

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Thursday,  
June 14, 2018

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: All right. Good morning,  
3 everybody. It's a great day in Austin, Texas. So good to  
4 see everyone here today.

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 straight up 8:00 a.m., and I am now  
8 calling the Board meeting for June 14, 2018 to order. I  
9 want to note for the record that public notice of this  
10 meeting, containing all items of the agenda, was filed  
11 with the Office of Secretary of State on June 6, 2018.

12 Before we begin today's meeting, please place  
13 all cell phones and other communication devices in silent  
14 mode, and please, as a courtesy to others, do not carry on  
15 side conversations or other activities in the meeting  
16 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're interested  
21 in commenting on and indicate if you wish to appear before  
22 the board and present your comment or if you only wish 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 In accordance with the department's  
3 administrative rule, comments to the board will be limited  
4 to three minutes. The timer light will be green for the  
5 first two minutes, yellow for one minute, and then red  
6 when your time is over. Individuals cannot accumulate  
7 time from other speakers. Comments should be pertinent to  
8 the issue stated on the comment sheet. When addressing  
9 the board, please state your name and affiliation for the  
10 record.

11 Before we begin today, I'd like to remind all  
12 presenters of the rules of conduct at our board meetings  
13 in the department's rule Section 206.22. The board chair  
14 is given authority to supervise the conduct of the  
15 meetings. This includes the authority to determine when a  
16 speaker is being disruptive of the meeting or is otherwise  
17 violating the timing or presentation of the rules as I  
18 just discussed.

19 Now I'd like to have a roll call of the  
20 members.

21 Board Member Barnwell?

22 MR. BARNWELL: Present.

23 MR. PALACIOS: Board Member Caraway?

24 MS. CARAWAY: Present.

25 MR. PALACIOS: Board Member Hardy?

1 MS. HARDY: Present.

2 MR. PALACIOS: Board Member Painter?

3 MR. PAINTER: Here.

4 MR. PALACIOS: Board Member Treviño?

5 MR. TREVIÑO: Here.

6 MR. PALACIOS: Board Member Walker?

7 MR. WALKER: Present.

8 MR. PALACIOS: And let the record reflect that  
9 I, Raymond Palacios, am here too. We have a quorum.  
10 Also, let the record reflect that Members Graham and  
11 Ingram are absent today.

12 And now if you'd join us in honoring our  
13 nation, the Pledge.

14 (The Pledge of Allegiance was recited.)

15 MR. WALKER: Today is Flag Day.

16 MR. PALACIOS: Thank you for noting. Board  
17 Member Walker has noted today is actually Flag Day, so one  
18 more reason to honor our country.

19 Now let's move on to the chair's report. I do  
20 want to acknowledge that we have two board members that  
21 are not present. I'd ask that we keep Blake in our  
22 prayers. He's having a medical procedure today and that's  
23 the reason he can't be here.

24 I'd also like to acknowledge the passing of one  
25 of our former board members. Mr. Marvin Rush passed away

1 recently. As many of you know, he was a board member, one  
2 of the original board members. Beginning in 2009, he  
3 served this board up to his retirement in 2016. Those of  
4 you that knew Marvin know the type of individual that he  
5 was. He was an iconic figure in the State of Texas, he  
6 had a magnetic personality. He started out from very  
7 humble origins. I understand his first business venture  
8 began when he was only ten years old. He took out a \$50  
9 loan to buy a Coca-Cola vending machine, and from that he  
10 parlayed that small business into one of the largest  
11 trucking industry's businesses in the entire nation.

12 I will remember him as a great man. I will  
13 always remember him for his wit, his wisdom, his  
14 compassion. I will say this, as a board member, one of  
15 the greatest benefits that I've had the opportunity to  
16 experience is this opportunity to serve with great people.

17 Marvin certainly is somebody that I will always remember  
18 for the great man that he was. I will always, always  
19 remember him as being a very, very good man and we will  
20 certainly miss him. God bless Marvin's soul, and we  
21 certainly will miss him.

22 So with that, let's move on now to the  
23 executive director's report. Ms. Brewster.

24 MS. BREWSTER: Good morning, Mr. Chairman,  
25 members, staff, guests.

1 I'd like to give the board an update on several  
2 things. Today's report is rather lengthy, I will try to  
3 be as concise as possible because I know that there's quite  
4 a few things on the agenda.

5 I'd like to give the board an update,  
6 obviously, on recent activities related to our Sunset  
7 review. As I'm sure you all know, we had our public  
8 hearing on May 23. Steven Ogle, the general counsel for  
9 Sunset, as well as the project lead for our Sunset review,  
10 laid out the staff report and recommendations, and before  
11 he got into the details of that report, he specifically  
12 complimented TxDMV staff on their professionalism and the  
13 approach and cooperation through the process. And that is  
14 certainly something that I have seen in TxDMV staff, and I  
15 want to thank them very much for their cooperation and  
16 dedication throughout this process.

17 During the hearing, Senator Watson discussed  
18 the issue of state agency boards and commissions  
19 generally, and indicated he would like the Sunset Advisory  
20 Commission to consider a broader, across-the-board  
21 approach to composition of all boards and commissions  
22 rather than addressing the issues individually by impacted  
23 agency. Senator Nichols indicated he could see a special  
24 panel, including the governor, lieutenant governor and  
25 speaker appointees review that the legislature would

1 conduct. And Senator Birdwell noted the issue is much  
2 broader than just TxDMV and even the 32 agencies currently  
3 under Sunset review. So this is a large scale discussion  
4 across all state agencies at this point.

5 Next the department provided testimony to the  
6 commission, beginning with our chairman, followed by  
7 Member Barnwell and then me. We had a great discussion  
8 about issues in the report and responded to members'  
9 questions. Representative Paddie specifically asked us to  
10 offer comments on the recommendation in the Department of  
11 Public Safety's report regarding the transfer of driver  
12 licensing, to study that transfer. I explained that we  
13 are a customer service agency and we are very focused on  
14 treating customers fairly and with efficiency and  
15 accuracy, also recognizing that there is a very important  
16 security component to that as well. I discussed how this  
17 is a very complex issue and without a doubt we are very  
18 willing to work very closely with DPS, with whom we've  
19 established a very good working relationship.

20 After we concluded our remarks, the commission  
21 heard from ABTPA and then took public comment. The  
22 commission heard from former TxDMV Chair Victor  
23 Vandergriff, several members of ABTPA auto theft task  
24 forces, and several individuals regarding assembled  
25 vehicles, kit cars, dune buggies, and certainly several

1 tax assessor-collectors, among others.

2 Overall it was a great discussion, there was a  
3 lot of good questions asked, and the webcast is available  
4 on the Sunset's website if there are those that want to go  
5 and view that hearing.

6 As far as next steps, the Sunset Commission  
7 will convene on August 29 and 30 to make decisions on the  
8 final Sunset report and recommendations, and at that  
9 hearing the commission will actually vote on each  
10 individual recommendation in the staff report and either  
11 adopt or not adopt the recommendation, and they may modify  
12 the recommendations and they may also include new  
13 recommendations. As we've discussed before, when the  
14 final Sunset staff report is adopted in August, any  
15 recommended management actions will become effective  
16 immediately, any of the items related to legislative  
17 changes would become part of the department's Sunset bill  
18 to be considered by the full legislative body when they  
19 convene in January.

20 With that, Mr. Chairman, members, I'm happy to  
21 answer any questions that you may have.

22 MR. PALACIOS: Are there any questions  
23 regarding the Sunset review process?

24 MR. WALKER: I have a question.

25 I'll have you know that yesterday in

1 yesterday's meeting I had it on and they were waving at  
2 me, and I said, It's on. And they said, We can't hear  
3 you.

4 MR. TREVIÑO: Did we get that for the record?

5 MR. WALKER: Whitney had me turned off up here  
6 at the top.

7 (General laughter.)

8 MR. WALKER: There was some recommendations in  
9 the report that said the board needs some additional  
10 training with respect to how to handle/conduct the  
11 protested cases, and I would like to know what our general  
12 counsel and what the staff plans on doing to addressing  
13 this issue because obviously there was a lot of talk about  
14 that in the report. I want to know if I haven't been  
15 trained, why have I not received that training, because  
16 I've never been instructed by general counsel that I  
17 needed additional training. We've been doing this for  
18 seven years, so how are we going to address that as a  
19 staff here?

20 MR. PALACIOS: Sure. That's a good point,  
21 Board Member Walker. As you mentioned, the Sunset  
22 Commission did discuss concerns regarding guidance on  
23 contested cases. Although they did not give any specific  
24 instances of, I guess, inappropriate handling of these  
25 cases, they did state that there was, I guess, a lack of

1 concise and clear guidance in this area.

2 Whitney and I discussed this issue last week  
3 and ideally, to your point, this guidance would come from  
4 general counsel's office, so we agreed what we believe is  
5 best at this point now is that we seek outside assistance  
6 from an entity that could provide the agency with clear,  
7 concise and direct guidance on these issues. So we've  
8 reached out to the AG's office for the purpose of getting  
9 education, training and guidance to our general counsel's  
10 office. In addition, that guidance and training will then  
11 be given to board members so that we all are on the same  
12 page, we understand the processes at all times, and  
13 there's no confusion.

14 And again, I will state again for the record,  
15 I'm not aware of any instances where this board has acted  
16 inappropriately, done something that I guess would be  
17 deemed as an act of malfeasance, however, we do know of a  
18 case or two where a contested case decision was brought  
19 back to the board because of improper motions and so  
20 forth, and again, I think this is where we need clarity,  
21 both from the staff level as well as the board. So again,  
22 we will be working with the AG's office for better  
23 instruction for general counsel's office as well as the  
24 board.

25 MR. WALKER: Well, what is kind of disturbing

1 to me about the whole process is that they have reiterated  
2 time and time again that we can't reopen and review the  
3 facts and change the facts of the cases, however, if you  
4 don't look at the facts you can't find out whether the  
5 rule of the law has been followed, so you have to ask  
6 questions when you get into the meat and guts of these  
7 cases to find out where the thoughts and processes were  
8 coming from of the examiner. And if we can't change  
9 anything in the facts of the law, which I'm not saying we  
10 should, but if we can't do that, then why does it even  
11 come before us because the general counsel or the attorney  
12 general's office ought to be able to look at the case and  
13 say the rule of the law was followed, because we don't  
14 have a lot of latitude to make a change in these cases in  
15 the first place.

16 MR. PALACIOS: Your sentiments were expressed  
17 by Board Member Barnwell at the Sunset Commission hearing,  
18 and I can tell you for my part I share the same level of  
19 frustration regarding, I guess, the responsibilities that  
20 we're charged with undertaking somewhat conflict with  
21 what's been stated in terms of what is within our  
22 authority. So hopefully, with this insight and training,  
23 I'm hopeful we'll have better clarity on these issues.

24 MR. WALKER: So I'm the only original board  
25 member left here, and I know the original board members,

1 Victor Vandergriff in particular, Ramsay Gillman, Marvin  
2 Rush, those guys felt like and the people felt like there  
3 needed to be a voice at the table that spoke to those  
4 people and that's why this is an eclectic board that's  
5 made up of people who have interests in the industry,  
6 people who have knowledge within the industry, and could  
7 look at all these cases that we listen to and say is this  
8 being fairly ruled upon by somebody that doesn't even  
9 understand the mechanics of how these operations work.

10 I mean, I didn't have the foggiest idea when I  
11 got on this board, and I'm not a car dealer, I'm a  
12 trucker, all that went into a franchise dealership and all  
13 that went into Lemon Laws and those kind of things. And  
14 so they were ecstatic, those guys were, that they were now  
15 going to be able to sit up here and listen to their co-  
16 industry people and evaluate whether the industries were  
17 being treated fairly. And so I think that this board has  
18 a stronger say sometimes in these cases than the SOAH  
19 people that don't even understand this industry sometimes.

20 Okay, I'll let it go.

21 MR. PALACIOS: Point is well taken.

22 Are there any other questions, comments  
23 regarding Whitney's presentation on the Sunset review  
24 status?

25 (No response.)

1 MR. PALACIOS: Okay. Please proceed.

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

3 The registration and title system refactoring  
4 project is on target to finish on time and within the  
5 current approved budget. All of the refactoring  
6 activities were completed over a year ago. The final  
7 phase of the project is to transition the maintenance and  
8 operations from Deloitte to IT. Our contract with  
9 Deloitte ends August 31, 2018 and we do not plan to renew  
10 that contract, and so IT will be taking on those M&O  
11 responsibilities and the project management role will end  
12 by December 31, 2018.

13 Moving on to the webDEALER project, the  
14 webDEALER, eTAG and centralized pay phase of webDEALER was  
15 implemented on April 9 and has been working in production  
16 since that date. The first two to three weeks after go-  
17 live, several divisions, including Enforcement, Motor  
18 Carrier Division, Motor Vehicle Division, Vehicle Titles  
19 and Registration and the Consumer Relations Division --  
20 which also provided training for all of the other  
21 divisions taking calls -- assisted the IT service desk  
22 with handling of incoming calls. This was truly an  
23 enterprise effort and I want to thank the staff for coming  
24 together as a team to help support the rollout of the eTAG  
25 and centralized pay phase of the webDEALER project.

1           The contractors who designed and developed eTAG  
2 and centralized pay have been released and IT is now  
3 providing the maintenance and operations of that system.  
4 Procurement work has begun on eTITLE which is the final  
5 phase of the webDEALER project.

6           Moving on for the webLIEN project, we are in  
7 negotiations on the scope of work and costs and those  
8 things are in progress. We believe that work on the  
9 webLIEN project will begin after the end of this fiscal  
10 year.

11           The call center project statement of work has  
12 been released to vendors and we are waiting proposals. We  
13 do anticipate that we will award during July of this year,  
14 next month.

15           Last on the list, but certainly not least, the  
16 fraud data dashboard project is proceeding actually a  
17 little bit ahead of schedule, and the statements of work  
18 for both the kiosk pilot as well as the enterprise website  
19 renovation project are in development.

20           Ms. Sandberg, our EPMD Division director, will  
21 give a more in-depth presentation on the projects in a  
22 future meeting, but just wanted to give you a quick status  
23 update on where we are with those enterprise projects.

24           With that, Mr. Chairman, members, I'm happy to  
25 answer any questions that you have.

1 MR. TREVIÑO: Whitney, what is the status of  
2 that fraud data task force that you're working on? What's  
3 the completion date?

4 MS. BREWSTER: The fraud data dashboard  
5 project, give me one moment, I can give you the  
6 anticipated end date of that.

7 MR. TREVIÑO: You can just ballpark it out, is  
8 it three months out, four months, five months, a year?

9 MS. BREWSTER: The spring of 2019.

10 MR. TREVIÑO: Perfect. Thank you very much.

11 MR. PALACIOS: Are there any other questions  
12 regarding the enterprise projects?

13 (No response.)

14 MR. PALACIOS: Okay. Please proceed.

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

16 The fraud data reporting project is a nice  
17 segue into the progress report on the first six months of  
18 our Compliance and Investigations Division. The division  
19 successfully processes complaints and investigates  
20 allegations of fraud relating to motor vehicle title and  
21 registration, provides support for law enforcement, as  
22 well as doing work on improving compliance in both tax  
23 assessor-collector offices as well as our regional service  
24 centers.

25 If the board will recall, we created the

1 division in January with a total staff of two: Tim Menke,  
2 our division director, as well as our longtime sole title  
3 fraud investigator, Robert Foster. In March the division  
4 added an executive assistant and thus far CID has filled  
5 20 of the 21 allocated positions with the exception for  
6 the field service representative in El Paso, vacated by  
7 Charlie Escobedo. He was promoted to the field service  
8 representative manager. So on June 1, 13 new field  
9 service representatives were hired and most recently on  
10 June 11 an attorney was hired, and I understand that many  
11 of you met him this morning, Mr. John Seaman.

12 Currently the division is identifying  
13 technology, computer software for data mining and mapping  
14 to discover vulnerabilities. Tools such as the fraud data  
15 dashboard gives the agency much needed insight and a  
16 desired proactive approach to reduce fraud. Having  
17 limited resources, being able to focus where there are the  
18 greatest risks by pinpointing trends and patterns will  
19 certainly assist in that effort. This utilization of  
20 technology will assist management to more efficiently  
21 direct those resources to the needed areas to ensure the  
22 best return on investment.

23 As part of the agency's outreach efforts, CID  
24 has met and is partnering with the fusion centers in  
25 Dallas, McKinney, Houston, San Antonio and Austin

1 regarding mutual areas of interest and has communications  
2 of collaboration and commitments of collaboration moving  
3 forward. Just to give a little bit of information on  
4 fusion centers, they operate at the federal level and they  
5 provide a unique perspective on threats across the state  
6 while offering local leadership with enhanced information  
7 sharing.

8 In early June several other division directors  
9 and myself attended the annual Tax Assessor-Collectors  
10 Association conference in Frisco, Texas. Our CID director  
11 took the opportunity to introduce himself to the tax  
12 assessor-collector community, as well as our new CIO, Mike  
13 Higginbotham, was there and was able to share thoughts  
14 with this very important stakeholder group.

15 CID is actively conducting criminal  
16 investigations throughout the state and has recently  
17 participated in search warrants regarding public  
18 corruption, fraud, vehicle theft and odometer rollbacks.

19 Lastly, in the division's commitment to ongoing  
20 training, all new CID staff will spend a day at the  
21 Williamson County Tax Assessor-Collector's office for  
22 briefings on TAC procedures, and that will happen in the  
23 last week of June, and they will also have a formal three-  
24 day training conference that will happen in Austin for all  
25 staff in late July.

1 With that, I am happy to answer any questions.

2 MR. PALACIOS: Hearing none, please proceed.

3 MS. BREWSTER: Thank you.

4 The 2018 survey of employee engagement was  
5 conducted by the University of Texas. That is something  
6 that UT does every two years for state agencies, this is  
7 actually the department's fourth survey, and this gives  
8 employees the opportunity to express their opinions on a  
9 variety of different factors, including but certainly not  
10 limited to supervision, pay, communication and overall job  
11 satisfaction. This survey is completely anonymous and  
12 voluntary.

13 All department employees received an  
14 invitation, maybe several invitations to participate in  
15 the online survey from me, and I'm really, really happy  
16 that we got the response that we did. We had 81 percent  
17 of our employees respond to the survey, and that is an  
18 increase over the last time, which I thought was very  
19 high, which was 78 percent, and that is absolutely  
20 considered an extremely high rate and it indicates that  
21 employees have an investment in this organization and are  
22 willing to contribute towards making improvements within  
23 the workplace. In addition, a high response rate  
24 indicates employees have high expectations from leadership  
25 to act upon the survey results also.

1           The overall score for the department was 366,  
2 up from the 2016 overall score of 361. Scores above 350  
3 are considered desirable. The SEE results are posted on  
4 the department's intranet page, the MyDMV page, where all  
5 employees can access that information, the overall agency  
6 information, but as well as the specific drill-down  
7 information by division, as well as organizational areas.

8           Next steps here, Human Resources Division staff  
9 will be conducting employee focus groups. They're  
10 currently doing those across the state to address ideas  
11 for areas where we can improve. The executive team will  
12 also discuss the results of those focus groups and then  
13 determine what those next steps are.

14           With your permission, Mr. Chairman, I will move  
15 on to the next item if there aren't any questions.

16           MR. PALACIOS: Board Member Treviño.

17           MR. TREVIÑO: Ms. Brewster, that report, is  
18 that score unusually high? Do we rank high among state  
19 agencies?

20           MS. BREWSTER: Member Treviño, I do not know  
21 how we rank against other state agencies, we just know  
22 that UT has determined that the threshold is at 350,  
23 anything higher than that is desirable. But if I can find  
24 out that information, I will certainly try to do that.

25           MR. TREVIÑO: That would be nice to know. And

1 I'd like to commend staff for that great performance.

2 MS. BREWSTER: Thank you.

3 All right. Moving on, Mr. Chairman?

4 MR. PALACIOS: Please proceed.

5 MS. BREWSTER: In September of 2017, the  
6 Department of Motor Vehicles launched the performance  
7 quality recognition program to recognize tax assessor-  
8 collectors who go above and beyond to comply with Texas  
9 law, agency rules, and to exceed customer expectations,  
10 and if you'll recall, this program was established in rule  
11 by this board.

12 The program recognizes tax assessor-collectors  
13 at three levels, gold, silver and bronze, and the factors  
14 for the program for evaluation deal with compliance with  
15 statutory and administrative rule requirements, the use of  
16 effective and efficient office practices, demonstrating  
17 commitment toward completing motor vehicle transactions  
18 properly and timely, and then providing exceptional  
19 customer service, as well as having a fraud detection  
20 program. Each level includes specific criteria that is  
21 progressively more proactive in meeting all those goals in  
22 each category.

23 We are proud to announce the first TAC offices  
24 to receive recognition for achievement as a result of  
25 their active participation, so Andrews, Bee and Wichita

1 counties achieved recognition at the silver level, and  
2 Archer, Eastland, Goliad, Irion and San Patricio counties  
3 all achieved recognition at the bronze level. And later  
4 on this week, the agency will be releasing a press release  
5 highlighting the exceptional work of these counties and  
6 expressing our appreciation for a job well done.

7 With that, Mr. Chairman, members, I'm happy to  
8 answer any questions on that item.

9 MR. PALACIOS: All right. Let's move forward.

10 MS. BREWSTER: All right. Moving to the last  
11 item, in addition to our service award and retirement  
12 announcements, I wanted to let you know what we recently  
13 received some awards, the first being the Everything is  
14 Fitter in Texas Challenge. It's a statewide wellness  
15 program, sponsored by the Department of State Health  
16 Services, it's agency against agency competitions. We  
17 came in third and want to commend those staff that  
18 participated in helping us achieve third. Next year we  
19 are setting our sights on beating the General Land Office  
20 who took first place.

21 But I do again want to commend the staff that  
22 participated and want to encourage them to keep up that  
23 healthy habit, and for those who didn't participate, we  
24 have another opportunity again next year, but don't wait  
25 till that opportunity, you can start now. And just to

1 show you, we received a plaque to commend our efforts.

2 MR. PALACIOS: Great. That's wonderful.

3 MS. BREWSTER: Moving along to our next award,  
4 for outstanding efforts that provide improved and more  
5 accessible services for Texas citizens, the Center for  
6 Digital Government recently selected eLICENSING to receive  
7 the Best IT Collaboration Among Organization Award at its  
8 Best of Texas Awards that occurred on their program on May  
9 31, which salutes IT projects and professionals in Texas  
10 state and local government. The Best IT Collaboration  
11 Among Organization Award recognizes a range of creative  
12 tech implementations and tools to enhance interagency  
13 collaboration and boost citizen service. The TxDMV  
14 eLICENSING program removes burdensome paper applications  
15 and manual payment processing, it accelerates and  
16 simplifies licensure efforts for all motor vehicle  
17 licensees into a single system, and it streamlines the  
18 process allowing motor vehicle and salvage vehicle dealers  
19 more time to focus on serving their communities,  
20 benefitting both industry and the community.

21 And this is the award that we received for  
22 eLICENSING. Our Motor Vehicle Division director, Daniel  
23 Avitia, accepted the award on behalf of the agency. His  
24 division, as well as many other divisions, including our  
25 IT Division, put significant effort into the success of

1 this project, o it's nice to know that others see that as  
2 well.

3 MR. TREVIÑO: Congratulations.

4 (Applause.)

5 MS. BREWSTER: Thank you.

6 And Chairman, certainly, if I may continue,  
7 last but not least, I want to recognize our retirees and  
8 employees who have reached a major milestone. We  
9 celebrate these employees as a show of our appreciation  
10 for their years of service to the citizens of Texas.

11 The following employees reached a 20-year state  
12 service milestone. Jo Ann Vasquez of the Enforcement  
13 Division and another JoAnne, JoAnne Canida of the Vehicle  
14 Titles and Registration Division, both reached that 20-  
15 year milestone.

16 We have two employees who have reached their 25  
17 years of state service. I know all of you know her, it's  
18 Ginny Booton, our Consumer Relations Division director,  
19 and Marla Rose of the Motor Vehicle Division.

20 If you'll join me in a round of applause and  
21 appreciation.

22 (Applause.)

23 MS. BREWSTER: And finally, the following  
24 individuals recently retired from the agency: Carey  
25 Osborn, Mallie Evans, Cindy Gresham, Linda Kirksey, Don

1 Wither, Tommy Rodriguez, and Tammy Briggs.

2 Mr. Chairman, if you'll also join me in giving  
3 them a warm applause in appreciation for a job well done.

4 And Mr. Chairman, that concludes my rather  
5 lengthy executive director's report today.

6 MR. PALACIOS: Good job, Whitney.

7 At this time we are going to go into a very  
8 brief closed session. It's now 8:33 a.m. on June 14,  
9 2018. We'll go into closed session under Texas Government  
10 Code Section 551.071. For those of you in the audience, I  
11 anticipate being in an executive session for approximately  
12 15 minutes. We'll reconvene in open session after that.

13 With that, we'll recessed from public meeting  
14 and we'll go into executive session.

15 (Whereupon, at 8:33 a.m., the meeting was  
16 recessed, to reconvene this same day, Thursday, June 14,  
17 2018, following conclusion of the executive session.)

18 MR. PALACIOS: Okay. We are back. It is  
19 approximately 8:53 a.m. on June 14, 2018, and the Board of  
20 the Texas Department of Motor Vehicles is now in open  
21 session. We want to note that no action was taken in  
22 closed session.

23 We'll move on to agenda item number 5,  
24 contested cases. I will note the parties in the Putnam  
25 Darwin Richardson case have asked for a continuance, so we

1 will not be hearing that case today. Therefore, we will  
2 move on to item number 6, Burns Motors, Protestant, v.  
3 Payne Edinburg, d/b/a Payne Chrysler, Dodge, Jeep, Ram and  
4 FCA US as the Applicant.

5 MR. DUNCAN: Members, David Duncan, general  
6 counsel.

7 I'd like to point out that none of the parties  
8 in this case or their counsel have requested oral  
9 argument, so they haven't asked to speak. They are  
10 present and available to answer your questions. I've  
11 spoken with counsel for Fiat Chrysler America and for the  
12 protestant and told them if they are asked any questions  
13 they are to do their best to cite to the record, and if  
14 they're certain that something you're asking about is not  
15 in the record, they're to tell you that and not add to the  
16 record.

17 Thank you.

18 MR. PALACIOS: Thank you.

19 Good morning, Daniel. Michelle, good morning.

20 MR. AVITIA: May we proceed?

21 MR. PALACIOS: Yes.

22 MR. AVITIA: Chairman, members, Ms. Brewster,  
23 good morning. For the record, Daniel Avitia, director of  
24 the Motor Vehicle Division. Alongside me this morning --  
25 I'm usually pointing to the left but today she's to the

1 right -- is Ms. Michelle Lingo, staff attorney with the  
2 Motor Vehicle Division and the legal subject matter expert  
3 on this contested case matter.

4 Agenda item 6, which can be found on page 24 of  
5 your board books, is a protest by Burns Motors against the  
6 application filed by Payne Edinburg to establish a new  
7 point dealership. This matter is being presented for the  
8 board's consideration and adoption of a final order. The  
9 issue presented in this case is whether the applicant,  
10 Payne Edinburg, established by a preponderance of the  
11 evidence that there is good cause for the establishment of  
12 the new Chrysler, Jeep, Dodge, Ram dealership in Edinburg,  
13 Texas.

14 Two administrative law judges from the State  
15 Office of Administrative Hearings conducted a six-day  
16 hearing on the merits. In evaluating the seven statutory  
17 factors, as presented in your executive summary and  
18 proposal for decision, the ALJs considered the evidence,  
19 witness testimony and legal arguments, as well as Burns  
20 Motors' exceptions to the proposal for decision and FCA's  
21 replies to Burns Motors' exceptions to the proposal for  
22 decision. The ALJs in this case found that good cause  
23 exists for the establishment of a new Chrysler, Jeep,  
24 Dodge, Ram dealership in Edinburg, Texas.

25 The board may change findings of fact or

1 conclusions of law made by a SOAH ALJ when change is  
2 justified under Texas Government Code, 2001.058(e). That  
3 is to say the board can make changes if it determines that  
4 the ALJ did not properly apply or interpret applicable  
5 law, an agency rule or a prior administrative decision, or  
6 that a prior administrative decision on which the ALJ  
7 relied on is incorrect or should be changed, and then  
8 finally, that the ALJ made a technical error in a finding  
9 of fact that should be changed.

10 The parties received notice of the board's  
11 consideration of this matter today and are present, and as  
12 David has mentioned, have opted not to request oral  
13 arguments this morning.

14 Members, this concludes my remarks.

15 MR. PALACIOS: Are there any questions for Mr.  
16 Avitia regarding this case?

17 I do have a question, Daniel. Is there a  
18 minimum distance regarding, I guess, the placement of  
19 competing brands? In other words, I understand a dealer  
20 would have standing to protest if a dealership is within  
21 15 miles of his geographic location, but is there a  
22 minimum distance in which a same brand can be put in the  
23 same market? In other words, could somebody build a  
24 dealership across the street from you?

25 MR. AVITIA: That is a good question, Chairman,

1 and to answer your question very simply, there is no  
2 minimum distance. As you have stated, the law requires  
3 that it be within 15 miles for protestability or within  
4 the same county. Looking at some information with regard  
5 to other Chrysler, Jeep, Dodge, Ram dealerships, we even  
6 one in Amarillo, Texas that is about 3.46 miles away from  
7 the nearest dealership.

8 MR. PALACIOS: Okay. Thank you.

9 Are there any other questions?

10 MR. BARNWELL: Mr. Avitia, you said in order to  
11 raise the option of being able to protest, within 15 miles  
12 and then you said or in the same county.

13 MR. AVITIA: Or within the same county. Yes  
14 sir.

15 MR. BARNWELL: So 25 miles and even if it's in  
16 the same county and 40 miles away.

17 MR. WALKER: Two hundred miles away, 200 miles  
18 in Harris County.

19 MR. BARNWELL: Well, I don't know about 200.

20 MR. WALKER: Brewster.

21 MR. BARNWELL: Well, Brewster maybe. Okay.  
22 Brewster could be 200.

23 MR. AVITIA: In this case you have two  
24 different counties, you have McAllen, you have Edinburg,  
25 but the distance is what is driving the protestability in

1 this case.

2 MR. BARNWELL: Distance drives it, but it's  
3 either/or, either one of those gives rise to the option to  
4 protest, the right to protest.

5 MR. AVITIA: That's correct.

6 MR. BARNWELL: All right. Thanks.

7 MR. PALACIOS: Okay. Any other questions?  
8 Last chance.

9 (No response.)

10 MR. PALACIOS: All right. I'll entertain a  
11 motion.

12 MR. WALKER: I so move that we accept the  
13 decision of the SOAH and do not overrule it.

14 MS. CARAWAY: I'll second.

15 MR. PALACIOS: There's a motion by Board Member  
16 Walker to accept the PFD, second by Board Member Caraway.  
17 All those in favor please signify by raising your right  
18 hand.

19 (A show of hands.)

20 MR. PALACIOS: Motion passes unanimously.

21 MR. AVITIA: Thank you.

22 MR. PALACIOS: Thank you very much.

23 Okay. Let's move on now to agenda item number  
24 7, rules adoption.

25 Mr. Kuntz, good morning.

1 MR. KUNTZ: Good morning, board members. For  
2 the record, Jeremiah Kuntz, director of the Vehicle Titles  
3 and Registration Division.

4 This morning we are presenting for your  
5 consideration the approval for adoption of amendments to  
6 Title 43, Administrative Code, Chapter 217, amendments  
7 217.122 and 217.123, as well as the new 217.125 and  
8 217.130. These rules, as I'm sure you remember, are  
9 related to the Motor Vehicle Record Information and  
10 Drivers Privacy Protection Act provisions that are  
11 contained in state and federal law.

12 The department is attempting to create a  
13 process by which we can better evaluate entities that are  
14 coming into the state and requesting access to our motor  
15 vehicle records, and so we presented the rules for public  
16 comment. We did receive quite a bit of public comment  
17 from industry partners that utilize our records that also  
18 provide services to other entities that would qualify to  
19 obtain the records directly, but they provide services to  
20 provide those records in other formats to their customers  
21 as well.

22 So I'm actually turn a little bit of this over  
23 to David Duncan. Our General Counsel's Office worked  
24 pretty extensively with some of these industry partners  
25 and their representatives to try and address the concerns

1 that were raised during the public comment period.

2 MR. DUNCAN: Members, David Duncan, general  
3 counsel.

4 You will find in front of you a packet. This  
5 is the rule and we've actually made some very minor edits  
6 to the rule even since we put it into your board packet  
7 about a week and a half ago. What we've done, and I'd  
8 like to mention the names of some of the folks that we've  
9 worked with very extensively on this, they've been a  
10 pleasure to work with and they've been very professional  
11 and very thoughtful about these proposed rules. Sean  
12 Wheatley with Experian, Alice Miles with R.L. Polk, and  
13 they had some outside help from some lobbyists here in  
14 Austin, Mindy McGary and Jack Erskine, and we've had  
15 numerous phone calls with them and email exchanges.

16 What happened was they made their comments and  
17 we agreed with a fair number of their comments. We  
18 attempted to incorporate those into our rule and mentioned  
19 how we would interpret and apply the rule in our preamble.  
20 Because we don't release the actual final version of our  
21 materials until just the week of the board meeting, they  
22 saw it for the first time this week and they continue to  
23 have some concerns.

24 So we went in, and the one major change that we  
25 made since the publication of the board book was in

1 217.122, which is the definitions you will see in this  
2 handout that we've given you, it is on page -- I'm  
3 sorry -- it's after the preamble language by two pages and  
4 we've changed the definition of requester. It previously  
5 was defined as a person seeking personal information  
6 contained in motor vehicle records from the department.  
7 And they were somewhat concerned that the sections that  
8 come later that discuss what level of documentation is  
9 necessary to support a disclosure, and that is in 217.125,  
10 that those 217.125 requirements to show licenses and that  
11 sort of thing would apply to their disclosures to their  
12 customers and that each time they disclosed to an  
13 insurance they would have to make sure that they had their  
14 insurance certificate, their license from the Texas  
15 Department of Insurance.

16 So we put the word "directly" in here to say  
17 very clearly that we're talking about when people come to  
18 us for records, we want them to show us that proof. They  
19 need to satisfy themselves, and their re-disclosures of  
20 our records are still subject to the limitations on who is  
21 entitled to get those records -- that's another definition  
22 that we have which is an authorized recipient, the very  
23 first definition -- they still have to prove to themselves  
24 that that person is an authorized recipient and they have  
25 to maintain records that that person is an authorized

1 recipient, but they didn't want the specific examples that  
2 we had. And again, we were fine with that and we thought  
3 it always read that way, we added that word just as a  
4 clarification.

5 All of the other changes are to the preamble  
6 and they're really to address concerns that they had about  
7 our reading of the rule and our application of the rule.  
8 One of the major changes that you will see where there's  
9 quite a bit of red is on page 5 of 10 of the preamble, and  
10 you'll see that we have a good bit of discussion about  
11 whether the necessity of providing ID and documentation  
12 that you're entitled to receive the records is necessary  
13 every time they get, say, their weekly update. So they  
14 have the master file, they have the big file, and then we  
15 update it every week to make sure it stays current.

16 They didn't want to show us their ID every time  
17 they get the weekly file, and we said that was never our  
18 intent. In subsection (c) it says you can negotiate an  
19 agreement with us and then you can get the records  
20 electronically on a routine basis. We've always  
21 interpreted it as if you meet (a) and (b) which is showing  
22 us your ID and proving who you are, showing us that you're  
23 entitled to the records, and then you negotiate an  
24 agreement, and from then on you're under the agreement,  
25 not under the other two. So that's what all of that

1 language is about.

2           It's my understanding from our conversations --  
3 and kudos to Jon Lawson, my attorney who does public  
4 information work; Jon has had numerous, numerous phone  
5 calls with these folks and has done a great job of  
6 addressing their concerns and summarizing these into the  
7 document -- and it is my understanding that the commenters  
8 are all satisfied now and that this rule meets their  
9 needs. We didn't agree with everything they commented on,  
10 I will say that, but the things we were able to agree on,  
11 they now concur with us that it's adequately reflected in  
12 this document.

13           Thank you, and I'll be able to answer any  
14 questions.

15           MR. PAINTER: How does this fit within the  
16 parameters established by the FBI under CJIS, Criminal  
17 Justice Information System and also under the federal  
18 statute of being able to release the information being a  
19 criminal violation if you release it without permission?

20           MR. DUNCAN: Those are very good questions,  
21 Member Painter. Thank you. I'm going to separate it into  
22 two. There is no CJIS anywhere in anything that we  
23 possess, there's nothing that meets it.

24           MR. PAINTER: Criminal Justice Information  
25 System. It's a violation of law to release certain

1 information that is gathered like date of birth.

2 MR. DUNCAN: Driver's license.

3 MR. PAINTER: Driver's license information,  
4 driver's license number, Social Security number.

5 MR. DUNCAN: We don't have any of those in the  
6 master file. DPS does.

7 I'm sorry, Member Walker?

8 MR. WALKER: None of this is being distributed.

9 MR. DUNCAN: We don't even have it. DPS has it  
10 as part of their driver's license database.

11 MR. PAINTER: Correct.

12 MR. DUNCAN: And Chapter 730 of the  
13 Transportation Code governs our database and DPS's DL  
14 database. They have much higher CJIS concerns. We do  
15 have interfaces with DPS that are governed by CJIS but  
16 they never touch this database that we're talking about.

17 MR. PAINTER: Okay.

18 MR. WALKER: So what is in this database, that  
19 Johnny Walker owns a F250 2017 Ford pickup truck, serial  
20 number, that's it?

21 MR. DUNCAN: And your address.

22 MR. WALKER: And my address.

23 MR. DUNCAN: Tying the personal information of  
24 the person to the vehicle is the real key.

25 MR. WALKER: And none of that is in CJIS?

1           MR. DUNCAN: That's not CJIS data, the address  
2 and the name.

3           MR. KUNTZ: CJIS is more focused on the person,  
4 our records are focused on the motor vehicle and the  
5 address of the person.

6           MR. DUNCAN: Back to your question about how  
7 this comports and what this does, this doesn't affect the  
8 criminal penalties. The criminal penalties are statutory,  
9 both in the state statute and the federal statute. I'm  
10 hopeful that with Jim Seaman, my new attorney starting in  
11 the division, having worked in U.S. attorney's offices  
12 before, and with Mr. Menke and his resources -- we have in  
13 the past since I've been here almost five years, we've  
14 spoken with every U.S. attorney's offices in Texas, we've  
15 spoken to several district attorney's offices, we've  
16 spoken with the AG's office, we've asked people to try to  
17 get interested and try to bring these cases and we've  
18 gotten no bites. -- I'm hopeful that we can convince  
19 somebody if we have a bad enough -- frankly, if we do this  
20 right these are self-proving. We can prove that somebody  
21 used this for an illegal person because we seed our  
22 database. If I can get some prosecutor interested in  
23 this, I'd love to see them bring a case.

24           So these rules don't affect those criminal  
25 penalties, they still exist. These rules strengthen the

1 agency's ability to restrict access to people who really  
2 shouldn't have this data.

3 MR. PAINTER: Good.

4 MR. TREVIÑO: How does the GDPR affect this,  
5 and are we covered under those rules?

6 MR. DUNCAN: We are not. The General Data  
7 Privacy Rule apply to EU. For those of you that don't  
8 know, the General Data Privacy Rule is a rule that was  
9 passed by the European Union Congress and the reason  
10 you're seeing so many updated privacy notices for Facebook  
11 and eBay and PayPal is they all do business in Europe,  
12 they all touch Europe in some form or fashion, either they  
13 provide products from there or they provide their services  
14 there. GDPR is being looked at by a lot of people as the  
15 new standard, the coming thing, but GDPR does not apply in  
16 the United States, and even if it did apply here, it  
17 probably wouldn't apply to us as a state agency. A lot of  
18 general statutory elements don't apply to state agencies  
19 in the handling of their job. Not to say that, for  
20 example, there's a federal Privacy Act that would apply if  
21 you have breaches of personal information, like say credit  
22 cards, if we had a bunch of credit card numbers -- which  
23 thankfully we don't -- and that got breached, that federal  
24 act on disclosure of those kinds of breaches does actually  
25 apply to us. It varies depending on how Congress passed

1 that law.

2 MR. TREVIÑO: Thank you for that.

3 MR. WALKER: So, Mr. Duncan, in this rule here  
4 does it say who has authorized access to the records?

5 MR. DUNCAN: Yes, Member Walker.

6 MR. WALKER: What page do I turn to?

7 MR. DUNCAN: There's two sections in the  
8 statute. One is mandatory disclosures. Those mandatory  
9 disclosures, we are required to give it to entities that  
10 are using it for recalls and for safety purposes. Then  
11 there's a section on discretionary disclosures, and the  
12 discretionary disclosures, in 217.125 you will see the  
13 things that we require people -- if a business is seeking  
14 it for a business purpose that's allowed by the statute,  
15 if an insurance company is seeking it for verification of  
16 customer information, if a lienholder is seeking it for  
17 verifying the information submitted to them by their  
18 customer, those are actually discretionary releases, we  
19 may release the information for that purpose.

20 MR. WALKER: May.

21 MR. DUNCAN: Yes, sir. What we have done in  
22 this section is we have said if you're seeking it for  
23 research you have to prove to us that you are in a  
24 researching occupation. We didn't just make that up, that  
25 actually comes from a federal case.

1 MR. WALKER: So I own an insurance company,  
2 justifiable I need to get records, we give them access to  
3 that. Correct?

4 MR. WALKER: I own a tow company so I can start  
5 a tow company tomorrow, Johnny Walker's Towing, you give  
6 me access to all that?

7 MR. DUNCAN: Yes, sir.

8 MR. KUNTZ: With proof of licensure.

9 MR. DUNCAN: Correct.

10 MR. KUNTZ: So tow truck companies are required  
11 to be licensed at TDLR. This would require that you  
12 demonstrate that you have a license with TDLR as a tow  
13 truck company.

14 MR. WALKER: And how hard is it to go get a  
15 license?

16 MR. KUNTZ: I do not have that information.

17 MR. PAINTER: You've got to have a million  
18 dollar insurance and a bunch of other stuff, it's not that  
19 hard.

20 MR. DUNCAN: But the fact is if a towing  
21 company were to get this information and abuse it, they  
22 could lose their license, they could lose their towing  
23 company because then they couldn't do any towing in the  
24 State of Texas.

25 MR. PALACIOS: Are there any other questions

1 for Jeremiah or Mr. Duncan or Mr. Archer?

2 MR. TREVIÑO: Mr. Chairman, I move that the  
3 board approve the adoption of amendments to Chapter 217,  
4 as recommended by staff.

5 MR. PAINTER: Second.

6 MR. PALACIOS: Motion by Board Member Treviño,  
7 second by Board Member Painter to accept the adoption of  
8 the rule. All those in favor please signify by raising  
9 your right hand.

10 (A show of hands.)

11 MR. PALACIOS: Motion passes unanimously.

12 Okay. Moving right along to agenda item number  
13 8. Now it's your turn, Mr. Archer.

14 MR. ARCHER: Good morning, Chairman Palacios  
15 and members of the board. For the record, my name is  
16 Jimmy Archer, director of the Motor Carrier Division.

17 This agenda item may be found beginning on page  
18 249 of your board book. I'm presenting this amendment to  
19 43 Texas Administrative Code, Chapter 218 for adoption  
20 today. This rule amendment was proposed to the board at  
21 the February 8 board meeting. The amendment requires a  
22 sole proprietor that applies for motor carrier operating  
23 authority to provide a copy of their driver's license or  
24 other identification document. Applicants must scan a  
25 copy of their identification document in the department's

1 motor carrier online system which is currently called  
2 eLINK.

3 We currently require the sole proprietor to  
4 provide us with an audit number on one of those  
5 identification documents, however, we want a copy of the  
6 actual identification document to help us verify the  
7 identity of the individuals who apply. Once the  
8 department processes the application to verify the  
9 identity of the applicant, the identification document is  
10 destroyed.

11 This additional documentation will help the  
12 department verify the identity of individuals who apply  
13 for operating authority. This will also help us to  
14 determine whether the applicant is a potential chameleon  
15 carrier or reincarnated carrier which is a motor carrier  
16 that reinvents itself or operates companies to avoid the  
17 consequences of prior violations of laws, rules or  
18 regulations.

19 Other amendments to 218.13 modify the language  
20 to be consistent with the amendments of House Bill 3254  
21 which dealt with chameleon carriers. The department  
22 received no comments on the proposed amendments. The  
23 proposal was published in the *Texas Register* on March 2,  
24 the comment period closed on April 2, and no comments were  
25 received. The proposed amendments create no fiscal

1 implications for state or local government. If the board  
2 approves, staff anticipates filing the notice of the  
3 adoption of these amendments with the *Texas Register* and  
4 they will become effective in 20 days.

5 I ask that the board approve the adoption of  
6 these amendments and I'd be happy to answer any questions  
7 you may have.

8 MR. PALACIOS: Are there any questions for Mr.  
9 Archer on this issue?

10 (No response.)

11 MR. PALACIOS: Hearing none, I will entertain a  
12 motion.

13 MR. BARNWELL: I move that the board approve  
14 the adoption of amendments to Section 218.13, as  
15 recommended by staff.

16 MR. WALKER: Second.

17 MR. PALACIOS: Motion by Board Member Barnwell,  
18 second by Board Member Walker. All those in favor signify  
19 by raising --

20 MS. BREWSTER: Treviño.

21 MR. PALACIOS: Treviño. I'm sorry. Second by  
22 Board Member Treviño. All those in favor by signify by  
23 raising your right hand.

24 (A show of hands.)

25 MR. PALACIOS: I want to note, thank you, Mr.

1 Archer. I understand you're just recovering from a bout  
2 of pneumonia, appreciate you being here and I hope you're  
3 feeling better. You're looking not yourself but I hope  
4 you're on the road to recovery.

5 MR. ARCHER: I'm coming back.

6 MR. PALACIOS: Let's move on to agenda item  
7 number 9.

8 MR. ARCHER: Yes, sir. The next agenda item  
9 may be found on page 269 of your board book. I'm  
10 presenting these amendments to Administrative Code,  
11 Chapter 219 for adoption today. These rule amendments  
12 were proposed to the board at the February board meeting.

13 The purpose of these amendments is to implement House  
14 Bill 2319 and Senate Bill 1524 which deal with intermodal  
15 shipping containers, and Senate Bill 1383 which deals with  
16 fluid milk permits.

17 These rules define the terms roll stability  
18 safety support system and truck blind spot systems, and  
19 clarify the terms approximately 612 inches and  
20 approximately 647 inches. Industry needs clarification on  
21 these terms to obtain equipment that complies with the  
22 permit requirements.

23 The department defines the terms roll stability  
24 support safety system and truck blind spot system because  
25 industry and enforcement personnel could interpret these

1 terms to mean different things. These terms were included  
2 in the legislation to attempt to make these permitted  
3 vehicles safer. The department's definitions focus on  
4 safety. For example, roll stability support safety system  
5 is defined to require an electronic system because manual  
6 actions and perceptions of a human driver do not qualify  
7 as roll stability support safety systems because a human  
8 driver might not be capable of detecting or preventing  
9 instability problems as well as an electronic system can.

10 Amendments to 219.34 and 219.36 clarifies the  
11 terms approximately 647 inches and an amendment to 219.36  
12 also clarifies the term approximately 612 inches. These  
13 terms state that the authorized distance between the front  
14 axle of the truck tractor and the last axle of a semi  
15 trailer in combination are eligible for permits under  
16 these sections. The department received calls from  
17 industry representatives who wanted to know how the  
18 department interpreted these terms because the industry  
19 wanted to exceed these numbers.

20 The legislature used the terms approximately  
21 647 inches and approximately 612 inches to ensure a  
22 certain distance between the applicable axles to minimize  
23 and prevent damage to roadways that could be caused by the  
24 axle weight of the permitted vehicles. The department  
25 discussed these issues with the Texas Department of

1 Transportation because they design and maintain the  
2 roadways on which these vehicles travel. We also  
3 consulted with the Texas Department of Public Safety  
4 because they enforce safety rules regarding weight.  
5 Further, the department discussed this issue at TxDOT's  
6 oversize and overweight stakeholder workshop which was  
7 held last November when an industry rep asked for  
8 clarification on the meaning of the term approximately 612  
9 inches and approximately 647 inches.

10 In defining these terms, the department focused  
11 on the object sought to be obtained which is to minimize  
12 and prevent damage that could be caused by excess weight  
13 of the permitted vehicles. The department also focused on  
14 the consequences of a particular interpretation or  
15 construction of these terms. TxDOT stated that any  
16 distance between 612 or 647 inches for these applicable  
17 permits could have a significant impact on the assessment  
18 of bridges and may result in additional bridge postings.

19 Also, industry asked only that the distances go  
20 above 612 inches and 647 inches so they could purchase  
21 equipment that is currently in production. The  
22 department, TxDOT and DPS agree that 612 inches and 647  
23 inches are the minimum distances allowed, however,  
24 permitted vehicles can exceed these distances. TxDOT did  
25 not suggest a specific maximum distance, however, they

1 stated the longer the better. DPS pointed out the  
2 potential benefit of not listing a maximum distance in  
3 case a manufacturer designs equipment that exceeds  
4 whatever the maximum is. However, the amendments  
5 establish a maximum distance so department personnel and  
6 industry have a clear maximum distance to buy equipment  
7 and to also issue the permits under.

8 The department received comments from KWIK  
9 Equipment Sales, LLC and the Texas Trucking Association.  
10 KWIK Equipment requested the department to increase the  
11 proposed 10 percent tolerance to a 15 percent tolerance on  
12 the 100,000 pound intermodal shipping container port  
13 permit.

14 MR. WALKER: What did you say 50 percent  
15 tolerance?

16 MR. ARCHER: Fifteen, one five.

17 The intermodal shipping container port permit  
18 which includes the term approximately 612 inches. KWIK  
19 Equipment stated that if the tolerance remained at 10  
20 percent, this permit would be useless and would probably  
21 never be used by anyone in the industry.

22 Texas Trucking Association requested the  
23 department to increase the proposed 10 percent tolerance  
24 to a 15 percent tolerance on the following permits: the  
25 93,000 pound North Texas intermodal permit, the 93,000

1 pound intermodal shipping container port permit and the  
2 100,000 pound intermodal shipping container port permit.  
3 Based on data that TXTA has seen, they feel that the 15  
4 percent tolerance would allow the permittees to better  
5 utilize overweight permits while still being compliant  
6 with the maximum axle weight limitations contained in the  
7 statute. TXTA agrees that the following distances  
8 specified in House Bill 319 and Senate Bill 1524 are  
9 minimum distances, approximately 612 inches and  
10 approximately 647 inches.

11 TXTA also requested the department to modify  
12 the proposed definition of Texas blind spot systems  
13 because the proposed definition could be interpreted to  
14 require the system to detect objects in all positions  
15 located to the rear of the driver's seat in the truck  
16 tractor. Although the truck blind spot system detects  
17 objects in the lanes that are adjacent to the lanes in  
18 which the truck tractor is and semi trailer are operating,  
19 systems don't detect objects in positions located directly  
20 to the rear of the driver's seat in the truck tractor.

21 The department's response on these comments, we  
22 recommend adoption of 219.34 and 219.36 with amendments to  
23 increase the 10 percent tolerance to a 15 percent  
24 tolerance on the following permits: the 93,000 pound  
25 North Texas intermodal permit, the 93,000 pound intermodal

1 shipping container permit, and the 100,000 pound  
2 intermodal shipping container permit. The amendments  
3 allow the permittees to better utilize the overweight  
4 permits while still being compliant with the maximum axle  
5 weights. Also, these amendments do not change the length  
6 limitation of a semi trailer under the Transportation  
7 Code.

8 The department also recommends adoption of  
9 Section 219.2 with amendments to modify the definition of  
10 truck blind spot systems to make it clear that these  
11 systems don't detect objects in all positions located to  
12 the rear of the driver's seat. The department worked with  
13 DPS to modify this definition.

14 John Esparza is here from TXTA and I think he'd  
15 like to comment on the rule.

16 MR. WALKER: Did he turn in a request form?

17 MR. PALACIOS: Yes, he did.

18 Mr. Esparza.

19 MR. ESPARZA: Mr. Chairman. Thank you,  
20 members. My name is John Esparza, I'm the president of  
21 the Texas Trucking Association. I'm in support of Mr.  
22 Archer and I just wanted to come and share just my  
23 gratitude for working with the agency. As Jimmy shared,  
24 this endeavor started through the course of the session  
25 and working with the author of the bill, and so it was a

1 heavy lift, it took a lot of folks to get this where it  
2 is.

3           And we also knew at that point in time the  
4 reason we were even talking about an approximation was  
5 that we were talking about an entirely new piece of  
6 equipment, something that has the technological  
7 advancements taking advantage of the things that are  
8 available in the trucking industry today, all in the name  
9 of safety, and that's one of the things that not just this  
10 agency but a number of others worked together to come to,  
11 and when we found that we were in need of defining that  
12 approximation, we went out and reached out to the actual  
13 individuals that were producing the trailers or in the  
14 process of doing so.

15           At a hearing a couple of weeks ago, Senator  
16 Nichols questioned this went into effect January 1, the  
17 number of permits were at a small level, where are they.  
18 And it's a matter of process, it is about carriers being  
19 very comfortable in what that approximation might be so  
20 that they can begin to produce these trailers. And we did  
21 have an instance where a company went out and began  
22 producing early and would not fit into these specs. So  
23 there was definitely a delay that we have seen and now  
24 we're anticipating that these trailers will start falling  
25 into production -- or they're already in production, will

1 fall into use more frequently very soon. I think the  
2 amount of permits that have already been sold, we would  
3 see increase.

4 So we know that there's been a definite need  
5 for this. Our concerns we shared with you all about doing  
6 so safely and taking advantage of, again, some of the  
7 technologies available to you. So we're here to just  
8 share our support. Thank you to the executive director  
9 and Mr. Archer and his team working with us. It's been  
10 quite a heavy lift. Thank you.

11 MR. PALACIOS: Thank you.

12 MR. WALKER: Question. You said you've been  
13 working with the trailer manufacturer. What does the  
14 trailer manufacturer have to do with roll stability?

15 MR. ESPARZA: Well, the trailer manufacturer  
16 with regard to the specs on the trailer itself. As Mr.  
17 Archer shared, there were concerns about the length of the  
18 trailer, what was too long and what was too short. What  
19 we found through our work with TxDOT and the agency here  
20 was that there was less concern about the length of the  
21 trailer than there was the shortness of the trailer with  
22 regards to its ability to safely and efficiently carry  
23 those new weighted loads across pavements and bridge  
24 structures, for that matter. But at some point when that  
25 trailer gets too long, you have concerns over the turning

1 radius, of course, but as important, you start to lose the  
2 actual maximizing the load itself and its weight. So  
3 there's a happy medium in there and the manufacturers were  
4 really trying to engineer that trailer to figure out where  
5 that is.

6 MR. WALKER: So I know that the trucking  
7 industry doesn't make the rules, the legislators do, but  
8 the number one accident, John, that the trucking industry  
9 has, we have is every time you make these trailers longer,  
10 when I get to the intersection and I have to make a right  
11 turn because the manufacturer is down the road to the  
12 right and I get here and I get to this stop sign, if I  
13 take a right-hand turn I'm going to take the telephone  
14 poll down, I'm going to take the light pole down and  
15 everything else because it takes so much radius to do  
16 that.

17 So now I get over here and in order to make  
18 that turn I get up here and I have to take a steal part of  
19 the left lane and when I steal part of the left lane and I  
20 have to get farther enough over, there's always a four-  
21 wheeler that wants to slip in there and try to sneak  
22 around me and I have a blind spot on that equipment that I  
23 can't see him and now I make that turn and I wipe out the  
24 roof of his car and he sues me for a million dollars. It  
25 happens every day, and you're aware of this just like I

1 am.

2 And so we look at safety within the industry  
3 and yet TxDOT is kind of telling us you've got to make the  
4 trailers longer because of the bridge formula -- and most  
5 people in this room don't even know what the bridge  
6 formula is, probably, and Mr. Archer could explain it  
7 maybe to you, and I was going to ask you a question about  
8 the bridge formula here. So every time we make these  
9 trailers longer in order to haul these loads, you're  
10 increasing the likelihood that I'm going to have to take a  
11 swing wider every time I go around an intersection and I'm  
12 going to get into an accident. And if you look at  
13 statistics, it's the number one accident in the trucking  
14 industry today.

15 I mean, I get it, I get what we're doing here  
16 with the industry saying we want you to haul more weight  
17 so that we can get our costs lower, but in the interest of  
18 safety, by making these trucks longer you're making it  
19 awful difficult to get these trucks around an  
20 intersection.

21 MR. ESPARZA: Mr. Walker, I think you speak to  
22 the heart of the discussion that has been had now for  
23 quite some time now but specifically to this legislation,  
24 was where is that happy medium, not just between what is  
25 safe, which is most important, but also what the bridges

1 and what pavement can actually take so that we're doing  
2 the least amount of damage, but also trying to put the  
3 driver in the best position and the company in the best  
4 position not to have an unsafe turn there. It certainly  
5 is a happy medium and it's not an exact science.

6 MR. WALKER: So, Jimmy, going back to this 215  
7 and 247 inch limits that you have on here, the bridge  
8 formula, how does this affect the current bridge formulas  
9 that we have in place, that TxDOT has in place right now?

10 MR. ARCHER: I think there's two issues that  
11 need to be understood. Number one is the statute nor the  
12 rule allow an increase in the length of a trailer which is  
13 59 feet under the Transportation Code. Now, there's no  
14 limitation on a truck-trailer combination. I mean, if you  
15 had a 250 foot long truck, I suppose you could have a 300  
16 foot long vehicle, but under this there's still a  
17 limitation by statute on how long the trailer can be. All  
18 this does is simply, to your point about the bridge  
19 formula, it allows a minimum of 612 or 647 inches. And  
20 then the industry came to us, according to TxDOT, that  
21 bridge formula, if it's any shorter, if they make that  
22 length from the front axle to the rear axle any shorter,  
23 then it causes an issue with the weight under the bridge  
24 formula, so that's why TxDOT said this is the minimum.  
25 And it can be longer but the trailer still can't be over

1 59 feet long by statute.

2 MR. ESPARZA: And if I might add, a great point  
3 of clarification there, Mr. Archer, speaking of the front  
4 axle of the tractor to the final axle of the trailer in  
5 the combination.

6 MR. PAINTER: The front axle of the tractor, is  
7 that called the drive axle?

8 MR. WALKER: No. Steering axle. Steering is  
9 the front.

10 MR. PAINTER: Steering. Okay.

11 MR. WALKER: So let's talk about the  
12 tolerances. Are we talking about axle tolerances or gross  
13 tolerances, or both?

14 MR. ARCHER: On the length?

15 MR. WALKER: No. You're asking for a 15  
16 percent tolerance here.

17 MR. ARCHER: This is only on the length, this  
18 has nothing to do with the weight.

19 MR. WALKER: Well, you just asked us  
20 specifically you want to change the tolerance from 10  
21 percent to 15 percent, it was in your rule.

22 MR. ARCHER: What we're saying, sir, is that  
23 the 612 and 647 inches are minimums. The manufacturers  
24 can go or the carriers can go up to 15 percent longer on  
25 the distance of the axle from the drive axle.

1 MR. WALKER: So the tolerance is only for  
2 length, not for weight.

3 MR. ARCHER: Yes, sir, only for length. The  
4 weight is already set in the statute.

5 MR. WALKER: Okay.

6 MR. PALACIOS: Are there any additional  
7 questions for Mr. Esparza or Mr. Archer?

8 (No response.)

9 MR. PALACIOS: Hearing none.

10 MR. WALKER: If not, I move that we adopt the  
11 revised amendments to Section 219.2, 219.34, 219.35 and  
12 219.36.

13 MS. HARDY: Second.

14 MR. PALACIOS: Okay. Motion by Board Member  
15 Walker, second by Board Member Hardy to accept the  
16 adoption of the rules. All those in favor please signify  
17 by raising your right hand.

18 (A show of hands.)

19 MR. PALACIOS: Motion passes unanimously.

20 MR. ESPARZA: Thank you.

21 MR. PALACIOS: Thank you very much, Mr.  
22 Esparza, Mr. Archer.

23 Let's move forward on agenda item number 10.  
24 Ms. Thompson, good morning.

25 MS. THOMPSON: Good morning, Chairman, members

1 of the board. I'm Corrie Thompson, director of the  
2 Enforcement Division. I'm presenting agenda item 10 for  
3 you which includes two rules that we're asking be proposed  
4 for comment in the *Texas Register*. This agenda item  
5 begins on page 314 in your board books.

6 Before you, you have a recommendation to  
7 approve, again, like I said, the publishing of proposed  
8 amendments to Rule 215.85 in the *Texas Register* for public  
9 comment. This rule 215.85 relates to referral fees  
10 associated with used motor vehicles. Amendments to this  
11 rule would add new sections (d) and (e) which clarify how  
12 a license general distinguishing number holder may pay a  
13 referral fee to an individual who has purchased a vehicle  
14 from a dealer within the five-year period preceding the  
15 referral that occurs. New section (e) states that a  
16 referral fee may not be paid to or may not be offered or  
17 provided to an employee of the dealer, a person who is  
18 employed by the dealer.

19 The purpose of the amendments to this rule is  
20 to distinguish referral fees from brokering activities  
21 which are prohibited by statute. We are making the  
22 distinguishing factor here in the amendment because  
23 brokering activities in their true sense really involve a  
24 middle person who's involved in the transaction,  
25 negotiating the deal between the dealer and the ultimate

1 end consumer.

2           There is no fiscal impact associated with this  
3 amendment, and since we're asking for a vote based on both  
4 of the rules included in agenda item 10, if you have no  
5 questions on this rule proposal, I will move on to the  
6 next rule.

7           MR. BARNWELL: I have a question.

8           MS. THOMPSON: Sure. Yes, Mr. Barnwell.

9           MR. BARNWELL: Why is a referral fee to an  
10 employee prohibited?

11           MS. THOMPSON: So again, we're trying to limit  
12 the prohibition on brokering activities. Brokering is not  
13 allowed in Texas, it is allowed in other states, but just  
14 trying to keep the line drawn between just offering an  
15 incentive to somebody who is a prior customer and trying  
16 not to cross over that line into true brokering.

17           MR. BARNWELL: So the referral fee must be a  
18 prior customer? That's not what the rule says.

19           MS. THOMPSON: So somebody who has purchased a  
20 vehicle from that dealer within the preceding five-year  
21 period. And then new section (e) is expressly excluding  
22 somebody who is employed by the dealer from being able to  
23 receive that referral fee.

24           MR. BARNWELL: Okay. Seems like a rule that  
25 we're making rules to have rules here. How much brokerage

1 abuse is there?

2 MS. THOMPSON: I'm not sure that I can speak to  
3 actual abuse, but we do have a lot of companies that come  
4 in that are actually excepted from the brokering  
5 prohibition because they meet the exceptions.

6 MR. BARNWELL: But we're not talking about  
7 them, are we?

8 MS. THOMPSON: Well, it depends. Again, I  
9 can't speak to the level of abuse of the rule.

10 MR. BARNWELL: But why is the rule being put  
11 into place if we don't know what it's supposed to address?  
12 Is it significant, or is this just a rule to have a rule?

13 MS. THOMPSON: Well, it's to allow dealers  
14 clarification that they can offer something that  
15 historically it's been their understanding they haven't  
16 been able to offer to customers because of the brokering  
17 prohibition.

18 MR. BARNWELL: So under the brokering  
19 prohibition, is it defined in the law anywhere?

20 MS. THOMPSON: Yes. It's in Occupations Code  
21 2301.

22 MR. BARNWELL: And what does it say?

23 MS. THOMPSON: It says that a person may not  
24 act as, offer to act as or claim to be a broker.

25 MR. BARNWELL: Okay. If I bought a car from a

1 dealer three years ago and a friend of mine says, You  
2 know, I like that car you've got. And I say, Why don't  
3 you go down the dealer. And I call the dealer up and I  
4 say, Hey, I'm sending my friend Bubba down there, how  
5 about \$100 referral fee? And the guy says, Sure. How is  
6 that brokerage?

7 MS. THOMPSON: Well, there's confusion because  
8 also Transportation Code 503.021 prohibits a person from  
9 engaging in the business of a dealer, directly or  
10 indirectly, and directly or indirectly includes the  
11 practice of arranging or offering to arrange a  
12 transaction. So there's just confusion where the line is  
13 drawn, and so the rule that's being proposed is just to  
14 literally provide clarification for dealers.

15 MR. BARNWELL: Are the other rules being  
16 changed, the existing rules, or is this just a new rule  
17 layered on top of existing rules?

18 MS. THOMPSON: This is an existing rule and  
19 this is just adding two additional sections to the  
20 existing rule.

21 MR. BARNWELL: So what you were talking about  
22 in terms of brokerage and all of that, that would be  
23 clarified here so that now referral fees are okay.

24 MS. THOMPSON: Correct.

25 MR. BARNWELL: And up until now referral fees

1 are not okay.

2 MS. THOMPSON: Correct. And there's been  
3 confusion about whether or not they are, because a lot of  
4 people do already have \$25 on the back of their business  
5 card for steering your friend to our dealership.

6 MR. BARNWELL: And that's illegal.

7 MS. THOMPSON: Under the rule it's currently  
8 interpreted that way sometimes, yes.

9 MR. BARNWELL: Okay. Thank you.

10 MR. PALACIOS: Ms. Thompson, can you clarify  
11 which types of licensed dealers this rule would apply to?

12 MS. THOMPSON: Absolutely. So this rule,  
13 particularly 215.85 speaks to used motor vehicle dealers  
14 which would be independent dealers that hold general  
15 distinguishing numbers. The rule that prohibits brokering  
16 for new motor vehicle franchised dealers is 215.84, and we  
17 are not addressing new vehicle licenses with this rule  
18 amendment.

19 MR. BARNWELL: Can they not do referral fees?

20 MS. THOMPSON: That's correct. Franchised  
21 dealers who hold franchise licenses, no, we are not  
22 touching that rule.

23 MR. BARNWELL: So they're still prohibited?

24 MS. THOMPSON: Correct.

25 MR. BARNWELL: Okay. Well, I find this

1 objectionable on several grounds, and what's the  
2 difference between a used car dealer and a franchised car  
3 dealer offering a referral fee? These are rules without a  
4 lot of logic, to my way of thinking. I'm sure the logic  
5 is there but it has not been made apparent to me at this  
6 point. Thank you.

7 MR. PALACIOS: Are there any further questions  
8 on the referral fee issue?

9 (No response.)

10 MR. PALACIOS: If not, please proceed.

11 MS. THOMPSON: I will move on to the next rule  
12 which begins on page 322 in your board books, again, still  
13 continuing with agenda item 10.

14 Before you now is a recommendation to approve  
15 the publishing of proposed amendments to Rule 215.155 in  
16 the *Texas Register* for public comment. This amendment is  
17 being proposed to make the rule consistent with  
18 Transportation Code 548. 215.155(b) currently states that  
19 a buyer's temporary tag may only be displayed on a vehicle  
20 that has a valid inspection. The amendment to this rule  
21 adds language authorizing display of a buyer's temporary  
22 tag on a vehicle that does not have a valid inspection as  
23 long as it meets an exemption that's laid out in Chapter  
24 548 of the Transportation Code.

25 Again, there's no fiscal impact associated with

1 this amendment. Are there any comments on this proposal?

2 MR. WALKER: Who's requesting that these be  
3 done?

4 MS. THOMPSON: I'm sorry?

5 MR. WALKER: Who's making the request on these  
6 changes? Who's making the request that we modify the  
7 rules?

8 MR. DUNCAN: David Duncan, general counsel.

9 On the second bullet point which is 215.155,  
10 you may recall that a gentleman from Louisiana, Mr. Gover,  
11 showed up at our board meeting a couple of meetings ago  
12 and talked about the requirement to get an inspection on a  
13 vehicle that he's taking out of state. This is a minor  
14 clarification of our rule. No one is really requesting  
15 this other than staff to make our rules consistent with  
16 the Comptroller's rules that interpret the Tax Code.

17 The first rule, Member Ingram has been working  
18 with us on that for some time.

19 MR. BARNWELL: The brokerage rule?

20 MR. DUNCAN: Yes, sir.

21 MR. PAINTER: And this is just to get it  
22 published for comment?

23 MR. DUNCAN: Yes, sir.

24 MR. PAINTER: Okay. Thank you.

25 MR. PALACIOS: Are there any additional

1 questions regarding either of the two rules? If not, I  
2 will entertain a motion to accept the rule proposals.

3 MR. PAINTER: Mr. Chairman, I move that the  
4 board approve the proposed amendments to Chapter 215 for  
5 publication in the *Texas Register* for public comment.

6 MR. WALKER: Second.

7 MR. PALACIOS: Motion by Board Member Painter,  
8 second by Board Member Walker to accept the rule proposal.

9 All those in favor please signify by raising your right  
10 hand.

11 (A show of hands.)

12 MR. PALACIOS: Motion passes unanimously.

13 MR. BARNWELL: No. I vote no.

14 MR. PALACIOS: I'm sorry. Okay. Board Member  
15 Caraway, Board Member Walker, Board Member Treviño, Board  
16 Member Hardy, Painter and Palacios vote in favor.

17 All opposed?

18 (A show of hands: Board Member Barnwell.)

19 MR. PALACIOS: Thank you.

20 MS. THOMPSON: Thank you.

21 MR. PALACIOS: We'll move on to agenda item  
22 number 11, specialty plate designs, our favorite. Mr.  
23 Kuntz, you're back again.

24 MR. KUNTZ: Members, for the record, I am back  
25 again, Jeremiah Kuntz, director of Vehicle Titles and

1 Registration Division. And I believe that we have two  
2 license plates that are listed on the agenda and I wasn't  
3 sure if the chair was removing item 11.A.

4 MR. PALACIOS: Yes. We are removing item 11.A.  
5 We'll delay that for a further meeting and we only have  
6 one plate at this time which is the Smokey Bear plate.

7 MR. KUNTZ: Great. Thank you very much.

8 So members, before you for your consideration  
9 is a new license plate design for Smokey the Bear. Many  
10 of you probably remember this iconic image relating to  
11 preventing wildfires. This license plate is being brought  
12 forward by the Texas A&M Forest Service under  
13 Transportation Code 504.801, and we did publish it for  
14 public comment. We received 434 people who liked the  
15 design, unfortunately we received 52 that did not. That  
16 is not uncommon that we have split opinions on our plate  
17 designs. But for your consideration is the Smokey the  
18 Bear license plate.

19 MR. WALKER: So whose plate is this? Is this a  
20 statutory plate, this is a department plate, or is this a  
21 My Plates plate?

22 MR. KUNTZ: This is a plate that is being  
23 offered by a sponsoring agency and that would be the Texas  
24 A&M Forest Service. So it is not a My Plates plate and it  
25 is not a statutorily required plate. Our statute allows

1 us to have sponsoring organizations, a state agency  
2 sponsoring a license plate. The Texas A&M Forest Service  
3 has brought this license plate before the board.

4 MR. WALKER: So they understand the  
5 requirements that they have to pre-sell?

6 MR. KUNTZ: Those plates do not meet the same  
7 requirements for the pre-sale of 200 plates. The pre-sale  
8 requirement is a contractual obligation in our contract  
9 with My Plates. None of the other plates that are either  
10 statutory or sponsored organization plates, they do not  
11 require a pre-sale of 200 license plates.

12 MR. WALKER: Does Texas A&M have to pay the  
13 fee, the \$4,000 setup fee?

14 MR. KUNTZ: Yes. It's an \$8,000 deposit that  
15 they have to pay until such time as they've sold enough  
16 license plates that it is refunded to them.

17 MR. WALKER: How many of these plates do they  
18 think that they have sold?

19 MR. KUNTZ: I don't have estimates on how many  
20 they believe that they'll sell.

21 MR. BARNWELL: Well, an Aggie will buy  
22 anything.

23 (General laughter.)

24 MR. WALKER: Only if it has TAMU on it. It  
25 doesn't have that on there.

1 MR. TREVIÑO: How many of these types of  
2 plates, not necessarily the Smokey Bear one here, but  
3 these types, this category of plates do we have?

4 MR. KUNTZ: So if you will look, I believe that  
5 we have included in your board book our -- we change this  
6 up every time you have a board meeting. We've got an  
7 infographic that has all of our plates on it, you can see  
8 there are 180 military plates, there are 50 plates with  
9 restricted distribution, the state specialty license  
10 plates there are 125 -- that includes both some statutory  
11 as well as state agency sponsored plates fall into that  
12 125 -- and then the vendor plates, there's 212 vendor  
13 plates currently available, for a grand total of 476 plate  
14 offerings today. This would make 477.

15 MR. WALKER: So I have kind of a question here,  
16 and I've been doing this a long time on this deal, but  
17 this plate right here, Smokey the Bear, when I see Smokey  
18 the Bear, I don't think of Texas A&M University or Texas  
19 A&M Forest Service, I may be thinking United States Park  
20 Service has Smokey the Bear on it. So I mean, there's no  
21 affiliation here at all to Texas A&M, so how does A&M  
22 think that they're going to make money?

23 MR. PALACIOS: Put a maroon that on him or  
24 something.

25 MR. BARNWELL: The problem is that -- and A&M

1 is smart about this, which you wouldn't normally expect --

2 MR. WALKER: Oh, come on, Barney.

3 MR. BARNWELL: -- they know that if they had  
4 their name all over it, then fewer people would buy the  
5 plate.

6 MR. TREVIÑO: I think we're playing with fire  
7 here, Mr. Chairman. I think we need to move on.

8 MR. BARNWELL: I could be wrong, but I think  
9 that's it.

10 MR. WALKER: You just made my determination on  
11 how I'm voting now.

12 MR. PALACIOS: He switched his vote.

13 (General laughter.)

14 MR. KUNTZ: Again, for your consideration.

15 MS. HARDY: When we add plates, do we ever  
16 delete plates over time? I mean, is this just going to  
17 grow to a thousand?

18 MR. KUNTZ: So that is a very good question,  
19 and it relates to the question that Mr. Walker asked  
20 earlier. The only provision that we have is in our  
21 contract with My Plates and what that actually requires is  
22 not only a pre-sale of 200 license plates, but it also  
23 states that the current number of registered plates fall  
24 below 200, then they get put on notice that their license  
25 plate will get removed from the available list. So we

1 actually have the 200 license plate threshold in place for  
2 the My Plates program.

3 MS. HARDY: Have we removed some of those?

4 MR. KUNTZ: We did. When we first signed that  
5 contract and that new provision came about, we had a  
6 series of plates that were lower performing license plates  
7 that fell off. We have not seen the current inventory of  
8 license plates fall below that 200 for any substantial  
9 amount of time. We have a couple that will dip down maybe  
10 to 197 and then they'll go and do some marketing and push  
11 it back up over 200, but all of our license plates at this  
12 point are maintaining above that 200 under the My Plates  
13 program.

14 MR. BARNWELL: Let me ask you one more  
15 question. You said that a state agency is not subject to  
16 the 200 plate minimum, and I understand that. But they  
17 had to pay \$8,000?

18 MR. KUNTZ: Correct.

19 MR. BARNWELL: And how do they recoup that? At  
20 what level does the state refund that to them, or do they?

21 MR. KUNTZ: We do refund it. There is a  
22 minimum threshold of number of license plates or renewed  
23 registrations that must occur. I don't have that specific  
24 number in front of me right now.

25 MR. BARNWELL: You don't know that number?

1 MR. KUNTZ: I know, you caught me today.

2 MR. BARNWELL: Well, at least it's a successful  
3 day for me, I don't know about you.

4 MR. KUNTZ: You have won this one for sure, Mr.  
5 Barnwell. We can get you that number.

6 (General laughter.)

7 MR. TREVIÑO: I think the big question on these  
8 is we could have a million types of plates, but as long as  
9 it's not a burden on the state or it doesn't affect public  
10 safety, it really doesn't matter, we could have a million  
11 of them. Either of those two questions, do you have  
12 concerns as to either one of those, either a burden on the  
13 state financially or concerns over public safety and the  
14 proliferation of plates would have a problem?

15 MR. KUNTZ: I would not say that we have a  
16 burden placed on the state financially. As referenced in  
17 this instance, there is a minimum threshold of plates that  
18 must be pre-ordered if it's a My Plates. For the other  
19 license plates that are occurring through the state agency  
20 sponsored, there's an \$8,000 deposit. That same \$8,000  
21 deposit is required if a statutory plate is required. The  
22 only ones that don't require that deposit are our military  
23 license plates, of which some of those recognitions they  
24 will never get to 200. The Medal of Honor is a prime  
25 example, we will never have 200 Medal of Honor license

1 plates, God help us, that have to be on the roadways. And  
2 so there's not really a financial burden on the state. We  
3 also recover \$8 per license plate to cover the cost of  
4 administering that program as well.

5 MR. TREVIÑO: And the public safety question?

6 MR. KUNTZ: That is a question that has come  
7 up. I've not been contacted by members of law enforcement  
8 to say that they're having difficulty with the plate  
9 program on the roadways. We could obviously reach out to  
10 them and see if they have any concerns in this day and age  
11 with the number of license plates.

12 MR. PAINTER: I think the biggest problem for  
13 law enforcement is being able to read it at a high speed  
14 if we're in a pursuit or something, being able to run it.

15 MR. KUNTZ: And we do test all of our license  
16 plates before we bring them to you for reflectivity, to  
17 make sure that the alphanumeric pattern is reflective and  
18 able to be read.

19 MR. PAINTER: Good.

20 MR. PALACIOS: Okay. Any other questions?

21 (No response.)

22 MR. PALACIOS: Hearing none, I will entertain a  
23 motion.

24 MR. TREVIÑO: I move that we adopt the Smokey  
25 the Bear plate.

1 MS. HARDY: Second.

2 MR. PALACIOS: Okay. Motion by Board Member  
3 Treviño, second by Board Member Hardy to accept the plate.  
4 All those in favor please signify by raising your right  
5 hand.

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

8 MR. PALACIOS: Board Members Walker, Treviño,  
9 Hardy, Barnwell, Painter.)

10 MR. PALACIOS: All those opposed?

11 (A show of hands: Board Members Caraway and  
12 Palacios.)

13 MR. PALACIOS: Board Members Caraway and  
14 Palacios. Motion carries.

15 MR. WALKER: I would have voted against but I  
16 was afraid they'd take my diploma back.

17 (General laughter.)

18 MR. PALACIOS: Smart move.

19 Okay. Let's move on now to Finance and Audit.  
20 We'll start with the Finance and Audit Committee update  
21 that will be given by Board Member Caraway who is the  
22 chair of the Finance and Audit Committee.

23 MS. CARAWAY: I will just say that we met  
24 yesterday and had a good meeting, and I will ask Ms.  
25 Flores to present her report, and Ms. Bankhead.

1 MR. WALKER: Just don't make it as long as  
2 yesterday.

3 MS. CARAWAY: True. Synopsis.

4 MS. FLORES: For the record, my name is Linda  
5 Flores. I'm the chief financial officer for the agency.  
6 And I've been directed and I will so proceed.

7 The first item is agenda item 12.A. in you  
8 board book, and it begins on page 333, and this is an  
9 action item for the board. We are requesting a two-part  
10 approval for the agency with regards to its headquarters  
11 maintenance dollars. As you know, we were appropriated  
12 approximately \$9 million this biennium. TxDMV and TxDOT  
13 created a workgroup to collaborate on identifying specific  
14 projects here on Camp Hubbard that required some type of  
15 renovation or repair. These dollars support not only  
16 Building 1 but Building 5. We do have the fifth floor of  
17 Building 6 where Motor Carrier is currently housed, but  
18 that floor was totally renovated for Motor Carrier when  
19 they moved in in January. So the \$9 million is to support  
20 the campus itself.

21 Because it's so late in the year, we didn't  
22 have time to really go out and spend any dollars this  
23 year, but in working with TxDOT, we identified a  
24 substantial list of projects that could be performed this  
25 biennium. So when we were also appropriated the dollars,

1 we didn't specify what capital line items we needed for  
2 the campus. Working with TxDOT, we identified \$4.2  
3 million in projects.

4 MR. PALACIOS: Pardon the interruption, Ms.  
5 Flores. Let the record reflect that it's 9:56 and Board  
6 Member Walker has stepped out. Please proceed.

7 MS. FLORES: In your board documents on page  
8 337 and 338, we identified specific capital projects that  
9 we wanted to undertake, so we've identified \$4.2- from  
10 today's dollars that we want to -- actually it's \$4.2  
11 million plus another \$2 million next year that we want to  
12 undertake. Again, because it's so late in the year, we're  
13 going to request two things: one, we need to set up a  
14 capital project line item in our bill pattern that's not  
15 there because these dollars were appropriated as  
16 operating, so that's step one; step two is to carry  
17 forward \$2.2 million into next year to cover all of the  
18 projects that we've identified. So that's approximately  
19 \$6 million, I believe, in '19.

20 We will have to modify the current memorandum  
21 of understanding with TxDOT. With board approval, we will  
22 develop a memo to both the Governor's Office and the  
23 Legislative Budget Board to create the capital line item,  
24 as well as the carryforward.

25 And that concludes my presentation on the

1 headquarters maintenance request.

2 MR. BARNWELL: Ms. Flores, where do these  
3 numbers come from?

4 MS. FLORES: Yes, sir. So in your board  
5 document on page 333 at the very bottom there is a list,  
6 table 1, DMV HQ maintenance projects, those are the  
7 projects that we've identified for both capital and things  
8 that will be processed through TxDOT with the memorandum  
9 of understanding. Those two dollars total roughly \$6.7  
10 million. Today's appropriation is \$5 million, in FY19 we  
11 have \$4 million.

12 MR. BARNWELL: Yes. I understand, I can read  
13 the numbers. Where do they come from?

14 MS. FLORES: We were appropriated those  
15 dollars.

16 MR. BARNWELL: Where do these estimates of  
17 these costs come from is what I'm talking about.

18 MS. FLORES: We were working collaboratively  
19 with TxDOT. We meet with them every two months. There's  
20 a large workgroup that's composed of our staff, Ann Pierce  
21 in Administrative Services, they bring their electrical  
22 support services, facility folks, they bring those folks  
23 to our meetings and when we're discussing changes that we  
24 would like to see or renovations that we would like to  
25 have performed.

1 MR. BARNWELL: I see. They work up a cost  
2 estimate for what they think it might cost for this.

3 MS. FLORES: Yes, sir.

4 MR. BARNWELL: Okay. Well, I was just  
5 wondering where the expertise came in because obviously we  
6 don't necessarily know what it costs to do these jobs.

7 MS. FLORES: Correct.

8 MR. TREVIÑO: And source of funds again?

9 MS. FLORES: Again, those are operating dollars  
10 that we have in our base budget, but because these are  
11 things over \$100,000, like the roof repair or the  
12 replacement of the roof in Building 5, that's estimated to  
13 cost a million, we're having to create project line items  
14 in our budget.

15 MR. BARNWELL: So right now we're \$2.2 million  
16 under on the MOU with TxDOT.

17 MS. FLORES: Yes, correct.

18 MR. BARNWELL: So that MOU needs to be amended  
19 to find that \$2.2 million.

20 MS. FLORES: Correct. They're going to help us  
21 with the work but we've got to pay them for the work.

22 MR. BARNWELL: Sure. They're unreasonable that  
23 way, I understand.

24 (General laughter.)

25 MS. FLORES: Duly noted.

1 MR. BARNWELL: Okay. I understand where you're  
2 going with that. Thank you.

3 MS. FLORES: So that concludes my presentation  
4 and we are asking for the board's approval to proceed.

5 MR. PALACIOS: Are there any further questions  
6 for Ms. Flores on this issue?

7 (No response.)

8 MR. PALACIOS: Hearing none, I will entertain a  
9 motion.

10 MR. PAINTER: Mr. Chairman, move that the board  
11 approve the following recommendation of the Finance and  
12 Audit Committee: number one, creation of a new capital  
13 project line item in the fiscal year 2019 budget for a  
14 Texas Department of Motor Vehicles maintenance and repair  
15 project with a total amount of \$4,209,505; and number two,  
16 request a carryforward of \$2,208,000 in unexpended  
17 balances in the Texas Department of Motor Vehicle  
18 headquarters.

19 MR. TREVIÑO: Second.

20 MR. PALACIOS: Motion by Board Member Painter,  
21 second by Board Member Treviño. I would also note that  
22 the Finance and Audit Committee, that is chaired by Chair  
23 Caraway, met yesterday and they went through this issue at  
24 length with the Finance department.

25 So I will now ask for the vote. All those in

1 favor please signify by raising your right hand.

2 (A show of hands.)

3 MR. PALACIOS: Motion passes unanimously.

4 For the record, it's 10:01 and Board Member  
5 Walker is back.

6 Okay. Let's move forward, Ms. Flores.

7 MS. FLORES: Yes, sir. We also provided a  
8 briefing, and this is agenda item 12.B. in your packet,  
9 and it begins on page 339. This is a briefing item only,  
10 it does not require board approval.

11 On page 342 of you material we've included a  
12 timeline for the appropriations request for the agency.  
13 Many of you have been through this before but for those  
14 who are new to the process, there is a reconciliation, if  
15 you will, of all state agencies' current budgets and it's  
16 called a base reconciliation. It's submitted to the  
17 Legislative Budget Board. We've done that, we did that in  
18 May. We modified our estimated expenditures in our budget  
19 for unencumbered balances that have been carried forward  
20 into our operations and we established what we believe is  
21 our estimated appropriations baseline for the next  
22 biennium.

23 Again, this was submitted in May. We believe  
24 that the LBB will come back with a baseline for us by the  
25 end of this month. We will also then turn around and

1 submit our official legislative appropriations request to  
2 external parties in August, so there will be another  
3 opportunity for us to bring this back to you with a  
4 recommended final budget request, if you will.

5 Our base budget does include things that we  
6 know we'll continue to perform in the next biennium, such  
7 as we've looked at our revenue collections, we know we  
8 will have enough to support our base and our exceptional  
9 items which I'll address later. The planned maintenance  
10 for the headquarters, by carrying forward those dollars  
11 into '19 and that's now in our base, we'll be able to  
12 again have enough dollars to support renovations/repairs  
13 for this campus going into the next biennium.

14 We're going to continue the full implementation  
15 of Compliance and Investigations Division. Mr. Menke has  
16 done an outstanding job of putting his staff in place. We  
17 know that as we evolve, more needs may be addressed and  
18 we're trying to anticipate those.

19 And finally, we do have approximately \$6  
20 million in our base going into the next biennium to cover  
21 our automation improvements for the registration and  
22 titling system. There's a lot of defects that we know  
23 that we need to address, so we've set aside dollars to  
24 support that effort as well.

25 Very quickly, we've identified our estimated

1 revenue collections from '18, '19, '20 and '21. Board  
2 Member Walker did point out that we had a very flat  
3 projection going into the next biennium, and that is due  
4 to our fiscal conservative approach. We are estimating  
5 approximately 1 percent into the next biennium for our  
6 fees. This chart just kind of gives you an idea for the  
7 DMV Fund, the largest fee collections that we have that  
8 support agency operations, primarily processing and  
9 handling fees, motor vehicle titles, registrations and  
10 motor carrier oversize/overweight fees that are deposited  
11 into the DMV Fund.

12 MR. WALKER: More directly I would say it was a  
13 Linda Flores ultraconservative projection.

14 MR. TREVIÑO: And do we get some kind of  
15 information from the state demographer, or how do you  
16 arrive at your projected numbers?

17 MS. FLORES: We do have a subscription to the  
18 Comptroller's revenue forecasting information. We do look  
19 at vehicle sales data, but as Board Member Walker  
20 indicated, I take a more conservative approach.

21 MR. WALKER: Very conservative.

22 MR. BARNWELL: I'd like to say thank you.

23 MS. FLORES: Even though sales may indicate  
24 that we've got 10 percent growth, I'm looking at  
25 registration renewals, I'm looking at titles, I'm looking

1 at events like Hurricane Harvey to kind of scale back to  
2 adjust for that, and I want to make sure that we at least  
3 hit our targets. Anything else goes into our fund balance  
4 that we're not allowed to touch anyway.

5 MR. TREVIÑO: And Ms. Flores, I think that I  
6 speak for the board and we encourage fiscal conservatism.  
7 So I'd like to applaud you on that.

8 MR. WALKER: We've got the best person in the  
9 state here, I promise you.

10 MS. FLORES: I don't know about that, but thank  
11 you very much.

12 As I mentioned before, we have looked at our  
13 revenue collections in the DMV Fund to determine whether  
14 or not we can support the exceptional items that I'm going  
15 to address shortly. We looked at our beginning balances  
16 for the current biennium versus the next biennium, what  
17 the revenue streams will be, what our obligations will be,  
18 and we took those items that are included starting on page  
19 348, 349 and 350 and we parsed out those items for ABTPA  
20 which are funded with general revenue, so that's not  
21 affecting the DMV Fund, we looked at the exceptional  
22 items, roughly \$21 million, and whether or not our fund  
23 could support that. And as you can see in this chart, we  
24 can certainly afford that as well as having a very  
25 sizeable fund balance.

1           Growing our fund balance, we do need to monitor  
2 that in a conservative manner. Those dollars will become  
3 a target during the appropriations process for use in some  
4 other program, specifically roads. So we're always  
5 looking at that, we don't want to grow our fund balance to  
6 be disproportionate to what we actually need.

7           MR. WALKER: So, Linda, we didn't really talk  
8 about this yesterday at the Finance and Audit meeting. I  
9 know we toiled for over a year trying to come up with our  
10 processing and handling fee, to try to get that number  
11 just dead-on so that it basically was where we needed it  
12 to be and where the TACs needed it to be. And now that  
13 we've been in this for, what, two years now, roughly?

14           MS. FLORES: It started in '17.

15           MR. WALKER: In '17. Where do you think we are  
16 with respect to that \$2.25 number? Do you think that  
17 we're pretty close to where we should have been?

18           MS. FLORES: Well, let me kind of give you an  
19 overview. Follow with me.

20           MR. WALKER: Okay.

21           MS. FLORES: Our processing and handling fee is  
22 \$4.75, if you go online you get a dollar discount so it's  
23 \$3.75. Two dollars is peeled off for the Texas.gov NICUSA  
24 vendor, so that leaves us with a \$1.75. Twenty-five cents  
25 of that is remitted to the counties for processing that

1 transaction. The agency is left with \$1.50. If you look  
2 at that \$1.50 and what it's generating and compare it to  
3 the program costs associated with that transaction, the  
4 registration, the fee itself, the revenue is not  
5 necessarily supporting all of the costs associated for  
6 VTR. I believe that when we were looking at the fee and  
7 the revenue versus the program costs, it was not covering  
8 all the costs, but because there are other fees going into  
9 the fund, it's helping cover that gap.

10 So you know, it depends on what philosophy  
11 you're looking at. Are you looking at whether the fee  
12 itself supports the actual cost to support that? No. But  
13 because there are other fees going into our accounts, we  
14 are trying to keep it as low as possible to encourage  
15 people to use the online transaction versus brick and  
16 mortar.

17 MR. WALKER: So in the process we listed to a  
18 lot of tax assessors -- Luanne can attest to this that we  
19 were collecting their fees and we make some changes to  
20 theirs. Are we getting any feedback from those people  
21 that, oh, my god, you're wiping us out, or man, we've done  
22 a heyday, we're making money hand over fist and covering  
23 our costs better now?

24 MS. BREWSTER: For the record, Whitney  
25 Brewster, executive director.

1           The feedback that we got was particularly  
2 around the dealer deputy fee, if you'll recall, and this  
3 board took action on that to allow for the tax assessor-  
4 collectors to hold on to that additional dollar. So that  
5 was primarily the feedback that we received and this board  
6 was very responsive to that.

7           I would also add that we're still very early on  
8 in the TxDMV Fund, and I would caution to do anything too  
9 dramatically different until we have a better idea of how  
10 that fund is going to perform.

11           MR. WALKER: Well, I'm not saying we do  
12 something, but it's something we need to be monitoring to  
13 make sure.

14           MS. HARDY: How big is the gap that you talked  
15 about, approximately?

16           MS. FLORES: I know the program side, the cost  
17 side was over \$100 million a year. On the revenue side,  
18 so for example, in FY18 we believe the processing and  
19 handling fee will generate approximately \$57.8 million,  
20 but if the program cost is over \$100-, it's roughly 50  
21 percent, 49 percent of the true cost associated with that  
22 transaction. But there are other fees.

23           MS. HARDY: Right. And that's \$100 million a  
24 year?

25           MS. FLORES: A year.

1 MR. WALKER: The cost or the proceeds?

2 MS. FLORES: The cost side. I mean, where we  
3 see a lot of extra revenue -- and I don't want to use the  
4 words extra revenue -- where we see revenue to help cover  
5 that gap is in the buyers tags, we get \$5 out of that, and  
6 there's also some other registration fees not associated  
7 with the registration renewal but they're called  
8 registration, that's about \$33 million a year. That's  
9 right, temporary permits. Certificates, we get over \$40  
10 million a year, and so that helps support the fund itself.  
11 Plus we get about a million dollars a year in interest,  
12 and that's unusual, most state agencies are not allowed to  
13 keep their interest and we are.

14 MR. PALACIOS: I guess just to further expand  
15 on this, the ancillary revenue that comes in offsets the  
16 cost. When we originally projected our forecast on this  
17 P&H fund and cost, did we expect this to break even?

18 MS. FLORES: No, sir, we did not. We never  
19 assumed that we would be breaking even. We knew that  
20 these other fees would help shore up the fund.

21 MR. PALACIOS: Okay.

22 MS. FLORES: Moving on, on page 345 of your  
23 material this is an appropriation to appropriation  
24 comparison, and I would like to make a correction on when  
25 we're comparing these two columns in blue and gray, for

1 your information, I indicated yesterday that it was due to  
2 a carryforward. That was not correct. This is an apples  
3 to apples comparison between our appropriation today  
4 versus tomorrow.

5 The difference is associated very specifically  
6 with the \$2 service fee, and this is shown on page 345 of  
7 your board material. The differences associated with the  
8 \$2 service fee for that processing and handling fee, the  
9 revenue nor the expense ever hit the DMV Fund. When the  
10 customer goes online to pay that fee, NICUSA, Texas.gov  
11 peels off their \$2 and remits the balance, so we're never  
12 actually seeing the deposit or paying out to NICUSA. So  
13 we have made an adjustment to our budget, our Legislative  
14 Budget Board analyst is aware and is expecting this.

15 So that's the basic difference from our  
16 appropriations today versus tomorrow. We had roughly  
17 about \$20 million in our baseline budget to make payments  
18 because when we were doing the processing and handling  
19 fee, developing that, we thought it would work like all of  
20 our other credit card service fees where we actually do  
21 make payments to the vendor. That is not the case and  
22 that's based on a contractual agreement with Texas.gov.  
23 So I just wanted to make sure I clarified that.

24 MR. WALKER: But there's an offsetting entry  
25 where the income is not there.

1 MS. FLORES: Correct. The income never comes  
2 in, the expense never goes out. And when we did talk to  
3 Department of Information Resources to modify that  
4 process, they were not inclined to do so, and they are the  
5 state agency who has this umbrella agreement with  
6 Texas.gov.

7 MR. WALKER: But when we were handling this and  
8 not using the Texas information agency on that \$2 fee, we  
9 were actually losing some money, were we not, in that  
10 area?

11 MS. FLORES: No, sir, not that I'm aware, not  
12 that I recall.

13 MR. WALKER: I thought our costs were a little  
14 bit higher, the credit card fees were higher.

15 MS. FLORES: If you recall, we were having that  
16 issue with Motor Carrier back in 2012-13.

17 MR. WALKER: It was a while back. We were  
18 losing money on some of the transaction fees because the  
19 credit card company was charging us more than what we were  
20 collecting.

21 MS. FLORES: Yes, sir. That was Motor Carrier,  
22 and we modified that to push the cost of that service fee  
23 to the end user, the customer who is buying the permit.  
24 Before the agency was absorbing it and I believe it was  
25 like a million a year, so by making that change in rule,

1 we were pushing that cost on to the customer buying the  
2 permit, and I think it's \$2.25 plus 25 cents.

3 On page 346 of your board material, we have a  
4 table that reflects the current baseline capital items  
5 versus what we're hoping to request in 2021. Our current  
6 baseline is roughly \$38.5 million and for 2020 it's \$46.9  
7 million. We've actually moved some dollars from our  
8 operating to cover anticipated increased costs for Data  
9 Center consolidation services. Agencies are required to  
10 look at their cost estimates when it comes to the Data  
11 Center. Based on some usage and servers, we know that  
12 we're going to have increased costs, so we've increased  
13 our capital line item -- because that is spelled out in  
14 our bill pattern -- to roughly about \$3 million. You'll  
15 also notice the headquarters maintenance project is now  
16 sitting in the capital line item because we believe we  
17 will have substantial capital line items going into the  
18 next biennium.

19 We've also modified our vehicle request. We  
20 received approximately \$900,000 this year to buy four new  
21 cars for Compliance and Investigations and then to replace  
22 as many cars as we could with the money that we received.

23 We believe we're going to replace all 43 of our cars and  
24 so our fleet will be totally replaced. We are asking for  
25 an additional eight new cars going into the next session,

1 and this will be primarily for Enforcement, again,  
2 Compliance and Investigations have indicated they needed  
3 cars as well.

4 And I've also parsed out some dollars for the  
5 field offices out there. We've received several requests  
6 for modifications to their office layouts, so this is a  
7 new line item, hopefully it will be positively received by  
8 the Legislative Budget Board, the Governor's Office and  
9 the legislators, but we really do need to invest in some  
10 of our locations across the state.

11 Now we move on to our exceptional items  
12 starting on page 348 of your material. We've delineated  
13 between Sunset and non-Sunset related items. There's ten  
14 requests total, seven of which are related to Sunset  
15 recommendations. It starts out with Compliance and  
16 Investigations fraud monitoring resources for \$220,000,  
17 and we've tagged it along with the specific Sunset  
18 recommendation. ABTPA has two requests, one Sunset, one  
19 non-Sunset. The Sunset related item is \$13 million for  
20 the biennium. This is to allow the program in reaction to  
21 enlarging their scope of responsibility to look into title  
22 fraud, this would allow the ABTPA program to push those  
23 dollars to the local police departments to help us with  
24 title fraud. So that is the big ticket item there.

25 The Enforcement data base and case management

1 system that Sunset indicated we needed to work on is the  
2 \$372,000. A complaint management system for \$4.2 million.

3 They indicated we needed to consolidate all of our  
4 complaint process because it is across several divisions.

5 An infrastructure for IT, \$2.7 million to help us with  
6 some basic application processes. And we've also got  
7 improvements, organizational assessment where a third  
8 party assessment indicated we needed more staff in IT and  
9 Sunset also recognized that need, 12 FTEs, almost \$2  
10 million. And the final Sunset is to modernize the motor  
11 carrier credentialing system platform. It's an outdated  
12 technology, they want to upgrade that, and that's \$6  
13 million.

14 The last three are non-Sunset and they're  
15 associated with, one, a data warehouse for the agency,  
16 customer service staff, nine FTEs, almost a million  
17 dollars, and then finally, this is the second ABTPA  
18 request for \$7.3 million. This is to cover the things  
19 that they're currently responsible for; they feel that  
20 they need the additional dollars just to cover what  
21 they're statutorily required to do today, and that's \$7.3.

22 And Mr. Walker had indicated they've asked for additional  
23 funding in previous legislative sessions, that is a true  
24 statement. We're hoping that this time, I don't know if  
25 it's the third time or the fourth time, will be the charm

1 and they get sufficient funding for their program. Again,  
2 \$42 million but \$20- of that, roughly half is general  
3 revenue and that's associated with ABTPA.

4 The last thing are our ask for new riders.  
5 Again, I was asked yesterday about we got the money for  
6 headquarters today, why don't we just use it tomorrow.  
7 State agencies have to have specific authority to do that.

8 We're asking for UB authority between the biennium,  
9 between the fiscal years. That would cover that question.

10 I will tell you we've asked for this ever since I've been  
11 here and we have not been successful, but we're going to  
12 ask again. We also want the authority if we have unspent  
13 dollars associated with a federal grant, let us carry  
14 forward that state match into the next year. Right now we  
15 don't have that. And Motor Carrier does have a federal  
16 grant, the CVISN grant that we do leave unspent state  
17 dollars. And the last thing is the capital projects HQ  
18 maintenance; anything that we don't spend today, we'd like  
19 to be able to carry forward that dollar into the next  
20 biennium.

21 So that's our ask for the next upcoming  
22 session. As I mentioned, our base will cover everything  
23 we have going on today but this will help us perhaps in a  
24 more guided growth process, if you will. As we continue  
25 to move forward, it will be interesting to see what comes

1 out of the session when it comes to DPS drivers licensing,  
2 but I would like to make sure that we have our  
3 infrastructure in place moving forward. And again, this  
4 is just a briefing item, we'll have another presentation  
5 in August.

6 MR. TREVIÑO: Ms. Flores, on the exceptional  
7 non-Sunset related data warehouse request, is that for us  
8 to have our own dedicated warehouse or to rent space from  
9 somebody else or to contract out?

10 MS. FLORES: It is for us to have our own data  
11 warehouse. There was a question yesterday, and I  
12 mentioned the Data Center takes care of the state servers  
13 and bulk printing and things like that, but each state  
14 agency has unique processes and transactions. We need a  
15 data warehouse for all of the applications that we have  
16 here in order to be able to extract that information and  
17 create reports and statistics that we can monitor and use  
18 for our daily operations.

19 I'm a big proponent because the state's  
20 accounting system is huge but they do not give us access  
21 to their data dictionary. Any kind of report that we  
22 need, we have to go to the Comptroller's Office and get  
23 stuck in a queue somewhere, we're like at the very bottom  
24 of the list, and I know hearing from our other divisions,  
25 they feel the same way when it comes to their particular

1 program. We're data rich but we're statistics poor. We  
2 can't extract that information. If we had a data  
3 warehouse, we could do that ourselves.

4 That concludes my presentation. Thank you.

5 MR. PALACIOS: Thank you, Ms. Flores.

6 Are there any further questions for Ms. Flores  
7 on the matters she's brought before us?

8 (No response.)

9 MR. PALACIOS: Thank you, Ms. Flores. Ms.  
10 Bankhead, thank you.

11 Let's move on to item 12.B.2. Peer review  
12 results.

13 Let the record reflect it's 10:27 and Board  
14 Member Hardy has stepped out.

15 MS. MENJIVAR-SUDDEATH: Good morning. For the  
16 record, Sandra Menjivar-Suddeath, Internal Audit director,  
17 and I'm presenting item 12.B. which is the peer review  
18 results. This is a briefing item only.

19 As you may recall, in February I provided some  
20 information about our peer review process. We are  
21 required as a division to receive an external assessment  
22 every three years to ensure that we are meeting our audit  
23 standards. Specifically we have to make sure that we're  
24 meeting the Institute of Internal Auditors International  
25 Professional Practice Framework, the Generally Accepted

1 Government Auditing Standards, and the Texas Internal  
2 Audit Act which is Texas Government 2102.

3 For this year's peer review, we had a team  
4 composed of someone from the Texas Workforce Commission  
5 and the Texas Department of Transportation. Since  
6 February that team has been reviewing our self-assessment  
7 report, reviewing our audit files, as well as meeting with  
8 board members, executive staff and internal audit staff to  
9 understand if we're in compliance. They finished their  
10 work in May and I'm happy to report that they found the  
11 division was in compliance with all audit standards and  
12 gave us an overall rating of pass, generally conforms  
13 which is the highest rating we can receive.

14 Now, the peer review team did issue one  
15 recommendation, that the division consider conducting an  
16 ethics related project. The recommendation and response  
17 is found on page 382 of your board book. The peer review  
18 team felt that the division had done a lot of work related  
19 to fraud, waste and abuse, but that we could do more  
20 reviewing the control structure on preventing fraud, waste  
21 and abuse. The division agreed and we did consider an  
22 ethics related project for FY 2019 but we didn't consider  
23 it high risk because we were doing a fraud, waste and  
24 abuse risk assessment in this fiscal year. However, the  
25 division is coordinating with Office of General Counsel to

1 review ethics training to see if we can maybe potentially  
2 be more active in that aspect, and we're looking into  
3 other items to potentially look at ethics and provide more  
4 information on ethics to the agency.

5 Are there any questions?

6 (No response.)

7 MS. MENJIVAR-SUDDEATH: Then I'll move on to  
8 the next item which is 12.B.3. the draft fiscal year 2019  
9 audit plan. So this is a briefing item only and it's  
10 found on page 389 of your board book. I will be  
11 requesting approval at the August board meeting.

12 This year's internal audit plan consists of ten  
13 proposed engagements, five contingency audits and other  
14 internal audit duties as assigned. The audit plan was put  
15 together using a new risk-based model. That is found on  
16 page 398 of your board book. We actually started  
17 collecting risks throughout the year and started rating  
18 and ranking the risks. Any risk that was considered a  
19 high risk, which was a four and above in the score, was  
20 put on potential for the plan. We reviewed the potential  
21 high risk areas with division staff, as well as board  
22 members, to identify the ones that were critical for us to  
23 do for the next fiscal year.

24 Those audits include the Compliance and  
25 Investigations Division review which starts on page 391,

1 the Lemon Law process, employee classification and hiring,  
2 information security risk management, payment card  
3 industry compliance, enterprise project management, as  
4 well as two required items which is the fiscal year  
5 internal audit plan and the annual internal audit report,  
6 as well as the internal audit followup and the  
7 management/board request.

8 This year the management/board request is a bit  
9 different than in previous years as in instead of  
10 allocating for just one project, we allocated 800 hours so  
11 that way we have flexibility.

12 MR. PALACIOS: Excuse me. Let the record  
13 reflect it's 10:31 and Board Member Hardy has returned.

14 MS. MENJIVAR-SUDDEATH: We have flexibility to  
15 potentially help the divisions with anything that may come  
16 ad hoc. The past couple of years we've been averaging  
17 about 700 hours on ad hoc advisories and projects, so this  
18 kind of gives us a better feel and better ability to  
19 schedule our projects and make sure that we're helping the  
20 agency as well as reviewing all audits.

21 Are there any questions on the audit plan?

22 MR. TREVIÑO: Do you feel you have the  
23 resources necessary to ensure the safety and soundness of  
24 this organization?

25 MS. MENJIVAR-SUDDEATH: We do. And you know,

1 as we're growing we're adjusting our audit projects and  
2 understanding how many hours each project needs, so we're  
3 constantly evaluating that, but right now we feel like  
4 we're properly resourced.

5 MR. TREVIÑO: Ms. Menjivar-Suddeath, do you  
6 feel is staff supportive of your work and are they helping  
7 you?

8 MS. MENJIVAR-SUDDEATH: Absolutely. Honestly,  
9 out of all the departments I've worked at, this is  
10 probably the most supportive staff we've had. When an  
11 issue comes up, management immediately addresses it.  
12 Sometimes before the report even goes out they're trying  
13 to get it fixed before, to show the seriousness of the  
14 ticket.

15 MR. TREVIÑO: That's great. And the culture of  
16 the organization, they see you as a team member and not  
17 somebody who's coming to tattletale on them?

18 MS. MENJIVAR-SUDDEATH: Exactly. We do a lot  
19 of outreach and work a lot with the division directors and  
20 the staff to make sure that they don't feel that we're the  
21 gotcha auditors, and that's shown in the respect and I  
22 think that's also shown in the results of the peer review.

23 MR. TREVIÑO: Excellent. Well, the board  
24 shares that and we thank you for your efforts.

25 MS. MENJIVAR-SUDDEATH: Thank you.

1 Any other questions on the audit plan?

2 (No response.)

3 MS. MENJIVAR-SUDDEATH: Okay. I'll move on to  
4 the Internal Audit Division status which is on page 399.  
5 The Internal Audit Divisions status is pretty long,  
6 there's eight items listed. Overall, though, I will tell  
7 you we are on target to finishing the audit plan again  
8 this year by August 31. There may be a couple of reports  
9 that will be done in September, but we will be able to  
10 start overall with new projects on September 1.

11 There are four main items in the internal audit  
12 status update that I want to highlight. The first is the  
13 third quarter followup results. That is listed on page  
14 402 of the board book. There were seven internal audit  
15 recommendations that were due in the first quarter which  
16 goes from March 1 through May 31. The internal audit  
17 reviewed these seven audit recommendations and we verified  
18 that the seven audit recommendations were fully  
19 implemented and two had been started. Those two that had  
20 been started were significantly done and they will be  
21 closing in this quarter, so the implementation rate for  
22 the third quarter was 71 percent.

23 We also completed the Texas Commission on Law  
24 Enforcement advisory service. This was a special request  
25 from the Enforcement Division to review the compliance of

1 the TCOLE training program. The TCOLE training program is  
2 our ability to give law enforcement credit for attending  
3 trainings that we want them to attend, so the dealer  
4 trainings or the motor carrier trainings, anything of that  
5 sort, law enforcement can come and they can get training  
6 for free and we can actually work with them and build  
7 relationships with them. So we reviewed the compliance of  
8 that program and we found overall that most things were in  
9 compliance. There were a few areas that compliance needed  
10 to be fixed, Enforcement is working on that, but we did  
11 not issue any audit recommendations on this report.

12 Jason Gonzales was the lead on that, so if you  
13 have any questions, please feel free to ask him.

14 Another audit that we finished was the social  
15 media audit. The social media audit is on page 427. This  
16 audit was to determine if the department's social media  
17 policies and processes have been sufficiently developed to  
18 protect the department's brand. The audit found that the  
19 department uses social media as a cost-effective method  
20 for reaching customers but the department needs to develop  
21 some guidance related to defining and promoting the  
22 department's brand and message, as well as creating  
23 privacy protocols and establishing a process to evaluate  
24 and approve and track social media platforms. We issued  
25 three audit recommendations in this finding and we gave

1 the engagement an overall rating of a two.

2 The final audit that is being presented is the  
3 travel and training audit. The travel and training audit  
4 is on page 415 of your board book. This audit was to  
5 determine if training and travel requests have appropriate  
6 approvals and justifications, as well as determining if  
7 the requests are appropriate and meet the needs of the  
8 department. We also reviewed board travel to ensure it  
9 was meeting compliance with state regulations. We found  
10 that board travel is in compliance with state regulations,  
11 as well as we found that processes have been developed to  
12 ensure training and travel requests are justified and  
13 expenses are appropriate. We did make some audit  
14 recommendations to just clean up the process a little bit  
15 for in-state authorization as well as out-of-state  
16 authorization as well, but overall it's a pretty good  
17 process and we rated them at a four overall.

18 Derek Miller was the lead on that engagement,  
19 as well as the social media one, so if you have any  
20 questions, please feel free to ask him.

21 Are there any questions on any of the reports  
22 that I just went over?

23 MR. TREVIÑO: Derek, would you like to comment  
24 on the social media audit?

25 MR. MILLER: Sure. For the record, Derek

1 Miller, senior internal auditor.

2           Reviewing the social media we found that the  
3 department has been doing a very good job with their  
4 social media and outreach as far as using it for customer  
5 interaction as well as reaching out to target markets such  
6 as motor carrier markets. It's rated a two not because we  
7 have really weak processes but that's just kind of where  
8 the department was at as far as utilizing it as a tool,  
9 and I think the recommendations we made were more kind of  
10 forward thinking for the future where if we want to start  
11 leveraging it more heavily as a communication tool, this  
12 is a little bit more of the foundation we should develop.

13           MS. MENJIVAR-SUDDEATH: Well, that concludes  
14 the internal audit status update. Thank you.

15           MR. PALACIOS: Okay. I just want to commend,  
16 Sandra, you and your staff, Jason and Derek. You were  
17 somewhat modest in your presentation of the peer review  
18 results. They were here yesterday, I was present for the  
19 meeting and two of the staff members of the audit team  
20 were here and gave very glowing remarks about Sandra and  
21 her staff and their professionalism, and you received very  
22 high marks. So you're to be commended and we thank you.

23           MS. MENJIVAR-SUDDEATH: Thank you.

24           (Applause.)

25           MR. PALACIOS: Okay. Let's move a little bit

1 out of order here. I know we have some people here that  
2 want to speak on the Assembled Vehicles Workgroup, so if  
3 we could move that up on the list here, we'll go to item  
4 number 15 and discussed the Assembled Vehicles Workgroup  
5 update. Jeremiah.

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

8 And Mr. Barnwell, I did want to follow up on  
9 your question earlier. My crack staff was able to get the  
10 answer. It's 800 license plates that are sold or renewed,  
11 after that point in time then the sponsoring organization  
12 would get their \$8,000 refunded.

13 MR. BARNWELL: So \$10 a plate credit for 800  
14 minimum.

15 MR. KUNTZ: Essentially, yes.

16 MR. BARNWELL: Thank you. That's critical  
17 information.

18 MR. KUNTZ: I just didn't want to leave that  
19 outstanding for you.

20 (General talking and laughter.)

21 MR. KUNTZ: So before you this is a briefing  
22 item, there is no decision that we are seeking from the  
23 board at this time.

24 We wanted to provide you with an update, the  
25 board with an update on the Assembled Vehicles Workgroup

1 and the activities that have taken place so far. We did  
2 have two separate time that we've had working group  
3 meetings. The first was a day and a half working group  
4 meeting, and then we had a followup working group meeting  
5 on April 26. I believe you may have a summary in your  
6 packets as well that I'll be going over today.

7 In an effort to try and keep this short, I know  
8 that we've had some long briefings on this, there's been  
9 some mention that this is a complex issue and we're going  
10 to make it as simple as we can today because apparently  
11 there are some folks that have taken issue with my  
12 comments that it's a complex issue, so we're going to try  
13 and keep it as simple as possible today.

14 So there are five primary issues that we have  
15 identified in working through the working group and  
16 looking at this issue. First is it's difficult for  
17 hobbyists and low volume manufacturers to comply with  
18 FMBSS. These are federal requirements that apply to  
19 manufacturers of all new motor vehicles regardless of the  
20 number of vehicles produced.

21 The second is Texas statutes governing  
22 manufacturers, regardless of the number of vehicles  
23 produced and dealers, do not provide exemptions to  
24 licensing requirements and sale restrictions.

25 Third, there are vast differences in the

1 vehicle design, construction and assembler's skill level  
2 of somebody that's putting one of these together.

3 Fourth, the absence of certain safety equipment  
4 on a motor vehicle may increase risk of liability for both  
5 the operator of the vehicle who may be an assembler or  
6 subsequent owner and other drivers that may be involved in  
7 an accident causing personal injury or property loss that  
8 may have been lessened or avoidable had that vehicle met  
9 the safety standards. Additionally, owners may not have  
10 disclosed to the insurance company that the original  
11 vehicle has been substantially altered from its original  
12 design, resulting in a loss of insurance coverage.

13 And fifth, the rule changes in 2012 and in 2014  
14 affecting existing titles and registration of assembled  
15 vehicles did not have any kind of grandfathering  
16 provisions in them and that's been a stumbling block as  
17 we've moved through this process.

18 At our meeting on April 26, we had various  
19 working group members that were present. Two of the  
20 working group members were not present at that meeting,  
21 and that is the National Highway Traffic Safety  
22 Administration representatives that were at the first  
23 meetings and then our member from the auto theft task  
24 force. All other members were present at that meeting.

25 The participants of that working group were

1     afforded an opportunity to bring forward possible  
2     recommendations for consideration by the working group. We  
3     did receive comments from two of the primary participants.  
4     The Specialty Equipment Marketing Association, otherwise  
5     known as SEMA, provided some recommendation, and then  
6     basically there's members on the working group that are  
7     part of what is known as the Assembled Vehicle Coalition  
8     that provided a packet to the working group for  
9     consideration.

10             The four recommendations were: reinstate all  
11     revoked titles and registration, amend Texas  
12     administrative rules, seek legislation to establish new  
13     definitions and strengthen inspection procedures, and  
14     clarify and strengthen county tax assessor-collector title  
15     and registration processes. We took those recommendations  
16     and evaluated them. In the form that they were presented,  
17     there were certain challenges that we noticed right off  
18     with some of the recommendations.

19             The first one I will go ahead and address here  
20     which is to reinstate all revoked titles, and we did  
21     convey to them that we were not able to do that and the  
22     reason for that is to reinstate the titles without a  
23     change in administrative rule would be a violation of our  
24     own administrative rule. We have to take steps first to  
25     amend those administrative rules before we could take any

1 actions to reinstate any titles. So from our perspective,  
2 that recommendation could not be acted upon immediately;  
3 as they had indicated in their recommendations, they  
4 wanted that to be done immediately.

5 They also presented a recommendation to create  
6 a definition for hobbyist. That definition would be  
7 required to be made in statute. We don't have the  
8 statutory authority in 2301, which requires license for  
9 manufacturers and dealers, to create a hobbyist exemption  
10 to the definitions that are currently in statute, and  
11 therefore, we can't take action in administrative rule on  
12 that one. It, again, would require some kind of statutory  
13 change to occur.

14 So based on what we were hearing, we did go  
15 back and start looking at this further. They had  
16 recommended that we look at some other states, some of the  
17 inspection processes that are in other states. We went  
18 back and looked at our own state laws again to review  
19 those again to make sure that we had not missed something  
20 or that there wasn't something else that might grant us  
21 flexibility in our processes. Based on that review, we  
22 have come up with some recommendations, one of which would  
23 be a recommendation for changes in our administrative  
24 rule, and so I'll go over some of these recommendations  
25 today.

1           So the options for administrative rule change  
2 would be to establish an assembled vehicle is considered a  
3 used motor vehicle. The biggest challenge that we've got  
4 right now is that there is not currently a definition for  
5 a used motor vehicle in our administrative rule. There is  
6 a used motor vehicle definition in statute but it's  
7 defined and then the term is not used anywhere in the  
8 statute. And so what we're trying to do is come up with a  
9 way to differentiate what is a new motor vehicle and a  
10 used motor vehicle.

11           The reason for that is that it is very simple,  
12 again, in looking at federal and state law that all of  
13 these requirements for being licensed as a manufacturer,  
14 compliance with Federal Motor Vehicle Safety Standards  
15 apply to new motor vehicles and there are exemptions for  
16 used motor vehicles. So it became apparent to us that  
17 what we needed to do was take a different approach and  
18 better define a used motor vehicle through administrative  
19 rule that would provide for some clarity for vehicles that  
20 are assembled using an existing frame.

21           Many of the vehicles that we see that these  
22 individuals have talked to us about are taking a frame  
23 from a previously manufactured vehicle by a licensed  
24 manufacturer and they're making alterations to that frame,  
25 to that underlying chassis, they're taking the bodies off

1 of it and then putting a new body on top of that frame.  
2 And so what we are going to propose is that we get an  
3 opportunity to go and write some rules to bring before the  
4 board to try and clarify that a used motor vehicle is a  
5 vehicle that is utilizing, at a minimum, an unaltered  
6 frame from an originally manufactured vehicle. We believe  
7 that we've got both federal and state basis that that is  
8 something that we could clearly move forward with through  
9 our administrative rulemaking that would be in compliance  
10 with both state and federal law.

11 The second would be to -- and basically these  
12 recommendations are trying to address each one of the  
13 points that I listed above -- the second would be to  
14 require a vehicle description on the vehicle's insurance  
15 policy to match the vehicle description entered into the  
16 registration and titling system. We want to ensure that  
17 any insurance policy that it's been disclosed to the  
18 insurer the exact alterations that have been made to that  
19 vehicle and that the insurance policy is correctly  
20 insuring the vehicle that we are providing title and  
21 registration to. So that would just be a modification to  
22 the administrative rule requiring that.

23 The third would be replacing a reference to  
24 assembled vehicles complying with Federal Motor Vehicle  
25 Safety Standards with requiring the vehicle contain safety

1 equipment compliant with Transportation Code Chapter 547.

2 Following our Sunset hearing, one of the members of  
3 Sunset raised the issue of why the department was  
4 enforcing the Federal Motor Vehicle Safety Standards, and  
5 so again, as I mentioned before, we went back and looked  
6 at the legislation, looked at Transportation Code to see  
7 is there something there that we're missing, and what we  
8 found is in Transportation Code 547, the Texas Department  
9 of Public Safety is required to administer the safety  
10 equipment that is required to be present on a motor  
11 vehicle and there is reference in that chapter of code to  
12 the Federal Motor Vehicle Safety Standards.

13 So what we are doing by reference is  
14 referencing any vehicle equipment that is installed on  
15 that vehicle would be compliant with Transportation Code  
16 Chapter 547, and therefore, it would fall in line with the  
17 Texas Department of Public Safety's rules on required  
18 equipment for a vehicle and any requirements that they  
19 have that that equipment be in compliance with the Federal  
20 Motor Vehicle Safety Standards. Therefore, we're again  
21 following state law, making sure that our rules are in  
22 compliance with the current state laws that are on the  
23 books and ensuring that the vehicles are being constructed  
24 in a way that the legislature intended them to be  
25 constructed.

1           The fourth item that we have would be to once  
2 we've got these rules in place also add in a  
3 grandfathering provision, that obviously was an oversight  
4 by the department when the rules were first created in  
5 2012 and 2014, to address concerns that have been raised  
6 about individuals that had titles to vehicles that were  
7 assembled prior to the rules being put in place in 2012  
8 and 2014. So we would work with our general counsel to  
9 draft up a grand fathering provision that would allow for  
10 the grand fathering of any vehicles that obtained titled  
11 prior to those rules being put in place in 2012.

12           And then the last one would be all of this  
13 would be a replacement of the restriction on the actual  
14 dune buggies. That restriction would be taken away and  
15 all these other provisions would be put in place,  
16 therefore providing greater clarity as to how vehicles can  
17 be titled and registered in the state.

18           With that, that concludes all of those  
19 recommendations. The thing that we wanted to make sure  
20 that we were very clear on is the impact that our rules  
21 and the estimation of how they would be implemented, how  
22 that would be impactful on the folks that we've heard from  
23 so far. Dune buggies utilizing a used unaltered frame  
24 that have replaced the body would be able to obtain title  
25 and registration. Custom vehicles and street rods would

1 still be eligible for title and registrations as they are  
2 today in compliance with our Texas state laws.

3 The proposed amendments would not provide a  
4 method for newly constructed vehicles, particularly any  
5 kind of newly constructed -- I'll use this terminology  
6 generally -- dune buggies or vehicles that are newly  
7 constructed not utilizing a frame from an existing  
8 manufactured vehicle. Particularly pipe constructed  
9 frames that are replacing any kind of frame on a vehicle  
10 would not be allowed under this provision. We do not see  
11 a path forward under state and federal law currently for  
12 somebody who is manufacturing a new frame that is not a  
13 replacement of an existing frame, that is not a replica of  
14 an existing frame, there's no path forward that we can see  
15 for those. Those generally would fall into the other  
16 category of a new vehicle.

17 We know that there is a particular interest  
18 from a company here in Texas and other companies, they  
19 refer to them as sand rails, there is a company, D.F.  
20 Goblin, those vehicles would still have, in our  
21 estimation, problems under current state and federal law.

22 I will mention that there's been some feedback  
23 that we've received to go and look at some other states.  
24 I will tell you I spent a good portion of yesterday going  
25 over Hawaii's regulations of vehicles. They were pretty

1 insightful, I will tell you. In Hawaii they have a  
2 reconstructed vehicle designation in their laws and they  
3 go through a pretty substantial amount of process at  
4 looking at every type of alteration that could be made to  
5 an existing vehicle to determine whether or not it is a  
6 reconstructed vehicle or maintains its used vehicle  
7 status. In looking at that particular law, it brought up  
8 some very interesting points that we will look at further  
9 as we look at our rulemaking. But they go as far as to  
10 say if you move the engine placement within the vehicle,  
11 if you move the transmission placement in the vehicle,  
12 that that throws that vehicle into the category of being a  
13 vehicle that needs to comply with Federal Motor Vehicle  
14 Safety Standards.

15 So there's definitely some things, again, as we  
16 keep going through this and we look at what other states  
17 are doing, there are some things that we can glean from  
18 the way that they've structured their statutes or their  
19 rules that we might be able to use to further clarify the  
20 difference between a new and used vehicle and provide  
21 greater guidance to individuals that are attempting to try  
22 and manufacture or make modifications to a vehicle that  
23 they're trying to get title and registration to.

24 With that, that completes my presentation, so  
25 if there are any questions.

1 MR. DUNCAN: Members, David Duncan, general  
2 counsel.

3 Two things, I just wanted to point out the  
4 documents that you've been provided were from the  
5 Assembled Vehicle Coalition, and we have one person who  
6 has signed up not to speak but asked us to read into the  
7 record that he does not wish to appear before the board,  
8 Mr. Steve Nelson from Mansfield, Texas, and stated that he  
9 wishes to oppose. I assume he wishes to oppose our  
10 current policies and not what Jeremiah has laid out  
11 because what Jeremiah laid out is the first time we've  
12 discussed it today.

13 MR. PALACIOS: We do have an individual who has  
14 asked to speak, but before that I'd like to entertain  
15 questions for Jeremiah.

16 MR. WALKER: I do. So there's no definitions  
17 in the rules today of what the definition of a used  
18 vehicle is?

19 MR. KUNTZ: Not currently in our administrative  
20 rule, no. There is one definition that we have been able  
21 to find in the Transportation Code but it does not get  
22 into the level of detail of a vehicle that's been  
23 remanufactured. The definition in statute has reference  
24 to a used vehicle is a vehicle that has been previously  
25 subject to a retail sale.

1           MR. WALKER: So your thought processes somewhat  
2 may be that we can go in by putting in a definition of  
3 used vehicles and kind of maybe clean up which would allow  
4 and define some of these kit cars versus dune buggies and  
5 street legal and so forth? I've got multiple questions  
6 where.

7           MR. KUNTZ: What we're trying to do and what we  
8 believe is -- where we believe we've got authority in this  
9 aspect is under Federal Motor Vehicle Safety Standards, as  
10 well as under state law, we believe that there are  
11 allowances for vehicles that are used vehicles and so  
12 there was a lot of discussion in our workgroup with NHTSA  
13 themselves, going through their interpretation letters and  
14 their different statutes to try and figure out where they  
15 draw the line on a used vehicle. What modifications are  
16 occurring on a vehicle that would then cause it to be  
17 deemed a new vehicle because you've made substantial  
18 modifications to the used vehicle itself.

19           And so what we're trying to do is clarify in  
20 our administrative rules that we believe a used vehicle  
21 falls into this category and that is utilizing an existing  
22 frame from a vehicle that was previously subject to a  
23 retail sale that was manufactured by a licensed  
24 manufacturer that is now being used for a remanufactured  
25 vehicle or a reconstructed vehicle.

1 MR. WALKER: So let me ask you this question,  
2 and maybe Kate can answer this better than you or I can  
3 answer it. How are you going to identify a chassis  
4 because chassis are not identified by serial numbers in my  
5 world. I don't think there's an identifying number on a  
6 chassis. So I say, hey, I used a Ford F150 chassis to  
7 make my dune buggy. How do you prove that?

8 MR. KUNTZ: So we do this today --

9 MR. WALKER: Let me ask, do you identify  
10 chassis with serial numbers?

11 MS. HARDY: I don't know.

12 MR. PALACIOS: They have VIN numbers on them.

13 MS. HARDY: On the chassis?

14 MR. PALACIOS: On the frame.

15 MR. WALKER: So there is an identifying number.

16 MR. PALACIOS: Yes.

17 MR. WALKER: Go ahead and answer.

18 MR. KUNTZ: I do want to clarify. Our title  
19 manual and our assembled vehicle manual go into great  
20 lengths to actually clarify this point. There is a year  
21 in which different manufacturers came into compliance with  
22 stamping a VIN onto the chassis, so under the same Federal  
23 Motor Vehicle Safety Standard, a manufacturer is required  
24 to have a conforming VIN. As that law was put into place,  
25 various manufacturers came into compliance with that, and

1 so at various points in time various manufacturers began  
2 stamping the VIN number onto the chassis. So when you go  
3 back in time, depending on the manufacturer, there are  
4 certain year breaks in which a VIN is present on those  
5 chassis, and when you get into very old chassis, your  
6 original 1929 Ford chassis, no, there's not going to be a  
7 VIN number stamped on those.

8           However, we have processes put in place in our  
9 title manuals on what information a person is supposed to  
10 present based on the type of chassis they're utilizing, so  
11 based on what that year model of chassis is, there's  
12 different documentation required that they must present if  
13 they are using that chassis to do a reconstructed vehicle.

14       And so if they're taking the body from an existing  
15 vehicle, let's say they're just trying to reconstruct a  
16 1965 Mustang and somebody has a chassis that was a good  
17 chassis that they're going to use that's a 1965 and  
18 they've got a body from a 1965, they would present  
19 ownership documents on both of those vehicles, the chassis  
20 and the body, they would merge those together and then the  
21 department would title that using the VIN of the body that  
22 was placed onto that chassis. But we would verify the VIN  
23 and all the information on that at the time that that  
24 titling event is occurring.

25           That is also one of the reasons that we have a

1 68A VIN inspection which is a confidential VIN inspection  
2 process done by law enforcement is to verify that the  
3 parts and pieces that were used to reconstruct that  
4 vehicle, none of those parts and pieces came from a stolen  
5 vehicle when they reassembled it. So we have processes  
6 and procedures already in place to verify all of that  
7 information and we would use those same processes and  
8 procedures here.

9 MR. WALKER: But aren't we doing that already  
10 with salvage titles? Because that's what a salvage title  
11 is, it's piecing together multiple different vehicles to  
12 come up with one.

13 MR. KUNTZ: So yes. If somebody is using the  
14 chassis, if you will, from a previously salvaged vehicle,  
15 yes, they would do this entire process that I just laid  
16 out, they would present that information at the time that  
17 they have reconstructed a vehicle. Especially if they  
18 were taking a chassis from a salvage vehicle and merging  
19 it with another vehicle, that's the exact process that  
20 they would be going through.

21 MR. WALKER: So what's the purpose of this  
22 process when we already have a mechanism out there called  
23 a salvage title that allows you to do everything we're  
24 talking about here?

25 MR. KUNTZ: So the differentiation here is that

1 some of the vehicles that are being constructed, the body  
2 that they are utilizing is not a body from a licensed  
3 manufacturer. So in the instance that we're talking about  
4 here, I'll use an example.

5 MR. WALKER: Kit cars.

6 MR. KUNTZ: Well, I'm going to go even further  
7 than just a kit car because a lot of the kit cars actually  
8 represent a previously manufactured vehicle. A 1965  
9 Shelby Cobra body kit, you can obtain and you can build a  
10 1965 Shelby Cobra replica vehicle. In these instances,  
11 many of the dune buggies are using a body kit from a  
12 company that was known as Meyers Manx, is a fiberglass  
13 body. That fiberglass body was never produced by a  
14 licensed manufacturer, there was never a full production  
15 Meyers Manx that was assembled on an assembly line and  
16 sold.

17 So they're not in a situation where they're  
18 replicating an existing vehicle, so what we are providing  
19 is an avenue for them to use a body from something that  
20 was never mass produced and affix it to a chassis that was  
21 mass produced. In the Meyers Manx example, many of those  
22 bodies are affixed to a Volkswagen Super Beetle floor pan  
23 chassis and they're taking a fiberglass body, putting it  
24 on the floor plan and then it then becomes what we used to  
25 refer to or refer to today as a dune buggy, and so what we

1 are providing is an avenue for those types of assemblages  
2 to be put together. Even though those assemblies do not  
3 represent a previously manufactured vehicle, so long as  
4 the chassis, the underlying foundation of that vehicle was  
5 produced by a manufacturer, we're saying that we would  
6 allow that to be utilized to assemble a vehicle.

7 MR. WALKER: So why wouldn't we just go in and  
8 modify our salvage definition and rules to allow that.

9 MR. KUNTZ: These are not all salvage vehicles.  
10 You could take a perfectly good Volkswagen Super Beetle  
11 from 1973, pull the old body off of it and then place a  
12 Meyers Manx body kit on top of it that's never been a  
13 salvage vehicle.

14 MR. WALKER: So what you're recommending then,  
15 I hear you, is that we come up with a new form of title.

16 MR. KUNTZ: It's not a new form of title. What  
17 we are clearly delineating is that as long as you're using  
18 a used chassis, that vehicle in our minds is still a used  
19 vehicle, it's not a newly assembled vehicle. When it  
20 becomes a newly assembled vehicle, newly assembled  
21 vehicles have a whole other statutory requirement for them  
22 to be manufactured by a licensed manufacturer, they're  
23 required to be distributed through a dealer network, they  
24 have to have an MCO, all of those requirements would kick  
25 in if the vehicle was deemed new.

1           What we are doing is we are saying because that  
2 was a previously used vehicle, it was a 1973 Volkswagen  
3 Super Beetle, we're going to maintain that as a used  
4 vehicle and therefore exempt them from all of the new  
5 vehicle requirements, i.e., it does not have to have  
6 airbags in compliance with Federal Motor Vehicle Safety  
7 Standards, it does not have to be sold by a licensed  
8 dealer, it does not have to be manufactured by a licensed  
9 manufacturer.

10           MR. WALKER: So you want to modify the rule to  
11 allow this to take place under standard title transfer and  
12 come up with a definition of used.

13           MR. KUNTZ: We are clarifying that these are  
14 used vehicles.

15           MR. BARNWELL: So, Jeremiah, what we're doing  
16 here is we're looking back at a limited universe of dune  
17 buggies, vehicles that are not reconstructed vehicles but  
18 using an existing chassis.

19           MR. KUNTZ: Correct.

20           MR. BARNWELL: So that's kind of our turning  
21 point. If it has an existing chassis, then it may fall  
22 under these new rules. And I say may because maybe it  
23 won't.

24           MR. KUNTZ: And again, yes, based on what  
25 paperwork they present and making sure that they're going

1 to be in compliance. And again, we really need to go  
2 through an exercise of crafting all the rules on this  
3 concept.

4 MR. BARNWELL: I understand this is a complex  
5 process. So there's no path forward for these new kinds  
6 of cars, like a Polaris RZR. I mean, in Utah those are  
7 licensed for the road but they're not for all roads, just  
8 for county and state highways but not for the interstates.

9 MR. KUNTZ: Correct. So this would not impact  
10 those vehicles that are considered a utility vehicle, an  
11 ATV, ROV, these would not impact those because those have  
12 special statutory provisions covering them and how they  
13 can be titled.

14 MR. BARNWELL: We don't have that in Texas,  
15 though, do we?

16 MR. KUNTZ: We allow for the titling of those  
17 vehicles.

18 MR. BARNWELL: But not the licensure.

19 MR. KUNTZ: But they do not get registration  
20 for operation on the roadways. They have limited  
21 operation for like golf carts can be operated within a  
22 certain distance from a golf course, can be operated on  
23 roadways less than 35 miles an hour.

24 MR. PALACIOS: Excuse me, Mr. Kuntz, let the  
25 record reflect at 11:06 Board Member Caraway stepped out.

1 MR. KUNTZ: So those are still covered  
2 statutorily through the provisions that allow for them to  
3 be titled but do not allow for them to be registered.

4 MR. BARNWELL: So the Federal Motor Vehicle  
5 Safety Standards Act is a big part of our problem, as I  
6 understand it from past conversations.

7 MR. KUNTZ: That is one of the substantial  
8 problems. The other is our own state law requiring  
9 anybody that is manufacturing a new vehicle to be licensed  
10 as a manufacturer and distribute through a dealer network.  
11 Those are the two biggest hurdles to get over.

12 MR. BARNWELL: And what we've got here is we've  
13 got, just to bloviate a little more -- I saw you, David --  
14 is that we're dealing with legislation and laws that were  
15 written before a lot of this stuff started happening, and  
16 you're tasked with trying to write rules now that fit a  
17 new paradigm. I think this is a significant and heavy  
18 lift for the department to make to try to find a way  
19 forward given the restrictions that we have on our ability  
20 to even move forward. We're having to come up with some  
21 new ideas and new constructs about how you view and  
22 perceive a vehicle's ability to be licensed and whether or  
23 not it constitutes a legal vehicle or not.

24 Were it up to me, and it's not, I would vote  
25 for more of a laissez faire thing, and just like

1 motorcycle helmets, if you're dumb enough to get in that  
2 car and hurt yourself or fall off a motorcycle without a  
3 helmet, God bless you, but it's your choice. And here I  
4 think it's just a matter of governmental overreach for  
5 years and years and it bugs me. I'd like to see less but  
6 I know that's a fool's errand, it's not going to happen.

7 MR. PALACIOS: Let the record reflect it's  
8 11:08 and Board Member Caraway has returned.

9 Any further comments, Board Member Barnwell?

10 MR. BARNWELL: No. I've said everything I had  
11 to say.

12 MR. PALACIOS: Okay. Jeremiah, I would like  
13 some clarification on the provision that allows a vehicle  
14 that resembles a previous vehicle to be titled and  
15 registered. Would those vehicles also be subject to  
16 having a used component or can they be built completely  
17 from scratch with a new frame?

18 MR. KUNTZ: You're asking me some tough  
19 questions here. What we are relying upon for vehicles  
20 that resemble other vehicles is state statute guidance  
21 which says the department shall title and register a  
22 vehicle that resembles a vehicle that was previously  
23 manufactured, and it does not get into in state law  
24 whether or not that vehicle is constructed with used parts  
25 or new parts. And so we are relying upon that state law

1 in moving forward to title and register those vehicles.

2 MR. BARNWELL: Like the Shelby Cobra.

3 MR. KUNTZ: Yes, that would be a good example,  
4 a Shelby Cobra that is constructed with a 90 percent kit  
5 that somebody obtains which would include the chassis, the  
6 body, everything but the motor, that somebody would build  
7 and then add the motor to in their house.

8 MR. PALACIOS: So it would appear to me that  
9 there might be a need then to tighten up the rules,  
10 whether it's through this agency or legislation, I guess  
11 define the word "resemble" because that could be  
12 subjective. I mean, would this cause an issue for us?

13 MR. KUNTZ: The word "resemble" is one that we  
14 have -- obviously it's a subjective terminology. What we  
15 generally rely upon when we start to evaluate the  
16 resembling of another vehicle is what documentation is  
17 presented to the department at the time of title. So if  
18 they are presenting information on an invoice from the kit  
19 car manufacturer that says that this is a 1965 Shelby  
20 Cobra kit replica, then we would rely upon that  
21 documentation that that company is affirmatively stating  
22 that that kit is intended to resemble a 1965 Shelby Cobra.

23 We have seen in other instances where the kit  
24 manufacturer is presenting their own name on the  
25 information, they actually have a bill of sale or some

1 kind of certificate of origination, it's not a  
2 manufacturer's certificate but a certificate of  
3 origination that does not delineate that that is a replica  
4 vehicle but instead has a different name for that vehicle  
5 because they are putting their own brand on that and not  
6 utilizing the brand or trademark from a previously  
7 trademarked vehicle. So that's where we generally start  
8 getting into trademark issues. Even the federal code  
9 contemplates that replica vehicles must only be produced  
10 from kit car manufacturers that basically have the trade  
11 dress and have the authority to make those vehicles, and  
12 so we would look at that similarly, that the person that  
13 is producing the information, that's manufacturing that  
14 vehicle, that they have declared that they are a replica  
15 and that they have proper trade dress to make such a  
16 vehicle.

17 MR. PALACIOS: If they were to, I guess, pass  
18 that threshold, would they still be subject to this code  
19 you're recommending, Transportation Code 547?

20 MR. KUNTZ: Well, 547, if they fall under the  
21 custom vehicle and street rod, they actually enjoy an  
22 exemption from Transportation Code 547 statutorily.

23 MR. PALACIOS: Okay.

24 MR. KUNTZ: So statute says if you are a custom  
25 vehicle and street rod that replicates a vehicle that was

1 previously manufactured, and I believe there's a  
2 designation on a year in statute on what you have to be  
3 replicating, I believe it's '48 or '49 is the year mark  
4 that you have to resemble something prior to that, then  
5 you can fall under that provision in Transportation Code  
6 and you enjoy an exemption to Transportation Code 547.

7 MR. PALACIOS: Okay. So to make sure I  
8 understand this, if it is a replica post 1949, then you're  
9 saying it would then be subject to Transportation Code.  
10 With pre you're saying there would be an exception, but if  
11 it's afterwards you're saying it would fall under?

12 MR. KUNTZ: You wouldn't fall under either way.  
13 So the custom vehicle and street rod means a vehicle that  
14 is at least 25 years old, so that's your first threshold,  
15 at least 25 years old, and of a model year after 1948 or  
16 manufactured to resemble a vehicle that is at least 25  
17 years old and of a model year after 1948, and so that is a  
18 custom vehicle. A street rod is a vehicle that was  
19 manufactured before 1949 or after 1948 to resemble a  
20 vehicle that was manufactured prior to 1949. So you're  
21 either a custom vehicle or street rod. If you're a street  
22 rod it's pre 1949, if you're a custom vehicle you are  
23 between 25 years old and 1948.

24 MR. PALACIOS: That's crystal clear.

25 MS. HARDY: Next steps?

1           MR. KUNTZ: So our next steps, we have been  
2 working on a draft rule package. We would want to  
3 continue working on that to try and make sure that we've  
4 got that buttoned up. We would like to bring the working  
5 group back together to try and review what we've come up  
6 with to see if there are any additional concerns that are  
7 raised by any of the working group members, and then we  
8 would try and bring that back before the board, I believe,  
9 again, at the discretion of our chair, probably around  
10 August, for our August board meeting.

11           MR. BARNWELL: Who all is on your working  
12 group, just groups of people?

13           MR. KUNTZ: So we have DPS; Factory 5 Racing  
14 which is a kit car manufacturer; DF Kit Car; SEMA; the  
15 Texas Automobile Dealers Association; the American  
16 Association of Motor Vehicle Administrators, AAMVA, that's  
17 our association of DMVs; Assembled Vehicle Coalition of  
18 Texas has multiple members on the working group, I believe  
19 we have four representatives from that association; we  
20 also have a tax assessor-collector representative; and  
21 then we've also got NHTSA participated in our first two  
22 working group meetings, I don't know that they'll continue  
23 to participate, we were lucky to get them when we did; and  
24 then a member of an auto theft task force, they actually  
25 conduct the 68A VIN inspections so we wanted their

1 perspective on this as well.

2 MR. BARNWELL: And then when you get through  
3 with your working group and you have some recommendations,  
4 then you filter that through David?

5 MR. KUNTZ: Yes, our general counsel are  
6 actually there during our working group deliberations so  
7 they would be able to see what deliberations occur, and  
8 then yes, they would craft up something.

9 MR. BARNWELL: I think your working group is  
10 well represented.

11 MR. WALKER: So let me ask a question about the  
12 working group. In the Sunset report it specifically  
13 states that our working groups do not have enough public  
14 members on there, and I didn't hear of a single public  
15 member.

16 MR. KUNTZ: I would definitely say that we've  
17 got public members. The members from what we are  
18 referring to as the Assembled Vehicle Coalition, those are  
19 all public members.

20 MR. WALKER: They all have a vested interest,  
21 though.

22 MR. KUNTZ: They are public members with an  
23 interest in titling and registration.

24 MR. PALACIOS: They're not industry members per  
25 se.

1 MR. BARNWELL: People without a public interest  
2 won't come.

3 MR. PALACIOS: I guess we're getting into  
4 parsing of definitions, but I understand it as market  
5 participants, these are not people that are actively  
6 engaged.

7 MR. WALKER: Well, the Sunset addressed that.

8 MR. PALACIOS: They did, but I do concur with  
9 you, Jeremiah, regarding their status as public members.

10 MR. KUNTZ: These are not members that are  
11 engaged in the business of manufacturing vehicles, these  
12 are private citizens that have assembled a vehicle and are  
13 attempting to title and register it.

14 MR. PALACIOS: Okay. We do have an individual  
15 who would like to speak on the issue. Mr. Faron Smith,  
16 are you here?

17 MR. SMITH: Hi. I'm Faron Smith. I represent  
18 the Assembled Vehicle Coalition of Texas, and Save the  
19 Texas Dune Buggy on the Facebook group.

20 This is the first we've actually heard of what  
21 Mr. Kuntz has been talking about and would like to hear a  
22 little bit more in the future. It's nice that he's  
23 actually starting to look at the Hawaii information that I  
24 gave you in the packet earlier because they have paved the  
25 way. There's a letter in there from NHTSA that states

1 it's really a used car that's on the very front page.  
2 Actually the second page it says that they don't -- I'm  
3 sorry, I'm nervous.

4 MR. KUNTZ: No worries.

5 MR. SMITH: But what happened in that thing it  
6 talks about NHTSA doesn't see it as a new car, they see it  
7 as a used car and it doesn't have to comply with Federal  
8 Motor Vehicle Safety Standards, and that's on the second  
9 page. And then you can also see that there's a bill  
10 that's been passed in 2004 by Hawaii so they have paved  
11 the way for us.

12 I do have a question for Mr. Kuntz, if I can?

13 MR. PALACIOS: Mr. Kuntz?

14 MR. KUNTZ: Sure.

15 MR. SMITH: As you know, my vehicle is from New  
16 Mexico and there's somebody else here who has one from  
17 Oklahoma and both for them were titled and registered in  
18 those states. Once we bring them here, we can't. Is  
19 there anything that you can talk about with that?

20 MR. KUNTZ: What do you mean by once you bring  
21 them here you can't?

22 MR. SMITH: Well, I can't title or register it  
23 in Texas.

24 MR. KUNTZ: Correct. Again, based on the  
25 comments I had earlier, we cannot under our current

1 administrative rules title and register those. It will  
2 require a rule change at a minimum in order to title and  
3 register a dune buggy in Texas, and so that's why we're  
4 presenting something here that we would go through a  
5 process to amend our rules. We would have to bring that  
6 rule package before this board in August after we've  
7 crafted the rule language so that we could move forward  
8 with that. And in addition, we had presented that we  
9 would provide a grandfathering provision for individuals  
10 that had obtained title and registration in Texas  
11 previously indicating that that vehicle was a dune buggy  
12 and that had title prior to 2012. That would allow for  
13 the reinstatement of titles that had been revoked that had  
14 been issued prior to the 2012 rule that would allow them  
15 to get back on the road as well.

16 But all of this still requires rulemaking  
17 because our current rules do not allow for it. That is  
18 the reason for the response that we gave during the  
19 working group meeting when you stated that you wanted all  
20 titles reinstated, we can't do that in compliance with our  
21 current rules. It requires a rule change first in order  
22 to do that to reinstate because to do so would violate our  
23 own rule.

24 MR. SMITH: That's pretty much all I've got.

25 MR. PALACIOS: Mr. Smith, I just want to thank

1 you for your participation. I know you and your group  
2 have been very passionate about this issue. I just hope  
3 you understand we are doing our best to delineate between  
4 the issues and rules that we can adopt as a board and as  
5 an agency and separate that from those that would require  
6 statutory change. To some degree, we're limited. This is  
7 a very broad issue, it's not just dune buggies, as you  
8 have heard, assembled vehicles, kit cars and so forth all  
9 have their different nuances, so to the extent that we can  
10 address these issues by rule, we will attempt to do so.  
11 But from what I have heard, I've been involved in this  
12 process for some time now, our purview is somewhat limited  
13 in what we can do, so we hope you understand that.

14 And let me ask, Jeremiah mentioned that he  
15 would be reassembling this group in the very near future.

16 Will you be coming back to assist with this process?

17 MR. SMITH: We're going to discuss it probably  
18 over lunch and we'll get back to him. There's a good  
19 chance I will.

20 MR. PALACIOS: Great. Well, thank you very  
21 much for your time.

22 MR. SMITH: All right. Thank you.

23 MR. BARNWELL: Thank you, Jeremiah.

24 MR. KUNTZ: That concludes my presentation.

25 MR. PALACIOS: Thank you very much.

1           We only have two items left on the agenda  
2 before we break for executive session, so I would suggest  
3 if anybody needs to take a break, go ahead and do so but  
4 otherwise we'll proceed. Let's see, we left off with item  
5 number 13, Board key performance indicators and balanced  
6 scorecard.

7           Let the record reflect Board Member Barnwell  
8 has stepped out.

9           Good morning, Tom.

10           MR. SHINDELL: Good morning, Chairman Palacios,  
11 Executive Director Brewster -- who also stepped out -- and  
12 distinguished remaining board members. For the record, my  
13 name is Tom Shindell and I'm the innovation and strategy  
14 analyst for the department, and I'm coming before you this  
15 morning to ask for approval to implement a balanced  
16 scorecard, or a BSC, as a replacement for the key  
17 performance indicators, or KPIs, as part of the strategic  
18 management system for the TxDMV. And this agenda item  
19 begins on page 445 of your board book.

20           To offer some perspective, in the Azimuth  
21 report of August 2011, one recommendation was to develop a  
22 balanced scorecard. It took us a bit of time as we began  
23 developing the balanced scorecard in January of 2017 and  
24 completed it in March of 2018. Briefly, while a balanced  
25 scorecard includes the components of key performance

1 indicators, it has some additional features, including a  
2 strategy map, which you can find on page 448 of your board  
3 book, which links department activities to desired  
4 outcomes, including our vision and mission which is  
5 organized around four different perspectives: the  
6 learning and growth perspective, the internal process  
7 perspective, the customer perspective, and the stakeholder  
8 perspective.

9           There are also objectives for each of those  
10 perspectives and they begin on page 449 of your board  
11 book, and we developed 13 objectives, and objectives are  
12 basically stretch goals we want to achieve that are  
13 probably just out of reach. For example, all of our  
14 customers trust that we'll protect their data. We  
15 probably wouldn't get 100 percent of our customers saying  
16 that they feel that we protect their data, but we would  
17 want to get as close to that goal as we could. So they're  
18 stretch goals.

19           Measures for each of those objectives, both  
20 lead or actionable measures and lag or after the fact  
21 performance measures, and those are similar to the KPIs  
22 that we currently have in place, and those are on page 450  
23 of your board book. Lead measures are one of the key  
24 benefits of a balanced scorecard because they allow us to  
25 collect data that we can take action on then to influence

1 the outcomes, so that's one of the key benefits of a  
2 balance scorecard.

3 We also developed performance targets for each  
4 of those measures and they're on page 450 of your board  
5 book and we developed 22 measure tartest. And I may have  
6 forgotten to mention that we developed 26 lead and lag  
7 measures as well.

8 And then finally, there are strategy map  
9 initiatives, and these are themed activities to help  
10 implement our objectives, and these are on page 454 of  
11 your board book. Research says that developing more than  
12 three initiatives can cause organizations to have trouble  
13 focusing on and completing them, and if you have three or  
14 less that most often leads to either significant progress  
15 or actually completing those initiatives. We crafted  
16 three different strategic initiatives for our balanced  
17 scorecard, including a training alignment initiative, a  
18 policy and procedure review initiative and an  
19 organizational survey alignment initiative.

20 The approval that I'm requesting is to replace  
21 the KPIs with the balanced scorecard as the department's  
22 designated performance measurement tool. KPIs will  
23 continue to be maintained and can be made available for  
24 you at any time should you so desire. We envision  
25 providing a balanced scorecard update quarterly to the

1 board and we can even provide a KPI update as well.  
2 Should you approve implementing the balanced scorecard, it  
3 would become effective July 1, 2018 and the data  
4 collection would begin from April 1 of 2018, we'd go back  
5 and collect the data retrospectively.

6 This concludes my presentation. I'm happy to  
7 respond to any questions you may have.

8 MR. PALACIOS: Thank you, Mr. Shindell.

9 Are there any questions?

10 (No response.)

11 MR. PALACIOS: You did a great job.

12 MS. HARDY: I move that the board adopt the  
13 balanced scorecard as the department's performance  
14 measurement system as a replacement for the key  
15 performance indicators with an implementation of July 1,  
16 2018.

17 MR. TREVIÑO: I second that motion.

18 MR. PALACIOS: Motion by Board Member Hardy,  
19 second by Board Member Treviño to adopt the balanced  
20 scorecard. All in favor please signify by raising your  
21 right hand.

22 (A show of hands: Board Members Caraway,  
23 Hardy, Painter, Palacios, Treviño.)

24 MR. PALACIOS: All those opposed?

25 (A show of hands: Board Member Walker.)

1 MR. PALACIOS: Board Member Walker is opposed.  
2 The motion carries. And Board Member Barnwell.

3 MR. BARNWELL: Is returning.

4 MR. WALKER: He didn't get to vote, he doesn't  
5 even know what we're talking about.

6 MR. BARNWELL: I don't want to vote.

7 (General laughter.)

8 MR. PALACIOS: Does that count as an  
9 abstention?

10 MS. BREWSTER: He wasn't here when you took the  
11 vote.

12 MR. PALACIOS: Okay. It passes.

13 Okay. Thank you very much, Mr. Shindell.

14 Let's move on now to agenda item number 14, our  
15 legislative and public affairs update. Good morning, Ms.  
16 Love.

17 MS. LOVE: Good morning, Mr. Chairman and  
18 members, and Executive Director Brewster. My name for the  
19 record is Caroline Love, director of the Government and  
20 Strategic Communications Division, and I wanted to provide  
21 an overall legislative update for you this morning to give  
22 you a status on where we are not only on implementation  
23 efforts from legislation that passed last session but also  
24 what we're looking for as we head into the next session.

25 So I'll begin by discussing that by and large

1 the department has implemented most of the legislation  
2 that was passed by the 85th Legislature, but there were a  
3 couple of items that recently had some updates that I  
4 wanted to provide to you all. And for the record also,  
5 the briefing for this item begins on page 455 of your  
6 board books.

7 So there were a couple of studies that were  
8 passed during the last session that the department has  
9 been working on. One of those was included in Senate Bill  
10 2076. There was a requirement there for the department to  
11 consider options for eliminating elements of the  
12 registration, titling and inspection processes and that  
13 report is due to the legislature by December 31, 2018.

14 And additionally, House Bill 1959 requires the  
15 department to conduct a study looking at alternative  
16 technologies for commercial fleet vehicles, and those  
17 could include anything from registration, credentialing,  
18 permitting, but also anything that might be related to  
19 license plates, so that could include something I guess a  
20 little more futuristic such as digital license plates, as  
21 California has recently done a pilot that has implemented  
22 these types of plates. That study is not due until  
23 December 1 of 2021.

24 And we went out with a statement of work, and  
25 we are allowed through both of these studies to work with

1 an institution of higher education. That statement of  
2 work, we received the responses and selected Texas State  
3 University to help us with these studies. And I did want  
4 to let you all know they are on target to complete the  
5 Senate Bill 2076 study well before the December 31  
6 deadline and they'll have a draft to us well before that  
7 for review and finalization, and then for the secondary  
8 study, the House Bill 1959, they anticipate having the  
9 results of that study to the department in September of  
10 2019, which is two years ahead of the statutory deadline  
11 for that study, and the results of that study will help  
12 the department determine the feasibility of a pilot for  
13 any of those technologies, alternative technologies that  
14 are identified that we could use and how those could move  
15 forward in a pilot.

16 So those are underway and unless there's any  
17 questions about the studies, I'll give an update on the  
18 other ones.

19 MS. HARDY: I guess I just have a quick  
20 question or a comment on the digital plates anyway, and  
21 I've been reading about the California pilot, and from  
22 what I understand it's 40 cars, less than 40 cars, they're  
23 all state cars. I guess I still don't understand for as  
24 much press as they're getting right now what are they  
25 going to do for us. I mean, what's wrong with the current

1 plate system, how much added value do digital plates  
2 bring? And I guess that's all part of the pilot that  
3 they're running and that we're going to run in the future  
4 and everything else, but I'm just trying to understand  
5 what digital plates are going to do.

6 MS. LOVE: That's definitely a very valid  
7 question and that's something that will be part of the  
8 study is what the benefit it could bring. They definitely  
9 have an option for the things that they've discussed are  
10 the ability for the plates to identify if your vehicle  
11 registration might be expired, it would display it on the  
12 plate.

13 MR. WALKER: It's a money source for states.  
14 They're using it in the trucking industry.

15 MS. HARDY: Because they're expensive. Right?

16 MR. WALKER: It reads your truck when you go  
17 through a checkpoint. Your license plate expired  
18 yesterday, a cop pulls you over, writes you a ticket.

19 MR. TREVIÑO: RFID.

20 MR. WALKER: It's a money-generating source.

21 MR. PALACIOS: Okay. They're expensive.

22 MS. LOVE: Per the California pilot, they are  
23 listed at \$699 for one plate. For a frame of reference,  
24 it does cost the state currently \$3.10 to produce the  
25 metal plates, as set of the metal plates.

1 MR. BARNWELL: Is that both the front and the  
2 rear of the vehicle?

3 MS. LOVE: One.

4 MR. BARNWELL: That's just one, so it's \$1,300  
5 plus or minus for both of them. I'd just like to go on  
6 record saying that may not be practical.

7 MS. HARDY: Well, if the power goes out or  
8 something, how is the sheriff going to see a plate.

9 MR. WALKER: But we'd lose all that revenue on  
10 all these privatized plates.

11 MR. PALACIOS: Oh, no, you wouldn't. You've  
12 got them digital now.

13 (General talking and laughter.)

14 MS. HARDY: All right. Keep going, Caroline.

15 MS. LOVE: All of these things will be part of  
16 the study.

17 And then another item that was implemented  
18 recently at the end of May, Senate Bill 869 was passed  
19 last session that allows for people to designate a  
20 beneficiary for their vehicle upon their death outside of  
21 the probate process, so that is something that was  
22 implemented and now is available on your title.

23 MR. WALKER: What's the relevance of that?

24 MS. LOVE: It helps for people who may not have  
25 a will, or it's a very similar process that was set out

1 the previous session when it comes to property, real  
2 property. The Texans for Access to Justice Commission is  
3 the group who was working on this effort and they felt it  
4 would be helpful to include vehicles as part of that as  
5 well to help those in need, I guess.

6 MS. CARAWAY: How is that different from rights  
7 of survivorship?

8 MS. LOVE: There is a nuanced difference. I  
9 would have to defer to VTR. Thank you, Jeremiah. I feel  
10 so alone without David.

11 MR. KUNTZ: I'm here for you, Caroline.

12 Jeremiah Kuntz, director of the Vehicle Titles  
13 and Registration Division.

14 So I believe the question was what's the  
15 difference between a beneficiary or a rights of  
16 survivorship. So I know it's kind of a nuanced deal, but  
17 on rights of survivorship both parties are listed with an  
18 ownership right to the vehicle, so if a husband and wife  
19 are jointly purchasing a vehicle, both of them are listed  
20 on the title and a rights of survivorship means that if  
21 one of them passes, then all rights to that vehicle passes  
22 to the other person that's on the actual title itself.  
23 With designating a beneficiary, a beneficiary has no  
24 rights to that vehicle while the other parties that are on  
25 the title are alive. Upon their death, then ownership

1 transfers to them, but they have no rights to come in and  
2 claim, hey, that's my vehicle. No, they're just a  
3 beneficiary, they only get that vehicle upon the owner's  
4 death.

5 MS. CARAWAY: Thank you.

6 MR. KUNTZ: Yes, ma'am.

7 MS. LOVE: So unless there are any other  
8 questions on implementation efforts, I'll talk now about  
9 what we're planning for for the next session.

10 So the 86th Legislature begins in January 2019,  
11 and as we've discussed before, this board is tasked with  
12 identifying opportunities for improvement or efficiencies  
13 via statutory changes in the Texas Transportation Code and  
14 that any recommendations should be presented. And so with  
15 the January date not too far off in the future, our staff  
16 has begun that process of looking current statutory  
17 limitations.

18 I will say some of the things that we're  
19 looking at relate to things we've identified as a result  
20 of processing titles for flood vehicles or things that  
21 happened as a result of the hurricane and storm, so those  
22 are some things that we're considering. We have not  
23 finalized a list for internal discussion just yet but we  
24 will shortly.

25 And then in the next few months we'll begin the

1 stakeholder process to get feedback from any impacted  
2 groups, and then we plan to in August have a preliminary  
3 list of findings that will be presented and we'll also be  
4 discussing with Member Treviño opportunities for the  
5 Legislative Committee to meet so we can discuss some of  
6 those items in more depth. But we hope to have a final  
7 list of recommendations to this board before the bill  
8 filing begins for the 86th Legislature which is set for  
9 November of 2018, November 12 is the date that that  
10 begins. So hopefully if we can get all those final and  
11 adopted before then, we'll be able to start that process  
12 well before the session begins.

13 And of course, we'll have a very unique  
14 situation going into this next session with the  
15 department's Sunset legislation that will also be out  
16 there, and as Ms. Brewster mentioned earlier, their  
17 recommendations that they adopt in August will frame that  
18 legislation and it will likely be, in addition to be  
19 significant that it continues our agency, it will also  
20 likely include several different statutes references and  
21 things like that. So it will be a very fun and  
22 interesting session, I'm sure.

23 MR. PALACIOS: As always.

24 MS. LOVE: And those were all the remarks that  
25 I had prepared. I'm happy to answer any questions.

1 MR. PALACIOS: Thank you, Caroline.

2 Okay. Did I miss anything or are we at the  
3 end?

4 Executive session. So we are going into closed  
5 session. It is now 11:40 a.m., on June 14, 2018. We'll  
6 go into closed session under Texas Government Code  
7 Sections 551.071, 551.074 and 551.089. For those of you  
8 in the audience, I anticipate being in executive session  
9 for approximately 30 minutes, *mas o menos*, and we'll  
10 reconvene in open session after that.

11 With that, we're recessed from public meeting  
12 and are going into executive session.

13 (Whereupon, at 11:40 a.m., the meeting was  
14 recessed, to reconvene this same day, Thursday, June 14,  
15 2018, following conclusion of the executive session.)

16 MR. PALACIOS: It's 12:13 p.m. on June 14, 2018  
17 and the Board of the Texas Department of Motor Vehicles is  
18 now in open session. We want to note that no action was  
19 taken in closed session.

20 We do not have any public comments.

21 MR. WALKER: I make a motion we adjourn.

22 MR. PALACIOS: Motion by Board Member Walker to  
23 adjourn.

24 MR. TREVIÑO: Second.

25 MR. PALACIOS: Second by Board Member Treviño.

1 All in favor?

2 (A show of hands.)

3 MR. PALACIOS: Let the record reflect the vote  
4 is unanimous. It is now 12:13 p.m. and we are adjourned.

5 (Whereupon, at 12:13 p.m., the meeting was  
6 adjourned.)

C E R T I F I C A T E

1  
2  
3 MEETING OF: TxDMV Board  
4 LOCATION: Austin, Texas  
5 DATE: June 14, 2018

6 I do hereby certify that the foregoing pages,  
7 numbers 1 through 149, inclusive, are the true, accurate,  
8 and complete transcript prepared from the verbal recording  
9 made by electronic recording by Nancy H. King before the  
10 Texas Department of Motor Vehicles.

11 DATE: 6/22/2018  
12  
13  
14  
15  
16

17 /s/ Nancy H. King  
18 (Transcriber)  
19

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