

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ACTION NISSAN, INC., d/b/a  
UNIVERSAL HYUNDAI,

Petitioner,

vs.

Case No. 15-2334

HYUNDAI MOTOR AMERICA AND  
HYUNDAI OF CENTRAL FLORIDA,  
LLC, d/b/a HYUNDAI OF  
CENTRAL FLORIDA,

Respondents.

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RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on the limited issue of Petitioner's standing on December 8 and 9, 2015, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge, in Tallahassee, Florida.

APPEARANCES

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STATEMENT OF THE ISSUES

At issue in this proceeding is whether the Petitioner, Action Nissan, Inc., d/b/a Universal Hyundai ("Universal"), has standing to protest the establishment of Hyundai of Central Florida, LLC, d/b/a Hyundai of Central Florida ("HCF"), as an additional dealership of Hyundai Motor America ("HMA") in Clermont (Lake County), Florida, as described in the notice published in the Florida Administrative Register of March 26, 2015 (vol. 41, no. 6, p. 1480-81).

PRELIMINARY STATEMENT

On March 26, 2015, the Department of Highway Safety and Motor Vehicles ("DHSMV") published notice that HMA intended to allow HCF to establish a dealership for the sale of Hyundai vehicles at a proposed location in Clermont, Lake County, Florida (the "Notice"). The Notice stated that it was for a "New Point Franchise Motor Vehicle Dealer in a County of More than 300,000 Population." On April 23, 2015, Universal timely filed its notice of protest of the proposed new Hyundai dealership. Also on April 23, 2015, DHSMV forwarded Universal's notice of protest to the Division of Administrative Hearings ("DOAH") for the assignment of an administrative law judge and

the conduct of a formal hearing. The final hearing was scheduled for December 3, 4, 8, 9, and 15 through 18, 2015, in Tallahassee.

On October 12, 2015, HMA filed a Motion for Bifurcated and Expedited Hearing on Universal Hyundai's Standing (the "Motion"). In consultation with the parties, the undersigned continued the final hearing on the merits of HCF's proposed dealership and scheduled two days of hearing, on December 8 and 9, 2015, on the threshold issue of Universal's standing to protest the proposed dealership.

Section 320.642(3)(a)2., Florida Statutes, provides that if a proposed new dealership is to be located "in a county with a population of less than 300,000, according to the most recent data of the United States Census Bureau or the data of the Bureau of Economic and Business Research of the University of Florida," then existing dealers within a radius of 20 miles of the proposed new dealership have standing to protest the new dealership. Section 320.642(3)(b)2. provides that if the proposed new dealership is to be located "in a county with a population of more than 300,000, according to the most recent data of the United States Census Bureau or the data of the Bureau of Economic and Business Research of the University of

Florida," then existing dealers within a radius of 12.5 miles of the proposed new dealership have standing to protest the new dealership.

The parties have stipulated that if the statutory "protest ring" is 12.5 miles, then Universal does not have standing to protest the proposed new dealership. They have also stipulated that if the ring is 20 miles, then Universal does have standing.

The Motion points out that the April 1, 2014, Bureau of Economic and Business Research of the University of Florida's ("BEBR") estimate of the population of Lake County was 309,736 persons and that the United States Census Bureau's July 1, 2014, estimate of the population of Lake County was 315,690. These were the most recent population estimates as of the date of the DHSMV notice. Therefore, based on the most recent data produced by the entities explicitly recognized by section 320.642(3), the protest ring is 12.5 miles and Universal does not have standing.

In response, Universal argues that the statute does not state that DHSMV is to rely on the estimates made by the Census Bureau or BEBR but on the most recent data generated by one of those entities. The most recent actual count of the persons living in Lake County, the 2010 United States Decennial Census, found the population to be 297,047 persons. Universal contends that this number should presumptively govern DHSMV's determination of county population, absent some demonstration

that the subsequent estimates made by the Census Bureau and BEBR are sufficiently accurate to demonstrate that the population of Lake County was greater than 300,000 persons on April 1, 2014.

Therefore, two related issues are to be resolved in this proceeding. First, there is the factual issue: what is the population of Lake County? Second, there is the legal issue: what does the statute require of DHSMV to determine the population of a county? May DHSMV continue its practice of relying on the most recent population estimate produced by BEBR, or must the agency conduct its own statistical analysis of the raw data gathered by BEBR or the Census Bureau and produce its own estimate of the county's population?

At the hearing on standing, Universal presented the testimony of Nalini Vinayak, an operational management consultant manager for DHSMV, and Stanford Weisberg, a professor of statistics at the University of Minnesota and consultant for the Fontana Group. Dr. Weisberg also testified in rebuttal. Dr. Weisberg was accepted as an expert in statistics. Universal's Exhibits 1 through 4 and 6 through 9 were admitted into evidence. Respondents presented the testimony of James McClave, chief executive officer of Info Tech, a statistical and economic consulting and software development firm, as well as a former member of the statistics faculty at the University of Florida. Dr. McClave was accepted as an expert in statistics.

Respondents' Exhibits 2 through 5 and 9 were admitted into evidence.

The three-volume Transcript of the final hearing was filed at DOAH on December 10, 2015. The parties timely filed their Proposed Recommended Orders on December 21, 2015.

Unless otherwise stated, all statutory references are to the 2014 edition of the Florida Statutes.<sup>1/</sup>

#### FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, and the entire record in this proceeding, the following findings of fact are made:

1. Universal is a Hyundai dealer located at 12801 South Orange Blossom Trail, Orlando, Florida 32837.

2. Standing to protest the establishment of an additional new motor vehicle dealer depends on the population of the county in which the proposed location sits. If the population is greater than 300,000 persons, then a dealer of the same line-make must either: i) be located within a radius of 12.5 miles from the proposed location (the "distance test"); or ii) "establish that during any 12-month period of the 36-month period preceding the filing of the [manufacturer's] application for the proposed dealership, the dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius

of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer" (the "sales test"). If the population is less than 300,000, the radius for purposes of the distance test is 20 miles, and a dealer must meet either the distance test or sales test based on a 20-mile ring.

§ 320.642(3), Fla. Stat.

3. Universal has not sought to establish standing under the sales test; the distance test is the only premise for standing in this case. The parties have stipulated that if the population in Lake County is greater than 300,000, then Universal does not have standing. If the population is less than 300,000, Universal has standing.

4. On March 26, 2015, DHSMV published the Notice, which indicated HMA's intent "to establish the new point location in a county of more than 300,000 population, according to the latest population estimates of the University of Florida, Bureau of Economic and Business Research."

5. There was no census or actual count of the population in Lake County in 2014. The parties' experts agree that the exact number of persons in Lake County when the Notice was published cannot be known.

6. Nalini Vinayak, the DHSMV employee who supervises licensing, regulation and compliance for motor vehicle dealers, manufacturers, and distributors, testified that in her nine years

of experience it has been the practice of DHSMV to rely on the most recent BEBR estimate of population in determining whether a county has a population greater or lesser than 300,000.

Ms. Vinayak testified that DHSMV's Bureau of Licenses and Enforcement does not employ statisticians and does not independently assess the data behind the BEBR estimate.

7. Universal's expert statistician, Dr. Sanford Weisberg, testified that there is never a way of knowing the actual population of a county; there are only population estimates of varying degrees of accuracy and reliability. The "gold standard" of population estimates is the Census Bureau's decennial census, because it attempts an actual count of all persons in the country. Dr. Weisberg noted that even the census is subject to a small factor of uncertainty.

8. The most recent decennial census in 2010 found that the population of Lake County was 297,047 persons.

9. BEBR is housed in the University of Florida's College of Arts and Sciences and describes its mission as follows:

- \* To collect, analyze, and generate economic and demographic data on Florida and its local areas;

- \* To conduct economic and demographic research that will inform public policy and business decision making;

- \* To distribute data and research findings throughout the state and the nation.<sup>2/</sup>



10. Under contract with the State of Florida, BEBR produces yearly estimates of the population of Florida and each of the state's counties and cities. BEBR's estimates are used for a variety of statutory purposes such as revenue sharing among counties,<sup>3/</sup> county applications for primary care for children and families challenge grants,<sup>4/</sup> concurrency determinations,<sup>5/</sup> regional water supply planning,<sup>6/</sup> and limitations on alcoholic beverage licenses.<sup>7/</sup>

11. BEBR produces estimates; it does not conduct population counts. When asked what the term "data" means in the context of population estimates, Dr. Weisberg responded as follows:

In this instance, data would be everything that goes into producing an estimate and everything that goes into assessing the quality of the estimate. So it would include the methodology that's used; it would include the data used to form an estimate; it would include the estimate; it would include estimates of imperfection in the estimate; and any other related inference based on those types of information.

12. Ms. Vinayak testified that when DHSMV published the Notice in March 2015, it consulted BEBR's April 1, 2013, Florida Estimates of Population. BEBR's April 1, 2013, estimate of the population in Lake County was 303,317 persons. The April 1, 2013, population estimate used by DHSMV did not reflect BEBR's most recent data as of March 2015. At the time the Notice was published, the most recent BEBR population estimates available

were those dated April 1, 2014. BEBR's April 1, 2014, estimate of the population in Lake County was 309,736 persons.

Therefore, DHSMV's mistake in using the 2013 estimate did not affect its conclusion that the population of Lake County exceeded 300,000 persons.

13. BEBR uses a "housing unit" method to estimate population, in which population changes are reflected by changes in occupied housing units. In its April 1, 2014, estimate, BEBR states that the housing unit method is the most commonly used method for making local population estimates in the United States because it can utilize a wide variety of data sources, can be applied at virtually any level of geography, and has a proven track record for producing reasonably accurate estimates. In its explanation of methodology, BEBR goes on to state:

The foundation of the housing unit method is the fact that almost everyone lives in some type of housing structure, whether a traditional single family unit, an apartment, a mobile home, or group quarters, such as a college dormitory, military barrack, nursing home, or prison. The population of any geographic area can therefore be calculated as the number of occupied housing units (households) times the average number of persons per household (PPH), plus the number of persons living in group quarters facilities.

14. BEBR constructs its annual estimates beginning with the housing units and persons per household observed in the last decennial census. BEBR calculates the change in housing units

by collecting more recent data on housing unit indicators, such as residential housing permits, active residential electric customers, homestead exemptions, and school enrollments. All of the data collected since the 2010 census indicates continued growth in the population of Lake County from 2010 to 2014: active residential electric customers increased 3.7 percent, school enrollments increased 2.4 percent, and building permits indicated a 2.4 percent increase in housing units.

15. Dr. Weisberg pointed out that residential building permits are not a precise indicator of new housing units during the period in question. BEBR assumes a standard time between permit issuance and the date of completion, but has no way of testing the accuracy of that assumption. Dr. Weisberg noted that BEBR also has the problem of estimating the number of new mobile homes, which do not require permits. BEBR must also estimate the number of homes that were demolished or taken out of residential service, all of which leaves a potential for error in the final population estimate. There are similar error potentials in using residential electric customers and homestead exemptions as factors for estimating population growth. In its own documentation, BEBR concedes that the components of its population estimates can never be known exactly.

16. The Census Bureau also makes annual estimates of population for counties and cities. The Census Bureau uses an

administrative record, or "ADREC" method, to adjust the 2010 census numbers for births, deaths, and migration into and out of each county. The Census Bureau's July 1, 2014, estimate of the population of Lake County was 315,690.

17. Dr. Weisberg noted that the ADREC method is subject to substantial uncertainty. The Census Bureau uses birth and death registries to estimate the number of births and deaths in a county, and tax returns to estimate the number of migrants entering and leaving the county. All of these estimated values are subject to error. Births may be registered in the wrong county. Tax returns may be filed at an incorrect address. Many persons do not file tax returns at all. Dr. Weisberg acknowledged that the Census Bureau may make adjustments to deal with these errors, but substantial uncertainty in the estimated population remains.

18. Dr. Weisberg conceded that the data collected by BEBR and the Census Bureau are appropriate indicators of population and that he does not know of better methods to estimate population. He testified that both institutions "do a fine job." Nevertheless, Dr. Weisberg contends that one cannot conclude that the population in Lake County is over 300,000 based on the BEBR and Census Bureau estimates, because they are subject to uncertainty and not sufficiently accurate.

19. Dr. Weisberg testified that the standard statistical methodology for deciding between two options, such as whether the population of Lake County is greater or lesser than 300,000, is hypothesis testing. A hypothesis test is used to determine whether there is enough evidence in a data sample to infer that a certain condition is true. This methodology enables one to determine whether there is enough data present to decide that a current condition (the "null hypothesis") should be rejected in favor of believing that a new condition (the "alternative hypothesis") prevails.

20. In this case, Dr. Weisberg started with an assumption that the population in Lake County is 297,047, based on the last census conducted in 2010. The decennial census should be treated as the null hypothesis or "state of nature" because it is the most recent number that one may be certain is accurate within a few hundred persons. One must further assume that the null hypothesis continues to prevail unless it can be established with 95 percent certainty that the population in Lake County is actually greater than 300,000. Once the null hypothesis is established, the statistical analysis will intrinsically favor the null hypothesis until there is "compelling evidence" that the condition described by the null hypothesis no longer applies.

21. In conducting his analysis, Dr. Weisberg posited three possible conclusions: (1) the population was almost certainly greater than 300,000; (2) the population was almost certainly less than 300,000; or (3) based on the accuracy of available estimates, reaching a conclusion that the population was greater than 300,000 is impossible. Dr. Weisberg testified that possible conclusion (3) could be restated to say that, based on the accuracy of the available estimates, reaching a conclusion that the population was less than 300,000 is also impossible.

22. As a result of his statistical tests, Dr. Weisberg opined that concluding that the population was greater than 300,000 is impossible. Dr. Weisberg also could not conclude with any level of confidence that the population was lesser than 300,000. He agreed with the statement that one cannot say with 95 percent confidence one way or the other whether the population of Lake County is under or over 300,000 persons. Under Dr. Weisberg's null hypothesis, the status quo of the 2010 decennial census would prevail, and the only conclusion to be reached is that the population remains less than 300,000.

23. HMA's expert statistician, Dr. James McClave, testified that because the hypothesis test is so heavily weighted in favor of maintaining the null hypothesis, the choice of the current condition to be identified as the null hypothesis can be determinative. In this case, Dr. McClave disagreed with

Dr. Weisberg's choice of the 2010 census number as the "state of nature" as of April 2014.

24. Dr. McClave believed that a consideration of the most recent estimates of the Census Bureau (315,690) and BEBR (309,736), and of the data on which those estimates were based, established that the status quo or current state of nature as of April 2014 was that the population of Lake County was over 300,000 persons. If the null hypothesis is that the population in Lake County is over 300,000, the data do not disprove it. In fact, Dr. McClave concluded "with a very high level of confidence that Lake County's population exceeded 300,000 on April 1, 2014."

25. Dr. Weisberg conceded that while the 2010 decennial census represented the state of nature as of 2010, it was not intended to be a measure of population in 2014. While the 2010 census enumeration may have been generally accepted as the true population of Lake County in 2010, no one would contend that it stated the true population as of April 2014. Dr. McClave opined that, even before collecting any population indicator data, a rational person would not begin with the belief or assumption that the population in Lake County in 2014 was 297,047.

26. Dr. McClave testified that statistics may be divided into the areas of inferential statistics, which includes the

complicated calculations of confidence intervals and hypothesis tests described very briefly above, and descriptive statistics, "just looking at the data and trying to get your arms around it, understand it." Descriptive statistics can be used as a "sanity check" on the Census Bureau's and BEBR's population estimates for Lake County, both of which are greater than the last census and over 300,000 persons. In this case, the descriptive statistics supported the conclusion that the population in Lake County has continued to grow at a pace sufficient to place it above 300,000 as of April 1, 2014.

27. The Census Bureau's enumeration of Lake County's 2010 population was 297,047, compared with an enumeration in 2000 of 210,527. Dr. McClave testified that this difference equates to a 10-year growth rate of 41 percent and average annualized growth of 3.5 percent per year from 2000 to 2010. He stated that for Lake County's population to have remained under 300,000 between 2010 and 2014, its four year growth rate would have to have slowed dramatically to only 1 percent over the four-year period, or only an average annualized growth rate of 0.25 percent.

28. Dr. Weisberg correctly noted that the growth rate in Lake County was much slower toward the end of the 2000-2010 decade. From this finding he concluded that Dr. McClave's



reliance on the 10-year growth rate may distort the picture of what has happened since 2010.

29. All parties agree that the population of Lake County in 2010 was 297,047, meaning that the county only needed to add 2,953 persons to its population between 2010 and 2014 to reach the level of 300,000. This addition would amount to an average of 738.25 persons per year from 2010-2014.

30. BEBR Special Population Report number 7, dated May 2011, was titled "Revised Annual Population Estimates for Florida and Its Counties, 2000-2010, with Components of Growth." In this report, BEBR reexamined its population estimates for the previous decade, revising them to make them consistent with the 2000 and 2010 Census counts. The report indicates that population growth in Lake County averaged 11,127.43 persons per year from 2000-2001 through 2006-2007, but only 2,877.67 persons per year from 2007-2008 through 2009-2010.

31. Dr. Weisberg was thus correct that the recession slowed growth in Lake County during the latter part of the decade. However, the absolute numbers indicate that even the levels of growth shown during the recessionary period would have been more than sufficient to raise the population of Lake County above 300,000 by April 2014. During the worst single year of the decade, 2008-2009, the population of Lake County increased by 2,302 persons. If the county's population increased by only

this number from 2010 through 2014, then its population would be well in excess of 300,000. No evidence was presented to indicate that the county's population growth between the 2010 Census and April 2014 could be presumed to be less than it was during the depths of the recession.

32. The statistical experts also testified at some length concerning Dr. Weisberg's testing of his null hypothesis. To do so, he calculated standard deviations which reflect the uncertainty or amount of error in the Census Bureau and BEBR population estimates. The standard deviations are calculated using estimates of uncertainty published by the Census Bureau and BEBR called Mean Absolute Percentage Errors or "MAPES." A MAPE is the average of errors of individual county population estimates when the direction of error (too high or too low) is ignored. A MAPE can be calculated only in a census year because that is the only year in which the estimate can be compared to a supposed true value.

33. Using various MAPES published by the Census Bureau and BEBR, Dr. Weisberg calculated standard deviations to determine several one-sided 95 percent confidence intervals that purport to show the uncertainty of the underlying population estimates. Dr. McClave pointed out that the MAPES contain uncertainty because the Census Bureau and BEBR report multiple MAPES, and there is judgment and uncertainty in selecting a MAPE to use.

Dr. McClave attempted to correct for the over-estimation of uncertainty in the 2010 MAPES by calculating a four-year MAPE. Dr. Weisberg contended that the four-year MAPE was flawed because there was no true value for the comparison.

34. No detailed findings are necessary as to the MAPES controversy. This complex issue is described merely to illustrate the central legal question: does section 320.642(3) actually require DHSMV to engage in the sort of sophisticated statistical and demographic analysis demonstrated by the experts in this case, who in any event reached diametrically opposing conclusions? Or does section 320.642(3) permit DHSMV to determine the population of the county as it has done for at least the past nine years, i.e, by adopting the BEBR population estimate as its own? The legal question will be discussed and resolved in the Conclusions of Law.

35. If the legal question is resolved in favor of DHSMV's reliance on the BEBR estimate, then it is not necessary to resolve the factual issues presented at the hearing as to the size of the population of Lake County. If the legal question is resolved in favor of the interpretation advocated by Universal, then the factual issues require resolution.

36. Based on the foregoing subsidiary findings, it is found that the population of Lake County was greater than 300,000 persons according to the most recent data of BEBR and

the Census Bureau at the time the Notice was published. Dr. Weisberg is theoretically correct that the possibility of the population being less than 300,000 cannot be absolutely ruled out, but the data point firmly in the upward direction.

CONCLUSIONS OF LAW

37. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569, 120.57(1), 320.642, and 320.699, Fla. Stat. (2015).

38. Section 320.642(2)(a), Florida Statutes, provides, in relevant part:

(2)(a) An application for a motor vehicle dealer license in any community or territory shall be denied when:

1. A timely protest is filed by a presently existing franchised motor vehicle dealer with standing to protest as defined in subsection (3). . . .

39. Universal bears the burden of establishing standing by a preponderance of the evidence. Braman Cadillac, Inc. v. Dep't of High. Saf. & Motor Veh., 584 So. 2d 1047, 1050 (Fla. 1st DCA 1991).

40. Section 320.642(3) provides:

(3) An existing franchised motor vehicle dealer or dealers shall have standing to protest a proposed additional or relocated motor vehicle dealer when the existing motor vehicle dealer or dealers have a franchise agreement for the same line-make vehicle to

be sold or serviced by the proposed additional or relocated motor vehicle dealer and are physically located so as to meet or satisfy any of the following requirements or conditions:

(a) If the proposed additional or relocated motor vehicle dealer is to be located in a county with a population of less than 300,000 according to the most recent data of the United States Census Bureau or the data of the Bureau of Economic and Business Research of the University of Florida:

1. The proposed additional or relocated motor vehicle dealer is to be located in the area designated or described as the area of responsibility, or such similarly designated area, including the entire area designated as a multiple-point area, in the franchise agreement or in any related document or commitment with the existing motor vehicle dealer or dealers of the same line-make as such agreement existed upon October 1, 1988;

2. The existing motor vehicle dealer or dealers of the same line-make have a licensed franchise location within a radius of 20 miles of the location of the proposed additional or relocated motor vehicle dealer; or

3. Any existing motor vehicle dealer or dealers of the same line-make can establish that during any 12-month period of the 36-month period preceding the filing of the licensee's application for the proposed dealership, the dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 20 miles of the location of the proposed additional or relocated motor vehicle dealer; provided the existing dealer is located in the same county or any county contiguous to the county where the

additional or relocated dealer is proposed to be located.

(b) If the proposed additional or relocated motor vehicle dealer is to be located in a county with a population of more than 300,000 according to the most recent data of the United States Census Bureau or the data of the Bureau of Economic and Business Research of the University of Florida:

1. Any existing motor vehicle dealer or dealers of the same line-make have a licensed franchise location within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; or

2. Any existing motor vehicle dealer or dealers of the same line-make can establish that during any 12-month period of the 36-month period preceding the filing of the licensee's application for the proposed dealership, such dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; provided such existing dealer is located in the same county or any county contiguous to the county where the additional or relocated dealer is proposed to be located. [Emphasis added]

41. As found above, DHSMV relies upon BEBR's most recent population estimate as establishing the population of the county in accordance with section 320.642(3). Universal contends that the statute requires DHSMV to consider the full range of the "most recent data" of the Census Bureau and BEBR, not merely the BEBR estimate based on that data. According to Universal, DHSMV

is required to perform its own analysis of the data in order to arrive at an independent estimate of a county's population.

42. The term "estimate" is used here advisedly. All the parties agree that the population of a county can never be precisely known; even the decennial count by the Census Bureau is off by a few hundred persons at the county level. Thus, section 320.642(3) does not require a perfect count of the population but a reliable estimate based on the most recent data of the Census Bureau or BEBR. Universal's reading of the statute assumes that there is to be found a more reliable estimate, based on the most recent BEBR data, than BEBR itself is capable of producing, and that DHSMV has the ability to produce such an estimate.

43. DHSMV's Bureau of Licenses and Enforcement does not employ statisticians. DHSMV is statutorily responsible for the administration and enforcement of the provisions of chapter 320. § 320.011, Fla. Stat. DHSMV is responsible for the regulation and licensing of motor vehicle manufacturers, factory branches, distributors and importers, among many other duties set forth in chapter 320. Universal points to no provision of chapter 320 indicating that DHSMV is charged with performing statistical analyses of the kind undertaken by the experts in this case, or routinely performed by BEBR in the normal course of its business.

44. BEBR is the State of Florida's statutorily acknowledged expert in the field of population statistics. It is irrational to read section 320.642(3) as requiring DHSMV, an agency with no particular expertise in the fields of demography or statistics, to go behind the estimating work performed annually by BEBR, an entity whose primary function is to generate precisely the kind of population estimates contemplated by the statute.

45. It is concluded that DHSMV's use of the most recent BEBR population estimates to determine the population of Lake County as of the date of the Notice was in compliance with section 320.642(3).

46. Even if DHSMV were not to rely on the BEBR estimate, the greater weight of the evidence produced at the hearing established that the population of Lake County was greater than 300,000 persons according to the most recent data of BEBR and the Census Bureau at the time the Notice was published.

47. Universal has not established by a preponderance of the evidence that it has standing to proceed with its protest.

#### RECOMMENDATION

Based on the foregoing, it is, therefore,

RECOMMENDED that a final order be entered by the Department of Highway Safety and Motor Vehicles dismissing Action Nissan, Inc., d/b/a Universal Hyundai's protest of the proposed



establishment of an additional dealership for failure to establish standing pursuant to section 320.642(3).

DONE AND ENTERED this 7th day of January, 2016, in Tallahassee, Leon County, Florida.

*Lawrence P. Stevenson*

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 7th day of January, 2016.

ENDNOTES

<sup>1/</sup> Section 320.642 was most recently amended in 2013.

<sup>2/</sup> <https://www.bebr.ufl.edu/content/about>

<sup>3/</sup> § 186.901, Fla. Stat.

<sup>4/</sup> § 154.504(2), Fla. Stat.

<sup>5/</sup> § 163.3180(5)(h)4., Fla. Stat.

<sup>6/</sup> § 373.709(2)(a)1.a., Fla. Stat.

<sup>7/</sup> § 561.20, Fla. Stat.

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(eServed)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.