

1507 - 21st Street, Suite 330
Sacramento, California 95811
Telephone: (916) 445-1888
Contact Person: Nicole Angulo
www.nmvb.ca.gov

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on February 4, 2011, at the Holiday Inn Hotel, Sonoma Room, San Francisco – Fisherman’s Wharf, 1300 Columbus Avenue, San Francisco, California.

2. **ROLL CALL**

Robert T. (Tom) Flesh, President of the Board, called the meeting of the Board to order at 2:04 p.m.

Present:	Ramon Alvarez C.	William G. Brennan, Executive Director
	Ryan L. Brooks (arrived 2:05 p.m.)	Robin Parker, Senior Staff Counsel
	Robert T. (Tom) Flesh	Dawn Kindel, Office Manager
	Peter Hoffman	Kathy Tomono, Mediator/Analyst
	Bismarck Obando	
	Victoria R. Pearson	
	Glenn E. Stevens	
	David W. Wilson	

Absent: David C. Lizárraga

3. **PLEDGE OF ALLEGIANCE**

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

4. **INTRODUCTION AND WELCOME OF NEWLY APPOINTED PUBLIC BOARD MEMBER, BISMARCK OBANDO**

Mr. Flesh welcomed newly appointed Public Member Bismarck Obando to the Board. Mr. Obando indicated that he had an opportunity to communicate with most of the Board members and it was a pleasure to meet them.

5. **APPROVAL OF THE MINUTES FROM THE DECEMBER 3, 2010, GENERAL MEETING**

Mr. Wilson moved to adopt the December 3, 2010, General Meeting minutes. Mr. Hoffman seconded the motion. Mr. Obando did not vote as he was not yet a member. The motion carried unanimously.

6. **2011 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

Mr. Flesh thanked everyone for their cooperation and assistance during the last two years.

Mr. Flesh moved to nominate Mr. Alvarez C. as President. Mr. Brooks seconded the motion to nominate Mr. Alvarez C. as President. Mr. Stevens moved to close the nominations, with Mr. Brooks seconding the motion. This motion to close the nominations carried unanimously. The motion to nominate Mr. Alvarez C. as President carried unanimously.

Mr. Alvarez C. moved to nominate Mr. Stevens as Vice President. Ms. Pearson seconded the motion to nominate Mr. Stevens as Vice President. Mr. Hoffman moved to close the nominations, with Mr. Wilson seconding the motion. This motion to close the nominations carried unanimously. The motion to nominate Mr. Stevens as Vice President carried unanimously. Mr. Stevens abstained from voting.

7. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE, BY THE INCOMING BOARD PRESIDENT**

After a brief discussion off the record, incoming President Alvarez C. made the following committee appointments:

- ADMINISTRATION COMMITTEE
Mr. Hoffman, Chair
Mr. Brooks, Member
- BOARD DEVELOPMENT COMMITTEE
Mr. Brooks, Chair
Mr. Obando, Member
- EXECUTIVE COMMITTEE
Mr. Alvarez C., Chair
Mr. Stevens, Member

- FISCAL COMMITTEE
Ms. Pearson, Chair
Mr. Flesh, Member
- GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE
Mr. Flesh, Chair
Mr. Wilson, Member
- POLICY AND PROCEDURE COMMITTEE
Mr. Wilson, Chair
Mr. Stevens, Member

8. **ORAL PRESENTATION BEFORE THE PUBLIC MEMBERS OF THE BOARD**

The Dealer Members did not participate in Agenda items 8-9 because they involved a dispute between a franchisee and franchisor.

- a. BONANDER PONTIAC, INC. v. DAIMLER TRUCKS NORTH AMERICA LLC
Protest No. PR-2239-10

No appearance was made on behalf of Protestant or Respondent.

- b. SANTA MONICA GROUP, INC. v. GENERAL MOTORS, LLC
Protest Nos. PR-2276-10 and PR-2277-10

No appearance was made on behalf of Protestant or Respondent.

9. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

- a. **CONSIDERATION OF PROPOSED ORDER**

BONANDER PONTIAC, INC. v. DAIMLER TRUCKS NORTH AMERICA LLC
Protest No. PR-2239-10

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss, by the Public members of the Board.

The closed Executive Session deliberations were postponed until the end of the meeting.

b. **CONSIDERATION OF PROPOSED ORDER**

SANTA MONICA GROUP, INC. v. GENERAL MOTORS, LLC
Protest Nos. PR-2276-10 and PR-2277-10

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss Protests, by the Public members of the Board.

The closed Executive Session deliberations were postponed until the end of the meeting.

10. **OPEN SESSION**

The members did not go into closed Executive Session; they remained in open session.

11. **DISCUSSION AND CONSIDERATION OF WHEN THE *GUIDE TO THE NEW MOTOR VEHICLE BOARD* WILL BE REVISED - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Polly Riggerbach concerning when the *Guide to the New Motor Vehicle Board* will be revised. Ms. Parker indicated that due to the number of proposed regulatory changes pending approval at the Office of Administrative Law and the loss of a Board attorney, it is recommended that the *Guide* be updated once the regulations are effective. This should occur in March or April 2011. The revised *Guide* would then be considered by the Board at the June 7, 2011, General Meeting.

12. **CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR FISCAL YEAR 2011-2012 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning the out-of-state travel plans for fiscal year 2011-2012. Proposals for 11 trips were requested including the following:

- Four of the trip requests are for the Executive Director, Chief of Staff, and two public Board members to attend the National Association of Motor Vehicle Boards and Commissions Fall Workshop in October 2011, in Reno, Nevada.
- One of the trip requests is for the Executive Director to attend the Recreational Vehicle Industry Association's 49th National Trade Show in December 2011, in Louisville, Kentucky.
- Five of the trip requests are for the Executive Director and four public Board members to attend the National Automobile Dealers Association Convention and Expo in February 2012, in Las Vegas, Nevada.

- One trip request is for the Board's Senior Staff Counsel to provide on-site training to Administrative Law Judge Anthony Skrocki in April 2012, in Sparks, Nevada.

Mr. Brennan indicated that once these requests have been approved by the Board, they will go to the Department of Motor Vehicles, the Business, Transportation and Housing Agency, the Department of Finance and the Governor's office for final approval. Once final administration approval is received, the Executive Committee will authorize which individuals will actually attend these trips.

Mr. Alvarez C. moved to approve the 11 out-of-state trips requested by the Executive Director. Mr. Stevens seconded the motion. The motion carried unanimously. Mr. Brooks stepped out of the meeting and did not vote on this matter.

13. **DISCUSSION AND CONSIDERATION OF DEALER/MANUFACTURER BOARD FEE ADJUSTMENTS - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Linda Lighter concerning the dealer/manufacturer Board fee adjustments. Mr. Brennan reported that at the December 3, 2010, Board Meeting a general discussion was had regarding the financial condition of the Board's reserve account. At the time, Mr. Brennan said that the reserve account was being watched very carefully and he was concerned that if action was not taken timely to reinstate fees to their previous level the Board might run out of funds in fiscal year 2013-2014. Mr. Brennan was asked about the administrative process needed to be taken to support the reinstatement of the previous fees. The Fiscal Committee was asked to meet and return a recommendation to the Board. The recommendation is that the Annual Board Fee per manufacturer or distributor be reinstated to \$.45 per vehicle with a minimum of \$300.00 and the dealer fee be reinstated to \$300.00.

Mr. Brennan indicated that he has spoken with Bill Davidson, Chief, Department of Motor Vehicles Financial Branch, Peter Welch at the California New Car Dealers Association, the California Motorcycle Dealers Association, the CalRVDA, and the Recreation Vehicle Industry Association; and all support the fee reinstatement.

Mr. Flesh moved to adopt the recommendation that the Annual Board Fee per manufacturer or distributor be reinstated to \$.45 per vehicle with a minimum of \$300.00 and the dealer fee be reinstated to \$300.00 coupled with the Board's ongoing responsibility to monitor its expenditures. Mr. Wilson seconded the motion. The motion carried unanimously.

14. **CONSIDERATION OF 2011 REVISIONS TO THE INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS, WHICH OUTLINES THEIR OBLIGATIONS TO PROVIDE NOTICES, SCHEDULES, AND FORMULAS MANDATED BY THE CALIFORNIA VEHICLE CODE AND CIVIL CODE TO THE NEW MOTOR VEHICLE BOARD AND/OR IMPACTED DEALERS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and revised *Informational Guide for Manufacturers and Distributors* from Bill Brennan and Robin Parker. Ms. Parker reported that the *Guide* was minimally revised. The title page was updated to reflect the new Governor, the Acting Agency Undersecretary, the current composition of the Board, and the resignation of Polly Riggerbach. The contact for Occupational Licensing was also updated to reflect a new phone number.

Mr. Alvarez C. moved to adopt the revised *Guide*. Mr. Stevens seconded the motion. The motion carried unanimously.

15. **ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the annual review of Board adopted policies. The new policies that were approved in 2010 are as follows:

- The Board adopted a policy concerning the presentation of public comment during Board consideration of a proposed decision, order, or ruling; the following language is to be inserted into the President's or presiding officer's introductory statement, as follows:

“Comments by the parties or by their counsel that are made regarding any proposed decision, ruling, or order 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 not comment on such matters.”

- The Board policy concerning gifts and honoraria was amended as follows:

State board members and designated staff may not accept gifts aggregating more than \$420 from any other single source if that gift would have to be reported on the recipient's Statement of Economic Interest (Form 700). Gifts received from a single source, totaling \$50 or more in a calendar year generally must be reported. The definition of “single source” is set forth in the NMVB Conflict-of-Interest, Appendix B – Disclosure Category which was approved by the Fair Political Practices Commission June 26, 2009 and the Secretary of State on July 29, 2009.

- Judge Riggerbach resigned in January 2011.
- Judge Waits' resigned in October 2010.

16. **ANNUAL REPORT ON THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Polly Riggerbach concerning the assignment of cases to Board ALJs in 2011. Ms. Parker reported that Judges Linda Waits and Polly Riggerbach both resigned. Furthermore, the assignment of ALJs is working well.

17. **DISCUSSION AND CONSIDERATION OF PUBLIC COMMENTS RECEIVED ON THE BOARD'S PROPOSED RULEMAKING FOR SECTION 551.12 (NOTICE OF ASSIGNMENT OF ADMINISTRATIVE LAW JUDGES; PEREMPTORY CHALLENGES) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the public comments received on the Board's proposed rulemaking for Section 551.12 which pertains to the notice of assignment of ALJs and peremptory challenges. Ms. Parker reported that a single comment was received involving only one of the nine proposed changes pertaining to case management. Upon review and consideration by staff it was concluded that the comment had merit and as a consequence the language proposed dealing with shortening the timeframe in which to file a peremptory challenge was removed from the rulemaking package.

Mr. Wilson moved to adopt the staff's proposed response to the public comments. Mr. Brooks seconded the motion. The motion carried unanimously.

18. **CONSIDERATION OF PROPOSED REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and proposed regulatory revisions from Bill Brennan and Robin Parker. Ms. Parker reported that Section 551.12 of Title 13 of the California Code of Regulations was severed from the other eight (8) case management regulatory amendments. This was done to address the public comments received from Mo Sanchez concerning the proposal to shorten the timeframe to file a peremptory challenge. In light of those comments, the staff proposed that the Board make the grammatical changes as originally noticed but that the days to file a peremptory challenge remain at 20 days. In light of Agenda item 13, Section 553 is being amended to reinstate the Annual Board Fee per manufacturer or distributor to \$.45 per vehicle with a minimum of \$300.00 and the dealer fee to \$300.00. Lastly, Section 553.20 was amended to reflect the reinstatement of the Annual Board Fee.

Ms. Pearson moved to adopt the proposed regulations. Mr. Wilson seconded the motion. The motion carried unanimously.

Mr. Flesh read the following statement into the record:

Given the Board's decision to go forward with the proposed regulations, I hereby delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. Notice of the proposed rulemaking will be published in the California Regulatory Notice Register and will be sent to the Public Mailing List. During the public comment period, I want to invite and encourage written and oral comments. Additionally, a public hearing at the Board's offices may be held to accept oral and written comments.

By the Board instructing staff to go forward with the proposed regulations, this does not necessarily indicate final Board action. If any written or oral comments are received, the full Board will consider the comments and reconsider the text of the proposed regulations. Furthermore, if the staff decides that substantive modifications to the proposed text are necessary, the Board will consider those modifications at a noticed meeting. However, non-substantive changes involving format, grammar, or spelling suggested by the Office of Administrative Law or the staff will not be considered by the Board because they are non-regulatory in nature. They will be considered by the Executive Committee and ultimately reported to the Board at a future meeting. If there are no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

19. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
- 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. Mr. Brennan noted that the Roundtable would be held in March at the Secretary of State building instead of the Ziggurat Building in West Sacramento. Furthermore, he mentioned that Ms. Riggerbach resigned and the Board is waiting for a new hire. Mr. Flesh mentioned that he wanted to invite the Governor to the Roundtable.

Ms. Parker reported that since the members received their written report, there had been two protests closed and no new protests filed. She recapped that there had been 85 protests and a total of 164 involuntary notices of termination filed in 2010.

With regards to judicial matters, Ms. Parker reported that in consultation with Jeffrey Schwarzschild, Deputy Attorney General, Glenn Stevens, Tom Flesh, and Augustin Jimenez, the General Counsel of Business, Transportation & Housing Agency, she filed a

declaration in the Powerhouse matter. Yamaha's motion for summary judgment was denied and the ruling of the court contained statements indicating that the Board lacked protest jurisdiction. In light of these statements, the Board felt compelled to provide statistical information concerning the types of matters filed, i.e., protests, petitions and appeals. Since the Board is a named party, it may take a more active role in this case.

9. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

a. **CONSIDERATION OF PROPOSED ORDER**

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Protest No. PR-2239-10

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss, by the Public members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Brooks moved to adopt the Administrative Law Judges Proposed Order. Mr. Obando seconded the motion. The motion carried unanimously.

b. **CONSIDERATION OF PROPOSED ORDER**

SANTA MONICA GROUP, INC. v. GENERAL MOTORS, LLC
Protest Nos. PR-2276-10 and PR-2277-10

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss Protests, by the Public members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Administrative Law Judge's Proposed Order. Mr. Flesh seconded the motion. The motion carried unanimously.

10. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Parker announced the decision in Agenda Items 9(a) and 9(b).

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

Mr. Stevens requested and the other members echoed that copies of Committee memos be sent electronically only without hard copies. Mr. Brooks suggested that the Board consult with the Board of Pharmacy concerning electronic binders for its meetings. Mr. Flesh congratulated the new officers; Messrs. Alvarez C. and Stevens. No additional public comment was presented.

21. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 3:38 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____
Ramon Alvarez C.
President
New Motor Vehicle Board