TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Thursday,
August 17, 2017

Lone Star Room
Building 1
4000 Jackson Avenue
Austin, Texas

BOARD MEMBERS:

Raymond Palacios, Chair
Blake Ingram, Vice Chair
Robert "Barney" Barnwell, III
Luanne Caraway
Brett Graham
Kate Hardy
Gary Painter
Guillermo "Memo" Treviño
Johnny Walker
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MR. PALACIOS: Good morning, everyone. It's a great day in Austin, Texas. So happy to see so many people here on this fine day.

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

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

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

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

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

MR. BARNWELL: Present.

MR. PALACIOS: Board Member Caraway?

(No response.)

MR. PALACIOS: Board Member Graham?

(No response.)

MR. PALACIOS: Board Member Hardy?

MS. HARDY: Here.

MR. PALACIOS: Board Member Ingram?

MR. INGRAM: Present.

MR. PALACIOS: Board Member Painter?

MR. PAINTER: Present.

MR. PALACIOS: Board Member Treviño?

MR. TREVIÑO: Here.

MR. PALACIOS: Board Member Walker?

MR. WALKER: Present.

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

Also, let the record reflect that Board Members Caraway
and Graham are absent today.

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

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

One other auspicious moment to recognize here.

For all the bachelors in Texas, sad times, I hate to say that there is one less bachelorette in Texas right now.
Congratulations to Ms. Whitney Brewster on her marriage.

On behalf of the Board, we wish you all the best and a lifetime of happiness. Congratulations.

MS. BREWSTER: Thank you.

(Applause.)

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

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

I have several things to mention to the Board and the attendees regarding the performance of our TxDMV staff, and wanted to recognize them for their hard work.

First, the eLICENSING project was recognized at the Texas Association of State Systems for Computing and Communications, or TASSCC, at their annual conference on August 8 in San Antonio. eLICENSING received the project excellence award for high value impact, high value business impact projects.

As a first of its kind web-based application developed by the TxDMV, eLICENSING revolutionizes the way the department interacts with our licensee groups comprised of tens of thousands of Texans and others from around the globe. This system has enabled TxDMV to offer new digital services to licensees such as the ability to use electronic signatures and make payments, scout and
verify locations via Google Maps, streamline legislative mandated background checks, and all while drastically reducing license application processing time.

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

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

(Applause.)

MS. BREWSTER: The other item that I wanted to mention, over the weekend of July 21, the AMSIT project team -- and the AMSIT project is where we're separating from TxDOT from the information infrastructure side of the house -- this AMSIT team updated the login security for the eTAG and webDEALER applications, and this update moved the TxDMV a huge step closer to completion of the AMSIT project and full technology separation from TxDOT.
I want to congratulate the team. I appreciate so much the hard work of that team. They moved more than 40,000 user accounts for eTAG and webDEALER to a TxDMV managed system which was an enormous effort. It increased the security associated with the systems, while providing users with new self-service functionality associated with forgotten user names and passwords. The team worked literally around the clock for migration to ensure that all systems were up and available on Monday morning at the start of business. The TxDMV service desk hours were extended, additional staff were brought on for the call center from multiple divisions in the agency, and I just could not thank this group enough.

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

MR. PALACIOS: Congratulations.

(Applause.)

MS. BREWSTER: The Board will hear a little more about this project later on and where we are. We're at the eleventh hour of the project, and I won't steal Ms. Sandberg's thunder, so I'll wait for her to give that
Chairman Palacios, members of the Board, would you join me at the front of the dais to recognize some individual staff?

MR. PALACIOS: Certainly.

MS. BREWSTER: Thank you.

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

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

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

(Applause; pause for presentation and photos.)

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

Thank you so much, Dave, for all of your work,
and we're very proud of you and thrilled that you were able to receive this award.

(Applause; pause for presentation and photos.)

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

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

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

    Thank you, Michael.

    (Applause; pause for presentation and photos.)

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

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

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

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

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

In September 1995, Phil moved to Austin to work in
TxDOT's newly formed Motor Carrier Division. During his
tenure at TxDOT, he and his employees underwent a number
of organizational changes, including the transfer of his
enforcement investigators and support staff to the newly
formed Texas Department of Motor Vehicles in November
2009. Between 2009 and 2012, Phil remained employed by
TxDOT in its Motor Carrier Division as manager of the
compliance and enforcement section dealing with
oversize/overweight issues. On January 1, 2012, the
remaining Motor Carrier Division employees were
transferred to the DMV, and the oversize/overweight
investigative staff was incorporated into the Enforcement
Division here at the DMV.

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

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

Thank you.
(Applause; pause for presentation and photos.)

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

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

Mr. Duncan.

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

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

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

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

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Thank you.

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

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

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

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

We will now move on to agenda item number 5,
contested case. Daniel Avitia and Michelle Lingo will now address agenda item 5, contested case involving World Car v. Hyundai Motors.

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

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

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

MR. KAPLAN: Thank you, Mr. Chairman. The Board already has our power point, I believe. We're not
going to argue anything from the prior hearing, which, as you pointed out, was thorough.

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

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

Do you have any questions at this time?

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

(No response.)
MR. PALACIOS: Thank you, Mr. Kaplan.

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

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

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

MR. YOUNG: I will. Thank you, Your Honor. My name is Kevin Young. I'm here with my law partner, David Prichard, with the law firm of Prichard Young in San Antonio. I'm here on behalf of Hyundai Motor America.

With me from Hyundai Motor America today is Rosemary McDonald and Mr. Tom Headrick.

MR. PALACIOS: Please continue.

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

MR. PALACIOS: Got elevated here.

(General laughter.)

MR. YOUNG: Given that we have five minutes, I am not going to walk completely through a power point. We have handouts which I will give the Board at the conclusion of my remarks which has some of the exhibits in there, but in answer to the chairman's question, should the Board adopt a new order, the answer is yes, the Board should adopt and sign the order that was proposed to it by the director, Mr. Avitia, in November of 2016, as prepared
and approved by the staff attorneys of the DMV. That order, in fact, supports the PFD issued by the ALJ. That is the order that we believe that this Board should enter.

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

The order that we believe should be entered is the one that was already proposed to you in November 2016. It contains very minor changes from the PFD as recommended by the ALJ, minor changes that the staff attorneys looked at and they found very technical changes that needed to be made, and they proposed an order which encompassed all of those technical changes and asked the
Board to approve it. We ask that hate Board sign that today.

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

And the reason that you can't do that, we believe it's impermissible to do that is because that's not the way the legislature set this Board up. This Board is a policy-making board, it has the important job of making policy all over Texas about the issues that it's charged to handle. It is not a board that is supposed to be deciding contested cases on the facts. The Board has delegated that job of deciding these adjudicated facts, that is someone, an ALJ, to hear the arguments of the parties, to hear both sides, to hear all of the things that Mr. Kaplan has trotted out, to hear all of the things
that Hyundai says, to listen to witnesses, to review all of the evidence, to do everything and then make those decisions.

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

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

The article says: When can an agency change the findings or conclusions of an administrative law judge? Their article. And in that article, let me just read two short passages from it and then I'll be essentially finished and take questions. The judge says that the ALJ is the one that's supposed to make adjudicative fact findings. He says: The ALJ is a
disinterested hearings officer who will call them as they are. The ALJ, unlike the agency, has focused entirely on the proceeding and presumably has heard all of the evidence. Third, as a part of hearing the evidence, the ALJ, again unlike the agency, has seen the demeanor of the witnesses.

MR. PALACIOS: Thank you, Mr. Young.

Are there any questions for Mr. Young?

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

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

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

MR. PAINTER: Thank you.

MR. PALACIOS: Mr. Young, I do have a question.
You made a comment regarding our responsibilities in contrast to the ALJ, and I think you said something to the effect that it is the ALJ's responsibility to discern facts and not this Board's responsibility. Are you saying then that this Board should accept all information presented to us by an ALJ as fact and accept everything at face value?

MR. WALKER: As undisputed.

MR. PALACIOS: Exactly.

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

MR. PALACIOS: As undisputed.

MR. WALKER: As undisputed.

MR. YOUNG: Well, first of all, they're not undisputed, that's first of all. But secondly, to answer your question directly, I think the best way I could answer that is to read exactly what Judge McCown says because this is Hyundai's argument all along. Judge McCown says when the board is considering whether to disturb the ALJ's findings of fact or conclusions of law in this kind of proceeding under this particular statute -- this paper is that specific, talking about the very statute that you're considering today, here's what he says: If you want to disturb the fact findings of the ALJ "give up." This is a decision the agency doesn't get to make. This is a bitter pill to swallow, but if it's truly
an adjudicative fact, then it's just one case. Do not cheat by attempting to create a fictitious policy reason.

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

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

Can I answer any other questions?

MR. PALACIOS: Thank you, Mr. Young.

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

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

Yes, please.

MR. WALKER: So I have a question.

MR. PALACIOS: Yes.

MR. WALKER: It's my understanding that the Board made a determination that if there were going to be handouts that they were going to be given to the Board prior to this meeting so that we could review those so
that we don't have to spend our time up here reading 20-page documents about cases before the Board. We can't intelligently make decisions with somebody handing out a 20-page document to us and say, hey, read it now and make a determination, that we would review these prior to any hearings.

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

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

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

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

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

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

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

MR. YOUNG: Thank you.

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

MR. KAPLAN: The point we've made from the
beginning, at the last hearing and now we're hearing an attempt to re-argue that, is that the ALJ's legal decisions to disregard material facts, and that's why in our proposed order some of the fact-findings are revised, but very limited fashion.

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

So that's the reason that some of the fact-findings are revised in our proposed order that we submitted July 27. If we do what they recommend, the Board's a rubber stamp and it gets to let the ALJ decide what is unreasonable discrimination. The legislature gave the Board the responsibility. The difference between this and a jury trial, as I say, is in a jury trial the judge instructs the jury on what is relevant, here the ALJ made
decisions that material undisputed facts just didn't matter to her. It's clear from our prior discussion that those are relevant.

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

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

MR. PALACIOS: Thank you, Mr. Kaplan.

Are there any further questions of either of
the two parties, Mr. Young or Mr. Kaplan, from the Board

(No response.)

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

MR. WALKER: Mr. Chairman, I'd like to make a motion. Since I made the original motion on the original case back in November, I'd like to amend that motion. I move that the Board amend the PFD by changing the following findings of facts and conclusions of law because the administrative law judge misapplied applicable law, specifically Texas Occupation Code, Section 2301.468, made a technical error in the findings of facts: Number one, add necessary findings of facts regarding the dates of the complaint filing and the renewal of the parties' agreement; number two, amend findings of fact number 30, add an additional finding of fact to reflect that Hyundai discriminated unreasonably between franchisees in the sale of motor vehicles owned by Hyundai; three, modify finding of fact number 52 to reflect that Hyundai's sales efficiency requirements were unreasonable; number four, amend findings of fact number 53 to state that the discretionary allocations made by Hyundai were unfair due to the disparity in allocations made among different dealers in the market; number five, modify conclusions of law number 3 to correct the citation for the Texas
Administrative Procedure Act; six, modify conclusion of law 6 to correct the citation to the correct version of the law; number seven, modify conclusions of law 8 to state that Hyundai's discretionary vehicle allocations are unreasonably discriminatory and correct the typographical error in the citation; eight, modify conclusions of law number 9 to conclude that World Car met the burden of proof to show that Hyundai violated its good duty and faith of fair dealing through the allocations of sales efficiency.

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

MR. BARNWELL: Second.

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

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

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

All opposed, signify by raising your right hand.

(A show of hands: Board Members Hardy and
MR. PALACIOS: For the record as well, Board Member Palacios is also in favor of the motion.

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

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

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

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

We have people representing each party. I
would like to ask that the attorney for Fiat Chrysler please come forward.

Good morning. Please identify yourself.

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

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

The Board, during its January hearing a few months ago, wanted to learn more from the ALJs on the issue of contributions to the dealership by the protestant in this case, the dealer, and specifically, contributions to the dealership from the dealer principal on an individual basis. During the hearing, the principal testified that he made contributions personally to the dealership over the last nine years, and those funds were used by the dealership to buy down the floor plan on vehicles he had purchased from the manufacturer. They were also used to distribute monies to other dealerships
for the same purpose that were owned by Mr. Atkission. Importantly, they were not used for day-to-day operations such as advertising, to pay salaries or to pay rent.

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

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

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

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

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

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


MR. CLOUATRE: No problem.

MR. PALACIOS: Please continue.

MR. CLOUATRE: You bet. On the net working capital and net worth, the dealership reported them as short-term liabilities which during the life of the dealership prior to the hearing would have subtracted those amounts out of working capital and net worth. When they were recast shortly before the hearing as long-term investments, they would have taken the short-term liabilities out of that equation so they then didn't
impact the net working capital and net worth, thus that's why there was an increase in both amounts, so the ALJs did find that those contributions did not change functionally, so they were appropriately accounted for by the dealership initially.

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

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

(No response.)

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

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

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

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

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

MR. CLOUATRE: The organization.

MR. PALACIOS: So what is Mr. Atkission?

MR. CLOUATRE: He is the dealer principal.

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

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

MR. CLOUATRE: That's an interesting question. It wasn't part of the record. But just in general discourse, I believe that there's been a move away from sole proprietorships, however, many folks still operate them as sole proprietors.

MR. PALACIOS: Because I'm trying to understand if Mr. Atkission, I guess, is not a dealer, I'm trying to struggle with how would you make an investment in a dealership unless you're a sole proprietor. I mean, how is that possible?
MR. CLOUATRE: Well, dealerships routinely plow profits and earnings back into their operations. That's how they generate the working capital traditionally on a daily basis. And remember that these contributions were not used for day-to-day operations, they were used -- a business decision was made by Mr. Atkission to place his contribution in the dealership rather than a bank to get that 4 percent return. They weren't used to buy advertising, to pay the service techs, to pay the rent on the facility.

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

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

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

MR. CLOUATRE: It is but it's functionally how those funds are used. Floor plan liabilities are
traditionally not considered working capital.

MR. PALACIOS: How is that so?

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

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

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

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

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

MR. PALACIOS: Well, ideally you want to turn it within a year, that's the goal. So by definition then, if he's paying down floor plan, would that not be a working capital contribution?
MR. CLOUATRE: Because he already had a floor plan loan, this is just a substitution of capital in for that. Functionally there's no difference. I would concur and agree with you if the capital contributions were done to make emergency payments to pay the techs or to pay a TV account.

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

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

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

MR. CLOUATRE: Correct.

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

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

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

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

MR. INGRAM: That would increase cash, though.

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

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

MR. CLOUATRE: Totally different situation. And again, back to the functional use of how those funds are used. And I apologize, Mr. Ingram, I thought it was just to be housed in the dealership for a 4 percent interest-earning vehicle. But if those funds are
deposited in such a way and then used for daily
operations, I would agree with you.

MR. PALACIOS: I just have one last question.

Again, these funds have been referred to as Cecil Money
which I guess is cash, so I assume the transaction is
something Mr. Atkission would write a check to his
dealership that was put in a cash account and then a
liability is set up. I guess what you're saying is that
those funds were used exclusively to pay down floor plan.

How do you know that those funds weren't being used for
anything else?

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

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

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

MR. WALKER: That's confusing me.
MR. CLOUATRE: Mr. Atkission would write a check to the dealership, it would be put in short-term notes.

MR. WALKER: Which dealership?

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

MR. WALKER: From the Chrysler dealership?

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

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

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

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

MR. CLOUATRE: To bring up the IRS, the dealership reported the net worth in net working capital.
as they reported to Chrysler for eight years the same way, so I can't answer that question, Mr. Walker.

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

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

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

MR. CLOUATRE: I believe he does.

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

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

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

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

MR. BARNWELL: So from time to time he would
pay down that floor plan. Why was he having to pay down
the floor plan? Was he selling cars out of trust?

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

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

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

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

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

MR. BARNWELL: From those other dealerships?

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

MR. BARNWELL: So the other dealerships never
paid anything back?
MR. CLOUATRE: That's my understanding. That was the evidence in the record that there was no expectation.

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

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

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

MR. CLOUATRE: From anyone.

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

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

MR. BARNWELL: Well, I suppose we could classify it in a number of different ways, and you don't know how the other stores classified that. How did the Orange store classify that transfer of funds?
MR. CLOUATRE: You know, that's a good question. I assume it was just a buy-down of that short-term note payable account.

MR. BARNWELL: I don't understand that.

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

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

MR. CLOUATRE: Correct.

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

MR. CLOUATRE: Correct.

MR. BARNWELL: Nothing necessarily wrong with that.

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

MR. BARNWELL: With regard to Mr. Palacios's issues, he's concerned, I'm concerned, I think we're all a little concerned that we're defining dealer too narrowly.
Now, when Mr. Atkission started Atkission, whatever it is, Chrysler or Atkission Orange, when he started that, he owned was it 23 percent, and then over a period of time he acquired the remaining outstanding equity interest in the company?

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

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

MR. CLOUATRE: Correct.

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

MR. CLOUATRE: Mr. Barnwell, that's the way the statute defines it. And I understand the frustration and the concerns expressed, I do, but that's the decision for this case, the decision for this case is within that statutory rubric. And I understand the point that you're
making. And I'll be honest with you, this statute is not
dissimilar to statutes in other states, the way that
dealers is defined and the way that it's applied.

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

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

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

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

MR. BARNWELL: Does he own multiple
dealerships?

MR. CLOUATRE: He does.

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

MR. CLOUATRE: He does.

MR. BARNWELL: Are they being terminated?

MR. CLOUATRE: No, sir.

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

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

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

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

(No response.)

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

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

MR. PALACIOS: Three minutes? Okay. Great. I'd like to now call up Mr. Bill Crocker. Good morning, sir.

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

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

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

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

At the bottom of page 7 they identified Cecil Atkission's $6.25 million of financial contributions to the business as merely a capital contribution with no terms of repayment. On the next page they said that
regardless of how it is classified, it was plainly not
enough to prevent the business from being a poorly
operated and money losing enterprise. You know very well
that is not the issue in this matter. The issue is
whether or not the manufacturer has proven the specific
grounds set out in the notice of termination and proven
that those grounds constitute good cause for termination.

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

The record is absolutely clear, the dealership
at all times had sufficient capital to meet FCA's working
capital and net worth requirements. It had been that way for the last seven years since the dealership had been losing money, he started lending that dealership money, according to the record, when he bought it, and that's the way he put additional capital into the dealership. You can't torture that into a short-term debt. Cecil just didn't have it recorded on what the ALJs considered the right line of the dealership's financial statement. The decision of the ALJs regarding the legal status of Cecil's contribution was error and must not be allowed to stand as a precedent.

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

What about the seven things which must be considered as a part of all existing circumstances? The ALJs discussed them at length in the supplemental PFD, but they are not additional grounds for termination as the ALJs treated them. They are facts which must be considered in determining whether the specific grounds set
out in the notice of termination constitute good cause for termination. They are included in the statute to preclude termination on any specified grounds without consideration of all of the existing circumstances of the dealership. They cannot be used as additional grounds as the ALJs used them in this case. That was error and must not be allowed to stand as a precedent.

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

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

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

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

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

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

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

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

MR. WALKER: So we didn't get an unbiased
opinion when we went back? I mean, is it proper that we
should have maybe asked for a different ALJ's
determination, or do we have any leeway to do that?
MR. DUNCAN: If I may. David Duncan, general counsel.

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

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

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

MR. WALKER: Thank you.

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

MR. CROCKER: Yes, sir, two others.

MR. PALACIOS: Okay. And I assume he owns multiple dealerships throughout the state of Texas. Is that correct?
MR. CROCKER: He does. Is he an LLC in all these other dealerships?

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

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

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

MR. PALACIOS: Yes, Board Member Walker.

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

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

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

MR. CROCKER: No, sir.

MR. WALKER: You have to go to Chrysler?
MR. CROCKER: You have to ask permission from Chrysler first before you even have authority to come to the DMV to request relocation.

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

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

MR. WALKER: Chrysler told you that?

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

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

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

MR. BARNWELL: Do you have a full and complete proposal now?
MR. CROCKER: Yes, sir.

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

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

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

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

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

MR. CROCKER: Well, that Chrysler did, two things. Number one, if you look at the letter, it's very clear there are only three grounds: lack of sales, lack of working capital, and lack of net worth. The other
grounds that they cited there were contributing factors to, not separate grounds for termination but separate factors contributing to the lack of sales. It's clear from the context of the letter, it's even clear from the way they put their headings on the paragraphs, only three grounds.

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

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

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

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

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

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

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

MR. CROCKER: It was about two years.

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

MR. CROCKER: That's correct.

MS. HARDY: Is that normal?

MR. CROCKER: Yes, ma'am.

MS. HARDY: Having two ALJs?

MR. DUNCAN: Two ALJs is not unheard of but
it's not really, really common either. Most cases have one judge.

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

MS. HARDY: Thank you.

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

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

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

MR. CROCKER: Sure.

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

MR. CROCKER: Well, that sign was damaged in a hurricane. There was a dispute over whether or not the
company that put it up could maintain it or would maintain it or whatever.

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

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

MR. BARNWELL: I understand what it is.

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

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

MR. CROCKER: They have done all of that.

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

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

MR. BARNWELL: Okay.

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

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

MR. CROCKER: You couldn't find that pattern in
that dealership. If it were going to be that way, it would be in all his dealerships, and he's been very successful.

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

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

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

MR. CROCKER: I agree.

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

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

MR. BARNWELL: Well, I understand your position on that. Having been issued a termination basically...
you're walking dead, so why would you go through the relocation issue when you're already not fogging a mirror.

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

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

MR. CROCKER: Say that again.

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

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

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

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

MR. INGRAM: I have a question for Mr. Duncan,
please. So the question is we had this case, we have this one issue, we remanded it back to SOAH for this one issue, now the case is back. So in essence, the case is not about the one issue, it's about the entire all seven factors that we have to look at. Right? Because I mean, in the end we have just those seven things that we looked at. Is that a fair assessment, we're looking at the case for the first time and we have the seven factors that we need to look at?

MR. DUNCAN: David Duncan, general counsel.

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

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

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

MR. INGRAM: Sure.

MR. CROCKER: If I may, your decision has to be made, though, on the three noticed reasons for termination. Those are not independent grounds for termination, those seven factors, they're just additional
things that must be considered, but your decision is based on the three noticed bases or reasons for the proposed termination.

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

MR. DUNCAN: That's correct.

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

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

MR. CROCKER: It's still the same three reasons for termination. They reiterated their analysis as they apply to those three factors, but the three factors -- and all the seven things really focus on lack of sales, and there's no question, the dealership did not sell enough automobiles or cars, vehicles, but you've got one factor
there by itself which statutorily cannot support
termination, you've got the two other bases for
termination they couldn't prove because we had plenty of
money in the dealership.

MR. INGRAM: Okay.

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

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

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

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

MR. INGRAM: But to be clear, not the principal
but the interest has been paid. Correct?
MR. CROCKER: Sure, absolutely.

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

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

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

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

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

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

MR. BARNWELL: Is it elected for taxes as a partnership?
MR. CROCKER: I think not. I think I understand that it is reported.

MR. BARNWELL: It's a disregarded entity.

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

MR. CROCKER: Company.

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

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

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

MR. CROCKER: Yes, sir.

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

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

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

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

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

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

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

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

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

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

MR. CROCKER: It would change the mentality of
the people who looked at the financial statement and they say, oh, now it's on the right line, we see that there's net worth there.

MR. WALKER: Thank you.

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

(No response.)

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

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

MR. PALACIOS: Okay. Thank you.

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

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

MR. CLOUATRE: It was the same two SOAH ALJs. Second point is -- Mr. Barnwell, you asked a question if it had been tried to work out -- it had been tried to work out before and after the notice. For years FCA had counseled the dealership, had provided written notice of issues. There was testimony from the area
manager who explicitly said what he had counseled the dealership on, including the net worth issue.

Number three, there was no request to relocate, there still is not request to relocate. It's a concept, and as Mr. Crocker alluded, that's not a formal proposal. So whether there's a stay or not, there's never been a request to relocate. Even though the dealer committed in 2008 to review that principle of becoming a dealer, there still is no formal request to relocate.

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

So I think this is one factor of seven. There were six that were found in favor of good cause, one was neutral. One of the factors, whether the dealer was complying with contractual requirements, there were eight bases of breach found, so this but a fraction of that.
And I think what I'd like to conclude with is if there ever was a case for termination in Texas, this is it, and if there is not good cause to terminate, what policy is that sending to the existing dealer body of all brands who are doing a good job? Does that suggest that performance doesn't matter, that compliance with contracts don't matter, that there be no reason to excel and treat customers well, to retain those customers, to make them loyal customers to return? And for customers, what message are we sending: that it's okay to drive 40 to 80 miles to buy a vehicle, that it's okay to have outdated, antiquated facilities, that it's okay to have poor service, that it's okay to have high prices? I don't think that's the policy message that you want to send.

MR. PALACIOS: Thank you, Mr. Clouatre.

MR. BARNWELL: Could I ask you a question?

MR. CLOUATRE: Yes, sir.

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

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

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

MR. CLOUATRE: One.

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

MR. CLOUATRE: Correct.

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

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

And also to suggest that Chrysler is okay
because they're 119 percent of the market does away with
the fact that Chrysler might be able to do better in that
market and frankly should be entitled to try. It's not a
fixed pie, as I think any dealer would admit. They're constantly trying to improve market share.

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

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

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

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

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

         (No response.)

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

         MR. CLOUATRE: Thank you.

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

         MR. WALKER: Don't look at me.
MR. PALACIOS: I would like to call a recess with Mr. Duncan, and I would estimate that we will be out for about fifteen minutes.

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

MR. PALACIOS: It's a recess.

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

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

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

MR. PALACIOS: Yes, Member Walker, he's back. We will reconvene. This is a very, very important matter, and as such, we need to devote all the time necessary to resolve this matter.

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

MR. PALACIOS: Yes.

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

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

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

We start with the issue of what is a dealer. The ALJ clearly states in their PFD that a dealer is not Mr. Atkission, and therefore, since Mr. Atkission is not a dealer, he could have invested a billion dollars, it doesn't matter because he is not a dealer. The dealer is Atkission Chrysler. If we accept that interpretation,
that narrow interpretation of what a dealer is, we are throwing everything we know in Texas regarding franchisees upside down. Because what the ALJs are stating now is unless you're a sole proprietor, there's no way you can invest in a dealership because the dealer is the dealership in some convoluted logic. Perhaps by reading the true definition of statute, that's what that means, but common everyday practice, we all know the dealer is the person that owns the dealership, the person on paragraph three, the person that invests in that dealership.

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

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

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

So to suggest now that Mr. Atkission has not contributed anything and then further suggest that he has nothing to lose which is the other statement here. There's no loss here the assets are only worth a couple hundred thousand dollars, there's no loss. Well, what about the $6.25 million? He has no means now to recoup that money. Once this franchise is terminated, he's lost everything. He has no opportunity to recoup his investment and he's out. But the ALJs dismiss that.
Again, they treat this Cecil Money as if it's some kind of monopoly money or funny money. This is hard cash, $6.25 million which is just completely disregarded by the ALJs. It's mind boggling.

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

That's the message we are sending here if we go forward with this motion. So for that, I would implore these Board members. And I'm going to say this, I have been on this Board for six years now, I also serve as a mediator for General Motors where I help mediate disputes between manufacturers and dealers, I attended several of these and I've never seen a case like this before. In the six years that I've been on this Board, I will tell you this case more than any other case makes me understand and
truly appreciate why this Board was set up the way it is. The composition, we have business people, we have dealers, we have tax assessors, we have people from manufacturing, law enforcement, trucking industry people, independent dealers, because collectively we have a comprehension of the issues that this agency is charged with writing rules on, overseeing, enforcing and making decisions on.

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

MR. BARNWELL: Mr. Chairman, in response to that impassioned plea -- which I appreciate your feelings on that very much -- to me the ALJs interpretation of the contributions by Mr. Atkission could be interpreted differently. He owns the whole thing, there's no question he contributed $6.25 million over a period of years to the
dealership, primarily used as floor plan and then part of it was used to fund other dealerships' cash requirements, so I don't have too much problem with that. It's the other six issues that give me pause.

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

So there are many reasons besides the capitalization that make this a case. You say it's egregious, I think it is too, I think there's never been a case more likely to result in a termination of a dealership than this one. There's just multiple acts and failures to act on the part of the dealer that have caused the problems that the dealer has today, and the violation of the various terms and conditions of the dealer.
agreement simply can't be ignored. So that's my position on it and why I support the ratification of the ALJs' conclusion as set forth in the PFD.

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

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

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

MR. INGRAM: Well, I think that referring back to the chairman's position that in a lot of ways it feels a little bit kind of like a "gotcha" on the loans, where if the loans had been done differently, it wouldn't have been a violation, and certainly they could be easily converted to the paid-in capital. But the facts remain that you still have the other issues that we have that weigh heavily in favor of FCA. So I'm trying to remove the concern of we're setting a precedent on this cash issue or this loan issue but still maintaining the ALJs' decision based on the other factors.
MR. WALKER: Well, the cash issue is, in my mind, the only argument they really have on the cancellation, that's in their favor, in my mind, against canceling the dealership. I'm with Mr. Barnwell on this deal, all the other things he's ignored and not done and tried to cover up the tracks of them, but you want to take and remove the capital contribution as being a contributing factor for the cancellation. Is that what you're asking for?

MR. INGRAM: Essentially, yes.

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

So again, carving out one exception because we don't believe it doesn't change the outcome here. My
position is there is not sufficient evidence -- there has been, number one, a complete misunderstanding of facts which has led to a misapplication of law. And that $6.25, again, if you read through the PFD, that is mentioned over and over and over how he is not a dealer, how the $6.25 million was not relevant. Did Mr. Atkission run the best dealership? Perhaps not. But is that in and of itself grounds for termination. He owns two other dealerships. Again, we're considering all other factors.

    MR. WALKER: Nineteen.

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

    And I will tell you, again, I have respect for ALJs, but in this case they have no comprehension of what
working capital is, what net worth is, what investment is. They go out of their way to try to explain working capital and the more they try to explain it, the more obvious it is that they are clueless. And I will state again this is a misapplication of law due to complete and egregious misunderstanding of basic facts. So we can carve out this one huge part of this case, but it doesn't change the outcome.

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

Okay. So I've got one there, but I've got five other reasons why it ought to be terminated for failure to comply with the dealer agreement, failure to make efforts to comply with the dealer agreement, failure to pursue
remedies that would have mitigated the damages that he was suffering due to low sales. And I understand what you're saying, Mr. Chairman, about the message you're sending, I don't think that this memorializes the ALJs' interpretation of what capital is, I think this is their interpretation of this particular dealer's situation in this particular case.

I would hope that dealers in the future would take from this decision that they don't need to be cavalierly throwing money at their dealerships and not classifying it correctly. There is a way to classify your investments in an LLC or in a corporation or anything else, and they're considered as equity. He never intended for this to be equity, and I understand there may be some tax reasons and those are fine, but the fact is that the dealer here, the one with the general distinguishing number, is Atkission Chrysler, LLC, an independent entity. He could own zero in it or he could own 100 percent of it or he could own any part of anything in between, but the fact is that the dealer was that.

And the GDN was in his name, he said he'd be there half the time and he wasn't. I mean, I'm not going to rehash all of the different reasons what's going on here, but he could have had a manager there, he could have had an F&I person onsite instead of somewhere else, and I
understand that could be a violation even of state law.
So this is a case where I don't know if he's going to lose
$6.25 million or some portion of it, I assume some of
those cars are floor planned and he has a lien on those
cars, surely he'll be able to -- I don't know about
surely, but hopefully he'll be able to recover $3- or $4
million or $5 million or whatever it is.

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

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

MR. PALACIOS: Well, actually, for the record,
the ALJ I guess found in favor of termination on five, if
you concede this one, it brings it down to four. One of
them I will say, factor number six, encompasses many of
the other factors. The statute doesn't say whether or not
it's four out of five or four out of seven, whatever it is, but I would just again state that there would not be five factors that would be in favor of termination, it would be closer to perhaps three.

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

And I was trying to think about it, I thought about it, and the only legal way to do that is if you're a sole proprietorship. Under this interpretation, the ALJs are very clear in stating that the dealer did not invest in itself because the dealer is not Mr. Atkission, it is Atkission Chrysler, so it is impossible to ever have an investment under that definition, under that interpretation. So I disagree with you, Mr. Barnwell, we
MR. BARNWELL: The fact is that's simply wrong. An investment in a dealership can be made in a number of different ways. It can be made with preferred stock, it can be made with common stock, it can be made with membership units, it can be made in a lot of different ways, but it is an investment by any person, doesn't have to be the dealer, could be a group of people who just like to invest in car dealerships.

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

MR. BARNWELL: I disagree with that.

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

MR. BARNWELL: Well, what we have to do if we're going to do that, Member Treviño, we're going to have to, first of all, figure out what the ALJs said.
regarding investment, whether, as Chairman Palacios said, nobody could ever invest in a dealership. Well, that's just not right. What did they say? If they said nobody could ever invest in a dealership, then they're going to get slapped down a hundred different ways in a hundred different courts.

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

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

MR. WALKER: Daniel, can I ask a question here? I'm still perplexed about when we sent this back to SOAH that we told SOAH they had it wrong and they need to look at it and determine and reevaluate their facts. The same person that said they had it wrong, without any arguments from the parties, no argument whatsoever, says, Oh, I'm right. That bothers me that we didn't go to a different SOAH judge and that we didn't go out here and allow both parties an opportunity to say the DMV Board had it right, this is a cash contribution, it is equity in the dealership. I mean, those points should have been thrown out of this deal, as far as I'm concerned. And I'm with
Mr. Barnwell, there's a lot of other problems with this case, but nobody was given their fair day at the table, either side of the parties, when it went back to SOAH to say, hey, here's why you're wrong and here's why you're right. Why can't we change that?

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

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

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

General Counsel, is that your position?

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

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

MR. WALKER: That's not what I understood Mr.
Crocker to say up here, was that they were not allowed to
give any more further evidence into it. Now, he may be
wrong or I may have interpreted it wrong, but that's what
he said.

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

MR. BARNWELL: Was any hearing requested?

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

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

MR. DUNCAN: They did not reopen the record.

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

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

MR. DUNCAN: That's my understanding as well

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

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

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

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

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

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

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

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

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

MR. BARNWELL: Let me ask a question of our general counsel. If we just approve the motion as made to affirm the PFD, what effect does that have with respect to future cases?
MR. DUNCAN: In my opinion, none. There is no precedential value to a contested case being heard by this Board on any future contested case. As a rule-making body, you do not do that. If you guys want to do a rule and want to say it's a contribution, you can do that.

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

MR. DUNCAN: No.

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

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

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

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

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

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

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

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

MR. DUNCAN: Correct.

MR. BARNWELL: That's my position.

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

Is there any further discussion?

MR. TREVIÑO: One directed to counsel. Is there a way to craft language to say we disagree with aspects of this?
MR. DUNCAN: You could overcome specific findings of fact and conclusions of law. That would take us some time to draft that order. We want to hear some specific rationale as to why the conclusions of the ALJs were incorrect, but yes, that could be written without changing the outcome.

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

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

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

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

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

All opposed.

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

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

All right. Let's move on. I guess something a
little lighter, specialty plate design. Tim Thompson.

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

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

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

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

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

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

  MR. TIM THOMPSON: The university themselves
changed their logo that the school is using.

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

MR. TIM THOMPSON: Yes, sir.

MR. WALKER: I move that we accept --

MR. PALACIOS: We have public comment.

MR. WALKER: On this?

MR. PALACIOS: Yes.

Mr. Hickman, good morning.

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

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

I'm against the state promoting one of the seven deadly sins for profit. The plethora of plate designs make criminal identification hard for both law enforcement and civilians, given many states engage in this dubious promotion and use the same plate numbers and similar designs. Number three, the plate design, like most of Texas MyPlates plates is mugly. That's an old surfer expression for more than ugly, and apparently 47
percent of the people in your survey agree with me on that. Number four, since Purdue is historically an agricultural school, Texas should not promote that inferior school but rather shame those thinking about going to Purdue into going to Texas A&M for a far better education. 176 plates sold to the misguided does not justify the expenditure.

Thank you.

MR. PALACIOS: Thank you, Mr. Hickman.

MR. WALKER: Thanks for the pitch there.

Appreciate that.

(General laughter.)

MR. PALACIOS: Do I hear a motion?

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

MR. TREVIÑO: Second.

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

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

MR. PALACIOS: Board Members Walker, Treviño, Hardy, Barnwell, Painter and Ingram in favor; Board Member Palacios opposed. Motion carries.
Let's move forward to agenda item number 8, Rules - proposal.

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

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

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

(General laughter.)

MR. PALACIOS: Please proceed.

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

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

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

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

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

MR. CLINT THOMPSON: Relative to changes in SB 2076? There were additional transactions, additional vehicles, if you will, that we've identified that we wanted to specifically call out that they are non-repairable, and the reason that we're pulling the actual criteria in administrative rule is we either had to update it to be consistent with the new statute or just make the reference. That way if there are any future changes, we
would not have to continue to update those.

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

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

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

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

MR. WALKER: So this is to post, you're wanting permission to post?
MR. CLINT THOMPSON: Yes, sir.

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

MR. BARNWELL: Second.

MR. PALACIOS: Motion by Board Member Painter to accept the proposal, second by Board Member Barnwell.

Any discussion?

(No response.)

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

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Thank you.

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

The department is seeking your approval in order to implement House Bill 561 which passed during this past legislative session. House Bill 561 requires the agency to establish rules for the issuance of
distinguishing license plates for package delivery vehicles. Package delivery vehicles was a new vehicle class that was created during this last session of the legislature.

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

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

MR. PAINTER: Does that state whether the plate would go front or back?
MR. TIM THOMPSON: Statute, I don't think actually addresses that. I'd have to look. I think by rule we require it to be on the back.

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

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

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

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

MR. WALKER: Will that require modification to RTS?

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

MR. WALKER: I don't either, that's why I'm asking the question. But they're going to be used on the roadways.
MR. TIM THOMPSON:  And they're required actually to have insurance as well.

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

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

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

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

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

MR. WALKER:  Twenty-five years?

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

MR. PAINTER:  What size vehicle does this
MR. TIM THOMPSON: Member Painter, this actually brings in --

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

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

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

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

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

MR. TIM THOMPSON: I'll just say by observation, most bills in that price range were not shown
to have significant impact on agencies by the LBB. And you are correct, Member Walker, our ability here today is only to implement the registration process, we don't have any provision to address the operational issues.

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

MR. TIM THOMPSON: Yes, sir.

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

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

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

MR. TIM THOMPSON: Those actually are titled.

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

MR. TIM THOMPSON: It should be titled.
MR. INGRAM: Well, the stolen ones don't have a title.

MR. WALKER: Mine are new.

(General laughter.)

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

MR. DUNCAN: We can ask.

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

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

MR. TREVIÑO: Thank you.

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

MS. HARDY: Second.
MR. PALACIOS: We have a motion by Board Member Ingram to accept the proposal, second by Board Member Hardy. Any discussion?

(No response.)

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

(A show of hands.)

MR. PALACIOS: Motion carries unanimously.

Thank you.

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

MR. INGRAM: Are we skipping this one?

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

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

Please proceed, Mr. Archer.

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

The 85th Legislature authorized three new permits: House Bill 2319 authorized the North Texas Intermodal Permit, Senate Bill 1383 authorized the Fluid
Milk Transport Permit, and Senate Bill 1524 authorized the Intermodal Shipping Container Port Permit.

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

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

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

The three proposed rules establish requirements, restrictions and procedures regarding these new permits such as application method, movement restrictions during hazardous conditions, and curfew...
restrictions. The Fluid Milk Transport Permit and Intermodal Shipping Container Port Permit also include provision regarding windshield stickers as required by statute, so we'll have to have stickers for those.

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

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

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

MR. WALKER: I have a couple.

MR. PALACIOS: We have some guest speakers, but
MR. WALKER: In the rule that we're posting right here, one thing that I noticed last night was it doesn't specify the weights in any of the rules.

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

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

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

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

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

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

MR. ARCHER: It's going to be specific because
the milk production areas are located in certain areas of
the state so these routes are pretty well set, so what
they've asked TxDOT to do and TxDOT is working with the
milk industry on setting those routes and they will have a
set route for those. They're going to give us those roads
as, I think, restrictions; rather than saying this is the
route, they're going to say you can't go on these roads
but you can go on these.

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

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

MR. WALKER: Less than a mile.

MR. ARCHER: It's very short.

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

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

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

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

MR. WALKER: Can we modify it after the rule?
MR. ARCHER: I'll leave that to counsel.

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

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

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

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

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

MR. WALKER: That's in statute?

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

MR. WALKER: You're sure?

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

MR. WALKER: It's in the rule?

MR. ARCHER: It's in the rule.

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

MR. PALACIOS: Any other questions for Mr.
Archer?

(No response.)

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

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

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

MR. ARCHER: That's correct.

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

MR. ARCHER: Well, to answer your question, currently the way the rules are written, it's a non-transferable permit. It can be replaced if the windshield
is destroyed or the sticker is destroyed, but in your situation you're speaking of, if you sell your truck, then you would have to buy a new permit if you want to replace that permit.

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

MR. ARCHER: That's in rule.

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

MR. ARCHER: Mr. Walker, if I may. If we could be very specific and careful about how we craft the transfer rule, because if we're not careful, we could have
unscrupulous people out there -- which I'm not suggesting
that anybody in this room is that -- that they could be
transferring those permits to trucks back and forth. And
it also causes some accounting issues to do that. We have
to issue a new sticker, in some cases refunds, we have to
back that out, so we have to be very specific about that.

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

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

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

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

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

MR. ARCHER: No transfer fee.

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

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

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

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

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

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

MR. ARCHER: That's true, but they're required
to have a sticker. My point is this, we can craft some
specific language in the situation we're talking about, if
you get rid of a vehicle within the term of the permit and
you want to use whatever is left on that permit term and
get a sticker for your truck, I think we could probably
accommodate that, or if the truck is wrecked or if you have mechanical problems. I think we should narrowly define that, though.

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

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

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

MR. DUNCAN: That would be ideal. Yes.

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

MR. WALKER: I second that.

MR. PALACIOS: We have a motion by Board Member Treviño to amend the current rule to include a transferability option, the motion has been seconded by
Board Member Walker. All in favor please signify by raising your right hand.

(A show of hands.)

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

MR. DUNCAN: Yes.

MR. WALKER: Okay.

MR. PALACIOS: Motion passes unanimously.

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

MS. BREWSTER: Yes.

MR. PALACIOS: Right.

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

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

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

MR. PARRISH: Hello, members of the Board, Chairman, Director Brewster. My name is Colin Parrish.
Thank you for allowing us to be here today. I'll try and keep it brief.

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

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

At one House hearing in particular, I will say that the Bowie County judge basically chartered a plane, flew all of the leadership down from Bowie County to attend this hearing, the in fact skipped a commissioners court meeting, so it is a strongly supported permit back in Bowie County. But they came down and they talked bout
the functions of the permit, and one of the exchanges that happened at that hearing was between one of the members on the dais and I believe it was with Mark Marek from TxDOT. They talked about this permit fee and up to $2,000, what does that mean, how would it be applied, how would it be determined. At that time the exchange consisted of Mark Marek said that it would be based on some sort of vehicle miles traveled fee, some sort of calculation, but they didn't set the fee, that it was just put in statutorily.

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

So to summarize, Domtar is a great company, Tammy will be here to tell a little bit about the company and the product that's being moved. I'm just here to ask
leniency during this process, that the legislature gave
the ability to the Board to go up to $2,000, not set it at
$2,000, and because the actual route that they're going to
be using is less than half the distance total authorized
in the permit, we're just looking for some leniency.
They're not looking for a free ride but the major product
they are producing is baby diapers and adult incontinence
products and those are kind of feel-good products and keep
the cost of goods down for baby diapers bottoms dry.

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

Thank you very much for your time.

MR. PALACIOS: Thank you, Mr. Parrish.

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

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

MS. WATERS: Hi. My name is Tammy Waters, and
I'm with Domtar. But just to kind of add on to the
product, so basically what you have is a large roll of
that material which we actually ship out, but then it goes
to the hammer mill, and once it goes through that, it's
beat up and then it becomes like cotton. So basically
this is what goes into your baby diapers, adult diapers,
feminine hygiene products, and that's your absorbent material. And it's flying all over the room, so sorry. That's a little show-and-tell lesson.

MR. WALKER: So this is that?

MS. WATERS: Yes.

MR. WALKER: In exact quantity?

MS. WATERS: Well, maybe not exact quantity. We have huge rolls, this is just a sample, just because most people, when you think about the fluff you think of it this way and that's not what we're shipping, so just to kind of give you a little bit of context.

MR. PALACIOS: Please proceed.

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

As far as Domtar, we actually have a facility in Ashdown, Arkansas which is located about 15 miles north of Texarkana, Texas. In addition, we do have a paper converting facility in Irving, Texas and a diaper plant in Waco, Texas. Of the nearly 850 employees in Ashdown,
about one-third of those reside in Texarkana and northeast Texas.

The Ashdown mill is transitioning to serve export markets and this requires us to seek deepwater ports to ship our product by the sealed oceangoing containers. That's why this permit is so important to us. We've invested over $200 million and what we did was we took our largest paper machine and converted it to a fluff pulp machine. We're a company that's trying to reinvent ourselves. Unfortunately, because of the wonderful thing that we all walk around with all the time, technology, in our hands, copy paper is just not needed as much as it used to be, so that's why we made the move to this type of product.

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

Since our new fluff pulp machine came online right at a year ago, we have worked diligently to build our customer base.
I've got to stop now?

MR. PALACIOS: Yes. Thank you.

MS. WATER: Okay. Sorry.

MR. PALACIOS: Unless there are any questions

(No response.)

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

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

MR. PALACIOS: Thank you.

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

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

I'm here to oppose any new rule creating a North Texas Intermodal Permit, a Fluid Milk Transfer Permit, or an Intermodal Shipping Container Port Permit.

The last time I looked, all these activities covered by these permits are already occurring. Am I to believe that suddenly whole new lines of transportation have appeared? Is there something in North Texas that does not exist in South Texas, East Texas, West Texas or the Panhandle? Is the transportation of fluid milk something new? The last time I looked, fluid milk somehow made it to my refrigerator without any new special permits. Have
shipping containers stopped moving in our ports? Maybe someone should tell Walmart that they've not been getting any goods from China.

What we're talking about here today is the government giving special advantages to special interests. In economics this is called rent sharing which is defined as securing market advantages from government that enhance individual wealth without creating societal wealth.

Government should not be in the business of choosing winners and losers. The free market does a far better job at that without the need to create a Fluid Milk Transport Permit, or an Intermodal Permit. All that is needed is a level playing field for everyone which is why I have never had any problem getting milk transported to my refrigerator.

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

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

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

MR. PALACIOS: Thank you, Mr. Hickman.

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

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

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

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

MR. WALKER: Second.

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

(A show of hands.)

MR. PALACIOS: Motion carries unanimously.

Thank you.

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

MR. TREVIÑO: Yes. The amendments.

MR. PALACIOS: So I'm going to move the order around a little bit out of consideration for some of the tax assessors who have traveled very, very far from
throughout the state to be with us today. So we will
begin item number 11 now, staff review of county and
deputy compensation, and Ms. Linda Flores will give us a
briefing.

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

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

And that petition for rulemaking is still pending, it is not technically what is before you in this. What we wanted to do is give you the facts first and let you know where we are, and if you would like for us to bring that petition for rulemaking back with a draft rule in the next Board meeting, we can be prepared to do that. So I wanted to give you that context so as you're thinking about this, you can think about directing the staff to bring that back as a rule in October.

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

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

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

MR. DUNCAN: Thank you.

MR. PALACIOS: Good afternoon.

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

The first twelve pages of your material beginning on 253 is a general overview and background specifically for the benefit of some of our new Board members. This agency began this journey several years
ago. We got to the point where the agency was created in 2009, conversations were taking place even then on how best to finance the operations of the Texas Department of Motor Vehicles. It was carved out initially from TxDOT which was primarily funded with the State Highway Fund, so to begin our preparations, we were financed out of the State Highway Fund, Fund 6.

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

On page 255 of your document, it goes on to talk about the intent of the initial legislative bill. House Bill 2202 was to consolidate some add-on fees. We had several fees, the automation fee, there were little pieces, and so they wanted us to consolidate all of those fees as much as possible. It was to end also the agency's "diversion" from the State Highway Fund. They considered our financing a diversion from the Highway Fund, so by
establishing a processing and handling fee, it would set aside all of those dollars that were previously being diverted from Fund 6 to finance this agency could now in turn be used on state roads.

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

We also looked at how can we increase the compensation for walk-in registration transactions at the county offices while also trying to reduce the workload that was flowing through those offices. And we also wanted to continue funding the equipment that is currently in our appropriations. I believe it's about $5 million a year. There's a capital item in the agency's budget specifically for new computers, printers and toner.
cartridges. And there were some other things that we wanted to try to reduce and create some efficiency: reduce the online transaction cost to the public, and to establish a performance quality recognition program that was put in place for the counties to try to achieve.

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

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

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

As part of the processing and handling fee, one of the efficiencies that we did put in place was to
centralize online fulfillment to try to drive some of our customers to our online portals for processing their registration renewals. This would be a benefit to the counties since they would no longer have to pay for the postage and the return envelope, they would not have to print the sticker at their respective offices. We also could identify a vendor, it is run through the Data Center consolidation services through the state, that could meet some of our next-day demands for processing our transactions.

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

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

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

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

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

Overall, registrations are down approximately 4 percent this year for the entire year, September through June. And that needs to be very clear: registration transactions are down this year. Month after month when I've been coming to you reporting on our quarterly revenue, I've indicated that registrations are significantly different than what we've seen in the past. We're not going to hit our projection. We've been trying to determine what is driving that trend. Transactions are down by 4 percent. In 2016, transactions were roughly 20 million transactions, we're at 19- this year. So what has
been the driving factor?

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

Before that rule was in place, we had 154,000 vehicles who had multi-year registration. After the rule was implemented last summer and by the time we started programming in RTS in October, that jumped up to 1.4 million cars, 1.4 million cars. They only had to pay the processing and handling fee one time for two years worth of registration. They didn't have to pay $9.50, they paid $4.75. They didn't have to come and renew in 2017. Granted, not all of those 1.4 million would come back and renew, maybe some got wrecked or maybe they got sold, but a substantial number of those vehicles did not come into either the online portal or the county offices to get renewed in '17. That is going to be a one-time blip and
will self-correct moving forward. We'll re-baseline and start moving back up like we've seen in the past.

MR. WALKER: Wasn't that '16?

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

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

MS. FLORES: Yes, sir.

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

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

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

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

MR. WALKER: But we are still going to -- the agency is going to be still in a good financial position
to pay our bills. Correct?

    MS. FLORES:  Mr. Walker, Mr. Walker.
    MR. WALKER:  Yes, Ms. Flores.
    MS. FLORES:  I've been doing governmental accounting for a long time. As I mentioned yesterday during the Finance and Audit Committee, we don't pivot like the private sector, we have to anticipate two years in advance and we have to plan. Yes, sir, we will have enough money to pay our bills and pay our folks.
    MR. WALKER:  That's the important thing.
    MS. FLORES:  Yes, sir. And we will have a positive fund balance when we're done.
    MR. WALKER:  And as long as you are at the helm there, I don't think we'll ever have to worry about that.
    MS. FLORES:  Time is ticking. I've been doing this a long time, sir.
    (General laughter.)
    MS. FLORES:  I would like to say that the temporary permits, it used to be that the counties were only compensated $1.50 for temporary permits. If they handle a temporary permit, they are compensated at the $4.75, so that's helped in some of the revenue.
    The other thing that's different is in our rule proposal this was the rule package estimate versus what we've seen in the first six months of the implementation,
and this is also in your Board material on page 271. The transactions are different. We had assumed that the walk-in rate would be 64 percent of transactions, it's actually 62 percent. Mail-in is actually 4 percent. Online it's really 13 percent and this is where we, the state, had hoped that we would have more adoptees, and we had a very aggressive adoption rate for online transactions. That is not being realized, but that is to the benefit of the counties, so if folks are not using the online portal, they're either walking in or they're processing their transactions at either the county, the full service deputy or a limited service deputy location, and you will actually see that. We had assumed that the limited service deputy would be at 5 percent, it's actually 11 percent. So more people are walking into the grocery stores to renew their registrations than we had anticipated.

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

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

MS. FLORES: We have not really had time to delve into that, so no, sir. We have not had time.
MR. INGRAM: Has the number of limited service deputies increased?

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

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

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

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

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

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

MS. FLORES: The other item that's kind of driving the registration revenue, when I say it's flat, even though we have less transactions, we are seeing that
there's a different mix in the type of vehicle that is being renewed. We have less motorcycles and light vehicles being renewed versus heavy duty trucks and passenger vehicles over 6,000 pounds, so those could be your larger SUVs. When it comes specifically to trucks over a ton, there's 10,000 vehicles associated with that classification. They pay a registration fee anywhere from $200 to $800, so even at a minimum if they're only paying $200, that's a significant revenue stream. So it's offsetting some of those lower transactions. You have vehicles that are paying more, so that kind of helps stabilize the revenue flow.

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

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

So now we get to the county compensation, and I'm sure this is of a lot of interest to our guests in the room. In FY16 we estimated that the counties received $51.5 million; in FY17 we believe that they'll receive approximately $47.8 million, and there is a delta. This does not include any of the labor savings that we had assumed in the rule package. Because the agency was taking on centralized fulfillment and we were eliminating the need to automatically the need to replace license plates, we assumed that there would be some labor savings,
not having to stuff the envelopes and that there would be some savings. For the purposes of this analysis, we only stuck to the hard cost of postage that would be saved for the counties. That is that $2.1 million. So their revenue is less but they should have incurred some savings when it came to postage, and that's where we get the $47.8 million. Is it the same as it was last year? No. But remember, registration transactions are down, they're down not only for the counties, they're also down for the state, they're down for anyone who processes a registration renewal.

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

MS. FLORES: This is actually an annual projection.

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

MS. FLORES: Through June.

MR. TREVIÑO: June.

MS. FLORES: Yes, sir.

MR. TREVIÑO: Thanks.

MR. PALACIOS: Ms. Flores, I guess the question that I would have looking at these numbers, as we're reviewing the impact of P&H on various entities, including
county revenues, and it's really difficult to ascertain looking at this chart what that impact is because part of this, as you said, has a lot to do with the decrease in overall registrations. So if we factor that in, do we know ultimately where we'd be? Is that the next slide?

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

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

MR. WALKER: Is there a reason?

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

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

MS. FLORES: I'm sorry?

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

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

MR. PALACIOS: Yes.

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

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

MS. BREWSTER: I'm sorry, sir?

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

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

MS. FLORES: The counties also do receive other compensation, just like the Texas DMV. The processing and handling fee is one fee of several that flow into our coffers. As we presented yesterday, the DMV Fund has other types of fees that help support this agency's operations, such as certificates of title, business licenses. The county too also has other revenue that they collect associated with duplicate receipts, special plates, replacement plates. And this number here, this
154- does not include the optional road and bridge fees and the county's share of oversize/overweight revenue.

The impact to the full service deputies.

Again, this table reflects the reduction in transactions which everyone is seeing, so this just kind of validates again that everyone is being impacted by fewer transactions.

Because we really didn't have a whole lot of data flowing through the registration and titling system, we knew that the full service deputies were authorized prior to the rule, that they were authorized to charge $5 on registrations. Based on the number of transactions from the prior year times that $5 registration, we estimated that they should have collected approximately $1.5 million. Because now things are being processed in the registration and titling system, we have identified $6.1 million collections January through June of this year for the first six months. If we estimate out for the year, we believe that they'll collect $10.4 million.

Again, the full service deputies, just like the DMV and the counties, also charge fees for services such as notary, delivery, surety bonds that are not captured in these amounts.

MR. WALKER: Ms. Flores, $6 million for six months, if we annualize that number will be $12 million.
MS. FLORES: But again, January to June. August is our end of year so it's another two months worth.

MR. WALKER: Oh, okay. I'm thinking calendar dates.

MR. BARNWELL: It's not really estimated annually then, is it?

MS. FLORES: No, sir. It's just from January to August, so it's an eight month. Because our fiscal year ends August 31, so we estimated those six months and we just straight-lined out to the end of August.

MR. BARNWELL: January through June.

MR. WALKER: January through June was six months, you had $6 million.

MR. BARNWELL: And you add two more to that because we had a million a month.

MR. WALKER: We add $4 million to it. It goes to $10 million.

MR. BARNWELL: July and August is only two months.

MR. WALKER: Yes, but she's adding $4 million.

MR. BARNWELL: I don't care if it goes to $10 million. I'm looking at the math and I don't see the math. I'm just wondering what's going on with that.

MS. FLORES: Member Barnwell, you're correct,
this is six months annualized to twelve months, and then
we factored in a little bit of a conservative factors, we
estimated 85 percent. So we took those six months, we
annualized it, then we backed it down a little bit to be
conservative as to what their collections would be.

MR. BARNWELL: So the problem I've got with
that is that these numbers are gerrymandered, they're
massaged, they're not real. There's all kinds of factors
that you're putting in there, and I'm not saying they're
unreasonable factors, they're just factors that aren't
disclosed.

MS. FLORES: Correct. I mean, the January
through June, those are actual receipts.

MR. BARNWELL: That's actual, and the rest of
it is a projection that's based on certain assumptions
that aren't listed on this.

MR. WALKER: How does he get by without turning
is mic on and I get chewed out every time?

MR. BARNWELL: Because I talk very loud.

(General laughter.)

MS. FLORES: I hear what you're saying, Board
Member.

MR. BARNWELL: So that's an issue that I've got
with a lot of the numbers, and I'm not questioning that
you know what you're doing, I'm questioning that I don't
understand what you're doing. Now, that's more my fault than your fault, but you've got to help me a little bit here, please.

MS. FLORES: Yes, sir.

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

MR. PALACIOS: Yes, please.

MS. BREWSTER: So the reason why Ms. Flores and her team took a conservative approach of 85 percent instead of straight-lining at 100 percent of the amounts from January to June is that our highest registration month is in March, and it would not be a fair comparison to continue that projection at the amount that we saw from January to June through the rest of the year, knowing that those are the lower registration months. And that's why an 85 percent projection was made.

MR. BARNWELL: And I don't have any particular heartburn over that, I think that's probably a reasonable assumption and change that you made, and I agree with it, I'd just like to know about it. So that's all I'm saying is it's just a disclosure on the page that I'd like to see so that I can say, okay, I understand why Ms. Flores did what she did because that makes a certain amount of sense. We know March, as you said, Madam Director, is the high month and we're not going have that high month in the last four months of the year and we're annualizing this. Those
things all mean things to me that make these numbers look like okay, and as I throw a thumb up and say is that about right, you know, I'm getting comfortable that your numbers are not skewed some way that I don't understand. I'm just asking for disclosure, that's all.

MS. FLORES: Absolutely. I hear you, Board Member.

MR. BARNWELL: Thank you. I don't mean to offend.

MS. FLORES: Oh, no, sir.

MR. BARNWELL: I'm strictly interested in information.

MS. FLORES: Absolutely.

MR. BARNWELL: Okay.

MS. FLORES: The next table identifies what we have seen, what we have captured for January through June in the way of deposits for the dealer deputies. We've identified $719,263 fees related to title convenience fees and they've processed 551,057 transactions, and therefore, they receive a dollar for each P&H transaction.

So as I previously mentioned, there are several factors affecting the registration collectors, not only for the counties but also for the state and all of our business partners who are processing registration, and that is the reduction in transactions is the driving
factor that's affecting all of our revenue.

The State Highway Fund is flat. TxDOT did reach out to use last week asking about the trends that they were seeing which coincided with ours, and they were asking for our help in understanding why the registration revenues were flat. The original rule package did include postage and labor savings to be taken into account when it came to the centralized fulfillment of online transactions. There are some limitations, as Board Member Barnwell pointed out. We have very limited insight into some of the economics that are being played out in the state, we have limited insight into some of the financials of our business partners, but we've tried to update the county compensation revenue based on what we've seen for the first six months.

There has been a silver lining, I would say, for our fee paying customers. When we embarked on the processing and handling fee, the Board authorized a one dollar online discount for online registration renewals. To date fee payers will save approximately $1.5 million for the first six months of this fee implementation. In addition, as I previously mentioned, if you bought your vehicle in 2016, you saved $4.75 for that second year's registration renewal, so fee payers have actually saved $6.56 million. They also got to skip the lines at their
choice of location. We estimate that they've actually
saved another $507,500, and the way we computed that,
Board Member Barnwell, we took approximately three minutes
in a vehicle, we came up with some minutes that they would
save driving to their local location, and we multiplied
that by the minimum wage of $7.25. So this involved
everyone involved with processing new registration
renewals to focus on other operational tasks or other
complicated transactions.

Our next steps is to continue to look at these
transaction counts and breakouts and all the data that we
have compiled through the end of this year as well as next
year. We need to have more data points in order to really
determine what the impact of his fee implementation will
be in the future. Every month we look at our registration
revenue, every month we look at our counts, so as we get
more data points, we'll be able to provide a clearer
understanding of what this fee has done for the state.

And that concludes my presentation.

MR. PALACIOS: Thank you, Ms. Flores.
Are there any questions regarding Ms. Flores's
briefing?

MR. INGRAM: I don't have any questions but I
have a comment. You had asked previously, Mr. Duncan had
asked and just a comment to staff from a dealer
perspective, I would like the staff to go back and take a
look at the dealer deputy part of that rule. I am very
cognizant to the harm, I will say, to the tax assessor-
collectors, so I'm totally in favor of taking a look at
that and seeing how we could fix it.

    MR. WALKER: I'm not sure I understand.

    MR. INGRAM: Well, when the dealer is a dealer
deputy and does the tax, the tax assessor-collector
basically gets, I think, 25 cents?

    MS. BREWSTER: May I?

    MR. PALACIOS: Yes, please.

    MS. BREWSTER: For the record, Whitney
Brewster.

    The county compensation is typically $2.30. If
there is a dealer deputy doing the work, they get a dollar
of that $2.30 fee, so the counties receive $1.30 for those
transactions.

    MR. INGRAM: And then if you remember, going
back to the study that we did, $1.30 is below their cost,
so it's a loser for them.

    MR. WALKER: But you're doing the work for
free, basically.

    MR. INGRAM: I am, but they have to review the
work and they also have to look at it to make sure it's
been done correctly. They have to monitor the plates,
they have to make sure the plates are being accounted for, so it's not free.

MR. PALACIOS: I would also add that one dollar reduction for the tax assessors, by using a dealer deputy, also applies to full service deputies, so it's the same effect.

MR. WALKER: I wasn't referring to that. I was referring to you do it basically for free. You do it as a benefit to your customer.

MR. INGRAM: That's true, but there's a huge savings to us in terms of timing.

MR. PALACIOS: Any more comments for Ms. Flores

(No response.)

MR. PALACIOS: If not, I would like to ask that Mr. Kevin Kieschnick come forward. He is here to discuss this agenda item. He's representing the Tax Assessor-Collectors Association and he is the tax assessor from Nueces County.

MR. KIESCHNICK: Thank you very much. I appreciate you guys bringing this up. And I want to thank staff as well for the work that they've done on this and for also just including us in this conversation because this partnership is really critical.

A couple of words that I want to go back on, though. You guys were talking about registrations
earlier. I've got some other things that you might want to consider on that end before I get into the dealer deputy issue.

MR. PALACIOS: I'm sorry. I identified you, but please identify yourself.

MR. KIESCHNICK: It's Kevin Kieschnick, Nueces County Tax Assessor-Collector, also the DMV liaison for Tax Assessor-Collectors Association of Texas.

Prior to single sticker, the people could actually renew their registrations even if their cars did not pass inspection, so some of that drop may also be related to that. Just something you guys might want to consider.

I've just got a couple of minutes here so I'm just going to jump right on. Revenue for the larger counties, there's 172 rural counties in Texas, this is as defined by Department of Statistics, and the rest are considered urban, and so it matches up with what she was saying earlier about the smaller counties seeing some increase in funding, the larger counties that actually produce the majority of the vehicle transactions, are seeing the reduction.

And this dealer deputy issue that you bring up is really key. We did lose some revenue, especially the urban counties. We had a $117,000 investment that we had
in an automated service for our online and mail-in transactions where we were issuing mail-ins and online transactions the same day, and so that investment that our county made is now only being used for property tax where we were actually using it for property and motor vehicle, and so we really didn't have a major savings in that arena because we already had an automated process in place. And that probably stands true for a lot of the larger counties, larger than me, as well.

So really, if we look at this dealer deputy issue, if we could somehow bring that back, a lot of us are really hurting for revenue because we're seeing tax rates cut, Chairman Palacios and I were talking about the major refunds we had to do as a result of the Valero refinery challenges, and various urban areas have those same sort of challenges that they're dealing with. When our commissioners set our budgets for the number of people they staff us with, they look at our revenue dropping. Our staffs are basically at risk of losing those staff members.

So I appreciate you guys really looking at this because we need it and we're a partnership and we certainly want to be able to offer the best service to our constituents and our dealers as possible, and just want to thank you for bringing that up. And if you have any
questions, I can go further, I've got about six seconds here.

MR. PALACIOS: Mr. Kieschnick, I do have a question so I'd just be clear on what's being proposed would be specific to dealer deputies or full service deputies as well?

MR. KIESCHNICK: Well, I refer more to the dealer deputies, that extra dollar, because what happens is, as was stated earlier, we're still issuing the plates, we're still managing the inventory. It definitely streamlines the process but it's actually costing us money to turn that over because we're losing that revenue and e still have that job function in place whether we're keeping that inventory in our offices or whether we're issuing it out to the dealers so you guys can have a more streamlined transaction. So we haven't changed that process any in my office, even though it costs us money because I don't want to disrupt the process we've got in place.

My county and numerous counties have gone out and really wrapped our arms around webDEALER, and it's really helped us tremendously, but it's actually now costing us money to bring more people on board as opposed to being a cost savings because we're losing some of that revenue. And as we talked earlier with our budgets being
reduced, every dollar counts, and you look at the number
of transactions that got through, we really need,
especially the larger counties, we really need that
revenue to justify our staffing levels.

MR. PALACIOS: So you would make no exception
for a full service deputy whether they stock inventory or
whether they don't?

MR. KIESCHNICK: Right. Bring it back to the
$2.30. And the dealers, they are able to retain $10 extra
for that transaction, and that streamlines your process as
well as ours. And we have like every single franchised
dealer, except one that refuses to get on it, on
webDEALER, and it's really helped us tremendously. And I
think that other franchise will get on board because we're
pretty much going to mandate it after December 31 because
our processes have to change because my lines on the
consumer side are not getting any shorter, and we've got
to move some of those people from our dealer side over to
our consumer side to get that line wait time down.

MR. WALKER: If your line is not getting any
shorter, are you registering more cars, or what's going
on?

MR. KIESCHNICK: We're about the same. We had
a drop because of the Eagleford. We were up about 305,000
in Nueces County and it dropped down to about 296-.

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of that was fleet, those fleet vehicles that left the area is kind of what we attributed that to.

MR. WALKER: Because of the oilfield?

MR. KIESCHNICK: The oilfield downturn, but it seems to be ticking back up now. But we lost a significant number of fleet vehicles and I think that's where most of those numbers went.

The other thing that our office is doing, and I'm sure others as well, is since TxDMV has allowed webDEALER to go out to the independent auto dealers, we're bringing those independent auto dealers onto webDEALER as well and issuing them plates and stickers, so we're trying to get them trained, and obviously some are going to be able to handle it some don't have the technical expertise so we're not going to mandate it for the smaller mom-and-pop shops, but trying to get as many people on this process as possible to help keep our lines down because it just makes things more efficient all the way across the board. And utilizing the ACH services is really tremendous and a critical part of that function.

MR. INGRAM: So you're actually deputizing the dealers?

MR. KIESCHNICK: Yes, we are.

MR. INGRAM: Great. Can you talk to John Ames?

(General laughter.)
MR. KIESCHNICK: And I think if we get this taken care of, and they're facing these issues, they would love to, but from what I've heard from talking to him, it's going to be a significant impact, especially on the volume that they run in Dallas County. I think I've got like 21 dealers or something; I can't imagine how many he's got. I just have a little over 360,000 people in our county, so I think they're about ten times our size.

MR. PALACIOS: So Mr. Kieschnick, I just want to be clear. So you're asking for the dollar from full service deputies to bring you back to $2.30 -- dealer deputies.

MR. KIESCHNICK: Yes, that's what we're asking for. And we're also asking for it to be optional, we're not asking it to be mandated. That's something that each county can work it out with their dealers individually. Some dealers may want to do it, some may not. There's certain ways around that, but most of the ones in our area, the ones I've talked to, both people we've talked to at TIADA -- I'm not going to put words in their mouth -- but our local dealers have said, Yes, we'd be willing to give that back to you because we understand the situation.

MR. PALACIOS: Will you be asking the same from full service deputies?

MR. KIESCHNICK: I don't have any full service
deputies

MR. PALACIOS: I guess are you speaking on behalf of TACA or just your county?

MR. KIESCHNICK: I'm speaking on behalf of TACA but we're specifically talking about the dealer deputy fee, we're not talking about the full service.

MR. PALACIOS: I guess my question would be why not.

MR. KIESCHNICK: There's four counties that deal with that and I'm not the expert in that area, so I'd have to really defer to those four counties. And I think Ruben is here and he may be able to speak specifically to that because I'm not really that familiar with that, so I'll defer that over to Ruben.

MR. PALACIOS: Well, he's actually on the speaker list.

MR. KIESCHNICK: Yes, he is. That's why I asked him to be here.

MR. PALACIOS: Would you like to speak on the matter, Mr. Gonzales?

Are you finished?

MR. KIESCHNICK: I'm done if you don't have any more questions for me.

MR. WALKER: So what I heard him say is that he's asking for permission to ask the dealer, Blake who is

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on webDEALER, to say would you foreclose your $1.30 and give it back to me instead of you keeping it.

MR. PALACIOS: Yes.

MR. KIESCHNICK: It's the dollar.

MR. WALKER: The dollar. Just a voluntary if he wants to give it he will, if he doesn't he can still keep it.

MR. KIESCHNICK: Yes. Because under the current rule, I think the dollar comes back to TxDMV if they don't take it, but I think everybody is taking it. That's my understanding.

MR. PALACIOS: That's fair enough.

MR. KIESCHNICK: Thank you very much. Appreciate your help on this.

MR. WALKER: But there's no fiscal impact on the agency at all here.

MR. PALACIOS: No.

Mr. Gonzales, would you like to comment? And again, my question is I'm hearing that the counties would like to get that dollar back. As we bring full service deputies on, they'll lose the dollar, as we bring dealer deputies on, they'll go from $2.30 to $1.30, and I guess my question is would you have the same impact using full service deputies. So I guess since you're a county that uses more full service deputies than anyone in the state,
MR. GONZALES: Yes, sir. Good afternoon, Mr. Chairman, Board members. My name is Ruben Gonzales, El Paso County Tax Collector. And I'm here to echo Mr. Kieschnick's commentary, and if it would be favorable in your minds to consider the extra one dollar that he dealer deputies are retaining now, to be retained by the county tax collectors, that would be very beneficial to us.

I am a county that is late in starting the webDEALER program so we have not been impacted very much right now like our other counties that have been participating in this program. They are taking a loss in revenue because of yielding that one dollar fee under the dealer deputy concept, so if you would consider allowing the extra one dollar to be retained by the county tax collectors, it would be very much appreciated. It would certainly help our funding.

Now, in regards to full service deputies, they basically also are impacting us because we do have full service deputies. I have eleven offices in my county, and believe it or not, the law of economics in our community forces many of the citizens to come into our office and pay the lower fee of $4.75 versus paying up to $9 for renewal or up to $20 for a title transfer. So they look at that and they absent themselves form going to the full
service deputies and come to our office, so I've been having a lobby full of customers. That creates a lot of criticism because the public doesn't understand the law of economics and they basically blame me for supposedly being inefficient because they're there waiting possibly for no more than 30 minutes but to them it's a wait and it's no different than going to the post office or McDonald's or Walmart and get in line to get service.

But in either case it does impact us, and because of the essence of time, I would like to submit to you for favorable consideration to help us if the dealer community would be willing to let go of that one dollar. In my conversation with many of them, they do not disfavor that, they support it, they wouldn't have any objection to it. So in future consideration, if you would consider that, it really would help the counties because we are in a fund situation where we're getting shortages.

I'm dearly impacted by the internet service right now. El Paso has one of the best, if not the best enforcement program for scofflaw but we're not able to participate under the current system so we're hurting. So again, I am impacted by that, but right now today the subject is dealer deputies and I would solicit your support in that.

MR. INGRAM: And so just to tack on, I'm sorry,
Mr. Gonzales, are you supporting that we also make it optional for the full service deputies to give up the dollar?

MR. GONZALES: I can't speak for the other counties, I'm sure they would love to do that. A lot of it depends, like it probably would be difficult for me to speak for Travis County because here their convenience fees have been much higher than the ones that were established in El Paso. The rate that's established now favors the full service deputies in El Paso because of economics being a border community, so to them in a way it's a profit. For the full service deputies in this part of Texas, and San Antonio possibly, it's probably not adequate, would not be feasible to do that.

MR. INGRAM: So your full service deputies actually increased because they were slightly lower, I believe, than the rate that we put in place.

MR. GONZALES: Yes, sir. Their rates increased, so they're happy as a lark, they're not complaining, but the people look at their pocketbooks and it's going to the businesses, and they're eventually winding up to our offices where they can get the same service and we only charge them an extra $4.75.

MR. INGRAM: So understanding that you're not speaking from all the tax assessor-collectors, just from
your own county, that you would be okay with making it
optional for full service deputies.

MR. GONZALES: Yes, sir, but I also am
supporting our association for the counties that are
impacted by this because they do need some relief, and
this is a good revenue resource that's available because
it's there, and if the dealer community does not object to
that, then we as an association or the counties that are
impacted by it would certainly be very much appreciative
of your efforts to help us in this area of funding.

MR. WALKER: So can I clarify one thing?
Because I think Blake hit on it and I wanted to go there
the same time because when I listen to you speak, you said
you want to have the county retain, you never said
optional on what he said. You mentioned the word optional
and I'm not sure I heard it back from him that it would be
optional. I think he's asking that they be able to retain.

Which is it: just the option that you can ask
for it, or do you want the ability to take it?

MR. GONZALES: For the dealer deputy community,
we would want to be able to keep the one dollar fee.

MR. WALKER: That's not what they asked for the
last speaker.

MR. GONZALES: The last speaker indicated to
give the option.
MR. WALKER: Right. I just wanted to clarify that because I heard two different things. I wanted to make sure I understood that right.

MR. GONZALES: Yes, sir.

MR. TREVIÑO: Did you have a comment, Counsel?

MR. DUNCAN: I just wanted to point out I did pull up the petition for rulemaking which came from Mr. Kieschnick on behalf of TACA, and the way they drafted it is up to $2.30. It is up to the Board obviously what rule you propose, and we can work with them and we obviously will have a lot of conversations with them about the structure of the rule and what it would say, but it would be difficult to program multiple levels of compensation for TACs.

MR. WALKER: So this is getting pretty complicated when you start making all this optional and not optional.

MR. DUNCAN: Having a number is obviously ideal, having a single number is obviously ideal.

MR. TREVIÑO: But to understand that optional means is that a county would have the option, but once it puts it in place, it's no longer an option in that county. So one county could have it, another county could not have it, but once it's in place in a county, it's not optional. Is that the question?
MR. GONZALES: Yes, sir. Again, what works for El Paso County may not necessarily work in other counties. But in reference to dealer deputies, that one dollar fee when a dealer deputy performs a transaction, if the dollar is favorable to you, we certainly would welcome it.

MR. PALACIOS: I think this is a rule that we need to look at. One of the benefits of P&H is that we have made uniform rules across the state and that was part of the mission.

MR. WALKER: That was the initial directive, to uniform it across the state, not that they can be arbitrary.

MR. PALACIOS: Yes. And so we've received comments from Mr. Gonzales and Mr. Kieschnick, obviously things are different, but I think as we go forward we need to look at whatever rules we look at or proposals we make are uniform and consistent.

MR. WALKER: I think that's exactly right.

MR. INGRAM: I actually heard Eric moan over there when we were talking about different rates.

(General laughter.)

MR. PALACIOS: Anything else, Mr. Gonzales?

MR. GONZALES: No, sir. I just thank you for your time

MR. PALACIOS: Thank you.
I want to thank Mr. Kieschnick and Mr. Gonzales and the other TACA members that have come from different parts across the state to be here with us. This agency has maintained a great relationship with TACA through the years. I know in coming up with this P&H fee, you were very integral and sitting on committees for hours and hours at a time, and it's that great relationship that I think is going to allow us to go forward and hopefully resolve issues that are pertinent to the two of us. So we thank you for all of your time.

MR. TREVIÑO: And your service to the State of Texas.

MR. PALACIOS: I'm going to take a quick poll here. We can go forward or we can take a lunch break.

MR. WALKER: Let's go. We'll never get out of here today.

MR. PALACIOS: All right. Does anybody want to take a five-minute break? Let's go ahead for those that haven't been there we'll take a five-minute break and we'll come back and knock this out.

(Whereupon, at 1:15 p.m., a brief recess was taken.)

MR. PALACIOS: Let's move forward, folks. By a consensus from the Board, we are going to bypass lunch, have trail mix for lunch, we are going to charge forward
on our agenda.

Moving to the next item, we'll have our Finance and Audit Committee update. Our chair is Board Member Caraway. She was not at the meeting yesterday; presiding in her place was Board Member Walker. So we'll move forward with the first item on that agenda which is consideration of committee recommendation regarding the fiscal year 2018 interagency agreement between TxDOT and TXDMV.

MR. WALKER: I'd like to give an update to the full Board and then I'll turn it over to the staff for brief presentations.

The committee met yesterday here at the DMV headquarters. As mentioned, I presided over the meeting which was also attended by Members Hardy and Barnwell. The committee considered seven agenda items, three of the items 10.A.1 through 10.A.3 from the committee meeting require action today by the full Board. After a brief staff presentation on each of these items, a committee member will make a recommendation for Board action. The remaining four items, 10.B.1 through 10.B.4 are just briefings. Staff will make a brief summary presentation of what was considered by the committee without repeating the entire presentations that we had yesterday, and staff will be available for any questions that we may have.
MR. PALACIOS: Ms. Flores.

MS. FLORES: The staff did present the FY18 recommended operating budget. This was the second presentation of this budget. The first presentation occurred at the June Board meeting. The operating budget for the next year totals $168 million. We have 779 FTEs, we got 16 new FTEs, 13 for the special investigations unit and three for headquarters. We are recommending that we transfer some unspent dollars from certain capital line items into automation and then transfer the automation balance of approximately $10.5 million forward into fiscal year '18. These dollars will finance a variety of automation projects, including webLIEN. This does require Board approval so that we can notify both the Legislative Budget Board and the Governor's Office of the transfer to the automation. This will be the last year that we're able to do this as well.

MR. BARNWELL: When does this have to be done by?

MS. FLORES: August 31.

The recommended budget included 173 contracts, 16 of which are statutorily required, contracts for routine services such as license plate production, and we did request specific Board approval for a couple of contracts, the Southwest Research Institute and American
Association of Motor Vehicle Administrators National Motor Vehicle Title Information System. We're asking that the Board authorize the executive director to execute those contracts.

That was the last part. With that, I'll take any questions.

MR. WALKER: So I'd like to also make a comment about the meeting yesterday is that one of the things that, Raymond, we did in committee yesterday was when we looked at all these contracts, we saw that there's 60 contracts out there and we kind of questioned are we really getting the best bang for our buck on some of these contracts and we questioned some of them and so forth, and we asked that maybe we look at -- and I know it's a statutory requirement that we buy license plates from the State of Texas penitentiary system, but it's a huge item, it's a $25 million contract that we pay with them and we get 12 million license plates a year so we're paying $2 apiece for license plates.

And we have asked that maybe Sandra look at potentially putting into not this one but maybe the next following to look at maybe is that our best option. Maybe can we go to ABC Manufacturing and buy license plates, that same volume, for 5 million bucks instead of paying 25 million to the state and just test some of those ideas out.
there. I know we can't change that but we could sure go
back to the legislature and say we're buying from the
penitentiary system and maybe we could be buying from
outside vendors and get a better deal, look at some of the
other contracts that we have that are out there that we've
just taken for granted.

And I made sure with the staff yesterday that
we weren't stepping on any toes but it might be prudent
and it's correct, maybe, for her to put that in her
internal audit review to do that, and she said yes, it
would be. So she may look at putting some of those things
in our future audit to kind of look at contracts. And our
executive director was there and she was okay with that
also to do that.

MR. PALACIOS: I guess the only question I
would have, are we mandated by statute to use the prison?

MR. WALKER: Yes, we are. And that's not what
I'm saying to do. I'm saying we ought to take a look,
it's our fiscal responsibility to question whether or not
we're getting the best deal from the prison system.

MR. PALACIOS: I see. Okay. Fair question.

Please proceed.

MS. FLORES: And that concludes the
presentation on the operating budget.

MR. PALACIOS: Thank you, Ms. Flores.
Are there any questions for Ms. Flores on the operating budget?

MR. TREVIÑO: Ms. Flores, you're still good on the revenue projections as Member Walker mentioned before. Right?

MS. FLORES: Yes, sir.

MR. TREVIÑO: Great. Thank you.

MR. PALACIOS: Do I hear a motion?

MR. WALKER: We're not finished with our report.

MS. BREWSTER: The report is not yet completed.

MR. WALKER: There's more to our.

MR. PALACIOS: I wasn't sure if you're commenting specifically on the operating.

MS. BREWSTER: Specifically on the operating.

MR. PALACIOS: Why don't we let him comment just on the operating and then we can move forward.

So we have Mr. Hickman who will comment on the operating budget.

MR. HICKMAN: I'm opposed to this budget for two reasons. The first is that you continue to fund employees who engage in influencing the passage or defeat of legislation. I have covered the legal reasons in one of my prior lectures to this body. A further reason is the moral one which was best expressed by Abe Lincoln:
Government of the people, by the people and for the people. Honest Abe never advocated government of the people, by the bureaucracy and for the special interests. Since as far as I can tell for the last two regular sessions, none of their major proposals have passed the legislature, so you've wasted a lot of taxpayer money that could have been better used for other purposes.

Speaking of better purposes, this agency has never reserved adequate monies for merit pay raises. This agency's merit pay system needs reform. It is too subjective and is subject to the vindictive whims of the division directors. That is one of the main reason that agency performance dropped that 20 percent in that six-month period I seem to constantly mention. You need to implement the objective criteria for merit pay, including objective criteria for division directors merit pay that automatically awards pay for actual performance and merit, not whimsy and illusion.

MR. PALACIOS: Thank you, Mr. Hickman.

MR. WALKER: I wasn't aware that this agency passes legislation.

MS. HARDY: So I move that the Board approve the following recommendations of the Finance and Audit Committee: the recommended fiscal year 2017 operating budget as presented --
MS. FLORES: Eighteen.


-- the department use the authority provided in the TxDMV capital rider #2 to transfer $5,869,823 from the TxDMV capital projects to the TxDMV automation for carryforward as outlined in the fiscal year 2018 operating budget, which is page 169 on the Board briefing materials; and the delegation to the executive director to negotiate, execute and sign the routine and required contracts contained in part 5 of the recommended fiscal year 2018 operating budget, and specific approval of the following contracts: the Southwest Research Institute and the American Association of Motor Vehicle Administrators National Motor Vehicle Title Information System.

MR. INGRAM: Second.

MR. PALACIOS: Motion made by Board Member Hardy to accept the fiscal year 2018 operating budget, second by Board Member INgram. Any discussion?

(No response.)

MR. PALACIOS: All in favor please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion carries unanimously.

Thank you, Ms. Flores.

MS. FLORES: Excuse me, Chairman Palacios.
Before we move on, if I could just recognize the staff. Yesterday, Chairman Walker indicated that obviously I was not alone in putting together this operating document, so I would like to recognize the staff who are responsible if I may, with your indulgence.

MR. PALACIOS: Absolutely.

MS. FLORES: They're kind of in the back.

Brian Kline, revenue estimator; Laura Fowler, revenue estimator; John Ralston, budget analyst; Sheila Bledsoe, budget analyst; Delores, budget analyst; Theo Kosub, he's our lead revenue estimator. He helps with all of my revenue estimators really keep me in line when it comes to those revenue estimates. And of course, Ms. Renita Bankhead, she always sits next to me during the quarterly financial report.

So to Board Member Walker's question, no, it does take a village to put this thing together. Thank you very much.

(Applause.)

MR. PALACIOS: Thank you very much, Ms. Flores, to you, your team, your entire staff. We truly appreciate all your hard work, your dedication for all you do for us. It's greatly appreciated.

Let's move on now to item A.1, the fiscal year 2018 interagency agreement between TxDOT and TxDMV to be
given by our executive director, Ms. Whitney Brewster.

MS. BREWSTER: Thank you, Mr. Chairman.

Annually, the TxDMV enters into an interagency agreement with TxDOT to lay out the roles and responsibilities of both of the agencies, due to the dependencies that we continue to have on one another. The agreement, the interagency contract is before you again this year, and I just wanted to briefly explain some of the differences over the FY16-FY17 interagency contract with TxDOT.

First, the agreement is now a biennial document to match the state budgeting process, and the duration of the biennium. The shared facilities and infrastructure issues between the two agencies are, I believe, now well understood, cooperation is very positive and routinely managed, so allowing for a longer time frame between renegotiations I believe is appropriate.

It removes references to shared IT infrastructure due to the successful completion of the TxDMV AMSIT project and other separation activities. It lowers the TxDMV not-to-exceed amount by half for what we pay TxDOT, from $2 million to $1 million, and I believe too that this reflects successful separation activities and TxDMV being able to provide those services on its own. Very positive.
It establishes a facilities management work group to begin the process of discussing possible takeover of the Camp Hubbard facility maintenance by TxDMV staff. If you'll recall, there was a bill that passed allowing TxDOT to transfer all or part of this property to TxDMV. The language was permissive and it did not include a time frame for which that would occur, and that was done deliberately to allow TxDOT to secure a headquarters of its own through the legislative process. And it did get some of that funding for land acquisition as well as for studies to be completed this biennium in the anticipation of asking for funding for the full structure in the next biennium, so that bill allowed for a little bit of flexibility there.

Member Walker and the other members of the Finance and Audit Committee had requested that I share with you that there is no adverse impact to the agency as it pertains to this agreement should that transfer not occur this biennium, so we should be able to operate just fine regardless of whether or not this property is transferred to the agency this biennium.

It clarifies information related to sharing IT infrastructure relationships in the new environment where TxDMV is almost completely separated from the TxDOT equipment.
That concludes my briefing.

MR. PALACIOS: Thank you, Ms. Brewster.

MR. WALKER: So we need a motion.

MR. PALACIOS: Yes, we do.

MR. WALKER: So I'd like to make a motion that the Board authorize the agency's executive director, Ms. Brewster, to negotiate the fiscal year 2018-19 interagency contract between the Texas Department of Transportation and the Texas Department of Motor Vehicles with any final changes and execute the contract as well as any amendments to the contract with the approval of the Board chairman.

MR. TREVIÑO: Second.

MR. PALACIOS: Motion made by Board Member Walker to authorize our executive director to negotiate the fiscal year 2018 interagency agreement between TxDOT and TxDMV with approval by the Board chairman, and second by Board Member Treviño. All in favor please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Let's move on now to item 10.A.3 which is the fiscal year 2018 Internal Audit Plan.

MS. MENJIVAR-SUDDEATH: Good afternoon. For the record, my name is Sandra Menjivar-Suddeath, Internal Audit director.
Yesterday I presented the fiscal year 2018 annual audit plan and I'm requesting approval of the plan. The audit plan consists of twelve proposed items, including eight audits, one advisory service, a special request placeholder for a Board or management request, the required fiscal year 2017 annual audit report, the required fiscal year 2019 audit plan, and two contingency audits. The plan also lists other internal audit duties such as conducting quality assurance, peer review and participating in executive steering committees.

Does anyone have any questions on the plan?

MR. WALKER: I have a comment to make.

MR. PALACIOS: Yes, sir.

MR. WALKER: I would like to pat Sandra on the back. This is the first time that we have ever had an internal audit plan that's been planned from the beginning of the year, gone through the proposed plan, and finished the plan year and done everything we said we were going to do. So her and her staff need to be commended on a job well done this year; it's the first time it's ever been done.

MR. PALACIOS: Hear, hear! Congratulations.

(Applause.)

MS. MENJIVAR-SUDBEATH: If I could take a second, it's really my staff who did all the work. Jason
Gonzalez and Derrick Miller are the two staff members that have done all the audit work and really pushed to make sure that we finished the audit plan this year.

MR. PALACIOS: Outstanding job.

(Applause.)

MR. PALACIOS: Thank you to you and your team. I know Jason and Derrick, you've got a great team. And I understand we're going to be adding a few more in the not too distant future.

MR. WALKER: So we need a motion to accept the plan, I guess.

MR. BARNWELL: I move that the Board approve the fiscal year 2018 Internal Audit Plan as recommended by the Finance and Audit Committee.

MR. PAINTER: Second.

MR. PALACIOS: We have a motion by Board Member Barnwell, a second by Board Member Painter to accept fiscal year 2018 Internal Audit Plan. Any discussion?

(No response.)

MR. PALACIOS: All in favor of the motion please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Thank you.

I'm going to skip around again on the agenda.
and we're going to go straight to the Legislative and
Public Affairs briefing to be given by Ms. Caroline Love.

MS. LOVE: Good afternoon. For the record, my
name is Caroline Love and I'm the director of the
Government and Strategic Communications Division for the
department. And I would like to offer you a briefing on
two items: an update on what our implementation efforts
are related to legislation passed during the 85th regular
session of the legislature, and then also an update on
what happened during the special session as it relates to
the department.

Your briefing will begin on page 287 of your
briefing book, and I'll just start by going through some
of the major implementation efforts that we have underway,
especially as they relate to the Board recommended items
that were passed by the legislature.

I'll start with Senate Bill 2075 which is the
bill that made a lot of changes related to the
Registration Code. There were a lot of just general
updates there and cleanup, but also one of the rules that
you heard for proposal earlier contains some of the
provisions of Senate Bill 275 relating to county office
closures in other counties that can step in. So as you
can see, as adopted earlier, some of those implementation
efforts are underway through rulemaking there. And then
also, we have a lot of guidance that is continuing to be provided to the counties and other stakeholder groups on any other updates that were made to vehicle registration items there.

I'll also discuss Senate Bill 2076, that one related to a lot of title changes and updates, and that included a significant effort related to the certified copy of original title so that starting in January of 2018 that will be a superceded title, so there will no longer be copies of titles that hold the same value as any other title that might be issued on a vehicle. So those implementation efforts remain underway, but then in addition there are some other components of that related to trailer dimensions and title transactions where we've been providing guidance as well to the counties on those measures.

And also, there was House Bill 1790 that was passed by the legislature which related to what happens when a disabled placard is seized and the recipient of that placard is notified. We removed a duplicative effort that was notifying those recipients by mail, and so that process is no longer required by statute, so we have implemented that and it's out.

MR. INGRAM: Caroline, can I back up just one second?
MR. INGRAM: On the CCOs, your briefing materials say January 1, 2019, you verbally said January 1, 2018.

MS. LOVE: I apologize. It is 2019.

MR. INGRAM: Okay. Thank you.

MS. LOVE: And part of the reason for that delay there is to allow for all the programming, and then we do have a significant stakeholder outreach and communication effort related to that being worked on as well.

And those wrap up the major implementation efforts as they relate to the Board recommended items that were passed. Many of the other efforts remain underway and working through those.

And then I also wanted to provide an update on the other legislative items that were passed by the legislature that we've been working on implementation efforts for. That includes House Bill 561 on the package delivery vehicles. The rules that were proposed earlier this morning are part of that effort, so those efforts remain underway.

There was also House Bill 1247 by Representative Pickett that clarifies the notification process when a vehicle storage facility is in possession.
of a vehicle and when there might be notifications required to owners, lienholders and things like that. We have provided the notice and the guidance to counties that follow that legislation, and so that has been implemented.

And I'll kind of jump around a little bit to those where we have implementation efforts ongoing, but please feel free to ask about any of the items that you may have a question on.

On House Bill 2663, that legislation allows counties to determine if a registration sticker replacement can be issued at no charge, and guidance has been accordingly provided to the counties on situations in which they can provide those at no charge. So we've implemented that.

And then, of course, we have the several container bills, intermodal shipping container and milk permit bills that you adopted the rules on earlier today as well, so those implementation efforts are underway through rule promulgation.

And also, on Senate Bill 1001, that one relates to inspection requirements for trailers. It increased the gross vehicle weight rating that would require an inspection. It used to be at 4,500 pounds, it went up to 7,500 pounds, and DPS is our partner in implementation for that. One of the efforts that relates to that is our
system, for one, would no longer require an inspection for
that one, but also, that the registration renewal notice
when sent to the customer notified whether or not their
trailer is required to be inspected, so that's in the
process of being implemented as well.

And then in addition, we have 44 new specialty
license plates that were created by the legislature, and
those are all set to be available starting September 1, so
those are implemented as well.

And unless there's any questions on
implementation efforts, I can move on to the special
session.

MR. PALACIOS: Please proceed.

MS. LOVE: So back on June 6, our governor
announced that he would call the legislature back to
consider a few things for 30 days, so it included Sunset
legislation that extends five agencies that provide
medical oversight and review that their Sunset legislation
was not passed during the regular session. And so that
was the priority for the legislature to consider, and then
the governor added on 20 additional items that were
various topics related to teacher pay and insurance
coverage, to local tree ordinances, all sorts of items
that were included in that additional column.

There was no anything that related to the
department, but there was in that additional call the option for the legislature to consider the Sunset review schedule, and when that bill was filed by Senator Taylor, it included pushing out DMV's Sunset review date from 2019, which is the current Sunset cycle, to 2023. And what this means for the agency, with our 2019 Sunset review cycle which will be when the legislature meets next, they'll be considering Sunset legislation that will continue the agency, the review by Sunset staff begins much earlier and the first part of that process, as we've talked about before, is the submission of a Sunset self-evaluation report by the agency which is due September 1 of the odd year prior to your expiration which would be this coming September 1 in a couple of weeks.

The department was already well underway in development of that report, and then when this legislation was filed we remained on track because it was uncertain as to whether or not anything would change, and thankfully we did remain on track because we are remaining in the current Sunset review cycle. Not only did the legislation only pass the Senate and it never made it through anything further on the House side, but when it got to the Senate floor, Senator Watson from the Austin area offered an amendment that changed the DMV Sunset from 2023 back to 2019 and the reason he stated for that is partly due to...
the fact that this agency was created in 2009, we were
originally set for Sunset review in 2015, that got pushed
to 2019, and he felt like it wouldn't be responsible of
the legislature to continue postponing the review of this
new agency. And in addition, he feels as though our
functions closely align with that of the Texas Department
of Public Safety and a big component of the Sunset review
schedule is they do try to set agencies that have similar
functions in the same cycle. And so after making that
case, the author found the amendment acceptable and we
remained in 2019 as it was.

So that was the exciting part of the special
session for DMV, and I guess the biggest outcome of that
is that we continue to remain on our current Sunset review
cycle, and we'll certainly be in touch about efforts
related to that as we continue in that process. But as
you all may have heard, the legislature adjourned on
Tuesday from their special session, and as of right now,
there is no indication of another one to come, but you
never know.

And those are all the items that I had. There
were a couple of bills that were filed that fell outside
of the special session call, they had hearings but then
they never proceeded further, that would have related to
our functions. One of those included the removal of
inspection requirements for vehicles, and that never even
got to the point of a hearing, so if you get any
questions, yes, you are still required to have your
vehicle inspected prior to registration, unless you have
trailer that's under 7,500 pounds gross vehicle weight
rating.

Thank you.

MR. PALACIOS: Thank you so much for that
presentation.

MS. LOVE: You're welcome.

MR. PALACIOS: Are there any questions?

(No response.)

MR. PALACIOS: Thank you.

I would like an update on the facilities to be
given by Ms. Flores.

MS. FLORES: In the interest of time, thank you
very much, Chairman.

I just wanted to mention that on Friday, the
agency is moving the San Antonio Regional Service Center.
Ann Pierce, who is in the audience, is serving as the de
facto project manager. She and her staff, along with IT
and Austin VTR staff will be heading to San Antonio, and
the move actually begins Friday after 5:00, we shut down
the office, we start the move over the weekend, and they
will reopen on Monday at 15150 Nacogdoches Road in San
Antonio. Approximately 18 staff will be moved to the new office, and once San Antonio is moved, we'll have seven regional service centers in commercial property while nine will continue to operate on TxDOT property. Abilene, Amarillo, Austin, Beaumont, Longview, Lubbock, Midland-Odessa, Pharr and Wichita Falls will remain on TxDOT owned property, and there are no plans to move any further offices in the next two years.

Thank you.

MR. PALACIOS: Thank you, Ms. Flores.

We have time for another briefing by staff, so I'm going to ask that we go ahead and receive a briefing regarding projects and operations from Ms. Judy Sandberg.

MS. SANDBERG: Good afternoon. Judy Sandberg, director of the EPMO. I will be giving you a report, not asking for any decisions. My report is on page 300 of your briefing book.

Very quickly, very good news to report about the AMSIT project. This weekend we will do the final major piece deployment for AMSIT, and if all goes well, as we expect it will, we will be able to close that project. Very important separation from TxDOT infrastructure by August 31, the end of this calendar month.

The RTS project, our next release is 810 which includes all the legislative mandates that need to go into
effect by September 1. It is on target. We will slip by one week. We had hoped to go this weekend but we need to do some more testing today. We expect it to be able to go live next weekend. We will still be in compliance with all the September 1 mandates.

webDEALER is on track. Our next deployment for webDEALER will include both eTAG as well as the new centralized payment module. They are on schedule for deployment the latter part of November. Then the final phase of webDEALER which will be the new eTITLE phase is currently on target to go live in March 2018, and that will conclude the multi-year webDEALER project.

That's the end of my briefing. Do you have any questions?

MR. PALACIOS: That was a very brief briefing.

(General laughter.)

MR. INGRAM: But amazing, simply amazing. Everyone has done a fantastic job in project and operations, and thank you very much. It's been a real pleasure to serve on that committee.

MS. SANDBERG: Thank you very much. It has taken a village, someone said that earlier. It's an amazing number of people who all worked together to make this happen and worked many, many hours. I feel honored top be associated with them. Thank you.
MR. PALACIOS: Thank you, Ms. Sandberg. Any questions? (No response.)

MR. PALACIOS: Thank you so much for everything you do.

We have one last item on our agenda, this is public comment. Mr. Hickman

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

As I look at you, I'm reminded of a story. Many years ago I found myself alone at three o'clock in the morning with Ronald Reagan in a hotel room at the Peachtree Plaza Hotel. I had been sent there to obtain his signature on this document. As I entered the room, I was greeted by his loud angry voice asking me: What the f*** happened?

MR. PALACIOS: Mr. Hickman, that is completely inappropriate. We've heard enough of you, and I'm going to cut you off at this point.

MR. HICKMAN: All right.

MR. PALACIOS: Okay. Let's move on to our last item on the agenda, which is adjournment. Do I hear a motion to adjourn?

MR. INGRAM: I move we adjourn.
MR. WALKER: Second.

MR. PALACIOS: We have a motion adjourn, second by Board Member Walker to adjourn this meeting. Meeting adjourned, all in favor.

(Whereupon, at 2:00 p.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF:   TxDMV Board
LOCATION:    Austin, Texas
DATE:        August 17, 2017

I do hereby certify that the foregoing pages, numbers 1 through 198, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Motor Vehicles.

/s/ Nancy H. King   8/23/2017
(Transcriber)         (Date)

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