

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

OPEN MEETING VIA TELEPHONE CONFERENCE CALL
PURSUANT TO GOVERNOR'S MARCH 16, 2020,
TEMPORARY SUSPENSION OF CERTAIN
OPEN MEETING PROVISIONS

Thursday,
August 6, 2020

BOARD MEMBERS:

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

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 (Informal Working Draft and Request for Informal Comments on Rules Relating to Contested Cases;

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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.

5 It is approximately 8:01 a.m., and I am now
6 calling the Board meeting for August 6, 2020 to order.
7 Will all board members please make sure their video is
8 turned on.

9 I want to note for the record that the public
10 notice of this meeting, containing all items on the
11 agenda, was filed with the Office of the Secretary of
12 State on July 29, 2020. This meeting is being held by
13 telephone conference call in accordance with Texas
14 Government Code Chapter 551, as temporarily modified under
15 Governor Greg Abbott's authority to suspend certain
16 statutes due to COVID-19.

17 Governor Abbott suspended various provisions of
18 the Texas Open Meetings Act that require government
19 officials and members of the public to be physically
20 present at specified meeting locations. Under that
21 suspension, the public will not be able to specifically
22 attend this meeting in person. Instead the public may
23 attend this meeting by using the link or by calling the
24 toll-free telephone number which are both posted in our
25 agenda which was filed with the Office of the Secretary of

1 State on July 29, 2020.

2 All board members, including myself, will be
3 participating remotely via WebEx. At this time, will all
4 attendees please mute your phone for the entire duration
5 of this meeting. I'm asking our WebEx meeting host to
6 make sure all attendees' phones are muted and their video
7 is turned off except for board members and those who are
8 presenting. Callers will be removed for any disruption,
9 including any background noise.

10 I would like to remind all participants that
11 this is a telephone conference call. Because this meeting
12 is being held by telephone conference call, there are a
13 few things that will assist in making the meeting run
14 smoother and assist the court reporter in getting an
15 accurate record.

16 Department staff and any commenters should
17 identify themselves before speaking, speak clearly.
18 Remember that there may be a slight delay due to the
19 telephone conference call meeting, so please wait a little
20 longer than usual before responding to participants. Do
21 not speak over others. And speakers should ask the
22 chairman to proceed and be sure to get recognized before
23 speaking.

24 If you wish to address the board or speak on an
25 agenda item during today's meeting, please send an email

1 to GCO_General@txdmv.gov. Please identify in your email
2 the specific item you're interested in commenting on, your
3 name and address, and whether you are representing anyone
4 or speaking for yourself. If your comment does not
5 pertain to a specific agenda item, we will take your
6 comment during the general public comment portion of the
7 meeting.

8 In accordance with department's administrative
9 rule, comments to the board will be limited to three
10 minutes, then the call will be muted. Comments should be
11 pertinent to the issue stated in your email. When
12 addressing the board, please state your name and
13 affiliation for the record.

14 Before we begin today, I'd like to remind all
15 presenters and those in attendance of the rules of conduct
16 to our board meetings. The department's rules under
17 Section 206.22, the board chair is given authority to
18 supervise the conduct of meetings. This includes the
19 authority to determine when a speaker is being disruptive
20 of the meeting or is otherwise violating the timing or
21 presentation rules I just discussed. Disruptive speakers
22 will be muted, given a warning about disruptive behavior,
23 then removed from the meeting for any continued
24 disruption.

25 And with that, I'd like to call the roll, our

1 first agenda item.

2 Board Member Bacarisse, are you here?

3 MR. BACARISSE: Present.

4 MR. TREVIÑO: Board Member Gillman?

5 MS. GILLMAN: Present.

6 MR. TREVIÑO: Board Member Graham?

7 MR. GRAHAM: Present.

8 MR. TREVIÑO: Board Member McRae?

9 MS. McRAE: Here.

10 MR. TREVIÑO: Board Member Prewitt?

11 MR. PREWITT: Here.

12 MR. TREVIÑO: Board Member Scott? Member

13 Scott?

14 MR. SCOTT: Here.

15 MR. TREVIÑO: Board Member Washburn? Member

16 Washburn?

17 MS. WASHBURN: I'm here. Can you hear me?

18 MR. TREVIÑO: Great. Yeah, and we see you now.

19 Thank you, Member Washburn, for responding.

20 And let the record reflect that I, Member

21 Treviño, am here too. We have a quorum.

22 Now we move on to agenda item 2, the pledges of

23 allegiance. Before we begin, I ask that the board and

24 other participants please turn off your audio and video,

25 except for Jeremiah Kuntz. We are very fortunate today to

1 have Mr. Parker Kuntz, member of Cub Scout Pack 333 and
2 the son of Jeremiah Kuntz, to lead us in the pledges of
3 allegiance.

4 Please, once you have turned off your video and
5 audio, all stand and honor our country and state with the
6 pledges of allegiance.

7 Parker and Jeremiah, will you please lead us in
8 the pledges of allegiance.

9 (The Pledges of Allegiance - U.S. and Texas
10 were recited.)

11 MR. TREVIÑO: Okay. Great. Parker, thank you
12 very much again for leading us. It's always a pleasure to
13 have you.

14 Thanks, Jeremiah.

15 MR. KUNTZ: You're welcome.

16 MR. TREVIÑO: Well done, well done. How do you
17 top that?

18 Okay. Let's see, we'll go to the chair's
19 reports. So the Transportation Code requires the board
20 chair to appoint a member of the board subcommittee to act
21 in the absence of the board subcommittee chair.

22 And referring to the Finance and Audit
23 Committee, chaired by Member Graham, in discussions with
24 Member Graham, we have decided to ask Member Gillman if
25 she would be willing to serve in the capacity as vice

1 chair of Finance and Audit.

2 And Member Gillman, are you willing to serve in
3 that capacity?

4 MS. GILLMAN: Yes, sir, happy to. It will be
5 my honor.

6 MR. TREVIÑO: Great. Well, we're very
7 fortunate to have you on the board and very fortunate to
8 have you as vice chair.

9 And Member Graham, thank you for that excellent
10 suggestion. Well done.

11 Okay. Well, the last thing on my chair report
12 is we have a lot of agenda items to go through today, and
13 there are a lot of rules that the staff have worked really
14 hard on, but one thing I just would like to mention -- and
15 I know the board is aware of this -- is that even though
16 it may be a very quick line item, we spend a very little
17 amount of time on it, it came up yesterday having to do
18 with Jimmy Archer talking about escort flag vehicles.

19 There's a lot of work that goes into these
20 items, and I would just like to recognize all the hard
21 work that staff does on these things, and even though we
22 just kind of get just a glance at it and move through it
23 very quickly, I would like to recognize the amount of work
24 that goes into each one of these agenda items and thank
25 staff for their hard work.

1 Even though we don't have a chance to do that
2 on each individual item, the board is well aware of how
3 hard you guys work on all these items. So thank you very
4 much.

5 Now with that, I would like to turn it over to
6 Executive Director Whitney Brewster for agenda item number
7 4.

8 Ms. Brewster.

9 MS. BREWSTER: Thank you, Mr. Chairman. And
10 thank you very much to the board for recognizing the
11 amount of work that goes into the items that we bring to
12 you. Very much appreciate your support and recognition.
13 And I, too, want to express my gratitude to staff for all
14 of the work that goes into putting the information before
15 the board. So thank you very much to the TxDMV staff.

16 Good morning, Mr. Chairman, board members. I
17 appreciate the opportunity to brief the board on various
18 items going on at the agency, starting with the COVID
19 disaster response.

20 Revenue impacts of COVID-19 will certainly be
21 discussed under the Finance and Audit Committee meeting
22 portion of this agenda, so I won't go into that during
23 this report, but I'll talk more about the operational
24 impacts and the activities.

25 So we continue to remain at about 75 percent of

1 our workforce telecommuting and about 25 percent in our
2 offices, either in the regions or at headquarters, making
3 sure that operations continue, mail is processed, things
4 of that nature.

5 Our regional service centers remain open to the
6 public, with staff performing those in-person
7 transactions. We are still appointments-based only, we're
8 only offering via appointments because this is a critical
9 way for us to be able to monitor the flow of people going
10 in and out of the offices, certainly for social distancing
11 purposes, and this has worked very well.

12 Additionally, we have rolled out new technology
13 to all of the regional offices that allow customers to
14 check in from vehicles upon arrival and to be notified
15 once it is their turn to go into a facility to have their
16 transaction completed.

17 I do want to make sure to thank VTR and our IT
18 staff for working so hard to make sure that that new
19 functionality was possible.

20 And to date, just in terms of the number of
21 incidents we have had within the TxDMV staff, we have had
22 15 employees test positive for COVID-19, none of which
23 have been linked to exposure in the workplace. We have
24 eight employees who have recovered from COVID-19, and we
25 currently have seven employees that are self-quarantining.

1 And we're closely monitoring our employees when it comes
2 to COVID-19 and work hard to work with our managers and
3 employees when one of our employees has a positive or a
4 presumed positive case.

5 Now, in response to these positive cases and to
6 minimize exposure to customers, we have continued in this
7 very heavy telecommuting phase. We have shut down and
8 de-fogged offices in the regions and floors of
9 headquarters, and since March we have shut down and
10 de-fogged 16 offices or floors, and again, this is since
11 March.

12 And because we know that this is a very strange
13 time for our employees, we have held a couple of town hall
14 meetings for all employees, as well as a separate one for
15 managers, where they have had the opportunity to ask
16 questions and to learn more about COVID-19 on staffing
17 levels, interviewing, bringing on new hires.

18 We also have two more town halls scheduled for
19 tomorrow to keep our employees in the loop on how the
20 agency is responding and what resources that they have
21 available to them. And I want to make sure that the board
22 is aware that we are continuing to look at ways that we
23 can provide services virtually.

24 And speaking of new hires, as I said earlier,
25 we've brought on over 50 new TxDMV colleagues since April

1 1st. And certainly starting a new job is always a
2 significant change but starting a new job during a
3 pandemic is certainly not any easier, and I am very
4 thankful for our HR team for quickly finding a way to
5 bring new employees on virtually, and thanks to our HR and
6 IT teams for developing processes to onboard and get folks
7 equipment to start their career with our agency.

8 And just one other thing that I will mention
9 before I complete this portion of my report. The Motor
10 Vehicle Crime Prevention Authority, they provide in-person
11 Texas Commission on Law Enforcement, or TCOLE, training
12 for motor vehicle crime investigators, and this training
13 is one of only two ways for investigators to be
14 credentialed to perform confidential VIN inspections.

15 And because of the pandemic, MVCPA and our
16 TxDMV Training Advisory Committee received authorization
17 from TCOLE to provide virtual training statewide, and this
18 is the first live interactive training ever authorized by
19 TCOLE. We've gotten really great feedback from the law
20 enforcement community for providing those services.

21 So things are continuing to move forward.
22 We're looking at ways that we can continue to provide
23 services to customers, our stakeholder groups as well, in
24 a more virtual way.

25 And so with that, Mr. Chairman, I'm happy to

1 answer any questions that the board has.

2 MR. TREVIÑO: Thank you, Ms. Brewster.

3 Does any member of the board have any questions
4 for Ms. Brewster?

5 (No response.)

6 MR. TREVIÑO: Being none, one thing I would
7 like to commend you, and your HR director, Matthew Levitt,
8 is the focus on wellness as well during this crisis. I
9 know it's a difficult thing to do, but at least it's
10 something that you guys are focused on and I have to
11 commend you on that because these are stressful times for
12 everyone. Not only onboarding people, bringing people on,
13 but also thinking about the wellness of your team members
14 that are spread all over the state speaks well of you and
15 your team, so I just want to commend you for that.

16 MS. BREWSTER: Thank you, Mr. Chairman, and
17 thank you for your support and your leadership in that
18 area and continuing to push the agency on continuing to
19 look at wellness, the complete package when it comes to
20 our workforce. So thank you for that.

21 MR. TREVIÑO: Certainly.

22 Okay. So anything else, Ms. Brewster?

23 MS. BREWSTER: Yes, sir, just moving on to item
24 4.B. For this next item I'm going to introduce a man who
25 you all already know him very well, but I want to

1 introduce him formally to you with his new role in the
2 organization.

3 Daniel Avitia was selected to serve in the
4 newly created deputy executive director position, in
5 addition to Shelly Mellott. Prior to this position Daniel
6 served very, very well in our Motor Vehicle Division
7 director position for six years. He is a lifelong Texan.

8 Daniel began his career in state government
9 over 25 years ago. He has held various director and
10 administrator positions in state government agencies,
11 including the University of Texas at El Paso, the
12 Department of Assistive and Rehabilitative Services, the
13 Texas Health and Human Services Commission, and the Texas
14 Department of Agriculture.

15 And in his new role Daniel oversees the day-to-
16 day operations of the department's administrative and
17 motoring services divisions which include Finance and
18 Administration, Human Resources, Information Technology
19 Services, the Motor Vehicle Division, and the Office of
20 Administrative Hearings, and you can find a complete bio
21 for Daniel in the board book.

22 So please join me in congratulating Daniel on
23 his very well-earned promotion.

24 (Applause.)

25 MR. TREVIÑO: Hear, hear. Well done.

1 Would you like to say a few words?

2 MR. AVITIA: I sure can. Thank you for the
3 opportunity.

4 Chairman, members, Ms. Brewster, thank you
5 again, and good morning.

6 I am sincerely honored and excited to continue
7 my journey with the DMV in this new capacity. I've
8 thoroughly enjoyed being and serving as the Motor Vehicle
9 Division director for the last six years, certainly look
10 forward to leveraging my expertise in customer service,
11 finance, human resources and relations and information
12 technology, all in an effort to continue to advance the
13 agency's mission and goals, as well as to continue
14 supporting TxDMV customers, both internally and
15 externally.

16 Thank you again.

17 MR. TREVIÑO: Well, Daniel, thank you on behalf
18 of the board, and you know, thank you very much for all
19 you do for your fellow Texans and we're very happy that
20 you're in that position.

21 MR. AVITIA: Thank you, Chairman.

22 MS. BREWSTER: Mr. Chairman, if I may complete
23 my report with item 4.C.

24 MR. TREVIÑO: Please, yes.

25 MS. BREWSTER: All right. At this time we'd

1 like to recognize our employees who have reached a state
2 service milestone. We celebrate these employees as a show
3 of our appreciation for the years of service for the
4 citizens of Texas.

5 The following employee has reached 30 years of
6 state service, huge accomplishments: Tommy O'Connor from
7 our Vehicle Titles and Registration Division. Tommy is
8 not on screen but he is listening to us right now.

9 Tommy began his state career in 1990 as a
10 summer employee working in the accounting section of VTR
11 at the Texas Department of Transportation, and in 2009
12 Tommy transferred to the Finance and Administrative
13 Services Division of DMV.

14 He spent ten years in various accounting roles
15 in FAS before returning back to VTR in 2019, where he is
16 the division's statistician and he is responsible for
17 collecting and reporting on important statistical data,
18 including a lot of the information that comes to you in
19 your board books.

20 Tommy is always positive, he's upbeat and
21 willing to go the extra mile, and we are absolutely
22 delighted that he's part of the budget and research
23 services team in VTR.

24 Congratulations on 30 years of state service.
25 What an incredible milestone.

1 MR. TREVIÑO: Hear, hear. Thank you, Tommy.
2 Thirty years statistically is rare. So thank you for your
3 service and also for your tenacity. Thank you for staying
4 with the stable serving Texans for 30 years.

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

6 And the following employees reached a state
7 service milestone but are not able to join us this
8 morning. With 20 years we have Lillie Stenbridge in our
9 Motor Carrier Division, and Lance Petri in the Finance and
10 Administrative Services Division. With 25 years we've got
11 Kristy Schultz in our Motor Carrier Division. With 35
12 years we have Kenny Corzine in our Information Technology
13 Services Division, and Darlene Hancock in our Finance and
14 Administrative Services Division.

15 And last, but certainly not least, the
16 following employees recently retired from the department:
17 Chuckle Harris in our Finance and Administrative Services
18 Division, Candy Southerland in our Vehicle Titles and
19 Registration Division, and Patti Racicot also in our
20 Vehicle Titles and Registration Division.

21 And with that, Mr. Chairman, that completes my
22 report. Thank you.

23 MR. TREVIÑO: Thank you, Ms. Brewster

24 Kenny Corzine and Darlene Hancock have 35
25 years, so they're five years ahead of Tommy O'Connor. Is

1 that correct?

2 MS. BREWSTER: That is correct. That sounds a
3 bit like a challenge, Mr. Chairman.

4 MR. TREVIÑO: That is. That's collectively 100
5 years of service to Texans.

6 MS. BREWSTER: That's amazing.

7 MR. TREVIÑO: That is amazing. So thank you
8 very much for all you do for the department and for the
9 state. Thank you.

10 Does that conclude your report?

11 MS. BREWSTER: Yes, sir. Thank you.

12 MR. TREVIÑO: Great. Does anybody on the board
13 have any questions for Ms. Brewster.

14 (No response.)

15 MR. TREVIÑO: Great. We'll now move on then to
16 contested cases, agenda item number 5. Before we move to
17 the contested case presentations, we'll hear from our
18 general counsel, Tracey Beaver.

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

21 Before we begin the presentations for the
22 contested cases, I wanted to let the board know that each
23 party has been allowed a ten-minute presentation time and
24 five-minute rebuttal. We'll begin with Mr. Avitia and
25 then Mr. Lloyd.

1 Thank you.

2 MR. TREVIÑO: Thank you, Ms. Beaver.

3 Daniel Avitia will now address agenda item
4 number 5, contested case.

5 MR. AVITIA: Chairman, thank you. Again, good
6 morning, members, Ms. Brewster. For the record, I'm
7 Daniel Avitia, deputy executive director of the Texas
8 Department of Motor Vehicles.

9 Mr. Brian Coats with the Enforcement Division
10 is the attorney that represented the department at the
11 State Office of Administrative Hearings on this matter.
12 Agenda item 5 can be found on page 10 of your board books.

13 It is a contested case regarding TxDMV v.
14 Johnnie Lloyd, d/b/a Five Start Motors and More. This
15 morning will be asking the staff to issue an order that
16 aligns with the ALJ's proposal for decision to approve
17 Five Star Motors and More GDN application.

18 Mr. Lloyd applied for a GDN license in 2019.
19 In the criminal history section of the application he
20 provided information about one felony conviction. The
21 standard background check identified two other convictions
22 that he did not disclose on his application. He then was
23 asked to disclose the details and provide the evidence of
24 fitness.

25 Ultimately, the Licensing Committee denied Mr.

1 Lloyd's license application after reviewing the
2 circumstances, including the mitigating facts and
3 information provided by Mr. Lloyd at the time. Key
4 factors for originally denying licensure included:
5 failure of Mr. Lloyd to originally disclose a complete
6 criminal history on his application; Mr. Lloyd's multi-
7 year prior serious felony convictions which were directly
8 related to the licensed occupation; as well as
9 insufficient evidence of rehabilitation.

10 Moving forward, additional evidence of
11 rehabilitation was provided at the hearing, to include two
12 letters of recommendation, proof of court fee payments,
13 and a completion certificate for substance abuse treatment
14 dated February of 2015.

15 Based on all the new evidence Mr. Lloyd
16 provided at the hearing, the ALJ found that Mr. Lloyd had
17 rehabilitated himself and is fit for licensure and
18 recommends the license be issued to him. Staff believes
19 the ALJ's analysis and the conclusions of law reached in
20 this case are certainly reasonable.

21 After consideration of the applicable law and
22 all the additional information and evidence provided in
23 the hearing, staff is asking the board again to issue a
24 final order which concurs with the ALJ's proposal for
25 decision to approve Mr. Lloyd's GDN license application.

1 I believe Mr. Lloyd did receive notice of this
2 meeting and is currently present to provide comments this
3 morning.

4 Members, this concludes my remarks on this
5 matter. Thank you.

6 MR. TREVIÑO: Great. Thank you, Mr. Avitia.

7 Any questions from board members?

8 (No response.)

9 MR. TREVIÑO: Okay. Hearing none, before we
10 proceed, will the meeting host please move Mr. Johnnie
11 Lloyd to panelist so that he can have his video and audio
12 on. As soon as that's done, we'll proceed with the
13 presentation from Mr. Johnnie Lloyd. Let me know when
14 that's available and Mr. Lloyd is ready to go.

15 How will we know? Will they let us know on
16 that?

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

19 Yes, Mr. Chairman, I understand that our agency
20 is currently working to get Mr. Lloyd unmuted.

21 MR. TREVIÑO: Great.

22 (Pause.)

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

25 Mr. Lloyd, it looks like you are now unmuted.

1 Would you like to proceed with your presentation?

2 MR. LLOYD: Yes, ma'am.

3 MR. TREVIÑO: Welcome, Mr. Lloyd.

4 MR. LLOYD: Hey. How are you doing?

5 MR. TREVIÑO: Good, well. And you?

6 MR. LLOYD: I'm all right.

7 MR. TREVIÑO: Great. You can proceed with your
8 presentation. You're live on the board here now so you're
9 welcome to start your presentation any time you like.

10 MR. LLOYD: Well, I just -- I don't really have
11 much to say; I was just listening in.

12 MR. TREVIÑO: Okay, great. Well, all right
13 then.

14 So we'll just proceed with the -- Tracey, Ms.
15 Beaver, would that conclude his presentation then?

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

18 Thank you, Mr. Lloyd, for being available.

19 And of course, Chairman, if you would like the
20 board members to ask Mr. Lloyd any questions, that would
21 be also possible.

22 MR. TREVIÑO: Thank you. Okay.

23 Thank you, Mr. Lloyd.

24 Any questions from board members?

25 MR. LLOYD: No, sir.

1 MR. TREVIÑO: How about Texas DMV board
2 members, any questions?

3 MR. LLOYD: No, sir.

4 MR. TREVIÑO: Okay. Mr. Lloyd, do you have
5 anyone else presenting on this case?

6 MR. LLOYD: No, sir.

7 MR. TREVIÑO: Okay. All right then. If there
8 are no more questions, will our meeting host please move
9 Mr. Johnnie Lloyd to attendee again.

10 All right. Does anybody have any other
11 questions?

12 (No response.)

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

15 MR. SCOTT: Mr. Chairman, Member Scott.

16 MR. TREVIÑO: The chair recognizes Member
17 Scott.

18 MR. SCOTT: I move the board uphold the SOAH's
19 PFD and adopt the findings of fact 1 through 25 and
20 conclusions of law 1 through 11 in the proposal for
21 decision.

22 MR. TREVIÑO: We have motion from Board Member
23 Scott. Do we have a second?

24 MR. BACARISSE: Second.

25 MR. TREVIÑO: We have a second from Member

1 Bacarisse.

2 MR. BACARISSE: Mr. Chairman, if I may?

3 MR. TREVIÑO: Yes, Member Bacarisse.

4 MR. BACARISSE: I just want to make a comment.

5 Serving for 13 years as district clerk, I've watched so
6 many criminal defendants come through the criminal court
7 system, and I'll tell you, very few of them were able to
8 discharge their fines and their other obligations through
9 probation and so forth fully, and I'm impressed that Mr.
10 Lloyd has made this effort and has really seemingly turned
11 a corner in his life. And so I appreciate him, and I
12 wanted to say that that's important and I appreciate his
13 willingness to really be serious about taking a different
14 direction in life. So I commend him for that.

15 MR. TREVIÑO: Well said, Member Bacarisse.

16 Is there any further discussion or any further
17 comments?

18 (No response.)

19 MR. TREVIÑO: Hearing none, I would call for
20 the vote. Board members, when I call your name, please
21 state your vote for the record.

22 Board Member Bacarisse?

23 MR. BACARISSE: Aye.

24 MR. TREVIÑO: Board Member Gillman?

25 MS. GILLMAN: Aye.

1 MR. TREVIÑO: Board Member Graham?

2 MR. GRAHAM: Aye.

3 MR. TREVIÑO: Board Member McRae?

4 MS. McRAE: Aye.

5 MR. TREVIÑO: Board Member Prewitt?

6 MR. PREWITT: Aye.

7 MR. TREVIÑO: Board Member Scott?

8 MR. SCOTT: Aye.

9 MR. TREVIÑO: Board Member Washburn? Member
10 Washburn? Are you on the line, Member Washburn? Did we
11 lose you? Oh, I see you nodding your head; I'd say that
12 that is affirmative, I take that as a yes, I take that as
13 a very emphatic yes.

14 MS. WASHBURN: Yes.

15 MR. TREVIÑO: And I, Chairman Treviño, vote yes
16 as well. Let the record reflect that it's unanimous and
17 the motion carries.

18 And I would also like to add my respect for Mr.
19 Lloyd and also that this board expects great things from
20 him, and we appreciate all his hard work.
21 Congratulations, Mr. Lloyd.

22 All right. We're going to move on to agenda
23 item number 6, another contested case.

24 Before we proceed with the contested case, we
25 will hear from our general counsel, Tracey Beaver.

1 MS. BEAVER: Thank you, Chairman, board
2 members. This is Tracey Beaver, general counsel, for the
3 record.

4 I just wanted to let everyone know that the
5 parties were given ten-minute presentation and five-minute
6 for rebuttal as well, and we'll begin with Mr. Avitia, and
7 then we have Ms. Taylor who is also able to provide her
8 input and presentation as well after Mr. Avitia.

9 MR. TREVIÑO: Great. Thank you, Ms. Beaver.
10 Daniel Avitia will now address agenda item
11 number 6.

12 Somebody has got their mic on, I'm not sure who
13 it is.

14 (Background noise from Mr. Graham's mic.)

15 MR. TREVIÑO: All right, Mr. Avitia.

16 MR. AVITIA: Certainly. Chairman, members, Ms.
17 Brewster, again for the record, Daniel Avitia, deputy
18 director of the Texas Department of Motor Vehicles.

19 Mr. Damian Shores with the Enforcement Division
20 is the attorney that represented the department at the
21 State Office of Administrative Hearings on this specific
22 matter.

23 Agenda item 6, which can be found on page 23 of
24 your board books, is the contested case regarding TxDMV v.
25 Alvina Taylor, d/b/a A&J Imports, LLC. Staff again will

1 be asking the board to issue a final order which concurs
2 with the ALJ's PFD to approve A&J Imports' application for
3 a GDN license.

4 Ms. Taylor is the spouse of Jason Taylor.
5 Jason Taylor applied for a GDN under the business name of
6 All Seasonz Imports, LLC, listing Ms. Taylor as 50 percent
7 owner and Mr. Taylor as 50 percent owner.

8 Mr. Taylor withdrew his application after being
9 informed the department intended to deny his license. The
10 department's decision to deny the license was based on Mr.
11 Taylor's failure to disclose criminal history and the
12 extent of the criminal history.

13 Now, Ms. Taylor then applied for a GDN license
14 under business name A&J Imports, LLC, listing herself as
15 100 percent owner. The Texas Administrative Code allows
16 for the department to deny a license application if the
17 applicant is affiliated with a person who is otherwise
18 ineligible for a license.

19 Now, based on the evidence presented at the
20 hearing, the ALJ found that Mr. Taylor and Ms. Taylor are
21 eligible for a license and that Mr. Taylor has
22 rehabilitated himself and as well is also fit for
23 licensure and recommended that the license be issued to
24 Ms. Taylor.

25 After consideration of the applicable law and

1 the facts in this case, staff is asking the board to issue
2 a final order which concurs with the ALJ's proposal for
3 decision to approve Alvina Taylor, A&J Motors, LLC
4 application for a GDN license.

5 Ms. Taylor did receive notice of this meeting
6 and is present to provide comments today.

7 Members, this concludes my remarks on this
8 matter.

9 MR. TREVIÑO: Thank you, Mr. Avitia.

10 Any questions from board members?

11 (No response.)

12 MR. TREVIÑO: Okay. Before we proceed, will
13 the meeting host please move Ms. Alvina Taylor to panelist
14 so she can have her audio and video on. We will now
15 proceed once that's set up with a presentation from Ms.
16 Alvina Taylor.

17 MS. TAYLOR: Can you hear me?

18 MR. TREVIÑO: Yes, ma'am.

19 MS. TAYLOR: I want to tell you that I just
20 wanted to give you guys my presentation, and I want to
21 thank you guys for the opportunity. This has been a long
22 run, we've been waiting on this for a long time, and I
23 just want to thank you guys.

24 MR. TREVIÑO: All right, Ms. Taylor. Welcome
25 and thank you for your comments.

1 Do any board members have any comments for Ms.
2 Taylor, questions? No?

3 (No response.)

4 MR. TREVIÑO: All right then. Thank you, Ms.
5 Taylor. Do you have anyone else presenting on this case?

6 MS. TAYLOR: No, sir, just myself.

7 MR. TREVIÑO: Great. If there are no
8 questions, I guess we're going to ask the meeting host to
9 please move Ms. Taylor to attendee. That way you can hear
10 the outcome here. I hear no questions, so there's no
11 questions for you.

12 So thank you very much for coming and speaking
13 to the board.

14 MS. TAYLOR: Thank you for having me.

15 MR. TREVIÑO: Yes, ma'am.

16 Okay. Any other questions or comments?

17 (No response.)

18 MR. TREVIÑO: Okay. Then hearing none, the
19 chair would entertain a motion. All right. Don't
20 everybody jump in at once.

21 MR. PREWITT: Mr. Chairman, this is John
22 Prewitt, board member.

23 I hereby move that we concur with the staff
24 recommendation and adopt the findings of fact and
25 conclusion of law in the proposed decision in the

1 administrative law judge's proposal for decision, as
2 amended in the ALJ's exception letter, and approve Alvina
3 Taylor, d/b/a A&J Imports' application for a motor vehicle
4 dealer's general distinguishing number.

5 MR. TREVIÑO: Great. We have a motion from
6 Member Prewitt. Thank you, Member Prewitt.

7 Do we have a second?

8 MR. GRAHAM: This is Brett Graham. I'll
9 second.

10 MR. TREVIÑO: We have a second from Member
11 Graham.

12 Is there any discussion, any questions?

13 (No response.)

14 MR. TREVIÑO: Hearing none, I would call for
15 the vote.

16 Member Bacarisse?

17 MR. BACARISSE: Aye.

18 MR. TREVIÑO: Member Gillman, is that a yes?

19 Okay. I'll take that as a yes.

20 Member Graham?

21 MR. GRAHAM: Aye.

22 MR. TREVIÑO: Member McRae?

23 MS. McRAE: Aye.

24 MR. TREVIÑO: Member Prewitt?

25 MR. PREWITT: Aye.

1 MR. TREVIÑO: Member Scott?

2 MR. SCOTT: Aye.

3 MR. TREVIÑO: Member Washburn?

4 MS. WASHBURN: Aye.

5 MR. TREVIÑO: Okay, good. And I, Chairman
6 Treviño, also vote yes. Let the record reflect that it is
7 a unanimous decision.

8 Ms. Taylor, congratulations. Thank you very
9 much for all your hard work, and we expect great things
10 from you.

11 All right. So now we're going to move on to
12 rules. We'll be taking up agenda item number 7, CPAC
13 recommendations, today. First we'll hear from our general
14 counsel, and then we'll hear from the Consumer Protection
15 Advisory Committee's presiding officer, Laird Doran.

16 Meeting host, will you please move Mr. Doran
17 from attendee to panelist where he may have his video and
18 audio turned on.

19 MS. BEAVER: Chairman, members, Ms. Brewster,
20 good morning. For the record, I'm Tracey Beaver, general
21 counsel.

22 The board appointed the Consumer Protection
23 Advisory Committee and charged them with using their
24 expertise to provide recommendations to the board to
25 ensure stakeholder and consumer involvement and public

1 transparency in policy issues including rulemaking.

2 This particular agenda item pertains to CPAC's
3 recommendation regarding the definition of refund for
4 rules. The next agenda item is the rule proposal for
5 refunds.

6 CPAC met again after hearing policy discussions
7 by the board regarding refunds and after new members were
8 appointed to the committee during the last board meeting,
9 including household goods movers and motor vehicle dealer
10 representatives. CPAC came up with an independent
11 recommendation on the definition of refunds based on their
12 discussion, and their presiding officer has kindly agreed
13 to present that recommendation to the board today.

14 Members, this concludes my remarks. Thank you.

15 And I'll now turn it over to CPAC Presiding Officer
16 Doran.

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

18 And welcome, Mr. Doran. Good to see you.

19 MR. DORAN: Good to see you. Good morning, Mr.
20 Chairman, board members, Ms. Brewster. My name is Laird
21 Doran, and I serve as the presiding officer for the
22 Consumer Protection Advisory Committee, known as CPAC.

23 CPAC would first like to take a moment to thank
24 you all for giving us an opportunity to provide our
25 expertise and our input for rulemaking with the

1 committee's recommendation on the definition of refunds.

2 The CPAC committee met several times and on
3 June 25, 2020 concluded our discussion on the definition
4 for rulemaking on refunds by the motor vehicle dealers and
5 motor carriers transporting household goods.

6 At our June 25, 2020 meeting, the newly
7 appointed franchised dealers and household goods movers
8 representatives on CPAC participated with the rest of the
9 committee in the various discussions regarding the
10 parameters of the definition of a refund to be considered
11 by staff when drafting the rule.

12 The parameters of the definition of refund that
13 CPAC is recommending today were recommended by CPAC Member
14 Carol Smith, who made the motion, which was seconded by
15 Member Rick Cavender. The vote for the parameters of the
16 definition of refund was approved unanimously by the CPAC
17 membership.

18 CPAC's recommendation is also incorporated into
19 the rule proposal being presented by the department and is
20 as follows: "A refund constitutes the return or repayment
21 of consideration. Under Section 2301.807, a refund is
22 limited to the amount paid by the consumer and without
23 inclusion of any additional consideration of damages or
24 harm."

25 Mr. Chairman, members, and Ms. Brewster, that

1 concludes my presentation.

2 MR. TREVIÑO: Thank you, Mr. Doran, and thank
3 you for your service to the citizens of Texas.

4 Are there any questions for Mr. Doran?

5 (No response.)

6 MR. TREVIÑO: Hearing none, Tracey, are there
7 any comments from the public?

8 MS. BEAVER: Tracey Beaver, general counsel.

9 There are no comments from the public on this
10 agenda item.

11 MR. TREVIÑO: Okay. So no comments from the
12 public, so hearing none, I guess the chair would entertain
13 a motion.

14 Is that Member Washburn? I can see your lips
15 moving but I can't hear anything.

16 MS. WASHBURN: Okay, let's try this. Can you
17 hear me now?

18 MR. TREVIÑO: Yes, I sure can.

19 MS. WASHBURN: Mr. Chairman, Member Washburn
20 here.

21 I move that the board adopt the Consumer
22 Protection Advisory Committee recommendation for the
23 department to incorporate into the development of their
24 proposed rule.

25 MR. TREVIÑO: Great. We've got a motion from

1 Member Washburn. Do we have a second?

2 MS. McRAE: I'll second.

3 MR. TREVIÑO: We've got a second from Member
4 McRae.

5 Any further discussion?

6 (No response.)

7 MR. TREVIÑO: Hearing none, I would call for
8 the vote.

9 Member Bacarisse?

10 MR. BACARISSE: Aye.

11 MR. TREVIÑO: Member Gillman? Member Gillman?

12 (No response.)

13 MR. TREVIÑO: Well, I don't see Member
14 Gillman's video on either, so I think we'll come back
15 there in a second here.

16 Member Graham?

17 MR. GRAHAM: Aye.

18 MR. TREVIÑO: Member McRae?

19 MS. McRAE: Aye.

20 MR. TREVIÑO: Member Prewitt?

21 MR. PREWITT: Aye.

22 MR. TREVIÑO: Member Scott?

23 MR. SCOTT: Aye.

24 MR. TREVIÑO: Member Washburn?

25 MS. WASHBURN: Aye.

1 MR. TREVIÑO: And I, Chairman Treviño, also
2 vote aye.

3 Member Gillman, one more time, are you back
4 with us?

5 (No response.)

6 MR. TREVIÑO: I don't see Member Gillman, and I
7 don't hear anything from her.

8 Tracey, should we just leave it as a question
9 mark? We've got more votes for, so we don't necessarily
10 need her vote.

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

13 It looks like Member Gillman has dropped off
14 the call. If you'd like to take a five-minute break so
15 that she might try to get her technology working before we
16 move on to the next agenda item, that would also be an
17 option.

18 MR. TREVIÑO: Great. But we can close this out
19 now, right, leave her as unavailable, I guess, on the
20 vote, or abstain?

21 MR. GRAHAM: Abstain.

22 MR. TREVIÑO: We've got seven votes for, and one
23 abstention, so the motion carries. If we get Member
24 Gillman back, we'll circle back and ask her if she's okay
25 with it. Right? But the motion carries nevertheless.

1 Okay. Again, I would like to thank the members
2 of CPAC for their hard work and participation on this
3 committee. Keep up the great work.

4 And will the meeting host please move Mr. Doran
5 back to attendee role.

6 Again, Presiding Officer Doran, thanks again for
7 all you do for the citizens of Texas.

8 And Tracey, I guess we'll take a couple-of-
9 minute break here to try and get Member Gillman back on.

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

12 If you'd like to take a break, just mention the
13 time that the break starts, how long the break will be,
14 and we can turn off audio and video.

15 MR. TREVIÑO: Okay. Then we'll take a five-
16 minute break. It's approximately 8:46, so we'll be back
17 in session around 8:50.

18 Thank you.

19 (Whereupon, at 8:46 a.m., a brief recess was
20 taken.)

21 MR. TREVIÑO: It's approximately 8:55, and I
22 guess we're back in session. Is everybody with us?

23 Member Gillman, let me fill you in on what
24 happened while you were gone. We discussed the last
25 issue, went for a vote. We had you as an abstention, it

1 was a seven to one abstention vote. Would you like to
2 vote aye on the last thing on the CPAC rules issue?

3 MS. GILLMAN: Yes.

4 Laird, are you still there? Laird?

5 MR. TREVIÑO: I think he's gone.

6 MS. GILLMAN: Oh, man. Well, I just wanted to
7 comment and say, you know, I've read through the CPAC
8 definition of refund, of course, and the work that they
9 did and I just wanted to say thank you to the CPAC and
10 also the staff that participated as well, and I wanted to
11 congratulate Laird on a much better work product that I
12 wholeheartedly endorse, and I wanted to give my vote aye.
13 So take me as a not abstention but I'm an aye.

14 MR. TREVIÑO: So let the record reflect that
15 this vote is now unanimous, and I'd like to speak for the
16 rest of the board here and say that I'm glad that your
17 comments were worth waiting for, and yes, we concur that
18 their work was terrific, they did a great job.

19 So great to have you back, Member Gillman.

20 MS. GILLMAN: Thank you.

21 MR. TREVIÑO: Let's move on to agenda item
22 number 8. We'll now hear proposals for Chapters 215 and
23 218. I'll turn it over to Corrie Thompson and to Brian
24 Ge.

25 Corrie, Brian, you here?

1 MS. THOMPSON: Good morning, Chairman. Can you
2 see me?

3 MR. TREVIÑO: Yes.

4 MS. THOMPSON: Okay, great.

5 Well, good morning, Chairman Treviño and board
6 members.

7 Welcome back, Member Gillman.

8 My name is Corrie Thompson. I am the director
9 of the Enforcement Division, and I am presenting agenda
10 item 8 which begins on page 47 in your board book.

11 Before you is a recommendation to approve the
12 publishing of new Rule 215.504 as well as the publishing
13 of proposed amendments to Rules 215.500 and 218.72 in the
14 *Texas Register* for public comment.

15 The purpose of all three of the rules before
16 you right now is to implement Senate Bill 604 which is, of
17 course, our Sunset bill. That bill added the ability for
18 the department to order refunds as a list of the available
19 sanctions that the department can use, and they did that
20 by adding language to Texas Occupations Code 2301.807 for
21 motor vehicle dealers, and to Transportation Code 643.257
22 for motor carriers transporting household goods.

23 The topic was brought before the Consumer
24 Protection Advisory Committee, as you just heard by
25 Presiding Officer Laird Doran, and these rules are the

1 result of the discussions had with that advisory committee
2 and those members.

3 So the rule language specifically starts on
4 page 52 in your board books. Rules 215.500 and new
5 215.504 relate to refunds for motor vehicle buyers and
6 lessees. 215.500 part (a)(5) simply adds refunds to the
7 list of available sanctions, so that's adding refunds to
8 penalties, the ability to deny, suspend or revoke a
9 license.

10 And then in 215.504, the new rule, we're
11 defining refunds, as Presiding Officer Doran said, as the
12 return of any percentage ordered by the department of
13 funds paid or contracted to be paid to a person, whether
14 those funds are documented as a separate line item or part
15 of the overall amount paid by the consumer. And it goes
16 on further to say that a refund may include overpayments,
17 fees paid for services not rendered, and payments made for
18 products not delivered.

19 On page 59 of your board book starts the rule
20 language for the motor carriers transporting household
21 goods under 217.72, new subsection (d), which also
22 similarly defines refund as the return of any percentage
23 of funds paid or contracted to be paid to a motor carrier
24 transporting household goods whether those funds are
25 document as a separate line item or included in the

1 overall amount paid by a customer.

2 That again includes overpayments, fees paid for
3 services not rendered, and fees paid for charges not
4 listed on the household goods mover's tariff after the
5 household goods mover takes possession of a consumer's
6 property, and then ends with saying a refund does not
7 include any consideration of damages or harm over the
8 amount paid by the consumer, so similar to the motor
9 vehicle rule.

10 There is no financial impact associated with
11 any of the rules being proposed for publication in the
12 *Register* for comment, so I will take any comments from the
13 board, and if there are no comments, I would ask that the
14 board approve publication of the proposed new rule and the
15 amendments to the two additional rules.

16 MR. TREVIÑO: Great. Thank you, Ms. Thompson.
17 Are there any questions for Ms. Thompson or Mr.
18 Ge?

19 (No response.)

20 MR. TREVIÑO: Hearing none, Tracey, are there
21 any comments from the public.

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

24 No comments from the public.

25 MR. TREVIÑO: Okay. So hearing no comments or

1 questions, the chair would entertain a motion.

2 MS. WASHBURN: Mr. Chairman, Member Washburn
3 here. Can you hear me?

4 MR. TREVIÑO: Yes, I can.

5 MS. WASHBURN: Okay, good. I think we've got
6 this down now.

7 MR. TREVIÑO: Great.

8 MS. WASHBURN: So I move that the board approve
9 agenda item 8 on the proposed amendments of Section
10 215.500 and Section 215.504 and the amendments of 218.72
11 for publication in the *Texas Register* for public comment.

12 MR. TREVIÑO: Great. Thank you, Member
13 Washburn.

14 We've got a motion from Member Washburn. Do we
15 have a second?

16 MS. McRAE: I'll second.

17 MR. TREVIÑO: Member McRae. I've got a second
18 from Member McRae.

19 Any further discussion?

20 (No response.)

21 MR. TREVIÑO: Hearing none, I will call for the
22 vote.

23 Member Bacarisse?

24 MR. BACARISSE: Aye.

25 MR. TREVIÑO: Member Gillman?

1 MS. GILLMAN: Aye.

2 MR. TREVIÑO: Member Graham?

3 MR. GRAHAM: Aye.

4 MR. TREVIÑO: Member McRae?

5 MS. McRAE: Aye.

6 MR. TREVIÑO: Member Prewitt?

7 MR. PREWITT: Aye.

8 MR. TREVIÑO: Member Scott?

9 MR. SCOTT: Aye.

10 MR. TREVIÑO: Member Washburn?

11 MS. WASHBURN: Aye.

12 MR. TREVIÑO: Great. And I, Chairman Treviño,
13 also vote aye, so let the record reflect that the vote is
14 unanimous and the motion carries.

15 We'll now move on to agenda item number 9 and
16 turn it back over to Ms. Corrie Thompson.

17 MS. THOMPSON: Thank you, Chairman. Yes, I'm
18 continuing on with agenda item 9. That next rule package
19 begins on page 61 in your board books, and before you now
20 is a recommendation to approve the publishing of New Rule
21 221.96 in the *Texas Register*, again for public comment

22 This rule again relates to implementation of
23 Senate Bill 604, the department's Sunset bill, which
24 established a process under which the board may issue a
25 cease-and-desist order to prohibit people who are engaging

1 in unlicensed salvage dealer activities from violating any
2 of the department's statutes, board rules or board orders,
3 and that would happen after a notice and order for
4 hearing.

5 It's a fairly simple one. We have cease-and-
6 desist authority in other sections of our statute that
7 pertain to motor vehicle dealers and to motor carriers,
8 and so this is just adding that additional authority for
9 the salvage section of code that we have.

10 Again, there's no financial impact associated
11 with the proposal, so I'll entertain any comments, and if
12 there are none, I would just ask that the board approve
13 the publication of the proposed rule.

14 MS. BREWSTER: Whitney Brewster, executive
15 director.

16 Mr. Chairman, I believe that you are muted.

17 MR. TREVIÑO: I apologize. Sorry about that.

18 Are there any questions of Ms. Thompson?

19 (No response.)

20 MR. TREVIÑO: Hearing none, Tracey, are there
21 any comments from the public?

22 MS. BEAVER: Tracey Beaver, general counsel.

23 No public comments.

24 MR. TREVIÑO: Okay. So hearing none and no
25 discussion, the chair would entertain a motion.

1 MS. GILLMAN: Chairman Memo, I'd like to
2 propose a motion. For agenda item number 9, I move that
3 the board approve the proposed Section 221.96 for
4 publication in the *Texas Register* for public comment.

5 MR. TREVIÑO: Thank you, Member Gillman.

6 We've got a motion from Member Gillman. Do we
7 have a second?

8 MR. PREWITT: Second.

9 MR. TREVIÑO: That's Member Prewitt?

10 MR. PREWITT: Yes.

11 MR. TREVIÑO: Great. Thank you, Member
12 Prewitt.

13 We've got a motion and a second. Any further
14 discussion?

15 (No response.)

16 MR. TREVIÑO: Hearing none, I will call for the
17 vote.

18 Member Bacarisse?

19 MR. BACARISSE:

20 MR. TREVIÑO: Member Gillman?

21 MS. GILLMAN: Aye.

22 MR. TREVIÑO: Member Graham?

23 MR. GRAHAM: Aye.

24 MR. TREVIÑO: Member McRae?

25 MS. McRAE: Aye.

1 MR. TREVIÑO: Member Prewitt?

2 MR. PREWITT: Aye.

3 MR. TREVIÑO: Member Scott?

4 MR. SCOTT: Aye.

5 MR. TREVIÑO: Member Washburn?

6 MS. WASHBURN: Aye.

7 MR. TREVIÑO: And I, Chairman Treviño, also
8 vote aye, so the motion is unanimous and it carries.

9 And we will move on to agenda item number 10,
10 regarding escort flag vehicles and escrow accounts. I
11 will turn it over to Jimmy Archer and Linda Flores.

12 MR. ARCHER: Good morning, Mr. Chair and
13 members of the board. For the record, my name is Jimmy
14 Archer. I'm the director of the Motor Carrier Division.
15 Agenda item number 10 is found beginning on page 67 of
16 your board books.

17 First, for the board's consideration, Chief
18 Financial Officer Linda Flores and I are presenting these
19 proposed rule amendments to 43 Texas Administrative Code,
20 Chapter 209.23 and Chapter 219 for publication in the
21 *Texas Register*. These rule amendments are necessary to
22 streamline department processes and improve program
23 efficiency by eliminating two escrow payment methods for
24 customers that purchase oversize/overweight permits.

25 First, the Texas DMV permit escrow account

1 requires department personnel to manually process
2 payments, and a permit account card, which is an escrow
3 account administered by Frost Bank, requires department
4 personnel to reconcile payment records.

5 The department currently accepts the following
6 methods of payment for oversize and overweight permits
7 online through the Texas Permitting and Routing
8 Optimization System, or TxPROS: credit card; automated
9 clearing house, or ACH; check; money order; cashier's
10 check; escrow account administered by the department; and
11 the permit account card administered by Frost Bank.

12 A recent internal audit advisory service
13 associated with accounts receivables identified escrow
14 accounts as a concern, specifically, Finance and
15 Administrative Services Division activates and deactivates
16 escrow accounts and adds funds to escrow accounts as
17 needed in TxPROS.

18 Eliminating these two types of payment methods
19 will alleviate audit concerns and improve efficiency and
20 that's possibly because the department implemented the
21 automated clearing house option in TxPROS as a form of
22 payment for all oversize and overweight in December of
23 2018.

24 When using this payment option the customer
25 will use their own bank account to purchase permits. To

1 complete a transaction to purchase a permit, the customer
2 will enter their account routing number and their bank
3 account number, then the permit transaction will be
4 processed.

5 There will be no correlating changes to
6 facilitate this change. There is a benefit to the
7 department in terms of alleviating risk by handling
8 customer funds and a cost benefit to the Finance Division
9 for personnel costs.

10 Ms. Flores can speak to these issues.

11 Linda, do you have any comments?

12 MS. FLORES: Thank you, Mr. Archer.

13 This is Linda Flores.

14 As Mr. Archer indicated, this is a very manual
15 process for the Finance and Administrative Services staff.

16 Approximately three people routinely have to reconcile or
17 process refunds for the escrow accounts. Eliminating this
18 payment will not cost consumers. In fact, there will be a
19 savings to our escrow account holders, since they can
20 process their permit request through ACH at no cost, and
21 currently we do charge \$5 per deposit every time a deposit
22 is sent to the agency.

23 That concludes my remarks. Thank you.

24 MR. TREVIÑO: Great. Thank you very much.

25 MR. ARCHER: Thank you, Ms. Flores.

1 And for the board's information, I did speak to
2 the Texas Trucking Association and to a few of our motor
3 carriers who are so far up to this point in support of
4 eliminating these two escrow options. The feeling among
5 our customers is as long as they have an efficient way to
6 purchase permits, they're fine with us eliminating these
7 two particular types of payment methods.

8 The other part of this rule of item 10 is the
9 escort flag vehicle rule. This is to conform our rules to
10 House Bill 61. The rule will conform our rules to House
11 Bill 61 by adding a definition for escort flag vehicle
12 under the Transportation Code that allows escort flag
13 vehicles the option of being equipped with alternating
14 amber and blue lights and defines an escort flag vehicle
15 as a vehicle that precedes or follows an
16 oversize/overweight vehicle to facilitate safe movement of
17 these vehicles on our roads.

18 I would ask that the board approve these
19 proposed amendments for publication in the *Texas Register*,
20 and I'd be happy to answer any questions you might have.

21 MR. TREVIÑO: Great. Thank you, Mr. Archer and
22 Ms. Flores.

23 And again, as we talked about at the beginning
24 of the meeting, the board does recognize how much work and
25 how many stakeholders you have to talk to to make

1 something which sounds relatively simple on paper actually
2 happen. So I know there's a lot of hard work that goes
3 into this, so I thank you for that.

4 So any questions for Mr. Archer or Ms. Flores
5 on these issues?

6 (No response.)

7 MR. TREVIÑO: Tracey, any comments from the
8 public?

9 MS. BEAVER: Tracey Beaver, general counsel.
10 No comments from the public.

11 MR. TREVIÑO: Great. So hearing no comments or
12 questions, the chair would entertain a motion.

13 MR. PREWITT: Mr. Chairman, this is John
14 Prewitt, board member.

15 I would like to move that the board approve the
16 publishing of proposed amendments to the *Texas Register*
17 for public comment, in particular Chapter 219, Oversize
18 and Overweight, Sections 219.2, 219.11, 219.13-219.15,
19 219.42, 219.43, and 219.61-219.63, relating to House Bill
20 61, escort flag vehicles, including the use of certain
21 lighting equipment, removing escrow account payments for
22 certain types of permits.

23 MR. TREVIÑO: Thank you, Member Prewitt.

24 So we have a motion from Board Member Prewitt.
25 Do we have a second?

1 MS. WASHBURN: Mr. Chair, I second.

2 MR. TREVIÑO: Second from Member Washburn.

3 Any further discussion?

4 MR. PREWITT: Mr. Chairman, I would just like
5 to thank Jimmy and Linda for the great work they've done
6 on all these amendments. I appreciate their work, the
7 industry does as well.

8 MR. TREVIÑO: Hear, hear.

9 Any further comments or discussion?

10 (No response.)

11 MR. TREVIÑO: Hearing none, I will call for the
12 vote.

13 Member Bacarisse:

14 MR. BACARISSE: Aye.

15 MR. TREVIÑO: Member Gillman?

16 MS. GILLMAN: Aye.

17 MR. TREVIÑO: Member Graham?

18 MR. GRAHAM: Aye.

19 MR. TREVIÑO: Member McRae?

20 MS. McRAE: Aye.

21 MR. TREVIÑO: Member Prewitt?

22 MR. PREWITT: Aye.

23 MR. TREVIÑO: Member Scott?

24 MR. SCOTT: Aye.

25 MR. TREVIÑO: Member Washburn?

1 MS. WASHBURN: Aye.

2 MR. TREVIÑO: And I, Chairman Treviño, also
3 vote aye, so the motion is unanimous, it carries.

4 And this takes us on to agenda item number 11,
5 and we'll turn it over again to Mr. Jimmy Archer.

6 MR. ARCHER: Thank you, Mr. Chairman.

7 Again, Jimmy Archer, director of the Motor
8 Carrier Division. This is item number 11 and it's found
9 at page 150 of your board books.

10 I'm asking that the board approve amendments to
11 Chapter 219 to facilitate House Bill 2620. This would add
12 a provision to Section 219.31 which would allow a vehicle
13 with a timber permit to also load and carry equipment that
14 is used to load timber.

15 It also adds a provision to Section 219.126
16 that allows the department to investigate and impose
17 administrative penalties on shippers that fail to provide
18 a shipper's certificate to carriers, and also repealing a
19 section that duplicates language found in the
20 Transportation Code. This language is inconsistent with
21 the Transportation Code.

22 There is no fiscal impact to these amendments,
23 and I would ask that the board approve these proposed
24 amendments for publication in the *Texas Register*.

25 I'll be happy to answer any questions you might

1 have. Thank you.

2 MR. TREVIÑO: Great. Thank you, Mr. Archer.

3 Any questions for Mr. Archer?

4 (No response.)

5 MR. TREVIÑO: Hearing none, Tracey, any
6 comments from the public?

7 MS. BEAVER: Tracey Beaver, general counsel.

8 No comment from the public on agenda item 11.

9 Thank you.

10 MR. TREVIÑO: Great. Thank you very much.

11 So hearing no discussion, the chair would
12 entertain a motion.

13 MR. PREWITT: Mr. Chairman, this is Member
14 Prewitt. I would like to make the motion that the board
15 approve agenda item 11, which is approving the publishing
16 of proposed amendments for Chapter 219, Oversize and
17 Overweight Vehicles and Loads, amendments to Section
18 219.31 and Section 219.126, and repeal of Section 219.83
19 relating to House Bill 2620, movement of oversize and
20 overweight vehicles, enforcement of vehicle size and
21 weight limitations.

22 MR. TREVIÑO: Thank you very much, Member
23 Prewitt, for moving this process forward.

24 Do we have a second?

25 MR. BACARISSE: Second.

1 MS. WASHBURN: Mr. Chairman, I second.

2 MR. TREVIÑO: Member Bacarisse beat you to it.

3 MS. WASHBURN: Okay.

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

6 Thank you, Member Washburn, thank you for
7 jumping in there.

8 Any further discussion?

9 (No response.)

10 MR. TREVIÑO: Hearing none, I will call for the
11 vote.

12 Member Bacarisse?

13 MR. BACARISSE: Aye.

14 MR. TREVIÑO: Member Gillman?

15 MS. GILLMAN: Aye.

16 MR. TREVIÑO: Member Graham?

17 MR. GRAHAM: Aye.

18 MR. TREVIÑO: Member McRae?

19 MS. McRAE: Aye.

20 MR. TREVIÑO: Member Prewitt?

21 MR. PREWITT: Aye.

22 MR. TREVIÑO: Is that a yes?

23 MR. PREWITT: Yes.

24 MR. TREVIÑO: Yes. Okay.

25 Member Scott?

1 MR. SCOTT: Aye.

2 MR. TREVIÑO: Member Washburn?

3 MS. WASHBURN: Aye.

4 MR. TREVIÑO: And I, Chairman Treviño, also
5 vote yes. The motion is unanimous and this motion
6 carries.

7 I just want to go back. I know this it's a
8 little bit tedious asking everybody for their vote, but
9 this is a recommendation by counsel that in this forum
10 that we actually record the votes of each member. Okay.

11 And that takes us into agenda item number 12.
12 I'll turn it over to Tim Menke.

13 MR. MENKE: Thank you, Mr. Chairman and board
14 members, executive director Ms. Brewster.

15 Agenda item number 12 is an action item, and
16 it's related to risk-based approach to monitoring and
17 preventing fraudulent activity.

18 Mr. Chairman, this will be presented in two
19 sections. I will specifically address the external-facing
20 component of this which is Section 223.101, and my
21 colleague, Sandra Menjivar-Suddeath, will specifically
22 address Section 206.151 specific to the internal-facing
23 risk-based approach to monitoring and preventing
24 fraudulent activity. We are requesting approval to
25 publish the proposed new sections in the *Texas Register*

1 for public comment.

2 The Texas Department of Motor Vehicles proposes
3 new 43 TAC 223.01 concerning an external risk-based system
4 of monitoring and preventing fraudulent activity related
5 to vehicle registration and titling in order to
6 efficiently allocate personnel and resources.

7 In this section it's necessary to implement
8 Transportation Code 520.004, as added by Senate Bill 604.
9 Transportation Code 520.004 requires the department by
10 rule to establish a risk-based system of monitoring and
11 preventing fraudulent activity related to vehicle
12 registration and titling in order to efficiently allocate
13 resources and personnel. The requirement is included
14 within the Sunset Advisory Commission's change in statute
15 recommendation 2.4.

16 The Sunset recommendation envisioned that the
17 department develop criteria to determine varying risk
18 levels such as transaction volume and past violations to
19 strategically allocate resources.

20 So specifically, the Compliance and
21 Investigations Division will implement the following four
22 measures: number one, establishing a risk-based system of
23 monitoring counties and their contractors; number two,
24 developing criteria to determine varying risk levels for
25 the department's fraud monitoring functions and

1 strategically allocate resources and personnel; number
2 three, review the department's methods for collecting and
3 evaluating related information, including the viability of
4 incorporating more remote transaction review practices in
5 order to supplement periodic but less frequent onsite
6 visits to counties; and finally, number four, developing
7 and providing training to fraud investigation staff.

8 And I can report to you, Mr. Chairman, that we
9 have already implemented these four measures and things
10 are going well.

11 That concludes my portion regarding the
12 external risk-based approach, and I'm happy to answer any
13 questions that the board may have.

14 MR. TREVIÑO: Great.

15 Does anybody have any questions from the board?

16 MS. GILLMAN: I do.

17 MR. TREVIÑO: Member Gillman.

18 MS. GILLMAN: Yes, sir. I'm thankful that I've
19 had the opportunity to sit on the Finance and Audit
20 Committee and following the recommendations from Sandra,
21 and I think that this identifying the high-risk areas of
22 fraud and trying to have a good system to not only
23 identify but come up with solutions is a really good one.
24 I wholeheartedly support it, and I think that this will be
25 a great thing for this agency.

1 MR. TREVIÑO: Great. Well said, well said.
2 Anybody else have any comments or questions?
3 (No response.)

4 MR. TREVIÑO: Ms. Menjivar-Suddeath, do you
5 have any comments on this?

6 MS. MENJIVAR-SUDDEATH: No. Good morning,
7 board members. For the record, Sandra Menjivar-Suddeath.

8 Mr. Menke did a great job in summarizing. I
9 think the one thing to note is internal and external fraud
10 teams are different and the various financial impacts are
11 different as well, and so that's the need for the two
12 separate rules.

13 MR. TREVIÑO: Great. Thank you very much.

14 Again, I know you're implementing Sunset, but I
15 know you guys were working on this even before Sunset was
16 involved, but can't thank you guys enough for looking at a
17 risk-based approach to this and also to just fraud in
18 general. It's part of our mandate, and I can't commend
19 you guys enough for heading down this road.

20 Any further questions or comments?

21 MS. McRAE: Chairman, I have one question.

22 MR. TREVIÑO: Member McRae. Sure.

23 MS. McRAE: Will counties be provided a report
24 to review prior to being turned over to the department?

25 MR. MENKE: Mr. Chairman, this is Tim Menke.

1 May I respond?

2 MR. TREVIÑO: Please, yes. Jump right in.

3 MR. MENKE: Thank you for the question. Yes,
4 we have, first of all, developed COGNOS reports that we
5 have sent out to the counties. Basically these were
6 in-house reports that we use to review traditionally
7 vulnerable areas we made available for the counties for
8 their own internal review.

9 In addition to that, if there are
10 vulnerabilities in the county that are not specifically
11 related to fraud in which we have a law enforcement
12 organization involved, we will work cooperatively with the
13 counties so they can transition to a compliant status.

14 Currently 98 percent of the counties in Texas
15 are compliant, we only have 2 percent that are not, and
16 normally it centers around training issues, turnover, and
17 maybe some sloppy recordkeeping. Very rarely is it linked
18 to fraudulent activity, but it does happen.

19 If it is linked specifically to fraudulent
20 activity and we have law enforcement involved, there's
21 only so much we can relay to the tax assessor-collector,
22 however, if there's not specific fraudulent activity, we
23 will engage in full disclosure and our field service
24 representatives will work collaboratively with the tax
25 assessor-collectors in order to resolve the compliance

1 issue.

2 MR. GRAHAM: Thank you.

3 MR. BACARISSE: Mr. Chairman?

4 MR. TREVIÑO: Member Bacarisse.

5 MR. BACARISSE: I have a question. You said
6 we're 98 percent compliant. I'm just curious to know how
7 Harris County is doing.

8 MR. MENKE: Harris County is currently in
9 compliance.

10 MR. TREVIÑO: There you go. All right.
11 Member McRae, did that answer your question
12 before? Are you satisfied?

13 MS. McRAE: Yes, it did. And I would also like
14 to just thank the agency for the COGNOS reports that have
15 been developed and the training that they have provided to
16 the tax assessors. It's greatly appreciated, and it's
17 been very official. So kudos to them for rolling those
18 reports out to the counties. Thank you.

19 MR. TREVIÑO: Great. Thank you for that
20 comment, Member McRae. Well said, well said.

21 So any other comments? Tracey, any comments
22 from the public?

23 MS. BEAVER: Tracey Beaver, general counsel.
24 No comments from the public on this agenda
25 item.

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

3 MS. McRAE: Chairman, I would like to make a
4 motion.

5 MR. TREVIÑO: The chair recognizes Member
6 McRae.

7 MS. McRAE: I move that the board approve the
8 proposed new Sections 216.151 and 223.101 for publication
9 in the *Texas Register* for public comment.

10 MR. TREVIÑO: We have a motion from Member
11 McRae. Do we have a second?

12 MR. PREWITT: Second.

13 MR. TREVIÑO: Member Prewitt.

14 We have a motion and a second. Any further
15 discussion?

16 (No response.)

17 MR. TREVIÑO: If not, I would call for the
18 vote.

19 Member Bacarisse?

20 MR. BACARISSE: Aye.

21 MR. TREVIÑO: Member Gillman?

22 MS. GILLMAN: Aye.

23 MR. TREVIÑO: Member Graham?

24 MR. GRAHAM: Aye.

25 MR. TREVIÑO: Member McRae?

1 MS. McRAE: Aye.

2 MR. TREVIÑO: Member Prewitt?

3 MR. PREWITT: Aye.

4 MR. TREVIÑO: Member Scott?

5 MR. SCOTT: Aye.

6 MR. TREVIÑO: Member Washburn?

7 MS. WASHBURN: Aye.

8 MR. TREVIÑO: And I, Chairman Treviño, also
9 vote aye, so the motion passes unanimously.

10 That takes us to agenda item number 13. I will
11 now turn it over to General Counsel Tracey Beaver.

12 MS. BEAVER: Chairman, members of the board,
13 good morning. For the record, I'm Tracey Beaver, general
14 counsel.

15 Today I'm presenting proposed rules to
16 implement Senate Bill 604 and Sunset Advisory Commission
17 recommendations that require the board to establish rules
18 for conduct and handling of contested cases coming before
19 the board for final decision.

20 This includes specifying clear expectations
21 limiting arguments and discussion to evidence from the
22 hearing held by the State Office of Administrative
23 Hearings administrative law judge.

24 In the staff report the final results, the
25 Sunset Advisory Commission emphasizes the board does not

1 re-litigate contested cases, which would include actions
2 such as allowing 20-minute oral argument for each party
3 that would then turn into hours of discussion. SOAH
4 proceedings provide for the parties to a contested case an
5 opportunity to make arguments and produce evidence in
6 accordance with standard processes under the APA. The
7 board must base their final decisions on evidence from
8 SOAH and are not to consider new issues or evidence.

9 These proposed rules before you today align
10 with the Sunset Commission recommendations and Senate Bill
11 604. The proposed rules give parties in a contested case
12 ten minutes to present their case with five minutes for
13 rebuttal.

14 The proposed rules also provide parties the
15 opportunity to submit presentations to the board which may
16 contain the party's arguments and discussion of the
17 evidence and laws; however, the proposed rules do not
18 allow parties to submit proposed final orders. Doing so
19 by rule would require the board to rule on each proposed
20 finding or conclusion submitted by the parties to the case
21 in their final order, which could result in the board
22 spending a great amount of time in board meetings ruling
23 on parties' proposals rather than focusing on the SOAH's
24 PFD, the scope of the board's authority to take action on
25 SOAH's PFD under Government Code Section 2001.058(e).

1 The department is requesting your approval to
2 proceed with publication of these proposed rules in the
3 *Texas Register* so that we may receive public comment. We
4 did previously post these rules as informal rules on the
5 website and received some informal comments, which may be
6 found in your board books.

7 Members, this concludes my remarks. I'm happy
8 to answer any questions. Thank you.

9 MR. TREVIÑO: Great. Thank you, Ms. Beaver.

10 Are there any questions for Ms. Beaver?

11 (No response.)

12 MR. TREVIÑO: Hearing none, Tracey, are there
13 any comments from the public?

14 Oh, wait a minute. Member Gillman has got her
15 hand up, and also Member Graham has his hand up.

16 So Member Gillman, why don't you go ahead.

17 MS. GILLMAN: My comments are that while I'm
18 fairly new to the board and have only heard a few cases, I
19 feel like that there are times when a lawyer is presenting
20 and we have (audio interference).

21 Mr. TREVIÑO: Member Gillman, one second. I
22 really want to make sure we hear what you're saying. I'm
23 not sure if somebody has got their -- if everybody mutes
24 their lines, maybe it will give Member Gillman a clearer
25 line.

1 MS. GILLMAN: Thank you.

2 So I was just saying that I think that there
3 are times when the attorneys for a contested case may have
4 a different conclusion than what the hearing officer had
5 written, and while I very much respect that we don't want
6 to re-litigate a case, I think that still within
7 parameters of using the findings of fact and conclusions
8 of law that lawyers should be able to present a new
9 conclusion, a new proposed final order that may provide a
10 different perspective and still completely on track with
11 the evidence that had already been presented, not retrying
12 a case, but I think it is important that counsel be able
13 to submit those presentation materials.

14 And as far as the time allowance, you know, I
15 know that these cases, some of them often go years and
16 years and millions of dollars, so I feel like a twenty-
17 minute presentation and then five minutes for rebuttal is
18 a very easy extension to respectfully understand the time
19 and effort and passion of these cases.

20 And when you're ready, Mr. Chairman, I have a
21 motion.

22 MR. TREVIÑO: Great. Thank you for your
23 comments, Member Gillman.

24 Member Graham, did you have a comment?

25 MR. GRAHAM: Am I off mute?

1 MR. TREVIÑO: Yes, you are.

2 MR. GRAHAM: Okay. Just kind of giving this
3 some thought in reading through this last night, you know,
4 in a lot of the contested cases that we hear the time
5 allotted as proposed is very adequate in a lot of cases,
6 but in the more complex cases -- and this is kind of what
7 I was thinking about last night, you know, we occasionally
8 have those cases that are very complex, have been going
9 through the SOAH courts for years, sometimes years, and
10 you know, it would be great if there was a way to have a
11 distinction between the kind of cases, perhaps.

12 One of the questions I had for Tracey was in
13 regards to what -- I know that one of the complications in
14 the information that was given to me was that if we allow
15 a rebuttal, a written rebuttal, so to speak, that it could
16 open us to then having to determine findings of fact and
17 conclusions of law of the rebuttals and then kind of take
18 us down that path, but it was my understanding that they
19 would still be allowed up to four pages to provide some
20 type of a conclusion, a document of conclusion as to their
21 thoughts on where they ended up.

22 Would you clarify for us, Tracey, what that
23 would look like, what they would be allowed to propose or
24 present to the board before the hearing in writing?

25 MR. TREVIÑO: Tracey.

1 MS. BEAVER: Tracey Beaver, general counsel.

2 Thank you for the question. Yes, the rule was
3 drafted, the proposed rules do provide that the parties
4 may submit presentation materials which can be in the form
5 of documents or power point slides, whatever format they
6 would like, and the content of those presentation
7 materials can include any explanation of their case they
8 would like to provide to the board, including what they
9 disagree with or agree with in any SOAH PFD.

10 The parties will be able to provide all of that
11 explanation to the board in consideration of that case in
12 advance if they request to provide those presentation
13 aids. The parties would not be prohibited from providing
14 that information to help the board understand their case
15 as long as it's information that's contained in the SOAH
16 record and they refer back to where in the record it was
17 contained.

18 The only prohibition would be that they can't
19 specify the specific finding of fact or conclusion of law,
20 because then that would put the board in the position
21 under the Government Code to respond to each of those
22 conclusions of law or proposed findings of fact in the
23 board's order.

24 So we had a balancing act to allow parties to
25 provide that context, explanation, and information for the

1 boards in their presentation materials without having a
2 formal proposed final order submitted.

3 And on the second point I'd just like to
4 mention the proposed rules do also provide the opportunity
5 for the chairman to grant additional time to parties who
6 are presenting their oral argument, specifically for those
7 instances where the case might be a bit more complex than
8 a routine case, so we did retain the chairman's discretion
9 in the proposed rules for the oral presentation time.

10 MR. GRAHAM: Thank you. So they can -- you
11 know, you're going to have one side that obviously
12 disagrees with the result and you're going to have one
13 side that agrees with the result, and if SOAH -- I'm still
14 a little confused about they have four pages to make a
15 case for why they disagree but in order to say what they
16 disagree with, wouldn't they have to reference a finding
17 of fact or conclusion of law that they felt like the ALJ
18 interpreted incorrectly or some fact that they thought was
19 concluded that was not correct? How would they do that
20 without referencing a finding of fact or a conclusion of
21 law?

22 MS. BEAVER: Tracey Beaver, general counsel.

23 Thanks for that follow-up question. The
24 parties would be able to explain what they disagree with
25 or agree with in the SOAH PFD by referencing the SOAH PFD

1 findings of fact and conclusions of law.

2 The parties would not be able to propose their
3 own conclusions of law or findings of fact to the board.
4 They would just be able to explain what they disagreed
5 with in the SOAH's PFD. It provides more context to the
6 board than presenting a draft final order in that format.

7 MR. GRAHAM: Okay. And again, I know this is
8 legal stuff and I'm trying to follow. And so if they did
9 want to -- well, not if they didn't want to, I'm sure
10 every one of them, regardless of who they are, they're
11 going to want to propose, you know, a conclusion that
12 specifies exactly the wording. And so you said if they
13 did that, then that would -- I mean, explain one more time
14 if they do that that would lead to what, lead to us having
15 to do additional research?

16 MS. BEAVER: So if the department by rule
17 permits parties to submit proposed findings of fact or
18 conclusions of law, the board is required by Government
19 Code Section 2001.141 to rule on each proposed finding or
20 conclusion submitted by the parties to the case in the
21 board's final order.

22 If the parties just submit presentation
23 materials explaining their thoughts, their evidence, their
24 arguments to the board, referencing the existing SOAH PFD,
25 that would be permitted. But the rule as it currently is

1 drafted prohibits parties from submitting proposed formal
2 final orders.

3 MR. GRAHAM: Thank you. And just to
4 conclude -- I know Member Bacarisse has a question, and I
5 really would like to hear some input from the other board
6 members on this and get their thoughts -- I know we just,
7 of course at the point in time that we originally heard
8 the case that went on for a very long time, it was the --
9 and I'm really just having thoughts out loud here as I
10 think through this -- our general counsel at that time
11 proposed, at the board's request, the written statement
12 that we made which ended up not being legally correct or
13 technical enough, and so, you know, it would be -- I think
14 it could be very helpful to understand, as a board member
15 with no legal expertise, maybe what they're thinking is on
16 that, but at the same time I understand that it could
17 create some other problems.

18 I'd love to hear some other board members'
19 opinions, so I'll back off here.

20 MR. TREVIÑO: Member Graham, thank you very
21 much for those comments and for following those thoughts
22 on down the line.

23 Member Bacarisse, go right ahead.

24 MR. BACARISSE: I just have a question.

25 First of all, thank you, Brett. I think you

1 bring up a lot of great points.

2 My question for Tracey is if a board -- our
3 board or some future board were to begin taking up
4 consideration of final orders presented to us, would we
5 not then open up an opportunity for the other party to
6 then appeal? In a sense, we're acting as a judicial body
7 instead of in our administrative role if we begin actually
8 considering final orders.

9 And then secondly -- well, really why don't you
10 just comment on that question. You know, if we begin
11 doing that, won't we open this up for further appeal and
12 continuation of the litigation, in a sense?

13 MS. BEAVER: Tracey Beaver, general counsel.

14 Yes. Thank you for that comment. It
15 definitely is a slippery slope, and that is definitely a
16 possibility that the board could go down that line of
17 opening a case up for more litigation.

18 State agencies are charged with following the
19 APA Government Code Section 2001.058. If the board wants
20 to change a finding of fact or a conclusion of law made by
21 the ALJ at SOAH, the agency has to determine that the
22 administrative law judge did not properly apply or
23 interpret applicable law, rules, policies or prior
24 administrative decisions, or that the prior administrative
25 decision on which the ALJ relied on is incorrect or should

1 be changed.

2 So it's a very limited scope that the board can
3 actually change a PFD, and if those proposed final orders
4 from parties are permitted, there is a chance that they
5 present additional findings of fact or conclusions of law
6 that would not follow the scope of the board's authority
7 to change a PFD.

8 MR. BACARISSE: I'm a big separation-of-powers
9 guy. We're the administrative or the executive branch of
10 government, they're the judicial branch, I'd like to keep
11 those separate. I'm not a lawyer, I took the cheap way
12 out and married one. But I don't want to begin trying to
13 decide matters of the law in our meetings. I think that
14 creates a tremendous challenge for us.

15 I do like the idea that the chair can, at his
16 or her discretion, allow more time for discussion, and I
17 think that there ought to be robust discussion and a lot
18 of questions asked in these very contested cases so that
19 we can get to the bottom of things as best we can as
20 members.

21 I just have a concern about the actual act of
22 receiving proposed orders for our consideration that go
23 well beyond what has already been adjudicated by the
24 administrative law judge.

25 That's my comment. Thank you.

1 MR. TREVIÑO: Thank you, Member Bacarisse.

2 Any other questions or comments?

3 MS. GILLMAN: I have a small comment.

4 MR. TREVIÑO: Okay, Member Gillman.

5 MS. GILLMAN: From my memory, in the last
6 pretty big case the reason why it was back again before us
7 was because the decision of the board was not as complete
8 or thorough or specific as it should have been, and that's
9 the reason it did come back to us.

10 And so I feel like having the attorneys for
11 both sides, if they submit a corrected proposed final
12 order that is perhaps more complete -- because I
13 completely agree with you, Charles, I'm not a lawyer
14 either, I don't know how to do it -- but if you allow the
15 lawyers to write a complete, thorough and clear new
16 proposed final order that will hold and that can be
17 submitted, as long as they submit it ahead of time and
18 giving both parties equal opportunity to review, I think
19 it actually helps the board have decisions that stick so
20 that they don't come back to us. And I just think it is
21 important to allow those presentations, because often it
22 becomes more refined and more specific so that it will
23 hold.

24 So I'm learning from that last big case that
25 allowing the presentation materials may have -- in the

1 future will aid the board in making a more firm decision
2 so that they don't come back. And I just feel like the
3 board needs to be able to hear the perspectives of the
4 attorneys that may be different than the hearing judge,
5 hearing officer.

6 And I also appreciate that the chairman should
7 have discretion to go longer if he wants to. Yes.

8 MR. TREVIÑO: Great.

9 Member Graham? Member Graham, you had your
10 hand up?

11 MR. GRAHAM: Sorry. I was on mute.

12 MR. TREVIÑO: You're good.

13 MR. GRAHAM: Just a quick comment, and I know
14 Shelly has a comment, I want to leave her plenty of time.

15 No question, in response to Member Bacarisse's
16 statements, no question that I would expect that in most
17 cases the board would usually uphold an ALJ's decision.
18 However, the statute was written to provide us this
19 authority because of in some cases the complex nature of
20 these cases and because we don't always -- the ALJ just
21 doesn't always get it right, and we've actually had cases
22 in the past where the agency has actually recommended, if
23 I remember correctly, to go against SOAH's decision.

24 And so I think, you know, for me -- and of
25 course, in many cases these are dealer cases, the complex

1 ones in particular with dealers and manufacturers, and I
2 think that Member Washburn would agree that these are the
3 ones that we really have a lot of responsibility to hear
4 and make sure we can get it right because that's one of
5 the most important responsibilities that I feel like we
6 have on this board.

7 And so anyway, I just kind of wanted to say
8 that. Anyway, I'll leave that and give the mic to Member
9 Washburn.

10 MR. TREVIÑO: Member Graham, thank you.

11 Sorry about that, Member Washburn. I see you
12 raising your hand. I apologize.

13 MS. WASHBURN: No problem.

14 This is maybe a more procedural question on the
15 time, because I agree, I mean, we've had cases where
16 parties have spent millions of dollars, right, and we give
17 them ten minutes to talk.

18 MR. TREVIÑO: Member Washburn, can I interrupt
19 you for a second. I just want to make sure that we don't
20 talk about any specific cases or anything, and I'm not
21 just suggesting that you will, but I'm just throwing it
22 out there.

23 MS. WASHBURN: No, no, no specific case.

24 MR. TREVIÑO: Great.

25 MS. WASHBURN: No, no specific case at all.

1 It's just a procedural question.

2 So if somebody needs more time, can they ask
3 you for that ahead of time, or is that something that's
4 granted at the time of the presentation? So if we say you
5 get ten minutes, each party gets ten minutes, at that
6 point does the board say that they need more time, or can
7 they ask for that ahead of time and then both parties can
8 prepare accordingly?

9 MR. TREVIÑO: Tracey, do you want to run
10 through the proposed rules and the way we've run it in the
11 past?

12 MS. BEAVER: Yes. Tracey Beaver, general
13 counsel, for the record. Thank you for that.

14 The proposed rules do provide an opportunity
15 for parties to present oral argument presentation before
16 the board. The parties would have a time frame under the
17 proposed rules to request oral argument; it would be 30
18 days prior to the start of the board meeting.

19 If the party wants to provide oral argument,
20 then the party may do so and request additional time. The
21 chairman would be authorized under the proposed rules to
22 review that request and authorize the amount of time for
23 each party to give a presentation, and of course, both
24 parties would be given the same amount of time for both
25 presentation and rebuttal as determined by the chairman.

1 MS. WASHBURN: So it is ahead of time, they can
2 ask for it ahead of time?

3 MS. BEAVER: Tracey Beaver, general counsel.
4 Yes, absolutely, it's ahead of time.

5 MS. WASHBURN: Okay. Thank you.

6 MR. TREVIÑO: Thank you, Member Washburn. Any
7 other questions, Member Washburn?

8 MS. WASHBURN: Nope. I've got it. Thank you.

9 MR. TREVIÑO: Great.

10 Any other questions from the board?

11 (No response.)

12 MR. TREVIÑO: Great. And I would like to thank
13 staff for their work on this because they are trying to
14 implement Sunset rules, and while trying to maintain the
15 ability of all parties to be able to make sure that they
16 get a fair hearing, and we do have the authority to decide
17 these cases and that is something that's written in
18 statute.

19 And we aren't attorneys, and any help that can
20 help us in that area would be useful, but by the same
21 token, we're trying to implement policy that the
22 legislature has asked us to fulfill.

23 So great comments, great comments. I think
24 staff has heard them, and hopefully we'll be able to
25 thread that needle and move forward.

1 So any other questions?

2 (No response.)

3 MR. TREVIÑO: Any public comments, Tracey?

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

6 Yes, we have two public commenters. First we
7 have Mr. Bennett.

8 MR. TREVIÑO: Great. All right. We'll now
9 hear from Mr. Bennett. So what is the process here? So
10 we'll hear from Mr. Bennett. Right?

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

13 Yes. If Mr. Bennett is able to unmute himself,
14 on your cue, Chairman, he may provide his public comment.

15 MR. BENNETT: Am I unmuted? Can you hear me?

16 MR. TREVIÑO: Yes, we can hear you. Please
17 state your name for the record and if you're representing
18 anyone, and you will have three minutes.

19 MR. BENNETT: Thank you, Mr. Chairman. My name
20 is Bruce Bennett. I'm a lawyer, I am representing myself
21 today, or I represent clients that appear before the
22 board.

23 I want to thank Ms. Beaver and her staff for
24 all the hard work they've done on the proposed rules.

25 The expertise over the matters that you

1 regulate, board members, is in this board and in the
2 department. SOAH has no such expertise. Its expertise is
3 in conducting evidentiary hearing. You, not SOAH, have
4 the power to interpret the law you administer and to set
5 the policies for the interpretation of those laws. SOAH's
6 job is to conduct the hearing and make proposed findings
7 and conclusions in accordance with your interpretation of
8 the law and your policies.

9 As one board member said, SOAH judges can and
10 do make mistakes. Because of their relatively lack of
11 industry expertise, they can misinterpret and misapply
12 your decisions and your policies. They can make findings
13 based on those misinterpretations or they can make
14 findings that have no evidentiary support. They can
15 wrongfully exclude evidence that was relevant or is
16 relevant to a proper decision in the case.

17 The legislature gives you the power to vacate a
18 SOAH PFD when ALJs have not properly applied or
19 interpreted your decisions and standards. The legislature
20 gives you the power to reject or change findings and
21 conclusions based on the ALJ's misinterpretation or
22 misapplication of your decisions and policies, and they
23 give you the power to reject findings that have no
24 evidentiary support. They give you the power to remand a
25 case for further analysis or reconsideration when the ALJs

1 have misinterpreted or misapplied your decisions or
2 policies or failed to consider evidence that should have
3 been considered.

4 The problem is that the proposed rules, some of
5 them unduly restrict your ability to exercise your
6 power -- your power to correct SOAH's mistakes and to
7 reach a proper decision. It's your decision the court
8 will review, not SOAH's. You should not be forced to be
9 saddled with a SOAH decision that is incorrect.

10 Now, proposed rule 2015.6(a) prohibits proposed
11 orders, but proposed orders can assist you in following
12 the ATA and correcting SOAH's mistakes. The issues was
13 raised this morning about, well, if there are proposed
14 findings then you have to go through each and every one.
15 That is incorrect.

16 There's a Third Court of Appeals decision where
17 the agency just put this in their final order: All other
18 requests for specific findings of fact and conclusions of
19 law and any other request if not granted are denied. And
20 the Third Court said, "This language constitutes a ruling
21 on the proper findings of fact and conclusions of law."
22 You can dispose of it that easily; it's not going to be an
23 onerous burden.

24 And a proposed order may not even ask to change
25 the findings, it may just say it needs to go back to

1 SOAH --

2 MR. TREVIÑO: I think we lost Mr. Bennett.
3 Right? The time limits are up, is that what happened
4 there?

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

7 At the three-minute time frame the commenter is
8 muted, but if you'd like to let the commenter know that
9 the time is up and just to finish that thought or
10 sentence.

11 MR. TREVIÑO: Great. We'll give Mr. Bennett
12 another 30 seconds or so to kind of wrap things up, but
13 stick with the three minutes, if we could, as close as we
14 can. Okay?

15 MR. BENNETT: Okay. Back on.

16 MR. TREVIÑO: Just kind of wrap it up. I
17 apologize.

18 MR. BENNETT: I'm doing my best, Your Honor.

19 The limitation of six pages of written
20 materials to the board members is too restrictive. No
21 other agency has those kinds of restrictions. The PUC
22 gives you 50 pages in an ordinary case, 100 pages in a
23 major rate case. And you should not be restricted like
24 that. There's also a problem, I think, with referencing
25 the SOAH administrative record, it should be the

1 administrative record.

2 I would ask that you not publish the rules at
3 this time, that you provide another period for informal
4 comment where we can discuss the changes that have been
5 made since May 4th and come back to you at that time. I
6 think that's a better process to follow at this point
7 rather than publishing the rules.

8 I'm happy to answer any questions. Thank you.

9 Are there any questions for Mr. Bennett?

10 (No response.)

11 MR. TREVIÑO: Okay. Hearing none, then,
12 Tracey, do we have any other comments? I heard you
13 mention there might be another one.

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

16 We now have a comment from Mr. Kaplan, and on
17 your cue, Chairman, IT can unmute Mr. Kaplan.

18 MR. TREVIÑO: Please unmute Mr. Kaplan.

19 Mr. Kaplan, welcome.

20 MR. KAPLAN: Thank you, Mr. Chair. Am I heard?
21 Can you hear me?

22 MR. TREVIÑO: Before you get started, Mr.
23 Kaplan, you're going to have three minutes. We'll give you
24 a little bit on the tail-end there, we'll come in around
25 2:50 or something like that and give you a heads-up and

1 give you a couple of seconds toward the end there to kind
2 of wrap it up if you could. Okay? Thank you.

3 MR. KAPLAN: Thank you. Can you hear me?

4 MR. TREVIÑO: Well, very well.

5 MR. KAPLAN: I'm an attorney in Houston. My
6 name is Lee Kaplan, representing myself.

7 Over the last 40 years I've represented both
8 manufacturers and franchisees in various disputes,
9 relocations, terminations and other disciplinary matters.
10 And I'm a trial advocate, and I would say that the current
11 proposal is too limited.

12 First, I'm in accord with Mr. Bennett's
13 comments in toto and Mr. Crocker's written comments that
14 at least twenty minutes per side is required, given the
15 vast amounts of money often affected by the board's
16 decision and the careers and lives that are affected and
17 sometimes ruined by board decisions, which are important.

18 Second, if I understand the current proposal,
19 visual aids and demonstratives are allowed, and if so, I
20 agree with that because they are needed to sufficiently
21 present key information that allows the board to cut to
22 the chase and ask good questions of the advocate.

23 I had a chart, for example, that I had to fight
24 to get board approval to let me discuss, even though that
25 chart itself was in the official record before the hearing

1 officer, the administrative law judge. I wasn't allowed
2 to show it to the board, I had to describe it by record
3 number. I think having that and being able to hand it out
4 is valuable.

5 Finally, I think it's critically important that
6 parties be able to provide proposals, findings of fact,
7 conclusions of law, and proposed orders. This is
8 important to an easy understanding of the key issues and
9 particularly to avoiding pitfalls.

10 I had one case in which -- because the board's
11 orders are subject to appellate review and obviously not
12 all members of the board are attorneys. In one recent
13 appearance I had before the board, the board entered an
14 order and it was reversed and remanded because it did not
15 have the bells and whistles that are required by an
16 appellate court. I think that just wasted everybody's
17 time, cost the parties a lot of money, it required a do-
18 over.

19 In general, the board needs input from
20 meaningful oral presentations. It needs the ability to
21 see a proposed order and to question interested parties as
22 well as staff regarding the orders that are submitted by
23 the parties, who presumably are most intimately familiar
24 with their cases, and to exercise its authority properly
25 by doing so.

1 Thank you.

2 MR. TREVIÑO: Okay, Mr. Kaplan. Thank you very
3 much. Does that conclude your remarks?

4 MR. KAPLAN: It does. Thank you.

5 MR. TREVIÑO: Very good. You have a little bit
6 of time left.

7 So are there any questions for Mr. Kaplan?
8 Member Gillman, I saw your hand raised.

9 MS. GILLMAN: No questions.

10 MR. TREVIÑO: Okay. No questions for Mr.
11 Kaplan? Great.

12 Tracey, do we have any other comments?

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

15 No other public comments. Thank you.

16 MR. TREVIÑO: Thank you very much.

17 Do we have any other questions or comments from
18 the board?

19 (No response.)

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

22 MR. BACARISSE: Mr. Chairman?

23 MR. TREVIÑO: I'm sorry. Member Bacarisse.

24 MR. BACARISSE: Just real quickly. What we're
25 doing here in this item is we're voting to publish for

1 comment, for public comment the proposed order here.
2 Right?

3 MR. TREVIÑO: We don't actually have a motion
4 yet, but that's what we're talking about.

5 MR. BACARISSE: Yeah, but I mean that's the
6 agenda item. Right?

7 MR. TREVIÑO: That's the agenda item, yes, sir.

8 MR. BACARISSE: Okay. Right. So I think
9 whatever we decide to do, whenever we put it out to the
10 public, we'll get plenty of public comment, and I look
11 forward to that. Thank you.

12 MR. TREVIÑO: I think you're right, Member
13 Bacarisse. I think we'll get some good meaty comments on
14 this one.

15 Okay. Any other comments or thoughts?

16 (No response.)

17 MR. TREVIÑO: If not, then the chair would
18 entertain a motion.

19 MS. GILLMAN: I have a motion.

20 MR. TREVIÑO: The chair recognizes Member
21 Gillman.

22 MS. GILLMAN: Motion for contested case rules,
23 number 13 on the agenda. I move that the board approve
24 the proposed amendments and new sections for publication
25 in the *Texas Register* for public comment, subject to the

1 following amendments:

2 Number one, I'd like to amend 206.22 to allow
3 parties to a contested case a maximum of twenty minutes
4 for their initial presentation, and in addition, five
5 minutes for rebuttal.

6 Secondly, I'd like to delete 215.60 and the
7 second sentence in new 215.60 to remove the prohibition on
8 accepting proposed orders, proposals for decisions and new
9 findings of fact or conclusions of law from a party to the
10 contested case so the board retains discretion on whether
11 to consider party submissions.

12 And number three, authorize the staff to make
13 conforming changes consistent with this motion, including
14 just renumbering the sections and making corresponding
15 changes throughout the rule proposal under agenda item
16 number 13 to remove the prohibition on acceptance of
17 proposed orders from parties to a contested case.

18 MR. TREVIÑO: Okay. We have a motion from
19 Member Gillman to make some changes to this. Do we have a
20 second?

21 MR. GRAHAM: I second.

22 MR. TREVIÑO: Is that Member Graham?

23 MR. GRAHAM: Yes.

24 MR. TREVIÑO: Okay. We have a second from
25 Member Graham.

1 Any further discussion?

2 (No response.)

3 MR. TREVIÑO: Okay. Hearing none, I would call
4 for the vote.

5 Member Bacarisse?

6 MR. BACARISSE: Aye.

7 MR. TREVIÑO: Member Gillman?

8 MS. GILLMAN: Aye.

9 MR. TREVIÑO: Member Graham?

10 MR. GRAHAM: Aye.

11 MR. TREVIÑO: Member McRae?

12 MS. McRAE: Aye.

13 MR. TREVIÑO: Member Prewitt?

14 MR. PREWITT: Aye.

15 MR. TREVIÑO: Member Scott?

16 MR. SCOTT: Aye.

17 MR. TREVIÑO: Member Washburn?

18 MS. WASHBURN: Aye.

19 MR. TREVIÑO: And I, Chairman Treviño, also
20 vote aye, so it is unanimous. Again, these are for public
21 comment and not for final order.

22 General Counsel Tracey Beaver, is that correct?

23 MS. BEAVER: Tracey Beaver, general counsel.

24 That's correct.

25 MR. TREVIÑO: Great. Okay. Very good. So

1 motion carries unanimously, and we look forward to those
2 comments as they come in.

3 We now move to agenda item number 14. I will
4 turn it over -- and it's approximately ten o'clock. I
5 think we'll take a five-minute break if that's okay with
6 everyone.

7 I think we're ahead of schedule. Is that
8 correct, Tracey?

9 MS. BEAVER: Thank you, Chairman. Yes, we're
10 ahead of schedule, so if you'd like to take a break, that
11 would be acceptable. Thank you.

12 MR. TREVIÑO: I think it's a good idea. It's
13 ten o'clock. Why don't we come back around 10:06 and
14 reconvene.

15 (Whereupon, at 10:00 a.m., a brief recess was
16 taken.)

17 MR. TREVIÑO: So we're going to reconvene. It
18 is approximately 10:08, and I will now turn it over to
19 Jeremiah Kuntz for agenda item number 14.

20 MR. KUNTZ: Good morning, members. Jeremiah
21 Kuntz, director of the Vehicle Titles and Registration
22 Division.

23 This is agenda item number 14, which is final
24 adoption of rules that are amending Section 217.144 of the
25 Administrative Code. These rules are a continuance of

1 some rules that were brought before the board -- I'm
2 sorry -- these rules are to implement provisions of Senate
3 Bill 604, which changed the name of the Automobile
4 Burglary and Theft Prevention Authority to the Motor
5 Vehicle Crime Prevention Authority.

6 The reason that I am making this presentation
7 as opposed to our director of the Motor Vehicle Crime
8 Prevention Authority is 217.144 is related to the VIN
9 inspection process for titling vehicles and the reference
10 to the Motor Vehicle Crime Prevention Authority as those
11 entities that have been trained to perform those types of
12 inspections.

13 This is a very simple rule, we're just changing
14 the name of the entity that is providing the training to
15 law enforcement officers to provide VIN inspections.

16 I'll be more than happy to answer any
17 questions.

18 MR. TREVIÑO: Thank you, Mr. Kuntz.

19 Any questions for Mr. Kuntz on this issue?

20 (No response.)

21 MR. TREVIÑO: Hearing none, Tracey, are there
22 any comments from the public?

23 MS. BEAVER: Tracey Beaver, general counsel.

24 No comments from the public on this item.

25 Thank you.

1 MR. TREVIÑO: Sounds great.

2 Is there any other discussion?

3 (No response.)

4 MR. TREVIÑO: Hearing none, the chair would
5 entertain a motion. All right. This is a tough one so
6 somebody has got to jump in here.

7 MR. PREWITT: Mr. Chairman.

8 MR. TREVIÑO: Mr. Prewitt.

9 MR. PREWITT: I hereby make a motion that the
10 board approve the publishing of the adoption of amended
11 Section 217.144 in the *Texas Register*.

12 MR. TREVIÑO: Thank you, Member Prewitt.

13 Do we have a second?

14 MR. BACARISSE: Second.

15 MR. TREVIÑO: Okay. Member Bacarisse, thank
16 you very much.

17 So we have a motion and second. Any further
18 discussion?

19 (No response.)

20 MR. TREVIÑO: Hearing none, I'll call for the
21 vote.

22 Member Bacarisse?

23 MR. BACARISSE: Aye.

24 MR. TREVIÑO: Member Gillman? And Member
25 Gillman is not back so let the record reflect that Member

1 Gillman is not back, so this will be another abstention, I
2 guess, at this point.

3 Tracey, is that the case?

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

6 If Gillman is not finished, it would not be a
7 vote for Ms. Gillman.

8 MR. TREVIÑO: Great. Oh, there she is, Member
9 Gillman is back.

10 We have a motion and a second to change the
11 name of the Automobile Burglary and Theft Prevention
12 Authority to Motor Vehicle Crime Prevention Authority.

13 MS. GILLMAN: Aye.

14 MR. TREVIÑO: We've got an aye.

15 Okay. Member Graham?

16 MR. GRAHAM: Aye.

17 MR. TREVIÑO: Member McRae?

18 MS. McRAE: Aye.

19 MR. TREVIÑO: Thank you.

20 Member Prewitt?

21 MR. PREWITT: Aye.

22 MR. TREVIÑO: Member Scott?

23 MR. SCOTT: Aye.

24 MR. TREVIÑO: Member Washburn?

25 MS. WASHBURN: Aye.

1 MR. TREVIÑO: And I, Chairman Treviño, also
2 vote aye, so this motion carries unanimously.

3 And that takes us to agenda item number 15 and
4 Mr. Jeremiah Kuntz again.

5 Mr. Jeremiah Kuntz, again, I cannot thank you
6 enough for having your sons leading the pledge. Thank you
7 very much. Great job.

8 MR. KUNTZ: Absolutely. They're happy to do
9 it. My older son did the Finance and Audit Committee
10 pledge yesterday, and so they enjoy doing it, and I like
11 to encourage them in fulfilling their civic duty as Cub
12 Scouts and Boy Scouts providing that service. So thank
13 you very much, Mr. Chairman.

14 MR. TREVIÑO: You said it. You know, we always
15 focus on our rights, but we don't always think about our
16 duties, and getting them to think about their duties early
17 I think is admirable, so thanks again.

18 Go ahead.

19 MR. KUNTZ: Absolutely.

20 Again for the record, Jeremiah Kuntz, director
21 of the Vehicle Titles and Registration Division.

22 Members, before you is agenda item number 17.
23 These also are amendments up for final adoption.

24 MR. TREVIÑO: Mr. Kuntz, I think we're on item
25 15, aren't we?

1 MR. KUNTZ: Yes, 15.

2 MR. TREVIÑO: Okay, great. Right. Sorry about
3 that.

4 MR. KUNTZ: And this amendments to 217.182.
5 This rule package is up before the board for final
6 adoption. This one -- and the one I got a little confused
7 on on the last one -- this is a continuation of
8 implementation of legislation from the last legislative
9 session related to House Bill 1548, which requires that
10 off-highway vehicles, which is inclusive of golf cars,
11 neighborhood electric vehicles, package delivery vehicles,
12 all of these other types of vehicles, to display an off-
13 highway vehicle license plate if being operated on the
14 roadways.

15 This rule is actually implementing the
16 processing and handling fee for the issuance of those
17 license plates to those vehicle types. This is just to
18 make these vehicles consistent with issuance of
19 registration or license plates for all other vehicles and
20 allows the county tax assessor-collectors to receive their
21 compensation from the processing and handling fee when
22 they process vehicles and issue an off-highway vehicle
23 license plate to them.

24 These rules were published for public comment
25 in the *Texas Register* on April 17th. We did receive one

1 public comment. The comment period closed on May 18th.
2 The comment was received from the Lubbock County Tax
3 Assessor-Collector in favor of the rules that you see
4 before you today.

5 If there are any questions, I'd be more than
6 happy to answer any questions.

7 MR. TREVIÑO: Great. Thank you, Mr. Kuntz.
8 Any questions for Mr. Kuntz?

9 (No response.)

10 MR. TREVIÑO: Hearing none, Tracey, any
11 comments from the public?

12 MS. BEAVER: Tracey Beaver, general counsel.
13 No comments from the public on this item.

14 MR. TREVIÑO: Thank you very much.

15 Anybody else, any other comments or questions?

16 (No response.)

17 MR. TREVIÑO: If not, the chair would entertain
18 a motion.

19 MR. BACARISSE: Mr. Chairman.

20 MR. TREVIÑO: Member Bacarisse.

21 MR. BACARISSE: I would like to make a motion.

22 I would move that the board would approve the adoption of
23 amendments to Section 217.182, as recommended by staff.

24 MR. TREVIÑO: Thank you, Member Bacarisse.

25 Do we have a second?

1 MR. PREWITT: Second.

2 MR. TREVIÑO: Member Prewitt, thank you very
3 much.

4 We have a motion and a second. Any other
5 further discussion?

6 (No response.)

7 MR. TREVIÑO: If not, I'll call for the vote.
8 Member Bacarisse?

9 MR. BACARISSE: Aye.

10 MR. TREVIÑO: Member Gillman?

11 MS. GILLMAN: Aye.

12 MR. TREVIÑO: Member Graham?

13 MR. GRAHAM: Aye.

14 MR. TREVIÑO: Member McRae?

15 MS. McRAE: Aye.

16 MR. TREVIÑO: Member Prewitt?

17 MR. PREWITT: Aye.

18 MR. TREVIÑO: Member Scott?

19 MR. SCOTT: Aye.

20 MR. TREVIÑO: Member Washburn?

21 MS. WASHBURN: Aye.

22 MR. TREVIÑO: And I, Chairman Treviño, also
23 vote aye, so the motion carries unanimously.

24 And that takes us to agenda item number 16,
25 Finance and Audit Committee update. So we're moving to

1 agenda item number 16, right, 16.A.1.

2 The board is responsible for the policy
3 direction of the department and the department's executive
4 director is responsible for the management of the
5 department.

6 The Texas DMV governance policy says the board
7 shall govern the agency through careful establishment of
8 policies reflecting the board's values and perspective,
9 always focusing on the goals to be achieved and not on the
10 day-to-day administrative functions.

11 Language in the Legislative Appropriations
12 Request, LAR, is based on both policy decisions and
13 management decisions for the department. The LAR is a
14 request from the department's executive director and the
15 board.

16 I will now turn it over to Committee Chair
17 Brett Graham, assisted by Linda Flores and Sergio Rey.

18 MR. GRAHAM: Thank you, Chairman.

19 You would like the Finance and Audit Committee
20 update at this point. Correct?

21 MR. TREVIÑO: Yes. Finance and Audit
22 Committee, and I think I skipped that and went into the
23 Legislative Appropriations Request and I didn't allow you
24 the opportunity to give the Finance and Audit Committee
25 update. Thank you very much. I kind of blurred those

1 together there. I'm so glad you pointed that out, Member
2 Graham.

3 MR. GRAHAM: I serve at your pleasure, sir.
4 I'm just making sure, following directions.

5 MR. TREVIÑO: [inaudible].

6 MR. GRAHAM: Okay. I don't think so.

7 Well, Ms. Flores and her staff briefed the
8 committee on the Legislative Appropriations Request
9 process for the upcoming legislative session yesterday
10 during our Finance and Audit Committee meeting, and this
11 included estimated revenue collections by fund, estimated
12 baseline budget appropriations request by strategy, and
13 capital budget project summary baselines, as well as
14 preliminary exceptional item requests and five riders that
15 assist in department operations: one rider which was
16 relevant to making payments to a vendor for the marketing
17 and sale of personalized license plates, and four riders
18 that addressed carryforward of unspent dollars between the
19 biennium for operations grants and headquarters projects.

20 And let me just say, let me just deviate a
21 moment and say I apologize, there's construction going on
22 outside my door here which just started 30 seconds ago
23 right on cue, so hopefully it's not too loud. If it is,
24 let me know.

25 Modifications to the appropriations request are

1 likely to occur when direction is received from state
2 leadership, and that is a very brief summary that
3 concludes the LAR discussion at the F&A Committee
4 yesterday. I'd be glad to go into more detail if the
5 board would like, but this is an action item, Mr.
6 Chairman.

7 MR. TREVIÑO: Great. So we have the action
8 item before us.

9 So Tracey, again, is this 16.A.1, and now we
10 allow Member Graham and Sergio Rey to discuss this. Is
11 that correct?

12 MS. BEAVER: Tracey Beaver, general counsel.

13 Yes. Thank you. That's correct. After Member
14 Graham gives the overview, if there are any questions from
15 the board members for TxDMV staff, they're all available
16 before the vote, and we have no public comment on this
17 item.

18 MR. TREVIÑO: Terrific. Thank you very much.

19 So any questions for Member Graham?

20 (No response.)

21 MR. TREVIÑO: Great. So now we will hear from,
22 I guess, Linda Flores and Sergio Rey. Any questions?

23 MS. FLORES: For the record, this is Linda
24 Flores. I'm available to answer any questions from the
25 board.

1 MR. GRAHAM: Mr. Chairman, I'll just add, just
2 to give a little context to those items that I mentioned,
3 the estimated baseline budget appropriations request
4 totals \$310.8 million, the capital budget project summary
5 is \$43.6 million, and the preliminary exceptional item
6 requests totals about \$17.5 million and eleven FTEs.

7 And again, this is a starting point that the
8 board will consider moving forward, and it's very likely
9 to change as we progress with state leadership input, but
10 just kind of our jumping-off point, I suppose.

11 MR. TREVIÑO: Great. Thank you very much,
12 Member Graham. And thank you, Linda Flores and Sergio
13 Rey, for all the hard work in preparing this.

14 So any other comments? And there's no public
15 comment. So hearing none, the chair would entertain a
16 motion.

17 MR. GRAHAM: Oh, you know, I do have a motion
18 but it's not this one.

19 MR. TREVIÑO: We need to approve this since the
20 Finance and Audit Committee recommends full board
21 approval. Correct?

22 MR. GRAHAM: That's correct. It did pass out
23 of Finance and Audit.

24 MR. TREVIÑO: Great. So we have a
25 recommendation from the Finance Committee for a full board

1 approval of this, so the chair would entertain a motion.

2 MS. GILLMAN: Is this number 16?

3 MR. TREVIÑO: This is 16.A.1.

4 MS. GILLMAN: Aha. I'd like to make a motion.

5 MR. TREVIÑO: There we go. Member Gillman has
6 got her hand up. I think the chair will recognize Member
7 Gillman.

8 MS. GILLMAN: I move that the board approve the
9 fiscal year 2022-23 Legislative Appropriations Request as
10 presented by staff, subject to any technical corrections
11 that are approved by the department's chief financial
12 officer and executive director to comply with the
13 instructions from the Legislative Budget Board.

14 MR. TREVIÑO: Great. Thank you, Member Gillman
15 We have a motion from Member Gillman. Do we
16 have a second?

17 MR. BACARISSE: Second.

18 MR. TREVIÑO: Member Bacarisse.

19 We have a motion and a second. Any further
20 discussion on this point?

21 (No response.)

22 MR. TREVIÑO: Hearing none, I will call for the
23 vote.

24 Member Bacarisse?

25 MR. BACARISSE: Aye.

1 MR. TREVIÑO: Member Gillman?

2 MS. GILLMAN: Aye.

3 MR. TREVIÑO: Member Graham?

4 MR. GRAHAM: Aye.

5 MR. TREVIÑO: Member McRae?

6 MS. McRAE: Aye.

7 MR. TREVIÑO: Member Prewitt?

8 MR. PREWITT: Aye.

9 MR. TREVIÑO: Member Scott?

10 MR. SCOTT: Aye.

11 MR. TREVIÑO: Member Washburn?

12 MS. WASHBURN: Aye.

13 MR. TREVIÑO: And I, Chairman Treviño, also
14 vote aye. This motion passes unanimously.

15 And now we move to 16.A.2. So we'll let
16 Chairman Graham, Committee Chair Graham and Ms. Flores and
17 Mr. Rey continue.

18 MR. GRAHAM: Thank you.

19 16.A.2 is the fiscal year 2021 recommended
20 annual operating budget. Staff presented the department's
21 budget for 2021 fiscal year which begins on September 1,
22 2020 and ends on August 31, 2021.

23 The department is proposing a budget of \$181.7
24 million. This total includes \$153 million in funds that
25 were appropriated for fiscal year 2021 use and \$28.7

1 million in funds that were appropriated in previous years
2 and the department is allowed to spend in the upcoming
3 fiscal year. These are what the board may recognize as
4 carryforward funds.

5 The largest areas of expenditures are
6 designated for \$88.6 million for core program activities.

7 These activities include the operations of our public-
8 facing divisions such as vehicle registration and titles,
9 motor industry licensing, conducting Lemon Law and
10 warranty performance hearings, motor carrier operations,
11 customer contact services, enforcement activities
12 including compliance and investigations, and motor vehicle
13 crime prevention.

14 It also includes \$37 million for capital
15 projects. These consist primarily of major technology
16 initiatives. Also included in those numbers are regional
17 service center improvements and some headquarters
18 maintenance projects.

19 And the fiscal year 2021 budget also includes
20 \$18 million in information technology. This activity
21 provides for administrative oversight of all department
22 technology functions and projects.

23 In addition to the annual operating budget, the
24 Finance and Audit Committee discussed some contracts.
25 During 2021 the department will be funding and monitoring

1 233 contracts that support various functions and
2 activities, those that are statutorily required and those
3 that are necessary to maintain TxDMV services at optimum
4 levels.

5 Staff also recommended approval to negotiate
6 and execute required contracts contained in the document
7 and specific approval of the following AAMVA contract:
8 the American Association of Motor Vehicle Administrators
9 National Motor Vehicle Title Information System, as we say
10 in Finance and Audit, the AAMVA NMVTIS -- how's that?
11 This contract allows the agency to maintain access to that
12 that I just previously described from the period of
13 September 1, 2020 through August 31, 2021.

14 Finally, staff requested approval to transfer
15 \$2.7 million from the automation capital line item to the
16 data center consolidation capital and to seek authority
17 from the Legislative Budget Board and the Governor's
18 Office Budget and Policy to exceed the 25 percent transfer
19 limit to utilize data center services managed application
20 services. This will address two projects on the
21 department's folio: the statewide webDEALER adoption
22 capital project, and the external website web server cloud
23 solution.

24 So as you can imagine, that was a mouthful, but
25 that concludes the summary of the annual operating budget

1 discussion at the F&A Committee, which was approved and we
2 will be glad to take any questions you have on any of
3 these items.

4 MR. TREVIÑO: Thank you for that thorough
5 analysis, Member Graham.

6 Any comments or questions for Member Graham?

7 (No response.)

8 MR. TREVIÑO: The full budget packet is in your
9 board materials, and recognizing that this is a very fluid
10 budget environment, given the current state of affairs of
11 our government and our economy, any other comments for
12 Member Graham?

13 (No response.)

14 MR. TREVIÑO: Great. So recognizing this has
15 been voted out of committee, they had a good look at this,
16 the chair would entertain a motion.

17 MR. BACARISSE: Mr. Chairman?

18 MR. TREVIÑO: Yes, Member Bacarisse.

19 MR. BACARISSE: I'd like to try to encapsulate
20 Chairman Graham's great analysis there by making a motion
21 that the board approve the FY 2021 operating budget as
22 presented, which includes approval of the following: one,
23 the listed contracts that require board approval as well
24 as the delegation of authority to the executive director
25 or the executive director's designee, subject to the

1 restrictions in Government Code Section 2261.254(d) for
2 the approved contracts; and number two, the transfer of
3 \$2.7 million from the Texas DMV automation system capital
4 line in rider number 2 of the department's bill pattern to
5 the data center consolidation capital line in the
6 department's bill pattern, subject to the department's
7 receiving approval from the Legislative Budget Board and
8 the Governor's Office to exceed the 25 percent transfer
9 limit on transferring the amount in one capital budget
10 line to another.

11 Thank you.

12 MR. TREVIÑO: Great. Thank you, Member
13 Bacarisse.

14 We have a motion. Do we have a second?

15 MR. PREWITT: I'll second.

16 MR. TREVIÑO: By Member Prewitt, so we have a
17 motion and second. Any further discussion?

18 (No response.)

19 MR. TREVIÑO: Hearing none, I would call for
20 the vote.

21 Member Bacarisse?

22 MR. BACARISSE: Aye.

23 MR. TREVIÑO: Member Gillman?

24 MS. GILLMAN: Aye.

25 MR. TREVIÑO: Member Graham?

1 MR. GRAHAM: Aye.

2 MR. TREVIÑO: Member McRae?

3 (No response.)

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

6 It looks like Member McRae may be having
7 technical issues and dropped off the call.

8 MR. TREVIÑO: Okay. So let the record reflect
9 that Member McRae is not currently with us, so we will say
10 that's an abstention.

11 Member Prewitt?

12 MR. PREWITT: Aye.

13 MR. TREVIÑO: Member Scott?

14 MR. SCOTT: Aye.

15 MR. TREVIÑO: Member Washburn?

16 MS. WASHBURN: Aye.

17 MR. TREVIÑO: And I, Chairman Treviño, also
18 vote aye, so with the exception of Member McRae's
19 abstention, technical abstention, this motion is seven to
20 one abstention and carries. Thank you very much.

21 We're now moving to agenda item 16.A.3, board
22 approval of FY 2021 Internal Audit plan. And we'll turn
23 it over to Chairman Graham, assisted by Ms. Sandra
24 Menjivar-Suddeath.

25 MR. GRAHAM: Thank you, Chairman.

1 Ms. Sandra Menjivar-Suddeath provided
2 information to the Finance and Audit Committee on the
3 first six-month Internal Audit plan yesterday. The plan
4 includes nine engagements which are composed of four
5 required and five risk-based engagements.

6 The risk-based engagements include
7 telecommuting, employee relations, procurement measures,
8 license plate manufacturing and monitoring, and
9 information technology change management. The information
10 technology change management will be a co-sourced
11 engagement and the engagements will review high risk areas
12 within the department.

13 The plan also provided details on divisional
14 initiatives, value-added services and contingency
15 engagements.

16 And that is a very brief summary, but, Sandra,
17 you may have something to add to that. Did I miss
18 anything?

19 MS. MENJIVAR-SUDDEATH: No, sir.

20 MR. GRAHAM: Okay. It did pass Finance and
21 Audit and is presented to the board for adoption.

22 MR. TREVIÑO: Great. Any questions for Member
23 Graham or for Ms. Menjivar-Suddeath?

24 (No response.)

25 MR. TREVIÑO: Hearing none, I would just like

1 to comment that what a pleasure it is to review these
2 documents that are presented and just acknowledge all the
3 hard work that's gone into it. It's very rare, I think,
4 when you look at audit documents that you say they are a
5 pleasure to look at, but they are, so well done.

6 So any other comments or questions from the
7 board?

8 (No response.)

9 MR. TREVIÑO: Any public comments, Tracey?

10 MS. BEAVER: Tracey Beaver, general counsel.

11 There are no comments for agenda item 16.

12 Thank you.

13 MR. TREVIÑO: Okay. So hearing none, the chair
14 would entertain a motion.

15 MR. GRAHAM: Actually, Mr. Chairman, I'll move
16 that the board adopt and approve the fiscal year 2021
17 first six-month Internal Audit plan as presented.

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

20 Do we have a second?

21 MS. GILLMAN: Second.

22 MR. TREVIÑO: Member Gillman. We've got a
23 second from Member Gillman.

24 And I just heard something. Did Member McRae
25 come back on by any chance?

1 (No response.)

2 MR. TREVIÑO: No. She's still not out there.

3 So we have a motion from Member Graham, a
4 second from Member Gillman. Any further discussion?

5 (No response.)

6 MR. TREVIÑO: Hearing none, I would call for
7 the vote.

8 Member Bacarisse?

9 MR. BACARISSE: Aye.

10 MR. TREVIÑO: Member Gillman?

11 MS. GILLMAN: Aye.

12 MR. TREVIÑO: Member Graham?

13 MR. GRAHAM: Aye.

14 MR. TREVIÑO: Member McRae?

15 (No response.)

16 MR. TREVIÑO: Not hearing Member McRae, so
17 again another abstention.

18 Member Prewitt?

19 MR. PREWITT: Aye.

20 MR. TREVIÑO: Member Scott?

21 MR. SCOTT: Aye.

22 MR. TREVIÑO: Member Washburn?

23 MS. WASHBURN: Aye.

24 MR. TREVIÑO: And I, Chairman Treviño, also
25 vote aye, so this motion also carries seven to one

1 abstention and passes.

2 I'm hearing that Member McRae is doing her
3 level best to get back on here and get up to speed.

4 So we'll move to agenda item 16.B.1. I'll turn
5 it over to Committee Chair Brett Graham, assisted by Linda
6 Flores and Brian Kline.

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

8 And it is, agenda item 16.B.1 is the financial
9 impacts of COVID-19 on TxDMV, and I appreciate your
10 comments, Mr. Chairman, on the work done by Sandra and
11 Sergio and Linda's team, and I also need to mention Brian
12 Kline who has done a lot of the legwork to help us try to
13 understand on the Finance and Audit Committee the overall
14 impacts to the agency as it pertains to COVID-19.

15 They have done extensive analysis to really
16 help us understand the picture of what those financial
17 impacts are, but more importantly they've dug down into it
18 to kind of categorize those that represent true losses in
19 revenue from declines in what's going on in our economic
20 conditions, and then those dollars that actually we will
21 not receive today but will most likely be deferred and
22 received in the future. So just wanted to thank all of
23 them, including Brian, for their work on that.

24 The revenue losses, just a summary of those
25 impacts of the pandemic on the department through the

1 month of June 2020, the most significant items in that
2 list included a loss of \$12,734,000 to the General Revenue
3 Fund 0001, and a loss of \$175,922,000 to the State Highway
4 Fund 0006, as well as a loss of \$22,219,000 to the TxDMV
5 Fund 0010. And again, just reiterating that there are a
6 lot of those dollars, approximately half of those dollars
7 will eventually be deferred to future cycles, so that's
8 not representative of entirely lost revenue.

9 As far as expenditures on COVID, the amounts
10 expended through June 2020 totaled \$1.47 million in
11 response to COVID-19. The expenditures were primarily
12 from staff time for planning and preparation of COVID-19
13 response activities, acquisition of personal protective
14 equipment items for employees and customers, cleaning
15 supplies and facility preparation activities such as
16 cleaning and de-fogging services, and the installation of
17 plexiglass partitions for public areas.

18 The total projected cost for COVID-19 response
19 is estimated to be \$1.7 million through the end of fiscal
20 year 2020. The year-end estimate assumes continued staff
21 time through the end of July and continued cleaning
22 services and cleaning supplies, PPE replenishment through
23 the end of the fiscal year.

24 Mr. Chairman, that concludes my summary of the
25 COVID financial impacts discussion at the Finance and

1 Audit Committee meeting.

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

4 Any comments or questions for Member Graham or
5 staff?

6 MS. GILLMAN: I have a question.

7 MR. TREVIÑO: Member Gillman.

8 MS. GILLMAN: Thank you, Mr. Chairman.

9 Remind me, Linda, what percentage of our
10 revenue, expected revenue have we not collected? Do you
11 think we are from budget are we 10 percent off or 50
12 percent off as far as the collections that you had
13 expected? And I guess I'd love to know through July.

14 MS. FLORES: Member Gillman, this is Linda
15 Flores for the record, Linda Flores, chief financial
16 officer.

17 From our expected targets, we're approximately
18 7 percent below our estimated revenue collections for the
19 year, and as we previously mentioned, we do believe that
20 that amount, that \$175 million primarily, will be received
21 as soon as the registration renewal waivers are lifted.

22 So 60 days after the waiver is removed, that's
23 when individuals are required to come in and renew the
24 registration, and in essence, we will capture those
25 registration renewals that we should have seen by August.

1 So the waivers occurred in March when the state
2 went into a lockdown. The governor issued the ability for
3 people not to have to go into a TAC office to renew the
4 registration. We are seeing a lot of individuals register
5 online, but there are some system limitations that we're
6 working on as well to extend the amount of late
7 registrations you can do online.

8 So we're hoping to have that done here in the
9 very near future, September-October, from what I
10 understand. So between that and then lifting the waiver,
11 we should see the majority of those dollars come in for
12 the state.

13 MS. GILLMAN: Thanks, Linda.

14 Yesterday at the conclusion of our Finance and
15 Audit meeting, I worked with some of our manufacturer
16 partners to try and get a sense of where we are with
17 regard to sales of both new and used vehicles this year,
18 and so what I'm getting ready to tell you is nothing
19 official, but I reached out to domestic and import and
20 every source that I could to try and come up with a number
21 just to give everyone a sense of it, because we don't know
22 from registration, you know, because we're behind.

23 But just from my unofficial poll, we are
24 retail, the number of new and used vehicles sold this year
25 is somewhere down around 15 to 18 percent, so I guess I

1 translate that to department dollars as well and revenue
2 for the state.

3 So anyway, hopefully we'll see a good bounce
4 back, but so far to date we're somewhere around 15 to 18
5 percent off, I think. I'll keep you posted.

6 MS. FLORES: And we do appreciate that, Board
7 Member Gillman, because we do look at sales of vehicles as
8 well when it comes to the title revenue. Yes, ma'am.
9 Thank you.

10 MR. TREVIÑO: Great. Thank you, Member
11 Gillman, for those comments and keeping the board informed
12 of the economic conditions in the State of Texas.

13 Any other comments or questions for staff or
14 for Member Graham?

15 (No response.)

16 MR. TREVIÑO: Great. Hearing none, then any
17 comments from the public on this?

18 MS. BEAVER: Tracey Beaver, general counsel.

19 There's no comments from the public on any of
20 the agenda items under number 16. Thank you.

21 MR. TREVIÑO: The only comment I would add is
22 just when you look at these numbers, they're staggering
23 just if you can think about how important our agency is
24 for the State of Texas. The amount of money involved and
25 the amount of commerce and the effects on the economy that

1 our department influences, it's staggering.

2 So anyway, thank you very much, Member Graham,
3 for all your hard work.

4 So this is not an action item, is it, it's just
5 information. Right?

6 Okay. We'll go to agenda item 16.B.2, and hear
7 from Committee Chair Brett Graham and Linda Flores and
8 Sergio Rey.

9 MR. GRAHAM: And I'll try to brief on this.
10 We've already covered some of this. 16.B.2 is the third
11 quarter financial summary, as we discussed the department
12 being in the midst of addressing the COVID-19 pandemic and
13 making modifications to its regional service centers and
14 service to customers while ensuring the safety of the
15 staff which needs to be a priority.

16 You heard in the previous briefing item the
17 financial impacts of COVID-19 on the department, but in
18 regard to collections, collections were experiencing
19 declines in the third quarter, as we discussed, due to fee
20 waivers and deferred revenue, as well as a general decline
21 in economic activity.

22 In this quarterly report, collections in the
23 TxDMV Fund 0010, which is the fund that directly supports
24 the operations of the department, experienced a decrease
25 of 7 percent compared to the same period last year.

1 Registration revenue is expected to decline approximately
2 9.1 percent from last year.

3 Collections will continue to be compressed in
4 the near future, we expect, as businesses and individuals
5 react to the pandemic. So I think those numbers certainly
6 are in line with what Member Gillman heard from some of
7 the manufacturers are certainly represented in those
8 numbers.

9 But that's a very broad overview of the third
10 quarter financial summary, Mr. Chairman.

11 MR. TREVIÑO: Thank you, Member Graham.

12 Any questions for Member Graham?

13 (No response.)

14 MR. TREVIÑO: Tracey, any comments from the
15 public on this or the next agenda item?

16 MS. BEAVER: Tracey Beaver, general counsel.

17 No comments from the public on this agenda item
18 or the next one.

19 MR. TREVIÑO: Great. So then we will move on
20 to agenda item 16.B.3. -- Member Graham, you've been busy,
21 you're on here for the next one as well, assisted by
22 Sandra Menjivar-Suddeath.

23 MR. GRAHAM: Yes, sir, absolutely. So it's a
24 busy time for Finance and Audit as we prepare for the new
25 year, and there's something going on in the Austin area

1 early next year. I don't remember what that is, but
2 there's something big coming, or hopefully anyway.

3 MR. TREVIÑO: Like a freight train.

4 MR. GRAHAM: So we'll be getting ready for that
5 as well.

6 Mr. Chairman, 16.B.3 is the Internal Audit
7 Division status report. Ms. Menjivar-Suddeath provided an
8 update on the status of current Internal Audit activities
9 including the four final engagements on the Internal Audit
10 plan.

11 She also provided us information on two
12 external engagements that are reviewing department
13 policies related to cybersecurity and criminal justice
14 information services security. And finally, information
15 was provided on how the Internal Audit staff are
16 participating in the local internal audit chapters.

17 And that is a very, very brief overview of a
18 whole lot of very important work, but I'll drop it there
19 and open it up for questions.

20 MR. TREVIÑO: Well said, Member Graham.

21 Any questions for Member Graham?

22 (No response.)

23 MR. TREVIÑO: Thank you for that succinct
24 presentation on very complex matters.

25 We will now move on to agenda item 17.A,

1 legislative and public affairs. We will turn then to Ms.
2 Caroline Love.

3 Caroline, are you on there?

4 MS. LOVE: Hi. This is Caroline. Can y'all
5 hear me?

6 MR. TREVIÑO: Yes, Caroline, we can hear you.

7 MS. LOVE: Great, okay. Thank you.

8 Well, good morning, board members and Chairman
9 and Executive Director Brewster. My name is Caroline
10 Love. I'm the director of the Government and Strategic
11 Communications Division for the department, and I wanted
12 to provide you all with a legislative and public affairs
13 update.

14 So tying in with the remarks made by Board
15 Member Graham a few minutes ago, there is something
16 happening in January -- at least it seems like it's on
17 track so far.

18 So starting on page 382 of the materials
19 provided to you today, there is some information regarding
20 some of the requirements of the board heading into a
21 legislative session, and the Texas Transportation Code
22 does state that the board shall consider opportunities in
23 which to improve department operations and efficiencies,
24 and so this process is something that the staff helps
25 prepare for the board.

1 My team has been working with all the divisions
2 within the department to identify any statutory
3 impediments that might keep us from being able to work
4 efficiently on a day-to-day basis, and we are in the
5 process of finalizing those at the internal level.

6 And then next we will go to the stakeholders
7 that may be impacted by those things that we are looking
8 at. And then once we get that feedback, we'll be coming
9 back to the Legislative and Public Affairs Committee with
10 discussion items on recommendations, as well as the board.

11 And one of the items that I did want to mention
12 that's a little new to this process for this upcoming
13 session is the fact that we now have advisory committees
14 to the board, which is not something that we had before,
15 and as you heard earlier, those advisory committees are
16 considering not only recommendations to our rules and
17 things like that but also to legislative items that can be
18 considered, so we'll be sure to incorporate those into the
19 overall package that gets brought forward to the board.

20 And if you'll notice as well on page 383,
21 there's a highlight of some of the key deadlines, the
22 dates that we need to be aware of going into the
23 legislative session.

24 The first one is that the bill filing begins on
25 November 8th, and that is of this year, and so the hope is

1 to bring this package to the board at the October board
2 meeting so that we will have time to get those adopted and
3 we'll start having information delivered over to the
4 legislature and begin those conversations.

5 Then, of course, the legislative session is set
6 to begin on January 12th of 2021 and then, of course, the
7 filing deadline is always a big date, 60 days later on
8 March 12th, and then 140 days after January 12th, on May
9 31st is when they are scheduled to adjourn sine die.

10 Of course there is so much up in the air at the
11 moment, but by and large what I'm hearing from other staff
12 and contacts in the Capitol area is that it will be very
13 difficult for the legislature to handle the volume that
14 we've seen in the past when it comes to bills filed and
15 bills considered.

16 Legislators are paring down their staff so that
17 they don't run the risk of having too many people in an
18 office at one time, and then, of course, they have so many
19 things they need to comply with in terms of social
20 distancing and those sorts of things that really have an
21 impact on the volume that they can consider. So that is
22 something we're also keeping in mind as we're moving
23 forward in this process.

24 And those are the key items I have for 17.A.
25 Are there any questions on that?

1 MR. TREVIÑO: Thank you, Ms. Love.

2 Any questions for Ms. Love?

3 MS. GILLMAN: I have a question.

4 MR. TREVIÑO: Member Gillman.

5 MS. GILLMAN: Who is on the advisory committee?

6 MS. LOVE: Well, I was referring to the already
7 established advisory committees which would be the
8 Consumer Protection Advisory Committee, and that is the
9 one that has actually the recommendations that might have
10 legislative components at the moment.

11 They have items considering the public
12 information protection, as well as a couple of legislative
13 references for when a dealership might go out of business
14 and how to help customers that are impacted. So it would
15 be those recommendations that have been incorporated in.

16 MR. TREVIÑO: And Member Gillman, Member Scott
17 chairs the Legislative and Public Affairs Committee.

18 MS. GILLMAN: Oh, okay. Thank you.

19 MR. TREVIÑO: Okay. Any other questions?

20 (No response.)

21 MR. TREVIÑO: I would like to thank Member
22 Scott for agreeing to serve.

23 And it looks like Member McRae is back. We
24 missed you, Member McRae. I don't know if I can say that
25 legally or statutorily, but I'm going to say that

1 personally. So good to have back.

2 MS. McRAE: You have to love technology. My
3 computer is fried, but I'm on another one.

4 MR. TREVIÑO: Well, there you. But you're
5 back. That's the important thing, you're back with us,
6 it's important to have your voice here.

7 So any other questions for Ms. Love?

8 (No response.)

9 MR. TREVIÑO: Hearing none, I think, Caroline,
10 you're up for the next item 17.B. Is that correct?

11 MS. LOVE: That is correct. Thank you.

12 So on page 384 of the materials you'll see a
13 quick update on the alternatively fueled vehicles study.
14 Senate Bill 604 from the 86th Legislature is the TxDMV
15 Sunset legislation which not only continued the agency
16 until 2039 -- we can all be thankful for that -- but also
17 had a few things in there that we've been working towards
18 implementing, including a requirement for TxDMV to work
19 with several state agencies on alternatively fueled
20 vehicles, what the impacts of those vehicles are to the
21 state infrastructure, and then also opportunities to
22 collect revenues from those vehicles that do not get
23 collected at the time of collecting motor fuels taxes
24 since they do not use traditional fuels.

25 So this study is due on December 1st. We have

1 been working with the other agencies. The Texas
2 Department of Transportation has a lot of information
3 related to vehicle miles traveled and that sorts of data
4 that will be included in the report.

5 We also have the Department of Public Safety on
6 inspection processes, the Texas Commission on
7 Environmental Quality that will provide information relevant
8 to the impact these vehicles have on the environment, and
9 then the Public Utility Commission has a lot of
10 information about should the use of these vehicles
11 continue to grow, the impacts it would have on the
12 electric grid and those sorts of things.

13 So we're still in the process of gathering that
14 information. We hope to have all the inputs complete from
15 the other agencies by the end of this month. And then
16 internally we've been working through looking at what
17 other states do to collect revenues from these types of
18 vehicles.

19 And not every state does but some states have
20 simple measures where they simply collect an extra fee at
21 the time of registration, others might have a more
22 complicated number of miles traveled system for collecting
23 revenue, so we're in the process of researching those and
24 looking internally to see what might be an option for
25 Texas to collect those revenues.

1 And as I mentioned, this report will be
2 finalized and delivered to the legislature by December
3 1st, and we are on track for that. So that's my update on
4 that, and I'm happy to answer any questions.

5 MR. TREVIÑO: Thank you, Ms. Love.

6 Any questions for Ms. Love on this electric
7 vehicle issue?

8 (No response.)

9 Mr. TREVIÑO: Hearing none, Tracey, are there
10 any public comments for this or the next three agenda
11 items?

12 MS. BEAVER: No public comments received.

13 MR. TREVIÑO: Great. Thank you very much.

14 Let's see, Caroline, you're up again, 17.C.

15 MS. LOVE: Thank you.

16 And so the last item I have for an update was
17 also part of the department's Sunset legislation. There
18 was a bill for us to implement a digital license plate
19 process, which I know you are very familiar with.

20 You adopted rules related to the implementation
21 of digital license plates, and those rules became
22 effective on July 12th. And we quickly went out with a
23 request for proposals, and that closed on July 17th this
24 year, and so we are currently in that evaluation and
25 negotiation and contract reward phase, and we are working

1 also on the business requirements for making sure our
2 systems can accommodate these types of technology and
3 plates, and we are on track to have this implemented by
4 the end of the calendar year.

5 That's all I have on that one, pretty brief,
6 but I'm happy to answer any questions.

7 MR. TREVIÑO: Thank you for keeping us up to
8 date on that, Caroline.

9 Any questions for Ms. Love?

10 (No response.)

11 MR. TREVIÑO: And again, Ms. Love, just to be
12 clear, you guys are on track. I heard that towards the
13 end, but I just want to make sure; it kind of broke up.
14 But you are on track to meet your goals on this. Right?

15 MS. LOVE: That is correct, yes.

16 MR. TREVIÑO: Great. Thank you very much.
17 Thank you, Caroline. I think we're pretty much done with
18 you.

19 So we'll now hear from agenda item number 18
20 and our executive director, Whitney Brewster.

21 MS. BREWSTER: Thank you, Mr. Chairman,
22 members. Again, Whitney, executive director, for the
23 record.

24 On item number 18 I'm seeking approval from the
25 board to execute the proposed delegation of authority that

1 you can find on page 388 of your board books. Really, the
2 purpose of this proposal is to provide a standing
3 delegation order that will govern our operations at times
4 when the executive director is unable or unavailable to
5 perform the duties of the executive director.

6 And so the proposed authorization that you see
7 before you for consideration delegates authority to Deputy
8 Executive Director Shelly Mellott and then Daniel Avitia
9 to perform the duties of executive director when the
10 executive director is not available.

11 And the delegation provides if one of the
12 deputy executive directors is absent, the other deputy
13 executive director will perform the duties. And if both
14 deputy executive directors are unavailable or unable, the
15 delegation then passes on to the chief financial officer.

16 So if approved, the authorization will provide
17 clear lines of succession and responsibility, and I would
18 say improved continuity of operations.

19 And with that, Mr. Chairman, I would be happy
20 to answer questions.

21 MR. TREVIÑO: Thank you, Ms. Brewster.

22 Any questions for Ms. Brewster?

23 MR. BACARISSE: Mr. Chairman?

24 MR. TREVIÑO: Yes, Member Bacarisse.

25 MR. BACARISSE: Ms. Brewster, just for

1 clarification, the way this is set up, in the absence of
2 the executive director the duties would fall to both of
3 your deputy executive directors simultaneously with one
4 not being over the other necessarily? I mean, that might
5 create some confusion.

6 MS. BREWSTER: So the proposed authorization
7 delegates authority to Deputy Executive Director Shelly
8 Mellott and Daniel Avitia to perform the duties of the
9 executive director when the executive director is unable
10 to be there that involve their respective divisions under
11 their supervision. First, we wanted to avoid a new
12 delegation order each time I'm out of the office --

13 MR. BACARISSE: Absolutely.

14 MS. BREWSTER: -- which is the way we've been
15 handling it. Second, we've added Daniel as a second
16 deputy executive director, and then we need the delegation
17 that provides that clear line, so in the areas where they
18 have direct oversight, they are delegated that authority.

19 In the event that there is question over the
20 order, it would fall first to Shelly Mellott, second to
21 Daniel, and then to the chief financial officer.

22 MR. BACARISSE: Okay. I just want to make sure
23 we have a real clear line delineation there.

24 MS. BREWSTER: Yes, sir.

25 MR. BACARISSE: So thank you.

1 MR. TREVIÑO: Good questions, Chairman
2 Bacarisse.

3 MS. GILLMAN: Mr. Chairman?

4 MR. TREVIÑO: Yes, Member McRae. Sorry. Did I
5 hear somebody else had a question?

6 MS. GILLMAN: I just don't know, Whitney, do
7 you have something that you think or expect will take you
8 out of the office?

9 MS. BREWSTER: No, ma'am. This would be in the
10 event that I was out for vacation, illness, or some sort
11 of unanticipated situation. This is not anything for a
12 planned absence, no, ma'am.

13 MR. TREVIÑO: Good question.

14 So any other questions for Executive Director
15 Brewster?

16 (No response.)

17 MR. TREVIÑO: So just to follow up on the two
18 questions that were raised here, so you do have a clear
19 line of succession and that Shelly would be your go-to,
20 even though you have administratively separated out the
21 tasks that each is responsible for.

22 At the end of the day we do have clear
23 delineation of who the second in command is going forward.
24 Is that correct?

25 MS. BREWSTER: Yes, sir.

1 MR. TREVIÑO: And then on the other score, I do
2 applaud you, because in this area of heightened
3 preparation for all kinds of natural disasters and in this
4 COVID environment, it's essential that all of us have a
5 deep bench and clear lines of succession.

6 So you are fortunate in that you have very,
7 very good staff to support you, and that speaks highly of
8 you as well. So well done for setting up this line of
9 succession.

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

11 MR. TREVIÑO: All right. So any other
12 questions for Executive Director Brewster?

13 (No response.)

14 MR. TREVIÑO: Hearing none, the chair would
15 entertain a motion. Any out there? Hello. Someone. Oh,
16 there's Member Bacarisse raising his hand.

17 MR. BACARISSE: Member Graham, do you have the
18 motion?

19 MR. GRAHAM: No, I do not have a formal motion,
20 I was going to throw something out there, but please go
21 ahead.

22 MR. BACARISSE: All right. Mr. Chairman, I
23 would like to propose the board approve the appointment of
24 delegates to act in the absence of the executive director
25 as outlined by Executive Director Whitney Brewster.

1 MR. TREVIÑO: Thank you, Member Bacarisse.

2 Do we have a second?

3 MR. GRAHAM: Second.

4 MR. TREVIÑO: All right, Member Graham, thank
5 you very much for stepping up.

6 So I've got a motion and second. Any further
7 comment?

8 (No response.)

9 MR. TREVIÑO: Hearing none, I would call for
10 the vote.

11 Member Bacarisse?

12 MR. BACARISSE: Aye.

13 MR. TREVIÑO: Member Gillman?

14 MS. GILLMAN: Aye.

15 MR. TREVIÑO: Member Graham?

16 MR. GRAHAM: Aye.

17 MR. TREVIÑO: Member McRae?

18 MS. McRAE: Aye.

19 MR. TREVIÑO: I saw you look. Yes, Member
20 McRae?

21 MS. McRAE: Aye. Yes.

22 MR. TREVIÑO: Okay. Member Prewitt?

23 MR. PREWITT: Aye.

24 MR. TREVIÑO: Member Scott?

25 MR. SCOTT: Aye.

1 MR. TREVIÑO: Member Washburn?

2 MS. WASHBURN: Aye.

3 MR. TREVIÑO: And I, Chairman Treviño, also
4 vote aye, and so this motion carries unanimously. Well
5 done.

6 All right. So now we are heading into closed
7 session. At this time the board requests that all non-
8 board members leave the closed meeting, with the exception
9 of Matthew Levitt.

10 (Whereupon, at 11:13 a.m., the meeting was
11 recessed, to reconvene this same day, Thursday, August 6,
12 2020, following conclusion of the executive session.)

13 MR. TREVIÑO: It is approximately 12:45, and
14 the board of the Texas DMV is now back in open session.

15 Will the board members please turn your video
16 back on. I ask that the meeting host move Whitney
17 Brewster and Tracey Beaver as panelists.

18 We will now move to agenda item 20, action
19 items from closed session, when everybody is ready.

20 MS. BEAVER: Chairman Treviño, this is Tracey
21 Beaver, general counsel, for the record.

22 I just wanted to confirm that when the board
23 went into closed session at approximately 11:13 that it
24 was under Texas Government Code Sections 551.071, 551.074,
25 551.076, and 551.089, as outlined in the posted agenda.

1 MR. TREVIÑO: Tracey, thank you very much for
2 reminding me. Yes, that is correct.

3 MS. BEAVER: Thank you, Chairman.

4 MR. TREVIÑO: Okay. So now we'll move to
5 agenda item 20 from the closed session.

6 Tracey, are there any public comments?

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

9 No public comments.

10 MR. TREVIÑO: Okay. Any other comments then?

11 (No response.)

12 MR. TREVIÑO: If not, I would entertain a
13 motion regarding agenda item 20.

14 MR. GRAHAM: Mr. Chairman, this is Brett
15 Graham.

16 I move the board approve the combined
17 evaluation for the executive director from our executive
18 session.

19 MR. TREVIÑO: Motion from Member Graham. Do we
20 have a second?

21 MR. BACARISSE: Second.

22 MR. TREVIÑO: Member Bacarisse.

23 Any further discussion on this topic?

24 (No response.)

25 MR. TREVIÑO: Hearing none, I would call for

1 the vote.

2 Member Bacarisse?

3 MR. BACARISSE:

4 MR. TREVIÑO: Member Gillman?

5 MS. GILLMAN: Aye.

6 MR. TREVIÑO: Member Graham?

7 MR. GRAHAM: Aye.

8 MR. TREVIÑO: Member McRae?

9 MS. McRAE: Aye.

10 MR. TREVIÑO: Member Prewitt?

11 MR. PREWITT: Aye.

12 MR. TREVIÑO: Member Scott?

13 MR. SCOTT: Aye.

14 MR. TREVIÑO: Member Washburn?

15 MS. WASHBURN: Aye.

16 MR. TREVIÑO: And I, Chairman Treviño, also
17 vote aye. Let the record reflect that it is a unanimous
18 vote and the motion carries.

19 We'll now move to agenda item 21, public
20 comment.

21 Tracey, are there any more public comments?

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

24 There's no public comments.

25 MR. TREVIÑO: Great. So unless there's any

1 further business, I would like to entertain a motion to
2 adjourn.

3 MR. GRAHAM: So moved.

4 MS. GILLMAN: Second the motion.

5 MR. TREVIÑO: Great. Thank you, Member Graham
6 and Member Gillman.

7 All in favor?

8 (A chorus of ayes.)

9 MR. TREVIÑO: Let the record reflect that the
10 vote is unanimous, and it is now 12:47 p.m. We are
11 adjourned.

12 (Whereupon, at 12:47 p.m., the meeting was
13 adjourned.)

C E R T I F I C A T E

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MEETING OF: TxDMV Board
LOCATION: via telephone conference call
DATE: August 6, 2020

I do hereby certify that the foregoing pages, numbers 1 through 139, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Motor Vehicles.

DATE: August 17, 2020

/s/ Nancy H. King
(Transcriber)

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