



# INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA DEPARTMENT OF REVENUE (DOR), DEPARTMENT OF  
TRANSPORTATION (INDOT), AND STATE POLICE (ISP)

TITLE: HEAVY VEHICLE ELECTRONIC LICENSE PLATE, INC. (HELP, INC.)

CASE ID: 2017-04-0071

DATE: July 30, 2018

*The Inspector General's Chief Legal Counsel, Tiffany Mulligan, after an investigation by  
Director of Investigations, Darrell Boehmer, reports as follows:*

The Indiana Office of Inspector General (OIG) investigates potential criminal activity and Code of Ethics violations within the executive branch of state government. Ind. Code § 4-2-7-3. The OIG is statutorily charged with recommending policies to deter, detect and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government. Ind. Code § 4-2-7-3(2). It also is charged with providing advice to agencies on developing, implementing and enforcing policies and procedures to reduce the risk of fraudulent or wrongful acts within the agency. Ind. Code § 4-2-7-3(8).

## **Complaint and OIG Investigation Overview**

On April 23, 2017, the OIG received a complaint along with a news article regarding an alleged conflict of interests in Missouri involving Heavy Vehicle Electronic License Plate (HELP), Inc., a non-profit and public/private partnership that provides weigh station bypass services. The article reported that the FBI was investigating Missouri state employees who were responsible for regulating the weigh station bypass industry while sitting on the board of HELP. The reporting party questioned whether similar problems were occurring in the State of Indiana.

The reporting party sent the OIG a follow up complaint with a second article noting that the Missouri Highway Patrol and Missouri Department of Transportation decided to remove its representatives from HELP's Board of Directors.

The OIG opened an investigation into this matter. As part of its investigation, the OIG also reviewed the Office of Missouri State Auditor's Report No. 2018-024<sup>1</sup> on Missouri's weigh in motion contracts. The Report provided additional information on Missouri state employees' service on the HELP Board and how such service raised conflict of interests concerns. For example, the Report quotes several emails between Missouri state employees and HELP staff that showed a preference towards HELP while these same employees were participating in decisions affecting HELP and its competitors.<sup>2</sup>

The OIG's investigation focused on whether the State of Indiana had employees on the Board of Directors at HELP and if so whether this hinders competition or benefits the State. During the course of the investigation, the OIG interviewed several witnesses, including representatives from the Indiana Department of Revenue (DOR), Indiana Department of Transportation (INDOT), and the Indiana State Police (ISP). The OIG also subpoenaed records from HELP and reviewed numerous documents, including contracts, Memorandums of Understanding (MOUs), and emails.

### **History and Overview of HELP and Drivewyze in Indiana**

The OIG found that DOR, ISP, and INDOT all have a role in supporting and enforcing state and federal commercial vehicle laws, such as size and weight restrictions. The State's efforts to enforce these laws include operation of weigh stations and truck scales throughout the

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<sup>1</sup> This Report can be found at: <https://app.auditor.mo.gov/Repository/Press/2018024215546.pdf>.

<sup>2</sup> OFF. MO. ST. AUDITOR REP. NO. 2018-024.

State of Indiana.

According to OIG interviews with DOR and ISP staff, the State of Indiana first began involvement with HELP in the 1990's. In 2013, DOR received approval for a Performance Information Systems Management (PRISM) grant through the Federal Motor Carrier Safety Administration to implement the HELP "E-screening Project." E-screening allows states to screen vehicles electronically, instead of having each vehicle stop at a weigh station for inspection.

As part of its e-screening technology, HELP installs weigh in motion (WIM) sensors in the roadways. These WIMs check for speed, vehicle weight, and regulatory compliance when the motor carrier travels over the WIMs. HELP's PrePass program allows motor carriers with solid safety ratings to bypass inspection facilities through the use of a transponder. Motor carriers can purchase a transponder and place it in the vehicles. The transponder transmits information to the State's weigh station, and the State can look up information on the vehicle, such as credentialing, licensing and safety rating. The State then uses this information to determine if a vehicle will need to stop at the weigh station for a manual inspection. The driver of the vehicle receives a green light or red light in the cab to indicate if he or she can bypass the weigh station or must stop for an inspection.

Auxilium, Inc. (Auxilium) is a non-profit organization that is classified as a supporting organization of HELP. Auxilium produces 360Smartview, a program that gathers and analyzes information that comes out of PrePass. While PrePass gives commercial vehicle operators a green light or red light indicating whether they need to stop at the weigh station, 360Smartview gets a photo of the vehicle and provides ISP with additional data. Furthermore, PrePass only screens those vehicles that have a transponder whereas 360Smartview screens all vehicles.

According to the documents provided by Auxilium in response to the OIG subpoena, the State of Indiana through the Indiana Department of Revenue first contracted with Auxilium in January of 2015 through a federal grant. The contract was for \$271,771 and ran through March 31, 2017. The purpose of the agreement was to allow the State of Indiana to purchase, install, and use law enforcement weigh station technology to determine the safety fitness of a motor carrier while the license or registration is in effect. The State amended this contract twice: first in April 2015 to add \$286,887 of federal grant money to the contract and add a Statement of Work for the development and implementation of the integration of the State's internal systems with the 360Smartview system; and second in May of 2017 to add \$224,782 of federal grant money, extend the contract to March 31, 2019, and to add a Statement of Work to provide installation of a 360Smartview system and a new weigh station.

Along with reviewing the State of Indiana's contract history with HELP, the OIG also reviewed whether the State of Indiana has done business or is currently doing business with any similar service providers that may be considered competitors of HELP. The OIG found that in April 2014, ISP entered into a non-binding Memorandum of Understanding (MOU) with Drivewyze, Inc. (Drivewyze). Drivewyze is a smart mobility services company that provides weigh station bypass technology. Under the MOU, Drivewyze provides bypass services and supporting technology at no cost to the State. The system is supported by motor carrier subscription fees paid directly to Drivewyze.

Based on information provided by ISP, all Indiana weigh stations have both HELP's PrePass technology and Drivewyze technology. This allows the motor carriers to decide which technology to purchase. Some trucking companies use only one type of technology and others use both HELP technology and Drivewyze technology.

## HELP Board of Directors

HELP's Board of Directors is composed of at least one motor carrier and one government Board representative from each "member state." HELP's website currently lists eighteen states as member states.<sup>3</sup> When a state becomes a member state under its contract with HELP, the state government automatically has a vote on the Board. The state government can ask for more than one state representative to participate in Board activities; however, a member state only has two votes on the Board, one public representative vote and one private representative vote, regardless of how many representatives a state appoints. The Board oversees PrePass operations, including major business decisions, such as operational policies, service pricing and new services.

The OIG found that Indiana is a member state. DOR has had one employee serving on the HELP Board since 2000, after Indiana first deployed PrePass. Several years ago, DOR asked for a representative from ISP to be added to the HELP Board in addition to the DOR member. Currently two Indiana state employees serve on HELP's Board, one employee from DOR and one employee from ISP. DOR pays \$15,000 as a member state, or \$7,500 per state representative. Based on Indiana's contracts with Auxilium, Indiana gets a \$15,000 price reduction for the annual license fee for the 360Smartview product as a member state.

As part of their Board membership, these two state employees have the opportunity to attend two Board meetings per year. Each two and a half day Board meeting includes a variety of presentations and reports from HELP committees, such as the safety, governance and ethics, and communications committees. The membership fee covers travel expenses for the meetings. The Indiana employees who attend these meetings do so on state time and consider it to be part

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<sup>3</sup> HELP'S BOARD OF DIRECTORS available at <https://www.helpinc.us/people/> (last visited on July 6, 2018).

of their official state duties.

HELP Board members, including members from state governments, receive a Conflict of Interest Policy and Acknowledgment form when joining the Board. They must sign an annual Conflict of Interest Acknowledgement Form and Disclosure Statement and must declare a conflict any time one exists by providing a written disclosure of the conflict or potential conflict to the President and CEO of HELP. Members must then recuse themselves from voting in a committee or during Board deliberations on any issue involving the conflict. Furthermore, a Board member cannot vote on a HELP project or expenditure that would solely benefit his or her state. HELP notes any recusal in its official committee or Board minutes.

The OIG reviewed records from the State Ethics Commission (SEC) and found that the former Commander of ISP's Commercial Vehicle Enforcement Division (CVED) received a Formal Advisory Opinion<sup>4</sup> from the SEC on whether he could serve on HELP's Board of Directors. The SEC found that the Commander would not violate Ind. Code § 4-2-6-5.5 or Ind. Code § 4-2-6-9, the conflicts of interests provisions of the Code of Ethics, by serving on HELP's Board. The Commander had stated that DOR paid for his seat on the HELP Board, and ISP's Ethics Officer had advised<sup>4</sup> that his service on the HELP Board would be considered part of his official state duties. As a result, the SEC found that the use of state funds to pay for the seat was not prohibited under the use of state property rule.

### **Differences between Missouri and Indiana**

After reviewing the media reports out of Missouri, along with the Office of Missouri State Auditor's Report No. 2018-034, the OIG found several differences between the State of

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<sup>4</sup> This Formal Advisory Opinion is No. 15-I-4 and can be found at: [https://www.in.gov/ig/files/opinions/2015/s15-I-4\\_ISP\\_COIdv\\_USP\\_GE\(1\).pdf](https://www.in.gov/ig/files/opinions/2015/s15-I-4_ISP_COIdv_USP_GE(1).pdf).

Indiana's use of e-screening technology and its relationship with HELP and what was reported in Missouri.<sup>5</sup>

First, Indiana owns the physical WIMs and the associated technology in Indiana whereas HELP owns the physical WIMs and the WIM data in Missouri. HELP's ownership of the WIMs and their data was a problem for Drivewyze when it tried to enter the market in Missouri several years ago. Missouri entered into an MOU with Drivewyze in 2014 to operate a pilot program to provide bypass services; however, Missouri terminated the contract two years later. Reports indicate that Missouri terminated the pilot program with Drivewyze because Drivewyze was unable to get access to the WIM data. Missouri's contract with HELP provided that HELP owned all of the WIMS and WIM data; therefore, Drivewyze had to either get the data from HELP's WIMs or get its own data. Drivewyze was unsuccessful in getting the data; therefore, it was unable to operate its system, and Missouri terminated the pilot program. In contrast to Missouri, Indiana owns the hardware and the actual scale in the roadways that screens the trucks for weight; therefore, Indiana can allow Drivewyze to tie into the WIMs as HELP does, for usage in its subscription based services. This has the effect of increasing competition for such services within Indiana.

Second, Drivewyze, HELP's competitor, has a greater physical presence in Indiana than in Missouri, which may show greater opportunity for competition in Indiana. Missouri has nineteen bypass stations using HELP's PrePass system,<sup>6</sup> while Drivewyze has two sites in very

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<sup>5</sup> Reports indicate that Missouri has awarded contracts to both HELP and Drivewyze since the conflicts of interests complaints first surfaced.

<sup>6</sup> MO. TRUCKING ASS'N, MO. PREPASS BY THE NUMBERS *available at* [http://go.prepass.com/PPSTMO2017\\_LPCONTACT.html?utm\\_source=State\\_Association&](http://go.prepass.com/PPSTMO2017_LPCONTACT.html?utm_source=State_Association&) (last visited July 6, 2018).

close proximity.<sup>7</sup> In contrast, HELP maintains seven PrePass equipped sites in Indiana,<sup>8</sup> and Drivewyze operates nine in Indiana.<sup>9</sup> Furthermore, Indiana is continuing to research new ways to monitor motor carriers and enforce regulations. For example, INDOT is working with Kapsch TrafficCom (Kapsch) and the Purdue Joint Transportation Research Program (JTRP) on a pilot program using Kapsch's technology to virtually weigh the vehicle. If the vehicle is found to be noncompliant with regulations on weight, the system would mail a citation to the vehicle's owner based on license plate information.<sup>10</sup>

### **Benefits of E-Screening Technology**

The OIG learned of several possible benefits of the e-screening technology. First, the technology benefits the State because it helps reduce the delays and long back-ups that resulted when all trucks had to pull into a weigh station. These back-ups led to safety issues on the roadways. It also benefits the State by allowing enforcement personnel to focus on those vehicles that are most likely to be out of compliance. This improves enforcement efficiency.

The technology also allows compliant carriers with good safety and inspection ratings to bypass the weigh station and save time. It also benefits the carrier and environment by reducing the fuel consumed during the manual check process.

### **Benefits of State Employees Participating in HELP Board Activities**

Several sources stated that Indiana and other states benefit from having state

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7 DRIVEWYZE, MO. COVERAGE *available at* <https://drivewyze.com/coverage-map/missouri/> (last visited July 6, 2018).

8 HELP, PREPASS FACT SHEET *available at* [http://go.prepass.com/rs/589-RIV-055/images/Fact\\_Sheet\\_IN-May\\_2017.pdf](http://go.prepass.com/rs/589-RIV-055/images/Fact_Sheet_IN-May_2017.pdf) (last visited on July 6, 2018).

9 DRIVEWYZE, IND. COVERAGE *available at* <https://drivewyze.com/coverage-map/indiana/> (last visited July 6, 2018).

10 Indiana Department of Transportation, Overweight Vehicle Enforcement Pilot Program, 2016, *available at* <https://www.in.gov/indot/3415.htm>.

representatives participate in the HELP Board because it allows the public and the State to have a voice on how HELP operates and how HELP addresses public safety issues. State employees who participate on the Board have the opportunity to advocate for safety, interact with other state representatives and learn what is working in other states.

### **Recommendations**

Based on the OIG's findings in this investigation, the OIG makes the following recommendations to DOR, ISP, and INDOT to reduce the appearance of conflicts of interests or unfair competition that may be raised by Indiana state employees serving as voting members of HELP's Board.

#### **Recommendation 1**

The OIG recommends that state agencies only allow state employees to serve on the HELP Board as non-voting members. Although the OIG learned that having state employees participate in HELP Board activities holds some benefit to the State as described above, serving as a voting member of the Board raises at least an appearance of a potential conflict of interests and unfair competition. The OIG believes the State can receive most, if not all, of the same benefits it receives as a voting member by having its employees participate on the HELP Board as non-voting members while reducing the risk or appearance of a conflict of interests or unfair competition.

According to communications from HELP, HELP's Governance and Ethics Committee recommended new Bylaws for HELP, which will allow states to have the option of not serving on the Board. Instead a state can become a general member of HELP. General members will be assessed the same membership fee amount as voting members and will be invited to attend and participate in committee discussions and open Board sessions; however, they will not be allowed

to vote. DOR formally requested that HELP change its membership to a non-voting member on July 2, 2018 as a proactive measure pending the results of the OIG's investigation. The OIG believes the general membership option HELP now offers to states gives states the option of staying engaged in important operations and safety discussions while minimizing their risk for a potential conflict of interests.

### **Recommendation 2**

DOR, ISP, and/or INDOT should perform a cost-benefit analysis to determine if membership in HELP is in the best interests of the State. This will require all participating agencies to communicate with other interested agencies on how they plan to utilize HELP or other e-screening technologies in the future. All three agencies should have the opportunity to contribute to discussions on the use and funding of this technology so that the State can produce a reasoned cost-benefit analysis of how best to move forward.

The OIG found some benefit to the State's participation in HELP as outlined earlier in this Report; however, DOR, ISP, and INDOT are in a better position to fully analyze the costs and benefits of the State's continued participation. The State should continue paying membership dues to HELP only if DOR, ISP, and/or INDOT determine that such membership is in the best interest of the State.

### **Recommendation 3**

If DOR, ISP, or INDOT determine it is in the best interest of the State for their employees to participate in HELP Board activities, then they should allow these employees to do so on state time and document that these activities are part of the employees' official state duties. The Code of Ethics ghost employment rule, which is found in 42 IAC 1-5-13, prohibits a state employee from engaging in, or directing others to engage in, "work other than the performance

of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.” Therefore, an employee who attends a HELP Board meeting without approval from a supervisor is at risk of committing ghost employment. In contrast, an employee who attends a HELP Board meeting with the written approval of his or her supervisor documenting that the activities are part of his or her official state duties would not face such risk.

Dated: July 30, 2018

APPROVED BY:

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive style with a horizontal line at the end.

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Lori Torres, Inspector General