



# Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

TxDMV Board Meeting  
Thursday, May 2, 2019  
8:30 a.m.

**AGENDA**  
**BOARD MEETING**  
**TEXAS DEPARTMENT OF MOTOR VEHICLES**  
**4000 JACKSON AVE., BUILDING 1, LONE STAR ROOM**  
**AUSTIN, TEXAS 78731**  
**THURSDAY, MAY 2, 2019**  
**8:30 A.M.**

All agenda items are subject to possible discussion, questions, consideration, and action by the Board of the Texas Department of Motor Vehicles (Board). Agenda item numbers are assigned for ease of reference only and do not necessarily reflect the order of their consideration by the Board. Presentations may be made by the identified staff or Board member or other staff as needed. The Board reserves the right to discuss any items in executive session where authorized by the Open Meetings Act.

- 1. Roll Call and Establishment of Quorum**
- 2. Pledges of Allegiance - U.S. and Texas**
- 3. Chair's Reports - Chairman Treviño**
  - A. Introduction of New Board Members - Charles Bacarisse, Stacey Gillman, Tammy McRae, and Shelley Washburn
  - B. Recognition of Service - Raymond Palacios and Barney Barnwell
  - C. Introduction of General Counsel - Tracey Beaver
  - D. Awards - Board Members Graham and Painter
  - E. Committee Appointments
- 4. Executive Director's Reports - Whitney Brewster**
  - A. Status Update on Implementation of Sunset Advisory Commission's Recommendations
  - B. HB 1959 Alternative Registration Technology Report (85th Legislature, Regular Session, 2017)
  - C. Awards, Recognition of Years of Service, and Announcements

**EXECUTIVE SESSION**

- 5. The Board may enter into closed session under one or more of the following provisions of the Texas Open Meetings Act, Government Code, Chapter 551:**
  - **Section 551.071** - Consultation with and advice from legal counsel regarding:
    - pending or contemplated litigation, or a settlement offer;
    - a matter in which the duty of the attorney to the government body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Government Code, Chapter 551; or
    - any item on this agenda.

- **Section 551.074** - Personnel matters.
  - Discussion relating to the appointment, employment, evaluation, reassignment, duties, discipline, and dismissal of personnel.
- **Section 551.089** - Security devices or security audits:
  - the deployment, or specific occasions for implementation, of security personnel or devices; or
  - a security audit.

**PAGE**

**CONTESTED CASES**

- 5** 6. **Denial of Renewal Application, Revocation of General Distinguishing Number, and Appeal to SOAH under Occupations Code, §53.023 and §2301.251(a); Transportation Code, §503.038(a)(6); and 43 Texas Administrative Code §215.88(i), (j).** MVD Docket No. 17-0214.ENF; SOAH Docket No. 608-19-0169.ENF; *Texas Department of Motor Vehicles, Enforcement Division v. Barnett Motor Company, Inc.* - Daniel Avitia and Robert Rice
- 30** 7. **Revocation of General Distinguishing Number, Civil Penalty, and Appeal to SOAH under Occupations Code, §2301.651(a)(3) and (4); and Transportation Code, §503.095.** MVD Docket No. 17-0178756; SOAH Docket No. 608-18-2991.ENF; *Texas Department of Motor Vehicles, Enforcement Division v. Dorsha Motors of Texas, LLC* - Barbara Jordan and Heather Pierce

**BRIEFINGS AND ACTION ITEMS**

- 87** 8. **Finance and Audit**
- A. **Internal Audit Division Status Report** - Sandra Menjivar-Suddeath (BRIEFINGS ONLY)
- FY 2019 Internal Audit Plan Status Update
  - FY 2019 Second Quarter Internal Audit Recommendation Follow-Up Memorandum
  - External Coordination Efforts
  - Division Updates
- 130** B. **Approval to Modify the November 3, 2016 Resolution Adopting Contract Approval Procedures** - Linda M. Flores
- 134** C. **FY 2019 Second Quarter Financial Report** - Linda M. Flores and Renita Bankhead (BRIEFING ONLY)
- 157** D. **FY 2020-2021 Legislative Appropriations Request, Baseline and Exceptional Items Update** - Linda M. Flores and Renita Bankhead (BRIEFING ONLY)
- 167** 9. **Specialty Plate Designs** - Jeremiah Kuntz
- A. Checkered Flag, New Design proposed by My Plates under Transportation Code, §504.851
  - B. Dallas Mavericks, Redesign proposed by My Plates under Transportation Code, §504.614

**PAGE**

- C. Save Texas Ocelots, Redesign proposed by Friends of Laguna Atascosa National Wildlife Refuge, Texas Parks and Wildlife Department to receive funds under Transportation Code, §504.801

- 169** 10. **Legislative and Public Affairs** - Caroline Love (BRIEFING ONLY)  
86th Legislative Session Update

**11. Vice Chair Election**

**12. Appointment of a Member to Act in the Absence of the Chair and the Vice Chair under Transportation Code, §1001.023(b)(9)**

**EXECUTIVE SESSION**

- 13. The Board may enter into closed session under one or more of the following provisions of the Texas Open Meetings Act, Government Code, Chapter 551:**
- **Section 551.071** - Consultation with and advice from legal counsel regarding:
    - pending or contemplated litigation, or a settlement offer;
    - a matter in which the duty of the attorney to the government body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Government Code, Chapter 551; or
    - any item on this agenda.
  - **Section 551.074** - Personnel matters.
    - Discussion relating to the appointment, employment, evaluation, reassignment, duties, discipline, and dismissal of personnel.
  - **Section 551.089** - Security devices or security audits:
    - the deployment, or specific occasions for implementation, of security personnel or devices; or
    - a security audit.

**14. Action Items from Executive Sessions**

**15. Public Comment**

**16. Adjournment**

The Board will allow an open comment period to receive public comment on any agenda item or other matter that is under the jurisdiction of the Board. No action will be taken on matters that are not part of the agenda for the meeting. For subjects that are not otherwise part of the agenda for the meeting, Board members may respond in accordance with Government Code, Section 551.042 and consider the feasibility of placing the matter on the agenda for a future meeting. In accordance with 43 Texas Administrative Code §206.22, any person wishing to address the Board must complete a speaker's form at the registration table prior to the agenda item being taken up by the

Board. Public comment will only be accepted in person. Each speaker will be limited to three minutes and time allotted to one speaker may not be reassigned to another speaker.

Agenda items may be presented by the named presenters or other TxDMV staff.

Pursuant to Sections 30.06 and 30.07, Penal Code (trespass by license holder with a concealed or openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun or a handgun that is carried openly.

Any individual with a disability who plans to attend this meeting and requires auxiliary aids or services should notify the department as far in advance as possible, but no less than two days in advance, so that appropriate arrangements can be made. Contact Carrie Fortner by telephone at (512) 465-3044.

I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements.

CERTIFYING OFFICIAL: Tracey Beaver, General Counsel, (512) 465-5665.

DATE: May 2, 2019

Action Requested: APPROVAL OF PROPOSED FINAL ORDER/BRIEFING

To: Texas Department of Motor Vehicles (TxDMV) Board  
From: Daniel Avitia, Director, Motor Vehicle Division  
Agenda Item: 6  
Subject: Denial of Renewal Application, Revocation of General Distinguishing Number, and Appeal to SOAH under Occupations Code, §53.023 and §2301.251(a); Transportation Code, §503.038(a)(6); and 43 Texas Administrative Code §215.88(i), (j). MVD Docket Case No. 17-0157075.H, ENF Docket No. 17-0214.ENF SOAH Docket No. 608-19-0169.ENF. *Texas Department of Motor Vehicles v. Barnett Motor Company, Inc. d/b/a Barnett Motor Co.*

**RECOMMENDATION**

Staff recommends the Board adopt all findings of fact and conclusions of law in the Administrative Law Judge's (ALJ) Proposal for Decision (PFD) as corrected by the ALJ's January 18, 2019, letter and enter an order revoking Respondent's General Distinguishing Number. A draft of the Final Order is attached to this Executive Summary for the Board's consideration.

**PURPOSE AND EXECUTIVE SUMMARY**

The State Office of Administrative Hearings (SOAH) issued a PFD for consideration by the Board of the Texas Department of Motor Vehicles. The Board may now consider and approve a Final Order against Respondent.

**FINANCIAL IMPACT**

None

**BACKGROUND AND DISCUSSION**

Respondent has held General Distinguishing Number (GDN) P5735 since 1999 and Respondent's owner, Frank Barnett, has been a motor vehicle dealer for more than 30 years. On July 6, 2016, Respondent filed an application for a trailer GDN. Respondent was sent a Notice of Department Decision (NODD) on or about December 1, 2016, recommending denial of the trailer GDN and revocation of GDN P5735. After Respondent withdrew its application for a trailer GDN, an Amended NODD was sent to Respondent on September 19, 2018.

The Amended NODD recommended revocation of GDN P5735. Respondent's 100% owner, Frank Dewayne Barnett, was alleged to have committed the following violations:

1. Making a material misrepresentation in an application for a trailer GDN by failing to disclose the existence of a prior criminal conviction.
2. Committing a misdemeanor offense directly related to his licensed profession; a sexual crime of indecent exposure while on a test drive with a female customer.

The Enforcement Division referred the contested case matter to SOAH on or about September 14, 2018. The ALJ conducted the hearing on the merits on October 17, 2018. The PFD was issued on December 11, 2018.

The ALJ found that the Respondent's owner, Frank Dewayne Barnett, committed the violations pled, and after weighing the additional factors specified in Texas Occupational Code § 53.023, recommended the Board revoke the Respondent's GDN.

The Enforcement Division filed exceptions only to correct the respondent's name. The respondent did not file exceptions. On January 18, 2019, in response to the Enforcement Division's exceptions, the ALJ issued a letter correcting Finding of Fact 6 by changing only the respondent's first name.

On April 2, 2019, the Enforcement Division sent respondent notice of the May 2, 2019, board consideration of this matter by first class mail, certified mail, and email.

The following documents are attached to this Executive Summary for consideration by the Board:

1. Amended Notice of Department's Decision, September 19, 2018;
2. Proposal for Decision, December 11, 2018;
3. Draft of the Final Order for Board Consideration.



## Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

ENFORCEMENT DIVISION  
(512) 465-4204  
(512) 465-5650 FAX

September 19, 2018

BARNETT MOTOR CO., INC.  
d/b/a BARNETT MOTOR CO INC  
890 N 11th St  
Beaumont, Texas 77702-1504  
**VIA CERT. MAIL AND EMAIL**

RE: IN THE MATTER OF THE LICENSE(S) OF  
BARNETT MOTOR CO INC, d/b/a BARNETT MOTOR CO INC  
WHEN RESPONDING, PLEASE REFER TO MVD CAUSE No. 17-0214.ENF

Dear Licensee:

In accordance with the notice provisions of Texas Administrative Procedure Act (TEX. GOV'T CODE §§ 2001.001 et seq.) and 43 TEX. ADMIN. CODE § 215.500, enclosed is an Amended Notice of Department Decision ("Decision") prepared by the Texas Department of Motor Vehicles ("Department"), Enforcement Division alleging that you, as a licensee of the Department, have violated the cited provisions of law in the manner described in the Decision. The allegation(s) are a result of a Department initiated investigation or outside complaint made against you and a Department investigation of that complaint.

If there are circumstances surrounding the allegations that you believe should mitigate any sanction imposed by the Decision you can discuss an informal settlement with the undersigned enforcement attorney. **To discuss an informal settlement of the case you [must first request an administrative hearing](#) as explained in the Decision within twenty-six (26) days from the date of the Decision. [For your convenience, you may use the request for hearing form included in this packet.](#)**

In most instances, an informal settlement can resolve the case in a shorter period of time with reduced civil penalties or other sanctions and without the costs associated with a formal proceeding. The undersigned attorney can be contacted at (512) 465-4204 or by writing using the address above.

If this case is set for hearing before an Administrative Law Judge ("ALJ") at the State Office of Administrative Hearings ("SOAH") you are entitled to receive a Notice of Hearing. Hearings in these matters are conducted under the rules of the Department and SOAH.

**ATENCIÓN:** Este es un documento legal importante que puede influir negativamente en su licencia para operar como concesionario de vehículos de motor en Texas. Se le ha acusado de violar la ley. Si dentro de los 26 días de esta carta no recibimos de usted una solicitud por escrito para una audiencia en este asunto una orden final será emitida por el DMV que puede imponer sanciones contra usted, incluyendo una multa civil y/o revocación de su distribuidor de vehículos de motor licencia. Instamos enérgicamente a ponerse en contacto inmediatamente con un abogado privado o el abogado del DMV que suscribe con respecto a este documento legal. Si lo desea, alguien con el DMV puede discutir este documento con usted en el idioma Español.

**If you do not request an administrative hearing within twenty-six (26) days from the date of the Decision, the terms and any sanctions contained therein become final.**

Sincerely,

*Rob Rice*

Robert Rice,  
Attorney, Enforcement Division  
(512) 465-4162

Enclosures

cc:Frank Barnett  
201 North Milk  
Beaumont, Tx 77701  
**VIA US MAIL AND CERT. MAIL**

**MOTOR VEHICLE DIVISION  
TEXAS DEPARTMENT OF MOTOR VEHICLES**

**IN THE MATTER OF THE LICENSE(S) OF** **MVD Cause No. 17-0214.EN**  
**BARNETT MOTOR CO INC, d/b/a BARNETT MOTOR CO INC**

**AMENDED NOTICE OF DEPARTMENT DECISION**

The Texas Department of Motor Vehicles, (hereinafter, "Department" or "Petitioner"), is the state agency with authority to administer and enforce Texas Occupations Code Chapter 2301; Texas Transportation Code Chapters 501, 502 and 503; and 43 Texas Administrative Code Chapter 215. An investigation of your business was conducted by the Department. As a result of that investigation, the Department determined that you, BARNETT MOTOR CO INC, d/b/a BARNETT MOTOR CO INC, (hereinafter "Respondent"), the holder of a license issued by the Department, violated certain provisions of Texas Occupations Code Chapter 2301; and/or Texas Transportation Code Chapters 501, 502 and 503 and/or 43 Texas Administrative Code Chapter 215. The Department alleges that Respondent committed the following violations:

1. Respondent, a licensee or license applicant, on or about , made a material misrepresentation to the Motor Vehicle Division in connection with an application for a trailer license application filed with the Motor Vehicle Division and later withdrawn, which conduct constitutes grounds for sanctions under TEX. TRANSP. CODE ANN. § 503.038(a)(6), TEX. OCC. CODE ANN. § 2301.651(a)(2) and 43 TEX. ADMIN. CODE 215.141(a)(19) and 43 TEX. ADMIN. CODE § 215.89(b)(3).
2. Respondent, a licensee, was, pursuant to his plea of guilty, convicted on 01/06/2005 of Indecent Exposure, a Class B Misdemeanor, receiving a sentence of a \$500 fine. The crime is directly related to the motor vehicle industry within the meaning of Chapter 53 of the Texas Occupations Code. The offense was committed in the presence of a female customer who was the complaining victim. The offense occurred on August 11, 2004, in a motor vehicle the Respondent had sold to the customer while the customer was driving the vehicle and the respondent was in the passenger seat while on a drive to troubleshoot a possible mechanical issue. Due to the foregoing, Respondent is unfit as a licensee and fails to meet the qualifications for a General Distinguishing Number (GDN) within the meaning of TEX. OCC. CODE ANN. § 2301.651(a)(1), 43 TEX. ADMIN. CODE § 215.88(i)(1)&(j)(6) and 43 TEX. ADMIN. CODE § 215.89(a)&(b)(2)&(3). The Respondent may also be denied a GDN license under Chapter 53 of the Texas Occupations Code.

The Department is authorized to deny an application for a license, revoke or suspend a license, under Texas Occupations Code § 2301.651; Texas Transportation Code § 503.038; and 43 Texas Administrative Code § 215.141(a). Further, Texas Transportation Code

§ 503.095 allows for a civil penalty of up to \$1,000.00 for each violation of, or per day for a continuing violation, of Chapter 503, or a rule or order adopted under the chapter. Texas Occupations Code § 2301.801 allows for a civil penalty of up to \$10,000.00 for each violation of, or per day for a continuing violation, of Chapter 2301, or a rule or order adopted under the chapter.

Based on the aforementioned investigation and allegations, and due to the nature and number of the violations, the Department recommends that Dealer General Distinguishing Number License No. P5735 be revoked.

**If you wish to contest the allegations or recommended sanction you must first request an administrative hearing in writing. You may send your own request for hearing or use the Request For Administrative Hearing form included in this packet. Send your request for hearing to the following address:**

Robert Rice  
Attorney, Enforcement Division  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, Texas 78731  
(512) 465-4162  
(512) 465-5650 Fax

**You must include your name and the MVD Case Number appearing in the heading of this Decision in your hearing request. [The Department must receive your written hearing request not later than the 26th day after the date of this Decision.](#)**

If you timely submitted a written request for a hearing, the Department may enter into an informal settlement agreement with you regarding these violations and enforcement action at any time before a final decision is rendered in this case.

If a timely written hearing request is received and no settlement is reached, an administrative hearing will be scheduled before the State Office of Administrative Hearings (SOAH). You will be notified of the hearing date and time. Hearings will be held at SOAH's offices located at 300 W. 15th St., Austin, Texas 78701. Increased penalties or other sanctions may be recommended by the Department at the hearing.

If you do not request a hearing by the 26th day from the date of this notice, the Department Decision becomes final. After that date the Department may issue a Final Order implementing the Decision.

Should this case be set for hearing, Petitioner prays that it be found that Respondent has violated the statutes and implementing rules alleged above; and, that, as appropriate, Respondent's license be revoked, canceled or suspended or that Respondent be placed on probation, or reprimanded; that civil penalties be imposed; and that the conduct alleged above be ceased and not resumed.

If you have any questions regarding this Decision, please contact me at (512) 465-4162.

**DATE OF DECISION:September 19, 2018**

Respectfully Submitted,

*Rob Rice*

Robert Rice  
Attorney – Enforcement Division  
Bar Card 16833900  
4000 Jackson Avenue  
Austin, Texas 78731  
(512) 465-4162  
(512) 465-5650 Fax

## **REQUEST FOR ADMINISTRATIVE HEARING**

If you intend to contest the allegations listed in the Notice of Department of Decision in this matter or negotiate a settlement with the assigned enforcement division attorney you must first request an administrative hearing. You may use this form to request a hearing.

I request a hearing in Texas Department of Motor Vehicles Docket No. 17-0215 ENF. (The Case Number is found in the heading of the Decision; i.e. [MVD Docket No. 17-0214.ENF](#)).

**NOTE: Failure to include the Case Number of this matter on this request may result in no hearing being scheduled and loss of the opportunity to settle this matter before a Final Order is issued.**

Name of person requesting hearing: \_\_\_\_\_

**(Please Print)**

Phone Number of person requesting hearing: \_\_\_\_\_

Would you like to discuss a resolution to this case without a hearing: \_\_\_\_ Yes \_\_\_\_  
No

***This request for hearing must be received at the below address no later than 26 days from the date of the Notice of Department Decision in this matter.***

TEXAS DEPARTMENT OF MOTOR VEHICLES  
ENFORCEMENT Division  
4000 Jackson Avenue – Austin, Texas 78731

This request may also be faxed to phone number **(512) 465-5650**

## Information about the Notice of Department Decision

This document provides information about the Notice of Department Decision (“Decision”) you have just received from the Enforcement Division of the Texas Department of Motor Vehicles (“Department”). If you have questions about the Decision call the enforcement attorney who signed the document at (512) 465-4204 or consult a private attorney. Please note that the enforcement attorney only represents the Department and therefore cannot give you legal advice. When contacting the Department you should refer to the case number at the top of the whenever you contact the Department about this case.

### **The Notice of Department Decision**

The Department filed the Decision, because of allegations that you (the Respondent) may have violated one or more of the laws enforced by the Department. After an investigation by the Department if violations are believed to have occurred, a Notice of Department Decision is prepared including the allegations and recommended sanctions. Sanctions may include a civil penalty (a monetary fine), and in more serious cases, revocation of your license. The civil penalty amount depends on the nature of the violation, facts of the case, any prior violations, any harm to consumers, and any action by you to minimize harm.

### **Settling Your Case**

You may settle this matter informally and avoid a hearing before an Administrative Law Judge (“ALJ”) at the State Office of Administrative Hearings (“SOAH”) by timely filing a request for hearing within 26 days of the date of the Decision and discussing the case with the enforcement attorney. During settlement discussions, you may make the enforcement attorney aware of any mitigating or extenuating circumstances that may justify a lower civil penalty or other adjustment of sanctions recommended in the Decision.

### **Paying the Civil Penalty**

If you settle this matter before a SOAH hearing, the Enforcement attorney will prepare and send you an “Agreed Final Order” containing the terms of the settlement. **You must sign the order and return a complete copy of it to the Department along with a check to pay any civil penalty imposed by the order.** The Department Board Chairman or a delegate will then sign the Agreed Final Order, which ends your case. The Department will send you a copy of the signed order to you or your representative.

### **Notice of Hearing**

If you request a hearing within 26 days of the date of the Decision and you do not settle the case, it will be set for a SOAH hearing. You will be sent a Notice of Hearing stating the time, place and nature of the hearing. **If you plan on appearing at the hearing, you must notify**

**the enforcement attorney. If you appear at the hearing without filing a response to the allegations or notifying the enforcement attorney, the hearing may be reset for another date.**

### **Changing the Hearing Date**

Contact the enforcement attorney if you wish to change the hearing date. If you and the enforcement attorney cannot agree on changing the hearing date, you should call the SOAH docket clerk at (512) 475-3445 about how to file a motion for continuance.

### **The Hearing**

The Texas Rules of Evidence and SOAH's rules of procedure apply to SOAH hearings. The enforcement attorney will present evidence in the form of witness testimony and documents. You (if representing yourself) or your attorney/representative may object to the evidence and question each witness. You may present your case after the enforcement attorney's presentation. You should bring your witnesses with you or arrange with the ALJ before the hearing to have the witnesses testify by telephone. If you need an interpreter, notify the enforcement attorney as soon as possible before the hearing. You need to bring an original and two copies of all documents you intend to present at the hearing.

After reviewing the parties' evidence and arguments, the ALJ will issue a Proposal For Decision ("PFD") addressing whether any violations occurred and what sanctions, if any, should apply.

If you disagree with the PFD, you may file "exceptions" explaining your disagreement. The Department will consider the PFD with the exceptions and any replies to the exceptions. You may also orally address your case before the Department Board at a scheduled meeting. The Department Board may: (1) issue a Final Order approving the PFD, (2) issue a Final Order approving the PFD with modifications, or (3) send the case back to SOAH for a new hearing.

If a Final Order is issued and you disagree with the order, you have 20 days after receiving it to file a Motion for Rehearing. If the Department Board or its delegate does not grant the Motion for Rehearing, the order will be final. If the order assessed a civil penalty or other sanction, you must comply with the order or the Department may initiate contempt action against you.

### **Appealing the Final Order**

You may appeal a Final Order to the Travis County District Court if you have filed a proper Motion for Rehearing within 30 days after a Final Order becomes final and appealable.

### **Failing to Attend the Hearing (Default)**

If you do not settle the case and fail to attend the hearing, the enforcement attorney may request a civil penalty and/or license revocation, and/or other sanction be entered against

you. The sanctions requested may be more severe than if you had settled before the hearing date. The Department will then issue and send you a copy of a Final Order. If you disagree with the order you may file a Motion for Rehearing. The case becomes final if you do not file a motion for rehearing within 20 days after receiving the order, or if the motion is not granted.

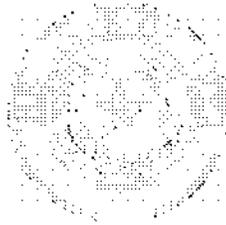
### ***Running Your Business While the Case is Pending***

You may continue operating your business and can renew your license while your case remains pending, unless the ALJ orders you to stop operating during the case.

### ***Communications with the ALJ, Director or Department Board Members***

The law prohibits communications about a pending case with the ALJ and the Department, **except communications with the enforcement attorney** or when the other party is included in the communication. For example, you may send a letter to the ALJ about a pending case only if you copy the enforcement attorney on the correspondence.

# State Office of Administrative Hearings



Lesli G. Ginn  
Chief Administrative Law Judge

December 11, 2018

Daniel Avitia, Director  
Motor Vehicle Division  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, TX 78731

**VIA INTERAGENCY MAIL**

**RE: SOAH Docket No. 608-19-0169.ENF; MVD Docket No. 17-0214.ENF / Texas Department of Motor Vehicles v. Barnett Motor Company, Inc. d/b/a Barnett Motor Co.**

Dear Mr. Avitia:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507, a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Fernando Rodriguez".

Fernando Rodriguez  
Administrative Law Judge

FR/eh

Enclosure

cc: Barnett Motor Co., Inc., 890 N. 11<sup>th</sup> Street, Beaumont, Texas 77702-1504 - **VIA REGULAR MAIL**  
Robert Rice, Attorney, Enforcement Division, Texas Department of Motor Vehicles, Motor Vehicle Division, 400 Jackson Ave., Austin, Texas 78731 - **VIA REGULAR MAIL**  
Frank Barnett, 201 North MLK, Beaumont, Texas 77701 - **VIA REGULAR MAIL**  
Melinda Moreno, Docket Clerk, Texas Department of Motor Vehicle, 4000 Jackson Avenue, Austin, Texas 78731 - **VIA INTERAGENCY MAIL** (with 1 CD)



## II. DISCUSSION

### A. Applicable Law

A “dealer” is an independent motor vehicle dealer who holds a GDN issued by the Department pursuant to Chapter 503 of the Texas Transportation Code.<sup>2</sup> The GDN constitutes a dealer’s license.<sup>3</sup> A dealer is defined as “a person who regularly and actively buys, sells, or exchanges vehicles at an established and permanent location.”<sup>4</sup> A person may not legally engage in the business of a motor vehicle dealer unless he holds a GDN.<sup>5</sup>

The Department may deny a GDN application, or revoke or suspend an existing GDN, if an applicant or GDN holder makes a material misrepresentation in any application or other information filed with the Department, or is convicted of a criminal offense that directly relates to the duties and responsibilities of the licensed occupation.<sup>6</sup> Pursuant to Texas Occupations Code § 53.025, the Department has adopted a rule identifying which criminal convictions directly relate to the duties and responsibilities of a dealer and may indicate a lack of fitness for licensure.<sup>7</sup> Included in crimes that directly relate to the duties and responsibilities of motor vehicle dealers are sexual offenses under Texas Penal Code Chapter 21.<sup>8</sup>

If an applicant or GDN holder has been convicted of an offense that directly relates to the occupation of motor vehicle dealer, the Department must then determine whether the conviction affects the applicant’s fitness to perform the duties and discharge the responsibilities of the licensed occupation. The factors the Department must consider in determining the fitness of a person who has been convicted of a crime are:

---

<sup>2</sup> Tex. Occ. Code § 2301.002(7); Tex. Transp. Code § 503.021 *et seq.*

<sup>3</sup> Tex. Occ. Code § 2301.002(17).

<sup>4</sup> Tex. Transp. Code § 503.001(4).

<sup>5</sup> Tex. Occ. Code § 2301.251(a); Tex. Transp. Code § 503.021.

<sup>6</sup> Tex. Occ. Code § 2301.651(a)(2), (3); Tex. Transp. Code § 503.038(a)(6), (7); 43 Tex. Admin. Code § 215.88(i)(1).

<sup>7</sup> 43 Tex. Admin. Code § 215.88(j).

<sup>8</sup> 43 Tex. Admin. Code § 215.88(j)(6).

- (1) The extent and nature of the person's past criminal activity;
- (2) The age of the person when the crime was committed;
- (3) The amount of time that has elapsed since the person's last criminal activity;
- (4) The conduct and work activity of the person before and after the criminal activity;
- (5) Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- (6) Other evidence of the person's fitness, including letters of recommendation from prosecutors, law enforcement and correctional officers; the sheriff or chief of police in the community where the person resides; and any other person in contact with the convicted person.<sup>9</sup>

The applicant also shall also furnish proof that he has:

- (1) maintained a record of steady employment;
- (2) supported the applicant's dependents;
- (3) maintained a record of good conduct; and
- (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.<sup>10</sup>

## **B. The Parties' Evidence and Arguments**

At the hearing, Staff moved to admit into evidence four exhibits, all of which were admitted without objection. Staff also presented the testimony of Antonia Knight, a licensing manager with the Department and the person who reviews eligibility issues associated with licenses and licensees. Mr. Barnett testified telephonically on his own behalf. After the hearing, Mr. Barnett submitted a character letter written by his son-in-law, Mr. Taylor. Mr. Rice objected to a portion

---

<sup>9</sup> Tex. Occ. Code § 53.023(a). The applicant has the responsibility, to the extent possible, to obtain and provide the required recommendations of the prosecution, law enforcement, and correctional authorities. Tex. Occ. Code § 53.023(b).

<sup>10</sup> Tex. Occ. Code § 53.023(c).

of the letter and the objection was sustained. The remainder of the letter was admitted into evidence as Barnett Exhibit 1.

Ms. Knight testified that Barnett Motor Co.s's motor vehicle GDN had been renewed five or six times over the years with no issue. On July 5, 2016, the Department received Mr. Barnett's application for a travel trailer GDN. On the Ownership Information portion of the travel trailer GDN application, Mr. Barnett answered "No" to Question 2, which asks whether "the person listed on this form or any officer, director, partner, trustee, or other person acting in a representative capacity has ever been convicted of a felony or misdemeanor offense . . . ." Question 28 of the travel trailer GDN application requires that the applicant acknowledge that a false answer on the application can result in license revocation. Question 28 also states that making a false statement on a license application may subject the applicant to criminal prosecution. Mr. Barnett signed the application on June 28, 2016.

Upon receipt of Mr. Barnett's application, the Department performed a criminal background check and discovered that Mr. Barnett had been convicted in 2005 of the Class B misdemeanor of Indecent Exposure.<sup>11</sup> Indecent Exposure is a sexual crime under Chapter 21 of the Texas Penal Code.<sup>12</sup> It is also directly related to the profession of automobile dealer under the Texas Occupations Code.<sup>13</sup> Ms. Knight testified that the Beaumont Police Department affidavit that led to Mr. Barnett's prosecution stated that on Wednesday, August 11, 2004, Mr. Barnett took a female customer on a test drive.<sup>14</sup> The customer had returned to Mr. Barnett's dealership after purchasing her car because the engine was not running smoothly.<sup>15</sup> The police affidavit stated that the customer, who was driving the car during the test drive, reported that Mr. Barnett grabbed her hand and placed it on his penis. The customer also reported that Mr. Barnett's penis was "slimy."<sup>16</sup>

---

<sup>11</sup> Staff Ex. 2 at 7.

<sup>12</sup> Tex. Penal Code § 21.08.

<sup>13</sup> Tex. Occ. Code § 53.021(1); 43 Tex. Admin. Code § 215.88(j)(6).

<sup>14</sup> Staff Ex. 2.

<sup>15</sup> Staff Ex. 2 at 1.

<sup>16</sup> Staff Ex. 2 at 1.

She immediately drove Mr. Barnett back to the dealership and proceeded immediately to the Beaumont Police Department where she filed a complaint.<sup>17</sup>

The police officer who executed the affidavit contacted Mr. Barnett, who submitted to an interview. The police affidavit states that during the interview Mr. Barnett admitted to being in the vehicle with his female customer, but said he could not remember exactly how her hand touched his genitals. He further admitted that “bodily fluid” was on his genitals and got on his customer’s hand.<sup>18</sup> Mr. Barnett claimed that his customer must have contacted his penis by placing her hand under his shorts, but he could not remember ejaculating on her hand. However, he conceded that the incident “went too far.”<sup>19</sup>

On January 6, 2005, in Cause No. 246464, County Court at Law No. 2, Jefferson County, Texas, Mr. Barnett pleaded *nolo contendere* to the Class B misdemeanor offense of Indecent Exposure.<sup>20</sup> On the same date, the court entered judgment and adjudicated Mr. Barnett guilty of the offense of Indecent Exposure.<sup>21</sup> For the offense, the court fined Mr. Barnett \$500 and assessed him court costs of \$243. The court did not impose a jail sentence on Mr. Barnett.

Ms. Knight testified that the Department’s rules were amended in 2015 to require applicants to state whether they had been convicted of *any* offense (*i.e.*, a felony or misdemeanor) that could potentially be disqualifying. Prior to that time, the Department’s rules did not require Staff to inquire into the criminal history of license applicants and renewal candidates.<sup>22</sup> As a result, when Mr. Barnett filed his July 2016 application for a travel trailer GDN, the Department’s criminal history search discovered Mr. Barnett’s 2005 misdemeanor conviction.

---

<sup>17</sup> Further details contained in the officer’s affidavit include the female driver’s description of lurid conduct and racist statements made by Mr. Barnett during the test drive.

<sup>18</sup> Staff Ex. 2 at 2.

<sup>19</sup> Staff Ex. 2 at 2.

<sup>20</sup> Staff Ex. 2.

<sup>21</sup> Staff Ex. 2 at 7.

<sup>22</sup> The criminal fitness rules became effective on October 6, 2014, and were added to the Department’s rules as 43 Tex. Admin. Code § 215.88-.89. *See*, 39 Tex. Reg. 7960-7962 (Oct. 3, 2014). Prior to the adoption of the criminal fitness rules, the application for a motor vehicle dealer GDN asked about felony convictions, although there were *no criminal fitness rules in effect* at that time. The criminal fitness rules adopted in 2014 apply to all offenses and do not distinguish between felonies and misdemeanors.

On July 18, 2016, Staff sent Mr. Barnett a letter informing him of Staff's findings and providing him with an opportunity to explain the criminal offense.<sup>23</sup> Staff also included in the letter relevant provisions of Texas Occupations Code § 53.022 and .023 and invited Mr. Barnett to provide potential mitigative facts related to the conviction. The letter also informed Mr. Barnett that it was his responsibility to provide explanatory or character letters from law enforcement officials regarding his case, including letters explaining his post-hearing rehabilitative efforts. Mr. Barnett's response to Staff's letter was a handwritten note dated August 5, 2016, and an executed Criminal History form.<sup>24</sup> In the note, Mr. Barnett stated that he did not disclose the nature of his criminal history because "it was 12 years ago and I honestly forgot about it. Nothing ever came of it, and nothing has ever happened since." However, Mr. Barnett acknowledged his conviction for Indecent Exposure in the Criminal History form.

At some point after he filed his travel trailer GDN application, Mr. Barnett withdrew it.<sup>25</sup> Despite this, Staff made the decision to revoke Mr. Barnett's *motor vehicle dealer's* GDN for two reasons: first, because Mr. Barnett's response on his Travel Trailer GDN application constituted a material misrepresentation on a Department application; second, because his offense is directly related to the profession of motor vehicle dealer. Ms. Knight testified that in making this decision Staff considered that the offense appeared to be the only criminal offense in Mr. Barnett's past. However, Ms. Knight stated that Staff also considered that the offense took place in 2004 when Mr. Barnett was 63 years old and a mature adult. The offense also occurred within the scope of activity covered by Mr. Barnett's motor vehicle dealer GDN. Ms. Knight also testified that Staff was concerned that Mr. Barnett could re-offend in the future because his motor vehicle dealer GDN would give him easy access to the public. Furthermore, Ms. Knight stated that despite being given the opportunity to submit explanatory information, Mr. Barnett submitted no letters of reference, no evidence of his work activity before and after the conviction, no evidence that he paid his fine and court costs, no evidence of good conduct, and no evidence that he supported his dependents.

---

<sup>23</sup> Staff Ex. 4.

<sup>24</sup> Staff Ex. 3.

<sup>25</sup> The record is not clear when Mr. Barnett withdrew his travel trailer application, but Staff considered the withdrawal in its review of Mr. Barnett's case.

Mr. Barnett testified that he has been in the automobile business 48 years, the last 38 years as a dealer, and this was his only criminal offense of any kind. He stated that he paid his fine and court costs and as far as he was concerned, that was the end of the matter. He further testified that he is 77 years old, and in the 13 years since his conviction he has had constant contact with the public and has not re-offended. Therefore, he felt Staff's concerns were overblown. Mr. Barnett acknowledged that he did not submit any written material in response to Staff's July 18, 2018 letter (other than the note and the Criminal History form), but requested the chance to have Larry Engleman testify telephonically on his behalf. Staff did not object to the request, and the ALJ called Mr. Engleman during the hearing who testified that he had known Mr. Barnett ten to twelve years because he was also in the car business.<sup>26</sup> Mr. Engleman also testified that Mr. Barnett was "a fantastic guy in every way," but did not elaborate. On cross-examination, Mr. Engleman acknowledged that he only heard of the offense through the Department's investigation and had no personal knowledge of the underlying facts of Mr. Barnett's conviction.

On closing, Mr. Barnett stated that he "forgot" about the conviction and had never mentioned it to his son-in-law, Richard Taylor, who was the person that actually completed the travel trailer GDN application. Mr. Barnett acknowledged signing the travel trailer GDN application, but requested a lesser penalty than revocation of his motor vehicle GDN license because of his age. In response to Mr. Barnett's request for additional time to provide character letters, the ALJ kept the record open for one week to allow Mr. Barnett to submit the information. On October 24, 2018, Mr. Rice filed a single character letter sent to him by Mr. Barnett. That letter was signed by Mr. Taylor, who stated that he (not Mr. Barnett) filled out the travel trailer GDN without knowing about his father-in-law's prior criminal history.<sup>27</sup>

### C. ALJ's Analysis

Mr. Barnett filed his travel trailer GDN application on July 16, 2016, and made a material misrepresentation on his application by stating that he had never been convicted of a misdemeanor. He also signed and submitted the application. During the hearing, Staff proved that Mr. Barnett was convicted in 2005 of the offense of Indecent Exposure, a Class B misdemeanor under Texas

---

<sup>26</sup> Mr. Engleman testified that he lived in Quitman, Texas, not in Beaumont.

<sup>27</sup> Barnett Ex. 1.

Penal Code § 21.08. By Department rule, Mr. Barnett's offense is directly related to the motor vehicle dealer profession.<sup>28</sup>

Mr. Barnett testified that he forgot about the conviction because it occurred approximately twelve years prior to the time he filed his Travel Trailer GDN application in 2016 and "nothing came of it."<sup>29</sup> The ALJ is dubious of that claim. Though classified as a Class B misdemeanor, Mr. Barnett's actions were serious and occurred in the scope of his duties as a motor vehicle dealer. More importantly, his actions resulted in a criminal conviction. The ALJ concludes that a reasonable person would not "forget" a criminal conviction, particularly given the underlying facts here. Furthermore, Mr. Barnett committed the offense when he was 63 years old and the offense was not the result of a youthful indiscretion. On the contrary, the offense was the result of a conscious decision made by a mature adult and was not an accident.

Because Mr. Barnett's offense is directly related to his licensed profession and because Mr. Barnett made a material misrepresentation on his Travel Trailer GDN application, the ALJ concludes that Staff carried its burden of proof to show that the Department may revoke Mr. Barnett's motor vehicle dealer GDN. However, while the Department has the authority to revoke Mr. Barnett's general GDN, it does not mean the Department *must* revoke Mr. Barnett's general GDN. The Department also has the discretion to suspend Mr. Barnett's general GDN or impose a civil penalty.<sup>30</sup> Further, before the Department imposes a sanction on Mr. Barnett it must first consider the factors in Texas Occupational Code § 53.023.

Mr. Barnett testified that the offense in question is his only criminal conviction. Staff did not challenge his assertion, and the ALJ concludes that this factor favors Mr. Barnett. Mr. Barnett was 63 years old when he committed the offense; he was not a young man. This factor weighs against Mr. Barnett. It has been approximately 13 years since his conviction, which the ALJ concludes is a factor in Mr. Barnett's favor. At the hearing, Mr. Barnett testified that he had not re-offended after his conviction, but offered no evidence of his activities since 2005 (*i.e.*, the date

---

<sup>28</sup> 43 Tex. Admin. Code § 215.88(j)(6).

<sup>29</sup> Staff Ex. 3.

<sup>30</sup> 43 Tex. Admin. Code § 215.141(a).

of the conviction) other than to suggest that he has been a motor vehicle dealer for the last 38 years. Similarly, there was no evidence that Mr. Barnett provided any relevant information regarding these factors to the Department before it made the decision to seek revocation of Mr. Barnett's motor vehicle GDN. On balance, these factors weigh against Mr. Barnett because he did not address them with the Department, and mentioned them only in passing during the hearing.

Mr. Barnett provided no evidence of his rehabilitation. With respect to "other evidence of the person's fitness,"<sup>31</sup> Mr. Barnett offered a single character letter from his son-in-law filed post-hearing, and no letters of recommendation from prosecutors, law enforcement officials, the sheriff or chief of police in his community. Mr. Taylor's letter states that he, not Mr. Barnett, prepared Mr. Barnett's Travel Trailer GDN application, and he was unaware of Mr. Barnett's conviction. However, the fact remains that Mr. Barnett signed the application, and it was his obligation, not Mr. Taylor's, to attest to the information included on the application. Mr. Barnett's character reference, Mr. Engleman, testified telephonically and only provided a vague, general opinion that Mr. Barnett was a "fantastic guy." However, Mr. Engleman conceded that he lived in Quitman, Texas, not in Beaumont, and only knew Mr. Barnett through his business dealings. Furthermore, Mr. Engleman testified that he knew nothing of the criminal charges resulting in Mr. Barnett's conviction. The ALJ concludes that these factors all weigh against Mr. Barnett.

Texas Occupations Code § 53.023(a) imposes on the applicant the responsibility to furnish proof that he has maintained a record of steady employment, supported his dependents, maintained a record of good conduct, and paid all outstanding court costs and fines. Mr. Barnett testified that he had not re-offended since his conviction and he paid his \$500 fine and \$423 in costs. He also testified that he had been a car dealer for 38 years, which is some evidence that he has held employment since his conviction. However, he provided no details on how owning a motor vehicle dealership affected his dependents, for the better or worse. Other than that, Mr. Barnett furnished no proof regarding the factors in Texas Occupations Code § 53.023(a). Therefore, after considering all the evidence and the totality of the applicable factors, the ALJ concludes that Mr. Barnett's motor vehicle dealer GDN should be revoked, as requested by Staff.

---

<sup>31</sup> Tex. Occ. Code § 53.023(a)(6).

### III. FINDINGS OF FACT

1. Barnett Motor Company, Inc., d/b/a Barnett Motor Company (Barnett Motor Co.) is a vehicle dealership owned and operated by Robert Dewayne Barnett in Beaumont, Jefferson County, Texas.
2. Barnett Motor Co., in the person of Mr. Barnett, currently holds General Distinguishing Number (GDN) P5735 for his motor vehicle dealership.
3. Mr. Barnett has renewed Barnett Motor Co.'s GDN P5735 five or six times over the years.
4. On or about August 11, 2004, one of Mr. Barnett's customers returned to Mr. Barnett's dealership to complain that her automobile was not running smoothly. Mr. Barnett and his customer went on a test drive so he could observe the car's behavior for himself.
5. The customer was a female, and during the test drive Mr. Barnett grabbed his customer's hand, placed it on his genitals, and performed a sex act on her hand. That same day, the customer filed a complaint against Mr. Barnett with the Beaumont Police Department.
6. On or about January 6, 2005, in County Court at Law No. 2, Jefferson County, Texas, Robert Dewayne Barnett pleaded *nolo contendere* to the Class B misdemeanor of Indecent Exposure. On that same date, the court considered Mr. Barnett's plea and adjudicated him guilty of the offense in Cause No. 246464.
7. Mr. Barnett paid a \$500 fine and \$423 in court costs.
8. Mr. Barnett was 63 years old when he committed the Class B misdemeanor offense of Indecent Exposure.
9. On July 6, 2016, Mr. Barnett filed a travel trailer GDN application with the Texas Department of Motor Vehicles (Department).
10. On his travel trailer GDN application, Mr. Barnett answered "No" to a question inquiring about past criminal convictions.
11. Mr. Barnett failed to disclose his 2005 Class B misdemeanor conviction for Indecent Exposure.
12. The travel trailer application was prepared and submitted to the Department by Mr. Barnett's son-in-law.
13. Mr. Barnett signed his travel trailer GDN application.
14. In his travel trailer GDN application, Mr. Barnett acknowledged that providing a false answer in a GDN application could result in revocation or denial of a GDN license or application, respectively, and further acknowledged that providing a false response on a license application could result in criminal prosecution.

15. Staff performed a criminal history search and discovered Mr. Barnett's 2005 conviction.
16. On July 18, 2016, Staff sent Mr. Barnett a Notice of Deficiency informing him that Staff had discovered the conviction and offering Mr. Barnett an opportunity to explain the failure to disclose the conviction.
17. On August 5, 2016, Mr. Barnett submitted a handwritten note asserting that he had forgotten about the conviction. He also attached an executed Criminal History form acknowledging the conviction.
18. As of the date of the hearing on the merits, Mr. Barnett had not re-offended.
19. On September 20, 2018, the Department sent Mr. Barnett an Amended Notice of Department Decision recommending that GDN License No. P5735 be revoked.
20. On that same date, the Department issued a Notice of Hearing scheduling the hearing on the merits for October 17, 2018.
21. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition.
22. Mr. Barnett provided no evidence of his activities since his conviction. Mr. Barnett also offered no evidence of his rehabilitation.
23. Mr. Barnett offered no evidence of steady employment or of having supported his dependents since his conviction.
24. Mr. Barnett provided no letters of recommendation from prosecutors, law enforcement and correctional officers, or the sheriff or chief of police in the community where Mr. Barnett resides, attesting to his overall character or fitness for licensure.
25. The hearing on the merits was held on October 17, 2018, before Administrative Law Judge Fernando Rodriguez in Austin, Texas. Staff was represented by Robert Rice, Enforcement Division attorney. Mr. Barnett appeared telephonically and represented himself. The hearing concluded that day, and the record initially closed on October 24, 2018, with the filing of a character letter written on Mr. Barnett's behalf. The record re-opened briefly on November 20, 2018, to receive requested statutory information from Staff. The record closed again on November 30, 2018, with the filing of Staff's information.

#### IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over dealers pursuant to Texas Occupations Code ch. 2301 and Tex. Transp. Code ch. 503.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a contested case in this matter, including the preparation of a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, under Texas Government Code ch. 2003.
3. Mr. Barnett received proper and timely notice of hearing as required by Tex. Gov't Code §§ 2001.051-.052.
4. A GDN constitutes a dealer's license, and a person may not legally engage in the business of motor vehicle dealer without a GDN. Tex. Occ. Code §§ 2301.002(17), 2301.251(a); Tex. Transp. Code § 503.21.
5. The Department may revoke a GDN or deny a GDN application if the applicant makes a material misrepresentation in any application or other information filed with the Department, or has committed a criminal offense that directly relates to the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 2301.25 1(a); Tex. Transp. Code § 503.038(a)(6); 43 Tex. Admin. Code § 215.88(i), (j).
6. The Class B misdemeanor of Indecent Exposure is directly related to the occupation of motor vehicle dealer. 43 Tex. Admin. Code § 218.88(j)(6); Tex. Penal Code § 21.08.
7. When determining whether to revoke or deny a GDN application because the applicant has been convicted of a crime, the Department must consider a number of additional factors. Tex. Occ. Code § 53.023.
8. In this case, the applicable factors support revocation of Mr. Barnett's existing GDN.
9. The Department should revoke Mr. Barnett's existing GDN.

**SIGNED December 11, 2018.**

  
\_\_\_\_\_  
FERNANDO RODRIGUEZ  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**MOTOR VEHICLE DIVISION  
TEXAS DEPARTMENT OF MOTOR VEHICLES**

<b>TEXAS DEPARTMENT OF MOTOR VEHICLES v. BARNETT MOTOR COMPANY, INC. D/B/A BARNETT MOTOR CO.</b>	§ § § §	<b>MVD CASE NO. 17-0157075.H ENF DOCKET NO. 17-0214.ENF SOAH DOCKET NO. 608-19-0169.ENF</b>
--	------------------	---

**FINAL ORDER**

The referenced contested case matter is before the Board of the Texas Department of Motor Vehicles (TxDMV) in the form of a Proposal for Decision (PFD) from the State Office of Administrative Hearings (SOAH) and involves revocation of the general distinguishing number of Barnett Motor Company, Inc. (Respondent).

The Board adopts the Administrative Law Judge's (ALJ) December 11, 2018, PFD as changed by the ALJ's January 18, 2019, letter correcting Respondent's first name from Robert to Frank in Finding of Fact 6 and in the Jurisdiction, Notice and Procedural History (Section I) of the PFD.

**ACCORDINGLY, IT IS ORDERED:**

1. That the Findings of Fact (FOF) 1 – 25 and Conclusions of Law (COL) 1 – 9 are hereby adopted;
2. That Respondent's General Distinguishing Number P5735 is hereby revoked; and
3. That all remaining motions, exceptions, or objections, of any party, if any, are hereby denied.

Date: \_\_\_\_\_

\_\_\_\_\_  
Guillermo "Memo" Treviño, Chair  
Board of Texas Department of Motor Vehicles

ATTESTED:

\_\_\_\_\_  
Daniel Avitia, Director  
Motor Vehicle Division  
Texas Department of Motor Vehicles

DATE: May 2, 2019

Action Requested: APPROVAL OF PROPOSED FINAL ORDER/BRIEFING

To: Texas Department of Motor Vehicles Board (Board)  
From: Barbara Jordan, Managing Attorney, Enforcement  
Agenda Item: 7  
Subject: Consideration and Approval of Final Order. *Texas Department of Motor Vehicles v. Dorsha Motors of Texas, LLC*; DMV Docket No. 17-0178756.ENF, SOAH Docket No. 608-18-2991.ENF.

**RECOMMENDATION**

Staff recommends the Board adopt the Administrative Law Judge's (ALJ) Findings of Fact. Staff recommends the Board adopt Conclusions of Law 1 – 3, 5 – 10, 12 – 15, and 17, amend Conclusions of Law 4, 11, 16, and 18, reject Conclusions of Law 19 -23, and assess a civil penalty of \$6,000.

The following documents are attached to this Executive Summary for consideration by the Board:

1. Notice of Hearing, May 11, 2018;
2. First Amended Notice of Department Decision, June 25, 2018;
3. Affidavit in Support of the Penalty Recommendation;
4. Proposal for Decision;
5. Proposed Final Order.

**PURPOSE AND EXECUTIVE SUMMARY**

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision (PFD) in *Texas Department of Motor Vehicles v. Dorsha Motors of Texas, LLC*; DMV Docket No. 17-0178756.ENF, SOAH Docket No. 608-18-2991.ENF. The Board may now consider and approve a Final Order against Respondent.

**FINANCIAL IMPACT**

None

**BACKGROUND AND DISCUSSION**

Respondent was sent the initial Notice of Department Decision (NODD) on or about October 25, 2017. The Enforcement Division referred the contested case matter to SOAH on or about April 2, 2018. A First Amended NODD was sent on June 25, 2018. Both NODDs alleged 13 violations, but Staff withdrew Allegation No. 12 at the hearing on the merits, which was held July 23, 2018. The PFD was issued on September 27, 2018. The ALJ found six of the 12 violations pled.

Respondent was alleged to have engaged in the following conduct:

1. Filed a false tax or title document, Allegation NODD Number(s): 1 (not substantiated)
2. Attached a buyer's temporary tag to a motor vehicle that did not have a valid report of inspection, Allegation NODD Number(s): 2; 6; 7 (substantiated)
3. Failed to keep a complete record, Allegation NODD Number(s): 3; 10; 11 (not substantiated)
4. Filed an Application for Texas Certificate of Title containing false or fraudulent lien information, Allegation NODD Number(s): 4 (not substantiated)



5. Offered for sale a motor vehicle that did not display the FTC Buyer's Guide, Allegation NODD Number(s): 5 (substantiated)
6. Failed to remove and properly dispose of the issued Texas License plates and/or the registration insignia, Allegation NODD Number(s): 8 (substantiated)
7. Failed to have the dealer or a bona fide employee present at the dealer's location during business hours, Allegation NODD Number(s): 9 (substantiated)
8. Willfully defrauded a purchaser in regard to the sale of a 2003 Toyota by altering the actual mileage of the odometer from 258,874 miles to 125,000, Allegation NODD Number(s): 13 (not substantiated)

The ALJ recommended a civil penalty totaling \$1,200 based on four violations. However, the Board, not the ALJ, is the decision maker concerning sanctions in a contested case. *Texas State Bd. of Dental Exam. v. Brown*, 281 S.W.3d 692 (Tex. App. 2009).

The Texas Occupations Code authorizes a civil penalty of up to \$10,000 for each violation. The Texas Transportation Code authorizes a civil penalty of not less than \$50 or more than \$1,000.

At the time of the hearing, Exhibit 4 was admitted into evidence. Exhibit 4 is the "Affidavit in Support of the Penalty Recommendation". The affidavit recommended a civil penalty of \$25,000 and revocation. Based on the Occupations Code and the Transportation Code, it is appropriate to assess a civil penalty of \$1,000 per violation. The ALJ found six violations, so Staff recommends a civil penalty of at least \$6,000.

**Texas Department of Motor Vehicles**

HELPING TEXANS GO. HELPING TEXAS GROW.

May 11, 2018

Dorsha Motors of Texas, LLC  
451 N. Eufless Dr.  
Cedar Hill, Texas 75104-3190  
**VIA US MAIL, CERT. MAIL AND EMAIL**

RE: IN THE MATTER OF THE LICENSE(S) OF  
Dorsha Motors of Texas, LLC  
MVD CASE NO. 17-0178756  
SOAH DOCKET NO.608-18-2991.ENF

Dear Licensee:

Enclosed is a copy of a Notice of Department Decision that was previously sent to you. Also enclosed is a Notice of Hearing filed by the Enforcement Division that sets the hearing in this case for Monday, at 7/23/2018 at 9:00 AM in the State Office of Administrative Hearings (SOAH) located on the fourth floor of the W.P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, TX 78701.

Pursuant to 43 Tex. Admin. Code § 215.308, within 20 days after service of the notice of hearing and Notice of Department Decision, or within 10 days after service of any amended notice of hearing and Notice of Department Decision, you may file a reply that specifically admits, denies or otherwise explains your position on each of the allegations.

Any reply or other pleadings should be sent to the SOAH at the following address: P.O. Box 13025 Austin, TX 78711-3025. The SOAH telephone number is (512) 475-4993 and the fax number is (512) 322-2061. You must also send a copy of any pleading or reply you or your attorney file in the case to the undersigned at the following address: Enforcement Division, Texas Department of Motor Vehicles, 4000 Jackson Street, Austin, Texas 78731. All communication should reference the SOAH Docket Number above.

**Please note that the factual allegations listed in the Notice of Department Decision and Notice of Hearing can be deemed admitted, and the relief sought in the Notice of Hearing and Notice of Department Decision might be granted by default against the defaulting party that fails to appear at the hearing.**

**Please also note that if you have not filed a reply to the Notice of Department Decision as discussed above and do appear at the hearing, the Enforcement Division Staff may request a continuance of the case and ask that the case be set to be heard on a future date. Advise the undersigned at least five (5) days before the scheduled hearing date if you or your attorney plans to attend the scheduled hearing.**

You or your attorney may contact the undersigned at (512) 465-4204.

Sincerely,

*Heather Pierce*

Heather Pierce,  
Attorney Enforcement Division

Enclosures

cc: Dorsha Motors of Texas, LLC  
3041 S. Walton Walker Blvd.  
Dallas, Texas 75211-7920  
**VIA US MAIL AND CERT. MAIL**

State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Tx 78711-3025  
**VIA E-File**

**MOTOR VEHICLE DIVISION  
TEXAS DEPARTMENT OF MOTOR VEHICLES**

**IN THE MATTER OF THE LICENSE(S) OF  
Dorsha Motors of Texas, LLC**

**MVD DOCKET NO. 17-0178756  
SOAH DOCKET No. 608-18-2991.ENF**

**NOTICE OF HEARING**

This Notice of Hearing, together with a Notice of Department Decision, attached hereto and incorporated herein, is issued in accordance with Tex. Gov't Code §§ 2001.052 et seq, 1 Tex. Admin. Code §§ 155.1 et seq, and Tex. Occ. Code § 2301.705 by the Enforcement Division, Texas Department of Motor Vehicles (hereinafter "The Department"). The Enforcement Division (hereinafter "Petitioner") alleges that Louis Waggoner, (hereinafter "Respondent"), has engaged in conduct that constitutes grounds for sanctions under the Texas Occupations Code, Texas Transportation Code or implementing regulations as alleged in the Notice of Department Decision.

**Under the authority of Tex. Occ. Code §§ 2301.151 through 2301.153, this matter has been docketed and set for hearing at the offices of the State Office of Administrative Hearings, on Monday, 7/23/2018 at 9:00 AM , at the W. P. Clements Building, 300 W. 15th Street, Fourth Floor, Austin, TX 78701.**

Pursuant to Tex. Gov't Code § 2001.057(c), the hearing may be continued on subsequent working days or at such times announced by the Administrative Law Judge until the hearing is concluded. At the hearing the Administrative Law Judge will afford Respondent the opportunity to respond to the allegations and present evidence on each issue involved in the case.

The Administrative Law Judge will determine whether Respondent has engaged in conduct that constitutes grounds for sanctions under the statutes and implementing rules set forth in the Notice of Department Decision, and will make a recommendation as to whether sanctions and penalties should be imposed against the Respondent.

For allegations where the prescribed conduct is subject to Chapter 2301 of the Texas Occupations Code and the rules adopted under that statute, the Department is authorized, in accordance with Tex.

Occ. Code §§ 2301.651 and 2301.802, to deny an application for a license; revoke, cancel, probate, or suspend a license; reprimand a license holder; or seek injunctive relief. Moreover, Tex. Occ. Code § 2301.801 authorizes the imposition of a civil penalty not to exceed \$10,000.00 per violation per day.

For allegations where the prescribed conduct is subject to Chapter 503 of the Texas Transportation Code or the rules adopted under that statute, the Department is authorized, in accordance with Tex. Transp. Code §§ 503.038 and 503.093(a)(2) and 43 Tex. Admin. Code § 215.141(a), to deny an application for license; revoke, cancel or suspend a license; or seek injunctive relief. Moreover, Tex. Transp. Code § 503.095 authorizes the imposition of a civil penalty not to exceed \$1,000.00 per violation per day.

**The factual allegations listed in this Notice of Department Decision and Notice of Hearing could be deemed admitted, and the relief sought in the Notice of Hearing and Notice of Department Decision might be granted by default against the defaulting party that fails to appear at hearing.**

**Please also note that if you have not filed a reply to the Notice of Department Decision as discussed above and do appear at the hearing, the Enforcement Division Staff may request a continuance of the case and ask that the case be set to be heard on a future date. Advise the undersigned at least five (5) days before the scheduled hearing date if you or your attorney plan to attend the scheduled hearing.**

Date: May 11, 2018

Sincerely,

*Heather Pierce*

Heather Pierce,  
Attorney Enforcement Division

**CERTIFICATE OF SERVICE**

I hereby certify that on May 11, 2018, a true and correct copy of the foregoing Notice of Hearing with attached Notice of Department Decision for SOAH Docket No.608-18-2991.ENF was forwarded to the Respondent by certified mail, return receipt requested.

*Heather Pierce*

Heather Pierce,  
Attorney Enforcement Division

**Texas Department of Motor Vehicles**

HELPING TEXANS GO. HELPING TEXAS GROW.

ENFORCEMENT  
DIVISION  
(512) 465-4204  
(512) 465-5650  
FAX

October 25, 2017

Dorsha Motors of Texas, LLC  
451 N Eules Dr  
Cedar Hill, Texas 75104-3190  
**VIA CERT. MAIL AND EMAIL**

RE: IN THE MATTER OF THE LICENSE(S) OF  
Dorsha Motors of Texas, LLC  
WHEN RESPONDING, PLEASE REFER TO MVD CASE No. 17-0178756.ENF

Dear Licensee:

In accordance with the notice provisions of Texas Administrative Procedure Act (TEX. GOV'T CODE §§ 2001.001 et seq.) and 43 TEX. ADMIN. CODE § 215.500, enclosed is a Notice of Department Decision ("Decision") prepared by the Texas Department of Motor Vehicles ("Department"), Enforcement Division alleging that you, as a licensee of the Department, have violated the cited provisions of law in the manner described in the Decision. The allegation(s) are a result of a Department initiated investigation or outside complaint made against you and a Department investigation of that complaint.

If there are circumstances surrounding the allegations that you believe should mitigate any sanction imposed by the Decision you can discuss an informal settlement with the undersigned enforcement attorney. To discuss an informal settlement of the case you **must first request an administrative hearing** as explained in the Decision within twenty-six (26) days from the date of the Decision. **For your convenience, you may use the request for hearing form included in this packet.**

In most instances, an informal settlement can resolve the case in a shorter period of time with reduced civil penalties or other sanctions and without the costs associated with a formal proceeding. The undersigned attorney can be contacted at (512) 465-4204 or by writing using the address above.

If this case is set for hearing before an Administrative Law Judge ("ALJ") at the State Office of Administrative Hearings ("SOAH") you are entitled to receive a Notice of Hearing. Hearings in these matters are conducted under the rules of the Department and SOAH.

**ATENCIÓN:** Este es un documento legal importante que puede influir negativamente en su licencia para operar como concesionario de vehículos de motor en Texas. Se le ha acusado de violar la ley. Si dentro de los 26 días de esta carta no recibimos de usted una solicitud por escrito para una audiencia en este asunto una orden final será emitida por el DMV que puede imponer sanciones contra usted, incluyendo una multa civil y/o

revocación de su distribuidor de vehículos de motor licencia. Instamos enérgicamente a ponerse en contacto inmediatamente con un abogado privado o el abogado del DMV que suscribe con respecto a este documento legal. Si lo desea, alguien con el DMV puede discutir este documento con usted en el idioma Español.

If you do not request an administrative hearing within twenty-six (26) days from the date of the Decision, the terms and any sanctions contained therein become final.

Sincerely,

*Heather Pierce*

Heather Pierce,  
Attorney, Enforcement Division  
(512) 465-4163

Enclosures

cc:Dorsha Motors of Texas, LLC  
3041 S Walton Walker Blvd  
Dallas, Texas 75211-7920  
**VIA CERT. MAIL**

**MOTOR VEHICLE DIVISION  
TEXAS DEPARTMENT OF MOTOR VEHICLES**

**IN THE MATTER OF THE LICENSE(S) OF                    MVD Case NO. 17-0178756.ENF**  
**Dorsha Motors of Texas, LLC**

**NOTICE OF DEPARTMENT DECISION**

The Texas Department of Motor Vehicles, (hereinafter, "Department" or "Petitioner"), is the state agency with authority to administer and enforce Texas Occupations Code Chapter 2301; Texas Transportation Code Chapters 501, 502 and 503; and 43 Texas Administrative Code Chapter 215. An investigation of your business was conducted by the Department. As a result of that investigation, the Department determined that you, Dorsha Motors of Texas, LLC, (hereinafter "Respondent"), the holder of a license issued by the Department, violated certain provisions of Texas Occupations Code Chapter 2301; and/or Texas Transportation Code Chapters 501, 502 and 503 and/or 43 Texas Administrative Code Chapter 215. The Department alleges that Respondent committed the following violations:

1. Respondent, a licensee, on or about January 11, 2016, filed a false tax or title document in connection with the sale of a 2006 Dodge. VIN 2B3KA43G76H522765, to Isaiah Dixon on or about November 10, 2015, which conduct constitutes grounds for sanctions under TEX. TRANSP. CODE ANN. § 503.038(a)(2).
2. Respondent, a licensee, on or about June 1, 2017 attached a buyer's temporary tag to a motor vehicle that did not have a valid report of inspection as required by 37 TEX. ADMIN. CODE 3.76(c), constituting grounds for sanctions under TEX. OCC. CODE § 2301.651(a)(4).
3. Respondent, a licensee, on or about October 18, 2017, failed to keep a complete record of all vehicles purchased or sold, specifically records related to the sale or purchase of a 2006 Dodge, VIN 2B3KA43G76H522765 on or about June 1, 2017 in violation of 43 TEX. ADMIN. CODE § 215.144. Specifically, Respondent failed to have the title indicating the transfer to the previous consumer Isaiah Dixon on 1/10/15.
4. Respondent, a licensee, filed an Application for Texas Certificate of Title containing false or fraudulent lien information in connection with the sale of a 2005 Nissan, VIN 1N4BA41E45C876539, to Brittany Nichols on or about February 22, 2017, which conduct constitutes grounds for sanctions under TEX. TRANSP. CODE ANN. § 503.038(a)(2).
5. Respondent, a licensee, on or about April 21, 2017, offered for sale motor vehicles that did not display the Federal Trade Commission Buyer's Guide, including but not limited to a 2007 Lexus, VIN JTHBJ46G072004807, in violation of 16 C.F.R. § 455.2, constituting grounds for sanctions under TEX. OCC. CODE ANN. § 2301.651(a)(4).

6. Respondent, a licensee, on or about February 22, 2017 attached a buyer's temporary tag to a motor vehicle that did not display a valid report of inspection as required by 37 TEX. ADMIN. CODE 3.76(c), constituting grounds for sanctions under TEX. OCC. CODE § 2301.651(a)(4).
7. Respondent, a licensee, on or about March 20, 2017 attached a buyer's temporary tag to a motor vehicle that did not display a valid report of inspection as required by 37 TEX. ADMIN. CODE 3.76(c), constituting grounds for sanctions under TEX. OCC. CODE § 2301.651(a)(4).
8. Respondent, a licensee, on or about April 21, 2017, failed to remove and properly dispose of the issued Texas license plates and/or the registration insignia for a 2007 Lexus, VIN JTHBJ46G072004807, a vehicle being displayed or offered for sale at the licensee's licensed location, in violation of TEX. TRANSP. CODE ANN. §§ 502.491 and 504.901.
9. Respondent, a licensee, on or about April 21, 2017, failed to have the dealer or a bona fide employee present at the dealer's location during the posted business hours for the purpose of buying, selling, exchanging or leasing vehicles, in violation of TEX. TRANSP. CODE ANN. §503.032 and 43 TEX. ADMIN. CODE § 215.140(1).
10. Respondent, a licensee, on or about May 3, 2017, failed to keep a complete record of all vehicles purchased or sold, specifically records related to the sale or purchase of a 2005 Nissan, VIN 1N4BA41E45C876539 on or about February 22, 2017 in violation of 43 TEX. ADMIN. CODE § 215.144. Specifically, the sales records failed to consist of the application for Texas certificate of title (130-U), title, and title application receipt (VTR-500).
11. Respondent, a licensee, on or about May 3, 2017, failed to keep a complete record of all vehicles purchased or sold, specifically records related to the sale or purchase of a 1999 Ford, VIN 1FMRU17L4XLB94442 on or about March 20, 2017 in violation of 43 TEX. ADMIN. CODE § 215.144. Specifically, the sales records failed to consist of all required documents and only consisted of the buyer guide and county title of issuance (VTR-136).
12. Respondent, a licensee, on or about January 19, 2017 attached a buyer's temporary tag to a motor vehicle that did not display a valid certificate of inspection as required by 37 TEX. ADMIN. CODE 3.76(c), constituting grounds for sanctions under TEX. OCC. CODE § 2301.651(a)(4).
13. Respondent, a licensee, on or about January 19, 2017, willfully defrauded a purchaser in regard to the sale of a 2003 Toyota, VIN 1NXBR32E43Z189494, to Aayush Karki, by altering the actual mileage of the odometer from 258874 to approximately 125000 miles, which conduct constitutes grounds for sanctions under TEX. OCC. CODE ANN. § 2301.651(a)(6).

The Department is authorized to deny an application for a license, revoke or suspend a license, under Texas Occupations Code § 2301.651; Texas Transportation Code § 503.038; and 43 Texas Administrative Code § 215.141(a). Further, Texas Transportation Code § 503.095 allows for a civil penalty of up to \$1,000.00 for each violation of, or per day for a continuing violation, of Chapter 503, or a rule or order adopted under the chapter. Texas

Occupations Code § 2301.801 allows for a civil penalty of up to \$10,000.00 for each violation of, or per day for a continuing violation, of Chapter 2301, or a rule or order adopted under the chapter.

Based on the aforementioned investigation and allegations, the Department recommends the assessment of a civil penalty in the amount of \$25,000. In addition, due to the nature and number of the violations, the Department recommends that Dealer General Distinguishing Number License No. P110107 be revoked.

**If you wish to contest the allegations, recommended civil penalty, or other sanction you must first request an administrative hearing in writing. You may send your own request for hearing or use the Request For Administrative Hearing form included in this packet. Send your request for hearing to the following address:**

Heather Pierce  
Attorney, Enforcement Division  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, Texas 78731  
(512) 465-4163  
(512) 465-5650 Fax

**You must include your name and the MVD Case Number appearing in the heading of this Decision in your hearing request. The Department must receive your written hearing request not later than the 26th day after the date of this Decision.**

If you timely submitted a written request for a hearing, the Department may enter into an informal settlement agreement with you regarding these violations and enforcement action at any time before a final decision is rendered in this case.

If a timely written hearing request is received and no settlement is reached, an administrative hearing will be scheduled before the State Office of Administrative Hearings (SOAH). You will be notified of the hearing date and time. Hearings will be held at SOAH's offices located at 300 W. 15th St., Austin, Texas 78701. Increased penalties or other sanctions may be recommended by the Department at the hearing.

If you do not request a hearing by the 26th day from the date of this notice, the Department Decision becomes final. After that date the Department may issue a Final Order implementing the Decision.

Failure to pay a civil penalty assessed by a Final Order within 30 days after the order becomes final may result in additional civil penalties or other sanctions being assessed against you.

If you choose to pay the civil penalty of \$25,000 without requesting an administrative hearing, please remit a check or money order made payable to the Texas Department of Motor Vehicles by 26 days from date of the Decision and include the MVD Case Number listed above. Send your payment to the following address:

Texas Department of Motor Vehicles  
MVD Finance - ATTN: Enforcement Division  
P.O. Box 5020  
Austin, Texas 78763-5020

Should this case be set for hearing, Petitioner prays that it be found that Respondent has violated the statutes and implementing rules alleged above; and, that, as appropriate, that Respondent's license be revoked, canceled or suspended or that Respondent be placed on probation, or reprimanded; that civil penalties be imposed; and that the conduct alleged above be ceased and not resumed.

If you have any questions regarding this Decision, please contact me at (512) 465-4163.

**DATE OF DECISION:October 25,  
2017**

Respectfully Submitted,

*Heather Pierce*

Heather Pierce  
Attorney – Enforcement Division  
Bar Card 24067969  
4000 Jackson Avenue  
Austin, Texas 78731  
(512) 465-4163  
(512) 465-5650 Fax



ENFORCEMENT DIVISION  
(512) 465-4163  
(512) 465-5650 FAX

June 25, 2018

Dorsha Motors of Texas, LLC  
451 N Eules Dr.  
Cedar Hill, Texas 75104-3190  
VIA CMRRR 7003 2260 0005 2741 4755

IN THE MATTER OF THE LICENSE(S) OF  
Dorsha Motors of Texas, LLC  
RE: WHEN RESPONDING, PLEASE REFER TO MVD CASE No. 17-0178756.ENF

SOAH DOCKET NUMBER 608-18-2991.ENF

Dear Licensee and Docket Clerk:

In accordance with the notice provisions of Texas Administrative Procedure Act (TEX. GOV'T CODE §§ 2001.001 et seq.) and 43 TEX. ADMIN. CODE § 215.500, enclosed is a First Amended Notice of Department Decision ("Decision") prepared by the Texas Department of Motor Vehicles ("Department"), Enforcement Division alleging that you, as a licensee of the Department, have violated the cited provisions of law in the manner described in the Decision. The allegation(s) are a result of a Department initiated investigation or outside complaint made against you, the licensee, and a Department investigation of that complaint.

Please note: you have already filed a Request for Administrative Hearing for this case. **Under the authority of Tex. Occ. Code §§ 2301.151 through 2301.153, this matter has been docketed and set for hearing at the offices of the State Office of Administrative Hearings, on Monday, 7/23/2018 at 9:00 a.m. at the W. P. Clements Building, 300 W. 15th Street, Fourth Floor, Austin, TX 78701.**

Sincerely,

Heather Pierce,  
Attorney, Enforcement Division  
(512) 465-4163

Upload Date: 20180625130953 Account Number: 3090 Upload Description: FirstAmendedNoticeofDepartmentDecision608-18-2991

**MOTOR VEHICLE DIVISION  
TEXAS DEPARTMENT OF MOTOR VEHICLES**

**IN THE MATTER OF THE LICENSE(S) OF  
Dorsha Motors of Texas, LLC**

**MVD Case NO. 17-0178756.ENF**

**SOAH Docket Number: 608-18-2991.ENF**

**FIRST AMENDED NOTICE OF DEPARTMENT DECISION**

The Texas Department of Motor Vehicles, (hereinafter, "Department" or "Petitioner"), is the state agency with authority to administer and enforce Texas Occupations Code Chapter 2301; Texas Transportation Code Chapters 501, 502 and 503; and 43 Texas Administrative Code Chapter 215. An investigation of your business was conducted by the Department. As a result of that investigation, the Department determined that you, Dorsha Motors of Texas, LLC, (hereinafter "Respondent"), the holder of a license issued by the Department, violated certain provisions of Texas Occupations Code Chapter 2301; and/or Texas Transportation Code Chapters 501, 502 and 503 and/or 43 Texas Administrative Code Chapter 215. The Department alleges that Respondent committed the following violations:

1. Respondent, a licensee, on or about January 11, 2016, filed a false tax or title document in connection with the sale of a 2006 Dodge, VIN 2B3KA43G76H522765, to Isaiah Dixon on or about November 10, 2015, which conduct constitutes grounds for sanctions under TEX. TRANSP. CODE ANN. § 503.038(a)(2).
2. Respondent, a licensee, on or about June 1, 2017 attached a buyer's temporary tag to a motor vehicle that did not have a valid report of inspection as required by 43 TEX. ADMIN. CODE 215.155(b), constituting grounds for sanctions under TEX. OCC. CODE § 2301.651(a)(4).
3. Respondent, a licensee, on or about October 18, 2017, failed to keep a complete record of all vehicles purchased or sold, specifically records related to the sale or purchase of a 2006 Dodge, VIN 2B3KA43G76H522765 on or about June 1, 2017 in violation of 43 TEX. ADMIN. CODE § 215.144. Specifically, Respondent failed to have the title indicating the transfer to the previous consumer Isaiah Dixon on 1/10/15.
4. Respondent, a licensee, filed an Application for Texas Certificate of Title containing false or fraudulent lien information in connection with the sale of a 2005 Nissan, VIN 1N4BA41E45C876539, to Brittany Nichols on or about February 22, 2017, which conduct constitutes grounds for sanctions under TEX. TRANSP. CODE ANN. § 503.038(a)(2).
5. Respondent, a licensee, on or about April 21, 2017, offered for sale motor vehicles that did not display the Federal Trade Commission Buyer's Guide, including but not limited to a 2007 Lexus, VIN JTHBJ46G072004807, in violation of 16 C.F.R. § 455.2, constituting grounds for sanctions under TEX. OCC. CODE ANN. § 2301.651(a)(4).
6. Respondent, a licensee, on or about February 22, 2017 attached a buyer's temporary tag to a motor vehicle that did not display a valid report of inspection as required by 43 TEX. ADMIN. CODE 215.155(b), constituting grounds for sanctions under TEX. OCC. CODE § 2301.651(a)(4).
7. Respondent, a licensee, on or about March 20, 2017 attached a buyer's temporary tag to a motor vehicle that did not display a valid report of inspection as required by 43 TEX. ADMIN. CODE 215.155(b), constituting grounds for sanctions under TEX. OCC. CODE § 2301.651(a)(4).

8. Respondent, a licensee, on or about April 21, 2017, failed to remove and properly dispose of the issued Texas license plates and/or the registration insignia for a 2007 Lexus, VIN JTHBJ46G072004807, a vehicle being displayed or offered for sale at the licensee's licensed location, in violation of TEX. TRANSP. CODE ANN. §§ 502.491 and 504.901.
9. Respondent, a licensee, on or about April 21, 2017, failed to have the dealer or a bona fide employee present at the dealer's location during the posted business hours for the purpose of buying, selling, exchanging or leasing vehicles, in violation of TEX. TRANSP. CODE ANN. §503.032 and 43 TEX. ADMIN. CODE § 215.140(1).
10. Respondent, a licensee, on or about May 3, 2017, failed to keep a complete record of all vehicles purchased or sold, specifically records related to the sale or purchase of a 2005 Nissan, VIN 1N4BA41E45C876539 on or about February 22, 2017 in violation of 43 TEX. ADMIN. CODE § 215.144. Specifically, the sales records failed to consist of the application for Texas certificate of title (130-U), title, and title application receipt (VTR-500).
11. Respondent, a licensee, on or about May 3, 2017, failed to keep a complete record of all vehicles purchased or sold, specifically records related to the sale or purchase of a 1999 Ford, VIN 1FMRU17L4XLB94442 on or about March 20, 2017 in violation of 43 TEX. ADMIN. CODE § 215.144. Specifically, the sales records failed to consist of all required documents and only consisted of the buyer guide and county title of issuance (VTR-136).
12. Respondent, a licensee, on or about January 19, 2017 attached a buyer's temporary tag to a motor vehicle that did not display a valid certificate of inspection as required by 43 TEX. ADMIN. CODE 215.155(b), constituting grounds for sanctions under TEX. OCC. CODE § 2301.651(a)(4).
13. Respondent, a licensee, on or about January 19, 2017, willfully defrauded a purchaser in regard to the sale of a 2003 Toyota, VIN INXBR32E43Z189494, to Aayush Karki, by altering the actual mileage of the odometer from 258874 to approximately 125000 miles, which conduct constitutes grounds for sanctions under TEX. OCC. CODE ANN. § 2301.651(a)(6).

The Department is authorized to deny an application for a license, revoke or suspend a license, under Texas Occupations Code § 2301.651; Texas Transportation Code § 503.038; and 43 Texas Administrative Code § 215.141(a). Further, Texas Transportation Code § 503.095 allows for a civil penalty of up to \$1,000.00 for each violation of, or per day for a continuing violation, of Chapter 503, or a rule or order adopted under the chapter. Texas Occupations Code § 2301.801 allows for a civil penalty of up to \$10,000.00 for each violation of, or per day for a continuing violation, of Chapter 2301, or a rule or order adopted under the chapter.

**Based on the aforementioned investigation and allegations, the Department recommends the assessment of a civil penalty in the amount of \$25,000. In addition, due to the nature and number of the violations, the Department recommends that Dealer General Distinguishing Number License No. P110107 be revoked.**

You have already timely submitted a written request for a hearing, the Department may enter into an informal settlement agreement with you regarding these violations and enforcement action at any time before a final decision is rendered in this case.

**Under the authority of Tex. Occ. Code §§ 2301.151 through 2301.153, this matter has been docketed and set for hearing at the offices of the State Office of Administrative Hearings,**

**on Monday, 7/23/2018 at 9:00 a.m. at the W. P. Clements Building, 300 W. 15th Street, Fourth Floor, Austin, TX 78701.**

If you choose to pay the civil penalty of \$25,000 without requesting an administrative hearing, please remit a check or money order made payable to the Texas Department of Motor Vehicles by 26 days from date of the Decision and include the MVD Case Number listed above. Send your payment to the following address:

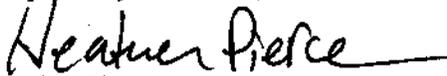
Texas Department of Motor Vehicles  
MVD Finance - ATTN: Enforcement Division  
P.O. Box 5020  
Austin, Texas 78763-5020

Should this case be set for hearing, Petitioner prays that it be found that Respondent has violated the statutes and implementing rules alleged above; and, that, as appropriate, that Respondent's license be revoked, canceled or suspended or that Respondent be placed on probation, or reprimanded; that civil penalties be imposed; and that the conduct alleged above be ceased and not resumed.

If you have any questions regarding this Decision, please contact me at (512) 465-4163.

**DATE OF DECISION: June 25, 2017**

Respectfully Submitted,



Heather Pierce

Attorney – Enforcement Division  
Bar Card 24067969  
4000 Jackson Avenue  
Austin, Texas 78731

(512) 465-4163

(512) 465-5650 Fax

**CERTIFICATE OF SERVICE**

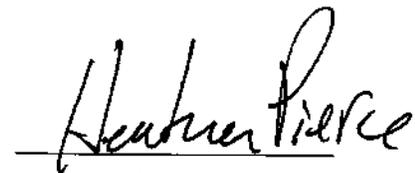
I certify that on the 25th day of June 2018, a true and correct copy of this document, the First Amended Notice of Department Decision, was served on the following individuals and at the location and the manner indicated below.

**ELECTRONIC FILING**

Docket Clerk  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> #504  
Austin, Texas 78701

**VIA CMRRR 7003 2260 0005 2741 4755:**

Dorsha Motors of Texas, LLC  
Attention: Louis Waggoner  
451 North Eules Drive  
Cedar Hill, Texas 75104



Heather Pierce, Attorney

Enforcement Division

MVD CAUSE NO. 17-0178756.ENF  
SOAH DOCKET NO. 608-18-2991.ENF

IN THE MATTER OF THE LICENSE OF DORSHA MOTOR OF TEXAS, LLC § BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

AFFIDAVIT IN SUPPORT OF THE PENALTY RECOMMENDATION

On this date, before me, a notary public appeared Barbara Jordan, who being first duly sworn, did say as follows:

*“My name is Barbara Jordan. I am over 18 years of age, of sound mind and have personal knowledge of the facts contained herein. I am submitting this affidavit in support of the sanctions requested by Petitioner in the above styled and numbered case.*

*I am employed as the Managing Attorney, Enforcement Division, Texas Department of Motor Vehicles and have been so employed since February 2018.*

*The Texas Department of Motor Vehicles is authorized to deny an application for a license, revoke, cancel or suspend a license (General Distinguishing Number), place on probation a person whose license has been suspended, or reprimand a license holder under Section 2301.651, Texas Occupations Code; Section 503.038, Texas Transportation Code; and Section 215.141(a) of Title 43, Texas Administrative Code.*

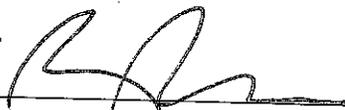
*Further, Section 503.095, Texas Transportation Code, allows for a civil penalty of up to \$1,000 for each act in violation and for each day of a continuing violation of Chapter 503 of the Texas Transportation Code. Section 2301.801, Texas Occupations Code, allows for a civil penalty of up to \$10,000 for each violation and for each day of a continuing violation of Chapter 2301, Texas Occupations Code, or Section 503.038(a), Texas Transportation Code; Section 2301.801, Texas Occupation Code also sets forth standards for assessing penalties.*

*I am familiar with the past decisions of the Motor Vehicle Board and the Division Director of the Motor Vehicle Division, and the Texas Department of Motor Vehicles in assessing penalties for violations committed by licensees and other persons under the jurisdiction of the Texas Department of Motor Vehicles and its predecessors.*

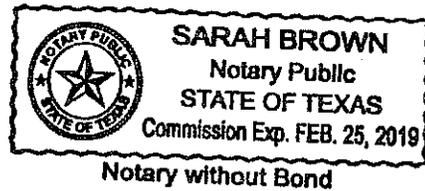
*I have reviewed the facts and circumstances of the above referenced case and recommend a civil penalty of \$25,000. In addition, due to the nature and number of the violations, the Department recommends that the Respondent's General Distinguishing Number License Number P110107 be revoked. I have considered the following standards as identified in Subsection 2301.801(b), Texas Occupations Code: (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public; (2) the economic damage to the public caused by the violation; (3) the history of previous violations; (4) the amount necessary to deter a future violation; (5) Respondent's efforts to correct the violation; and (6) any other matter that justice may require.*

*It is my opinion that the recommended sanction is in conformity with the past decisions of the Motor Vehicle Board, the Division Director of the Motor Vehicle Division and the Texas Department of Motor Vehicles in assessing penalties for violations committed by licensees and other persons under the jurisdiction of the Texas Department of Motor Vehicles and its predecessors, and the recommended sanctions are appropriate in this case."*

FURTHER AFFIANT SAETH NOT.

  
 Barbara Jordan  
 Managing Attorney, Enforcement Division  
 Texas Department of Motor Vehicles  
 Austin, Texas

STATE OF TEXAS                    §  
   §  
 COUNTY OF TRAVIS               §



Subscribed and sworn before me on this 19<sup>th</sup> day of July, 2018.

  
 \_\_\_\_\_

# State Office of Administrative Hearings



Lesli G. Ginn  
Chief Administrative Law Judge

September 27, 2018

Daniel Avitia, Director  
Motor Vehicle Division  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, TX 78731

**VIA INTERAGENCY MAIL**

RE: **Docket No. 608-18-2991.ENF; MVD Docket No. 17-0178756 ENF/ *The Texas Department of Motor Vehicles - Enforcement Division v. Dorsha Motors of Texas, LLC***

Dear Mr. Avitia:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read 'Casey A. Bell'.

Casey A. Bell  
Administrative Law Judge

CB/lc  
Enclosure

cc: Dorsha Motors of Texas, LLC, Attn: Louis Waggoner, 451 North Eules Drive, Cedar Hill, TX 75104 - **VIA REGULAR MAIL**  
Dorsha Motors of Texas, LLC, Attn: Louis Waggoner, 3041 S. Walton Walker Blvd., Dallas, TX 75211-7920 - **VIA REGULAR MAIL**  
Dorsha Motors of Texas, LLC, Attn: Louis Waggoner, [dorshamotorsoftexas@yahoo.com](mailto:dorshamotorsoftexas@yahoo.com) - **VIA EMAIL**  
Heather Pierce, Attorney, Enforcement Division, Texas Department of Motor Vehicles, Motor Vehicle Division, 400 Jackson Ave., Austin, TX 78731 - **VIA REGULAR MAIL**  
Melinda Moreno, Docket Clerk, Texas Department of Motor Vehicle, 4000 Jackson Avenue, Austin, Texas 78731 - **VIA INTERAGENCY MAIL** (with 1 hearing CD; Certified Exhibits)

300 W. 15<sup>th</sup> Street, Suite 504, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025  
512.475.4993 (Main) 512.475.3445 (Docketing) 512.475.4994 (Fax)  
[www.soah.texas.gov](http://www.soah.texas.gov)

**SOAH DOCKET NO. 608-18-2991.ENF  
MVD DOCKET NO. 17-0178756 ENF**

<p><b>TEXAS DEPARTMENT OF MOTOR VEHICLES – ENFORCEMENT DIVISION, Petitioner</b></p> <p><b>v.</b></p> <p><b>DORSHA MOTORS OF TEXAS, LLC, Respondent</b></p>	<p>§ § § § § § § § § §</p>	<p><b>BEFORE THE STATE OFFICE</b></p> <p><b>OF</b></p> <p><b>ADMINISTRATIVE HEARINGS</b></p>
--	--	--

**TABLE OF CONTENTS**

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY ..... 1**

**II. APPLICABLE LAW ..... 2**

**III. ALLEGED VIOLATIONS, EVIDENCE, AND ARGUMENTS ..... 3**

**A. Filing False Tax Documents ..... 4**

        1. 2006 Dodge Charger ..... 4

        2. 2005 Nissan Maxima..... 6

**B. Displaying Buyer’s Temporary Tags Without Valid Inspections..... 7**

        1. The Dodge..... 8

        2. 1999 Ford Expedition ..... 9

        3. 2003 Toyota Corolla ..... 9

**C. Failure to Keep Records of Vehicle Sales and Purchases..... 100**

        1. The Dodge..... 111

        2. The Maxima ..... 12

        3. The Expedition..... 13

**D. Offering Vehicle For Sale Not Displaying FTC Buyer’s Guide ..... 13**

**E. Failure to Remove Registration Insignia ..... 14**

**F. Failure to Have Owner or Bona Fide Employee Present At Dealer Location..... 15**

**G. Willfully Defrauding a Purchaser..... 16**

**H. Staff’s Recommended Sanctions ..... 18**

**IV. ANALYSIS AND RECOMMENDATION ..... 19**

**A. Filing False Tax Documents ..... 19**

**B. Displaying Buyer’s Temporary Tags Without Valid Inspections..... 20**

**C. Failure to Keep Records of Vehicle Sales and Purchases..... 21**

**D. Offering Vehicle For Sale Not Displaying FTC Buyer’s Guide..... 222**

**E. Failure to Remove Registration Insignia ..... 23**

**F. Failure to Have Owner or Bona Fide Employee Present At Dealer Location..... 233**

**G. Willfully Defrauding a Purchaser..... 24**

**H. Appropriate Sanctions ..... 25**

**V. FINDINGS OF FACT..... 27**

**VI. CONCLUSIONS OF LAW..... 29**

**SOAH DOCKET NO. 608-18-2991.ENF**  
**MVD DOCKET NO. 17-0178756 ENF**

<b>TEXAS DEPARTMENT OF MOTOR VEHICLES – ENFORCEMENT DIVISION,     Petitioner</b>	§ § § § § § § § § §	<b>BEFORE THE STATE OFFICE</b>
<b>v.</b>		<b>OF</b>
<b>DORSHA MOTORS OF TEXAS, LLC,     Respondent</b>		<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff (Staff) of the Texas Department of Motor Vehicles – Enforcement Division (Department) seeks to impose a \$25,000 civil penalty against Dorsha Motors of Texas, LLC (Respondent) for 12 alleged violations of the Texas Transportation Code and Department rules. Staff also recommends that Respondent’s general distinguishing number license be revoked. The Administrative Law Judge (ALJ) finds Staff proved six of the 12 alleged violations and recommends that the Department’s board (Board) impose civil penalties of \$1,200 against Respondent but not revoke his license.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

Neither party disputed notice or jurisdiction. Those matters are discussed in the Findings of Fact and Conclusions of Law without further discussion here. On July 23, 2018, ALJ Casey A. Bell convened the hearing on the merits at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorney Heather Pierce represented Staff. Respondent’s managing member, Louis Waggoner, appeared on Respondent’s behalf. Evidence was presented, and the hearing adjourned the same day. The record closed on July 30, 2018, after the ALJ gave Respondent the opportunity to file additional evidence with respect to one of Staff’s allegations.

## II. APPLICABLE LAW

A person may not engage in business as a motor vehicle dealer by regularly and actively buying, selling, or exchanging vehicles at an established and permanent location, without a general distinguishing number issued by the Department.<sup>1</sup> The Department may revoke a general distinguishing number license if the license holder violates any law relating to the sale and distribution of motor vehicles, violates chapter 2301 of the Texas Occupations Code or any rule adopted by the Board, or willfully defrauds a purchaser.<sup>2</sup> The Department can also cancel a dealer's general distinguishing number license if the dealer falsifies a title document or files a false or forged tax document.<sup>3</sup> A license may not be revoked unless the license holder is afforded the opportunity for a hearing.<sup>4</sup>

A person who violates chapter 503 of the Texas Transportation Code, or any rule adopted under such chapter, is subject to a civil penalty of not less than \$50 and not more than \$1,000.<sup>5</sup> Each act in violation of chapter 503 of the Texas Transportation Code and each day of a continuing violation is a separate violation.<sup>6</sup> Further, if after a hearing the Board finds that a person has violated chapter 2301 of the Texas Occupations Code, a Board rule adopted under such chapter, or Section 503.038(a) of the Texas Transportation Code, the Board may impose a civil penalty not to exceed \$10,000 per violation. Each act of violation and each day of a continuing violation is a separate violation.<sup>7</sup>

In determining the amount of any civil penalty, the Board must consider the following factors:

---

<sup>1</sup> Tex. Transp. Code §§ 503.001(4), .021.

<sup>2</sup> Tex. Occ. Code § 2301.651(a)(3)-(4), (6).

<sup>3</sup> Tex. Transp. Code § 503.038(a)(1)-(2).

<sup>4</sup> Tex. Occ. Code § 2301.651(d).

<sup>5</sup> Tex. Transp. Code § 503.095(a).

<sup>6</sup> Tex. Transp. Code § 503.095(b).

<sup>7</sup> Tex. Occ. Code § 2301.801(a).

- 1) The seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public;
- 2) The economic damage to the public caused by the violation;
- 3) The history of previous violations;
- 4) The amount necessary to deter a future violation;
- 5) Efforts to correct the violation; and
- 6) Any other matter that justice may require.<sup>8</sup>

Staff has the burden of proving, by a preponderance of the evidence, that Respondent committed the alleged violations and the appropriate sanction for any such violations.<sup>9</sup>

### III. ALLEGED VIOLATIONS, EVIDENCE, AND ARGUMENTS

Respondent currently holds a general distinguishing number license issued by the Department.<sup>10</sup> Based on an investigation performed by Department investigator Paul Skendrovic, Staff determined that Respondent committed 12 separate violations of chapters 502 and 503 of the Texas Transportation Code, Board rules adopted under chapter 2301 of the Texas Occupations Code and chapter 503 of the Texas Transportation Code, and a federal regulation relating to the sale of motor vehicles.

Staff offered Mr. Skendrovic's testimony, along with seven exhibits that were admitted into evidence without objection. Mr. Skendrovic testified that he has been a Department investigator for 10 years and was a peace officer for 29 years prior to joining the Department. His job duties at the Department include investigating complaints made by consumers, dealers, and law enforcement personnel. He stated that Staff Exhibits 6-8 constituted documentation he obtained through the course of his investigation of several complaints made against Respondent.

---

<sup>8</sup> Tex. Occ. Code § 2301.801(b).

<sup>9</sup> 1 Tex. Admin. Code § 155.427.

<sup>10</sup> Staff Ex. 1.

Mr. Waggoner testified on behalf of Respondent and offered four exhibits, three of which were admitted without objection and one of which was admitted over a limited objection by Staff.

**A. Filing False Tax Documents**

Staff alleges that Respondent, on two separate occasions, filed false tax documents in connection with vehicle sales, thereby subjecting its general distinguishing number license to revocation pursuant to Texas Transportation Code § 503.038(a)(2).

**1. 2006 Dodge Charger**

Staff contends that Respondent filed a false tax or title document by applying for a Texas title on a vehicle that it sold without a valid emissions inspection. Mr. Skendrovic identified a Buyer's Order indicating that Isaiah Dixon purchased a 2006 Dodge Charger (the Dodge) from Respondent on November 10, 2015.<sup>11</sup> Staff's evidence shows that the Dodge was titled to Dorsha Motors LLC in Philadelphia, Pennsylvania, and that the title was assigned to Respondent on November 9, 2015.<sup>12</sup> Mr. Skendrovic identified a document entitled "Application for Texas Title and/or Registration" by which Mr. Dixon, along with Respondent, appeared to apply for title and registration for the Dodge. The document appears to be signed and dated by Mr. Dixon and Mr. Waggoner on November 10, 2015.

Mr. Skendrovic also identified a document purporting to be a report of an emissions inspection performed on the Dodge on November 12, 2015.<sup>13</sup> He obtained the report by searching the North Central Texas Council of Governments (NCTCOG) database using the Dodge's vehicle identification number (VIN). According to Mr. Skendrovic, the documents in the NCTCOG database come from the Texas Department of Public Safety. Mr. Skendrovic testified that the emissions inspection of the Dodge was invalid because there is no on-board

---

<sup>11</sup> Staff Ex. 6 at 42.

<sup>12</sup> Staff Ex. 6 at 36, 48.

<sup>13</sup> Staff Ex. 6 at 33.

diagnostic (OBD) VIN reflected in the inspection report. Mr. Skendrovic explained that there are two fields in an emissions inspection report for VINs to be populated. The first field is populated by the inspector manually typing the vehicle's VIN into the inspection computer. The second field is for the OBD VIN. Mr. Skendrovic testified that if a vehicle is equipped with an OBD computer, that computer populates the OBD VIN field in the inspection report with the vehicle's VIN when the inspector plugs the inspection computer into the OBD's computer. According to Mr. Skendrovic, the Dodge has an OBD computer because it was manufactured in 2006, and the federal government required all vehicles manufactured in 2002 and after to be equipped with OBD computers. Mr. Skendrovic testified that because the first field is populated with the Dodge's VIN but the second OBD VIN field is not populated with the Dodge's VIN, either (a) the report actually reflects the inspection of a vehicle other than the Dodge that did not have an OBD computer, or (b) the inspector simply created the record without conducting an actual inspection.

According to Mr. Skendrovic, prior to delivering a vehicle to a purchaser, a dealer must ensure the vehicle is legal to operate on the roadway. Specifically, Respondent was required to have a valid and passing emissions inspection for the Dodge to complete the sale to Mr. Dixon because his dealership is located in the Dallas area, where emissions inspections are required. Mr. Skendrovic further stated that a person cannot apply for a Texas title for a vehicle that does not have a valid inspection. He testified that Respondent filed the Application for Texas Title and/or Registration for the Dodge with the county tax office, along with the invalid emissions inspection report. During his investigation, Mr. Skendrovic did not speak with any of the inspectors who issued these reports. Mr. Skendrovic also confirmed that Mr. Dixon did not complain to the Department about Respondent.

Mr. Waggoner testified that he did not know that the emissions inspection performed on the Dodge on November 12, 2015, was improper in any way. He stated that he relied upon the inspection station to perform an appropriate and lawful inspection and assumed that they did. Mr. Waggoner testified that when he signed the Application for Texas Title and/or Registration on November 10, 2015, for the sale of the Dodge to Mr. Dixon, he had not yet received the full

purchase price for the car from Mr. Dixon. He could not recall when he finally received the balance owed on the Dodge from Mr. Dixon. Mr. Waggoner stated that he filled out all of the sales paperwork on November 10, 2015, the day that Mr. Dixon made a \$1,500 down payment.<sup>14</sup> However, he did not actually file the Application for Texas Title and/or Registration for the Dodge until January 11, 2016.<sup>15</sup>

## 2. 2005 Nissan Maxima

On or about February 25, 2017, Brittany Nichols filed a written complaint with the Department pertaining to her February 22, 2017 purchase of a 2005 Nissan Maxima (the Maxima) from Respondent.<sup>16</sup> According to Ms. Nichols's complaint, Respondent omitted the value of her trade-in from the initial sales paperwork as a way to pay less in taxes on the sale. Ms. Nichols also claimed that Respondent tried to steal the Maxima back from her two days after the sale, forced her to sign a different set of sales documents on February 24, 2017, and made her pay for the Maxima's inspection. Ms. Nichols further complained that Respondent promised to repair the Maxima's motor mount, but did not, and that Respondent tampered with parts to make the car stop and then stole her paper tags.<sup>17</sup>

In Staff's evidence there is a Buyer's Order for the Maxima that lists the sales price as \$4,500.00, includes a trade-in allowance of \$1,800 for a 1999 Ford Expedition, and shows a \$0 balance.<sup>18</sup> According to Mr. Skendrovic, he spoke with Ms. Nichols over the phone and she confirmed her complaint as set forth in her written submission to the Department. However, he stated that her "initial" complaint concerned Respondent's filing of a lien on the Maxima. Mr. Skendrovic stated that he asked Mr. Waggoner why Respondent had filed a lien on the Maxima, and that Mr. Waggoner told him the lien was filed because Ms. Nichols still owed taxes

---

<sup>14</sup> See Staff Ex. 3 at 37.

<sup>15</sup> Staff Ex. 3 at 44.

<sup>16</sup> Staff Ex. 7 at 62-63.

<sup>17</sup> Staff Ex. 7 at 63.

<sup>18</sup> Staff Ex. 7 at 103.

on the sale. Mr. Skendrovic stated that he had been provided no documentation by Respondent to support Mr. Waggoner's professed reason for the lien filing.

An Application for Texas Title and/or Registration was submitted on or about February 22, 2017, for the Maxima purchased from Respondent by Ms. Nichols.<sup>19</sup> The application indicates that Respondent is the first lienholder. Mr. Waggoner testified that he accepted a \$2,700 cash payment from Ms. Nichols for the Maxima on February 22, 2017.<sup>20</sup> After the cash payment and the allowance for her trade-in vehicle, Mr. Waggoner stated that Ms. Nichols still owed Respondent approximately \$380, which he stated he did not indicate on the other paperwork because "it was already completed." Mr. Waggoner admitted that Respondent placed a lien on the Maxima title when it was sold to Ms. Nichols, and that he thought that whenever someone owed money on a vehicle purchase, filing a lien was appropriate. According to Mr. Waggoner, Ms. Nichols paid the price of the vehicle, which was \$4,500, through her cash payment and trade-in value, but did not pay the tax, title and license and other miscellaneous fees. He stated that he did not think it was necessary to show on the buyer's order that Ms. Nichols still owed \$380 because it was such a small amount. Mr. Waggoner testified that he was contacted by the Texas Office of Consumer Credit Commissioner (OCCC) about the filing of the lien, and the OCCC informed him that Respondent could not file a lien without a security agreement with Ms. Nichols. Respondent then released the lien.<sup>21</sup>

#### **B. Displaying Buyer's Temporary Tags Without Valid Inspections**

Staff alleges that Respondent, on three separate occasions, attached buyer's temporary tags to motor vehicles that it sold without having valid inspections for those vehicles.<sup>22</sup> Under

---

<sup>19</sup> Staff Ex. 7 at 66.

<sup>20</sup> Resp. Ex. 2 at 2. The receipt indicates that the money was received on May 22, 2017, but Mr. Waggoner testified that it should have shown the payment made on February 22, 2017. He stated that the date on the receipt is a mistake, and that his son filled out the receipt.

<sup>21</sup> See Resp. Ex. 2 at 3.

<sup>22</sup> Staff had actually alleged a fourth violation of this type, pertaining to Ms. Nichols's purchase of the Maxima. However, during the hearing after being provided documentation by Mr. Waggoner regarding the Maxima's inspection history, Mr. Skendrovic testified that the Maxima did have a valid inspection when Respondent displayed a buyer's temporary tag on the Maxima. Staff then withdrew the allegation that Respondent attached a buyer's temporary tag to the Maxima without a valid inspection.

Board rules, a buyer's temporary tag may be displayed only on a vehicle that has a valid inspection in accordance with Texas Transportation Code chapter 548.<sup>23</sup> A dealer is required to issue a buyer's temporary tag to a person who buys a vehicle from the dealer. The dealer is responsible for displaying the tag.<sup>24</sup>

Staff bases these allegations on the timing of the issuance of the buyer's temporary tags for these vehicles as compared to the date the vehicles were inspected. Mr. Skendrovic testified that some of the buyers told him that they had their vehicle inspected after the sale and some told him that Respondent had their vehicle inspected. He also stated that the buyers told him that they drove the vehicles after the sale from Respondent with buyer's temporary tags attached and before the inspections were done.

#### **1. The Dodge**

Staff maintains and Mr. Skendrovic testified that Respondent attached to the Dodge a buyer's temporary tag issued on November 10, 2015, without having a valid inspection for the Dodge. Staff's evidence shows that a buyer's temporary tag for the Dodge was created for Mr. Dixon on November 10, 2015.<sup>25</sup> Mr. Skendrovic stated that he did not have a conversation with Mr. Dixon, but based his determination that a violation was committed based on (a) the date the buyer's temporary tag was issued and (b) his determination that the November 12, 2015 emissions inspection of the Dodge was invalid.

Mr. Waggoner conceded that Respondent had the buyer's temporary tag issued and printed prior to obtaining the emissions inspection on the Dodge. Mr. Waggoner stated that did not believe that he displayed the buyer's temporary tag on the Dodge before it had a valid inspection. Mr. Waggoner admitted that the purpose of a buyer's temporary tag is to show that the buyer is the owner of the vehicle. He stated that even though Mr. Dixon did not have enough money to purchase the Dodge and only gave him a \$1,500 down payment on

---

<sup>23</sup> 43 Tex. Admin. Code § 215.155(b).

<sup>24</sup> 43 Tex. Admin. Code § 215.132(8); Tex. Transp. Code § 503.063(a), (c).

<sup>25</sup> Staff Ex. 6 at 34.

November 10, 2015, he did everything that he would have typically done if the sale was to be finalized that day, including issuing the buyer's temporary tag.

## **2. 1999 Ford Expedition**

Staff also alleges that Respondent attached a buyer's temporary tag to a 1999 Ford Expedition (the Expedition) on or about March 20, 2017, when the Expedition did not have a valid inspection. Mr. Skendrovic identified a document in Staff's evidence that shows on March 20, 2017, a buyer's temporary tag for the Expedition was issued by the Department for Willie McGhee.<sup>26</sup> Mr. Skendrovic also identified an emissions inspection report for the Expedition dated September 10, 2015.<sup>27</sup> According to Mr. Skendrovic, based on his review of the NCTCOG database and the documents provided by Respondent, the last emissions inspection on the Expedition was done on September 10, 2015; therefore, it had expired prior to Respondent's issuance of the buyer's temporary tag for Mr. McGhee. Mr. Skendrovic stated that he did not speak to Mr. McGhee, but that Mr. Waggoner told him that he had issued the buyer's temporary tag and Mr. McGhee drove the vehicle.

Mr. Waggoner testified that the Expedition ended up breaking down before a sale to Mr. McGhee could be finalized, and Respondent later sold it at auction for \$200. He did create a buyer's temporary tag for the Expedition on March 20, 2017, with Mr. McGhee indicated as the buyer. Mr. Waggoner stated that Mr. McGhee wanted to purchase the Expedition, so Mr. Waggoner put the buyer's temporary tag on the Expedition and let Mr. McGhee test-drive it. He admitted that he should have put a dealer's tag on the Expedition for the test drive, but he stated that he was trying to sell the vehicle to Mr. McGhee.

## **3. 2003 Toyota Corolla**

Staff alleges that on or about January 19, 2017, Respondent attached a buyer's temporary tag to a 2003 Toyota Corolla (the Corolla) it sold to Aayush Karki. Mr. Skendrovic identified a

---

<sup>26</sup> Staff Ex. 7 at 77.

<sup>27</sup> Staff Ex. 7 at 75.

document he obtained from Mr. Karki that Mr. Karki told him was a receipt from Respondent for Mr. Karki's purchase of the Corolla from Respondent for \$2,500.00.<sup>28</sup> Staff's evidence also includes a reassignment of title for the Corolla from Respondent to Mr. Karki.<sup>29</sup>

According to Mr. Skendrovic, Mr. Karki was issued a buyer's temporary tag for the Corolla on January 19, 2017.<sup>30</sup> Staff's evidence indicates that the Corolla underwent an emissions inspection on February 20, 2017.<sup>31</sup> According to Mr. Skendrovic, based on his search of the NCTCOG database, the previous emissions inspection of the Corolla was done on July 23, 2014, and had expired by the time of the sale to Mr. Karki.

Mr. Waggoner testified that there probably was a valid inspection on the Corolla when he issued the buyer's temporary tag for Mr. Karki for his purchase of the Corolla. However, he did not have any documentation to corroborate this testimony. He admitted that, at the time of the hearing, he did not know if there was a valid inspection on the Corolla at the time he placed the buyer's temporary tag on the Corolla for Mr. Karki. However, he also noted that the allegation in Staff's notice of hearing did not provide a VIN or description of the vehicle involved, so he did not know what vehicle the allegation pertained to and had not had the opportunity to determine whether there was a valid inspection for the Corolla at the time he displayed the buyer's temporary tag on the vehicle for Mr. Karki.

### **C. Failure to Keep Records of Vehicle Sales and Purchases**

Staff alleges that Respondent failed to maintain a complete record with respect to sales of the Dodge, the Maxima, and the Expedition. Under Department rules, a dealer must maintain a complete record of all vehicle purchases and sales for at least 48 months and make the record available for inspection and copying by Department representatives during business hours.<sup>32</sup>

---

<sup>28</sup> Staff Ex. 8 at 136.

<sup>29</sup> Staff Ex. 8 at 153.

<sup>30</sup> See Staff Ex. 8 at 158.

<sup>31</sup> Staff Ex. 8 at 163.

<sup>32</sup> 43 Tex. Admin. Code § 215.144(a).

Department rules set forth the contents of the complete record that must be maintained by a dealer.<sup>33</sup>

For these three vehicles, Mr. Skendrovic wrote separate letters to Respondent requesting production of numerous documents, which are specifically identified in the letters.<sup>34</sup> Mr. Skendrovic testified that when a dealer provides documents in response to a record request, he gives the dealer the benefit of the doubt and assumes those documents were in the dealer's record at the time of the request and not created in response to the request. He also presumes that if the dealer does not send him a document that he specifically requested, the dealer does not have that document. Mr. Skendrovic testified that if he were to follow up an initial request to clarify whether a dealer had mistakenly failed to send him a particular document, and the dealer subsequently provided him the document, he would have no way of knowing whether the dealer actually had the document in the record at the time of the initial request or had created the document only after the follow-up clarification.

According to Mr. Skendrovic, he received from Respondent, by facsimile from Mr. Waggoner, some but not all of the documents he requested regarding the three vehicles. Mr. Skendrovic testified that neither Mr. Waggoner nor anyone else from Respondent contacted him to make sure he had received all of the documents that Respondent faxed. He stated that Respondent did not provide him with any written statement as to why it did not produce all of the documents requested. Mr. Skendrovic did not follow up with Respondent to make subsequent requests for documents that were not included in the records that Respondent faxed to him.

### **1. The Dodge**

Staff contends that with respect to a June 1, 2017 sale of the Dodge, Respondent failed to maintain the vehicle title indicating the transfer of the Dodge to Mr. Dixon on November 10, 2015. Mr. Skendrovic testified that a copy of the front and back of the title for

---

<sup>33</sup> 43 Tex. Admin. Code § 215.144(e)(8)(D).

<sup>34</sup> Staff Ex. 6 at 26-27; Staff Ex. 7 at 54-55. The ALJ was unable to find a letter from Mr. Skendrovic seeking documents pertaining to Respondent's sale of the Maxima to Ms. Nichols.

the Dodge was missing from Respondent's records when he requested such records from Respondent. On October 3, 2017, Mr. Skendrovic sent a letter to Respondent requesting that Respondent produce a copy of the front and back of the title for the Dodge, along with the rest of Respondent's records concerning its sale.<sup>35</sup> According to Mr. Skendrovic, Respondent did not send him a copy of the front and back of the title in response to this letter. Mr. Skendrovic did not follow up with a subsequent request, but instead obtained a copy of the title from another source.

Mr. Waggoner testified that he had the title to the Dodge, and he produced it at the hearing, where it was admitted into evidence.<sup>36</sup> He stated that he faxed a copy of the title to Mr. Skendrovic after receiving Mr. Skendrovic's letter requesting documentation regarding the Dodge. Mr. Waggoner testified that he put a cover sheet with the fax, but that he did not indicate on the cover sheet how many pages he was faxing to Mr. Skendrovic. He also did not list on the cover sheet the documents he was faxing to Mr. Skendrovic.

## **2. The Maxima**

Staff alleges and Mr. Skendrovic testified that Respondent's record of its sale of the Maxima to Ms. Nichols on February 22, 2017, did not include the application for Texas certificate of title, the title itself, or the title application receipt, based on the documents provided to Mr. Skendrovic by Respondent. Mr. Skendrovic conceded that he did not follow up with Respondent after his initial record request to clarify whether Respondent had the particular documents that were missing from the record produced to him by Respondent.

Mr. Waggoner testified that he faxed Respondent's entire record on the Maxima to Mr. Skendrovic, including the application for title, the title itself, and the title application receipt. Mr. Waggoner had no record showing that the fax was successfully sent to Mr. Skendrovic. He

---

<sup>35</sup> Staff Ex. 6 at 26-27.

<sup>36</sup> Resp. Ex. 1 at 4-6.

produced the Application for Texas Title and/or Registration for the Maxima, the title application receipt for the Maxima, and the title for the Maxima, which were admitted into evidence.<sup>37</sup>

### 3. The Expedition

Staff alleges and Mr. Skendrovic testified that Respondent's record of its sale of the Expedition to Mr. McGhee on March 20, 2017, only included the Federal Trade Commission (FTC) Buyer's Guide and the County of Title Issuance form, based on the documents on this sale that were provided to Mr. Skendrovic by Respondent upon Mr. Skendrovic's request.<sup>38</sup>

Mr. Waggoner claimed that Respondent had all the required documents in its record of the purchase of the Expedition, but that he misread Staff's allegation and only brought to the hearing the documents that Staff indicated Respondent had already produced. Mr. Waggoner testified that he faxed Respondent's entire record on the Expedition to Mr. Skendrovic.

#### D. Offering Vehicle For Sale Not Displaying FTC Buyer's Guide

Pursuant to federal regulation promulgated by the FTC, a used car dealer must display the applicable FTC Buyer's Guide on a vehicle before offering it for sale.<sup>39</sup> The guide must be prominently and conspicuously displayed and readable on both sides.<sup>40</sup> Mr. Skendrovic testified that he went to Respondent's licensed place of business on April 21, 2017, as part of his investigation. He stated that he observed a black 2007 Lexus (the Lexus) offered for sale by Respondent that did not display the FTC Buyer's Guide. Mr. Skendrovic identified several photographs in Staff's evidence that he took of the Lexus showing that it did not display the FTC Buyer's Guide.<sup>41</sup> According to Mr. Skendrovic, the FTC Buyer's Guide must be either hanging from the rear view mirror, lying on the dashboard, or pasted to the window.<sup>42</sup> Mr. Skendrovic

---

<sup>37</sup> Resp. Ex. 3.

<sup>38</sup> See Staff Ex. 7 at 54.

<sup>39</sup> 16 Code of Federal Regulations (CFR) § 455.2(a).

<sup>40</sup> *Id.*

<sup>41</sup> Staff Ex. 7 at 122-26.

<sup>42</sup> The rule requires the Buyer's Guide to "be displayed prominently and conspicuously in any location on a vehicle and in such a fashion that both sides are readily readable." 16 CFR § 455.2(a)(1).

stated that he circled the Lexus and did not see the FTC Buyer's Guide anywhere in or on the vehicle. He looked inside the Lexus through its windows for the FTC Buyer's Guide but did not open any of the doors and look inside for the guide.

Mr. Skendrovic did not know how many motor vehicle dealers were operating at the location where Respondent was licensed on April 21, 2017. He confirmed that up to four dealers may operate at the same location. However, he stated that after he saw the Lexus he obtained an auction receipt dated April 5, 2017, showing that Respondent bought the Lexus from JPMorgan Chase Bank (Chase).<sup>43</sup> Mr. Skendrovic testified that he knew the Lexus was for sale because it was displayed at the entrance to the dealership with some type of tassel or a banner on the window.<sup>44</sup>

Mr. Waggoner testified that he normally tapes FTC Buyer's Guides up on the inside of a window in vehicles that Respondent offers for sale. He stated that if an FTC Buyer's Guide was not taped to the inside of one of the windows of the Lexus when Mr. Skendrovic inspected it, the guide must have fallen off the window.

#### **E. Failure to Remove Registration Insignia**

When a vehicle is transferred or sold in Texas, the registration insignia issued for the vehicle must be removed.<sup>45</sup> Mr. Skendrovic testified that he observed a registration sticker on the Lexus being offered for sale by Respondent on April 21, 2017.<sup>46</sup> The sticker indicated that the registration expired at the end of December 2016. Staff's evidence indicates that Respondent purchased the Lexus from Chase on April 5, 2017.<sup>47</sup> Mr. Skendrovic stated that Respondent was prohibited from having the registration sticker on the vehicle when offering it for sale. Staff argues that Respondent should have removed the registration insignia when it purchased the

---

<sup>43</sup> See Staff Ex. 7 at 121.

<sup>44</sup> See Staff Ex. 7 at 123, 126.

<sup>45</sup> Tex. Transp. Code § 502.491(a).

<sup>46</sup> See Staff Ex. 7 at 125.

<sup>47</sup> Staff Ex. 7 at 121.

vehicle from Chase. According to Mr. Skendrovic, it was also Chase's responsibility to remove the registration insignia upon the sale of the Lexus to Respondent; however, the Department does not regulate banks and thus could not take enforcement action against Chase.

Mr. Waggoner stated that he did not pay any attention to the registration sticker on the Lexus when he purchased it; his primary concern was the license plates for the vehicle. He admitted that the sticker was on the Lexus on April 21, 2017, when Mr. Skendrovic visited Respondent's location.

**F. Failure to Have Owner or Bona Fide Employee Present At Dealer Location**

Under Department rules, the owner or a bona fide employee of a dealer must be at the dealer's licensed location available to the public during the posted business hours for the purposes of buying, selling, exchanging, or leasing vehicles.<sup>48</sup> Mr. Skendrovic testified that when he visited Respondent's licensed location on April 21, 2017, Mr. Waggoner was not there and no employee was present. Mr. Skendrovic stated that he talked to a gentleman who appears in one of the photographs he took at Respondent's location on April 20, 2017, and was the only person present, and the gentleman stated that he does mechanic work.<sup>49</sup>

According to Mr. Waggoner, the gentleman in the photograph taken by Mr. Skendrovic was Respondent's employee on April 21, 2017. Mr. Waggoner testified that the gentleman, whose name is Tim, sold cars, cleaned cars, and did mechanic work for Respondent. Mr. Waggoner stated that Tim could have bought and sold cars for Respondent that day. According to Mr. Waggoner, at the time the photograph was taken, Tim was in charge at Respondent's dealership and was there to buy and sell cars. Mr. Waggoner was at an auction when Mr. Skendrovic visited Respondent's location. Mr. Waggoner testified that later that day, Tim called him to tell him that Mr. Skendrovic had come by Respondent's dealership.

---

<sup>48</sup> 43 Tex. Admin. Code § 215.140(1)(B).

<sup>49</sup> See Staff Ex. 7 at 124.

When asked why Tim would have told Mr. Skendrovic that he was not Respondent's employee, Mr. Waggoner stated that Tim, who is African-American, had been in jail previously and did not want to talk to Mr. Skendrovic, who is white and had an insignia on his chest. Mr. Waggoner expressed the opinion that in the area where Respondent's dealership is located, African-American people like Tim do not want to divulge information to unknown white persons who arrive unannounced.

### **G. Willfully Defrauding a Purchaser**

With regard to Respondent's sale of the Corolla to Mr. Karki, Mr. Skendrovic testified that Mr. Karki claimed the odometer reading on the Corolla at the time of the sale was 127,000 miles.<sup>50</sup> However, the receipt from Respondent's purchase of the Corolla at auction on March 8, 2016, and the Carfax report for the Corolla indicates that the mileage on the Corolla was 258,874 miles on March 8, 2016.<sup>51</sup> A vehicle inspection report dated February 20, 2017, pertaining to the Corolla recorded the odometer reading at 125,887 miles.<sup>52</sup> According to Mr. Skendrovic, these documents and Mr. Karki's statement to him indicate that Respondent rolled the odometer back on the Corolla prior to selling it to Mr. Karki.

The Odometer Disclosure Statement included in Respondent's records for the sale of the Corolla to Mr. Karki does not appear to disclose that the mileage on the odometer was not the actual mileage on the Corolla, as Mr. Skendrovic testified it should have.<sup>53</sup> The Odometer Disclosure Statement also indicates that the odometer reads "EXEMPT."<sup>54</sup> Mr. Skendrovic explained that under federal law, the mileage on a vehicle must be reported through the end of its tenth year. At the beginning of a vehicle's eleventh year, it is exempt from those reporting requirements. According to Mr. Skendrovic, it was not wrong for Respondent to indicate that the odometer reading was exempt on the Odometer Disclosure Statement.

---

<sup>50</sup> See also Staff Ex. 8 at 128.

<sup>51</sup> Staff Ex. 8 at 133.

<sup>52</sup> Staff Ex. 8 at 166.

<sup>53</sup> Staff Ex. 8 at 156.

<sup>54</sup> *Id.*

Mr. Skendrovic stated that Mr. Karki told him that he discovered the discrepancy in the mileage reflected on the odometer and the mileage shown in the Carfax report, but he cannot remember what Mr. Karki stated regarding when he made this discovery. He was not sure when the complaint from Mr. Karki was received by the Department.<sup>55</sup> Mr. Skendrovic testified that Mr. Karki told him that Mr. Waggoner did not disclose to him that the mileage reflected on the odometer at the time of sale was not the actual mileage on the Corolla, or tell him that the Corolla was exempt from mileage reporting. According to Mr. Skendrovic, if the Corolla's original odometer had been replaced, that should have been disclosed to Mr. Karki in writing, and the new odometer should have been set to zero miles.

Mr. Waggoner admitted that the mileage showing on the odometer when Respondent sold the Corolla to Mr. Karki was not the mileage on the vehicle when Respondent purchased it at auction. He testified that for part of the time that Respondent owned the Corolla, it was in the possession of another dealer. According to Mr. Waggoner, that dealer replaced the Corolla's "cluster" because the speedometer had ceased to function. When the new cluster was installed, the mileage on the odometer went to approximately 127,000 miles.

Respondent offered into evidence several documents pertaining to its sale of the Corolla to Mr. Karki. The purchase order agreement signed by Respondent and Mr. Karki identifies the mileage as "127, Exempt."<sup>56</sup> Another document signed by Mr. Karki and showing that Mr. Karki did not owe further monies for his purchase of the Corolla indicates the mileage as "EXEMPT."<sup>57</sup> The Buyer's Order for the sale of the Corolla from Respondent to Mr. Karki indicates the mileage as "EXEMPT."<sup>58</sup> The As-Is Sold Without Warranty form signed by Mr. Karki for his purchase of the Corolla identifies the mileage as "EXEMPT."<sup>59</sup> An Odometer Disclosure Statement signed by Mr. Karki for the Corolla purchase indicates that the odometer reads "EXEMPT," and includes a certification from Respondent that "the odometer reading is

---

<sup>55</sup> Mr. Karki's complaint in Staff's evidence also does not indicate the date it was made. *See* Staff Ex. 4 at 128.

<sup>56</sup> Resp. Ex. 4 at 1.

<sup>57</sup> Resp. Ex. 4 at 2.

<sup>58</sup> Resp. Ex. 4 at 3.

<sup>59</sup> Resp. Ex. 4 at 4.

NOT the actual mileage. WARNING: ODOMETER DISCREPANCY.”<sup>60</sup> Mr. Waggoner stated that he told Mr. Karki in conversation leading up to the sale that the mileage showing on the odometer was not the accurate mileage on the Corolla because the cluster had been replaced, and that the Corolla was exempt from mileage reporting requirements.

According to Mr. Waggoner, Mr. Karki did not begin complaining about the odometer reading until months after the sale. Mr. Waggoner testified that before Mr. Karki made such complaints, Mr. Karki had asked Respondent to sell the Corolla for him and had wanted to buy another car from Respondent. Mr. Waggoner stated that Mr. Karki first began complaining about transmission issues with the Corolla, and only after communication broke down between Mr. Karki and Respondent did he raise the issue regarding the odometer reading.

#### **H. Staff’s Recommended Sanctions**

Mr. Skendrovic testified that revocation of Respondent’s general distinguishing number license is appropriate because the evidence shows a pattern of conduct by Respondent and that Respondent repeatedly violated the same statutes and rules. He stated that most of the violations by themselves are relatively minor, but because they occur in sequence they are more serious. Mr. Skendrovic stated that Respondent’s filing of a false tax document is a serious violation in and of itself. He noted that Respondent had been on notice since October 2017 that the Department alleged violations for failure to keep complete records on several vehicles and could have produced the missing documents, but Respondent had not responded to such notice and provided the records.<sup>61</sup>

Staff also offered into evidence an affidavit from Barbara Jordan, the Managing Attorney in the Department’s Enforcement Division since February 2018. She stated in her affidavit that she is familiar with past decisions by the Board in assessing penalties for violations committed by other licensees. Ms. Jordan testified that she reviewed the facts and circumstances of this

---

<sup>60</sup> Resp. Ex. 4 at 5. Staff sought no explanation from Mr. Waggoner of the apparent inconsistency between this document and the Odometer Disclosure Statement in Staff’s evidence. See Staff Ex. 8 at 156.

<sup>61</sup> See Staff Ex. 2 at 8.

case and recommended a \$25,000 total civil penalty be assessed for the violations alleged by Staff. She also recommended that given the nature and number of the violations, and considering the factors set forth in Texas Occupations Code § 2301.801(b), Respondent's general distinguishing number license be revoked. She concluded by stating her opinion that such sanctions would conform to past decisions by the Board and are appropriate in this case.<sup>62</sup>

#### IV. ANALYSIS AND RECOMMENDATION

##### A. Filing False Tax Documents

Staff failed to prove that Respondent filed a false tax document by filing the Application for Texas Title and/or Registration for the Dodge. The ALJ finds nothing false about any of the statements made in this document. Mr. Skendrovic maintained that it was false because the inspection done on November 12, 2015, was invalid. However, there is no representation in the Application for Texas Title and/or Registration for the Dodge regarding its inspection status. Although it may be the case that it was a violation of another statute or rule to file the Application for Texas Title and/or Registration for the Dodge without a valid inspection, the ALJ does not find that these facts constitute the filing of a false tax document as alleged by Staff. Therefore, the ALJ concludes that Respondent's filing of the Application for Texas Title and/or Registration for the Dodge cannot serve as a basis to revoke Respondent's license or to assess a civil penalty against Respondent.

Staff also failed to prove that Respondent filed a false tax document when it filed the Application for Texas Title and/or Registration for the Maxima. Staff takes the position that the document was false because Respondent was improperly listed as the first lienholder given that at the time Respondent placed a lien on the Maxima's title, there was no legal basis for doing so. Although it appears that Respondent filed a lien on the Maxima improperly, Respondent was the first lienholder at the time the Application for Texas Title and/or Registration was filed for the Maxima. The evidence showed that once Respondent was made aware by the OCCC that the

---

<sup>62</sup> Staff Ex. 4.

lien was invalid, Respondent released the lien. Therefore, the document itself was not false when it was filed, even if Respondent violated some other provision of law or was otherwise wrong with respect to its placing of the lien on the Maxima. The ALJ concludes that Respondent's filing of the Application for Texas Title and/or Registration for the Maxima cannot serve as a basis to revoke Respondent's license or to assess a civil penalty against Respondent.

#### **B. Displaying Buyer's Temporary Tags Without Valid Inspections**

The preponderance of the evidence does show that Respondent attached a buyer's temporary tag to the Dodge without a valid inspection in violation of 43 Texas Administrative Code § 215.155(b). Mr. Skendrovic's testimony showed that the emissions inspection of the Dodge on November 12, 2015, was invalid. Whether Respondent knew that it was invalid or not is irrelevant; there is no knowledge requirement in the rule. Respondent did not offer any evidence to contradict Mr. Skendrovic's testimony regarding the validity of the November 12, 2015 emissions inspection; Mr. Waggoner simply claimed reliance on the inspector. Further, Respondent offered no evidence that there was a valid inspection on the Dodge when the buyer's temporary tag issued for Mr. Dixon on November 10, 2015, was displayed on the Dodge, presumably at or around the time Respondent applied to transfer title to Mr. Dixon in January 2016.

The preponderance of the evidence also shows that Respondent did not have a valid inspection on the Expedition when it displayed the buyer's temporary tag on the Expedition. The most recent inspection on the Expedition, performed on September 10, 2015, expired before March 20, 2017. Mr. Waggoner admitted he put the buyer's temporary tag on the Expedition on March 20, 2017, so that Mr. McGhee could take it for a test drive. Respondent provided no evidence to show that there was a valid inspection on the Expedition as of March 20, 2017. Therefore, the ALJ concludes that Respondent violated 43 Texas Administrative Code § 215.155(b) when he displayed the buyer's temporary tag on the Expedition on March 20, 2017.

Staff also met its burden of proof to show that Respondent displayed a buyer's temporary tag on the Corolla when it did not have a valid inspection. The sale of the Corolla to Mr. Karki occurred on or about January 19, 2017. That day, Respondent reassigned title of the Corolla to Mr. Karki, and the buyer's tag was issued. Mr. Waggoner thought that he would have checked and found that there was a valid inspection before he reassigned title, but he did not provide any documentation of such an inspection. Respondent claimed that he did not know which vehicle that Staff's allegation referred to because Staff did not include the vehicle type or VIN. However, the notice did include the date of the alleged violation. According to Staff's evidence, only one buyer's temporary tag was issued by Respondent on that date, for Mr. Karki and the Corolla.<sup>63</sup> The notice also did not include vehicle types or VINs for the Dodge or the Maxima, but Respondent did not complain that it was not aware of which vehicles those allegations referred to. Further, the ALJ kept the record open for one week after the hearing concluded to allow Respondent to provide proof that there was a valid inspection on the Corolla at the time he placed the buyer's temporary tag on the vehicle. However, Respondent did not file any additional evidence after the hearing.

### **C. Failure to Keep Records of Vehicle Sales and Purchases**

Staff alleged in its notice of hearing that Respondent failed to keep a complete record of a sale or purchase of the Dodge on or about June 1, 2017.<sup>64</sup> Staff offered no evidence showing that Respondent purchased or sold the Dodge on or about June 1, 2017. Regardless, Respondent produced the title transferring ownership to Mr. Dixon, the only document alleged to be missing from Respondent's record, at the hearing. Therefore, Staff failed to meet its burden of proof on this allegation.

Staff also failed to prove its allegation that Respondent did not keep a complete record of its February 22, 2017, sale of the Maxima to Ms. Nichols. Staff specifically alleged that the sales records did not include the application for Texas certificate of title (130-U), the title, and

---

<sup>63</sup> Staff Ex. 4 at 158.

<sup>64</sup> Staff Ex. 2 at 5; Staff Ex. 3 at 16.

the title application receipt (VTR-500). There was a discrepancy in the evidence as to whether Respondent produced these documents in response to Mr. Skendrovic's request. Mr. Skendrovic stated that he presumes that when documents are not received in response to a records request, the documents do not exist. However, Mr. Waggoner testified that Respondent had these documents in its record of this sale, and that he at least attempted to fax them to Mr. Skendrovic. Importantly, Staff's notice of hearing does not allege that Respondent failed to make these documents available for inspection and copying by a Department representative; the allegation only states that Respondent failed to keep a complete record.<sup>65</sup> Respondent at the hearing produced the documents that Staff alleged it had failed to keep. Therefore, Staff did not meet its burden of proof to show that Respondent violated 43 Texas Administrative Code § 215.144 as alleged in its notice of hearing with respect to Respondent's February 22, 2017 sale of the Maxima.

Staff also failed to meet its burden to prove that Respondent failed to keep a complete record of a March 20, 2017, sale or purchase of the Expedition. The evidence showed that although Respondent issued a buyer's temporary tag for the Expedition on March 20, 2017, in anticipation of selling the vehicle to Mr. McGhee, the sale did not occur because of mechanical issues that arose. Therefore, there was no March 20, 2017 sale as alleged by Staff, and thus no violation of 43 Texas Administrative Code § 215.144 with respect to Respondent's record of any such sale.

#### **D. Offering Vehicle For Sale Not Displaying FTC Buyer's Guide**

Staff proved by a preponderance of the evidence that on April 21, 2017, the FTC Buyer's Guide was not prominently or conspicuously displayed in the Lexus in a fashion in which both sides are readily readable when the Lexus was offered for sale. Mr. Skendrovic testified clearly that the guide was not visible to him through any of the windows of the Lexus as he circled it on that day, and that the Lexus was being offered for sale. Mr. Waggoner did not dispute that the Lexus was offered for sale by Respondent on April 21, 2017, but had no personal knowledge of

---

<sup>65</sup> Staff Ex. 3 at 17.

whether the guide was in the Lexus on that date. He only testified generally that he typically tapes the guides to the inside of the windows of all vehicles Respondent offers for sale. Mr. Waggoner contended that if Mr. Skendrovic did not see the guide in the Lexus on April 21, 2017, it had probably fallen off the window and was in the vehicle somewhere. Even if the guide had fallen off the window, at the time Mr. Skendrovic viewed the Lexus, the guide was clearly not prominently or conspicuously displayed as required. Therefore, Respondent did not comply with 16 Code of Federal Regulations (CFR) § 455.2(a) on April 21, 2017, with respect to the Lexus.

**E. Failure to Remove Registration Insignia**

The preponderance of the evidence shows that Respondent did not remove the registration insignia from the Lexus when it purchased the Lexus from Chase in April 2017. On April 21, 2017, Mr. Skendrovic observed a registration sticker on the Lexus indicating that the registration had expired in December 2016. The photographic evidence in the record corroborates Mr. Skendrovic's testimony, and Respondent offered no evidence to the contrary. Further, the evidence showed and Respondent did not dispute that Respondent purchased the Lexus from Chase at an auction on April 5, 2017. Respondent did not remove the registration sticker from the Lexus after that purchase and before it was offered for sale; therefore, Staff proved that Respondent violated Texas Transportation Code § 502.491(a), which required the registration insignia to be removed upon sale or transfer of a vehicle.

**F. Failure to Have Owner or Bona Fide Employee Present At Dealer Location**

Staff also proved its allegation that Respondent did not have either an owner or a bona fide employee present at its dealership for the purpose of buying and selling vehicles when Mr. Skendrovic visited Respondent's dealership during posted business hours on April 21, 2017. Although Mr. Waggoner testified that a gentleman by the name of Tim was employed by Respondent and at the dealership when Mr. Skendrovic arrived, and that Tim could buy and sell cars that day, the uncontroverted evidence indicated that Tim denied being an employee of

Respondent when questioned by Mr. Skendrovic. Regardless of Tim's motivation or purpose for such denial, when he made that statement he was no longer a bona fide employee of Respondent because he could not have fulfilled the purpose of buying and selling cars after making such a representation. Therefore, the ALJ concludes that on April 21, 2017, Respondent violated 43 Texas Administrative Code § 215.140(1)(B) as alleged by Staff.

### **G. Willfully Defrauding a Purchaser**

The ALJ finds that Staff failed to prove that Respondent willfully defrauded Mr. Karki in its sale of the Corolla to Mr. Karki. The evidence showed that on various documents pertaining to the sale signed by Mr. Karki, the mileage on the Corolla was noted as "EXEMPT." None of those documents indicated that the actual mileage on the vehicle at the time of the sale to Mr. Karki was the mileage shown on the odometer. Respondent produced an Odometer Disclosure Statement, signed by Mr. Karki, that includes a certification that the miles on the odometer were not the actual miles on the Corolla, and that there was an odometer discrepancy.<sup>66</sup> Respondent also offered uncontroverted testimony that that he verbally told Mr. Karki that the vehicle's cluster had been replaced and that the miles on the odometer had gone down as a result, but that the mileage was exempt. There are several documents in the record, including another Odometer Disclosure Statement, the application for title, and the reassignment of title to Mr. Karki, which indicate that the miles were exempt; however, these documents did not inform Mr. Karki that the odometer reading was not the actual mileage.<sup>67</sup>

The ALJ finds compelling the actual complaint filed by Mr. Karki, in which he states that "The dealer did not tell me about the odometer exempt . . .", and again that "I just have the problem that he did not tell me about the odometer exempt."<sup>68</sup> The evidence is clear that Respondent did communicate to Mr. Karki that the mileage on the Corolla was exempt. Respondent may have confused Mr. Karki by telling him the miles were exempt, and Respondent

---

<sup>66</sup> Resp. Ex. 4 at 5.

<sup>67</sup> Staff Ex. 4 at 150, 153, 156.

<sup>68</sup> Staff Ex. 4 at 128.

likely could have communicated more clearly to Mr. Karki the situation with respect to the mileage on the Corolla's odometer and the meaning of exempt mileage. However, considering all of the evidence, the ALJ finds that Respondent did not willfully defraud Mr. Karki.

#### **H. Appropriate Sanctions**

Pursuant to Texas Occupations Code § 2301.651(a)(3) and (4), the Board has the authority to revoke Respondent's license for any violation of any Board rule or any law related to the sale of motor vehicles. Staff proved that Respondent violated three different Board rules as well as a federal regulation that relates to the sale of motor vehicles. Staff based its recommended sanctions on Ms. Jordan's affidavit, which cited the number and nature of the violations. However, the ALJ finds that Staff only proved six of the 12 alleged violations, and that Staff did not meet its burden to prove that Respondent filed false tax documents or willfully defrauded a customer, which were the most serious violations alleged. The violations that were proven were relatively minor. Therefore, the evidence presented by Staff does not support revocation of Respondent's license as recommended by Ms. Jordan and Staff.

Staff proved that Respondent violated 43 Texas Administrative Code § 215.155(b) on three separate occasions by displaying buyer's temporary tags on vehicles without valid inspections. Staff also proved that Respondent violated 43 Texas Administrative Code § 215.140(1)(B) by failing to have an owner or bona fide employee present at its dealership during business hours for the purposes of buying, selling, exchanging, or leasing vehicles. Both of these rules were adopted under chapter 503 of the Texas Transportation Code, which requires dealers to issue a temporary tag to a purchaser of a vehicle and for persons applying for general distinguishing number licenses to demonstrate that they will have owners or employees present to conduct dealer business.<sup>69</sup> Under Texas Transportation Code § 503.095(a), for violations of rules adopted under chapter 503, a person is subject to a civil penalty of not less than \$50 or more than \$1,000. There is nothing in the statute or Department rules setting forth any factors that must be considered in determining the appropriate penalty for these violations.

---

<sup>69</sup> Tex. Transp. Code §§ 503.032(c)(2), .063(a).

The violations for displaying buyer's tags on vehicles without valid inspections are somewhat serious in that the buyers could have been cited by law enforcement for operating their vehicles without valid inspections.<sup>70</sup> Such citations could have caused economic harm to the buyers in the form of potential fines and court costs.<sup>71</sup> There was no evidence that the vehicles were unsafe to drive or that Respondent had committed any prior violations. With respect to the Dodge, Respondent relied upon the inspector to perform a valid inspection and believed that it was valid when the buyer's tag was displayed on the vehicle. With regard to the Expedition, the buyer's temporary tag was only in place for a test drive by Mr. McGhee, who did not ultimately purchase the vehicle. Therefore, the ALJ recommends the Board impose a \$250 civil penalty against Respondent for each of these violations. Respondent did not offer any evidence to explain why the buyer's temporary tag was displayed on the Corolla; therefore, the ALJ recommends the Board impose a \$500 civil penalty against Respondent for this violation.

The violation for failing to have an owner or bona fide employee present during business hours to buy, sell, lease, or exchange vehicles is not very serious in that it did not pose potential harm to customers, except that they may not have been able to make a transaction with the dealer that day. Therefore, the ALJ recommends the Board impose a \$200 civil penalty against Respondent for this violation.

By failing to remove the registration insignia from the Lexus, Respondent violated Texas Transportation Code § 502.491(a). Staff's notice of hearing cites to no authority for the Board to impose a civil penalty for such violation, and the ALJ was unable to locate any such authority. Therefore, the ALJ recommends no penalty be assessed for this violation. Likewise, Staff cites to no authority for imposition of a civil penalty for Respondent's violation of 16 CFR § 455.2(a); therefore, the ALJ recommends no penalty be assessed for this violation.

---

<sup>70</sup> Tex. Transp. Code § 548.605(b).

<sup>71</sup> Tex. Transp. Code § 548.605(e)-(f).

## V. FINDINGS OF FACT

1. Dorsha Motors of Texas, LLC (Respondent) holds a general distinguishing number license issued by the Texas Department of Motor Vehicles (Department). Louis Waggoner is Respondent's managing member.
2. On November 10, 2015, Mr. Waggoner, on behalf of Respondent, and Isaiah Dixon signed an Application for Texas Title and/or Registration form for Mr. Dixon's purchase of a 2006 Dodge Charger (the Dodge) from Respondent. There is no statement on the form regarding the inspection status of the Dodge.
3. On February 22, 2017, Mr. Waggoner, on behalf of Respondent, and Brittany Nichols signed an Application for Texas Title and/or Registration form for Ms. Nichols's purchase of a 2005 Nissan Maxima (the Maxima) from Respondent. The form identified Respondent as the first lienholder. The Department received the application on or about March 9, 2017.
4. Respondent placed a lien on the Maxima's title when it was sold to Ms. Nichols. Respondent later released the lien on the Maxima's title after the Texas Office of Consumer Credit Commissioner informed Respondent that a lien could not be placed on a vehicle without a security agreement between Respondent and the purchaser.
5. The emissions inspection performed on the Dodge on November 12, 2015, was invalid. Respondent relied upon the vehicle inspector to perform a valid emissions inspection on the Dodge.
6. There was no valid inspection on the Dodge when the buyer's temporary tag was displayed on the Dodge at the time Respondent transferred title to Mr. Dixon.
7. There was no evidence that the Dodge was unsafe to drive when Respondent displayed a buyer's temporary tag on the vehicle for Mr. Dixon.
8. On or about March 20, 2017, Respondent displayed a buyer's temporary tag on a 1999 Ford Expedition (the Expedition) and then Willie McGhee took the Expedition for a test drive. At that time, the Expedition did not have a valid inspection.
9. There was no evidence that the Expedition was unsafe to drive when Respondent displayed a buyer's temporary tag on the vehicle for Mr. McGhee.
10. Mr. McGhee did not ultimately purchase the Expedition from Respondent.
11. On or about January 19, 2017, Respondent displayed a buyer's temporary tag on a 2003 Toyota Corolla (the Corolla) when he sold the Corolla and transferred title to the Corolla to Aayush Karki. At that time, the Corolla did not have a valid inspection.

12. There was no evidence that the Corolla was unsafe to drive when Respondent displayed a buyer's temporary tag on the vehicle for Mr. Karki.
13. There was no evidence of a sale of the Dodge by Respondent on or about June 1, 2017.
14. On July 23, 2018, Respondent was in possession of the title transferring ownership of the Dodge from Respondent to Mr. Dixon.
15. On July 23, 2018, Respondent was in possession of the application for Texas certificate of title (130-U), the title, and the title application receipt (VTR-500) pertaining to its February 22, 2017, sale of the Maxima to Ms. Nichols.
16. On April 21, 2017, a Federal Trade Commission Buyer's Guide was not visible from the outside of a black 2007 Lexus (the Lexus) that Respondent was offering for sale.
17. Respondent purchased the Lexus at auction from JPMorgan Chase Bank on April 5, 2017. At that time, there was a registration sticker on the Lexus. Respondent did not remove the registration sticker before offering the Lexus for sale on April 21, 2017.
18. On April 21, 2017, the only person present at Respondent's licensed location denied that he was Respondent's employee and stated that he did mechanic work.
19. Prior to Respondent's sale of the Corolla to Mr. Karki, the speedometer malfunctioned and the cluster was replaced. When this happened, the mileage reading on the odometer, which had been in excess of 258,000 miles, went to approximately 127,000 miles.
20. At some time after Mr. Karki purchased the Corolla from Respondent, he filed a complaint with the Department indicating that Respondent did not tell him that the odometer was exempt.
21. To effectuate his purchase of the Corolla from Respondent, Mr. Karki signed several documents that indicated the mileage on the Corolla was exempt.
22. An Odometer Disclosure Statement signed by Mr. Karki in conjunction with his purchase of the Corolla includes a certification from Respondent that the mileage on the odometer was not the actual mileage on the vehicle and that there was an odometer discrepancy.
23. After several complaints were made against Respondent, Staff initiated an investigation of Respondent and determined that Respondent violated certain provisions of Texas Occupations Code chapter 2301; Texas Transportation Code chapters 502 and 503; and 43 Texas Administrative Code chapter 215.
24. On May 11, 2018, Department staff (Staff) issued a Notice of Hearing and a Notice of Department Decision to Respondent, which contained a statement of the time, place, and

nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted.

25. On June 25, 2018, Staff issued a First Amended Notice of Department Decision to Respondent.
26. On July 23, 2018, Administrative Law Judge Casey A. Bell convened a hearing at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Heather Pierce, Enforcement Staff Attorney, represented Staff. Louis Waggoner appeared on Respondent's behalf. The hearing adjourned the same day, and the record was left open until July 30, 2018, to allow Respondent to submit additional evidence pertaining to one of Staff's allegations.

## VI. CONCLUSIONS OF LAW

1. The Department has jurisdiction over independent motor vehicle dealers pursuant to Texas Occupations Code chapter 2301 and Texas Transportation Code chapter 503.
2. SOAH has jurisdiction over all matters related to conducting a contested case in this matter, including the preparation of a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, under Texas Government Code chapter 2003.
3. Respondent received proper and timely notice of the hearing. Tex. Gov't Code §§ 2001.051-.052.
4. Staff had the burden to prove by a preponderance of the evidence that Respondent committed the alleged violations and that the sanctions it recommended were appropriate. 1 Tex. Admin. Code § 155.427.
5. Staff failed to meet its burden to prove that Respondent filed false tax documents in connection with the sale of the Dodge to Mr. Dixon on or about November 10, 2015.
6. Staff failed to meet its burden to prove that Respondent filed a false tax document in connection with the sale of the Maxima to Ms. Nichols on or about February 22, 2017.
7. Staff failed to meet its burden to prove that Respondent failed to keep a complete record of an alleged June 1, 2017 sale of the Dodge.
8. Staff failed to meet its burden to prove that Respondent failed to keep a complete record of its February 22, 2017 sale of the Maxima to Ms. Nichols.
9. Staff failed to meet its burden to prove that Respondent failed to keep a complete record of an alleged March 20, 2017 sale of the Expedition.

10. Staff failed to meet its burden to prove that Respondent willfully defrauded Mr. Karki in connection with the sale of the Corolla.
11. Respondent violated 43 Texas Administrative Code § 215.155(b), a rule adopted by the Department under chapter 503 of the Texas Transportation Code, by displaying a buyer's temporary tag on the Dodge when it did not have a valid inspection.
12. Respondent violated 43 Texas Administrative Code § 215.155(b) by displaying a buyer's temporary tag on the Expedition when it did not have a valid inspection.
13. Respondent violated 43 Texas Administrative Code § 215.155(b) by displaying a buyer's temporary tag on the Corolla when it did not have a valid inspection.
14. Respondent violated 16 Code of Federal Regulations § 455.2(a) by failing to prominently and conspicuously display a Federal Trade Commission Buyer's Guide in the Lexus when offering it for sale on April 21, 2017.
15. Respondent violated Texas Transportation Code § 502.491(a) when it did not remove the registration sticker from the Lexus after it purchased the Lexus on April 5, 2017, and offered it for sale on April 21, 2017.
16. Respondent violated 43 Texas Administrative Code § 215.140(1)(B), a rule adopted by the Department under chapter 503 of the Texas Transportation Code, by failing to have an owner or bona fide employee present at its dealership on April 21, 2017, for the purpose of buying, selling, exchanging, or leasing motor vehicles.
17. Pursuant to Texas Occupations Code § 2301.651(a)(3) and (4), the Board has the authority to revoke Respondent's license for any violation of any Board rule or any law related to the sale of motor vehicles.
18. A person who violates any Board rule adopted under chapter 503 of the Texas Transportation Code is subject to a civil penalty of not less than \$50 or more than \$1,000. Tex. Transp. Code § 503.095.
19. The Board should impose a \$250 civil penalty against Respondent for its violation of 43 Texas Administrative Code § 215.155(b) pertaining to the Dodge.
20. The Board should impose a \$250 civil penalty against Respondent for its violation of 43 Texas Administrative Code § 215.155(b) pertaining to the Maxima.
21. The Board should impose a \$500 civil penalty against Respondent for its violation of 43 Texas Administrative Code § 215.155(b) pertaining to the Corolla.

SOAH DOCKET NO. 608-18-2991.ENF

PROPOSAL FOR DECISION

PAGE 31

22. The Board should impose a \$200 civil penalty against Respondent for its violation of 43 Texas Administrative Code § 215.140(1)(B).
23. The Board should not revoke Respondent's general distinguishing number license.

**SIGNED September 27, 2018.**



---

**CASEY A. BELL  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**MOTOR VEHICLE DIVISION  
TEXAS DEPARTMENT OF MOTOR VEHICLES**

**IN THE MATTER OF DORSHA  
MOTORS OF TEXAS, LLC**

§  
§  
§

**MVD DOCKET NO. 17-0178756.ENF  
SOAH DOCKET NO. 608-18-2991.ENF**

**FINAL ORDER**

The referenced contested case matter is before the Texas Department of Motor Vehicles Board (Board) in the form of a Proposal for Decision (PFD) from the State Office of Administrative Hearings (SOAH) and involves a civil penalty assessed against Dorsha Motors of Texas, LLC. (Respondent).

In accordance with Texas Gov't. Code § 2001.058(e)(1), the specific reasons and legal basis for the Board's changes to the Administrative Law Judge's (ALJ) Conclusions of Law (COL) are as follows.

**The Board amends Conclusion of Law 4 to read:**

*Staff had the burden to prove by a preponderance of the evidence that Respondent committed the alleged violations. 1 Tex. Admin. Code § 155.427.*

The ALJ did not properly interpret the law by holding that, "*Staff had the burden to prove by a preponderance of the evidence that Respondent committed the alleged violations and that the sanctions it recommended were appropriate*". 1 Tex. Admin. Code § 155.427 does not require Staff to prove by a preponderance of the evidence that the sanctions it recommended were appropriate. The Board, not the ALJ, is the decision maker concerning sanctions in a contested case. *Texas State Bd. of Dental Exam. v. Brown*, 281 S.W.3d 692 (Tex. App. 2009).

**The Board amends Conclusion of Law 11 to read:**

*Respondent violated 43 Texas Administrative Code § 215.155(b), a rule adopted by the Department under chapter 2301 of the Occupations Code and chapter 503 of the Texas Transportation Code, by displaying a buyer's temporary tag on the Dodge when it did not have a valid inspection.*

The ALJ misapplied the law by omitting the Board's rulemaking authority under the Occupations Code, which is included in the Purpose and Scope for the rules adopted in 43 Texas Administrative Code chapter 215. 43 Tex. Admin. Code § 215.1. Failure to cite to the Board's rulemaking

authority under the Occupations Code could improperly limit the Board's ability to assess civil penalties under Tex. Occ. Code § 2301.801.

**The Board amends Conclusion of Law 16 to read:**

*Respondent violated 43 Texas Administrative Code § 215.140(1)(B), a rule adopted by the Department under chapter 2301 of the Occupations Code and chapter 503 of the Texas Transportation Code, by failing to have an owner or bona fide employee present at its dealership on April 21, 2017, for the purpose of buying, selling, exchanging, or leasing motor vehicles.*

The ALJ misapplied the law by omitting the Board's rulemaking authority under the Occupations Code, which is included in the Purpose and Scope for the rules adopted in 43 Texas Administrative Code chapter 215. 43 Tex. Admin. Code § 215.1. Failure to cite to the Board's rulemaking authority under the Occupations Code could improperly limit the Board's ability to assess civil penalties under Tex. Occ. Code § 2301.801.

**The Board amends Conclusion of Law 18 to read:**

*A person who violates any Board rule adopted under chapter 503 of the Texas Transportation Code is subject to a civil penalty of not less than \$50 or more than \$1,000. Tex. Transp. Code § 503.095. If the board determines that a person is violating or has violated this chapter, a rule adopted or order issued under this chapter, or Section 503.038(a), Transportation Code, the board may impose a civil penalty. The amount of the penalty may not exceed \$10,000 for each violation. Each act of violation and each day a violation continues is a separate violation. Tex. Occ. Code § 2301.801.*

The ALJ misapplied the law by omitting the Board's civil penalty authority under the Occupations Code. Under the Occupations Code, the Board has the authority to impose a civil penalty of up to \$10,000 for each violation. The Board's authority under the Transportation code only allows the Board to assess a civil penalty of up to \$1,000 per violation. Failing to include Tex. Occ. Code § 2301.801 could improperly limit the Board's ability to assess civil penalties.

**The Board deletes Conclusions of Law 19, 20, 21, 22 and 23.**

The ALJ misapplied the law. The Board, not the ALJ, is the decision maker concerning sanctions in a contested case. *Texas State Bd. of Dental Exam. v. Brown*, 281 S.W.3d 692 (Tex. App. 2009). The ALJ recommended a civil penalty totaling \$1,200 based on four violations, however, the ALJ, in COL 11 – 16, found six violations. The ALJ did not cite any basis in the record for his recommendation.

At the hearing on the merits, the ALJ admitted Exhibit 4, Affidavit in Support of the Penalty Recommendation. Barbara Jordan signed the Affidavit and swore in pertinent part:

*“[She] [had] reviewed the facts and circumstances of the above referenced case and recommend a civil penalty of \$25,000. In addition, due to the nature and number of the violations, the Department recommends that the Respondent’s General Distinguishing Number License Number P110107 be revoked. [She] [did] consider the following standards as identified in Subsection 2301.801(b), Texas Occupations Code: (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public; (2) the economic damage to the public caused by the violation; (3) the history of previous violations; (4) the amount necessary to deter a future violation; (5) Respondent’s efforts to correct the violation; and (6) any other matter that justice may require.*

*It is my opinion that the recommended sanction is in conformity with the past decisions of the Motor Vehicle Board, the Division Director of the Motor Vehicle Division and the Texas Department of Motor Vehicles in assessing penalties for violations committed by licensees and other persons under the jurisdiction of the Texas Department of Motor Vehicles and its predecessors, and the recommended sanctions are appropriate in this case.”*

Ms. Jordan’s affidavit is the only evidence in the record pertaining to assessment of penalties and sanctions. Based on the violations found in COL 11 – 16, it is proper for the Board to omit COL 19 – 23 and assess a civil penalty of \$6,000, or \$1,000 per violation, which is a lower civil penalty than recommended by Ms. Jordan.

**ACCORDINGLY, IT IS ORDERED:**

1. Findings of Fact 1 – 26 and Conclusions of Law 1 – 3, 5 – 10, 12 – 15, and 17 are adopted as stated in the PFD;
2. Conclusions of Law 4, 11, 16, and 18 are amended as stated in this Final Order;
3. Conclusions of Law 19 – 23 are deleted;
4. Respondent shall pay a civil penalty of \$6,000 within 60 days of the date of this Order;  
and
5. All remaining motions, exceptions, or objections, of any party, if any, are hereby denied.

Date: \_\_\_\_\_

---

Guillermo “Memo” Treviño, Chair  
Board of the Texas Department of Motor Vehicles

DATE: May 2, 2019

Action Requested: BRIEFING

---

**To:** Texas Department of Motor Vehicles (TxDMV) Board  
**From:** Sandra Menjivar-Suddeath, Internal Audit Director  
**Agenda Item:** 8A  
**Subject:** Internal Audit Division Status Update

---

**RECOMMENDATION**

None

**PURPOSE AND EXECUTIVE SUMMARY**

The status update provides information on current Internal Audit Division (IAD) activities. The May 2019 update contains the fiscal year (FY) 2019 Internal Audit Plan status, external coordination efforts, and division updates.

**FINANCIAL IMPACT**

None

**BACKGROUND AND DISCUSSION**

At every TxDMV Board meeting, IAD provides an update and status on current activities, including the annual Internal Audit Plan status. The annual Internal Audit Plan status includes information on the engagement type, the objective(s), anticipated report release date, and the current status (planning, fieldwork, or reporting).

For the May 2019 update, the IAD is providing information on the FY 2019 Internal Audit Plan status, external coordination efforts, and divisional updates.

**FY 2019 Internal Audit Plan status**

The IAD is currently working on eight internal engagements and anticipates completing the audit plan by the end of the fiscal year. The eight internal engagements are the following:

- Enterprise Project Management Advisory Service (*Reporting Phase of the engagement*)
- Information Security Risk Management Audit (*Reporting Phase of the engagement*)
- Procurement and Contract Management Audit (*Fieldwork Phase of the engagement*)
- Accounts Receivable Advisory Service (*Fieldwork Phase of the engagement*)
- FY 2019 Internal Audit Follow-Up Audit (*Fieldwork phase of the engagement*) – this update includes the verified status of implementation status for internal audit recommendations due in the second quarter (December 1, 2018 – February 28, 2019). TxDMV implemented 16 internal audit recommendations that were due or completed in the second quarter; the implementation rate was 80%.
- Compliance and Investigations Division (CID) Audit (*Planning Phase of the engagement*)
- Payment Card Industry (PCI) Compliance (*Planning Phase of the engagement*)
- FY 2020 Internal Audit Plan (*Planning Phase of the engagement*)

**External Coordination efforts**

Since the February TxDMV Board Meeting, the following external coordination efforts have occurred:



- The State Auditor's Office (SAO) conducted an audit on contract management and issued their audit report in February 2019.
- The Texas Comptroller of Public Accounts began a desk audit review of the Department's use of promotional items in April 2019.
- TxDMV submitted the FY 2019 Quarter 2 Coordination of Investigation letter on April 2, 2019.

#### Division Updates

Division staff have been asked to take part in several audit organization efforts.



## Texas Department of Motor Vehicles

### Internal Audit Division Status Update

#### Fiscal Year (FY) 2019 Internal Audit Plan Status

Engagement	Description	Status
<b>Enterprise Project Management</b>	An advisory service to evaluate the current project management governance structure.	<i>Reporting Phase</i>  Anticipated release date: May 2019
<b>Information Security Risk Management</b>	An audit to determine whether the Department has sufficient processes in place to monitor and identify information security threats.	<i>Reporting Phase</i>  Anticipated release date: May 2019
<b>Procurement and Contract Management</b>	An audit to determine whether the procurement process is achieving desired outcomes and whether the contract management process is achieving desired outcomes.	<i>Fieldwork Phase</i>  Anticipated release date: August 2019
<b>Accounts Receivable</b>	An advisory service to evaluate the accounts receivable function.	<i>Fieldwork Phase</i>  Anticipated release date: August 2019
<b>FY 2019 Internal Follow-Up</b>	An engagement that verifies the implementation status of outstanding audit recommendations.  Implementation status progress for internal audit recommendations are reported quarterly. At the end of the fiscal year, a report provides a summary of the implementation status for all internal and external audit recommendations.	<i>Fieldwork Phase</i>  FY2019 Quarter 2 Follow-up Memorandum attached.  Anticipated release date: August 2019
<b>Compliance and Investigations Division (CID)</b>	An audit to determine whether CID established appropriate and valid objectives to meet desired outcomes and to evaluate whether the CID structure is sufficient to prevent, detect, and investigate external fraud, waste, and abuse.	<i>Planning Phase</i>  Anticipated release date: August 2019
<b>Payment Card Industry (PCI) Compliance</b>	An audit to determine whether the Department is in compliance with PCI requirement 5: protect all systems against malware and regularly updated anti-virus software programs.	<i>Planning Phase</i>  Anticipated release date: August 2019
<b>FY 2020 Internal Audit Plan</b>	An engagement to identify high risk areas in TxDMV that may warrant review in fiscal year 2019.	<i>Planning Phase</i>  Presentation and Approval to the Board: August 2019

## External Coordination

- The State Auditor's Office (SAO) conducted an audit on contract management from November through December 2018. The final report was released in February 2019 and had three chapters. The report is attached to this status update.
- The Texas Comptroller of Public Accounts began a desk audit review of the Department's use of promotional items. The notice is attached to this status update.
- The FY2019 Quarter 2 Coordination of Investigation letter was submitted to the SAO on April 2, 2019. The letter provides a written response to the 14 SAO Hotline Complaints received and provides information on 9 internal fraud, waste, and abuse allegations.

## Division Updates

- Derrick Miller, Senior Auditor, was accepted into the State Agency Internal Audit Forum – Internal Audit Leadership Development Program.
- Jacob Geray, Internal Auditor, was asked to take part in providing feedback to the U.S. Government Accountability Office (GAO) on their website. The GAO produces the Generally Accepted Government Auditing Standards, which is one of the required auditing standards.
- Sandra Menjivar-Suddeath, Internal Audit Director, has been asked to serve as Secretary for the Institute of Internal Auditors (IIA) – Austin Chapter.



Texas Department of Motor Vehicles  
**MEMORANDUM**

Date: March 29, 2019

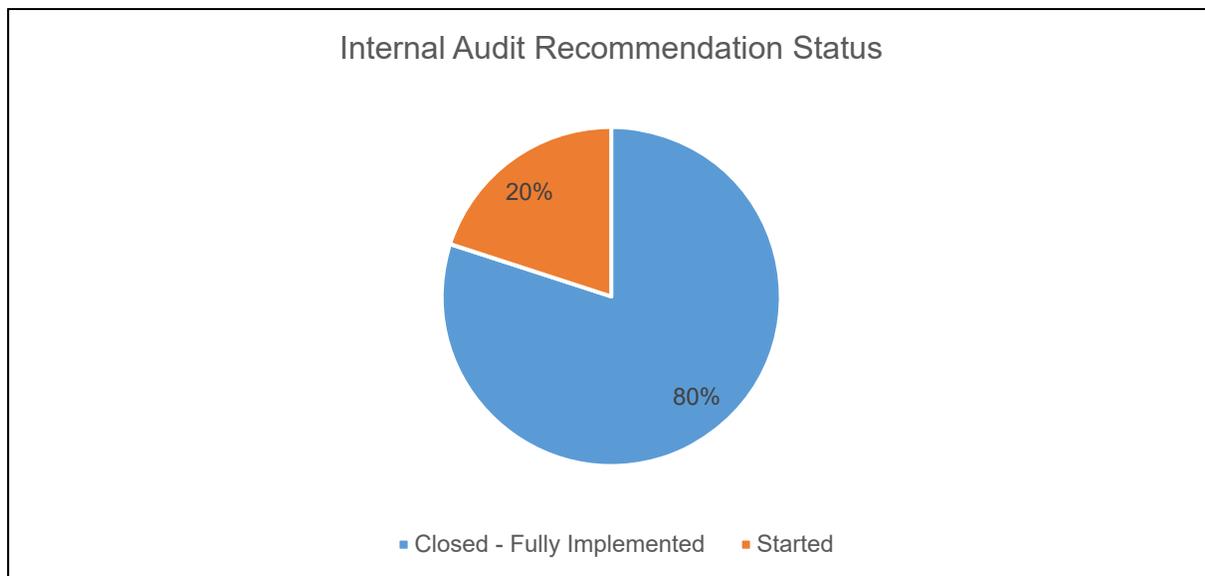
To: Texas Department of Motor Vehicles (TxDMV) Board  
From: Sandra Menjivar – Suddeath, Internal Audit Director  
Subject: Fiscal year (FY) 2019 Internal Audit Follow-Up: Second Quarter Results

---

## Second Quarter Results

TxDMV implemented 16 internal audit recommendations that were due or completed between December 1, 2018 and February 28, 2019. For the second quarter of FY 2019, the implementation rate was 80%.

Chart 1. Internal Audit Recommendation Status



## Background

The Internal Audit Division (IAD) continuously conducts follow-up activities to determine if appropriate action has been taken to address previously issued internal audit recommendations (recommendations). On a quarterly basis, the IAD reports to the TxDMV Board whether appropriate action was taken by assigning an implementation status to each recommendation reviewed during the designated period. The implementation status IAD assigns includes the following:

- **Fully Implemented:** The division fully implemented the audit recommendation by developing and using processes, systems, or policies. The changes are operating as intended.

- **Started:** The division began developing and using processes, systems, or policies to implement a recommendation but not all elements were complete. The division revised the completion date.
- **Pending:** The division has not begun developing processes or using processes, systems, or policies to implement a recommendation. The division revised the completion date.
- **Not Implemented/ Management Accepts the Risk:** The division and department no longer intends to develop a process, system, or policy to address a recommendation.
- **Not Applicable**<sup>1</sup>: The recommendation is no longer relevant.

The IAD determines whether appropriate action was taken and assigns an implementation status to the recommendations when the completion date is due or when the division submits an implementation action.

IAD designates a priority for each recommendation listed in an audit or advisory service report. Each recommendation is rated as a HIGH or LOW priority. The priority is given based on the criteria documented in table 1.

Table 1. Priority Criteria

Priority	Criteria
<b>Low</b>	<ul style="list-style-type: none"> <li>• Requires only a written policy or procedure update</li> <li>• Requires documentation submittal (e.g., evidence of risk analysis, cost benefit analysis, or TAC/TGC revision)</li> <li>• Are within an acceptable range of the risk tolerance for the division</li> <li>• An external audit recommendation that is not a reoccurring or regulatory issue</li> </ul>
<b>High</b>	<ul style="list-style-type: none"> <li>• Executive Management or Board Request</li> <li>• Not within an acceptable range of the risk tolerance of the division</li> <li>• New process had to be developed to address recommendations</li> <li>• An audit recommendation (external or internal) that is a reoccurring issue or has a regulatory impact</li> </ul>

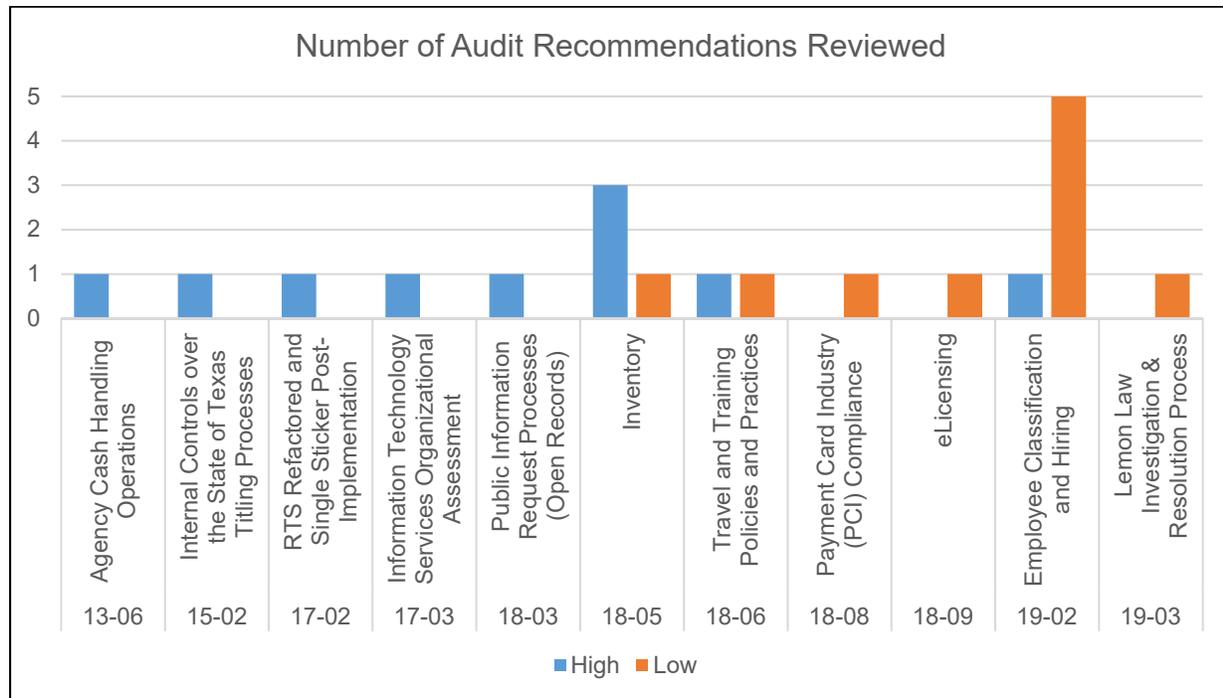
## Second Quarter Follow – Up Information and Results

For the second quarter of FY 2019, the IAD reviewed 20 audit recommendations, from 11 internal audit reports, that had an estimated completion date or were submitted as a completed between December 1, 2018 and February 28, 2019. Out of the 20 audit recommendations, 10

<sup>1</sup> Some recommendations are no longer applicable due to the age of the recommendation and organizational changes.

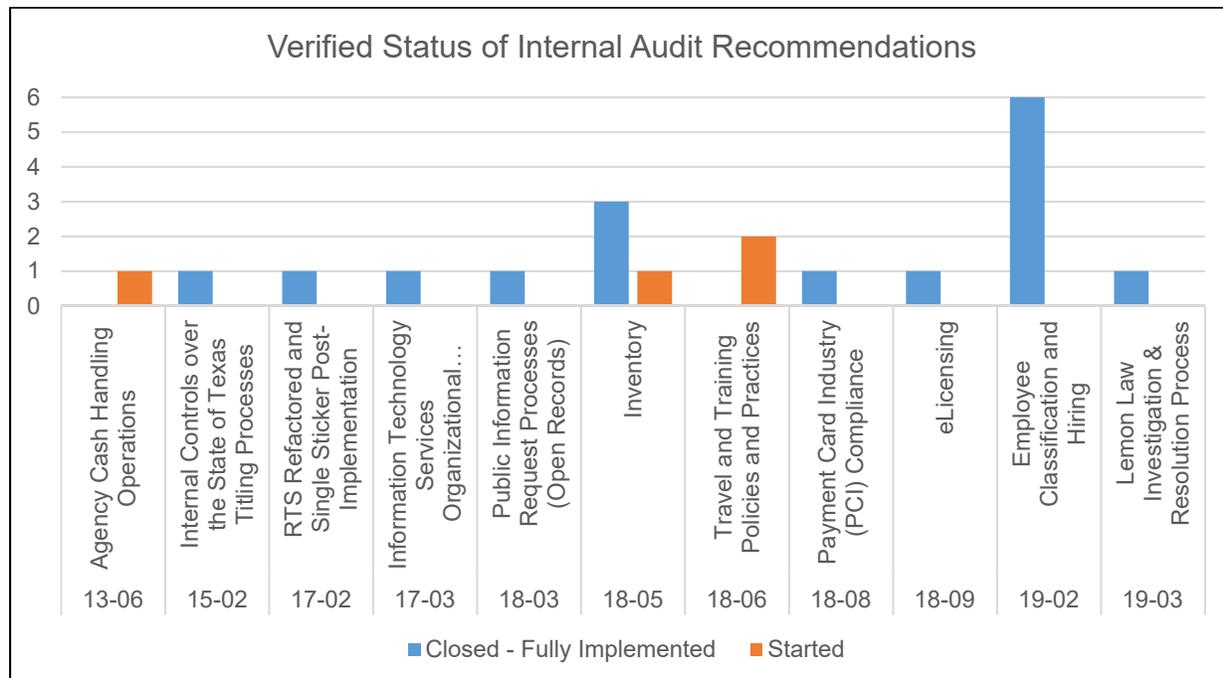
audit recommendations had a priority of HIGH and 10 audit recommendations had a priority of LOW, as noted in Chart 2.

Chart 2. Audit Recommendations Reviewed



The IAD verified that TxDMV fully implemented 16 recommendations (80%) and started the implementation for four recommendations (20%), as noted in Chart 3.

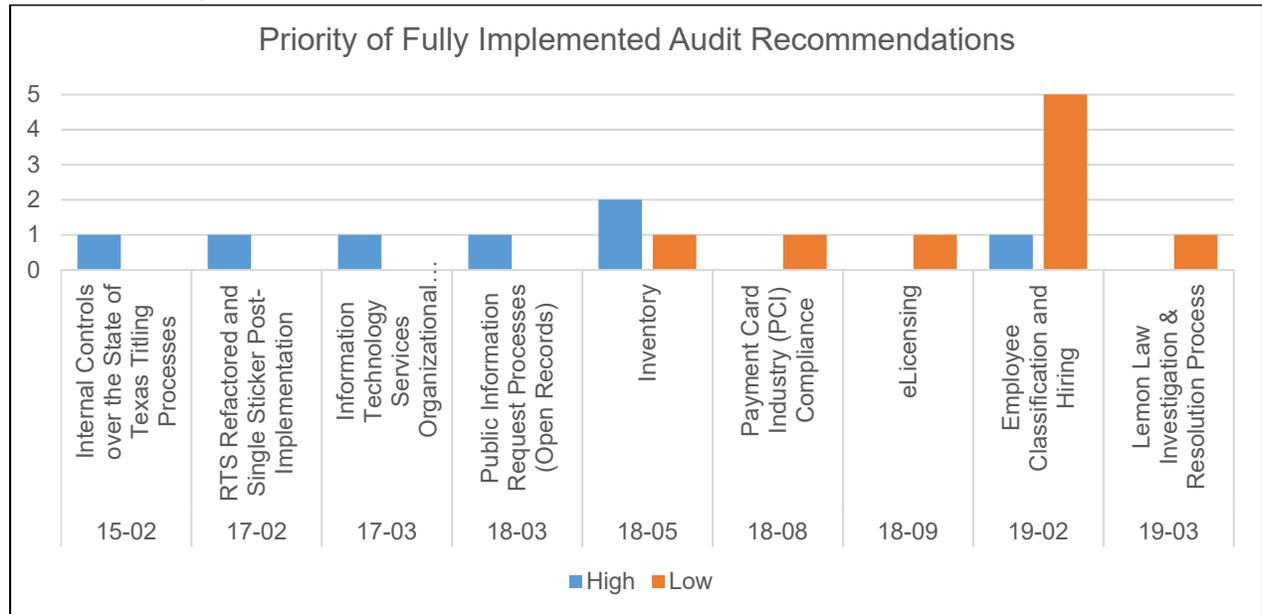
Chart 3. Verified Status



### Fully Implemented Audit Recommendations

Out of the 16 fully implemented recommendations, 7 recommendations had a HIGH priority and 9 recommendations had a LOW priority. Chart 4 depicts the priority status for fully implemented recommendations by audit.

Chart 4. Priority of Implemented Audit Recommendations



On average, the fully implemented audit recommendations were implemented within 60 days of the estimated completion date. An audit recommendation issued in the Employee Classification and Hiring audit was implemented 189 days before the estimated completion date.

### Started Audit Recommendations

The four started recommendations were issued in the Inventory, Travel and Training Policies and Practices, and the Agency Cash Handling Operations audit reports. Progress has been made on each of the four recommendations.

The three recommendations related to the Inventory audit and the Travel and Training Policies and Practices audit had significant progress made. The three recommendations are at least 90% implemented. IAD anticipates that these three recommendations will be fully implemented by the end of the fiscal year.

The audit recommendation issued in the Agency Cash Handling Operations audit relates to creating a project proposal to implement the acceptance of credit and debit cards at the TxDMV Regional Service Centers (RSCs). TxDMV is still working on implementing the audit recommendation and anticipates completion of the project proposal by June 30, 2019.

- cc: Whitney Brewster, Executive Director
- Shelly Mellott, Deputy Executive Director
- Carrie Fortner, Board Liaison
- TxDmv Executive Management



Texas Department of Motor Vehicles  
**MEMORANDUM**

**Date:** April 22, 2019

**To:** Whitney Brewster, Executive Director

**From:** Sandra Menjivar-Suddeath, Internal Audit Director

**Subject:** Compliance & Investigations Division – Engagement Memorandum

---

As part of the fiscal year (FY) 2019 Internal Audit Plan, the Internal Audit Division (IAD) will be conducting an audit on the Compliance and Investigations Division (CID). IAD will conduct the audit in accordance with the Institute of Internal Auditors *International Professional Practices Framework* and the Generally Accepted Government Auditing Standards.

### Audit Objectives and Scope

The preliminary audit objectives are to:

- determine whether CID established appropriate and valid objectives to meet desired outcomes.
- evaluate whether CID structure is sufficient to prevent, detect, and investigate external fraud, waste, and abuse.

Audit objectives may be revised during the planning phase of the audit. The IAD will provide management with any proposed revisions to the objectives.

As part of the engagement, IAD will work with staff from CID.

### Audit Timing

The planning phase of the audit is scheduled from May 2019 to June 2019 and the fieldwork phase is tentatively scheduled from June 2019 to July 2019. The IAD expects to release the audit report in August 2019.

### Audit Communication

The IAD will provide regular communication to CID during the audit.

If you have any questions, please contact me at (512) 465-4118. We look forward to working with the Compliance and Investigation Division.

CC: Guillermo “Memo” Treviño, Chairman, TxDMV Board  
Brett Graham, Finance and Audit Committee Chairman, TxDMV Board  
John M. Prewitt, Finance and Audit Committee, TxDMV Board  
Charles Bacarisse, Finance and Audit Committee, TxDMV Board

Stacey Gillman, Finance and Audit Committee, TxDMV Board  
Gary Painter, TxDMV Board  
Paul R. Scott, TxDMV Board  
Tammy McRae, TxDMV Board  
Shelley Washburn, TxDMV Board  
Shelly Mellott, Deputy Executive Director  
Tracey Beaver, General Counsel  
Tim Menke, Compliance and Investigations Director  
Carrie Fortner, Board Liaison  
Derrick Miller, Senior Internal Auditor



Texas Department of Motor Vehicles  
**MEMORANDUM**

**Date:** April 22, 2019

**To:** Whitney Brewster, Executive Director

**From:** Sandra Menjivar-Suddeath, Internal Audit Director

**Subject:** Payment Card Industry (PCI) Compliance – Engagement Memorandum

---

As part of the fiscal year (FY) 2019 Internal Audit Plan, the Internal Audit Division (IAD) will be conducting an audit on the Department's compliance with PCI requirement 5. PCI requirement 5 requires the Department to protect all systems against malware and regular updates of anti-virus software programs. IAD will conduct the audit in accordance with the Institute of Internal Auditors *International Professional Practices Framework* and the Generally Accepted Government Auditing Standards.

### Audit Objectives and Scope

The preliminary audit objective is to determine whether the Department has protected all systems against malware and regularly updated anti-virus software programs.

Audit objectives may be revised during the planning phase of the audit. The IAD will provide management with proposed revisions to the objectives.

As part of the engagement, IAD will work with staff from the Information Technology Services Division – Information Security Section.

### Audit Timing

The audit planning phase is scheduled from May to June 2019 and the fieldwork phase is tentatively scheduled from June 2019 to July 2019. The IAD expects to release the audit report in August 2019.

### Audit Communication

The IAD will provide regular communication to the Information Technology Services Division.

If you have any questions, please contact me at (512) 465-4118. We look forward to working with the ITS Division.

**CC:** Guillermo "Memo" Treviño, Chairman, TxDMV Board  
Brett Graham, Finance and Audit Committee Chairman, TxDMV Board  
John M. Prewitt, Finance and Audit Committee, TxDMV Board  
Charles Bacarisse, Finance and Audit Committee, TxDMV Board  
Stacey Gillman, Finance and Audit Committee, TxDMV Board

Gary Painter, TxDMV Board  
Paul R. Scott, TxDMV Board  
Tammy McRae, TxDMV Board  
Shelley Washburn, TxDMV Board  
Shelly Mellott, Deputy Executive Director  
Tracey Beaver, General Counsel  
Mike Higginbotham, Chief Information Officer  
Joshua Kuntz, Information Security Officer  
Carrie Fortner, Board Liaison  
Jason E. Gonzalez, Senior Internal Auditor



An Audit Report on

# **Selected Contracts at the Department of Motor Vehicles**

February 2019

Report No. 19-029



An Audit Report on

# ***Selected Contracts at the Department of Motor Vehicles***

SAO Report No. 19-029  
February 2019

## ***Overall Conclusion***

The Department of Motor Vehicles (Department) should strengthen its monitoring activities it performs for both its contract renewal with License Plates of Texas, LLC, doing business as My Plates (My Plates) and with Insight Public Sector (Insight) to ensure compliance with contract requirements. The Department performed the required contract planning, procurement, and formation for the contract with Insight. However, it should improve certain contract formation functions.

### **My Plates Contract**

The Department performed monitoring activities of its contract with My Plates, which included (1) monitoring progress toward the guaranteed revenue to the State of \$15 million, (2) reviewing the annual marketing plan, and (3) participating in monthly meetings with My Plates. However, the Department should perform a risk assessment and develop a monitoring plan to strengthen its monitoring of other key contract deliverables to help ensure that they were being met, such as:

- The State receiving the correct amount of license plate sales revenue.
- The Department receiving accurate license plate auction sales information and auction revenue being submitted to the Department within the required time frames.
- Third-party license agreements for the use of intellectual property containing required provisions.

Auditors reviewed the Department's oversight activities for the My Plates contract.

### **Background**

Auditors selected two Department of Motor Vehicles (Department) contracts to audit for this report:

- **My Plates contract.** This contract was originally procured in 2009 by the Department of Transportation and was renewed under the Department on November 19, 2014. The contract is for the design, sale, and marketing of specialty license plates until November 18, 2019.

The contract requires My Plates to reimburse the Department for costs related to programming prior to production, plate design or redesign, and production for each plate per order year.

Revenue generated from the sale of specialty license plates is divided between the State and My Plates. My Plates guarantees through the contract that the State shall receive at least \$15 million in revenue share payments by the end of the contract renewal term.

- **Insight Public Sector contract.** The Department contracted with Insight Public Sector for the 2016 Registration and Titling System County Equipment Refresh Project (CERP). The objective of CERP was to replace existing Department equipment located at more than 500 county tax assessor-collector offices across the state. The total contract amount is \$6,961,134, with \$5,761,134 for the equipment and installation and \$1,200,000 for maintenance services over a 4-year period. The contract term is July 26, 2016, through August 6, 2020.

Sources: The contracts audited.

## Insight Public Sector Contract

The Department adequately performed planning activities and followed requirements in applicable statutes and the *State of Texas Contract Management Guide* to procure the Insight contract. The Department included provisions required by the *State of Texas Contract Management Guide* in its contract with Insight and adequately performed monitoring activities to enforce the terms of the Insight contract. However, the Department should strengthen its processes to ensure that the terms of the contract are consistent with solicitation documents and that Insight submits an updated subcontracting plan when required. In addition, the Department should ensure that it consistently reports contracts to the Legislative Budget Board and on its Web site as required.

Auditors reviewed the Department's planning, procurement, contract formation, and oversight activities for the Insight contract.

Table 1 presents a summary of the findings in this report and the related issue ratings. (See Appendix 2 for more information about the issue rating classifications and descriptions.)

Table 1

Summary of Chapters/Subchapters and Related Issue Ratings		
Chapter/ Subchapter	Title	Issue Rating <sup>a</sup>
1	The Department Monitored Some Areas of Its Specialty License Plate Contract, But It Should Identify and Monitor Other Key Areas	Medium
2-A	The Department Adequately Performed Contract Planning, Procurement, Formation, and Oversight Activities for the Insight Contract	Low
2-B	The Department Should Ensure That It Consistently Reports Contracts as Required	Medium

<sup>a</sup> A subchapter is rated **Priority** if the issues identified present risks or effects that if not addressed could critically affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern and reduce risks to the audited entity.

A subchapter is rated **High** if the issues identified present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

A subchapter is rated **Medium** if the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

A subchapter is rated **Low** if the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

Auditors communicated other, less significant issues separately in writing to Department management.

## ***Summary of Management's Response***

At the end of each chapter in this report, auditors made recommendations to address the issues identified during this audit. The Department agreed with the recommendations in this report.

## ***Audit Objective and Scope***

The objective of this audit was to determine whether the Department has administered certain contract management functions for selected contracts in accordance with applicable requirements.

The scope of this audit covered the Department's selected processes for the following two contracts through August 31, 2018:

- Oversight related to the contract renewal with My Plates for the design, sale, and marketing of specialty license plates. This contract was originally procured in 2009 by the Department of Transportation and was renewed under the Department on November 19, 2014.
- Planning, procurement, formation, and oversight related to the contract with Insight for the 2016 Registration and Titling System County Equipment Refresh Project, which was effective July 26, 2016.

# Contents

## ***Detailed Results***

---

Chapter 1	
The Department Monitored Some Areas of Its Specialty License Plate Contract, But It Should Identify and Monitor Other Key Areas .....	1
Chapter 2	
The Department Adequately Performed Contract Planning, Procurement, Formation, and Oversight Activities for the Insight Contract, But It Should Ensure That It Consistently Reports Contracts as Required .....	7

## ***Appendices***

---

Appendix 1	
Objective, Scope, and Methodology .....	12
Appendix 2	
Issue Rating Classifications and Descriptions .....	16
Appendix 3	
Revenue from the Contract Renewal with My Plates .....	17

## Detailed Results

Chapter 1

### ***The Department Monitored Some Areas of Its Specialty License Plate Contract, But It Should Identify and Monitor Other Key Areas***

---

**Chapter 1  
Rating:**  
Medium <sup>1</sup>

The Department performed monitoring activities of its contract with License Plates of Texas, LLC, doing business as My Plates (My Plates), which included (1) monitoring progress towards the guaranteed revenue to the State of \$15 million, (2) reviewing the annual marketing plan, and (3) participating in monthly meetings with My Plates. However, the Department should perform a risk assessment and develop a monitoring plan to strengthen its monitoring of other key contract deliverables to help ensure that they were being met. For example, the Department should strengthen its monitoring to ensure that the State receives the correct license plate sales revenue amounts and that the third-party license agreements contain all of the required provisions.

**The Department should perform a risk assessment and develop a monitoring plan to ensure compliance with key contract requirements.**

The Department did not perform a risk assessment or develop a monitoring plan to oversee the My Plates contract. A risk assessment and monitoring plan should identify the contract requirements to be monitored, how the requirements will be monitored, and who will perform the monitoring. A monitoring plan and risk assessment are required by the *State of Texas Contract Management Guide*.

While the Department performed some monitoring activities, a monitoring plan would help ensure that the vendor is complying with key areas of the contract and that the Department can identify problems or issues.

**The Department performed monitoring of some key contract areas.**

Although the Department did not perform a risk assessment and develop a monitoring plan for the My Plates contract, it performed monitoring activities over some key areas to ensure the contractor met its requirements related to the guaranteed revenue, annual marketing plan, and regular executive and working group meetings.

- **Guaranteed Revenues.** The Department monitored the vendor's progress toward meeting its contractual guarantee of \$15 million to the State's

---

<sup>1</sup> The risk related to the issues discussed in Chapter 1 is rated as Medium because the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

General Revenue Fund. The contract renewal states that My Plates guarantees that the State shall receive at least \$15 million in revenue share payments by the end of the contract renewal term on November 18, 2019. According to information provided by the Department, My Plates met the \$15 million guarantee in August 2017 (see Figure 1 in Appendix 3 for more information).

- **Annual Marketing Plan.** My Plates submitted its annual marketing plan to the Department for each of the four years of the contract renewal, as required. The marketing plan included information such as plans for increasing state revenue, revenue projections, and measurable objectives to identify and increase sales to its target audience.
- **Executive Level and Working Group Meetings.** As required by the contract renewal, the Department met with My Plates executive management and operational staff monthly as a working group to discuss marketing activities and expenditures, sales summaries, and upcoming marketing promotions.

**The Department should improve its monitoring activities over other key areas of the contract.**

Because the Department did not perform a risk assessment or develop a monitoring plan, as discussed above, it did not adequately monitor some key areas of the contract. That included ensuring that (1) the State received the correct amount of sales revenue, (2) third-party license agreements included required provisions, and (3) My Plates complied with subcontracting reporting requirements.

**Sales Revenue.** While the Department monitored to ensure that the State received its share of revenue, it should strengthen its monitoring to ensure that the share the State received was the correct amount. In addition, the Department did not perform adequate monitoring to ensure that it received accurate auction sale information and auction sale revenue within required time frames.

- Revenue Allocation.** The Department should strengthen its monitoring to ensure that the license plate sales revenue was allocated correctly. The contract renewal defines the revenue share percentages between the State, My Plates, and cost recoveries. For each specialty license plate sale, the Department recovers an \$8 cost to manufacture the plate, and the State General Revenue Fund and My Plates each receives a percentage of the remaining revenue (see Figures 2 through 4 and Table 3 in Appendix 3 for additional information).

The Department asserts that it relies on coding it developed for the My Plates system, which is used to process specialty license plate sales, to automatically allocate the revenue associated with the sales (see text box and Figures 5 and 6 in Appendix 3 for more information). However, the Department did not perform periodic reviews of the sales transactions to ensure the revenue share allocations were correct and that the amounts were accurately recorded in its Registration and Titling System (RTS) and the State's Uniform Statewide Accounting System (USAS). Although auditors did not identify significant errors in the allocation of revenue between the State and My Plates, there is potential risk that the allocation coding is not working as intended, causing the sales revenue to be incorrectly allocated between the State and My Plates.

#### License Plate Revenue Allocations

When a customer purchases a specialty license plate through the My Plates system, the My Plates system sends the transaction to the State's payment system (Texas.gov), where the customer enters payment information. Based on the coding within the My Plates system, the financial information from the transaction is sent from Texas.gov to the State's Uniform Statewide Accounting System (USAS). The My Plates system also sends the sales transaction information to the Department's Registration and Titling System (RTS). The RTS data shows the individual payment amount, cost recovery amount, State General Revenue share, and My Plates' share for each license plate sale. The USAS data shows the total cost recovery, State General Revenue share, and My Plates' share amounts for all license plate sales made that day (not at a transactional level).

Sources: Information provided by the Department and data from USAS.

- Auction Revenue.** The Department did not verify information from My Plates to ensure that auction sales revenue was accurate and was deposited within 72 hours as required. My Plates contracted with another vendor to operate the license plate auctions conducted during the contract period and to collect the sales proceeds. This vendor deposits those funds directly into a bank account controlled by My Plates. The contract renewal requires My Plates to submit the State's portion of the revenue to the Department within 72 hours of receipt.

During the contract renewal period, My Plates conducted 12 auctions, for which it reported total sales of \$268,149. My Plates provided auction results to the Department for all 12 auctions; however, the documentation was not always adequate to provide the Department with needed information to ensure compliance with the contract. Specifically, for 9 of the 12 auctions, My Plates did not provide the Department with independent information from the auction vendor; therefore, the

Department cannot verify the sales amount and the date the revenue was deposited. Without independent sources of information, the Department cannot ensure that it is receiving the correct amount of revenue within the required time frame.

**Third-party License Agreements.** The Department did not ensure that the third-party license agreements (license agreements) between My Plates and third parties contained all of the provisions that the My Plates contract requires (see text box for additional information). Auditors tested 5 of the 24 new license plate designs that the Department's governing board reviewed and/or approved during the contract renewal period. While the Department ensured that My Plates had a valid license agreement in place for all five plate designs, it did not ensure that the five license agreements contained all of the required provisions. All five of the license agreements tested were missing one or more required provisions, which included requirements to transfer the rights, renewal options, or the description of how start-up costs are to be collected and refunded. In addition, two of the five license agreements had expired as of September 30, 2018, and were still available for sale as of November 9, 2018. Not having current license agreements with third parties regarding the use of their copyrighted material creates a risk that the third parties could bring legal action against the Department.

#### Third-party License Agreements

My Plates may contract to obtain for-profit rights to use intellectual property or other proprietary items of third parties, when creating specialty license plate designs. My Plates is required to submit the license agreements to the Department for approval as part of a proposed new license plate design application.

Source: The contract renewal audited.

**Subcontractor Reporting Requirements.** The Department did not ensure that My Plates complied with subcontracting reporting requirements through the life of the contract. My Plates stopped submitting *Progress Assessment Reports* in September 2017. Title 34, Texas Administrative Code, Section 20.285, and the contract with My Plates require the vendor to submit monthly compliance reports through the life of the contract. After auditors brought this issue to the Department's attention, it coordinated with My Plates to submit the *Progress Assessment Reports* from October 2017 through September 2018. The *Progress Assessment Reports* showed that My Plates (1) did not list any subcontractors and (2) did not make any payments to subcontractors during that time frame.

## Recommendations

The Department should:

- Perform a risk assessment to determine what areas to monitor and develop a monitoring plan.
- Ensure that license plate sales revenue is correctly allocated and recorded.
- Implement a process to enable the Department to confirm auction sales are accurate and revenues are submitted to the State within 72 hours as required.
- Ensure that My Plates includes all required provisions in its license agreements with third parties.
- Ensure that My Plates complies with the subcontracting reporting requirements related to the contract.

## Management's Response

*The Department agrees with the recommendations. The Department will take the following actions to ensure compliance with the current contract:*

- *Conduct a risk assessment and develop a monitoring plan. The monitoring plan will be in place by May 31, 2019.*
- *Monitor license plate revenue to ensure it is appropriately allocated.*
- *Work with the vendor, My Plates, to obtain bank statements or other independent evidence documenting auction results and the date for which My Plates receives payment for auction commitments. The department will do so prior to My Plates conducting any additional auctions.*
- *Review all My Plates licensing agreements with third parties to ensure that the third-party agreements include all required provisions. This review is currently underway and the Department anticipates completion by August 31, 2019.*
- *Ensure My Plates complies with the subcontracting reporting requirements related to the contract through the end of the contract term, November 2019.*

*Since the My Plates contract expires in November 2019, the Department has already begun planning on how to monitor the new Specialty License Plate contract. For the new Specialty License Plate contract, the Department will enhance the contract monitoring process to include a formalized contract monitoring plan based on a risk assessment and implement a post award*

*contract conference to ensure contractors are aware of all contract requirements, including subcontracting reporting requirements.*

*The draft Request for Proposal (RFP) for the Specialty License Plate contract has been modified to simplify the submission of auction proceeds and ensure compliance with third-party agreements. The RFP will require the selected vendor to use the Department's template for its license agreements with third parties to ensure that all required clauses are included in the license agreements. The RFP will also require the selected vendor to collect payment from winning auction bidders and submit their plate orders within seven calendar days of the completion of an auction, and require the vendor to make payment to the state the same day the vendor places the order for the license plates with the state. These modifications to payment collections are in response to the difficulty experienced under the current contract provisions. The Department anticipates the new contract, with the new requirements, to be in place by November 2019.*

*Responsible Parties: Interim General Counsel, Chief Financial Officer, and Vehicle Titles and Registration Division Director*

## Chapter 2

## ***The Department Adequately Performed Contract Planning, Procurement, Formation, and Oversight Activities for the Insight Contract, But It Should Ensure That It Consistently Reports Contracts as Required***

---

The Department complied with most applicable requirements to plan, procure, form, and monitor the Insight Public Sector (Insight) contract. However, it should ensure that all provisions in the contract are consistent with the solicitation documents and the vendor submits all Historically Underutilized Business (HUB) subcontracting plans and reports as required. In addition, the Department should ensure that it consistently reports contracts to the Legislative Budget Board and on its Web site as required.

## Chapter 2-A

### **The Department Adequately Performed Contract Planning, Procurement, Formation, and Oversight Activities for the Insight Contract**

**Chapter 2-A  
Rating:  
Low<sup>2</sup>**

**Contract Planning.** The Department adequately performed planning activities, which included developing a detailed cost estimate and statement of work, and used the appropriate procurement method for solicitation as required by the *State of Texas Contract Management Guide* for the Insight contract.

**Contract Procurement.** The Department followed requirements in applicable statutes and the *State of Texas Contract Management Guide* to procure the Insight contract. Specifically, it properly advertised the solicitation, evaluated responses using the criteria published in the solicitation, and scored all proposal evaluations correctly. In addition, the Department selected the appropriate contractor based on its evaluation criteria. The Department ensured that key personnel involved in procuring the Insight contract signed nondisclosure and conflict of interest statements prior to contract approval.

**Contract Formation.** The Department included provisions required by the *State of Texas Contract Management Guide* in its contract with Insight; however, it should strengthen its processes to ensure that the terms of the contract are consistent with solicitation documents. There was a discrepancy between the language in the solicitation documents and the final contract related to Insight employee background checks. As a result, Insight did not provide the Department with certification that it had performed background checks on

---

<sup>2</sup> The risk related to the issues discussed in Chapter 2-A is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

its employees. This increases the risk that Insight employees without background checks could work on the project. The Department did not perform a review of the contract documents prior to contract execution, which could have detected the discrepancy.

**Contract Monitoring.** The Department adequately performed monitoring activities to enforce the terms of the Insight contract. That monitoring included verification of equipment installation and maintenance services, verification that vendor invoices were supported, and verification that Insight produced contract deliverables, such as a communication plan and project schedule. However, the Department should improve its processes to ensure that Insight complies with applicable HUB subcontractor reporting requirements.

The Department did not require Insight to submit an updated HUB subcontracting plan when required. Insight submitted with its proposal a HUB subcontracting plan that stated it did not plan to use subcontractors. During the course of the contract, Insight subcontracted work and submitted monthly *Progress Assessment Reports* to the Department. After auditors brought this issue to the Department's attention, it obtained an updated HUB subcontracting plan from Insight.

Title 34, Texas Administrative Code, Section 20.285 (34 TAC 20.285), requires contractors to submit an updated HUB subcontracting plan to the Department if the contractor decides to subcontract in a manner that is not consistent with the original HUB subcontracting plan. Additionally, 34 TAC 20.285 requires contractors to submit monthly reports to document their good-faith efforts to comply with their HUB subcontracting plan. As a result of not adequately monitoring Insight's subcontracting plan, the Department could not determine whether the vendor's subcontracting activities were in compliance with their HUB subcontracting plan.

## Recommendations

The Department should:

- Review the contract prior to execution to ensure that contract terms are consistent with requirements in its solicitation documents.
- Implement a process to ensure that its contractors submit HUB subcontracting plans as required.

## Management's Response

*The Department agrees with the recommendations. The Department currently uses pre-approved templates for certain procurement documents (such as Request for Offers, Invitation for Bids, and Standard Terms and Conditions) that are periodically reviewed and approved by the Purchasing Section and the Office of General Counsel. On the Insight contract, staff in the business division added a condition to the Statement of Work, which was inconsistent with the language in the pre-approved template for the Request for Offers. Although the language was inconsistent, the Insight employees all passed criminal background checks before obtaining access to the Department's systems. In addition, Department employees escorted all Insight employees when accessing any Department or tax assessor-collector facilities.*

*The Purchasing Section, in consultation with the Office of General Counsel, will review the current procurement process to address the audit recommendation. In addition, the Purchasing Section, in accordance with best practices as recommended by the Comptroller's Statewide Procurement Division, will implement post-award contractor conferences for complex, high risk contracts to ensure all parties are aware of the requirements in the contract. The review will be completed by August 31, 2019.*

*In addition, the HUB Coordinator in the Purchasing Section has developed a tool to track submission of HUB subcontracting plans for procurements that require reports. In addition to implementing post award contract conferences to make contractors aware of HUB subcontracting reporting, the Department will strengthen its monitoring of contracts post award by including a review of HUB subcontracting. The post award contract conference process will be implemented by June 30, 2019.*

*Responsible Parties: Interim General Counsel and Chief Financial Officer*

## Chapter 2-B

**The Department Should Ensure That It Consistently Reports Contracts as Required**

**Chapter 2-B  
Rating:**  
Medium<sup>3</sup>

The Department did not consistently report contracts to the Legislative Budget Board (LBB) and on its Web site as required. The Department reported the Insight contract to the LBB and on its Web site; however, auditors identified other contracts that the Department did not report to the LBB and on its Web site. Specifically:

- For contracts on the Department's Web site that were effective after September 1, 2015, and valued at or more than \$1 million, the Department did not report 8 (50 percent) of 16 contracts to the LBB as required by Texas Government Code, Sections 2254.006 and 322.020, and in Article IX, Section 7.04, of the General Appropriations Acts (84th and 85th Legislatures).
- The Department did not ensure that the contracts listed in its accounting system and on its Web site were consistent. Auditors determined that the Department did not report on its Web site 434 (9 percent) from a list of 4,690 contracts within its accounting system as required by Texas Government Code, Section 2261.253(a).

As of December 4, 2018, the Department (1) reported all 8 contracts to the LBB and (2) updated its Web site to report 351 (81 percent) of the 434 contracts. Reporting its contracts to the LBB and on its Web site as required would help the Department increase the transparency of its contracting processes.

**Recommendation**

The Department should report its contracts to the LBB and on its Web site in accordance with statutory requirements.

**Management's Response**

*The Department agrees with the recommendation. The Department is up to date on contract reporting to the Legislative Budget Board (LBB) contract system and on the Department's public facing website. The Purchasing Section will update the LBB contract system and Department's public facing website on a monthly basis to ensure that contracts are reported as statutorily required. In addition, the Department will utilize the CAPPs*

<sup>3</sup> The risk related to the issues discussed in Chapter 2-B is rated as Medium because the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

*Financial System to maximize contract reporting. The Department will have its process updated by June 30, 2019.*

*Responsible Party: Chief Financial Officer*

# Appendices

## Appendix 1

### **Objective, Scope, and Methodology**

---

#### **Objective**

The objective of this audit was to determine whether the Department of Motor Vehicles (Department) has administered certain contract management functions for selected contracts in accordance with applicable requirements.

#### **Scope**

The scope of this audit covered the Department's selected processes for the following two contracts through August 31, 2018:

- Oversight related to the contract renewal with License Plates of Texas, LLC, doing business as My Plates (My Plates) for the design, sale, and marketing of specialty license plates. This contract was originally procured in 2009 by the Department of Transportation and was renewed under the Department on November 19, 2014.
- Planning, procurement, formation, and oversight related to the contract with Insight Public Sector (Insight) for the 2016 Registration and Titling System County Equipment Refresh Project, which was effective July 26, 2016.

#### **Methodology**

The audit methodology included collecting and reviewing documentation for the Department's contracts with Insight and My Plates including conducting interviews with Department staff; reviewing applicable statutes, rules, and Department policies and procedures; and performing selected tests and procedures.

#### **Data Reliability and Completeness**

Auditors used revenue and expenditure information in the Uniform Statewide Accounting System (USAS) for both contracts. Auditors tested user access controls and relied on previous State Auditor's Office audit work. Auditors determined that the USAS data was sufficiently reliable for the purposes of this audit.

For the Insight contract, auditors compared the expenditure data in USAS to data in the Department's Centralized Accounting and Payroll/Personnel System (CAPPS) to determine completeness of the invoice payment

population. Auditors determined that the invoice payment data in USAS was sufficiently reliable for purposes of the audit.

Auditors also reviewed contract listings from the Department's CAPPs purchasing module. Auditors' procedures to review the contract listings for completeness included observing the data extraction and comparing the data to contracts listed on the Department's Web site and the Legislative Budget Board's database. Auditors identified discrepancies among the contract listings in CAPPs, the Department's Web site, and the Legislative Budget Board's database (see Chapter 2-B for further information).

#### **Sampling Methodology**

Auditors selected non-statistical samples of (1) new license plate sales made through My Plates' Web site and (2) separate samples of payment invoices for installation and maintenance of equipment procured through the Insight contract. Those samples were selected primarily through random selection. Auditors also selected a risk-based sample of new specialty license plate designs approved by the Department's governing board and additional risk-based samples of installation invoices and new license plates sales.

Additionally, auditors selected a risk-based sample of weekly status reports from the Insight contract.

The sample items above were not necessarily representative of the populations; therefore, it would not be appropriate to project the test results to the populations.

Information collected and reviewed included the following:

- Department policies and procedures.
- The Department's contract with Insight and its contract renewal with My Plates.
- Department revenue data from USAS, the Department's Registration and Titling System (RTS), and My Plates' system reports.
- Department expenditure data from USAS and CAPPs.
- Department expenditure supporting documentation.
- User access documentation for both USAS and CAPPs.
- Historically Underutilized Business (HUB) subcontracting plans and *Progress Assessment Reports* for both contracts audited.
- Listings of the Department's contracts in CAPPs, the Department's Web site, and the Legislative Budget Board's database.

Procedures and tests conducted included the following:

- Interviewed Department staff to identify the Department's financial and operational processes for contracting, including financial and administrative internal controls and the information systems that support those processes.
- Tested a sample of new license plate sales through My Plates to determine whether the Department allocated the revenue in accordance with the contract and the vendor complied with contractual sales requirements.
- Performed calculations to determine whether My Plates met its minimum revenue guarantee to the State's General Revenue Fund.
- Tested samples of payments to Insight to determine whether (1) the Department monitored the vendor's performance and (2) payments were supported and made after verification of services received.
- Verified that the Department (1) limited access to its accounting systems to personnel whose job duties required such access and (2) ensured appropriate segregation of duties.
- Tested a sample of vendor new plate designs to determine whether the Department ensured that My Plates complied with contractual requirements, including whether My Plates had third-party license agreements when required.
- Determined whether the Department monitored its vendors' compliance with the HUB subcontracting plans and with HUB reporting requirements for the two contracts audited.
- Determined whether the Department reported its contracts to the Legislative Budget Board's database and on its Web site as required.

Criteria used included the following:

- The General Appropriations Acts (84th and 85th Legislatures).
- Texas Government Code, Chapters 322, 2161, 2251, 2254, and 2261.
- Title 34, Texas Administrative Code, Chapter 20.
- *State of Texas Contract Management Guide* (version 1.13, September 2014, and version 1.15, March 2016).<sup>4</sup>
- The Department's contract with Insight.
- The Department's contract renewal with My Plates.

---

<sup>4</sup> These guides were in effect during the planning, procurement, formation, and oversight of the contracts audited for this report. *The State of Texas Contract Management Guide* was updated and released as the *State of Texas Procurement and Contract Management Guide* (version 1.1, August 2018).

- The Department's policies and procedures.

### **Project Information**

Audit fieldwork was conducted from July 2018 through January 2019. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Jennifer Lehman, MBA, CIA, CFE, CGAP (Project Manager)
- Gregory Scott Adams, CPA, MPA, CGFM (Assistant Project Manager)
- Jennifer Fries, MS
- Mike Gieringer, CFE
- Benjamin Hikida
- Minh Trang
- George D. Eure, CPA (Quality Control Reviewer)
- Becky Beachy, CIA, CGAP (Audit Manager)

## Appendix 2

**Issue Rating Classifications and Descriptions**

Auditors used professional judgement and rated the audit findings identified in this report. Those issue ratings are summarized in the report chapters/sub-chapters. The issue ratings were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

In determining the ratings of audit findings, auditors considered factors such as financial impact; potential failure to meet program/function objectives; noncompliance with state statute(s), rules, regulations, and other requirements or criteria; and the inadequacy of the design and/or operating effectiveness of internal controls. In addition, evidence of potential fraud, waste, or abuse; significant control environment issues; and little to no corrective action for issues previously identified could increase the ratings for audit findings. Auditors also identified and considered other factors when appropriate.

Table 2 provides a description of the issue ratings presented in this report.

Table 2

Summary of Issue Ratings	
Issue Rating	Description of Rating
Low	The audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited <u>or</u> the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.
Medium	Issues identified present risks or effects that if not addressed could <u>moderately affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.
High	Issues identified present risks or effects that if not addressed could <u>substantially affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity.
Priority	Issues identified present risks or effects that if not addressed could <u>critically affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity.

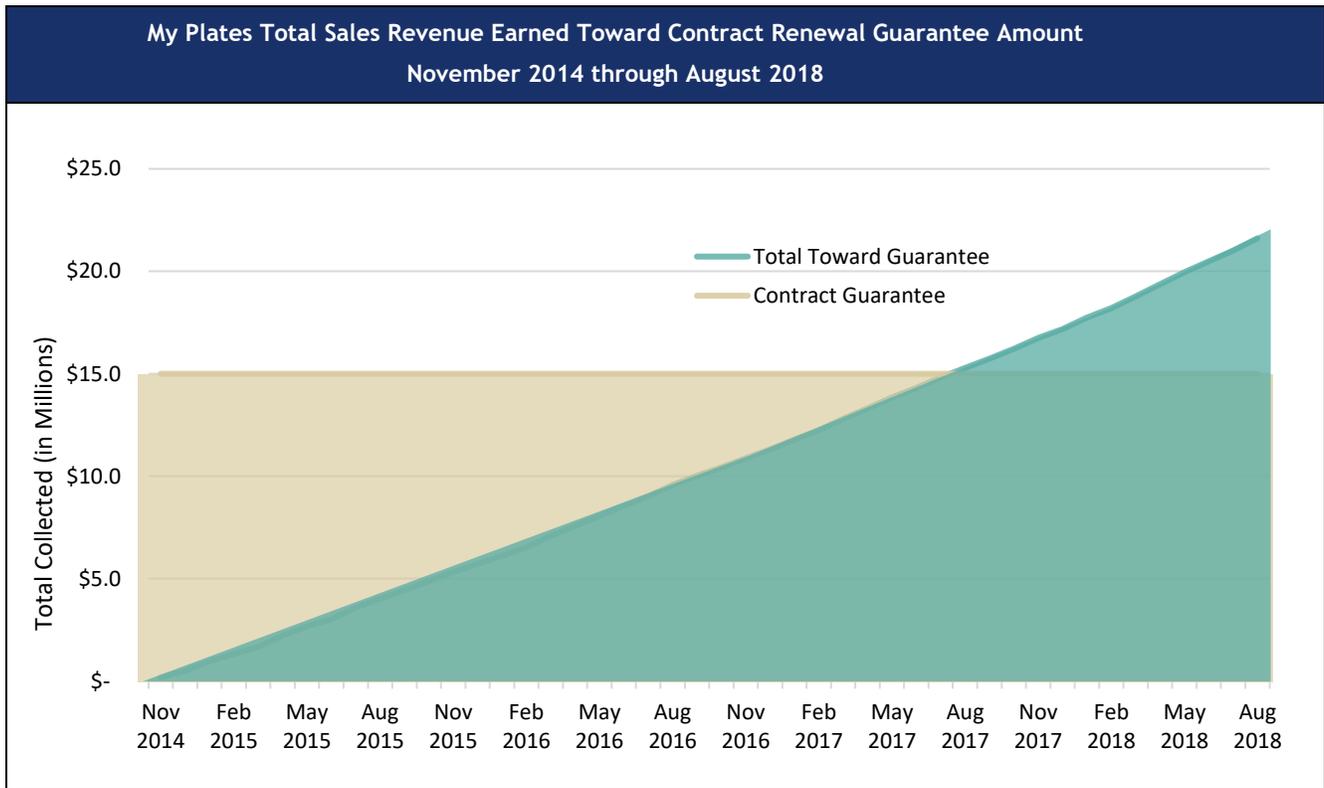
Appendix 3

## Revenue from the Contract Renewal with My Plates

### Sales Revenue toward Contract Renewal Guarantee Amount

Figure 1 shows the total sales revenue to the State’s General Revenue Fund that License Plates of Texas, LLC, doing business as My Plates (My Plates) had earned toward the contract renewal guarantee of \$15 million between November 2014 and August 2018. According to information provided by the Department of Motor Vehicles (Department), My Plates met the \$15 million guarantee requirement in August 2017.

Figure 1



Source: The State Auditor’s Office created this figure based on unaudited license plate sales revenue data provided by the Department.

### Division of Revenue from the Sale of Specialty License Plates through the My Plates Contract Renewal

The contract renewal specifies how the revenue from the sale and renewal of specialty license plates offered through the contract is divided between the State and My Plates. The Department receives \$8 to recover its manufacturing cost for each year covered by the license plate. Table 3 shows the division of revenue after the \$8 cost recovery.

Table 3

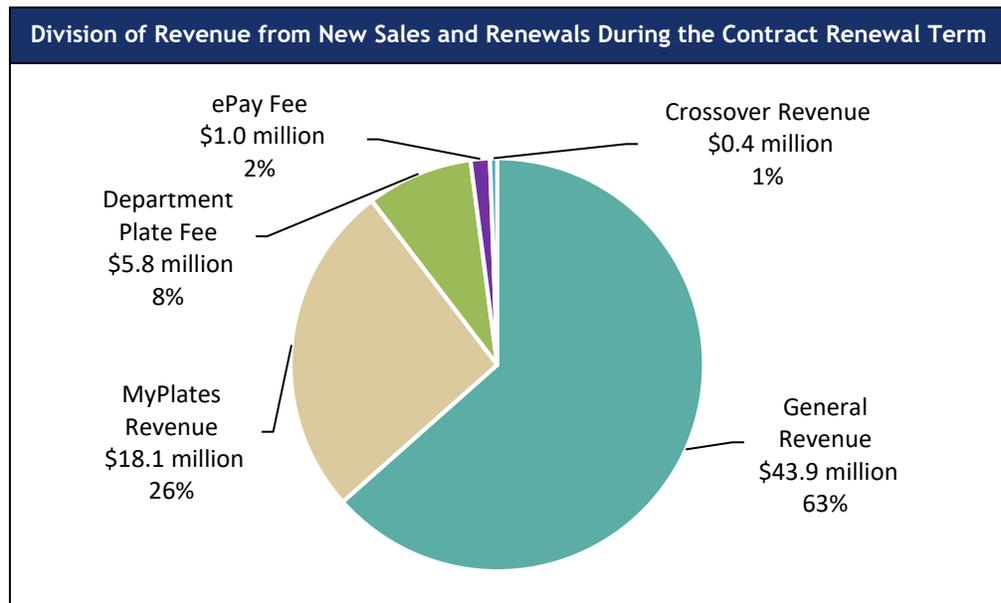
Division of Specialty License Plate Revenue		
Plate Term	Percent to State's General Revenue Fund	Percent to Vendor
1 year	40 percent	60 percent
2 - 5 years	60 percent	40 percent
Plates Purchased through Auction (5 years)	60 percent	40 percent
Renewals of Existing Plates	95 percent	5 percent

Source: The Department's contract renewal with My Plates.

**Revenue Division (New Plate Sales, Renewals, and Both)**

Figure 2 shows the division of all specialty license plate sales revenue among the State’s General Revenue Fund, My Plates, the Department’s \$8 cost recovery, and credit card processing fee (ePay Fee) from November 2014 through August 2018. The credit card processing fee charged for new license plate sales is paid from My Plates’ share of the revenue. Crossover license plates are specialty license plates previously authorized by statute for which the sponsoring organization has entered into an agreement with My Plates for the inclusion of the plate in the program.

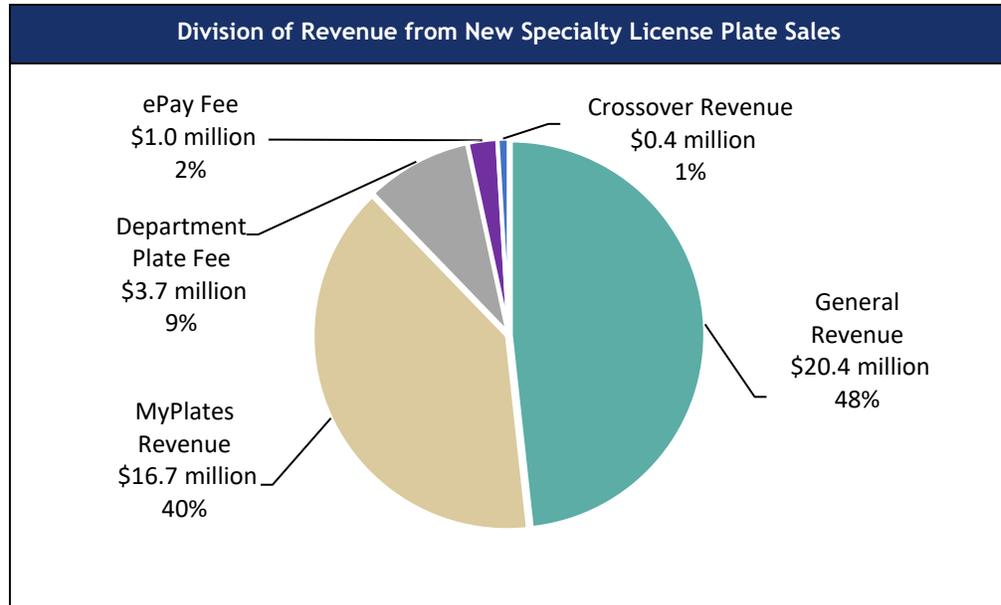
Figure 2



Source: The State Auditor’s Office created this figure based on unaudited license plate sales revenue data provided by the Department.

Figure 3 shows the division of new license plate sales revenue among the State’s General Revenue Fund, My Plates, the Department’s \$8 cost recovery, and credit card processing fee (ePay Fee) from November 2014 through August 2018.

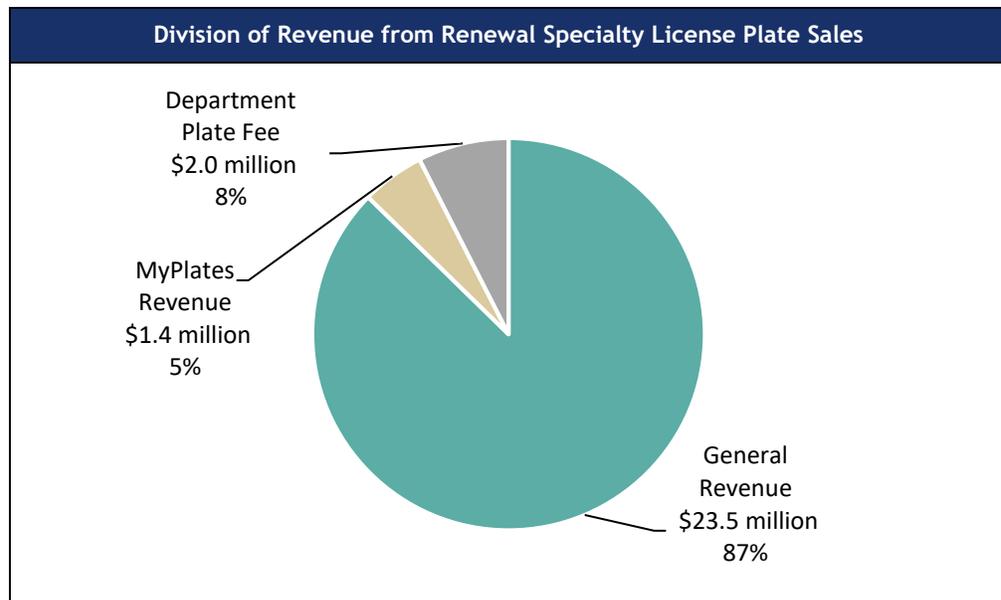
Figure 3



Source: The State Auditor’s Office created this figure based on unaudited license plate sales revenue data provided by the Department.

Figure 4 shows the division of license plate renewal revenue among the State’s General Revenue Fund, My Plates, and the Department’s \$8 cost recovery from November 2014 through August 2018.

Figure 4



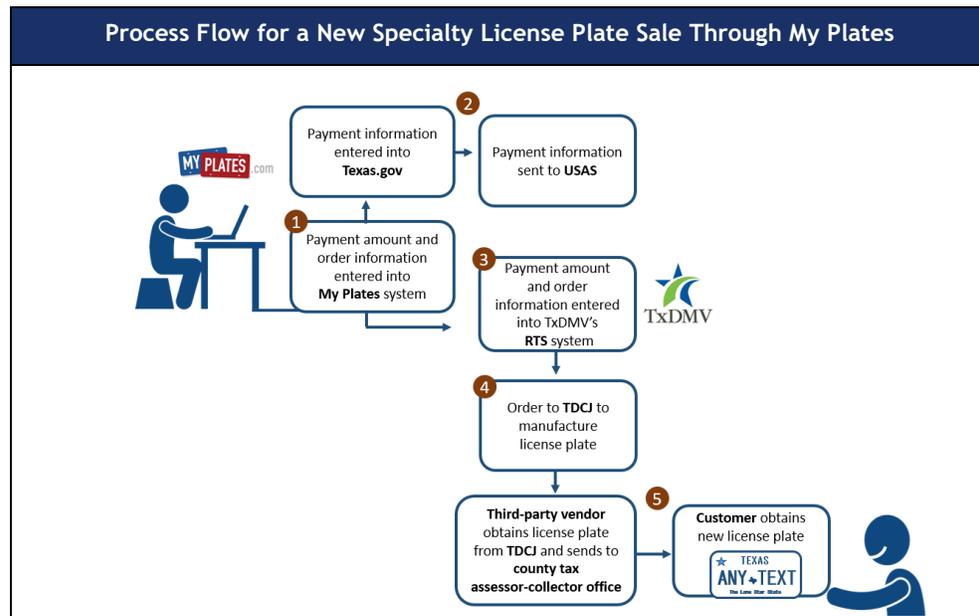
Source: The State Auditor’s Office created this figure based on unaudited license plate sales revenue data provided by the Department.

### Process Flow for a New Specialty License Plate Sale Through My Plates

Figure 5 shows the process flow for a new specialty license plate sale:

- 1 A customer purchases the license plate online through the My Plates Web site.
- 2 My Plates' Web site captures the order and customer information. The customer is redirected to the Texas.gov Web site to enter payment information. Payment information is sent from Texas.gov to the Uniform Statewide Accounting System (USAS).
- 3 The transaction (less the credit card information) is recorded in My Plates' system and downloaded into the Department's Registration and Titling System (RTS). (The Department receives sales transaction information from My Plates and RTS, and the revenue receipt information is available in USAS.)
- 4 The Texas Department of Criminal Justice (TDCJ) manufactures the license plate.
- 5 The Department contracts with a third-party vendor to obtain the license plate from TDCJ and ship the plate to the county tax assessor-collector office. The customer picks up the license plate from the county tax assessor-collector office.

Figure 5



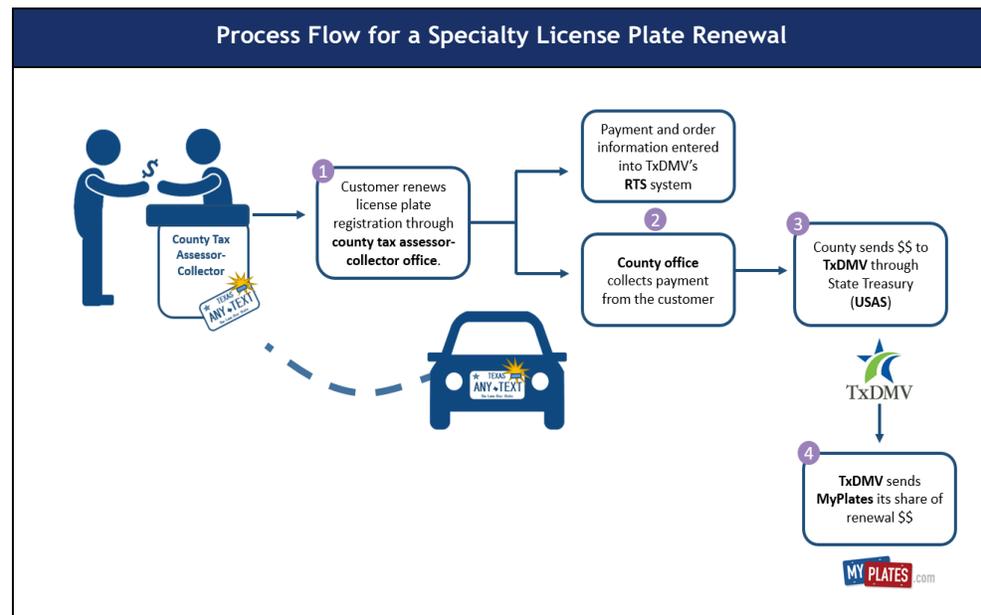
Source: The State Auditor's Office created this figure based on information from the Department.

### Process Flow for a Specialty License Plate Renewal

Figure 6 shows the process flow for a specialty license plate renewal:

- 1 A customer renews a specialty license plate through a county tax assessor-collector office.
- 2 The county tax assessor-collector office collects payment from the customer and updates RTS.
- 3 The county tax assessor-collector offices send the renewal payments to the Department through the State Treasury (USAS).
- 4 The Department sends payment to My Plates for its share of the renewal revenue.

Figure 6



Source: The State Auditor's Office created this figure based on information from the Department.

Copies of this report have been distributed to the following:

### Legislative Audit Committee

The Honorable Dan Patrick, Lieutenant Governor, Joint Chair

The Honorable Dennis Bonnen, Speaker of the House, Joint Chair

The Honorable Jane Nelson, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable John Zerwas, House Appropriations Committee

The Honorable Dustin Burrows, House Ways and Means Committee

### Office of the Governor

The Honorable Greg Abbott, Governor

### Department of Motor Vehicles

#### Members of the Department of Motor Vehicles Board

Mr. Raymond Palacios Jr., Chair

Mr. Guillermo "Memo" Treviño, Vice Chair

Mr. Robert "Barney" Barnwell III

Ms. Luanne Caraway

Mr. Brett Graham

Ms. Kate Hardy

Mr. Gary Painter

Mr. John Prewitt

Mr. Paul Scott

Ms. Whitney Brewster, Executive Director



This document is not copyrighted. Readers may make additional copies of this report as needed. In **addition, most State Auditor's Office reports may be downloaded from our Web site:** [www.sao.texas.gov](http://www.sao.texas.gov).

In compliance with the Americans with Disabilities Act, this document may also be requested in alternative formats. To do so, contact our report request line at (512) 936-9500 (Voice), (512) 936-9400 (FAX), 1-800-RELAY-TX (TDD), or visit the Robert E. Johnson Building, 1501 North Congress Avenue, Suite 4.224, Austin, Texas 78701.

**The State Auditor's Office is an equal opportunity employer and does not** discriminate on the basis of race, color, religion, sex, national origin, age, or disability in employment or in the provision of services, programs, or activities.

To report waste, fraud, or abuse in state government call the SAO Hotline: 1-800-TX-AUDIT.

**Glenn Hegar**

Texas Comptroller of Public Accounts

March 27, 2019

Linda Flores  
Chief Financial Officer  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, TX 78731-6007

Dear Ms. Flores:

As part of our data analysis initiative at the Fiscal Management Division of the Comptroller of Public Accounts (Comptroller's), we are conducting desk audits of certain agencies' activities based on analytical reports produced from the Uniform Statewide Accounting System (USAS). The purpose of this audit is to identify agencies with potential issues in the area of purchase of promotional items.

We have identified 146 transactions, totaling \$157,665.08 for the period 9/1/2015-8/31/2018, where your agency made expenditures to Comptroller Object Code 7309 – Promotional Items.

Please provide the following in response to this audit request:

1. A list of the types of promotional items that your agency may purchase.
2. The legal citation(s) of your agency's statutory authority to expense purchases using Object Code 7309. If there are multiple sections of a statute authorizing the purchases of different types of promotional items, please list them individually.
3. Your agency's written policies and procedures for the accounting and recording of expenditures related to promotional items. In particular, please describe your agency's procedures for making a determination on whether you have the statutory authority to purchase a good or service before entering into a purchase contract.

The information requested above should be provided to me via e-mail at [shanda.hernandez@cpa.texas.gov](mailto:shanda.hernandez@cpa.texas.gov) by **April 10, 2019**. Upon completion of our review, we may use this information to perform additional audit procedures. We will also notify you of any findings and any recommendations to prevent unauthorized purchases from being processed. Institution of higher education may be requested to refund general appropriations for any unallowable expenses.

If you have any questions, please contact me at 512-936-8489 or via email at [shanda.hernandez@cpa.texas.gov](mailto:shanda.hernandez@cpa.texas.gov).

Sincerely,



Shanda Hernandez, Expenditure Audit  
Fiscal Management Division



Comptroller.Texas.Gov  
P.O. Box 13528  
Austin, Texas 78711-3528

512-463-4444  
Toll Free: 1-800-531-5441 ext: 3-4444  
Fax: 512-463-4902

Attachments

cc: Michael Apperley, Manager, Statewide Fiscal Oversight, Fiscal Management Division  
Somaia Farag, Expenditure Audit Supervisor, Fiscal Management Division



DATE: May 2, 2019  
Action Requested: APPROVAL

**To: Texas Department of Motor Vehicles Board (TxDMV)**  
**From: Linda M. Flores, CPA, Chief Financial Officer**  
**Agenda Item: 8B**  
**Subject: Consider and take action to modify the November 13, 2016 Resolution Adopting Contract Approval Procedures**

### RECOMMENDATION

TxDMV staff recommends approval to modify the November 3, 2016 Resolution Adopting Contract Approval Procedures.

### PURPOSE AND EXECUTIVE SUMMARY

The agency modified contract approval procedures on November 3, 2016. It established amendments in accordance with established best practices with input and guidance from the Office of General Counsel. Revisions to the resolution include clarifications which further establish internal processes and requirements for the approval of contracts prior to award to a vendor. Key changes in the previous document are indicated below.

#### **The new proposal includes:**

- Current dates; and
- Adding security services to routine contracts exempted from board approval.

### FINANCIAL IMPACT

No financial impact is expected from this request.

### BACKGROUND AND DISCUSSION

Contract approval procedures were approved by the TxDMV Board on March 10, 2011. The procedures delegated authority for the Executive Director to approve and sign contracts on behalf of the department for procurements mandated by statute or use by other state agencies. It also specified that the Executive Director could execute contracts under \$200,000 within budget guidelines according to established procurement and contract laws, rules, regulations and policies of oversight agencies. The board authorized the Executive Director to adopt separate internal procedures and/or administrative rules to assist with the implementation of the resolution.

These procedures were modified on September 12, 2013, November 14, 2013 and November 3, 2016. The modifications were to clarify board approvals for contract renewals and/or change orders that exceed \$200,000; increase the original contract by 25 percent or more with a \$50,000 or more value; or increases the original contract by \$100,000 or more. The modification also reflected specific exemptions and a provision for the agency's annual budget document to include all agency contracts which are expected to exceed \$200,000 in the next fiscal year.

## BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

## CONTRACT APPROVAL PROCEDURES

Revised ~~November 03,~~  
~~2016~~ May 2, 2019

The Board of the Texas Department of Motor Vehicles (Board) finds it necessary to adopt procedures relating to contracts executed on behalf of the Texas Department of Motor Vehicles (department). The Executive Director (or designee) has the authority to sign and/or approve contracts on behalf of the department without Board approval, to the extent this contract approval procedures does not require prior Board approval and Board approval is not required by law. The Board authorizes the Executive Director to adopt separate internal procedures to assist with the implementation of this contract approval procedures.

**Procurement Process:**

The department may enter into the procurement process to acquire goods and/or services without consultation or prior Board approval provided that the department complies with the General Contract Approval procedures below.

**General Contract Approval:**

Department contracts must be submitted to the Board by the Executive Director (or designee) for review and approval prior to execution and/or award if:

- the contract or contract renewal exceeds \$200,000.
- a change order, individually or in combination with other change orders (other than the exercise of available renewal options), increases the original contract by twenty-five percent or more, as long as the dollar amount of the change order is \$50,000 or more.
- any change order, individually or in combination with other change order (other than the exercise of available renewal options), increases the original contract by \$100,000 or more.

At the discretion of the Executive Director (or designee), the department may request the Board consider any contract of any amount.

**Exclusions:**

The department is not required to obtain approval for any grants awarded to the department or awarded by the department or any contracts which do not obligate the department to pay, such as the contract for the TexasSure program.

The following department contracts are for routine operations and are excluded from the contract approval procedures listed above:

Statewide Procurement Division (SPD) Contracts	Lawn Services
Department of Information Resources (DIR) Contracts	Janitorial Services
Council on Competitive Government (CCG) Contracts	Vehicles
Hardware/Software Maintenance	Leased Copiers
Vehicle Registration Renewal Notices	Copier Maintenance
Vehicle Titles	Trash Disposal
TXMAS Contracts <sup>1</sup>	Interagency/Interlocal Agreements <sup>2</sup>
Registration Stickers	Software - Off-the shelf
Equipment Maintenance	Set-Aside Contracts <sup>3</sup>
Temporary Staff Services	Postage
<b>Security Services</b>	

### **Emergency Procurements:**

In the event a contract is needed on an emergency basis, the Executive Director (or designee) will contact the Board Chairman or the Finance and Audit Committee for approval to execute such a contract and will brief the full Board at the next regularly scheduled Board meeting.

An emergency procurement is an unforeseeable situation requiring a procurement and the possible execution and/or award of a contract to:

- prevent a hazard to life, health, safety, welfare, or property;
- avoid undue additional costs to the state; or
- avoid undue delay to any department operations.

### **Budgeting and Reporting:**

Even though the routine contracts listed above are excluded from Board review, the Executive Director (or designee) must still ensure that all contracts are within budget guidelines and adhere to all established procurement contract laws, rules, regulations and policies of oversight agencies.

No later than August 31<sup>st</sup> of each fiscal year, the Chief Financial Officer (or designee) shall submit to the Board an annual report which identifies all agency contracts which are expected to exceed \$200,000 in the next fiscal year. This report shall include, but not be limited to, vendor name, contract purpose, contract amount, and contract duration. Additionally, the Chief Financial Officer (or designee) shall state whether sufficient funds are available in the agency's proposed operating budget for such contracts.

<sup>1</sup> Texas Multiple Award Schedule (TXMAS) contracts are contracts that have been developed from contracts awarded by the federal government or any other governmental entity of any state.

<sup>2</sup> However, the interagency contract between TxDMV and the Texas Department of Transportation pursuant to House Bill 3097 from the 81<sup>st</sup> Regular Legislative Session and/or Senate Bill 1420 from the 82<sup>nd</sup> Regular Legislative Session is excluded from this exclusion. So the department must obtain Board approval for this contract prior to execution of such contract, to the extent the dollar amount triggers the requirement for Board approval.

<sup>3</sup> Set-aside contracts are a specific set of contracts for which a competitive procurement is not required, such as contracts for commodities or services that are available from Texas Correctional Industries and the Central Nonprofit Agency under contract with the Texas Workforce Commission (TWC). Currently, TIBH Industries, Inc. is the Central Nonprofit Agency under contract with TWC.

Funds for the department's contracts are first considered when the Board reviews and approves the department's operating budget. The Board's approval of the operating budget constitutes approval of any contracts listed in the operating budget. After the Board approves the operating budget, the department's Executive Director (or designee) is authorized to execute such contracts according to established procurement and contract laws, rules, regulations and policies of oversight agencies.

IT IS THEREFORE ORDERED by the Board that these contract approval procedures are adopted. The contract approval procedures dated ~~November 14, 2013~~ November 03, 2016, and titled *Board of the Texas Department of Motor Vehicles, Contract Approval Procedures* is rescinded, effective ~~November 03, 2016~~ May 2, 2019.

The Department is directed to take necessary steps to implement the actions authorized in this contract approval procedures.

~~November 03, 2016~~  
May 2, 2019

Chairman

Guillermo "Memo" Treviño, chair~~Raymond Palacios, Jr.,~~

Board of the Texas Department of Motor Vehicles

DATE: May 2, 2019  
Action Requested: Briefing

**To: Finance & Audit Committee - Texas Department of Motor Vehicles (TxDMV)**  
**From: Linda M. Flores, CPA, Chief Financial Officer**  
**Agenda Item: 8C**  
**Subject: Fiscal Year (FY) 2019 Second Quarter Financial Report**

Enclosed is the FY 2019 Second Quarter Financial Summary Report for the period ending February 28, 2019.

The TxDMV Board is briefed quarterly by staff on the revenue collections and agency expenditures. This report contains sections detailing year-to-date status as well as actuals versus projections of revenues and expenditures. The quarterly report includes a section dedicated to the TxDMV Fund.

#### EXECUTIVE SUMMARY

The department collected sufficient revenue through the second quarter of FY 2019 to support its expenditures during the same time period.

#### TOTAL REVENUES (All Funds)

Total revenue collections received by the TxDMV totaled \$889.1 million through the second quarter of FY 2019. This amount includes:

- \$751.92 million for the State Highway Fund (Fund 0006);
- \$ 54.67 million for the General Revenue Fund (Fund 0001); and
- \$ 82.50 million for the TxDMV Fund (Fund 0010).

Total deposits in all funds increased by 3.9% compared to FY 2018.

#### METHOD OF FINANCE

The TxDMV is self-sufficient and supports all of its expenditures through revenues deposited to TxDMV Fund 0010, with the exception of the Automobile Burglary and Theft Prevention Authority (ABTPA). ABTPA is fully funded through fees deposited to the credit of the General Revenue Fund.

#### TxDMV FUND REVENUES

Second quarter year-to-date collections for the TxDMV Fund 0010 totaled \$82,503,070. This amount comprises:

- \$76,507,743 in fee collection (including revenues from titles, registered vehicles, oversize/overweight permits, business dealer licenses and miscellaneous fees); and
- \$5,995,327 in collections of service fees for credit cards and Texas.gov (payment portal for online registration transactions).

Year-to-date through February 2019, collections for TxDMV Fund fee revenues were 1.8% higher than the previous fiscal year. The major drivers for higher revenue collections were motor vehicle registrations, oversize/overweight permits, and increased TxDMV Fund interest.



### **MyPlates STATUS**

For the quarter ending February 2019, \$6.5 million in deposits has been processed for vendor specialty plates. General Revenue Fund deposits associated with the MyPlates contract from November 2014 to February 2019 (since the contract's inception) totaled \$50.2 million. The year-to-date deposits, since the contract began, exceeded the \$15 million contract guarantee by \$35.2 million. New plates for this quarter included the addition of the Texas State Rifle Association plate.

### **EXPENDITURES/OBLIGATIONS**

Overall, year-to-date obligations through February 28, 2019 totaled \$110.6 million (\$55.5 million in expenditures, obligations of \$6 million for online service fees, and \$49.1 million in encumbrances). Significant expenditure categories continue to include salaries, contract services for plate production, printing costs for Vehicle Titles and Registration forms, postage, and Data Center Services costs. Included in expenditures is approximately \$2.3 million for contract payments to the MyPlates vendor. Contract payments to the MyPlates vendor are contingent upon revenues collected.

Included in the capital project budget status are expenditures of approximately \$5.6 million, encumbrances of approximately \$12.5 million, for a total obligated amount of \$18.1 million. This includes \$10.2 million in obligations associated with Data Center Services, \$5.1 million in Automation obligations, \$1.9 million in County Technology projects, \$188K in Agency Growth and Enhancement, and \$314K for Agency vehicles.

At the end of the second quarter, staff began the Mid-Year review process. The Mid-Year review is an estimate of anticipated year-end balances available to be reallocated to address agency needs. A preliminary list of requests has been developed and budget staff are in the process of developing recommendations.



# Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

---

## FY 2019 Financial Summary for the Second Quarter ending February 28, 2019

**Finance and Administrative Services Division**

**May 2, 2019**



**Texas Department of Motor Vehicles**  
HELPING TEXANS GO. HELPING TEXAS GROW.

**Quarter to Quarter Comparisons  
Actual Revenue (All Funds)**

# All Funds Revenue Collections by the TxDMV

## Year-to-Date (YTD) Second Quarter FY 2018 vs YTD Second Quarter FY 2019 Actual Revenue All Funds through February

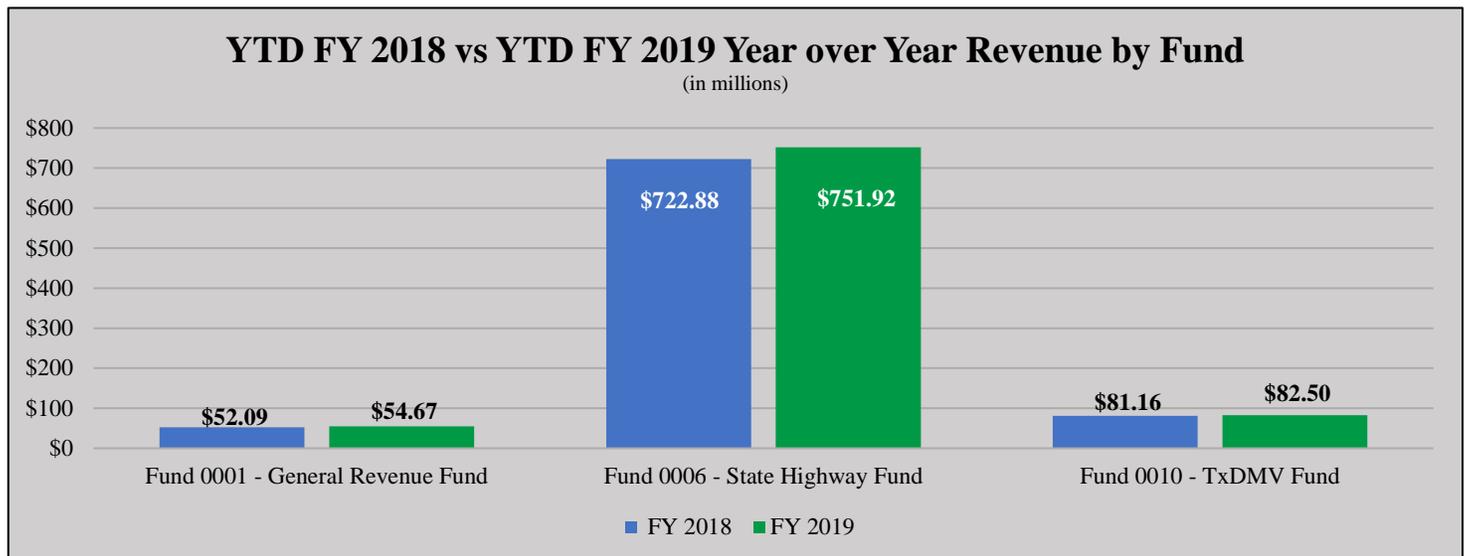
TxDMV collects revenues from registrations, dealer licenses, oversize/overweight permits, motor carrier credentials, and other fees for deposit into the:

General Revenue (GR) Fund (Fund 0001)

State Highway Fund (Fund 0006)

TxDMV Fund (Fund 0010)

Total revenue collections were \$889.1 million through the second quarter of FY 2019.



### Key items of note:

- Revenue collections have been positively impacted by a strong Texas economy and continued growth across the state. Overall, year-to-date FY 2019 revenue collections deposited to the TxDMV Fund (Fund 0010), the State Highway Fund (Fund 0006), and the General Revenue Fund (Fund 0001) increased by 3.9% (\$32.98 million) from FY 2018.
- The largest component of the Fund 0006 revenue increase is from motor vehicle registrations, which increased by \$21.8 million and was 3.3% more than the same time period of FY 2018. As the state continues to add residents, the number of registered vehicles continues to trend upward.
- Economic growth has fueled increased demand for larger vehicles, which pay higher registration fees, as well as oversize/overweight permits. Oversize/overweight permits increased by 13.1% from FY 2018 in all three funds.



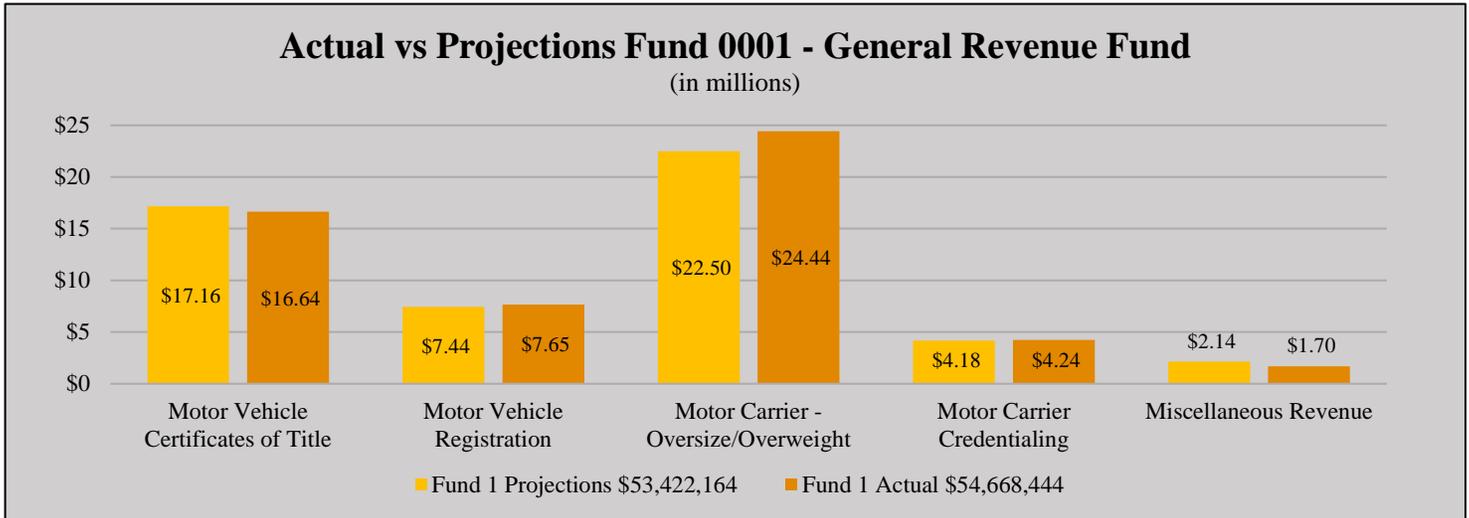
Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

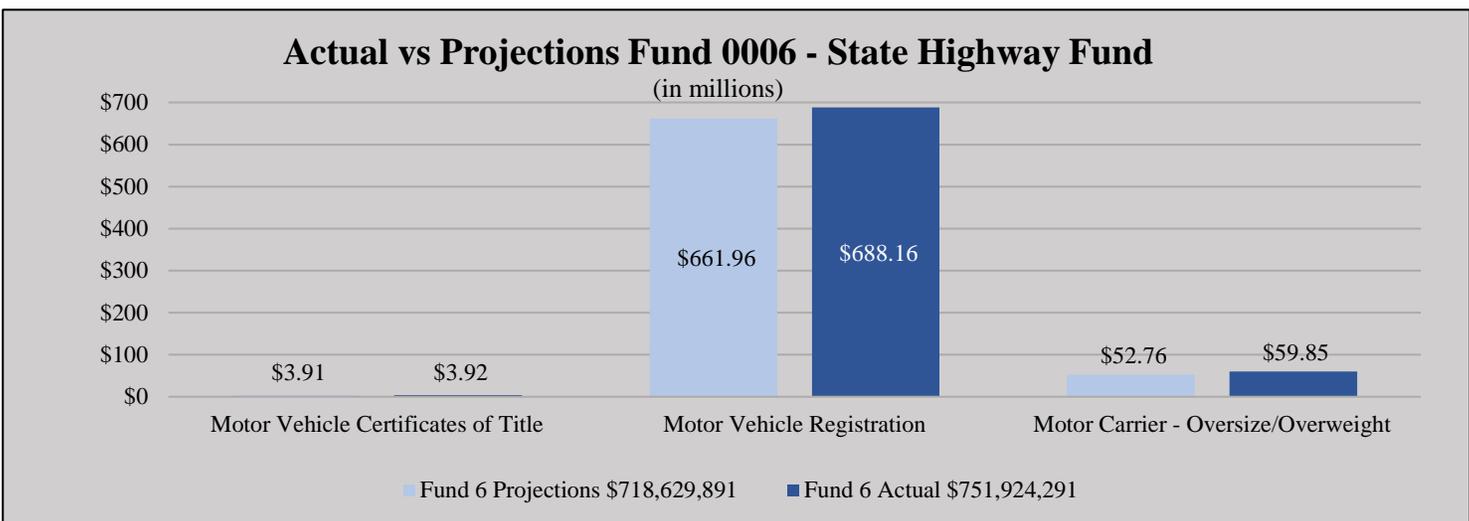
Comparison of Actual to Projections  
General Revenue and State Highway  
Funds

# General Revenue Fund and the State Highway Fund

## Year-to-Date (YTD) Revenue Actual vs Projections through February 2019



- Year-to-date FY 2019 revenue collections from title fees were 3.1% (\$525,148) lower than projections, returning to more historical levels following the FY 2018 spike as a result of vehicles damaged by Hurricane Harvey.
- Motor vehicle registration includes \$6.5 million in revenue deposits generated through the specialty plate contract with MyPlates. The current contract, which was renewed in November 2014 and expires in November 2019, has generated \$50.2 million in Fund 0001 revenue. Plate offerings continue to expand with the addition of the Texas State Rifle Association plate, in the second quarter of 2019.
- Oversize/overweight permit issuance continues to increase due to favorable economic conditions. Permit revenue was 8.6% (\$1,941,020) over projections.



- Fiscal year-to-date, the department has collected \$751.9 million in State Highway Fund revenue, which is 2.4% over projections.
- The majority of Fund 0006 revenue (91.5%) is from motor vehicle registrations. The number of registered vehicles continues to increase in line with the state population growth.



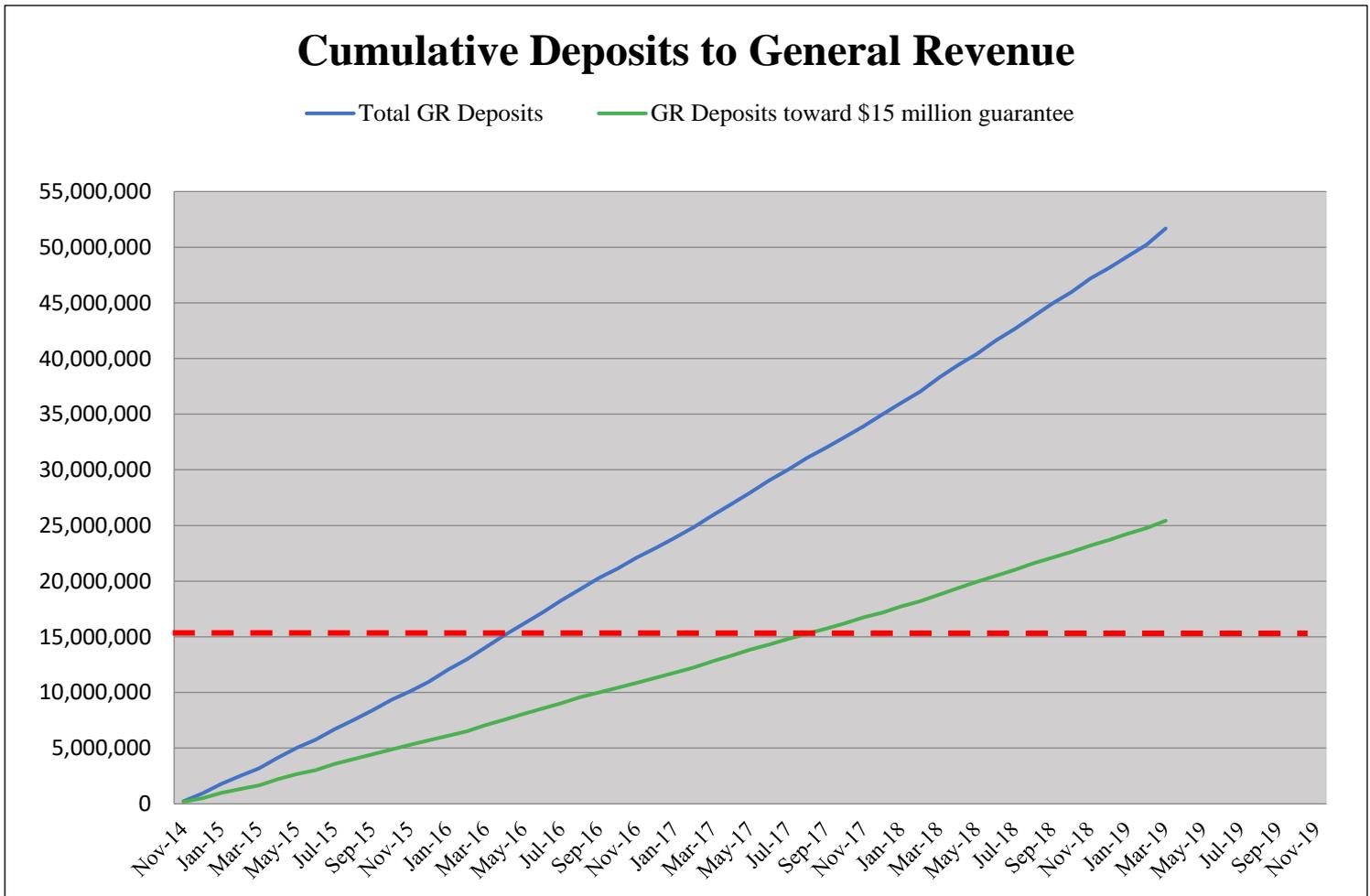
Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

## Vendor License Plate Revenue

Section 504.851 of the Texas Transportation Code allows the Texas Department of Motor Vehicles to enter into a contract with a private vendor to market and sell specialty license plates for issuance on non-commercial vehicles registered in Texas. In 2014, the department awarded a second five-year contract to MyPlates, which continues sales from November 2014 to November 2019. Texas was the first state to hire a private vendor to sell specialty plates. The program offers an opportunity for motorists to add individual expression and creativity to their vehicles. The department’s governing board must approve all plate designs and prices. Department oversight ensures that MyPlates provides a quality product at a reasonable price that maximizes revenue gain to the State.

All plates are made at the Wynne Correctional Unit in Huntsville (operated by the Texas Department of Criminal Justice). Plates are available in a variety of Texas themes and colors, meet strict design specifications, and contain law-enforcement security features.



- Through February 2019, cumulative vendor deposits to the General Revenue Fund under the renewed contract totaled \$50,235,727.
- MyPlates met the \$15 million contractual guarantee the third week of August 2017.
- General Revenue Fund deposits from the sale of vendor specialty plates are determined by plate type and plate term with the State receiving 40% from all plates of one year, 95% of all renewal sales, 60% of all auction sales, 60% from all plates sales with a term of greater than one year, and 10% of all ancillary products.



**Texas Department of Motor Vehicles**  
HELPING TEXANS GO. HELPING TEXAS GROW.

**TxDMV Fund 0010 Financial  
Status Highlights**

# TxDMV Fund 0010 Financial Status Highlights Year-To-Date (YTD) Fiscal Year 2019

<i><b>Fund 0010 Revenue</b></i>	<b>Year-to-date</b>
Motor Vehicle Certificates of Title	\$ 19,849,785
Motor Vehicle Registration	\$ 17,073,821
Motor Carrier - Oversize/Overweight	\$ 8,113,910
Business Dealer Licenses	\$ 3,889,825
Miscellaneous Revenue	\$ 2,435,866
Processing and Handling Fee	\$ 25,144,536
<b>Total Fee Collections (Subtotal)</b>	<b>\$ 76,507,743</b>
Service Fees (Texas.gov, Credit Card Fees)	\$ 5,995,327
<b>Total Revenue Available</b>	<b>\$ 82,503,070</b>
<i><b>Fund 0010 Expenditures</b></i>	
TxDMV Operational Expenditures	\$ 47,894,948
Fringe Benefits	\$ 6,021,289
Service Fees (Texas.gov, Credit Card Fees)	\$ 5,995,327
<b>Total Operational Expenditures</b>	<b>\$ 59,911,564</b>



- The department's revenue covered the department's expenditures.
- The inclusion of revenue from antique license plates has positively impacted TxDMV Fund registration revenue collections. This was the result of the redirection of fee collections from the State Highway Fund to the TxDMV Fund beginning in late FY 2018.
- A robust Texas economy has resulted in an increased issuance of oversize/overweight permits, primarily related to the state's oil and gas industry.
- The TxDMV Fund balance at the end of the second quarter is \$108.3 million. This balance includes the FY 2019 beginning balance of \$85.7 million.

<b>TxDMV Fund Balance</b>	
<b>FY 2019 Beginning Fund Balance</b>	<b>\$ 85,746,398</b>
Revenue	\$ 82,503,070
less Expenditures	\$ 59,911,564
<b>Ending Fund Balance</b>	<b>\$ 108,337,904</b>



**Texas Department *of* Motor Vehicles**  
HELPING TEXANS GO. HELPING TEXAS GROW.

**TxDMV Fund 0010 Details**

## YTD Second Quarter FY 2019 vs YTD Second Quarter FY 2018 TxDMV Fund Actual Revenue

Revenue Category	Year over Year			
	FY 2018 Actual	FY 2019 Actual	% Difference	
Motor Vehicle Certificates of Title	\$ 20,495,082	\$ 19,849,785	-3.1%	↓
Motor Vehicle Registration	16,035,971	17,073,821	6.5%	↑
Motor Carrier Oversize/Overweight	6,774,172	8,113,910	19.8%	↑
Business Dealer Licenses	3,944,172	3,889,825	-1.4%	↓
Miscellaneous Revenue	1,652,284	2,435,866	47.4%	↑
Processing and Handling Fee	26,640,398	25,144,536	-5.6%	↓
<b>Subtotal</b>	<b>\$ 75,542,079</b>	<b>\$ 76,507,743</b>	<b>1.3%</b>	↑
Service Fees	\$ 5,538,935	\$ 5,995,327	8.2%	↑
<b>Total</b>	<b>\$ 81,081,014</b>	<b>\$ 82,503,070</b>	<b>1.8%</b>	↑

- FY 2019 certificate of title revenue is down 3.1% from FY 2018, returning to normal levels after an uptick in salvage-title transactions as a result of vehicles damaged by Hurricane Harvey and higher auto sales in FY 2018.
- Business dealer license revenue was down 1.4% (\$54,347) compared to FY 2018, mostly resulting from typical fluctuations in the general distinguishing numbers (GDNs) fee.
- The largest component of the TxDMV Fund is the processing and handling (P&H) fee, contributing 32.9% of the revenue collected. P&H fee collections were less this year primarily because of the discontinuance of online 30-day and one-trip temporary permits, as detailed on the next page. P&H fee revenue is expected, however, to meet the FY 2019 projections.

Revenue Category	Projections vs Actuals			
	FY 2019 Projections	FY 2019 Actual	% Difference	
Motor Vehicle Certificates of Title	\$ 19,201,565	\$ 19,849,785	3.4%	↑
Motor Vehicle Registration	15,583,517	17,073,821	9.6%	↑
Motor Carrier Oversize/Overweight	6,944,864	8,113,910	16.8%	↑
Business Dealer Licenses	4,001,915	3,889,825	-2.8%	↓
Miscellaneous Revenue	1,579,000	2,435,866	54.3%	↑
Processing and Handling Fee	25,782,600	25,144,536	-2.5%	↓
<b>Subtotal</b>	<b>\$ 73,093,461</b>	<b>\$ 76,507,743</b>	<b>4.7%</b>	↑
Service Fees	\$ 5,614,531	\$ 5,995,327	6.8%	↑
<b>Total</b>	<b>\$ 78,707,992</b>	<b>\$ 82,503,070</b>	<b>4.8%</b>	↑

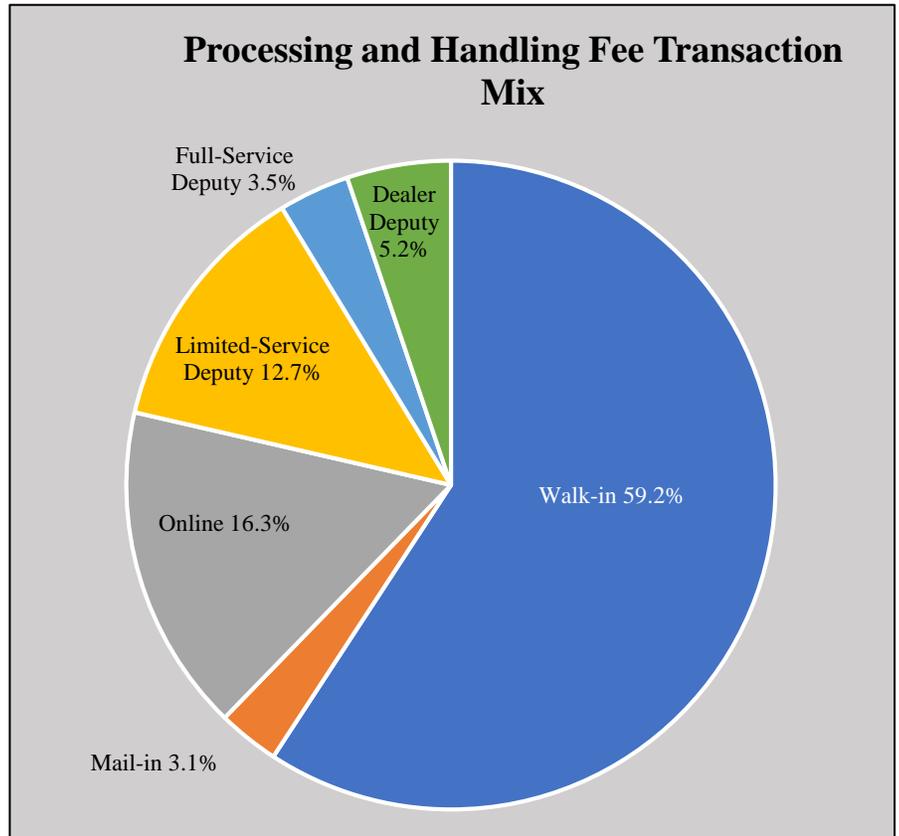
- As of February, actual revenue collections are in line with projections, and P&H fee projections are expected to be met at the end of the fiscal year, as well.
- Miscellaneous revenue continues to reflect a significant revenue increase compared to the same period last year. The largest component of year-to-date miscellaneous revenue is interest on the TxDMV Fund (\$1,191,725). This revenue exceeded projections due to a higher than expected fund balance and interest rate increase (interest rate in 2018 was an average of 1.45% versus 2.37% in 2019). About three times as much interest revenue was received in FY 2019 than in the same period last fiscal year.

# TxDMV Fund 0010 Highlights

## YTD Second Quarter TxDMV 0010 Fund Activity Highlights Processing and Handling Fee

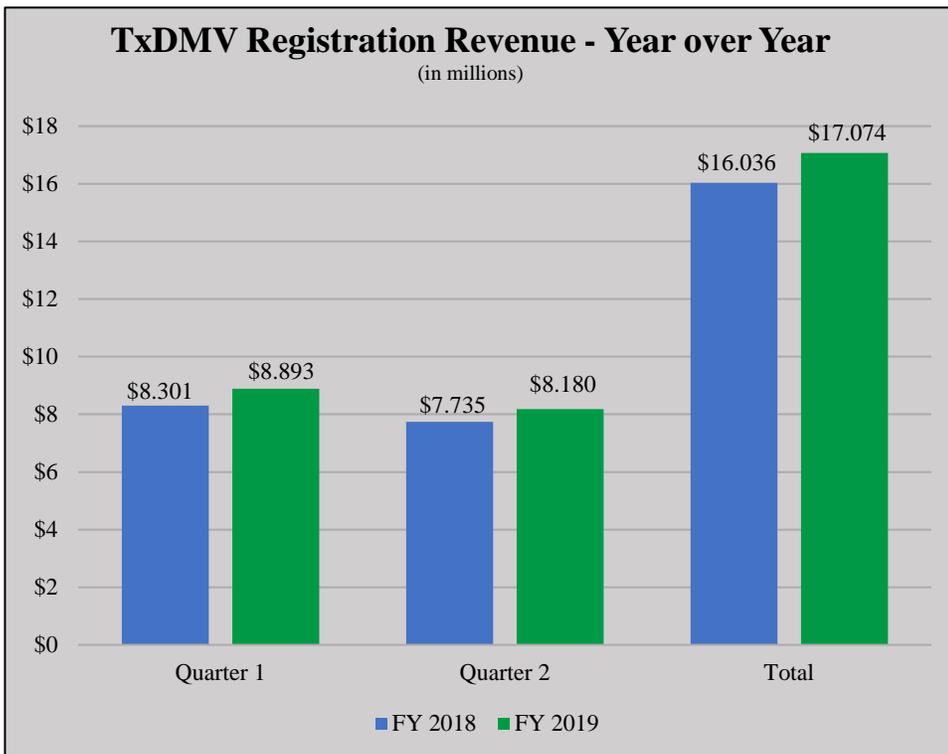
**FY 2019 Processing and Handling Revenue through February: \$25,144,536**

- The majority (59.2%) of transactions were completed at a county office. Year-to-date online utilization was approximately 16.3%, a 1.3 percentage-point increase from YTD FY 2018.
- In FY 2018, TxDMV became aware of unauthorized use of online 30-day and one-trip temporary permits, and discontinued those particular transactions in the fourth quarter of the fiscal year; the discontinuation remains in effect. This resulted in a reduction of revenue when comparing the second quarter of FY 2019 to the same period of FY 2018. The department will reconsider online 30-day and one-trip temporary permits when additional security measures can be implemented.



## Motor Vehicle Registration

**FY 2019 Registration Revenue through February: \$17,073,821**



- Year-to-date FY 2019 registration revenue was 6.5% (\$1,037,850) higher than FY 2018 collections.
- The major increase in registration was due to the antique plate fee revenue, which is approximately \$750,000 year-to-date that is now being deposited to Fund 0010 instead of Fund 0006.
- The number of registered vehicles continues to trend upward as the state continues to add residents. Population rose 1.41% from 2017 to 2018 and is expected to grow 1.39% in 2019.

# TxDMV Fund 0010 Highlights

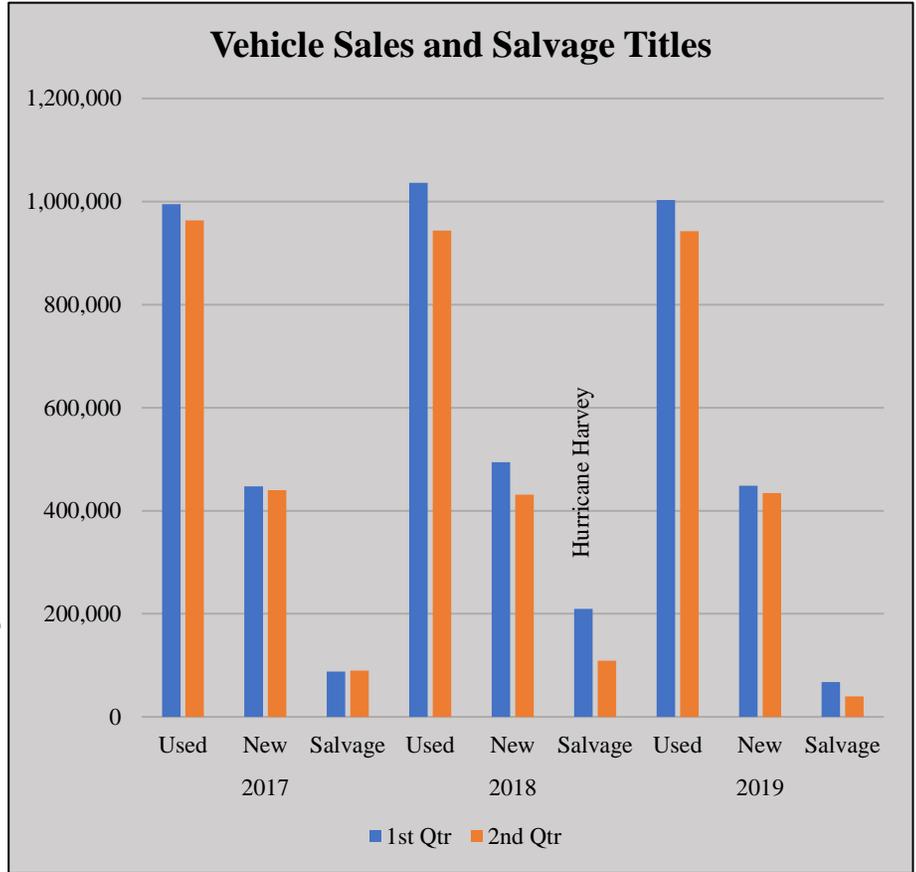
## YTD Second Quarter TxDMV Fund 0010 Activity Highlights Motor Vehicle Certificates of Title

**FY 2019 Certificates of Title Revenue through February: \$19,849,785**

➤ FY 2019 TxDMV Fund certificates of title revenue was down 3.1% compared to FY 2018. There was a spike in title transactions in FY 2018 as result of damage caused by Hurricane Harvey. FY 2019 revenue has returned to more historical levels.

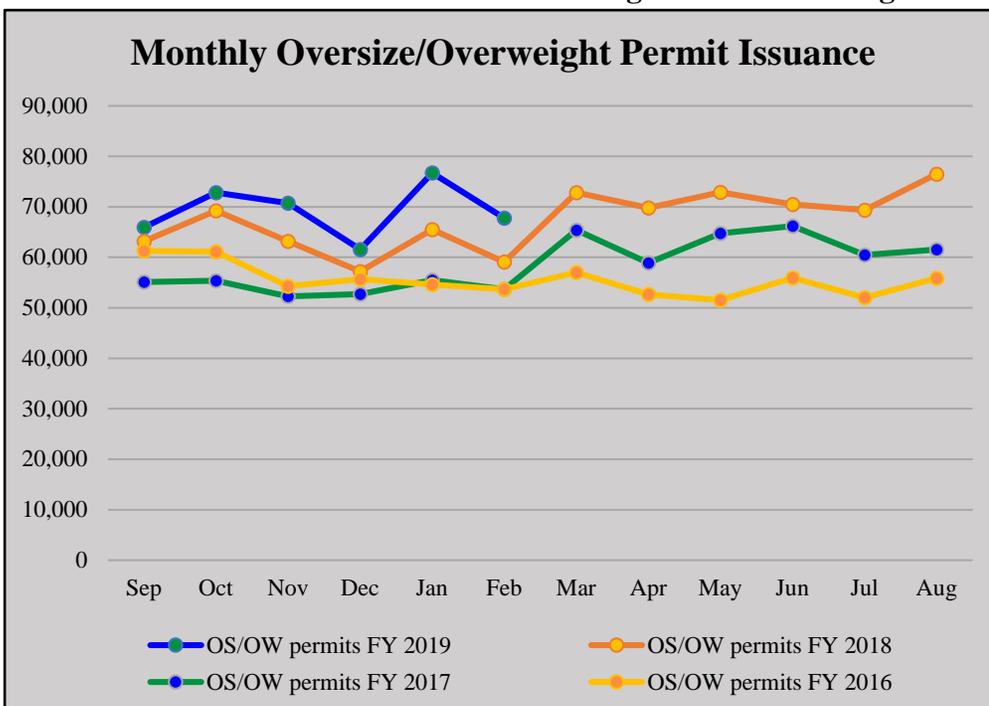
➤ Revenue from the original-title fee makes up the largest component of certificates of title revenue. Year-to-date, revenue was collected from the issuance of approximately 3.1 million original titles. Original-title issuance is driven by new and used vehicle sales.

➤ Through the second quarter, compared to FY 2018, year-to-date auto sales decreased by 2.7%, with used-car sales down 1.8% and new-car sales down 4.6%, all contributing to a decline in revenue.



## Motor Carrier Oversize/Overweight

**FY 2019 Oversize/Overweight Revenue through February: \$8,113,910**



➤ Oversize/overweight permit issuance continues to trend upward due to an increase in construction activity and the export of oil and gas. TxDMV Fund year-to-date revenue from oversize/overweight permits increased 19.8% compared to last year.

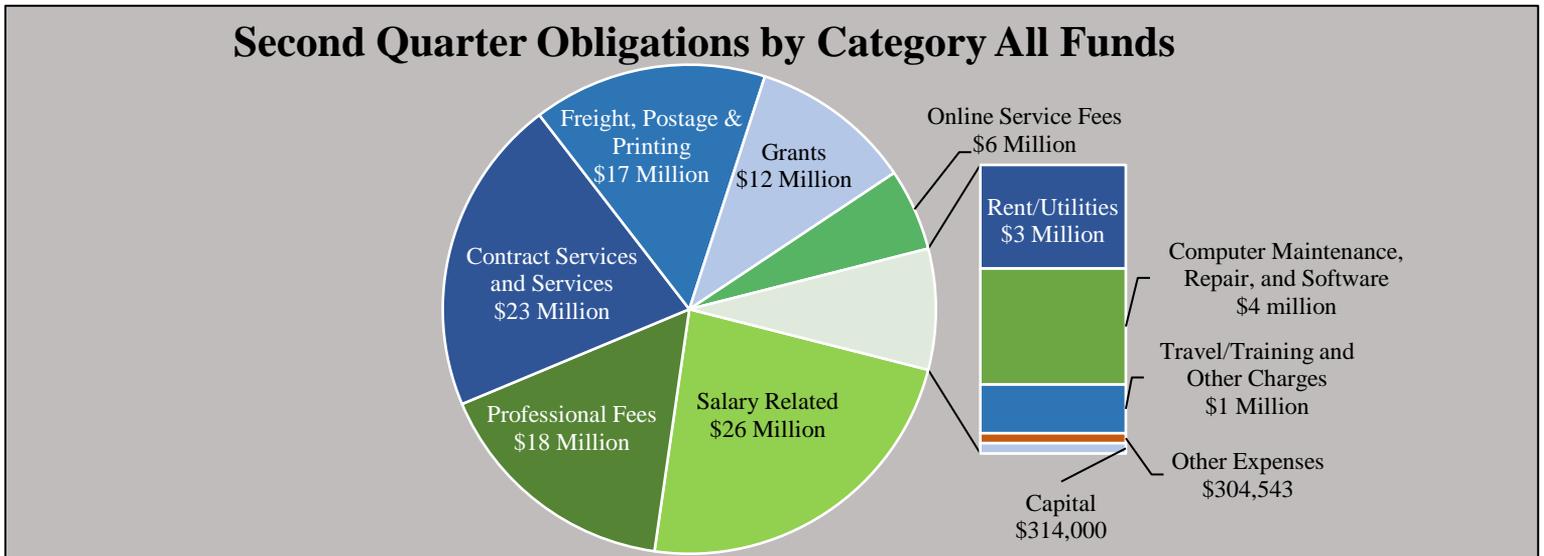
➤ Year-to-date FY 2019, 415,624 oversize/overweight permits were issued, a 10.1% increase over FY 2018.



**Texas Department *of* Motor Vehicles**  
HELPING TEXANS GO. HELPING TEXAS GROW.

**TxDMV Budget**

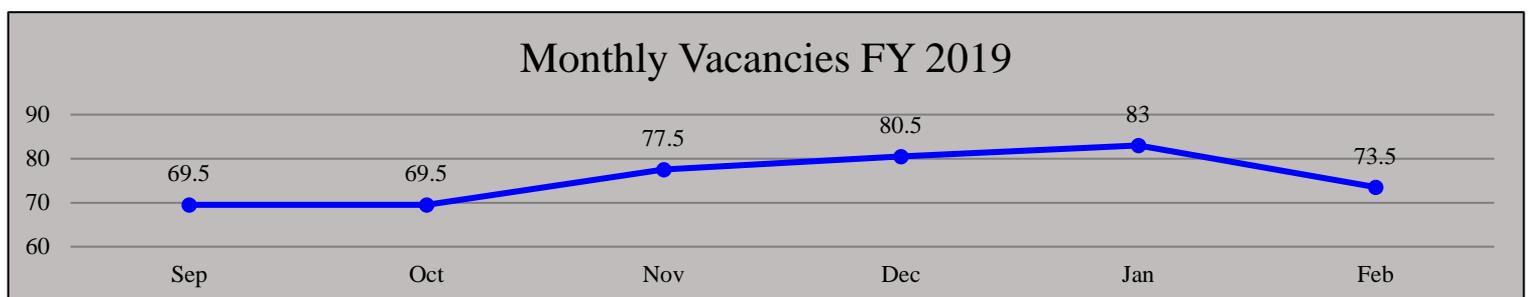
- Second quarter TxDMV obligations totaled \$110.6 million (expenditures of \$55.5 million, obligations of \$6.0 million for online service fees, and \$49.1 million in encumbrances).



- Major year-to-date obligations in FY 2019 are listed in the table above. Obligations for freight/postage/printing (primarily printing/postage), contract services, professional fees, salary related and grants constitute 89% of the departments obligations as of the end of the 2nd quarter.
- Printing expenditures are primarily for titling and registration forms and imaging costs. Contract services includes costs of license plate production, registration decal production, and MyPlates contract obligations. Professional fees are associated with data center services and capital project contractors working on agency technology initiatives.
- Staff began the mid-year review process at the end of the second quarter. The mid-year review is a process to estimate anticipated year-end balances available to be reallocated to address agency needs. A preliminary list of requests has been compiled and budget staff are in the process of developing recommendations.

## YTD Second Quarter Full Time Employees

- Vacancies decreased at the end of the second quarter as compared to the end of the first quarter of FY 2019.
- Overall filled positions have remained constant from 707 Full Time Employees (FTEs) in February 2018 to 706 FTEs as of February 2019.
- The second phase of the Information Technology Services Division (ITSD) reorganization was implemented through the consolidation of the Enterprise Project Management Office (EPMO) with ITSD. Seventeen (17) FTEs were moved to ITSD to improve the integration between project initiatives and information technology services.



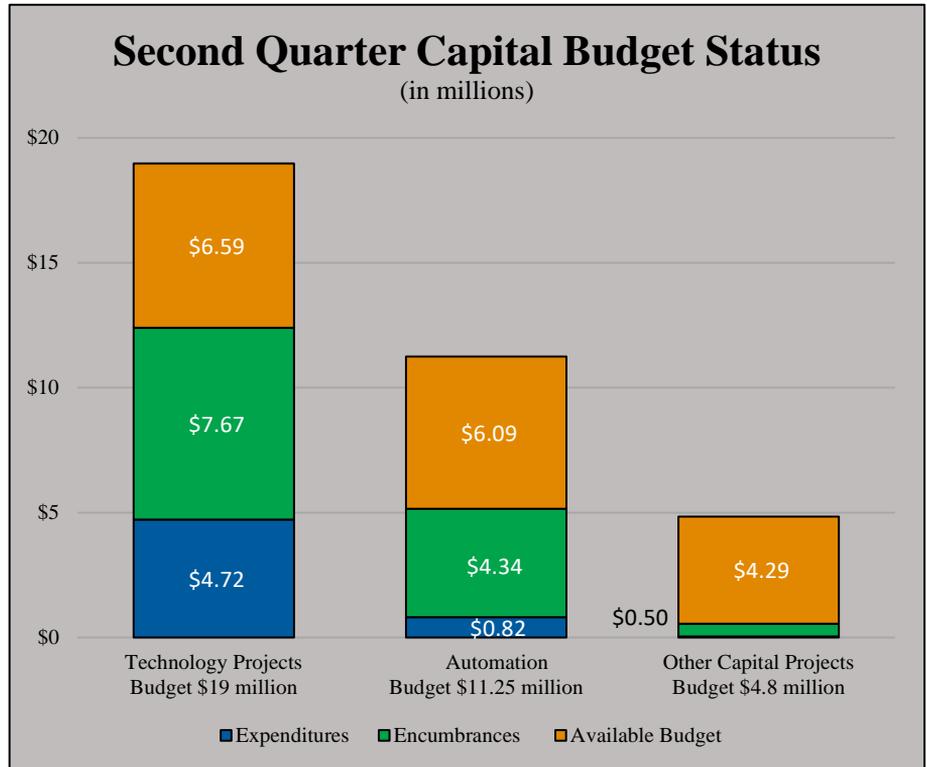
## YTD Second Quarter Capital Budget and Projects

### Capital Project Budget Status

	Revised Budget	Expenditures	Encumbrances	Available Budget
<b>Technology</b>	\$ 18,979,995	\$ 4,724,514	\$ 7,670,068	\$ 6,585,413
<b>Automation</b>	\$ 11,249,322	\$ 815,550	\$ 4,340,580	\$ 6,093,192
<b>Other Capital Project</b>	\$ 4,839,505	\$ 46,782	\$ 498,441	\$ 4,294,282
<b>All Capital Grand Total</b>	<b>\$ 35,068,822</b>	<b>\$ 5,586,846</b>	<b>\$ 12,509,089</b>	<b>\$ 16,972,887</b>

### Capital Budget Status

- The capital budget totals \$35,068,822.
- Expenditures of \$5.6 million and encumbrances of \$12.5 million total obligations of \$18.1 million.
- The budget for capital consists of \$15.2 million carried forward from FY 2018; \$15.6 million in new appropriations; and \$4.2 million transferred from operating categories for the HQ Maintenance project. The HQ Maintenance is contained in the "Other Capital Project" line item.
- Detailed information on Technology Projects is shown below, and Automation and Other Capital Project information is on Page 14.

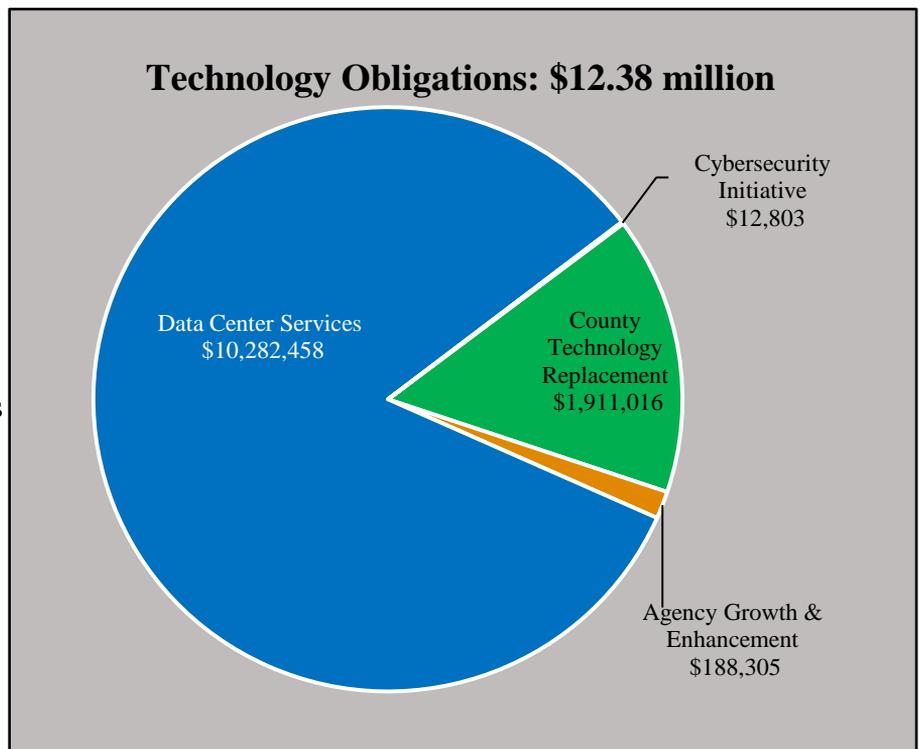


## YTD Second Quarter Technology Capital Projects

### Technology Highlights

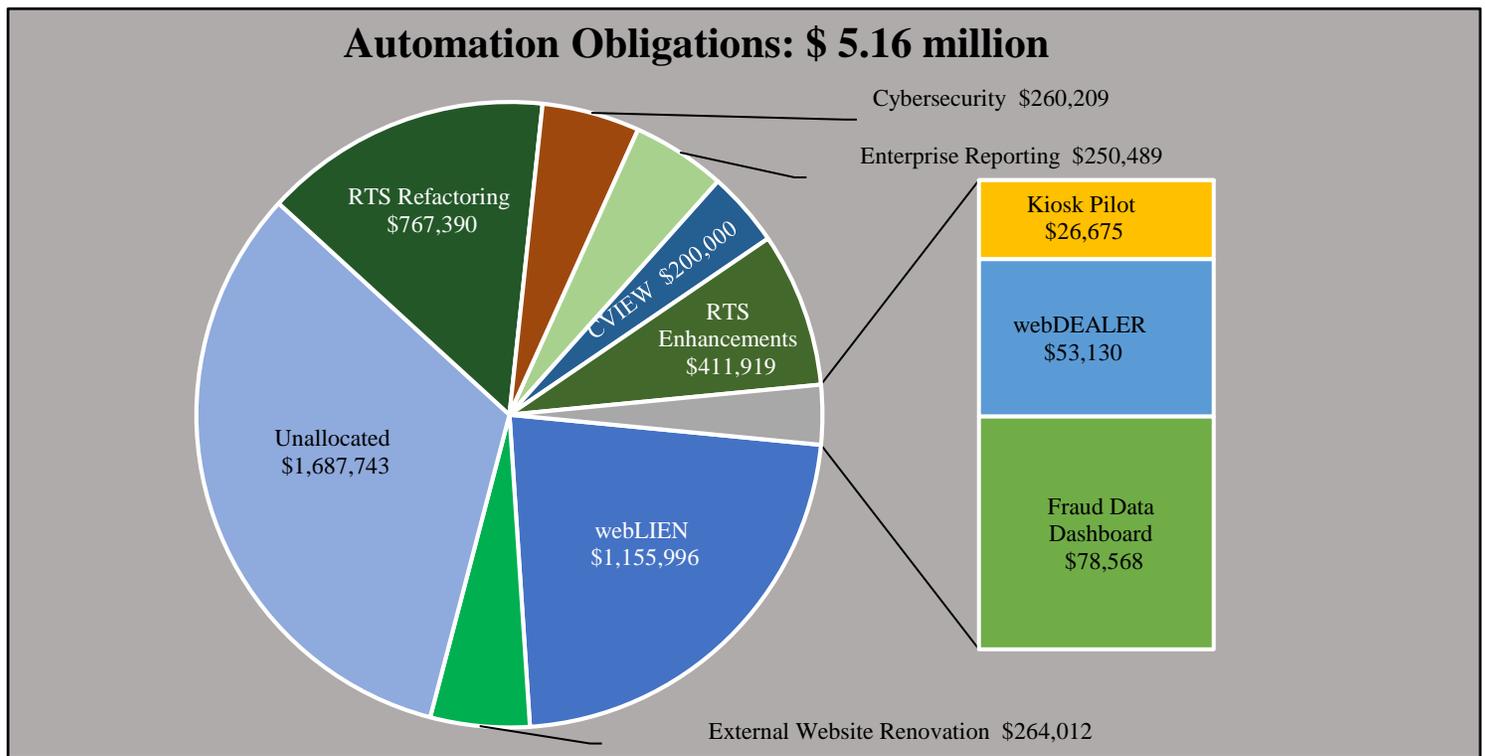
The obligations in the Technology category consists of:

- Data Center Services (DCS), the largest component (\$10.2 million), provides management of applications, hardware, and technology services for TxDMV.
- County Technology Replacement comprises \$1.9 million of the revised budget. Obligations consist of support to the counties such as toner, tech support and software upgrades.
- Agency Growth & Enhancement obligations of \$188K provide technology equipment and services for agency operations.



# TxDMV Capital Projects

## YTD Second Quarter Automation Capital Projects



- The TxDMV Automation Project consists of \$5.16 million in obligations. The primary obligations are for webLIEN, Registration and Titling System (RTS) Refactoring, RTS Enhancements, and future Automation initiatives.
- FY 2019 also includes the final year of the RTS Refactoring project; the project is in the final stages and will transition to maintenance in the second half of FY 2019.
- The External Website Renovation contract was awarded in February 2019 and the expected release date is October 2019. All stakeholders for the website are currently providing input as the renovation will update the department's public-facing website in appearance and functionality.

## YTD Second Quarter Other Capital Projects

- Other Capital Projects budget of 4.8 million consists of: \$325K for Agency Vehicles, \$305K for HQ Security/Badge, and \$4.2 million for HQ maintenance.
- HQ maintenance has no obligations as of February 28, 2019. Weatherization, roof replacement, and Security & Badge system projects have entered the planning phase and will be completed in FY 2020.
- TxDMV continues to collaborate with TxDOT on needed repairs and renovations in buildings occupied by TxDMV. Three new positions were approved by the 85<sup>th</sup> Legislature to facilitate the assumption of maintenance and repairs by TxDMV. The new staff will begin these responsibilities in April 2019.



# Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

# **Budget Terms and Definitions**

**Annual Operating Budget** – An agency’s approved Annual Operating Budget represents a one-year financial plan supporting the agency’s business operations and addresses base operating requirements and adjustments. The budget covers funding for each division and reflects the most appropriate method of finance and strategy for core activities and continuing programs. The TxDMV Recommended Annual Operating Budget reflects Fiscal Year 2019 appropriations as identified S.B. 1, 85<sup>th</sup> Legislature, Regular Session, GAA. The agency’s final Annual Operating Budget covers a one-year period from September 1 through August 31.

**Appropriated** – Refers to the dollars or associated full-time equivalent (FTE) positions authorized for specific fiscal years and the provisions for spending authority.

**Appropriation Year (AY)** – Refers to the specific fiscal year for which an appropriation is made. The appropriation year dictates the year to which the expenditure is authorized/charged.

**Base Request** – The base request represents the basis for the agency’s biennial budget. The base request cannot exceed the appropriated amount established by the legislature through the prior biennial GAA, adjusted for Article IX appropriation reductions.

**Benefit Replacement Pay** – Benefit Replacement Pay (BRP) is compensation authorized by the Texas Legislature to offset the loss of state-paid Social Security contributions. S.B.102, 74<sup>th</sup> Legislature eliminated the state-paid Social Security payment effective December 31, 1995. After this date, eligible employees began receiving a supplement known as Benefit Replacement Pay (BRP) in place of the state-paid Social Security payment. Eligible employees include those that were employed by the state and subject to FICA taxes on August 31, 1995, and have been continuously employed by the state since that date; employees that left the state but returned within 30 consecutive calendar days and those that retired before June 1, 2005, and returned to work with the state before September 30, 2005.

**Biennium** – Two-year funding cycle for legislative appropriations.

**Capital Budget** – The portion of an agency’s appropriation that is restricted to expenditures for designated capital construction projects or capital acquisitions.

**Centralized Accounting and Payroll/Personnel System (CAPPS)** – CAPPS is the official name of the statewide Enterprise Resource Planning (ERP) system created by the Comptroller’s of Public Accounts (CPA) office ProjectONE team. CAPPS will replace legacy systems with a single software solution for financial and Human Resources (HR)/Payroll Administration for Texas state agencies. The modules for TxDMV’s CAPPS include: Asset Management; General Ledger/Commitment Control (Budget); Payables; Purchasing/eProcurement; HR and Payroll Administration.

# Budget Terms and Definitions

**Expended** – Refers to the actual dollars or positions utilized by an agency or institution during a completed fiscal year; a goal or strategy; an object of expense; or an amount from a particular method of finance.

**Federal Funds/Grants** – Funds received from the United States government by state agencies and institutions that are appropriated to those agencies for the purposes for which the federal grant, allocation, payment or reimbursement was made.

**Fiscal Year (FY)** – September 1 through August 31 and specified by the calendar year in which the fiscal year end e.g. fiscal year 2019 runs from September 1, 2018 through August 31, 2019.

**Full-Time Equivalents (FTEs)** – Units of measure that represent the monthly average number of state personnel working 40 hours per week.

**General Appropriations Act (GAA)** – The law that appropriates biennial funding to state agencies for specific fiscal years and sets provisions for spending authority.

**General Revenue (GR) Fund** – The fund (Fund 0001) that receives state tax revenues and fees considered available for general spending purposes and certified as such by the Comptroller of Public Accounts.

**Lapsed Funds** – The unobligated balance in an item of appropriation that has not been encumbered at the end of a fiscal year or at the end of the biennium. Appropriations expire if they are not: 1) obligated by August 31 of the appropriation year in which they were made or, 2) expended within two years following the last day of the annual year.

**Line-item** – An element of spending authority granted to an agency or institution in an appropriations bill. It is literally, a line in the General Appropriations Act specifying an agency's appropriations for a specific designated use. In Texas, the governor may veto a line-item.

**Method of Finance** – This term usually appears as a heading for a table that lists the sources and amounts authorized for financing certain expenditures or appropriations made in the General Appropriations Act (GAA). A source is either a "fund" or "account" established by the comptroller or a category of revenues or receipts (e.g. federal funds).

**Rider** – A legislative directive or appropriation inserted in the GAA following appropriation line-items for an agency or in the special or general provisions of the act. A rider provides direction, expansion, restriction, legislative intent or an appropriation. The term also applies to special provisions at the end of each article and general provisions in the GAA. A rider appropriation is distinguished from a regular appropriation (i.e., line-items in the GAA) and a special appropriation (i.e. legislation other than the GAA).

# **Budget Terms and Definitions**

**Salary Budget** – Fiscal Year 2019 salaries include projected annual costs based on Fiscal Year 2018 actual salaries with adjustments for vacancies, merits and Fiscal Year 2019 longevity costs.

**State Highway Fund (Fund 0006)** – Constitutionally created fund that dedicates net revenues from motor vehicle registration fees and taxes on motor fuels and lubricants. Revenue in the State Highway Fund is used for highway construction and maintenance, acquisition of right-of-ways and law enforcement on public roads.

**TxDMV Fund** – The TxDMV Fund is a dedicated Texas Department of Motor Vehicles Fund separate from the General Revenue Fund and State Highway Fund. Several statutorily-dedicated revenue streams including certificates of title, motor vehicle registration, oversize/overweight permitting, business dealer licenses and other miscellaneous fees are deposited to the credit of the TxDMV Fund.

**Unexpended Balance (UB) or Carry-Forward** – The amount left in an item of appropriation at the end of an appropriation period and includes only that part of the appropriation, if any, which has not had an obligation or commitment made by the agency in charge of spending the appropriation. The term also refers to the amount of an appropriation, a fund or a category of revenue which is brought forward (appropriated) to the succeeding fiscal year. Agencies must have legislative authority to move funds from one year to the next and/or from one biennium to the next biennium.

DATE: May 2, 2019  
Continued From: -  
Action Requested: Briefing

To: Finance & Audit Committee -Texas Department of Motor Vehicles (TxDMV)  
From: Linda M. Flores, CPA, Chief Financial Officer  
Agenda Item: 8D  
Subject: FY 2020-2021 Legislative Appropriations Request, Baseline and Exceptional Items – House Bill 1 (H.B. 1) Committee Substitute and Senate Committee Substitute for H.B. 1

Attached is a briefing on the recommended appropriations as included in the Committee Substitute for House Bill (H.B.) 1 as approved by the House and Senate.

**EXECUTIVE SUMMARY**

The 86<sup>th</sup> Legislature will establish the Texas Department of Motor Vehicles (TxDMV) two-year appropriations through the passage of House Bill 1 (H.B. 1) in May 2019. The department is primarily funded by revenues deposited in the TxDMV Fund 0010, and General Revenue Fund 0001 to fund the Automobile Burglary and Theft Prevention Authority (ABTPA).

In January 2019, the House of Representatives and the Senate filed their respective versions of the General Appropriations Act (GAA) H.B. 1 and Senate Bill 1 (S.B. 1), respectively. Both introduced bills included identical levels of baseline funding for the department totaling \$300.9 million, \$151.7 million in FY 2020 and \$149.2 million in FY 2021.

Neither of the introduced bills recommended funding for any of the department’s exceptional items requests.

In response to the recommendations of the introduced bills, the department re-prioritized and modified a new exceptional items list. The new list totaled \$37.6 million and was submitted to the Legislative Budget Board.

The **House Appropriations Committee** made their recommendations and a House Committee Substitute for H.B.1 was filed on March 14, 2019. The House approved the Committee Substitute on March 28, 2019. The changes for the department in the House Committee Substitute include recommended funding at the requested amount for seven of the TxDMV exceptional items. Decisions on the exceptional items for the Automobile Burglary and Theft Prevention Authority (ABTPA) have been deferred for consideration, at a later date, in the House version and is not recommended in the Senate version.

The **Senate Finance Committee** incorporated decisions into a Senate Committee Substitute for H.B. 1 which was filed on April 9, 2019. The Senate Committee Substitute includes recommended funding at the requested amount for four of the TxDMV exceptional items. Two exceptional items - 1) Information Technology Infrastructure Improvements and 2) Customer Service Enhancement, were recommended with reduced amounts from the original request. The TxDMV exceptional item for Headquarters Facility improvements was not recommended in the Senate Committee Substitute.

**RIDERS**

A rider is a legislative directive or appropriation inserted in the General Appropriation Act following appropriation line items for an agency or in a special or general provision of the act. A rider provides direction, expansion, restriction, legislative intent or an appropriation.

The introduced version of H.B.1. and S.B. 1 included requested riders for Unexpended Balance authority for Automation funding, matching funds for Federal grants, and TxDMV Headquarters Maintenance and security systems.

The requested rider for Unexpended Balance Authority within the biennium, which will allow the department to carry forward unspent dollars in Year 1 to Year 2 for the same purpose, is included in the Senate Committee Substitute for H.B.1 but not in the House version.

New Rider 10 is contained in House Committee Substitute for H.B. 1. This is a contingency rider that transfers the Driver License Program if legislation is enacted to transfer the program. (Note: The Senate Committee Substitute for H.B. 1 does not contain this rider).

### **METHOD OF FINANCE**

All of TxDMV operations and the recommended exceptional item requests would be funded through the TxDMV fund, with the exception of ABTPA. ABTPA's operations and its exceptional item requests would be funded through General Revenue.

### **FISCAL IMPACT**

#### **H.B. 1 COMMITTEE SUBSTITUTE RECOMMENDATIONS – MARCH 28, 2019**

The H.B.1 Committee Substitute, approved on March 28, 2019 recommends a total of \$314.5 million for TxDMV for the upcoming biennium; this reflects an increase of \$13.6 million over H.B. 1, as introduced. The increase from the introduced version is a result of recommendations to fund the department's exceptional items other than the requests for ABTPA.

#### **RECOMMENDED EXCEPTIONAL ITEMS (\$13.6 million)**

- \$2.7 million for Information Technology Infrastructure Improvements\*
- \$1.9 million for Information Technology Development and Maintenance\*
- \$567,000 for Consumer Protection and Tracking\*
- \$904,000 for Customer Service Enhancement
- \$1.9 million for the Statewide Cost Allocation Plan
- \$5.1 million for the Headquarters Facility
- \$500,000 for Regional Service Center Capital

#### **SENATE COMMITTEE SUBSTITUTE FOR H.B. 1 RECOMMENDATIONS – APRIL 9, 2019**

The Senate Committee Substitute, approved on April 9, 2019, recommends a total of \$307.8 million for TxDMV for the upcoming biennium; this reflects an increase of \$6.9 million over S.B. 1, as introduced. The increase from the introduced version is a result of recommendations to fund a portion of the TxDMV exceptional items.

#### **RECOMMENDED EXCEPTIONAL ITEMS (\$6.9 million)**

- \$1.7 million for Information Technology Infrastructure Improvements\*
- \$1.9 million for Information Technology Development and Maintenance\*
- \$567,000 for Consumer Protection and Tracking\*
- \$381,290 for Customer Service Enhancement
- \$1.9 million for the Statewide Cost Allocation Plan
- \$500,000 for Regional Service Center Capital

#### **H.B.1 AND S.B.1 AS INTRODUCED IN JANUARY 2019**

Included in the H.B. 1. and S.B. 1 as introduced was a funding total of \$300.9 million for the FY 2020-2021 biennium. The introduced version of the appropriations bill did not include any requested exceptional items.

### **MODIFIED EXCEPTIONAL ITEM REQUESTS**

The Legislative Budget Board provided TxDMV an opportunity to update their exceptional item requests in January 2019 after the House and Senate budget introduced recommendations became available.



The department modified its list of exceptional items to include nine items totaling \$37.6 million. Seven items were requested for TxDMV and are now recommended in the H.B. 1 Committee Substitute as shown above. The Senate Committee Substitute recommends four items at the requested amounts, two items at a reduced amount, and does not recommend the Headquarters Facility request.

The department's exceptional item requests for General Revenue funds related to ABTPA have been deferred to final deliberation of H.B.1 Article XI, which addresses programs and strategies not funded elsewhere. The ABTPA requests were not recommended in the Senate Committee Substitute Article XI.

**ABTPA REQUESTS (\$24 million)**

- \$ 6.6 million for ABTPA Crime Reduction and Border/Port Security
- \$17.4 million to broaden ABTPA's Statutory Mandate\*

*Note: \* These items are associated with Sunset Advisory Commission Recommendations.*

# Legislative Appropriations Request for Fiscal Years 2020 and 2021 Update

The image displays a collection of Texas license plates from 1922 to 1961, arranged in a grid. The plates show various designs and colors over time. In the center of the grid is the logo of the Texas Department of Motor Vehicles, which consists of a blue star with a green and blue swoosh. Below the logo, the text "Texas Department of Motor Vehicles" is written in a serif font.

Year	Year	Year	Year	Year
1922	1923	1924	1925	1926
1927	1931	1932	1936	1937
1942	1946	1947	1951	1952
1953	1954	1955	1956	1957
1958	1959	1960	1961	

## FY 2020-2021 Legislative Appropriations Overview

The 86<sup>th</sup> Legislature will establish the Texas Department of Motor Vehicles (TxDMV) two-year appropriations through the passage of House Bill 1 (H.B. 1) in May 2019. The TxDMV's budget is contained in Article VII Business and Economic Development. The department is primarily funded by revenues deposited in the TxDMV Fund 0010. The Automobile Burglary and Theft Prevention Authority is funded by General Revenue Fund 0001.

## Comparison of Introduced Versions to Committee Substitutes

- The table below is a summarized comparison of the House and Senate versions of the Committee Substitute for H.B. 1 originally introduced in January 2019.

Comparison of Introduced Versions to Committee Substitutes

	H.B. 1/S.B. 1 Introduced/Full-Time Equivalents (FTEs)	H.B. 1 Committee Substitute	Senate Committee Substitute for H.B. 1	Variance Between H. B. 1 Substitute and Senate Substitute for H. B. 1
<b>Baseline</b>	\$300.9 Million/779 FTEs	\$300.9 Million/779 FTEs	\$300.9 Million/779 FTEs	\$0/0 FTEs
<b>Exceptional</b>	\$ - 0 -/0	\$13.6 Million/21 FTEs	\$6.9 Million/16 FTEs	\$6.7 Million/5 FTEs
<b>Total</b>	\$300.9 Million/779 FTEs	\$314.5 Million/800 FTEs	\$307.8 Million/795 FTEs	\$6.7 Million/5 FTEs

- The House passed the Committee Substitute for H.B. 1 on March 28, 2019. TxDMV was appropriated \$314.5 million and 800 FTEs for the 2020-2021 biennium.
- The Senate amendments to H.B. 1 were approved on April 9, 2019. TxDMV was appropriated \$307.8 million and 795 FTEs for the 2020-2021 biennium.
- The difference between the two versions of the Committee Substitute for H.B. 1, \$6.7 million, will be addressed by a conference committee meeting in April. The conference committee will be composed of members of the House Appropriations and the Senate Finance committees. The key differences in the Senate amended version of H.B. 1 are as follows:
  - \$5.1 million for Headquarters (HQ) Facility improvements was not recommended.
  - Two exceptional items were partially funded. The Information Technology Infrastructure Improvements item was reduced by \$1.0 million and the Customer Service Enhancement request was reduced by \$600k with a reduction of 5 FTEs.
  - Rider for Unexpended Balance authority within the biennium was approved. This rider will allow the department to carry forward unspent dollars in Year 1 to Year 2 to be used for the same purpose as appropriated.

## House - Committee Substitute H.B. 1 Engrossed Version

- The House approved appropriations for TxDMV of \$314.5 million/800.0 FTEs for the biennium.
- Seven (7) TxDMV exceptional items were approved, \$13.6 million biennial total, 21 FTEs (detailed on Exceptional Items Table on page 3).
- The exceptional items for ABTPA are deferred to Article XI (Agency Programs And Strategies Not Funded Elsewhere In This Act).
- Rider for Unexpended Balance authority within the biennium was not approved (mentioned above).
- Contingency rider #10 relating to the transfer of the Driver License function from the Texas Department of Public Safety (DPS) to the TxDMV is included.

## Senate - Committee Substitute for House Bill 1 (H.B. 1)

- The Senate approved a biennial total of \$307.8 million/795.0 FTEs.
- The Senate approved the following TxDMV exceptional items:
  - Two (2) exceptional items were approved but at a reduced amount.
    - Information Technology Infrastructure Improvements reduced from \$2.7 million to \$1.7 million.
    - Customer Service Enhancement reduced from request of 9.0 FTEs (\$904k) to 4.0 FTEs (\$381k).
  - Four (4) exceptional items were approved as requested:
    - Information Technology Development and Maintenance (\$1.9 million).
    - Consumer Protection and Tracking (\$567k).
    - Statewide Cost Allocation Plan (\$1.9 million).
    - Regional Service Center Capital (\$500k).
- The following exceptional items were not recommended:
  - Headquarters Facility (\$5.1 million).
  - ABTPA Crime Reduction Strategy (\$6.6 million).
  - Funding to Broaden ABTPA's Statutory Mandate (\$17.4 million).
- Rider for Unexpended Balance authority within the biennium was approved.
- Contingency rider #10 relating to the transfer of the Driver License function from the Texas Department of Public Safety to the TxDMV *is not included*.

## Exceptional Item Status

Exceptional Items 

TxDMV Revised Exceptional Items Request				Exceptional Items Status House Bill 1 (H.B. 1) Committee Substitute			Exceptional Items Status Senate Committee Substitute for House Bill 1 (H.B. 1)		
Priority	Exceptional Items	Biennial Total	Full Time Equivalents	Committee Recommendation	Biennial Total	Full Time Equivalents	Committee Recommendation	Biennial Total	Full Time Equivalents
1	Information Technology Infrastructure Improvements	\$ 2,700,000		Approved	\$ 2,700,000		Approved	\$ 1,700,000	
2	Information Technology Development and Maintenance	\$ 1,922,568	12.00	Approved	\$ 1,922,568	12.00	Approved	\$ 1,922,568	12.00
3	Consumer Protection and Tracking	\$ 567,500		Approved	\$ 567,500		Approved	\$ 567,500	
4	Customer Service Enhancement	\$ 904,005	9.00	Approved	\$ 904,005	9.00	Approved	\$ 381,290	4.00
5	Statewide Cost Allocation Plan	\$ 1,902,000		Approved	\$ 1,902,000		Approved	\$ 1,902,000	
6	Headquarters Facility	\$ 5,112,000		Approved	\$ 5,112,000		Not Recommended	\$ -	
7	Regional Service Center Capital	\$ 500,000		Approved	\$ 500,000		Approved	\$ 500,000	
1	ABTPA Crime Reduction Strategy	\$ 6,600,000		Deferred to Article XI			Not Recommended		
2	Broaden ABTPA's Statutory Mandate	\$17,400,000		Deferred to Article XI			Not Recommended		
<b>Total, Exceptional Items</b>		<b>\$37,608,073</b>	<b>21.00</b>		<b>\$13,608,073</b>	<b>21.00</b>		<b>\$6,973,358</b>	<b>16.00</b>
<b>Method of Finance</b>									
	General Revenue Fund 0001	\$24,000,000			\$ -			\$ -	
	Texas Department of Motor Vehicles Fund 0010	\$13,608,073			\$13,608,073			\$6,973,358	
<b>Total, Method of Finance</b>		<b>\$37,608,073</b>			<b>\$13,608,073</b>			<b>\$6,973,358</b>	

### Exceptional Items:

- Information Technology Infrastructure Improvements** - This exceptional item requests funding to implement identified improvements that will facilitate a comprehensive approach in application development, maintenance and updating of TxDMV information technology infrastructure. Request includes improvements to the department's development environment consisting of funding for Data Center Services (DCS) for servers and database licenses (\$1,700,000) to build out non-production environments to support the software development lifecycle. Funding in professional fees (\$600,000) will be utilized to implement testing improvements to facilitate the creation of self-service test data, obtaining automated testing tools, and creating automated tests. Finally, application development funding of \$400,000 will facilitate self-service password reset functionality in the Registration and Titling System (RTS) and Motor Vehicle Inquiry Network (MVINET) and will modify the International Registration Plan System (IRP) to reduce errors.

- **Information Technology Development & Maintenance** - This exceptional item requests funding to implement operational improvements that enable the agency to develop and maintain TxDMV information technology projects and infrastructure. Internal and third-party analyses of the Information Technology Services Division determined that additional FTEs are needed to fulfill all existing obligations and to maintain service levels to avoid future backlog.
- **Consumer Protection and Tracking** - This exceptional item requests funding to leverage technology to achieve the goal of a proactive, risk-based approach to enforcement and fraud. The request will fund three initiatives. 1) Construction of a public-facing database of case histories for motor vehicle and motor carrier licensees. 2) Enhancements to the existing case management system to improve reporting of motor vehicle and motor carrier enforcement data, including complaints by source and license type, nature of complaint, resolution by allegation type, and enhanced reporting of cases referred to the State Office of Administrative Hearings. 3) Provide the newly created Compliance and Investigations Division (CID) with software tools to help detect and assist in the investigation of auto theft, auto fraud, curbstoning, insurance fraud, tax scofflaws, and unlicensed businesses. Planned software acquisitions will automate the identification of vulnerabilities, trends and other indicators of fraud and criminal behavior, including activity on online classifieds, e-commerce and social media websites.
- **Customer Service Enhancement** - This is a request for eight Customer Service Representatives and one trainer for the department's Consumer Relations Division (CRD), the centralized division responsible for assisting customers with motor vehicle inquiries and transactions by mail, email and phone. CRD's call and email volume has increased by 53% and 58%, respectively (FY 11 – 17). CRD is unable to effectively handle the significant increased call demand with existing staffing levels. As a result, Vehicle Titles and Registration Division staff have been supporting title calls. Their support comes with adverse consequences to their primary customers and stakeholders that include longer wait times, limited availability, reduced quality service for in-person transactions and county and dealer support in Regional Service Centers. Augmenting CRD's staffing will reduce the need to pull front line staff from the counter to assist in handling the increased call volume, and customers will be served more efficiently with increased skills and knowledge with a dedicated trainer focused on consistency and quality.
- **Statewide Allocation Plan** - This exceptional item requests funding for the Department's Statewide Cost Allocation Plan (SWCAP) allocation. SWCAP represents recoverable costs incurred by oversight agencies providing central administrative and support services to state agencies. The allocation for TxDMV has tripled due to the department's implementation of the Centralized Accounting & Payroll/Personnel System (CAPPS), provided by the Comptroller. To meet the projected increase in the SWCAP allocation for the upcoming biennium, the department requests an additional \$700,000 in FY 2020 and \$1.2 million FY 2021.

- **Headquarters Facility** - This item was included in the 2020-21 baseline but was not included in the House or Senate introduced versions of TxDMV's appropriations. The exceptional item request would be used to implement a proposed master plan that will rehabilitate, support and maintain the Camp Hubbard aging buildings, specifically Building 1 that was built in 1955. The total cost of \$5.1 million includes the following:
  - o Building Rehabilitation - Flooring, Paint, Air Quality Check, Professional Services, Elevator Rehabilitation, HVAC, Electrical, Plumbing, Demolition, New Construction, and Window Rehabilitation.
  - o Swing Space Rent - Rent to cover the cost of office space for staff during construction.
  - o Furniture - Cost of modular furniture for open spaces and hardwood furniture for offices.
  - o Moving Services - Includes moving staff and equipment to lease space and returning them back to Building 5 after construction.
  - o IT Services/Equipment - Includes new data drops, networking, WAN and LAN services, phone services, and workstation setup.
  
- **Regional Service Center Capital** - This item was also included in the 2020-21 TxDMV baseline but was not recommended in the introduced version of H.B. 1/S.B. 1. This exceptional item request is for funds to update and reengineer Regional Service Centers (RSCs). The department believes that creating consistent office environments designed to maximize workflow efficiencies will translate into enhanced customer service in a number of ways, including shorter wait times, more informative signage, adequate customer seating and increased privacy at transaction windows. Costs include funding for modular furniture, painting and flooring, electrical services, HVAC, and configuration changes. Also included are costs for cabling, wiring, and network services.
  
- **ABTPA Crime Reduction Strategy** - This ABTPA request is to restore funding included in the 2020-21 baseline but not approved in the introduced version of H.B. 1/S.B. 1. The funds will be used to support local law enforcement in its combat against organized crime and enhance border security to reduce motor vehicle theft and burglary losses that exceed \$1 billion. ABTPA currently funds economic motor vehicle theft teams (taskforces). All ABTPA taskforces combat prolific offenders, gangs and organized criminal networks. In FY 2018, taskforces investigated 400 groups operating motor vehicle theft operations. The border and port taskforces regularly combat transnational gangs and cartels. All taskforces lack prosecutorial support, dedicated criminal intelligence analysts, specialized motor vehicle cybersecurity experts. Much of the increased economic losses to the public, from motor vehicle burglary and theft crime, is caused by highly organized criminal enterprise. ABTPA taskforces identified almost 2,000 prolific offenders linked to motor vehicle burglary and theft more than 3 times in FY 2018. ABTPA funded taskforces confronted transnational gangs 48 times. The funds would be used to add prosecutors to assist ABTPA law enforcement, criminal intelligence analysts and automotive cybersecurity technologists and pilot projects for new prevention and recovery technology in taskforces. The amount requested represents 80% of the salary and basic operating cost of the positions and pilot projects. The

remaining 20% would be shared with local law enforcement agencies currently combating these crimes without any state support.

- **Broaden ABTPA's Statutory Mandate** - The request totals \$17.4 million for the biennium. The funds will be used to effectively meet the Sunset Advisory Commission (SAC) recommendation to expand the types of motor vehicle crimes (such as title fraud) ABTPA law enforcement grant recipients combat.

DATE: May 2, 2019  
 Continued From:  
 Action Requested: APPROVAL

**To:** Texas Department of Motor Vehicles Board  
**From:** Jeremiah Kuntz, Vehicle Titles and Registration Division  
**Agenda Item:** 9  
**Subject:** Specialty Plate Designs

**RECOMMENDATION**

The Vehicle Titles and Registration Division (VTR) seeks board approval or denial of three plate designs submitted for your consideration. The first design, Save Texas Ocelots, is from a nonprofit organization (non-vendor) and is a redesign of an existing plate. This plate has been offered since 2013 and has sold 514 plates as of February 2019. The other two plate designs are Dallas Mavericks and Checkered Flag and are from the marketing vendor, My Plates. The Dallas Mavericks design is a redesign of the existing Dallas Mavericks plate. This plate has been offered for sale since 2011 and 207 plates have been sold as of February 2019. The second vendor plate design, the Checkered Flag, is a new plate design and has never been sold before.

**PURPOSE AND EXECUTIVE SUMMARY**

Statutory authority for the board to approve non-vendor specialty plates is in Transportation Code Section 504.801. Statutory authority for the board to approve vendor specialty license plates and invite the public's comment on proposed vendor plate designs is in Texas Transportation Code Section(s) 504.851 (g) and (g-1) (1). The board's approval criteria is clarified in Administrative Code(s) §217.45 *Specialty License Plates, Symbols, Tabs, and Other Devices* and §217.52, *Marketing of Specialty License Plates through a Private Vendor*.

The renewed vendor contract (paragraph #11, *Inventory Management Controls*) specifies that following the board's contingent approval of a plate, the vendor must get at least 200 commitments within six months of the approval for a plate to be produced. (Equally, existing plates must maintain 200 registered to stay in the program.) My Plates' procedure is to first offer a plate to the public to register their interest. Following the board's contingent approval, My Plates then offers a plate online for prepaid orders. My Plates confirms when 200 prepaid orders are achieved. (Since the contract with My Plates was renewed in March 2014, the board has contingently approved 24 vendor plates. Of the 24, eight did not achieve the required 200 commitments and were not produced.)

TxDMV's procedure is to invite comments on all proposed plates ahead of the board's review. The department's intent is to determine if there are any unforeseen public concerns about a plate design. The department publishes a 10-day "like/dislike/comment-by-email" survey, called an eView, on its website. Although the survey counts the public's "likes" and "dislikes," it is unscientific and not used as an indicator of a plate's popularity. The vendor's OU plate, for example, received thousands of eView "dislikes" in 2010 (presumably because of college football rivalry) and has since sold over 904 plates.

The plate designs were presented to the public in a March 2019 eView. No negative comments were received. The count of the public's "like/dislikes" are below with the design.

Save Texas Ocelots (redesign)  
 455 people liked this design and 32 did not.

Current Design



Redesign



Dallas Mavericks (redesign)  
 223 people liked this design and 123 did not.

Current Design



Redesign



Checkered Flag (new)  
 223 people liked this design and 260 did not.

New Design



# TEXAS SPECIALTY PLATE BUSINESS

Vehicle Titles and  
Registration Division  
Special Plates Unit  
(5 FTEs) 5/19



Division Director  
Jeremiah Kuntz



Texas Department  
of Motor Vehicles

## TOP FIVE REGISTERED MYPLATES LICENSE PLATES

Rank	Name	Currently Registered
1	LARGE STAR WHITE/BLACK	44,936
2	CLASSIC BLACK	26,350
3	TEXAS BLACK 1845	19,521
4	LONE STAR BLACK	11,976
5	T FOR TEXAS BLACK	6,309

## TOP FIVE REGISTERED MILITARY MERITORIOUS SERVICE LICENSE PLATES

Rank	Name	Currently Registered
1	MERITORIOUS SERVICE MEDAL	9,521
2	BRONZE STAR MEDAL	8,742
3	AIR MEDAL	5,701
4	LEGION OF MERIT	3,736
5	DISTINGUISHED FLYING CROSS	1,762

## TOP FIVE REGISTERED TXDMV NON-VENDOR CHARITY PLATES

Rank	Name	Currently Registered
1	ANIMAL FRIENDLY	9,838
2	CONSERVATION HORNED LIZARD	7,730
3	STATE OF THE ARTS	6,611
4	CONSERVATION BLUEBONNET	4,876
5	CONSERVATION WHITE-TAILED DEER	3,435

## TO BE RELEASED IN APRIL

Jackson State University

Big Horn Sheep



Houston Community College



SLP AVAILABLE	478:
MILITARY AND DV	180
RESTRICTED USE	50
STATE SPECIALTY	128
VENDOR SPECIALTY	120

## SPECIAL PLATES UNIT CUSTOMER SERVICE FY 2019

**21,526**  
Personalized Plate  
Applications Reviewed  
(10% declined)

**17,523**  
Telephone Calls

**55**  
Walk-in Customers

**7,208**  
Email

**982**  
Refunds

**15**  
Public Information/  
Open Records

**10,773**  
Correspondence  
(including plate applications)



DATE: May 2, 2019  
Continued From:  
Action Requested: BRIEFING

---

**To:** Texas Department of Motor Vehicles Board  
**From:** Caroline Love, Government & Strategic Communications (GSC) Division  
**Agenda Item:** 10  
**Subject:** Legislative Update

---

#### **PURPOSE AND EXECUTIVE SUMMARY**

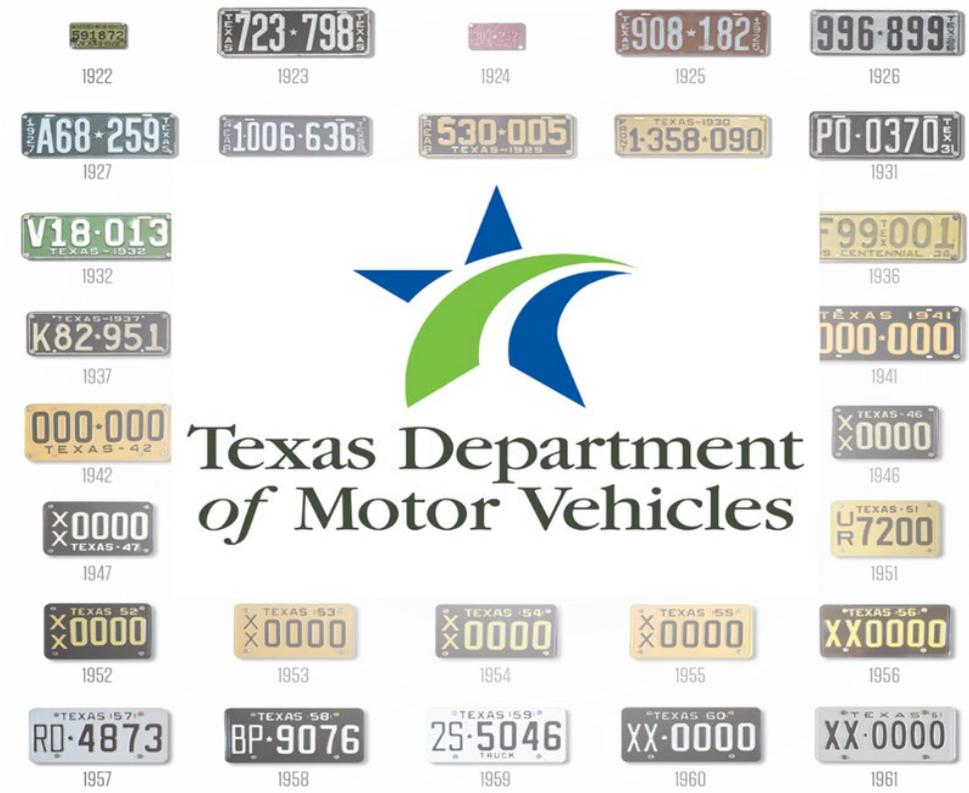
This briefing will provide an update on upcoming key dates for the 86<sup>th</sup> Legislative Session, legislation filed impacting the department, and legislation filed of general interest. The briefing will also cover recent and upcoming legislative hearings and meetings, as well as the status of the TxDMV continuing legislation as it relates to the Sunset process.

#### **FINANCIAL IMPACT**

None.

#### **BACKGROUND AND DISCUSSION**

The Government & Strategic Communications Division continue to provide regular updates throughout the session on the status of legislation impacting the department, as well as implementation efforts of legislation in the interim.



# Texas Department of Motor Vehicles Legislative and Public Affairs Briefing

# 86<sup>th</sup> Legislative Session Update–Agenda Item 10



- **General 86<sup>th</sup> Legislature Information**

- **Key Dates include:**

- November 12, 2018: Bill Filing Started
- January 8, 2019: First Day of Session
- March 8, 2019: Last Day to File Legislation
- May 27, 2019: Sine Die
- June 16, 2019: Last day for the Governor to sign/veto/allow legislation to be enacted without signature
- September 1, 2019: General effective date for new laws unless otherwise specified in legislation

- **The Government and Strategic Communications Division (GSC) is responsible for:**

- Identifying and following all legislation filed potentially impacting department operations or processes
  - Weekly meetings ongoing with the TxDMV Executive Team and department subject matter experts to discuss legislation filed of interest and potential impacts to the department
  - Analyzing legislation and working with legislative offices as needed to provide information
  - Developing fiscal impact statements in conjunction with the Finance & Administrative Services and impacted divisions
  - Providing status reports to the Executive Team and TxDMV Board regarding legislation identified with a potential impact
- Coordinating the department's participation in legislative hearings and meetings
- Monitoring all substantive hearings and floor activities
- *Providing reports to the Executive Team and TxDMV Board on important hearings and floor activities*

# TxDMV Board 86<sup>th</sup> Legislative Agenda



- **General 86<sup>th</sup> Legislature Statistics**

- 7,281 bills filed (as compared to just over 6,800 in 2017)
- Staff has identified 578 bills with potential impacts to TxDMV

- **Legislation of interest**

- **SB 604 by Buckingham/HB 1541 by Paddie** related to the continuation of TxDMV
  - Passed out of the Senate, heard in House Transportation Committee; anticipated to be heard on the House Floor May 14
- **SB 616 by Birdwell/HB 1530 by Paddie** related to the continuation of the Texas Department of Public Safety, containing language requiring both agencies to assess what it would take to accomplish a transfer of the Driver License program, due to the Legislature by September 2020
  - Passed out of the Senate, heard in House Homeland Security and Public Safety Committee, anticipated to heard on the House Floor May 14
- **HB 11 by Ed Thompson** relates to a direct transfer of the Driver License program to TxDMV by January 2021
  - Passed out of the House and referred to the Senate Transportation Committee, awaiting a hearing
- 14 bills have been filed creating new specialty license plates
  - If all passed, 19 new specialty license plate designs would be created
  - Of those, 5 bills create new military-related specialty license plates (9 new designs total for these military plates)

# TxDMV Board 86<sup>th</sup> Legislative Agenda



- The Texas Department of Motor Vehicles (TxDMV) Board is charged with considering opportunities to improve the operations of the department and recommending statutory changes to the Texas Legislature under Texas Transportation Code, Section 1001.025.
- TxDMV's Government and Strategic Communications Division worked with all the department's divisions and offices to identify statutory changes the board could recommend throughout 2018.
- Several department stakeholders received a copy of the draft recommended changes and provided feedback, including the Tax Assessor-Collector Association, Texas Trucking Association, Texas Recreational Vehicle Association, Texas Towing & Storage Association, Alliance of Auto Manufacturers, Texas Independent Auto Dealers Association, Texas Automobile Dealers Association, Insurance Auto Auctions, United States Automobile Association, Texas Southwester Cattle Raisers Association, Copart, Texas Food and Fuels Association, Texas Farm Bureau, Texas Oil & Gas Association, State Farm, Property Casualty Insurers Association of American, and the National Association of Mutual Insurance Companies.
- Recommendations were presented to the Legislative & Public Affairs Committee October 3, 2018
- The TxDMV Board adopted these recommended changes October 4, 2018

# TxDMV Board 86<sup>th</sup> Legislative Agenda



- Summary of the Recommendations and Bill Status
  - **Enhanced responsiveness to natural disasters**
    - **HB 2835 by Canales** allowing residents from a declared disaster area 30 days after registration expiration to renew during a disaster without being subject to a ticket/citation (*awaiting House Calendar*)
    - **HB 2112 by Ed Thompson** related to ownership of vehicles determined salvage or non-repairable when a claim has been paid associated with a declared natural disaster and creating a definition of what constitutes a “flood vehicle” in statute; how such vehicles will be titled; and repeal a requirement that the department create an inventory form for salvage dealers (*awaiting House Local Calendar*)
  - **Creating efficiencies in processes**
    - **HB 4304 by Clardy** would deposit Auto Burglary and Theft Prevention Authority (ABTPA) appropriations to the TxDMV Fund to provide for consistent method of finance for all department functions and operations (*not being pursued as a standalone bill, but addressed in the budget*)
    - **HB 2620 by Armando Martinez** provides for several updates to motor carrier permitting; repeals the statutory requirement to issue oversize/overweight permits by phone; and allow the department to require escort flaggers if needed as part of issuing an oversize/overweight permit (*awaiting House Calendar*)
    - **HB 2834 by Canales** exempts materials from investigations from Public Information Act requirements until the conclusion of the investigation (*awaiting House Calendar*)
    - **HB 3842 by Tracy King/SB 2052 by Hinojosa** clarifying motor vehicle dealers can only sell vehicles from their licensed location (*HB 3842 passed by the House April 26/Awaiting Senate Local Calendar*)
    - **HB 3988 by Raney** clarifying the payment of a fee by a manufacturer in a Lemon Law case can be paid upon finalization of the case (*awaiting House Local Calendar*)
    - Restructuring the current title dispute process to provide for more consistent use of the process statewide (*not filed*)



# Questions

**Board Policy Documents**

Governance Process (10/13/11)

Strategic Planning (10/13/11)

Board Vision (4/7/16)

Agency Boundaries (9/13/12)

KPIs (9/12/14)

---

## Texas Department of Motor Vehicles TxDMV Board Governance Policy

### 1. PURPOSE

The directives presented in this policy address board governance of the Texas Department of Motor Vehicles (TxDMV).

### 2. SCOPE

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. The TxDMV Board Governance Policy shall be one that is comprehensive and pioneering in its scope.

### 3. POLICY

#### 3.1. TxDMV Board Governing Style

The Board shall govern according to the following general principles: (a) a vision for the agency, (b) diversity in points of view, (c) strategic leadership, providing day-to-day detail as necessary to achieve the agency vision, (d) clear distinction of Board and Executive Director roles, (e) collective decision making, (f) react proactively rather than reactively and with a strategic approach. Accordingly:

- 3.1.1. The Board shall provide strategic leadership to TxDMV. In order to do this, the Board shall:
  - 3.1.1.1. Be proactive and visionary in its thinking.
  - 3.1.1.2. Encourage thoughtful deliberation, incorporating a diversity of viewpoints.
  - 3.1.1.3. Work together as colleagues, encouraging mutual support and good humor.
  - 3.1.1.4. Have the courage to lead and make difficult decisions.
  - 3.1.1.5. Listen to the customers and stakeholders needs and objectives.
  - 3.1.1.6. Anticipate the future, keeping informed of issues and trends that may affect the mission and organizational health of the TxDMV.
  - 3.1.1.7. Make decisions based on an understanding that is developed by appropriate and complete stakeholder participation in the process of identifying the needs of the motoring public, motor vehicle industries,

and best practices in accordance with the mission and vision of the agency.

- 3.1.1.8. Commit to excellence in governance, including periodic monitoring, assessing and improving its own performance.
- 3.1.2. The Board shall create the linkage between the Board and the operations of the agency, via the Executive Director when policy or a directive is in order.
- 3.1.3. The Board shall cultivate a sense of group responsibility, accepting responsibility for excellence in governance. The Board shall be the initiator of policy, not merely respond to staff initiatives. The Board shall not use the expertise of individual members to substitute for the judgment of the board, although the expertise of individual members may be used to enhance the understanding of the Board as a body.
- 3.1.4. The Board shall govern the agency through the careful establishment of policies reflecting the board's values and perspectives, always focusing on the goals to be achieved and not the day-to-day administrative functions.
- 3.1.5. Continual Board development shall include orientation of new Board members in the board's governance process and periodic board discussion of how to improve its governance process.
- 3.1.6. The Board members shall fulfill group obligations, encouraging member involvement.
- 3.1.7. The Board shall evaluate its processes and performances periodically and make improvements as necessary to achieve premier governance standards.
- 3.1.8. Members shall respect confidentiality as is appropriate to issues of a sensitive nature.

### **3.2. TxDMV Board Primary Functions/Characteristics**

TxDMV Board Governance can be seen as evolving over time. The system must be flexible and evolutionary. The functions and characteristics of the TxDMV governance system are:

- 3.2.1. Outreach
  - 3.2.1.1. Monitoring emerging trends, needs, expectations, and problems from the motoring public and the motor vehicle industries.
  - 3.2.1.2. Soliciting input from a broad base of stakeholders.

### 3.2.2. Stewardship

3.2.2.1. Challenging the framework and vision of the agency.

3.2.2.2. Maintaining a forward looking perspective.

3.2.2.3. Ensuring the evolution, capacity and robustness of the agency so it remains flexible and nimble.

### 3.2.3. Oversight of Operational Structure and Operations

3.2.3.1. Accountability functions.

3.2.3.2. Fiduciary responsibility.

3.2.3.3. Checks and balances on operations from a policy perspective.

3.2.3.4. Protecting the integrity of the agency.

### 3.2.4. Ambassadorial and Legitimizing

3.2.4.1. Promotion of the organization to the external stakeholders, including the Texas Legislature, based on the vision of the agency.

3.2.4.2. Ensuring the interests of a broad network of stakeholders are represented.

3.2.4.3. Board members lend their positional, professional and personal credibility to the organization through their position on the board.

### 3.2.5. Self-reflection and Assessment

3.2.5.1. Regular reviews of the functions and effectiveness of the Board itself.

3.2.5.2. Assessing the level of trust within the Board and the effectiveness of the group processes.

## 3.3. Board Governance Investment

Because poor governance costs more than learning to govern well, the Board shall invest in its governance capacity. Accordingly:

3.3.1. Board skills, methods, and supports shall be sufficient to ensure governing with excellence.

- 3.3.1.1. Training and retraining shall be used liberally to orient new members, as well as maintain and increase existing member skills and understanding.
  - 3.3.1.2. Outside monitoring assistance shall be arranged so that the board can exercise confident control over agency performance. This includes, but is not limited to, financial audits.
  - 3.3.1.3. Outreach mechanisms shall be used as needed to ensure the Board's ability to listen to stakeholder viewpoints and values.
  - 3.3.1.4. Other activities as needed to ensure the Board's ability to fulfill its ethical and legal obligations and to represent and link to the motoring public and the various motor vehicle industries.
- 3.3.2. The Board shall establish its cost of governance and it will be integrated into strategic planning and the agency's annual budgeting process.

#### **3.4. Practice Discipline and Assess Performance**

The Board shall ensure the integrity of the board's process by practicing discipline in Board behavior and continuously working to improve its performance. Accordingly:

- 3.4.1. The assigned result is that the Board operates consistently with its own rules and those legitimately imposed on it from outside the organization.
  - 3.4.1.1. Meeting discussion content shall consist solely of issues that clearly belong to the Board to decide or to monitor according to policy, rule and law. Meeting discussion shall be focused on performance targets, performance boundaries, action on items of Board authority such as conduct of administrative hearings, proposal, discussion and approval of administrative rule-making and discussion and approval of all strategic planning and fiscal matters of the agency.
  - 3.4.1.2. Board discussion during meetings shall be limited to topics posted on the agenda.
  - 3.4.1.3. Adequate time shall be given for deliberation which shall be respectful, brief, and to the point.
- 3.4.2. The Board shall strengthen its governing capacity by periodically assessing its own performance with respect to its governance model. Possible areas of assessment include, but are not limited to, the following:
  - 3.4.2.1. Are we clear and in agreement about mission and purpose?

- 3.4.2.2. Are values shared?
  - 3.4.2.3. Do we have a strong orientation for our new members?
  - 3.4.2.4. What goals have we set and how well are we accomplishing them?
  - 3.4.2.5. What can we do as a board to improve our performance in these areas?
  - 3.4.2.6. Are we providing clear and relevant direction to the Executive Director, stakeholders and partners of the TxDMV?
- 3.4.3. The Board Chair shall periodically promote regular evaluation and feedback to the whole Board on the level of its effectiveness.

---

## Texas Department of Motor Vehicles Strategic Planning Policy

### 1. PURPOSE

The directives presented in this policy address the annual Strategic Planning process at the Texas Department of Motor Vehicles (TxDMV).

### 2. SCOPE

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. TxDMV Strategic Planning Policy attempts to develop, document and expand its policy that is comprehensive in its scope in regards to the strategic planning process of the Board and the Department beyond that of the state strategic planning process.

### 3. POLICY

#### 3.1. TxDMV Board Strategic Planning

This policy describes the context for strategic planning at TxDMV and the way in which the strategic plan shall be developed and communicated.

- 3.1.1. The Board is responsible for the strategic direction of the organization, which includes the vision, mission, values, strategic goals, and strategic objectives.
- 3.1.2. TxDMV shall use a 5-year strategic planning cycle, which shall be reviewed and updated annually, or as needed.
- 3.1.3. The 5-year strategic plan shall be informed by but not confined by requirements and directions of state and other funding bodies.
- 3.1.4. In developing strategic directions, the Board shall seek input from stakeholders, the industries served, and the public.
- 3.1.5. The Board shall:
  - 3.1.5.1. Ensure that it reviews the identification of and communication with its stakeholders at least annually.
  - 3.1.5.2. Discuss with agency staff, representatives of the industries served, and the public before determining or substantially changing strategic directions.

- 
- 3.1.5.3. Ensure it receives continuous input about strategic directions and agency performance through periodic reporting processes.
  - 3.1.6. The Board is responsible for a 5-year strategic plan that shall identify the key priorities and objectives of the organization, including but not limited to:
    - 3.1.6.1. The creation of meaningful vision, mission, and values statements.
    - 3.1.6.2. The establishment of a Customer Value Proposition that clearly articulates essential customer expectations.
    - 3.1.6.3. A Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis, to be updated annually.
    - 3.1.6.4. An assessment of external factors or trends (i.e., customer needs, political factors, economic factors, industry trends, technology factors, uncertainties, etc.)
    - 3.1.6.5. Development of the specific goals and objectives the Department must achieve and a timeline for action.
    - 3.1.6.6. Identification of the key performance indicators to measure success and the initiatives that shall drive results.
    - 3.1.6.7. Engage staff at all levels of the organization, through the executive director, in the development of the strategic plan through surveys, interviews, focus groups, and regular communication.
    - 3.1.6.8. Ensure the strategic planning process produces the data necessary for LBB/GOBPP state required compliance while expanding and enhancing the strategic plan to support the needs of the TxDMV. The overall strategic plan shall be used as a tool for strategic management.
  - 3.1.7. The Board delegates to the Executive Director the responsibility for **implementing** the agency's strategic direction through the development of agency wide and divisional operational plans.
-

---

## Texas Department of Motor Vehicles TxDMV Goals and Objectives

### 1. PURPOSE

The information presented in this policy addresses the goals and key objectives of the Board of the Texas Department of Motor Vehicles (TxDMV) as they relate to the mission, vision, and values of the TxDMV.

### 2. SCOPE

The scope of this policy is to define the desired state the TxDMV Board is working to achieve. This policy is designed to be inspirational in outlining the desired state of the agency that supports the TxDMV Board vision and meeting agency goals.

### 3. TxDMV MISSION

To serve, protect and advance the citizens and industries in the state with quality motor vehicle related services.

### 4. TxDMV VISION

The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.

### 5. TxDMV VALUES

To earn the trust and faith of all citizens of Texas with transparency, efficiency, excellence, accountability, and putting stakeholders first.

- 5.1. **Transparency** – Being open and inclusive in all we do.
- 5.2. **Efficiency** – Being good stewards of state resources by providing products and services in the most cost-effective manner possible.
- 5.3. **Excellence** – Working diligently to achieve the highest standards.
- 5.4. **Accountability** – Accepting responsibility for all we do, collectively and as individuals.
- 5.5. **Stakeholders** – Putting customers and stakeholders first, always.

### 6. TxDMV GOALS

#### 6.1. GOAL 1 – Performance Driven

The TxDMV shall be a performance driven agency in its operations whether it is in customer service, licensing, permitting, enforcement or rule-making. At all times the TxDMV shall mirror in its performance the expectations of its customers and stakeholder by effective, efficient, customer-focused, on-time, fair, predictable and thorough service or decisions.

### 6.1.1. Key Objective 1

The TxDMV shall be an agency that is retail-oriented in its approach. To accomplish this orientation TxDMV shall concentrate the focus of the agency on:

- 6.1.1.1. Delivering its products and services to all of its customers and stakeholders in a manner that recognizes that their needs come first. These needs must be positively and proactively met. TxDMV works for and with its customers and stakeholders, not the other way around.
- 6.1.1.2. Operating the agency's licensing and registration functions in a manner akin to how a private, for-profit business. As a private, for-profit business, TxDMV would have to listen to its customers and stakeholders and implement best practices to meet their needs or its services would no longer be profitable or necessary. Act and react in a manner that understands how to perform without a government safety net and going out of business.
- 6.1.1.3. Simplify the production and distribution processes and ease of doing business with the TxDMV. Adapting and maintaining a business value of continuous improvement is central to TxDMV operations and processes.
- 6.1.1.4. All operations of the TxDMV shall stand on their own merits operationally and financially. If a current process does not make sense then TxDMV shall work within legislative and legal constraints to redesign or discard it. If a current process does not make or save money for the state and/or its customers or stakeholders then TxDMV shall work within legislative and legal constraints to redesign or discard it. TxDMV shall operate as efficiently and effective as possible in terms of financial and personnel needs. Divisions should focus on cost savings without sacrificing performance. Division directors are accountable for meeting these needs and applicable measures. All division directors are collectively responsible for the performance of TxDMV as a whole.
- 6.1.1.5. Focus on revenue generation for transportation needs as well as the needs of its customers.
- 6.1.1.6. Decisions regarding the TxDMV divisions should be based on the overriding business need of each division to meet or provide a specific service demand, with the understanding and coordination of overarching agency-wide needs.

- 6.1.1.7. Developing and regularly updating a long-range Statewide Plan describing total system needs, establishing overarching statewide goals, and ensuring progress toward those goals.
- 6.1.1.8. The TxDMV shall establish a transparent, well-defined, and understandable system of project management within the TxDMV that integrates project milestones, forecasts, and priorities.
- 6.1.1.9. The TxDMV shall develop detailed work programs driven by milestones for major projects and other statewide goals for all TxDMV divisions.
- 6.1.1.10. The TxDMV, with input from stakeholders and policymakers, shall measure and report on progress in meeting goals and milestones for major projects and other statewide goals.

## **6.2. GOAL 2 – Optimized Services and Innovation**

The TxDMV shall be an innovative, forward thinking agency that looks for ways to promote the economic well-being and development of the industries it serves as well as the State of Texas within the legislative boundaries that have been established for the agency.

### **6.2.1. Key Objective 1**

The TxDMV shall achieve operational, cultural, structural and financial independence from other state agencies.

- 6.2.1.1. Build the TxDMV identity. This means that TxDMV shall make customers aware of what services we offer and how they can take advantage of those services.
- 6.2.1.2. Build the TxDMV brand. This means that TxDMV shall reach out to the stakeholders, industries we serve and the public, being proactive in addressing and anticipating their needs.
- 6.2.1.3. Determine immediate, future, and long term facility and capital needs. TxDMV needs its own stand-alone facility and IT system as soon as possible. In connection with these needs, TxDMV shall identify efficient and effective ways to pay for them without unduly burdening either the state, its customers or stakeholders.
- 6.2.1.4. All regulations, enforcement actions and decision at TxDMV shall be made in a timely, fair and predictable manner.

### **6.2.2. Key Objective 2**

Provide continuous education training on business trends in the industry with a particular emphasis on activities in Texas.

6.2.3. Key Objective 3

Provide continuous outreach services to all customers and stakeholders to access their respective needs and wants. This includes helping frame legislative or regulatory issues for consideration by other bodies including the legislature.

6.2.4. Key Objective 4

Examine all fees to determine their individual worth and reasonableness of amount. No fee shall be charged that cannot be defended financially and operationally.

**6.3. GOAL 3 – Customer-centric**

The TxDMV shall be a customer-centric agency that delivers today's services and decisions in a positive, solution-seeking manner while ensuring continuous, consistent and meaningful public and stakeholder involvement in shaping the TxDMV of tomorrow.

6.3.1. Key Objective 1

The TxDMV shall seek to serve its customer base through a creative and retail oriented approach to support the needs of its industries and customers.

6.3.2. Key Objective 2

The TxDMV shall develop and implement a public involvement policy that guides and encourages meaningful public involvement efforts agency-wide.

6.3.3. Key Objective 3

The TxDMV shall develop standard procedures for documenting, tracking, and analyzing customer complaint data. Successful problem resolution metrics should be monitored to support continuous improvement activities that shall permanently improve customer facing processes.

6.3.4. Key Objective 4

The TxDMV shall provide a formal process for staff with similar responsibilities to share best practices information.

6.3.5. Key Objective 5

The TxDMV shall provide central coordination of the Department's outreach campaigns.

6.3.6. Key Objective 6

The TxDMV shall develop and expand user friendly, convenient, and efficient website applications.

6.3.7. Key Objective 7

TxDmv shall timely meet all legislative requests and mandates.

---

## **Agency Operational Boundaries as Defined by Department Policies of the TxDMV Board (Board)**

The Board is responsible for the policy direction of the agency. The Board's official connection to the day-to-day operation of the Texas Department of Motor Vehicles (TxDMV) and the conduct of its business is through the Executive Director of the TxDMV (ED) who is appointed by the Board and serves at its pleasure. The authority and accountability for the day-to-day operations of the agency and all members of the staff, except those members who report directly to the Board, is the sole responsibility of the ED.

In accordance with its policy-making authority the Board has established the following policy boundaries for the agency. The intent of the boundaries is not to limit the ability of the ED and agency staff to manage the day-to-day operations of the agency. To the contrary, the intent of the boundaries is to more clearly define the roles and responsibilities of the Board and the ED so as to liberate the staff from any uncertainty as to limitations on their authority to act in the best interest of the agency. The ED and staff should have certainty that they can operate on a daily basis as they see fit without having to worry about prior Board consultation or subsequent Board reversal of their acts.

The ED and all agency employees shall act at all times in an exemplary manner consistent with the responsibilities and expectations vested in their positions. The ED and all agency employees shall act in a manner consistent with Board policies as well as with those practices, activities, decisions, and organizational circumstances that are legal, prudent, and ethical. It is the responsibility of the ED to ensure that all agency employees adhere to these boundaries.

Accordingly, the TxDMV boundaries are as follows:

1. The day-to-day operations of the agency should be conducted in a manner consistent with the vision, mission, values, strategic framework, and performance metrics as established by the Board. These elements must not be disregarded or jeopardized in any way.
2. A team-oriented approach must be followed on all enterprise-wide decisions to ensure openness and transparency both internally and externally.
3. The agency must guard against allowing any financial conditions and decision which risk adverse fiscal consequences, compromise Board financial priorities, or fail to

show an acceptable level of foresight as related to the needs and benefits of agency initiatives.

4. The agency must provide timely, accurate, and honest information that will afford the Board, public, stakeholders, executive branch and the legislature the best ability to evaluate all sides of an issue or opportunity before forming an opinion or taking action on it. Any information provided that is intentionally untimely, inaccurate, misleading or one-sided will not be tolerated.
5. The agency must take all reasonable care to avoid or identify in a timely manner all conflicts of interest or even the appearance of impropriety in awarding purchases, negotiating contracts or in hiring employees.
6. The agency must maintain adequate administrative policies and procedures that are understandable and aid in staff recruitment, development and retention.
7. The agency must maintain an organizational structure that develops and promotes the program areas from an enterprise-wide perspective. No organizational silos or sub-agencies will be allowed. We are the TxDMV.
8. The agency must empower its entire staff to deliver a positive customer experience to every TxDMV customer, stakeholder or vendor to reduce their effort and make it easier for them to do business with the TxDMV.
9. The agency must at all times look to flattening its organizational structure to reduce cost as technology advances allow.
10. Agency staff shall anticipate and resolve all issues timely.
11. The agency must maximize the deployment and utilization of all of its assets – people, processes and capital equipment – in order to fully succeed.
12. The agency must not waste the goodwill and respect of our customers, stakeholders, executive branch and legislature. All communication shall be proper, honest, and transparent with timely follow-up when appropriate.
13. The agency should focus its work efforts to create value, make sure that processes, programs, or projects are properly designed, budgeted and vetted as appropriate with outside stakeholders to ensure our assumptions are correct so positive value continues to be created by the actions of the TxDMV.
14. The ED through his or her staff is responsible for the ongoing monitoring of all program and fiscal authorities and providing information to the Board to keep it apprised of all program progress and fiscal activities. This self-assessment must result in a product that adequately describes the accomplishment of all program

---

goals, objectives and outcomes as well as proposals to correct any identified problems.

15. In advance of all policy decisions that the Board is expected to make, the ED will provide pertinent information and ensure board members understand issues/matters related to the pending policy decision. Additionally, the ED or designee will develop a process for planning activities to be performed leading up to that particular policy decision and the timeframe for conducting these planning activities. It is imperative that the planning process describes not only when Board consideration will be expected but also when prior Board consultation and involvement in each planning activity will occur.
16. In seeking clarification on informational items Board members may directly approach the ED or his or her designee to obtain information to supplement, upgrade or enhance their knowledge and improve the Board's decision-making. Any Board member requests that require substantive work should come to the Board or Committee Chairs for direction.
17. The agency must seek stakeholder input as appropriate on matters that might affect them prior to public presentation of same to the Board.
18. The agency must measure results, track progress, and report out timely and consistently.
19. The ED and staff shall have the courage to admit a mistake or failure.
20. The ED and staff shall celebrate successes!

The Board expects the ED to work with agency staff to develop their written interpretation of each of the boundaries. The ED will then present this written interpretation to the Board prior to discussion between the Board and ED on the interpretation. The Board reserves the right to accept, reject or modify any interpretation. The intent is that the Board and the ED will come to a mutually agreeable interpretation of agency boundaries that will then form the basis of additional written thought on the part of the ED and staff as to how these boundaries will influence the actions of the agency.

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER
Performance Driven	Effective and efficient services	1	Average processing time for new franchise license applications	45 days	35 days		MVD
		2	Average processing time for franchise renewals	11 days	5 days		MVD
		3	Average processing time of franchise license amendments	20 days	8 days		MVD
		4	Average processing time for new Dealer's General Distinguishing Number (GDN) license applications	35 days	17 days		MVD
		5	Average processing time for GDN renewals	14 days	7 days		MVD
		6	Average processing time for GDN license amendments	19 days	7 days		MVD
		7	Average turnaround time for single-trip routed permits	33.88 mins	32 mins		MCD
		8	Average turnaround time for intrastate authority application processing	1.47 days	1.4 days		MCD
		9	Average turnaround time for apportioned registration renewal applications processing	2 days	2 days		MCD
		10	Average turnaround time to issue salvage or non-repairable vehicle titles	5 days	4 days		VTR
		11	Average time to complete motor vehicle complaints with no contested case proceeding	131 days	120 days		ENF
		12	Average time to complete motor vehicle complaints with contested case proceeding	434 days	400 days		ENF
		13	Average time to complete salvage complaints with no contested case proceeding	131 days	120 days		ENF
		14	Average time to complete salvage complaints with contested case proceeding	434 days	400 days		ENF
		15	Average time to complete motor carrier complaints with no contested case proceeding	297 days	145 days		ENF
		16	Average time to complete motor carrier complaints with contested case proceeding	133 days	120 days		ENF
		17	Average time to complete household goods complaints with no contested case proceeding	432 days	145 days		ENF
		18	Average time to complete household goods complaints with contested case proceeding	371 days	180 days		ENF
		19	Average time to complete Oversize/Overweight (OS/OW) complaints with no contested case proceeding	40 days	35 days		ENF
		20	Average time to complete OS/OW complaints with contested case proceeding	265 days	250 days		ENF
		21	Percent of lemon law cases resolved prior to referral for hearing	76%	60%		ENF
		22	Average time to complete lemon law cases where no hearing is held	147 days	65 days		ENF
		23	Average time to complete lemon law cases where hearing is held	222 days	150 days		ENF
		24	Percent of total renewals and net cost of registration renewal: A. Online B. Mail C. In Person	A. 15% B. 5% C. 80%	A. 16% B. 5% C. 79%		VTR
		25	Total dealer title applications: A. Through Webdealer B. Tax Office	Baseline in development	A. 5% B. 95%		VTR

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER	
Optimized Services and Innovation		26	Percent of total lien titles issued: A. Electronic Lien Title B. Standard Lien Title	A. 16% B. 84%	A. 20% B. 80%		VTR	
		27	Percent of total OS/OW permits: A. Online (self-issued) B. Online (MCD-issued) C. Phone D. Mail E. Fax	A. 57.47% B. 23.03% C. 11.33% D. 1.76% E. 6.4%	A. 58% or greater B. 25% or greater C. 10% or less D. 1.7% or less E. 5.3% or less		MCD	
		28	Average time to complete lemon law and warranty performance cases after referral	Baseline in development	25 days		OAH	
		29	Average time to issue a decision after closing the record of hearing	Baseline in development	30 days		OAH	
		Implement appropriate best practices	30	Percent of audit recommendations implemented	Baseline in development	90% annual goal for these recommendations which Internal Audit included in a follow-up audit		IAD
		Continuous business process improvement and realignment	31	Percent of projects approved by the agency's governance team that finish within originally estimated time (annual)	57%	100%		EPMO
			32	Percent of projects approved by the agency's governance team that finish within originally estimated budget (annual)	71%	100%		EPMO/ FAS
			33	Percent of monitoring reports submitted to Texas Quality Assurance Team (TXQAT) by or before the due date	79%	100%		EPMO
			34	Percent of project manager compliance with EPMO project management standards based upon internal quality assurance reviews	Baseline in development	100%		EPMO
		Executive ownership and accountability for results	35	Percent of employees due a performance evaluation during the month that were completed on time by division.	Baseline in development	100%		HR
		36	Percent of goals accomplished as stated in the directors performance evaluation	Baseline in development	Measure annually at the end of the fiscal year		EXEC	
	Organizational culture of continuous improvement and creativity	37	Employees who rate job satisfaction as above average as scored by the Survey of Employee Engagement (SEE)	3.47 (SEE 2012)	3.65	3.60 (SEE 2013)	HR	
		38	Increase in the overall SEE score	337 (SEE 2012)	360	351 (SEE 2013)	HR	
Focus on the internal customer	Focus on the internal customer	39	Percent of favorable responses from customer satisfaction surveys	Baseline in development	90%		EPMO	
		40	Annual agency voluntary turnover rate	6.5% (FY 2013)	5.0%		HR	
	Increase transparency with external customers	41	Number of education programs conducted and number of stakeholders/customers attending education programs	4.48/80.61	4/80		MCD	
		42	Number of education programs conducted and number of stakeholders/customers attending education programs	36/335	42/390		VTR	
		43	Number of eLearning training modules available online through the Learning Management System and number of modules completed by stakeholders/customers	eLearning Modules Available - 28 Completed - 735	Available - 31 Completed - 814		VTR	

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER
Customer Centri		44	Number of Shows and Exhibits attended to educate stakeholders/customers about TxDMV services and programs	6	7		MVD
		45	Number of education programs conducted and number of stakeholders/customers attending education programs	3/250	3/250		ENF
		46	Number of education programs conducted and number of stakeholders/customers attending education programs	3/150	4/300		ABTPA
		47	Percent of customers and stakeholders who express above average satisfaction with communications to and from TxDMV	Baseline in development	80%		All Divisions
	Excellent Service Delivery	48	Average hold time	9 min	9 min		CRD
		49	Abandoned call rate	22%	20%		CRD
		50	Average hold time	Baseline in development	1 min		ITS
		51	Abandoned call rate	Baseline in development	5%		ITS
		52	Average hold time	Credentialing - 1.6 minutes Permits - 2.08 minutes CFS - 54.38 seconds	Credentialing - 1.5 minutes Permits - 2 minutes CFS - 50 seconds		MCD
		53	Abandoned call rate	Credentialing - 7% Permits - 6.42% CFS - 5.63%	Credentialing - 6% Permits - 5% CFS - 5%		MCD
<b>Key:</b>		<b>Critical</b>	<b>Off Target</b>	<b>On target</b>	<b>Not yet started</b>		
<b>Vision:</b> The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.							
<b>Mission:</b> To serve, protect, and advance the citizens and industries in the state with quality motor vehicle related services.							
<b>Philosophy:</b> The Texas Department of Motor Vehicles is customer-focused and performance driven. We are dedicated to providing services in an efficient, effective and progressive manner as good stewards of state resources. With feedback from our customers, stakeholders and employees, we work to continuously improve our operations, increase customer satisfaction and provide a consumer friendly atmosphere.							
<b>Values:</b> We at the Texas Department of Motor Vehicles are committed to: <b>TEXAS-Transparency, Efficiency, EXcellence, Accountability, and Stakeholders.</b>							