TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Thursday,
June 14, 2018

Lone Star Room
Building 1
4000 Jackson Avenue
Austin, Texas

BOARD MEMBERS:
Raymond Palacios, Chair
Blake Ingram, Vice Chair
Robert “Barney” Barnwell, III
Luanne Caraway
Brett Graham
Kate Hardy
Gary Painter
Guillermo “Memo” Treviño
Johnny Walker
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11. Specialty Plate Designs
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13. Board Key Performance Indicators and Balanced Scorecard
14. Legislative and Public Affairs Update (BRIEFING ONLY)
15. Assembled Vehicles Workgroup Update (BRIEFING ONLY)

EXECUTIVE SESSION
16. The Board may enter into closed session under one or more of the following provisions of the Texas Open Meetings Act, Government Code, Chapter 551:
   • Section 551.071
   • Section 551.074
   • Section 551.089
17. Action Items from Executive Session none
18. Public Comment none
19. Adjournment 148
MR. PALACIOS: All right. Good morning, everybody. It's a great day in Austin, Texas. So good to see everyone here today.

My name is Raymond Palacios, and I'm pleased to open the Board meeting of the Texas Department of Motor Vehicles. It is straight up 8:00 a.m., and I am now calling the Board meeting for June 14, 2018 to order. I want to note for the record that public notice of this meeting, containing all items of the agenda, was filed with the Office of Secretary of State on June 6, 2018.

Before we begin today's meeting, please place all cell phones and other communication devices in 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 the department's administrative rule, comments to the board will be limited to three minutes. 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 issue 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 of the rules of conduct at our board meetings in the department's rule Section 206.22. The board chair is given authority to supervise the conduct of the meetings. This includes the authority to determine when a speaker is being disruptive of the meeting or is otherwise violating the timing or presentation of the rules as I just discussed.

Now I'd like to have a roll call of the members.

Board Member Barnwell?

MR. BARNWELL: Present.

MR. PALACIOS: Board Member Caraway?

MS. CARAWAY: Present.

MR. PALACIOS: Board Member Hardy?
MS. HARDY: Present.

MR. PALACIOS: Board Member Painter?

MR. PAINTER: Here.

MR. PALACIOS: Board Member Treviño?

MR. TREVIÑO: Here.

MR. PALACIOS: Board Member Walker?

MR. WALKER: Present.

MR. PALACIOS: And let the record reflect that I, Raymond Palacios, am here too. We have a quorum. Also, let the record reflect that Members Graham and Ingram are absent today.

And now if you'd join us in honoring our nation, the Pledge.

(The Pledge of Allegiance was recited.)

MR. WALKER: Today is Flag Day.

MR. PALACIOS: Thank you for noting. Board Member Walker has noted today is actually Flag Day, so one more reason to honor our country.

Now let's move on to the chair's report. I do want to acknowledge that we have two board members that are not present. I'd ask that we keep Blake in our prayers. He's having a medical procedure today and that's the reason he can't be here.

I'd also like to acknowledge the passing of one of our former board members. Mr. Marvin Rush passed away
recently. As many of you know, he was a board member, one of the original board members. Beginning in 2009, he served this board up to his retirement in 2016. Those of you that knew Marvin know the type of individual that he was. He was an iconic figure in the State of Texas, he had a magnetic personality. He started out from very humble origins. I understand his first business venture began when he was only ten years old. He took out a $50 loan to buy a Coca-Cola vending machine, and from that he parlayed that small business into one of the largest trucking industry's businesses in the entire nation.

I will remember him as a great man. I will always remember him for his wit, his wisdom, his compassion. I will say this, as a board member, one of the greatest benefits that I've had the opportunity to experience is this opportunity to serve with great people. Marvin certainly is somebody that I will always remember for the great man that he was. I will always, always remember him as being a very, very good man and we will certainly miss him. God bless Marvin's soul, and we certainly will miss him.

So with that, let's move on now to the executive director's report. Ms. Brewster.

MS. BREWSTER: Good morning, Mr. Chairman, members, staff, guests.
I'd like to give the board an update on several things. Today's report is rather lengthy, I will try to be a concise as possible because I know that there's quite a few things on the agenda.

I'd like to give the board an update, obviously, on recent activities related to our Sunset review. As I'm sure you all know, we had our public hearing on May 23. Steven Ogle, the general counsel for Sunset, as well as the project lead for our Sunset review, laid out the staff report and recommendations, and before he got into the details of that report, he specifically complimented TxDMV staff on their professionalism and the approach and cooperation through the process. And that is certainly something that I have seen in TxDMV staff, and I want to thank them very much for their cooperation and dedication throughout this process.

During the hearing, Senator Watson discussed the issue of state agency boards and commissions generally, and indicated he would like the Sunset Advisory Commission to consider a broader, across-the-board approach to composition of all boards and commissions rather than addressing the issues individually by impacted agency. Senator Nichols indicated he could see a special panel, including the governor, lieutenant governor and speaker appointees review that the legislature would
conduct. And Senator Birdwell noted the issue is much broader than just TxDMV and even the 32 agencies currently under Sunset review. So this is a large scale discussion across all state agencies at this point.

Next the department provided testimony to the commission, beginning with our chairman, followed by Member Barnwell and then me. We had a great discussion about issues in the report and responded to members' questions. Representative Paddie specifically asked us to offer comments on the recommendation in the Department of Public Safety's report regarding the transfer of driver licensing, to study that transfer. I explained that we are a customer service agency and we are very focused on treating customers fairly and with efficiency and accuracy, also recognizing that there is a very important security component to that as well. I discussed how this is a very complex issue and without a doubt we are very willing to work very closely with DPS, with whom we've established a very good working relationship.

After we concluded our remarks, the commission heard from ABTPA and then took public comment. The commission heard from former TxDMV Chair Victor Vandergriff, several members of ABTPA auto theft task forces, and several individuals regarding assembled vehicles, kit cars, dune buggies, and certainly several
tax assessor-collectors, among others.

Overall it was a great discussion, there was a lot of good questions asked, and the webcast is available on the Sunset's website if there are those that want to go and view that hearing.

As far as next steps, the Sunset Commission will convene on August 29 and 30 to make decisions on the final Sunset report and recommendations, and at that hearing the commission will actually vote on each individual recommendation in the staff report and either adopt or not adopt the recommendation, and they may modify the recommendations and they may also include new recommendations. As we've discussed before, when the final Sunset staff report is adopted in August, any recommended management actions will become effective immediately, any of the items related to legislative changes would become part of the department's Sunset bill to be considered by the full legislative body when they convene in January.

With that, Mr. Chairman, members, I'm happy to answer any questions that you may have.

MR. PALACIOS: Are there any questions regarding the Sunset review process?

MR. WALKER: I have a question.

I'll have you know that yesterday in
yesterday's meeting I had it on and they were waving at me, and I said, It's on. And they said, We can't hear you.

MR. TREVIÑO: Did we get that for the record?

MR. WALKER: Whitney had me turned off up here at the top.

(General laughter.)

MR. WALKER: There was some recommendations in the report that said the board needs some additional training with respect to how to handle/conduct the protested cases, and I would like to know what our general counsel and what the staff plans on doing to addressing this issue because obviously there was a lot of talk about that in the report. I want to know if I haven't been trained, why have I not received that training, because I've never been instructed by general counsel that I needed additional training. We've been doing this for seven years, so how are we going to address that as a staff here?

MR. PALACIOS: Sure. That's a good point, Board Member Walker. As you mentioned, the Sunset Commission did discuss concerns regarding guidance on contested cases. Although they did not give any specific instances of, I guess, inappropriate handling of these cases, they did state that there was, I guess, a lack of
concise and clear guidance in this area.

Whitney and I discussed this issue last week and ideally, to your point, this guidance would come from general counsel's office, so we agreed what we believe is best at this point now is that we seek outside assistance from an entity that could provide the agency with clear, concise and direct guidance on these issues. So we've reached out to the AG's office for the purpose of getting education, training and guidance to our general counsel's office. In addition, that guidance and training will then be given to board members so that we all are on the same page, we understand the processes at all times, and there's no confusion.

And again, I will state again for the record, I'm not aware of any instances where this board has acted inappropriately, done something that I guess would be deemed as an act of malfeasance, however, we do know of a case or two where a contested case decision was brought back to the board because of improper motions and so forth, and again, I think this is where we need clarity, both from the staff level as well as the board. So again, we will be working with the AG's office for better instruction for general counsel's office as well as the board.

MR. WALKER: Well, what is kind of disturbing
to me about the whole process is that they have reiterated
time and time again that we can't reopen and review the
facts and change the facts of the cases, however, if you
don't look at the facts you can't find out whether the
rule of the law has been followed, so you have to ask
questions when you get into the meat and guts of these
cases to find out where the thoughts and processes were
coming from of the examiner. And if we can't change
anything in the facts of the law, which I'm not saying we
should, but if we can't do that, then why does it even
come before us because the general counsel or the attorney
general's office ought to be able to look at the case and
say the rule of the law was followed, because we don't
have a lot of latitude to make a change in these cases in
the first place.

MR. PALACIOS: Your sentiments were expressed
by Board Member Barnwell at the Sunset Commission hearing,
and I can tell you for my part I share the same level of
frustration regarding, I guess, the responsibilities that
we're charged with undertaking somewhat conflict with
what's been stated in terms of what is within our
authority. So hopefully, with this insight and training,
I'm hopeful we'll have better clarity on these issues.

MR. WALKER: So I'm the only original board
member left here, and I know the original board members,
Victor Vandergriff in particular, Ramsay Gillman, Marvin Rush, those guys felt like and the people felt like there needed to be a voice at the table that spoke to those people and that's why this is an eclectic board that's made up of people who have interests in the industry, people who have knowledge within the industry, and could look at all these cases that we listen to and say is this being fairly ruled upon by somebody that doesn't even understand the mechanics of how these operations work.

I mean, I didn't have the foggiest idea when I got on this board, and I'm not a car dealer, I'm a trucker, all that went into a franchise dealership and all that went into Lemon Laws and those kind of things. And so they were ecstatic, those guys were, that they were now going to be able to sit up here and listen to their co-industry people and evaluate whether the industries were being treated fairly. And so I think that this board has a stronger say sometimes in these cases than the SOAH people that don't even understand this industry sometimes.

Okay, I'll let it go.

MR. PALACIOS: Point is well taken.

Are there any other questions, comments regarding Whitney's presentation on the Sunset review status?

(No response.)
MR. PALACIOS: Okay. Please proceed.

MS. BREWSTER: Thank you, Mr. Chairman.

The registration and title system refactoring project is on target to finish on time and within the current approved budget. All of the refactoring activities were completed over a year ago. The final phase of the project is to transition the maintenance and operations from Deloitte to IT. Our contract with Deloitte ends August 31, 2018 and we do not plan to renew that contract, and so IT will be taking on those M&O responsibilities and the project management role will end by December 31, 2018.

Moving on to the webDEALER project, the webDEALER, eTAG and centralized pay phase of webDEALER was implemented on April 9 and has been working in production since that date. The first two to three weeks after go-live, several divisions, including Enforcement, Motor Carrier Division, Motor Vehicle Division, Vehicle Titles and Registration and the Consumer Relations Division -- which also provided training for all of the other divisions taking calls -- assisted the IT service desk with handling of incoming calls. This was truly an enterprise effort and I want to thank the staff for coming together as a team to help support the rollout of the eTAG and centralized pay phase of the webDEALER project.
The contractors who designed and developed eTAG and centralized pay have been released and IT is now providing the maintenance and operations of that system. Procurement work has begun on eTITLE which is the final phase of the webDEALER project.

Moving on for the webLIEN project, we are in negotiations on the scope of work and costs and those things are in progress. We believe that work on the webLIEN project will begin after the end of this fiscal year.

The call center project statement of work has been released to vendors and we are waiting proposals. We do anticipate that we will award during July of this year, next month.

Last on the list, but certainly not least, the fraud data dashboard project is proceeding actually a little bit ahead of schedule, and the statements of work for both the kiosk pilot as well as the enterprise website renovation project are in development.

Ms. Sandberg, our EPMO Division director, will give a more in-depth presentation on the projects in a future meeting, but just wanted to give you a quick status update on where we are with those enterprise projects.

With that, Mr. Chairman, members, I'm happy to answer any questions that you have.
MR. TREVIÑO: Whitney, what is the status of that fraud data task force that you're working on? What's the completion date?

MS. BREWSTER: The fraud data dashboard project, give me one moment, I can give you the anticipated end date of that.

MR. TREVIÑO: You can just ballpark it out, is it three months out, four months, five months, a year?


MR. TREVIÑO: Perfect. Thank you very much.

MR. PALACIOS: Are there any other questions regarding the enterprise projects?

(No response.)

MR. PALACIOS: Okay. Please proceed.

MS. BREWSTER: Thank you, Mr. Chairman.

The fraud data reporting project is a nice segue into the progress report on the first six months of our Compliance and Investigations Division. The division successfully processes complaints and investigates allegations of fraud relating to motor vehicle title and registration, provides support for law enforcement, as well as doing work on improving compliance in both tax assessor-collector offices as well as our regional service centers.

If the board will recall, we created the
division in January with a total staff of two: Tim Menke, our division director, as well as our longtime sole title fraud investigator, Robert Foster. In March the division added an executive assistant and thus far CID has filled 20 of the 21 allocated positions with the exception for the field service representative in El Paso, vacated by Charlie Escobedo. He was promoted to the field service representative manager. So on June 1, 13 new field service representatives were hired and most recently on June 11 an attorney was hired, and I understand that many of you met him this morning, Mr. John Seaman.

Currently the division is identifying technology, computer software for data mining and mapping to discover vulnerabilities. Tools such as the fraud data dashboard gives the agency much needed insight and a desired proactive approach to reduce fraud. Having limited resources, being able to focus where there are the greatest risks by pinpointing trends and patterns will certainly assist in that effort. This utilization of technology will assist management to more efficiently direct those resources to the needed areas to ensure the best return on investment.

As part of the agency’s outreach efforts, CID has met and is partnering with the fusion centers in Dallas, McKinney, Houston, San Antonio and Austin.
regarding mutual areas of interest and has communications of collaboration and commitments of collaboration moving forward. Just to give a little bit of information on fusion centers, they operate at the federal level and they provide a unique perspective on threats across the state while offering local leadership with enhanced information sharing.

In early June several other division directors and myself attended the annual Tax Assessor-Collectors Association conference in Frisco, Texas. Our CID director took the opportunity to introduce himself to the tax assessor-collector community, as well as our new CIO, Mike Higginbotham, was there and was able to share thoughts with this very important stakeholder group.

CID is actively conducting criminal investigations throughout the state and has recently participated in search warrants regarding public corruption, fraud, vehicle theft and odometer rollbacks.

Lastly, in the division's commitment to ongoing training, all new CID staff will spend a day at the Williamson County Tax Assessor-Collector's office for briefings on TAC procedures, and that will happen in the last week of June, and they will also have a formal three-day training conference that will happen in Austin for all staff in late July.
With that, I am happy to answer any questions.

MR. PALACIOS: Hearing none, please proceed.

MS. BREWSTER: Thank you.

The 2018 survey of employee engagement was conducted by the University of Texas. That is something that UT does every two years for state agencies, this is actually the department's fourth survey, and this gives employees the opportunity to express their opinions on a variety of different factors, including but certainly not limited to supervision, pay, communication and overall job satisfaction. This survey is completely anonymous and voluntary.

All department employees received an invitation, maybe several invitations to participate in the online survey from me, and I'm really, really happy that we got the response that we did. We had 81 percent of our employees respond to the survey, and that is an increase over the last time, which I thought was very high, which was 78 percent, and that is absolutely considered an extremely high rate and it indicates that employees have an investment in this organization and are willing to contribute towards making improvements within the workplace. In addition, a high response rate indicates employees have high expectations from leadership to act upon the survey results also.
The overall score for the department was 366, up from the 2016 overall score of 361. Scores above 350 are considered desirable. The SEE results are posted on the department's intranet page, the MyDMV page, where all employees can access that information, the overall agency information, but as well as the specific drill-down information by division, as well as organizational areas.

Next steps here, Human Resources Division staff will be conducting employee focus groups. They're currently doing those across the state to address ideas for areas where we can improve. The executive team will also discuss the results of those focus groups and then determine what those next steps are.

With your permission, Mr. Chairman, I will move on to the next item if there aren't any questions.

MR. PALACIOS: Board Member Treviño.

MR. TREVIÑO: Ms. Brewster, that report, is that score unusually high? Do we rank high among state agencies?

MS. BREWSTER: Member Treviño, I do not know how we rank against other state agencies, we just know that UT has determined that the threshold is at 350, anything higher than that is desirable. But if I can find out that information, I will certainly try to do that.

MR. TREVIÑO: That would be nice to know. And
I'd like to commend staff for that great performance.

MS. BREWSTER: Thank you.

All right. Moving on, Mr. Chairman?

MR. PALACIOS: Please proceed.

MS. BREWSTER: In September of 2017, the Department of Motor Vehicles launched the performance quality recognition program to recognize tax assessor-collectors who go above and beyond to comply with Texas law, agency rules, and to exceed customer expectations, and if you'll recall, this program was established in rule by this board.

The program recognizes tax assessor-collectors at three levels, gold, silver and bronze, and the factors for the program for evaluation deal with compliance with statutory and administrative rule requirements, the use of effective and efficient office practices, demonstrating commitment toward completing motor vehicle transactions properly and timely, and then providing exceptional customer service, as well as having a fraud detection program. Each level includes specific criteria that is progressively more proactive in meeting all those goals in each category.

We are proud to announce the first TAC offices to receive recognition for achievement as a result of their active participation, so Andrews, Bee and Wichita
counties achieved recognition at the silver level, and
Archer, Eastland, Goliad, Irion and San Patricio counties
all achieved recognition at the bronze level. And later
on this week, the agency will be releasing a press release
highlighting the exceptional work of these counties and
expressing our appreciation for a job well done.

With that, Mr. Chairman, members, I'm happy to
answer any questions on that item.

MR. PALACIOS: All right. Let's move forward.
MS. BREWSTER: All right. Moving to the last
item, in addition to our service award and retirement
announcements, I wanted to let you know what we recently
received some awards, the first being the Everything is
Fitter in Texas Challenge. It's a statewide wellness
program, sponsored by the Department of State Health
Services, it's agency against agency competitions. We
came in third and want to commend those staff that
participated in helping us achieve third. Next year we
are setting our sights on beating the General Land Office
who took first place.

But I do again want to commend the staff that
participated and want to encourage them to keep up that
healthy habit, and for those who didn't participate, we
have another opportunity again next year, but don't wait
till that opportunity, you can start now. And just to
show you, we received a plaque to commend our efforts.

MR. PALACIOS: Great. That's wonderful.

MS. BREWSTER: Moving along to our next award, for outstanding efforts that provide improved and more accessible services for Texas citizens, the Center for Digital Government recently selected eLICENSING to receive the Best IT Collaboration Among Organization Award at its Best of Texas Awards that occurred on their program on May 31, which salutes IT projects and professionals in Texas state and local government. The Best IT Collaboration Among Organization Award recognizes a range of creative tech implementations and tools to enhance interagency collaboration and boost citizen service. The TxDMV eLICENSING program removes burdensome paper applications and manual payment processing, it accelerates and simplifies licensure efforts for all motor vehicle licensees into a single system, and it streamlines the process allowing motor vehicle and salvage vehicle dealers more time to focus on serving their communities, benefitting both industry and the community.

And this is the award that we received for eLICENSING. Our Motor Vehicle Division director, Daniel Avitia, accepted the award on behalf of the agency. His division, as well as many other divisions, including our IT Division, put significant effort into the success of
this project, o it's nice to know that others see that as well.

MR. TREVIÑO: Congratulations.

(Applause.)

MS. BREWSTER: Thank you.

And Chairman, certainly, if I may continue, last but not least, I want to recognize our retirees and employees who have reached a major milestone. We celebrate these employees as a show of our appreciation for their years of service to the citizens of Texas.

The following employees reached a 20-year state service milestone. Jo Ann Vasquez of the Enforcement Division and another JoAnne, JoAnne Canida of the Vehicle Titles and Registration Division, both reached that 20-year milestone.

We have two employees who have reached their 25 years of state service. I know all of you know her, it's Ginny Booton, our Consumer Relations Division director, and Marla Rose of the Motor Vehicle Division.

If you'll join me in a round of applause and appreciation.

(Applause.)

MS. BREWSTER: And finally, the following individuals recently retired from the agency: Carey Osborn, Mallie Evans, Cindy Gresham, Linda Kirksey, Don
Wither, Tommy Rodriguez, and Tammy Briggs.

Mr. Chairman, if you'll also join me in giving

them a warm applause in appreciation for a job well done.

And Mr. Chairman, that concludes my rather

lengthy executive director's report today.

MR. PALACIOS: Good job, Whitney.

At this time we are going to go into a very

brief closed session. It's now 8:33 a.m. on June 14,

2018. We'll go into closed session under Texas Government

Code Section 551.071. For those of you in the audience, I

anticipate being in an executive session for approximately

15 minutes. We'll reconvene in open session after that.

With that, we'll recessed from public meeting

and we'll go into executive session.

(Whereupon, at 8:33 a.m., the meeting was

recessed, to reconvene this same day, Thursday, June 14,

2018, following conclusion of the executive session.)

MR. PALACIOS: Okay. We are back. It is

approximately 8:53 a.m. on June 14, 2018, and the Board of

the Texas Department of Motor Vehicles is now in open

session. We want to note that no action was taken in

closed session.

We'll move on to agenda item number 5,

contested cases. I will note the parties in the Putnam

Darwin Richardson case have asked for a continuance, so we
will not be hearing that case today. Therefore, we will
move on to item number 6, Burns Motors, Protestant, v.
Payne Edinburg, d/b/a Payne Chrysler, Dodge, Jeep, Ran and
FCA US as the Applicant.

MR. DUNCAN: Members, David Duncan, general
counsel.

I'd like to point out that none of the parties
in this case or their counsel have requested oral
argument, so they haven't asked to speak. They are
present and available to answer your questions. I've
spoken with counsel for Fiat Chrysler America and for the
protestant and told them if they are asked any questions
they are to do their best to cite to the record, and if
they're certain that something you're asking about is not
in the record, they're to tell you that and not add to the
record.

Thank you.

MR. PALACIOS: Thank you.

Good morning, Daniel. Michelle, good morning.

MR. AVITIA: May we proceed?

MR. PALACIOS: Yes.

MR. AVITIA: Chairman, members, Ms. Brewster,
good morning. For the record, Daniel Avitia, director of
the Motor Vehicle Division. Alongside me this morning --
I'm usually pointing to the left but today she's to the
right -- is Ms. Michelle Lingo, staff attorney with the Motor Vehicle Division and the legal subject matter expert on this contested case matter.

Agenda item 6, which can be found on page 24 of your board books, is a protest by Burns Motors against the application filed by Payne Edinburg to establish a new point dealership. This matter is being presented for the board's consideration and adoption of a final order. The issue presented in this case is whether the applicant, Payne Edinburg, established by a preponderance of the evidence that there is good cause for the establishment of the new Chrysler, Jeep, Dodge, Ram dealership in Edinburg, Texas.

Two administrative law judges from the State Office of Administrative Hearings conducted a six-day hearing on the merits. In evaluating the seven statutory factors, as presented in your executive summary and proposal for decision, the ALJs considered the evidence, witness testimony and legal arguments, as well as Burns Motors' exceptions to the proposal for decision and FCA's replies to Burns Motors' exceptions to the proposal for decision. The ALJs in this case found that good cause exists for the establishment of a new Chrysler, Jeep, Dodge, Ram dealership in Edinburg, Texas.

The board may change findings of fact or
conclusions of law made by a SOAH ALJ when change is justified under Texas Government Code, 2001.058(e). That is to say the board can make changes if it determines that the ALJ did not properly apply or interpret applicable law, an agency rule or a prior administrative decision, or that a prior administrative decision on which the ALJ relied on is incorrect or should be changed, and then finally, that the ALJ made a technical error in a finding of fact that should be changed.

The parties received notice of the board's consideration of this matter today and are present, and as David has mentioned, have opted not to request oral arguments this morning.

Members, this concludes my remarks.

MR. PALACIOS: Are there any questions for Mr. Avitia regarding this case?

I do have a question, Daniel. Is there a minimum distance regarding, I guess, the placement of competing brands? In other words, I understand a dealer would have standing to protest if a dealership is within 15 miles of his geographic location, but is there a minimum distance in which a same brand can be put in the same market? In other words, could somebody build a dealership across the street from you?

MR. AVITIA: That is a good question, Chairman,
and to answer your question very simply, there is no minimum distance. As you have stated, the law requires that it be within 15 miles for protestability or within the same county. Looking at some information with regard to other Chrysler, Jeep, Dodge, Ram dealerships, we even one in Amarillo, Texas that is about 3.46 miles away from the nearest dealership.

MR. PALACIOS: Okay. Thank you.
Are there any other questions?

MR. BARNWELL: Mr. Avitia, you said in order to raise the option of being able to protest, within 15 miles and then you said or in the same county.

MR. AVITIA: Or within the same county. Yes sir.

MR. BARNWELL: So 25 miles and even if it's in the same county and 40 miles away.

MR. WALKER: Two hundred miles away, 200 miles in Harris County.

MR. BARNWELL: Well, I don't know about 200.

MR. WALKER: Brewster.

MR. BARNWELL: Well, Brewster maybe. Okay.
Brewster could be 200.

MR. AVITIA: In this case you have two different counties, you have McAllen, you have Edinburg, but the distance is what is driving the protestability in
MR. BARNWELL: Distance drives it, but it's either/or, either one of those gives rise to the option to protest, the right to protest.

MR. AVITIA: That's correct.

MR. BARNWELL: All right. Thanks.

MR. PALACIOS: Okay. Any other questions?

Last chance.

(No response.)

MR. PALACIOS: All right. I'll entertain a motion.

MR. WALKER: I so move that we accept the decision of the SOAH and do not overrule it.

MS. CARAWAY: I'll second.

MR. PALACIOS: There's a motion by Board Member Walker to accept the PFD, second by Board Member Caraway. All those in favor please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

MR. AVITIA: Thank you.

MR. PALACIOS: Thank you very much.

Okay. Let's move on now to agenda item number 7, rules adoption.

Mr. Kuntz, good morning.
MR. KUNTZ: Good morning, board members. For the record, Jeremiah Kuntz, director of the Vehicle Titles and Registration Division.

This morning we are presenting for your consideration the approval for adoption of amendments to Title 43, Administrative Code, Chapter 217, amendments 217.122 and 217.123, as well as the new 217.125 and 217.130. These rules, as I'm sure you remember, are related to the Motor Vehicle Record Information and Drivers Privacy Protection Act provisions that are contained in state and federal law.

The department is attempting to create a process by which we can better evaluate entities that are coming into the state and requesting access to our motor vehicle records, and so we presented the rules for public comment. We did receive quite a bit of public comment from industry partners that utilize our records that also provide services to other entities that would qualify to obtain the records directly, but they provide services to provide those records in other formats to their customers as well.

So I'm actually turn a little bit of this over to David Duncan. Our General Counsel's Office worked pretty extensively with some of these industry partners and their representatives to try and address the concerns.
that were raised during the public comment period.

MR. DUNCAN: Members, David Duncan, general counsel.

You will find in front of you a packet. This is the rule and we've actually made some very minor edits to the rule even since we put it into your board packet about a week and a half ago. What we've done, and I'd like to mention the names of some of the folks that we've worked with very extensively on this, they've been a pleasure to work with and they've been very professional and very thoughtful about these proposed rules. Sean Wheatley with Experian, Alice Miles with R.L. Polk, and they had some outside help from some lobbyists here in Austin, Mindy McGary and Jack Erskine, and we've had numerous phone calls with them and email exchanges.

What happened was they made their comments and we agreed with a fair number of their comments. We attempted to incorporate those into our rule and mentioned how we would interpret and apply the rule in our preamble. Because we don't release the actual final version of our materials until just the week of the board meeting, they saw it for the first time this week and they continue to have some concerns.

So we went in, and the one major change that we made since the publication of the board book was in
217.122, which is the definitions you will see in this handout that we've given you, it is on page -- I'm sorry -- it's after the preamble language by two pages and we've changed the definition of requester. It previously was defined as a person seeking personal information contained in motor vehicle records from the department. And they were somewhat concerned that the sections that come later that discuss what level of documentation is necessary to support a disclosure, and that is in 217.125, that those 217.125 requirements to show licenses and that sort of thing would apply to their disclosures to their customers and that each time they disclosed to an insurance they would have to make sure that they had their insurance certificate, their license from the Texas Department of Insurance.

So we put the word "directly" in here to say very clearly that we're talking about when people come to us for records, we want them to show us that proof. They need to satisfy themselves, and their re-disclosures of our records are still subject to the limitations on who is entitled to get those records -- that's another definition that we have which is an authorized recipient, the very first definition -- they still have to prove to themselves that that person is an authorized recipient and they have to maintain records that that person is an authorized
recipient, but they didn't want the specific examples that we had. And again, we were fine with that and we thought it always read that way, we added that word just as a clarification.

All of the other changes are to the preamble and they're really to address concerns that they had about our reading of the rule and our application of the rule. One of the major changes that you will see where there's quite a bit of red is on page 5 of 10 of the preamble, and you'll see that we have a good bit of discussion about whether the necessity of providing ID and documentation that you're entitled to receive the records is necessary every time they get, say, their weekly update. So they have the master file, they have the big file, and then we update it every week to make sure it stays current.

They didn't want to show us their ID every time they get the weekly file, and we said that was never our intent. In subsection (c) it says you can negotiate an agreement with us and then you can get the records electronically on a routine basis. We've always interpreted it as if you meet (a) and (b) which is showing us your ID and proving who you are, showing us that you're entitled to the records, and then you negotiate an agreement, and from then on you're under the agreement, not under the other two. So that's what all of that
language is about.

It's my understanding from our conversations -- and kudos to Jon Lawson, my attorney who does public information work; Jon has had numerous, numerous phone calls with these folks and has done a great job of addressing their concerns and summarizing these into the document -- and it is my understanding that the commenters are all satisfied now and that this rule meets their needs. We didn't agree with everything they commented on, I will say that, but the things we were able to agree on, they now concur with us that it's adequately reflected in this document.

Thank you, and I'll be able to answer any questions.

MR. PAINTER: How does this fit within the parameters established by the FBI under CJIS, Criminal Justice Information System and also under the federal statute of being able to release the information being a criminal violation if you release it without permission?

MR. DUNCAN: Those are very good questions, Member Painter. Thank you. I'm going to separate it into two. There is no CJIS anywhere in anything that we possess, there's nothing that meets it.

MR. PAINTER: Criminal Justice Information System. It's a violation of law to release certain
information that is gathered like date of birth.

MR. DUNCAN: Driver's license.

MR. PAINTER: Driver's license information, driver's license number, Social Security number.

MR. DUNCAN: We don't have any of those in the master file. DPS does.

I'm sorry, Member Walker?

MR. WALKER: None of this is being distributed.

MR. DUNCAN: We don't even have it. DPS has it as part of their driver's license database.

MR. PAINTER: Correct.

MR. DUNCAN: And Chapter 730 of the Transportation Code governs our database and DPS's DL database. They have much higher CJIS concerns. We do have interfaces with DPS that are governed by CJIS but they never touch this database that we're talking about.

MR. PAINTER: Okay.

MR. WALKER: So what is in this database, that Johnny Walker owns a F250 2017 Ford pickup truck, serial number, that's it?

MR. DUNCAN: And your address.

MR. WALKER: And my address.

MR. DUNCAN: Tying the personal information of the person to the vehicle is the real key.

MR. WALKER: And none of that is in CJIS?
MR. DUNCAN: That's not CJIS data, the address and the name.

MR. KUNTZ: CJIS is more focused on the person, our records are focused on the motor vehicle and the address of the person.

MR. DUNCAN: Back to your question about how this comports and what this does, this doesn't affect the criminal penalties. The criminal penalties are statutory, both in the state statute and the federal statute. I'm hopeful that with Jim Seaman, my new attorney starting in the division, having worked in U.S. attorney's offices before, and with Mr. Menke and his resources -- we have in the past since I've been here almost five years, we've spoken with every U.S. attorney's offices in Texas, we've spoken to several district attorney's offices, we've spoken with the AG's office, we've asked people to try to get interested and try to bring these cases and we've gotten no bites. -- I'm hopeful that we can convince somebody if we have a bad enough -- frankly, if we do this right these are self-proving. We can prove that somebody used this for an illegal person because we seed our database. If I can get some prosecutor interested in this, I'd love to see them bring a case.

So these rules don't affect those criminal penalties, they still exist. These rules strengthen the
agency's ability to restrict access to people who really
shouldn't have this data.

MR. PAINTER: Good.

MR. TREVIÑO: How does the GDPR affect this, and are we covered under those rules?

MR. DUNCAN: We are not. The General Data Privacy Rule apply to EU. For those of you that don't know, the General Data Privacy Rule is a rule that was passed by the European Union Congress and the reason you're seeing so many updated privacy notices for Facebook and eBay and PayPal is they all do business in Europe, they all touch Europe in some form or fashion, either they provide products from there or they provide their services there. GDPR is being looked at by a lot of people as the new standard, the coming thing, but GDPR does not apply in the United States, and even if it did apply here, it probably wouldn't apply to us as a state agency. A lot of general statutory elements don't apply to state agencies in the handling of their job. Not to say that, for example, there's a federal Privacy Act that would apply if you have breaches of personal information, like say credit cards, if we had a bunch of credit card numbers -- which thankfully we don't -- and that got breached, that federal act on disclosure of those kinds of breaches does actually apply to us. It varies depending on how Congress passed
that law.

MR. TREVIÑO: Thank you for that.

MR. WALKER: So, Mr. Duncan, in this rule here does it say who has authorized access to the records?

MR. DUNCAN: Yes, Member Walker.

MR. WALKER: What page do I turn to?

MR. DUNCAN: There's two sections in the statute. One is mandatory disclosures. Those mandatory disclosures, we are required to give it to entities that are using it for recalls and for safety purposes. Then there's a section on discretionary disclosures, and the discretionary disclosures, in 217.125 you will see the things that we require people -- if a business is seeking it for a business purpose that's allowed by the statute, if an insurance company is seeking it for verification of customer information, if a lienholder is seeking it for verifying the information submitted to them by their customer, those are actually discretionary releases, we may release the information for that purpose.

MR. WALKER: May.

MR. DUNCAN: Yes, sir. What we have done in this section is we have said if you're seeking it for research you have to prove to us that you are in a researching occupation. We didn't just make that up, that actually comes from a federal case.
MR. WALKER: So I own an insurance company, justifiable I need to get records, we give them access to that. Correct?

MR. WALKER: I own a tow company so I can start a tow company tomorrow, Johnny Walker's Towing, you give me access to all that?

MR. DUNCAN: Yes, sir.

MR. KUNTZ: With proof of licensure.

MR. DUNCAN: Correct.

MR. KUNTZ: So tow truck companies are required to be licensed at TDLR. This would require that you demonstrate that you have a license with TDLR as a tow truck company.

MR. WALKER: And how hard is it to go get a license?

MR. KUNTZ: I do not have that information.

MR. PAINTER: You've got to have a million dollar insurance and a bunch of other stuff, it's not that hard.

MR. DUNCAN: But the fact is if a towing company were to get this information and abuse it, they could lose their license, they could lose their towing company because then they couldn't do any towing in the State of Texas.

MR. PALACIOS: Are there any other questions
for Jeremiah or Mr. Duncan or Mr. Archer?

MR. TREVIÑO: Mr. Chairman, I move that the board approve the adoption of amendments to Chapter 217, as recommended by staff.

MR. PAINTER: Second.

MR. PALACIOS: Motion by Board Member Treviño, second by Board Member Painter to accept the adoption of the rule. All those in favor please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Okay. Moving right along to agenda item number 8. Now it's your turn, Mr. Archer.

MR. ARCHER: Good morning, Chairman Palacios and members of the board. For the record, my name is Jimmy Archer, director of the Motor Carrier Division.

This agenda item may be found beginning on page 249 of your board book. I'm presenting this amendment to 43 Texas Administrative Code, Chapter 218 for adoption today. This rule amendment was proposed to the board at the February 8 board meeting. The amendment requires a sole proprietor that applies for motor carrier operating authority to provide a copy of their driver's license or other identification document. Applicants must scan a copy of their identification document in the department's
motor carrier online system which is currently called eLINK.

We currently require the sole proprietor to provide us with an audit number on one of those identification documents, however, we want a copy of the actual identification document to help us verify the identity of the individuals who apply. Once the department processes the application to verify the identity of the applicant, the identification document is destroyed.

This additional documentation will help the department verify the identity of individuals who apply for operating authority. This will also help us to determine whether the applicant is a potential chameleon carrier or reincarnated carrier which is a motor carrier that reinvents itself or operates companies to avoid the consequences of prior violations of laws, rules or regulations.

Other amendments to 218.13 modify the language to be consistent with the amendments of House Bill 3254 which dealt with chameleon carriers. The department received no comments on the proposed amendments. The proposal was published in the Texas Register on March 2, the comment period closed on April 2, and no comments were received. The proposed amendments create no fiscal
implications for state or local government. If the board
approves, staff anticipates filing the notice of the
adoption of these amendments with the Texas Register and
they will become effective in 20 days.

I ask that the board approve the adoption of
these amendments and I'd be happy to answer any questions
you may have.

MR. PALACIOS: Are there any questions for Mr.
Archer on this issue?

(No response.)

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

MR. BARNWELL: I move that the board approve
the adoption of amendments to Section 218.13, as
recommended by staff.

MR. WALKER: Second.

MR. PALACIOS: Motion by Board Member Barnwell,
second by Board Member Walker. All those in favor signify
by raising --

MS. BREWSTER: Treviño.

MR. PALACIOS: Treviño. I'm sorry. Second by
Board Member Treviño. All those in favor by signify by
raising your right hand.

(A show of hands.)

MR. PALACIOS: I want to note, thank you, Mr.
Archer. I understand you're just recovering from a bout of pneumonia, appreciate you being here and I hope you're feeling better. You're looking not yourself but I hope you're on the road to recovery.

MR. ARCHER: I'm coming back.

MR. PALACIOS: Let's move on to agenda item number 9.

MR. ARCHER: Yes, sir. The next agenda item may be found on page 269 of your board book. I'm presenting these amendments to Administrative Code, Chapter 219 for adoption today. These rule amendments were proposed to the board at the February board meeting. The purpose of these amendments is to implement House Bill 2319 and Senate Bill 1524 which deal with intermodal shipping containers, and Senate Bill 1383 which deals with fluid milk permits.

These rules define the terms roll stability safety support system and truck blind spot systems, and clarify the terms approximately 612 inches and approximately 647 inches. Industry needs clarification on these terms to obtain equipment that complies with the permit requirements.

The department defines the terms roll stability support safety system and truck blind spot system because industry and enforcement personnel could interpret these
terms to mean different things. These terms were included in the legislation to attempt to make these permitted vehicles safer. The department's definitions focus on safety. For example, roll stability support safety system is defined to require an electronic system because manual actions and perceptions of a human driver do not qualify as roll stability support safety systems because a human driver might not be capable of detecting or preventing instability problems as well as an electronic system can.

Amendments to 219.34 and 219.36 clarifies the terms approximately 647 inches and an amendment to 219.36 also clarifies the term approximately 612 inches. These terms state that the authorized distance between the front axle of the truck tractor and the last axle of a semi trailer in combination are eligible for permits under these sections. The department received calls from industry representatives who wanted to know how the department interpreted these terms because the industry wanted to exceed these numbers.

The legislature used the terms approximately 647 inches and approximately 612 inches to ensure a certain distance between the applicable axles to minimize and prevent damage to roadways that could be caused by the axle weight of the permitted vehicles. The department discussed these issues with the Texas Department of
Transportation because they design and maintain the roadways on which these vehicles travel. We also consulted with the Texas Department of Public Safety because they enforce safety rules regarding weight. Further, the department discussed this issue at TxDOT's oversize and overweight stakeholder workshop which was held last November when an industry rep asked for clarification on the meaning of the term approximately 612 inches and approximately 647 inches.

In defining these terms, the department focused on the object sought to be obtained which is to minimize and prevent damage that could be caused by excess weight of the permitted vehicles. The department also focused on the consequences of a particular interpretation or construction of these terms. TxDOT stated that any distance between 612 or 647 inches for these applicable permits could have a significant impact on the assessment of bridges and may result in additional bridge postings.

Also, industry asked only that the distances go above 612 inches and 647 inches so they could purchase equipment that is currently in production. The department, TxDOT and DPS agree that 612 inches and 647 inches are the minimum distances allowed, however, permitted vehicles can exceed these distances. TxDOT did not suggest a specific maximum distance, however, they
stated the longer the better. DPS pointed out the potential benefit of not listing a maximum distance in case a manufacturer designs equipment that exceeds whatever the maximum is. However, the amendments establish a maximum distance so department personnel and industry have a clear maximum distance to buy equipment and to also issue the permits under.

The department received comments from KWIK Equipment Sales, LLC and the Texas Trucking Association. KWIK Equipment requested the department to increase the proposed 10 percent tolerance to a 15 percent tolerance on the 100,000 pound intermodal shipping container port permit.

MR. WALKER: What did you say 50 percent tolerance?

MR. ARCHER: Fifteen, one five.

The intermodal shipping container port permit which includes the term approximately 612 inches. KWIK Equipment stated that if the tolerance remained at 10 percent, this permit would be useless and would probably never be used by anyone in the industry.

Texas Trucking Association requested the department to increase the proposed 10 percent tolerance to a 15 percent tolerance on the following permits: the 93,000 pound North Texas intermodal permit, the 93,000
pound intermodal shipping container port permit and the
100,000 pound intermodal shipping container port permit. Based on data that TXTA has seen, they feel that the 15 percent tolerance would allow the permitees to better utilize overweight permits while still being compliant with the maximum axle weight limitations contained in the statute. TXTA agrees that the following distances specified in House Bill 319 and Senate Bill 1524 are minimum distances, approximately 612 inches and approximately 647 inches.

TXTA also requested the department to modify the proposed definition of Texas blind spot systems because the proposed definition could be interpreted to require the system to detect objects in all positions located to the rear of the driver's seat in the truck tractor. Although the truck blind spot system detects objects in the lanes that are adjacent to the lanes in which the truck tractor is and semi trailer are operating, systems don't detect objects in positions located directly to the rear of the driver's seat in the truck tractor.

The department's response on these comments, we recommend adoption of 219.34 and 219.36 with amendments to increase the 10 percent tolerance to a 15 percent tolerance on the following permits: the 93,000 pound North Texas intermodal permit, the 93,000 pound intermodal
shipping container permit, and the 100,000 pound intermodal shipping container permit. The amendments allow the permitees to better utilize the overweight permits while still being compliant with the maximum axle weights. Also, these amendments do not change the length limitation of a semi trailer under the Transportation Code.

The department also recommends adoption of Section 219.2 with amendments to modify the definition of truck blind spot systems to make it clear that these systems don't detect objects in all positions located to the rear of the driver's seat. The department worked with DPS to modify this definition.

John Esparza is here from TXTA and I think he'd like to comment on the rule.

MR. WALKER: Did he turn in a request form?

MR. PALACIOS: Yes, he did.

Mr. Esparza.

MR. ESPARZA: Mr. Chairman. Thank you, members. My name is John Esparza, I'm the president of the Texas Trucking Association. I'm in support of Mr. Archer and I just wanted to come and share just my gratitude for working with the agency. As Jimmy shared, this endeavor started through the course of the session and working with the author of the bill, and so it was a
heavy lift, it took a lot of folks to get this where it is.

And we also knew at that point in time the reason we were even talking about an approximation was that we were talking about an entirely new piece of equipment, something that has the technological advancements taking advantage of the things that are available in the trucking industry today, all in the name of safety, and that's one of the things that not just this agency but a number of others worked together to come to, and when we found that we were in need of defining that approximation, we went out and reached out to the actual individuals that were producing the trailers or in the process of doing so.

At a hearing a couple of weeks ago, Senator Nichols questioned this went into effect January 1, the number of permits were at a small level, where are they. And it's a matter of process, it is about carriers being very comfortable in what that approximation might be so that they can begin to produce these trailers. And we did have an instance where a company went out and began producing early and would not fit into these specs. So there was definitely a delay that we have seen and now we're anticipating that these trailers will start falling into production -- or they're already in production, will
fall into use more frequently very soon. I think the amount of permits that have already been sold, we would see increase.

So we know that there's been a definite need for this. Our concerns we shared with you all about doing so safely and taking advantage of, again, some of the technologies available to you. So we're here to just share our support. Thank you to the executive director and Mr. Archer and his team working with us. It's been quite a heavy lift. Thank you.

MR. PALACIOS: Thank you.

MR. WALKER: Question. You said you've been working with the trailer manufacturer. What does the trailer manufacturer have to do with roll stability?

MR. ESPARZA: Well, the trailer manufacturer with regard to the specs on the trailer itself. As Mr. Archer shared, there were concerns about the length of the trailer, what was too long and what was too short. What we found through our work with TxDOT and the agency here was that there was less concern about the length of the trailer than there was the shortness of the trailer with regards to its ability to safely and efficiently carry those new weighted loads across pavements and bridge structures, for that matter. But at some point when that trailer gets too long, you have concerns over the turning
radius, of course, but as important, you start to lose the
actual maximizing the load itself and its weight. So
there's a happy medium in there and the manufacturers were
really trying to engineer that trailer to figure out where
that is.

MR. WALKER: So I know that the trucking
industry doesn't make the rules, the legislators do, but
the number one accident, John, that the trucking industry
has, we have is every time you make these trailers longer,
when I get to the intersection and I have to make a right
turn because the manufacturer is down the road to the
right and I get here and I get to this stop sign, if I
take a right-hand turn I'm going to take the telephone
poll down, I'm going to take the light pole down and
everything else because it takes so much radius to do
that.

So now I get over here and in order to make
that turn I get up here and I have to take a steal part of
the left lane and when I steal part of the left lane and I
have to get farther enough over, there's always a four-
wheeler that wants to slip in there and try to sneak
around me and I have a blind spot on that equipment that I
can't see him and now I make that turn and I wipe out the
roof of his car and he sues me for a million dollars. It
happens every day, and you're aware of this just like I
am.

And so we look at safety within the industry and yet TxDOT is kind of telling us you've got to make the trailers longer because of the bridge formula -- and most people in this room don't even know what the bridge formula is, probably, and Mr. Archer could explain it maybe to you, and I was going to ask you a question about the bridge formula here. So every time we make these trailers longer in order to haul these loads, you're increasing the likelihood that I'm going to have to take a swing wider every time I go around an intersection and I'm going to get into an accident. And if you look at statistics, it's the number one accident in the trucking industry today.

I mean, I get it, I get what we're doing here with the industry saying we want you to haul more weight so that we can get our costs lower, but in the interest of safety, by making these trucks longer you're making it awful difficult to get these trucks around an intersection.

MR. ESPARZA: Mr. Walker, I think you speak to the heart of the discussion that has been had now for quite some time now but specifically to this legislation, was where is that happy medium, not just between what is safe, which is most important, but also what the bridges
and what pavement can actually take so that we're doing the least amount of damage, but also trying to put the driver in the best position and the company in the best position not to have an unsafe turn there. It certainly is a happy medium and it's not an exact science.

MR. WALKER: So, Jimmy, going back to this 215 and 247 inch limits that you have on here, the bridge formula, how does this affect the current bridge formulas that we have in place, that TxDOT has in place right now?

MR. ARCHER: I think there's two issues that need to be understood. Number one is the statute nor the rule allow an increase in the length of a trailer which is 59 feet under the Transportation Code. Now, there's no limitation on a truck-trailer combination. I mean, if you had a 250 foot long truck, I suppose you could have a 300 foot long vehicle, but under this there's still a limitation by statute on how long the trailer can be. All this does is simply, to your point about the bridge formula, it allows a minimum of 612 or 647 inches. And then the industry came to us, according to TxDOT, that bridge formula, if it's any shorter, if they make that length from the front axle to the rear axle any shorter, then it causes an issue with the weight under the bridge formula, so that's why TxDOT said this is the minimum. And it can be longer but the trailer still can't be over
59 feet long by statute.

MR. ESPARZA: And if I might add, a great point of clarification there, Mr. Archer, speaking of the front axle of the tractor to the final axle of the trailer in the combination.

MR. PAINTER: The front axle of the tractor, is that called the drive axle?

MR. WALKER: No. Steering axle. Steering is the front.

MR. PAINTER: Steering. Okay.

MR. WALKER: So let's talk about the tolerances. Are we talking about axle tolerances or gross tolerances, or both?

MR. ARCHER: On the length?

MR. WALKER: No. You're asking for a 15 percent tolerance here.

MR. ARCHER: This is only on the length, this has nothing to do with the weight.

MR. WALKER: Well, you just asked us specifically you want to change the tolerance from 10 percent to 15 percent, it was in your rule.

MR. ARCHER: What we're saying, sir, is that the 612 and 647 inches are minimums. The manufacturers can go or the carriers can go up to 15 percent longer on the distance of the axle from the drive axle.
MR. WALKER: So the tolerance is only for length, not for weight.

MR. ARCHER: Yes, sir, only for length. The weight is already set in the statute.

MR. WALKER: Okay.

MR. PALACIOS: Are there any additional questions for Mr. Esparza or Mr. Archer?

(No response.)

MR. PALACIOS: Hearing none.

MR. WALKER: If not, I move that we adopt the revised amendments to Section 219.2, 219.34, 219.35 and 219.36.

MS. HARDY: Second.

MR. PALACIOS: Okay. Motion by Board Member Walker, second by Board Member Hardy to accept the adoption of the rules. All those in favor please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

MR. ESPARZA: Thank you.

MR. PALACIOS: Thank you very much, Mr. Esparza, Mr. Archer.

Let's move forward on agenda item number 10.

Ms. Thompson, good morning.

MS. THOMPSON: Good morning, Chairman, members
of the board. I'm Corrie Thompson, director of the
Enforcement Division. I'm presenting agenda item 10 for
you which includes two rules that we're asking be proposed
for comment in the Texas Register. This agenda item
begins on page 314 in your board books.

Before you, you have a recommendation to
approve, again, like I said, the publishing of proposed
amendments to Rule 215.85 in the Texas Register for public
comment. This rule 215.85 relates to referral fees
associated with used motor vehicles. Amendments to this
rule would add new sections (d) and (e) which clarify how
a license general distinguishing number holder may pay a
referral fee to an individual who has purchased a vehicle
from a dealer within the five-year period preceding the
referral that occurs. New section (e) states that a
referral fee may not be paid to or may not be offered or
provided to an employee of the dealer, a person who is
employed by the dealer.

The purpose of the amendments to this rule is
to distinguish referral fees from brokering activities
which are prohibited by statute. We are making the
distinguishing factor here in the amendment because
brokering activities in their true sense really involve a
middle person who's involved in the transaction,
negotiating the deal between the dealer and the ultimate
end consumer.

There is no fiscal impact associated with this amendment, and since we're asking for a vote based on both of the rules included in agenda item 10, if you have no questions on this rule proposal, I will move on to the next rule.

MR. BARNWELL: I have a question.

MS. THOMPSON: Sure. Yes, Mr. Barnwell.

MR. BARNWELL: Why is a referral fee to an employee prohibited?

MS. THOMPSON: So again, we're trying to limit the prohibition on brokering activities. Brokering is not allowed in Texas, it is allowed in other states, but just trying to keep the line drawn between just offering an incentive to somebody who is a prior customer and trying not to cross over that line into true brokering.

MR. BARNWELL: So the referral fee must be a prior customer? That's not what the rule says.

MS. THOMPSON: So somebody who has purchased a vehicle from that dealer within the preceding five-year period. And then new section (e) is expressly excluding somebody who is employed by the dealer from being able to receive that referral fee.

MR. BARNWELL: Okay. Seems like a rule that we're making rules to have rules here. How much brokerage
abuse is there?

MS. THOMPSON: I'm not sure that I can speak to actual abuse, but we do have a lot of companies that come in that are actually excepted from the brokering prohibition because they meet the exceptions.

MR. BARNWELL: But we're not talking about them, are we?

MS. THOMPSON: Well, it depends. Again, I can't speak to the level of abuse of the rule.

MR. BARNWELL: But why is the rule being put into place if we don't know what it's supposed to address? Is it significant, or is this just a rule to have a rule?

MS. THOMPSON: Well, it's to allow dealers clarification that they can offer something that historically it's been their understanding they haven't been able to offer to customers because of the brokering prohibition.

MR. BARNWELL: So under the brokering prohibition, is it defined in the law anywhere?

MS. THOMPSON: Yes. It's in Occupations Code 2301.

MR. BARNWELL: And what does it say?

MS. THOMPSON: It says that a person may not act as, offer to act as or claim to be a broker.

MR. BARNWELL: Okay. If I bought a car from a

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dealer three years ago and a friend of mine says, You
know, I like that car you've got. And I say, Why don't
you go down the dealer. And I call the dealer up and I
say, Hey, I'm sending my friend Bubba down there, how
about $100 referral fee? And the guy says, Sure. How is
that brokerage?

MS. THOMPSON: Well, there's confusion because
also Transportation Code 503.021 prohibits a person from
engaging in the business of a dealer, directly or
indirectly, and directly or indirectly includes the
practice of arranging or offering to arrange a
transaction. So there's just confusion where the line is
drawn, and so the rule that's being proposed is just to
literally provide clarification for dealers.

MR. BARNWELL: Are the other rules being
changed, the existing rules, or is this just a new rule
layered on top of existing rules?

MS. THOMPSON: This is an existing rule and
this is just adding two additional sections to the
existing rule.

MR. BARNWELL: So what you were talking about
in terms of brokerage and all of that, that would be
clarified here so that now referral fees are okay.

MS. THOMPSON: Correct.

MR. BARNWELL: And up until now referral fees
are not okay.

MS. THOMPSON: Correct. And there's been confusion about whether or not they are, because a lot of people do already have $25 on the back of their business card for steering your friend to our dealership.

MR. BARNWELL: And that's illegal.

MS. THOMPSON: Under the rule it's currently interpreted that way sometimes, yes.

MR. BARNWELL: Okay. Thank you.

MR. PALACIOS: Ms. Thompson, can you clarify which types of licensed dealers this rule would apply to?

MS. THOMPSON: Absolutely. So this rule, particularly 215.85 speaks to used motor vehicle dealers which would be independent dealers that hold general distinguishing numbers. The rule that prohibits brokering for new motor vehicle franchised dealers is 215.84, and we are not addressing new vehicle licenses with this rule amendment.

MR. BARNWELL: Can they not do referral fees?

MS. THOMPSON: That's correct. Franchised dealers who hold franchise licenses, no, we are not touching that rule.

MR. BARNWELL: So they're still prohibited?

MS. THOMPSON: Correct.

MR. BARNWELL: Okay. Well, I find this
objectionable on several grounds, and what's the
difference between a used car dealer and a franchised car
dealer offering a referral fee? These are rules without a
lot of logic, to my way of thinking. I'm sure the logic
is there but it has not been made apparent to me at this
point. Thank you.

MR. PALACIOS: Are there any further questions
on the referral fee issue?

(No response.)

MR. PALACIOS: If not, please proceed.

MS. THOMPSON: I will move on to the next rule
which begins on page 322 in your board books, again, still
continuing with agenda item 10.

Before you now is a recommendation to approve
the publishing of proposed amendments to Rule 215.155 in
the Texas Register for public comment. This amendment is
being proposed to make the rule consistent with
Transportation Code 548. 215.155(b) currently states that
a buyer's temporary tag may only be displayed on a vehicle
that has a valid inspection. The amendment to this rule
adds language authorizing display of a buyer's temporary
tag on a vehicle that does not have a valid inspection as
long as it meets an exemption that's laid out in Chapter
548 of the Transportation Code.

Again, there's no fiscal impact associated with
this amendment. Are there any comments on this proposal?

MR. WALKER: Who's requesting that these be
done?

MS. THOMPSON: I'm sorry?

MR. WALKER: Who's making the request on these
changes? Who's making the request that we modify the
rules?

MR. DUNCAN: David Duncan, general counsel.

On the second bullet point which is 215.155,
you may recall that a gentleman from Louisiana, Mr. Gover,
showed up at our board meeting a couple of meetings ago
and talked about the requirement to get an inspection on a
vehicle that he's taking out of state. This is a minor
clarification of our rule. No one is really requesting
this other than staff to make our rules consistent with
the Comptroller's rules that interpret the Tax Code.

The first rule, Member Ingram has been working
with us on that for some time.

MR. BARNWELL: The brokerage rule?

MR. DUNCAN: Yes, sir.

MR. PAINTER: And this is just to get it
published for comment?

MR. DUNCAN: Yes, sir.

MR. PAINTER: Okay. Thank you.

MR. PALACIOS: Are there any additional
questions regarding either of the two rules? If not, I will entertain a motion to accept the rule proposals.

MR. PAINTER: Mr. Chairman, I move that the board approve the proposed amendments to Chapter 215 for publication in the Texas Register for public comment.

MR. WALKER: Second.

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

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

MR. BARNWELL: No. I vote no.

MR. PALACIOS: I'm sorry. Okay. Board Member Caraway, Board Member Walker, Board Member Treviño, Board Member Hardy, Painter and Palacios vote in favor.

All opposed?

(A show of hands: Board Member Barnwell.)

MR. PALACIOS: Thank you.

MS. THOMPSON: Thank you.

MR. PALACIOS: We'll move on to agenda item number 11, specialty plate designs, our favorite. Mr. Kuntz, you're back again.

MR. KUNTZ: Members, for the record, I am back again, Jeremiah Kuntz, director of Vehicle Titles and
Registration Division. And I believe that we have two license plates that are listed on the agenda and I wasn't sure if the chair was removing item 11.A.

MR. PALACIOS: Yes. We are removing item 11.A. We'll delay that for a further meeting and we only have one plate at this time which is the Smokey Bear plate.

MR. KUNTZ: Great. Thank you very much.

So members, before you for your consideration is a new license plate design for Smokey the Bear. Many of you probably remember this iconic image relating to preventing wildfires. This license plate is being brought forward by the Texas A&M Forest Service under Transportation Code 504.801, and we did publish it for public comment. We received 434 people who liked the design, unfortunately we received 52 that did not. That is not uncommon that we have split opinions on our plate designs. But for your consideration is the Smokey the Bear license plate.

MR. WALKER: So whose plate is this? Is this a statutory plate, this is a department plate, or is this a My Plates plate?

MR. KUNTZ: This is a plate that is being offered by a sponsoring agency and that would be the Texas A&M Forest Service. So it is not a My Plates plate and it is not a statutorily required plate. Our statute allows
us to have sponsoring organizations, a state agency
sponsoring a license plate. The Texas A&M Forest Service
has brought this license plate before the board.  
MR. WALKER: So they understand the
requirements that they have to pre-sell?
MR. KUNTZ: Those plates do not meet the same
requirements for the pre-sale of 200 plates. The pre-sale
requirement is a contractual obligation in our contract
with My Plates. None of the other plates that are either
statutory or sponsored organization plates, they do not
require a pre-sale of 200 license plates.
MR. WALKER: Does Texas A&M have to pay the
fee, the $4,000 setup fee?
MR. KUNTZ: Yes. It's an $8,000 deposit that
they have to pay until such time as they've sold enough
license plates that it is refunded to them.
MR. WALKER: How many of these plates do they
think that they have sold?
MR. KUNTZ: I don't have estimates on how many
they believe that they'll sell.
MR. BARNWELL: Well, an Aggie will buy
anything.
(General laughter.)
MR. WALKER: Only if it has TAMU on it. It
doesn't have that on there.

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MR. TREVIÑO: How many of these types of plates, not necessarily the Smokey Bear one here, but these types, this category of plates do we have?

MR. KUNTZ: So if you will look, I believe that we have included in your board book our -- we change this up every time you have a board meeting. We've got an infographic that has all of our plates on it, you can see there are 180 military plates, there are 50 plates with restricted distribution, the state specialty license plates there are 125 -- that includes both some statutory as well as state agency sponsored plates fall into that 125 -- and then the vendor plates, there's 212 vendor plates currently available, for a grand total of 476 plate offerings today. This would make 477.

MR. WALKER: So I have kind of a question here, and I've been doing this a long time on this deal, but this plate right here, Smokey the Bear, when I see Smokey the Bear, I don't think of Texas A&M University or Texas A&M Forest Service, I may be thinking United States Park Service has Smokey the Bear on it. So I mean, there's no affiliation here at all to Texas A&M, so how does A&M think that they're going to make money?

MR. PALACIOS: Put a maroon that on him or something.

MR. BARNWELL: The problem is that -- and A&M
is smart about this, which you wouldn't normally expect --

MR. WALKER: Oh, come on, Barney.

MR. BARNWELL: -- they know that if they had their name all over it, then fewer people would buy the plate.

MR. TREVIÑO: I think we're playing with fire here, Mr. Chairman. I think we need to move on.

MR. BARNWELL: I could be wrong, but I think that's it.

MR. WALKER: You just made my determination on how I'm voting now.

MR. PALACIOS: He switched his vote.

(General laughter.)

MR. KUNTZ: Again, for your consideration.

MS. HARDY: When we add plates, do we ever delete plates over time? I mean, is this just going to grow to a thousand?

MR. KUNTZ: So that is a very good question, and it relates to the question that Mr. Walker asked earlier. The only provision that we have is in our contract with My Plates and what that actually requires is not only a pre-sale of 200 license plates, but it also states that the current number of registered plates fall below 200, then they get put on notice that their license plate will get removed from the available list. So we
actually have the 200 license plate threshold in place for the My Plates program.

MS. HARDY: Have we removed some of those?

MR. KUNTZ: We did. When we first signed that contract and that new provision came about, we had a series of plates that were lower performing license plates that fell off. We have not seen the current inventory of license plates fall below that 200 for any substantial amount of time. We have a couple that will dip down maybe to 197 and then they'll go and do some marketing and push it back up over 200, but all of our license plates at this point are maintaining above that 200 under the My Plates program.

MR. BARNWELL: Let me ask you one more question. You said that a state agency is not subject to the 200 plate minimum, and I understand that. But they had to pay $8,000?

MR. KUNTZ: Correct.

MR. BARNWELL: And how do they recoup that? At what level does the state refund that to them, or do they?

MR. KUNTZ: We do refund it. There is a minimum threshold of number of license plates or renewed registrations that must occur. I don't have that specific number in front of me right now.

MR. BARNWELL: You don't know that number?
MR. KUNTZ: I know, you caught me today.

MR. BARNWELL: Well, at least it's a successful day for me, I don't know about you.

MR. KUNTZ: You have won this one for sure, Mr. Barnwell. We can get you that number.

(General laughter.)

MR. TREVIÑO: I think the big question on these is we could have a million types of plates, but as long as it's not a burden on the state or it doesn't affect public safety, it really doesn't matter, we could have a million of them. Either of those two questions, do you have concerns as to either one of those, either a burden on the state financially or concerns over public safety and the proliferation of plates would have a problem?

MR. KUNTZ: I would not say that we have a burden placed on the state financially. As referenced in this instance, there is a minimum threshold of plates that must be pre-ordered if it's a My Plates. For the other license plates that are occurring through the state agency sponsored, there's an $8,000 deposit. That same $8,000 deposit is required if a statutory plate is required. The only ones that don't require that deposit are our military license plates, of which some of those recognitions they will never get to 200. The Medal of Honor is a prime example, we will never have 200 Medal of Honor license
plates, God help us, that have to be on the roadways. And so there's not really a financial burden on the state. We also recover $8 per license plate to cover the cost of administering that program as well.

MR. TREVIÑO: And the public safety question?

MR. KUNTZ: That is a question that has come up. I've not been contacted by members of law enforcement to say that they're having difficulty with the plate program on the roadways. We could obviously reach out to them and see if they have any concerns in this day and age with the number of license plates.

MR. PAINTER: I think the biggest problem for law enforcement is being able to read it at a high speed if we're in a pursuit or something, being able to run it.

MR. KUNTZ: And we do test all of our license plates before we bring them to you for reflectivity, to make sure that the alphanumeric pattern is reflective and able to be read.

MR. PAINTER: Good.

MR. PALACIOS: Okay. Any other questions?

(No response.)

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

MR. TREVIÑO: I move that we adopt the Smokey the Bear plate.
MS. HARDY: Second.

MR. PALACIOS: Okay. Motion by Board Member Treviño, second by Board Member Hardy to accept the plate. All those in favor please signify by raising your right hand.

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

MR. PALACIOS: Board Members Walker, Treviño, Hardy, Barnwell, Painter.)

MR. PALACIOS: All those opposed?

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

MR. PALACIOS: Board Members Caraway and Palacios. Motion carries.

MR. WALKER: I would have voted against but I was afraid they'd take my diploma back.

(General laughter.)

MR. PALACIOS: Smart move.

Okay. Let's move on now to Finance and Audit. We'll start with the Finance and Audit Committee update that will be given by Board Member Caraway who is the chair of the Finance and Audit Committee.

MS. CARAWAY: I will just say that we met yesterday and had a good meeting, and I will ask Ms. Flores to present her report, and Ms. Bankhead.
MR. WALKER: Just don't make it as long as yesterday.

MS. CARAWAY: True. Synopsis.

MS. FLORES: For the record, my name is Linda Flores. I'm the chief financial officer for the agency. And I've been directed and I will so proceed.

The first item is agenda item 12.A. in your board book, and it begins on page 333, and this is an action item for the board. We are requesting a two-part approval for the agency with regards to its headquarters maintenance dollars. As you know, we were appropriated approximately $9 million this biennium. TxDMV and TxDOT created a workgroup to collaborate on identifying specific projects here on Camp Hubbard that required some type of renovation or repair. These dollars support not only Building 1 but Building 5. We do have the fifth floor of Building 6 where Motor Carrier is currently housed, but that floor was totally renovated for Motor Carrier when they moved in in January. So the $9 million is to support the campus itself.

Because it's so late in the year, we didn't have time to really go out and spend any dollars this year, but in working with TxDOT, we identified a substantial list of projects that could be performed this biennium. So when we were also appropriated the dollars,
we didn't specify what capital line items we needed for
the campus. Working with TxDOT, we identified $4.2
million in projects.

MR. PALACIOS: Pardon the interruption, Ms. 
Flores. Let the record reflect that it's 9:56 and Board
Member Walker has stepped out. Please proceed.

MS. FLORES: In your board documents on page
337 and 338, we identified specific capital projects that
we wanted to undertake, so we've identified $4.2- from
today's dollars that we want to -- actually it's $4.2
million plus another $2 million next year that we want to
undertake. Again, because it's so late in the year, we're
going to request two things: one, we need to set up a
capital project line item in our bill pattern that's not
there because these dollars were appropriated as
operating, so that's step one; step two is to carry
forward $2.2 million into next year to cover all of the
projects that we've identified. So that's approximately
$6 million, I believe, in '19.

We will have to modify the current memorandum
of understanding with TxDOT. With board approval, we will
develop a memo to both the Governor's Office and the
Legislative Budget Board to create the capital line item,
as well as the carryforward.

And that concludes my presentation on the
headquarters maintenance request.

MR. BARNWELL: Ms. Flores, where do these numbers come from?

MS. FLORES: Yes, sir. So in your board document on page 333 at the very bottom there is a list, table 1, DMV HQ maintenance projects, those are the projects that we've identified for both capital and things that will be processed through TxDOT with the memorandum of understanding. Those two dollars total roughly $6.7 million. Today's appropriation is $5 million, in FY19 we have $4 million.

MR. BARNWELL: Yes. I understand, I can read the numbers. Where do they come from?

MS. FLORES: We were appropriated those dollars.

MR. BARNWELL: Where do these estimates of these costs come from is what I'm talking about.

MS. FLORES: We were working collaboratively with TxDOT. We meet with them every two months. There's a large workgroup that's composed of our staff, Ann Pierce in Administrative Services, they bring their electrical support services, facility folks, they bring those folks to our meetings and when we're discussing changes that we would like to see or renovations that we would like to have performed.
MR. BARNWELL: I see. They work up a cost estimate for what they think it might cost for this.

MS. FLORES: Yes, sir.

MR. BARNWELL: Okay. Well, I was just wondering where the expertise came in because obviously we don't necessarily know what it costs to do these jobs.

MS. FLORES: Correct.

MR. TREVIÑO: And source of funds again?

MS. FLORES: Again, those are operating dollars that we have in our base budget, but because these are things over $100,000, like the roof repair or the replacement of the roof in Building 5, that's estimated to cost a million, we're having to create project line items in our budget.

MR. BARNWELL: So right now we're $2.2 million under on the MOU with TxDOT.

MS. FLORES: Yes, correct.

MR. BARNWELL: So that MOU needs to be amended to find that $2.2 million.

MS. FLORES: Correct. They're going to help us with the work but we've got to pay them for the work.

MR. BARNWELL: Sure. They're unreasonable that way, I understand.

(General laughter.)

MS. FLORES: Duly noted.
MR. BARNWELL: Okay. I understand where you're going with that. Thank you.

MS. FLORES: So that concludes my presentation and we are asking for the board's approval to proceed.

MR. PALACIOS: Are there any further questions for Ms. Flores on this issue?

(No response.)

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

MR. PAINTER: Mr. Chairman, move that the board approve the following recommendation of the Finance and Audit Committee: number one, creation of a new capital project line item in the fiscal year 2019 budget for a Texas Department of Motor Vehicles maintenance and repair project with a total amount of $4,209,505; and number two, request a carryforward of $2,208,000 in unexpended balances in the Texas Department of Motor Vehicle headquarters.

MR. TREVIÑO: Second.

MR. PALACIOS: Motion by Board Member Painter, second by Board Member Treviño. I would also note that the Finance and Audit Committee, that is chaired by Chair Caraway, met yesterday and they went through this issue at length with the Finance department.

So I will now ask for the vote. All those in
favor please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

For the record, it's 10:01 and Board Member Walker is back.

Okay. Let's move forward, Ms. Flores.

MS. FLORES: Yes, sir. We also provided a briefing, and this is agenda item 12.B. in your packet, and it begins on page 339. This is a briefing item only, it does not require board approval.

On page 342 of you material we've included a timeline for the appropriations request for the agency. Many of you have been through this before but for those who are new to the process, there is a reconciliation, if you will, of all state agencies' current budgets and it's called a base reconciliation. It's submitted to the Legislative Budget Board. We've done that, we did that in May. We modified our estimated expenditures in our budget for unencumbered balances that have been carried forward into our operations and we established what we believe is our estimated appropriations baseline for the next biennium.

Again, this was submitted in May. We believe that the LBB will come back with a baseline for us by the end of this month. We will also then turn around and
submit our official legislative appropriations request to external parties in August, so there will be another opportunity for us to bring this back to you with a recommended final budget request, if you will.

Our base budget does include things that we know we'll continue to perform in the next biennium, such as we've looked at our revenue collections, we know we will have enough to support our base and our exceptional items which I'll address later. The planned maintenance for the headquarters, by carrying forward those dollars into '19 and that's now in our base, we'll be able to again have enough dollars to support renovations/repairs for this campus going into the next biennium.

We're going to continue the full implementation of Compliance and Investigations Division. Mr. Menke has done an outstanding job of putting his staff in place. We know that as we evolve, more needs may be addressed and we're trying to anticipate those.

And finally, we do have approximately $6 million in our base going into the next biennium to cover our automation improvements for the registration and titling system. There's a lot of defects that we know that we need to address, so we've set aside dollars to support that effort as well.

Very quickly, we've identified our estimated
revenue collections from '18, '19, '20 and '21. Board Member Walker did point out that we had a very flat projection going into the next biennium, and that is due to our fiscal conservative approach. We are estimating approximately 1 percent into the next biennium for our fees. This chart just kind of gives you an idea for the DMV Fund, the largest fee collections that we have that support agency operations, primarily processing and handling fees, motor vehicle titles, registrations and motor carrier oversize/overweight fees that are deposited into the DMV Fund.

MR. WALKER: More directly I would say it was a Linda Flores ultraconservative projection.

MR. TREVIÑO: And do we get some kind of information from the state demographer, or how do you arrive at your projected numbers?

MS. FLORES: We do have a subscription to the Comptroller's revenue forecasting information. We do look at vehicle sales data, but as Board Member Walker indicated, I take a more conservative approach.

MR. WALKER: Very conservative.

MR. BARNWELL: I'd like to say thank you.

MS. FLORES: Even though sales may indicate that we've got 10 percent growth, I'm looking at registration renewals, I'm looking at titles, I'm looking
at events like Hurricane Harvey to kind of scale back to adjust for that, and I want to make sure that we at least hit our targets. Anything else goes into our fund balance that we're not allowed to touch anyway.

MR. TREVIÑO: And Ms. Flores, I think that I speak for the board and we encourage fiscal conservatism. So I'd like to applaud you on that.

MR. WALKER: We've got the best person in the state here, I promise you.

MS. FLORES: I don't know about that, but thank you very much.

As I mentioned before, we have looked at our revenue collections in the DMV Fund to determine whether or not we can support the exceptional items that I'm going to address shortly. We looked at our beginning balances for the current biennium versus the next biennium, what the revenue streams will be, what our obligations will be, and we took those items that are included starting on page 348, 349 and 350 and we parsed out those items for ABTPA which are funded with general revenue, so that's not affecting the DMV Fund, we looked at the exceptional items, roughly $21 million, and whether or not our fund could support that. And as you can see in this chart, we can certainly afford that as well as having a very sizeable fund balance.
Growing our fund balance, we do need to monitor that in a conservative manner. Those dollars will become a target during the appropriations process for use in some other program, specifically roads. So we're always looking at that, we don't want to grow our fund balance to be disproportionate to what we actually need.

MR. WALKER: So, Linda, we didn't really talk about this yesterday at the Finance and Audit meeting. I know we toiled for over a year trying to come up with our processing and handling fee, to try to get that number just dead-on so that it basically was where we needed it to be and where the TACs needed it to be. And now that we've been in this for, what, two years now, roughly?

MS. FLORES: It started in '17.

MR. WALKER: In '17. Where do you think we are with respect to that $2.25 number? Do you think that we're pretty close to where we should have been?

MS. FLORES: Well, let me kind of give you an overview. Follow with me.

MR. WALKER: Okay.

MS. FLORES: Our processing and handling fee is $4.75, if you go online you get a dollar discount so it's $3.75. Two dollars is peeled off for the Texas.gov NICUSA vendor, so that leaves us with a $1.75. Twenty-five cents of that is remitted to the counties for processing that
transaction. The agency is left with $1.50. If you look at that $1.50 and what it's generating and compare it to the program costs associated with that transaction, the registration, the fee itself, the revenue is not necessarily supporting all of the costs associated for VTR. I believe that when we were looking at the fee and the revenue versus the program costs, it was not covering all the costs, but because there are other fees going into the fund, it's helping cover that gap.

So you know, it depends on what philosophy you're looking at. Are you looking at whether the fee itself supports the actual cost to support that? No. But because there are other fees going into our accounts, we are trying to keep it as low as possible to encourage people to use the online transaction versus brick and mortar.

MR. WALKER: So in the process we listed to a lot of tax assessors -- Luanne can attest to this that we were collecting their fees and we make some changes to theirs. Are we getting any feedback from those people that, oh, my god, you're wiping us out, or man, we've done a heyday, we're making money hand over fist and covering our costs better now?

MS. BREWSTER: For the record, Whitney Brewster, executive director.
The feedback that we got was particularly around the dealer deputy fee, if you'll recall, and this board took action on that to allow for the tax assessor-collectors to hold on to that additional dollar. So that was primarily the feedback that we received and this board was very responsive to that.

I would also add that we're still very early on in the TxDMV Fund, and I would caution to do anything too dramatically different until we have a better idea of how that fund is going to perform.

MR. WALKER: Well, I'm not saying we do something, but it's something we need to be monitoring to make sure.

MS. HARDY: How big is the gap that you talked about, approximately?

MS. FLORES: I know the program side, the cost side was over $100 million a year. On the revenue side, so for example, in FY18 we believe the processing and handling fee will generate approximately $57.8 million, but if the program cost is over $100-, it's roughly 50 percent, 49 percent of the true cost associated with that transaction. But there are other fees.

MS. HARDY: Right. And that's $100 million a year?

MS. FLORES: A year.
MR. WALKER: The cost or the proceeds?

MS. FLORES: The cost side. I mean, where we see a lot of extra revenue -- and I don't want to use the words extra revenue -- where we see revenue to help cover that gap is in the buyers tags, we get $5 out of that, and there's also some other registration fees not associated with the registration renewal but they're called registration, that's about $33 million a year. That's right, temporary permits. Certificates, we get over $40 million a year, and so that helps support the fund itself. Plus we get about a million dollars a year in interest, and that's unusual, most state agencies are not allowed to keep their interest and we are.

MR. PALACIOS: I guess just to further expand on this, the ancillary revenue that comes in offsets the cost. When we originally projected our forecast on this P&H fund and cost, did we expect this to break even?

MS. FLORES: No, sir, we did not. We never assumed that we would be breaking even. We knew that these other fees would help shore up the fund.

MR. PALACIOS: Okay.

MS. FLORES: Moving on, on page 345 of your material this is an appropriation to appropriation comparison, and I would like to make a correction on when we're comparing these two columns in blue and gray, for
your information, I indicated yesterday that it was due to a carryforward. That was not correct. This is an apples to apples comparison between our appropriation today versus tomorrow.

The difference is associated very specifically with the $2 service fee, and this is shown on page 345 of your board material. The differences associated with the $2 service fee for that processing and handling fee, the revenue nor the expense ever hit the DMV Fund. When the customer goes online to pay that fee, NICUSA, Texas.gov peels off their $2 and remits the balance, so we're never actually seeing the deposit or paying out to NICUSA. So we have made an adjustment to our budget, our Legislative Budget Board analyst is aware and is expecting this.

So that's the basic difference from our appropriations today versus tomorrow. We had roughly about $20 million in our baseline budget to make payments because when we were doing the processing and handling fee, developing that, we thought it would work like all of our other credit card service fees where we actually do make payments to the vendor. That is not the case and that's based on a contractual agreement with Texas.gov.

So I just wanted to make sure I clarified that.

MR. WALKER: But there's an offsetting entry where the income is not there.
MS. FLORES: Correct. The income never comes in, the expense never goes out. And when we did talk to Department of Information Resources to modify that process, they were not inclined to do so, and they are the state agency who has this umbrella agreement with Texas.gov.

MR. WALKER: But when we were handling this and not using the Texas information agency on that $2 fee, we were actually losing some money, were we not, in that area?

MS. FLORES: No, sir, not that I'm aware, not that I recall.

MR. WALKER: I thought our costs were a little bit higher, the credit card fees were higher.

MS. FLORES: If you recall, we were having that issue with Motor Carrier back in 2012-13.

MR. WALKER: It was a while back. We were losing money on some of the transaction fees because the credit card company was charging us more than what we were collecting.

MS. FLORES: Yes, sir. That was Motor Carrier, and we modified that to push the cost of that service fee to the end user, the customer who is buying the permit. Before the agency was absorbing it and I believe it was like a million a year, so by making that change in rule,
we were pushing that cost on to the customer buying the permit, and I think it's $2.25 plus 25 cents.

On page 346 of your board material, we have a table that reflects the current baseline capital items versus what we're hoping to request in 2021. Our current baseline is roughly $38.5 million and for 2020 it's $46.9 million. We've actually moved some dollars from our operating to cover anticipated increased costs for Data Center consolidation services. Agencies are required to look at their cost estimates when it comes to the Data Center. Based on some usage and servers, we know that we're going to have increased costs, so we've increased our capital line item -- because that is spelled out in our bill pattern -- to roughly about $3 million. You'll also notice the headquarters maintenance project is now sitting in the capital line item because we believe we will have substantial capital line items going into the next biennium.

We've also modified our vehicle request. We received approximately $900,000 this year to buy four new cars for Compliance and Investigations and then to replace as many cars as we could with the money that we received. We believe we're going to replace all 43 of our cars and so our fleet will be totally replaced. We are asking for an additional eight new cars going into the next session,
and this will be primarily for Enforcement, again,
Compliance and Investigations have indicated they needed
cars as well.

And I've also parsed out some dollars for the
field offices out there. We've received several requests
for modifications to their office layouts, so this is a
new line item, hopefully it will be positively received by
the Legislative Budget Board, the Governor's Office and
the legislators, but we really do need to invest in some
of our locations across the state.

Now we move on to our exceptional items
starting on page 348 of your material. We've delineated
between Sunset and non-Sunset related items. There's ten
requests total, seven of which are related to Sunset
recommendations. It starts out with Compliance and
Investigations fraud monitoring resources for $220,000,
and we've tagged it along with the specific Sunset
recommendation. ABTPA has two requests, one Sunset, one
non-Sunset. The Sunset related item is $13 million for
the biennium. This is to allow the program in reaction to
enlarging their scope of responsibility to look into title
fraud, this would allow the ABTPA program to push those
dollars to the local police departments to help us with
title fraud. So that is the big ticket item there.

The Enforcement data base and case management
system that Sunset indicated we needed to work on is the $372,000. A complaint management system for $4.2 million.

They indicated we needed to consolidate all of our complaint process because it is across several divisions. An infrastructure for IT, $2.7 million to help us with some basic application processes. And we've also got improvements, organizational assessment where a third party assessment indicated we needed more staff in IT and Sunset also recognized that need, 12 FTEs, almost $2 million. And the final Sunset is to modernize the motor carrier credentialing system platform. It's an outdated technology, they want to upgrade that, and that's $6 million.

The last three are non-Sunset and they're associated with, one, a data warehouse for the agency, customer service staff, nine FTEs, almost a million dollars, and then finally, this is the second ABTPA request for $7.3 million. This is to cover the things that they're currently responsible for; they feel that they need the additional dollars just to cover what they're statutorily required to do today, and that's $7.3.

And Mr. Walker had indicated they've asked for additional funding in previous legislative sessions, that is a true statement. We're hoping that this time, I don't know if it's the third time or the fourth time, will be the charm.
and they get sufficient funding for their program. Again, $42 million but $20–of that, roughly half is general revenue and that's associated with ABTPA.

The last thing are our ask for new riders. Again, I was asked yesterday about we got the money for headquarters today, why don't we just use it tomorrow. State agencies have to have specific authority to do that. We're asking for UB authority between the biennium, between the fiscal years. That would cover that question. I will tell you we've asked for this ever since I've been here and we have not been successful, but we're going to ask again. We also want the authority if we have unspent dollars associated with a federal grant, let us carry forward that state match into the next year. Right now we don't have that. And Motor Carrier does have a federal grant, the CVISN grant that we do leave unspent state dollars. And the last thing is the capital projects HQ maintenance; anything that we don't spend today, we'd like to be able to carry forward that dollar into the next biennium.

So that's our ask for the next upcoming session. As I mentioned, our base will cover everything we have going on today but this will help us perhaps in a more guided growth process, if you will. As we continue to move forward, it will be interesting to see what comes
out of the session when it comes to DPS drivers licensing, but I would like to make sure that we have our infrastructure in place moving forward. And again, this is just a briefing item, we'll have another presentation in August.

MR. TREVIÑO: Ms. Flores, on the exceptional non-Sunset related data warehouse request, is that for us to have our own dedicated warehouse or to rent space from somebody else or to contract out?

MS. FLORES: It is for us to have our own data warehouse. There was a question yesterday, and I mentioned the Data Center takes care of the state servers and bulk printing and things like that, but each state agency has unique processes and transactions. We need a data warehouse for all of the applications that we have here in order to be able to extract that information and create reports and statistics that we can monitor and use for our daily operations.

I'm a big proponent because the state's accounting system is huge but they do not give us access to their data dictionary. Any kind of report that we need, we have to go to the Comptroller's Office and get stuck in a queue somewhere, we're like at the very bottom of the list, and I know hearing from our other divisions, they feel the same way when it comes to their particular
program. We're data rich but we're statistics poor. We can't extract that information. If we had a data warehouse, we could do that ourselves.

That concludes my presentation. Thank you.

MR. PALACIOS: Thank you, Ms. Flores.

Are there any further questions for Ms. Flores on the matters she's brought before us?

(No response.)

MR. PALACIOS: Thank you, Ms. Flores. Ms. Bankhead, thank you.

Let's move on to item 12.B.2. Peer review results.

Let the record reflect it's 10:27 and Board Member Hardy has stepped out.

MS. MENJIVAR-SUDDEATH: Good morning. For the record, Sandra Menjivar-Suddeath, Internal Audit director, and I'm presenting item 12.B. which is the peer review results. This is a briefing item only.

As you may recall, in February I provided some information about our peer review process. We are required as a division to receive an external assessment every three years to ensure that we are meeting our audit standards. Specifically we have to make sure that we're meeting the Institute of Internal Auditors International Professional Practice Framework, the Generally Accepted
Government Auditing Standards, and the Texas Internal Audit Act which is Texas Government 2102.

For this year's peer review, we had a team composed of someone from the Texas Workforce Commission and the Texas Department of Transportation. Since February that team has been reviewing our self-assessment report, reviewing our audit files, as well as meeting with board members, executive staff and internal audit staff to understand if we're in compliance. They finished their work in May and I'm happy to report that they found the division was in compliance with all audit standards and gave us an overall rating of pass, generally conforms which is the highest rating we can receive.

Now, the peer review team did issue one recommendation, that the division consider conducting an ethics related project. The recommendation and response is found on page 382 of your board book. The peer review team felt that the division had done a lot of work related to fraud, waste and abuse, but that we could do more reviewing the control structure on preventing fraud, waste and abuse. The division agreed and we did consider an ethics related project for FY 2019 but we didn't consider it high risk because we were doing a fraud, waste and abuse risk assessment in this fiscal year. However, the division is coordinating with Office of General Counsel to
review ethics training to see if we can maybe potentially be more active in that aspect, and we’re looking into other items to potentially look at ethics and provide more information on ethics to the agency.

Are there any questions?

(No response.)

MS. MENJIVAR-SUDEATH: Then I'll move on to the next item which is 12.B.3. the draft fiscal year 2019 audit plan. So this is a briefing item only and it's found on page 389 of your board book. I will be requesting approval at the August board meeting.

This year's internal audit plan consists of ten proposed engagements, five contingency audits and other internal audit duties as assigned. The audit plan was put together using a new risk-based model. That is found on page 398 of your board book. We actually started collecting risks throughout the year and started rating and ranking the risks. Any risk that was considered a high risk, which was a four and above in the score, was put on potential for the plan. We reviewed the potential high risk areas with division staff, as well as board members, to identify the ones that were critical for us to do for the next fiscal year.

Those audits include the Compliance and Investigations Division review which starts on page 391,
the Lemon Law process, employee classification and hiring,
information security risk management, payment card
industry compliance, enterprise project management, as
well as two required items which is the fiscal year
internal audit plan and the annual internal audit report,
as well as the internal audit followup and the
management/board request.

This year the management/board request is a bit
different than in previous years as in instead of
allocating for just one project, we allocated 800 hours so
that way we have flexibility.

MR. PALACIOS: Excuse me. Let the record
reflect it's 10:31 and Board Member Hardy has returned.

MS. MENJIVAR-SUDDEATH: We have flexibility to
potentially help the divisions with anything that may come
ad hoc. The past couple of years we've been averaging
about 700 hours on ad hoc advisories and projects, so this
kind of gives us a better feel and better ability to
schedule our projects and make sure that we're helping the
agency as well as reviewing all audits.

Are there any questions on the audit plan?

MR. TREVIÑO: Do you feel you have the
resources necessary to ensure the safety and soundness of
this organization?

MS. MENJIVAR-SUDDEATH: We do. And you know,
as we're growing we're adjusting our audit projects and understanding how many hours each project needs, so we're constantly evaluating that, but right now we feel like we're properly resourced.

MR. TREVIÑO: Ms. Menjivar-Suddeath, do you feel is staff supportive of your work and are they helping you?

MS. MENJIVAR-SUDDEATH: Absolutely. Honestly, out of all the departments I've worked at, this is probably the most supportive staff we've had. When an issue comes up, management immediately addresses it. Sometimes before the report even goes out they're trying to get it fixed before, to show the seriousness of the ticket.

MR. TREVIÑO: That's great. And the culture of the organization, they see you as a team member and not somebody who's coming to tattletale on them?

MS. MENJIVAR-SUDDEATH: Exactly. We do a lot of outreach and work a lot with the division directors and the staff to make sure that they don't feel that we're the gotcha auditors, and that's shown in the respect and I think that's also shown in the results of the peer review.

MR. TREVIÑO: Excellent. Well, the board shares that and we thank you for your efforts.

MS. MENJIVAR-SUDDEATH: Thank you.
Any other questions on the audit plan?

(No response.)

MS. MENJIVAR-SUDEATH: Okay. I'll move on to the Internal Audit Division status which is on page 399. The Internal Audit Divisions status is pretty long, there's eight items listed. Overall, though, I will tell you we are on target to finishing the audit plan again this year by August 31. There may be a couple of reports that will be done in September, but we will be able to start overall with new projects on September 1.

There are four main items in the internal audit status update that I want to highlight. The first is the third quarter followup results. That is listed on page 402 of the board book. There were seven internal audit recommendations that were due in the first quarter which goes from March 1 through May 31. The internal audit reviewed these seven audit recommendations and we verified that the seven audit recommendations were fully implemented and two had been started. Those two that had been started were significantly done and they will be closing in this quarter, so the implementation rate for the third quarter was 71 percent.

We also completed the Texas Commission on Law Enforcement advisory service. This was a special request from the Enforcement Division to review the compliance of
the TCOLE training program. The TCOLE training program is our ability to give law enforcement credit for attending trainings that we want them to attend, so the dealer trainings or the motor carrier trainings, anything of that sort, law enforcement can come and they can get training for free and we can actually work with them and build relationships with them. So we reviewed the compliance of that program and we found overall that most things were in compliance. There were a few areas that compliance needed to be fixed, Enforcement is working on that, but we did not issue any audit recommendations on this report.

Jason Gonzales was the lead on that, so if you have any questions, please feel free to ask him.

Another audit that we finished was the social media audit. The social media audit is on page 427. This audit was to determine if the department's social media policies and processes have been sufficiently developed to protect the department's brand. The audit found that the department uses social media as a cost-effective method for reaching customers but the department needs to develop some guidance related to defining and promoting the department's brand and message, as well as creating privacy protocols and establishing a process to evaluate and approve and track social media platforms. We issued three audit recommendations in this finding and we gave
the engagement an overall rating of a two.

The final audit that is being presented is the travel and training audit. The travel and training audit is on page 415 of your board book. This audit was to determine if training and travel requests have appropriate approvals and justifications, as well as determining if the requests are appropriate and meet the needs of the department. We also reviewed board travel to ensure it was meeting compliance with state regulations. We found that board travel is in compliance with state regulations, as well as we found that processes have been developed to ensure training and travel requests are justified and expenses are appropriate. We did make some audit recommendations to just clean up the process a little bit for in-state authorization as well as out-of-state authorization as well, but overall it's a pretty good process and we rated them at a four overall.

Derek Miller was the lead on that engagement, as well as the social media one, so if you have any questions, please feel free to ask him.

Are there any questions on any of the reports that I just went over?

MR. TREVIÑO: Derek, would you like to comment on the social media audit?

MR. MILLER: Sure. For the record, Derek
Miller, senior internal auditor.

Reviewing the social media we found that the department has been doing a very good job with their social media and outreach as far as using it for customer interaction as well as reaching out to target markets such as motor carrier markets. It's rated a two not because we have really weak processes but that's just kind of where the department was at as far as utilizing it as a tool, and I think the recommendations we made were more kind of forward thinking for the future where if we want to start leveraging it more heavily as a communication tool, this is a little bit more of the foundation we should develop.

MS. MENJIVAR-SUDEATH: Well, that concludes the internal audit status update. Thank you.

MR. PALACIOS: Okay. I just want to commend, Sandra, you and your staff, Jason and Derek. You were somewhat modest in your presentation of the peer review results. They were here yesterday, I was present for the meeting and two of the staff members of the audit team were here and gave very glowing remarks about Sandra and her staff and their professionalism, and you received very high marks. So you're to be commended and we thank you.

MS. MENJIVAR-SUDEATH: Thank you.

(Applause.)

MR. PALACIOS: Okay. Let's move a little bit
out of order here. I know we have some people here that want to speak on the Assembled Vehicles Workgroup, so if we could move that up on the list here, we'll go to item number 15 and discussed the Assembled Vehicles Workgroup update. Jeremiah.

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

And Mr. Barnwell, I did want to follow up on your question earlier. My crack staff was able to get the answer. It's 800 license plates that are sold or renewed, after that point in time then the sponsoring organization would get their $8,000 refunded.

MR. BARNWELL: So $10 a plate credit for 800 minimum.

MR. KUNTZ: Essentially, yes.

MR. BARNWELL: Thank you. That's critical information.

MR. KUNTZ: I just didn't want to leave that outstanding for you.

(General talking and laughter.)

MR. KUNTZ: So before you this is a briefing item, there is no decision that we are seeking from the board at this time.

We wanted to provide you with an update, the board with an update on the Assembled Vehicles Workgroup
and the activities that have taken place so far. We did have two separate time that we've had working group meetings. The first was a day and a half working group meeting, and then we had a followup working group meeting on April 26. I believe you may have a summary in your packets as well that I'll be going over today.

In an effort to try and keep this short, I know that we've had some long briefings on this, there's been some mention that this is a complex issue and we're going to make it as simple as we can today because apparently there are some folks that have taken issue with my comments that it's a complex issue, so we're going to try and keep it as simple as possible today.

So there are five primary issues that we have identified in working through the working group and looking at this issue. First is it's difficult for hobbyists and low volume manufacturers to comply with FMBSS. These are federal requirements that apply to manufacturers of all new motor vehicles regardless of the number of vehicles produced.

The second is Texas statutes governing manufacturers, regardless of the number of vehicles produced and dealers, do not provide exemptions to licensing requirements and sale restrictions.

Third, there are vast differences in the
vehicle design, construction and assembler's skill level of somebody that's putting one of these together.

Fourth, the absence of certain safety equipment on a motor vehicle may increase risk of liability for both the operator of the vehicle who may be an assembler or subsequent owner and other drivers that may be involved in an accident causing personal injury or property loss that may have been lessened or avoidable had that vehicle met the safety standards. Additionally, owners may not have disclosed to the insurance company that the original vehicle has been substantially altered from its original design, resulting in a loss of insurance coverage.

And fifth, the rule changes in 2012 and in 2014 affecting existing titles and registration of assembled vehicles did not have any kind of grandfathering provisions in them and that's been a stumbling block as we've moved through this process.

At our meeting on April 26, we had various working group members that were present. Two of the working group members were not present at that meeting, and that is the National Highway Traffic Safety Administration representatives that were at the first meetings and then our member from the auto theft task force. All other members were present at that meeting.

The participants of that working group were
afforded an opportunity to bring forward possible recommendations for consideration by the working group. We did receive comments from two of the primary participants. The Specialty Equipment Marketing Association, otherwise known as SEMA, provided some recommendation, and then basically there's members on the working group that are part of what is known as the Assembled Vehicle Coalition that provided a packet to the working group for consideration.

The four recommendations were: reinstate all revoked titles and registration, amend Texas administrative rules, seek legislation to establish new definitions and strengthen inspection procedures, and clarify and strengthen county tax assessor-collector title and registration processes. We took those recommendations and evaluated them. In the form that they were presented, there were certain challenges that we noticed right off with some of the recommendations.

The first one I will go ahead and address here which is to reinstate all revoked titles, and we did convey to them that we were not able to do that and the reason for that is to reinstate the titles without a change in administrative rule would be a violation of our own administrative rule. We have to take steps first to amend those administrative rules before we could take any
actions to reinstate any titles. So from our perspective, that recommendation could not be acted upon immediately; as they had indicated in their recommendations, they wanted that to be done immediately.

They also presented a recommendation to create a definition for hobbyist. That definition would be required to be made in statute. We don't have the statutory authority in 2301, which requires license for manufacturers and dealers, to create a hobbyist exemption to the definitions that are currently in statute, and therefore, we can't take action in administrative rule on that one. It, again, would require some kind of statutory change to occur.

So based on what we were hearing, we did go back and start looking at this further. They had recommended that we look at some other states, some of the inspection processes that are in other states. We went back and looked at our own state laws again to review those again to make sure that we had not missed something or that there wasn't something else that might grant us flexibility in our processes. Based on that review, we have come up with some recommendations, one of which would be a recommendation for changes in our administrative rule, and so I'll go over some of these recommendations today.
So the options for administrative rule change would be to establish an assembled vehicle is considered a used motor vehicle. The biggest challenge that we've got right now is that there is not currently a definition for a used motor vehicle in our administrative rule. There is a used motor vehicle definition in statute but it's defined and then the term is not used anywhere in the statute. And so what we're trying to do is come up with a way to differentiate what is a new motor vehicle and a used motor vehicle.

The reason for that is that it is very simple, again, in looking at federal and state law that all of these requirements for being licensed as a manufacturer, compliance with Federal Motor Vehicle Safety Standards apply to new motor vehicles and there are exemptions for used motor vehicles. So it became apparent to us that what we needed to do was take a different approach and better define a used motor vehicle through administrative rule that would provide for some clarity for vehicles that are assembled using an existing frame.

Many of the vehicles that we see that these individuals have talked to us about are taking a frame from a previously manufactured vehicle by a licensed manufacturer and they're making alterations to that frame, to that underlying chassis, they're taking the bodies off
of it and then putting a new body on top of that frame.
And so what we are going to propose is that we get an
opportunity to go and write some rules to bring before the
board to try and clarify that a used motor vehicle is a
vehicle that is utilizing, at a minimum, an unaltered
frame from an originally manufactured vehicle. We believe
that we've got both federal and state basis that that is
something that we could clearly move forward with through
our administrative rulemaking that would be in compliance
with both state and federal law.

The second would be to -- and basically these
recommendations are trying to address each one of the
points that I listed above -- the second would be to
require a vehicle description on the vehicle's insurance
policy to match the vehicle description entered into the
registration and titling system. We want to ensure that
any insurance policy that it's been disclosed to the
insurer the exact alterations that have been made to that
vehicle and that the insurance policy is correctly
insuring the vehicle that we are providing title and
registration to. So that would just be a modification to
the administrative rule requiring that.

The third would be replacing a reference to
assembled vehicles complying with Federal Motor Vehicle
Safety Standards with requiring the vehicle contain safety
equipment compliant with Transportation Code Chapter 547.

Following our Sunset hearing, one of the members of Sunset raised the issue of why the department was enforcing the Federal Motor Vehicle Safety Standards, and so again, as I mentioned before, we went back and looked at the legislation, looked at Transportation Code to see is there something there that we're missing, and what we found is in Transportation Code 547, the Texas Department of Public Safety is required to administer the safety equipment that is required to be present on a motor vehicle and there is reference in that chapter of code to the Federal Motor Vehicle Safety Standards.

So what we are doing by reference is referencing any vehicle equipment that is installed on that vehicle would be compliant with Transportation Code Chapter 547, and therefore, it would fall in line with the Texas Department of Public Safety's rules on required equipment for a vehicle and any requirements that they have that that equipment be in compliance with the Federal Motor Vehicle Safety Standards. Therefore, we're again following state law, making sure that our rules are in compliance with the current state laws that are on the books and ensuring that the vehicles are being constructed in a way that the legislature intended them to be constructed.
The fourth item that we have would be to once we've got these rules in place also add in a grandfathering provision, that obviously was an oversight by the department when the rules were first created in 2012 and 2014, to address concerns that have been raised about individuals that had titles to vehicles that were assembled prior to the rules being put in place in 2012 and 2014. So we would work with our general counsel to draft up a grandfathering provision that would allow for the grandfathering of any vehicles that obtained titled prior to those rules being put in place in 2012.

And then the last one would be all of this would be a replacement of the restriction on the actual dune buggies. That restriction would be taken away and all these other provisions would be put in place, therefore providing greater clarity as to how vehicles can be titled and registered in the state.

With that, that concludes all of those recommendations. The thing that we wanted to make sure that we were very clear on is the impact that our rules and the estimation of how they would be implemented, how that would be impactful on the folks that we've heard from so far. Dune buggies utilizing a used unaltered frame that have replaced the body would be able to obtain title and registration. Custom vehicles and street rods would
still be eligible for title and registrations as they are today in compliance with our Texas state laws.

The proposed amendments would not provide a method for newly constructed vehicles, particularly any kind of newly constructed -- I'll use this terminology generally -- dune buggies or vehicles that are newly constructed not utilizing a frame from an existing manufactured vehicle. Particularly pipe constructed frames that are replacing any kind of frame on a vehicle would not be allowed under this provision. We do not see a path forward under state and federal law currently for somebody who is manufacturing a new frame that is not a replacement of an existing frame, that is not a replica of an existing frame, there's no path forward that we can see for those. Those generally would fall into the other category of a new vehicle.

We know that there is a particular interest from a company here in Texas and other companies, they refer to them as sand rails, there is a company, D.F. Goblin, those vehicles would still have, in our estimation, problems under current state and federal law.

I will mention that there's been some feedback that we've received to go and look at some other states. I will tell you I spent a good portion of yesterday going over Hawaii's regulations of vehicles. They were pretty
insightful, I will tell you. In Hawaii they have a reconstructed vehicle designation in their laws and they go through a pretty substantial amount of process at looking at every type of alteration that could be made to an existing vehicle to determine whether or not it is a reconstructed vehicle or maintains its used vehicle status. In looking at that particular law, it brought up some very interesting points that we will look at further as we look at our rulemaking. But they go as far as to say if you move the engine placement within the vehicle, if you move the transmission placement in the vehicle, that that throws that vehicle into the category of being a vehicle that needs to comply with Federal Motor Vehicle Safety Standards.

So there's definitely some things, again, as we keep going through this and we look at what other states are doing, there are some things that we can glean from the way that they've structured their statutes or their rules that we might be able to use to further clarify the difference between a new and used vehicle and provide greater guidance to individuals that are attempting to try and manufacture or make modifications to a vehicle that they're trying to get title and registration to.

With that, that completes my presentation, so if there are any questions.
MR. DUNCAN: Members, David Duncan, general counsel.

Two things, I just wanted to point out the documents that you've been provided were from the Assembled Vehicle Coalition, and we have one person who has signed up not to speak but asked us to read into the record that he does not wish to appear before the board, Mr. Steve Nelson from Mansfield, Texas, and stated that he wishes to oppose. I assume he wishes to oppose our current policies and not what Jeremiah has laid out because what Jeremiah laid out is the first time we've discussed it today.

MR. PALACIOS: We do have an individual who has asked to speak, but before that I'd like to entertain questions for Jeremiah.

MR. WALKER: I do. So there's no definitions in the rules today of what the definition of a used vehicle is?

MR. KUNTZ: Not currently in our administrative rule, no. There is one definition that we have been able to find in the Transportation Code but it does not get into the level of detail of a vehicle that's been remanufactured. The definition in statute has reference to a used vehicle is a vehicle that has been previously subject to a retail sale.
MR. WALKER: So your thought processes somewhat may be that we can go in by putting in a definition of used vehicles and kind of maybe clean up which would allow and define some of these kit cars versus dune buggies and street legal and so forth? I've got multiple questions where.

MR. KUNTZ: What we're trying to do and what we believe is -- where we believe we've got authority in this aspect is under Federal Motor Vehicle Safety Standards, as well as under state law, we believe that there are allowances for vehicles that are used vehicles and so there was a lot of discussion in our workgroup with NHTSA themselves, going through their interpretation letters and their different statutes to try and figure out where they draw the line on a used vehicle. What modifications are occurring on a vehicle that would then cause it to be deemed a new vehicle because you've made substantial modifications to the used vehicle itself.

And so what we're trying to do is clarify in our administrative rules that we believe a used vehicle falls into this category and that is utilizing an existing frame from a vehicle that was previously subject to a retail sale that was manufactured by a licensed manufacturer that is now being used for a remanufactured vehicle or a reconstructed vehicle.
MR. WALKER: So let me ask you this question, and maybe Kate can answer this better than you or I can answer it. How are you going to identify a chassis because chassis are not identified by serial numbers in my world. I don't think there's an identifying number on a chassis. So I say, hey, I used a Ford F150 chassis to make my dune buggy. How do you prove that?

MR. KUNTZ: So we do this today --

MR. WALKER: Let me ask, do you identify chassis with serial numbers?

MS. HARDY: I don't know.

MR. PALACIOS: They have VIN numbers on them.

MS. HARDY: On the chassis?

MR. PALACIOS: On the frame.

MR. WALKER: So there is an identifying number.

MR. PALACIOS: Yes.

MR. WALKER: Go ahead and answer.

MR. KUNTZ: I do want to clarify. Our title manual and our assembled vehicle manual go into great lengths to actually clarify this point. There is a year in which different manufacturers came into compliance with stamping a VIN onto the chassis, so under the same Federal Motor Vehicle Safety Standard, a manufacturer is required to have a conforming VIN. As that law was put into place, various manufacturers came into compliance with that, and
so at various points in time various manufacturers began stamping the VIN number onto the chassis. So when you go back in time, depending on the manufacturer, there are certain year breaks in which a VIN is present on those chassis, and when you get into very old chassis, your original 1929 Ford chassis, no, there's not going to be a VIN number stamped on those.

However, we have processes put in place in our title manuals on what information a person is supposed to present based on the type of chassis they're utilizing, so based on what that year model of chassis is, there's different documentation required that they must present if they are using that chassis to do a reconstructed vehicle. And so if they're taking the body from an existing vehicle, let's say they're just trying to reconstruct a 1965 Mustang and somebody has a chassis that was a good chassis that they're going to use that's a 1965 and they've got a body from a 1965, they would present ownership documents on both of those vehicles, the chassis and the body, they would merge those together and then the department would title that using the VIN of the body that was placed onto that chassis. But we would verify the VIN and all the information on that at the time that that titling event is occurring.

That is also one of the reasons that we have a
68A VIN inspection which is a confidential VIN inspection process done by law enforcement is to verify that the parts and pieces that were used to reconstruct that vehicle, none of those parts and pieces came from a stolen vehicle when they reassembled it. So we have processes and procedures already in place to verify all of that information and we would use those same processes and procedures here.

MR. WALKER: But aren't we doing that already with salvage titles? Because that's what a salvage title is, it's piecing together multiple different vehicles to come up with one.

MR. KUNTZ: So yes. If somebody is using the chassis, if you will, from a previously salvaged vehicle, yes, they would do this entire process that I just laid out, they would present that information at the time that they have reconstructed a vehicle. Especially if they were taking a chassis from a salvage vehicle and merging it with another vehicle, that's the exact process that they would be going through.

MR. WALKER: So what's the purpose of this process when we already have a mechanism out there called a salvage title that allows you to do everything we're talking about here?

MR. KUNTZ: So the differentiation here is that
some of the vehicles that are being constructed, the body that they are utilizing is not a body from a licensed manufacturer. So in the instance that we're talking about here, I'll use an example.

MR. WALKER: Kit cars.

MR. KUNTZ: Well, I'm going to go even further than just a kit car because a lot of the kit cars actually represent a previously manufactured vehicle. A 1965 Shelby Cobra body kit, you can obtain and you can build a 1965 Shelby Cobra replica vehicle. In these instances, many of the dune buggies are using a body kit from a company that was known as Meyers Manx, is a fiberglass body. That fiberglass body was never produced by a licensed manufacturer, there was never a full production Meyers Manx that was assembled on an assembly line and sold.

So they're not in a situation where they're replicating an existing vehicle, so what we are providing is an avenue for them to use a body from something that was never mass produced and affix it to a chassis that was mass produced. In the Meyers Manx example, many of those bodies are affixed to a Volkswagen Super Beetle floor pan chassis and they're taking a fiberglass body, putting it on the floor plan and then it then becomes what we used to refer to or refer to today as a dune buggy, and so what we
are providing is an avenue for those types of assemblages
to be put together. Even though those assemblies do not
represent a previously manufactured vehicle, so long as
the chassis, the underlying foundation of that vehicle was
produced by a manufacturer, we're saying that we would
allow that to be utilized to assemble a vehicle.

MR. WALKER: So why wouldn't we just go in and
modify our salvage definition and rules to allow that.

MR. KUNTZ: These are not all salvage vehicles.

You could take a perfectly good Volkswagen Super Beetle
from 1973, pull the old body off of it and then place a
Meyers Manx body kit on top of it that's never been a
salvage vehicle.

MR. WALKER: So what you're recommending then,
I hear you, is that we come up with a new form of title.

MR. KUNTZ: It's not a new form of title. What
we are clearly delineating is that as long as you're using
a used chassis, that vehicle in our minds is still a used
vehicle, it's not a newly assembled vehicle. When it
becomes a newly assembled vehicle, newly assembled
vehicles have a whole other statutory requirement for them
to be manufactured by a licensed manufacturer, they're
required to be distributed through a dealer network, they
have to have an MCO, all of those requirements would kick
in if the vehicle was deemed new.
What we are doing is we are saying because that was a previously used vehicle, it was a 1973 Volkswagen Super Beetle, we're going to maintain that as a used vehicle and therefore exempt them from all of the new vehicle requirements, i.e., it does not have to have airbags in compliance with Federal Motor Vehicle Safety Standards, it does not have to be sold by a licensed dealer, it does not have to be manufactured by a licensed manufacturer.

MR. WALKER: So you want to modify the rule to allow this to take place under standard title transfer and come up with a definition of used.

MR. KUNTZ: We are clarifying that these are used vehicles.

MR. BARNWELL: So, Jeremiah, what we're doing here is we're looking back at a limited universe of dune buggies, vehicles that are not reconstructed vehicles but using an existing chassis.

MR. KUNTZ: Correct.

MR. BARNWELL: So that's kind of our turning point. If it has an existing chassis, then it may fall under these new rules. And I say may because maybe it won't.

MR. KUNTZ: And again, yes, based on what paperwork they present and making sure that they're going
to be in compliance. And again, we really need to go
through an exercise of crafting all the rules on this
concept.

MR. BARNWELL: I understand this is a complex
process. So there's no path forward for these new kinds
of cars, like a Polaris RZR. I mean, in Utah those are
licensed for the road but they're not for all roads, just
for county and state highways but not for the interstates.

MR. KUNTZ: Correct. So this would not impact
those vehicles that are considered a utility vehicle, an
ATV, ROV, these would not impact those because those have
special statutory provisions covering them and how they
can be titled.

MR. BARNWELL: We don't have that in Texas,
though, do we?

MR. KUNTZ: We allow for the titling of those
vehicles.

MR. BARNWELL: But not the licensure.

MR. KUNTZ: But they do not get registration
for operation on the roadways. They have limited
operation for like golf carts can be operated within a
certain distance from a golf course, can be operated on
roadways less than 35 miles an hour.

MR. PALACIOS: Excuse me, Mr. Kuntz, let the
record reflect at 11:06 Board Member Caraway stepped out.
MR. KUNTZ: So those are still covered statutorily through the provisions that allow for them to be titled but do not allow for them to be registered.

MR. BARNWELL: So the Federal Motor Vehicle Safety Standards Act is a big part of our problem, as I understand it from past conversations.

MR. KUNTZ: That is one of the substantial problems. The other is our own state law requiring anybody that is manufacturing a new vehicle to be licensed as a manufacturer and distribute through a dealer network. Those are the two biggest hurdles to get over.

MR. BARNWELL: And what we've got here is we've got, just to bloviate a little more -- I saw you, David -- is that we're dealing with legislation and laws that were written before a lot of this stuff started happening, and you're tasked with trying to write rules now that fit a new paradigm. I think this is a significant and heavy lift for the department to make to try to find a way forward given the restrictions that we have on our ability to even move forward. We're having to come up with some new ideas and new constructs about how you view and perceive a vehicle's ability to be licensed and whether or not it constitutes a legal vehicle or not.

Were it up to me, and it's not, I would vote for more of a laissez faire thing, and just like
motorcycle helmets, if you're dumb enough to get in that car and hurt yourself or fall off a motorcycle without a helmet, God bless you, but it's your choice. And here I think it's just a matter of governmental overreach for years and years and it bugs me. I'd like to see less but I know that's a fool's errand, it's not going to happen.

MR. PALACIOS: Let the record reflect it's 11:08 and Board Member Caraway has returned.

Any further comments, Board Member Barnwell?

MR. BARNWELL: No. I've said everything I had to say.

MR. PALACIOS: Okay. Jeremiah, I would like some clarification on the provision that allows a vehicle that resembles a previous vehicle to be titled and registered. Would those vehicles also be subject to having a used component or can they be built completely from scratch with a new frame?

MR. KUNTZ: You're asking me some tough questions here. What we are relying upon for vehicles that resemble other vehicles is state statute guidance which says the department shall title and register a vehicle that resembles a vehicle that was previously manufactured, and it does not get into in state law whether or not that vehicle is constructed with used parts or new parts. And so we are relying upon that state law
in moving forward to title and register those vehicles.

MR. BARNWELL: Like the Shelby Cobra.

MR. KUNTZ: Yes, that would be a good example, a Shelby Cobra that is constructed with a 90 percent kit that somebody obtains which would include the chassis, the body, everything but the motor, that somebody would build and then add the motor to in their house.

MR. PALACIOS: So it would appear to me that there might be a need then to tighten up the rules, whether it's through this agency or legislation, I guess define the word "resemble" because that could be subjective. I mean, would this cause an issue for us?

MR. KUNTZ: The word "resemble" is one that we have -- obviously it's a subjective terminology. What we generally rely upon when we start to evaluate the resembling of another vehicle is what documentation is presented to the department at the time of title. So if they are presenting information on an invoice from the kit car manufacturer that says that this is a 1965 Shelby Cobra kit replica, then we would rely upon that documentation that that company is affirmatively stating that that kit is intended to resemble a 1965 Shelby Cobra.

We have seen in other instances where the kit manufacturer is presenting their own name on the information, they actually have a bill of sale or some
kind of certificate of origination, it's not a manufacturer's certificate but a certificate of origination that does not delineate that that is a replica vehicle but instead has a different name for that vehicle because they are putting their own brand on that and not utilizing the brand or trademark from a previously trademarked vehicle. So that's where we generally start getting into trademark issues. Even the federal code contemplates that replica vehicles must only be produced from kit car manufacturers that basically have the trade dress and have the authority to make those vehicles, and so we would look at that similarly, that the person that is producing the information, that's manufacturing that vehicle, that they have declared that they are a replica and that they have proper trade dress to make such a vehicle.

MR. PALACIOS: If they were to, I guess, pass that threshold, would they still be subject to this code you're recommending, Transportation Code 547?

MR. KUNTZ: Well, 547, if they fall under the custom vehicle and street rod, they actually enjoy an exemption from Transportation Code 547 statutorily.

MR. PALACIOS: Okay.

MR. KUNTZ: So statute says if you are a custom vehicle and street rod that replicates a vehicle that was
previously manufactured, and I believe there's a
designation on a year in statute on what you have to be
replicating, I believe it's '48 or '49 is the year mark
that you have to resemble something prior to that, then
you can fall under that provision in Transportation Code
and you enjoy an exemption to Transportation Code 547.

MR. PALACIOS: Okay. So to make sure I
understand this, if it is a replica post 1949, then you're
saying it would then be subject to Transportation Code.
With pre you're saying there would be an exception, but if
it's afterwards you're saying it would fall under?

MR. KUNTZ: You wouldn't fall under either way.
So the custom vehicle and street rod means a vehicle that
is at least 25 years old, so that's your first threshold,
at least 25 years old, and of a model year after 1948 or
manufactured to resemble a vehicle that is at least 25
years old and of a model year after 1948, and so that is a
custom vehicle. A street rod is a vehicle that was
manufactured before 1949 or after 1948 to resemble a
vehicle that was manufactured prior to 1949. So you're
either a custom vehicle or street rod. If you're a street
rod it's pre 1949, if you're a custom vehicle you are
between 25 years old and 1948.

MR. PALACIOS: That's crystal clear.

MS. HARDY: Next steps?
MR. KUNTZ: So our next steps, we have been working on a draft rule package. We would want to continue working on that to try and make sure that we've got that buttoned up. We would like to bring the working group back together to try and review what we've come up with to see if there are any additional concerns that are raised by any of the working group members, and then we would try and bring that back before the board, I believe, again, at the discretion of our chair, probably around August, for our August board meeting.

MR. BARNWELL: Who all is on your working group, just groups of people?

MR. KUNTZ: So we have DPS; Factory 5 Racing which is a kit car manufacturer; DF Kit Car; SEMA; the Texas Automobile Dealers Association; the American Association of Motor Vehicle Administrators, AAMVA, that's our association of DMVs; Assembled Vehicle Coalition of Texas has multiple members on the working group, I believe we have four representatives from that association; we also have a tax assessor-collector representative; and then we've also got NHTSA participated in our first two working group meetings, I don't know that they'll continue to participate, we were lucky to get them when we did; and then a member of an auto theft task force, they actually conduct the 68A VIN inspections so we wanted their
perspective on this as well.

MR. BARNWELL: And then when you get through
with your working group and you have some recommendations,
then you filter that through David?

MR. KUNTZ: Yes, our general counsel are
actually there during our working group deliberations so
they would be able to see what deliberations occur, and
then yes, they would craft up something.

MR. BARNWELL: I think your working group is
well represented.

MR. WALKER: So let me ask a question about the
working group. In the Sunset report it specifically
states that our working groups do not have enough public
members on there, and I didn't hear of a single public
member.

MR. KUNTZ: I would definitely say that we've
got public members. The members from what we are
referring to as the Assembled Vehicle Coalition, those are
all public members.

MR. WALKER: They all have a vested interest,
though.

MR. KUNTZ: They are public members with an
interest in titling and registration.

MR. PALACIOS: They're not industry members per
se.
MR. BARNWELL: People without a public interest won't come.

MR. PALACIOS: I guess we're getting into parsing of definitions, but I understand it as market participants, these are not people that are actively engaged.

MR. WALKER: Well, the Sunset addressed that.

MR. PALACIOS: They did, but I do concur with you, Jeremiah, regarding their status as public members.

MR. KUNTZ: These are not members that are engaged in the business of manufacturing vehicles, these are private citizens that have assembled a vehicle and are attempting to title and register it.

MR. PALACIOS: Okay. We do have an individual who would like to speak on the issue. Mr. Faron Smith, are you here?

MR. SMITH: Hi. I'm Faron Smith. I represent the Assembled Vehicle Coalition of Texas, and Save the Texas Dune Buggy on the Facebook group.

This is the first we've actually heard of what Mr. Kuntz has been talking about and would like to hear a little bit more in the future. It's nice that he's actually starting to look at the Hawaii information that I gave you in the packet earlier because they have paved the way. There's a letter in there from NHTSA that states
it's really a used car that's on the very front page. Actually the second page it says that they don't -- I'm sorry, I'm nervous.

MR. KUNTZ: No worries.

MR. SMITH: But what happened in that thing it talks about NHTSA doesn't see it as a new car, they see it as a used car and it doesn't have to comply with Federal Motor Vehicle Safety Standards, and that's on the second page. And then you can also see that there's a bill that's been passed in 2004 by Hawaii so they have paved the way for us.

I do have a question for Mr. Kuntz, if I can?

MR. PALACIOS: Mr. Kuntz?

MR. KUNTZ: Sure.

MR. SMITH: As you know, my vehicle is from New Mexico and there's somebody else here who has one from Oklahoma and both for them were titled and registered in those states. Once we bring them here, we can't. Is there anything that you can talk about with that?

MR. KUNTZ: What do you mean by once you bring them here you can't?

MR. SMITH: Well, I can't title or register it in Texas.

MR. KUNTZ: Correct. Again, based on the comments I had earlier, we cannot under our current
administrative rules title and register those. It will require a rule change at a minimum in order to title and register a dune buggy in Texas, and so that's why we're presenting something here that we would go through a process to amend our rules. We would have to bring that rule package before this board in August after we've crafted the rule language so that we could move forward with that. And in addition, we had presented that we would provide a grandfathering provision for individuals that had obtained title and registration in Texas previously indicating that that vehicle was a dune buggy and that had title prior to 2012. That would allow for the reinstatement of titles that had been revoked that had been issued prior to the 2012 rule that would allow them to get back on the road as well.

But all of this still requires rulemaking because our current rules do not allow for it. That is the reason for the response that we gave during the working group meeting when you stated that you wanted all titles reinstated, we can't do that in compliance with our current rules. It requires a rule change first in order to do that to reinstate because to do so would violate our own rule.

MR. SMITH: That's pretty much all I've got.

MR. PALACIOS: Mr. Smith, I just want to thank
you for your participation. I know you and your group have been very passionate about this issue. I just hope you understand we are doing our best to delineate between the issues and rules that we can adopt as a board and as an agency and separate that from those that would require statutory change. To some degree, we're limited. This is a very broad issue, it's not just dune buggies, as you have heard, assembled vehicles, kit cars and so forth all have their different nuances, so to the extent that we can address these issues by rule, we will attempt to do so. But from what I have heard, I've been involved in this process for some time now, our purview is somewhat limited in what we can do, so we hope you understand that.

And let me ask, Jeremiah mentioned that he would be reassembling this group in the very near future. Will you be coming back to assist with this process?

MR. SMITH: We're going to discuss it probably over lunch and we'll get back to him. There's a good chance I will.

MR. PALACIOS: Great. Well, thank you very much for your time.

MR. SMITH: All right. Thank you.

MR. BARNWELL: Thank you, Jeremiah.

MR. KUNTZ: That concludes my presentation.

MR. PALACIOS: Thank you very much.
We only have two items left on the agenda before we break for executive session, so I would suggest if anybody needs to take a break, go ahead and do so but otherwise we'll proceed. Let's see, we left off with item number 13, Board key performance indicators and balanced scorecard.

Let the record reflect Board Member Barnwell has stepped out.

Good morning, Tom.

MR. SHINDELL: Good morning, Chairman Palacios, Executive Director Brewster -- who also stepped out -- and distinguished remaining board members. For the record, my name is Tom Shindell and I'm the innovation and strategy analyst for the department, and I'm coming before you this morning to ask for approval to implement a balanced scorecard, or a BSC, as a replacement for the key performance indicators, or KPIs, as part of the strategic management system for the TxDMV. And this agenda item begins on page 445 of your board book.

To offer some perspective, in the Azimuth report of August 2011, one recommendation was to develop a balanced scorecard. It took us a bit of time as we began developing the balanced scorecard in January of 2017 and completed it in March of 2018. Briefly, while a balanced scorecard includes the components of key performance

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indicators, it has some additional features, including a strategy map, which you can find on page 448 of your board book, which links department activities to desired outcomes, including our vision and mission which is organized around four different perspectives: the learning and growth perspective, the internal process perspective, the customer perspective, and the stakeholder perspective.

There are also objectives for each of those perspectives and they begin on page 449 of your board book, and we developed 13 objectives, and objectives are basically stretch goals we want to achieve that are probably just out of reach. For example, all of our customers trust that we'll protect their data. We probably wouldn't get 100 percent of our customers saying that they feel that we protect their data, but we would want to get as close to that goal as we could. So they're stretch goals.

Measures for each of those objectives, both lead or actionable measures and lag or after the fact performance measures, and those are similar to the KPIs that we currently have in place, and those are on page 450 of your board book. Lead measures are one of the key benefits of a balanced scorecard because they allow us to collect data that we can take action on then to influence
the outcomes, so that's one of the key benefits of a balance scorecard.

We also developed performance targets for each of those measures and they're on page 450 of your board book and we developed 22 measure targets. And I may have forgotten to mention that we developed 26 lead and lag measures as well.

And then finally, there are strategy map initiatives, and these are themed activities to help implement our objectives, and these are on page 454 of your board book. Research says that developing more than three initiatives can cause organizations to have trouble focusing on and completing them, and if you have three or less that most often leads to either significant progress or actually completing those initiatives. We crafted three different strategic initiatives for our balanced scorecard, including a training alignment initiative, a policy and procedure review initiative and an organizational survey alignment initiative.

The approval that I'm requesting is to replace the KPIs with the balanced scorecard as the department's designated performance measurement tool. KPIs will continue to be maintained and can be made available for you at any time should you so desire. We envision providing a balanced scorecard update quarterly to the
board and we can even provide a KPI update as well.

Should you approve implementing the balanced scorecard, it
would become effective July 1, 2018 and the data
collection would begin from April 1 of 2018, we'd go back
and collect the data retrospectively.

This concludes my presentation. I'm happy to
respond to any questions you may have.

MR. PALACIOS: Thank you, Mr. Shindell.

Are there any questions?

(No response.)

MR. PALACIOS: You did a great job.

MS. HARDY: I move that the board adopt the
balanced scorecard as the department's performance
measurement system as a replacement for the key
performance indicators with an implementation of July 1,
2018.

MR. TREVIÑO: I second that motion.

MR. PALACIOS: Motion by Board Member Hardy,
second by Board Member Treviño to adopt the balanced
scorecard. All in favor please signify by raising your
right hand.

(A show of hands: Board Members Caraway,
Hardy, Painter, Palacios, Treviño.)

MR. PALACIOS: All those opposed?

(A show of hands: Board Member Walker.)
MR. PALACIOS: Board Member Walker is opposed.

The motion carries. And Board Member Barnwell.

MR. BARNWELL: Is returning.

MR. WALKER: He didn't get to vote, he doesn't even know what we're talking about.

MR. BARNWELL: I don't want to vote.

(General laughter.)

MR. PALACIOS: Does that count as an abstention?

MS. BREWSTER: He wasn't here when you took the vote.

MR. PALACIOS: Okay. It passes.

Okay. Thank you very much, Mr. Shindell.

Let's move on now to agenda item number 14, our legislative and public affairs update. Good morning, Ms. Love.

MS. LOVE: Good morning, Mr. Chairman and members, and Executive Director Brewster. My name for the record is Caroline Love, director of the Government and Strategic Communications Division, and I wanted to provide an overall legislative update for you this morning to give you a status on where we are not only on implementation efforts from legislation that passed last session but also what we're looking for as we head into the next session.

So I'll begin by discussing that by and large
the department has implemented most of the legislation
that was passed by the 85th Legislature, but there were a
couple of items that recently had some updates that I
wanted to provide to you all. And for the record also,
the briefing for this item begins on page 455 of your
board books.

So there were a couple of studies that were
passed during the last session that the department has
been working on. One of those was included in Senate Bill 2076. There was a requirement there for the department to consider options for eliminating elements of the registration, titling and inspection processes and that report is due to the legislature by December 31, 2018.

And additionally, House Bill 1959 requires the department to conduct a study looking at alternative technologies for commercial fleet vehicles, and those could include anything from registration, credentialing, permitting, but also anything that might be related to license plates, so that could include something I guess a little more futuristic such as digital license plates, as California has recently done a pilot that has implemented these types of plates. That study is not due until December 1 of 2021.

And we went out with a statement of work, and we are allowed through both of these studies to work with
an institution of higher education. That statement of
work, we received the responses and selected Texas State
University to help us with these studies. And I did want
to let you all know they are on target to complete the
Senate Bill 2076 study well before the December 31
deadline and they'll have a draft to us well before that
for review and finalization, and then for the secondary
study, the House Bill 1959, they anticipate having the
results of that study to the department in September of
2019, which is two years ahead of the statutory deadline
for that study, and the results of that study will help
the department determine the feasibility of a pilot for
any of those technologies, alternative technologies that
are identified that we could use and how those could move
forward in a pilot.

So those are underway and unless there's any
questions about the studies, I'll give an update on the
other ones.

MS. HARDY: I guess I just have a quick
question or a comment on the digital plates anyway, and
I've been reading about the California pilot, and from
what I understand it's 40 cars, less than 40 cars, they're
all state cars. I guess I still don't understand for as
much press as they're getting right now what are they
going to do for us. I mean, what's wrong with the current
plate system, how much added value do digital plates bring? And I guess that's all part of the pilot that they're running and that we're going to run in the future and everything else, but I'm just trying to understand what digital plates are going to do.

MS. LOVE: That's definitely a very valid question and that's something that will be part of the study is what the benefit it could bring. They definitely have an option for the things that they've discussed are the ability for the plates to identify if your vehicle registration might be expired, it would display it on the plate.

MR. WALKER: It's a money source for states. They're using it in the trucking industry.

MS. HARDY: Because they're expensive. Right?

MR. WALKER: It reads your truck when you go through a checkpoint. Your license plate expired yesterday, a cop pulls you over, writes you a ticket.

MR. TREVIÑO: RFID.

MR. WALKER: It's a money-generating source.

MR. PALACIOS: Okay. They're expensive.

MS. LOVE: Per the California pilot, they are listed at $699 for one plate. For a frame of reference, it does cost the state currently $3.10 to produce the metal plates, as set of the metal plates.
MR. BARNWELL: Is that both the front and the rear of the vehicle?

MS. LOVE: One.

MR. BARNWELL: That's just one, so it's $1,300 plus or minus for both of them. I'd just like to go on record saying that may not be practical.

MS. HARDY: Well, if the power goes out or something, how is the sheriff going to see a plate.

MR. WALKER: But we'd lose all that revenue on all these privatized plates.

MR. PALACIOS: Oh, no, you wouldn't. You've got them digital now.

(General talking and laughter.)

MS. HARDY: All right. Keep going, Caroline.

MS. LOVE: All of these things will be part of the study.

And then another item that was implemented recently at the end of May, Senate Bill 869 was passed last session that allows for people to designate a beneficiary for their vehicle upon their death outside of the probate process, so that is something that was implemented and now is available on your title.

MR. WALKER: What's the relevance of that?

MS. LOVE: It helps for people who may not have a will, or it's a very similar process that was set out
the previous session when it comes to property, real
property. The Texans for Access to Justice Commission is
the group who was working on this effort and they felt it
would be helpful to include vehicles as part of that as
well to help those in need, I guess.

MS. CARAWAY: How is that different from rights
of survivorship?

MS. LOVE: There is a nuanced difference. I
would have to defer to VTR. Thank you, Jeremiah. I feel
so alone without David.

MR. KUNTZ: I'm here for you, Caroline.

Jeremiah Kuntz, director of the Vehicle Titles
and Registration Division.

So I believe the question was what's the
difference between a beneficiary or a rights of
survivorship. So I know it's kind of a nuanced deal, but
on rights of survivorship both parties are listed with an
ownership right to the vehicle, so if a husband and wife
are jointly purchasing a vehicle, both of them are listed
on the title and a rights of survivorship means that if
one of them passes, then all rights to that vehicle passes
to the other person that's on the actual title itself.

With designating a beneficiary, a beneficiary has no
rights to that vehicle while the other parties that are on
the title are alive. Upon their death, then ownership
transfers to them, but they have no rights to come in and claim, hey, that's my vehicle. No, they're just a beneficiary, they only get that vehicle upon the owner's death.

   MS. CARAWAY: Thank you.

   MR. KUNTZ: Yes, ma'am.

   MS. LOVE: So unless there are any other questions on implementation efforts, I'll talk now about what we're planning for for the next session.

   So the 86th Legislature begins in January 2019, and as we've discussed before, this board is tasked with identifying opportunities for improvement or efficiencies via statutory changes in the Texas Transportation Code and that any recommendations should be presented. And so with the January date not too far off in the future, our staff has begun that process of looking current statutory limitations.

   I will say some of the things that we're looking at relate to things we've identified as a result of processing titles for flood vehicles or things that happened as a result of the hurricane and storm, so those are some things that we're considering. We have not finalized a list for internal discussion just yet but we will shortly.

   And then in the next few months we'll begin the
stakeholder process to get feedback from any impacted
groups, and then we plan to in August have a preliminary
list of findings that will be presented and we'll also be
discussing with Member Treviño opportunities for the
Legislative Committee to meet so we can discuss some of
those items in more depth. But we hope to have a final
list of recommendations to this board before the bill
filing begins for the 86th Legislature which is set for
November of 2018, November 12 is the date that that
begins. So hopefully if we can get all those final and
adopted before then, we'll be able to start that process
well before the session begins.

And of course, we'll have a very unique
situation going into this next session with the
department's Sunset legislation that will also be out
there, and as Ms. Brewster mentioned earlier, their
recommendations that they adopt in August will frame that
legislation and it will likely be, in addition to be
significant that it continues our agency, it will also
likely include several different statutes references and
things like that. So it will be a very fun and
interesting session, I'm sure.

MR. PALACIOS: As always.

MS. LOVE: And those were all the remarks that
I had prepared. I'm happy to answer any questions.
MR. PALACIOS: Thank you, Caroline.

Okay. Did I miss anything or are we at the end?

Executive session. So we are going into closed session. It is now 11:40 a.m., on June 14, 2018. We'll go into closed session under Texas Government Code Sections 551.071, 551.074 and 551.089. For those of you in the audience, I anticipate being in executive session for approximately 30 minutes, mas o menos, and we'll reconvene in open session after that.

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

(Whereupon, at 11:40 a.m., the meeting was recessed, to reconvene this same day, Thursday, June 14, 2018, following conclusion of the executive session.)

MR. PALACIOS: It's 12:13 p.m. on June 14, 2018 and the Board of the Texas Department of Motor Vehicles is now in open session. We want to note that no action was taken in closed session.

We do not have any public comments.

MR. WALKER: I make a motion we adjourn.

MR. PALACIOS: Motion by Board Member Walker to adjourn.

MR. TREVIÑO: Second.

MR. PALACIOS: Second by Board Member Treviño.
All in favor?

(A show of hands.)

MR. PALACIOS: Let the record reflect the vote is unanimous. It is now 12:13 p.m. and we are adjourned.

(Whereupon, at 12:13 p.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF:     TxDMV Board
LOCATION:     Austin, Texas
DATE:       June 14, 2018

I do hereby certify that the foregoing pages, numbers 1 through 149, 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:  6/22/2018

/s/ Nancy H. King
(Transcriber)

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