

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

9:11 a.m.
Thursday,
December 9, 2010

John H. Reagan Building
105 West 15th Street
Room 120
Austin, Texas

BOARD MEMBERS:

Victor Vandergriff, Chair
Cheryl E. Johnson, Vice Chair
Cliff Butler
Jim Campbell
Ramsay Gillman
Victor Rodriguez
Marvin Rush
Laura Ryan
Johnny Walker

STAFF MEMBERS:

Ed Serna, Executive Director
Brett Bray, General Counsel

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P R O C E E D I N G S

1
2 MR. VANDERGRIFF: Good morning. I apologize
3 for starting a few minutes late today. Our first item of
4 business is to have a roll call and the establishment of a
5 quorum.

6 Board Member Walker?

7 MR. WALKER: Present.

8 MR. VANDERGRIFF: Board Member Gillman?

9 MR. GILLMAN: Present.

10 MR. VANDERGRIFF: Vice Chair Johnson?

11 MS. JOHNSON: Here.

12 MR. VANDERGRIFF: Board Member Campbell?

13 MR. CAMPBELL: Present.

14 MR. VANDERGRIFF: Board Member Butler?

15 MR. BUTLER: Here.

16 MR. VANDERGRIFF: Board Member Ryan?

17 MS. RYAN: Here.

18 MR. VANDERGRIFF: And Board Member Rodriguez?

19 MR. RODRIGUEZ: Here.

20 MR. VANDERGRIFF: And we do have a quorum at
21 today's meeting.

22 The next item is to see if there's anyone in
23 the public that wishes to speak in general. We do not
24 have any cards for that.

25 So we'll move right into our consent agenda,

1 and we have Bill Harbeson up on that.

2 MR. HARBESON: May I proceed?

3 MR. VANDERGRIFF: Yes.

4 MR. HARBESON: Good morning. My name is Bill
5 Harbeson. I'm the director of the Enforcement Division of
6 the Texas Department of Motor Vehicles.

7 This is the consent agenda. This morning's
8 agenda has 44 enforcement agreed orders, three notice of
9 violation agreed orders, two cases where the staff is
10 requesting to dismiss the case, one Lemon Law motion for
11 dismissal, and two cases from franchise cases where
12 there's a request for a dismissal.

13 The Board has been provided the information on
14 these. I can provide some more information if you need
15 it. The staff today is requesting that you adopt these
16 agreements and dismissals.

17 MR. RODRIGUEZ: Mr. Chairman.

18 MR. VANDERGRIFF: We have a question from Mr.
19 Rodriguez first.

20 MR. RODRIGUEZ: I so move. And by the way, A
21 has items 1 through 44, B has items 1 through 3, item C
22 has 1 and 2, D has 1 through 9, and E has items 1 and 2,
23 and I move that we approve the consent agenda.

24 MR. BUTLER: Second.

25 MR. VANDERGRIFF: We have a second from Mr.

1 Butler. Any discussion?

2 (No response.)

3 MR. VANDERGRIFF: Seeing none, I'd ask you to
4 raise your right hand in support of the motion, please.

5 (A show of hands.)

6 MR. VANDERGRIFF: The motion carries
7 unanimously.

8 Thank you, Bill. You are still up because
9 we're on item 3.A, and that's the adoption of some rules
10 under Title 43.

11 MR. HARBESON: Yes, sir.

12 The staff was presented in October with a
13 proposal for a new rule -- for a rule change, actually, in
14 the area of the rules that deal with the motor carrier
15 industry. This is Rule 218.71 of Title 43. The request
16 dealt with the rule because the rule, as written, when
17 compared to the statute was not consistent with what the
18 statute said. It had varied in several areas which made
19 enforcement not only difficult but really unpredictable by
20 whoever is going to be handling the case.

21 So the staff, taking the recommendations of the
22 Texas Motor Transportation Association, worked with them
23 to come up with a change to the rule which we believe more
24 closely followed the legislature's intent in the statute.

25 I believe one of the items that you have in

1 your package is a chart that sort of tracks where we
2 started, that being Transportation Code 643.251, the rule
3 as it exists and then the rules as proposed. And what we
4 have done is taken the statute and tried to clarify it and
5 then actually follow the statute.

6 The proposed rule was published and today's
7 item before the Board is for actually a vote on whether or
8 not the new rule should be adopted. It's the staff's
9 position that what we have done here is actually follow
10 the statute and make it clearer for both those who are
11 regulating the industry and those being regulated in the
12 industry to understand how the rule works in a particular
13 disciplinary case.

14 MR. RODRIGUEZ: Move we adopt, Mr. Chairman.

15 MS. JOHNSON: Second that motion.

16 MR. VANDERGRIFF: We have a motion by Mr.
17 Rodriguez and a second by Ms. Johnson. Do we have any
18 discussion?

19 MR. WALKER: I have a question. I'm still a
20 little bit confused about how this will affect the motor
21 carrier industry when you have a rule at TxDOT that's
22 contradictory to the rule we're proposing at DMV because
23 you'll have two different sets of rules. What rule will
24 the industry have to follow?

25 MR. HARBESON: Well, there's actually not a

1 TxDOT rule. What it is in the TxDOT side of the
2 regulation of the industry, it's a reference back to the
3 DMV side of the regulation of the industry. I hope that
4 explains it, but the rule that we pass today will be the
5 rule that controls their disciplinary actions because it's
6 the controlling rule for this industry.

7 MR. WALKER: So our rules will control the
8 actions of TxDOT in how they enforce the stuff.

9 MR. HARBESON: Yes, sir. It's an interesting
10 situation, but their statute says the rule passed, the
11 rule as it applies to 643.251 will be the rule to be
12 applied to those cases that are being currently regulated
13 by TxDOT Motor Carrier.

14 MR. WALKER: And this same rule request was
15 also sent to TxDOT. Did TxDOT ever respond to that?

16 MR. HARBESON: I was told -- I'm not sure,
17 actually, sir.

18 MR. RODRIGUEZ: But you've got only one
19 comment, right, filed?

20 MR. HARBESON: There were two comments filed,
21 by the Movers Association and by the --

22 MR. RODRIGUEZ: Southwest Movers and Texas
23 Motor Transportation.

24 MR. HARBESON: Southwest Movers, yes, sir.
25 Those were the only two comments on the rule. Both were

1 favorable and recommending passage of the rule.

2 MR. WALKER: I don't doubt that it's good to do
3 it, but I just want to make sure that what we do is
4 applicable, because the enforcement actions are being
5 taken place over at TxDOT. Is that not correct?

6 MR. HARBESON: That's, I believe, what
7 precipitated a look at the rule as to how it was being
8 applied. Yes, sir.

9 MR. WALKER: Okay. Thank you.

10 MR. VANDERGRIFF: I don't see any further
11 questions so I'd call for your vote. Please raise your
12 right hand in support of the motion.

13 (A show of hands.)

14 MR. VANDERGRIFF: The motion carries
15 unanimately.

16 Thank you, Bill.

17 MR. HARBESON: Thank you, sir.

18 MR. VANDERGRIFF: Our next item is also
19 proposed rules under Title 43 from Vehicle Titles and
20 Registration.

21 MR. ELLISTON: Good morning, Mr. Chairman,
22 members. For the record, my name is Randy Elliston. I'm
23 the director of the Vehicle Titles and Registration
24 Division.

25 The Texas Department of Motor Vehicles proposes

1 amendments to Chapter 217 concerning vehicle titles and
2 registration. Amendments to 217.28 update the
3 registration language. Previously the department embossed
4 some of the specialty license plates with expiration dates
5 of the registration. These plates no longer contain this
6 feature but will have a registration sticker instead.
7 Other amendments change the wording to include some of the
8 listed license plates, such as the State Official plates,
9 that will not have a renewal specialty plate fee.

10 Amendments to this section also clarify that if
11 a motor vehicle or its license plates are stolen, the same
12 alphanumeric sequence plate will not be replaced until the
13 plate or the motor vehicle is recovered. This will
14 prevent duplicate plates and the possibility of an
15 innocent person being pulled over by law enforcement by
16 mistake.

17 Also, amendments to 217.62 clarify the
18 applicability of owner-retained vehicles to vehicles that
19 were titled in Texas. The Transportation Code requires an
20 insurance company or a self-insured person to submit a
21 report to the department stating that the motor vehicle
22 was damaged if the owner is going to retain possession of
23 the vehicle. For example, if a Maine-titled vehicle is
24 damaged, then the owner must obtain a title in accordance
25 with Maine law. This would probably be some type of

1 salvage title. The Maine residents cannot bring a damaged
2 motor vehicle to Texas to try to get a title based on an
3 undamaged Maine title. This amendment would prevent
4 confusion and promote the correlation of the appropriate
5 type of title between the two states.

6 We recommend that the proposed rules be
7 approved for posting.

8 MR. VANDERGRIFF: Any questions?

9 MR. RODRIGUEZ: So moved, Mr. Chairman.

10 MR. VANDERGRIFF: We have a motion from Mr.
11 Rodriguez to approve. Do we have a second?

12 MR. BUTLER: Second.

13 MR. VANDERGRIFF: Second from Mr. Butler. All
14 right. All those in favor please raise your right hand in
15 support of the motion.

16 (A show of hands.)

17 MR. VANDERGRIFF: The motion carries
18 unanimously.

19 Our next item of business is the consideration
20 of warranty performance proposals for decision under the
21 Occupations Code.

22 MR. GILLMAN: All right. So you've got a
23 Cowboys license plate. I know this is done.

24 MR. VANDERGRIFF: Yes. Okay. Go ahead.
25 Randy, we may need you back even though we've voted on

1 this.

2 MR. GILLMAN: Well, he was asking a question
3 and I didn't have the answer, I just thought it was a good
4 question.

5 MR. VANDERGRIFF: Okay.

6 MR. WALKER: Randy, you know, we've got a
7 license plate that says Cowboys fixing to come out of the
8 millwork that could be a valuable license plate to the
9 State of Texas.

10 MR. ELLISTON: Yes, sir.

11 MR. WALKER: If I were to steal that license
12 plate off that car and go bury it in my backyard, can that
13 license plate never, ever be used again until it is
14 recovered?

15 MR. ELLISTON: As long as that license plate is
16 still listed in a law enforcement data base and is stolen,
17 it would not be able to be reissued.

18 MR. WALKER: Ever.

19 MR. ELLISTON: Ever. Now, there is a process
20 for stolen vehicles and items like that to be purged from
21 those systems. Typically those are reviewed at least on a
22 five-year basis.

23 MR. WALKER: So there is a potential or
24 capability that five years down the road somebody could
25 reevaluate the Cowboys license plate and regenerate it and

1 re-put it back into the system?

2 MR. ELLISTON: That's correct, or the law
3 enforcement agency that enters it, if the situation was
4 resolved, the owner says I no longer want that in there,
5 there is a possibility that could be removed and they
6 could get the license plate back at that point.

7 MR. WALKER: So in theory, the Aggies could
8 sneak over to the guy that owns the Hook-Em license plate,
9 bury it, and it could never be used again.

10 MR. ELLISTON: That's correct.

11 MR. VANDERGRIFF: I'm not sure that's a theory
12 if you're the one raising the question.

13 MR. ELLISTON: As long as it is reported stolen
14 to law enforcement.

15 MR. GILLMAN: If it's missing, you're going to
16 be the number one suspect.

17 (General laughter.)

18 MR. RODRIGUEZ: Just a point. The license
19 plate theft does not necessarily translate to a motor
20 vehicle theft, number one.

21 MR. ELLISTON: That's correct.

22 MR. RODRIGUEZ: So there's a distinction. And
23 all we're doing at this point in time anyway is just
24 posting the rule, and if we want to make some changes, we
25 can make some changes to fix that is what I was going to

1 say.

2 MR. VANDERGRIFF: You didn't pass the rule,
3 you're just pushing it on for publication.

4 MR. RODRIGUEZ: But I see the point. I want to
5 warn all of the Aggies -- I mean I want to warn the Hook-
6 Ems what is it we're going to do.

7 (General talking and laughter.)

8 MR. RODRIGUEZ: But it shouldn't be the case
9 because it's real easy, but I see the point. All I'm
10 saying right now is all we're doing is posting.

11 MR. WALKER: We're just posting, we're not
12 voting on the rule.

13 MR. VANDERGRIFF: Right.

14 MR. HARBESON: Today we have one case on
15 warranty performance before the Board. The staff is
16 asking for this case to be passed. Yesterday the
17 petitioner in this case notified staff that they had
18 reached an agreement with the manufacturer and did not
19 want to continue on with the case. So what will happen
20 today if we pass the case is that the next time the Board
21 meets we'll be presenting you a case to actually dismiss
22 the case upon agreement of the parties.

23 So the staff is asking today that this matter
24 be passed.

25 MR. GILLMAN: No action.

1 MR. VANDERGRIFF: No. You just make a motion
2 to continue this to the next meeting.

3 MR. GILLMAN: So moved.

4 MR. VANDERGRIFF: Motion from Director Gillman.

5 MR. WALKER: Second.

6 MR. VANDERGRIFF: A second from Mr. Walker.

7 All those in favor please raise your right hand in support
8 of the motion.

9 (A show of hands.)

10 MR. VANDERGRIFF: The motion carries
11 unanimately. Thank you. We'll pass it till the next
12 meeting.

13 And Bill, do we have consideration of
14 enforcement motions for disposition?

15 MR. HARBESON: We do indeed.

16 The staff has before the Board 14 cases that
17 are essentially default cases where a case was initiated,
18 set for hearing, the respondent did not appear at the
19 hearing, and the case is now back before the Board for a
20 final order and issuance of a final order. We are asking
21 that DMV Docket Number 10-0231 be passed today as staff
22 reached an agreement and settled the case with the
23 respondent and that case will come before you at the
24 consent agenda of the next meeting.

25 So the other 13 cases, we are asking that they

1 be approved and a final order be issued.

2 MR. RODRIGUEZ: So you're asking for items --
3 which one to be excluded from the list?

4 MR. HARBESON: It will be 10-0231.

5 MR. RODRIGUEZ: On the list it's which one?

6 MR. VANDERGRIFF: Number 2.

7 MR. WALKER: I make a motion that we pass on
8 number 2 and go forward with the other 13.

9 MR. RODRIGUEZ: D.1 and then D.2 through 14.

10 MR. WALKER: Yes.

11 MR. RODRIGUEZ: Second.

12 MR. VANDERGRIFF: We have a motion from Mr.
13 Walker and we have a second from Mr. Rodriguez. A motion
14 and a second. Any discussion on them?

15 MR. BRAY: When Mr. Walker says go forward, I
16 think he means approve?

17 MR. VANDERGRIFF: Yes.

18 MR. WALKER: Approve 1 through 14 with the
19 exception of 2 and pass on number 2.

20 MR. VANDERGRIFF: And Mr. Rodriguez has
21 seconded that motion, so any further discussion on it?

22 (No response.)

23 MR. VANDERGRIFF: Seeing none, I'd ask you to
24 raise your right hand in support of the motion.

25 (A show of hands.)

1 MR. VANDERGRIFF: The motion carries
2 unanimately with, again, number 2 being passed on that
3 list.

4 We are now all the way into action item 4.A,
5 which is the approval of specialty license plate designs.

6 MR. ELLISTON: Again for the record, my name is
7 Randy Elliston. I'm the director of Vehicle Titles and
8 Registration Division.

9 The state's specialty plate vendor is
10 requesting approval of specialty plate designs that are
11 included in your briefing book. The university plates are
12 currently in the department plates program and are being
13 moved into the vendor program.

14 The license plates for Stephen F. Austin State
15 University, Texas Christian University, Texas State
16 University and the University of Texas at Arlington are
17 new designs. These plate designs have been published on
18 the department's website for comment. Those comments are
19 also included in your book. In addition, the plates have
20 passed the legibility and reflectivity testing and the
21 Board has the authority to approve or disapprove the
22 specialty license plates in accordance with the department
23 rule.

24 One issue came up earlier regarding some of
25 these license plates other than the ones I specifically

1 mentioned are crossovers. This is the first time I think
2 we've had crossovers come to the board. These plates are
3 not new designs, they're just actually just crossovers
4 from our program to the other, so we'd also like some
5 direction from the Board do you want to see these. I
6 don't think they require your approval, they're the exact
7 same design, and the only thing if you choose not to see
8 these, we would only in the future bring you ones that
9 would be new designs. So we'd like to have some direction
10 on that also.

11 MR. VANDERGRIFF: I think that's probably a
12 discussion item, Board. What's your pleasure on that last
13 request from Mr. Elliston? Do you want to see the
14 crossover designs?

15 MR. WALKER: They're already approved designs.
16 I see no reason why we need to recreate them and bring
17 them into this meeting. All we need to do is approve that
18 they be crossed over, and I believe that it's required
19 that we vote to do a crossover? I'm not real sure that we
20 even need to vote on that.

21 MR. ELLISTON: I don't think that that's
22 required. This was the first time, so just so everybody
23 had visibility that we had crossovers going we brought
24 those to you today. In the future I do not believe it's
25 required that you actually vote on these to be crossed

1 over because it's part of the contract.

2 MR. VANDERGRIFF: The Board had expressed
3 significant interest in wanting to see all the license
4 plate designs, so I think in an abundance of prudence, the
5 department wanted to make sure that we saw these coming.

6 MR. RODRIGUEZ: Two questions, Mr. Chairman.

7 MR. VANDERGRIFF: Sure.

8 MR. RODRIGUEZ: Number one, do we have a choice
9 whether or not the crossover happens, number one? And
10 number two, crossover means going from the previous
11 issuing process to the private vendor process now. Is
12 that not right?

13 MR. ELLISTON: That's correct. The crossover
14 merely takes it out of our program, what we were currently
15 doing, and moves it over to the vendor program.

16 MR. RODRIGUEZ: And by virtue of crossing over
17 that way, the old funding requirements of certain
18 scholarships and things like that is left behind if we let
19 them crossover. So my first question is do we have a
20 choice in whether or not they cross over.

21 MR. ELLISTON: I don't think we have a choice
22 in whether or not they cross over. Again, as long as
23 there's not a design issue, any time they do a new design
24 it obviously has to come back to the Board for approval.
25 As far as the funding mechanism or where the money goes,

1 that's already set out in the contract how that works so I
2 don't think there's any impact there.

3 MR. RODRIGUEZ: So again, just to be clear,
4 when Texas let My Plates have its contract, we gave them
5 everything. Brett, I'm just wondering.

6 MR. WALKER: The legislature did.

7 MR. RODRIGUEZ: Right. That's what I mean by
8 Texas.

9 MR. BRAY: I'm not as certain as Mr. Elliston
10 that you don't have a choice. And Jennifer, maybe you
11 should come up. And she can correct me if I'm wrong
12 because she's the most familiar with that statutory
13 language.

14 But there is one little piece that talks about
15 the Board. It's very vague but just generally sort of a
16 public interest standard of approving plates that go to My
17 Plates. And I'm just thinking out loud that the Board
18 might have an interest in sort of the things you were
19 referencing in the beginning that those might be issues,
20 might not be, but I'm having some anxiety about the Board
21 giving up its authority, if it has authority.

22 MS. SOLDANO: Well, the way the rules are
23 written really goes to the design, but I just wanted to
24 clear up one thing. Under the statute, actually when they
25 cross over -- these are the collegiate plates we're

1 talking about as far as scholarships -- the statute
2 actually has the funding changes a little bit as far as
3 who it goes to but the funding still goes -- let's say
4 Texas State is crossing over, that funding still goes to
5 Texas State, and under the statute it's supposed to be
6 used for the same purposes.

7 Now, of course, we don't know what happens once
8 it hits the university and all that, but actually the
9 purpose of the plate should continue, once it goes to the
10 vendors, to be used for the scholarships still.

11 MR. RODRIGUEZ: Are we comfortable with this or
12 do we want to just put this off until we get better
13 answers on this? I'm just wondering.

14 MR. VANDERGRIFF: Well, I think at this point
15 since we've had kind of a little bit of a murky answer
16 then I probably would put this off at this point in time.

17 MR. RODRIGUEZ: So moved, Mr. Chairman.

18 MR. VANDERGRIFF: So at this point we'll go
19 ahead and continue to just see them, I guess, coming up,
20 but we'll revisit the question.

21 MR. BRAY: I'm afraid I'm being the cause of
22 the murky answer and putting it off, and I don't want to
23 impede progress, if you will. Perhaps you could just
24 approve them this time, unless, of course, you have some
25 issue, and then we can determine in a more timely fashion

1 or given some time if you even need to approve them.

2 MR. VANDERGRIFF: That's exactly what I was
3 going to suggest. We were really still on the discussion
4 about whether or not we want to see them again in the
5 future, and I was just concluding, based on the
6 conversations that pending further disussion from you
7 that's exactly what we should do. But now we should take
8 up these particular designs.

9 MR. WALKER: What is the issue? Are we talking
10 about whether or not we're going to see them or whether or
11 not we're going to approve them?

12 MR. RODRIGUEZ: That's not the question I'm
13 raising. I'm raising the question do we have a choice --
14 the only question I have is do we have a choice at all
15 whether or not we allow crossovers to happen. If we
16 don't, then this is all moot. Okay? The reason I'm
17 concerned about that is because when it crosses over then
18 some of the scholarship things we talked about in the past
19 go with it and no longer are bound by law like they
20 currently are. And these are significant, some of these
21 are some significant schools up here.

22 So that's why I'm concerned about whether or
23 not if we have the choice that we make that decision based
24 with this knowledge, number one. If we don't have the
25 decision to make, then it's a moot point

1 MR. WALKER: Well, let's just take Texas A&M,
2 since it's dear to my heart. The legislature set up, I
3 believe, Jennifer, that license plate originally to fund
4 scholarship programs at Texas A&M University. True?

5 MS. SOLDANO: True.

6 MR. WALKER: And when they set that up, I don't
7 know that there's ever been any accountability, and we
8 could probably pick up the telephone and call Texas A&M
9 and say where did that money go, how did it get used and
10 so forth. I don't know whether we can or not but I assume
11 we could

12 MR. RODRIGUEZ: They could be audited. Right.

13 MR. WALKER: And so when they cross over
14 there's been a question as to let's say I have that Texas
15 A&M license plate on my wife's car and I paid \$30 for it
16 and out of that the plate sold for \$10.50, I think it is,
17 or \$11, it's close to that -- or \$30 is what the plate
18 sells for, the State gets \$10 and the Texas A&M
19 scholarship program got \$20.

20 MR. RODRIGUEZ: When it crosses over it goes to
21 the school, not necessarily the scholarship program.

22 MR. WALKER The original plate that the State
23 has right now, the \$20 --

24 MR. RODRIGUEZ: In the current form, yes.

25 MR. WALKER: In its current form the \$20 would

1 have gone to the Texas A&M scholarship program, I assume,
2 and I don't know anything about where the money goes at
3 A&M. But now when the plate crosses over, it is my
4 understanding that the plate fee will now change to, I
5 believe, it can still be at \$30 at one level but it also
6 has a \$95 level also, and then the cut now can be the My
7 Plates people will get \$10 and Texas A&M may get \$50 of
8 that money. And we may have an answer coming in right
9 here.

10 MR. FARRAR: Mr. Walker, how are you?

11 MR. WALKER: I'm doing wonderful.

12 Can you explain to us -- can you come forward,
13 Steve. Steve Farrar, you all know Steve.

14 Steve, on the crossover plates when we cross
15 these plates over, the Texas A&M plate, the specialty
16 plate is a \$30 plate today. Right?

17 MR. FARRAR: Correct.

18 MR. WALKER: And it is still going to stay a
19 \$30 plate or is it going to be increased?

20 MR. FARRAR: The people that have an existing
21 Texas A&M plate will be grandfathered.

22 MR. WALKER: Ramsay doesn't have a Texas A&M
23 plate and he wants to get one.

24 MR. GILLMAN: I'm not going to get one.

25 (General laughter.)

1 MR. FARRAR: If Ramsay would like to get one
2 now then he can certainly get one, and certainly prior to
3 the date that that plate crosses over.

4 MR. WALKER: Let's go to the crossover time.
5 Now it's crossed over. What is the fee on the plate going
6 to be?

7 MR. FARRAR: The plate fee will be \$55 a year,
8 it will be in line with all the My Plates fees.

9 MR. WALKER: So it does increase.

10 MR. FARRAR: It does increase, but what also
11 increases is the royalty amount going back to the
12 scholarship fund for Texas A&M.

13 MR. WALKER: It's my understanding we really
14 don't know where the money goes, it just goes back to
15 Texas A&M. It's not dedicated in your contract, is it?

16 MR. FARRAR: Well, Texas A&M has already
17 indicated it will be going to scholarships.

18 MR. WALKER: If Texas A&M didn't designate
19 that, could they use that money to build a new engineering
20 building at A&M?

21 MS. SOLDANO: Can I answer that?

22 MR. WALKER: Yes.

23 MS. SOLDANO: Okay. I'm just going to read
24 straight from the statute that when it crosses over the
25 money is deposited to the credit the account designated by

1 the law authorizing the specialty license plate. So it
2 goes back to the original.

3 MR. WALKER: So it has to go into scholarships.

4 MS. SOLDANO: Right.

5 MR. WALKER: That kind of answers our question,
6 I think, that the money is going to stay in the
7 scholarship fund.

8 MR. RODRIGUEZ: I just want to make sure we're
9 clear on this. Brett? I'm still not comfortable with it.

10 MR. BRAY: The original question is do we have
11 a choice, and I still am a little --

12 MR. VANDERGRIFF: And we'll bring that back to
13 the Board.

14 MR. BRAY: If nothing else, I think as a
15 formality for now, you ought to take them up.

16 MR. VANDERGRIFF: Jim.

17 MR. CAMPBELL: And Mr. Chairman, I think we
18 need to vote on these nine items right here and then
19 separate the two and bring it back up at the next meeting,
20 so I'd make a motion to approve these nine items.

21 MR. VANDERGRIFF: We have a motion. Do we have
22 a second?

23 MR. GILLMAN: I'll second.

24 MR. VANDERGRIFF: Second from Mr. Gillman.

25 Any discussion on the nine plates themselves?

1 MS. JOHNSON: I just have a question.

2 MR. VANDERGRIFF: Sure.

3 MS. JOHNSON: I have a general question. If
4 you go to page 7 of 7 there was a comment. When citizens
5 provide comments or questions and they're specific, and in
6 this case it was a senior citizen asking if these are
7 available as handicap plates, does anybody respond to a
8 pertinent question? If somebody says who would want to
9 buy this plate, I can see where that doesn't necessarily
10 necessitate a response, but I just wanted to know that
11 somebody is addressing the questions of the citizens.

12 MR. SERNA: Yes, ma'am.

13 MS. JOHNSON: And they are.

14 MR. SERNA: If it's a specific question like
15 that.

16 MS. JOHNSON: Okay. Thank you.

17 MR. FARRAR: And just for the record, all of
18 the plates in the My Plates program are ISA.

19 MS. RYAN: One question just for clarification.
20 Under staff comments on page 4, several of the license
21 plates are under six-month agreements and it looks like
22 those agreements expire the end of this month, December
23 30.

24 MR. FARRAR: We've already had the addendum
25 come through, it's been signed by both parties now through

1 CLC. That scanned copy has been sent back to the Texas
2 Department of Motor Vehicles. They provide a one-year
3 renewal every year, and so this is where we got to with
4 the timing of that.

5 MS. RYAN: And so that's back to renewal.

6 MR. FARRAR: It has already been renewed.

7 MR. SERNA: Yes, ma'am, it has.

8 MS. RYAN: Thank you.

9 MR. VANDERGRIFF: WE have a motion and a
10 second. Any further discussion, questions?

11 (No response.)

12 MR. VANDERGRIFF: None. Okay. With that I'd
13 ask you to raise your right hand in support of the motion,
14 please.

15 (A show of hands.)

16 MR. VANDERGRIFF: These plates are approved
17 unanimously. Thank you very much.

18 MR. RODRIGUEZ: I'm opposed to it.

19 MR. VANDERGRIFF: All those against, please
20 raise your right hand.

21 (A show of hands.)

22 MR. VANDERGRIFF: Chief Rodriguez did raise his
23 right hand, so please let the record reflect we have one
24 opposed.

25 We're now into -- I don't believe we're going

1 to have an action item here but we list it here as the
2 Board legislative priorities. The first two bills were to
3 go out last month which is the Vision 21 bill we're
4 calling it, and an the DMV bill. There has been some
5 considerable discussion as per the instructions and
6 followup discussion from our Board meeting from last
7 month, and I believe Ms. Cost has an update on at least a
8 couple of them, and I think perhaps also on the Vision 21
9 bill we've had some comments that perhaps Deborah Giles
10 can update us on.

11 MS. COST: Good morning. For the record, my
12 name is Molly Cost and I'm the director of the Motor
13 Vehicle Division for the department.

14 Do you want me to go ahead and talk about the
15 DMV cleanup bill discussion and then we can go back to
16 Vision 21?

17 MR. VANDERGRIFF: Yes, absolutely. That's
18 fine.

19 MS. COST: Okay, sure.

20 At the last Board meeting the Texas Automobile
21 Dealers Association and the Alliance of Automobile
22 Manufacturers presented both some verbal and written
23 comments with regard to the DMV cleanup bill, and there
24 were ten sections that they provided comments on and I was
25 instructed to meet with them and discuss those to see if

1 we could explain the request for the amendments a little
2 better and discuss it.

3 There was one item that we preliminarily talked
4 about, it was at the very end, it was about the advisory
5 committee, the changes to the bill with regard to advisory
6 committees, and that wasn't exactly my area so we talked
7 about that a little bit. But I want to let the Board know
8 that the Motor Vehicle Division is moving forward with its
9 first advisory committee meeting. We sent out some
10 invitations yesterday, we've gotten a good response back.

11 We're looking at holding the meeting either December 22
12 or January 4 or 5. We've got a couple of issues with
13 regard to franchise and manufacturer issues, so those are
14 the folks that we're inviting the first time, and then as
15 things progress we'll add other people in when we have
16 other topics.

17 The other nine concerns that were raised, we
18 were able to basically resolve six of them, and I can
19 either go through each of them or I can just go to the
20 ones that we hadn't resolved, whatever is your preference.

21 I'll hit them all quickly.

22 MR. VANDERGRIFF: Go ahead, please.

23 MS. COST: Okay. And again, what I'm
24 discussing here is the DMV cleanup bill and I'm going to
25 talk about it by sections.

1 The first concern was with regard to Section 1,
2 a change to the definition of distributor, and we were
3 able to reach compromise language on that. The
4 Manufacturers Alliance was concerned that the proposed
5 language was a little too broad and we were able to reach
6 compromise language on that -- that is in your Board
7 packets -- that all parties agreed to. And the staff
8 recommends that we amend the amendment with this new
9 language that would change the definition of distributor
10 to mean a person other than a manufacturer who distributes
11 or sells new motor vehicles to a franchised dealer -- and
12 here's the new language -- or enters into franchise
13 agreements with franchised dealers on behalf of the
14 manufacturer.

15 The second section was Section --

16 MR. VANDERGRIFF: Go ahead, Mr. Gillman,
17 question.

18 MS. COST: I'm sorry.

19 MR. GILLMAN: Basically we're going to make
20 some kind of motion on all of these?

21 MR. VANDERGRIFF: I think at this point in time
22 we're trying to make sure you have this information, but
23 yes, we would eventually.

24 MR. GILLMAN: Wouldn't be better off or would
25 it be better, she's through with Section 1, could we just

1 approve or disapprove Section 1?

2 MR. VANDERGRIFF: You want to approve one after
3 the other?

4 MR. GILLMAN: I mean what's best?

5 MR. VANDERGRIFF: I think it's probably best
6 that we just took them up collectively.

7 MR. GILLMAN: Okay.

8 MR. VANDERGRIFF: Except I apologize, I do not
9 have a copy of this of what we have before us in my book.

10 MR. CAMPBELL: Well, I think, Mr. Chairman, on
11 the ones that are unresolved we'll probably take up
12 separately.

13 MR. VANDERGRIFF: That's correct.

14 MS. COST: Molly, can you start at the top,
15 please, just looking at this?

16 MS. COST: So go back to Section 1 again?

17 MR. VANDERGRIFF: Yes. Go ahead.

18 MS. COST: Sure. No problem.

19 Again, the first comment that was received from
20 the Alliance was with regard to Section of the bill, the
21 amendments to the definition of distributor. The
22 amendments that were originally proposed they felt were a
23 little too broad and might encompass financial providers,
24 et cetera, and so we reached some compromise language.
25 And the staff recommends that this new language be

1 inserted into the bill and the definition would read:
2 Distributor means a person other than a manufacturer who
3 distributes or sells new motor vehicles to a franchised
4 dealer, or -- and here's the new language -- enters into
5 franchise agreements with franchised dealers on behalf of
6 the manufacturer.

7 MR. VANDERGRIFF: And I'm looking out into the
8 audience because we do have members present from the Texas
9 Automobile Dealers and the Alliance of Automotive
10 Manufacturers, and so I'm assuming that they would be
11 jumping up and down if this wasn't agreed language that
12 they were comfortable with. The Chair is reflecting that
13 they're laughing in the back, so I'm assuming that means
14 they're okay.

15 MS. COST: Good. I appreciate you being the
16 eyes in the back of my head.

17 With regard to Section 2, that amendment would
18 have added language into some of the Board's powers, and
19 specifically with regard to Occupations Code Section
20 2301.465, that's known as the repurchase provision. If a
21 franchise agreement is terminated, the manufacturer is
22 required to repurchase vehicles and certain items under
23 certain parameters.

24 The original amendment as proposed by staff
25 would simply clarify that the Board had the authority

1 actually order the repurchase or the redemption of items.

2 The Manufacturers Alliance believed that that was not
3 just a clarification but an expansion of the Board's
4 authority. The staff and the Automobile Dealers
5 Association felt it was just a clarification, that
6 authority already exists in 2301.465. We couldn't reach a
7 consensus on this amendment, and that one will be up to
8 the Board. The staff suggests it be removed simply
9 because of the controversial of it, but that's up to the
10 Board.

11 MR. VANDERGRIFF: What I'm suggesting going
12 along -- at this time I'm speaking to the Board -- is that
13 on this particular issue, since there is some controversy
14 with it, that we kind of set this aside for the moment and
15 we'd come back to that individually to talk about it to
16 make sure we have better discussion. Is that okay with
17 the rest of the Board? So we'll come back to this one if
18 the Board chooses to have more information, and we'll take
19 these other items up once you're through.

20 MS. COST: Okay. The next area of concern was
21 in Section 3, and it was a clarification proposed by staff
22 to make it clear that ambulances and firefighting
23 vehicles, the physical process of building them quite
24 often is you take somebody else's cab and chassis and you
25 put an ambulance or a firefighting vehicle body on it. So

1 the physical process is a different kind of manufacturing
2 process but legally for many years, since 1995, the folks
3 that make ambulances and firefighting vehicles have been
4 considered manufacturers and they are licensed as
5 manufacturers and they are allowed to establish their own
6 dealer body to sell these products.

7 The clarification that was requested in the
8 statute was to make it clear that something that met the
9 definition of ambulance or firefighting vehicle was no
10 longer a Ford or a GMC, it was a XYZ ambulance or an ABC
11 firefighting vehicle. That is the way that these folks
12 have been licensed since 1995, that's the way they conduct
13 business.

14 The Alliance had a concern that this would
15 somehow affect Lemon Law responsibility, and once I
16 explained what the purpose of it was, they withdrew their
17 concern. So we recommend that that amendment go forward
18 as it was originally proposed.

19 MR. WALKER: Can I ask a question of Molly?

20 MR. VANDERGRIFF: Sure.

21 MS. COST: Certainly.

22 MR. WALKER: So what is the recommendation here
23 on Lemon Law with respect to an ambulance? Let's say you
24 buy a GM chassis body and Ramsay Gillman puts an ambulance
25 body behind it, does Lemon Law still apply to the vehicle

1 or not?

2 MS. COST: Yes, it does.

3 MR. WALKER: Then who becomes responsible for
4 the Lemon Law: is it GM or is it Ramsay Conversions?

5 MS. COST: Both. There is also a definition in
6 our code of chassis manufacturer and if someone only
7 manufactures chassis, they have a license with us, and in
8 the Lemon Law proceeding generally what happens is both
9 the ambulance manufacturer and the underlying chassis
10 manufacturer are named as respondents in the case, and
11 depending on how the evidence comes out, who's responsible
12 for it will be ordered to either repair it or repurchase
13 it or replace it.

14 MR. GILLMAN: Can it be split responsibility?
15 In other words, the body builder works perfect but the
16 engine doesn't run.

17 MS. COST: That's correct. And it works the
18 same way with conversions too.

19 MR. WALKER: And that's determined by a SOAH
20 judge, I assume, an administrative law judge?

21 MS. COST: Yes. They make a recommendation and
22 then if it's under the Lemon Law, those would come to me
23 for final decision, and if it's a warranty performance
24 case, it would come to the Board.

25 MR. WALKER: So what is it we're trying to

1 change here? I'm confused on what the recommendation is.

2 MS. COST: The law currently says that the make
3 of an ambulance and a firefighting vehicle is that of the
4 chassis manufacturer. It was an amendment that happened
5 many years ago to try to fix some language with regard to
6 I believe it was motor homes, and the language was just
7 stuck in the wrong places. A second stage MCO is issued
8 on an ambulance or a firefighting vehicle and so it is
9 titled and registered as a XYZ ambulance.

10 MR. WALKER: So it's not going to be a GMC
11 anymore, it's going to be a Ramsay Conversions.

12 MS. COST: That's correct, or a Ramsay
13 Ambulance. That's correct.

14 MR. WALKER: And so we want that to still be
15 that way?

16 MS. COST: Yes.

17 MR. VANDERGRIFF: So we're just trying to clean
18 that up.

19 MS. COST: Right. The change is basically
20 moving it into the practice that has existed since 1995,
21 since ambulances and firefighting vehicles became part of
22 the code.

23 MR. GILLMAN: And there's no opposition.

24 MR. WALKER: And I agree. I just didn't
25 understand. Thank you for the clarification.

1 MS. COST: No problem.

2 Section 10 is the next section that we received
3 comments on. This is the section that would have
4 expanded --

5 MR. VANDERGRIFF: Section 4.

6 MS. COST: I'm sorry. Thank you.

7 Section 4. This amendment would have added the
8 word "showroom" to a provision -- I'm sorry, I'm trying to
9 find it in my book -- that describes what a franchised
10 dealer has to be licensed for. It was an attempt by staff
11 to put the word in the statute that we have been basically
12 using since the beginning of the statute, as far as I
13 understand. We issue franchise licenses to dealers for
14 each separate and distinct showroom, so if they have more
15 than one building that has sales and vehicle display at
16 the same location, we would issue two different franchise
17 licenses to that. And this was simply an attempt to put a
18 clarification into the language of the statute so that
19 everybody would know that this is how the agency has dealt
20 with this.

21 The Manufacturers Alliance was concerned
22 that -- first of all, I don't think they realized that
23 this is how the licensing process has been done for years,
24 and once that was explained, it seemed to alleviate some
25 of the concern, but there still seems to be some question

1 about whether or not this is going to encourage dualing by
2 dealers which is, most of you probably know, having more
3 than one line make within the same showroom.

4 Manufacturers tend to want to have their dealers have
5 separate facilities for their lines.

6 We don't see that this amendment is really
7 changing anything with the way that we currently issues
8 licenses. If a manufacturer doesn't want a dealer to
9 dual, there are processes they can follow and that are
10 covered in other parts of the statute with regard to that.

11 The manufacturers seem to indicate that they would really
12 rather we issue separate licenses per franchise, not per
13 showroom, and that would be a complete change to the way
14 we have licensed since 1971.

15 We suggest that this language remain in the
16 statute in the amendment, but that will be up to the
17 Board. I think it's still a controversial issue with the
18 manufacturers association.

19 MR. VANDERGRIFF: All right. So that's on our
20 come back to list.

21 MS. COST: Yes.

22 Section 10, that is the provision that would
23 have changed from dealer to person in a provision that
24 talks about the Board being able to enforce against any
25 person who violates a Board rule or advertising rules or

1 aids and abets. Bill Harbeson was involved in these
2 discussions also, and basically the staff and the dealers
3 and manufacturers reached a consensus that we don't need
4 to make this amendment, that it can stay as "dealer."
5 There are other parts of the code that we can use to go
6 after unlicensed individuals or other licensees that are
7 committing these types of violations.

8 MR. VANDERGRIFF: Or people working for a
9 licensee that is committing a violation.

10 MS. COST: That's correct. So we suggest that
11 the amendment be removed and that the statute stay as it
12 currently is with just "dealer."

13 Section 13 was the provision that was about
14 notices of termination that would have changed the period
15 that a dealer had to protest a notice of termination. In
16 a situation where the dealership has been closed for seven
17 consecutive business days, the manufacturer is currently
18 able to send a notice of termination that will terminate
19 that franchise within 15 days, and the staff recommended
20 that we synchronize the protest period to that 15 days
21 also.

22 Basically, from the comments that were received
23 at the Board meeting and during our subsequent
24 discussions, the dealers are uncomfortable with only
25 having a 15-day period to protest and they requested that

1 it actually be changed to 30 and 30, that the termination
2 would be effective in 30 days and that the protest could
3 be filed within those 30 days. The manufacturers were
4 concerned that if a dealership has already been closed for
5 seven consecutive business days, allowing even more time
6 for it to remain franchised is a problem.

7 And we didn't reach a consensus on this,
8 basically, it was a 30-30 and a 15-15, and so staff
9 recommends that the amendment be removed and that we just
10 leave it as it is.

11 MR. GILLMAN: So we'd leave it 15 that it would
12 be closed and 30 or 60 if it was just a termination
13 letter.

14 MS. COST: That's correct. But the period in
15 which the dealer is eligible to protest either of those
16 situations is left at 60 days.

17 MR. WALKER: Which is the current statute?

18 MS. COST: Which is the current statute.

19 MR. VANDERGRIFF: The current statute gives
20 them a 15-day notice but 60 days in which to respond. So
21 basically you're out of business, you've been terminated,
22 but you still have a lot more time to respond.

23 MS. COST: Correct.

24 MR. GILLMAN: So just for clarification --

25 MR. VANDERGRIFF: As a practical matter. Go

1 ahead, Mr. Gillman.

2 MR. GILLMAN: -- the Alliance didn't want to
3 shorten it to 30 days?

4 MS. COST: They didn't want to extend the time
5 period until the termination was effective from 15 days to
6 30 days.

7 MR. GILLMAN: I couldn't understand why they
8 were wanting to stretch it out, but now I see what you're
9 saying.

10 MR. VANDERGRIFF: We will come back to this one
11 because it's a hold right now.

12 MS. COST: Section 15, this amendment would
13 have added the words "non-franchised" and "franchised" in
14 front of the word "dealer" in the manufacturer ownership
15 prohibition which is Section 2301.476. The dealer
16 association was a little bit uncomfortable with this but
17 they weren't adamant in their opposition to it, and
18 because this will clarify what the current state of the
19 law is from a couple of federal court decisions, the staff
20 recommends that this amendment remain in the bill
21 proposal.

22 MR. VANDERGRIFF: Do you want to explain that a
23 little bit, what the current federal law holds?

24 MS. COST: Certainly. Currently a manufacturer
25 or a distributor is unable to, except under some

1 exceptions, limited exceptions, own, operate or control
2 either a new motor vehicle dealership or a used motor
3 vehicle dealership. Prior to the change in the law in
4 1999, 2001, I think it was 1999, that prohibition was only
5 for new motor vehicle dealerships, but when the law was
6 changed it said "dealer" which includes both new and used
7 motor vehicle dealers. And there have been two federal
8 court cases that have upheld the agency's interpretation
9 of this, and all we were seeking to do with this amendment
10 is to keep people from having to go find those federal
11 court cases and just put the language in the statute.

12 MR. VANDERGRIFF: Okay.

13 MS. COST: Section 16 was an amendment to the
14 Lemon Law to expand the reach of the Lemon Law to military
15 personnel who are stationed in Texas and to people who may
16 have purchased their vehicles outside of the state but
17 then moved into Texas and are Texas residents, they've
18 registered their vehicles here, to allow them to also
19 avail themselves of the Lemon Law protection.

20 There was some discussions with the Alliance
21 with regard to the original amendment language. They
22 didn't have any problems at all with the military issue,
23 the original amendment just said the vehicle had to be
24 registered in the state, they were considered with forum
25 shopping and people, I guess, living in other states

1 registering their vehicles in Texas to avail themselves of
2 the Lemon Law. Since the intent behind it was always for
3 people who are residents of the state and have registered
4 their vehicles, the staff recommends that we add a
5 residency requirement to that registration, and my
6 understanding is that the Alliance is fine with that
7 compromise.

8 MR. WALKER: Add residency.

9 MR. VANDERGRIFF: And you've got proposed
10 language there in front of you.

11 MS. COST: Yes, and there's proposed language
12 in your Board packet.

13 MR. GILLMAN: But there's no length of
14 residency, just residency.

15 MS. COST: That's correct. It's just
16 residency.

17 MR. GILLMAN: How complicated is it to become a
18 resident of Texas?

19 MR. VANDERGRIFF: Well, you move here.

20 MS. JOHNSON: To vote, 30 days.

21 MR. GILLMAN: What's that?

22 MS. JOHNSON: To vote, 30 days.

23 MR. CAMPBELL: But a residence, you just change
24 address, don't you?

25 MR. VANDERGRIFF: Yes.

1 MR. CAMPBELL: So that's today.

2 MR. GILLMAN: So you still could conceivably
3 have somebody shopping the states.

4 MR. VANDERGRIFF: It would be a little harder
5 if you're a member of the active military.

6 MR. GILLMAN: Well, active military, I'm with
7 the Alliance on that.

8 MR. VANDERGRIFF: That's what it says here.

9 MR. GILLMAN: Well, I thought it said military
10 and residents.

11 MR. VANDERGRIFF: If you do down the proposed
12 language a little further down, it says you have to be a
13 resident, the vehicle has to be registered here, and
14 active military.

15 MR. GILLMAN: The vehicle being registered.

16 MR. VANDERGRIFF: An active military person
17 would have a hard time just coming to Texas to get under
18 the Lemon Law.

19 MR. GILLMAN: Oh, no. I wasn't even
20 questioning the military, I was talking just about the
21 resident. But where it says registered his vehicle here,
22 he's got to re-up with tax again if he does that, so that
23 eliminates a little of that.

24 MS. COST: And just to make sure everybody is
25 clear, these are actually two different expansions: one

1 would be military located in Texas, and a second would be
2 people who move into the state and register their vehicles
3 here. The second one doesn't have anything to do with
4 residency.

5 And I will point out that there was already
6 language in the statute that had some residency
7 requirement. If I bought the vehicle from someone who met
8 the requirements of the Lemon Law and there is still a
9 manufacturer's warranty and I am able to avail myself of
10 that manufacturer's warranty, I had to be a resident in
11 order to do that. So there was already some residency
12 requirement, it was just in the second owner portion of
13 the provision.

14 MR. CAMPBELL: Under that provision there's no
15 specific time frame?

16 MS. COST: There is not a time frame proposed.

17 MR. GILLMAN: I think what gets them, though,
18 is when they've got to register that vehicle here.

19 MR. BRAY: Can we clarify your question a
20 little bit? When you say there's no specific time frame,
21 she's not proposing changing the time frames that
22 currently exist in the Lemon Law which is still the 24
23 months/24,000 miles, et cetera.

24 MR. CAMPBELL: But what they are proposing is
25 that owner means a person who is entitled to enforcement

1 of a manufacturer's warranty who purchased the vehicle
2 retail and is a resident of this state and registered the
3 vehicle in this state. So that could happen like in a
4 day. Like if they moved from California to here, they
5 could register their vehicle and become resident in a
6 day's time. I mean, should there be a period of time
7 there I guess is my question, versus one day.

8 MS. COST: I think that's certainly something
9 that the Board could do by rule to establish what a
10 residency requirement under the Lemon Law is.

11 MR. GILLMAN: If I'm not misunderstanding,
12 first of all, is the Lemon Law 12 months or 24 months?

13 MR. BRAY: Twenty-four months.

14 MR. GILLMAN: And 24,000 miles?

15 MR. BRAY: Yes, sir.

16 MR. WALKER: Is it original owner?

17 MR. BRAY: It could be a subsequent person.

18 MR. GILLMAN: Excluding the military -- I think
19 we all agree on the military -- if I'm reading this right,
20 what stops a person from just coming in and saying I'm a
21 resident and the next day I want to do it, am I correct
22 that it says and has registered the vehicle in this state?

23 MS. COST: Yes.

24 MR. GILLMAN: Well, that's going to take a
25 little time in itself, plus it costs money, doesn't it?

1 MR. CAMPBELL: Excuse me. When you say to
2 register it, can't they do that in a day's time? I mean,
3 like you an go up there and register it today.

4 MR. GILLMAN: But what does it cost?

5 MS. JOHNSON: Out-of-state transfer fee.

6 MR. GILLMAN: How much?

7 MS. JOHNSON: \$90 -- \$15? And then the
8 registration fee, whatever it is depending on what type of
9 vehicle.

10 MR. VANDERGRIFF: You don't want them to forum
11 shopping because they're doing it because they think
12 there's a reason to do it and that registration fee is not
13 going to stop them.

14 MR. GILLMAN: I was thinking taxes. My
15 apologies.

16 MR. WALKER: There's no tax.

17 MR. GILLMAN: I understand that now.

18 MR. VANDERGRIFF: But I think what Ms. Cost is
19 suggesting is that if we did move on this that the Board
20 would still have the ability to establish by rule, if we
21 wanted to, with notice, comment from the industry, what
22 that residency requirement should be. It's a little
23 difficult to put that in the statute because it then
24 decreases your flexibility, or it's not advisable to put
25 it in a statute if the Board takes this up.

1 MR. GILLMAN: Agreed.

2 MR. WALKER: Forum shopping, is Texas more
3 lenient than Louisiana, Oklahoma, Arkansas, New Mexico
4 which are kind of touching us, or how does our Lemon Law
5 compare to theirs?

6 MR. BRAY: She's looking at me. We have a good
7 Lemon Law, a lot of the states do, but the forum shopping
8 used to be worse before the law was tightened to the
9 extent that it is because we have so many snowbirds that
10 come down in the winter and they previously could avail
11 themselves of the Texas Lemon Law if they had bought their
12 vehicle in Connecticut -- in fact, that kind of happened.

13 We've tightened it up to such an extent that now it seems
14 to have left out military folks and people that come to
15 live in Texas to be Texas citizens. That's the object of
16 this.

17 We're proud of our Lemon Law but I wouldn't say
18 that it's tremendously better than other states that have
19 Lemon Laws. They're administered differently.

20 MR. WALKER: So what I just heard you say was
21 that Texas had a problem with people forum shopping Lemon
22 Laws and coming to Texas, we had tightened this up through
23 some prior legislative process and now we want to kind of
24 loosen it back up a little bit because the military kind
25 of got excluded?

1 MR. BRAY: Yes, sir. The only way I would
2 build on that is it was probably too far, the pendulum was
3 too far one way, and in the process of fixing it we
4 believe the pendulum went too far the other way, and we'd
5 like to try to bring the pendulum kind of back in the
6 middle.

7 MR. WALKER: And so you think that the wording
8 that we have does that?

9 MR. BRAY: Yes, sir.

10 MR. GILLMAN: And the Alliance is in agreement
11 with all this?

12 MR. VANDERGRIFF: No. Well, go ahead.

13 MS. COST: I thought they were. I thought
14 adding the residency requirement to the registration
15 requirement they were in favor of.

16 MR. VANDERGRIFF: I thought your wording here
17 says that the Alliance is still formulating their opinion.

18 MR. GILLMAN: I'm so sorry. I had some email
19 correspondence with them just in the last couple of days
20 that said residency requirement. It was after I filed my
21 comments. I apologize.

22 MR. WALKER: Ms. Cost, can I ask a question?

23 MS. COST: Certainly.

24 MR. GILLMAN: This Alliance, can you give me
25 what the makeup of it is without giving me names? Is

1 there manufacturers and dealers?

2 MS. COST: It's the Manufacturers Alliance.

3 MR. WALKER: The Alliance is made up of just
4 manufacturers?

5 MS. COST: Yes.

6 MR. VANDERGRIFF: Yes. Just like TADA is made
7 up of just the new car dealers.

8 MR. GILLMAN: I totally see the Alliance's side
9 on the deal myself, but you do need to help these military
10 people out for sure, and I think tightening it up by
11 making it where they have to be a resident is a workable
12 solution.

13 MR. BRAY: If I could just give you one
14 example. Today if you live in Dallas, Texas and for some
15 reason you go buy your vehicle in Oklahoma City and you've
16 been a Texas resident all your life, you cannot avail
17 yourself of the Texas Lemon Law.

18 MR. GILLMAN: Well, they ought to buy Texas
19 anyway.

20 (General laughter.)

21 MR. BRAY: Fair enough.

22 MR. VANDERGRIFF: Just remember there are a lot
23 of citizens that are on th border towns that want to cross
24 the border is a fact of life.

25 MR. GILLMAN: I think this is a workable

1 solution.

2 MR. VANDERGRIFF: All right. Nineteen.

3 MS. COST: And last but not least, Section 19,
4 the proposed amendment would have eliminated the protest
5 right for engine, axle and transmission dealers. Based on
6 the comments that the Dealers Association presented at the
7 Board meeting, the recommendation from the staff is to
8 just remove this amendment and leave the statute as it is.

9 MR. VANDERGRIFF: All right. So at this point
10 we really have before you, Board members, Section 1, 3,
11 10, 15, 16.

12 MR. CAMPBELL: And 19.

13 MR. VANDERGRIFF: And 19, you're right, unless
14 the Board wants to take that up.

15 MR. WALKER: I thought 19 was being killed.

16 MR. VANDERGRIFF: If we're agreeing to kill it.

17 The ones that there was dispute on with the positions we
18 had and no resolution necessarily were 2, 4, 13 and 19,
19 however, if it's okay with the Board to agree that the
20 statute not be any attempt to change it, it would just be
21 deleted, we can leave that in the agreed list as well.

22 MR. BRAY: I believe that 15 can be deleted.

23 MR. VANDERGRIFF: Deleted. Exactly. But I
24 think that that's one where the Alliance and TADA were
25 both in agreement with respect to that, and I guess that's

1 similar to 19 in that the concerns that were raised at the
2 Board meeting they were just proposing deleting it.

3 MS. COST: Those were valid concerns and it
4 never should have happened.

5 MR. VANDERGRIFF: So I'll rephrase. 1, 3, 10,
6 15, 16 and 19, I'm recommending that the Board accept all
7 of those as presented.

8 MR. GILLMAN: Can I ask a question?

9 MR. VANDERGRIFF: Please.

10 MR. GILLMAN: On Section 15, TADA stated they
11 were concerned that this change would limit the effect of
12 this provision but the word adamant. Is that still the
13 case?

14 MS. COST: I believe so.

15 MR. GILLMAN: Any comment from TADA?

16 MR. VANDERGRIFF: Mr. Braziel, I think, spoke
17 on this before

18 MR. WALKER: Which section?

19 MR. VANDERGRIFF: Fifteen. Do you have this
20 little summary?

21 MR. BRAZIEL: On the "franchised" or "non-
22 franchised."

23 MR. VANDERGRIFF: Yes.

24 MR. BRAZIEL: We had reservations about
25 introducing that concept but in terms of corresponding

1 with the law, we think that that's what the current law
2 is.

3 MR. VANDERGRIFF: The answer is they don't have
4 any major objection.

5 MR. GILLMAN: It took me a while but I got
6 that.

7 MR. VANDERGRIFF: Sadly enough, he was trained
8 as a lawyer too, so it's hard.

9 MS. RYAN: And on Section 15 also, is that the
10 only change, adding "franchised" and "non-franchised" to
11 that section?

12 MS. COST: Yes.

13 MS. RYAN: Everything else is as it was written
14 previously?

15 MS. COST: Correct.

16 MS. JOHNSON: Mr. Chairman, I'd like to make a
17 motion that we accept as presented and move forward on
18 Sections 1, 3, 10, 15, 16 and 19.

19 MR. VANDERGRIFF: All right. Do we have a
20 second to that motion?

21 MR. GILLMAN: Second.

22 MR. VANDERGRIFF: Motion and second. Raise
23 your right hand in support of the motion, please.

24 (A show of hands.)

25 MR. VANDERGRIFF: That motion carries

1 unanimously.

2 By the way, I want to point out that these
3 bills are in legislative council, so they are drafted as
4 they were presented at the last Board meeting or being
5 drafted that way, so these items may be changed perhaps
6 before it actually is introduced but more likely as an
7 amendment that comes through the committee when it hears
8 it. So we will leave that to our sponsors to figure that
9 out and our staff will get with them with the specifics of
10 what the industry is in agreement. And as you all know,
11 we're looking to make sure that on the bills that we move
12 forward that these are, in essence, supported universally
13 by the industry and agreed to by the industry. So one of
14 the watchwords is if something does strike a lot of
15 controversy, then we'd just delete it.

16 Which is now where we're going into three of
17 them here and I guess we'd go back into number 2 which
18 this is considered an expansion of our authority here. So
19 perhaps you want to cover this one again and see if the
20 Board wants to take this up or just go ahead and agree to
21 delete it.

22 MS. COST: Certainly.

23 Again, this provision relates to a
24 manufacturer's or distributor's obligation to repurchase
25 vehicles and parts and certain products that meet certain

1 criteria upon the termination of a franchise. And the
2 language that's suggested, staff believes, and I believe
3 the Dealers Association agrees, is simply a clarification
4 to make sure that everybody understands that within a
5 hearing that's held at the State Office of Administrative
6 Hearings and that comes to this Board for final decision,
7 that the Board has the authority to not only order costs
8 or attorney's fees or things like that but also actually
9 the dealer's cost of vehicle -- and I'm just pulling
10 numbers out of the air -- \$10,000, manufacturer, you are
11 obligated to repurchase that vehicle and you need to make
12 sure that you've paid the dealer \$10,000 in addition to
13 any costs and fees.

14 That's how this statute has been administered
15 for many years at this agency and it was simply an attempt
16 to make it clear that it's not just there's a liability
17 for \$10,000 and then the dealer has to go to the district
18 court in order to collect those monies, it was intended to
19 be a one-stop shop, they come to the agency who has the
20 expertise on this and the agency is able to order that
21 repurchase or replacement.

22 And my understanding is that the Alliance
23 believes that's an expansion of the statute and staff and
24 the Dealers Association doesn't see it that way.

25 MR. VANDERGRIFF: Does anybody from the

1 industry wish to comment on this at all, either Mr.
2 Braziel or Ms. Leo, or Mr. Roche? I see him back behind.
3 I didn't see you earlier.

4 MR. BRAZIEL: I think Ms. Cost has captured it
5 correctly.

6 MR. BRAY: We need him on the record.

7 MR. VANDERGRIFF: Please identify yourself for
8 the record.

9 MR. BRAZIEL: Rob Braziel with the Texas
10 Automobile Dealers Association.

11 MR. VANDERGRIFF: In this case why don't we let
12 Deborah move back and keep Molly at the microphone.

13 MR. BRAZIEL: Mr. Chairman, would it be easier
14 just to go over all three at one time and then go from
15 there.

16 MR. VANDERGRIFF: That's a great idea.

17 MR. BRAZIEL: I think Ms. Cost has captured it
18 correctly with regard to Section 2. We believe that the
19 authority exists for the department to accomplish the
20 repurchase and redeeming that was suggested in the
21 statute. We think that that authority already exists but
22 we have no objection to further clarifying that if that's
23 what the department wants.

24 Similarly, on Section 4 the addition of the
25 word "showroom" we believe corresponds with their existing

1 policies, and I think that if that helps them in terms of
2 their clarification, we don't have an objection to the use
3 of that word.

4 And I'll let the Alliance speak for themselves,
5 but I think they want to significantly change the
6 licensing function to accomplish a substantive policy
7 issue which has to do with adding a line make, and I think
8 Ms. Cost suggested that there are other provisions in the
9 code that take care of that situation.

10 With regard to Section 13 which is the protest
11 period, we understood the desire to try and sync the
12 statute with how long a termination goes and how long a
13 protest period goes, we just thought the 15 days was a
14 little short for a protest period in this case, and what
15 we suggested was a compromise of 30 days and 30 days so
16 that the protest period gets shortened significantly but
17 also the termination period lengthens by a small amount
18 just to sync the statutes.

19 MR. VANDERGRIFF: So that it went from 15 and
20 30 and from 60 to 30 is what you're saying?

21 MR. BRAZIEL: Correct. That was our suggestion
22 for accomplishing the department's objectives.

23 MR. WALKER: Which doesn't extend the far end.
24 It's still the same end results of period of time.

25 MR. GILLMAN: It shortens the far end. In

1 other words, if you want to terminate a dealer and he has
2 not been closed for seven days, presently you notify him
3 and then he has 60 days to respond.

4 MR. BRAZIEL: Correct.

5 MR. GILLMAN: We're proposing that we would
6 make it 30 days.

7 MR. BRAZIEL: We're only dealing with the cases
8 of somebody who has been closed seven consecutive days.

9 MR. VANDERGRIFF: A notice of termination is a
10 garden-vanilla type, that's a serious action, but it's
11 when they've actually physically shut down operations

12 MR. GILLMAN: But you're shortening the other
13 one from 60 to 30.

14 MR. BRAZIEL: Correct. For a guy who has been
15 closed seven days --

16 MR. VANDERGRIFF: You're thinking it's for the
17 entire. It's only in this limited circumstance is it
18 being shortened.

19 MR. GILLMAN: In other words, if they're going
20 to terminate a dealer, we're shortening the time -- we're
21 not.

22 MR. BRAZIEL: For a regular termination the 60-
23 day protest period would still be there. We were only
24 addressing the guy or the dealer who's been closed for
25 seven consecutive days. Currently we have the situation

1 where there's a 15-day termination and a 60-day protest
2 period. We were concerned about shortening that protest
3 period all the way down to 15 days. So as a compromise we
4 said let's give 30 days on termination and let's have a
5 30-day protest period in those circumstances as a
6 compromise to try and accomplish the objective of the
7 department to sync those statutes.

8 MR. WALKER: Only if they haven't been opened
9 for seven days.

10 MR. BRAZIEL: Correct.

11 MR. VANDERGRIFF: Let me ask the reverse just
12 to play devil's advocate. On the flip side, somebody has
13 been shut down for seven days, there's obviously a serious
14 problem, business is not being done there. Why do they
15 need an additional 15 days beyond the current 15 days?

16 MR. BRAY: I think I can answer that. I'd like
17 to try. Everybody keeps saying that they're closed for
18 seven days. In reality, the cases that I have seen, it's
19 always that they were alleged to be closed for seven days
20 and that's the argument that comes up is I wasn't closed.

21 MR. BRAZIEL: And there are some exceptions in
22 there that it would then be on the dealer -- correct me if
23 I'm wrong, Brett -- it would then be on the dealer to
24 prove that one of those exceptions existed, like act of
25 God, a hurricane, that kind of thing. And what we're

1 saying is that given that extremely short time period, we
2 thought giving a person additional time of the 30 days as
3 opposed to 15 made a lot more sense.

4 MR. VANDERGRIFF: Okay. Any other questions of
5 Mr. Braziel on those three points?

6 (No response.)

7 MR. VANDERGRIFF: I see Mr. Roche is up. Good
8 to see you this morning.

9 MR. ROCHE: Good morning.

10 MR. VANDERGRIFF: And as Mr. Bray identified,
11 please identify yourself for the record.

12 MR. ROCHE: Good morning. My name is Ken
13 Roche. I'm with Gulf States Toyota, a private distributor
14 in Houston, Texas.

15 My testimony this morning to try to help
16 amplify some of the issues, I don't represent the Alliance
17 and I'm not a member of the Alliance. I occasionally come
18 before you where I've been authorized to; this time I'm
19 not, so I'm trying to offer Gulf States' sense of the
20 argument so that at least you have that benefit.

21 The issue that you just left, if I'd go to that
22 first because it's the one we talked about most recently.

23 In the situation where a manufacturer believes a dealer
24 has in fact been shut down for seven days is the most
25 serious, egregious kind of events for any manufacturer

1 because you have no representation, so they've lost their
2 loan capacity, they don't have money, or whatever other
3 reason.

4 The manufacturers in the compromise, well,
5 let's go to 30-30, so 30 days to give a notice that the
6 franchise has been terminated under these extreme
7 circumstances of a closure. You have the arguments back
8 and forth of were they really seven days and all. The
9 reason the Alliance suggested not going to the 30-30 is
10 those situations where it really is they don't have the
11 money to operate, they're shut down, the 15 days is
12 important to get that taken care of and out of the way.

13 Even if we have a 60-day period where they come
14 back and protest, we'll put up with that because we think
15 more often than not in that circumstance the dealer
16 doesn't show up, they're out of business, they don't
17 argue. And we're better off in the worst situation to
18 have the time short so we can get on with the business of
19 cleaning up, getting somebody in that place to do repairs,
20 et cetera.

21 So that's why a 30-30 wasn't automatically
22 comfortable. It seems to make sense, it sounds logical,
23 but when you have the most extreme circumstance where
24 they're shut down, they're gone, they're out of business,
25 they're not going to show up, we need the 15 days because

1 we need to get in there and clean up the mess.

2 MR. VANDERGRIFF: So basically, theoretically,
3 with 15 days plus they've already been shut down for
4 seven, you're already talking about 22 days, roughly, but
5 if you put another 15 days it's roughly 37 days at its
6 maximum extreme.

7 MR. ROCHE: Correct. So the preference would
8 be when it's the most extreme circumstance we'd rather
9 have the short time, even with the risk of a 60-day which
10 is too long, but we'd rather have not gone to the 30-30.
11 In fact, during the discussions I agreed to the 30-day
12 protest but not to the 30-day notice of termination. I
13 thought it was going to be 15 and 30, at least cut it from
14 60 back to 30. And I'm just trying to give you the reason
15 why, if two out of five of those instances they're never
16 going to show up, they're gone, they stole the money,
17 whatever. We need to clean it up immediately so the short
18 time really is necessary.

19 MR. GILLMAN: If they're out of trust and if
20 they allegedly are closed for seven days, you think 15
21 days is enough for them to full be able to regain another
22 floor plan?

23 MR. ROCHE: I recognize the argument. Let's
24 take a situation. I'm sympathetic to the argument made by
25 the dealers that 15 days to protest is awfully short. If

1 someone has a death in the family so the patriarch dies --
2 I'm making up a scenario where the family is in trouble,
3 they weren't thinking about the lawyers to get the protest
4 done, they're trying to bury their father, you know, that
5 kind of situation. I understand the difficulty of moving
6 quickly on a 15-day protest right. I get that.

7 So I'm not surprised nor am I unsympathetic to
8 the Dealer Association saying 15 days to protest is
9 uncomfortable for them, but lengthening the 15 days to
10 terminate in those extreme circumstances, we'd rather keep
11 that under the law and take our risk on the longer. From
12 a GST standpoint during the discussion I said, Well, okay,
13 keep us at 15 and give you 30 to protest, and at least it
14 will have diminished the problem. But I wanted to just
15 give you the context of why that discussion happened the
16 way it did.

17 MR. GILLMAN: So we're not at 15 and 60.

18 MR. ROCHE: Yes, sir.

19 MR. GILLMAN: And what we're talking about
20 doing is shortening the 60 and leaving the 15 in?

21 MR. ROCHE: That's from the manufacturers'
22 side. I wanted you to understand why the manufacturers
23 were taking the position they were taking. It's an
24 extreme circumstance.

25 MR. VANDERGRIF: Let me make sure and recap.

1 The agency initially was saying sync 15 with 15, so we
2 were proposing from an agency perspective to reduce it
3 from 60 to 15 days to protest. That met with reaction
4 from TADA.

5 MR. GILLMAN: I can see why.

6 MR. VANDERGRUFF: Yes. So then it went to the
7 recommendation from the dealers was 30 and 30, so reducing
8 the protest time from 60 to 30 but increasing the notice
9 time from 15 to 30, and the manufacturer doesn't want to
10 do that.

11 MR. GILLMAN: So I understand it, right now
12 it's closed for seven days, then you've got 15 days to
13 tell him he's terminated, then he's got 60 days, so you've
14 got 60, 75 and seven, and the Alliance proposing to
15 shorten all that to what period of time?

16 MR. VANDERGRUFF: Well, at this point in time,
17 I think that since there was no consensus, the staff's
18 recommendation is that we just delete it, drop it, leave
19 it as is.

20 MR. WALKER: Which is seven, 15 and 60.

21 MR. VANDERGRUFF: Fifteen and 60.

22 MR. WALKER: So seven is part of the 60 total?

23 No.

24 MR. GILLMAN: Is that fair to the Alliance?

25 MR. ROCHE: It's not perfect, but I wanted you

1 to understand why they were not willing to expand from the
2 15-day notice of termination to the 30, because we need to
3 get on to business.

4 MR. GILLMAN: I understand. I'm just trying to
5 find something that you would be happy with.

6 MR. ROCHE: GST suggested briefly, and then we
7 got to where it was clear the group was in the green.
8 When I said I'm comfortable with Molly's proposal, I
9 thought we were talking about going 15-day notice of
10 termination and a 30-day. That's not what we agreed to,
11 that was just a proposal. I'm trying to give you the
12 context.

13 MR. GILLMAN: So if we do nothing?

14 MR. VANDERGRIFF: If we do nothing, we're at 15
15 and 60. The Alliance, as Mr. Roche has pointed out, he
16 doesn't represent the Alliance, but he's trying to
17 articulate the position and that would be comfortable at
18 15 and 30 which would shorten the amount of time. But on
19 the other hand, the TADA position is that they're not
20 comfortable, I don't think, with shortening from 60 to 30
21 unless there is a lengthening of the time on the
22 termination notice from 15 to 30.

23 MR. GILLMAN: In practicality, if a guy has
24 been closed for seven days, you're going to have a hard
25 time getting him reopened anyway. So I mean, I don't

1 think the 60 days is unreasonable.

2 MR. VANDERGRIFF: Well, that would be just
3 staying with the current law.

4 MR. GILLMAN: Yes. And I think they want the
5 short notice period probably more than the protest time.

6 MR. ROCHE: Because the four out of five of
7 these circumstances -- I'm guessing, I don't know the
8 history -- but I'm saying if somebody is shut down for
9 seven days, something really dramatic is going on, and the
10 manufacturer wants to shut that down and get another
11 player involved.

12 If there's a protest, what you need to
13 understand is as soon as they file a protest everything is
14 frozen.

15 MS. COST: And if I could interject there.
16 That was the staff's concern. Actually, 50 days, 60 days,
17 30, 45, that as not really the concern, it was the fact
18 that in this situation the termination is effective 15
19 days after they send the notice, the termination is
20 effective, the dealer is terminated. But they have
21 another 60 days to file a protest to that, and so if on
22 the 16th day the dealer comes in and says wait a minute, I
23 wasn't closed down for seven days, or there was a reason
24 why, we had a fire inside and you couldn't see what was
25 going on, the franchise agreement has been terminated by

1 law.

2 Now, that doesn't mean that the dealer couldn't
3 ask the SOAH ALJ: Can you please reinstate this while we
4 litigate this issue. But that's the concern is the
5 termination is effective but there's still this protest
6 right. And so all I was trying to do is make the statute
7 sync up whatever the time period is because under the
8 normal termination where there's a full 60 days notice and
9 a full 60 days to protest, it's the same 60-day period.
10 Their franchise agreement is not terminated until the full
11 60-day period has run. And so this was an attempt to try
12 to do the same thing in this closed seven consecutive
13 business days situation.

14 MR. GILLMAN: Can we vote on that one?

15 MS. RYAN: Just a quick question before you
16 vote. The fire inside probably is, I'm figuring, a small
17 amount because a manufacturer would probably be involved
18 in any major disaster. Usually that comes in pretty
19 quick, from my experience. But how many cases do we have
20 where after a 15-day termination we get drawn out 60-day
21 protests?

22 MS. COST: This has not been a huge issue.

23 MS. RYAN: Okay.

24 MS. COST: I get asked every couple of years is
25 there anything in the code that you've gotten questions

1 about. This is one particular provision that I've gotten
2 questions about from manufacturer representatives or
3 manufacturer attorneys over the years of how does this
4 interplay, and it's just kind of always been on my radar
5 screen.

6 MS. RYAN: But where it truly is a termination,
7 the business has shut down for whatever reason and that
8 was a decision. Okay.

9 MR. VANDERGRIFF: Let me make sure and put in
10 that the original intent of the DMV cleanup bill was
11 really almost twofold: one is to actually take care of
12 glitches, niches, whatever that occurred in our enabling
13 legislation, House Bill 3097; and the second was in a
14 version of if pigs could fly and you could clean up all
15 the things that you've gotten questions on over the years.

16 And I do think, by and large, we've accomplished a lot in
17 the bill that we have in that there have been many things
18 that have been agreed on, we just are getting down to the
19 ones where there wasn't some agreement.

20 And that doesn't mean there's not other issues
21 of a more substantive nature that are out there, but
22 that's not included in these bills, of course. We
23 certainly can take this one up individually if you would
24 like to do that.

25 MR. CAMPBELL: I'd like to recommend to go

1 ahead and leave the language as currently exists in the
2 statute which would mean to be deleted from this.

3 MR. WALKER: I second that.

4 MR. VANDERGRIFF: All right. And any other
5 discussion on it?

6 (No response.)

7 MR. VANDERGRIFF: We have a motion from Mr.
8 Campbell, second from Mr. Walker. All those in favor
9 please raise your right hand.

10 (A show of hands.)

11 MR. VANDERGRIFF: That carries unanimously, so
12 it's deleted.

13 We still have Section 4 and 2, if the Board
14 would like to take that up at all.

15 MS. JOHNSON: I'd like to make a comment on
16 Section 2. The only words that we're adding, the law
17 currently says: Enter an order requiring a person to pay
18 costs and expenses of a party in connection with an order
19 entered under Section 2301.465. The only thing that
20 you're adding is at the beginning of that before pay
21 costs, repurchase or redeem all items specified in
22 2301.465. So truly this is simply clarification. I'm not
23 sure that I really understand that this is going to
24 adversely affect anything.

25 MS. COST: Correct.

1 MS. JOHNSON: And so my recommendation would be
2 that we don't delete this. If we're having an issue with
3 clarification, let's clarify it so that we can stop the
4 confusion.

5 MR. WALKER: The Alliance agrees that we have
6 the authority already. Is that not correct? So all this
7 is is just supposedly to clarify even though we already
8 think we do and they think we do?

9 MR. VANDERGRIFF: Well, I don't think that's
10 their position. I don't know if Mr. Roche wants to
11 articulate that or not.

12 MS. JOHNSON: I'd like to hear from the
13 Alliance. If the Alliance has an opinion, I'd like them
14 to state it, and you're not representing the Alliance.

15 MR. ROCHE: No. And there's no representative
16 here that can testify.

17 MS. JOHNSON: Okay. I didn't realize that.

18 MR. VANDERGRIFF: There's a representative here
19 but they're not testifying.

20 MR. ROCHE: And Ms. Cost has described it
21 accurately and I don't have any amplification I can give

22 MR. VANDERGRIFF: I think that we do have a
23 representative there.

24 MS. LEO: I'm Myra Leo of the Alliance of
25 Automobile Manufacturers, and unfortunately, I'm not

1 advised on this. It went back to the Alliance, going
2 through a committee of sorts, and I apologize that I do
3 not have an answer for you at this time.

4 MS. JOHNSON: Do you personally have any
5 issues? Have you reviewed this? I know you don't have
6 the authority to extend your personal opinion, so I won't
7 put you in that position. Thank you.

8 MR. VANDERGRIFF: I will state this, if this is
9 all right. Ms. Leo is part of the group that represents
10 the Alliance locally here, but she is not actually part of
11 the Alliance. The Alliance itself is based in Washington,
12 D.C. and makes the call from Washington, D.C.

13 MS. LEO: And that's the challenge for today.
14 They were involved in visiting with Molly about certain
15 issues and we're very happy with that conversation for the
16 most part, but this one in particular was an issue and I
17 need a little bit more clarification before I state
18 anything specifically today. I apologize for that.

19 MR. VANDERGRIFF: I personally think that we
20 can get around this and I do think that it's just stating
21 the law as it is.

22 MS. JOHNSON: Deleting it won't affect
23 anything.

24 MR. VANDERGRIFF: Well, deleting it may not
25 affect it but it does also give some clarification that

1 you are to repurchase or redeem the items.

2 MR. GILLMAN: Shouldn't we make that
3 clarification?

4 MR. VANDERGRIFF: Yes, we can.

5 MR. GILLMAN: I propose that we make that
6 clarification.

7 MR. VANDERGRIFF: So you're proposing to keep
8 the language

9 MS. JOHNSON: I'll second that.

10 MR. VANDERGRIFF: We have a motion and a second
11 to keep the language in.

12 MR. CAMPBELL: Discussion.

13 MR. VANDERGRIFF: Please. The motion is by
14 Member Gillman and Vice Chair Johnson is seconding it.

15 Mr. Campbell.

16 MR. CAMPBELL: Since there was no consensus,
17 the staff suggests that the proposed amendment be deleted,
18 but you're saying to leave it in. Is that what you're
19 saying?

20 MR. VANDERGRIFF: That's the motion is to leave
21 that particular section in.

22 MR. WALKER: Do we have a second on that?

23 MR. VANDERGRIFF: Yes, we do.

24 MS. JOHNSON: I seconded.

25 MR. VANDERGRIFF: Are we ready to call for the

1 question on this one? Any more discussion?

2 (No response.)

3 MR. VANDERGRIFF: Okay. All those in favor
4 please raise your right hand in support.

5 (A show of hands.)

6 MR. VANDERGRIFF: All those opposed.

7 (A show of hands.)

8 MR. VANDERGRIFF: The motion carries five to
9 three.

10 All right. With that, we are on Section 4
11 which is the last one.

12 MS. COST: Section 4 is again just an attempt
13 to clarify and it's my version of the bill that's on page
14 10 and it's the last subsection (c) in Section 2301.257.
15 Currently what the law says is a franchised dealer must
16 apply for a separate license under this section for each
17 separate and distinct dealership as determined by the
18 Board, and the way the agency has always interpreted those
19 words, separate and distinct dealership is a showroom.

20 And on the franchise application form it asks
21 how many showrooms do you have at this location in an
22 attempt to make sure that we're getting every showroom
23 licensed. And so again, if pigs could fly, we wanted to
24 add that language in here so everybody would be on
25 specific notice that that was how we choose to license.

1 The manufacturers' comments seem to basically
2 completely depart from that. They would rather see us
3 license either by franchise or by specific line make, so
4 if a dealer had multiple lines in one showroom, they would
5 end up having multiple licenses. That would be completely
6 different than the way we currently do it.

7 I'm not sure, and I had some email
8 correspondence with the Alliance's D.C. representative as
9 late as yesterday and answered some questions that they
10 had and they haven't gotten back to me, so I'm not really
11 sure where they stand on their concerns with regard to
12 this section. But this would not be a change at all in
13 the way that we have conducted business since 1971.

14 MR. VANDERGRIFF: It's just clarifying.

15 MS. COST: It's just clarifying.

16 MR. VANDERGRIFF: Did you have anything that
17 you wanted to add, Mr. Bray?

18 MR. BRAY: Only to ask Ms. Cost if she could
19 add to her discussion that what we recently discovered
20 that occurred in conversation that it's almost bringing it
21 back to where it really was.

22 MS. COST: Right. When the statute was
23 codified in 2003, prior to that there was some language
24 that talked about display and sale of motor vehicles, and
25 I think in the codification the legislative council was

1 trying to take out some extraneous words and I think they
2 felt like dealership is defined as a location where
3 somebody displays and sells motor vehicles so we don't
4 need that extra language. But that's why the agency has
5 always interpreted a separate license for each separate
6 showroom because what the statute originally said was a
7 separate location for the display and sale of motor
8 vehicles, and we think of that as a showroom for a
9 franchised dealership.

10 MR. BRAY: And we believe it got lost in
11 translation and the complication because there was no
12 indication anywhere in the record that there was a reason
13 for that change.

14 MS. COST: Correct. There was not supposed to
15 be any substantive changes made with that codification.
16 And we have not changed our interpretation based on the
17 codification. I've had people ask me about this, well,
18 what do you mean about this, and we mean showroom. Well,
19 they don't have to ask anymore -- well, they'll still ask,
20 of course, but I can point to a word in the statute now or
21 they can find it for themselves easier.

22 MR. VANDERGRIFF: I realize that Ms. Leo is not
23 authorized to speak for the Alliance per se, or Mr. Roche,
24 if you have the ability, again, not part of the Alliance
25 but to articulate the concern.

1 MR. ROCHE: Thank you. Again, my name is Ken
2 Roche with Gulf States Toyota.

3 To help give you an understanding of where they
4 were coming from, many states license based on the
5 franchise agreement, not the showroom. So in fact, the
6 member that was in the negotiating session was surprised
7 that this is in fact how Texas does it.

8 So let me give you an example of a very unusual
9 possibility, and this was the kind of thing they would
10 worry about. If you have a dual Toyota and a Mitsubishi
11 dealership in a single showroom, that would be one
12 license. If for some reason that dealer got into a
13 problem and breached their agreement with Mitsubishi and
14 Mitsubishi terminated them and that termination was
15 effective, they don't have a license to sell the Toyotas
16 in the showroom.

17 MR. VANDERGRIFF: Ms. Cost.

18 MS. COST: Actually, no. If there was a
19 termination effective for one or more lines that are on a
20 license, we just remove those lines from that license. So
21 if they had Toyota and Mitsubishi, we'd just remove
22 Mitsubishi and Toyota would remain on the license.

23 MR. ROCHE: So during the negotiations that was
24 what the were thinking was the possibility and this is the
25 explanation they got. So I think it's de minimus in terms

1 of what was happening, they understand it's the law, it's
2 the way it's been operating, and so they've worked through
3 that and gone back to their members to explain it, but I'm
4 not aware of it being finally communicated. But that's my
5 understanding of the circumstance to help you understand
6 where the disagreement originated.

7 MR. VANDERGRIFF: So basically, there's a
8 concern about the way the law actually reads, the belief
9 is they'd rather it be based on a franchise agreement
10 versus a showroom, but having said that, if the law is a
11 showroom then this is a de minimus change and isn't
12 affecting anything.

13 MS. RYAN: The license states additions and
14 deletions of individual manufacturer's lines as they may
15 come and go within that showroom. Correct?

16 MS. COST: That's correct.

17 MS. RYAN: So the clarification is always there
18 one way or the other.

19 MS. COST: That's correct.

20 MR. CAMPBELL: But you're not saying like if
21 there's a dealer that has three different Toyota, Honda
22 and Chevrolet, it doesn't matter, they can be all under
23 one license currently?

24 MS. COST: If they are all in one showroom
25 building, they're all under one license.

1 MR. CAMPBELL: This does not change it to where
2 now they're obligated to have three separate licenses.

3 MS. COST: No.

4 MR. VANDERGRIFF: It's just making it clear
5 that we do it by showroom which we've done for 40 years,
6 so that just makes it clear.

7 MS. JOHNSON: Mr. Chairman, I'm going to risk
8 making a motion that we do keep the language as proposed
9 in the legislation.

10 MR. BUTLER: I'll second.

11 MS. JOHNSON: And leave in the word "showroom."

12 MR. VANDERGRIFF: We have a motion by Vice
13 Chair Johnson and a second by Member Butler. Do we have
14 any further discussion?

15 (No response.)

16 MR. VANDERGRIFF: All those in favor please
17 raise your right hand in support.

18 (A show of hands.)

19 MR. VANDERGRIFF: The motion carries
20 unanimously. And I failed to note earlier, by the way,
21 that Board Member Marvin Rush is absent today, so he has
22 not participated, obviously, in any of these votes and has
23 not been here today.

24 With that, I think we've then gone to the other
25 item on your agenda for your discussion on this point

1 which is the various requests for information of
2 delegation. Please explain all of this.

3 MS. COST: Okay. I almost felt like I needed
4 to do a matrix or something. The request, as I understood
5 it from the last Board meeting, was to come back with
6 various options for this Board to delegate the authority
7 that it has in contested case hearings.

8 There are three types of contested case
9 hearings that the Board currently has the authority to
10 hear to issue final orders. Franchise cases which are the
11 dealer-dealer, dealer-manufacturer disputes under 2301 of
12 the Occupations Code, enforcement matters that allege
13 violations of Chapter 2301 of the Occupations Code -- if
14 they allege violations of Chapter 503 of the
15 Transportation Code, by statute those go to the Motor
16 Vehicle Division director for final decision; and the
17 third that the Board has authority for are warranty
18 performance complaints arising under Section 2301.204 of
19 the Occupations Code. So franchise enforcement, warranty
20 performance, that's how I'll refer to these through this
21 discussion.

22 And the Board has authority over these if the
23 complaints were filed on or after September 1 of 2009, the
24 day that the new agency came into existence. Anything
25 filed before that, regardless of what type of case it is,

1 the Motor Vehicle Division director has final authority
2 over.

3 From 1989 till 2009, the final order authority,
4 whether it was the Board or the division director, has had
5 the statutory authority to delegate any power they had.
6 As the Motor Vehicle Division director, I still have this
7 authority but the Board currently does not. And so the
8 question before the Board today is whether or not you want
9 to request in this cleanup bill -- or I'm sorry -- in a
10 different bill or in the cleanup bill ask the legislature
11 to amend the law to provide you with some type of
12 delegation authority in hearings.

13 And in making this determination and in
14 considering your options, I'd like you to keep in mind
15 that issuing final orders and ruling on motions for
16 rehearing are not the only things that are involved in
17 this process. There are various ministerial acts such as
18 issuing subpoenas or ruling on requests to extend time to
19 file briefings or other things that in the past, because
20 there was delegation authority, that staff could easily do
21 that.

22 MR. WALKER: Is it your interpretation that the
23 staff does not have authority to do that now?

24 MS. COST: I don't believe so. If there's no
25 delegation authority then there's no ability.

1 MR. WALKER: So the only person that could
2 issue a subpoena right now would be directly from the
3 Board.

4 MS. COST: I'm sorry. By rule there is a
5 provision that allows SOAH ALJs to do that and that has
6 been delegated to the SOAH ALJs.

7 MR. WALKER: Who delegated it to SOAH?

8 MS. COST: I'm sorry. It was done by rule.
9 The Board did it by rule earlier this year, late last
10 year.

11 MR. WALKER: So by rule we have already taken
12 care of the issue.

13 MS. COST: You have some, not others. The
14 subpoenas, the cease and desists, the statutory stays,
15 those were specifically discussed, but if a party files a
16 request to extend time to file a motion for rehearing
17 there's no ability for staff -- I mean, the Board would
18 have to rule on that.

19 MR. GILLMAN: To give them a rehearing or not.

20 MS. COST: No. If they want to ask for an
21 extension of time to file a motion for rehearing, which
22 they are allowed to ask for under the statute, currently
23 the Board would have to rule on that.

24 MR. RODRIGUEZ: And it's all because of the
25 enabling legislation that got us here and recently

1 supported by an AG's opinion.

2 MS. COST: Correct.

3 MR. RODRIGUEZ: So the reason it's now ours is
4 because of the language in the legislation that created
5 us, so we're now trying to figure out what we want to do,
6 if we really want to do this or go back and ask them to
7 help us fix it to where some other portion of us can do
8 it.

9 MR. WALKER: That's not right, I don't think.
10 I think what this is asking is that it give us the
11 authority to transfer should we want to transfer that
12 authority.

13 MR. RODRIGUEZ: Right.

14 MR. VANDERGRIFF: If I could cut to it here, if
15 I could.

16 MS. COST: Please.

17 MR. VANDERGRIFF: You have various options and
18 they're listed and they've got some bold points and things
19 here, but really there's three big options: one, very
20 broad delegation authority that basically we would request
21 that our statute be amended to allow us, through notice,
22 comment and rule, so that doesn't mean we do delegate
23 anything, it's just we've got broad delegation authority;
24 and then some of the others are partial delegation
25 authority.

1 I would be so bold perhaps to suggest to the
2 Board, I know that there are certain issues that we may
3 not want to delegate and there are certain issues we may
4 be very glad to delegate, as a whole. I'm not
5 presupposing what anybody does. But I think that our best
6 options are preserved by going for a full delegation
7 authority, allowing us to then come back to this Board
8 individually if that passes by law to consider the various
9 items on the first of this page as to which items we would
10 want to delegate and which items we absolutely would not.

11 But to limit ourselves in the ability to delegate
12 authority I think is a mistake in the ability for us to
13 manage the business.

14 MR. RODRIGUEZ: Agree, Mr. Chairman.

15 MR. GILLMAN: I disagree, Mr. Chairman.

16 MR. VANDERGRIFF: I understand.

17 MR. GILLMAN: If you delegate the very core of
18 this Board as far as serving the public, especially in
19 rulemaking, contested cases where the consumer wants to
20 come in here and make a plea, I'm not sure that I want
21 this Board to have the ability to just delegate that away
22 and then we say but if we ever want it back, we can get it
23 back, and in the meantime we hardly don't even hear about
24 it. I mean, it just goes on and it's not brought to our
25 attention.

1 And I think it would be wrong to deny -- in
2 other words, why is the truckers represented and why are
3 the tax assessor-collectors represented, why are the used
4 car dealers represented, why is the manufacturers and/or
5 distributors represented if the governor and the public
6 and the government didn't want our expertise to be lent to
7 this decision-making process and not leave it, in all due
8 respect, to Ms. Molly Cost, who does a hell of a job,
9 leave it to strictly her discretion. The next one in that
10 job may not be as efficient as she is.

11 And I think that if you want to delegate as an
12 automobile dealer and representing the industry and
13 hopefully representing the consumers also, if you want to
14 delegate, if he wants to delegate his authority, he wants
15 to delegate his and she wants to delegate hers, fine,
16 delegate, but let's do not, let's very specifically
17 exclude rulemaking and contested cases.

18 MR. VANDERGRIFF: Well, rulemaking is not part
19 of this.

20 MR. GILLMAN: Well, it will be.

21 MR. VANDERGRIFF: I don't think that's part of
22 this discussion.

23 MR. GILLMAN: Okay. Well, then contested
24 cases.

25 MR. VANDERGRIFF: The contested cases are not

1 part of it per se, and it's in a broad picture of our, in
2 essence, what I would call our judicial authority. All
3 I'm saying is I'm not saying we're delegating anything.

4 MR. GILLMAN: But you're wanting the right to,
5 and I'm saying I don't want us to have the right to.

6 MR. VANDERGRIFF: But I will tell you a couple
7 of things. One is that in having the right to delegate,
8 that allows this Board and future Boards that option
9 through notice and comment and rule as to what would be
10 delegated or not. Second, by having no ability to
11 delegate, by having no Board ability to tack in the wind
12 and adjust, then you are potentially playing into the very
13 position that you do not want which is that that authority
14 be taken away from us, because by maintaining the status
15 quo where we have no delegation authority, no ability to
16 consider delegation authority --

17 MR. GILLMAN: On that one item.

18 MR. VANDERGRIFF: On any item at this point.
19 But if you have that, then you're by definition setting up
20 almost an either/or choice if that decision is ever
21 brought to the legislature as an independent matter. Some
22 legislator or multitudes of legislators might have
23 something brought to them that says this Board is going to
24 take these cases up and has no authority to delegate
25 versus an option where everything else or most everything

1 else in the state goes to SOAH, and so it's going to go to
2 SOAH. Most recently, for example, the Comptroller has
3 done that, many other agencies have done that.

4 So you're setting, potentially, this agency up
5 for falling in line with what's happened in others. So
6 the very right you're wanting to protect, you may be, by
7 limiting your ability to consider delegating parts of it,
8 enforcing that argument.

9 MR. GILLMAN: Well, while I admit you may be
10 more knowledgeable about that than I am, I'd like to take
11 my chance over at that legislature to get them to defend
12 the public and the right of this Board to make those
13 decisions as opposed to turning it 100 percent over to
14 staff.

15 Now, if you want them to have delegation
16 powers, have at it, but not those two items that I
17 discussed.

18 MS. RYAN: Just to clarify, it's not just to
19 staff, there are multiple options. It's not necessarily
20 that what we delegate it to but the fact that we have the
21 ability to delegate it, and then the decision of where it
22 gets delegated to is still to be determined. Correct? I
23 mean, there's options in here, as I read it.

24 MR. GILLMAN: If ten years from now you have a
25 lazy Board, we'll just delegate it, I don't think the

1 public is being very well served.

2 MS. RYAN: What if ten years from now there's a
3 solution that we're not aware of today that actually makes
4 it a more efficient process?

5 MR. GILLMAN: Well, then we ought to address it
6 at that time. But let's don't start delegating or
7 suggesting that we have the power to delegate.

8 MS. RYAN: We can still say no. Right? We can
9 decide not to delegate.

10 MR. GILLMAN: We can say no now too.

11 MS. RYAN: But it's too late if something gets
12 taken from us or we can't respond quickly enough to
13 something. Because we get this opportunity every two
14 years. Correct?

15 MR. RODRIGUEZ: Just to kind of clarify, all
16 we're doing here is talking about proposing some
17 legislation. We could say no, like you suggest, we don't
18 want that in the proposal we're trying to get in there,
19 that doesn't mean that someone else can't propose it
20 outside of the circle. All I'm saying to you is that
21 we're going over an argument here that really we have
22 little or no -- in the end someone else could completely
23 cut us off and say you know what, we'll do it on our own.

24 So the idea of getting it done this way simply
25 allows us the opportunity to decide later if we want to

1 and how we want to and what processes we want to subscribe
2 to to get that done, if we do. All we're trying to do
3 here is create the ability to do that for efficiency
4 purposes down the road. We may not be able to do what you
5 want to do all the time.

6 And if we say no now, like you suggest, that
7 doesn't mean it still can't get done. Someone else could
8 walk up there and say you know what, I'm going to do this,
9 I'm going to carry this bill differently.

10 MR. GILLMAN: But I feel an obligation.

11 MR. RODRIGUEZ: That's fine.

12 MR. GILLMAN: Or at least if I'm sitting here
13 to say I don't think that's right. Now, once I'm gone and
14 a new Board is here, then that's their conscience.

15 MR. RODRIGUEZ: And that's okay.

16 MR. GILLMAN: On my conscience I hate to see us
17 do that.

18 MR. RODRIGUEZ: And I understand that. I'm
19 just saying that's not the end of it. Even if we vote
20 here and say no, we don't want that, one of us could walk
21 up there and say we do want it, Mr. So-and-so, carry this
22 for us.

23 MR. VANDERGRIFF: What I would suggest maybe is
24 if the other Board members have -- I think with all due
25 respect and love, your position is very clear, but I don't

1 know if there's anybody else that wants to articulate
2 anything on this point that hasn't heard some of this.

3 MR. BRAY: Can I interject one thing?

4 MR. VANDERGRIFF: Sure.

5 MR. BRAY: I'm very much in favor of giving the
6 Board the authority to delegate generally. The policy
7 discussion about what you delegate and when you delegate
8 it or if you delegate it, that's among the Board. I'm all
9 about giving the Board the choice, the authority. But
10 something that I just wanted to interject is so far the
11 discussion has seemed to be about programs or pieces of
12 your business, and I'm really more concerned, from the
13 seat I'm sitting, in about individual situations, those
14 things that come up rarely but they come up and when they
15 do they're messes. So I think another piece of it is to
16 think about it on an individual case-by-case basis. There
17 may be a case that you as a Board don't want to hear.
18 Right now you don't have a choice.

19 MR. VANDERGRIFF: That's what it goes back to.

20 I think in this case less is more. Having full
21 delegation authority gives you the opportunity to do that
22 and the more we try to piecemeal what it is we would or
23 wouldn't do is limiting on us and future boards, and this
24 also does not affect rulemaking which is what, quite
25 frankly, the previous legislature was sold on the idea of

1 a Department of Motor Vehicles, the selling point was that
2 the industry would have voices, not necessarily that the
3 industry would decide contested cases or the like, and I'm
4 not saying that we don't decide contested cases.

5 I would ask, if I could, maybe a member would
6 be agreeable to recommending this, is just see where this
7 stands as a motion to allow us -- I have one question but
8 I'll ask that in a second -- a motion to allow us to have
9 full delegation authority which, again, would not happen
10 without notice and comment and rule, I think sends a
11 signal that might calm some waters out there would be
12 appropriate for us to do.

13 MR. RODRIGUEZ: So moved, Mr. Chairman.

14 MR. BUTLER: I'll second it.

15 MR. VANDERGRIFF: We have a motion and a
16 second.

17 MS. JOHNSON: Can you repeat that motion,
18 please?

19 MR. VANDERGRIFF: The motion would be basically
20 on the broad full delegation authority. It doesn't mean
21 we're delegating anything but keeping the language very
22 simple.

23 But I would ask this question if I could. For
24 example, at least in my mind, if the delegation authority
25 did occur, I would not necessarily -- using your example,

1 Ms. Cost, but not in a negative way -- wouldn't
2 necessarily want the person in charge of licensing to be
3 somebody handling cases. That may be something that was
4 handled separately or differently or if we had our own
5 administrative law judges in the agency. Is the language
6 that is here or language that can be written doesn't limit
7 that option if there was some future Board that created
8 some future alignment in the agency that, in effect,
9 walled off some of that to its own ALJs, they'd have the
10 ability to do that. Correct?

11 MS. COST: Correct.

12 MR. GILLMAN: Do we really believe that the
13 State of Texas wants us to have a Board here and then have
14 the power to delegate that decision-making process away
15 from us?

16 MR. VANDERGRIFF: On judicial cases that
17 possibility exists, yes, that that would occur. But
18 again, I'm not saying that we do that.

19 MR. GILLMAN: But then why give us the power to
20 do it? And I know you say, well, Gillman, if we don't
21 give ourselves the power to do it, then it could be turned
22 around on us. Of course, maybe I have more faith in that
23 Capitol over there which may be wrong, but it would appear
24 to me that they would want this body to look at those
25 cases and make decisions as opposed to turning it over to

1 the staff.

2 MR. VANDERGRIFF: But again, we haven't done
3 that and I'm not saying that we do do it.

4 MR. GILLMAN: But you're wanting to lay the
5 groundwork for that.

6 MR. VANDERGRIFF: Want the authority to be able
7 to do it.

8 MR. GILLMAN: Which is laying the groundwork
9 for it, I think.

10 MR. VANDERGRIFF: Maybe, but maybe not. I
11 mean, it just depends on moving this forward.

12 MR. GILLMAN: But if you don't do it then
13 there's no maybe to it.

14 MR. VANDERGRIFF: If we don't do it, then I
15 think that it's more likely that others will take action
16 to put restrictions upon us.

17 MR. GILLMAN: Well, didn't we already have --
18 and I may be confused here, but didn't the attorney
19 general come down and say we didn't have authority to do
20 that?

21 MR. VANDERGRIFF: Based on what's written in
22 the statute today. That doesn't mean the attorney general
23 is saying that we can't do it.

24 MR. GILLMAN: So he's not saying whether he
25 wants it or not, he's interpreting the law.

1 MR. VANDERGRIFF: It's the way the statute is
2 currently written. Yes.

3 MR. GILLMAN: I'm saying why don't we stick
4 with that law.

5 MR. VANDERGRIFF: Because, in my personal
6 opinion, I think this Board needs to have the option to be
7 able to look at the cases that we decide.

8 MR. GILLMAN: How are you going to look at them
9 if the staff has the --

10 MR. VANDERGRIFF: And decide which ones we
11 would want to delegate and which ones we would not, we
12 need to have the option in the future to tack in the wind.
13 As Member Ryan indicated, future Boards, future
14 situations may dictate something different.

15 MR. GILLMAN: Did you not suggest just a second
16 ago, if I understand it, that instead of just blanket we
17 have the right to delegate this, that we take these cases,
18 listen to the staff talk to us about and then we decide
19 whether we want to hear it or not.

20 MR. VANDERGRIFF: But that's included. If you
21 have the ability to delegate, full delegation authority,
22 that's included. My point is the more you try to pick
23 categories of things you want to delegate then the more
24 detailed the statute becomes, the more particular it
25 becomes. You still have that authority in a full

1 delegation power. You can limit what you do by notice,
2 comment and rule versus by statute.

3 You want to preserve, in my opinion, maximum
4 flexibility for this Board and future Boards to be able to
5 keep or delegate, as the case may be, based upon the facts
6 and circumstances either on an individual case or the
7 facts and circumstances globally that exist at the time
8 you're making that decision. You want that type of
9 flexibility versus being rigidly bound in a statute.

10 MR. GILLMAN: Respectfully --

11 MR. VANDERGRIFF: You disagree, and I
12 understand.

13 MR. GILLMAN: -- I disagree. I mean, I just
14 don't see how the public is going to be served by doing
15 what you're doing -- in other words, by what you're
16 proposing to do.

17 MS. COST: I'm sorry. Can I provide a real
18 world example that literally happened this morning?

19 Dudley McCalla, who some of you may know, is a
20 local attorney here, widely respected in the
21 administrative law area, walked into Building 150 at
22 Riverside while me and a few other directors were waiting
23 to come over here. And I said, Oh, are you coming for the
24 Board meeting? And he said, Yes. And I said, Oh, well,
25 it's not here, it's at the Reagan Building. And I said,

1 Is there something I can help you with? And he said, I'm
2 just trying to get a case dismissed.

3 One of the cases considered earlier today that
4 you voted to accept the order of dismissal was one where
5 he represented the applicant in a new dealership
6 application that was protested by someone else. After the
7 case went to SOAH, the protestant decided to withdraw
8 their protest. Until we have a final order, the Licensing
9 Section can't continue processing that application because
10 we still have a pending protest until a final order is
11 issued. That matter has been agreed to by both sides,
12 both sides agreed to waive their motion for rehearing, and
13 the dismissal came from SOAH at least 30 days ago, and
14 because of the timing of things, this was the first Board
15 meeting we could this on.

16 So because the Board doesn't have any authority
17 to delegate anything, we had to wait till today to get
18 that order final.

19 MS. JOHNSON: Let me ask you a question. But
20 who was harmed by that?

21 MS. COST: The applicant who wants to either
22 open his dealership or add those lines to the dealership,
23 the consumers in the area that aren't getting -- I don't
24 even remember off the top of my head what manufacturer it
25 is, but don't have the representation of that line. And

1 when we had a Board previously, there was authority to
2 delegate in the statute and there was two things that they
3 delegated to staff to decide, and that was one of them and
4 it was for these specific reasons. Because of the Board
5 meeting schedules and the notice that has to happen and
6 everything, it was causing a delay in the process when
7 everybody had agreed that this case needed to go away.

8 MR. GILLMAN: You said the Board had the
9 authority to delegate.

10 MS. COST: Yes, sir.

11 MR. GILLMAN: And then it was changed.

12 MS. COST: When the Board was dissolved in
13 2005, the language that had previously given the Board the
14 ability to delegate any powers that it held was changed to
15 the then final order authority which was the Motor Vehicle
16 Division director. When this agency and this Board was
17 created in 2009, that provision was not changed to the
18 Motor Vehicle Board, it was left as the Motor Vehicle
19 Division director. In my personal opinion, I think it was
20 an oversight because it's within a section, a subsection
21 that is entitled Board Powers and Duties.

22 MR. VANDERGRIFF: Which also brings you back to
23 Member Rodriguez's comment earlier that somebody that has
24 the power to actually write law and make law might change
25 it anyway no matter what we think, because historically,

1 until this Board and this agency was created, historically
2 the previous Motor Vehicle Division which contains almost
3 all of the issues that you're talking about, first the
4 Board and then the director had the very authority we're
5 asking to put in now. We're, in essence, not asking for
6 something that we didn't have for all the existence we've
7 been around in that narrow category of motor vehicle
8 dealer except for the last two years.

9 MR. GILLMAN: I think that's part of what, at
10 least the automobile dealers, didn't think it was a very
11 good idea.

12 MR. VANDERGRIFF: But the automobile dealers
13 participated for decades in which there was never any
14 major question about us being able, as auto dealers, to
15 sit on a board and if we wanted to delegate some authority
16 we would. And that's also consistent with virtually every
17 other state agency out there that has the authority to
18 delegate power.

19 MR. GILLMAN: What does the Alliance think
20 about this?

21 MR. BUTLER: Point of order.

22 MR. VANDERGRIFF: Okay. To answer that
23 question, since it was there right before Mr. Butler asked
24 for the point of order, is that the Alliance certainly
25 would like us to delegate the cases -- excuse me -- not

1 delegate the cases, they'd like to take that authority
2 away from us specifically, so that's different than
3 delegation.

4 But with that, I guess we've had a point of
5 order. You're calling the question?

6 MR. BUTLER: Yes, sir.

7 MR. BRAY: Can you repeat who is responsible
8 for the motion and the second?

9 MR. WALKER: There's not a motion, is there?

10 MR. VANDERGRIFF: Yes.

11 MR. BUTLER: Yes, there's a motion, certainly
12 is.

13 MR. VANDERGRIFF: There is definitely a motion.
14 I seconded Victor's motion.

15 MR. VANDERGRIFF: Member Rodriguez made the
16 motion and Mr. Butler seconded the motion.

17 MR. WALKER: To allow full delegation
18 authority.

19 MR. VANDERGRIFF: That's correct. I would then
20 call for the vote. Please raise your right hand in
21 support of the motion.

22 (A show of hands.)

23 MR. VANDERGRIFF: The motion carries six to
24 two, with Members Johnson and Gillman voting against.

25 I hope we're not as long on the VTR bill.

1 MS. GILES: Thank you. I am Deborah Giles and
2 I'm the director of Government and Stakeholder Relations,
3 and this will be very brief.

4 As you know, this bill was passed by the Senate
5 last session in SB 1507 and was authored by Senator
6 Carona, and there have been some changes and additions
7 since that time, and we are down to two minor issues that
8 have come, and actually they came up after the Board
9 packets went out, so I apologize, you do not have anything
10 in your Board packets.

11 One was a result of a conference call with TADA
12 and it was relating to definitions, and I can give you
13 some examples: should we say record of title or
14 electronic record of title; should we say in Section 7
15 obtain a title before disposing of the vehicle, or should
16 we say obtain a receipt of title. So we have had
17 discussions and worked those items out, and out of respect
18 for your time, just wanted to tell you what those were
19 about.

20 The second issue, however, there is -- and this
21 came up from the Governor's Office, we had a meeting with
22 his staff -- there is in Section 4 an addition from last
23 session's bill, and it's regarding the alias titles and
24 that is given to law enforcement.

25 MR. VANDERGRIFF: I'm sorry. I missed that.

1 Regarding what titles?

2 MS. GILES: I'm sorry. It is in Section 4 of
3 the VTR bill and it relates to alias titles, and it is in
4 the bill from last session, however, what happened was
5 that the Lottery Commission asked that we expand those who
6 are allowed to receive an alias title.

7 We discussed this with the Governor's Office
8 and what they requested was before the Board make a
9 decision, they would like the opportunity to talk to the
10 Lottery Commission because what happened was the
11 unintended consequence of opening this up to all peace
12 officers under Article 2.12 is this: we currently issued
13 18,300 alias titles but if we open it up to everyone,
14 every peace officer employed or appointed under Article
15 2.12, that would over 70 more entities which would expand
16 the number eligible. So we're trying to find a solution
17 for that.

18 MR. WALKER: Excuse me. Ramsay and I are lost
19 here. First off, we don't even have, I think, what you're
20 talking about under the Vision 21. We're going over the
21 Vision 21 simplification?

22 MS. GILES: Yes.

23 MS. JOHNSON: That's not the fee
24 simplification.

25 MR. WALKER: Well, I don't know that I have the

1 tab.

2 MR. VANDERGRIFF: It's this big bill.

3 What I would suggest at this point, let me ask
4 you a couple of questions since we don't have any written
5 material. And in fairness to Ms. Giles, this stuff has
6 just been coming in in the last 24 hours.

7 MS. GILES: Yesterday afternoon.

8 MR. VANDERGRIFF: So do you feel that these
9 issues cannot be worked out at this point in time, the
10 ones that you're going through, with either the Governor's
11 Office or with industry, that they're working their way
12 out?

13 MS. GILES: Absolutely they all can be worked
14 out and there are no major issues remaining in this bill,
15 it's just how to best do it.

16 MR. VANDERGRIFF: Okay. So my suggestion,
17 would be in terms of briefing the Board, is that we'll get
18 a chance to hear this again in January when this is more
19 completely fleshed out. But this is on the 343-page Vision
20 21 bill is what she was covering right now. Does that
21 make sense to the Board?

22 MR. WALKER: Because I wasn't following her, I
23 didn't know where she was going.

24 MR. VANDERGRIFF: I understand. This isn't
25 even hot off the press, this is hot off the lips, so to

1 speak because this discussion has just been going on.

2 MS. GILES: Yes, sir. Thank you.

3 MR. VANDERGRIFF: But wanted to make you aware
4 that those discussions are ongoing, these issues are being
5 vetted and resolved, and again, this bill is on the same
6 path as the others.

7 MS. GILES: Right. Thank you.

8 MR. VANDERGRIFF: The third one is we do have
9 actually language that's being vetted right now, and that
10 language we will bring to you in January, and that is what
11 we're calling for our purposes the DMV Rule bill. It is
12 based upon really a couple of premises. And Mr. Serna has
13 given you the details in your packet, and that's what you
14 were referring to, Mr. Walker, was the fee simplification
15 part.

16 Going back in time for us in the last
17 legislative session, a great legislative accomplishment
18 was done which the industry and the consumers don't really
19 even know about yet greatly -- the industry does but not
20 the consumers -- and that is to reduce the categories on
21 motor vehicle registration categories down to just
22 literally a couple of handfuls of categories. And in
23 doing that, it takes effect on September 1 of this coming
24 year and we were requested -- when I say that, the Vehicle
25 Titles and Registration Division within TxDOT was

1 requested to make that bill last session to be revenue-
2 neutral, and they did their level best to be able to do
3 that, but that assumes that the status quo stays the same
4 in terms of the mix of vehicle sales. That did not happen
5 and the end result of that was -- and after Mr. Serna
6 explains that, I'll come back to the rule part here and
7 the justification there, but I'll toss it to you.

8 MR. SERNA: Yes, sir. You do have material in
9 your Board books under a cover page that's entitled Texas
10 DMV Registration Fee Simplification Bill. I'd like you to
11 flip to the third page. What I wanted to have you turn to
12 is the third page, the third sheet of paper which is a
13 spreadsheet, looks like this. It basically at the top
14 says Revenue-Neutral.

15 This was the information that was provided to
16 the legislature last session. If you go down to the
17 bottom you see a positive number of \$329,000, and that's
18 as close to zero as the staff could get at the instruction
19 of the legislature.

20 The Chairman has already pointed out that the
21 fees were significantly simplified. Under the current
22 structure -- and Ms. Johnson knows this -- there's a stack
23 of papers, literally about an inch to an inch and a half
24 thick, for various registration fees. And Mr. Walker
25 knows that, for example, on weight-classified vehicles

1 it's based on 100-pound increments and the type of tires
2 that you have even on the vehicle. So we were successful
3 in simplifying that.

4 Unfortunately what's happened is the economy
5 has changed and therefore revenue projections are
6 changing. And if you'll flip the page, the next three
7 sheets are the exact same data except with different
8 growth factors for motor vehicles, but in all cases you
9 will see that the positive \$329,000 has turned into a
10 negative roughly \$19 million annually.

11 This is as a result of a couple of things.
12 First of all, the total volume of vehicles sold started
13 dropping, the federal government instituted Cash for
14 Clunkers. Interestingly enough, in the Cash for Clunkers
15 program more people bought pickup trucks than cars and
16 they bought heavier trucks. The fees under the current
17 structure for heavier trucks is higher than what it's
18 going to be under the simplified fee, so there's a
19 projected loss just because you're going to a lower fee.

20 But if you'll also look at the automobiles,
21 originally we were projecting annual incomes or three-year
22 incomes of \$31.8 million for passenger cars and now the
23 projections are in the \$5 million because of the total
24 volume decrease.

25 The point of this is we have made House

1 Transportation and Senate Transportation aware of the
2 potential adverse impact, unintended adverse impact as a
3 result of the economic changes to the fee simplification.

4 And we believe we have industry as well as legislative
5 support. Staff is still very supportive of a simplified
6 structure but there will probably need to be a discussion
7 in the upcoming legislative session about fee adjustments
8 in order to offset the projected decreases in revenue.

9 And that leads to the other part of the
10 conversation that the Chairman was alluding to earlier.

11 MR. VANDERGRIFF: There is a bill that is
12 working again for our purposes, instead of calling it fee
13 simplification because it really isn't that, it's DMV
14 would be permitted by rule to set the fees that go into
15 Fund 6. These do not include, at least on my list, the
16 licensing fees that we're talking about for a dealer
17 licensing fee and the like, but they do include all of the
18 fees for plate fees, special permitting fees, transfer
19 fees, motor vehicle registration fees, the like.

20 The justification or the purpose for this would
21 be that literally if you have to wait every two years for
22 the legislature to meet to be able to adjust fees in order
23 to meet the shifting demand in vehicle sales, then we
24 could very well, for example, if this previous law had
25 been in effect in 2011 then we could be looking at a \$30-

1 to \$40 million shortfall in revenue in the state that the
2 legislature would have been powerless, by definition,
3 because it doesn't meet to have addressed it.

4 But this Board, in a partial answer to
5 something that Mr. Gillman raised earlier, we are here to
6 look out for the industry, for all aspects of the
7 industry, and to be able to react quickly and
8 appropriately to it, so allowing us to have the fee-
9 setting capability would enable us to do that. It also
10 would allow us a mechanism to get to the fourth part of
11 what we're looking to try to accomplish, and that's what's
12 been tagged the Enterprise Bill which is the self-
13 directed, semi-independent agency.

14 And so this bill that will be before you --
15 we'll send copies out to you as it makes a couple of
16 adjustments -- is literally putting the fee-setting
17 ability with this Board, and as I said, that's being
18 developed as we speak. And that's in line and consistent
19 with what this Board previously approved saying that
20 wanting to be a self-directed, semi-independent agency,
21 you've got to have a revenue stream which you have some
22 province over so this would allow us to do that.

23 So you will get here shortly kind of a listing
24 of what fees would be in that grouping as well as the
25 appropriate language from the bill, but it's consistent

1 with what we approved previously at this point, or will
2 be.

3 Any questions at this point?

4 MR. CAMPBELL: Just one question.

5 MR. VANDERGRIFF: Sure.

6 MR. CAMPBELL: Mr. Serna, just a question
7 regarding the passenger vehicle going from \$31 million
8 down to \$5-. I don't see how it can drop 80 percent.

9 MR. SERNA: The decrease is in the number of
10 vehicles, not in the average to future rate, but in the
11 number of passenger vehicles. One of the things that
12 happened that we found interesting in our analysis in the
13 Cash for Clunkers program more individuals purchased
14 trucks than passenger vehicles and they purchased heavier
15 trucks. The one piece of information that's missing here
16 are the raw data numbers that are behind the calculations.

17 But it was an interesting phenomena that the
18 staff found that more people, at least here in Texas more
19 people bought pickup trucks and they bought heavier pickup
20 trucks, so for example, the F-250 or 350 versus the 150 or
21 the Ranger. As a result you have a shift in the number of
22 vehicles heavier trucks under the current structure, you
23 pay more for a new vehicle than you do an older vehicle,
24 the average price increased, so the delta between the
25 future fixed price of \$50.75 and the average price became

1 greater as well. So those two combined, the shift in the
2 number of vehicles and the price change, caused that, what
3 you're pointing out, that basically \$26 million change in
4 passenger vehicles.

5 MR. CAMPBELL: Wouldn't the heavier truck have
6 gone up \$26 million or some number there?

7 MR. SERNA: Well, originally -- and if you look
8 at that first sheet, that revenue-neutral sheet --
9 originally there was always going to be a projected loss
10 in revenue in the light truck category. That's the only
11 way we could get to as close to zero as possible. So even
12 though there was a volume increase in light trucks, what
13 caused that loss is the average price increased greater.
14 Remember, before the average price was \$54.54, now our
15 projections -- not price but average registration fee,
16 state registration fee is \$56.42.

17 MR. VANDERGRIFF: Remember, in the fee
18 simplification bill, as passed by the previous
19 legislature, they actually also reduced the fees. We
20 failed to note that. So the reduction in the fees
21 combined with the shift in sales was a double whammy.

22 MS. RYAN: A question. With regard to Cash for
23 Clunkers with the swing in revenue, I'm not clear on the
24 tie, because if memory serves, there were only certain
25 vehicles that were available for Cash for Clunkers, and

1 the heavy duty trucks were not included, and you had to
2 have a certain mileage per gallon increase in order to
3 qualify which meant, again if memory serves, most of the
4 cars were lighter trucks, not the heavy duty trucks. I
5 don't even think the 350s and 250s were included.

6 MR. SERNA: The other thing that did happen --

7 MS. RYAN: I just want to make sure we were
8 clear on our explanations.

9 MR. SERNA: I apologize. That's not the only
10 factor, though I used that one as the primary one. The
11 other thing you may recall -- or at least I recall because
12 I was in the market at the time looking for a vehicle --
13 is as gas prices began to also increase, automobile
14 dealers and the manufacturers began to discount, for lack
15 of a better description, those less fuel efficient
16 vehicles greater. I could get a greater discount on a
17 Toyota Tundra than I could on a 4-cylinder Four Runner or
18 a Rav4 or a Camry. The discounts were greater so that
19 drove more people that would have been buying cars, Cash
20 for Clunkers or no Cash for Clunkers, to those vehicles
21 where they were getting \$10,000 off, zero percent
22 financing versus we'll give you a thousand off and the
23 same financing as normal or low interest rates.

24 MS. RYAN: So the registration data supports
25 the categories that we've drawn our projections on. I

1 guess that's what I was trying to clarify is that Cash for
2 Clunkers didn't have drivers in these projections.

3 MR. SERNA: Not just Cash for Clunkers, yes,
4 ma'am. Right. Yes, ma'am.

5 MS. RYAN: Okay. Thank you.

6 MR. VANDERGRIFF: Also, language is being
7 worked up now on the Enterprise Bill that is the self-
8 directed, semi-independent agency, and that language has
9 not been finalized yet but that is keeping separate the
10 agency structure from the ability for the Board to set
11 fees, although there will be a tie there because there
12 will have to be a revenue stream coming off to support us
13 as a self-directed, semi-independent agency. The Board
14 will see that here in January when we meet again.

15 And then I don't know if there's an LAR update.

16 MR. WALKER: Let me ask a question here.

17 MR. VANDERGRIFF: Sure.

18 MR. WALKER: If the Enterprise Bill were to
19 pass, there's no reason for any of this here to exist. Is
20 that correct?

21 MR. VANDERGRIFF: The answer would be yes.
22 There's still potentially -- the Enterprise Bill could tie
23 in some of this. The answer to your question is yes --
24 I'm sorry -- there would be no reason for this to exist,
25 but if the Enterprise Bill did not pass then we still have

1 to address the fee issue, and this would be a way to do
2 it.

3 MR. WALKER: So should both bills pass then you
4 just throw this one out?

5 MR. VANDERGRIFF: In essence, yes. It would be
6 included in it.

7 MR. WALKER: This bill would have no relevance
8 at that point then. Right?

9 MR. VANDERGRIFF: Well, it would still have
10 relevance per se if it passed independently. But it's
11 kind of like, for example, if in the last legislative
12 session our enabling legislation under House Bill 3097 had
13 passed but then had been subsequently included in the
14 Sunset Bill overseeing TxDOT, if that bill had passed then
15 it's the last bill in that controls if there was differing
16 language.

17 MR. WALKER: So we want to put the Enterprise
18 Bill behind this bill.

19 MR. VANDERGRIFF: No, not necessarily. But
20 this would be different in that this would have consistent
21 language that would tie in with the Enterprise Bill as
22 well. Also, our sponsors could drop one bill in favor of
23 another if it looks like both are moving forward, or they
24 could be merged in. There will be efforts during the
25 legislative session, I'm sure, by others to add things,

1 for example, to any one of our bills or we could collapse
2 one into another as well.

3 MR. WALKER: So if the Enterprise Bill doesn't
4 go into effect, the adjusted rates under which one of
5 these tables are we proposing using?

6 MR. VANDERGRIFF: Well, right now there's a law
7 that goes into effect September 1 of 2011 along the lines
8 of the sheets that Mr. Serna passed out to you. That law
9 is law, so it has to be changed.

10 MR. WALKER: And which rates are the ones that
11 are applicable today, the very first page?

12 MR. SERNA: I'm sorry, sir. Effective
13 September 1 of 2011, under the column heading HB 2553
14 Fees.

15 MR. WALKER: Let me find that.

16 MR. VANDERGRIFF: It's your second page where
17 it has a \$19 million negative number at the bottom.

18 MR. WALKER: These are the ones that will take
19 effect.

20 MR. SERNA: Yes, sir. The ones under the
21 heading HB 2553 Fees on the first page, it's under the
22 heading Recommended Fees but the numbers are all the same.
23 These are the fees that are in statute, the law has
24 already passed, it passed last legislative session, it
25 simply won't take effect until September 1 of 2011.

1 MR. WALKER: And that's going to give us, with
2 the vehicles currently on the streets today, about a \$19
3 million shortfall.

4 MR. SERNA: Yes, sir.

5 MR. WALKER: We want to change that to what?

6 MR. BUTLER: The legislature already did it.

7 MR. VANDERGRIFF: Let me interrupt, if I can,
8 to answer that two ways. Right now there is a fee that
9 has been established that is by law going to take effect
10 September 1 of this coming year. If no action is taken
11 the State will lose money. So in order to avoid that, the
12 legislature -- I mean, there's different options they can
13 come up with, I'm sure, but the first option and the only
14 option on the table at the moment is they will have to
15 vote.

16 They could repeal the law which, of course,
17 it's a fee simplification that is of great benefit to the
18 consumers and the industry in the State of Texas, a huge
19 benefit to us to have this fee simplification. Or they
20 can vote to raise the fee, now they will be voting to
21 raise a fee, just getting back to ground zero, or they
22 can, in effect, do what we just talked about doing from
23 our perspective, they could delegate that authority to a
24 board that might be better able to tack in the wind to
25 address that fee shortfall now and in the future going

1 forward.

2 If the Enterprise Bill did not pass, then they
3 could still address the fee issue but not give us that
4 full authority to operate as an independent business under
5 the state. If the Enterprise Bill passes with the
6 authority attached to it, then we have that same
7 authority.

8 MR. SERNA: Maybe this will just confuse things
9 but we don't get to do anything. The information that I
10 presented is just for informational purposes. The point
11 is under the current method of fees getting set the Board
12 doesn't get to do anything. We present the material to
13 the legislature and say this is going to happen. Only the
14 legislature can adjust these fees.

15 MR. VANDERGRIFF: But we're asking for the
16 authority to adjust those fees so we don't have to preside
17 over a business that's losing money that we have no
18 ability to influence it right now. In my opinion, we want
19 that authority so that we can make sure we don't lose
20 money, the State doesn't lose money.

21 MR. WALKER: Do we have the wording on that?

22 MR. SERNA: That's what the Chairman indicated
23 is being worked on right now that will be forwarded to the
24 Board members.

25 MR. VANDERGRIFF: Yes.

1 MR. WALKER: There's no action required.

2 MR. VANDERGRIFF: Not at this point.

3 MR. SERNA: No, sir. This was informational.

4 The only thing I had added or asked to add LAR
5 update, normally by this time state agencies receive a
6 base budget and we have not received that base budget, so
7 unfortunately, I don't have any information to provide as
8 an update other than we're awaiting base budget which will
9 give us a preliminary indication of the LBB's position on
10 our Legislative Appropriations Request, and two, we're
11 awaiting any information from the committees that will
12 start posting hearings, but no change to date.

13 MR. RODRIGUEZ: Mr. Chairman, I would just like
14 to ask, we had a request recently of another 2.5 percent
15 current fiscal period reduction. Did that come to us as
16 well, or not?

17 MR. SERNA: Yes, sir. I was going to discuss
18 that in my update, the executive director's update under
19 the financial.

20 MR. RODRIGUEZ: Okay.

21 MR. VANDERGRIFF: We have one last item for
22 action and that's the request for a formal opinion, and
23 I'll ask Ms. Cost to come back up. And after this I will
24 ask that we take probably a ten-minute break, so we will
25 do that.

1 MS. COST: Good morning, still. Again for the
2 record, I'm Molly Cost, the director of the Motor Vehicle
3 Division for the department.

4 In this agenda item staff requests the Board's
5 adoption, as its formal opinion, the informal opinion that
6 was issued on November 19, 2010 concerning warranty
7 service providers for GMC Medium-duty trucks. The
8 informal opinion should be located in your Board packets.

9 As you know, as part of the recent bankruptcy
10 General Motors decided to discontinue the manufacture of
11 GMC Medium-duty trucks. The GMC Medium-duty truck sales
12 and service agreements expired October 31, 2010 and GM
13 offered agreements to its dealers that would authorize
14 them to perform warranty work on the Medium-duty trucks
15 but not authorize the sales of the vehicles because, of
16 course, the trucks are no longer being manufactured.

17 Concerns were raised that the GMC Medium-duty
18 truck dealers would not be able to continue providing
19 warranty service work under these service only or warranty
20 service only agreements because Texas law only allows
21 service only locations if the dealer is also franchised
22 and licensed to sell the vehicles in question.

23 We brought this issue up at the October Board
24 meeting and after that time we had some discussions with
25 stakeholders, and based on that, the informal opinion

1 contained in your Board book was issued.

2 This informal opinion states that current Texas
3 law provides for the continuation of warranty service work
4 by GMC Medium-duty truck dealers under their current
5 licenses without the necessity for a change in statute or
6 rule since performing warranty work is an essential part
7 of the new motor vehicle sales and distribution process.
8 The informal opinion concludes that both General Motors
9 and the GMC Medium-duty truck dealers that want to
10 continue to perform warranty work can do so under their
11 current licenses until all warranty periods have expired.

12 And I want to make it clear that this is only
13 for currently licensed and franchised GMC Medium-duty
14 truck dealers that were selling the product, they will get
15 to continue providing warranty if they choose to do so
16 under these new service agreements.

17 Since an informal opinion is not binding on the
18 Board pursuant to rule, staff is requesting the Board's
19 consideration of this issue and the adoption of the
20 informal opinion as a formal opinion of the Board. And
21 I'm available for any questions.

22 MR. VANDERGRIFF: Does anyone have any
23 questions?

24 MS. JOHNSON: Mr. Chairman, I'd like to make a
25 motion to adopt the informal opinion of the Motor Vehicle

1 Division director as a formal opinion of the Board under
2 Board Rule 43 of the Texas Administrative Code, Section
3 215.4.

4 MR. VANDERGRIFF: Do we have a second?

5 MR. GILLMAN: Second.

6 MR. VANDERGRIFF: A motion from Vice Chair
7 Johnson and a second from Member Gillman. Any discussion?

8 (No response.)

9 MR. VANDERGRIFF: Seeing none, I'd call for
10 your vote. Please raise your right hand in support.

11 (A show of hands.)

12 MR. VANDERGRIFF: The motion carries
13 unanimously.

14 And with that, we'd like a ten-minute recess,
15 and we will come back for the briefings and the like.

16 (Whereupon, a brief recess was taken.)

17 MR. VANDERGRIFF: We are back in session, and
18 it's approximately noon.

19 And I guess the next item we're on some
20 briefings. And I do want to note that Victor Rodriguez
21 has left the meeting, he's headed back to his duties in
22 McAllen, so we now are missing Board Member Rodriguez and
23 Board Member Rush as well.

24 As far as reports from me, this is a very broad
25 category letting us make sure that we talk. I think all

1 the Board members are aware that we did receive officially
2 last month the opinion from the attorney general regarding
3 the Board delegation authority, confirming that under the
4 current statute we do not have that authority to delegate
5 cases. But also a part of that opinion was the question
6 of whether or not Board members, because they were a part
7 of a particular industry, would recuse themselves from the
8 consideration of cases, and the opinion there was no, that
9 the usual rules that apply in any situation like that, if
10 you have a direct conflict of interest, that that would be
11 what would recuse you. So I want to make sure that the
12 public is aware of that. That opinion is public and I
13 know many of you have picked it up off of the attorney
14 general's site.

15 We continue to meet, the staff does
16 particularly, with stakeholders out there in the industry,
17 both on issues of importance and legislative issues as
18 well. I don't know if anyone has any more detailed update
19 they would care to give or the like. And hopefully the
20 industry believes that we're out there talking to you and
21 asking for your thoughts and opinions, and if we're not,
22 please make sure and give that to the Board.

23 On the advisory committees, we by statute are
24 required to have advisory committees, and I've certainly
25 been duly noted by the legislature in this last month to

1 move on a couple of those. I think we had a brief mention
2 that we do have moving forward from the Motor Vehicle
3 Division. Ms. Cost at the next meeting will bring you the
4 particulars of that as well as the proposed membership on
5 that committee.

6 That does not preclude us, however, from
7 addressing it, as we've discussed and agreed already to
8 do, in upcoming legislation to allow it to be a different
9 setup than it is currently. But we do have that
10 requirement and we're monitoring it.

11 From the media perspective, I don't know if I
12 saw Kim Su Lia here -- she's not here today. The
13 Executive Director might want to update us if any major
14 media inquiries have come in. I know we did have a rather
15 lengthy story written up in the Star Telegram in Fort
16 Worth this past weekend on the specialty license plate
17 issue.

18 And then I also will tell you that I met with
19 the editorial board of the Dallas Morning News this last
20 week and they certainly continue to ask questions about
21 the specialty license plates. So I'm sure that issue will
22 continue, but I made sure and told them that we're
23 appreciative of our partnership with My Plates and we
24 continue to support that relationship as it provides
25 income to the State of Texas.

1 And we did have and we do still have, I think,
2 the Governor's Office is here, so if there's anything they
3 wanted to add they certainly could. But we continue to be
4 mindful of them as well as legislative offices, and we
5 have some folks here today.

6 And with that, the last thing I'll note, and
7 Mr. Serna may be covering it in full, but we will be
8 making sure Board members, the internal auditor position
9 has been posted, a little slow in coming but it's coming,
10 and so we will have another member of our direct staff.

11 Did you have a question?

12 MR. SERNA: It hasn't been posted. We are
13 waiting on comment from you and members of the Finance
14 Committee.

15 MR. VANDERGRIFF: I apologize. They're waiting
16 on the Board.

17 MR. SERNA: But we will post it. My
18 anticipation is that we post this month.

19 MR. VANDERGRIFF: So we will have that position
20 moving out.

21 And so with that, I'll turn it to you.

22 MR. SERNA: I have just a couple of things to
23 update you on. If I can impose upon you to take a letter
24 and pass it down. What you're receiving is a copy of the
25 letter that we received from leadership, the Governor's

1 Office, Lieutenant Governor's Office and the Speaker
2 concerning additional savings -- I think it's described as
3 additional savings equal to 2.5 percent of our original
4 general revenue and general revenue dedicated
5 appropriations.

6 Linda and I met, our CFO Linda Flores and I met
7 and we'll be looking at our appropriations, our general
8 revenue appropriations for additional ways of saving
9 another 2.5 percent. One other thing that I'd like to
10 note for Fiscal Year '11 is I've also asked Linda, and
11 I'll be working with the directors and we'll certainly
12 present material to the Board, but I've also asked for her
13 to look at ways for us to find savings in our other
14 revenue source which is Fund 6 which is not affected by
15 this request for the 2.5 percent, but we still want to
16 examine the other portions of our budget.

17 You may recall that approximately 86 to 87
18 percent of our budget is funded out of Fund 6 and the
19 remainder comes out of general revenue with a very small
20 portion of federal funds and grants. So we will also in
21 Fiscal Year 2011 be looking for ways to reduce spending or
22 find savings not only general revenue dedicated but in our
23 other source of funds as well, even though we were not
24 being asked to do that. I understand very clearly from
25 this Board that we want to try to be as efficient as

1 possible so we want to look to those sources as well, and
2 I'll be reporting to you on that in the future.

3 You did receive in your Board books the monthly
4 financial statements. In the consideration of time, Linda
5 is available if anybody has any questions on the financial
6 statements. The bottom line is our spending is tracking
7 with our annual spending from a year ago, as is our
8 revenue collection, so we really haven't seen any
9 decreases in either of the two. There are no substantial
10 changes or variations in the patterns to report, but we
11 are available to answer any questions that any Board
12 member has concerning the financials.

13 MS. JOHNSON: I have one. On page 8 it's
14 showing postal services and administration services
15 considerably higher than usual, it's a million dollars.
16 Is that because maybe once a year you're renewing your
17 postal meter or permits?

18 MS. FLORES: Yes, ma'am. As the rates change
19 we have to adjust accordingly.

20 MR. SERNA: Identify yourself, please.

21 MS. FLORES: I'm sorry. For the record, my
22 name is Linda Flores. I'm the chief financial officer for
23 the department.

24 MR. SERNA: But yes, ma'am, that's the annual.

25 MS. JOHNSON: Okay. Thank you.

1 MR. VANDERGRIFF: And just again, I know we've
2 talked about this before, but the professional fees and
3 services, that dwarfs our salaries and wages category, so
4 can you illuminate what's in that category for us? That's
5 on page 7.

6 MS. FLORES: Basically, professional fees
7 captures all of those costs associated with consultants
8 and any other contract that we might have for staff
9 augmentation. Primarily we've got Vision 21 in there.

10 MR. VANDERGRIFF: I apologize. I should have
11 put the phrase in there the budget has that and yet we're
12 not spending that, so can you illuminate that just to make
13 sure.

14 MS. FLORES: Yes, sir. Primarily that is the
15 Vision 21 program. Out of that \$54 million, it's over \$30
16 million is tied to Vision 21.

17 MR. SERNA: Go ahead. I'm sorry, sir.

18 MR. VANDERGRIFF: I was trying to serve you up
19 a softball, but I butchered the process of that. But it's
20 not being spent because?

21 MS. FLORES: Because the Vision 21 program is
22 still in the stage of being clarified.

23 MR. VANDERGRIFF: But there's still very much a
24 need for that.

25 MS. FLORES: Yes, sir. I believe staff has

1 been working on the business process analysis, and I know
2 that Mr. Serna has probably a status on that for you.

3 MR. SERNA: And you recall that we were
4 allocated these funds for this biennium. We adjusted
5 plans so that we wouldn't just be spending money without
6 knowing what we were doing and having a clear purpose for
7 the expenditure. We're doing that. Part of our
8 Legislative Appropriations Request for Fiscal Year '12 and
9 '13 includes Vision 21 capital. It's simply moving this
10 same money forward, it's not money in addition.

11 I do not anticipate that we will spend anywhere
12 near this budgeted amount in this fiscal year, and we'll
13 have a more detailed report for you on what he projections
14 are in January after we have a little bit clearer picture
15 of what we're going to be completing in Fiscal Year '11,
16 and then also we'll be adjusting that again as a result of
17 any legislative action that comes out.

18 MR. VANDERGRIFF: A couple of questions. In
19 the last legislative session I think the legislature, this
20 money could have continued to accumulate as it had for a
21 number of years, and we had the money accumulating but no
22 authority to spend it. Correct?

23 MR. SERNA: Yes, sir.

24 MR. VANDERGRIFF: It was dedicated funds but
25 not authority to spend.

1 MR. SERNA: Yes, sir.

2 MR. VANDERGRIFF: We received that in the last
3 session with the expectation, and actually the legislature
4 had been told that by the Vehicle Titles and Registration
5 Division, that they were ready to move the project
6 forward. But I think as it turned out it really wasn't as
7 ready to move forward, coupled with the fact that now we
8 were a new agency and perhaps a different, more
9 encompassing direction. Correct?

10 MR. SERNA: Yes, sir. Three things happened.
11 One, the plan that was presented was not anywhere near
12 close to be executable and we determined that in probably
13 March. Two, there was an expectation that what is
14 commonly referred to as the Vision 21 Bill, a lot of the
15 changes that were in that bill were necessary in order to
16 advance the project. That bill did pass but it got stuck
17 behind a voter registration bill and died like several
18 others. And then third, the Department of Motor Vehicles
19 was created unfortunately -- and this is an odd twist --
20 the Appropriations Bill passed before the Department of
21 Motor Vehicles Bill passed and there was no way really for
22 the legislature, appropriations and finance, to take into
23 consideration the changes that having the new agency
24 created would have on that particular request

25 MR. VANDERGRIFF: But it's fair to say that

1 going forward in the future that there will be a need for
2 this money.

3 MR. SERNA: Yes, sir.

4 MR. VANDERGRIFF: It's just that we've been
5 prudent not spending it before it was necessary.

6 MR. SERNA: Yes, sir.

7 MR. VANDERGRIFF: Okay. That's what I wanted
8 to make sure of. Pardon me for interrupting.

9 MR. SERNA: No, sir. Anything else on
10 financials?

11 (No response.)

12 MR. SERNA: Thank you, Linda.

13 Agency operations, I did want to point out
14 that -- and there's also an item for personnel so this is
15 kind of both of those -- we are in the process of
16 beginning interviews or we will begin interviews for our
17 chief information officer, basically our IT director. We
18 did distribute to the Chairman and the members of the
19 Finance Committee copies of a draft posting for our
20 internal auditor. We clearly state in posting that that
21 position reports to the Board. Our expectation is that
22 we'll move forward with being able to get that posted and
23 get somebody onboard as quickly as possible.

24 We have several other positions in the finance
25 and accounting area and in the Human Resources Division

1 that are being filled or are posted and awaiting
2 interviews to begin, so we feel very comfortable that
3 we'll get those done very quickly.

4 And I know you know this but just to sort of
5 repeat it for everybody, was we fill those positions, for
6 example in personnel and we get our personnel department
7 set up, then we stop using the services of the Texas
8 Department of Transportation. We've been able to do that
9 very recently with our purchasing department. We've got
10 that area set up and now TxDOT is kind of handing that off
11 to us. So as we get these areas set up, we have TxDOT
12 kind of stand down in their particular areas.

13 The other thing that I wanted to point out,
14 there's a whole list of things here and it's really
15 primarily to allow us to be able to discuss any particular
16 area, but the one thing that I do want to point out is on
17 the very last item, results of the survey of employee
18 engagement, that's a standing item that we're reporting
19 on. We have not received any reports back from the
20 University of Texas yet.

21 I think I shared with the Board at the last
22 meeting that we had roughly in excess of 70 percent
23 participation by our employees. We did hear from UT that
24 the actual number was 76 participation which we were very
25 pleased with. So out of the 560-some employees that we

1 have statewide, 76 percent of them took the time to
2 provide us feedback. We expect to start getting
3 information from the University of Texas, and as I receive
4 that I will forward it to the Board members, either
5 individually and we will also discuss it in public
6 meeting.

7 I also intend to make all the information we
8 receive available to all of our staff, and the commitment
9 is with that information we will also develop plans to
10 address any shortcomings that staff has identified that
11 the Board says yes, these are things that we really want
12 to look at address. We'll have plans put in place that
13 staff can monitor our progress to address those plans that
14 they raised in this survey, so we're just not going to get
15 the survey, look at it and stick it on a shelf.

16 Probably the very last thing that I want to
17 point out is in addition to the department and the
18 employees going through a significant transition as we
19 moved the divisions a year ago out of TxDOT and then going
20 through adjustments for organizational changes which we
21 did, and now we are making some moves, physical moves
22 within the space that is allocated to us. So Building 1
23 at Camp Hubbard, second floor of Building 5 at Camp
24 Hubbard, and Building 150 at Riverside, we are making some
25 minor space moves to get the divisions physically aligned

1 to match the organization.

2 What I wanted to point out is despite these
3 three things that are going on, staff collectively has not
4 dropped any of their efforts to provide high quality of
5 customer service. I'm still getting a lot of comments
6 from the public wishing that their former state,
7 California, Ohio, others, were like Texas. We haven't
8 seen a decrease in the number of calls to our call centers
9 nor the number of issues that we're addressing, either in
10 licensing or enforcement.

11 We have seen our turnaround times get better,
12 so despite everything else that's going on and the chaos
13 that's kind of moving around the staff, they're still
14 focused on their mission and we're still improving our
15 performance a little bit, and I wanted to at least
16 publicly compliment the staff as a whole for being able to
17 continue to move forward despite these sort of minor
18 distractions.

19 One of the things that I'm going to start doing
20 with next month's update is sharing with Board members
21 just comments that we get, both positive and negative,
22 either to our website, we do have a Twitter account, or
23 through written correspondence, so that the Board can see
24 some of what I've been seeing in the way of feedback that
25 we're getting from the public. But it's probably running

1 95 to 97 percent positive, and the interesting thing is
2 the 3 to 5 percent that's negative probably half of that
3 belongs to another agency because we don't do driver's
4 license, and I'm happy about that.

5 But I am going to start just including a little
6 packet in the Board book that are unfiltered comments that
7 we get from the public through the various mechanisms that
8 we communicate with them.

9 The Chairman asked that I at least point out
10 any significant media situations that have gone on -- not
11 situations but events. The one that has occurred was last
12 week a Fort Worth Star Telegram reporter developed a story
13 concerning not so much specialty plates but personalized
14 plates and whether there were personalized plates that had
15 phrases on them that were maybe inappropriate. He was
16 asking us what our process for ensuring that we had some
17 filters. We provided information. Overall we thought the
18 report was well developed and balanced. Kim Su Lia did an
19 excellent job, as did the staff from Vehicle Titles and
20 Registration in providing him the information that he
21 needed.

22 In addition, it was interesting to note that he
23 sort of did a preview of his story in the middle of the
24 week on his blog and a lot of the comments that came back
25 indicated that the public thought that there were good

1 filters in place to keep phrases off of license plates
2 that really didn't belong on license plates, inappropriate
3 phrases or things that could be.

4 And in case you don't know, we do have a pretty
5 elaborate process if someone requests a personalized plate
6 before we issue that for ensuring that it doesn't have
7 something that's maybe inappropriate or offensive. But if
8 we miss that and the public complains, then we address
9 that immediately, and in those situations where that's
10 happened, that's seemed to have satisfied the public as
11 well.

12 And that's kind of the extent of my report for
13 this month. Any questions or other things that the Board
14 is interested in knowing about?

15 MR. CAMPBELL: One observation or maybe a
16 request is I'd like to ask that the Chairman maybe appoint
17 some members to the Internal Audit Committee. We've
18 gotten your pamphlet of criteria and it looks great, but I
19 think we need to be involved in that process.

20 MR. SERNA: Yes, sir. I agree.

21 MR. VANDERGRIFF: I agree. Mr. Campbell, I
22 will look for you as the chair of our Finance and Audit
23 Committee to give some recommendations in that regard,
24 certainly to be on that committee but to give
25 recommendations of who to ask. So the Board members can

1 have Mr. Campbell to thank for that assignment.

2 (General laughter.)

3 MR. VANDERGRIFF: With that, we've come to the
4 end of our regular part of our agenda. We are going to
5 have an executive session that will be pursuant to Section
6 551.074 on personnel matters related to agenda items 4 and
7 5. For those of you in the audience, I would anticipate
8 being in executive session for approximately 30 minutes,
9 and we will reconvene in open session after that and we
10 also might have potential action items. But with that, we
11 are adjourned from the public meeting. We'll be in
12 executive session.

13 We will go into executive session, Board
14 members, in ten minutes. We do, I believe, have lunch
15 available, so I'll allow you time to get that together, so
16 we'll be in executive session at 12:30. And if we're not
17 coming out at one o'clock, I will report out to let you
18 know that.

19 MR. WALKER: Do we want to do public comments
20 right now?

21 MR. VANDERGRIFF: That's a good point. I don't
22 think we had any additional public comments because we did
23 that at the beginning of the meeting.

24 Member Walker asked if we want to do public
25 comments, but unless I was missing that, I think we didn't

1 have anybody else.

2 Thank you very much.

3 (Whereupon, at 12:21 p.m., the meeting was
4 recessed, to reconvene in open session following
5 conclusion of the executive session.)

6 MR. VANDERGRIFF: I apologize. They have an
7 official script that I never stick to and I'm looking for
8 it here. It is approximately 1:35 p.m., December 9, 2010,
9 and the Board of the Texas Department of Motor Vehicles is
10 now in open session. We want to note that no action was
11 taken in closed session.

12 The only item that we have for discussion is a
13 motion to adjourn, so I would be pleased to entertain.

14 MR. WALKER: So moved.

15 MR. VANDERGRIFF: We have a motion from Board
16 Member Walker to adjourn.

17 MS. JOHNSON: Second.

18 MR. VANDERGRIFF: Second from Vice Chair
19 Johnson. And so with that, at 1:37 p.m., we are
20 adjourned.

21 MS. JOHNSON: Should we vote?

22 MR. VANDERGRIFF: Oh, I'm sorry. Everybody in
23 favor, raise their hand.

24 (A show of hands.)

25 MR. VANDERGRIFF: I apologize. As I've said

1 before, I chair too many different boards where the rules
2 are all different. None of you are exactly the same.

3 (Whereupon, at 1:37 p.m., the meeting was
4 concluded.)

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MEETING OF: TxDMV Board of Trustees

LOCATION: Austin, Texas

DATE: December 9, 2010

I do hereby certify that the foregoing pages, numbers 1 through 137, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy King before the Texas Department of Motor Vehicles.

(Transcriber) 12/14/2010
(Date)

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