

# The Merit Rating Board: Review and Recommendations

By David S. Clancy

## Introduction

Significant administrative failings involving the Registry of Motor Vehicles have drawn attention to an entity called the Merit Rating Board (MRB or the Board). MRB's administrative personnel and processes have been the subject of sharp criticism, and also extensive ongoing reform efforts. This policy brief reviews the relevant circumstances, and makes recommendations for consideration by MRB and other government personnel as they move forward.

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## The Merit Rating Board

The Massachusetts government website, Mass.gov, states: “[t]he Merit Rating Board’s primary mission is to maintain and update individual driving records and to report this information to Massachusetts auto insurers and other government agencies involved in transportation and public safety. The [MRB] also administers the Safe Driver Insurance Plan (SDIP).”<sup>1</sup> The latter “tracks an individual’s driving record and gives automobile insurers a framework so that they can charge individual customers additional surcharges on insurance premiums depending on their driving records.”<sup>2</sup>

Mass.gov also states that MRB was “established in 1976 in accordance with Section 57A of Chapter 6C of the Massachusetts General Laws”; that it is a “subdivision of” the Registry of Motor Vehicles (RMV); and that it “is managed by a director appointed by the Registrar of Motor Vehicles, the Commissioner of Insurance, and the Attorney General.”<sup>3</sup>

## Tragic Accident Revealed Serious Administrative Shortcomings, with the Merit Rating Board Significantly Involved in Those Failings

On June 21st, a tragic accident occurred in New Hampshire: a commercially operated truck collided with a group of motorcyclists, killing seven of them.<sup>4</sup> The truck driver — Volodymyr Zhukovskyy — had two Massachusetts driver’s licenses, commercial and individual. He survived, and was charged with negligent homicide.<sup>5</sup>



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The Massachusetts Department of Transportation (DoT) soon disclosed that Mr. Zhukovskyy refused a chemical test in Connecticut on May 11; that Connecticut notified Massachusetts of this incident before the fatal accident; and that the notification should have resulted in the automatic suspension of Mr. Zhukovskyy's commercial license.<sup>6</sup>

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flows to RMV in electronic and hard-copy format. As to the latter type of record, the Merit Rating Board was involved. Since 2016, MRB was in possession of "tens of thousands" of paper driving-record notifications received by Massachusetts from other states, which, in March 2018, the MRB had simply "stopped processing."<sup>7</sup>

DoT has since identified other challenges the MRB faces, not limited to out-of-state notifications, and stated that "data entry and system compatibility issues have existed historically" within MRB.<sup>8</sup>

## Official Response to Date Has Been Multifaceted

Many corrective actions have occurred. Among others:

- On June 25, then-Registrar of Motor Vehicles Erin Deveney resigned and was replaced by Acting Registrar Jamey Tesler.<sup>9</sup>
- The July 1 DoT report announced multiple actions, including expedited review of backlogged records, related license suspensions, revised processes, and commencement of an external audit.<sup>10</sup> DoT has generated multiple additional "interim reports," providing updates on the deficiencies discovered and on changes made to address them.<sup>11</sup>
- The Massachusetts Legislature's Joint Committee on Transportation held hearings on July 22 and 30, questioning, among others, then-director of the Merit Rating Board, Thomas Bowes.<sup>12</sup>
- External auditor Grant Thornton released a preliminary report dated August 16.<sup>13</sup>
- As noted, Mass.gov describes the Merit Rating Board as "managed by a director appointed by the Registrar of Motor Vehicles, the Commissioner of Insurance, and the Attorney General."<sup>14</sup> In his August 15 report, Acting Registrar Tesler stated his intent to "reactivate the statutory oversight role of the Merit Rating Board," because "[r]ecent events have highlighted the importance

of MRB and the board's statutorily defined role as an oversight board for the agency's responsibility to maintain driver records."<sup>15</sup> That group — Acting Registrar Tesler; Glenn Kaplan of the Attorney General's office; and Commissioner of Insurance Gary Anderson — convened on August 20, and terminated Mr. Bowes.<sup>16</sup>

- On August 22, 2019, the Department of Transportation announced the appointment of Paolo Franzese as interim director of the Merit Rating Board.<sup>17</sup>
- On September 25, 2019, Acting Registrar Tesler; Glenn Kaplan and Gary Anderson again met, along with (among others) Mr. Franzese. Among other things, the board:
  - Affirmed its intent to have an active role in light of the terms of the governing statute;
  - Discussed the proper qualifications for a permanent director of the Merit Rating Board and took steps toward a job posting for that position;
  - Decided as a default matter to meet every two weeks (on Wednesdays at 1 p.m.); and
  - Decided to request the involvement of the Office of the Massachusetts Inspector General in reviewing the administrative work of the Merit Rating Board and providing reports to the panel as appropriate.
- On October 4, 2019, Grant Thornton released its 106-page final report. That report makes many recommendations applicable to the DoT and RMV in general, including improved whistleblower mechanisms, development of a code of conduct, improved training, specific organizational changes, and attention to specified risk areas. As to the Merit Rating Board, the report contains a section titled "Lack of Oversight by the Merit Rating Board." That section states, citing a *Boston Herald* article: "We understand that the board's first meeting since 2015 was in August 2019, when the board convened to terminate the employment of Mr. Bowes."<sup>18</sup> Grant Thornton further states that "[s]uch meetings would have provided an opportunity for dialogue between Mr. Bowes and the board, which could have included discussion of issues related to the processing of out-of-state notifications" and that this was a "possible missed opportunity for discussion of the out-of-state notification process and related challenges."<sup>19</sup> The report recites — "based on discussion with the Acting Registrar" — that "bi-weekly board meetings have been scheduled for the next few months," and recommends that the board "should meet regularly."<sup>20</sup>

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## Clarity About the Statutory Composition and Responsibilities of the Merit Rating Board is Important, And The Public Will Benefit from the Board's Current Path

By the terms of the governing Massachusetts statute, and consistent with its name, the Merit Rating Board is a board — that is, a panel. And that panel “consist[s] of” three high-level officials:

There shall be within the registry of motor vehicles a motor vehicle insurance merit rating board, in this section called the board. The board shall consist of the registrar of motor vehicles, who shall serve as chair, the commissioner of insurance and the attorney general or a designee.<sup>21</sup>

Further, though the statute empowers the board to appoint a “director” and to collect and expend funds,<sup>22</sup> the statute charges “the board” as a whole — not solely subordinate personnel — with the defined legal responsibility:

The board shall formulate and administer a plan for compiling, gathering and disseminating information, operator records and histories and such other data as it deems necessary or appropriate pertaining to motor vehicle accidents, claims under motor vehicle policies and motor vehicle violations in order to facilitate the implementation and operation of the [Safe Driver Insurance Plan].<sup>23</sup>

However, public sources of information have not fully captured the content of this decades-old governing statute. For example, Mass.gov itself briefly references the three-member panel, but describes only its responsibility to appoint a director.<sup>24</sup> (In describing MRB, Grant Thornton’s preliminary report quoted that same sparse language.<sup>25</sup> Grant Thornton more fully described the governing panel’s statutory role until its just-issued Final Report;<sup>26</sup> still, that report’s list of individuals interviewed does not include two of the panel’s three members, namely the Commissioner of Insurance and the designee of the Attorney General.<sup>27</sup>) The Massachusetts Secretary of State’s “Citizens’

Guide to State Services” contains a paragraph which describes the Merit Rating Board as a “statistical agency,” and does not mention the governing panel at all.<sup>28</sup>

Perhaps relatedly, initial press coverage of the controversy reflected an evolving understanding of the Merit Rating Board’s statutory structure. An informative August 19 *Boston Globe* article disclosed “the three-person panel tasked with overseeing the much-maligned Merit Rating Board” and revealed that the panel “sat dormant for years.”<sup>29</sup> However, the *Globe* referred to the officials as members of an “obscure panel” that is “also called” the Merit Rating Board, and described the

panel’s function as “overseeing” the “Registry unit now at the center of the scandal.” There is certainly an important practical distinction between a board and underlying administrative personnel. However, by statute there is a single Merit Rating Board; this legal entity “consist[s] of” the three public officials in question; and the statute confers its defined responsibility on “the board,” not solely on subordinate officials or employees.

As to other early press reports, many did not mention the three-member board, and where that panel was mentioned, it was often described obliquely. For example, an August 8 article in Fitchburg’s *Sentinel & Enterprise* (“Healey Mum on Potential RMV Charges”) quoted the Attorney General’s strong criticisms of RMV — and even mentioned the possibility of her office bringing criminal charges — but did not mention that she (or her designee) is a member of the Merit Rating Board.<sup>30</sup>

In such an atmosphere, it is difficult for the public to understand the relevant facts, and to make informed assessments.

Recently, government has fostered greater clarity. As noted, in his August 15 interim report, shortly before the August 20 meeting, Acting Registrar Tesler stated his intent to “reactivate the statutory oversight role of the Merit Rating Board,” because “[r]ecent events have highlighted the importance of MRB and the board’s statutorily defined role as an oversight board for the agency’s responsibility to maintain driver records.”<sup>31</sup>

Further, the board’s September 25, 2019 meeting included a public reference to — and lengthy quotation from — the governing statute; a default commitment to meetings every two weeks; and a board resolution to seek the assistance and expertise of the Inspector General in ongoing corrective efforts.

These steps honor the Legislature’s desire (made clear by the terms of the statute) for significant involvement of the three high-level officials, and they will be practically beneficial, adding capable eyes and voices to the work of the administrative body in question.

Such steps cannot preclude problems, but they should increase the likelihood that problems are noticed and corrected. Grant Thornton’s final report finds that, during the period of time when MRB’s governing board was apparently not meeting (2015–2019), the backlog of paper out-of-state notifications was elevated to then-Registrar Deveney. The report states that in 2016, Ms. Deveney approved transfer of the backlogged records to the MRB for processing (they were previously within RMV’s Driver Control Unit), and that Ms. Deveney later agreed that, due to administrative burdens, they be de-prioritized by MRB.<sup>32</sup> There is no indication that Ms. Deveney conferred with the full board on these matters.<sup>33</sup>

Grant Thornton’s final report also states that in “May 2016,” “prior to the transfer of out-of-state notification processing

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responsibility from the DCU to the MRB,” an MRB employee wrote an email identifying a broader challenge: “staffing inadequacies” which were “compromising the ability of the Merit Rating Board to accomplish its work.” Grant Thornton states that the email was addressed to “the Assistant Secretary of the Executive Office for Administration and Finance with a copy

to” — among others — “the MRB Board Members, which included Ms. Deveney, the Attorney General, and the [then] Commissioner of Insurance”.<sup>34</sup>

To the extent issues like this arise in the future, the public will benefit from a regularly-meeting board.

## Recommendations

This policy brief recognizes the extensive reform efforts to date, and, in a spirit of constructive comment, offers these thoughts:

1. The board’s commitment to regular meetings is very appropriate. In this regard, one might reasonably look to corporate boards of directors, where regular board meetings are customary. For example, one survey found that in 2018, among companies listed on the S&P 500 index, the average number of board meetings (in-person and telephonic) was eight (i.e., approximately every six weeks).<sup>35</sup> In addition, the Massachusetts Inspector General’s 2017 “Guide for Members of Public Boards and Commissions, How to Be an Effective Member of a Public Board or Commission” states in part that “Public boards should meet regularly to facilitate open, vigorous and in-depth discussions...”<sup>36</sup> As noted, Grant Thornton’s Final Report similarly states that the board should “meet regularly.”<sup>37</sup>
2. To better communicate MRB’s composition and structure to the public, Mass.gov could include a statement such as, “The Merit Rating Board consists of the Registrar of the Registry of Motor Vehicles, the Commissioner of Insurance, and the Attorney General or her designee. The Board discharges its statutorily defined work with the support of an appointed director and subordinate personnel. *See* Mass. Gen. L. Chapter 6C, Section 57A.” The Secretary of State’s “Citizens Guide to State Services” — which describes the Merit Rating Board but not its governing panel — could be similarly revised.
3. It would also be beneficial for the relevant portion of Mass.gov to include additional information on board activity. As of this writing, that web resource — titled “Past events for Merit Rating Board (MRB)” — currently includes no information about meetings prior to August 20; as to the August 20 and September 25 meetings, the web page contains meeting agendas but not minutes.<sup>38</sup> At least while corrective efforts are actively underway, and public interest is great,

the board should consider (a) posting on Mass.gov agendas and minutes of pre-2019 meetings, to the extent available (or at minimum identifying when those meetings occurred), and (b) routinely posting minutes of the reconvened board (that is, starting with the August 20 and September 25 meetings). This would exceed the requirements of the Open Meeting Law (which calls for provision of minutes only upon a specific request), but would enhance transparency at this important juncture.

4. As noted, the board voted to seek the assistance of the Massachusetts Inspector General. If not already contemplated, that assistance might include input not only into improving the administrative work of the Merit Rating Board, but also recommendations on the board-level process itself — an important issue where the underlying administrative work, as here, is clearly extensive and complex. For example, it could be valuable for the board to commission particular types of standing reports from administrative personnel, such as reports on backlog in important areas; reports on MRB-related whistleblower complaints; and reports on administrative functions that have recently been added to or subtracted from MRB’s scope of work. The board could then review the up-to-date versions of those standing reports at each periodic meeting. Inspector General review in this area might reveal other ways to assist the board in its function. The Inspector General has relevant experience, as reflected by his 2017 “Guide for Members of Public Boards and Commissions.”
5. Finally, a government official should be tasked with identifying any similar situations elsewhere in state government — specifically, settings where a legislatively created board or committee of high-level officials requires revival or reinvigoration (particularly where, as here, the underlying administrative work is clearly important). To the extent such situations are identified and resolved, that outcome would benefit the public by enhancing high-level involvement in the relevant government work.

## Endnotes

1. “Merit Rating Board”, via <https://www.mass.gov/merit-rating-board-mrb> (accessed 10/7/19).
2. “Overview of the Merit Rating Board,” fn.1, via <https://www.mass.gov/info-details/overview-of-the-merit-rating-board> (accessed 10/7/19).
3. *Id.*
4. “Serious Motor Vehicle/Motorcycle Crash, Route 2, Randolph”, N.H. Division of State Police, 6/21/19, via <https://www.nh.gov/safety/divisions/nhsp/new-sevents/2019/20190621-randolph-crash.htm> (accessed 10/7/19).
5. “Volodymyr Zhukovskyy Arrested on Seven Counts of Negligent Homicide,” N.H. Dep’t of Justice, 6/24/19, via <https://www.doj.nh.gov/news/2019/20190624-zhukovskyy-arrest.htm> (accessed 10/7/19).
6. “RMV Chief Resigns As Info Is Revealed About Driver In N.H. Crash, State House News Service June 26, 2019, <https://www.statehousenews.com/news/20191145> (accessed 9/10/19)
7. “Preliminary Review of State-to-State Communications and Actions Underway,” 7/1/19 Memorandum from M. Breen, DoT General Counsel & J. Tesler, Acting Registrar of Motor Vehicles, at p. 4, via [https://www.mass.gov/files/documents/2019/07/25/dot-rmv\\_InterimReport\\_1.pdf](https://www.mass.gov/files/documents/2019/07/25/dot-rmv_InterimReport_1.pdf) (accessed 10/7/19)
8. “Interim Progress Report #5,” J. Tesler, Acting Registrar, 8/15/19, at 6, via <https://d279m997dpfwgl.cloudfront.net/wp/2019/08/RMV-Interim-Report-5-August-15-2019-FINAL.pdf> (accessed 10/7/19)
9. “Mass. Trucking Company in Deadly N.H. Crash Had Troubling History Of Driver Violations,” Boston Globe, 6/25/19, via <https://www.bostonglobe.com/metro/2019/06/25/mass-trucking-company-deadly-crash-had-troubling-history-driver-violations/y3QRHHi1eGJhCQn5poX5yN/story.html> (accessed 10/7/19).
10. *Supra*, fn.7.
11. *E.g.*, the 8/15/19 memorandum cited *supra* at n.8.
12. “RMV Knowingly Created Backlog, Ex-Registrar Tells Lawmakers,” Boston Globe, 7/30/19, via [https://www.bostonglobe.com/metro/2019/07/30/rmv-officials-set-grilled-over-missed-license-suspensions-beacon-hill/sPA3VCC4CgweHpOmaAApokL/story.html?p1=Article\\_Inline\\_Text\\_Link](https://www.bostonglobe.com/metro/2019/07/30/rmv-officials-set-grilled-over-missed-license-suspensions-beacon-hill/sPA3VCC4CgweHpOmaAApokL/story.html?p1=Article_Inline_Text_Link) (accessed 10/7/19)
13. “Grant Thornton LLP Preliminary Report”, 8/16/19 (hereafter “Grant Thornton Preliminary Report”), via <https://htv-prod-media.s3.amazonaws.com/files/ma-rmv-grant-thornton-preliminary-report-08-16-2019-1565977335.pdf> (accessed 10/7/19).
14. *Supra* at n.2.
15. “Interim Progress Report #5,” J. Tesler, Acting Registrar, 8/15/19, at 2, 6, via <https://d279m997dpfwgl.cloudfront.net/wp/2019/08/RMV-Interim-Report-5-August-15-2019-FINAL.pdf> (accessed 10/7/19).
16. “Thomas Bowes Fired As Director Of Embattled RMV Unit,” Boston Globe, 8/20/19, via <https://www.bostonglobe.com/metro/2019/08/20/second-rmv-official-fired-wake-agency-scandal/KX5nxMcB-ZZpTWmS1qTdaQK/story.html> (accessed 10/7/19) . As has been broadly reported, it is not clear when they or predecessors’ previous meeting had taken place. Mass. gov’s section titled “Past Events for Merit Rating Board” — [https://www.mass.gov/merit-rating-board-mrb/events/past?\\_page=1](https://www.mass.gov/merit-rating-board-mrb/events/past?_page=1) (accessed 10/7/19) — contains only agendas for the two recent meetings. During the August 20 meeting, Attorney General designee Glenn Kaplan stated that “this board has not met in years despite my repeated requests to convene.” (“Opening Statement of Glenn Kaplan, AG’s Designee of Board of Merit Rating Board,” 8/20/19, via <https://www.statehousenews.com/pr/20193493> (accessed 9/10/19).)
17. “State Appoints Temporary Leader of the Merit Rating Board,” Boston Globe, 8/22/19, via <https://www.bostonglobe.com/metro/2019/08/22/state-appoints-temporary-leader-rmv-merit-rating-board/sIBXx9Ose0t4gQ-CiVTCCWI/story.html> (accessed 10/7/19)
18. See Grant Thornton October 4, 2019 Final Report (hereafter, “Grant Thornton Final Report”), at 42, via [https://www.scribd.com/document/428788071/Mass-RMV-Grant-Thornton-Final-Report?campaign=VigLink&ad\\_group=xxc1xx&source=hp\\_affiliate&medium=affiliate](https://www.scribd.com/document/428788071/Mass-RMV-Grant-Thornton-Final-Report?campaign=VigLink&ad_group=xxc1xx&source=hp_affiliate&medium=affiliate) (accessed 10/7/19)
19. Grant Thornton Final Report, at 42.
20. Grant Thornton Final Report, at 42, 52.
21. Mass. Gen. L. Chapter 6C, Section 57A(a) (underscoring and italics added for emphasis).
22. Mass. Gen. L. Chapter 6C, Section 57A(a) (“The board shall appoint a director, who shall not be subject to Chapter 31 [i.e., the Massachusetts Civil Service Law].”), (d) (“The board may expend for expenses and for legal, investigative, clerical and other assistance amounts appropriated for those purposes. All costs of administration and operation of the board shall be borne by insurance companies...”)

23. Mass. Gen. L. Chapter 6C, Section 57A(a) (emphasis added.)
24. <https://www.mass.gov/info-details/overview-of-the-merit-rating-board> (Merit Rating Board “is managed by a director appointed by the Registrar of Motor Vehicles, the Commissioner of Insurance, and the Attorney General.”) (accessed 10/7/19)
25. Grant Thornton Preliminary Report, at 12.
26. Grant Thornton Final Report, at 14.
27. Grant Thornton Final Report, at 20-21.
28. <https://www.sec.state.ma.us/cis/ciscig/q/q21q24.htm>
29. “Healey, An RMV Critic, Sits on Panel Charged With Overseeing Unit At Center of Scandal,” Boston Globe, 8/19/19, via <https://www.bostonglobe.com/metro/2019/08/19/healey-rmv-critic-sits-panel-charged-with-overseeing-unit-center-scandal/wgeqCDOccEG-WIzHVx8RRTK/story.html> (accessed 10/7/19)
30. <https://www.sentinelandenterprise.com/2019/08/07/healey-mum-on-potential-rmv-charges/> (“Attorney General Maura Healey would not say whether she is looking into bringing criminal charges against anyone at the Registry of Motor Vehicles...”) (accessed 10/7/19)
31. “Interim Progress Report #5,” J. Tesler, Acting Registrar, 8/15/19, at 2, 6, via <https://d279m997dpfwgl.cloudfront.net/wp/2019/08/RMV-Interim-Report-5-August-15-2019-FINAL.pdf> (accessed 10/7/19)
32. Grant Thornton Final Report, at 34, 37. See also “Opening Statement of Glenn Kaplan, AG’s Designee of Board of Merit Rating Board,” 8/20/19 (“I was never informed about this additional responsibility or about the backlog of records”).
33. See “Opening Statement of Glenn Kaplan, AG’s Designee of Board of Merit Rating Board,” 8/20/19 (“I was never informed about this additional responsibility or about the backlog of records”). (Grant Thornton has recommended reversal of these decisions — specifically, that all out-of-state notifications be processed and adjudicated by a single new unit, outside of MRB. Grant Thornton Final Report, at 58.)
34. Grant Thornton Final Report, at 35 & n.137 (identifying as individuals copied on the email, inter alia, “Daniel Judson” (then Commissioner of Insurance) and “Maura Healy [sic]” (an apparent reference to Attorney General Maura Healey).) The Final Report does not include this email as an exhibit. Consequently this paper relies solely on (and assumes the accuracy of) Grant Thornton’s description of the email’s content and addressees.
35. “2018 United States Spencer Stuart Board Index,” at 8, 24 via [https://www.spencerstuart.com/-/media/2019/july/ssbi\\_2018\\_new.pdf](https://www.spencerstuart.com/-/media/2019/july/ssbi_2018_new.pdf) (accessed 10/7/19)
36. “Guide for Members of Public Boards and Commissions,” Commonwealth of Massachusetts Office of the Inspector General, Dec. 2017 Edition, at p. 3, via [https://www.mass.gov/files/documents/2017/12/12/OIG-Guide-for-Members-of-Public-Boards-and-Commissions-December-2017.pdf?\\_ga=2.161236664.40414673.1568040398-144185103.1556305948](https://www.mass.gov/files/documents/2017/12/12/OIG-Guide-for-Members-of-Public-Boards-and-Commissions-December-2017.pdf?_ga=2.161236664.40414673.1568040398-144185103.1556305948) (accessed 10/7/19).
37. Grant Thornton Final Report, at 52.
38. See [https://www.mass.gov/merit-rating-board-mrb/events/past?\\_page=1](https://www.mass.gov/merit-rating-board-mrb/events/past?_page=1) (accessed 10/7/19)

