

2016  
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 body; and process all motor vehicle related complaints promptly and professionally; 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, 2016

The Honorable Terry McAuliffe, Governor  
Virginia General Assembly  
State Capitol  
Richmond, Virginia 23219

Dear Governor McAuliffe 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 for over twenty years. 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.

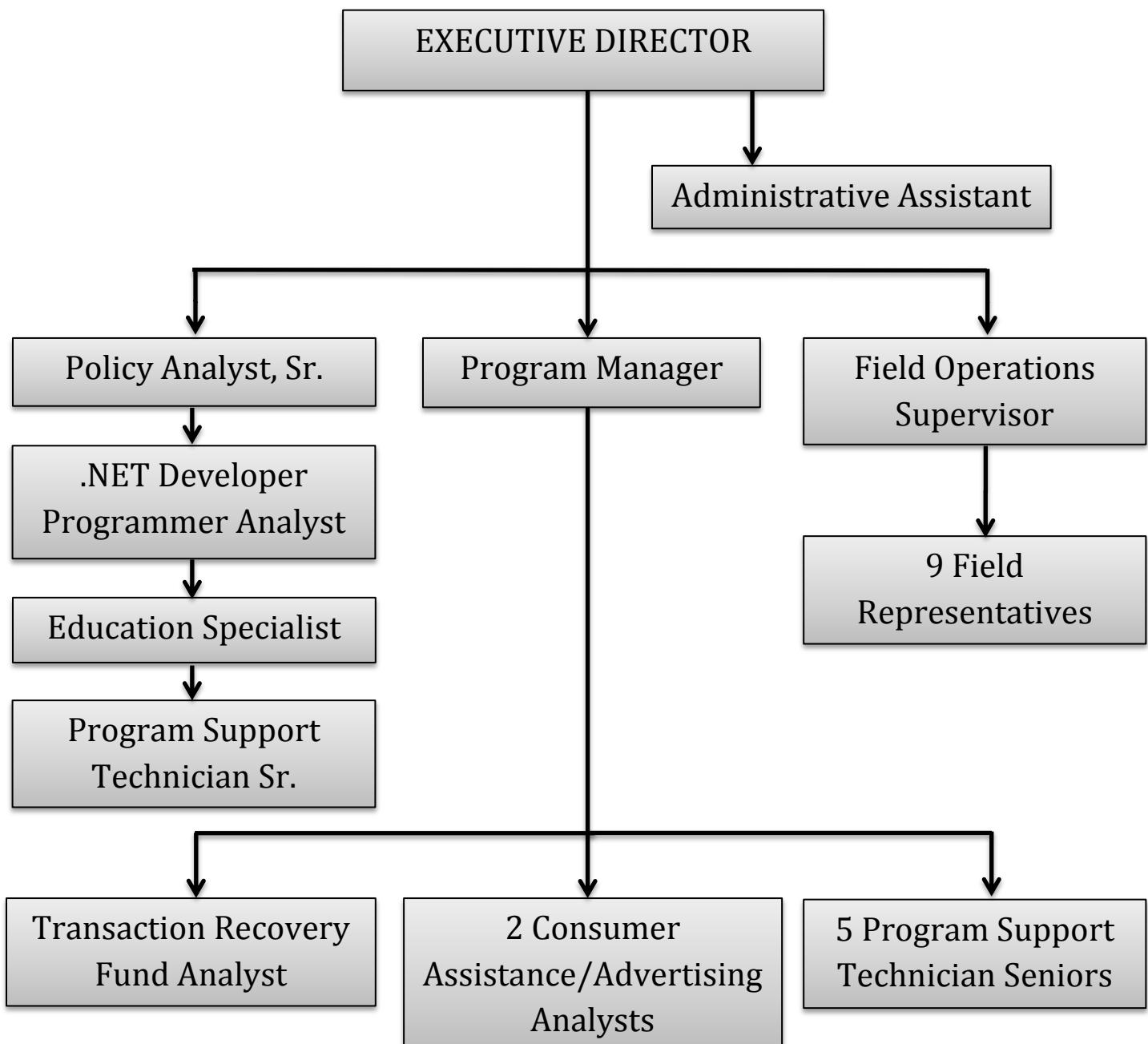
Sincerely,

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

William R. Childress  
Executive Director

cc: Secretary Aubrey Layne  
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 twelve field representatives who work out of their “home-offices” located throughout the Commonwealth. 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 is to process initial and renewal applications of 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 directed by DMV.

Approximately 500 consumers contact the Board staff each month to request mediation or assistance solving a problem concerning a dealership. This has proven to be a very successful program as most situations can be resolved with the introduction of mediation and a clear understanding of the problem by all parties involved. The most common questions and complaints received from consumers are related to:

- Title/Registration not obtained by the dealer for the consumer
- Dealer has gone out-of-business
- Contract/Pricing questions and disputes
- Motor vehicle is in need of repair shortly after the purchase

Most consumers contact us by telephone or email with some visiting our office or sending a letter. Consumers contact Board staff via an email address and an easy to complete form established on the MVDB website. Once received, Board staff review the email and respond accordingly. The MVDB has established a performance measure to ensure that email correspondence is replied to in a timely fashion. This measure requires Board staff to respond to 98% of all website emails within three (3) business days. I am pleased to report that nearly 100% of all emails received during this report period were responded to within the three day timeframe.

The Board has been very aggressive in monitoring dealer advertising as well as other dealer practices. During the current reporting period, the Board assessed \$103,250 in advertising related civil penalties as a result of enforcement efforts. In keeping with the Board's philosophy of "education first", Board staff continues to educate our licensed dealers through telephone calls, emails and letters.

Also, the MVDB has aided consumers defrauded by dealers by awarding a total of \$193,760 to eleven consumers during this report period from the Motor Vehicle Transaction Recovery Fund (MVTRF). The MVTRF is funded through assessments paid by all 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.

When it comes to enforcing the laws, rules and regulations, the MVDB's philosophy is "education first". If educational efforts do not produce the desired outcomes, then we must 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 \$663,200 and collected \$321,281 in civil penalties from dealers (includes advertising civil penalties as noted above). These 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.

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. At any given time there may be one or more other functioning committees who have a specific assignment. Once these assignments are completed, the committee is disbanded.

These committees are schedule 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.
- Direct the advertising staff on how they monitor and identify advertising violations and consumer complaints concerning advertising.

## **FRANCHISE REVIEW AND ADVISORY COMMITTEE**

George Pelton, *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.

## **ADMINISTRATIVE HEARINGS**

Board staff conducted 136 administrative hearings during the two year reporting period. The Board's education specialist prepared and presented the majority of the cases to a hearing officer. Some cases were presented by the Board's Program Manager or Field Representative Supervisor. Both Informal Fact Finding Conferences and Formal Hearings are conducted at the Board's headquarters location in Richmond. While Board staff encourages the individuals who are the subject of hearings to appear in person, they may also participate by telephone.

Hearing officers submit their reports/recommendations to the Board's Executive Director. 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 majority of decisions are made by the nineteen member Board at their regularly scheduled meetings. The subjects of hearings that are decided by the Board are encouraged to attend the Board meetings. The Board provides time for the subjects of the cases to address the Board and respond to questions posed by the Board.

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

During this reporting period the Board levied civil penalties, suspended and revoked certificates and licenses, and mandated that dealership owners take and pass the two-day dealer-operator course. Oftentimes the Board will mandate that a dealer must have a satisfactory inspection or face a suspension or an additional civil penalty. Also during the reporting period, we increased the number of instances dealers were offered the option to pay a civil penalty, thus waiving their right to a hearing.

## **CORE BUSINESS ACTIVITIES**

### **DEALER LICENSING**

The primary focus of the Board is to license the nearly 4,593 franchise (new) and independent (used) licensed automobile, motorcycle, trailer, and recreational vehicle dealers in the Commonwealth. (There are about 926 franchise dealers and 3,667 independent dealers.) These dealers have a combined total of approximately 22,670 licensed salespersons. In addition the Board also licenses 307 dealers associated with manufactured homes, water craft trailers, non-profits, and foreign registrants.

In Fiscal Year 2015 Board staff processed 3,432 dealer certificates and 17,759 salespersons licenses. In Fiscal Year 2016 the figures were 3,634 and 18,799 respectively. It should be noted that about 20% of the 4,593 dealers and 15% of the licensed salespersons choose to have a two year license. In order to secure a dealer-operator qualification or a salesperson license, one must first pass a test. In FY15, 7,188 tests were administered and in FY16, 7,469 tests were administered. Through an agreement with DMV dealer-operator and salesperson tests may be taken 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, determines if the applicant should be granted a license.

## **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 1,243 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, 1,713 dealer operators re-certified.

Every other month, the MVDB publishes a newsletter called Dealer Talk. The focus of the newsletter is to educate dealers regarding common business problems; changes in laws and regulations; provide updates and reminders of existing law; and inform the dealer community of actions taken by the Board against dealers. The newsletter is emailed to approximately 5,850 individuals and is posted on our 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:

<b>Dealer License Plates</b>	
<b>FY 15</b>	<b>FY 16</b>
37,438	31,668

## **CONSUMER ASSISTANCE**

The MVDB employs two full-time employees whose primary responsibilities are responding to consumer concerns and initiating investigations on the consumer's behalf. However, it is not the intent of staff to act as legal counsel to the consumer. During the reporting period, we averaged about 500 consumer contacts per month. [The table below does not include the approximate 125 consumer contacts we receive by email each month.]

The Motor Vehicle Dealer Board provides several methods for which a consumer can contact our office and request assistance.

CONSUMER COMPLAINTS FY15			CONSUMER COMPLAINTS FY16			
	Total	Written		Total	Written	
	Phone	Calls		Phone	Calls	
July 2014	419	7	412	July 2015	414	19
August	409	15	394	August	475	30
September	403	13	390	September	424	10
October	428	15	413	October	475	31
November	301	16	285	November	280	13
December	353	22	331	December	341	20
January 2015	340	10	330	January 2012	321	22
February	291	9	282	February	417	21
March	460	26	434	March	362	15
April	406	32	374	April	333	12
May	370	16	354	May	478	31
June	451	22	429	June	420	21
<b>TOTAL</b>	<b>4,624</b>	<b>203</b>	<b>4,421</b>	<b>TOTAL</b>	<b>4,740</b>	<b>245</b>
						<b>4,498</b>

## **Selected Agency Initiatives**

### **Legislation - HB 2189**

Was unanimously adopted by the General Assembly and transferred the licensing and regulatory responsibility for recreational vehicles, motorcycles and trailer dealers from DMV to the Motor Vehicle Dealer Board effective July 1, 2015. HB 2189 simplified many motor vehicle dealer laws and regulations. Prior to HB 2189, most of the current vehicle regulations which apply to all dealers, were stated redundantly in four different areas of the Virginia Code. Now the laws are covered under one chapter of the code. HB 2189 achieved consistency in the regulations for all dealer license types. Another achievement of HB 2189 is that it ensures all dealers have Board representation, not only motor vehicle dealers, but recreational, motorcycle, and trailer dealers as well. HB 2189 ensures the Board will be comprised of Franchise and Independent Dealers, and one member with no direct or indirect interest, other than that of a consumer, and that they serve to promote the interest of the retail buyers. Implementation strategies were

developed for all major components of the agency's operations: HR, IT, budget, licensing and administrative support.

### **Information Technology Application Development**

Horizon – is the name of this in-house application development that successfully consolidated all of the MVDB's legacy applications into one system. Three major components to Horizon were completed: Licensing (Dealer & Salesperson), Field inspection workflow, and Reports. To promote optimal use of resources, development was segmented into a series of modules. This approach allowed users to formulate business requirements and set priorities as well as schedule user acceptance and testing prior to production. Horizon enables an easier interface to review and evaluate transactional data from the mainframe by using new and secure technologies.

### **Dealer Outreach and Communications**

- I. Continuing education, Online Recertification – to keep pace with new motor vehicle dealer laws and consumer regulations the Board initiated a requirement that all dealer-operators had to complete an online recertification program every 36 months using Board approved vendors. During this biennial period over 2,500 dealer-operators (the primary person who runs the daily operations of the dealership) have successfully met this continued education requirement and reinforces course curriculum taught by the Virginia Independent Automobile Dealers Association at Virginia's Community Colleges.
- II. Constant Contact- as a result of past legislation that required all dealers to submit their official email address to the MVDB, we have utilized an email service (Constant Contact) to provide efficient email communications to our dealer community. Prior to this legislation, the agency obtained optional email addresses from dealers at the time of license renewal. In addition field representatives now equipped with the smartphone devices can stay connected with dealers in their jurisdictions while on the road and respond to emails timely and appropriately.
- III. Dealer Audit Sheet and Self-Inspection Checklist - based on feedback from the Board membership and the Dealer community, the MVDB staff developed two critical documents to help the licensed dealers with field inspections. The Dealer Audit Sheet provides both the field representative and the dealer with a "snap shot" of current information the MVDB has on record for the dealership. This enables both the dealer and the MVDB staff to review and correct any data. The Self-Inspection Checklist was a result of feedback received from Board members. This form is an educational tool that will allow the Dealer to be proactive in their review of their current business operations and serves as a reminder of high visibility inspection areas focused on by the Field Representatives. Dealerships mindful and focused on this checklist should be successful during their next inspection (random or scheduled). Both, the Audit Sheet and the Self-Inspection Checklist are based on the Board's long standing principal of education before enforcement for the Dealer community.

## 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. We do not anticipate requiring any fee adjustments in the current biennial (FY17 and FY18).

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 2015 and 2016 are shown below:

<b><i>Fiscal Year Ending June 30, 2015</i></b>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
2,581,514	2,22,884	886, 814

<b><i>Fiscal Year Ending June 30, 2016</i></b>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
2,806,037	2,445,593	1,240,810