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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on September 10, 2009, at the BMW Western Region Training Center, Classroom No. 2, 1175 South Dupont Avenue, Ontario, California.

2. **ROLL CALL**

Robert T. (Tom) Flesh, President of the Board, called the meeting of the Board to order at 10:12 a.m.

Present: Ramon Alvarez C. William G. Brennan, Executive Director
 Robert T. (Tom) Flesh Howard Weinberg, General Counsel
 Victoria R. Pearson
 Glenn E. Stevens
 David W. Wilson

Absent: Ryan L. Brooks
 David C. Lizárraga
 Haig Papaian
 Alan J. Skobin

3. **PLEDGE OF ALLEGIANCE**

Mr. Stevens led the members and staff in the Pledge of Allegiance.

4. **APPROVAL OF THE MINUTES FROM THE JUNE 5, 2009, GENERAL MEETING**

Mr. Alvarez moved to adopt the June 5, 2009, General Meeting minutes. Mr. Stevens seconded the motion. The motion carried unanimously.

5. **ANNUAL REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg updating the Board delegations that were originally adopted in 1997 in compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency, and recently revised at the November 20, 2008, General Meeting. Mr. Weinberg reported that at the June 5, 2009, General Meeting, the members considered the revised delegations and asked the General Counsel to re-examine the approvals necessary for procuring an item costing in excess of three thousand dollars (\$3,000).

In addition to minor grammatical suggestions, the staff recommended that the "Administrative Duties" delegation pertaining to "Procurement" be revised to delegate to the Executive Director "the authority to procure any necessary equipment, supplies, and services up to the amount budgeted in a line item of the Board's approved budget. If, due to extenuating circumstance, the necessary expenditure exceeds the amount budgeted, the Executive Director shall contact the members of the Fiscal Committee by telephone and discuss this matter. The Committee may authorize the procurement which may then be ratified by the full Board at its next regularly scheduled meeting."

Mr. Stevens moved to adopt the revised Board Delegations. Mr. Wilson seconded the motion. The motion carried unanimously.

6. **DISCUSSION AND CONSIDERATION OF WHO WILL ATTEND THE OUT-OF-STATE TRIPS FOR THE 1ST AND 2ND HALF OF FISCAL YEAR 2009-2010 THAT WERE PREVIOUSLY APPROVED BY THE BOARD - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning who will attend out-of-state trips for the 1st and 2nd half of fiscal year 2009-2010. Mr. Brennan reported that at the April 23, 2009, General Board meeting, the Board Members approved and ratified out-of-state travel plans for fiscal year 2009-2010. It was decided at the meeting that the Executive Committee would authorize individuals to attend. At the June 5, 2009, Board meeting the members conditionally approved Bill Brennan and Dawn Kindel to attend the National Association of Motor Vehicle Boards and Commissions ("NAMVBC") Fall Workshop in Charleston, South Carolina. The members asked to revisit this approval at the next Board meeting in light of State budgetary constraints.

Mr. Flesh moved to approve Bill Brennan and Dawn Kindel to travel to the NAMVBC Fall Workshop in Charleston, South Carolina, October 3 – 6, 2009, two staff to attend the National Automobile Dealers Association ("NADA") Convention and Expo, February 13-15, 2010, in Orlando, Florida, and the Board would pay the registration fees for NADA for any Public Member that wants to attend. Mr. Wilson seconded the motion. The motion carried unanimously.

7. **DISCUSSION AND CONSIDERATION OF BOARD POLICY ON PUBLIC COMMENTS IN COMPLIANCE WITH THE BAGLEY-KEENE OPEN MEETING ACT (GOV. CODE § 11120 ET SEQ.), DURING CONSIDERATION OF PROPOSED DECISIONS, ORDERS OR RULINGS CONDUCTED PURSUANT TO GOVERNMENT CODE SECTION 11500, ET SEQ. - AD HOC PUBLIC COMMENT COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning a Board policy on public comments in compliance with the Bagley-Keene Open Meeting Act during the consideration of Proposed Decisions, Orders or Rulings conducted pursuant to the Administrative Procedure Act. Mr. Weinberg reported working with the Ad Hoc Committee to draft language to be inserted into the President's or presiding officer's introductory statement prior to Board consideration of a proposed decision or proposed order, as follows:

Comments by the parties or by their counsel that are made regarding any proposed decision must be limited to matters contained within the Administrative record of the proceedings. No other information or argument will be considered by the Board.

Members of the public may comment on such matters at the end of the meeting.

Mr. Stevens moved to adopt the inclusion of the quoted language. Mr. Wilson seconded the motion. The motion carried unanimously.

8. **ANNUAL UPDATE CONCERNING THE DEVELOPMENT AND USE OF THE BOARD'S WEBSITE - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Kathy Tomono updating the development and use of the Board's website. Mr. Brennan reported that over the past several months, the Board staff made a number of changes to the website to make it more "user friendly". Mr. Brennan reported a 100% increase in the number of hits to the website from the last fiscal year. Additionally, a chart of the five most requested pages or hits was also provided. Mr. Brennan indicated that the chart reflecting the five most requested hits would be reviewed given that the numbers were difficult to reconcile with the total volume of website hits.

9. **ANNUAL REPORT ON BOARD DEVELOPMENT PROGRAM - BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker reporting on the Board Development Program. Mr. Brennan reported on planned Board education for next year including the National Automobile Dealers Association Convention and National Association of Motor Vehicle Boards and Commissions in February 2010. Additionally, he reported that the staff would ask George Valverde and Mary Garcia from DMV to attend the March meeting which is held in conjunction with the California New Car

Dealers Association's Dealer Day. Lastly, the members attend the LA Auto Show in November. Mr. Flesh indicated that he would like the Board to continue the Industry Roundtable as it is well received. Mr. Flesh suggested that relevant speakers and topics be included in Board meetings to the extent such inclusions are timely and relevant to educate Board members. Mr. Flesh further asked the Government and Industry Affairs Committee to work with staff for suggestions for future Industry Roundtables including one in 2010. Lessie House, Executive Director, Louisiana Motor Vehicle Commissions was suggested by Mr. Flesh as a potential speaker and wanted the Board to be proactive in educating the industry. Mr. Stevens requested that eBay Motors be invited to educate the Board on Internet sales. The topic of the Industry Roundtable will be addressed at the next Board meeting in December.

10. **ANNUAL DISCUSSION AND CONSIDERATION OF THE METHODS FOR DETERMINING BOARD FEES - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg discussing the methods for determining Board fees. Mr. Weinberg reported that Mr. Brooks requested the staff determine on an annual basis that the funds collected by the Board are fees rather than taxes. Mr. Stevens moved to approve the methods for determining Board fees and asked that this topic be brought back in six months. Mr. Wilson seconded the motion. The motion carried unanimously.

11. **DISCUSSION CONCERNING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Legislation of Special Interest.
None
- b. Legislation of General Interest.
 - (1) Assembly Bill 5 (Assembly Member Evans) - Electronic Discovery Act. [Chaptered 6/29/09]
 - (2) Assembly Bill 1494 (Assembly Member Eng). [Chaptered 8/6/09]
 - (3) Senate Bill 424 (Senators Padilla, Florez, and Harman). [Chaptered 7/2/09]
- c. Pending Legislation of General Interest.
 - (1) Senate Bill 95 (Senator Corbett) – California Car Buyers' Protection Act of 2009.
- d. Pending Federal Legislation of General Interest.
 - (1) United States House of Representatives Bill 100 (U.S. Representative Dreier) - Commonsense Auto Recovery Act of 2009.
 - (2) United States House of Representatives Bill 120 (U.S. Representative Frelinghuysen).
 - (3) United States House of Representatives Bill 159 (U.S. Representative Pascrell).
 - (4) United States House of Representatives Bill 385 (U.S. Representative

- Rogers) - Consumer Auto Relief Act of 2009 or the CAR Act of 2009.
- (5) United States House of Representatives Bill 1550 (U.S. Representative Sutton) - Consumer Assistance to Recycle and Save Act of 2009.
 - (6) United States House of Representatives Bill 2224 (U.S. Representative Terry).
 - (7) United States House of Representatives Bill 2743 (U.S. Representative Maffei) - Automobile Dealer Economic Rights Restoration Act of 2009.
 - (8) United States House of Representatives Bill 2750 (U.S. Representative LaTourette) - Automobile Dealer Economic Rights Restoration Act of 2009.
 - (9) United States House of Representatives Bill 2796 (U.S. Representative LaTourette) - Automobile Dealer Economic Rights Restoration Act of 2009.
 - (10) United States House of Representatives Bill 3311 (U.S. Representative Blumenauer).
 - (11) United States House of Representatives Bill 3367 (U.S. Representative Levin) - Heavy Duty Hybrid Truck Incentives Improvement Act of 2009.
 - (12) United States House of Representatives Bill 3435 (U.S. Representative Obey)
 - (13) United States House of Representatives Bill 3450 (U.S. Representative Jackson-Lee) - Automobile Dealers Fair Competition Act of 2009.
 - (14) United States Senate Bill 209 (U.S. Senator Boxer).
 - (15) United States Senate Bill 247 (U.S. Senator Feinstein) - Accelerated Retirement of Inefficient Vehicles Act of 2009.
 - (16) United States Senate Bill 271 (U.S. Senator Cantwell) - Fuel Reduction using Electrons to End Dependence on the Mid-East (FREEDOM) Act of 2009.
 - (17) United States Senate Bill 333 (U.S. Senator Mikulski).
 - (18) United States Senate Bill 1135 (U.S. Senator Stabenow) - Drive America Forward Act of 2009.
 - (19) United States Senate Bill 1200 (U.S. Senator Feinstein) - Short Term Accelerated Retirement of Inefficient Vehicles Act of 2009.
 - (20) United States Senate Bill 1304 (U.S. Senator Grassley) - Automobile Dealer Economic Rights Restoration Act of 2009.

The members were provided with a memorandum from Bill Brennan and Howard Weinberg updating them on legislation. Mr. Weinberg reported that Senate Bill 95 was enrolled but not yet signed by the Governor and that Senate Bill 424 had been chaptered. Mr. Flesh requested that in future reports, special attention be given Federal Senate Bill 1304.

12. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
 - (1) Status of Protests.
 - (2) Status of Petitions.
 - (3) Status of Appeals.
 - (4) Matters Resolved.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

Mr. Brennan provided the members with a report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. He indicated that the Board was hosting an Administrative Law Judge ("ALJ") Roundtable to educate the ALJs on policies and practices before the Board as well as analyze and evaluate financial statements. Additional topics include mandatory settlement conferences and the Federal Electronic Discovery Act. Mr. Brennan also reported on the Attorney Roundtable scheduled for mid-October. Mr. Brennan provided an overview of the topics scheduled including bankruptcy filings in general and the impact on the new vehicle industry along with a panel discussion from the various industries. The members expressed concern that some topics identified for the Attorney Roundtable are more appropriate for an Industry Roundtable or broader audience. Appropriately, Mr. Brennan stated that the agenda would be modified to address only legal educational matters. Mr. Flesh commented that he wanted to revisit the Industry Roundtable and bring these types of topics to it. Mr. Wilson agreed.

Mr. Stevens indicated that he would contact the legal staff directly to discuss case management.

There was no report on judicial matters.

13. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), all members of the Board shall convene in a closed Executive Session.

CONSIDERATION OF A PERSONNEL MATTER - EXECUTIVE COMMITTEE

The members of the Board convened in closed Executive Session to discuss this agenda item.

This matter was postponed until after Agenda Item 16.

14. **OPEN SESSION**

The members did not go into closed Executive Session, as Agenda Item 14 was postponed.

15. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BY THE BOARD PRESIDENT**

At the April 23, 2009, General Meeting, Mr. Flesh assigned the Board Members to the various committees. At the suggestion of Mr. Stevens, the assignment of the Administration Committee was revisited and the following change was made by Mr. Flesh: Haig Papaian was assigned to Chair the Administration Committee, and Ryan Brooks replaced Ramon Alvarez C. as the member.

Prior to continuing the agenda, Mr. Flesh thanked BMW, Jim Ryan, Kevin Rivera, and Gary Terlecki for making the arrangements for the meeting and Board education. Additionally, he commented that he was sorry that Bob Frisch was unable to attend.

16. **PUBLIC COMMENT. (GOV. CODE § 11125.7)**

No additional public comment was presented.

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CONSIDERATION OF A PERSONNEL MATTER - EXECUTIVE COMMITTEE

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14. **OPEN SESSION**

The members returned from Open Session and no announcement was made concerning the closed Executive Session.

17. **LUNCH BREAK**

The members had a brief lunch break after the adjournment of the meeting.

18. **PRESENTATION ON BMW HYDROGEN 7 SERIES THAT IS A PRODUCTION-READY VEHICLE POWERED BY HYDROGEN - BOARD DEVELOPMENT COMMITTEE**

The presentation of the BMW Hydrogen 7 Series vehicle was held after the adjournment of the meeting as this was not an item involving any action or discussion on the part of the

Board and was purely for educational purposes.

19. **ADJOURNMENT**

The lunch break and presentation of the BMW Hydrogen 7 Series occurred after the adjournment of the meeting as there were no members of the audience in attendance and there would be no other discussion other than viewing the vehicles.

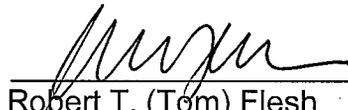
With no further business to discuss, the meeting was adjourned at approximately 12:22 p.m.

Submitted by



WILLIAM G. BRENNAN
Executive Director

APPROVED:



Robert T. (Tom) Flesh
President
New Motor Vehicle Board