

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

4000 Jackson Avenue
Building 1
Lone Star Room
Austin, Texas 78731

Thursday,
August 5, 2021
9:00 a.m.

BOARD MEMBERS:

Charles Bacarisse, Chair
Christian Alvarado
Stacey Gillman
Brett Graham
Tammy McRae (absent)
Sharla Omumu
John Prewitt (via videoconference)
Manuel "Manny" Ramirez (absent)
Paul R. Scott

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P R O C E E D I N G S

1
2 MR. BACARISSE: Good morning. My name is
3 Charles Bacarisse, and I'm pleased to open the Board
4 meeting of the Texas Department of Motor Vehicles.

5 It is now nine o'clock in the morning and I am
6 calling the Board meeting for August 5, 2021 to order. I
7 want to note for the record that the public notice of this
8 meeting, containing all items on the agenda, was filed
9 with the Office of Secretary of State on July 28, 2021.

10 This meeting is being held by videoconference
11 call as authorized under Section 511.127 of the Government
12 Code. Board Member Prewitt planned to participate with us
13 in person today but is in Houston remotely and is unable
14 to join us. Board members and I are here in Austin at the
15 department's headquarters office located at 4000 Jackson
16 Avenue, Building 1, Lone Star Conference Room. The Austin
17 location is open and available to the public.

18 Before we begin today's meeting, please place
19 all cell phones and other communication devices in a
20 silent mode. And please, as a courtesy to others, do not
21 carry on side conversations or other activities in the
22 meeting room.

23 I want to welcome those who have joined us in
24 person for today's Board meeting. We are glad to have you
25 here and we want you to know that the Texas DMV continues

1 to take active measures to prevent the spread of COVID-19
2 and variants at the Texas DMV.

3 The speaker's podium and other surfaces are
4 being disinfected between presenters. Face coverings and
5 hand sanitizer are available, and seating is set up for
6 social distancing. Face coverings and social distancing
7 are not required at this meeting and each individual
8 attending the meeting has the right and responsibility to
9 decide for themselves based on their personal
10 circumstances. It's your choice and you are welcome here
11 at this meeting of the DMV.

12 If you wish to address the Board or speak on an
13 agenda item during today's meeting, please complete a
14 speaker's sheet at the registration table or send an email
15 to GCO General@TxDMV.gov. Please identify in your email
16 the specific item you're interested in commenting on, your
17 name and address and whether you're representing anyone or
18 speaking for yourself. If your comment does not pertain
19 to a specific agenda item, we'll take your comment during
20 the general public comment portion of the meeting.

21 In accordance with department administrative
22 rule, comments to the Board will be limited to three
23 minutes, and to assist each speaker, a timer has been
24 provided. The timer light will be green for the first two
25 minutes, yellow for one minute, and then red when your

1 time is over. Individuals cannot accumulate time from
2 other speakers and comments should be pertinent to the
3 issues stated on the comment sheet that you sign. When
4 addressing the Board, please state your name and
5 affiliation for the record.

6 There are a few things that will assist in
7 making the meeting run smoother and assist the court
8 reporter in getting an accurate record. First, of course,
9 is to please identify yourselves, as I just mentioned,
10 certainly speak clearly, do not speak over others, and
11 please ask the chairman to proceed and get recognized
12 before speaking.

13 I would like to also thank our court reporter
14 who is transcribing this meeting. To make sure we have an
15 accurate recording of this meeting, it's very important
16 that the Board members and anyone presenting today
17 identify themselves before speaking and speak clearly and
18 slowly.

19 Before we begin today, I would like to remind
20 all presenters and those in attendance of the rules of
21 conduct at our Board meetings. In the department rules,
22 Section 206.22, the Board chair is given authority to
23 supervise the conduct of the meetings. This includes the
24 authority to determine when a speaker is being disruptive
25 of the meeting or is otherwise violating the timing or

1 presentation rules I just discussed.

2 So having that business out of the way, I'd now
3 like to call the roll and establish a quorum, so when I
4 call your name, please speak out.

5 Board Member Alvarado, are you here?

6 MR. ALVARADO: Present.

7 MR. BACARISSE: Board Member Gillman?

8 MS. GILLMAN: Present.

9 MR. BACARISSE: Board Member Graham?

10 MR. GRAHAM: Present.

11 MR. BACARISSE: Board Member McRae?

12 (No response.)

13 MR. BACARISSE: Board Member Omumu?

14 MS. OMUMU: Present.

15 MR. BACARISSE: Board Member Ramirez?

16 (No response.)

17 MR. BACARISSE: Board Member Scott?

18 MR. SCOTT: Present.

19 MR. BACARISSE: Also, let the record reflect
20 that Member Prewitt is absent today here, but is joining
21 us via videoconference. And let the record reflect that
22 I, Charles Bacarisse, am here too, so we have a quorum.

23 Let's please all stand and honor our country
24 and state with the pledges of allegiance. And I'll now
25 turn it over to Member Scott to lead us in the U.S.

1 pledge.

2 (The United States Pledge of Allegiance was
3 recited.)

4 MR. BACARISSE: And now Member Gillman will
5 lead us in the pledge to the state flag.

6 MS. GILLMAN: I am?

7 MR. BACARISSE: Oh, you're not?

8 MR. GRAHAM: I've got it.

9 MR. BACARISSE: We'll do it together. Go
10 ahead.

11 (The Texas Pledge of Allegiance was recited.)

12 MR. BACARISSE: Thank you, members, for leading
13 us in the pledges.

14 Before I move to the next agenda item, I'd like
15 to note that we have the vice chair election listed as
16 agenda item number 12. However, because we have three
17 members not with us today, the full Board is not here. I
18 would like to not take up that agenda item at this Board
19 meeting, and we'll move it to the next Board meeting.

20 So we'll now move to agenda item 3, which is
21 the chair's reports.

22 On May 4, 2021, Governor Abbott appointed
23 Christian Alvarado of Austin as a public representative,
24 and Sharla Omumu of Cypress as a vehicle
25 manufacturing/distribution industry representative. The

1 terms for Members Alvarado and Omumu expire February 1,
2 2027. The new members have received Senate confirmation
3 and they have fulfilled the required training.

4 Also, they have completed all required
5 paperwork and have been duly sworn into office and have
6 received their commission from the Texas Secretary of
7 State. You can read more about our new Board members on
8 our department website under the "About Us" section, and I
9 look forward to working with them.

10 So please join me in welcoming our new members,
11 Member Alvarado and Member Omumu.

12 (Applause.)

13 MR. BACARISSE: And now moving to agenda item
14 3.B, and as result of our recent change in Board members
15 and chair, we're going to make some changes to the
16 committee assignments, and they are listed.

17 Our Finance and Audit Committee will consist of
18 Brett Graham as the chair, and Members Tammy McRae, Sharla
19 Omumu, and John Prewitt. Legislative and Public Affairs
20 Committee will consist of Paul Scott as the chair, and
21 Members Christian Alvarado, Tammy McRae, and Manny
22 Ramirez. And the Projects and Operations Committee will
23 consist of John Prewitt as the chair, and Members
24 Christian Alvarado, Stacey Gillman, and Paul Scott.

25 Agenda item 3.C is recognition of service, and

1 this is the part that I've been waiting for. We will now
2 move to recognize and take this opportunity to thank our
3 outgoing chairman, Mr. Memo Treviño.

4 Mr. Treviño served on the Board since 2019, and
5 he's been actively engaged in many important issues
6 throughout his time on the Board, and he will be missed.
7 I can't personally thank him enough for his good
8 fellowship, his mentorship, and his openness to me as a
9 new member and as vice chair. He included me completely
10 so often and I appreciate that very much.

11 Mr. Treviño, would you like to say a few words?

12 Come forward. I didn't see you behind the pole there.
13 Come over here to the podium, we want to get you on the
14 record.

15 MR. GRAHAM: One more time.

16 MR. BACARISSE: One more time. You have three
17 minutes -- no, just kidding.

18 (General laughter.)

19 MR. TREVIÑO: Chairman Bacarisse and members of
20 the Board of the Texas Department of Motor Vehicles, it
21 was an honor, and because of you it was also a pleasure,
22 to serve. And any time you can serve the citizens of
23 Texas is a good day.

24 And I don't have any words for all the support
25 that staff and all of you provided to me as chairman, and

1 I just can't thank you enough. I think that's it. We
2 could go on for hours, but that's counterproductive.

3 MR. BACARISSE: We could, we could.

4 Members, I want to ask if any of you want the
5 floor, please, to be able to say some words to Former
6 Chair Treviño.

7 Mr. Graham.

8 MR. GRAHAM: Sure. I will say it's been a
9 pleasure working with you. Running these Board meetings
10 is pretty intense, I would imagine, just from this end
11 looking that way, and you did a great job of managing
12 those meetings, leading this agency, a tremendous amount
13 of time and effort that has to be invested to do that, and
14 you did an exceptional job. It was a pleasure to serve
15 with you, and call you my friend. Thank you.

16 MR. BACARISSE: Member Gillman.

17 MS. GILLMAN: I would echo that as well. Memo,
18 thank you so much for paving the way for me and
19 introducing me to this process. I know that you were
20 invited to every single committee meeting and your time
21 and patience and dedication to it all was appreciated by
22 the State of Texas.

23 And I'm so thankful that the governor and this
24 agency had you as the leader and were able to be a great
25 example for us. So thank you for your service.

1 MR. BACARISSE: Member Scott.

2 MR. SCOTT: I'd just like to say, Memo, it's
3 been a great honor to serve with you. You've been a great
4 leader for us and you've helped us through some unusual
5 times, and you stepped right in when we needed someone to
6 be a stabilizing force.

7 But mostly from a personal standpoint, it is a
8 personal honor to be your friend and to have served on
9 this Board with you. Thank you.

10 MR. BACARISSE: I think those comments reflect
11 my thoughts as well, and I'm the newbie. So again, thank
12 you, Memo, for your service to the people of Texas and to
13 this Board and this agency. Thank you very much. Job
14 well done.

15 (Applause.)

16 MR. BACARISSE: Ms. Brewster, do you have some
17 words that you'd like to share?

18 MR. TREVIÑO: Before you move on, if you would
19 indulge me, I would like to thank and applaud all the
20 staff who put this agency together and all of you. It's
21 awkward to be here and hear you guys say such nice things
22 about me, but it is a pleasure to say nice things about
23 you because it's well deserved, all of you, because
24 without you this state would not be as good a place as it
25 is. And I just want to thank you and make sure everybody

1 knows that.

2 (Applause.)

3 MR. BACARISSE: And I think we have a special
4 presentation. Is that right? Do you want to do that now?

5 MS. BREWSTER: Yes.

6 (Pause for presentation and photos.)

7 MR. BACARISSE: Thank you. Such a great
8 leader. Thank you, sir.

9 (Applause.)

10 MR. BACARISSE: I will now turn it over to
11 Executive Director Whitney Brewster for agenda item 4.

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

13 I appreciate the time to share a few things
14 this morning. With the Board not meeting in June, a lot
15 has happened since we last met, and so I wanted to update
16 the Board and those listening in on a few of the
17 initiatives that we have been working on. They are listed
18 in your Board books, a more complete picture of those
19 projects. I'm not going to go in depth into all of them
20 but I would like to touch quickly on them and thank those
21 who were instrumental in making these things happen.

22 The first being the call center upgrade. We
23 upgraded our call center to the latest software version
24 for both Cisco and NICE. For the call center components
25 for the Consumer Relations Division and the Motor Carrier

1 Division, we upgraded all of the call-recording features,
2 the workforce management system, quality assessment
3 system, reporting tools and the automated agent routing
4 system. For VTR we upgraded the call-routing and
5 reporting tools.

6 Also, our regional service centers now have
7 access to all of the tools that our Consumer Relations
8 Division and Motor Carrier Division call centers have,
9 those features. We replaced the customer callback
10 feature, which is the courtesy callback. And we replaced
11 the unsupported after-call customer survey with a robust
12 survey tool.

13 And so what this does for us is it provides us
14 a more stable contact center system, vendor support for
15 the contact center software. Fail-over and backup
16 functions have been re-architected and improved to work as
17 designed. The ability to add new options which we were
18 not able to do because of the out-of-date system, we can
19 now add things such as messaging, chats and bots.

20 We have enhanced reporting. We have more
21 licenses to handle increased call volumes, enhanced and
22 better overall security features, and again, a more robust
23 survey feature so we can do data-mining on the information
24 that we receive from customers after they've finished the
25 phone call with our staff.

1 And I just want to say thank you to our
2 Consumer Relations Division, our Motor Carrier Division,
3 Vehicle Title and Registration Division, and our
4 Information Technology Services Division. This was truly
5 across all of the agency but these four divisions really
6 helped us get across the finish line.

7 I want to give a special shout out to Ginny
8 Booton, our Consumer Relations Division director, who
9 served as the executive sponsor on this project, and I do
10 also want to thank Butch Grote, our CIO, who was very
11 helpful in pulling this across the finish line. It wasn't
12 an easy project, so thank you to the staff who helped with
13 making that happen. It improves our customer service and
14 that's exactly what we should be doing.

15 On page 8 of your Board book, I'll just move
16 through the projects and answer any questions at the end,
17 if that's all right, Mr. Chairman.

18 MR. BACARISSE: Sure, that's fine.

19 MS. BREWSTER: We had a successful launch of a
20 new learning management system for RTS, registration and
21 titling system training. VTR, the Vehicle Titles and
22 Registration Division, recently completed a large scale
23 project to transition all of our mandatory registration
24 and titling system training to a new management system.
25 After extensive research, we chose a product called Talent

1 LMS as the new platform.

2 Our training specialist in VTR, Juan Gomez, was
3 instrumental -- he developed and executed the five-month
4 project plan that resulted in the migration of 85 training
5 modules and approximately 4,000 user accounts. These are
6 all of the tax assessor-collectors and their staffs, the
7 users of the registration and titling system, so we were
8 able to transition all of those over seamlessly.

9 We're now taking advantage of the new system
10 with over 1,100 training courses already completed, and
11 that was just as of July 9. So thank you so much to Juan
12 Gomez, the Vehicle Title and Registration Division, and
13 the tax assessor-collectors for being so collaborative
14 with the department on the transition of this. It's a
15 large scale process impacting a lot of people, so I want
16 to say thank you so much to the staff at the agency that
17 helped make that happen.

18 The next item, on June 21, 2021, we marked a
19 significant milestone for the Vehicle Title and
20 Registration regional services section. Batch printing
21 was launched, after a three-year initiative. That now
22 allows our regional service centers to print certified
23 copies of original titles that were originally processed
24 in our regional centers. They can now mail that directly
25 to our vendor Xerox.

1 The Wichita Falls RSC was our first region to
2 launch the program. Prior to having this ability to print
3 CCOs directly to the vendor, our customer service
4 representatives took about four to five minutes per mail-
5 in transaction.

6 As a result of this, we are expecting a
7 reduction to about a minute to a minute and a half per
8 transaction by having the CCOs print directly to the
9 vendor to be stuffed and mailed from that location. This
10 should bring our average time to complete each transaction
11 to approximately three and a half minutes which we believe
12 will have a significant impact operationally and allow us
13 to repurpose positions in the future. Also, the
14 department will realize some cost savings for postage by
15 being able to utilize the bulk rate that the vendor uses.

16 And in the same release, we also added the
17 ability for the regional service centers to remove liens
18 when issuing certified copies of original titles when an
19 original release of lien is provided. Customers will see
20 an automatic benefit by no longer having to make an
21 additional visit to a county tax assessor-collector's
22 office and pay an additional application fee to have a
23 lien removed. This will save the customer money and
24 obviously time.

25 And so I want to just say thank you so much for

1 the innovation of Vehicle Titles and Registration Division
2 for making that happen. That is a process improvement not
3 only impacting us internally with more efficiency, but
4 definitely we're going in the right direction in terms of
5 cutting down the time and money it takes to do
6 transactions.

7 Moving on, and this is on page 10 of your Board
8 books, the Vehicle Titles and Registration Division
9 collaborated with the Information Technology Services
10 Division, and this was to deploy an enhancement to the
11 registration and titling system that allows the Texas Law
12 Enforcement Telecommunications Systems, or TLETS, those
13 users, to query temporary tags and view dealer names and
14 DBA, dealer license number and dealer address when they
15 run the eTAG in TLETS.

16 TLETS users, which are primarily law
17 enforcement officers, can also view the status of the
18 temporary tag and will know if the tag is active, expired
19 or voided. This enhancement that interfaces with TLETS
20 will help officers more easily determine the legitimacy of
21 a temporary tag during a traffic stop or investigation,
22 and was added from meetings the department had with law
23 enforcement regarding enhancements we can put in place to
24 help combat eTAG fraud.

25 I'll keep going. I am also pleased to announce

1 an enhancement to webSALVAGE, the department's web-based
2 application for processing salvage and non-repairable
3 title applications. That was successfully implemented on
4 June 21 of this year, allowing electronic submission of
5 owner-retained reports by insurance companies.

6 Owner-retained reports are submitted to the
7 department when an insurance company pays a claim on a
8 vehicle when it's deemed to be salvage or non-repairable
9 and the owner retains the vehicle. Paper forms were
10 previously the only way to submit these reports to the
11 department and required a lot of manual processing by
12 staff, so this enhancement allows insurance companies to
13 self-serve as well as streamline the process for staff
14 that continue to process those paper forms as they come
15 in.

16 While staff are currently using the
17 enhancement, title services staff is. They are working
18 very closely with insurance companies to hopefully
19 encourage participation. It's a great program. So just
20 wanted to make sure that the public was aware of this new
21 enhancement and improvement in process.

22 The Motor Carrier Division. The most recent
23 upgrade to the Motor Carrier Division's Texas Permitting
24 and Routing Optimization System, or TxPROS, they
25 implemented a super-heavy permit release on May 4. And

1 just for the new members and the public, TxPROS is a
2 web-based system that allows motor carriers to apply for
3 size and weight permits online, 24/7. TxPROS maps a
4 GIS-based route customized to each permitted load and with
5 road restrictions and all in real time.

6 So the improvements that were made to this is
7 that we had heard from customers that the old routing
8 function was challenging with customers in some particular
9 areas, like the ability to manipulate and view routes,
10 understand why a route was rejected, be able to exchange
11 information with the department through the notes
12 functionality within the system, submit and approve
13 documents electronically, receive application status
14 information, and choose from multiple approved routes,
15 which motor carriers did not have the ability to do prior
16 to this release.

17 It addressed some significant technical
18 challenges that I noted, but also during this release --
19 or on the heels of this release, we were able to launch
20 the first -- we were able to upgrade the mapping. Prior
21 to, it was simply state-maintained roads being visible.
22 We moved to Google Maps, so the motor carrier has various
23 views, in addition to what Google Maps users see which are
24 major landmarks, natural lakes and rivers you can things
25 such as, state and federal and local roads as well, which

1 was not possible before.

2 I want to say thank you to some folks in our
3 Motor Carrier Division and our Oversize/Overweight permit
4 team, in particular Brian Elliott, Roy Smith, John
5 Arkinson, James Mangawang, Liz Mitchell, James Bunner, and
6 Karen McRae, who retired at the end of May. These are
7 huge improvements to the system and I thank these staff
8 very much for the hard work and innovation to make that
9 happen.

10 And I believe that I'm at the last item under
11 the executive director's report project update, and this
12 is a good one. I want to say thank you to the entire
13 agency, the Board, the Motor Vehicle Crime Prevention
14 Authority Board, for a very successful training year when
15 it comes to our cybersecurity.

16 For the second year in a row, we were able to
17 achieve 100 percent, that's all Board members on both
18 boards, all agency staff. I just want to say thank you so
19 much for everybody's recognition of the importance of
20 cybersecurity and taking that training. We are in the
21 final stages of preparation for FY22 cybersecurity
22 training year, and our target date for rolling that out to
23 staff and Board members is currently scheduled for
24 September of 2021.

25 And with that, that concludes item 3.A -- I'm

1 sorry -- 4.A on the executive director's reports. Are
2 there any questions on those projects?

3 MR. BACARISSE: Members, any questions for
4 Whitney?

5 (No response.)

6 MR. BACARISSE: Seeing none, I would like to
7 ask you to go ahead and move to agenda item 4.B.

8 MS. BREWSTER: Thank you. Execution of
9 amendment number 2 to the contract with Southwest Research
10 Institute, or SwRI, those materials are located on page 14
11 of your Board book.

12 Under the Board's contract approval procedures,
13 the chairman is authorized to grant the executive director
14 a request to sign a contract that requires Board approval
15 if the department needs to sign a contract on an emergency
16 basis. An emergency procurement includes an unforeseeable
17 situation requiring the execution of a contract to avoid
18 several things, but one being undue additional cost to the
19 state.

20 In May of this year, I did request from
21 Chairman Bacarisse to sign an amendment to our contract
22 with the Southwest Research Institute for our Commercial
23 Vehicle Information Exchange Window, CVIEW, those
24 services. The chairman did approve my request to sign the
25 amendment, I signed the amendment, and as required by the

1 Board resolution for contracts, I am now briefing the
2 Board regarding the amendment.

3 So Texas receives and shares motor carrier
4 safety data with other states via a system called the
5 Commercial Vehicle Information Exchange Window. I'm going
6 to call it CVIEW to make it easy.

7 So the amendment added programming services
8 which are funded through a 2017 Federal Innovation
9 Technology Development Grant through the Federal Motor
10 Carrier Safety Administration. The programming services
11 will allow for law enforcement to obtain data on
12 oversize/overweight permits at the roadside issued to
13 motor carriers. The amount of the amendment was for
14 \$215,828.42, and was allocated from those federal dollars.

15 Again, this amendment falls under the exception
16 for an emergency procurement, because it was necessary to
17 sign this amendment before the end of June so that we
18 could avoid undue additional cost to the state. As we all
19 know, the Board did not meet in June. We would normally
20 have brought this to the Board for consideration in that
21 June meeting.

22 If the contract amendment was not signed before
23 that time, we would not be able to complete the work by
24 September 30. And really this was to be able to use --
25 DPS, Department of Public Safety, who also utilizes these

1 dollars and system, as well as the Comptroller's Office
2 and TxDOT, they were going to be hiring a vendor to
3 perform the second part of the work which is the interface
4 to see the permit information roadside. They were not
5 able to bring a vendor on quickly enough.

6 We had a vendor already working in CVIEW. We
7 were able to utilize that contract and make that amendment
8 to be able to utilize those federal dollars and not have
9 to use state dollars because we ran out of time. The
10 grant ends at the end of September, so in order for us to
11 complete the work, we needed to execute the contract as
12 soon as possible.

13 So with that, we don't exercise that option
14 very often but I did want to make sure that the Board was
15 aware that we had and to be able to answer any questions
16 that you have.

17 MR. BACARISSE: Thank you.

18 Members, any questions on this item?

19 MS. GILLMAN: No questions.

20 MR. BACARISSE: We're good? Okay. Thank you.

21 I'd like to go ahead and move then, Whitney, to
22 introduction of the new director of Purchasing, please.

23 MS. BREWSTER: Thank you. And he is welcome to
24 stand up and wave. The department will soon be welcoming
25 our new director of Purchasing. He's not on the job quite

1 yet, August 16 is his first start day.

2 Starting August 16, Bradley Payne will be
3 joining us from the Texas Comptroller's Office. He brings
4 with him a wealth of experience and knowledge that will
5 make him a huge asset at TxDMV.

6 He began his career in procurement and
7 contracting as an estimator and project manager for BJ
8 Electric, where he bid on and managed multimillion dollar
9 new and remodel construction projects as both a prime and
10 a subcontractor. And after seven years there, he had a
11 brief stint at the Travis County Sheriff's Office before
12 joining the Statewide Procurement Division of the State
13 Comptroller's Office in October of 2015.

14 He's a rarity. He was born and raised here in
15 Austin, attended Concordia University, where he played
16 baseball and soccer while obtaining a bachelor's degree in
17 kinesiology.

18 And we're just very excited for Bradley to join
19 the team, and I ask Board members to please join me in
20 giving him a warm welcome to the department.

21 (Applause.)

22 MR. BACARISSE: Welcome, Mr. Payne.

23 Do you want to move to agenda item 4.D now?

24 MS. BREWSTER: Yes, sir. Thank you.

25 We're also pleased to announce we've hired our

1 new chief information security officer, Will Hilton, who
2 joined the team on June 14.

3 Will is coming to the TxDMV -- and there he is
4 over there behind the pillar there -- he's coming to us
5 from the Health and Human Services Department where he
6 served as the agency's information security risk manager.

7 He has a lot of experience. He has a bachelor of science
8 in computer sciences, a master of science in
9 cybersecurity, and a master of business administration,
10 all from the University of Maryland University College.

11 Will began his career in the United States Air
12 Force where he held multiple increasingly responsible
13 cybersecurity roles. After his retirement from the Air
14 Force, Will served as the chief information security
15 officer at Capgemini, which is the vendor supporting the
16 Texas Department of Information Resources, their shared
17 technology services, before he moved over to Health and
18 Human Services.

19 So we are lucky to have Will on board, and
20 please join me in welcoming him to the department.

21 (Applause.)

22 MR. BACARISSE: Absolutely. Welcome, Mr.
23 Hilton.

24 Item E.

25 MS. BREWSTER: All right, movin' and groovin'.

1 At this time we would like to recognize our
2 employees who have reached a major state service
3 milestone. We celebrate these employees as a show of our
4 appreciation for the years of service to the citizens of
5 Texas. Matthew Levitt, from our Human Resources Division,
6 will read the service announcements.

7 And normally we would come down to the front of
8 the dais. We won't be doing that today but we will
9 welcome any guests to the podium. And with that.

10 MR. LEVITT: Thank you, Whitney.

11 Good morning, Chairman and members. My name is
12 Matthew Levitt. I am the director of the Human Resources
13 Division, and as Whitney said, we'd like to recognize
14 employees on their years of state service.

15 First we'd like to recognize the following
16 employee who has reached 30 years of state service: Ann
17 Pierce from the Finance and Administrative Services
18 Division.

19 Ann Pierce began her career in 1986 as a summer
20 hire at the State Department of Highways and Public
21 Transportation, SDHPT, now TxDOT. Ann currently serves as
22 the TxDMV Finance and Administrative Services Division
23 deputy division director.

24 She's passionate about volunteering in
25 community involvement, has been a supporter and

1 contributor for many years to many organizations. You may
2 not know this but years ago Ann was the one that
3 spearheaded a project that converted Texas's use of steel
4 to aluminum which we use now in license plate
5 manufacturing, while she was with VTR.

6 She's married to Deke, they have three grown
7 children, two grandchildren and four four-legged children.

8 Please join me in congratulating Ann on 30 years of state
9 service.

10 (Applause.)

11 MS. BREWSTER: And Mr. Chairman, if I may?

12 MR. BACARISSE: Please.

13 MS. BREWSTER: Just a little bit about Ann.

14 She's about the most organized person I've ever met, maybe
15 next to Corrie Thompson. But I want the Board to know how
16 much we appreciate Ann.

17 She is excellent at making sure that our
18 facilities are taken care of, that they're safe and that
19 our employees have a great place to work. So I want to
20 thank Ann for all that she does for the department, and
21 let's say congratulations again one more time. Thirty
22 years is amazing.

23 (Applause, pause for photos.)

24 MR. BACARISSE: Ann, I can't imagine the
25 challenge that this past year and a half has been.

1 MS. PIERCE: It's hard finding parts for a 1968
2 Easel.

3 (General laughter.)

4 MR. BACARISSE: Yeah, right, exactly. Great
5 job. Thank you. Yeah, that's true. We have a legacy
6 facility. Would that be a nice way to put it?

7 MS. BREWSTER: Yes, sir.

8 (General laughter.)

9 MR. BACARISSE: Please continue, Ms. Brewster.

10 MR. LEVITT: Monica Hernandez, also from the
11 Finance and Administrative Services Division. Monica
12 began her career with the Texas Department of
13 Transportation in July 1991 in the Vehicle Data Management
14 Section. Monica worked in Consumer Information Services,
15 now known as the Consumer Relations Division, before
16 transferring to the TxDMV as an administrative assistant
17 in the Finance and Administrative Services Division.

18 Monica has worked here at Camp Hubbard Building
19 1 her entire state career. She's always been a resource
20 for anyone with a finance, purchasing, inventory or CAPPS
21 question. She's always there to greet you and help you
22 with a smile, as she just did this morning by the front
23 door.

24 Congratulations on 30 years of state service,
25 Monica.

1 (Applause.)

2 MS. BREWSTER: And Mr. Chairman, she doesn't
3 only help with finance, purchasing, inventory and CAPPS
4 questions, she helps with anything. Oftentimes she will
5 come and help us out in the executive office. She's
6 willing to lend a helping hand whenever it's needed. And
7 she's about the most pleasant person you'll ever have the
8 opportunity to meet.

9 MS. HERNANDEZ: Love this place.

10 MR. BACARISSE: Well, don't leave. So thank
11 you for your service.

12 (Applause.)

13 MR. LEVITT: Mr. Chairman, there are a few more
14 that I'd like to mention. The following employees reached
15 a state service milestone but were unable to join us this
16 morning: Tracey Stafford in the Enforcement Division;
17 Tanya Vernon and James Bunner in the Motor Carrier
18 Division; Randi Quintero and Joyce Juarez in the Vehicle
19 Titles and Registration Division; Ana Roesch in the
20 Information Technology Services Division; Sue Russell in
21 the Office of Administrative Hearings; Sherry Flemming in
22 the Consumer Relations Division.

23 Next we have employees who reached 25 years of
24 state service -- unable to join us but we have a short bio
25 of James Mangawang from the Motor Carrier Division. James

1 has worked in the Motor Carrier Division for the duration
2 of his time at TxDMV and TxDOT before that. He's the
3 primary liaison between TxDOT and TxDMV on road
4 construction projects, restrictions and map data, and he's
5 always had a keen eye on safety and is an asset to the
6 division.

7 I'd like to identify others with 25 years of
8 service unable to be here this morning: Drake Kirk in the
9 Government and Strategic Communications Division; Tania
10 Sanders in the Vehicle Titles and Registration Division;
11 Dion Arnold in Information Technology Services; and Jesse
12 Kirk in Information Technology Services.

13 And finally I'd like to recognize one more
14 employee in our own Human Resources Division with 20 years
15 of state service, Ms. Margaret Barker.

16 And last, I'd like to identify the following
17 employees who recently retired from the department:
18 Belinda Martin and Brenesa Brown in the Vehicle Titles and
19 Registration Division; Karen McRae and John Poole and
20 Sylvia Alvarado in the Motor Carrier Division; Angel Cruz
21 in Information Technology Services; and Linda Flores from
22 the Finance and Administrative Services Division.

23 Thank you, Chairman and members.

24 MR. BACARISSE: Thank you.

25 MS. BREWSTER: Will you please join me in

1 congratulating these incredible employees on this major
2 milestone. It's very impressive.

3 (Applause.)

4 MS. BREWSTER: Thank you.

5 And it gives me great pleasure to see our
6 retired chief financial officer, Linda Flores, and her
7 family in the boardroom today. Welcome, we're so glad
8 that you're here.

9 Linda retired from the department at the end of
10 May. She has a little boss now, a grandbaby that bosses
11 her around.

12 I'd just like to share a little bit about
13 Linda. She joined our team in the early stages of this
14 department in 2010 as the agency's first and only CFO.
15 She also spent nearly a year as the interim executive
16 director and helped really helped ensure a smooth
17 transition when I came on board in 2012.

18 I couldn't have done it without Linda, and I
19 will be forever grateful for the way in which she helped
20 me navigate the newly created department and Texas state
21 government, which I'd never worked for before. And she
22 was just extremely helpful to me.

23 With her financial acumen expertise and her
24 strong -- incredibly strong work ethic, I know no one who
25 works harder than Linda Flores -- Linda has helped us

1 navigate many of the complex -- and some of them have been
2 doozies -- issues over the years, including managing the
3 ongoing fiscal impacts of the pandemic. She oversaw the
4 development of our legislative appropriations requests,
5 our annual operating budgets, quarterly reports to the
6 legislature and to the governor, numerous end-of-year
7 reports, probably more than she can ever count, and all of
8 these things that are required to be done timely and
9 completely under statute.

10 Before joining our team she was the CFO for the
11 Texas Commission on Environmental Quality, and she's held
12 various state roles, also spending 15 years in financial
13 and accounting positions with the City of Corpus Christi.

14 Linda is a wonderful person to work with. We
15 miss her dearly. Thank you so much for coming back so we
16 can see you and honor you appropriately. And please join
17 me in honoring Linda Flores as we present her with her
18 retirement and service awards.

19 Come on up, if you would, Linda.

20 (Applause; general talking and laughter; pause
21 for photos.)

22 MR. BACARISSE: Thank you. Any words of
23 wisdom, Linda?

24 MS. FLORES: Never say no to any opportunity
25 that comes your way. It can always lead you to some new

1 exciting paths that you never thought you would take.

2 With your indulgence, though, I would like to
3 recognize my family who's here with me.

4 MR. BACARISSE: Please.

5 MS. FLORES: Starting with my firstborn, my
6 daughter Laura, and her husband Chris. My youngest
7 daughter Alyssa and her husband Justin Clapper, and the
8 son that is sandwiched in between the two -- my precious
9 boy, as the girls refer to him -- Henry Flores and his
10 wife Joy. And finally, my husband, Tom Irwin, who always
11 had the light on when I came home after dark.

12 Thank you.

13 (Applause.)

14 MR. GRAHAM: Mr. Chairman.

15 MR. BACARISSE: Member Graham.

16 MR. GRAHAM: I just want to say as the current
17 Finance and Audit chair, oh, my gosh, you were such an
18 incredible asset for us, and incredible person, very kind,
19 but man, those are a lot of numbers, I mean, from
20 everywhere, coming from every direction. And as a new
21 Finance and Audit chair, I'm just trying to get my head
22 around it.

23 And I would ask her these questions and she'd
24 go: Look on page 72, look at column 4, you'll see where
25 this comes from this account. And she was always right,

1 and she had such a grasp of it. She understood it, and
2 big shoes to fill.

3 You were amazing and really glad to have been
4 here with you and worked with you. So thank you.

5 MR. BACARISSE: Very true.

6 (Applause.)

7 MR. BACARISSE: Member Gillman.

8 MS. GILLMAN: Linda, I just wanted to
9 complement what Member Graham said. A lot of numbers, but
10 you always brought a calmness and grace and sophistication
11 to your reports and your reporting and credibility. And
12 you have a great reputation throughout, everyone thinks
13 so.

14 So thank you for all those years, it's awesome.
15 Thanks.

16 MR. BACARISSE: Absolutely.

17 (Applause.)

18 MS. BREWSTER: Last, but certainly not least,
19 Mr. Chairman and Board members, Caroline Love has accepted
20 a position with the Texas Municipal Retirement System as
21 their communications manager. And her last day was
22 Friday, July 30, but we were not going to let her go
23 without saying thank you publicly for her service.

24 She joined us in November of 2014 and she's
25 just done an outstanding job leading our department's

1 communications, our legislative affairs, our media
2 relations, our marketing, social media, website, and more.

3 I mean, she's just done so much for the department and
4 moved the needle forward. Our loss is definitely TMRS's
5 gain.

6 We will miss you, Caroline, but we know that
7 you're just going to be down the street. TMRS has a
8 building being built just down the street, so don't be a
9 stranger.

10 And please join me in thanking Caroline for her
11 service to our agency.

12 MR. BACARISSE: Absolutely.

13 (Applause; pause for photos.)

14 MR. BACARISSE: Caroline, thank you. We are so
15 appreciative of your efforts through, before I got here,
16 Sunset -- which I know what that's like -- and just the
17 daily challenge of managing messaging in state government.

18 So thank you.

19 MS. LOVE: When I first started in 2005 with
20 TxDOT, the sign out front of the door says Texas
21 Department of Transportation, but then when they went
22 through Sunset in July 2008, that was probably the most
23 contentious Sunset hearing I think I ever saw. In fact, I
24 was eight months pregnant at the time, and TxDOT's deputy
25 executive director at the time said to me: I have a

1 bottle of water, I can dump it on the floor, and you're in
2 labor.

3 (General laughter.)

4 MR. BACARISSE: That's clever.

5 MS. LOVE: But that's what created DMV, and I
6 am thankful to have come over here. It was the best thing
7 I think the legislature could have done.

8 It's been wonderful, and I'm so thankful for
9 the opportunity. License plates are part of my DNA now.
10 Thank you so much.

11 (General laughter.)

12 MR. BACARISSE: Thank you.

13 MS. BREWSTER: Thank you.

14 MS. GILLMAN: All the best to you.

15 MS. BREWSTER: I know Caroline is not going to
16 miss all of those individual questions about license
17 plates and registration. We wish her all the best.

18 And again, don't be a stranger. You've had
19 such a huge impact on this department. And thank your new
20 boss for allowing you to be here this morning.

21 Mr. Chairman, that ends the longest executive
22 director's report in all of history, and I'm happy to
23 answer any questions that you have.

24 MR. BACARISSE: Members, do you have any
25 questions that you might remember from the executive

1 director's report?

2 (No response.)

3 MS. BREWSTER: So much has happened.

4 MR. BACARISSE: Yes, this is true. It's been
5 an incredibly busy period. My thanks to all the staff and
6 everyone involved here.

7 And certainly we want to thank, and all our
8 respect and love to Ms. Flores and Ms. Love for their
9 service here with this department.

10 MS. BREWSTER: Thank you.

11 MR. BACARISSE: Before we move to the next
12 agenda item, I would like to propose about a five, ten-
13 minute break. Twenty-minute break. Counsel advises we
14 need a twenty-minute break. Very good.

15 So we stand in recess for 20 minutes. We'll be
16 back at 10:10. Right? Very good. Thank you.

17 (Whereupon, at 9:50 a.m., a brief recess was
18 taken.)

19 MR. BACARISSE: It's now 10:15 and I am
20 bringing us out of recess back into session, so we are
21 about to move to the next agenda item.

22 And before we do that, I'd like to provide a
23 few comments just regarding and reminding everybody of the
24 decorum of this meeting. It's important to wait to be
25 recognized by me as the chair before obtaining the floor

1 to speak. You may raise your hand or say Chairman,
2 whatever, and I will then recognize you by name. Please
3 be courteous and wait until the prior speaker is finished
4 before asking for the floor.

5 Also, I may alternate giving the floor to
6 members with differing views or opposing and favoring a
7 motion when we have a motion, as appropriate. For
8 example, I'll give all members wishing to speak a turn
9 before giving the floor to a member for a second time in
10 discussion.

11 Remember to always address me as the chair in
12 your comments and not other Board members during a
13 discussion. Members and the chair may ask to confer with
14 general counsel and take a recess at any time as
15 necessary. So as we work through this, we have two new
16 members and we want to certainly be respectful of them and
17 their process through this and all of our parties as well,
18 so that's the way we'll operate.

19 And before we move to agenda item 5, or as we
20 move to agenda item 5, the contested case, the Texas
21 Department of Motor Vehicles v. Jay Enterprise dba M&M
22 Auto Sales, I would like to hear from our general counsel,
23 Tracey Beaver.

24 Ms. Beaver.

25 MS. BEAVER: Thank you, Chairman. Tracey

1 Beaver, general counsel, for the record.

2 Appearing for Jay Enterprise today is
3 Representative Bryan Laine, and for Enforcement we have
4 Brian Ge and Karen Meisel. The parties for Enforcement
5 will present first and then it will be followed by Mr.
6 Laine.

7 According to department rule, each party has up
8 to 15 minutes to present their case. There will be a
9 timer presented by department staff. When there is a
10 minute remaining, the light will turn yellow and then once
11 the 15 minutes is up, red light will appear and there will
12 be a beep.

13 Thank you.

14 MR. BACARISSE: Thank you.

15 I'd also like to remind the Board members and
16 the parties that the Board's final decision must be based
17 solely on evidence contained within the administrative
18 record from SOAH and the Board shall not consider any new
19 information. Members must consider this case based on the
20 statutes and rules that were in effect at the time of the
21 alleged violations. The Board must not consider any
22 legislation from the past session or any advisory
23 committee meetings that may have dealt with temp tags, so
24 just to remind us of that.

25 And Brian Ge, with the assistance of Karen

1 Meisel, will now address agenda item 5, the contested
2 case. You have the floor.

3 MR. GE: Mr. Chairman, members, Ms. Brewster,
4 good morning. My name is Brian Ge.

5 MS. BREWSTER: Mr. Chairman.

6 MR. BACARISSE: Yes. I'm sorry. One moment.

7 MS. BREWSTER: The court reporter cannot hear.

8 MR. BACARISSE: Okay. Speak loudly. Sorry.

9 MS. BREWSTER: Thank you.

10 MR. BACARISSE: Thank you, Brian. Please
11 continue.

12 MR. GE: As the chairman stated, Karen Meisel,
13 the attorney with the Enforcement Division who tried this
14 case at the State Office of Administrative Hearings, is
15 with me here today.

16 Agenda item number 5, which can be found on
17 page 19 of your Board books, is a contested case regarding
18 the Texas Department of Motor Vehicles v. Jay Enterprise,
19 Inc. dba M&M Auto Sales. A hearing was held before an
20 administrative law judge, or ALJ, at the State Office of
21 Administrative Hearings on August 13, 2020. The ALJ
22 issued a proposal for decision.

23 MS. BEAVER: Apologies, Chairman. I'm sorry to
24 interrupt. It looks like they still can't quite get the
25 transcript for the recording. I'm not sure if maybe we

1 need another microphone if there's one that could be a
2 little bit louder or just maybe talk closer to the
3 microphone. You almost have to be in front of it.

4 Sorry for the interruption.

5 MR. BACARISSE: That's fine. Thank you.

6 MR. GE: Is this better?

7 THE REPORTER: yes.

8 MR. GE: My apologies.

9 MR. BACARISSE: Just get right on, get right up
10 to it.

11 (General laughter.)

12 MR. GE: The ALJ issued a proposal for decision
13 on October 27, 2020. Staff is asking the Board to issue a
14 final order that modifies the ALJ's proposal for decision
15 to include revocation of Jay Enterprise general
16 distinguishing number, in addition to the \$5,000 civil
17 penalty that the ALJ recommended.

18 Department records show that user Amjad Nassar
19 and dealer Jay Enterprise issued approximately 1,649
20 buyer's temporary tags between January 1, 2019, and
21 September 1, 2019. During that time period, the dealer,
22 Jay Enterprise, reported only one vehicle sale to their
23 local tax authority. Based on the seriousness of Jay
24 Enterprise's suspected fraudulent use of buyer's temporary
25 tags, the department issued a notice of department

1 decision on January 29, 2020, calling for a civil penalty
2 of \$25,000 and revocation of their general distinguishing
3 number.

4 This notice should reasonably have given Jay
5 Enterprise notice of, one, the gravity of the allegations
6 being levied against them, and two, if they suspected any
7 unauthorized use of their temp tag account that they
8 should secure their account. Instead, between the date
9 that we sent out that notice of department decision,
10 January 29, 2020, and the date of the hearing on August
11 13, 2020, the dealer issued an additional 84 temporary
12 tags, despite reporting only 13 sales to their local tax
13 authority.

14 When the ALJ issued his proposal for decision,
15 the ALJ found that the tags were issued from Jay
16 Enterprise's account, but the ALJ declined to hold Jay
17 Enterprise responsible for the overwhelming majority of
18 the tags issued from their account.

19 The ALJ concluded that based on the evidence,
20 Jay Enterprise violated the Texas Transportation Code by
21 printing more than one buyer's temporary tag for buyers of
22 vehicles, as well as the Texas Administrative Code by
23 failing to have business hours posted at their licensed
24 location and failing to have an employee on site or have a
25 sign stating when the dealer would resume operations.

1 Based on those violations, the ALJ concluded that a civil
2 penalty of \$5,000 without revocation of Jay Enterprise's
3 general distinguishing number was appropriate.

4 Ms. Meisel will now explain why staff believes
5 the Board should modify the ALJ's proposal for decision to
6 include revocation of Jay Enterprise's general
7 distinguishing number.

8 Thank you.

9 MS. MEISEL: Good morning. Can you guys hear
10 me okay?

11 MR. BACARISSE: Yes. Just speak loudly.

12 MS. MEISEL: I'll use Brian's mic.

13 Karen Meisel, Enforcement attorney. Good
14 morning Mr. Chairman, members of the Board, Ms. Brewster.

15 Thank you for allowing me to speak today.

16 Just some background on the complaint. It was
17 filed by a police officer from the City of Vidor, Texas,
18 in August 2019. The complaining officer pulled over a
19 vehicle bearing a temporary tag issued by this dealer.
20 The officer determined during that traffic stop that the
21 vehicle was a salvage vehicle and it was not permitted to
22 be operated on Texas roadways.

23 Another Vidor officer also testified during the
24 hearing that he had pulled over about 40 or 50 vehicles
25 bearing temporary tags from this dealer. When he was

1 asked at trial if any of the temporary tags were
2 legitimate tags, his answer was an unequivocal no.

3 Chief investigator Dave George testified at
4 length at the hearing about the eTAG system and how
5 temporary tags are to be used. He also testified to the
6 harms that come from the abuse of the tag system.

7 One of the ways in which we in Enforcement
8 gauge proper tag use is we compare the dealer's vehicle
9 sales that are reported on their vehicle inventory tax
10 statements to their county tax authority, and we compare
11 those statements to the number of tags that have been
12 issued, particularly in this case buyer's tags. So during
13 the charging time frame, as Mr. Ge stated, respondent
14 issued about 1,600 buyer's temporary tags, and again, only
15 one sale during that charging time frame and the NODD.

16 From the initial time period, January 1, 2019,
17 right up until July 31 of 2020, right before we went to
18 hearing on this matter, respondent's account had issued
19 about 3,000 buyer's temporary tags. During that same time
20 frame, only about twelve vehicle sales were reported to
21 the local tax authority. So even after department
22 investigators visited the respondent on January 23, 2020,
23 the tag abuse continued. Even after I sent out the NODD
24 at the end of January 2020, the tag abuse continued.

25 Enforcement disagrees with the ALJ's analysis

1 of the department's statutes and rules as they relate to
2 the dealer's duty to monitor and prevent misuse of their
3 eTAG account. In the PFD the ALJ finds that petitioner
4 misused the tag system on at least two occasions, but he
5 does not agree with petitioner that the misuse of the
6 system arises to a level warranting revocation of
7 respondent's dealer's license.

8 Petitioner Enforcement is not disputing the
9 ALJ's findings for the premises violations. The ALJ
10 recommended a total \$1,000 penalty, \$500 for two
11 violations. Just to let you know, you can revoke the
12 dealer on these violations alone, the premises violations.

13 Now, department statute and rules are intended
14 to hold dealers accountable for tags obtained through
15 their dealer eTAG accounts. The discipline that is being
16 recommended in the record and the basis for it are not
17 consistent with the record, as the staff notified the
18 dealer about the excessive tag issue in January of 2020
19 and as the record shows the misuse continued.

20 Petitioner disagrees with the ALJ's position as
21 to when the respondent should have had sufficient notice
22 of the violations and when the respondent should have
23 taken corrective actions to prevent future violations.
24 It's not the hearing date, it's not the date of the PFD,
25 as the ALJ offers in his decision or his recommendation,

1 Enforcement contends that the respondent is always
2 responsible for the tag activity on their account. Such
3 failure to correct these violations after the department
4 put the respondent on notice of the tag abuse warrants
5 revocation of his license.

6 I ask you to send a signal to dealers across
7 Texas that the tag system is not to be abused. If the
8 abuse is done, I ask you to revoke that license.

9 Therefore, Enforcement respectfully requests
10 that you modify the PFD to order revocation of
11 respondent's dealer license, General Distinguishing Number
12 P133025, for the violations of the department's statute
13 and rules.

14 Thank you.

15 MR. BACARISSE: Thank you.

16 Before we proceed further, I think it's time to
17 invite Mr. Laine to approach the podium. Mr. Laine
18 represents the respondent, Jay Enterprise dba M&M Auto
19 Sales. And we'll now proceed with the respondent's oral
20 presentation by Mr. Laine.

21 Mr. Laine, you have a total of 15 minutes to
22 present, and the time begins as soon as you start
23 speaking. So welcome and thank you.

24 MR. LAINE: Thank you, Mr. Chairman, Board
25 members. It's a pleasure to be here. I certainly

1 enjoyed -- I'm glad I came, I enjoyed earlier. You had
2 some great people come up.

3 I do represent Jay Enterprise dba M&M Auto
4 Sales, and again, my name is Bryan Laine, L-A-I-N-E. And
5 of course, the owner of that license is here, Mr. Nassar,
6 Amjad Nassar is in the back over there.

7 So Mr. Chairman, if it's okay if I proceed,
8 I'll move forward.

9 MR. BACARISSE: You bet.

10 MR. LAINE: Now, the other interesting thing I
11 saw today was some of the agenda that y'all were trying to
12 fix, some of the new programs that you were putting in and
13 some of the things that the Board was involved in,
14 certainly cyber crime, and I can see why Ms. Meisel moved
15 forward to maybe present this case to the Board.

16 At the hearing, which was a six-hour hearing by
17 Zoom -- it was kind of grueling, actually, for both of
18 us -- there were about five different witnesses and maybe
19 the sixth witness was Mr. Nassar. So at the hearing there
20 were several investigators and the Vidor Police
21 Department -- which is Orange County -- police officers
22 who initiated basically the investigation for the buyer's
23 tags.

24 The whole premise, I think, on the main
25 objection -- and we're not even objecting to the premise

1 violations, so I guess I'm just here to talk about the
2 buyer's tags -- was a word that the ALJ judge never said
3 but was implied, I think in his ruling, and of course, Ms.
4 Meisel said in her exceptions, which was the word
5 "hacking". Basically, as the chairman mentioned earlier,
6 this case all revolves around evidence and at the hearing
7 we heard evidence about the tags being issued from Mr.
8 Nassar or from Jay Enterprise.

9 There was never really a question, I think,
10 that the system had Jay Enterprise as issuing these
11 buyer's tags. But from the evidence, one of the main
12 investigators in Vidor -- which is in the report -- found
13 that these tags he traced were coming from a convenience
14 store in Beaumont, Texas. Now, J&J (sic) Enterprise was
15 selling cars in Port Arthur, Texas, and there was nothing
16 ever remotely linked to Port Arthur, Texas, or anything of
17 that nature.

18 Mr. Nassar denied ever knowing that his account
19 was used for this. He introduced, as Ms. Meisel said,
20 several titles of cars that he had sold which were about
21 20 titles. He did admit, yes, in the decision, I have had
22 customers, two customers who weren't able to get them
23 registered, I wrote them another buyer's tag. And that's
24 where the ALJ judge left it with Mr. Nassar.

25 I think Ms. Meisel's issue -- and it's a

1 legitimate issue, I don't think it fits the facts of this
2 case, not the evidence of this case and not what we found
3 in all of the evidence that the investigators and the
4 police officer put on -- about whether Mr. Nassar was the
5 one getting on the computer, using his pass code and
6 ordering all these tags, printing the tags and just giving
7 them out, selling them.

8 That was the real issue, that you were getting
9 all these tags and you were selling the tags. There was
10 no evidence of that. In fact, the only evidence that was
11 found was never remotely linked to Mr. Nassar.

12 In fact, one of the lead investigators
13 mentioned the word "hacking" in his actual testimony.
14 Now, the ALJ judge never said the word "hacking" in his
15 decision; the word "hacking" came from the department.
16 But that is the real issue.

17 And what Karen is saying to the Board is, look,
18 how could you not know, how could you not know, Mr.
19 Nassar. She is saying, I am putting the responsibility on
20 you.

21 Well, the fact of the matter is Mr. Nassar, who
22 didn't know many of the rules, or knew them but wasn't
23 exactly following some of the premises liability rules,
24 didn't even know to check his account. He didn't know
25 that any of this was happening. That's what he testified.

1 So it comes down to this. And I think it's
2 very appropriate because even in the actual hearing itself
3 the issue was, or was implied, how do we make this buyer
4 tag system a little better. So I think that's the whole
5 reason that we're here.

6 I think Karen wants a different decision, but
7 there's an overriding principle. But in this particular
8 hearing there was absolutely zero evidence of buyer tag
9 fraud associated with Mr. Nassar, associated with getting
10 on the computer, downloading these tags and doing it up.

11 We're talking about 3,000 tags. That's almost
12 incredible to do. His little business is deep in Port
13 Arthur, Texas, and he didn't do that. The judge found he
14 didn't do that.

15 The fines for the buyer tag abuse came from his
16 admission. That's what the judge ended up finding, that
17 you did more than one buyer's tag for several cars, and he
18 fined him \$2,000 per tag, and then \$500 each for the
19 premises liability.

20 Mr. Nassar is current. He got the message.
21 He's done everything he needs to do, and he knows what's
22 required of him as far as keeping his license, and he
23 values his license.

24 But from this particular aspect, the exception
25 that Ms. Meisel made to the actual ALJ's findings is, I

1 really think, the difference between whether you believe
2 in hacking or not. And the issue is, if you believe in
3 hacking or not, that's an issue for the department to deal
4 with. But it also came down to an issue of evidence. The
5 actual people investigating, tracking these, moving these,
6 catching them on the street, pulling them over tags and
7 finding out where they were coming from had nothing to do
8 remotely with Mr. Nassar.

9 So that was the issue that was brought up in
10 the hearing and probably a very good issue to deal with in
11 general, but as far as the evidence and the issues with
12 Mr. Nassar and should he keep his license, should he have
13 to pay more for that, he got the message. A \$5,000 fine
14 for Mr. Nassar is substantial, and you know, he values his
15 license. But the evidence in this record that the ALJ
16 found was not a fraudulent abuse of buyer's tags by Mr.
17 Nassar.

18 And so we respectfully -- I respectfully
19 request that the Board approve the ALJ's decision in sum
20 as it is, that the license certainly not be revoked, and
21 that the Board maintain a \$5,000 fine. Thank you.

22 MR. BACARISSE: Okay. Thank you, Mr. Laine.
23 Just hang tight there.

24 I'll now ask if our Board members have any
25 questions of either counsel in this situation. So

1 members, I'm throwing it open.

2 Mr. Graham.

3 MR. GRAHAM: So do we need a motion? Or I
4 guess we need a motion before we discuss but we don't need
5 a motion to ask questions.

6 MR. BACARISSE: Right.

7 MR. GRAHAM: So I was just trying to think
8 through that and make sure we kept on.

9 MR. BACARISSE: Keep me on track here.

10 MR. GRAHAM: You know, it's what we've got to
11 do.

12 I do have a question, if I may.

13 MR. BACARISSE: Is this a question to Mr.
14 Laine?

15 MR. GRAHAM: Yes, sir, Mr. Laine.

16 After being notified, after your client was
17 notified of the temp tag issue and then subsequently there
18 were tags that continued to be issued that weren't related
19 to sales, did your client ever at any point in there reset
20 his password on his account?

21 MR. LAINE: No, sir.

22 MR. GRAHAM: No.

23 MR. LAINE: No, sir. It was always the same
24 password. I think if I may, to your point, I think the
25 ALJ judge, and what Ms. Meisel was trying to say in her

1 objections -- which I think the judge legally got it
2 right -- is somehow -- and I don't think this is even
3 written in the law -- but somehow the burden should be on
4 Mr. Nassar. And in her exceptions she's talked about
5 intent or knowledge. In other words, what should your
6 intent and knowledge be, should it be negligence maybe,
7 even a standard?

8 But the bottom line is if there was no intent
9 and knowledge on the part of Mr. Nassar and the evidence
10 never traced him to any type of deception. In other
11 words, I didn't know, I didn't check, no, I didn't change
12 my password, but yet the evidence presented never linked
13 to any of his buyer tags going.

14 So I think that's where the ALJ kind of ended
15 up is, was there a real personal individual culpability
16 here, and he didn't find that based on the evidence.

17 MR. GRAHAM: Okay. Thank you. And in the
18 event, I meant, before I asked you that question, to tell
19 you anything I ask or anyone else up here asks we should
20 only know of things that are part of the record. So if I
21 or anyone else asks anything that's not part of the
22 record, please be sure to let us know.

23 MR. LAINE: Yes, sir.

24 MR. GRAHAM: So thank you.

25 MR. BACARISSE: I think that's a good point. I

1 think we will get guardrailed, so that's good.

2 Members, any other questions of either Mr.
3 Laine or --

4 MS. GILLMAN: I have a question.

5 MR. BACARISSE: I'm sorry. Member Gillman.

6 MS. GILLMAN: Ms. Meisel --

7 MR. BACARISSE: Turn your mic on.

8 MS. GILLMAN: I'm curious about -- you said
9 that you did compare the taxes paid to the local tax
10 authority to the buyer's tags issued. Is that right?

11 MS. MEISEL: Yes, that's correct.

12 MS. GILLMAN: And is that a normal -- it seems
13 very logical to me. I'm just asking, is that a normal
14 good way of establishing car sales, transactions that
15 actually happened with the buyer's tags printed? That's
16 normal, I'm assuming.

17 MS. MEISEL: Yes, if I understand your question
18 correctly. That is how I'll try to reconcile buyer's tags
19 that are issued in excess of what we believe are the sales
20 coming from that particular dealer. I mean, this is a
21 small dealer. He told you, he's in Port Arthur, Texas.

22 A dealer of that size wouldn't be selling 3,000
23 cars in a year. But in order to compare -- you know, in
24 order to see what they should be issuing, yes, we look at
25 those VITs, if they file them, as a way of comparing what

1 it should be. Because the rule states it's one buyer's
2 tag is issued per sale, so if you have excess buyer's tags
3 of any sort, I mean, the only exception to issuing more
4 than one is if it's lost or stolen, and that's not going
5 to happen all the time. So you know, it's a good way of
6 gauging what the dealer's tag account should look like.

7 MS. GILLMAN: And the 40 or 50 vehicles that
8 the police officers -- that's 40 different vehicles not
9 attached to a sale that was recorded. Is that correct?

10 MS. MEISEL: I don't want to try to state
11 something that I don't recall specifically in the record,
12 but I recall Detective Martin testifying that he had
13 stopped 40 or 50 vehicles in around Vidor, because that's
14 his jurisdiction. And I asked him if he ever found any of
15 those temporary tags that were placed on those vehicles to
16 be legitimate tags, and his answer was no.

17 MS. GILLMAN: Thank you.

18 MR. BACARISSE: Members, any other questions of
19 either counsel at this point?

20 (No response.)

21 MR. BACARISSE: Hearing none, I would ask if
22 there are any other comments, Tracey?

23 MS. BEAVER: Tracey Beaver, general counsel,
24 for the record.

25 No public comments. Thank you.

1 MR. GRAHAM: Mr. Chairman?

2 MR. BACARISSE: Yes, Mr. Graham.

3 MR. GRAHAM: Just before we move forward I just
4 have a question for counsel, if I may.

5 MR. BACARISSE: Yes, go ahead.

6 MR. GRAHAM: Just a clarification.

7 MR. BACARISSE: Absolutely.

8 MR. GRAHAM: Tracey, would you clarify for us
9 the difference of burden, proof of burden in a case such
10 as this versus a criminal case? Is there a difference in
11 the proof of burden and what does that look like?

12 MS. BEAVER: Tracey Beaver, general counsel,
13 for the record.

14 Under the statutes in this case there were
15 allocations that the respondent violated certain sections
16 of the Transportation Code Chapter 503. The burden is on
17 Enforcement to prove that the violations occurred.

18 Oftentimes in criminal statutes you'll see an
19 additional type of burden added on to the allegation,
20 which would include some sort of action like mens rea, a
21 knowledge element. In this case the SOAH ALJ did also add
22 in the proposal for decision an element that the statute
23 in Transportation Code Chapter 503 also had a knowledge
24 element or a neglect element.

25 Does that answer your question?

1 MR. GRAHAM: Yes, it does. I might just follow
2 up with a question. In my reading of the statute I did
3 not find any words to indicate that there is a knowledge
4 requirement. Would that be an accurate interpretation of
5 how the statute is written?

6 MS. BEAVER: Tracey Beaver, general counsel,
7 for the record.

8 I would say that that would be an item that the
9 Board would be able to deliberate in their reading and
10 interpretation of the statute under their purview to
11 interpret for the department. So for this case that would
12 be an element that you might want to include in
13 deliberation as you're discussing how the department
14 applies or interprets the statute.

15 MR. GRAHAM: Okay. Thank you.

16 MR. BACARISSE: Thank you, Member Graham.

17 At this point, if there are no further
18 questions for counsel on either side, the chair would
19 entertain a motion on agenda item 5.

20 Member Scott.

21 MR. SCOTT: Thank you, Mr. Chairman.

22 I move that the Board adopt the SOAH PFD with
23 the findings of fact and conclusions of law --

24 MS. BEAVER: Chairman?

25 MR. BACARISSE: I'm sorry. One moment. I

1 apologize, Mr. Scott.

2 MS. BEAVER: I apologize for the interruption.
3 I don't believe the court reporter can quite hear you,
4 Member Scott. I apologize.

5 MR. BACARISSE: I thought his mic was on.
6 Sorry, Mr. Scott. Go ahead.

7 MR. SCOTT: Can you hear me now? Thank you.

8 I move that the Board adopt the SOAH PFD with
9 the findings of fact and conclusions of law amended as
10 follows.

11 Number one, finding of fact 19 should be
12 amended to read: Mr. Nassar testified that he was the
13 only person with the password to the account. There is no
14 evidence that Mr. Nassar knowingly supplied respondent's
15 password to someone else.

16 Number two, conclusion of law number 3 should
17 be renumbered to read 3(a).

18 Number three, conclusion of law 3(b) should be
19 added to read: Any person who violates any Board rule
20 adopted under Chapter 503 of the Texas Transportation Code
21 is subject to a civil penalty of not less than \$50 nor
22 more than \$1,000. That's Texas Transportation Code
23 503.095.

24 If the Board determines that a person is
25 violating or has violated Chapter 2301 of the Texas

1 Occupations Code, a rule adopted or order issued under
2 Chapter 203 or Section 503.038(a) Transportation Code, the
3 Board may impose a civil penalty. The amount of the
4 penalty may not exceed \$10,000 for each violation. Each
5 act of violation and each day the violation continues is a
6 separate violation, Texas Occupation Code 2301.801.

7 Number four, conclusion of law 3(c) should be
8 amended to read: Respondent violated Transportation Code
9 503.063 by issuing more than one buyer's temporary tag per
10 vehicle sold and by failing to safekeep each buyer's
11 temporary tag he obtained. That's Texas Transportation
12 Code 503.063(a) and (d).

13 Conclusion of law should be amended to read:
14 Respondent should pay a penalty of \$10,000 for allowing
15 the issuance of 1,649 temporary buyer's tags under his
16 eTAG account in the same period that respondent sold one
17 vehicle. That's Texas Transportation Code 503.063(a).

18 Number six, conclusion of law 7 should be added
19 to read: Respondent misused or allowed the misuse of a
20 temporary tag under Transportation Code 503. Accordingly,
21 the Board should revoke respondent's GDN license. Texas
22 Transportation Code 503.038(a)(12).

23 Thank you.

24 MR. BACARISSE: Thank you, Member Scott.

25 Is there a second to this motion?

1 MR. GRAHAM: I'll second the motion.

2 MR. BACARISSE: All right. We now have a
3 motion and a second on the floor. So Board Member Scott,
4 as the maker of the motion, would you like to say anything
5 further or shall we just begin discussion at this point?

6 MR. SCOTT: Yes. Thank you, Mr. Chairman.

7 The administrative law judge misinterpreted and
8 misapplied the statutes by adding a knowledge requirement
9 to Transportation Code 503.038(a)(12) and 503.063. The
10 statutes do not require the department to prove that the
11 dealer knew about the misuse to constitute a violation of
12 503.063 or to authorize the department to revoke the
13 dealer's license under 503.038.

14 The language on pages 13 and 14 of the proposal
15 for decision, PFD, incorrectly states that the department
16 had the burden to prove that the dealer had knowledge of
17 how the buyer's tags were printed because the dealer
18 denied having knowledge about the excess tags.

19 And finding of fact 14 in the PFD provides that
20 a dealer is supposed to create one buyer's tag per
21 vehicle. The dealer in this case admitted to printing
22 more than one buyer's tag for unspecified buyers in
23 finding of fact 15. Finding of fact 16 finds that from
24 January 1, 2019 through September 1, 2019 he sold only one
25 car.

1 The facts of this case are straightforward to
2 show a violation. Findings of fact 16 and 17 show that
3 while the dealer sold only one vehicle, over 1,600 temp
4 tags were issued from his account.

5 As stated on page 7 of the PFD, the account
6 should only be accessed by a user name and password of
7 this dealer. On page 13 of the PFD it notes that the
8 dealer was the only one with the password. Transportation
9 Code 503.063 was clearly violated in this case.

10 The department has the right to revoke the
11 dealer's license under 503.038. The statute does not
12 require the department to prove the dealer knew about the
13 misuse to violation of these provisions.

14 The actions of the dealer in this case were not
15 within the realm of reasonable. The amount of misuse is
16 not a simple mistake. Issuing over 1,600 temp tags in a
17 period where one vehicle was sold looks to me to be either
18 a willful violation or at least extreme neglect. If you
19 allow this to happen with your account, you do not get to
20 be a licensed dealer anymore, period.

21 MR. BACARISSE: Thank you, Member Scott.

22 Any other members that wish to comment or ask
23 questions?

24 Member Gillman and then Member Omumu.

25 MS. GILLMAN: I would like to make a few

1 comments and that is that I agree with Member Scott that
2 looking at the facts of this case it's clear to me that
3 this individual's behavior is not that of a dealer. The
4 finding of facts 5 and 12 note that the dealership shared
5 a building with a convenience store and someone may be
6 sleeping there.

7 Finding of fact 16 and 17 show that he only
8 sold one car and issued 1,600 buyer's tags. Page 8 of the
9 PFD, the police detective noted that he stopped 40 to 50
10 vehicles with buyer's tags issued from the dealership that
11 were not legitimate tags. And on page 13 of the PFD the
12 dealer testified he was the only one with the password.

13 I feel the comment about knowledge, it is
14 possible that a dealer can give a password to an employee
15 and that employee could misuse it without their knowledge.

16 But in this particular case, the dealer was the only one
17 with the password, and I think that that is a clear
18 violation. And he had the opportunity to, as soon as
19 the -- what do you call it, a NODD?

20 MR. GE: A notice of department decision, also
21 referred to as a NODD.

22 MR. BACARISSE: Please state your name for the
23 record, sir. I'm sorry.

24 MR. GE: I apologize. My name is Brian Ge, for
25 the record.

1 MR. BACARISSE: Thank you, Mr. Ge.

2 MS. GILLMAN: Thank you, Brian.

3 So I feel that Member Scott's recommendation
4 should be taken in consideration by this Board and his
5 license revoked.

6 MR. BACARISSE: Ms. Omumu, did you have a
7 comment you'd like to make at this time?

8 MS. OMUMU: Thank you, Mr. Chairman. I just
9 wanted to state it is very important that those regulated
10 by the Texas DMV follow the rules and the laws. From my
11 perspective, there are too many violations in this case.

12 Findings of fact 16 and 17 reflect that more
13 than 1,600 temp tags were issued from the dealer's account
14 when only one vehicle was sold. The dealer should be held
15 accountable for this vast difference between the sales and
16 the temp tags. The \$5,000 penalty recommended in the PFD
17 is not high enough to deter any future violations.

18 If we, the Board, were to approve the original
19 PFD, we would set precedent for future cases similar to
20 this. Temporary tag misuse is a serious public safety
21 issue and higher penalties and sanctions will send a
22 message that violating the rules and statutes in such an
23 extreme manner is unacceptable and will not be tolerated.

24 I also agree with Member Scott's motion that
25 the dealer's license be revoked.

1 Thank you, Mr. Chairman.

2 MR. BACARISSE: Thank you.

3 Members, any other further discussion?

4 Member Alvarado.

5 MR. ALVARADO: Thank you, Mr. Chairman.

6 I agree generally with the motion, but if I may
7 I'd just like to walk through the reasoning so that there
8 hopefully is predictability from the regulatory
9 environment that we're discussing.

10 MR. BACARISSE: Yes. Take your time.

11 MR. ALVARADO: Thank you.

12 And so for me it starts with Government Code
13 2001.058(e), and that is how we get into the ability to
14 alter this, in my opinion, because it says that -- and I
15 have a lot of notes here, if I may read here?

16 MR. BACARISSE: You go right ahead.

17 MR. ALVARADO: So .058(e) says that a state
18 agency may change a finding of fact or conclusion of law
19 made by an administrative law judge, and it enumerates
20 different opportunities. And number one says that the
21 administrative law judge did not properly apply or
22 interpret the applicable law.

23 So for me, as I read through the record, it was
24 not a premise issue that stood out. For me the thinking
25 takes me to this right here, Transportation Code

1 503.063(d), and it clearly states: The dealer is
2 responsible for the safekeeping and distribution of each
3 buyer's tag the dealer obtains.

4 As I read the record there seemed to be -- the
5 ALJ seemed to impute a knowledge requirement. And there's
6 different parts of the record, but the proposal for
7 decision, pages 13 and 16 in particular, stood out to me.

8 And my read of the statute -- which for me it is
9 Transportation Code 503.038(a)(12) that this hinges on,
10 and the statute -- and I believe the legislative intent
11 behind the statute does not require a knowledge
12 requirement.

13 The statute says that, 503.038 Cancellation of
14 a general distinguishing number, section (a), The
15 department may cancel a dealer's general distinguishing
16 number if the dealer misuses or allows the misuse of a
17 temporary tag authorized under this chapter. To me,
18 whether or not one knew is not the important part. As I
19 started in this discussion, the dealer is responsible for
20 the safekeeping and distribution of each buyer's tag.

21 So that is all to say that this is a tough
22 case, but a strict reading of the statutes and what's
23 available to us in the record to me indicates that
24 503.038(a)(12) was the issue here. And the ALJ's
25 discussion and reliance of the knowledge requirement was

1 inaccurate, in my opinion.

2 Mr. Chairman, that's all I have.

3 MR. BACARISSE: Thank you, Mr. Alvarado.

4 Members, any other questions or comments on
5 this motion that is before us?

6 Mr. Graham.

7 MR. GRAHAM: Just a few. Clearly with this
8 board if you're the last to speak you're going to be out
9 of bullets. That is some good stuff right there. Y'all
10 jumped in quickly.

11 So just to be sure I am clear, Member Scott,
12 your motion is falling under section one of the guidance
13 on contested cases that the administrative law judge did
14 not properly apply or interpret applicable law. Would
15 that be accurate?

16 MR. SCOTT: Yes, that's right, Member Graham.

17 MR. GRAHAM: Okay. And I just will say I
18 support all of the thoughts that have been made here by my
19 fellow members today. Just a few other comments.

20 I think that it is important that this agency
21 from a enforcement standpoint is reasonable and fair in
22 how it handles enforcement cases. And so, you know, as I
23 think about as a dealer, as my friends that I know who are
24 also dealers, I mean, there can be mistakes. There can be
25 errors.

1 I mean, there can be fraud, for that matter.
2 And so, you know, I think it's just incumbent upon us as a
3 dealer to deal with that and handle that. And we have to
4 be held accountable for our actions at the end of the day.

5 My concern here is that if this decision were
6 to stand, then I, as a dealer, as long as I could say I
7 didn't know, I can do anything I want, really, as long as
8 I don't know. And that's concerning. And that's I don't
9 think the intent of the statute and how it should be
10 interpreted.

11 So in this case I do think it came down quickly
12 to these tags that were printed. Were they printed
13 fraudulently? Were they printed without knowledge?

14 Well, at the end of the day, the respondent was
15 notified that there was a problem and it continued. And
16 if the password wasn't changed, I think he either was
17 responsible or he did not take care of business. He
18 didn't do what he should have and reset his password.

19 In either case, I think he should be held
20 accountable for those actions. And for that reason, I
21 support the motion.

22 Thank you.

23 MR. BACARISSE: Thank you, Mr. Graham.

24 Member Gillman, yes.

25 MS. GILLMAN: Member Graham, I think you're

1 exactly right. Sometimes misuse does happen to dealers
2 that want to do it the right way -- and this is what I was
3 trying to allude to earlier about a rogue employee that
4 can go without the dealer's knowledge -- but I'm agreeing
5 with you that once it was brought to his attention,
6 resetting his password, handling it appropriately is what
7 should be expected to respect your dealer license. And
8 that didn't happen in this case.

9 I've got one other comment and that is the one
10 tag per vehicle. Honestly, I didn't know, and I've been a
11 dealer for 30 years. I didn't know that you're limited to
12 one per vehicle.

13 I have customers every single day that change
14 color, that decide they don't want navigation and they
15 switch to something that doesn't have navigation. They
16 want a backup camera, they don't want a backup camera, and
17 so a customer is allowed to change their mind. And so I
18 have printed more than one tag for a customer in trying to
19 do the right thing and make them happy.

20 Three thousand to one customer is not normal
21 and seems abusive and neglectful, and so I guess I wanted
22 during this discussion to have it on the record that I'd
23 like to have further discussion about the one per vehicle
24 because I want good customer service and to serve Texans
25 and dealers should be allowed to do that without violating

1 the law. But in this particular case I am agreeing with
2 the motion presented by Member Scott because I feel like
3 there was neglect and knowledge of the abuse.

4 Thank you, Mr. Chairman.

5 MR. BACARISSE: Thank you, Member Gillman.

6 Any other members have comment at this point?

7 (No response.)

8 MR. BACARISSE: Seeing and hearing none, I will
9 call for the vote on the motion. Board members, when I
10 call your name please state your vote for the record.

11 Member Alvarado?

12 MR. ALVARADO: Aye in support of the motion.

13 MR. BACARISSE: Member Gillman?

14 MS. GILLMAN: Aye in support of the motion.

15 MR. BACARISSE: Member Graham?

16 MR. GRAHAM: Aye.

17 MR. BACARISSE: Member Omumu?

18 MS. OMUMU: Aye.

19 MR. BACARISSE: Member Scott?

20 MR. SCOTT: Aye.

21 MR. BACARISSE: And I, Chairman Bacarisse, vote
22 aye, so the motion passes. Let the record reflect that it
23 was unanimous, and six votes for. Thank you.

24 We now move to agenda item 6 which is Contested
25 Case Texas Department of Motor Vehicles v. Boss Exotics,

1 if members are comfortable continuing forward we'll do
2 that.

3 I'd also like to remind the Board members and
4 the parties that the Board's final decision must be based
5 solely on the evidence contained in the administrative
6 record from SOAH and the Board shall not consider new
7 information. And we're just taking a moment to reset
8 here.

9 Brian Ge, with the assistance of Heather
10 Pierce, will now address agenda item 6, Contested Case.
11 So Mr. Ge.

12 MR. GE: Mr. Chairman, members, Ms. Brewster,
13 good morning again. For the record, my name is Brian Ge
14 and I'm the managing attorney for the Enforcement
15 Division. As the chairman stated, Heather Pierce, the
16 lead attorney for the Enforcement Division, who tried this
17 case at the State Office of Administrative Hearings, is
18 with me here today.

19 Agenda item 6, which can be found on page 50 of
20 your Board books, is a contested case regarding the Texas
21 Department of Motor Vehicles v. Boss Exotics, LLC. A
22 hearing was held before an ALJ at the State Office of
23 Administrative Hearings on July 28, 2020. The ALJ issued
24 a proposal for decision on September 21, 2020.

25 Staff is asking the Board to issue a final

1 order that modifies the ALJ's proposal for decision to
2 include revocation of Boss Exotics' general distinguishing
3 number, in addition to the \$9,500 civil penalty that the
4 ALJ recommended.

5 The ALJ concluded that based on the evidence,
6 Boss Exotics violated various provisions of the Texas
7 Transportation Code by issuing multiple buyer's temporary
8 tags for the sale of a vehicle, issuing multiple dealer's
9 temporary tags for a vehicle before purchasing the
10 vehicle, and failing to notify the department of a change
11 to the dealer's address within ten days of the change, as
12 well as various provisions of the Texas Administrative
13 Code by failing to make records available for inspection
14 during normal business hours, failing to keep a complete
15 record of all vehicle sales, failing to have business
16 hours posted at the licensed location, and failing to have
17 a copy of their general distinguishing number posted in a
18 conspicuous location.

19 Based on those violations, the ALJ concluded
20 that a civil penalty of \$9,500 without revocation of Boss
21 Exotics' general distinguishing number was appropriate.
22 Ms. Pierce will now explain why staff believe the Board
23 should modify the ALJ's proposal for decision to include
24 revocation of Boss Exotics' general distinguishing number.

25 Thank you.

1 MR. BACARISSE: Ms. Pierce.

2 MS. PIERCE: Can you guys hear me?

3 MR. BACARISSE: Yes. Go right ahead, you're
4 good.

5 MS. PIERCE: Under the Occupations Code the
6 Board may revoke a license if the licensee fails to
7 maintain the qualifications for a license. Under the
8 Transportation Code, the Board may -- different
9 terminology -- cancel a license if the licensee fails to
10 maintain the qualifications for a license.

11 Here there was substantive evidence produced at
12 trial, that is in the record and in the PFD, to establish
13 that respondent failed to meet basic requirements of
14 having a license. The request for the addition of the
15 revocation term is based on respondent's failure to be at
16 the location he was licensed at, which is a qualification
17 for a license.

18 In the PFD on page 64 of your Board book, under
19 the section titled G. Appropriate Sanctions, the ALJ
20 writes that the violations that were proven were
21 relatively minor. The failure to be at a licensed
22 location is not a minor violation. The choice of penalty
23 is vested in the agency and not in the court. Ultimately
24 it is the Board and not the ALJ who is the decision-maker
25 concerning sanctions.

1 An established and permanent place of business
2 is a requirement of licensure and of having a license. A
3 license-holder must demonstrate that the location is an
4 established and permanent place of business. A GDN-holder
5 can only operate at their licensed location.

6 The PFD had findings of fact and conclusions of
7 law that respondent had not been at his licensed location
8 and that he had vacated his licensed location for a
9 substantial period of time. Here the ALJ adopted findings
10 of fact and conclusions of law that from at least November
11 8 of 2019 through July 6 of 2020 that he was not at his
12 licensed location. To put that in context, it is
13 approximately 242 days or seven months and 29 days.

14 Further, the PFD found that the respondent did
15 not meet other premises requirements on multiple locations
16 when he was at his site location. Respondent was not
17 operating from their licensed location in any capacity and
18 the PFD clearly establishes that respondent was not at
19 this location.

20 Further, respondent failed to alert the
21 department as to the change of address or phone number
22 which is required. The language in the law says "shall"
23 which you must interpret as "must".

24 Now, bottom line here and why we're requesting
25 revocation is that respondent was not at his licensed

1 location. In order to have and continue to have a
2 license, you must have a permanent and established place
3 of business. This is by no means a minor violation.

4 MR. BACARISSE: Thank you.

5 Thank you, Mr. Ge and Ms. Pierce.

6 I want to ask, before we proceed further, if
7 there is a representative for Boss Exotics here, please
8 approach the podium if you wish to be heard.

9 MS. BEAVER: Tracey Beaver, general counsel,
10 for the record.

11 There has been nobody to sign in at the
12 registration table for Boss Exotics' representation.

13 Thank you.

14 MR. BACARISSE: Okay, very good.

15 In that case, I would certainly allow members
16 if you have questions of Mr. Ge or Ms. Pierce, we could
17 entertain those questions now before a motion.

18 Mr. Graham.

19 MR. GRAHAM: It's really not a question, it's
20 just kind of thinking out loud here. I mean, these are
21 not insignificant violations. I mean, as I said
22 previously, I think it's important to keep fair and
23 reasonable -- keeping that in mind. I mean, we make
24 mistakes, I've made mistakes, as Stacey -- Member Gillman
25 said, she's made mistakes.

1 Okay. We need to be accountable for those, and
2 you know, we don't want to lose our license for minor
3 mistakes. This is racking them up right here. This is a
4 long list.

5 And it's just so troubling to me that as I
6 interpret the statute, the legislature has granted us the
7 ability to revoke a license based on our rules and the
8 statute, and here we have an ALJ who has just decided, it
9 feels like, to toss that out the window. And it's
10 disturbing and it's troubling.

11 And so really I just wanted to kind of say that
12 out loud as I was thinking about it. I don't really
13 understand. It's a matter of public safety that if we're
14 going to license dealers to sell automobiles that people
15 are going to put their families in, put their kids in,
16 well, they need to be legitimate and they need to follow
17 the rules.

18 And anyway, it just aggravates me. Anyway,
19 I'll stop there.

20 Thank you.

21 MR. BACARISSE: I appreciate your comments.

22 Thank you, Member Graham.

23 Any other members wish to make comment before
24 we entertain a motion?

25 Member Alvarado.

1 MR. ALVARADO: Mr. Chairman.

2 MR. BACARISSE: Sure.

3 MR. ALVARADO: I think I might actually have a
4 little typo on page 61, so I was just going to see if
5 someone could read what it's supposed to say to me,
6 please, if that's okay. Page 10 of the PFD, page 61 of
7 the book under Subsection IV.A, I have a word that's
8 spelled M-I-E-S. I don't think that's a real word, but
9 just that paragraph, if someone doesn't mind reading it
10 out loud just to be sure.

11 MR. BACARISSE: It looks like Ms. Pierce is
12 getting to that particular page or paragraph specifically,
13 so we'll give you a few moments to get there.

14 MS. PIERCE: You're saying 61 or 63 of the
15 Board book?

16 MR. ALVARADO: Of the Board book 61, page 10 of
17 the PFD, Section IV, Part A. It looks like a very
18 important word there and that word here on my paper reads
19 M-I-E-S.

20 MS. PIERCE: I noticed that this morning when
21 we printed out the PFD from SOAH's website. And this is
22 Heather Pierce speaking.

23 MR. ALVARADO: Thank you.

24 MS. PIERCE: So I'm going to read that
25 paragraph which is on your Board book, page 61 of your

1 Board book and page 10 of the proposal for decision. Bear
2 with me one minute.

3 MR. ALVARADO: Thank you.

4 MS. PIERCE: And do you want me to read the
5 entire paragraph?

6 MR. ALVARADO: Just Section A is where I have
7 my typo here.

8 MS. PIERCE: Okay. "The preponderance of the
9 evidence does show that respondent issued three buyer's
10 temporary tags to one consumer for the sale of one
11 vehicle. Whether respondent knew that it was a violation
12 of the statute and rules or not is irrelevant, as they
13 contain no knowledge requirement. Therefore, the ALJ
14 concludes that respondent violated Texas Transportation
15 Code Section 503.063(a)."

16 MR. ALVARADO: Okay. So "mies" should be
17 "rules". Thank you very much.

18 MR. BACARISSE: That's good. Thank you. Good
19 catch.

20 Any other questions, members?

21 (No response.)

22 MR. BACARISSE: Seeing none, I would entertain
23 a motion. Does anyone wish to make a motion in this case?

24 MR. SCOTT: Mr. Chairman?

25 MR. BACARISSE: Yes, Member Scott.

1 MR. SCOTT: May I have a moment to confer with
2 counsel, please?

3 MR. BACARISSE: Certainly. We'll take a brief
4 recess here. It is now 11:20. Do we need about five
5 minutes, Member Scott? Would that be sufficient? Or ten,
6 what do you want?

7 MR. SCOTT: Thank you, Mr. Chairman. Ten
8 minutes, please

9 MR. BACARISSE: Okay. Very good. We'll
10 reconvene at 11:30. Thank you.

11 (Whereupon, at 11:20 a.m., a brief recess was
12 taken.)

13 MR. BACARISSE: Okay, folks, it is 11:35 and
14 I'd like to reconvene this meeting of the Board of the
15 Texas Department of Motor Vehicles.

16 We are at the point now in the agenda where we
17 have had discussion and presentation in the matter
18 regarding an enforcement case, Texas Department of Motor
19 Vehicles v. Boss Exotics, and I had asked for a motion and
20 we took a brief recess, so I would like to restate my
21 request of the members to see if there is a motion in this
22 case.

23 MR. SCOTT: Mr. Chairman?

24 MR. BACARISSE: Member Scott.

25 MR. SCOTT: Thank you, Mr. Chairman.

1 I move that the Board uphold SOAH's PFD
2 adopting findings of fact 1 through 14 and conclusions of
3 law 1 through 21, as set forth in the ALJ's September 21,
4 2020 proposal for decision. The Board should also adopt
5 finding of fact 11(a) and conclusion of law 11(a), as set
6 forth in the ALJ's November 9, 2020 response letter to
7 petitioner's exceptions to proposal for decision.

8 Conclusion of law 22 should be amended to read
9 as follows: The Board should revoke respondent's GDN
10 license.

11 MR. SCOTT: Okay. Member Scott, that is your
12 motion.

13 Is there a second on this motion?

14 MR. GRAHAM: Second.

15 MR. BACARISSE: Member Graham moves second. We
16 have a motion and a second. We may have further
17 discussion, if there is any, amongst the Board.

18 Members, is there any comment from any of you
19 at this time on this motion?

20 MR. SCOTT: Mr. Chairman?

21 MR. BACARISSE: Yes, Mr. Scott.

22 MR. SCOTT: Thank you.

23 Since this is my motion, I'd like to state that
24 I understand the ALJ thought the violations were minor,
25 but there are rules for a reason and it is the Board's job

1 to determine which sanctions are appropriate. What level
2 of premises violations reaches the point of warranting
3 revocation?

4 If we looked at them individually they do not,
5 but collectively the pattern of behavior and the general
6 inability to follow the rules sets up flags for me,
7 particularly the ALJ's conclusion of law that the dealer
8 vacated his listed location for so many months. If a
9 dealer is not at his location for the better part of a
10 year, that is a serious violation of the premises
11 requirements, and someone that in my opinion does not
12 deserve to have a license to sell vehicles in Texas.

13 We've had several of us here on the Board
14 mention today that you can make mistakes, you can have
15 employees that make mistakes that you're not aware of.
16 You can have a rogue employee. I mean, things can happen,
17 and there are consequences for those. A lot of that stuff
18 wouldn't rise to the level of revocation of license.

19 But when you have a situation where the rules
20 are very clear: you have to have a license, you have to
21 have a licensed location and it has to be staffed, there
22 have to be people there to have a license. And if you're
23 not going to be present, if you're not going to be selling
24 vehicles, then you just don't need a license to sell
25 vehicles in the State of Texas.

1 I don't think the rules are that onerous that
2 it's impossible or put unnecessary burdens on people to
3 maintain their license to be a dealer, but we do have some
4 rules. And to just ignore that and ignore them for an
5 extended period of time, then I don't think you should be
6 licensed to be a dealer in the State of Texas.

7 MR. BACARISSE: Thank you, Member Scott.

8 Any other members wish to comment on the motion
9 that's before us?

10 (No response.)

11 MR. BACARISSE: Seeing no further comment, I
12 will call for the vote on this motion. As I call your
13 name, please state your vote for the record.

14 Member Alvarado?

15 MR. ALVARADO: Aye.

16 MR. BACARISSE: Member Gillman?

17 MS. GILLMAN: Aye.

18 MR. BACARISSE: Member Graham?

19 MR. GRAHAM: Aye.

20 MR. BACARISSE: Member Omumu?

21 MS. OMUMU: Aye.

22 MR. BACARISSE: And Member Scott?

23 MR. SCOTT: Aye.

24 MR. BACARISSE: And I, Chairman Bacarisse, vote
25 aye as well. It's unanimous, six to nothing. Thank you.

1 We'll now move to agenda item 7 which is
2 consideration and approval in the matter of the license
3 application of Peacedavies International, LLC, and SOAH
4 docket listed in your agenda there. We will hear from, as
5 we prepare the space -- thank you -- we will hear from
6 Monique Johnston and she will address agenda item 7 which
7 is this contested case.

8 Ms. Johnston, good morning, and you have the
9 floor. You're still on mute. Get that green circle to go
10 there. There you go.

11 MS. JOHNSTON: Chairman, members, Ms. Brewster,
12 good morning. For the record, I'm Monique Johnston,
13 director of the Motor Vehicle Division. Mr. Robert Rice,
14 with the Enforcement Division, is the attorney who
15 represented the department before the ALJ at the State
16 Office of Administrative Hearings.

17 Agenda item 7, which can be found on page 77 of
18 your Board books, is a contested case regarding the Texas
19 Department of Motor Vehicles v. Peacedavies International,
20 LLC.

21 Peace Uleanya applied for a salvage dealer
22 license in October 2017, identifying herself as the sole
23 owner of Peacedavies International, LLC. The business
24 address on the application is the same address as Friends
25 Auto Truck and Industrial Equipment, LLC, a licensed

1 salvage business owned by her spouse, Mr. Okezie Uleanya.

2 In February 2017, Mr. Uleanya pled guilty to
3 felony theft. And when he applied to renew his salvage
4 license in May of 2017, his criminal history was reviewed
5 and the application was denied and his license was
6 revoked. Mr. Uleanya did not contest this decision and
7 the salvage license for his business was revoked at the
8 end of February 2018.

9 As background, the Motor Vehicle Division has a
10 Licensing Committee which reviews license applications
11 with complex eligibility issues such as criminal history.

12 The committee may decide to approve an application, defer
13 an application, or refer to the Enforcement Division for
14 denial. The committee reviews applicants' criminal
15 histories and evaluates applicants for fitness under
16 existing statutes, rules and department guidelines.

17 The members of this committee include the
18 licensing manager, background research analysts, staff
19 attorneys, and the division director. The committee's
20 mandate is to apply these standards objectively and
21 consistently across applicants and license-holders. To do
22 so, the committee members focus on objective measures such
23 as how much time has passed since the last criminal
24 conviction, will licensing the applicant enable the
25 illegal activity to continue, and what documentation did

1 the applicant provide to prove their fitness and
2 eligibility for a license.

3 In May of 2018 the Licensing Committee decided
4 to pursue denial of Mrs. Uleanya's application after
5 reviewing the circumstances, including the additional
6 information she provided. The key factors for considering
7 the applicant unfit and denying licensure included the
8 following: the timing and use of the existing address of
9 her spouse's business, suggesting she was a chameleon
10 applicant, someone who is secretly applying for a license
11 on behalf of the former business owner who was ineligible
12 to be licensed due to revocation.

13 Texas Administrative Code 221.111(a)(5),
14 effective December 9, 2015, requires the department to
15 deny new applications submitted by members of the salvage
16 dealer's immediate family when the salvage dealer's
17 license has been revoked and the new business is at the
18 same location. And Mrs. Uleanya's spouse is unfit for
19 licensure and he would have had community property
20 interest in her business.

21 MVD referred the denied application to the
22 Enforcement Division and Mrs. Uleanya was sent notice of
23 department decision recommending denial of her application
24 in February 2019. The Enforcement Division referred the
25 contested case matter to SOAH and provided notice of

1 hearing to Mrs. Uleanya. The hearing was held on December
2 2, 2020 and the record closed the same day. The PFD was
3 issued February 1, 2021 and neither party filed
4 exceptions.

5 The ALJ found that Mrs. Uleanya was fit for
6 licensure and recommended a license be granted. The ALJ
7 concluded that the salvage rule prohibiting immediate
8 family members from being licensed does not apply to Texas
9 limited liability corporations, and under Texas law, a
10 spouse with community property interest in the LLC does
11 not have corresponding right to participate in the
12 business.

13 While this case was proceeding, the Board
14 adopted new fitness rules for salvage dealers which went
15 into effect October 31, 2020. These new rules delete the
16 family affiliation references and focus on whether an
17 unfit person has any control over the business to be
18 licensed. Mrs. Uleanya's sworn statement affirms that her
19 spouse will not have a role in the LLC she owns, and her
20 affidavit is included in the record.

21 Staff believes the ALJ's analysis and the
22 conclusions of law reached in this case are reasonable and
23 the recommendation would be the same under the rules in
24 effect at the time and under the department's current
25 criminal fitness rules. Accordingly, staff asks that the

1 Board issue a final order adopting the ALJ's findings of
2 fact and conclusions of law and approving the Motor
3 Vehicle Division to continue processing Peacedavies
4 International, LLC's application for a salvage dealer
5 license.

6 Mrs. Uleanya and her representative, Mr. Troy
7 Wilson, received notice of this meeting, however, I do not
8 believe they have a representative here today or they have
9 not checked in as of about 15 minutes ago.

10 Members, this concludes my remarks and thank
11 you. I'm open to any questions.

12 MR. BACARISSE: Thank you, Ms. Johnston.

13 And just to verify that there is no
14 representative here today representing Peacedavies
15 International, LLC, or is there one? Please identify
16 yourself, if so.

17 (No response.)

18 MR. BACARISSE: Okay. Thank you.

19 I'd certainly open the floor at this point for
20 any questions members may have of Ms. Johnston.

21 Mr. Alvarado.

22 MR. ALVARADO: Thank you, Mr. Chairman.

23 If you don't mind, can you just walk us through
24 the timeline one more time, from the October 2017
25 application, November 2017, October 2020, December -- all

1 the dates seem important to this, and also the rule change
2 date, please.

3 MS. JOHNSTON: Monique Johnston, for the
4 record.

5 So in February 2017, Mr. Uleanya, the spouse,
6 pled guilty to felony theft and when he applied to renew
7 his salvage license in May of 2017, his criminal history
8 was reviewed and the application was denied and his
9 license was revoked. Mrs. Uleanya shortly thereafter
10 submitted an application for a salvage license for the
11 same location under a different business name, and that
12 was in October of 2017. The final revocation for the
13 license of Mr. Uleanya occurred in February of 2018.

14 And then MVD's Licensing Committee reviewed the
15 application in May of 2018 after allowing Mrs. Uleanya to
16 submit any mitigating documents she wanted us to consider
17 for approval of her salvage license. It was decided by
18 the Licensing Committee to pursue denial of that license,
19 and then that was referred to the Enforcement Division to
20 pursue denial. And Mrs. Uleanya wanted to continue with
21 the application and requested a hearing, at which time it
22 went before SOAH.

23 There were some delays in the process due to
24 Mrs. Uleanya's changing attorneys a couple of times and
25 then asking for additional time to submit some

1 documentation, and then also, her attorney was ill during
2 that time. And then there was a family emergency on the
3 department's attorney's side as well, so there were some
4 delays before the final PFD was issued.

5 MR. ALVARADO: And the rule change?

6 MS. JOHNSTON: The rule change went into effect
7 October 31, 2020, and so that deleted the reference to
8 family members. If you have a family member who is
9 considered unfit, it deleted that portion in the rules.
10 And the salvage rules were previously not consistent with
11 the fitness rules for the other license types, so they now
12 align for all of the license types.

13 MR. ALVARADO: Thank you.

14 MR. BACARISSE: Members, any other questions of
15 Ms. Johnston?

16 (No response.)

17 MR. BACARISSE: Seeing none, I'd entertain a
18 motion on this agenda item. Does any member wish to make
19 a motion? Are you fixing to, Mr. Graham?

20 MR. GRAHAM: I'll make a run at it. I have
21 nothing prepared but I will just make a run at it.

22 I will make a motion to approve -- I'm sorry?

23 MR. BACARISSE: Uphold?

24 MR. GRAHAM: To uphold based on the ALJ's
25 conclusions of law and that's it.

1 MS. OMUMU: I second, Mr. Chair.

2 MR. BACARISSE: Okay. So we have a motion and
3 a second and we may have conversation and discussion
4 around that motion and second.

5 MS. BEAVER: Mr. Chairman, if I may?

6 MR. BACARISSE: Yes, Ms. Beaver.

7 MS. BEAVER: Tracey Beaver, general counsel,
8 for the record.

9 Just to clarify the motion, Member Graham, was
10 the motion to uphold SOAH's PFD and adopt the findings of
11 fact and conclusions of law as stated and to approve the
12 license issue in this matter?

13 MR. GRAHAM: Yes. Did I not say that?

14 MS. BEAVER: Perfect.

15 MR. GRAHAM: In my head, that's kind of how it
16 was coming around.

17 (General laughter.)

18 MR. BACARISSE: It's good to get that
19 clarification. Thank you.

20 Any discussion on this motion, members?

21 (No response.)

22 MR. BACARISSE: Hearing none, seeing none, I
23 would go ahead and call the question on this motion. We
24 will vote now. Please, again, state your vote as I call
25 your name.

1 Member Alvarado?

2 MR. ALVARADO: Aye.

3 MR. BACARISSE: Member Gillman?

4 MS. GILLMAN: Aye.

5 MR. BACARISSE: Member Graham?

6 MR. GRAHAM: Aye.

7 MR. BACARISSE: Member Omumu?

8 MS. OMUMU: Aye.

9 MR. BACARISSE: Member Scott?

10 MR. SCOTT: Aye.

11 MR. BACARISSE: And I, Member Bacarisse, vote
12 aye as well, so it's unanimous, six four, zero against,
13 and this matter is concluded.

14 We now can move to agenda item number 8 which
15 is a rule proposal, and in that situation we will have new
16 team coming up. We're going to turn it over to Mr. Luna,
17 Roland Luna, for presentation on agenda item 8, whenever
18 he's ready.

19 MR. LUNA: Good morning, Chairman Bacarisse,
20 Board members. My name is Roland Luna. I'm the director
21 of the Vehicle Titles and Registration Division.

22 The agenda item can be found on page 87 of your
23 Board book. The action item before you is a request from
24 the Vehicle Titles and Registration Division for Board
25 approval to publish the proposed amended Section 217.41 in

1 the *Texas Register*. The proposed amended section is to
2 implement Senate Bill 792 related to specialty license
3 plates and placards for vehicles of certain disabled
4 veterans.

5 Under Senate Bill 792, which is effective
6 January 1, 2022, access to disabled parking spaces will be
7 limited to persons, including disabled veterans, who are
8 eligible for a disabled person's license plate bearing the
9 international symbol of access under Transportation Code
10 504.201. Senate Bill 792 requires the department to adopt
11 rules by December 1, 2021. The agency requests approval
12 to publish the proposed amendment in the *Texas Register*.

13 I'm happy to take any questions that you have.

14 MR. BACARISSE: Thank you.

15 Members, do you have any questions of Mr. Luna
16 at this time on this item?

17 (No response.)

18 MR. BACARISSE: Okay. Seeing and hearing none,
19 I wanted to ask if there are any members of the public
20 that have signed up to comment on this agenda item
21 specifically.

22 Ms. Beaver?

23 MS. BEAVER: Tracey Beaver, general counsel,
24 for the record.

25 No public comment on this agenda item. Thank

1 you.

2 MR. BACARISSE: Thank you.

3 If there are no comments or questions, the
4 chair would entertain a motion on this item.

5 MR. GRAHAM: Mr. Chairman, I make a motion to
6 approve specialty plates designed as presented -- rule
7 proposal. I'm sorry. Rule proposal. I'm sorry.

8 I make a motion to approve the rule proposal
9 Chapter 217 on Vehicles Titles and Registration, as
10 proposed.

11 MR. BACARISSE: Great. There is a motion. Is
12 there a second?

13 MS. GILLMAN: Second.

14 MR. BACARISSE: Member Gillman seconds this
15 motion. All in favor please signify by your vote when I
16 call your name.

17 Member Alvarado?

18 MR. ALVARADO: Aye.

19 MR. BACARISSE: Member Gillman?

20 MS. GILLMAN: Aye.

21 MR. BACARISSE: Member Graham?

22 MR. GRAHAM: Aye.

23 MR. BACARISSE: Member Omumu?

24 MS. OMUMU: Aye.

25 MR. BACARISSE: Member Scott?

1 MR. SCOTT: Aye.

2 MR. BACARISSE: And I, Member Bacarisse, vote
3 aye as well. The motion is approved. Thank you.

4 Now the fun stuff, agenda item number 9 and the
5 specialty plates.

6 Mr. Luna, please continue.

7 MR. LUNA: Thank you, Chairman Bacarisse.

8 Roland Luna, Vehicle Titles and Registration
9 Division.

10 The action item before you is a request from
11 the Vehicle Titles and Registration Division for Board
12 approval of denial, in accordance with the Board's
13 statutory authority. The four plates that can be found in
14 your Board book on page 98 -- we also have a display right
15 in front of the dais -- each plate is from the state's
16 specialty license plate marketing vendor, My Plates.

17 The first plate design is from My Plates who
18 seeks approval for the design and issuance of a new
19 University of Texas San Antonio plate proposed under
20 Transportation Code 504.851. The department posted the
21 proposed design for public comment in April of this year;
22 817 people liked the design, 161 did not.

23 The second plate design is for the design and
24 issuance of a new Love Heart black plate proposed under
25 Transportation Code 504.851. We posted the proposed

1 design for public comment in April of this year; 390 liked
2 the design, 280 did not.

3 The third plate design which is a design and
4 issuance of a Louisiana State University crossover design
5 plate proposed under Transportation Code 504.6011 and
6 504.851. The department posted this proposed design for
7 public comment as well in May of 2021; 189 liked the
8 design, 144 did not.

9 The fourth and final plate is a redesigned
10 plate for the issuance of an existing Mississippi State
11 University plate proposed under Transportation Code
12 504.851. We posted the proposed design for public comment
13 in May of 2021; 117 people liked the design, 171 did not.

14 The agency requests your consideration and
15 approval of these plates.

16 This concludes my presentation and I'm happy to
17 take any questions that you have.

18 MR. BACARISSE: Thank you.

19 MS. GILLMAN: I have a question.

20 MR. BACARISSE: Yes, Member Gillman.

21 MS. GILLMAN: Thank you, Mr. Chairman.

22 This is just a procedure question. When you
23 have more people dislike than like -- and I have nothing
24 against Mississippi State or the redesign, I'm just asking
25 for my knowledge -- you are recommending we do it anyway?

1 MR. LUNA: We post these in what we call our
2 eVIEW, so on our website it's an unscientific way of
3 eliciting feedback from the public. It's a way for them
4 to provide feedback as to whether or not they like the
5 plate.

6 Now, if the Board decides to approve the plate,
7 this particular plate still has to meet the minimum of 200
8 so that it can stay in production.

9 MS. GILLMAN: Oh.

10 MR. BACARISSE: Two hundred sales, right? You
11 don't think it was a bunch of Vanderbilt folks, do you,
12 that were piling in there? It's anonymous, right, the
13 feedback is anonymous.

14 (General laughter.)

15 MR. LUNA: If you choose to provide some
16 information, Chairman, you can.

17 MR. BACARISSE: I'm not aware of anything.

18 MS. GILLMAN: So what you're saying is you have
19 to get 200 sales in order to keep printing.

20 MR. LUNA: Exactly right, Member Gillman.

21 MS. GILLMAN: Okay. These are new plates so
22 there's no sales yet.

23 MR. LUNA: Some of them are new, some of them
24 are redesigns.

25 MS. GILLMAN: For the redesigns, you already

1 have more than 200 or else you wouldn't be proposing it.

2 MR. LUNA: So if you want to look to the
3 display, if I could direct your attention there, the third
4 plate coming down is a crossover plate. And what that
5 means is that you have a white background, and if you look
6 to the right of the display case where there's a colored
7 background. That's why we call that a crossover plate,
8 you're crossing over to the vendor so that you can have
9 some color that's included in the design of the plate.

10 MR. SCOTT: I have a question.

11 MR. LUNA: Yes, sir.

12 MR. SCOTT: So going back to the Mississippi
13 State, for Member Gillman. Can people still buy the old
14 plate? If we approve the new plate, does the old plate
15 automatically go out of production?

16 MR. LUNA: I believe that once we go to the new
17 plate, that it's only the new plate, but I have to check
18 with the program. That's correct.

19 MR. SCOTT: Okay. So the old plate goes out of
20 production.

21 MR. LUNA: Yes, sir.

22 MR. SCOTT: Now, if we have a situation on the
23 new plate where only 50 people buy it, they get 50
24 produced anyway, but if we don't sell 200 then it's not
25 available the next year? Is that what I'm to understand?

1 MR. LUNA: Sell and maintain 200.

2 MR. SCOTT: Sell and maintain. So there have
3 to be 200 each year?

4 MR. LUNA: Yes, sir.

5 MR. SCOTT: Okay. Thank you.

6 MR. BACARISSE: Member Graham.

7 MR. GRAHAM: And this is really just a general
8 question. Is the design of these plates limited in the
9 amount of colors that can be put on the plate, or is it
10 unlimited? Just a general question.

11 MR. BACARISSE: Whatever is imaginable.

12 MR. GRAHAM: Oh, how about that. Okay.

13 And then also, just for clarification as well,
14 with the departure of UT and OU from the Big 12, do we
15 need to consider revocation of any previous plates?

16 (General talking and laughter.)

17 MR. GRAHAM: Okay, relax, relax. Groans from
18 everywhere. I guess I am in Austin, right?

19 All right, just having some fun with you. All
20 right, I'm done, I'm out. Sic 'em Bears.

21 MR. BACARISSE: You've got a plate.

22 Any other questions?

23 (No response.)

24 MS. HOLLOWAY: All right. Hearing none, I
25 would call -- I've lost track. Are we at a motion and

1 second already?

2 MR. LUNA: No, we have no motion.

3 MR. BACARISSE: We need a motion. Thank you.

4 Sorry.

5 Would anyone like to make a motion to approve
6 agenda item 9, the specialty plates, as laid out by Mr.
7 Luna?

8 MS. OMUMU: Mr. Chairman, I'd like to make a
9 motion.

10 MR. BACARISSE: Yes, Member Omumu.

11 MS. OMUMU: I move that the Board approve the
12 specialty plates as presented. Thank you, sir.

13 MR. BACARISSE: Thank you.

14 We have a motion. Is there a second?

15 MS. GILLMAN: I'll second.

16 MR. BACARISSE: There is a second, Member
17 Gillman.

18 We have a motion and a second. Any discussion
19 on this motion further?

20 (No response.)

21 MR. BACARISSE: Hearing none, I'll call the
22 vote.

23 Member Alvarado?

24 MR. ALVARADO: Aye.

25 MR. BACARISSE: Member Gillman?

1 MS. GILLMAN: Aye.

2 MR. BACARISSE: Member Graham?

3 MR. GRAHAM: Aye.

4 MR. BACARISSE: Member Omumu?

5 MS. OMUMU: Aye.

6 MR. BACARISSE: Member Scott?

7 MR. SCOTT: Aye.

8 MR. BACARISSE: And I, Member Bacarisse, vote
9 aye. So it is six-zero, unanimous.

10 Thank you, Mr. Luna. I appreciate it. That
11 takes care of item number 9.

12 And item number 10, Ms. Brewster has some
13 advisory committee appointments that she'd like to
14 discuss.

15 So Ms. Brewster, you have the floor.

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

17 For the record, Whitney Brewster, executive
18 director.

19 I am bringing before you some advisory
20 committee appointments for consideration. Transportation
21 Code 1001.031 directs the Texas Department of Motor
22 Vehicles Board to appoint one or more advisory committees.
23 The Board did adopt rules establishing five new advisory
24 committees: the Consumer Protection, or CPAC, Customer
25 Service, Motor Carrier Regulation, Motor Vehicle Industry,

1 and Vehicle Titles and Registration, during the August 8,
2 2019, Board meeting.

3 Just a little bit of information. The Board
4 has established two of those committees. I am asking for
5 consideration for the remaining three.

6 Just some information about the remaining
7 advisory committees. The Customer Service Advisory
8 Committee will make recommendations on topics related to
9 improving and enhancing customer service by the
10 department, including infrastructure, new customer service
11 initiatives, policy and process improvements, and
12 technology. The Motor Carrier Regulation Advisory
13 Committee will make recommendations on topics related to
14 motor carrier registration and motor carrier regulation.
15 And finally, the Motor Vehicle Industry Regulation
16 Advisory Committee will make recommendations on topics
17 related to regulation of the motor vehicle industry.

18 So just a little more about who can be
19 considered or what the composition of the committees
20 should look like. Advisory committee members must have
21 knowledge about and interest in the work of the committee,
22 represent a broad range of viewpoints about the work of
23 the committee, and not be a member of the Board.

24 Advisory committees must be composed of a
25 reasonable number of members, not to exceed 24, and this

1 is in rule. And to the extent practical, ensure
2 representation of members from diverse geographical
3 regions of the state who have an interest or expertise in
4 the subject area of the particular advisory committee.

5 The Motor Carrier Regulation Advisory Committee
6 and Motor Vehicle Industry Regulation Advisory Committee
7 must be composed of members that provide a balanced
8 representation between the regulated industry, and
9 consumers of regulated services, and that's under
10 Government Code. But because the Customer Service
11 Advisory Committee is charged with considering department
12 customer service, the balancing requirement in Government
13 Code 2110.002 does not apply. Instead, the department
14 considers the factors of knowledge, interest and
15 geographic diversity to recommend individuals as well as
16 industry representatives for membership.

17 So I am recommending today that the Board
18 appoint the individuals from the list of those potential
19 members that you can find starting on page 103 of your
20 Board materials for the Customer Service Advisory
21 Committee, the Motor Carrier Regulation Advisory
22 Committee, and the Motor Vehicle Industry Regulation
23 Advisory Committee.

24 The Board is required to look at various
25 factors, including the balance of the advisory committee,

1 to ensure representation of industries and consumers of
2 our services, like I said, with the exception of that
3 Customer Service Advisory Committee, and different
4 geographical regions of the state.

5 I have reviewed 19 applications for the
6 Customer Service Advisory Committee, 43 applications for
7 the Motor Carrier Regulation Advisory Committee, and 41
8 applications for the Motor Vehicle Industry Regulation
9 Advisory Committee. I considered the various eligibility
10 standards. I looked at the applicants' knowledge and
11 interest of the work, differing viewpoints, industry
12 occupation.

13 I also looked at the different geographical
14 regions of the state, as well as whether the applicants
15 were consumers of our services. And I think it's
16 important to point out that we do consider tax assessor-
17 collectors not a regulated community by us, but a consumer
18 of our services.

19 I also would like to point out, because we're
20 still relatively new to advisory committees, having just
21 finishing out the remaining three, I think it's important
22 to note that the rule does not say equal representation of
23 all industries; it says industry and consumers of our
24 services. And based on the number of applications that we
25 receive, to the extent practicable, we try to honor what

1 is included in the rule.

2 Are these advisory committees perfect? No,
3 they are not, in terms of equal representation of all
4 stakeholder groups. However, to the extent practicable,
5 we did try to consider industry and knowledge and also
6 based on what the applicants selected.

7 So the process that we use for vetting is that
8 I'll just tell you on multiple occasions I've reached out
9 soliciting applicants for our membership on our advisory
10 committees, including reaching out to a broad range of
11 viewpoints about what we do, including the associations,
12 sent out several govDeliveries. We are still accepting
13 applications.

14 This is a dynamic process, I would say, in that
15 these are volunteers. Oftentimes they roll on, they roll
16 off, and so we are continuously receiving applications and
17 vetting those for consideration to bring back to the
18 Board.

19 So with that, I will conclude my remarks and
20 see if the Board has any questions.

21 MR. BACARISSE: Thank you, Ms. Brewster.

22 Members, any questions on this item?

23 MS. GILLMAN: Yes.

24 MR. BACARISSE: Member Gillman.

25 MS. GILLMAN: I learned about these three -- is

1 it three --

2 MS. BREWSTER: The three remaining advisory
3 committees?

4 MS. GILLMAN: I learned of this just within the
5 last seven days, whenever, and when I got this list it
6 seemed to me that the dealer representations -- I'm just
7 going to start with the Customer Service Advisory
8 Committee. The dealer representation, I can see one from
9 Audi Dominion, he's the dealer principal, and eight tax
10 collectors.

11 I feel like customer service and infrastructure
12 and technology is extremely important to car dealers, and
13 I feel like that the statement balancing does not apply is
14 wrong, and that dealers are customers of this agency and
15 should absolutely be more represented, instead of one or
16 even two out of 17.

17 So similarly, on the other two committees, I
18 feel that the dealer -- like for example, Motor Vehicle
19 Industry Regulation. Well, motor vehicle industry is a
20 dealer's livelihood, and I feel like there should be, out
21 of 20 people, more franchised dealers. Not weighted more
22 or less, it's just I feel like it doesn't have to be equal
23 but it shouldn't be, like in my customers service example,
24 one out of 17.

25 So I respectfully -- and I've talked to

1 Whitney about this and so it's not a surprise at this
2 moment to her, but I feel like the committees are
3 definitely at 17, 20 and 20 are already really -- those
4 are large committee sizes. But I respectfully would
5 request that balancing should apply. And like I said, it
6 doesn't have to be perfectly even but not weighted so
7 inappropriately -- or disproportionately, I should say.

8 So those are my comments, and when it's
9 appropriate, Mr. Chairman, I'd like to make a motion.

10 MR. BACARISSE: Okay. Thank you, Member
11 Gillman.

12 Member Graham, did I see you thinking about
13 this?

14 MR. GRAHAM: Well, really I was just going to
15 ask some questions along the same lines. I was trying
16 to -- sometimes it's hard to really get a sense for what
17 someone's responsibility is based on just the company
18 name. So yeah, her sentiments I would concur with. I
19 just want to make sure that everyone is represented on
20 these.

21 MR. BACARISSE: Okay. Member Scott, do I see
22 you would like to make a comment?

23 MR. SCOTT: Thank you, Mr. Chairman.

24 I would just like to know if Director Brewster
25 would like to address what Member Gillman had to say.

1 MS. BREWSTER: Mr. Chairman?

2 MR. BACARISSE: Sure, Ms. Brewster.

3 MS. BREWSTER: Thank you.

4 And thank you, Member Scott. I appreciate the
5 opportunity to address it.

6 I'd like to just, one, address the fact that
7 these committees were established through rule on August 8
8 of 2019. I reached out immediately after adoption of
9 those rules to various organizations for help finding
10 volunteers that would be interested in helping develop
11 policy recommendations to the Board, including motor
12 vehicle dealers, motor carriers. And I reached out again
13 in March of 2020 to the motor carrier associations to have
14 greater help in being able to round those out.

15 There's a reason why we didn't bring all of
16 them to the Board: we've only established two because we
17 have not had the applications. And so we waited to ask
18 for consideration of these advisory committees until we
19 had more applications.

20 On June 29 of 2021 I reached out to all of our
21 govDelivery subscribers and various organizations for help
22 finding additional applicants to help fill those vacancies
23 on those three remaining committees. We received 33
24 additional applications, which was excellent.

25 But I want to make the point again that these

1 are volunteers. Obviously we need to abide by the 24
2 members, but we try to be as inclusive as possible.
3 That's why you see the large group that you do.

4 I'll say for the Customer Service Advisory
5 Committee, I'm presenting the Board with 17 names for
6 consideration. Of those, five are county tax assessor-
7 collectors, three are county tax office employees, three
8 motor carrier representatives, one franchised auto dealer,
9 two salvage representatives, and three members of the
10 public. I would like to say that we originally did have
11 two franchised dealers, but when contacted, the gentleman
12 was no longer able to serve.

13 For the Motor Carrier Regulation Advisory
14 Committee, I am presenting the Board with 20 names for
15 consideration. I am recommending that the Board appoint
16 12 motor carrier representatives, three representatives of
17 household goods movers, one salvage representative, one
18 county tax assessor, one law enforcement member, and two
19 public members.

20 And last, the Motor Vehicle Industry Advisory
21 Committee has nine motor vehicle dealer representatives,
22 one motor carrier representative, one salvage
23 representative, two tax office employees, one law
24 enforcement member, and six public members.

25 When we receive applications, like I said, we

1 received 19 for the Customer Service Advisory Committee,
2 and I'm recommending 17, one of which dropped out. And so
3 I'd just like to just mention that the individuals that
4 are applying for these advisory committees select the
5 committees that they want to serve on. And so if somebody
6 has not selected the Customer Service Advisory Committee,
7 we're not just putting people on those advisory
8 committees. We're supposed to base it off the interests
9 that they put in the application.

10 So these advisory committees, as you know,
11 provide policy recommendations to the Board. There are a
12 lot of policy considerations, having just gone through the
13 legislative session, some very large that we need to move
14 on that will take a long time.

15 I am proposing these committees. I am happy to
16 bring back additional names for consideration if we
17 receive additional applications, but we are at the mercy
18 of those who apply and what committee they select to serve
19 on.

20 I know that was rather long-winded, but I
21 appreciate the opportunity to respond to that.

22 MR. BACARISSE: I have a question, Whitney.
23 The last time we've done this was the first time.

24 MS. BREWSTER: Yes.

25 MR. BACARISSE: So what have you seen? Even

1 though the people have said yes, I want to serve, how has
2 attendance and activity been generally from these
3 volunteers? Have most, some, few, how would you judge it
4 or how would you explain it?

5 MS. BREWSTER: I would actually, if you don't
6 mind, I'd like to ask Counsel Beaver to respond to that.
7 She's been involved in all of the meetings.

8 MR. BACARISSE: All of the meetings. Great.

9 MS. BEAVER: Thank you. Tracey Beaver, general
10 counsel, for the record.

11 Yes, we have established some advisory
12 committees and they've brought recommendations to the
13 Board. I just wanted to also state that the advisory
14 committees have no actual authority. They just are
15 members who are providing some perspective to the Board,
16 as Sunset requested we do for those policy issues, so we
17 can get similar transparent and open communication with
18 policy issues from those folks that are going to be
19 impacted before it becomes an agenda item for the Board.

20 But as far as participation in the advisory
21 committees, it's been very active. We've been very
22 pleased that the folks who have volunteered have actually
23 spent several hours in meetings, repeatedly meeting until
24 they find where they can get to a place that they have
25 enough information, have gone down every rabbit trail and

1 know the policy issues to bring a recommendation to the
2 Board.

3 It's very active participation, communication.

4 Those are also available on the website so you can also
5 go back and review the discussion and materials if
6 additional information is wanted from the Board as well.

7 When we set these advisory committee meetings,
8 we do provide a couple of dates that would be available,
9 and times. I would mention it is not possible for every
10 member to attend every meeting, so we need to make sure we
11 have a quorum. Although you're going to recommend a
12 certain number of applicants be on each committee, there
13 is no guarantee that all 17 of those folks are going to be
14 able to participate on that date and that time.

15 So that's why we try to get representation from
16 the different industries and more than one from each
17 industry, so that if somebody is not available to attend,
18 we do have somebody else from that industry who's
19 available. So we take that into consideration when we set
20 these meetings. If we notice that we only have a certain
21 industry representative at that meeting and it's not a
22 good time for a balanced representation, we will reset it
23 to another time so that we can have that voice at the
24 meeting.

25 So I just wanted to reiterate that even though

1 there might be five independent dealers and five
2 franchised dealers recommended for the Motor Vehicle
3 Industry Advisory Committee, the chances that all ten of
4 them participate in any particular meeting is not likely
5 because trying to coordinate those schedules.

6 MR. BACARISSE: Sure.

7 MS. BEAVER: We also on the back-end try to
8 make sure that we have that equal balance -- not equal,
9 that we have that balanced representation for the actual
10 meeting.

11 Thank you.

12 MR. BACARISSE: Great. Thank you.

13 Members, any other questions?

14 MS. GILLMAN: I have another comment.

15 MR. BACARISSE: Member Gillman.

16 MS. GILLMAN: I just feel like the motor
17 vehicle industry committee, with, I think -- I'm seeing
18 one franchised dealer is just not enough, one out of 20.
19 In case he's not available, we have zero out of 20. So I
20 respectfully would ask for more time to add applicants to
21 make it and I feel like it should be -- the balancing
22 should apply and a more equal, not perfectly, but more
23 equal representation should apply.

24 MR. BACARISSE: Member Graham.

25 MR. GRAHAM: So this is, as I think you said,

1 these are going to change. There are going to be folks
2 fall off, going to be folks come in. Can that occur at
3 any given time? I mean, does a new appointment require
4 Board approval or only the creation, every appointment?

5 MS. BREWSTER: Yes, sir. I bring new names to
6 the Board for consideration before adding to the advisory
7 committees.

8 MR. GRAHAM: Okay. And so, you know, Stacey, I
9 don't know if would be a reasonable ask to maybe approve
10 but request additional efforts to improve that, but it
11 does -- I agree, we need some representation, and if we
12 need to provide names, we can do that.

13 MS. GILLMAN: I didn't know if adding five or
14 six to every committee makes it more like a classroom than
15 a committee. The size looks really big to me, but that's
16 not my decision. But you know, I'm sure every one of
17 these people, thankfully, would volunteer, that's really
18 nice, but I just need applicants in the franchised dealer
19 to add to.

20 MR. BACARISSE: Member Scott.

21 MS. GILLMAN: Yeah. Director Brewster, these
22 committees are capped at a certain number?

23 MS. BREWSTER: They're capped at 24 through
24 rule.

25 MR. SCOTT: Okay.

1 MS. GILLMAN: So I can only add four.

2 MR. SCOTT: Unless a couple leave. And you're
3 going to have a lot of that. People are aware of it or
4 not. They think they're interested and they're not going
5 to be interested. I don't know.

6 But like one committee we only have 17 on,
7 right? So there's room on there. But like the Motor
8 Carrier, there's 20 already.

9 MS. GILLMAN: And like I said, I just found out
10 about this last week, and I would have -- I think I would
11 have raised my hand and said, hey, we need to work on
12 this. But now it's already full.

13 MR. BACARISSE: Well, at 17 on the Customer
14 Service Advisory, you've got some room. Right?

15 MS. GILLMAN: Yes, agreed.

16 MR. BACARISSE: Which is good.

17 MS. GILLMAN: Motor Vehicle Industry -- I mean,
18 Motor Carrier, I feel like I don't know what issues there
19 are but I don't know if new car franchised dealers should
20 be on it.

21 MR. GRAHAM: Yeah.

22 MS. GILLMAN: But the Motor Vehicle Industry,
23 that sounds like a topic that would be very intimate to
24 new car franchised dealers.

25 MS. OMUMU: I have a question.

1 MR. BACARISSE: Yes, Member Omumu.

2 MS. OMUMU: Director Brewster, you mentioned
3 that you began this process back in 2019. Is that
4 correct?

5 MS. BREWSTER: Yes, ma'am. We've been
6 recruiting every since then.

7 MS. OMUMU: Okay. And the Board was made aware
8 of that?

9 MS. BREWSTER: Yes, ma'am.

10 MS. OMUMU: Okay. So along those lines, I'm in
11 favor of us making a motion to approve, because this has
12 now been a two-year-long process and dealers had ample
13 opportunity to apply if they were interested. But there
14 was no interest, the reason why there is the imbalance, so
15 not for lack of trying on staff's part. So my view is a
16 little different.

17 MS. GILLMAN: It's just that we approved the
18 advisory committees back in August, but the actual
19 formation of and the weight of industry experts is just
20 now being disclosed. And so I feel a little blinded
21 because they were formed and I didn't know the balance.

22 I wish there was more transparency at the
23 formulation time, whether it was back in August or in June
24 of the next -- ten months later. I just wish there was a
25 little bit more transparency about the balance.

1 And if no one volunteers, I completely agree,
2 there has to be a time limit and to move forward. I'm not
3 disagreeing. I just didn't know when these were going to
4 be formed.

5 I just don't have a crystal ball to let me know
6 the imbalance, and I just don't think the -- I disagree
7 that balancing does not apply, I think balancing should
8 apply. And I respect Whitney's trying to formulate these
9 committees and working with the applicants she has, I just
10 wish more transparency with regard to when it's not
11 balanced.

12 So I'm asking for a little more time, and you
13 said things can be added.

14 MS. BREWSTER: Yes, ma'am.

15 MS. GILLMAN: I guess if I was going to get my
16 dream wish, it would be similar to the Board's makeup, you
17 know, a little bit of manufacturer, a little bit of new,
18 used, law enforcement, tax assessor. I mean, I think that
19 that's a very good balance. And Motor Vehicle Industry
20 sure sounds like a topic that would be super important to
21 franchised dealers and we need more representation.

22 MR. BACARISSE: Mr. Scott.

23 MR. SCOTT: When we authorized these boards, I
24 made a point, as the independent dealer representative on
25 this board, to reach out to the executive director of the

1 Independent Dealers Association, and make a plea or
2 comment to him that these boards were being formed and
3 felt like that his association should be active in trying
4 to recruit and find members of his group to serve on these
5 boards. I went back to him a couple of times on that, and
6 he said, Well, we're trying, we're trying. We're just not
7 having a whole lot of interest.

8 So I really want to follow up with Director
9 Brewster's comment and what Tracey said, it has been
10 difficult. I just think maybe as members of the Board if
11 we want to have good representation from our specific
12 areas of expertise that we be as active as we can to help
13 recruit people. So that's my comment.

14 MS. GILLMAN: Is it possible in the future
15 before you bring it to the Board meeting for adoption that
16 there be more transparency with regard to, this is the
17 makeup and this is what we're lacking. And in this
18 particular case, not one -- well, I'm sorry -- there's one
19 franchised dealer out of 20 on both Motor Vehicle and on
20 Customer Service. I'm asking for more transparency 30
21 days ahead of time before you bring it to the Board so
22 that there can be a recognition of unequal representation.

23 So with that said, I'm asking for -- you have
24 said yes, you can present more applications. I'm thankful
25 for that and I'm wanting -- I don't know if you've already

1 told all of these folks, but I would have wanted it to be
2 more across the industry representation, similar to this
3 Board.

4 MR. BACARISSE: I appreciate your points,
5 Member Gillman.

6 I have a question about timing. After the last
7 session you all, for the first time, appointed these
8 advisory committees to help us promulgate rules that the
9 legislature mandated this agency come up with, and
10 certainly there were some very hot topics in that interim
11 period, which these boards did give good advice on.

12 Our challenge now is one of timing once again.

13 Since the legislature has concluded we have rulemaking
14 mandates on us and we have to move forward and promulgate
15 rules in a timely fashion, that being as it is, I am
16 sensitive to your point about finding good representation,
17 active representation so that the voice of all parts of
18 our public can be heard.

19 My question is, since these memberships are
20 fluid and can we entertain applications in any given time
21 throughout the next couple of years.

22 MS. BREWSTER: We do.

23 MR. BACARISSE: And you do. I think it's
24 incumbent on all of us, as Board members, to do what we
25 can to promote the point of participation from our various

1 industries. I'm just speaking as a public member; I think
2 we have good public representation. So I want to
3 encourage us to do that, I think that is important.

4 I share your point, absolutely. But I think
5 that our challenge is to move forward with the formation
6 of the committees with the understanding that more
7 representation can be sought, should be sought, shall be
8 sought from various parts of our universe. Right?

9 MS. GILLMAN: Yes, sir. I'm glad you brought
10 up history.

11 When these advisory committees were formulated
12 and CPAC was the first one to get formed, from my memory
13 we had a franchised dealer that had fallen off and only
14 because I was informed at the Board meeting, just like
15 this, of the new committee members and there was not a
16 franchised dealer on it, I raised my hand and said, Wait a
17 minute. And we did get two great franchised dealers to be
18 added to that board, and how many people are on CPAC right
19 now?

20 MS. BREWSTER: I believe 14.

21 MS. GILLMAN: And in my opinion, they worked
22 really well together and had very good positive
23 recommendations and it worked great. So that's why I feel
24 like I'm repeating history again. I'm here saying, Wait a
25 minute, we're under-represented.

1 And I'm only learning about this in the last
2 seven days, so please give me some time to improve the
3 balance. It's just like CPAC, it was not balanced at all.

4 We added two and I feel like the work product was great
5 and it worked. So that's what I'm asking again. I'm just
6 finding this out this week, and again, I'm feeling under-
7 represented.

8 Timing is important. I respect timing, I'm
9 just asking to allow -- because it is so unbalanced to
10 give us some time. You can even set the time, 30 days
11 will be okay with me.

12 MR. BACARISSE: So here's the question -- I
13 mean, it goes to your question. I was just going to ask
14 for information purposes, you know, if these committees
15 were approved today, what's the timeline for them
16 beginning to work and really dig into things.

17 What's that timeline? I don't know.

18 MS. BEAVER: Tracey Beaver, general counsel,
19 for the record.

20 We would anticipate starting up these
21 committees the end of this month and the beginning of next
22 month so that we could have some input from the advisory
23 committees to bring potential rulemaking and policy issues
24 to this Board in October. We've only received one
25 additional application since this list was provided to the

1 executive director and recommended to the Board in the
2 Board books for participation in these committees.

3 After the department has sent out our
4 govDelivery email notices, reached out to each of the
5 specific industry associations, personal calls made to the
6 leadership of associations and a lot of public outreach,
7 we updated our web page, and we still have not received
8 any additional applications. So I just wanted to make
9 mention that there's been a tremendous effort from the
10 department to reach out to all of the different
11 industries.

12 Thank you.

13 MR. BACARISSE: All right. Thank you.

14 Members, we have the task before us to take
15 some action on each of these three committees. Certainly
16 we could have a motion and a second on a motion and then
17 discuss that motion if you so choose.

18 I see Member Scott.

19 MR. SCOTT: I have another question.

20 MR. BACARISSE: Sure.

21 MR. SCOTT: Looking at the example of the
22 Motor Carrier, so we have 20 people on there, and the
23 committee can be 24, so if this were approved today and
24 members of the Board got out and recruited the additional
25 four more people to volunteer, they would still have to

1 come back before the Board for confirmation. Is that
2 right?

3 MS. BREWSTER: That's correct, Member Scott.

4 MR. SCOTT: So we could find a couple more
5 people, the committee would go to work but the four new
6 people we found could not be as part of that committee
7 until the next Board meeting and they were confirmed.

8 MS. BREWSTER: If we received additional
9 applications that rounded out the advisory committees a
10 little bit better, I think the first opportunity to bring
11 those names to the Board would be in October.

12 MR. BACARISSE: To Member Scott's question,
13 they wouldn't be able to begin participating unless and
14 until they were confirmed by this Board. Is that correct?

15 MS. BREWSTER: To be a voting member on the
16 advisory committee. However, these are open meetings,
17 anybody is invited to the meetings and welcome to share
18 their thoughts.

19 MS. GILLMAN: Have we passed ballots outside of
20 meetings? I'm trying to remember.

21 MR. BACARISSE: Do you mean has the Board, the
22 DMV Board called a special meeting for a certain purpose
23 outside of the normal cycle? Is that kind of the
24 question?

25 MS. GILLMAN: Where you just pass a ballot,

1 it's sent to your office and you check the box and sign
2 your name. Has that happened?

3 MS. BEAVER: Tracey Beaver, general counsel,
4 for the record.

5 Are you asking if we've had ballots for the
6 board or for advisory committees?

7 MS. GILLMAN: Yes.

8 MR. BACARISSE: Stacey, I think your question,
9 if I may try to restate it, is has this Board been asked
10 to vote on one item out of Board meeting sequence?

11 MS. GILLMAN: Not rulemaking, it's not a
12 contested case, it's not -- I'm just asking could that be
13 a possibility.

14 MS. BREWSTER: Mr. Chairman, if I may?

15 MR. BACARISSE: Yes.

16 MS. BREWSTER: We have had Board meetings to
17 consider one topic before. I cannot recall what the topic
18 was, but it was one item. We cannot do a ballot because
19 of the requirements of the Open Meetings Act. We would
20 need to bring that together.

21 MR. BACARISSE: We need to post a meeting and
22 have it available to the public.

23 MS. BREWSTER: Yes, sir.

24 MR. SCOTT: Question.

25 MR. BACARISSE: Mr. Scott.

1 MR. SCOTT: Can the Board authorize the
2 executive director to make temporary appointments to these
3 committees subject to confirmation at the next meeting?

4 MS. BEAVER: Tracey Beaver, general counsel,
5 for the record.

6 I need a moment just to look at the statute.

7 MR. BACARISSE: Okay, sure. Take a look.
8 Thank you.

9 That's a good question, Mr. Scott.

10 MS. GILLMAN: I hate to be --

11 MR. BACARISSE: Obviously you're passionate
12 about this issue so we want to hear you, and that's fine.

13 MS. GILLMAN: I'm going one more time to Motor
14 Vehicle Industry. One person on this list -- and by the
15 way, I don't know him so I have no personal interaction
16 with this one person but I know him by reputation, and
17 that is number 8, Buddy Ferguson with that big long law
18 firm, and he, I just know from reputation, has always --
19 that's a big word --

20 MR. BACARISSE: Yeah, be careful.

21 MS. GILLMAN: -- I probably don't know that.

22 MR. BACARISSE: You're in a public meeting.

23 (General laughter.)

24 MS. GILLMAN: -- by reputation often only
25 represents manufacturers and is always -- no, that's a

1 wrong statement, I'm not going to use that word either --
2 often on the other side of litigation against a franchised
3 car dealer.

4 And with that knowledge, I feel like I should
5 raise my hand and say I think it's unusual and maybe
6 inappropriate to include litigating attorneys that have a
7 history just one way. It makes me feel like I need to
8 have -- I think it would be better if that kind of
9 representation is not included in an advisory committee.

10 MR. BACARISSE: Ms. Beaver, have you reached a
11 conclusion on the question that was put to you?

12 MS. BEAVER: Under the statute 1001.031
13 Advisory Committee, it does say that the Board shall
14 appoint, so it is up to the Board to appoint the
15 applicants to the advisory committee from the list that is
16 selected by the executive director. I could do additional
17 research to see if that is one of those particular
18 authorities that can be delegated, but on first review, my
19 initial response would be that the Board shall appoint
20 under the statute.

21 MR. BACARISSE: Yeah. "Shall" is a strong
22 word.

23 MS. BREWSTER: Mr. Chairman?

24 MR. BACARISSE: Yes, Whitney.

25 MS. BREWSTER: Just a point of clarification.

1 On the Motor Vehicle Industry Regulation Advisory
2 Committee there are nine motor vehicle dealer
3 representatives. Two of them are franchised dealers, one
4 is a motorcycle dealer, motorcycle/ATV dealer as well,
5 maybe not your traditional but definitely a franchised
6 dealer.

7 MS. GILLMAN: So I --

8 MR. BACARISSE: Let me -- I'm sorry, go ahead.

9 MS. GILLMAN: I am -- because I don't know this
10 person I feel -- but I feel like it's setting -- it's
11 steering an advisory committee for our industry in perhaps
12 the wrong way, and I don't think that we should encourage
13 the lawyers that are typically against each other to
14 become -- to be included in these committees. I think
15 it's kind of inappropriate.

16 MS. BREWSTER: Mr. Chairman?

17 MR. BACARISSE: Yes.

18 MS. BREWSTER: We are required to look at
19 differing points of view on these committees, and so I
20 just think that's something to keep in mind.

21 MR. BACARISSE: Let me also remind all of us --
22 you probably know this -- but anything that comes up from
23 an advisory Board to us is ultimately our decision to make
24 on policy. We've asked these groups to gather for the
25 purpose of helping us make policy, but they don't have the

1 final say. And so while we may like or not like certain
2 people that are on these committees, that's
3 understandable, but just remember you all have the final
4 authority in rulemaking, and it's published for public
5 comment after it comes to us as well.

6 So it goes from the advisory committee to us,
7 then we vote to put it out for public comment, and then it
8 comes back to us for final approval. So each rule takes
9 months to actually approve.

10 While we work on a better representation, to
11 Ms. Gillman's point, I do think that we need to take some
12 action today on actually putting these committees in
13 motion so that they can begin their work, not finish it
14 but begin it. And I would definitely encourage the
15 franchised dealers and motor carriers and others, where we
16 feel like -- where you Board members, who understand your
17 industries, feel like there's not good representation, I
18 want to see good representation, certainly. I mean,
19 that's my opinion, just so you know where the chair stands

20 The chair would like to entertain a motion to
21 approve the formation of these three committees, and we
22 can take them all as one motion, I think that's probably
23 the best. That's the way the agenda has it laid out.

24 MS. OMUMU: Mr. Chairman, I'd like to make a
25 motion, please.

1 MR. BACARISSE: Member Omumu.

2 MS. OMUMU: I move that the Board appoint the
3 list of people to serve as advisory committee members on
4 the three advisory committees, as presented by the
5 department's executive director in the attached Board book
6 materials dated August 5, 2021.

7 Thank you, Mr. Chairman.

8 MR. BACARISSE: Thank you.

9 Is there a second to that motion?

10 MR. SCOTT: Second.

11 MR. BACARISSE: Mr. Scott seconds that motion.

12 So the motion before us is to approve the
13 formation of the committees and the membership as listed,
14 and that is the motion before us. And I'm going to call
15 the roll --

16 MR. GRAHAM: One question.

17 MR. BACARISSE: Oh, I'm sorry. Yeah, I forgot
18 to ask is there questions. Yes. I'm sorry.

19 MR. GRAHAM: For the purpose of this vote,
20 could I ask for a commitment from DMV that if we go out
21 and find some really good qualified -- in our case, I'm a
22 franchised dealer -- that that would be given due
23 consideration in the course of this.

24 MS. BREWSTER: Absolutely, Member Graham.

25 MR. BACARISSE: And I would encourage each of

1 you who have those networks to work them. And I will, to
2 your point, Member Graham, I will stay with the staff in
3 making sure that we continue to find a solid
4 representation. To your point, Ms. Gillman, I'm sensitive
5 to that.

6 MR. GRAHAM: Thank you.

7 MR. BACARISSE: So with those verbal
8 commitments on the record, are there any other questions
9 about the motion?

10 (No response.)

11 MR. BACARISSE: Hearing none, I would entertain
12 a vote now, please.

13 MS. GILLMAN: Mr. Chairman.

14 MR. BACARISSE: I'm sorry. Yes, Ms. Gillman.
15 That's fine. Go right ahead.

16 MS. GILLMAN: With regard to the attorney, can
17 I -- is it -- I'm asking for your comments, do you feel
18 that my recommendation is too strong, and in that light,
19 is eliminating one person too strong, or is it setting a
20 precedent to go ahead and invite other attorneys of the
21 same?

22 MR. BACARISSE: Well, I think it's best if you
23 ask for a friendly amendment from the person who made the
24 motion.

25 Can we do that if a motion has been made and

1 seconded? Can we take a friendly amendments at that
2 point?

3 MS. BEAVER: Yes, a friendly amendment would be
4 germane to this motion if you wanted to remove one person
5 from a particular committee.

6 MR. BACARISSE: Okay. So really, Member
7 Gillman, your request should be made in the form of a
8 friendly amendment to Member Omumu, and it's up to her to
9 accept it or not.

10 MS. GILLMAN: I'd like to make a friendly
11 amendment to remove candidate number 8, Buddy Ferguson,
12 from the Motor Vehicle Industry Advisory Committee.

13 MS. OMUMU: So respectfully, Member Gillman, I
14 don't know enough about Mr. Ferguson to clearly remove him
15 from the list. And I would have to believe that there was
16 some vetting process involved in his application, and that
17 as executive counsel mentioned, we do entertain a diverse
18 board with opposing positions because that does make us a
19 little bit stronger when we have diverse opinions.

20 So I do respectfully decline the removal of Mr.
21 Ferguson at this time.

22 MR. BACARISSE: We have a motion and a second
23 on the floor. I need to call the roll, I am calling the
24 vote at this point.

25 Member Alvarado?

1 MR. ALVARADO: Aye.

2 MS. BEAVER: Chairman, I apologize. Did we
3 have a second on the amendment?

4 MR. BACARISSE: Yes, we did have a second.

5 MS. GILLMAN: On my amendment, Chairman.

6 MR. BACARISSE: Oh. Well, it was rejected, it
7 was not taken.

8 MS. GILLMAN: Oh.

9 MR. BACARISSE: A friendly amendment has to be
10 accepted or rejected. So we are voting on the motion as
11 stated by Member Omumu and seconded.

12 MS. GILLMAN: Okay.

13 MR. BACARISSE: So the motion was to approve
14 these three committees, but of course, with the idea that
15 we're going to aggressively seek additional members that
16 will bring the right kind of voices into the conversation
17 of policy creation, so that's absolutely there.

18 So Member Alvarado, I'm sorry, I have to
19 continue here once I start a roll call.

20 Member Gillman?

21 MS. GILLMAN: Nay.

22 MR. BACARISSE: Member Graham?

23 MR. GRAHAM: Aye.

24 MR. BACARISSE: Member Omumu?

25 MS. OMUMU: Aye.

1 MR. BACARISSE: Member Scott?

2 MR. SCOTT: Aye.

3 MR. BACARISSE: And I, Member Bacarisse, vote
4 aye. Thank you.

5 Now we can move to item number 11 which is
6 Finance and Audit Committee update.

7 MR. GRAHAM: All right. Put the pressure on me
8 to turn the barometer of this, put it in gear and rock and
9 roll.

10 (General laughter.)

11 MR. BACARISSE: Thank you.

12 MR. GRAHAM: Okay, let's do it.

13 Well, let's see here, we will begin with
14 Finance and Audit Committee report. Executive Director
15 Brewster requested the Finance and Audit Committee to
16 recommend that the Board authorize her to finish
17 negotiating the interagency contract between the TxDMV and
18 the Texas Department of Transportation for fiscal years
19 2022-2023. She also requested the Finance and Audit
20 Committee to recommend that the Board authorize her to
21 execute the final contract with approval from the Board
22 chairman.

23 TxDMV and TxDOT entered into an interagency
24 contract every year since TxDMV became an agency in 2009
25 to address issues such as shared facilities and the need

1 to cooperate on different programs and issues.

2 The Finance and Audit Committee voted to
3 recommend that the Board approve Executive Director
4 Brewster's request for the Board to authorize her to
5 finish negotiating the interagency contract with TxDOT and
6 authorize her to execute the final contract with approval
7 from the Board chairman.

8 That is an action item. This is something that
9 we have done, as we said, each year, and we'll need to do
10 again.

11 MR. BACARISSE: Okay. So we need to take a
12 motion on 11.A. Is that right? We need to have a motion
13 on approving agenda item 11.A.

14 MR. GRAHAM: And let me ask, if we could, if
15 there's any questions.

16 MR. BACARISSE: Yeah, before that. Right.

17 MR. GRAHAM: Be glad to answer any questions.
18 This is just for things we do together with TxDOT, it's
19 just an interagency agreement.

20 MR. BACARISSE: Right. Hearing no questions, I
21 would call for a motion to approve 11.A.

22 MS. OMUMU: I'd like to make a motion, Mr.
23 Chairman.

24 MR. BACARISSE: Yes, Member Omumu.

25 MS. OMUMU: I move that the committee recommend

1 the full Board authorize the agency's director or her
2 designee to finish negotiating the fiscal years '22-23
3 interagency contract between TxDOT and Texas DMV, and
4 authorize the agency's executive director to execute the
5 contract with the approval of the Board chairman.

6 MR. BACARISSE: Thank you.

7 Is there a second?

8 MS. GILLMAN: Second.

9 MR. BACARISSE: Member Gillman seconds. Thank
10 you.

11 Let's call the roll here. Member Alvarado?

12 MR. ALVARADO: Aye.

13 MR. BACARISSE: Member Gillman?

14 MS. GILLMAN: Aye.

15 MR. BACARISSE: Member Graham?

16 MR. GRAHAM: Aye.

17 MR. BACARISSE: Member Omumu?

18 MS. OMUMU: Aye.

19 MR. BACARISSE: And Member Scott?

20 MR. SCOTT: Aye.

21 MR. BACARISSE: I, Chairman Bacarisse, vote aye
22 as well. It's 6-0.

23 Please continue to 11.B.

24 MR. GRAHAM: Okay. Thank you.

25 Ms. Pierce and Mr. Luna then presented the

1 intent of the department to relocate -- am I cutting in
2 and out, do y'all want to grab me another mic?

3 MR. BACARISSE: I think she can hear you. Can
4 she hear?

5 MR. GRAHAM: -- relocate the San Antonio
6 Regional Service Center to a new location.

7 MR. BACARISSE: Hold on a second. I'm sorry.
8 You can back away a little bit.

9 MR. GRAHAM: What are y'all saying here?

10 (General laughter.)

11 MR. GRAHAM: Ms. Pierce and Mr. Luna presented
12 the intent of the department to relocate the San Antonio
13 Regional Service Center to a new location because of
14 unresolved ongoing maintenance issues with the current
15 location.

16 Staff recommended the Board authorize the
17 executive director to negotiate and execute, in
18 conjunction with the Texas Facilities Commission, a new
19 lease for a ten-year term running through 2031. So we
20 just cannot resolve the maintenance issues that we have at
21 this location, and with this agreement we will go out and
22 seek new facilities.

23 MR. BACARISSE: Thank you.

24 Any questions on this issue from the members?

25 MR. GRAHAM: It is an action item.

1 MR. BACARISSE: I have it as an action item.

2 MR. GRAHAM: Yes, it is.

3 MR. BACARISSE: It is an action item, so I
4 would entertain a motion on item 11.B.

5 MS. OMUMU: I'd like to make a motion, Mr.
6 Chairman.

7 MR. BACARISSE: Yes, Ms. Omumu.

8 MS. OMUMU: I move that the full Board
9 authorize the department's executive director to negotiate
10 and execute, in conjunction with the Texas Facilities
11 Commission, a new lease for the San Antonio Regional
12 Service Center for a ten-year term.

13 Thank you.

14 MR. BACARISSE: Thank you.

15 Is there a second to that motion?

16 MS. GILLMAN: I'll second.

17 MR. BACARISSE: Member Gillman seconds.

18 I will call the roll. Member Alvarado?

19 MR. ALVARADO: Aye.

20 MR. BACARISSE: Member Gillman?

21 MS. GILLMAN: Aye.

22 MR. BACARISSE: Member Graham?

23 MR. GRAHAM: Aye.

24 MR. BACARISSE: Member Omumu?

25 MS. OMUMU: Aye.

1 MR. BACARISSE: Member Scott?

2 MR. SCOTT: Aye.

3 MR. BACARISSE: And I, Charles Bacarisse, vote
4 aye as well, 6-0 this passes.

5 And now we go to item 11.C. Sergio Rey and
6 John Ralston worked with you on this one.

7 MR. GRAHAM: That is correct. This is the
8 fiscal year 2022 recommended annual operating budget. It
9 is an action item as well.

10 Mr. Rey and Mr. Ralston presented the
11 department's budget for fiscal year '22 which begins on
12 September 1, 2021, and ends August 31, 2022. The
13 department is proposing a budget of \$178.4 million. This
14 total includes \$156.2 million in funds that were
15 appropriated for fiscal year 2022 use, and \$22.2 million
16 in funds that were appropriated previous years, and that
17 the department is allowed to spend in the upcoming fiscal
18 year. These are known as carryforward funds.

19 The largest areas of expenditures are
20 designated for \$89.3 million for core program activities.

21 These include operations of our public-facing divisions
22 like Vehicle Titles and Registration, motor industry
23 licensing, conducting Lemon Law and warranty performance
24 hearings, motor carrier operations, customer support
25 services, enforcement activities, including compliance and

1 investigations, and motor vehicle crime prevention, and
2 that was \$89.3 million of that.

3 \$22 million is for capital projects. Primarily
4 they consist of major technology initiatives, and also
5 included are funds for vehicle replacements and regional
6 service center improvements.

7 \$17.8 million in information technology. This
8 activity provides for administrative oversight of all
9 department technology functions and projects.

10 And in addition, during fiscal year 2022, the
11 department will be funding and monitoring 252 contracts
12 that support various functions and activities. Of these,
13 staff presented two contracts for approval from the Board
14 for the executive director to negotiate and execute
15 required contracts.

16 The first was the fiscal year 2022 contract
17 with Southwest Research Institute that provides continued
18 specialized maintenance and consulting for the Motor
19 Carrier Division for the Texas Commercial Vehicle
20 Information Exchange Window, also known as CVIEW. The
21 fiscal year 2022 contract with the American Association of
22 Motor Vehicle Administrators National Motor Vehicle Title
23 Information System allows the department to maintain
24 required access to AAMVA NMVTIS. That is the two
25 contracts that we referenced.

1 So with that, I will be glad to take questions
2 on the recommended annual operating budget, again, \$178.4
3 million.

4 MR. BACARISSE: Members, any questions for
5 Member Graham?

6 (No response.)

7 MR. BACARISSE: Hearing none, I would entertain
8 a motion to approve item 11.C, the annual operating
9 budget.

10 MS. GILLMAN: Mr. Chairman, I have a motion.

11 MR. BACARISSE: Yes, Member Gillman.

12 MS. GILLMAN: I move that the full Board
13 approve the fiscal year 2022 operating budget as
14 presented, which includes approval of the following: the
15 listed contracts that require Board approval, as well as
16 delegation of signature authority to the executive
17 director or the executive director's designee, subject to
18 restrictions and authority of Government Code Section
19 2261.254(c) and (d) for the approved contracts, and number
20 two, a budget of approximately \$178.4 million.

21 MR. BACARISSE: Thank you for that motion.

22 Is there a second?

23 MR. SCOTT: Second.

24 MR. BACARISSE: Member Scott seconds. So I'll
25 call roll, all in favor.

1 Member Alvarado?

2 MR. ALVARADO: Aye.

3 MR. BACARISSE: Member Gillman?

4 MS. GILLMAN: Aye.

5 MR. BACARISSE: Member Graham?

6 MR. GRAHAM: Aye.

7 MR. BACARISSE: Member Omumu?

8 MS. OMUMU: Aye.

9 MR. BACARISSE: Member Scott?

10 MR. SCOTT: Aye.

11 MR. BACARISSE: And I, Chairman Bacarisse, vote
12 aye as well, it's 6-0.

13 And we move to item 11.D, third quarter
14 financial report. This is briefing only, so Mr. Rey, or
15 are you going to do it, Member Graham?

16 MR. GRAHAM: Well, actually, it's a great
17 question. I was going to do these and then I just
18 realized if the Board would like to hear from these folks,
19 you are welcome to. How about I give the summary and if
20 there's questions we'll bring them up.

21 MR. BACARISSE: Yeah, sure. That's great.

22 MR. GRAHAM: I'm not sure if their feelings
23 would be hurt if we didn't. I am also not sure if their
24 feelings would not be hurt if we didn't.

25 MR. BACARISSE: I think they're looking pretty

1 good about --

2 MR. GRAHAM: Yeah, they look pretty good.

3 (General laughter.)

4 MR. BACARISSE: Mr. Graham, I would urge you to
5 go all the way to G, just roll with it.

6 MR. GRAHAM: You got it.

7 Well, this is for the third quarter financial
8 report ending May 31, 2021. Mr. Rey provided an excellent
9 overview of the department's financial activities for the
10 quarter ending May 31, 2020.

11 The most significant items included the
12 department's total revenue deposits of \$1.4 billion --
13 just think about where we were this time a year ago and
14 what we were wondering was going to happen. 4.4 percent
15 increase compared to the third quarter of fiscal year
16 2020.

17 MR. BACARISSE: That's remarkable.

18 MR. GRAHAM: It's remarkable, really was. The
19 TxDMV Fund 0010 collections totaled \$112 million which is
20 a 3.9 percent decrease compared to the third quarter of
21 fiscal year 2020. The department collected sufficient
22 revenue through the third quarter of fiscal year 2021 to
23 support the \$105.2 million in expenditures during the same
24 period, and the ending TxDMV Fund 0010 balance as of May
25 31, 2021 was \$160.7 million. The inclusion of

1 encumbrances adjusts the net balance to \$134.6 million.

2 So you know, pretty exceptional news and things
3 have rebounded nicely. There are a few various things,
4 some things are up some, some are down slightly, but
5 overall we're very pleased with where we are at and the
6 funds that are coming in. So that is the third quarter
7 financial report.

8 MR. BACARISSE: Any questions, members, on
9 that?

10 MR. GRAHAM: That is a briefing item only, Mr.
11 Chairman.

12 MR. BACARISSE: Right.

13 MR. GRAHAM: 11.E.

14 MR. BACARISSE: Yes, sir.

15 MR. GRAHAM: Okay. 11.E is the Texas
16 Comptroller of Public Accounts post-payment audit -- I
17 feel so funny doing this, Sandra -- post-payment audit of
18 TxDMV. This is a briefing item.

19 Ms. Menjivar-Suddeath informed the committee
20 about the selection of the department for a routine post-
21 payment audit from the Texas Comptroller of Public
22 Accounts, under the authority granted in Texas Government
23 Code 403.011. The audit covers the period beginning
24 December 1, 2019, through November 30, 2020. The last
25 post-payment audit for TxDMV was in 2017.

1 The objectives of the audit included contracts
2 that were procured according to the applicable state laws
3 and Comptroller requirements, ensuring that payments were
4 processed according to applicable state laws, Comptroller
5 requirements, and statewide automated system guidelines.
6 The documentation to support those payments was
7 appropriately maintained and financial transaction and
8 high risk assets are properly recorded. This audit is
9 currently in field work, so it is ongoing.

10 And there you go.

11 MR. BACARISSE: Very good. All right. Thank
12 you.

13 Item F is an action item. This is the FY22
14 First Six-Month Internal Audit Plan and Risk Assessment
15 Report, so Ms. Menjivar-Suddeath and Jason Gonzalez, do
16 you have anything to present to us, are we good? Good to
17 go?

18 Member Graham.

19 MR. GRAHAM: She said roll the tape.

20 (General laughter.)

21 MR. BACARISSE: She did, yes. She's got you
22 briefed up.

23 MR. GRAHAM: For many years this was an annual
24 audit plan and what we saw was that the audit team and
25 Sandra were coming back midyear, because there were so

1 many changes, and so at that time the decision as made to
2 make the annual audit a six-month audit. So for the
3 fiscal year '22 First Six-Month Internal Audit Plan and
4 Risk Assessment Report, Ms. Menjivar-Suddeath and Mr.
5 Gonzalez provided the results and 357 operational and 66
6 fraud, waste and abuse risks were reviewed during the risk
7 assessment, including previously identified high and very
8 high risks.

9 Ms. Menjivar-Suddeath informed the committee
10 that the department continues to mitigate identified high
11 and very high risks. And what we continue to see is a
12 lowering of the overall number of high risk audits, and
13 that really, I think, primarily can be attributed to the
14 work that they've done to bring awareness of these issues,
15 these high risk areas.

16 And the executive team here at DMV now meet on
17 this monthly and review with the directors. They talk
18 about it extensively, and just that awareness has helped
19 reduce the overall number -- well, not the awareness but
20 the awareness and then the inevitable actions have reduced
21 that number, which is a great thing.

22 And I know this was a request of the board and
23 particularly from Member Gillman, a year or so ago or
24 maybe a year and a half ago -- actually we were in here,
25 it was even more than a year and a half ago because we

1 were actually in here. And I know Member Gillman, myself,
2 the committee really appreciate the executive leadership
3 team taking that so seriously and doing a great job with
4 it to mitigate those risks.

5 The risk assessment led to the identification
6 of internal audit engagements to be conducted in the first
7 six months of the next fiscal year. Nine engagements were
8 proposed. These engagements will review information
9 technology and operational processes, as well as looking
10 at functions that were significantly impacted by bills
11 passed by the 87th Texas Legislature.

12 The Finance and Audit Committee did approve Ms.
13 Menjivar-Suddeath's recommendation to recommend to the
14 full Board approval of the First Six-Month Internal Audit
15 Plan. And we will be glad to answer any questions that
16 you may have, but we do need action.

17 MR. BACARISSE: You do need action on this
18 item, absolutely.

19 Members, is there someone who has any questions
20 for Member Graham, first, or may I entertain a motion to
21 approve item 11.F, the Six-Month Internal Audit Plan and
22 Risk Assessment Report?

23 MS. GILLMAN: I have a motion, Mr. Chairman.

24 MR. BACARISSE: Yes, Member Gillman.

25 MS. GILLMAN: I move that the Board approve the

1 fiscal year 2022 First Six-Month Internal Audit Plan, as
2 presented.

3 MR. BACARISSE: Thank you.

4 Is there a second to that motion?

5 MS. OMUMU: I second.

6 MR. BACARISSE: Member Omumu seconds. Any
7 discussion?

8 (No response.)

9 MR. BACARISSE: Hearing none, I will call the
10 vote.

11 Member Alvarado?

12 MR. ALVARADO: Aye.

13 MR. BACARISSE: Member Gillman?

14 MS. GILLMAN: Aye.

15 MR. BACARISSE: Member Graham?

16 MR. GRAHAM: Aye.

17 MR. BACARISSE: Member Omumu?

18 MS. OMUMU: Aye.

19 MR. BACARISSE: Member Scott?

20 MR. SCOTT: Aye.

21 MR. BACARISSE: And I, Member Bacarisse, vote
22 aye as well. Thank you.

23 Item G, Mr. Graham.

24 MR. GRAHAM: Thank you.

25 I'll just add also that regarding all of these

1 audits, as our new members spend some time on their
2 SharePoint you'll see the Internal Audit section of that
3 where you'll see a great dashboard of all of the audits,
4 where the audits have been focused, how they're
5 proceeding. Just a lot of information, pretty much
6 anything you would ever want to know. Now, the cool thing
7 is it puts it in a dashboard form that's kind of easy on
8 the eyes, and easy to see from a 50,000-foot view, but you
9 can click in and get great detail on any of that that you
10 want.

11 And I know that Sandra and the team have worked
12 really, really hard. That was sort of priority for us on
13 the audit team to get you a global view or perspective of
14 audit, while still having the ability to dive in. And
15 they worked really hard on that dashboard and I think
16 you'll find it very helpful.

17 So we're going to 11.G, Internal Audit Division
18 status update. Ms. Menjivar-Suddeath provided an update
19 on the status of current internal audit activities. The
20 update included information on the external coordination
21 efforts, including the recently released audit report from
22 the Texas Comptroller of Public Accounts, and the status
23 of all internal audit engagements.

24 The status also included the peer review
25 results for the division. Mr. Gonzalez, the peer review

1 team lead from the Texas Department of Insurance, went
2 over the peer review results.

3 The peer review found the division compliant
4 with all internal audit requirements, but one
5 recommendation was issued to ensure the division document
6 sample selection in engagements. The peer review also
7 identified best practices that are being conducted by the
8 division. And so we kind of joked around about that just
9 a little bit, that an auditor is not ever going to let you
10 off the hook without something.

11 MR. BACARISSE: That's right.

12 MR. GRAHAM: So they had one thing on the team
13 which, I think, is great. They said they hit it out of
14 the park. And they ranked them -- I also thought it was
15 kind of entertaining that the highest ranking that they
16 could get -- that our audit team could get was Pass,
17 Generally Conformed.

18 (General laughter.)

19 MR. BACARISSE: Yeah, that's incredible,

20 MR. GRAHAM: That's the best you can get.

21 MR. BACARISSE: Right, that's five star.

22 MR. GRAHAM: Okay, you did all right.

23 We're very fortunate as an agency to have an
24 incredible audit team. Sandra does a spectacular job, her
25 and her team, and you will see that over time, and we

1 really appreciate their work on all of that.

2 So I'm not sure if maybe I went too fast there.

3 Any questions, I'm available.

4 MR. BACARISSE: Any questions, members, on any
5 of the items?

6 Yes, Member Gillman.

7 MS. GILLMAN: I just wanted to compliment
8 Sandra myself, and say thank you for letting me be on this
9 committee, Member Graham -- Chairman Graham, on your
10 committee.

11 MR. GRAHAM: You can be chairman if you want
12 to.

13 (General laughter.)

14 MS. GILLMAN: And for the rest of the Board,
15 it's been a great ride and watching the very high risk
16 items within the agency go on a way downward trend has
17 been fantastic, and Sandra and her team and all the
18 division directors deserve applause for that. And then
19 Sandra receiving the highest grade from her peer review
20 from the Department of Insurance and also the auditor at
21 Texas Workforce Commission is just real outstanding
22 recognition.

23 I also want to compliment you, Sandra. You're
24 doing a great job.

25 MR. BACARISSE: Indeed. Thank you, Member

1 Gillman. And thank you, Chairman Graham. Great work in
2 all of these matters that are vitally important to the
3 agency, so thank you.

4 MR. GRAHAM: You bet.

5 MR. BACARISSE: Item number 12 we have skipped,
6 postponed until the next Board meeting.

7 Item number 13 is the appointment of a member
8 to act in the absence of the chair and the vice chair
9 under Transportation Code Section 1001.023(b)(9), and that
10 is my privilege to do. And I want to ask Member Graham to
11 continue in that role as what I would call pro-tem of this
12 Board. And I am thankful for your leadership and I hope
13 you'll say yes again.

14 MR. GRAHAM: Pro-tem sounds a lot better than
15 backup to the backup.

16 MR. BACARISSE: Doesn't it?

17 (General laughter.)

18 MR. GRAHAM: But yeah, I'm in. I'm glad to
19 serve and stand ready should you ever need me, Mr.
20 Chairman.

21 MR. BACARISSE: Thank you. Well, you never
22 know. We're running a little naked now without a vice
23 chair, so just stay healthy.

24 MR. GRAHAM: Got it.

25 MR. BACARISSE: Okay. That ends this portion

1 of our public meeting. There is a little thing I need to
2 say. We will now take up agenda item number 14.

3 We're going to go into closed session. It is
4 now 1:18 in the afternoon on August 5, 2021. We'll go
5 into closed session under Texas Government Code Sections
6 551.071, 551.074, 551.076 and 551.089.

7 For those of you in the audience, I anticipate
8 being in executive session for approximately an hour and a
9 half. We'll reconvene in open session after that. With
10 that, we are recessed from the public meeting and we are
11 going into closed session. Thank you.

12 (Whereupon, at 1:18 p.m., the meeting was
13 recessed, to reconvene this same day, Thursday, August 5,
14 2021, following conclusion of the closed session.)

15 MR. BACARISSE: It is now 3:24 p.m. and the
16 Board of the Texas DMV is now back in session.

17 The Board will now take up item 15, action
18 items from executive session. And I will entertain a
19 motion regarding agenda item 15, which is the performance
20 evaluation of the internal auditor, including any
21 modifications to compensation.

22 MR. GRAHAM: Mr. Chairman, I'll make a motion.

23 MR. BACARISSE: Yes, sir, Mr. Graham.

24 MR. GRAHAM: I move that the Board approve the
25 combined evaluation for the internal auditor from our

1 executive session and an increase of the salary of the
2 internal auditor, Ms. Menjivar-Suddeath, by 4 percent. I
3 also move the Board to authorize the department staff to
4 take the necessary actions required under the act to
5 implement that change.

6 MR. BACARISSE: Very good. There's a motion.
7 Is there a second?

8 MR. SCOTT: Second.

9 MS. GILLMAN: Second.

10 MR. BACARISSE: Second by Member Scott, Member
11 Gillman also.

12 There's a motion and a second. Any further
13 discussion on this?

14 (No response.)

15 MR. BACARISSE: If not, I'll call the roll for
16 the vote, please.

17 Member Alvarado?

18 MR. ALVARADO: Aye.

19 MR. BACARISSE: Member Gillman?

20 MS. GILLMAN: Aye.

21 MR. BACARISSE: Member Graham?

22 MR. GRAHAM: Aye.

23 MR. BACARISSE: Member Omumu?

24 MS. OMUMU: Aye.

25 MR. BACARISSE: And Member Scott?

1 MR. SCOTT: Aye.

2 MR. BACARISSE: And I, Member Bacarisse, vote
3 aye as well. It's 6-0, unanimous. Thank you.

4 And the next item is public comment if we have
5 any. Has anybody survived to stay to the end?

6 MS. BEAVER: Tracey Beaver, general counsel.

7 We had one registration card submitted by email
8 prior to the Board meeting from Mr. Kohler. Mr. Kohler
9 has not signed in as being present at the meeting today
10 and I do not see him in the Lone Star Room.

11 Thank you.

12 MR. BACARISSE: Okay, very good. Thank you.

13 There being no public comment, and unless
14 there's any further business, I'd entertain a motion to
15 adjourn.

16 MR. GRAHAM: So moved.

17 MR. BACARISSE: It's been moved from Mr.
18 Graham. Is there a second?

19 MR. ALVARADO: Second.

20 MR. BACARISSE: Second from Alvarado.

21 All in favor say aye.

22 (A chorus of ayes.)

23 MR. BACARISSE: Meeting is adjourned.

24 (Whereupon, at 3:26 p.m., the meeting was
25 adjourned.)

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C E R T I F I C A T E

MEETING OF: TxDMV Board
LOCATION: Austin, Texas
DATE: August 5, 2021

I do hereby certify that the foregoing pages,
numbers 1 through 155, inclusive, are the true, accurate,
and complete transcript prepared from the verbal recording
made by electronic recording by Nancy H. King before the
Texas Department of Motor Vehicles.

DATE: August 17, 2021

/s/ Nancy H. King
(Transcriber)

On the Record Reporting
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