TEXAS DEPARTMENT OF MOTOR VEHICLES

FINANCE AND AUDIT COMMITTEE
MEETING

Wednesday,
February 6, 2019

Lone Star Room
Building 1
4000 Jackson Avenue
Austin, Texas

COMMITTEE MEMBERS:

Luanne Caraway, Chair
Brett Graham
Kate Hardy
John Prewitt
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EXECUTIVE SESSION

8. The Board may enter into closed session under none one or more of the following provisions of the Texas Open Meetings Act, Government Code, Chapter 551:
   Section 551.071
   Section 551.074
   Section 551.089

9. Public Comment none

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PROCEEDINGS

MS. CARAWAY: Good afternoon. My name is Luanne Caraway, and I'm pleased to open the meeting of the Finance and Audit Committee of the Board of the Texas Department of Motor Vehicles.

It is 2:00 p.m., and I'm now calling the committee meeting for February 6, 2019 to order, and 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 January 29, 2019.

Before we begin today's meeting, please place all cell phones and other communication devices in silent mode.

And now I'd like to have a roll call of the committee members.

Member Hardy?

MS. HARDY: Present.

MS. CARAWAY: Member Prewitt?

MR. PREWITT: Present.

MS. CARAWAY: And I'm Luanne Caraway, chairman of the committee, and let the record reflect that we have a committee quorum. Member Graham is absent today.

The posted agenda stated that a quorum of the board may be present at this meeting, however, board members who are not members of the Finance and Audit Committee will not vote on any committee agenda items today nor will any board
I see that Chairman Palacios is in the room today for information gathering and discussion. And if you would, please all stand and honor our country and state with the pledge of allegiance. (Pledges of allegiance recited - U.S. and Texas.)

MS. CARAWAY: Thank you.

And now we will move to agenda item 3. I don't have any comments.

Director Brewster, do you have any?

MS. BREWSTER: Thank you, Madam Chair.

I could not let this opportunity escape without thanking you, Madam Chair, as well as Member Hardy, for your service to the state, for your contributions to this organization and making the services that we provide to the citizens of the state better. We will miss you tremendously. It has been my personal privilege to get to know both of you better, and I know I speak on behalf of all of the agency staff, we wish you all the best in your retirement, it is well deserved, but we will miss you so very much. So thank you.

(Applause.)

MS. CARAWAY: Thank you for that very much.

Moving on to agenda items 4.A and B, we will now year from Linda Flores and Sergio Rey on those two items.
MS. FLORES: Thank you. For the record, Linda Flores, chief financial officer for the Texas Department of Motor Vehicles.

And to my far right is Sergio Rey, director of accounting, and Sergio is going to provide a briefing on the end of year annual financial report and nonfinancial report.

MR. REY: Good afternoon, Madam Chair, board members, Ms. Brewster. For the record, my name is Sergio Rey. I'm the department's accounting director, and as Ms. Flores mentioned, I will be going over the annual financial report.

The annual financial report is commonly referred to as the AFR and it is the accounting summary of the financial transactions for the fiscal year of 2018. By statute, the AFR is submitted to our oversight agencies by November 20 of each year. The AFR is completed on a modified accrual basis of accounting which means that revenue is recognized when it is measurable and received and expenses are recognized at the point that they become a liability to the entity.

The AFR is a net result of revenues and expenditures, related transactions for the period starting September 1, 2017 through August 31 of 2018. The AFR can represent activities from up to three different appropriation budgets. The General Appropriations Act allows appropriated budgets to be expended in the existing fiscal year plus two
more. For this reason, the AFR is not a typical budget to actual type report but more so a snapshot of a twelve-month period of time.

So with that, we'll begin on page 15 of your board book, and you will see right there the combined balance sheet or the statement of net assets. To highlight our balance sheet, you will see our three major categories: total assets, which saw an increase of $14 million; and our fund balance, which saw an increase of $22 million from fiscal year '17.

Both of these are a result of our increase of activities in our TxDMV Fund, whether that was revenue and typically in cash. Our other activities that relate to our current assets were also the purchase of our 21 vehicles for the agency for our fleet.

As we move on, because we're talking about cash and revenue, let's look at the next page which is our income statement, or the statement of revenue, expenditures and changes in net assets. In fiscal year 2018, licenses, fees and permits, which reflects 99 percent of our total revenue, increased by $100 million. This is a result of increased vehicle registration and temporary permits, roughly $55 million, increases in oversize/overweight permits of $17 million, and a full year of the processing and handling fees collections, around $20 million. Our Auto Burglary and Theft Prevention strategy continues to be appropriated from general...
revenue, which in 2018 saw an decrease of $2 million.

Our expenditures netted to a decrease of $23 million. The closeout of the computer equipment refresh project in 2017 was noticeable in our decrease in the materials and supplies category. Postage expenditures were also lower since in 2017 there was an additional postage meter load for additional activities for mailing. Professional fees and services also saw a decrease of expenditures during 2018 as we were winding down our RTS refactoring project, and of course, also the closeout of other projects during fiscal year 2017 that didn't carry over into 2018, like the eLICENSING project.

Now, as a percentage, one of our major categories, salaries and payroll wages, as a percentage it reflects an increase from a percentage standpoint but monetarily we continued to see a decrease from the 2017 hiring freeze that impacted our first quarter.

At this point, I will pause for any questions unless you wish I proceed into the annual nonfinancial report.

(No response.)

MR. REY: Our annual report of nonfinancial data is a compilation of schedules required by statute and whose requirements are published by the Governor's Office of Budget and Planning. TxDMV was required to submit eight of the schedules as part of the nonfinancial report. In here there
is a detailed briefing discussion of that on page 4 of your briefing book, but the nonfinancial begins on page 60 of your board book. It talks about our appropriation transfers, basically the movement of funds between our strategies within the fiscal year, our historically underutilized business strategic plan progress, which is the comparisons of the 2017 and '18 reach-out to historically underutilized businesses owned by women and minorities

The next report, the indirect cost schedule, this reflects the overhead cost of the agency associated with payroll benefits and the Statewide Cost Allocation Plan, or what we call SWCAP. Annually the Governor’s Office contracts with a third party to collect expenditures from oversight agencies and allocate those across state agencies and state public institutions in order to recuperate the costs for the general revenue fund. When the department began, our costs were minimal to none, starting off 2013 at $125,000, slowly increasing to in the $200s, where in 2017 we paid $248,000, in 2018 it doubled to $468,000. Now, much of this is related to our activities with the Comptroller’s Office and the services provided, especially with the enterprise system, CAPPS, the PeopleSoft system, the financial and HR payroll modules, and in 2019 we are seeing a considerable increase which will be discussed later in our exceptional items.

The next report of high visibility is our
professional consulting fees and legal services fees. This is the itemized detail of the same category in our income statement by the same name. Again, reflected here is the decrease or the winding down of our activities with the Deloitte project on the RTS refactoring that closed out on August of 2018, and also decreases with other vendors such as Explore Information Services which in 2017 had a project to help upgrade our Texas International Registration Plan which in 2018 we had our contract with them to continue our annual maintenance services.

The other reports include our space occupied which kind of details where we're at and how many of our staff is in those locations. And the final report I'll cover here is the vehicle purchase report which, again, reflects the purchase of 21 new vehicles added to our fleet.

With that, that is the recap of the annual financial report and the report of nonfinancial data. I'm open to any questions that you may have.

MS. CARAWAY: Any questions?

(No response.)

MS. CARAWAY: Thank you, Sergio, for that report. And we'll move on to item 5, which is the fiscal year 2019 first quarter financial report. Linda Flores and Renita Bankhead.

MS. FLORES: So at this point, again, Renita
Bankhead, assistant CFO, she is going to cover the first quarter activities, and as Sergio mentioned, the financial statements don't really provide you a budgetary impact, our quarterly reports do, so it's a one-year budget, one year's worth of expenditures.

MS. HARDY: What page is that?

MS. FLORES: This is starting on page 74 of your board book.

MS. BANKHEAD: Good afternoon. Chair Caraway, members of the committee, Ms. Brewster, for the record, I am Renita Bankhead, assistant chief financial officer. I'm here to present, as Linda said, the financial summary for the first quarter of 2019. This presentation is a summary of department revenue collections and expenditures for the period ending November 30, 2018.

I'm going to start speaking from page 76 of your board materials. This is a briefing item. So note this format this year, it's a little different, we're still working through our format. The report still contains information on revenues and expenditures but what we've changed is we've added a highlights section at the beginning of each section and then we follow that with detailed information.

So beginning on page 78, total revenue for all funds, total all funds revenue collections for the first quarter were $469 million, an increase of $3.5 million over
the same period last year. The increases were in vehicle registration and oversize/overweight permitting, and that was particularly in Fund 6 that was the major driver. Revenues for titles was slightly lower but that is because last year we had a little spike because of the damaged vehicles, salvage vehicles related to Hurricane Harvey. I'd note that our revenue collections this year are within our projected levels, so we are within our projections.

Next is beginning on page 83, our TxDMV Fund highlights. Our overall TxDMV Fund collections, they covered our department expenditures for the first quarter. The TxDMV Fund collections were slightly higher than the same period FY 2018, and the same drivers that we had for all funds also impacted the TxDMV Fund: the overall increase in oversize/overweight permitting, also the increase in the number of registered vehicles, but title revenue was also down for the DMV Fund because of the same reasons for overall revenues.

The collections for the processing and handling fee were slightly down from projected levels. A factor in this drop was beginning in FY 2019, 30-day and one-day temporary permits were not being sold online, and that was the result of a discovery that there was unauthorized use of these permits, and the agency is in the process of working on measures to ensure that that unauthorized use doesn't
occur, so until that happens, we're not going to be selling those permits online, but once we get that straightened out, we'll start again, and our revenue will reflect that increase.

At the end of the first quarter, TxDMV Fund balance was $101 million, and this includes the $23 million that we received at the beginning of last biennium, we have not touched that. Any unspent balances at year-end will remain in the TxDMV Fund to support our appropriations request.

Let's talk briefly here about expenditures. For the first quarter we haven't had anything out of the ordinary for our expenditures. And that begins on page 87 of your materials. Our major obligations are in salaries, ABTPA grants and contract services for plate production, printing and mailing for vehicle registration and titles. The chart that you see there shows that our expenditures are a little less than what we had in prior years, but that's because of some of the things that Sergio had mentioned, we have some projects that are winding down and some other things, so our expenses are still where we think they should be but our overall share of the budget is a little bit less, though.

Also included in our budget is $35 million for capital expenditures, and that includes $15.2 million in carryforward from the prior year, primarily for automation. The majority of our capital budget is allocated to technology projects, specifically automation and the contract for the
data center consolidation services contract. Those two projects alone are about two-thirds of our technology budget. The RTS refactoring project ended in December of 2018 and we are now moving it to the maintenance phase.

Finally, our adjusted budget does reflect the two requests the board submitted to the LBB and the Governor's office for TxDMV headquarters maintenance. And the first one was a carryforward of $2.2 million of FY18 maintenance funding, to be used for the same purposes in '19, and then a transfer from operating expenses to create a TxDMV headquarters maintenance capital project, and this project provides funding for major headquarter needs such as roof replacement, weatherization and any internal or external building repairs.

That concludes my presentation. I'm happy to answer any questions.

(No response.)

MS. FLORES: Now we get to the good stuff. This agenda item, again, is a briefing item and it's an update to our appropriations request, really good stuff. I wanted to give you an update about certain committee meetings that we've had, and House Bill 1/Senate Bill 1, which is the preliminary appropriations budget, has been distributed to the public. For us, House Bill 1/Senate Bill 1 primarily all contain the same provisions with one exception, and I'll
discuss that shortly.

So just to kind of give you a basic reminder of where we were at, we submitted a request of $321 million, and we also had $19.2 in exceptional items. House Bill 1/Senate Bill 1 not only did not include any exceptional items, it also reduced our base request for a couple of items. It removed funding for ABTPA, as well as our headquarters $5.1 million in headquarters maintenance dollars and $500,000 for regional service center renovations.

House Bill 1 and Senate Bill 1 both include riders for unexpended balance authority for automation, allowing the agency to carry forward those dollars. It allows for matching funds of state dollars for a federal grant, and we only have one in Motor Carrier, and it also provides some UB authority for those maintenance dollars. House Bill 1, unlike Senate Bill 1, also includes a new rider, it's Rider 10, it's a contingency rider that would transfer the driver's license program.

We had a very short turnaround when House Bill 1 was distributed. The bill came out on a Monday at close to 5:00. We were notified by the Legislative Budget Board, our analyst, that if we wanted to have any of our exceptional items reconsidered, they would need to be resubmitted by Wednesday. So we quickly identified our exceptional items that had not been approved, so that was kind of the first
pass, we want those back, we want them to consider those.

But in the meantime, we also included the cuts to our base that they had included in House Bill 1, which was facilities, the regional service center, and ABTPA, so we added those in. And then the fourth item, that Sergio briefly, mentioned had to do with what we SWCAP, Statewide Cost Allocation Plan. What Sergio didn't indicate was that that cost is tripling for FY19, and it's because of the deployment of the CAPPS financial and human resources modules that we're using.

I know that some people would think it's counterintuitive that why is your cost going up, but as they put out more agencies and they deploy to other agencies, the cost to maintain that system as an enterprise goes up, so those of us who are not general revenue get to reimburse the Comptroller for the use of that system for the maintenance and upgrades and whatever. So our cost in '19 will be $1.2 million versus $468,000, so we've asked for an exceptional item to finance that cost. We also know that going into 2021 that projection is going to $1.6 million, so that's the purpose of our number 5, SWCAP. And this is not something that you can argue with.

MR. TROUT: It's a tell.

MS. FLORES: It's a tell. Correct.

So this year we're having to come up with some
creative ways to pay for that bill, and so we'd like to put it out there as far as the legislative committees to see that.

The other thing that we did modify, if a statutory mandate is enacted that would broaden ABTPA's mandate when it comes to title fraud, we did change that amount and increased it by $4.3 million. So to broaden ABTPA's statutory mandate, we're asking for $17.4 million for the biennium.

So our exceptional items went from $19.2 million to $37.6 million for consideration by the Appropriations Committee.

We had a meeting with the first Appropriations Committee meeting, Senate Finance Appropriations, on January 31. The discussion centered around several items. The first which drew a lot of attention was, from my perspective, House Bill 1's rider transferring driver's license. There was a lot of discussion about the agency's ability to take that on. Sunset report, we're waiting on that, there will be some guidance provided to DPS, as well as to the DMV, as to when that program is scheduled to transfer. Right now it's scheduled to transfer September 1, 2021, which allows the agency, both agencies, to make a case to how to appropriately resource that transition, so we'll have another bite at the apple, if you will, as we go through session and identify things that need to be done in order to get us ready for that transfer.
The other topic that took up quite a bit was ABTPA. There was a lot of discussion and interest from Senate Finance to consider the request that has been put in front of them. And then we also had some discussion on some of our projects, the RTS refactoring project, as well as webDEALER.

And then finally, we were tasked with providing updates by Senator West on our historically underutilized business percentages. Some of our percentages have come down. As a result of projects that are ending, the use of minority and women-owned businesses has also gone down, and so I know there is a follow-up meeting with Senator West and his staff to talk about future steps as we try to get those numbers back up.

We do have another meeting scheduled February 11, at 7:30. This will be in front of House Appropriations. So I believe that the same topics will probably be covered at that meeting.

And with that, I conclude my presentation.

MS. CARAWAY: Any questions? Thank you all very much for your reports.

MS. HARDY: Just a quick comment on the licensing change. I guess, first things first, it has to be decided whether, in fact, the DMV will absorb or combine licensing. Right? If that's decided this year, and then it was by 2021 is implementation date that things would be ready and merged.
and ready to go, or ready to start that process?

MS. BREWSTER: Madam Chair, if I may?

MS. CARAWAY: Yes.

MS. BREWSTER: Whitney Brewster, executive director.

The recommendation that was adopted by the Sunset Commission is that the report would be done and completed by September 1 of 2020.

MS. HARDY: Okay.

MS. BREWSTER: And then the second part of that was that the transfer would occur September 1 of 2021. That recommendation, the Sunset Bill, we have not seen that yet, but that is the recommendation that was adopted by the Sunset Commission, so one would assume that that is what would be in the bill itself.

MR. TROUT: So the report, obviously a couple of years to get the report done, if you have twelve months to implement -- hopefully everything is in the report -- how do you implement everything in twelve months unless it's spelled out, I guess, in the report and budgets and everything else. Right? I mean, that's a huge -- a huge undertaking.

MS. BREWSTER: It is a huge undertaking. It does give us the opportunity, though, to go back before the legislature after that report is completed, as Ms. Flores said, it gives us the opportunity to go back before
the legislature should there be any other items that need
to be considered that would require a budget or statute change.

MS. HARDY: Okay.

MS. CARAWAY: Not a whole lot of time.

MS. BREWSTER: No, not too long.

MS. HARDY: I mean you can't underestimate how

big this would be.

MS. BREWSTER: Right.

MS. CARAWAY: It's huge.

MS. HARDY: So twelve months.

MS. CARAWAY: Thank y'all very much.

Anything else?

(No response.)

MS. CARAWAY: Okay. So we'll move on to item

number 7 and the Internal Audit Division status report with

Sandra Menjivar-Suddeath and Derrick Miller. And I

apologize, Sandra, I never get your name out right the first
time, never. Somebody else can do that next time.

(General laughter.)

MS. CARAWAY: So you'll be addressing items 7.A

through D. Correct?

MS. MENJIVAR-SUDEATH: Good afternoon. For the

record, Sandra Menjivar-Suddeath, Internal Audit director,

and I'm presenting item 7 which is the Internal Audit Division

status. This is a briefing item only, and the report can
be found on page 98 of your board book. The report includes a status of our internal audit engagement and external audit engagement.

For this status, the status includes two completed internal audit engagements and four current internal audit engagements. The four current engagements include two audits and two advisory services. Advisory services, just as a reminder, are management requests where there's a clear deliverable and a request, and these types of engagements usually provide information to the department to help with the management of a process or a goal, we usually don't issue recommendations, it's information only. Status also includes the four external engagements that we're helping to coordinate.

The first item on the status is the employee classification and hiring process audit, and this report can be found on page 100 of your board books. The audit objective was to determine whether the hiring processes were sufficiently agile to address current and emerging staffing needs. We included this in the fiscal year 2019 audit plan because effective talent management, including hiring staff, is critical for the department to achieve its objectives.

Through our review, we identified two key processes for effective talent management. One is the job classification reviews which ensure staff are appropriately
classified and divisions are properly staffed, and then the
hiring process which actually facilitates the hiring of
employees.

We rated the maturity level of this engagement
at a two which means that the work procedures are being
followed by several employees but the results were not
necessarily consistent. The process was not fully documented
and it had not been sufficiently evaluated to address risk.

We gave this rating because we had four audit results related
to clarifying the job classification review, monitoring
background checks contract deliverables, reporting conflict
of interest, and shortening hiring time frames.

Derrick Miller was the senior auditor who led the
engagement, and he'll provide more information on the audit
results.

MR. MILLER: Thank you, Sandra.

For the record, Derrick Miller, Department of
Motor Vehicles senior auditor.

To start with, again, this audit primarily focused
on the hiring processes and the job classification review
process. As background, on the job classification review
process, the Human Resources Division is responsible for
ensuring that all department employees are appropriately
classified according to the State's position classification
plan. That plan defines most state employee positions, what
the job duties, qualifications and salary structures are. The department's classification process involves the division first identifying the need for the classification review, obtaining the Executive Office approval to undergo that review, and then Human Resources conducts the evaluation and approves the final outcome of what the classification determination should be.

Real quickly, on the hiring process, the hiring process begins when the position is submitted for posting to HR from the division that's hiring, and in each of the divisions a hiring manager is responsible for reviewing applications, conducting and scoring the interviews and selecting top candidates. And once the candidate is selected, the hiring manager can then make a conditional offer after the manager completes a reference check, and then a final offer can be made to the candidate once a criminal history background check is completed by the HR Division. The department uses a contracted vendor to obtain its criminal history background information.

Moving on to audit result number one, this had to do with the job classification review process. Again, the process involves all reviews undergoing the same review process regardless of impact or complexity of the requested changes. The Executive Office approval is required before the start of any job classification review, but we found it
was not formally required to sign off on the final outcomes of those reviews. Similarly, the Finance and Administrative Services Division, their review and approval of the financial impact was not formally built into the process.

In requiring the same process for all job classification reviews, the department conducted some of those reviews in greater depth than warranted on low impact position changes. This created an increase in the completion time for those reviews and also required the Executive Office attention on many matters that were less impactful to the agency. For example, job classification reviews, they averaged 52 days to complete and those ranged anywhere from seven days to 134 days on the higher end.

We looked at 14 reviews across all divisions of the agency, and we found that four of those were conducted for position adjustments that did not result in significant changes, and there was also four reviews that did not include a budgetary impact statement. In addition to all of that, the lack of a defined process and the availability of guidance to divisions created some confusion as to what necessary supporting documents are needed, what the approval process is, and what the expected timeline is for that.

We did make three recommendations in this area to the HR Division. First, formally define and document job classification review processes and communicate to the
divisions what the required support, approvals and workflow would be, develop target time frames for the job classification reviews, and finalize the proposed changes to the Executive Office as far as their workflow in the process.

MS. MENJIVAR-SUDDARTH: And if I can add, we presented these issues and results to the Human Resource director when he started. He had also identified some of the same issues before our review and began working on these issues pretty much immediately after we discussed with him, so the implementation for most of these are if not already in the process of being implemented or have been already taken into effect.

MR. MILLER: Any questions on the first result? That's probably the single biggest mouthful for any of our results here.

Moving on to the second result, we looked at the criminal background check contract. Again, criminal background checks are required on all hires. The contract language for the department's vendor required a 72-hour delivery of the requested background checks, however, when we looked at the actual return rate of those, we found that 55 of 187, which is 29 percent, took longer than 72 hours.

The issue was that the department was monitoring the results based on the original procurement requirement.
so the original bid said three to five business days was what we were asking for, the contract language that got put in actually said 72 hours, which were 72 straight hours. And with the department averaging 66 days from posting a job opening to making a final offer to a candidate, and since this audit objective was about the ability to fulfill staffing needs, adding any longer processing times than we have to just increases the likelihood that we'll lose out on top candidates being available.

I will note that we also looked at the three to five day time frame and found that 95 percent of the background checks came in at three to five days, if we were using that yardstick.

A recommendation we made in this area was for the HR Division to monitor the criminal history background check processing times according to the contract terms of the vendor.

MS. HARDY: Does the state use the same background check agency? Do all the agencies use the same?

MS. MENJIVAR-SUDEATH: No. It's dependent on each department. We have one specific contract with one vendor. We went through an RFP process to find the vendor, select the vendor that gave us the best value, but it is dependent on each agency. For example, I think DPS uses their in-house service because they have it right there.
MS. HARDY: Okay.

MR. MILLER: Audit result number three regarding the conflict of interest disclosures in the hiring process, we found the hiring process did not address potential conflict of interest arising from a personal relationship between interviewers and candidates. The department does have a policy prohibiting nepotism based on family relationships, but it did not have a kind of prohibition or a disclosure regarding conflict of interest based on a personal relationship which has the potential to increase the risk for any actual or perceived bias or favoritism during the interviewing and hiring.

We looked at 27 hiring files, eight of those, or 30 percent, of what we reviewed contained a reference check form in which the person interviewing the candidate was also providing the candidate's reference for the position. Those were all internal hires so for the most part those were supervisors -- not all of them but the majority of those were in cases where a supervisor was interviewing their own staff for a higher position.

I will note that we did not find any evidence in the hiring files that a potential conflict of interest existed between the interviewers and the candidates that were selected in the files that we reviewed.

MS. HARDY: Question. Do you guys ask on an
annual basis? We did at General Motors on the conflict of
interest because people get hired ongoing. Is that a question
that are asked employees?

MR. MILLER: Repeat the question again.

MS. HARDY: Oh, I'm sorry. As far as you're
asking it at the hiring process, but is that a regular question
or ongoing question every year to see if family members or
other people have hired into other state agencies or within
DMV?

MS. MENJIVAR-SUDEATH: No, it's not at this
moment. We are working on updating our ethics policy and
so conflict of interest is something we're discussing as part
of that ethics policy and employees will be required to sign
it and have training I think annually, so we may incorporate
part of that into it.

MS. HARDY: Good. It is actually being done.

MS. BREWSTER: Madam Chair, if I might?

MS. CARAWAY: Yes.

MS. BREWSTER: During the application process on
the online application, there is a question each and every
time you apply for a job whether or not you are related to
any state employees and where those employees work.

MS. HARDY: Reside. Right?

MS. BREWSTER: Yes, ma'am. And so there is that
built into the process.
MS. HARDY: Okay.

MR. MILLER: That's why we specify it as to just a personal relationship. Conflict of interest could be overly broad in some cases.

The recommendation we made in this area is to develop and implement an interviewer attestation that the interviewer should disclose any potential conflict of interest arising from a personal relationship between themselves and the candidate.

The last result, audit result number four, regards hiring milestones. As noted before, the department takes an average of 66 days from posting a job opening to making a final offer. The majority of that time is actually in the divisions doing their portion of the hiring, with 27 days spent screening and interviewing candidates and an additional 13 days to select a candidate for a position.

We could not determine exactly where within that hiring process creates the most slowdown or bottleneck because the available data was not accurately entered into the department's personnel system, and therefore, we could not rely upon it for that analysis.

The department may not be able to obtain the best candidate for the position due to a long hiring process. Again, the longer you go, the more chance you have a good candidate slipping away.
HR does track and monitor some dates related to the hiring process. Hiring managers are not entering hiring milestone dates into the department's personnel system accurately throughout the process. For example, we looked at 27 hiring files, 24 did not have the candidates interview date, 12 did not have the date which the hiring divisions completed interviewing of all candidates, and 10 did not have the date that the candidates were screened.

To address these areas, we recommended the Human Resource Division review how information is entered into the system and require the hiring managers to enter the information accurately, and also to consider evaluating for other opportunities to shorten the hiring timeline.

That concludes all my remarks on the report unless there are any additional questions.

MR. PREWITT: On the screening, does the vendor give us the day when they give the report on the background check? Could that be used as a proxy for date of screening, the date of receipt?

MS. MENJIVAR-SUDEATH: The date of screening, so screening in this is when the hiring manager goes through the process to review all the applications. The system actually has that information, you can put that information in the system. What we found is hiring managers just weren't doing it, and our Human Resource Division to help make sure
that these candidates didn't go away, they went ahead and accepted the information even though it was incomplete to make sure that they could get the offer out to the employees.

But like I said, without the information, we couldn't really do an analysis, and we did work with Human Resources to validate that they needed that information, and they said yes, they do need that information to see how long the hiring process is taking.

MR. PREWITT: Okay. Thank you.

MS. HARDY: For the people who didn't get the job, same thing apply, do they get a response saying thanks for applying but not at this time, we'll keep your record on file type?

MS. MENJIVAR-SUDEATH: Yes. The system generates a letter and I think it can be emailed or mailed -- I think our Human Resource director is here if I'm incorrect -- but after a candidate is selected and that person is hired on, a letter is generated to the person.

MS. HARDY: Okay. Good.

MS. MENJIVAR-SUDEATH: With that, we'll move on to the next item on the status report which is the Lemon Law investigation and resolution audit. This audit was completed in January 2019 and it's found on page 121 of your finance and audit board book. Now, the senior auditor who did this audit was Jason Gonzalez. Unfortunately, he's in training.
today and will not be here, but he will be available tomorrow if I can't answer any of your questions.

So the objective of this audit, there was two objectives to this audit. One was to determine whether the Lemon Law processes provide equitable and objective resolution, and the second one was to determine whether the Lemon Law process was achieving objectives. We included this audit because in fiscal year 2015 the Texas Legislature actually gave the department the ability to administer the entire Lemon Law program so that the program could be more efficient and effective for both the consumer and manufacturer.

Our audit results found that the department is achieving objectives and has taken steps to be seen as an equitable and objective partner by providing equal opportunity for the consumer and manufacturer to present their cases and by providing a cost-effective resolution to manufacturers and consumers, however, we did that additional steps can be taken to ensure the program is meeting its objective and can be further seen as equitable.

For that reason we rated this engagement at a level two maturity, again, where procedures are being followed by several employees but the results may not be consistent and the process not completely documented and they may not sufficiently evaluated or addressed risk.
We issued four audit results related to defining roles and responsibilities, leveraging technology, increasing communication to consumers, and identifying conflict of interest. In total we had a total of 10 audit recommendations to address these results.

One thing to note, we did do a survey of all consumers and manufacturers that had gone through the process to obtain their feedback on how they thought the process went. Most of them stated that they appreciated the department's professionalism in the process, and so we highlighted that in the strengths section of our report.

So Lemon Law is an informal resolution process designed as an alternative to costly litigation. It's only for newly purchased or leased motor vehicles that develop a defect or a condition that substantially impairs the use, market value or safety. A consumer must give a manufacturer reasonable opportunity and final opportunity to repair the defect before they can file a complaint with the department.

Now, once a complaint is filed by the consumer, there's actually two divisions that administer the program: Enforcement Division and the Office of Administrative Hearings. The complaints are received by the Enforcement Division through eLICENSING. The Enforcement Division determines eligibility and attempts to resolve the dispute through informal resolution, having discussions with the
consumer and manufacturer to see if they can come to an agreement. There's actually two full-time equivalents, or FTEs, dedicated to the Lemon Law program and enforcement. They're known as case advisors and these case advisors have subject matter expertise in both vehicles and the Lemon Law program.

If the case advisors cannot get to a resolution with the consumer and manufacturer, then it's referred to the Office of Administrative Hearings. The Office of Administrative Hearings conducts a hearing and then renders a final decision on the complaint. The administrative hearings are conducted by two licensed attorneys, both of them known as chief hearing officers. If either the consumer or the manufacturer disagrees with the final decision, then they can appeal the decision back to the department and the department can re-hear the case or it can be sent to district court.

So since Lemon Law is being done by two different divisions, we really focused in on the processes done by the divisions to kind of understand if they're achieving objectives and to get conclusions on the audit objectives. The first thing we noticed is that we haven't really established roles and responsibilities for the Enforcement Division and the Office of Administrative Hearings when it comes to the Lemon Law program. We found that each division
was operating independently and had led to multiple things
that we highlighted in the first finding.

Two main points were one was the difference of
definition -- not definition -- interpretation of final
opportunity. So before a consumer can submit the complaint
to the Lemon Law program, you have to give the manufacturer
a final opportunity to fix the issue. In one of the cases
we were reviewing, the Enforcement Division had decided a
final opportunity had been given to the manufacturer and the
consumer, however, the case was then forwarded to the Office
of Administrative Hearings, and when it got to the Office
of Administrative Hearings, it was actually determined that
final opportunity had not been given to the manufacturer, so there was a continuance in the case which delayed the
closing of the complaint.

Another thing to note also on final guidance of
written order. So when the Office of Administrative Hearings
issues a written order for a vehicle to be repaired, the
manufacturer has to adhere to that written order. If it does
not, the consumer can go through the Enforcement Division
to submit a complaint to see if they can get resolution on
it. For the Enforcement Division to actually take action
on a written order, there are certain things that have to
be included in that order.

One, the order needs to have information on exactly
what part of the vehicle violated the warranty, it has to identify how the defect leads to the warranty, and there has to be clear instruction on what needs to occur to resolve the case. We pulled a sample of ten final orders and what we identified, four orders did not document the exact part that needed to be fixed, and nine orders did not have specific information on how the defect leads to the warranty and/or how the complaint should be resolved. This is important to note because neither Enforcement or Office of Administrative Hearings had really had discussions on what needed to be in the order to ensure that the complaint would be fully taken care of.

The final couple of things we noticed were vehicle inspections, there was not a clear definition on when vehicle inspections should be done and information on that to Office of Administrative Hearings because it could help with their cases. Prehearing conferences, there were some issues with that, and then case advisory notes in the system were not really consistently put in.

We issued three recommendations to Enforcement and Office of Administrative Hearings to correct these things that we saw and both divisions are currently working to establish the roles and responsibilities to ensure going forward that we have a more consistent process.

The second issue we noted was the eLICENSING
technology is not being leveraged. eLICENSING is a system of record for Lemon Law complaints, however, when we pulled information from eLICENSING, we found that both divisions were storing information outside of eLICENSING and that it was duplicative of what was inside of eLICENSING. One of the examples we discuss in the report is a referral sheet. The referral sheet, which is when Enforcement sends a complaint to the Office of Administrative Hearings, there were paper copies of it and then it was uploaded into eLICENSING about two to three times. So we made recommendations to Enforcement Division and Office of Administrative Hearings to correct these issues. Both of them are working on them. There are some limitations to the technology but they are working with our IT department to fix those issues.

The third result was communication to the customer. So we did note the department has made available to the customer information on the Lemon Law process, however, the information is a big fragmented on our website. We have Lemon Law information on two separate sections, one in the Enforcement section and one in the Office of Administrative Hearings, and the communication is not always consistent.

We also found that the department has not been fully leveraging social media to help the consumer understand the Texas Lemon Law program. We did a review of social media,
we pulled 27 videos through YouTube that had some relation to Lemon Law, and we found 23 of them were either general automotive discussions or attorneys trying to advertise their legal services for the Lemon Law program which goes into contrast of what the program was really meant for.

So we made two recommendations to address these concerns and better inform the consumers. The Office of Administrative Hearings, as well as Enforcement Division, will be working with our Government and Strategic Communications office and/or other people to get better communication out both to the consumer and the manufacturer on the process.

MS. HARDY: Remind me again how many Lemon Law cases we get a year.

MS. BREWSTER: Madam Chair, if I may?

MS. CARAWAY: Yes.

MS. BREWSTER: Member Hardy, for FY18 we did 350 where they actually went to hearing.

MS. HARDY: Okay. Actually went to hearing.

MS. BREWSTER: Yes, ma'am.

MS. HARDY: Is that normal? Is that a normal year?

MS. BREWSTER: Roughly, yes, around the mid 300 mark.

MS. MENJIVAR-SUDEATH: Since 1993 we've had
about 17,000 complaints overall, so it's not a large percentage of what the department does but it is a very visible part that impacts consumers.

The final issue is conflict of interest. We didn't identify any concerns with conflict of interest, but we do believe because consumers and manufacturers are involved, it would be best to have a formal process to document any concerns with conflict of interest. This would ensure that everyone is aware that everyone goes through some review of conflict of interest to ensure that they are able to provide the most equitable resolution possible.

The other thing we noted is that one of the statutes actually requires the chief hearing officer to listen to all appeals which is problematic because we only have two hearing officers and the chief hearing officer conducts hearings, and so there are sometimes where a case that he has heard has come up for appeal and he has to render his own decision on whether to appeal or not. And we did note one in our sample, we did pull one where the chief hearing officer did his own appeal. We found no issues with the way he handled it, but again, from a perception issue, it's not the best thing.

So we did make three recommendations to address these concerns. One of them has been fully implemented, the Office of Administrative Hearings has already updated their documents to include information on the conflict of interest.
One will take a bit longer to do because it is a legislative change, so the legislature may choose not to do that but we still wanted to at least put it out there.

Any questions on the report?

(No response.)

MS. MENJIVAR-SUDDDEATH: Then we'll go to one of our other items which is the FY 2019 first quarter followup. That is on page 142 of your board book.

The internal audit followup is something we started about a year ago. We follow up on a quarterly basis on internal audit recommendations, and this one includes audit recommendations that were either due or submitted to us from September 1 through November 30, 2013. In that time period we reviewed nine audit recommendations from four audit reports, with six of them having a high priority and three of them having a low priority. And the definition of what constitutes a high priority and a low priority are on page 143 of your board book.

What we found is six recommendations were fully implemented, including all of the low priorities and half of the high priorities that had been implemented, so that gave us an implementation rate of 67 percent for the first quarter. The remaining three recommendations that stayed open, two of them have already been resubmitted for implementation and we're in the process of reviewing those.
And this chart just kind of gives you which recommendations from which reports were fully implemented. Something to note that recommendations are being implemented within 17 days of the estimated implementation date which, colloquially, my staff and I were talking, is probably one of the best rates we've seen and time frames with it.

Something else to note, the Texas DMV Fund audit, there was one recommendation to monitoring production changes. Finance and Administrative Services Division said that they would implement this by December 31, 2018. They actually implemented by September 13 which was 109 before the due date.

And then from there we'll move on to our current engagements which include four, and those are found, the advisory service agreements as well as the engagement memorandums begin on page 146.

So the first engagement is the enterprise project management advisory service which was on the fiscal year 2019 audit plan. This advisory service is to evaluate the current project management governance structure of the Information Technology Services Division through facilitation and research. We're in the planning part of this engagement but we anticipate finishing this by May 2019.

The second engagement is the information security risk management audit. Again, this was also on our fiscal
year 2019 plan. The audit objective is to determine whether
the department has sufficient processes in place to identify
and assess security threats. We have move on to field work
in this audit and anticipate releasing the report in May 2019.
Due to the nature of the subject, this will be issued as
a confidential audit, so that means we'll be discussing this
in executive session when we release the report.

The third is the project and contract management
audit. Now, this was not on the audit plan, however, the
board had approved additional hours for us to do if any risk
came out through the year we could adapt the plan. This was
also one of our higher risk areas that we had already
identified but it was a contingency audit.

The audit objectives are to determine whether the
procurement and contract management processes are achieving
desired outcomes. We are in the planning phase of this.
This is going to take a little bit longer because the same
team that is working on the enterprise project management
advisory service is working on this engagement, and this is
more detailed and so we anticipate releasing this in August
2019.

The final one is the accounts receivable advisory
services. Similar to the procurement and contract management
audit, we added this on to the audit plan. We are in the
planning stages of this engagement and we do anticipate this
going on until August 2019. The advisory service is with the Finance and Administrative Services Division and it's to evaluate the accounts receivable function within the department.

Any questions on our current engagements?

(No response.)

MS. MENJIVAR-SUDDEATH: Final is the external coordination efforts. There's four items we're monitoring or working on. The first is the Federal Highway Administration was to conduct a review of the heavy vehicle use tax. It was initially supposed to be done in November, but it's been delayed. We don't have a new date; once we have a new date, we'll provide that information.

The second is the State Office of Risk Management conducted a field visit to the Houston Regional Service Center to review safety items. This was done in October. They issued three recommendations related to safety. All those have already been corrected and Internal Audit has verified that they have been corrected.

The next item is the State Auditor's Office is conducting an audit on contract management. They have actually issued the draft report to us. We're in the process of reviewing that and anticipate that the report will be released within two weeks or so, and you will be copied. I believe you've already received some correspondence on the
report, you'll probably receive the actual copy of the report once it's out.

The final item is the fiscal year 2019 quarter one coordination letter. This is a letter we send to the State Auditor's Office to provide our written response to the 12 State Auditor Hotline complaints we received in the first quarter, as well as six items that we're currently working on.

And that concludes my presentation. Any questions?

MR. PREWITT: No. Great job.

MS. MENJIVAR-SUDDEATH: Thank you.

MS. CARAWAY: Good job. Thank you very much, Derrick and Sandra.

If we have no other business from any of the members, I would like to entertain a motion to adjourn.

MS. HARDY: I motion that we adjourn.

MS. CARAWAY: I have a motion by Kate Hardy.

MR. PREWITT: I'll second.

MS. CARAWAY: And a second by John Prewitt.

Anybody opposed?

(General laughter.)

MS. CARAWAY: I have a motion and a second. All those in favor?

(A chorus of ayes.)
MS. CARAWAY: Okay. We are adjourned at 3:01 p.m. Thank you.

(Whereupon, at 3:01 p.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF:  TxDMV Finance & Audit Committee
LOCATION:   Austin, Texas
DATE:       February 6, 2019

I do hereby certify that the foregoing pages, numbers 1 through 45, 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: February 11, 2019

/s/ Nancy H. King
(Transcriber)

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