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ADOPTION OF REVISIONS TO

SUBCHAPTER A. COLLECTION OF DEBTS

43 TAC §209.1 AND §209.2

SUBCHAPTER B. PAYMENT OF FEES FOR DEPARTMENT GOODS AND SERVICES

43 TAC §209.23

SUBCHAPTER C. DONATIONS AND CONTRIBUTIONS

43 TAC §209.33

REPEAL OF

43 TAC §209.34

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Chapter 209, Subchapter A, Collection of Debts, §209.1 and §209.2; Subchapter B, Payment of Fees for Department Goods and Services, §209.23; and Subchapter C, Donations and Contributions, §209.33. The department adopts §209.23 without changes to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5021) and the text will not be republished. The department adopts §§209.1, 209.2, and 209.33 with changes at adoption to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5021) and those sections will be republished. The changes to §§209.1, 209.2, and 209.33 are described in the Reasoned Justification section below. In conjunction with this adoption, the department adopts the repeal of 43 TAC §209.34, which is also published in this issue of the *Texas Register*.

The department adopts amendments to make the rules consistent with statute; to comply with statute; to remove unnecessary language; to add context or authority for certain rules; to clarify the rules; and to make the rules consistent with current processes, procedures, and terminology. In addition, the

1 department adopts amendments that renumber subdivisions within the rules due to the addition or
2 deletion of subdivisions.

3 **REASONED JUSTIFICATION.**

4 Subchapter A. Collection of Debts

5 An adopted amendment to §209.1 adds a new subsection (a) to state the purpose of the section.
6 The department adopts §209.1(a) with a change at adoption to delete the unnecessary second sentence
7 in the proposed text, which incorporated by reference any requirements in 1 TAC §59.2 that were not
8 addressed in §209.1 to the extent that Government Code, §2107.002 requires a state agency to include
9 the requirements in rule. Government Code, §2107.002 requires a state agency that collects delinquent
10 obligations owed to the state agency to establish procedures by rule for collecting a delinquent obligation
11 and a reasonable period for collection. Government Code, §2107.002 also requires such rules to conform
12 to the “uniform guidelines” established by the attorney general. The Office of the Attorney General
13 adopted 1 TAC §59.2 (Collection Process: Uniform Guidelines and Referral of Delinquent Collections), and
14 §59.2(b) expressly contains the “uniform guidelines,” which are referenced in Government Code,
15 §2107.002. Adopted §209.1 complies with Government Code, §2107.002 because it contains the
16 procedures for collecting a delinquent obligation and a reasonable period for collection in conformance
17 with the uniform guidelines contained in 1 TAC §59.2(b), as well as the relevant definitions contained in 1
18 TAC §59.2(a). The language in 1 TAC §59.2(c) governs the referral of a delinquent obligation to an attorney,
19 and already expressly applies to a state agency that refers a delinquent obligation to the attorney general
20 or another attorney for collection under the “referral guidelines” referenced in Government Code,
21 §2107.003. For these reasons, the department adopts new §209.1(a) with a change at adoption to delete
22 the second proposed sentence as it was unnecessary. Due to the adoption of new §209.1(a), an adopted
23 amendment to §209.1 re-letters the subsection for definitions to subsection (b).

1 An adopted amendment deletes the definition for the word “person” in re-lettered §209.1(b)
2 because the word is already defined in Government Code, §311.005, which applies to administrative rules
3 under Government Code, §311.002(4). An adopted amendment also renumbers the last definition in re-
4 lettered §209.1(b) due to the deletion of the definition for the word “person.” Adopted amendments to
5 the definition for the word “security” in re-lettered §209.1(b) delete references to an “entity” because
6 the definition for the word “person” in Government Code, §311.005 includes “any other legal entity.”

7 An adopted amendment to §209.1 deletes prior subsection (b) regarding collection from
8 contractors for the following reasons: 1) this issue is already addressed in §209.1(f)(2) regarding the
9 warrant hold procedures of the Texas Comptroller of Public Accounts that are authorized by Government
10 Code, §403.055 for any debtor to the state; and 2) the language in prior §209.1(b) did not reference the
11 due process requirements under Government Code, §403.055.

12 Adopted amendments to §209.1(c)(1) through (3) change the words “will” and “should” to “shall”
13 for consistency and to clarify that the department has a duty to take the actions regarding the notice and
14 demand letters to the debtor. These adopted amendments to §209.1(c)(1) through (3), as well as other
15 adopted amendments to change the words “will” or “should” to “shall” in this adoption order, were
16 necessary to make the rule text consistent with Government Code, §311.016(2), which defines the word
17 “shall” to mean “imposes a duty,” unless the context in which the word or phrase appears necessarily
18 requires a different construction or unless a different construction is expressly provided by statute.
19 Government Code, §311.002(4) states that Government Code, Chapter 311 applies to each rule adopted
20 under a code. The Chapter 209 rules were adopted under various codes, including the Government Code
21 and the Transportation Code.

22 Adopted amendments to §209.1(c)(4) change certain instances of the word “will” to “must” to
23 indicate that it is a condition precedent for each letter to comply with certain requirements before the

1 letter becomes a demand letter under 1 TAC §59.2(a)(4), which defines the term “demand letter” within
2 the definition for the term “make demand.” Government Code, §311.016(3) defines the word “must” to
3 mean “creates or recognizes a condition precedent,” unless the context in which the word or phrase
4 appears necessarily requires a different construction or unless a different construction is expressly
5 provided by statute. Adopted amendments to §209.1(c)(4) also clarify that the department shall include
6 the notation “Return Service Requested” on the envelope for each demand letter, and shall resend the
7 demand letter if the United States Postal Service (USPS) provides the department with an address
8 correction. Although 1 TAC §59.2(b)(3) states that all demand letters should be mailed in an envelope
9 bearing the notation “address correction requested” in conformity with a citation to a section in an
10 appendix to the Code of Federal Regulations, the cited section does not currently contain the notation or
11 mailer endorsement called “address correction requested.” Also, the USPS published a document called
12 “507 Quick Service Guide | Postal Explorer” in which the USPS stated that for first-class mail, the USPS
13 action on the mailer endorsement “Return Service Requested” is to return the “mailpiece” with the new
14 address or the reason for non-delivery attached at no charge. Therefore, “Return Service Requested” is
15 the appropriate notation to include on the envelope to ensure that USPS provides the department with
16 any new address for the recipient, so that the department can resend the demand letter.

17 Adopted amendments to §209.1(d)(1) replace a clause with the word “debtor” because the clause
18 repeats a portion of the definition for the word “debtor” in re-lettered §209.1(b). Adopted amendments
19 to §209.1(d)(2) and (3) add the word “correct” to be consistent with 1 TAC §59.2(b)(2). An adopted
20 amendment to §209.1(d) also adds a new paragraph (4) to be consistent with 1 TAC §59.2(b)(2), which
21 requires that the department’s records contain an accurate physical address when a fiduciary or trust
22 relationship exists between the agency as principal and the debtor as trustee. Due to the addition of new
23 paragraph (4), adopted amendments renumber the remaining paragraphs in §209.1(d). Adopted

1 amendments to renumbered §209.1(d)(5), (10) and (12) add a reference to the debtor for clarity. An
2 adopted amendment to renumbered §209.1(d)(13) replaces the word “account” with the word
3 “obligation” because the word “obligation” is defined in re-lettered §209.1(b).

4 An adopted amendment to §209.1(e)(1)(D) deletes the language that said the department is not
5 required to prepare and file a proof of claim in a bankruptcy case when the department is represented by
6 the attorney general. According to 1 TAC §59.2(b)(6)(C)(i), the attorney general will assist the state agency
7 with the preparation of a proof of claim, but clause (i) does not say the attorney general will file the proof
8 of claim. Also, an adopted amendment to §209.1(e)(1)(D) clarifies that the department shall prepare and
9 file a proof of claim in the bankruptcy case when appropriate based on advice from the attorney general.
10 When the department receives a bankruptcy notice, the department first determines whether the person
11 owes an obligation to the department and whether the bankruptcy notice instructs creditors to not file a
12 claim because no property appears to be available to pay creditors. If the person owes an obligation to
13 the department and the bankruptcy notice does not instruct creditors to not file a proof of claim, the
14 department consults with the attorney general regarding whether to file a proof of claim in the case. The
15 adopted amendments to §209.1(e)(1)(D) reflect the department’s current practice with regard to filing
16 proofs of claim.

17 Adopted amendments to §209.1(e)(1)(E) modify the language to be consistent with 1 TAC
18 §59.2(b)(6)(C)(v), which says the state agency should file a claim in each probate proceeding administering
19 the decedent’s estate, and does not provide any exception for agencies that are represented by the
20 attorney general.

21 Adopted amendments to §209.1(e)(2) change the word “will” to “shall” for consistency and to
22 indicate the department has a duty regarding the actions listed in paragraph (2). Adopted amendments
23 to §209.1(e)(2) also clarify that the list of uncollectible obligations is illustrative, rather than exhaustive,

1 and includes obligations that are not legally collectible or are uncollectible as a practical matter. These
2 amendments make §209.1(e)(2) consistent with 1 TAC §59.2(b)(6).

3 An adopted amendment to §209.1(e)(2)(A) deletes the words “dismissed or” because the term
4 “discharged in bankruptcy” is used to refer to an obligation that a creditor is legally prohibited from
5 collecting. *See* 11 U.S.C. §524. Adopted amendments to §209.1(e)(2)(B) make the language consistent
6 with 1 TAC §59.2(b)(6)(C)(ii) regarding a limitation provision in a lawsuit.

7 An adopted amendment to §209.1(e)(2) deletes prior subparagraph (C) because §209.1(e)(2) is a
8 list of delinquent obligations the department shall consider to be uncollectible and shall make no further
9 efforts to collect, consistent with 1 TAC §59.2(b)(6)(C). Although 1 TAC §59.2(b)(6)(C)(iii) provides an
10 exception for when circumstances indicate that the account is clearly uncollectible, clause (iii) provides
11 the general rule that the obligation should be referred to the attorney general if a corporation has been
12 dissolved, has been in liquidation under Chapter 7 of the United States Bankruptcy Code, or has forfeited
13 its corporate privileges or charter; or if a foreign corporation had its certificate of authority revoked. The
14 language in prior §209.1(e)(2)(C) implied the opposite of what 1 TAC §59.2(b)(6)(C)(iii) provides by stating
15 the general rule is that the delinquent obligation is uncollectible in these situations unless the
16 circumstances indicate that the account is nonetheless collectible or that fraud was involved. If a
17 corporation described in 1 TAC §59.2(b)(6)(C)(iii) owes a delinquent obligation to the department, the
18 department shall refer the obligation to the attorney general unless the circumstances indicate that the
19 obligation is clearly uncollectible or another exception under §209.1 or 1 TAC 59.2 applies. For example,
20 the obligation might be legally uncollectible under Business Organizations Code, Chapter 11 regarding the
21 termination of a domestic entity. The list of uncollectible obligations in §209.1(e)(2) is illustrative, rather
22 than exhaustive. Adopted amendments to §209.1(e)(2) re-letter the subsequent subparagraphs due to
23 the deletion of prior §209.1(e)(2)(C).

1 Adopted amendments to re-lettered §209.1(e)(2)(D) make the language consistent with 1 TAC
2 §59.2(b)(6)(C)(v). If the debtor is deceased, 1 TAC §59.2(b)(6)(C)(v) says state agencies should file a claim
3 in each probate proceeding administering the debtor’s estate and that the delinquent obligation should
4 be classified as uncollectible if such probate proceeding has concluded and there are no remaining assets
5 of the decedent available for distribution.

6 An adopted amendment to §209.1(e)(3) adds a reasonable tolerance below which the
7 department shall not refer a delinquent obligation to the attorney general as required by 1 TAC
8 §59.2(b)(8). The adopted amendment to §209.1(e)(3) expressly includes the department’s current
9 reasonable tolerance practice, which is to only refer a delinquent obligation to the attorney general if the
10 delinquent obligation exceeds \$2,500 or the attorney general advises otherwise. Adopted amendments
11 to §209.1(e)(3) also delete the factors that 1 TAC §59.2(b)(8) requires state agencies to consider in
12 establishing the reasonable tolerance, as well as “policy reasons or other good cause,” which was a factor
13 the department previously added to §209.1(e)(3) to consider when making a determination of whether
14 to refer a delinquent obligation to the attorney general. With the adoption of the specific dollar threshold
15 for referral established in rule, as well as the exception based on advice from the attorney general, the
16 deleted factors and the complex case-by-case analysis they implied are no longer necessary.

17 Adopted amendments to §209.1(e)(4) change the words “will” and “should” to “shall” for
18 consistency and to indicate the department has a duty to refer a delinquent obligation to the attorney
19 general for collection efforts if the department determines that the delinquent obligation shall be
20 referred.

21 Adopted amendments to §209.1(f)(1) make the language consistent with 1 TAC §59.2(b)(4)
22 regarding the filing of a lien to secure an obligation.

1 The department adopts §209.1(f)(2) with a change at adoption to change the catchline from
2 “Warrants” to “Warrant Holds” to accurately describe the contents of paragraph (2). An adopted
3 amendment to §209.1(f)(2) also changes the word “will” to “shall” for consistency and to clarify that the
4 department has a duty to comply with the “warrant hold” procedures of the Texas Comptroller of Public
5 Accounts that are authorized by Government Code, §403.055. Although state employees at the Texas
6 Comptroller of Public Accounts and other Texas state agencies refer to the “warrant hold” procedures,
7 the procedures also apply to the issuance of electronic funds transfers. Government Code, §403.055
8 ensures that no payments in the form of a warrant or an electronic funds transfer are made to a person
9 who is indebted to the state or has a tax delinquency, unless an exception applies. In addition, adopted
10 amendments to §209.1(f)(2) make the language consistent with Government Code, §403.055 by
11 referencing electronic funds transfers and the fact that there are certain exceptions that authorize the
12 Texas Comptroller of Public Accounts to issue a warrant or initiate an electronic funds transfer to a debtor.
13 Lastly, adopted amendments to §209.1(f)(2) clarify that the “warrant hold” procedures apply to each
14 individual debtor.

15 An adopted amendment to the title of §209.2 and adopted amendments to the text throughout
16 §209.2 change the words “check” or “checks” to “payment device” to be consistent with the terminology
17 in Business and Commerce Code, §3.506, which authorizes the holder of a dishonored payment device to
18 charge the drawer or indorser a processing fee not to exceed \$30 when seeking to collect the face value
19 of the payment device. An adopted amendment to the title of §209.2 and adopted amendments to
20 §209.2(a) and (c) also clarify that §209.2 applies even if there is one instance of a dishonored payment
21 device by changing the rule terminology from the plural to the singular regarding the payment device. In
22 addition, adopted amendments to the text throughout §209.2 replace the word “endorser” with
23 “indorser” to be consistent with the terminology in Business and Commerce Code, §3.506.

1 Adopted amendments to §209.2(b) clarify that the definitions in Business and Commerce Code,
2 Chapter 3 govern §209.2 and control to the extent of a conflict with the definitions in §209.2(b). Adopted
3 amendments to §209.2(b)(2) modify the definition for “dishonored payment device” by replacing the
4 word “instrument” with the term “payment device” because Business and Commerce Code, §3.506 uses
5 the term “payment device.” Adopted amendments to §209.2(b)(2) also modify the definition for
6 “dishonored payment device” to delete the portion of the definition that defined a check because adopted
7 new §209.2(b)(3) adds the definition for the term “payment device” from Business and Commerce Code,
8 §3.506. In addition, adopted amendments to §209.2(b)(2) correct a grammatical error and modify the
9 definition for “dishonored payment device” to clarify that the listed reasons for the dishonor of the
10 payment device are examples.

11 An adopted amendment to the first sentence in §209.2(c) changes the word “will” to “shall” to
12 indicate that the department has a duty to process a dishonored payment device using the procedures
13 outlined in §209.2. An adopted amendment to the first sentence in §209.2(c) also replaces the term
14 “returned check” with the term “dishonored payment device,” which is a defined term in §209.2(b). In
15 addition, an adopted amendment to the first sentence in §209.2(c) clarifies that the department shall not
16 charge a processing fee to the drawer or indorser if the department is prohibited from doing so under
17 Business and Commerce Code, §3.506, which prohibits a person from charging a processing fee to a
18 drawer or indorser if a reimbursement fee has been collected under Article 102.007(e) of the Code of
19 Criminal Procedure.

20 Adopted amendments throughout §209.2(c) change the word “will” to “shall” for consistency and
21 to impose a duty on the person to whom the language applies. Adopted amendments to §209.2(c)(2) and
22 (3) replace the term “payment processor charges” with a reference to any service charge under §209.23
23 of this title for clarity. The department adopts §209.2(c)(3) with a change at adoption to keep the comma

1 after the word “title” for consistency. An adopted amendment to §209.2(c)(3) also clarifies that the
2 reference to the processing fee is a reference to the \$30 processing fee.

3 An adopted amendment to §209.2(c)(4) clarifies that the fee that is referenced in §209.23 of this
4 title is a service charge. An adopted amendment to §209.2(c)(4) also replaces the word “chapter” with
5 “title” for consistency. In addition, the department adopts §209.2(c)(4) with a change at adoption to
6 remove “(relating to Methods of Payment)” because an adopted amendment to §209.2(c)(2) adds this
7 language, which is only required to be included the first time that §209.23 is referenced in §209.2.

8 An adopted amendment to §209.2(d) adds a reference to this title to correctly reference §209.1,
9 which is contained in Title 43. An adopted amendment to §209.2(d) also replaces the term “payment
10 processor charges” with the clause “service charge under §209.23 of this title” for clarity. In addition, an
11 adopted amendment to §209.2(d) clarifies that the reference to the processing fee is a reference to the
12 \$30 processing fee. Lastly, an adopted amendment to §209.2(d) breaks the sentence into two separate
13 sentences for clarity and readability.

14 An adopted amendment to §209.2(e) changes the word “will” to “shall” for consistency and to
15 impose a duty on the department regarding the order in which the drawer’s or indorser’s payment to the
16 department shall be applied. An adopted amendment to §209.2(e) also clarifies that the reference to the
17 processing fee is a reference to the \$30 processing fee. In addition, adopted amendments to §209.2(e)
18 clarify that after the drawer’s or indorser’s payment is applied to the \$30 processing fee, the balance
19 would first be applied to any service charge required by §209.23 of this title, and then to the face amount
20 of the dishonored payment device.

21

22 Subchapter B. Payment of Fees

1 An adopted amendment to the title of Subchapter B of Chapter 209 deletes the words “for
2 Department Goods and Services” to clarify that Subchapter B is not limited to payment of fees for
3 department goods and services. For example, §209.23 applies to a payment for administrative penalties
4 that are due under an administrative enforcement case, such as the penalties under Transportation Code,
5 §643.251.

6 An adopted amendment to §209.23(a) states that the purpose of §209.23 is to establish the
7 methods of payment that the department may accept and to make the public aware of a potential service
8 charge for certain methods of payment. Although §209.23 lists many different methods of payment that
9 the department may accept, the transaction itself dictates the methods of payment that the department
10 will accept for that particular transaction. For example, when the department’s enforcement attorneys
11 send a Notice of Department Decision (NODD) to an alleged violator of certain Texas laws, the NODD tells
12 the person to pay the administrative penalties with a check, cashier’s check, or money order. Another
13 example is the department’s website, which provides information regarding the methods of payment that
14 are accepted for certain transactions, such as the purchase of an oversize/overweight permit. An adopted
15 amendment to §209.23(a) also deletes a reference to the point of sale because the reference to the “point
16 of sale” may confuse a person who is paying an administrative penalty to the department.

17 An adopted amendment to §209.23(a)(3) deletes the language that says a personal or business
18 check is not an acceptable method of payment of fees under Transportation Code, §502.094 to clarify that
19 this exception is not the only exception for certain methods of payment. For example, §209.2(c)(3)
20 dictates the methods of payment that the department will accept when a person is required to make
21 certain payments to the department after the person’s payment device is not honored upon presentment
22 to a bank or other financial institution upon which the payment device is drawn or made. Adopted
23 amendments to §209.23(b) also clarify that a person paying by debit card or electronic funds transfer has

1 a duty to pay any applicable service charge per transaction, which is already required under current law.
2 In addition, an adopted amendment to §209.23(b) deletes a reference to a payment made by Automated
3 Clearing House (ACH) because the Texas Department of Information Resources (DIR) does not currently
4 charge a service fee under Government Code, §2054.2591 when a payment is made by ACH through DIR's
5 payment engine.

6

7 Subchapter C. Donations or Contributions

8 An adopted amendment to the title of Subchapter C of Chapter 209 and the title of §209.33
9 changes the "and" to "or," so the title is "Donations or Contributions" because adopted new §209.33(b)
10 defines the term "donation or contribution." An adopted amendment to the title of §209.33 also deletes
11 the words "Acceptance of" because adopted amendments to §209.33 expand the scope of the rule to
12 include other topics, such as the standards of conduct governing the relationship between board
13 members, department employees, and donors.

14 Adopted new §209.33(a) and (b) clarify that §209.33 provides uniform criteria and procedures
15 regarding donations or contributions, as well as standards of conduct governing the relationship between
16 the board, the department's employees, and donors, regardless of the type or value of the donation or
17 contribution and regardless of whether the donor is a private donor.

18 Adopted new §209.33(a) adds language regarding the purpose of §209.33 because adopted
19 amendments to §209.33 address criteria and procedures regarding donations or contributions under
20 Transportation Code, §1001.008 and Government Code, Chapter 575, as well as standards of conduct that
21 state agencies are required to address in rule under Government Code, §2255.001. As described below,
22 the citations to the applicable statutes in adopted new §209.33(a) clarify that §209.33 applies, even

1 though some of the cited statutes use different terminology and apply to certain kinds of donations or
2 contributions.

3 Adopted new §209.33(b) adds definitions for clarity, including the definitions for the terms
4 “board,” “department,” and “executive director,” which are found in Transportation Code, §1001.001.
5 Adopted new §209.33(b) also defines the term “donation or contribution” as anything of value in any
6 form, including real or personal property, money, materials, or services, given by a donor to the board, as
7 authorized by Transportation Code, §1001.008. Although Transportation Code, §1001.008 refers to both
8 donations or contributions, a contribution is also a donation, and both are also gifts. The new definition
9 for the term “donation or contribution” in adopted new §209.33(b) clarifies that §209.33 applies to any
10 donation or contribution, even if the donation or contribution does not fall within the scope of
11 Government Code, Chapter 575 because the donation or contribution does not fall within the definition
12 of the word “gift” under Government Code, §575.001 or does not trigger the dollar threshold for a gift
13 under Government Code, §575.002, which states that Government Code, Chapter 575 only applies to a
14 gift that has a value of \$500 or more. Although Government Code, Chapter 575 uses the term “gift” rather
15 than “donation or contribution,” Government Code, §575.001 defines “gift” to mean a donation of money
16 or property.

17 In addition, adopted new §209.33(b) defines the word “donor” as a person who makes a donation
18 or contribution to the board, as authorized by Transportation Code, §1001.008. According to Government
19 Code, §311.002(4), Chapter 311 of the Government Code applies to administrative rules such as §209.33,
20 which are adopted under a code, such as the Government Code or the Transportation Code. Government
21 Code, §311.005 defines the word “person” to include a corporation, organization, government or
22 governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other
23 legal entity. The new definition for “donor” in adopted new §209.33(b) clarifies that §209.33 applies to a

1 donation or contribution from any donor, even if the donation or contribution is from a public donor, such
2 as another governmental agency, and does not fall within the scope of Government Code, §2255.001,
3 which only applies to a donation or contribution of money from a private donor.

4 Due to the addition of adopted new §209.33(a) and (b), adopted amendments to §209.33 re-letter
5 prior subsections (a) and (b) to become subsections (c) and (d). Adopted amendments to re-lettered
6 §209.33(c) and (d) clarify that subsections (c) and (d) apply to the donation or contribution, even if it is a
7 single donation or contribution. An adopted amendment to re-lettered §209.33(d) also clarifies that the
8 records of the board meeting shall include the name of the donor. Although Government Code, §575.004
9 does not apply to a gift that has a value of less than \$500, the second sentence in adopted re-lettered
10 §209.33(d) applies to that donation or contribution if the board accepts the donation or contribution
11 because it is a good practice to include the required information under re-lettered §209.33(d) in the
12 records of the board meeting for transparency. Government Code, §575.004 requires a state agency that
13 accepts a gift that has a value of \$500 or more to record the name of the donor, a description of the gift,
14 and a statement of the purpose of the gift in the minutes of the meeting for the state agency's governing
15 board.

16 Adopted new §209.33(e) requires the department to use the donation or contribution for the
17 purpose specified by the donor to the extent the stated purpose complies with Transportation Code,
18 §1001.008. Transportation Code, §1001.008 only authorizes the board to accept a donation or
19 contribution for the purposes of carrying out the board's functions and duties. In addition, Transportation
20 Code, §1001.008 prohibits the board from accepting a donation or contribution from an entity or
21 association of entities that the board regulates.

22 Adopted new §209.33(f) adds language from repealed §209.34, which said the department may
23 document terms or conditions relating to a donation or contribution through a donation agreement with

1 the donor. Adopted new §209.33(f) also amends the language incorporated from repealed §209.34 by
2 changing the clause “terms or conditions” to “terms and conditions,” to correct the terminology, and by
3 using the term “donation or contribution” as defined by adopted new §209.33(b). In conjunction with the
4 repeal of §209.34, adopted new §209.33(f) consolidates the language regarding donations or
5 contributions into one rule.

6 Adopted new §209.33(g) states that board members and department employees shall comply
7 with the standards of conduct under Government Code, Chapter 572 and any other law regulating the
8 ethical conduct of state officers and employees when interacting with a donor or potential donor.
9 Government Code, §2255.001(a) and (b)(2), (3), and (4) require each state agency that is authorized by
10 statute to accept money from a private donor to adopt rules that govern all aspects of conduct of the
11 state agency in the relationship between the donor, the state agency, and the state agency’s employees,
12 including the donor’s “use” of the state agency’s employee or property, service by the state agency’s
13 officer or employee as an officer or director of the donor, and the donor’s monetary enrichment of the
14 state agency’s officer or employee. Although Government Code, §2255.001 only applies to a donation or
15 contribution of money from a private donor, adopted amendments to §209.33 apply to a donation or
16 contribution from any donor, including another governmental agency, because a conflict of interest could
17 exist for any donation or contribution. Even though Transportation Code, §1005.001 already says the
18 board and department employees are subject to the standards of conduct under Government Code,
19 Chapter 572 and any other law regulating the ethical conduct of state officers and employees, adopted
20 new §209.33(g) repeats the language from Transportation Code, §1005.001 with some modifications
21 because Government Code, §2255.001 requires each state agency that is authorized by statute to accept
22 money from a private donor to adopt rules governing the relationship between the donor, the state
23 agency, the state agency’s officers, and the state agency’s employees. The provisions in Government

1 Code, §2255.001 regarding a private organization that exists to further the purposes and duties of a state
2 agency do not apply to the department because there is no such private organization for the department;
3 therefore, the department is not adopting a rule regarding such a private organization.

4 The department adopts §209.33(h) and (i) with changes at adoption to clarify that the subsections
5 apply to a proposal or decision pending before a potential donor to the board, rather than a proposal or
6 decision pending before the board regarding a potential donor's offer to make a donation or contribution
7 to the board. Adopted new §209.33(h) states that a board member who serves as an officer or director of
8 a potential donor to the board shall not vote on a proposal or decision pending before the potential donor
9 to make a donation or contribution to the board. Adopted new §209.33(i) states that if the department's
10 executive director serves as an officer or director of a potential donor to the board, the executive director
11 shall not vote on a proposal or decision pending before the potential donor to make a donation or
12 contribution to the board. Government Code, §2255.001(b)(3) requires each state agency that is
13 authorized by statute to accept money from a private donor to adopt rules that govern all aspects of
14 conduct of the state agency in the relationship between the donor, the state agency, and the state
15 agency's employees, including service by the state agency's officer or employee as an officer or director
16 of the donor. Adopted new §209.33(h) and (i) help to prevent a conflict of interest regarding a proposed
17 donation or contribution to the board under Transportation Code, §1001.008.

18 Adopted new §209.33(j) prohibits a board member or a department employee from authorizing
19 a donor to use department property unless the following requirements are met: 1) the board member or
20 the department, as applicable, have statutory authority to do so; 2) the property shall only be used for a
21 state purpose; and 3) the property shall be used in accordance with a contract between the department
22 and the donor that complies with Texas law. Most of these requirements spell out current law; however,
23 Government Code, §2255.001(b)(2) requires each state agency that is authorized by statute to accept

1 money from a private donor to adopt rules that govern all aspects of conduct of the state agency in the
2 relationship between the donor, the state agency, and the state agency's employees, including the
3 donor's use of the state agency's property.

4 Only the legislature may grant power to board members and the department regarding the use
5 of the department's property; therefore, a board member or a department employee is prohibited from
6 authorizing a donor to use department property unless there is statutory authority to do so. Also,
7 Government Code, §2203.004 says that state property may only be used for state purposes and that a
8 person may not entrust state property to a person if the property will not be used for state purposes. In
9 addition, if the department is not sufficiently compensated for the use of the department's property, the
10 transaction must comply with Article III, §51 of the Texas Constitution, which prohibits the legislature
11 from granting, or authorizing a state agency to grant, public money to a private individual or entity.
12 Attorneys general have construed Article III, §51 to also apply to the granting of public property to a
13 private individual or entity. See Tex. Att'y Gen. Op. Nos. GA-0894 (2011) at 1, MW-373 (1981) at 9.
14 Attorneys general have also stated that Article III, §51 does not prevent the state from making an
15 expenditure of public money or providing public property that benefits a private individual or entity if the
16 following requirements are met: 1) the transaction serves a legitimate public purpose; and 2) the
17 appropriate governing body places sufficient controls on the transaction to ensure that the public purpose
18 is carried out. See Tex. Att'y Gen. Op. Nos. GA-0894 (2011) at 2, JC-0244 (2000) at 5, JC-0146 (1999) at 3,
19 MW-373 (1981) at 9. A contract is a general method of placing sufficient controls on the transaction to
20 ensure that the public purpose is carried out.

21 If the department is sufficiently compensated for the use of the department's property, the
22 transaction is not a gratuity. See Tex. Att'y Gen. Op. No. GA-0894 (2011) at 2. For transparency, adopted
23 new §209.33(j) requires the property to be used in accordance with a contract between the department

1 and the donor that complies with Texas law, even if Article III, §51 of the Texas Constitution does not
2 apply to the transaction.

3 The department adopts the repeal of prior §209.34 regarding a donation agreement, in
4 conjunction with the adopted amendment to incorporate the language from prior §209.34 into §209.33,
5 with minor amendments, to consolidate the language regarding donations or contributions into one rule.

6

7 **SUMMARY OF COMMENTS.**

8 The department did not receive any written public comments on the proposed amendments or
9 repeal.

10

11

CHAPTER 209. FINANCE

12

SUBCHAPTER A. COLLECTION OF DEBTS

13

43 TAC §209.1 and §209.2

14

15 **STATUTORY AUTHORITY.** The amendments are adopted under Government Code, §2107.002, which
16 requires a state agency that collects delinquent obligations owed to the state agency to establish
17 procedures by rule for collecting a delinquent obligation and a reasonable period for collection; Business
18 and Commerce Code, §3.506, which authorizes the holder of a dishonored payment device to charge a
19 maximum processing fee of \$30; Transportation Code, §502.191(e), which authorizes the department to
20 collect a service charge in an amount that is reasonably related to the expense incurred by the
21 department in collecting the original amount of a fee under Transportation Code, Chapter 502 when the
22 payment of the original amount by electronic funds transfer, credit card or debit card is not honored by
23 the funding institution or by the electronic funds transfer, credit card, or debit card company on which

1 the funds were drawn; Transportation Code, §1002.001, which provides the board of the Texas
2 Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and
3 appropriate to implement the powers and the duties of the department; and the statutory authority
4 referenced throughout the preamble and in the rule text, which is incorporated by reference.

5 **CROSS REFERENCE TO STATUTE.** The adopted amendments implement Government Code, Chapters 403
6 and 2107; Business and Commerce Code, §3.506; and Transportation Code, §502.191(e) and §1002.001.

7

8 Text.

9 §209.1. Collection of Debts.

10 (a) Purpose. The purpose of this section is to comply with Government Code, §2107.002, which
11 requires a state agency that collects delinquent obligations owed to the state agency to establish
12 procedures by rule for collecting a delinquent obligation.

13 (b) Definitions. The following words and terms, when used in this section, shall have the
14 following meanings, unless the context clearly indicates otherwise.

15 (1) Attorney general--The Office of the Attorney General of Texas.

16 (2) Debtor--Any person liable or potentially liable for an obligation owed to the
17 department or against whom a claim or demand for payment has been made.

18 (3) Delinquent--Payment is past due by law or by customary business practice, and all
19 conditions precedent to payment have occurred or been performed.

20 (4) Department--The Texas Department of Motor Vehicles.

21 (5) Obligation--A debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan,
22 charge, or grant.

1 (6) Security--Any right to have property owned by a person with an obligation to the
2 department sold or forfeited in satisfaction of the obligation, and any instrument granting a cause of
3 action in favor of the department against a person or a person's property, such as a bond, letter of
4 credit, or other collateral that has been pledged to the department to secure an obligation.

5 (c) Notification of obligation and demand letters.

6 (1) The department shall send to the debtor written notice of the obligation, such as an
7 administrative enforcement order that imposes a penalty or fine.

8 (2) If no satisfactory response is received within 30 days after the date that the notice is
9 sent under paragraph (1) of this subsection, the obligation becomes delinquent on the 31st day after the
10 date that notice is sent, unless the department's notice, the law, or a department rule imposes a
11 different deadline for payment. The department shall send the first demand letter not later than the
12 30th day after the date on which the obligation becomes delinquent.

13 (3) If no satisfactory response is received within 30 days after the day on which the first
14 demand letter was sent, the department shall send the final demand letter no later than 60 days after
15 the date on which the first demand letter was sent. The final demand letter shall include a deadline by
16 which the debtor must respond and, if the department determines in accordance with subsection (e) of
17 this section that the obligation shall be referred to the attorney general, a statement that the obligation,
18 if not paid, shall be referred to the attorney general.

19 (4) Each demand letter must set forth the nature and amount of the obligation owed to
20 the department and must be mailed by first class United States mail, in an envelope that shall bear the
21 notation "Return Service Requested." If an address correction is provided by the United States Postal
22 Service, the department shall resend the demand letter to that address prior to referral to the attorney
23 general.

1 (d) Records. When practicable, the department shall retain a record of a delinquent obligation. A
2 record shall contain documentation of the following information:

3 (1) the identity of each debtor;

4 (2) the correct physical address of the debtor's place of business;

5 (3) the correct physical address of the debtor's residence, where applicable;

6 (4) an accurate physical address for the trustee when a fiduciary or trust relationship
7 exists between the department as principal and the debtor as trustee;

8 (5) a post office box address when it is impractical to obtain a physical address, or when
9 the post office box address is in addition to a correct physical address for the debtor;

10 (6) attempted contacts with the debtor;

11 (7) the substance of communications with the debtor;

12 (8) efforts to locate the debtor and the assets of the debtor;

13 (9) state warrants that may be issued to the debtor;

14 (10) current contracts the debtor has with the department;

15 (11) security interests that the department has against any assets of the debtor;

16 (12) notices of bankruptcy, proofs of claim, dismissals and discharge orders received
17 from the United States bankruptcy courts regarding the debtor; and

18 (13) other information relevant to collection of the delinquent obligation.

19 (e) Referrals of a delinquent obligation to the attorney general.

20 (1) Prior to referral of a delinquent obligation to the attorney general, the department
21 shall:

22 (A) verify the debtor's address and telephone number;

1 (B) send a first and final demand letter to the debtor in accordance with
2 subsection (c) of this section;

3 (C) verify that the obligation is not considered uncollectible under paragraph (2)
4 of this subsection;

5 (D) prepare and file a proof of claim in the case of a bankruptcy when
6 appropriate based on advice from the attorney general; and

7 (E) file a claim in each probate proceeding administering the decedent's estate if
8 the debtor is deceased.

9 (2) The department shall consider a delinquent obligation uncollectible and shall make
10 no further effort to collect if the obligation is not legally collectible or is uncollectible as a practical
11 matter. Examples of an obligation that is not legally collectible or is uncollectible as a practical matter
12 include an obligation, which:

13 (A) has been discharged in bankruptcy;

14 (B) is subject to an applicable limitations provision that would prevent a lawsuit
15 as a matter of law, unless circumstances indicate that the applicable limitations provision has been
16 tolled or is otherwise inapplicable;

17 (C) is owed by an individual who is located out-of-state, or outside the United
18 States, unless a determination is made that the domestication of a Texas judgment in the foreign forum
19 would more likely than not result in collection of the obligation, or that the expenditure of department
20 funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is
21 justified;

22 (D) is owed by a debtor who is deceased, where each probate proceeding has
23 concluded, and where there are no remaining assets available for distribution; or

1 (E) is owed by a debtor whose circumstances demonstrate a permanent inability
2 to pay or make payments toward the obligation.

3 (3) Except as advised otherwise by the attorney general, the department shall not refer
4 a delinquent obligation to the attorney general unless the delinquent obligation exceeds \$2,500.

5 (4) The department shall refer a delinquent obligation to the attorney general for
6 further collection efforts if the department determines, in accordance with this subsection, that the
7 delinquent obligation shall be referred.

8 (f) Supplemental and alternative collection procedures.

9 (1) Liens. Where state law allows a state agency to record a lien securing the obligation,
10 the department shall file the lien in the appropriate records of the county where the debtor's principal
11 place of business, or, where appropriate, the debtor's residence, is located or in such county as may be
12 required by law as soon as the obligation becomes delinquent or as soon as is practicable. Unless the
13 delinquent obligation has been paid in full, any lien securing the indebtedness may not be released
14 without the approval of the attorney representing the department after the matter has been referred to
15 the attorney general.

16 (2) Warrant Holds. The department shall utilize the "warrant hold" procedures of the
17 Comptroller of Public Accounts authorized by Government Code, §403.055, to ensure that no treasury
18 warrants are issued to a debtor and no electronic funds transfers are made to a debtor until the debt is
19 paid, unless an exception applies.

20
21 §209.2. Charges for Dishonored Payment Device.

22 (a) Purpose. Business and Commerce Code, §3.506, authorizes the holder of a dishonored
23 payment device, seeking collection of the face value of the payment device, to charge the drawer or

1 indorser of the payment device a reasonable processing fee, not to exceed \$30. This section prescribes
2 policies and procedures for the processing of a dishonored payment device made payable to the
3 department and the collection of fees because of the dishonor of a payment device made payable to the
4 department.

5 (b) Definitions. The definitions contained in Business and Commerce Code, Chapter 3 govern this
6 section and control to the extent of a conflict with the following definitions in this subsection. The
7 following words and terms, when used in this section, shall have the following meanings, unless the
8 context clearly indicates otherwise.

9 (1) Department--The Texas Department of Motor Vehicles.

10 (2) Dishonored payment device--A payment device that is drawn or made upon a bank
11 or other financial institution, and that is not honored upon presentment for reasons including, but not
12 limited to, the account upon which the payment device has been drawn or made does not exist, is
13 closed, or does not have sufficient funds or credit for payment of the payment device in full.

14 (3) Payment device--A check, item, paper or electronic payment, or other device used as
15 a medium for payment.

16 (c) Processing of a dishonored payment device. Upon receipt of notice from a bank or other
17 financial institution of refusal to honor a payment device made payable to the department, the
18 department shall process the dishonored payment device using the following procedures; however, the
19 department shall not charge a \$30 processing fee to the drawer or indorser if the department is
20 prohibited from doing so under Business and Commerce Code, §3.506.

21 (1) The department shall send a written notice by certified mail, return receipt
22 requested, to the drawer or indorser at the drawer or indorser's address as shown on:

23 (A) the dishonored payment device;

1 (B) the records of the bank or other financial institution; or

2 (C) the records of the department.

3 (2) The written notice shall notify the drawer or indorser of the dishonored payment
4 device and shall request payment of the face amount of the payment device, any service charge under
5 §209.23 of this title (relating to Methods of Payment), and a \$30 processing fee no later than 10 days
6 after the date of receipt of the notice. The written notice shall also contain the statement required by
7 Penal Code, §32.41(c)(3).

8 (3) The face amount of the payment device, any service charge under §209.23 of this
9 title, and the \$30 processing fee must be paid to the department:

10 (A) with a cashier's check or money order, made payable to the Texas
11 Department of Motor Vehicles; or

12 (B) with a valid credit card, approved by the department, and issued by a
13 financial institution chartered by a state or the United States, or a nationally recognized credit
14 organization.

15 (4) Payments made by credit card must include the service charge required by §209.23
16 of this title.

17 (5) If payment is not received within 10 days after the date of receipt of the notice, the
18 obligation shall be considered delinquent and shall be processed in accordance with §209.1 of this title
19 (relating to Collection of Debts).

20 (d) Supplemental collection procedures. In addition to the procedures described in §209.1 of
21 this title, the department may notify appropriate credit bureaus or agencies if the drawer or indorser
22 fails to pay the face amount of a dishonored payment device, any service charge required under §209.23

1 of this title, and the \$30 processing fee. In addition, the department may refer the matter for criminal
2 prosecution.

3 (e) Any payment to the department from the drawer or indorser of a dishonored payment
4 device shall be applied first to the \$30 processing fee, then to any service charge required by §209.23 of
5 this title, and then to the face amount of the dishonored payment device.

6

7

SUBCHAPTER B. PAYMENT OF FEES

8

§209.23

9

10 **STATUTORY AUTHORITY.** The amendments are adopted under Transportation Code, §1001.009, which
11 authorizes the board to adopt rules regarding the method of collection of a fee for any goods sold or
12 services provided by the department, or for the administration of any department program;
13 Transportation Code, §501.176, which authorizes the department to collect a fee for processing a title or
14 registration payment by electronic funds transfer, credit card, or debit card in an amount that does not
15 exceed the amount of the charges incurred by the state to process the payment; Transportation Code,
16 §502.094, which authorizes the department to charge a service charge for a payment by credit card or
17 escrow account for a 72-hour or a 144-hour permit; Transportation Code, §502.191, which authorizes the
18 department to collect a fee for processing a payment by electronic funds transfer, credit card, or debit
19 card in an amount not to exceed the amount of the charges incurred by the department to process the
20 payment; Transportation Code, §621.356 and §623.076, which authorize the board to adopt rules that
21 require the payment of a discount or service charge for a credit card payment in addition to the fee;
22 Transportation Code, §643.004, which authorizes the department to adopt rules that require the payment
23 of a discount or service charge for a credit card payment in addition to the fee; Transportation Code,

1 §645.002, which authorizes the department to adopt rules regarding the method of payment of a fee
2 required under the unified carrier registration plan and agreement, including rules that require the
3 payment of a discount or service charge for a credit card payment in addition to the fee; Transportation
4 Code, §646.003, which authorizes the department to adopt rules regarding the method of payment of a
5 fee under Transportation Code, Chapter 646, including rules that require the payment of a discount or
6 service charge for a credit card payment in addition to the fee; Transportation Code, §1001.009, which
7 authorizes the board to adopt rules that require the payment of a discount or service charge for a credit
8 card payment in addition to the fee; Government Code, §2054.1115, which authorizes a state agency that
9 uses the state electronic internet portal to use electronic payment methods for point-of-sale transactions
10 (including in-person transactions), telephone transactions, and mail transactions; Government Code,
11 §2054.2591, which authorizes the Texas Department of Information Resources (DIR) to set fees that a
12 state agency may charge for a transaction that uses the state electronic Internet portal project;
13 Transportation Code, §§501.176, 502.191, and 520.003, which authorize the department to collect the
14 fees that DIR sets under Government Code, §2054.2591; Transportation Code, §1002.001, which provides
15 the board with the authority to adopt rules that are necessary and appropriate to implement the powers
16 and the duties of the department; and the statutory authority referenced throughout the preamble and
17 in the rule text, which is incorporated by reference.

18 **CROSS REFERENCE TO STATUTE.** The adopted amendments implement Transportation Code, §§501.176,
19 502.094, 502.191, 520.003, 621.356, 623.076, 643.004, 645.002, 646.003, 1001.009, and 1002.001; and
20 Government Code, §2054.1115 and §2054.2591.

21
22 Text.

23 §209.23. Methods of Payment.

1 (a) The purpose of this section is to establish the methods of payment that the Texas
2 Department of Motor Vehicles may accept, depending on the transaction, and to make the public aware
3 of a potential service charge for certain methods of payment. All fees for department goods and services
4 and any fees required in the administration of any department program shall be paid to the department
5 with a method of payment accepted by the department, which may be:

6 (1) a valid debit or credit card, approved by the department, and issued by a financial
7 institution chartered by a state or the United States, or a nationally recognized credit organization;

8 (2) electronic funds transfer;

9 (3) a personal check, business check, cashier's check, or money order, payable to the
10 Texas Department of Motor Vehicles;

11 (4) cash in United States currency, paid in person; or

12 (5) by an escrow account, established with the department for the specific purpose of
13 paying fees.

14 (b) Persons paying the department by credit card, debit card, or electronic funds transfer shall
15 pay any applicable service charge per transaction.

16

17

SUBCHAPTER C. DONATIONS OR CONTRIBUTIONS

18

§209.33 and §209.34

19

20 **STATUTORY AUTHORITY.** The amendments are adopted under Transportation Code, §1001.008, which
21 authorizes the board to accept a donation or contribution in any form and to delegate to the executive
22 director the authority to accept a donation or contribution that is under \$500 or that is not otherwise
23 required to be acknowledged in an open meeting; Transportation Code, §1005.001, which says the board,

1 the executive director, and each employee of the department is subject to the standards of conduct
2 imposed by Government Code, Chapter 572, and any other law regulating the ethical conduct of state
3 officers and employees; Government Code, Chapter 575, which governs a state agency's acceptance of a
4 gift, which is defined as a donation of money or property that has a value of \$500 or more; Government
5 Code, §2255.001, which requires a state agency that is authorized by statute to accept money from a
6 private donor to adopt rules governing the relationship between the donor, the state agency, and the
7 state agency's employees; Transportation Code, §1002.001, which provides the board with the authority
8 to adopt rules that are necessary and appropriate to implement the powers and the duties of the
9 department; and the statutory authority referenced throughout the preamble and in the rule text, which
10 is incorporated by reference.

11 **CROSS REFERENCE TO STATUTE.** The adopted amendments implement Transportation Code, §§1001.008,
12 1002.001, and 1005.001; and Government Code, Chapters 572, 575, and 2255.

13

14 Text.

15 §209.33. Donations or Contributions.

16 (a) The purpose of this section is to establish the criteria and procedures regarding donations or
17 contributions under Transportation Code, §1001.008 and Government Code, Chapter 575, as well as the
18 standards of conduct governing the relationship between the board, the department's employees, and
19 donors under Government Code, Chapter 2255.

20 (b) The following words and terms, when used in this section, shall have the following meanings,
21 unless the context clearly indicates otherwise.

22 (1) Board--The board of the Texas Department of Motor Vehicles.

23 (2) Department--The Texas Department of Motor Vehicles.

1 (3) Donation or contribution--Anything of value in any form, including real or personal
2 property, money, materials, or services, given by a donor to the board, as authorized by Transportation
3 Code, §1001.008.

4 (4) Donor--A person who makes a donation or contribution to the board, as authorized
5 by Transportation Code, §1001.008.

6 (5) Executive director--The executive director of the Texas Department of Motor
7 Vehicles.

8 (c) The executive director may accept a donation or contribution valued under \$500.

9 (d) Board acceptance of a donation or contribution shall be made in an open meeting. The
10 records of the meeting shall identify the name of the donor and describe the donation or contribution
11 and its purpose.

12 (e) If a donor specifies the purpose of the donation or contribution, the department shall use
13 the donation or contribution for that purpose to the extent the specified purpose complies with
14 Transportation Code, §1001.008.

15 (f) The department may document terms and conditions relating to a donation or contribution
16 through a donation or contribution agreement with the donor.

17 (g) Pursuant to Transportation Code, §1005.001 and Government Code, §2255.001, board
18 members and department employees shall comply with the standard of conduct imposed by
19 Government Code, Chapter 572 and any other law regulating the ethical conduct of state officers and
20 employees when interacting with a donor or potential donor.

21 (h) A board member who serves as an officer or director of a potential donor to the board shall
22 not vote on a proposal or decision pending before the potential donor to make a donation or
23 contribution to the board.

1 (i) If the department's executive director serves as an officer or director of a potential donor to
2 the board, the executive director shall not vote on a proposal or decision pending before the potential
3 donor to make a donation or contribution to the board.

4 (j) A board member or a department employee shall not authorize a donor to use department
5 property unless the following requirements are met:

6 (1) the board member or the department, as applicable, must have statutory authority
7 to do so;

8 (2) the property shall only be used for a state purpose; and

9 (3) the property shall be used in accordance with a contract between the department
10 and the donor that complies with Texas law.

11
12 **STATUTORY AUTHORITY.** The repeal is adopted under Transportation Code, §1001.008, which authorizes
13 the board to accept a donation or contribution in any form and to delegate to the executive director the
14 authority to accept a donation or contribution that is under \$500 or that is not otherwise required to be
15 acknowledged in an open meeting; Government Code, §2255.001, which requires a state agency that is
16 authorized by statute to accept money from a private donor to adopt rules governing the relationship
17 between the donor, the state agency, and the state agency's employees; Transportation Code, §1002.001,
18 which provides the board with the authority to adopt rules that are necessary and appropriate to
19 implement the powers and the duties of the department; and the statutory authority referenced
20 throughout the preamble and in the rule text, which is incorporated by reference.

21 **CROSS REFERENCE TO STATUTE.** The adopted repeal implements Transportation Code, §1001.008 and
22 §1002.001; and Government Code, Chapter 2255.

23

- 1 Text.
- 2 §209.34. Donation Agreement.
- 3