

2018
BIENNIAL REPORT
VIRGINIA
MOTOR VEHICLE DEALER BOARD



Mission Statement

The Motor Vehicle Dealer Board will administer sections of the Commonwealth's Motor Vehicle Dealer Laws and Regulations as charged; promote the best interests of both the automotive consumer and dealer community; while providing a high level of customer service.

Chairman
Richard D. Holcomb
Commissioner
Department of Motor Vehicles

Executive Director
William R. Childress
Executive Director
Motor Vehicle Dealer Board



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November 1, 2018

The Honorable Ralph Northam
Virginia General Assembly
State Capitol
Richmond, Virginia 23219

Dear Governor Northam and Virginia General Assembly:

I am pleased to provide to you the Motor Vehicle Dealer Board's Biennial Report as required by Virginia Code §46.2-1503.5. I have prepared this report on behalf of the Motor Vehicle Dealer Board (Board).

The Board has been in existence since 1995. We make every effort to educate the dealer community regarding the laws and regulations governing their industry. The approach of the Board and its staff is to educate dealers so that they will have the necessary knowledge and tools to further the professionalism of the automobile, motorcycle, trailer, and recreational vehicles dealer industry. In addition, the Board has taken a pro-consumer stand in its administration of the Transaction Recovery Fund; enforcement of Advertising Regulations and by assisting consumers when they are having a dealer related problem.

Upon reviewing the report, I'm sure you will agree that the Board continues to make a positive impact upon the dealer community, the economy, and within the Commonwealth. Our methods of operation are completely transparent and evolving as we strive to better serve the citizens of the Commonwealth. We thank you for your support as we continue our efforts to minimize regulations, increase efficiency, and enhance consumer protection.

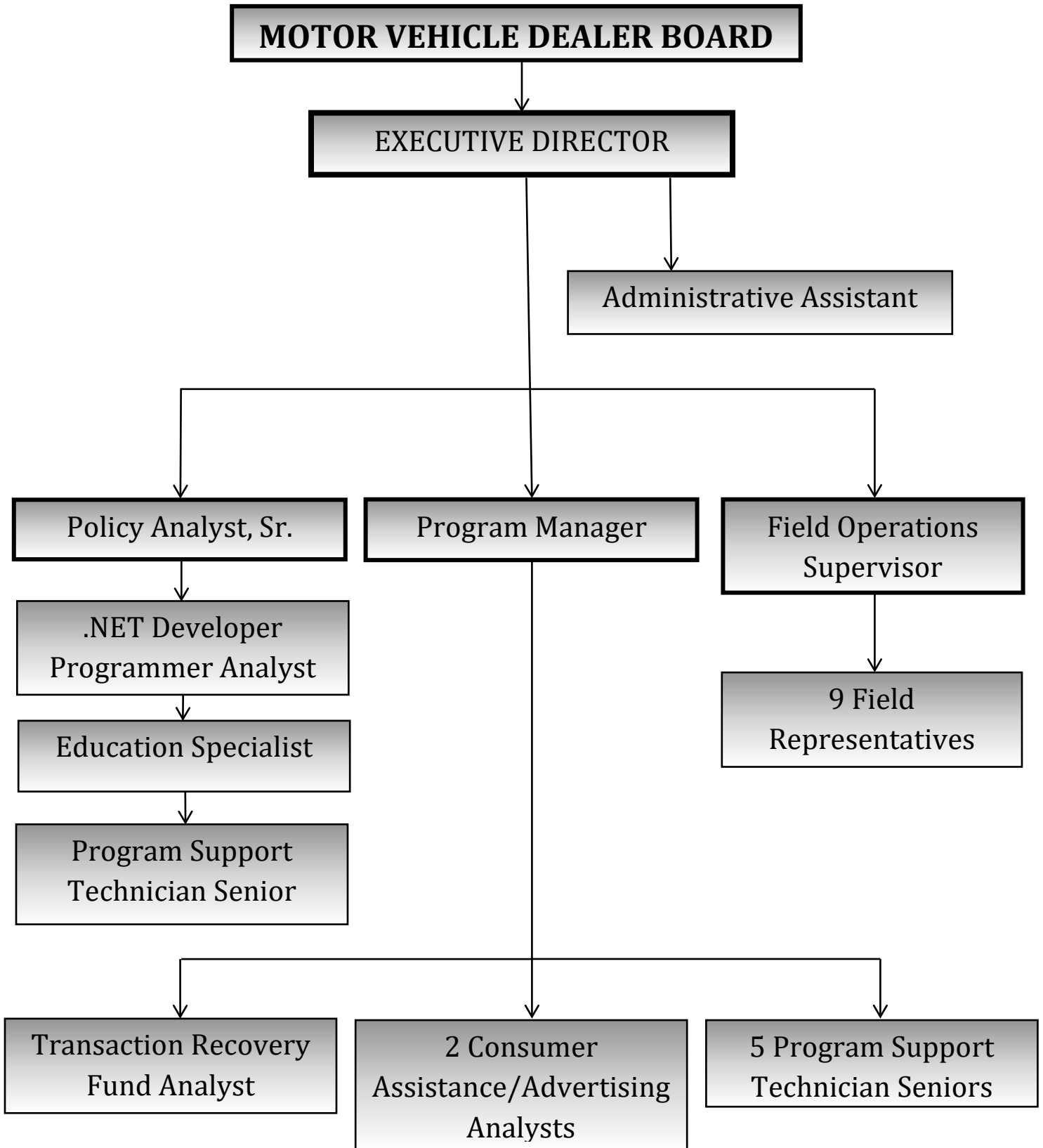
Sincerely,

A handwritten signature in blue ink that reads "William Childress".

William R. Childress
Executive Director

cc: Secretary Shannon Valentine
Members of the Motor Vehicle Dealer Board

***Motor Vehicle Dealer Board
Organizational and Operational Chart***



INTRODUCTION

The 1995 General Assembly overwhelmingly adopted legislation to shift the regulation and oversight of the new and used motor vehicle dealer industry from the Department of Motor Vehicles (DMV), to a professional board as described below. In 2015 the General Assembly adopted legislation that moved the oversight and regulation of motorcycle, trailer and recreational dealers from the DMV to the same board.

The Board consists of nineteen members for which the Governor, subject to confirmation by the General Assembly, appoints eighteen. In order to stagger appointments and ensure continuity, initially, eight members were appointed to two-year terms and nine were appointed to four-year terms.

The statute creating the Board stipulates that ten members shall be licensed franchise (“new”) motor vehicle dealers, and seven members shall be independent (“used”) dealers. Further, the statute requires that of the seven independent dealers, one shall be primarily engaged in trailer, recreational vehicle or rental vehicle business, and one shall be a licensed independent motorcycle dealer. The last members include an individual who has no direct or indirect interest, other than as a consumer and the Commissioner of the DMV, who serves as the Board’s chairman.

Members of the Board represent all areas of the Commonwealth. In addition, they represent all levels of ownership. Board members include those that own several dealerships to those with small operations and just a few employees. This cross section ensures that all perspectives of the industry have a voice on the Board.

The primary focus of the Motor Vehicle Dealer Board, as mandated by Virginia statute (Chapter 15 of Title 46.2), is to regulate new and used car, motorcycle, trailer and recreational vehicle dealers. This includes certifying and licensing dealers and salespersons. Additionally, the MVDB administers the Motor Vehicle Transaction Recovery Fund (MVTRF), handles consumer complaints regarding the dealers mentioned, monitors dealer advertising, and schedules hearings.

Organizationally, the Board staff is divided into two functional areas: Field Operations and Headquarters Operations. The field operations consist of a supervisor and field representatives who work out of their “home-offices” located throughout the Commonwealth. Inspecting dealerships, educating dealers, salespersons and consumers is the primary focus of the field representatives. Enforcement becomes necessary only after continued, blatant disregard for laws.

The number one priority of the Dealer Board Headquarters Operations staff is to review and ensure all applications meet all motor vehicle statutory requirements and local zoning ordinances before processing any initial or renewal applications for our licensees (dealers and salespersons). This work constitutes the highest volume and work effort of the Headquarters staff. As part of the licensing process, the Board issues and renews dealer license plates and decals as authorized by DMV.

Lastly, the Motor Vehicle Dealer Board is self-sufficient and is funded strictly by fees paid by the licensed dealers. These fees cover all of the expenses of the Board. No general fund dollars are appropriated to the MVDB.

COMMITTEES

Five statutorily mandated committees act as an extension of the Board: Advertising, Licensing, Franchise Law, Transaction Recovery Fund and Dealer Practices.

These committees are scheduled to meet on the second Monday of every other month in Room 702 at the Department of Motor Vehicles Headquarters Building, 2300 West Broad Street, Richmond, Virginia. The full Board meeting follows the completion of the last committee meeting on the same day.

The May 10, 2010 Motor Vehicle Dealer Board meeting was the first Commonwealth of Virginia Board or Commission meeting to be broadcast live over the web. All bi-monthly meetings are now broadcast live and are available to the public to view until the next meeting.

The responsibilities of each of these committees are outlined below:

ADVERTISING COMMITTEE

David Duncan, *Chairperson*

Committee Functions

- To advise the Board and the Board staff on matters related to motor vehicle dealer advertising. The committee is to receive and identify advertising issues. The committee will discuss, and as needed, direct a study or investigate issues in order to make policy and procedural recommendations to the Board.
- Review staff reports on advertising complaints and violations. Present a summary report to the Board.
- Review, and then make recommendations to the Board on individual advertising actions proposed by the Executive Director and which are required to come before the Board.
- Direct the advertising staff on how they monitor and identify advertising violations and consumer complaints concerning advertising.

FRANCHISE REVIEW AND ADVISORY COMMITTEE

Gardner Britt, *Chairperson*

Committee Functions

- Advise the DMV Commissioner, through the Board, of any violations of Article 7 (Franchises) of the Motor Vehicle Dealer Act. (See § 46.2-1573.C.)
- Assist the Commissioner in assembling panels, made up of three Board members, as described in § 46.2-1573.D.8.

- Meets on an “as needed” basis and not every other month as does other committees.

LICENSING COMMITTEE

Joe Tate, *Chairperson*

Committee Functions

- To advise the Board and the Board staff on matters related to the licensing of dealers, dealer-operators and salespersons. The committee is to receive and identify dealer-licensing issues. The committee will discuss, and as needed, direct a study or investigate issues in order to make policy and procedural recommendations to the Board.
- Review, and then make recommendations to the Board on individual licensing actions proposed by the Executive Director and which are required to come before the Board.

TRANSACTION RECOVERY FUND COMMITTEE

Chris Maher, *Chairperson*

Committee Functions

- Monitor the activities and solvency of the TRF and report findings to the Board.
- Review staff reports and recommendations concerning actions against the fund. Make recommendations to the Board on claims against the fund.

DEALER PRACTICES COMMITTEE

Ron Kody, *Chairperson*

Committee Functions

- To advise the Board and the Board staff on issues related to the conduct of business. The committee will receive and identify dealer practice issues. The committee will discuss, and as needed, direct a study or investigate issues in order to make policy and procedural recommendations to the Board.
- Review, and then make recommendations to the Board on dealer related issues proposed by the Executive Director and which are required to come before the Board.

ADMINISTRATIVE HEARINGS

Board staff conducted 73 administrative hearings during the two year reporting period. The Board’s Office Manager prepared and presented the vast majority of the cases to a hearing officer. Some cases were presented by the Board’s Field Supervisor. In all instances, other members of the Board’s staff may be required to participate in the hearing process as witnesses to contribute their direct knowledge of the facts as they relate to the hearing. The Board offers licensed dealers and salespersons the opportunity to have an Informal fact-finding conference, and/or a Formal Fact Finding Conference. Informal fact-finding conferences are usually convened when a licensed dealer or salesperson appeals an administrative action initiated by the Board staff. Formal hearings are appeals of the actions taken against a licensed dealer or

salesperson by the Executive Director or the Board. All fact-finding conferences and hearings are conducted at the Board's headquarters location in Richmond. While Board staff encourages the individuals who are the subject of the conferences/hearings to appear in person, they may also participate by telephone. The Board staff is working on conducting future fact-finding conferences via video conference.

In addition to the 73 administrative hearings previously mentioned, Board staff conducted 31 Informal fact-finding conferences for consumers filing claims against the Motor Vehicle Transaction Recovery Fund (MVTRF). The MVTRF paid out a total of \$148,264.85 to ten consumers during the two year period. The MVTRF is funded through assessments paid by all licensed dealers during the first three years they are in business. Legislation initiated by the MVDB during the 2014 General Assembly adjusted the fee that dealers pay into the MVTRF from \$250 per year to \$350 per year. This adjustment was the first in nearly 30 years and will ensure the MVTRF remains solvent and consumers protected.

As stated earlier, when it comes to enforcing the laws, regulations, and policies, the MVDB's philosophy is "education first". If educational efforts do not produce the desired outcomes, then we use our enforcement authority. One enforcement tool available to the Board is to assess a civil penalty. In this reporting period the MVDB assessed civil penalties totaling \$543,621 and collected \$244,825 from dealers. Collected civil penalties are deposited into the Transportation Trust Fund. Civil penalties not collected are reported to the Department of Taxation's Debt Set-Off Program for collection.

Some of these administrative civil penalties (10 – 15%) are appealed to an Informal fact-finding conference and constitute the bulk of the 73 administrative hearings mentioned earlier. In some instances assessed penalties are reduced or withdrawn by the 19 member Board or the Executive Director. The Board has the authority to increase assessments or institute assessments as well.

Hearing officers submit their reports/recommendations to the Board's Executive Director who reviews the recommendations. The Board has given the Executive Director the authority to make decisions on certain types of cases that have been adjudicated through Informal fact-finding conferences. The greater majority of the hearing officer recommendations are forwarded to the 19 member Board to be decided during their regularly scheduled meetings. The subjects of the hearings are encouraged to attend the Board meetings. The Board provides time for them to address the Board and respond to questions posed by Board members.

In advance of the Board meetings, Board members are provided with the hearing officer's report and recommendations. In addition Board members are provided all evidence presented during the fact-finding conferences and all comments/exceptions to the report as submitted by the subjects of the hearings. The Board discusses each case and makes their determination in the interest of consumers and the motor vehicle dealer community.

CORE BUSINESS ACTIVITIES

DEALER LICENSING

The primary focus of the Board is to license franchise (new) and independent (used) automobile, motorcycle, trailer, and recreational vehicle dealers in the Commonwealth. Approximately 4,450 dealer licenses are issued to the 3,700 licensed dealerships in Virginia.

Many dealerships in Virginia are licensed to sell different types of vehicles, i.e., new cars/trucks, used cars/trucks, new trailers, used trailers, new motorcycles, used motorcycles, new recreational vehicles and used recreational vehicles. A dealership selling used cars/trucks and used trailers will have two licenses at the dealership location authorizing them to sell the vehicles. In addition, approximately 315 dealer licenses were issued each year to Foreign Registrant, Manufactured Home, Non-Profit and Water Craft dealerships.

In Fiscal Year 2017 Board staff processed 18,941 salespersons licenses. In Fiscal Year 2018 the figure was 18,856. It should be noted that approximately 20% of the dealer licenses and 15% of the salespersons licenses are issued for a two year period. In order to secure a dealer-operator qualification or a salesperson license, one must first pass a standardized test. 6,553 tests were administered in FY17 and 6,976 tests were administered and in FY18. Through an agreement with DMV dealer-operator and salesperson applicants may take their test at any DMV Customer Service Center.

A criminal history background check is conducted on each and every initial application for a dealer or salesperson's license submitted to the Board. If an applicant has a criminal history, Board staff, using established criteria and guidelines, determines if the applicant should be granted a license. Applicants denied a license may elect to appeal.

DEALER EDUCATION

Legislation initiated by the Board and adopted by the 2005 General Assembly requires all applicants for an original independent dealer-operator certificate of qualification to successfully complete a course of study before they can take the certificate of qualification test. Working with the Virginia Independent Automobile Dealers Association and the Virginia Community College System, a two day class was instituted. During the two year reporting period, a total of forty-four classes were held, with over 1,261 students attending. Many of those attending did so voluntarily and others attended as mandated by the Board.

§46.2-1511 requires all dealer-operators to re-certify every three years. Re-certification is a form of continuing education. To re-certify, dealer-operators have the choice of either completing an on-line course, a classroom course, or taking a test at any DMV Customer Service Center. During this reporting period, 1,901 dealer operators re-certified.

During non-Board meeting months, the MVDB publishes the Dealer Talk newsletter. The focus of the newsletter is to educate dealers regarding common business problems; changes in laws and regulations; to provide updates and reminders of existing law; recommended best practices; and to inform the dealer community of administrative actions taken by Board staff and the Board against licensed dealers. The newsletter is emailed to approximately 6,100 individuals and is posted on the agency's website.

Dealers and others may subscribe to our email list in order to receive periodic messages concerning items of interest. In addition, we work closely with the trade associations to use their communication tools to educate dealers. The Board's Executive Director gives presentations at association meetings and annual conferences.

DEALER LICENSE PLATES

The Department of Motor Vehicles is responsible for allocating and distributing license plates, including dealer's license plates. In order to create a "one-stop shopping" experience for dealers, the Board and DMV maintain a Memorandum of Understanding that authorizes the

Board to distribute dealer license plates. The following table displays the number of dealer plate transactions handled during the reporting period by Board staff:

FY 17	FY 18
46,568	47,842

CONSUMER ASSISTANCE

The MVDB employs two full-time employees whose primary responsibilities include responding to consumer concerns and initiating investigations on the consumer's behalf. It is not the intent of, nor shall Board staff act as legal counsel to the consumer.

Consumers wishing to file a complaint, seeking mediation or assistance with a dealer matter can do so in several ways. By an overwhelming margin, calling the Board staff and talking to one of the consumer representatives is the most common method used by consumers. Other methods include submitting a consumer complaint form (via our website), emailing, sending letters/faxes, and in person visits at our Richmond location.

During this reporting period the Board staff received over 10,000 consumer assistance requests for assistance in securing titles or registration from dealers, or to mediate a matter with a dealership. The number of requests for assistance is up approximately 15% from the last Biennial Report (8,919). The most common questions and complaints received from consumers are related to:

- Title/Registration issues
- Out of business dealerships
- Contract/Pricing questions and disputes
- Vehicle service and repairs
- Vehicle warranties
- State inspections

On the agency's website (www.mvdb.virginia.gov), consumers can register a complaint against a dealer by completing the "Request for Consumer Assistance" form. Once completed and submitted by the consumer, Board staff will review the submission and respond accordingly. The MVDB has established a performance measure to ensure that all "Request for Consumer Assistance" requests are replied to in a timely fashion. This measure requires Board staff to respond to 98% of all website submissions within three (3) business days. During this biennial period the MVDB exceeded the 98% threshold.

The Board has been aggressive in monitoring dealer advertising as well as other dealer practices. Although aggressive, the Board staff needs to find innovative methods and processes to monitor the exploding dealer advertisement market, especially on social media platforms which has surged recently. Lack of resources, especially those with knowledge of social media workings and the ability to find the sites that dealers are using to advertise, is a major challenge for the Board right now. As we move forward, the Board staff will be looking for ways to address this issue. This is essential to maintaining a level playing field for all licensed dealers.

In the meantime the Board staff is expending its energies working with individual dealerships, and the dealer associations in educating the dealer community about Virginia's advertising laws and policies. This effort is in line with the Board's philosophy of "education first". To accomplish educating the dealers the Board staff continues to publish articles in the Dealer Talk newsletter, send emails, field visits, Constant Contact notifications, and violation letters.

Selected Agency Initiatives Instituted

Electronic Mail (Email) Recertification Notifications

This provided a more efficient means for the MVDB staff to notify independent dealer-operators of their upcoming recertification requirement and deadline. A module was added to Horizon (agency's in house application) to allow for bulk monthly notifications. This notification process allowed the MVDB staff to send email notifications to the dealer-operator and to the dealership, thus ensuring that the recertification requirement reminder and deadline was known to the dealer operator.

Electronic Mail (Email) of §46.2-1533 (1533) Notifications

This provided the field representatives a faster, efficient and secure way of tracking initial 1533 violation notices. A 1533 violation is when a licensed dealership has failed to be open for business during its posted business hours, or has failed to be open for business for at least 20 hours (with 10 of those hours being between 9 am and 5 pm M-F) as required by law. This email notification allows the field representative to send an email notification to the dealership informing them that the dealership is in violation. The dealership is allowed 7 calendar days to respond to the notification and explain why they were not open for business. If the dealer responds within the allotted period, the response is included in the field representative's final report and the appropriate actions are taken while giving consideration to the dealership's response.

Interactive Maps (Dealership Locations)

This provides the field representatives and the field representative supervisor with a visual document that shows all of the licensed dealerships in the field representative's area of responsibility. When the user hovers over the icon representing the dealership, it shows the all the relevant information about the dealership. Information such as the dealership's name, address, dealer number and the last year the dealership was inspected. This map can be used by the field representative through their smart phones. The map helps the field representative plan their dealership visits and the field representative supervisor as she reviews their areas for dealerships that may need attention sooner rather than later.

Contracts

Contracts with various organizations were formally finalized. Over the years the MVDB has been dealing with several vendors who have provided services to the Board in support of the 2-day Dealer-Operator class and the online dealer-operator recertification course. No formal agreement of the services provided and the expectations of all parties involved existed. The Board now has contracts in place for all services being provided in support of the 2-day Dealer-Operator class and the online dealer-operator recertification course.

FISCAL AFFAIRS SUMMARY

In FY 96, through the APA process, the Board adjusted licensing fees that dealers pay to the Board. These fees cover all of the expenses of the Board. When these fees were adjusted, it was done with a five year planning horizon. The plan was for the Board to collect sufficient yearly revenues to accumulate a fund balance that would meet operational needs throughout that five-year period.

Business processes implemented by the Board staff expanded the original five year projection. This fee structure provided an adequate revenue base that supported the Board until the fees were adjusted in December of 2007. The Board successfully completed the APA Regulatory process in the fall of 2007 to adjust fees. The new fees were effective December 1, 2007 – nearly twelve years after the initial fees were put in place.

The 2007 fee structure was designed to produce balances in the first few years to support expenditures that will exceed revenues in the out years. When the new fee structure was developed, it was projected that the new fee structure would provide an adequate revenue stream through 2013.

Legislation adopted by the General Assembly in 2014 capped the fees that dealers could be charged, but more importantly this legislation gave the Board the authority to adjust fees not exceeding the cap. In July 2015, in concert with legislation that moved the oversight of motorcycles, trailers, and recreational vehicles from DMV to the Board, the Board exercised its authority and adjusted dealer fees.

The Board's financial accounting and reporting functions are provided by DMV. As a result of this joint effort, the Board has been able to conduct its statutory responsibilities and its financial management functions in a most cost-effective manner. The Board's operating revenue, expenditures/transfers and year-end balance for Fiscal Years 2017 and 2018 are shown below:

<i>Fiscal Year Ending June 30, 2017</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
2,735,452	2,674,438	1,306,598

<i>Fiscal Year Ending June 30, 2018</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
2,825,736	2,634,465	1,497,869