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MR. TREVIÑO: Good morning. My name is Memo Treviño, and I'm pleased to open the Board meeting of the Texas Department of Motor Vehicles. It is approximately 8:03 a.m., and I'm now calling the Board meeting for October 3, 2019 to order.

I want to note for the record that the public notice of this meeting, containing all items on the agenda, was filed with the Office of Secretary of State on September 25, 2019.

This meeting is being held by video conference call, as authorized under Section 55.127 of the Government Code. Board Members Prewitt and Washburn will be participating by remote broadcasting from Houston.

Members Washburn and Prewitt, can you hear us?

MS. WASHBURN: Yes.

MR. PREWITT: Yes.

MR. TREVIÑO: All good? Great.

Board Members Bacarisse, Gillman, Graham, McRae, Scott and I are here in Austin at the department's headquarters located at 4000 Jackson Avenue, Building 1, Lone Star Conference Room. The Austin location is open and available to the public.

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

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

In accordance with department administrative rule, comments to the Board will be limited to three minutes. To assist each speaker, a timer has been provided. The timer light will be green for the first two minutes, yellow for one minute, and then red when your time is over. Individuals cannot accumulate time from other speakers. Comments should be pertinent to the issues stated on the comment sheet. When addressing the Board, please state your name and affiliation for the record.

Before we begin today, I'd like to remind all presenters and those in attendance of the rules of
conduct at our Board meetings. In the department's rules, Section 206.22, the Board chair is given authority to supervise the conduct of meetings. This includes the authority to determine when a speaker is being disruptive of the meeting or is otherwise violating the timing or presentation rules I just discussed.

And now I'll call the roll.

Board Member Bacarisse?

MR. BACARISSE: Here.

MR. TREVIÑO: Board Member Gillman?

MS. GILLMAN: Present.

MR. TREVIÑO: Board Member Graham?

MR. GRAHAM: Present.

MR. TREVIÑO: Board Member McRae?

MS. McRAE: Here.

MR. TREVIÑO: Board Member Prewitt?

MR. PREWITT: Here.

MR. TREVIÑO: Board Member Scott?

MR. SCOTT: Here.

MR. TREVIÑO: Board Member Washburn?

MS. WASHBURN: Here.

MR. TREVIÑO: Let the record reflect that I, Memo Treviño, am here too and we have a quorum.

So let's all please stand and honor our country and state with the pledges of allegiance.
(The pledges of allegiance were recited.)

MR. TREVIÑO: Well done.

Before we begin today's meeting, I would like to remind all participants that this is a video conference call meeting. We don't do these very often. Because this meeting is being held by video conference call with Members Prewitt and Washburn, there are a few things that will assist in making the meeting smoother and assist the court reporter in getting an accurate record. Department, staff, parties to the contested case, and any commenters should identify themselves before speaking, speak clearly.

Remember that there may be a slight delay with Members Prewitt and Washburn -- but it looks like it's pretty good, the connection seems pretty good, right? -- due to the video conferencing, so please wait a little longer than usual before responding to the participants at the other site. Do not speak over others, and speakers should ask the chairman to proceed and be sure to get recognized before speaking.

Before we go to agenda item number 3, I would like to say thank you to our fantastic department regional staff in Houston and to our great IT staff here at Camp Hubbard for ensuring that he remote meeting link was functioning for today's meeting, and Member Prewitt
and Member Washburn look great over there, so great job, great job.

All right. So the next agenda item is agenda item number 3. Chair's report.

The first order of business will be the Transportation Code requires the Board chair to appoint a member of the Board to act in the absence of the chair and the vice chair. Therefore, I would like to appoint Member Graham over here to serve in that capacity should that event occur, if you agree to serve.

MR. GRAHAM: I will agree to serve, Mr. Chairman.

MR. TREVIÑO: Thank you very much, Member Graham. Hopefully that will never happen but we know we'll be in good hands if it does.

All right. And then a couple of other comments here. Laura Ryan from the Texas Department of Transportation, TxDOT. Since November 7 of 2007, at least one person has died on Texas roadways every single day. Since that day, more than 65,000 fatalities have resulted from vehicle crashes on Texas roadways. In an effort to end the deadly 18-year milestone, the Texas Department of Transportation in its End the Streak Campaign reminds drivers it's a shared responsibility among roadway users and engineers to keep our roads safe.
Former Texas DMV Board chair, Laura Ryan, and current TxDOT commissioner, has asked for our support in partnership. I'm excited to announce that Texas DMV will join forces with our sister state agency to help raise awareness for the End the Streak Campaign. During our December Board meeting we'll highlight how you'll see campaign materials in every Texas DMV facility across Texas so that we can ensure all Texans understand that each one of us has the power to make a difference and help save a life.

So I would encourage everybody to follow up learning a little more about this campaign. It's good for Texas, and Laura Ryan is doing a lot of hard work for this and we definitely want to support her in this endeavor.

Okay. And then we have another really exciting thing, the reason that Member Washburn is in Houston is not only to accompany Member Prewitt so he's not lonely over there, but also she's being honored with the Women Who Mean Business Award this evening. The Houston Business Journal included our very own Board member, Shelley Washburn, as one of their 2019 Women Who Mean Business Award recipients, specifically as an outstanding leader in professional services. Member Washburn was selected for this award for her career.
achievements, contributions to her company, community involvement and leadership, and also just for being a great person. She will be honored this evening at an awards gala in Houston.

Congratulations, Member Washburn.

(Applause.)

MS. WASHBURN: Thanks for the kind comments. I appreciate it. And thanks for allowing me to do this from here so I can make the dinner tonight.

MR. TREVIÑO: Thank you for just being such a great Board member and for your service to Texas, and congratulations again.

Okay. Next is agenda item 3.B. Proposed tentative 2020 Board meeting schedule, which is in your books to keep everyone aware. You'll see most of the Board meetings are currently on the first Thursday of every other month, and the committee meetings are the Wednesdays before the Board meetings. If there is a change, we will notify everyone. Once a meeting is officially scheduled, the meeting date will be posted on the department's website.

And with that, I think we'll go to Executive Director Whitney Brewster's report.

MS. BREWSTER: Thank you, Mr. Chairman.

Before I go into my report, I just want to
thank publicly the TxDMV Board and the executive team for their generosity in hosting yesterday's luncheon. I thought it was a smashing success, we had great attendance, celebrating the 10th anniversary of the Texas Department of Motor Vehicles. So thank you so much on behalf of the agency. We couldn't have done it without the Board and the executive team, and certainly the volunteers that helped organize yesterday's event, so thank you very much.

And with that, Mr. Chairman, if I may enter into my report.

MR. TREVIÑO: Well, cheers to ten years, Texas DMV staff.

(Appause.)

MS. BREWSTER: All right. I know we have a very full agenda so I will make my report -- I will present it as efficiently as possible today.

I wanted to give a quick update on the TxDMV organizational assessment project, also known as TOAP. No Board action is necessary at this time, this is simply a briefing, and you can find the information on this item on page 7 of your board materials.

TOAP is a staff-driven effort to revisit the legislature's vision for this agency and to ensure we have a strong foundation upon which to build as we move
into the future. And we utilized six work groups, communications, legal, organizational preparation, process and technology work groups to accomplish our objectives through this project.

In the June Board meeting I updated the Board on TOAP and what the work groups were hoping to accomplish. I'm very pleased to say that a great deal has been accomplished since we last discussed TOAP. And I'm not going to go through all of these items, you can see a comprehensive list of those items in your board books, again starting on page 7, but I would like to highlight just a couple of areas, if I may.

The communications work group developed a style guide for all TxDMV written communications. They developed standard templates for our communication, including things like memos, fax cover sheets, so everything has the same look and feel coming from the department.

The legal work group did a full inventory of all of TxDMV's policies so we could identify where we may have gaps. They also reviewed our fraud policies for updating. They looked at reviewing and defining the rulemaking process so that we have greater transparency around the rulemaking process for not only our agency and Board but external entities that deal with the
department.

The finance administrative services work group developed an assessment report, both short-term and long-term strategies for both headquarters and our regional service centers, and they developed a facilities report that laid out what those strategies are. They are in the process of finalizing key performance indicators for our internal processes. We have a number of them for our external processes, our program areas, but to improve the overall efficiency of the agency, developing KPIs around our internal functions as well, and those are soon to be completed.

The organizational preparation work group developed a career path policy which each of the divisions are now looking at implementation into the individual divisions to be completed by the end of this year. They also developed an annual classification review plan to make sure that our employees are properly classified and compensated for the work that they do. They developed a new leadership academy which just launched a couple of days ago, which filled up, I'll just say, within four hours by agency staff interested in leadership in this agency, which was very encouraging and again sent a very loud message to, I think, agency management that there is that desire for leadership skill.
sets to be grown within the department.

The process work group completed an RFI and based on that information developed a statement of work to look at the possibility of moving forward with project mapping out our major functions within the organization, so again, so that we can make sure that they are captured appropriately through policy, but also looking for efficiencies and gaps where we can do better.

The technology work group assessed our application performance. They also reviewed the standards and currency of our software and hardware within the department.

Again, that is just a snapshot of some of the items that were accomplished. Again, you can see a full list in your board books, but most of the work groups have either completed their work or have transitioned into operations and are continuing to monitor those through completion.

I want to sincerely thank the executive team for either chairing a work group or serving on a work group. Everyone participated in this process, and so I would like to recognize the chairs of each of the committees: for the communications work group, Caroline Love was the chair, thank you, Caroline; Tracey Beaver who chaired the legal work group; Linda Flores who
chaired the finance work group; Daniel Avitia who chaired the process work group; and Mike Higginbotham who chaired our technology work group. If you'll just join me -- I'm sorry, and Matthew Levitt who chaired the organizational preparation work group.

If you would please join me in just giving them a round of applause.

(Applause.)

MS. BREWSTER: Their efforts are certainly helping better position the department in the years to come, so I appreciate very much the work that they have done.

Moving on, I wanted to introduce the Board and the audience to our new chief information security officer. Angel Cruz joined TxDMV. Angel, do you mind standing? Thank you.

Angel Cruz joined TxDMV as our chief information security officer on September 16. He brings significant security governance, information risk and service management expertise from 20-plus years in various organizations, both private as well as governmental agencies, in senior roles with DXC Corporation, Hewlett Packard, through the Texas Department of Information Resources as the State of Texas chief information security officer, also with the
University of Texas at Austin and University of Texas at Pan American.

He is originally from Brooklyn but has been in Austin for 17 years. He retired as senior chief data systems technician from the U.S. Navy. And he and his wife have three grown children and they play golf whenever they get a chance, and it looks like they've got a potential trip to Europe brewing in the future at some point.

But, Chair, members, guests and staff, please join me in welcoming Angel Cruz to the department.

(Applause.)

MS. BREWSTER: Thank you, Angel.

At this time, Mr. Chairman, we'd like to recognize our recent retirees and employees who have reached major service milestones within the department. We celebrate these employees as a show of our appreciation for their many years of service and their dedication to the citizens of Texas.

So members, if you would join me at the front of the dais. Thank you.

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

And this morning we have an employee who has reached 20 years of state service here with us. Please
welcome Tiffanay Waller from the Finance and Administrative Services Division.

(Applause.)

MS. YANCEY: Tiffanay's career with the State of Texas began at the Lottery Commission in 1999 where she was a drawing specialist and was on TV during the lottery drawings for almost five years. Since then, she worked for the Texas Education Agency for over 12 years, then with the CPA where she obtained her certifications for Texas contract developer and Texas contract manager.

Next Tiffanay worked for the Health and Human Services Commission before joining the DMV just two months ago on August 1. She is the contract manager for the purchasing department where she facilitates the competitive solicitation process and oversees the development, implementation and maintenance of contract and procurement functions for the department.

Congratulations on 20 years, Tiffanay.

(Applause; pause for presentation and photos.)

MS. YANCEY: The following employee has reached 25 years of state service, Donny Ruemke. He's also from Finance and Administrative Services.

(Applause.)

MS. YANCEY: Donny began his state career with the DPS in 1994 at the age of 18. His first job was as a
security officer on the graveyard shift with the DPS Capitol Police District. Donny moved to daytime work at DPS in July 1996 as an accident records microfilm clerk, preparing paper crash reports for microfilm processing. In March 2005 he became the electrical designer and lead upfitter for customized mobile equipment that was manufactured in-house by TxDOT. In December 2010 Donny was hired as the fleet manager for TxDMV. He was the youngest fleet manager in Texas state government at that time. He is responsible for all DMV fleet vehicle related operations and for a 63-unit fleet. Donny has consistently provided an exceptional level of customer service and routinely receives praise from his stakeholders.

Congratulations, Donny.

(Applause; pause for presentation and photos.

MS. YANCEY: The following employees reached a state service milestone but were unable to join us this morning. Twenty years: Scott Doyle, Information Technology Services Division; and Stephanie Rogers from Enforcement Division. Twenty-five years: Yolanda Brijalba in Vehicle Titles and Registration Division.

And forty years: Earl Pearson from Enforcement Division.

And last, the following employees recently retired from the department: Gary Gradel, Cecilia Chen,
Linda Page, Pat Barnes, Alice Carmona, and Conrad Munoz.

Thank you.

(Appplause.)

MS. BREWSTER: Thank you, Mr. Chairman. That completes my report.

MR. TREVIÑO: Well, great. Thank you for that thorough report.

And we would like to again welcome Angel to the department. We expect great things from you.

And commend everybody for starting this initiative, this process that you've just described.

And also, this leadership program sounds great, sounds like a really great exercise too.

All right. So next order of business is the contested case before us. So before I move to the contested case presentations, we'll hear from our general counsel, Tracey Beaver.

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

I just wanted to let the Board know that the order of the presentation of the case will be that the Respondent will go after Mr. Avitia. Each party will have ten minutes for the presentation and five minutes for rebuttal, after which the Board may ask questions of the parties.
Thank you.

MR. TREVIÑO: Okay. Thank you, Ms. Beaver.

Daniel Avitia and Heath Pierce will now address agenda item number 5. Contested case.

MR. AVITIA: Chairman and members, Ms. Brewster, good morning. For the record, Daniel Avitia. I serve as the director of the Motor Vehicle Division. With me this morning, as you mentioned, is Ms. Heather Pierce. Ms. Pierce provided the legal representation on this case at the State Office of Administrative Hearings.

Agenda item 5 can be found on page 14 of your board books. This morning the Board is rehearing a licensure contested case, which was first presented to you in June of this year, regarding Discount Auto Brokers. I will be asking the Board to issue a final order on this matter. Discount Auto Brokers is owned by Mr. Sayed Tabatabaei and this contested case is regarding the owner's fitness for licensure given his recent felony for tampering with government records.

The Board's first vote in June on this matter was unanimous in decision to deny the license renewal and revoke Discount Auto Brokers GDN and salvage licenses. In my first presentation to the Board I reviewed the facts of the case. I also spent some time reviewing the Motor Vehicle Division's Licensure Review Committee
process and our focus on consistency and objectivity when making decisions regarding these matters. Today I would like to briefly review the facts of the case again and then spend some time addressing the ALJ's proposal for decision, addressing specifically whether the ALJ did not properly apply or interpret applicable law in determining fitness and licensure, as well as why the ALJ's recommended sanction is flawed and must be changed.

Chairman and members, this is a summary of the aggravating factors and facts in this case. Number one, Mr. Tabatabaei was warned by police about unlawful vehicle inspections in 2015 when two of his employees were arrested at his licensed place of business for conducting false emissions tests. Police investigators at that time found that 38 percent of all vehicle inspections conducted at the Respondent's business location were fraudulent.

Number two, despite this warning in 2016, Mr. Tabatabaei not only allowed the unlawful activity to continue but to increase. Police investigators found that 281 vehicle inspections conducted in a six-month period at his licensed location, representing 59 percent of all vehicle inspections performed, were fraudulent as well. Mr. Tabatabaei was arrested for this second investigation at his licensed location.
Number three, on November 15, 2016, Mr. Tabatabaei pled guilty to the felony of tampering with government records and confessing that he unlawfully, intentionally and knowingly allowed false information to be entered into the State Motor Vehicle Emissions and Safety Inspection System which is used by state vehicle inspectors to document motor vehicle emissions and safety inspections.

Number four, Mr. Tabatabaei's criminal history and record is recent.

Number five, the fraudulent activity was conducted at Mr. Tabatabaei's licensed business so continued licensure by our department would provide him with the opportunity to repeat the conduct.

Now, members, I'd like to review the ALJ's proposal for decision briefly. Texas Government Code 2001.058(e) provides that a state agency may change an ALJ's finding of fact or conclusions of law if the ALJ did not properly apply or interpret applicable law and/or administrative decisions. In this case the ALJ did not properly apply or interpret applicable law, determining fitness for licensure in two ways.

First, by requiring the department to prove that Mr. Tabatabaei knew or should have known that his employee was using his inspector license to conduct
illegal emissions, and then secondly, by concluding that the department had not met its burden of proof on this case, when, in fact, the guilty plea Mr. Tabatabaei entered in criminal court proved his unlawful, intentional and knowing conduct, and the department met its burden of proof by introducing Mr. Tabatabaei's guilty plea. There are several SOAH licensing opinions that support the basic legal principle that a criminal court guilty plea is an admission of guilt in a subsequent licensing hearing.

Based on the ALJ's errors in applying the law, I recommend the Board find Mr. Tabatabaei unfit for licensure. The ALJ's recommended sanction is flawed, in my opinion, and must be changed. The ALJ recommended that Discount Auto Brokers' licenses be renewed and suspended for two years and any instance of misconduct during the two-year period be probated and suspension leading to summary revocation of all licenses. The ALJ erred in this recommendation for two reasons. Number one, summary revocation of a license would violate statute and Board rules requiring proper notice and hearing for a license holder, and number two, the word misconduct of any kind is too vague to be enforceable. Members, in summary, the ALJ's recommended sanction is too lenient to be effective and conflicts
with prior SOAH recommendations, statutory provisions and
Board decisions. The Board may change a sanction as the
Board, and not the ALJ, is the decision-maker concerning
sanctions in a contested case under Texas law.
Accordingly, staff is asking the Board to issue a final
order adopting the ALJ's corrected findings of fact and
conclusions of law, as recommended by staff, denying all
applications and revoking the Respondent's salvage dealer
and GDN licenses as this, I believe, is the only sanction
that would be consistent with current law and prior SOAH
recommendations and Board decisions.

Mr. Tabatabaei is present this morning, along
with his counsel, Mr. Lau. They both received notice of
this meeting and Mr. Lau would like to present and
provide comment today to the Board.

Members, this concludes my remarks at this
point. I'm certainly happy to answer any questions you
may have.

MR. TREVIÑO: Thank you, Mr. Avitia.

Any questions from Board members?

MR. GRAHAM: if you would, would you clarify
the specific conclusions of law? I don't know that I've
got the exact number that you referenced.

MR. AVITIA: Yes, sir. Just give me a moment
to find it.
So counsel was asking me a question here, Member Graham. Are you specifically talking about 2001.058(e) which allows the Board to change findings of fact and conclusions of law, or the specific conclusions of law and findings of fact in the PFD?

MR. GRAHAM: In the PFD that you believe were found to be incorrect from the ALJ.

MR. AVITIA: Yes, sir. We would be recommending that conclusion of law number 8 be deleted, that conclusion of law number 12 be changed from fit to unfit, and we would be recommending that conclusion of law number 13 also be deleted.

MR. GRAHAM: Okay. We may have some more questions when we come back around, but I just wanted to make sure I was clear on that as we heard from them.

MR. TREVIÑO: Member Scott?

MR. SCOTT: On the PFD number 12, the ALJ says that some sanction is warranted, and then I go down to number 13 and it says the department should suspend the license for two years and probate suspension. Do we have a process in place at the agency to suspend the license? Is that one of the options?

MR. AVITIA: Good question, Member Scott. We do not have a process to essentially probate a license.

In the June presentation I mentioned we don't have a
probation division within this agency, so probating is really not an option for this agency. I'm not sure who does that in licensure matters at this point.

MR. SCOTT: Okay. And then you went on to say that Respondent not engage in any misconduct. What type of misconduct would that refer to?

MR. AVITIA: I think that's the issue that we're having with the ALJ's proposal for decision is we don't know what kind of misconduct he's talking about. I don't know if that means receiving a parking ticket or having some kind of assaulting type, it could be anything really. So that's why we're trying to change the PFD so that we don't have to understand what that misconduct may be. We're just not sure what he meant by that.

MR. SCOTT: So the sanction that the ALJ calls for here, we're not really equipped to impose that sanction, so that is not something that's available as a sanction.

MR. AVITIA: Correct.

MR. TREVIÑO: Members Washburn or Prewitt, any comments, questions?

(No response.)

MR. TREVIÑO: Good. Okay. Mr. Avitia and Ms. Pierce, thank you very much.

So we'll now proceed with Respondent's
Mr. Lau, welcome.

Mr. Tabatabaei.

MR. LAU: Good morning. My name is Ethan Lau from the law firm Rivas Goldstein, and I represent Mr. Tabatabaei as far as Discount Auto Brokers, LLC, this case before you, and thank you for the opportunity for us to speak.

I just want to -- there's some legal issue that I want to get out of the way. First of all, there has been legal precedent under the Texas Board of Dental Examiners v. Brown, which is grounds that the Board should really give deference to the ALJ's findings of facts and conclusion of law unless, as Mr. Avitia has said, that under Texas Administrative Procedure Code 2001.58(e) when there is a specific finding that the ALJ has misapplied the law or has conduct something improper, therefore, the Board can depart from it, and it requires the department to provide specific legal basis and reasoning for the departure.

And in this case, as elicited from the ALJ hearing back in November, there was testimony and the ALJ judge did agree, as presented in his proposal for decision, that Mr. Tabatabaei and Discount Auto Brokers, because of a variety of different reasons, because they
were being evicted at the time and there was impending tax deadline and Mr. Tabatabaei allowed one of his employees to use his license, state inspection license to do inspections, and not knowing that the employee ended up doing these dummy fraudulent inspections behind his back.

When he was subsequently approached by the detectives from Harris County Sheriff's Department, that's the first time he found out and then the employee disappeared, found nowhere.

And after Mr. Tabatabaei found out what had happened, he cooperated with the investigator, cooperated with the prosecutor and he's taken responsibility for the issue that has occurred in his place of business. As stated by the ALJ, Mr. Tabatabaei took a plea of guilty and then complied with probations and paid all the fines and did his community service, and because of his good behavior and cooperation with probation, he was granted an early discharge, I believe it was nine months early or something to that effect.

And then the ALJ also found specifically that Mr. Tabatabaei has implemented specific steps to ensure that something like that wouldn't happen again, including providing periodic employee training, installing cameras that are recording 24 hours to ensure that something like
that wouldn't happen again. In fact, early this year one of his employees was caught doing these kind of dummy inspections and then Mr. Tabatabaei made a report to Department of Public Safety for that purpose and then immediately terminated the employee.

Also, the ALJ has found that Mr. Tabatabaei clearly understands the magnitude of the misconduct that has taken place in his place of business and that he has learned from his mistakes and has made positive steps to ensure that something like that won't happen again.

So based on these factors and there's a list of five factors that the Board and the ALJ should consider whether the licensee is suitable to be licensed under Texas 43 Administrative Code 215.89(a)(1) through (5) which include considering the nature of the crime, the age, as well as the conduct before and after the alleged misconduct, as well as whether there's recommendations by the probation officer or the police officer with respect to the licensee's character. And ALJ Casey Bell did, in his decision, go through the individual items and then based on his analysis of those items determined that Mr. Tabatabaei is fit for licensure.

So based on the authority of the Brown case, the department really should give deference to that
decision, to that finding of law that Mr. Tabatabaei is fit for licensure. So with all due respect to counsel, there is nothing in the ALJ's decision or in his proposal for decision where it does indicate that he has in any way misapplied the law. He did go through the factors, he applied the factors based on the testimony and the evidence received at the ALJ hearing and he made a conclusion that Mr. Tabatabaei is fit for licensure.

And then whether the Board has beared its burden that Mr. Tabatabaei is intentionally falsifying these government records it's not really relevant whether he is fit to have license. We admit that Mr. Tabatabaei did something wrong, we admitted that there should be some basis for some punishment but to take away his entire livelihood. Mr. Tabatabaei for the last ten years, for decades his sole source of income is operating his used car sales dealership. He supports his elderly parents, he supports his wife, he has a nine-month-old, and he's only the sole source of income for his family. He has taken responsibility for the misconduct, he has taken a guilty plea, he has complied with all probation imposed by Harris County, his state inspection license has been taken away, and the only source of income for him is to continue to operate his business. If his license has been revoked, then there's no way for him to
support his family and he'll be essentially on the
street.

So just based on these cumulative reasons, we
ask the Board to allow the renewal of the general
distinguishing license as well as the salvage license
with the endorsements.

Thank you.

MR. TREVIÑO: Thank you, Mr. Lau. Thank you, Mr. Tabatabaei.

Any questions for Mr. Lau? Member Prewitt.

MR. PREWITT: Mr. Chairman, if appropriate, I'd like to make a motion at this time.

MR. TREVIÑO: I think we still have discussion.

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

At this time we'll allow five minutes of rebuttal for each party, but first if there's any questions for Mr. Lau or Mr. Tabatabaei, and then afterwards, Mr. Avitia will have five minutes for rebuttal and Mr. Lau.

MR. TREVIÑO: Great. Any questions for Mr. Lau, Member Washburn or Member Prewitt?

(No response.)

MR. TREVIÑO: Anybody else?
(No response.)

MR. TREVIÑO: So I think, Mr. Avitia, we'll proceed to you for rebuttal. You have five minutes.

MR. AVITIA: Yes, sir. Mr. Chairman, members, thank you for the time for rebuttal.

I'd like to make a couple of points with regard to Mr. Lau's provided information. Number one, the committee that reviews licensure determinations did consider the nature, the age, the conduct and the letters of recommendation provided by the licensee.

The nature of the crime is extremely significant in this case. As I mentioned in the previous presentation in June, with Mr. Tabatabaei knowing violations, he put 281-plus vehicles on the road that should not be on the road with you, with me, with our families, and this is knowingly, and I'll talk about that in just a little bit.

We did consider his age. These were not youthful indiscretions. Mr. Tabatabaei was 39 when he committed this crime, he pled guilty.

Letters of recommendation, we reviewed those, and while all very positive, I'll say, still not enough to sway the committee to make the recommendation to continue licensure, and that's why we're here today.

Now, Mr. Lau has said that Mr. Tabatabaei did
not knowingly violate the law. The police report that I have here and that was submitted as evidence lists Mr. Tabatabaei over 30 times within this small document of seven pages. Mr. Tabatabaei did know, so that information is false.

To support that specifically, and I'm reading from the police report, the inspector says, "Mr. Tabatabaei was in and out of the inspection bays giving several workers directions." Another quote, "Mr. Tabatabaei knowingly participated and allowed a female to use his name and secret PIN number to complete the unlawful inspections."

Now, if I'm running a business, as Mr. Tabatabaei does, I would know that a Dodge Ram and a Toyota 4 Runner are constantly in my inspector bays, as is discussed in the police report. If those two vehicles are constantly in those bays and other vehicles are pulling in to the tune of over 281 times but those two vehicles aren't moving because those are the clean scanning, meaning those are the two vehicles constantly being used to run the operation, then that tells me he did know. The police report tells me that he did know and supported the action.

Members, that concludes my remarks with regard to Mr. Lau's comments. Certainly happy to answer any
questions, but I seek your favorable determination on this matter.

MR. TREVIÑO: Any questions from the Board?

Member Scott.

MR. SCOTT: The PFD number 12 says some sanctions, but since we don't have the ability to probate or suspend the license, are there any sanctions available to us other than revocation of the license?

MR. AVITIA: Member Scott, thank you. I may have to punt to your general counsel since I'm not an advisor to the Board, but what I will say is the sanction that we are recommending from the licensure perspective is revocation.

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

The sanctions available to the Board are those that are outlined in the PFD, so the findings of fact and conclusions of the law are the entire universe that the Board may consider in making a decision in the contested case. And in the sanction in the proposal for decision, the judge in the case did recommend revocation, but you can also change that outcome because the Board is the final decision-maker in the case.

MR. TREVIÑO: Any more questions? Member Graham.
MR. GRAHAM: So in conclusion of law 8, the judge discusses probation, and as you stated and as I think most of us are aware, there is no probation within the agency. I find that interesting, and I wanted to ask would the ALJ not have researched that? Because now it causes me to wonder about other facts as it pertains to our options as a Board in this case and whether or not what the ALJ has stated was even researched. I mean, I just don't understand how one of the conclusions of law could not even, in all reality, be an option to us.

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

While there is a provision under the law that the license can be probated or suspended, the response from Mr. Avitia was that functionally at the department currently we don't have that process in place. But I'll turn it over to Mr. Avitia for comment.

MR. AVITIA: Right. Member Graham, thank you for the question, first of all.

Your counsel is correct, we do not have that process in this agency, have never had that process in this agency, and I guess that's why we were so perplexed by the proposal for decision and the ALJ's conclusions of law with regard to not just number 8 but also number 13 and number 12.
MR. GRAHAM: Thank you.

MR. AVITIA: Yes, sir.

MR. TREVIÑO: Member Gillman.

MS. GILLMAN: Is it taken into consideration, both sides in the arguments presented, is it reasonable to recommend a revocation and then an application period accepted within five years?

MR. AVITIA: Member Gillman, we briefly talked about that in June. The answer to that question is twofold. Number one, the applicant will be eligible to reapply within five years. I believe it's the conviction, so he would be eligible to apply in 2023, if my math is correct. And revocation is certainly what we're pursuing this morning.

MS. GILLMAN: Thank you.

MR. TREVIÑO: Member Scott.

MR. SCOTT: Once the license is revoked, you're at a five-year waiting period?

MR. AVITIA: Based on the Occupation Code, yes, sir, we'd be looking for five years from the date of the conviction, I said if my math is correct he would be eligible to reapply.

MR. TREVIÑO: Member Graham.

MR. GRAHAM: I'm going to jump back in here.

MR. TREVIÑO: Sure.
MR. GRAHAM: So as I read conclusion of law 8, that's neither here nor there, that's not an option, so as I try to work through my analysis, I'm going to scratch 8. That takes us to 12 which I think is obviously that's where this case will be decided one way or the other which is to change, and your request, change fit to unfit. So as I look at that through the context of what we can or cannot consider -- and I'm not going anywhere here, I'm just walking down this path with you and general counsel as we look at this -- we have three options -- we have three ways that we can change this word fit to unfit. First, if we conclude the ALJ did not properly apply or interpret applicable law, that a prior administrative decision on which the ALJ relied, or a technical error in a finding of fact should be changed.

So I think I have learned from past cases that the ALJ or the court of appeals does not always fully appreciate us just changing a word without having something behind it to deliver, and so help me connect that. How do I, as a Board member, knowing that this could end up back in another court, how can we -- we can't just change it from fit to unfit, we have to have something to hang that on. Right? Would that be accurate?

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

The Board must also consider the factors under Occupations Code Section 53.023 regarding any mitigating factors, and since Mr. Avitia has provided his rebuttal of five minutes and the Board is asking him questions, Mr. Lau will also have a rebuttal of five minutes and then you can ask him questions as well.

Thank you.

MR. TREVIÑO: So Mr. Avitia is done with his five minutes?

MR. AVITIA: Yes, sir.

MR. TREVIÑO: So can Member Graham's question be answered, or are you saying the time limit is expired for questions to Mr. Avitia?

MS. BEAVER: You can also consider the factors under Occupations Code Section 53.023 regarding any mitigating factors, and if those are factors under the findings of fact that you'll want to review if there is anything you wanted to change.

MR. TREVIÑO: Okay. Thank you.

Any further questions for Mr. Avitia and Ms. Pierce?

(No response.)

MR. TREVIÑO: Thank you.

Mr. Lau, Mr. Tabatabaei.
MR. LAU: Thank you.

So I think Member Graham has stated that the issue is in order to change any wording on the conclusion of law requires some sort of misapplication of law or some sort of impropriety by the ALJ, and what I'm hearing from counsel is that they are disagreeing with how the ALJ analyzed the factors, but there is no indication that the ALJ was in any way misapplying the law. He did go through the factors under 215.9(a), and then with the individual factors he listed testimony and based on the testimony that he has listened to and the evidence admitted, he concluded based on these factors that Mr. Tabatabaei is fit to be licensed.

And irrespective of what the committee has -- how they view the evidence and how they view the severity of the conduct, the Board is really bound by the ALJ's decisions on the conclusions of law unless there is some misconduct, and there is none here and they fail to point to any. So the fitness finding really should be binding, and then if we go down the road and have a judicial review, there is really nothing for the Board to point to that indicates why they want a departure from the ALJ's conclusions.

And then with respect to the allegation that Mr. Tabatabaei intentionally engaged in this
conduct, we know for a fact from the police report there
are a lot of conclusions being drawn that the fact that
Mr. Tabatabaei was talking to his employees and having
conversations with his employees at his lot, it's
considered he was instructing people to do these illegal
actions. But they were videotapes of what had happened,
and we actually obtained the videotape and presented it
to the ALJ.

We played 20 minutes or so of video and this
is actually referenced on page 8 of the proposal for
decision, which the ALJ described that it was a videotape
that is several hundred meters away -- feet away, with no
audio, and all it shows is Mr. Tabatabaei walking around
the lot and talking to various people, and there's no
indication -- and based on the observations the
investigator, detective written in his report that Mr.
Tabatabaei intentionally instructed his employees to
conduct these illegal inspections, which is not true, and
it doesn't show it from the observations or from the
actual videotape what had happened.

And also, with respect to what had happened in
the past 2015, prior to the incident that we are
concerned about, where two employees were arrested at the
place of business, there was never a conversation to Mr.
Tabatabaei about what had happened. This is also
elicited during the testimony to the ALJ. All had happened was that the detective came and talked to Mr. Tabatabaei in his office asking, Do you know what's going on? And Mr. Tabatabaei said, I don't know. And that was the extent of the conversation. There was never a warning about something illegal misgiving that is going on his business, there was never any indication that something was going on.

And again, there is no evidence to prove that Mr. Tabatabaei intentionally did anything, so to base on some kind of conjecture to then show that Mr. Tabatabaei is unfit and then to deviate from the ALJ's conclusion of law which is binding on the Board which is improper, it's entirely reversible in any judicial review.

And if there are any questions, I'm happy to answer.

MR. TREVIÑO: Thank you, Mr. Lau, Mr. Tabatabaei.

Does anybody have any questions, anybody from the Board? Member Washburn? Member Prewitt?

MR. PREWITT: No questions.

MR. TREVIÑO: Member Gillman.

MS. GILLMAN: Just discussion.

MR. TREVIÑO: Okay. Good.
MR. PREWITT: Member Treviño, I'd like to make
a motion at this time.

MR. TREVIÑO: So we have a motion, Member
Prewitt. What is your motion?

MR. PREWITT: Mr. Chairman, I move that the
Board adopt the findings of fact 1-28, and conclusions of
law 1-7, 9 and 11, as stated in the proposal for
decision, delete conclusions of law 8 and 13 because the
ALJ misapplied the law, and amend conclusion of law 12 to
state that the Respondent is unfit because giving the
Respondent a license would put Respondent in a position
to repeat the unlawful conduct of allowing an employee to
use his inspector's license to perform 281 unlawful
inspections at his place of business and has insufficient
mitigating factors to give him a license. I move that
the Board deny the Respondent's license renewal
applications and revoke the existing GDN and salvage
dealer's license.

Mr. Chairman, the sanction in the PFD of a
probated license is too lenient to be effective. The
sanctions of denial of Respondent's applications for
renewal and revocation of Respondent's GDN license and
salvage dealer's license is appropriate and consistent
with prior Board administrative decisions. The Board,
not the ALJ, is the decision-maker concerning sanctions.
in a contested case.

Thank you, Mr. Chairman.

MR. TREVIÑO: And we have a motion from Member Prewitt. Does everybody follow the motion, and do we have a second?

MS. GILLMAN: I'll second.

MR. TREVIÑO: We have a second.

MR. TREVIÑO: Okay. Discussion? Member Gillman, would you like to? Anybody?

MS. GILLMAN: I guess I just wanted to say that I also think that it is reasonable to switch the wording to unfit because of in the findings of fact I feel like the two employees that were arrested is a warning and should have been taken seriously. I think that this was a blatant disregard for the law.

I feel like in finding of fact number 23 Mr. Tabatabaei was going to be more careful in his hiring practices, and that confuses because I feel like he knowingly gave his number out and that was his personal decision to defraud the public.

I feel like changing the wording to unfit and revoking a license is not the end of the world because you can reapply in five years.

I feel like also the letters of recommendation, one from the BBB, while I respect the
BBB, I don't feel like it's a credible measure of rehab because the BBB never comes to audit your place of business, there's no consequence as a result of the BBB's opinion, and they don't have any fraud detection. Maybe a better judge of performance would have been the inspector that comes around regularly from the state. To me that would have been a better judge of performance and rehab going forward.

In my own trying to understand the timeline, this all began in 2015 and really there's been no -- Mr. Tabatabaei has been in business without interruption since then, if I'm correct. So I feel that a sanction is warranted when you have a blatant disregard for the law, and I feel like this second time around at the Board we should get it right in the final order.

Thank you, Mr. Chairman.

MR. TREVIÑO: Thank you, Member Gillman.

Any more discussion? Member Graham.

MR. GRAHAM: Just if I could, obviously in this situation some bad decisions were made and I certainly recognize and appreciate the efforts to correct that on Mr. Tabatabaei's part. At the same time, Daniel, I appreciate the recommendation that you've brought and certainly like to support our staff. You obviously feel very strongly about this based on your extensive amount
of time that you've spent on this.

And so I want to make sure that our general
counsel feels good about we're on pretty good ground with
these recommended revisions.

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

Under Government Code Section 2001.058(e),
you'll need to identify those conclusions of law that you
would recommend changing, if there are any, and then
you'd need to specify the specific reasoning as to why,
and some of that reasoning would be to also go to any of
those mitigating factors under Occupations Code Section
53.023, so that's the discussion that's being had right
now.

MR. GRAHAM: Okay. So we will need reasoning
to go with the change to conclusion of law 12, and that's
essential if that's where we're headed.

MS. BEAVER: Tracey Beaver, general counsel,
for the record. If anybody would like to confer
privately with counsel, that's also an option.

MS. McRAE: Chairman. I would like to add to
that.

MR. TREVIÑO: Yes, Member McRae.

MS. McRAE: The department has to consider
certain factors under 53.023, one of those being the age,
and the Respondent was 39 years old at the time of the incident, and so I feel like he was old enough to distinguish right from wrong.

The letter of recommendation, that's another factor we have to consider, and you had the one of the letter of recommendation from the probation officer, and while certainly the probation officer's recommendation is credible, it's a credible source, there are other sources of recommendation that could have been sought, such as the chief of police, the sheriff's office. None of those exist, you have just the one from the probation officer. There is no other recommendations from anyone else within the community that you come into contact with.

And as far as the rehabilitation, you stated that security cameras were installed and I don't remember the words you used to describe the training, but as a business owner and a license holder, I think it's incumbent upon the owner, he has that obligation to ensure that all statutes and all laws relating to that license is being upheld.

And I don't feel those things have been met by the Respondent.

MR. TREVIÑO: Thank you, Member McRae.

Any more discussion?

MR. PREWITT: Mr. Chairman?
MR. TREVIÑO: Yes, Member Prewitt.

MR. PREWITT: I'd like to add some further comments to bolster the motion I made, if I may. Some of these comments will be redundant on some of the other statements other Board members have previously made.

MR. TREVIÑO: Member Prewitt, one second.

So General Counsel Beaver, is he amending his motion or just adding comments to his motion?

MS. BEAVER: It's perfectly fine for the member who made the motion to also then go ahead and give comments as to why he was making the motion.

MR. TREVIÑO: Very good. Thank you.

Go ahead, Member Prewitt. Sorry to interrupt you.

MR. PREWITT: So I think the SOAH proposal for decision, my basis that it should be amended because in finding of fact 8 the ALJ found that 281 unlawful emissions inspections -- which we've already discussed were conduct conducted from the Respondent's place of business -- from October 2015 to April 2016, and Mr. Chairman, the false information from those inspections were recorded in the Texas Information Management System using Respondent/owner's license number and Respondent/employee's license numbers. That's 281 inspections which I think is a very significant number.
The fact that the Respondent allowed his employee to use his vehicle inspector license to perform these inspections at his place of business knowing it would be unlawful to do so. And although the ALJ found in part that the Respondent took responsibility for and regrets his mistake, the number of times he committed this unlawful act, over 281 times, is substantial and it's not an isolated incident that could be considered a mistake.

Mr. Chairman and Board, I would also state that the Respondent did not show or does not seem to show sufficient rehabilitation for being fit for licensure. He was 39 years old when these violations occurred, when this crime was committed, from October 20, 2015 to April 20, 2016. Only one year had lapsed since the last time that Respondent's crime was committed to the time he applied to renew his license, and in my opinion, it's just not enough time to have passed since his last criminal activity to consider it rehabilitated.

The thing that was mentioned earlier by Board Member Gillman about the BBB, that's just an industry association, it's not an endorsement that he's rehabilitated or doing business in a proper manner. It would have been helpful to have character references from those in contact with him or from his industry that he's
an upstanding and honorable member of the salvage industry community. We don't have that.

A criminal history of tampering with a government record in his place of business is injurious to the industry's reputation, and as one of the Board member's stated earlier, we don't have something in place to have probationary status and to review these guys and oversee these guys' activity.

Mr. Chairman, concerning the mitigating factors under Occupations Code Section 53.023, the Respondent did not show he's rehabilitated. Giving Respondent a license would allow him to repeat the unlawful conduct which is unacceptable. The ALJ found in finding of fact 17 that the unlawful conduct was still occurring at his place of business as recent as early 2018. Although the Respondent fired the employee for performing illegal inspections, giving Respondent a license would give him the opportunity to repeat the conduct.

Thank you, Mr. Chairman.

MR. TREVIÑO: Thank you, Member Prewitt. Any further discussion?

(No response.)

MR. TREVIÑO: No? Okay. Hearing none, I call for a vote. We have a motion from Board Member Prewitt,
we have a second. Hearing none, I call for the vote.

Board members, when I call your name please state your vote for the record.

Member Bacarisse?

MR. BACARISSE: Aye.

MR. TREVIÑO: Member Gillman?

MS. GILLMAN: Aye.

MR. TREVIÑO: Member Graham?

MR. GRAHAM: Aye.

MR. TREVIÑO: Member McRae?

MS. McRAE: Aye.

MR. TREVIÑO: Member Prewitt?

MR. PREWITT: Aye.

MR. TREVIÑO: Member Scott?

MR. SCOTT: Aye.

MR. TREVIÑO: Member Washburn?

MS. WASHBURN: Aye.

MR. TREVIÑO: And I, Chairman Treviño, vote aye as well. It's a unanimous decision.

Mr. Lau and Mr. Tabatabaei, it gives this Board no pleasure, but the motion passes unanimously. Thank you.

MR. AVITIA: Members, thank you.

MR. TREVIÑO: Thank you, Mr. Avitia. Thank you, Ms. Pierce.
We'll take a quick two-minute break and we will resume in a couple of seconds.

(Whereupon, at 9:12 a.m., a brief recess was taken.)

MR. TREVIÑO: Ladies and gentlemen, I call this meeting back to order. It's approximately 9:20 and we are back in session. Thank you for your patience.

We now move to agenda item number 6, Advisory Committee appointments. We'll address this item at a future Board meeting. I'm sorry. No, we're not, we're going to address it now.

We are now going to take up the appointment of members to the Vehicle Titles and Registration Advisory Committee, presented by Executive Director Brewster.

MS. BREWSTER: Thank you, Mr. Chairman. For the record, Whitney Brewster, executive director. I am addressing item number 6 which starts on page 88 of your board books.

I am recommending that the Texas Department of Motor Vehicles Board appoint the individuals from the list of potential members to the Vehicle Titles and Registration Advisory Committee. Again, you will find the full list of names on page 89 of your board materials.

Our Sunset Bill SB 604 required that the TxDMV
Board adopt rules establishing advisory committees by September 1 of 2019, which you did in the August 8 Board meeting. The TxDMV Board is required to appoint members to an advisory committee by selecting them from a list of potential members provided by the executive director, which, again, you see in your board books. Further the Board is required to, to the extent practical, consider the balance of the advisory committee to ensure representation of industries or occupations regulated or indirectly regulated by the department, consumers of services, as well as different geographical regions of the state.

I have reviewed approximately 30 applications for the VTR Advisory Committee. I considered various eligibility standards, I looked at the applicants' knowledge and interest in the work of the committee, I also looked at differing viewpoints, as well as the industry or occupation of the applicant. I also looked at the different geographical regions of the state, as well as whether the applicants were consumers of our services.

Please note that the applicants that are not on this list will continue to be considered should there be turnover or if there is additional members in a particular area of expertise that is needed.
Additionally, we will continue to accept applications for our advisory committees. If there are additional members that will further balance the representation, I will most certainly consider their eligibility and bring them before this Board for consideration.

Mr. Chairman, I'd be happy to answer any questions that you have.

MR. TREVIÑO: Great. We're very happy that you got so many applications.

Does anybody have any questions for Ms. Brewster?

MS. McRAE: Chairman, I have a question.

MR. TREVIÑO: Ms. McRae, go right ahead.

MS. McRAE: It's more for clarification. Is there a term for the advisory committee?

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

The term for the advisory committee is four years.

MS. McRAE: Okay. I thought so.

And I think you just stated this, but will other members be added to this committee?

MS. BREWSTER: Member McRae, yes, they can.

The maximum allowance is 24 on the committee, and what you see presented are 14 names at this time.
MS. McRAE: Okay.

MR. TREVIÑO: Member Graham.

MR. GRAHAM: I do have a concern just from the standpoint that there's no -- thinking about the franchise dealer system, both truck and auto side of the industry, we have no one from the truck side and we have one used car dealer, or we have one used sales manager from a dealership.

MS. BREWSTER: We have an independent car dealer represented, as well as a franchise dealer represented.

MR. GRAHAM: So that was your approach on it was just like the Board. I mean, this is a nine-member committee. Correct?

MS. BREWSTER: Currently what you see proposed are 14 members.

MR. GRAHAM: Fourteen. I'm sorry. That's right.

MS. BREWSTER: There is an allowance up to 24 should we receive other applications. We have had incredible interest in serving on our advisory committees from the tax assessor-collector and the dealer community. I will tell you there are certain areas that we're still needing some applications from which, again, we would most certainly welcome. But if I could make a public
plea, Mr. Chairman.

MR. TREVIÑO: Of course.

MS. BREWSTER: The areas that we're really looking for are around public representation, we're also looking for manufacturer members, as well as potentially some law enforcement members as well. This is just one of the five committees that this Board has established. Again, we're continuing to take names and if there are further applications that would help round out the representation on this advisory committee, I will certainly review those, I will review all of them for eligibility, but bring them to this board for consideration.

MR. GRAHAM: I would certainly request that we see if we can find someone from the truck side.

MS. BREWSTER: I appreciate that, Member Graham. You will see in here there are a couple of different entities with motor carrier expertise, maybe not particularly in the motor carrier sales but you will see several that have motor carrier expertise if you look in the right-hand column. Additionally, the roles which they play in their particular business, those businesses do have a motor carrier influence as well.

But again, if we receive applications, we will most certainly consider those, so any assistance in
helping get the word out to increase the representation on the advisory committee would be appreciated.

MR. GRAHAM: I just would like to encourage y'all if you think about the role that the dealers play in this process, I just want to make sure there's adequate representation, and right now one out of 14, I just want to make sure that we've got the right people at the right table. So I will certainly reach out to someone on the truck side, maybe from the dealership side, to see if we can get you some more applications.

Thank you.

MR. TREVIÑO: Thank you very much, Member Graham.

Member Gillman.

MS. GILLMAN: I just wanted to agree that the purpose of the advisory committee is to review processes and make it better. Right, I guess?

MS. BREWSTER: Yes, ma'am.

MS. GILLMAN: And so I think it's important to have the user, the one using the system, like the truck dealer, car dealer, new car and independent used car, I think the user knowledge is vital in that process of review and trying to make recommendations for improvement, because they're users, they know it. So I would agree, we should try and get representation from
all three.

   Thanks.

MR. TREVIÑO: Great. Thank you, Member Gillman.

Member Washburn.

MS. WASHBURN: Thanks.

Ms. Brewster, I appreciate you recognizing that there's no one on the committee from the manufacturer/distributor. How can we help, or is there a way that in general more recruiting can be done? I'm assuming that you just don't have applicants for some of these roles.

MS. BREWSTER: Yes, ma'am, that is correct, and I know general counsel is willing to assist in crafting messages to get the word out across the state regarding needs for additional applicants. So I'm looking at general counsel, and she is nodding, if you can't see her.

(General laughter.)

MS. WASHBURN: As new applicants come in, then you would serve those up to us in future meetings so that we can make sure that this kind of doesn't fall through the cracks?

MS. BREWSTER: Yes, ma'am. This is very important, and it's important to note that this is the

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first time we've really gone through these comprehensive advisory committee process, and as we continue to get applications, again, we will continue to receive them, I will continue to review them for eligibility, and I will bring them forward to this Board for consideration to be added either to this or the other committees that are yet to be appointed.

MS. WASHBURN: Thank you.

MR. TREVIÑO: Great.

MR. GRAHAM: One more question.

MR. TREVIÑO: General Counsel Beaver.

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

I just wanted to mention that the application for the advisory committees is on our website, and we did a GovDelivery notice, and I'd be happy, as Whitney was mentioning, to craft a message for members if you would like to spread the word as well.

MR. TREVIÑO: Thank you. Maybe we should have a bumper sticker.

MR. GRAHAM: Let's do a license plate.

MR. TREVIÑO: Let's do a license plate.

(General laughter.)

MR. GRAHAM: I just wanted to ask did we reach out to stakeholders? What did that process look like?
MS. BREWSTER: Yes. Member Graham, thank you for asking that question. We've done a series of things. We've mentioned it a couple of times in this meeting, but we've also sent the message throughout GovDelivery which is our primary way of communicating with the various stakeholder groups to get the message out. In addition, to add greater visibility around the process, the information has been posted on the website explaining what the various committees, what we're looking for, as well as the application so that we can get that information and review the eligibility of those candidates with relative ease.

MR. TREVIÑO: So the balance may not perfect but there was a reason you wanted to get this committee up and running quickly because there are some things you guys wanted to run through this committee, so that was one of the desires, and so there are slots open. And that's one of the challenges with our system of government, our republic requires citizen participation, and that's a challenge trying to find people who are willing to serve and dedicate some of their time to helping this process work. And you try to do balance by industry and geography as well. Right?

MS. BREWSTER: Geography, as well as consumers of the services versus industry. That was very important
through the Sunset process to make sure that we have a
more balanced representation between industry and
consumers of our services.

MR. TREVIÑO: And so this was a process to get
it started, it's not perfect, it's not where we want it
to be exactly. Right?

MS. BREWSTER: That is correct.

MR. TREVIÑO: But you just wanted to kind of
put a stake in the ground and get this thing moving.

MS. BREWSTER: Yes, sir.

MR. TREVIÑO: And now it requires other people
to find members to participate and volunteer their time
to help us with this process.

Any other comments from Member Prewitt?

You're awfully silent. You're good. Okay.

Okay. No more comments. Are there any
comments from the public? I've got a list of comments
here. Is anybody commenting on this?

MS. BREWSTER: No, sir.

MR. TREVIÑO: No? Okay. So no public comment
on that.

Do I have a motion?

MS. McRAE: Chairman, I'd like to make a
motion.

MR. TREVIÑO: Member McRae.
MS. McRAE: I move that the Board appoint the following individuals to serve on the Vehicle Titles and Registration Advisory Committee, and let me apologize first if I do not pronounce these names correctly:
Tawana Kuni of Flower Mound; Dana Clark Moore of Leander; Ivan Nino of El Paso; James Paschall of San Antonio; Kristi Torres of Edinburg; Cristal Vincent of Amarillo; Linda Kinney of Comfort; Robert Roberti of Frisco; Keith Millard of Nacogdoches; Thomas Drake of Rockdale; Jackie Polk of Lufkin; Faron Smith of Canyon Lake; Shay Luedeke of Holland; and David Fontenot of Jonestown.

MR. TREVIÑO: Great. So we have a motion from Member McRae. Do we have a second?

MR. SCOTT: Second.

MR. TREVIÑO: Second from Member Scott.

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

(A show of hands.)

MR. TREVIÑO: And it appears to be unanimous.

Great. Motion carries.

Thank you very much, Member McRae.

We now go into the rules section. I'd now like to hear agenda item number 7. Rule adoptions. I'll turn it over to Mr. Jeremiah Kuntz. Welcome, Mr. Kuntz.

Thank you for joining us today.
MR. KUNTZ: Good morning. Thank you, members. For the record, Jeremiah Kuntz, director of the Vehicle Titles and Registration Division.

Before you I will be laying out agenda item number 7, which is the new 217.75. These rules are before you for final adoption.

These rules relate to Senate Bill 604 providing registration and title system and fraud training and updating statutory citations. The adopted new sections implement Transportation Code 520.023, as added by Senate Bill 604 from the 86th Legislative Session. That bill required the department to implement a training on the department's automated registration and title system. Senate Bill 604, Section 4.06 requires the department to adopt rules to implement the training program required by that section by December 1 of 2019. And I wanted to make sure that we stress that.

There was a compressed time schedule to have these rules proposed following the legislative session, compile all of the comments that we received from stakeholders related to this rule so that we can get this before you at this meeting so that so that we can company with that statutory requirement of December 1 of this year.

MR. TREVIÑO: Mr. Kuntz, could you repeat that date again?
MR. KUNTZ: December 1, 2019.

MR. TREVIÑO: December 1. Okay. Thank you.

MR. KUNTZ: The reason this Board meeting is important is you will not have another Board meeting until after December 1 and so we really had to crunch the time frame to compile all of the comments. Before you you'll see my binder here, this is all of the comments that we have received on this one rule.

The comment period closed and we immediately went into trying to go through all of those comments, make sure that we had addressed all of those comments in responses and/or changes to the rule, and because of that, there is one thing that I'll be covering at the end that there is a slight modification that we would like to kind of read and go through to the rule. Just because of that compressed schedule, it took a lot of time to get through drafting all of the changes and there was one item that we wanted to make sure that we address with you this morning.

As I go through this, I'm going to try to go through a couple of things: one, the rule, and then also how the training program will work. Before I do that, I do want to mention that we took some steps to try and make sure that the word was out with the tax assessor-collector community, basically our largest impacted
stakeholder by this rule. This rule requires the county tax assessor-collectors to take training, as well as our own employees, but we wanted to really make sure that we got the word out to them about the rule and then how the department anticipated implementing the rule.

So we sent out a message through the system that we just referred to, the GovDelivery system, letting them know that we were going to have webinars to discuss the rule, and so that went out. We held two webinars initially. Due to some scheduling conflicts, we held two more to try and make sure that we had covered all of the county tax assessor-collectors or given them the ability to participate in those four webinars. The webinars were also posted on our website, as we do all of our webinars, and the notice included information about the training program and all of the different training lessons that we currently have available.

The department has had a training application that we refer to as the ELearning system that’s been available to tax assessor-collectors as well as our own employees for some time now. There are currently 51 lessons that are in that program that would be required by this rule. There are other lessons that are available on that rule but that are not required, but there are 51 potential lessons that would be required. And when I say
required, they would be required depending on what permissions are granted to that employee, so not all employees in the county offices would have to take all 51 of those modules. Depending on what permissions that employee is given, they would have to take anywhere from what we estimate between three hours up to approximately 24 hours if you had basically full permissions, every permission available.

So we don't take lightly that this has an impact on county tax assessor-collectors. One of the comments that we received was, you know, hey, this is going to take us off the line potentially. And our response to that in the rules is this is an investment of time. This is an investment of three to 24 hours that that employee will have to take one time, they won't have to continue to take those same three to 24 hours every single year. There will be updates that we would make to the system but we do not anticipate that those updates would have the same impact as this initial roll-out of the rule would have.

And so we believe that there is an investment of time in employees, just as we see within the department we invest in our own employees when we send them to training. Ms. Brewster referred to the programs that we have within the department to invest in our
leadership and to make sure that our employees are fully trained for the positions that they hold. And so we find that to be very substantial in the way that we're viewing how this rule will be implemented, so I wanted to make sure that we're really fully talking through that.

I will tell you I'm investing my own time into this program. I've gotten through all of the registration modules so far, I fully intend to take all of the rest of the modules myself to make sure that I'm fully informed as to what is in those training modules.

We also will be reviewing all of those modules any time there's training. Myself and Tim Thompson will actually review all of that content and make sure that we see all the content that's going in to make sure that any updates are relevant and that they are fully reviewed by myself and my deputy.

So I wanted to make sure that I made that point, that this is not something that we're just pushing out and only going to require of the stakeholders. We fully intend to invest the time ourselves.

Additionally, we provide support to our county tax assessor-collectors in our 16 regional offices and we have a mandate to all of our employees that support those counties to make sure that they have taken all the modules as well. So again, we're investing that time in
our own employees to make sure that our employees are
looking at all of the same training content that the tax
assessor-collectors are going to be taking.

So sorry to kind of go through all that but I
thought it was important that we make sure to get that
out there on the record.

MR. TREVIÑO: And also, to be clear, Mr.
Kuntz, this Board recognizes and fully understands the
work that you guys have put into it and we appreciate the
diligent attention that you've given to this project, and
can't imagine the level of detail that you've gone
through, but we appreciate your work on this.

MR. KUNTZ: Thank you, sir.

MR. TREVIÑO: Absolutely.

MR. KUNTZ: So I'll run through some of the
requirements that are laid out in the rule and then we'll
also go through some of the, I guess, larger issues that
were brought up during comment.

So 217.75(a) establishes that a person using
RTS must complete the training. That includes department
personnel as well as county tax assessor-collector
personnel. Just to make sure that we're clear, it does
not include deputies that are not utilizing the
registration and title system. We have deputies that use
other applications like webDEALER, webSUB. Those are not
covered under this rule as they are not utilizing the registration and title system, and that was what statute required us to provide training.

217.75(b) specifies training will be available through the department's online training system. That is the ELearning system that I referred to.

(c) requires a person to complete each training course associated with the level of permission to enable that permission and sets time frames for completing the training. The proposed text has been changed to clarify one item, and there was a comment that came in regarding a passing score or what is completed. We have gone through and clarified, because that is the way our system is currently set up, a passing score is an 80 percent or higher.

We know that there are some industry standards and the school system that require 70 percent or higher. As industry professionals and as we look at the system, we believe that 80 percent for an industry professional is a reasonable score for them to be able to accomplish. Again, I've taken these courses. A person who is fully familiar with what's in that content should easily be able to achieve of 80 percent or higher.

MR. TREVIÑO: And you can take the test over, can't you?
MR. KUNTZ: You can take the test over, and
we've also clarified that as well.

MR. TREVIÑO: Thank you.

MR. KUNTZ: And that's exactly what's next
here. We've added that language that clarifies users may
take a course and test as often as they desire. So as
soon as you've completed the course and gone through the
test, you can immediately start over and retake the whole
course or go right to the test and retake the test.

We also clarified that it allows full service
deputy employees to qualify for the 14-day extension.
You remember from the last Board meeting there was an
amendment to the proposed rules -- I believe Member McRae
made that motion -- to add a 14-day extension if there
were extenuating circumstances that the employee faced
during the 90-day period that they had to take an updated
course, and so we've made sure to make that change in the
rule as well.

21.75(d) provides the department will disable
a user's permission if the training is not completed
within the authorized time frames in that section. The
text has been changed to clarify the permission can be
enabled by using the process to complete training and
enable the permissions above. So what that is referring
to is if for some reason somebody has had their
permission -- they got a permission today, they're an existing employee, they failed to complete the training and receive a passing score and their permission has been disabled, all it takes is making sure that they take the training course, get an 80 percent or higher, get that verified by the department, and their permission will be reenabled at that time. So we're clarifying that that is all it takes, it's not a permanent disabling of that person's permissions if they fail to complete the course within that time frame. All they have to do is go back, take the training, and their permission will be reenabled.

The proposed rule was published for comments in the August 23, 2019 issue of the Texas Register. The comment period closed on September 23. The department received 148 written comments on the proposed rules. I will go into what those comments entailed.

We did receive one comment from Ronnie Bock with Kerrville RV in support of the rule as proposed. She offered no changes and basically said she completely agreed with the rule as proposed as she would like to see training for county tax assessor-collector employees.

The department received 147 written comments requesting changes in the proposed text, were against the rule as proposed from the Tax Assessor-Collector
Association of Texas and the tax assessor-collectors themselves individually.

So I'll go through some of the comments that we received just to give you a little bit of, I guess, an idea of the kind of comments that we received for changes and how the department responded to those.

The first comment that I'll kind of go over is the score of 80 percent, and I've mentioned that before. There were some comments that suggested that we should lower that passing score down to 70 percent from 80. We also received a comment that we needed to put what the passing score was into the rule language itself. We have done that, we've added what a passing score entails of 80 percent. We did, however, not lower that score down to 70 percent based on the comments that I made previously, that they can go back and retake the test, and as industry professionals, we want to make sure that we're holding to a higher standard to make sure that the citizens of Texas get the service that they deserve and have educated individuals that are processing these transactions.

I've covered that we had webinars.

We did receive, and I covered this a little bit, that taking time away from serving the public could negatively impact the daily operations of providing
service to the public. As I mentioned before, the department recognizes that training is a small investment of time and we believe that we should provide expedient, high quality and accurate customer service without the assistance of the department personnel. And what we're really referring to there is making sure that we've got front-line clerks that are fully trained on how to process these transactions, reduces that dependence to potentially have to call the department for clarification about how to process a transaction.

As I mentioned, we do support the county tax assessor-collectors and will continue to support them in all their efforts to service the public, but we also recognize that if a clerk has to call the department to seek clarification about how to process transactions, that too takes away from the time that they're servicing the public and we believe that having a fully trained staff reduces that dependence on having to contact the department to seek clarification on how to process transactions.

There was some comments, concern that they may be forced to decline services to taxpayers because they were locked out, and we wanted to really clarify this. The department disagreed with the comment. The possibility of unforeseen programming errors always
exists, so we recognize that, but it is impossible for us to tell if there's unforeseen errors that would affect the counties. And so this comment was saying that we should have dedicated resources to certain counties in the case of an unforeseen outage or some kind of IT glitch, and we support all of the counties equally, we don't have dedicated resources for handpicked counties, and so we disagree that we needed to address that in the rule to specify that there would be certain counties that receive preferential treatment or some kind of dedicated resources to their county.

We dedicate our resources statewide in the regional service centers. The way this application will work, a county clerk will take the training, they will have to request that the training be verified through RTS, and so that will send that request to the department, it will add it to a work list on the department side. And we have clarified in the comments back on this one that we will be working that list in a first-come, first-serve basis, so we will work the list from top to bottom. All 16 regional offices will have the ability to log into that work list and work those requests for verification from the top to bottom. And so, again, we will work those with no preference to the county that's making the request in the order in which
they're received by the department.

There was a comment regarding the potential for a county to have to pay for accounts into the ELearning system, and so we've clarified that. We actually have an allocation of resources to the county tax assessor-collectors, they receive an allocation of work stations. With every work station they also receive a user name and password to the ELearning system. For small counties between one and 19, they are also entitled to an additional ELearning account, and then any county that has more than 19 will receive 10 percent above their ELearning allocation just as their base that they don't have to pay for.

The department has that in an agreement with the county tax assessor-collectors, we have a written contract with them and a document that outlines how all those allocations work, and we allocate those based on that. Any ELearning accounts that they need in addition to that are $11 per year per account. And so that's not something that's in this rule, it's covered in a contract between the department and the county tax assessor-collectors.

Another comment was relating to a sandbox. This is a training sandbox that we received funding for in the last legislative appropriation, and we wanted to
go ahead and really make sure that we covered this comment in our response but here as well. We are not requiring training be conducted in the sandbox, we are requiring that they take a module. And so to require training in the sandbox was above and beyond what this rule is covering, and so there were a lot of comments that the sandbox needs to be put in place before this rule is effective. There is not a requirement for them to go into the sandbox and conduct training in the sandbox. The training is in the ELearning system.

We believe that there is great value in providing the county tax assessor-collectors with a sandbox which is why we sought an appropriation to go and receive funding to create that, but that is a project that will take time to get up and running, it is not a small endeavor. We received a substantial amount of funding to do that and it will take resources, time to get that up and running so that the counties have the ability to use that, but that will not be a requirement of this rule.

We also received comments that the training requirements are unnecessary and that county tax assessor-collectors prefer to use their own training systems. We disagree that it's not necessary as Transportation Code 520.023 directs the department to
implement this training program. We have to put in place a training program. This rule does not preclude them from having their own training in addition to what is offered in this rule.

We also had a comment that the rule might inhibit performance of legally required services to taxpayers. We disagree with that in that completion of the training is a legal requirement. That statute requires that county tax assessor-collectors take the training. It is in itself a legal requirement for them to comply with.

We had one comment that training materials should be only offered in February of 2020 or later rather than in December of 2019. The rule has a deadline of August 31, and this comment was really about the timing of when they had to take training. This training has to be completed by August 31. They can start taking the training whenever they want, including right now, and so we wanted to make sure that we gave county tax assessor-collectors a full year, if you will, to start working on that, and so that's why we started sending out webinars saying get ahead of the curve, start taking training now because training taken now is still good once this rule goes into effect and you won't have to retake it once the effective date of this rule is
adopted.

And so we were trying to give as much headway or leeway for them to start taking the training and finding that time within the year that's not a busy time for them to be able to take that training.

There was a comment recommending that training be available to be taken as often as desired, and I wanted to make sure that we covered that. I covered that before. We did agree with that and we did make changes to state that the section does not limit the number of times or how often a person may take a training course or test, so we did agree with that comment and make changes into our rule language.

I believe that really kind of hits the main comments that we received, kind of the big ones.

MR. TREVIÑO: Thank you for not going through all 148. I think I speak for the audience.

(General laughter.)

MR. KUNTZ: And a lot of those 148 commenters had a lot of the same comments, so we received duplication.

MR. TREVIÑO: But the overall universal comment theme that you saw through all of them is that there's a broad agreement that we need to have some type of common training. Right?
MR. KUNTZ: Yes. And I'll call it a template, it wasn't really a form letter, but we got a template form many of the tax assessor-collectors that stated at the beginning that, yes, they agree that training is something that is of value, and so we concur with that. And there were some definite changes that they suggested. We've accepted some of those, we have not accepted others, for various reasons as I've covered. But there's a full body in the preamble of all of the comments and how we've responded to those. Again, I'm not going to go through all of them.

But at this time, what I would like to do is go ahead and cover a statement kind of to put in place the one thing that I wanted to cover that I mentioned at the beginning.

MR. TREVIÑO: Please do,

MR. KUNTZ: And so I would recommend that the Board vote to approve the adoption of new Section 217.75 with one modification that is not included in the board book.

We amended the rule in response to comments that requested the department to define what is required to pass or complete a training course. Based on other comments, it is understood this would involve achieving a grade for the course that would be verified in the
Elearning system. Verification is necessary because the current registration and title system and the current ELearning system cannot communicate. We don't have electronic verification available to us at this time.

The department changed 217.75(c) to remove the word pass and we replaced it with the word complete. That was in response to a comment that we had received. To add certainty to what the term complete means in this section, the department added a sentence that reads: "A person completes a training course when the person obtains a score of at least 80 percent on the course test and the training is verified." That second part becomes very important to us as we're having this discussion right now, and I really want to stress we added the words "and is verified." Because that's the way the system is going to work, it was very good language.

The definition of complete is a good definition that gives clarity to how the system will work, however, upon further review it raised a new concern from the department. We are concerned that the deadline for persons to take the training is the same deadline for the department to verify that training. For example, the rule requires persons with RTS access on the effective date of this rule to complete the required training by August 31, 2020. If a large number of
persons finish the training on August 31, the department might not be able to manually verify the training for all those people on August 31 and prevent them from losing their permissions to RTS the following day.

So the example that we have before us and the concern the department has before us is that by adding clarity to what completed is to include that the department has finalized its verification, we have, in effect, put ourselves in a box that on August 31 all training must be completed and verified by the department. If 80 percent of the county tax assessor-collector employees submitted that completion at five o'clock on August 31, there is no way humanly possible that my staff would be able to complete verification of all of that training by eight o'clock the following morning to have the tax assessor-collectors up and running. August 31 falls on a Monday, we don't even have a weekend to be able to do the verification, and so that put us in this very awkward position with how to implement this.

So as such, we would recommend the addition of one sentence after the first sentence in Section 217.75(d) in your board books to address our concerns. "The department will not disable a permission for a county tax assessor-collector employee or full service
deputy if the person timely submits their score, however, the department will disable a person's permissions if we determine the submitted score is not at least 80 percent." Also, our general counsel may need to modify the preamble to the rule to address this additional sentence.

So that concludes my presentation on that. We would ask for your favorable consideration of that last amendment to this rule packet.

MR. TREVIÑO: Great. Thank you very much, Mr. Kuntz.

Are there any questions from the Board for Mr. Kuntz? Member Gillman.

MS. GILLMAN: Why do we have a software program that does not communicate with you guys? And what can be done to correct that?

MR. KUNTZ: So the software application that we currently have today is a software application that we have used for some time that has served us well. It has never been needed to actually provide an interface to the registration and title system because we have not had a requirement or any kind of rule or statute that required a linkage between those two, it's always been a voluntary system.

We would not have time to re-procure a new
system in time for adoption of this to load in all of those training modules into a new system. And so we are, unfortunately, boxed in with the current application that we have. We can always go back and look at other applications to see what functionality exists. We can also reach out to this vendor and see if they have the ability to add some kind of portal or some kind of API to connect that system with our system, but at this time, unfortunately, we are just boxed in.

MS. GILLMAN: And you are going to ask them to try and modify?

MR. KUNTZ: Yes, ma'am.

MS. GILLMAN: That would be great.

MR. TREVIÑO: Thank you, Member Gillman.

Member McRae.

MS. McRAE: Yes. Hi, Jeremiah. I want to clarify a couple of points and then I want clarification in some other areas.

First of all, the sandbox, I don't think that we were requesting -- I don't think the impression was that we would be testing through the sandbox, I think it was more that it would allow new employees to train in the sandbox prior to requesting RTS log on which would allow them training prior to taking these ELearning modules.
MR. KUNTZ: If I can just respond real quick. The comment was to disagree with making changes to the rule. We agree that the sandbox will be available to the county tax assessor-collectors at any time. Whether they have already been granted permissions or before they are granted permissions, we fully anticipate that that would be available to them. Unfortunately, just kind of with the way of responding to comments, you have to either agree and make modifications to your rule or disagree, and so that's why it was just a disagreement of making any changes to the rule. But we wholeheartedly agree that that system would be available to employees prior to them being able to log in.

MS. McRAE: Okay. Do we have an ETA on the sandbox at this point?

MR. KUNTZ: I would have to defer to our chief information officer.

MS. McRAE: Never mind. I see his head shaking.

MR. BACARISSE: Mr. Chairman, if I may just quickly? To the uninitiated, what is this sandbox, please?

MR. TREVIÑO: Thank you for that question, Vice Chairman Bacarisse.

MR. KUNTZ: There has been a request for some

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time for a system that is not a live production system
being made available to the tax assessor-collectors so
they could go in with test data and train their employees
on how to process through a transaction without actually
being in the live system and effecting a transaction.

MR. BACARISSE: That's what this is.
MR. KUNTZ: Yes.
MR. BACARISSE: Thank you.
MS. BREWSTER: And if I may, Mr. Chairman?
MR. TREVIÑO: Yes. Please jump right in.
MS. BREWSTER: Again, we did receive funding
through the legislative session for a sandbox, and
obviously we received those funds September 1 and we're
looking at ways to go about moving forward with having
that sandbox available.

Again, to just reemphasize what Mr. Kuntz
said, we are in complete agreement that that is something
that would be very helpful moving forward to make sure
that everybody is adequately trained.

MS. McRAE: Thank you.
MR. TREVIÑO: It's a safe space for you to
practice is what a sandbox describes. It's not live, in
other words.

MS. McRAE: And Jeremiah, another question.
As I understand the rule, and I understand how this
modification to add, but I don't recall the time frame so
to forgive me for that, but some time ago the department
asked tax assessor-collectors to go through the ELearning
accounts and kind of clean those up, and there was
discussion back and forth as to, well, if someone has
already completed the ELearning and passed, was it
necessary for them to maintain that account.

And so some of us maintained our accounts even
though they have passed, other tax assessor-collectors
deleted those accounts because their employees had
successfully passed those modules. All they have at this
time point some tax assessor-collectors, is a paper document -- which you are familiar with -- that is a report that
comes out of that module stating that it's completed and
it lists the score.

Will this rule allow for that paper document
to be accepted since there is not an electronic
verification in this case?

MR. KUNTZ: So we've had a lot of discussion
internally about that very issue, and we also were fully
aware that at one point in time the systems changed and
we got into a new system and everything doesn't port over
all the time.

A lot of the discussion we've had, and as it
relates to this rule as well, is around when new courses
are available. So this rule requires retaking a course when there are changes to the course, and there is a time period in which to retake those. If you have paper documentation that shows that you have completed the course in its current format, then we will look at ways that we can try and update the system to show those as complete.

Most of what I'm understanding from folks is that a lot of the courses have changed, especially since we changed over the systems. All of the courses are new since that change, but if you have documentation that shows that you took the course in its current format, we can look at ways that we can go into the system and mark as complete. I don't know right here right now how the system performs on the administrator side so I can't definitively tell you that I can go in and just mark it as checked, but we can work through that, we can work with the tax assessor-collectors on a resolution on that.

MS. McRAE: Okay. Thank you.

Another question, I guess, is for the other persons or other deputies that don't actually work in RTS but such as our webDEALERs and our subcontractors, they are processing work on the front end that is then transported electronically to the tax assessor-collectors, and as we're verifying we either have to
approve it or we're rejecting it back to them. I do think that it's important that they understand the process and the requirements in statute. So I think the more educated all of us are, the better we can provide service back to the motoring public. So I would like to see at some point some training made available maybe for the webDEALER and also for our subcontractors.

MR. KUNTZ: We can definitely look at developing training for those user groups, the subcontractors. What we were making sure that we did in this rule was comply with the statutory requirement as it was written in Senate Bill 604 which did not go beyond requiring training for users that are outside of the registration and title system.

MS. McRAE: Right, and I understand that.

MR. KUNTZ: But we can definitely work on the development of training for any user groups that y'all would like to see training for. Right now our main thrust is making sure that we've got training for all of the different RTS permissions. Once we get through that effort that my team is going through right now, we can always look at adding additional training where the tax assessor-collectors have needs.

MS. McRAE: Okay. Thank you.

And just two more items. First of all, the
reason I think you received 147 comments from the tax
assessor-collectors is at the last Board meeting we did
have one public comment that was posted from the
association and it was presented as though it was one
comment, and we certainly do not want to waste the
department's time or resources by having to go through
each comment, especially if they're repeated comments.
That was not the intent. We just wanted the department
to realize that there was, in this case, 147 tax
assessor-collectors that felt very strongly one way or
the other regarding the rules.

So we are looking at maybe a different process
to submit which hopefully will be more efficient for all
of us which is maybe presenting a public comment through
the association and then just the various tax assessors
signing on to that which would probably help save
everyone some time.

MR. KUNTZ: Sure.

MS. McRAE: But I wanted to clarify that. It
was certainly not intentional to just bog y'all down with
additional work.

MR. KUNTZ: And I do want to make sure, I'd be
remiss if I didn't say this, we welcome the comments, we
welcome all of the feedback. In this instance,
unfortunately, we just had a compressed timeline. That's
really the only issue that the department faced was just trying to get through all of the comments in time to make the Board meeting. Under the normal process we would have more time to spend going through those and providing the responses. I think we did a pretty good job of getting through all the comments in the short amount of time that we had. I'd like to give a lot of credit to our general counsel's staff for processing through those. I know my staff worked long hours to try and get through all those comments as well, and so it was really -- like I said, we welcome them, love to get the comments because it gives us a good perspective on what's going on, and so it was no burden at all.

MS. McRAE: Well, we appreciate. Which leads me to the next one. I appreciate, I did ask that you provide webinars on an additional day. The first two webinars was the same day and it was when the TAC legislative conference was going on so there was a large number of tax assessors that were attending that and unfortunately we were not able to attend that webinar. And then the second day, unfortunately I didn't get to attend that webinar, as well as many other tax assessors, because that's the day we had the flooding, September 19. But I do appreciate you offering the additional training for the webinars.
But I appreciate the department looking and
listening to our comments. We have, as you know, 254 and
I think it's important that we look at the impact not
only to the larger counties but to our smallest counties.
And I don't know who's aware but I came from a smaller
county, I was tax assessor for 14-1/2 years in Sabine
County. And so as the time frame, the training within
the 90 days, the additional training that's required, my
staff will be trained in Montgomery County, I don't see
that as an issue at all, I go back to the smaller
counties. I'm not the voter registrar in Montgomery
County so I don't have that additional task, which is
very time-consuming with a lot of deadlines, but I am
concerned about the smaller counties that are processing
motor vehicle, property tax and the voter registration
and other things that they may do. So I am concerned
about that for them and I just wanted to state that.

Thank you.

MR. TREVIÑO: Thank you for your comments,
Member McRae.

Anyone else have any comments or questions for
Mr. Kuntz?

(No response.)

MR. TREVIÑO: Members Washburn, Prewitt, you
guys okay?
MR. PREWITT: Okay.

MR. TREVIÑO: Now are there any public comments? I think we do have a few. And these are in the order they were received. Is that correct?

MS. BREWSTER: I cannot confirm that, sir.

(General laughter.)

MR. TREVIÑO: All right. We'll start with Larry Gaddes.

Larry, are you here? Great. Thank you. Larry, welcome. Good morning. Thanks for being here.

MR. GADDES: Thank you for the opportunity. My name is Larry Gaddes. I'm the tax assessor-collector for Williamson County.

And I'd like to begin first by letting you know that I'm speaking directly to rule number 217.75(c)(5), and some specific language in that portion of the rule that states that a person who has not been assigned permissions in RTS on or before the effective date of this section must complete all required training before enabling permissions by the department.

I do want to state first that my office places a significant emphasis on investment in training our staff, especially our new employees, and we applaud and support your agency's efforts to create consistent training and standards throughout the state. I
especially appreciate the attention, focus and resources your department has provided to assist our offices in that effort.

TACs offices, as you already know, throughout the state employ a variety of training techniques to ensure their staff is well prepared to serve the public. My office specifically, not only do we differ from county to county, but we change our training techniques based on the person that we're training, so as we have an individual enter our world -- and our world is complicated and overwhelming at times for somebody who has never worked, number one, for government, and number two, with motor vehicles and registration system so it's a confusing, complex world at times, especially for the new folks -- and we change our training to meet the needs of the person that we're training to give them the best possible experience with our office and give them the best tools to be successful in their new career with our office.

So we believe that some minor changes to that section of the proposed rule can be made to provide some flexibility to the county TACs offices and still achieve the department's goal of complying with SB 604 and having everyone complete the required modules if they are working in the RTS environment.
What we would ask is that our recommendation for this minor modification would be that TxDMV approve user permissions specifically for the registration renewal portion of the system after completion of the three AAMVA courses, and then after granting this permission level for registration renewals, allow new users, specifically new users, 30 days to complete the remaining required modules to retain that specific permission. So this gives us, the county TACs offices, some flexibility with how we're training our new employees. I think it's very important for those new employees to complete those three required AAMVA trainings, give us the permissions into RTS, and give us the 30 days to complete the remaining six webinars so we can slowly train these new employees and not overwhelm them with the information in our system.

MR. TREVIÑO: Thank you, Larry.

MR. GADDES: Thank you.

MR. TREVIÑO: Thank you very much for all your comments and all your hard work in Williamson County.

So Kevin Kieschnick. Kevin, welcome.

MR. KIESCHNICK: Thank you. Kevin Kieschnick, Nueces County tax assessor-collector.

And really the primary concern I had has already been addressed by Jeremiah, so I have nothing
further to add.

MR. TREVIÑO: Well, thanks for coming and saying hi. That's great. Thank you for all your hard work in Nueces County, Kevin.


MS. FRENCH: Good morning, Chairman and Board. It's so nice to be here. Thank y'all so much.

First of all, I would like to say thank you all for your service. We're in the business of service and so we know what it means to spend your time and your treasure and your effort in serving the public, and so we appreciate everything that y'all do as well.

And by the way, my name is Michelle French and I'm the Denton County tax assessor-collector. I also am the immediate past president of the Tax Assessor-Collector Association, and know I'm the DMV liaison, so you might see me a few more times.

Also, our president, Cathy Talcott, she wanted to be here so badly but she is under the weather and she told me to tell me y'all that. So unfortunately, she's not able to make it this time.

I would like to echo a couple of things. First of all, training is extremely important. We completely support the concept of training, we completely
support the concept of having consistent training all
across the state. That way everyone is getting the same
thing. So we do absolutely support that.

We do have, as people have certainly
commented, we do have a little bit of concern still about
the 90-day period. As Member McRae was saying, some of
our tax assessors, they have multiple functions on top of
motor vehicle, they may have property tax, voter reg,
running elections, possibly Parks and Wildlife, and so
while it sounds like 90 days is a lot of time, we all
know life goes really, really fast, especially in a busy
office, and so we do think it would be helpful to have a
little bit more time, possibly up to 120 days to be able
to have that training in place.

Also, I'd like to echo the concerns that
Member McRae had regarding the means by which training is
certified. For those situations where a person no longer
has that electronic record, being able to have that paper
document that you turn in, I really appreciate the fact
that Jeremiah said that y'all are going to look at ways
to be able to allow that. That's great because I think
that will help our tax assessors whose people have
already been through training.

And then finally, I'd just like to say that we
had a meeting, me being myself, Cathy Talcott and Shay
Luedeke, we all had a meeting a couple of weeks ago with Jeremiah, with the leadership, with technology. We talked a lot through these rules and went through a lot of some of the things that we were concerned, some of the things they were concerned about, y'all are concerned about, and how to have a little bit of a meeting of the minds. And I was happy to see in the documentation that several of the ideas that we all discussed were addressed to our satisfaction, so we appreciate that.

And that's all I have.

MR. TREVIÑO: Great. Thank you for your comments, Michelle. And please send our regards to Cathy and tell her we hope she gets feeling better. And thanks for all your hard work in Denton County.

And now Bruce Stidham.

MR. STIDHAM: (Speaking from audience.) Mr. Chairman, thank you, but my question has already been answered by Mr. Kuntz.

MR. TREVIÑO: Thank you, Mr. Stidham, and excellent handwriting, by the way, I must say. I must say, well done. And thank you for your comments.

MR. GRAHAM: And Bruce is my tax assessor in Grayson County and he does an incredible job and is very well thought of from other people besides me, I promise.

Bruce, thank you for all you do. Appreciate
you coming down and joining us.

(General talking and laughter.)

MR. TREVIÑO: Okay. Stephen Palacios. Mr. Palacios, welcome. Good to have you here.

MR. PALACIOS: Hello. Stephen Palacios, Bexar County TAC's Office.

Chairman, members, I want to discuss one of the items that was disagreed on by the DMV was that there was no financial impact. We do feel that there is a financial impact. It's hard to pull 100-plus staff members from your office for anywhere from three to 24 hours for training and not have a financial impact, so there is a financial impact. We are also in the process currently of investing $200- to $300,000 in training, not specifically for this but in addition to this, so there is a financial impact to us.

And it was noted that it is an investment of time, and we do agree it is an investment of time, but in many cases, as noted earlier, it's a reinvestment of time because some of these have already been taken, we've got employees that have been here 30-35 years and they're going to have to kind of reinvest their time, in most cases take 24 hours, and that's a long time to take people off line. And that was due to varying case instances, new systems or systems changing, whatever.
We do agree, like everybody said, sandbox is a supplement to ELearning and we do want to emphasize that we really do like to get that as quick as possible. I did not hear an ETA when somebody was asked earlier on that. No ETA?

There was also the department said that they disagreed that the 4.06 had to involve the tax assessors, they said it was actually 4.07, but since the training does address having to deny or suspend the RTS system. We do feel that 4.07 does come into play and that the tax assessors should be involved since that brought that in.

That's it. Thank you.

MR. TREVIÑO: Thank you, Mr. Palacios. Thank you for your comments and your hard work in Bexar County.

We've got several people from Bexar County here. David DeLeon.

I'm sorry. We've got a question?

MS. GILLMAN: No. I have dealerships in Bexar County.

Mr. DeLeon, welcome.

MR. DeLEON: Good morning, Chairman and Board.

My name is David DeLeon from the Bexar County TAC's Office. I'm the director of motor vehicles.

I'll be short. The only thing I do want to mention, I agree, first of all, with what Mr. Palacios
said, and the second thing is I know at times the
department does reach out to tax assessor-collectors to
get input, however, there's 254 counties in the State of
Texas, as y'all know, but there are only four counties
that have the business model that we have, full service
deputies. At times I know that they reach out but I
believe, or in my opinion, I think these four counties
are not included in this input. That's all I wanted to
say. Just make sure that maybe in the future just make
sure one of those four counties are included when y'all
need input.

Thank you.

MR. TREVIÑO: Great. Thank you, Mr. DeLeon,
and thanks for your hard work in Bexar County.

Okay. Mr. Salas, Richard Salas, from Bexar
County, as well. Well represented from Bexar County.

Good morning.

MR. SALAS: Good morning, Board members.

Richard Salas, the manager of customer public information
in the Bexar County TAC's Office.

I'm not going to rehash what Mr. Palacios and
Mr. DeLeon mentioned, but I do want to briefly discuss
the department's intention of enabling a permission
expeditiously. I believe this goes to Section
217.75(c)(4). And I think there was a comment made or
submitted as far as the timeline of when the permission should be enabled. Bexar County had proposed by the next business day or as soon thereafter as practicable on completion of required training.

The department's contention is that it has to be worked on a first come, first served model, and so there's really no timetable as far as turning on the permission for the tax assessors or their deputies once proper reporting has been submitted. So that's one thing I think implementing a timetable would help hold the department to transparency and more accountability in that respect in serving the Texas motoring public in an efficient manner.

The other item is the sandbox testing requirement. I think it's important that perhaps language be included in the rule with regards to the sandbox requirement, only because they go hand in hand with the live RTS system. So to include some kind of provisional language in that would also go towards providing more accuracy which the department is trying to attain and efficiency, as well as the prevention of fraud, waste and errors by all parties.

That's all I have. Thank you.

MR. TREVIÑO: Great. Thank you very much, Mr. Salas.
MS. McRAE: Chairman.

MR. TREVIÑO: Yes.

MS. McRAE: I don't have a question, I just wanted to address a comment that was made.

MR. TREVIÑO: Sure.

MS. McRAE: We do have on the list of the advisory committee appointments that were just made, we do have someone from one of those counties. Kristi Torres from Edinburg, she is from the Hidalgo County Tax Assessor-Collector's Office. I just wanted to throw that out there.

MR. SALAS: One more item. I think it's been proposed in the past that maybe we start the meetings an hour later to accommodate those coming in from out of town. I think the exception was made to start it. I know it's been brought up in the past but just wanted to point that out.

MR. TREVIÑO: Thank you very much, Mr. Salas. Thank you very much.

MS. BREWSTER: Mr. Chairman, if I may add one thing to the advisory committee discussion?

MR. TREVIÑO: Yes, please.

MS. BREWSTER: We also do have a full service deputy that is on the advisory committee from El Paso.

MR. TREVIÑO: Excellent. Great. Thank you.
Any further comments from either staff or the Board or questions? Does anybody have any further comments or questions? Member Washburn.

MS. WASHBURN: It sounds like just hearing from some of the public comments some of the issues are particularly from some of the smaller organizations. I keep hearing three to 24 hours, so I don't know if it's more towards three or more towards 24 hours of training. Is there any reason it has to be done within 90 days versus 120 days? Does the Transportation Code require that?

MR. TREVIÑO: Mr. Kuntz.

MR. KUNTZ: I'll address this, and there's a couple of things that I think maybe are in that question that I'll try and dissect and break down.

So the three hours, the eight hours or the 24 hours is dependent upon what type of permission is granted, so the easiest training, I guess I should say, to complete is a registration renewal or registration training, and I believe our tax assessor-collector from Williamson County made a little bit of reference to that in his comments. That is the training that we believe takes approximately three hours. I have taken it myself, I've taken all of the modules required for that. That's about correct. Each of the modules are probably 20
minutes, 15 to 20 minutes, depending on kind of your pace.

And those are estimates. I want to make sure that clarify. Our system is not timed, it does not require you to spend a certain amount of time on the screens. If you fly right through it, you can get through it in a very short amount of time. If you want to spend all day long sitting there staring at the screens, you can sit there all day long staring at the screens, but the three hours is really just kind of an estimate of this is about the average amount of time that it would take for somebody doing registration transactions to complete the training.

Eight hours is our estimate for somebody to completing both the registration and title modules. What we believe is going to be most of the clerks that are out in the county offices, they're probably going to fall into that eight-hour category. That's your standard clerk that's doing both title and registration work.

The 24 hours of training is really kind of the extreme and it's not what we expect very many employees to have to take, and that is if you've got full system access. So you've got every single permission, you've got full access. This is going to be more in line with your chief deputies, maybe your managers in a location or
something that have full permissions in the system. And the reason it's longer, for every one of those permissions we've mapped back a different training module that goes to the specific permission. So if you've got all 40 or so permissions that are in RTS, then you've got many more courses that you've got to take and there's many more hours.

Now, the thing that I want to also stress is your permissions will be granted as you complete those courses. You don't have to wait until you've taken all the courses to submit all of those. So if you've taken the registration courses that are necessary for those permissions, you can ask for those as you go. The training is permission based, and so if there is a specific permission you need to do your job, you can go take that one course or the courses that are required for that specific permission and that permission can be turned on immediately. So one permission may only have a 30-minute course behind it and that's the one permission that you've got to have.

So does that kind of help clarify a little bit?

The second part on the 90 days is the 90 days is when the department puts new training out specific to a permission. So just like I said there are 41 or so
permissions out there, if your specific permission that we have granted access to, if we update that module following a legislative session, for example, let's say it's the titles module, and there have been changes from the legislative session related to titles and we update that specific module, you would have 90 days to complete that one module which may only be a 30-minute module. You do not have to retake all eight hours of the modules, it would be that one module that we've updated in compliance with the law that you would have 90 days to complete.

I know that we've received comments that they would like additional days and that's something for the Board to consider whether or not y'all want to grant additional days for them to take those courses.

Did I answer all of the questions that you had?

MS. WASHBURN: Yes.

MR. TREVIÑO: Thank you for your question, Member Washburn.

MS. BEAVER: And Chairman, if I may also add?

MR. TREVIÑO: Yes, General Counsel.

MS. BEAVER: In agreement with Mr. Kuntz.

Also, the training requirement under the Transportation Code was so that tax assessor-collector employees could
also identify fraudulent activity related to the vehicle registration and titling, and so it's extremely important for the State of Texas that folks are trained up so they can do that fraud identification too, which is a requirement of the training.

MR. TREVIÑO: Great point. Thank you for bringing that up.

MR. KUNTZ: And just to add on to that, we've actually created a matrix of all of the different training modules. All training modules require three courses related to fraud regardless of what permission you've got, so that one element of fraud is required of every employee regardless of what kind of permission you've got.

MR. TREVIÑO: Thank you.

Any other questions, comments for Mr. Kuntz?

(No response.)

MR. TREVIÑO: Okay. Hearing none, the chairman would entertain a motion if anyone is so motivated.

MS. McRAE: I would like to take a quick recess to talk to our general counsel.

MR. TREVIÑO: All right. If everybody is in agreement, it's right now 10:40 and we'll take a couple minute break here.
(Whereupon, at 10:40 a.m., a brief recess was taken.)

MR. TREVIÑO: We'll call us back into session. It's approximately 10:44.
And the business at hand was we were ready to entertain a motion if someone was so motivated.

MS. McRAE: I just would like to ask Jeremiah on the record one question.

MR. TREVIÑO: Sure.

MS. McRAE: I realize that the AAMVA courses are not required currently but I do think it's important, I'm in favor of those, but I understand the are not required right now under this rule as part of the required modules. Is that correct?

MR. KUNTZ: We have three modules that we would require all clerks to take, that is the AAMVA fraud training. There are three required modules that are across the board. It does not matter what permission you're getting, you have to take those three modules, and then you have to take the specific transaction module in addition to those.

MS. McRAE: Okay. Thank you for that.

So I was wanting to get your thoughts on Larry Gaddes's comments as to providing if our new employees were to take the three AAMVA courses and then the
registration renewal modules, if permissions could be
turned on at that point and then go from there, then they
could build upon that to kind of add some flexibility.

MR. KUNTZ: I'm thinking right now.

MS. McRAE: I had not heard that yet and so I
apologize. I would have asked ahead of time.

MR. KUNTZ: No. That's okay. In fact, as he
was saying that I was trying to digest administratively
how we would administer that. I believe that we could
get to the administration of that. It would require us
to change some of the way that we're programming right
now for this, but we can always go to IT and make sure
that they've got this covered. It would just be another
element in code for them on RTS that they would have to
factor in for that because it would be kind of a two-
stage permission, if you will.

MR. TREVIÑO: Vice Chairman Bacarisse.

MR. BACARISSE: Just a clarification point. I
thought I heard you say earlier in your statements that
as a tax assessor clerk took the modules and passed them,
that it's a rolling approval process, as you pass each
module you're approved and your permission is turned on.
Is that correct?

MR. KUNTZ: Yes. And so what we have
basically mapped out in our matrix, if you will, is kind
of a one to one. It's pretty binary in that once you've approved the courses the permission is turned on. What Mr. Gaddes has proposed is once you've taken these courses your permission is turned on and a new clock starts for 30 days and then that clock expires if you don't take the next set of courses that are required.

MR. BACARISSE: Oh, I see.

MR. KUNTZ: And so it becomes a little bit additional code that we would have to add into the system to handle that scenario. I was also trying to look very quickly at what those modules are. I'm familiar with the modules for the registration. I will tell you the base modules are pretty simple. I mean, just to be flat-out honest with you, the registration renewal modules are not extremely difficult and not very time-consuming to take. And so there's a little bit of is three hours on the front-end in training too heavy of a lift in order to turn that permission on for somebody who's never done this before. That's really the question at hand because that's the specific permission that we are talking about that's three hours in basic training.

MR. BACARISSE: Thank you.

MR. TREVIÑO: That's something you can look into but at this point you don't feel comfortable giving a yay or nay on it. Right?
MR. KUNTZ: I mean, I can look back at our IT guys.

MR. TREVIÑO: It's not fair to put them on the spot right now to make a public comment on something.

MR. KUNTZ: I'll quote our IT folks as I've heard in the past, anything can be coded but it's all a matter of time and money.

MR. TREVIÑO: It's time and money.

I don't think it's fair to put you guys on the spot also.

MS. McRAE: Okay.

MR. TREVIÑO: Good?

MS. McRAE: Uh-huh.

MR. TREVIÑO: Thank you.

MS. McRAE: Thank you.

MR. TREVIÑO: So we're back to the chair entertaining a motion from someone who is interested in making a motion.

MR. KUNTZ: And just to make sure I cover, as y'all are entertaining this motion, if there is a motion, I would like the Board to consider the changes that I had laid out related to the time for the department to verify the training has been completed.

MS. McRAE: I would like to make a motion. I move that the Board approve the adoption of the new
Section 217.75, with the amendment as recommended by Mr. Kuntz, as well as an amendment to provide additional time for an employee to complete the required training from 90 days to 120 days. I ask that because I feel it's important to provide that extra 30 days to complete the new training because we do not want to adversely affect the smaller county tax assessor-collectors offices, and as I've stated, it could have the potential of an adverse effect to those smaller offices and the majority of our counties are under 40,000. So that's my motion.

MR. TREVIÑO: Great. We have a motion on the floor. Do we have a second?

MR. GRAHAM: Second.

MR. TREVIÑO: Second. All those in favor please signify by raising your right hand.

(A show of hands.)

MR. TREVIÑO: And it appears the motion carries unanimously. Thank you very much.

Mr. Kuntz, you've got your approval. Member McRae, thank you very much for the motion.

So we now hear the rule proposal. First we will consider agenda item number 8. Mr. Kuntz and Mr. Menke.

MR. KUNTZ: I'm back.

MR. TREVIÑO: You're back, yes, you are.
MR. KUNTZ: For the record, Jeremiah Kuntz, director of the Vehicle Titles and Registration Division.

Before you are rules for proposal. Agenda item number 8 adds new 217.76 through 217.78 relating to the suspension or denial of access to the registration and title system. We are seeking approval to publish the rules in the Texas Register for public comment.

The purpose of the proposed new and amended sections is to implement Senate Bill 604 from the 86th Legislative Session which authorizes the department to adopt rules and policies for the maintenance and use of the registration and title system. Senate Bill 604 also provides that the department has sole authority to determine access to RTS.

Section 217.76 also implements SB 604, Section 407 which requires the department, not later than March 1 of 2020, in coordination with the county tax assessor-collectors, to develop, adopt and implement rules that create clear criteria for the suspension.

As we looked at this rule and started making sure that we're in compliance with statute, general counsel drafted a letter to the county tax assessor-collector association to present the criteria that we were contemplating for denial or suspension of access to RTS. That was sent to them and we received comments back.
from them. We also met with them in person, as Ms. French relayed to the department on the previous agenda item, and we had some discussions about the criteria for suspension or denial of access at that time, as well, to kind of go over the comments that we received from them.

The biggest thing I want to really lay out and clarify is that statute really required us to seek input on the criteria itself and not on the process. The tax assessor-collectors responded back and gave us some good input related to the process as well as the criteria for denial or suspension, and a lot of those comments really centered around the process that we currently have with the full service deputies in an addendum to their contract.

And so as we went about putting together the proposal that you see today, we took from that addendum to help really create the process that you see here in the rule before you which lays out some timelines for us on review. If there's ever a suspension or termination, there's an appeal process, if you will, to the department, to the executive director, and there's some timelines in place for when the executive director would have to make some decisions about whether or not to uphold that suspension or denial of access or whether or not to go ahead and allow it to be turned back on.
The thing that I really want to stress as we're talking about this is the department does not take lightly suspending access or denying access to the registration and title system. We have not taken action without consultation with the county tax assessor-collectors in very many instances. I can recall two in my career with the DMV where we have taken access away from an employee of a tax assessor-collector office or full service deputy without first consulting with the tax assessor-collector. In both of those instances there was an ongoing criminal investigation and the department did not have the latitude to be able to consult with the county tax assessor-collector about that termination prior to that access being turned off.

And we really wanted to stress this is not something that we're going around and we're just going to be turning people's access on and off. In the other instances that we've terminated access, in most instances beyond those, we've actually been informed by the county tax assessor-collector that they had an issue in their department. And so it's something that we don't take lightly. We make sure that we are on solid footing before we take action because we know that it is very important to provide those services to the customers and we don't want to just do that without good cause.
And so we believe that we have got a rule before you that really clearly articulates the criteria by which we would terminate access, and then also that we would work in consultation with the county tax assessor-collectors unless there are extenuating circumstances, such as there's an ongoing criminal investigation.

MR. TREVIÑO: Mr. Menke, anything to add?

MR. KUNTZ: I've got Mr. Menke here for support.

MR. TREVIÑO: Great. Thank you very much for those comments.

Does anybody on the Board have any questions or comments for Mr. Kuntz and Mr. Menke?

(No response.)

MR. TREVIÑO: Hearing none, are there any public comments? I don't think we've received any on this issue. Great. Thank you, Melanie.

Okay. So with that, the chair would entertain a motion. Member Scott.

MR. SCOTT: I move the Board approve the proposed new sections 217.76 and 217.78 for publication in the Texas Register for public comment.

MR. TREVIÑO: Great. We have a motion. Do we have a second?

MR. GRAHAM: Second.
MR. TREVIÑO: Member Graham.

Any further discussion?

(No response.).

MR. TREVIÑO: With that, I'll call for the vote. All those in favor please signify by raising your hand.

(A show of hands.)

MR. TREVIÑO: Motion carries unanimously.

Thank you very much.

Thanks, Mr. Kuntz.

And now we go to agenda item number 9, and we'll turn it over to Mr. Menke.

MR. MENKE: Good morning, Mr. Chairman, Board members. For the record, Tim Menke, director of the Compliance and Investigations Division

Agenda number 9 on page 102 of the briefing book is a proposal for the new Chapter 223 Compliance and Investigations Division relating to county tax assessor-collector reporting of suspected fraud, waste and abuse and implementation of the Sunset Advisory Commission recommendation 2.2.

We are requesting approval to publish the proposed new chapter in the Texas Register for public comment, and specifically formalizing the department's current red flag warning system for county tax assessor-
collectors, and then also provide an option for counties to request action for suspected fraud, waste and abuse, immediately suspending access to RTS.

And with your permission, Mr. Chairman, if I could provide just a little bit of context on the red flag process.

MR. TREVIÑO: Thank you.

MR. MENKE: Currently 85 percent of our ongoing investigations have resulted from this process. This is an outstanding process. Our tax assessor-collectors are the first line of defense on the ground, and when you can identify potential fraud at its source, you put efficiency into the system. You don't have to provide documents and chase them down later. And when you become more efficient in that manner, you become more proactive in identifying fraud.

We have approximately 225 referrals per month coming in from the tax assessor-collector offices. That's an average over the last three months. That's a significant increase from earlier on in the year. In January of 2019 we circulated a policy kind of articulating this process that has not been formalized yet, and it's too early to tell if the education and the interest on the part of the tax assessor-collectors has resulted in increased reporting, but I can tell you that
approximately 25 percent of the referrals that are sent in are sent back to the tax assessor-collectors for administrative action. CID does not make recommendations on administrative action, we leave that to the tax assessor-collectors.

We review the information when it comes in to see if there's potential criminal activity and right now we have basically about a three-day turnaround from the time we receive the initial complaint to the time we review it, and then approximately another 24 hours to respond back to the county if there's going to be any review on that particular matter. If it's determined to be criminal in nature, we will not respond back to the county because we work closely with law enforcement, and since we bring in law enforcement and district attorney offices in the process to make sure we have decent ROI because we're not going to waste our time on something law enforcement or the DA's office is not interested in.

We bring law enforcement in early and quite often law enforcement we have 100 percent acceptance rate right now from law enforcement, and we are under orders not to divulge any information regarding an ongoing criminal investigation.

So I just wanted to clarify that because I know there was a question from the TACs about
communication and how it should maybe mirror what
enforcement does. Enforcement conducts the
administrative investigations and can have dialogue back
and forth, but our hands are tied not because we're tying
our hands, because the law enforcement agency or the
judiciary component is ordering us not to divulge any
information.

This is very successful. As I said, 85
percent of our current investigations -- and they're all
felonies -- have come through this red flag process.
This formalizes the process that has been in place for a
while.

And with that, I'll take any questions that
you may have.

MR. TREVIÑO: Thank you, Mr. Menke, and
congratulations on what you're working on.

Any questions from the Board for Mr. Menke?

MS. McRAE: I have a comment, if it's okay,
Mr. Chairman.

MR. TREVIÑO: Certainly.

MS. McRAE: I would just like to thank y'all
because we are seeing that y'all are turning those around
very quickly, and we put a lot of time and effort, the
tax assessors, in trying to identify that fraud, so we
appreciate the efforts of the department as well.
MR. TREVIÑO: Thanks for the comment.
And there's no public comments on this one either?

MR. BACARISSE: We're just going to publish. Right?

MS. BREWSTER: This is for posting.

MR. BACARISSE: This is for posting.

MR. MENKE: We're requesting approval to publish the proposed new chapter.

MR. TREVIÑO: Great. And hearing no other comments, the chair would entertain a motion.

(General talking and laughter.

MR. GRAHAM: Mr. Chairman, I apologize. I move that the Board approve proposed new Chapter 223 rules for publication in the Texas Register for public comment.

MR. TREVIÑO: We've got a motion from Member Graham.

MR. BACARISSE: Second.

MR. TREVIÑO: Second from member Bacarisse.

All those in favor please signify by raising your hand.

(A show of hands.)

MR. TREVIÑO: Motion carries. Thank you very much.

Now we get to the exciting part. Mr. Kuntz,
agenda item number 10.

MR. KUNTZ: Yes. For the record, Jeremiah Kuntz, director of the Vehicle Titles and Registration Division. I'll be covering agenda item number 10, the most anticipated agenda item.

MR. TREVIÑO: Clearly.

(General laughter.)

MR. KUNTZ: Before you for your consideration is a redesign of the Baylor University license plate. This plate design is from our marketing vendor, My Plates. For members that have not gone through this process, this is a pretty standard process during Board meetings to either adopt new designs from My Plates or redesigns of existing license plates, and this new redesign is before you for your consideration. The University of Baylor brought this redesign to My Plates requesting that they update their logo based on the update that they have at the university.

MR. TREVIÑO: So I think it's high time, and it's Baylor University, not the University of Baylor. Just saying.

MR. BACARISSE: Mr. Chairman, just a question.

MR. TREVIÑO: Vice Chairman.

MR. BACARISSE: Are both plates that would be the new design, or is one the old design and then we're
looking at the new design?

MR. KUNTZ: So the license plate that you see on the top is the existing license plate.

MR. BACARISSE: The current design. This is the new design on the bottom?

MR. KUNTZ: On the bottom, yes.

MR. BACARISSE: Okay. Thank you. I have two kids at Baylor so I have a slightly vested interest. He's an alum.

MR. TREVIÑO: Would you like to recuse yourself?

MR. BACARISSE: I might -- no, I'm kidding.

MR. TREVIÑO: All right. Any other comments?

Member Scott.

MR. SCOTT: You're replaced one. Is only one going to be available?

MR. TREVIÑO: Member Scott, you need to press your button to be heard by the members in Houston.

MR. SCOTT: There we go. My question was you eliminate one and we just end up with one plate, not a choice of two?

MR. KUNTZ: So the way that our redesigns work is that anybody that has the existing plate will continue to be able to display that existing plate on their vehicle, we don't recall them, but the old plate will no
longer be available for sale, the new redesign would be available for sale.

MR. TREVIÑO: Thank you for clarifying.

MR. GRAHAM: And one other question. I see in the notes that there were 97 people did not like the plate and that there were thousands who didn't like the OU plate. Actually, I don't have a question, I just wanted to hear myself say that.

(General laughter.)

MR. GRAHAM: So with that, Mr. Chairman, I'll be ready.

MR. TREVIÑO: Member Washburn and Member Prewitt might like to weigh in on this topic. Good?

Then if there's no further discussion, the chair would entertain a motion from anybody who is so motivated.

MR. GRAHAM: Thank you, Mr. Chairman.

MR. TREVIÑO: My pleasure, Member Graham.

MR. GRAHAM: I move that the Board approve the undefeated, first place in the Big 12 currently, Baylor University redesign specialty plate. Sic'em Bears.

MR. TREVIÑO: Wow. That's one of the best motions I think I've heard.

MR. BACARISSE: I'll second.

MR. TREVIÑO: I've got a second here from
Member Bacarisse.

Any further discussion?

(No response.)

MR. TREVIÑO: Hearing none, all those in favor please signify by raising your right hand.

MR. BACARISSE: Sic'em.

MR. GRAHAM: Ready? Sic'em Bears.

(A show of hands.)

MR. TREVIÑO: Motion carries with extreme prejudice. Motion carries.

So let's get moving.

MS. BEAVER: Mr. Chairman?

MR. TREVIÑO: Yes.

MS. BEAVER: Tracey Beaver, general counsel, for the record. Just to clarify, was that a unanimous vote?

MR. TREVIÑO: I'm sorry. Yes, it appeared to be a unanimous vote, raised by the right hand with the bear claw. It appeared to be a unanimous motion. Thank you for clarifying that.

MR. TREVIÑO: And now we move on to 11.A. Finance. Ms. Flores. No.

First we're going to hear from Mr. Kuntz, agenda item 11.A, and I want to remind the Board that this agenda item is sensitive because the contract is
technically still under negotiation. The Board is only being asked to delegate authority to the department's executive director to negotiate, approve and execute the contract. There is no need to deliberate about the details of this procurement which could result in the disclosure of sensitive information that could jeopardize the department's position. Also, vendor proposals are confidential until a contract is signed.

Mr. Kuntz.

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

Before you, agenda item 11.A is seeking approval from the Board to delegate authority to the executive director for the execution of the specialty license plate marketing contract. The way that this recommendation is being presented is that the executive director would work in consultation the chair. With the approval of the Board now, the executive director could execute the contract in consultation with the chair for this specialty license plate marketing contract.

Just a very brief history. Statute authorizes the department to have a contract with a vendor to market and sell specialty license plates. These are specialty license plates that are not the state license plates like
the military plates, those kind of things, this is new specialty license plates. Our contract RFP that went out would actually have the vendor host all of the license plates for the state on one website in addition to any license plates that they present.

The General Appropriations Act appropriates the department $5 million in appropriations authority to compensate the vendor for their work, and so there's authority for the department to provide compensation. Their compensation is based very much linkage to the license plates that they sell, and so the way this contract is set up in the RFP is that the marketing vendor can propose new license plate designs to the Board, as you've just adopted here, and then they would go out and market those license plates, and then they would enjoy a share of the revenue that the state receives from those license plates as compensation to the vendor.

The existing contract that we have had was initially executed in 2009, it was renewed in 2014, and it will expire on November 19 of this year, and so that's why we moved forward with initiating a request for proposals to the vendor community to elicit responses so that we could get a new contract in place prior to the termination date in November.
MR. TREVIÑO: And Mr. Kuntz, in your opinion, this program has been successful?

MR. KUNTZ: Yes. This has been a very successful program for the department as well as the State of Texas. The general revenue account receives substantial revenue from the sale of these license plates. Over the years it has brought in revenue to the state.

MR. TREVIÑO: Thank you, Mr. Kuntz.

Member Gillman, do you have a question?

MS. GILLMAN: Yes. I just saw that you did request a second vendor to submit a proposal, is that right, in the spring of this year?

MS. BEAVER: Tracey Beaver, general counsel.

If I might go ahead and pull up Aline Aucoin to respond to that question.

MS. GILLMAN: Well, the question is have you received a second bid.

MS. AUCOIN: Aline Aucoin, for the record, associate general counsel.

So we followed the proper procurement process by posting the request for proposals on the electronic State Business Daily for the entire vendor community to submit a response. The procurement process is a confidential process. We cannot disclose information in

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this open meeting, it would jeopardize the department's position, so I'm not going to answer the question on whether we have or haven't received a second response. I've provided you with a summary.

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

Thank you, Aline Aucoin.

To summarize, we're not able to discuss the details of the contract in this open meeting. The question before the Board today is just whether or not you would like to delegate authority to the executive director, signature and approval authority for any contract, for the contract that has a value in excess of a million dollars. But if you would like to consult with counsel, we could also do that.

MR. TREVIÑO: Member Gillman?

MS. GILLMAN: Maybe I should word it a different way.

MR. TREVIÑO: Well, probably, if you want to discuss this directly with them, we should call a short break and you can consult with them to get your question answered directly, because they can't discuss anything to do with the contracts in the public meeting.

MS. GILLMAN: I won't discuss any specific contracts.
MR. TREVIÑO: Okay. Fair enough.

MS. GILLMAN: My comment would be because I guess it's $5 million per year times six years, with another six-year renewal, that's $60 million. It would seem logical you get two bids. That's my only comment.

MS. AUCOIN: If you'd like to take recess, I'm available to discuss one on one.

MR. TREVIÑO: Member Gillman, I'd be happy to call a five-minute break.

And with that, it's approximately 11:14, and we'll take a two-minute break.

(Whereupon, at 11:14, a brief recess was taken.)

MR. TREVIÑO: So with that, any more discussion, any more questions for staff?

(No response.)

MR. TREVIÑO: Hearing none, the chair would entertain a motion.

MR. BACARISSE: Mr. Chairman, I'd like to make a motion that the Board approve the delegation of authority to the executive director, after consultation with the Board chairman, to negotiate, approve and execute the specialty license plate marketing contract in an amount not to exceed any appropriation contained in the current state biennial budget, as well as any future
state biennial budget for this item.

MR. TREVIÑO: Thank you very much. We've got a motion from Vice Chairman Bacarisse. Do we have a second?

MS. McRAE: I second.

MR. TREVIÑO: A second by Member McRae. Any further discussion?

(No response.)

MR. TREVIÑO: Hearing none, please signify by raising your hand if you're in favor of this motion.

(A show of hands.)

MR. TREVIÑO: Motion passes unanimously.

Thank you.

Now we move on to item 11.B. Ms. Flores, thank you for joining us today.

MS. FLORES: Good morning. For the record, Linda Flores, chief financial officer for the Texas Department of Motor Vehicles.

I am presenting agenda item 11.B. This is a request from the Board to authorize the department's executive director to negotiate and execute, in conjunction with the Texas Facilities Commission, a contract renewal for the Dallas/Carrollton Regional Service Center for an additional five-year term effective April 2020 through March 31, 2025.
We have been at this location for at least 20 years that I'm aware of. I believe we originally located there in 1995. It's approximately 7,800 square feet, it's located in Carrollton, Texas. This information on our monthly payment can be found in your board book on 117.

The Texas Facilities Commission holds the authority for leasing all state property. They do work with the agencies and we do have to agree with the terms of the agreement. We finance the agreement as well. And so I am requesting that you authorize the executive director to approve the renewal.

I would also like to mention that we do believe that the needs of the region will outpace our current office in the next foreseeable future, at least in the next eight years. VTR has done an analysis and we have been asked by a member of the legislature to look at perhaps locating another satellite office in the Dallas proper area. In this location in Carrollton we pay approximately $16 a square foot; Dallas at this time it's about $35 a square foot. So it's significantly more and we do not have the appropriate funding to create a new satellite office at this time, but we will be looking at that perhaps in our next appropriations request.

So with that, I conclude my presentation.
MR. TREVIÑO: Thank you very much, Ms. Flores. Does anybody have any questions for Ms. Flores?

(No response.)

MR. TREVIÑO: Hearing none, unless there's any further discussion, I would like to entertain a motion for agenda item 11.B.

MR. BACARISSE: Mr. Chairman, I move to authorize the agency's executive director, or her designee, to negotiate and execute, in conjunction with the Texas Facilities Commission, the contract renewal for the Dallas/Carrollton Regional Service Center lease for an additional five-year term, effective April 1, 2020 through March 31, 2025.

MR. TREVIÑO: Thank you very much, Vice Chairman Bacarisse.

Do we have a second to that motion?

MS. GILLMAN: Second.

MR. TREVIÑO: Got a second, Member Gillman. All those in favor please signify by raising your hand.

(A show of hands.)

MR. TREVIÑO: And again, motion passes unanimously. Thank you very much.

We'll now move into agenda item 11.C. Ms.
Flores and Mr. Rey. Thank you for joining us.

MS. FLORES: Thank you. Moving on to agenda item 11.C. Again, Linda Flores. This is a briefing item only, we are not asking for any action from the Board at this time. With me is Sergio Rey, he is the assistant CFO for the department, and I will turn it over to him to give you a brief overview of our fourth quarter ending August 31.

MR. REY: Good morning, Board members, Ms. Brewster. Again for the record, my name is Sergio Rey, assistant chief financial officer. I'll be providing a quick summary of our fourth quarter year-to-date for fiscal year 2019.

High level description or discussion on the total revenue for all the funds, and for fiscal year 2019 we collected close to $2 billion worth of revenue. The major driver here, of course, is the State Highway Fund with the registration fees. Much of that is because of the increased number of registered vehicles. So this is more detail you will find in your board books on page 127. So again, this is a comparison of all funds, fiscal year 2019 in green to 2018 in blue.

Other major drivers during fiscal year 2019 included oversize/overweight permits and interest revenue from the Texas DMV Fund, which I will talk about in this
later slide.

To kind of continue covering all the funds for DMV, here are the expenditures and obligations. For the year we had a total of $158 million worth of expenditures, much of that in our operations, our online services and also we still show encumbrances or commitments for the year of $21.4 million. These commitments or the encumbrances are budgetary transactions or commitments for goods and services that were procured before August 31 but we haven't received yet or having paid for them yet, so we're expecting much of that in our grants for ABTPA, or the division formerly known as ABTPA, our automation and for other operations under the TxDMV Fund.

Now, specifically for the TxDMV Fund here are the highlights of our revenue. Again, we had $179 million of revenue come in during the year. This was an increase, again, the focus being the oversize/overweight permits where we had issued more than in previous years — had ever. Yes. Definitely any of the past three years combined we had more permits in 2019.

In miscellaneous revenue, this is where you will find the interest revenue from the DMV Fund, a combination the fact that we had a higher fund balance and there were very good interest rates during fiscal
year 2019 contributed to the increase in miscellaneous revenue.

Our processing and handling fee, which is about one-third of the DMV Fund collections, closed out the year with a net decrease, and this attributed to the discontinuation of the 30-day and one-day trip temporary permits from the online portal.

As far as the expenditures for the DMV Fund itself, here we have a comparison of budget to expended summary here. Eighty percent of our expenditures pretty much fall in these four categories: salaries, contracted services, professional fees, and postage. From there we did not expend $48.25 million from our budgeted amounts of appropriations, of which from that there will be about $9 million that we'll carry forward into fiscal year, both from the headquarters maintenance project and our automation projects. Again, we had some commitments that we were expecting in fiscal year '20 from these appropriations, close to $9 million. This leaves an estimated lapse of $30 million.

These are unobligated obligations. What this means is that DMV funds appropriated to the department were not used for the operations and there wasn't an encumbrance or an obligation as of August 31. This lapsed amount stays in the DMV Fund balance for future
appropriations.

MR. BACARISSE: Could I ask a question, Mr. Chairman?

MR. TREVIÑO: Certainly.

MR. BACARISSE: Just curious. I know in a prior state agency I served at, the Legislative Budget Board was pretty hawkish on monies unexpended at that agency and they would sweep them back. Does that happen here? How do we manage our relationship between what we're able to save and use?

MS. FLORES: Linda Flores.

That's because they were a general revenue agency. All general revenue is swept on a quarterly basis by the Comptroller to ensure that they're using their cash wisely and that they're not leaving behind those encumbrances and just letting them sit out there. So that is a process, it's an automatic process. You have to have an encumbrance; if you don't, they sweep it.

Here we are not a general revenue agency other than for the motor vehicle, the new crime prevention authority, previously known as ABTPA, so the money that we collect in the DMV Fund stays in the fund. That's not to say that a legislator can't come and see that nice healthy fund balance and appropriate it for a different use. But it stays in the fund, it continues to earn
interest, and we also have the ability to request the use of those dollars in a future year.

     MR. BACARISSE: Great. Thank you.
     MR. REY: Speaking of the health of the fund, this last slide kind of summarizes our fund balance as of August 31, 2019, and we started off the year with $85 million, and as far as those transactions throughout the year, left us with a cash balance of just over $135 million. Again, taking into account the encumbrances or the expected expenditures in fiscal year '20 from this particular appropriations of 2019, we estimate that there's an adjusted balance of $126 million.

     This concludes the brief briefing of the DMV fund and the revenues and the fourth quarter revenues and expenditures for the agency. Open to any questions that you may have.
     MR. TREVIÑO: Any questions from members of the Board?
     (No response.)
     MR. TREVIÑO: Mr. Rey, thank you very much for that report. Is there anything in the revenue or the cost side that at this point is changing or different or that you should inform the Board about? Anything that you guys are seeing?
     MR. REY: At this point revenues continue
exceeding projections from the ones that we create during
the legislative appropriations process, but we're steady,
and as far as expenditures, we're still on track similar
to last year.

MR. TREVIÑO: Great. Okay. Very good. Thank
you, Mr. Rey and Ms. Flores, for that excellent report.

MS. FLORES: I did want to say besides I have
a gatekeeper that won't open the gate if the money is not
there. We have a lot of gatekeepers around this
department.


So we're done with that, that's 11.C. And now
we're on to Ms. Flores, 11.D.

MS. FLORES: 11.D. Again, this is a briefing
item. In our last Board meeting, Ms. Sandra Menjivar had
mentioned an internal audit report on procurement and
contract management audit. At that time I also indicated
that we had several other external audits. We made a
commitment to provide the Board with an update, and Debra
Rosas is here, she is the purchasing director, to help me
provide you with that update.

I would like to point out between three audits
we had 23 recommendations that all had to be implemented
by September 1. Debra started February of '19, so as
soon as she got here she hit the floor running, and we
were able to implement 16 of those 23.

And I know that Sandra is still in the process
of verifying all of our implementations, but that's not
to say that we don't have more in front of us. We have
six more recommendations that we have to implement
between now and the end of the year.

Senate Bill 20 -- this is information from
your board memo on page 144 -- there were two major
pieces of legislation that have impacted all state
agencies. Senate Bill 20 in the 84th legislation, Senate
Bill 65 from the 86th legislation, both by Senator Jane
Nelson, have increased oversight and contract monitoring
for state agency procurements and contracts. It
increases our accountability, transparency, as well as
complicating procurements for the State of Texas

So at this time I'm going to turn it over to
Debra so she can kind of give you an idea of the things
that we implemented by September and what's still in
front of us at the end of the year.

MS. ROSAS: Good afternoon. For the record,
my name is Debra Rosas. I'm the purchasing director.
Thank you.

And so I'd like to just highlight out of those
16 recommendations that the purchasing section has
already implemented, two of them are the procurement
staff responsibilities. Those have been clearly defined so that there is transparency and an understanding from all of the procurement staff of the responsibilities on behalf of the department.

In addition to that implementation, one document was revised called a purchase order checklist which actually hit more than eight of the recommendations. Just by changing that document to include website links and dollar thresholds for the procurement staff to easily identify the required documents needed for the procurement file.

One of the most visible implementations is the contract monitoring training that has been rolled out in June of 2019 and has been continued in September of 2019, with future training scheduled. The contract monitoring training is developed to help the division users identify who is responsible to monitor that the department is receiving the services according to the contract or purchase order from the vendor.

Some of the upcoming recommendations that are going to be implemented are the combining of commodity procurements which will establish a set schedule so that end users know when items will be ordered and to enable procurement staff to be more efficient.

And in conclusion, I would just like to say
that the procurement staff is on track to implement the
remaining recommendations from all three audits.

Great. Thank you very much, Ms. Rosas.

Does anyone have any questions for Ms. Rosas,
Ms. Flores or Mr. Rey on these issues?

(No response.)

MR. TREVIÑO: No. But I would like to thank
you, Ms. Rosas, for being proactive, implementing all
these things. Procurement is extremely important, very
sensitive area. The citizens of Texas expect the revenue
that you guys are responsible for to be spent well, and
procurement is such a vital piece of it. So thank you
very much for working on this, and we look forward to
hearing more reports from Ms. Flores as we go forward on
this area.

So thank you very much.

MS. FLORES: Thank you.

MR. TREVIÑO: Next we will hear from Ms.
Sandra Menjivar-Suddeath on agenda item number 11.E.
Internal Audit Charter. Now we get to the fun stuff.

MS. MENJIVAR-SUDDEATH: Good morning. For the
record, Sandra Menjivar-Suddeath, Internal Audit
director, and I'm presenting item 11.E, the Internal
Audit Charter. I'm requesting approval on the Internal
Audit Charter, and it can be found on page 152 of your
board book.

The Internal Audit Charter is a required document by the Texas Internal Auditing Act, as well as the Institute of Internal Auditing Standards. It outlines our vision, mission, goals, purpose, authority and scope, as well as provides information on the responsibilities from the internal audit function, as well as management and the Board.

We are required to review this on an annual basis, and during our review this year we identified that the current charter does not reflect the current leadership in the Board, and so we're requesting approval. We also made some changes to it to clarify our scope and authority.

With that, I'm open to any questions you may have.

MR. TREVIÑO: Great. Does anyone have any questions for Ms. Menjivar-Suddeath?

(No response.)

MR. TREVIÑO: Okay. And there's no public comments on this. Unless there is any further discussion, I would entertain a motion.

MR. GRAHAM: I move that the Board approve the Internal Audit Charter as presented.

MR. BACARISSE: Second.
MR. TREVIÑO: Great. We have a motion and a second. All those in favor please signify by raising your hand.

(A show of hands.)

MR. TREVIÑO: And the motion carries unanimously again. Thank you very much, Ms. Menjivar-Suddeath.

We now move on to agenda item 11.F.

MS. MENJIVAR-SUDDEATH: Great. So item 11.F. is the Internal Audit Division status update. It's on page 168 of your board book and it's a briefing item only. It includes information on two completed reports and the three engagements that we started, as well as the external coordination efforts begun.

So at the beginning of fiscal year 2020, new activities include three audit engagements as well as the external coordination efforts. The first audit engagement that we've begun is the title and registration program customer support, so we're looking at how we support our customers for title and registration questions. We do anticipate releasing that report in January 2020.

We also have the patch management audit. This is looking at how we're patching our systems and hardening our systems, servers, networks, work stations,
things to that regard. It was part of the cybersecurity roadmap, and so we anticipate also releasing this in January 2020.

We've begun our internal audit follow-up, as Ms. Flores mentioned. We are reviewing audit recommendations that were implemented between the last quarter of fiscal year 2019 and the first quarter of this year. So far we've had about 35 audit recommendations that were implemented in that time period so we're a little behind on that so we're really going through and reviewing them and asking questions. We will be issuing memorandums on what those statuses are shortly.

And then finally, the one external coordination effort, the Texas Workforce Commission Civil Rights Division provided us notification that they will be doing a compliance review shortly. They'll be onsite in December but they've already done some information requests and are gathering information from human resources, our civil rights division, to help them in their review.

Moving on to completed reports, the first completed report is on page 170 of your board book. It's the fiscal year 2019 annual audit activity report. This report is a required report that summarizes the activities of Internal Audit. It is due to the
Governor's Office, the Legislative Budget Board, the State Auditor's Office by November 1, and we also have to post it on our website, and we'll do that after this meeting. There are seven sections of the report that we are required to provide information on that includes compliance with Texas Government Code 2102, our previous audit plan, the status of it, our current audit plan, as well as information related to our audit advisory.

So that report is on page 170, it's a pretty standard report, so if you don't have any questions, I'll move on to quality assurance.

MR. TREVIÑO: How is our six-month cadence program for your audit plan working out?

MS. MENJIVAR-SUDDEATH: Well, we've only been one month into it so we'll see how it goes, but I think it will be very beneficial. This year we've seen already an increase on certain things that are occurring both on follow-up and fraud, waste and abuse, and so it will hopefully give us the flexibility to be able to better manage our audits, as well as all those other items that keep coming up.

MR. TREVIÑO: Great.

MS. MENJIVAR-SUDDEATH: So the quality assurance report is on page 189 of your board book. So we are required by audit standards to do a self-
assessment every year. That self-assessment includes us looking at are we complying with audit standards. We've actually expanded our quality assurance and improvement program to include measures about our effectiveness and our efficiency. So our quality assurance program not only looks at are we complying with audit standards, it also looks at our progress on our peer review, which is our external assessment, but we also look at our key performance indicators, the capability model, and the fraud, waste and abuse allegations and dispositions.

And so I'm not going to focus too much on our compliance with audit standards because we are complying with audit standards, as well as our peer review recommendation. We've been doing a lot of work with our ethics work group to help refine the ethics policy of the agency. What I am going to focus on is our key performance indicators, our capability model and our fraud, waste and abuse allegation and disposition because those are very telling about our effectiveness and our efficiency.

And so what you have here is a slide that kind of gives you information of how we've trended on our ten KPIs in the past two years. For fiscal year '19 we met nine out of the ten KPIs. Now, there's something more telling in the trend that we've actually had a little bit
of a downturn in our KPIs. That's partially because of our workload. We've had a significantly more larger workload in fiscal year '19. In addition, because of that workload it puts stress on our internal processes and showed some areas where we could improve our efficiency and effectiveness in our processes, so that way they could take the stress of an increased workload.

The one KPI we did not achieve was the audit knowledge. We went from a 91 to a 77 percent survey result. That is partially, one, we didn't focus necessarily sufficiently on the high risk areas so we went and grabbed all risks related to projects which meant we were probably asking too many questions, maybe our scope was a little bit too large, and so that resulted in our clients feeling that we maybe didn't know enough about the subject area.

The other part was the survey responses themselves. We sent out seven surveys to 39 respondents and we only received eight responses back from four surveys. So it really doesn't tell a good picture of whether people feel like we are knowledgeable about what we're doing, but those were the responses we had.

Another thing that we'll notice in the KPIs are engagements within budget. Last year we were 8 percent lower than the budgeted engagement, this year we
were 8 percent higher. And if you go to the next slide, that's the overall. When you look at our issued and our reporting numbers, it's significantly higher. For audits that we issued we were actually 16 percent above the projected hours of engagement, and then for the reports, when we were doing this we had two reports in reporting, we were about 9 percent. Now, between those two and the other engagements, we ended up being at a total of 8 percent. But I wanted to highlight this because this is a true representation of how we were doing in our engagement hours.

And then this one is more telling about per engagement. As you can tell, there's a lot of red and red means we were over budget, and one of the projects, the Lemon Law and investigation project, we were about 400 hours over. So there was significant impacts to us.

Next slide. And so this is our surveys for KPIs. We did meet three out of the four. The audit knowledge, as I mentioned, we were at 77 percent. I will say we do get a lot of feedback from management. They have no problem calling me giving me good feedback and bad feedback which we take and incorporate processes and make changes to improve those processes.

The next item is the Internal Audit capability model, so this is one of our big things. So we rate all
our engagements, so we thought it's only fair for us to be rated as well so the agency knows where we are. We are at a level 3 in our capability model which means we still have some work to do. We were able to, in fiscal year '19, improve on our integration of a performance measure, since now we have ten measures instead of just the eight, so that was a green box.

The other box right next to it, the audit strategy leverages organizational management, I wanted to point that out because we can't move to level 4 until the agency has a good risk management process. The agency is working on that, but it's important to note that the capability model works with the agency so that way we progress at the same time as the agency is progressing.

And then moving on to fraud, waste and abuse referrals. We saw a substantial increase in that last year. We had 36 in fiscal year '18, in fiscal year '19 we had 89. Most of those were from the State Auditor's Office and some were from internal. A lot of them were related to dealer issues such as title transfers, things like that, but any complaint we receive we review and provide a disposition or a referral to.

And then the final slide shows the overall what was the status of those fraud, waste and abuse allegations. And so in fiscal year '18 we had 12
allegations that we investigated and in ’19 we had 14
that we investigated, but those 14 actually had a lot
more subcomponents to it, so they're taking longer to
complete.

So with that, that's my presentation.

MR. TREVIÑO: So that's a large increase.

MS. MENJIVAR-SUDDEATH: It is.

MR. TREVIÑO: Are you already having
discussions with management to see if that trend
continues that we have the resources adequately to
support your work in that area?

MS. MENJIVAR-SUDDEATH: Yes. I've had
conversations with Ms. Brewster about our workload with
fraud, waste and abuse. We don't know if it's an anomaly
or not. We do know we've had already several complaints
come in that are requiring us to expend more resources on
it. So if this trend continues, we'll definitely have to
talk about resources when it comes to fraud, waste and
abuse.

MR. TREVIÑO: Great. Any questions from the
Board?

(No response.)

MR. TREVIÑO: I'd also like to thank Member
Graham for his hard work in the Audit Committee working
with you to make sure we get the right information and
that you've got support from the Board in a more detailed way. So thank you, Member Graham, for your hard work in that area.

MR. GRAHAM: You bet. Thank you.

MR. TREVIÑO: Any other questions?

MS. McRAE: I think they just do a great job.

MR. TREVIÑO: They do do a good job.

Now, the other thing, though, is the survey responses. So what you showed us is not good. I mean, eight doesn't really give you anything to work with, so does management understand or is trying to figure out a way to support you getting those surveys back?

MS. MENJIVAR-SUDDEATH: We're working on processes. I mentioned it to Ms. Brewster when we were doing our quality assurance, when we were doing the work, that our response rate was very low, and so we're thinking of different ways of how to incentivize, you know, send reminders. I have no problem walking to people's office and asking them to fill out the surveys.


All right. Well, great, as long as you're working on that because I think everyone appreciates the work that you do and that's just one way of showing the respect.

Well done. Thank you very much.

All right. Member Gillman, I think you have
something to share with us, don't you? Member Gillman, don't you have a little something to share with us about Ms. Brewster perhaps? Briefly, mind you. We're not giving you a break for five minutes on this.

(General laughter.)

MS. GILLMAN: No, no. In the Dealer Choice magazine published by Texas automobile dealers, I just wanted to highlight that our own Whitney Brewster was interviewed and did a great job in talking about her role as chair of AAMVA. And AAMVA stands for?


MR. TREVIÑO: Well, of course.

MS. BREWSTER: So it encompasses all jurisdictions and territories from North America, Canada and the United States.

MS. GILLMAN: And it was a really great article.

MS. BREWSTER: Thank you.

MS. GILLMAN: And if you haven't seen it, here it is.

MR. TREVIÑO: Great article. Always get the word out there. Well done.

(Applause.)

MR. TREVIÑO: You are president this year of
AAMVA, aren't you?

MS. BREWSTER: The chair.

MR. TREVIÑO: You're the chair, and that's actually a good point because that is a huge honor and she is out representing the greatest state in the United States and representing Texas in that group and doing it well.

MS. BREWSTER: Thank you.

MR. TREVIÑO: Member Graham, do you have anything to share with us?

MR. GRAHAM: Yes. Thank you, Mr. Chairman.

I'd just like to recognize my good friend, Board Member John Prewitt, who you can see there on the screen. For those of y'all who aren't aware, Board Member Prewitt is battling cancer and has been doing this over the last few months. There's a website that you can kind of follow him on and he makes posts and his actions have been incredibly inspirational to a lot of people, including myself.

This thing is designed to allow people to surround the person battling the cancer to lift that individual up and be strong as they can be. And somehow this man continues, during the course of his battle, to lift others up around him, and I don't know how he does it, but it's been amazing to watch.
And know we love you, we're with you, keep fighting, brother, and we've got your seat warm and ready to come back. So hang in there.

(Applause.)

MR. TREVIÑO: Member Prewitt, do you have any words for us?

MR. PREWITT: Just thank you for your kind words, Brett, and thank you, Board and everybody, for your support. Means the world to me and my family. Thank you.

MR. TREVIÑO: You're in our thoughts and prayers. And we admire you greatly because even though you are not feeling well and you're going through this horrible battle, you're still out here and you're still out here serving Texans, and that is a servant's heart. I don't have words for the admiration that I have for you. So thank you, Member Prewitt.

All right. Thank you, Member Graham, for bringing it all around to what really matters in many ways.

So we're going into closed session now. It is now approximately 11:58 on October 3, 2019. We'll go into closed session under Texas Government Code Section 551.071, 551.074, 551.076, and 551.089.

For those of you in the audience I anticipate
being in executive session for approximately an hour, maybe an hour, and we will reconvene in open session after that.

With that, we are recessed from the public meeting and we are going into executive session.

(Whereupon, at 11:58 a.m., the meeting was recessed, to reconvene this same day, Thursday, October 3, 2019, following conclusion of the executive session.)

MR. TREVIÑO: It is approximately 1:17 p.m., and the Board of the Texas DMV is now back in open session.

And the last order of business we have before us is agenda item 13, and I move that the Board approve an increase of the salary of the executive director --

MS. BEAVER: Chairman?

MR. TREVIÑO: Yes.

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

If you wouldn't mind noticing that the other two members are no longer present.

MR. TREVIÑO: Good point. Thank you very much.

We no longer have Member Washburn and Member Prewitt. They have signed off and they weren't in executive session.
So anyway, we're back in session, we have a quorum.

And now we'll proceed to agenda item 13, which has to do with the executive director's compensation. And so at this point I would like to make a motion, and that is I move that the Board approve an increase of the salary of the executive director, Ms. Brewster, to the full amount authorized and budgeted in the Texas DMV bill in Article 7 of the General Appropriations Act for the 2020-2021 biennium, and to authorize the staff to take the necessary actions required under the Act to implement that change.

Do I have a second?

MR. BACARISSE: I'll second.

MR. TREVIÑO: Got a second from Vice Chair Bacarisse.

Any discussion?

(No response.)

MR. TREVIÑO: With that, I would call for a vote. All those in favor please signify by raising your right hand.

(A show of hands.)

MR. TREVIÑO: All opposed?

(No response.)

MR. TREVIÑO: The motion carries unanimously.
I would just like to add to Executive Director Brewster that we're very happy with her performance. We've outlined some areas that we think would be useful for the department to grow but would like to thank her for her service to the citizens of Texas and this Board.

MS. BREWSTER: Thank you very much. And I very much appreciate the support of this Board and I look forward to working with you over the course of the next year and addressing some of the areas that we discussed. So thank you very much for your support.

MR. TREVIÑO: Good. Thank you, thank you. Any other comments?

MR. GRAHAM: Mr. Chairman, I move we adjourn.

MS. McRAE: Second.

MR. TREVIÑO: We've got a motion. So with that, I think we stand adjourned.

(Whereupon, at 1:19 p.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF: Texas Department of Motor Vehicles
LOCATION: Austin, Texas
DATE: October 3, 2019

I do hereby certify that the foregoing pages, numbers 1 through 158, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Motor Vehicles.

DATE: October 11, 2019

/s/ Nancy H. King
(Transcriber)

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