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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on September 21, 2023, at the Department of Motor Vehicles in Room 5F.

Ardashes (“Ardy”) Kassakhian, President and Public Member, called the meeting of the Board to order at 10:01 a.m.

2. ROLL CALL

Board Members Present: Anne Smith Boland (left at 2:02 p.m.)
Ashely Dena
Kathryn Ellen Doi
Ardashes “Ardy” Kassakhian
Jacob Stevens

Board Members Not Present: Ryan Fitzpatrick
Karthick Ramakrishnan
Bismarck Obando
Brady Schmidt

Board Staff Present: Timothy M. Corcoran, Executive Director
Dawn Kindel, Assistant Executive Officer
Robin P. Parker, Chief Counsel
Suzanne Luke, Administrative Services Analyst
Rabia Sadiq, Mediation Services Analyst

Mr. Corcoran indicated a quorum was established for case management and general business.

3. PLEDGE OF ALLEGIANCE

Agenda item 3 was skipped due to inadvertence.

4. **INTRODUCTION AND WELCOME OF NEWLY APPOINTED DEALER BOARD MEMBER ASHLEY DENA**

President Kassakhian welcomed newly appointed Dealer Member Ashley Dena. Ms. Dena commented that she is excited to be on the Board.

5. **ANNOUNCEMENT OF NEWLY APPOINTED PUBLIC BOARD MEMBER KARTHICK RAMAKRISHNAN**

President Kassakhian formally welcomed newly appointment Public Member Karthick Ramakrishnan, who was unable to attend the meeting.

Additionally, President Kassakhian congratulated Members Smith Boland and Stevens for their recent reappointments to the Board. Both were pleased to be reappointed and are happy to serve.

6. **PRESENTATION OF RESOLUTION TO INDER DOSANJH, FORMER DEALER BOARD MEMBER**

At the March 30, 2022, General meeting, the members unanimously moved to present Inder Dosanjh, former Dealer Member, with a Resolution in appreciation for his dedication and service to the Board and the State of California. President Kassakhian thanked Mr. Dosanjh for his service and commented that Mr. Dosanjh was instrumental in a number of programs with the Board and worked closely with the staff.

Mr. Dosanjh indicated that it was his pleasure to serve on the Board and to be a part of the committees he served on.

7. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, LEGISLATIVE COMMITTEE, POLICY AND PROCEDURE COMMITTEE, AND AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION, BY PRESIDENT KASSAKHIAN**

After a brief discussion off the record, President Kassakhian made the following modifications to the existing committee assignments:

- Member Dena was appointed as a member of the Fiscal Committee after Member Smith Boland stepped down and Member Obando was moved to Chair.
- Member Dena was appointed to the Ad Hoc Committee on Equity, Justice and Inclusion.

8. **DISCUSSION AND CONSIDERATION OF THE AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION'S NEW POLICIES AND OTHER CORE FOUR-RELATED RECOMMENDATIONS - AD HOC COMMITTEE**

- a) Board policy that recruitment and hiring practices be designed and implemented with the goal of filling at least 44% of Board public contact positions with bilingual employees who have passed the Department of Motor Vehicles' Bilingual Verbal Proficiency Examination.
- b) Board policy requiring the Ad Hoc Committee on Equity, Justice, and Inclusion review all new and revised policies prior to Board action in order to further institutionalize equity within Board programs.

The members were provided a memo from Tim Corcoran regarding the Ad Hoc Committee on Equity, Justice and Inclusion's new policies and other Core Fore-related recommendations. As indicated in the memo, the California State Transportation Agency ("CalSTA") convened a workshop and summit in January to gather the executive leadership of the CalSTA departments, boards and commissions to collaboratively develop ideas to take back to their respective bodies in furtherance of one or more of the following priorities:

- 1) Safety
- 2) Equity
- 3) Climate Action
- 4) Economic Prosperity

At the May 23, 2023 meeting of the Ad Hoc Committee, the members heard and discussed proposals, and prepared the recommendation noted above for Board consideration.

Mr. Corcoran provided a detailed overview on the Core-Four related recommendations. Additionally, Mr. Corcoran indicated that the first policy in Agenda Item 8 a) pertaining to bilingual employees treats bilingual fluency as a desired skill. It recognizes that an employee that can speak a language other than English brings value to the Board, not only in better representing the consumers it serves, but also by enriching the cultural environment. Forty-four percent of Californians speak a language other than English at home so it seemed like a good starting point to set the goal for bilingual employees.

Next, Mr. Corcoran provided an overview of the second policy in Agenda Item 8 b) requiring the Ad Hoc Committee review all new and revised policies prior to Board action in order to further institutionalize equity within the Board's programs. This policy would allow the Ad Hoc Committee to identify opportunities or challenges that the proposed policy or amendment might create for historically underrepresented groups and make those comments to the Board when those policies are considered.

As Committee Chair, Member Smith Boland thanked Mr. Corcoran and the Committee Members for their hard work.

Member Stevens moved to adopt the recommended policies in Agenda Item 8 a) and 8 b). Member Smith Boland seconded the motion. The motion carried unanimously.

9. **DISCUSSION AND CONSIDERATION OF TASKING THE GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE TO DEVELOP A CORE FOUR - SAFETY INITIATIVE (OKR) RELATED TO IMPROVING THE REPAIR RATE OF CALIFORNIA-REGISTERED VEHICLES SUBJECT TO THE TAKATA AIR BAG INFLATOR “STOP DRIVE” SAFETY RECALL**

Mr. Corcoran is recommending that the Government and Industry Affairs Committee develop a Core Four – Safety initiative related to improving the repair rate of California-registered vehicles subject to the Takata air bag inflator “stop drive” safety recall. Mr. Corcoran remarked that this matter is closely related to CalSTA Secretary Omishakin’s Core-Four priorities discussed in the prior Agenda Item and fits within “safety.”

An overview of this recall was provided by Mr. Corcoran: (1) the Takata recall affected 67 million vehicles in the U.S.; (2) it was a stop drive, stop sell recall; (3) California has roughly 750,000 unrepared vehicles subject to the recall; and (4) the groups most affected and at risk are lower income, non-English speaking and minority groups. He noted that the National Safety Council is a coalition of automakers that are committed to resolving the Takata airbag recall along with dealers and other government entities.

Clay Leek, Deputy Chief of the Bureau of Automotive Repair (“the Bureau”) was invited to discuss this topic. Deputy Chief Leek provided an overview of the Bureau, which protects Californians through effective oversight of the automotive repair industry, and the administration of a vehicle emissions reduction and safety program. The Bureau provides a wide range of services, licenses and regulates approximately 35,000 California automotive repair dealers, licenses brake and lamp stations, mediates automotive repair complaints, investigates, and takes disciplinary action. The Bureau is also responsible for the California Smog Check Program, which gives it a unique touchpoint with consumers as every couple years their vehicle is inspected by one of the Bureau’s licensees.

Deputy Director Leek indicated that consumer protection is a big piece of what the Bureau does. In 2020, the Bureau partnered with CARFAX and the Alliance for Automotive Innovation to incorporate vehicle safety recall information into the Smog Check Program. CARFAX made safety recall data available to jurisdictions like the California Smog Check Program. In either English or Spanish (at the consumer’s choice), the vehicle inspection report provided to consumers after a smog check identified open safety recalls. Additionally, the Bureau initiated an outreach campaign with the National Highway Traffic Safety Administration and Elevate, a public affairs firm, to reach nearly 1.3 million vehicle owners, which was extremely effective. There was a 64% increase in the months following that outreach campaign. Deputy Director Leek offered the Bureau’s assistance to increase compliance rates with the recall.

Member Doi asked what Mr. Corcoran envisions the Board (perhaps in conjunction with the Bureau) can do to raise awareness. Mr. Corcoran is looking for Board support on this project so he can fully review and identify strategies in addition to outreach.

Member Doi inquired if this is an appropriate topic for the Ad Hoc Committee to work on in conjunction with the Government and Industry Affairs Committee. And would this potentially be a topic for public discussion at some point in the development to cultivate ideas. Mr. Corcoran remarked that since Member Smith Boland is the chair of both committees, there will be representation from each committee. Keeping this matter with the Government and Industry Affairs Committee allows flexibility to convene as many preliminary calls as often as necessary before public meetings are held. Mr. Corcoran agreed that meetings of the entire Board with the public would be beneficial in finding these solutions.

President Kassakhian inquired of Deputy Director Leek whether there is the ability for the Board to use State resources in reaching out to various media outlets and ethnic media outlets. In response, Deputy Director Leek indicated the Bureau has data that would help target vehicles subject to the recall.

Mr. Corcoran formally thanked the Department of Motor Vehicles as one of the Board's early partners in helping Mr. Corcoran connect with the National Safety Council and Check to Protect program. He also thanked the Office of Traffic Safety, who has been instrumental in making those connections as well. And of course the California New Car Dealers Association.

On behalf of the California New Car Dealers Association, its Chief Legal Officer, Anthony Bento echoed everything that has been said. His takeaway from the Bureau's presentation is the communication issue. Motorists subject to the recall may not have a relationship with a franchised new car dealer in their community. They acquire their vehicle on Craigslist or from a used car dealer or some private party sale. So we are dealing with a customer that might not have familiarity with the recall process or know a safety repair is free of charge. There is a higher degree of skepticism among those customers with respect to parts availability. Thankfully, the parts availability issue has improved greatly since the Takata recall began.

Prior to the meeting, Mr. Bento researched the National Highway Traffic Safety Administration and learned another 53 million vehicles are going to be recalled in an airbag recall unrelated to Takata so there could be parts availability problems in the future. Mr. Bento indicated that he looks forward to working with the Board and the Bureau on communication and developing a better strategy because the unrepaired vehicles deserve more attention; he applauded the Board for focusing on this issue.

Member Doi moved to adopt the staff recommendation and hold future discussions seeking public input. Member Smith Boland seconded the motion. The motion carried unanimously.

10. **DISCUSSION AND CONSIDERATION OF REVISED BOARD POLICY CONCERNING THE ALLOCATION OF COURT REPORTER FEES EXCLUSIVELY TO THE PARTIES CONSISTENT WITH SECTION 551.7 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - ADMINISTRATION COMMITTEE**

The members were provided with a memo from Tim Corcoran and Robin Parker proposing revisions to the Board's existing policy by allocating court reporter fees exclusively to the parties consistent with Section 551.7 of Title 13 of the California Code of Regulations.

Ms. Parker reported that with the Office of Administrative Hearings ("OAH") presiding over its first hearing, the staff are learning that when a matter is transferred to OAH, the Board's role in the process is limited. The Board has no interaction with counsel for the parties. In light of this, allowing the parties more flexibility to select a court reporter of their choice seems prudent. The parties would have to provide the Board a copy of the transcript just like they normally would after the first day of the hearing. And they would provide OAH a copy, if applicable. For consistency, the same policy would apply to dispositive motions such as a motion to dismiss. Anytime the staff or an Administrative Law Judge request a court reporter or for Board meetings, the existing policy would apply and the Board would pay all costs and secure the court reporter.

Member Doi asked if OAH's practice is consistent with the staff proposal so OAH requires the parties to get their own court reporter. Ms. Parker indicated that with an OAH hearing, the Board either pays OAH to secure a court reporter or the Board can provide the court reporter. When the Board requests an OAH hearing, the staff indicate that the Board will provide the reporter. Then in the Order of Time and Place of Hearing, the parties' obligations as to the court reporter are detailed. Information is provided in advance and there are no surprises as to how costs are allocated. The Board has regulatory authority in this regard.

In response to a follow-up question from Member Doi, Ms. Parker explained that under the current policy, the Board secures the court reporter through its contract and incurs the cost. All costs related to the first day of hearing are paid by the Board except for the parties' transcripts. Each hearing day thereafter, the court reporter receives fees directly from the parties. Member Doi summarized the difference from the current practice as the parties select the court reporter of their choice and then the parties pay all costs instead of the Board paying for the first day of the hearing and providing the court reporter. This is correct. Ms. Parker added that the parties could use the Board's court reporter service if they wanted.

As indicated in the memo, the proposed revised policy is:

For merits and dispositive motion hearings, the parties, on an equal basis, are responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs, and the cost of certified hearing transcript(s) for the New Motor Vehicle Board and Office of

Administrative Hearings, if applicable. Counsel are responsible for purchasing their own transcript(s), if desired.

In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter's appearance fee, the delivery fee, and any other costs. The requesting party or parties will also be responsible for providing the New Motor Vehicle Board and Office of Administrative Hearings, if applicable, with a certified copy of the transcript. Counsel are responsible for purchasing their own transcript(s), if desired.

The staff recommended that the Board revise its existing policy so the parties are equally responsible for scheduling the court reporter and for paying all court reporter-related fees and costs including hearing transcripts on the first hearing day for all merits hearings and dispositive motions. This would allow the parties to timely secure the court reporter of their choice and ensure any special requests are met.

Member Stevens moved to adopt the staff recommendation. Member Smith Boland seconded the motion. The motion carried unanimously.

As a follow-up question, Member Doi asked if the revised policy required proceeding through the rulemaking process with the Office of Administrative Law. Ms. Parker indicated that the Board has regulatory authority in place to allocate the costs entirely to one of the parties or to apportion the costs among the various parties. (Cal. Code Regs., tit. 13, § 551.7) The Board has discretion or can assume all of the costs. The revised policy just allocates the costs exclusively to the parties. Member Doi requested that since there will not be a public process, before making the change, if the staff get any comments or concerns expressed by the parties about the change to notify the Board. Ms. Parker indicated she would.

11. **UPDATE ON BOARD DEVELOPMENT ACTIVITIES - BOARD DEVELOPMENT COMMITTEE**

The members were provided a memo from Tim Corcoran concerning Board development activities. Mr. Corcoran suggested educational presentations by our colleagues at the Department of Motor Vehicles for future Board Development in a "Meet the DMV Series."

Member Doi encouraged new members to suggest topics that would be helpful to understanding the Board and encouraged the Dealer Members to suggest topics they think would be helpful to the Public Members to better understand the industry.

President Kassakhian added that he thinks it is great to be at the Department of Motor Vehicles' headquarters. It is an opportunity to learn more about their operations and for the Department to learn more about the Board.

There was no Board action as this matter was for information only.

12. **UPDATE CONCERNING THE BOARD'S COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY, AND THE RESULTANT CORRECTIVE ACTION PLAN - EXECUTIVE COMMITTEE**

Mr. Corcoran and Ms. Parker provided the members with an update regarding the Board's compliance with the 1996 performance audit. As indicated in the memo, the chart below provides a brief summary of the updates to the corrective action plan taken by the Board:

Finding No.	Description	Update
9	Issue memo for reorganization.	The Office of Administrative Law was added to the Board's "Merit Hearings Judge Assignment Log," so it is next in line to preside over a protest hearing between a franchisee and franchisor. For a period not to exceed three years, the Executive Director has discretion to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH outside the normal rotation, the Executive Director will seek Executive Committee permission.
15	Board delegations are not formalized.	Reflects updates to the Board adopted delegations.
24	The computer system needs additional physical security devices.	Locks are provided for all laptops. The Board's server is managed/housed by DMV IT and is subject to their mitigation protocols. Smoke detectors are managed by DMV Facilities and are subject to Fire Marshall rules.
30(31)	Board staff do not have access to written guidance on appropriate behavior.	All staff have access to written guidance on appropriate behavior via the DMV Driver and the DMV Expectations document.

Member Doi questioned Finding 30(31) as it seemed passive to have staff look for written guidance. Miss Kindel indicated that in addition to the DMV Driver, all staff are annually provided the expectations document. It is signed by staff and outlines the policies for proper behavior. Staff do not have to search for this written guidance.

There was no Board action as this matter was for information only.

13. **REPORT ON NON-SUBSTANTIVE CHANGES SUGGESTED BY THE OFFICE OF ADMINISTRATIVE LAW TO THE FOLLOWING REGULATIONS - EXECUTIVE COMMITTEE**

- a. Request for Informal Mediation (13 CCR § 551.14)
- b. Contents (13 CCR § 555)
- c. Procedure at Hearings (13 CCR § 580)
- d. Format of First Page; Format and Filing of Papers (13 CCR § 595)

The members were provided with a memo from Tim Corcoran and Robin Parker concerning non-substantive changes to the proposed regulatory text of Sections 551.14, 555, 580, and 595 of Title 13 of the California Code of Regulations, as summarized below:

1. Request for Informal Mediation (13 CCR § 551.14): In subparagraph (c)(2), “residence addresses and business” could not be deleted as OAL deemed these substantive changes.
2. Contents (13 CCR § 555): In subparagraph (a), the replacement of “he or she appears” with “appearing” was approved by the Board but inadvertently not underlined when submitted to OAL so the underline was added. OAL suggested replacing “his or her” with “petitioner’s” in subparagraph (a). In subparagraph (b) “residence addresses and business” could not be deleted as OAL deemed these substantive changes.
3. Procedure at Hearings (13 CCR § 580): In subparagraph (c), OAL suggested replacing “him or her” and “him” with “the witness” and “his or her” with “their” so this section is gender neutral.
4. Format of First Page; Format and Filing of Papers (13 CCR § 595): In subparagraphs (a)(1), (d), and (e), references to “facsimile” could not be deleted as OAL deemed this a substantive change. In subparagraph (a)(1), references to office and residence address could not be deleted as OAL deemed these substantive changes.

Ms. Parker commented that the proposed changes determined to be substantive will be added to future rulemaking. The Executive Committee approved the changes suggested by the Office of Administrative Law, which enabled the Board to move forward with the rulemaking packet. These regulations were operative upon publication because they are non-substantive.

There was no Board action as this matter was for information only.

14. **REPORT ON THE BOARD’S FINANCIAL CONDITION AND RELATED FISCAL MATTERS - FISCAL COMMITTEE**

- a. Report on the Board’s Financial Condition for the 3rd Quarter of Fiscal Year 2022-2023.

- b. Status report concerning the Board's collection of the Annual Board Fee.
- c. Discussion and consideration of the Board's proposed budget for the next fiscal year, and whether any dealer/manufacturer fee adjustments are necessary.

The members were provided with a memo from Tim Corcoran, Dawn Kindel and Suzanne Luke. Ms. Luke indicated that the third quarter of Fiscal Year 2022-2023 began with a budget appropriation of \$2.03 million, ending with \$2.5 million reserve balance. Sixty percent (60%) of the appropriated budget for the third quarter was expended. There is no need for fee structure adjustments.

Ms. Luke indicated that the annual collection of fees from manufacturers and distributors began in July. Staff have collected \$641,857.00 of the \$767,248.00 from manufacturers and distributors under the Board's jurisdiction.

Mr. Corcoran thanked the Department of Motor Vehicles for providing hoteling space for the Board at their headquarters. This resulted in the Board saving more money than it normally would. Additionally, as staff continue to examine OAH for handling merits hearings, this time period is being used to study what the actual costs are for making that transition.

There was no Board action as this matter was for information only.

15. **DISCUSSION REGARDING THE 2024 NEW MOTOR VEHICLE BOARD INDUSTRY ROUNDTABLE FOCUSING ON "INDUSTRY SERVICES" SUCH AS AN OVERVIEW OF BOARD PROGRAMS AND THE DEPARTMENT OF MOTOR VEHICLES' INVESTIGATIONS DIVISION, OCCUPATIONAL LICENSING INSPECTIONS PROGRAM, AND THE NEWLY FORMED INDUSTRY SERVICES BRANCH - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

Mr. Corcoran discussed focusing on "Industry Services" for the 2024 Industry Roundtable to include an overview of Board programs and the Department of Motor Vehicles' Investigations Division, Occupational Licensing Inspections Program, and the newly formed Industry Services Branch. Instead of focusing on specific topics like equity and electric vehicles, equity in the industry in terms of manufacturer support for minority dealer ownership, or the State's transition to entirely electric vehicles, the staff is proposing a return to the traditional purpose of the Roundtable. The Roundtable would be an opportunity to update the industry and public on changes at the Board and also at the Department of Motor Vehicles.

Trina Washington, Deputy Director of Operations for the Department of Motor Vehicles ("Department"), described the Department's recent reorganization and modernization. She noted that in everything it does, the Department is always focused on how it can make it easier for its customers, team members, and all Californians. The Department is also focused on modernization by getting away from the legacy database built in the 1960s towards a more modernized cloud-based solution.

In July 2022, under Director Gordon, the Department underwent a major reorganization so basically all of the policy functions moved to a specific division called policy and all of the operations functions came to operations. The Operations Division has six branches as follows:

- The Driver's License Branch handles all of the backend processing for driver's license ID cards that are processed throughout the state as well as salesperson cards.
- The Registration Services Branch and the Registration Resolution Branch handle all the miscellaneous registration transactions that either a field office can't handle or they come through the Department's remittance processing.
- The Document Services Branch handles all the incoming and outgoing mail for the Department and all of the digital imaging, so all the titles and documents that are presented to the Department are imaged and kept in electronic files.
- The Internal Staff Services Branch helps with administrative functions.
- The Industry Services Branch is led by Branch Chief Ailene Short and has a total of five units under her.
 - The Information Release Unit processes any government or law enforcement request for information.
 - The Business Partner Operations Unit focuses on reviewing all of the work that the business partners process. The BPA bridge allows business partners to electronically submit all their paperwork and it's imaged and then technicians review the imaged document rather than waiting for boxes of paper to arrive. This is a modernization effort.
 - The International Registration Plan for heavy commercial vehicles operating in more than one state. The Department collects the fees and portions them out to the states in which they operate.
 - The Motor Carrier Program was one of the Department's first units that allowed customers to renew their motor carrier permits online.
 - The Occupational Licensing Unit handles dealers, salespeople, and wholesalers. The Department is working on the first phase of the digital experience platform modernization program, which is the most important technology project that the department has and is getting off the legacy system and creating an online solution. In October 2022, DXP for Occupational Licensing was rolled out and allows online renewal.

Deputy Director Washington indicated that she is happy to partner with the Board and to continue educating and informing people of the really great things the Department is doing to make it better for all Californians.

President Kassakhian and Mr. Corcoran thanked Deputy Director Washington. Mr. Corcoran mentioned that the Roundtable is also an opportunity to hear from the industry itself through the Alliance for Automotive Innovation and the California New Car Dealers Association.

Member Doi asked the number of employees in the Operations Branch and how many are still working remotely. Deputy Director Washington indicated there are 1,400

employees and the number of employees that telework is small now given the paper shift back and forth.

As a dealer, Member Smith Boland thanked Deputy Director Washington for the Department's efforts because dealers also want to serve their customers and make it a great experience. All of the modernization efforts are better for everyone.

In response to Member Smith Boland's question concerning whether the Roundtable will be in person, Mr. Corcoran indicated that the Board would decide as there are advantages and disadvantages to in-person and virtual.

President Kassakhian indicated that as a resident of California, he appreciates the pilot program for the mobile driver's licenses the Department is initiating. For those who may have heard or not heard, at least 1.5 million Californians can sign up to have their driver's licenses on their telephones or on their Apple wallets through the Department and that's exciting.

Mr. Bento offered his thanks as well. He noted a couple of problems with Occupational Licensing's online system in terms of dealer acquisitions as the process was new and industry education was needed. Mr. Bento admires the tremendous work Deputy Director Washington has done to facilitate that transition because it's not easy. But he is confident that the industry, and California as a whole is going to be in a much better place.

President Kassakhian indicated that his preference is for the Board to strive for in-person activities and programs but also sees the value of hybrid programming.

There was no Board action as this matter was for information only.

16. **DISCUSSION CONCERNING PENDING LEGISLATION - LEGISLATIVE COMMITTEE**

a. Pending Legislation of Special Interest:

- (1) Assembly Bill 473 (Assembly Member Aguiar-Curry) - Motor vehicle manufacturers, distributors, and dealers.

b. Pending Legislation of General Interest:

- (1) Senate Bill 143 (Assembly Committee on Budget and Fiscal Review) - State Government (teleconference meetings under the Bagley-Keene Open Meeting Act)
- (2) Senate Bill 544 (Senator Laird) - Bagley-Keene Open Meeting Act: teleconference.

c. Pending Federal Legislation of General Interest: None

The members were provided with a memo from Tim Corcoran and Robin Parker concerning pending legislation that was supplemented with a handout at the meeting. Ms. Parker reported that there have been a number of changes to the legislation the staff is monitoring. She summarized the bills as follows:

- Assembly Bill 473, which adds three new protests to existing Vehicle Code section 3065.3. and makes a number of other changes to the 11700 series has been enrolled and presented to the Governor. (This bill was subsequently approved by the Governor.)
- Senate Bill 143 was already chaptered and is effective. This bill loosens the requirements under the Bagley-Keene Open Meeting Act by making it easier for the Board and other entities to hold teleconference meetings. This authorization expires on December 31, 2023.
- Senate bill 544 was enrolled and presented to the Governor on September 15th. (This bill was subsequently approved by the Governor.) This bill, unlike Senate Bill 143, requires at least one member of the Board to be physically present at each teleconference location and the teleconference location is open to the public. By contrast, a remote location as defined would not be open to the public and would not be noticed on the agenda. A majority of the members of the Board would have to all be physically present at a teleconference location. If any member attends by teleconference from a remote location, that is not a public location and there is anybody 18 years or older present in the room with them, they have to disclose the general nature of that person's relationship. Members need to visibly appear on camera for all open portions. The staff will continue to analyze this bill and provide an update at the next General Meeting.
- U.S. House of Representatives Bill 1435 modifies the waiver process under the Clean Air Act. It passed the house very quickly and was referred to the Senate environment and Public Works Committee.
- U.S. State Senate bill 2090 is very similar. The substance is the same as the House of Representatives bill with minor word choices and grammatical differences.

Member Doi inquired about the House of Representatives Bill 1435 and whether it is a reaction to Governor Newsom's initiative on zero emission vehicles in 2035.

Ms. Parker remarked that a summary of the bill references revoking any Clean Air Act waivers that California received between January 1, 2022 and the date that the bill becomes effective if the state standard directly or indirectly limits the sale or use of vehicles with internal combustion engines.

Mr. Corcoran commented that the bill would be broader because other states follow California's lead in this regard and have long utilized the EPA exemption process.

Mr. Bento added that he was in Washington the week prior to the meeting and that most observers did not think it is very likely that a democratic controlled senate will advance

this legislation, nor would a democratic president sign a bill like this into law. The goal of this bill would be to essentially void California's 2035 ZEV [zero emission vehicle] mandate and that is not likely to happen.

There was no Board action as this matter was for information only.

17. **DISCUSSION AND CONSIDERATION OF PROPOSED REVISIONS TO THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES AND OFFICE OF ADMINISTRATIVE HEARINGS BY ASSIGNING CASES ACCORDING TO THE LAST DIGIT IN THE PROTEST NO. WHEN THE PROTEST IS FILED - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memo from Tim Corcoran and Robin Parker regarding proposed revisions to the assignment of cases to Board Administrative Law Judges (ALJs) and OAH assigning cases according to the last digit in the Protest No. when the protest is filed.

As indicated in the memo, the process of assigning ALJs to Board cases has been modified over time to conform with the law and to fit the current needs of the Board. In 1998, the Board approved a numerical designation system for assigning ALJs. Under that system, an ALJ was assigned from a list based upon the last digit of the case no. Beginning in 2002, this system proved problematic as it resulted in an unequal distribution of cases especially when an assigned ALJ was unavailable for a significant period of time.

Beginning in 2002, there were a number of modifications to the numerical system that was eventually replaced in 2005 with the current system that assigns the merits hearing ALJ on a rotational basis at the Hearing Readiness Conference. This system has worked well over the years with several temporary and permanent modifications to meet the existing case management needs.

At the January 25, 2023, General Meeting, the Board added OAH to the "Merit Hearings Judge Assignment Log," so OAH would be next in line to preside over a protest hearing between a franchisee and franchisor.

This action was taken in response to a regulation CalPERS is proposing that would, for purposes of the Government Code, define "limited duration" employment "as a limit of twenty-four consecutive months per appointment of a retired person in the employ of a CalPERS-covered public employer, regardless of how many months or hours in those months the retired person served in the appointment during that twenty-four consecutive month period." (Cal. Code Regs., tit. 2, § 574.1)

Adding OAH to the assignment log would allow the Board to evaluate if this is an effective long-term alternative if the Board is unable to retain its retired annuitant merits Administrative Law Judges. It would also highlight any statutory or regulatory changes that may be necessary if, in the future, the Board's merits hearings are referred to OAH.

All law and motion hearings and settlement conferences will continue to be heard by the Board ALJs up to the Hearing Readiness Conference. If counsel for the parties, at the

Hearing Readiness Conference, indicate they are prepared to go to hearing then the Board submits to OAH a Request for Hearing and takes no further action in the protest unless Protestant files a Request for Dismissal. The Hearing Readiness Conference is typically held 45 days prior to commencement of the merits hearing.

Given the limited number of matters that proceed to a merits hearing each year, at the April 28, 2023, General Meeting, the Board granted temporary discretion (not to exceed 3 years) to the Executive Director to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH that is outside the normal rotation, the Executive Director would seek Executive Committee approval.

The first protest assigned to OAH was scheduled for hearing on September 18, 2023. As the staff worked through this process and learned how hearing dates were assigned, it became apparent that notifying the parties at the Hearing Readiness Conference that their hearing is being transferred to OAH was not fair. Counsel have proceeded for many months accomplishing various pre-hearing tasks with an anticipation that the date selected for the hearing would remain unchanged. We learned that once the Board requests OAH preside over a matter, it could take several months for a hearing date due to the length (5-10 days) and complexity.

Given the broad discretion granted to the Executive Director, it was necessary to seek permission from the Executive Committee to institute an immediate change in how merits hearings were assigned. On July 31, 2023, Mr. Corcoran notified the Executive Committee that the ALJ needs to be assigned when the protest is filed similar to the numerical designation adopted in 1998. This eliminates any surprise as ALJ assignments are made when the protest is filed and the parties are notified at the initial telephonic Pre-Hearing Conference. Any delays can be accounted for in hearing dates if the matter is assigned to OAH. Additionally, more opportunities to assign hearings to OAH was factored in as reflected below:

- 1, 6 OAH
- 2, 7 Pipkin [Next Board ALJ in order]
- 3, 8 OAH
- 4, 9 Nelsen [Following Board ALJ in order]
- 5, 0 Woodward-Hagle [Following Board ALJ in order]

For new protests starting with Protest No. PR-2832-23, the ALJ was assigned based on the last digit of the case no. Protest No. PR-2832-23 was assigned to ALJ Pipkin. In consolidated matters such as Protest Nos. PR-2833-23 through PR-2836-23, OAH was assigned. The first protest in numerical order is always the lead case in consolidated matters and would be used for ALJ assignments. In the event a Board ALJ is not available, OAH would be the default.

For existing protests, ALJs will continue to be assigned at the Hearing Readiness Conference using the Merit Hearings Judge Assignment Log on a rotational basis.

In addition to the information provided in the memo, Ms. Parker added that a number of discussions and training sessions have been held with OAH ALJs. As we learn and move

forward with assigning matters, it is likely that this policy will evolve.

Member Smith Boland moved to adopt the staff recommendation that all new protests starting with Protest No. PR-2832-23 are assigned a merits ALJ from a list based on the last digit of the Protest No. when the protest is filed and for existing protests ALJs will continue to be assigned at the Hearing Readiness Conference on a rotational basis using the Merit Hearings Judge Assignment Log. Member Stevens seconded the motion. The motion carried unanimously.

18. **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. Corcoran commented that the Executive Director's Report serves as a means for the Board and public to keep an active eye on various projects, both recurring and special projects that the Board, its committees, and staff are working on.

In addition to implementing the recently adopted policies pertaining to bilingual employees and Ad Hoc Committee review of all new and revised policies, Mr. Corcoran will host calls with the Government and Industry Affairs Committee, key stakeholders, and potential contributors to develop the 2024 Industry Roundtable. Similar calls will be held regarding strategies, opportunities, and specific goals regarding the repair rate of California registered vehicles still affected by the Takata airbag recall. Calls will also be held with the Board Development Committee to discuss potential Board education including "Meet the DMV Series." Lastly, at a future meeting, the Board's first-ever Strategic Plan will be discussed with the Board and most likely the Executive Committee to develop a strategic plan with equity embedded. This is an opportunity to find further synergies with CalSTA's Core-Four objectives within the Board's Strategic Plan.

Ms. Parker reported that she has been training ALJ Tammy Bayne. ALJ Bayne is also mentoring with ALJ Skrocki to receive additional training. A 3-hour training session with OAH was held in August. Training will begin shortly for Jason Rose, newly hired Attorney III.

Ms. Parker reported that after the partially published opinion from the Third Appellate District Court of Appeal was issued, Barber Honda filed a petition for review with the California Supreme Court on September 6, 2023. On behalf of the Board, John McGlothlin, Deputy Attorney General, filed a letter with the Court indicating that the Board was not going to respond unless the Court so requests. American Honda filed its answer. The Court has until October 31, 2023 to decide whether or not it's going to grant that petition for review. It could, however, grant itself an additional 30 days if it so chose. (After the meeting, the Court granted itself the additional 30 days.)

Regarding the Petition filed by Courtesy Subaru against Subaru of America, the

Department of Motor Vehicles requested an extension of time until January 31, 2024, to issue its findings. Ms. Parker handed out the request but no Board action was taken as this matter was not on the agenda. Ms. Parker mentioned that counsel for both parties were provided with a copy of the request for extension. This matter will be considered at a future meeting.

Lastly, Ms. Parker discussed the number of merits hearings this year in contrast to 2022, in which there were no hearings. An 8-day hearing is before OAH, on October 9, 2023, ALJ Woodward Hagle will preside over a 5-day hearing, ALJ Pipkin is tentatively presiding over a 3-day hearing mid-November, and ALJ Nelsen is tentatively presiding over a 5-day hearing in December. Hearings are tentatively set from February through May 2024.

Miss Kindel discussed the Board's move into its permanent facility at the Department's headquarters in Sacramento. Construction will begin soon with demolition. The facility will hopefully be completed by the summer of 2024.

There was no Board action as this matter was for information only.

19. **SELECTION OF BOARD MEETING DATES FOR 2024**

The Board members selected the following Board meeting dates for 2023 and 2024:

- December 8, 2023, General Meeting via Zoom and teleconference.
- February 22, 2024, General Meeting (location to be determined)
- June 12, 13, or 19, 2024, General Meeting (location to be determined) (After the meeting, the members selected June 13, 2024.)

The members took a lunch break and then convened in Closed Executive Session.

20. **CLOSED EXECUTIVE SESSION**

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

a. **DISCUSSION AND CONSIDERATION OF PERSONNEL MATTERS - ADMINISTRATION COMMITTEE**

Discussion and consideration of personnel matters, by all members of the Board.

The Public and Dealer Members convened in Closed Executive Session to discuss Agenda Item No. 20(a).

b. **CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE**

Consideration of annual performance review for Executive Director, by all members of the Board.

The Public and Dealer Members convened in Closed Executive Session to discuss Agenda Item No. 20(b).

21. **OPEN SESSION**

The Board Members returned to Open Session. President Kassakhian announced there was no Board action taken in regard to Agenda Item 20.

22. **PUBLIC COMMENT** (Gov. Code § 11125.7)

No additional public comment was presented.

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

President Kassakhian reminded the Dealer Members in attendance, that they may not participate in, hear, comment or advise other members upon or decide Agenda Items 23-24.

President Kassakhian read the following statement “comments made by the parties or their counsel that are made regarding any proposed decision, ruling or order must be limited to matters contained within the administrative record of the proceeding. No other information or argument will be considered by the Board. These are adjudicative matters that will be deliberated on in closed Executive Session. Therefore, pursuant to subdivision (e) of Government Code section 11125.7, members of the public may not comment on this matter.”

Let's Ride Motorsports Inc v. Textron Specialized Vehicles Inc. (“TSV”)
Protest Nos. PR-2815-23

Oral comments were presented before the Public Members of the Board. Robert A. Mayville, Jr., Esq. of the Law Offices of Gavin M. Hughes represented Protestant. Patrick D. Quinn, Esq. of Nelson Mullins Riley & Scarborough LLP represented Respondent.

24. **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.

CONSIDERATION OF PROPOSED ORDER

Let's Ride Motorsports Inc v. Textron Specialized Vehicles Inc. ("TSV")
Protest Nos. PR-2815-23

Consideration of the Administration Law Judge's Proposed Order Granting Respondent's Motion to Dismiss Protest, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Member Doi moved to adopt the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss Protest. Member Stevens seconded the motion. The motion carried unanimously.

25. OPEN SESSION

The Public Members returned to Open Session. President Kassakhian announced the decision in Agenda Item 24.

Prior to adjourning the meeting, Member Doi commented on Dawn Kindel's decades of service to the Board as Dawn's retirement nears. As Member Doi reflected on her 10 years of service, she remarked that for 34 years, Dawn has been a constant with her gracious, calm and understated presence guiding the members along the way.

Dawn started at the Board as a student assistant in 1989 and now 34 years later she'll be retiring at the end of the year. Because Dawn has such a modest demeanor, Ms. Doi commented that many members may have no appreciation for how much she does for the Board except her colleagues on the Board. But there's no question that the Board would not be the robust and vibrant organization that its been over the last three decades without Dawn's steady hand, continuity, and dedication.

In fact, without Dawn and Robin, Member Doi stated the Board literally would not have functioned during the difficult period when Bill Brennan's health was failing, and when he ultimately passed away while still serving as executive director. And Member Doi thinks that very challenging transition period six years ago was when for the first time that many of the members really understood and fully appreciated Dawn's loyalty, dedication, and importance to the Board. Additionally, Dawn has been instrumental in ensuring a smooth transition from the Board's prior location to the Department.

In addition to serving with great distinction on the staff of this Board, Member Doi noted that Dawn raised the profile of the Board on the national stage when she rose to the position of treasurer with the National Association of Motor Vehicle Boards and Commissions, and in that role brought the annual meeting to Sacramento in September 2019, which was an outstanding success, and a lot of work on the part of Dawn and her colleagues.

Today marks Dawn's final Board meeting so on behalf of the current members of the Board and the Board members who've served over the last 34 years, Member Doi wanted to thank Dawn for everything she's done for the Board, the transportation agency, and

the State of California. Dedicated public servants like Dawn are really the backbone and unsung heroes of our state government. Member Doi commented that the Board will miss Dawn and hopes to see her at future meetings.

Member Stevens commented that he appreciated Dawn's steady hand from day one and her kindness on a personal level.

President Kassakhian added that public service is a calling; we do it because we love helping people and making sure our state is better off. Dawn has led the way at the Board and provided guidance.

Dawn thanked everyone for the kind words and prepared a few remarks to share. She started in her twenties; working for the Board has been her life and Dawn will miss everyone. State service was her calling as Dawn loves helping people. Several memorable moments were discussed including the toll Bill Brennan's passing had on everyone, the hiring of Mr. Corcoran as the Executive Director, and transitioning the office in March 2020 to a virtual office so services continued to be provided to the public, employees were paid, and everyone was safe. Retirement is something Dawn is looking forward to as she plans to travel, go camping, and spend time with family and friends. She plans to stay in touch by monitoring the Board's website and may even attend a meeting.

Mr. Corcoran added that Dawn was the first person to congratulate and welcome him to the Board so graciously and that stands today as one of the most touching moments of his entire career. She has been so welcoming, supportive and helpful. Mr. Corcoran thanked Dawn and added that he will miss her and that she cannot be replaced.

In conclusion, President Kassakhian wished Dawn the best of luck and added that California is better off because of her.

26. **ADJOURNMENT**

Member Stevens moved to adjourn the meeting. Member Doi seconded the motion. The motion carried unanimously. With no further business to discuss, the meeting was adjourned at 3:06 p.m.

Submitted by

Timothy M. Corcoran

TIMOTHY M. CORCORAN
Executive Director

APPROVED: _____

Jacob Stevens

Jacob Stevens
Vice President
New Motor Vehicle Board