

# SUNSET ADVISORY COMMISSION

STAFF REPORT WITH COMMISSION DECISIONS

*Texas Department of Motor Vehicles*

2018–2019  
86TH LEGISLATURE

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*Cover Photo: The Texas Capitol rotunda houses the Texas Governors and Presidents Portrait Gallery. The gallery includes portraits of every government leader in Texas' history, including several presidents when Texas won its independence from Mexico and became a republic. Photo Credit: Janet Wood*

# **TEXAS DEPARTMENT OF MOTOR VEHICLES**

**SUNSET STAFF REPORT WITH COMMISSION DECISIONS  
2018-2019  
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## ***HOW TO READ SUNSET REPORTS***

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and actions into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading.**)

### 1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

**FIRST VERSION:** The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.

### 2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

**SECOND VERSION:** *The Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.

### 3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

**THIRD VERSION:** The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.

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# — SUNSET COMMISSION DECISIONS





# SUNSET COMMISSION DECISIONS

## Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Texas Department of Motor Vehicles, as well as modifications and new recommendations raised during the public hearing.

This Sunset review is the Legislature's first opportunity, since the creation of the department in 2009, to comprehensively evaluate how well the department is meeting the Legislature's goals for improved performance in issuing vehicle titles and registrations, and regulating motor vehicle sales and motor carriers. The commission found the department has largely accomplished these goals and should be continued for 12 years.

However, the department's board struggles to balance its role as the administrator, regulator, and arbitrator of competing interests in the motor vehicle industry, particularly since the majority of the board members represent different facets of the industry. The Sunset Commission recognized the potential for the board to initiate potentially anticompetitive rulemaking, but determined this is not a problem unique to this regulatory board. As such, the commission decided to request the Legislature to examine all state boards, including the Texas Department of Motor Vehicles board, for any legislation needed to mitigate the potential liability of boards controlled by active market participants.

The commission also found the department lacks standard oversight and enforcement mechanisms needed to better protect the integrity of state vehicle titles and registrations, particularly in the wake of Hurricane Harvey. In addition, the role of county tax assessor-collectors in helping the department detect title and registration fraud needs to be better defined.

Finally, the department lacks key enforcement authority necessary to best protect the public and needs to improve its enforcement processes to reduce complaint resolution timeframes, including expanding its enforcement data tracking and reporting, and analyzing inefficiencies to better allocate resources. For salvage activity, and salvage vehicle dealers specifically, the department lacks authority to combat unlicensed practice, comprehensive criminal background checks on applicants, and a risk-based approach to conduct effective inspections of licensed salvage vehicle dealers.

## ISSUE 1

*The Department's Industry-Oriented Board and Its Processes Create Risk for the State.*

**Recommendation 1.1, Adopted as Modified** — Replace the original staff recommendation with the following. Direct the Sunset Commission to request that the Legislature examine all state boards, including the Texas Department of Motor Vehicles board, for any legislation needed to mitigate the potential liability of boards controlled by active market participants. (Management action – nonstatutory)

**Recommendation 1.2, Not Adopted** — Require the governor to designate a public member as the presiding officer of the department's board.

**Recommendation 1.3, Adopted** — Require the board to adopt rules and policies to establish clear standards for conduct and handling of contested cases coming before the board for final decisions.

**Recommendation 1.4, Adopted as Modified** — Update and modify the standard Sunset across-the-board requirement related to board member training to include a provision that ensures the training addresses concerns of potentially anticompetitive behavior.

**Recommendation 1.5, Adopted** — Remove the board's exemption from providing balanced representation on its advisory committees.

**Recommendation 1.6, Adopted** — Apply the Sunset across-the-board requirement related to negotiated rulemaking and dispute resolution.

**Recommendation 1.7, Adopted** — Direct the board to establish advisory committees to provide expertise for rulemaking and other issues and adopt rules regarding standard committee structure and operating criteria. (Management action – nonstatutory)

## ISSUE 2

### *Texas Lacks Basic Safeguards to Identify and Address Vehicle Title Fraud.*

**Recommendation 2.1, Adopted** — When outsourcing state services to full-service deputies, require counties to follow standard contracting practices.

**Recommendation 2.2, Adopted as Modified** — Clarify the department's authority to control access to the registration and title system. Also require the department, by March 1, 2020, to work with county tax assessor-collectors to create clear criteria for the department to suspend or deny access to the registration and title system when a county tax assessor-collector suspects abuse, fraud, or waste of the system by an employee or a full-service deputy. The department must adopt rules regarding criteria to suspend access to the registration and title system by March 1, 2020.

In addition to the statutory recommendation, direct the department, as a management action, to adopt rules to

- formalize the department's current "red flag" fraud warning system, further developing and implementing a clear and efficient path for county tax assessor-collectors to report suspected fraud, waste, or abuse of the registration and title system by employees, dealers, and full-service deputies; and
- provide an option for a county to request action for suspected fraud or abuse, such as immediately suspending access to the registration and title system.

**Recommendation 2.3, Adopted as Modified** — Implement mandatory fraud training for all persons processing state registration or title transactions. Also, as a management action, specify the training will be provided online or in-person as needed, prior to gaining access to the registration and title system.

**Recommendation 2.4, Adopted as Modified** — Require the department to implement a proactive, risk-based approach to monitoring fraud. In addition to the statutory recommendation, direct the department, as a management action, to share best practice protocols with county tax assessor-collectors to implement such fraud monitoring.

**Recommendation 2.5, Adopted as Modified** — Authorize the department to audit or perform a compliance review of any entity providing registration and title services, and to access records needed to conduct audits or fraud investigations. This recommendation would also authorize county tax assessor-collectors to audit or perform a compliance review of any entity providing registration and title services in the county, and to access records needed to conduct audits or fraud investigations. The authority of the county tax assessor-collectors to perform audits and compliance reviews does not in any way limit the department's authority to audit or perform a compliance review of any entity providing registration and title services.

**Recommendation 2.6, Adopted** — Authorize ABTPA grant recipients to use funds to combat a broader range of motor vehicle crimes, such as title and odometer fraud, beyond just automobile burglary and theft.

## ISSUE 3

### *The Department's Approach to Enforcement Does Not Effectively Address the Biggest Risks to the Public.*

**Recommendation 3.1, Adopted** — Remove statutory exceptions from standard enforcement practices for deceptive advertising violations by motor vehicle dealers.

**Recommendation 3.2, Adopted** — As part of the department's enforcement authority, authorize refunds for consumers for motor vehicle and motor carrier violations.

**Recommendation 3.3, Adopted** — Authorize the department to use cease-and-desist authority for unlicensed salvage activity.

**Recommendation 3.4, Adopted** — Direct the department to identify and implement methods to reduce its complaint resolution timeframes. (Management action – nonstatutory)

**Recommendation 3.5, Adopted** — Direct the department to develop clear guidance and criteria for prioritizing investigations and inspections. (Management action – nonstatutory)

**Recommendation 3.6, Adopted** — Direct the department to improve enforcement data tracking in its existing systems. (Management action – nonstatutory)

**Recommendation 3.7, Adopted** — Direct the department to revise and expand key performance indicators and annual enforcement reports to better assess effectiveness and efficiency and provide more visibility of its enforcement program. (Management action – nonstatutory)

**Recommendation 3.8, Adopted** — Direct the department to publish penalty matrices. (Management action – nonstatutory)

**Recommendation 3.9, Adopted** — Direct the department to publish more detailed enforcement histories of regulated motor vehicle and motor carrier businesses. (Management action – nonstatutory)

## ISSUE 4

### *Key Elements of the Department's Licensing Functions Do Not Conform to Common Licensing Standards.*

**Recommendation 4.1, Adopted** — Eliminate motor vehicle show and exhibition approval requirements.

**Recommendation 4.2, Adopted as Modified** — Eliminate the representative and salvage agent licenses, but maintain the lease facilitator license.

**Recommendation 4.3, Adopted** — Eliminate separate salvage license endorsements and establish a single, streamlined salvage license.

**Recommendation 4.4, Adopted** — Authorize the department to set salvage license terms in rule.

**Recommendation 4.5, Adopted** — Direct the department to conduct criminal history checks for all motor vehicle license renewals. (Management action – nonstatutory)

**Recommendation 4.6, Adopted** — Direct the department to adopt criminal history evaluation rules and guidelines consistent with Chapter 53, Texas Occupations Code for salvage industry regulation. (Management action – nonstatutory)

**Recommendation 4.7, Adopted** — Remove unnecessary application requirements for salvage licenses. (Management action – nonstatutory)

## ISSUE 5

### *Texas Has a Continuing Need for the Texas Department of Motor Vehicles, but Opportunities Exist to Better Leverage State IT Investments.*

**Recommendation 5.1, Adopted** — Continue the Texas Department of Motor Vehicles for 12 years.

**Recommendation 5.2, Adopted** — Require the department to ensure webDEALER is available to automobile dealers in all Texas counties by September 1, 2020.

**Recommendation 5.3, Adopted** — Apply the standard across-the-board requirement related to complaints.

**Recommendation 5.4, Adopted** — Direct the department to develop a comprehensive approach to developing, maintaining, and updating its IT infrastructure. (Management action – nonstatutory)

**Recommendation 5.5, Adopted** — Direct the department to evaluate and identify further opportunities to consolidate and modernize its customer service functions to improve efficiency and customer experience. (Management action – nonstatutory)

## ADOPTED NEW RECOMMENDATIONS

### **Completion Date of House Bill 1959 (85R) Study**

Direct the department to conduct the existing contracted study to identify and assess alternative technologies for registering commercial vehicles to replace license plates, permits, and other documentation



and registration methods currently in use by the state, and evaluate the safety and suitability for identified technologies for use on roadways, as required under House Bill 1959 (85th Legislature, Regular Session) by March 31, 2019 instead of December 1, 2021. Also, direct the department to include an analysis of any statutory impediments to conducting a pilot program as described in H.B. 1959 as part of this study. (Management action – nonstatutory)

### Licensing and Inspection of Salvage Dealers

As part of the license application process for a salvage vehicle dealer, direct the department to consider the criminal background of an applicant's partner, company principal, officer, or general manager as a qualifying factor when determining whether to issue a license. (Management action – nonstatutory)

Direct the department to establish a risk-based approach to its salvage vehicle dealer inspections. As part of the risk-based inspections, the department should consider factors including inspection history, complaint history, and any other factors determined by department rule. (Management action – nonstatutory)

### Audits of Tax Assessor-Collectors

Require the department to coordinate with the comptroller of public accounts and authorize the comptroller of public accounts to include, at the comptroller's discretion and as part of its ongoing audits of state revenue collections by county tax assessor-collector offices, a review of processes relating to a county's collection and remittance of revenues included in the audit.

## Fiscal Implication Summary

Overall, the Sunset Commission's recommendations will result in increased efficiency and effectiveness for the department, regulated entities, and stakeholders, as well as reduced regulatory costs over time. Recommendations to eliminate unnecessary motor vehicle licenses and processes are expected to have a negative fiscal impact to the state of \$98,688 annually, but would improve efficiency and oversight of the program. Abolishing the motor vehicle shows and exhibitions approval process would result in an estimated savings of \$68,310 to the Texas Department of Motor Vehicles Fund (TxDMV Fund) associated with one full-time employee position. Eliminating the representative license would result in a loss of approximately \$168,400 annually in fee revenue to the TxDMV Fund, which would be offset by savings from an estimated \$9,311 associated with administering this license type. Requiring the department to conduct criminal background checks for all motor vehicle license renewals would have a small cost to the department of \$7,909 annually from the TxDMV Fund. Other recommendations do not have an anticipated fiscal impact or could be accomplished within existing department resources.

### *Texas Department of Motor Vehicles*

<b>Fiscal Year</b>	<b>Revenue Loss to TxDMV Fund</b>	<b>Savings to TxDMV Fund</b>	<b>Cost to the Department</b>	<b>Change in Number of FTEs From FY 2019</b>
2020	\$168,400	\$77,621	\$7,909	-1.0
2021	\$168,400	\$77,621	\$7,909	-1.0
2022	\$168,400	\$77,621	\$7,909	-1.0
2023	\$168,400	\$77,621	\$7,909	-1.0
2024	\$168,400	\$77,621	\$7,909	-1.0



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# **SUMMARY OF SUNSET STAFF RECOMMENDATIONS**





# SUMMARY

In 2009, as a result of a recommendation of the Sunset Commission, the Legislature moved the motor vehicle-related functions of the Texas Department of Transportation to a newly-created agency, the Texas Department of Motor Vehicles. The stated intent of this move was to ensure these functions — issuing vehicle titles and registrations and regulating motor vehicle sales and carriers — received the focus and attention needed to improve operations and overall customer service. This Sunset review is the Legislature's first opportunity to comprehensively evaluate how well the department is meeting the Legislature's goals for improved performance. Overall, the department has largely accomplished these goals and should be continued for 12 years. Through proactive management, the department has modernized motor vehicle services and improved customer service for both the public and industry. However, the department cannot simply rest on its laurels, as it now must address several new challenges that were never envisioned when the department was created.

The department is caught in the middle of Texas' evolving motor vehicle industry, as newer business models are challenging Texas' traditional vehicle franchise model. Out-of-state automotive manufacturers whose business models do not include sales and warranty repairs through franchised dealers, and manufacturers who perform warranty repairs on vehicle motors separate from franchised dealers, are examples of new business models that strain the state's traditional franchise model of regulation. As the administrator, regulator, and arbitrator of competing interests in the motor vehicle industry, the department's board has struggled to balance these roles, particularly since the majority of the board members represent different facets of the industry. At times, board members struggle to prioritize the needs of the state as a whole versus their industry interests, straining their appropriate role as a member of a statewide policymaking board. Board actions to initiate potentially anticompetitive rulemaking indicate the volatility of this evolving industry and pose significant risk to the state if not checked.

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*New business models strain the state's traditional vehicle franchise model of regulation.*

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Flooded cars left in the wake of Hurricane Harvey have put a spotlight on the department's efforts to combat motor vehicle title fraud. In response to growing concerns about title fraud, the department requested and the 85th Legislature appropriated significant resources to investigate and address title fraud in Texas. However, the review found the department lacks standard oversight and enforcement mechanisms needed to better protect the integrity of state vehicle titles and registrations. The department also lacks authority to exercise even the most fundamental oversight of its state functions carried out by counties and county contractors, who are on the front lines of the fight against fraud, leaving the department poorly positioned to protect state revenues and prevent harm to consumers.

Finally, as an agency driven by and focused on its customer service mission and culture, some of the department's other key functions have not fully matured. The department has implemented several new IT systems to improve efficiency and customer service, but lacks an overarching approach and plan for managing its IT infrastructure, which has resulted in poor prioritization and coordination of different IT projects and project delays. The department also does not require the use of all its online systems, which decreases efficiency and increases costs. The review found counties, who provide registration and title services on behalf of the state, are often the largest barrier to expansion of technological solutions to improve customer service. The department also lacks key enforcement authority necessary to best protect the public and needs to improve its enforcement processes to reduce complaint resolution timeframes, including expanding its enforcement data tracking, reporting, and analyzing capabilities to identify inefficiencies and better allocate resources.

The following material highlights Sunset staff's key recommendations for the Texas Department of Motor Vehicles.

## Issues and Recommendations

### *Issue 1*

#### **The Department's Industry-Oriented Board and Its Processes Create Risk for the State.**

Since 2009, when the Legislature transferred titling and registration of motor vehicles from TxDOT to the newly created Texas Department of Motor Vehicles, the department's nine-member board has included four members representing elements of the motor vehicle industry, which the board regulates, and only two public members — the lowest ratio of public or consumer members to industry members in the board's history. With an industry-dominated board and an industry member serving as chair, the board lacks a strong objective voice to help mediate business disputes among industry members and stakeholders. Regulating competing industries within one agency can result in the appearance of the agency or board favoring one industry at the expense of another, or favoring one group's interest over consumers. Adding to these perceived problems with objectivity is questionable board conduct, especially relating to protest cases where the board at times effectively relitigates contested cases between franchised dealers and manufacturers or distributors at open board meetings. In addition, the department's rulemaking process often uses informal working groups over formal advisory committees, which lack stakeholder and consumer inclusivity and public transparency.

#### **Key Recommendations**

- Restructure the board by replacing one franchised dealer member with a public member to better balance board representation.
- Require the governor to designate a public member as the presiding officer of the board.
- Require the board to adopt rules and policies to establish clear standards for conduct and handling of contested cases coming before the board for final decisions.
- Direct the board to establish advisory committees to provide expertise for rulemaking and other issues, and to adopt rules regarding standard committee structure and operating criteria.

## ***Issue 2***

### **Texas Lacks Basic Safeguards to Identify and Address Vehicle Title Fraud.**

A motor vehicle title not only represents rightful legal ownership but also one of the most significant purchases in a person's life. Title transactions have considerable financial implications for the state in terms of the collection of state taxes and fees, generating about \$1.6 billion in fee revenue in fiscal year 2017 alone and \$9.8 billion in vehicle sales and rental taxes over the 2016–17 biennium. Until recently, a lack of investigative resources constrained the department's approach to investigating title fraud, but recent legislative investments have allowed the department to more proactively investigate and address title fraud in the state. However, the review found the department still lacks adequate oversight authority and tools needed to address fraud most effectively, such as ensuring the 254 tax assessor-collector offices that perform the majority of these title transactions receive fraud training and follow standard contracting practices, and giving the department the clear authority to audit title operations of these offices and their contractors.

#### **Key Recommendations**

- When outsourcing state services to full-service deputies, require counties to follow standard contracting practices.
- Clarify the department's authority to control access to the registration and title system.
- Implement mandatory fraud training for all persons processing state registration or title transactions.
- Require the department to implement a proactive, risk-based approach to monitoring fraud.
- Authorize the department to audit or perform a compliance review of any entity providing registration and title services and access records needed to conduct audits or fraud investigations.

## ***Issue 3***

### **The Department's Approach to Enforcement Does Not Effectively Address the Biggest Risks to the Public.**

The department enforces statute and rules governing more than 32,000 licensed motor vehicle dealer businesses and individuals, and nearly 50,000 registered motor carrier companies, including trucking and moving companies. The lack of key data in the department's two enforcement data systems limits the department's ability to evaluate the effectiveness of its enforcement efforts, including assessing staff performance. The department's complaint resolution process needs additional improvements to prioritize complaints based on risk and ensure timely resolution of complaints so the most serious risks to the public are addressed. The department also lacks key enforcement tools necessary to protect the public, such as refund and cease-and-desist authority.

#### **Key Recommendations**

- Direct the department to identify and implement methods to reduce its complaint resolution timeframes.
- Direct the department to improve enforcement data tracking in its existing systems.

- As part of the department's enforcement authority, authorize refunds for consumers for motor vehicle and motor carrier violations and cease-and-desist authority for unlicensed salvage activity.

## ***Issue 4***

### **Key Elements of the Department's Licensing Functions Do Not Conform to Common Licensing Standards.**

In reviewing the department's regulatory functions, Sunset staff found certain licensing processes do not match model standards or common practices observed in other regulatory agencies. Specifically, some department practices are not necessary for public protection, such as approving licensees to attend an auto show or exhibition, and separately licensing employees who work under the supervision of a licensed business. Other regulatory requirements create unnecessary hurdles to licensure and reduce agency efficiency. In addition, the department's failure to capture criminal history information upon renewal for motor vehicle licensees and nonstandard evaluation of criminal history for salvage applicants is inconsistent with both state law and the requirements for other similar types of licenses regulated by the department.

#### **Key Recommendations**

- Eliminate motor vehicle show and exhibition approval requirements and the representative, lease facilitator, and salvage agent licenses.
- Eliminate the separate salvage license endorsements and establish a single, streamlined salvage license.
- Direct the department to conduct criminal history checks for all motor vehicle license renewals.
- Direct the department to adopt criminal history evaluation rules and guidelines consistent with Chapter 53, Texas Occupations Code for salvage industry regulation.

## ***Issue 5***

### **Texas Has a Continuing Need for the Texas Department of Motor Vehicles, but Opportunities Exist to Better Leverage State IT Investments.**

In 2009, the Legislature created the Texas Department of Motor Vehicles as a stand-alone agency separate from Texas Department of Transportation in an effort to ensure the state's motor vehicle functions receive the focus and attention needed to improve administration of these functions and customer service. Sunset staff found that as the motoring population continues to grow, Texas has a continuing need to provide title and registration functions, as well as continued regulation of the motor vehicle and motor carrier industries through licensing, permitting, and enforcement. While the department has largely achieved the Legislature's intent of creating positive change, further opportunities exist to better leverage IT investments.

#### **Key Recommendations**

- Continue the Texas Department of Motor Vehicles for 12 years.
- Require the department to ensure webDEALER is available to automobile dealers in all Texas counties by September 1, 2020.



- Direct the department to develop a comprehensive approach to developing, maintaining, and updating its IT infrastructure.
- Direct the department to evaluate and identify further opportunities to consolidate and modernize its customer service functions to improve efficiency and customer experience.

## Fiscal Implication

Overall, these recommendations would result in increased efficiency and effectiveness for the department, regulated entities, and stakeholders, as well as reduced regulatory costs over time. Most recommendations in this report do not have an anticipated fiscal impact, may have a fiscal impact that could not be determined, or could be accomplished within existing department resources. However, recommendations in Issue 4, which eliminate several unnecessary motor vehicle licenses and processes, are expected to have a negative fiscal impact to the state of about \$123,780 annually, but ultimately should contribute to improved efficiency and oversight.

*Issue 4* — Abolishing the motor vehicle shows and exhibitions approval process would not affect fee revenues, since the department does not charge a fee for these approvals. However, this change would reduce costs for both the agency and the state through the reduction of one full-time equivalent position, with savings of \$68,310 in salary and benefits to the Texas Department of Motor Vehicles Fund (TxDMV Fund).

Eliminating the representative and lease facilitator licenses would result in an approximate annual loss of \$195,025 in fee revenue to the TxDMV Fund. Statute requires the department to charge a \$100 annual fee for each representative license and \$375 for each lease facilitator license. The department licensed 1,684 representatives and 71 lease facilitators in fiscal year 2017. Eliminating the salvage agent license would not impact fee revenue because the recommendation requires the department to adopt fees in rule that are sufficient to cover costs and the department already has this authority for salvage fees. Losses in fee revenue would be offset by savings from no longer administering these license types, which the department estimates to be \$10,787.

Requiring the department to conduct criminal background checks for all motor vehicle license renewals would have a small cost to the department. The department pays one dollar for each name-based criminal history check. The department renewed 7,852 motor vehicle licenses in fiscal year 2017 without checking criminal history. As a result, the department would pay approximately \$7,852 annually from the TxDMV Fund to conduct a criminal history check on each motor vehicle license renewal.

### *Texas Department of Motor Vehicles*

Fiscal Year	Revenue Loss to TxDMV Fund	Savings to TxDMV Fund	Cost to the Department	Change in Number of FTEs From FY 2019
2020	\$195,025	\$79,097	\$7,852	-1.0
2021	\$195,025	\$79,097	\$7,852	-1.0
2022	\$195,025	\$79,097	\$7,852	-1.0
2023	\$195,025	\$79,097	\$7,852	-1.0
2024	\$195,025	\$79,097	\$7,852	-1.0



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**AGENCY AT A GLANCE**  
**APRIL 2018**



# AGENCY AT A GLANCE

The Legislature created the Texas Department of Motor Vehicles in 2009 by transferring various motor vehicle functions from the Texas Department of Transportation to the newly created department. The department's mission is to serve, protect, and advance the citizens and industries in the state with quality motor vehicle-related services.<sup>1</sup> The department performs the following key functions to fulfill this mission:

- Provides title, registration, and license plate services
- Regulates the sales of motor vehicles, including dealers, manufacturers, and distributors
- Authorizes motor carriers to operate within Texas and issues oversize/overweight permits
- Investigates complaints against regulated motor vehicle licensees and motor carriers, and conducts enforcement activities

## Key Facts

- **Board.** The department's board consists of nine members appointed by the governor, with the advice and consent of the Senate, who serve six-year staggered terms. Statute requires the board's membership to consist of two licensed franchised dealers, one licensed independent dealer, one licensed manufacturer or distributor, one county tax assessor-collector, one member of a county or municipal law enforcement agency, one member from the motor carrier industry, and two public members.<sup>2</sup> The governor designates the board's chair. The chart below shows the current board membership.

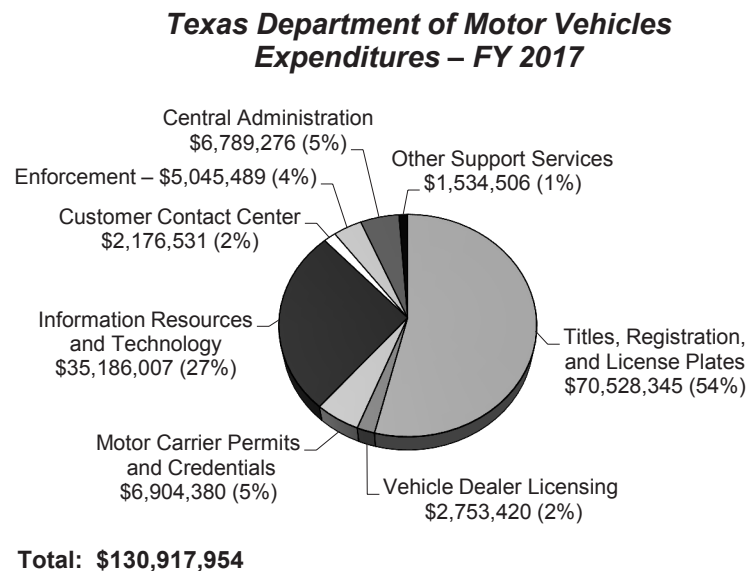
***Texas Department of Motor Vehicles Board***

Name	City	Qualification	Term Expires
Raymond Palacios Jr., Chair	El Paso	Franchised Auto Dealer	February 2019
Robert "Barney" Barnwell III	Magnolia	Public Member	February 2019
Luanne Caraway	Kyle	Tax Assessor-Collector	February 2019
Brett Graham	Denison	Franchised Auto Dealer	February 2017
Kate Hardy	Trophy Club	Vehicle Manufacturing or Distribution Industry	February 2021
Blake Ingram	Sunnyvale	Independent Auto Dealer	February 2017
Gary Painter	Midland	Law Enforcement	February 2022
Guillermo "Memo" Treviño	Laredo	Public Member	February 2021
John Walker III	Houston	Motor Carrier Industry	February 2017

- **Funding.** In fiscal year 2017, the department received \$1.82 billion in total revenue from about 150 different fees, mostly vehicle title and registration fees. As shown in Appendix A, the department deposits approximately 85 percent of these fees to the State Highway Fund for highway construction and maintenance activities, with the rest going to the General Revenue Fund and the Texas

Department of Motor Vehicles Fund (TxDMV Fund) for the department's internal operations. In fiscal year 2017, the department operated with a budget of about \$130 million from the TxDMV Fund and served as a pass through for nearly \$15 million in general revenue for automobile burglary and theft prevention grants.

The department spent about \$130 million in fiscal year 2017, more than half of which was on vehicle titles and registration. The pie chart, *Texas Department of Motor Vehicles Expenditures*, details the department's expenditures. Appendix B describes the department's use of state-certified historically underutilized businesses in purchasing goods and services for fiscal years 2015–2017.



- Staffing.** In fiscal year 2017, the department had 763 budgeted positions and employed 698 staff. About 500 staff are based in the Austin headquarters, with the remaining staff allocated among 16 regional service centers that provide limited registration and title services, as well as additional resources to county tax assessor-collectors. The department has an additional office in Huntsville within the Texas Department of Criminal Justice that coordinates the design and manufacturing of license plates. Appendix C compares the department's workforce composition to the percentage of minorities in the statewide civilian labor force for fiscal years 2015–2017.
- Vehicle titles, registration, and license plates.** State law requires a valid title and current registration to legally operate a vehicle on Texas public roadways. Vehicle titles allow a person to establish and legally transfer ownership of a vehicle and track major events in the vehicle life cycle, such as major damage and odometer readings, to guard against fraud when ownership changes hands. Motor vehicle registration helps ensure compliance with vehicle inspection and insurance requirements mandated by state law. Since Texans must apply for vehicle title and registration through their county of residence, the department provides these services in conjunction with each of the 254 county tax assessor-collector offices, where most face-to-face interactions with the public occur.<sup>3</sup> Together, the department and these offices issued about 8.2 million titles and processed about 24 million vehicle registrations and renewals in fiscal year 2017.

The department maintains vehicle records in its registration and title system. As a part of the title application process, the department queries the federal National Motor Vehicle Title Information System to verify the accuracy and legitimacy of title information against title records from other states to prevent damaged or stolen vehicles from re-entering the consumer marketplace without proper disclosure to buyers. As described further in Issue 2, the department identifies and investigates motor vehicle-related fraud, such as schemes to avoid paying vehicle sales tax or attempts to sell flooded or otherwise damaged vehicles to unsuspecting consumers.

The department also manages the design and production of license plates — including general issue, specialty, and personalized plates — and contracts with the Texas Department of Criminal Justice to manufacture these plates. The department currently offers 474 specialty plate designs, including specific plate designs mandated by state law or created by the department or its private vendor, MyPlates. In total, about 806,561 specialty plates were registered in Texas in fiscal year 2017.

- **Motor vehicle industry regulation.** The department regulates more than 32,000 motor vehicle industry licensees in 11 different license categories, including franchised (new car) dealers, and distributors, manufacturers; independent (used car) dealers; salvage dealers; and others. Issue 4 provides additional information about the department's motor vehicle licensing function. As part of this industry's unique regulatory model, which defines in part the business relationship between manufacturers and distributors and their franchisees, dealers can protest certain actions by other dealers, manufacturers, or distributors at the department, as discussed in further detail in Issue 1 and Appendix D.<sup>4</sup> The department received 24 protests in fiscal year 2017 and provided mediation services in 22 cases.

The department also enforces laws and regulations meant to protect the public from deceptive business practices and other issues related to the motor vehicle industry. In fiscal year 2017, the department received 5,985 complaints, conducted 4,878 investigations, and completed 120 inspections, taking enforcement action in 3,014 cases. The most common complaints include failure to apply for title, inadequate or incomplete records, and misuse of temporary tags. Issue 3 provides more detail about the motor vehicle enforcement process.

- **Motor carrier regulation.** The department and the Federal Motor Carrier Safety Administration share responsibility for regulating motor carriers. Generally, the department regulates companies operating within Texas (intrastate), while federal regulation applies to companies operating across state lines (interstate), with some companies having both types of operating authority. For intrastate and interstate carriers, the Texas Department of Public Safety (DPS) is primarily responsible for enforcing safety as well as size and weight requirements.

For intrastate motor carriers, the department processes applications for operating authority, allowing these companies to operate legally on Texas public roadways. The department verifies the carrier's compliance with basic safety requirements, such as maintaining sufficient liability insurance. The Federal Motor Carrier Safety Administration issues similar authority for carriers operating across state lines. The table, *Active Intrastate Motor Carriers*, shows the main types and total number of carriers with intrastate operating authority in fiscal year 2017.

**Active Intrastate Motor Carriers  
FY 2017**

General motor carriers (cargo)	48,723
Passenger transporters	469
Household goods movers	875
Hazmat	2,612
<b>Total</b>	<b>52,679</b>

The department also regulates the movement of oversize and overweight vehicles that exceed state and federal maximums for width, height, length, and weight by requiring and issuing oversize and overweight permits for both intrastate and interstate motor carriers through the Texas Permitting and Routing Optimization System (TxPROS). The department issued 701,715 permits in fiscal year 2017, including 431,085 that were self-issued online by motor carriers using TxPROS.

The department shares enforcement responsibilities for motor carriers with DPS, who has primary responsibility for enforcing motor carrier safety laws and regulations, as well as commercial driver

license requirements on roadways, and operating weigh stations throughout the state to check for compliance with size and weight requirements. Texas state troopers inspect vehicles and report citations to the department. DPS may recommend suspension of operating authority for carriers with a history or pattern of safety violations or prohibit a driver from operating until the carrier addresses a safety issue, such as unsafe brakes. The department determines whether the citation warrants further administrative enforcement, specifically for size and weight violations, and takes enforcement action when a carrier fails to provide or maintain evidence of required minimum liability insurance. Consumers also file complaints with the department against motor carriers, typically household goods movers. In fiscal year 2017, the department received 8,010 complaints against motor carriers with the vast majority — 5,673 — resulting from insurance coverage violations. The department either assessed a sanction or issued a warning in 6,086 cases. Issue 3 provides additional information about the motor carrier enforcement process.

- **Lemon Law.** The department processes complaints for the Texas Lemon Law program, which provides a low-cost option for consumers to resolve disputes with manufacturers relating to defects in new vehicles, or “lemons.” The department determines eligibility for relief under the law and attempts to resolve complaints through in-house mediation services, staffed by case advisors who are trained motor vehicle technicians and certified mediators. Complaints not resolved through mediation proceed to the department’s Office of Administrative Hearings, which hears only Lemon Law cases. The department received 473 complaints in fiscal year 2017, settled 205 cases, and conducted 111 administrative hearings. In addition, the department can issue repurchase or replacement orders, and ordered 82 as a result of settlements and administrative hearings in fiscal year 2017.
- **Automobile Burglary and Theft Prevention Authority.** The Automobile Burglary and Theft Prevention Authority (ABTPA) has its own six-member, governor-appointed board and is administratively attached to and staffed by the department.<sup>5</sup> The Legislature appropriates a portion of the \$2 fee assessed on consumer car insurance policies in Texas to the department to fund ABTPA and its grant program. The authority’s board awards competitive grants annually to local law enforcement agencies or multi-jurisdictional task forces based on highest rates of automobile burglary and theft. The authority awarded a total of \$13,362,745 in grant funding to 24 law enforcement agencies and task forces for fiscal year 2017. Grant recipients primarily use the funds for officer positions to investigate motor vehicle burglary and theft, and must report performance indicators to the department, including stolen vehicles recovered, cases cleared, and persons arrested, as detailed in the table, *Automobile Burglary and Theft Prevention Authority Grant Performance Measures*.

***Automobile Burglary and Theft Prevention Authority  
Grant Performance Measures – FY 2017***

Recovered Stolen Vehicles	11,172
Cleared Motor Vehicle Theft Cases	15,563
Persons Arrested for Motor Vehicle Theft	2,901
Cleared Burglary of a Motor Vehicle Cases	5,457
Persons Arrested for Motor Vehicle Burglary	1,487

<sup>1</sup> “About Us,” Texas Department of Motor Vehicles, accessed February 26, 2018, <http://www.txdmv.gov/about-us>.

<sup>2</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 1001.021, Texas Transportation Code.

<sup>3</sup> Sections 501.023 and 502.040, Texas Transportation Code.

<sup>4</sup> Chapter 2301, Texas Occupations Code.

<sup>5</sup> Article 4413(37), Vernon’s Texas Civil Statutes.



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# ISSUES



# ISSUE 1

## *The Department's Industry-Oriented Board and Its Processes Create Risk for the State.*

### Background

In 2009, the Legislature transferred the titling and registration of motor vehicles, as well as certain regulatory functions, from the Texas Department of Transportation to the newly created Texas Department of Motor Vehicles. The composition of the department's nine-member board primarily reflects the regulated industries that transferred, as shown in the textbox, *Texas Department of Motor Vehicles Board Composition*.<sup>1</sup>

Like most other states, Texas uses the franchise model to regulate the sale and distribution of new motor vehicles. This regulatory structure heavily involves the state in defining the business relationship between manufacturers or distributors with their franchised dealers in a way the state is not involved in most other regulated businesses. The textbox, *Motor Vehicle Industry Participants*, describes the different roles of the participants in the industry. In effect for decades, this model requires a strict separation between manufacturers and dealers — law prohibits manufacturers from selling directly to consumers, reserving this right for franchisees only, and prohibits a manufacturer from owning an interest in a franchised dealer.<sup>2</sup>

As a key element of this regulatory structure, Texas law provides for a “protest” process, allowing franchised dealers to protest certain actions by other dealers or the manufacturer. For example, a franchised dealer could protest the proposed termination of a franchise or an application for a new dealership license selling the same line-makes of vehicles (such as Ford or Honda) within a certain proximity of a current licensee.<sup>3</sup> Unlike typical contested cases, the department is not a party to the protests, which involve a dispute between two department licensees or a licensee and an applicant for a license. State law requires mediation between the parties, which the department provides to help settle protests before they progress to a contested hearing at the State Office of Administrative Hearings (SOAH).

The board has an important but limited role as the final decision maker on all protest cases. If a party appeals the board's final decision, the board becomes a party to the contested case. Appendix D provides a flow chart that shows the path protest cases take from filing to resolution. Since fiscal year 2010, the department has received 242 protests, resulting in 154 referrals to SOAH.

#### ***Texas Department of Motor Vehicles Board Composition***

- Two franchised dealers of different vehicle classes
- One independent dealer
- One representative of a manufacturer or distributor
- One tax assessor-collector
- One representative of a law enforcement agency of a county or municipality
- One representative of the motor carrier industry
- Two members of the public

#### ***Motor Vehicle Industry Participants***

- **Manufacturer:** assembles new motor vehicles
- **Distributor:** sells motor vehicles on behalf of a manufacturer to a franchised dealer and enters into franchise agreements on behalf of a manufacturer
- **Franchised Dealer:** sells and services new motor vehicles under agreements with manufacturers or distributors

## Findings

### The department's board is weighted toward industry interests, creating risks to the state.

- **Majority of industry board members.** Board structures are not intended to provide representation of a regulated industry, but rather to provide expertise, when necessary, for effective decisionmaking. Four of the board's nine members represent elements of the motor vehicle industry despite only 2 percent of the department's expenditures directly supporting regulation of this industry. In other words, motor vehicle industry regulation is not the primary function of the department — issuance of vehicle titles, registrations, and license plates is.

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*The current board has the lowest ratio of public or consumer members to industry members in the board's history.*

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The current board has the lowest ratio of public or consumer members to industry members in the board's history. Historically, the previous boards that regulated the motor vehicle industry ranged from having five industry members on a nine-member board, to having a six-person all public-member board. The last version of the board, when it was administratively attached to the Texas Department of Transportation, had three industry members and six public members. The focus of all these prior boards was solely on regulating the motor vehicle industry, not the wide responsibilities of the current department.

The Sunset Commission's across-the-board standard on board composition requires at least one-third of a board's membership consist of public members to ensure sufficient public participation and balanced perspectives to inform policy and decisionmaking. Boards dominated by members of a regulated profession or directly affected by the activities of the agency run the risk of not fully considering the impacts of their decisionmaking on broad public interests. In total, six of the nine members of the board represent entities regulated by or under the jurisdiction of the department. Only two of the positions on the board are reserved for public members. Also, the chair of this board has always been a current or former member of the motor vehicle industry.

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*The board lacks a strong, unbiased voice to help mediate disputes among industry members.*

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With an industry-dominated board and an industry member serving as chair, the board lacks a strong, unbiased voice to help mediate disputes among industry members. Unbiased leadership on this board is especially crucial because of its role in deciding contested protest cases involving business disputes that pit two licensees, often from different department-regulated industries, against each other. Regulation of industries with such conflicts within one agency can result in the agency or board favoring one industry at the expense of another or favoring one group's interest over consumers. Protest cases can cause difficulty for industry members of the board to separate the interests of their business sector from their role of deciding these cases in an unbiased manner.

- **Potentially anti-competitive rule proposals.** In fall 2017, members of the board attempted to use the department's rulemaking process to propose new show and exhibition rules on a highly sensitive and controversial policy issue — the Tesla sales model — as described in the textbox, *Attempts to Modify the Texas Franchise Model*. Even though the department ultimately did not propose any version of the drafted rules, these actions raise serious concerns about anticompetitive board action, especially in light of a 2015 U.S. Supreme Court decision regarding anticompetitive regulatory board behavior.<sup>4</sup> When board members attempt to affect the market in which they also participate, they risk, at a minimum, the appearance of being anti-competitive, which not only puts the department at risk of costly litigation but also jeopardizes the reputation of the board as a policymaking body and the integrity of the regulatory process. While this board struggles to enforce statute that has not kept pace with current business models, it is not the board's role to create policy when the Legislature has chosen not to adopt a policy.

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*It is not the board's role to create policy when the Legislature has chosen not to do so.*

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#### ***Attempts to Modify the Texas Franchise Model***

During the past three legislative sessions, the Legislature has considered various proposals to modify the existing motor vehicle franchise model to allow manufacturers, such as Tesla, to sell directly to consumers within Texas; however, none of these bills have become law. Tesla's business model does not use franchised dealers for sales, which is at odds with the traditional franchise model. Franchised dealers generally oppose changes to the current regulatory structure that protects their business model and ensures all new motor vehicle sales flow through a dealer. Allowing manufacturers like Tesla to sell vehicles directly to consumers would potentially impinge on the financial interests of franchised dealers.

In the summer of 2017, the draft agenda for the department's board meeting on August 17 included an item for a proposed draft rule for shows and exhibitions. However, the draft rule was pulled due to the length of the agenda and concerns expressed by the Texas Automobile Dealers Association. In September, the board created an ad hoc, informal working group that included board members, agency staff, and representatives from the Texas Automobile Dealers Association and General Motors, but did not include other stakeholders directly impacted by the draft rules being considered. This group developed a proposed rule for shows and exhibitions that would have made Tesla's business model more difficult, if not impossible to carry out within Texas by prohibiting manufacturers from showing their vehicles or offering test drives at shows or exhibitions. Ultimately, these rules were never proposed.

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*The board should avoid actual or even the appearance of anticompetitive actions.*

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The impact of the recent U.S. Supreme Court ruling has focused attention on board actions that do not clearly align with a board's statutory duties, especially actions by board members who are market participants and may be motivated to act in their self-interest.<sup>5</sup> While the department's board is not an occupational licensing board per se, it is a regulatory board and the same imperative to avoid anticompetitive action or even the appearance of such still applies.

**The appearance of questionable board member conduct indicates inadequate board policies and ineffective board member training.**

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*Sunset staff observed the board retrying cases at board hearings.*

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- **Questionable board discussion on contested protest cases creates risk of appeal.** The board engages in fact-finding missions that can go beyond what it is legally allowed to consider when deliberating contested protest case proposals for decision from SOAH. Board consideration of information outside of the formal evidentiary record creates risks of procedural violations that could cause the state to be overturned on appeal, wasting extensive time and resources already invested in the case by the state, which has no stake in the outcome of the case. While an agency's board may ultimately disagree with a SOAH decision, boards do not generally relitigate cases the way the department's board does. Sunset staff, in reviewing archived board meetings, observed the board engaging in public deliberations that at times lasted several hours and sometimes included new testimony, effectively retrying the case at the board meeting. SOAH proceedings provide the parties an opportunity to produce all arguments and evidence in accordance with standard processes in the Texas Administrative Procedures Act that are designed to ensure objectivity and fairness. The textbox, *Unique Features of the Board's Review of Contested Protest Cases*, describes some of the unusual conduct that is common for this board when it reviews protest cases.

***Unique Features of the Board's Review of Contested Protest Cases***

- 20-minute oral arguments for each party that regularly turn into hours of discussion
- Board members and parties to the case publically discuss evidence outside the official record
- Attempting to rewrite proposals for decision without proper justification

Governing boards with final order authority on contested cases, including the department's board, must base their final decisions on evidence contained solely within the official administrative

record from SOAH.<sup>6</sup> If the parties raise new issues or attempt to offer supplemental evidence, standard practice is to stop discussion on the matter and either not consider the new information or remand the case back to SOAH for further consideration of the evidence. Even though the department's general counsel frequently advises against considering new issues or evidence, Sunset staff observed the board allowing new information from parties outside of the official record. Hearing such evidence calls into question whether the board can make an objective decision on only the evidence in the record. As a result, if the board makes modifications to a proposal for decision, the parties or the public cannot determine whether these modifications are based on the issues within or outside the SOAH record. A procedural violation, such as making changes based on evidence outside the record, puts the state at risk in an appeal and is fundamentally unfair to the party who prevailed based on the record produced at SOAH.

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*Hearing evidence outside the record calls into question the basis for the board's decisions.*

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While statute requires board members to complete certain training before serving on the board, the department lacks adequate policies and training materials to guide board members' conduct and discussion when hearing oral arguments and acting on proposals for decision.<sup>7</sup> To curtail inappropriate

board discussion, some state agencies develop policies to guide behavior when acting on proposals for decision, especially with highly technical and complex cases. For example, the Texas Medical Board has policies in place to curtail inappropriate discussion by the parties and the board members outside the evidentiary record in SOAH cases before the board.<sup>8</sup>

- **Board member involvement in advisory committees and working groups risks the appearance of undue influence in policy development.**

Governing boards typically use formal advisory committees and informal working groups to seek needed expertise and perspectives from stakeholders and other interested parties. Currently, board members serve on both of the department's advisory committees and often participate as members of the department's working groups, which also include department staff and stakeholders. Having board members serving on advisory committees or working groups risks the appearance of the board guiding the advisory committee to a pre-determined result — regardless of board member industry expertise. Having board members on working groups or advisory committees undermines the independent, external expertise and recommendations these groups are intended to provide to the full board, and can influence or inhibit the groups' discussions or recommendations.

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*Board member participation in advisory processes undermines independent, external expertise.*

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- **Attempted ex parte communications with board members.** The board lacks a clear policy on the subject of ex parte communications, even though department staff advise board members to refrain from any such communications. Sunset staff identified documentation supporting at least two occasions in which parties to contested protest cases attempted to contact board members before the board issued a final order on the protest. If board members respond, they place themselves individually and collectively at risk of litigation, as the Texas Administrative Procedures Act prohibits such communication.<sup>9</sup> The department needs policies and periodic training to ensure board members do not enable this type of behavior.

### **The department lacks a comprehensive and transparent approach to gathering and using stakeholder input.**

The department has a diverse range of stakeholders, including industry participants that are often at odds with one another, as well as 254 elected county tax assessor-collectors with diverse opinions about title and registration administration. While all agencies should make proactive efforts to obtain stakeholder input and feedback, the department has a particularly high bar to meet, given the many industry stakeholders, local governments, and members of the public who are directly affected by the department's rules and policies. However, the department lacks the structure and processes needed to ensure inclusive, transparent opportunities for stakeholder and public input to inform the department's rulemaking and policy development.

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*The department lacks an inclusive and transparent stakeholder and public input process.*

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- **More reliance on internal working groups rather than more open and transparent advisory committees.** State agencies often use standing or time-limited advisory committees as a means of getting independent, external



expertise to inform the agency's rulemaking proposals as well as policies and procedures; to offer best practices for implementing and improving agency programs; and to help identify needs for new agency programs and services. By contrast, the department relies almost exclusively on ad hoc working groups as the primary means of obtaining stakeholder feedback for developing rule proposals, instead of advisory committees that ensure more open, broad-based opportunities for stakeholder input and vetting. The textbox, *Advisory Committees vs. Working Groups*, explains common uses of advisory committees and working groups in state government. Currently,

the department has two advisory committees — one for motor vehicle licensing and another for household goods movers — but uses them primarily for the statutory rule revisions every four years, and does not use them in a consistent way to gather stakeholder feedback.<sup>10</sup> The motor vehicle licensing committee last met in December 2013, and the household goods committee last met in October 2016.

The department has plenty of rulemaking opportunities to use advisory committees to ensure transparency and inclusiveness, especially for contentious and controversial topics, but instead has opted to use working groups. Using working groups to help develop policy or rule changes can be an effective part of the stakeholder input process. However, Sunset staff received feedback from stakeholders that the department's approach to establishing working groups makes those not specifically invited to participate feel as if their perspective is not valued. In addition, department staff does not typically invite consumer representatives to working groups, missing a crucial perspective on board policies and rules. Relying on working groups alone does not provide the

transparency or inclusiveness formal advisory committees provide through posted public meetings and public records of committee deliberations. Use of advisory committees along with working groups to develop rule or policy proposals would allow for a broader base of input, rather than a more limited group of hand-selected voices and perspectives.

- **Statutory exemption from ensuring balanced industry and public perspectives on advisory committees.** Unlike most other regulatory agencies, the Legislature has exempted the department from the statutory requirement that agencies provide balanced representation between the regulated industry and consumers on its advisory committees.<sup>11</sup> Not having consumer members on the department's advisory committees

### ***Advisory Committees vs. Working Groups***

#### **Advisory committees:**

- created by a board or statute
- obtain independent, external expertise
- include public representation
- open to the public
- minutes taken
- present recommendations to the full board for consideration

#### **Working groups:**

- created by agency staff
- advise staff on policy issues before a more public vetting of issues
- composed of a small, select group that meets in a closed setting
- no required meeting posting
- no requirement to maintain minutes
- provides initial comments to staff to aid in drafting a more formal proposal

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*The department is not required to balance industry and consumer representation on advisory committees.*

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directly undermines the goals of promoting broad stakeholder input at the department. Without the perspectives of the public, the department may be unaware of the impacts of proposed policies and rules on consumers.

- **Missed opportunities for alternative dispute resolution and negotiated rulemaking.** The department's governing statutes do not include a standard provision relating to consideration of alternative rulemaking and dispute resolution that the Sunset Commission routinely applies to agencies under review. Stakeholder survey responses and interviews conducted during the Sunset review indicate the contentious nature of some of the department's policy areas could benefit from use of alternative dispute resolution or negotiated rulemaking. These alternative methods could improve rulemaking and policymaking, if parties are willing to participate, through more open, inclusive and conciliatory processes designed to solve problems by building consensus.

## Recommendations

### *Change in Statute*

#### **1.1 Restructure the board by replacing one franchised dealer member with a public member to better balance board representation.**

This recommendation would modify the existing board structure by replacing one of the two franchised dealers with a public member, to total three public members and one franchised dealer, in addition to one member each to represent independent dealers, manufacturers or distributors, motor carriers, tax assessor-collectors, and law enforcement.<sup>12</sup> Having another public member on the board would provide more balance between the industry and public perspectives on the board, ensuring the public has enough of a direct voice in the activities of the department to help balance industry interests. By December 1, 2019, the governor should appoint the new public member to replace the franchised dealer-member whose term expires first.

#### **1.2 Require the governor to designate a public member as the presiding officer of the department's board.**

The standard Sunset across-the-board recommendation requires the governor to designate the presiding officer of state policymaking bodies to increase state agencies' accountability. However, the board's questionable conduct under industry-linked leadership and the 2015 U.S. Supreme Court ruling on anticompetitive board behavior support modifying the standard recommendation to require the governor to designate one of the public members of the board as the presiding officer. A presiding public member would be in a position to help temper even the appearance of industry influence on the board and mediate between board members from industries that often disagree — particularly the franchise dealer and manufacturer members when protest cases come before the board.

#### **1.3 Require the board to adopt rules and policies to establish clear standards for conduct and handling of contested cases coming before the board for final decisions.**

This recommendation would require the board to adopt rules and policies that establish standards for appropriate conduct and discussion of contested case proposals for decision from an administrative law judge. These rules and policies would also specify staff's role in managing contested protest cases before

the board, including advising the board on procedural matters. The rules and policies should also set clear expectations limiting arguments and discussion to only evidence within the official record from SOAH. The department needs to ensure policies cover topics such as ex parte communications and the distinction between the proper use of board member expertise versus representing or advocating for a particular industry.

#### **1.4 Update and modify the standard Sunset across-the-board requirement related to board member training.**

This recommendation would update existing statutory requirements for the department to provide board member training by requiring the department to develop a training manual that each board member attests to receiving annually, and require existing board member training to include information and guidance about the scope of the board's rulemaking authority. The recommendation also would require training on the board's authority and limits in acting on proposals for decision from SOAH, as informed by the policies adopted under Recommendation 1.3. Additionally, department staff should work with the board to schedule regular, periodic refresher training required for all board members each biennium.

#### **1.5 Remove the board's exemption from providing balanced representation on its advisory committees.**

This recommendation would remove the statutory exemption that allows the board to create advisory committees that advise the department regarding an industry or occupation regulated or directly affected by the department without providing balanced representation between the industry or occupation and consumers of services provided by the industry or occupation.<sup>13</sup> The department would be required to reconfigure membership of its advisory committees to include public membership by March 1, 2020. Subjecting the department to this requirement already in general state law would provide a more balanced public involvement process for the department's critical functions.

#### **1.6 Apply the Sunset across-the-board requirement related to negotiated rulemaking and dispute resolution.**

This recommendation would require the board to develop and implement a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by SOAH. This provision would help ensure the board develops a plan to apply these procedures, when appropriate, to its rulemaking, contract disputes, and other potential conflict areas. Having alternative options available for resolving ongoing and future contentious issues would better ensure participation, even by parties at odds with each other, and promote broader-based consensus.

### ***Management Action***

#### **1.7 Direct the board to establish advisory committees to provide expertise for rulemaking and other issues and adopt rules regarding standard committee structure and operating criteria.**

The board should establish standing advisory committees to provide independent, external expertise on significant department functions and policies by September 1, 2019. Advisory committees should be reflective of the different program areas within the department and include at a minimum, motor vehicle industry regulation, motor carrier industry regulation, and vehicle titles and registration.

The board should clearly distinguish between the appropriate situations to use advisory committees versus working groups. The board should adopt rules regarding the purpose, structure, and use of its advisory committees, including

- the purpose, role and goal of the committees;
- size and quorum requirements of the committees;
- composition and representation provisions of the committees;
- qualifications of the members, such as experience or geographic location;
- conflict-of-interest policies for committee members;
- appointment procedures for the committees;
- terms of service;
- training requirements, if needed;
- the method the department will use to receive public input on issues acted upon by the advisory committees; and
- compliance with the requirements of the Open Meetings Act.

Under this recommendation, the board should ensure the working groups and advisory committees do not include board members, allowing advisory committees and workgroups to serve in the independent advisory capacity for which they are created. While board members generally should not attend meetings of the committees or groups, board member perspectives would continue to be a valuable component of discussion before the board ultimately votes on a proposal. This change would ensure open consideration and inclusion of stakeholder and public interests, without the influence of board member involvement.

Having standing advisory committees would create more structure around the department's stakeholder input processes and a more inclusive, independent, and transparent process for vetting issues and developing rules. Having these advisory committees would also provide additional opportunities for public and stakeholder input and ensure any stakeholder or member of the public who wishes to participate and provide input has the opportunity to do so.

## Fiscal Implication

These recommendations would require the board to develop and adopt new rules and policies related to board member roles, advisory committees, working groups, and public involvement, which do not require additional resources. The negotiated rulemaking and dispute resolution recommendation only requires the development of a policy; it does not require use of alternative dispute resolution for any particular situation.

- .....
- <sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 1001.021(b), Texas Transportation Code.
  - <sup>2</sup> Chapter 2301, Texas Occupations Code.
  - <sup>3</sup> Ibid. at Sections 2301.257, 2301.472, and 2301.652.
  - <sup>4</sup> *N.C. State Bd. of Dental Exam'rs v. Fed. Trade Comm'n*, 135 S. Ct. 1101 (2015).
  - <sup>5</sup> Ibid.
  - <sup>6</sup> Section 2001.141, Texas Government Code.
  - <sup>7</sup> Section 1001.030, Texas Transportation Code.
  - <sup>8</sup> 22 T.A.C. Section 187.35.
  - <sup>9</sup> Section 2001.061, Texas Government Code.
  - <sup>10</sup> Section 2001.039, Texas Government Code.
  - <sup>11</sup> Section 1001.031, Texas Transportation Code; Section 2110.002, Texas Government Code.
  - <sup>12</sup> Section 1001.021(a), Texas Transportation Code.
  - <sup>13</sup> Section 1001.031, Texas Transportation Code; Section 2110.002, Texas Government Code.

# ISSUE 2

## *Texas Lacks Basic Safeguards to Identify and Address Vehicle Title Fraud.*

### Background

The Texas Department of Motor Vehicles performs vehicle title and registration services in conjunction with each of the 254 county tax assessor-collector offices throughout Texas. In fiscal year 2017, the department issued 8.6 million vehicle titles and processed 24 million vehicle registrations and renewals, collecting about \$1.6 billion in fee revenue, most of which was deposited to the State Highway Fund for highway construction and maintenance. The state also collected about \$9.8 billion in vehicle sales and rental taxes over the 2016–17 biennium, about 10 percent of the state’s total tax collections, most of which flows through county tax assessor-collector offices and their contractors.<sup>1</sup>

With vehicle title transactions, a large amount of money is at stake in terms of state taxes and fees, and the purchase of a vehicle is a major financial investment for most people. Because of the financial implications, title transactions can be subject to fraud, including inflated sales prices and the titling of damaged or unsafe vehicles, that defrauds the state and harms consumers. The textbox, *Examples of Vehicle Title Fraud*, provides types of title fraud the department investigates, most commonly sales tax fraud.

Until recently, a historical lack of investigative resources rendered the department’s approach to title fraud investigation entirely reactive and unable to address an increasing backlog of fraud referrals. The department, which began investigating title fraud in fiscal year 2014 with one fraud investigator, conducted 828 investigations in fiscal year 2017.<sup>2</sup> In response to growing concerns about title fraud, the department requested and the Legislature appropriated an additional \$2 million and 13 additional full-time equivalent positions for the 2018–19 biennium to provide a more structured, proactive approach to investigating and addressing title fraud in the state. The department’s fraud investigator has developed the expertise to handle these often highly complex title fraud investigations but will remain the department’s only resource in combating fraud until the department completes hiring and training of additional staff later this year.

The textbox on the following page, *Examples of Title Fraud Cases*, describes some of the types of cases investigated by the department in conjunction with law enforcement agencies, though the department indicates it sometimes has difficulty getting local law enforcement to pursue criminal investigation and prosecution of these cases. Since fiscal year 2014, the department’s fraud investigation efforts have resulted in 60 known arrests.

#### **Examples of Vehicle Title Fraud**

- **Sales tax fraud:** Attempts to avoid paying sales tax on vehicle sales, such as by reporting a much lower sales price than the actual price on a title application.
- **Title washing:** Selling damaged vehicles to unsuspecting consumers by fraudulently obtaining a clean title or altering an existing salvage title to hide vehicle damage.
- **Selling vehicles with flood damage:** Unscrupulous dealers may sell flooded vehicles on their lot without getting a salvage title.
- **Odometer fraud:** Rolling back odometers to increase resale value of vehicles.
- **Rebuilt salvage fraud:** Falsifying an affidavit asserting damage to a salvage vehicle has been fixed to cover up theft by substituting a stolen vehicle for a wrecked or damaged vehicle.

### **Examples of Title Fraud Cases**

- Multiple tax assessor-collectors were accused of or admitted to accepting bribes to process fraudulent title applications or registration transactions.
- Dealer conspired to roll back 600 vehicle odometers and sell the vehicles to unsuspecting consumers at an inflated price.
- Former department employee accepted bribes to process 51 fraudulent applications for certified copies of title.
- Tax assessor-collector employee voided legitimate title transactions, reprocessed them with a lower sales price and pocketed the difference, resulting in loss of fees and sales tax revenue.
- Dealer submitted fraudulent rebuilt salvage paperwork as a way of covering up vehicle theft.
- Criminal investigation of a county contractor (full-service deputy) for various sales tax fraud activities.

Title fraud not only risks financial harm but endangers the public by allowing potentially dangerous vehicles to remain on the road. The department updates titles when a vehicle is reported as salvaged or nonrepairable, such as after flood damage. However, title fraud can allow such vehicles to remain on the road and re-enter the market without anyone knowing about the damage to the vehicle. Estimates suggest Hurricane Harvey damaged between 500,000 and one million vehicles along the Texas coast, and many of these vehicles could make their way back into the marketplace through attempts to sell them without disclosing damage.<sup>3</sup> Additionally, flooded vehicles entering the marketplace on the heels of natural disasters like Hurricane Harvey highlight the increased risk for consumer harm at the hands of unscrupulous actors. The department's investigations also frequently involve improper payment of vehicle sales tax, translating to lost revenue for the state and a negative impact on the state's ability to fund critical government services.

## **Findings**

### **The state's decentralized structure for providing vehicle title and registration services lacks basic oversight safeguards, resulting in significant fraud risks.**

Texas law assigns the department overall responsibility for and oversight of the state's vehicle registration and title system but places most responsibility for processing vehicle registration and title transactions with county tax assessor-collectors.<sup>4</sup> While Texas benefits from having customer service capacity in every county, this decentralized structure creates confusion about oversight responsibilities and authority.

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*State law allows counties to contract out for title and registration services with little oversight.*

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- **Limited oversight of locally contracted services.** Statute authorizes counties to use private contractors, or "deputies," to provide various title and registration services to the public. Some counties contract with "full-service deputies," who provide all the same services as the county tax office and have direct access to the state registration and title system owned by the department.<sup>5</sup> However, statute also requires the department, not the counties, to define the duties and obligations of deputies but does not contemplate ensuring counties that outsource state business have basic contract oversight mechanisms in place.<sup>6</sup> Currently, four Texas counties



contract with full-service deputies — Travis, Bexar, Hidalgo, and El Paso — which accounted for about 5 percent of the statewide total number of title and registration transactions in fiscal year 2017.

Because the counties contract directly with the full-service deputies, the department's relationship with them is limited and indirect. The department's only existing oversight mechanism over full-service deputies is through a department rule requiring the county to include a contract addendum that defines specific circumstances in which the department can cut off access to the state's registration and title system, such as those described in the textbox, *Reasons for Suspension of Full-Service Deputy System Access*.<sup>7</sup> These circumstances include failure to materially follow state law or a pending criminal investigation. In practice, the contract addendum only provides for state intervention once violations are rampant and the integrity of the state registration and title system is breached. Recently, the department suspended a contractor's access to the registration and title system after it identified a pattern of apparent fraudulent transactions with the primary objective of evading proper payment of sales tax on motor vehicle transactions. In a 2016 case, the department shut off access to the registration and title system to another full-service deputy at the request of a county judge after the arrest of a county tax assessor-collector, county staff, and others on bribery and other charges related to selling fake vehicle registrations.<sup>8</sup> Further, while the department suspects fraud is occurring based on sampling a number of transactions by other full-service deputies, a lack of clear statutory authority to intervene prevents the department from more proactively protecting the integrity of state registrations and titles.

#### **Reasons for Suspension of Full-Service Deputy System Access**

- Multiple types of transaction schemes aimed at avoiding sales tax
- Title transactions containing false or improper addresses
- Rebuilt salvage transactions with falsified repairs
- Transactions with forged signatures
- Adding or collecting unauthorized charges or fees to a motor vehicle title or registration transaction

Though statute allows counties to outsource motor vehicle transactions to private companies, this arrangement carries all of the risk of outsourcing state functions without standard contract oversight tools. However, Texas law contains no requirements for counties to ensure open, competitive bidding and other basic government contracting standards, as described in the textbox, *County Contract Oversight Gaps*. While counties may competitively bid these contracts, they do not always choose to do so. For example, Travis County has been contracting with the same companies for decades — in one case since 1960 — with no periodic rebidding of these contracts. A review of some county contracts with full-service deputies found contracts with no specific expiration dates, no process for renewal, or no specific performance criteria. Statute

#### **County Contract Oversight Gaps**

- Lack of competitive bidding
- Contracts without expiration or periodic review
- No clear performance criteria or measures
- No required review of vendor performance
- Lack of required conflict-of-interest provisions or policies

also does not require compliance with the State Contract Management Guide to which other state functions are subject.<sup>9</sup> Because vehicle title and registration services are in fact state business, setting basic contracting parameters that counties must follow to outsource these functions is an entirely appropriate and essential role for the state.

County contracts also create perverse payment incentives. Full-service deputies receive compensation for each transaction they process, providing little incentive for these private contractors to refuse transactions that appear fraudulent. New contracts authorizing the department to issue sanctions for allowing transactions found to be fraudulent would be the ideal way to address this problem. Given the Texas Legislature's intensive focus on improving state contracting, putting basic parameters in these contracts that allow private businesses to provide state services is an obvious step the state can take to improve oversight, protect state revenues, and prevent harm to consumers.

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*The department lacks clear authority to terminate access to its title and registration system.*

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- **Insufficient access controls to critical state IT system.** The state created and maintains the registration and title system that maintains millions of vehicle records; however, the department's limited authority to control access to that information and role in county-contractor arrangements prevents the department from mitigating damage in cases of fraud or potential cybersecurity threats at county offices or their contractors. For example, a full-service deputy contractor is currently suing the department to regain access to the registration and title system. After discovering a significant number of apparently fraudulent transactions, such as not collecting required sales tax, the department suspended the contractor's access to the registration and title system. Currently, the addendum to county contracts with full-service deputies is the only place where the department's rights to terminate access to the system are defined for full-service deputies. Also, statute does not clearly contemplate the department's right to terminate access to the system for county employees, potentially preventing the department from being able to fully maintain security of its system.

### **The department lacks adequate oversight authority and tools to identify and address fraud effectively.**

- **Insufficient oversight authority.** Statute does not provide clear authority for the department to audit county tax assessor-collectors and their contractors or to review these entities for compliance, which would ensure full access to records needed to provide proper oversight of state vehicle registrations and titles. While the department may access relevant transaction records through the registration and title system, it does not have clear authority to access other records necessary to investigate fraud thoroughly, such as financial records, without county or deputy cooperation.<sup>10</sup>
- **No required fraud training for staff processing transactions.** The department offers voluntary training to educate county employees on detecting fraud by customers and other employees, but this training is



not required for county staff or their contractors processing registration and title transactions. County staff and contractors are on the front lines day-to-day and are most in need of knowing what to look for in evaluating fraudulent documents submitted by customers and detecting suspicious behavior in other staff. Given the high stakes involved, requiring training on spotting potential fraud is a minimal step the state can take to further the department's efforts to address fraud.

- **Lack of reporting tools to proactively monitor fraud.** The department has not had sufficient resources or existing tools to proactively monitor and investigate fraud, instead only reacting to referrals of suspected or known fraud. Currently, fraud detection largely depends on voluntary reporting from county, department, or county contractor staff. The department is developing standard reports to identify fraud proactively through a "fraud dashboard". However, because this effort is still in the early stages, it would benefit from clear legislative direction and ongoing monitoring to ensure full implementation.
- **Internal regional service center monitoring gap.** The department has some staff dedicated to visiting and monitoring county tax assessor-collector offices, but does not regularly monitor transactions occurring at its own 16 regional service centers, even though it has identified fraud at these centers in the past. For example, in 2014 one department employee was caught fraudulently processing certified copies of titles. Providing clear direction to the department to include regional service center transactions as part of its overall risk assessment and monitoring activities would help address this gap.

**The department is not using its existing resources to address fraud most effectively.**

- **Inefficient use of field staff.** The department uses eight field service representatives to build relationships with 254 county tax assessor-collector offices and monitor them to address potential compliance problems. However, the use of field service representatives has not been targeted or based on relative risks and has instead focused on ensuring visits to every county office at regular intervals. Given the limited number of field service representatives — with an additional five representatives yet to be hired — using these staff in a more strategic, risk-based manner could include focusing on areas of the state with higher transaction volume and places with previous problems combating fraud. For example, the department could conduct more remote monitoring using the department's information systems to review transactions and identify any problematic trends, instead of regularly traveling to every county office. The department also does not provide adequate training on best practices in detecting and investigating fraud, failing to effectively prepare field service representatives to proactively detect fraud.

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*The department does not require fraud detection training for employees processing registration and title transactions.*

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*Field service representatives do not focus efforts on riskiest areas.*

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- **Barriers to leveraging law enforcement.** The department struggles to engage law enforcement in investigations and prosecutions of motor vehicle fraud, which are primarily criminal in nature. Specifically, statutory barriers prevent the department from fully leveraging its existing relationships with local law enforcement agencies and task forces that receive grant funds through the Automobile Burglary and Theft Prevention Authority (ABTPA), as described in the textbox, *DMV's Relationship With ABTPA*.<sup>11</sup> State law requires local law enforcement agencies receiving ABTPA grant funds to use the funds for investigating theft or burglary of vehicles, not other types of motor vehicle crimes, such as odometer and title fraud.<sup>12</sup> For example, even though title fraud is commonly involved in automobile theft, under current law, the grantees cannot investigate those violations without risking grant funding.

#### ***DMV's Relationship With ABTPA***

The Automobile Burglary and Theft Prevention Authority (ABTPA), which is administratively attached to the department, works to reduce automobile burglary and theft by awarding financial grants to local law enforcement agencies and multi-jurisdictional task forces. Through these grants, ABTPA has fostered a statewide cooperative network of law enforcement groups, prosecutors, insurance industry representatives, local tax assessor-collectors, and concerned citizens to combat vehicle burglary and theft through enforcement, prevention, public information, and education initiatives. In fiscal year 2017, ABTPA awarded about \$13.4 million in grants to 24 law enforcement agencies and task forces.

## **Recommendations**

### ***Change in Statute***

#### **2.1 When outsourcing state services to full-service deputies, require counties to follow standard contracting practices.**

This recommendation would require counties choosing to contract out state motor vehicle services — specifically registration and title services — to use standard state contracting processes. County tax assessor-collectors would be required to

- use a competitive bidding process for each contract, including rebidding of all existing contracts by December 1, 2019;
- specify renewal and expiration terms and dates in each contract;
- include performance criteria and measures as part of each contract; and
- monitor contractor performance and use this information in future contracting decisions.

This recommendation would ensure counties follow basic, good government contracting practices when outsourcing state services. Counties could use the department as a resource for implementing the processes and contract provisions specified above. Requiring basic contracting safeguards would improve competition, enhance security of state systems, provide better oversight, and help ensure more transparency into how these contractors provide state services.

## **2.2 Clarify the department's authority to control access to the registration and title system.**

This recommendation would clarify that the department is the owner of the registration and title system. Statute would specify that authority to determine access to the system is solely that of the department, and authorize the department to adopt rules and policies for the system, such as user access, to ensure adherence to best practices and protect against cybersecurity threats.

This recommendation would also authorize the department to suspend access to the registration and title system for material noncompliance or violations of law or rule, suspected fraud, or a pending criminal investigation. To implement this recommendation, the department would adopt rules to further specify circumstances under which it would consider suspending access to the system.

## **2.3 Implement mandatory fraud training for all persons processing state registration or title transactions.**

This recommendation would require all department staff, county staff, and county contractors who process vehicle registrations or title transactions to complete training on the registration and title system and identification of motor vehicle fraud. The department would adopt rules to implement this requirement by December 1, 2019, including a timeline for training existing staff. The department should continue to offer its existing online fraud training program to serve as a basis for this training, but staff should review and update the training periodically to incorporate system changes or to address new trends in motor vehicle fraud.

## **2.4 Require the department to implement a proactive, risk-based approach to monitoring fraud.**

This recommendation would provide statutory direction to the department in its efforts to monitor and prevent fraud, including establishing a risk-based system of monitoring counties and their contractors, as well as the department's regional service centers. Under this recommendation, the department would develop criteria to determine varying risk levels, such as transaction volume and past violations, to strategically allocate resources and personnel. This recommendation also would provide direction to the department to monitor and investigate transactions performed in regional service centers as part of the agency's overall approach to combating fraud.

In implementing this recommendation, the department should determine risk levels for the department's fraud monitoring functions and review its methods for collecting and evaluating related information. The department also should consider the viability of incorporating more remote transaction review practices to supplement periodic, but less frequent, on-site visits to counties. The department should also develop or otherwise provide training to fraud investigations staff using expertise of existing field service representatives.

## **2.5 Authorize the department to audit or perform a compliance review of any entity providing registration and title services and access records needed to conduct audits or fraud investigations.**

This recommendation would ensure the department has broad authority to audit or perform compliance reviews, investigate any provision of state functions related to vehicle title and registration and access relevant records as needed. The department would have the clear authority to review and audit the title and registration aspects of county tax offices and their contractors related specifically to identifying

potential fraud or risk of fraud. Such authority would help ensure the state's ability to conduct necessary oversight of billions of dollars in registration and title transactions to protect taxpayers and consumers. The Legislature recently provided 13 new positions for antifraud activities, which would fit well with this new authority.

## **2.6 Authorize ABTPA grant recipients to use funds to combat a broader range of motor vehicle crimes, such as title and odometer fraud, beyond just automobile burglary and theft.**

This recommendation would authorize ABTPA grant recipients to use grant funds not just for vehicle burglary and theft, but also for other motor vehicle fraud-related crimes. This recommendation would also require ABTPA, in conjunction with the department, to develop updated performance measures for grants used to address these additional motor vehicle crimes. To draft this statutory change, the Texas Legislative Council should make necessary changes to codify laws for ABTPA, and clarify its mission and name to reflect the broader purpose of deterring motor vehicle crimes, including fraud. In conjunction with this recommendation, the department should provide training to its grant-funded auto theft task forces and then consider offering the training to other law enforcement agencies. Providing training would allow the department to share internally developed fraud investigation expertise and better leverage its existing law enforcement relationships to make its efforts to address fraud more effective.

## **Fiscal Implication**

These recommendations could be accomplished by the department using its newly enhanced resources. The department received an additional 13 full-time equivalent positions from the Legislature specifically to address fraud, and the department already is pursuing an IT project to develop for various reports that will allow more proactive monitoring of potential fraud, as described in Recommendation 2.4.

Recommendation 2.1 requiring counties to follow best practices in contracting out delegated state services will not have an additional cost since monitoring performance of outsourced government functions is a fundamental responsibility of government officials and agencies. Recommendation 2.3 requiring training does not have a cost since the department has already developed and would continue to offer online fraud training.

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<sup>1</sup> Legislative Budget Board, *Fiscal Size-Up 2016–2017 Biennium*, accessed February 7, 2018, [http://www.lbb.state.tx.us/Documents/Publications/Fiscal\\_SizeUp/Fiscal\\_SizeUp.pdf](http://www.lbb.state.tx.us/Documents/Publications/Fiscal_SizeUp/Fiscal_SizeUp.pdf).

<sup>2</sup> This total includes all individual cases of fraud. The department frequently investigates cases with multiple allegations or incidents, so the number of cases investigated is smaller.

<sup>3</sup> Nathan Bomey and Aamer Madhani, “Hurricane Harvey May Have Wrecked Up To 1M Cars and Trucks,” *USA Today*, August 31, 2017. Accessed February 8, 2018, <https://www.usatoday.com/story/money/cars/2017/08/31/hurricane-harvey-cars/619785001/>.

<sup>4</sup> All citations to Texas statutes are as they appear in <http://statutes.legis.texas.gov/>. Sections 501.0041, 502.004, 520.004, and 520.005, Texas Transportation Code.

<sup>5</sup> Section 520.0071, Texas Transportation Code; 43 T.A.C. Section 217.163.

<sup>6</sup> Section 520.0071, Texas Transportation Code.

<sup>7</sup> 43 T.A.C. Section 217.163(k).

<sup>8</sup> “Cameron County Tax Assessor-Collector Accused of Issuing False Vehicle Registrations in Exchange for Cash,” accessed February 16, 2018, <https://www.expressnews.com/news/local/article/Cameron-County-tax-collector-assessor-allegedly-6746631.php>.

<sup>9</sup> Sections 2261.256(b) and 2155.0755(a)(3), Texas Government Code.

<sup>10</sup> Sections 501.003, 502.0021, and 520.004, Texas Transportation Code; 43 T.A.C. Section 217.71.

<sup>11</sup> Article 4413(37), Vernon’s Texas Civil Statutes.

<sup>12</sup> Ibid.



# ISSUE 3

## *The Department's Approach to Enforcement Does Not Effectively Address the Biggest Risks to the Public.*

### Background

The mission of the Texas Department of Motor Vehicles is to serve, protect, and advance the citizens and industries in the state with quality motor vehicle-related services.<sup>1</sup> The department accomplishes this mission by enforcing laws governing motor vehicle sales and distribution, and the salvage and motor carrier industries. The department enforces statute and rules governing more than 32,000 licensed motor vehicle businesses and individuals, and nearly 50,000 registered motor carrier companies, including trucking and moving companies.

In fiscal year 2017, the department allocated 82 staff to enforcement, including 43 investigators located throughout the state. Enforcement activities include investigating complaints against both used and new motor vehicle dealers, and violations by motor carriers, such as household goods movers, and issuing citations for failure to carry adequate insurance. In fiscal year 2017, the department received 13,995 complaints — 5,985 motor vehicle and 8,010 motor carrier complaints. In response to these complaints, the department conducted 4,878 motor vehicle and 7,257 motor carrier investigations, as well as performed 120 proactive inspections of motor vehicle dealerships in fiscal year 2017.

#### **Enforcement Actions FY 2017**

No Violation Found	1,666
Warning	1,156
Penalties Assessed*	7,944
<b>Total</b>	<b>10,766</b>

\* Includes 5,673 motor carrier liability insurance citations.

The table, *Enforcement Actions*, summarizes department enforcement results in fiscal year 2017. Motor vehicle enforcement actions are primarily taken against dealers; common violations include failing to timely transfer a vehicle title to a buyer, improper use of temporary paper license plates, and deceptive advertising. The vast majority of motor carrier enforcement cases are automatic penalties resulting from trucking companies failing to meet liability insurance requirements.

### Findings

#### **The department lacks basic trend data needed to effectively evaluate how well it protects the public and best manage its enforcement efforts.**

- Limited enforcement data.** Sunset staff requested basic information regarding the number, type, and progression of complaints through the enforcement process and found the department's data tracking and reporting capabilities lacking. While the department is working to improve its enforcement data tracking, it struggled to provide Sunset basic information like complaint dispositions by license type and enforcement actions taken for different types of violations. The textbox on the following page, *Examples of Enforcement Data Tracking Limitations*, lists just a few of the limitations encountered in motor carrier and motor vehicle data during the review.

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*The department struggled to provide Sunset basic enforcement information.*

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### ***Examples of Enforcement Data Tracking Limitations***

- Complaint disposition and enforcement action by license type, such as the number of household goods movers receiving administrative penalties.
- Complaint disposition and violation category by license type, such as number of dealers with substantiated advertising violations.
- Number of licensees with multiple, repeat violations.
- Multiple discrepancies in data, creating challenges in tracing the path of all complaints through the system.

Without this trend data, the department cannot fully assess the effectiveness of its enforcement efforts or accurately assess staff performance, which ultimately impairs the department's ability to protect the public.

The department's approach to enforcement data tracking leaves it unable to identify trends in type of violations or determine whether its sanctions serve as an effective deterrent against repeat violations. At a minimum, regulatory agencies should track and report basic statistical information detailing the number, source, and types of complaints received; caseload statistics;

and the disposition of complaints resolved. While the department does track some of this data, such as details on caseload statistics, overall, the department's current approach to tracking and managing enforcement data is limited, preventing the department, and Sunset staff, from gaining a clear overall picture of its enforcement functions.

- **Limitations of recent information system upgrades.** In fiscal year 2017, the department, as part of a larger \$2.8 million software upgrade, switched to a new licensing and enforcement system for motor vehicle licensees that automated a number of internal processes, like mobile upload of investigative evidence. Changes in complaint closure codes in the new system made data reports difficult to compare to the old system, reducing the department's ability to use trend data to assess and manage its enforcement efforts. Ultimately, the new system will provide the department with better reporting capabilities, but the system needs additional modifications to track and report key enforcement data that licensing programs typically produce. The department's motor carrier case management system, which is separate from the motor vehicle system, similarly lacks features necessary to track enforcement data in a useful way, such as enforcement action by type of violation. This information would allow the agency to determine how frequently it uses, for example, administrative penalty authority versus other enforcement tools, like suspension, to evaluate which penalties best deter repeat violations.
- **Limited performance measures.** The department's limited data tracking and reporting capabilities prevent it from generating useful performance reports, crucial for informed decision making and effective management. Occupational licensing agencies often include output and outcome measures in key performance indicators to display the effectiveness and efficiency of department operations, such as the total number of complaints resolved, the percentage of complaints resolved within internal timeframes, and the percentage of complaints resulting in disciplinary action. However, the enforcement division's key performance indicators primarily touch on the timeliness of resolving complaints and do not capture these other necessary measures. While measuring the timeliness of complaint resolution is

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*Even with recent upgrades, the enforcement IT systems lack needed data.*

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certainly useful and necessary for managing regulatory programs, a more complete picture of the department's enforcement functions is necessary.

**The department's complaint resolution process needs improvement to ensure the most serious risks to the public are addressed.**

The department's complaint resolution process misses opportunities to most efficiently manage investigative efforts. In comparison to other regulatory agencies, the department lacks an organized approach to triaging incoming complaints, such as centrally handling nonjurisdictional complaints, to minimize unnecessary work and effectively allocate its investigative resources. The use of investigative resources for unnecessary purposes and lagging complaint resolution timeframes raise questions about the efficiency and management of the department's enforcement process. Although the department can identify bottlenecks in its enforcement process, the department needs more oversight of investigator and attorney time spent on cases to ensure timely closure.

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*Nonstandard enforcement practices lead to lagging complaint resolution timeframes.*

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- **Investigation of nonjurisdictional complaints.** The department assigns all complaints to investigators to find possible violations, even if the complaint is clearly nonjurisdictional and the department lacks legal authority to resolve the complaint. Common examples of nonjurisdictional complaints include consumer complaints about motor vehicle financing or illegal use of temporary license plates. The accompanying table, *Nonjurisdictional Complaints*, shows the number of nonjurisdictional complaints that, while not overwhelming, divert focus from addressing the open cases that are within the department's authority to resolve.

***Nonjurisdictional Complaints***

FY 2013	247
FY 2014	163
FY 2015	140
FY 2016	159
FY 2017	57

- **No formal policies for prioritizing complaints based on risk.** Regulatory agencies should provide investigators clear guidance to prioritize complaints alleging the highest risks to the public. While the department has policies that identify certain areas of high risk, such as complaints involving financial harm to consumers, the department lacks formal policies outlining general risk factors that warrant prioritization of cases, such as cases involving repeat violators. The absence of uniform, consistent direction for prioritizing cases has led to investigators developing their own case management priorities.

- **Undefined inspection prioritization.** Because investigators have limited guidance on how to prioritize their cases, individual investigators have broad discretion over whether to perform inspections at all and to determine the details of the inspection. As a result of this broad discretion, inspection totals vary widely from year to year as shown in the table, *Inspections Conducted*. Placing more parameters around this process, such as setting expectations and clear criteria for determining when an inspection is needed and

***Inspections Conducted***

FY 2013	504
FY 2014	416
FY 2015	355
FY 2016	415
FY 2017	120

how to prioritize such inspections, would help the department make the most of its limited investigative resources. For example, inspecting dealers with multiple and repeat violations would be an effective use of time.

- **Lagging complaint resolution timeframes.** In fiscal years 2015–2017, the department generally did not meet its internal goals for resolving complaints as shown in the chart, *Average Complaint Resolution Time in Days*.<sup>2</sup> For example, the department’s average number of days to resolve a complaint against a salvage licensee was 325 days in fiscal year 2017, nearly

***Average Complaint Resolution Time in Days***

	FY 2015		FY 2016		FY 2017	
	Target	Actual	Target	Actual	Target	Actual
Motor Vehicle	120	179	120	120.17	120	154.29
Motor Carrier	145	166.7	145	155.25	145	155.58
Salvage	120	133.4	120	283.17	120	325
Household Goods Movers	145	235.5	145	159.42	145	195.42

three times the target of 120 days. Household goods mover, motor vehicle dealer, and motor carrier complaint resolution timeframes also exceeded the department’s targets. Some of the department’s aging cases date back to January 2016, with 30 investigations open longer than one year at the end of fiscal year 2017. Slow

complaint resolution creates the potential for a backlog of cases to build up. Though the department is aware of this issue and has identified potential logjams such as lax closure policies for long-pending cases, it has not developed a formal plan to prioritize efforts and strategically address the timeliness problem to ensure the most serious complaints are prioritized and the oldest cases are resolved.

### **The department lacks effective enforcement tools necessary to protect the public.**

- **Little incentive to comply with advertising rules.** Under statute and rule, a motor vehicle licensee could violate 24 different advertising rules — meant to prevent deceptive or misleading advertisements — without being subject to an enforcement action beyond a warning and opportunity to cure the violation.<sup>3</sup> For a first-time violation of each advertising rule, the department issues a “cure letter” allowing the license holder 30 days to correct the violation. Statute prevents the department from proceeding with enforcement action, even when a licensee violates multiple advertising rules, unless it can show the license holder committed a subsequent violation of the same advertising rule.<sup>4</sup> Offering licensees the opportunity to cure each type of violation provides little incentive for licensees to comply on the front end with advertising restrictions, even though the department offers advertising review and dealer education services on the subject. Examples of types of advertisements prohibited by department rules are listed in the textbox on the following page, *Types of Prohibited Advertising*.

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*State law does not encourage front end compliance with advertising restrictions.*

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- **No refund authority.** Regulatory agencies sometimes use restitution or refunds as part of their overall enforcement toolkit to assist consumers deceived by a licensee. Refunds are appropriate in cases in which losses to consumers can be easily quantified, such as in vehicle purchases where the cost of the vehicle is easily determined. While the department takes refunds and reimbursements into consideration as part of a voluntary agreed order to resolve a complaint, the department lacks authority to require refunds.

#### ***Types of Prohibited Advertising***

- **Bait advertisement:** offers intended to shift a consumer's interest from the advertised product to another that is more expensive or is advantageous to the dealer
- **Fleet price:** terms implying that consumers will receive the same price as multi-purchase commercial businesses
- **Unclear identification:** claims that fail to clearly disclose make and model, and photographs that do not match the vehicle being advertised
- **Used vehicles:** creating any impression that a used vehicle is actually new

Similarly, the department has no statutory authority to order a household goods mover to pay a refund to a consumer, instead requiring the department to establish a formal process to mediate disputes over fees or damages.<sup>5</sup> In fiscal year 2017, the department held 43 mediations, and 26 resulted in successful agreements between parties for a satisfactory settlement. While clearly many of these mediations are successful, if the department pursues enforcement action after an unsuccessful mediation, the department should also have the ability to require refunds to assist consumers unable to obtain relief through the mediation process.

- **Lack of authority to counter unlicensed salvage activity.** Regulatory agencies should have authority to maintain the integrity of the regulated profession or industry by addressing unlicensed activity. Statute authorizes the department to issue cease-and-desist orders for motor vehicle dealers and for health and safety reasons involving motor carriers. The department can also seek injunctive relief through the attorney general's office as an additional measure of compliance with licensing requirements. Statute does not authorize cease-and-desist or such injunctive authority for unlicensed salvage activities.<sup>6</sup> Use of cease-and-desist orders would provide for faster resolution of unlicensed activities, and the authority to seek injunctive relief would provide a more complete means of seeking compliance from unlicensed entities.

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*The department lacks the authority to require refunds for consumers deceived by a licensee.*

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### **Additional transparency would provide needed information to licensees and the public.**

- **Unpublished penalty matrices.** A regulatory agency should establish a set of guidelines, such as a penalty matrix, that links specific types of violations with specific penalties or penalty ranges and that provides for aggravating and mitigating factors. Such guidelines help ensure that disciplinary action relates appropriately to the nature and seriousness of the offense and promote consistency in applying sanctions to similar types of violations. While the department uses penalty matrices for motor carrier,

motor vehicle, and salvage enforcement actions that generally follow best practices, they are not publicly available. Ensuring licensees are aware of the consequences of violations of statute and rule provides transparency for the regulated population.

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*The department does not provide the public sufficient detail about licensees' enforcement histories.*

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- **Inconsistent and limited reporting of enforcement data.** Regulatory agencies should make final enforcement actions against licensees publicly accessible to inform consumers' decision-making. The department publishes enforcement history of motor carriers through a searchable internet database on its website, but does not include the critical context of the enforcement action provided in the final enforcement order. At the same time, the department provides too much information on pending or past complaints, which may not be fair to the license holder if an investigation later finds no wrongdoing. In contrast, the department publishes no similar information for complaint history of motor vehicle licensees, limiting information to whether a licensee has an active license or not. The purchase of a vehicle is a highly consequential financial decision, and the detail the department already collects about a licensee's enforcement history would better inform consumers and encourage compliance from regulated businesses. More robust evaluation, monitoring, and public reporting of key enforcement data also would support the department's overall transparency.

## Recommendations

### *Change in Statute*

#### **3.1 Remove statutory exceptions from standard enforcement practices for deceptive advertising violations by motor vehicle dealers.**

This recommendation would remove the statutory requirement the department allow a licensee the opportunity to cure each type of advertising violation once before assessing a penalty. Under current policy, a dealer could commit up to 24 different violations without sanction. The effect of this recommendation is to provide the department authority to limit the overall number of advertising violations that could occur before a licensee is sanctioned to better promote compliance. The department already considers, and should continue to consider, warnings for first violations in its penalty matrix but should also factor in repeat or numerous violations to inform penalty levels. This recommendation would give the department greater flexibility and an appropriate tool to deal with advertising violations, an area with high numbers of complaints.

#### **3.2 As part of the department's enforcement authority, authorize refunds for consumers for motor vehicle and motor carrier violations.**

Under this authority the department could require refunds limited to the amount paid by the consumer and without inclusion of any additional consideration of damages or harm. The refund may be in lieu of or in addition to other sanctions ordered against a licensee or carrier. This recommendation would allow the department to take more effective action when consumer harm can be quantified and offer relief to consumers without the need for separate civil court action.

### **3.3 Authorize the department to use cease-and-desist authority for unlicensed salvage activity.**

This recommendation would extend the department's existing cease-and-desist authority to include unlicensed salvage activity, the only area of its regulatory functions not already covered by existing authority. The department also would receive the standard authorization to seek enforcement of its cease-and-desist orders against unlicensed salvage activity through the attorney general's office. This authority would give the department an additional option to deal with unlicensed salvage practice violations and align enforcement tools for salvage activity with the rest of the motor vehicle dealer industry.

### ***Management Action***

### **3.4 Direct the department to identify and implement methods to reduce its complaint resolution timeframes.**

This recommendation would direct the department to develop methods to identify and address the factors in the enforcement process that contribute to long complaint resolution timeframes. In creating this approach, the department should include the following elements:

- Develop a complaint intake system to centrally close and refer nonjurisdictional complaints to the appropriate agencies to allow investigators to more efficiently focus on resolving outstanding jurisdictional complaints
- Identify stages of the department's investigative process that delay complaint resolution and implement changes to minimize identified bottlenecks
- Develop clear priorities based on types of allegations and their associated risk to the public, balanced with the need to close the oldest outstanding cases
- Develop a policy to require presentation of long-pending cases and the reasons that the cases remain pending to the board for review

The new policies regarding complaints must ensure the department investigates complaints as thoroughly as necessary before closing the case, as quality should not suffer to gain more expedient case resolution. The board should approve the new policies no later than December 1, 2018, and report these efforts to the Sunset Commission at that time. While implementing the new approach, the department should consider limiting proactive inspections until aged cases are adequately addressed. This recommendation encourages the department to strategically address open complaints and establish clear timelines and expectations.

### **3.5 Direct the department to develop clear guidance and criteria for prioritizing investigations and inspections.**

This recommendation would require the department to develop clear criteria and establish policies to prioritize investigations and inspections to ensure the most efficient allocation of resources toward complaints alleging the most serious risks to the public. As part of this recommendation, the department should train investigators on the prioritization criteria and monitor investigation progress to ensure field work happens in accordance with central prioritization policies and procedures. Further, the department should establish internal performance measures for investigators, including tracking and documenting how investigators spend their time, to assess the need to reallocate investigator resources. The department should develop criteria and establish these policies by March 1, 2019.



### **3.6 Direct the department to improve enforcement data tracking in its existing systems.**

Under this recommendation, the department should establish policies that clearly set out what enforcement data the department needs to track. The department should include, at a minimum, the following measures and statistics for each fiscal year:

- Total number of complaints against each type of licensee
- Source of each complaint (i.e., administrative violations originating with agency staff, or complaint cases originating from the public or another outside source)
- Type or nature of each complaint (advertising, failing to transfer a title, not disclosing vehicle condition, insurance violation, etc.)
- Number of resolved complaints by each type of action taken (nonjurisdictional, dismissed, warning, administrative penalty, suspension, revocation, etc.)
- Analysis of the resolution by the nature of the allegation of all complaints by fiscal year (advertising, failing to transfer title, not disclosing vehicle condition, insurance violation, etc.)
- Number and percent of cases open longer than the department's performance goals with timeframes for how long a case can remain open before being presented to the board
- Number of cases referred to the State Office of Administrative Hearings (SOAH) (default and non-default)
- Number and percent of contested cases heard at SOAH
- Number and percent of cases appealed to district court
- Average number of days to resolve a complaint, from complaint received to investigation completed
- Average number of days to resolve a complaint, from complaint received to case closure

Based on this information, the department should evaluate any trends in types of cases to inform decisions about prioritization, resource allocation, or the need for an education campaign geared toward the public or licensees about notable trends. Enforcement staff should work together with the agency's leadership and the IT division to agree on solutions that are technologically reasonable and that allow for useful, holistic tracking and reporting. Making these changes would allow the department to better manage its enforcement program by having the data needed to effectively allocate resources and identify inefficiencies or other issues.

### **3.7 Direct the department to revise and expand key performance indicators and annual enforcement reports to better assess effectiveness and efficiency and provide more visibility of its enforcement program.**

The department should expand its internal key performance indicators to include more comprehensive information about the scope and results of the enforcement process for both motor vehicle and motor carrier programs. Key performance indicators should be measures that allow department management to ensure efficiency of its processes, ensure more effective outcomes, and more quickly identify problems caused by growing backlogs or bottlenecks. The department also should revise its annual reports to include more comprehensive information and data, such as the metrics listed in Recommendation 3.6,

and post them on the agency's website. This recommendation would ensure the department and the board have improved visibility of the enforcement program and would provide more transparency to licensees and the public about the department's activities.

### **3.8 Direct the department to publish penalty matrices.**

The department should publish its guidelines for enforcement actions in the form of a penalty matrix for motor carrier, motor vehicle, and salvage industry enforcement activities. A penalty matrix is a guideline with both mitigating and aggravating factors that is designed to guide an agency's enforcement actions. This recommendation would ensure visibility into the department's enforcement decisions and clear understanding among licensees regarding expected penalties for certain types of violations, taking into account enforcement history and other factors.

### **3.9 Direct the department to publish more detailed enforcement histories of regulated motor vehicle and motor carrier businesses.**

The department should publish enforcement histories of all licensees showing enforcement actions taken by the department as well as the causes for enforcement action by providing the final order. The department should only publish final actions against motor carriers, not complaints received. Providing this information would enable consumers to make informed decisions in choosing service providers and potentially act as a deterrent against future violations.

## **Fiscal Implication**

These recommendations provide the basis for the department to adjust their enforcement practices, but do not impose new costs on the department. However, Recommendation 3.6 to modify the department's IT systems to track data and produce reports it needs for effective management of enforcement efforts could have a fiscal impact to the Texas Department of Motor Vehicles Fund. The department would need to assess the types of reporting capabilities needed and how the systems could be adapted to determine the actual impact.

<sup>1</sup> "About Us," Texas Department of Motor Vehicles, accessed February 26, 2018, <http://www.txdmv.gov/about-us>.

<sup>2</sup> Areas where the department meets its internal goals for resolving complaints include oversize/overweight complaints with no contested case proceedings and Lemon Law cases where no hearing is held.

<sup>3</sup> All citations to Texas statutes are as they appear in <http://statutes.legis.texas.gov/>. Section 2301.203(c), Texas Occupations Code.

<sup>4</sup> Section 2301.203(c), Texas Occupations Code; 43 T.A.C. Section 215.270.

<sup>5</sup> Section 643.153, Texas Transportation Code.

<sup>6</sup> Section 2302.351, Texas Occupations Code.





# ISSUE 4

## *Key Elements of the Department's Licensing Functions Do Not Conform to Common Licensing Standards.*

### Background

The Texas Department of Motor Vehicles issues and renews licenses necessary to regulate different aspects of the sale and distribution of motor vehicles in the state. In fiscal year 2017, the department regulated 32,340 licensees in 11 types of motor vehicle license categories, detailed in the table, *Motor Vehicle License Types*.

***Motor Vehicle License Types – FY 2017***

<b>License Type</b>	<b>Description</b>	<b>Total Number of Licensees</b>
Manufacturer	Manufacture or assemble new motor vehicles	176
Distributor	Sell vehicles on behalf of a manufacturer to a franchised dealer and enter into franchise agreements on behalf of a manufacturer	103
Franchise Dealer	Sell and service new motor vehicles under agreements with manufacturers or distributors	2,736
Independent Dealer	Buy, sell, or exchange used vehicles	19,680
Lessor	Provide another person the right to possess and use a motor vehicle under the terms of a lease agreement	228
Lease Facilitator	Operate as a leasing agent for a vehicle leasing company	71
Converter	Modify, add, or subtract from a previously assembled new motor vehicle	161
Representative	Act as an agent or employee for a manufacturer, distributor, or converter	1,684
In-Transit	Transport and deliver a vehicle from the manufacturer or another point of origin	177
Salvage Dealer	Acquire, sell, rebuild, or repair salvage vehicles	7,983
Salvage Agent	Acquire and sell salvage vehicles as directed by a licensed salvage dealer	22
<b>Total</b>		<b>32,340</b>

The Sunset Advisory Commission has a long history evaluating licensing functions, as the increase of occupational licensing programs served as an impetus behind the creation of the commission in 1977. Since then, the Sunset Commission has completed more than 110 licensing agency reviews. Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. Sunset staff continues to refine and develop standards, reflecting additional experience and different or changing needs, circumstances, or practices in licensing agencies. The following material highlights areas where the department's statute and rules differ from these model standards and describes the potential benefits of conforming to standard practices.

## Findings

### Certain regulations are not necessary to protect the public and create burdens for the department and licensees.

Licensing agencies should implement regulation at the minimum level necessary to protect the public. Regulatory practices that create an unnecessary administrative burden while providing little public benefit should be streamlined or eliminated to right-size the state's role in regulating the industry. The following material describes areas in which the department's regulation of the motor vehicle industry is overly cumbersome and unnecessary for protecting the public.

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*Approving participation in motor vehicle shows and exhibitions is an unnecessary layer of regulation.*

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- **Unnecessary approval process to participate in auto shows and exhibitions.** Licensees may not participate in motor vehicle shows or exhibitions unless they provide written notice to the department and receive approval before the opening date of the show or exhibition.<sup>1</sup> The textbox, *Motor Vehicle Shows and Exhibitions*, describes these events.

#### **Motor Vehicle Shows and Exhibitions**

A show involves multiple motor vehicle dealer participants and takes place on a specific day or days, while an exhibition is an ongoing vehicle display such as a car at a shopping mall. Marketing of motor vehicles and trailer products takes place at these events.

This requirement is an extra bureaucratic hoop with minimal added consumer or public protection benefit, and creates an unnecessary layer of regulation for licensees and the department, since the activities it aims to prevent, such as conducting vehicle sales activities outside of a dealership, are already prohibited for most licensees by other laws and rules.<sup>2</sup> Even without this extra step, the department could still investigate alleged violations at a show or exhibition, since the law already requires participants to be licensed by the department.<sup>3</sup> The approval process does not add any additional experience or public safety requirements needed to protect consumers or the public.

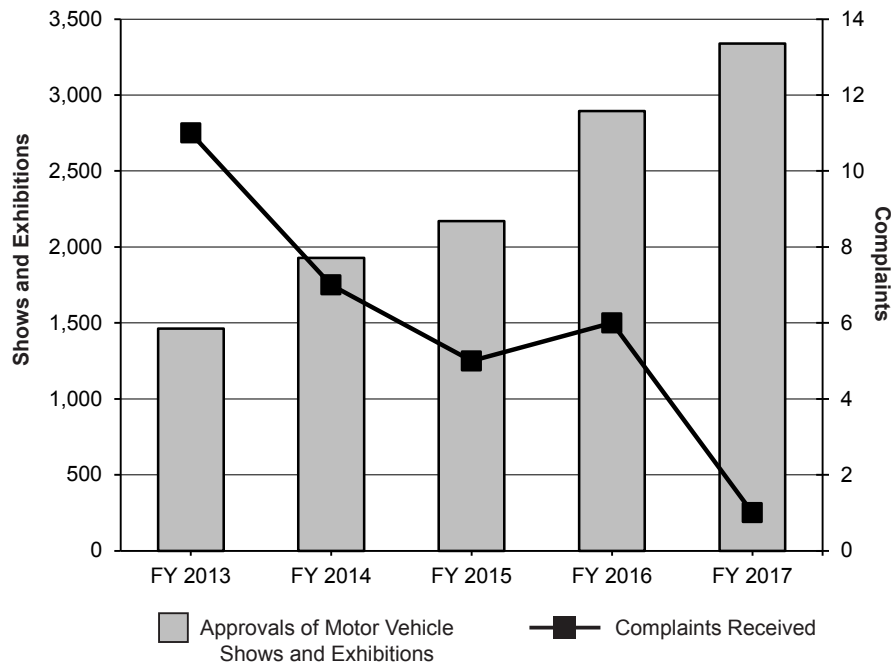
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*In FY 2017, the department received only one motor vehicle shows and exhibitions complaint.*

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Data on motor vehicle shows and exhibitions reveals little regulatory activity resulting specifically from these events. Denials of applications to attend these shows and exhibitions are rare, occurring only for unlicensed applicants or for a show that does not meet the required minimum number of participants. The graph on the following page, *Motor Vehicle Shows and Exhibitions Activity*, displays how the total number of department approvals to attend shows and exhibitions increased for the past five fiscal years, with a decreasing number of complaints received, falling to only one complaint in fiscal year 2017. Show and exhibition complaints reflect violations for not providing advance written notice of participation in an event and demonstrate no risk to public safety.

**Motor Vehicle Shows and Exhibitions Activity  
FYs 2013–2017**



- **Unnecessary, duplicative licenses.** The licensing requirements for representatives, lease facilitators, and salvage agents create an administrative burden for the department and an unnecessary license for individual employees while providing no demonstrable public protection. These duplicative licenses involve the department in an employment matter rather than adding additional protection for consumers and the public.

Representatives. Representatives promote the distribution or sale of new motor vehicles or contact dealers on behalf of a manufacturer, distributor, or converter — companies already licensed by the department.<sup>4</sup> The department licensed 1,684 representatives in fiscal year 2017, but received no complaints and took no enforcement actions related to this license type during the past five fiscal years. Statute prohibits manufacturers, distributors, and converters from performing direct sales of motor vehicles to consumers, so representatives do not interact with the public as part of their activities.<sup>5</sup>

Lease facilitators. Lease facilitators act as agents for vehicle lessors, who are also licensed by the department.<sup>6</sup> The license allows a lease facilitator to solicit and connect prospective customers with a lessor during the process of leasing a motor vehicle. The department licensed 71 lease facilitators in fiscal year 2017, and received only three complaints in the last four fiscal years. This license type provides no additional consumer or public protection, because a vehicle lessor, also licensed by the department, directly manages a facilitator's work. In comparison, no licensing requirement exists for dealership salespeople who interact with the public on a daily basis for test drives and vehicle sales.

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*The  
representative,  
lease facilitator,  
and salvage  
agent licenses  
do not add  
additional  
protection for  
consumers.*

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*Endorsements confuse and burden both salvage licensees and the department.*

Salvage agents. Salvage agents acquire and sell non-repairable or salvage motor vehicles as directed by a salvage vehicle dealer, who is also licensed by the department. A salvage agent can only perform the business activities permitted under the license of the salvage dealer the agent is in business with.<sup>7</sup> The department licensed 22 salvage agents in fiscal year 2017, and received no complaints or enforcement actions related to this license type during the past five fiscal years.

- **Cumbersome endorsement system for salvage licensees.** The regulatory framework for the salvage industry is unnecessarily complex for licensees to comply with and the department to administer. Statute establishes endorsement requirements for salvage licensees that perform any of five distinct salvage-related activities, explained in the textbox, *Types of Salvage Endorsements*. Salvage licensees must often hold multiple endorsements to operate their businesses and sometimes need multiples of the same endorsement for work performed at different locations.

#### ***Types of Salvage Endorsements***

- **New Automobile Dealer:** Buy or sell salvage and non-repairable motor vehicles not previously subject to a retail sale.
- **Used Automobile Dealer:** Buy or sell salvage and non-repairable motor vehicles previously sold to a customer before being damaged. Rebuild up to five salvage vehicles per calendar year.
- **Salvage Pool Operator:** Conduct auctions where non-repairable and salvage motor vehicles are sold.
- **Salvage Vehicle Broker:** Buy or sell salvage and non-repairable vehicles owned by a license holder and to be purchased or sold by another salvage license holder.
- **Salvage Vehicle Rebuilder:** Buy and rebuild more than five salvage vehicles so vehicles can be titled and legal to operate on public roads.

#### ***Salvage Licensees by Number of Endorsements February 2018***

Number of Endorsements	Total Licensees
1	3,931
2	2,091
3	87
4	11
5 or more	10

The table, *Salvage Licensees by Number of Endorsements*, lists the number of salvage licensees with multiple endorsements as of February 8, 2018. These endorsements do not require applicants to meet different licensing criteria or attest to the activities they engage in. Because of this regulatory scheme, salvage applicants must go through an unnecessary and confusing administrative process to obtain multiple endorsements that provide no additional consumer or public protection value.

#### **Minimal and unclear criminal history standards for licenses allow for gaps in consumer and public protection.**

- **Gaps in identifying relevant criminal history.** Agencies generally should perform criminal history checks before issuing or renewing a license.

The department runs criminal history checks on all applicants for initial licensure and renewal of all salvage vehicle dealer license holders. However, for renewal of motor vehicle industry licenses, the department only runs criminal history checks on licensees that self-report new criminal history. By relying on self-reporting alone for motor vehicle industry license renewals, the department is likely missing information on new criminal history that may disqualify a licensee seeking renewal. The department should be more thorough by requiring criminal history checks for all renewals to ensure licensees are treated consistently and the public is adequately protected.

- **Minimal standards for evaluating criminal history.** In determining a license applicant's qualifications for licensure, Chapter 53 of the Texas Occupations Code requires agencies to apply objective standards that directly connect an applicant's criminal history to the duties and responsibilities of the licensed occupation.<sup>8</sup> While the department adopted rules in compliance with Chapter 53 for most motor vehicle dealer licensees, it has yet to do so for salvage licensees.<sup>9</sup> The department's rules outlining criminal history evaluations for the salvage industry are vague and do not align with policies established in Chapter 53. For example, rules only address felony criminal convictions within the last three years, but Chapter 53 requires agencies to specify which convictions are relevant and, for those convictions that are not directly relevant, authorizes agencies to consider convictions within the last five years.<sup>10</sup> Under the department's rules, an applicant with a misdemeanor that is directly related to the salvage industry, such as concealing a vehicle's salvage status, could be granted a license, potentially putting the public at risk. Adopting rules that comply with state law would provide clarity needed for the department to objectively and fairly evaluate salvage license applicants' criminal history and better protect the public.

#### **Other statutory licensing provisions present unnecessary hurdles to licensure and reduce agency efficiency.**

- **Unnecessary qualifications for licensure.** Requirements to obtain a license should have a clear link to public protection. Statute requires the department to evaluate "business reputation and character" when considering applications for salvage licensure.<sup>11</sup> The department reviews reputation and character by requiring a salvage license applicant to submit three business references with an application. In practice, the references are unnecessary and do not add value since the department does not perform any additional verification of the business providing the reference or have objective standards for evaluating the references. The department only considers completeness of the reference information provided and ensures a reference does not have the same last name or address as the applicant. The business references submitted as part of the reputation and character provision are unnecessary, reduce agency efficiency, and do not further public protection.

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*The department relies only on self-reported changes to criminal history.*

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*The department does not follow state law when assessing criminal history information for salvage industry licensees.*

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- **Burdensome salvage license renewal process.** License renewal should be scheduled as efficiently as possible to minimize burden on the agency and licensees. Statute requires salvage license holders to renew their licenses annually, but authorizes the department to determine license periods for all other motor vehicle dealer licenses.<sup>12</sup> In practice, the department fulfills this provision for all other motor vehicle licensees with a two-year license term set in rule.<sup>13</sup> The one-year term required in statute specifically for salvage dealers is inconsistent with agency practice for other motor vehicle dealer licensees and creates unnecessary workload for department licensing staff. Other licensing agencies typically renew licenses every two years. Authorizing the department to determine salvage license periods would ease administrative burdens and be less onerous for salvage license holders.

## Recommendations

### *Change in Statute*

#### **4.1 Eliminate motor vehicle show and exhibition approval requirements.**

This recommendation would remove the unnecessary requirement for motor vehicle dealer licensees to request approval from the department before participating in motor vehicle events. The department could still take enforcement action against any licensee or entity that violates law or rule applicable to the motor vehicle industry, such as offering a vehicle for sale outside of a licensed dealership. Eliminating this requirement would reduce staff time spent on a duplicative and unnecessary administrative process without compromising department oversight of licensees, and reduce complexity of the regulation for licensees.

#### **4.2 Eliminate the representative, lease facilitator, and salvage agent licenses.**

While this recommendation would eliminate three licenses, the department would continue to regulate the businesses that employ individuals performing representative, lease facilitator, and salvage agent activities. Employees that perform those types of business activities already work under the supervision of a business licensed and regulated by the department. As part of this recommendation, the department should adopt rules to modify the fee schedule for the umbrella salvage license in Recommendation 4.3 to ensure this change is revenue neutral. Eliminating these licenses would remove an unnecessary regulation and reduce administrative burden on department staff and the motor vehicle industry.

#### **4.3 Eliminate separate salvage license endorsements and establish a single, streamlined salvage license.**

This recommendation would eliminate the separate endorsement scheme prescribed in statute and instead create a single umbrella license for the salvage industry that incorporates all business activities authorized by the five endorsements currently available to salvage dealer licensees. The department should adopt rules to modify the fee schedule to ensure this change is revenue neutral. Streamlining the salvage license would allow the licensee population to perform more salvage industry activities with fewer regulatory hoops and reduce the administrative burden on the department.



#### **4.4 Authorize the department to set salvage license terms in rule.**

This recommendation would give the department the ability to align the salvage renewal process with processes for renewing all other motor vehicle licenses every two years. This change would allow the department to reduce staff time and resources spent processing renewals without compromising oversight of licensees.

### ***Management Action***

#### **4.5 Direct the department to conduct criminal history checks for all motor vehicle license renewals.**

Under this recommendation, the department should run criminal history checks on all motor vehicle licensees renewing their licenses, not just those that self-report new criminal history. This change would protect against a gap in regulation that could allow dealers or other motor vehicle licensees to operate without meeting minimum requirements established to protect consumers and the public.

#### **4.6 Direct the department to adopt criminal history evaluation rules and guidelines consistent with Chapter 53, Texas Occupations Code for salvage industry regulation.**

The department should adopt rules guided by Chapter 53, Texas Occupations Code, “Consequences of Criminal Conviction”, for determining qualifications for a salvage dealer license. This recommendation would conform the department’s rules to existing state policy and the way other motor vehicle licenses are regulated to ensure fair and objective evaluation of criminal history that directly connects specific types of crimes to the salvage industry.

#### **4.7 Remove unnecessary application requirements for salvage licenses.**

This recommendation would direct the department to stop requiring new applicants to submit business references as part of the initial licensure application process. Removing this requirement would eliminate an unnecessary and unused step from the application process. The department would continue to obtain any needed background information and review criminal history information to determine an applicant’s eligibility for licensure.

### **Fiscal Implication**

Overall, these recommendations would have a negative fiscal impact to the state of approximately \$123,780. The fiscal impact results from costs due to additional criminal history checks, revenue losses to the Texas Department of Motor Vehicles Fund (TxDMV Fund) from elimination of three unnecessary license types, and savings from no longer administering the three licenses.

Recommendation 4.1 would result in savings to the state. Abolishing the motor vehicle shows and exhibitions approval process would not affect fee revenues, since the department does not charge a fee for these approvals. However, this change would reduce costs for both the agency and the state through the reduction of one full-time equivalent position, with savings of \$68,310 in salary and benefits to the TxDMV Fund.

Recommendation 4.2 to eliminate the representative and lease facilitator licenses would result in an approximate annual loss of \$195,025 in fee revenue to the TxDMV Fund. Statute requires the department to charge a \$100 annual fee for each representative license and \$375 for each lease facilitator license.<sup>14</sup> The department licensed 1,684 representatives and 71 lease facilitators in fiscal year 2017. Eliminating

the salvage agent license as part of Recommendation 4.2 would not impact fee revenue because the recommendation requires the department to adopt fees in rule that are sufficient to cover costs and the department already has this authority for salvage fees.<sup>15</sup> Losses in fee revenue would be offset by savings from no longer administering these license types, which the department estimates to be \$10,787.

Recommendation 4.3 would not have a fiscal impact. The recommendation requires the department to adopt fees in rule that recover costs, resulting in at least the same level of revenue as current fees when creating an umbrella salvage license.

Recommendation 4.5 would result in a small cost to the department. The department pays one dollar for each name based criminal history check.<sup>16</sup> The department renewed 7,852 motor vehicle licenses in fiscal year 2017 without checking criminal history.<sup>17</sup> As a result, the department would pay approximately \$7,852 annually from the TxDMV Fund to conduct a criminal history check on each motor vehicle license renewal.

***Texas Department of Motor Vehicles***

<b>Fiscal Year</b>	<b>Revenue Loss to TxDMV Fund</b>	<b>Savings to TxDMV Fund</b>	<b>Cost to the Department</b>	<b>Change in Number of FTEs From FY 2019</b>
2020	\$195,025	\$79,097	\$7,852	-1.0
2021	\$195,025	\$79,097	\$7,852	-1.0
2022	\$195,025	\$79,097	\$7,852	-1.0
2023	\$195,025	\$79,097	\$7,852	-1.0
2024	\$195,025	\$79,097	\$7,852	-1.0

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- <sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov>. Section 2301.358(a), Texas Occupations Code.
- <sup>2</sup> Section 2301.358(c), Texas Occupations Code. Statute permits the sale of certain types of specialty vehicles at shows and exhibitions, such as motor homes, towable recreational vehicles, ambulances, firefighting vehicles, and tow trucks.
- <sup>3</sup> Section 2301.358(b), Texas Occupations Code.
- <sup>4</sup> Section 2301.251(a)(1), Texas Occupations Code.
- <sup>5</sup> Section 2301.251(a), Texas Occupations Code; Section 503.021, Texas Transportation Code.
- <sup>6</sup> Section 2301.002, Texas Occupations Code.
- <sup>7</sup> Section 2302.107, Texas Occupations Code.
- <sup>8</sup> Section 53.021, Texas Occupations Code.
- <sup>9</sup> 43 T.A.C. Sections 215.88 and 215.89.
- <sup>10</sup> Section 53.021(a)(2), Texas Occupations Code; 43 T.A.C. Section 221.111(a)(3).
- <sup>11</sup> Section 2302.104, Texas Occupations Code.
- <sup>12</sup> Section 2302.151(a), Texas Occupations Code.
- <sup>13</sup> 43 T.A.C. Section 215.87(a).
- <sup>14</sup> Section 2301.264(a)(3), Texas Occupations Code; Section 2301.263(a)(6), Texas Occupations Code.
- <sup>15</sup> Section 2302.052, Texas Occupations Code.
- <sup>16</sup> Section 411.088(a)(1), Texas Government Code.
- <sup>17</sup> This number excludes salvage licenses since the department already conducts criminal history checks on these and the license types recommended for elimination in Recommendation 4.2.



# ISSUE 5

## *Texas Has a Continuing Need for the Texas Department of Motor Vehicles, but Opportunities Exist to Better Leverage State IT Investments.*

### Background

In 2009, the Legislature created the Texas Department of Motor Vehicles by carving out motor vehicle services and regulation from the Texas Department of Transportation (TxDOT).<sup>1</sup> The department administers vehicle titles and registration services for the state's 24 million vehicles; regulates more than 32,000 individuals and businesses in the motor vehicle industry, such as auto dealers; and shares oversight of the state's approximately 50,000 motor carriers with the Department of Public Safety (DPS). The department also collects about \$1.5 billion annually in registration, title, and oversize/overweight commercial vehicle permit fees that help fund TxDOT's highway maintenance and construction activities.

The Legislature created the department as a result of TxDOT's 2009 Sunset review. The Sunset Commission, and ultimately the Legislature as a whole, identified a need to separate motor vehicle functions from TxDOT to heighten focus and attention on these functions and improve overall customer service, goals difficult for TxDOT to meet given its primary focus on building and maintaining Texas' highway infrastructure.<sup>2</sup> The current Sunset review is the Legislature's first opportunity to comprehensively evaluate the department's performance and determine how well it is meeting the Legislature's goals, particularly improved customer service.

### Findings

#### **Texas has a continuing need for the department's regulation of the motor vehicle industry.**

- **Vehicle titles and registration.** The department's title and registration functions serve several purposes: to protect individual vehicle owners, facilitate law enforcement activities, ensure compliance with various state mandates, and collect critical revenue for highway infrastructure. Vehicle titles record legal ownership of a vehicle and track major events in a vehicle's life cycle, such as major damage and odometer readings to guard against fraud when ownership changes hands. Vehicle registration allows for a scheduled time for the state to check an owner's compliance with state inspection and automobile insurance requirements, and facilitates law enforcement's ability to track stolen vehicles or vehicles used as part of criminal activity. Registration is linked to a vehicle's license plates, which allows police to link vehicles to individuals. All 50 states require vehicles to be titled and registered, and federal law requires all states to report title history to a national database, which helps disrupt criminal efforts to fraudulently sell damaged vehicles to unsuspecting consumers.<sup>3</sup> Title and registration fees also provide significant funding for the state highway system.

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*All 50 states  
require vehicles  
to be titled and  
registered.*

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*The department regulates various motor vehicle businesses as well as intrastate commercial vehicles.*

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- **Motor vehicle industry regulation.** The department regulates various types of motor vehicle businesses, such as automobile manufacturers, dealerships, and salvage dealers. The state needs an agency to regulate these industries to protect the public, especially given the large financial investment a vehicle purchase represents for most people. The motor vehicle industry also presents potential for significant consumer harm, such as failure to provide title and registration to a buyer, misleading advertisements, or sale of damaged vehicles to unsuspecting consumers. The department also takes action against dealers that fail to pay required sales tax or commit other types of fraud, and administers the state's Lemon Law, which ensures a low-cost option for consumers to address vehicle quality issues with manufacturers.
- **Motor carrier credentialing and enforcement.** Large commercial vehicles, more commonly known as semi-trucks or tractor-trailers, are critical for the state's economy but present inherent, increased safety risks to the traveling public. The department handles the registration, or "credentialing," of intrastate commercial vehicles (those operating only within Texas, not across state lines) to ensure they meet basic requirements for doing business in Texas.<sup>4</sup> The department monitors compliance with liability insurance requirements and handles permitting for oversize or overweight vehicles, a function federal law delegates to each state.<sup>5</sup> These vehicles add danger to roadways and cause significant wear and tear of the state's highway infrastructure. Permitting of oversize or overweight vehicles serves to both collect fees to help offset the cost of this damage and ensure carriers can safely transport large loads by using a route capable of accommodating their unusual size and weight. The department also regulates passenger bus companies and household goods carriers, and investigates consumer complaints.

The department shares some enforcement responsibilities with DPS. For example, while DPS issues citations for individual size and weight violations, the department can open a broader investigation to determine whether a carrier has a pattern of hauling oversize or overweight loads without the appropriate permits and can take administrative enforcement action, such as levying administrative penalties against a noncompliant carrier. DPS may also recommend the department revoke an intrastate company's authority to operate in the state in instances of a poor safety compliance record.

#### **Key Department Achievements**

- Implementation of multiple new IT systems to move transactions online and automate various agency processes
- Increased centralization of customer service functions
- Considerable focus by agency management on measuring, monitoring, and improving performance
- Proactive agency culture with focus on performance improvement

**The department has largely achieved the Legislature's intent of creating positive change, but further opportunities exist to better leverage IT investments and improve customer service.**

Since its creation, the department has made numerous changes aimed at achieving the Legislature's goals for improved performance, highlighted in the textbox, *Key Department*

*Achievements.* These efforts have included \$215.6 million in expenditures on IT capital projects since fiscal year 2010, a centerpiece of the department's efforts to improve overall customer service. Stakeholder feedback obtained through the Sunset review generally indicates satisfaction with the progress made by the department since its separation from TxDOT. Though the department has made significant efforts to modernize its processes and improve customer service, the following material highlights some key areas in which it could further the Legislature's original goals.

- **Undefined IT prioritization and focus.** Since its creation, the department has implemented several major new IT systems to improve efficiency and service to its many customers. The textbox, *IT Improvements*, highlights some of these major changes. However, these efforts have overextended the agency's limited resources and management processes and capabilities. The department lacks an overarching approach and plan for managing its IT infrastructure and inadequately coordinates differing priorities among divisions, resulting in struggles to balance day-to-day IT needs with longer-term improvement efforts. These shortcomings result in delays in completing key IT projects and a high workload for staff trying to balance many demands. The department recently completed a privately contracted assessment that identified problems in the department's IT division structure and processes and offered solutions to help improve its IT management.
- **Failure to fully maximize costly IT investments.** While the department requires customers to conduct business entirely online for some of its services, such as submitting applications for motor vehicle licenses and motor carrier credentials, use of its other online systems remains optional, decreasing efficiency and increasing costs. The department's general approach is to allow voluntary adoption of its online systems. In fact, the department did not have authority to require county tax offices to offer online vehicle registration renewal to the public until the Legislature authorized them to do so in 2013.<sup>6</sup> Requiring the use of these existing online systems could improve customer service by creating faster transactions for the industry and public, and create cost savings for taxpayers by reducing the need for staff dedicated to data entry and application processing.

A prime example of one of the department's underused systems is webDEALER, a system that allows automobile dealers to submit title and registration applications online on behalf of buyers, instead of having to submit them in person at county tax offices. The department provides work stations capable of using the department's various systems, including webDEALER, and training at no cost to county tax offices that opt to use

### ***IT Improvements***

- **eLicensing:** Provides for online submission of motor vehicle licensing applications and complaints.
- **webDEALER:** Allows automobile dealers to submit title and registration applications to county tax offices electronically, rather than waiting in line at a physical tax office location.
- **Registration and Title System (RTS):** Migration of the RTS from the TxDOT mainframe onto an online platform managed by the department.
- **eLINC:** Provides for motor carrier credentialing online and offers improved verification of applicant data by linking with federal systems.
- **TxPROS oversize/overweight permit self-issuance:** Allows trucking companies to self-issue most permits online and create routes automatically.

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*The department lacks an overarching approach and plan for managing its IT infrastructure.*

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*The department can't require the use of its existing online systems that could improve customer service.*

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the webDEALER system, but only 80 of the 254 counties in Texas offer dealers access to this system. Phasing in a requirement for all counties to offer webDEALER would maximize the state's nearly \$7 million investment in this system and move more transactions online, translating to shorter wait times at the tax office for dealers and the public overall.

Another example is the new capability of trucking companies to self-issue oversize/overweight permits using the department's TxPROS system. Although use of the system is optional, in fiscal year 2017, trucking companies self-issued 76 percent of permits eligible for self-issuance. The department could fully realize the efficiencies the system offers by phasing in required use of the system.

- **Scattered and confusing customer service functions.** While the department has consolidated some customer service functions into its customer contact center in its Consumer Relations Division, various customer service functions remain scattered throughout the agency as listed in the textbox, *Fragmented Customer Service Functions*.

***Fragmented Customer Service Functions***

- Consumer Relations Division customer contact center
- Motor Carrier Division credentialing
- Motor Carrier Division registration
- Motor Carrier Division permits
- IT help desk for county tax offices
- 16 regional service centers
- Vehicle Titles and Registration specialty plates help desk
- Enforcement Division complaint intake

While valid reasons may exist for keeping some functions separate, such as those requiring highly specialized knowledge, others may be good candidates for further consolidation or at least standardization in staff training, processes, and performance measures to ensure consistent treatment and response to customers and the public. In addition, while the department has implemented customer-service-feedback-surveys for nearly all of its customer-facing functions, the surveys all contain unique questions that do not allow for cross-functional, comprehensive analysis. As a result, the department cannot easily compare and evaluate agencywide customer service data to analyze trends and issues.

The divided provision of motor vehicle services is also confusing. While tax assessor-collector offices in each of the 254 counties provide the majority of title and registration services, the department's 16 regional service centers also provide a limited range of title and registration functions, primarily providing certified copies of vehicle titles. Sunset staff's visits to regional offices and other feedback received during the review reveal consumers and the public are often confused about which services are offered by the department's service centers and which services they must access through the county tax offices. Further evaluation of the split between county and regional service center duties, and the potential to move additional services online, could identify opportunities to improve the delivery of services to the public. For example, some states, such as New York and Virginia, allow the public to order copies of vehicle titles online.<sup>7</sup>

- **Separate complaint processes.** Each division has its own complaints process without consistent central reporting or analysis of complaint trends for use in management decisions. This approach creates risk that

the department may not adequately address internal or external complaints and that agency management does not have a holistic picture of customer service issues facing the department. In addition, the department's statute lacks standard across-the-board language requiring it to maintain consistent complaint information and a system for acting on complaints, and to keep proper documentation to ensure that problems are addressed and in a timely fashion.

**All of the department's reporting requirements continue to be needed.**

The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished. The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines and expiration dates are not included, nor are routine notifications or notices, posting requirements, or federally mandated reports. Reports required in the General Appropriations Act are also omitted under the presumption that the appropriations committees have vetted these requirements each biennium. Appendix E lists the department's reporting requirements, all of which Sunset staff found useful and should be continued.

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*The department's statute lacks standard language for handling complaints.*

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**The department should continue to implement state cybersecurity requirements and industry best practices.**

The 85th Legislature tasked the Sunset Commission with assessing cybersecurity practices for agencies under review.<sup>8</sup> The assessment of the department's cybersecurity practices focused on identifying whether the agency complied with state requirements and industry cybersecurity best practices. Sunset staff did not perform technical assessments or testing due to lack of technical expertise, but worked closely with the Department of Information Resources to gather a thorough understanding of the department's technical infrastructure. Sunset staff found no significant issues relating to the department's cybersecurity practices that require action by the Sunset Commission or the Legislature, and communicated the results of this assessment directly to the department.

## **Recommendations**

### ***Change in Statute***

#### **5.1 Continue the Texas Department of Motor Vehicles for 12 years.**

This recommendation would continue the department until September 1, 2031, ensuring the department continues to provide needed motor vehicle services for the public; regulates industries that can harm consumers and put the safety of the traveling public at risk; collects fee revenue critical for the state's highway infrastructure; and provides essential business functions in both motor vehicle and motor carrier industries that are critically important to the state's economy.

## **5.2 Require the department to ensure webDEALER is available to automobile dealers in all Texas counties by September 1, 2020.**

Under this recommendation, statute would require all Texas counties to offer the use of webDEALER to automobile dealers for submitting registration and title applications on behalf of buyers. This recommendation would provide statutory direction ensuring the state's investment is available to dealers statewide and produces the efficiencies envisioned by the department, while providing a time period allowing for implementation for counties not yet offering webDEALER. This recommendation would not require dealers to use webDEALER, but would ensure that counties make this online option available to dealers throughout the state.

## **5.3 Apply the standard across-the-board requirement related to complaints.**

This recommendation would require the department to maintain a system for acting on complaints and make information available regarding its complaint procedures. The department would also be required to maintain documentation on all complaints and periodically notify complaint parties of the status of complaints.

### ***Management Action***

## **5.4 Direct the department to develop a comprehensive approach to developing, maintaining, and updating its IT infrastructure.**

This recommendation would direct the department to develop a holistic approach to managing its information technology systems and resources to ensure effective resource allocation and the ability to meet its customers' expectations. The department's approach should include the following elements:

- Full inventory of IT systems and assets
- Needs assessment and timelines for maintenance and updates required for existing IT assets
- Evaluation of priority projects with full consideration of overall demands on the department's IT resources
- Processes to ensure communication and coordination among the executive team, IT staff, and project management staff to ensure clear priorities and minimize risk
- Other changes the department may identify through its recent privately contracted IT assessment

While the department does limited IT planning as part of the Biennial Operating Plan, this recommendation would go further to ensure the department's approach to IT planning and execution continues to evolve and mature, and would provide the Legislature an opportunity to follow up and ensure the department implements needed changes. The department's IT functions are critical to its ability to continue improving its customer service and meet the public's and regulated business' expectation to have online options for conducting business with the state.

### **5.5 Direct the department to evaluate and identify further opportunities to consolidate and modernize its customer service functions to improve efficiency and customer experience.**

The department should evaluate the following components to determine whether efficiencies and improved customer service outcomes could be achieved:

- Consolidation and standardization of the department's customer service activities, including customer satisfaction surveys, to pool resources and improve experiences for all agency customers
- Opportunities for moving additional transactions online to reduce the need for the public to visit brick and mortar locations, such as obtaining certified copies of titles online, requiring all dealers to use webDEALER when available, and requiring all motor carriers to self-issue oversize/overweight permits
- Evaluation of the confusion between services offered by counties and regional service centers to identify ways to reduce or eliminate customer confusion, including any statutory changes needed

This recommendation is intended to provide the department with clear direction to continue to improve its customer service and modernize operations, a primary goal of the Legislature in creating the agency.

## **Fiscal Implication**

These recommendations would not have a direct fiscal impact to the state. If the Texas Department of Motor Vehicles is continued, the department's annual appropriation of \$145.2 million would continue to be needed. The recommendations to evaluate required use of online options and require counties to offer webDEALER to licensed dealers would ensure the state gets the full-expected return on investment by moving more state business online, requiring less staff time at the department and shorter wait times at county tax offices. The department already offers training and workstations for counties to encourage use of webDEALER, and expansion of the system would not result in additional costs to the state or counties. If the department ultimately requires dealers to use webDEALER, this change would not result in additional costs to dealers since the system is web-based and requires no IT investment on the dealers' part. In addition, self-issuing permits does not implicate an extra cost to motor carriers — only internet access is required, with department staff available for technical assistance as needed.

Recommendation 5.4, directing the department to develop a comprehensive approach to developing, maintaining, and updating its IT infrastructure simply reorganizes its IT management process, and is not a requirement for a new process. This change should produce efficiencies and potential cost savings through improved IT planning and project execution.

Recommendation 5.5, directing the department to evaluate and modernize its customer service functions is intended to identify efficiencies and allow the department to better serve its customers within the current budget. These efficiencies could be gained by pooling existing customer service staff, for example, or offering more transaction types online.

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<sup>1</sup> Chapter 933 (H.B. 3097), Acts of the 81st Legislature, Regular Session, 2009.

<sup>2</sup> House Research Organization, bill analysis for House Bill 3097, 81st Regular Session, accessed February 2, 2018, <http://www.hro.house.state.tx.us/pdf/ba81r/hb3097.pdf#navpanes=0>.

<sup>3</sup> National Conference of State Legislatures, “Vehicle Registration Fees by State,” accessed February 2, 2018, <http://www.ncsl.org/research/transportation/registration-and-title-fees-by-state.aspx>. 28 C.F.R. Part 25.

<sup>4</sup> The Federal Motor Carrier Safety Administration handles registration and enforcement of interstate carriers, with DPS playing a key role in enforcing safety requirements for interstate carriers operating in Texas.

<sup>5</sup> 23 U.S.C. Chapter 141.

<sup>6</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 520.005(d), Texas Transportation Code.

<sup>7</sup> New York Department of Motor Vehicles, “Replace a title certificate,” accessed February 2, 2018, <https://dmv.ny.gov/registration/replace-title-certificate>; Virginia Department of Motor Vehicles, “Replacement Titles,” accessed February 2, 2018, <https://www.dmv.virginia.gov/vehicles/#replacement.asp>.

<sup>8</sup> Section 325.011(14), Texas Government Code; Chapter 683 (H.B. 8), Acts of the 85th Texas Legislature, Regular Session, 2017.

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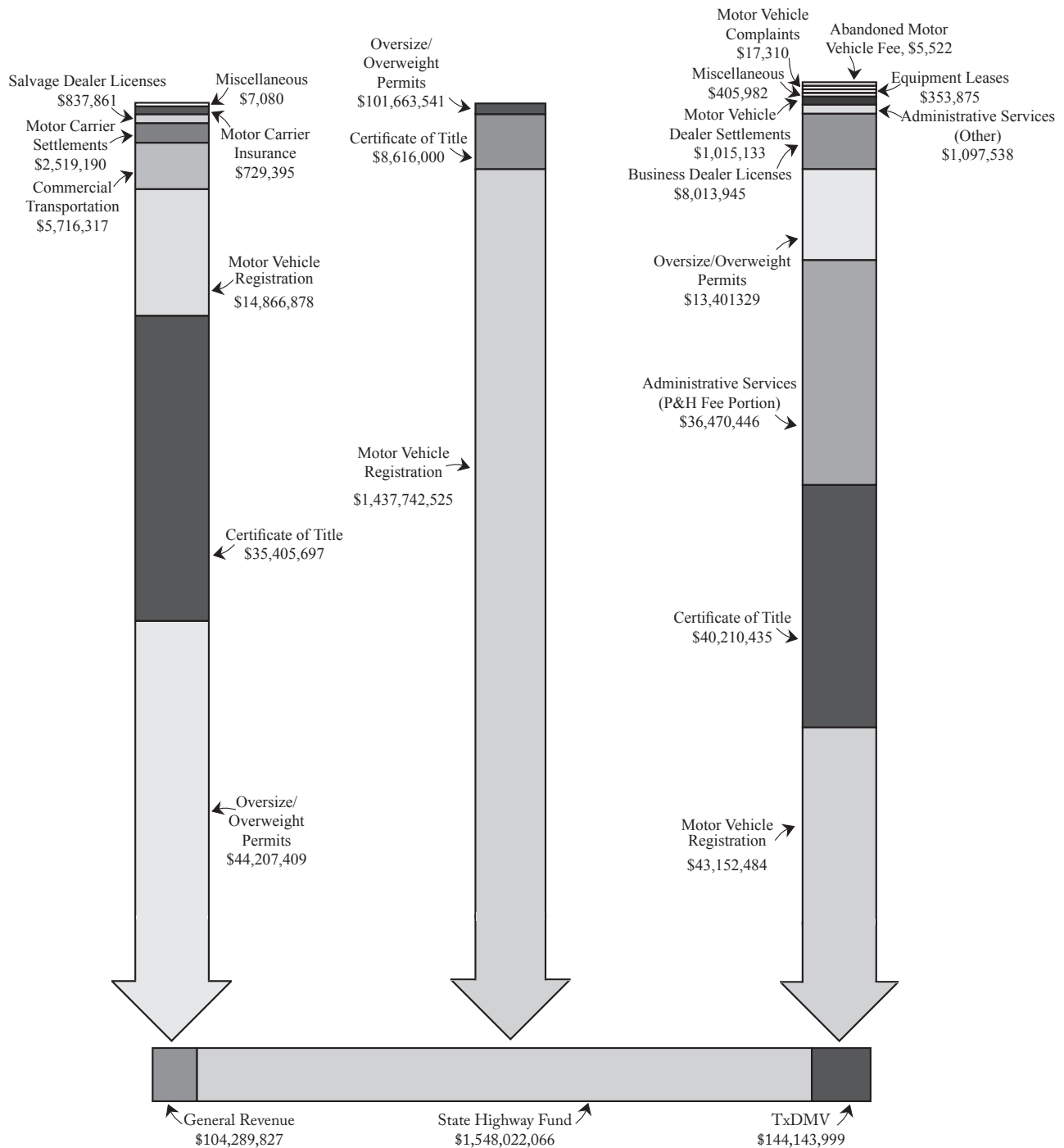
## APPENDICES





# APPENDIX A

## Flow of Texas Department of Motor Vehicles (TxDMV) Fees – FY 2017





# APPENDIX B

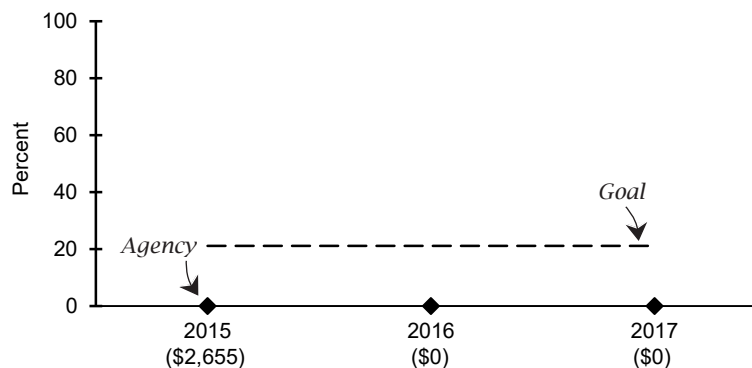
## ***Historically Underutilized Businesses Statistics 2015 to 2017***

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the Texas Department of Motor Vehicles' use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2015 to 2017. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

The Texas Department of Motor Vehicles has complied with the HUB program requirements and elected to set department-specific goals for HUB purchasing in the other services and commodities categories for fiscal years 2015 to 2017. The department exceeded its agency-specific goal for HUB purchasing in the commodities category in 2015 and 2016, but fell just short in 2017. The department had the most HUB purchasing in the other services category, but has not met its agency specific goal since 2015.

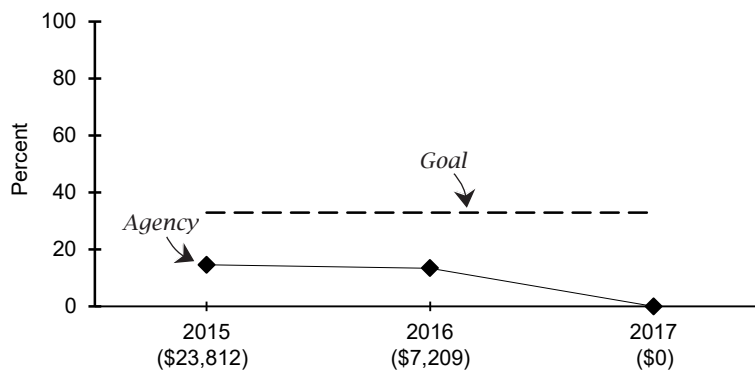
### **Building Construction**



In fiscal year 2015, the department fell short of the statewide goal for spending in building construction, and had no spending in this category in fiscal years 2016 and 2017.

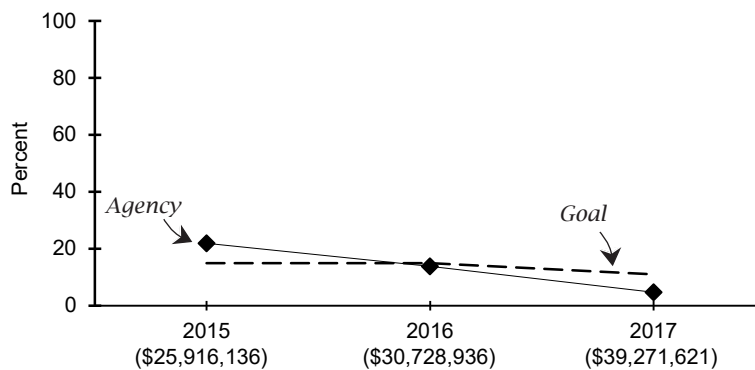
## Appendix B

### Special Trade



The department had few expenditures and fell short of the statewide goal for special trade purchases in fiscal years 2015 and 2016, and had no expenditures in this category in fiscal year 2017.

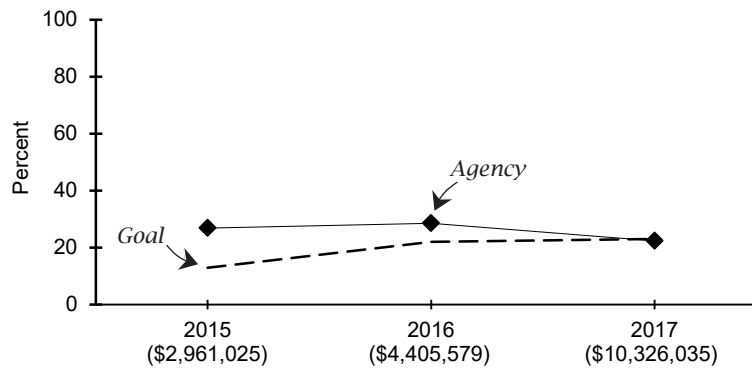
### Other Services



The department exceeded its agency-specific goal for other services in fiscal year 2015, but fell short of it in fiscal years 2016 and 2017.

## Appendix B

### Commodities



The department's purchases in this category exceeded its agency-specific goal in fiscal years 2015 and 2016, but fell just short in 2017.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

<sup>2</sup> Chapter 2161, Texas Government Code.

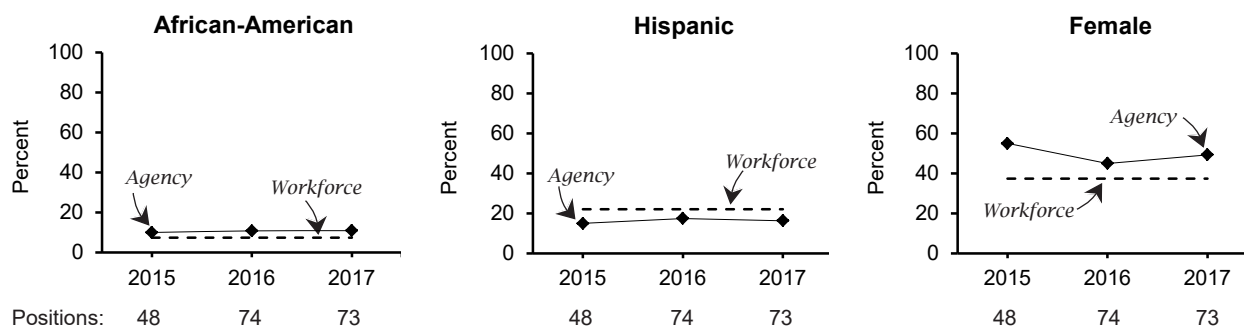


# APPENDIX C

## ***Equal Employment Opportunity Statistics 2015 to 2017***

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Department of Motor Vehicles.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2015 to 2017. The department fell short in meeting Hispanic employee workforce percentages in each job category for fiscal years 2015 to 2017, except within administrative support. The department consistently fell below each civilian workforce percentage in the technical job category the past three fiscal years. The department does not have positions in service, maintenance, or skilled craft job categories.

### **Administration**

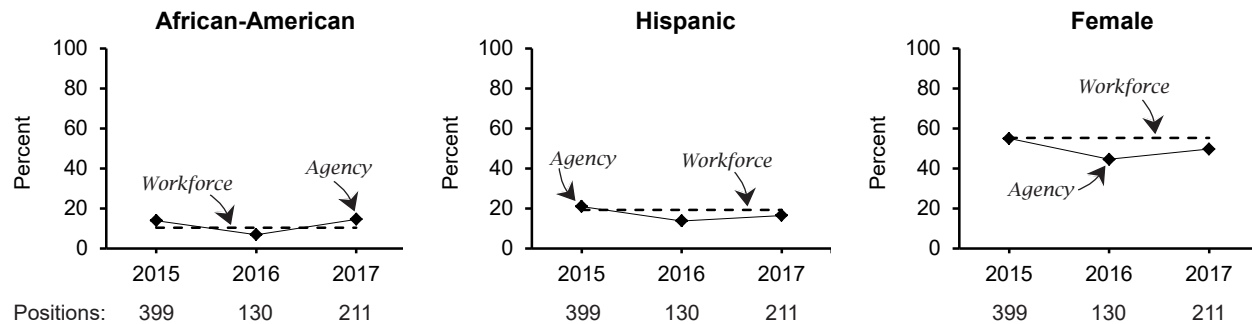


The department fell short of civilian workforce percentages for Hispanic employees in the last three fiscal years, but met or exceeded percentages for African-Americans and particularly for females.



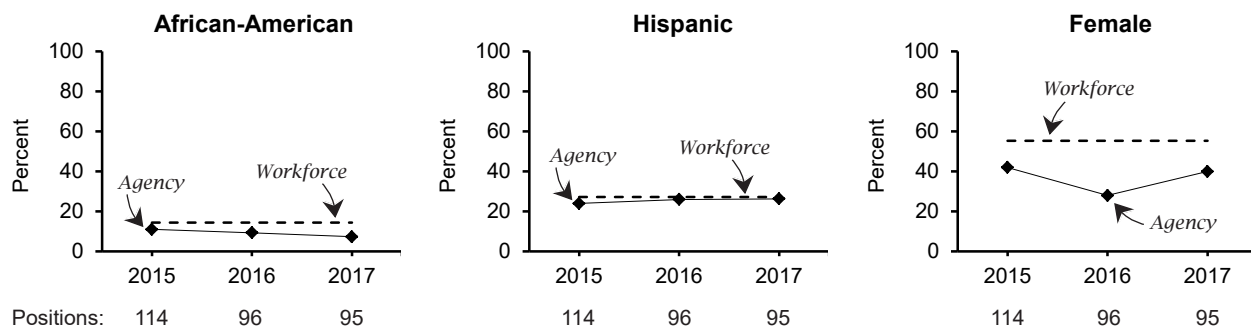
## Appendix C

### Professional



The department met each civilian workforce percentage in each category in fiscal year 2015, but in 2016 fell short in each category. In 2017, the department only met civilian workforce percentages for African-American employees, falling short for both Hispanic and female employees.

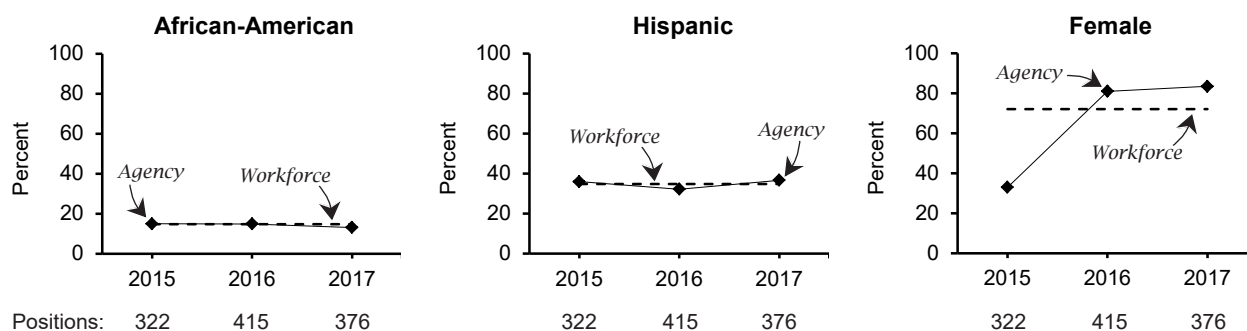
### Technical



For the past three fiscal years, the department fell below civilian workforce percentages in all three categories, particularly for females.

## Appendix C

### Administrative Support



The department exceeded the statewide average by employing more than 80 percent women in the past two fiscal years. The department met civilian workforce percentages for both African-American and Hispanic categories in fiscal year 2015, falling just below for Hispanic employees in 2016, and also slightly below for African-American employees in 2017.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

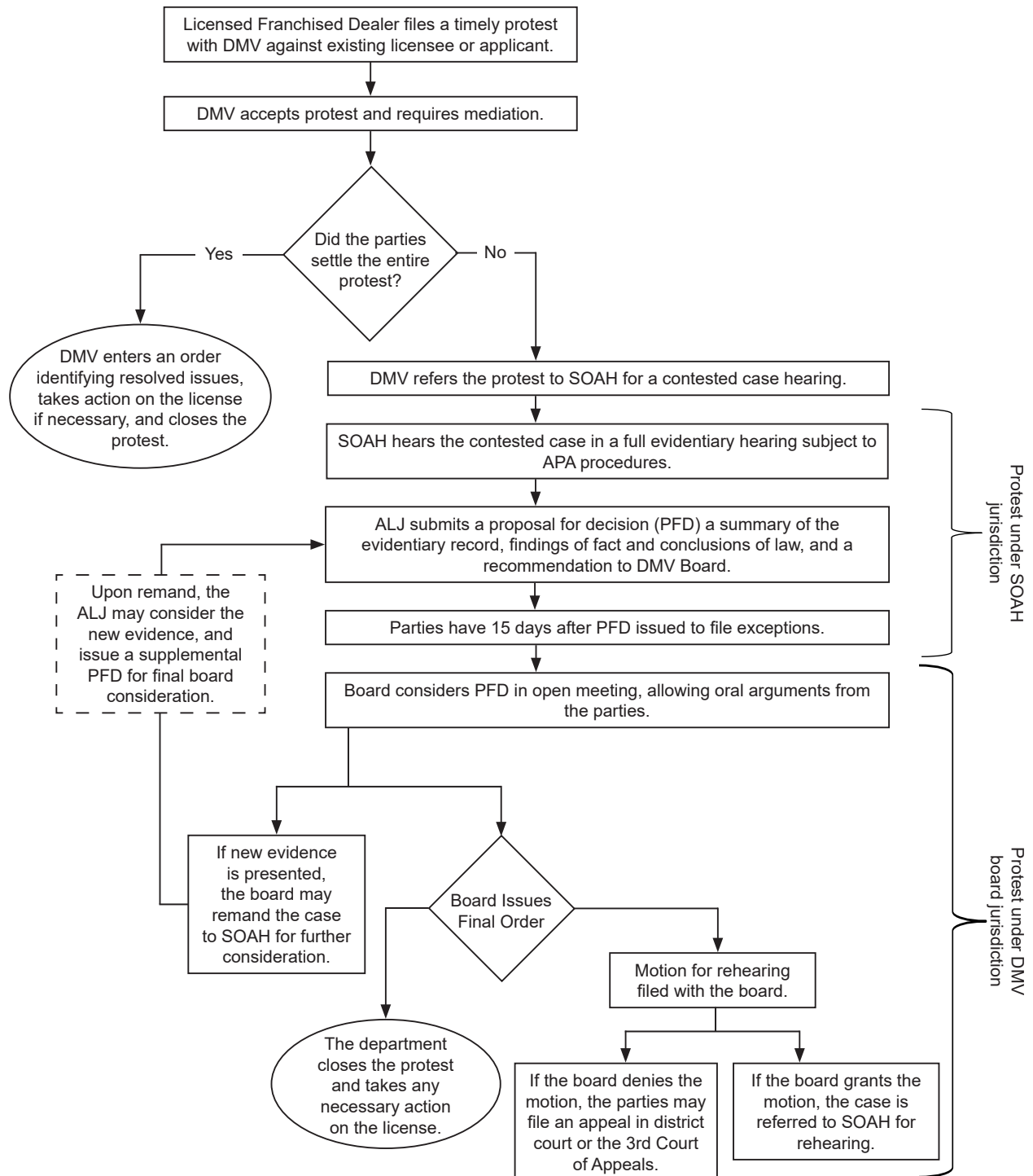
<sup>2</sup> Section 21.501, Texas Labor Code.

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.



# APPENDIX D

## *Texas Department of Motor Vehicles (TxDMV) Protest Flow Chart*





# APPENDIX E

## Reporting Requirements

### Texas Department of Motor Vehicles

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
1. Report on the Number of Alternately Fueled Vehicles Registered in Texas	Section 502.004(c), Texas Transportation Code	This report contains the number of alternately fueled vehicles registered in the state.	Legislature	Continue
2. State of Affairs	Section 1001.023(b)(3), Texas Transportation Code	This report communicates the state of affairs at the department to the Office of the Governor.	Governor	Continue
3. Recommendations for Structural Changes	Section 1001.023(b)(6), Texas Transportation Code	This report comments on the department's organizational structure and includes recommendations for structural change.	Governor, Department of Motor Vehicles Board, and the Legislative Budget Board	Continue
4. Report on Repurchased or Replaced Motor Vehicles	Section 2301.611, Texas Occupations Code	This report lists the number of vehicles repurchased or replaced as provided for by the "Texas Lemon Law."	Public	Continue

### Automobile Burglary and Theft Prevention Authority

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
1. Board Annual Activity Report	Article 4413(37), Section 6(d), Vernon's Texas Civil Statutes	This report contains an overview of Automobile Burglary and Theft Prevention Authority (ABTPA) activities from the preceding year.	Lieutenant Governor, Speaker of the House of Representatives	Continue
2. Annual Funds Report	Article 4413(37), Section 6(i), Vernon's Texas Civil Statutes	This report contains an overview of ABTPA's grant activity from the preceding year.	Lieutenant Governor, Speaker of the House of Representatives	Continue
3. Plan of Operation	Article 4413(37), Section 7, Vernon's Texas Civil Statutes	This report contains an overview of ABTPA's operating plan.	Legislature	Continue





# APPENDIX F

## ***Staff Review Activities***

During the review of the Texas Department of Motor Vehicles, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended board meetings; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this agency:

- Visited, toured, and interviewed staff at the Austin and San Antonio Regional Service Centers, including investigators for motor vehicle and motor carrier regulation
- Interviewed and shadowed a Field Services Representative on visits to Fort Bend County tax assessor-collector offices, and met with county staff
- Participated in a ride-along with a motor vehicle investigator
- Conducted a survey of stakeholders to gather feedback on the department's performance
- Met with board members and staff from the Automobile Burglary and Theft Prevention Authority
- Met with representatives from other partnering state agencies, such as the Department of Public Safety, Texas Department of Transportation, Department of Information Resources, and State Office of Administrative Hearings



# Sunset Staff Review of the *Texas Department of Motor Vehicles*

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