgets for the number of people  
18 they staff us with, they look at our revenue dropping.  
19 Our staffs are basically at risk of losing those staff  
20 members.

21 So I appreciate you guys really looking at this  
22 because we need it and we're a partnership and we  
23 certainly want to be able to offer the best service to our  
24 constituents and our dealers as possible, and just want to  
25 thank you for bringing that up. And if you have any

1 questions, I can go further, I've got about six seconds  
2 here.

3 MR. PALACIOS: Mr. Kieschnick, I do have a  
4 question so I'd just be clear on what's being proposed  
5 would be specific to dealer deputies or full service  
6 deputies as well?

7 MR. KIESCHNICK: Well, I refer more to the  
8 dealer deputies, that extra dollar, because what happens  
9 is, as was stated earlier, we're still issuing the plates,  
10 we're still managing the inventory. It definitely  
11 streamlines the process but it's actually costing us money  
12 to turn that over because we're losing that revenue and e  
13 still have that job function in place whether we're  
14 keeping that inventory in our offices or whether we're  
15 issuing it out to the dealers so you guys can have a more  
16 streamlined transaction. So we haven't changed that  
17 process any in my office, even though it costs us money  
18 because I don't want to disrupt the process we've got in  
19 place.

20 My county and numerous counties have gone out  
21 and really wrapped our arms around webDEALER, and it's  
22 really helped us tremendously, but it's actually now  
23 costing us money to bring more people on board as opposed  
24 to being a cost savings because we're losing some of that  
25 revenue. And as we talked earlier with our budgets being

1 reduced, every dollar counts, and you look at the number  
2 of transactions that got through, we really need,  
3 especially the larger counties, we really need that  
4 revenue to justify our staffing levels.

5 MR. PALACIOS: So you would make no exception  
6 for a full service deputy whether they stock inventory or  
7 whether they don't?

8 MR. KIESCHNICK: Right. Bring it back to the  
9 \$2.30. And the dealers, they are able to retain \$10 extra  
10 for that transaction, and that streamlines your process as  
11 well as ours. And we have like every single franchised  
12 dealer, except one that refuses to get on it, on  
13 webDEALER, and it's really helped us tremendously. And I  
14 think that other franchise will get on board because we're  
15 pretty much going to mandate it after December 31 because  
16 our processes have to change because my lines on the  
17 consumer side are not getting any shorter, and we've got  
18 to move some of those people from our dealer side over to  
19 our consumer side to get that line wait time down.

20 MR. WALKER: If your line is not getting any  
21 shorter, are you registering more cars, or what's going  
22 on?

23 MR. KIESCHNICK: We're about the same. We had  
24 a drop because of the Eagleford. We were up about 305,000  
25 in Nueces County and it dropped down to about 296-. Most

1 of that was fleet, those fleet vehicles that left the area  
2 is kind of what we attributed that to.

3 MR. WALKER: Because of the oilfield?

4 MR. KIESCHNICK: The oilfield downturn, but it  
5 seems to be ticking back up now. But we lost a  
6 significant number of fleet vehicles and I think that's  
7 where most of those numbers went.

8 The other thing that our office is doing, and  
9 I'm sure others as well, is since TxDMV has allowed  
10 webDEALER to go out to the independent auto dealers, we're  
11 bringing those independent auto dealers onto webDEALER as  
12 well and issuing them plates and stickers, so we're trying  
13 to get them trained, and obviously some are going to be  
14 able to handle it some don't have the technical expertise  
15 so we're not going to mandate it for the smaller mom-and-  
16 pop shops, but trying to get as many people on this  
17 process as possible to help keep our lines down because it  
18 just makes things more efficient all the way across the  
19 board. And utilizing the ACH services is really  
20 tremendous and a critical part of that function.

21 MR. INGRAM: So you're actually deputizing the  
22 dealers?

23 MR. KIESCHNICK: Yes, we are.

24 MR. INGRAM: Great. Can you talk to John Ames?

25 (General laughter.)

1           MR. KIESCHNICK: And I think if we get this  
2 taken care of, and they're facing these issues, they would  
3 love to, but from what I've heard from talking to him,  
4 it's going to be a significant impact, especially on the  
5 volume that they run in Dallas County. I think I've got  
6 like 21 dealers or something; I can't imagine how many  
7 he's got. I just have a little over 360,000 people in our  
8 county, so I think they're about ten times our size.

9           MR. PALACIOS: So Mr. Kieschnick, I just want  
10 to be clear. So you're asking for the dollar from full  
11 service deputies to bring you back to \$2.30 -- dealer  
12 deputies.

13           MR. KIESCHNICK: Yes, that's what we're asking  
14 for. And we're also asking for it to be optional, we're  
15 not asking it to be mandated. That's something that each  
16 county can work it out with their dealers individually.  
17 Some dealers may want to do it, some may not. There's  
18 certain ways around that, but most of the ones in our  
19 area, the ones I've talked to, both people we've talked to  
20 at TIADA -- I'm not going to put words in their mouth --  
21 but our local dealers have said, Yes, we'd be willing to  
22 give that back to you because we understand the situation.

23           MR. PALACIOS: Will you be asking the same from  
24 full service deputies?

25           MR. KIESCHNICK: I don't have any full service

1 deputies

2 MR. PALACIOS: I guess are you speaking on  
3 behalf of TACA or just your county?

4 MR. KIESCHNICK: I'm speaking on behalf of TACA  
5 but we're specifically talking about the dealer deputy  
6 fee, we're not talking about the full service.

7 MR. PALACIOS: I guess my question would be why  
8 not.

9 MR. KIESCHNICK: There's four counties that  
10 deal with that and I'm not the expert in that area, so I'd  
11 have to really defer to those four counties. And I think  
12 Ruben is here and he may be able to speak specifically to  
13 that because I'm not really that familiar with that, so  
14 I'll defer that over to Ruben.

15 MR. PALACIOS: Well, he's actually on the  
16 speaker list.

17 MR. KIESCHNICK: Yes, he is. That's why I  
18 asked him to be here.

19 MR. PALACIOS: Would you like to speak on the  
20 matter, Mr. Gonzales?

21 Are you finished?

22 MR. KIESCHNICK: I'm done if you don't have any  
23 more questions for me.

24 MR. WALKER: So what I heard him say is that  
25 he's asking for permission to ask the dealer, Blake who is

1 on webDEALER, to say would you foreclose your \$1.30 and  
2 give it back to me instead of you keeping it.

3 MR. PALACIOS: Yes.

4 MR. KIESCHNICK: It's the dollar.

5 MR. WALKER: The dollar. Just a voluntary if  
6 he wants to give it he will, if he doesn't he can still  
7 keep it.

8 MR. KIESCHNICK: Yes. Because under the  
9 current rule, I think the dollar comes back to TxDMV if  
10 they don't take it, but I think everybody is taking it.  
11 That's my understanding.

12 MR. PALACIOS: That's fair enough.

13 MR. KIESCHNICK: Thank you very much.  
14 Appreciate your help on this.

15 MR. WALKER: But there's no fiscal impact on  
16 the agency at all here.

17 MR. PALACIOS: No.

18 Mr. Gonzales, would you like to comment? And  
19 again, my question is I'm hearing that the counties would  
20 like to get that dollar back. As we bring full service  
21 deputies on, they'll lose the dollar, as we bring dealer  
22 deputies on, they'll go from \$2.30 to \$1.30, and I guess  
23 my question is would you have the same impact using full  
24 service deputies. So I guess since you're a county that  
25 uses more full service deputies than anyone in the state,

1 will we be asking the same from full service deputies?

2 MR. GONZALES: Yes, sir. Good afternoon, Mr.  
3 Chairman, Board members. My name is Ruben Gonzales, El  
4 Paso County Tax Collector. And I'm here to echo Mr.  
5 Kieschnick's commentary, and if it would be favorable in  
6 your minds to consider the extra one dollar that he dealer  
7 deputies are retaining now, to be retained by the county  
8 tax collectors, that would be very beneficial to us.

9 I am a county that is late in starting the  
10 webDEALER program so we have not been impacted very much  
11 right now like our other counties that have been  
12 participating in this program. They are taking a loss in  
13 revenue because of yielding that one dollar fee under the  
14 dealer deputy concept, so if you would consider allowing  
15 the extra one dollar to be retained by the county tax  
16 collectors, it would be very much appreciated. It would  
17 certainly help our funding.

18 Now, in regards to full service deputies, they  
19 basically also are impacting us because we do have full  
20 service deputies. I have eleven offices in my county, and  
21 believe it or not, the law of economics in our community  
22 forces many of the citizens to come into our office and  
23 pay the lower fee of \$4.75 versus spaying up to \$9 for  
24 renewal or up to \$20 for a title transfer. So they look  
25 at that and they absent themselves form going to the full

1 service deputies and come to our office, so I've been  
2 having a lobby full of customers. That creates a lot of  
3 criticism because the public doesn't understand the law of  
4 economics and they basically blame me for supposedly being  
5 inefficient because they're there waiting possibly for no  
6 more than 30 minutes but to them it's a wait and it's no  
7 different than going to the post office or McDonald's or  
8 Walmart and get in line to get service.

9 But in either case it does impact us, and  
10 because of the essence of time, I would like to submit to  
11 you for favorable consideration to help us if the dealer  
12 community would be willing to let go of that one dollar.  
13 In my conversation with many of them, they do not disfavor  
14 that, they support it, they wouldn't have any objection to  
15 it. So in future consideration, if you would consider  
16 that, it really would help the counties because we are in  
17 a fund situation where we're getting shortages.

18 I'm dearly impacted by the internet service  
19 right now. El Paso has one of the best, if not the best  
20 enforcement program for scofflaw but we're not able to  
21 participate under the current system so we're hurting. So  
22 again, I am impacted by that, but right now today the  
23 subject is dealer deputies and I would solicit your  
24 support in that.

25 MR. INGRAM: And so just to tack on, I'm sorry,

1 Mr. Gonzales, are you supporting that we also make it  
2 optional for the full service deputies to give up the  
3 dollar?

4 MR. GONZALES: I can't speak for the other  
5 counties, I'm sure they would love to do that. A lot of  
6 it depends, like it probably would be difficult for me to  
7 speak for Travis County because here their convenience  
8 fees have been much higher than the ones that were  
9 established in El Paso. The rate that's established now  
10 favors the full service deputies in El Paso because of  
11 economics being a border community, so to them in a way  
12 it's a profit. For the full service deputies in this part  
13 of Texas, and San Antonio possibly, it's probably not  
14 adequate, would not be feasible to do that.

15 MR. INGRAM: So your full service deputies  
16 actually increased because they were slightly lower, I  
17 believe, than the rate that we put in place.

18 MR. GONZALES: Yes, sir. Their rates  
19 increased, so they're happy as a lark, they're not  
20 complaining, but the people look at their pocketbooks and  
21 it's going to the businesses, and they're eventually  
22 winding up to our offices where they can get the same  
23 service and we only charge them an extra \$4.75.

24 MR. INGRAM: So understanding that you're not  
25 speaking from all the tax assessor-collectors, just from

1 your own county, that you would be okay with making it  
2 optional for full service deputies.

3 MR. GONZALES: Yes, sir, but I also am  
4 supporting our association for the counties that are  
5 impacted by this because they do need some relief, and  
6 this is a good revenue resource that's available because  
7 it's there, and if the dealer community does not object to  
8 that, then we as an association or the counties that are  
9 impacted by it would certainly be very much appreciative  
10 of your efforts to help us in this area of funding.

11 MR. WALKER: So can I clarify one thing?  
12 Because I think Blake hit on it and I wanted to go there  
13 the same time because when I listen to you speak, you said  
14 you want to have the county retain, you never said  
15 optional on what he said. You mentioned the word optional  
16 and I'm not sure I heard it back from him that it would be  
17 optional. I think he's asking that they be able to retain.

18 Which is it: just the option that you can ask  
19 for it, or do you want the ability to take it?

20 MR. GONZALES: For the dealer deputy community,  
21 we would want to be able to keep the one dollar fee.

22 MR. WALKER: That's not what they asked for the  
23 last speaker.

24 MR. GONZALES: The last speaker indicated to  
25 give the option.

1 MR. WALKER: Right. I just wanted to clarify  
2 that because I heard two different things. I wanted to  
3 make sure I understood that right.

4 MR. GONZALES: Yes, sir.

5 MR. TREVIÑO: Did you have a comment, Counsel?

6 MR. DUNCAN: I just wanted to point out I did  
7 pull up the petition for rulemaking which came from Mr.  
8 Kieschnick on behalf of TACA, and the way they drafted it  
9 is up to \$2.30. It is up to the Board obviously what rule  
10 you propose, and we can work with them and we obviously  
11 will have a lot of conversations with them about the  
12 structure of the rule and what it would say, but it would  
13 be difficult to program multiple levels of compensation  
14 for TACs.

15 MR. WALKER: So this is getting pretty  
16 complicated when you start making all this optional and  
17 not optional.

18 MR. DUNCAN: Having a number is obviously  
19 ideal, having a single number is obviously ideal.

20 MR. TREVIÑO: But to understand that optional  
21 means is that a county would have the option, but once it  
22 puts it in place, it's no longer an option in that county.

23 So one county could have it, another county could not  
24 have it, but once it's in place in a county, it's not  
25 optional. Is that the question?

1 MR. GONZALES: Yes, sir. Again, what works for  
2 El Paso County may not necessarily work in other counties.  
3 But in reference to dealer deputies, that one dollar fee  
4 when a dealer deputy performs a transaction, if the dollar  
5 is favorable to you, we certainly would welcome it.

6 MR. PALACIOS: I think this is a rule that we  
7 need to look at. One of the benefits of P&H is that we  
8 have made uniform rules across the state and that was part  
9 of the mission.

10 MR. WALKER: That was the initial directive, to  
11 uniform it across the state, not that they can be  
12 arbitrary.

13 MR. PALACIOS: Yes. And so we've received  
14 comments from Mr. Gonzales and Mr. Kieschnick, obviously  
15 things are different, but I think as we go forward we need  
16 to look at whatever rules we look at or proposals we make  
17 are uniform and consistent.

18 MR. WALKER: I think that's exactly right.

19 MR. INGRAM: I actually heard Eric moan over  
20 there when we were talking about different rates.

21 (General laughter.)

22 MR. PALACIOS: Anything else, Mr. Gonzales?

23 MR. GONZALES: No, sir. I just thank you for  
24 your time

25 MR. PALACIOS: Thank you.

1           I want to thank Mr. Kieschnick and Mr. Gonzales  
2 and the other TACA members that have come from different  
3 parts across the state to be here with us. This agency  
4 has maintained a great relationship with TACA through the  
5 years. I know in coming up with this P&H fee , you were  
6 very integral and sitting on committees for hours and  
7 hours at a time, and it's that great relationship that I  
8 think is going to allow us to go forward and hopefully  
9 resolve issues that are pertinent to the two of us. So we  
10 thank you for all of your time.

11           MR. TREVIÑO: And your service to the State of  
12 Texas.

13           MR. PALACIOS: I'm going to take a quick poll  
14 here. We can go forward or we can take a lunch break.

15           MR. WALKER: Let's go. We'll never get out of  
16 here today.

17           MR. PALACIOS: All right. Does anybody want to  
18 take a five-minute break? Let's go ahead for those that  
19 haven't been there we'll take a five-minute break and  
20 we'll come back and knock this out.

21           (Whereupon, at 1:15 p.m., a brief recess was  
22 taken.)

23           MR. PALACIOS: Let's move forward, folks. By a  
24 consensus from the Board, we are going to bypass lunch,  
25 have trail mix for lunch, we are going to charge forward

1 on our agenda.

2 Moving t the next item, we'll have our Finance  
3 and Audit Committee update. Our chair is Board Member  
4 Caraway. She was not at the meeting yesterday; presiding  
5 in her place was Board Member Walker. So we'll move  
6 forward with the first item on that agenda which is  
7 consideration of committee recommendation regarding the  
8 fiscal year 2018 interagency agreement between TxDOT and  
9 TXDMV.

10 MR. WALKER: I'd like to give an update to the  
11 full Board and then I'll turn it over to the staff for  
12 brief presentations.

13 The committee met yesterday here at the DMV  
14 headquarters. As mentioned, I presided over the meeting  
15 which was also attended by Members Hardy and Barnwell.  
16 The committee considered seven agenda items, three of the  
17 items 10.A.1 through 10.A.3 from the committee meeting  
18 require action today by the full Board. After a brief  
19 staff presentation on each of these items, a committee  
20 member will make a recommendation for Board action. The  
21 remaining four items, 10.B.1 through 10.B.4 are just  
22 briefings. Staff will make a brief summary presentation  
23 of what was considered by the committee without repeating  
24 the entire presentations that we had yesterday, and staff  
25 will be available for any questions that we may have.

1 MR. PALACIOS: Ms. Flores.

2 MS. FLORES: The staff did present the FY18  
3 recommended operating budget. This was the second  
4 presentation of this budget. The first presentation  
5 occurred at the June Board meeting. The operating budget  
6 for the next year totals \$168 million. We have 779 FTEs,  
7 we got 16 new FTEs, 13 for the special investigations unit  
8 and three for headquarters. We are recommending that we  
9 transfer some unspent dollars from certain capital line  
10 items into automation and then transfer the automation  
11 balance of approximately \$10.5 million forward into fiscal  
12 year '18. These dollars will finance a variety of  
13 automation projects, including webLIEN. This does require  
14 Board approval so that we can notify both the Legislative  
15 Budget Board and the Governor's Office of the transfer to  
16 the automation. This will be the last year that we're  
17 able to do this as well.

18 MR. BARNWELL: When does this have to be done  
19 by?

20 MS. FLORES: August 31.

21 The recommended budget included 173 contracts,  
22 16 of which are statutorily required, contracts for  
23 routine services such as license plate production, and we  
24 did request specific Board approval for a couple of  
25 contracts, the Southwest Research Institute and American

1 Association of Motor Vehicle Administrators National Motor  
2 Vehicle Title Information System. We're asking that the  
3 Board authorize the executive director to execute those  
4 contracts.

5 That was the last part. With that, I'll take  
6 any questions.

7 MR. WALKER: So I'd like to also make a comment  
8 about the meeting yesterday is that one of the things  
9 that, Raymond, we did in committee yesterday was when we  
10 looked at all these contracts, we saw that there's 60  
11 contracts out there and we kind of questioned are we  
12 really getting the best bang for our buck on some of these  
13 contracts and we questioned some of them and so forth, and  
14 we asked that maybe we look at -- and I know it's a  
15 statutory requirement that we buy license plates from the  
16 State of Texas penitentiary system, but it's a huge item,  
17 it's a \$25 million contract that we pay with them and we  
18 get 12 million license plates a year so we're paying \$2  
19 apiece for license plates.

20 And we have asked that maybe Sandra look at  
21 potentially putting into not this one but maybe the next  
22 following to look at maybe is that our best option. Maybe  
23 can we go to ABC Manufacturing and buy license plates,  
24 that same volume, for 5 million bucks instead of paying 25  
25 million to the state and just test some of those ideas out

1       there. I know we can't change that but we could sure go  
2       back to the legislature and say we're buying from the  
3       penitentiary system and maybe we could be buying from  
4       outside vendors and get a better deal, look at some of the  
5       other contracts that we have that are out there that we've  
6       just taken for granted.

7                   And I made sure with the staff yesterday that  
8       we weren't stepping on any toes but it might be prudent  
9       and it's correct, maybe, for her to put that in her  
10      internal audit review to do that, and she said yes, it  
11      would be. So she may look at putting some of those things  
12      in our future audit to kind of look at contracts. And our  
13      executive director was there and she was okay with that  
14      also to do that.

15                   MR. PALACIOS: I guess the only question I  
16      would have, are we mandated by statute to use the prison?

17                   MR. WALKER: Yes, we are. And that's not what  
18      I'm saying to do. I'm saying we ought to take a look,  
19      it's our fiscal responsibility to question whether or not  
20      we're getting the best deal from the prison system.

21                   MR. PALACIOS: I see. Okay. Fair question.  
22                   Please proceed.

23                   MS. FLORES: And that concludes the  
24      presentation on the operating budget.

25                   MR. PALACIOS: Thank you, Ms. Flores.

1                   Are there any questions for Ms. Flores on the  
2 operating budget?

3                   MR. TREVIÑO: Ms. Flores, you're still good on  
4 the revenue projections as Member Walker mentioned before.  
5 Right?

6                   MS. FLORES: Yes, sir.

7                   MR. TREVIÑO: Great. Thank you.

8                   MR. PALACIOS: Do I hear a motion?

9                   MR. WALKER: We're not finished with our  
10 report.

11                   MS. BREWSTER: The report is not yet completed.

12                   MR. WALKER: There's more to our.

13                   MR. PALACIOS: I wasn't sure if you're  
14 commenting specifically on the operating.

15                   MS. BREWSTER: Specifically on the operating.

16                   MR. PALACIOS: Why don't we let him comment  
17 just on the operating and then we can move forward.

18                   So we have Mr. Hickman who will comment on the  
19 operating budget.

20                   MR. HICKMAN: I'm opposed to this budget for  
21 two reasons. The first is that you continue to fund  
22 employees who engage in influencing the passage or defeat  
23 of legislation. I have covered the legal reasons in one  
24 of my prior lectures to this body. A further reason is  
25 the moral one which was best expressed by Abe Lincoln:

1 Government of the people, by the people and for the  
2 people. Honest Abe never advocated government of the  
3 people, by the bureaucracy and for the special interests.

4 Since as far as I can tell for the last two regular  
5 sessions, none of their major proposals have passed the  
6 legislature, so you've wasted a lot of taxpayer money that  
7 could have been better used for other purposes.

8 Speaking of better purposes, this agency has  
9 never reserved adequate monies for merit pay raises. This  
10 agency's merit pay system needs reform. It is too  
11 subjective and is subject to the vindictive whims of the  
12 division directors. That is one of the main reason that  
13 agency performance dropped that 20 percent in that six-  
14 month period I seem to constantly mention. You need to  
15 implement the objective criteria for merit pay, including  
16 objective criteria for division directors merit pay that  
17 automatically awards pay for actual performance and merit,  
18 not whimsy and illusion.

19 MR. PALACIOS: Thank you, Mr. Hickman.

20 MR. WALKER: I wasn't aware that this agency  
21 passes legislation.

22 MS. HARDY: So I move that the Board approve  
23 the following recommendations of the Finance and Audit  
24 Committee: the recommended fiscal year 2017 operating  
25 budget as presented --

1 MS. FLORES: Eighteen.

2 MS. HARDY: Eighteen. My bad.

3 -- the department use the authority provided  
4 in the TxDMV capital rider #2 to transfer \$5,869,823 from  
5 the TxDMV capital projects to the TxDMV automation for  
6 carryforward as outlined in the fiscal year 2018 operating  
7 budget, which is page 169 on the Board briefing materials;  
8 and the delegation to the executive director to negotiate,  
9 execute and sign the routine and required contracts  
10 contained in part 5 of the recommended fiscal year 2018  
11 operating budget, and specific approval of the following  
12 contracts: the Southwest Research Institute and the  
13 American Association of Motor Vehicle Administrators  
14 National Motor Vehicle Title Information System.

15 MR. INGRAM: Second.

16 MR. PALACIOS: Motion made by Board Member  
17 Hardy to accept the fiscal year 2018 operating budget,  
18 second by Board Member INgram. Any discussion?

19 (No response.)

20 MR. PALACIOS: All in favor please signify by  
21 raising your right hand.

22 (A show of hands.)

23 MR. PALACIOS: Motion carries unanimously.

24 Thank you, Ms. Flores.

25 MS. FLORES: Excuse me, Chairman Palacios.

1 Before we move on, if I could just recognize the staff.  
2 Yesterday, Chairman Walker indicated that obviously I was  
3 not alone in putting together this operating document, so  
4 I would like to recognize the staff who are responsible if  
5 I may, with your indulgence.

6 MR. PALACIOS: Absolutely.

7 MS. FLORES: They're kind of in the back.  
8 Brian Kline, revenue estimator; Laura Fowler, revenue  
9 estimator; John Ralston, budget analyst; Sheila Bledsoe,  
10 budget analyst; Delores, budget analyst; Theo Kosub, he's  
11 our lead revenue estimator. He helps with all of my  
12 revenue estimators really keep me in line when it comes to  
13 those revenue estimates. And of course, Ms. Renita  
14 Bankhead, she always sits next to me during the quarterly  
15 financial report.

16 So to Board Member Walker's question, no, it  
17 does take a village to put this thing together. Thank you  
18 very much.

19 (Applause.)

20 MR. PALACIOS: Thank you very much, Ms. Flores,  
21 to you, your team, your entire staff. We truly appreciate  
22 all your hard work, your dedication for all you do for us.

23 It's greatly appreciated.

24 Let's move on now to item A.1, the fiscal year  
25 2018 interagency agreement between TxDOT and TxDMV to be

1 given by our executive director, Ms. Whitney Brewster.

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

3 Annually, the TxDMV enters into an interagency  
4 agreement with TxDOT to lay out the roles and  
5 responsibilities of both of the agencies, due to the  
6 dependencies that we continue to have on one another. The  
7 agreement, the interagency contract is before you again  
8 this year, and I just wanted to briefly explain some of  
9 the differences over the FY16-FY17 interagency contract  
10 with TxDOT.

11 First, the agreement is now a biennial document  
12 to match the state budgeting process, and the duration of  
13 the biennium. The shared facilities and infrastructure  
14 issues between the two agencies are, I believe, now well  
15 understood, cooperation is very positive and routinely  
16 managed, so allowing for a longer time frame between  
17 renegotiations I believe is appropriate.

18 It removes references to shared IT  
19 infrastructure due to the successful completion of the  
20 TxDMV AMSIT project and other separation activities. It  
21 lowers the TxDMV not-to-exceed amount by half for what we  
22 pay TxDOT, from \$2 million to \$1 million, and I believe  
23 too that this reflects successful separation activities  
24 and TxDMV being able to provide those services on its own.  
25 Very positive.

1           It establishes a facilities management work  
2 group to begin the process of discussing possible takeover  
3 of the Camp Hubbard facility maintenance by TxDMV staff.  
4 If you'll recall, there was a bill that passed allowing  
5 TxDOT to transfer all or part of this property to TxDMV.  
6 The language was permissive and it did not include a time  
7 frame for which that would occur, and that was done  
8 deliberately to allow TxDOT to secure a headquarters of  
9 its own through the legislative process. And it did get  
10 some of that funding for land acquisition as well as for  
11 studies to be completed this biennium in the anticipation  
12 of asking for funding for th full structure in the next  
13 biennium, so that bill allowed for a little bit of  
14 flexibility there.

15           Member Walker and the other members of the  
16 Finance and Audit Committee had requested that I share  
17 with you that there is no adverse impact to the agency as  
18 it pertains to this agreement should that transfer not  
19 occur this biennium, so we should be able to operate just  
20 fine regardless of whether or not this property is  
21 transferred to the agency this biennium.

22           It clarifies information related to sharing IT  
23 infrastructure relationships in the new environment where  
24 TxDMV is almost completely separated from the TxDOT  
25 equipment.

1                   That concludes my briefing.

2                   MR. PALACIOS: Thank you, Ms. Brewster.

3                   MR. WALKER: So we need a motion.

4                   MR. PALACIOS: Yes, we do.

5                   MR. WALKER: So I'd like to make a motion that  
6 the Board authorize the agency's executive director, Ms.  
7 Brewster, to negotiate the fiscal year 2018-19 interagency  
8 contract between the Texas Department of Transportation  
9 and the Texas Department of Motor Vehicles with any final  
10 changes and execute the contract as well as any amendments  
11 to the contract with the approval of the Board chairman.

12                   MR. TREVIÑO: Second.

13                   MR. PALACIOS: Motion made by Board Member  
14 Walker to authorize our executive director to negotiate  
15 the fiscal year 2018 interagency agreement between TxDOT  
16 and TxDMV with approval by the Board chairman, and second  
17 by Board Member Treviño. All in favor please signify by  
18 raising your right hand.

19                   (A show of hands.)

20                   MR. PALACIOS: Motion passes unanimously.

21                   Let's move on now to item 10.A.3 which is the  
22 fiscal year 2018 Internal Audit Plan.

23                   MS. MENJIVAR-SUDDEATH: Good afternoon. For  
24 the record, my name is Sandra Menjivar-Suddeath, Internal  
25 Audit director.

1           Yesterday I presented the fiscal year 2018  
2 annual audit plan and I'm requesting approval of the plan.

3       The audit plan consists of twelve proposed items,  
4 including eight audits, one advisory service, a special  
5 request placeholder for a Board or management request, the  
6 required fiscal year 2017 annual audit report, the  
7 required fiscal year 2019 audit plan, and two contingency  
8 audits. The plan also lists other internal audit duties  
9 such as conducting quality assurance, peer review and  
10 participating in executive steering committees.

11           Does anyone have any questions on the plan?

12           MR. WALKER: I have a comment to make.

13           MR. PALACIOS: Yes, sir.

14           MR. WALKER: I would like to pat Sandra on the  
15 back. This is the first time that we have ever had an  
16 internal audit plan that's been planned from the beginning  
17 of the year, gone through the proposed plan, and finished  
18 the plan year and done everything we said we were going to  
19 do. So her and her staff need to be commended on a job  
20 well done this year; it's the first time it's ever been  
21 done.

22           MR. PALACIOS: Hear, hear! Congratulations.

23           (Applause.)

24           MS. MENJIVAR-SUDDEATH: If I could take a  
25 second, it's really my staff who did all the work. Jason

1 Gonzalez and Derrick Miller are the two staff members that  
2 have done all the audit work and really pushed to make  
3 sure that we finished the audit plan this year.

4 MR. PALACIOS: Outstanding job.

5 (Applause.)

6 MR. PALACIOS: Thank you to you and your team.

7 I know Jason and Derrick, you've got a great team. And I  
8 understand we're going to be adding a few more in the not  
9 too distant future.

10 MR. WALKER: So we need a motion to accept the  
11 plan, I guess.

12 MR. BARNWELL: I move that the Board approve  
13 the fiscal year 2018 Internal Audit Plan as recommended by  
14 the Finance and Audit Committee.

15 MR. PAINTER: Second.

16 MR. PALACIOS: We have a motion by Board Member  
17 Barnwell, a second by Board Member Painter to accept  
18 fiscal year 2018 Internal Audit Plan. Any discussion?

19 (No response.)

20 MR. PALACIOS: All in favor of the motion  
21 please signify by raising your right hand.

22 (A show of hands.)

23 MR. PALACIOS: Motion passes unanimously.

24 Thank you.

25 I'm going to skip around again on the agenda

1 and we're going to go straight to the Legislative and  
2 Public Affairs briefing to be given by Ms. Caroline Love.

3 MS. LOVE: Good afternoon. For the record, my  
4 name is Caroline Love and I'm the director of the  
5 Government and Strategic Communications Division for the  
6 department. And I would like to offer you a briefing on  
7 two items: an update on what our implementation efforts  
8 are related to legislation passed during the 85th regular  
9 session of the legislature, and then also an update on  
10 what happened during the special session as it relates to  
11 the department.

12 Your briefing will begin on page 287 of your  
13 briefing book, and I'll just start by going through some  
14 of the major implementation efforts that we have underway,  
15 especially as they relate to the Board recommended items  
16 that were passed by the legislature.

17 I'll start with Senate Bill 2075 which is the  
18 bill that made a lot of changes related to the  
19 Registration Code. There were a lot of just general  
20 updates there and cleanup, but also one of the rules that  
21 you heard for proposal earlier contains some of the  
22 provisions of Senate Bill 275 relating to county office  
23 closures in other counties that can step in. So as you  
24 can see, as adopted earlier, some of those implementation  
25 efforts are underway through rulemaking there. And then

1 also, we have a lot of guidance that is continuing to be  
2 provided to the counties and other stakeholder groups on  
3 any other updates that were made to vehicle registration  
4 items there.

5 I'll also discussion Senate Bill 2076, that one  
6 related to a lot of title changes and updates, and that  
7 included a significant effort related to the certified  
8 copy of original title so that starting in January of 2018  
9 that will be a superceded title, so there will no longer  
10 be copies of titles that hold the same value as any other  
11 title that might be issued on a vehicle. So those  
12 implementation efforts remain underway, but then in  
13 addition there are some other components of that related  
14 to trailer dimensions and title transactions where we've  
15 been providing guidance as well to the counties on those  
16 measures.

17 And also, there was House Bill 1790 that was  
18 passed by the legislature which related to what happens  
19 when a disabled placard is seized and the recipient of  
20 that placard is notified. We removed a duplicative effort  
21 that was notifying those recipients by mail, and so that  
22 process is no longer required by statute, so we have  
23 implemented that and it's out.

24 MR. INGRAM: Caroline, can I back up just one  
25 second?

1 MS. LOVE: Sure.

2 MR. INGRAM: On the CCOs, your briefing  
3 materials say January 1, 2019, you verbally said January  
4 1, 2018.

5 MS. LOVE: I apologize. It is 2019.

6 MR. INGRAM: Okay. Thank you.

7 MS. LOVE: And part of the reason for that  
8 delay there is to allow for all the programming, and then  
9 we do have a significant stakeholder outreach and  
10 communication effort related to that being worked on as  
11 well.

12 And those wrap up the major implementation  
13 efforts as they relate to the Board recommended items that  
14 were passed. Many of the other efforts remain underway  
15 and working through those.

16 And then I also wanted to provide an update on  
17 the other legislative items that were passed by the  
18 legislature that we've been working on implementation  
19 efforts for. That includes House Bill 561 on the package  
20 delivery vehicles. The rules that were proposed earlier  
21 this morning are part of that effort, so those efforts  
22 remain underway.

23 There was also House Bill 1247 by  
24 Representative Pickett that clarifies the notification  
25 process when a vehicle storage facility is in possession

1 of a vehicle and when there might be notifications  
2 required to owners, lienholders and things like that. We  
3 have provided the notice and the guidance to counties that  
4 follow that legislation, and so that has been implemented.

5 And I'll kind of jump around a little bit to  
6 those where we have implementation efforts ongoing, but  
7 please feel free to ask about any of the items that you  
8 may have a question on.

9 On House Bill 2663, that legislation allows  
10 counties to determine if a registration sticker  
11 replacement can be issued at no charge, and guidance has  
12 been accordingly provided to the counties on situations in  
13 which they can provide those at no charge. So we've  
14 implemented that.

15 And then, of course, we have the several  
16 container bills, intermodal shipping container and milk  
17 permit bills that you adopted the rules on earlier today  
18 as well, so those implementation efforts are underway  
19 through rule promulgation.

20 And also, on Senate Bill 1001, that one relates  
21 to inspection requirements for trailers. It increased the  
22 gross vehicle weight rating that would require an  
23 inspection. It used to be at 4,500 pounds, it went up to  
24 7,500 pounds, and DPS is our partner in implementation for  
25 that. One of the efforts that relates to that is our

1 system, for one, would no longer require an inspection for  
2 that one, but also, that the registration renewal notice  
3 when sent to the customer notified whether or not their  
4 trailer is required to be inspected, so that's in the  
5 process of being implemented as well.

6 And then in addition, we have 44 new specialty  
7 license plates that were created by the legislature, and  
8 those are all set to be available starting September 1, so  
9 those are implemented as well.

10 And unless there's any questions on  
11 implementation efforts, I can move on to the special  
12 session.

13 MR. PALACIOS: Please proceed.

14 MS. LOVE: So back on June 6, our governor  
15 announced that he would call the legislature back to  
16 consider a few things for 30 days, so it included Sunset  
17 legislation that extends five agencies that provide  
18 medical oversight and review that their Sunset legislation  
19 was not passed during the regular session. And so that  
20 was the priority for the legislature to consider, and then  
21 the governor added on 20 additional items that were  
22 various topics related to teacher pay and insurance  
23 coverage, to local tree ordinances, all sorts of items  
24 that were included in that additional column.

25 There was no anything that related to the

1 department, but there was in that additional call the  
2 option for the legislature to consider the Sunset review  
3 schedule, and when that bill was filed by Senator Taylor,  
4 it included pushing out DMV's Sunset review date from  
5 2019, which is the current Sunset cycle, to 2023. And  
6 what this means for the agency, with our 2019 Sunset  
7 review cycle which will be when the legislature meets  
8 next, they'll be considering Sunset legislation that will  
9 continue the agency, the review by Sunset staff begins  
10 much earlier and the first part of that process, as we've  
11 talked about before, is the submission of a Sunset self-  
12 evaluation report by the agency which is due September 1  
13 of the odd year prior to your expiration which would be  
14 this coming September 1 in a couple of weeks.

15           The department was already well underway in  
16 development of that report, and then when this legislation  
17 was filed we remained on track because it was uncertain as  
18 to whether or not anything would change, and thankfully we  
19 did remain on track because we are remaining in the  
20 current Sunset review cycle. Not only did the legislation  
21 only pass the Senate and it never made it through anything  
22 further on the House side, but when it got to the Senate  
23 floor, Senator Watson from the Austin area offered an  
24 amendment that changed the DMV Sunset from 2023 back to  
25 2019 and the reason he stated for that is partly due to

1 the fact that this agency was created in 2009, we were  
2 originally set for Sunset review in 2015, that got pushed  
3 to 2019, and he felt like it wouldn't be responsible of  
4 the legislature to continue postponing the review of this  
5 new agency. And in addition, he feels as though our  
6 functions closely align with that of the Texas Department  
7 of Public Safety and a big component of the Sunset review  
8 schedule is they do try to set agencies that have similar  
9 functions in the same cycle. And so after making that  
10 case, the author found the amendment acceptable and we  
11 remained in 2019 as it was.

12 So that was the exciting part of the special  
13 session for DMV, and I guess the biggest outcome of that  
14 is that we continue to remain on our current Sunset review  
15 cycle, and we'll certainly be in touch about efforts  
16 related to that as we continue in that process. But as  
17 you all may have heard, the legislature adjourned on  
18 Tuesday from their special session, and as of right now,  
19 there is no indication of another one to come, but you  
20 never know.

21 And those are all the items that I had. There  
22 were a couple of bills that were filed that fell outside  
23 of the special session call, they had hearings but then  
24 they never proceeded further, that would have related to  
25 our functions. One of those included the removal of

1 inspection requirements for vehicles, and that never even  
2 got to the point of a hearing, so if you get any  
3 questions, yes, you are still required to have your  
4 vehicle inspected prior to registration, unless you have  
5 trailer that's under 7,500 pounds gross vehicle weight  
6 rating.

7 Thank you.

8 MR. PALACIOS: Thank you so much for that  
9 presentation.

10 MS. LOVE: You're welcome.

11 MR. PALACIOS: Are there any questions?

12 (No response.)

13 MR. PALACIOS: Thank you.

14 I would like an update on the facilities to be  
15 given by Ms. Flores.

16 MS. FLORES: In the interest of time, thank you  
17 very much, Chairman.

18 I just wanted to mention that on Friday, the  
19 agency is moving the San Antonio Regional Service Center.  
20 Ann Pierce, who is in the audience, is serving as the de  
21 facto project manager. She and her staff, along with IT  
22 and Austin VTR staff will be heading to San Antonio, and  
23 the move actually begins Friday after 5:00, we shut down  
24 the office, we start the move over the weekend, and they  
25 will reopen on Monday at 15150 Nacogdoches Road in San

1 Antonio. Approximately 18 staff will be moved to the new  
2 office, and once San Antonio is moved, we'll have seven  
3 regional service centers in commercial property while nine  
4 will continue to operate on TxDOT property. Abilene,  
5 Amarillo, Austin, Beaumont, Longview, Lubbock, Midland-  
6 Odessa, Pharr and Wichita Falls will remain on TxDOT owned  
7 property, and there are no plans to move any further  
8 offices in the next two years.

9 Thank you.

10 MR. PALACIOS: Thank you, Ms. Flores.

11 We have time for another briefing by staff, so  
12 I'm going to ask that we go ahead and receive a briefing  
13 regarding projects and operations from Ms. Judy Sandberg.

14 MS. SANDBERG: Good afternoon. Judy Sandberg,  
15 director of the EPMO. I will be giving you a report, not  
16 asking for any decisions. My report is on page 300 of  
17 your briefing book.

18 Very quickly, very good news to report about  
19 the AMSIT project. This weekend we will do the final  
20 major piece deployment for AMSIT, and if all goes well, as  
21 we expect it will, we will be able to close that project.

22 Very important separation from TxDOT infrastructure by  
23 August 31, the end of this calendar month.

24 The RTS project, our next release is 810 which  
25 includes all the legislative mandates that need to go into

1 effect by September 1. It is on target. We will slip by  
2 one week. We had hoped to go this weekend but we need to  
3 do some more testing today. We expect it to be able to go  
4 live next weekend. We will still be in compliance with  
5 all the September 1 mandates.

6 webDEALER is on track. Our next deployment for  
7 webDEALER will include both eTAG as well as the new  
8 centralized payment module. They are on schedule for  
9 deployment the latter part of November. Then the final  
10 phase of webDEALER which will be the new eTITLE phase is  
11 currently on target to go live in March 2018, and that  
12 will conclude the multi-year webDEALER project.

13 That's the end of my briefing. Do you have any  
14 questions?

15 MR. PALACIOS: That was a very brief briefing.

16 (General laughter.)

17 MR. INGRAM: But amazing, simply amazing.

18 Everyone has done a fantastic job in project and  
19 operations, and thank you very much. It's been a real  
20 pleasure to serve on that committee.

21 MS. SANDBERG: Thank you very much. It has  
22 taken a village, someone said that earlier. It's an  
23 amazing number of people who all worked together to make  
24 this happen and worked many, many hours. I feel honored  
25 to be associated with them. Thank you.

1 MR. PALACIOS: Thank you, Ms. Sandberg.

2 Any questions?

3 (No response.)

4 MR. PALACIOS: Thank you so much for everything  
5 you do.

6 We have one last item on our agenda, this is  
7 public comment. Mr. Hickman

8 MR. HICKMAN: For the record, my name is Howard  
9 Anthony Hickman. I'm a retired enforcement attorney for  
10 this agency.

11 As I look at you, I'm reminded of a story.  
12 Many years ago I found myself alone at three o'clock in  
13 the morning with Ronald Reagan in a hotel room at the  
14 Peachtree Plaza Hotel. I had been sent there to obtain  
15 his signature on this document. As I entered the room, I  
16 was greeted by his loud angry voice asking me: What the  
17 f\*\*\* happened?

18 MR. PALACIOS: Mr. Hickman, that is completely  
19 inappropriate. We've heard enough of you, and I'm going  
20 to cut you off at this point.

21 MR. HICKMAN: All right.

22 MR. PALACIOS: Okay. Let's move on to our last  
23 item on the agenda, which is adjournment. Do I hear a  
24 motion to adjourn?

25 MR. INGRAM: I move we adjourn.

1 MR. WALKER: Second.

2 MR. PALACIOS: We have a motion adjourn, second  
3 by Board Member Walker to adjourn this meeting. Meeting  
4 adjourned, all in favor.

5 (Whereupon, at 2:00 p.m., the meeting was  
6 adjourned.)

C E R T I F I C A T E

MEETING OF: TxDMV Board

LOCATION: Austin, Texas

DATE: August 17, 2017

I do hereby certify that the foregoing pages, numbers 1 through 198, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Motor Vehicles.

/s/ Nancy H. King      8/23/2017  
(Transcriber)                      (Date)

On the Record Reporting  
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