

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,  
December 10, 2020  
8:03 a.m.

BOARD MEMBERS:

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

*ON THE RECORD REPORTING*  
*(512) 450-0342*

I N D E X

<u>AGENDA ITEM</u>	<u>PAGE</u>
1. Roll Call and Establishment of Quorum	9
2. Pledges of Allegiance - U.S. and Texas	10
3. Chair's Reports	
A. Introduction of New Board Member Manuel "Manny" Ramirez	10
B. Committee Member Appointments	11
4. Executive Director's Reports	
A. Introduction of Ombudsman Leah Leone	13
B. State Employee Charitable Campaign (SECC) Awards and Results	16
C. TxDMV Website Update	17
D. Awards, Recognition of Years of Service, and Announcements	19
 RULES - ADOPTIONS	
5. Chapter 215, Motor Vehicle Distribution Amendments, §215.500 New, §215.504 Chapter 218, Motor Carriers Amendments, §218.72 (Relating to SB 604, clarifying the refund authority for motor vehicle buyers and lessees; refund to a consumer who paid the motor carrier to transport household goods) (Proposal Published - August 21, 2020 - 45 Tex Reg 5874) (Review by Office of the Governor, Regulatory Compliance Division; submission August 27, 2020; comment period closed September 30, 2020)	38
6. Chapter 221, Salvage Vehicle Dealers New §221.96, Cease and Desist (Relating to SB 604, establishing process under which board may issue a cease and desist order to prohibit a person from violating statutes, board rules, or board orders, after notice and an opportunity for a hearing) (Proposal Published - August 21, 2020 - 45 Tex Reg 5902) (Review by Office of the Governor, Regulatory	47

Compliance Division; submission August 24, 2020;  
comment period closed September 25, 2020)

7. Chapter 209, Finance 28  
Amendments, §209.23  
Chapter 219, Oversize and Overweight Vehicles  
and Loads Amendments, §§219.2, 219.11, 219.13 -  
219.15, 219.42, 219.43, and 219.61 - 219.63  
(Relating to HB 61 and HB 2620, escort flag  
vehicles including the use of certain lighting  
equipment; removing escrow account payment)  
(Proposal Published - August 21, 2020 -  
45 Tex Reg 5869)
8. Chapter 219, Oversize and Overweight Vehicles 34  
and Loads  
Amendments, §219.31 and §219.126  
Repeal, §219.83  
(Relating to HB 2620, movement of oversize or  
overweight vehicles and enforcement of motor  
vehicle size and weight limitations)  
Proposal Published - August 21, 2020 -  
45 Tex Reg 5899)
9. Chapter 206, Management 49  
New, §206.151  
Chapter 223, Compliance and Investigations  
Division  
New, §223.101  
(Relating to SB 604, risk-based monitoring and  
prevention of title and registration fraud)  
(Proposal Published - August 21, 2020 -  
45 Tex Reg 5867)
10. Chapter 206, Management 78  
Amendments, §206.22  
Chapter 215, Motor Vehicle Distribution  
Amendments, §215.22 and §215.55  
New, §§215.59 - 215.63  
(Relating to SB 604, new Occupations Code  
§2301.709(d), contested cases; and a petition  
for rulemaking)  
(Informal Working Draft and Request for Informal  
Comments on Rules Relating to Contested Cases;  
and Petition for Rulemaking - Published on TxDMV  
website April 3, 2020 to May 4, 2020)  
(Proposal Published - August 21, 2020 -  
45 Tex Reg 5866)  
(Review by Office of the Governor, Regulatory  
Compliance Division; submission August 24, 2020;  
comment period closed September 25, 2020)

11. Chapter 217, Vehicle Titles and Registration Amendments, §217.3 126  
 (Relating to vehicle titling for mopeds)  
 (Proposal Published - October 16, 2020 -  
 45 Tex Reg 7407)

BRIEFING AND ACTION ITEMS

12. Specialty Plate Design 129  
 Penn State - New Design proposed by My Plates  
 under Transportation Code, §504.851
13. Legislative and Public Affairs Committee Update  
 A. Alternatively Fueled Vehicles Study Update 132  
 as Submitted to the Legislature under Senate  
 Bill 604, 86th Legislature, Regular Session  
 (2019)  
 (BRIEFING ONLY)
- B. Agency Process for Legislative Session 134  
 (BRIEFING ONLY)
- C. Recommended Legislation to the 87th 136  
 Legislature under Transportation Code,  
 §1001.025
14. Finance and Audit  
 A. Internal Audit Division Status Update 172  
 (BRIEFING ONLY)  
 - FY 2020 Quality Assurance Improvement  
 Program Report
- B. Internal Audit Charter 179
15. Amendment to the TxDMV Balanced Scorecard 185
16. Appointment of Ombudsman to Act as Civil Rights 188  
 Officer under Transportation Code,  
 §1001.023(b) (7)

EXECUTIVE SESSION

17. The Board may enter into closed session 190  
 under one or more of the following  
 provisions of the Texas Open Meetings Act,  
 Government Code, Chapter 551:  
 Section 551.071  
 Section 551.074  
 Section 551.076  
 Section 551.089
18. Action Items from Executive Session 191

19.	Public Comment	none
20.	Adjournment	196

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 8:03 a.m., and I am now  
6 calling the Board meeting for December 10, 2020 to  
7 order. I want to note for the record that the public  
8 notice of this meeting, containing all items on the  
9 agenda, was filed with the Office of Secretary of State on  
10 December 1, 2020.

11 General Counsel Beaver, is everything coming in  
12 better now?

13 MS. BEAVER: Yes. Thank you, Chairman. You're  
14 coming through clearly.

15 MR. TREVIÑO: Great.

16 This meeting is being held by telephone  
17 conference call in accordance with Texas Government Code,  
18 Chapter 551, as temporarily modified under Governor Greg  
19 Abbott's authority to suspend certain statutes due to  
20 COVID-19. Governor Abbott suspended various provisions of  
21 the Texas Open Meetings Act that require government  
22 officials and members of the public to be physically  
23 present at specified meeting locations.

24 Under that suspension, the public will not be  
25 able to physically attend this meeting in person.

1 Instead, the public may attend this meeting by using the  
2 link or by calling the toll free telephone number which  
3 are both posted in our agenda which was filed with the  
4 Office of the Secretary of State on December 1, 2020. All  
5 board members, including myself, will be participating  
6 remotely via Webex.

7 At this time will all attendees please mute  
8 your phone for the entire duration of this meeting. I'm  
9 asking our Webex meeting host to make sure all attendees  
10 phones are muted and their videos turned off, except for  
11 board members and those who are presenting. Callers will  
12 be removed for any disruptions, including background  
13 noise.

14 I would like to remind all participants that  
15 this is a telephone conference call meeting. Because this  
16 meeting is held by telephone conference call, there are a  
17 few things that will assist in making the meeting run  
18 smoother and will assist the court reporter in getting an  
19 accurate record. Department staff and any commenters  
20 should identify themselves before speaking. Speak  
21 clearly.

22 Remember there may be a slight delay due to the  
23 telephone conference call meeting so please wait a little  
24 longer than usual before responding to participants. Do  
25 not speak over others, and speakers should ask the

1 chairman to proceed and be sure to get recognized before  
2 speaking.

3           If you wish to address the board or speak on an  
4 agenda item during today's meeting, please send an email  
5 to GCO\_general@TxDMV.gov. Please identify in your email  
6 the specific item you're interested in commenting on, your  
7 name and address, and whether you're representing anyone  
8 or speaking for yourself. If your comment does not  
9 pertain to a specific agenda item, we will take your  
10 comment during the general public comment portion of the  
11 meeting.

12           In accordance with department administrative  
13 rule, comments to the board will be limited to three  
14 minutes, then the call will be muted by the meeting host  
15 when your time is up. Comments should be pertinent to the  
16 issues stated in your email. When addressing the board,  
17 please state your name and affiliation for the record.

18           Before we begin today, I'd like to remind all  
19 presenters and those in attendance of the rules of conduct  
20 at our board meetings. In the department's rules under  
21 Section 206.22, the board chair is given authority to  
22 supervise the conduct of meetings. This includes the  
23 authority to determine when a speaker is being disruptive  
24 of the meeting or is otherwise violating the timing or  
25 presentation rules I just discussed. Disruptive speakers



1 will be muted, given a warning about disruptive behavior,  
2 then removed from the meeting for any continued  
3 disruption.

4           Okay. We'll start off with the roll call.  
5 Please respond verbally when I call your name.

6           Member Bacarisse, are you here?

7           MR. BACARISSE: Present.

8           MR. TREVIÑO: Member Gillman?

9           MS. GILLMAN: Present.

10          MR. TREVIÑO: Member Graham?

11          MR. GRAHAM: Present.

12          MR. TREVIÑO: Member McRae?

13          MS. McRAE: Here.

14          MR. TREVIÑO: Member Prewitt?

15          MR. PREWITT: Present.

16          MR. TREVIÑO: Member Ramirez?

17          MR. RAMIREZ: Present.

18          MR. TREVIÑO: Member Scott?

19          MR. SCOTT: Present.

20          MR. TREVIÑO: And Member Washburn?

21          MS. WASHBURN: Here.

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

24           Okay. Next item is the pledge of allegiance.  
25 Before we begin, I ask that the board and other panelists

1 please turn off their audio and video. I will also turn  
2 off my video as I lead you -- actually, I'm going to ask  
3 Member Ramirez, our new member, Manny Ramirez, to lead us  
4 in the pledges. We will pause to give presenters and  
5 board members to turn off their audio and video.

6 Please all stand and honor our country and  
7 state with the pledges of allegiance.

8 Member, Ramirez, whenever you're ready.

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

11 MR. TREVIÑO: Member Ramirez, thank you very  
12 much. Appreciate your assistance in that.

13 We're going to move on to agenda item number 3,  
14 chair's report.

15 On November 3, 2020, Governor Abbott appointed  
16 Manuel "Manny" Ramirez to the Board of the Texas  
17 Department of Motor Vehicles as the law enforcement  
18 representative. His term is set to expire on February 1,  
19 2021.

20 And Member Ramirez is president of the Fort  
21 Worth Police Officers Association. We are very, very  
22 happy to have him here with us. He has fulfilled the  
23 required training, he has fulfilled all the required --  
24 he's completed all required paperwork, has been duly sworn  
25 into office and received his commission from the Texas

1 Secretary of State. You can read more about our new board  
2 member on our department website under the About Us  
3 section.

4 And I, and I know I speak for the rest of the  
5 board, look forward to working with you. Thank you very  
6 much for your public service and your willingness to serve  
7 in this capacity.

8 Board members, please join me in welcoming our  
9 new board member, Manny Ramirez.

10 (Applause.)

11 MR. TREVIÑO: Member Ramirez, would you like to  
12 say a few words?

13 MR. RAMIREZ: Sure. This is Member Ramirez.  
14 I'd like to thank you, Chairman Treviño, for the  
15 tremendous introduction and thank everybody else for a  
16 warm introduction.

17 You know, it's my hope just to continue the  
18 great work that this board has been doing over the past  
19 several years, making sure that we ensure efficient and  
20 effective service to the citizens of Texas. That's the  
21 number one priority is to make sure that we have an  
22 organization that's moving along. And I think that it has  
23 been that way, so I'm looking forward to joining the team  
24 and doing what I can to make sure we keep working.

25 MR. TREVIÑO: Great. Well said, Member

1 Ramirez. Thank you for your service to this board and  
2 thank you for your service to the citizens of Texas by  
3 keeping Fort Worth safe. Appreciate that.

4 Now that we have a full board with Member  
5 Ramirez joining us, I would like to notify the board that  
6 Member Ramirez has agreed to join the Legislative and  
7 Public Affairs Committee as a member. This new structure  
8 provides for balance and diverse membership on the  
9 Legislative and Public Affairs Committee. This  
10 appointment doesn't require any action by the board under  
11 Transportation Code, Chapter 1001.

12 So thank you, Member Ramirez, for agreeing to  
13 serve on that committee.

14 Okay. And the last thing I'd like to cover in  
15 my report is we had an election recently in November -- I  
16 don't know if everybody is aware of it -- but I'm talking  
17 specifically about Member McRae's election -- reelection  
18 as tax assessor-collector for Montgomery County. Member  
19 McRae, we want to congratulate you on your landslide  
20 victory and continued service on this board.

21 So Member McRae, would you like to say  
22 anything?

23 MS. McRAE: It's always humbling to be elected  
24 and represent our constituents, and it's just an honor to  
25 be able to do that in Montgomery County and to be able to

1 serve with these other great members of this board. So  
2 thank you so much.

3 MR. TREVIÑO: Well, I know I speak for the  
4 board when I say congratulations on your election and on  
5 your reelection but also on your level of service to the  
6 citizens of Texas on the Texas Association of Tax  
7 Assessor-Collectors, also on this board, and then also the  
8 tax assessor-collector for Montgomery County. So thank  
9 you very much.

10 MS. McRAE: Thank you.

11 MR. TREVIÑO: And with that, I think I'll turn  
12 it over to our executive director, Whitney Brewster, for  
13 her report.

14 Whitney.

15 MS. BREWSTER: Thank you, Mr. Chairman. Good  
16 morning, Mr. Chairman, members, guests, and staff.

17 I also want to congratulate Member McRae and  
18 welcome Member Ramirez. It's really great to have a full  
19 board and I know the staff is thrilled about Member  
20 Ramirez joining the board.

21 Just a few things to go through this morning.  
22 I know there's a lot on the agenda today, but I'd like to  
23 start off by introducing you to a new member of our  
24 team. Leah Leone joined the TxDMV team on November 1 as  
25 the agency's employee ombudsman and ethics officer for the

1 agency.

2           You can find out a little more about Leah in  
3 your board books, but just to share a little bit about  
4 her, she is very experienced as a high conflict  
5 mediator. She's been a teacher and a trainer with over 25  
6 years of diverse experience managing and teaching conflict  
7 resolution, and she is a law professor also specialized in  
8 alternative dispute resolution. So we have a wealth of  
9 knowledge in Leah.

10           She joins us most recently from the Office of  
11 Attorney General where she served as the director of  
12 access and visitation for the child support division. And  
13 she has a bachelor's degree in organizational psychology  
14 with a law degree with a specialization in dispute  
15 resolution.

16           So I will turn it over to Leah for just a  
17 moment to go through what she's going to be doing as our  
18 employee ombudsman.

19 Leah.

20 MS. LEONE: Yes. Thank you, Whitney. Good  
21 morning, Board and Mr. Chairman. I'm grateful to be here  
22 with you this morning. And as employee ombudsman for  
23 TxDMV, I'm quite excited. I will be the go-to, if you  
24 will, for all communication when employees have workplace  
25 disputes or issues or have a question about

1     appropriateness, their duties and how to facilitate  
2     challenging conversations or conversations that they  
3     struggle with finding the correct words, and definitely  
4     helping with resources, referrals if any time there should  
5     arise any conflicts as well.

6             I'm very excited to join such an amazing agency  
7     with wonderful leaders such as Ms. Brewster.

8             MS. BREWSTER: Well, thank you, Leah.

9             I just wanted the board to meet our new  
10    employee ombudsman. This is a new position for the  
11    department. This is one way for us to address conflict in  
12    the workplace with the effort of keeping morale high and  
13    recruitment and retention strong within the department.

14            And I know Leah has already hit the ground  
15    running, and we'll hear a little more later on in the  
16    agenda as to other things that Ms. Leone may be doing on  
17    behalf of the department. But I just want to welcome her  
18    to the team, and thank you for being on the line this  
19    morning, Leah.

20            MS. LEONE: Thank you so much.

21            MS. BREWSTER: Mr. Chairman, are there any  
22    questions for Ms. Leone before we move on?

23            MR. TREVIÑO: Would you like to ask any  
24    questions of Ms. Leone?

25            (No response.)

1 MR. TREVIÑO: Ms. Leone, on behalf of the  
2 board, we're very impressed by all your accomplishments,  
3 we've read your bio and had the opportunity to speak with  
4 you. We expect great things from you, and welcome to the  
5 Texas DMV. We look forward to working with you over the  
6 course of the next several years.

7 MS. LEONE: I appreciate your support. Thank  
8 you, Mr. Chairman.

9 MR. TREVIÑO: Whitney, do you want to continue  
10 with your report?

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

12 Moving on to item B, the State Employee  
13 Charitable Campaign. Our agency recently participated in  
14 the Texas State Employee Charitable Campaign, or we call  
15 it SECC. And this provides employees the opportunities to  
16 donate to different charities through payroll deductions,  
17 and it's one of the largest state employee campaigns in  
18 the nation.

19 And just wanted to share that our agency  
20 participated again this year, we have every year since our  
21 inception as an agency. It was coordinated this year by  
22 Stephanie Lopez in our Human Resources Division, and our  
23 employees donated just about \$6,500 this year to a wide  
24 range of charities, and it was an increase over last year.

25 One thing that was challenging this year was



1 COVID-19. Previously we've been able to have some fun  
2 employee events and fundraisers like a chili cookoff or an  
3 ice cream social, but we weren't able to do that this  
4 year.

5 But nevertheless, we did have some fundraising  
6 events coordinated by Donna Winter in our Human Resources  
7 Division and had a Halloween contest for employees and  
8 employees' children, employees' pets, so there was some  
9 were some fun ways for folks to show their creativity and  
10 raise a little money. So I want to just thank Stephanie  
11 and Donna both for their coordination and also making it a  
12 fun fundraising event for the department.

13 So just a quick feel-good update for the board,  
14 just wanted to let the board know that we are continuing  
15 to participate in things that do good around the community  
16 and boost morale within the department.

17 If I might move on to item C.

18 MR. TREVIÑO: Sure. Absolutely. We recognize  
19 their creativity and thank them for their efforts.

20 MS. BREWSTER: Thank you, Chairman.

21 On the evening of Friday, October 16, we  
22 launched our redesigned website at TxDMV.gov. This was a  
23 really exciting effort for us because we spent a lot of  
24 time looking at web analytics to see how our users were  
25 using the information on our website or not, and I'm just

1 really pleased to be able to share that we've had a great  
2 experience with the new website.

3 It's far more mobile friendly. It does have  
4 improved search capabilities so people can get to the  
5 information that they need sooner, and much more  
6 straightforward navigation, so reducing the number of  
7 clicks you have to get to essential content.

8 And so just wanted to share a couple of  
9 statistics with the board. We have seen a huge increase  
10 in the number of visits to our website. So for example,  
11 in 2019 we had just over one million hits to the TxDMV.gov  
12 home page. This November we had almost 2.9 million hits  
13 to our home page. And we're just seeing a huge increase  
14 in information being needed from motorists, and I'm really  
15 glad that we were able to roll out the website when we did  
16 to be able to help Texans get the information that they  
17 need.

18 Just one other thing that -- there's two other  
19 things, actually, that I might mention about the  
20 website. We're now able to see that our customers have  
21 pivoted away from desktop-friendly web designs to more  
22 mobile-friendly layouts, and as we all know, many people  
23 are accessing the internet from their handheld devices and  
24 we wanted this website to meet them where they are  
25 searching for that information.

1           So for example, we have seen our website visits  
2 from mobile users nearly double from a year ago, so about  
3 492,000 users in November of 2019 compared to about almost  
4 920,000. And so that's a really interesting shift in the  
5 way that our customers are accessing our website.

6           And then last, but certainly not least, the new  
7 website is hosted on Amazon Web Services which really  
8 helps our system meet the users' demands more efficiently  
9 and faster than we did before. For instance, we're able  
10 to utilize the content delivery system so it can ensure  
11 that no matter where in the world a user makes a page  
12 request, the content is coming from the closest Amazon  
13 server to their location. It's not coming all the way  
14 back to Austin to get the information for the user.

15           So I just wanted to share some of that  
16 information with the board. It is an exciting improvement  
17 for the department and certainly for our customers, and so  
18 wanted to just give a quick update to the board on where  
19 we were with the website.

20           Any questions?

21           MR. TREVIÑO: No questions from the board.  
22 Whitney, thanks for the update and keep on going.

23           MS. BREWSTER: Thank you, sir.

24           And last, but certainly not least, this is the  
25 time where we like to recognize our employees who have

1 reached a major state service milestone, and this is one  
2 way that we celebrate our employees and show our  
3 appreciation for those years of service to the citizens of  
4 Texas. So if you would please join me as I go through  
5 here in congratulating our employees who have reached  
6 major milestones.

7 The first are those employees who have reached  
8 20 years of state service. The first I will mention is  
9 Felicia Cantu. She's with our Information Services  
10 Technology Division.

11 Felicia has been with the DMV since 2000 and  
12 she works as a data analyst in the data support services  
13 section of IT. Her work involves complex data requests  
14 from DMV customers with really tight deadlines and quick  
15 turnaround times and she handles these requests accurately  
16 using exceptional customer service and technical skills.  
17 She is an absolute asset to our team, and congratulations  
18 to Felicia on 20 years of state service.

19 Is Felicia on the line?

20 MS. CANTU: Yes, I'm here. I just wanted to  
21 say thank you guys. Like I really, really appreciate  
22 everything. I've had 20 wonderful years meeting amazing  
23 people and it's been a true blessing to work at DMV.  
24 Everybody has been great.

25 MS. BREWSTER: Thank you so much.

1 MR. TREVIÑO: Thank you for your service.  
2 Really happy that you're here and thank you for taking the  
3 time to come in and say hello and let us recognize you.  
4 You know, I mean, you've done so much for the citizens of  
5 Texas and we really appreciate your work.

6 MS. CANTU: Thank you. I appreciate y'all.

7 MS. BREWSTER: Mr. Chairman, there are a few  
8 more that I'd like to just mention here. Thank you.

9 Martha Yancey from our Human Resources  
10 Division, she's been working for the TxDMV since 2015 and  
11 has 20 years of total experience working for the State of  
12 Texas. Prior to coming to our department, she worked for  
13 social service agencies, including the Department of Human  
14 Services and Health and Human Services Commission.

15 All of her state service has been in human  
16 resources, performing a wide variety of roles, including  
17 payroll, benefits, recruiting and employee relations. She  
18 is an important part of the HR team, where she serves  
19 customers across the department in the areas of recruiting  
20 and employee relations. And you may also remember Martha  
21 who as the employee under normal circumstances presents  
22 these service awards in person on behalf of TxDMV.

23 So congratulations to Martha for 20 years of  
24 state service.

25 Moving on to 25 years of state service, we have

1 Karen McRae from our Motor Carrier Division. Karen  
2 started with TxDOT in 2001 as a permit officer after  
3 working for Texas A&M University -- which she says is the  
4 greatest university on earth -- while earning her  
5 bachelor's degree in engineering technology, engineering  
6 design graphics.

7 At TxDOT and since she's transferred to our  
8 Motor Carrier Division, she has been instrumental in the  
9 design and the development as well as the launch and  
10 continued improvement of TxPROS, and that's our Texas  
11 Permitting and Routing Optimization System. We really  
12 appreciate her loyalty and her commitment to the  
13 oversize/overweight section of the Motor Carrier Division,  
14 and congratulations to Karen on 25 years of state  
15 service. That's fantastic.

16 There are quite a few at 25 years of state  
17 service, it's amazing. Matthew Levitt of our Human  
18 Resources Division, Matthew is receiving recognition for  
19 25 years as well. He came to the Department of Motor  
20 Vehicles with a wealth of experience and expertise in the  
21 area of human resources, including being the HR director  
22 at the Texas School for the Deaf and as the HR manager at  
23 other Texas state agencies.

24 Before becoming part of our team, he taught  
25 college level business classes and he was selected as the

1 outstanding instructor at Concordia University's  
2 accelerated degree program. Matthew is also the past  
3 president of the State of Texas Human Resources  
4 Association.

5 So we are really proud to recognize Matthew's  
6 dedication and service to the department and to the State  
7 of Texas. So congratulations to Matthew.

8 We also have a 30-year state service recipient,  
9 Stacey Cullen in our Enforcement Division. Stacey began  
10 her career with the state in October of 1990 at the Texas  
11 Department of Public Safety, and during her tenure with  
12 DPS she worked in the license issuance and driver license  
13 bureau in the driver licensing section, and also the  
14 correspondence section before being promoted to a  
15 secretary position.

16 She was then promoted to vehicle inspection and  
17 emissions. She was one of the first five employees who  
18 started the emissions program, and she was awarded the  
19 Traffic Law Enforcement Chief's Award of Excellence. In  
20 October of 1998, Stacey joined the Texas Department of  
21 Transportation in the Motor Vehicle Division in the Lemon  
22 Law Section, where she worked for a year before being  
23 promoted to human resource officer for the Motor Vehicle  
24 Division.

25 She obtained her human resource certificate and

1 kept it active for many years, and in 2003 Stacey became  
2 the executive assistant to the division director of the  
3 Environmental Affairs Division after all human resource  
4 related positions were consolidated within the Human  
5 Resources Division. Ultimately, she returned back to the  
6 Motor Vehicle Division's enforcement section that ended up  
7 becoming a standalone division as it is today.

8 Her organizational skills are tremendous, her  
9 outgoing personality helps keep the division staff on  
10 track, and certainly our regulated entities informed of  
11 all available training opportunities offered by  
12 enforcement. She's very involved in that process.

13 So congratulations to Stacey on 30 years of  
14 state service.

15 Last, but certainly not least, Chairman and  
16 Board members, Pamela Winnick from our Vehicle Titles and  
17 Registration Division. She started as a customer service  
18 representative for the Texas Department of Transportation  
19 on October 16 of 1985 in Wichita Falls. She has 35 years  
20 of state service.

21 She is the manager of the Wichita Falls  
22 Regional Service Center. She has always enjoyed working  
23 with customers concerning titling and registration and has  
24 seen many changes over the years. Pam is that employee  
25 who dedicates herself to her work wholeheartedly, and she



1 is a truly dedicated and loyal employee.

2           Congratulations to Pam on 35 years of excellent  
3 state service. That's a tremendous accomplishment.

4           So congratulations to all of our employees who  
5 wished to be recognized.

6           I do want to mention a couple of others who did  
7 reach major milestones. For 20 years, Priscilla Kanutz in  
8 our Information Technology Services Division; Julie Payne  
9 in our Vehicle Titles and Registration Division in our  
10 Midland-Odessa Office, that's 20 years; Sergio Rey in our  
11 Finance and Administrative Services Division with 25 years  
12 of state service.

13           And last, the following employees recently  
14 retired from the department and some of them are very  
15 likely familiar to folks on the line: Cindy James of our  
16 Information Technology Service Division; Tamera Parr-Lamb  
17 in our Vehicle Titles and Registration Division; and John  
18 Stewart in our Finance and Administrative Services  
19 Division.

20           Thank you very much, Mr. Chairman, members of  
21 the board. That concludes the last item of the executive  
22 director's report. Are there any questions or comments?

23           MR. TREVIÑO: Just on behalf of the board,  
24 Whitney, I'd like to thank all these team members for  
25 their loyalty and dedication and for their level of

1 service to all the citizens of Texas and to the Texas DMV,  
2 of course. So thank you very much for the report and for  
3 all these team members' hard work.

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

5 MR. TREVIÑO: Any other comments from the  
6 board?

7 (No response.)

8 MR. TREVIÑO: Hearing none, Executive Director  
9 Brewster, please proceed.

10 MS. BREWSTER: That concludes my remarks, sir.

11 MR. TREVIÑO: Okay, great. Thank you very much  
12 for that excellent report, and we will move on to --  
13 Tracey, we're going to move on to agenda item number 5,  
14 but one of the things if you have any comments or  
15 commenters, one of the things in the last board meeting I  
16 went through all the items we discussed and asked for  
17 comments at the end. I think just from a governance  
18 standpoint here, why don't you just let me know if we have  
19 any commenters as we go through as opposed to just me  
20 asking. Is that okay?

21 MS. BEAVER: Thank you, Chairman. I'll do so,  
22 and we do have a commenter for agenda item number 5,  
23 Refund Rules, after the director of the Enforcement  
24 Division, Corrie Thompson, gives her introduction of the  
25 agenda item.

1 MR. TREVIÑO: Great. Thank you.

2 We will now move no to agenda item number 5,  
3 and we'll turn it over to Corrie Thompson.

4 Ms. Thompson.

5 MS. THOMPSON: Thank you. Good morning, Mr.  
6 Chairman and Board members.

7 MR. TREVIÑO: Hold on a second, hold on a  
8 second. Ms. Thompson, you're coming in very, very  
9 broken. Do you want to try again?

10 MS. THOMPSON: Are you able to hear me?

11 MR. TREVIÑO: Why don't you try and speak a  
12 little bit more, Ms. Thompson. We'll get started and see  
13 how it goes. I may break in again.

14 MS. THOMPSON: Okay. Try this again. Good  
15 morning, Chairman. How about now?

16 MR. TREVIÑO: Not good.

17 Art, I'm going to turn it over to you as host  
18 to see if you can work out the audio portion.

19 MS. THOMPSON: I'm going to try one more thing  
20 here.

21 MR. TREVIÑO: Are other board members having  
22 the same challenges I'm having?

23 MR. PREWITT: Yes, I am.

24 MR. TREVIÑO: Okay.

25 MS. BEAVER: Chairman, this is Tracey Beaver,

1 general counsel, for the record.

2 It looks like it still having some audio  
3 issues. We're having some tech issues this morning. If  
4 you would like to move on to the next agenda item after  
5 giving Ms. Thompson a few moments to see if can check her  
6 audio. She could always work offline as well with our  
7 ITSD folks.

8 MR. TREVIÑO: Great. So I guess we'll move on  
9 to agenda item number 7 because Ms. Thompson has agenda  
10 item 5 and 6. Is that correct?

11 MS. BEAVER: That is correct, Chairman.

12 MR. TREVIÑO: Okay, great.

13 Then we'll move on to agenda item number 7, and  
14 that has to do with escort flag vehicles. We'll turn it  
15 over to Mr. Jimmy Archer and Linda Flores.

16 MR. ARCHER: Good morning, Mr. Chairman and  
17 members of the Board. For the record, my name is Jimmy  
18 Archer and I'm the director of the Motor Carrier Division.

19 Can you hear me okay today?

20 MR. TREVIÑO: Sound great, Mr. Archer.

21 MR. ARCHER: Thank you, sir.

22 MR. TREVIÑO: You look good too, by the way.

23 MR. ARCHER: I even have my Christmas tie on  
24 today.

25 This is agenda item number 7 and it's found

1 beginning on page 28 of your board books. Item 7 will be  
2 presented in two parts.

3 First, for the board's consideration, Chief  
4 Financial Officer Linda Flores and I are presenting these  
5 rule amendments to 43 Texas Administrative Code, Chapters  
6 209 and 219 for adoption and publication in the *Texas*  
7 *Register*. These rule amendments were originally approved  
8 by the board for publication at the August 6 board meeting  
9 and were published from comment in the *Texas Register* on  
10 August 21. No comments were received during the comment  
11 period.

12 These rule amendments are necessary to  
13 streamline department processes and improve program  
14 efficiency by eliminating two escrow account payment  
15 methods for customers that purchase oversize/overweight  
16 permits. Those two methods are a Texas Department of  
17 Motor Vehicles escrow account which requires department  
18 personnel to manually process payments, and a permit  
19 account card which is an escrow account administered by  
20 Frost Bank and requires department personnel to reconcile  
21 the payment records.

22 The department currently accepts the following  
23 methods of payment for oversize/overweight permits for  
24 online purchases through Texas Permitting and Routing  
25 Optimization System, or TxPROS: we accept credit cards,

1 automatic clearinghouse, or ACH, check, money order,  
2 cashier's check, cash, escrow account administered by the  
3 department, the permit account card which is administered  
4 by Frost Bank.

5 Internal Audit advisory services associated  
6 with accounts receivables identified an escrow balance as  
7 a concern. Specifically, the Finance and Administrative  
8 Services Division activates and deactivates escrow  
9 accounts and adds funds to the escrow accounts as needed  
10 in TxPROS. Eliminating these two types of payment methods  
11 will alleviate the audit concerns and improve efficiency.

12 This is possible because the department  
13 implemented automated clearinghouse in the Texas  
14 Permitting and Routing Optimization System as a form of  
15 payment for all oversize/overweight permits in December of  
16 2018. Use of ACH will afford motor carriers with a  
17 cheaper option for the payment of oversize/overweight  
18 permits than either the department escrow or the PAC card.

19 The benefit is to the customers because they  
20 will not be depositing funds into escrow accounts and  
21 therefore will be able to earn interest on their own  
22 funds. There will be no problem or any changes in TxPROS  
23 to facilitate this change, however, there is no benefit to  
24 the Motor Carrier Division in terms of personnel costs but  
25 there are benefits for the Finance and Administrative

1 Services Division. Ms. Flowers can answer any questions  
2 you may have for cost savings for Finance and  
3 Administrative Services.

4 Linda.

5 MS. FLORES: Thank you, Jimmy.

6 For the record, Linda Flores, chief financial  
7 officer for the department.

8 As Mr. Archer indicated, this is a win-win  
9 situation for not only the department but our payers.  
10 We're addressing an Internal Audit advisory service to  
11 improve reducing human intervention as well as encouraging  
12 the use of online electronic payments, and the offer of  
13 using ACH is also a win benefit for our payers because  
14 there is no charge for the use of the ACH. The department  
15 will be saving approximately three individuals who  
16 manually processed these payments at the front end and at  
17 the back end.

18 And with that, I conclude my remarks. Thank  
19 you.

20 MR. TREVIÑO: Thank you, Mr. Archer and Ms.  
21 Flores. Are there any questions for Mr. Archer and Ms.  
22 Flores?

23 MR. ARCHER: Mr. Chairman, let me mention the  
24 escort flag vehicles real quickly.

25 MR. TREVIÑO: Sure. Go ahead.

1           MR. ARCHER: The second part of this rule  
2 package is this permits that escort flag vehicles be  
3 equipped with alternating flashing blue and amber  
4 lights. Last legislative session the legislature added  
5 the blue light. This rule simply is permissive and allows  
6 them to use both blue and amber lights.

7           So that's the second part of it and those are  
8 all my comments. I'll be happy to answer any questions  
9 you might have.

10          MR. TREVIÑO: Great. Thank you, Mr. Archer,  
11 for that report. And Ms. Flores, thank you very much.  
12 And thank you guys for looking for ways to make our agency  
13 more efficient.

14          Any questions for Ms. Flores and Mr. Archer?

15          (No response.)

16          MR. TREVIÑO: Hearing none, the chair would  
17 entertain a motion for agenda item number 7.

18          MR. PREWITT: Mr. Chairman.

19          MS. THOMPSON: Member Prewitt.

20          MR. PREWITT: Yes, Mr. Chairman. I move that  
21 the board approve the adoption of the escort flag vehicle  
22 and escrow account rules, including amendments to Section  
23 209.23 and amendments to Sections 219.2, 219.11, 219.13-  
24 219.15, 219.42, 219.43, and 219.61-219.63, as recommended  
25 by staff.



1 Well done, Jimmy and Linda. Thank you.

2 MR. TREVIÑO: We have motion from Member  
3 Prewitt. Do we have a second?

4 MR. RAMIREZ: I'll second.

5 MR. TREVIÑO: I believe that was Member  
6 Ramirez.

7 MR. RAMIREZ: Yes, I'll second.

8 MS. WASHBURN: Member Washburn seconds.

9 MR. TREVIÑO: Member Ramirez beat you, Member  
10 Washburn. We will accommodate you later on.

11 Any further discussion?

12 (No response.)

13 MR. TREVIÑO: Hearing none, I'll call for the  
14 vote.

15 Member Bacarisse?

16 MR. BACARISSE: Aye.

17 MR. TREVIÑO: Member Gillman?

18 MS. GILLMAN: Aye.

19 MR. TREVIÑO: Member Graham?

20 MR. GRAHAM: Aye.

21 MR. TREVIÑO: Member McRae?

22 MS. McRAE: Aye.

23 MR. TREVIÑO: Member Prewitt?

24 MR. PREWITT: Aye.

25 MR. TREVIÑO: Member Ramirez?

1 MR. RAMIREZ: Aye.

2 MR. TREVIÑO: Member Scott?

3 MR. SCOTT: Aye.

4 MR. TREVIÑO: Member Washburn?

5 MS. WASHBURN: Aye.

6 MR. TREVIÑO: And I, Chairman Treviño, also  
7 vote aye. The motion carries unanimously, motion passes.

8 Mr. Archer, if you would continue with agenda  
9 item number 8.

10 MR. ARCHER: Absolutely, Mr. Chairman. Again,  
11 Jimmy Archer for the record.

12 This is item number 8, and it's found beginning  
13 at page 105 of your board book.

14 For the board's consideration I'm presenting  
15 this rule amendment to 43 Texas Administrative Code,  
16 Chapter 219 for adoption and publication in the Register.

17 Again, this rule was originally approved --

18 MR. TREVIÑO: Mr. Archer, can you hold a  
19 second?

20 MR. ARCHER: Sure.

21 MR. TREVIÑO: Board members, if you could put  
22 your phones on mute while the person is talking, I think  
23 we might be able to get a little bit better audio  
24 quality. Thank you.

25 Okay, Mr. Archer, please continue.

1 MR. ARCHER: Am I coming through now?

2 MR. TREVIÑO: You're coming in fine.

3 MR. ARCHER: Okay, great. This is amendment to  
4 43 Texas Administrative Code, Chapter 219 for adoption and  
5 publication in the Register. These rules were originally  
6 approved for publication for comment on August 21 and no  
7 comments were received on this package.

8 These rule amendments are necessary to conform  
9 to all the rules of Transportation Code Section 623.272  
10 and 623.331, and also repeal of 219.83 for the shipper's  
11 certificate, as amended by House Bill 2625 of the 86th  
12 Legislature.

13 The proposed rules conform our rules to House  
14 Bill 2625 adopting a provision to allow vehicles with an  
15 annual timber permit to also load and carry equipment used  
16 to load timber, adding a provision that allows the  
17 department to investigate and impose administrative  
18 penalty on a shipper that does not provide a shipper's  
19 certificate of weight, and repeals any duplicative and  
20 inconsistent language.

21 There is no financial impact to state or local  
22 governments as a result of this, and I would ask that the  
23 board adopt these rule amendments for publication, and I'd  
24 be happy to answer any questions you might have.

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

1 Are there any questions for Mr. Archer?

2 (No response.)

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

5 MR. PREWITT: Mr. Chairman, Board Member  
6 Prewitt here. I move that the board approve the adoption  
7 of amendments to Sections 219.31 and 219.126 and the  
8 repeal of Section 219.83, as recommended by staff.

9 MR. TREVIÑO: Great. Thank you, Member  
10 Prewitt.

11 Do we have a second?

12 MR. BACARISSE: Second.

13 MR. TREVIÑO: Okay. Member Bacarisse, second  
14 from Member Bacarisse.

15 Any further discussion?

16 (No response.)

17 MR. TREVIÑO: Hearing none, I'd 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 Ramirez?

5 MR. RAMIREZ: Aye.

6 MR. TREVIÑO: Member Scott?

7 MR. SCOTT: Aye.

8 MR. TREVIÑO: And Member Washburn?

9 MS. WASHBURN: Aye.

10 And I, Chairman Treviño, also vote aye. Let  
11 the record reflect that it's unanimous and motion carries.

12 Okay. How's Ms. Thompson doing, General  
13 Counsel Beaver? Can we circle back, or should we keep  
14 going?

15 MS. THOMPSON: I believe I'm in. How about  
16 seeing me?

17 MR. TREVIÑO: We can see you. I can see you.  
18 Yep, it looks like I'm getting thumbs up from other board  
19 members. Do you want to try that audio one more time,  
20 test it? Any Christmas carols you want to sing and just  
21 kind of test the audio?

22 MS. THOMPSON: I don't want anybody to have to  
23 suffer through that madness.

24 MR. TREVIÑO: Okay. Well, let's get started.  
25 You're coming in fine and don't let the audio issues -- it

1 happens all the time, so please, go right ahead, Ms.  
2 Thompson.

3 MS. THOMPSON: Absolutely. Well, it woke me up  
4 in the morning, so I didn't have two cups of coffee yet,  
5 so now I'm good to go.

6 MR. TREVIÑO: There you go.

7 MS. THOMPSON: Well, good morning once again,  
8 Chairman and members of the Board. I'm Corrie Thompson,  
9 I'm the director of the Enforcement Division, and today  
10 I'm presenting agenda item number 5. It's going to begin  
11 on page 10 of your board book.

12 And before you what you have is a  
13 recommendation to approve the adoption of New Rule 215.504  
14 as well as the adoption of Rules 215.500 and 218.72. And  
15 the purpose of all three of these rules is to implement  
16 Senate Bill 604 which was our Sunset bill from last  
17 legislative session.

18 It added the ability for the department to be  
19 able to order refunds to our list of available sanctions  
20 that we can use in the Enforcement Division, and it did  
21 that by adding language to Occupations Code 2301.807 for  
22 motor vehicle dealers and additional language to Texas  
23 Transportation Code 643.257 for motor carriers who  
24 transport household goods. These topics were brought  
25 before the Consumer Protection Advisory Committee for

1 additional guidance and any input that they may have had  
2 to the rules, and so the rule language that you have  
3 before you is the result of those discussions.

4           The rule language actually starts at the bottom  
5 of page 16. Rule 215.500 and 215.504 relate to the  
6 refunds for motor vehicle buyers and lessees. The  
7 215.500(a)(5) adds in a new section and adds in a refund  
8 to that list of available sanctions. Before it was just  
9 penalties, the ability to deny or suspend or revoke a  
10 license. Then 215.504 defines the term "refund" and gives  
11 the department the ability to impose that additional  
12 sanction.

13           The rule language for the household goods  
14 movers that are transporting household items starts on  
15 page 20 and it relates to those refunds for the consumers  
16 who are paying motor carriers to move their home items for  
17 them. It also defines "refund" and then gives the  
18 department the ability to impose that as a sanction for  
19 anybody who has violated that department rule.

20           There's no financial impact associated with the  
21 proposal, and these rule proposals were published for  
22 comment in the *Texas Register* from August 21, 2020 through  
23 September 21, 2020. We did receive a written comment from  
24 the Texas Automobile Dealers Association in response to  
25 Rule 215.504. There was a minor change where we were

1 using the word "consumer" and there was an ask that we  
2 change it to match the statute language which was "buyer  
3 or lessee" and so we've done that.

4 If the board does adopt these new sections  
5 during the meeting, we anticipate publication in the  
6 December 25 -- so Merry Christmas to everyone -- issue of  
7 the *Texas Register*, with a December 30 effective date.

8 So if there are no questions on that, then I  
9 would ask the board for approval to publish the adoption  
10 in the *Texas Register* for these new sections.

11 MR. TREVIÑO: Thank you for that report, Ms.  
12 Thompson.

13 Are there any questions for Ms. Thompson from  
14 the board?

15 (No response.)

16 MR. TREVIÑO: Hearing none, Tracey, when do we  
17 take comments? Are there any comments on any of these?

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

20 We did have one person registered to comment on  
21 this agenda item. Katherine Warren. I saw her logged in  
22 as an attendee earlier. I no longer see her as an  
23 attendee but she was given instructions on how to raise  
24 her hand so we could unmute her to get her comment.

25 She wanted to comment regarding a license



1 issue. So at this time if you're ready for her comments,  
2 you can ask Ms. Warren to raise her hand, and if she's a  
3 call-in user, she'll do so, and I'll let you know if we  
4 see her in there.

5 MR. TREVIÑO: Great. But this would be an  
6 appropriate time in the progress of the meeting. Correct?

7 MS. BEAVER: Yes, Chairman.

8 MR. TREVIÑO: Great. And I'm sorry, the  
9 commenter's name was?

10 MS. BEAVER: Katherine Warren.

11 MR. TREVIÑO: Ms. Warren, if you could raise  
12 your hand, we'll let you in if you're on the line.

13 MS. BEAVER: Tracey Beaver, general counsel,  
14 for the record. I don't see her logged in and none of the  
15 call-in users have raised their hand. I believe she may  
16 have logged off.

17 I will have staff reach out to her from the  
18 Enforcement Division to address any concerns she might  
19 have on her licensing issue. And then also, if she does  
20 log back in, there's another opportunity to provide  
21 comment at the end of the meeting in the public comment  
22 portion, so I'll also mention her name again at that  
23 portion if she does happen to log in.

24 MR. TREVIÑO: Great. Thank you, General  
25 Counsel.

1                   Okay. So is there any other questions for Ms.  
2 Thompson?

3                   (No response.)

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

6                   MS. WASHBURN: So moved.

7                   MR. TREVIÑO: Member Washburn?

8                   MS. WASHBURN: Can you hear me?

9                   MR. TREVIÑO: Member Washburn, you're not  
10 coming in. Could you start over again? It seems like  
11 there's a delay or something. Could you try again?

12                   MS. WASHBURN: How about now, can you hear me  
13 now?

14                   MR. TREVIÑO: Yes, that's better.

15                   MS. WASHBURN: I move [audio cuts out].

16                   MR. TREVIÑO: Actually, Member Washburn, no,  
17 it's not coming in for some reason. Is it just me or do  
18 other people have the same issue? It seems like there's a  
19 delay of some kind.

20                   MS. WASHBURN: Better now?

21                   MR. TREVIÑO: Seems like a little better now.  
22 Try it.

23                   MS. WASHBURN: Okay. I move the board approve  
24 the adoption of the refund rules, including amendments to  
25 Sections 215.500 and New Section 215.504 and [audio cuts

1 out] --

2 MR. TREVIÑO: General Counsel Beaver, it's not  
3 coming through.

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

6 It doesn't sound like it's going to be clear  
7 enough for the court reporter to be able to get this. I'm  
8 thinking we could take a quick break and have IT get with  
9 Member Washburn if you would like to take a five-minute  
10 break. It sounds like there's a delay.

11 MR. TREVIÑO: I think it would be a good idea.

12 So members, I think we're going to be recessed  
13 for approximately five minutes.

14 Member Gillman, you can go ahead and get some  
15 more coffee if you need it, and we'll be back at about  
16 8:55. Thanks.

17 (Whereupon, a brief recess was taken.)

18 MR. TREVIÑO: It think we're ready to start  
19 again and if everybody -- do I have to take roll again or  
20 is it just general acknowledgment?

21 MS. BEAVER: Chairman, it's an acknowledgment  
22 that we're back on the record as long as we see everybody  
23 is still on and their video is on.

24 MR. TREVIÑO: Great. If you guys could just  
25 check the log and make sure everybody is on. I don't see

1 everyone here. Let's see, Member Graham, Member Gillman,  
2 don't see them.

3 Member Washburn, are you there?

4 MS. WASHBURN: I'm here.

5 MR. TREVIÑO: Okay, great. So are we missing  
6 anyone, General Counsel Beaver?

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

9 It looks like we have Member Gillman who  
10 doesn't have video on, Member Graham does not have video  
11 on, so we might need to wait for just a moment. I haven't  
12 heard from either of them.

13 MR. TREVIÑO: Sounds great.

14 Member Graham, Member Gillman, are you present?

15 Member Graham is on.

16 Member Gillman?

17 (No response.)

18 MR. PREWITT: Making a new pot of coffee.

19 MR. TREVIÑO: I think you're probably right.

20 MR. PREWITT: Slow drip.

21 (General laughter.)

22 MR. TREVIÑO: Member Gillman?

23 (No response.)

24 MR. TREVIÑO: Well, we have a quorum, so  
25 General Counsel Beaver, should we just go ahead and get

1 started?

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

4 It's fine to go ahead and move on. The ending  
5 part was taking the vote for agenda item number 5.

6 MR. TREVIÑO: Right. I think Member Gillman,  
7 we can catch her back up on this issue.

8 So hearing no further discussion on agenda item  
9 number 5, the chair would entertain a motion.

10 MS. WASHBURN: Mr. Chairman, I'd like to make a  
11 motion.

12 MR. TREVIÑO: The chair recognizes Member  
13 Washburn.

14 MS. WASHBURN: I move that the board approve  
15 the adoption of the refund rules, including amendments to  
16 Section 215.500 and New Section 215.504, and amendments of  
17 Section 218.72, as recommended by staff.

18 MR. TREVIÑO: Great. We have a motion by  
19 Member Washburn. Do we have a second?

20 MS. McRAE: I would like to second, Chairman.

21 MR. TREVIÑO: We have a second by Member McRae.

22 Any further discussion?

23 (No response.)

24 MR. TREVIÑO: Hearing none, call for the vote.  
25 Member Bacarisse?

1 MR. BACARISSE: Aye.

2 MR. TREVIÑO: Member Gillman?

3 MS. GILLMAN: Aye.

4 MR. TREVIÑO: Member Graham?

5 MR. GRAHAM: Aye.

6 MR. TREVIÑO: Member McRae?

7 MS. McRAE: Aye.

8 MR. TREVIÑO: Member Prewitt?

9 MR. PREWITT: Aye.

10 MR. TREVIÑO: Member Ramirez?

11 MR. RAMIREZ: Aye. And I'd like to add good  
12 job by the staff for looking for ways to give more  
13 enforcement ability to the department instead of just  
14 having the option to suspend a license or something like  
15 that. I mean, I think this is a better way to serve our  
16 consumers in the end run.

17 MR. TREVIÑO: Hear, hear. Well said.

18 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. Let the record reflect that this motion carried  
24 unanimously.

25 We'll now move on to agenda item number 6.

1 MS. THOMPSON: Can everybody still hear me?

2 MR. TREVIÑO: Yes. And just for the record,  
3 Member Gillman has joined us again.

4 Is that correct, Member Gillman?

5 MS. GILLMAN: Correct, Mr. Chairman.

6 MR. TREVIÑO: Good to have you back.

7 All right, Ms. Thompson, please go right ahead.

8 MS. THOMPSON: Again, Corrie Thompson, director  
9 of the Enforcement Division. And now I'm continuing on  
10 with agenda item 6. This next rule package will begin at  
11 page 24 in your board book, and now before you with a  
12 recommendation to approve the adoption of New Rule 221.96

13 This rule also relates to Senate Bill 604, our  
14 Sunset bill from the last legislative session which  
15 established a new process under which the board may issue  
16 a cease and desist order to prohibit a person who may be  
17 engaging in unlicensed salvage activities from violating  
18 statute, board rules, court orders, and that would be  
19 after a notice and opportunity for a hearing through our  
20 administrative procedures.

21 There's no financial impact associated with the  
22 proposal or the adoption of this rule. The proposal was  
23 published for comment in the *Texas Register* from August  
24 21, 2020 through September 21, 2020, and we received no  
25 comments. If the board adopts this new rule during this

1 meeting today, we anticipate publication, again, on  
2 December 25, 2020, with an effective date of December 30,  
3 2020.

4 So I'm happy to answer any questions you may  
5 have, and if there are none, I'd ask that the board has  
6 approval to publish the adoption in the *Texas Register*.

7 MS. GILLMAN: Mr. Chairman, I have a motion.  
8 Can you hear me all right, Mr. Chairman?

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

11 It looks the chairman is muted, but Member  
12 Gillman, are you able to get your video turned on?

13 MR. TREVIÑO: I apologize. Member Gillman, we  
14 hear you fine. I apologize. Member Gillman

15 MS. GILLMAN: I move that the board approve the  
16 adoption of the cease and desist rule in Section 221.96,  
17 as recommended by staff.

18 MR. TREVIÑO: Great. We have a motion by  
19 Member Gillman. Do we have a second?

20 MR. PREWITT: I second it.

21 MR. TREVIÑO: Member Prewitt. We have a second  
22 by Member Prewitt. Any further discussion?

23 (No response.)

24 MR. TREVIÑO: Hearing none, I'll call for the  
25 vote.



1 Member Bacarisse?

2 MR. BACARISSE: Aye.

3 MR. TREVIÑO: Member Gillman?

4 MS. GILLMAN: Aye.

5 MR. TREVIÑO: Member Graham?

6 MR. GRAHAM: Aye.

7 MR. TREVIÑO: Member McRae?

8 MS. McRAE: Aye.

9 MR. TREVIÑO: Member Prewitt?

10 MR. PREWITT: Aye.

11 MR. TREVIÑO: Member Ramirez?

12 MR. RAMIREZ: 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. Let the record reflect that the motion carries  
19 unanimously.

20 Okay. We're going to now move to agenda item  
21 number 9, and we will hear from Mr. Timothy Menke and Ms.  
22 Sandra Menjivar-Suddeath.

23 MR. MENKE: Good morning, Mr. Chairman, Board  
24 members. For the record, Tim Menke. I'm the director of  
25 the Compliance and Investigations Division. I'm going to

1 address agenda item 9 which you'll find on page 112 of  
2 your briefing books.

3 This is an action item, and it relates to New  
4 Sections 206.151 which is the internal portion of a risk-  
5 based approach to monitoring title and registration fraud,  
6 and Section 223.101 which is the external facing portion  
7 of the risk-based monitoring and prevention of title and  
8 registration fraud. As I mentioned, this is an action  
9 item, and we are requesting approval to publish the  
10 adopted new sections in the *Texas Register*.

11 Specifically, New Section 223.101 is necessary  
12 under Transportation Code 520.004 that requires the  
13 department by rule to establish a risk-based system of  
14 monitoring and preventing fraudulent activity related to  
15 vehicle registration and titling in order to efficiently  
16 allocate resources and personnel. The requirement is  
17 included within the Sunset Advisory Commission change in  
18 statute recommendation 2.4.

19 The Sunset recommendation envisioned the  
20 department to develop criteria to determine varying risk  
21 levels, such as transaction volume and past violations, to  
22 strategically allocate resources and personnel. The  
23 proposed sections were published for comment in the August  
24 21, 2020 issue of the *Texas Register*; the comment period  
25 closed on September 21 of 2020.

1           The department received two comments specific  
2 to 223.101. One came from the Lubbock Tax Assessor-  
3 Collector's office and the other comment came from the Tax  
4 Assessor-Collectors Association of Texas.

5           The comment from the Lubbock County Tax  
6 Assessor-collector recommended including language that  
7 clarifies the qualifying criteria used to determine when  
8 and how additional monitoring will be required, and that  
9 gives the sources and methods. And quite often we're  
10 working with law enforcement in criminal investigations  
11 and we're just not at liberty to divulge that information.

12           The second comment from the Tax Assessor-  
13 Collectors Association wanted language to include  
14 procedures to notify county tax assessor-collectors  
15 concerning routine and periodic reviews. Now, we agree  
16 and have added language to that portion of the sentence,  
17 however, it goes on to say "and disclose procedures  
18 concerning possible fraudulent activity." Once again,  
19 when working with law enforcement, we may be prevented  
20 from divulging that type of information.

21           And Mr. Chairman, if I may just quickly provide  
22 a short context for the board as to when we may or may not  
23 provide information to a tax assessor-collector?

24           MR. TREVIÑO: Please go right ahead, Mr. Menke.

25           MR. MENKE: All right. Thank you, sir.

1 CID gets law enforcement involved very early on  
2 in criminal investigations, and that's to ensure  
3 efficiency of operations. If a law enforcement  
4 investigators office is not going to proceed, we're  
5 spinning our wheels and we're wasting our time in moving  
6 forward with a criminal investigation.

7 Quite often, most of the time, law enforcement  
8 instructs us not to divulge any information regarding a  
9 joint criminal investigation. However, having said that,  
10 there are some circumstances in which CID can quickly  
11 provide information to a tax assessor-collector.

12 For example, if a law enforcement agency or  
13 prosecution entity deems that the activity doesn't meet  
14 the threshold, either a prosecution or investigation  
15 threshold, they may decline. And in that case, we will  
16 immediately notify the tax assessor-collector that it has  
17 been declined for criminal prosecution, this is what we  
18 found through the course of our investigation, and seek  
19 whatever administrative action we deem appropriate.

20 Another scenario could be, too, employees  
21 within a TAC office are under investigation. Employee A  
22 may be charged criminally, Employee B may be involved  
23 peripherally and may not be charged. Law enforcement may  
24 give us the go-ahead to release information regarding  
25 Employee B that's not going to be charged so the tax

1     assessor-collector can move forward with administrative  
2     action as they deem appropriate.

3             So bottom line is we recognize very clearly not  
4     to let these issues fester; if we have the ability, to  
5     move quickly to provide information to the tax assessor-  
6     collector.

7             So I provided that quick context to the board  
8     for understanding, and I'm happy to answer any questions  
9     before I turn it over to my colleague, Sandra Menjivar-  
10    Suddeath.

11            MR. TREVIÑO: Great. Thank you, Mr. Menke.

12            Was Mr. Menke's explanation -- was everybody  
13    able to follow that? Member Gillman? It was more or  
14    less, I'd say, the last three sentences perhaps were a  
15    little garbled, if you could, Mr. Menke. I got it but it  
16    was a little garbled, so for Ms. Gillman, you might just  
17    repeat the last three or four sentences there.

18            MR. MENKE: [audio cuts out].

19            MR. TREVIÑO: Well, I think we lost your audio.

20            MR. MENKE: Okay, sorry?

21            MR. TREVIÑO: I think we lost your audio.

22            MR. MENKE: Okay.

23            MR. TREVIÑO: General Counsel?

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

1           It sounds like the audio is still a bit spotty.  
2           I don't think this is going to be sufficient for the  
3           court reporter to be able to document what the last few  
4           sentences were that were said. Of course, if any board  
5           members have questions of Mr. Menke, then maybe some of  
6           that additional information can be gathered that way while  
7           Mr. Menke works with IT to see if his audio can be  
8           resolved.

9           MR. TREVIÑO: Great. Well -- Member Graham?

10          MR. GRAHAM: I would just like to ask Member  
11          McRae if this is something she supports. I mean, I was  
12          trying to follow that, certainly not my area, and respect  
13          her opinion on the matter and would like to get her  
14          thoughts.

15          MR. TREVIÑO: Great. All right. General  
16          Counsel Beaver, is it appropriate for board members to go  
17          ahead and talk through it at this point, or just wait for  
18          comments and discussion?

19          MS. BEAVER: Thank you, Chairman.

20          At the point after a motion is made is when  
21          deliberation occurs, but definitely feel free to ask any  
22          questions of Mr. Menke. I will also note that there is a  
23          second part to this rule package with our Internal Audit  
24          director presenting, so if you'd like for her to present  
25          her portion and then Mr. Menke will have time to address

1 his audio.

2 MR. TREVIÑO: Great. Member Graham, great  
3 question, and we'll hope to hear from Member McRae in the  
4 discussion phase of this.

5 Ms. Sandra Menjivar-Suddeath, are you  
6 available?

7 MS. MENJIVAR-SUDDEATH: Good morning, Board  
8 members. Can y'all hear me?

9 MR. TREVIÑO: Yes, I can. And I would ask  
10 board members to mute their lines while Ms. Menjivar-  
11 Suddeath is speaking, it might help.

12 MS. MENJIVAR-SUDDEATH: Good morning. For the  
13 record, Sandra Menjivar-Suddeath, Internal Audit  
14 director. And as General Counsel Beaver made mention,  
15 this rule package does include the internal part of the  
16 risk-based monitoring and prevention of title and  
17 registration fraud.

18 Specifically it will be in Section 206.105  
19 where we'll have information about the internal risk-based  
20 monitoring system for potential fraud in the regional  
21 service centers, as well as developing criteria for  
22 developing varying risk levels for internal fraud  
23 monitoring functions throughout the department. It also  
24 establishes rules for training and development from staff  
25 members on fraud, waste, and abuse.

1           Our part is a little bit different than the  
2 external part as everything here is internal and  
3 eventually, if we need to, we refer to law enforcement  
4 through the Compliance and Investigations Division.

5           I'm open to answer any questions on the  
6 internal fraud and hopefully Mr. Menke can jump on the  
7 line shortly.

8           MR. TREVIÑO: Do any board members have any  
9 questions for Ms. Menjivar-Suddeath?

10           (No response.)

11           MR. TREVIÑO: Okay. Thank you, Sandra,  
12 appreciate it.

13           MS. GILLMAN: Can I ask a question?

14           MR. TREVIÑO: Certainly.

15           MS. GILLMAN: How many current and pending  
16 investigations are there?

17           MS. MENJIVAR-SUDDEATH: For internal?

18           MS. GILLMAN: Sandra, I don't know, it might be  
19 for Mr. Menke and/or.

20           MS. MENJIVAR-SUDDEATH: Yes. So for internal  
21 we currently have about two investigations that we're  
22 working on. I can't really go into the details of them,  
23 obviously, but I can tell you on average we have about two  
24 investigations we work each quarter. We do receive a lot  
25 more complaints than that, and actually, I will be



1 covering that in our quality assurance and improvement  
2 program results which is item 14.A.

3 MS. GILLMAN: How long does an investigation  
4 take? That's probably for Mr. Menke.

5 MR. TREVIÑO: Mr. Menke, are you back with us?

6 MR. MENKE: I'm checking my audio. Can you  
7 hear me?

8 MR. TREVIÑO: Yes.

9 MR. MENKE: Okay. Externally facing, the  
10 investigation may last anywhere from a couple of months up  
11 to a year, depending upon the complexity of the  
12 investigation.

13 MR. TREVIÑO: And do you have any  
14 investigations that are open currently, Mr. Menke, that  
15 you can give us some information on, not necessarily the  
16 investigation itself but just numbers?

17 MR. MENKE: Regarding investigations in TAC  
18 offices, of our current portfolio 88 ongoing  
19 investigations, we may have one at this particular time.

20 MR. TREVIÑO: Ms. Gillman?

21 MS. McRAE: Chairman, can he repeat what he  
22 just said, please?

23 MR. TREVIÑO: Mr. Menke, can you repeat that?

24 MR. MENKE: Yes. Of our current portfolio of  
25 88 open investigations, I believe we have one that

1 involves a tax assessor-collector office.

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

3 Member Gillman?

4 MS. GILLMAN: And tell me the financial impact  
5 of the fraud. I'm guessing if there is fraud with a TAC's  
6 office, title fraud, is the title fraud equal to the value  
7 of the car or the motor vehicle?

8 MR. MENKE: Thank you for the question. Quite  
9 often the investigations in TAC offices are more related  
10 to public corruption than dollar value. Of the 88 cases  
11 we have, the portfolio is about \$42 million in total.  
12 Quite often what we see in internal investigations -- I  
13 should say not internal -- investigations of TAC offices,  
14 we'll see kickbacks, small dollar amounts, really not  
15 large dollar amounts associated with the fraudulent  
16 activity.

17 MR. TREVIÑO: Member Gillman, any further  
18 questions?

19 MS. GILLMAN: I guess I was a little bit  
20 confused. I was thinking title fraud would mean a title  
21 was issued for a vehicle that was not supposed to be, and  
22 that may indicate a larger value.

23 MR. TREVIÑO: Mr. Menke or Ms. Menjivar-  
24 Suddeath, any clarification?

25 MR. MENKE: For the record, Tim Menke.

1           When we're looking at investigations within a  
2 TAC office, we're really looking at employees engaging in  
3 some type of fraudulent activity. The title fraud in  
4 general is a much larger number and it usually involves  
5 conspiracies with external sources. But as far as tax  
6 assessor-collector offices related to employees, that  
7 dollar amount tends to be fairly small.

8           MS. GILLMAN: And Mr. Chairman, I also am  
9 interested in Member McRae's comments and I value her  
10 experience and I'm interested in what she has to say.

11           MR. TREVIÑO: Great. We'll get to her comments  
12 in a few moments, hopefully.

13           Member McRae, was your question answered by Mr.  
14 Menke, the clarification?

15           MS. McRAE: I do have one question. He said  
16 there were 88 external cases and one involving a tax  
17 assessor-collector's office. Is that correct, Mr. Menke?

18           MR. MENKE: That's correct, ma'am.

19           MS. McRAE: So of the other 87 cases, those do  
20 not, just to clarify, involve a tax assessor-collector's  
21 office. Correct?

22           MR. MENKE: The tax assessor-collector  
23 employees are not subject of the investigation. The tax  
24 assessor-collector office may be involved providing  
25 information regarding possible fraudulent activity through

1 our red flag process, but not specific to any employees  
2 within that office.

3 MS. McRAE: Okay. And of the one case that  
4 involves a tax assessor-collector, has that tax assessor-  
5 collector been made aware of the potential for fraud in  
6 that office?

7 MR. MENKE: Yes, I believe so. I would have to  
8 check with my lead investigator on that. Normally we will  
9 be able to provide that information if law enforcement  
10 allows us to do that.

11 MS. McRAE: I have one other question. That  
12 case involving the tax assessor-collector, was that case  
13 self-reported, or that potential fraud self-reported from  
14 the tax assessor-collector? Or was it something that the  
15 agency detected through its practices of reviewing  
16 transactions? Is that something you can say?

17 MR. MENKE: I would like to refer to that  
18 offline, if possible, to get the clarification from my  
19 investigative team and provide the information to you  
20 offline, respectfully, if I can.

21 MR. TREVIÑO: Great. Member McRae, are you  
22 okay with that? I think we should respect Mr. Menke's  
23 request.

24 MS. McRAE: And I do have comment, I just don't  
25 know if now is the appropriate time to make comment.

1 MR. TREVIÑO: When we get to the discussion  
2 portion, Member McRae, I think we can talk about -- get  
3 your comments. At this point I think we should just keep  
4 our comments -- or questions, actually, to staff, and then  
5 we'll take it to the comment portion and then we can  
6 discuss it ourselves.

7 MS. McRAE: Okay. Thank you.

8 MR. TREVIÑO: Great.

9 Any other questions? Member Gillman has got  
10 another question.

11 MS. GILLMAN: Can you hear me, Mr. Chairman?

12 MR. TREVIÑO: Perfectly.

13 MS. GILLMAN: Mr. Menke, in your  
14 investigations, do you find in your experience that  
15 sometimes it's beneficial and helpful actually to have the  
16 assistance of the leadership of the tax collector's office  
17 to assist in catching the bad guys, the potential fraud?  
18 And you said yes, if law enforcement allows it to  
19 communicate, but in your experience, has their office  
20 actually assisted in helping resolve issues?

21 MR. MENKE: Thank you for the question, Member  
22 Gillman. Absolutely. We work in partnership with tax  
23 assessor-collectors specifically for [audio cuts out]  
24 identifying fraudulent activity.

25 MR. TREVIÑO: Mr. Menke, you're going to have

1 to back up again. We're losing you.

2 MR. MENKE: I apologize. Absolutely. We work  
3 in cooperation with the tax assessor-collectors and that's  
4 a valued relationship. Especially through our red flag  
5 process, they are on the front lines of identifying  
6 potential fraud, so very important. And whenever we can  
7 release information to them to help weed out potential  
8 fraudulent activity, we do, when allowed to by law  
9 enforcement.

10 MS. GILLMAN: Thank you, sir.

11 MR. TREVIÑO: Mr. Menke, so is most of the  
12 fraud self-reported and most of the stuff is stuff that  
13 you've worked through the tax assessor-collectors in  
14 general?

15 MR. MENKE: In general, yes, sir.

16 MR. TREVIÑO: Great. It's a great partnership,  
17 and the TACs of Texas -- which is difficult to say -- are  
18 great partners and do a great job for the majority of  
19 counties in the State of Texas. Is that correct?

20 MR. MENKE: Yes, sir, that's correct.

21 MR. TREVIÑO: Great, great. Any other  
22 questions for Mr. Menke or Ms. Menjivar-Suddeath?

23 (No response.)

24 MR. TREVIÑO: Great. Hearing none, the chair  
25 will entertain a motion for agenda item 9.

1 MR. SCOTT: Mr. Chairman?

2 MR. TREVIÑO: Yes.

3 MR. SCOTT: This is Member Scott.

4 MR. TREVIÑO: The chairman recognizes Member  
5 Scott.

6 MR. SCOTT: I move that the board approve the  
7 adoption of Sections 206.151 and 223.101, as recommended  
8 by staff.

9 MR. TREVIÑO: Great. Got a motion from Member  
10 Scott. Do we have a second?

11 MR. PREWITT: Mr. Chairman, this is Member  
12 Prewitt, I'm prepared to make a second but only after  
13 having some discussion on this matter.

14 MR. TREVIÑO: Absolutely. We'll get the second  
15 and go into discussion before we have any vote, and then  
16 we can do anything we like after that discussion phase.

17 MR. PREWITT: Okay. If that's the protocol,  
18 then I will second this motion in terms of opening  
19 discussion. Thank you.

20 MR. TREVIÑO: Thank you very much, Member  
21 Prewitt.

22 And now the chair will open up the floor for  
23 discussion. Anybody like to make comment? The chair  
24 recognizes Member McRae.

25 MS. McRAE: Thank you, Chairman.

1 MR. TREVIÑO: Yes, ma'am.

2 MS. McRAE: I would just like to say that,  
3 first of all, the tax assessor-collectors are statutory  
4 agents of DMV and it's a partnership I think that we all  
5 value, and because of that partnership and because -- I'm  
6 not sure if the board, all members of the board realize  
7 the tax assessors, of course, we are elected, we are  
8 elected for four-year terms, and we have personal  
9 liability. That is something that other elected officials  
10 do not hold. And so we are also required to be bonded  
11 through the Governor's Office and through our  
12 commissioners courts, all 254 counties.

13 And as Mr. Menke alluded to, we are on the  
14 frontlines. We are self-reporting. I don't know the  
15 percentage of the fraud. Maybe that's something that  
16 either he or Sandra could provide, but we are self-  
17 reporting a lot of the fraud, the majority of the fraud  
18 through the red flag program.

19 And for board members that really don't know  
20 what that is, the red flag program is a process by which a  
21 transaction is accepted and processed through a county tax  
22 assessor-collector's office and it's processed and it's  
23 questionable. It's questionable to the point that we're  
24 asking the experts at DMV to take a closer look at this  
25 because we believe this to contain some type of



1 fraudulent -- maybe it's documentation or there's a number  
2 of items.

3 I know that Montgomery County reports quite a  
4 few. I have one person, one employee, staff member that  
5 is dedicated, she's my quality assurance manager. All she  
6 does all day long is review for fraud, both internally  
7 with staff through transactions, also externally for  
8 transactions that are accepted from dealers and from the  
9 public. I'm fortunate that I do have this individual  
10 and our commissioners court has enabled me to do this.

11 A lot of counties may have someone similar, but  
12 the vast majority of the counties in Texas are under  
13 40,000 in population. The elected tax assessor-collector  
14 in the majority of these counties are on the frontline  
15 processing transactions alongside their staff, and they  
16 don't have the resources or the funding to have a position  
17 like I have. So it makes it a little more difficult in  
18 those counties for them to go through some of the reports  
19 maybe that some of the larger counties have the time and  
20 personnel to do.

21 But I would just like to say that because of  
22 our relationship, our partnership, and the liability, I  
23 think it's important that the tax assessor always be  
24 notified. I cannot imagine that -- I mean, unless it  
25 specifically involves the tax assessor-collector, the

1 question of potential fraud, I think the tax assessor  
2 should always be notified. And I say that not only  
3 because do we process motor vehicle transactions, a lot of  
4 us process properly tax. I bring in over \$2-1/2 billion a  
5 year to this office and I'm personally liable, have a  
6 personal liability for every penny of that.

7 And so we do other things such as property tax,  
8 some do voter registration, we process boats and motors.  
9 So if there's a potential for fraud with motor vehicles,  
10 that same potential could exist in other areas within the  
11 office.

12 And I understand that is not a DMV issue but it  
13 is a tax assessor-collector concern, and I personally want  
14 to be the first person -- I want to be able to self-  
15 report, hopefully, that I'm watching closely and I can  
16 self-report any potential fraud. And I have reached out  
17 to DMV personnel before and had them look at a specific  
18 employee.

19 But not all counties have that same option that  
20 some of the larger counties do, so again, I think the tax  
21 assessors should be involved. I think they should know,  
22 because our personal liability is on the line throughout  
23 the duration of any investigation that's going on. And as  
24 we see so much with red flag, we are never brought back  
25 into the loop.

1           We continue to send in red flag transactions  
2 for repeat offenders and we don't know the status of these  
3 cases. And it's frustrating because you don't see the  
4 fruits of your labor from being on the frontlines and  
5 trying to identify the fraud, which really equates to loss  
6 of revenue for the State of Texas and also for the  
7 counties.

8           MR. TREVIÑO: Great.

9           MS. McRAE: I would like to see us take a  
10 little more time, defer this rule, and I don't know if we  
11 could have some sort of small committee, but work  
12 together. There's no perfect solution.

13           I don't think the tax assessors would 100  
14 percent ever agree or DMV would 100 percent ever agree,  
15 but I think there's a way that we can come to a compromise  
16 to where we can come up with a better rule than what we  
17 currently have. I would like to see it come back in  
18 February.

19           MR. TREVIÑO: Great.

20           Mr. Menke, would you like to add anything or  
21 clarify anything to what Ms. McRae said?

22           MR. MENKE: Thank you, Chairman. For the  
23 record, Tim Menke.

24           Just to bolster what Member McRae has said,  
25 when we essentially started the red flag program, we've

1 received almost 6,000 red flag referrals from tax  
2 assessor-collectors. The viability rate, which -- meaning  
3 that there is substance to those referrals, is 94 percent,  
4 which means that we provide title fraud training to the  
5 TAC offices. That training is working. The TAC offices  
6 are identifying vital issues, not only fraud but maybe  
7 weaknesses.

8 The process for red flag is when we see the  
9 referral and within a week we will determine if it's  
10 viable. If it's not viable and there is no substance, we  
11 will send it back to the TAC office. If it is viable, we  
12 will then forward it on for administrative action  
13 elsewhere or for criminal referral.

14 Very, very few end up in criminal referral, but  
15 they may be referred to VTR to support a training issue  
16 within a TAC office. But just to reinforce what Member  
17 McRae has said, 94 percent of referrals coming in from TAC  
18 offices have substance to them, so they are reporting  
19 correctly.

20 MR. TREVIÑO: Great. I think I speak for all  
21 the board how much we respect and thank our Texas tax  
22 assessor-collectors for the hard work they do and the  
23 great job that they do for our state.

24 Any comments from the board? Member Ramirez.

25 MR. RAMIREZ: Thank you.

1           And thank you, Member McRae, for the context  
2 and clarification on the red flag program and everything  
3 that you guys deal with. I know our tax assessor up here  
4 in Tarrant County, Wendy Burgess, she's fantastic and does  
5 something similar to make sure that fraud doesn't run  
6 rampant around here.

7           I had a couple of questions. So the reason why  
8 we're making this rule in the first place is because the  
9 Sunset Commission decided that the department would make  
10 this rule to develop this risk-based monitoring system for  
11 the department, not for tax assessor-collectors. Is that  
12 correct, Mr. Menke?

13           MR. TREVIÑO: Mr. Menke?

14           MR. MENKE: Yes, sir.

15           MR. RAMIREZ: Okay. So I guess my question,  
16 too -- and I want to piggyback on Member McRae -- if we're  
17 getting quite a few red flag notifications and 94 percent  
18 of them are valid but yet we're not providing feedback to  
19 the tax assessor-collectors as to the progress of those  
20 investigations [audio cuts out] sort of a disincentive. I  
21 think we'd all agree that, you know, it's in the best  
22 interest of the public that they feel motivated to  
23 continue that operation. We want them to feel like  
24 they're partners in that piece.

25           So what I'd like to see -- and maybe it's a

1 separate conversation from this motion and this issue --  
2 but perhaps a training program for tax assessor-collectors  
3 or even a feedback loop at least where at the conclusion  
4 of a red flag case that the tax assessor is notified of  
5 what occurred once it's over with.

6 Because I understand in the middle of an  
7 internal investigation or external investigation dealing  
8 with law enforcement, there are some things that you  
9 cannot disclose. And definitely, I don't think that it  
10 would be appropriate by rule for this department to  
11 include something that might cause an issue later on with  
12 law enforcement with the Internal Investigations  
13 Division. If they say you cannot release that information  
14 but yet our rule says that you must, I can see where that  
15 might cause a little consternation.

16 So I'm supportive of this rule in how it is,  
17 but I would also like to see a little addition to where  
18 the tax assessors could get information on how the  
19 investigations are concluded and give them a little  
20 feedback, and maybe some training even as to how they can  
21 better bolster their internal fraud monitoring.

22 MR. TREVIÑO: Mr. Menke, can you comment on how  
23 TACs are notified on red flag issues?

24 MR. MENKE: Yes. I followed up with my field  
25 service representative manager. He said within ten days

1 after reviewing a red flag referral, a letter goes out to  
2 the tax assessor-collector regarding the administrative  
3 action that is taken. Once it takes an administrative  
4 action, it is referred elsewhere and is not on CID's plate  
5 anymore. If it remains criminal, then we maintain control  
6 of that referral.

7 So an example of referring elsewhere, we may  
8 refer something that is a training issue, or it wasn't  
9 fraudulent but maybe [audio cuts out] within a tax  
10 assessor-collector's office, we may refer that to VTR for  
11 training of persons, to follow up with the tax assessor-  
12 collector to resolve the vulnerability. Once again, that  
13 94 percent viability doesn't mean they're criminal, it  
14 means something valid is there.

15 There is a vulnerability that doesn't warrant  
16 an investigation but warrants administrative follow-up. I  
17 hope that helps clarify it.

18 MR. TREVIÑO: Thank you, Mr. Menke.

19 Did all the board members hear Mr. Menke's  
20 statement? Great. Okay.

21 Member Prewitt, did you have a question?

22 MR. PREWITT: Yes, I did, Mr. Chairman. I  
23 guess the first question was, in prior conversations my  
24 understanding is that we've had roughly twelve Texas  
25 counties that have had investigations of a tax assessor in

1 the past, say, 10-15 years. Is that an accurate  
2 statement? I'll ask that of Whitney and Mr. Menke.

3 MS. BREWSTER: May I jump in? Whitney  
4 Brewster, executive director.

5 I would say since the inception of the agency I  
6 would say that there has been roughly that number of the  
7 tax assessor-collectors themselves. Yes, sir.

8 MR. PREWITT: And that's been over how many  
9 years that we've been established now?

10 MS. BREWSTER: That would be over the course of  
11 the last ten years.

12 MR. PREWITT: Ten years. And then does the  
13 Sunset bill -- and of course, as a board we're very  
14 motivated to comply with the requirements of the  
15 legislature and want to do that. But does the Sunset bill  
16 require us to actually follow what the form of this rule  
17 is in the sense of non-notification of tax assessor-  
18 collectors? Is that something required by the Sunset  
19 legislation?

20 MS. BREWSTER: I will defer the specific  
21 language to Mr. Menke, but I believe the language is broad  
22 to include reference to a risk-based monitoring program.  
23 It does not get prescriptive on what that looks like.

24 MR. PREWITT: My contention is that those  
25 twelve counties over ten years represents 4.72 percent of



1 all the Texas counties, so there's 95.28 percent of Texas  
2 counties where we have not had any issues, with 254  
3 counties. So I guess my concern is we may be throwing the  
4 baby out with the bathwater.

5 And I guess the other concern is that the  
6 partnership with Texas DMV and the county tax assessor-  
7 collectors -- and totally understanding what's been said  
8 by other board members regarding complying with law  
9 enforcement and where we want to be an aid, not an  
10 impediment to law enforcement. But I would echo Ms.  
11 McRae's sentiments as far as, is there a way we can come  
12 to an agreement or compromise where you don't have total  
13 non-notification of the county tax assessor-collectors who  
14 have taken an oath and are personally liable?

15 You know, if there was bad behavior on their  
16 part, they're going to go to jail. Right? But I do think  
17 there may be a way to have a form of compromise, and I  
18 just wanted to add that as an observation. Thank you.

19 MR. TREVIÑO: Thank you, Member Prewitt.

20 Member McRae.

21 MS. McRAE: Yes. And I would like to clarify  
22 with Mr. Menke's comment about the red flag. The red flag  
23 program is where tax assessors and our staff are self-  
24 reporting transactions. Now, some of those could involve  
25 internal employees, perhaps if there was a large volume of

1 red flags by a specific employee, but I think red flag is  
2 a little different issue than internal fraud  
3 investigations.

4 I'm talking more about if there is a specific  
5 employee or employees that are being looked at by the  
6 agency, I think that is when the tax assessors need to be  
7 brought in. Because we're self-reporting on the red flag,  
8 we're not self-reporting necessarily on internal issues,  
9 they may not know about, the tax assessor.

10 So when there is a potential for a fraud  
11 investigation for a tax assessor's office is when I think  
12 the tax assessor should be brought in and made aware,  
13 unless the tax assessor themselves are the point of the  
14 investigation. And I just want to clarify that red flag  
15 and the fraud investigations, they're a little different  
16 in the scope.

17 And I understand not being able to give, as  
18 Sandra mentioned, not being able to give specific  
19 information. But I just think it's a little vague -- the  
20 standards are vague and are very subjective, and I would  
21 like to see us refine them a little more and compromise,  
22 spend a little more time on this.

23 Because again, we're talking about reputations  
24 and careers. Because if I'm not able to be bonded, if my  
25 bond is pulled and I'm not bondable again, no matter that

1 I'm elected, I cannot hold this office again. I must be  
2 bondable.

3 MR. TREVIÑO: Great. Thank you, Member McRae.  
4 Member Gillman. The chair recognizes Member  
5 Gillman. You're on mute, we can't hear you.

6 MS. GILLMAN: Thank you. I wanted to state  
7 that I also agree with Member McRae's assessment of the  
8 situation and believe that the tax assessor-collectors  
9 should be involved, and we should -- the Department of  
10 Motor Vehicles should reveal the existence of a fraud  
11 investigation unless the tax collector themselves are  
12 subject. So I just echo exactly what Member McRae has  
13 said.

14 Do we need a modified motion, Mr. Chairman, or  
15 can we do as Member McRae suggested and table this for  
16 another time?

17 MR. TREVIÑO: We lost you there, Member  
18 Gillman, but I think at this point we should ask Member  
19 Scott if he would like to withdraw his motion or Member  
20 Prewitt withdraw his second and this motion to die, if  
21 that's the case.

22 Member Scott, would you like to withdraw your  
23 motion?

24 MR. SCOTT: Yes, Mr. Chairman, I withdraw my  
25 motion.

1 MR. TREVIÑO: Okay. Member Scott has withdrawn  
2 his motion. So do we have another motion, or would we  
3 like to send this back to staff for further clarification  
4 and review?

5 MR. BACARISSE: Mr. Chairman?

6 MR. TREVIÑO: Yes.

7 MR. BACARISSE: Vice Chairman Bacarisse here.

8 I was a formerly elected constitutional officer  
9 in the state and was on the line personally for conduct  
10 that happened in my office while I was district clerk, so  
11 I understand exactly what Member McRae is saying.

12 I'd like to make a motion that we table agenda  
13 item number 9 for further review and discussion, and then  
14 come back at the next board meeting for an approval as  
15 amended through this discussion period.

16 MR. TREVIÑO: We have a motion from Member  
17 Bacarisse. Do we have a second?

18 MR. PREWITT: I second it, Mr. Chairman.

19 MR. TREVIÑO: Member Prewitt. We've got a  
20 second from Member Prewitt.

21 Clearly the tax assessor-collectors are vital  
22 to the operations of the state, they do a fantastic job.  
23 Member McRae's office runs like clockwork, but we have to  
24 also be aware that law enforcement has protocols that they  
25 use for running investigations, so hopefully we can craft

1 some kind of solution going forward.

2 Any further discussion on Member Bacarisse's  
3 motion?

4 (No response.)

5 MR. TREVIÑO: Hearing none, I'd call for the  
6 vote.

7 Member Bacarisse?

8 MR. BACARISSE: Aye.

9 MR. TREVIÑO: Member Gillman?

10 MS. GILLMAN: Aye.

11 MR. TREVIÑO: Member Graham?

12 MR. GRAHAM: Aye.

13 MR. TREVIÑO: Member McRae?

14 MS. McRAE: Aye.

15 MR. TREVIÑO: Member Prewitt?

16 MR. PREWITT: Aye.

17 MR. TREVIÑO: Member Ramirez?

18 MR. RAMIREZ: Aye.

19 MR. TREVIÑO: Member Scott?

20 MR. SCOTT: Aye.

21 MR. TREVIÑO: Member Washburn?

22 MS. WASHBURN: Aye.

23 MR. TREVIÑO: And I, Chairman Treviño, also  
24 vote aye. Motion carries unanimously.

25 General Counsel Beaver, do you have a good

1 sense of what we need to do there?

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

4 Yes. I just wanted to mention that the  
5 proposal date for this particular rule was August 21 so  
6 the next board meeting would not require us to re-propose  
7 if it were postponed. And so we will be addressing this  
8 item at the February board meeting, pending the chairman's  
9 approval to put it on the agenda. Thank you.

10 MR. TREVIÑO: Certainly, absolutely. Okay.  
11 Thank you very much, General Counsel Beaver.

12 We will now move on to agenda item number 10.  
13 I'll turn it over to General Counsel Beaver.

14 MS. BEAVER: Thank you, Chairman, members, Ms.  
15 Brewster. Good morning. For the record, I'm Tracey  
16 Beaver, general counsel.

17 Today I'm presenting rules to implement Senate  
18 Bill 604, our Sunset bill, and also the Sunset Advisory  
19 Commission recommendations that require the board to  
20 establish rules for conduct and handling of contested  
21 cases coming before the board.

22 MR. TREVIÑO: General Counsel Beaver, I think  
23 before we head into this -- because we do have six  
24 commenters. Is that correct?

25 MS. BEAVER: That is correct, Chairman. So

1 after I present this item for the board, then we'll go  
2 ahead and go into public comment period before any  
3 motions.

4 MR. TREVIÑO: This agenda item may take a  
5 little bit longer than normal, so I think we'll take a  
6 five-minute break, let everybody get freshened up, and  
7 we'll come back to it. 9:46, we'll come back at 9:50.

8 MS. BEAVER: Thank you, Chairman.

9 (Whereupon, a brief recess was taken.)

10 MR. TREVIÑO: We're back in session, a full  
11 complement of the board is here, and we'll now hear agenda  
12 item number 10, and we'll turn it over to General Counsel  
13 Tracey Beaver.

14 Ms. Beaver.

15 MS. BEAVER: Thank you, Chairman, members, Ms.  
16 Brewster. Good morning. Again for the record, I'm Tracey  
17 Beaver, general counsel.

18 Today I'm presenting rules to implement Senate  
19 Bill 604 and Sunset Advisory Commission recommendations.

20 I'm getting a little bit of feedback, so I have  
21 to pause.

22 MR. TREVIÑO: If board members could mute their  
23 mics, it might help General Counsel Beaver with her  
24 presentation. Thank you.

25 MS. BEAVER: Thank you, Chairman.

1           Today I'm presenting rules to implement Senate  
2 Bill 604 and Sunset Advisory Commission recommendations  
3 that require the board to establish rules for conduct and  
4 handling of contested cases coming before the board for  
5 final decision. The rules also respond in part to a  
6 petition for rulemaking. The adoption is listed on your  
7 agenda as item 10 and on page 124 of your board books.

8           An informal draft of these proposed amendments  
9 and new sections were posted to the department's website  
10 for public comment back on April 3rd of 2020. The  
11 department received six written informal comments at that  
12 time and made changes to the rule text based on the  
13 informal comments.

14           And on August 6th of 2020 the board approved  
15 publishing the rule proposal in the *Texas Register* for  
16 public comment. The comment period closed September 21,  
17 2020, and the department did receive eight written  
18 comments and made changes to the proposed rule text before  
19 you based on the comments.

20           Senate Bill 604, in part, amended Occupations  
21 Code Section 2301.709 by adding Subsection (g) that  
22 requires the board to establish standards and rules and  
23 policies for reviewing contested cases. Additionally,  
24 in the final Sunset Advisory Commission staff report, the  
25 Commission emphasized that the board should not



1 effectively re-litigate contested cases by considering new  
2 information or testimony presented in a board meeting that  
3 was not presented in the formal SOAH proceeding.

4 This could include actions such as allowing  
5 extensive oral argument during the board meeting for each  
6 party that would then turn into hours of discussion of  
7 information that was not presented at SOAH. SOAH  
8 proceedings, the State Office of Administrative Hearings  
9 proceedings provide the parties to a contested case an  
10 opportunity to make arguments and produce evidence in  
11 accordance with standard processes under the APA.

12 And I'll pause here. It does look like Member  
13 Gillman may have had some technology issues. Member  
14 Gillman's video went out. So Chairman, if you'd permit  
15 me, we can see if her audio and video still works.

16 MR. TREVIÑO: Member Gillman, are you still  
17 with us? Member Gillman?

18 (No response.)

19 MR. TREVIÑO: I think we have lost Member  
20 Gillman. There's a caution, she's at low bandwidth with  
21 her local computer conditions. We've got some issues with  
22 Member Gillman.

23 Would you like to attempt to contact her --  
24 would someone attempt to contact her to make sure that  
25 she's going to be able to join us?

1 MS. BEAVER: Chairman, General Counsel, for the  
2 record.

3 I'll see if ITSD can reach out to her, or our  
4 technology services department, to see if they can help  
5 resolve the technology issue.

6 MR. TREVIÑO: Great. I would like to have  
7 Member Gillman and have a full complement of the board to  
8 discuss this issue.

9 (Pause.)

10 MR. TREVIÑO: Member Gillman, can you hear us?  
11 It looks like she's trying to log on again.

12 MS. BEAVER: Chairman, General Counsel Tracey  
13 Beaver, for the record.

14 I just got confirmation that our technology  
15 department is reaching out to her.

16 MR. TREVIÑO: Thank you.

17 If everybody could just kind of stay on the  
18 line here for a minute. I'm reluctant to call another  
19 break, for obvious reasons.

20 MR. GRAHAM: And Mr. Chairman, we've been  
21 battling -- no one can explain but two or three times a  
22 day we just have some little micro millisecond glitch in  
23 our internet that knocks our routers out, and we've been  
24 battling it about three or four months and no one can fix  
25 it. No one can find it or explain it.

1           So we're going to fiber to eliminate the  
2 routers, hopefully it will do it. But you know,  
3 technology and internet, it's not perfect, is it?

4           MR. TREVIÑO: No, it's not. And we've been  
5 pretty lucky for our board meetings, most of them have  
6 gone very well.

7           We'd like to thank staff for putting all this  
8 together, and you know, it's the challenges of working  
9 online and the new reality that we're facing. But we'd  
10 like to thank staff because it has gone very, very well  
11 the last couple of meetings we've had, very efficient, and  
12 staff has done a good job of getting all the materials to  
13 us.

14          MR. RAMIREZ: Chairman Treviño?

15          MR. TREVIÑO: Yes.

16          MR. RAMIREZ: Has there been any indication on  
17 when we might resume in-person meetings, or is that still  
18 all up in the air as well?

19          MR. TREVIÑO: I don't know if there's anything  
20 new.

21          Whitney, do you have any comments on that?

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

24          I'd just also like to mention that we don't  
25 have any of these items on our agenda for the meeting

1 today so I would hesitate for us to go into items that the  
2 public wasn't given notice that we would be discussing  
3 today either.

4 MR. TREVIÑO: General Counsel Beaver, thank you  
5 very much for pointing that out. Is a procedural question  
6 like this subject to those rules? I mean, this is more a  
7 process question, I would think, than an agenda item,  
8 don't you?

9 MS. BEAVER: At this time all I can say is that  
10 we don't have that information about when we're going to  
11 go back to in-person, but yeah, if we wanted to get into  
12 detailed discussion about the conduct of a hearing.

13 It looks like we have Member Gillman back.

14 MR. TREVIÑO: So we will use caution in  
15 answering that question. And we have Member Gillman back.

16 MS. GILLMAN: So all electricity at my home  
17 just went out, but I have two capable college students  
18 that made my telephone a hotspot.

19 MR. TREVIÑO: Wow. That's great.

20 MS. GILLMAN: They came to my rescue and I  
21 don't know how it works.

22 MR. TREVIÑO: Well, good to have you back, and  
23 I think it's those Christmas lights you've got on the  
24 front lawn, I think you need to cut back a little bit.

25 (General laughter.)

1 MS. GILLMAN: I apologize.

2 MR. TREVIÑO: Well done, good to have you  
3 back. We have a full complement of the board and so I  
4 think we ought to press on.

5 So General Counsel Beaver, if you could just  
6 pick up from roughly where you left off.

7 MS. BEAVER: Absolutely. Thank you, Chairman.

8 And I was discussing the Sunset Advisory  
9 Commission staff report. I'll just mention that the  
10 Commission emphasized that SOAH proceedings, the State  
11 Office of Administrative Hearings proceedings provide  
12 parties to a contested case an opportunity to make  
13 argument and produce evidence in accordance with the  
14 standard processes under the Government Code requirements,  
15 which is also called the Administrative Procedures Act,  
16 the APA.

17 And the board must base their final decisions  
18 on evidence from the State Office of Administrative  
19 Hearings proceedings and may not consider new issues or  
20 evidence. The amendments and new sections before you  
21 today align with the Sunset Commission recommendations and  
22 Senate Bill 604.

23 The rules provide each party a maximum of 20  
24 minutes for their initial presentation and a maximum of  
25 five minutes for rebuttal. The board has discretion

1 whether to allow parties to present their case, and these  
2 rules preserve the chairman's discretion by not requiring  
3 a set timeframe for all contested case presentations,  
4 because contested cases do vary in complexity and the  
5 parties to a contested case do not always need the full 20  
6 minutes to present their case.

7           The rules specify clear expectations limiting  
8 arguments and discussion to evidence in the record of the  
9 contested case hearing held at SOAH. The rules also  
10 address the requirement that board members may use their  
11 industry expertise to help them understand a case and make  
12 effective decisions, however, board members are not  
13 advocates for any particular industry.

14           And the rules authorize parties to file  
15 presentation aids for cases that are governed by  
16 Occupations Code, Chapter 2301. Those presentation aids  
17 enable each party to clearly and concisely present their  
18 case to the board regardless of what documents they decide  
19 to include in their presentation aids.

20           And the department did modify the language to  
21 increase the page limit from four pages to eight pages for  
22 the initial presentation aid for a total of ten pages,  
23 including those two pages for rebuttal presentation aid.  
24 The department also amended the rules to authorize the  
25 board chairman to increase the page limits to preserve

1 that discretion for presentation aids for each party.

2 And the department is requesting your approval  
3 to adopt the amendments under the sections presented. And  
4 members, this concludes my remarks. I'm happy to answer  
5 any questions the board has on this proposed rule -- or  
6 adopted rule. Thank you.

7 MR. TREVIÑO: Thank you very much, General  
8 Counsel Beaver, and thank you for all your hard work on  
9 putting this together.

10 Any questions for Ms. Beaver from the board?

11 (No response.)

12 MR. TREVIÑO: Okay. Hearing none, General  
13 Counsel Beaver, do we have any comments?

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

16 Yes, we have six commenters who have registered  
17 to comment on these rules today, and they have all been  
18 given instructions on how to raise their hand so that they  
19 can be unmuted by our technology department. I'll  
20 introduce them each one by one. I'll also mention that we  
21 do have staff on the line to give the one-minute warning  
22 when time is running and then another warning at the  
23 three-minute point.

24 And the first person that we have to comment is  
25 David Alaniz.

1 MR. TREVIÑO: Okay. So we'll now hear from Mr.  
2 Alaniz. Mr. Alaniz, please raise your hand using the  
3 instructions provided, we discussed that. State your name  
4 for the record and if you are representing anyone.

5 You will have three minutes and you will be  
6 muted by the host after speaking for three minutes, and  
7 you'll get a warning at one minute. I just want to review  
8 that so we're good to go.

9 Mr. Alaniz, are you ready?

10 MS. BEAVER: This is Tracey Beaver, general  
11 counsel, for the record.

12 Mr. Alaniz has his hand raised and he appears  
13 to be ready to comment. We're just waiting for our IT  
14 department to unmute him. Thank you.

15 MR. TREVIÑO: Great. So whenever you're ready  
16 to go.

17 MR. ALANIZ: Can you hear me now?

18 MR. TREVIÑO: Yes, Mr. Alaniz, we hear you very  
19 well. Welcome.

20 MR. ALANIZ: Good morning. My name is Martin  
21 Alaniz from Coffey and Alaniz, and I'm here today to speak  
22 on agenda item 10 because we represent motor vehicle  
23 franchised dealers before the TxDMV.

24 I respectfully request the board reject  
25 proposed rule Section 215.60, presentation aids, as it's



1 currently written. I support allowing the parties to use  
2 presentation aids in its oral argument; I object to having  
3 those aids limited to only ten pages.

4 I believe that these presentation aids are  
5 necessary to assist the board in understanding the  
6 complexities of these cases. The rule should also allow  
7 for the submission of proposed orders and proposed  
8 findings of fact and conclusions of law for the board to  
9 consider.

10 Three points I would like to make about this  
11 proposed rule. First under Rule 215.59(a), the parties  
12 are given 30-days notice of the board meeting, but under  
13 Rule 215.59(b), a party to a contested case must notify  
14 the board within 14 days of that board meeting if they  
15 wish to present before the board.

16 But in contrast, under .60(a) you have to  
17 submit your presentation aids 21 days before the board  
18 meeting, so that effectively means that you are forced to  
19 notify the board that you want to present 21 days, not 14  
20 days before the board meeting. This inconsistency  
21 prejudices the parties.

22 Secondly, under 215.60(e), the board chairman  
23 is authorized to increase the page limits for each  
24 party. While I support the intent of this provision, the  
25 rule also states that the board shall notify the parties

1 under 215.59(a) which we now know is 30 days before the  
2 board meeting. That means that a party cannot request for  
3 good cause to increase that page limitation since they  
4 will not even be aware that is even going to be before the  
5 board when the chairman is supposed to let the parties  
6 know that that page limitation has been increased.

7 It isn't clear how you ask for that increase  
8 and when that asking needs to happen. There's just no  
9 mechanism for making that request happen in the rules.

10 STAFF: You have one minute remaining.

11 MR. ALANIZ: And finally, under Texas  
12 Government Code Section 2001.062(a)(2), it allows an  
13 adversely affected party in a contested case to present  
14 briefs to the officials who are to render the final  
15 decision. So I suggest adding a rule to clarify that  
16 briefs to the board are allowed under the APA and define  
17 the time frame for filing such briefs and responses in  
18 order to comply with the requirements of the APA.

19 Now, I believe that these rules are an  
20 overreaction and overcorrection to the Sunset Commission  
21 report. Allowing the parties to argue before the  
22 decision-maker in the case is not re-litigating the  
23 matter, especially considering the time limitations  
24 already imposed on the party.

25 The board is the final decision-maker and not a

1 rubber stamp for SOAH. These rules should have been  
2 promulgated by setting up a rules committee that included  
3 board representatives, staff and the stakeholders affected  
4 in order to get real input about the real world  
5 consequences of such rules.

6 So I support the use of presentation aids to  
7 the board and I find that allowance to be necessary and I  
8 ask that the board reject the Rule 215.60.

9 STAFF: Your three minutes are up.

10 MR. TREVIÑO: Thank you very much, Mr. Alaniz,  
11 and thank you for keeping your comments to three minutes.

12 Okay. Tracey, do we have another presenter?

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

15 We have another presenter, David Downey. He's  
16 also been given instructions on how to raise his hand,  
17 when you're ready, Chairman.

18 MR. TREVIÑO: Mr. Downey, are you ready to go?

19 MR. DOWNEY: Mr. Chairman, can you hear me?

20 MR. TREVIÑO: We can hear you fine. You have  
21 three minutes, and they'll give you a one-minute warning.

22 Mr. Downey, welcome.

23 MR. DOWNEY: Thank you.

24 Mr. Chairman, members of the Board, my name is  
25 Dan Downey from Austin. I'm here representing myself,

1 although I do represent auto dealers in contested cases.  
2 And I wish to comment in opposition to the proposed  
3 limitation on pages in presentation aids.

4 My comments fall into three categories: first,  
5 the limitation is unrealistic; second, it could have  
6 unintended consequences; and third, it's unnecessary.

7 First, it's unrealistic. Look, I'm not fan of  
8 verbose briefing, believe me. As a district judge in  
9 Houston, I saw a lot of it.

10 But I can't imagine limiting to eight pages or  
11 any other amount for that matter, a post-trial motion for  
12 judgment, notwithstanding the verdict, for example,  
13 seeking the reversal of a jury verdict in a case that may  
14 have taken a week or more to try, with several witnesses  
15 and documentary evidence. And even though I was there  
16 presiding over the trial, I would not feel comfortable  
17 limiting the arguments of the lawyers.

18 In essence, the board is asked to do the same  
19 thing, to review the decision of an ALJ. Likewise, I  
20 would think the board would be very uncomfortable in  
21 reversing a case that may have involved several days of  
22 testimony and documentary evidence addressing very complex  
23 issues on the strength of just eight pages. The choice  
24 then becomes to make that very uncomfortable, and in my  
25 view, unwise decision, or simply remove that uncomfortable

1 belt and affirm the ALJ, in which case the process ceases  
2 to provide any meaningful review.

3 Secondly, it could have unintended  
4 consequences. I think unduly limiting this important  
5 review function might send the wrong message to others.  
6 It could suggest that the board does not take this process  
7 very seriously, that it considers it tedious.

8 STAFF: You have one minute remaining.

9 MR. DOWNEY: I don't subscribe to that view,  
10 but others might.

11 Lastly, I think it's unnecessary. Those of us  
12 who practice in this area are a small group, a specialized  
13 group, and we see each other frequently. I have found  
14 that my colleagues know what to do and what not to do in  
15 front of this board, and the one thing we know for sure is  
16 that an effective presentation must be an efficient one.

17 Thank you, Mr. Chairman. That concludes my  
18 remarks.

19 MR. TREVIÑO: Thank you very much, Mr. Downey,  
20 thank you for those comments.

21 Tracey, do we have another presenter?

22 MS. BEAVER: Yes, Chairman. We have four more.

23 The next one we have is Karen Phillips who was  
24 given instructions on how to raise her hand. So when  
25 you're ready, Chairman, you can have her also give

1 comment.

2 MR. TREVIÑO: Okay. Ms. Phillips, whenever  
3 you're ready.

4 MS. PHILLIPS: Yes. Can you hear me?

5 MR. TREVIÑO: I can hear you fine, and welcome.

6 MS. PHILLIPS: Well, thank you very much. Good  
7 morning, Chairman Treviño, Board members, and Director  
8 Brewster. Karen Phillips, general counsel for TADA.

9 TADA and its members and the members' counsel  
10 are mindful and respectful of the board's time. It is  
11 very seldom that a contested case is ever brought before  
12 the board, however, in those very rare instances, an  
13 understanding of the issues is paramount for the board to  
14 discharge its responsibilities.

15 Although the page limitation is expanded from  
16 the initial proposal from six pages to now a total of ten,  
17 that limitation can have unintended effect of keeping  
18 essential information from the board to such an extent  
19 that the board is not able to perform its required duties  
20 as were set out in Government Code 2001.058(b), in which  
21 the board is charged with making certain that an ALJ's PFD  
22 properly applies or interprets law, rules, policies or  
23 prior administrative decisions.

24 The board is also charged with determining if a  
25 prior administrative decision on which the ALJ may have

1     relied is incorrect or should be changed. And finally,  
2     technical errors in the ALJ's findings of fact are the  
3     responsibility to be corrected by the board.

4             In order to fulfill those obligations and  
5     change a finding of fact or conclusion or law or vacate or  
6     modify a proposed order, the necessary information to  
7     discharge these duties must be available to the board.  
8     While ten pages may be adequate in some controversies,  
9     limiting counsel on information to ten pages total is  
10    unlikely to give parties the necessary ability to fully  
11    brief the board in a complex case.

12            In addition, a presentation limitation of ten  
13    pages should not include a party's proposed final order  
14    with findings of fact or conclusions of law, as a proposed  
15    final order may assist the board in complying with its  
16    Government Code obligations.

17            STAFF: You have one minute remaining.

18            MS. PHILLIPS: Thank you.

19            At the board's August 6 board meeting, Member  
20    Gillman made a motion to remove the prohibition on  
21    accepting proposed orders, proposals for decision and new  
22    findings of fact or conclusions of law from a party to the  
23    contested case so that the board retains discretion on  
24    whether to consider a party's submission. The motion also  
25    included authorizing the staff to make the conforming

1 changes to remove the prohibition. The motion passed by  
2 unanimous vote.

3 In today's proposal it does not include a  
4 proposed final order, PFD, and findings and conclusions to  
5 be provided to the board except, perhaps, under that ten-  
6 page limitation. TADA respectfully requests the board to  
7 amend the proposed rule by deleting the ten-page  
8 limitation and to allow proposed final orders, a PFD, new  
9 findings of fact and conclusions of law to be provided to  
10 the board without a page penalty.

11 That concludes my remarks. Thank you.

12 MR. TREVIÑO: Thank you, Ms. Phillips.

13 General Counsel Beaver, can board members ask  
14 presenters questions?

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

17 Yes, that would be fine if board members would  
18 like to ask commenters questions.

19 MR. TREVIÑO: Great. I failed to mention that  
20 at the beginning. I just want to make sure that board  
21 members have that opportunity, so please, I won't ask  
22 after each presenter, but if any board member would like  
23 to ask for clarification, please jump in. Okay?

24 Does anybody have any questions of Ms.  
25 Phillips?



1           MR. GRAHAM: Just a clarification for general  
2 counsel, if I could, Chairman.

3           MR. TREVIÑO: Certainly, Member Graham.

4           MR. GRAHAM: Thank you.

5           Just to make sure I'm clear, what is currently  
6 being proposed was modified to include a proposal for  
7 final order. Correct?

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

10           The motion at the last board meeting was to  
11 remove the prohibition from parties presenting proposed  
12 final orders in their presentation aids, so we did remove  
13 that prohibition. The rule specifically stated at the  
14 proposal stage as presented to the board that parties were  
15 prevented from submitting proposed final orders to the  
16 board.

17           And so we did remove that language from the  
18 rule as presented for adoption today, so if parties did  
19 want to provide any proposed findings of fact or  
20 conclusions of law, the rule currently does not prevent  
21 that. However, we did not increase the page limit or  
22 presentation aids to also include them to additionally be  
23 able to present a full proposed final decision, and those  
24 proposed final decisions are also filed with the State  
25 Office of Administrative Hearings during the exceptions

1 period.

2 I hope that answers your question.

3 MR. GRAHAM: Yeah. So I think it sounds like,  
4 in the case of Ms. Phillips's issue, we do have the  
5 proposed final order allowed and in place but the  
6 restrictions on the pages is the problem.

7 Okay. Just trying to make sure I keep this  
8 straight, so thank you.

9 MR. TREVIÑO: Thank you, Member Graham, for  
10 your question.

11 Any other questions? If not, we'll head on to  
12 the next presenter, General Counsel Beaver.

13 MS. BEAVER: Thank you. The next person  
14 registered to comment is Mr. Bruce Bennett.

15 MR. TREVIÑO: Mr. Bennett, are you there?

16 MR. BENNETT: I am, Mr. Chairman.

17 MR. TREVIÑO: Great. We can hear you fine, and  
18 welcome.

19 MR. BENNETT: Okay. I'm Bruce Bennett. I'm an  
20 attorney from Austin representing myself.

21 Proposed Rule 215.60, subsection (d), as you  
22 know, limits the parties to ten pages of written  
23 presentation aids. Subsection (d) violates Section  
24 2001.062(a) of the Administrative Procedures Act, which  
25 allows parties in a contested case to use [audio cuts out]

1 to a final decision-maker. The [audio cuts out] of  
2 Subsection (d) page limits to briefs is based on a  
3 misunderstanding of the contested case decision-making  
4 process.

5 The ALJ's job is to hear the evidence and make  
6 proposed findings and legal conclusions based on your  
7 interpretation of Chapter 2301 and your policies and  
8 decisions, which are binding on the ALJ. Your job is to  
9 make the final decision based on correct legal  
10 interpretations and on facts that are supported by the  
11 evidence.

12 To do your job you must give the parties the  
13 opportunity to present briefs to you as the APA  
14 requires. You can't do your job if you impose an  
15 arbitrary page limit on briefing that restricts the  
16 information you need to analyze the PFD, especially in a  
17 complex case.

18 An ALJ's proposed findings and conclusions can  
19 be based on a misinterpretation of the law or policy.  
20 ALJs can make findings that have on evidentiary support.  
21 You're empowered to correct the ALJ's legal errors.

22 You're authorized to reject or change findings  
23 or conclusions based on the ALJ's misinterpretation or  
24 misapplication of the law, a disregard of your prior  
25 decisions and policies, or if no evidence supports the

1 proposed findings, you can remand the case for further  
2 analysis if the ALJ fails to consider evidence that should  
3 have been considered.

4 Correcting the ALJ's legal errors is not  
5 re-litigating the case. The legislature expects you to  
6 exercise your own judgment in deciding whether the ALJ  
7 made legal errors.

8 STAFF: You have one minute remaining.

9 MR. BENNETT: Nothing in the recent Hyundai  
10 opinion or in the Sunset report prevents you from  
11 correcting legal errors.

12 Cases concerning the distribution and sale of  
13 motor vehicles, such as dealer termination cases or major  
14 enforcement cases, vitally affect the public interests and  
15 our state's economy. Analyzing an ALJ's legal errors in  
16 complex highly technical cases with extensive records,  
17 length PFDs and hundreds of findings and explaining the  
18 consequences of those errors will take more than ten pages  
19 of presentational aids.

20 No other state agency has page limits except  
21 the PUC, and they give you 50 pages in an ordinary case  
22 and 100 pages in a big case. Staff says in their response  
23 to comments that briefs should be submitted to the ALJ  
24 before the PFD is even issued, that is before the ALJ  
25 commits any error that will need to be briefed.

1           The APA allows the parties to present briefs to  
2 the final decision-maker, that's you, not the ALJs. The  
3 briefs are for you to help you analyze and correct legal  
4 errors the ALJ has committed in the PFD. You should  
5 exclude briefs from --

6           STAFF: Three minutes are up.

7           MR. BENNETT: thank you.

8           MR. TREVIÑO: Thank you very much for the  
9 comments, Mr. Bennett, and for keeping it to three  
10 minutes.

11           Next presenter, Ms. Beaver, or no questions?  
12 Anybody have any questions for our presenter?

13           (No response.)

14           MR. TREVIÑO: If not, Ms. Beaver, next  
15 presenter.

16           MS. BEAVER: Sure. I'll try to say his last  
17 name correctly. It's Leon Komkov.

18           MR. TREVIÑO: Mr. Komkov.

19           MR. KOMKOV: Yes. You said it perfectly. Can  
20 everyone hear me?

21           MR. TREVIÑO: Yes, Mr. Komkov, you're coming in  
22 great, and welcome.

23           MR. KOMKOV: All right. Well, thank you, Mr.  
24 Chairman. Thank you, members of the Board, thank you,  
25 staff. My name is Leon Komkov, and I represent myself

1 today. I am an attorney representing retail automobile  
2 dealers. I will try not to be cumulative, but I do urge  
3 the board not to adopt the proposed rule 215.60 as  
4 currently drafted.

5 Folks have noted that at the August 6 board  
6 meeting, Member Gillman moved that any restriction or  
7 limitation on the board accepting proposed final orders,  
8 proposed findings of fact, conclusions of law and  
9 exceptions to PFDs should be deleted from the rule. That  
10 motion was unanimously approved by the board.

11 I contend that the revised version that is in  
12 front of you today of this rule effectively overrules  
13 Member Gillman's motion that was adopted by you. It  
14 reincorporates what the board asked to be deleted by not  
15 expressly excluding proposed orders, proposed findings of  
16 fact and omissions of law and exceptions from the page  
17 restrictions on presentational aids.

18 I'm somewhat perturbed by the term  
19 "presentational aids" used in this rule, because it seems  
20 to wash over the fact that the APA does permit for  
21 briefing, not just a PowerPoint, not just some exhibits  
22 that might assist the argument before the board; it  
23 permits briefing.

24 I ask in the strongest terms that the parties'  
25 proposed final orders, the parties' exceptions to the PFD,

1 and the parties' proposed findings of fact and conclusions  
2 of law expressly be excluded from any page limitations.  
3 Given the severe page restrictions as it stands right now,  
4 this rule effectively in a complicated case is going to  
5 put parties to the decision: Will you file a brief or  
6 will you give the board a proposed final order?

7 In a case that lasted two or three weeks, some  
8 of these termination or some of these protest cases, the  
9 proposed final order itself is going to eat up the ten-  
10 page limit. I think if the board looked at its most  
11 recent decisions in complicated, complex cases where you  
12 rejected portions of a PFD, you'll find that double-spaced  
13 your orders alone are eight to ten pages.

14 STAFF: You have one minute remaining.

15 MR. KOMKOV: Respectfully, I believe the  
16 staff's comments to 215.60 do reflect a misunderstanding  
17 of the trial process.

18 The staff notes these restrictions shouldn't be  
19 problematic because the parties have ample opportunity to  
20 submit briefs, exceptions, and responses to SOAH prior to  
21 the issuance of the final PFD. That's a quote.

22 Exceptions and responses to briefs can't  
23 usefully be made to SOAH until after the PFD is issued,  
24 because no one knows what the error is. Once the PFD is  
25 issued, though, the record is closed at SOAH and the

1 matter is referred back to this board for determination,  
2 and this is the point at which briefing needs to happen.

3 Submitting a final order to SOAH is a moot act.  
4 SOAH doesn't enter the final order, this board does. It's  
5 not a presentational aid, it is the fundamental crux of  
6 this board's function.

7 Thank you all.

8 MR. TREVIÑO: Thank you for your comments, Mr.  
9 Komkov.

10 Can we have our next presenter?

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

13 The last person we have registered to comment  
14 is Jarod Stewart.

15 MR. TREVIÑO: Mr. Stewart, are you ready to go?

16 MR. STEWART: Yes. Can you hear me?

17 MR. TREVIÑO: We can hear you fine, Mr. Stewart

18 MR. STEWART: Thank you, Board members. My  
19 name is Jarod Stewart. I'm an attorney in Houston, and I  
20 have represented retail auto dealers before the board on  
21 several occasions.

22 I echo the comments of everyone that has spoken  
23 so far. I disagree strongly with the 215.60 as it  
24 pertains to the definition of presentational aids and also  
25 with respect to the page limit.



1           Including the broad definition of  
2           presentational aids, which would include, as written,  
3           briefs, proposed orders, proposed findings of fact and  
4           conclusions of law is wrong because a presentation aid is  
5           something like a visual aid or a chart or something that  
6           would help the board understand these complex issues as  
7           they are distilled down for the board in a meeting, but a  
8           brief and an order are not a presentation aid and they  
9           should be excluded from that.

10           I think that would solve a lot of the problems  
11           with the page limit. If ten pages was truly the  
12           presentation aids, that sounds a little more reasonable,  
13           although I still think ten pages is probably too few for  
14           some cases, but the briefs and the proposed orders are  
15           going to take a lot more pages in order for the board to  
16           understand these issues.

17           Now, the concern from staff is that we're going  
18           to overwhelm the board with too much information, but I  
19           think, as Mr. Bennett pointed out and Mr. Alaniz also  
20           pointed out, the APA requires and gives the parties the  
21           right to submit briefs to the board, and so that right  
22           should not be taken away by defining presentation aids to  
23           include the briefs and the proposed orders, so that should  
24           be taken out of there.

25           And with respect to the page limits, the

1 concern about re-litigating cases is not -- this is like  
2 taking a sledgehammer to a mosquito. The Sunset  
3 Commission was concerned about having new testimony and  
4 arguments that went on for hours and addressing that  
5 concern I think is addressed by the time limitations that  
6 have been proposed, about 20 minutes, which can be  
7 adjusted by the chairman, but saying that the parties are  
8 limited in a case --

9 STAFF: You have one minute remaining.

10 MR. STEWART: -- that can involve livelihoods,  
11 hundreds of employees, millions of dollars and extensive  
12 records down to ten pages total for briefs, orders and  
13 everything, it's not going to fix the problem; it's going  
14 to make the job impossible to do or will effectively make  
15 the board a rubber stamp, because the board will not be  
16 able to consider any of the issues and potential errors  
17 committed by ALJs, which sometimes do not have expertise  
18 in this area and may not understand the board's  
19 definitions or policies or rules.

20 And so for that reason, I think the best  
21 solution here would be to exclude briefs, proposed orders  
22 and findings of fact and conclusions of law from the  
23 definition of presentational aids, and adopt a rule that  
24 would specifically allow the presentation of those  
25 materials to the board, and if reasonable page limits were

1 proposed, that would be fine.

2 I know of no lawyer that practices in this  
3 area, whether representing manufacturers, distributors, or  
4 dealers, that is in agreement with these page limits or  
5 limiting the parties.

6 STAFF: Your three minutes are up.

7 MR. TREVIÑO: Great. Thank you, Mr. Stewart,  
8 for your comments.

9 General Counsel Beaver, are we finished with  
10 public comments at this point?

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

13 I'm just confirming very quickly that we have  
14 no other commenters.

15 Yes, those are all the commenters for this  
16 agenda item. Thank you.

17 MR. TREVIÑO: Great. So before we take it up  
18 for discussion, General Counsel Beaver, would you like to  
19 clarify anything that was in the comments from the  
20 presenters or any of the questions that were raised or  
21 issues?

22 MS. BEAVER: Sure. I'm happy to answer  
23 questions from the board members as well. I'd just like  
24 to state that the rules do provide that the department  
25 will give parties 30 days' notice before the case is going

1 to be heard before the board, and parties will have 21  
2 days to present their presentation aids for the board.  
3 That way each party can see what the presentation aids are  
4 going to look like for the parties, and then they have 14  
5 days to let us know if they want to present oral argument.

6 I would like to just mention, also, this is the  
7 same process we've been following for about a year and a  
8 half now with protest cases and contested cases before the  
9 board, so the rules really are just implementing our  
10 current processes.

11 If parties would like to present a proposed  
12 final order, they are able to do so during what they call  
13 the exceptions period at the State Office of  
14 Administrative Hearings. The judges who heard the case  
15 will submit their proposed final order and then the  
16 parties are able to submit exceptions, including what they  
17 think the judge's order should have looked like.

18 So as we saw in our last case, parties  
19 submitted those proposed final orders to SOAH after seeing  
20 the PFD to the SOAH judge for them to consider whether  
21 they wanted to make changes.

22 So I just wanted to mention also that that is  
23 after seeing the PFD, so the board has that information  
24 available to see. There's lots of briefings and evidence  
25 heard at SOAH, and the board is able to see all of that

1 information when making their decision in any protest or  
2 contested case.

3 That's all that I have, but I'm happy to answer  
4 questions.

5 MR. TREVIÑO: Great. Thank you, General  
6 Counsel Beaver.

7 Does the board have any questions for General  
8 Counsel Beaver? Member Graham.

9 MR. GRAHAM: Did you call me, Chairman?

10 MR. TREVIÑO: Member Graham, I sure did.

11 MR. GRAHAM: Okay. It seems to me that I  
12 recollect that in a recent case that we did not -- there  
13 was a period of time where we were not given the proposed  
14 final orders. Is that not correct, Counsel?

15 MS. BEAVER: That is correct. These rules  
16 reflect the current process and that the chairman has  
17 discretion on what items the board would like to consider  
18 for these cases, and we have limited the amount of  
19 information that was presented after the SOAH case to the  
20 board, and so we did presentation aids the last case but  
21 the additional information outside of the SOAH record has  
22 historically not been presented to the board.

23 If the parties did not present those proposed  
24 final orders during the exceptions period at SOAH after  
25 they saw the PFD.

1           We did have one case -- that I would just like  
2 to mention; I can't talk too much about because it is in  
3 current litigation -- in which the proposed final order  
4 was presented at the open meeting but was not presented  
5 prior to the case being heard by the board because it was  
6 information that was not presented in the SOAH record.

7           MR. GRAHAM: And so as written today, I mean,  
8 if attorneys from one side or the other want to submit to  
9 this board a proposed final order, would they not be  
10 allowed to do so?

11           MS. BEAVER: They would need to do so during  
12 the exceptions period at SOAH after seeing the SOAH  
13 judge's proposed final decision, and then it would be part  
14 of the administrative record that the board would see.

15           If the parties wanted to present a proposed  
16 final order or suggested findings of fact or conclusions  
17 of law, the rule does not prohibit that in their  
18 presentation aids, but it would have to be in the  
19 presentation aids.

20           Part of the reason for that is Government Code  
21 Section 2001.141 requires that if a rule of the department  
22 does specifically provide that y'all can have those  
23 proposed final orders, the board will have to rule on  
24 every one of those findings of fact and conclusions of law  
25 presented.

1           So we did a balancing act, allowing the board  
2 to be able to see what arguments the parties are going to  
3 make at the contested case before the board so you can see  
4 the presentation aids, know a little bit about what the  
5 oral argument is.

6           But really the board is charged with looking at  
7 the evidence in the record that was presented at SOAH, so  
8 this is just streamlining that process and balancing the  
9 information that the board is able to see from the parties  
10 before hearing the contested case without hearing new  
11 evidence or additional documents.

12           If parties wanted to submit more than the  
13 presentation aid page limit or font limit, then that would  
14 be prohibited from these rules. At this time they're only  
15 allowed to present the presentation aids, but we did  
16 reserve the chairman's discretion to allow additional  
17 documents to be presented and additional time. So it's  
18 the same process we have now; it's the chairman's  
19 discretion.

20           MR. TREVIÑO: Member Graham, does that answer  
21 your question? And we have adjusted the time and the  
22 presentation aids in complicated cases.

23           MR. GRAHAM: I just want to make sure that I  
24 understand this, because I kind of heard a couple of  
25 different things there that I'm not really clear, that if

1 representatives want to give us a proposed final order,  
2 you're saying if they haven't done it within the period at  
3 the conclusion of the SOAH case, if it's not done in that  
4 certain time period, then they are not -- they are  
5 restricted from presenting that to us?

6 MS. BEAVER: They would have to ask us to be  
7 able to present that, and it would be up to the chairman's  
8 discretion if he wanted to allow that to be presented,  
9 because the rules as currently drafted provide that  
10 parties will be able to present presentation aids with a  
11 certain page limit, so if they wanted to submit more than  
12 just presentation aids, like a proposed final order, I'm  
13 assuming would be more than the page limit and font size,  
14 then we would have to ask the chairman in his discretion  
15 to allow that in certain cases.

16 The rule currently does not prohibit or  
17 specifically state they're allowed to, and it's not  
18 specifically excluded from the page limit of the  
19 presentation aids.

20 MR. GRAHAM: So I'll just conclude because I  
21 know there's lots of other questions. In the four years  
22 that I've been involved in this process, I think it's  
23 really important to be able to have the opportunity to  
24 hear each side's case as to what they consider not being  
25 correctly interpreted by SOAH in some way, form, or



1 fashion.

2           You know, it's very helpful to me as a board  
3 member, and I just don't want to see that, you know,  
4 restricted or prohibited. So that's my thoughts, but I'll  
5 let someone else jump in here. Thank you.

6           MR. TREVIÑO: Thank you, Member Graham.

7           Member Ramirez, I think you had your hand up  
8 next.

9           MR. RAMIREZ: Yes, Mr. Chairman. Thank you.

10           Currently is there any objective criteria or  
11 standard for when a chairman might grant an exception to  
12 the page limit or presentation aid material?

13           MS. BEAVER: Currently we've had a standard  
14 process, and it's very important to be consistent. There  
15 are cases that are more complex.

16           We've had a case that went to district court  
17 and was remanded, so I can just mention that there might  
18 be some cases that have extreme circumstances that we  
19 won't likely see again, but those might be circumstances  
20 where the chairman needs to use that discretion, but at  
21 this point the rule does not specify any certain criteria  
22 in which that discretion would be used.

23           The goal of these rules is to provide  
24 uniformity, predictability, and consistency for parties  
25 presenting cases before the board so they know that they

1 have an even playing field and what to expect, so it would  
2 be expected that the rules are consistent implementation  
3 of only allowing presentation aids unless there's some  
4 extraordinary circumstances.

5 MR. RAMIREZ: I guess my trouble there is that  
6 if we provide equal or consistent rulings on the cases,  
7 then we ought to have some criteria as for when an  
8 exception would be granted.

9 It seems sort of subjective to say some case is  
10 more complicated than another. I think that some of the  
11 parties to these cases might argue that all of their cases  
12 are complicated and that we need more information, and it  
13 appears that that's the main sticking point here is the  
14 page limits on these presentation aids.

15 So if we are to put some limit on it by rule, I  
16 would just respectfully request that we include some  
17 criterion as for when the parties could request a  
18 chairman's exception and we don't leave it up to the  
19 subjective nature of things.

20 MR. TREVIÑO: And Member Ramirez, I'll comment  
21 on my process in doing this. Generally what I've done --  
22 and I can only speak for my term as chair -- is to follow  
23 precedent, which means that if there is a standard that's  
24 been used in other cases, I try to adhere to that as much  
25 as I possibly can.

1           But there have been exceptions with very, very  
2 complicated cases that have come with a lot of materials  
3 that I have, with the proper request from counsel, made  
4 some exceptions in those cases. But you're right, there  
5 isn't a hard and fast rule, and it's a balancing act.  
6 I've tried to stick to precedent as much as I possibly  
7 could.

8           MR. RAMIREZ: Thank you for the clarification,  
9 Mr. Chairman.

10           MR. TREVIÑO: Certainly.  
11 Member Gillman.

12           MS. GILLMAN: Thank you, sir. Can you hear me  
13 now?

14           MR. TREVIÑO: I can hear you fine.

15           MS. GILLMAN: Okay. I made the motion at the  
16 August 6 meeting, and I don't have my exact wording in  
17 front of me, but I thought -- and that's probably a  
18 problem; I'd probably request Tracey Beaver read it out to  
19 me, but I thought that we removed prohibitions from both  
20 sides submitted a proposed final order.

21           And I, too, don't want to hold back information  
22 from the board. I really feel like the people that have  
23 presented today are experts in their field, and from my  
24 notes from today's comments, the summary is they'd really  
25 like not to have a page penalty for briefs, orders, and

1 presentation aids in order for us to properly analyze  
2 these cases, and I appreciate the people that came to tell  
3 us that.

4 And secondly, I don't have a list of the dates  
5 of submission, but if there are inconsistencies and even  
6 how they submit, whether they have to do it in writing or  
7 not, you know, can they do it by email and things like  
8 that.

9 So I'd like to just say that the unintended  
10 consequence of my motion on August 6 was I wasn't clear or  
11 included enough language to allow -- to clarify some of  
12 these details.

13 So I'd like to maybe -- unless I need to modify  
14 the original motion from August 6 -- I can do that, modify  
15 the motion to change a few words and amend the motion --  
16 we can do that, or we can get with general counsel to  
17 really properly draft something that is a little bit more  
18 specific, a little bit more inclusive of some of these  
19 comments today. Which do you think would be better?

20 MR. TREVIÑO: General Counsel Beaver, would you  
21 like to call a recess and talk with Member Gillman about  
22 that?

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

25 At this time we can't amend a motion that was

1 previously presented and voted on at a prior board meeting  
2 for proposal. But the good news is that we're at the  
3 adoption stage of this rule, so we can absolutely make  
4 changes, and those items are definitely things that we got  
5 public comment on, so we can have a new motion for today  
6 that would address any concerns that you have and then  
7 have deliberation on that once we get to that stage if  
8 you'd like to draft a motion on that.

9 I'd just like to mention that we did remove the  
10 prohibition from parties sending in proposed final orders  
11 or findings of fact and conclusions of law, so we can go  
12 ahead and do a new motion for you if you'd like to confer  
13 with me.

14 MS. GILLMAN: Because I really think that I'm  
15 just not capable of getting in all this language. Should  
16 we do it now or should we hold the drafting of a new  
17 motion for the next board meeting? I don't know.

18 MR. TREVIÑO: So are there any other comments  
19 from any other board members? Member Bacarisse.

20 MR. BACARISSE: Mr. Chairman, listening to all  
21 of the discussion, as well as the presentations, some of  
22 those litigators I know personally and respect, I think we  
23 as a board need to be careful about what we wish for,  
24 because if you want to open up all of the possible  
25 submissions that attorneys can come up with, just

1 remember, you have a full-time job, okay, and you're going  
2 to get piles and piles and piles of paper that you don't  
3 have time to review and you may not understand.

4 So I'm just cautioning you, as the former  
5 district clerk of Harris County, I have seen what  
6 attorneys can file in cases, and I'm not an attorney and I  
7 just want to caution us about what we're opening the door  
8 to consider doing. Okay?

9 I think we should table this motion and  
10 perhaps, you know, bring in -- as one of the commenters  
11 said, perhaps form a committee with one or two of these  
12 litigators that have appeared before our board on numerous  
13 occasions to assist us in drafting a proper order. But  
14 let's be careful about how much information we're going to  
15 allow to come towards us, because we don't need to  
16 re-litigate these cases. Thank you.

17 MR. TREVIÑO: Thank you, Member Bacarisse.

18 Any comments from any other board members?

19 MS. WASHBURN: I agree with Member Bacarisse.  
20 I think maybe ten pages isn't enough, but I don't want 200  
21 pages either, so I think maybe we do need to step back and  
22 look and see what really makes sense.

23 MR. TREVIÑO: Great. Thank you, Member  
24 Washburn.

25 Member McRae.

1 MS. McRAE: Yes. And I just kind of want to  
2 echo what Members Bacarisse and Washburn said. Maybe the  
3 ten pages is not enough, but as one of the commenters  
4 stated, in some of the smaller cases they have a limit of  
5 50, some of the larger cases a limit of 100 pages.

6 While we don't want to re-litigate a case, we  
7 want to certainly as a board be fair and make sure that  
8 we're getting the necessary information to make the right  
9 decisions on these cases.

10 So I would like to see us, I think, go back to  
11 the drawing board and come up with something that would be  
12 somewhat of a compromise between what we have proposed and  
13 something less than -- like Member Washburn said, 200  
14 pages is a lot.

15 MR. TREVIÑO: Great. Thank you very much,  
16 Member McRae.

17 Any other comments from board members?

18 MR. GRAHAM: Mr. Chairman, this is Brett.

19 MR. TREVIÑO: Yes, Member Graham.

20 MR. GRAHAM: I think I would add having my  
21 first board meeting, I drove to Austin the night before  
22 and picked up my box of materials to review and read  
23 before the next morning, and I appreciate Member  
24 Bacarisse's point.

25 But I do believe it's a really good idea -- one

1 of the speakers had made the comment that in some cases  
2 the proposed final order will chew up the ten pages. So  
3 you know, we talk about the differences in these cases,  
4 some are not that complex, some are very complex, and that  
5 document right there, I think if we were to allow for them  
6 to submit that separate from the summary document, that  
7 would help possibly with those more complex cases that are  
8 going to have larger proposed final orders to work that  
9 and be acceptable to everyone. So that would be my  
10 thoughts.

11 MR. TREVIÑO: Great. Thank you, Member Graham.  
12 So any other comments from board members?

13 (No response.)

14 MR. TREVIÑO: Hearing none, General Counsel,  
15 you kind of hear the sense from the board. Would you like  
16 to huddle with Member Gillman and see what her proposal  
17 is, do we vote on this current one, do we table? What do  
18 you think the best way to address the concerns of the  
19 board at this stage are?

20 MS. BEAVER: Sure. Anyone can make a motion to  
21 go ahead and table this, similar to what we did for agenda  
22 item number 9, if you'd like to table this to the February  
23 board meeting, and then you would get a second and a vote  
24 on that.

25 I'd just also like to mention that the proposed



1 date for this was August 21, so we would be within that  
2 six-month automatic withdrawal period hearing this in  
3 February, so this wouldn't need to be re-proposed; we  
4 could adopt in February.

5 But I'm happy to confer if anybody would like  
6 any different type of motion other than to table it.

7 MR. TREVIÑO: Great. Member Prewitt.

8 MR. PREWITT: Mr. Chairman, I'd like to make a  
9 motion to table this matter until our February board  
10 meeting.

11 MR. TREVIÑO: Great. We have a motion from  
12 Member Prewitt. Do we have a second?

13 MR. RAMIREZ: I'll second.

14 MR. TREVIÑO: Member Bacarisse. Any further  
15 discussion?

16 MR. BACARISSE: Member Ramirez was the second.

17 MR. TREVIÑO: I apologize.

18 MR. BACARISSE: That's all right.

19 MR. TREVIÑO: Thank you, Member Ramirez, for  
20 your quick second. I apologize for missing it.

21 Any further comment or discussion?

22 (No response.)

23 MR. TREVIÑO: Great. The only thing that I  
24 would ask is, General Counsel Beaver, to just fully brief  
25 each of the board members on how this process will work

1 and bring everyone up to speed on how we address this  
2 going forward. Okay?

3 MS. BEAVER: Thank you. Appreciate that,  
4 Chairman.

5 MR. TREVIÑO: Thank you, General Counsel.

6 So we've got a motion and a second. I'm going  
7 to call for the vote here.

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 Ramirez?

19 MR. RAMIREZ: Aye.

20 MR. TREVIÑO: Member Washburn?

21 MS. WASHBURN: You might have called me. Aye.

22 I didn't hear it.

23 MR. TREVIÑO: Thank you.

24 And I, Chairman Treviño, also vote aye. Let  
25 the record reflect that the motion carries unanimously,

1 and we will table this with further discussion with  
2 general counsel on how to address some of the concerns  
3 raised by the board to balance the board's ability to get  
4 information but also to make it easier for the board to  
5 make some decisions.

6 MR. SCOTT: Mr. Chairman?

7 MR. TREVIÑO: Yes.

8 MR. SCOTT: Member Scott. I also vote aye.

9 MR. TREVIÑO: I'm sorry. Did I not call you?

10 MR. SCOTT: No, sir, you did not.

11 MR. TREVIÑO: I apologize, Member Scott. Thank  
12 you for being observant, and thank you for jumping in  
13 there and being part of the decision here. I apologize.

14 MR. SCOTT: No problem.

15 MR. TREVIÑO: That's why we have Member Scott  
16 here, to keep us honest. Thank you, Member Scott, always  
17 do a great job.

18 MS. GILLMAN: Mr. Chairman?

19 MR. TREVIÑO: Yes.

20 MS. GILLMAN: So to conclude, I'm going to  
21 offer to get with Tracey Beaver, general counsel, to  
22 modify some of the language and with also some limits on  
23 what can be submitted so that we don't all go crazy with  
24 hundreds of pages. Agreed.

25 MR. TREVIÑO: Please.

1 MS. GILLMAN: So do you think we need to have a  
2 committee or do you think that we can work on this  
3 internally?

4 MR. TREVIÑO: I think we will work on it  
5 internally, but what I would like General Counsel Beaver  
6 to do is brief each of the board members individually on  
7 the pros and cons of what we're talking about and to  
8 circle some suggestions about how to do that.

9 And definitely you will be part of the process,  
10 but I would like her to counsel with each of the  
11 individual board members so they fully appreciate what  
12 receiving a PFD or any kind of different information that  
13 we receive, what are the ramifications of that and sort of  
14 the background of why we've done things the way we have  
15 done going along, and then she can counsel with you about  
16 drafting -- or any board member about drafting a possible  
17 other motion.

18 But all board members have equal responsibility  
19 in drafting a motion if they so feel that it's necessary,  
20 but encourage you to come up with one with general counsel  
21 if you feel strongly about it.

22 MS. GILLMAN: Thanks, Mr. Chairman. Sounds  
23 like a great plan. Thank you, sir.

24 MR. TREVIÑO: Great. Thank you. Thank you for  
25 your input and your service to the State of Texas.

1 MS. BEAVER: Chairman, if I may?

2 MR. TREVIÑO: Yes.

3 MS. BEAVER: I'd just like to mention also that  
4 if I do confer with any board members, it would just be  
5 for legal advice -- we're not going to do any kind of  
6 walking quorum -- but also that you do have discretion to  
7 create committees and those don't need board votes.

8 So we will offline on how to do this  
9 appropriately, to address concerns under the Open Meetings  
10 Act. Thank you.

11 MR. TREVIÑO: Thank you very much, General  
12 Counsel Beaver. And I just want to state for the record  
13 that that is the reason that I'd like for general counsel  
14 to confer with each of the board members so we don't  
15 violate any statute, rule or law, and that we not only  
16 follow the letter of the law but the spirit of the law in  
17 drafting a good decision for the State of Texas. Fair  
18 enough? Great. Thank you.

19 So that was agenda item 10. Right?

20 MS. BEAVER: That's correct. The next item is  
21 agenda item 11 with Tim Thompson.

22 MR. TREVIÑO: Great. Generally 11 follows 10,  
23 so we'll now hear from Tim Thompson.

24 Mr. Thompson, are you ready to present?

25 MR. THOMPSON: Yes, sir, I am.

1 MR. TREVIÑO: Well, let 'er rip.

2 MR. THOMPSON: So good morning, Mr. Chairman,  
3 Board members. For the record, my name is Tim Thompson.  
4 I'm the deputy director of the Vehicle Titles and  
5 Registration Division, and I am proudly serving as the  
6 interim director.

7 The item before you can be found on page 193 of  
8 your board books. It's an action item for your  
9 consideration to move forward with final adoption of an  
10 amendment to our Texas Administrative Code, Title 43,  
11 Chapter 217, Section 217.3, which pertains to motor  
12 vehicle titles.

13 Members, this item was posted to the October 16  
14 issue of the *Texas Register* and closed on November 16.  
15 The department did not receive any comments on this  
16 proposal.

17 So for some background for y'all, during the  
18 last legislative session the 86th Legislature passed House  
19 Bill 3171 that repealed a section of Transportation Code  
20 which required the Department of Public Safety to maintain  
21 a list of certified moped vehicles for the State of Texas.

22 We, in our rule, referred to that list as  
23 guidance for determining the proper titling and  
24 registration of mopeds. DPS had informed us that they  
25 were not going to continue to maintain that list of mopeds

1 for the State of Texas since they were no longer  
2 statutorily required to do so.

3 Therefore, the amendment before you is seeking  
4 to remove the reference to that list that's contained in  
5 our rule, and going forward in the future with making  
6 title and registration determinations for these type of  
7 vehicles moving forward, we will rely simply upon  
8 Transportation Code Section 541.201 that provides the  
9 actual statutory definition of a moped.

10 That's all I have for you, sir.

11 MR. TREVIÑO: Thank you, Mr. Thompson.

12 Ms. Gillman, your mic is on, just as a heads  
13 up.

14 MS. GILLMAN: Thank you.

15 MR. TREVIÑO: No worries.

16 Thank you, Mr. Thompson. Does that conclude  
17 your presentation?

18 MR. THOMPSON: Yes, sir, it does.

19 MR. TREVIÑO: Thank you.

20 Does any board member have any questions for  
21 Mr. Thompson on this issue?

22 (No response.)

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

25 MR. SCOTT: Mr. Chairman?

1 MR. TREVIÑO: Yes, Member Scott.

2 MR. SCOTT: Member Scott. I move that the  
3 board approve the adoption of amendments to Section 217.3  
4 relating to titling of mopeds, as recommended by staff.

5 MR. TREVIÑO: Great. We've got a motion from  
6 Member Scott. Do we have a second?

7 MR. GRAHAM: I'll second.

8 MS. GILLMAN: Second.

9 MR. TREVIÑO: Okay. Who was it? I have a hard  
10 time with all the entities here. Who was the second?

11 MS. GILLMAN: I'll second.

12 MR. TREVIÑO: Member Graham?

13 MR. GRAHAM: I will withdraw my second and let  
14 Member Gillman have the second.

15 MR. TREVIÑO: Member Gillman?

16 MS. GILLMAN: I'll second.

17 MR. TREVIÑO: Everybody is fighting for this  
18 one. Mopeds are a hot issue, so thank you guys for being  
19 on the record to defend the moped users here.

20 All right. So any further discussion?

21 (No response.)

22 MR. TREVIÑO: Hearing none, I would call for  
23 the 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 Ramirez?

10 MR. RAMIREZ: Aye.

11 MR. TREVIÑO: Member Scott?

12 MR. SCOTT: Aye.

13 MR. TREVIÑO: Member Washburn?

14 MS. WASHBURN: Aye.

15 MR. TREVIÑO: And I, Chairman Treviño, also  
16 vote aye. Let the record reflect that the motion carries  
17 unanimously.

18 With that, we have a scheduled break. Is  
19 everybody okay, should we just keep plowing ahead, or  
20 would everybody like to take a break? Member Graham,  
21 Member Prewitt, good? All right. Let's keep going.

22 We're going to go to agenda item number 12, and  
23 we'll turn it over to Mr. Tim Thompson.

24 MR. THOMPSON: Yes, sir, Mr. Chairman. Again,  
25 Tim Thompson, deputy director of the Vehicle Titles and

1 Registration Division, proudly serving as the director.

2 The action item before you is a request from  
3 the department's specialty plates vendor, My Plates, to  
4 produce a new specialty plate, and for your reference,  
5 this item can be found on page 199 of your board books.  
6 It should have a brief description and a photo of the  
7 proposed plate.

8 My Plates is requesting approval for the design  
9 and issuance of the new license plate in coordination with  
10 Penn State University and the Penn State Alumni  
11 Association of Greater Houston.

12 The department posted this proposed design for  
13 public comment back in October, and we had 911 people that  
14 liked the design and 91 that stated they did not like the  
15 design.

16 With that, the agency requests your  
17 consideration for approval of this plate.

18 MR. TREVIÑO: Thank you, Mr. Thompson.

19 Are there any questions for Mr. Thompson?

20 (No response.)

21 MR. TREVIÑO: Thank you, Mr. Thompson. And I  
22 think I speak for the board that we sent our regards the  
23 Penn State Alumni Association of Greater Houston.

24 So no comments, so the chair would entertain a  
25 motion on this issue.

1 MR. BACARISSE: Mr. Chairman, since I'm in  
2 Houston and I represent the Nittany Lions down here, I  
3 move that the board accept the Penn State plate design, as  
4 presented by staff.

5 MR. TREVIÑO: Okay. We have an enthusiastic  
6 motion from Member Bacarisse. Do we have a second?

7 MS. McRAE: I will second that motion.

8 MR. TREVIÑO: Member McRae. We have a second  
9 from Member McRae.

10 Any further discussion on this issue?

11 (No response.)

12 MR. TREVIÑO: If not, I would call for the  
13 vote.

14 Member Bacarisse?

15 MR. BACARISSE: Aye.

16 MR. TREVIÑO: Member Gillman?

17 MS. GILLMAN: Aye.

18 MR. TREVIÑO: Member Graham?

19 MR. GRAHAM: Aye.

20 MR. TREVIÑO: Member McRae?

21 MS. McRAE: Aye.

22 MR. TREVIÑO: Member Prewitt?

23 MR. PREWITT: Aye.

24 MR. TREVIÑO: Member Ramirez?

25 MR. RAMIREZ: Aye.

1 MR. TREVIÑO: Member Scott?

2 MR. SCOTT: Aye.

3 MR. TREVIÑO: Member Washburn?

4 MS. WASHBURN: Aye.

5 MR. TREVIÑO: And I, Chairman Treviño, also  
6 vote aye. Let the record reflect that the vote is  
7 unanimous and this motion carries.

8 Okay. We will now move on to agenda item  
9 number 13. We have a presentation from the Legislative  
10 and Public Affairs Committee, an update, and I will turn  
11 it over to our able chair, Paul Scott, and he will be  
12 assisted by Caroline Love.

13 Chairman Scott, are you ready to go?

14 MR. SCOTT: Thank you, Mr. Chairman.

15 Yesterday, the Legislative and Public Affairs  
16 Committee received an update from TxDMV's Government and  
17 Strategic Communications director, Caroline Love, on  
18 several topics. She will be joining us in a moment to  
19 provide an update on legislative activities and discuss a  
20 few potential recommendations to provide member of the  
21 legislation for the upcoming session.

22 The first item is the alternatively fueled  
23 vehicle study, but before she begins, I want to provide  
24 the board with a summary of her update on the  
25 alternatively fueled vehicle study that was submitted to

1 the Texas Legislature on December 1.

2 Last session the legislature passed Senate Bill  
3 604, the TxDMV continuing Sunset legislation, which  
4 included a requirement for the department to submit a  
5 study on opportunities to assess a fee on alternatively  
6 fueled vehicles, such as electric vehicles that do not pay  
7 motor fuels taxes for their use on Texas roads.

8 This study was completed with information and  
9 data from several other agencies, including the Texas  
10 Department of Transportation, the Texas Department of  
11 Public Safety, Texas Commission on Environmental Quality,  
12 and the Public Utility Commission.

13 TxDMV staff coordinated with these agencies  
14 over the past several months to obtain their research and  
15 the information outlined in the bill and compile a report  
16 and sent it to the legislature by the December 1, 2020  
17 submission deadline.

18 With these alternatively fueled vehicles not  
19 contributing into the motor fuels tax for road use, as  
20 most vehicles do, the studies looked at several  
21 alternatives levying a fee in Texas on those vehicles  
22 based on electricity usage, vehicle registration and  
23 vehicle safety. The study recommends a registration-based  
24 alternative, as it would provide a consistent source of  
25 revenue and align closely with the existing collection

1 mission.

2 The collection of an additional fee for  
3 alternatively fueled vehicles at the time of registration  
4 and registration renewal is a similar approach used by  
5 most states that have such fees and closely aligns with  
6 the current approach to vehicle registration in Texas.

7 Based upon the analysis provided by the  
8 contributing agencies, an estimated amount of \$100 a year  
9 for an electric vehicle and a somewhat lower amount for  
10 hybrid electric vehicles would replace the average amount  
11 of state motor fuel tax equivalent to what a conventional  
12 vehicle pays.

13 A copy of the report outlining this analysis  
14 and research is provided in your board materials today and  
15 also available on the TxDMV website.

16 Now we'll hear from Caroline Love.

17 MR. TREVIÑO: Thank you, Chairman Scott, for  
18 that report.

19 Caroline, are you ready to go?

20 MS. LOVE: Yes, sir. Good morning, Mr.  
21 Chairman and members. And thank you, Chairman Scott, for  
22 that opening and summary of that study.

23 So what I would like to cover for you all now  
24 is a quick briefing on item 13.B, which is just a reminder  
25 of some of the key dates that are coming up during this

1 next legislative session.

2 The bill filing began on November 9, so we are  
3 just over a month into bills being filed, and then the  
4 legislature, of course, will begin on January 12 of 2021.

5 The last day for the legislature to file legislation is  
6 March 12, and then they are scheduled to adjourn sine die  
7 on May 31. And so those will be some fairly busy months  
8 for all of us, honestly, as we go through this.

9 I do want to mention quickly that there has  
10 been a slight increase of the number of bills filed since  
11 the bill filing date began. On the very first day, 745  
12 bills were filed, as compared to 566 on the first day of  
13 filing in 2018, so there has been a little bit of an  
14 increase, but state leadership is saying that even though  
15 there has been this increase, the number of bills that  
16 will be working their way through the system will likely  
17 be fewer due to the pandemic and the need for limited  
18 meetings and in-person activities at the Capitol. So  
19 we'll continue to watch that.

20 The final determinations of what committee  
21 processes will look like and how the department will  
22 participate will occur once the legislature comes in and  
23 adopts those rules, but the Capitol State Preservation  
24 Board has been taking a lot of efforts to improve the air  
25 quality and flow through the Capitol, and they've

1 installed plexiglass in hearing rooms, things to help  
2 protect those who need to be there.

3 So more to come on that in the future, but  
4 unless there's any questions about that portion, I'm happy  
5 to move on to agenda item 13.C.

6 MR. TREVIÑO: Are there any questions from the  
7 board for Ms. Love?

8 (No response.)

9 MR. TREVIÑO: Caroline, don't hear any, so just  
10 keep moving.

11 MS. LOVE: Okay. Thank you.

12 So as we have done in the last board meeting,  
13 the Texas Department of Motor Vehicles Board is tasked  
14 with considering opportunities to improve operations at  
15 the department by recommending statutory changes to the  
16 Texas Legislature under Transportation Code 1001.025.

17 And there were some adoptions that occurred of  
18 recommended legislation at the October board meeting. We  
19 have five additional recommendations for your  
20 consideration today that were also approved by the  
21 Legislative and Public Affairs Committee yesterday, and so  
22 I will go ahead and run through those, and at the end of  
23 that summary I'm happy to answer any questions about the  
24 items.

25 These certain items allowed us additional



1 opportunities to go back to our stakeholder groups and get  
2 more feedback and kind of work through some of the  
3 concepts that I'll talk through in a moment.

4 So the first item relates to opportunities to  
5 stop temporary tag abuse. To help curtail egregious abuse  
6 of the temp tag system, this recommendation would allow  
7 DMV to suspend access to the system while we continue to  
8 investigate those who may be abusing their access.

9 Currently the statute states that the  
10 department cannot deny access to a licensed dealer, so  
11 staff must complete the administrative process up to the  
12 point of license revocation before eTAG access can be  
13 turned off in cases of misuse.

14 So this recommended change would give DMV the  
15 ability to suspend a license holder's access to the system  
16 while the case is in process in instances where we have  
17 evidence of fraudulent misuse and where continued access  
18 would pose a risk to the public.

19 These cases are becoming more and more  
20 prevalent as law enforcement agencies are reporting  
21 they're seeing a high volume of fraudulent temp tags that  
22 are issued by licensed dealers from their eTAG accounts,  
23 and we have also heard from law enforcement agencies in  
24 other states regarding temp tag misuse from Texas.

25 Additionally, the abuse of temp tags has been

1 linked to other criminal activities, such as human  
2 trafficking and drug trafficking, so we really want to try  
3 to do everything we can to help curb this abuse.

4 Our staff would self-initiate these temp tag  
5 cases by comparing the number of tags issued by a dealer  
6 to the number of vehicles sold by a dealer. Dealers who  
7 have issued thousands of tags without evidence of sales to  
8 support tag issuance would be subject to this suspension  
9 allowed by this recommendation.

10 Dealers subject to database suspension would be  
11 issued a notice stating that access would be suspended  
12 within a certain time period prior to the suspension. The  
13 notice would provide the dealer with an opportunity to  
14 contact the department with additional information that  
15 would stop the suspension and would also provide  
16 information on how the dealer could request an expedited  
17 hearing within 20 calendar days at the State Office of  
18 Administrative Hearings.

19 This new expedited hearing gives SOAH the  
20 ability to decide only the question of whether DMV can  
21 keep the suspension in place while we continue to pursue  
22 the ultimate sanction for our license holder.

23 The suspension would only affect the license  
24 holder's access to the eTAG system, and the license holder  
25 would still be able to obtain temporary tags through other

1 means such as through a tax assessor-collector office.

2 In our review of this concept with  
3 stakeholders, we also discussed opportunities to address  
4 temp tag abuse through other measures that could be  
5 considered during the licensing process, for example, and  
6 we are committed to continuing to work with our  
7 stakeholders through these conversations and on other  
8 efforts that might be available.

9 The next recommended item relates to the  
10 display of temporary permits. Currently the temp permits  
11 referenced in statute are not consistent with the display  
12 of the permit. There are a couple that say that permits  
13 should be displayed in the rear windshield while most say  
14 that they should be placed in the rear license plate area,  
15 and the rear license plate area is most beneficial for law  
16 enforcement. This recommendation would clarify that all  
17 of them should be displayed in the rear license plate  
18 area.

19 And then item number 3: As we have discussed  
20 previously, the Consumer Protection Advisory Committee met  
21 several times this year, and they had some recommendations  
22 that were very helpful in trying to consider additional  
23 opportunities to protect customers.

24 This particular recommendation in number 3  
25 relates to the increase of a surety bond. This will help

1 DMV address issues when a dealer goes out of business,  
2 including the failure of a dealer to pay of trade in a  
3 vehicle, submit a title transfer document, remit collected  
4 fees to the county, and interaction with bankruptcy  
5 proceedings. The statute currently waives certain fees if  
6 a customer can show that they were paid, and it requires  
7 independent dealers to maintain a \$25,000 surety bond.

8 This recommendation would increase the amount  
9 of that bond to \$50,000 and also allows dealers to obtain  
10 insurance in lieu of the bond. This recommendation also  
11 extends this bond requirement to franchised dealers, which  
12 is a protection which does not currently exist for  
13 customers of franchised dealerships.

14 However, I do want to note that the extension  
15 of this increased bond requirement to franchised dealers  
16 was not a CPAC recommendation but was recommended by staff  
17 in an effort to help us find these additional protections  
18 for customers and also for consistency across license  
19 types.

20 The recommendation also requires this  
21 information about the surety bond and insurance be posted  
22 in a dealer's office next to the dealer's license, and  
23 this information would also be maintained on the  
24 department's website for customer reference.

25 In our research on this recommendation, this

1 increased bond is consistent with dealer bond requirements  
2 that we've seen in other states, and additionally, we  
3 continue to visit with other states on this sort of  
4 concept and researching other opportunities such as a  
5 scalable bond that might reflect more of a dealership's  
6 sales for larger dealerships versus smaller dealerships.  
7 So this is just a start of a process that we're going to  
8 continue researching moving forward.

9           The fourth item before you relates to another  
10 Consumer Protection Advisory Committee recommendation to  
11 help protect the motor vehicle records the department  
12 maintains.

13           This recommendation states that an individual  
14 or entity who was once eligible to receive this  
15 information and is no longer eligible to receive this  
16 information by law, that individual or entity may no  
17 longer retain that personal information.

18           And the last recommendation relates to several  
19 updates to the Texas Title Act. As we continue to work  
20 with our stakeholders on streamlining processes, we  
21 identified a couple of areas in the Title Act that we  
22 would like to recommend for changing.

23           The first part of this recommendation relates  
24 to out-of-state titles that may come into Texas to receive  
25 a rebuilt title without having to be deemed a salvage

1 title first.

2 Current statute requires issuance of a salvage  
3 title before a rebuilt Texas title can be obtained, and  
4 salvage dealers must apply for a salvage title when  
5 scrapping the vehicle when it's being brought for certain  
6 auctions.

7 This would allow a vehicle with an out-of-state  
8 title comparable to a salvage title to be issued a rebuilt  
9 title, and it would help eliminate some of the paperwork  
10 that we go through currently.

11 The next component of this recommendation would  
12 ensure that there is not a statutory difference between a  
13 printed title and an electronic title. It would remove  
14 statutory references to ensure that no legal differences  
15 exist between printed and electronic titles except when  
16 necessary.

17 Examples of necessary differences between  
18 printed and electronic titles would include not requiring  
19 an individual to receive an electronic title for changing  
20 signing requirements for printed titles, and it would also  
21 allow salvage dealers that purchase vehicles from law  
22 enforcement auctions or foreclosure sales to use an  
23 auction sales receipt to report vehicles that are being  
24 scrapped, dismantled or destroyed in order to eliminate an  
25 unnecessary application for salvage dealers and processing

1 by department staff.

2 And the last component of this recommendation  
3 relates to the deficient ownership documentation title  
4 process that can be used by insurance companies.

5 Current statute requires that a vehicle must  
6 have been issued a paper title in Texas or another state  
7 for an insurance company to apply for title when they  
8 obtain the current title of the vehicle.

9 I feel like there's too many titles in that  
10 sentence, but essentially, if a vehicle was on a lot that  
11 was never subject to the first sale, the manufacturer's  
12 certificate of origin would serve as that proof of title  
13 for the purpose of the insurance company following these  
14 processes.

15 And that concludes the summary of the  
16 recommendations. I'm happy to answer any questions.

17 MR. TREVIÑO: Thank you very much, Ms. Love.

18 Are there any questions for Chairman Scott or  
19 Ms. Love on these legislative priorities?

20 Member Scott, you did vet these in your  
21 Legislative and Public Affairs Committee. Is that  
22 correct?

23 MR. SCOTT: Yes, sir, we did.

24 MR. TREVIÑO: And you're recommending the full  
25 board to approve them. Correct?

1           MR. SCOTT: I would say that specifically to  
2 item four regarding the surety bond and so forth that  
3 actually I voted to move this out of the Legislative  
4 Committee, because I think there's a lot of discussion  
5 that needs to take place, and I don't think that  
6 discussion should be just restricted to CPAC.

7           I appreciate the work that CPAC has been doing  
8 on this, but I think there's some discussion that needs to  
9 be had by the full board. So that was my reason for  
10 wanting to move this out of committee and take it to the  
11 full board.

12           I'm not convinced that this adequately  
13 addresses the issues that face the citizens when this  
14 happens. The dealer goes out of business and, you know,  
15 there is a statute to work around registration fees and  
16 that sort of stuff, but my biggest concern here is dealers  
17 that go out of business, customers traded in a vehicle  
18 that has a lien on it, the dealer has gone out of  
19 business, the dealer agreed to pay it off as part of the  
20 contract, but the dealer never paid off the customer's  
21 existing loan.

22           So we have a customer here, a citizen, who is  
23 left with two contracts, and so the financial institution  
24 that has the original loan is going to be reporting  
25 nonpayment of that loan to the various credit reporting



1 agencies. And this goes on for months and months and the  
2 customer doesn't have any ability to make both car  
3 payments or just pay it off and say, well, I'll file suit  
4 against the nonexistent dealer, the guy that went  
5 bankrupt.

6 So I realize this is probably something that's  
7 going to require some other agencies to get involved with  
8 us, but it is a motor vehicle transaction, so somehow this  
9 comes on our plate, and we should be working with whatever  
10 those other agencies are, OCCC or something.

11 I'm not suggesting that the State of Texas or  
12 the taxpayers pay off all these loans, but there's got to  
13 be a provision somehow that we can instruct the financial  
14 institutions to treat this much like they do when a  
15 consumer or an individual has filed for bankruptcy where  
16 that credit reporting is flagged in a certain way so that  
17 everyone knows that there's something going on and it's  
18 not just Mrs. Cook not making her car payment. Right?

19 I mean, she traded her car in, good faith. We,  
20 the State of Texas, licensed that dealer, we have  
21 oversight over that dealer. She's just a consumer.

22 So I just take it out a little bit and go later  
23 on this customer decides, hey, I think I want to buy a big  
24 screen TV for my family, and they go to Best Buy and apply  
25 for Best Buy credit and they can't because now they've got

1 bad credit, and it's through no fault of their own and  
2 they have really no way of fixing it.

3 So somehow our agency and other agencies need  
4 to get involved and try to come up with a way to do  
5 something about this.

6 MR. TREVIÑO: Great. Thank you for that  
7 clarification or sharing that with us.

8 Any other questions or comments from the board?

9 (No response.)

10 MR. TREVIÑO: Hearing none --

11 MS. GILLMAN: Yes, sir.

12 MR. TREVIÑO: Yes, Member Gillman.

13 MS. GILLMAN: I also have an issue with number  
14 4. I don't understand why -- I think that CPAC was formed  
15 to try and improve and help the consumer, but I think that  
16 having new legislation that mandates that every new car  
17 franchised dealer go and get a \$50,000 bond is like  
18 putting a tiny, tiny little band-aid that maybe on the  
19 rare occasions when you have a big, big problem.

20 I'm not sure that it -- I'm certain that it is  
21 not really the best solution for when a franchised dealer  
22 goes out of business. I'm actually thinking that a  
23 \$50,000 bond will do almost nothing.

24 And so I'm agreeing with Member Scott that I  
25 think that the recommendations here should be looked at a

1 little further, and I'm also thankful that Caroline said  
2 that CPAC did not recommend that every single licensed  
3 franchised dealer go and get a bond, that that was staff  
4 recommendation.

5 I think that we need to be careful, I don't  
6 think that the CPAC's recommendations -- they're  
7 volunteering their time to come up with these  
8 recommendations, they should not be ignored. That would  
9 be contrary to what we're asking them to do, kind of a  
10 curve ball.

11 So that is number one; I echo what Member Scott  
12 said that I think that this deserves a little bit more  
13 time.

14 My second comment is regarding, and it's a  
15 question for Caroline --

16 MR. TREVIÑO: Member Gillman, at this point  
17 before we got into deliberation -- I don't mean to cut you  
18 off; it's just procedural --

19 MS. GILLMAN: They're questions, they're just  
20 questions.

21 MR. TREVIÑO: Questions, and then we'll go into  
22 deliberations, and we'll talk about how we address it.

23 MS. GILLMAN: Correct. Question to Caroline.  
24 If any dealer has their permit suspended before -- I  
25 definitely appreciate the fact that you're proposing an

1 expedited hearing in front of a SOAH judge, but in the  
2 time that their business is suspended, any dealer cannot  
3 deliver a car without a license, and the TAC's office as a  
4 solution is not open after five o'clock, they're not open  
5 on the weekends, and I can't get a temporary permit from  
6 the TAC's office if they are closed, and sometimes they do  
7 close because of COVID --

8 MR. TREVIÑO: Member Gillman, you froze up and  
9 we lost you.

10 Is everybody else still on? Okay, I see Member  
11 Bacarisse. Okay. Member Gillman is back.

12 Member Gillman, we lost you there for a brief  
13 moment.

14 MS. GILLMAN: So my question to Caroline was  
15 because suspension or access to the temp tag is going to  
16 put us out of business and sometimes certainly I can't get  
17 a temp tag from the TAC's office after hours or on  
18 weekends, holidays, and my number that I'm limited to get  
19 at the TAC's office would be really shrunk -- what do you  
20 think -- how do you -- is there any other solution that  
21 would not put a dealer out of business?

22 MS. LOVE: Yes. This is the process that would  
23 be defined by board rule, so we could work with the board  
24 on having these opportunities to ensure that our goal is  
25 not to necessary put these people out of business but to

1 make sure they're complying with the laws that they're  
2 required to comply with.

3 So another option I know our enforcement staff  
4 was looking at was in addition to being able to obtain  
5 this paperwork through the county tax assessor, we would  
6 also look at electronic options, so that if it was  
7 something after hours there might be an option there  
8 through that county for such transactions to occur.

9 These are things that we're wanting to work  
10 through, and that would be done in that rulemaking process  
11 as well.

12 MS. GILLMAN: Mr. Chairman, when you're ready,  
13 I am prepared to make a motion.

14 MR. TREVIÑO: Great. So is there any further  
15 comments from the board, comments or questions?

16 (No response.)

17 MR. TREVIÑO: Okay. Member Gillman.

18 MS. BEAVER: Chairman, this is Tracey Beaver  
19 for the record. May I have the floor?

20 MR. TREVIÑO: Certainly.

21 MS. BEAVER: I just wanted to let you know that  
22 we do have a public comment before we hear a motion from  
23 the board. Karen Phillips.

24 MR. TREVIÑO: Ms. Phillips, are you ready to  
25 go?

1 MS. PHILLIPS: Yes. Thank you very much.

2 MR. TREVIÑO: Great. Same rules apply; you've  
3 got three minutes.

4 MS. PHILLIPS: Thank you. Good morning again  
5 to Chairman Treviño, Board members and Director Brewster.  
6 Karen Phillips, GC for TADA.

7 I want to echo a few of the comments that have  
8 been discussed with respect to the temp tag suspension.  
9 We've had one conversation with agency staff and would  
10 like to continue those conversations in order to arrive at  
11 a solution at the licensing stage and not at the stage  
12 where the tags are in the process of being printed and  
13 abused.

14 So to try to stop overprinting of the temp tags  
15 on the front-end versus misuse to us seems to be the  
16 preferable solution. Now, it will not solve the flea  
17 market issue, and that may ultimately not be able to be  
18 solved until perhaps we're at the point where we're  
19 plating the vehicle at the time of sale.

20 But TADA does not feel that suspension of temp  
21 tag printing and an expedited hearing at SOAH is the  
22 necessary response, because we may not get an expedited  
23 decision from SOAH, and as has been pointed out, temp tags  
24 need to be able to be issued late at night and on the  
25 weekends.

1           As to the bond, I do appreciate that Ms. Love  
2 did indicate that expanding it to franchised dealers was  
3 the staff recommendation. It is something that TADA  
4 opposes because franchised dealers undergo constant  
5 financial reporting requirements to their OEMs, as well as  
6 frequent audits.

7           We also invest in land, facilities, and have  
8 capitalization requirements before ever obtaining our  
9 franchise, and so to expand a \$50,000 bond to the  
10 franchised dealers is a hoop that we do not feel is  
11 necessary for us to go through.

12           And I'm happy to respond to any questions, but  
13 that completes my remarks at this point.

14           MR. TREVIÑO: Thank you very much, Ms.  
15 Phillips.

16           Any questions for Ms. Phillips?

17           (No response.)

18           MR. TREVIÑO: Well, hearing none, I have a  
19 question for staff. Is this something that happens --  
20 Member Ramirez.

21           MR. RAMIREZ: Quick question for Ms. Phillips.

22           She was talking about the temp tags get printed and the  
23 enforcement action has to be taken putting in a safeguard  
24 so that it doesn't occur. Were you thinking like a temp  
25 tag limit on a dealer, and then if they wanted to print

1 more than that allotment, they would have to request it  
2 beforehand, or were there any specifics you can add to  
3 that conversation?

4 MS. PHILLIPS: Yes. I think at the licensing  
5 stage you could certainly ask an applicant or a licensee  
6 the number that they feel they need to be able to be  
7 printing on a monthly basis, and that may be a form of it  
8 is derived by the number of vehicles that they can put on  
9 the lot for display purposes; it could be the number of  
10 experience that they've had in sales, and so to make that  
11 request at the front-end and for the agency to have that  
12 information at the front-end and then perhaps limit the  
13 number that can be printed before we ever get to the point  
14 that thousands and thousands, that I am being told, are  
15 being printed on a monthly basis and are being abused with  
16 no sales.

17 I'd like to see that be explored before we go  
18 through the no printing capability and suspension as well  
19 as the additional time and effort that the agency would  
20 have to expend.

21 MR. RAMIREZ: Thank you, Chairman.

22 MS. PHILLIPS: Thank you.

23 MR. TREVIÑO: Any other questions for Ms.  
24 Phillips?

25 (No response.)



1 MR. TREVIÑO: This is a staff question. Do we  
2 frequently stop dealers from printing tags? Is this  
3 something that we have tried to do on a frequent basis?

4 MS. BREWSTER: Mr. Chairman, Whitney Brewster,  
5 executive director.

6 Corrie Thompson, the director of Enforcement,  
7 is on the line. I'd like, if it's okay with you, to have  
8 her speak on this item.

9 MR. TREVIÑO: Certainly. Ms. Thompson.

10 MS. THOMPSON: Just to confirm, can everybody  
11 hear me this time?

12 MR. TREVIÑO: Yes.

13 MS. THOMPSON: Great. Corrie Thompson,  
14 director of the Enforcement Division.

15 As Ms. Love mentioned, we do currently pursue  
16 cases where we're seeing excessive issuance of tags, and  
17 the way the department has to act on those cases now,  
18 again, as she did mention, we have to complete the entire  
19 administrative process before we're able to terminate the  
20 access to the tag system, because the current statute that  
21 is in place says the department cannot deny access to  
22 someone who holds a license. That means we must get rid  
23 of the license in order to stop that.

24 So what we're seeing is a bleeding of excessive  
25 issuance of fraudulent bad tags that shouldn't be out in

1 the world on the streets.

2 And Ms. Love mentioned that law enforcement is  
3 seeing those tags, they're being used in the commission of  
4 numerous types of crimes, and so what this seeks to do is  
5 to give the department a point earlier in the  
6 administrative process to interject, stop that bleeding,  
7 give the dealer an alternate way that has more oversight  
8 to get those tags issued to them while we then continue  
9 investigating the case and proceed with the ultimate  
10 sanction option that would come before the board for a  
11 final decision.

12 And how we're handling these cases currently,  
13 when we issue the notice of department decision and say,  
14 hey, you've issued X number of tags, you don't have the  
15 sales we're seeing to back that up, we don't get responses  
16 on those, because a lot of the people that are engaging in  
17 this type of egregious abuse are not responsive because  
18 they're not truly dealers.

19 And so I believe that that would continue to be  
20 the case with those that we would catch in the net if we  
21 were to be able to move forward with this change and  
22 ultimately obtain this additional authority through the  
23 department.

24 MR. TREVIÑO: Great. Thank you very much for  
25 the clarification.

1 MS. GILLMAN: Mr. Chairman?

2 MR. TREVIÑO: Yes, Member Gillman.

3 MS. GILLMAN: I have a motion.

4 MR. TREVIÑO: Is there any other comment or  
5 questions for staff before we move to a motion?

6 (No response.)

7 MR. TREVIÑO: Great. Okay, Member Gillman,  
8 please proceed.

9 MS. GILLMAN: Okay. I move that the board  
10 approve the legislative recommendations by the Legislative  
11 and Public Affairs Committee, with two amendments.

12 Number one amendment would be to delete the  
13 recommendation of temp tag abuse that's number 2 in our  
14 board book, page 267, with regard to suspension of the  
15 temp tags to dealers.

16 The second amendment I'd like to recommend is  
17 to delete the recommendation of change increasing the  
18 surety bond and extending the financial requirement to  
19 franchised dealers. I think this is listed under number 4  
20 in our board book on page 267.

21 MR. TREVIÑO: I think it's number 3.

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

24 The updated board books available on our  
25 website, on page 267, the temp tag issue is number 1 and

1 the surety bond issue is number 3, just to clarify.  
2 They've been updated.

3 MS. GILLMAN: Sorry. I apologize. I printed  
4 this section yesterday, so I apologize. Number 1 and  
5 number 3. Thank you for that clarification.

6 So I propose to delete those two  
7 recommendations, number 1 and number 3, and move to adopt  
8 the clarification display of temporary permits. And what  
9 number is that one?

10 MR. TREVIÑO: That is 2.

11 MS. GILLMAN: Got it. Approve to adopt  
12 managing data privacy and external access to confidential  
13 motor vehicle records at DMV. What number is that?

14 MR. TREVIÑO: That is 4.

15 MS. GILLMAN: And lastly, to adopt and clarify  
16 the electronic titles and printed titles having the same  
17 statutory value and refine the use of the deficient owner  
18 documentation process to assist with insurance company  
19 vehicle cases. That's number?

20 MR. TREVIÑO: Five.

21 MS. GILLMAN: Five. And I'd like to make this  
22 motion to direct staff to finalize and submit these  
23 recommendations to the legislature as directed in the  
24 transportation code for further consideration by members  
25 of the legislature for bill drafting and potential filing.

1 MR. TREVIÑO: Member Gillman, just for  
2 clarification purposes, you'd like to strike completely --  
3 not to change or amend 1 and 3, you want to just strike  
4 them completely?

5 MS. GILLMAN: Yes, sir, I'd like to strike them  
6 completely and from being adopted and approved today and  
7 instead suggest further work is necessary, language  
8 modification, not throwing out the issues.

9 I respect very much temp tag abuse improvement  
10 and also -- so I'm wanting to delete those two  
11 recommendations at this time by amendment and move to  
12 adopt the other three.

13 MR. TREVIÑO: So we've got a motion. Do we  
14 have a second?

15 MR. GRAHAM: This is Brett. I'll second.

16 MR. TREVIÑO: Member Graham. We have a second  
17 from Member Graham.

18 Do we have any more discussion on this? Any  
19 comments from board members?

20 MR. GRAHAM: This is Board Member Graham. I'll  
21 just add I do agree that regarding the bonds, you know, in  
22 the franchised dealer world it's not really a solution  
23 because it's just absolutely insignificant, and there  
24 might be a better way to do it.

25 Perhaps we can come up with something that

1 would be beneficial to the consumers in Texas, but at the  
2 end of the day, this is going to make a whole lot of  
3 dealers go get a bond that I don't think really achieves  
4 anything. So certainly agree with the position.

5 That's my comments. Thank you.

6 MR. TREVIÑO: Thank you, Member Graham.

7 Member Bacarisse. You're on mute, Member  
8 Bacarisse.

9 MR. BACARISSE: Sorry.

10 MR. TREVIÑO: You're back.

11 MR. BACARISSE: Can you hear me now?

12 MR. TREVIÑO: Yes, sir.

13 MR. BACARISSE: I want to encourage or ask that  
14 we move with all due haste to get new language on this  
15 temp tag abuse issue, because 99.9 percent of all the  
16 dealers in the state are good people, they're doing  
17 important work.

18 But there are people that are abusing this  
19 system and the end up selling these tags or whatever  
20 they're doing to serious criminals, and we've got to clean  
21 up the problem without hurting the rest of the good  
22 businesspeople out there.

23 So I don't want us to have too much of a delay  
24 in figuring out the language that works so we can get some  
25 enforcement not the bad actors.

1 Thank you.

2 MR. TREVIÑO: Thank you for that comment,  
3 Member Bacarisse.

4 Member Ramirez.

5 MR. RAMIREZ: I would echo what Member  
6 Bacarisse just said. I think that it is a real problem.  
7 We see it in the law enforcement community, human  
8 trafficking, all different types of offenses that occur.

9 So I would say that we need to act expediently  
10 to get some language in there, whether that's tweaking  
11 what staff has already put together and making sure that  
12 maybe you can't suspend the ability or the access to the  
13 system without a completed SOAH hearing if they choose to  
14 appeal.

15 Maybe instead of saying the opportunity for a  
16 SOAH hearing, we can't suspend it without that, or working  
17 on language to address it on the front-end, as Ms.  
18 Phillips with TADA suggested, but I do think that we can't  
19 scrub the issue altogether when we have hardworking staff  
20 that have given us a recommendation and said that this is  
21 a pain point they're coming up against.

22 MR. TREVIÑO: Thank you very much for those  
23 comments, Member Ramirez.

24 Anybody else?

25 MS. GILLMAN: Because this is the comment

1 section, I would say I know that abuse in temp tags is  
2 happening, and I definitely want to support law  
3 enforcement in their efforts, and I want to catch the bad  
4 guys really bad.

5 I support trying to come up with a solution on  
6 the front-end, like Ms. Phillips said, but suspending --  
7 as presented here, as the recommendation, suspending a  
8 dealer's access, even for a short a time as 20 days, puts  
9 them out of business.

10 So I wholeheartedly agree, it's past time for  
11 temp tag abusers to be brought to justice, but I think  
12 that there's a better solution, and we should work hard  
13 for it.

14 MR. TREVIÑO: Any other comments? Member  
15 McRae. I'm sorry. Member Washburn, I apologize, go  
16 ahead.

17 MS. WASHBURN: So I guess I just have a  
18 question on what we're voting on here, because Ms. Love  
19 said in the beginning these aren't baked, they still need  
20 to go get some stakeholder buy-in. So are we voting that  
21 this is the final thing that we're recommending, or are we  
22 voting that we're going to address these issues?

23 MR. TREVIÑO: Caroline, would you like to  
24 comment on that, clarify?

25 MS. LOVE: Yes. Thank you. This is Caroline



1 Love with DMV.

2 So we have been working with stakeholders to  
3 get their feedback, and so what we brought before the  
4 board today was something that we felt we had a  
5 significant amount of discussion, and we've been working  
6 to accommodate certain requests on that.

7 And so I believe, based on what the motion was,  
8 that three of those the motion would move forward; the  
9 other two would be ones that staff will take back and look  
10 into further and come back to the board at a future date.

11 MR. TREVIÑO: But, Caroline, these are  
12 legislative priorities for us to address with this session  
13 of the legislature. Is that correct? These are not  
14 policy prescriptions necessarily that we are going to  
15 implement tomorrow.

16 MS. LOVE: That is correct.

17 MR. TREVIÑO: So just to clarify if you could,  
18 in the best words you can, these are legislative  
19 priorities that we're advocating for, but they're not  
20 final language in a bill or statute or anything.

21 MS. LOVE: Absolutely. Once these  
22 recommendations are adopted and we take them to the  
23 legislature, should a legislative member choose to file  
24 the legislation, that will truly be the start of that  
25 process, and we'll be available as a resource and continue

1 working with stakeholders on what my eventually become  
2 part of the law, but that would be several months away.

3 MR. TREVIÑO: And, Caroline, if you could also  
4 comment, how would we address changing these to come up  
5 with something? Because I agree with board members in  
6 that I feel very uncomfortable just striking these,  
7 especially on the permits.

8 It seems like 99.9 percent of all licensed  
9 dealers are in compliance with the law and do a great job  
10 in their communities and never will be subject to  
11 something like this, but instead of defending them, we're  
12 defending the bad actors.

13 It appears to be a clear and present danger  
14 that the staff and other law enforcement have determined  
15 exists, and to strike it and not come up with language  
16 quickly that addresses it seems like we're not defending  
17 dealers, we're defending bad actors. I'm very  
18 uncomfortable completely striking that language.

19 Can you talk about ways that we will come up  
20 with language to address these issues so we're not put in  
21 that position?

22 MS. LOVE: Absolutely, yes. We definitely can  
23 go back to the stakeholder groups and talk through these  
24 concepts and see what would be more of a middle ground,  
25 and this is what's meant to be one tool in a toolbox of

1 how to address these situations.

2 So our staff is planning to look at those other  
3 options at the front-end at the time of licensing, those  
4 sorts of activities may not require legislative changes,  
5 but those are things that we can look into to supplement  
6 these types of recommendations.

7 MR. TREVIÑO: Great. And what kind of a  
8 timeline would you think that we would be to put together  
9 to make sure that we do have good language heading into  
10 the session?

11 MS. LOVE: The last day for the legislature to  
12 file legislation is March 12, and the board will have  
13 another meeting prior to then. We'll definitely be  
14 working to get that language clarified, and we can come  
15 back in February with another proposal at that point.

16 MR. TREVIÑO: Great. Thank you very much. And  
17 the board would encourage you -- I think I speak for the  
18 board -- to come up with language quickly because of the  
19 issues involved.

20 Any other comments or questions on this?

21 MR. GRAHAM: Mr. Chairman, this is Brett. One  
22 clarification, just making sure I'm understanding  
23 something correctly: My understanding was that we are  
24 catching the bad actors on the temp tag issue; it's just  
25 we would like to tighten down the amount of time from the

1 point at which the investigation is ongoing or concludes  
2 and to the point at which they can no longer issue those  
3 temp tags and trying to find a method by which to tighten  
4 that timeline down to reduce the impact on folks who are  
5 being impacted by it, while not infringing on the ability  
6 of someone who might be accused but inevitably isn't  
7 guilty of not being able to issue the temp tags.

8           Would that be an accurate assessment of what  
9 we're trying to achieve with this?

10           MS. LOVE: This is Caroline Love again. That  
11 is very accurate, yes.

12           MR. GRAHAM: Now, I know it wasn't perfect, but  
13 that's good; I'm glad to be pretty close. All right, just  
14 making sure I was on base. Thank you.

15           MR. TREVIÑO: Member Gillman. The chair  
16 recognizes Member Gillman.

17           MS. GILLMAN: One possible solution that I  
18 thought of is there could be board discussion for  
19 Caroline's consideration is once the DMV has identified a  
20 potential abuser of our system, begin that alert system to  
21 the dealer, set up the expedited hearing to hear his side  
22 of the situation, his/her side, but my main problem is the  
23 suspension of the temp tag until you get to SOAH.

24           And so I'm certain that there is language that  
25 can be modified in here to try and catch the bad actors,

1 but let's not have so much authority that you can put a  
2 dealer out of business in the meantime.

3 MS. LOVE: This is Caroline Love once again.

4 We agree completely. We always try to strike a  
5 balance of protecting consumers while also not having  
6 anything too onerous for the businesses, so we thank you  
7 for that feedback.

8 MR. TREVIÑO: Great. And I would also like to  
9 echo Chairman Scott's comments on dealers that go out of  
10 business as well. There has to be some language we can  
11 add to that, because it is an ongoing issue, and I do  
12 think it's something we should address as well.

13 MR. SCOTT: Mr. Chairman?

14 MR. TREVIÑO: Yes, Member Scott.

15 MR. SCOTT: There is a sense here from the  
16 board of the urgency in dealing with the egregious use of  
17 these temp tag abusers, and if I understand it. Whatever  
18 we come up with, it's going to be a recommendation that  
19 will go to the legislature, and if it's passed out of the  
20 legislature, then even then you're still looking at next  
21 fall before it comes into effect. Is that correct?

22 So my question is -- or what I would like to  
23 see is I would like to see staff -- we need to work on  
24 something to do on the legislative side, that's no  
25 question.

1           But what can we do as an agency now from  
2 whatever rule or some way to deal with this in the  
3 interim? And I don't know. We're really talking about  
4 some egregious people here that sell 20 cars a year and  
5 print, you know, 10,000 tags.

6           So what can we do from an agency internally to  
7 accelerate our ability to deal with this? Because waiting  
8 on the legislature, if this is an urgent issue, it's not  
9 something that can be done -- you know, nothing is going  
10 to happen for a long time.

11           MR. TREVIÑO: Director Brewster or Ms.  
12 Thompson, would you guys like to comment on that, or would  
13 you guys like to come back with a more thorough  
14 presentation for the February meeting?

15           MS. BREWSTER: Mr. Chairman, we would be happy  
16 to come back at a future meeting with more information,  
17 but I can tell you that the agency is moving forward with  
18 just what Member Scott has mentioned, looking at other  
19 ways, non-legislative ways that we can address issues  
20 around temp tags.

21           We have reached out to other states to see what  
22 they're doing. I know that temp tags and temp tag abused  
23 is not an issue that is specific to Texas, unfortunately;  
24 it's an issue across many jurisdictions, so the American  
25 Association of Motor Vehicle Administrators, which we are

1 a member of, is putting together a best practices document  
2 around temp tags.

3 So there is a lot of activity in the community  
4 around this issue, but I think taking that multi-faceted  
5 approach is certainly a way that we can most effectively  
6 deal with issues around temp tags.

7 MR. TREVIÑO: Great.

8 MS. BREWSTER: Mr. Chairman, we'd be happy to  
9 come forward with more information at the next meeting.  
10 Thank you.

11 MR. TREVIÑO: Thank you.

12 Ms. Thompson, did you have a comment?

13 MS. THOMPSON: Yes. I just wanted to respond  
14 to Member Scott again. And, yes, you're correct, it would  
15 take a change because, as I mentioned earlier, the current  
16 statute does say the department cannot deny while they  
17 have a license.

18 And so right now we need to look at something  
19 for getting that statutory language out of the way so that  
20 we can do something in the interim, be that on the back-  
21 end, as Caroline has discussed today about being able to  
22 allow us the opportunity to suspend it when we notice the  
23 bad act is already happening, or a system based on the  
24 front-end that would, again, also involve cutting off tags  
25 potentially in some way or alerting us to begin taking

1 that action, because right now we are currently limited to  
2 having to move through the entire administrative process.

3 And so as we work our way up through those that  
4 are at minimum three to four months to move through that,  
5 there could be 3-, 4,000, 10,000 tags issued in the  
6 interim. But, yes, we are stuck with the current process  
7 given the statutory language in effect.

8 MR. TREVIÑO: The only suggestion I would make  
9 is that we as an agency have good relationships with all  
10 the stakeholders, and it's probably best for us to draft  
11 the type of legislation that we would like to see come out  
12 of the legislature than allow the legislature, who may not  
13 be informed or be able to spend the time on this, come out  
14 with a piece of legislation that we don't particularly  
15 like and have difficulty implementing.

16 So I just would encourage staff and  
17 stakeholders to get together, craft a good solution for  
18 the citizens of Texas so we can provide language to our  
19 legislators to help them come up with a good decision for  
20 all Texans. Okay?

21 MR. SCOTT: Mr. Chairman?

22 MR. TREVIÑO: Yes, sir.

23 MR. SCOTT: My question for staff is if we see  
24 someone with -- there's a law enforcement component of  
25 this situation, so if we see someone issuing a whole bunch



1 of tags, are we permitted to or is it appropriate for  
2 us -- would it do any good for us as an agency to notify  
3 law enforcement? What do we do with that internally?

4 We have investigators of our own. How do we  
5 deal with that? You know, we've got human trafficking,  
6 we've got all kinds of things that this touches on, but  
7 what can we do as far as letting law enforcement know, or  
8 would that be appropriate or helpful?

9 MS. THOMPSON: Absolutely. So I would  
10 encourage anybody who sees activity that is against  
11 department rule or law to report those violations to us so  
12 that staff can begin working on those.

13 In Enforcement we do work on these cases, CID  
14 does the same as well, and they're working on engaging law  
15 enforcement entities who can get with prosecutors to see  
16 if we can get activity on the criminal side as well.

17 There are criminal components to eTAG misuse  
18 and abuse. Currently I believe the highest offense level  
19 is a state jail felony, the others are misdemeanors, so  
20 law enforcement may be taking action on their end to see  
21 about what they can do in terms of increasing offense  
22 levels.

23 But we do currently work with law enforcement  
24 when we see these violations; that is how we are becoming  
25 aware of the types of crimes that are being committed with

1 our temporary tags.

2 I'm sure that us exploring options also for how  
3 we can just stop the number of tags are getting out into  
4 the world would be helpful for law enforcement as well,  
5 which is one of the reasons the department is proposing  
6 these changes.

7 MR. TREVIÑO: Member Scott, does that answer  
8 your question, or would you like some more information on  
9 that?

10 MR. SCOTT: That's fine. I just wanted to  
11 throw that out there: what can we do, since there's such  
12 a sense of urgency in looking at everything that we can do  
13 to help all the stakeholders, stop this abuse, stop the  
14 bad guys. And we understand we have to go through the  
15 legislative process, but in the interim we need to be as  
16 active on this as we can.

17 MR. TREVIÑO: So Member Scott, with your  
18 permission, I would recommend that staff come back to us  
19 with a detailed presentation. You might include MVCPA as  
20 well; clearly they have a stake in this as stolen vehicles  
21 and those types of vehicles are undercut offline in the  
22 United States.

23 But again, I just would encourage staff and  
24 stakeholders to try and get together, because the language  
25 that we would like to see adopted by the legislature, I do

1 think we're best positioned to provide that language. So  
2 I would encourage you guys to come up with something for  
3 both these issues. because they do affect Texans, and if  
4 we craft something quickly, I sense that's the will of the  
5 board.

6 So we have a motion in front of us, we have a  
7 second. Any further discussion on this issue?

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: Member Prewitt?

20 MR. PREWITT: Aye.

21 MR. TREVIÑO: Member Ramirez?

22 MR. RAMIREZ: 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. Let the record reflect that the motion carries  
4 unanimously. And you've got your direction, so hope to  
5 hear from you soon.

6 So with that, I think we'll take a five-minute  
7 break, come back around 12:15. How does that sound?

8 (Whereupon, a brief recess was taken.)

9 MR. TREVIÑO: All right. I think we can get  
10 Member Gillman caught up as we're heading into the  
11 Internal Audit Division status update, and it's briefing  
12 only, so Ms. Menjivar-Suddeath, are you on the line?

13 MS. MENJIVAR-SUDDEATH: Good afternoon, Board  
14 members. Can y'all hear me?

15 MR. TREVIÑO: I can hear you. Can everybody  
16 else hear?

17 Welcome, Ms. Menjivar-Suddeath, it's great to  
18 see you.

19 MS. MENJIVAR-SUDDEATH: Great to see you as  
20 well.

21 Good afternoon, Board members. For the record  
22 Sandra Menjivar-Suddeath, Internal Audit director, and I  
23 am presenting 14.A, which is the Internal Audit Division  
24 status. This is a briefing item only and is on page 269  
25 of your board books.

1           The Internal Audit Division status includes  
2 three external coordination activities and five Internal  
3 Audit engagements. For time consideration, I will skip  
4 the external coordination information that's found on page  
5 270 and go straight into the Internal Audit activities.

6           On the Internal Audit side we are moving along  
7 with our engagements and continuing to work on our six-  
8 month audit plan that's been noted on page 270. We have  
9 two engagements in reporting, two engagements in field  
10 work, and our quality assurance and improvement engagement  
11 was completed since the last board meeting.

12           The entire report and the results of our  
13 quality assurance and improvement program are found on  
14 page 272 of your board book, but I want to direct your  
15 attention to the one-pager on page 271. The one-pager on  
16 271 provides all key information of the report an in  
17 illustrative manner.

18           Since 2019 the Internal Audit Division has been  
19 working on visualizing our reports to provide the board a  
20 glance of our results, and if you would like to go further  
21 into detail, you can read the report.

22           So on page 271, and going forward, we will be  
23 including these illustrative one-pagers in all of our  
24 reports for your consideration.

25           So the illustration shows the components of our

1 quality assurance and improvement program, and just as a  
2 reminder, internal audit standards require that Internal  
3 Audit review itself annually and then every three years  
4 have an external auditor come in to review whether we're  
5 meeting performance standards, as well as how effective we  
6 are.

7 Our quality assurance program includes the  
8 review of our internal audit standards, external  
9 assessment recommendation progress, key performance  
10 indicators, capability model, and fraud, waste and abuse  
11 information.

12 Overall, the division is doing very well. On  
13 the internal audit standards we were found to be fully in  
14 compliance; however, two opportunities of improvement were  
15 noted in our review.

16 One is better role identification. In  
17 reviewing our internal audit charter, we identified that  
18 we didn't really solidify the Finance and Audit  
19 Committee's role in oversight in internal audit in the  
20 charter. We also could expand and remove some of the  
21 duplication in the charter of our roles and  
22 responsibilities, and in the next item I'll present those  
23 changes.

24 The other opportunity of improvement was  
25 related to board training. Although we do train the board

1 on what internal audit does, it hasn't focused on the role  
2 of internal audit in the department. It's a slight shift  
3 but a significant shift where instead of talking about our  
4 maturity assessment and the recommendations and looking to  
5 the past, it's more looking forward about what do we do  
6 related to risk management, what are the expectations to  
7 risk management, fraud, waste and abuse and engagement.

8 And so both these items were identified as  
9 opportunities of improvement, and we have been actively  
10 working on correcting both of them, and I'm happy to  
11 report that we have completed -- or hopefully completed  
12 correcting both of them.

13 On the external assessment side, our peer  
14 review in 2018 identified an opportunity for us to be more  
15 involved in the ethics program. Our internal audit  
16 standards require us to be a part and work on ethics-  
17 related issues. They recommended we become more involved  
18 in the ethics program. We believe we have implemented  
19 that recommendation in the past year, as we worked in the  
20 ethics work group to help advise the department on its new  
21 policy for ethics.

22 On key performance indicators, we have ten  
23 measures. Unfortunately, we only met six out of the ten,  
24 which is 60 percent, which as you know, doesn't make me  
25 happy, but it is what it is.

1           But we did meet the internal audit plan, all  
2 engagements that were in the internal audit plan were  
3 completed. We also asked our divisions and our clients,  
4 you know, are audit recommendations useful to you? And we  
5 did have an 85 percent agreement that the recommendations  
6 we're proposing do help the department and the division in  
7 its risk management, governance, and efficiency and  
8 effectiveness.

9           Where we did not meet our key performance  
10 indicators was related to the customer satisfaction. Our  
11 key performance indicator is 80 percent for customer  
12 satisfaction; we were at 74 percent.

13           When we looked into what was going on, two  
14 things are occurring. One, we don't have a high response  
15 rate, so clients and divisions that are not happy with us,  
16 it's a bigger impact to us.

17           The second thing we noticed in the responses is  
18 that it wasn't necessarily they were unhappy with the  
19 process but more unhappy with the results, which you can  
20 kind of expect when internal audit is out making  
21 recommendations and maybe changing the design of a program  
22 or a function.

23           However, although we did identify those things  
24 that were going on, we are already working on ways to  
25 improve our customer satisfaction, and we'll be rolling



1 out new initiatives over the next year.

2 On the capability model, this is a model  
3 specifically for the public sector, where it looks at the  
4 maturity ranking of the function. We are still at a Level  
5 3.

6 Now, we've done some significant improvements  
7 over the past year where we've improved our communication  
8 plan, we've created dashboards and reports to help the  
9 board and executive office kind of keep tabs on what we're  
10 doing, as well as we've really been more positioning  
11 ourselves to help the agency ensure that we keep up with  
12 innovation, be a key agent of change, and we measure that  
13 by our ability to participate in work groups, ad hoc  
14 advisories, as well as the innovation we're producing  
15 ourselves.

16 Now, for us to get to a Level 4 and 5, we do  
17 really have to work with our management on the risk  
18 management function, and we're hoping that as we mature  
19 our risk management function in the agency, Internal Audit  
20 will be able to achieve that Level 4 or 5.

21 The final component of the quality assurance  
22 and improvement program is the fraud, waste, and abuse  
23 program, and what you have there are kind of the key  
24 information of what we did last year.

25 We spent about 1,100 hours on fraud, waste, and

1 abuse last year. Now, the majority of that was actually  
2 in investigations and not detection. That is something we  
3 are working on this year, on doing more things related to  
4 detection and prevention.

5 But we also handled 72 complaints. Now, those  
6 complaints are not all internal audit or internal fraud,  
7 waste, and abuse; some of these are State Auditor issues  
8 such as someone complained to the State Auditor that they  
9 didn't get a title or that they need to figure out how to  
10 get a bonded title, and so those come through us and we  
11 distribute those. Of the 72 complaints we handled,  
12 though, 24 were related to internal investigations and  
13 allegations and we did substantiate five of them.

14 So that's the quality assurance and improvement  
15 program. I'm open to any questions you may have on our  
16 results.

17 MR. TREVIÑO: Thank you, Ms. Menjivar-Suddeath.  
18 Does anybody have any questions?

19 (No response.)

20 MR. TREVIÑO: Okay. And I would just draw the  
21 board's attention to the slide on page 271 that kind of  
22 summarizes, gives us an overview.

23 I would just to commend Ms. Menjivar-Suddeath  
24 on what a great job that slide is. It's one slide in a  
25 big presentation, but a lot of work went into it and you

1 should be commended for it. Great looking piece of work  
2 there.

3 MS. MENJIVAR-SUDDEATH: Thank you.

4 MR. TREVIÑO: Okay. And keep on going.

5 MS. MENJIVAR-SUDDEATH: Okay. So I will move  
6 on to item 14.B, which is the Internal Audit Charter.  
7 This is an action item, and I am requesting approval on  
8 the Internal Audit Charter. The document begins on page  
9 290 of your board book. You have both the tracked changes  
10 and a clean version. The tracked changes show the changes  
11 we made to the Internal Audit Charter since the last  
12 approval.

13 There are a few key things that we did. One,  
14 we provided more information on Internal Audit's role in  
15 risk management and fraud, waste and abuse, and wanted to  
16 clarify what our responsibilities are versus the  
17 department's and the board's.

18 Two, we wanted to document communication to the  
19 board and the executive director so that way there's an  
20 expectation from the very get-go on what we should be  
21 communicating and when.

22 Three and four are together. We clarified the  
23 board's responsibilities related to internal audit  
24 documents and performance, and then we added the role of  
25 the Finance and Audit Committee related to performance,

1 governance, and risk management to clarify those roles.

2 And finally, the Internal Audit Charter was  
3 getting a little bit too big for me, so we decided to  
4 consolidate as much as possible and remove any extraneous  
5 language and kind of consolidate the information.

6 And so with that, I'm open to any questions you  
7 may have on the Internal Audit Charter.

8 MR. TREVIÑO: Does anyone have any comments for  
9 Ms. Menjivar-Suddeath on the Internal Audit Charter?

10 (No response.)

11 MR. TREVIÑO: Member Graham, any comments?

12 MR. GRAHAM: No. Just always appreciate the  
13 great work that Sandra and her team does, and they really  
14 want to continue to excel as a department, and they're a  
15 pleasure to work with. They make my head spin a lot  
16 because of the depth of these audits and what goes into  
17 them, but I appreciate their work.

18 MR. TREVIÑO: Hear, hear. Well said.

19 Any other comments?

20 (No response.)

21 MR. TREVIÑO: Great. So with that --

22 MS. GILLMAN: Mr. Chairman. I have a comment.  
23 This is Stacey.

24 MR. TREVIÑO: Yes, Member Gillman, jump on in.

25 MS. GILLMAN: I'm on the committee with Member

1 Graham, and I, too, want to echo the extensive work that  
2 Sandra does to try and identify risks to the department,  
3 and so the KPIs at 60 percent is disturbing, and what I  
4 know goes on behind the scenes and what needs to be  
5 stressed is that Sandra's department points out some --  
6 through her audit process she points out some potential  
7 problems and then hands it off to the divisions for  
8 improvement of the process, so it's a little bit  
9 concerning to me 85 percent of the -- I think she said 85  
10 percent -- I can't remember the words you used, Sandra.

11 MR. TREVIÑO: Found the recommendation to be  
12 useful?

13 MS. GILLMAN: Yeah, that recommendations were  
14 useful. It's kind of like when an auditor comes and  
15 points out ten things that are wrong, they only like 85 of  
16 them, 8.5 out of 10. But really, there needs to be --  
17 Sandra works so hard to point all these things out; it  
18 really is important for the division directors to embrace  
19 and resolve some of these issues so that they don't linger  
20 on Sandra's books for years and years and years.

21 So as a board member, I'd like to encourage all  
22 division directors, and of course, Whitney, our executive  
23 director, to help reduce Sandra's list.

24 MR. TREVIÑO: Great. Thank you for those  
25 comments, Member Gillman.

1 Ms. Brewster, any comments on that?

2 MS. BREWSTER: Executive Director Brewster.

3 Member Gillman, I do want to make sure that the  
4 board hears this directly from me. I think it is  
5 extremely important the work that Internal Audit does, and  
6 they are a valued partner within this department.

7 I would say Sandra and her team have done an  
8 excellent job when it comes to working with each of the  
9 divisions, when it comes to audit activities and  
10 engagements. They work regularly with management to make  
11 sure that they are addressing things that we as management  
12 see as issues within the department, and so they're  
13 extremely helpful in that aspect as well.

14 I don't want those scores to be reflective of  
15 what I believe is the overall culture of the organization,  
16 which is that by and large it is very accepting of  
17 Internal Audit and Internal Audit recommendations.

18 I think there may have been a couple of  
19 engagements with relatively low feedback scores that, like  
20 Sandra mentioned to me, may have amplified the results  
21 that you see there, but I do not want to leave the board  
22 with the impression that that is the overall thought  
23 process of the agency.

24 MR. TREVIÑO: Great. Thank you for clarifying  
25 that.

1 MS. BREWSTER: Thank you.

2 MR. TREVIÑO: Any other comments or questions  
3 for Ms. Menjivar-Suddeath or staff on this issue?

4 (No response.)

5 MR. TREVIÑO: Hearing none, the chair would  
6 call for a motion. I'm sorry? Go ahead.

7 MS. MENJIVAR-SUDDEATH: It was me. I was just  
8 going to echo what Ms. Brewster said. We work very well  
9 with management, and management does take our  
10 recommendations seriously and does act on them. Sometimes  
11 it takes longer to implement than anticipated.

12 I think that's something, you know, you always  
13 think the bosses are nosier than they should be, but we do  
14 work really well with management.

15 MR. TREVIÑO: Great. Thank you very much, and  
16 the board appreciates everything that you do, you do great  
17 work. And very innovative in your presentation materials  
18 and you are a valued member from the board's perspective  
19 for sure.

20 Okay. Any further comments?

21 (No response.)

22 MR. TREVIÑO: Hearing none, I would entertain a  
23 motion.

24 MR. GRAHAM: Mr. Chairman, I move the board  
25 approve the Internal Audit Charter as presented by the

1 Internal Audit director.

2 MR. TREVIÑO: Great. We've got a motion from  
3 Member Graham. Do we have a second?

4 MS. GILLMAN: Second.

5 MR. TREVIÑO: Member Gillman.

6 Okay. Any further discussion?

7 (No response.)

8 MR. TREVIÑO: Hearing none, I'll call for the  
9 vote.

10 Member Bacarisse?

11 MR. BACARISSE: Aye.

12 MR. TREVIÑO: Member Gillman?

13 MS. GILLMAN: Aye.

14 MR. TREVIÑO: Member Graham?

15 MR. GRAHAM: Aye.

16 MR. TREVIÑO: Member McRae?

17 MS. McRAE: Aye.

18 MR. TREVIÑO: Member Prewitt?

19 MR. PREWITT: Aye.

20 MR. TREVIÑO: Member Ramirez?

21 MR. RAMIREZ: 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. That motion carries unanimously.

3 Member Washburn, I believe you've got to drop  
4 off at 12:45, so feel free to drop off whenever you need  
5 to. Okay?

6 We will now move into agenda item number 15 and  
7 turn it over to Mr. Tom Shindell.

8 MR. SHINDELL: good afternoon, Chairman  
9 Treviño, Board members, Executive Director Brewster, and  
10 welcome, Member Ramirez.

11 For the record, my name is Tom Shindell, and  
12 I'm the Innovation and Strategy analyst for the  
13 department. I will be presenting agenda item 15, which is  
14 the amendment to the TxDMV balanced scorecard found on  
15 page 305 in your board books. This is an action item.

16 The department uses the balanced scorecard as  
17 part of an overall strategic management process. The  
18 scorecard is a strategic management tool comprised of  
19 several components, including a strategy map, objectives  
20 for each of four different perspectives in the scorecard,  
21 which includes learning and growth, internal process,  
22 customers, and stakeholders, and well as lead, which are  
23 actionable, and lag, which are after-the-fact measures for  
24 each objective.

25 The action being requested of you today is to

1 approve a measure for internal process one, its lead  
2 measure.

3 The objective being measured is all employees  
4 work with a sense of urgency. The actual lead measure  
5 description can be found on pages 306 and 307 in your  
6 board books. The measure being proposed is a roll-up  
7 measure of 33 separate key performance indicators into an  
8 overall measure reflecting the sense of urgency on the  
9 part of department staff.

10 I will pause here and ask if you have any  
11 questions about the proposed measure.

12 MR. TREVIÑO: Any questions for Mr. Shindell?

13 (No response.)

14 MR. TREVIÑO: Great. Mr. Shindell, go right  
15 ahead.

16 MR. SHINDELL: Okey-dokey.

17 The other action being requested is the  
18 authorization for me to the board for staff to be able to  
19 make periodic changes as needed to the scorecard and to  
20 provide periodic updates to the board. And I'll pause  
21 here if you have any questions.

22 MR. TREVIÑO: Great. Any questions for Mr.  
23 Shindell on those changes he's requesting?

24 (No response.)

25 MR. TREVIÑO: If not, then the chair would

1 entertain a motion.

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

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

6 MS. McRAE: I would like to move to amend the  
7 TxDMV balanced scorecard as proposed by TxDMV staff. I'll  
8 also move to authorize the executive director or the  
9 executive director's designee to approve changes to the  
10 TxDMV balanced scorecard as needed, with periodic updates  
11 to the board.

12 MR. TREVIÑO: All right. We've got a motion  
13 from Member McRae. Do we have a second?

14 MR. PREWITT: I second.

15 MR. TREVIÑO: Member Prewitt.

16 Okay. Any further discussion?

17 (No response.)

18 MR. TREVIÑO: Hearing none, I'll call for the  
19 vote.

20 Member Bacarisse?

21 MR. BACARISSE: Aye.

22 MR. TREVIÑO: Member Gillman?

23 MS. GILLMAN: Aye.

24 MR. TREVIÑO: Member Graham?

25 MR. GRAHAM: Aye.

1 MR. TREVIÑO: Member McRae?

2 MS. McRAE: Aye.

3 MR. TREVIÑO: Member Prewitt?

4 MR. PREWITT: Aye.

5 MR. TREVIÑO: Member Ramirez?

6 MR. RAMIREZ: Aye.

7 MR. TREVIÑO: Member Scott?

8 MR. SCOTT: Aye.

9 MR. TREVIÑO: Member Washburn?

10 MS. WASHBURN: Aye.

11 MR. TREVIÑO: Great. And I, Chairman Treviño,  
12 also vote aye. Let the record reflect that the motion  
13 carries unanimously.

14 Thank you very much, Mr. Shindell, for that  
15 report. Go right ahead.

16 MR. SHINDELL: I was just saying thank you very  
17 much.

18 MR. TREVIÑO: Yes, sir.

19 Okay. We're now moving to agenda item number  
20 16. Transportation Code Section 1001.023 requires the  
21 board chair to designate at least one employee of the  
22 department as a civil rights officer of the department and  
23 receive regular reports from the officer or officers on  
24 the department's efforts to comply with civil rights  
25 legislation and administrative rules.

1           Civil rights officers are appointed by the  
2 chair of the board and oversee the Equal Employment  
3 Opportunity, EEO, process for the department as required  
4 by Transportation Code 1001 to help ensure compliance with  
5 civil rights laws and policies. Therefore, I am  
6 appointing our ombudsman Leah Leone as civil rights  
7 officer.

8           I'd like to say thank you to David Richards for  
9 his work as interim civil rights officer. Thank you very  
10 much, Mr. Richards, on behalf of the board. You've done  
11 an amazing job, and everybody is very proud of what you  
12 accomplished. We appreciate your hard work and service to  
13 the department and look forward to your continued work in  
14 the Office of General Counsel.

15           Ms. Leone, are you online?

16           MS. LEONE: Yes, Mr. Chairman, I'm here.

17           MR. TREVIÑO: Wonderful. Would you like to say  
18 a few words?

19           MS. LEONE: I would like to thank my colleague  
20 Mr. Richards for all of his sharing and giving me his  
21 notes and understanding of his position as he's been  
22 acting in the interim position as the civil rights  
23 officer.

24           MR. TREVIÑO: Well, said, well said,

25           And thank you very much and we look forward to

1 working with you, and please let us know how we can be  
2 supportive in your mission. I know I speak for the board  
3 when we say we take these issues very seriously. We're  
4 very glad that you're on watch.

5 MS. LEONE: As am I. Thank you. I quite take  
6 them seriously as well, and I look forward to working with  
7 you and the board not his as well.

8 MR. TREVIÑO: Great. Look forward to hearing  
9 from you soon.

10 Okay. We'll now take up agenda item number 17.

11 For those of you in the audience, this is executive  
12 session, I anticipate being in executive session for  
13 approximately an hour and we will reconvene in open  
14 session after that. We will go into closed session under  
15 Texas Government Code Section 551.071, 551.074, 551.076 or  
16 551.089.

17 Will the meeting host please move all  
18 panelists, except the board members and those needing to  
19 be in closed session, to attendees. It is now  
20 approximately 12:40 on December 10, 2020, and we're going  
21 into closed session.

22 (Whereupon, at 12:40 p.m., the meeting was  
23 recessed, to reconvene this same day, Thursday, December  
24 10, 2020, following conclusion of the executive session.)

25 MR. TREVIÑO: It's approximately 1:00 p.m. and

1 the board of the Texas DMV is now back in open session. I  
2 ask that the meeting host move Tracey Beaver as panelist.

3 MEETING HOST: Who do you need as panelist?

4 MR. TREVIÑO: General Counsel Beaver. Let me  
5 know when that's done.

6 MEETING HOST: Okay. She's back.

7 MR. TREVIÑO: She's back, General Counsel  
8 Beaver is back. Great. Are you there, Tracey? Can't see  
9 or hear you.

10 MS. BEAVER: Tracey Beaver, general counsel,  
11 for the record. I'm moved to panelist, but it does sound  
12 like there's a little bit of feedback.

13 MR. TREVIÑO: Okay. Could board members mute  
14 their mics until we get through the last couple of things  
15 here? Will board members and panelists please turn on  
16 your video and unmute your lines and then mute them back.

17 So we just had a closed session on agenda item  
18 18. The chair would entertain a motion for that.

19 MR. BACARISSE: Mr. Chairman?

20 MR. TREVIÑO: Yes.

21 MR. BACARISSE: I would like to make a motion.  
22 First of all, Mr. Chairman, do you need to do the regular  
23 announcement that we're back in session, and blah-blah to  
24 open session. Did you go over all of that?

25 MR. TREVIÑO: I think I did. I said it's

1 approximately 1:00 p.m., the board is now back in open  
2 session and asked the meeting host to move Tracey Beaver  
3 as panelist. We've got Tracey back, we've got you back.

4 MR. BACARISSE: Great. So I'd like to move  
5 that the board approve the performance plan of the  
6 executive director, as we discussed in the closed session.

7 MR. TREVIÑO: I've got a motion from Member  
8 Bacarisse. Do we have a second?

9 MR. PREWITT: Second.

10 MR. TREVIÑO: Member Prewitt.

11 Any further discussion?

12 (No response.)

13 MR. TREVIÑO: Hearing none, I'd call for the  
14 vote.

15 Member Bacarisse?

16 MR. BACARISSE: Aye.

17 MR. TREVIÑO: Member Gillman?

18 MS. GILLMAN: Aye.

19 MR. TREVIÑO: Member Graham?

20 MR. GRAHAM: Aye.

21 MR. TREVIÑO: Member McRae?

22 MS. McRAE: Aye.

23 MR. TREVIÑO: Member Prewitt?

24 MR. PREWITT: Aye.

25 MR. TREVIÑO: Member Ramirez?



1 MR. RAMIREZ: Aye.

2 MR. TREVIÑO: Member Scott?

3 MR. SCOTT: Aye.

4 MR. TREVIÑO: And Member Washburn has dropped  
5 off, and I, Chairman Treviño, vote aye. Let the record  
6 reflect that the motion carries unanimously, with the  
7 exception of Member Washburn, who was not present.

8 And before we move to agenda item number 19,  
9 General Counsel Beaver, can you give us an update on the  
10 person who came last time and had some concerns with a  
11 moving company? Is that possible even though it's not on  
12 the agenda.

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

15 I'd be happy to update the board as we get more  
16 information on that, but that's not posted on the agenda  
17 today, so I would ask that we postpone that to a later  
18 time.

19 MR. TREVIÑO: Great, but if you could, if any  
20 member of the public comes with a question in regards to  
21 whether we have an answer or not, really would appreciate  
22 to give something that we're working on it or something  
23 like that. I know you're working hard, and I appreciate  
24 your hard work, but if you can, I just think it would be a  
25 good process.

1 MS. BEAVER: Absolutely. Happy to do so.

2 MR. TREVIÑO: Thank you very much.

3 So we'll move on to agenda item 19. Are there  
4 any more commenters out there, or have we exhausted our  
5 commenters?

6 MS. BEAVER: We did have one person who  
7 registered to comment earlier on a general item, and her  
8 name was Katherine Warren. I don't see her logged in, but  
9 we have a couple of call-in users, so if you'd like Ms.  
10 Warren to have an opportunity to raise her hand in case  
11 she did call in, now would be the time.

12 MR. TREVIÑO: We would absolutely like to hear  
13 from Ms. Warren. We absolutely like to hear from the  
14 public, it's their right. So anybody out there like to  
15 raise their hand for public comment?

16 MS. BEAVER: No attendees have raised their  
17 hand for public comment, so we will touch base with Ms.  
18 Warren after the meeting as well to make sure any of her  
19 issues are addressed and follow up with the board at the  
20 next board meeting. Thank you.

21 MR. TREVIÑO: Terrific.

22 Okay. So then we will move to agenda item  
23 number 20. Are we good there, General Counsel?

24 MS. BEAVER: Yes, that's it for the public  
25 comment period.

1 MR. TREVIÑO: Great. Unless there's any  
2 further business, I would like to entertain a motion to  
3 adjourn

4 MR. RAMIREZ: Motion.

5 MR. TREVIÑO: Member Ramirez, thank you very  
6 much.

7 And is there a second?

8 MR. BACARISSE: Second. Bacarisse.

9 MR. TREVIÑO: Member Bacarisse.

10 Great. Okay. So call for the vote.

11 Member Bacarisse?

12 MR. BACARISSE: Aye.

13 MR. TREVIÑO: Member Gillman?

14 MS. GILLMAN: Aye.

15 Do we really need to take a vote on  
16 adjournment?

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

19 Yes, sir.

20 MR. TREVIÑO: Okay. 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 Ramirez?

2 MR. RAMIREZ: Aye.

3 MR. TREVIÑO: Member Scott?

4 MR. SCOTT: Aye.

5 MR. TREVIÑO: And Board Member Washburn has  
6 dropped off, and let the record reflect that I, Chairman  
7 Treviño, also vote aye.

8 Let the record reflect the vote is unanimous,  
9 and it is now approximately 1:05 p.m., and this meeting is  
10 adjourned. Thank you very much for everybody's hard work  
11 and patience.

12 (Whereupon, at 1:05 p.m., the meeting was  
13 adjourned.)

14

C E R T I F I C A T E

1  
2  
3 MEETING OF: TxDMV Board  
4 LOCATION: Austin, Texas  
5 DATE: December 10, 2020

6 I do hereby certify that the foregoing pages,  
7 numbers 1 through 197, inclusive, are the true, accurate,  
8 and complete transcript prepared from the verbal recording  
9 made by electronic recording by Nancy H. King before the  
10 Texas Department of Motor Vehicles.

11 DATE: December 23, 2020  
12  
13  
14  
15  
16

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

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