

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Thursday,
October 3, 2019

Lone Star Room
Building 1
4000 Jackson Avenue
Austin, Texas

BOARD MEMBERS:

Guillermo "Memo" Treviño, Chair
Charles Bacarisse
Stacey Gillman
Brett Graham
Tammy McRae
John Prewitt
Paul Scott
Shelley Washburn

I N D E X

<u>AGENDA ITEM</u>	<u>PAGE</u>
1. Roll Call and Establishment of Quorum	6
2. Pledges of Allegiance - U.S. and Texas	7
3. Chairs Reports	
A. Appointment of a Member to Act in the Absence of the Chair and the Vice Chair under Transportation Code, §1001.023(b)(9)	8
B. Proposed 2020 Board Meeting Schedule	10
4. Executive Director's Reports	10
A. TxDMV Organizational Assessment Project Update	11
B. Awards, Recognition of Years of Service, and Announcements - Introduction of Chief of Information Security, Angel Cruz	16
 CONTESTED CASE	
5. Rehearing: Denial of Renewal Application, Revocation of General Distinguishing Number (GDN), Revocation of Salvage Licenses, and Appeal to SOAH under Occupations Code, §§53.021-53.023 and 2301.251(a), Transportation Code, §503.038(a)(7); and 43 Texas Administrative Code §215.88(i), (j), and §221.112. MVD Docket Nos. 17-0178350 (GDN Case), 17-0178352 (Salvage Case), and 19-0000505 (Salvage Case), SOAH Docket Nos. 608-18-2228.ENF and 608-18-2229.ENF; Texas Department of Motor Vehicles, Enforcement Division v. Discount Auto Brokers, LLC	19
 COMMITTEE ITEM	
6. Advisory Committee Appointments	51
 RULE - ADOPTION	
7. Chapter 217, Vehicle Titles and Registration New, §217.75 (Relating to SB 604, providing Registration and Title System and fraud training and updating statutory citations) (Proposal Published August 23, 2019 - 44 Tex. Reg. 4465)	62
 RULES - PROPOSAL	
8. Chapter 217, Vehicle Titles and Registration	112

New, §§217.76-217.78
(Relating to suspension or denial of access
to the Registration and Title System)

9. New, Chapter 223, Compliance and Investigations 116
Division
(Relating to county tax assessor-collector
reporting of suspected fraud, waste, or abuse
and implementation of Sunset Advisory Commission's
Recommendation 2.2)
- BRIEFINGS AND ACTION ITEMS
10. Specialty Plate Design 121
Baylor University, Redesign proposed by
My Plates under Transportation Code, §504.851
11. Finance and Audit
- A. Delegation of Authority to the Executive 124
Director for the Execution of the
Specialty License Plate Marketing Contract
- B. Delegation of Authority to the Executive 130
Director for the Execution of the
Dallas/Carrollton Regional Service Center
Commercial Property Lease Renewal
- C. FY 2019 Fourth Quarter Financial Report 133
- D. Procurement and Contract Management Audit 138
Update
- E. Internal Audit Charter 141
- F. Internal Audit Division Status Report 143
- FY 2019 Quality Assurance and Improvement
Program Report
- FY 2019 Annual Audit Report
- EXECUTIVE SESSION
12. The Board may enter into closed session under 155
one or more of the following provisions of the
Texas Open Meetings Act, Government Code,
Chapter 551:
- Section 551.071
 - Section 551.074
 - Section 551.076
 - Section 551.089
13. Action Item from Executive Session 156
Executive Director Compensation
14. Public Comment none
15. Adjournment 157

P R O C E E D I N G S

1
2 MR. TREVIÑO: Good morning. My name is Memo
3 Treviño, and I'm pleased to open the Board meeting of the
4 Texas Department of Motor Vehicles. It is approximately
5 8:03 a.m., and I'm now calling the Board meeting for
6 October 3, 2019 to order.

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

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

15 Members Washburn and Prewitt, can you hear us?

16 MS. WASHBURN: Yes.

17 MR. PREWITT: Yes.

18 MR. TREVIÑO: All good? Great.

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

24 Before we begin today's meeting, please place
25 all cell phones and other communication devices in the

1 silent mode, and please, as a courtesy to others, do not
2 carry on side conversations or other activities in the
3 meeting room.

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

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

24 Before we begin today, I'd like to remind all
25 presenters and those in attendance of the rules of

1 conduct at our Board meetings. In the department's
2 rules, Section 206.22, the Board chair is given authority
3 to supervise the conduct of meetings. This includes the
4 authority to determine when a speaker is being disruptive
5 of the meeting or is otherwise violating the timing or
6 presentation rules I just discussed.

7 And now I'll call the roll.

8 Board Member Bacarisse?

9 MR. BACARISSE: Here.

10 MR. TREVIÑO: Board Member Gillman?

11 MS. GILLMAN: Present.

12 MR. TREVIÑO: Board Member Graham?

13 MR. GRAHAM: Present.

14 MR. TREVIÑO: Board Member McRae?

15 MS. McRAE: Here.

16 MR. TREVIÑO: Board Member Prewitt?

17 MR. PREWITT: Here.

18 MR. TREVIÑO: Board Member Scott?

19 MR. SCOTT: Here.

20 MR. TREVIÑO: Board Member Washburn?

21 MS. WASHBURN: Here.

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

24 So let's all please stand and honor our
25 country and state with the pledges of allegiance.

1 (The pledges of allegiance were recited.)

2 MR. TREVIÑO: Well done.

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

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

21 Before we go to agenda item number 3, I would
22 like to say thank you to our fantastic department
23 regional staff in Houston and to our great IT staff here
24 at Camp Hubbard for ensuring that the remote meeting link
25 was functioning for today's meeting, and Member Prewitt

1 and Member Washburn look great over there, so great job,
2 great job.

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

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

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

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

16 All right. And then a couple of other
17 comments here. Laura Ryan from the Texas Department of
18 Transportation, TxDOT. Since November 7 of 2007, at
19 least one person has died on Texas roadways every single
20 day. Since that day, more than 65,000 fatalities have
21 resulted from vehicle crashes on Texas roadways. In an
22 effort to end the deadly 18-year milestone, the Texas
23 Department of Transportation in its End the Streak
24 Campaign reminds drivers it's a shared responsibility
25 among roadway users and engineers to keep our roads safe.

1 Former Texas DMV Board chair, Laura Ryan, and
2 current TxDOT commissioner, has asked for our support in
3 partnership. I'm excited to announce that Texas DMV will
4 join forces with our sister state agency to help raise
5 awareness for the End the Streak Campaign. During our
6 December Board meeting we'll highlight how you'll see
7 campaign materials in every Texas DMV facility across
8 Texas so that we can ensure all Texans understand that
9 each one of us has the power to make a difference and
10 help save a life.

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

16 Okay. And then we have another really
17 exciting thing, the reason that Member Washburn is in
18 Houston is not only to accompany Member Prewitt so he's
19 not lonely over there, but also she's being honored with
20 the Women Who Mean Business Award this evening. The
21 Houston Business Journal included our very own Board
22 member, Shelley Washburn, as one of their 2019 Women Who
23 Mean Business Award recipients, specifically as an
24 outstanding leader in professional services. Member
25 Washburn was selected for this award for her career

1 achievements, contributions to her company, community
2 involvement and leadership, and also just for being a
3 great person. She will be honored this evening at an
4 awards gala in Houston.

5 Congratulations, Member Washburn.

6 (Applause.)

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

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

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

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

24 MS. BREWSTER: Thank you, Mr. Chairman.

25 Before I go into my report, I just want to

1 thank publicly the TxDMV Board and the executive team for
2 their generosity in hosting yesterday's luncheon. I
3 thought it was a smashing success, we had great
4 attendance, celebrating the 10th anniversary of the Texas
5 Department of Motor Vehicles. So thank you so much on
6 behalf of the agency. We couldn't have done it without
7 the Board and the executive team, and certainly the
8 volunteers that helped organize yesterday's event, so
9 thank you very much.

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

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

14 (Applause.)

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

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

23 TOAP is a staff-driven effort to revisit the
24 legislature's vision for this agency and to ensure we
25 have a strong foundation upon which to build as we move

1 into the future. And we utilized six work groups,
2 communications, legal, organizational preparation,
3 process and technology work groups to accomplish our
4 objectives through this project.

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

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

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

1 department.

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

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

1 sets to be grown within the department.

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

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

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

19 I want to sincerely thank the executive team
20 for either chairing a work group or serving on a work
21 group. Everyone participated in this process, and so I
22 would like to recognize the chairs of each of the
23 committees: for the communications work group, Caroline
24 Love was the chair, thank you, Caroline; Tracey Beaver
25 who chaired the legal work group; Linda Flores who

1 chaired the finance work group; Daniel Avitia who chaired
2 the process work group; and Mike Higginbotham who chaired
3 our technology work group. If you'll just join me -- I'm
4 sorry, and Matthew Levitt who chaired the organizational
5 preparation work group.

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

8 (Applause.)

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

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

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

1 University of Texas at Austin and University of Texas at
2 Pan American.

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

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

12 (Applause.)

13 MS. BREWSTER: Thank you, Angel.

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

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

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

24 And this morning we have an employee who has
25 reached 20 years of state service here with us. Please

1 welcome Tiffanay Waller from the Finance and
2 Administrative Services Division.

3 (Applause.)

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

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

18 Congratulations on 20 years, Tiffanay.

19 (Applause; pause for presentation and photos.)

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

23 (Applause.)

24 MS. YANCEY: Donny began his state career with
25 the DPS in 1994 at the age of 18. His first job was as a

1 security officer on the graveyard shift with the DPS
2 Capitol Police District. Donny moved to daytime work at
3 DPS in July 1996 as an accident records microfilm clerk,
4 preparing paper crash reports for microfilm processing.
5 In March 2005 he became the electrical designer and lead
6 upfitter for customized mobile equipment that was
7 manufactured in-house by TxDOT. In December 2010 Donny
8 was hired as the fleet manager for TxDMV. He was the
9 youngest fleet manager in Texas state government at that
10 time. He is responsible for all DMV fleet vehicle
11 related operations and for a 63-unit fleet. Donny has
12 consistently provided an exceptional level of customer
13 service and routinely receives praise from his
14 stakeholders.

15 Congratulations, Donny.

16 (Applause; pause for presentation and photos.)

17 MS. YANCEY: The following employees reached a
18 state service milestone but were unable to join us this
19 morning. Twenty years: Scott Doyle, Information
20 Technology Services Division; and Stephanie Rogers from
21 Enforcement Division. Twenty-five years: Yolanda
22 Brijalba in Vehicle Titles and Registration Division.
23 And forty years: Earl Pearson from Enforcement Division.

24 And last, the following employees recently
25 retired from the department: Gary Gradel, Cecilia Chen,

1 Linda Page, Pat Barnes, Alice Carmona, and Conrad Munoz.

2 Thank you.

3 (Applause.)

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

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

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

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

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

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

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

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

1 Thank you.

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

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

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

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

20 The Board's first vote in June on this matter
21 was unanimous in decision to deny the license renewal and
22 revoke Discount Auto Brokers GDN and salvage licenses.
23 In my first presentation to the Board I reviewed the
24 facts of the case. I also spent some time reviewing the
25 Motor Vehicle Division's Licensure Review Committee

1 process and our focus on consistency and objectivity when
2 making decisions regarding these matters. Today I would
3 like to briefly review the facts of the case again and
4 then spend some time addressing the ALJ's proposal for
5 decision, addressing specifically whether the ALJ did not
6 properly apply or interpret applicable law in determining
7 fitness and licensure, as well as why the ALJ's
8 recommended sanction is flawed and must be changed.

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

18 Number two, despite this warning in 2016, Mr.
19 Tabatabaei not only allowed the unlawful activity to
20 continue but to increase. Police investigators found
21 that 281 vehicle inspections conducted in a six-month
22 period at his licensed location, representing 59 percent
23 of all vehicle inspections performed, were fraudulent as
24 well. Mr. Tabatabaei was arrested for this second
25 investigation at his licensed location.

1 Number three, on November 15, 2016, Mr.
2 Tabatabaei pled guilty to the felony of tampering with
3 government records and confessing that he unlawfully,
4 intentionally and knowingly allowed false information to
5 be entered into the State Motor Vehicle Emissions and
6 Safety Inspection System which is used by state vehicle
7 inspectors to document motor vehicle emissions and safety
8 inspections.

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

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

15 Now, members, I'd like to review the ALJ's
16 proposal for decision briefly. Texas Government Code
17 2001.058(e) provides that a state agency may change an
18 ALJ's finding of fact or conclusions of law if the ALJ
19 did not properly apply or interpret applicable law and/or
20 administrative decisions. In this case the ALJ did not
21 properly apply or interpret applicable law, determining
22 fitness for licensure in two ways.

23 First, by requiring the department to prove
24 that Mr. Tabatabaei knew or should have known that his
25 employee was using his inspector license to conduct

1 illegal emissions, and then secondly, by concluding that
2 the department had not met its burden of proof on this
3 case, when, in fact, the guilty plea Mr. Tabatabaei
4 entered in criminal court proved his unlawful,
5 intentional and knowing conduct, and the department met
6 its burden of proof by introducing Mr. Tabatabaei's
7 guilty plea. There are several SOAH licensing opinions
8 that support the basic legal principle that a criminal
9 court guilty plea is an admission of guilt in a
10 subsequent licensing hearing.

11 Based on the ALJ's errors in applying the law,
12 I recommend the Board find Mr. Tabatabaei unfit for
13 licensure. The ALJ's recommended sanction is flawed, in
14 my opinion, and must be changed. The ALJ recommended
15 that Discount Auto Brokers' licenses be renewed and
16 suspended for two years and any instance of misconduct
17 during the two-year period be probated and suspension
18 leading to summary revocation of all licenses. The ALJ
19 erred in this recommendation for two reasons. Number
20 one, summary revocation of a license would violate
21 statute and Board rules requiring proper notice and
22 hearing for a license holder, and number two, the word
23 misconduct of any kind is too vague to be enforceable.

24 Members, in summary, the ALJ's recommended
25 sanction is too lenient to be effective and conflicts

1 with prior SOAH recommendations, statutory provisions and
2 Board decisions. The Board may change a sanction as the
3 Board, and not the ALJ, is the decision-maker concerning
4 sanctions in a contested case under Texas law.

5 Accordingly, staff is asking the Board to issue a final
6 order adopting the ALJ's corrected findings of fact and
7 conclusions of law, as recommended by staff, denying all
8 applications and revoking the Respondent's salvage dealer
9 and GDN licenses as this, I believe, is the only sanction
10 that would be consistent with current law and prior SOAH
11 recommendations and Board decisions.

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

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

19 MR. TREVIÑO: Thank you, Mr. Avitia.

20 Any questions from Board members?

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

24 MR. AVITIA: Yes, sir. Just give me a moment
25 to find it.

1 So counsel was asking me a question here,
2 Member Graham. Are you specifically talking about
3 2001.058(e) which allows the Board to change findings of
4 fact and conclusions of law, or the specific conclusions
5 of law and findings of fact in the PFD?

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

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

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

16 MR. TREVIÑO: Member Scott?

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

23 MR. AVITIA: Good question, Member Scott. We
24 do not have a process to essentially probate a license.
25 In the June presentation I mentioned we don't have a

1 probation division within this agency, so probating is
2 really not an option for this agency. I'm not sure who
3 does that in licensure matters at this point.

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

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

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

19 MR. AVITIA: Correct.

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

22 (No response.)

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

25 So we'll now proceed with Respondent's

1 presentation.

2 Mr. Lau, welcome.

3 Mr. Tabatabaei.

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

9 I just want to -- there's some legal issue
10 that I want to get out of the way. First of all, there
11 has been legal precedent under the Texas Board of Dental
12 Examiners v. Brown, which is grounds that the Board
13 should really give deference to the ALJ's findings of
14 facts and conclusion of law unless, as Mr. Avitia has
15 said, that under Texas Administrative Procedure Code
16 2001.58(e) when there is a specific finding that the ALJ
17 has misapplied the law or has conduct something improper,
18 therefore, the Board can depart from it, and it requires
19 the department to provide specific legal basis and
20 reasoning for the departure.

21 And in this case, as elicited from the ALJ
22 hearing back in November, there was testimony and the ALJ
23 judge did agree, as presented in his proposal for
24 decision, that Mr. Tabatabaei and Discount Auto Brokers,
25 because of a variety of different reasons, because they

1 were being evicted at the time and there was impending
2 tax deadline and Mr. Tabatabaei allowed one of his
3 employees to use his license, state inspection license to
4 do inspections, and not knowing that the employee ended
5 up doing these dummy fraudulent inspections behind his
6 back.

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

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

21 And then the ALJ also found specifically that
22 Mr. Tabatabaei has implemented specific steps to ensure
23 that something like that wouldn't happen again, including
24 providing periodic employee training, installing cameras
25 that are recording 24 hours to ensure that something like

1 that wouldn't happen again. In fact, early this year one
2 of his employees was caught doing these kind of dummy
3 inspections and then Mr. Tabatabaei made a report to
4 Department of Public Safety for that purpose and then
5 immediately terminated the employee.

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

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

24 So based on the authority of the Brown case,
25 the department really should give deference to that

1 decision, to that finding of law that Mr. Tabatabaei is
2 fit for licensure. So with all due respect to counsel,
3 there is nothing in the ALJ's decision or in his proposal
4 for decision where it does indicate that he has in any
5 way misapplied the law. He did go through the factors,
6 he applied the factors based on the testimony and the
7 evidence received at the ALJ hearing and he made a
8 conclusion that Mr. Tabatabaei is fit for licensure.

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

1 support his family and he'll be essentially on the
2 street.

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

7 Thank you.

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

10 Any questions for Mr. Lau? Member Prewitt.

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

13 MR. TREVIÑO: I think we still have
14 discussion.

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

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

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

24 (No response.)

25 MR. TREVIÑO: Anybody else?

1 (No response.)

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

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

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

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

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

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

25 Now, Mr. Lau has said that Mr. Tabatabaei did

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

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

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

24 Members, that concludes my remarks with regard
25 to Mr. Lau's comments. Certainly happy to answer any

1 questions, but I seek your favorable determination on
2 this matter.

3 MR. TREVIÑO: Any questions from the Board?
4 Member Scott.

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

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

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

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

24 MR. TREVIÑO: Any more questions? Member
25 Graham.

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

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

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

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

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

1 MR. GRAHAM: Thank you.

2 MR. AVITIA: Yes, sir.

3 MR. TREVIÑO: Member Gillman.

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

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

15 MS. GILLMAN: Thank you.

16 MR. TREVIÑO: Member Scott.

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

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

23 MR. TREVIÑO: Member Graham.

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

25 MR. TREVIÑO: Sure.

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

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

25 MS. BEAVER: Tracey Beaver, general counsel,

1 for the record.

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

8 Thank you.

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

11 MR. AVITIA: Yes, sir.

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

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

20 MR. TREVIÑO: Okay. Thank you.

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

23 (No response.)

24 MR. TREVIÑO: Thank you.

25 Mr. Lau, Mr. Tabatabaei.

1 MR. LAU: Thank you.

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

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

24 And then with respect to the allegation that
25 Mr. Tabatabaei10:27 AM intentionally engaged in this

1 conduct, we know for a fact from the police report there
2 are a lot of conclusions being drawn that the fact that
3 Mr. Tabatabaei was talking to his employees and having
4 conversations with his employees at his lot, it's
5 considered he was instructing people to do these illegal
6 actions. But they were videotapes of what had happened,
7 and we actually obtained the videotape and presented it
8 to the ALJ.

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

21 And also, with respect to what had happened in
22 the past 2015, prior to the incident that we are
23 concerned about, where two employees were arrested at the
24 place of business, there was never a conversation to Mr.
25 Tabatabaei about what had happened. This is also

1 elicited during the testimony to the ALJ. All had
2 happened was that the detective came and talked to Mr.
3 Tabatabaei in his office asking, Do you know what's going
4 on? And Mr. Tabatabaei said, I don't know. And that was
5 the extent of the conversation. There was never a
6 warning about something illegal misgiving that is going
7 on his business, there was never any indication that
8 something was going on.

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

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

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

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

21 MR. PREWITT: No questions.

22 MR. TREVIÑO: Member Gillman.

23 MS. GILLMAN: Just discussion.

24 MR. TREVIÑO: Okay. Good.

25 Member Prewitt, did you have a question?

1 MR. PREWITT: Member Treviño, I'd like to make
2 a motion at this time.

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

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

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

1 in a contested case.

2 Thank you, Mr. Chairman.

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

6 MS. GILLMAN: I'll second.

7 MR. TREVIÑO: We have a second.

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

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

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

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

24 I feel like also the letters of
25 recommendation, one from the BBB, while I respect the

1 BBB, I don't feel like it's a credible measure of rehab
2 because the BBB never comes to audit your place of
3 business, there's no consequence as a result of the BBB's
4 opinion, and they don't have any fraud detection. Maybe
5 a better judge of performance would have been the
6 inspector that comes around regularly from the state. To
7 me that would have been a better judge of performance and
8 rehab going forward.

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

16 Thank you, Mr. Chairman.

17 MR. TREVIÑO: Thank you, Member Gillman.

18 Any more discussion? Member Graham.

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

1 of time that you've spent on this.

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

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

7 Under Government Code Section 2001.058(e),
8 you'll need to identify those conclusions of law that you
9 would recommend changing, if there are any, and then
10 you'd need to specify the specific reasoning as to why,
11 and some of that reasoning would be to also go to any of
12 those mitigating factors under Occupations Code Section
13 53.023, so that's the discussion that's being had right
14 now.

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

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

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

23 MR. TREVIÑO: Yes, Member McRae.

24 MS. McRAE: The department has to consider
25 certain factors under 53.023, one of those being the age,

1 and the Respondent was 39 years old at the time of the
2 incident, and so I feel like he was old enough to
3 distinguish right from wrong.

4 The letter of recommendation, that's another
5 factor we have to consider, and you had the one of the
6 letter of recommendation from the probation officer, and
7 while certainly the probation officer's recommendation is
8 credible, it's a credible source, there are other sources
9 of recommendation that could have been sought, such as
10 the chief of police, the sheriff's office. None of those
11 exist, you have just the one from the probation officer.

12 There is no other recommendations from anyone else
13 within the community that you come into contact with.

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

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

23 MR. TREVIÑO: Thank you, Member McRae.

24 Any more discussion?

25 MR. PREWITT: Mr. Chairman?

1 MR. TREVIÑO: Yes, Member Prewitt.

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

6 MR. TREVIÑO: Member Prewitt, one second.

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

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

12 MR. TREVIÑO: Very good. Thank you.

13 Go ahead, Member Prewitt. Sorry to interrupt
14 you.

15 MR. PREWITT: So I think the SOAH proposal for
16 decision, my basis that it should be amended because in
17 finding of fact 8 the ALJ found that 281 unlawful
18 emissions inspections -- which we've already discussed
19 were conduct conducted from the Respondent's place of
20 business -- from October 2015 to April 2016, and Mr.
21 Chairman, the false information from those inspections
22 were recorded in the Texas Information Management System
23 using Respondent/owner's license number and
24 Respondent/employee's license numbers. That's 281
25 inspections which I think is a very significant number.

1 The fact that the Respondent allowed his
2 employee to use his vehicle inspector license to perform
3 these inspections at his place of business knowing it
4 would be unlawful to do so. And although the ALJ found
5 in part that the Respondent took responsibility for and
6 regrets his mistake, the number of times he committed
7 this unlawful act, over 281 times, is substantial and
8 it's not an isolated incident that could be considered a
9 mistake.

10 Mr. Chairman and Board, I would also state
11 that the Respondent did not show or does not seem to show
12 sufficient rehabilitation for being fit for licensure.
13 He was 39 years old when these violations occurred, when
14 this crime was committed, from October 20, 2015 to April
15 20, 2016. Only one year had lapsed since the last time
16 that Respondent's crime was committed to the time he
17 applied to renew his license, and in my opinion, it's
18 just not enough time to have passed since his last
19 criminal activity to consider it rehabilitated.

20 The thing that was mentioned earlier by Board
21 Member Gillman about the BBB, that's just an industry
22 association, it's not an endorsement that he's
23 rehabilitated or doing business in a proper manner. It
24 would have been helpful to have character references from
25 those in contact with him or from his industry that he's

1 an upstanding and honorable member of the salvage
2 industry community. We don't have that.

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

9 Mr. Chairman, concerning the mitigating
10 factors under Occupations Code Section 53.023, the
11 Respondent did not show he's rehabilitated. Giving
12 Respondent a license would allow him to repeat the
13 unlawful conduct which is unacceptable. The ALJ found in
14 finding of fact 17 that the unlawful conduct was still
15 occurring at his place of business as recent as early
16 2018. Although the Respondent fired the employee for
17 performing illegal inspections, giving Respondent a
18 license would give him the opportunity to repeat the
19 conduct.

20 Thank you, Mr. Chairman.

21 MR. TREVIÑO: Thank you, Member Prewitt.

22 Any further discussion?

23 (No response.)

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

1 we have a second. Hearing none, I call for the vote.

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

4 Member Bacarisse?

5 MR. BACARISSE: Aye.

6 MR. TREVIÑO: Member Gillman?

7 MS. GILLMAN: Aye.

8 MR. TREVIÑO: Member Graham?

9 MR. GRAHAM: Aye.

10 MR. TREVIÑO: Member McRae?

11 MS. McRAE: Aye.

12 MR. TREVIÑO: Member Prewitt?

13 MR. PREWITT: Aye.

14 MR. TREVIÑO: Member Scott?

15 MR. SCOTT: Aye.

16 MR. TREVIÑO: Member Washburn?

17 MS. WASHBURN: Aye.

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

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

22 Thank you.

23 MR. AVITIA: Members, thank you.

24 MR. TREVIÑO: Thank you, Mr. Avitia. Thank
25 you, Ms. Pierce.

1 We'll take a quick two-minute break and we
2 will resume in a couple of seconds.

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

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

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

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

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

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

25 Our Sunset Bill SB 604 required that the TxDMV

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

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

22 Please note that the applicants that are not
23 on this list will continue to be considered should there
24 be turnover or if there is additional members in a
25 particular area of expertise that is needed.

1 Additionally, we will continue to accept applications for
2 our advisory committees. If there are additional members
3 that will further balance the representation, I will most
4 certainly consider their eligibility and bring them
5 before this Board for consideration.

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

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

10 Does anybody have any questions for Ms.
11 Brewster?

12 MS. McRAE: Chairman, I have a question.

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

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

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

18 The term for the advisory committee is four
19 years.

20 MS. McRAE: Okay. I thought so.

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

23 MS. BREWSTER: Member McRae, yes, they can.
24 The maximum allowance is 24 on the committee, and what
25 you see presented are 14 names at this time.

1 MS. McRAE: Okay.

2 MR. TREVIÑO: Member Graham.

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

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

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

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

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

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

1 plea, Mr. Chairman.

2 MR. TREVIÑO: Of course.

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

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

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

24 But again, if we receive applications, we will
25 most certainly consider those, so any assistance in

1 helping get the word out to increase the representation
2 on the advisory committee would be appreciated.

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

11 Thank you.

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

14 Member Gillman.

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

18 MS. BREWSTER: Yes, ma'am.

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

1 all three.

2 Thanks.

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

5 Member Washburn.

6 MS. WASHBURN: Thanks.

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

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

19 (General laughter.)

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

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

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

8 MS. WASHBURN: Thank you.

9 MR. TREVIÑO: Great.

10 MR. GRAHAM: One more question.

11 MR. TREVIÑO: General Counsel Beaver.

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

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

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

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

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

23 (General laughter.)

24 MR. GRAHAM: I just wanted to ask did we reach
25 out to stakeholders? What did that process look like?

1 MS. BREWSTER: Yes. Member Graham, thank you
2 for asking that question. We've done a series of things.
3 We've mentioned it a couple of times in this meeting,
4 but we've also sent the message throughout GovDelivery
5 which is our primary way of communicating with the
6 various stakeholder groups to get the message out. In
7 addition, to add greater visibility around the process,
8 the information has been posted on the website explaining
9 what the various committees, what we're looking for, as
10 well as the application so that we can get that
11 information and review the eligibility of those
12 candidates with relative ease.

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

24 MS. BREWSTER: Geography, as well as consumers
25 of the services versus industry. That was very important

1 through the Sunset process to make sure that we have a
2 more balanced representation between industry and
3 consumers of our services.

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

7 MS. BREWSTER: That is correct.

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

10 MS. BREWSTER: Yes, sir.

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

14 Any other comments from Member Prewitt?
15 You're awfully silent. You're good. Okay.

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

19 MS. BREWSTER: No, sir.

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

22 Do I have a motion?

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

25 MR. TREVIÑO: Member McRae.

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

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

14 MR. SCOTT: Second.

15 MR. TREVIÑO: Second from Member Scott.

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

18 (A show of hands.)

19 MR. TREVIÑO: And it appears to be unanimous.
20 Great. Motion carries.

21 Thank you very much, Member McRae.

22 We now go into the rules section. I'd now
23 like to hear agenda item number 7. Rule adoptions. I'll
24 turn it over to Mr. Jeremiah Kuntz. Welcome, Mr. Kuntz.
25 Thank you for joining us today.

1 MR. KUNTZ: Good morning. Thank you, members.

2 For the record, Jeremiah Kuntz, director of the Vehicle
3 Titles and Registration Division.

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

7 These rules relate to Senate Bill 604
8 providing registration and title system and fraud
9 training and updating statutory citations. The adopted
10 new sections implement Transportation Code 520.023, as
11 added by Senate Bill 604 from the 86th Legislative
12 Session. That bill required the department to implement
13 a training on the department's automated registration and
14 title system. Senate Bill 604, Section 4.06 requires the
15 department to adopt rules to implement the training
16 program required by that section by December 1 of 2019.

17 And I wanted to make sure that we stress that.

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

24 MR. TREVIÑO: Mr. Kuntz, could you repeat that
25 date again?

1 MR. KUNTZ: December 1, 2019.

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

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

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

20 As I go through this, I'm going to try to go
21 through a couple of things: one, the rule, and then also
22 how the training program will work. Before I do that, I
23 do want to mention that we took some steps to try and
24 make sure that the word was out with the tax assessor-
25 collector community, basically our largest impacted

1 stakeholder by this rule. This rule requires the county
2 tax assessor-collectors to take training, as well as our
3 own employees, but we wanted to really make sure that we
4 got the word out to them about the rule and then how the
5 department anticipated implementing the rule.

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

18 The department has had a training application
19 that we refer to as the ELearning system that's been
20 available to tax assessor-collectors as well as our own
21 employees for some time now. There are currently 51
22 lessons that are in that program that would be required
23 by this rule. There are other lessons that are available
24 on that rule but that are not required, but there are 51
25 potential lessons that would be required. And when I say

1 required, they would be required depending on what
2 permissions are granted to that employee, so not all
3 employees in the county offices would have to take all 51
4 of those modules. Depending on what permissions that
5 employee is given, they would have to take anywhere from
6 what we estimate between three hours up to approximately
7 24 hours if you had basically full permissions, every
8 permission available.

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

21 And so we believe that there is an investment
22 of time in employees, just as we see within the
23 department we invest in our own employees when we send
24 them to training. Ms. Brewster referred to the programs
25 that we have within the department to invest in our

1 leadership and to make sure that our employees are fully
2 trained for the positions that they hold. And so we find
3 that to be very substantial in the way that we're viewing
4 how this rule will be implemented, so I wanted to make
5 sure that we're really fully talking through that.

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

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

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

21 Additionally, we provide support to our county
22 tax assessor-collectors in our 16 regional offices and we
23 have a mandate to all of our employees that support those
24 counties to make sure that they have taken all the
25 modules as well. So again, we're investing that time in

1 our own employees to make sure that our employees are
2 looking at all of the same training content that the tax
3 assessor-collectors are going to be taking.

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

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

13 MR. KUNTZ: Thank you, sir.

14 MR. TREVIÑO: Absolutely.

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

19 So 217.75(a) establishes that a person using
20 RTS must complete the training. That includes department
21 personnel as well as county tax assessor-collector
22 personnel. Just to make sure that we're clear, it does
23 not include deputies that are not utilizing the
24 registration and title system. We have deputies that use
25 other applications like webDEALER, webSUB. Those are not

1 covered under this rule as they are not utilizing the
2 registration and title system, and that was what statute
3 required us to provide training.

4 217.75(b) specifies training will be available
5 through the department's online training system. That is
6 the ELearning system that I referred to.

7 (c) requires a person to complete each
8 training course associated with the level of permission
9 to enable that permission and sets time frames for
10 completing the training. The proposed text has been
11 changed to clarify one item, and there was a comment that
12 came in regarding a passing score or what is completed.
13 We have gone through and clarified, because that is the
14 way our system is currently set up, a passing score is an
15 80 percent or higher.

16 We know that there are some industry standards
17 and the school system that require 70 percent or higher.

18 As industry professionals and as we look at the system,
19 we believe that 80 percent for an industry professional
20 is a reasonable score for them to be able to accomplish.

21 Again, I've taken these courses. A person who is fully
22 familiar with what's in that content should easily be
23 able to achieve of 80 percent or higher.

24 MR. TREVIÑO: And you can take the test over,
25 can't you?

1 MR. KUNTZ: You can take the test over, and
2 we've also clarified that as well.

3 MR. TREVIÑO: Thank you.

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

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

19 21.75(d) provides the department will disable
20 a user's permission if the training is not completed
21 within the authorized time frames in that section. The
22 text has been changed to clarify the permission can be
23 enabled by using the process to complete training and
24 enable the permissions above. So what that is referring
25 to is if for some reason somebody has had their

1 permission -- they got a permission today, they're an
2 existing employee, they failed to complete the training
3 and receive a passing score and their permission has been
4 disabled, all it takes is making sure that they take the
5 training course, get an 80 percent or higher, get that
6 verified by the department, and their permission will be
7 reenabled at that time. So we're clarifying that that is
8 all it takes, it's not a permanent disabling of that
9 person's permissions if they fail to complete the course
10 within that time frame. All they have to do is go back,
11 take the training, and their permission will be
12 reenabled.

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

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

23 The department received 147 written comments
24 requesting changes in the proposed text, were against the
25 rule as proposed from the Tax Assessor-Collector

1 Association of Texas and the tax assessor-collectors
2 themselves individually.

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

7 The first comment that I'll kind of go over is
8 the score of 80 percent, and I've mentioned that before.

9 There were some comments that suggested that we should
10 lower that passing score down to 70 percent from 80. We
11 also received a comment that we needed to put what the
12 passing score was into the rule language itself. We have
13 done that, we've added what a passing score entails of 80
14 percent. We did, however, not lower that score down to
15 70 percent based on the comments that I made previously,
16 that they can go back and retake the test, and as
17 industry professionals, we want to make sure that we're
18 holding to a higher standard to make sure that the
19 citizens of Texas get the service that they deserve and
20 have educated individuals that are processing these
21 transactions.

22 I've covered that we had webinars.

23 We did receive, and I covered this a little
24 bit, that taking time away from serving the public could
25 negatively impact the daily operations of providing

1 service to the public. As I mentioned before, the
2 department recognizes that training is a small investment
3 of time and we believe that we should provide expedient,
4 high quality and accurate customer service without the
5 assistance of the department personnel. And what we're
6 really referring to there is making sure that we've got
7 front-line clerks that are fully trained on how to
8 process these transactions, reduces that dependence to
9 potentially have to call the department for clarification
10 about how to process a transaction.

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

21 There was some comments, concern that they may
22 be forced to decline services to taxpayers because they
23 were locked out, and we wanted to really clarify this.
24 The department disagreed with the comment. The
25 possibility of unforeseen programming errors always

1 exists, so we recognize that, but it is impossible for us
2 to tell if there's unforeseen errors that would affect
3 the counties. And so this comment was saying that we
4 should have dedicated resources to certain counties in
5 the case of an unforeseen outage or some kind of IT
6 glitch, and we support all of the counties equally, we
7 don't have dedicated resources for handpicked counties,
8 and so we disagree that we needed to address that in the
9 rule to specify that there would be certain counties that
10 receive preferential treatment or some kind of dedicated
11 resources to their county.

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

1 they're received by the department.

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

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

23 Another comment was relating to a sandbox.
24 This is a training sandbox that we received funding for
25 in the last legislative appropriation, and we wanted to

1 go ahead and really make sure that we covered this
2 comment in our response but here as well. We are not
3 requiring training be conducted in the sandbox, we are
4 requiring that they take a module. And so to require
5 training in the sandbox was above and beyond what this
6 rule is covering, and so there were a lot of comments
7 that the sandbox needs to be put in place before this
8 rule is effective. There is not a requirement for them
9 to go into the sandbox and conduct training in the
10 sandbox. The training is in the ELearning system.

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

21 We also received comments that the training
22 requirements are unnecessary and that county tax
23 assessor-collectors prefer to use their own training
24 systems. We disagree that it's not necessary as
25 Transportation Code 520.023 directs the department to

1 implement this training program. We have to put in place
2 a training program. This rule does not preclude them
3 from having their own training in addition to what is
4 offered in this rule.

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

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

1 adopted.

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

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

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

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

18 (General laughter.)

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

22 MR. TREVIÑO: But the overall universal
23 comment theme that you saw through all of them is that
24 there's a broad agreement that we need to have some type
25 of common training. Right?

1 MR. KUNTZ: Yes. And I'll call it a template,
2 it wasn't really a form letter, but we got a template
3 form many of the tax assessor-collectors that stated at
4 the beginning that, yes, they agree that training is
5 something that is of value, and so we concur with that.
6 And there were some definite changes that they suggested.
7 We've accepted some of those, we have not accepted
8 others, for various reasons as I've covered. But there's
9 a full body in the preamble of all of the comments and
10 how we've responded to those. Again, I'm not going to go
11 through all of them.

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

16 MR. TREVIÑO: Please do,

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

21 We amended the rule in response to comments
22 that requested the department to define what is required
23 to pass or complete a training course. Based on other
24 comments, it is understood this would involve achieving a
25 grade for the course that would be verified in the

1 Elearning system. Verification is necessary because the
2 current registration and title system and the current
3 ELearning system cannot communicate. We don't have
4 electronic verification available to us at this time.

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

17 The definition of complete is a good
18 definition that gives clarity to how the system will
19 work, however, upon further review it raised a new
20 concern from the department. We are concerned that the
21 deadline for persons to take the training is the same
22 deadline for the department to verify that training. For
23 example, the rule requires persons with RTS access on the
24 effective date of this rule to complete the required
25 training by August 31, 2020. If a large number of

1 persons finish the training on August 31, the department
2 might not be able to manually verify the training for all
3 those people on August 31 and prevent them from losing
4 their permissions to RTS the following day.

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

21 So as such, we would recommend the addition of
22 one sentence after the first sentence in Section
23 217.75(d) in your board books to address our concerns.
24 "The department will not disable a permission for a
25 county tax assessor-collector employee or full service

1 deputy if the person timely submits their score, however,
2 the department will disable a person's permissions if we
3 determine the submitted score is not at least 80
4 percent." Also, our general counsel may need to modify
5 the preamble to the rule to address this additional
6 sentence.

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

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

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

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

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

25 We would not have time to re-procure a new

1 system in time for adoption of this to load in all of
2 those training modules into a new system. And so we are,
3 unfortunately, boxed in with the current application that
4 we have. We can always go back and look at other
5 applications to see what functionality exists. We can
6 also reach out to this vendor and see if they have the
7 ability to add some kind of portal or some kind of API to
8 connect that system with our system, but at this time,
9 unfortunately, we are just boxed in.

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

12 MR. KUNTZ: Yes, ma'am.

13 MS. GILLMAN: That would be great.

14 MR. TREVIÑO: Thank you, Member Gillman.

15 Member McRae.

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

19 First of all, the sandbox, I don't think that
20 we were requesting -- I don't think the impression was
21 that we would be testing through the sandbox, I think it
22 was more that it would allow new employees to train in
23 the sandbox prior to requesting RTS log on which would
24 allow them training prior to taking these ELearning
25 modules.

1 MR. KUNTZ: If I can just respond real quick.
2 The comment was to disagree with making changes to the
3 rule. We agree that the sandbox will be available to the
4 county tax assessor-collectors at any time. Whether they
5 have already been granted permissions or before they are
6 granted permissions, we fully anticipate that that would
7 be available to them. Unfortunately, just kind of with
8 the way of responding to comments, you have to either
9 agree and make modifications to your rule or disagree,
10 and so that's why it was just a disagreement of making
11 any changes to the rule. But we wholeheartedly agree
12 that that system would be available to employees prior to
13 them being able to log in.

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

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

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

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

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

25 MR. KUNTZ: There has been a request for some

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

6 MR. BACARISSE: That's what this is.

7 MR. KUNTZ: Yes.

8 MR. BACARISSE: Thank you.

9 MS. BREWSTER: And if I may, Mr. Chairman?

10 MR. TREVIÑO: Yes. Please jump right in.

11 MS. BREWSTER: Again, we did receive funding
12 through the legislative session for a sandbox, and
13 obviously we received those funds September 1 and we're
14 looking at ways to go about moving forward with having
15 that sandbox available.

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

20 MS. McRAE: Thank you.

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

24 MS. McRAE: And Jeremiah, another question.

25 As I understand the rule, and I understand how this

1 modification to add, but I don't recall the time frame so
2 forgive me for that, but some time ago the department
3 asked tax assessor-collectors to go through the ELearning
4 accounts and kind of clean those up, and there was
5 discussion back and forth as to, well, if someone has
6 already completed the ELearning and passed, was it
7 necessary for them to maintain that account.

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

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

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

24 A lot of the discussion we've had, and as it
25 relates to this rule as well, is around when new courses

1 are available. So this rule requires retaking a course
2 when there are changes to the course, and there is a time
3 period in which to retake those. If you have paper
4 documentation that shows that you have completed the
5 course in its current format, then we will look at ways
6 that we can try and update the system to show those as
7 complete.

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

19 MS. McRAE: Okay. Thank you.

20 Another question, I guess, is for the other
21 persons or other deputies that don't actually work in RTS
22 but such as our webDEALERS and our subcontractors, they
23 are processing work on the front end that is then
24 transported electronically to the tax assessor-
25 collectors, and as we're verifying we either have to

1 approve it or we're rejecting it back to them. I do
2 think that it's important that they understand the
3 process and the requirements in statute. So I think the
4 more educated all of us are, the better we can provide
5 service back to the motoring public. So I would like to
6 see at some point some training made available maybe for
7 the webDEALER and also for our subcontractors

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

15 MS. McRAE: Right, and I understand that.

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

24 MS. McRAE: Okay. Thank you.

25 And just two more items. First of all, the

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

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

18 MR. KUNTZ: Sure.

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

22 MR. KUNTZ: And I do want to make sure, I'd be
23 remiss if I didn't say this, we welcome the comments, we
24 welcome all of the feedback. In this instance,
25 unfortunately, we just had a compressed timeline. That's

1 really the only issue that the department faced was just
2 trying to get through all of the comments in time to make
3 the Board meeting. Under the normal process we would
4 have more time to spend going through those and providing
5 the responses. I think we did a pretty good job of
6 getting through all the comments in the short amount of
7 time that we had. I'd like to give a lot of credit to
8 our general counsel's staff for processing through those.

9 I know my staff worked long hours to try and get through
10 all those comments as well, and so it was really -- like
11 I said, we welcome them, love to get the comments because
12 it gives us a good perspective on what's going on, and so
13 it was no burden at all.

14 MS. McRAE: Well, we appreciate. Which leads
15 me to the next one. I appreciate, I did ask that you
16 provide webinars on an additional day. The first two
17 webinars was the same day and it was when the TAC
18 legislative conference was going on so there was a large
19 number of tax assessors that were attending that and
20 unfortunately we were not able to attend that webinar.
21 And then the second day, unfortunately I didn't get to
22 attend that webinar, as well as many other tax assessors,
23 because that's the day we had the flooding, September 19.
24 But I do appreciate you offering the additional training
25 for the webinars.

1 But I appreciate the department looking and
2 listening to our comments. We have, as you know, 254 and
3 I think it's important that we look at the impact not
4 only to the larger counties but to our smallest counties.

5 And I don't know who's aware but I came from a smaller
6 county, I was tax assessor for 14-1/2 years in Sabine
7 County. And so as the time frame, the training within
8 the 90 days, the additional training that's required, my
9 staff will be trained in Montgomery County, I don't see
10 that as an issue at all, I go back to the smaller
11 counties. I'm not the voter registrar in Montgomery
12 County so I don't have that additional task, which is
13 very time-consuming with a lot of deadlines, but I am
14 concerned about the smaller counties that are processing
15 motor vehicle, property tax and the voter registration
16 and other things that they may do. So I am concerned
17 about that for them and I just wanted to state that.

18 Thank you.

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

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

23 (No response.)

24 MR. TREVIÑO: Members Washburn, Prewitt, you
25 guys okay?

1 MR. PREWITT: Okay.

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

5 MS. BREWSTER: I cannot confirm that, sir.

6 (General laughter.)

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

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

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

14 And I'd like to begin first by letting you
15 know that I'm speaking directly to rule number
16 217.75(c)(5), and some specific language in that portion
17 of the rule that states that a person who has not been
18 assigned permissions in RTS on or before the effective
19 date of this section must complete all required training
20 before enabling permissions by the department.

21 I do want to state first that my office places
22 a significant emphasis on investment in training our
23 staff, especially our new employees, and we applaud and
24 support your agency's efforts to create consistent
25 training and standards throughout the state. I

1 especially appreciate the attention, focus and resources
2 your department has provided to assist our offices in
3 that effort.

4 TACs offices, as you already know, throughout
5 the state employ a variety of training techniques to
6 ensure their staff is well prepared to serve the public.

7 My office specifically, not only do we differ from
8 county to county, but we change our training techniques
9 based on the person that we're training, so as we have an
10 individual enter our world -- and our world is
11 complicated and overwhelming at times for somebody who
12 has never worked, number one, for government, and number
13 two, with motor vehicles and registration system so it's
14 a confusing, complex world at times, especially for the
15 new folks -- and we change our training to meet the needs
16 of the person that we're training to give them the best
17 possible experience with our office and give them the
18 best tools to be successful in their new career with our
19 office.

20 So we believe that some minor changes to that
21 section of the proposed rule can be made to provide some
22 flexibility to the county TACs offices and still achieve
23 the department's goal of complying with SB 604 and having
24 everyone complete the required modules if they are
25 working in the RTS environment.

1 What we would ask is that our recommendation
2 for this minor modification would be that TxDMV approve
3 user permissions specifically for the registration
4 renewal portion of the system after completion of the
5 three AAMVA courses, and then after granting this
6 permission level for registration renewals, allow new
7 users, specifically new users, 30 days to complete the
8 remaining required modules to retain that specific
9 permission. So this gives us, the county TACs offices,
10 some flexibility with how we're training our new
11 employees. I think it's very important for those new
12 employees to complete those three required AAMVA
13 trainings, give us the permissions into RTS, and give us
14 the 30 days to complete the remaining six webinars so we
15 can slowly train these new employees and not overwhelm
16 them with the information in our system.

17 MR. TREVIÑO: Thank you, Larry.

18 MR. GADDES: Thank you.

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

21 So Kevin Kieschnick. Kevin, welcome.

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

24 And really the primary concern I had has
25 already been addressed by Jeremiah, so I have nothing

1 further to add.

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

5 Okay. Michelle French. Good morning,
6 Michelle. Welcome.

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

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

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

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

23 I would like to echo a couple of things.
24 First of all, training is extremely important. We
25 completely support the concept of training, we completely

1 support the concept of having consistent training all
2 across the state. That way everyone is getting the same
3 thing. So we do absolutely support that.

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

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

24 And then finally, I'd just like to say that we
25 had a meeting, me being myself, Cathy Talcott and Shay

1 Luedeke, we all had a meeting a couple of weeks ago with
2 Jeremiah, with the leadership, with technology. We
3 talked a lot through these rules and went through a lot
4 of some of the things that we were concerned, some of the
5 things they were concerned about, y'all are concerned
6 about, and how to have a little bit of a meeting of the
7 minds. And I was happy to see in the documentation that
8 several of the ideas that we all discussed were addressed
9 to our satisfaction, so we appreciate that.

10 And that's all I have.

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

15 And now Bruce Stidham.

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

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

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

25 Bruce, thank you for all you do. Appreciate

1 you coming down and joining us.

2 (General talking and laughter.)

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

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

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

17 And it was noted that it is an investment of
18 time, and we do agree it is an investment of time, but in
19 many cases, as noted earlier, it's a reinvestment of time
20 because some of these have already been taken, we've got
21 employees that have been here 30-35 years and they're
22 going to have to kind of reinvest their time, in most
23 cases take 24 hours, and that's a long time to take
24 people off line. And that was due to varying case
25 instances, new systems or systems changing, whatever.

1 We do agree, like everybody said, sandbox is a
2 supplement to ELearning and we do want to emphasize that
3 we really do like to get that as quick as possible. I
4 did not hear an ETA when somebody was asked earlier on
5 that. No ETA?

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

12 That's it. Thank you.

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

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

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

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

20 Mr. DeLeon, welcome.

21 MR. DeLEON: Good morning, Chairman and Board.

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

24 I'll be short. The only thing I do want to
25 mention, I agree, first of all, with what Mr. Palacios

1 said, and the second thing is I know at times the
2 department does reach out to tax assessor-collectors to
3 get input, however, there's 254 counties in the State of
4 Texas, as y'all know, but there are only four counties
5 that have the business model that we have, full service
6 deputies. At times I know that they reach out but I
7 believe, or in my opinion, I think these four counties
8 are not included in this input. That's all I wanted to
9 say. Just make sure that maybe in the future just make
10 sure one of those four counties are included when y'all
11 need input.

12 Thank you.

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

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

17 Good morning.

18 MR. SALAS: Good morning, Board members.

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

21 I'm not going to rehash what Mr. Palacios and
22 Mr. DeLeon mentioned, but I do want to briefly discuss
23 the department's intention of enabling a permission
24 expediently. I believe this goes to Section
25 217.75(c)(4). And I think there was a comment made or

1 submitted as far as the timeline of when the permission
2 should be enabled. Bexar County had proposed by the next
3 business day or as soon thereafter as practicable on
4 completion of required training.

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

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

23 That's all I have. Thank you.

24 MR. TREVIÑO: Great. Thank you very much, Mr.
25 Salas.

1 MS. McRAE: Chairman.

2 MR. TREVIÑO: Yes.

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

5 MR. TREVIÑO: Sure.

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

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

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

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

22 MR. TREVIÑO: Yes, please.

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

25 MR. TREVIÑO: Excellent. Great. Thank you.

1 Any further comments from either staff or the
2 Board or questions? Does anybody have any further
3 comments or questions? Member Washburn.

4 MS. WASHBURN: It sounds like just hearing
5 from some of the public comments some of the issues are
6 particularly from some of the smaller organizations. I
7 keep hearing three to 24 hours, so I don't know if it's
8 more towards three or more towards 24 hours of training.

9 Is there any reason it has to be done within 90 days
10 versus 120 days? Does the Transportation Code require
11 that?

12 MR. TREVIÑO: Mr. Kuntz.

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

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

1 minutes, 15 to 20 minutes, depending on kind of your
2 pace.

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

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

20 The 24 hours of training is really kind of the
21 extreme and it's not what we expect very many employees
22 to have to take, and that is if you've got full system
23 access. So you've got every single permission, you've
24 got full access. This is going to be more in line with
25 your chief deputies, maybe your managers in a location or

1 something that have full permissions in the system. And
2 the reason it's longer, for every one of those
3 permissions we've mapped back a different training module
4 that goes to the specific permission. So if you've got
5 all 40 or so permissions that are in RTS, then you've got
6 many more courses that you've got to take and there's
7 many more hours.

8 Now, the thing that I want to also stress is
9 your permissions will be granted as you complete those
10 courses. You don't have to wait until you've taken all
11 the courses to submit all of those. So if you've taken
12 the registration courses that are necessary for those
13 permissions, you can ask for those as you go. The
14 training is permission based, and so if there is a
15 specific permission you need to do your job, you can go
16 take that one course or the courses that are required for
17 that specific permission and that permission can be
18 turned on immediately. So one permission may only have a
19 30-minute course behind it and that's the one permission
20 that you've got to have.

21 So does that kind of help clarify a little
22 bit?

23 The second part on the 90 days is the 90 days
24 is when the department puts new training out specific to
25 a permission. So just like I said there are 41 or so

1 permissions out there, if your specific permission that
2 we have granted access to, if we update that module
3 following a legislative session, for example, let's say
4 it's the titles module, and there have been changes from
5 the legislative session related to titles and we update
6 that specific module, you would have 90 days to complete
7 that one module which may only be a 30-minute module.
8 You do not have to retake all eight hours of the modules,
9 it would be that one module that we've updated in
10 compliance with the law that you would have 90 days to
11 complete.

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

16 Did I answer all of the questions that you
17 had?

18 MS. WASHBURN: Yes.

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

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

22 MR. TREVIÑO: Yes, General Counsel.

23 MS. BEAVER: In agreement with Mr. Kuntz.

24 Also, the training requirement under the Transportation
25 Code was so that tax assessor-collector employees could

1 also identify fraudulent activity related to the vehicle
2 registration and titling, and so it's extremely important
3 for the State of Texas that folks are trained up so they
4 can do that fraud identification too, which is a
5 requirement of the training.

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

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

15 MR. TREVIÑO: Thank you.

16 Any other questions, comments for Mr. Kuntz?

17 (No response.)

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

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

23 MR. TREVIÑO: All right. If everybody is in
24 agreement, it's right now 10:40 and we'll take a couple
25 minute break here.

1 (Whereupon, at 10:40 a.m., a brief recess was
2 taken.)

3 MR. TREVIÑO: We'll call us back into session.
4 It's approximately 10:44.

5 And the business at hand was we were ready to
6 entertain a motion if someone was so motivated.

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

9 MR. TREVIÑO: Sure.

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

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

22 MS. McRAE: Okay. Thank you for that.

23 So I was wanting to get your thoughts on Larry
24 Gaddes's comments as to providing if our new employees
25 were to take the three AAMVA courses and then the

1 registration renewal modules, if permissions could be
2 turned on at that point and then go from there, then they
3 could build upon that to kind of add some flexibility.

4 MR. KUNTZ: I'm thinking right now.

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

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

17 MR. TREVIÑO: Vice Chairman Bacarisse.

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

24 MR. KUNTZ: Yes. And so what we have
25 basically mapped out in our matrix, if you will, is kind

1 of a one to one. It's pretty binary in that once you've
2 approved the courses the permission is turned on. What
3 Mr. Gaddes has proposed is once you've taken these
4 courses your permission is turned on and a new clock
5 starts for 30 days and then that clock expires if you
6 don't take the next set of courses that are required.

7 MR. BACARISSE: Oh, I see.

8 MR. KUNTZ: And so it becomes a little bit
9 additional code that we would have to add into the system
10 to handle that scenario. I was also trying to look very
11 quickly at what those modules are. I'm familiar with the
12 modules for the registration. I will tell you the base
13 modules are pretty simple. I mean, just to be flat-out
14 honest with you, the registration renewal modules are not
15 extremely difficult and not very time-consuming to take.

16 And so there's a little bit of is three hours on the
17 front-end in training too heavy of a lift in order to
18 turn that permission on for somebody who's never done
19 this before. That's really the question at hand because
20 that's the specific permission that we are talking about
21 that's three hours in basic training.

22 MR. BACARISSE: Thank you.

23 MR. TREVIÑO: That's something you can look
24 into but at this point you don't feel comfortable giving
25 a yay or nay on it. Right?

1 MR. KUNTZ: I mean, I can look back at our IT
2 guys.

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

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

8 MR. TREVIÑO: It's time and money.

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

11 MS. McRAE: Okay.

12 MR. TREVIÑO: Good?

13 MS. McRAE: Uh-huh.

14 MR. TREVIÑO: Thank you.

15 MS. McRAE: Thank you.

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

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

24 MS. McRAE: I would like to make a motion. I
25 move that the Board approve the adoption of the new

1 Section 217.75, with the amendment as recommended by Mr.
2 Kuntz, as well as an amendment to provide additional time
3 for an employee to complete the required training from 90
4 days to 120 days. I ask that because I feel it's
5 important to provide that extra 30 days to complete the
6 new training because we do not want to adversely affect
7 the smaller county tax assessor-collectors offices, and
8 as I've stated, it could have the potential of an adverse
9 effect to those smaller offices and the majority of our
10 counties are under 40,000. So that's my motion.

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

13 MR. GRAHAM: Second.

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

16 (A show of hands.)

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

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

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

24 MR. KUNTZ: I'm back.

25 MR. TREVIÑO: You're back, yes, you are.

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

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

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

15 Section 217.76 also implements SB 604, Section
16 407 which requires the department, not later than March 1
17 of 2020, in coordination with the county tax assessor-
18 collectors, to develop, adopt and implement rules that
19 create clear criteria for the suspension.

20 As we looked at this rule and started making
21 sure that we're in compliance with statute, general
22 counsel drafted a letter to the county tax assessor-
23 collector association to present the criteria that we
24 were contemplating for denial or suspension of access to
25 RTS. That was sent to them and we received comments back

1 from them. We also met with them in person, as Ms.
2 French relayed to the department on the previous agenda
3 item, and we had some discussions about the criteria for
4 suspension or denial of access at that time, as well, to
5 kind of go over the comments that we received from them.

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

15 And so as we went about putting together the
16 proposal that you see today, we took from that addendum
17 to help really create the process that you see here in
18 the rule before you which lays out some timelines for us
19 on review. If there's ever a suspension or termination,
20 there's an appeal process, if you will, to the
21 department, to the executive director, and there's some
22 timelines in place for when the executive director would
23 have to make some decisions about whether or not to
24 uphold that suspension or denial of access or whether or
25 not to go ahead and allow it to be turned back on.

1 The thing that I really want to stress as
2 we're talking about this is the department does not take
3 lightly suspending access or denying access to the
4 registration and title system. We have not taken action
5 without consultation with the county tax assessor-
6 collectors in very many instances. I can recall two in
7 my career with the DMV where we have taken access away
8 from an employee of a tax assessor-collector office or
9 full service deputy without first consulting with the tax
10 assessor-collector. In both of those instances there was
11 an ongoing criminal investigation and the department did
12 not have the latitude to be able to consult with the
13 county tax assessor-collector about that termination
14 prior to that access being turned off.

15 And we really wanted to stress this is not
16 something that we're going around and we're just going to
17 be turning people's access on and off. In the other
18 instances that we've terminated access, in most instances
19 beyond those, we've actually been informed by the county
20 tax assessor-collector that they had an issue in their
21 department. And so it's something that we don't take
22 lightly. We make sure that we are on solid footing
23 before we take action because we know that it is very
24 important to provide those services to the customers and
25 we don't want to just do that without good cause.

1 And so we believe that we have got a rule
2 before you that really clearly articulates the criteria
3 by which we would terminate access, and then also that we
4 would work in consultation with the county tax assessor-
5 collectors unless there are extenuating circumstances,
6 such as there's an ongoing criminal investigation.

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

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

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

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

14 (No response.)

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

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

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

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

25 MR. GRAHAM: Second.

1 MR. TREVIÑO: Member Graham.

2 Any further discussion?

3 (No response.).

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

7 (A show of hands.)

8 MR. TREVIÑO: Motion carries unanimously.
9 Thank you very much.

10 Thanks, Mr. Kuntz.

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

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

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

22 We are requesting approval to publish the
23 proposed new chapter in the *Texas Register* for public
24 comment, and specifically formalizing the department's
25 current red flag warning system for county tax assessor-

1 collectors, and then also provide an option for counties
2 to request action for suspected fraud, waste and abuse,
3 immediately suspending access to RTS.

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

7 MR. TREVIÑO: Thank you.

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

17 We have approximately 225 referrals per month
18 coming in from the tax assessor-collector offices.
19 That's an average over the last three months. That's a
20 significant increase from earlier on in the year. In
21 January of 2019 we circulated a policy kind of
22 articulating this process that has not been formalized
23 yet, and it's too early to tell if the education and the
24 interest on the part of the tax assessor-collectors has
25 resulted in increased reporting, but I can tell you that

1 approximately 25 percent of the referrals that are sent
2 in are sent back to the tax assessor-collectors for
3 administrative action. CID does not make recommendations
4 on administrative action, we leave that to the tax
5 assessor-collectors.

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

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

24 So I just wanted to clarify that because I
25 know there was a question from the TACs about

1 communication and how it should maybe mirror what
2 enforcement does. Enforcement conducts the
3 administrative investigations and can have dialogue back
4 and forth, but our hands are tied not because we're tying
5 our hands, because the law enforcement agency or the
6 judiciary component is ordering us not to divulge any
7 information.

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

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

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

17 Any questions from the Board for Mr. Menke?

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

20 MR. TREVIÑO: Certainly.

21 MS. McRAE: I would just like to thank y'all
22 because we are seeing that y'all are turning those around
23 very quickly, and we put a lot of time and effort, the
24 tax assessors, in trying to identify that fraud, so we
25 appreciate the efforts of the department as well.

1 MR. TREVIÑO: Thanks for the comment.

2 And there's no public comments on this one
3 either?

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

6 MS. BREWSTER: This is for posting.

7 MR. BACARISSE: This is for posting.

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

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

12 (General talking and laughter.)

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

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

19 MR. BACARISSE: Second.

20 MR. TREVIÑO: Second from member Bacarisse.
21 All those in favor please signify by raising your hand.

22 (A show of hands.)

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

25 Now we get to the exciting part. Mr. Kuntz,

1 agenda item number 10.

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

6 MR. TREVIÑO: Clearly.

7 (General laughter.)

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

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

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

23 MR. TREVIÑO: Vice Chairman.

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

1 looking at the new design?

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

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

6 MR. KUNTZ: On the bottom, yes.

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

10 MR. TREVIÑO: Would you like to recuse
11 yourself?

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

13 MR. TREVIÑO: All right. Any other comments?
14 Member Scott.

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

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

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

22 MR. KUNTZ: So the way that our redesigns work
23 is that anybody that has the existing plate will continue
24 to be able to display that existing plate on their
25 vehicle, we don't recall them, but the old plate will no

1 longer be available for sale, the new redesign would be
2 available for sale.

3 MR. TREVIÑO: Thank you for clarifying.

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

9 (General laughter.)

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

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

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

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

18 MR. TREVIÑO: My pleasure, Member Graham.

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

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

24 MR. BACARISSE: I'll second.

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

1 Member Bacarisse.

2 Any further discussion?

3 (No response.)

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

6 MR. BACARISSE: Sic'em.

7 MR. GRAHAM: Ready? Sic'em Bears.

8 (A show of hands.)

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

11 So let's get moving.

12 MS. BEAVER: Mr. Chairman?

13 MR. TREVIÑO: Yes.

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

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

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

23 First we're going to hear from Mr. Kuntz,
24 agenda item 11.A, and I want to remind the Board that
25 this agenda item is sensitive because the contract is

1 technically still under negotiation. The Board is only
2 being asked to delegate authority to the department's
3 executive director to negotiate, approve and execute the
4 contract. There is no need to deliberate about the
5 details of this procurement which could result in the
6 disclosure of sensitive information that could jeopardize
7 the department's position. Also, vendor proposals are
8 confidential until a contract is signed.

9 Mr. Kuntz.

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

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

22 Just a very brief history. Statute authorizes
23 the department to have a contract with a vendor to market
24 and sell specialty license plates. These are specialty
25 license plates that are not the state license plates like

1 the military plates, those kind of things, this is new
2 specialty license plates. Our contract RFP that went out
3 would actually have the vendor host all of the license
4 plates for the state on one website in addition to any
5 license plates that they present.

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

19 The existing contract that we have had was
20 initially executed in 2009, it was renewed in 2014, and
21 it will expire on November 19 of this year, and so that's
22 why we moved forward with initiating a request for
23 proposals to the vendor community to elicit responses so
24 that we could get a new contract in place prior to the
25 termination date in November.

1 MR. TREVIÑO: And Mr. Kuntz, in your opinion,
2 this program has been successful?

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

9 MR. TREVIÑO: Thank you, Mr. Kuntz.

10 Member Gillman, do you have a question?

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

14 MS. BEAVER: Tracey Beaver, general counsel.

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

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

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

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

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

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

7 Thank you, Aline Aucoin.

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

16 MR. TREVIÑO: Member Gillman?

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

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

24 MS. GILLMAN: I won't discuss any specific
25 contracts.

1 MR. TREVIÑO: Okay. Fair enough.

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

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

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

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

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

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

16 (No response.)

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

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

1 state biennial budget for this item.

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

5 MS. McRAE: I second.

6 MR. TREVIÑO: A second by Member McRae.

7 Any further discussion?

8 (No response.)

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

11 (A show of hands.)

12 MR. TREVIÑO: Motion passes unanimously.

13 Thank you.

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

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

19 I am presenting agenda item 11.B. This is a
20 request from the Board to authorize the department's
21 executive director to negotiate and execute, in
22 conjunction with the Texas Facilities Commission, a
23 contract renewal for the Dallas/Carrollton Regional
24 Service Center for an additional five-year term effective
25 April 2020 through March 31, 2025.

1 We have been at this location for at least 20
2 years that I'm aware of. I believe we originally located
3 there in 1995. It's approximately 7,800 square feet,
4 it's located in Carrollton, Texas. This information on
5 our monthly payment can be found in your board book on
6 117.

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

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

25 So with that, I conclude my presentation.

1 MR. TREVIÑO: Thank you very much, Ms. Flores.
2 Does anybody have any questions for Ms.
3 Flores?

4 (No response.)

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

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

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

17 Do we have a second to that motion?

18 MS. GILLMAN: Second.

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

22 (A show of hands.)

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

25 We'll now move into agenda item 11.C. Ms.

1 Flores and Mr. Rey. Thank you for joining us.

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

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

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

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

1 later slide.

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

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

22 In miscellaneous revenue, this is where you
23 will find the interest revenue from the DMV Fund, a
24 combination the fact that we had a higher fund balance
25 and there were very good interest rates during fiscal

1 year 2019 contributed to the increase in miscellaneous
2 revenue.

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

8 As far as the expenditures for the DMV Fund
9 itself, here we have a comparison of budget to expended
10 summary here. Eighty percent of our expenditures pretty
11 much fall in these four categories: salaries, contracted
12 services, professional fees, and postage. From there we
13 did not expend \$48.25 million from our budgeted amounts
14 of appropriations, of which from that there will be about
15 \$9 million that we'll carry forward into fiscal year,
16 both from the headquarters maintenance project and our
17 automation projects. Again, we had some commitments that
18 we were expecting in fiscal year '20 from these
19 appropriations, close to \$9 million. This leaves an
20 estimated lapse of \$30 million.

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

1 appropriations.

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

4 MR. TREVIÑO: Certainly.

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

11 MS. FLORES: Linda Flores.

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

19 Here we are not a general revenue agency other
20 than for the motor vehicle, the new crime prevention
21 authority, previously known as ABTPA, so the money that
22 we collect in the DMV Fund stays in the fund. That's not
23 to say that a legislator can't come and see that nice
24 healthy fund balance and appropriate it for a different
25 use. But it stays in the fund, it continues to earn

1 interest, and we also have the ability to request the use
2 of those dollars in a future year.

3 MR. BACARISSE: Great. Thank you.

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

13 This concludes the brief briefing of the DMV
14 fund and the revenues and the fourth quarter revenues and
15 expenditures for the agency. Open to any questions that
16 you may have.

17 MR. TREVIÑO: Any questions from members of
18 the Board?

19 (No response.)

20 MR. TREVIÑO: Mr. Rey, thank you very much for
21 that report. Is there anything in the revenue or the
22 cost side that at this point is changing or different or
23 that you should inform the Board about? Anything that
24 you guys are seeing?

25 MR. REY: At this point revenues continue

1 exceeding projections from the ones that we create during
2 the legislative appropriations process, but we're steady,
3 and as far as expenditures, we're still on track similar
4 to last year.

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

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

11 MR. TREVIÑO: Yes. Okay. Good.

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

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

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

1 were able to implement 16 of those 23.

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

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

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

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

23 And so I'd like to just highlight out of those
24 16 recommendations that the purchasing section has
25 already implemented, two of them are the procurement

1 staff responsibilities. Those have been clearly defined
2 so that there is transparency and an understanding from
3 all of the procurement staff of the responsibilities on
4 behalf of the department.

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

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

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

25 And in conclusion, I would just like to say

1 that the procurement staff is on track to implement the
2 remaining recommendations from all three audits.

3 Great. Thank you very much, Ms. Rosas.

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

6 (No response.)

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

16 So thank you very much.

17 MS. FLORES: Thank you.

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

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

1 board book.

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

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

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

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

19 (No response.)

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

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

25 MR. BACARISSE: Second.

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

4 (A show of hands.)

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

8 We now move on to agenda item 11.F.

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

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

23 We also have the patch management audit. This
24 is looking at how we're patching our systems and
25 hardening our systems, servers, networks, work stations,

1 things to that regard. It was part of the cybersecurity
2 roadmap, and so we anticipate also releasing this in
3 January 2020.

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

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

21 Moving on to completed reports, the first
22 completed report is on page 170 of your board book. It's
23 the fiscal year 2019 annual audit activity report. This
24 report is a required report that summarizes the
25 activities of Internal Audit. It is due to the

1 Governor's Office, the Legislative Budget Board, the
2 State Auditor's Office by November 1, and we also have to
3 post it on our website, and we'll do that after this
4 meeting. There are seven sections of the report that we
5 are required to provide information on that includes
6 compliance with Texas Government Code 2102, our previous
7 audit plan, the status of it, our current audit plan, as
8 well as information related to our audit advisory.

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

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

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

22 MR. TREVIÑO: Great.

23 MS. MENJIVAR-SUDDEATH: So the quality
24 assurance report is on page 189 of your board book. So
25 we are required by audit standards to do a self-

1 assessment every year. That self-assessment includes us
2 looking at are we complying with audit standards. We've
3 actually expanded our quality assurance and improvement
4 program to include measures about our effectiveness and
5 our efficiency. So our quality assurance program not
6 only looks at are we complying with audit standards, it
7 also looks at our progress on our peer review, which is
8 our external assessment, but we also look at our key
9 performance indicators, the capability model, and the
10 fraud, waste and abuse allegations and dispositions.

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

21 And so what you have here is a slide that kind
22 of gives you information of how we've trended on our ten
23 KPIs in the past two years. For fiscal year '19 we met
24 nine out of the ten KPIs. Now, there's something more
25 telling in the trend that we've actually had a little bit

1 of a downturn in our KPIs. That's partially because of
2 our workload. We've had a significantly more larger
3 workload in fiscal year '19. In addition, because of
4 that workload it puts stress on our internal processes
5 and showed some areas where we could improve our
6 efficiency and effectiveness in our processes, so that
7 way they could take the stress of an increased workload.

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

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

23 Another thing that we'll notice in the KPIs
24 are engagements within budget. Last year we were 8
25 percent lower than the budgeted engagement, this year we

1 were 8 percent higher. And if you go to the next slide,
2 that's the overall. When you look at our issued and our
3 reporting numbers, it's significantly higher. For audits
4 that we issued we were actually 16 percent above the
5 projected hours of engagement, and then for the reports,
6 when we were doing this we had two reports in reporting,
7 we were about 9 percent. Now, between those two and the
8 other engagements, we ended up being at a total of 8
9 percent. But I wanted to highlight this because this is
10 a true representation of how we were doing in our
11 engagement hours.

12 And then this one is more telling about per
13 engagement. As you can tell, there's a lot of red and
14 red means we were over budget, and one of the projects,
15 the Lemon Law and investigation project, we were about
16 400 hours over. So there was significant impacts to us.

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

24 The next item is the Internal Audit capability
25 model, so this is one of our big things. So we rate all

1 our engagements, so we thought it's only fair for us to
2 be rated as well so the agency knows where we are. We
3 are at a level 3 in our capability model which means we
4 still have some work to do. We were able to, in fiscal
5 year '19, improve on our integration of a performance
6 measure, since now we have ten measures instead of just
7 the eight, so that was a green box.

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

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

23 And then the final slide shows the overall
24 what was the status of those fraud, waste and abuse
25 allegations. And so in fiscal year '18 we had 12

1 allegations that we investigations and in '19 we had 14
2 that we investigated, but those 14 actually had a lot
3 more subcomponents to it, so they're taking longer to
4 complete.

5 So with that, that's my presentation.

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

7 MS. MENJIVAR-SUDDEATH: It is.

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

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

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

22 (No response.)

23 MR. TREVIÑO: I'd also like to thank Member
24 Graham for his hard work in the Audit Committee working
25 with you to make sure we get the right information and

1 that you've got support from the Board in a more detailed
2 way. So thank you, Member Graham, for your hard work in
3 that area.

4 MR. GRAHAM: You bet. Thank you.

5 MR. TREVIÑO: Any other questions?

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

7 MR. TREVIÑO: They do do a good job.

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

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

20 MR. TREVIÑO: Public shaming. Okay. Good.
21 All right. Well, great, as long as you're working on
22 that because I think everyone appreciates the work that
23 you do and that's just one way of showing the respect.

24 Well done. Thank you very much.

25 All right. Member Gillman, I think you have

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

5 (General laughter.)

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

11 MS. BREWSTER: The American Association of
12 Motor Vehicle Administrators.

13 MR. TREVIÑO: Well, of course.

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

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

19 MS. BREWSTER: Thank you.

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

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

24 (Applause.)

25 MR. TREVIÑO: You are president this year of

1 AAMVA, aren't you?

2 MS. BREWSTER: The chair.

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

8 MS. BREWSTER: Thank you.

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

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

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

20 This thing is designed to allow people to
21 surround the person battling the cancer to lift that
22 individual up and be strong as they can be. And somehow
23 this man continues, during the course of his battle, to
24 lift others up around him, and I don't know how he does
25 it, but it's been amazing to watch.

1 And know we love you, we're with you, keep
2 fighting, brother, and we've got your seat warm and ready
3 to come back. So hang in there.

4 (Applause.)

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

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

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

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

21 So we're going into closed session now. It is
22 now approximately 11:58 on October 3, 2019. We'll go
23 into closed session under Texas Government Code Section
24 551.071, 551.074, 551.076, and 551.089.

25 For those of you in the audience I anticipate

1 being in executive session for approximately an hour,
2 maybe an hour, and we will reconvene in open session
3 after that.

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

6 (Whereupon, at 11:58 a.m., the meeting was
7 recessed, to reconvene this same day, Thursday, October
8 3, 2019, following conclusion of the executive session.)

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

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

15 MS. BEAVER: Chairman?

16 MR. TREVIÑO: Yes.

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

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

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

23 We no longer have Member Washburn and Member
24 Prewitt. They have signed off and they weren't in
25 executive session.

1 So anyway, we're back in session, we have a
2 quorum.

3 And now we'll proceed to agenda item 13, which
4 has to do with the executive director's compensation.
5 And so at this point I would like to make a motion, and
6 that is I move that the Board approve an increase of the
7 salary of the executive director, Ms. Brewster, to the
8 full amount authorized and budgeted in the Texas DMV bill
9 in Article 7 of the General Appropriations Act for the
10 2020-2021 biennium, and to authorize the staff to take
11 the necessary actions required under the Act to implement
12 that change.

13 Do I have a second?

14 MR. BACARISSE: I'll second.

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

17 Any discussion?

18 (No response.)

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

22 (A show of hands.)

23 MR. TREVIÑO: All opposed?

24 (No response.)

25 MR. TREVIÑO: The motion carries unanimously.

1 I would just like to add to Executive Director
2 Brewster that we're very happy with her performance.
3 We've outlined some areas that we think would be useful
4 for the department to grow but would like to thank her
5 for her service to the citizens of Texas and this Board.

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

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

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

14 MS. McRAE: Second.

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

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

C E R T I F I C A T E

1
2
3 MEETING OF: Texas Department of Motor Vehicles

4 LOCATION: Austin, Texas

5 DATE: October 3, 2019

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

11 DATE: October 11, 2019
12
13
14
15
16

17 /s/ Nancy H. King
18 (Transcriber)
19

20 On the Record Reporting &
21 Transcription, Inc.
22 7703 N. Lamar Blvd., Ste 515
23 Austin, Texas 78752
24
25